

THE HIGH COURT

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JUDICIAL REVIEW

No. 343 of 1988

BETWEEN

BALLYBAY MEAT EXPORTS LIMITED

APPLICANT

AND

MONAGHAN COUNTY COUNCIL

RESPONDENT

Judgment of Mr. Justice Gannon delivered the 15th day of
January 1990

The Applicant Company engages in the business of butchering processing, packaging and freezing of pre-slaughtered animal carcasses, employing 106 people at locations at Corbrack, Ballybay in the County of Monaghan. The Applicant is thus identified in the affidavit sworn on the 19th of November 1988 by Peter Judge who is the projects manager and accountant of the Company. His affidavit grounds an application of the Applicant Company for Judicial Review by way of Certiorari to quash a decision of the Respondent County Council notified to the Company by letter dated the 3rd of May 1988. That was a decision made upon an application dated the 10th of March 1988 by the Applicant Company for a licence pursuant to Section 16 of the Local Government (Water Pollution) Act 1977 to discharge trade effluent into the Respondent's sewer. The Order giving leave

to apply for Judicial Review by way of Certiorari and for declaratory reliefs was made by Mr. Justice Barron on the 24th of November 1988. The reliefs sought on that Order include

"(a) A declaration that the following charges to be paid in advance namely:

- (i) a capital contribution of £42,014 (once off) plus
- (ii) an annual running charge of £3,600 or
- (iii) an annual running charge of £12,394.00 (subject to annual review) which were purportedly imposed by the Respondent in the letter dated the 3rd of May 1988 are ultra vires the Respondent and null and void.

(b) A declaration that the Applicant is entitled to connect with and cause drains to empty into the Respondent's sewers without the imposition of any financial pre-condition or other term or condition in accordance with Section 23 of the 1878 Act the planning permission and the licence to discharge to sewers.

(c) An Order of Certiorari quashing the decision of the Respondent which levied the said charges by letter dated the 3rd day of May 1988.

(d) An Order of Mandamus directing the Respondent to allow the Applicant to connect into and cause his drains to empty into the said sewers without any financial pre-condition or charge payable in advance or otherwise and in particular without payment of the said charges sought to be levied by the Respondent's letter of the 3rd day of May 1988."

Other reliefs in the nature of injunctions were also sought. The grounds which were relied upon at this hearing are set out in that Order of the 24th of November 1988 as

follows:

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"(2) that the Applicant do have leave to apply for the aforesaid reliefs by way of application for Judicial Review on the following grounds:

- (1) by a grant of planning permission dated the 16th of August 1987 the Applicant became entitled to erect a meat processing plant and related site works at Corkeeran Ballybay in the County of Monaghan subject to the conditions therein and in particular subject to full compliance with the terms and conditions expressed in a licence to discharge trade effluent into the adjacent sewers of the Respondent at Corkeeran granted to the Applicant on the 16th of August 1987 pursuant to the provisions of Section 16 of the Local Government (Water Pollution) Act 1977
- (ii) in addition to the above the Applicant is entitled pursuant to the provisions of Section 23 of the Public Health (Ireland) Act 1878 to connect with or cause its drains to empty into the existing sewers of the Respondent the Applicant has notified the Respondent of its intention to do so and has complied with the Respondent's regulations in the said planning permission sewer discharge licence and the conditions specified by the Respondent numbered 1, 2, 3, and 4 in their letter dated the 3rd day of May 1988 all in connection with the mode in which the communications between the Applicant's drains and the Respondent's sewers are to be made pursuant to the Applicant's request for a sewer connection dated the 10th day of March 1988

(iii) the purported imposition by the Respondent of further conditions in its said letter of the 3rd day of May 1988 requiring the payment in advance of: (i) a capital contribution of £42,014.00 (once off) plus (ii) an annual running charge of £3,600.00 or (iii) an annual charge of £12,394.00 (subject to annual review) which were subsequently stated to be levied under the Local Government (Financial Provisions) (No. 2) Act 1983 in respect of the cost to the Council of providing plant to treat and dispose of the Applicant's licensed trade effluent is ultra vires the Respondent and null and void in that:-

(a) the said Act of 1983 has no application to the facts

(b) the charges sought to be levied are properly the subject matter of a condition attached to and specified in the licence to discharge trade effluent into the Respondent's sewer and are not the proper subject matter of a letter dated the 3rd day of May 1988

(c) the said charge was sought to be imposed some five months after the date chosen by the Respondent for the coming into force of the conditions attached to the said licence and some nine months after the date of granting of planning permission and consequently outside the time for any appeal under those provisions

(d) the said charges are unappealable and not subject to negotiation or arbitration

(e) the said charges are not properly levied.

(iv) without prejudice to the foregoing the said charges

are unauthorised unfair and excessive restriction on the Applicant's exercise of it's right pursuant to Section 23 of the Public Health (Ireland) Act 1878 in that:

(a) the said charges have no relation to the terms and conditions authorised by the said Section 23

(b) the said charges are excessive and out of all proportion to the actual volume of discharge of trade effluent from the Applicant's premises

(c) the Respondent has at all times failed neglected and refused to give the Applicant particulars of precisely what the said charges are sought to be levied in respect of and how the same are calculated in relation to the Applicant

(v) by reason of the Respondent's insistence on the Applicant's payment in advance of the said charges prior to the Applicant being permitted to connect or cause it's drains to be emptied into the existing adjacent sewer of the Respondent the Applicant is unable to bring the said plant into operation or to commission the equipment thereof and is in grave and immediate danger of sustaining severe contractual and economic loss thereby."

The events leading to the decision notified in the letter of the 3rd of May 1988 are set out in paragraphs 3 to 12 inclusive of the affidavit of Peter Judge. The contents of these paragraphs may be summarised as follows. Following the decision of the Applicant Company in 1986 to invest upwards of £5 million in the construction and fitting out of a new meat processing plant at Corkeeran they held a series

of meetings with representatives of the County Council for the purposes of ascertaining and complying in all respects with the requirements of the County Council in matters of planning and environmental requirements including the obtaining of necessary licences. The intended premises would be a mere 100 yards from the nearest sewer manhole the property of the Respondent and the Applicant applied to the Respondent for a licence under Section 16 of the Local Government (Water Pollution) Act 1977 to discharge trade effluent to that sewer. In their application form they set out full technical details of the nature and extent of the trade effluent proposed to be discharged into the sewer as well as detailed physical and chemical characteristics thereof as they understood would be required by the Respondent and also furnished copies of the architect's drawings. They received a licence bearing reference number W.P. 3/87 entitled A Licence To Discharge Trade Effluent Or Other Matter To A Sewer dated the 17th of August 1987 signed by the County Manager with Order Number S70/87. That licence stated ¹⁴the Monaghan County Council in exercise of the powers conferred on it by the Local Government (Water Pollution) Act 1977 hereby grants a licence to discharge trade effluent from Ballybay Meat Exports Limited Corbrack located at Corkeeran Ballybay County Monaghan to County Council sewer at Corkeeran subject to the conditions as listed in the schedule attached hereto. ¹⁵The schedule referred to contains limits and volume of trade effluent to be discharged daily and prescribes physical and chemical characteristics thereof. It also provides for screening of effluent, the measurement of effluent flow and taking of samples, and the keeping of

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records and furnishing thereof monthly to the County Council. Condition 11 of the scheduled conditions is the only one requiring the Applicant to make any money payment and it is as follows "The licensee shall contribute £400 per annum towards Monaghan County Council effluent monitoring costs". It also required all conditions to be operable on and from the 21st of December 1987. The Applicant also had applied for planning permission under Section 26 (1) of the Local Government (Planning and Development) Act 1963, and on the 17th August 1987 was notified of the grant of outline planning permission under that Act subject to 16 conditions. The reference number of the application on the Respondent's register is P 323/87 and this also appears on the application to the Respondent's fire authority for their report. The 16 conditions required compliance with environmental provisions, roadworks, health board requirements and the requirements of the fire authority. In addition they included the following two conditions

"7. All conditions of the effluent discharge licence shall be complied with in full. (Ref. No. WP 3/87)."

and also

"10. Separate application to be made to Monaghan County Council for formal sewer and watermain connections as required."

At the foot of the scheduled conditions there is a note that the reasons for the imposition of the conditions are, as to numbers 4, 5, 6, 7, 8, 9, and 10 as follows "to prevent pollution of any natural watercourse." The application for connection with the sewers as required by Condition 10 was

made by the Applicant on the 10th of March 1988 upon a form provided by the Respondent which required technical detail as regards quantity and nature of effluent and the means and point of discharge into the Respondent's sewer. In his affidavit Mr. Judge exhibits the relevant documents showing full compliance with the requirements of the Respondent. He exhibits also the letter of the 3rd of May 1988 from the Respondent in answer to the application of the 10th of March 1988 and this he says stipulates conditions for the connection to the public sewer which include substantial payments of money which were not required as conditions for the grant of a licence to discharge into the sewer. As this letter is the intimation of the decision which is challenged in these proceedings it is appropriate to quote in full the letter of the 3rd of May 1988 and the reply thereto of the 11th of May 1988. The letter of the 3rd of May 1988 from the Respondent to the Applicant is as follows:

"Dear Sir,

I refer to your application for a sewerage connection and wish to inform you that the Council have no objection subject to the following conditions:-

- (1) You provide and lay a 100 mm rising main as per details and specifications approved by Monaghan County Council. You comply with Conditions No. 8 and 9 of Planning Permission Ref. No. P 323/87.
- (2) You obtain the necessary road opening licence approval from Monaghan County Council prior to the commencement of any work. (Application form enclosed)
- (3) You notify the local authority office before the work is completed and covered over with earth so that an inspection of same may be carried out by the local authority.
- (4) All of the work associated with the proposed connection to the public sewer system to be carried out by you.

(5) You pay

(1) a capital contribution of £42,014 (once off) plus

(2) annual running charge of £3,600

or

you pay an annual charge of £12,394 (subject to annual review). Both the above charges are payable in advance. These charges are based on a average daily effluent flow of 18 M³/day and quality as per discharge licence.

(6) Foul and waste water drainage from culinary and sanitary appliances only to be connected to public sewer system and all storm water run-off from roofs and paved areas to be discharged to natural open watercourse/existing surface water drainage system.

Yours faithfully,"

The letter of the 11th of May 1988 in reply from the

Applicant is as follows:

"Dear Sir,

I am writing in reply to your letter of the 3rd May 1988 where you list six conditions to our application for a sewerage connection.

I would like to refer you to the licence to discharge effluent granted to us on 17th August 1987 where 12 conditions were listed. The only fees mentioned in these conditions were £400 monitoring costs which were condition number 11. I would have assumed that if either a capital contribution or an annual running charge were required they would have been noted at this stage.

All financing, grant approvals etc. have now been fully completed and the additional costs involved have not been allowed for in our estimates. I would ask you to look at the charges which you have proposed as they are quite significant in relation to other costs for the plant.

I would also be obliged if you could tell me if there are any other contributions or running charges connected with this development from yourselves.

Yours sincerely,"

In his affidavit Mr. Judge also exhibits some of the correspondence between the Applicant's Solicitor and the County Council. In the letter of the 25th of July 1988 the

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Solicitor for the Applicant refers to the conditions in the letter of the 3rd of May 1988 and enquires the specific statutory authority for the charges which are claimed and which he says were not indicated to the Applicant at any stage prior to the letter of the 3rd of May which he says was some nine months after the granting of planning permission and the licence to discharge trade effluent into sewers in August 1987. In their reply to that letter the Respondent County Council stated in a letter of the 2nd of August 1988

"I wish to state that the statutory authority for the charges is the Local Government (Financial Provisions) No. 2 Act 1983. The charges proposed are based on the cost of the Council of providing plant to treat effluent discharge and the appropriate portion of maintenance and running costs of same."

In a letter of the 9th of August the Respondent states

"The capital and running charges have been calculated on the basis of the Mogden Formula which in turn relate to capital cost, loan charges and maintenance costs."

In their Statement of Opposition the Respondent County Council state as follows:-

"(1) The charges imposed by the Respondent in its letter of the 3rd day of May 1988 to the Applicant were imposed in respect of the connection of the Applicant's factory to the public sewerage system in Ballybay provided and maintained by the Respondent pursuant to the provisions of the Public Health (Ireland) Act 1878 and the use of the said system by the

Applicant.

- (2) The said charges were lawfully imposed and charged by the Respondent pursuant to the powers in that regard provided under Section 2 of the Local Government (Financial Provisions) (No. 2) Act 1983.
- (3) The said charges are reasonable having regard to the volume of the Applicant's discharges into the said sewage system and to the nature and content of such discharges."

The affidavit in support of the Statement of Opposition was sworn by Mr. Fergus Coyle on behalf of the Respondent and in it he swears as follows:

- "(3) The annual charge of £12,394 the subject matter of this application was calculated by a method known as the "Mogden Formula". This is a method which is widely used by public authorities in a number of countries including Ireland, England, America and a number of European Countries for the purpose of calculating, on a proportionate basis, charges to be imposed on a particular undertaking for its use of the public sewage system. The formula is designed to apportion fairly the cost of the provision and maintenance of a sewage system among particular categories of users and takes into account the cost of the system and the amount of discharge and the nature and content of the discharge of a particular user. It is also designed to provide a uniform method for calculation of such charges. It is

based on the "polluter pays" principle which is the basic policy objective of the European Community with regard to the defrayment of the cost of disposing of effluent."

He refers to a schedule setting out the calculations based on the Mogden Formula as an exhibit and goes on:

"(4) The once off capital charge of £42,014 with an annual charge of £3,600 is calculated as a proportion of the total capital cost of providing the Ballybay sewerage works and of its running cost where the annual running cost of the system is £34,000 and the cost of providing the system was £2,040,000. The charges under this heading are calculated by, in the case of the capital sum, dividing the costs of providing the plant by the daily design loading in Kilogrammes of B.O.D. (437 kgs) of the plant and multiplying it by the projected daily discharge of the Plaintiff's effluent in kilogrammes of B.O.D. (9 kgs) and in the case of the annual charge by dividing the annual running costs of the system (£34,000) by the present daily B.O.D. load in kilogrammes (85 kgs) received by the plant and multiplying it by the daily load of B.O.D. in kilogrammes of effluent received from the Plaintiff (9 kgs)."

The statutory enactments invoked in the course of the correspondence and referred to in argument on the hearing are the Local Government (Water Pollution) Act 1977 (No. 1 of 1977), the Local Government (Financial Provisions) (No. 2)

Act 1983 (No. 21 of 1983) and the Public Health (Ireland) Act 1878 (41 and 42 VIC. C. 52). The 1983 Act is to be construed as one with the Acts included in the collective citation therein namely the Local Government Acts 1925 to 1983. The 1878 Act is included in the collective citation in the Local Government (Sanitary Services) Acts 1878 to 1964. The 1977 Act is stated in its preamble to be "An Act to provide for the control of water pollution and for other matters connected with water pollution". This last statute is not included in a collective citation and its effect is to repeal the Rivers Pollution Prevention Acts of 1876 and 1893 and two sections of the Fisheries (Consolidation) Act 1959.

The Respondent County Council is a "local authority" as defined in Section 1 (1) of the 1977 Act. It is also a "sanitary authority" as defined in the same subsection of that Act. Subsection (1) of Section 1 of the 1977 Act includes the following further definitions namely "sewage", "sewage effluent", "sewer" and "trade effluent". The last mentioned definition is as follows:

"Trade effluent means effluent from any works, apparatus, plant or drainage pipe used for the disposal to waters or to a sewer of any liquid (whether treated or untreated, either with or without particles of matter in suspension therein,) which is discharged from premises used for carrying on any trade or industry (including mining), but does not include domestic sewage or storm water."

This statute also makes distinction between domestic sewage for which no definition is given in the Act and the other

sewage and effluent coming within the terms which are defined. These are distinctions which are not to be found in the Public Health (Ireland) Act, 1878 which is the first of the Sanitary Services Acts in the collective citation of Local Government (Sanitary Service) Acts, 1878 to 1964. The 1983 Act is described in its preamble to be "An Act to enable Local Authorities and Sanitary Authorities to make certain charges and to amend Section 9 of the Local Government (Financial Provisions) Act 1978". The distinction (if any is to be made) between local authorities and sanitary authorities is not defined in any relevant enactments referred to during the hearing of this application for a Judicial Review. The amendment of Section 9 of the Local Government (Financial Provisions) Act, 1978 enables the Minister for the Environment to supplement out of moneys provided by the Oireachtas the income of a rating authority or a housing authority which, prior to the passing of the 1978 Act, had power to raise such income by a levy of rates on hereditaments which comprise buildings used inter alia partly and to a significant extent as domestic buildings and partly and to a significant extent for another purpose. The provisions of the Local Government Acts of 1878, 1941, 1946 and 1970 relative to the raising of money by a levy of rates by a local authority as a rating authority were not opened at this hearing. It is sufficient to note that the Respondent on this application is a body which is invested with powers and charged with the duties required by legislation from time to time of "local authority", of "planning authority", of "rating authority", and of "sanitary authority". The Respondent also comes within the definitions both of "local

authority" and of "sanitary authority" in Section 1 of the Local Government (Water Pollution) Act, 1977 although the provisions of that Act preserve a distinction between the functions of local authority and of sanitary authority. In particular Section 4 (1), which prohibits the discharge of trade effluent or sewage effluent into any waters, enables the local authority to grant a licence to make such discharge into waters in their functional area. But that prohibition and necessity for a licence does not apply by virtue of Section 4 (2) to a discharge from a sewer nor to a discharge which is subject to regulations which may be made under subsection (10) of Section 4. A contravention of subsection (1) of Section 4 constitutes an offence. Subsection (12) of Section 4 is as follows:-

"(12) A person shall not be entitled solely by reason of a licence under this section to discharge, or cause or permit the discharge of, trade effluent or sewage effluent to waters."

Section 3 contains at subsection (1) a general prohibition in the following terms:-

"Subject to subsection (5), a person shall not cause or permit any polluting matter to enter waters."

Subsection (5) of Section 3 contains six sub-subsections of which the first only is relevant and it is as follows:-

"(5) Subsection (1) does not apply to -

(a) discharges of trade effluents or sewage effluents (other than a discharge the subject of regulations under section 4 (10), unless where a relevant standard is prescribed under section 26 the discharge complies with that standard);".

The remaining subparagraphs of that subsection and section do not appear to be relevant to the matter now under consideration. Subsection (10) of Section 4 is a provision enabling the Minister for Local Government to exempt by means of regulations of a specific nature the discharge of specified types of effluent into specific classes or areas of waters from the prohibition (against so doing without licence) contained in subsection (1) (a) of Section 4. Such licence if required may be granted, according to subparagraph (b) of Section 4 (1), either by the local authority in whose functional area the waters are or by the local authority in whose functional area are "any premises, works, apparatus, plant or drainage pipe from which effluent is discharged is situated." Subsection (2) of Section 4 provides that the prohibition in subsection (1) does not apply to discharges from a sewer, or which are the subject of regulations made under subsection (10) of Section 4. That section and the regulations which may be made pursuant to subsection (10) relates to the discharge of sewage effluent or trade effluent directly into waters not by means of nor into a sewer. The words "waters" as defined in Section 1 does not include a sewer. Section 26 is a provision which enables the Minister for Local Government to prescribe quality standards for waters and for trade and sewage effluents and methods of treatment of such effluents. The specific requirements to be prescribed in such regulations are indicated in subsection (2) of Section 26. These regulations govern the discharges into waters from sewers, and place upon the sanitary authority "in which the sewer is vested or by which it is controlled" the duty of compliance with the regulations made

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under Section 26.

The discharge into a sewer "of trade effluent or other matter (other than domestic sewage or storm water)" is prohibited by Section 16 (1) unless it be in accordance with a licence granted "by the sanitary authority in which the sewer is vested or by which it is controlled". Contravention of this prohibition constitutes a criminal offence for which prosecution may be taken by the sanitary authority. Civil proceedings by the sanitary authority are also available as alternative or in addition to criminal prosecution. The sanitary authority is given a discretion by Section 16 (2) (a) either to refuse a licence or to grant a licence subject to appropriate conditions. The exercise of that discretion is governed by subparagraph (b) of Section 16 (2) which requires the sanitary authority to "have regard to the objectives contained in any relevant plan under section 15". Furthermore subsection (3) of Section 16 prohibits the grant by a sanitary authority of a licence which would allow the discharge into a sewer of trade effluent which would not comply with the standard prescribed under Section 26. Subsection (4) of Section 16 prescribes the matters which may be the subject of conditions under subsection (2) (a) for the grant of a licence. Of these the only one requiring a money payment to the sanitary authority as a condition for the grant of a licence is at subparagraph (b) of subsection (4) of Section 16. It is there provided that a condition attached to a licence may require defrayment of or contribution towards "the cost incurred by the sanitary authority in monitoring, treating or disposing of a discharge". This section does not specify what amount is to

be charged nor specify an amount which a charge must not exceed. The effect of Section 17 appears to be that a licence given under Section 16, if valid, is effective for a period of three years and renewable subject to amendment or deletion of conditions by agreement or under regulations which may be made by the Minister to conform with Section 26. The exception in subsection (1) of Section 16 of "domestic sewage or storm water" seems to be a recognition of the right conferred on the occupier of premises and of the duty imposed on the sanitary authority in respect of such matters by Section 23 of the Public Health (Ireland) Act, 1878.

The first paragraph of Section 23 of the 1878 Act reads as follows:-

"The owner or occupier of any premises within the district of a sanitary authority shall be entitled to cause his drains to empty into the sewers of that authority on condition of his giving such notice as may be required by that authority of his intention so to do, and of complying with the regulations of that authority in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by that authority to superintend the making of such communications."

The second paragraph of the section provides for the circumstance of non compliance. The 1878 Act contains detailed and comprehensive provisions imposing on a sanitary authority the duty to provide sewers and to take discharges

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from drains and to prevent and abate nuisance within its district. The expense of laying out and maintaining a sewage system for its district was provided for by recourse to a rate fund levied by the rating authority upon all occupiers of rateable hereditaments in its district. That Act includes also a provision for protecting the purity and quality of water of any stream or watercourse into which filthy water might be conveyed by a sewer. It prescribes that the sanitary authority may not use its sewers to convey sewerage or filthy water to such an outfall "until such sewage or filthy water is freed from all excrementitious or other foul or noxious matter such as would affect or deteriorate the purity or quality of the water in such stream....".

The latest of the three statutes for consideration is the Local Government (Financial Provisions) (No. 2) Act, 1983 upon Section 2 of which the Respondent relies in its Statement of Opposition. I have already referred to the purpose of that statute as stated in the preamble and to the effect of Section 9 which relates to rating authorities and housing authorities. The only reference to a sanitary authority in the 1983 Act is in the wording of the amendment effected by Section 8 of Section 65A of the Public Health (Ireland) Act 1878 as inserted by Section 7 of the Local Government (Sanitary Services) Act, 1962. In the course of this hearing no argument was addressed to the distinction if any to be made between a local authority and a sanitary authority. But it is clear from a comparison of Section 4 with Section 16 and of Section 7 with Section 17 and from Section 9 and many other sections of the Local Government (Water Pollution) Act 1977 that the legislature did make such

a distinction in the 1977 Act. It would appear from the preamble to the 1983 Act to maintain that distinction. It would seem to follow therefore (though I have heard no argument on this) that in relation to the matters the subject of legislation in the 1977 Act the provisions of Sections 1 to 7 inclusive of the 1983 Act apply only to a local authority to the exclusion of a sanitary authority. Thus it would appear to be the intention of the legislature that Section 2 of the 1983 Act applies to Section 4 and related sections of the 1977 Act, but not to Section 16 and related sections of that Act. I have already pointed out that Section 16 and related sections deal with discharge into a sewer whereas Section 4 and related sections deal with the discharge otherwise than by sewer of trade effluent into "waters" which, as defined in the 1977 Act, do not include a sewer.

Although the 1878 Act was not opened for consideration in any detail on this hearing there are features of it which can be recognized as of general application. In general terms it required sanitary authorities to undertake in their respective sanitary districts the responsibility of safeguarding the public health not merely in a supervisory fashion but actively by providing to the public at large health services without individual charge. The right of an owner or occupier to cause his drains to empty into the sewer of a sanitary authority without charge is a public right conferred by Section 23 of the 1878 Act and not merely an individual service provided by the sanitary authority to such individual person. The only conditions applicable to the individual to which that right is subject are the giving of

notice and submission to superintendence and compliance with regulations as to the mode of making the connection between the drain and the sewer. That section does not authorize the imposition by the sanitary authority or any local authority of any other conditions for compliance by any individual.

I am of opinion that the charges which the Respondent determined to charge, as specified in the letter of the 3rd of May 1988, do not come within the range of the authority conferred by Section 23 of the Public Health Act 1878. In my opinion they relate only to the licence applied for under Section 16 of the 1977 Act which was granted on the 17th of August 1987 and in which a charge was made (for which no calculation has been shown in evidence). In my opinion the Order of the Respondent referred to in the letter of the 3rd of May 1988 was in effect a review of the licence which had already been granted on the 17th of August 1977. It did not conform to the provisions for review of such a licence in Section 17 of the 1977 Act. In my opinion it does not come within the ambit of any power to charge to which Section 2 of the 1983 Act refers.

The Respondent is a body whose authority and functions are prescribed by legislation, and consequently it may be required to establish that its actions accord not only as to purpose but also as to form as prescribed by the legislature. In the matter under consideration the legislature has made distinctions in matters of form and substance in the requirements prescribed for the County Council in its different capacities as sanitary authority and as local authority which it has failed to recognize. In my

opinion the Applicant is entitled to the reliefs set out in paragraphs (a), (b), (c) and (d) of the Order of Barron, J. dated the 21st of November 1988.

S.G.
8th January 1990.

Licence granted on 16th Aug. 1987 is a valid & subsisting licence - relief under par (d) of the order of 21 Nov 1988 not required costs awarded to applicant - include costs reserved.

Stay order on costs to 6th Febr. & if notice of appeal served extend stay until appeal.