THE HIGH COURT

RECORD NUMBER: 2024/4410 HP

BETWEEN

ALAN CROGHAN
AMANDA FARRELLY
MELISSA KELLY

PLAINTIFFS

AND

PAUL COLLINS
TANYA HENNIGAN
TOWNBE UNLIMITED COMPANY
THE COMMISSIONER OF AN GARDA SIOCHANA
RODERICK O'GORMAN
THE MINISTER FOR CHILDREN, EQUALITY, DISABILITY, INTEGRATION AND YOUTH
DUBLIN CITY COUNCIL
THE GOVERNMENT OF IRELAND
THE MINISTER FOR HOUSING LOCAL GOVERNMENT AND HERITAGE

DEFENDANTS

JUDGMENT OF MR JUSTICE DAVID HOLLAND DELIVERED 31 OCTOBER 2024

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INTRODUCTION

1. By Notice of Motion the Plaintiffs, litigants in person for all of whom Ms Kelly primarily spoke, seek the following interlocutory reliefs:

> *1. "An injunction against any of the above named defendants or any of their agents or employees from housing migrants at the Coolock Crown Paints site or its environs.*
>
> *2. A mandatory injunction on the relevant public representatives to adhere to the precautionary principle and halt this project immediately in accordance with the TFEU Article 191 …."*

Other reliefs were also sought but were not in reality pursued. Some, prematurely sought, may be pursued later – notably discovery, once pleadings have closed.

2. The principles applicable to the grant or refusal of interlocutory injunctions are authoritatively set out in **Merck**.[1] However, the motion was opposed on the ground that the Plaintiff's case was unstateable – did not raise a fair question to be tried. The Plaintiffs only briefly addressed the balance of convenience and then only by conclusionary assertions that the state of that balance was obvious. The Defendants' response was confined to assertions that the Plaintiffs' case was unstateable.

3. I should note that Ms Kelly is party to other, similar proceedings, in which similar interlocutory injunctive relief is sought.[2] Application has been made to strike out those proceedings as bound to fail. Judgment stands reserved on both motions in those proceedings. I do not see that this circumstance bears on my decision on the motion before me. An argument was made that the Plaintiffs' failure, in moving an application for an ex parte injunction, to bring Ms Kelly's other proceedings and the reservation of that judgment to the attention of Mulcahy J was in breach of their duty of candour. While the criticism may be merited and might be decisive in another, similar, case, as no ex parte injunction was granted and as the argument was not pursued before me with much vigour, I prefer not to decide this motion by reference to that argument.

4. I need not describe in detail the State's obligations as to the reception of applicants for international protection in Ireland. They have recently been described by O'Donnell J.[3] While those obligations may not per se and alone establish the legality of any particular steps taken to accommodate such applicants, it is notable that those the State's legal obligations include housing such applicants. It is also notable that O'Donnell J has by that judgment declared that the State's

[1] Merck Sharp & Dohme Corporation v Clonmel Healthcare Limited [2019] IESC 65, [2020] 2 IR 1.

[2] McGhee, Maguire & Kelly v Minister for Children & Integration et al, 2023/1424P. Interlocutory reliefs sought in those proceedings include,

- "An injunction against any of the above named defendants or any of their agents or employees from housing migrants in Mullingar Barracks or its environs."
- "A mandatory injunction on the relevant public representatives to adhere to the precautionary principle and halt the asylum program immediately in accordance with the TFEU Article 191 …"

[3] In The Irish Human Rights and Equality Commission v The Minister For Children, Equality, Disability, Integration and Youth, Ireland and The Attorney General [2024] IEHC 493.

> *"…….. failure to provide for the basic needs of newly arrived international protection applicants between 4 December 2023 and 10 May 2024, whether by way of the provision of accommodation, shelter, food and basic hygiene facilities or otherwise, is in breach of that class of persons rights pursuant to Article 1 of the Charter of Fundamental Rights of the European Union."*

O'Donnell J stated that he was,

> *"satisfied that the current State response to the needs of IP applicants who are acknowledged to be without accommodation is inadequate to the point that the rights of the class of person concerned in these proceedings under Article 1 of the Charter of Fundamental Rights of the European Union have been breached by the State. As noted by the CJEU[4] in clear and unequivocal terms in Saciri[5] and Haqbin[6], a failure to provide for the basic needs of applicants amounts to a breach of their right to human dignity."*

It is apparent from the affidavits in this case that the urgency – the emergency – represented by the need to provide such accommodation continues.

PLENARY SUMMONS – BRIEF DESCRIPTION

5. These proceedings were started by plenary summons issued on 16 August 2024, which was amended, as to the identity of the defendants, on 30 September 2024. The general indorsement of claim on the summons is not the usual short form endorsement. It states at some length the matters on which the Plaintiffs rely and the reliefs which they seek. It is no less valid by its length but it is impractical to set out here in full. While the Defendants have appeared, no Statement of Claim has been delivered. However, the Plaintiff's substantive pleaded complaints may be briefly summarised as follows:

- They object, on various pleaded grounds, to the accommodation of migrants at the former Crown Paints Site in Coolock, Dublin 17.

- They object, on various pleaded grounds and more generally, to the immigration of migrants to the State.

- They allege various wrongs on the part of An Garda Síochána in and about the policing of what they describe as peaceful protests against the accommodation of migrants at the former Crown Paints Site ("the Site"). In particular, and though the torts alleged are not identified as such, the First Plaintiff ("Mr Croghan"), a Coolock resident, alleges assault and battery of his person by members of An Garda Síochána on the occasion of what he asserts was a peaceful protest outside the former Crown Paints Site on 16 July 2024. Mr Croghan sets out in the Plenary Summons a detailed narrative account of the alleged occurrences on that occasion and essentially repeats that account on affidavit in this motion.

[4] Court of Justice of the European Communities
[5] Case C-79/13 Federaal agentschap voor de opvang van asielzoekers v. Saciri and Others ECLI:EU:C:2014:103.
[6] Case C-233/18 Haqbin v. Federaal Agentschap voor de opvang van asielzoekers ECLI:EU:C:2019:956.

The Second Plaintiff ("Ms Farrelly"), a Coolock resident, makes similar allegations as to the policing of a protest on 15 July 2024 – though it is unclear if she complains of battery as opposed to assault. However, it should be said that these allegations did not feature – nor could they sensibly have done so – in the Plaintiffs' argument for the interlocutory injunctions which they seek.

- Various declarations are sought but in very non-specific terms – terms not related to the validity of specific and identifiable instruments. Notably there is no plea of the invalidity of the Class 20F planning exemption described below.

6. The reliefs sought in the summons are as follows:

1. An injunction against any of the above named defendants or any of their agents or employees from housing migrants in The Crown Paints Facility, Nos 1-3, Malahide Road, Coolock, Dublin 17 or its environs.

2. A declaration that the right of a family and or community to protect the safety and wellbeing of their children is a right protected by Bunreacht na hÉireann.

3. An order of mandamus on the relevant defendants to adhere to the precautionary principle and halt this project immediately in accordance with the TFEU Article 191 (ex Article 174 TEC).

4. A declaration that certain acts outlined in this matter are an infringement on the unenumerated natural and inalienable rights as enshrined under Article 40.3 of the Constitution of Ireland.

5. A declaration that the decision to accept mass unvetted asylum migration into Coolock is an infringement of the TFEU Article 191 …….. for failure to adhere to the precautionary principle.

6. A declaration that the international protection related legislation and the actions of certain plaintiffs are in breach of the Aarhus convention and related legislation because of lack of transparency, lack of access to data regarding safety and environmental risk assessment protocols and lack of public participation in the decision making process.

7. A declaration that the international protection related legislation is contrary to the constitution of Ireland and the ECHR because it is discriminatory.

8. A declaration that the Garda Síochána acted in a breach of their oath and in a manner repugnant to the constitution the ECHR and the international convention of civil and political rights.

9. An order of disclosure for the following: (omitted as not here relevant).

10. An order of mandamus for The Chief Superintendent to investigate all criminal matters relating to unvetted migrants being trafficked or otherwise entering the country without documentation and an effort to ascertain their true identity in order to deport dangerous criminals.

11. An order of mandamus on the chief superintendent to investigate allegations of "provocateurs" operating in and around the Site and of police brutality and of possible foreign agents operating without identification as part of the so called "riot squad".

12. Interim and interlocutory relief.

13. Leave to add further plaintiffs and defendants as the situation progresses as this summons was compiled in urgency because of current events.

14. Costs and expenses.

15. Reasonable accommodation as a lay litigant.

LITIGANTS IN PERSON

7. While she did not seek special privileges as a lay litigant, my perception is that Ms Kelly, though clearly industrious and a lay litigant of at least some experience,[7] found the hearing of the motion somewhat frustrating. On occasion she let that show – though, of course, that does not affect my substantive decision here. Given also the relief sought in the Plenary Summons by way of "Reasonable accommodation as a lay litigant" it may assist, however, to briefly refer to the way in which the Courts deal with cases brought by lay litigants. There are in this respect a starting point, an underlying reality and two competing tendencies which must be balanced in the particular case with a view to maximising the interests of justice as between the parties.

8. The starting point is the constitutional right of access to the courts: anyone can exercise such access and need not retain a lawyer to do so. The underlying reality is that most litigants retain lawyers for very good reason: law and litigation are often complex and difficult. Lawyers' expertise and experience in law and litigation are generally a considerable advantage in litigating and when litigating against opponents represented by lawyers, lay litigants are typically at a disadvantage accordingly. The courts, in assisting lay litigants, attempt to a limited degree to ameliorate that disadvantage. However, and as to the competing tendencies, the courts can assist lay litigants only to the degree that such assistance is compatible with the courts' overarching duty to maintain neutrality and open-mindedness as between the parties until the point of decision. This overarching duty in practice limits the assistance the courts can give to lay litigants. Litigation is adversarial and the court cannot, by assisting an unrepresented party, unfairly deprive another of a litigation advantage to which it is properly entitled.

9. Humphreys J has recently said in **Kelly**[8] that a court may extend a degree of latitude to a lay litigant to ensure that she is not unduly disadvantaged by ignorance of procedural requirements. That latitude may

[7] See Affidavit of David Delaney 7/10/24 §12 & 13.
[8] Kelly v An Bord Pleanála & National Transport Agency [2024] IEHC 364 §65, citing ample authority.

include endeavouring to facilitate such a litigant in framing her submissions so as to bring out the real issues in dispute. Such an exercise does not inherently constitute unfair prejudice to other parties and is instead aimed at arriving at a more level playing field. It can result, as it did in this case, in a somewhat unorthodox sequence of presentations – not least as it is often prudent to ask the assistance of counsel for the represented litigant, somewhat out of turn, to illuminate the matters at issue. But such assistance to litigants in person should not be taken to the point of unfair prejudice to the other side and such latitude does not extend to the application of different legal tests.

10. Ultimately, a litigant in person is subject to the same substantive and procedural legal rules as other litigants. As the Supreme Court observed in **Munnelly**,[9]

> *"However, any litigant whether represented or unrepresented must obey the same fundamental rules, and a self-representing litigant must adhere to the same principles as are applicable to proceedings in which the parties are represented by lawyers. The Court is entitled to seek precision and clarity from all parties, as that is essential if the Court is to be in a position to best perform its function and administer justice between them."*

And as the Court of Appeal observed in **Fox**,[10] citing **Dowling**,[11]

> *"…while acknowledging that the lay applicants are not legally represented and that the courts generally will, in those circumstances, endeavour to ensure that unrepresented parties are not unfairly prejudiced, it nonetheless remains the case that parties cannot expect to benefit by being unrepresented to the extent of being permitted to conduct their proceedings in a way that would not be allowed to a represented party."*

11. In **Paes**,[12] Bradley J recently repeated the important point that, while the court will assist a lay litigant, *"a party with legal representation should not be unfairly penalised because his opponent does not have legal representation …".*

THE TOWNBE DEFENDANTS & BRIEF DESCRIPTION OF THE PROPOSED DEVELOPMENT AT THE CROWN PAINTS SITE

12. Most of the defendants need not be particularly described. The First Defendant ("Mr Collins") is a Director of and the Second Defendant ("Ms Hennigan") is employed as Managing Director of the Third Defendant, ("Townbe"). Townbe is part of the "Remcoll" group of companies. Save where otherwise apparent, I will use the name "Townbe" to collectively refer to Townbe itself, Mr Collins, Ms Hennigan and the Remcoll group companies. Their role in the matters of concern to the Plaintiffs is not pleaded. However,

[9] Munnelly v Hassett [2023] IESC 29 §41.
[10] Fox v The Data Protection Commissioner [2024] IECA 92 §27.
[11] Dowling & Ors v The Minister for Finance & Ors [2012] IESC 32 §4.7.
[12] Paes v O'Connor [2024] IEHC 199 §54, citing Flynn v Desmond [2015] IECA 34 §19.

it is clear on the papers that Townbe is the leasehold owner of the "Coolock Accommodation Centre" at the former Crown Paints Site and intends to develop it for use as accommodation for International Protection Applicants – primarily by erecting 230 prefabricated accommodation units thereon. That proposal is being appraised by the Minister for Children, Equality, Disability, Integration and Youth. No contract has been signed by the Minister in that regard.

13. Townbe says that, its attempts to develop the Site having been frustrated in mid-July 2024 by public disorder, arson and criminal damage (in which participation by the Plaintiffs is not alleged), it will not resume the attempt unless and until both An Garda Síochána and Townbe itself are satisfied that it is safe to do so. That is not the position at present.

14. The affidavits of David Delaney, Assistant Secretary General in the Department of Children, Equality, Disability, Integration and Youth, depose to the extent and the urgency of the challenges in providing for the accommodation of large numbers of immigrants to Ireland. He observes, correctly, that the Plaintiffs' case is framed largely (though not entirely) in terms of concerns – in large part policy concerns - relating to migration into Ireland generally, rather than in terms of specific issues relating to the housing of Applicants for International Protection at the Site. He says the proceedings are a collateral challenge to Ireland's immigration system writ large. For example, a key concern of the Plaintiffs is the decision of the Government to opt in to seven legislative measures of the EU Migration & Asylum Pact. He characterises that as a concern neither stateable nor justiciable. With all these observations I agree – save to clarify that, in my view, the assertion of a collateral challenge is made in the colloquial rather than the technical legal sense. Its gravamen is an attempt to litigate non-justiciable Government policy. Also, and of course, law underlain by Government policy is justiciable even if the underlying policy is not.

THE PROPOSED DEVELOPMENT & ITS PLANNING STATUS

15. It is clear from the papers that Townbe intends, broadly, two elements of development of the Crown Paints Site:

- The erection of 230 prefabricated modular residential units suited to "small families" and capable of accommodating 741 persons.

- The use of the development thus erected as an IPAS[13] Accommodation Centre. Whether that use will be confined to "small families" I am unclear – nor do I see that question as relevant to any issue I must decide.

[13] IPAS is the International Protection Accommodation Service

16. Whereas Townbe's stated intent is to operate the IPAS Accommodation Centre once built, it says that it, as yet, has no contract with the State to do so and cannot say for sure that it will obtain such a contract. I do not see that caveat as of weight in any matters I must decide. What matters is that Townbe owns the lands, intends to (and has attempted to) erect accommodation thereon and intends to operate an IPAS Accommodation Centre thereon. I do not see that any lack of certainty as to whether and with whom and in what terms the State may ultimately contract for provision of those services on the Site would prevent my granting an injunction, it were otherwise right to do so, restraining Townbe from carrying out its stated intention of housing applicants for international protection on the Site.

17. By letter dated 10 April 2024, Downey Planning Consultants, for Townbe, notified Dublin City Council ("DCC") of its intent to avail, as to a proposed development of the Crown Paints Site, of the class of exempted development for which Schedule 2, Part 1, Class 20F, PDR 2001[14] provides. In other words, they asserted entitlement to proceed with such a development without needing planning permission to do so. It is agreed by all that there is no such planning permission. It is important to describe the development proposed in the notification, which was specific to the assertion of a Class 20F exemption. It reads as follows:

> *"Proposal is for temporary change of use from warehouse/light industrial building to provide temporary accommodation for international protection applicants via the construction of 230 no. modular residential accommodation units for total of 741 no. international protection guests and ancillary works."*

The intended start date of the new use was identified as 1 May 2024.

18. Class 20F was inserted by the Exempted Development # 4 Regulations 2023[15] and it reads as follows:

Column 1 **Description of Development**	**Column 2** **Conditions and Limitations**
CLASS 20F Temporary use by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth to accommodate or support displaced persons or persons seeking international protection of any structure or part of a structure used as a school, college, university, training centre, social centre, community centre, non-residential club, art gallery, museum, library, reading room, sports club or stadium, gymnasium, hotel, convention centre,	1. The temporary use shall only be for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection. 2. Subject to paragraph 4 of this class, the use for the purposes of accommodating displaced persons shall be discontinued when the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4 March 2022[16] comes

[14] The Planning and Development Regulations 2001 as amended..
[15] The Planning and Development (Exempted Development) (No. 4) Regulations 2023. SI No. 376 of 2023.
[16] Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection.

Column 1 **Description of Development**	**Column 2** **Conditions and Limitations**
conference centre, shop, office, Defence Forces barracks, light industrial building, airport operational building, wholesale warehouse or repository, local authority administrative office, play centre, medical and other health and social care accommodation, event and exhibition space or any structure or part of structure normally used for public worship or religious instruction.	to an end in accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001.[17] 3. The use for the purposes of accommodating persons seeking international protection shall be discontinued not later than 31 December 2028. 4. Where the obligation to provide temporary protection is discontinued in accordance with paragraph 2 of this class, on a date that is earlier than 31 December 2028, the temporary use of any structure which has been used for the accommodation of displaced persons shall continue for the purposes of accommodating persons seeking international protection in accordance with paragraph 3 of this class. 5. The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development. 6. 'displaced persons', for the purpose of this class, means persons to whom temporary protection applies in accordance with Article 2 of Council Implementing Decision (EU) 2022/382 of 4 March 2022. 7. 'international protection', for the purpose of this class, has the meaning given to it in section 2(1) of the International Protection Act 2015 (No. 66 of 2015).[18] 8. 'temporary protection', for the purpose of this class, has the meaning given to it in Article 2 of Council Directive 2001/55/EC of 20 July 2001."[19]

[17] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.
[18] International Protection Act 2015 s.2(1) of the "international protection" means status in the State either— (a) as a refugee, on the basis of a refugee declaration, or (b) as a person eligible for subsidiary protection, on the basis of a subsidiary protection declaration;
"refugee" means a person, other than a person to whom section 10 applies, who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside his or her country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it; "refugee declaration" means a statement, made in writing by the Minister, declaring that the person to whom it relates is a refugee;
[19] Article 2 For the purposes of this Directive: (a) 'temporary protection' means a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary

19. As appears from Condition 5 of Class 20F, DCC's prior approval of or agreement with development within the scope of Class 20F is not required. Townbe's only obligation before developing in reliance on Class 20F is to notify DCC. No doubt, if DCC disagrees that Class 20F applies it could, in the first instance tell Townbe of its view and, in the second, take enforcement proceedings against the development if needs be – as could any other person.

20. As to the scope of Class 20F, it expressly exempts only the use of a structure. It does not expressly exempt any works required to prepare the structure for such use. This is readily apparent from its terms. On 29 April 2024 Humphreys J in **Dromaprop**,[20] considering Class 20F, repeated the orthodoxy that planning exemption classes are strictly construed. See also **Stapleton, Doorly** and **Dillon.**[21] That is so as reliance on exemptions puts a developer in a *"special and, in a sense, privileged category. They permit the person who has that in mind to do so without being in the same position as everyone else who seeks to develop his lands, namely, subject to the opposition or views or interests of adjoining owners or persons concerned with the amenity and general development of the countryside."*[22] Humphreys J held on the facts of **Dromaprop** that the Class 20F exemption was available to Dromaprop, as to the use of the premises at issue in that case but

> *"That doesn't mean that the internal works are all lawful or that retention permission would not be required by the letter of the law …… First of all, the development consisting of the non-conforming works and the development consisting of the new use are separate developments legally. The legality of the latter is not dependent on the legality of the former. I am rejecting the council's argument to the contrary."*

21. Counsel for DCC accordingly accepts that the Class 20F exemption does not exempt works which otherwise require planning permission. That said, it is difficult to see how structures such as a light industrial building, airport operational building, wholesale warehouse or repository, local authority administrative office, or play centre could, without appreciable works, be changed to use for accommodation. Perhaps such works might benefit from a different exemption – for example if they were confined to internal works. Indeed, though it was not invoked in the notification to DCC (The notification requirement is particular to Class 20F and is not usually required to avail of an exemption), counsel for Townbe indicated, having taken instructions, that it relied on the exemption set out in s.4(1)(h) PDA 2000[23] – which encompasses:

> *"(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;"*

protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection;

[20] Leitrim County Council v Dromaprop Ltd [2024] IEHC 233.

[21] Stapleton v ABP & Savona [2024] IEHC 3 §210, Doorly v Corrigan [2022] IECA 6 §83. Dillon v Irish Cement Ltd. [1986] 11 JIC 2602, 2004 WJSC-SC 266.

[22] Dillon, cited in Doorly.

[23] Planning & Development Act 2000.

22. Mr Collins, in an affidavit sworn on 18 July 2024 in other proceedings relating to the same proposed development, a copy of which affidavit is exhibited in these proceedings, describes the proposed development as follows:

> *"We assemble the living spaces like an apartment complex. Everybody in the place will have their own door. It caters for small family units. You have kitchen facilities, laundry, sports facilities, which are all shared. Playgrounds, running tracks, gyms, inside the complex. It's all undercover, but 50% of the roof structure is removed, so it's an inside-outside concept."*

23. On the view I take of the proceedings, I need not now decide whether a proposed development thus described, either as to works or use, would fall within either exemption discussed above – Class 20F or s.4(1)(h). Nor need I take a view whether DCC was correct to reject, by reference to Class 20F, a complaint by a member of the public (not a Plaintiff) of unauthorised development on the Site. However, counsel for the State advises that the State intends, of prudence rather than of legal obligation, to require as a precondition to making any contract for the operation of an IPAS Accommodation Centre on the Site, that a declaration will have been obtained under s.5 PDA 2000 whether anything done or to be done on the Site is or is not development or is or is not exempted development within the meaning of the PDA 2000. Of course, and as discussed at the hearing, any person may seek such a declaration and thereby participate in the planning process.

24. Counsel for Townbe suggested, on instruction, that the words "*50% of the roof structure is removed*" do not mean "*50% of the roof is removed*". He says they mean that the roof will stay in place with only substructure being removed. I do not find that a readily apparent interpretation. I accept his proposition that some allowance can be made as to the precision of an affidavit sworn overnight in conditions of considerable urgency and involving public disorder in the vicinity of the Site (none of which is blamed on the present Plaintiffs). Nonetheless, Townbe only has itself to blame if others believe on foot of that affidavit, perhaps wrongly, that their proposed development involves removing 50% of a roof which, another document exhibited before me strongly suggests, has a considerable asbestos content – all as part of a development they have described as an "*inside-outside concept*". Imprecision in an affidavit is at the risk of the deponent, not of the reader.

25. Incidentally, and as I understand, whatever of the roof is to be removed, it has not yet been removed. No doubt if that work starts appropriate steps can be taken in the event of a fear that the work is being done unsafely as to asbestos removal. Here it suffices to say that the plenary summons does not mention asbestos or allege the breach or intended breach of any identified laws governing asbestos removal.

26. At the hearing I respectfully suggested to Townbe that, as a practical matter, the community engagement espoused by Townbe and the State would benefit from publication by Townbe of a precise, comprehensive and complete description of their proposed development in accordance with the general

principles of transparency and consultation underlying community engagement. Given that opposition to the project does not, as I understand, relate primarily to the works or to their resultant structures but relates to their use, it would be naïve to imagine that on such publication such opposition would cease. That said, it seems that Townbe has already proffered that publication as Mr Duffy, its deponent, points out on affidavit that the plans for the proposed development have been lodged with Dublin City Council via the Building Control Management System and are publicly accessible there.

LEGAL BASIS OF CLAIM – A FAIR ISSUE TO BE TRIED?

27. It is, of course, necessary that a plenary summons set out, if only briefly, the legal basis of the claim. Notably, in the factual context and as Ms Kelly accepted, the plenary summons here does not invoke **s.160 PDA 2000**[24] and so does not seek an injunction on the basis for which s.160 provides: *"Where an unauthorised development has been, is being or is likely to be carried out or continued, …".*

28. When asked to state the legal bases on which she alleged a right of action capable of supporting the interlocutory injunctions which she seeks, Ms Kelly nominated two:

- the precautionary principle as established in EU environmental law. She cites **Article 191 TFEU**.[25]
- the obligations as to public participation in environmental processes for which the **Aarhus Convention**[26] provides.

29. The precautionary principle is, of course, a vital principle of EU law generally and of EU environmental law in particular. Article 191.2 TFEU reads:

> *"Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay."*

30. However, Article 191 does not have direct effect in Irish law and the precautionary principle is not justiciable in our courts on a freestanding basis. Breach of the precautionary principle is not, per se, actionable in in our courts. The precautionary principle is an interpretive principle applicable to formal legal instruments. Nor, for that matter, is the preventive principle or the "*aim*" of "*a high level of protection*" of

[24] Planning and Development Act 2000.
[25] The Treaty on the Functioning of the European Union.
[26] Convention On Access To Information, Public Participation In Decision-Making And Access To Justice In Environmental Matters, Done At Aarhus, Denmark, On 25 June 1998.

the environment actionable in in our courts – as to which see **Power**.[27] As was observed in a recent ALAB case:[28]

> "*Scott[29] asserts that "The precautionary principle is controversial, in part because it is often mis-represented and misunderstood" and that there are many different versions and no agreed definition of it. ……. The caselaw review by Macken J[30] in Hygeia[31] leads her to conclude (as does Scott) that "the precautionary principle is highly technical in nature and subject to considerable constraints in its application." This seems consistent with the observation of the EU Commission in 2000[32] that "The issue of when and how to use the precautionary principle, … is giving rise to much debate, and to mixed, and sometimes contradictory views"[33].*

31. In short, a case pleaded merely on the precautionary principle is unstateable. On this ground alone, the claim, made on an interlocutory basis, for "*A mandatory injunction on the relevant public representatives to adhere to the precautionary principle and halt this project immediately"* must be rejected.

32. As to reliance on the Aarhus Convention, as an instrument of international law, it too has no direct effect in Ireland and is not directly justiciable in the Irish courts – that is the effect of Article 29.6 of the Constitution. The issue of the place of Aarhus in domestic law was discussed in **Jennings**.[34] I invited Ms Kelly to identify precisely the provisions of domestic law on which she relied as giving effect to the Aarhus right of public participation for which she contends. She did not do so – expecting, it seems, that I would do that for her. I explained that the onus was on her to assert reliance on a particular domestic law and, of course, she would have to demonstrate also its stateable application to the factual matrix she alleged. In my judgement, she failed to do either.

33. In any event, one must pose the question: public participation in what? The right to public participation is not free-standing. The Aarhus Convention right, where it exists as transposed into Irish law, is to public participation in environmental law "decision-making" by public authorities. There must be a decision-making process in which the question of public participation arises. The only even arguably relevant process of which I am aware in this case is Townbe's notification to DCC of its intention to develop in reliance on exemption Class 20F. As has been noted, that is merely a notification obligation – no development consent, or like decision, is required. Indeed, the whole point of the exempted development

[27] Power & Wild Ireland Defence v ABP, the State & Knocknamona Windfarm [2024] IEHC 108 §64 et seq.
[28] SWI, IFI, Sweetman & Ors v ALAB et al [2024] IEHC 421 §515 et seq
[29] Op cit.
[30] A Judge of the European Court of Justice from 1999 to 2004.
[31] Hygeia Chemicals v Irish Medicines Board [2010] IESC 4 – Macken J, citing Case T-74/00 Artegodan and Case T-13/99 of Pfizer Animal Health v Council of the European Union [2002] ECR II/ 3318.
[32] Communication from the Commission on the precautionary principle, Brussels, 2.2.2000, COM(2000) 1 final.
[33] §515.
[34] Jennings v An Bord Pleanála [2022] IEHC 249 §45 et seq.

regime is that no development consent is required. And the exempted development regime is disapplied to any development of which EIA[35] or AA[36] is required[37] - in which event public participation occurs.

34. In short, the case pleaded on the Aarhus Convention is unstateable. As both legal bases on which the interlocutory injunctions were sought are unstateable, all claims for such reliefs are rejected.

THE PLAINTIFFS' FACTUAL PLEAS & AVERMENTS

35. The pleas on which the Plaintiffs' claims for relief are founded include a variety of matters to the pleading of which no present objection of the kind I articulate below can be taken for present purposes – though I do not thereby suggest they are well-founded in fact or stateable in law, or would survive application to strike them out as unstateable. The proper responses in many cases are political rather than from the courts. For example, the feelings of those who spend years on housing lists may be understandable but call for political response. The pleas that Coolock is a deprived and under-resourced area with social difficulties (including addiction), high unemployment and poor standards of living and is thereby unsuited to house immigrants may be more of a political than a legal argument and, if a valid legal argument, may or may not suffice to ground relief at trial. But that remains to be argued. The pleas of lack of transparency and public participation allegedly required generally and by the Aarhus Convention and pleas (such as they are) by reference to planning law are in a similar category. The significance to the proceedings of the pleaded invocation of such as Bunreacht na hÉireann, the Treaty on the Functioning of the European Union and the European Convention on Human Rights remains to be ascertained. The complaints in law as to policing will have to be met at trial but are irrelevant to the grant or refusal of injunctions as to the development or use of the Site.

36. However, other pleas and averments fall into a different category in the absence of any evidence capable of supporting them as contributing to the claim before me for interlocutory relief. It is important to say that ordinarily such utterances might be regarded as political in nature and in greater or lesser degree protected by rights of free speech. But, broadly, the right to free speech is a right to express one's views – not a right to not have one's views criticised or rejected by others – whether or not as baseless. Be that as it may, here the pleas are made in support of applications for injunctions. Indeed, the Plaintiffs cite **TD v Minister for Education**[38] for a proposition that the fact that a court decision may affect policy does not necessarily mean a breach of the separation of powers and so a court *"on very rare occasions"* may have a jurisdiction, and even a duty, to make a mandatory order against another branch of government. Accordingly, it is proper that I, as a judge, consider these pleas and averments, interpret them, and take a view on their weight, if any, in support of applications for injunctions, in circumstances in which, as I say, I consider that no evidence in their support has been adduced. While some such pleas, taken in isolation, may

[35] Environmental Impact Assessment within the meaning of Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment as amended.
[36] As provided for by Art 6(3) of the Habitats Directive - Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, as amended.
[37] S.4(4) PDA 2000.
[38] [2001] 4 IR 259 , [2001] 12 JIC 1702.

have innocuous meanings, they must be interpreted in context – each in the context of the others and also in the historical and sociological contexts which they invoke.

37. The following pleas fall, in my view into this category:

- The Plaintiffs are "*indigenous*" to Ireland. *"The third named plaintiff is a living woman, an indigenous citizen of Eire and a mother of 6 children under 18."* These are examples of pleas uncontroversial in themselves but seen in a somewhat different light in the context of the other pleas.
- "*The serious issues in relation to protecting our Culture and our Heritage and Migration*."
- The "*Implantation of non-EU Foreign Nationals*" which, due to Garda action, has *"instilled sheer fear into the hearts and minds of the People of Coolock".*
- "*We, the People of Coolock, feel that this implantation of un-vetted migrants into Éire is in fact an invading Army condoned and facilitated by the Irish Government and all 'Opposition' Parties*."
- *"… fears regarding Crown IPAS accommodating 500+ (unvetted migrants)."*
- *"There is currently a discriminatory policy implemented by our Government to apply for a Taxi license, whereby, non-nationalist pass rate required is 30% and Indigenous Irish pass rate is 70% requirement, flooding the Taxi market and affecting my ability to provide for my family."*
- *"Through my work as a taxi driver I have seen a huge rise in crime around the City Centre, in particular, knife crime, carried out by predominantly foreign nationals. I fear that this will be mirrored if 500+ unvetted migrant men move into Crown paints. The close proximity to our only Leisure facilities in Coolock, being the LeisurePlex and the Odeon Cinema, where young unaccompanied children often frequent, is a cause for serious concern and fear for the majority of mothers and fathers that I have spoken to."*
- *" …… serious concerns that the mass importation of unvetted and unscreened migrants from abroad under various international protection schemes has been undertaken in breach of numerous national and international laws and poses a serious threat to her children[39] and her environment."*
- *"…… it is unquestionably an unenumerated and natural right of mothers to protect them[40] from any and all harm such as the increased crime rates and infectious disease rates that occur as a result of un-vetted mass migration."*
- *"This plaintiff is an Irish nationalist and republican and as such opposes plantation level migration as it is likely to disrupt our indigenous culture and way of life."*
- *"…… there seems to be no concern from the same authorities that imposed these mandates in the rise in TB and HIV in the country as a result of migration from countries with very high levels of these and other diseases and their effects on the indigenous population and environment."*
- *"The plaintiffs have serious concerns about the ramifications the high levels of serious diseases such as TB and HIV in most of the countries of origin of these migrants both from a standpoint of human health and the possibility of contamination of the environment and as such constitute a serious breach of the precautionary principle."*
- *"The plaintiffs have serious religious/cultural/moral objections to what appears to be another plantation of their native land like those which our ancestors were subjected to."*

[39] The third named plaintiff pleads that she is a "is a living woman, an indigenous citizen of Eire and a mother of 6 children under 18."
[40] their children.

- *"There are already a large number of migrants as well as Native homeless people living in tents on the streets by this unsustainable influx of migrants and this will lead to an increase in disease, environmental damage and social problems which will create conditions that the plaintiffs believe constitute Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; of the indigenous population contrary to article 2, C, of the UN convention on genocide."*

38. Of the content of affidavits, I give a sample only. Insofar as it might be suggested that I have taken them out of context, I reject any such suggestion as I am of the view that the number of instances given below suffices to establish the context.

39. The affidavits of Melissa Kelly include the following:

- *"I say and believe that the unsustainable mass migration that is in effect the fifth plantation of Eireann is unlawful and detrimental to the indigenous people of this nation."*
- *"It appears that the virulent anti-Nationalists that have manoeuvred themselves into positions of power in our state are not content with displacing us with un-vetted and often hostile strangers, erasing our culture and making us once again second or third class citizens in our native land, but now they want to take our ability to even feel angry about it. Even Cromwell did not have the audacity to attempt this."* (In my view only the underlined words here fall into the category I have been describing.)
- "*We have a chief of police who was found to have colluded with loyalist death squads" … which nobody could see as anything but a loyalist and former British agent threatening Irish Nationalists with internment for no crime other than being Irish nationalists. It seems that his conditioning would lead him to believe that "**being Irish means we're guilty, so we're guilty one and all"** ……. Mr Harris who is filled with and motivated by hate. His mask has slipped ……. "*.[41]
- *"A Fianna Fail councillor (of migrant origin) recently said that those involved in the riot in Dublin, (which I believe was actually a set up as explained below), should be shot or beaten to death."*
- An entire section is headed – "*Reasons why I believe that this unsustainable level of plantation level migration is another attempt to genocide the indigenous nationalist Irish*". It states that *"By "genocide" we mean the destruction of a nation or of an ethnic group."*
- Genocide is *"a coordinated plan of different actions **aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves**. The objectives of such a plan would be the disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group."*[42]
- *"Twice, in the twelfth and thirteenth centuries and again in the sixteenth and seventeenth, military conquest and the planting of foreign settlers changed forever the demographic makeup of the*

[41] Emphasis in original.
[42] Emphasis in original.

population, and with it the language, the culture, the religion and the social and political structure and one does not need to be a join the dots expert to see that this is clearly history repeating."

- *"…….. the plantation of hostile strangers has been a colonialist divide and conquer device used to eradicate indigenous peoples since time immemorial."*
- *"Most of these people are not refugees, they are instead people who are stealing aid from actual refugees, who are dying in camps worldwide waiting for aid that will never come because these people and all the NGO/legal types have stolen their aid."*
- Ms Kelly cites what she alleges to be *"The justified anger and concern felt by the indigenous population to what they rightly see as another attempt at genocide by plantation of the native men and women of Eireann."*
- Ms Kelly gives a specific account of the historical plantations of Ireland and their results of *"war oppression and misery for the indigenous Irish"* – her invocation of them is not in doubt.
- The pending hate crime legislation is described as *"a clear and obvious attempt to cover up the genocide of the native Irish".*
- Ms Kelly repeatedly describes migrant accommodation as "*these plantation centres*".
- *"This injunction could not possibly be more urgent, and to fail to grant it has the potential to ignite civil war."*

40. The grounding affidavit of Amanda Farrelly, sworn 21 August 2024, identifies her as the taxi driver who, in the Plenary Summons, blames predominantly foreign nationals for a huge rise in knife crime and discrimination in favour of non-national applicants for taxi licenses.

41. The grounding affidavit of Alan Croghan, sworn 21 August 2024 includes the following:

- "*I have spoken at many Peaceful Protests regarding the very serious issues in relation to protecting our "Culture", our "Heritage, our "Island" and the dire consequences we, the Irish Indigenous People face by the secret plantation of predominantly illegal, unvetted, No Passport Holding Military aged Muslim and South African males into Ireland*."

- *"…. Just as disturbing that these unvetted undocumented Male Muslims and Male South Africans are allowed to enter our island with no passports."*

Note in these passages the interweaving of genuine concerns – the arrival of migrants from safe countries or without passports (though, even then, one must recognise lack of papers as, in certain circumstances, a genuine characteristic of some who need asylum) – with other alleged concerns. Indeed, this interweaved mobilising of genuine concerns is a general feature of the Plaintiffs' pleadings and affidavits but does not camouflage the other content.

42. I am conscious that, as his proceedings emphasise, Mr Croghan is in serious ill-health. It may just be possible to view his utterances less disfavourably in that light. However, he has taken the considerable step of becoming a plaintiff in an action in the High Court. The High Court is not just another soap-box or social

media outlet. Nor, for that matter, is it a public protest. In seeking to hold others legally and coercively to account by proceedings, plaintiffs accept that they may also find themselves held to account in at least some respects. While I detected some unease at the hearing, the fact remains that the other Plaintiffs, in a very formal way by joining with Mr Croghan in launching these proceedings, and the non-party supporters of these proceedings, have chosen to associate themselves with the formal expression of his sentiments. Presumably, the other Plaintiffs knew of this content of his affidavit before it was filed. If they did not, they should have and the fact demonstrates how one may easily lose control of forces one unleashes.

43. The word "un-vetted" has achieved a recent prominence in certain corners of public discourse. It is a code word for "criminal" or, at least, that the person of whom it is used may well be a criminal and a danger to society and perhaps to children in particular. By applying it to immigrants in particular and in circumstances in which very many indigenous people are "un-vetted", the message is conveyed that immigrants pose a special risk and threat not generally posed by the indigenous. As was said in **McGreal**[43] communities, or for that matter parts of communities, may not as a matter of legal right vet or veto the arrival of those who, otherwise legally, seek to live amongst them, whether they be Irish citizens (many of whom are "unvetted"), EU citizens (many of whom are "unvetted"), stateless persons or others. In Ireland, "vetting" is not a precondition to living somewhere. In such "vetting" lies segregation.

44. Ms Kelly disavows racism. I make no finding in that regard. However, citizens have at least some responsibility not merely for what they mean to say but for what others may reasonably understand them to have said – for the foreseeable effect of what they say on others. That is especially so as to the deployment of highly emotive, resonant, historical and provocative tropes, idioms, images, analogies and metaphors. To depose, as Ms Kelly does, that the Government's actions are worse than Cromwell's and amount to a plantation of foreigners, is to conjure in the mind, however much she might protest she does not intend it, images of racial discrimination (as she would have it, against indigenous Irish), massacre, starvation, dispossession, and expulsion.

45. The same is true of her appalling invocation of the concept of immigrants as instruments of genocide. She protests that the term encompasses so-called "*cultural genocide*" – but even on that basis the invocation is execrable. However the **UN Genocide Convention**[44] authoritatively defines genocide as follows:

> *"Article II*
> *In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*
> *(a) Killing members of the group;*
> *(b) Causing serious bodily or mental harm to members of the group;*
> *(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
> *(d) Imposing measures intended to prevent births within the group;*

[43] McGreal v Minister for Housing [2024] IEHC 520.
[44] Convention on the Prevention and Punishment of the Crime of Genocide Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948.

(e) Forcibly transferring children of the group to another group."

46. This definition has no doubt formed, and in any event reflects, the common understanding of the word genocide. Whatever she protests she intends, it is the meaning which Ms Kelly conveys, and must be presumed to have intended to convey, to others. Indeed, she specifically cites Article II (c) - in which I note in particular the word "physical". Placed, as Ms Kelly places it, in the context of the Cromwellian Plantation, the message to an Irish audience is as clear as is the clarion call to action it logically implies.

47. Though the concept of "*cultural genocide*" is not unknown to legal and academic scholarship in the context of international law,[45] the UN has made it clear that the Convention concept of genocide does not include "*so called "cultural genocide*"."[46] Indeed Bilsky & Klagsbrun, in arguing for a concept of cultural genocide, acknowledge that "*the Genocide Convention does not prohibit cultural genocide as such, and it is limited to its physical and biological aspects."* While it may be a concept influential in the political sphere or in the formation of specific legislation protective of ethnic or other identifiable groups or prohibitive of invidious discrimination, a free-standing allegation of "cultural genocide" does not represent a stateable case for an injunction at Irish domestic law. Even if I am wrong in that as a general proposition, there is no evidence before me which would render such a case stateable in the present case.

48. In my view, Mr Delaney is perfectly correct when he deposes, of the pleas and affidavit content I have described above, that *"This is not evidence at all, let alone evidence that establishes a basis for the grant of any reliefs sought in the application."*[47]

49. Absent evidence to support them and as they are pleaded, sworn to and marshalled by the Plaintiffs in support of their claim for interlocutory relief which they urge the Court to grant, I think it proper to say these pleas and averments are, to use a word which seems both old-fashioned and inadequate, disgraceful. They are to be fundamentally and unreservedly deprecated. They together comprise a vicious narrative of a kind which, by othering and dehumanising human beings, by categorising them as risk of contagion - disease-carriers, threats to children, and as criminals, by categorising them as being given discriminatory access to the employment of the "indigenous", by categorising them by religion and country of origin in the context of the purpose for which that was done, by describing them as a "*mass importation"* and so a threat to our culture and heritage, which has *"instilled sheer fear into the hearts and minds of the People of Coolock",* they invoke tropes familiar to anyone with any appreciation of the history of discrimination against peoples, races, religious believers and foreigners. My view whether they reflect hatred of migrants by the Plaintiffs, I will refrain from expressing. But if one is taken, as one is, to intend the foreseeable consequences of one's actions, and despite their protestations to the contrary, their clear intent is to bestir such hatred in others. The Plaintiffs have by these pleas and averments disclosed that they have taken an early step, but clearly a step, down a road which leads to racist xenophobia, discrimination and, history teaches us, not infrequently far worse.

[45] E.g. Bilsky & Klagsbrun, The Return of Cultural Genocide? The European Journal of International Law Vol. 29 no. 2, Oxford University Press, 2018.
[46] https://www.un.org/en/genocideprevention/documents/Genocide%20Convention-FactSheet-ENG.pdf. As Bilsky accepts.
[47] Affidavit sworn 7 October 2024 §50.

50. Any hesitation I might have had in forming that view, and I do not say I had any, is firmly dispelled by the invocation of the concept of "plantation". While not all Irish people, indigenous or not, will recollect the historical context, very many understand the general message conveyed by that word. It invokes the dispossession, extirpation, and expulsion of the Gaelic people – as the Plaintiffs put it, "our ancestors" - and Gaelic culture from large parts of Ireland. The best-known are, successively, the Plantation of Munster, the Plantation of Ulster and the Cromwellian Plantation. Whatever the truth of their detail, (and they had varying success from the point of view of the planters) they represent in the shared cultural memory of Ireland violence, injustice, impoverishment, starvation, misery, exile and the degradation of those supplanted. Their social and political legacy is still with us though, happily, the enmities and violence they produced are much faded and fading further – one hopes fast. However, the repeated and express invocation by the Plaintiffs of the concept of plantation is clearly intended to convey that the prospect of the dispossession, impoverishment and expulsion of the indigenous people of Ireland and their culture is again upon us – the threat now posed by immigrants generally and applicants for international protection in particular. Modernising the trope, the word "plantation" is a historically-framed and particularly Irish evocation, no doubt understood by appreciable numbers as such, of the baseless "Great Replacement" conspiracy theory. On a proper and contextual interpretation, these are, in my view, the viciously destructive meanings of the Plaintiffs' plea of plantation.

51. The Plaintiffs' papers are awash in meaningless conspiracy theories. One example will suffice. Ms Kelly complains in the following terms as to unidentified statutory instruments in the area of planning law:

> *"The minister who signed the statutory instruments was not the minister for the environment but the minister for planning and development, a seemingly deceptive sleight of hand, being that the planning and development post would seem to represent the social and economic pillar and not the environmental pillar, and to not clarify this would seem to be less than transparent ……"*

Ignoring the supposed dichotomy between planning law and environmental law, the allegation of a "*seemingly deceptive sleight of hand*" is clearly baseless.

52. It will be apparent from the foregoing that I reject completely the Plaintiffs' view that I should lend any weight to these pleas and averments in considering their application for an injunction. I should add that, while I did not enter into the detail, I did at the hearing forewarn the Plaintiffs in general terms of the views I have expressed above, so they could respond.

53. I should add that such minimal concern as is expressed in the Plaintiffs' papers for the conditions of accommodation of applicants for International Protection and for homeless migrants, when read in the context of those papers as a whole, in no substantial way diminishes the overall thrust of the content of those papers as described above.

54. Finally I wish to make clear that, while the Plaintiffs are clearly not alone in their views, I reject their attempt to incorporate "*the people of Coolock*", much less the "*vast majority*" of the Irish people or the "*indigenous people of Ireland as a whole*" as adherents to their views as I have recorded them above. Appreciable numbers of people have genuine concerns as to control of migration and those concerns are to be considered by the Oireachtas and the Executive and any resultant decisions carried into effect by legislation and executive action. But I have seen no evidence whatsoever for the Plaintiffs' claims that their views can be generally attributed to "*the people of Coolock*" or the Irish people generally.

INJUNCTION REQUIRING PUBLIC REPRESENTATIVES TO HALT THIS PROJECT

55. I have already rejected as unstateable the Plaintiff's reliance on the precautionary principle as underlying the mandatory interlocutory injunction sought against "public representatives". If, I am incorrect in this regard, I find in any event that the case falls well short of the "strong case" required to justify a mandatory injunction – as to which see **Okunade**,[48] citing inter alia, **Maha Lingam**.[49] **Okunade** expresses the need for judicial restraint in making mandatory interlocutory orders requiring public authorities to exercise public law powers in a particular fashion - here, as the Plaintiffs want, by seeking to halt the proposed development. In substance, the Plaintiffs seek the public law, discretionary, remedy of mandamus. In fact, while the motion seeks an injunction, the relevant plea in the summons explicitly seeks mandamus. In reality, the Plaintiffs seek mandamus on an interlocutory basis. Judicial restraint in granting mandamus stems from the principle of separation of powers. As Phelan J pointed out in **MB**,[50] *"mandamus only lies where there has been an explicit and unambiguous duty imposed upon the body against whom the order is sought."* No such duty has been shown here. And in MB a permanent order was in issue. Mandamus is, in any event, an exceptional remedy – **De Blacam**[51] - though the point should not be overstated. Certainly, the case made here does not even approach one in which interlocutory mandamus would conceivably lie to require public authorities to exercise discretionary powers in order to frustrate a project deemed in the public interest (if it is so deemed in due course) for purposes of compliance with the State's obligations to accommodate applicants for international protection.

56. On this ground also, the application, made on an interlocutory basis, for *"A mandatory injunction on the relevant public representatives to adhere to the precautionary principle and halt this project immediately"* must be rejected.

AFFIDAVIT OF PAUL COLLINS SWORN 18 JULY 2024 IN PROCEEDINGS 2024/3668

57. As stated, Mr Collins, swore an affidavit sworn on 18 July 2024 in other proceedings. Its unusually informal tone is not, in my view, entirely explained by the undoubted urgency of its preparation: imprecise

[48] Okunade v Minister for Justice, Equality and Law Reform [2012] 3 IR 152 §76.
[49] Maha Lingam v Health Service Executive [2005] IESC 89, (2006) 17 ELR 137.
[50] M.B. v HSE [2023] IEHC 99.
[51] De Blacam, Judicial Review, 2nd Ed'n §29.12.

phrases like "and so on" should not generally appear in affidavits. However, while a deponent takes the risk of it, informality of tone is not necessarily an ultimate concern. Content is. Mr Collins made the following averment:

> *"15. Coolock required special permissions that haven't been utilised previously because this is the first of its kind, by virtue of a clause brought in under the Planning Acts to help with the Ukrainian refugees and international protection Applicants. Those permissions have been obtained."*

58. This averment is notable for unacceptable vagueness in describing the legal regime at issue – particularly in an affidavit prepared, as this was, with professional legal assistance. It is also notable for a clear assertion that, whatever the "permissions" may be, they had been obtained. Counsel for Townbe tells me that my colleague who heard that matter made inquiry as to this assertion – as to which I am not surprised. Though I have not seen it, I accept that a corrective affidavit resulted as to reliance on the Class 20F exemption. As my colleague no doubt dealt with the issue as he saw proper, it is not for me in these proceedings to take any view beyond that which I have expressed.

CONCLUSION

59. There can be no doubt but that migration, worldwide and in Ireland and from legitimate points of view, represents a very considerable political challenge. For many reasons, including its potential to engender conflict, it is particularly important that migration is managed in accordance with law. For the avoidance of doubt, I reiterate that nothing in this judgment enters into the political sphere or suggests that legitimate political concerns do not arise as to the management of immigration or that some such concerns are particular to communities in which IPAS accommodation is placed. Still less does this judgment condone illegal immigration. Nor does it seek to trammel freedom of speech – if such issues arise they fall to be dealt with otherwise than in this judgment. However, in court, words matter and freedoms carry responsibilities. Litigants cannot ask courts to act on allegations without expecting that the Court will scrutinise those allegations. Courts act on evidence – not on mere assertion. If granted, injunctions are granted on evidence. There is no evidence before me of the actuality or risk of genocide, plantation, contagion, civil war or the other allegations I have deprecated above. The vicious allegations made against the Commissioner of An Garda Siochana were supported by no evidence whatsoever. The absence of such evidence demonstrates the Plaintiffs' irresponsibility in pleading and deposing to those dangerously provocative allegations.

60. For the reasons set out above, I reject the Plaintiffs' application for interlocutory injunctions. I do so in particular as the causes of action and/or alleged illegalities on which the application was explicitly based and to which it was explicitly confined – breach of the precautionary principle and breach of Aarhus public

participation rights – do not raise a fair issue to be tried.

David Holland
31 October 2024