

DONEGAL C.C.



THE HIGH COURT

1982 No. 51 M.C.A.



IN THE MATTER OF THE LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACT, 1976

BETWEEN/

THE COUNTY COUNCIL OF THE COUNTY OF DONEGAL

Applicants

- and -

KIERAN O'DONNELL

Respondent

Judgment delivered by O'Hanlon J. the 25th day of June, 1982.

The picture presented in this case is a confused one - a situation for which both parties must share the blame.

The Respondent applied to the County Council for permission to build a dwelling-house on a site at Drumoghill, Manorcunningham, Co. Donegal, in the year 1978. This application was refused by the Planning Authority for the area. The County Council allege, and this is not disputed by the Respondent, that the site map lodged in support of that application was incorrect and did not show the true boundaries of the site then in the ownership and possession of the Respondent, but this did not come to the notice of

the County Council for some considerable time after the application had been received and dealt with under the Planning Acts.

Permission was refused, but a motion was then put down before the County Council by a number of councillors who invoked the provisions of the City and County Management (Amendment) Act, 1955, Sec. 4, as a result of which Donegal County Council on the 29th January, 1979, adopted a resolution directing the County Manager "to decide to grant planning permission to Kieran O'Donnell, Drumoghill, Manorcunningham". It must be unusual to find these exceptional statutory powers invoked and used to override a decision already made by a Planning Authority in relation to an application to build a single dwelling-house, particularly having regard to the right of appeal which existed at all material times in favour of applicants for permission who find that their applications have been rejected. Be that as it may, it happened in the present case, and the County Manager on the 16th March, 1979, in compliance or purported compliance with the said direction, made an Order deciding

to grant Planning Permission to the Respondent for the erection of a dwellinghouse subject to a number of conditions which were referred to in the said Decision.

The notification of this Decision which was received by the Respondent contains four conditions, numbered (1) to (4) inclusive, but a line in print or type runs through Condition (1), which reads as follows: "1. Dwelling to be located within the area outlined in blue on the attached plan."

The explanation for the line which is now given by the Applicants is that it was accidentally superimposed in the course of copying documents. The Respondent claims that he should not be bound by a condition which was crossed out in the document he received, but he does not state, by affidavit or otherwise, that he was deceived by what had happened and caused to believe that the condition was not to apply. It is clearly legible in the document, and having regard to the numbering of the conditions in proper sequence (1) to (4), I am of opinion that it would have been apparent to a person receiving the document that the condition was intended to apply, or he would at least have been put upon further inquiry

directed to the Planning Authority to clear up any doubt which might remain in his mind about the matter.

Consequently I commence by rejecting the first submission made on behalf of the Respondent, that he should not be regarded as having been bound by the said Condition.

The Condition provides that the dwelling is to be located in the area "outlined in blue on the attached plan". The Respondent has deposed on affidavit to the fact that he did not receive any map with the said notification, and it is contended on his behalf that he was prejudiced by this default on the part of the Planning Authority, in that he might have exercised a right of appeal against the condition had it come to his notice immediately on receipt of the notification that they were requiring him to build in a completely different part of the site to that referred to in his application and the documents which accompanied it. However, the same condition was contained in the Grant of Permission, dated 18th April, 1979, and this time the relevant plan accompanied the document. Once again, I would hold that the terms of Condition No. 1 put the

Respondent upon inquiry as to its effect, and it would have been an easy matter for himself or for his architect to ask for inspection of the plan which was referred to in the Condition and to point out that it had not been received.

Prima facie, it appears to me that the only Grant of Permission which is now in existence, entitling the Respondent to carry out works of development on his site, is the Order of the 18th April, 1979, and that he is bound by the four conditions which form part of the Grant of Permission.

What next transpired was that a further application in exactly similar form to the first application was made on behalf of the Respondent to the County Council on the 12th July, 1979, notwithstanding the Grant of Permission already obtained by him, and once again a proposal was put before the County Council that they should give a direction to the County Manager to grant permission, but the Motion was a more detailed one on this occasion and referred to "Planning Permission to Kieran O'Donnell, Drumoghill, Manorcunningham, for the erection of a dwellinghouse and septic tank in

accordance with plans submitted to the County Council."

The Motion was discussed at a meeting of the County Council on the 30th July, 1979, but apparently was not put to the meeting and lapsed, whereupon the application for Planning Permission was refused.

In this situation the Respondent had to fall back upon the Planning Permission derived from the Order of 18th April, 1979, but in doing so he proceeded to carry out building works on the site referred to in his notice of application, and not on the site designated by the Planning Authority in Condition No. 1 which I have already held forms part of the Planning Permission granted in his favour.

By reason of the fact that the map which accompanied the application for permission was incorrect, the alternative site so designated by the Planning Authority as the only location on which they would permit the dwellinghouse to be erected, now appears to be quite unsuitable for a number of reasons - one reason being that the building would actually encroach on the public road if built where the County Council have said it should be built.

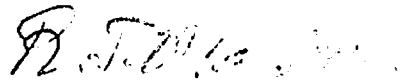
These considerations are not sufficient, in my opinion, to entitle the Respondent to disregard the requirements of the Planning Authority and to substitute for them his own decision as to the most appropriate part of his lands for the execution of the building works.

In these circumstances, his action in proceeding to build on the site originally designated by him without having obtained planning permission or approval for so doing, constitutes a breach by him of the provisions of the Planning Acts, and the Applicants are, in my opinion, entitled to an Order as sought by them under Sec. 27 of the Act of 1976, restraining the Respondent from continuing with the building works which have already been commenced by him on his lands in the Townland of Drumoghill, Manorcunningham, in the County of Donegal, as referred to in the Notice of Motion in the present proceedings.

Having regard to a number of unsatisfactory features in the way the Planning Authority have dealt with the application for permission from the outset, and the correspondence relating thereto, I propose to make no Order

as to costs in the matter, - each party to bear their
own costs.

Approved.



R.J. O'Hanlon.

28th June, 1982.

Note:

The Applicants were represented by Eoin McGonigal, B.L. (instructed by V.P. McMullin & Sons, Solicitors, Ballybofey), and the Respondents by T.C. Smyth, S.C., and Andrew Bradley, B.L. (instructed by O'Gorman, Cunningham & Co., Solicitors, Letterkenny).

Cases referred to:-

Hamilton v. West Sussex Co. Council, (1958) 2.Q.B.

Pyx Granite Co. Ltd. v. Ministry of Housing and Loc. Govt.,

(1958) 1 Q.B. 55-4.

Pilkington v. Sec. of State, (1973) 1 W.L.R. 1527.