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*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY EILEEN REID FOR JUDICIAL REVIEW

IN THE MATTER OF A DECISION OF BELFAST CITY COUNCIL

HORNER J

A. Introduction

[1] This is a challenge by Eileen Reid ("the Applicant") who lives at 13 Ballymurphy Drive, Belfast, to the decision of Belfast City Council ("the Council") to refuse to erect an additional street name plate in Irish at Ballymurphy Drive, Belfast. The application for such a street name plate had the support of 52 out of the 92 members living in the street who were eligible to vote. She claims that the decision to refuse to erect a street name plate is unlawful, as is the policy underlying it. As this is a judicial review, it is important to emphasise that the court is not concerned with the merits of whether there should be a dual street name plate at Ballymurphy Drive but rather on whether the process that ultimately determined that no additional street name should be erected, was lawful.

B. Background to the policy on dual language street names

[2] Article 11(1) of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1995 states:

> "A council may erect at or near each end, corner or entrance of any street in its district a name plate showing the name of the street; and a name plate erected under this paragraph –
>
> (a) shall express the name of the street in English; and
>
> (b) may express the name in any other language."

[3] Street names and dual name plates have been a source of discord in Northern Ireland over the years leading to community tensions. They have also been a contentious issue at local government as the minutes of the meetings of the council and its various committees testify. On 12 June 1995 the attention of the Health and Environmental Services Committee ("HES") of the council was drawn to Article 11 of the 1995 Order which had just come in to effect. At that meeting on 12 June the HES requested a draft policy be produced to deal with the erection of street name plates in a language other than English and that this should be presented to the HES after consultation with all the other party groups of the council. By 11 December 1995 a policy had been agreed but there were issues as to the resources required to make it work. It was estimated that the basic cost of providing second language street signs over a 5 year period would be in the region of £200,000. To that sum had to be added the cost of providing additional staff and the resources to establish administrative systems and procedures. It was considered that this would require expenditure of approximately £30,000 per year over a 5 year period. Implementation of the policy was deferred pending consultation on the funding issues with the Department of the Environment. The views of the Director of Legal Services were sought by the Director of Health and Environmental Services with regard to the feasibility of the council charging for the erection of dual language street signs.

[4] On 10 August 1998 HES reached a decision that the council should implement the draft policy for the erection of dual language street signs. At the full meeting of the council on 1 September 1998 the council ratified HES's decision and the policy came into effect. This was an open policy and one in respect of which councillors would have been aware. Any ratepayer on inquiry could have found out about it.

[5] The policy noted that Article 11 of the 1995 Order gave councils the discretionary power to erect dual language street signs or secondary name street plates in languages other than English. It records at paragraph 2:

> "These policy proposals were developed in close consultation with the Director of Legal Services and are

> designed to promote consistent and reasonable responses. However, the policy should not be applied in such a way as to prevent due consideration being given to the particular circumstances of each application. Having regard to the significant resource consequences of administering the implications of the policy, the policy should be reactive in nature."

[6] The process can be summarised thus:

(i) Only applications supported by a petition representing not less than one third of the people appearing on the electoral register of the street will be progressed.

(ii) Where that requirement has been met the council will canvass those persons appearing on the Electoral Register of that street and seek their views on their request to erect a street sign in a second specified language. They will be each given a pre-paid envelope to be returned within one month of receipt.

(iii) Where two-thirds or more of the occupiers appearing on the Electoral Register have indicated that they are in favour of the erection of a second language street sign, then such a sign will be erected. People not returning a reply will be deemed not to be in favour of the application.

(iv) The council retains an overriding discretion to take the particular circumstances of each application into account in deciding whether there should be a street name plate erected regardless of the numbers voting in favour of the application.

[7] On 2 March 2000 the UK Government signed the Council of Europe Charter for Regional or Minority languages and ratified it in March 2001. The Charter was to come into force on 2 July 2001. The Policy and Resources Committee ("PRC") of the council considered the Charter and asked for a detailed report. This was prepared by the Assistant Chief Executive. At a meeting of 13 December 2002 various recommendations for compliance with the Charter were put forward. It is specifically recorded at paragraph 27 in respect of place names in Irish:

> "This issue is not expected to provide any difficulty for the Council, since it already has a policy of providing dual language street names in Belfast, if requested by two-thirds of the residents of the street."

This was then ratified by the full council on 6 January 2003. On 21 February 2003 the PRC considered the report of the Director of Legal Services which recorded that it had the force of international law but that "there is no specific domestic national legislation to compel District Councils to abide by the guidance coming from

Government". On 3 March 2003 the PRC minutes were ratified at the meeting of the council.

[8] The policy was then reviewed following a request by the PRC. It was reaffirmed by the HES Committee on 16 June 2007 and at a meeting of the full council on 1 May 2007 it was agreed that it should be taken back to the HES for further consideration.

[9] On 11 June 2007, after further consideration by the HES of the policy, a one year pilot scheme was introduced whereby applications for additional street name plates no longer required petitions with one-third support before progressing to a full survey. There was also discussion of the two-thirds approach. On 2 June 2007 the council approved the decision instituting the pilot scheme. On 3 September 2008 HES reviewed the policy again and agreed to end the pilot scheme. On 1 October 2008 the full council sent the policy back for further consideration. On 8 October 2008 HES reaffirmed the decision of 3 September 2008 requiring submission of a petition. On 3 November 2008 this decision was approved by the full council.

[10] On 5 December 2011 HES was asked to consider whether the policy should be amended so as to require two-thirds only of those who had returned a survey form. On 8 February 2012 HES considered the range of options, discussed the matters and reaffirmed the policy after a number of votes. On 1 March 2012 the full council ratified the HES minutes following a contested vote.

[11] The Policy has thus been the subject of considerable democratic scrutiny by the council and its committees over an extended period of time. It is clear that it has been the subject of considerable debate and dispute. But ultimately the policy in general, and the two-thirds majority of issued surveys rule in particular, has prevailed.

[12] The policy seems to have worked well. From 1998 until the end of 2013, 180 applications have been made to the council to erect a street name plate in a second language. 144 of those applications have been approved. 34 applications were not progressed as there were insufficient responses to the council's surveys. From 2009 until the end of 2013, all the applications which were submitted have been approved, save for two applications, both of which had an insufficient response to the council's survey. In the two years preceding the present application, that is 2011 and 2012, there was a 100% success rate in respect of applications received.

[13] Of the 25 councils in Northern Ireland, 14 councils have a dual language policy. For the 14 who have a dual language policy, three use a straight majority of surveys returned, four use a two-thirds majority of surveys returned, two use a two-thirds of issued surveys rule and the other five are not known. The other two councils with the two-thirds of issued surveys rule are Castlereagh and Strabane councils.

C. Background to the Application

[14] On 23 May 2013 an application was received for dual language street signs for Ballymurphy Drive, Belfast, from Glór na Móna, 195 Whiterock Road, Belfast. This is an Irish language group, one of whose aims is to promote the Irish language. The application included a petition that met the one-third requirement. Accordingly, under its policy the council had to carry out its own survey. A survey was sent to all those people who appeared on the Electoral Register for Ballymurphy Drive. Ninety-two surveys in total were issued with a deadline of 13 July 2013 for the return of the surveys. The letter accompanying the survey stated that following the questionnaire, based on the returns, Mr Martin, Head of Service, may make a recommendation to the council. It also indicated that as there were 92 people eligible to complete the survey the appropriate minimum for recommending approval was not less than 62 replies. Enclosed with the letter was a pre-paid envelope. The questionnaire contained 3 statements in respect of which the party surveyed was asked to tick their preferred answer. They were as follows:

(a) I wish to have a second street name plate erected at Ballymurphy Drive, the second one being an Irish translation.

(b) I do not wish to have a second street name plate erected at Ballymurphy Drive, the second one being an Irish translation.

(c) I have no preference either way. (As the policy states two-thirds of those surveyed must approve the request before recommendation is made, this answer is taken that you are happy with the current position regarding the sign.)

[15] The deadline was extended because it included a public holiday during the response period to the end of August 2013. There were 52 "Yes" responses received in total. There were 21 responses received on 17 June 2013, 25 responses on 4 July 2013, 11 responses on 10 July 2013. The remaining "yes" responses were received as follows, one response on 19 June 2013 and two responses on 20 June 2013. There seems to have been some organised campaign to obtain responses given that the vast majority of responses were received in three batches on three particular dates. These surveys are not confidential.

[16] On 5 November 2013 Mr Flanigan, Solicitor, wrote on behalf of the applicant asking the council to confirm that the application in respect of Ballymurphy Drive had been granted. The response from the Health and Environmental Services Department was from Mr Martin, Head of Service. He said:

> "I would confirm that the application in respect of Ballymurphy Drive has not been granted due to insufficient responses being returned to the Council …

> In the case of Ballymurphy Drive 92 people were eligible for completing (sic) the survey and the appropriate minimum recommending approval is not less than 62 replies in favour of the dual language street sign. To date Building Control have received 52 replies in favour of the dual language street sign."

[17] In response to requests as to how many were against the dual language street sign the council replied on 19 November 2013 that one person had responded on the basis that he was not in favour.

[18] There followed a letter of 26 November 2013 from Michael Flannigan, Solicitor, complaining that the policy was Wednesbury unreasonable and ultra vires, as it was not consistent with the relevant statutory duty, it was not consistent with the council's position that it would act in accordance with its obligations under the European Charter for Regional or Minority languages and that it was an unlawful fetter on the council's discretion.

[19] On 15 January 2014 Mr John Walsh, Town Solicitor for the council replied dealing with the complaints that have been made and concluding as follows:

> "The policy requirement for two-thirds of residents to respond favourably is not unreasonable and properly falls within the exercise of the council's discretion as to the circumstances in which it will erect a second name plate."

[20] He denied the policy was unlawful and said that the council had taken legal advice. The solicitors responded by issuing proceedings on behalf of the applicant and seeking leave to apply for judicial review.

D. <u>The Grounds of Challenge</u>

[21] There were five grounds of challenge put forward at the hearing. They were:

(a) The refusal of the council to consider the proposal to erect an Irish language street name plate at Ballymurphy Drive was ultra vires, unlawful and of no effect because the respondent fettered its discretion in applying the policy in such a way as to prevent due consideration being given to the particular circumstances of this application. ("Ground 1")

(b) The council's dual language street sign policy is ultra vires, unlawful and of no effect because it requires two-thirds or more of the occupiers appearing on the Electoral Register to indicate that they are in favour of the proposal to erect a second language street sign before the respondent will consider the proposal and/or because it deems those who do not reply to the proposal as not being in favour of it because it is Wednesbury unreasonable to:

(i) deem those that do not respond to the proposal as being opposed to it, and/or

(ii) set the level of expressions of approval at the same threshold as that formally required to change the street name. ("Ground 2")

(c) The impugned terms of the policy are inconsistent with the terms of Article 11 of the 1995 Order, insofar as Article 11 requires the respondent to have regard to the views **expressed by the occupiers**, whereas the impugned terms of the policy allow those who do not respond to the proposal to be considered to have expressed opposition to it. ("Ground 3")

(d) The impugned terms of the policy are inconsistent with the council's commitment to act in accordance with its obligations under the European Charter for Regional or Minority Languages, and in particular the Charter obligation under 10(2)(g) to the **use of adoption of traditional and correct forms of place-names in regional or minority languages**, which Charter should be used to interpret the statutory discretion available to the respondent under Article 11 of the 1995 Order. ("Ground 4")

(e) The policy is treated by the respondent as if it were of legislative force and expressed in mandatory terms, and as such amounts to an improper attempt by the respondent to exercise legislative powers where none exist. In particular, the impugned terms of the policy are ultra vires as an attempt to re-enact the substantive terms of (the repealed) Section 21 of the Public Health Amendment Act 1907, where no such legislative power exists. ("Ground 5")

As can be seen there is an overlap with some of these different arguments.

[22] At this stage I should record my thanks to both counsel who presented their respective cases both clearly and comprehensively. I have taken into account all the points which they have made in their detailed and nuanced skeleton arguments and oral submissions. The interests of brevity forbid me from rehearsing all of the arguments in full.

E. Statutory Background

[23] The relevant provision is Article 11(4) of the 1995 Order. It describes the discretionary power the council has to erect a second name plate:

> "In deciding whether and, if so, how to exercise its powers under paragraph (1)(b) or (2) in relation to any street, a council should have regard to any views in the matter expressed by the occupiers of premises in that street …"

[24] It is noteworthy that the requirement under the relevant provision is that the council "shall have regard to any views on the matter expressed by the occupier of premises …".

[25] Article 11(1) clearly gives the council a discretion whether or not to erect a second name plate. How that discretion is to be exercised is set out in 11(4). The words used and their context do not suggest that the council is only to have exclusive regard to the views expressed by the occupiers. In Sandford Ltd v New Zealand Recreational Fishing Council Inc [2008] NZCA 160 (this decision was subsequently upheld by the Supreme Court) the Court of Appeal found that a requirement to "have regard to" a matter requires the decision-maker "to give the matter genuine attention and thought but it remains open to the decision-maker to conclude that the matter is not of sufficient significance to outweigh other contrary considerations". The expression "to have regard to" is weaker than "to have particular regard to" and it is certainly much less constraining than "take into account" and "give effect to". So under this provision the council has a discretion. It must give genuine attention and thought to the expressed views of the occupiers, but it is still entitled to take into account other lawful considerations affecting its decision. I consider that this is the lawful way for the council to approach the discretion vested in it pursuant to Article 11(1).

F. Discussion

Ground 1

[26] The applicant says that the council fettered its discretion by requiring two-thirds of the Electoral Register at Ballymurphy Drive to approve the addition of a second street name in Irish. The council responds by stating that its discretion is not fettered. It could take into account other matters, but the applicant, for whatever reason, chose not to bring these matters to the attention of the council.

[27] There can be no doubt that the applicant and/or her solicitor and/or the local councillor for the area did not offer any reasons to try and persuade the Head of Service, HES or the council, despite not achieving 62 votes in favour of the proposal that there should be a second street sign in Irish erected at Ballymurphy Drive. However, subsequently the applicant has offered reasons which include:

(i) The proportion of the people in the lower Falls area with an interest in Irish is approximately 20%.

(ii) This street is within the Gaeltacht Quarter which is built on the traditional strengths of the Irish language and culture.

[28] The policy expressly states at Section 2 as follows:

> "These policy proposals were developed in close consultation with the Director of Legal Services and are designed to promote consistent and reasonable responses. However, the policy should not be applied in such a way as to prevent due consideration being given to the particular circumstances of each application. Having regard to the significant resource consequences of administering the implications of the policy, the policy should be reactive in nature."

The policy then goes on to state at (iii) of Section 3:

> "Where two-thirds or more of the occupiers appearing on the Electoral Register have indicated they are in favour of the erection of a second language street sign, then such a sign will be erected. People not returning a reply will be deemed not to be in favour of the application."

[29] The following points are of significance:

(i) The applicant complains that the application was not considered by the HES (or the full council) but was in fact dealt with by a council officer(s) and he operated as if he was in a self-imposed straitjacket.

(ii) The policy in relation to dual street signs was public, well-known and has been in operation for a number of years. It has been taken advantage of successfully by the occupiers of many streets in the Belfast area.

(iii) Mr Martin, Head of Services, "found no circumstances which warranted" it being put before the committee. Mr Martin, on the evidence adduced before this court, was legally entitled to reach such a conclusion.

(iv) The committee could decide that despite not reaching the two-thirds threshold that it wished to consider the matter in response to prompting by local residents and/or their solicitor and/or their local councillor or other councillors.

(v) The solicitor for the applicant was free to write in and make any submissions he wanted on the applicant's behalf. He chose not to do so. No satisfactory explanation has been given for this omission. Councillors have the right to sit in on any committee meeting. A councillor is able to write and make representations to any officer or member of any committee. The local councillor for Ballymurphy Drive could have made submissions on behalf of the application for a dual language street sign but chose not to do so. No explanation has been given as to why the council was not asked to exercise its residual discretion and permit a second street sign in Irish to be erected.

[30] An attack was also made on such a decision being taken by Mr Martin. However, Section 47A(1) of the Local Government Act (Northern Ireland) 1972 states:

> "The council may arrange for the discharge of any of its functions, except the power of making a rate, or of borrowing money or of acquiring, holding or disposing of land by an officer with the council and any transferred provision regulating the exercise of a function by a council shall also apply to regulate the exercise of that function by an officer of the council."

In the circumstances and in the light of the evidence there is nothing objectionable in the role which was carried out by Mr Martin.

[31] The court concludes that there is no force whatsoever in the complaint that the council unlawfully fettered its discretion. The court does find that there is considerable force in the submission that the applicant and her advisors by their actions, or more properly, their inaction, precluded the council from exercising its discretion. They failed to put before it any of the grounds which might have persuaded the council to grant a second street name being erected at Ballymurphy Drive despite the failure to achieve the number required under the policy of 62 returned surveys.

Ground 2

[32] The policy of a two-thirds majority of those eligible is not Wednesbury unreasonable for a number of different reasons.

(i) The policy of providing an additional street name in another language can be socially and politically divisive. The level of discord can be gauged from the debates within the council. Unfortunately, in Northern Ireland's deeply divided society many on each side of the political and cultural divide, rightly or wrongly, see the other's language, whether it be Irish or Ulster Scots, as associating that community with a particular political view point. In those circumstances it cannot be unreasonable to require clear and convincing evidence on the part of those who occupy the street that they want an additional street name plate in another language, apart from English.

(ii) The amount of effort required to return a stamped addressed envelope, especially against a background where there does appear to have been a campaign to obtain the necessary approvals provides a good gauge to judge the groundswell of enthusiasm in favour of a second name plate.

(iii) The present rule allows the council to avoid a situation where the residents' preferred option could alter from time to time depending on movement of people within the street. There are obvious costs implications in providing or removing street furniture. The OFMDFM document ("A Shared Future: Policy and Strategic Framework for Good Relations in Northern Ireland" (March 2005)) emphasises a need for authorities to take positive action to ensure that shared and neutral spaces remain shared and used by all sections of the community. As the council points out this supports a policy which requires a high level of demonstrated community desire for a dual name plate which, realistically, "might well be viewed as identifying a street clearly with one community and be construed as exclusive of other communities". This is especially so given that the surveys are not confidential. Those not wanting a dual street name need not nail their colours to the mast.

(iv) Finally, this is a view shared by two other councils who have adopted the same policy. They will have considered the issue and adopted the same policy of a two-thirds majority of those appearing on the electoral register. There is no suggestion that the councillors of Castlereagh and Strabane councils acted perversely.

In the circumstances the applicant has not begun to meet the high threshold necessary to prove "Wednesbury unreasonableness" on the part of the council.

Ground 3

[33] The applicant claims that the council is required to have regard to the views "expressed by the occupiers". Those who did not return the survey did not express a view and therefore should not have been taken into account. However, this argument is fundamentally flawed. No one who received the survey could fail to misunderstand the position and the consequences of not voting. It was crystal clear to everyone that in order for there to be a dual street sign, a two-thirds majority of those written to in Ballymurphy Drive must reply in favour of the proposal. Those who did not return their surveys can have been in no doubt as to the consequences of their inaction.

[34] In any event, as the court has already made clear in its interpretation of Article 11, the council is only required to "have regard to" views expressed and it retains an overall discretion. For the reasons set out elsewhere in the judgment, such a policy is not unlawful. The council is not bound to follow the majority of the views expressed by those who returned the survey or by a majority of those to whom the survey was sent.

Ground 4

[35] The applicant complains that the council has publicly committed itself to act in accordance with the European Charter for Regional or Minority Languages ("The

Charter") and in particular Article 10 of the Charter. The central and key provision upon which it relies is Article 10(2)(g) which states:

> "In respect of the local and regional authorities on whose territory the number of residents who are users of regional or minority languages is as such to justify the measures specified below, the Parties undertake to allow and/or encourage:
>
> (g) the use or adoption, if necessary, in conjunction with the name in the official language(s) of traditional and correct forms of place-names in regional or minority languages."

[36] The applicant makes the case that the levels of Irish language use and interest in the locality are high. Further, that the two-thirds issued surveys rule in favour of a dual street name in Irish is inimical to the council's obligation under the treaty.

As a general proposition international treaties or agreements which, as here, have not been incorporated into the national laws are not enforceable: see R v Secretary of State for the Home Department ex parte Brind [1991] 1 AC 696 at 761-2.

[37] In Re MacGiolla Cathain's Application for Judicial Review [2009] NIQB 66 Treacy J said at paragraphs [31]-[33] of his judgment:

> "[31] In respect of the first ground of challenge grounded in the alleged breach of Article 7(2) of the Charter the respondent submitted that its provisions operate only on the plane of international law and create no rights or obligations in domestic law.
>
> [32] The distinction between international law and domestic law has long been accepted by the courts in the United Kingdom. Where it is intended to give domestic legal effect to obligations arising from international treaties the method of achieving this is by incorporating the relevant treaty into domestic law as for example was done by the Human Rights Act 1998 in relation to the principal provisions of the European Convention on Human Rights. This has not however been done in relation to the Charter.
>
> [33] This well established legal position reflects the constitutional principle that in the UK the Executive does not have law making powers unless these are conferred upon it by Parliament. The ratification of an international

> treaty such as the Charter is an Executive action effected under prerogative power and involves no delegation of legislative power by the legislature. Moreover, unlike legislation, such an exercise does not require the assent of Parliament. The Crown cannot change unambiguous law by the exercise of prerogative powers. In this respect see the case of Proclamations (1611) 12 Co Rep 74 where at 75 it is stated that:
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> > "The King by his proclamation or other ways cannot change any part of the common law, statute law, or customs of the realm."
>
> If the ratification of an international treaty had the effect of altering domestic law then the Executive would be able to supplant the legislature by making legislation without any form of Parliamentary consent or approval by the backdoor. This would clearly emasculate the constitutional principle that in the UK the Executive does not enjoy law making powers unless these are bestowed upon it by Parliament. See the House of Lords decisions in Rayner v DTI [1990] 2 AC 4 118 at 499-50, Brind [1991] 1 AC 696 at 747-748 and 762B-D and R v Lyons [2003] 1 AC 976 at [13] and [27]."

[38] Treacy J also rejected further arguments about the applicability of the Charter based on:

(a) The legitimate expectation it was claimed was created by the Executive action of ratifying the Charter. He rejected this as an impermissible attempt to bypass the constitutional principle referred to above.

(b) The Treaty should be used as an aid to statutory interpretation. However, in that case (as here) the wording was clear and unambiguous and its use was otiose.

[39] A public authority such as the respondent cannot be obliged to treat itself as bound to act in compliance with international obligation. Even where it does so it is clear from the authorities that the courts will adopt a very light touch review which will not extend to ruling on the meaning or effect of the International Treaty. This was considered by Weatherup J in McCallion's Application (No: 4) 2009 NIQB 45 at paragraphs [20]-[21] where he said:

> "[20] A domestic decision maker may purport to make his decision in accordance the terms of an unincorporated international treaty. Or he may merely take into account

> the terms of the treaty in making his decision. Or he may declare that, having taken account of the terms of the treaty, the decision that he has made is in accordance with the treaty. Or he may declare that he will make his decision without regard to the terms of the treaty. In the present case the decision maker concluded that a decision adverse to the applicant would not involve a breach of the Convention. Further, in the present case, the decision maker did not purport to exercise his discretion in accordance with the Convention provision but rather, in reaching his decision, he took into account the Convention and his conclusion that a finding adverse to the applicant would not involve a breach of the Convention.
>
> [21] The effect of Charter House Research is that in general the Court will not seek to interpret the terms of an unincorporated treaty nor will the Court adjudicate upon the correctness in law of a decision maker's conclusion on the meaning of the treaty. The Court may do so where there is no issue about the interpretation of the Convention and the Court is considering whether the interpretation is compatible with the terms of the treaty. The Court may do so where there is settled Convention jurisprudence which provides a particular interpretation. The Court will hesitate to do so where the treaty provides a forum for the resolution of a dispute as to interpretation."

In the present circumstances the court does not consider that the Charter adds anything valuable to the construction to be given to Article 11.

[40] Further, there is no evidence before the court that the number of users of Irish is such as to justify the measures sought. Of course there is evidence of interest. Certainly in the last census approximately 1 in 5 claimed to have "some knowledge of Irish". It is a fairly anodyne expression. Many people who could claim to have some knowledge of Irish could not be described as users.

[41] More importantly Baile Uí Mhurchú is the traditional name for the Ballymurphy Townland. However, Ballymurphy Drive never had an original Irish name. The street since its original creation has always been known as Ballymurphy Drive.

For all these reasons the application grounded on an alleged breach of council's obligations under the Charter, whether self-imposed or not, fails.

Ground 5

[42] The complaint here is that the policy for the erection of an additional street name in another language is the same as existed under Section 21 of the Public Health Amendment Act 1907 (now repealed) for the change of a street name. However, this argument carries no weight.

(i) There is no evidence of the provision of the 1907 Act playing any part in the deliberations of the council: see the affidavit of Mr Martin, and in particular paragraph 38.

(ii) If it was taken into account, there is nothing unlawful about the council looking at other related legislation in making a decision in this controversial area, especially if there was evidence that the operation of such provision had worked well in the past.

(iii) In any event, and conclusively, once it is accepted that the council retains discretion to erect a dual name plate without the two-thirds response generally required by the policy, the grounds for such a complaint disappear.

G. Conclusion

[43] For the reasons which are set out in this judgment, the applicant's claim for judicial review fails on all the grounds that have been advanced. I will hear the parties on the issue of costs.