Neutral Citation Number: [2008] IEHC 454

THE HIGH COURT
JUDICIAL REVIEW

2006 1339 JR

BETWEEN

MARY O'DONNELL, PATRICK O'DONNELL,
MICHAEL O'DONNELL (A MINOR SUING BY HIS MOTHER
AND NEXT FRIEND MARY O'DONNELL),
ELLEN O'DONNELL (A MINOR SUING BY HER MOTHER
AND NEXT FRIEND MARY O'DONNELL),
MARY O'DONNELL (A MINOR SUING BY HER MOTHER
AND NEXT FRIEND MARY O'DONNELL),
PATRICK O'DONNELL (A MINOR SUING BY HIS MOTHER
AND NEXT FRIEND MARY O'DONNELL),
MARGARET O'DONNELL, (A MINOR SUING BY HER MOTHER
AND NEXT FRIEND MARY O'DONNELL),
TERESA O'DONNELL, (A MINOR SUING BY HER MOTHER
AND NEXT FRIEND MARY O'DONNELL),
AND GERRY O'DONNELL (A MINOR SUING BY HIS MOTHER
AND NEXT FRIEND MARY O'DONNELL)

APPLICANTS

AND
SOUTH DUBLIN COUNTY COUNCIL,
THE MINISTER FOR THE ENVIRONMENT, HERITAGE
AND LOCAL GOVERNMENT,
IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

Judgment of Mr. Justice John Edwards delivered on the 11th day of January, 2008

Introduction

1. The applicants are travellers. The first and second named applicants are wife and husband respectively and they have seven children, namely the third to ninth named applicants respectively. In an affidavit sworn by her on 6th November, 2006, Mrs. Mary O'Donnell states that her seven children range in age from sixteen down to two. At that time, the third named applicant was sixteen years of age, the fourth named applicant fifteen years of age, the fifth named applicant twelve years of age, the sixth named applicant eight years of age, the seventh named applicant nine years of age, the eighth named applicant two years of age and the ninth named applicant thirteen years of age. The fourth named applicant, Ellen O'Donnell, has cerebral palsy and is confined to a wheelchair. Mrs. O'Donnell looks after the seven children full time and is not employed outside of the home. Her husband is unemployed and is in receipt of disability allowance. At present the family resides in a mobile home located at a temporary halting site operated by the first named respondent at Whitestown Way, Tallaght, Dublin 24. Their present accommodation is overcrowded and cramped. It is particularly unsuitable for the fourth named applicant, having regard to her disability. The particular needs of the fourth named applicant have been assessed by an occupational therapist and the relevant reports have been submitted to the first named respondent. In addition, the first named respondent has had its environmental health officer assess and report on the family's accommodation and a report has also been obtained from P.J. Rochford Mobile Home Repairs and Services. In general terms, the applicants claim in these proceedings that they are entitled by law to be provided with suitable, adequate and accessible caravan accommodation by the first named respondent and that, by failing to provide such accommodation, the Council has acted in breach of their statutory duty under the Housing Acts, 1966 to 2004 interpreted in accordance with s. 2 of the European Convention on Human Rights Act, 2003, contrary to s. 3 of the European Convention on Human Rights Act, 2003 and contrary to the applicants' rights under the Constitution of Ireland.

The Relevant Legislation

2. Before proceeding to rehearse in any detail the parties' respective pleadings and the evidence before me I must allude to the relevant legislative scheme and refer with particularity to certain provisions of it. The relevant scheme has already been reviewed and summarised succinctly by Charleton J in a case of *Doherty & Doherty –v- South Dublin County Council*, *The Minister for the Environment, Heritage and Local Government, Ireland and the Attorney General; the Equality Authority, Notice Party*, delivered on the 22nd of January 2007, to which I was referred by both sides in the present case. In *Doherty*, Charleton J considered the case of two elderly travellers suffering from ill health who were residing in a damp and draughty caravan and who claimed, *inter alia*, a right under the Housing Acts 1966 – 2004 when interpreted in accordance with the principles laid down in the European Convention on Human Rights Act 2003 to be provided with a centrally heated, insulated and internally plumbed caravan. In the circumstances I propose to adopt his excellent summary for the purposes of this judgment. Commencing at paragraph 19, he states:

> "19. The Housing Act, 1966 consolidated existing legislation as to the provision of housing. It also cast a duty on local authorities to survey the need for housing within their functional area and to make provision, based on the scheme of priorities, whereby people who are otherwise unable to afford housing might be offered accommodation at reasonable rent. Section 60 provided that it is the duty of a housing authority to make a scheme determining the priorities to be accorded to categories of persons who are in need of housing. This scheme was a public document which could be inspected; s. 60(9). The primary objectives of this section were replaced by s. 9 of the Housing Act, 1988, which recasts s. 60, which it repealed. Section 9 makes it the duty of a housing authority to assess the needs of the homeless, of Travellers, of those in unsuitable accommodation, of young people without family support, of the sick and the elderly, and those without adequate means. This includes those who may later enter the functional area of the authority."

3. It is perhaps appropriate to interrupt the quotation here to add that section 2 of the 1988 Act defines "homeless" in terms a person shall be regarded by a housing authority as being homeless 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 …"

4. Resuming then the quotation from Charlton J, he continues:

"Under s. 10 further powers to offer accommodation, such as Bed & Breakfast accommodation, are conferred on the housing authority. Part IV of the Act of 1966 is concerned with the elimination of slum and tenement dwellings and, in that regard, empowers local authorities to serve orders for repair or demolition and to bring prosecutions in respect of related offences. Section 56 of the Act of 1966 provides:-

> "56 - (1) A housing authority may erect, acquire, purchase, convert or reconstruct, lease or otherwise provide dwellings (including houses, flats, maisonettes and hostels) and such dwellings may be temporary or permanent.
>
> (2) A housing authority may, in connection with dwellings provided, to be provided or which in the opinion of the authority will in the future require to be provided under this Act, provide and, if they think fit, maintain in good order and repair roads, shops, playgrounds, places of recreation, parks, allotments, open spaces, sites for places of worship, factories, schools, offices and other buildings or land and such other works or services, as will, in the opinion of the authority, serve a beneficial purpose either in connection with the requirements of the persons for whom the dwellings are provided or in connection with the requirements of those persons and of other persons."

20. The following section of the Act of 1966 allows for the provision of sites for housing in a similar way. There is no specific mention in the Act of 1966 of the Irish Traveller Community. One notes however, the reference in s. 56 to temporary accommodation which could, although it is not specified, include a mobile home or caravan. Section 13 of the Housing Act, 1988 applies only to those who belong "to the class of persons who traditionally pursue or have pursued a nomadic way of life." The section was replaced by s. 29 of the Housing (Traveller Accommodation) Act, 1998. It is to be noted that the definition does not confine the rights enabled by the section to those who have pursued this lifestyle on this island, as does the Equal Status Acts, 2000 – 2004. It applies, on the face of it, to all traditional nomads. As substituted by s. 29 of the 1998 Act, s. 13 of the 1988 Act reads, as to its material part:-

> "13 - (1) This section applies to persons belonging to the class of persons who traditionally pursue or have pursued a nomadic way of life.
>
> A housing authority may provide, improve, manage and control sites for caravans used by persons to whom this section applies, including sites with limited facilities for the use by such persons otherwise than as their normal place of residence or pending the provision of permanent accommodation under an accommodation programme within the meaning of s. 7 of the Housing (Traveller Accommodation) Act, 1998, and may carry out any works incidental to such provision, improvement, management or control, including the provision of services for such sites.
>
> (3) Section 56(2) of the Principal Act shall apply in connection with the provision of sites under this section as it applies in connection with the provision of dwellings under that section."

21. Section 56(2) of the Housing Act, 1966, enables the authority to maintain buildings and services ancillary to housing. Section 13(7) of the Act of 1988, as substituted by s. 29 of the Act of 1998, defines a caravan as:-

> "Any structure designed or adapted for human habitation which is capable of being moved from one place to another, whether by towing or transport on a vehicle or trailer, and includes a motor vehicle so designed or adapted and a mobile home, but does not include a tent."

5. A site with limited facilities is defined by reference to the temporary nature of the stay but which, in that regard, must have sufficient water, a hard parking surface and facilities for waste disposal. Just as under the Housing Act, 1966, there was a duty to make an assessment of housing needs, so under the Housing (Traveller Accommodation) Act, 1998, Part II provides a duty on a housing authority to assess the need for sites and to adopt an accommodation programme for Travellers. Under s. 25, the authority may make a loan for the acquisition or repair of a caravan, or to purchase a site. Under s. 15 of the Housing Act, 1988, as inserted by s. 30 of the Housing (Traveller Accommodation) Act, 1998, the Minister may pay to a housing authority a grant or subsidy in respect of:-

> "(a) The provision of dwellings (including houses, flats, maisonettes and hostels) by the authority;
>
> (b) The improvement or reconstruction of dwellings provided by the authority;
>
> (c) The provision of caravans or the provision, improvement or management by the authority of sites for caravans referred to in s. 13 (as amended by the Housing (Traveller Accommodation) Act, 1998) for persons to whom that section applies;
>
> (d) The acquisition of land for the provision of dwellings or sites referred to in this section;
>
> (e) The carrying out of ancillary works …; and
>
> (f) The provision of assistance under s. 5 to a body approved of by the Minister for the purposes of that section."

6. It should be noted that section 5 of the 1988 Act (dealing with assistance by housing authorities of certain bodies) was subsequently repealed by section 37 of the Housing (Miscellaneous Provisions) Act 1992. However, section 6 of the 1992 Act provides that any reference in section 15 of the 1988 Act to section 5 of the same Act shall be construed as a reference to section 6 of the 1992 Act, which replaced the said section 5.

7. Section 6 of the Housing (Miscellaneous Provisions) Act 1979 is also relevant. This section provides for the provision of grants and other assistance by housing authorities to a person providing a new house or carrying out improvement works to a house, subject to regulations made by the Minister for Environment.

8. At this juncture it may be helpful to elaborate on the various schemes that exist on foot of which a member of the travelling community may seek grant aid or loan assistance pursuant to the provisions that have been highlighted above.

9. In order to comply with his obligations under section 25 of the Housing (Traveller Accommodation) Act, 1998 the Minister for

Housing and Urban Renewal established an administrative scheme, promulgated by Circular Letters No's TAU1/2000 and TAU1A2000 (to be read together), entitled "Scheme of Loans and Grants for the Purchase of Caravans by Travellers" (hereinafter referred to as the Caravan Loan Scheme). The purpose of this scheme was expressed to be "to address the needs of traveller families who live in substandard caravans". The scheme provides, *inter alia*, for loans to be made available to travellers, to be administered by the relevant local authority, up to a maximum of €6,350 for the purchase of a caravan, whether new or second hand. The applicant is, however, required to contribute at least 10% of the price of the caravan himself/herself. The caravan has to be purchased from a reputable supplier and represent value for money. Further, in order to qualify an applicant must be assessed as being in need of accommodation by the relevant local authority, and be unable to provide for same out of his/her own resources. The scheme provides that a loan, if granted, is to be repaid over 1-5 years. In addition to loan assistance, the scheme also provides (though it is not relevant in this case) for grant aid to travellers purchasing their first caravan, calculated at 10% of the purchase price up to a maximum of €635.

10. In addition to the Caravan Loan Scheme there are two grant other schemes which will feature in a consideration of the evidence in this case, and which therefore should be identified at this stage. Utilising the legal framework laid down in section 6 of the 1979 Act the Minister has promulgated regulations establishing separate grant aid schemes to be administered by housing authorities (i) for the provision of additional accommodation or the carrying out of works of adaptation for the purpose of rendering a house more suitable for the accommodation of a disabled person (hereinafter referred to as the Disabled Persons Grants Scheme), and (ii) for the carrying out of essential repairs to a house (hereinafter referred to as the Essential Repairs Grant Scheme). The regulations in question are Housing (Disabled Persons and Essential Repairs Grants) Regulations 2001, SI 607/2001. It should be noted, as it is a matter relevant to an aspect of the evidence in this case, that *prima facie* the said regulations apply only to "a house" (as defined in the 1992 Act) and there is nothing contained in the statutory instrument to suggest that they can apply to caravans. Moreover the court's attention has not been drawn to any other legislative provision suggesting this. The regulations in question are the subject of a Department of the Environment Circular letter HGS 4/01, exhibited before me in an affidavit and, again, there is nothing in that document to suggest that these schemes can apply to caravans. As will become apparent when I come to review the evidence in this case the terms "house" and "housing" as used in the said regulations are interpreted and applied by the first named respondent as including caravans. I have doubts as to the correctness of this interpretation on the basis of present information although I am not to be taken as deciding on this definitively as the question was not addressed in the arguments before me, nor is it necessary for me to decide on this in determining the questions at issue in this case.

The proceedings

11. On 13th November, 2006 the applicants applied *ex parte* to this Honourable Court (Peart J.) for leave to apply by way of judicial review for diverse reliefs, which I will come to in a moment. The application was grounded principally upon the aforementioned affidavit of Mary O'Donnell, sworn on 6th November, 2006. The application was acceded to and Mr. Justice Peart made an order granting the applicants leave to apply by way of application for judicial review for the reliefs set forth at "D" in the draft "Statement Required to Ground an Application for Judicial Review" (hereinafter referred to as the statement of grounds) exhibited by the applicants on the grounds set forth at "E" in the same document. The matter was made returnable for 5th December, 2006.

12. By a notice of motion dated 22nd November, 2006 the applicants duly applied to this Honourable Court for the reliefs set out at "D" in their statement of grounds. However, at the commencement of the hearing before me it was indicated by counsel for the applicants that certain of the reliefs claimed at "D" in the statement of grounds were no longer being pursued, and in particular reliefs based upon alleged duties arising under the Equal Status Act, 2000 and Council Directive 2000/43. There is also a requested minor amendment to the statement of grounds so that it is to be read as referring specifically to "an additional three bedroomed mobile home" and I am disposed to grant that amendment. Accordingly, if one excises references to the Equal Status Act, 2000 and Council Directive 2000/43 from part "D" of the statement of grounds and the notice of motion (as amended), the result is a claim for relief in the following terms :

> (1) an order of *mandamus* requiring the first and second named respondents to exercise their statutory powers under the Housing Act, 1966 – 2004, interpreted in accordance with s. 2 of the European Convention on Human Rights Act, 2003, and thereby provide the applicants with adequate, suitable and accessible adapted caravan accommodation and service unit in accordance with the occupational therapist's reports submitted to the first named respondent and the report by the Environmental Health Officer and by P.J. Rochford Mobile Home Repairs and Services and an additional three bedroomed mobile home.
>
> (2) An order of *mandamus* requiring the first named respondent to decide on the application by the applicants to provide them with suitable and adequate and accessible adapted caravan accommodation and service unit.
>
> (3) A declaration that in all the circumstances herein, the failure by the first and second named respondents to ensure the provision of adequate, suitable and accessible adapted caravan accommodation and an additional three bedroomed mobile home to the applicants, constitutes a breach of: the Housing Acts, 1966 – 2004, interpreted in accordance with s. 2 of the European Convention on Human Rights Act, 2003; and the applicants' rights under Article 40.3, 41 and 42 of the Constitution of Ireland.
>
> (4) Damages for breach of statutory duty.
>
> (5) Damages pursuant to s. 3 of the European Convention on Human Rights Act, 2003.
>
> (6) Costs.

13. The detailed grounds upon which relief is sought are set out at part. "E" of the applicant's statement of grounds and appear in fifteen closely-typed paragraphs between pages 2 and 5 thereof. It is not necessary for me to set these out in their entirety but rather it is more appropriate to summarise them. Before doing so, however, I should state that the grounds as pleaded are a mixture of matters of fact and matters of law. With respect to the matters of fact pleaded, certain of the alleged facts are disputed by the respondents and I will refer to these disputes with some particularity later in this judgment. However, the factual matters relied upon in the statement of grounds are pleaded in the following terms:-

> "The applicants are a traveller family consisting of two adults and seven children, who currently live in one overcrowded, cramped, two-bedroomed, adapted caravan, provided by the first named respondent, on a temporary halting site with a service unit, also provided by the first named respondent. The caravan itself is in a very poor state of repair: it is overrun with mice; there is no longer a functioning toilet in the caravan; the shower cannot be used; the doors to the bathroom jam, the skylight leaks, and the radiators do not work. The fourth named applicant, who is fifteen years of age, has cerebral palsy, and is wheelchair-bound. Neither the adapted caravan nor the service unit are wheelchair accessible. The

shower cubicle in the service unit is too small for a wheelchair user. There is not sufficient room for the fourth named applicant to manoeuvre her wheelchair into the bedroom. She is totally dependent on her parents. The applicants cannot afford the cost of a new adapted caravan, a loan, or the cost of the necessary works to render the caravan fit for habitation and use by the fourth named applicant. They have applied to the first named respondent for suitable accessible adapted caravan accommodation since July, 2005. Two occupational therapist's reports and a report by the Irish Wheelchair Association were sent to the first named respondent, which highlights the problem of the current accommodation for the fourth named applicant. The first named respondent has not decided on the applicant's accommodation application."

14. The legal matters relied upon can be summarised as follows. It is alleged that the first and second named respondents owe statutory duties towards the applicants under the Housing Acts, 1966 to 2004. It is contended that those Acts must be interpreted in a manner compatible with the State's obligations under the European Convention on Human Rights, pursuant to s. 2 of the European Convention on Human Rights Act, 2003. Further, the first and second named respondents are obliged to perform their functions in a manner compatible with the State's obligations under the said Convention. It is alleged that they must have particular regard to articles 8 and 14 of the Convention and that, in particular, article 8 of the Convention imposes a positive obligation on them to facilitate the traveller way of life and to adopt measures designed to secure respect for the applicants' family life without discrimination on any ground. The applicants further rely upon article 8 of the Convention as imposing a positive obligation on the first and second named respondents, in respect of people with disabilities (such as the fourth named applicant), to act in a manner which will enable them to enjoy, so far as possible, a normal private and family life, including the provision of suitably adapted accommodation. It is pleaded that the first and second named respondents when exercising their functions under the Housing Acts, 1966 to 2004 must respect the applicants' rights under Article 41.1 and/or Article 42 of the Constitution. The applicants contend that the first named respondent is in breach of its statutory duties under the European Convention and its duties under the Constitution in failing to act on the medical reports provided to it (which failure is alleged to be continuing) and in failing to provide suitable and adequate and accessible adapted caravan accommodation to the applicants in circumstances where their living conditions make it virtually impossible for them to have any meaningful private or family life. In addition, with respect to the fourth named applicant specifically, it is contended that the aforementioned alleged breaches are causing ongoing damage to her physical and psychological integrity and to her social and moral education and development as a human being.

15. The first named respondent filed a statement of opposition on 26th January, 2006. A statement of opposition was filed on behalf of the second, third and fourth named respondents on 15th February, 2007. Since then, the applicants have let the second, third and fourth named respondents out of the proceedings. Accordingly, at this point I am only concerned with the statement of opposition filed by the first named respondent. Once again, this is a somewhat lengthy document and it is sufficient for the purposes of this judgment for me to summarise the case as pleaded rather than reciting it in full. It is expressly denied by the first named respondent that it has interfered with or infringed the applicants' right to respect for their private and family life. It is further denied that the first named respondent is in breach of its obligations under the Housing Acts, 1966 to 2004 or under the European Convention on Human Rights Act, 2003. It is further denied that it is in breach of its duties under the Convention itself. The first named respondent's position is that it operates a scheme of letting priorities under the Housing Acts and it also operates a Traveller Accommodation Programme. The accommodation provided under the Housing Acts to qualified persons is allocated not upon individual demand but in accordance with that scheme of letting priorities and/or the Traveller Accommodation Programme and the resources available to the housing authority at any given time. The first named respondent contends that it has made reasonable efforts to meet the plaintiffs' temporary accommodation needs pending the provision of more suitable permanent accommodation. The first named respondent contends that the applicants' overcrowded living conditions can be relieved pending the provision of permanent accommodation by the acquisition of another caravan by the first and second named applicants with financial assistance from the respondents. The provision of financial assistance by means of loans and/or grants is an adequate discharge of the first named respondent's obligations pending the provision of appropriate permanent accommodation. It is expressly pleaded that the rights guaranteed under article 8 of the European Convention do not confer on the applicants a right to be provided with accessible adapted caravan accommodation or to any particular type of home and that the obligation to facilitate the traveller way of life, which is acknowledged, does not confer on the applicants a right to be provided with accessible adapted caravan accommodation or any particular type of home. The first named respondent contends that article 14 of the European Convention has no application to the matters at issue in the proceedings and that that article is not engaged by the applicants' claim. Without prejudice to that assertion, any difference in treatment of the applicants from members of the settled community is objectively and reasonably justified. The first named respondent denies that there has been any breach of the applicants' rights under Article 41.1 or Article 42 of the Constitution and contends that the Constitution does not confer on the applicants a right to be provided with accommodation, or any particular type of accommodation. Grants and loans are available to members of the travelling community under the Housing Acts 1966 to 2004, and related legislation, to repair, improve or adapt and/or purchase a caravan in the same way that such grants and loans may be obtained by settled persons to improve or adapt or purchase a house. There is therefore no discrimination against travellers in the Housing Acts 1966 to 2004 and the regulations made thereunder, so says the first named respondent. The first named respondent contends that it has at all times acted in a *bona fide* manner in respect of the housing requirements of the applicants. The applicants have been provided with temporary accommodation pending the provision to them of suitably sized and appropriately adapted permanent accommodation under the first named respondent's Traveller Accommodation Programme for the period 2005-2008. Moreover, the temporary accommodation consisted of two caravans, one a wheelchair accessible mobile home, and the other an ordinary one room caravan, on a serviced halting site, and these were provided with financial assistance made available under the Disabled Person's Grant Scheme operated by the Department of the Environment, Heritage and Local Government.

The Evidence

16. As previously mentioned I have before me an affidavit of the first named applicant, Mary O'Donnell, sworn on 6th November, 2006 with various documents exhibited therein. I also have an affidavit of Jeanne Boyle sworn on 13th November, 2006. Ms. Boyle is a solicitor representing the applicants and her affidavit exhibits a course of correspondence between the applicant's solicitors and the first named respondent, including, and also arising out of, a freedom of information request made on behalf of the applicants to the first named respondent to pursuant to The Freedom of Information Act, 1997. The first affidavit on behalf of the first named respondent was an affidavit of Philip Murphy sworn on 26th January, 2006. It was replied to by a further affidavit of Mary O'Donnell sworn on 6th March, 2007. There is then a further affidavit of Philip Murphy sworn on 14th May, 2007 and a supplemental affidavit of Philip Murphy also sworn on 14th May, 2007. Then there was a further affidavit of Mary O'Donnell sworn on 1st October, 2007 and a further affidavit of Jeanne Boyle sworn on 9th October, 2007. By and large the essential facts of the case are not contentious and are readily to be gleaned from the affidavit evidence. Where there are conflicts of fact I will identify and allude to them later in this judgment.

17. The first named applicant deposes that she and her family have spent a lot of their lives living on halting sites. Their recent accommodation history is as follows. In or about 1993 the family moved from the Bawnogue Halting Site in Clondalkin to the St. Maelruns Halting Site in Tallaght. During the same year they applied to the first named respondent for housing. On 14th February, 1994 South Dublin County Council allocated a house at 16 Old Tower Crescent, Clondalkin, Dublin 22 to the first and second named

applicants in accordance with the council's scheme of letting priorities. The first named applicant initially said in her affidavit sworn on the 6th of November 2006 that this did not work out because they were harassed by the police at the time, with the result that a month later they handed back the keys. However, in her affidavit sworn on the 1st of October 2007 she states:

> "The reality is that we could not live in bricks and mortar accommodation. My husband, who has always lived in a caravan and up until we married had always been on the move, feels physically and psychologically unwell if he has to stay in a house for any amount of time. When we moved to a house in Neilstown in 1994, he moved back into a caravan after one week."

18. Further, the Court notes in the affidavit of Philip Murphy sworn on 26th January, 2007 correspondence is exhibited consisting of a letter dated 10th March, 1994, from a Ms. Yvonne Dervan, an Assistant Staff Officer in the Housing Allocations Section of South Dublin County Council to a Mr. P. Smyth, a Senior Administrative Officer in the council's Community Affairs Department, recording that the first named applicant had informed her that she was quite happy in the house but that her husband wanted to live in Tallaght. I am satisfied on the evidence before me that the real reason that the house in Neilstown was rejected was not due to the alleged harassment but rather because the second named respondent was unwilling to live there. In any event following the surrender of the tenancy the applicants moved to Bay 13 in the St. Maelruns Halting Site in Tallaght. The next significant event in the chronology is that in early 1995 the first and second named applicants informed a Mr. Tom Lynam, a social worker attached to the South Dublin Co Council Community Affairs Department that they wished to be removed from the housing list as they no longer wanted standard housing accommodation. Correspondence is exhibited by Mr. Murphy in the form of a letter dated 2nd February, 1995 from the said Mr. Lynam to his superior, a Mr. T O'Connor, Senior Social Worker, formally communicating the first and second named applicants' wishes in that regard.

19. In the first half of 2001 the first named respondent carried out refurbishment works to the St. Maelruns Halting Site. Specifically a tarmacadam surface was laid in place of the crushed stone surface of Bay 13 in order to facilitate the fourth named applicant's wheelchair. This was done on foot of a request from the first and second named applicant supported by recommendations from the council's social worker and the Central Remedial Clinic. These resurfacing works were carried out in or about May of 2001 at a cost of £5,625.

20. In or about April, 2002 the applicants moved from Bay 13 of the St. Maelruns Halting Site to a site at Virginia House, Tallaght following the death of a family member. The council subsequently provided them with temporary facilities at Virginia House in Tallaght. The applicants left that site in December, 2003 at the invitation of the council following the offer and acceptance of accommodation in Bay 1 of a two bay temporary halting site facility at Whitestown Way in Tallaght. This site was offered to them because the family was unwilling to return to the St. Maelruns halting site due to the bereavement that I have previously mentioned. The other bay at Whitestown Way was offered to and accepted by the first named applicant's mother. Bay 1, Whitestown Way was equipped with a service unit separate from the caravans parked there containing a toilet, a shower, a sink, and sockets for kitchen equipment.

21. In April, 2003 the council was requested to provide the applicants with a specially adapted wheelchair accessible mobile home on the grounds that the two bedroom caravan in which they were then living was in very poor condition and was not suitable for their daughter Ellen's needs. In light of this request the council obtained a report dated 10th April, 2003 from Ms. Fiona Maguire, Occupational Therapist and also a report dated 11th September, 2003 from Ms. Mary O'Kelly, Occupational Therapist. The first named applicant exhibited both of these reports before me. The first named respondent was sympathetic to the applicants' needs and agreed in principle that the family needed to be provided with a wheelchair accessible mobile home. It was also recognised that due to the size of the O'Donnell family it would be necessary to provide them with an additional caravan. In December, 2003 the council purchased a second hand Pemberton Sovereign wheelchair accessible mobile home and a second hand Lunar Eclipse caravan, at a total cost of £47,000, and provided them to the applicants in order to accommodate their large family size. I am satisfied that both of these caravans, though second hand, were in good condition when they were provided to the applicants. According to the first named respondent monies made available under the Disabled Persons Grant Scheme funded the purchase of these caravans. The applicants claim to have been completely unaware of this.

22. In order to facilitate access to the Pemberton Sovereign mobile home the respondent engaged the services of Meehans of Tulla, County Clare, who were specialist providers of wheelchair accessible ramps, to install a suitable access ramp to the mobile home. The access ramp was installed in conjunction with the delivery and installation of the Pemberton Sovereign mobile home. The access ramp cost an additional sum of €11, 293. It is not clear whether or not the ramp was granted aided in addition to the caravans, or whether the first named respondent directly funded it.

23. The O'Donnell family comprised nine members when the council provided them with the mobile home and the caravan. Prior to that, the family had resided in a two bedroom standard sized caravan purchased with a loan from the first named respondent. According to the first named applicant the Pemberton Sovereign mobile home was regarded by the family as being a significant improvement on the old caravan. The wheelchair fitted into the caravan and it had a toilet and shower suitable for use by the fourth named applicant who subsequently learned how to use the toilet for the first time at the age of 13.

24. The first named applicant deposes that while the two bedroomed Pemberton Sovereign adapted mobile home is an improvement on the family's old caravan, there are a number of problems with it. She complains that there is a step up into the mobile home such that the fourth named applicant needs assistance to get in and out of the caravan in her wheelchair. This problem has become more significant as in early 2005 the toilet and shower in the caravan became unusable, with the result that the service unit facilities have to be used by all members of the family including the fourth named applicant. Now when the fourth named applicant needs to use the toilet she has to be lifted outside to the service unit toilet and shower. The first named applicant deposes that the toilet bowl in the caravan cracked and had to be removed. There is no evidence before me of any attempt by the first or second named applicants to employ a plumber to replace the toilet bowl, a relatively minor job, and thereby to restore sanitary facilities within the mobile home. She further states that the family do not use the shower in the caravan as there is no half door around the shower area and water spills out from it into a join in the floor covering from where it leaks out to the ground below. Also, she complains that there is no hot water. Again there is no evidence before me of any attempt by the first or second named applicants to employ a carpenter to fit a half door, or a plumber to fix the hot water. When queried about this by the Court at the submissions stage of the proceedings Counsel for applicants was unable to offer any explanation for the failure of the applicants to ensure basic maintenance of the mobile home provided to them, save for urging upon the Court that regard should be had to cultural differences between members of the travelling community and the settled community to excuse it.

25. The first named applicant does state that she called on the respondent on at least four occasions to fix the hot water problem but they took no steps to address this issue. As will emerge, the first named respondent rejects that the Council was asked to fix the hot water or, indeed, that it had any responsibility to do so in the absence of basic maintenance by the applicants.

26. As to the present situation, the first named applicant contends that the Pemberton Sovereign mobile home is now overrun with mice, which the family believes have made nests in between the walls of the caravan. She complains that the skylight leaks and she queries the integrity of the floor. There is also a complaint that the sliding doors to the bathroom and to one of the bedrooms jam. She states that the radiators do not work. On account of this the mobile home is cold and damp. There is an excessive condensation problem and there are now extensive patches of black mould on the walls. She asserts that a "mobile home repairs expert" has informed the applicants that the solution would be to re-insulate the walls but that to do so would cost more than it would to replace the mobile home. The first named applicant has not exhibited a report from the applicants' said expert, nor is he/she identified. No doubt re-insulation of the mobile home would assist in retaining heat within the mobile home as an antagonist to damp but it seems to me, as a matter of common sense, that without a working "dry" heat source re-insulation would not of itself eliminate condensation damp. The fundamental problem would appear to be that the radiators are not working. Again, there is no evidence that the first and second named applicants have even attempted to get them fixed from their own resources. There appears to be a complete abdication of responsibility in that regard to the council.

27. The applicants also complain about the external service unit on the halting site. The first named applicant states that the service unit is purportedly adapted for use by a person with a disability. However, because of the step at the entrance to the unit the fourth named applicant needs assistance to get in and out of it. Also, she states that the shower cubicle is too small for a person in a wheelchair to manoeuvre in. As a consequence, Ellen needs assistance to have a shower.

28. Separate to, and quite apart from, complaints about the state of repair of the Pemberton Sovereign mobile home, the applicants also complain about overcrowding. For some reason, which I do not regard as having been adequately explained, the applicants gave away the Lunar Eclipse caravan to the first named applicant's mother within a very short time of having received it. All of the applicants then moved into the Pemberton Sovereign mobile home thereby creating an artificial overcrowding situation. The explanation put forward for this occurrence, such as it is, was that even with two caravans there was not enough room for the family. The Lunar Eclipse caravan was a one roomed caravan with no separate bedroom. The entire space was designed to be used both for living in and sleeping. Conversely, the first named applicants mothers caravan had two separate bedrooms in addition to a living space. The applicants contend that they swapped the Lunar Eclipse for the first named applicants mothers caravan in order to get more space. However, this proved a bad bargain because the mother's caravan was in bad condition and was infested with mice. Consequently it had to be destroyed and, the applicants contend, was in fact taken away by the first named respondent using a JCB.

29. The first named applicant states that over the last few years the children have grown up: they are older and bigger. She states that they now have four teenagers and three under tens running around in very cramped living conditions. The two boys, Michael, the third named applicant and Gerald, the tenth named applicant, sleep in the living area of the mobile home. The two girls, Margaret, the seventh named applicant, and Mary, the fifth named applicant, share one of the bedrooms. Ellen, the fourth named applicant, shares the other bedroom with her parents and with Teresa, the eighth named applicant and Patrick, the sixth named applicant. It is stated, and I readily accept, that the fourth named applicant cannot really move around much in the wheelchair. Her wheelchair does not fit into the bedroom and, accordingly, she needs assistance to get in and out of the bedroom and in and out of her bed, as well as in relation to getting dressed and undressed.

30. In reply to the applicants' claims Mr. Murphy in his affidavit of 26th January, 2007 states that in or about July, 2005 the first named respondent received complaints that the applicants were living in overcrowded conditions and that the mobile home was now unfit for habitation. A Senior Environmental Officer inspected the applicants' living arrangements and agreed that the mobile home was unfit for habitation due to lack of repair of the toilet bowl and the absence of hot water. On foot of the report of the Senior Environmental Officer the first named respondent requested P.J. Rochford, Mobile Home Repairs and Services, of Redgap, Rathcoole, County Dublin, to inspect the Pemberton Sovereign mobile home. On 15th August, 2005 Mr. Patrick Rochford reported that while a number of items in the mobile home were in need of repair the mobile home was otherwise in good condition. Unfortunately, he does not price the necessary repair works in his report but it is clear from the nature of matters listed that the cost would be modest compared with the cost of replacing the mobile home even on a second hand basis. Mr Rochford also recorded a complaint made by the second named applicant that because rats were entering the mobile home, the windows had to be kept closed which was causing dampness in the bedroom. Beyond noting the complaint he does not comment on it. I have no direct evidence as to whether employment of the services of a pest extermination contractor would solve the rodent problem, but it is reasonably to be inferred that it would. The first named respondent contends that the repairs identified by Mr. Rochford have wholly or mainly been rendered necessary by the neglect or default of the first and second named applicants. Mr. Murphy goes on to state the following:

> "It would seem that rather than repair the indoor toilet bowl they removed it altogether from the mobile home. The Council has no record of receiving any complaints from either the first named or second named applicant in relation to the lack of hot water. Hot water was and is available in the service unit. I further say and believe that the applicants have caused or permitted the condition of the mobile home to deteriorate but that the mobile home can be made fit provided the repair works are carried out. In the Council's view, responsibility for maintenance and repair so as to prolong the life of the mobile home falls on the first and second named applicants. The mobile home is the applicants' property, not the Council's and in the circumstances the Council is not responsible for the condition of the mobile home and has no obligation or duty to carry out repairs to it."

31. Mr. Murphy goes on to point out that provision is made in the Housing Acts scheme of legislation to enable a housing authority to give interest-free loans for the repair, improvement or alteration of caravans and, furthermore, grant aid or subsidies may be obtained by disabled persons, including members of the travelling community, to carry out alterations to their homes, or in the case of travellers, to contribute toward the cost of purchasing a mobile home or adapting a caravan to make it more disabled-friendly. He refers specifically to the Caravan Loan Scheme and to the Disabled Persons Grant Scheme as being potentially available to travellers with a disabled family member. In regard to the latter scheme, Mr. Murphy is clearly of the view that it can apply to caravans. Moreover, it is further clear that that represents the corporate view of the first named respondent and not just Mr. Murphy's personal view, because in a letter from the first named respondents Law Agent to the applicant's Solicitors dated 20th July 2007, exhibited in the third affidavit sworn by the first named applicant on the 1st of October 2007, the Law Agent states:

> "I would ask you to please note that the terms (House, Housing) as used in the Disabled Persons Grant Scheme and in the Essential Repairs Grant Scheme are interpreted and applied by the council as including caravans."

32. In any event Mr. Murphy goes on to state that the first named respondent is aware of the fourth named applicant's disability and accepts that the O'Donnell family are living in overcrowded conditions in the Pemberton Sovereign mobile home. He asserts that there is sufficient space on Bay 1, Whitestown Way, to accommodate another small caravan and the overcrowding can be relieved by the first and second named applicant purchasing another caravan to replace the Lunar Eclipse which the applicants gave away.

33. The applicants contend that they can neither afford to repair the existing caravan nor can they afford to repay a loan to

purchase another caravan. In his affidavit of 26th January, 2007 Mr. Murphy, on behalf of the first named respondent, states that the Council does not accept the first named applicant's contention that they are unable to afford to repay a loan to purchase another caravan or that they would be unable to make loan repayments on the maximum interest-free loan of €6,350 payable over a five-year period. He states that to the best of his knowledge and belief, the first and second named applicants are in receipt of weekly unemployment assistance and monthly Children's Allowance from the Department of Social Welfare in the following sums: €408.50 per week and €1,225 per month, which in total exceeds €36,350 per annum. The applicants do not dispute that they have this level of income. Mr Murphy asserts that if the first and second named applicants were to make a loan application to the Council that application would in his view be granted and the loan could be repaid by means of a household budget deduction authorising the deduction of a weekly sum from their weekly benefits payment from the Department of Social and Family Affairs. He states that most of the traveller families who have taken out a caravan loan repay the loan in this manner by a weekly payment of €20.

34. In her second affidavit sworn on 1st October, 2007 in reply to Mr. Murphy's affidavit of 26th January, 2007, the first named applicant asserts that the suggestion in Mr. Murphy's said affidavit that the grants provided for in the Housing (Disabled Persons and Essential Repairs Grants) Regulations, 2001 apply to caravans was something hitherto unknown to her or her legal advisers. I accept this because, as I have already pointed out, the instrument in question, *prima facie*, suggests otherwise. She deposes that as a result of becoming aware of this fact the applicants decided to apply for grants under both the Disabled Persons Grant Scheme and the Essential Repairs Grant Scheme and also for a loan under the Caravan Loan Repairs Scheme. It is clear from correspondence exhibited before me that a formal application was made to the first named respondent for such grant and loan assistance by letter of 9th March, 2007. The application for a grant under the Essential Repairs Grant Scheme was made in the joint names of the first and second applicants. The application for relief under the Disabled Persons Grant Scheme was made in the named of Ellen O'Donnell, the fourth named applicant. The application under the Caravan Loan Repair Scheme was made in the joint names of the first and second named applicants. By a letter dated 5th June, 2007, the first named respondent acknowledged receipt of the said grant and loan applications. With respect to the application for a grant under the Disabled Persons Grant Scheme, it was noted that, according to the council's records, a disabled person's grant had already been paid in respect of providing accommodation for Ellen O'Donnell. It was pointed out that under the terms of the Disabled Persons Grant Scheme a second grant is not normally paid to the same applicant unless the medical circumstances of the applicant have changed. The Council's letter stated that the medical certificate enclosed with the application did not identify a change in the medical circumstances of the applicant and confirmation of the position in that regard was requested. With respect to the application for a grant under the Essential Repairs Grant Scheme, it was pointed out that as no member of the family was aged 65 or over, the applicants were ineligible and, accordingly, the application could not proceed. With regard to the application for a loan pursuant to the Caravan Loan Repair Scheme, the said letter sought clarification of the amount which the applicants were seeking to borrow. By a letter dated 17th July, 2007, the applicants' solicitors confirmed that in respect of the Disabled Persons Grant application there was no change in the medical circumstances of Ellen O'Donnell. In respect of the application for a loan under the Caravan Loan Repair Scheme, it was stated that the applicants were seeking a loan of in or around (i) €56,000 to purchase a replacement two bedroomed disabled person's caravan; or €20,000 to repair their current two bedroomed disabled person's caravan; and (ii) €20,000 to purchase a second-hand three bedroomed caravan. By a letter from the Council to the applicants' solicitors dated 20th July, 2007 it was pointed out that the sums which the applicants were seeking to borrow exceeded the maximum loan amounts payable under the scheme and, in the circumstances, the Council did not have power to pay out any amount in excess of the maximum amounts payable under the relevant scheme. It went on to state that the Council proposed to assess the condition of the applicants' caravan prior to making any decision on their loan application. It appears that on Wednesday, 12th September, 2007, two members of the Council's Housing Department inspected the applicants' caravan at 1 Whitestown Way, Tallaght. Following that inspection the applicants' solicitors wrote to the first named respondent by a letter dated 25th September, 2007 and stated:

> "Given their current living conditions, the health hazard presented by black damp spores, the fact that some of the seven children have chronic asthma and that winter is approaching, we believe that this family's accommodation need is now so urgent as to require the use of emergency powers combined with the powers under the Housing Acts to provide then with suitable and adequate caravan accommodation, whether by acquiring a new caravan or carrying out repair works on their caravan. We ask you to use the aforesaid emergency powers forthwith. In view of the failure to respond to our grant applications in respect of this caravan, and the urgent health risk for our clients, and the imminent approach of winter, we have no option but to seek this relief from the courts."

35. That was the position as of the date of hearing.

36. Mr. Murphy further points out that the first and second named applicants were interviewed on 7th September, 2004 by Fergal Doogue, an officer of the Traveller Accommodation Unit of South Dublin County Council for the purpose of the assessment carried out by the Council of traveller accommodation needs as of the 30th September, 2004 to enable the council to prepare its Traveller Accommodation Programme for the period 2005/2008, which was subsequently adopted on 9th May, 2005. In the first named respondent's administrative area Travellers who do not wish to live in standard dwellings and who have abandoned the nomadic lifestyle, have the option of being provided a site with physical accommodation in the form of a day house or alternatively with physical accommodation comprising a house in a group housing scheme. In the course of that interview the applicants specified a group house as their preferred choice of accommodation. The record of the interview is exhibited before me. (In her affidavit of 1st October 2007 Mrs. O'Donnell says that she has no recollection of the document, and parries that it is not an application form for accommodation. However, I am satisfied from the documentation exhibited that the applicants did indicate a preference for group housing when interviewed by Mr Doogue.) Mr. Murphy goes on to depose that it is and, at all material times, has been the council's intention to meet the applicants long term accommodation needs having regard to the medical circumstances of the fourth named applicant by providing them with suitable sized and appropriately adapted accommodation. This long term need has been assessed and permanent accommodation appropriate to their needs is to be provided for them under the traveller accommodation programme at either the redeveloped Belgard Road site or at the newly developed site at Rathcoole. The design of the individual group house will be modified to accord with the medical and occupational therapy recommendations regarding the specific needs of the fourth named applicant. The relevant traveller accommodation programme has been exhibited before me. He confirms that the South Dublin County Council has assessed the family in respect of their accommodation needs and has deemed them eligible for the provision of traveller's specific permanent accommodation on a residential caravan park. In the meantime the respondent has provided the family with a bay on a temporary site and, with the aid of grants monies, a specially adapted and wheel chair accessible two bedroomed mobile home was provided to particularly meet the needs of the fourth named applicant who is wheel chair bound, together with a second caravan. He asserts that this provision of temporary accommodation is an adequate and sufficient discharge of the council's duty pending the provision of permanent accommodation under the traveller accommodation programme. Mr. Murphy points out that there is no duty on the first named respondent under the Housing Acts to provide caravans. However, the first named respondent has the power to provide financial assistance for the acquisition of caravans. He states that the non-provision of caravans is not based any discriminatory grounds but because there are reasonable and justifiable reasons for not providing such accommodation under the Housing Acts. Caravans and mobile homes are, by their very nature, moveable structures and housing authorities would not be in a position to manage and control them. This type of accommodation is not designed for year around living. They are prone to dampness

in cold weather because inadequate ventilation gives rise to condensation when internal heaters are used, rendering them unsuitable for the accommodation of the elderly, ill and disabled persons. Accommodation of this type has a short life span of approximately ten years, though it may be even shorter if it is not looked after with appropriate maintenance and repair. Furthermore caravans and mobile homes begin to lose value once occupancy commences and become an increasingly diminishing asset with the passage of time. The provision of caravan and mobile home accommodation would represent a continual drain on the public purse and would give rise to serious administrative problems for housing authorities. Such provision would be open to abuse by persons making repetitive applications to be provided with caravan accommodation, and the potential for such abuse would be significantly increased in the case of travellers engaging in a nomadic lifestyle. In such circumstances housing authorities would have to undertake detailed investigations in order to rule out abuse and such investigations would inevitably entail additional administrative costs and impose a significant burden on the housing authority's resources.

37. Finally Mr. Murphy asserts that the first named respondents' position is that the provision of financial assistance by means of loans and grants to travellers who do not wish to be provided with standard housing or group housing in order that they may purchase replacement caravans is an adequate discharge of the council's statutory duties and any positive obligations that arise by virtue of Article 8 of the European Convention on Human Rights and Fundamental Freedoms to respect the applicant's private and family life as members of the traveller community.

Decision

38. Notwithstanding the ostensibly permissive language used in sections 9 and 13 of the Housing Act 1988, it is well established that in appropriate circumstances housing authorities are under a duty to use the powers conferred upon them to meet the accommodation needs of those unable to provide for themselves, including travellers. That much is clear from a series of judgments commencing with *University of Limerick –v- Ryan* (Unreported, High Court, Barron J., 21st February, 1991) and continuing through *O'Brien –v- Wicklow Co Council* (Unreported, High Court, Costello J., 10th June 1994); *County Meath VEC –v- Joyce* [1994] 2 ILRM 210; *Mongan –v- South Dublin County Council* (Unreported, High Court, Barron J., 31st July 1995); *Ward –v- South Dublin County Council* [1996] 3 IR 195; *O'Reilly, O'Reilly & Others –v- Limerick County Council, the Attorney General and the Human Rights Commission* (Unreported, High Court, McMenamin J., 29th March, 2006); *Doherty & Doherty –v- South Dublin County Council, The Minister for the Environment, Heritage and Local Government, Ireland and the Attorney General; the Equality Authority, Notice Party* (Unreported, High Court, Charleton J., 22nd of January 2007); and *O'Donnell, O'Donnell and others –v- South Dublin Co Council* (Unreported, High Court, Laffoy J., 22nd May, 2007).

39. Most, if not all, of the judgments subsequent to that in *University of Limerick –v- Ryan* quote extensively from the seminal judgment of Barron J. in that case, and in particular the following passages which again bear reiteration:

> "The question to be answered is whether the enactment of Section 13 imposes a duty to provide such caravan sites or merely empowers the Council to do so. As a matter of construction, it may be argued that since Sections 8, 9, and 11 do not include the need for caravan sites, so the obligation imposed upon the Council by Section 13 must be different. I do not accept that. There is no distinction in principle between the manner in which the powers to provide dwellings under section 56(1) of the 1966 Act is framed and that under which the power to provide caravan sites under section 13(2) of the 1988 Act is framed. Both appear to give a discretion, but this is a discretion which must in appropriate circumstances be exercised."

40. A little further on Barron J. states the following by way of further elaboration:

> "Section 13 must be taken to intend that the obligation of the Council to provide for housing needs extends in the case of those to whom s. 13 applies to the provision not of dwellings but of caravan sites. It is I think significant that s. 56(2) of the 1966 Act is to apply to serviced halting sites as it does to dwellings. In my view, s. 13 imposes on the local authority an obligation to provide serviced halting sites to those who require them instead of conventional dwellings in the same way as s. 56(1) requires them to provide the latter. Such obligation is, of course, subject to all the provisions which limit the obligations of the housing authority under s. 56 of the 1966 Act. The section does however mean that the housing authority cannot meet its statutory obligations by offering only a conventional dwelling to Travellers. It must bring into force the estimate, assessment and scheme respectively required by ss. 8, 9 and 11. If in accordance with the result of these matters, the housing authority has obligations in accordance with its resources for persons who are Travellers, then those obligations must be fulfilled. In the case of those persons to whom s. 13 applies and who do not wish to be provided with dwellings, the obligation must be fulfilled by the provision of caravan sites. As a matter of construction of s. 13, it seems to me that the statutory obligation to provide a caravan site for Travellers is identical to the statutory obligation to provide dwellings for those of the settled community. The only difference in the obligation lies in the nature of the housing to be provided. Whether the person in need is a traveller or a member of the settled community, once the duty exists it must be performed. In the one case, it is performed by providing a caravan site; in the other by providing conventional housing. I refer only to the position of those Travellers who live permanently in a particular area and whose need for a caravan site is as a permanent home. The provision of a temporary halting site or sites is a different matter and does not arise in the present case."

41. It is clear therefore that the first named respondent owes a duty to the applicants to consider their long term housing needs, to plan for them, and if necessary to provide them with a permanent serviced halting site instead of a conventional dwelling. Now it should be pointed out that the circumstances of present case concern the standard of accommodation provided on a temporary halting site, as was also true and acknowledged by Charlton J. in the Doherty case. However, with regard to the long term situation the first named respondent has in place a Traveller Accommodation Programme 2005-2008, and it has considered, and proposes to address, the needs of the applicants in that context and within the timeframe of that program. As it happens the long-term plan in this case involves group housing in Tallaght, because that is what the applicants have asked for. Accordingly the provision of halting site accommodation, or caravan accommodation on a halting site, does not now arise for consideration in the context of permanent or long term accommodation plan. The present complaint is not with respect to the Council's plan to permanently accommodate the applicant family in a group-housing scheme within the context of the first named respondent's Traveller Accommodation Programme 2005/2008. As no evidence suggesting the contrary has been put before it, the Court expects that that plan will be implemented within the scheduled timeframe so that the applicants will be in their permanent accommodation by the end of December 2008 at the latest. Accordingly, no question arises at this stage of a failure on the part of the first named respondent to fulfil its duty under section 13 of the 1988 Act as amended. Nor is it likely to arise if the council faithfully implements the proposed plan.

42. However, that is not the end of the matter. With regard to the present temporary accommodation arrangements the first named respondent accepts that this family are living in conditions that are not just sub-standard but which are overcrowded and unfit for human habitation. While this represents hardship for the entire family undoubtedly the greatest hardship is being borne by fourth named applicant on account of the additional difficulties that she experiences on account of her cerebral palsy. On one view of it

they meet the criteria for homelessness. However, the first named respondents' position, with which I have a degree of sympathy, is that the council has in the relatively recent past provided this family with adequate and suitable temporary accommodation. The council further says that the fact that the accommodation provided to them is now inadequate and unsuitable is due to the applicants' own actions (i) in giving away the Lunar Eclipse caravan and (ii) in failing or neglecting to maintain the Pemberton Sovereign Mobile home which was also provided to them. The first named respondent says that it has discharged its duty and that, with respect to the present situation, the applicants must assume personal responsibility and sort it out for themselves. Counsel for the applicants suggests that the actions and failures complained of should be excused, effectively on "cultural relativity" grounds.

43. I have already indicated that I am have not been impressed with the first and second named applicants explanation for parting with the Lunar Eclipse in the circumstances in which they did, but there has at least been some attempt to explain it. However, there is little or no evidence before me, from either side (save for some suggestion of impecuniosity on the part of the applicants), to explain why the first and second named applicants allowed the mobile home to fall into its present state of disrepair. On the one hand, it could be because they have a "hand out" mentality and, although able to do so, are totally unwilling to take personal responsibility for the upkeep of their home and expect the council to do everything for them. On the other hand, there could have been a genuine difficulty in accessing the necessary services due to lack of education, not knowing exactly what tradesmen were required, or how to source them, or how to retain them or deal with them, or due to distrust of the settled community or a belief that tradesmen from the settled community would not be willing to work for travellers. What particularly concerns me is that the first named respondent has known since 2005 that the applicants' mobile home requires to be repaired. If the council, for perfectly reasonable reasons, was not prepared to assume a maintenance obligation with respect to the mobile home their duty was (i) to make that fact crystal clear to the applicants and, (ii) to ensure that there were no foreseeable obstacles to the applicants accessing the required services themselves. On the evidence before me I am reasonably happy that the first requirement was fulfilled, but there is an evidential deficit with respect to the second requirement. Section 6 of the Housing Act, 1988 expressly provides for the employment by a housing authority of social workers in connection with the accommodation of travellers. It is clear from the evidence that South Dublin County Council employs such social workers. Yet there is no evidence before me that anyone on behalf of the first named respondent thought to ask the first and second named applicants why it was that they were not proceeding to effect the necessary repairs to their mobile home once they had been informed that the council would not be carrying out the works in question. There may well have been a genuine difficulty but nobody enquired if that was the case. By the same token the applicants have not provided the court with any evidence as to why they have not attempted to carry out necessary maintenance, save for asserting that they could not afford to do so. I expressly reject the explanation of impecuniosity. There is not a scintilla of evidence that any attempt was made to even enquire about getting repairs done, much less the obtaining of an estimate. It is clear that the first and second named applicants, while by no means wealthy, are not without income. On the evidence before me it seems likely that the cost of repairs would have been modest, and certainly within the scope of what they could have borrowed under the Caravan Loans Scheme. However, while the court does not intend to enter the realms of speculation I do not rule out the possibility that the real difficulty may have been inability to access, or lack of knowledge as to how to, access the necessary services. In that regard the Court notes that in *O'Reilly, O'Reilly & Others –v- Limerick County Council, the Attorney General and the Human Rights Commission* McMenamin J. rejected the suggestion that a Court should be slow to grant relief in circumstances where, by their own choice, the applicants had resumed habitation in unacceptable conditions. In doing so McMenamin J. was influenced by the fact that the applicants had little formal education, and also by the fact that on the face of it they had not been fully and properly advised in relation to their housing requirements. Somewhat analogous considerations obtain in the present case. The applicants in this case have, I infer, also had little formal education. Moreover, there is a significant question mark over whether the Council engaged with them sufficiently to ensure that they could access necessary services to repair their mobile home.

44. So what is to be done?

45. Much of the argument in this case was directed towards the proposition that the first named respondent should replace the applicants existing mobile home and provide them with a further caravan to alleviate the overcrowding that exists. The case of *Doherty & Doherty –v- South Dublin County Council and others*, previously referred to, was the first case in which a member of the Irish Travelling Community claimed an entitlement to be provided with an actual caravan as distinct from a site on which to park a caravan. Charleton J rejected the claim in that case stating:

> "42. It has been urged on the Court that what is reasonable in terms of accepting or refusing accommodation, within the definition of homelessness in s. 2 of the Housing Act, 1988, must take into account the particular circumstances of the applicants living, as they have, all their life either as nomads on the side of the road or, for the about the last ten years in various halting sites. Circumstances can occur where persons who have led a nomadic way of life may find it difficult to accept, on a permanent basis, settled accommodation. It is not, however, what the applicants are being asked to do here. In asserting their rights to nomadic accommodation, they are being met with an answer, from the Council, that a symbolic vestige of their tradition may be preserved in the shape of a site for their caravan with a day house, but only after a reasonable interval of time for the purposes of re-development. In the meanwhile it is not unreasonable that the available accommodation is in bricks and mortar and nor is it unreasonable that the County Council will not go and immediately buy them a plumbed, centrally heated mobile home with electricity supply: this is not in accordance with the scheme of priorities set down by the Council under the Housing Acts and its provision is outside the relevant regulations made under s. 15 of the Housing Act, 1988, as amended."

46. Both Charlton J. in the Doherty case, and Laffoy J. in the *O'Donnell* case, respectively, conducted extensive reviews of the rights of Gypsies and Travellers under the European Convention on Human Rights and Fundamental Freedoms, and in particular under articles 3, 8 and 14 of that Convention, in so far as they have been considered by the European Court of Human Rights, and by courts in England and Wales. *Doherty* and *O'Donnell* are very recent cases and it is therefore unnecessary for me to repeat that exercise. However, for the purposes of this judgment I adopt both Charlton J's and Laffoy J's respective reviews. With respect to an argument based upon Article 8 of the European Convention on Human Rights and Fundamental Freedoms and a line of cases before the European Court of Human Rights culminating with the case of *Codona –v- The United Kingdom* (7th February 2006), Charlton J. stated:

> "45. In addition to the foregoing, I can find nothing in any other decision of the European Court of Human Rights, or of the courts in the United Kingdom or here, which would establish that the particular aspect of family life that requires to be respected in the case of a member of the Irish Traveller Community demands the provision of a new, centrally heated, plumbed caravan with electricity supply. On analysis of the relevant case law under the European Convention of Human Rights, my judgment is that the statutory entitlements of the applicants exceed any benefit that might be available to them on the basis of an interpretation of Article 8 of the European Convention on Human Rights.
>
> 46. I would add that the decisions to date show a reluctance to require State authorities to intervene with forms of welfare as an aid to the exercise of rights. Whether welfare is provided, and at what level, and in what particular

> circumstances, is essentially a matter of political decision. The discourse of politics in this area tends to move between the poles of urging self-reliance and of offering cradle-to-grave support. Like a family, the resources of any nation are limited and it is a matter for political and executive decision as to what resources should be committed to what problems and with what priority. A breach of legislation prescribing such an allocation, as in housing, calls for judicial intervention. Where, however, a plea is made that the court should declare the absence of welfare support to be wrong in a particular situation of itself, the applicant should show a complete inability to exercise a human right for his or her own means and a serious situation that has set the right at nought with the prospect of serious long term harm. Any proposed intervention by the court should take into account that it is the responsibility of the legislature and executive to decide the allocation of resources and the priorities applied by them."

47. I respectfully agree with and endorse the general approach of Charlton J. However, the facts of this case are not on all fours with the facts in the Doherty case. There are two issues in the present case. One concerns lack of maintenance and repair of the existing mobile home such that it is not fit at present for human habitation. The other issue concerns overcrowding. With respect to the first issue, I do not consider that there is a complete inability on the part of the applicants to improve their situation such that the first named respondent should have to provide a replacement adapted mobile home for the applicants, particularly where the applicant family is expected to receive permanent group housing accommodation within the next twelve months. The mobile home can certainly still be repaired and it is incumbent on the first and second named applicants to take responsibility for that. However, there is also a corresponding duty on the first named respondent to engage with them so as to provide them with assistance, if they require it, to access the necessary services. Further, the first named respondents should provide the first and second named applicants with all necessary assistance to access loan finance for the purpose of effecting essential repairs within the parameters of the Caravan Loan Scheme.

48. With respect to the second issue, namely overcrowding, the first named respondent has suggested that the applicants should purchase an additional caravan from within their own resources. I don't think that there is any reality to that in circumstances where there is already going to be a call on such finance as may be available under the Caravan Loan Scheme for the purpose of repairing the mobile home. Moreover, it has to be acknowledged that the maximum sum of €6350 available under the said scheme is hardly generous in today's terms. That said the present overcrowding situation is exceptional in the circumstances of the present case. It is exceptional because in this particular case it goes beyond creating the sort of discomfort that is only to be expected in an overcrowding situation. Personal inconvenience, lack of privacy, discomfort and so forth are the usual consequences of overcrowding. If these were the only consequences of the present overcrowding situation the Court would be of the view that, regrettable though the situation be, it is one to be endured on a "grin and bear it" as it would not be regarded as crossing the threshold between merely regrettable circumstances as opposed to breaching fundamental rights. However, in this particular case a particularly regrettable feature of the present overcrowding situation is that effectively sets at nought the custom adaptations that were made to the mobile home to accommodate Ellen's disability. What is the point in having a wheelchair adapted mobile home if it is so crowded with people that the wheelchair bound occupant who it was intended to benefit cannot move around? The first named respondent has been aware of this problem since 2005 and has allowed it to continue. They should not have done so. It has to be acknowledged that the first named respondent has done a great deal for this family over the years. However, though they may have been exasperated by the first and second named applicants disposal of the Lunar Eclipse caravan, the council ought to have had regard, on an ongoing basis, for the particular needs of the fourth named applicant and should have intervened in some fashion to effect a restoration of the amenities that she particularly requires.

49. In the case of *O'Donnell, O'Donnell and others –v- South Dublin Co Council* (Unreported, High Court, Laffoy J., 22nd May, 2007), Ms. Justice Laffoy, distinguishing that case from the *Doherty* case, found a failure on the part of the state and its organs to function in a manner compatible with Article 8 of the European Convention on Human Rights and Fundamental Freedoms. That case concerned a traveller family, three of whom suffered from "Hurler's syndrome". She stated:

> "If there is no statutory protection for the plaintiffs in their current predicament which ensures suitable and appropriate accommodation for them having regard to their age, mental condition, disability, dependency and family circumstances, the interstices into which they have fallen must represent a failure of the State and its organs to function in a manner compatible with article 8."

50. I think that approach is apposite in this case as well. As previously mentioned I consider the *Doherty* case to be distinguishable on its facts from the present case, having regard to Ellen's particular circumstances and the circumstances of the family as a unit where one of its' members is significantly disabled. I believe that Ellen's rights under article 8 are not currently being vindicated in so far as the overcrowding situation is concerned, and I so hold. I am therefore prepared to make a declaration to that effect and I am prepared to order the first named respondent to exercise its statutory powers under the Housing Acts 1966-2004 requiring it to provide the applicants, with whom the fourth named applicant dwells as part of a family unit, with adequate temporary accommodation pending their placement in permanent accommodation under the Traveller Accommodation Programme 2005-2008. I am not prepared to specifically order the provision of another caravan. It is a matter for the first named respondent as to what steps it needs to take to comply with my order. Unlike the situation in this case, the *O'Donnell* case heard by Laffoy J. was brought by Plenary Summons and the only remedy available to the Court was an award of damages. The present case involves a judicial review and the Court has a much wider range of remedies available to it, including damages. As the breach of rights that I have found relates only to the fourth named applicant, there is no question of an award of damages to anybody except her. Moreover, although her rights have been breached and she is entitled to some damages for that, that breach has not, to date, continued long enough to have caused her lasting physical or psychological prejudice. The damages which she will receive are therefore likely to be modest, and I will assess those damages at a later date.

51. For completeness, I should state that I do not consider that a case has been made out that article 14 of the European Convention of Human Rights and Fundamental Freedoms has been breached, nor has a case been made out that the first named respondent has breached the constitutional rights of any of the applicants.

52. I will hear submissions from Counsel as to the exact form of orders to be made in the circumstances.