THE HIGH COURT

[2011 No. 56 J.R.]

BETWEEN

SISTER MARY CHRISTIAN, SISTER THERESA KENNEDY, SISTER JOSEPHINE MCDONALD, SISTER UNA O'NEILL, SISTER EILEEN MARY DURACK, SISTER MARY FAHY, SISTER MARY O'FLYNN, SISTER MONICA BYRNE AND SISTER BRIDIE COLLINS

APPLICANTS

AND

DUBLIN CITY COUNCIL

RESPONDENT

JUDGMENT of Mr. Justice Clarke delivered on the 27th of June, 2012

1. Introduction

1.1 This judgment is supplemental to a judgment delivered by me on 27th April, 2012, ("the main judgment"). Defined terms are used in the same way as in that judgment. At the conclusion of the main judgment I invited counsel to consider the appropriate form of order which should be made in the light of the findings in that judgment. The case was put back for further consideration in order to make that final order and to deal with the question of costs.

1.2 On the 15th June, a further hearing occurred. While some progress had been made as to the terms of the order which it might be said properly flowed from the main judgment, there remained some areas of difference between the parties. In addition, while conceding that some order as to costs should be made in favour of the Sisters of Charity, counsel for Dublin City Council did not agree that the Sisters were entitled to their entire costs. This judgment is, therefore, directed to the issues which arose at that further hearing. I propose turning first to the question of the order. Separate documents were prepared by both sides which formed the basis of the issues now in dispute. I, therefore, propose first to turn to those issues.

2. The Issues on the Order

2.1 The order proposed on behalf of the Sisters of Charity is as set out in a letter from Arthur Cox of the 14th May, 2012. It is in the following terms:-

> "An order of *certiorari*, by way of judicial review, quashing the decision of the respondent, dated 24th November, 2010, to adopt the Dublin City Development Plan 2011-2017, insofar as the said Dublin City Development Plan 2011-2017 includes zoning Z15 and all references thereto, as delineated on the First Schedule attached hereto.
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> An order of *certiorari*, by way of judicial review, quashing the Z15 zoning and those aspects of the Dublin City Development Plan 2011-2017 which deal with the Z15 zoning, as delineated on the First Schedule attached hereto.
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> A declaration that the lands owned by the applicants within the functional area of the respondent previously zoned Z15, as more particularly set out in the Second Schedule attached hereto currently have no zoning.
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> An order of *mandamus*, by way of judicial review, directing the respondents to make such variation or variations of the Dublin City Development Plan 2011- 2017, pursuant to section 13 of the Planning and Development Act 2000 as amended, as necessary to address the treatment of such lands as previously zoned Z15 under the said Plan in the light of, and in accordance with the provisions of, the judgment of this Honourable Court delivered on 27th April, 2012."

2.2 In reply, and having consulted with the elected members, Dublin City Council proposed an alternative form of order in the following form:-

> "An order of *certiorari*, by way of judicial review, quashing the decision of the respondent, dated 24th November, 2010 ("the said decision"), to adopt the Dublin City Development Plan 2011-2017, insofar as the said Dublin City Development Plan 2011-2017 includes zoning Z15 and all references thereto, as delineated on the First Schedule attached hereto.
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> An order directing the said decision of the respondents to be remitted to the stage for consideration of the Manager's Report on Submissions/Observations on the Draft Plan (May 2010) for further consideration by the Elected Members of the Dublin City Council, as necessary to address the treatment of such lands previously zoned Z15 under the said Plan in the light of, and in accordance with the provisions of, the judgment of this Honourable Court delivered on 27th April, 2012."

2.3 In substance, the issues which arise are, therefore, as follows:-

> (i) While it is agreed by both parties that whatever order or orders of *certiorari* are to be made should refer to a schedule which delineates, for the purposes of deletion, all relevant references to Z15 zoning, there is one minor difference between the parties as to the appropriate exclusions.
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> That difference relates to para. 15.2 of the Development Plan. The paragraph, as originally adopted, is in the following form:-
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> > "The need to ensure that there is an increase in the amount of resource lands available in the city both in existing established areas and regeneration/development areas, given the capacity for an additional 67,000 residential units in the city and the fact that the majority of land zoned Z15 is in active use and given that in many areas these facilities do not have the capacity to meet existing needs (in terms of school places and access to health and

recreational faciities) *[sic]* and to ensure that there is capacity to meet the needs of existing and future residential communities, in particular for schools, hospitals and recreational activities."

Counsel for the Sisters of Charity suggests that the entirety of the paragraph in question should be deleted. Dublin City Council submits that the only deletion should be of:-

"and the fact that the majority of land zoned Z15 is in active use and given that in many areas these facilities do not have the capacity to meet existing needs (in terms of school places and access to health and recreational faciities) *[sic]* and".

In all other respects counsel are agreed as to the deletions and the only issue which remains for me to decide under this aspect of the case is as and between the competing submissions of the parties on that narrow question.

(ii) Second, it will be seen that the draft submitted on behalf of the Sisters of Charity suggests that there be separate orders of *certiorari* directed to, respectively, the decision of the elected members to adopt the Development Plan and the Development Plan itself. The version suggested on behalf of Dublin City Council suggests only one order directed to the decision to adopt.

(iii) Third, the draft submitted on behalf of the Sisters of Charity suggests that there be a declaration to the effect that the lands which are subject to Z15 zoning in the plan as adopted are now without zoning. I did not understand counsel for Dublin City Council to disagree that such was the effect of the order or orders of *certiorari* to be made, but it was submitted that it was either unnecessary or inappropriate for this Court to make a declaratory order of the type suggested.

(iv) Finally, and perhaps of greatest substance, there is a significant difference between the parties as to the precise way in which I should give effect to the intention described in the main judgment to refer the matter back to the elected members for further consideration. Leaving aside the difference of wording which is apparent from the respective drafts it is, for reasons which will become apparent, clear that the real issue of substance between the parties is as to the manner in which the matter should be referred or remitted back. In other words, in light of the main judgment what is really at issue is the question of the steps that the elected members must now take in order to address any question of the zoning of the lands previously designated as Z15. In particular should the plan simply be subject to the statutory variation procedure (under s. 13 of the 2000 Act) or should the matter go back to some point in the development plan adoption process?

2.4 As the issues other than (iv) are of less substance and might reasonably be described as being largely technical in nature, I turn to those questions first.

3. The Technical Questions

3.1 The first issue which needs to be addressed is the extent of the deletion to be made in respect of para. 15.2 of the Development Plan as adopted. The argument put forward on behalf of the Sisters of Charity is that the entire passage quoted earlier in this judgment only makes sense in the context of providing a justification for Z15 zoning and that, therefore, the entirety of the passage should be deleted for, it is said, if Z15 zoning is itself deleted then the entirety of the passage no longer has any proper place in the Development Plan. The argument put forward on behalf of Dublin City Council drew attention to the overall heading of para. 15.2 (of which the disputed portion only forms one bullet point) which is titled "Challenges". On that basis, and having regard to the other bullet points which are not, in themselves, in controversy, it is suggested that the list of bullet points represents what, in the words of the introduction to para. 15.2, are described as issues highlighted from an evaluation of the implementation of the previous Dublin City Development Plan.

3.2 The real question comes down to one of whether the proposed revised bullet point in question (deleting the specific reference to Z15 zoning in the manner which Dublin City Council accepts) would represent a logical or coherent "challenge" or "issue" which needed to be addressed in the Development Plan as a whole and independent of providing a justification for the now to be quashed Z15 zoning.

3.3 On balance I have come to the view that the portion of the bullet point which Dublin City Council suggests ought not be deleted should stand. For the reasons set out in the main judgment, I did not reach any conclusion as to whether it would, at the level of principle, be permissible to provide for Z15 zoning (or something like it) in general terms precisely because of the absence of reasons, which might be said to allow an assessment to be made as to whether such a zoning was permissible. I did not, therefore, reach any conclusions as to whether some form of zoning (or indeed a number of different zonings) designed to maintain "resource lands" might or might not be justified. In those circumstances it seems to me that the bullet point in question ought remain subject to the deletion of that portion which Dublin City Council accepts must be removed by virtue of its express reference to Z15 zoning.

3.4 The second question under this heading concerns whether there should be one or two orders of *certiorari*. I am not sure that a great deal turns on the matter. However, I am persuaded by the argument put forward on behalf of the Sisters of Charity that it is important, having regard to the fact that a development plan is a public document with significant legal consequences, that it be made clear that the Development Plan itself has, to the extent of removing any parts thereof referable to Z15 zoning, been quashed. I, therefore, propose to make two separate orders of *certiorari* directed, respectively, to the decision to adopt the Development Plan and to the Development Plan itself. Both orders will make reference to the schedule which will contain the agreed deletions together with a deletion to the disputed bullet point in para. 15.2, in the manner to which reference has already been made.

3.5 The next question concerns whether there should be a declaration to clarify the fact that the areas zoned Z15 in the plan as adopted will, as a result of the orders of *certiorari* already noted, currently have no zoning. As noted earlier, I did not understand counsel for Dublin City Council to dispute that such was the consequence of the order or orders of *certiorari* which follow from the main judgment. It seems to me that in so agreeing counsel was entirely correct. The quashing of Z15 zoning does not, of itself, give rise to any form of zoning in respect of the lands in question. It does seem to me, therefore, that it is appropriate that there be a declaration for the purposes of removing any doubt as to the status, after this order is made, of the zoning of the lands in question. Rather than, however, using the precise phraseology suggested on behalf of the Sisters of Charity, I propose making a declaration:-

"That the lands owned by the applicants within the functional area of the respondent described as being zoned Z15 in the Dublin City Development Plan 2011-2017 as adopted are, by virtue of the orders of *certiorari* herein contained, subject to no zoning unless and until changes to the said Development Plan are adopted by the respondent in accordance with the process specified in this order."

It seems to me that such a declaration more correctly clarifies the precise zoning position.

3.6 It is next necessary to turn to the real issue of substance which is as to the precise way in which this matter should be referred back to the elected members.

4. How should the matter be referred back?
4.1 As can be seen from the competing draft orders to which reference has already been made, the Sisters of Charity propose an order of *mandamus* directing Dublin City Council to make such variation or variations in the Development Plan, under s. 13 of the 2000 Act, as are necessary to address the zoning of the lands zoned Z15 in the plan as adopted in a manner appropriate to meet the main judgment.

4.2 The alternative proposed on behalf of Dublin City Council suggests that the matter be remitted to the stage for consideration of the Manager's report on submissions/observations on the draft development plan (which occurred in May, 2010) for consideration by the elected members in accordance with the main judgment.

4.3 Leaving aside, for the moment, the technical difference (if there be one of substance) between *mandamus* and a remittal process, it is also necessary to consider the procedures which lead to the adoption of a development plan and the question as to the further process that will need to be engaged in by the elected members in order to formulate and finalise a decision as to how the lands, which are now to become in effect un-zoned, are to be zoned.

4.4 The process leading to the adoption of a development plan is briefly described in Section 5 of the main judgment. The first stage so described involves an issues paper which, after public consultation, leads to a meeting of the elected members for the purposes of issuing directions on the preparation of a draft development plan. The second stage involves a consideration by the elected members of a proposal to adopt that draft development plan including a consideration of such amendments to it as might be proposed by the elected members. The third stage involves public consultation on the draft development plan so adopted including the publication of an environmental report and appropriate assessments. A fourth stage involves a consideration of such public submissions as arise from the consultation to which I have referred and involves a further consideration of amending motions proposed by the elected members and a report prepared by the Manager on such matters. Any material amendments so proposed (with consequential addenda to the environmental report and assessments) are again the subject of public consultation which in turn leads to further submissions and a further opportunity for the elected members to bring motions. It is in the light of those final submissions and proposed amendments that the fifth stage involving the ultimate decision to adopt the development plan is taken.

4.5 In *Tristor Ltd v. Minister for the Environment & Ors* [2010] IEHC 397, I had to consider the appropriate order to make in circumstances where, for the reasons set out in the judgment in that case, I had determined that an aspect of the development plan of Dun Laoghaire Rathdown Council had to be quashed by reason of the way in which the Minister in question had directed that the plan be changed. In the main judgment in that case I simply stated, at para. 9.1, that:-

> "[...] the development plan itself needs to be remitted back to Dun Laoghaire Rathdown Council to consider what measures should be put in place in the light of the fact that the Council is no longer bound by the Minister's direction."

I invited counsel to consider the judgment and make further submissions on the precise form of order which might be required to give effect to that general intention.

4.6 In a subsequent judgment in the same case (*Tristor Ltd v. Minister for the Environment & Ors* [2010] IEHC 454) I dealt with the precise form of order to be made. I noted that Kelly J., in *Usk & District Residents Association Ltd v. An Bord Pleanála* [2007] IEHC 86, had remitted a matter back to An Bord Pleanála in a manner which accepted the validity of the relevant planning process up to a point which was described in the judgment of Kelly J. as "the first inspector's report". I noted that the overriding principle behind any remedy in civil proceedings should be to attempt, in as clinical a way as is possible, to undo the consequences of any wrongful or invalid act but to go no further. I went on to note that the 2000 Act does not address the question of what is to happen if a particular provision or provisions in a development plan is or are found to be invalid. On the facts of *Tristor* I held that, in the circumstances of that case, the appropriate course of action to adopt was to remit the matter back to allow the elected members to adopt appropriate zoning in respect of the lands which were the subject of the litigation but that, in so doing, the elected members were required to operate on the basis that a valid process, up to and including a point in the process where what I determined to be an invalid ministerial intervention had occurred, had been engaged in. As I pointed out at para. 4.4, "the sole function of the Court is to fashion an order which puts matters back into a position in which they were immediately before the wrongful exercise of a ministerial discretion occurred."

4.7 It is, of course, the case that there are significant differences between the problem which led to the quashing of the relevant aspect of the Dun Laoghaire Rathdown Council's development plan in *Tristor* and the issues which have led to the quashing of Z15 zoning in this case. However, at a general level, it seems to me that the principle behind the order made in *Tristor* remains valid and is applicable to this case.

4.8 It is not necessary for a court which quashes an order or measure made or taken at the end of a lengthy process to necessarily require that the process go back to the beginning. Where the process is conducted in a regular and lawful way up to a certain point in time, then the court should give consideration as to whether there is any good reason to start the process again. Active consideration should be given to the possibility of remitting the matter back to the decision-maker or decision-makers to continue the process from the point in time where it can be said to have gone wrong. There may, of course, on the facts of any individual case, be problems with doing that. However, in my view a court should lean in favour of standing over a properly conducted process and only require any part of the process which was invalid to be revisited in the context of a matter being referred back.

4.9 It is also important to identify the distinction between a variation of a development plan, as provided for by s. 13 of the 2000 Act, and an amendment to a draft development plan, which occurs in accordance with the provisions of s. 12 of the same Act. Under s. 13(1) a planning authority is entitled, at any time, for stated reasons, to decide to make a variation of a development plan which for the time being is in force. It follows that a variation is something which Dublin City Council would be entitled to introduce into its Development Plan whether or not there was a remittal back. If there were a simple order of *certiorari* quashing Z15 zoning having, for the reasons already addressed, the effect of rendering the lands formerly zoned Z15 to be without any zoning, then it would follow that, without any further order, it would be open to the elected members to introduce measures providing for the zoning of the lands which had, by that process, become un-zoned simply by adopting the procedures provided for in s. 13. It seems to me, therefore, that there would be no point in making an order remitting the matter back in the way proposed by the Sisters of Charity for such an order would simply require the councillors to do something which they are already entitled to do by law and where no useful purpose would be served by making an order requiring them to exercise that statutory entitlement. For example, in the unlikely event that the

elected members wanted to leave these lands un-zoned, an order of *mandamus* might give rise to some complications.

4.10 It seems to me, therefore, that the order proposed on behalf of the Sisters of Charity in reality seeks to revisit the determination made in the main judgment that the matter should be remitted back. Requiring that the process, post remittal back, be conducted in accordance with the variation procedure which is available to the elected members in any event would defeat the purpose of a remittal back.

4.11 It follows that the concept of a remittal back carries with it the fact that the process, post remittal back, be treated as part of the process leading to the adoption of the development plan rather than a variation of the development plan once adopted. However, having come to that view it seems to me that it remains for decision as to the precise process which is required to be followed by the elected members post remittal back.

4.12 Nevertheless, a number of principles must underlie any decision as to the appropriate course of action to adopt in such circumstances. First, as already noted, the court should endeavour to avoid an unnecessary reproduction of a legitimate part of the process.

4.13 Second, on the facts of this case, it will be necessary for the elected members to form a view as to how the lands which have, in effect, become un-zoned by reason of the quashing of Z15 zoning are now to be zoned. It is important to emphasise that it is no function of this Court to direct the elected members as to the zoning that should be adopted. That is a function of the elected members subject to the jurisdiction of this Court to consider any questions arising as to whether either the process leading to or the result of that adoption is lawful. This Court has no function in determining zoning. It follows that whatever process is put in place must pay all due respect to the undoubted entitlement of the elected members to decide zoning in a lawful fashion.

4.14 Third, although hardly controversial, it is necessary to note that the two specific elements of the Z15 zoning which were quashed on the grounds of irrationality (rather than on the basis of an absence of reasons) cannot, of course, find their way into any new development plan which may come to be adopted. Thus, the provisions concerning social and affordable housing and the absence of potential material variation motions cannot be reproduced.

4.15 Fourth, it is necessary to recognise that it is inherent in the 2000 Act that public consultation, in accordance with the terms of that Act, must take place. The 2000 Act is carefully designed to ensure that, in the event that there are material changes in the proposed development plan as it progresses, a further round of public consultation must take place.

4.16 Finally, and most importantly, it does need to be recorded that there are a whole range of ways in which the elected members may choose to deal with the zoning of the lands which were formerly zoned Z15. It must, of course, be recognised that, with the exception of the two specific problems already identified, the main judgment did not address the question of whether Z15 zoning as it appeared in the Development Plan as adopted (with or without modifications), could have survived challenge had adequate reasons been given because, for the reasons set out in the main judgment, I did not feel it possible to come to a conclusion on that question. It does need to be emphasised that it remains possible, therefore, that Z15 zoning could be justified by the giving of adequate reasons. It should not be assumed that an assessment of the legitimacy of Z15 zoning, such reasons having been given, would necessarily lead to any particular conclusion as to its validity. At one end of the spectrum it is, therefore, clearly open to the elected members to consider whether something which, to a greater or lesser extent, resembles the current Z15 zoning should be reproduced in the revised development plan which will follow on from the remittal back to be ordered but with, on this occasion, adequate reasons. At the other end of the spectrum it might appear appropriate to the elected members to consider simply putting the lands which are currently zoned Z15 in the plan as adopted into some other existing zoning. In between those two extremes there are many intermediate positions whereby a new form of zoning might find favour. Likewise, it needs to be emphasised, as was correctly argued by counsel for the Sisters of Charity, that it does not necessarily follow that all of the lands which were zoned Z15 in the plan as adopted must now have the same zoning. It is possible that, after proper consideration, the elected members may choose different solutions (whether a new form ofZ15, an entirely new zoning, or an existing zoning) in respect of different parts of the lands in question. All of these are matters for the elected members.

4.17 It seems to me that where a matter is referred back to a decision-maker, the inherent jurisdiction of the court entitles the court to give directions as to the process to be followed by that decision-maker in reconsidering the matter. However, the court should, in giving such directions, attempt to replicate, insofar as it may be practicable, the legal requirements that would apply, whether under statute, rules or the like, to the making of decisions of that type. It will not always be possible to ensure exact compliance with the relevant regime, for it is in the nature of a decision having already been made and having been subsequently quashed, that some variation on the normal procedure may be necessitated. To take but a simple example, the changes, which will ultimately come into place as a result of the quashing of Z15 and the adoption of whatever measures the elected members may consider appropriate to deal with same, will give rise to a situation where, in a sense, and at least so far as the lands affected by Z15 are concerned, the Development Plan will not have been adopted within the timeframe provided for in the 2000 Act. However, that is an inevitable consequence of the quashing of the Z15 zoning.

4.18 In the light of those principles it seems to me that the first port of call is that the elected members must meet and decide what zoning or zonings they now wish to put in place for the lands which will, by then, have come to be entirely un-zoned. It does not seem to me that I should be prescriptive as to the procedure to be followed by the elected members in order to reach such an initial decision. I will, however, direct that the elected members are, as soon as may be practicable, to arrange a meeting for the purposes of considering what additions or inclusions are to be placed in the Development Plan for the purposes of zoning the former Z15 lands in whatever manner the elected members decide and to specify such reasons as the elected members consider appropriate for that decision. It is a matter for the elected members to decide how the proposals which are to go before such a meeting are to be formulated whether by the Manager or by individual councillors. However, the intent of the first direction is that such a meeting is to take place and that a proposal for whatever additions or inclusions as are considered appropriate is to be adopted at that meeting.

4.19 Given that, at a minimum, it will be necessary for any new formulation of a zoning proposal in respect of the lands zoned Z15 in the plan as adopted to include, for the first time, adequate reasons, it seems to me that, by analogy with the public consultation provisions contained within s. 12 of the 2000 Act, I should direct that there be some opportunity for public consultation in the light of the proposal put forward as a result of the meeting of the elected members to which I have already referred. It may, of course, be that a significantly different zoning will be proposed. That would carry with it the necessity for public consultation in any event. However, even if a zoning which closely resembles Z15 is to be proposed (shorn, at a minimum, of the two specific measures which are to be quashed and cannot be reproduced) then at least sufficient reasons will have to be given. In the light of those reasons it is appropriate that interested parties be entitled to make whatever representations they may consider appropriate.

4.20 I will, therefore, secondly direct that, after the elected representatives have formulated a proposal arising out of the first

direction, that proposal should be made available to the public for consultation and submission for a period of six weeks in a manner similar to that provided for ins. 12 of the 2000 Act.

4.21 Finally, and in the light of a consideration of such public submissions as arise, I will thirdly direct that the councillors are to meet to adopt such new provisions in respect of the lands currently zoned Z15 in the plan as adopted as may appear to them to be appropriate. In order to replicate, insofar as practicable, the statutory process, I will direct that the Manager, by analogy with the provisions of s. 12(4) of the 2000 Act, should prepare a report on any submissions or observations made on foot of the public consultation process to which I have referred and that the Manager submits that report to the elected members within a period of three weeks from the closing date for public submissions. In addition, as the elected members will be required to consider the Manager's report, the final meeting to adopt any new provisions will obviously have to post date the finalisation of the Manager's report.

4.22 I would add two addenda. First, if, in the light of public consultation, it is proposed to alter the new measures in a way which would be material in the sense in which that term is used in respect of the adoption process in the 2000 Act, then any such alteration will have to be considered in the same way as a material amendment to the draft development plan is considered. However, in the event that the elected members are minded to affirm their initial decision without either any amendment or any amendment which would be material in that sense, then they are free to do so.

4.23 The second addenda is to clarify that the only inclusions in the Development Plan which are permitted by these directions are those which are necessitated to deal with the situation which has arisen by virtue of the effective de-zoning of Z15. That is not to say that inclusions of different types might not be so necessitated. For example, as already noted, it might be that the elected members will take the view that some lands previously zoned Z15 should now go into an already existing zoning category. There is no reason why, therefore, an addition to an existing zoning category may not legitimately occur so as to include lands which the elected members now feel should go into that category. However, the purpose of this clarification is to ensure that the process directed to be carried out cannot be used to make any other alterations in the Development Plan save those which directly and necessarily arise out of the de-zoning of the Z15 lands. Any other changes which elected members might wish to bring about can only be achieved through the ordinary variation procedure provided for ins. 13 of the 2000 Act.

4.24 In summary, I propose directing a three stage process:-

> (i) A meeting of the elected members to adopt a proposal for inclusions in the Development Plan necessitated by the need to replace those aspects of the Development Plan now quashed;
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> (ii) A public consultation process of six weeks to receive submissions on those inclusions; and
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> (iii) A final meeting of the elected members to consider those submissions together with a Manager's report thereon and to make a final decision on the appropriate inclusions.

4.25 In addition, I will direct that if, in the course of the process leading to or at the meeting referred to at (iii), a material amendment, in the sense in which that term is used in the 2000 Act, is proposed, the relevant procedures applicable to such an amendment under the provisions of the 2000 Act are to apply.

4.26 It only remains to deal with the question of costs.

5. Costs

5.1 It was, quite properly, accepted on behalf of Dublin City Council that, as the Sisters of Charity had succeeded in significant part, at least some costs must necessarily be awarded in their favour. However, two points were made.

5.2 The first was to draw attention to the fact that a significant number of issues which arose at the hearing were not, for the reasons set out in the main judgment, ultimately determined. It does not seem to me that that factor ought alter the proper position in respect of costs. First, at the level of principle, a party may put forward a range of reasons as to why they should succeed. Sometimes a court will consider all of them. Sometimes a court will not go on to consider alternative means of a plaintiff or applicant achieving the same end when one sufficient means of victory has been established. It does not seem to me that it is appropriate to in any way penalise a plaintiff or applicant who has succeeded in obtaining the relief claimed simply because the court, for whatever reason, does not decide whether each of the bases put forward for that success is correct.

5.3 But there are even stronger reasons, on the facts of this case, as to why that principle must be applied. As was argued by counsel for the Sisters of Charity, the reason why almost all of the other grounds put forward were not decided was because the court came to the view that it was impossible to reach an appropriate assessment on those matters in the absence of adequate reasons having been given. It follows that the specific cause, on the facts of this case, of the other issues not being decided was the failure of Dublin City Council to give reasons in the first place. In those circumstances it does not seem to me to be appropriate to make any deduction in the costs to be awarded to reflect time spent on those issues which were not decided. The issues concerned were not decided due to a failure on the part of Dublin City Council to give adequate reasons for the challenged aspects of the Development Plan in the first place.

5.4 The second basis on which it was suggested that a full order for costs should not be made was because the Sisters of Charity had, undoubtedly, lost on one issue being the discrete constitutional challenge based on the contention that Z15 zoning breached Art. 44 of the Constitution. There is no doubt but that argument on that point took up some, admittedly limited, part of the time at the hearing. There is equally no doubt that the claim not allowed appears as a separate head of claim in the papers filed by the Sisters of Charity and is addressed in the submissions of both parties.

5.5 It must be recalled that under the principles identified in *Veolia Water UK Plc & Ors v. Fingal County Council* [2006] IEHC 240, the proper question to ask, where an otherwise successful party fails on some issue or issues, is as to whether the raising of the issue or issues on which that party failed has clearly added to the costs of the litigation. As I have pointed out in a number of subsequent cases, *Veolia* does not mean that it is appropriate to engage in an exercise of adding up the points on which a party has won and a party has lost. Rather, what *Veolia* suggests should be done is that the party who wins (in the sense of having had to come to court to obtain something that they could not otherwise get) is *prima facie* to get full costs, but that the court can depart from that situation where it is clear that the costs have been increased by reason of the raising of other unmeritorious points. The precise way in which it is appropriate for the court to deal with such a situation will be very much dependent on the facts of the individual case.

5.6 In those circumstances it does seem to me that it is appropriate to make some allowance (albeit a very small one) for the failure

of the Sisters of Charity on the Art. 44 claim. In all the circumstances it seems to me that I should direct that there be a deduction of €15,000 (inclusive of VAT) from the total amount of costs taxed to reflect that fact. It seems to me that such a sum is a reasonable measurement of the deduction to be made by disallowing the Sisters of Charity's costs in arguing that point together with reflecting the additional costs to which Dublin City Council was put in defending that point.