

McGRANE

184

THE HIGH COURT

ON APPEAL FROM/

THE CIRCUIT COURT

EASTERN CIRCUIT

COUNTY OF LOUTH

Record No. 28E/1983

BETWEEN/

JOSEPH McGRANE

Plaintiff
(Respondent)



-and-

LOUTH COUNTY COUNCIL

Defendant
(Appellant)

Judgment delivered by O'Hanlon J. the 9th day of December 1983.

In these proceedings, commenced by Equity Civil Bill in the Circuit Court, the Plaintiff, suing in a representative capacity on his own behalf and on behalf of other named members of an unincorporated body known as the Philipstown Dump Committee, sought an injunction to restrain Louth County Council from entering upon lands which the Council had acquired at Philipstown for the purpose of building a rubbish dump thereon, and a further injunction restraining the Council

from building the proposed dump.

He claimed that if the dump were constructed and used in the location proposed, it would cause irreparable injury to the lives, lands, health and quiet enjoyment of himself and the other persons on whose behalf the action was instituted.

In other words, the proceedings are in the nature of quia timet proceedings to restrain the Council from committing the tort of nuisance by the user they proposed to make of the lands acquired by them at Philipstown, and on the hearing of the proceedings in the Circuit Court the learned Circuit Court Judge granted the injunctions as sought by the Plaintiff on the 8th July, 1983. From this decision the County Council have appealed to the High Court.

The following facts emerged in the course of the evidence. Louth County Council is the Refuse Collection Authority for the entire of Co. Louth save the towns of Dundalk and Drogheda, where a different authority has responsibility for this activity. During the period leading up to the institution of these proceedings the Council made use of five disposal sites - two of them being sites at Dundalk and Drogheda

operated by other Local Authorities; two of them being small disposal sites in the Cooley area, and the fifth and principal site being the Bolies site in the centre of the County. The last-mentioned site was taking about 6,000 tons of domestic refuse each year - more than half the total for the County area, but a critical situation has arisen in recent years by reason of the exhaustion of the capacity of the Bolies site, and the Council had to seek an alternative site as a matter of considerable urgency, to cope with the situation which would arise when the Bolies site had been closed permanently.

The steps taken to meet the situation involved the carrying out of a survey by the County Engineer in 1978 of the future requirements of the County Council for domestic waste disposal; the examination for suitability of a number of potential sites which came on the market; the purchase in 1980 of a tract of land comprising about 27 acres, for a sum of £80,000, in the belief that it would meet the Council's requirements in the matter; and the engaging of English consultants, Messrs. Aspinwall and Co., to carry out a detailed site investigation before proceeding further with the proposed development.

Modern scientific research has focussed attention on the dangers of water pollution as one of the principal hazards which may arise if the wrong location is chosen for a waste disposal site, and much of the evidence in the present case was adduced in relation to this particular problem. Other forms of nuisance which may be generated as a result of the provision of areas for waste disposal may cease to be a source of trouble after the lapse of a period of time, with the closure and covering in of the dump, but the pollution of water supplies by leachate - the noxious liquid formed by water percolating through the waste products which have been dumped - may have harmful effects which can continue indefinitely into the future.

The Geological Survey of Ireland in their lengthy and carefully researched Information Circular on the topic of "Waste Disposal Sites" (1982 No. 82/1) by D. Daly and G.R. Wright state, at p. 9:

"Even where surface water is the main source of supply, it is irresponsible to pollute a resource that may be required by future generations. The consequences of groundwater pollution last for much longer - years, decades and possibly centuries - than those of surface water pollution because of the time required to flush the contaminated groundwater from the aquifer. Once pollution of an aquifer has occurred it is difficult, and usually prohibitively expensive, to reclaim the aquifer, even when the source of pollution is removed."

An aquifer is defined by the authors as "a saturated geological formation or unit which is capable of yielding sufficient water to wells or springs to be a significant source of water supply." For zoning purposes the Geological Survey has had regard to areas containing major aquifers, minor aquifers, and non-aquifers or aquifers with adequate natural protection. The conclusion is that Waste Disposal Sites should be located, whenever it is possible to do so, in a Zone 4 area of non-aquifers or aquifers with adequate natural protection.

While County Louth has not been formally zoned for the purposes of aquifer protection, the consultants employed by the Co. Council were able to carry out a zoning exercise on their own initiative in reliance on a comprehensive report on the groundwater resources of a region extending from Louth into Monaghan and Cavan, prepared by An Foras Forbartha and the Geological Survey Office. The outcome of these investigations has been to demonstrate - to the satisfaction of the consultants, at least - that only limited areas in particular parts of the county can fairly be regarded as Zone 4

areas, and therefore provisionally suitable for waste disposal by landfill.

The search for suitable sites has been confined to these areas, by and large, the consultants taking the view that the expense of searching out small pockets in the areas other than Zone 4 areas would not be warranted.

By this process of elimination, the decision was made to acquire the site at Philipstown, and it involved the purchase of a large tract of prime agricultural land, rather than an area of waste ground such as might have been considered more suitable for dumping purposes. The decision to incur the heavy expenditure involved in this purchase was justified by reference to the system of management now considered necessary for waste disposal sites, which involves the covering in of waste materials dumped on a daily basis, and is dependent on the availability of earth cover materials.

Accordingly, the case for the County Council, in resisting the Plaintiff's claim for an injunction to halt the project, stressed, in the first place, the care which was taken in the choice of the Philipstown site to guard against

the ever-present danger of water contamination from leachate.

Expert evidence was given by Barry J. Tennyson, a Consulting Engineer, called on behalf of the Plaintiff, which challenged the conclusions which had been reached by the County Council's consultants on this aspect of the case.

Mr. Tennyson spoke of the danger of pollution of the White River, which runs to within 400m. of the proposed waste disposal site, and to a tributary of that river which at present crosses the site and is to be diverted round it if the project is allowed to continue.

He felt that the tests which had been carried out by the English consultants, Messrs. Aspinwall, were not sufficient to establish that groundwater in aquifers below the site would not be contaminated. Messrs. Aspinwall acknowledged the presence of aquifers below the surface of the site, but were satisfied that the geological formation, mainly underlying boulder clay, provided a sufficiently impermeable layer to protect the aquifers. In addition they maintained that a "hydraulic defence" was provided by the water table in the area, so that the pressure upwards would counteract any

downward seepage which might threaten the aquifers.

Having considered the expert evidence on both sides, I have come to the conclusion that if the project is carried through in all respects in the manner recommended by the consultants, it should not present a danger to the water supplies of the area. Messrs. Aspinwall have advised that before the site is developed as a landfill, a search of surrounding properties should be made to identify all wells obtaining water from groundwater sources in the White River site area. They have also advised the regular monitoring of the water in these wells and in the White River and its tributary to confirm that no contamination from the site is taking place, and I understood the County Council to express their willingness to give effect to all the recommendations made by their consultants in these and other respects.

However, a finding to this effect would only dispose of the major objection founded upon an alleged danger to the water supplies of the area, and leaves for consideration a very large number of other grounds upon which the local inhabitants apprehend that nuisance will be caused if the land is

developed as a waste disposal site. Drawing upon their own experience and the experience of others as to what has happened in and around the other rubbish dumps which have hitherto been used by Louth County Council, they say that appalling conditions have been allowed to exist without any effective steps being taken to manage the sites in a proper and hygienic manner. The principal complaints related to smoke and smells from burning waste; decomposing materials being left exposed so that they attracted rats and other vermin, and gave rise to health hazards to humans and to farm animals; lack of supervision at and around the sites so that indiscriminate dumping by members of the public took place at the approaches and entrances to the sites as well as on the sites themselves; plagues of flies invading houses in the area, and the congregation of itinerants at and near the sites for scavenging purposes.

These allegations were not refuted very convincingly. The County Council witnesses tended to say that it was very difficult to control uncivilised behaviour by members of the public, and there appeared to me to be an implicit recognition of the fact that conditions at existing dumps had been very

unpleasant for people living anywhere in their vicinity.

This explains the very natural unwillingness of the people of Philipstown to go along with the Council's proposal to locate the next site not far from their homes and places of recreation. The Plaintiff and those whom he represents do not believe that the Council will live up to the counsel of perfection given to them in the very comprehensive report of Messrs. Aspinwall, and they say that even if the Council were minded to do so, they simply have not sufficient finance available to them to carry through the project in the elaborate manner advised by the consultants.

I am prepared to accept, on the evidence, that dumps used by the County Council in the past have been malodorous, unsightly and unhygienic, and what I have to assess in the present proceedings is whether there is a real danger that such conditions will be produced again at Philipstown if the waste disposal site is constructed there. In the words of Vice-Chancellor Chatterton in A. G. -v- Rathmines & Pembroke Joint Hospital Board, (1904) 1 IR 161, at p. 167: "In such cases it must be shown that the complainants entertain a reasonable,

well-grounded apprehension that the work which the defendants are carrying out would, if allowed to proceed, result in substantial damage to the complainants. A mere fanciful objection to it will not be a sufficient ground for obtaining relief, but it must be shown that the work is, or would be, a substantial injury to the persons or property of the complainants.

I would throw into the scales in the Council's favour the following circumstances. Their initial choice of the Philipstown site was based on a responsible scientific appraisal of the problem in line with the most modern research, and involved them in the acquisition of a large area of valuable farmland. It was urged in the course of the present proceedings that a site such as a disused quarry would have been more appropriate, and such sites were undoubtedly available, and could in all probability have been acquired for a fraction of the cost involved in the acquisition of the Philipstown lands. In addition, the Council would probably have encountered no local opposition, or very little, if they had opted for a site of this kind. However, the report of the Geological Survey of Ireland demonstrates, at p. 23 why this apparently attractive option is in many cases unsuitable for hydrogeological reasons, and it appears to me that the

acquisition of land of the Philipstown character was more in keeping with modern thinking on the proper location and management of waste disposal sites.

Secondly, the Council having acquired the site in question, did not resort to the haphazard dumping which has taken place in the past in so many parts of Ireland, but commissioned a report from consultants with very considerable experience in this field, to confirm the suitability of the site, and to advise as to the development and management of the site if considered suitable. This lengthy procedure has occupied a period of two or three years, and in the process a meeting or meetings took place with representatives of the Philipstown community to explain to them what was involved in the project and to endeavour to set their fears at rest.

What has taken place up to the present is sufficient to convince me that the Council have behaved in a very responsible manner in relation to this particular project; have not shirked the costs of financing it; and are committed to carrying it through in the manner advised by the consultants. If this is done, then the dump should never become a nuisance or an eyesore. What is promised is a constant and continuing process of

covering in materials dumped on a daily basis; the pumping off of surface water to ensure that it is not allowed to accumulate on the site; the collection and carrying away of leachate to the extent that it is produced on the site; the diversion of the river which now runs through the site; the identification and constant monitoring of the sources of water which are in such proximity to the site as to be capable of suffering contamination were leachate to percolate freely from the site to subterranean levels.

The County Manager also undertook that adequate steps would be taken to prevent nuisance from indiscriminate dumping in the vicinity of the site at week-ends or at other times when the dump was not open, and there were assurances given that the access roads would be adequate or would be made adequate for the additional traffic that would be generated.

It would be a very serious step to take to turn the clock back at this critical stage for waste disposal in Co. Louth, and require the Council to embark once again upon the search for a suitable site which they initiated several years ago. This would be the effect of granting the injunction now sought by

the Plaintiff, and I would not be prepared to grant such relief unless there were strong grounds for rejecting the evidence which has been given on behalf of the County Council on the hearing of this appeal. For the reasons already stated I am prepared to accept their bona fides in the matter and to act in the belief that they do not propose to create a nuisance at Philipstown, and will not do so if they follow closely the guide-lines which their expert advisers have laid down for them. For these reasons I propose to allow the appeal taken against the Order made in the Circuit Court, and to refuse the injunctions sought by the Plaintiff. This verdict in no way prejudices the right of the Plaintiff or of any other person who may be affected by the operation of the waste disposal site, to come back to Court at any time in the future, if an actionable nuisance is created by the manner in which the site is developed or operated by the County Council. It would be much better, however, if - as was suggested during the hearing of the appeal - the parties could agree to set up a joint committee representative of the local authority and of the residents, to serve as a forum for discussion as to the

manner in which the scheme is being implemented by the County Council, and to ensure that any matters of grievance are brought to the notice of the responsible authority as soon as they arise.

A. J. Jordan

18th Jan. 1950.