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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION
(JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY JR 180
FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION OF THE NORTHERN IRELAND HOUSING EXECUTIVE

Ms Fiona Doherty QC with Mrs Orla Gallagher (instructed by KRW Law)
for the Applicant
Mr Aidan Sands (instructed by NIHE Legal Services) for the Respondent

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COLTON J

Introduction

[1] This is the third in a series of judicial reviews which relates to decisions taken by the Northern Ireland Housing Executive in respect of the applicant's application under Article 29 of the Housing (Northern Ireland) Order 1988 and the Scheme for the Purchase of Evacuated Dwellings ("SPED").

[2] Because of attacks on the applicant's property she lives in an increased and justified state of fear of loyalist paramilitaries. As a result she has been granted anonymity in these and previous proceedings.

[3] The unusual and complicated factual matrix has been set out in the court's judgment in the application by JR 103 (as she was then known) delivered on 2 March 2021. It was set out in that judgment in the following way:

> "[3] The dispute centres on a bungalow at an address known to the court in the Belfast area. Throughout this judgment the bungalow will be referred to as "the premises."

[4] It is the applicant's evidence that she purchased the premises in September 2007 after returning to Northern Ireland in 2006 with her husband and her four year old son. Her husband was disabled following a brain haemorrhage and the premises were purchased due to its wheelchair accessibility.

[5] In the course of these proceedings the applicant has served a number of affidavits setting out her use of the premises since its purchase. In truth the history is not entirely clear but in short form at this stage it is sufficient to say that it is her evidence that the premises were lived in by the family on and off since their purchase. The premises has been leased out to tenants for significant periods. As a result of various attacks at the premises, believed to be by loyalist paramilitaries, she or her family did not feel safe there. As a consequence she has also lived at an address in Crawfordsburn. An additional factor was that throughout this period her husband was in hospital for significant periods of time during which periods the premises were rented out.

[6] It is her case that she moved back into the premises in the summer of 2013. On 18 September 2013 there was an arson attack on the premises. Thereafter, the premises were unoccupied. Rather than accept a cash payment from the insurance company in relation to the premises she avers that the family decided to rebuild the premises as a family home. She avers that in July 2014 she attended the premises with an architect to start the rebuild. The rebuild commenced and was completed by the start of July 2015. Her evidence is that on 31 July 2015 she had the oil tank filled and began moving back into the premises that day. Over the weekend of 1/2 August 2015 the hot water tank and radiators were stolen. The premises were directly targeted and as a result she again vacated them on 3 August 2015 to return to live in alternative premises.

[7] Thereafter, she put the premises on the market but efforts to sell were frustrated by ongoing acts of intimidation by persons believed to have loyalist paramilitary connections in the area.

[8] In the meantime, sadly the applicant's husband died in August 2016.

[9] The applicant applied to the Northern Ireland Housing Executive (NIHE) for the purchase of her home under the Scheme for the Purchase of Evacuated Dwellings (SPED) on 6 March 2017. In that application she indicated that the premises was her home until August 2016. That application was rejected because the PSNI refused to issue a Chief Constable's Certificate which is a requirement under the scheme.

[10] The applicant then submitted a second application on 22 April 2018, with the assistance of her solicitors. Again, the applicant indicated that the property was vacated in August 2016. Again, a Chief Constable's Certificate was refused. The applicant judicially reviewed the decisions of the PSNI and the NIHE and the decision was quashed by consent.

[11] In those proceedings a replying affidavit was filed on 8 July 2019 by Paul Reid on behalf of the NIHE. In his response at paragraph 32 onwards Mr Reid averred as follows:

> '**NIHE Position**
>
> 32. These proceedings have brought new information to the Housing Executive's attention, which is clearly pertinent to eligibility criterion 1, ie whether the house owned by the applicant was her principal residence. There is a reference in the papers to the house being owned jointly by the applicant and her mother having been bought from her late uncle's estate. There is also reference to the house having been rented to tenants for significant periods of time.
>
> 33. In her affidavit evidence the applicant has given no clear account of when she and her family did or did not actually live in the house as their principal residence. The status of the address at … Crawfordsburn is unclear. Clearly it was

the applicant's principal residence for a considerable period of time, but the extent of this has not been clarified. These are all matters which would require further investigation by the Housing Executive and any reconsideration of this application.

34. A substantial amount of new evidence has now become available to NIHE, including a credit check and details of when the premises was rented out. This information was not before the decision-maker at the time of the second application. The totality of the evidence now available would tend to suggest that the 'principal residence' test was not satisfied.

35. For these reasons, the Executive has proposed a fresh consideration of the application by a different decision-maker who would review all the matters and information including those which have become available within this judicial review. It is likely the applicant would want to make additional representation on these matters.'

[12] In light of the contents of this affidavit understandably the matter was disposed of by way of a quashing of the decision with an agreement that a fresh decision would first be made by the NIHE, upon receipt of any new representations that the applicant wished to make.

[13] Arising from this outcome the applicant submitted a fresh application on 29 July 2019 which was refused by David Dunn, an official working in the NIHE, on 30 August 2019."

[4] The applicant succeeded in the JR 103 application. Although the court accepted that some of the evidence of the applicant's case was problematic it formed the view that the decision-maker had erred in law because he had failed to address the possibility that the applicant had, as she asserted, moved to live in the premises on 31 July 2015 and was forced to vacate the premises on 3 August 2015 as a result of intimidation which could be sufficient to establish the SPED criteria. If she had so

occupied the premises between 31 July 2015 and 3 August 2015 this could have led to a different decision. The court therefore quashed the decision of 30 August 2019 under challenge and directed that the matter be reconsidered by a different decision-maker to determine whether or not the application met the SPED criteria.

[5] The court also permitted the applicant to submit any additional material to support her application within two weeks of the date of the judgment.

[6] Pursuant to that judgment the matter was reconsidered by the Northern Ireland Housing Executive. On 14 May 2021 her application was refused. It is this decision which is the subject matter of this challenge.

The SPED scheme

[7] The SPED scheme has a statutory underpinning in Article 29 of the Housing (Northern Ireland) Order 1988 ("the 1988 Order"), the statutory purpose being to "acquire by agreement houses owned by persons who, in consequence of acts of violence, threats to commit such acts or other intimidation, are unable or unwilling to occupy those houses." The scheme arose out of the conflict in Northern Ireland and there is no equivalent scheme anywhere else in the United Kingdom.

[8] The scheme established in accordance with Article 29 sets out the necessary criteria for an application. The relevant and most recent iteration provides:

> "2.1 All the following conditions must be satisfied before an application will be eligible for acceptance under SPED.
>
> (i) The house must be owner occupied and must be the applicant's only or principal home.
>
> (ii) There must be evidence (substantiated by the PSNI) that it is unsafe for the applicant or a member of his/her household residing with him/her to continue to live in the house, because that person has been directly or specifically attacked or intimidated and as a result is at risk of serious injury or death. A certificate stating this clearly, signed by the Chief Constable of the Police Service of Northern Ireland, or authorised signatory, must be provided to the Housing Executive."

[9] The issue in this case is whether or not the applicant has satisfied the criterion at 2.1(i). Is the applicant the owner/occupier of the property and is it her only or principal home?

The impugned decision

[10] The respondent provided the applicant with a reasoned written decision dated 14 May 2021.

[11] The decision is supported by an affidavit from the decision-maker confirming she had no previous involvement in the case. In her affidavit she sets out the background to the SPED scheme and replies to some of the matters raised in the applicant's supporting affidavit.

[12] Turning to the written decision under challenge it begins by summarising the history of the applications. It sets out the eligibility criteria for the SPED scheme. It confirms that in carrying out a review she had taken into account all three SPED applications, associated documents and the court proceedings including the court's judgment of 2 March 2021 with a particular focus on occupation and primarily "whether it is more likely than not that the applicant was in occupation of the property as her principal home on 3 August 2015, being the date on which she says she vacated the property."

[13] The decision then sets out in tabular form the documents relied upon by the applicant as evidence of occupation during her period of ownership and comments on the probative value of each of the items of documentation in terms of establishing occupation as a principal home.

[14] Having done so she sets out her reasoning and conclusions in the following way:

> "It would appear from the evidence in this case and as indicated in the Judgment at paragraph [6] that the applicant's '… evidence is that on 31 July 2015 she had the oil tank filled and began moving back into the premises that day. Over the weekend of 1/2 August 2015 the hot water tank and radiators were stolen. The premises were directly targeted and as a result she again vacated them on 3 August 2015 to return to live in alternative premises.'
>
> I have considered this evidence carefully but these facts, in my view, suggest that she did not actually occupy the Property over that weekend as the theft of a hot water tank and radiators took place and indeed damage to the oil tank including spilling oil in the garden are in my view inconsistent with someone actually occupying and living in the property at that time. That view is consistent with the various statements made by the applicant in

paragraph 6, 7 and 8 of her affidavit sworn on 19 December 2019 that it was her intention to live in the property permanently as her home but due to the actual vandalism and intimidation occurring particularly over the weekend of 31 July 2015 that intention was never in fact achieved.

For example she states in the final sentence at paragraph 8 `we came to appreciate that the various acts occurred when there was activity around the property suggesting that we intended to move in, and were calculated to intimidate us out of living in it.'

From the evidence that I have reviewed, it is clear that the applicant's stated intention was to move into the property as her principal home on Monday 3/8/15 but in reality was prevented from doing so due to the alleged vandalism and acts of intimidation occurring over that weekend when the property was unoccupied.

In the overall consideration of this case there is evidence provided by the applicant to suggest that she was intending to move into the property after the date of the alleged incident. This is evidenced by her own statement that she started to carry out repairs to the property and carried out minimal repairs based on affordability.

Conclusion

I am satisfied that on the basis of all the previous existing evidence in this case and the recent additional evidence provided by the applicant it is insufficient to establish that she was occupying the Property as her principal home during the period 31/7/15 and 3/8/15 or anytime thereafter. The CISU along with the PSNI witness statement indicate that the applicant's principal home prior to 31/7/15 was ... Crawfordsburn.

Accordingly, the Housing Executive cannot accept the application under the SPED scheme as it does not meet eligibility condition 1, namely:

> 'The house must be owner occupied and must be the applicant's only or principal home.'"

The grounds of challenge

[15] The Order 53 statement relies on multiple grounds including allegations of illegality, failure to take into account material considerations, irrationality, breach of statutory duty, breach of Convention rights and a breach of the scheme itself.

[16] Ms Doherty in her submissions submits that the NIHE has erred in concluding that the applicant does not meet condition 2.1(i) of the scheme. Essentially the applicant asserts that as of 31 July 2015 the premises were occupied by her and were her only or principal home. The decision-maker has concluded that this was not the case. In coming to that conclusion the applicant asserts that the decision lacks "proper consideration and reasoning." In short, Ms Doherty alleges that the NIHE had made a mistake of fact.

[17] Before analysing the arguments on behalf of the parties I pause to set out some important legal considerations for this review.

[18] There is no basis upon which the applicant can impugn the lawfulness of the scheme or the criteria itself. As was recognised by the Court of Appeal in *Re Cooley's Application* [2014] NICA 18 where an applicant is threatened or attacked in his or her home in circumstances which may give rise to risk of serious injury or death the State's positive obligation under article 8 can be engaged. The scheme itself clearly complies with the State's article 8 obligations. The issue in this case is the decision that has been made in terms of whether or not the applicant qualifies for assistance under the scheme.

[19] Article 29(2)(a) of the 1988 Order provides the NIHE with a discretion as to "the circumstances in which the Executive may acquire a house under the scheme." There is no statutory requirement to provide for the purchase of all houses of persons who have been threatened in all circumstances and the Executive is entitled to set its own criteria subject to the approval of the department.

[20] The SPED scheme is not intended to be a compensation scheme for property damage. It is operated by the Housing Executive because it relates to housing, rather than property. This is why the "principal home" test is the first criterion to be established under the scheme. The second criterion requires the applicant to show that it is "unsafe" to continue to live in the house due to violence or intimidation.

[21] It must also be remembered that the scheme is only a part of the statutory obligations imposed on the Housing Executive under the 1988 Order. The Executive routinely provides emergency accommodation, support, advice and assistance to those who have been rendered homeless. The SPED scheme is only one of a much larger package of measures available to help victims of intimidation and violence in the context of housing.

[22] The court is therefore not considering the lawfulness of the scheme but the lawfulness of the decision made under the scheme. In that event the court is mindful of the fact that it is a court of supervisory jurisdiction. It is not the task of the court to substitute its own view on the merits of the decision but rather to audit the legality of the decision under challenge.

[23] The court is reviewing the decision of a person with substantial experience in the housing field. She is not a lawyer and it would be wrong of the court to analyse her decision in an overly legalistic manner. The court is not involved in a review of the merits of the decision.

[24] Essentially what is involved in this dispute is an assessment of the facts. In general terms in these circumstances the court should leave assessment of evidence and fact to the primary decision-maker. To find illegality in these circumstances the court would need to see some form of irrational reasoning or clearly flawed analysis of the facts by the decision-maker.

[25] Turning to the particular facts of this application, in its previous judgment the court indicated that the evidence in support of the applicant's case was "problematic." Nothing in this hearing has changed the court's view in this regard.

[26] What is the main evidence supporting the applicant's assertion that the premises in question were her principal home? In her first affidavit in support of the first judicial review dated 7 May 2019 she avers at paragraph 5 and onwards:

> "5. I moved into the bungalow with my family in spring of 2008. I had to rent the property out for a few months in the spring of 2009 when my husband was in hospital and moved back into the property in the summer of 2009 when my husband was discharged from hospital. In 2010 when my husband was further hospitalised the property was again rented out. We needed the income. In the summer of 2013 I moved back into the property.
>
> 6. My husband's health was deteriorating rapidly and as I was working full-time with a lot of travelling to London and Dublin with my job and caring for our 4 year old, I needed extensive family support. Our son was being looked after a lot by my parents and we lived either with them or closer to them for periods of time. This was a time in my life when I was trying to balance a critically ill husband who needed 24/7 care with all his personal care and feeding, a full-time job and childcare.
>
> 7. On 18 September 2013 there was an arson attack on the property. Rather than accept a cash payment from

> the insurance company on 19 June 2014 we decided to rebuild our family home. In July 2014 I attended the property with an architect to start the rebuild. Bricks were thrown at my car. The rebuild commenced and was completed by the start of July 2015. On 31 July 2015 I had the oil tank filled and began moving back into the property that day. Over the weekend of 1/2 August 2015 the hot water tank and radiators were stolen. The property was directly targeted when my family moved back in after the fire. Further incidents occurred. When I installed and activated an alarm system the electricity meters were damaged on no less than four occasions."

[27] In her first SPED application dated 6 March 2017 she completed a standard form provided by the NIHE in which she provides personal details and the address of the relevant premises. She includes documents to confirm evidence of her occupancy of the house, namely a statement from the Co-Operative Bank between 26 July and 4 August 2016 in which her address is given as the premises, household insurance for the premises between 17 June 2015 and 16 June 2016, together with a BT order dated 2 October 2015 and a quotation for a CCTV system dated 13 August 2015.

[28] In her second SPED application the covering letter from her instructing solicitor indicated "our client's home was purchased as the main family residence and was being prepared and renovated as such." Again, the standard NIHE application form is completed. Under the section identifying the additional persons permanently resident at the above address the applicant refers to her husband and son and says that all three people (to include herself) were resident at the premises when they were forced out in 2016. She includes background information in the form of an additional statement. That statement refers to the purchase of the premises in the autumn of 2007 and that after basic adaptations were carried out "we moved in and started the lengthy process of making it into a suitable home."

[29] The statement goes on to say:

> "In 2009 my husband suffered another serious stroke and was hospitalised long-term. In 2010 I moved closer to my parents for help with our son in order to facilitate evening hospital visits. As my husband was in hospital for more than 6 months the property was rented out to help meet our costs. In 2012 as my husband's health improved we moved back in and continued with the renovations."

[30] She then refers to the fire on 18 September 2013 which completely destroyed the premises. She goes on to say that in 2015 the rebuild was completed and on

1 August 2015 "I filled up the oil tank and switched on the central heating system and we started to move our furniture and belongings into the property. That very same evening the property was broken into and damaged to such an extent that it was uninhabitable."

[31] Later in setting out a list of the main incidents and those reported to the PSNI the following entry appears:

> "3/8/15 – On the day my family and I were moving back into our home, the property was damaged to the extent that it was no longer habitable."

[32] The document included a detailed timeline which again refers to the premises being rented out in 2010 and moving back into the premises in 2012. It also indicates that on 31 July 2015 the premises was completed and they had started to move back in. On 1 August 2015 the following entry appears:

> "Oil tank filled up and heating system switched on Friday afternoon to move in on Monday."

[33] In addition the applicant placed considerable emphasis on two documents namely confirmation of delivery from LL Bean of various items to the property dated 23 July 2009 and a delivery from Tesco on 20 December 2009 with various Christmas items. These support the contention that the applicant was occupying the premises on those dates. In addition to these materials subsequently the applicant has sent an email to the respondents on 10 June 2019 confirming delivery of home heating oil from Alfa Oils on 29 July 2015 – 250 litres at a cost of £105 – order no 544. Bizarrely this contrasts with other records in relation to this delivery. On 10 March 2021 the applicant provided an invoice from Belfast and Down Oil Supplies dated 29 July 2015 with an order no 186155 in relation to an oil delivery to the premises in question. In addition, in the timeline in the second SPED application the delivery in question was purportedly from Hayes Fuels.

[34] In closing submissions Ms Doherty pointed out that the companies were related and the apparent discrepancy could easily be explained. I am prepared to accept that a delivery of oil was made to the property on 29 July 2015.

[35] On 24 July 2019 a third SPED application was made which included a large volume of supplementary materials.

[36] The related materials set out the background to the purchase of the premises in Crawfordsburn and the inability to adapt this to meet her husband's needs. She outlines the circumstances of the purchase of the premises in question and indicates that they were purchased "with the intention of it being her principal family home." She indicated that the family first lived at the premises and carried out renovations

during periods from 2008 to 2010 but that she had to work around rental agreements during this time.

[37] After the arson attack on 18 September she says that she rejected an offer from the insurance company to pay out for the value of the home and instead spent over a year rebuilding the house as it was "to be our principal family home."

[38] She confirms that they evacuated the property "for good" in autumn 2016.

[39] The respondent asserts, and I accept, that in the vast majority of cases the question of occupancy and principal home is relatively straightforward.

[40] In this case it became clear that on investigation of the original SPED application there was a significant issue about when and in what circumstances these premises were occupied by the applicant and whether they were ever her principal home at all.

[41] The genesis of this primarily arose from a statement the applicant made to the PSNI on 18 July 2014, signed by her, in which she states:

> "I own (the premises). I have owned this property for about 5 years. I have never lived in it and have rented it out to tenants."

[42] On 28 October 2013 in a letter from PSNI ACC Alan Todd to a public representative references a statement made to the PSNI dated 20 October 2013 where the applicant states:

> "I own (the premises) with my mother. I have owned this property since 2007. I let this property out …"

[43] In order to further investigate the matter the Housing Executive sought evidence from its Corporate Investigation and Security Unit (CISU). CISU is the department which NIHE uses in order to investigate and establish property occupancy credentials.

[44] CISU carried out a credit records check but found no credit information for the applicant associated with the premises. However, an extensive and unbroken credit history for the applicant commencing in 2011 until 5 June 2019 was established in respect of the premises in Crawfordsburn. CISU carried out a series of further checks in an attempt to confirm residency of the premises in question:

- Health and Social Care Business Service Organisation (BSO) records show that the applicant was registered at the Crawfordsburn address from November 2007 with no breaks.

- Land and Property Services records show that the applicant was registered as the vacant ratepayer of the premises with the correspondence address at the Crawfordsburn address. She is registered as the owner/occupier of the address at Crawfordsburn and has been responsible for rates from 8 February 2006.

- Companies House records show the applicant registered as a director of a management company whose address is registered at the address in Crawfordsburn.

- Housing benefit records show private housing benefit claims in respect of tenancies at the premises during the following periods:

    - 10/12/07 – 19/05/08
    - 01/11/08 – 13/09/09
    - 16/04/10 – 31/08/12
    - 01/10/12 – 01/09/13.

[45] That report was looking at the situation as of August 2016 when the applicant claimed that she had evacuated the premises. The report concludes:

> "Based on the information that I have collected it is my belief that the applicant on balance does not reside at (the premises) as her only or principal home.
>
> It is my belief based on the information that I have collected on balance that the applicant's only or principal home was in August 2016 and remains to be of (the address in Crawfordsburn) due to her unbroken history at the property.
>
> This is based on the extensive connections to (the property at Crawfordsburn) and that I cannot locate any connections to (the premises) other than that she is a joint owner of the property and planning applications at the property which would not be proof of residence."

[46] Of course, as the report acknowledges, this is not in any way determinative of the issue. The decision has to be made by the Northern Ireland Housing Executive.

[47] Faced with this evidence one can see why it was described in the court's previous judgment as "problematic" and why a clear issue arises as to whether or not the applicant met the criteria under 2.1(i).

[48] Despite this the court did quash the decision of 30 August 2019 because it was concerned that the decision-maker did not give proper consideration as to whether

or not in fact the applicant had occupied the premises as her principal residence between 31 July 2015 and 3 August 2015.

[49] In those circumstances it is entirely understandable that the primary (although not exclusive) focus of the decision now under challenge was on that period.

[50] The court gave the applicant leave to submit any additional material to support her application. As a result the applicant submitted a letter from the Bank of Ireland dated 9 March 2021. This was a short letter addressed "To whom it may concern" confirming that during the period of 8 July 2015 to August 2015 the statement address for a Bank of Ireland account in the name of the applicant was the premises. She also submitted a hard copy invoice for the home heating oil delivered on 29 July 2015. This is the invoice provided by Belfast and Down Oil Supplies to which I have already referred. Finally, the applicant enclosed two photographs of her family, one relating to the applicant's son's 6th birthday party on 14 June 2008 and another of the applicant's son and her husband "in 2013."

[51] The application confirmed specifically that the applicant moved into the premises on 31 July 2015 following the rebuild of her home which resulted from an arson attack and then was forced to vacate the property again on 3 August 2015 as a result of further attacks/intimidation.

[52] This additional material was considered along with the previous material submitted leading to the impugned decision which has been set out already.

[53] A frustrating aspect of this application is that subsequent to the impugned decision, and notwithstanding that the court granted permission to the applicant to submit further material in support of her claim, the affidavit in support of the Order 53 statement provides further detail of her purported occupancy of the premises during these dates. Thus, she says at paragraph 6 onwards of her affidavit sworn on 12 August 2021 as follows:

> "6. I did not attend work that Friday 31 July 2015 as this was the day we planned to move back in. That morning I drove from my parents' house with boxes ready to unpack in our home. As it was the school summer holidays my son was with me. I remember staying at the property while a friend collected my son around lunchtime and took him out for a while so he didn't get too bored.
>
> 7. I had ordered home heating oil earlier that week knowing we would finally be in the property that weekend. We did not speak with the delivery person as I

had already paid for the oil. I cannot remember exactly what time the oil was delivered.

8. We had a takeaway on Friday night. Otherwise we cooked basic meals in our home as we settled in. We stayed at the property on Friday and continued unpacking the next day. We left around lunchtime to do some shopping, returning afterwards – late afternoon – and again I made a basic meal as we were busy. Our days were spent mostly out and about looking for random items which we needed such as a letterbox. We also went to Glengormley to shop for white kitchen goods such as a washing machine and tumble dryer. My father and my brother joined us at the property and, although I cannot remember exactly when they arrived, they were working at the property, helping us, for several hours. They left later that evening.

9. We stayed at the property on Saturday 1 August 2015, and on Sunday we continued our work there. On Sunday evening I remember we were alone at the property. I was working late into the evening and had all the lights switched on with no curtains up. I was unaware of anyone watching us from outside the property but, in hindsight – with no curtains, our presence and actions would have been apparent. We felt completely comfortable there and there was nothing which alerted us to any concern or issues with the safety of our home or our personal safety. There would have been a lot of activity at the property over the course of that weekend. The builders came to do some final touches on the Saturday afternoon, but from memory we were out at Glengormley at that stage.

10. I have a memory of taking various boxes and storing them at the back of the garage, hoping to take each one separately into the house to unpack it. I knew from the start that it would take us a long time to settle into our property due to having to care for my son and especially due to my husband's disability. My overall memory of that weekend was that it was incredibly stressful given the practicalities. This was at a difficult time for us as a family and even though I believe that once we had settled in it would all work out, this did not detract from the anxiety which I felt. Even though we

had moved in, it would be a while before we settled there.

11. On the Sunday evening (2 August) – after midnight – I took my son to my parents' house as I had an early work meeting the next morning and needed childcare during the school holidays. My work clothes and briefcase were at my parents' house as I had slept there the previous Thursday after work.

12. We had a home alarm system installed at (the premises) in the days before we moved in, this was paid by bank transfer on 6 August 2015. Unfortunately, we did not switch it on when we left in the early hours of Monday morning as I knew the builders were coming the next day.

13. At around lunchtime on Monday 3 August 2015 I received a telephone call from the builder to say that there had been a break-in at the property. The oil tank had been emptied unto the garden and the boiler, radiators and internal water tank were taken with forced entry and there was damage to the front door. We did not reside in the house after 3 August 2015 due to these and previous attacks. It was clear that every time we went near the property we were being watched and attacks occurred. …

15. There had been no attacks on the property when we were not there, yet after this weekend of moving then the attacks began with a major attack designed to make the property uninhabitable. The oil spills across the garden meant that we could not move back in. The septic tank had been burnt out – and I vividly remember realising we could not return to live there. This was really the first time that I realised we would never be able to safely live there."

[54] Mr Sands understandably complains that none of this detail was made available to the decision-maker and says it would be wrong of the court to take this evidence into account. Nothing approaching this detail had been provided in three previous applications and two judicial review applications. Nor had this sort of detail been provided in support of the review subsequent to the judgment in *JR 103*.

[55] In any event Mr Sands says that the evidence available including contemporaneous material clearly conflicts with the detail of the account given so late in the day.

[56] In addition to some of the material referred to earlier Mr Sands refers to the PSNI log report in relation to the arson on 18 September 2013 which contains the following entry:

> "Fire service report that the property was secure prior to their arrival. They had to force entry. The property was vacant – beds lined up against wall, very little furniture, no clothes, not lived in. The electricity switched off at mains and no sign of accelerants. Fire service believe seat of fire in roofspace and could have been lit for some time. …"

[57] This is consistent with the premises having been let out up until the end of August 2013 and thereafter not being occupied. This contradicts any assertion by the applicant that she had moved in prior to the arson. She may well have formed the intention that she would do so but the contemporaneous evidence suggests that this was not the case. This is consistent with the statement of 18 July 2014 which has been partially set out above and which includes the following:

> "Today I was at property I own at (the premises). I have owned this property for about 5 years. I have never lived in it and have rented it out to tenants. A tenant notified me last August that he was moving out and so the property was vacant last September during which time it was burnt out and it was malicious and deliberate."

[58] In relation to what occurred prior to 3 August 2015 the contemporaneous occurrence inquiry log report from the PSNI is significant. The log entry records:

> "The building entered was a property new build currently under construction. Property secured Saturday 1.8.15 at approximately 1500 hours by contractor and entry discovered this morning when staff arrived at site."

[59] The log entry records contact between the PSNI and the applicant on 5 August 2015. In subsequent correspondence with the applicant on 10 August 2015 reference is made to a cigarette butt which the applicant was anxious should be tested for DNA as a potential lead in identifying those responsible for the criminal damage to the premises. The note records that the cigarette butt "was located outside your property, on an active building site …"

[60] Mr Sands points out that there is no mention of damage to the septic tank as set out in the applicant's affidavit during the investigation in August 2015. Her affidavit suggests this occurred at that time. However, the documentation reveals that this was first reported to the PSNI on 21 February 2017 where the log entry records:

> "She states this is the septic tank in the garden and according to the AP has been burnt sometime over the past week. She has no idea when."

[61] Another log entry retained by the PSNI on 23 October 2018 records that:

> "She had filled the oil tank and carried out all the usual preparations to move. However immediately prior to moving in damage was caused to the property making this impossible."

[62] Ms Doherty points out in response that much of this material is not actually referred to in the actual decision, although it certainly was available to the decision-maker, unlike the affidavit sworn in support of this application.

[63] Given the context of this case the court has had to examine the factual matrix in more detail than might otherwise be expected in a judicial review application. At the end of the day the resolution of the application does depend on an assessment of the factual situation on the ground.

[64] The evidence points to the applicant being in occupancy of the premises, probably as her principal residence, between the spring of 2008 and 2009 and for a further period between the summer of 2009 and the spring of 2010. This is supported by the documentation provided by the applicant. It is also consistent with the dates upon which housing benefit was paid to tenants. For the remainder of the period prior to 2015 it is clear that the property was rented out up until the time of the arson in September 2013. I accept that it is probable that the applicant intended to rebuild the property with a view to occupying it and treating it as her principal home. Unfortunately because of the events which took place she never achieved that objective. Throughout the relevant period apart from the short periods to which I have referred her principal residence was the Crawfordsburn address.

[65] On the basis of the material available to the court it has concluded that the impugned decision was a rational one.

[66] The court accepts that one should be slow and careful in drawing conclusions from statements and documents that range over a number of years. This is particularly so when statements may be made in a specific context and when someone such as the applicant may be under extreme pressure.

[67] However, on the examination of the materials before the court it seems that there are internal inconsistencies in what the applicant has said about her occupation of the premises, in particular in relation to the crucial period identified by the court in the previous judgment. In addition it seems to the court that there is an abundance of external material which supports the conclusion reached by the decision-maker that the premises were not the applicant's principal residence. In the court's view the weight of the evidence points to the fact that the Crawfordsburn address was her principal residence and certainly that this was a decision open to the decision-maker.

[68] I say this even having regard to the affidavit evidence which was not before the decision-maker. I had considered whether to refer the matter back yet again for a further decision in light of that affidavit evidence but it seems to the court that the evidence overwhelmingly points to the fact that at the relevant time this was a building under construction. It had been secured by the builders on the Saturday. The break-in was discovered when they returned to the premises on the Monday. The evidence firmly points towards the fact that the house was not occupied and could not be said to be the applicant's principal residence at the time.

[69] In short the court is not satisfied that there has been any illegality in the decision made by the respondent. It was a rational and reasonable decision which lawfully applied the relevant criteria for consideration of the SPED application made by the applicant.

[70] I understand that this decision will come as a great disappointment to the applicant. There is no doubt that she has been the victim of unacceptable and appalling intimidation. However, the decision by the Executive that she is not eligible under the SPED scheme for the premises to be purchased by the Executive is a rational and lawful one, supported by the evidence.

[71] There are no grounds for the court to interfere with that decision and, accordingly, judicial review is refused.