*835 R. (on the application of Squire) v Shropshire Council

No Substantial Judicial Treatment

Court
Court of Appeal (Civil Division)

Judgment Date
24 May 2019

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[2019] EWCA Civ 888
[2019] Env. L.R. 36

Court of Appeal (Civil Division)

Sir Terence Etherton MR , King and Lindblom LLJ

24 May 2019

Agricultural buildings; Agricultural waste; Consultation; Environment Agency; Environmental impact assessments; Environmental permits; Material considerations; Odours; Planning permission; Poultry;

H1 *Environmental impact assessment—planning permission—application for intensive poultry rearing unit—spreading poultry manure as waste on land—whether planning committee had assessed on-site and off-site effects of proposed development—role of Environment Agency as consultee on application—whether Agency had power to control impact on residential amenity of odour from waste spreading after grant of planning permission*

H2. The Interested Party (MB) was a farmer in Shropshire. MB applied to the defendant local planning authority (SC) for planning permission to erect four poultry buildings with associated landscaping and infrastructure. The proposed development also involved the storage of poultry manure and the subsequent spreading of the manure on SC's land. The proposed development required an environmental assessment (EIA) under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 . The Claimant (S) was a neighbour of the proposed development and was concerned that the storage and spreading of the manure from the proposed development would result in odour and dust which would detrimentally affect residential amenity in the surrounding area. As part of the planning application process, MB submitted an environmental statement that contained an Odour Impact Assessment and Manure Management Plan. Consultation on the application included a response from the Environment Agency (EA). In considering the application SC was advised by the relevant Planning Officer that the operations at the proposed development would require a permit from the EA and that this permit provided a satisfactory safeguard against unacceptable impacts on residential amenity. Subsequently, SC granted planning permission. S sought to challenge that grant of planning permission arguing that the EIA was flawed because it had focused on the regulation of the development instead of undertaking a proper assessment of the direct and indirect effects. Moreover, S argued that as the storage and spreading of the manure did not require planning permission, the issue of the possible impacts upon residential amenity had not been properly regarded as a material consideration. ***836**

H3. At first instance, S' claim was dismissed because the judge was satisfied that the permit was sufficient to control the management of manure off-site in order to protect the environment. S appealed arguing that first, the judge was wrong to conclude that the environmental permit would "control the management of manure" outside the site; and second, the judge was wrong to conclude that the EIA undertaken for the proposed development—in particular the assessment of the likely effects of odour and dust arising from the storage and spreading of manure—was adequate and lawful.

H4. **Held** , in allowing the appeal:

H5. (1) Although the term "associated wastes" did not explicitly include the disposal of manure on other land once it had been removed from the site, manure clearly fell within that concept and its removal from the site was therefore within the ambit of the activities allowed by the environmental permit. Given the definition of "site" to which the permit related, it seemed clear that the concept of "disposal" embraced the transfer of manure beyond the site boundaries to farmland elsewhere for spreading on the land. The concept of "appropriate measures" to prevent or minimise pollution extended to the arrangements put in place by MB for the removal of the manure and its onward transport. Thus, the provisions of the permit were clear.

H6. (2) The crucial question regarding the advice from the relevant Planning Officer was whether the advice given was significantly deficient or misleading. In advising the committee, the planning officer had misunderstood the scope and effect of the future manure management plan to be put in place by MB. He had failed to acknowledge that such a plan would relate only to the MB's own land, not to any third-party land where the manure might be disposed of; moreover, he had not made it clear that there was no assurance that the plan would control odour and dust pollution.

H7. (3) The EIA was deficient with regard to the environmental impacts of the storage and spreading of manure as an indirect effect of the proposed development. Although the EIA had discussed the proposed arrangements for MB's land, it did not for any other land; nor had it specified the other land on which the manure was going to be spread. Moreover, although it had addressed the problem of odour and dust arising from the use of the buildings, it had not assessed the effects of odour and dust arising from the storage and spreading of manure, either on MB's land or any other land. There was nothing to indicate that the EA had concluded that the proposed storage and spreading of manure on farmland was not a potential source of pollution, with significant effects on the environment, which ought to be addressed in determining the planning application. There was no consideration of whether a gap would exist between the control under the permit and such control as could be exercised through restrictions imposed in the planning process; nor what measures were likely to be applied on third-party land as requirements attached to the planning permission, or how effective they were likely to be in reducing the effects of odour and dust. The manure management plan was not a substitute for the lack of assessment in the EIA.

H8. (4) Accordingly, the unlawfulness of the EIA vitiated the grant of the planning permission. Although the planning officer had not merely adopted the EIA as his own assessment, but had provided the members with the EA's consultation response and the objectors' representations, he had not accurately reflected the EA's position on manure management. ***837**

H9 Cases referred to:

Abraham v Region Wallonne (C-2/07) EU:C:2008:133; [2008] Env. L.R. 32
Atkinson v Secretary of State for Transport [2006] EWHC 995 (Admin); [2007] Env. L.R. 5
Gateshead MBC v Secretary of State for the Environment [1995] Env. L.R. 37; (1996) 71 P. & C.R. 350; [1994] 1 P.L.R. 85
Preston New Road Action Group v Secretary of State for Communities and Local Government [2018] EWCA Civ 9; [2018] Env. L.R. 18
Mansell v Tonbridge and Malling BC [2017] EWCA Civ 1314; [2019] P.T.S.R. 1452; [2018] J.P.L. 176
R. v North Yorkshire CC Ex p. Brown; R. v N. Yorkshire CC Ex p. Cartwright [2000] 1 A.C. 397; [1999] 2 W.L.R. 452; [1999] Env. L.R. 623
R. (on the application of Frack Free Balcombe Residents Association) v West Sussex CC [2014] EWHC 4108 (Admin)
R. (on the application of Morge) v Hampshire CC [2011] UKSC 2; [2011] 1 W.L.R. 268; [2011] Env. L.R. 19
R. (on the application of Blewett) v Derbyshire CC [2003] EWHC 2775 (Admin); [2004] Env. L.R. 29
R. (on the application of Burkett) v Hammersmith and Fulham LBC (No.2) [2003] EWHC 1031 (Admin); [2004] Env. L.R. 3
R. (on the application of Brown) v Secretary of State for Transport [2003] EWHC 819 (Admin); [2004] Env. L.R. 2

Stringer v Minister for Housing and Local Government [1970] 1 W.L.R. 1281; 68 L.G.R. 788; (1971) 22 P. & C.R. 255
Trump International Golf Club Scotland v Scottish Ministers [2015] UKSC 74; [2016] 1 W.L.R. 85; 2016 S.C. (U.K.S.C.) 25

H10 Legislation referred to:

Senior Courts Act 1981 s.31(2A)
Electricity Act 1989 s.36
Environmental Protection Act 1990 s.106
Town and Country Planning Act 1990 s.106
Water Resources Act 1991 s. 1 - 5 , 79 , 80 , 81 , 97
Planning and Compulsory Purchase Act 2004 s.38(6)
Directive 2008/1 on integrated pollution prevention and control 2008/1 (Integrated Pollution Prevention and Control)
Directive 2011/92 on the effects of public and private projects on the environment (Environmental Assessment) arts. 3 , 4 , 5
Environmental Permitting (England and Wales) Regulations 2016 (SI 2016/1154) regs 8(1) , 12 , 13 , 14 , 20 , 22 , 36(1) , 37 , 38(2) (3)

H11 Representation

Ms E. Dehon (instructed by Richard Buxton Environmental and Public Law) appeared on behalf of the Appellant
Mr H. Richards (instructed by Shropshire Council) appeared on behalf of the Respondent
Mr C. Hawley (instructed by Hewitsons LLP) appeared on behalf of the Interested Party ***838**

Judgment

Lindblom LJ:

Introduction

1. Did a local planning authority, when granting planning permission for an intensive poultry-rearing facility, fail to consider as it should the likely effects of odour and dust arising from the disposal of manure? That is the basic question in this appeal. It requires us to consider the reach of an environmental permit issued under reg.13 of the Environmental Permitting (England and Wales) Regulations 2016 ("the 2016 regulations") and the relevance of that permit in a planning decision, and the adequacy of the environmental impact assessment ("EIA") undertaken for the proposed development.

2. The appellant, Ms Nicola Squire, appeals against the order, dated 6 July 2018, of Mr Rhodri Price Lewis QC, sitting as a deputy judge of the High Court, by which he dismissed her claim for judicial review of the planning permission granted on 1 September 2017 by the respondent, Shropshire Council, for the erection of four poultry buildings and associated development at Footbridge Farm, Tasley, near Bridgnorth. The interested party, Mr Matthew Bower, who owns the site, was the applicant for planning permission and intends to erect the buildings and use them for the intensive rearing of poultry. The Environment Agency granted an environmental permit for the facility in April 2017.

3. Ms Squire is a local resident. She, together with others, objected to the proposal. One of her concerns was that the large quantities of manure from the poultry buildings, when stored and spread on agricultural land, would cause unacceptable odour and dust. The facility would be operated on a 48-day cycle, in which 210,000 chicks would be brought into the buildings, reared for 38 days and then removed, leaving 10 days for the buildings to be cleaned and prepared for the next flock. In the course of a year about 1,575,000 broiler chickens would be reared, and some 2,322 tonnes of manure produced. The manure would be disposed of by spreading it on farmland close to residential areas on the west side of Bridgnorth – some of it not owned by Mr Bower. Ms Squire's home is about 300 metres from one of the fields on which manure might be spread.

4. The claim for judicial review was issued on 16 October 2017. It asserted that the grant of planning permission was unlawful in two main respects: first, because the council had failed to consider the likely effects of the development on the environment in accordance with the legislative regime for EIA; and secondly, because it had failed to take into account those effects, and the position of the Environment Agency, as material considerations in the decision on the application. The judge rejected both grounds. I granted permission to appeal on 12 November 2018.

The issues in the appeal

5. The appeal is on two grounds, from which two main issues arise: first, whether the judge was wrong to conclude that the environmental permit would "control the management of manure" outside the site to which the permit related; and secondly, whether he was wrong to conclude that the EIA undertaken for the proposed ***839** development—in particular the assessment of the likely effects of odour and dust arising from the storage and spreading of manure—was adequate and lawful.

The regulatory framework for environmental permits

6. The 2016 regulations implement Directive 2008/1/EC concerning integrated pollution prevention and control ("the IPPC Directive") in England and Wales. Under reg.12 an "environmental permit" is required for the operation of a "regulated facility", which is defined to include an "installation" for the intensive rearing of poultry "… with more than … (i) 40,000 places for poultry" (reg.8(1) and Pt A(1)(a)(i) of s.6.9, of Sch.1). Regulation 13(1)(a) gives the Environment Agency, as "regulator", the power to grant an operator an "environmental permit". The content and form of an environmental permit are prescribed by reg.14 . An environmental permit may be varied or revoked, subject to a right of appeal (regs 20 and 22). The Environment Agency's enforcement powers include the service of an "enforcement notice" (reg.36), and the service of a "suspension notice" (reg.37). An enforcement notice may be served if the Environment Agency "considers that an operator has contravened … an environmental permit condition" (reg.36(1)). It is an offence for a person "to fail to comply with or to contravene an environmental permit condition" (reg.38(2)); or "to fail to comply with the requirements of an enforcement notice or of a … suspension notice …" (reg.38(3)).

The Code of Good Agricultural Practice

7. The Code of Good Agricultural Practice, "Protecting our Water, Soil and Air" ("the COGAP"), produced by the Department for Environment, Food and Rural Affairs in association with the Environment Agency, was published in 2009. Section 3 , "Management Plans", together with other sections, form a statutory code under s.97 of the Water Resources Act 1991 (para.8). The statutory code deals with controlled water and minimizing the pollution of such water on land classified as a Nitrate Vulnerable Zone. It does not deal with odour and dust. The essential purpose of "manure management plans" is to avoid water pollution and nitrate loss. Sub-section 3.2 states that "[in] Nitrate Vulnerable Zones you must comply with the rules that restrict the quantity of livestock manure and organic manures you can apply and times of the year when certain types may not be applied …". The principles of "Good practice" are set out (in paras 137 to 146). In s.5 , "Field work", subs.5.4, "Application of livestock manures and dirty water", says that "[correct] application of manures will reduce your fertiliser costs, improve soil structure, and reduce the risk of causing pollution". The advice that follows includes the use of the farmer's "manure management plan together with a field inspection to identify whether it is safe to spread livestock manures and dirty water – and avoid causing water pollution"; and, "[if] possible, to reduce odour and ammonia loss", the use of a "band spreader or injector to apply slurry", or "otherwise, … broadcast equipment with a low trajectory and large droplets"; and "[on] bare land and stubble, to reduce odour, ammonia loss and run-off risk", the incorporation of slurry "immediately, and at the latest within 6 hours", and of solid manure "as soon as possible, and at the latest within 24 hours". Detailed guidance is then given on "Good practice", including the "Timing of applications". The weather conditions that "cause odours to be diluted quickly" are explained (para.386). Farmers are told to "[avoid] spreading at weekends, bank holidays, or in the evening unless it ***840** is solid manure that has been … treated to reduce odour" (para.387); and to "[avoid] spreading solid manure, slurry or dirty water in fields close to and upwind of houses" (para.391). The specific guidance given on "Application techniques" refers to the reduction of "odour" (paras 397 to 400).

Sector Guidance Note EPR 6.09

8. In January 2010 the Environment Agency produced Sector Guidance Note EPR 6.09, "How to comply with your environmental permit for intensive farming" ("the Sector Guidance Note"). Its "Introduction" says that it is "about preventing pollution"; that it "describes the standards and measures we expect intensive pig and poultry farms to take in order to control the risk of pollution to air, land and water"; that "[farms] regulated under EPR require a bespoke permit to operate", and that "[the] permit will cover all aspects of farm management, from feed delivery to manure management". It points out that the IPPC Directive "requires that the Best Available Techniques (BAT) are used". It goes on to explain that "[modern] permits describe the objectives (or outcomes) that we require … but they do not normally tell you how to achieve them", and that "[each] section of this guidance gives the typical permit condition with which you must comply and then provides guidance on how to comply". It says that "[where] a condition requires you to take appropriate measures to secure a particular objective, we will expect you to use, at least, the measures described in this guidance which are appropriate for meeting the objective".

9. In s.2 , "Operations", under the heading "Slurry spreading and manure management planning – off-site activity", condition 2.3.3 states:

> "2.3.3 The operator shall take appropriate measures in off-site disposal or recovery of solid manure or slurry to prevent, or where this is not practicable to minimise, pollution."

The guidance on this condition says that the operator "should maintain written evidence of the arrangements in place when [he exports] slurry and manure such as … records of the quantities and the date of transfer … to … [a] third party for spreading to land" and "the names and addresses and land acreage available where manures and slurries are exported for spreading to land". It goes on to say that "[where] a 'manure agent' or other third party accepts liability for removing manure or slurry from the installation, [the operator] should provide acceptable confirmation that[,] … as a minimum, the third party will ensure that the manure is spread to land in accordance with [the COGAP] … or … that the spreading will be in accordance with a manure management plan for the receiving land". Under the heading "Spreading of manure and slurry to minimise emissions to air", it emphasizes the need to "take appropriate measures when spreading manure or slurry to land to prevent, or where this is not possible to minimise the emissions to air in implementing [the] manure management plan".

The Environment Agency's guidance on the storage and spreading of poultry manure

10. The Environment Agency has produced two other documents of relevance here. The first, a "Factsheet" entitled "Storage and spreading of poultry manure", published in July 2014, states that "[the] storage and spreading of manure from a ****841*** poultry unit is not regulated by the Environmental Permit for the poultry site (or broiler farm)", that "[the] waste should be spread in accordance with [the COGAP] …", and that "[where] land lies within a Nitrate Vulnerable Zone additional measures will be required". It acknowledges that "[the] use of manure from intensive poultry sites is an established agricultural practice", and that "[there] is legislation which controls the use and storage of this manure". It goes on to point out that "[the COGAP] … states that manure management plans … should be produced to manage the spreading of manure", that these are "designed to reduce the environmental impact of spreading manures", and that they "limit the odour disturbance from poultry manure but do not eradicate them". It says that the Environment Agency "[regulates] any pollution to water from manure storage or spreading" and "also … NVZ compliance"; and that "[odour] or flies from a field heap would be considered a statutory nuisance and would be regulated by the local council".

11. The second document, "Frequently asked questions" on "Broiler farms and environmental permits", was issued in May 2016. In answer to the question "What about odour and noise?" it says that "[the] permit would contain conditions that we enforce, ensuring that odour … from a broiler farm is kept to a minimum". On the question "Do broiler farms spread and store

manure on the fields?" it says that "[where] a broiler farm sends used litter off site, records must be kept showing who has taken the manure and what quantities have been taken"; that "[the] permit requires that each recipient of the manure agrees to spread the manure in accordance with [the COGAP]"; and that "[although] an environmental permit will not regulate the spreading or storing of manure on fields outside of the permitted area, we would expect all manure spreading to be done in accordance with [the COGAP] and also in compliance with the Nitrate Vulnerable Zone regulations".

The regime for EIA

12. Recital (2) to Directive 2011/92/EU "on the assessment of the effects of certain public and private projects on the environment" ("the EIA Directive") refers to the "precautionary principle" and the principle that "[effects] on the environment should be taken into account at the earliest possible stage in all the technical planning and decision-making processes". Article 3 requires an EIA to "… assess in an appropriate manner … the direct and indirect effects of a project on … (a) human beings …". Under art.4(1) the projects listed in Annex I, which include "17. Installations for the intensive rearing of poultry … with more than … (a) [85,000] places for broilers …", are to be made "subject to an assessment …". The information required under art.5 , which is specified in Annex IV, includes "4. A description of the likely significant effects of the proposed project on the environment resulting from … (c) the emission of pollutants, the creation of nuisances and the elimination of waste". The description should cover "the direct effects and any indirect, secondary, … short, …, permanent and temporary … effects of the project" (footnote 1).

13. The EIA Directive was transposed into domestic law by the Town and County Planning (Environmental Impact Assessment) Regulations 2011 ("the EIA regulations"), which were in force at the relevant time. Regulation 2(1) defined an "environmental statement" as a "statement … (a) that includes such of the information referred to in Part 1 of Schedule 4 as is reasonably required to assess ***842** the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but … (b) … at least the information referred to in Part 2 of Schedule 4". Paragraph 4 of Part 1 required "[a] description of the likely significant effects of the development on the environment …". Paragraph 2 of Part 2 referred to "[a] description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects"; and paragraph 3, "[the] data required to identify and assess the main effects which the development is likely to have on the environment". Under reg.3(4) , when granting planning permission for "EIA development", a local planning authority was required to take into account the "environmental information", defined in reg.2(1) as "the environmental statement, including any further information and any other information, any representations made by any body required by these Regulations to be invited to make representations, and any representations duly made by any other person about the environmental effects of the development".

14. In Case C-2/07 *Abraham v Wallonia [2008] Env. L.R. 32* , the European Court of Justice emphasized (in [26] of its judgment) that an EIA "must, in principle, be carried out as soon as it is possible to identify and assess all the effects which the project may have on the environment …". In her opinion in that case Advocate General Kokott said (at [75]) that "the aim of [EIA] is for the decision on a project to be taken with knowledge of its effects on the environment and on the basis of public participation"; that "[investigation] of the environmental effects makes it possible … to prevent the creation of pollution or nuisances where possible, rather than subsequently trying to counteract them"; and that "[the] requirement of public participation implies that the participation can still influence the decision on the project".

15. Domestic case law acknowledges that an environmental statement will not always contain the "full information" about a project, and that the EIA regulations "recognise that an environmental statement may well be deficient, and make provision through the publicity and consultation processes for any deficiencies to be identified so that the resulting 'environmental information' provides the local planning authority with as full a picture as possible" (see the judgment of Sullivan J., as he then was, in *R. (on the application of Blewett) v Derbyshire County Council [2003] EWHC 2775 (Admin)* , at [41], citing the speech of Lord Hoffmann in *R. v North Yorkshire County Council, Ex p. Brown [2000] 1 A.C. 397* , at p.404).

The environmental statement for the proposed development

16. The environmental statement for the proposed development, dated February 2017, was prepared by Ian Pick Associates Ltd., specialist agricultural and rural planning consultants.

17. In chapter 3, "Description of development", in the "Project Description", it explained that "[at] the end of each flock cycle, the buildings are cleaned out and the manure removed … and loaded directly in waiting vehicles, which are sheeted and the manure removed from the site for disposal as a sustainable fertiliser on agricultural land" (para.3.10). Under the heading "Expected Residues and Emissions", it said that "[expected] residues and emissions from the site are limited to" three things, including "[airborne] emissions in the form of odour, ammonia, ***843** nitrogen, and dust" and "[production] of waste in the form of poultry manure and dirty water" (para.3.18).

18. In chapter 8, "Odour Impact Assessment", it referred to the "detailed odour impact assessment" provided by AS Modelling and Data and attached at Appendix 3 (para.8.1). That assessment, in the form of a dispersion modelling study, dealt only with likely odour emissions from the proposed poultry houses, concluding that "[the] results of the modelling indicate that … the 98th percentile hourly mean odour concentration at nearby residences … would be below the Environment Agency's benchmark for moderately offensive odours, a 98th percentile hourly mean of 3.0 ouE/m3 over a one year period" (para.8.4).

19. In chapter 9, "Environmental Management", under the heading "Assessment", it acknowledged (in para.9.2) the requirement for "an IPPC permit … administered by the Environment Agency". It said that "[the] permit must take into account the whole environmental performance of the plant, covering e.g. emissions to air, water and land, generation of waste …", and also this:

> "9.2 … As the proposed poultry unit will be controlled under the IPPC permitting regime, the likelihood of significant impact on the environment from the proposed development is negligible due to the strict regime of control."

On "Odour Management", it said that "[the] development [has] been assessed as part of the IPPC permit application and deemed acceptable subject to odour control conditions", and that "[the] site is subject to the IPPC permit conditions which requires emissions from the activities shall be free from odour at levels likely to cause pollution outside the site" (para.9.4). On "Dust", it said that "[the] results of the DEFRA research project demonstrated that emissions from poultry units in terms of particulate matter reduced to background levels by 100m downwind of … even the highest emitting poultry houses" (para.9.7). On "Manure Disposal", it said (in para.9.11):

> "9.11 The proposed poultry units will operate on a floor litter basis and will generate poultry manure. The manure will be disposed of through use as a sustainable agricultural fertiliser. The [applicant's] manure management plan is attached to this statement as Appendix 4."

The "Summary" in para.9.16 said this:

> "9.16 The operation of the site is subject to the rigorous controls of the Environment Agency's IPPC permitting regime. The site is required to operate to Best Available Techniques and the conditions of the permit require the site to be free from pollution."

20. Appendix 4 to the environmental statement is the "Manure Management Report", dated 17 October 2016, produced by Cymru ADAS Wales. In s.1 , "Introduction", the purpose of the report was said to be "to offer guidance on manure management for the proposed 210,000 bird broiler enterprise …". Its aim was "to identify the land available for safely spreading manures at Footbridge Farm". It indicated "how much broiler litter will need to be exported, such that the Nitrogen applied from the litter falls under the maximum application of 170kg/ha under the NVZ area farmed and the 250kg Nitrogen/ha per annum under [the COGAP]". In s.3 , "Slurry/Manure Application", it referred to Appendix 1, which identified the ***844*** individual fields comprising the "area of spreadable ground" – a total of 178.57 hectares. Under the heading "Farm N loading", it identified a requirement for "a minimum of 138.08 ha of non NVZ land" to receive exported broiler litter. It acknowledged that Mr Bower had "the consent of a neighbouring arable farmer (non NVZ) who would be willing to take the broiler litter". On "Exported & Imported Manure", it said:

> "It is anticipated that broiler litter (estimated at 1,150 tonnes) will be exported onto a neighbouring arable farm which lies outside the NVZ. When exporting (or importing), you should be aware of the following:
>
> > Records of imports and exports will need to be maintained as evidence of compliance with this requirement, and should include as a minimum, the type of organic manure exported, volume, and date of movement and name/address of recipient."

In s.4 , "Storage", it said that "[manure] from the broiler sheds will be covered with polythene sheeting in suitably sited field heaps prior to spreading to land". It acknowledged the importance of adhering to the relevant "recommendations in [the COGAP] when spreading manure" and listed nine of those recommendations. Appendix 2, "Risk Maps for Manure and Slurry Application", stated that "[a] Manure Management Plan has been produced", but that seems to have been a reference to the Manure Management Report itself. This appendix identified "no-spread areas, high risk areas and those areas of the farm that are suitable for applications of manures for most of the year" and "the amount of land available to take the manures produced". In s.5 , "Recommendations & Next Steps", the Manure Management Report said that "[a] minimum of 138.08ha … of land will be required to export an estimated 1,151 tonnes of broiler litter when the enterprise is fully operational", and that Mr Bower "should ensure that [he] can secure the non NVZ land in the locality to export the broiler litter".

21. The "Non Technical Summary", in chapter 15 of the environmental statement, repeated the conclusion that the proposal "includes rigorous environmental controls through the IPPC permit process and requires the site to operate using Best Available Techniques" (paragraph 15.3).

The Environment Agency's response to consultation

22. In a letter to the council dated 17 March 2017 the Environment Agency responded to consultation on the application for planning permission:

> "Environmental Permitting Regulations: The proposed development will accommodate up to 210,000 birds, which is above the threshold (40,000) for regulation of poultry farming under the Environmental Permitting (England and Wales) Regulations (EPR) 2010. The EP controls day to day general management, including operations, maintenance and pollution incidents. In addition, through the determination of the EP, issues such as relevant emissions and monitoring to water, air and land, as well as fugitive emissions, including odour, noise and operation will be addressed.
>
> Based on our current position, we would not make detailed comments on these emissions as part of the current planning application process. It will be the responsibility of the applicant to undertake the relevant risk assessments ***845*** and propose suitable mitigation to inform whether these emissions can be adequately managed. For example, management plans may contain details of appropriate ventilation, abatement equipment etc. Should the site operator fail to meet the conditions of a permit we will take action in-line with our published Enforcement and Sanctions guidance.
>
> A Permit application has been submitted and, whilst not issued yet, there have been no concerns raised by my Permitting colleagues.
>
> For the avoidance of doubt we would not control any issues arising from activities outside of the permit installation boundary. Your Public Protection team may advise you further on these matters.
>
> …
>
> Manure Management (storage/spreading): Under the EPR the applicant will be required to submit a Manure Management Plan, which consists of a risk assessment of the fields on which the manure will be stored and spread, so long as this is done so within the [applicant's] land ownership. It is used to reduce the risk of the manure leaching or washing into groundwater or surface water. The permitted farm would be required to analyse the manure twice a year and the field soil (once every five years) to ensure that the amount of manure which will be applied does not exceed the specific crop requirements i.e. as an operational consideration. Any Plan submitted would be required to accord with the Code of Good Agricultural Policy (COGAP) and the Nitrate Vulnerable Zones (NVZ) Action Programme where applicable.
>
> The manure/litter is classed as a by-product of the poultry farm and is a valuable crop fertiliser on arable fields.
>
> Separate to the above EP consideration, we also regulate the application of organic manures and fertilisers to fields under the Nitrate Pollution Prevention Regulations.
>
> …".

The environmental permit

23. The environmental permit issued to Mr Bower by the Environment Agency on 12 April 2017 is for an "intensive farming poultry installation". The "Introductory note" states, in bold text, that "[this] introductory note does not form a part of the notice". It says that "[at] depletion the litter will be removed from the site and spread on the operator's own land and any surplus will be sold off and recorded". Mr Bower, as "the operator", is permitted to operate "an installation" at Footbridge Farm "to the extent authorised by and subject to the conditions of this permit".

24. Under the heading "Conditions", the environmental permit sets out a series of requirements and restrictions. The conditions relating to "General management", include condition 1.1.1, which states:

> "1.1.1 The operator shall manage and operate the activities:
>
> (a) in accordance with a written management system that identifies and minimises risks of pollution, so far as is reasonably practicable, including those risks arising from operations …
>
> …".

25. Several conditions govern the "Operations". Under the heading "Permitted activities", condition 2.1.1 states that "… [the] only activities authorised by the ***846*** permit are the activities specified in schedule 1 table S1.1 …". The activities described in that table are "[the] rearing of poultry in a facility with a capacity for 210,000 broiler places", limited "[from] receipt of birds, raw materials and fuels onto the site to removal of birds and associated wastes from site"; and the "[operation] of 1 biomass boiler …". Under the heading "The site", condition 2.2.1 says that "… [the] activities shall not extend beyond the site, being the land shown edged in green on the site plan at schedule 7 to this permit" – which comprises only the proposed poultry buildings and hardstanding, adjacent to the existing buildings at Footbridge Farm.

26. Dealing with "Operating techniques", condition 2.3.1 requires the "activities" to be operated using the "techniques and in the manner described in the documentation specified in schedule 1, table S1.2 …". That table refers to a response to a "Schedule 5 Notice dated 23/03/2017 … confirming the farm will be operated in accordance with the new [Best Available Techniques] conclusions". Condition 2.3.5 states:

> "2.3.5 The operator shall take appropriate measures in disposal or recovery of solid manure or slurry to prevent, or where this is not practicable, to minimise pollution."

Schedule 2, "Waste types, raw materials and fuels" refers only to "Fuel for biomass boiler units".

27. As for "Odour", condition 3.3.1 requires that "[emissions] from the activities shall be free from odour at levels likely to cause pollution outside the site … unless the operator has used appropriate measures, including, but not limited to, those specified in any approved odour management plan, to prevent or where that is not practicable to minimise the odour".

The council's decision to grant planning permission

28. On 29 August 2017 the application for planning permission went before the council's South Planning Committee, the members having by then carried out a site visit. The planning officer's report to the committee recommended approval.

29. In section 4.0, "Community Representations", the report recorded the concerns of Tasley Parish Council, including that "… [the] litter from the sheds is going to be placed on land very near to where the new housing for Tasley is proposed …" (para.4.1.1). It also quoted in full the Environment Agency's response to consultation, and noted that the environmental permit had been issued on 12 April 2017 (para.4.1.4).

30. The council's Public Protection Officer had raised "[no] objections". His comments included these (para.4.1.10):

> "4.1.10 …
>
> Reconsultation – 14/7/17 comments: It is my professional opinion that a poultry operation of this size and scale can operate without causing significant impact on the surrounding area. As such I have no objection to the application and have no conditions to recommend with the exception of recommending that poultry numbers are conditioned as these were the basis of input parameters on environmental reports reviewed. ***847**
>
> The site will be regulated under an Environmental Permit issued and regulated by the EA. As a result it is not the place of the planning system to condition aspects that the permitting regime will address which included odour and noise.
>
> Comments 28/6/17: Having reviewed comments from the odour modelling consultant in response to concerns raised in regard to the odour assessment I can confirm that I am in general agreement with the odour consultant and have no concerns regarding odour.
>
> Comments 16/5/17 on detailed objection from Professor Lockerbie [of Stirling University]:
>
> …
>
> Professor Lockerbie correctly states the odour assessment does not take into consideration spreading of manure. This is a common agricultural [practice] taking place in the UK and can occur on the land currently. Although spreading of manure does cause localised odour it is short lived where agricultural best practice e.g. ploughing in asap, takes place. Stockpiled manure produces odour for a time until a crust forms at which point little to no odour is emitted. Again this could occur without the development and is not considered relevant. Should manure be stockpiled inappropriately close to receptors legislation exists to address this. …".

He concluded:

> "… I do not consider any additional odour assessment is necessary to support this application and find the initial assessment submitted to be generally satisfactory.
>
> Having considered the amended noise and odour assessment I do not consider it likely that the development will have a significant adverse impact on existing properties or areas where

> properties may be proposed in future. As a result I have no objections to the proposed development as it is possible to be developed in such a way which will not have a significant impact on nearby land uses. As a result the EA permit is sufficient to control noise and odour.
>
> …".

31. Summarizing the objections of members of the public, the planning officer referred to a long list of concerns expressed on various matters, including those relating to "Odour, noise and dust; health" – among them "[the] presence of odour from manure …" (para.4.2.2).

32. In section 6.0 of the report, "Officer Appraisal", the planning officer referred to the policy in para.122 of the National Planning Policy Framework ("NPPF"), which, he said, "makes clear that planning authorities should focus on whether the development itself is an acceptable use of the land, and the impact of the use, rather than the control of processes or emissions themselves where these are subject to approval under pollution control regimes", and "… should assume that these regimes will operate effectively" (para.6.2.6).

33. In a subsection headed "Impact on water resources" he considered "Manure management" (in para.6.7.5):

> "6.7.5 … The planning application is accompanied by a Manure Management Plan (MMP) …, which identifies the land available at the farm for safely spreading poultry manure and indicates how much would need to be exported. ***848** Officers recognise that poultry manure is an agricultural product and fertiliser, and that spreading to farmland is controlled under the Nitrate Pollution Prevention Regulations regulated by the Environment Agency. … Some of this manure will be spread on farmland at Footbridge Farm. Due to controls over nitrogen loading the MMP states that there would be a need to export some of the manure to other farms. The MMP states that manure would be covered with polythene sheeting in suitably sited field heaps prior to spreading to land. The Environment Agency has confirmed that these matters are controlled under the Manure Management Plan that is required as part of the Environmental Permit. As such it is considered that there is an appropriate mechanism for regulating this element of the overall poultry operation."

34. Under the heading "Residential and local amenity considerations; impact upon tourism", the planning officer referred again to the environmental permit, through which, he said, "issues such as relevant emissions and monitoring to water, air and land, as well as fugitive emissions, including odour, noise and operation will be addressed" (para.6.8.3). When considering "Odour", he acknowledged that "[a] significant level of public concern has been raised regarding the potential odour impacts of the proposal" (para.6.8.7). He went on to refer to the "specific concerns over the methodology and findings of the odour assessment raised by members of the public", including that the "[odour] report is fundamentally flawed as it takes no account of the odour from the manure which would be spread on adjacent fields", and that it "… does not mention dust" (para.6.8.12). He continued (in paras 6.8.13 and 6.8.14):

> "6.8.13 The Public Protection Officer has provided further comments following the receipt of the above concerns. The Officer has confirmed that he concurs with the findings of the report and that a poultry development of the scale and size proposed can operate at this site without causing a significant impact on the surrounding area. In addition further clarification has been provided by the applicant's agent and consultant. Officers consider that the odour report has been based upon relevant Environment Agency guidance. … No concerns have been raised over the methodology of the report by the Agency or the Public Protection team. The proposal should be considered in relation to local and national planning policy and in making a decision it is not considered that weight can be given to guidance relating to broiler facilities in Australia. The proposal does not seek permission for manure spreading. This is an agricultural activity and any permission granted for the broiler operation would not seek to control the location for manure spreading. This matter is controlled by other regulations.
>
> 6.8.14 Officers note that the results of modelling do not suggest that odour from the proposed development would not be detectable beyond the site boundary at certain times. However it is reasonable to conclude that odour impacts would not be significant. There is clearly a significant level of public concern over odour. However the technical advice from the pollution control authorities is that the submitted odour assessment is fit for purpose and that there are no significant issues."

35. On "Dust", the planning officer accepted (in para.6.8.15) that "[dust] can be emitted into the atmosphere through the ventilation systems of the proposed ***849*** buildings". He referred to the "assessment of potential impacts from dust emissions" in the environmental statement, and the conclusion that "dust impacts would be negligible". The Environment Agency, he said, would "only seek a risk assessment for dust where there is a sensitive receptor within 100 metres of the installation". He concluded that "[whilst] there have been public concerns raised over dust emissions and potential health effects from the proposed facility, based upon the advice received from technical consultees it is considered that there is a sufficient separation distance between the site and receptors to ensure that the risk of such adverse effects is not significant".

36. He then said this (in para.6.8.16):

> "6.8.16 An Environmental Permit for the operation has been issued and the Environment Agency has confirmed that, through this, issues such as odour, noise and dust will be addressed. Officers consider that this will provide an effective system for controlling emissions from the facility. …".

37. In his "Conclusion" he said (in para.7.1):

> "7.1 … The concerns raised regarding the potential impacts of the proposal, including in relation to residential amenity issues such as odour, have been given due consideration. Officers consider that the technical assessments submitted as part of the Environmental Statement are generally

> satisfactory. No significant concerns have been raised through consultation with the relevant pollution control bodies to suggest that the proposal is not an acceptable use of land. Officers consider that adverse impacts on residential and local amenity can be satisfactorily safeguarded. In addition the Environmental Permit that has been issued for the operation would provide an additional level of control. …".

38. At the meeting, as the minutes record, the committee heard representations for and against the proposal, including concerns about odour and dust. It resolved to accept the planning officer's recommendation. The planning permission granted on 1 September 2017 was subject to 13 conditions, none of which related to the disposal of manure.

The judgment in the court below

39. It was, we were told, common ground in the court below that odour and dust arising from the off-site storage and spreading of manure were indirect effects of the proposed development, which it was necessary to assess in the EIA, and were also material considerations in the council's decision on the application for planning permission.

40. The judge concluded that the council had assessed the direct and indirect effects of the proposed development before granting planning permission (at [43] of the judgement). He was satisfied, "on consideration of the permit, [the COGAP] referred to in the Agency's response to [the council], and [the Sector Guidance Note] that the permit can control the management of manure off site in order to protect the environment and amenities". The Public Protection Officer's advice, "on the basis of his experience and expertise, that localised odour from manure spreading is short-lived where agricultural best practice takes place and that whilst stockpiled manure produces odour for a time until a crust forms thereafter there is little odour" ***850*** was, said the judge, "an assessment of the likely significant effects of manure management in terms of effects on amenities". The members were "entitled to rely on that assessment together with the other information they had in order to comply with [the council's] duties under the Directive and Regulations". They "had before them [the environmental statement], the consultation responses, the assessment of the PPO on the potential effects of manure management, the correct advice that the permit would provide relevant control and the overall conclusion that officers considered that adverse impacts on residential amenity "can be satisfactorily safeguarded" (at [44]). They had "all the environmental information before them as defined in reg.2(1) , the advice of their officers and the knowledge that the operations, including the manure management, would be under the control of the Environment Agency" (at [45]). The environmental permit enabled the Environment Agency "to control manure management off site so as to control dust and odours". It had said in its consultation response that a manure management plan would be required and would have to accord with the COGAP, which, said the judge, "goes well beyond matters relevant to groundwater and surface water protection, even if that is its sole statutory role, and deals expressly with the application of manure to land and gives practical guidance on odour reduction". The Sector Guidance Note made it clear that any permit "… will require manure management off site to comply with the Code "to prevent or where this is not practicable to minimise pollution" and emissions to air are expressly dealt with" (at [46]).

Did the council misunderstand the environmental permit?

41. The essential question here is whether, as Ms Estelle Dehon argued on behalf of Ms Squire, the council misunderstood the scope of the environmental permit, and, contrary to the judge's view, the permit could not "control the management of manure off site"; or, as was contended by Mr Hugh Richards on behalf of the council and Mr Christian Hawley for Mr Bower, it would be wrong to interpret the permit so narrowly.

42. One must start, therefore, by construing the relevant provisions of the environmental permit, in particular condition 2.3.5, to establish whether and, if so, how it would control the disposal of manure on agricultural land outside the site to which it

relates. This we must do without the assistance of the Environment Agency, which—understandably—has taken no part in these proceedings, either in this court or below.

43. The approach to be adopted in an exercise of this kind is that indicated by the Supreme Court in *Trump International Golf Club Scotland Ltd v The Scottish Ministers [2015] UKSC 74* (see, in particular, the judgment of Lord Hodge, at [32]–[39]; and the judgment of Lord Carnwath, at [52]–[66]). It applies to public documents of various kinds—in *Trump* a consent granted under s.36 of the Electricity Act 1989 , here an environmental permit issued under reg.12 of the 2016 regulations . One must start with the words used in framing the document, reading them objectively and in their full context, without straining their natural and ordinary meaning beyond what the context requires, but with appropriate caution where, as here, a breach of condition may lead in the end to criminal proceedings. Using other documents as aids to construction is permissible if they are incorporated by reference or it is necessary to resolve some ambiguity within the document itself. ***851**

44. Though its interpretation is perhaps not as straightforward as one might wish, I do not think the environmental permit is ambiguous or unduly opaque.

45. The activities permitted under condition 2.1.1 and Table S1.1 in Sch.1 include the "removal of birds and associated wastes from site". They do not explicitly include the disposal of manure on other land once it has been removed from the site, and manure is not referred to as one of the "Waste types" in Schedule 2. In my view, however, manure clearly falls within the concept of "associated wastes". It is obviously a form of waste associated with the intensive rearing of poultry. Its removal from the site is, therefore, within the ambit of the activities referred to in Table S1.1. The stipulation in condition 2.2.1—that "[the] activities shall not extend beyond the site [as defined] …"—does not preclude this understanding of what the "activities" themselves comprise.

46. Condition 2.3.5 is the only requirement in the permit relating specifically to the disposal of manure. It does not provide for the control of any particular kind of emission that might cause pollution. Such control comes through other conditions, including condition 3.3.1, "Odour", which deals with "[emissions] from the activities ", requiring them to be "free from odour at levels likely to cause pollution outside the site …" (my emphasis). Condition 2.3.5 does, however, insist on the operator taking "appropriate measures" in the "disposal or recovery" of "solid manure or slurry"—with the explicit aim "to prevent, or where this is not practicable, to minimise pollution".

47. Given the definition of the "site" to which the permit relates, which extends only to the poultry buildings and the hardstanding around them, it seems clear that the concept of "disposal" embraces the transfer of manure beyond the site boundaries to farmland elsewhere—whether in the ownership of Mr Bower as operator or of others—for spreading on that land. The concept of "pollution" is not defined, but may be taken to include harmful effects on water, soil or air caused by the relevant "disposal". Such effects potentially include the generation of odour and dust.

48. The concept of the operator taking "appropriate measures" to prevent or minimize "pollution" must correspond to that understanding of "pollution". It does not, in my view, enlarge the operator's own responsibility under the permit to managing or overseeing the spreading of manure on another farmer's land. But I think it would extend to the arrangements he puts in place for the removal of manure from the site and its onward transport to the land where it is to be stored and spread, and, where he is undertaking the spreading operation himself, the arrangements he puts in place for that. It would also extend to the keeping of proper records of those arrangements, to aid the Environment Agency in ensuring that the measures taken are "appropriate". In practice, of course, the question of whether "appropriate measures" have been taken will depend on the Environment Agency's own judgment on the steps required and the operator's performance of them.

49. Reading condition 2.3.5 together with conditions 1.1.1(a) and 2.3.1, and Table S1.2 in Schedule 1, one can also infer that the disposal of manure must be undertaken in accordance with "a written management system that identifies and minimises risks of pollution, so far as reasonably practicable …" (condition 1.1.1(a)), and with "Best Available Techniques" (condition 2.3.1 and Table S1.2). A "written management system" could include a manure management plan—though there is no reference to a "manure management plan", either here or elsewhere in the permit. ***852**

50. Thus the effect of condition 2.3.5 is to place the onus on the operator to ensure, as far as he reasonably can, that the disposal of manure outside the boundaries of the permit site is appropriately carried out, so that pollution is prevented. It does not create any direct obligation on third parties. Given the possibility of enforcement or suspension under regs 36 and 37 , and prosecution for an offence under reg.38 , a broader understanding of the condition—that it extended the Environment Agency's regulatory control directly to the acts and omissions of third parties on their own land—would not be correct. The conditions imposed on the permit, including condition 2.3.5, are intended to establish a clear basis for monitoring and controlling the performance of the defined "activities". Breaches of condition by the operator must be capable of being established in an objective way, and, if need be, enforced against.

51. It is not necessary to resort to any extraneous materials to shed light on the meaning of the permit. The relevant provisions make good sense as they are drafted, and in their context.

52. However, the interpretation I favour is also consistent with the introductory note—which refers to Mr Bower's intention to remove manure from the site and spread it on his own land, and that any "surplus" will be "sold off and recorded". The reference there to records being kept of "surplus" manure corresponds to the guidance on model condition 2.3.3 in the Sector Guidance Note, which stresses the importance of the operator keeping "written evidence" of the arrangements he makes when exporting manure and details of the land to which it is taken for spreading, his being able to provide "acceptable confirmation" that "as a minimum" it will be spread "in accordance with [the COGAP]", and also that this will be done "in accordance with a manure management plan for the receiving land". Condition 2.3.5 in the environmental permit is in almost identical terms to model condition 2.3.3. The reference in the Sector Guidance Note to the operator having to be able to confirm that the COGAP has been complied with makes clear the relevance of the principles of good practice set out in that document. Thus the Sector Guidance Note, though it need not be used as an aid to the construction of condition 2.3.5, shows how that condition would be applied by the Environment Agency. The documents published by the Environment Agency in July 2014 and May 2016 are to the same effect. They make it clear that the spreading of manure from a poultry unit is expected to be undertaken in accordance with the COGAP, but that this is not an activity regulated by an environmental permit (see [10] above).

53. This understanding of the environmental permit is also reflected in the Environment Agency's letter of 17 March 2017. The Environment Agency left no doubt that if the operator failed to meet the conditions of the permit, it would act to enforce those conditions. However, it also told the council, emphatically, that it "would not control any issues arising from activities outside of the permit installation boundary". And when it referred specifically to the storage and spreading of manure on farmland, it stressed the need for Mr Bower to prepare a manure management plan for his own land, which would be "used to reduce the risk of the manure leaching or washing into groundwater or surface water", would require from the "permitted farm" a regular analysis of the manure and the field soil to ensure that the amount of manure applied did not exceed the "specific crop requirements", and "would be required to accord with [the COGAP]" as well as with "the Nitrate Vulnerable Zones … Action Programme …". The focus here was on the effect of manure spreading upon groundwater and surface water and the ***853** condition of the soil, which, one should keep in mind, is the principal concern of the statutory code in the COGAP and the Nitrate Vulnerable Zones Action Programme. There is no mention of odour and dust. And there is no mention of third party land.

54. Was the committee's decision flawed by a failure to grasp the scope of the environmental permit itself? I do not think it was.

55. As has been said many times, the court does not approach a planning officer's report to committee in an overly critical spirit, searching for minor mistakes or infelicities. It concerns itself only with errors that go to the lawfulness of the decision the members have made. The report must be read fairly, and as a whole. The crucial question will always be whether the advice given to the committee was deficient or misleading in a significant way (see the summary of the relevant principles in *Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314* , at [42], [62] and [63]).

56. There are two relevant parts of the report put before the committee by the planning officer when it considered Mr Bower's proposal: the Public Protection Officer's comments and conclusions, set out in para.4.1.10, and the planning officer's own assessment, in section 6.0. The Public Protection Officer had acknowledged that "the site" itself would be regulated by the Environment Agency under the environmental permit. His advice that it was "not the place of the planning system to condition aspects that the permitting regime will address which [include] odour and noise" presumably meant that where the environmental permit sufficiently controlled such matters, there was no need for that control to be replicated in planning conditions. His reference to "legislation" that would address the stockpiling of manure "inappropriately close to receptors" does not suggest that he assumed the environmental permit itself would achieve that. He may have had in mind the legislative regime for statutory nuisance under the Environmental Protection Act 1990 – in particular the provisions in Part III, "Statutory Nuisances and Clean Air" (ss.79 to 82), including an authority's powers to issue an abatement notice (under s.80) and to seek injunctive relief (under s.81); and he may have been assuming that this separate regime would operate effectively if the need arose – though this is not clear either from his comments recorded in the report or from the minutes of the committee meeting. However, his conclusion—on the basis of the "amended noise and odour assessment"—that the proposed facility itself would operate without a "significant impact on nearby land uses", and that "[as] a result the EA permit is sufficient to control noise and odour" from the facility, did not, I think, exaggerate the scope of the environmental permit itself.

57. The planning officer's own appraisal was influenced by the Public Protection Officer's comments and seems consistent with them. His reference to para.122 of the NPPF, and in particular the Government's advice that local planning authorities should assume "pollution control regimes" outside the land use planning system "will operate effectively" was appropriate (para.6.2.6). He dealt specifically with "Manure management" (in para.6.7.5). His reference to the "Manure Management Plan", identifying "the land available at the farm for safely spreading poultry manure" and indicating "how much would need to be exported", appears to have been to the "manure management plan" referred to in para.9.11 of the environmental statement—which is the "Manure Management Report" in Appendix 4. His advice that the Environment Agency had "confirmed that these matters are controlled under the Manure Management Plan that is required as part of the Environmental ***854*** Permit" was plainly intended to reflect the comments made in the Environment Agency's letter of 17 March 2017.

58. But this was not, in my view, an accurate reflection of what the Environment Agency had said in its letter. It had not said that Mr Bower would be required to submit a manure management plan under the environmental permit, but "[under] the EPR". More significantly, however, the planning officer did not acknowledge that the Environment Agency had, in its letter, made it quite clear that the future manure management plan it envisaged here would relate only to Mr Bower's own land—which was to reinforce the point it had made earlier in the letter, "[for] the avoidance of doubt", that it "would not control any issues arising from activities outside of the permit installation boundary". Nor did he acknowledge that the Environment Agency had not said the manure management plan would control the effects of odour and dust arising from the storage and spreading of manure on farmland, wherever this was to be done.

59. There can be no complaint about the planning officer's advice (in para.6.8.13) that the assessment presented in the environmental statement, which dealt with likely odour emissions from the poultry houses themselves, had been "based upon relevant Environment Agency guidance". Nor can it be suggested that the Environment Agency's position on dust

emissions from the facility itself was misrepresented (in para **s** 6.8.15 and 6.8.16). The observation (in para.6.8.16) that the Environment Agency had confirmed that "issues such as odour, noise and dust will be addressed" through the environmental permit—which, in the view of the council's officers, would provide an "effective system for controlling emissions from the facility " (my emphasis)—was again a reference to the Environment Agency's letter of 17 March 2017, this time to its first paragraph. This was not a misleading account of the Environment Agency's position on that particular matter. And the advice (in para.7.1) that the permit would provide "an additional level of control" was apt.

60. In my opinion, therefore, it cannot be said with certainty that either the Public Protection Officer in his comments or the planning officer in his own advice betrayed a misunderstanding of the scope of the environmental permit itself. The error made by the planning officer was a different one. It was to misunderstand the scope and effect of the future manure management plan to which the Environment Agency had referred in its letter of 17 March 2017 when responding to consultation on the planning application. The Environment Agency had made it plain in the letter that it would not be involved in policing the storage and spreading of manure that was going to have to be disposed of on unidentified third party land—estimated in the Manure Management Report as amounting to 1,151 tonnes each year. The manure management plan to which it had referred was still to be submitted. It was to relate to Mr Bower's own land, not to any land he did not own. And there was no assurance that it was going to control odour and dust pollution from the storage and spreading of manure either on his or on any other farmer's land. Rather, it was going to be "used to reduce the risk of the manure leaching or washing into groundwater or surface water". Thus the limits of the Environment Agency's intended role in monitoring the storage and spreading of manure from this proposed facility were clear from its letter.

61. It follows, in my view, that this ground of appeal succeeds, to the extent I have indicated. Whether the planning officer's error was fatal to the council's decision goes to the next issue, to which I now turn. ***855**

Was the Eia for the development flawed, and the council's decision therefore unlawful?

62. The question here is whether, as Ms Dehon argued, and contrary to the judge's conclusion, the EIA for the project was deficient in failing to assess the effects of odour and dust caused by the storage and spreading of manure, including on third party land; thus lacked an adequate assessment of the direct and indirect environmental effects of the proposed development; and was therefore unlawful—so that the council's decision to grant planning permission was itself invalid.

63. The environmental statement identified "poultry manure" as one of the forms of waste that would be produced by the facility (para.3.18). It considered the impact of odour and dust arising from the use of the poultry buildings. In its consideration of "Environmental Management" (in chapter 9), it acknowledged the role of the environmental permit in regulating "the whole environmental performance of the plant". It concluded that, because the facility would be controlled under a permit, the "likelihood of significant impact on the environment" was "negligible due to the strict regime of control" (para.9.2). This conclusion was echoed in the "Summary", which referred again to the "rigorous controls" in the "IPPC permitting regime", the requirement for "Best Available Techniques" to be used in the operation of the facility, and the conditions of the permit requiring "the site" to be "free from pollution" (para.9.16).

64. "Manure Disposal" was specifically considered. It was noted that the manure was going to be disposed of as "a sustainable agricultural fertiliser", in accordance with the "manure management plan" in Appendix 4 (para.9.11). The Manure Management Report in that appendix calculated the tonnage that would need to be exported for spreading on a "neighbouring arable farm" and the area of land required, given the restrictions applying in Nitrate Vulnerable Zones. It stressed the need to keep accurate records for the exported manure. It pointed out that the manure was to be covered in suitably sited heaps before being spread. And it acknowledged the importance of adhering to the guidance in the COGAP. It did not, however, identify the third party land on which, it estimated, 1,151 tonnes of manure was going to be spread each year, and any areas

of housing nearby. Nor did it attempt any assessment of the impact of odour and dust arising from that activity on that land, wherever it was.

65. Four conclusions emerge. First, the environmental statement recognized that the facility was inevitably going to produce manure, all of which would be spread as a fertiliser on agricultural land in the local area: some of it on Mr Bower's land, some of it not. It described and discussed the arrangements proposed for Mr Bower's land, but not for any third party's. There is no suggestion that the calculations of tonnage and land areas in the Manure Management Report were inaccurate. But the environmental statement did not specify the third party land on which manure was going to be spread.

66. Secondly, although a separate chapter of the environmental statement was devoted to the assessment of odour likely to emanate from the poultry buildings themselves (chapter 8), and a separate paragraph to dust coming from those buildings (para.9.7), it did not set out any parallel assessment, or indeed any meaningful assessment at all, of the effects of odour and dust from the storage and spreading of manure, either on Mr Bower's land or on any other farmer's. It did not seek to anticipate the content of any future manure management plan, including the fields to which ***856** it would relate, or the arrangements that would be undertaken for the storage and spreading of manure. It did not attempt to predict and assess the polluting effects of those activities either on land owned by Mr Bower, or on other land to which the manure management plan would not relate. The Manure Management Report did not venture to assess the effects of the arrangements to which it referred. In short, there was no relevant assessment.

67. Thirdly, it cannot simply be inferred from the relevant parts of the environmental statement that its authors had concluded that the proposed storage and spreading of manure on farmland was not a potential source of pollution, including odour and dust, with significant effects on the environment, which ought to be addressed in determining the application for planning permission. Those who prepared the environmental statement – and Cymru ADAS Wales, who prepared the Manure Management Report in Appendix 4 – were of course entitled to assume that the Environment Agency would perform its regulatory functions as it should, and as far as they went (see my judgment in *Preston New Road Action Group v Secretary of State for Communities and Local Government [2018] Env. L.R. 18* , at [89]–[93]; the judgment of Glidewell L.J. in *Gateshead Metropolitan Borough Council v Secretary of State for the Environment [1995] Env. L.R. 37* , at p.49; and the judgment of Gilbart J. in *Frack Free Balcombe Residents' Association v West Sussex County Council [2014] EWHC 4108 (Admin)* , at [100]). The control that would be exerted by the Environment Agency through the environmental permit was clearly a factor they had in mind. However, they did not attempt to relate that control to the spreading of manure on land to which the permit and its conditions would not apply. Nor did they consider whether a gap would exist between the control under the permit and such control as could be exercised through restrictions and requirements imposed in the planning process. The Manure Management Report touched upon measures by which harmful effects on the environment might be reduced. But it did not consider what measures were likely to be applied on third party land, in what form such measures might be imposed as requirements attached to the planning permission – whether by conditions or by a planning obligation under s.106 of the Town and Country Planning Act 1990 —or how effective they were likely to be in reducing the effects of odour and dust.

68. Fourthly, the future manure management plan to which the planning officer referred in paragraph 6.7.5 of his report was not a substitute for the assessment lacking in the environmental statement. Not only was it yet to come into existence, but even when it did it was only going to relate to the storage and spreading of manure on Mr Bower's own land, and not to the substantial quantities that were going to have to be disposed of elsewhere. And its limited scope had been indicated by the Environment Agency in its letter of 17 March 2017 (see [60] above).

69. In my view, therefore, the environmental statement was deficient in its lack of a proper assessment of the environmental impacts of the storage and spreading of manure as an indirect effect of the proposed development. In this respect it was not compliant with the requirements of the EIA Directive and the EIA regulations.

70. Turning again to the planning officer's report to committee, one can see that he did not merely adopt the assessment in the environmental statement as if it were his own. He provided the members with the consultation response of the Environment Agency, and the advice of the council's Public Protection Officer, as well as a summary of the representations made by objectors. However, he did **857* not accurately reflect the Environment Agency's position on manure management in its letter of 17 March 2017 (see [56]–[60] above).

71. The Public Protection Officer's opinion was that a facility of the size proposed could "operate without causing significant impact on the surrounding area". He referred to the concern expressed by Professor Lockerbie that the odour impact assessment in the environmental statement did not address the spreading of manure on local farmland. He pointed out that the spreading of manure was a "common agricultural [practice]", which could occur whether or not the proposed development went ahead. He then made a series of general comments: that although the spreading of manure does cause "localised odour", such odour was "short lived" where "agricultural best practice" was followed; that stockpiled manure "produces odour for a time until a crust forms …"; that "this could occur without development" and was "not … relevant"; and that if manure were "stockpiled inappropriately close to receptors", action could be taken under the appropriate legislation – presumably, as I have said, the Environmental Protection Act 1990 . He did not see the need for any additional odour assessment; he thought the assessment provided was "generally satisfactory". And he did not consider it likely that the development would have a "significant adverse impact" on living conditions. The difficulty here, as I see it, is that he was not able to base his own consideration of the effects of odour from the spreading of manure produced by this proposed poultry unit on any coherent assessment in the environmental statement, or in the knowledge of the specific arrangements likely to be put in place or of the likely scale and location of this activity and its proximity to dwellings. He made his comments only at a general level, and not in a conscious attempt to supply the assessment missing in the environmental statement. Those broad and generalized comments did not, in my view, meet the need for an assessment in accordance with the regime for EIA, on the approach indicated in relevant authority such as *Blewett* (see [14] above).

72. The same may be said of the planning officer's own appraisal. He plainly shared the Public Protection Officer's view that a facility of the size proposed could operate on the site "without causing [a] significant impact on the surrounding area". The application did not seek permission for the spreading of manure; this was an agricultural activity; and it was not envisaged that the planning permission would control its location (para.6.8.13). Like the Public Protection Officer, the planning officer concluded that there were "no significant issues" relating to odour, and despite the "significant level of public concern" about this, he endorsed the advice of the "pollution control authorities" that the submitted odour assessment was "fit for purpose" (para.6.8.14). In his opinion the "technical assessments" in the environmental statement were "generally satisfactory", and "residential and local amenity [could] be satisfactorily safeguarded" (para.7.1). Again, however, the advice given to the members, so far as it dealt with odour from the spreading of manure rather than odour from the operation of the facility itself, lacked any foundation in an assessment within the environmental statement. The planning officer did not attempt to make good that lack of assessment by providing one of his own. He was not able to add to the "technical assessments" in the environmental statement an assessment that had not been done at all.

73. The simple point here, therefore, is that neither the Public Protection Officer's comments nor the planning officer's own appraisal—nor indeed the Environment Agency's consultation response—expressly recognized the need for a meaningful assessment, in the EIA for this development, of the likely effects of odour from **858* the disposal of large quantities of poultry manure—some 2,320 tonnes a year on farmland outside the application site, including some 1,150 tonnes on unidentified third party land. Neither acknowledged that such an assessment was required before planning permission could properly be granted for the proposed development. Neither went beyond generalities. And neither made good the lack of assessment in the environmental statement. Ultimately there was nothing within the environmental information for this project that qualified as a proper assessment, in accordance with the EIA regulations, of the effects of odour from the storage and spreading of manure.

74. The planning officer also dealt with "Dust", but only as one of the potential emissions from the poultry buildings, which is how it had been considered in the environmental statement, and he concluded that the effects of dust from that source would

be "negligible" (para.6.8.15). In common with the Public Protection Officer, he said nothing about dust from the storage and spreading of manure. His approach was consistent with that adopted in the environmental statement, where dust from the storage and spreading of manure had not been assessed.

75. Ms Dehon made four submissions on the judge's conclusions. In view of what I have said so far, I can take them quite shortly.

76. Ms Dehon's first point was that the judge wrongly treated as part of the "environmental information", within the definition in reg.2(1) of the EIA regulations , documents that were not before the council when it made its decision. This, I think, is a misunderstanding of what the judge said. He did not find that the COGAP and the Sector Guidance Note were components of the "environmental information". Nor did he allow the council, after the event, to rely on these documents as if they were "environmental information", or as bolstering its decision to grant planning permission.

77. The second point was that it was wrong to regard the manure management plan required in the future—to which the Environment Agency had referred in its consultation response—as "environmental information". Given the need for a timely and adequate assessment of likely significant effects on the environment, enabling worthwhile public participation—as was emphasized, for example, in *Abraham v Wallonia* —Ms Dehon submitted that the manure management plan would have had to be before the council when making its decision if reliance was going to be placed upon it. I see some force in this submission. But in any event, whilst the future manure management plan would be a mechanism to control pollution arising from the spreading of manure on Mr Bower's own land, it was not going to do so for land owned by third parties.

78. Thirdly, Ms Dehon submitted, it was wrong to regard the generalized comments of the Public Protection Officer as "an adequate assessment of the likely significant effects of manure management". As I have said, I think this submission is sound.

79. The fourth and final submission was that the EIA was defective because it omitted an assessment of the effects of dust from the storage and spreading of manure. This submission is secondary to the main argument on the failure to assess the effects of odour, but I think it is also correct.

80. I would therefore allow the appeal on this ground. Despite the submissions of Mr Richards and Mr Hawley in support of the judge's analysis, I differ from it. In my view the EIA for the proposed development was incomplete and unlawful, and this unlawfulness vitiated the council's decision to grant planning permission. ***859**

Section 31(2A) of the Senior Courts Act 1981

81. On 19 February 2018, some four months after these proceedings were issued, Mr Bower entered into a planning obligation under s.106 of the 1990 Act , in the form of a unilateral undertaking. He covenanted not to allow any birds to be housed in the proposed poultry buildings until he had submitted to the council, and it had approved, a "Manure Management Plan" (cl.5.1.1). The "Manure Management Plan" must require the manure to be spread in accordance with "the relevant parts of the DEFRA Guidance" (cl.5.1.2); and must include "restrictions and requirements with regard to the spreading of manure to agricultural land to ensure there are no unacceptable effects on residential and public amenity" (cl.5.1.3). Arrangements must be included in the Manure Management Plan for it to be revised if the council reports to Mr Bower any "verified complaints about odour and dust arising from the spreading of Manure to agricultural land" (cl.5.1.5), and for recording "the names of third parties to whom manure is disposed for spreading" (cl.5.1.6). Manure is to be provided to third parties "for disposal by way of

spreading to agricultural land only where that party agrees in writing with [Mr Bower] to comply with the relevant parts of the Manure Management Plan when spreading the manure …" (cl.5.1.7).

82. In the light of that planning obligation, and relying on s.31(2A) of the Senior Courts Act 1981 , Mr Richards and Mr Hawley invited us to conclude that relief should be refused, because it is "highly likely" that the council's decision "would not have been substantially different" had the obligation been before the committee. I cannot accept that submission. The planning obligation itself illustrates some of the uncertainties persisting at the time of the council's decision. It does not, however, overcome the lack of a proper assessment of the environmental effects of odour and dust in the EIA. There is, in my view, no justification here for withholding an order to quash the planning permission, which will enable the council, when redetermining the application, to ensure that the requirements of the EIA Directive and the EIA regulations are properly complied with.

Conclusion

83. For the reasons I have given, I would allow the appeal.

King LJ

84. I agree.

Sir Terence Etherton MR

85. I also agree. ***860**