

THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 49 JR]

BETWEEN

ELIZABETH MULHARE (A PERSON OF UNSOUND MIND NOT SO FOUND ON INQUIRY, SUING BY HER MOTHER AND NEXT FRIEND BARBARA MULHARE) AND BARBARA MULHARE

APPLICANTS

AND

CORK COUNTY COUNCIL

RESPONDENT

JUDGMENT of Ms. Justice Baker delivered on the 5th day of May, 2017.

1. The second applicant is the mother and carer of the first applicant who suffers from profound physical and mental disabilities. This application for judicial review concerns their application to Cork County Council, a housing authority, that they be rehoused in accommodation appropriate to the physical needs of the first applicant, and sufficiently proximate to the medical practitioners and hospital where she attends from time to time.

2. The application is framed as an application for judicial review by way of certiorari to quash a decision made on 17th November, 2015, by which Cork County Council refused to rehouse the applicants in accommodation suited structurally or geographically to the needs of the first applicant. In the alternative, the applicants seek an order of mandamus that the respondent provide appropriate housing for them. The applicants also seek declaratory relief that they be entitled to priority in the allocation and provision of housing within the functional area of the respondent.

3. The respondent denies that the claim is properly a matter for judicial review, as the application seeks to undermine the statutory function of the Council as a housing authority and interfere with the scheme of priorities established by it in the performance of its statutory functions. It is asserted that the respondent has properly considered the housing needs of the applicants, and the factual basis of this plea and the interplay between the role the respondent and Cork City Council, a distinct housing authority in County Cork, will appear in the course of this judgment.

4. The respondent asserts that it has offered to carry out works of repair and alteration to the premises currently occupied by the applicants at No. 4 Lois Oir, Pyke Road, Fermoy, Co. Cork in accordance with the recommendations made in a report by an occupational therapist.

Relevant facts

5. Elizabeth Mulhare, the first applicant, is 28 years old, suffers with cerebral palsy, and is fully dependent on her mother for all aspects of her care. She suffers from severe and persistent respiratory infection and for which she is treated at a hospital outpatient clinic and general practitioner in Cork City, some 43km from her home.

6. The applicants have, since 23rd September, 2011, resided in premises in Fermoy, County Cork of which the second applicant is tenant, initially to Fermoy Town Council, and currently to Cork County Council as successor in title of the original lessor. They had previously resided within the Cork City Council boundary in Ballyvolane, Cork, as tenants to the City Council and subsequently in premises in Rathcormac, Co. Cork, close to Fermoy, and later in Fermoy Town itself. Mrs. Mulhare accepted the offer of the tenancy in the premises at Lios Oir, Fermoy and in her letter of 23rd September, 2011 expressed herself to be "very grateful and thankful" and "very happy and thankful" to accept the tenancy of that premises. Works were carried out to the premises in 2012 with which she also expressed satisfaction.

7. The difficulties which the applicants say have come to light since that time, and their dissatisfaction with the current state of the premises will be dealt with in the course of this judgment.

8. The premises in which the applicants live is accepted as not being of a standard suitable for the needs of the first applicant. There is, for example, no level access to a shower room, to taps, and no bedroom with a sufficient door opening to enable access by a wheelchair. The house is affected by mould and dampness.

9. A report prepared by an occupational therapist has identified the unsuitability of the premises and what needs to be done. The County Council has agreed to carry out the works identified by the occupational therapist, but the applicants claim that more suitable premises must be found which enables ready and relatively cheap access to the doctor and clinic. In effect, the applicants claim that they should be allocated a house within a five-mile radius of the hospital and GP practice, and that such premises is to be found within the functional area of Cork County Council.

10. Correspondence has been engaged between the solicitors for the applicants and Cork County Council. The first letter of 23rd July, 2014 sets out a general request that Mrs. Mulhare and her daughter be rehoused in accordance with the recommendation of Dr. Noel O'Regan contained in his report of 17th July, 2014, in which he states that the current accommodation is not suitable for the medical and physical needs of Elizabeth. That letter did not expressly recommend a move to a different geographical location and its focus was the unsuitability of the current accommodation.

11. Correspondence continued for almost a year, during which a lengthy and detailed report dated 6th November, 2014, was prepared by an occupational therapist and in which detailed recommendations were made for refurbishments and adaptations. That report summarised the position that her current home was "no longer suitable for Elizabeth" and recommended that Cork County Council would consider two options, either the carrying out of the refurbishment and adaptations, or the rehousing of Elizabeth and her mother to a suitable property closer to Cork City in the light of a recommendation of Dr. O'Regan that it would be beneficial for Elizabeth and her mother to live near his surgery and to Cork University Hospital where Elizabeth frequently attended for day admissions or longer.

12. Correspondence culminated in a letter of 24th April, 2015, from the solicitors for the applicants the purpose of which was:

"...to call on the Council to confirm within two weeks of even date, that it will take appropriate practical steps, within a reasonable period, to provide our said Client and her mother with suitably adapted accommodation closer to the aforesaid hospital. In that regard, what we request is suitably adapted accommodation (the specifications whereof to be agreed between the parties' respective experts) to be provided within six months and within a radius of five miles of Cork University Hospital (For the avoidance of doubt, our Client remains open to discussion on the details of any such accommodation)."

13. Correspondence continued over the following months leading to a short letter from the County Solicitor of 17th November, 2015, referring to the intervening correspondence and which set out the following:

"I would reiterate that at all times my Client has been ready, willing and able to immediately carry out the works suggested by the occupational therapist and to address any work necessary to redress damages in the property.

Unfortunately, the Council does not have any suitable alternative accommodation available for your client in the city hinterland or elsewhere."

14. The application for judicial review is focused on this letter of 17th November, 2015.

Relief sought

15. The applicants seek an order of *certiorari* quashing the decision articulated in the letter of 17th November, 2015. The statement of grounds was amended pursuant to an order of Noonan J. made on 3rd October, 2016, by which there was added a prayer for relief on the grounds that the County Council had failed to take account of, or give sufficient weight to, the physical condition of the first applicant, that irrelevant considerations were engaged, or that the determination was not reached in accordance with the requirements of natural and constitutional justice. Finally, the applicants seek damages or compensation for breach of statutory duty and negligence pursuant to s. 8 of the European Convention on Human Rights Act 2003.

16. The primary relief sought, however, is *mandamus* and in that regard the relief sought is specific and narrow: an order by way of *mandamus* directed to Cork County Council that it would provide housing to the applicants that is "suitable and appropriate" in terms of its structural and internal configurations and also "as to geographical proximity to her medical advisers", and "within five miles of the bounds of Cork City", suitably adapted for the applicants and within five miles of Cork University Hospital, and that the applicants be prioritised in the allocation of accommodation.

17. The statement of grounds sets out 28 separate grounds, of which several contain a number of subsets. The primary ground, however, is that no proper regard was had to the physical and medical needs of the first applicant, both in regard to any accommodation that might be suitable to her physical and medical needs but also to meet her geographical needs.

18. Leave was granted by Humphreys J. on 1st February, 2016.

19. After the applicants commenced the correspondence with Cork County Council and on the suggestion made in a letter of 24th February, 2015, by the County Solicitor, the solicitor for the applicants made formal application to Cork City Council for housing within its functional area. Cork City Council replied by formal decision on 7th October, 2015, declining to consider the application further on the grounds that Mrs. Mulhare had arrears outstanding on a previous tenancy at Ballyvolane, near Cork city, said by Cork City Council as having been "abandoned" by her. The City Council confirmed that until the arrears were paid in full or an agreement made to pay them over time, it would not further consider the application.

20. That letter is of particular significance having regard to the narrow basis of the order of *mandamus* sought, namely that accommodation be provided within five miles of the "bounds of Cork City". The application is variously described in geographical terms as a request for accommodation to be provided in close proximity to the surgery of Dr. O'Regan and Cork University Hospital. No identifying feature was presented in evidence which would enable me to understand precisely where the applicants seek now to be accommodated, but it is important that I would note that the general description contained in the affidavit evidence and a map exhibited in an affidavit of Michael Joyce, the solicitor for the applicant, sworn on the 29th January, 2016, would suggest that what is sought lies within the functional area of Cork City Council and the hospital lies on the south west of that area and Dr. O'Regan's surgery in the north east. I do not propose making a decision on that ground alone, but the fact that Cork City Council is not a notice party or a respondent to this application, and the fact that accommodation is being sought in what is arguably an area within its functional area, and not that of the respondent, presents a particular difficulty in that were an order to be made in the vague and broad terms of the order sought, the order would be incapable of performance by Cork County Council insofar as it might thereby be required to provide housing within the functional area of another local authority. Leaving aside that practical consideration, the specificity in the nature of the relief sought highlights the fact that the applicants in truth are seeking that they be considered outside the statutory scheme of allocation of housing.

Facts not in dispute

21. That Elizabeth suffers from profound physical and mental disability is not in doubt, nor is it that her mother has been her carer and engages that role with dedication and great affection for her daughter. The County Council accepts that the current premises at Lois Oir, Fermoy is not suitable for the present needs of Elizabeth, and the reasons for this are various. Elizabeth is now a grown woman, and her physical needs are less readily met by her mother as they were when she was a small child. Certain adaptations to the house and functional equipment would make the lives of both Elizabeth and her mother considerably better, and the Council accepts that a significant degree of modification and improvement needs to be made to the house to meet Elizabeth's current needs and to enable her mother to look after her within the home with the care and diligence that she has engaged up to now. The Council confirmed in its letters of 4th February, 2015, 24th February, 2015, and 17th November, 2015, that it was ready, willing and able to carry out the recommendations set out in the report of the occupational therapist and to address any issues that arise from dampness that has become very apparent in the premises in the recent past.

22. The applicants are not happy to stay in the Fermoy premises, and say that their needs can be met only by the provision of a house closer to the city. The Council in its letters of 24th February, 2015 and 19th May, 2015 said that it has no house available that might meet the needs of the applicants and that it is constrained by the lack of availability of suitable accommodation. Both these letters stressed the requirement that the County Council should keep in mind the needs of all of its tenants.

The statutory housing function

23. Part 2 of the Housing (Miscellaneous Provisions) Act 2009, ("the Act of 2009") provides for the housing function of a local

authority. Section 20 makes provision for applications for social housing as follows:

"(3) A housing authority may carry out a social housing assessment where a household has been in receipt of a supplement under section 198(3) of the Social Welfare Consolidation Act 2005 towards the amount of rent payable by the household in respect of the household's residence for such period as may be prescribed."

24. The Minister has made Regulations, the Social Housing Assessment Regulations 2000, S.I. 84 of 2011, pursuant to the statutory power in that regard contained in s. 20(2).

25. Section 22 of the Act of 2009, provides that a local authority must adopt a "scheme of priorities" by which it determines "the order of priority to be accorded in the allocation of dwellings to households" by them deemed eligible.

26. A local authority is required to act upon the scheme: *McDonald v. Feely & Anor.* (Unreported, Supreme Court, O'Higgins C.J., 23rd, July, 1980).

27. Cork County Council adopted its housing scheme on 13th June, 2011 and provides an order of priority which it will and must apply to the allocation of housing in accordance with the scheme provided by the Housing Acts 1966 to 2009. The priorities are to be applied in the order as set out therein which may be summarised as follows:

- (i) applicants living in dangerous housing;
- (ii) applicants deemed to be homeless;
- (iii) applicants living in unfit or overcrowded conditions;
- (iv) applicants living in unfit conditions, as defined in s. 66 of the Housing Act 1966 viz. houses which are "unfit for human habitation in any respect";
- (v) applicants living in overcrowded conditions;
- (vi) applicants in need of housing on disability, medical, compassionate or similar grounds; and
- (vii) applicants not included in any other category who have been assessed and approved for support.

28. The application of the applicants falls sixth in the order of priority.

29. The housing scheme provides for exceptions by which the housing authority is permitted to disregard the order of priority in favour of "persons in need of accommodation arising from specified exceptional circumstances" or in the case of "exceptional or compassionate grounds". That the Council has power to disregard its own order of priority is not in doubt, but whether the court may interfere with its choice is a more difficult question.

30. The housing authority under s. 10 may provide housing services and housing support for the purposes of meeting accommodation needs of persons in its functional area. The power is permissive but creates a corresponding obligation, in material respects similar to ss. 9 and 13 of the Housing Act 1988, in regard to which Laffoy J. in *O'Donnell v. South Dublin County Council* [2007] IEHC 204, [2011] 3 I.R. 417 said the following:

"It is well settled, as a result of a long line of authority commencing with the seminal judgment of Barron J. in *University of Limerick v. Ryan* (Unreported, High Court, Barron J., 21st February, 1991), that ss. 9 and s. 13 are not merely enabling provisions which confer power on a housing authority to meet the accommodation needs of those unable to provide for themselves, but the sections also impose a corresponding duty on the housing authority to make use of those powers where appropriate." (para. 36)

31. That authority is well established, and it is not doubted by the respondent that the power of the local authority imports a corresponding duty to carry out housing assessments and to fully consider an application for housing made to it.

32. That such powers and duties exist in the local authority as housing authority is not in dispute in this case, but the applicants argue that the application of the scheme has been erroneous.

33. The Housing Act 1966 was described as a "major legislative measure" by O'Higgins C.J. in *McNamee v. Buncrana U.D.C.* [1983] I.R. 213, and whether it gives rise to a right on the part of a person disappointed with a decision of a housing authority has been the subject of a number of authoritative decisions of the superior courts. In *McDonagh & Ors. v. Clare County Council & Anor.* [2004] IEHC 184, Smyth J. rejected the argument that a failure or refusal by Clare County Council to provide the type of accommodation that the applicants "sought and wanted" was not of itself a breach of statutory duty:

"The obligation of a Housing Authority is to respond to be a need not a want. An Applicant is of course entitled to express a preference for the type of accommodation he/she bona fide believes, grounded on objective evidence, is suited and meets his/her accommodation needs. There is however no obligation on the Housing Authority to provide immediately such specified accommodation - it must not only assess needs and priorities but have regard to all other persons who have needs and to its availability of accommodation. It is the function of the Housing Authority to adjudicate on the claims of the Applicants, not that of the Court."

34. That a person who has applied to a housing authority for housing does not have a veto on the decision is clear from the decision of Peart J. in *Fingal County Council v. Gavin & Ors.* [2007] IEHC 444 in which he was considering an application by way of plenary proceedings for a declaration that the plaintiff should provide suitable traveller accommodation for the defendants within its functional area, and where what was sought was accommodation for up to 80 persons in a single site. Peart J. regarded the request as unreasonable, and having considered s. 9 of the Housing Act 1988 and the matters to which the housing authority was required to have regard, concluded that a reasonable offer of accommodation had been provided:

"By reason of the fact that in my view reasonable offers in all the circumstances of this case were made by the plaintiff council, I cannot regard the defendants as coming within the meaning of homeless appearing in this section, as to do so would amount to giving the family a right of veto over accommodation offered. I note in particular that the section

specifically provides that it is the authority's view of the reasonableness of the accommodation which is relevant, and that the persons concerned are not conferred with any veto or power of approval." (p. 14)

35. The applicants have a right to apply for housing, and to have their application considered in the context of the statutory scheme, and that right carries a corresponding duty on the part of the Council to reasonably consider their request and to come to a decision that is soundly and rationally based.

36. The decisions of Smyth J. in *McDonagh & Ors. v. Clare County Council & Anor.* and Peart J. in *Fingal County Council v. Gavin & Ors.* point to a proposition that the legislation cannot be interpreted as giving an unfettered right to an applicant for housing to veto a rational choice made by the housing authority, or to choose accommodation.

37. However, the decision of Smyth J. in *McDonagh & Ors. v. Clare County Council & Anor.* is also authority for the proposition that the right of an applicant for housing to have his or her application considered is not an absolute and unconditional right and is "resource dependent":

"It cannot have been the intention of the legislature that at all times and in all circumstances the Housing Authority would have available and vacant and ready for occupation either conventional permanent or conventional emergency accommodation.... It is for the Housing Authority to prioritise the building programme necessary to house those entitled under the Acts - and to prioritise those whom it considers entitled to such accommodation under the TAP and/or on the Housing List."

38. Charleton J. considered the position in *Doherty v. South Dublin County Council & Ors. (No. 2)* [2007] IEHC 4, [2007] 2 I.R. 696, and his judgment also reflected the extent to which it is the function of the local authority to manage its resources and to set the priorities, and that an obligation on the part of the local authority to consider an application for housing had to be made in the context of the resources available. The duty therefore is one that is constrained and must be understood in the context of available resources:

"The housing authority, however, has obligations only in accordance with its resources and according to the scheme of priorities set out by it." (p. 715)

39. This is consistent with the judgment of Laffoy J. in *Ward v. Dublin South County Council* [1996] 3 I.R. 195:

"It is not the function of this Court to direct a local authority as to how it should deploy its resources or as to the manner in which it should prioritise the performance of its various statutory functions. These are matters of policy which are outside the ambit of judicial review. Moreover, in relation to the function at issue here, the provision of accommodation in the form of halting sites for members of the travelling community to whom a housing authority owes a duty under s. 13, while there may be informed opinions as to how the function would be best performed, which differ from the approach being adopted by the housing authority, it is no function of this Court to adjudicate on the merits between the differing points of view." (p. 203)

40. The allocation of housing by a local authority, therefore, must be done in accordance with the scheme of priorities and based on a reasonable and reasoned consideration of an application. The allocation of housing is a matter within the competence and expertise of the housing authority and it is not the function of the court to direct how that policy is to be applied in any particular case.

41. It seems to me outside my competence, and not a matter for judicial review, to direct that the respondent would provide a house within the narrow geographical radius identified by the applicants as suitable for their needs, as to do so would be to engage in an assessment of the housing stock and of the needs of the applicants which are outside the power of a court.

42. For these reasons, I consider that the application for judicial review in the form of *mandamus* is not one that may properly be brought, is outside the competence of the court, and would be an impermissible interference by the court in the allocation of resources by a statutory body.

Adequacy of reasons

43. The application for judicial review in its amended form seeks a declaration that the refusal of the request by the applicants for suitable alternative accommodation in close geographical proximity to the city of Cork is void and *ultra vires* in that it failed to take account of or give sufficient weight to the physical condition of the first applicant or that the respondent took into account irrelevant considerations or was made in breach of natural and constitutional justice.

44. Mrs. Mulhare resided at a premises in Ballyvolane, Cork which she vacated leaving arrears of rent in or around the month of May, 2007. Certain orders under the Domestic Violence Act 1996 were made in the Cork District Court in January, 1998 and it is argued that the respondent acted wrongfully in taking account of the existence of these orders, or what counsel describes as the "character" of Mrs. Mulhare or her accommodation history. It is argued in those circumstances that the application for alternative housing was not properly considered or that irrelevant considerations were engaged.

45. Reliance was placed on the decision of Hedigan J. in *Zatreanu & Ors. v. Dublin City Council* [2014] IEHC 556 in which he quashed a refusal by Dublin City Council to give priority to a transfer application in circumstances where the applicants had been subjected to harassment in the area where they were living. Hedigan J. held that it was inappropriate for the Council to have regard to, or assume, that the gardai would address the concerns of the applicants. The decision had been made on what Hedigan J. described as "a test that was too narrow".

46. The applicants also argue that the operative or real reason behind the refusal to provide alternative accommodation to them was an erroneous view that Mrs. Mulhare had wrongly refused to permit the carrying out of modifications and repairs to their current accommodation made in letters of 19th May, 2015 and 17th November, 2015. It is suggested in those circumstances that the respondent applied the incorrect test, and that it took the view that the applicants had no need for a housing allocation as their current home could be made suitable for their needs.

47. It is averred on affidavit that Elizabeth suffers physical hardship and emotional distress when she has to travel by car, especially when travel necessitates that she is away from her mother. It is argued in those circumstances that the geographical location is a central and crucial factor that ought to have been considered by the respondent in its consideration of their application and that, therefore, while an offer has been made to renovate and modify the existing house, no consideration at all has been had of the severe distress and discomfort that was suffered in the frequent journeys necessitated by the fragile physical health of Elizabeth.

48. Counsel explained that the applicants no longer trusted the approach of the respondent, and that it was not clear whether, if Mrs. Mulhare accepted the offer of renovation and modification, she and her daughter would find themselves slipping down the housing list or indeed being considered not to have a place on that list at all. It is argued, therefore, that the approach of the respondent is wrong in that it refused to consider the application on its merits, and that the sole focus of the respondent had been the needs of the applicants regarding the nature of their physical accommodation, and that the geographical considerations had not been engaged.

49. A factual dispute has arisen with regard to the travel arrangements and the respondent argues that Mrs. Mulhare has refused to take up an offer made in or around 27th February, 2015 by a charity of a free taxi service to hospital. I do not propose considering the correctness of the assertion by the respondent that the refusal was unreasonable, as the matter can be dealt with without a decision on that assertion.

50. The applicants may not seek judicial review to displace other persons on the housing list or to seek an order directed to the respondent that it treat the application of the applicants as coming within the exceptions in its scheme of priority, and that the medical and compassionate reasons on which they rely are sufficient to place them in a position of undoubted priority.

51. The evidence is clear that there are a very large number of approved applicants on the housing list in the functional area of the respondent, the total number being 7,480, of whom 557 have needs based on physical disability. The practical reality is that no house is available which would satisfy the very specific and geographically narrow radius in which the applicants wish to live. I reject the suggestion that the Council has disregarded the distance concerns, because of the clear evidence from the respondent that no suitable accommodation is available in the area identified.

52. Insofar as the applicants seek to avail of the application for judicial review to obtain clarity as to whether they will remain on the housing list were they to accept the offer of renovation and modification of their existing premises, I make a number of observations. First, no letter has been identified in which clarification of this point was sought. Second, the issue arose in the course of argument and not in the affidavits or in the pleadings. Third, the respondent does not assert that by providing for the costs of renovations and modifications to the existing dwelling, it will have fully satisfied the request for a transfer by the applicants.

53. There is nothing in the correspondence that suggests that the applicants will not remain on the housing list, and that much is clear. It is not the function of the High Court on application for judicial review to interpret the correspondence with a view to ascertaining a matter that was not sought to be clarified before the proceedings commenced and in respect to which leave was not granted.

54. Insofar as it has arisen, I reject the suggestion that the applicants are homeless within the meaning of s. 2(a) of the Housing Act 1988. I reject the suggestion that the applicants were refused accommodation by Cork County Council for reasons relating to the arrears of rent with Cork City Council. The affidavit evidence of Paul Sutton is that, while Cork City Council may have correctly regarded the existence of arrears as a matter for consideration, that fact was not one that fell for consideration by the respondent authority. This evidence is uncontroverted and was not sought to be cross-examined. However, even if the applicant is correct, it seems to me the fact that the applicants did happily accept the accommodation in Fermoy when it was offered to them in 2011 is a relevant factor, as the fact that the applicants now find themselves living in Fermoy was a matter which Mrs. Mulhare freely accepted and welcomed when the offer of housing in that area was made to her.

55. Further, pursuant to section G of the Housing Scheme, the Council may on any application for a transfer, take in account arrears of rent, and Article 25(b)(i) of the Assessment Regulations 2011 permits a housing authority to refuse to consider the provision of social housing supports where a household has incurred arrears of rent for an accumulated period of twelve weeks or more in any period of three years. This factor could legitimately have influenced Cork County Council, did in fact influence Cork City Council, and was not a wholly irrelevant to the application.

56. The first principle which bears on my consideration in the present case is that the applicants have not established any statutory basis on which they might be entitled to be housed in a particular house in a particular area. The legislative scheme as interpreted in the case law shows a general duty on a housing authority to assess and meet housing needs in accordance with a scheme adopted for that purpose. A local authority, as housing authority, has a statutory function to manage its housing stock, and great care must be taken by the courts in the making of any order that might pre-ordain the application or direct the decision-making process of a local authority in its management of housing.

57. The local authority has a duty corresponding to its power to manage its housing, and meet and assess the housing needs within its functional area. In the present case, it seems to me that the applicants contend for a position in which the court would direct the local authority with a degree of specificity and concreteness that I do not believe is borne out by the authorities.

Article 8 of the European Convention on Human Rights

58. The applicants claim that the failure of the respondent to provide them with a suitable house is a breach of Article 8 of the ECHR which provides:

"Everyone has the right to respect for his private and family life, his home and his correspondence."

59. Article 8 does not create a positive obligation on the part of a local authority to provide a home. Charleton J. in *Doherty v. South Dublin County Council & Ors.* (No. 2) cited with approval the judgment of the European Court on Human Rights in *Chapman v. United Kingdom* (2001) 33 E.H.R.R. 18 as follows:

"It is important to recall that Article 8 does not in terms give a right to be provided with a home. Nor does any of the jurisprudence of the Court acknowledge such a right. While it is clearly desirable that every human being has a place where he or she can live in dignity and which he or she can call home, there are unfortunately in the Contracting States many persons who have no home. Whether the State provides funds to enable everyone to have a home is a matter for political not of judicial decision." (Quoted by Charleton J. at p. 721)

60. A failure or refusal by the respondent to provide the applicants with a suitable home does not amount to a breach of Article 8 of the Convention. MacMenamin J. in *O'Donnell v. South Dublin County Council* [2015] IESC 28 said the following:

"A consideration of ECtHR case law demonstrates that, in fact, no judgment confers a right to be provided with a home of one's choice, nor are there any positive obligations to provide alternative accommodation of an applicant's choosing (see *Chapman v. UK* (Application no. 27238/95) (2001) 33 E.H.R.R. 442 . However, an observation of the ECtHR in *Marzari v.*

Italy [1999] 28 E.H.R.R. CD 175 is not without interest:

'The Court considers that, although Article 8 does not guarantee the right to have one's housing problem solved by the authorities, a refusal of the authorities to provide assistance in this respect to an individual suffering from a severe disease might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such refusal on the private life of the individual'." (para. 83)

61. I reject the argument that any right protected by Article 8 has been infringed. Insofar as it is relevant, I consider that the respondent has adequately provided for the Article 8 rights of the applicants in agreeing to carry out works of modification and repair, and such provision was made within the competence of the authority to manage its own finances and the allocation of its limited housing resources.

Conclusion

62. For all of these reasons, I refuse to grant the relief sought. That is not to say that I take any view as to the suitability of the accommodation in Fermoy where the applicants currently reside. Elizabeth has been fortunate indeed in having the loving and committed care of her mother, and her mother's task is a demanding and difficult one which she performs with great fortitude. However, the application that I direct that housing resources be applied to provide the applicants with the house in the area where they choose to live is not one which I may make, and it would be an impermissible breach of the separation of powers for a court to infringe upon the policy decision of the respondent housing authority in circumstances where I am satisfied that the decision is made was within its area of competence.