

~~DUBLIN C.C. v Barrett~~
BARRETT (J) BUILDERS

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Henchy J.
Hederman J.
McCarthy J.

THE SUPREME COURT

147/148 - 1979

THE COUNTY COUNCIL OF THE
COUNTY OF DUBLIN

Applicant/
Appellant

and

JACK BARRETT (BUILDERS) LIMITED

Respondent

and

JACK BARRETT (BUILDERS) LIMITED

Plaintiff

v.

THE COUNTY COUNCIL OF THE
COUNTY OF DUBLIN

Defendant/
Appellant

JUDGMENT delivered on the 28th day of July 1983 by

HEDERMAN J. *Nem Liss.*

On the 30th April and 1st May 1979 Mr. Justice Gannon heard oral evidence in the High Court proceedings brought by the respondent against the appellant, and having considered the



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affidavits and documents before him he gave a reserved written judgment on 2nd May 1979 on the respondent's action in the High Court and the appellant's motion dated 12th July 1978 in the same matter.

In his judgment the learned High Court Judge held that the respondent is not obliged under and by virtue of the permission (planning control No. 10099) granted by the appellant to Ffarmorr Limited on the 10th August 1971, or by the permission (planning control No. 10099) granted by the appellant to the respondent on the 24th April 1972 and by the applications, plans and particulars lodged by or on behalf of Ffarmorr Limited and the respondent to construct a link road at Grange Road, Raheny in the County of Dublin and further ordered that the appellant's motion of the 12th July 1978 for an order under s. 27 of the Local Government (Planning and Development) Act, 1976, to compel the respondent to build the said link road do stand dismissed with costs.

From both orders of the High Court the appellants have appealed to this Court.

On the 21st March 1972 Ffarmorr Limited sold, with the co-operation of Patrick Gerard Morris, the lands at Grange Abbey, Grange Road, Raheny in the County of Dublin, to the respondent for

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the sum of £290,000.

Prior to this sale Farrmorr Limited, through Prosper Development Company Limited, submitted a number of plans to the appellant for the development of the site of approximately 48 acres, as a residential community. The lands in question are bounded on the north side by Grange Road, on the west side by the Hole-in-The Wall Road, on the east side by a continuation of Grange Road and on the south by the lands of Donaghmede development.

Finally on the 30th April 1971 the appellant received from Prosper Development Company Limited an application on behalf of Farrmorr Limited, for a proposed development of the area of approximately 48 acres, for the erection of 521 dwellinghouses

This application (referred to hereafter as application D778) included, as was necessary under the Act, a detailed lay-out plan, to which I will refer later. Permission was granted on 21st June 1971. In granting the permission the appellant made it conditional on the respondent fulfilling 13 conditions.

Subsequently on the 14th September 1971 Farrmorr Limited submitted another development plan for the same area (Plan D 1727) which was refused on 12th November 1971. An appeal was lodged

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on the 25th November 1971 by Farmorr Limited but the appeal was withdrawn in respect of Plan D 1727 on the 6th March 1972 before the sale to the respondent.

Meanwhile on the 24th January the respondent submitted a planning application to the appellant for Grange Abbey, Grange Road, Raheny, County Dublin, in their own name and with an address at 18 Fitzwilliam Square, Dublin. On the form of application item 6 which requires a description of the proposed development including the purpose for which the lands (and/or buildings) are to be used - "if for more than one purpose give details", and the respondent filled in the description as "change of house type". Item 13 of the application form sets out other relevant details and the respondent's replies are set out as follows:

"Lay-out and landscaping as permitted by Order P/1507/71, 29th June 1971, Reference D 778."

The registered reference for this application is E. 109 and accompanying the application was a lay-out map showing a slightly lesser number of houses in the development area and some boundaries adjoining the property to be developed.

I am satisfied that the application by the respondent was

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confined to an application to change the type of house to be constructed, but was in all respects subject to the lay-out and landscaping as permitted in the planning application reference D.778 granted to Ffarmorr in June 1971.

In the original application by Ffarmorr, D 778, as already stated there were 13 conditions. One of those conditions referred to a transport cafe and service station being omitted from the development in the original application, and the other condition referred to a pedestrian link and gap proposed between plot 527-528 and that it be relocated between plot 543-544. The only other difference in the conditions attaching to the permission was that in the Ffarmorr development the financial contribution was in the sum of £69,885 whereas in the conditions attached to the respondent's permission, the financial contribution was £68,010 only.

On the original site plan it is clearly stated what works are to be carried out by the Local Authority in detail, including the road widening and re-alignment of Grange Road, the widening by the Local Authority of Hole In The Wall Road, a roundabout which partly abuts on to the respondent's property to be constructed by

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the Local Authority, the foul sewage outfall as designed by Local Authority and at the south west outfall complex including a flood plan to be designed by Local Authority. Over the railway bridge a design and erection of a new railway bridge and ancillary works by Local Authority and at the bottom of the map details are given of the height of the walls, the width of the roads to be constructed by the developers and through the centre of the development a road marked "Link Road" which is essential for proper access to the public roadway for the many houses to be built by the developer south of the link road. Plan E.109 submitted by the respondent only shows on the site map the position of the new type of house for which permission was granted.

The development plan reference B. 109 planning control 10099, decision order No. P597/72 was prepared by Mr. Christopher Morris, architect for Farrmorr and all the notations on the development plan are admittedly in the handwriting and drawings of Mr. Morris, who, in his evidence said that he disposed of his files about 5 or 6 years after Farrmorr sold the property, except for drawings and tracings. He further admitted in evidence that he was relying on his memory. He also stated that it was he who suggested to the Planning Authority the construction of the Roundabout at the end

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of the link road. At Question 411 he stated, referring to his notes on the development plan: "That note would not imply commitment on the part of the County Council to doing the link road". He further suggested in cross-examination that the matter of the link road and the responsibility for constructing it was not resolved.

On re-examination Mr. Morris said:-

"My memory of the situation was this - that following the preliminary discussions and the earlier planning application it was clear to me and to my clients that the question of the cost of the distributor road was hung. I was instructed to make the planning application and to avoid getting what I would have considered was an almost certain rejection if I said link road by Local Authority. I left out that."

Some of the relevant conditions attaching to the original permission granted to Farmorr Limited are as follows:-

Condition No. 2:- that the development be carried out and completed strictly in accordance with the plans and specifications lodged with the application save as is in the conditions hereunder otherwise required.

Condition No. 4:- that the roads, sewers, water mains and other

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services shown on the lodged plan or required by the development be constructed in accordance with the Council's requirements for such services.

Condition No. 7:- that the lands required for major road and roundabout proposals shall be reserved for such purposes in accordance with details to be agreed with the Roads Design Section of the Council.

Condition No. 12:- Building Bye-Law approval shall be obtained and any condition of such approval shall be observed in the development.

All these conditions were also included in the conditions attaching to the permission granted to the respondent reference register No. E109.

On the 21st January 1972 the appellant gave notice of disapproval to the respondent under the building Bye-Laws.

In this notice they gave four reasons on which they disapproved of the plans submitted - the first reason being that adequate details of the roads had not been submitted, the second was that the details of the water mains lay-out had not been submitted. Thirdly the proposals re surface water drainage are not satisfactory - and

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fourthly that satisfactory longitudinal sections of the foul sewers throughout have not been submitted. This notice also advised the respondent to consult with the Sanitary Services Department and Building Control Department. On the 18th April 1972 the respondent through their then Managing Director Mr. J.J. Barrett (now deceased) enclosed two copies of drawings numbered PF 72/1/2/3/4 together with two additional copies of drawings No. PF 72/1 showing the lay out of the water main as agreed with the appellant's Department. Also enclosed were two copies of the specifications for roads, sewers and public footpaths. This letter of 18th April 1972 was dealing only with the Building Bye-Laws and the Sanitary Services Department and in my view is not relevant or admissible in determining the issue as to whether or not the developer was responsible for building the link road.

I am satisfied that when one examines the lay-out on which the original application No. 778 was granted the plan speaks for itself and there is no ambiguity as to the work to be undertaken by the developer and the works to be undertaken by the Local Authority. Clearly the link road which goes through the centre of the development and would measure approximately 717 yards is part of the

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permission and conditions granted to the respondent in the erection of approximately 500 houses in this particular area.

The failure of the developer to put in the link road has resulted in the residents in part of the estate being obliged to use two unauthorised road connections made by the respondent, one of which gives access to Grange Road on the eastern side of the development and the other which has been provided by building a short link road to provide temporary access for residents in the south western portion of the estate across the land reserved for the link road and adjoining an estate road which gives access to Grange Road.

In the course of his judgment in Readymix Eire Limited v. Dublin County Council and Minister for Local Government (unreported) (with which Walsh J. agreed) given in this Court on the 30th July 1974, Henchy J. said at p. 4:-

"When a permission issues in a case such as this, it enures for the benefit not alone of the person to whom it issues but also for the benefit of anyone who acquires an interest in the property: s. 28(5). A proper record of the permission is therefore necessary. This is provided for by s. 8, which prescribed that a planning authority shall keep a

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register of all land in their area affected by the Act. This register is the statutorily designated source of authoritative information as to what is covered by a permission. The Act does not in terms make the register the conclusive or exclusive record of the nature and extent of a permission, but the scheme of the Act indicates that anybody who acts on the basis of the correctness of the particulars in the register is entitled to do so. Where the permission recorded in the register is self-contained, it will not be permissible to go outside it in construing it. But where the permission incorporates other documents, it is the combined effect of the permission and such documents that must be looked at in determining the proper scope of the permission. This, because in the present case the permission incorporated by reference the application for permission together with the plans lodged with it, it is agreed that the decision so notified must be construed by reference not only to its direct content but also to the application and the plans lodged.

Since the permission notified to an applicant and entered in the register is a public document, it must be construed objectively as such, and not in the light of subjective considerations special to the

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applicant or those responsible for the grant of the permission. Because the permission is an appendage to the title to the property, it may possibly not arise for interpretation until the property has passed into the hands of those who have no knowledge of any special circumstances in which it was granted. Since s. 24(4) of the Act allows the production by a defendant of the permission to be a good defence in a prosecution for carrying out without permission development for which permission is required, it would be contrary to the fundamentals of justice as well as the canons of statutory interpretation to hold that a permission could have variable meanings, depending on whether special circumstances known only to certain persons are brought to light or not."

I accept the reasoning as quoted in Mr. Justice Henchy's judgment as being the proper principles to be applied in this case and in applying these principles I am satisfied that the construction of the link road as set out in the original application is the exclusive responsibility of the respondent.

I would accordingly allow both these appeals. I would dismiss the plaintiff's claim and make declarations in terms of (a) and (b) of paragraph 15 of the defendant's counterclaim.

Approved:
A.J.H.
28.7.83.

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