APPROVED

THE HIGH COURT

JUDICIAL REVIEW

[2023] IEHC 598

2023 962 JR

BETWEEN/

VICTORIA KEENAN (NEE HARTY)

Applicant

-AND-

CLARE COUNTY COUNCIL AND THE COMMISSIONER OF AN GARDA SÍOCHANA AND DIRECTOR OF PUBLIC PROSECUTIONS AND IRELAND AND THE ATTORNEY GENERAL

Respondents

JUDGMENT (*ex tempore*) of Mr. Justice Conleth Bradley delivered on Wednesday, 8th November, 2023

INTRODUCTION

Preliminary

1. The Statement of Grounds in this contested application for leave to apply for judicial review describes the applicant as a young mother who is a member of the Traveller community. The applicant was married in 2013 and together with her husband they put their names on the council's housing list in 2013 – over ten years ago.

2. The applicant and her five young children, who range from two to nine years of age, live in a caravan as their family home, which is presently parked at the end of a cul-de-sac on the edge of Sixmilebridge, County Clare. The caravan has been located there since in or around August 2023. The applicant states that this is because they have no other home and that they have never had an authorised location upon which to place their caravan.

3. The applicant describes how, for some time previously, she and other members of her family had located themselves on the edges of the Ring Road around Ennis on disused fields and roads and that during the Covid-19 pandemic, portable toilets and water-drums were provided by the council notwithstanding the unauthorised nature of the siting of the caravans (as per regulations in force during the pandemic).

4. However, she adds that when the applicant and her family (going back to the time of her grandmother) found 'out-of-the-way' places in the hills between Ennis and Limerick, they were ordered to leave because of summonses served by the gardaí, in some instances based on complaints from council officials.

5. Ultimately, the applicant parked her caravan in the carpark of the Sixmilebridge railway station (albeit that she describes the presence of barriers there which restricted access and egress) and it was while here that her eldest child started school in Sixmilebridge.

6. It was the removal of her caravan from that location by the gardaí (with the assistance of council officials) which forms the immediate background to these proceedings.

7. I heard submissions from the applicant, who is a litigant in person (assisted by Ms. Heather Rosen, a McKenzie friend).

8. Mr. Luán Ó'Braonáin SC made submissions on behalf of Clare County Council ("the council") and Mr. Joe Jeffers SC made submissions on behalf of the Garda Commissioner, the DPP, Ireland and the Attorney General ("the State").

9. While a substantial amount of evidence has been placed before the court, it remains an application for leave to apply for judicial review under Order 84 of the Rules of the Superior Courts, 1986 (as amended) ("RSC 1986") and the threshold remains that of arguability or stateability.

10. The applicant first made an *ex parte* application (in person) to this court (Sanfey J.) on the 18th August 2023 and the court directed that the council and the Garda Commissioner be put on notice of the application and that the council[1] be restrained until Friday 25th August 2023 (or until further Order in the meantime) from interfering, encroaching or taking possession of the caravan occupied by the applicant and her

[1] This was later clarified as being directed to the gardaí.

children which was *in situ* at Lios Anama, Sixmilebridge, County Clare. When the matter next came before the court (Stack J.) on the 25th August 2023, after hearing from the applicant (assisted by Ms. Rosen as a McKenzie Friend) and separately from counsel for the council and counsel for the Garda Commissioner, the court made directions for the service of documentation and continued the restraining order until the 5th September 2023. On the 31st August 2023 the court (Phelan J.) extended the time for service of documentation. When the matter came before the court (Egan J.) on the 5th September 2023, the court granted the applicant's request for an adjournment to the 9th October 2023, continued the restraining order against the council and the gardaí and made further directions in relation to the service of documents. I understand from the parties that when the matter next came before the court the applicant may have been unavailable and eventually the matter came before the court and was assigned a hearing date for the 31st October 2023. When the matter was called on at the call-over on the previous Thursday, Hyland J. refused the applicant's application for a further adjournment.

11. One of the advantages of O.84, r.24(1) of RSC1986 (the rules which provide for 'leave on notice') is that the exchange of further affidavits in a contested leave application (from the date of the initial *ex parte* leave application) can act to sharpen the focus of the issues between the parties. This is what has occurred in this case but, of course, the applicable threshold is the relatively low standard of arguable or stateable grounds. At the hearing before me, the applicant, assisted by Ms. Rosen (as a McKenzie friend), sought an adjournment on the basis of having just received legal submissions and authorities from the council and the State respondents. The council and the State respondents opposed the further adjournment and indicated that they would not rely on

the legal authorities furnished to the applicant and Ms. Rosen and that their oral submissions would be based on general principles. I indicated to the applicant that I was refusing the application for a further adjournment.

12. It may be observed that applications, such as this one, may in the future benefit by the parties consenting to a 'telescoped hearing' in the manner envisaged by O.84, r.24(2) RSC 1986 where the court can treat an application for leave as if it were the hearing of an application for judicial review with such ancillary directions addressing the matters set out in O.84, r. 24(2)(i), (ii) (I),(II), (III) and (IV) of the RSC 1986.

Affidavits

13. The applicant has sworn five affidavits – on the 18th August 2023, 25th August 2023, 5th September 2023, 29th September 2023 and 15th October 2023. Mr. John Corry, Administrative Officer with the Housing Department of the council has sworn three affidavits– on the 24th August 2023, 4th September 2023 and the 6th September 2023. Superintendent John Ryan has sworn the main affidavit on behalf of the Garda Commissioner dated the 15th September 2023 with four shorter affidavits from Sgt. Shane Graham and Garda Colette Acton both sworn on the 15th September 2023 and from Sgt. Seamus Mulligan and Sgt. Tracey Stanley both sworn on the 18th September.

14. Unsurprisingly, the applicant's Statement of Grounds does not conform precisely with O.84 of the RSC 1986. Five main reliefs are sought which in their terms include the grounds relied upon by the applicant. Essentially the first two reliefs are sought against the Garda Commissioner and third and fourth reliefs are sought against the council. I

am assuming that the fifth relief – a claim for damages– is sought as against both the council and the State respondents.

15. In addressing these matters, I now set out the salient facts relative to the reliefs which are sought against each of the principal respondents bearing in mind that this is a leave application.

THE ISSUES

First & Second Reliefs & related grounds

16. Paraphrasing the reliefs sought at paragraphs 1 and 2 of the applicant's Statement of Grounds, the applicant effectively seeks (i) an interlocutory injunction against An Garda Síochána (and the council insofar as any council officials may have facilitated or assisted the gardaí) preventing them from removing (i.e. impounding) her caravan, which is her family home, until separate plenary proceedings[2] involving the applicant's mother have been determined, and, (ii) an interim injunction to the same effect pending the determination of the aforesaid interlocutory injunction application. (A similar description of this relief is set out in the first bullet point of paragraph 68 of the applicant's first affidavit sworn on the 18th August 2023).

17. The plenary proceedings involving the applicant's mother were described by the applicant as a challenge under the Constitution and the European Convention on Human

[2] Record Number 2021/3205P.

Rights Act 2003 (as amended) to laws which facilitate the alleged trespass and the alleged impounding of the homes of members of the Traveller community and, specifically, to the then threatened removal of the applicant's mother's caravan from the carpark of Sixmilebridge railway station. According to the affidavit of Superintendent John Ryan (at paragraphs 22-23) which was sworn on the 15th September, 2023, the applicant's mother subsequently accepted an offer of accommodation in Newmarket on Fergus from Clare County Council and her caravan was removed by agreement from the carpark of Sixmilebridge railway station. Superintendent Ryan further avers (at paragraph 26 of that affidavit) that these proceedings were listed for mention in the Chancery List on the 20th October 2023. The applicant has a different understanding of these events, stating that her mother had to accept the sole tenancy in this accommodation because of illness and because she could not face another winter without services and described a situation of hardship and deprivation.

18. Insofar as the applicant seeks to have an order made which would have the effect of joining her to her mother's *separate* plenary action, such an order cannot be granted in this application for leave to apply for judicial review. It is noted that the application by the applicant's sister and her children to join as co-plaintiffs related to the separate plenary action in Record Number 2021/3205P.

19. The applicant makes the alternative argument that, regardless (or independent) of the proceedings involving her mother (again which she understands to involve a challenge to an intended decision to impound a home that is a caravan), she asks the court to give

her protection so that her home is not impounded and refers to the protections of the family under the Constitution.

20. The applicant has described the immediate context which has led to this application for leave to apply for judicial review as an emergency.

21. Consequent upon a complaint from the council, An Garda Síochána had served a notice on the applicant pursuant to section 19C of the Criminal Justice (Public Order) Act 1994 as inserted by section 24 of the Housing (Miscellaneous Provisions) Act 2002 requiring her to leave the carpark of the railway station in Sixmilebridge and to remove her caravan. The applicant believed that this was a safe place to live for her and her young family. The applicant didn't comply with that notice and this had two consequences: first, on the 6th May 2021 the applicant was served with a summons for failure to comply with the notice; second, on the 22nd July 2023, An Garda Síochána, assisted by council officials, removed the applicant's caravan and brought it to the Clare County Council storage facility in Inagh, County Clare. The applicant found this to be a traumatic experience and expressed concern about the effects, of what she refers to as having "your home taken away", on her children.

22. On or about the 25th July 2023 the applicant retrieved her caravan from the storage facility and parked it at Lios Anama, Sixmilebridge, County Clare. It remains there today. She describes this as a place "*where it obstructs no-one, at a cul-de-sac next to an entrance to a field, (which also is not blocked), and some distance back from houses and traffic*." However, it is clear from the accounts given by both the applicant and Superintendent John Ryan, as a result of the applicant parking her caravan at this

location, tensions have arisen amongst the local people in the area leading to protest meetings and even anger.

23. On the 10th August 2023, on receipt of a formal complaint from a council official, An Garda Síochána served a notice on the applicant pursuant to section 19C of the Criminal Justice (Public Order) Act 1994 as inserted by section 24 of the Housing (Miscellaneous Provisions) Act 2002 requiring the applicant to leave this location and to remove her caravan.

24. However, after the initiation of this application for leave to apply for judicial review, An Garda Síochána received legal advice which led to the withdrawal of the section 19C Notice and confirmation that no further notice would be issued by An Garda Síochána to the applicant in respect of the parking by the applicant of her caravan at this precise location at Lios Anama, Sixmilebrdge, County Clare.

25. In this regard at paragraph 36 of his Affidavit sworn on the 15th September 2023, Superintendent Ryan avers as follows:

> *"36. Following the issuing of these proceedings, An Garda Síochána has received legal advice. On foot of that advice, I confirm that An Garda Síochána has decided to withdraw the Garda Notice issued to the Applicant. No action will be taken by An Garda Síochána on foot of this Garda Notice and I confirm that no further Garda Notice will be issued by An Garda Síochána to the Applicant in respect of the Applicant's caravan in its current location. I say and am advised that*

in these circumstances, the reliefs sought against An Garda Síochána are unnecessary."

26. Consequently, the matters referred to by the applicant and comprising the gravamen of the issues and reliefs set out in the first and second paragraphs of the Statement of the Grounds have now in fact been addressed.

27. In his judgment in *G v DPP* [1994] 1 I.R. 374 at 377-378, Finlay C.J. set out the necessary ingredients which the applicant must satisfy the court in a *prima facie* manner by the facts set out in her or his affidavit and submissions made in support of their application which included *inter alia* that the facts averred in the affidavit would be sufficient, if proved, to support a stateable ground for the form of relief sought by way of judicial review and that on those facts an arguable case can be made that the applicant is entitled to the relief which she or he seeks.

28. Since the decision in *G v DPP* was handed down, O.84 of the RSC 1986 now provides for contested leave applications (O.84, r. 24(1) RSC 1986)[3] where a wider factual context may now be presented because other parties are involved and O.84 also provides for telescoped hearings where the court may treat an application for leave as if it were the hearing of the application for judicial review (O.84, r.24(2) RSC 1986). The former applies to this application.

[3] To which *G v DPP* applies.

29. In a contested leave application, therefore, the intended respondents have an opportunity to set out their view of matters on affidavit and this has occurred in this case.

30. Arguably, on one view, the act of bringing these proceedings by the applicant, together with their procedural history before the High Court, has resulted in an affidavit being sworn on the 15th September 2023 by Superintendent Ryan on behalf of the Garda Commissioner which contains an averment at paragraph 36 which meets and addresses the substance of the reliefs sought in paragraphs 1 and 2 of the applicant's Statement of Grounds. Whether this could be more accurately described as rendering those aspects of the applicant's claims moot – in the sense explained by the Supreme Court in *Lofinmakin v Minister for Justice* [2013] IESC 49, [2013] 4 I.R. 274 and *ELG v. HSE* [2021] IESC 82 i.e. there now being no dispute – I find that there are now no arguable or stateable grounds for the seeking of an interlocutory injunction by the applicant against the gardaí (and the council insofar as any council officials may facilitate or assist the gardaí) restraining them from impounding the applicant's caravan.[4]

31. Leave is therefore refused in relation to the reliefs claimed in paragraphs D(I) and D(II) of the applicant's Statement of Grounds.

32. In addition, I find that there are no grounds for any damages claim (paragraph D(V) of the applicant's Statement of Grounds) made out against the Garda Commissioner and

[4] In the Statement of Grounds the applicant sought an injunction until the separate plenary proceedings (Record Number 2021/3205P) involving the applicant's mother had been determined and also an interim injunction to the same effect pending the determination of this interlocutory injunction application.

the Director of Public Prosecutions (or any of the State respondents) and that this application for leave to apply for reliefs by way of judicial review is refused as against the Garda Commissioner, the Director of Public Prosecutions, Ireland and the Attorney General.

Third & Fourth Reliefs & related grounds

33. The third and fourth reliefs are directed against the council. They relate to what the applicant describes as both a temporary and an emergency situation.

34. Again, in summary, the applicant seeks an order of mandamus directing the council (i) to procure land which can facilitate the placing of her caravan on an emergency basis, within reach of the applicant's childrens' schools, pending the identification of more suitable temporary or long term provision, and (ii) to provide a portable toilet and water-drum (described by the applicant as the most basic sanitary services required for health and safety) at this temporary or emergency location. (A similar description is set out in the second bullet point of paragraph 68 of the applicant's first affidavit sworn on the 18th August 2023 which also refers to the Guidelines of the Housing (Traveller Accommodation) Act 1998).

35. In her affidavit sworn on the 15th October 2023, the applicant refers to what she describes as a policy under the Children First Act 2015 in emphasising the point that her childrens' needs are not being prioritised in the decision-making process and states that her children are without water, electricity and a toilet.

36. It is not clear whether the request for the provision of a portable toilet and water-drum – as this is framed in the Statement of Grounds – is referring to the applicant's current location at Lios Anama, Sixmilebrdge, County Clare. However, the first affidavit of the applicant sworn on the 18th August, at paragraph 18, would appear to suggest that the request for the basic services of a portable toilet and water-drum – dates back to the position which applied during the Covid-19 pandemic restrictions which included the provision of such facilities even when the caravan was parked in unauthorised places arising from changes in regulations to address the Covid-19 pandemic.

General principles

37. Before turning to the facts of this case, the following would appear to be general principles which can be gleaned from the case law when considering the provisions of the Housing Acts 1966 to 2015:

(i) A failure by a housing authority to provide the type of accommodation that applicants seek and want is not a breach of statutory duty;[5]

(ii) Where a reasonable offer of accommodation was made by the housing authority and rejected, the persons could not be regarded as being *homeless* within the

[5] *McDonagh & Ors v Clare County Council* [2004] IEHC 184. The High Court (Smyth J.) *inter alia* observed that there was no obligation on the housing authority to provide immediately such specified accommodation. It must not only assess needs and priorities but have regard to all other persons who have needs and to its availability of accommodation and that it is the function of the housing authority, rather than the High Court, to adjudicate on the claims of the applicants, not that of the Court.

meaning of section 2 of the Housing Act 1988 and that to decide otherwise would in effect be to give a veto on the accommodation offered;[6]

(iii) The Housing Acts 1966 to 2015 cannot be interpreted as giving applicants an unfettered right to veto a rational choice made by the housing authority or to choose accommodation;[7]

(iv) It is the function of the local authority to manage its resources and to set the priorities and the housing authority's obligation to consider an application for housing must be made in the context of the resources available;[8]

(v) In relation to the seeking of an order of mandamus by an applicant, the allocation of housing by a local authority must be done in accordance with the Scheme of Priorities and based on a reasonable and reasoned consideration of an application. The allocation of housing is a matter within the competence and expertise of a housing authority and it is not the function of the court to direct how that policy is to be applied in any particular case;[9]

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[6] *Fingal County Council v Gavin & Ors* [2007] IEHC 444 (Peart J.)

[7] In *McDonagh & Ors v Clare County Council* [2004] IEHC 184, the High Court (Smyth J.) *inter alia* observed that: "*It cannot have been the intention of the legislature that at all times and in all circumstances the Housing Authority would have available and vacant and ready for occupation either conventional permanent or conventional emergency accommodation ... It is for the Housing Authority to prioritise the building programme necessary to house those entitled under the Acts – and to prioritise those whom it considers entitled to such accommodation under the TAP and/or on the Housing List*."

[8] *Doherty v South Dublin County Council & Others (No. 2)* [2007] IEHC 4, [2007] 2 I.R. 696 (per Charleton J.); *Ward v Dublin South County Council* [1996] 3 I.R. 195 (per Laffoy J.).

[9] *Mulhare & Ors v Cork County Council* [2018] IECA 206 (Dunne, Peart & Hogan JJ.– judgment delivered by Peart J).

(vi) It is outside the competence of the High Court and not a matter for judicial review to direct that a housing authority would provide a house within the narrow geographical radius identified by an applicant as suitable for their needs as to do so would be to engage in an assessment of the housing stock and of the needs of the applicants which are outside the power of a court;[10]

(vii) Unless a clear error in the decision-making process is established by a disappointed applicant for housing or re-housing, the courts may not intervene and quash a decision that has led to that disappointment.[11]

38. The identification of the above principles reflect in large part the general tenor of the submissions made on behalf of the council by Mr. Ó'Braonáin SC.

39. While I am not deciding the issue of substance in this leave application, the Superior Courts appear reluctant to interfere with the exercise of a housing authority's discretion when it comes to the determination of homelessness (under section 2 of the Housing Act 1988) and if applicable, the manner and nature of the assistance offered (under section 10 of the Housing Act 1988).

40. There are, or course, cases which provide exceptions to these principles.

[10] *Mulhare & Ors v Cork County Council* [2018] IECA 206 (Dunne, Peart & Hogan JJ– judgment delivered by Peart J).

[11] *Mulhare & Ors v Cork County Council* [2018] IECA 206 (Dunne, Peart & Hogan JJ– judgment delivered by Peart J).

41. While the aforementioned principles emphasise the discretion exercised by a housing authority when making determinations under sections 2 and 10 of the Housing Act 1988, these provisions were also addressed by the Supreme Court in *O'Donnell v South Dublin County Counci*l [2015] IESC 28.

42. In that case the High Court and the Supreme Court considered in particular the circumstances of the fourth named applicant daughter who at the time of the High Court hearing was 15 years of age, and as a result of cerebral palsy required the use of a wheelchair and was educationally disadvantaged and did not have access to certain facilities until she had reached the age of 13 years. In the case of the parents the Supreme Court held that Mr and Mrs O'Donnell had been repeatedly offered housing and the Council and not failed in its statutory duty to them. However, it distinguished the position of the fourth named applicant daughter whose position, the Court held, was truly exceptional.

43. Consequently, the Supreme Court held the County Council had a duty under section 10 of the Housing Act 1988 to take practicable steps on foot of the request for accommodation which was made to it. At its highest, that duty was to "provide a homeless person with such assistance (including financial assistance) as the authority considered appropriate" (section 10(1)(b) of the Housing Act 1988), or to "rent accommodation, arrange lodgings or contribute to the cost of such accommodation or lodging for this young person who was homeless" (section 10(c) of the Housing Act 1988). The Supreme Court (MacMenamin J.) held that the County Council could, in compliance with its statutory duty under section 10(1)(b) of the Housing Act 1988 "*at minimum, have written in the clearest possible terms offering 'financial assistance',*

that is to say, that workers would be available on a specified date and time to carry out repairs to the caravan, and, if necessary, making arrangements to ensure repayment of the cost afterwards. This message could have been reinforced by a social worker visit explaining the contents of the letter, again in the clearest possible terms, together with a written acknowledgment of its contents."

44. In the second example, the main issue in *Fagan v Dublin City Council* [2019] IESC 96[12] was the question of how a housing authority should apply section 20(1) of the Housing (Miscellaneous Provisions) Act 2009 and, in particular, how it should interpret the word "household". The court's task was to determine the four corners within which a housing authority can conduct such an assessment and determine whether any asserted requirement to live together is reasonable.

45. Again, in line with the principles adumbrated above (and echoing the submissions of Ó'Braonáin SC for the council) Irvine J. held that it was not for a court to substitute its judgment for that of the council. Rather, the court's role was to determine whether, in reaching its decision, the council's approach was permissible. In that case, it was held that if the court concluded that the council's decision had been influenced by impermissible factors, the correct approach would be to make an order of *certiorari* with the result that the council would be obliged to reconsider Mr. Fagan's application based only on relevant considerations.

[12] The Supreme Court was comprised of Clarke C.J., MacMenamin, Charleton, O'Malley and Irvine JJ. The judgment was delivered by Irvine J.

46. In fact in that case when assessing Mr. Fagan's application for social housing support the council in that case had categorised his household as a one-person household and in the context of section 20(1) of the 2009 Act held that he did not "*have a reasonable requirement to live together*" with his children[13] even though at the time he had joint custody and was co-parenting the children with his former partner. The effect of the council's decision in that case, in terms of allocation of housing under section 22 of the 2009 Act, was, first, to exclude Mr. Fagan from consideration of accommodation with a separate bedroom for his children and second, if his needs were to be met by making a housing assistance payment ("HAP") rather than accommodation, that payment would be confined to a single person household. The Supreme Court (Irvine J.) held that the council erred in taking resources into account when it was assessing the composition of the household under section 20(1) of the 2009 Act, given that it can take the availability of resources into account at a different stage in the process when for example, setting its housing services plan (section 16 of the 2009 Act) and when it comes to determine the priority to be afforded to a particular household when allocating its resources under section 22 of the 2009 Act.

47. Irvine J. held that resources could not be taken into account in determining whether or not two persons are "reasonable" in their requirement to live together.

48. In terms of the case before me, it is important to reiterate that I am not deciding the substantive judicial review application but rather I am assessing whether or not the applicant has established – at this leave stage – arguable or stateable grounds.

[13] Mr. Fagan's children were minors and were joined in the proceedings as co-applicants suing by their father and next friend.

The facts of this case: offers

49. The council's central position is that a number of reasonable offers of accommodation have been made to the applicant by it "*within and in deployment of its resources*" which have been refused by the applicant and that its efforts to source appropriate accommodation will continue. It also states that the it remains open for the applicant to source private rented accommodation via the HAP scheme, which is a form of social housing support.

50. The applicant has been deemed eligible for social housing and to qualify for a 4-bedroom house with the date of her eligibility backdated to the 16th July 2020.

51. In her most *recent* application dated the 19th July 2021 the applicant sought rented local authority accommodation and Mr. Corry in his affidavit dated the 4th September 2023 states that the applicant did not seek traveller group housing or traveller halting site bay housing though it is noted that some of the temporary offers made recently to the applicant included sites located on halting sites.

52. On 14th December 2022, the applicant was offered a permanent tenancy of a 3-bedroom property at 44 Kilnasoolagh Park, Newmarket on Fergus, County Clare – characterised by Mr. Corry on behalf of the council at paragraph 6 of his affidavit sworn on the 6th October 2023 as a "*home for life*" with a commitment by the Council to extend the

house in 2023 (on foot of the applicant expressing an interest in the property on the Choice Based Letting System). The applicant responded by saying that the permanent offer of this 3 bedroom house to rent was too small. (It appears that the extension referred to was subject to a further consent, for example, under Part VIII of the Planning and Development Regulations 2001-2023). The applicant's position was that the necessary consent could not be guaranteed and that, even if was obtained, it could take another six months to build the extension. Ultimately she stated that she would accept the tenancy after the extension was built and there appears to have been detailed discussion between the council and the applicant about the nature and type of the extension but no agreement was reached.

53. On the 5th January 2023, Mr. Corry states that the council made verbal offers of temporary tenancies at the following four locations in Ennis which the applicant could occupy until the extension on the house at 44 Kilnasoolagh Park, Newmarket on Fergus, County Clare, was completed: 14 Willow Park, Ennis; 40 Bridge Court, Ennis; 72 Dún na hInse, Ennis; 30 John Paul Avenue, Ennis (where the house next door had been burned).

54. While the applicant may not recall these specific temporary offers (which were made verbally by Mr. Corry on behalf of the council), the applicant maintains that the offer of temporary accommodation in Ennis and Shannon are two areas that her family cannot go to and describes an incident at the house rented by their mother where her brother (then a minor) and her sister were the subject of a knife attack carried out by two young men who were prosecuted and imprisoned and one of whom when out on bail was killed by a stranger. The applicant states because relations of the young men living in Ennis

and Shannon, these areas are not a safe place for her to live whereas Sixmilebridge (though close to Shannon) is a safe place to live. In his affidavit sworn on the 15th September 2023, Superintendent Ryan (at paragraph 41) states that he does not accept that Ennis and Shannon are unsafe places for the applicant to live as a result of these matters and that the gardaí know of no threats having been made against the applicant and have not advised her that she is under threat and makes the point that Sixmilebridge (which he understands is the Applicant's preference for accommodation) is located 24km from Ennis while Newmarket on Fergus is approximately 17km from Ennis.

55. On 11th January 2023 the council advised the applicant that a 3 bedroom property was available immediately at 66 Tradaree Court, Shannon but the applicant refused this property because she was of the view that it was in a run-down area.

56. On 24th July 2023 following the removal of her caravan from the Sixmilebridge Railway Station the applicant met with the Council's Homeless Action Team and was offered emergency homeless accommodation in the form of a private B&B in the Ennis area (which the applicant deemed to be unsafe) and the applicant was advised that as emergency accommodation was at capacity, if the applicant was able to source an alternative private accommodation, the Homeless Action Team would work with her and the payment of same but it appears that there was nowhere that could accommodate the applicant and her family.

57. On 21st August 2023 (after the initiation of these proceedings), the council offered the applicant a temporary tenancy in a 5 bed property in Ennis and this offer was refused.

58. In or around the 21st - 22nd August 2023, the council (the Clare County Council Homeless Action team) could not source emergency accommodation in Newmarket on Fergus or Shannon areas or hotel accommodation in the Limerick area which would be suitable for the applicant and her family.

59. On 24th August 2023, after the initiation of these proceedings, the council's solicitors wrote to the applicant and offered her the following 5 sites on a temporary basis and acknowledged that these sites required works to be carried out which it stated would be done as a matter of urgency by the council: (a) Bay 9 at the rear of Ballaghboy Halting Site which required water and electricity supply; (b) a caravan could be accommodated at St. Anthony's Grove, Ballaghadfadda, Clarecastle with necessary accommodation works; (c) one vacant bay was available in Ballymurtagh (the remainder of this site was occupied by a different family; (d) No. 6 Knockanean, while vacant, was with the housing allocation section of the council which, at the time, were in discussions with a potential tenant but the council stated that it could be made available; (e) No. 6 Watery Road was vacant but required refurbishment works but could be made available.

60. The council's solicitors wrote again to the applicant on 31st August 2023. The council were of the view that there was sufficient capacity in the St. Anthony's Grove site for the temporary placement of the applicant's caravan and it further stated that it was in the vicinity of a house occupied by the applicant's aunt. At paragraph 26 of Mr. Corry's affidavit sworn on the 4th September 2023 he also added in relation to the St. Anthony's Grove site that the "*Council would be in a position to make available at that site basic sanitary services and a water supply pending a more suitable offer of accommodation being made available*." Mr. Corry also stated, in response to the applicant informing

the council that previously she had had to park her caravan in the yard adjacent to her aunt's house, that there were two other locations within the St. Anthony's Grove area where the applicant's caravan could be accommodated. In her Affidavit sworn on the 15th October 2023 the applicant states that St. Anthony's Grove was under no circumstances a solution for her family. The letter from the applicant's aunt (exhibited to Mr. Corry's Affidavit at Exhibit JC8) states that the applicant had asked if she could leave her unoccupied caravan in her yard and while her aunt initially agreed to that proposal for a couple of days due to the reactions from a third party she had no choice but to ask the applicant to remove her caravan from her yard.

61. In or around early September 2023 the applicant inquired about three 3-bedroom houses which she understood to be available in Sixmilebridge but which apparently were not available to her. At paragraph 27 of Mr. Corry's affidavit sworn on the 4th September 2023 he states that the applicant had been assessed as requiring a 4-bedroom house and was not being considered for those houses and a similar explanation was given in relation to six other properties (109 Kilnasoolagh Park, 24 Cappa Lodge, 74 Cappa Lodge and the houses in Ard Ratha, Sixmilebridge) which the applicant had previously expressed an interest in but which were not allocated to her and adding that they were allocated in accordance with the Social Housing Allocation scheme. Mr. Corry also stated that the applicant was nominated for consideration by an Approved Housing Body for a property at Gleann Cora in Newmarket on Fergus but this was not proceeded with because it was a 3-bedroom property. Mr. Corry also stated that the property at 19 Woodview Heights was allocated to a family with a greater need in accordance with the Council's Social Housing Allocation Scheme.

62. Also at this time, in early September 2023, the applicant enclosed correspondence from other members of a different family which stated that she would not be welcome at the Ballaghboy halting site and further correspondence was furnished from another family in relation to the site referred to as 6 Knockanean though Mr. Corry states at paragraph 28 of his affidavit sworn on the 4th September 2023 that there was no signed agreement yet received in relation to this site.

63. The applicant also expressed her concern that a position or policy was being proffered to the effect that no more members of the Traveller Community would be able to stay in Sixmilebridge and refers to the application of a quota system and a dispersal policy in the allocation of housing for the Traveller Community. In his affidavit sworn on the 4th September 2023, (at paragraph 9) Mr. Corry states that there was no such quota system operated by the council regarding the allocation of housing to members of the Traveller Community and that the order of priority for dwelling allocations is set out in paragraph 3.8 of the Social Housing Allocation Scheme. He added that the demand for social housing far exceeds the Council's resources. In terms of overall statistics, he stated that the current number of households on the waiting list exceeds 2,800 with over 1,400 housing applicants qualifying for transfers (over 1,100 of which are accommodated under the Housing Assistance Payments (HAP) scheme leaving a net demand of almost 1,400 qualified social housing applicants. He pointed out that the council had a Homeless Action Team that provided assistance and support and that the council has a adopted a Traveller Accommodation Programme ("TAP") and that the most recent TAP was for 2019-2024 and was adopted on the 14th October 2019.

64. In her affidavit of the 15th October 2023 at paragraph 6, the applicant raises some questions about what she describes as an apparent policy in the sourcing of private accommodation (presumably through HAP) which involves having to inform a would-be proprietor that the payment of rent came from the Council and whether this was "*…a stumbling block indeed if trying to source emergency accommodation as a member of the Traveller Community*" together with her children.

65. Mr. Corry states that the council has at all times assessed the applicant's need for accommodation in accordance with these schemes, namely paragraph 3.8 of the Social Housing Allocation Scheme and the Traveller Accommodation Programme (TAP).

66. The applicant mentions her disappointment of being informed that two houses were identified for purchase by the council and of being informed by a council official that she should withdraw her Freedom of Information (FOI) request as this would delay the official from arranging the house purchase and then being informed that the house purchase would not proceed because of difficulties regarding septic tanks in rural areas. Mr. John Corry, who is an Administrative Officer in the Council's Housing Department refutes in the strongest possible terms (at paragraph 28 of his affidavit sworn on the 24th August 2023) that he suggested in any manner that the applicant should withdraw the FOI request and states that he did advise the applicant that he was working to find a solution to her housing situation and that if an FOI request was submitted that his efforts would be diverted to dealing with a response to it. Mr. Corry adds that a subsequent FOI request was granted on the 17th August 2023 (the day prior to the swearing of the applicant's affidavit) and provided to the applicant. Mr. Corry also responds by stating that the two houses proposed by the applicant were in rural locations and that he

informed the applicant that the council's preference was to acquire houses in urban areas identified in the housing application as areas of choice in order to minimise issues with regard to lack of services.

67. In her affidavit of the 15th September 2023 the applicant refers to her request to the council to be permitted to place her caravan at lands near to her mother's apartment at Radharc an Oir, Newmarket on Fergus and Mr. Corry in his replying affidavit of the 6th October 2023 states that while the land is owned by the council, it is zoned for Enterprise Development within what is described as the interim County Development Plan 2023-2029 and is not available for use as a residential area and to place the applicant's caravan there would, he says, amount to unauthorised development.

68. There is, unfortunately, much disagreement between the parties in this application as the above summary illustrates.

69. Mr. Corry (for the council) states at paragraph 31 of his affidavit sworn on the 4th September 2023 in relation to the placement by the applicant of her caravan at its current location at the end of a cul-de-sac on the edge of Sixmilebridge, County Clare that *"[i]t is clear that it is not a suitable location for the Applicant's caravan to remain even on a temporary basis*" and observes that the council's Homeless Action Team will continue to work to source emergency accommodation for the applicant but was "*conscious of the constraints regarding the availability of such accommodation for a family of the applicant's siz*e."

70. Having regard to the legal principles set out earlier in this judgment (including the exceptions to these principles), I consider that when applied to the facts of this case, the

applicant has met the relatively low threshold of establishing an *arguable* or *stateable* case. It will be a matter for the court hearing the judicial review application to decide the substantive issues raised.

71. I therefore grant the applicant leave to apply for judicial review for an order of mandamus directing the council (i) to procure land which can facilitate the placing of her caravan on an emergency basis, within reach of the applicant's childrens' schools, pending the identification of more suitable temporary or long term provision, and (ii) to provide a portable toilet and water-drum (described by the applicant as the most basic sanitary services required for health and safety) at the temporary or emergency location provided by the council.

Fifth Relief

72. I do not find that the applicant has established any arguable or stateable grounds which would predicate a claim in damages against the council and I refuse leave to apply for judicial review seeking a claim for damages as against the council.

ANCILLARY MATTERS

73. A review of the papers reveals two additional matters.

74. In the applicant's Statement of Grounds which has the date stamp of the Central Office as received on the 18th August 2023 and in her verifying affidavit sworn on the 18th August 2023, the "*Applicants*" listed on the face of the proceedings are the applicant and also the names of each of her five children but they are not named as suing by their

mother and next friend. Further each of the named children do not appear to be listed in the subsequent documents such as the further affidavits from the applicant and the other parties or indeed in the Court Orders.

75. A similar issue applies to the Irish Human Rights and Equality Commission (IHREC) who were included as a named Notice Party in the Statement of Grounds and Affidavit dated the 18th August 2023 but not in any subsequent documentation. Earlier it had been suggested, as an explanation, that the reference to the IHREC arose from copying the title of a different set of proceedings. Whether or not that may be the explanation, I request that this judgment and copy of the pleadings be served on IHREC. It is a matter for that body to decide what further steps, if any, that it may or may not take.

ORDERS

76. In summary, therefore, I make the following orders:

(i) The applicant is refused leave to apply for judicial review in respect of reliefs at D(I) and D(II);

(ii) The applicant is refused leave to apply for judicial review in respect of reliefs at D(V) as against Clare County Council and the Garda Commissioner, Director of Public Prosecutions, Ireland and the Attorney General;

(iii) The Applicant is granted leave to apply for judicial review in respect of reliefs at D(III) and D(IV) against Clare County Council only;

(iv) The Garda Commissioner, Director of Public Prosecutions, Ireland and the Attorney General can be removed as respondents to the proceedings;

(v) The application for judicial review together with this judgment should be notified and furnished to the Irish Human Rights and Equality Commission.

77. I will hear the parties as to any other ancillary or consequential directions or orders.