

## THE HIGH COURT

2016 No. 352 MCA

## IN THE MATTER OF THE PLANNING AND DEVELOPMENT ACTS 2000-2015

AND

## IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT

Between:

LAOIS COUNTY COUNCIL

APPLICANT

– and –

NUTGROVE SAND AND GRAVEL LIMITED

FIRST-NAMED RESPONDENT

– and –

PATRICK CORBET

SECOND-NAMED RESPONDENT

– and –

DAVID BRICKLEY

THIRD-NAMED RESPONDENT

**JUDGMENT of Mr Justice Max Barrett delivered on 5th February, 2018.**

1. On 9th December, 2015, Laois County Council issued a notice of motion seeking certain prohibitory and declaratory reliefs concerning alleged quarrying activities at Clonalsee, County Laois. By order of the Circuit Court dated 21st April, 2016, the matter was transferred to the High Court and came on for hearing on 20th July, 2017. In fact, the matter settled on that day without going into a full hearing and, on 14th August, 2017, the following perfected order of the court issued:

**"[Title of Proceedings]"**

*This action being listed for hearing before the Court this day*

*Whereupon and on hearing what was offered by Counsel for the respective parties*

*And It Appearing that a settlement has been reached herein*

*By Consent IT IS ORDERED that*

*1. The Respondents their servants and agents and anyone with notice of this Order be prohibited from carrying out the following works on the Respondents' lands on any date after the 21st day of July 2017 save with the express authority of the Applicant*

*i. Excavation of materials*

*ii. Expansion of the quarry*

*iii. Removal of any materials from the Respondents' lands*

*2. The Respondents remove all plant and machinery from the Second and Third Named Respondents' lands on or before the 31st day of July 2017 save those otherwise agreed with the Applicant to remain for restoration purposes.*

*3. The Respondents submit to and agree with the local authority a restoration plan detailing all steps to the [be?] taken to restore the said lands to agricultural use within a period of four weeks from the date hereof.*

*4. This matter be listed for mention on 13th day of October 2017."*

2. A few points of note arise. First the order refers to settlement between the parties. Second, the order of the court faithfully reflects the note handed in to the court on 20th July concerning what order was to issue from the court on consent between the parties. Third, it appears that the order has been complied with to date. Fourth, strikingly absent from the order (and the handwritten note) is any reference as to the issue of costs.

3. On 22nd January, 2018, the parties came before the court and Laois County Council made application for its costs. The respondents objected to the court acceding to this application, in the first instance on the basis that the settlement arrived at between the parties, and as referred to in the order of the court, had made no reference as to costs.

4. The court accepts the contentions of the respondents in this last regard. In the normal course of events a settlement agreement will make specific provision in relation to the legal costs incurred. Absent such provision, a court will not imply a term in relation to costs, the natural inference being that each party will bear its own costs. In this regard, it is perhaps useful to recall *Foskett on Compromise* (8th ed.), 83, in which the learned authors observe, *inter alia*, as follows, under the heading "Costs":

**"5-60** *Whilst a court will always deal with the question of costs in contested proceedings, it is, of course, something for*

*the parties to resolve by agreement if they settle those proceedings. If they do not mention it at all in their negotiations or their agreement, the only conclusion would seem to be that each side must bear its own costs. It is not necessary, in order to give efficacy to the agreement, for the court to imply a term relating to costs."*

5. This is respectfully accepted by the court as a good statement of the position presenting under Irish law also.
6. The foregoing being so clearly the position that pertains at law, the court does not propose to consider such further arguments as were made by the respondents in this regard.
7. It follows that the court will make no order as to costs.