Neutral Citation Number: [2010] IEHC 302

THE HIGH COURT

2009 350 JR

BETWEEN

CONNIE DELANEY AND OTHERS

APPLICANTS

AND

GALWAY CITY COUNCIL

RESPONDENT

JUDGMENT of Mr. Justice McMahon delivered on the 21st day of July, 2010

Introduction

1. In these judicial review proceedings, it is alleged that Galway City Council, the respondent herein, was in breach of the relevant statutory provisions when it adopted the Traveller Accommodation Programme 2009 – 2013 at a meeting of the City Council on 9th February, 2009. It was agreed between the parties that the Court would first determine the effects of the "joint motion" passed at that meeting by the City Councillors before addressing other issues that could be affected by this determination. Before considering what occurred at the relevant meeting, it is necessary to first examine the nature of the legislation involved, that is, the Housing (Traveller Accommodation) Act 1998.

The Housing (Traveller Accommodation) Act 1998

2. The short title to the Housing (Traveller Accommodation) Act 1998 ("the Act") declares it to be:-

> **"**AN ACT TO AMEND AND EXTEND THE HOUSING ACTS . . . TO MAKE PROVISION FOR THE ACCOMMODATION NEEDS OF TRAVELLERS, TO PROVIDE FOR THE APPOINTMENT OF A NATIONAL TRAVELLER ACCOMMODATION CONSULTATIVE COMMITTEE AND LOCAL TRAVELLER ACCOMMODATION CONSULTATIVE COMMITTEES AND TO PROVIDE FOR RELATED MATTERS**."**

3. Part II of the Act relates to the Traveller Accommodation Programme ("TAP") and under s. 10 of the Act, the relevant housing authority, having publicised its intention and notified certain parties, is obliged to prepare an accommodation programme every five years which shall include, *inter alia*, (i) the most recent assessment for sites in its area; (ii) a statement of policy in relation to meeting the accommodation needs of travellers; (iii) an indication of the strategy for securing the implementation of the programme, and (iv) measures for implementation in relation to the provision of the range of accommodation to meet the needs identified.

4. In preparing a TAP, the relevant housing authority must also have regard to the needs identified, the distinct needs and family circumstances of travellers and the provision of sites to address the accommodation needs of travellers other than as their normal residence, but taking into account also their annual patterns of movement.

5. In fulfilment of its statutory duties, the respondent prepared the TAP 2009 – 2013. This was its third programme. Significantly, it identified the need for two halting sites within the city as a necessary accommodation need for travellers. The draft TAP was placed before the Councillors for adoption on 9th February, 2009, the adoption of the TAP being a function reserved for the Councillors in the first instance.

6. The minutes of the relevant meeting show that some members were concerned with the provision of any halting sites in the City and there was a lively debate on the matter. Two motions relating to the matter were tabled and seconded and, without getting into the details at this juncture, it was proposed and agreed that these two motions should be voted on as a "joint motion". (A third motion was also proposed as an amendment to the first motion but this was not accepted as such by the Chairman.)

The Applicants' Case and the Issue

7. The applicants here make no complaint regarding the manner in which the TAP was prepared or regarding the matters taken into account in its preparation. They make only one objection to the TAP as adopted by the Councillors on 9th February, 2009: they allege that the adopted TAP does not include measures for the implementation of the identified needs for halting sites for travellers mentioned in the programme itself. Specifically, they say that the "joint motion" passed by the Councillors on that occasion removed the implementation measures included in the draft which referred to the identified needs of "two halting sites" for travellers. As a result, the applicants allege that the respondent is in breach of its statutory obligations.

8. The question then is what was the effect of the "joint motion" passed by the City Councillors at the meeting on 9th February, 2009, and did this motion affect the adopted TAP to such an extent that the TAP no longer provided for the identified needs of the travelling community, as identified by the respondent itself in the programme. Before attempting an answer to this question, one significant point should be noted: the decision taken in relation to the draft TAP is a reserved one for the Councillors. It is not a decision for the Manager or for the Executive. Once taken, it is a decision of the City Council. What the Manager thought or advised before the decision was taken does not affect the ultimate decision by the Councillors on the issue. Further, what the Manager did after the decision was taken has no affect on the decision itself, but may be evidence as to what he thought the motion meant. The only function given to the Manager in relation to the adoption of the TAP arises only if the Councillors fail to act; in such an event, the Manager is given a power to adopt the draft TAP under s. 14 of the Act. It is important, however, to appreciate that this is a default power which only arises if the Councillors fail to adopt the TAP in the first place. In a situation like the present one, this does not arise as the Councillors have taken a decision and, consequently, s. 14 does not come into play.

9. This clear division of powers in the legislation means that there cannot be a standoff between the Councillors and the Manager in respect of the TAP and its adoption.

10. The initial question for the Court, then, is whether the decision of the Councillors to adopt the TAP, subject to the "joint motion", is in breach of their statutory duties as imposed by the Act. The applicants argue that the defendant is in breach of the Act because they say that the decision taken in passing the motion to omit some reference in the draft TAP relating to the provision of halting sites emasculates the TAP and ignores the statutory obligation that the respondent should make provision in the TAP for the identified needs in the programme. Further, they emphasise the distinction between the adoption of the TAP and the subsequent publication of it by the Executive. In the present case, the applicants' argument is that what the Court must be concerned with is the adopted programme and not the published programme where there is a conflict between the two. The only difference between the two documents is that two paragraphs which appeared in the draft at paragraph 4.6 have been removed now in the published programme. I agree with this submission and accordingly, I propose to look at the "joint motion" first and endeavour to determine its meaning. This will involve a consideration of the minutes of the meeting of the respondent held on 9th February, 2009. To appreciate what took place, however, I must first outline the draft TAP that was tabled at that meeting for consideration. Before doing so, I will outline the respondent's position.

Respondent's Argument

11. The essence of the respondent's argument in these proceedings is that, regardless of what has been taken out of the draft at paragraph 4.6, there still remains in the programme sufficient recognition to show that the respondent is still committed to the provision of the identified needs, that is, two halting sites. It relies, in particular, though not exclusively, on paragraph 4.2 which appears under the heading 'Objectives and Targets - 2009 – 2013' in the published TPA. This paragraph, the respondent says, survives the "joint motion" and identifies as an objective two residential halting sites to be built in 2012. Further, in the summary of its objectives and targets, the last sentence of paragraph 4.2, highlighted in bold print, specifically refers to "2 **residential halting sites."**

12. Moreover, the respondent has averred on affidavit that the subsequent action of the Executive does indeed show a full commitment to the provision of these two halting sites and sets out what actions have been taken by the respondent in furtherance of that end, since 9th February, 2009.

13. The applicants, however, respond by saying that the effect of the "joint motion" as passed, and the TAP, as adopted, is much more general in its effect, and that its effect is not confined to the removal of two paragraphs from paragraph 4.6 only. A proper reading of the motion, according to the applicants, means that the programme was adopted with all references to halting sites removed and not only those in paragraph 4.6.

14. They emphasise that the TAP subsequently published is not to be taken as being that which was adopted by the Councillors and that to determine this, one must look at the record of the meeting of 9th February, 2009. Additionally, the applicants say that the respondent had, in carrying out his statutory duty under Part II of the Act, identified at paragraph 4.6 the following as the needs: provision "for 2 additional residential halting sites in the City, with **a possible 3rd site**" [emphasis added] and that what remains in paragraph 4.2 falls short of what was identified as a need insofar as there is no mention now in the TAP of "a possible 3rd site". I do not accept this to be a persuasive substantive point. The wording "possible" in connection with the third site signifies not a present identified need, but the possibility of a future need. For this reason, I reject the applicants' argument in this respect.

The Traveller Accommodation Programme

15. The published 'TAP 2009-2013' is a 27-page document which is divided into an Introduction and Four Parts. It is the third programme since the introduction of the legislation. The Introduction refers to the Act and the establishment of a Local Traveller Accommodation Consulting Committee. Section 10 of the Act entrusts the City Council with the preparation of detailed accommodation proposals for travellers. In its Policy Statement, the respondent recognises travellers' identity as a minority group, "some of whom travel and strive to accommodate themselves in a culturally appropriate way". The Introduction summarises the contents of the TAP in the following way:-

> "Part I of the Plan details the Census of Traveller families undertaken in November '07, their current housing status, and the measures taken to-date to provide appropriate Traveller accommodation. Part II provides an analysis of the assessment of housing needs as carried out over Summer 2008, and specifies the accommodation needs of Travellers, while Part III outlines the policy of the City Council in relation to meeting the accommodation needs.
>
> Finally, Part IV specifies the strategy of the City Council for securing the implementation of the programme and specifies the actions to be taken during the specified times." (Page 3 of TAP)

16. The respondent completed an assessment of needs under s. 9 of the Act, and details the result in a table in part II of the TAP. This was compiled after extensive interviews with all the relevant traveller groups. Importantly, the TAP acknowledges that the need is constantly changing. The section relating to halting sites is set out here:-

"Accommodation Type	TAP '05- 08 stats	Stats at 1/10/08
Families in Permanent Halting Site	21	20 tenancies & 9 families outside without legal tenancies. A further 4 individuals sharing with family on 1 site. "

17. Noted also are the preferred type of housing (*e.g*. standard housing, group schemes, permanent residential caravan sites, *etc*.) of each family and a note of when applications were made for the first time.

18. Part III sets out the respondent's Traveller Accommodation Policy Statement in detail, and in it the respondent pledges to consult with travellers and to provide housing, including traveller-specific accommodation, which has regard for traveller culture. Without dwelling too much in detail on what is a strong positive statement of policy, I draw attention to para. 16 which provides as follows:-

> "16. Group housing schemes and other Traveller specific accommodation shall consist of moderately sized sites, having regard to compatibility of families and varying according to location and typically not exceeding 6-7 units".

19. Part IV finally addresses the core issues for consideration in this case, the first introductory paragraph reads:-

> "This Part highlights the need as defined, the objectives of the Five–Year Traveller Accommodation Plan in order to meet the need, and the current and proposed measures of Galway City Council to advance Traveller accommodation issues over a range of options. It also highlights the issues involved not only in the provision of Traveller Accommodation, but in the provision of all accommodation forms by local authorities."

20. Dealing with the 'Defined Need' and with regard to the halting sites the following is noted:-

> "4.1 Requiring permanent residential Halting Sites: 3
>
> • 11 families requesting a site outside the City within a 5 mile radius (2 of which were previously accommodated in group scheme in the City)
>
> • 6 families requesting a site in the Salthill/Knocknacarra area (none of these families are currently on the GCC. housing waiting list)
>
> • 9 families requesting a site in the Headford Rd area."

Paragraph 4.2 goes on to deal with 'Objectives and Targets – 2009 - 2013' and it is clearly noted there that it is an objective for the year 2012 to provide two halting sites. The final paragraph on objectives and targets summarises these objectives in the final sentence which is set out in bold print: "Effectively, this is accommodation provisions for 133 families in standard accommodation, with a further provision of 2 group schemes and 2 residential halting sites". [Emphasis added]

21. Paragraph 4.6 of the published TAP relates to 'Permanent Residential Caravan Parks – Halting Sites', and this now in its entirety reads:-

> "Consequential vacancies arising in all permanent Residential Caravan Parks are to be offered to Traveller families on the waiting list, who have identified a bay as meeting their housing need."

22. It is worth repeating that the only difference between the draft TAP and the published version after the motion was passed is the omission of the following two paragraphs which I now set out: (the draft and the published version are identical in all other respects).

> "A need has been identified for 2 additional residential halting sites in the City, with a possible 3rd site needed subject to applications being made and assessed by a third group of families.
>
> This Plan includes provision for 2 sites. The process of identification of these has commenced, and it is anticipated that sites will be identified in the near future.
>
> The provision is subject to site agreement as part of this plan by the elected members, Planning Approval under the Part 8 process, and available funding from the Traveller Accommodation Unit. All sites under consideration are currently in Galway City Council ownership."

23. Paragraph 4.7 notes the transient halting site at Carrowbrowne.

24. Finally, there is provision for a review by the respondent of the TAP at any time or at such time as the Minister may specify and, in any event, midway through the period. Indeed, a commitment is given to review it annually through its consultation mechanism.

25. As already noted, the respondent argues that the "joint motion" only deleted the final two paragraphs of paragraph 4.6, whereas the applicants argue that the "joint motion", as passed, meant that all references in the TAP relating to halting sites were to be removed. If the narrow interpretation is taken, the respondent says that there remains sufficient recognition in the programme (especially at paragraph 4.2) to show that it meets its statutory obligations.

26. What, then, is one to make of the published TAP in its published form and its proposal regarding the perceived needs and its implementation plans? Leaving aside any discussion with regard to the history and perhaps controversy relating to its adoption, I am satisfied that, in the published TAP, there is an explicit commitment to provide two residential halting sites by 2012 at paragraph 4.2 of the programme. Moreover, this commitment is expressed in bold print by way of summary at the end of paragraph 4.2. Significantly, as if to reinforce the commitment, this is the only sentence in the whole programme (other than headings) where bold print is used. This, in my view, meets the perceived and defined needs for halting sites identified by the respondent at paragraph 4.1 of the programme.

27. In interpreting and interrogating the TAP, I approach the document as an ordinary member of the public would do. This, I think, is the proper approach, and it is the same approach sanctioned as being the correct way to read and construct documents in the planning area. In *Re X.J.S. Investments Ltd*. [1986] I.R. 750, McCarthy J. stated at p.756:-

> "Certain principles may be stated in respect of the true construction of planning documents:-
>
> (a) To state the obvious, they are not Acts of the Oireachtas or subordinate legislation emanating from skilled draftsmen and inviting the accepted canons of construction applicable to such material.
>
> (b) They are to be construed in their ordinary meaning as it would be understood by members of the public, without legal training as well as by developers and their agents, unless such documents, read as a whole, necessarily indicate some other meaning . . ."

28. Relying on this, Barr J. in *Tennyson v. Corporation of Dún Laoghaire* [1991] 2 I.R. 527, said at pp. 535 to 536:-

> "In the light of these authorities it seems to me that a court in interpreting a development plan should ask itself what would a reasonably intelligent person, having no particular expertise in law or town planning, make of the relevant provisions?"

29. From the point of view of the reasonably intelligent person with no particular expertise in the area, this is how I think he would read the TAP as published: on its face, the published TAP meets the Council's own identified needs. The question then remains whether this analysis is affected by the motion passed by the Councillors on 9th February, 2009. I will now look at the minutes of the meeting of 9th February, 2009, to determine what the "joint motion" meant in the context of the debate.

The Council Meeting of 9th February, 2009

30. The information relating to the discussion that preceded this motion is to be found in the minutes of 9th February, 2009. The draft TAP 2009–2013 already circulated to members, was introduced by Mr. J. O'Neill, Director of Services. Having referred to the legislative basis for the TAP, he outlined the traveller accommodation already provided by the respondent and the further provisions contained in the new programme. He said that many of the submissions made to the respondent related to the proposed provision of halting sites and a robust debate followed with several different proposals as to how the matter should be progressed. The meeting was extended to complete the consideration of the item. Mr. O'Neill reminded the Councillors of their statutory responsibilities.

31. I set out here, for the sake of completeness, relevant excerpts from those minutes:-

> "A further debate followed in which Councillors sought clarification on their role and options in adopting the plan.
>
> Mr. J. O'Neill, in response to issues and questions raised, advised that the elected Council is entitled to amend the programme as presented, but he cautioned as to whether the Council would then be doing enough to meet the needs identified in preparation of the programme.
>
> The City Manager, in response to issues raised, advised that he supported Mr. J. O'Neill's comments regarding the timing of the adoption of the programme and the difficulties it posed for Councillors. He then referred to this Council's and previous Council's proud history of providing accommodation for travellers and stated that he respected the views of the Council. He advised, however, that he must also respect the views of the families and that includes the provision of halting sites and that he could not ignore this.
>
> He advised that if the Council adopts the plan which does not take account of families on the list, that he believed it may cause a difficult situation in the long-term. He cautioned against removing provision for halting sites from the plan and said that the Housing Authority could not ignore its obligations to provide accommodation as the stated preference of the applicant.
>
> He then outlined the three options open to the elected Council as set out in the report *i.e*.
>
> • Adopt the draft plan with alterations
>
> • Adopt the draft plan without alterations
>
> • Do not accept the draft plan
>
> He advised Councillors that if they do not adopt the plan the decision then falls to him.
>
> A further debate followed on the possible legal implications of adopting the plan without halting sites . . . The City Manager again advised against adopting the plan without provision for halting sites and said that this could create a very difficult legal position for the Council.
>
> Cllr. J. Mulholland then formally proposed his motion No. 1 as follows;
>
> That Galway City Council adopt as published the Draft Traveller Accommodation Plan 2009–2013 with the following alterations: that planned provision of two additional permanent halting sites be removed from said plan.
>
> This was seconded by Cllr. B. Walsh
>
> Cllr. D. Lyons then proposed his motion as follows:
>
> 'I propose that the Draft Traveller Accommodation Programme 2009 – 2013 be adopted subject to the following amendment:
>
> In paragraph 4.6.1 proposed (sic) to delete the following wording from the draft plan [the two paragraphs at 4.6.1 quoted above were then reproduced]'
>
> This was second by Cllr. D. McDonnell and it was agreed that they be considered as a joint motion.
>
> Cllr. Catherine Connelly then proposed the following amendment:
>
> 'That the concept/provision of halting sites in the City be reviewed in full consultation with the L.T.A.C.C. and a comprehensive report to come back before Council as soon as possible'.
>
> This was seconded by Cllr. Brolchain N. Ó.
>
> The Mayor, Cllr. P. Conneely, ruled that the motion be not accepted as an amendment to the main joint motion and that it be treated as a separate motion.
>
> He then called for a vote to be taken on the main joint motion which resulted as follows;
>
> In Favour: 11
>
> Against: None
>
> Abstentions: 4

> The Mayor declared the motion carried and called for a vote to be taken on Cllr. Catherine Connolly's motion as a separate motion.
>
> The vote was not taken and Cllr. Catherine Connolly requested that her protest at the motion not being treated as an amendment to the main motion to be recorded."

32. A few points are warranted. There can be no doubt that some Councillors were concerned about the provision of halting sites. It was clearly a political issue. There was also a good deal of procedural confusion in the handling of the issue. Allowing the matter to be resolved by way of a "joint motion" was less than satisfactory and certainly contributed to uncertainty. Further, it is not obvious from the minutes why the Mayor refused to accept the third motion as an amendment and it is not clear whether it was intended as an amendment to the first motion or to the "joint motion". Nor is it clear, though one can surmise why, when it was decided to treat the third motion as a separate motion, a vote having been called, was not, in the event, taken.

33. On reading the minutes, the question immediately arises as to what exactly does the "joint motion" mean in the context of the minutes recording the vote. It is clearly recorded that the motions of Councillor Mulholland and Councillor Lyons were taken as a "joint motion". It could not be argued that both motions were adopted as separate motions independently of each other. As tabled, the substance of the two motions are not the same: Councillor Mulholland's motion, the first motion tabled, is phrased in vague, general terms and, on its face, it refers to the removal of *all* references to halting sites in the draft TAP. In contrast, Councillor Lyons' motion is specific: it relates to removing only two specific paragraphs in paragraph 4.6 of the draft TAP. Referring to Councillor Lyons' motion, the minutes record that "this was seconded by Cllr. D. McDonnell and it was agreed that they be considered as a "joint motion".

34. Having carefully read the minutes, I have come to the conclusion, after some hesitation, that Councillor McDonnell, in seconding Councillor Lyons' motion, was of the view, after the debate, that the more specific terms of the second motion more accurately reflected what was intended. In proposing to take the two motions as a "joint motion", I am of the view that what must have been intended was that the first motion was to be modified by the second motion. This in my view is what was agreed. I think that it is a reasonable interpretation of what was done. It might be expected that the normal procedure in such matters would be followed, and that Councillor Lyons' motion would have been taken as an amendment to the first motion. In such circumstances, if the amendment was passed, there would have been no requirement to vote on the original motion which would have died when the amendment was passed. Perhaps, this was what the Councillors understood was happening. In any event, I reject as unreasonable that, in taking the simple vote on the "joint motion", what occurred was that the two motions were passed separately and independently of each other. If they were viewed by the Councillors as separate and conflicting motions, they would have been dealt with separately, or more probably, as already noted, with Councillor Lyons' motion being treated as an amendment to the first motion, and voted on in the first instance. That this was not the intention can be borne out by the eventual publication, subsequently, of the TAP, where only the two paragraphs at paragraph 4.6 were omitted. The programme was otherwise unaltered.

35. There are other reasons why this interpretation should be favoured. Mr. O'Neill and the City Manager were very aware of the respondent's legal obligations in relation to the TAP and had alerted the Councillors to their responsibilities. Since the City Manager did not feel obliged, however, to remind them of the possibility of being personally liable by way of surcharge if they acted illegally, it is not unreasonable to assume that the Councillors had, by that time, taken heed of these warnings. In such circumstances, it is reasonable that the less intrusive interpretation of the motion is what was in their minds by the time the vote was taken. I have come to this conclusion even though it has been brought to my attention that, in making a subsequent planning appeal to An Bord Pleanála for temporary permission to use the Carrowbrowne site as a "temporary transient site", one of the grounds of appeal seems to support the interpretation advanced by the applicants that the Councillors had voted against all new halting sites in the city. Significant as this may be, it must be borne in mind that it was only made in pleadings and, in any event, it is contradicted by the interpretation put forward by the City Manager more recently in his circular letter dated 8th July, 2009. In any event, I prefer this interpretation than that urged on me by the applicants, namely, that the "joint motion" meant both motions independently of each other, which in my opinion is untenable.

36. Having made this determination, I find that the continued references in the section headed 'Objectives and Targets-2009-2013' at paragraph 4.2 to two halting sites, having survived any purported excision, means that the integrity of the TAP was not damaged in this respect by the motion. The survival of paragraph 4.2 meant that the identified needs of the applicants for halting sites continued to be recognised in the programme and were addressed and provided for in that section. Because the removal of these two paragraphs did not emasculate the TAP, as I have found, the Councillors' motion had no substantive effect on the TAP, even when passed in its truncated form.

37. In the course of the hearing, counsel for the applicants indicated that although he had not pleaded it he had come to the opinion, on further reflection and research on the matter, that the Councillors had, in fact, no power to amend the draft TAP as submitted to them, and therefore, their attempt to do so was illegal. He felt that, although he had not pleaded it, it was right and proper that he should now bring this to the attention of the court. In my view, counsel for the applicants was correct to do so. Counsel for the respondents did not comment on this, having been taken by surprise, and apart from the applicants' concession, I have had no serious submissions on the matter from either side. Assuming, for the purposes of the argument, however, that this is true, my further comments are as follows: if the Councillors acted illegally in attempting to amend the draft, their attempt must fail, and the removal of any part of the draft TAP, including or additional to the two paragraphs at paragraph 4.6, was ineffective from the outset. In these circumstances, the Councillors' vote should be construed as adopting the draft TAP in its full form which should include the two excised paragraphs.

38. By way of summary, therefore, I set out my conclusions as follows:-

> (i) The "joint motion" voted on by the Councillors on 9th February, 2009, must be interpreted in a way that the motion of Councillor Lyons (the second motion) modified the general wording of Councillor Mulholland's motion (the first motion). This means that the "joint motion" was addressed to the deletion of the two paragraphs in para. 4.6 only, and not to anything else in the draft TAP.
>
> (ii) This motion, even if effective in law, did not have the effect of emasculating the TAP in the manner suggested by the applicants. Shorn of these two paragraphs, the TAP still contains sufficient recognition of the identified needs of the applicants in paragraph 4.2 of the programme.
>
> (iii) The Executive, since February 2009, has continued to fulfil its statutory obligations in that regard and has taken appropriate steps to achieve the objective in the programme for the provision of two halting sites. (See affidavit of Ms. Patricia Philbin, dated 2nd July, 2010.)

(iv) If the position is as the applicants' counsel now outlines to the Court, though not pleaded, that the Councillors had no legal power to amend the TAP, then, of course, their attempted amendment had no legal effect from the outset. In that event, the question remains as to whether the applicants have been adversely affected by the Councillors' actions and, if so, in what manner.

39. It is also of some significance to note that since these proceedings were commenced, the City Manager wrote a circular letter to the Councillors on 8th July, 2009, informing them of these developments and advising them that in spite of what was being alleged by the applicants, the Council's position was clear which he set out as follows:-

> "While the proceedings are still before the courts, the City Council has taken legal advice and will be defending the proceedings on the basis that the provisions of para. 4.1 (define need), 4.2 (objectives and targets, 2009 – 2013) and 4.5 (traveller specific accommodation), make it clear that it is an objective of the Council to provide the accommodation for travellers, including two halting sites (subject to availability of land and resources) and that the programme complies in full with all statutory requirements and ministerial directions."

40. It was indicated to the Court that not one Councillor had objected to this interpretation since the letter was sent even though a year has passed since they were informed.

41. It was decided at the hearing that I should determine this single issue first and that I would then hear submissions from the parties as to the effect of this holding on the reliefs sought in these proceedings. I propose to do this at an appropriate date in the near future.