

TRALEE U.D.C.

1983 - 48 M.C.A.

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IN THE MATTER OF AN APPLICATION BY TRALEE URBAN DISTRICT COUNCIL
AND IN THE MATTER OF AN APPLICATION UNDER THE LOCAL GOVERNMENT
(PLANNING AND DEVELOPMENT) ACT 1976

BETWEEN:

THE URBAN DISTRICT COUNCIL OF TRALEE

Applicant

and

JAMES P. STACK

Respondent

Judgment of Mr. Justice Barrington delivered the 13th day of *JANUARY* 1984.

In this case the Urban District Council of Tralee seek an order pursuant to Section 27 of the Local Government (Planning and Development) Act 1976 prohibiting the continuance of the development commenced by the respondent at the pool or pond situate in the townlands of Ballyvelly and Lohercannan within the area of the Urban District Council of Tralee, and certain ancillary relief.

The case concerns the pool or pond known as the "Swan Pond" situated within the area of the Tralee Urban District Council which, in recent times, has been regarded by the members of the Urban District Council of Tralee as worthy of preservation and protection because of its amenity value to the community.

The respondent's lands enclose the pond on three sides and the respondent in fact, claims to own the pond itself. This claim is not admitted by the Urban District Council and it is not necessary for me to resolve this issue in these proceedings.

The pond is approximately 3.53 acres in extent and is quite shallow being

approximately three feet deep. The pond is situated at the end of the respondent's field and is used by his cattle for drinking water. The cattle apparently wade through the pond and drink from it.

The respondent wishes to reclaim the land under the pond for agricultural purposes and in fact commenced reclamation works. It was these works which led the Urban District Council to bring the present motion. The respondent has given an undertaking not to continue with his reclamation works pending the outcome of these proceedings.

On the 6th July, 1981 the Tralee Urban District Council made a special amenity order in respect of the pond. The Minister for the Environment by statutory instrument no. 319 of 1982 refused to confirm the special amenity order. On the 21st June, 1983 the Tralee Urban District Council gave notice of the making of a new special amenity order in respect of the pond. The respondent has objected to the making of this order.

There is controversy between the parties as to the amenity value of the pond and as to the propriety of the Urban District Council in making a second special amenity order in respect of the pond when the Minister for the Environment had refused to confirm the first. But again it is not necessary for me to resolve these matters for the purposes of this case.

It appears to me that the present case turns upon a net point as to whether

the works carried out, or proposed to be carried out, by the respondent constitute "development" within the meaning of the Planning Acts. It is common case that the respondent proposes to reclaim the lands for agricultural purposes and that he has no planning permission to do this. The issue is whether he requires planning permission or whether he does not.

It also seems clear that the work carried out, or proposed to be carried out, by the respondent constitutes what the lay-man would call land reclamation for agricultural purposes. The issue is whether it is, as the respondent maintains, land reclamation within the meaning of the Land Reclamation Act 1949.

Section 3 of the Local Government (Planning and Development) Act 1963 provides generally that development, save where the context otherwise requires, means the carrying out of any works on, in or under land or the making of any material change in the use of any structures or other land. Section 4 provides that certain developments are to be "exempted developments". One of these is development consisting of the use of any land for the purposes of agriculture. I do not think that land reclamation of the kind contemplated in the present case would be regarded as the "use" of land for the purposes of agriculture even though the objective may be to use the reclaimed land for agricultural purposes.

But Section 4 also exempts (at sub-section 1 paragraph(i)) -

"Development consisting of the carrying out of any of the works referred to in the Land Reclamation Act 1949".

But the Land Reclamation Act 1949 refers to itself in its long title as an Act "to authorise the Minister for Agriculture to carry out land reclamation....." It is clear from the body of the Act that the land reclamation contemplated by the Act is land reclamation carried out by the Minister either at the request of the occupier of the land or on the Minister's own initiative. I do not think that the respondent in the present case can rely on the reference to the Land Reclamation Act 1949 contained in Section 4 of the Local Government (Planning and Development) Act 1963.

It therefore appears to me that the development carried out or proposed to be carried out by the respondent in the present case is not exempted development and that he is not free to carry it out without planning permission.

Under these circumstances it appears to me that the applicants are entitled to relief.

Gene B...