

Neutral Citation No: [2025] NICA 51

Ref: McC12858

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No:

Delivered: 08/10/2025

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
KING'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY TRACEY MORRIS
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

The Appellant appeared as a Litigant in Person
Mr Aidan Sands KC (instructed by NIHE Legal Services) for the Respondent

Before: McCloskey LJ, Colton J and McAlinden J

McCLOSKEY LJ (*delivering the judgment of the court*)

Introduction

[1] This is an appeal by Tracey Morris (the "appellant") against the order and associated judgment of temporary High Court Judge Simpson (the "judge"), both dated 19 February 2025, dismissing her claim for judicial review against the Northern Ireland Housing Executive ("NIHE"). See [2025] NIKB 10

[2] In her judicial review claim, the relief sought by the appellant is formulated thus:

"For the courts to order the NIHE to agree to accommodate my family at 15 Marlborough Crescent, Carryduff, until a more permanent home is located in a non-sectarian and safe environment."

As recorded by the judge at [3] of his judgment, the grounds of challenge are multifarious. The judge further noted a previous judicial review challenge by the appellant relating to a different residential property in which leave was refused by Scofield J.

[3] The appellant has been in dispute with NIHE, her landlord, for some time. Disputes of this kind giving rise to litigation are in the experience of the courts frequently protracted and progressively acrimonious, as in this case. The appellant's family circumstances lie at the heart of the dispute. The appellant asserts that she is suffering from a range of ailments (which in the interests of her privacy we do not detail). One effect of these, she suggests, is reduced mobility requiring her to enlist walking aids. She resides with two teenage sons, one of whom suffers from attention deficit disorder which has generated a statement of special educational needs.

[4] The appellant and her two teenage sons have been residing in a four - bedroom, two storey, semi-detached house in south Belfast since May 2020. This is a private sector property. The rent has been paid out of public funds, by housing benefit, with NIHE paying the shortfall. Throughout this period of some five and a half years the appellant has been on the NIHE waiting list for the allocation of permanent housing.

[5] The discrete dispute with NIHE giving rise to the appellant's judicial review challenge was stimulated by her identification of a three - bedroom bungalow in Carryduff (the "*Carryduff bungalow*") as suitable for the needs of her family. The dispute was triggered when NIHE intimated that it would not fund the rental sought by the landlord in question since, as recorded by the judge at para [5], this fell:

"... significantly above the applicable standard rate for three-bedroom dwellings and well beyond the range of the limited discretion to increase the applicable rates that is normally available to the [NIHE] Area Manager."

[6] The appellant has at all times been insistent that the particular needs of her family require the provision of a ground floor three - bedroom property. She has advanced a range of reasons for this unremitting stance, many of them documented in the earlier judgment of Scofield J, concerning the same litigant, at [2024] NIKB 96. They relate particularly, though not exclusively, to the needs of her ADHD son. Some two months following the initiation of these proceedings NIHE offered to the appellant a ground floor three - bedroom flat situated in one of the areas previously selected by her for permanent housing. This was proposed by NIHE as alternative temporary accommodation. The appellant refused the offer. She subsequently removed this area from her list of preferred areas.

[7] Disputes of the present kind tend to acquire a rolling character, with the evidential framework evolving and altering with the passage of time. In the present case, the most recent evidence provided on behalf of NIHE would appear to be the letter of review decision written by the Deputy Regional Manager ("DRM"), dated 13 December 2024, quoted at [14] of the first instance judgment. This letter expressed the NIHE's updated assessment of the suitability of the south Belfast

property and evinced an intention on behalf of NIHE to "... continue to work towards sourcing alternative, more suitable temporary accommodation." The next development has been noted in [6] above. Following this, the appellant was permitted by the High Court to expand her claim to incorporate a challenge to NIHE's assessment that the ground floor three - bedroom Belfast flat constituted suitable accommodation for her and her family.

[8] A *soi-disant* "rolled up" hearing ensued. The affidavit evidence on behalf of NIHE indicated that less than 1% of the approximately 1,300 single let dwellings then available were ground floor flats and bungalows. Only four ground floor flats were available. The offer of one of these to the Appellant had been refused by her. The affidavit described "*unprecedented demand and stress on temporary accommodation.*" Unsurprisingly, there were also averments about "*an extremely challenging funding environment.*" Furthermore, while the appellant had been accorded the highest priority status available ("FDA") there were almost 30,000 households with the same status. In addition, increased dependence on private rented sector accommodation had resulted in dramatic increased cost to NIHE by a factor of almost six. The deponent further averred that, given this constellation of factors, there was, in substance, an enhanced duty on NIHE to ensure value for money with regard to every single let rental. Moreover, the rental for the Carryduff bungalow being pursued by the private sector landlord's agent was approximately 50% above the NIHE "*standardised*" (or maximum) rate, excluding "*exceptional circumstances.*" In her present temporary accommodation the appellant and her family have been the beneficiary of rental payments well in excess of the maximum rate.

[9] It is appropriate to reproduce para [32] of the judgment of the judge:

"Mr Gunn's affidavit explains the rationale for the decision, in the light of the respondent's policies, including its policy on maximum rental payments. From that it is clear that the figure of £1,350 per month is significantly above the standardised rate, which is described as being "the maximum rate outside of exceptional circumstances." (Para [42]). Para [47] of the affidavit identifies two examples of single let accommodation beyond the standardised rates, in each of which the family circumstances involved "permanent wheelchair users, requiring a bespoke solution." Even then, the "costs were considerably lower than those associated with" the Carryduff property."

[10] The judge, carefully and painstakingly, in dissecting the appellant's written claim identified a multiplicity of grounds of challenge, at paras [33]-[52]. He dismissed them all. Turning next to the expanded element of the appellant's challenge (see [7] *supra*), the judge made two inter-related conclusions. First, the multiple factual disputes disclosed were quite unsuitable for resolution in the form of a judicial review challenge. Second, the appellant had failed to pursue the

statutory alternative remedy of review available to her under the statutory provisions rehearsed in paras [57]–[59] of the judgment. The judge harboured no misgivings about the adequacy of this alternative remedy.

[11] We turn to the appellant’s notice of appeal. This has stimulated the following submission in the skeleton argument of Mr Sands KC on behalf of NIHE:

“[17] The applicant initially identified Carryduff and Newtownbreda as her areas of choice for accommodation, but in August 2024 this was increased to include Castlereagh rural, Milltown/Gray’s Park, Lower Ormeau, Upper Ormeau and Rosewood Park. It appears from the affidavit of Mr Gunn that the area of choice “applies only when it comes to an allocation of permanent accommodation; it has no application to sourcing temporary accommodation. Mr Sands said (as had previously been indicated to the court in December) that NIHE had identified what it considered to be suitable accommodation in University Street, Belfast. This property, according to the affidavit of Mr Gunn is within the Lower Ormeau area of choice and some 300 metres from the McClure Street property which was the subject of the previous challenge before Scofield J. On 16 January 2025 it appears that the applicant removed the Lower Ormeau area from her list of areas of choice. The University Street property is a ground-floor flat, with three bedrooms and a bathroom, one of the bedrooms also having en-suite facilities (ie per Scofield J “an all-one-level, ground-floor, 3-bedroom property”). The applicant was and remains adamant that this property is not suitable.”

This court agrees with this succinct assessment.

[12] In our construction and evaluation of the grounds of appeal we have accorded to the appellant a reasonable measure of latitude consistent with our duty of impartiality as between the two parties. The court has also been generous in receiving from the appellant a range of new documentary materials without insisting upon the customary strict procedural requirements. This magnanimity extends to the appellant’s “skeleton argument” which takes the form of an unsworn witness statement. Fundamentally, the appellant’s grounds of appeal manifestly fail to coherently formulate any sustainable challenge to the judgment under appeal.

Process

[13] In our processing of this appeal the parties, in the usual way, received equal time allocations for oral submissions. At the case management stage, the court's estimate was one hour per party. Ultimately, having regard to the volume and content of the materials lodged by the appellant and the parties' respective skeleton arguments, all received subsequently, this was modified to 20 minutes per party. In her presentation the appellant, who accepted the court's invitation to remain seated, was articulate and confident. No request for additional time was made. In the event, the court did not require to hear from Mr Sands KC representing NIHE.

Conclusion

[14] If there is a single imperfection in the judgment under appeal it is that the judge, having elected to adopt the "rolled-up" mechanism (*supra*), in an otherwise unassailable judgment did not indicate whether leave to apply for judicial review was granted or refused. This court would have expected the legally represented respondent to have raised this issue with the judge. Be that as it may it is, ultimately, a matter of little moment. We consider it incontestable that the leave threshold, namely an arguable case with a reasonable prospect of success was not, by some distance, overcome.

[15] For the reasons given, this hopeless appeal is dismissed.