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Judgment: approved by the Court for handing down | *Delivered:* **25/11/2010**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (COMMERCIAL)

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McQUILLAN ENVIROCARE LIMITED

Plaintiff;

and

ANTRIM BOROUGH COUNCIL

Defendant.

_____

WEATHERUP J

[1] The plaintiff claims against the defendant for Misfeasance in Public Office. The claim against the defendant concerns direct liability for the actions of the Councillors of Antrim Borough Council and in the alternative, vicarious liability for the actions of John Quinn, employed by the defendant as Director of Environmental Services. Mr Hanna QC and Mr Good appeared for the plaintiff and Mr Shaw QC and Mr Dunford appeared for the defendant.

[2] The plaintiff operates a Waste Transfer Station at Newpark Industrial Estate, Antrim. On 14 December 2000 the defendant refused a Disposal Licence to the plaintiff which prevented the plaintiff commencing its waste transfer operations on the site. The Department of the Environment for Northern Ireland granted the appeal of the plaintiff against the refusal of the Disposal Licence and the plaintiff commenced operations on the site in October 2001. Accordingly the commencement of the plaintiff's operations on the site was delayed for a period of 10 months. The parties have agreed damages at £90,000. Liability is disputed by the defendant.

The Statutory Power exercised by the Counsellors.

[3] In 2000, Disposal Licences were issued by District Councils under the Pollution Control and Local Government (Northern Ireland) Order 1978, the provisions of which included the following (*italics added*).

> 7(3) - Where a district council receives an application for a disposal licence for a use of land, plant or equipment for which such planning permission is in force or such consent has been granted, the council shall not reject the application unless *the council is satisfied that its rejection is necessary for the purpose of preventing danger to public health.*
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> 8(2) - A disposal licence may include such conditions as the district council which issues it sees fit to specify in the licence….
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> 8(5) - If within the period of two months beginning with the date on which a district council receives an application duly made to it for a disposal licence or within such longer period as the council and the applicant may at any time agree in writing, the district council has neither issued a licence in consequence of the application nor given notice to the applicant that the council has rejected the application, the district council shall be deemed to have rejected the application.
>
> 12(1) - Where …. an application for a disposal licence …. is rejected .... the applicant for the licence …. may, in accordance with regulations, appeal from the decision in question to the Department; and where on such an appeal the Department determines that the decision is to be altered the district council concerned shall give effect to the determination.

[4] It is to be noted that under Article 7(3) of the 1978 Order the District Council could only reject an application for a Disposal Licence if satisfied that its rejection was "*necessary for the purpose of preventing danger to public health.*"

The Nature of Misfeasance in Public Office.

[5] The tort of Misfeasance in Public Office was considered by the House of Lords in Three Rivers District Council and Others v. Governor and Company of the Bank of England (No 3) [2003] 2 AC1. There are two different forms of the tort. The first is targeted malice by a public officer. This involves conduct specifically intended to injure a person and involves bad faith in the sense of the exercise of public power for an improper or ulterior motive. The second, and the form of the tort said to arise in the present case, is untargeted malice. This involves a public officer taking action knowing that he has no power to do the act complained of and that the act will probably injure the plaintiff. Untargeted malice will be established by proof of recklessness but only in its subjective sense. Accordingly the plaintiff must establish that the public officer acted with a state of mind of knowledge of or reckless indifference to the illegality of his action and its consequences. The plaintiff must establish that the defendant acted in the knowledge of or with reckless indifference to the probablity that the action would injure the plaintiff.

[6] In relation to untargeted malice Lord Steyn stated in Three Rivers DC –

> "The basis for the action lies in the defendant taking a decision in the knowledge that it is an excess of the powers granted to him and that it is likely to cause damage to an individual or individuals. It is not every act beyond the powers vesting in a public officer that will ground the tort. The alternative form of liability requires an element of bad faith (page 192C).
>
> …. reckless indifference to consequences is as blameworthy as deliberately seeking such consequences. It can therefore now be regarded as settled law that an act performed in reckless indifference as to the outcome is sufficient to ground the tort in its second form (page 192 G).
>
> The plaintiff must prove that the public officer acted with a state of reckless indifference to the illegality of his act (page 193 C).
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> …. a plaintiff must establish not only that the defendant acted in the knowledge that the act was beyond his powers but also in the knowledge that his act would probably injure the plaintiff or person of a class of which the plaintiff was a member (page 196 A).

> Recklessness about the consequences of his act, in the sense of not caring whether the consequences happen or not, is therefore sufficient in law (page 196 C).

[7] An institution, such as a District Council, can only have knowledge or be reckless subjectively if one or more individuals acting on its behalf had that knowledge or were subjectively reckless. Their subjective state of mind has to be established. To that end they have to be identified. Where, in a claim for Misfeasance in Public Office against Southwark London Borough Council, it had not been demonstrated who it was on behalf of the Council had acted in bad faith and what subjectively was their state of mind, the person affected was unable to establish his claim for Misfeasance in Public Office (Southwark London Borough Council v. Dennett [2007] EWCA Civ 1091).

[8] The present case is one of untargeted malice. The plaintiff has to establish that one or more individuals acting on behalf of the defendant refused the Disposal Licence to the plaintiff in the knowledge of or with reckless indifference to the illegality of that decision and in the knowledge of or with reckless indifference to the probability that injury would be caused to the plaintiff.

The Application for Planning Permission.

[9] The plaintiff applied for planning permission for the development of the Waste Transfer Station in 1997. The defendant was a consultee in the planning process. The plaintiff's proposal came before the defendant's Planning Committee and the Technical Services Committee. The minutes of the meeting of the Technical Services Committee of 29 April 1997 recorded the concerns of residents and Councillors for the types of materials that would be deposited on the site. The plaintiff's application came before the Planning Committee of the defendant on 26 June 1997. The Planning Committee response to the Planning Service was one of unanimous opposition to the proposal on the basis that the site was wholly unsuitable given the proximity of housing and that an alternative location within an exclusively industrial environment with more environmental protection would be required. While the site was in an industrial estate it was in close proximity to housing.

[10] Environmental consultants were engaged by the plaintiff and an Environmental Statement prepared. The defendant engaged Entec UK Ltd as environmental consultants who reported to the defendant on the plaintiff's proposal.

[11] At a Planning Committee meeting of 30 October 1997 it was agreed that the Entec Report be forwarded to Planning Service and that they be notified of the defendant's view that the application be refused. At a meeting of the Council on 13 November 1997 it was noted that there was unanimous opposition to the development on the proposed site. The plaintiff's consultants produced two addenda to the Environmental Impact Assessment and these were responded to by Entec and considered at the Planning Committee meeting of 26 February 1998. The plaintiff's treatment of the Environmental Statement was deemed to be unsatisfactory and the members of the Planning Committee reiterated the decision not to support the application as the location was felt to be unsuitable. At the meeting of the Technical Services Committee of 27 October 1998 it was noted that on foot of previous responses by the defendant to the Planning Service the plaintiff had engaged a new consultant, namely CES, to review the environmental statement. A revised Environmental Impact Statement was completed and the plaintiff's representatives attended a meeting of the Technical Services Committee on 30 March 1999. It was recommended that a response to Planning Service should incorporate the Entec assessment of the revised Environmental Impact Statement, reaffirmation of opposition to the proposal on the basis of siting and proximity to housing due to the potential environment effects on the local community and a requirement that a full 'Hazop' operational risk assessment analysis be undertaken.

[12] On 28 October 1999 the defendant received notification that Planning Service had decided to issue a Notice of Intention to Approve the plaintiff's application for planning permission. The plaintiff obtained planning permission for the development of the site as a Waste Transfer Station on 18 January 2000.

The Application for the Disposal Licence.

[13] Having secured planning permission the plaintiff applied to the defendant for a Disposal Licence on 25 July 2000. CES acted as consultants for the plaintiff and Entec as consultants for the defendant. The 1978 Order required a decision in two months subject to extension of time by agreement. There was agreement to extension of time for a decision. A meeting with the defendant's officials took place on 19 October 2000 to conduct a review of Entec's comments on the proposed Disposal Licence. Representatives of the plaintiff and CES were present to address concerns.

[14] At the Environmental Services Committee meeting on 31 October 2000 it was noted that –

> "Members reiterated their concerns in relation to this proposal but acknowledged that in the absence of any

> technical deficiencies the Council could not withhold the licence.
>
> Councillor Dunlop voiced his opposition to the site on health and safety grounds."

At the Council meeting of 9 November 2000 the above minute of the meeting of 31 October 2000 was amended. The plaintiff relied on the amendment as evidence of bad faith on the part of the Councillors. The minutes of 9 November recorded the amendment as follows –

> "Councillor Keenan asked that the latter part of the second paragraph be deleted to allow for further clarification of legal issues.
>
> AGREED – that the second paragraph be amended to read "Members reiterated their concerns in relation to this proposal to have such operations so close to residential properties and potential public health risks which could ensue.""

[15] By internal memo dated 22 November 2000 Trevor Stewart, Environmental Health Officer for the defendant, to Ian Suitor, acting Chief Environmental Health Officer, reviewed the progress of the waste disposal licence application. It was noted that the Entec reports had highlighted several issues of concern most of which had been addressed by CES and that nothing had been found by Entec to lead them to recommend the refusal of a licence. In the memo Mr Stewart stated that he was of the opinion that there were no grounds for refusing the licence as a danger to public health and he recommended that the Council be asked to approve the award of a licence. The Environmental Health Section Report by Council officials to the Environmental Services Committee considering the application for the Disposal Licence on 28 November 2000 recommended that there was no evidence to suggest that the refusal of a licence was necessary for the purpose of preventing danger to public health and that Council should approve in principle the award of the licence.

[16] Meanwhile, on 30 October 2000, an event had occurred that I am satisfied was to have a significant impact on the processing of the application for the Disposal Licence. As a result of fire and flood at premises at Sandhurst near Gloucester in England a waste processing plant licence was suspended and the Environmental Agency undertook an inquiry. Residents of the village were evacuated and there were concerns for public health. This incident featured in the discussions about the plaintiff's licence at the meeting on 28 November 2000.

[17] David Ford was a Councillor on Antrim Borough Council from 1993 to 2001 and gave evidence as to the consideration of the plaintiff's application for the Disposal Licence at meetings of the Committee on 28 November and 14 December 2000 and of the full Council on 14 December 2000. Mr Ford was present at the three meetings. His evidence was that Councillors were unanimous in their opposition to the grant of a licence to the plaintiff at the proposed site and there was anxiety for public health. Mr Quinn attended the meeting of 28 November 2000 to answer questions. He was questioned about public health concerns and about Sandhurst. Limited information about the Sandhurst incident reinforced the concerns. Investigations into Sandhurst were at an early stage and Councillors were aware of the media reports of fire and flooding and residents' respiratory problems and this was said to have weighed heavily on Councillors' minds that not all requirements may have been put in place.

[18] The Environmental Services Committee meeting of 28 November 2000 agreed that a special meeting of the Environmental Services Committee be convened to consider the licence application on 14 December 2000 before the full Council meeting, also on that date.

[19] Prior to the Committee meeting of 14 December 2000 John Quinn, Director of Environmental Services, prepared a paper for the meeting referring to a rejection of a licence where that was necessary for the purposes of preventing danger to public health and proposing grounds for rejection –

> "In accordance with the precautionary principle, the Council considers it necessary to reject the licence for the purposes of preventing potential danger to public health due to the siting of the facility, its proximity to housing and the potential for its operation to impinge on the basic human rights of local residents, in breach of Article 8 of the Human Rights Act".

Mr Ford stated that the paper prepared for the meeting of 14 December 2000 indicated that Mr Quinn took on board the views of Councillors against the grant of the licence.

[20] At the meeting of the Environmental Services Committee on 14 December 2000 seventeen of the nineteen members of the Council were present – six of whom were non members of the Committee. The Committee recommended the rejection of the licence largely in the terms of the draft in Mr Quinn's paper.

[21] At the meeting of the full Council which followed on 14 December 2000 the recommendations of the Committee were adopted.

The Plaintiff's Appeal against the Refusal of the Disposal Licence.

[22] The plaintiff also relied on events occurring after the decision of 14 December 2000 as evidence of bad faith. In anticipation of an appeal by the plaintiff the Environmental Services Committee and the Council on 14 December 2000 had agreed that in the event of an appeal the Council would be represented by the Director of Environmental Services and other officials together with four members of the Council and that the Chief Executive be given discretion to employ legal and other specialist representation if appropriate. At a Council meeting on 30 January 2001 notice was given that an appeal had been lodged against the decision to refuse the licence to the plaintiff. It was recommended that the Council proceed on the basis of legal advice to give authority to instruct the Council's solicitors and Queen's Counsel "to proceed to handle and dispose of the matter as appears to be in the best interests of the Council and the public interest in accordance with the proper application of the precautionary principle and in accordance with the law". The plaintiff contended that the delegation to the defendant's legal representatives "to handle and dispose" of the appeal was evidence of the defendant's desire not to be seen to make any decision in respect of the application for the licence other than refusal.

[23] The appeal papers lodged by the defendant in 2001 indicated that the Council considered its decision to be fully justified in view of the Sandhurst incident; referred to the preliminary report submitted to the Deputy Prime Minister by the Environment Agency and the Health and Safety Agency which was stated to have concluded that the waste licence in force for the facility had set a reasonable standard of control with necessary enforceable conditions and that the site was inspected at the appropriate frequency; noted that in view of the report's conclusions it appeared that the Sandhurst incident had occurred notwithstanding that the facility was licensed and subject to inspection; stated that the Council had commissioned a report from Entec on the Sandhurst incident comparing it with the plaintiff's site and predicting the consequences of a similar incident on that site; attached the Entec report which was stated to identify similarities between the proposed operating procedures for the plaintiff's site and Sandhurst and that the procedures at Sandhurst were superior to those at the plaintiff's site; concluded that while it was recognised that the probability of an incident similar to that at Sandhurst occurring was low it remained the opinion of the defendant that due to proximity of businesses and housing should such an event occur then the consequences had a high potential to be catastrophic in terms of public health.

[24] The Entec Report stated in its conclusions under the heading "Improvement in Controls" that the greatest criticism of the Environment Agency arising out of the Sandhurst incident was the lack of imposition of a required standard in the Working Plan using a licence condition. The Report stated that in the plaintiff's case the Working Plan was of a lower standard than

that of the Sandhurst site and the plaintiff had yet to produce an emergency plan. The Report stated that where continued negotiations failed to agree a required standard the defendant should refuse to grant a waste management licence on the grounds that they cannot ensure the operation will not pollute the environment or give harm to human health.

[25] The plaintiff and CES produced a response addressing the concerns. The response considered the possible causes of the Sandhurst fire; drew up comparison tables of the Sandhurst site and the plaintiff's site and concluded that the sites were in marked contrast; considered the respective operating standards and procedures and rejected Entec's approach; completed a consequence analysis that concluded that in all the circumstances there was no added risk at the plaintiff's plant from the presence of special waste.

[26] At the hearing of the appeal, Counsel for the defendant informed the Panel that as a result of advice provided by Entec the defendant accepted that the site was suitable for the plaintiff's waste transfer operation. However the defendant had three specific concerns relating to certain operational matters namely waste acceptance, waste storage and bulking of wastes. In addition the Panel was provided with a draft Waste Disposal Licence which was stated to be the product of substantial discussions between the respective consultants. The Panel heard representations and produced a report which listed a number of observations and recommendations. The matters listed included consideration of waste acceptance procedures, waste storage and tests prior to bulking of similar waste types. The Panel considered that additional controls should be incorporated into the licence and/or Working Plan. The Panel concluded that the proposed facility did not present a danger to public health and accordingly recommended to the Department that the appeal should be allowed.

[27] The plaintiff contends that the position reached at the conclusion of the appeal hearing could have been reached by discussion between the respective consultants on or before the date of the defendant's decision on 14 December 2000 and that it was never necessary to reject the licence application on public health grounds.

Did Councillors refuse the Disposal Licence in the knowledge of or with reckless indifference to the illegality of that decision?

[28] Consideration of the grant of a licence to the plaintiff was undertaken by Councillors at the meetings of 28 November 2000 and 14 December 2000. There was a history of concern on the part of Councillors in relation to the siting of the plant. The issue came before the Environmental Services Committee on 28 November with a recommendation for approval. The Sandhurst incident had occurred on 30 October 2000. A collection of newspaper reports of the Sandhurst incident were received from the Environmental and Heritage Service

by the Technical Services Department on 24 November 2000. It has not been established that the material went to the Counsellors but I am satisfied from the evidence of Mr Ford that they were aware of the incident, at least on 28 November, if not before. At the meeting of 28 November the minutes record that there was a lengthy discussion by Councillors on the subject of the plaintiff's licence. According to the evidence of Mr Ford, Councillors questioned Mr Quinn about public health concerns. In the end the issue was put back to 14 December for further consideration. The briefing paper for that later meeting reflecting the concerns of Councillors provided the option for refusal of the licence. On 14 December 2000 the Committee and the Council decided to refuse the licence.

[29] The Councillors were required to exercise the statutory power in accordance with the provisions of Article 7(3) of the 1978 Order. The legality of their decision required compliance with the terms of the statutory power. There was no power to reject the application for the licence unless (i) the Council was satisfied (ii) that rejection was necessary (iii) for the purpose of preventing danger to public health.

[30] I am satisfied that Councillors knew that the only basis for rejection of the licence was that it was necessary for the purpose of preventing danger to public health. This was made clear to Councillors in the briefing papers. I am satisfied that the Councillors had concerns about the siting of the plant on public health grounds. I accept the evidence of Mr Ford that the discussion at the meetings of Councillors on 28 November 2000 and 14 December 2000 related to public health concerns about the siting of the plant and particularly about the public health implications of the Sandhurst incident and their relevance to the plaintiff's plant.

[31] The plaintiff contends that "concerns" for public health issues were not a sufficient basis for rejection of the licence in the absence of evidence of public health grounds that would render it necessary to reject the licence in order to prevent danger to public health. It was further contended that as the consultants' reports did not provide evidence of a public health issue relating to the plaintiff's plant, the Councillors were not entitled to reject the licence. To do so in the absence of such evidence was said to amount to bad faith, even if the motive was a concern for public health. On the other hand the defendant contends that direct evidence to support public health concerns was not required and that the issue is whether there were specific genuine public health concerns and that these rendered it necessary to reject the licence.

[32] I am satisfied that at the meetings the Councillors voiced their concern for public health by reason of the siting of the plant adjacent to the workers in the industrial estate and the nearby residents. The consultants' reports addressed the risks generated by the proposed working of the plaintiff's plant and Mr Quinn felt able to advise the Councillors prior to 28 November that

there was no evidence of a public health risk. However I am satisfied from the evidence of Mr Ford that the Sandhurst incident alarmed the Councillors as it involved a licensed operation that created health problems and the Councillors wanted to know how Sandhurst compared with the plaintiff's proposals. When the issue of the licence was being considered by the Councillors in November and December 2000 there was not available to the Counsellors an appropriate report on the circumstances at Sandhurst. The preliminary report that was prepared for the Deputy Prime Minister was delivered on 1 January 2001.

[33] I accept the evidence of Mr Ford that Councillors would not have been privy to internal staff papers, that briefing reports for meetings would have been made available to Councillors in advance of the meetings and that Councillors would not have attended meetings with officials on the issue of the plaintiff's licence prior to the Committee or Council meetings.

[34] The issue of Sandhurst was not raised with the plaintiff's representatives until a phone call from officials on 15 December 2000. Sandhurst was not an issue for officials in internal memos or the briefing note to Counsellors prior to the meeting of 28 November. However I am satisfied that it was certainly an issue for Councillors at the meetings on 28 November and 14 December 2000.

[35] When the issue of the licence was being considered by the Councillors there were a number of options. One option was to defer a decision pending further enquiries into the Sandhurst incident. There was a legislative time constraint on the making of the decision and the plaintiff had already agreed an extension of time and any deferral for further enquiries would have required agreement to an additional extension of time. That may have been forthcoming from the plaintiff but was not an option adopted by the Councillors. A further option would have involved consultation with the plaintiff and its representatives about the ramifications of the Sandhurst incident. This would probably have been undertaken in conjunction with the first option had the Councillors decided to seek agreement to defer a decision for further enquiries. Another option was to approve the licence with conditions. However until the results of at least the preliminary investigation into the Sandhurst incident were available the basis for any conditions that would be relevant to the lessons of the Sandhurst incident could not be identified. Another option would have been to approve the licence but that would have required the Councillors to take no cognisance of the added concerns that had been generated by the Sandhurst incident when the causes of the Sandhurst problem had not been identified. The Councillors had the option of making no decision so that there would have been a deemed refusal.

[36] The defendant might have initiated enquiries into the Sandhurst incident immediately after it occurred with a view to enabling officials and Councillors to be better informed when the plaintiff's licence came up for

consideration in November and December 2000. CES and Entec might have offered their views on the Sandhurst incident prior to the meetings. However the outcome of any such earlier inquiries or the obtaining of consultants views in advance would inevitably have produced tentative outcomes pending at least the preliminary report on the Sandhurst incident. All of the above options were feasible but not adopted by the defendant. Convenience, expediency, fairness, competence might have dictated other outcomes than the one adopted. The presence or absence of any of those considerations does not of necessity involve a finding of bad faith.

[37] I am satisfied that there was no bad faith on the part of the Councillors. The decision of 14 December 2000 was taken for a lawful purpose, namely, the Councillors were satisfied that it was necessary to reject the licence for the purpose of preventing danger to public health. The Councillors did not act in the knowledge or with reckless indifference to the illegality of their actions. Their decision was made on the basis of the lawful statutory purpose, namely, the refusal of the licence being necessary for preventing danger to public health.

[38} I am satisfied that any decision taken on 14 December 2000 whether to grant or refuse the licence, when Councillors could not know the implications of Sandhurst, would have been to refuse the licence. There were believed to have been similarities between the Sandhurst site and the plaintiff's site and Councillors did not know when they would have obtained further details about Sandhurst. In the absence of such further information it was necessary to reject the licence on public health grounds. That such information as later became available did not establish public health grounds for refusing the licence does not detract from the necessity of making the decision that was made on 14 December 2000. That such later decision was made by others does not detract from the necessity of the Councillors making the decision they did on 14 December 2000.

[39] The practical alternative to refusal on 14 December 2000 was to defer a decision to a later date, by agreement with the plaintiff, which agreement may well have been forthcoming. There was no attempt to defer the decision. I am satisfied that the failure to seek agreement to defer a decision was not an exercise in bad faith. The issue had been before two sub committee meetings and a recommendation for refusal had been made to the full Council in circumstances which I am satisfied rendered it necessary to refuse the licence. In any event I am satisfied, with the benefit of being able to look back on events, that any deferral by agreement probably would have led to a series of exchanges, the outworking of which would have led to a similar result eventually, although not of course in the context of an appeal process. However the plaintiff would have had to satisfy the Councillors over a period of time and would not have been entitled to commence operations.

[40] The plaintiff contends that the Councillors acted to appease their electorate in the upcoming elections of May 2001 and without reliance on the proper statutory ground for refusal of the licence. Mr Ford denied that Council elections pending in May 2001 influenced the decision making. There was unanimous cross party agreement to refuse the licence and five of the nineteen Councillors were not seeking re-election. He stated that he had made unpopular decisions on the waste issue on previous occasions. I accept that the Councillors views reflected those of their electorate who in turn had public health concerns about the site. Despite the terms of the consultant's reports and the initial recommendation of staff to approve the licence, the Sandhurst incident gave the Councillors good grounds for such public health concerns as rendered it necessary to refuse the licence for public health reasons.

[41] A further aspect of the plaintiff's approach is the alleged abdication by Councillors of a decision to approve the licence by reason of the delegation to the defendant's legal representatives to handle and dispose of the appeal. I am satisfied that this was the practical means of dealing with an appeal process involving the complement of Councillors, legal representatives on both sides and a hearing before a Panel. In any event the minute of the meeting of 31 January 2001 recorded that the meeting had two letters from the Council's solicitors and proceeded on the basis of the legal advice to give authority to instruct solicitors and Queens Counsel to proceed to handle and dispose of the appeal. Thus the Council decided on the manner of handling the appeal on the basis of legal advice. Mr Hanna QC for the plaintiff sought disclosure of the legal advice on the basis that any legal professional privilege attaching to the solicitors letters had been waived when Mr Shaw QC for the defendant relied on the minute of 30 January 2001. I refused disclosure of the solicitor's letter on the basis that there had been no waiver of the privilege.

[42] The approach taken by the Councillors was expressed in terms of 'the precautionary principle'. The plaintiff objects that there is no such principle provided for in the legislation. Such genuine public health concerns as may be said to have existed are also said to have been addressed by the experts' reports. However, as Mr Ford's evidence established, what the Sandhurst incident demonstrated was that public health risks could arise at the Sandhurst plant despite the operation of the licensing regime. How had that happened? Unless the Councillors were reassured that the grant of a license to the plaintiff would not create similar risks to public health at the plaintiff's plant they were entitled to be cautious. Thus the Councillors were satisfied that it was necessary to refuse the license on public health grounds in the absence of such reassurance. I am satisfied that a decision made on 14 December 2000 whether to grant, with or without conditions, or to refuse the license, could only have been a refusal. The Councillors did not seek to defer the decision and I am satisfied that the failure to do so was not evidence of bad faith. Had the Councillors sought agreement to defer the decision the same outcome, no doubt, would have been reached eventually with the plaintiff obtaining the

licence. The plaintiff contends that this position could have been reached in December 2000. I do not accept that. The information on the Sandhurst incident was not available. To apply a precautionary principle was not to act in a manner that was contrary to the statutory power.

[43] Mr Ford rejected the suggestion that the change to the Environmental Services Committee minutes of 31 October 2000 was improper. It involved, he stated, an alteration by consensus as members felt the draft minute did not represent the balance of discussion. I accept that evidence and reject the contention that the alteration of the minutes was an indication of bad faith.

[44] The plaintiff also relied on an article in the Antrim Guardian published in the week before the meeting of 28 November. The article referred to the Council having to grant the licence if the Technical Services Department gave the plaintiff's plant a clean bill of health, that failure to do so would result in the Department forcing the Council to grant the licence and that ratepayers would be liable for lost trade while the issue was resolved. A "Council insider" was quoted as saying that the Council's hands were tied. The article was said by the plaintiff to reflect the position in which the Councillors found themselves. I do not accept that that was the case. Indeed the article went on to discuss the Sandhurst incident, the risks posed to Antrim and the ongoing campaign to oppose the licence. As found above, the Councillors were entitled to refuse the licence in the circumstances prevailing on 14 December 2000.

[45] The plaintiff objected to the wide terms in which the Council refused the licence, namely by reference to the precautionary principle, the 'potential' danger to public health, the impact of the basic human rights of residents and the breach of the Human Rights Act. I have referred above to the precautionary principle, which I have found to be compatible with the statutory power. The other matters express the rejection of the licence in terms that are wider than the statutory power. I do not intend to read the recommendation of the Committee or the resolution of the Council as if they were legislative provisions. I am satisfied for the reasons stated above that there was no bad faith in the decision to refuse the licence. The terms of the decision might have been more strictly drawn and it would be desirable that they should reflect more accurately the statutory power but I am satisfied that that shortcoming does not undermine the finding I have made in relation to the decision.

[46] I am satisfied that there was no illegality in relation to the decision of 14 December 2000. If, contrary to that finding, I had been satisfied on the question of illegality and the requisite state of mind of the Councillors, I would have found that I was satisfied as to the relevant state of mind in relation to the consequences, namely that the Councillors would have had knowledge of the probability of causing loss to the plaintiff.

Vicarious Liability.

[47] The plaintiff further claims that the defendant is liable for Misfeasance in Public Office on the basis of vicarious liability for the actions of its official John Quinn in preparing the briefing note for the meetings of 14 December 2000 containing proposed grounds for refusal of the licence to the plaintiff. It is not in question that in furnishing the briefing note to Councillors on 6 December 2000 Mr Quinn was acting in the course of his employment as Director of Environmental Services for the defendant. Was he acting in the knowledge of or with reckless indifference to the illegality of his actions in briefing the Councillors on a refusal of the licence? Mr Quinn did not give evidence. Mr Ford's evidence was that Mr Quinn produced the paper for the meetings of 14 December 2000 taking on board the views of the members of the Environmental Services Committee meeting of 28 November 2000 and explaining the case against the grant of a licence to the plaintiff.

[48] Mr Quinn's briefing paper for the meetings of 14 December 2000 included reference to the only permissible ground for rejection of the licence and stated –

> "If the Council is minded to reject the licence it is considered reasonable to argue that the proximity of the site to housing could lead to danger to the public health of local residents and that the precautionary principle should apply, particularly given some recent experiences in GB."

The briefing paper states that it was "considered reasonable to argue" that proximity to housing could lead to a danger to the public health of local residents. This reflects Mr Ford's account of the discussions at the Environmental Services Committee meeting of 28 November 2000 when Councillors concerns were expressed in terms of the siting of the plant and the dangers to the public health. The briefing paper also refers to "the precautionary principle" and "some recent experience in GB", the latter being undoubtedly a reference to the Sandhurst incident. The precautionary principle found expression in Mr Quinn's proposed grounds for any refusal of the licence and was adopted by the Environmental Services Committee and the full Council at their meetings on 14 December 2000 in rejecting the licence. I have found that the precautionary principle was not incompatible with the proper exercise of the statutory power.

[49] I am satisfied that Mr Quinn's briefing note was a response to the views expressed by Councillors at the Environmental Services Committee meeting of 28 November 2000 and reflected the concerns for public health that had been raised at that meeting. It is clear that the views expressed by Councillors on 28

November 2000 did not accord with Mr Quinn's recommendation on the briefing note for that meeting that the licence be granted and that the mood of the meeting was against the grant of the licence. Mr Quinn's briefing note for the meeting of 14 December 2000 recognised the reasonableness of the argument against the grant of the licence and articulated a basis for rejecting the licence on those grounds. I am satisfied that Mr Quinn cannot be faulted for submitting the briefing note for the meeting of 14 December 2000. It did not propose or contemplate any illegality. It articulated the concerns of Councillors at the previous meeting, concerns which I am satisfied were well founded, concerns which I am satisfied entitled the councillors to reject the licence on lawful grounds. I reject the complaint that the actions of Mr Quinn amounted to Misfeasance in Public Office.

[50] For the reasons set out above I reject the plaintiff's claim for Misfeasance in Public Office against the members of the Council and as vicariously liable for Mr Quinn as an employee of the Council and there will be judgment for the defendant.