



Appeal Decisions

Site visit made on 9 March 2015

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an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 May 2015

Appeal A: Appeal Ref: APP/Z1585/C/14/2220003

Little Warley Hall Farm, Ranks Green, Fairstead, Chelmsford, Essex, CM3 2BG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Paul Humphreys against an enforcement notice issued by Essex County Council.
- The Council's reference is ESS/60/13/BTE – APPEAL.
- The notice was issued on 7 May 2014.
- The breach of planning control as alleged in the notice is without the benefit of planning permission the construction of an abattoir wash water storage tank and de-odorising ring apparatus including associated equipment and container.
- The requirements of the notice are to:
 - 1) Cease and do not resume the transferring of abattoir wash water into the storage tank.
 - 2) Remove the abattoir wash water storage tank from the land.
 - 3) Remove the container and all equipment and materials associated with the abattoir wash water tank from the land.
- The period for compliance with the requirements is:
 - 1) Within one day.
 - 2) Within three months.
 - 3) Within three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees are exempt the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Appeal B: Appeal Ref: APP/Z1585/A/14/2220007

Little Warley Hall Farm, Ranks Green, Fairstead, Chelmsford, Essex, CM3 2BG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Paul Humphreys against the decision of Essex County Council.
- The application Ref ESS/60/13/BTE, dated 29 November 2013, was refused by notice dated 31 March 2014.
- The development proposed is the retention of abattoir wash water storage tank and de-odorising ring apparatus including associated equipment container and hardstanding.

Summary of Decision: The appeal is dismissed.

Application for costs

1. An application for costs was made by the Appellant against the Council. This application is the subject of a separate Decision.

The appeal on ground (a), the deemed planning application and the s.78 appeal

2. From the reasons for refusal and the reasons for issuing the notice I consider that the main issues in these appeals are firstly whether the development is appropriately located having regard to the living conditions of local residents and secondly whether sufficient information has been provided about the development.

First issue: Location and living conditions

3. The hamlet of Ranks Green comprises a scattered group of farm buildings, dwellings and some commercial uses. It is in a rural area about 8km from the northern edge of Chelmsford. The wash water tank is situated at Little Warley Hall Farm at the northern edge of a working farmyard which comprises various agricultural developments. Access to it is via a drive from the road around and through the farmyard. The tank lies to the north of a large manure heap.
4. The tank is a circular segmented structure comprising a number of identical concrete components mechanically fixed together set on a concrete base and grouted so that it is waterproof. It stands 3m above ground level and projects 1m below the ground and has an internal radius of 11.855m. The concrete has a smooth surface and is light grey in colour. It is filled to 3.5m in depth and it holds about 1,545,500 litres of liquid¹.
5. There is an area of crushed rubble hardsurfacing around the tank and a shipping container, painted dark green, is situated immediately to the west of the tank. This contains de-odorising equipment, a pump, control equipment and de-odorising fluid².
6. The tank was constructed in 2012 and its function is to hold abattoir wash water until such time as it is spread on the land as fertiliser. The wash water is transported by tanker from the Appellant's abattoir some 900m away by road. The wash water is mains water containing blood, animal flesh and animal faeces that has been sieved to remove solids above 4-6mm in size. Prior to the building of the tank, wash water was spread on the Appellant's holding and surplus wash water was transported away from the abattoir for storage and spreading elsewhere.
7. The spreading of the wash water on the land as fertiliser requires a licence from the Environment Agency (a Deployment) on which conditions can be imposed. The Deployment for the year 2013-2014 permitted land spreading to take place twice a year – after the main crop is taken off in July/August and after the maize crop has been cut in October³. For the year 2014-2015 the Deployment permits, in addition to spreading on stubble, the spreading of wash water onto a growing crop⁴. The Deployment states the fields on which the wash can be spread and it is the Appellant's case that to ensure the minimum

¹ Paragraph 3.21 of the Appellant's Grounds of Appeal

² Paragraph 3.22 of the Appellant's Grounds of Appeal

³ Email from the Appellant's agent to the Council dated 28 January 2014

⁴ Letter from the Appellant's agent to the Inspectorate dated 18 March 2015

odour impact on nearby residents the fields in the north are spread when the wind direction is favourable. It is, he says, therefore most efficient for the tank to be located as close as possible to those fields.

8. Following the construction of the tank and complaints about odour, the Environment Agency conducted an investigation and published a report in October 2013; a revised report was issued in January 2014. Both reports came to the same conclusion, that is, 'that whilst an odour was detected on several occasions by our officers it is at a level that would be expected of a storage tank ... The storage of abattoir wash water is by its nature an odorous one and therefore we would not expect it to be odour free at all times'. This report comprises the Appellant's odour evidence.
9. The background to the Environment Agency Report was 47 reports between 20 December 2012 and 10 August 2013 mainly relating to odour thought to be coming from the tank. Analysis of these reports showed that a maximum of 23 could have related to the tank or to land spreading. Monitoring was undertaken by the Environment Agency between 10 June 2013 and 2 August 2013 by ten different people and up to ten minutes was spent at each of six monitoring points. On ten occasions the probable source of odour was the tank. The descriptions of the smell include 'offensive revolting muck'; 'very unpleasant - strong sewerage'; 'acrid smell'; and 'stagnant drains mixed with sweet chemical'.
10. Local residents have continued to complain about the odour from the tank and have made representations about such matters as being unable to stay out in the garden because of the smell. Representations in the appeal process have been made by local residents individually and through the representations of a Planning Consultant. Many residents have lived in the area for a long time and none had any complaints prior to 2012 about this particular smell, even though it would appear that wash water was being spread on the land prior to that date. It is also notable that local residents do not appear to have any complaints about other smells arising from the Appellant's farming activities such as manure, silage and the production of animal feed.
11. Complaints were made at the end of 2012 to Braintree District Council's Environment Services and the Environmental Health Officer reported⁵ that she witnessed 'a strong unpleasant odour affecting the residential area of Ranks Green' and she noted that she had not received any complaints prior to that date about odour in the locality.
12. I accept that there may be odour emanating from the land spreading and it is difficult to distinguish that smell from the smell emanating from the tank. However, in the past the times of land spreading were limited whereas complaints since the tank was built have been consistent throughout the year. I also accept that there may be some exaggeration from local residents, but they are the people who live in the area all the time and I give their views about the adverse impact the smells from the tank are having on their lives significant weight. In doing so I note that the Environment Agency accepts that the tank produces odour at 'a level that would be expected of a storage tank' but gives no evaluation or explanation of what this may mean. My visit took place on a cold day and I do not know how full the tank was but I noted a distinct unpleasant odour emanating from it; this odour was completely

⁵ Memo dated 27 August 2013 enclosed with the Questionnaire in the s.78 appeal

distinguishable from the odour of the manure, silage and other more usual farmyard smells.

13. Since the appeal proceedings began the Environment Agency have begun investigations into whether the storage of the wash water meets the requirements for temporary storage, under which the previous and current Deployments were issued, or permanent storage, in which case different regulations apply but at the time of writing this decision, the Environment Agency's investigations have not been concluded⁶. In any event, the criteria under which the Environment Agency grants Deployments are different from the planning considerations with which I am concerned in this appeal.
14. I accept that there should be some consistency between consents issued under the planning and pollution control regimes as advised in Planning Policy Statement 10 'Planning for sustainable waste management' (PPS10)⁷. However, PPS10 also advises that the likely impact on amenity should be taken into account and this includes the consideration of odours⁸. In this regard Policies W3A and W10E of the Essex and Southend Waste Local Plan (the Waste Plan) and Saved Policies RLP36, RLP62 and RLP90 of the Braintree District Local Plan Review 2005 (the Local Plan) seek to ensure, among other things, that new development will be consistent with the goals and principles of sustainable development and will not have an unacceptable impact on the surrounding area and cause harm to nearby residents as a result of such things as smell.
15. Policy 62 of the Local Plan also seeks to ensure adequate preventative measures are taken to ensure that any discharge will not cause harm. The tank includes a de-odorising ring apparatus, however, local residents have also made representations about the unpleasant odour emanating from this equipment when it is used and the Environmental Health Officer advised that from her involvement in investigating odour from establishments such as animal by-product premises the neutralising spray system does not eliminate odour. It therefore seems that rather than mitigating the problem of unpleasant smell the use of the de-odorising unit could be exacerbating it.
16. The Environment Agency recommended that the tank was covered by either a roof or floating cover to mitigate the potential odour issues in future. No such cover has been installed but the Appellant suggests that a planning condition could be imposed requiring a cover to be installed. The Appellant has submitted information about two covers, one is a system of clay aggregate that floats on the surface called 'Aerocover' and the other is a durable cover. With regard to the former, the information comes in the form of reports from the manufacturer and an article from 'Pig World' entitled 'Slurry Management' which concludes with the words 'He wouldn't categorically say there is no odour at all, but it is negligible and is currently keeping the various authorities happy' and the latter details are promotional material from the manufacturer and provides no information about performance.
17. The Appellant maintains that this is the type of condition that is frequently imposed and it would be for the Council to determine on the basis of the details

⁶ The Appellant's agent's letter to the Inspectorate dated 18 March 2015 and enclosed email and other correspondence

⁷ Paragraph 29

⁸ Annex E to PPS10

supplied which type of cover would be appropriate. I consider that this approach may be the normal one when the development is a proposal only when all the merits can be taken into account, but this appeal is concerned with a development that has taken place and from which odour is known to emanate. In the absence of any expert, independent evidence I am unable to reach any conclusion whether a cover would provide a solution and I therefore consider that the imposition of a planning condition requiring a cover would not overcome the unacceptability of the tank.

18. In correspondence with the Council, the Appellant advised that wash water has to be taken away from the abattoir before 06.00⁹ and that tanker trips to the tank are not constant but would be unlikely to exceed five or six per week and that when the tank is full, tankers carry on past the site to dispose of the wash water elsewhere¹⁰. Local residents, however, take a different view and say that there are far more than five or six tanker journeys per week and that tankers registered to industrial waste companies have also visited the site. Local residents also say that the tankers visiting the appeal site cause noise, disturbance, dust and have an adverse impact on highway safety.
19. A number of different farming activities take place on Little Warley Hall Farm and elsewhere in the vicinity all of which generate traffic, noise and disturbance of some type or another at different times of the day. However, for similar reasons as before, the residents live in the hamlet and they are aware of what is going on and I again note that complaints were not made prior to the construction of the tank about farm vehicles in general. But, in the absence of any detailed traffic or other reports I give this matter little weight.
20. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development¹¹ which for decision takers means approving development proposals that accord with the development plan without delay. Although the construction of the storage tank may comply with some development plan policies such as supporting the re-use and recycling of wash water which in turn is beneficial to the Appellant's abattoir and farming businesses, these do not outweigh the significant harm that results to nearby residential occupiers.
21. I therefore conclude that the storage tank is not appropriately located and that it has a harmful effect on the living conditions of local residents and that it is contrary to Saved Policies RLP 36 and RLP62 in the Local Plan and Policies W3A and W10E in the Waste Plan.

Second issue: Information

22. At the time the application was made, the Appellant advised that he was willing to install a cover on the tank should the Council deem it necessary¹². In its response to the planning application the Environment Agency concluded that 'the current odour control measures, the de-odorising ring, are inadequate'¹³ and recommended that a condition be imposed requiring the submission of a design for the capping of the tank. I have considered above the question of the imposition of a planning condition in respect of the cover and I am of the

⁹ Email from the Appellant's agent to the Council dated 13 February 2014

¹⁰ Email from the Appellant's agent to the Council dated 28 January 2014

¹¹ Paragraph 14

¹² Planning and Design and Access Statement dated 9 December 2013

¹³ Letter dated 10 January 2014 included with the Questionnaire

opinion that, in the absence of expert and independent information I am unable to reach any conclusion whether a cover would provide a solution at this stage. The circumstances may have been different if the application had not been retrospective.

23. Also at the time of the application the Environment Agency raised no concerns about the design or use of the tank, however, the Agency has since stated that they believe that the storage of the wash water 'is no longer temporary storage'¹⁴. I cannot speculate whether this possible change of status would have led to a different response at the time of the planning application and I am not aware of any change in the Environment Agency's stance. No concerns were raised by the Environment Agency about what could happen if the tank failed and in this respect I note that the wash water poses no risk to human health. The question of possible flooding has not been addressed so far as I am aware by the Environment Agency.
24. I consider that more information prior to the construction of the tank would have been appropriate. However, the tank has been constructed and although concerns have been raised by the Council and the local residents, taking the Environment Agency's position into account it seems to me that on balance sufficient information has now been provided about the development.

Other Matters

25. The Appellant has provided a large amount of technical information about such matters as the chemical content of the wash water and the various agricultural and other processes with which he is involved. I have taken these matters into account insofar as they are relevant to these appeals. In reaching my conclusions I have taken into account that the land spreading of wash water will not cease and that, given the Appellant's business interests, it is likely that tanker trips through the hamlet of some scale or another will continue.
26. Many representations have been made that the tank should have been located in a different place. In this appeal I am solely concerned with the tank as built and I have not taken into account any submissions relating to a possible different location and any consequent implications. Nor have I been concerned in this appeal with matters such as the importation of waste and whether the wash water is industrial waste or not.

Conclusions

27. Although I have found that there is sufficient information about the wash water tank, this does not outweigh my conclusion with regard to its inappropriate location and the harmful effect on local residents' living conditions with regard to the odour emanating from it. For the reasons given above, and taking all other matters into account, I conclude that the ground (a) appeal fails, the deemed planning application is refused and the s.78 appeal is dismissed.

The appeal on ground (f)

28. In an appeal on ground (f) the Appellant is saying that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control. In this case the Appellant notes that the Council does not

¹⁴ Letter dated 30 September 2014 from the Environment Agency to the Local MP- enclosed with the Appellant's agent's letter dated 18 March 2015

object to the tank on visual amenity grounds and therefore it is excessive to require the tank to be removed because it could be retained and used for other agricultural related purposes.

29. The purposes of the requirements of a notice are to restore the land to its condition before the breach took place and to remedy any injury to amenity which has been caused by the breach¹⁵.

30. The breach of planning control is the construction of the tank and the associated equipment and the requirements require its removal together with the associated equipment. The retention of the tank would therefore not fulfil the statutory purpose of the requirements to restore the land to its condition before the breach took place. In the circumstances the requirements are not excessive and the ground (f) appeal fails.

Conclusions

Appeal A

31. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeal B

32. For the reasons given above I conclude that the appeal should be dismissed.

Decisions

Appeal A: Appeal Ref: APP/Z1585/C/14/2220003

33. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: Appeal Ref: APP/Z1585/A/14/2220007

34. The appeal is dismissed.

Gloria McFarlane

Inspector

¹⁵ S.173 (4) of the 1990 Act

