Neutral Citation no. [2006] NIQB 87 | *Ref:* **DEEC5708**

Judgment: approved by the Court for handing down | *Delivered:* **13/12/06**

*(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 MARGARET DELANEY FOR LEAVE TO APPLY FOR JUDICIAL REVIEW OF A DECISION OF THE BELFAST IMPROVED HOUSING ASSOCIATION

AND IN THE MATTER OF A POLICY OF THE DEPARTMENT OF SOCIAL DEVELOPMENT

DEENY J

[1] The applicant is a tenant of the Belfast Improved Housing Association (BIH). She wished to buy the bungalow in which she lived. Her application was initially denied. Her solicitor made representations on her behalf but these were not successful and the refusal to permit her to buy her bungalow was confirmed in August of this year.

[2] Counsel for BIH did not in the skeleton argument take any issue on delay. When this was raised by the court an affidavit of the applicant's solicitor Michael Flannigan was submitted. The substantive reply from BIH finally confirming their refusal was by way of a letter dated 16 August. Legal Aid was then sought and was granted on 18 October 2006 however this application was not lodged until 23 November 2006 and there was therefore a delay outside the three months period of approximately one week. However, the policy is an ongoing one. Mr Sherrard for the respondent was unable to point to any prejudice to his client. In the circumstances I extend the time for bringing the application.

[3] Counsel for the respondent in a written skeleton argument placed considerable emphasis on asserting that the applicant enjoyed no right under Article 1 Protocol 1 of the European Convention on Human Rights to buy her home as contended by the applicant at paragraph 3(c) of her Order 53 statement. This seems to be in accord with the decision of the Court of

Appeal in Northern Ireland in Re William McDonnell [2004] NICA 7 where the court ruled that there was neither breach of Article 8 nor of Article 1 of the First Protocol when Housing Executive tenants were unable to buy their homes. I observe that the court does not appear to have been addressed on the particular point that even if such a right does not exist under the Convention the combined effect of Article 3 of the 1983 Order, which refers to "the right to buy" with the European Convention might lead to a distinction being drawn with the European jurisprudence carefully reviewed on the judgment of the court. But in any event it does not seem to me that any breach of the Convention is in fact essential to the applicant's case here.

[4] Mr White seemed to make out an arguable case on ground 3(a) and 3(b) of his Order 53 statement. Firstly the Association is fettering its discretion by leaving itself no ground to make any exception to the policy which prohibits it from selling to a tenant any bungalow with one or two bedrooms. The only exception seems to relate to previous holding of a tenancy in an urban regeneration area which the plaintiff cannot benefit from. It may be that this can be explained and justified but it has not been so to date.

[5] Secondly under 3(b) he says the policy is irrational. The Court of Appeal in McDonnell carefully considered the policy then prevailing and, although this was technically obiter to the decision, they reached the conclusion at paragraph 43 that the Housing Executive policy limiting the right to buy and excluding the sale of bungalows up to two bedrooms was justified. However the policy hereunder questioned differs. It prohibits the bungalows but unlike the policy considered by the Court of Appeal apparently permits ground floor apartments of up to two bedrooms to be sold. Mr White contends that it is irrational if the purpose is, as was contended in McDonnell, to ensure an adequate stock of housing for older persons. Furthermore the express references to persons over 60 has disappeared although one can suspect the reasons for that. His first point does seem to be one that requires some explanation.

[6] In the circumstances therefore I grant leave to bring these proceedings under 3(a), (b), and out of caution (c) of the Order 53 statement. Ground 3(d) arose out of a somewhat opaque letter from the respondent and it does not seem to me that they were taking into account an irrelevant consideration and I do not grant leave on that ground.

[7] The respondent makes it clear in its correspondence and in the submissions of its counsel that this scheme is imposed on it by the Department of Social Development although not set out in any statutory regulation or order in council. In those circumstances I direct the papers be served on the Department of Social Development. It may well be that they are the appropriate body to explain and defend this policy.