

THE HIGH COURT

[2021] IEHC 478

[Record No. 2018/241 MCA]

IN THE MATTER OF THE WASTE MANAGEMENT ACTS, 1996 TO 2011

BETWEEN

LOUTH COUNTY COUNCIL

APPLICANT

AND

JOHN PRENDERGAST

RESPONDENT

JUDGMENT of Mr. Justice Barr delivered electronically on the on the 8th day of July, 2021

Introduction

1. The applicant is the local authority for the county of Louth. The respondent is a joint owner of a farm and lands situate at and known as Millpark, Knockbridge, Dundalk, County Louth, which he owns with Rita Prendergast, Enda Prendergast and Eugene Prendergast. The respondent manages the farm operations and the various other uses being made of the lands.
2. These proceedings concern an application by the applicant for various forms of injunctive relief, both prohibitory and mandatory, arising out of the alleged illegal use of the lands as a waste facility by the respondent. In particular, the applicant seeks an order pursuant to s. 57 of the Waste Management Act, 1996 to 2011 restraining the respondent, his servants, agents and licensees from accepting, disposing of, or recovering any waste materials at Millpark, Knockbridge, Dundalk, County Louth (hereinafter referred to as "the facility") unless and until a valid waste permit or waste licence is in force in respect of the said facility.
3. The applicant also seeks orders pursuant to s. 57 and/or s. 58 of the Acts, directing the respondent to make a number of specific steps as outlined in the amended notice of motion in relation to engagement of environmental consultants to prepare a method statement for the removal of waste from the facility and to take the necessary steps to remediate the lands.
4. The respondent initially represented himself in the proceedings. Thereafter, he was represented by a firm of solicitors and when they came off record, he was represented by a different firm of solicitors and counsel at the hearing of this application. Essentially, the defence put forward on affidavit by the respondent, was to the effect that such waste as there was on the lands, had been placed there by the applicant over a long number of years and therefore it was inappropriate that they should now seek injunctive relief against him to remove that waste from the lands. This defence will be dealt with in more detail later in the judgment.
5. At the hearing of the application, the main submission put forward by counsel on behalf of the respondent was to the effect that the court should not make mandatory orders requiring the respondent to undertake extensive remediation works, as he did not have the financial means to undertake same.

Background

6. There have been a large number of affidavits filed in this matter, which set out in considerable detail the activities carried on by the respondent at the facility since 2016. It is not necessary to set out in extenso all of the materials set out in the affidavits. Instead, the court will give a broad chronological summary of the events which took place concerning the activities carried on by the respondent at the facility since 2016.
7. The lands occupied by the respondent at Millpark, Knockbridge, Dundalk, County Louth, comprise a site of approximately 35 hectares (being 86.5 acres) which is primarily used as a working tillage farm and for other commercial uses, which will be outlined in greater detail later in the judgment.
8. The River Fane is located approximately 270 metres to the south of the property. This is important, as the River Fane constitutes a source of some of the drinking water for the greater Dundalk area.
9. In an affidavit sworn on 12th June, 2018, Mr. Patrick Finn, a retired engineer, formerly employed by the applicant, stated that a complaint was received by the applicant in October, 2016 alleging the unauthorised deposit of waste on the respondent's property. On 20th October, 2016, Mr. Damien Holmes, a scientist employed by the applicant, inspected the respondent's property. He was accompanied by Mr. Kieran Kinney, an employee of the applicant and by Mr. Andrew Moag, a director of AMC Environmental Ltd of Enterprise Road, Bangor, County Down. That company had been retained by the applicant to carry out an environmental risk assessment of the lands.
10. In an affidavit sworn on 7th June, 2018, Mr. Holmes stated that on 20th October, 2016, they collected the following waste objects at the respondent's lands: a toothbrush, razor, bottle top, syringe, medicine container, textile and alkaline batteries. He stated that these items indicated that they had originated from household waste. The general size of the waste was consistent with screen household waste from a trommel or some other screening device, which further indicated that the waste had originated from a waste treatment plant.
11. Mr. Holmes also observed construction waste deposited at the facility, which included wood, plastic screws, nails, plasterboard, textile, cement and concrete residues. The size of the construction and demolition waste was also consistent with it having originated from the output of a screening device, such as a trommel, or other screening device and as such, it would have originated from a waste treatment plant. He noted that the quantities of waste at the property appeared to be significant. One pile on the yard measured 8 metres in height. He also observed significant deposits of biodegradable waste deposited at the facility. He took a number of photographs during that inspection which were exhibited to his affidavit.
12. On 21st October, 2016 Mr. Holmes issued a direction to the respondent pursuant to s. 14 of The Waste Management Act, 1996 to cease the acceptance and disposal of waste on his lands. The direction was sent by registered post to the respondent and he also handed

him a copy of same at the property on 21st October, 2016. The registered post was returned to the Council. He exhibited a true copy of the direction in his affidavit.

13. On 4th November, 2016, Mr. Holmes accompanied Mr. John Moag of AMC Environmental, visited the facility to carry out an aerial survey of the property to quantify the volume of waste. During that site inspection they also carried out some gas readings on the cracks in the ground near where the "site 2" waste sample had been taken on 20th October, 2016. There was a strong odour at the location. Steam was visible coming from the cracks in the ground. The odour was similar to landfill gas. It was an acetic acid smell, which was indicative of the early stages of anaerobic decomposition of organic waste.
14. In an affidavit sworn by Mr. Andrew Moag on 7th June, 2018, he stated that having viewed aerial imagery of the facility from Google Earth, it was apparent that deposits of waste had been built up over several years. The aerial photographs that he had had regard to were taken on various dates between November 2005 and November 2016. The photographs from 2005 to 2011 showed that the farmlands, buildings and yard remained largely unchanged in terms of layout and extent. By July 2013 a new haulage road had been developed to the south east and south west of the site. Storage of what appeared to be manures or waste had been commenced to the west, adjacent to the yard and two rows of approximately 30 black plastic bales were in the area. Black bales and tyres were stored on the south eastern edge of the yard. At that time the yard was surfaced with what appeared from the aerial photographs to be stone.
15. Mr. Moag stated that by 2016 the two aerial photographs of 4th November, 2016 showed an increase in waste storage on the west, south and east flanks of the yard. The western deposit was as extensive as the footprint of the building, measuring approximately 30m by 40m. A large deposit of material consisting of waste, or manures contaminated with waste, was stored under black plastic sheeting to the south. Waste was stored over the eastern part of the yard comprising tyres, furniture and other mixtures of material. Wastes were also deposited on the southern flank of the yard and extended over what was formerly a field. These deposits were covered with soil and stone. Excavation was taking place on the eastern edge of the buildings close to the dwelling. The aerial photography indicated that between July 2013 and November 2016 significant changes occurred in relation to the deposition of material on the site and to the extent of the yard area.
16. Mr. Moag went on in his affidavit to deal with the site inspection on 20th October, 2016. He observed deposits of waste extending over areas to the south and east of the farmyard buildings complex as shown in figure 3 of his report. These wastes were deposited on the edges of building perimeters and hard standing. The deposits were mixtures of both manures and wastes comprising household and construction waste. A deposit of waste was also discovered off a farm track south of an arable field, within 40 metres of the River Fane. The location of that deposit was shown in figure 3A in the AMC report. That deposit comprised a series of waste comprising household waste, construction waste and manure. It presented a serious risk to the River Fane during

potential flooding events and a moderate risk of pollution due to the proximity of the river, as the wastes were located on a vulnerable aquifer and the pathways to the river and anticipated baseload to the river was short.

17. Mr. Moag outlined how he took a number of samples from the various waste deposits that he had located at the facility. He sent the samples for laboratory testing for biological activity by a company called Fitz Scientific and for a range of waste parameters by Jones Environmental Laboratories. The samples showed chemistry indicative of household waste, or construction waste. The laboratory results were set out in Table 62 of the AMC report, which was exhibited to his affidavit. The potential sources of contamination, potential migration pathways and potential receptors in the vicinity of the site were set out in Table 42 of the AMC report.
18. Mr. Moag stated that the storage and retention of the waste deposits on the lands, without any containment in place, posed an environmental risk to ground water, surface water, human health and habitats. Preliminary risk assessment carried out by his company showed significant pollutant linkages with the receptors around the site.
19. He noted that the wastes deposited in the farmyard buildings complex as shown in figure 3 in the AMC report, had not been fully quantified, but from observations, the deposits appeared to be significant and potentially exceeded six metres in depth in one location. He stated that the storage and retention of these deposits constituted a risk to the environment and to human health. The waste deposits contained biodegradable waste, identified as household waste screenings. That waste would be degraded to release heavy metals, ammonium, chloride, organic substances and a range of other potential contaminants that cause harm to human health, plants and animals. He was concerned that the waste could give rise to environmental pollution of ground water, which may have linkages to surface water and ultimately to the River Fane and thereby to human receptors, as it was a drinking water source. He advised that given the risks involved, it would be necessary to carry out a full assessment of the wastes and their effect on the environment. He was of the view that removal of the waste materials from the site was necessary to ensure the protection of the environment against harmful effects caused by the unauthorised storage and landfilling of waste and for the purpose of remediating environmental pollution at the site.
20. It should be noted that the respondent is not authorised to accept or hold waste at the property, as neither a waste licence or waste facility permit has been issued to him under the Act in respect of the property. The absence of such a licence or permit was deposed to by Mr. Finn in his affidavit sworn on 12th June, 2018 and by Mr. Callaghan in his affidavit sworn on 17th April, 2019. Those averments have not been contradicted by the respondent.
21. On 19th December, 2016, the applicant issued a notice pursuant to s. 18 of the 1996 Act calling on the respondent, as the holder of waste at the facility to furnish written records to the applicant in relation to all waste indicated in the photographs attached to that notice. On the same date, the applicant issued a notice pursuant to s. 55 of the Act

requiring the respondent to cease the holding, recovery and disposal of all waste on the facility as shown in figure 3, within fifteen days of receipt of the notice by him. The respondent was also required by that notice to furnish to the applicant an environmental risk assessment in respect of the relevant deposits. It also called on the respondent to furnish an options appraisal report within two weeks of approval by the applicant of the environmental risk assessment. The notice also called upon the respondent to thereafter prepare a detailed remediation plan and following approval thereof by the applicant, the respondent was called on to implement the detailed remediation plan within eight weeks. A similar notice under s.55 of the Act was issued on 19th December, 2016, in respect of the waste deposited in the area marked figure 3A in the AMC report. The statutory notices were served on the respondent by Mr. Damien Holmes on 21st December, 2016.

22. The respondent did not comply with the requirements of any of the statutory notices.
23. The respondent's facility was inspected by Mr. Finn and Mr. Holmes on 26th January, 2017, at which time it was observed that the waste was still in situ. The property was re-inspected by Mr. Finn and Mr. Holmes on 21st March, 2017. The waste was still in situ. No new waste was visible. As wastewater was visible at the base of the waste deposited in close proximity to the River Fane, Mr. Holmes returned to the property on 24th March, 2017 and observed white staining on the grass in the drainage ditch, indicating the presence of leachate. A water sample from the area with white staining was collected and sent to Fitz Scientific for analysis.
24. Mr. Finn re-inspected the waste deposited near the River Fane on 27th March, 2017. He formed the opinion that leachate emanating from the waste posed a likely threat of pollution to the River Fane. Mr. Finn wrote to the respondent by letter dated 30th March, 2017 to inform him of the council's intention to exercise its powers pursuant to s.56 of the Act on 10th April, 2017 to excavate the area and remove all waste from the area shown in Figure 3A, which had been appended to the s.55 notice. The respondent was given an opportunity to furnish a written undertaking before 7th April, 2017 to carry out the waste removal works in accordance with a waste removal plan.
25. On 4th April, 2017, two lorry loads of mixed commercial, construction and demolition and household waste were observed by Ms. Rebecca Walsh, Assistant Scientist employed by the applicant and by Damien Holmes, tipped into the upper yard of the property. When the waste was examined material was found therein which indicated that it may have originated in Northern Ireland, as a newspaper from that jurisdiction was found among the waste.
26. The letter from the applicant to the respondent dated 30th March, 2017 was returned by An Post. Mr. Finn wrote again to the respondent in similar terms by letter dated 11th April, 2017. That letter was delivered by hand by Mr. Holmes to the respondent on the same day.
27. Between 13th and 21st June, 2017, the applicant's licensed contractors removed approximately 1087 tonnes of waste from the area shown in figure 3A of the AMC report.

28. As deposed to in the affidavit sworn by Mr. Seán Callaghan, Executive Scientist employed by the applicant, sworn on 17th April, 2019, in late July 2018, the applicant received a complaint from An Garda Síochána that waste materials were being delivered to the respondent's facility. A joint inspection of the property was carried out by the applicant, with the assistance of AMC Environmental Limited and An Garda Síochána on 5th October, 2018.
29. Mr. Callaghan presented himself to the weighbridge office and spoke to the respondent. He refused permission to enter the property, stating that the applicant would have to obtain a warrant to gain access to the property. Mr. Callaghan left the property and went with a member of An Garda Síochána to the District Court Judge in Drogheda, where he applied for and was granted a warrant to enter the property. When he returned to the property at approximately 12:18 hours, he found the entrance gate locked. The respondent refused permission for him to enter the property on the basis that the warrant was not stamped. It was explained to him by D/Garda John Moroney that the warrant did not need a stamp. The respondent then permitted entry onto the property at 13:20 hours.
30. In the affidavit, Mr. Callaghan gives a detailed account of numerous stockpiles of waste material that he observed when walking through the property. It is not intended to set out all the material that he observed. It will suffice to give a general summary. In an area marked as Zone 2, he observed a stockpile consisting of construction and demolition material, which included fragments of concrete, paving, corrugated plastic, ducting, large pieces of road tarmac, brick, metal, rebar, tiles, electrical wires, household electrical items (phone chargers), green waste, soil material, timber, metal strapping and water pipes.
31. In an area identified as Zone 3 there was freshly deposited brown soil, together with road tarmac material, angular concrete debris, 100mm diameter steel pipe fragments, construction concrete waste, plastic, metal, timber, brick, soil fines and construction and demolition fines.
32. In a different stockpile identified as stockpile number 5 located within Zone 3, he found blocks, brick, plastic, MDF, plastic film, tyres, waste sanitary, fittings, plasterboard, wire, security glass and timber. There was also what appeared to be an organic type household type waste covered in plastic with a small area exposed. Receipts found in the waste material dated from 1992 to 1994. In total, Mr. Callaghan gave a description of material found in thirteen different stockpiles in five different zones on the property. These were all set out *in extenso* in his affidavit, together with photographs of the various stockpiles.
33. During that inspection, a search of the weighbridge office was conducted, during which two folders were copied from the weighbridge office computer onto a memory stick. The hard drive unit of the CCTV was also seized.

34. On 9th October, 2018, Mr. Callaghan attended at the property and reminded the respondent of the s.14 direction that he had verbally given to the respondent on 5th October, 2019 directing him to cease accepting and disposing of waste on his lands with immediate effect. On that date a written direction pursuant to s.14 of the Act was served on the respondent.
35. Mr. Callaghan went on to state that he believed that the respondent had unlawfully accepted commercial, municipal and construction related waste materials at the property since the issue of the application seeking injunctive relief. Some of the waste material observed at the property on 5th October, 2018 had been identified as hazardous waste. He stated that waste materials were being held by the respondent at the facility in a manner that caused, or was likely to cause, environmental pollution. He stated that he believed that the respondent had continued to accept large quantities of waste material. He stated that he believed that the respondent intended, unless restrained by the court, to continue to accept, dispose of and recover waste at the property.
36. In an affidavit sworn on 16th April, 2019, Mr. Andrew Moag dealt with the site inspection which he had attended with Mr. Callaghan on 5th October, 2018. He deposed to the fact that he had taken various samples from the stockpiles of waste which had been listed at Table 1 of the inspection report. The descriptions of the materials comprised in the samples were set out in Table 2 of the report. There were photographs of each of the samples below Table 2.
37. Mr. Moag went on to state that having sent samples to Exova Jones Laboratories for testing, he received a report from them, which he exhibited to the affidavit. He was satisfied that all five samples tested could be classified as waste. Sample SP001, taken from stockpile number one comprised natural soil and no significant contamination was found in that sample. Sample SP002 taken from stockpile number two comprised manure material and had moderate hydrocarbon contamination with aromatic heavy fraction oils. Asbestos was found to be present in samples SP004 and SP006. Those samples required further testings to determine if the stockpiles from which the samples were taken should be classified as hazardous or non-hazardous waste.
38. Sample SP006 was found to be heavily contaminated animal bedding with diesel range and heavier hydrocarbons and polycyclic aromatic hydrocarbons (PAHs). Asbestos fibre bundles were also noted to be present. Sample SP007 was found to comprise very heavily contaminated soils with diesel range and heavier hydrocarbons and PAHs, more than twice the level of SP006 for total hydrocarbons. Samples SP006 and SP007 were indicative of spillage of diesel or heavier hydrocarbons. Both samples were highly odorous and hydrocarbon odours were noted during the inspection of the site in the general area of stockpiles 006 and 007 where those samples were taken. A synopsis of the laboratory testing results were set out in Table 3 of the inspection report.
39. Mr. Moag stated that a drone survey had been carried out of the facility on 5th October, 2018. The volumes of waste deposited since the last inspection on 4th November, 2016 were shown in Table 4.

40. Mr. Moag stated that the waste volumes recorded in the inspection report represented an estimate of the waste imported onto the site between 4th November, 2016 and 5th October, 2018. That waste came to a total of 56,758m³. However, as Zone 2 appeared to be largely made up of farm waste, the volume of material observed within that zone was deducted, leaving approximately 56,500m³ of waste materials comprising commercial, municipal and construction related waste, that had been brought onto the site since November 2016. At a bulk density of approximately 1.5 tonnes per cubic metre, that equated to 84,750 tonnes of waste.
41. Mr. Moag also referred to a large plateau of waste that had been compacted and levelled at the back of the farmyard, in an area which was not visible from the main road. That area had extended out over a field that was previously under crop. The area had been infilled, partly in 2016, but there was an additional 38,033m³ of waste that had been placed there since November, 2016. There was a mixture of surface soils, manures, construction waste, residual waste from waste processing sites, oily wastes in soils and drums across the site.
42. Mr. Moag stated that visual observation, photographs and laboratory testing, confirmed that a large volume of waste had been brought to the site and deposited directly onto the ground, or on top of previously deposited waste. The waste presented a risk of environmental pollution as it was deposited directly onto the ground. Some of the waste was potentially hazardous and other wastes had clearly already been demonstrated to be hazardous. Hazardous substances known to be present on site included asbestos and oily wastes.
43. In an affidavit sworn on 16th April, 2019, Mr. Ben Gallagher, Acting Executive Scientist employed by the applicant, gave details of a number of lorries that had been stopped by An Garda Síochána in the course of the inspection on 5th October, 2018. He stated that one lorry was stopped by the gardaí at the entrance to the facility and was directed to the football pitch further up the road. Mr. Gallagher inspected the lorry. It was carrying a load of soil and stone. Following examination of the docket given to him by the gardaí, which had been obtained from the driver, the details thereof indicated that the load, which was estimated to be 27 tonnes, had come from GMC Ballycoolin and was destined for THC Dundalk. Mr. Gallagher took a number of photographs of the content of the rear of the lorry.
44. Mr. Gallagher stated that on the same date a second lorry was stopped at the entrance to the respondent's lands. It was redirected to the entrance of the football pitch. It had no load on board. The driver of the lorry was cautioned and under caution, he informed Mr. Gallagher that he had just posited a load of topsoil on the respondent's land.
45. Later that afternoon, Mr. Gallagher accompanied the drone operator onto the facility. In an area identified as Zone 3 near stockpile 006, he observed an excavated area which contained waste stones, bricks, blocks, plastic and evidence of hydrocarbon spillage. Adjacent to the area were two lorry trailers containing tanks and pipes, which showed evidence of oil and strong hydrocarbon odours. There was also a van at the location

which contained four barrels. Within the excavated area there was a barrel that was leaking a substance.

46. The applicant sought interlocutory orders by notice of motion issued on 18th April, 2019.

The Applicant's Submissions

47. Having opened the relevant portions of the 1996 Act, Ms. O'Farrell BL submitted that the respondent had permitted the accumulation of a large quantity of waste at the facility. That had been totally unauthorised, as it was not contested that the respondent held neither a waste licence, or a waste permit.
48. It was submitted that there was clear evidence in the affidavits that had been filed on behalf of the applicant that the waste at the facility constituted an environmental risk and a risk to human health due to the possibility of contamination with the River Fane, which was a source of drinking water for the greater Dundalk area.
49. It was submitted by counsel that the applicant had met the criteria which are necessary in order for the reliefs sought in the amended notice of motion to be granted to it. The relevant criteria had been laid down by the High Court in *Cork County Council v. O'Regan* [2009] 3 I.R. 39. It provided that the court must be satisfied of three things: there must be waste on the lands with the meaning of the Act; the respondent must be holding or disposing of waste on the land and the holding or disposing of the waste must constitute a hazard to the environment. See in particular paras. 18 – 25 of the judgment of Clarke J. (as he then was).
50. It was submitted that it was clear on the affidavit evidence that the respondent would not desist from carrying out the waste collection and disposal activities at the facility unless restrained by order of the court. He had flagrantly disobeyed a number of notices that had been served on him since as far back as 2016. It was submitted that in all the circumstances it was appropriate and reasonable that the court should make the orders sought in the amended notice of motion.

The Respondent's Submissions

51. Initially the respondent represented himself in the proceedings as a lay litigant. He submitted a number of documents headed "Statement of Fact and Truth", which, judging from their content, may have come from the internet. They did not address the issues in the case at all.
52. On an unknown date, the applicant filed an unsworn affidavit in which he made serious allegations against the applicant. He stated that in or about 1994, he had been approached by a local representative who was a member of the local authority, to see if he would permit material which was going to be dredged from an area known as Stephenstown Pond and to have same placed on his lands. He stated that being a young man at the time, and being anxious to assist the local authority, he agreed to this course of action. He stated that the local authority knew that it was illegal to tip such material onto agricultural land that was used to grow and supply food to the public. He alleged

that such disposal of material dredged from the pond was in breach of the 1996 Act, which provided that such material should be removed to a landfill site.

53. The respondent further alleged that in 2002 to 2003 the applicant approached him again seeking permission to dip thousands of tonnes of engineering grade material on his lands. He stated that it was not until 2005, when the applicant itself was under investigation by the Department of the Environment in relation to unspecified activities, that they used a "heavy hands on" approach towards him and were trying to pass the blame for the waste material onto the respondent. He stated that it was at that time that the applicant started to write to him, stating that it was unauthorised for him to hold or collect waste without a proper permit.
54. The respondent went on in that affidavit to state that a meeting had been arranged for 14th February, 2007 with the particular public representative, but it was cancelled at short notice. He further stated that in 2007 he was in court in relation to unauthorised development on the land. In the course of those proceedings, he had obtained an environmental report on the site where all the materials were stored. The respondent further alleged that the applicant's solicitor had not been truthful in her affidavit evidence, as she had not referred to written correspondence that she had had with the applicant going back as far as 2007.
55. The respondent further alleged that the applicant had deposited waste on his lands going back to the early 1990's. He further alleged that the applicant continued to tip waste on the lands up to the present day.
56. He further alleged that in 2018, a number of waste barrels had been left at the entrance to his premises. The gardaí had been informed of it and did not initiate any thorough investigation, as they only took a statement. He stated that the barrels still remained on the premises to be removed by the applicant.
57. The applicant stated that he was being used as a "pawn" to cover up what seemed to him to be corruption in planning matters and how the "seedy" workings of local government representatives and local government planning authorities, who worked hand in glove together, were trying to extricate themselves from a situation of their own making. He stated that on 28th April, 2019 he had made a statement to the gardaí in Dundalk regarding the tipping of waste material by the applicant on his lands.
58. From in or about February 2021, the respondent was represented by Prospect Law, Solicitors. They brought an application returnable for 3rd June, 2021 seeking liberty to come off record on behalf of the respondent. That application was based on an affidavit sworn by Ruadhán MacAodháin on 2nd June, 2021. That application was granted. Subsequently the respondent became represented by his current solicitor and counsel.
59. At the hearing of this application, Mr. Temple BL on behalf of the respondent made two submissions. Firstly, he repeated an application that had been made earlier in the day by a different counsel representing the respondent, seeking an adjournment of the hearing

of the application. That application had been refused by the court for the reasons set out in its *ex tempore* ruling.

60. Counsel's main submission was to the effect that the court should not grant the mandatory reliefs sought by the applicant, due to the fact that the respondent was a man of very limited means. He stated that the respondent had lost his home, which had been repossessed by a lending institution. He had since had to take up residence with his siblings. He stated that the respondent was of limited financial means and would not have the funds to carry out the various assessments that were being sought by the applicant, nor would he be able to fund the remediation works that would be necessary consequent upon such assessments. It was submitted that in those circumstances, it would be unreasonable and unjust for the court to impose obligations upon him which he was not in a financial position to undertake.
61. In response to the allegations made by the respondent, two affidavits were filed on behalf of the applicant. The first was an affidavit sworn by Mr. David Hanratty, a Senior Engineer employed by the applicant, which affidavit was sworn on 2nd November, 2019. In that affidavit, Mr. Hanratty outlined how the firm of Dooley Brothers of Iniskeen, Co. Monaghan, was contracted by the Council to dredge the area known as Stephenstown Pond, which was situated one mile east of the village of Knockbridge.
62. Mr. Hanratty states that the respondent has grossly overstated the quantity of material removed from the pond, which he states was between 14,000m³ and 25,000m³. Mr. Hanratty stated that he had been informed by Mr. Brian Dooley that no more than 600m³, of silt, soil and vegetation was removed from the pond.
63. Mr. Hanratty further stated that the material dredged from Stephenstown Pond was not brought to, or deposited on the respondent's lands at Millpark, Knockbridge, Dundalk. It was in fact spread by Dooley Brothers on the lands of a neighbouring farmer, Mr. Seán Lambe at Stephenstown, Knockbridge, Dundalk, Co. Louth. The deponent further stated that the material dredged from the pond did not contain all sorts of domestic, industrial and agricultural wastes consisting of dead animals, or diesel sludge, as alleged by the respondent.
64. Mr. Hanratty further stated that the Council had no knowledge of a contractor by the name of Seamus Duffy, who was alleged by the respondent to have placed the material on his lands on behalf of the applicant. He stated that Mr. Seán Callaghan, Executive Scientist employed in the applicant, reviewed the paperwork in the archives relating to the Stephenstown Pond project and could find no reference to a contractor by the name of Seamus Duffy from Jenkinstown. In addition, Mr. Callaghan had also made inquiries with the former operator of the Dundalk landfill, Mr. Eddie Pulman, who confirmed that he had never heard of a contractor by that name and such a contractor did not have any dealings at Dundalk landfill.
65. A similar inquiry was made by Mr. Callaghan of Mr. Brian Dooley, who confirmed that Seamus Duffy of Jenkinstown did not work on the Stephenstown Road project.

Accordingly, Mr. Hanratty stated and believed that the applicant did not contract with Seamus Duffy to carry out any works in relation to the Stephenstown Pond project.

66. Mr. Hanratty went on to deal with the material that was in fact deposited on the respondent's lands in 2002 to 2003. It contained excavated road verge material comprising topsoil and subsoil mix consisting of clay, stone, and gravel. It was deposited on the respondent's property with his consent while road widening works were being carried out on the Stephenstown Pond Road during 2002 and 2003. That road verge material was separate and distinct from the stockpiles of materials which were identified during the inspection of the respondent's lands on 5th October, 2018.
67. Finally, Mr. Hanratty denied that the applicant had spread any material on the respondent's lands, other than that put on his lands in 2002/2003. He denied that the applicant had illegally dumped waste on the respondent's land from 1990 to the present, as alleged by the respondent, or at all.
68. An affidavit was sworn by Mr. Brian Dooley, retired Civil Engineering Contractor on 29th September, 2020. He stated that his company had been contracted by the applicant in 1994 to carry out cleaning and removal works in Stephenstown Pond. The works were carried out over a period of two months between April and May 1994. He stated that no other contractor was involved in that type of work at the pond. He stated that the respondent was mistaken in saying that Seamus Duffy of Jenkinstown worked on the Stephenstown Pond project. He stated that the material removed from the pond comprised surplus vegetation. He confirmed that that material was spread on the lands of a neighbouring farmer, Mr. Seán Lambe.

The Law

69. Section 57 of the Waste Management Act 1996 (as amended) is the key statutory provision in this case. It is in the following terms:-

"57.—(1) Where, on application by any person to the High Court, that Court is satisfied that waste is being held, recovered or disposed of in a manner that causes or is likely to cause environmental pollution or section 34 or 39(1) to be contravened, it may by order—

- (a) require the person holding, recovering or disposing of such waste to carry out specified measures to prevent or limit, or prevent a recurrence of, such pollution or contravention, within a specified period,
- (b) require the person holding, recovering or disposing of such waste to do, refrain from or cease doing any specified act, or to refrain from or cease making any specified omission,
- (c) make such other provision, including provision in relation to the payment of costs, including costs incurred by the Agency in relation to the carrying out of relevant inspections or surveys and the taking of relevant samples and the analysis of the results of any such activities, as the Court considers appropriate.

- (2) *An application for an order under this section shall be by motion, and the High Court when considering the matter may make such interim or interlocutory order as it considers appropriate.*
- (3) *An application for an order under this section may be made whether or not there has been a prosecution for an offence under this Act in relation to the activity concerned and shall not prejudice the initiation of a prosecution for an offence under this Act in relation to the activity concerned.*
- (4) *Without prejudice to the powers of the High Court to enforce an order under this section, a person who fails to comply with an order under this section shall be guilty of an offence."*

70. A number of the key terms used in s.57 are defined in ss. 4 and 5 of the 1996 Act. Section 4 provides that the word "activity" includes operation; the word "disposal" (a) means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy, and (b) without prejudice to the generality of para. (a), includes the disposal operations listed in the third schedule to the Act and "waste disposal activity" shall be construed accordingly. The section provides that "hazardous waste" means waste which displays one or more of the hazardous properties listed in the second schedule to the Act. "Waste" means any substance or object which the holder discards or intends or is required to discard.
71. Section 5 provides that the word "contravention" shall include, in relation to any provision, a failure or refusal to comply with that provision, and "contravene" shall be construed accordingly. The section provides that "environmental pollution" means, in relation to waste, the holding, transport, recovery or disposal of waste in a manner which would endanger human health or harm the environment, and in particular "(a) create a risk to waters, the atmosphere, land, soil, plants, or animals, (b) create a nuisance through noise, odours, or litter or, (c) adversely affect the countryside or places of special interest".
72. Section 5 further provides that the word "facility" means, in relation to the recovery or disposal of waste, any site or premises used for such purpose. The word "occupier" includes, in relation to any premises, the owner, a lessee, any person entitled to occupy the premises and any other person having, for the time being, control of the premises. The words "person in charge" includes, in relation to any premises, the occupier of the premises, or a manager, supervisor or operator of an activity relating to the holding, disposal or recovery of waste, which is carried on at the premises. Finally, the term "waste holder" means the waste producer or the person who is in possession of the waste.
73. The test which must be applied by the court when considering whether to grant relief pursuant to s.57 of the Act, was set down in *Cork County Council v. O'Regan*. In that case, Clarke J stated that there were three criteria: firstly, there must be waste within the meaning of the Act; secondly, it must be established that the waste was being "held"

recovered or disposed of and thirdly, the holding and disposal of the waste must be likely to cause environmental pollution, or was likely to contravene s.34 or s.39(1) of the Act (as amended).

74. In relation to the interpretation of the 1996 Act generally, O'Sullivan J in *Wicklow County Council v. Fenton & Ors. (No. 2)* [2002] 4 IR 44, stated as follows: -

"The purpose of the Act of 1996 and of the underlying directives is, inter alia, to control and prevent environmental pollution due to the production, handling, recovery and disposal of waste including hazardous waste. Where environmental pollution occurs or is likely to occur a person who causes it can be made the subject of an order. In interpreting the Act of 1996, I must apply the teleological principle with the result that the Act must be interpreted in a way which achieves these objectives rather than otherwise."

75. O'Sullivan J went on to note that the use of the word "may" in both ss. 57 and 58, connoted that the jurisdiction was discretionary; however, such discretion must be exercised in accordance with principles which include the principle that the objectives of the Act and of the underlying directives must be achieved by the interpretation and application by the court of those sections.

76. In *Laois County Council v. Scully* [2006] 2 IR 292, Peart J stated as follows in relation to the rationale behind the enactment of the 1996 Act:

"The Waste Management Acts were enacted in order to give effect to a number of EU instruments, but in particular Council Directive 75/442/EEC, ('the Waste Directive'). The Waste Directive has as a stated objective the protection of the environment and human health, and the achievement of a high level of protection based upon the principles that preventive action shall be taken, that environmental damage should as a priority be rectified at source, and that the polluter should pay. The Oireachtas has given effect to the objectives of the Directive by the provisions of the Waste Management legislation in force and to which the court has been referred."

77. Finally, in the *Wicklow County Council v. Fenton* case, O'Sullivan J noted that s.57 spoke of the waste being likely to cause environmental pollution. He went on to hold that it was not necessary that any environmental damage had to have taken place, before an order could be made; it would suffice if there was a risk that such damage was likely to occur if the waste was not removed and the land remediated.

Conclusions

78. The court is satisfied that the matters deposed in the various affidavits filed on behalf of the applicant, are true and accurate. They have not been contradicted in any credible or realistic way by the respondent.
79. The court is satisfied that the respondent is a part owner of the lands situate at and known as Millpark, Knockbridge, Dundalk, Co. Louth. The court is further satisfied that

the respondent is an occupier of the facility within the meaning of the 1996 Act. It is clear from the affidavits sworn on behalf of the applicant that the respondent has at all material times had control of operations carried out at the facility. He was the person in the office in the weighbridge on the dates when various officers visited the premises for the purpose of serving documents upon him. It was he who prevented access to the facility on 5th October, 2018, when Mr. Callaghan and others sought to carry out an inspection. It was necessary for Mr. Callaghan to obtain the necessary warrant from the District Court Judge in order to gain access to the premises. All correspondence concerning activities carried on at the facility over a number of years, was addressed to the respondent. At no stage did he ever dispute that he was the person who had management and control of the facility. Accordingly, the court is entirely satisfied that he is an occupier of the facility within the meaning of the Act.

80. The court is satisfied on the basis of the averments made by Mr. Finn and Mr. Callaghan, that the respondent has never been the holder of either a waste licence, or a waste permit. Those averments have not been contradicted by the respondent.
81. The court is satisfied from the various affidavits referred to earlier in the judgment and from the technical reports exhibited therewith, that there is a considerable quantity of waste being stored at the facility. The court is satisfied that the respondent has been operating an unlawful waste reception facility on his lands. The court is further satisfied that there has been a considerable intensification of his use of the facility in this regard in the period between 2016 and 2018.
82. The court is satisfied from the evidence presented by the applicant that the waste at the facility poses a threat both to the environment and to human health, given the potential for contamination of ground water and surface water, which would ultimately make its way into the River Fane, thereby posing a risk to the source of drinking water for the greater Dundalk area.
83. The court does not accept the purported defence put up by the respondent in his unsworn affidavit. The court is satisfied that it represents nothing more than a cunning lie. Like all such lies, it has a scintilla of truth within it, so as to give the lie a veneer of credibility.
84. The court prefers the sworn evidence of Mr. Hanratty and Mr. Dooley, to the unsworn evidence of the respondent. The court is satisfied that while dredging works were carried out to Stephenstown Pond by the applicant, the materials recovered from the pond were never spread on the respondent's land.
85. The scintilla of truth referred to above, concerns the fact that in or about 2002 to 2003, the applicant did seek permission from the respondent to deposit some material on his lands. However, the court accepts the averments made by Mr. Hanratty in his affidavit sworn on 2nd November, 2019, to the effect that the applicant did not tip "thousands of tonnes of engineering grade material" on the respondent's land. The court accepts Mr. Hanratty's evidence that one thousand tonnes of excavated road verge material, comprising a topsoil and subsoil mix, consisting of clay, stone, and gravel was deposited

on the respondent's property, with his consent, while road widening works were being carried out on the Stephenstown Pond Road in 2002 and 2003. The court accepts his evidence that the material was of engineering grade, typical of the type of material adjacent to a public road and suitable for filling to embankments or on agricultural lands. It was used by the respondent, as he wished to fill low lying areas of agricultural land adjacent to and below the surface of the public road. The court accepts that this road verge material was separate and distinct from the stockpiles of materials which were identified during the inspection of the respondent's lands on 5th October, 2018.

86. The court does not accept the allegation made by the respondent that the applicant has engaged in illegal dumping of material on his lands from 1994 down to the present time. There is absolutely no evidence presented by the respondent to backup that assertion. The court is satisfied that it is a lie.
87. The court is entirely satisfied that the waste material observed by the applicant's representatives on the respondent's lands in 2016 and 2018, was not connected to any of the matters alleged by the respondent in his unsworn affidavit.
88. Even if the court were wrong in its conclusion on this conflict in the evidence, and if one were to take the respondent's case at its highest, it would still not afford him a defence to the reliefs sought herein. At its high water mark, his defence as set out in the unsworn affidavit is that he permitted the applicant to engage in illegal dumping at the facility from 1994 down to the present time. That is not a defence to the reliefs sought by the applicant herein. If it were true, it would possibly entitle him to bring a separate action against the applicant, seeking either an indemnity, or a contribution to the costs of remediating the land. That is a matter for the respondent. It is not a defence to the application herein.
89. Having regard to the findings of the court herein, the court is satisfied that the applicant is entitled to the reliefs sought in its amended notice of motion, which is exhibited at exhibit CM1 to the affidavit sworn by Caroline McArdle on 18th April, 2019.
90. Insofar as it was submitted on behalf of the respondent that the court should not make any mandatory orders of the sort sought by the applicant at para. 2 of its amended notice of motion, due to the fact that the respondent had limited financial means and would not be in a position to fund the carrying out of the assessments and works sought by the applicant; the court does not regard this submission as being well founded. The essential principle underlying the Waste Management Acts and in particular, the provisions of ss. 57 and 58 thereof, is that the polluter should pay the cost of remedying the effects of his illegal activity.
91. The court does not regard the argument put forward on behalf of the respondent, that he does not have the financial means to carry out the orders that may be made by the court pursuant to the reliefs sought at para. 2 of the notice of motion, as being credible. The respondent is part owner of the facility which comprises a tillage farm and lands measuring approximately 86.5 acres. If necessary, he and his co-owners can sell some of

these lands to pay for the pollution and damage to the environment that the respondent has caused.

Decision

92. Having regard to the findings of the court herein, the court will make an order in the terms of para. 1 of the amended notice of motion with immediate effect.
93. The court will make an order pursuant to s.57 and 58 of the 1996 Act (as amended) in the terms of para. 2 of the amended notice of motion. The court will permit the parties to make submissions in relation to the time periods during which the relevant steps set out in sub-paras. (a) – (i) should be carried out.
94. The court proposes to make an order directing that the respondent should pay the applicant's costs of these proceedings.
95. As this judgment is being delivered electronically, the parties will have a period of two weeks within which to submit brief written submissions in relation to the terms of the final order and on costs and on any other matters that may arise; following which the court will make the final order in this matter.