



THE COURT OF APPEAL

Approved
No Redactions Needed

Neutral Citation No. [2024] IECA 301
Court of Appeal Record No. 2024/152
High Court Record No. 2007/4820P

Costello P.
Noonan J.
O'Moore J.

BETWEEN/

LIAM CAMPION, JOSEPHINE CAMPION, CAMPION CONCRETE

PRODUCTS LIMITED AND VORAN HOUSE LIMITED

PLAINTIFFS/APPELLANTS

-AND-

SOUTH TIPPERARY COUNTY COUNCIL

DEFENDANT/RESPONDENT

JUDGMENT of Mr. Justice Brian O'Moore delivered on the 19th day of December, 2024

1. 2007 was a long time ago. In that year, Barack Obama (then the junior Senator for Illinois) announced his campaign to become the Democratic Party's candidate for President of the United States. Rory McIlroy abandoned his amateur status and became a professional golfer. The first version of the Apple iPhone was launched.

2. 2007 also saw the commencement of these proceedings. This action has not gone to trial in the intervening 17 years. As a result of the lack of progress on the part of the plaintiffs, and specifically by reference to the period 2018 to 2023, the High Court (Gearty J.) struck out these proceedings for inordinate and inexcusable delay. The plaintiffs have appealed that decision to this court. This is my judgment on that appeal.

3. The plaintiffs, who I will describe as “the Campion interest”, claim damages against the defendant (“*the County Council*”) under a number of headings. These are: -

- (a) damages for misfeasance in public office;
- (b) damages for breach of legitimate expectation;
- (c) damages for breach of contract, misrepresentation, negligent misstatement, negligence and/or breach of duty;
- (d) damages for defamation;
- (e) damages for malicious falsehood;
- (f) damages for wrongful interference with the constitutional rights of the Campion interests.

Other adjectival reliefs, such as interest and costs, are also sought.

4. The amended statement of claim centres on a meeting of the 18th July, 2006 attended by, among other people, representatives of the Campion interests and representatives of the County Council. The meeting, it is alleged, was to consider a building project being undertaken by the Campion interests; there was planning permission in place for the

development, but certain changes were being proposed by the developers. It is pleaded (at para. 10 *et seq.* of the amended statement of claim) that: -

“10. In the course of the said meeting, revised plans which had been prepared by Mr. Greg Bell, were shown to Mr. James O’Mahony. Having reviewed the said revised plans, the said Mr. James O’Mahony, acting in his capacity as a servant or agent of the Defendant and with due authority to bind the Defendant, agreed that the following are minor changes: -

- (a) The change in location of the 52 holiday cottages to accommodate the widening of the roadways and hammer heads to facilitate compliance with Condition 6 of the said planning permission;
- (b) the change in house type of the 52 holiday cottages from seven detached houses to terraced houses.

11. Furthermore, the said James O’Mahony, in his capacity as servant or agent of the Defendant and with due authority to bind the Defendant, agreed that the Plaintiffs could carry out the Development in accordance with the revised plans insofar as the location of the 52 holiday cottages and the change of house type were concerned. There were other proposed changes in the revised plans which Mr. James O’Mahony did not agree with, which related to the associated construction of the Hotel and the position in that regard was accepted by the Plaintiff.

12. The said Agreement constituted an implied representation by the Defendant to the Plaintiffs that it would not object to the Development of the holiday cottages and associated ground works in accordance with the revised plans or take any steps (to include the commencement of any enforcement proceedings) to prevent or alter

in any substantial way the carrying out and/or completion of the said works in accordance with the revised drawings as agreed in the said meeting.”

5. It is further pleaded that the Campion interests proceeded to carry out the relevant development in accordance with the revised plans, that an enforcement notice was served on them on the 3rd May, 2007, and that this notice required the Campion interests to cease work at the site, to remove any cottage units either partially or fully constructed on the site, and to reinstate the portion of the site where the units had been constructed.

6. These proceedings began on the 28th June, 2007, a matter of weeks after the service of the enforcement notice. Subsequent to the service of the enforcement notice, it is pleaded that the County Council “*caused a prosecution to be taken in the District Court ...*” against certain of the Campion interests. The hearing of this prosecution took place over 10 days, at the conclusion of which the District Judge dismissed the charges.

7. The proceedings having begun in June 2007, a statement of claim was not delivered until two years after that (on the 4th June, 2009). A notice for particulars was raised by the County Council in August 2009. No further action took place until March 2011, when there was a notice of change of solicitor on behalf of the Campion interests and a notice of intention to proceed was also served. The second, third, and fourth plaintiffs were joined to the proceedings by order of Ryan J. on the 10th October, 2011, and an amended statement of claim delivered in November 2011. That remains the active version of the statement of claim.

8. The pleadings were exchanged at a gentle pace. One particular pleading, a notice for particulars, features heavily in the current appeal and I will return to it in due course. Importantly in the progress of the action, a motion was issued on the 23rd May, 2012 on behalf of the County Council seeking the trial of preliminary issues. That application was

refused by Charleton J. (then in the High Court) by order of the 22nd October, 2012. That order was appealed on the 1st January, 2013 by the County Council, and the judgment of the Supreme Court (McKechnie J.) on that appeal was delivered on the 31st July, 2015. The appeal was refused.

9. There had been an agreement between the parties to make discovery. That was the subject of a motion brought on behalf of the Campion interests seeking to strike out the defence for a failure to comply with this agreement, and to make discovery. That motion was issued on the 18th February, 2013, the County Council was ordered to make discovery by the High Court (Cross J.) on the 22nd April, 2013, and a stay on that discovery order (as well as an order staying the proceedings pending the appeal against the order of Charleton J.) was refused by the Supreme Court on the 31st May, 2013. Despite the fact that the Supreme Court had refused any stay in respect of the making of discovery by the County Council, somewhat extraordinarily the County Council's affidavit of discovery was not sworn until the 6th December, 2016. As is obvious, this was three and a half years after the Supreme Court had refused any stay on the obligation of the County Council to make discovery to the Campion interests. This failure is, to some extent, explained in an affidavit sworn on behalf of the County Council in the current motion, which suggests that the delay in making discovery by the County Council itself resulted from the fact that the County Council offered to exchange discovery with the plaintiffs, but that the Campion interests themselves were slow in making the discovery that they had agreed to provide. Notwithstanding this account, the fact remains that (after the Campion interests made discovery) it was necessary to bring a further motion to strike out the County Council's defence before it eventually provided an affidavit of discovery. In any event, this signalled delay is a further demonstration of the lack of urgency on both sides in dealing with these proceedings.

10. As at the end of 2016, therefore, the question of the trial of a preliminary issue had been comprehensively dealt with in favour of the Campion interests, and discovery had been made (by the Campion interest in July of 2016 and, as already noted, by the County Council some five months later). Nothing then happened until March 2020, when the Campion interest provided “*preliminary particulars of special damages*”. On the 7th December, 2021 the County Council, unusually, served a notice of intention to proceed. On the 25th July, 2022 the current solicitors for the Campion interests came on record on their behalf.

11. The current motion seeking to strike out the claim was commenced on the 20th April, 2023.

12. In his grounding affidavit, the solicitor for the County Council set out the history of the case and referred to relevant inter partes correspondence. This includes an agreement reached in February 2018 to the effect that the parties would not issue motions for further and better discovery “*in the interests of progressing the proceedings ...*”. The deponent, Mr. Binchy, also referred to the service by the County Council in November 2011 of a derelict site notice on the bankers for the Campion interests, which was conditionally withdrawn in 2018 on the basis (set out in a letter from Mr. Binchy’s firm of the 27th November, 2018) that: -

“(1) such withdrawal is strictly without prejudice to the County Council’s statutory obligations to address the issues which have given rise to the issue of this Notice, and the Council may have to issue a further Notice in due course, in the event matters are not adequately addressed or resolved between the parties, in the very near future;

(2) that timely, without prejudice negotiations are taking place between the parties with respect to the above proceedings and also with respect to the Site, which negotiations will adequately address both of these matters.”

13. On the 16th April, 2021, Binchy Law wrote to the then solicitors for the Campion interests, recording the failure to press on with the proceedings and noting that no particulars of loss had been provided by the Campion interest, notwithstanding the fact that in replies to particulars dated the 2nd February 2012 there was an undertaking to do so “*in due course*”. This is the outstanding pleading to which I referred earlier in this judgment.

14. Very importantly, this letter concluded: -

“We are also instructed to issue a motion seeking to dismiss the Plaintiff’s claim for inordinate and inexcusable delay and seeking such alternative reliefs as may be appropriate, including but not limited to an order compelling your client to furnish those particulars which they committed to furnishing at paragraphs 25, 58, 59 and 69 of the plaintiff’s replies to particulars dated 2nd February 2012, over nine years ago. The terms of this letter and other inter partes correspondence, will be relied upon by our clients in seeking our clients’ costs of any such motion.”

15. On the 9th July, 2021, Binchy Law wrote again to the then solicitors for the Campion interests, noting the absence of any reply to the previous correspondence. As already recited, the notice of intention to proceed was served by Binchy Law in December 2021. Notably, after the motion issued there was then a mediation arranged between the solicitors for December 2023. In preparation for this mediation, and with commendable thoroughness, Binchy Law wrote to the current solicitors for the Campion interest by letter of the 1st December, 2023, stating: -

“For the purposes of the mediation, counsel personnel including Engineers, and any other assessors as may be required, need most urgent access to the site, in order to determine its current state, the nature of remediation works required, and the estimated cost associated with same.

We are to assure your clients that this information is only to be collated for the purposes of the mediation itself, and it cannot be used in any other context whatsoever, such as the legal proceedings.”

I should note that the solicitors for the Campion interests agreed to provide such access.

16. Mr. Mohan SC, a distinguished counsel with significant experience in mediation of these type of disputes, was agreed as mediator between the parties. Ultimately, however, the mediation did not bear fruit.

17. The final letter of significance is a letter from Tom Casey, the current solicitor for the Campion interests, to Binchy Law on the 23rd April, 2024. That referred to the current motion, and set out the resolution of other proceedings involving the Campions and other completely separate parties, notably Everyday Finance DAC. These proceedings were heard by the High Court (Barrett J.) in November 2023 but were subsequently compromised. Towards the end of the letter, and dealing with the application to dismiss the current proceedings, the author stated: -

“With regard to the Dismissal Application proceeding, and entirely without prejudice to our Clients’ position that there is no merit to the Application, we would now invite the Defendant to withdraw the Dismissal Application, and instead to engage with the Plaintiffs, its advisors and experts, in the first instance and as a matter of urgency in progressing the mediation process and also, in tandem or in any event without further

delay following an unsuccessful conclusion of the mediation process, in relation to addressing the outstanding issues in advance of the case proceeding and being certified as being ready for trial by the narrowing (*sic*) the issues between the parties, including at this point facilitating expert meetings and engagement and in the first instance engagement on the future development of the Site.”

The baleful reality, unfortunately, is that even as of April of this year the case could not be certified as being ready for hearing, despite the passage of 17 years since its inception. I will return to this at the conclusion of this judgment.

18. The first affidavit of Mr. Binchy set out some of this correspondence. For the sake of maintaining a narrative that is easy to follow, I have gone on to describe all of the relevant correspondence laid before both the High Court and this court. I will now return to the contents of Mr. Binchy’s first affidavit, in particular to consider the alleged prejudice caused to the County Council as a result of the delay of the Campion interests. I have already described the delay which the High Court judge felt was relevant, namely the period from 2018 to 2023 (with some allowance for the COVID period of 2020 to 2021). In his first affidavit, Mr. Binchy essentially described the prejudice to the County Council as follows: -

“46. A number of relevant witnesses on behalf of the Defendant, who were employees of the Defendant at the time of the events which form the subject matter of the proceedings have either left the employment of the Defendant, retired or have long since been transferred to different responsibilities/duties within the Defendant Local Authority and, as such, are now at a considerable remove from the events which form the subject matter of the proceedings. In particular, Mr. James O’Mahony whose oral evidence would be necessary to address the factual assertions made by the Plaintiffs in relation to the meeting held on 18 July 2006 is now retired.

Further, other relevant witnesses on behalf of the Council in relation to the events that occurred in 2006 and 2007, including Ms. Marie McGivern, who has also retired and Ms. Sonya Reidy, who has since moved to the employment of Limerick City and County Council. Whilst the Council does not anticipate that these witnesses will be unavailable for the hearing of the action, those witnesses are no longer in the employment of the Defendant and, at all events, are now expected to give oral testimony in relation to events which occurred either sixteen or seventeen years ago.

47. Thus, the Defendant is prejudiced by the Plaintiff's failure to prosecute the proceedings because, in general, memories fade and become less reliable with the passage of time. I say that the greater the lapse of time between the events and the hearing of the action, the more fragile and unreliable oral testimony becomes. It is apparent that the length of the delay in this case – over sixteen and a half years since the meeting on 18 July 2006 and approximately fifteen years and ten months since the Enforcement Notice dated 3 May 2007 issued – is such that the defendant will be seriously prejudiced in its defence of the plaintiff's claims herein."

Mr. Binchy went on to state that there was a real risk that it was no longer possible to have a fair trial, that injustice would be done if the claim was tried at this stage, and that because of this delay it was no longer possible for the claim to be determined within a reasonable time.

19. In his responding affidavit, Mr. Liam Campion accepted that for a period between mid-2018 and throughout 2019 "*criticism could be made of the plaintiffs in failing to advance the case...*"; however, he said that during that period: -

"... we were engaged with our legal team and other advisors, including with regard to quantification of our losses. It is also appropriate to record, as Mr. Binchy's

affidavit fairly concedes, that commencing in 2018 there was, for the first time, engagement between the parties' advisors for the purposes of exploring a potential resolution of the issues, which all the parties accept are complex."

20. This explanation is at far too general and vague a level. It gives no satisfactory explanation as to exactly when these various activities were taking place or the amount of time that was involved, nor does it explain the failure actually to do anything visible in the proceedings. Equally unimpressive is Mr. Campion's description of his lack of computer literacy which, he maintains, impeded the progress of the litigation during the COVID period. As Mr. Binchy correctly states in his replying affidavit, other forms of communication between solicitor and client would have been possible over that period to allow the case to be prosecuted. Indeed, as Mr. Binchy points out at para. 20 of his second affidavit, Mr. Campion could have either communicated by telephone with his solicitors or *"sought assistance to use a computer during this time if necessary."*

21. More meaningful, however, is the averment at para. 67 of Mr. Campion's affidavit to this effect: -

"67. Given that the delay is occasioned by the Defendant's action, and inaction, during the 11 year period and up to 2019, it is frankly difficult to understand how the defendants can now credibly contend that the passage of time with the requirement for oral testimony from its intended witnesses, gives rise to a risk of an unfair trial. I say however that it is appropriate to note that the individuals referenced in Mr. Binchy's affidavit have previously given evidence on its behalf in the course of its unsuccessful Prosecution Proceedings and transcripts of their evidence, in addition obviously to their own notes on the relevant material on the Defendant Council's file

having been made available to them to familiarise themselves with the issues in dispute.”

22. Strikingly, Mr. Binchy does not respond to this specific averment. While it is unlikely that issues such as, for example, the motivation of the County Council in serving the enforcement notice or the advice available to it as to the effect of the 2006 meeting were explored in any depth for the course of the District Court prosecution, it is inevitable that some matters of relevance were the subject of evidence over that very lengthy period of 10 days at hearing. In addition, the uncontradicted evidence of Mr. Campion is that all of the individuals identified by Mr. Binchy gave evidence at the District Court hearing. To some extent, therefore, the availability of the District Court transcripts distinguishes this case from many others in which the passage of time may render the evidence of witnesses unsafe. The evidence of Mr. Campion would have been more persuasive if further detail about the transcripts had been provided by him. However, as the parties accepted at the hearing of the appeal—the onus is on the County Council to establish an element of prejudice. It was open to the County Council, in meeting the affidavit evidence of Mr. Campion, to describe the testimony given to the District Court and indicate why it would not be of advantage to the named witnesses in these proceedings. However, the County Council chose not to do so. It is not enough, in the context of this motion, for the County Council to rely upon the commonplace averment (found at the start of Mr. Binchy’s second affidavit) to the effect that the failure to comment upon or contradict any of Mr. Campion’s evidence should not be taken as acceptance of that evidence on the part of the County Council.

23. The only joinder on the question of prejudice containing Mr. Binchy’s second affidavit is this: -

“26. The Plaintiffs have failed to excuse their delay in these proceedings, which delay is inordinate and would cause serious prejudice to the Defendant if the Plaintiffs were permitted to proceed with their claim at this remove. In particular, memories fade and become less reliable with the passage of time. In April 2023, it was sixteen and a half years since the meeting on 18 July 2006 and it is now over seventeen years since that meeting. In April 2023, it was approximately fifteen years and ten months since the Enforcement Notice dated the 3rd May 2007 issued now it is over sixteen years and two months since that Notice issued.”

24. That is my summary of the relevant evidence on the motion.

25. There were three submissions made on behalf of the Campion interests at the hearing of the appeal. The first two were completely without merit. The third was of some importance.

26. The first submission was to the effect that the real issue in the case was whether or not the proposed changes in the development put forward at the meeting in July 2006 were material changes to the existing planning permission. This, it was argued, is a matter which could be decided without reference to the memory of witnesses. It would follow that the fading of memory was not a relevant factor in considering whether or not the proceedings were to be dismissed for delay. This submission entirely ignores the fact that whether or not the change was a material one was not the only issue in the case. From the portion of the pleadings which I have cited, there is clearly a question as to what happened at the meeting in July 2006. In his judgment refusing the County Council’s appeal in respect of the fixing of a preliminary issue, McKechnie J. incisively identified at least five factual issues which had to be resolved at trial. These were: -

(1) the reason why the enforcement proceedings were issued;

- (2) the identity and positions held by those who were involved in that decision;
- (3) what views were expressed and by whom at the meeting in July 2006;
- (4) what advice the County Council officially received regarding the legal effect of that meeting;
- (5) what was the true motivation for taking such proceedings.

27. These are all questions which will have to be resolved by reference to oral evidence. While there may be some documentation which would be of assistance in assessing that evidence, not a single document of that sort was opened by counsel at the hearing of the appeal notwithstanding the fact that final discovery in this action has been made.

28. The second point emphasised by counsel for the Campion interests was the suggestion that the compromise of the Everyday proceedings in some way accrued to the benefit of this action. This, it was submitted, helps to explain and justify certain of the delay over the five year period between 2018 and 2023. It is stated, at para. 28 of the written submissions of the Campion interest, that: -

“... The Appellants commenced and ultimately settled Commercial Court proceedings which crystallised their damages claim ...”

29. I am not convinced that the commencement or settlement of these proceedings in any way justifies the inaction of the Campion interest over the relevant period. In the letter of the 23rd July, 2024 from Tom Casey to which I have already referred, it is stated that the proceedings involving Everyday “*involves the interpretation of a Deed of Settlement dated 29th July 2013...*”; page 2 of that letter. It is difficult to know why, if the interpretation of a 2013 deed was of central or any importance to the current action, this does not then appear

to have been referred to as such at any time prior to the expiry of the five year period of delay. It does not appear to feature in the March 2020 *“Preliminary Particulars of Special Damages”*. It is also not deployed in any contemporaneous correspondence explaining the lack of activity in the current proceedings in the half decade between 2018 and 2023. It can therefore be discounted.

30. The third submission made by counsel for the Campion interest is, in my view, a telling one. In referring to the limited evidence advanced by the County Council on this motion with regard to prejudice, counsel correctly submitted that nowhere is it stated that there has been any discussion with any witness (whether identified in the affidavits or not) about their ability to recall the events from July 2006 onwards. While one would not disagree with the evidence of Mr. Binchy to the effect that memories fade over time, the relevant question in this case is whether persons expected to give evidence at trial in this case are suffering from such a diminution in memory. This does not require a medical report. It does, however, assist the court if the persons whose evidence is at issue have at least been asked to express a view as to how clearly they can remember relevant events.

31. In his admirably focused oral submissions, counsel for the County Council relied upon the correspondence to which I have referred in which, for a period of some two years (from April 2021 until the motion was issued in May 2023), the solicitors for the County Council called upon the Campion interest to prosecute the proceedings by providing particulars of loss. If this was not done, it was stated, a motion such as the current one would be issued. As it happens, the solicitors for the County Council effectively provided a two year period for these particulars of loss to be provided. Counsel submitted, plausibly, that this demonstrated that the striking out of these proceedings caused no injustice, as the Campion interest had plenty of opportunity to mend their hand. However, I think that the

correspondence has another significance. In circumstances where the County Council had formed the view, as of April 2021, that it was entitled to bring a motion to strike out the proceedings but nonetheless continued to give the Campion interest a very significant time to provide particulars, one would have serious doubts about the level of general prejudice sustained by the County Council as a result of the delay between 2018 and 2023. To put it another way, it is difficult to understand why the Local Authority was looking for particulars of loss if it was really the case that as of April 2021 a fair trial was impossible and it should not have to defend the action. Equally, the case made by the County Council is that the five year delay period has led to a general prejudice in the County Council's position as the memory of witnesses may well have faded over that time. If this was really the case, and while the timing of an application of this type is always a matter of judgment, one would have expected the motion to be brought sooner rather than later.

32. The trial judge found that there had been inordinate delay over the period 2018 to 2023. I would respectfully agree with that conclusion. She also found that this delay was inexcusable, and again I would agree with that overall conclusion and with her view that this period of inactivity was "*only partly explained by the pandemic...*"; para. 3.28 of the High Court judgment.

33. The trial judge went on to find that the general prejudice asserted by the County Council was sufficient to dismiss these proceedings. In doing so, she referred to the transcript of the District Court hearing, but expressed the view (at para. 3.38 of the judgment): -

“... but this alone will not dictate the conclusion of the civil proceedings or witness evidence, attested by cross examination, will be crucial.”

While this is undoubtedly correct, it does not address the argument that the existence of these transcripts would be of some use in refreshing the memory of relevant witnesses if this was needed.

34. I respectfully disagree with the trial judge's assessment of the evidence. In terms of general prejudice, it is important to note the very limited nature of the evidence advanced by the County Council in this motion. It is at a singularly general level, and is not enough to justify the extreme step of ordering the termination of this claim.

35. The fact that witnesses have left the employment of the County Council is of no real importance; that much is fully accepted by Mr. Binchy in his first affidavit. The fact that there is no evidence that these witnesses have any difficulty in recalling the relevant events is of great significance. The Campion interests have not made the argument that the existence of the District Court transcripts will oust the need for oral evidence and cross examination of witnesses in the current action. However, the fact that these transcripts exist, and will be of some assistance to witnesses at the trial of the current claim, supports the view that the general prejudice as described in the affidavit evidence of the County Council is not enough to justify the striking out of these proceedings. In addition, there is further support for this view in the fact that the County Council was still looking for particulars of loss in 2021, presumably for the purpose of the case going to trial. Notwithstanding the threat to issue a motion such as this, it would appear to be the case that three years into the relevant period of delay the County Council was still agitating the solicitor for the Campion interest to take steps to move on with the proceedings. The fact that this might have been done in conjunction with attempts to settle the case is of limited importance. It should, however, be noted that if the County Council felt justified in seeking an order to strike out the

proceedings, then obtaining particulars of loss solely in order to make a settlement offer to the claimants would be a strange thing to do.

36. For these reasons, I would disagree with the conclusion of the trial judge that, on the evidence, the proceedings should be dismissed. In an impeccable summary of the legal principles involved, the trial judge noted two important passages in the judgment of Collins J. in this court in *Cave Projects Limited v Kelly* [2022] IECA 245. These are to the effect that: -

- (1) “it is important that assertions of general prejudice are carefully and fairly assessed and that they have a sufficient evidential basis.”
- (2) “courts must be astute to ensure that proceedings are not dismissed unless, on a careful assessment of all the relevant facts and circumstances, it is clear that permitting the claim to proceed would result in some real and tangible injustice to the defendant.”

37. These quotes are, in large measure, two sides of the same coin. Taking due regard of the element of discretion involved in the decision of the trial judge, and the margin of appreciation which exists in respect of that exercise, I have nonetheless come to the view that on the evidence advanced on behalf of the County Council it has failed to discharge the burden of establishing general prejudice of a type that justifies the dismissing of these proceedings.

38. This also disposes of the County Council’s cross appeal on costs issues, which is predicated on the dismissal of the underlying proceedings.

39. Finally, I will return to the closing passage of the letter from Tom Casey in April of this year. The correspondence from Binchy Law, inasmuch as it has been opened to this

court on this motion, has been constructive in suggesting engagement between the parties on certain practical matters. For example, identifying the need to have the County Council engineers access the site in order to make the mediation more likely to succeed was both professional and responsible. There is no reason to believe that, were engagement between the engineers for the purpose of getting the case ready for trial to be proposed by the solicitors for the Campion interests, this would be in any way resisted by the solicitors for the County Council.

40. In any application to dismiss proceedings on the grounds of inordinate and inexcusable delay, the natural response by solicitors acting for plaintiffs is to set out in some detail practical and realistic ways in which the case might be readied for a hearing. While an attempt was made to do this in this case, the actual proposals are at a level of generality which fall short of what should be done. The solicitors for the plaintiffs bear the onus of moving on this case, particularly given the high-octane allegations of misfeasance which have been advanced many years ago and which the County Council is entitled to be able to meet in open court.

41. I am therefore going to direct that this matter be sent back to the judge in charge of the Non-Jury List, to be listed before her for mention at 10am on Tuesday the 28th January, 2025. By that time, I would expect the parties to have agreed the sort of case management directions which are now familiar in most divisions of the High Court. This will include, but not be confined to, a date for the delivery of the plaintiffs' witness statements, a date for the delivery of the defendant's witness statements, a date for the meeting of experts, a date for the delivery of a joint report identifying the points of agreement and the points of disagreement between the experts, a date for the delivery of legal submissions on behalf of the Campion interest and a date for the delivery of legal submissions on behalf of the County

Council. In the event of any disagreement, I have no doubt that the head of the Non-Jury List will make relevant directions to ensure that this case goes to trial during the course of the next calendar year.

42. My provisional view on costs is that, having succeeded on the motion, the Campion interests are entitled to their costs in the High Court and in this court. In the circumstances of this case, there should be a stay on the costs order until the final determination of these proceedings before the High Court. Should either party wish to argue for a different order, that party will have until the 31st January, 2025 to make submissions in writing not to exceed 1,000 words and the other party will have 14 days to respond in like manner.

43. Costello P. and Noonan J. agree with this judgment, and the orders which I propose.