Neutral Citation [2017] IEHC 19

THE HIGH COURT

JUDICIAL REVIEW

[2015 No. 174 JR]

IN THE MATTER OF AN APPLICATION PURSUANT TO THE PLANNING AND DEVELOPMENT ACT 2000

AND IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 50 OF THE PLANNING AND DEVELOPMENT ACT 2000

BETWEEN

KENNY BYRNES

APPLICANT

AND

DUBLIN CITY COUNCIL

RESPONDENT

JUDGMENT of Ms. Justice Baker delivered on the 18th day of January, 2017.

1. This application relates to the authorisation of proposed works and change of use of premises at 9 and 10 Fitzwilliam Street granted under the special scheme applicable to local authority development created by s.179 of the Planning and Development Act 2000 ("the Act") and Part VIII of the Planning and Development Regulations 2001 ("the 2001 Regulations").

2. The applicant seeks an order of *certiorari* quashing the decision of Dublin City Council ("the Council") to proceed with the decision to authorise the development, and seeks declaratory relief regarding the applicability of s. 179 of the Act and Part VIII of the 2001 Regulations.

3. Leave was granted by Noonan J. on 13th April, 2015.

Factual Background

4. The applicant lives with his family at 2 Fitzwilliam Street Upper, Dublin 2, a Georgian house built between 1760 and 1790 and identified in the Dublin City Development Plan as a protected structure. The architectural and heritage value of the premises and the adjoining Fitzwilliam Square, Merrion Square and Fitzwilliam Street is recognised in the Development Plan.

5. The respondent is the owner of nearby premises at 9 and 10 Fitzwilliam Street Lower, Dublin 2, known as Longfield House, operated by its previous owners as a "boutique" hotel, comprising two Georgian houses, also protected structures, and noted in the Dublin City Development Plan as part of the Georgian heritage area of south central Dublin.

6. In or around the month of October, 2014 the Council initiated a proposal to carry out works and to change the use of the subject premises from a former hotel to supported temporary accommodation for single persons and couples comprising a total of 30 bed spaces and common living and support rooms to be operated by Dublin Simon Community ("Dublin Simon"). As the Council is the owner of the premises it availed of the special legislative scheme.

7. The proposal arose from a perceived need to replace facilities currently operated by Dublin Simon in an emergency accommodation unit for homeless persons located at Harcourt Street in the City of Dublin, a relatively short distance from the subject premises.

8. A decision was made by the Council on 2nd February, 2015 that the refurbishment works and change of use be authorised. The process envisaged by Part VIII of the 2001 Regulations does not provide for an appeal to An Bord Pleanála, and this application for judicial review is a challenge to the entire decision of the Council in the circumstances.

9. A number of specific complaints are made with regard to the process engaged by the Council, and these broadly are as follows:

a. The proposed development constitutes a material contravention of Dublin City Development Plan, 2011 ("the Development Plan") and is therefore in breach of s. 178(2) of the Act.

b. The public notice failed to comply with Article 81 of the 2001 Regulations.

c. There was no notice given to a prescribed body as required by Article 82 of the 2001 Regulations.

d. The report prepared by the Chief Executive, or Manager, of the Council for submission to the elected representatives for the purposes of the decision making process did not comply with s. 179(3) of the Act.

e. The development does not fall within s. 179(1) of the Act, as it is in substance a development by Dublin Simon, a private developer, and not a Council development.

10. The application is fully contested and the respondent makes a preliminary objection that the application is out of time. I deal first with this argument.

Is the application out of time?

11. Leave was granted on 13th April, 2015 and the decision challenged was made on 2nd February, 2015. An eight week period to commence an application for judicial review is provided by s. 50(6) of the Act, the period of eight weeks to begin on the date of the decision. The order of Noonan J. granting leave was made fifteen days outside the permitted eight week period, which expired on 29th March, 2016, a Sunday.

12. The evidence of the applicant contained in his second affidavit sworn on 11th December, 2015 is that application was made to Noonan J. on 27th March, 2015, the last day of the Hilary term and he, having considered the statement to ground the application for

judicial review, adjourned the matter to the first day of the Easter term, a Monday. Monday is the appropriate day, bar exceptional circumstances, for the making of an application for leave.

13. The matter then came on for hearing on Monday, 13th April, 2015 and was further considered by Noonan J. and an order granting leave made.

14. I consider that the application was made within time, on 27th March, 2015, and that the application before Noonan J. was a two-stage process, the effect of which was that having considered the matter briefly, and within the time available to him, Noonan J. adjourned further consideration to 13th April, 2015. The application was commenced and moved within time, and the conclusion of the hearing was adjourned due to the exigencies of the list and of the law terms, a matter outside the control of the applicant and of Noonan J. I reject the argument that the applicant is out of time.

Preliminary observation: the nature of the review
15. McGuinness J. in *Duffy v. Waterford Corporation* [1999] IEHC 24 noted the limit of her jurisdiction in judicial review, but the applicant argues that having regard to the fact that this application is a review of a decision under s. 178 in respect of which there is no appeal, that a narrow approach to review is not to be preferred. I accept the argument that, as judicial review is the sole available remedy by which the applicant can challenge a decision under s. 178, the court may investigate the circumstances of the permission with some particularity and a degree of scrutiny, and that it is not confined to the test as identified in *O'Keeffe v. An Bord Pleanála & Ors.* [1993] 1 I.R. 39. I consider that such approach is consistent with the requirement that the applicant have an effective remedy, albeit judicial review is the relevant remedy. McGuinness J. did not address the scope or approach of a court hearing the review but did note that the court was not to take upon itself the role of adjudicating on a planning permission.

16. With that approach in mind, I deal now in sequence with the substantive grounds of challenge made by the applicant.

The first challenge: user is in material contravention of the Development Plan
17. Section 178(2) of the Act places certain restrictions on the use of the statutory scheme by local authorities in that:

> "The corporation of a city shall not effect any development in the city which contravenes materially the development plan".

18. Section 178(2) of the Act prohibits the granting of permission which "contravenes materially the development plan" as explained by Clarke J. in *Maye v. Sligo Borough Council* [2007] IEHC 146, [2007] 4 I.R. 678 at p. 695 where he suggests that the "manner in which it is in contravention of the development plan must be material".

19. Before I deal with the specific grounds on which it is claimed that the proposed development contravenes the Dublin City Development Plan, I turn to examine the correct approach to the construction of a plan.

Development Plan: general principles
20. Certain principles have been identified in the case law with regard to the construction of the language of and the approach of the Court to the import of a development plan on the power of a local authority to grant planning permission. Certain key principles have been outlined in the course of argument and I now examine these.

21. Clarke J. in *Christian & Ors. v. Dublin City Council* [2012] IEHC 163, [2012] 2 I.R. 506 described a development plan as "a mixture of the general and the specific" and "a mix of broad policy and concrete implementation measures". (paras. 51 & 52)

22. Charleton J. identified the standard that must be met by an applicant asserting a material contravention as a "higher test than merely showing that there are matters which might justify the refusal of the planning permission": *Wicklow County Council v. Forest Fencing Limited & Anor.* [2007] IEHC 242, [2008] 1 I.L.R.M. 357 (para. 34)

23. Materiality is linked to the extent to which a development is, or might reasonably be expected to be, opposed by local interests and the judgment of Barron J. in *Roughan & Ors. v. Clare County Council* (Unreported, High Court, Barron J., 18th December, 1996) remains authoritative:

> "What is material depends upon the grounds upon which the proposed development is being, or might reasonably be expected to be, opposed by local interests. If there is no real or substantial ground in the context of planning law for opposing the development, then it is unlikely to be a material contravention."

That *dictum* was quoted with approval by Clarke J. in *Maye v. Sligo Borough Council*.

24. Materiality can be tested in the light of objections made to a planning application. Sixty three third party objections were made to the subject application, albeit thirty nine were in identical form. That these raised matters of a planning nature would suggest that the grounds of objections were material from a planning point of view, but the extent of opposition, while it might identify the materiality of the contravention, does not of itself establish that the permission has been granted in material contravention. This is apparent from the decision of Hedigan J. in *Ryan v. Clare County Council* [2009] IEHC 115 where he said the following:

> "…objections are only relevant when considering the materiality of a contravention as opposed to assessing whether one exists." (para. 42)

Hedigan J. held in that case that there was no contravention, albeit there was a large volume of objections.

25. A development plan must be considered as a whole: In *Wicklow County Council v. Forest Fencing Limited & Anor*. Charleton J. held that the Development Plan should be "considered in the round" and that "no section should be considered in isolation from the entire document".

The Dublin City Development Plan
26. The Dublin City Development Plan 2011 – 2017 was prepared in accordance with the requirements of Chapter 1, Part II of the Act. It was adopted by the councillors at a full council meeting 24th November, 2010. It came into effect on 22nd December, 2010 and covers a period of six years from that date.

27. The Development Plan identifies concerns with regard to the provision of services to alleviate homelessness in the City, and contains a number of relevant policies to that end, including Policy QH28 to "support the implementation of the Homeless Action Plan

for Dublin. Paragraph 11.4.12 provides that:

> "The City Council and other statutory agencies are obliged to provide appropriate accommodation and to work together to improve the range and quality of services available for homeless persons."

28. The Dublin City Homeless Action Plan was adopted pursuant to a statutory obligation under s. 37 of the Housing (Miscellaneous Provisions) Act 2009 and while the adoption of policy QH28 does not mean that the Action Plan has been incorporated into the Development Plan as such, the stated objective of providing a solution to homelessness is a planning consideration and a planning policy.

29. Concrete policy objective QH29 requires that there would not be "undue concentration" of homeless accommodation or support services as this might have a negative effect on residential communities. Paragraph 17.13 of the Development Plan, dealing with standards for institutions/hostels and social support services, notes the undesirability of an overconcentration of "institutional hostel accommodation" and homeless accommodation.

The grounds of challenge: material contravention with regard to user

30. The applicant argues that the permission is invalid as the proposed development is in material contravention of the Development Plan adopted in 2011 in a number of respects. The subject premises are located within a "Georgian Conservation Area", designated as Zone Z8 within the Development Plan, with an overall objective of protecting "the existing architectural and civic design character" such that "limited expansion consistent with the conservation objective" is to be permitted. The aim of the Z8 zoning is to maintain and enhance the areas and to protect in particular the residential element of the squares and streets during day and night. Within Z8 there is a requirement that a minimum of 60% of floor space in any unit should be residential.

31. Relevant permissible uses within Zone Z8 include a "hostel" or rooms for use by "medical and related consultants".

32. Certain other uses are described as "open for consideration" including "buildings for the health, safety and welfare of the public". The use is defined in Appendix 29 of the Development Plan as follows:

> "Use of a building as a health centre or clinic… hospital, hostel (where care is provided). …"

33. The phrase "hostel where care is provided" is also found in Part IV of Schedule 2 of the 2001 Regulations where Class VI use is "use as a residential club, a guest house or a hostel (other than a hostel where care is provided)".

34. The proposal is to offer temporary accommodation for a maximum period of six months to homeless individuals or couples, and the evidence is that the services intended to be offered within the building are to replace, but not entirely replicate, those offered in the facility located at 27 Harcourt Street, Dublin 2, a service operated by Dublin Simon and funded by the State under s. 10 of the Housing Act 1988 and the Health Act 2004. Many of the people who at present live in the Harcourt Street facility suffer from various classes of drug and alcohol addiction problems, and it is proposed to provide visiting GP and nursing services to address physical ailments and overall health and psychological and emotional wellbeing.

35. The applicant argues that, as the hostel is to have a high degree of support of a social and medical type, the proposed use is not of a hostel in a true sense, but rather fits within a different category of use identified in the Development Plan as "a hostel where care is provided".

36. The Council argues that the proposed development is for the use of Longfield House as a hostel, and that hostel use is expressly permitted within Z8. It argues in the alternative that as a matter of fact Longfield House will be used as a hostel, and the affidavits of Mary Conway, Deputy City Planning Officer, express her professional view that the intended use is permissible in principle as residential hostel use. Ms. Conway suggests that the relevant material characteristics are that the premises will offer temporary accommodation, and any support services will not materially alter that primary use. If the support services intended to be offered in the premises suggest a different characterisation, then the hostel is one that readily falls within the category of use open for consideration, and is a building for the health, safety and welfare of the public.

37. The applicant expresses particular disquiet that the services to be provided at the premises will include methadone and needle exchange programmes, and argues that this user does not sufficiently respect the overriding objective of the Z8 zoning, to maintain and enhance the residential character of the Georgian streets and squares during the day and night. He argues that a "hostel" properly understood is a tourist hostel or a hostel for backpackers, students or tourists seeking inexpensive accommodation. He suggests that what is proposed in Longfield Hostel is a "wet" hostel where the persons who will use the facility suffer from alcoholism, drug addiction, mental instability or other illnesses. He argues that the deliberate and carefully drawn distinction between a "hostel" and a "hostel where care is provided" in the Development Plan was intended to foster use which enhanced the active residential use of the area, and that the proposed use of Longfield Hostel could not do this.

38. The applicant argues that the proposed use of Longfield Hostel therefore is as a "treatment facility for persons with particular problems" (para. 21, affidavit sworn 11th December, 2015), and that the use will be "similar" to that which operates at Merchant's Quay of which he has personal knowledge (para. 12, third affidavit, 15th June, 2016). Mr. Byrnes suggests that he could not continue to live with his children or grandchildren who reside with him and their parents with the "kinds of risks and threats" to their health and safety that the intended use would involve.

39. The Council in a number of replying affidavits including that of Dáithí Downey, acting director of Dublin Regional Homeless Executive, explains the supports intended to be offered at Longfield Hostel. It is intended that a General Practitioner nominated from the SafetyNet grouping, which offers free primary healthcare to homeless persons, will provide general health services to the residents as is currently provided in the Harcourt Street facility. He explains that a methadone treatment programme is operated through other clinics, one in Merchant's Quay in Dublin 8 and the other at Granby Row in Dublin 2. Prescriptions for methadone are issued at one of those two clinics in accordance with the relevant regulations. Prescriptions are not issued from Harcourt Street, and are not proposed for Longfield Hostel. Only a limited number of pharmacies may dispense methadone, and in the vast majority of cases the methadone itself must be consumed at the pharmacy. The Harcourt Street facility has operated as "no more than a referral point for methadone treatment programmes" (para. 14, affidavit of Dáithí Downey). Mr. Downey identifies that there can be "incidental discussion" of a resident's progression or status on such a treatment programme within the hostel care provided at Harcourt Street. His evidence is that the same type of service, in the form of consultation services, are intended to be offered at Longfield Hostel.

40. Similar evidence is offered by Cathal Morgan, director of Dublin Regional Homeless Executive, who says at para. 11 of his affidavit, sworn on 3rd August, 2016, that "there will be [no] methadone treatment centre located within the proposed hostel nor a needle

exchange centre or drop in centre". Any counselling or support services provided will be for the use of residents only and will not include any form of drug dispensing. It is said therefore that the type of facilities in respect of which Mr. Byrnes expresses concern will not be available.

41. There will be a nurses' room on the first floor and the evidence, in particular that of Mary Conway (para. 7, second affidavit sworn 3rd February, 2016), is that this room will be for "general medical treatment". In her first affidavit, Ms. Conway refers to the fact that "specific drug treatment, or methadone treatment" might be afforded in that nurses' room, but the evidence of Dáithí Downey and Cathal Morgan indicates otherwise. Ms. Conway in her third affidavit, sworn on 3rd August, 2016 at para. 9 clearly states that methadone will not be dispensed at the proposed facility.

42. No contrary evidence is offered, and I consider that the suggestion by the applicant that methadone treatment is intended to be offered at Longfield Hostel is speculation, not borne out by the facts and stated intention of the Council.

No public benefit
43. Mr. Byrnes argues that the characterisation for which the respondent contends in the alternative, that the use is for "the health, safety or welfare of the public", is incorrect as the general public would not benefit from such user, which is rather to be seen as confined to a fixed or identifiable group of persons who might become homeless. His argument is that the narrow range of persons who might use such a facility means that it is not properly characterised as a "public" health centre.

44. I consider that the applicant is incorrect in this for a number of reasons: the persons who may avail of the intended hostel are any members of the public who find themselves homeless. The evidence of Cathal Morgan suggests that almost four thousand persons have availed of services and accommodation for the homeless in the Dublin region in the first quarter of the current calendar year, and that 913 families were in homeless accommodation in the week beginning 23rd May, 2016. These figures do not include the persons who have not, for one or other reason, availed of accommodation available through the Council or other services for homeless persons, and the evidence is that the number of people who are *de facto* without shelter is large. Exact number of persons who "sleep rough" i.e. persons who are without shelter of any type, is not before me, although the legal submissions of the applicant state that 102 such persons were counted on one night in the Spring of 2016, and there were 228 people identified on a random survey conducted by the Simon Community on 21st September, 2016.

45. The applicant suggests that only a "very small number of persons" will be eligible to avail of the hostel services and that this means that the use is not open for consideration as the public in general is not served.

46. I reject the suggestion by Mr. Byrnes that the "public" must be identified in homogeneous way. To say that a health or welfare use is one for the public in general only if all members of the public generally are likely to use the service is too narrow an understanding of the type of community need which is sought to be met by the provision of hostel in the Development Plan. It is not the case that the Council proposes housing already identified persons in the hostel, but rather the accommodation and its ancillary services are to be provided to persons who meet the criteria to be determined by the operators, including persons who will comply with prescribed policies and procedures and living arrangements, and in that sense the service and accommodation will be available to persons unfortunate enough to find themselves in circumstances of homelessness, perhaps allied with an addiction or medical problem. Any member of the community who finds himself or herself homeless could seek to avail of the hostel intended for Longfield House.

47. In my view, it stretches argument to say that the persons who are homeless in Dublin, or those who are likely to become homeless, for one or other or several reasons are not classified as members of the public in the sense in which that phrase is used at appendix 29 of the Development Plan. The services are for the public as correctly understood.

Conclusion on user
48. Some confusion might be noted in the approach of the Council to precisely what type of hostel use is proposed at the premises, and whether it is contended that the use is as a residential hostel simpliciter, or as a "hostel where care is provided". Both uses are permissible in Z8, albeit that the latter use is one "open for consideration", and not readily available. However the user is to be characterised, it seems to me that the user is one contemplated by the Development Plan, and I accept the evidence that the user is not in material contravention of the Plan. The provision of services for homeless persons is one contemplated by the Plan and is a relevant planning consideration.

49. The services to be offered at Longfield Hostel will not on the evidence amount to a treatment facility as Mr Byrnes contends, but even if medical assistance or services are to be offered the user for such services are "care" services and services to further the health of the public.

50. I accept the argument of the respondent that there is nothing in the Development Plan that requires accommodation for homeless persons to be confined to certain areas or parts of the city, or that homeless accommodation ought not to be positioned in residential areas or in identified residential areas.

51. I am further persuaded in my approach by the dicta of McGuinness J. in *Duffy v. Waterford Corporation* where she was hearing an application for judicial review of a planning permission for a scheme of 70 social houses in Co. Waterford. McGuinness J. noted that the development plan contained an analysis of the need for social housing and a general policy of countering social segregation by the provision of mixed housing. At p. 23 of her judgment she said the following:

> "Far from being a material contravention of chapter 3 of the plan read as a whole, it seems to me that the proposed scheme is in accordance with a number of the plan's objectives. It aims at avoiding social segregation by creating a mixed residential area and it is also a smaller scale scheme with less than 75 houses. I have, of course, no difficulty in understanding that both the applicant and the other local residents have deeply felt reservations about the scheme, as is clear from the tenor of their written and oral objections to it; I am not without sympathy for their difficulties. However, it is not for this Court in a judicial review application to adjudicate on the merits or otherwise from a planning point of view of the proposed development. As a matter of law I am unable to hold that the proposed scheme is a material contravention of the Waterford City Development Plan 1994."

52. No likely material contravention of the Development Plan is found in the proposed user.

Material contravention: proposed structural alterations
53. It is argued that the development proposes material alterations to a protected structure which significantly change the appearance of the building and in particular its façade and interior layout. The development will require certain internal works and the provision of disabled access from the street, the removal of an existing cantilever on the second floor of the rear and the

reinstatement of a landing window, to take just some examples. The grounding affidavit of Mr. Byrnes describes the intended works as "significant" and "major" changes to the exterior and interior of both buildings (para. 24, first affidavit). He states a belief that the modifications will "effect a significant alteration" in the character of the buildings and of the façades and internal layout, argued to be in contravention of the protection afforded to the buildings under the Development Plan, where they are designated as protected structures. It is argued therefore that the proposed development amounts to a material contravention of the Development Plan, in that it fails to have regard to the protected status afforded under the plan and with the designation of the area as an Architectural Conservation Area governed by s. 81 of the Act.

54. Mr. Byrnes offers no evidence, either his own evidence, or evidence of an expert, by which is identified the material effect of the proposed works on the protected structures. The first affidavit of Mary Conway on behalf of the Council, sworn 17th July, 2015 addresses the question at para. 26 where she says that there will be "very limited physical change or alteration" and that there will be "no effect or impact on either of the buildings or on the surrounding environment". She says there will be no visually obtrusive or dominant development which might be inconsistent with the Z8 zoning. In her second affidavit sworn 3rd February 2016, at paras. 19 and 20 she expands on this.

55. The evidence of the Council is that the relevant Georgian squares and streets are not an Architectural Conservation Area. The premises are in a "conservation area", a non-statutory designation contained in the Development Plan, which at para. 7.2.5.3 requires that the Council will ensure that any developments "compliment" the character of the area.

56. In the absence of expert evidence to contradict that of Ms. Conway, herself a planning expert, I consider that I have no evidence on which I could make a finding that the proposed development is in contravention of the Development Plan in that it materially bears on the character of the structures.

57. Furthermore, the designation of a premises as a "protected structure" of itself does not mean that development is precluded, but s. 57(1) of the Act has the effect that the carrying out of works to such a structure "shall be exempted development only if those works would not materially affect the character of the structure or any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest". Paragraph 7.2.5.2 of the Development Plan provides for the management and control of protected structures, but does not envisage the absolute prohibition on works which might alter or modify those structures.

58. The applicant has not made out a case that the proposed structural works amount to a contravention of the Development Plan, and I have no evidence of a technical nature on which I could make a determination of how and in what respect a contravention would result.

59. This ground of challenge fails on its facts.

The second ground of review: inadequacy of public notices

60. The applicant contends that the public notices published and posted by the Council failed to comply with s. 179(2)(a) of the Act and Article 81 of the 2001 Regulations. It is argued that the notice was too broad and general in its description, and failed to identify the full extent of the use intended at Longfield House, and that the structural alternations and modifications to the existing structures, likely to affect the interior and exterior of the buildings, were not indicated in the notice.

61. As to the details of a proposed use required to be in a notice, Articles 81(1) of the 2001 Regulations provides as follows:

> "(1) A local authority shall, in accordance with this article,-
>
> a. give notice of proposed development in an approved newspaper, and
>
> b. erect or fix a site notice or site notices on the land on which the proposed development would be situated"

Article 81(2) identifies a number of mandatory requirements in the form of the notice. Article 81(2)(b) requires that the "nature and extent of the proposed development" be stated.

62. The heading to the notice configured in bold print with a large font described the development as follows:

> "Proposed change of use of 9/10 Fitzwilliam Street Lower, Dublin 2 (protected structures) from former hotel (Longfield) to supported temporary accommodation (STA) and associated refurbishment works."

63. In the body of the notice the proposed use was described as:

> "The provision of Supported Temporary Accommodation for single persons and couples providing a total of 30 bed spaces and is to replace the existent Dublin Simon Community emergency accommodation services located on Harcourt Street, which has to be vacated."

64. The applicant argues that the notice is defective in that the use proposed is not a "change of use" from a former hotel to the accommodation type proposed, but that it is a *de novo* planning application, as the use of the premises as a hotel had long since been abandoned. It is argued also that the description of the intended use is suggestive of residential use and that a person reading the notice would not have understood the extent and nature of the support services for addictions and psychological or emotional problems that are intended to be offered in the hostel.

65. He points in particular to the fact that a disused building in another part of the city, at Fatima Mansions in Rialto, Dublin 8 was considered, but not adopted, by the Council for the use intended in Longfield Hostel because of "such a degree of local opposition", and argues that local opposition to the subject development would have been greater than that actually voiced had the full extent of the use, with the existence of a nurses' room and its attendant activities been clear from the notice.

66. Mr. Byrnes made a submission in writing to the respondent on the 17th December, 2014 in which he said that the proposed use extended "way beyond 'residential' and is actually much broader than that inferred in the public notices". He identified from the plans and drawings provision for an interview room, a project worker's office, a nurses' room, a sitting activities room and a "dry" lounge. He said, taking a description from a report by the Dublin Simon Community of the services envisaged, that the facility will provide:

> "a specialised form of accommodation for persons with needs that require a specialised form of support including:-

- "Persons with needs related to mental ill-health and drug and alcohol dependency
- Persons (and dependants) fleeing from domestic violence
- Ex-offenders
- Persons leaving institutional care
- Young persons leaving care"

He identifies the likely users as persons with mental ill-health and drug or alcohol dependency, persons fleeing domestic violence, ex-offenders, persons leaving institutional care, and young persons leaving care, all of which are identified in the Dublin Simon Community document.

67. His submissions raised a concern that the proposed use would not be compatible with the securing of investment for new development in the area and that it was incompatible with the economic regeneration of the area, necessary to preserve its architectural and aesthetic character.

68. Mr. Byrnes said that there is a "great degree of concern on the part of a number of my neighbours" who live in the immediate area concerned. He exhibits 63 submissions, 58 objectors, one supporter and four observers and exhibits each of their submissions.

69. His argument is that the description in the notice was not sufficient to alert interested members of the public to the fact that the buildings were intended to be used as a hostel where care is provided, and that the extent and nature of the support services could not have been sufficiently well understood by such persons.

70. The documentation in respect of the development, available for inspection or purchase by members of the public on-line and at the public counter in the Civic Offices at Wood Quay, included a Dublin Simon service description document, a building report and impact assessment prepared by Blackwood Associates Architects and Conservation Consultants, a joint report of the Homeless Services and City Architect Division of the Council, documents that show that the hostel will be run and managed by Dublin Simon and that the residential accommodation would be "supported". The Dublin Simon document sets out the "specialised form of support" proposed, that risk assessment will be carried out to ensure that the appropriateness of placement and that all persons who use the accommodation will be allocated a "key" worker for the duration of their stay at the hostel. Education in life skills and health, family support and education in financial matters is also to be provided.

71. The report of the architects and conservation consultant suggested that the works would be carried out with minimal intervention, and repairs rather than replacement of the original fabric of the building was to be preferred.

72. The applicant also argues that the details of the proposed works were not sufficiently identified in the public notices, and more especially that those works would have a material effect on the character of the protected structure. The proposition of the applicant that a notice must contain sufficient detail to comply with the requirement of Article 81(2)(c) to identify the nature and extent of a material effect on the character of the area or of the protected structure is scarcely controversial.

73. Insofar as the proposed works are concerned, Article 81(2)(c) requires that a notice referred to in sub-article (1) shall state that the local authority proposes to carry out the development and where a proposed development consists of or comprises the carrying out of works:

> (i) Which would materially affect the character of a protected structure or a proposed protected structure,
>
> (ii) To the exterior of a structure which is located within an architectural conservation area…or a proposed variation of a development plan, and the development would materially affect the character of the area concerned, indicate this fact, and…".

74. The public notice contained a list of eight separate items of refurbishment works, all of which were stated to be carried out "in accordance with the conservation architect's report", but, the applicant argues that notice did not comply with Article 81(2)(c) because it did not expressly indicate that the works would materially affect the character of the protected structures, and did not indicate the fact that what was proposed was a variation of the development plan.

Public notices: legal principles

75. The Superior Courts have considered in a number of cases the object of a published notice and how a court is to determine whether a notice was sufficient to achieve the purpose identified by Henchy J. in *Monaghan Urban District Council v. Alf-a-BET Promotions Ltd* [1980] I.L.R.M. 64 as "to enable interested members of the public to ascertain whether they have reason to object to the proposed development". Henchy J. faulted for vagueness the "veiled and misleading notice" in that case. Griffin J. noted the common good objective of the Act and that it was "therefore vital that interested persons should have been given adequate notice of … the nature and extent of the Development."

76. Griffin J. identified the purpose of a notice in *Crodaun Homes v. Kildare County Council* [1983] I.L.R.M. 1 as follows:

> "The primary object of the publication in a newspaper is to ensure that adequate notice is given to enable those members of the public who are interested in the environment, or who may be affected by the proposed development, to ascertain whether they may have a reason to object to the proposed development."

77. In a later case, Kelly J. in *Blessington & District Community Council Ltd v. Wicklow County Council* [1997] 1 I.R. 273 asked whether the notice was "sufficient" to "alert any vigilant interested party to what was contemplated". He considered that the purpose of the notice was to alert persons of the proposed development who:

> "If they wished to have further information as to precisely what was envisaged, they could have inspected the plans submitted with the planning application." (p.287)

78. Haughton J. considered extensively the requirement of a notice in *Ratheniska Timahoe and Spink Substation Action Group & Anor. v. An Bord Pleanála* [2015] IEHC 18 where he described the advertisement as having led the large number of persons who had made

objections on foot of the notice, "to further and more detailed documents and information".

79. The guidelines for planning authorities published by the Department of the Environment Heritage & Local Government in June, 2007 at para. 3.4 deal with the purpose of site notices, and that site notices which contain too much detail are "unnecessary and can cause confusion". It is advised that the notice should give "a brief indication" of the nature and extent of a proposed development and "is not required to go in to excessive detail". As rule of thumb, a notice should not include details of the type "that can reasonably be assumed to be part of a normal part of development", and "that a common sense approach to informing the public" should be adopted.

80. In the light of the authorities, what is envisaged by the legislation is that a notice should alert a vigilant or potentially interested party to the general nature of what is proposed. While the guidelines issued by the Department of the Environment do not have statutory force, albeit they are issued under a statutory power, they correctly identify the various objectives that need to be achieved, and the importance of having a sufficiently clear but not over detailed notice, which is likely to inform but not confuse, a potentially interested person. A notice must be site and development specific, it must alert the persons who are likely to be interested in that particular development as to the general nature of the development proposed, be sufficiently concrete to raise an interest or concern as to the development, and invite further queries and inspection of the detailed documents. The intention is to give sufficient information to lead a person to make enquiries and thereafter to consider whether to make objection to the proposed development. The notice is not intended to be or comprise all of the information on foot of which an objection would be framed, or to inform a person who is wholly ignorant of the character of an area.

Conclusion on adequacy of notice

81. I consider it relevant that the applicant has not said on affidavit that he personally was misled by the notices. I have read the submissions made by other interested parties and each of them contains arguments of the class made by Mr. Byrnes with regard to the suitability of the area and/or buildings for the class of supported accommodation intended. These parties appear to have had sufficient knowledge of the type of accommodation proposed to make submissions with regard to its suitability having regard to the particular character of the area.

82. The applicant has not persuaded me that the notices were defective on account of a failure to describe the details of the proposed works. My comments above are relevant to this consideration, and as noted, I consider that the applicant, while he has asserted that there will be a material change both to the building and to the character of the surrounding area, has adduced no expert evidence to enable me to judge whether this is so. As I noted, Mr. Byrnes has exhibited a large number of plans and drawings, but I neither have the competence nor the power to interpret these without expert assistance.

83. I also reject the argument of the applicant that Article 81(2) (c) requires a notice to state whether or not the development would materially affect the character of an area or of a protected structure. The requirement is that if the proposed works are likely to have such an impact then the notice must identify the nature and extent of the impact, not that the impact would be material. As the surrounding area is not an architectural conservation area Article 81(2)(c)(ii) has no applicability, and accordingly the notice could be argued to be defective only if there was likely to be an effect on the character of the buildings themselves which are protected structures.

84. I also consider that the notices, as a matter of fact, were very detailed in listing the eight detailed classes of works proposed and also linked those works to the technical report of the conservation architects. The reference to the Dublin Simon Community, to the Harcourt Street Hostel which Longfield Hostel would replace, and to the fact that the accommodation provided in the hostel would be "supported" together mean that the notices were sufficient to identify the nature of the proposed user. I consider that it was clear what was intended was more than a mere holiday or backpackers' type hostel.

85. The argument that the site notices were not visible or legible was not pursued at the hearing.

86. The particular context of the notice in the present case was the fact that the hostel use proposed was to replace an existing hostel in their neighbourhood, clearly identified and presumably reasonably well known by persons who live in the area. Another element of the notice that must be observed is that the hostel accommodation was identified as being one that would be run or managed by Dublin Simon. Because the public notice is aimed at interested persons within the area where development is proposed, some knowledge can be imputed to those persons of local factors. Persons reading the notice can be reasonably presumed to be broadly familiar with the work of Dublin Simon, and the notice was therefore correctly framed on an assumption that the persons reading had some local knowledge and knowledge of contemporary life in Dublin City. No person who lives and works in Dublin City, or in Ireland, could be unaware in general of concerns regarding homelessness, the services provided by the Simon Community generally, and the fact that hostel accommodation is being offered to certain persons who cannot otherwise provide secure shelter for themselves or their families. It stretches belief to argue that a person who lives in contemporary Ireland would not know that homelessness was caused or contributed to by a number of factors including poverty, domestic violence, addiction or drug or alcohol abuse and psychological or psychiatric problems, or that young persons leaving care are in some way vulnerable if they have no family who can offer shelter and support.

87. I consider that a notice must be seen in the context in which it is published and posted, namely a context of contemporary city life, and the persons interested in the environment or who live or work locally must be assumed for the purpose of the content of the notice not to live in a vacuum.

88. Further, a large number of local objections and observations were made to the proposal and the empirical evidence that a number of local persons with standing to make objections did in fact engage with the proposal suggests the notice was adequate and contained sufficient evidence of the requisite matters.

89. I am persuaded that this approach to the empirical evidence is supported by the observation of Haughton J. in *Ratheniska Timahoe and Spink Substation Action Group & Anor. v. An Bord Pleanála* that a "large number of parties were in fact alerted by the public notices as to what was being contemplated", and by O'Caoimh J. in *O'Brien & Ors. v. South Tipperary County Council & Ors.,* (Unreported, High Court, 22nd October, 2002) where he noted in proceedings in which inter alia it was argued that the site notice was not visible, that the notice "was read by several people".

90. I consider for the reasons outlined that the notice was adequate in the detail and description of the proposed use, and that this is evidenced by the number of detailed submissions made in the planning process which expressed precisely the concerns regarding the nature of the support services, concerns regarding anti-social behaviour and the impact on the safely and residential character of the area.

91. This ground of challenge therefore fails.

Third ground of review: no notice to prescribed body
92. The applicant also makes the argument that the process was not compliant with the requirements of Article 82(3)(b) of the 2001 Regulations in that evidence is not available that the notice of the proposed development was circulated to Bord Fáilte/Fáilte Ireland, notwithstanding that the development might detract from the value of the tourist amenity of Georgian Dublin.

93. The respondent accepts that a notice was not served, but furnishes by way of exhibit a letter from Fáilte Ireland dated 1st August, 2016 by which it confirmed "it would not have made any submission in this case". This evidence is presumably adduced to argue that the error, if there is was one, in failing to notify Fáilte Ireland should be considered as a *de minimis* failure of process. I consider that to be correct.

94. However, I also consider that there is no evidence before me that would suggest that the applicant is correct that Fáilte Ireland was a necessary notice party. The obligation to notify this prescribed body arises only when the development might "obstruct or detract from" the tourist amenity. Mr. Byrnes does say that the Georgian area of Dublin is a valuable amenity in architectural, historical, cultural and tourist contexts but that is not sufficient evidence for me to conclude that the existence of a homeless hostel would actively detract from the tourist or amenity value of the Georgian streets and squares.

95. For these two reasons, that I am not satisfied that Article 82(3)(b) has been shown to have been triggered, and also because any error was minimal I reject this ground of review.

Fourth ground of review: inadequacy in Manager's Report
96. In the adoption of the statutory exemption pursuant to s. 179 of the Act and Part VIII of the 2001 Regulations, s.179(3) requires that the manager of the local authority shall prepare a written report in relation to a proposed development and submit the report to the members of the authority for their consideration and decision.

97. The applicant argues that the Report submitted by the Chief Executive (formerly styled City Manager) of Dublin City Council did not comply with the mandatory requirements of s. 179(3)(b) by which certain details are mandated in the report to the elected members. I will deal with each of these requirements in turn.

98. First, a report is required to:

> "(i) describe the nature and extent of the proposed development and the principal features thereof, and shall include an appropriate plan of the development and appropriate map of the relevant area,"

It is argued that the Report, number 59/2015, did not contain a map or an appropriate map of the relevant area or any plan or appropriate plan of the proposed development. It is also argued that the Report failed to identify that the two premises were protected structures under the Development Plan.

99. Second, a report is required to:

> "(ii) evaluate whether or not the proposed development would be consistent with the proper planning and sustainable development of the area to which the development relates, having regard to the provisions of the development plan and giving the reasons and the considerations for the evaluation."

It is argued that the reasons and considerations that led the Chief Executive to the view that the proposed development would be consistent with the proper planning and sustainable development of the area are not set out, nor is the likely impact on the area identified. The Report does identify the relevant zone and the architectural and civic character of the area and conservation objectives, and does contain a narrative of the works, but it is argued that the report must contain more than a mere narrative but also a planning evaluation of those elements.

100. Third, a report is required to:

> "(iii) list the persons or bodies who made submissions or observations with respect to the proposed development in accordance with the regulations under subsection (2),"

It is argued that while the report does identify that 63 submissions were made by third parties, those parties were not identified.

101. Fourth, a report is required to

> "(iv) summarise the issues, with respect to the proper planning and sustainable development of the area in which the proposed development would be situated, raised in any such submissions or observations, and give the response of the manager thereto …"

It is argued that the report contains no summary of the issues or a response by the Chief Executive to the issues raised in submissions. In particular, it is argued that the report failed to note at all the argument made by the applicant that the proposed development was incompatible with certain investment projects taking place or intended for the area, including office, employment and other economic development. The applicant had argued that the Z8 zoning could not be reconciled with the proposed development and that this argument is nowhere noted in the report. It is further argued that the report does not identify another submission made by the applicant, that the Part VIII procedure was not appropriate at all in the circumstances. It is said that the report contains no response by the Chief Executive.

102. Fifth, a report is required to:

> "(v) recommend whether or not the proposed development should be proceeded with as proposed, or as varied or modified as recommended in the report, or should not be proceeded with, as the case may be."

No specific argument is made that a failure to observe this requirement is made.

Discussion on Report
103. The Chief Executive's Report is six pages long, the first page and a half of which is a summary of the proposed development. It

identifies the planning application for a change of use from a former hotel with twenty-six en suite bedrooms and other facilities which had ceased to function as such in 2007 when Dublin City Council purchased the premises. A full page is devoted to a summary of the submissions. The relevant summary identifies "anti-social behaviour", a likely negative impact on existing residential, amenity, architectural and civic design character of the area, a negative impact on local business, tourism and future development of the area, safety and security of pedestrians and property owners, and concerns regarding its use as a methadone facility. It identifies that submissions were made with regard to the "level of detail in the planning application", although I consider that that was meant to refer to the level of detail in the planning notice or notices. That error could not have operated to cause any confusion.

104. The balance of the report under the heading "D. Evaluation" runs to three and a half pages and identifies the policies and standards in the Development Plan, the zoning objective of Z8, the Dublin Simon Community Management and Service description document and contains the following conclusion:-

> "The proposed change of use would be consistent with policy QH28 to support the implementation of the Homeless Action Plan for Dublin. Having regard to the nature and scale and management of the proposed development, it is considered that subject to compliance with the conditions set out in the Recommendations of this report, that the proposed development would not injure the amenity of property in the vicinity, and that the proposed development accords with the City Development Plan and with the proper planning and sustainable development of the area."

Certain conditions are proposed thereafter.

105. The importance of a manager's report cannot be overstated. It is the statutory means by which the members of a local authority are informed of all relevant matters arising for their consideration, and forms the framework within which their decision making process is engaged.

106. It is argued by the applicant that an elected member of the local authority who read the Report would have had no sense of the extent to which the premises would be used for methadone or needle exchange programmes, or the likely social impact on persons living in the area. It is suggested that the Chief Executive's comment on the services provided by Dublin Simon is "bland" and offers limited clarity, save to say that Dublin Simon would meet with local communities, that they have "policies and procedures in place to minimise disruption both inside and outside the building", and that it has a "mission, vision and values". It is argued in those circumstances that the Chief Executive did not deal with the matter in planning terms, and no analysis of the impact on the amenity in the area is conducted, but is rather left over for Dublin Simon to deal with in its day-to-day operation of the facility.

107. The applicant also argues that the distinction between a hostel and a "hostel with care" is nowhere noted or explained, and therefore the elected representatives would have no understanding that what was proposed was not a development squarely within the Z8 permitted use, but rather one which was open for consideration within that use. Thus the elected members would not have known that their active consideration was required, as absent such, the development would be a contravention of the Development Plan.

108. The absence of express identification of the persons who made observations and submissions is noted as critical, as these persons live or work in the area and could not be said to be busybodies or serial objectors. The most criticism is levied at the fact that the response of the Chief Executive to the submissions is nowhere set out and the only reference is a single sentence in which the Chief Executive said:

> "All the submissions received have been considered in the assessment of this application."

109. It is also argued that the Conservation Officer who prepared a report was critical of the proposal in the context of the "long-term management and conservation of the Georgian fabric of the city". Certain mitigation measures were suggested but none of these became a condition of the planning permission.

110. McKechnie J. in *Sandyford Environmental Planning and Road Safety Group Ltd v. Dun Laoghaire Rathdown County Council* [2004] IEHC 133, dealt with an argument that the report of the Chief Executive was defective in the manner of summarising the contents of submissions and objections. He rejected the objections on the following grounds:

> "52. In my opinion, there is no obligation on the County Manager under the relevant provision to circulate to each member of the Council, prior to the commencement of their consideration, the entirety of the objections and submissions received by it. The requirement on the Manager is to 'summarise the issues' raised by such persons. This, in my view, cannot be read as imposing the wider obligation as is suggested on behalf of the applicant. The duty upon him is but to 'summarise' the issues raised. Accordingly, I cannot agree that by any method of statutory interpretation the Manager is obliged to circulate in full all the submissions and observations received. In addition, it seems from the uncontroverted evidence that his report was available to council members prior to the 9th July, 2001 and that, at such meeting there was available cases of the entire submissions so received. Moreover, from the applicant's point of view its members took steps to circulate to each Councillor Dr. Smal's report and presumably any other documents they saw fit. I, therefore, don't believe that the argument now advanced on behalf of the applicant company is in any way sustainable.
>
> 53. Likewise, I am of the view that the distillation by the Manager of the public submissions was adequate and was within the duty imposed upon him. In complying with this obligation he is not bound to use any formula or follow any specified method. There is within the section scope for a variety of presentations, some of which by choice may be far more extensive than others. The applicant's challenge, however, is not put in this way. In truth, this is a question of statutory interpretation, and although quite briefly dealt with, I am nevertheless satisfied that the issues raised, both in substance and in materiality, were adequately outlined in his said report."

111. The task of a court in considering whether the requirements of s. 179(3) have been met does require a critical evaluation of the report of the Chief Executive, as was done by McKechnie J. in that case. I adopt the proposition explained by McKechnie J. that no formula or method is required by which the submissions and observations are to be summarised. The question is whether the submissions and observations were sufficiently outlined in their substance and materiality.

112. No argument is made by the applicant that the Chief Executive was required to circulate all of the submissions, and that particular argument was rejected expressly by McKechnie J., but the argument is that the summary was inadequate, particularly in its failure to deal with other objectives of the Council with regard to the importance of the "South Georgian Core 2013", the alleged likely negative impact on business, tourism and the future development of the area, and the conflict with the mission statement of Dublin Simon.

113. I do consider that the response of the Chief Executive to the submissions was not adequately articulated. The single line at the end of that part of his Report is not in any real sense a response in substance as to the planning materiality of the observations. While the approach of the Chief Executive can be gleaned from the report taken as a whole and the various planning and policy considerations of the Council identified there, I consider that the Report was defective in failing to clearly state the views of the Chief Executive as required by the statutory provisions.

114. The function of a court in hearing a judicial review where the adequacy of a city or county managers report is under consideration must be to look at whether there has been compliance with the statutory requirements in the round, and to consider whether taken as a whole, a report was sufficient to present to the elected members evidence on which they could make a decision.

115. There is no statutory requirement that mandates a particular formula or structure or amount of content that must be found in a report from the Chief Executive, and provided a report taken as a whole is not so generic or vague or lacking in detail so as to fail to identify the nature and planning implications of a proposed development, a report would satisfy the purpose for which it is mandated.

116. The perceived need which gave rise to the purchase of the subject premises by the respondent in the first place and the putting together of a planning proposal thereafter must have been known to the members of Dublin City Council. I note the observations made above with regard to the role of the elected representatives and that a report is required to be addressed to them, not as a general body but as an expert body with identified and necessary expertise and knowledge of the planning and policy considerations in their functional area. I also consider that it is relevant that the report is prepared for submission to a meeting of the elected members at which they were free to raise questions to clarify or expand the matters continued within the report. From the minutes of the meeting, it does not seem that any question was raised in which clarification or further detail was, in fact, sought.

117. Having regard to the nature of the proposed development, and that it was to provide accommodation for homeless persons, a planning and general policy articulated by the Council in public documents, the well known Georgian area in which the development was proposed and the fact that I consider that there was as matter of fact no proposed material deviation from the Development Plan in the intended works or user, I consider that the Report of the Chief Executive laid before the meeting at which the resolution to authorise the development was approved was adequate for the statutory purpose for which it was prepared. This is because the members of the council who attended and voted were uniquely aware of the planning and policy considerations in play, and the absence of a specific indication by the Chief Executive of his recommendations and considerations did not materially impact on the capacity of the elected representatives to make a considered decision. The elected representatives had available to them for several days prior to the meeting the entire detailed and complete files on the development, and were therefore armed with sufficient information to question the Chief Executive at the meeting with regard to any element of the proposal. The minutes of the meeting suggest no queries were raised, and in the circumstances the elected representatives must be taken to have understood the nature of the proposals.

118. This was a unique development of accommodation of a sensitive nature in an area of architectural and historic importance in the city of Dublin. It was proposed at a time when provision of services for homeless persons was a matter of political importance. I consider it unlikely that the elected members required in those circumstances to have summarised for them any more details than those contained in the Report. In particular I consider that the approach of the Chief Executive to the proposals was evident in his Report, albeit not fully expressed by him. Other aspects of the provision of housing and the problems of homelessness in the city were the subject matter of other discussion at the meeting at which the decision as made.

119. I am satisfied that the Report satisfied the statutory requirement of notifying the elected representatives of the nature of the proposed development.

120. Furthermore, if there were inadequacies, they were de minimis and met the test explained by Henchy J. in *Monaghan Urban District Council v. Alf-a-Bet Promotions Limited*, where he accepted that the *de minimis* rule did apply to a judicial review under the Planning Acts, and referred to deviations "so trivial, or so technical, or so peripheral, or otherwise so insubstantial that, on the principle that it is the spirit rather than the letter of the law that matters, the prescribed obligation has been substantially, and therefore, adequately, complied with".

121. Henchy J. found in that case that the deviations were not so minimal or trivial that they could be ignored.

122. McGovern J. in *Dunne & Anor. v. An Bord Pleanála & Anor*. [2006] IEHC 400, identified the requirement that an applicant show some prejudice by the "purely technical" omission of the developer, and held that as no prejudice had been either pleaded or found that:

> "…insofar as there have been any technical breaches of the regulations that the applicants have not been prejudiced on account of these breaches and in some cases they are so minimal as not to warrant any action being taken by this court." (p. 22)

123. Some of the errors identified in the Report were trivial or technical. The applicant could, of course, argue that he has suffered a general prejudice and that the planning permission was granted notwithstanding his objection on a number of matters of substance. There were available to the elected representatives a wide range of objections and observations, including a critique by the conservation architect of the Council itself, and I consider that the process was robust and transparent, and that the decision of the Council cannot be impugned on account of certain technical or relatively minor matters, such as the absence of a full scale map, or the absence of the list of the persons who made submissions and observations on the planning permission.

124. The applicant argues that, having regard to what he says is the favourable regime operating in respect of an application for planning permission by a local authority under s. 179 of the Act and Part VIII of the 2001 Regulations, the statutory requirement should be construed and applied strictly, especially as the process makes no provision for an appeal. It is argued that all the statutory requirements must be performed in "a transparent way", and that if any breach, no matter how minor, is found that the permission should fall. It is also argued in those circumstances that the court should be slow to exercise its discretion to refuse relief.

125. However, there is nothing in the legislation which displaces the characterisation of a judicial review as a discretionary remedy. Charleton J. made it clear in *MacMahon v. An Bord Pleanála & Ors.* [2010] IEHC 431, as follows:

> "It has been argued that an order of the court quashing a decision should automatically follow in every case where such procedures have been found to be defective. I cannot accept, however, that the court is to be shorn of its discretion in judicial review matters simply because the issue concerns planning." (para. 18)

126. The errors identified are minor and trivial, and for the reasons stated and in the exercise of my discretion I reject this ground of challenge.

Fifth ground of review: Part VIII procedure not appropriate
127. The applicant argues that the respondent erred in availing of the procedure provided in s. 178 of the Act because the proposed development does not fall within the category of developments to which s. 179(1)(d) of the Act applies. That sub-section provides as follows:

> "This section shall also apply to proposed development which is carried out within the functional area of a local authority which is a planning authority, on behalf of, or in partnership with the local authority, pursuant to a contract with the local authority."

128. Section 179 modifies the normal rule by which development by a local authority and other bodies is exempted development pursuant to s. 4(1) of the Act. By reason of s. 179 certain local authority-owned development is prohibited without planning permission and the category of the development to which the requirement applies is set out s. 179. One of these is where the local authority is carrying out its own development in partnership with another person.

129. It is argued that the documentation presented in the course of the planning process shows unequivocally that the provisions of the Act have been invoked to facilitate the re-location of a hostel unit operated and managed by Dublin Simon at Harcourt Street. It is argued that the development was not carried out on behalf of, or in partnership with the local authority under a contract, and that the development is not a local authority development of itself. It is argued in those circumstances that the incorrect procedure was used and that the permission must fall on account of this.

130. The applicant's grounding affidavit at para. 11 relies on a general statement that there this "no evidence contained in the public file of a contract with a local authority, creating a partnership of a type that would be required to entitle the development to avoid the requirements of the planning process".

131. The first replying affidavit of Mary Conway at para. 8 identifies the elements of the proposed development she says bring it within the procedure in s. 179 of the Act and Part VIII of the 2001 Regulations. The premises are owned by the Council and the Council is to pay the costs of refurbishment. The provision of accommodation for homeless persons is a statutory function and obligation of the Council pursuant to the Housing (Miscellaneous Provisions) Act, 2009. The facility will be managed by Dublin Simon, an approved non-government organisation which provides services to homeless persons, and it is intended that a contract for the "delivery of hostel accommodation to homeless persons and associated services" will be entered into between Dublin Simon and the Council once the refurbishment works are concluded and prior to the opening of the facility. (para. 5)

132. Mr. Byrnes replies by saying that as no agreement is in place with Dublin Simon, no joint venture exists which would bring the development within s. 179(1) (d). The Council rejects his suggestion that the facility will be managed exclusively by a private organisation. At para. 10 of her second affidavit Ms. Conway explains that the Council "will effectively provide but not manage the service," in effect that Dublin Simon will act as agent for the Council in the performance of one of its statutory functions.

133. I consider that the evidence points to the fact that the development is proposed on behalf of the local authority itself, which will continue to own the premises and will have the benefits and burdens of the contract for the provision of the services in the premises identified on affidavit. I consider that s. 179(1)(d) properly construed includes application for permission for the development in buildings owned by a local authority in which services will be provided by a third party on behalf of the authority, and I am satisfied that the evidence points to the Council retaining control of the buildings, that the development is to be carried out on its behalf in premises which it intends to use for a designated use, and, it having no expertise in the provision of the service intended, it will employ a recognised entity to carry out the service on its behalf.

134. I consider that the evidence points to the proposed development being one that is intended to be carried out by the local authority. That the use of the premises is that permitted under the planning permission is self-evident, and the provision of a homeless service would by its nature have to be performed by a person or entity with knowledge and expertise in that sphere. The legislation is not to be read as requiring that the use to be carried on in the premises be directly done by the local authority and it is sufficient to come with the legislative scheme that the services will be provided on behalf of or under a contract with a local authority.

135. I reject the argument that as no contract yet exists with Dublin Simon that the legislative scheme has no application. The identity of the body that will manage the service is disclosed and the permission will relate to, and govern, that use by that body.

136. For all of the reasons identified, I propose to refuse the application for judicial review.