

Councillors: elected eunuchs



O'Devaney Gardens

Sidelined countrywide on the height of new buildings, at least in O'Devaney Gardens elected members are looking to assert their legal prerogatives on land disposal

by **Michael Smith**

Councillors in Ireland have very limited powers. They constitute a bully pulpit to embarrass the City or County CEO into doing the democratic thing, also known as having the power to hold the CEO to account. Mostly CEOs go along with a regimen whereby they do what business people and developers want but they make Councillors look good and throw money at their pet projects and pet Community groups in exchange for being

allowed to decide the big things themselves. Councillors get appointed to internal and external committees like VECs, strike the rate, determine rate and property tax rebates and they have what are known as reserved powers for things like zoning and disposal of lands.

Two recent encroachments on their powers highlight their eunuch status.

When Eoghan Murphy was Minister for the Environment, following lobbying, he introduced guidelines to allow smaller and lower-standard apartments and to allow greater building

heights. But cleverly he made the guidelines mandatory so local authorities and An Bord Pleanála, on appeal, in fact legally are obliged to follow the guidelines – making them rules not guidelines. Local authorities are bound to apply their own development plan standards but An Bord Pleanála is not so bound.

Four recent schemes in Dublin City illustrate this.

The two schemes below were rejected by Dublin City Council but approved by An Bord Pleanála.



22-storey Johnny Ronan offices on Tara St;



9-storey hotel on Capel St on Working Men's club site

The next two schemes are seeking planning permission from Dublin City Council.



Johnny Ronan 9-storey buy-to let, low-rise Appian Way;



Marlet 12-storey buy-to-let, Upper Abbey St

If they are refused there they will probably have more luck with An Bord Pleanála – applying the rigid guidelines.

Meanwhile even where powers are reserved to them, Councillors struggle to register their *cojones*.

Three Dublin City Councillors recently invoked the local Government Act seeking to force a vote to revoke the sale of land for the redevelopment of O’Devaney Gardens near the city’s Phoenix Park after

An Bord Pleanála granted permission for 1047 residential units despite the fact Councillors, after endless fractious discussion, had voted in 2019 to dispose of the City’s land for 768 residential units. The result of forcing a litre of development into a pint pot is that some of the blocks were forced up to 14 storeys in breach of the City’s all-important development plan for the site.

Independent Councillor Cieran Perry’s resolution started by reminding the Councillors of the relevant statutory background:

- Section 132 (1) of the Local Government Act 2001 states that it is the duty of every [CEO] to carry into effect all lawful directions of a Council in relation to the exercise and performance of the reserved functions of the local authority or joint body. One of those functions is transferring City Council land.
- Section 15 (1) of the Planning and Development Act 2000 states it shall be the duty of a planning authority to take such steps within its powers as may be necessary for securing the objectives of the development plan. Those objectives

preclude 14-storey blocks on O’Devaney Gardens.

- Section 140 of the Local Government Act 2001 states that an elected council or joint body may by resolution require any particular act, matter or thing specifically mentioned in the resolution and which the local authority or the [CEO] concerned can lawfully do or effect, to be done or effected in the performance of the executive functions of the local authority. It was on that basis the Councillors tried to force the CEO to comply with the law and the Dublin City Development Plan.

The CEO prevaricated. A long and unpersuasive legal opinion procured by the CEO on behalf of the Council even though it should have been procured by Councillors since the function of disposing of land is a reserved one, for them. The opinion obfuscated so Councillors would be confused into believing that a property-disposal matter was a planning matter. He said “the motion relates to a recent decision of An Bord Pleanála” and therefore the motion is out of order. Clearly the decision does not relate to the planning decision but to the terms of the land disposal. It was as if the lawyer thought the Councillors were fools.

The CEO’s legal advice assumed Councillors wasted several meetings discussing O’Devaney for the proposal they assented to be to be treated as an initial tender proposal to be swiftly replaced by a final tender proposal more profitable for the developer and agreed behind their backs with the CEO.

Voting to facilitate a breach of Dublin City

Development Plan (on issues like height, density, plot ratio) is unlawful under s 15 (1) of the Planning and Development Act 2000 cited above – it is the DUTY of the planning authority to take such steps as may be necessary to secure the development plan; and once Councillors’ attention has been drawn to that breach they are personally liable for legal actions that attempt to reverse any unlawfulness they push through.

In those circumstances - so Councillors aren’t stuck between a rock and a hard place - it made perfect sense for Councillors to have in the end sought fully independent legal advice rather than just a second opinion on the original legal terms of reference which had been drawn up by the CEO.

Councillors are sterile adjuncts to the visionless and inefficient local authority system. The biggest property disposal on the agenda for the City Council is of lands at Oscar Traynor Road in Coolock, to Glenveagh Properties. Councillors voted down a proposal last year because they wanted the City Council to develop the site itself. But the CEO came back with another proposal involving Glenveagh in early October. In effect despite the fact that property disposal is a function reserved to Councillors, the CEO ignored their stated wishes.

With this as background, the potential sidelining of their view, indeed their exercise of their legal prerogative, on O’Devaney Gardens is a good hill to die on for Councillors concerned to man (and woman) up.

The legal advice that may symbolise Councillors’ escape from irrelevance is awaited. **L**