

THE HIGH COURT

[2021] IEHC 182
[2019 No. 6522P.]

BETWEEN

**BRAY BOXING CLUB LIMITED
AND
PETER TAYLOR**

PLAINTIFFS

**AND
WICKLOW COUNTY COUNCIL**

DEFENDANT

JUDGMENT of Mr. Justice Allen delivered on the 16th day of March, 2021

Introduction

1. In 1902 Bray Town Council bought or built a shed in Bray harbour which, it being where it was and what it was, was called or came to be known as the Harbour Shed. In 2006 the Council divided the shed and in 2007 let part of it to the trustees of St. Fergal's Boxing Club, which was an unincorporated boxing club, and which appears to have taken its name from the dedication of the parish hall where it had first been established in 1995.
2. In 2013 the Harbour Shed was demolished and at the considerable expense of the ratepayers of Bray and the taxpayers of Ireland a new purpose built boxing gym was erected on the site. Whether for continuity or lack of imagination the new building was also called the Harbour Shed. In 2014 Bray Town Council was merged with Wicklow County Council and in September of that year the new building was let by Wicklow County Council to the trustees of St. Fergal's Boxing Club.
3. On 5th June, 2018 there was a very serious violent incident at the premises. One man was shot dead and two other injured. On 7th June, 2018 Wicklow County Council changed the locks and excluded the plaintiffs who at that time were in occupation.
4. By this action, which was commenced by plenary summons issued on 16th August, 2019 the plaintiffs claim a variety of reliefs which appear mostly to be directed to the contents of the building, but which include a mandatory injunction requiring the Council to allow them back in. The plaintiffs' claim to be allowed back in is clear – in the sense that it is clear what they want the court to order the Council to do, if not why – but the several reliefs claimed in relation to the contents are something of a puzzle. When the Council changed the locks it invited the plaintiffs to collect their belongings and soon after the plaintiffs collected some of them. In the years since the Council has repeatedly said that it will facilitate the collection of anything else belonging to the plaintiffs which they wish to remove but the plaintiffs have refused to do so.
5. In any event, the substantive claim in the action is a claim that the plaintiffs are entitled to possession or occupation of the Harbour Shed and damages for alleged interference with its chattels. The plaintiffs delivered their statement of claim on 20th February, 2020 and the Council delivered its defence on 12th November, 2020. There is an outstanding notice for particulars of the claim but otherwise, according to the plaintiffs, the action is ready for hearing.

6. By notice of motion issued on 16th November, 2020 the plaintiffs applied to the High Court for five orders. Three of the orders sought were declarations which – leaving aside the fact that they are not reliefs claimed by the summons or statement of claim – are final orders which the court could not possibly make on an interlocutory motion. The first relief claimed by the notice of motion is an interlocutory order requiring the Council to let the plaintiffs back in, but that was abandoned on the opening of the application, which was confined to the relief claimed at para. 2 of the notice of motion, which is:-

"2. *An injunction restraining the defendant whether by themselves (sic.) their servants or agents, or any person having notice of the making of this order, from terminating the Applicants (sic.) legal interest and/or estate in the possession of Bray Boxing Club in the absence of a properly obtained court order, the defendants (sic.) having been put on notice of such interest, and the matter being the subject matter of ongoing High Court litigation: Record No. 2019/6522P – Bray Boxing Club Limited and Peter Taylor v. Wicklow County Council.*"

The plaintiffs' motion

7. The plaintiffs' notice of motion, as I have said, was issued on 16th November, 2010. Following a protracted exchange of affidavits between then and 25th January, 2021, and an exchange of written legal submissions based on the notice of motion and those affidavits, the motion came on for hearing on 23rd February, 2021. The papers were filed in advance and were read by the court. In opening, Mr. Richard N. Kean S.C., for the plaintiffs, limited the application to the relief sought at para. 2 of the notice of motion. When his time came to be heard, Mr. Esmonde Keane S.C., for the defendant, said that no prior notice had been given that the application would be so limited, although he did not say that he was surprised that it had been so limited.
8. It is by no means clear from the notice of motion – or as I will come to, the affidavits filed on behalf of the plaintiffs – precisely what orders are sought, or by whom, or on what basis, but broadly speaking the plaintiffs, or one or other of them, claim to be entitled to "a legal estate and/or interest" in the building known as the Harbour Shed. What precisely, or even generally, that "legal estate and/or interest" is, and what precisely, or even generally, it is that the plaintiffs apprehend the Council will do *pendente lite* unless the order now sought is made is rather elusive.
9. It is best to start from the beginning.

Background

10. There is some dispute as to the facts but more, I think that it is fair to say, a wide difference of opinion or understanding as to the consequences of what happened between January, 2007, when St. Fergal's Boxing Club went into possession of the old Harbour Shed, and June, 2018, when the plaintiffs were locked out of the new one. I am not on this application to attempt to resolve any disputed issue or fact or law but if I am to understand what it is that the plaintiffs want by way of interlocutory relief, and why, it is necessary that I should endeavour to understand what the dispute is.

11. By indenture of lease made the 20th January, 2007 between Bray Town Council, as Landlord, and John Kane, Albert Morris and Peter Taylor, described as the trustees of St. Fergal's Boxing Club, as Tenant, Bray Town Council demised to the Tenant the property at the west of Bray harbour called the Harbour Shed for a term of four years and nine months at a rent of €200 per annum. The lease did not identify a commencement date, but the keys were handed over on 20th February, 2007 and the rent was billed and paid from that date. The letting was described as a temporary convenience letting pending the implementation by Bray Town Council of a scheme of redevelopment at Bray Harbour. The Tenant was recited in the lease to be a "*Sports Club*" and, in a letter of 7th December, 2005 from the Club's solicitors to the Council, as an unincorporated club consisting of a number of members being the participants in the Club. In the same letter Messrs. Kane, Morris and Taylor were described, respectively, as the chairman, the secretary and the principal coach. The solicitors then proposed that the lease would be granted in favour of the Club and would be held in the names of Messrs. Kane, Morris and Taylor as trustees for and on behalf of the Club. For the duration of the term of four years and nine months and thereafter until 19th February, 2013 Bray Town Council raised invoices for rent at the rate of €200 per annum. The invoices were directed to "*Pete Taylor, St. Fergal's Boxing Club*" at what appears to have been Mr. Taylor's home address. All of those invoices were paid.
12. The boxing club formally called St. Fergal's Boxing Club came to be called Bray Boxing Club. I suspect that it may have been variously called St. Fergal's Boxing Club and Bray Boxing Club because in the solicitor's letter of 7th December, 2005 it was referred to as both.
13. The property demised by the lease of 20th January, 2007 was, as described, a shed. It had no toilets or showers or changing rooms. It appears not even to have had running water.
14. Bray Boxing Club thrived for a time. In 2011 Bray Town Council conducted a feasibility study into the provision of new accommodation for Bray Boxing Club on a site owned by the Council at Ballywaltrim Road. The study group comprised two officials from Bray Town Council, an architect, a representative of Bray Chamber of Commerce, and a Mr. John Murphy, representing Bray Boxing Club. The Club was then said to have 100 active members, including a number of European and World title holders and to have outgrown its facility. Plans were drawn for a new purpose built facility to be built by the Council at an estimated cost of €343,000. The study identified a number of possible funding partners including the Department of Sport, Wicklow County Council and Bray Town Council. The feasibility study report suggested that the chairperson of the Club was Mr. John Murphy, the secretary Mr. Tony Kelly and the treasurer Ms. Bridget Taylor. It identified Mr. Pete Taylor as the head coach and Mr. Matthew Tindell as the assistant coach.
15. On 30th May, 2012 Bray Town Council applied to the Department of Transport, Tourism and Sport for a grant of €300,000 towards the provision of a new boxing club facility at

Ballywaltrim, Bray which was estimated to cost €528,910. On 25th January, 2013 the Department made a provisional allocation of €190,000.

16. In or about May, 2013 Bray Town Council decided on a change of location of the proposed new facility to Bray harbour and on 9th July, 2013 the councillors voted to approve the proposed development at the harbour for Bray Boxing Club in accordance with the requirements of Part XI of the Planning and Development Act, 2000 and Part 8 of the Planning and Development Regulations, 2001.
17. Bray Boxing Club vacated the shed in August, 2013. The evidence suggests that no rent was demanded or paid in respect of the period between February and August. While the construction work was in progress the Town Clerk applied herself also to the preparation of a new lease and on 8th October, 2013 she wrote to Mr. Taylor asking for the names and addresses of the solicitor and the trustees of Bray Boxing Club.
18. By January, 2014 the new facility was ready for occupation and the Club moved in before the paperwork was finalised.
19. By a document described as a licence dated 1st September, 2014 made between Wicklow County Council, therein called the Landlord, and Scott Earls, Tony Kelly, John Murphy, Gary Ryan, Bridget Taylor and Peter Taylor, described as the trustees of Bray Boxing Club, and therein called the Tenant, Wicklow County Council demised the premises known as Bray Boxing Club to the Tenant for a term of eleven months at a rent of €2,500 per annum. The document appears to have been written in part on the template of the 2007 lease and recites that it is a licence, but it purports to demise the property at a rent and makes the "*Tenant*" liable for payments of rates and compliance with enactments and contains a covenant to permit entry. Provisionally, it looks like a lease. A letter from the District Administrator of 31st July, 2014 shows that this document was sent in duplicate to Mr. Pete Taylor, Bray Boxing Club, Bray Harbour because, it was said, Bray Town Council was not in a position to grant a long term sporting lease due to a small hitch with the sports capital grant. The licence or lease of 1st September, 2014 does not specify a commencement date and it is put up by Wicklow County Council as a licence for eleven months from 1st September, 2014. By contrast with the 2007 lease, the 2014 document does not contain a covenant against assignment or a proviso for re-entry.
20. The small hitch with the sports capital grant appears to have been that Bray Town Council, although it had been in occupation of the old shed since 1902, was not registered as the owner. A Land Registry application was lodged by Bray Town Council in 2013 but this appears not to have been processed before that body was subsumed into Wicklow County Council on the coming into effect of the Local Government Reform Act, 2014 on 1st June, 2014. Eventually, on 29th January, 2015, Wicklow County Council was registered as the owner of the property comprised in a new Folio 38327F, County Wicklow. The registration of Wicklow County Council as the owner of the land was confirmed to the Department of Transport, Tourism and Sport by letter dated 3rd February, 2015. By letter dated 17th February, 2015 the Department formally approved

the grant allocation of €190,000, to be paid in a first and final instalment, and the grant was paid on 23rd February, 2015.

21. From the time that Bray Boxing Club went into occupation of the new premises no rent has been paid.
22. By letter dated 17th June, 2016 the Council wrote to The Trustees, Bray Boxing Club proposing a meeting to discuss the lease of the Harbour Shed. Mr. David Forde, the Council's municipal district administrator, has deposed that on 24th June, 2016 he met with Mr. Taylor on behalf of Bray Boxing Club and then informed Mr. Taylor that the premises would have to be valued. The premises was so valued and on 24th March, 2017 Mr. Taylor was informed that the valuation was €14,000 per annum, plus rates and insurance and that the next step was to draft a disposal notice for the elected members of the Council who (as they had in the case of the 2007 lease, and as was required by s. 183 of the Local Government Act, 2001) would have to approve the new lease. The letter was addressed to Mr. Pete Taylor, Bray Boxing Club, Harbour Shed, Seafront, Bray.
23. On 30th May, 2017, following a telephone call in the meantime, the Council wrote again to Mr. Taylor. He was then advised that as part of the disposal process copies of the valuations would have to be circulated to the councillors for their information.

"If the Club is not in a financial position to pay the market rental, as contained in the valuation, documentation would be required from you showing this and it would be a matter for the councillors to agree any proposed reduction in the proposed rent. I would be grateful if you would revert to me on this matter urgently and also provide details of the trustees of Bray Boxing Club as previously requested."

24. There was no response to this letter and a reminder was sent on 2nd August, 2017. On 15th August, 2017 the Law Agent of Wicklow County Council had a letter from Brendan Maloney & Company, solicitors, who identified their client in the heading as Peter Taylor/Bray Boxing Club but said that they acted on behalf of Mr. Taylor who had requested them to write *"in relation to an issue which has arisen in connection with the occupancy by Bray Boxing Club of the premises"*. They wrote:-

"My client advises that the occupancy of the premises is linked to him and to his daughter's preparation and participation in the London Olympic Games in 2012. They had, for a long number of years used/shared a premises on the site, let to them by Bray Town Council. Post the 2012 Olympic Games the premises benefited from a government funded scheme which allowed substantial improvements to be carried out to the premises.

No formal agreement was put in place, but my client was of the understanding that in recognition of the achievements of his and his daughter that they were not to be charged rent by the Council.

The letters recently received seeking payment are in his view contrary to the spirit of the understood agreement.

Can you please review the matter and revert as our client is anxious to resolve the matter as soon as possible?"

25. The Law Agent replied on 14th September, 2017. He referred to the 2007 lease to Bray Boxing Club's then trustees, Messrs. Kane, Morris and Taylor, for four years and nine months and asserted that since then a number of licences had been issued to the trustees, the last of which was issued on 1st September, 2014 to Messrs. Earls, Kelly, Murphy, Ryan, Taylor and Taylor. He acknowledged that a sports grant had been obtained by the Council which, he said, contained conditions including that the premises be used as a sports club. The Law Agent relayed his instructions that "your client" (identified as Mr. Taylor) was operating the premises as a "pay as you go gym" or similar, which was in breach of the terms of the grant, and his instructions that no member of Bray Town Council or Wicklow County Council staff had entered into any understanding that rent would not be charged.
26. The Law Agent set out the Council's position – which was that the premises must be used as a boxing club open to the appropriate community and other groups in accordance with the terms of the sports grant, and that the trustees of the Club would be required to sign a lease in terms to be agreed, subject to the approval of the members of Wicklow County Council. If it should have happened that the Club had been incorporated into a limited liability company, that body would have to be the lessee and its obligations would have to be guaranteed by the directors. Mr. Taylor was asked, within 21 days, to confirm that the premises would be used in accordance with the terms of the grant; that it would be used by a sports club with a minimum of 15 members; that Mr. Taylor and his fellow trustees or any limited liability company guaranteed by its directors would enter a lease; and that the rent as determined by a competent valuer would be paid.
27. On 18th September, 2017 Mr. Taylor's solicitors acknowledged the Law Agent's letter and said that he was taking instructions. They replied on 26th September, 2017. The letter identified their client as Mr. Taylor and was marked "SUBJECT TO LEASE/LEASE DENIED". The solicitors asked for certain information and documents and continued:-

"Without prejudice to reviewing the above material, our clients point out that the premises are used as a sports club. It has an open access policy and Mr. Taylor describes it as being a community based club that allows access to anyone who wishes to use the premises. He further instructs that he is not aware of any breach or that he is operating the premises contrary to the terms of the Sports Grant.

Our client has no objection to a formal lease being put in place, subject to the terms and conditions of which can be agreed and at an agreed rental. In this regard, please be advised that a company was formed some years ago and we have written to the club's accountant in order that we may obtain specific details in relation to its incorporation.

We will revert with that information when same is to hand.

Subject to the above, our client confirms the following:

- 1. That the premises are being used in accordance with his understanding of the Grant facility made available in 2012.*
 - 2. That the Club is and will be used as a Sports Club with a minimum membership of 15 members.*
 - 3. That the Trustees are subject to their being a properly incorporated company. (sic.) The company will take a Lease of the premises.*
 - 4. That a rent can be agreed and determined as provided for and incorporated into the anticipated Lease can be set. Obviously our client reserves the right as to the amount of rent and to advancing such arguments as he says exist in respect of the rent to be charged."*
28. As far as the solicitors were concerned matters rested there.
29. On 20th September, 2017 a letter was sent to "*The Trustees, Bray Boxing Club*" enclosing an invoice addressed to Bray Boxing Club for €7,500 for three years rent for the period 1st September, 2014 to 31st August, 2017. There was no response, and nothing was paid.
30. On 6th February, 2018 a further letter was sent to "*The Trustees, Bray Boxing Club*" enclosing an invoice for €833.33 for three months rent from 1st September, 2017 to 31st December, 2017 and asking for payment of this amount and the outstanding €7,500. There was no response, and nothing was paid.
31. On 3rd May, 2018 a further letter was sent to "*The Trustees, Bray Boxing Club*" enclosing an invoice for €1,250 for six months' rent from January, 2018 to June, 2018 and asking for payment of this amount and the outstanding €8,333.33. On this occasion the invoice was addressed to Bray Boxing Club Limited by Guarantee. There was no response, and nothing was paid.
32. On 5th June, 2018 there was a shooting at the premises. One man was shot dead and two, one of whom was Mr. Taylor, were injured.
33. Late in the afternoon of 7th June, 2018 the Law Agent wrote to Brendan Maloney & Company, solicitors, with whom he had been in correspondence in August and September, 2017. He identified their clients as Peter Taylor/Trustees of Bray Boxing Club and referred to their letter of 26th September, 2017 and to "*recent unfortunate events*" which had taken place on the previous Tuesday. The Law Agent wrote to say that Wicklow County Council had decided to take possession of the club premises and to have it cleaned and repaired to the extent necessary to restore it to sports use. He recalled that it had been indicated in their letter of 26th September, 2017 that the

trustees were proposing to set up a company and repeated the requirements that any lease or other arrangement would require the approval of the elected members of the Council and that any lease to a company would have to be guaranteed by the directors. It was said that the Council would instruct a professional valuer to advise on what would be a fair rent.

34. On the same evening Messrs. Brendan Maloney & Company replied, identifying their client as Peter Taylor/Bray Boxing Club. It was said that they had spoken with the club accountant who advised that *"Bray Boxing Club was incorporated in a company limited by guarantee and accounts filed in respect of same."*

"It is the intention of Bray Boxing Club to continue to operate through its board and that it will take such steps as are necessary to have the premises cleaned up and where necessary repaired. However the premises as of today's date remains a crime scene and under the control of An Garda Síochána, to whom a set of keys has been given.

Such legal interest or estate that Wicklow County Council may have in the premises, is subject to the legal interest and estate in possession of Bray Boxing Club. Our clients do not acknowledge and would challenge the legal authority of Wicklow County Council [to] summarily seize or attempt to seize possession of the premises in the absence of a properly obtained court order."

35. As had been indicated would be done, and notwithstanding the challenge to its entitlement to do so (or perhaps before that challenge) Wicklow County Council took possession of the premises and changed the locks. In a letter of 8th June, 2018 to Mr. Maloney the Law Agent confirmed that the Council had done so and would allow persons who identified themselves to the district administrator access to remove personal possessions.
36. By letter dated 21st June, 2018 Mr. Maloney asked for arrangements to be made for access to be made available to Ms. Karen Brown to remove personal items of *"our clients"* (Mr. Taylor/Bray Boxing Club) from the club. The Law Agent asked for confirmation that Mr. Taylor proposed removing only personal items that were his own property and that arrangements would be made to ensure that a member of the Club would be present.
37. A letter of 29th June, 2018 from the Law Agent to Mr. Maloney indicates that Mr. Taylor had attended at the premises on the previous day and had taken away personal belongings consisting of paperwork and clothing but that there remained a substantial quantity of clothing which appeared to be Mr. Taylor's property. With a view to forestalling any complaint later that items might have been removed or destroyed by the Council without authority, Mr. Maloney was asked whether Mr. Taylor was interested in these and to confirm that he had removed everything he wished to remove and that the Council was free to deal with anything that remained as it saw fit.

38. Brendan Maloney & Company replied by a letter which was misdated 21st June, 2018 but received in Wicklow County Council Law Department on 9th July, 2018. They asked for a meeting with a view to agreeing the next steps for Bray Boxing Club to continue its operation under a management team while Mr. Taylor was recovering. It was said that although the locks had been changed Bray Boxing Club did not accept that its possession had ceased and that in the event of any loss or damage proceedings would be issued against the Council. Bray Boxing Club demanded a set of keys and it was said that Mr. Taylor intended that his personal belongings would remain on the premises. There appears to have been no reply to that letter.
39. At some time between July, 2018 and March, 2019 Robinson O'Neill, solicitors, were instructed to take over the handling of the matter from Brendan Maloney & Company. On 13th March, 2019 Robinson O'Neill wrote to the Law Agent. They identified their client as Pete Taylor/Bray Boxing Club and asked for a meeting to discuss "*the next step with Bray Boxing Club continuing its operation under a management team who will be responsible for all operations while our client continues to recover.*" It was said that there was gym equipment in the premises, the property of Mr. Taylor, worth in excess of €60,000 and thousands of euros worth of personal belongings including clothes, books, electronic equipment, watches, jewellery, boxing memorabilia, a 2012 Olympic medal and various other sentimental and priceless belongings. The totality of Mr. Taylor's belongings were said to have an estimated worth of €100,000. It was said that although the locks had been changed Bray Boxing Club did not accept that its possession had ceased. It was said to be imperative that "*our clients*" should have access to the premises and the Law Agent was asked to confirm that facilities would be made available, failing which High Court proceedings seeking injunctive relief would be issued without further notice. A reminder was sent on 9th April, 2019.
40. By letter dated 1st May, 2019 the law department of Wicklow County Council acknowledged receipt of Robinson O'Neill's correspondence and indicated that instructions were being taken. In the meantime, Robinson O'Neill were asked to confirm whether they acted for the trustees of Bray Boxing Club as well as Mr. Taylor. That question was not immediately answered and on 20th June, 2019 the Council sent to Robinson O'Neill, by way of formal service on Mr. Taylor, a letter of demand for possession addressed to him and copies of letters in the same terms said to have been sent "*to the other five trustees of Bray Boxing Club*". The Council claimed that the trustees owed €2,291.67 for rent on foot of the agreement of 1st September, 2014; €2,462 for rates to the end of 2018; and mesne rates at the rate of €227.27 per month from 1st August, 2015 amounting in total to €9,981.03. It was said that the Council was prepared to issue legal proceedings against each of the trustees of Bray Boxing Club if a resolution could not be found outside of litigation.
41. It is not unequivocally stated that the letter of 20th June, 2019 was sent to the other trustees or, if it was, whether any of them responded.

42. O'Neill Robinson replied on 9th July, 2019. They confirmed that they acted only for Mr. Taylor and not the "remaining trustees". Mr. Taylor denied that the sums claimed were owing and asserted that no invoices had been delivered between 2014 and 2017. The letter asserted that:-

"Post the 2012 Olympic games, our client made a direct request from (sic.) the former Taoiseach Enda Kenny and the then Minister for Sport Michael Ring that the facility at Bray Boxing Club be improved mainly based on the success of the Bray Boxing Club at the Olympic Games.

You will [be] undoubtedly aware that said request was ultimately granted and the Department of Sport granted funding to you to improve the facility at Bray Boxing Club."

43. Mr. Taylor's solicitors protested that in March, 2017 Wicklow County Council had proposed an annual rent of €14,000, which was said to have been an increase of €11,500, for a facility which had only been granted funding based on the achievements of Mr. Taylor, Ms. Katie Taylor and Mr. Adam Nolan. It was said to have been astonishing that no invoice had been issued for rent between September, 2014 and August, 2017. Mr. Taylor's solicitors asserted that "We are instructed that Bray boxing club holds the licence for the harbour shed. Said licence is current and alive." It was said, again, that Bray Boxing Club did not accept that its possession of the premises had ceased, and that Mr. Taylor's valuable property remained in the boxing club and that it was imperative that Robinson O'Neill's clients should be in a position to gain access to the premises.
44. On 16th August, 2019 the plaintiffs issued their plenary summons, which was served under cover of a letter of 20th August, 2019. The statement of claim was delivered on 20th February, 2020 and, following a motion for judgment in default, the defence was delivered on 12th November, 2020 under cover of a letter protesting that the plaintiffs had not replied to a notice for particulars which had been served on 6th July, 2020 and that the defence might need to be amended in light of the replies.
45. What precipitated the application now before the court was a letter dated 9th November, 2020 addressed to Bray Boxing Club CLG and said to have been posted outside the premises. The letter was addressed to the secretary, Bray Boxing Club CLG and signed by the Law Agent and read:-

"On behalf of Wicklow County Council, I am to give Bray Boxing Club CLG 30 days' notice determining its licence to occupy the Harbour Shed, Strand Road, Bray Harbour, County Wicklow on 8th December, 2020.

Bray Boxing Club CLG is required to vacate the said premises and to remove all possessions and equipment property belonging to the Company from the said premises by the said date. Access for this purpose will be facilitated by Wicklow County Council.

This Notice is served without prejudice to any right or remedy arising or existing up to the said date of termination to which Wicklow County Council may be entitled."

46. The plaintiffs' solicitors protested by letter on the following day that the Council was seeking to terminate a licence within 30 days "*in the face of proceedings instituted in 2019 by our client seeking reinstatement to the said premises*". The Council was asked to undertake (1) that pending the determination of the proceedings it would take no further steps to seek to extinguish "*our client's licence/lawful entitlement to occupy the property in question*", and (2) pending the determination of the proceedings to maintain "*our client's*" possessions contained in the property in their original condition pending their return to "*our client*" and or the conclusion of the proceedings.
47. By letter dated 13th November, 2020 the plaintiffs' solicitors were asked to confirm their authority to accept service of Circuit Court proceedings against Bray Boxing Club CLG. On the same day the plaintiffs obtained liberty to issue the notice of the motion now before the court. By letter dated 16th November, 2020 the plaintiffs' solicitors said that they were in the dark as to the nature of the Circuit Court proceedings intended to be issued and took the position that in those circumstances they could not make any comment in relation to their representation of the respondent or otherwise in those proceedings: which was understood to mean that they were not authorised to accept service.
48. Finally, as far as the chronicle of events is concerned, on 22nd December, 2020 the plaintiffs' solicitors served a form of Notice of Intention to Claim Relief under s. 20 of the Landlord and Tenant (Amendment) Act, 1980. The notice was signed "*Robinson Solicitors, solicitors for the Tenant*". It identified the tenement as The Harbour Shed situate to the west of Bray Harbour; the relevant lease or tenancy as a lease dated 20th February, 2007 the parties to which were said to have been Bray Boxing Club Company Limited by Guarantee, Peter Taylor, Peter Taylor being a Trustee of St. Fergal's Boxing Club and Wicklow County Council; and the rent as €200 per annum.

Discussion

49. It is very difficult to understand what it is the plaintiffs hope to achieve by this application, or even to understand what the application is. For starters, the order at para. 2 of the notice of motion is not one of the reliefs sought by the summons or statement of claim. It is trite that the court may at any stage allow such amendment of the pleadings as may be necessary for the purpose of determining the real questions in controversy between the parties, but I struggle to understand the question or issue to which the remaining relief sought is directed.
50. The motion, as I have said, was fairly obviously precipitated by the Council's letter of 9th November, 2020. That letter long post-dated the summons and statement of claim, but it also post-dated the delivery of the defence.
51. The defence admits the documented dealings between Bray Town Council and later Wicklow County Council and the unincorporated Club, and the documented application to the Department of Transport, Tourism and Sport for the grant, and the approval and

payment of the grant, but denies that the plaintiffs had any involvement in these matters. The Council's position is that Mr. Taylor did not seek or obtain permission to use or occupy the premises and that any occupation of the premises by either of the plaintiffs was unlawful. The Council's position is that as of 7th June, 2018 when it changed the locks the plaintiffs were not in possession and did not have permission to be there. In the alternative it is pleaded that the Company was a bare licensee which licence (if any) was terminated by the Council's peaceable resumption of possession.

52. The plaintiffs ask for an order restraining the defendant from terminating "*the Applicants legal interest and/or estate in the possession of Bray Boxing Club in the absence of a properly obtained court order*". The absence of a possessive apostrophe makes it impossible to know whether the estate or interest is claimed by one or other or both plaintiffs. There is no indication of what the legal interest or estate claimed is. The reference to Bray Boxing Club is ambiguous but it seems to me that it can only sensibly refer to the premises, rather than the unincorporated association – on whose behalf the plaintiffs do not purport to sue. Apart from the fact that it is not apparent what legal interest or estate is claimed, I do not know of any legal interest or estate in land held by one person that is terminable only by, or after the making of, a court order.
53. Written legal submissions were filed on behalf of the plaintiffs but these largely consisted of extensive quotations from a number of cases which were not clearly tied in to the facts of the instant case or the relief claimed by the notice of motion.
54. Mr. Kean said that each of the plaintiffs claimed an estate or interest in the premises, but I cannot see how that could be so. The estate or interest claimed – whichever and whatever it is – is the basis of the plaintiffs' claim in the substantive proceedings (and was the basis of the interlocutory relief claimed at para. 1 of the notice of motion until it was abandoned) for a mandatory injunction requiring the defendant to permit them, or one of them, to re-enter the premises so it must be the lowest estate or interest in possession. There is no suggestion that there is any intermediate estate or interest between Wicklow County Council and whichever of the plaintiffs is said to be entitled to possession. It is submitted that the estate or interest might be a lease, or a periodic tenancy, or a licence but it is not clearly said which. Nor is there any clear submission as to what the terms of the lease, or periodic tenancy, or licence, might be. The objective fact of the matter is that no one has paid any money to Wicklow County Council since at least August, 2013 and probably shortly after 21st June, 2012 when €200 was paid against an invoice of that date in respect of the rent from 20th February, 2012 to 19th February, 2013.

Dramatis personae

55. It seems to me that the key – or at least the starting point – to unravelling the confusion is to identify precisely who is who.
56. St. Fergal's Boxing Club is, or was, an unincorporated association which was incapable of holding property and so the property used by its members was held on their behalf by trustees. Mr. Taylor's averment that he secured the shared use of the Harbour Shed in

about 2005 is ambiguous. He may or may not have been instrumental in persuading Bray Town Council to allow the shed to be used by the Club, but it is plain that the Council made the shed available to the Club, and not to Mr. Taylor personally. Mr. Taylor's averment that he secured the shared use of the premises for the purposes of establishing a boxing club which became known as St. Fergal's Boxing Club also appears to be at variance with the brief history of the Club recorded in the 2011 feasibility study: which was that St. Fergal's Boxing Club was established in 1995 and originally operated from the old St. Fergal's parish hall on Boghall Road before moving to Ballywaltrim Community Centre which it had the use of for a number of hours each week. In his second affidavit Mr. Taylor highlights a number of statements in the feasibility study report, including in the short appendix entitled "*About Bray Boxing Club*" which sets out the history of the Club. He does not take issue with the history there set out.

57. Mr. Taylor was one of the signatories to the lease of 20th January, 2007 but unquestionably that was in his capacity as trustee of the Club and not in his personal capacity. These proceedings are brought by Mr. Taylor in his personal capacity and on his own behalf and not on behalf of the Club. While in his second affidavit Mr. Taylor asserts that he instructed his lawyers to deal with the matter in order to protect the position of Bray Boxing Club on behalf of all members of the club, he persists in confusing and conflating the business carried on by him and the Company and the Club. He does not aver that he has the authority of the Club, or the trustees, or of any of the members of the Club, and his solicitors have been clear in correspondence that they have no instructions on behalf of anyone other than the named plaintiffs.
58. Bray Boxing Club Company Limited by Guarantee was incorporated under the Companies Act, 2014 on 2nd September, 2015. Its main object is "*to establish and manage a boxing club in all its various branches and in so doing to buy, sell and deal in all goods and to provide such services as deemed necessary or useful.*" The subscribers are seven limited liability companies associated with the company formation agent. According to the Companies Office filings, it has one director, Mr. Taylor, and a secretary, Ms. Karen Brown, whose address is the same as Mr. Taylor's. Mr. Kean objected to the description of Ms. Brown as Mr. Taylor's girlfriend, but the objection is that it is disrespectful rather than inaccurate. While Mr. Kean referred to the Club as the Company's predecessor in title there is no evidence or even suggestion of any purported transfer of anything from the Club to the Company or of any involvement by any of the other members or trustees of the Club with the Company or with this litigation. This action is brought by the Company on its own behalf and for its own benefit.
59. Wicklow County Council is the statutory successor to Bray Town Council which was dissolved on 1st June, 2014 from when (by virtue of the Local Government Reform Act, 2014 (Transfer Date) Order, 2014) Wicklow County Council for all purposes became and has been its successor.

The plaintiffs' case

60. Mr. Taylor has deposed that when, he says, he established a boxing club at the premises it lacked even basic facilities and required substantial improvements to make it fit for

purpose as a gymnasium and that in the period following the 2007 lease considerable expenditure was incurred by the Company and by himself in improving the facilities. He does not say what money was spent or what improvements were made to the old Harbour Shed but whatever, if any, expenditure was incurred cannot, as Mr. Taylor asserts, have been incurred by the Company which did not exist until long after the old shed was knocked down and the new facility built. Moreover, it is common case that the old Harbour Shed was not fit for purpose and it is not suggested that any money was spent on the new facility other than that directly spent by Bray Town Council and indirectly by the Department of Transport, Tourism and Sport.

61. As to the circumstances in which the Company came to be incorporated, Mr. Taylor, in his second affidavit, asserted that it was necessary to incorporate the club as Bray Boxing Club Limited by Guarantee to draw down the sports capital grant. This is demonstrably not so. In the first place there is no evidence of any connection between the Company which was incorporated by Mr. Taylor and the Club, or its trustees, or its members. Secondly, the evidence is that the cause of the delay in the drawdown of the grant monies was the fact that the site was not registered in the name of the Council. Thirdly, the evidence is that the grant was drawn down seven or eight months before the Company was incorporated.
62. Mr. Taylor asserts that over the years that followed a number of minor rent increases were imposed by Bray Town Council and paid "*by the Applicants herein*". That assertion is also demonstrably untrue. The uncontested evidence is that the Club (and not Mr. Taylor, and not the Company which did not exist) paid €200 per annum until at the latest August, 2013 and that the Club agreed to pay but did not pay (nor did anyone else pay) €2,500 per annum with effect from 1st September, 2014. When Mr. Taylor says in his chronology – before he comes to 2012 – that Bray Boxing Club operated its subscriptions on what became known as an honesty policy, pursuant to which those who could pay did and those who could not afford to were allowed to use the facility on the basis that they would pay when they could, he can only be referring to the Club, and not the Company.
63. In his second affidavit Mr. Taylor takes issue with an averment in the affidavit of Mr. David Forde, filed on behalf of the Council, that there was never a relationship of landlord and tenant or licensor and licensee between either of the plaintiffs and Wicklow County Council or either of the plaintiffs and Bray Town Council. He says that he disagrees with that statement in its entirety and asserts that "*Mr. Forde is well aware of the fact that he has been dealing with the same parties and entities with regard to Bray Boxing Club throughout the entirety of the period.*" This misses the point completely that Mr. Taylor's dealings with the Council were as one of a number of trustees for the Club whereas he now asserts a personal right and a right on behalf of a limited company which as far as the evidence goes never had anything to do with the unincorporated Club.
64. Mr. Taylor avers that in October, 2012 he made a direct request to the then Taoiseach and the then Minister for Sport for a grant and that a sports capital grant was approved in the amount of €190,000. That does not easily fit with the fact that Bray Town Council

had applied to the Department for the grant on 30th May, 2012 and the fact that what was then proposed was not the reconstruction of the Harbour Shed but a new build at Ballywaltrim, but I will assume for present purposes that Mr. Taylor will establish at trial that it was by dint of his lobbying that the grant was approved. It is acknowledged that Mr. Taylor's averment that the sports capital grant was granted to the plaintiffs is incorrect. The difficulty I see with the proposition that Mr. Taylor was responsible for the approval of the grant as far as the asserted entitlement to occupy the premises is concerned is that it goes nowhere. Mr. Taylor does not say that anyone promised him that he, or any company that he might form, would be entitled to occupy the new building. I find it quite impossible to understand how it might have been thought that Mr. Taylor's eloquence in persuading the Taoiseach or the Minister to commit public money to a public capital project might give rise to a personal or private estate or interest in the property. Mr. Keane points out that the €190,000 central government grant paid to Bray Town Council only covered about half of the total expenditure of €385,822.56 on the reconstruction but I do not see that it would have made any difference if Mr. Taylor had persuaded the Minister to underwrite the entire cost. The grant was a grant to Bray Town Council on the terms applicable to such grants to part fund the construction of a new facility which it was envisaged would be used by the Club. It was never envisaged that the facility would be used by Mr. Taylor or by the Company, still less that they or either of them would have a legal interest or estate in it.

65. Mr. Taylor asserts that the plaintiffs vacated the premises for a period while substantial repair works were being carried out and that the works were completed by August, 2014. The Council contends that the work was not repair work but entailed a complete reconstruction which retained only a gable wall but this, I think, is a distraction from the fact that it was not the plaintiffs who vacated the old Harbour Shed but the Club.
66. Mr. Taylor gives a reasonably accurate account of the correspondence in 2017 save that he confuses and conflates the Club, himself and the Company, until he asserts that in September, 2017 the Company was the licensee of the premises. There is simply no evidential basis for that assertion. The last "license" granted by the council was that of 1st September, 2014 and it was granted to the Club. The council's position in September, 2017 was that the Club owed three years rent and there was and is no suggestion – either by the Council or by Mr. Taylor – that the Company has any liability to the Council. While Mr. Taylor in his affidavit and Mr. Kean in argument sought to make much of the fact that the Council did not raise any invoices for rent between 2014 and 2017 is was not said why this was thought to be relevant and I do not see that it is.
67. Mr. Taylor asserts that while there was no formal agreement between the parties, it was the understanding of the plaintiffs that in recognition of the achievements of Mr. Taylor and his daughter they would not formally be charged a rent. Again I fail to understand the basis for this assertion. It is not said that anyone said anything to Mr. Taylor or his company about rent. The demonstrable fact of the matter is, and it is common case, that the form of agreement dated 1st September, 2014 which was sent to the Club's solicitors two years after the 2012 Olympic games for execution by the Club's trustees – and which

was then signed by Mr. Taylor without demur – provided for an eleven month letting at a rent of €2,500 per annum. Whatever dispute there might be as to the amount of the rent, it seems to me that an agreement to pay rent is inconsistent with the existence of any understanding that no rent would be payable.

68. Mr. Taylor asserts that the position of the Council when it sought a rent of €14,000 per annum *“ran contrary to the spirit of the understood agreement between the parties and was also contrary to the spirit of support of the County Council members which was reflected in the original nominal rent charged under the original lease of 2007.”* But there was no agreement and Mr. Taylor does not assert that there was an agreement or that anything was said or done which might have given rise to his asserted understanding. The rebuilt facility was a completely different building to the shed which it had replaced. To be sure the valuation of €14,000 per annum plus rates which was put on the new building was a great deal more than the €200 per annum charged for the shed or, perhaps more comparably, the €2,500 per annum provided for by the agreement of 1st September, 2014, but it was not disputed that the proposed rent was a fair market rent and it was made clear to the Club that if it could not afford the proposed rent it could make its case as to what it could afford, which would be put to the county councillors. No one ever sought to make that case.
69. Mr. Taylor in his affidavit asserted that the demand for rent was a demand more appropriate to a commercially run premises as opposed to one being operated by a community based club but the evidence is that, if not in 2017 then certainly by 2018, whatever activity which was being carried on in the premises was not being carried on by the Club but by Mr. Taylor, personally, who has asserted personal ownership of all of the gym equipment and other contents of the building. It is also the irresistible inference from the proposal made in the correspondence in 2018 and again in 2019 that the premises would be managed by someone other than Mr. Taylor while Mr. Taylor recovered from his injuries, that Mr. Taylor personally had been managing the premises and intended to resume doing so when he recovered.
70. Mr. Taylor asserts that the locks were changed on the premises on 7th June, 2018 *“... without informing the tenant and licensee, the first and second named plaintiffs.”* I do not understand it to be suggested that the Company was the tenant and Mr. Taylor the licensee and conceptually they cannot both have been both, but only one or other of them can have been either the tenant or a licensee. Absent any agreement by either with the Council I do not see any evidential basis for the argument that either was either.
71. Mr. Taylor then goes on to summarise and exhibit the correspondence between the plaintiffs’ solicitors and the Council but as Mr. Keane rightly says, this amounts only to a summary of what was written by each to the other and amounts to mere assertion without any evidential basis.
72. As to the changing of the locks on the premises, Mr. Taylor avers that the Council was attempting to use the serious violent incident of 5th June, 2018 as a cover or smokescreen to unlawfully evict and remove the plaintiffs while on notice of the plaintiffs’

assertion of their interest and estate in possession in the premises and the previous discussions between the parties. Here, I think, Mr. Taylor is on slightly firmer ground. Long before the day of the attack at the premises the Council was aware that Mr. Taylor was claiming to be entitled to the estate or interest in possession of the premises – although not what that estate or interest allegedly was, or the basis on which Mr. Taylor claimed to be entitled to it. I am not absolutely convinced that the incident was used as a cover or smokescreen, but it does rather appear (and certainly Mr. Taylor has a case to make) that the Council seized the opportunity created by the incident to go into possession and change the locks. However, whether this was unlawful depends upon whether Mr. Taylor was entitled to be there and if he was, the terms of any such entitlement.

73. Mr. Taylor in his grounding affidavit deals at some length with the contents of the premises. What he avers is not quite the same as the position set out in his solicitors' correspondence. For example, Mr. Taylor avers that the total value of the property in the gym is €160,000 while the correspondence put a value of €60,000 on the gym equipment and €100,000 on the entirety of the personal property, which I certainly read as comprising the entirety of the contents. Nothing however turns on this for present purposes. What is significant is that it is not asserted that any of the property in the premises is the property of the Club. Ambiguously, Mr. Taylor complains that he has not been afforded access to the premises, but I think that it is reasonably clear that his complaint is that he has not been allowed to resume occupation rather than that he has been denied an opportunity to collect his belongings.
74. Mr. Taylor deals at some length with what he describes as the eviction notice posted outside the premises on 9th November, 2020, without saying very much about it. He suggests that the Council is attempting to circumvent the proceedings by the service of this notice but not how. He suggests that should the proposed actions of the Council as set out in the notice go unaddressed the reliefs which the plaintiffs claim may no longer be available, but he does not identify the proposed actions of the Council or say how those actions might somehow circumvent the plaintiffs' action or identify the reliefs which he apprehends might no longer be available. Neither does he explain why the reliefs sought by the notice of motion are different to the undertakings sought by his solicitors before the application was made.
75. The Council's letter of 9th November, 2020 to the Company is something of a puzzle. On the one hand the Council is adamant that it never had any dealings of any nature with the Company – of whose existence it says that it was unaware until September, 2017 – and that it never gave the Company permission to occupy the premises. The Council stands over its claimed entitlement to have changed the locks on 7th June, 2018 but says that the letter of 9th November, 2020 was served out of an abundance of caution. If the Company's apprehension is that the letter of 9th November, 2020 may have been effective to terminate its licence, that is something that could only be decided by the trial judge.

76. For completeness I mention that it is said by the Council that Mr. Taylor's claim to a proprietary interest in the premises is inconsistent with the claims he has made in a personal injuries action which he has brought against *inter alia* Wicklow County Council claiming damages for personal injuries arising out of the shooting. It is true, as Mr. Keane has submitted, that Mr. Taylor's personal injuries summons refers to the Occupiers Liability Act, 1995 but it does not identify which of the seven named defendants (among whom are the first plaintiff in this action) is alleged to have been the occupier. That action also refers to the Safety, Health and Welfare at Work Act, 1989 to 2005, without alleging which of the seven defendants is alleged to have been the plaintiff's employer. It is not, I think, useful that I should attempt to identify the basis on which Wicklow County Council has been named as a defendant in the personal injuries action. As far as this action concerned it is common case that whoever it was was in occupation of the premises on the day of the shooting it was not the Council.

Conclusions

77. I set out in full, at para. 45, the text of the letter which has prompted this application. It is addressed to Bray Boxing Club CLG and gives 30 days' notice determining its licence to occupy the Harbour Shed. It makes clear that the Council will facilitate the removal of any possessions but does not say that the Council will do anything if that is not done.
78. On the plaintiffs' case, the Company does not have any personal property in the premises. In argument Mr. Kean suggested that his clients apprehended that the Council would act on foot of this so-called eviction notice but I have no evidence of that and it seems to me that any such apprehension is inconsistent with the *status quo* which has pertained since the locks were changed on 7th June, 2018. Moreover, the relief now sought is directed to the building and not the contents.
79. The plaintiffs variously claim to be entitled to an interest or estate in the premises and to be entitled to a new lease. It is said that the interest or estate might be a lease, or a periodic tenancy or a licence, but not, clearly, which. The premise of any claim to be entitled to a new tenancy must be that that whatever tenancy the plaintiffs may previously have had has ended. So there could be no sensible basis for a claim for an injunction restraining the termination of any tenancy on which the claim for a new tenancy is based. There is no sensible basis on which the plaintiffs might claim to be entitled to the tenant's interest in any existing lease. The Council is adamant that the plaintiffs have no periodic tenancy in the building, so there is no basis for any apprehension of any termination of a periodic tenancy.
80. The Council has variously denied that the plaintiffs ever had a licence and pleaded that any licence (if any) which the plaintiffs might have had was a bare licence determinable at will, which was determined on 7th June, 2018, when the locks were changed. I do not immediately see where the 30 days' notice given to the Company on 9th November, 2020 fits into the defence delivered in this action, but it might, I suppose, have something to do with the intended Circuit Court action. If, for the sake of argument, the Company had a licence which was determinable on reasonable notice, I do not see any legal basis upon which it might properly be restrained from giving such notice. There is an issue in these

proceedings as to whether the Council was lawfully entitled to have done what it did on 7th June, 2020. If, for the sake of argument, the plaintiffs had a licence which the Council was not entitled to summarily determine, I see no reason why it would not be entitled to give the Company whatever notice it might be entitled to.

81. On this application the court has no role in adjudicating on the necessity for or validity of the letter of 9th November, 2020. There is no apprehension expressed that the Council might write any more letters. If there was, I do not know on what conceivable basis the Council might be restrained from writing more letters.
82. The premise of an order restraining the Council from terminating the plaintiffs' legal interest and/or estate in the premises could only be that it could effectively do so. If it could effectively do so, it would be lawful for it to do so. I do not know on what conceivable basis the Council might be restrained from doing something which it is lawfully entitled to do.
83. I mentioned earlier that the plaintiffs' solicitors were asked whether they had authority to accept service of Circuit Court proceedings. Such proceedings have been drafted on behalf of the Council but not issued pending the determination of this application. It is said that the Council intends to issue proceedings claiming declarations as to its entitlement to vacant possession of the premises and arrears of rent, rates and mesne rates. It is said that such proceedings are likely to be heard sooner than High Court proceedings and would save costs and are likely to include the trustees of the Club, unless the trustees concede the claims of the Council. If the plaintiffs' apprehension is that the Council will issue Circuit Court proceedings against them, that is not what they seek to restrain. If the plaintiffs' apprehension is that the Council will clear out the Harbour Shed and make it available to someone else before there has been a judicial determination of its claims, that would be inconsistent with the *status quo* which has pertained since 7th June, 2020 and the Council's declared intention to ask the Circuit Court to declare that the plaintiffs have no interest in the property. More to the point, it would not be prevented by an order in the terms now sought.
84. I find the submission that the only effective occupier of the premises since 2005 has been the plaintiffs and their predecessor in title to be impossible to reconcile with the accepted fact that the plaintiffs have been locked out since June, 2018. Moreover, while it is suggested that the plaintiffs (or one or other of them) may be the successor in title to the Club there is no indication of how it is said the interest of the Club might have devolved. The fact of the matter is that the term of the 2014 lease (if it was a lease) expired on 31st July, 2015.
85. The plaintiffs' acknowledged obligation to satisfy the court that damages would not be an adequate remedy is not met by the assertion that there is no evidence that the defendant would suffer any damage if the relief sought were to be granted.
86. It was submitted that if the court were not to grant the relief sought the plaintiffs would suffer catastrophic financial loss but there is simply no evidence of what that loss might

be. While it has been asserted that the Company has filed accounts, no such accounts have been exhibited. The premise of the suggestion that the plaintiffs would suffer catastrophic losses must be that they, or one or other of them, was generating substantial profits from the operation of the Harbour Shed but there is no evidence of this. Further, it is said, Mr. Taylor would suffer huge reputational damage but there was no evidential basis for that suggestion and I can see no connection between Mr. Taylor's reputation and the relief now sought.

Order

87. For these reasons, the plaintiffs' motion must be refused.
88. The plaintiffs having at the very last minute abandoned most of their application and having failed on what was left, I can think of no reason why they should not be ordered to pay the costs of the motion. I will allow a period of fourteen days from the date of delivery of this judgment for the filing and service of a written submission as to what other order it may be said should be made.
89. Provisionally, I would be inclined to stay execution of the order for costs pending the determination of the action by the High Court. If the defendant would argue otherwise, it may file and serve a written submission within fourteen days.
90. In the event that either side should make a submission in relation to the costs, the other will have fourteen days within which to respond. The costs of any issue in relation to the costs order will be payable by the loser.