

**THE HIGH COURT**

[2022] IEHC 107

[Record No. 2019/262 MCA]

**BETWEEN**

**KILDARE COUNTY COUNCIL**

**APPLICANT**

**AND**

**PATRICK MERLEHAN T/A ARK RECYCLING**

**RESPONDENT**

**JUDGMENT of Mr. Justice Barr delivered electronically on the 24th day of February, 2022**

**Introduction.**

1. The applicant is the local authority for the county of Kildare. The respondent resides at Newtown, Moone, Co. Kildare. The respondent is the registered owner of the lands, which are contained on folio KE799, County Kildare. The site comprises approximately 6.5 acres, in a rural location. The respondent trades under the business name of 'Ark Recycling'.
2. In these proceedings the applicant seeks orders pursuant to ss. 57 and 58 of the Waste Management Act 1996 (as amended) in respect of the activities carried on by the respondent at the said site. In particular, it is alleged that without holding any relevant planning permission, or a waste permit, or a waste licence, the respondent has been carrying on activities in relation to the acceptance and holding of waste at the site and continues so to do.
3. The applicant seeks orders preventing the respondent from continuing to carry on these activities and an order providing for the remediation of the site and the costs thereof.
4. The respondent has filed a number of affidavits in response to the applicant's proceedings herein. He also addressed the court as a lay litigant at the hearing of this matter in January 2022.

**Background.**

5. As already noted, at all material times the respondent has been the registered owner of the lands at Newtown, Moone, Co. Kildare, as comprised in folio KE799 County Kildare (hereinafter referred to as 'the site'). It is common case that the respondent resides on the site.
6. The lands comprise a total of 6.5 acres of land in an area primarily utilised for agricultural purposes. To the east of the site, is a stream which acts as a divide between the site and the adjacent property, Bolton Abbey, which is situate approximately 100m from the site. The southern boundary is characterised by the presence of the River Lerr which flows from east to southeast. A millrun from the Lerr enters the site from the southeast, runs within the southern portion of the site and exits to the southwest, flowing back into the main course of the Lerr.
7. The respondent held two previous waste permits: waste permit 64/2002 and waste permit 64/2002A were issued by the applicant in respect of the site on 27th June, 2002 and on 23rd July, 2008 respectively. Waste permit 64/2002A expired on 23rd July, 2009.

Thereafter, no further waste permit applications or permits have been made or issued in respect of the site, save for an invalid application in 2009. This aspect will be dealt with later in the judgment.

8. Following an inspection of the lands in 2012, notices pursuant to s.55 of the Waste Management Act, 1996 (hereinafter 'the 1996 Act') were served on the applicant and on Ark Recycling requiring the cessation of the acceptance of waste onto the site. Unsuccessful attempts were made by the applicant to inspect the site in 2013. Warrants for inspection of the site were procured from the District Court in 2013 and again in 2014.
9. The applicant brought prosecutions in the District Court against the respondent pursuant to ss. 32, 39 and 55 of the 1996 Act. On 23rd July, 2013, the District Court judge, having heard an outline of the evidence, refused jurisdiction to hear the case, primarily, due to the significant volumes of waste on the lands. Subsequently, the DPP determined not to pursue the prosecution in the Circuit Court.
10. In 2014, the Minerex Environmental Limited, Hydrogeological, Environmental and Geophysical Services, were retained by the applicant to carry out an inspection of the site and to report on what was found thereon. Mr. Cecil Shine, who holds a Bachelor of Science Degree in Geology and a Master of Science Degree in Hydrogeology, inspected the site on three occasions: 14th August, 2014, 19th May, 2019 and 31st October, 2019; in respect of which visits he issued three reports. These reports indicated that over the relevant period there was approximately 20,200 tonnes of waste deposited and held on the site, made up of a mixture of hazardous waste, potentially hazardous waste and non-hazardous waste.
11. The specifics of what was found in the course of these inspections and the remedial works that are necessary to remediate the site, will be dealt with in greater detail later in the judgment.
12. On 25th November, 2019, an interim order was made by O'Connor J. in the High Court, restraining the respondent from accepting waste on the site without the consent or permission of the applicant, or further order of the court. The respondent appealed that order to the Court of Appeal; however, as he failed to comply with the direction of that court to file submissions within a given period, his appeal was struck out.
13. The respondent has filed three affidavits in response to the applicant's application herein. In addition, he made a substantial oral submission to the court at the hearing of the application in January 2022. In essence, the respondent accepted that he was holding waste on the site. He stated that he had approached a number of companies from whom he had accepted waste, asking them to remove it from the site. One company had complied with that request, but the others had not. The applicant denied that any of the material on the site posed a threat to human health or the environment. He stated that he was no longer accepting waste material onto the site. He stated that his preference would be to reach an amicable solution with the applicant, whereby the situation in relation to the material that remained on the site, could be resolved.

**Evidence on Behalf of the Applicant.**

14. Given the concessions made by the respondent in the course of his oral submissions to the court at the hearing of these proceedings, it is not necessary to set out *in extenso* all of the evidence that was led on behalf of the applicant. However, in order to fully understand the basis for the orders which the court proposes to make in this case, it is necessary to give a brief overview of the evidence that was led on behalf of the applicant. The primary evidence led on behalf of the applicant was contained in the affidavit sworn by Mr. Liam Dunne on 10th July, 2019 and the affidavits sworn by Mr. Cecil Shine, Consultant Geologist and Hydrogeologist sworn on 10th July, 2019 and 17th June, 2020.
15. In an affidavit sworn on 10th July, 2019, Mr. Liam Dunne, Senior Executive Officer in the applicant, outlined the background to the history of the ownership and use of the lands. He exhibited the relevant folio for the site, being folio KE799, County Kildare. He stated that he had carried out a planning search in respect of the site and discovered that no planning applications had been made to the applicant for the importation and deposition of waste at the site. He further stated that no waste permits had been issued to the respondent in respect of the site subsequent to the expiry of permit number 64/2002A, which expired on 23rd July, 2009. He exhibited the relevant waste permits that had issued in respect of the site.
16. He stated that during an inspection of the site on 27th February, 2013, what purported to be a waste permit bearing number 64/2009, was produced by the respondent in respect of the site. Mr. Dunne stated that he carried out a search in relation to this alleged waste permit. He confirmed that the permit was never issued by the applicant to the respondent, or to any other entity. To an extent, that was corroborated by the submission made by the respondent at the hearing of this application. He stated that in the course of discussions with the applicant for the issuance of a new waste permit, he had sent a draft of a proposed permit to the applicant. He stated that he had received the permit back with a stamp placed upon it by the applicant. He treated this as being a validly issued permit and operated pursuant to it.
17. Mr. Dunne went on in his affidavit to state that on 23rd May, 2019, he carried out a search on the internet in respect of the website: [www.arkrecycling.com](http://www.arkrecycling.com). On that website it was asserted, inter alia, that the site had the benefit of a waste permit bearing reference 64/2009 issued by the applicant and the statement that the respondent operated a recovery and recycling facility. He exhibited a copy of the website search at LD4 to his affidavit.
18. Mr. Dunne went on to state that when the applicant became aware that the respondent had been in correspondence with the Environmental Protection Agency (hereinafter 'the EPA') and that he had purported to provide environmental reports in respect of the alleged waste permit number 64/2009, the applicant wrote to the EPA to advise them that such a permit did not exist. Mr. Dunne carried out a waste licence application search through the EPA in respect of the site. He stated that on 7th May, 2019, the applicant received an email from the EPA stating that there was no waste licence application made to the EPA for the lands. He exhibited a copy of that email.

19. Mr. Dunne went on in the affidavit to outline the history of inspections of the site and the issuance of a notice pursuant to s.55 of the 1996 Act and the obtaining of a warrant to inspect the site which had been obtained from the District Court. He exhibited the relevant notice and warrant.
20. Mr. Dunne stated on or about 22nd May, 2013, Mr. Daniel Costigan, Environment Overseer and Waste Enforcement Officer employed by the applicant, received a letter from the respondent in which he enclosed a number of "invoices" in respect of damages that he alleged were due to him as a result of various inspections carried out of the site by the applicant, its servants or agents. The total amount sought was in the order of €885,200. The relevant correspondence was exhibited to the affidavit sworn by Mr. Daniel Costigan on 10th July, 2019.
21. Mr. Dunne outlined how site inspections had been carried out by Mr. Costigan and Mr. Shine on 8th April, 2014; 8th January, 2019; and 5th March, 2019. The site inspections revealed a considerable quantity of waste material on the site made up of hazardous waste, potentially hazardous waste and non-hazardous waste. Details of the material find on these inspections was set out in the affidavits sworn by Mr. Costigan and Mr. Shine and in the reports furnished by Mr. Shine following his inspections.
22. On 28th May, 2019 the applicant's solicitor wrote to the respondent calling upon him to immediately cease the acceptance of waste onto the lands. He was further requested to agree to carry out the necessary remediation works. The letter further threatened that the necessary proceedings would be brought if the respondent refused to comply with the requests made therein. The respondent replied thereto by email dated 11th June, 2019, wherein he requested the applicant's solicitor to confirm what statutory or other legal authority their clients intended to rely on in any proceedings that may issue. By letter dated 14th June, 2019 the applicant's solicitor informed the respondent that sufficient details of the proceedings had been set out in the previous correspondence.
23. The originating notice of motion in this matter issued on 1st August, 2019. As already noted, an interim injunction was obtained from O'Connor J. in the High Court on 25th November, 2019. While that order was appealed by the respondent to the Court of Appeal, his appeal was subsequently struck out for failure to deliver submissions.
24. Mr. Cecil Shine, of Minerex Environmental Limited, swore two affidavits in this matter. In his first affidavit sworn on 10th July, 2019 he dealt with the site inspection that he had carried out on 28th April, 2014. Following that inspection, he had issued a report which he exhibited at CS1 to the affidavit. The court has had regard to the content of that report and in particular to the photographs at appendix B thereof. Those photographs show *inter alia*: a large pile of glass items; a significant amount of crushed glass from what appears to be separated fractions of municipal waste, which had been used to cover a portion of the site; bales of paper and cardboard from separated fractions of municipal waste, which were stored indoors; plastic bottles from separated fractions of municipal waste and other plastic containers stored in sacks or bales outdoors; a large quantity of wooden objects from different origins, such as pallets, demolition waste, *etc*, which was collected in large

piles on the ground; a number of bales of metal cans; plastic sheeting; shredded plastic and shredded textile bags, rubber mats, melted plastics and bags of palletised plastic; a quantity of plastic CD and DVD covers; plastic crates and metal fencing; a large quantity of carpet tiles stored on pallets; metal infrastructure in the form of pipes and ducting; large piles of what appeared to be demolition waste; used, empty, unsealed plastic containers stored on pallets and on the ground; insulation material from the construction industry; sheets of roofing material containing asbestos, which were stored on the ground; roofing materials possibly containing asbestos stored in wooden boxes on the ground; a large quantity of paint cans, tubs and containers stored at various areas in the site; waste pesticides, detergents and chemicals; plastic barrels; waste oil from unknown sources stored in recovered containers, some of which were unsealed; a large quantity of used tyres; disused vehicles stored and piled on the ground; engine parts, vehicle components and small machinery stored in skips and on the ground; used oil filters stored in bins on the ground; disused fridge freezers which were stored on the ground; handheld electrical equipment, including battery equipment and discarded batteries, which were stored in a skip on the ground; disused TV, computer screens, printers and other electronic equipment; gas tanks; large metal tanks; a large pile of mixed waste, probably generated from sorting operations at the site; ash from wood fires from what could be a waste incineration process stored in barrels and skips on the ground.

25. Mr. Shine carried out a further inspection of the site on 5th March, 2019, following which he produced his second report. The results of his inspection on that occasion, together with photographs of what he observed, were set out at section 3 of the report. The material shown in photographs 4-10, revealed that a significant quantity of waste, similar in nature to that which had been observed in the inspection in 2014, remained on the site. This included a mixed waste stockpile, containing broken glass, end of life vehicles and wheelie bins; a severely contaminated stockpile of waste; assorted electronic wastes in a stockpile; a stockpile of broken asbestos sheets; leaking hydrocarbon drums and IBC's in a stockpile and a stockpile of mixed glass waste.
26. At section 4 of his report, Mr. Shine concluded that there was hazardous waste on the site consisting of waste oil and fuel mixture, paints, waste chemicals and waste from electrical and electronic equipment and partially broken asbestos sheeting as shown in photos 6, 7 and 8. There was also potentially hazardous waste. That represented the most significant portion of the waste stored at the site. It consisted of a heterogeneous group of materials, that in the absence of a review of documentation regarding the nature, origin and segregation process, were deemed to be possibly containing residues of, or were contaminated by, dangerous substances.
27. Mr. Shine also was of the view that there was non-hazardous waste, which comprised separated fractions of municipal waste and construction and demolition waste made up of glass, metal, paper and cardboard, and tyres. He stated that most of those wastes were stored or had been contaminated in a manner which reduced the options for recycling, for example much of the glass was mixed with different colour glass in the one stockpile, as shown in photograph number 10.

28. Mr. Shine carried out a further inspection of the site on 31st October, 2019, following which he issued his third report dated 15th June, 2020. That inspection and report primarily related to the condition of the soil at the site. He noted that there was contaminated soil on the site, in the form of visible and odorous soil contamination by hydrocarbons. That was observed in the yard at the northern end of the facility. He noted that an area of contaminated soil, as identified from his previous visit in March 2019, had since that time been partially cleaned up and back filled with crushed glass. The current location of the contaminated soils removed from that location was unknown. No waste transfer documents were reviewed by Mr. Shine regarding the removal of that material from the site. He recommended that waste transfer documentation should be obtained in respect of this material. This area of contaminated soil was shown in the photographs taken in March 2019 and in the photograph taken in October 2019, as set out at figure 3 to the report.
29. In the report, Mr. Shine went on to note that there was considerable evidence that oil had been stored on the site and that there was a considerable quantity of oil continued to be stored thereon. He further stated that there was evidence of burning of waste on site and in particular evidence of the uncontrolled burning of tyres was observed in a skip, as shown in photograph number 4. His overall conclusion was that the site contained large quantities of oil product and asbestos sheeting, both of which were hazardous wastes, for which he understood there was no licence to store or process those materials. The site also possessed hydrocarbon contaminated soils and there was evidence of tyre burning on the site.
30. Having regard to the material found as a result of the site inspections in March and October 2019, Mr. Shine set out the potential remedial options at section 4 of his report. This will be dealt with later in the judgment.
31. As already noted, an affidavit was sworn by Mr. Daniel Costigan, on 10th July, 2019. In that, he set out the materials that he had observed on the site at his inspection thereof on 1st September, 2012. He exhibited photographs of what he had seen on that inspection. He also dealt with a further inspection of the lands on 27th February, 2013. He set out the materials that he observed on the site on that occasion. It is not necessary to set out the materials that were observed by him in the course of these inspections, as the materials were the same as those identified by Mr. Shine in the course of his inspections.
32. At para. 14 of the affidavit he stated that on 13th February, 2014, he had attempted to gain entry to the site but had been refused entry by the respondent. He had observed a sign which was prominently displayed at the site giving a telephone number and website address, and indicating that the hours of business of the site were from 09:00 to 17:00 Monday to Friday, and 09:00 to 13:00 hours on Saturdays. It stated that the licence holder was Unlimited Recycling Limited and operated under permit number 64/2009. Mr. Costigan stated that there was a second sign in the same terms situate on the boundary fence of the site. He exhibited photographs of the signs.

33. Mr. Costigan outlined how in the course of an inspection on 28th April, 2014, he had observed a sign on a wall on a building in the site, which indicated waste types that were accepted at the site including: free/household recycling, drain cleaning, waste water treatment, hazardous waste, agri-waste, composting, salvage and junkyard. He exhibited a series of photographs that he had taken in the course of that inspection.
34. Mr. Costigan stated that as a result of a complaint received on 8th January, 2019, to the effect that waste was being burnt on the site, he attended with the fire service and An Garda Síochána on 9th January, 2019. He observed smoke rising from several large piles of waste consisting of mixed waste. There was a large machine close to the mounds of waste, which appear to be used to transfer the waste from the mounds onto the burning piles. He took a number of photographs and exhibited these to the affidavit.
35. Mr. Costigan corroborated the evidence contained in the affidavit sworn by Mr. Shine in respect of the site inspection on 5th March, 2019. He outlined that he had observed the same types of waste on the site. He stated that as a result of what he had observed on the site, together with the opinion expressed by Mr. Shine, he was satisfied that the respondent had caused, was continuing to cause and was likely to cause into the future, environmental pollution on the lands and/or in contravention of s.34 and/or s.39(1) of the 1996 Act.
36. Finally, three affidavits were sworn by Mr. Colm Flynn, Senior Executive Engineer and Waste Enforcement Officer with the applicant on 10th July, 2019, 9th October, 2020 and 24th January, 2022. He deposed to what he had seen at the site inspection on 5th March, 2019. He stated that he estimated that in excess of 20,200 tonnes of waste was currently being stored without authorisation on the site. At para. 10 of his first affidavit, he set out how he calculated the quantity of waste stored on the site. He also exhibited two aerial photographs, which had been taken of the site on 22nd January, 2012 and on 30th January, 2019. He stated that, as could be seen from the aerial photographs, there had been a significant increase in activity on the lands in the recent past. He concurred in the view expressed by Mr. Costigan that from the reports furnished by Mr. Shine and from their observations of what had occurred on the site the respondent had caused, was causing and was likely to cause environmental pollution and/or act in contravention of ss. 34 and 39(1) of the 1996 Act.
37. In his second affidavit sworn on 9th October, 2020, Mr. Flynn outlined what he had seen at a site inspection on 22nd July, 2020. He stated that he had observed large quantities of organic, non-organic and hazardous waste stored throughout the site. This material was unprotected from the elements. He accepted that the site did appear tidier and there were signs of some waste having been removed from the site. He stated that when he spoke to the respondent, he had confirmed that he had engaged in an effort to remove some of the waste from the site.
38. Mr. Flynn stated that he observed stockpiles of waste located close to a large furnace adjacent to the main house on the lands, including tyres and treated timbers. The burning of waste was noticeable mainly close to the furnace, but also in a number of other

locations throughout the site. He stated that the respondent admitted to burning tyres and treated timbers. He stated that in an area which had previously been recorded as containing a large amount of tyres, it was now free from tyres. The area now consisted of scorch marks, remnants of burnt tyres and a badly burnt tree. The respondent told him that the stockpile of tyres in that area had "mistakenly gone on fire recently", causing the damage that was evident in the area. Mr. Flynn was of the opinion that tyres of that nature could not possibly go on fire without a planned accelerant. He stated that ss. 32 and 39 of the 1996 Act prohibited the burning of waste. In addition, the Waste Management (Prohibition of Waste Disposal by Burning) Regulations 2019, prohibited such burning of waste, unless authorised by the applicant. He stated that according to the applicant's records, the respondent did not have any authorisation, or permit, to engage in the burning of waste on the site, nor had he obtained the relevant licence from the EPA to burn waste on the site.

39. Mr. Flynn stated that he also observed a large number of disused mobile homes, which had been brought onto the site since his last inspection. Each of the mobile homes appeared to be no longer habitable and was deemed to be waste. The respondent admitted that he had brought these items onto the site since the date of the High Court injunction, but he stated that his opinion was that they were not waste and that he proposed to renovate the mobile homes to habitable use. Mr. Flynn exhibited a number of photographs showing what he had seen in the course of his inspection.
40. Mr. Flynn stated that by letter dated 15th September, 2020, the solicitors for the applicant had written to the respondent requesting, *inter alia*, that he give an undertaking that no further unauthorised burning of waste would take place on the site. The said letter was returned to the applicant's solicitor marked with the words "Return to sender. No contract. Not recognised".
41. In his third affidavit sworn on 21st January, 2022, Mr. Flynn stated that he had carried out a further inspection of the site on 27th March, 2021. The respondent accompanied them during that inspection. Mr. Flynn stated that he observed a large volume of organic, non-organic and hazardous waste stored throughout the site, which was unprotected from the elements, similar to what he had observed during his previous inspection.
42. He observed that the stockpile of glass on the site had increased in size. Additional mobile homes had been brought onto the site, together with additional end of life vehicles, which had not been present during his last inspection.
43. He also observed inert waste in the form of OSB boards, painted skirting boards, timber panelling, mattresses and other waste, which was being burned in the respondent's home heating furnace situate on the site. He also saw evidence of burning at various other locations around the site.
44. Mr. Flynn stated that he observed an area where waste had previously been situate on the site. When he asked the respondent about that, he was informed that he had receipts to prove the disposal of that waste, but advised that the applicant would need to make an



appointment to see such documentation. He refused to show Mr. Flynn the documentation when asked to do so. Mr. Flynn stated that he was unaware of the nature of the waste that had been removed from the site, or of the personnel involved in its removal, or to where the waste had been removed. He stated that the respondent was not in receipt of a waste permit in respect of the transport of waste, as averred to in the affidavit sworn by Mr. Dunne on 10th July, 2019. Mr. Flynn exhibited a number of photographs taken during his inspection of the site on 27th March, 2021.

45. On 21st January, 2022, Mr. Flynn conducted a drive-by inspection of the lands. He attended at the entrance and also at 300m to the east of the entrance. He observed significant volumes of waste on the site. He had been unable to carry out a more detailed inspection, as the respondent had responded to his request by putting conditions on any such inspection, which essentially made the carrying out of such an inspection impossible.
46. Mr. Flynn referred to correspondence from the respondent dated 2nd October, 2020 and 4th March, 2021, wherein he requested the applicant to contact certain private companies asking them to remove waste from the site. The applicant had informed the respondent on a number of occasions, both verbally and by email, of the duties of the holder of waste material under the 1996 Act. The applicant further informed the respondent that it had no statutory function, or powers to carry out such instruction to other parties on his behalf. He exhibited copies of the relevant correspondence.
47. The applicant also relied on an affidavit sworn by Mr. Niall O'Riordan, Senior Assistant Chief Fire Officer for County Kildare, sworn on 15th November, 2019. He had carried out an inspection of the site on 31st October, 2019, following which he had prepared a report dated 21st November, 2019. In that report, he gave a verbal description and photographic evidence of the material that he had observed on site. It largely mirrored that which had been detailed in Mr. Shine's reports. He confirmed from his observation that there was evidence of recent fires on the site. He was of opinion that it was extremely likely that pollutants would enter the ground and potentially enter the water table and thereafter into the local water sources, such as the River Lerr. He stated that that could result in significant pollution of local water sources and give rise to an associated impact on the local environment. He exhibited a copy of his report, which also included the photographs taken from that inspection.

**Legal Submissions on Behalf of the Applicant.**

48. Counsel for the applicant, Ms. Deirdre Hughes BL, submitted that the evidence proffered on behalf of the applicant, showed overwhelmingly that the respondent was the registered owner of the site; he resided on the site and he had actively carried out the holding and processing of waste on the site. She stated that there was uncontroverted evidence that he did not hold planning permission to carry out such activities on the site, nor was he the current holder of a waste permit, or waste licence. It was submitted that in these circumstances, the court should proceed to make orders pursuant to ss. 57 and 58 of the 1996 Act. In this regard counsel referred to the decisions in *EPA v. Neiphin Trading* [2011] 2 IR 575; *Ronan & Sons v. Clean Build Limited & Ors.* [2011] IEHC 350 and *Wicklow County Council v. O'Reilly* [2006] 3 IR 623.

49. In relation to the remediation works that should be directed by the court, counsel submitted that the applicant was not seeking an order that the respondent should carry out the remediation works at what could be termed the "gold standard" identified at option E in Mr. Shine's report, as those would cost in excess of €3m. Counsel accepted that the applicable legal test was that the person responsible for the pollution should have to carry out the remediation works that were the least expensive, while at the same time being adequate to ensure that the risk of pollution was removed: see *Laois County Council v. Scully* [2006] 2 IR 292 and *John Ronan & Sons v. Clean Build Limited*, supra.
50. Applying those principles to the present case, counsel submitted that the applicant was seeking an order that catered for options B and D, as set out in Mr. Shine's report dated 15th June, 2020. That would require the respondent to remove all the hazardous material in the short term and provide for the disposal, partial removal and partial restoration of the site. It was submitted that the cost of carrying out those remediation works, as identified in the report at appendix G, was reasonable and proportionate. It was submitted that it was reasonable for the court to direct the respondent to carry out that remediation work and to set a time limit for him to do so.

**Evidence and submissions of the Respondent.**

51. As already noted, the respondent swore three affidavits in the matter on 28th November, 2019, 5th December, 2019 and on the following day, 6th December, 2019. He also made extensive oral submissions at the hearing of the application.
52. His position as outlined to the court, can fairly be summarised in the following way: He accepted that he was the owner of the site. He stated that he had been born and reared there. He was very conscious of environmental and health concerns. He stated that he would never do anything that would endanger either the environment or human health.
53. The respondent stated that he had had a good relationship with the applicant until approximately 2006. Thereafter, he had tried to negotiate the terms of a new waste permit and to that end had sent them a draft permit which he hoped they would agree to. He stated that he received a copy of the draft permit with a stamp that had been placed on it by the applicant. He treated that as a valid permit under which to carry on operations at the site.
54. The respondent accepted that he was the holder of waste on the site. He stated that he had a great interest in recycling of waste and in particular in relation to the process known as parolysis, whereby material such as tyres and plastics could be converted into petrol, diesel, crude oil and black carbon. He stated that that process had been developed in Japan many years ago. He had tried to get into that activity on a commercial basis at that time, but it had required a very large investment, which he could not make. He stated that in recent years the cost of this procedure had reduced considerably. He was of the opinion that there was considerable money to be made in the conversion of tyres and plastics into fuel derivatives and black carbon.

55. He stated that he had abided by the terms of the injunction made by O'Connor J. in November 2019. He had not accepted any new material on site since that time. Furthermore, he stated that he had requested the companies who had deposited material at the site, to come and take the material away, because as producers of the material, they were liable for its safe disposal under the principle of "polluter pays". He stated that one company had removed its material from the site. The others had not removed their material from the site. He had written to those companies, informing them that they were trespassing on the site by leaving the material thereon. He stated that he had charged them "storage fees" for keeping the material on site against his wishes.
56. The respondent stated that he accepted the broad thrust of the content of Mr. Shine's reports. He accepted what was shown in the photographs. He stated that he would like to continue in business in a small way, refurbishing mobile homes and buying and selling cars from the site. He stated that he had given some of the mobile homes to young couples, who were unable to get onto the property ladder, due to the high price of houses at the present time.
57. The respondent stated that he works in the yard every day and that he had tried to make it clean and tidy. He denied that there was any contamination of the soil, or any risk to the ground water, due to the fact that he did not keep any inert materials on the site.
58. The respondent stated that while he may be a "rag and bone man" due to the fact that he dealt in materials that other people may not want, he denied that he was a waste contractor. He stated that he did not have any employees in his employment at the present. He only wished to continue buying and selling cars and mobile homes in a small way. He stated that the material that was currently in the yard was his stock in trade.
59. The respondent stated that he had tried to obtain legal aid, but had been unable to secure it in time for the hearing. He stated that his preferred option would be to work with the applicant to achieve an amicable solution for the remediation of the site.

**The law.**

60. The relevant provisions of ss. 57 and 58 of the Waste Management Act 1996 (as amended), are as follows: -

*"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, 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, 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, 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.*

58. (1) (a) *Where, on application by any person to the appropriate court, that court is satisfied that another person is holding, recovering or disposing of, or has held, recovered or disposed of, waste, in a manner that is causing, or has caused, environmental pollution, that court may make an order requiring that other person to do one or more of the following, that is to say:*

- (i) *to discontinue the said holding, recovery or disposal of waste within a specified period, or*
- (ii) *to mitigate or remedy any effects of the said holding, recovery or disposal of waste in a specified manner and within a specified period.*

(2) (a) *An application for an order under this section shall be brought in a summary manner and the court when considering the matter may make such interim or interlocutory order as it considers appropriate.*

*[...]*

(3) (a) *An order shall not be made by a court under this section unless the person named in the order has been given an opportunity of being heard by the court in the proceedings relating to the application for the order.*

(b) *The court concerned may make such order as to the costs of the parties to or persons heard by the court in proceedings relating to an application for an order under this section as it considers appropriate*

*[...].”*

61. 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.
62. 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".

63. 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.
64. 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).
65. 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."*
66. 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.
67. 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 1996 to 2000 were enacted in order to give effect to a number of European Union instruments, but in particular Council Directive 75/442/EEC, as amended by Council Directive 91/156/EEC. The waste directives have 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 the polluter should pay. The Oireachtas has given effect to the objectives of the waste directives by the provisions of the waste management legislation in force and to which the court has been referred."*

68. 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.
69. The test set down in *Cork County Council v. O'Regan*, was confirmed and applied in the subsequent decision in *John Ronan & Sons v. Clean Build Limited*.

**Conclusions.**

70. In the course of his submission to the court at the hearing of this matter in January 2022, the respondent raised the issue that he had applied for, but had not obtained legal aid. Having regard to the length of time that the proceedings have been in being, together with allied proceedings, all of which concerned unauthorised activities carried out by the respondent since the expiry of waste permit 64/2002A on 23rd July, 2009, the court cannot regard this as a valid excuse for the activities carried on by the respondent, or as a reason why the court should not deal with the matter.
71. These proceedings commenced by notice of motion dated 1st August, 2019, the respondent had plenty of time to seek legal aid if he wished to do so. The absence of a definitive outcome from the Legal Aid Board in respect of the respondent's applications to it, is not a good reason why the court should not proceed to deal with this application some 2.5 years after it had been commenced.
72. Turning to the substance of the application, the court must apply the legal provisions outlined above to the facts as found by it. The court finds the following facts: Firstly, the court is satisfied that the respondent is the owner of the site and is the person responsible for all operations carried on at the site. The court is further satisfied that the respondent does not have planning permission for the activities carried on at the site; nor is he the holder of a waste permit or a waste licence in relation to the transportation, holding or processing of waste at the site.
73. The court is satisfied from the evidence contained in the affidavits sworn by Mr. Dunne, Mr. Flynn, Mr. Costigan, Mr. O'Riordan and Mr. Shine and the documents and photographs exhibited thereto, that the respondent has accepted waste onto the site and is holding waste thereon. That is not seriously disputed by the respondent.

74. The court is satisfied from the reports furnished by Mr. Shine and Mr. O'Riordan, that the holding of the materials on the site, as shown in the photographs and in the form that they are shown in the photographs, constitutes a risk to the environment and indeed, a risk to human health. The court is satisfied that this material is waste material. In these circumstances, the court is entirely satisfied that it is appropriate and necessary for it to make the necessary orders pursuant to ss. 57 and 58 of the 1996 Act.
75. In relation to the necessary remediation works that should be directed to be carried out by the respondent, the court notes the dicta of Peart J. in *Laois County Council v. Scully*, where he stated that in general, the court should direct those remediation works that could be carried out at the most economic level, while at the same time being sufficient to remove the risk of environmental pollution and the risk of damage to human health.
76. The court notes that dicta to the same effect were made by Clarke J. (as he then was) in the *Clean Build* case.
77. Having regard to the applicable legal principles, the court is satisfied that the remediation options as proposed by the applicant are necessary to ensure that the risk to the environment is eliminated, while at the same time being fair and proportionate to the respondent. Accordingly, the court will direct that the remediation works as set out at options B and D at section 4 of the report furnished by Mr. Shine dated 15th June, 2020, shall be carried out by the respondent in order to properly remediate the site. The court will receive submissions from the parties as to the wording of the final order in this regard and in relation to the time periods within which such works must be completed.
78. As this judgment is being delivered electronically, the court will allow the parties a period of two weeks within which to furnish brief written submissions on the terms of the final order and on costs and on any other matters that may arise.