Neutral Citation Number: [2007] IEHC 444

THE HIGH COURT

Record Number: 2007 No. 3142P

BETWEEN

FINGAL COUNTY COUNCIL

PLAINTIFF

AND

MARTIN GAVIN, SAM GAVIN, MICHAEL REILLY, ARTHUR PURCELL, ROBERT GAVIN, TERRY MONGAN, PATRICK GAVIN, DOUGLAS PURCELL, AND PAUL GAVIN

DEFENDANTS

Judgment of Mr Justice Michael Peart delivered on the 14th day of December 2007:

1. These proceedings are one of three sets of proceedings which came on for hearing before me. At the commencement submissions were made as to the order in which they ought to be heard, and I concluded that it was appropriate that the within proceedings (including the defendants' Counterclaim) be heard first, since it seemed to me that whatever the outcome of the defendants' judicial review proceedings against Dublin City Council (the 2nd proceedings) the plaintiff herein would wish to apply for the injunctive relief sought against the defendants to vacate the lands which they are occupying. There is a third set of proceedings in which the defendants herein are plaintiffs and where they seek a declaration of unconstitutionality of certain legislation.

2. The present proceedings are brought by the plaintiff council against the defendants, a traveller family, in order to obtain an order restraining trespass by them and other members of that extended family on certain lands at Thomondtown, Lusk, Co. Dublin, as well as a mandatory injunction from this Court requiring the defendants, as well as other members of the extended Gavin family to remove themselves together with all vehicles, caravans, mobile homes, scrap, waste, animals and other livestock from these lands. Other reliefs are sought in the usual way but it unnecessary to set out those other reliefs in detail.

3. In the Counterclaim delivered with their Defence in these proceedings the defendants seek, *inter alia*, mandatory relief in the form of an order directing Fingal County Council to provide them within its functional area with suitable traveller accommodation, including appropriate emergency accommodation and services in the form of a halting site.

4. Of relevance in that regard is the fact that the second set of proceedings referred to above are Judicial Review proceedings commenced by the Gavin family against Dublin City Council in which they seek, *inter alia*, mandatory orders requiring that Council to provide them with traveller specific accommodation, namely group housing, pursuant to the that Council's Traveller Accommodation Programme 2005-2008.

5. There are about 90 people, including a large number of young children, who make up the extended Gavin family which is currently encamped on the plaintiff Council's lands, and who are seeking emergency accommodation from Fingal County Council in short term, and thereafter more permanent accommodation from Dublin City Council. This number of people comprises about thirteen distinct families.

Some background history of events

6. It is acknowledged by the Gavin family that they are not historically indigenous to the functional area of Fingal County Council, but rather the functional area of Dublin City Council, since for upwards of twenty years the extended Gavin family have been tenants of Dublin City Council at a halting site at St. Dominick's Park, Coolock since it opened in 1980. However, they claim that in February 2005 they were forced out of St. Dominick's Park by another traveller family, the Quinn/McDonough family and that they went to Belfast at that time where they encamped themselves there in large numbers on a condemned site. It is claimed in evidence that it was always their intention to seek alternative traveller accommodation from Dublin City Council, since they were no longer safe in St. Dominick's Park, even though they had moved to Belfast. In November 2005 they moved back to this jurisdiction, and forcibly and unlawfully entered upon what I shall refer to as the SIAC site at Thomondtown from which the plaintiff now seeks their removal. In evidence the defendants have stated that it was felt that they would be in a better position to negotiate with Dublin City Council if they were back in Dublin rather than in Belfast.

7. In asserting that they are in need of emergency provision from Fingal County Council, they state that the circumstances of emergency result from their having been forced out of St. Dominick's Park in February 2005 by the Quinn/McDonough family. It was suggested to them in cross-examination that while there may have been an emergency created in February 2005, that emergency was dealt with by them by moving to Belfast, but that they moved back to the SIAC site voluntarily in November 2005, and not therefore in circumstances which can be regarded as an emergency such as to require the plaintiff council to accommodate them on an emergency basis. The plaintiff maintains that since the Gavin family is not indigenous to its functional area they have no obligation to provide traveller specific accommodation for them, emergency or otherwise.

8. In addition, the plaintiff council considers that in circumstances where they may be homeless and in need of housing, the defendants are at liberty apply to the plaintiff Council for emergency housing, other than traveller specific accommodation, in the same way as any other citizen in need of housing by completing the necessary application form, and that it will be considered. However, Mr Joe Murphy, who gave evidence for the plaintiff, has stated that the policy of the plaintiff Council is that only travellers who are indigenous to the functional area of the plaintiff will be allocated traveller specific accommodation, and that such applications received from non-indigenous traveller families will be "ruled out".

9. At any rate, in the immediate aftermath of the defendants arriving at the SIAC site on the 29th November 2005 the council visited the site to ascertain what was happening. It appears that on three or four previous occasions the Council had had occasion to move travellers who had entered that site. On the following day, as a result of what was seen, members of the Council returned on the 30th November 2007 and served notices requiring the removal of all mobile homes and vehicles pursuant to s. 10 (1)(c) of the Housing (Miscellaneous Provisions) Act, 1992 (as amended).

10. At this point in time at the end of November 2005 the plaintiff council in fact made an offer to the defendants to provide some alternative accommodation in its area at various halting sites. This offer was made orally but was turned down by the Gavin family since the accommodation offered was not in a single site and the extended Gavin family wished to remain as a single group in one location. The sheer size of the extended family made this impossible for the plaintiff to provide, since no sufficiently large site was available. This offer was made in spite of the Council's policy not to provide this type of accommodation to a non-indigenous traveller family.

11. Two days later on the 2nd December 2005 members of the plaintiff council, accompanied by members of an Garda Siochana and

some contractors attended at the site to evict those present and to remove the mobile homes and vehicles, and to remove large quantities of soil and other material which had been placed as an obstruction to entry. Violent resistance was put up by the Gavin family, such that the effort to clear the site was abandoned. I will not set out the evidence given in this regard, but it suffices to say that apart from having been subjected to abusive shouting by members of the defendant family, the vehicles in which the Council staff and Gardai were travelling were hit with stones and iron bars. In addition, efforts were made by the Gavin family members to open the doors of the vehicles. I am completely satisfied that this was a very violent resistance to the plaintiff's efforts and that the decision to abandon the attempt to evict the defendants was a wise and necessary one. Since that date no further attempt has been made to remove the persons encamped there but there has been further violence by the families there towards adjoining land owners and other persons who have wanted to inspect the property, in addition to damage to property. These incidents have been very serious, and where the safety of these persons was severely jeopardised requiring such persons to abandon their vehicles and make their escape on foot to the adjoining motorway. There is no need to set out the evidence in this regard in any detail.

12. Once the s.10 notices were served, however, solicitors were instructed on behalf of the extended Gavin family. Messrs. Brophys, solicitors wrote to Dublin City Council (not Fingal County Council) by letter dated 30th November 2005. That letter set out a brief history of the Gavin family having had to leave St. Dominick's Park and move to Belfast due to intimidation. It went on to say that their clients now wished to return to Dublin where they have lived all their lives and where their children attend school. The letter refers to the service of notices by Fingal County Council requiring them to vacate the site and that they have been threatened with arrest and conviction in the event that they do not comply with the notices. Brophys go on to say that Fingal County Council are maintaining that it has no responsibility towards the extended Gavin family, and that they understand also that Dublin City Council was also maintaining that it was not responsible since the Gavin family was not then residing in its functional area. These solicitors then proceed to state that they had advised their clients that "the statutory duty to provide accommodation rests with Dublin City Council" and that the purpose of their letter is to call upon it to provide "temporary accommodation or preferably permanent accommodation within the next five days", and that failure to comply with this demand would result in Court proceedings being issued immediately.

13. The fact that the defendants herein were trying to force the Dublin City Council to provide accommodation and were maintaining that it was that council which had the statutory duty to do so is relied upon by the plaintiff as support for the submission that it has no such statutory duty. It has been pointed out, as I have already mentioned, that it was not until the defendants delivered their Defence in these proceedings on the 15th May 2007 that they made any claim by way of Counterclaim against the plaintiff council.

14. In that Counterclaim the defendants plead, *inter alia*, as follows:

> "24. The plaintiff, its servants or agents, when making estimates of and assessing the need for suitable and adequate housing accommodation and/or halting sites in its functional area pursuant to Sections 8, and/or 9, and/or 11, and/or 20 of the Housing Act, 1988 and/or Sections 6 and/or 7 and/or 10 of the Housing (Traveller Accommodation) Act 1998 must have special regard to the particular circumstances and need of the defendants and their extended family".

15. As I have stated already, there is no need to set out in any detailed way all the evidence which I have heard in relation to the trespass by the defendants onto the SIAC site at Thomondtown, and the violence by members of the Gavin family towards those who sought on the plaintiff's behalf to have the family remove themselves from that site. I am completely satisfied that the plaintiff council is entitled to the reliefs sought in these proceedings, namely an injunction to restrain the named defendants, any person or persons acting in concert with them, and all other persons having knowledge of this Order from trespassing on the plaintiff's lands at Thomondtown, Lusk in the County of Dublin, being the lands more particularly shown outlined in red on the map and photograph attached to the Plenary Summons issued herein, together with an order that the defendants and any other persons currently in occupation of those lands forthwith remove themselves, and all vehicles, caravans, mobile homes, scrap, waste and animals and any other livestock in their ownership or control from the said lands. Once effect is given to these orders, the remainder of the reliefs sought do not, subject to any submission to the contrary which might be made by the parties, need to be included in the order.

16. It was urged on this application on behalf of the defendants that in circumstances where they were forced by an emergency arising from the intimidation and violence towards them by the Quinn/McDonough families to enter upon these lands as trespassers, that they ought not to be required by order of this Court to leave the said lands until alternative suitable and appropriate traveller specific accommodation is made available to them by the plaintiff council. I reject that submission.

17. In that regard I am of the view that while there may have been such hostility towards the defendants resulting in their departure from St. Dominick's Park, the defendants at that time dealt with that emergency, if that is how it is correctly characterised, by departing that premises and moving to Belfast as I have described. I am of the view that on the occasion in November 2005 when they left Belfast and returned to this jurisdiction and entered unlawfully onto the plaintiff's said lands, they did so at a time of their own choosing and, in that sense did so other than in any emergency situation such as they contend.

18. In so far as it may be relevant to say so, I am also satisfied that the defendants, or at least some of them were responsible for the unlawful unauthorised excavation of the earth bank on the said lands of the plaintiff which supports and/or forms part of the R129 public road at a point where the said road is a flyover on the M1 motorway, as pleaded in the Statement of Claim. Considerable expense was incurred by the plaintiff in addressing the potential danger caused to that roadway by these excavations. The purpose of that excavation seems to have been in order to enlarge the space available for the defendant family on the site. I am also satisfied from the evidence which I have heard that some of the defendants at least were involved in activities at various times which has had the effect of preventing some adjoining landowners from using their land which adjoins this site. These persons have been subjected to violence and threats according to the evidence before me, as have members of the plaintiff council from time to time.

The Counterclaim

19. I have already referred to the fact that it was only on the 15th May 2007 when the defendants delivered their Defence and Counterclaim in these proceedings that they first attempted to suggest that the plaintiff council, as opposed to Dublin City Council, was in breach of its statutory duties in not providing emergency housing or other suitable accommodation to the defendants. I have already referred to the fact that in an affidavit sworn in proceedings brought by these defendants against Dublin City Council, it is specifically stated therein that it is Dublin City Council which has the obligations upon it, which in these proceedings they claim against the plaintiff council.

20. The defendants submit that they are homeless and in "serious and urgent need of appropriate accommodation", and that their present living conditions constitute an accommodation emergency. The defendants have maintained that the emergency exists not just because of the hostility and violence towards them while at St. Dominick's, as stated, but that also because and since the plaintiff council served s. 10 notices upon them on the 30th November 2005, one day after they arrived there.

21. The defendants in evidence have stated that one of the reasons why they returned from Belfast was that they felt that if they were in Dublin they would be in a better position to put pressure on Dublin City Council to provide them with appropriate and suitable accommodation. The plaintiff council has taken the view, in line with its policy in this regard, that the Gavin family is not historically indigenous to its area of responsibility, and that therefore it is not responsible for providing accommodation, emergency or otherwise, to them within its area. The defendants do not contradict the fact that historically they have resided within the area of Dublin City Council, but they do not accept that the plaintiff council is entitled to adopt a policy that it will provide traveller specific accommodation only to those families who are indigenous to its area. In fact, the evidence has been, and I accept it, that the plaintiff council did in fact make an accommodation proposal to the Gavin family even though it did not regard itself as being under a legal obligation to do so. One offer was made orally in November 2005, and the second in writing by letter dated 24th February 2006.

22. The accommodation offered to the defendant family consisted of 3 halting site bays at Balbriggan, 2 houses at Bill Shelly Park, Finglas, and a further 8 halting site bays at St. Mary's Cappagh, Finglas. This offer was turned down by the extended Gavin family on the basis that the accommodation was unsuitable and inadequate and inappropriate to their needs. Part of the reason for considering it inappropriate and unsuitable was that in the case of one of these sites, it is reasonably proximate to an area in which members of the Quinn/McDonough family live, and they are afraid to be so close to these persons given the history of hostility which led to their decision to leave St. Dominick's and move to Belfast, as already outlined. Another reason for rejecting these offers is that the Gavin family, in line with their culture and tradition of moving around the country and living together as a single unit, had no wish to be split up in the manner which would result from taking up accommodation in these three locations. Some other complaints were around the question of whether the accommodation offered was in fact ready for occupation, but the plaintiff's evidence has been that it would not take very much work or time to make the dwellings habitable and suitable, if the defendants were prepared to take up the offer..

23. In addition, the plaintiff states that by letter dated 15th May 2007 to the defendants' solicitors, it made an offer to the defendants that it would assess, on an urgent basis, the housing needs of any of the defendants who would submit a completed application form (with supporting documentation) seeking suitable temporary accommodation at serviced halting sites or in Council houses. The evidence of the plaintiff is that no such application has been received as a result of this invitation.

24. As I have said, it was only in May 2007 that this point was raised by the defendants. At all previous stages the defendants had maintained that it was Dublin City Council which was in breach of its duties and obligations to them. The plaintiff council states in evidence that it has no accommodation available which would satisfy the defendants' requirement to remain together in a single unit, since the extended Gavin family is so numerous. The defendants on the other hand maintain that the plaintiff is under an obligation to facilitate the traveller way of life, and that this obligation rests upon the plaintiff not only by virtue of statutory duties under various provisions of the Housing Act, 1966, the Housing Act, 1988 and the Housing (Traveller Accommodation) Act, 1998, but also by virtue of obligations upon it by virtue of Articles 8 and/or 14 of the European Convention on Human Rights, 1957, and s. 3 of the European Convention on Human Rights Act, 2003.

25. The defendants submit that when making estimates of and assessing the need for suitable and adequate housing accommodation and/or halting sites in its functional area pursuant to sections 8, and/or 9, and/or 11, and/or 20 of the Housing Act, 1988, and or sections 6 and/or 7 and/or 10 of the Housing (Traveller Accommodation) Act, 1998, the plaintiff council must have special regard to the particular needs of the defendants and their extended family, and that it must make provision for them when determining its scheme of priorities for accommodation, including halting sites, both as homeless persons and as persons in need of emergency accommodation.

26. The defendants also submit that there is an obligation on the plaintiff to use its emergency accommodation powers under s. 138 of the Local Government Act, 2001 to carry out works to provide such accommodation; to request the Housing Authority to estimate and assess the existing and prospective requirements of those living in a particular part of its functional area; to consult with the Minister for Environment, Heritage and Local Government; to apply to that Minister for financial assistance pursuant to s. 15 of the Housing Act, 1988; and if necessary to request the Minister to use powers to acquire land for an emergency pursuant to s. 181 of the Planning and Development Act, 2000.

27. The plaintiff denies that it has any of these obligations upon it in circumstances where the defendants are not indigenous to its functional area, and in any event maintain that where it has made what it regards as reasonable offers of accommodation to the Gavin family and which have been rejected, it has discharged any obligation which it may be found to have in this regard towards the Gavin family.

28. John Rogers SC has submitted on the defendants' behalf that a broad definition must be given to the meaning of 'emergency', when interpreting the nature of the statutory obligations upon the plaintiff council, and submits that in the case of these defendants, an emergency arose following the service upon the defendants of a notice under s. 10 of the Housing (Miscellaneous Provisions) Act, 1992, requiring them to leave the site, in circumstances where these defendants had nowhere else to go in order to accommodate themselves. Mr Rogers has referred the Court to the judgment of O'Higgins CJ in McDonald v. Feely and others, unreported, Supreme Court 23rd July 1980, and has submitted that it is suggested by the learned Chief Justice therein that an eviction or at least the real threat of eviction can constitute an emergency such as places an obligation on the local authority for the functional area in question to take such steps as are within its powers to alleviate that emergency by an appropriate provision of emergency or other accommodation, before it enforces its rights as owners of lands against even trespassers.

29. It is important to look at the facts which gave rise to that judgment. In that case the local authority had passed a resolution that the plaintiff family which included ten young children be removed from land in the ownership of the local authority, and following the passing of the resolution a large contingent comprising officials from the authority and many Gardai arrived at the encampment and informed the family that they were required to vacate the land in question by three days later. The plaintiff mother was further informed that if they did not do so, they would be forcibly removed. A critical finding in that case is that prior to this resolution and the efforts to enforce it no offer of any alternative site or accommodation was made by the local authority. It was in this context that the learned Chief Justice stated: "Faced with this emergency thereby created the plaintiff …… consulted the solicitor… and these proceedings were commenced."

30. In the present case two offers of alternative emergency accommodation were made to the Gavin family as already set forth above – one orally and another in writing to their solicitors as I have stated already. For reasons which I have stated, these offers were rejected. In the case referred to, the plaintiff had also rejected an offer of accommodation made prior to the hearing of the appeal to the Supreme Court against the granting by the High Court of an interlocutory injunction pending the hearing of that case. It appears that subsequent to the granting of the injunction in the High Court the local authority did in fact consider the needs of the plaintiff and her family and what accommodation might be adequate and suitable for them. The plaintiff was offered a three bed-roomed house in Clondalkin or a similar chalet in Rathfarnham. She had certain objections to each of these alternatives, including that the chalet was built on a site which was already occupied by another traveller family and she was afraid of what intimidation might be

encountered by her and her children from this family. Chief Justice O'Higgins stated in this regard:

> "She still maintains her objection to going to reside there because of possible intimidation by the other family which occupies the site. Undoubtedly the possibility of such intimidation does exist. Nevertheless the undoubted rights in law of the defendants as owners of the site cannot be overlooked or ignored once it appears that they are being exercised properly and lawfully. These rights are now being exercised with such regard as is possible, in the circumstances, to the housing needs of the plaintiff and her family. She cannot be accorded a right of veto over what is proposed because of the possibility of unlawful action by others. Appropriate steps can and I am sure will be taken by the Garda authorities to minimise the possibility of such trouble …… The securing of such a chalet through the Dublin Corporation is, in the circumstances, a reasonable discharge by the defendants of their duty as a Housing Authority."

31. In the present case, and leaving aside altogether the question of whether the plaintiff authority is entitled to take the view and adopt a policy based upon that view, that its obligations relating to the provision of accommodation for traveller families can be confined to only those who are indigenous to its own functional area, I am satisfied that the plaintiff council in this case has made offers to the defendants which constitute a reasonable discharge of any obligations which it may owe to them. By saying this I am not to be taken as deciding that there are such obligations upon it.

32. In such circumstances, the requirement upon the defendants to vacate the site on foot of the s. 10 notices served upon them is not tainted by the sort of unlawfulness which was apparent in the McDonald case in which no consideration of the needs of the family had been made by the local authority. It is safe I think to presume that were it not for the fact that subsequent to the granting of the injunction pending trial, and before the appeal against that order the authority considered the needs of the family, and made an offer of two alternative suitable dwellings, albeit not so regarded by the plaintiff, the Supreme Court would have been disposed to refuse the appeal against the granting of the injunction.

33. In the present case, the plaintiff council has offered accommodation which it feels is the best that it can offer given the very large number of families and family members constituting the Gavin extended family, and who have all congregated on their property without any prior warning that they were doing so. The proposed accommodation is spread over three sites as I have indicated. The Gavin family have objections to each of the sites individually, but have an overarching objection based on the fact that to be split up in any way runs contrary to their tradition and culture of travelling and living as a single unit.

34. In my view what the defendants are seeking in this action is to have an entitlement to a veto on any offer of accommodation made by the plaintiff council for the purpose of alleviating the housing need of the defendants. That could not be a reasonable expectation, and I note the remarks of O'Higgins CJ in that regard in the McDonald case referred to. Again, without deciding the issue of whether the plaintiff is obliged to provide accommodation to the defendants at all, given its policy regarding indigenous families, it seems to me that the question of reasonableness of the offers made by the plaintiff council must be seen in the light of the scale of the problem presented to it for resolution – namely the provision of suitable accommodation to a large number of individual families, and comprising in total about 80 persons including very young children. In my view it is unreasonable to expect a local authority to in all cases be able to provide accommodation for such a number in a single unit or single site. To spread such a large number over three sites within the one functional area is a reasonable and considered proposal. The reasons for rejection by the defendants are not tenable, even that based on a fear of intimidation from the Quinn/McDonough families referred to. Just as in the McDonald case referred to, the possibility of such intimidation exists, but that possibility is insufficient to justify rejection of the offer, and therefore where a reasonable offer has been made, the plaintiff council can be seen as having discharged whatever onus is upon it to consider the defendants' needs and offer such accommodation as they reasonably do.

35. Mr Rogers referred to the relevant provisions of the Housing Act, 1988 regarding the assessment of needs for and provision of traveller accommodation. S. 9 (1) of the Act requires a housing authority at intervals of not more than three years to make an assessment of the need for the provision of adequate and suitable housing accommodation for persons who the authority has reason to believe require or are likely to require accommodation from the authority, and who are in need of such accommodation and cannot provide it from their own resources.

36. S. 9(2) of the Act provides that without prejudice to the generality of subsection (1), the authority shall have regard to the need for housing of persons, *inter alios*, who are (a) homeless or (b) persons to whom s. 13 applies – i.e. "persons belonging to the class of persons who traditionally pursue or have pursued a nomadic way of life." Mr Rogers submits that the defendants are within each of these categories, and that the plaintiff council is therefore obliged to include the needs of these defendants in their assessment, regardless of whether they are indigenous to its functional area or not.

37. I should refer to the definition given to "homeless" for the purposes of this Act by s. 2 thereof. That section, as relevant to the present case provides:

> "2.— A person shall be regarded by a housing authority as being homeless for the purposes of this Act if—
>
> (a) there is no accommodation available which, in the opinion of the authority, he, together with any other person who normally resides with him or who might reasonably be expected to reside with him, can reasonably occupy or remain in occupation of, or
>
> (b) …… "

38. By reason of the fact that in my view reasonable offers in all the circumstances of this case were made by the plaintiff council, I cannot regard the defendants as coming within the meaning of homeless appearing in this section, as to do so would amount to giving the family a right of veto over accommodation offered. I note in particular that the section specifically provides that it is the authority's view of the reasonableness of the accommodation which is relevant, and that the persons concerned are not conferred with any veto or power of approval. Obviously the 'opinion' of the council must be rationally based, otherwise a decision may be open to challenge, but that does not arise in the present case, where I am satisfied from the evidence which I have heard that the plaintiff council have considered what possible accommodation can be provided in the difficult situation which exists for them, given the numbers of families involved, and that they have come up with a suggested provision which is as much as can be reasonably expected in all the circumstances. Since they are not homeless persons therefore within the meaning of this Act, the suggestion by Mr Rogers that s. 10 of the Act is engaged in respect of the defendants is incorrect. He had suggested that as homeless persons the Health Service Executive could become involved in the provision of assistance for the defendants upon the request to that body by the plaintiff council under s. 10.

39. However, clearly the defendants fit easily within s. 13(1)(b) of the Act, since they are acknowledged to be members of the

travelling community. They are therefore persons which a housing authority must "have regard to" when assessing the housing need in its functional area.

40. Mr Rogers has referred to s. 6 (1) of the Housing (Traveller Accommodation) Act, 1998 which imposes an obligation upon the relevant authority, when making an assessment under s. 9 of the 1988 Act to "make an assessment of the need for sites in the functional area concerned". It is important to note also the provisions of s. 6 (4) of the 1998 Act which provides:

> "4.— Without prejudice to the generality of subsection (1), a relevant housing authority, in making an assessment shall have regard to
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> (a) the estimate of travellers referred to in subsection (5),
>
> (b) the need for sites with limited facilities referred to in section 13 of the Act of 1988 (as amended by this Act) in relation to the national patterns of movement of travellers, otherwise than as their normal place of residence, and
>
> (c) the views, if any, of the local consultative committee concerned."

41. In relation to (a) above, it is worth noting that subsection 5 provides:

> "(5) A relevant housing authority shall make an estimate of the numbers of traveller families and households for whom accommodation will be required within the functional area for a period which the Minister may by direction specify."

42. Section 7 of the 1998 Act makes provision for the adoption of an accommodation programme for the functional area, and shall specify in such a programme the accommodation needs of travellers and the provision of accommodation required to address those needs.

43. Section 10 of that Act sets out a number of matters which the authority must include when preparing an accommodation programme, such as the most recent s. 6 assessment of needs, and any particulars concerning the accommodation needs of travellers in assessments made under s. 9 of the 1988 Act; a statement of the policy of the relevant housing authority concerned in relation to meeting the accommodation needs of travellers, including accommodation needs identified in the assessments under s. 6 of the 1998 Act and s. 9 of the 1988 Act. It must also specify in the programme the "strategy of the relevant housing authority for securing the implementation of the programme".

44. Section 10(3) of the Act provides:

> "(3) Without prejudice to the generality of subsection (1) a relevant housing authority, in preparing an accommodation programme, shall have regard to –
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> (a) the needs identified under paragraphs (a) and (b) of subsection (2) and any other matter which may be specified in paragraph (f) of subsection (2),
>
> (b) the distinct needs and family circumstances of travellers,
>
> (c) the provision of sites to address the accommodation needs of travellers other than as their normal place of residence and having regard to the annual patterns of movement by travellers, and
>
> (d) such other matters as the Minister may by direction specify from time to time." (my emphasis)

45. Mr Rogers has submitted that there was therefore an obligation on the plaintiff council in its programme for the year 2005 to have made provision for the needs of what he referred to as "transient travellers" such as the defendants in this case. I take this to mean that the plaintiff council ought to have made provision in its 2005 programme for the possibility that the extended Gavin family and any other such traveller families presumably, might well as part of their nomadic lifestyle suddenly appear in the plaintiff council's functional area, and have immediately available such accommodation as may be required by them in such circumstances, or at least within a reasonable time-frame. Since this is a somewhat different argument than that in relation to the obligation to provide emergency accommodation, that is, accommodation to be provided in order to address a situation of emergency in which a family might find itself, such as a caravan being suddenly destroyed by fire, I propose to deal with it even though I have already concluded that the defendants' arrival on this site in November 2005 did not arise from an emergency created by the hostility of the Quinn/McDonough and following which the Gavin family decamped to Belfast.

46. It is contended by the defendants that the plaintiff council ought to have included in its 2005-2006 Programme a plan to have available suitable accommodation for such as the Gavin family, as transient travellers pursuant to the provisions of s. 10 (3) of the 1998 Act. I have set out that provision above. The 2005-2008 Programme has been produced in evidence, and under the heading "Transient Sites" the following appears:

> "Following consultation with the Local Area Traveller Consultative Committee it is accepted that –
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> · The Council should concentrate on accommodating Travellers traditionally in the Council's administrative area.
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> · Recognition should be given to Travellers who travel and that the issue of transient sites should be examined by the Local Traveller Accommodation Consultative Committee.
>
> Recognition must also be given to the fact that the vast majority of families who would seek to avail of transient sites have vacated their permanent accommodation on a temporary basis to avail of the opportunity to trade in the Fingal area or an adjacent area. Housing Authorities are obliged to consider applications for accommodation for families who are unable to provide suitable accommodation from their own resources.
>
> During the course of the assessment the Council also sought the views of Traveller families in Fingal on the provision of a transient site. No Traveller family indicated that a transient site should be provided in Fingal. However the Council will investigate the possibility and feasibility of providing a transient site in the Fingal area to be run on a commercial basis."

47. In my view the plaintiff can be seen in this section of its Programme to "have had regard to" the matters referred to in s. 10(3)(c) of the 1998 Act. It is true that Mr Joseph Murphy of the plaintiff council has stated that the policy of the council is that the accommodation needs of indigenous Traveller families are not considered for the purpose of its Programme, and that if an application for accommodation is received from any non-indigenous family it will be disregarded. I should add as a rider at this point that in fact the Gavin family was invited to submit applications for emergency accommodation but none was received. But in any event, he stated also that it is the council's policy also that halting sites should comprise small number units, for up to perhaps ten families. He stated that it was his experience that where a unit contained something like thirty families, which is what the extended Gavin family appears to consist of, this does not work satisfactorily. He stated also that while he was aware that the Gavins felt intimidated and at risk from the McDonough family and that the McDonoughs were living near part of the accommodation offered to the Gavins as part of a provision for them, the accommodation offered in three sites was reasonable and the best that the plaintiff could manage given the sites at their disposal.

48. Mr Murphy made the point also that while a Traveller family could apply for *traveller specific accommodation*, that family had to be indigenous to the Fingal functional area, otherwise it would not be eligible for consideration. But he went on to say that this did not preclude that family from applying for non-traveller specific accommodation, like any other non-traveller family in the area who is in need of standard housing. He accepted that the policy of considering only applications from indigenous traveller families was not contained in the 2005 – 2008 Programme. He stated that this was the manner in which the council had decided how best to deal with issues of this kind. He also stated that the council had given consideration of the provision of transient sites, but their investigations and consultations with Traveller bodies had satisfied the council that these are not required for inclusion in the Programme.

49. It seems to me that a housing authority such as the plaintiff council should be allowed a margin of appreciation in how they develop policies for addressing the housing accommodation needs, including for traveller families, within its functional area. The housing legislation to which reference has been made sets out a number of matters which the authority must have regard to when developing Accommodation Programmes form time to time. The fact that the authority must have regard to something does not mean that it must take particular steps in relation to it. It must however at least take it into account in its assessment, and not ignore it.

50. In the present case, the council appears to have had regard to the various matters that it is required to have regard to by the relevant statutory provisions. In particular, it has had regard to the possible requirement for the provision of transient sites for travellers. They have consulted with Traveller bodies/committees as referred to in s. 6(4)(c) of the 1998 Act when assessing needs in its functional area under that section. They have decided that there is not a need for such sites. It is not to be regarded as unjust or discriminatory, or otherwise a dereliction of its duty that the council in this case has adopted a policy that it will consider applications for traveller specific accommodation only from families who are indigenous to its functional area.

51. As I have said, each authority must be accorded a reasonable margin of appreciation in the policies which it adopts dependent on the prevailing circumstances in its particular functional area. It seems to me utterly unreasonable and unrealistic that a council could be expected to have available at all times a bank of unoccupied halting sites or other traveller accommodation of sufficient size, just in case at any particular time and without any warning a large cohort of traveller families, comprising one extended family, such as the defendants and who wish as part of traveller tradition and custom to move around the country together at will, and at all times be accommodated in a single unit which meets with their approval. That seems to be what the submissions made by the defendants in this case would require that the plaintiff council should have had available.

52. I note that in his judgment in *McDonagh v. Clare County Council* [2002] 2 IR 634, O'Sullivan J. considered the question of whether it was within the power of a local authority to have an indigenous policy included in its Accommodation Programme. He concluded as follows at p. 647:

> "My conclusion is that the incorporation of a residence or indigenous policy in a traveller accommodation programme is something within the statutory power of a housing authority but – and it is an important but – it must not be applied with the rigidity of a rule to such circumstances in which, for example, Mrs McDonald found herself in May, 1980. Her housing needs deserved consideration and attention notwithstanding such a policy."

53. In my view it is clear that the plaintiff council has such a policy but that it is not applied so rigidly as to be unlawful. In spite of the indigenous policy being in place, offers of accommodation were in fact made to the defendants, which I have concluded were reasonable offers in all the circumstances.

54. In relation to emergency accommodation, the council invited the defendants to make the appropriate application for accommodation, but no applications were received. I have no evidence as to the precise reason why that offer was not taken up, but I presume that some collective decision was taken by the extended Gavin family not to make such applications, since it is clear that what they wanted by way of accommodation provision was a halting site large enough to accommodate them in a single unit by way of emergency provision. In my view, given the scale of that requirement, it is unreasonable to expect that the council would be able to accommodate such a request at short notice and without warning for the reasons which I have already adverted to, and that such a possibility should be included in any assessment of anticipated need going forward, and to be included in the three year plan for 2005-2008, even though the council would have been aware at some point in 2005 of the existence of the extended Gavin family in its functional area at that time.

55. There will inevitably be a limit to the amount of available land at the disposal of any local authority, and that must be taken account of when considering whether the plaintiff council has been in breach of its statutory obligations and duties under relevant legislation, including its obligations arising under the European Convention on Human Rights. There are many demands upon a Council in relation to its bank of land, and the range of people and bodies to whom obligations may be owed in relation to it is great. The manner in which the plaintiff council has conducted itself in the circumstances of this case cannot be seen as an infringement or breach of any of these obligations and duties to the defendants, provided that in deciding upon its policies and decisions the Council has acted reasonably. In my view it has, especially given the offers of accommodation which have in fact been made but which have been rejected by the defendants.

56. For these reasons I am satisfied that the defendants' Counterclaim should be dismissed.