

Irena Elliott

13/06/02 06:12 PM

To: Ps Ministers/OFMDFM/DFP@DFP

cc: Gerry Loughran/OFMDFM/DFP@DFP, George
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Houston/OFMDFM/DFP@DFP, Valerie
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Subject: Holy Cross Primary School

Please see attached from Denis.

Thanks.

Irena.



180-02 Judicial Review - Governors of Holy Cross Girls School (FM & DFM) 13 June : Order 53 & affidavitt.pc

PRONI

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(vi) A Declaration that the procedure by which the decision was arrived at was unfair and unlawful;

(vii) Interim Relief

(viii) Such further and other relief as may be appropriate;

(ix) Costs.

3. The grounds upon which the said relief is sought are as follows:-

(i) The Respondents have no legal authority to erect the said wall

(ii) The proposed erection of the said wall is ostensibly required in the interests of community safety. The term community safety is a term which is designed to obscure the fact that the wall is a security wall and as such is ultra vires the powers delegated to the Executive and/or the First and Deputy First Minister.

(iii) Despite the characterisation of the wall as required for community safety, or the security of the Glenbryn residents, there is no objective evidential basis to suggest that the wall is required for "community safety" or security reasons, the only jurisdiction for the erection of the wall are the subjective views of the CRUA.

(iv) The decision to erect the said wall has been taken without any or any adequate consideration being given to the following matters:-

(a) The views of the nationalist community in Ardoyne;

(b) The views of the parents of children who attended Holy Cross Girls' School;

(c) The genuine and reasonable fears of the parents of the children who attend Holy Cross Girls' School for the safety of their children;

(d) The Article 2 and Article 3 rights of the children who attend Holy Cross Girls' School and the risk to their life and personal safety which will be posed by the erection of the said wall;

(e) The right of the children of Holy Cross Girls' School to attend school without fear of attack;

(f) The future viability of Holy Cross Girls's School given the opposition of parents to the measures and their decision to withdraw children from the School should it proceed;

(g) The fact that the impact of the erection of the wall will achieve that which the violent Loyalist protests failed to achieve, the closure of Holy Cross Girls' School;

(h) The rights of parents to send children to the school of their choice;

(i) The fact that the Chief Constable of the Police Service of Northern Ireland does not regard the erection of such a wall as necessary for the security needs of the Ardoyne area;

(j) The fact that any re-alignment of the Ardoyne Road was initially to take place with the consent of both communities and that nonetheless it is proposed to proceed without the consent of the nationalist community;

(k) The proposal from the Board of Governors of Holy Cross Girls' School that a fence be erected rather than a wall;

(l) That it was Loyalist protestors which included Glenbryn residents and members of Concerned Residents of Upper Ardoyne who were involved in constant breaches of the criminal law from September to November 2001 and that it is inappropriate to reward such breaches whilst punishing the victims of that unlawful behaviour.

(v) The decision of the Respondents to erect the said wall has been determined by irrelevant considerations;

(a) The negotiations which took place between the Loyalist protestors and the First and Deputy First Ministers which contributed in part to the suspension of the protest against pupils in Holy Cross Girls's School;

(b) The promises made by the First and Deputy First Ministers to Loyalist protestors which in part led to their suspending the protest;

(c) The subjective views of the residents of Glenbryn as to their security needs;

(d) The demands of the residents of Glenbryn.

- (vi) The erection of the wall will create a hiding place from which loyalists can mount attacks on parents and children as they travel to Holy Cross Girls' School. Given the conduct of the Loyalist protestors during September to November 2001 this fear is genuine and reasonable and the decision to erect the wall amounts to a breach of the Article 2 rights of the children who attend Holy Cross Girls' School and their parents.
- (vii) The decision to erect the wall has been taken without any meaningful consultation with the Board of Governors, the parents of the Children of Holy Cross Girls's School or the nationalists residents of Ardoyne. Throughout the consultation process the terms of the process have been dictated by CRUA.

Dated this day of June 2002

Signed:.....

JAMES T JOHNSTON & CO
SOLICITORS
138 DONEGALL STREET
BELFAST
BT1 2HX

**IN THE HIGH COURT OF JUSTICE IN NORTHERN
IRELAND**

QUEEN'S BENCH DIVISION (CROWN SIDE)

In the matter of the application by Fr. Aidan Troy
Chairman Holy Cross Girls's School Board of Governors
for leave to apply for Judicial Review and in the matter
of a decision of the First and Deputy First Minister.

I, Fr. Aidan Troy, Chairperson of the Board of Governors
of Holy Cross Girls' School Belfast aged 18 years and
upwards make oath and say as follows:-

1. I was appointed as Chairperson of the Board of
Governors of Holy Cross Girls' Primary School and have
held that position since the 6th August 2001.

2. Over the months September to November 2001,
Loyalist protestors, including residents of the Glenbryn
Estate, held protests aimed at preventing children who
attend the Holy Cross School from travelling to and from
the school up the Ardoyne Road.

3. These protests which were held three times daily,
as children travelled to and from the school with their
parents were conducted in an unlawful and violent
manner.

4. The policing of the protest meant that the
Ardoyne Road which was open at all other times of the
day, was blocked at the times children travelled to and
from the school by the presence of saracens. Parents
and children were only allowed to walk up the Ardoyne
Road when the security gates were opened and they
were permitted to do so by the RUC.

5. During the course of the protest I directly
witnessed the following incidents:-

1) Parents and children were subjected to vile
sectarian and sexist abuse on a thrice daily basis.

ii) An explosive devise was thrown from 'protestors' on to the Ardoyne Road on the 5th September 2001 as pupils were being taken to the school.

iii) Explicit pornographic material being displayed by Loyalists protestors as pupils travelled to school.

iv) Death threats were shouted towards named parents as they travelled to and from the school.

v) Twice daily I was made the subject of allegations of having engaged in improper sexual activity with the pupils of Holy Cross Girls' School. On another occasion my name was on a number of placards accusing me of being a paedophile and of having joined the Priesthood to abuse small children.

vi) Posters and placards were held by protestors identifying me by name and calling me a paedophile.

vii) Abusive phone calls were made to the Monastery these were reported to the RUC which necessitated a BT trace being put on the Monastery telephone.

viii) On one occasion I witnessed hot tea or coffee being thrown which struck a parent on the leg.

ix) I was once hit by a brick thrown by a protestor which struck me on the ankle.

x) I witnessed Father Gary Donegan being struck by a brick which had been thrown by a protestor on the elbow.

xi) Spittle was regularly directed at me as I walked to and from school necessitating me washing my hair on an almost twice daily basis.

xii) On occasions protestors wore masks which had a frightening impact on the pupils.

xiii) I witnessed the throwing of fire crackers into the midst of parents and pupils.

xiv) I witnessed daily taunting of parents and pupils with abusive language.

xv) The proximity of the local residents to the pupils was a constant threat and matter of grave concern to me.

6. The protests continued until mid November, at or about that time, the policing strategy changed and the protests were suspended. Loyalist protestors have never accepted that the protests are at an end and over the subsequent months we have experienced threats that the suspension of the protests will be lifted.

7. I am aware that the First and Deputy First Ministers were involved in political negotiations aimed at ending the protest. I believe it to be the case that they reached agreements on steps which would be taken to the benefit of Glenbryn residents and I believe that this was a factor in the decision to call of the protest. I am unaware nor have I ever been advised what precise promises were made by the First and Deputy First Ministers to the Glenbryn residents in return for calling of the protest.

8. Immediately after the suspension of the protest on the 23rd November 2001 I received a letter from the First and Deputy First Ministers, in my capacity as Chairman of the Board of Governors. I beg leave to refer to a copy of the letter and the Attachment to the letter, attached and exhibited hereto as "AT1"

9. The letter addresses what the First and Deputy First Minister regard as the issues which needed to be addressed arising from the protest. The categories of issues include 'community safety' which is described as a matter which falls within the remit of the Northern Ireland Executive and 'security and policing issues which fall within the remit of the Northern Ireland Office.

10. As I understand it this reflects the fact that the Northern Ireland Executive is not responsible and has no authority to take action in the area of security and policing as these are reserved matters which lie within the provenance of the United Kingdom Government and the NIO.

11. In the Attachment to the letter of the

23rd November 2001 the second issue identified makes reference to the 'Re-alignment' of Ardoyne Road/Alliance Avenue junction'. It appears that the First and Deputy First Ministers were to proceed with this issue "in consultation with and agreement of both communities". It appears evident that any progress on that issue was dependent on the agreement of both communities. It was not understood by myself or the Board of Governors at that point that what was being envisaged was a wall which would in effect obstruct the road and interfere with the sight-line of parents to the Holy Cross Girls' School.

12. In and about January 2002 there was publicity in the local media about a wall being built across the Ardoyne Road. This caused widespread concern and distress among parents of children who attend Holy Cross Girls' School. I then received a letter from Jane Kennedy, the Security Minister in the Northern Ireland Office dated the 23rd January 2002 which referred to having received a report from the Chief Constable which "details his view of the security needs of the Ardoyne Area". I have never received a copy of the said report. The correspondence confirms however that "the Chief Constable has not made any recommendation to build a wall across the Ardoyne Road nor have I considered any such proposal". A copy of this letter is attached and exhibited hereto as "AT2".

13. There has since that time been further correspondence sent to me by the Office of First and Deputy First Minister. An update on progress was sent to me on the 20th February 2002 and I would refer in particular to the section entitled 'Alliance Avenue Intersection'. As can be seen from this section the first proposed design was one which had been prepared following active consultation with CRUA (Concerned Residents of Upper Ardoyne) a group actively involved in organising Loyalist protests against school children from Holy Cross Girls' School. As is also apparent there had been no consultation with the residents of Lower Ardoyne, the Right to Education Group, the parents of children at Holy Cross Girls' School or the Board of Governors. I beg leave to refer to the said correspondence and the Wall plans produced on that date. A copy is attached and exhibited thereto as

"AT3".

14. Subsequent to the issues of those plans there were ongoing negotiations which involved Mr. Wheeler of the Office of First and Deputy First Ministers and CRUA and the Focus Group, which is an umbrella organisation representative of the various community groups in Ardoyne. The Board of Governors was not directly involved in any of those meetings. But as a result of those meetings, further plans were sent in March 2002 and a further update was sent in April 2002. I beg leave to refer to a copy of the said update and Plans attached and exhibited hereto as "AT4".

15. Meetings were held with the First and Deputy First Ministers in early May 2002 at which it was communicated to the First and Deputy First Minister that there was total opposition from the Board of Governors and parents who send children to Holy Cross Girls's School to the proposed re-alignment of the Ardoyne Road and the erection of a wall at the junction of Ardoyne Road/Alliance Avenue. The reason behind the objection are our communities fears about the safety of our children travelling to and from the school. The proposed re-alignment interfered with the sight line up the road and there are also concerns that a wall could be used by Loyalists to hide behind and mount attacks on Nationalists using the road. Those fears are based upon our experience of the manner in which residents from Glenbryn were involved in violent sectarian protests directed against primary school girls. Given what was experienced by parents, children and staff of Holy Cross School over September to November 2001 and given that those protests have never been called off, merely suspended, it is my opinion that those fears are genuine and reasonable.

16. Further correspondence with attached proposals issued from the Office of First and Deputy First Ministers on the 10th and 17th May 2002. I beg leave to refer to copies of the said correspondence with appendixes attached and exhibited hereto as "AT5".

17. During this period the Board of Governors met with personnel from the Office of First and Deputy First Ministers and a copy of a letter sent by the School

Principal, Mrs. Anne Tanney to parents updating them on recent developments is attached and exhibited hereto as "AT6".

18. Following consultation with parents and the Board of Governors, the Board sent a written response to the Office of First and Deputy First Ministers on the 27th May 2002 outlining our views in relation to their proposals. A copy of the said correspondence is attached and exhibited hereto as "AT7". The concerns which we highlighted were as follows:-

i) The Office of First and Deputy First Ministers when addressing the issue of "community safety" appears to focus exclusively on the safety concerns of the Glenbryn Residents and insufficient weight was been given to the safety concerns of the residents of Lower Ardoyne or the safety concerns of the children, parents and staff of the Holy Cross School.

ii) That rather than a wall being erected, a high wire mesh fence could be erected, of the type that exists in other interface areas in North Belfast. A fence rather than a wall has the advantage of:

a) Provide such protection as is required to the residents of Upper Ardoyne

b) Prevent the deprivation of natural light from the houses behind the wall, which was an issue raised with us by the First Minister in meetings:

c) Prevent anyone using the wall as a hiding place from which to launch violent attacks on either community.

19. The only response which we received to this correspondence was on the 7th June 2002. This letter announces the First and Deputy First Ministers way forward having received representations from the various parties affected by their decision. A copy of the letter is attached and annexes to the said correspondence are attached and exhibited as "AT8".

20. As can be seen from the contents of the letter it is proposed that a wall will be erected at the junction of

Ardoyne Road and Allance Avenue. No adequate consideration appears to have been given to our proposal to erect a fence rather than a wall and no reason is advanced for rejecting that suggestion. No new plans for this wall have been provided to us. It is further proposed in annex three to the said correspondence that work on this wall will commence on the 17th June 2002.

21. As a result of this correspondence a meeting of the Board of Governors and meetings of the parents were held on the 9th June 2002. A meeting with the teaching staff was held on the 10th June 2002.

22. It was the unanimous view of the parents that should a wall be erected their fears for the safety of their children were such that they will withdraw their children from the school.

23. It was also the unanimous view of the members of the Board of Governors and the staff of Holy Cross Girls's School that they oppose the erection of this wall. It is our collective view that the erection of the wall means the inevitable closure of the School due to rapidly falling numbers.

24. It is a source of deep anger and distress to parents, staff and members of the Board of Governors alike that having withstood the intimidation of loyalist protestors, during which time the school remained opened and functioning, the existence of the school should now be threatened by decisions of the First and Deputy First Ministers.

25. More over it appears that these decisions have their origins in the Loyalist protests and that they have been dictated in large part by agreements reached with persons who were involved in the Loyalist protests. It is evident from the letter of the 23rd January 2002 from the Security Minister, exhibited as "AT2" above that the impetus behind the erection of the wall are the subjective views of the residents of Glenbryn as to their security requirements rather than any objectively discernible security concerns.

26. Given that the erection of this wall is being