



[2026] IEHC 484

**THE HIGH COURT
PLANNING & ENVIRONMENT
CIRCUIT APPEAL**

DUBLIN CIRCUIT

COUNTY OF THE CITY OF DUBLIN

[High Court Record No.: H.CA.2025.0000329]

[Circuit Court Record No.: 2025 5748 Co. Dublin]

**IN THE MATTER OF THE PLANNING AND DEVELOPMENT ACT 2000
NOTICE OF MOTION FOR RELIEF UNDER SECTION 160 OF THE PLANNING AND
DEVELOPMENT ACT 2000**

BETWEEN

SOUTH DUBLIN COUNTY COUNCIL

RESPONDENT/PLAINTIFF

AND

**THRESHFORD LIMITED, MULLNASSA LIMITED AND BRANACH DEVELOPMENTS LIMITED
APPELLANTS/DEFENDANTS**

AND

**THE HIGH COURT
PLANNING & ENVIRONMENT
CIRCUIT APPEAL**

DUBLIN CIRCUIT

COUNTY OF THE CITY OF DUBLIN

[High Court Record No.: H.CA.2025.0000330]

[Circuit Court Record No.: 2025 5894 Co. Dublin]

**IN THE MATTER OF THE PLANNING AND DEVELOPMENT ACT 2000
NOTICE OF MOTION FOR RELIEF UNDER SECTION 160 OF THE PLANNING AND
DEVELOPMENT ACT 2000**

BETWEEN

JOHN O'NEILL

APPLICANT/RESPONDENT

AND

**BRANACH DEVELOPMENTS LIMITED AND MULLNASSA LIMITED
RESPONDENTS/APPELLANTS**

(No. 3)

<i>Commencement of works:</i>	<i>mid-August 2025</i>
<i>Date of Circuit Court order:</i>	<i>19 December 2025</i>
<i>Date of principal judgment:</i>	<i>3 June 2026</i>
<i>Relevant consequential hearing:</i>	<i>9 July 2026</i>
<i>Date draft judgment circulated:</i>	<i>13 July 2026</i>

JUDGMENT of Humphreys J. delivered on Friday 17 July 2026

1. Having made mandatory orders under s. 160 of the Planning and Development Act 2000 to redress unauthorised development, the issue now is the approval of the method statement and costs. This judgment sets out for the record the background to the order made on 9 July 2026.

Judgment history

2. In *South Dublin County Council v. Threshford Limited and Ors, O'Neill v. Branach Developments Limited and Anor (No. 1)* [2026] IEHC 342 (Unreported, High Court, 3 June 2026), I dismissed the appeal and affirmed the Circuit Court's orders, holding that the works constituted unauthorised development and were not exempt. I ordered the respondents to cease the development, remove the structures, and restore the lands to their prior condition, with costs awarded against them.

3. In *South Dublin County Council v. Threshford Limited and Ors, O'Neill v. Branach Developments Limited and Anor (No. 2)* [2026] IEHC 407 (Unreported, High Court, 26 June 2026), I outlined the background and rationale to the order made on 22 June 2026 by way of mandatory s. 160 relief.

4. As noted above, this ruling is dealing with further issues as to the form of the order and costs.

5. On 13 July 2026, a draft of the present judgment was sent to the parties, pursuant to paragraphs 15, 195 to 198 and 204 of Practice Direction HC 137 issued by the President of the High

Court, to give an opportunity to address matters such as errors/ambiguities on the basis set out below.

6. Parties are required to:

- (i) Read the draft or have their legal representatives if applicable do so on their behalf.
- (ii) Identify any matters falling within the below.
- (iii) Positively communicate with the court in writing in response to the draft by the deadline specified, such responses to be emailed to the court and uploaded to ShareFile, either stating that they have no comments or setting out the comments.
- (iv) Carry out the foregoing without delay – the draft judgment procedure is a concession which parties can engage with but must do so with immediate dispatch, discipline and focus – it is not the opening of a new phase of the litigation that gives rise to “an entitlement to elaborate procedures at every point” (to use a phrase of O’Donnell C.J. (Dunne, Charleton and Baker JJ. concurring) in *O’Sullivan v. Health Service Executive* [2023] IESC 11 (Unreported, Supreme Court, 10 May 2023) at para. 39); and still less should the procedure invite the perhaps “serious error, to which lawyers are prone, to approach any such case on the tacit assumption that only procedures which approximate to a criminal trial are fair, and anything which departs from that is somehow dubious” (O’Donnell J. (Clarke C.J., McKechnie, MacMenamin, Dunne JJ. concurring) in *O’Sullivan v. Sea Fisheries Protection Authority* [2017] IESC 75, [2017] 3 I.R. 751, [2018] 1 I.L.R.M. 245, 780).
- (v) Keep the draft confidential. Draft judgments are not public domain materials and, while they can be shared between the lawyers concerned and their clients, subject to the following, it is inappropriate for any person to refer to them for any purpose other than to assist the court in relation to the finalisation of the formal judgment. Therefore anyone with information as to the text, content or proposed outcome of any draft is required not to publish or transmit such information to others save solely by way of private transmission for the legitimate purposes of assisting in the finalisation of the judgment and subject to a similar restriction on any recipient. Trial participants should take reasonable steps to keep drafts confidential. On this topic, see *Attorney General v. Crosland (No. 2)* [2021] UKSC 58, [2022] 1 W.L.R. 367, [24/01/2022] T.L.R. 1 (Briggs, Kitchin, Burrows, Rose, Arden SCJJ) which discusses why restriction on publication of draft judgments is in the interests of the administration of justice; see also *Baigent v. Random House Group Ltd* [2006] EWHC 1131 (Ch), [2006] 5 WLUK 45, (2006) 150 S.J.L.B. 603 (Smith J.); *R. (Counsel General for Wales) v. Secretary of State for Business, Energy and Industrial Strategy* [2022] EWCA Civ 181, [2022] 1 W.L.R. 1915, [2022] 4 All E.R. 599 (Sir Geoffrey Vos MR; Davies and Dingemans LJ. concurring); *Public Institution for Social Security v. Banque Pictet & Cie SA and others* [2022] EWCA Civ 368, [2022] 3 WLUK 291, [2022] B.L.R. 349 (Carr LJ; Jackson and Simler LJ. concurring); *Itkin v. Wood* [2023] JRC 101 (Unreported, Royal Court of Jersey, 22 June 2023).

7. The foregoing constitutes an immediately effective direction of the court to the parties and anyone having notice of the draft judgment with effect from the date of circulation of the draft.

8. The responses should not be to reargue the substance (submissions to that effect will be disregarded) but are confined to matters such as:

- (i) informing the court as to whether the party prefers an alternative to a formal written judgment as proposed, and if the party so considers, whether that party considers that the entire matter or some specified part of it can be disposed of (a) by order without a reasoned judgment, or (b) by *ex tempore* reasons without a written judgment;
- (ii) informing the court, assuming that the court proceeds with a formal judgment, as to whether the party wishes to propose any corrections to the draft such as:
 - (a) any apparent typographical, factual, legal or other errors in the draft;
 - (b) any apparent ambiguity or other matter in the draft that could unnecessarily multiply issues or complicate the further processing of the matter;
 - (c) any redaction of personal or other information that a party wishes to request;
 - (d) in the event that the court proposes to refer to any matter (whether factual, legal (including reference to authorities or other legal material), *obiter* comment or otherwise) not referred to at the hearing, any submission as to why such reference is not relevant or otherwise should not be included or as to why such matter if included should not lead to the proposed conclusion;
 - (e) any other matter in the draft judgment that the party considers should be omitted;

- (f) any matter not included in the draft judgment that the party considers should be added to it (including where the party considers that procedural, factual or legal points not set out in the judgment should be addressed or where the party considers that reasons for any aspect of the decision are not set out or where an overall ground is disposed of but detail of the ground or sub-ground is not expressly addressed, or where an issue arose the disposition of which would be *obiter* but on which the party concerned considers that there would be a benefit in the court expressing a view); and
- (g) any other proposals as to the wording (as opposed to substance) of the decision if the proposed wording causes any issue for a party for any identified reason; and
- (iii) assisting the court by providing views on such matters if any on which views are specifically invited in the draft judgment.

9. In particular, parties should draw the court's attention to any apparent error or ambiguity whether they have been successful on the point or not.

10. The rules of engagement in such a situation are that the draft is without prejudice to the right of the court ultimately to issue a judgment in whatever form or with whatever content it considers appropriate. It is then entirely a matter for the court as to whether to give judgment with or without amendment including any amendment that appears appropriate to the court whether arising from submissions or not. Any judgment may be given without further notice following the expiry of the specified period, whether comments are made or not. That period will not be extended save in exceptional circumstances.

11. The deadline for such comments from the parties was to be 16:00 on Wednesday 15 July 2026. Responses were as follows:

- (i) council: no comments.
- (ii) Mr O'Neill: no comments; and
- (iii) respondents: no comments.

Method statement

12. The method statement was acceptable to the council subject to certain amendments as set out in the annex.

13. The respondents initially proposed various qualifications about weather and contractor availability and about timelines being indicative but ultimately agreed that liberty to apply would cover matters. In particular a statement that all timelines would be indicative would make the order essentially unenforceable.

14. Given the extent to which there is now broad agreement as to the steps required I did not consider it necessary to list the matter for further mention and will simply leave it to the parties to see to it that the order is executed. That will also help to keep down any further legal costs. Obviously there is liberty to apply in the event of any default or other issue.

Costs *vis-à-vis* the council

15. At a previous point in the proceedings there was an issue as to whether the council's costs in the High Court should be on the High Court scale (*per* the council) or the Circuit Court scale (*per* the respondents) but that has fallen away by virtue of agreement to the former.

16. The provisional orders of relevance were:

"(xiii) in each case, there be an order for costs in the High Court (including reserved costs and the costs of written submissions) being awarded to the applicants against the respondents jointly and severally and any issue as to the extent of such costs be determined, in default of agreement, by way of legal costs adjudication;

...

(xv) in the SDCC case, pursuant to s. 161(2) of the 2000 Act, the order for costs in the High Court shall include all costs or expenses reasonably incurred by the applicant in relation to the investigation and detection of the unauthorised development as well as in the proceedings, including costs incurred in respect of the remuneration and other expenses of employees, consultants and advisers in respect of those matters."

17. These are now agreed. There was an issue as to whether the order should expressly cover the costs of legal costs adjudication but that was not pressed by the council. Such a term is only really needed if the order is as to partial costs, which is not the case here.

Costs *vis-à-vis* Mr O'Neill

18. The relevant provisional orders were:

"(xi) in the O'Neill case, the order of the Circuit Court as to costs be affirmed on the basis that there be an order for costs in the Circuit Court (including reserved costs and the costs of written submissions and including a certificate for junior counsel as granted by that court) being awarded to the applicant against the respondents jointly and severally to be taxed in default of agreement;

...
 (xiii) in each case, there be an order for costs in the High Court (including reserved costs and the costs of written submissions) being awarded to the applicants against the respondents jointly and severally and any issue as to the extent of such costs be determined, in default of agreement, by way of legal costs adjudication;"

19. The respondents argued that costs were discretionary and that only a portion should be awarded in favour of Mr O'Neill. However no pressing basis for that is made out. It was entirely open to Mr O'Neill to take his own proceedings and that was neither precluded nor deprived of value by the fact that the council instituted their proceedings. Any one case can derail or settle for a variety of reasons, and Mr O'Neill had his own cause of action independent of any other actual or potential plaintiff, in which he has been entirely successful. The various matters in the No. 1 judgment which there is no need to rehearse again do nothing to provide a basis for anything other than a full order for costs and no such contrary basis is otherwise apparent. As Mr O'Neill pointed out in submissions, this is a "simple, straightforward, costs following the event" situation.

20. Mr O'Neill did not press for measurement of costs or for an order as to the costs of legal costs adjudication being expressly provided for (as above, this is really only necessary in the event of partial costs). So I confirmed the particular provisional orders specified above.

Payment on account

21. Mr O'Neill applied for payment of costs on account.

22. Practice Direction HC 125 provides:

"Payment on Account of Costs Pending Adjudication
 HC125 | High Court

This Practice Direction is issued in accordance with the general authority of the President of the High Court and ss. 11(12) and (13) of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020.

This Practice Direction replaces Practice Direction HC71 (Payment on account of costs pending taxation) dated 28th March, 2017. Practice Direction HC71 is revoked with effect from Tuesday, 6th February, 2024, and is replaced, with effect from that date, by this Practice Direction.

The attention of practitioners is drawn to the provisions of Order 99, r. 2(5) of the Rules of the Superior Courts and to the power of the Court to make orders requiring the payment of an amount in respect of costs on account.

I hereby direct that in all cases where there is no dispute as to the liability for the payment of costs and in any other case which a judge thinks appropriate, an order may be made directing payment of a reasonable sum on account of costs within such period as may be specified by the judge pending the adjudication of such costs. Such orders may be made on an undertaking being given by the solicitor for the successful party that, in the event of adjudication realising a smaller sum than that directed to be paid on account, such overpayment will forthwith be repaid.

This Practice Direction shall come into effect on Tuesday, 6th February, 2024.

Dated 31st January, 2024

David Barniville

President of the High Court"

23. In this case the three relevant criteria are satisfied:

- (i) the costs order has been made and as the respondents are not proposing to appeal to the Supreme Court (but even if they were, this comes within the category of "any other case which a judge thinks appropriate", subject to debating the timing of that, but that is academic in the present case);
- (ii) the sum proposed by the applicant is reasonable in this context (€60,000) and is in my view (based on general knowledge of costs but also having regard to the bill of costs prepared by Mr O'Neill's legal costs accountant) likely to be less than the amount which the applicant will secure on adjudication; and
- (iii) the necessary undertaking has been furnished.

24. Furthermore the overall balance of fairness and justice militates in favour of an order for payment on account to Mr O'Neill as the successful party, again without rehearsing everything already stated in the principal judgment. The respondents are on the hook for costs to be paid at some point so fairness and efficiency dictate that we should simply get on with that.

25. Accordingly I made the order sought. That order does not require a finding that the respondents are likely to be insolvent or the like but obviously the fact that the remediation is going to be expensive doesn't assist their defence of the application. So the order under this heading was:

"On the undertaking of the solicitor for Mr O'Neill that, in the event of adjudication realising a smaller sum than that directed to be paid on account, such overpayment will be repaid within 28 days of conclusion of adjudication, the respondents be jointly and severally

required to pay to such solicitor the sum of €60,000 on account of the costs of the proceedings within 28 days of 9 July 2026.”

Costs of the hearing of 9 July 2026

26. Given the minimal extent to which the costs orders against the council were contested and the limited dispute on other issues I generally made no order as to costs of the hearing of 9 July 2026.

27. However, as to the costs of the application for costs and payment out, Mr O’Neill was wholly successful so should have the costs of the costs-related hearing.

Order

28. For the foregoing reasons, the order made on 9 July 2026 was that:

- (i) in each case, the method statement be approved as modified by the Annex to the order;
- (ii) in each case, all results of investigations or surveys be copied to each the applicants as they become available;
- (iii) in each case, there be an order for costs in the High Court (including reserved costs and the costs of written submissions) being awarded to the applicants against the respondents jointly and severally and any issue as to the extent of such costs be determined, in default of agreement, by way of legal costs adjudication;
- (iv) in the SDCC case, pursuant to s. 161(2) of the 2000 Act, the order for costs in the High Court shall include all costs or expenses reasonably incurred by the applicant in relation to the investigation and detection of the unauthorised development as well as in the proceedings, including costs incurred in respect of the remuneration and other expenses of employees, consultants and advisers in respect of those matters;
- (v) in the O’Neill case, the order of the Circuit Court as to costs be affirmed on the basis that there be an order for costs in the Circuit Court (including reserved costs and the costs of written submissions and including a certificate for junior counsel as granted by that court) being awarded to the applicant against the respondents jointly and severally to be taxed in default of agreement;
- (vi) in the O’Neill case, on the undertaking of the solicitor for Mr O’Neill that, in the event of adjudication realising a smaller sum than that directed to be paid on account, such overpayment will be repaid within 28 days of conclusion of adjudication, the respondents be jointly and severally required to pay to such solicitor the sum of €60,000 on account of the costs of the proceedings within 28 days of 9 July 2026;
- (vii) in the SDDC case, there be no order as to the costs of the hearing on 9 July 2026;
- (viii) in the O’Neill case, there be no order as to the costs of the hearing on 9 July 2026 other than that there be an order for costs in favour of Mr O’Neill for the costs of the costs application and payment on account application, and any issue as to the extent of such costs be determined, in default of agreement, by way of legal costs adjudication; and
- (ix) there be liberty to apply.

ANNEX – STEPS TO BE TAKEN

Date	Period	Action
6 July 2026	6 July 2026 – 17 August 2026	- All investigations, surveys, scoping completed and appended to the Method Statement - Appointment of contractors for demolition works - Commencement of certain demolition works including removal of windows, doors, roof tiles and any other salvageable materials
17 August 2026	17 August 2026 – 21 September 2026	Demolition/deconstruction of all units; treatment/removal of any invasive species; breakout and removal of all foundations, slabs and plinths (incl. green-field foundations) to the depth confirmed by the geotechnical investigation; removal of new roads, new hardstanding, new footpaths, new drains and service trenches to facilitate the 29 units; on-site segregation and concrete crushing; progressive off-site disposal to licensed facilities; compilation of the independent waste-tracking log and tipping dockets
21 September 2026	21 September 2026 – 28 September 2026	Post-clearance visual validation inspection by an SDCC engineer confirming complete removal of all structures, foundations and buried waste (if any) before any topsoil is placed

Date	Period	Action
28 September 2026	28 September 2026 – 12 October 2026	Soil remediation and profile reinstatement per the designed drainage/slope-stability solution: installation of the French-drain / SuDS network; deep sub-grade de-compaction / sub-soiling and subsoil ripping to 450mm; placement of 150–300mm certified BS 3882 topsoil; grading and profiling to the pre-development ground condition
12 October 2026	12 October 2026 – 2 November 2026	Landscape reinstatement: native hedgerow bed preparation, mulch mats and protective fencing (IS 435); SuDS swales, check dams and wet-mix seeding; grass/wildflower seeding; hedgerow and semi-mature tree planting (subject to the planting-season point at 6.4); erection of stock-proof fencing
2 November 2026		Inspection by SDCC engineer confirming approval of landscaping plan