

UKELA Moot Problem 2014

IN THE COURT OF APPEAL

PICKLES LIMITED (Appellant) v SMITH AND OTHERS (Respondents)

Pickles Limited applied to the Levels District Council (the local planning authority or “LPA”) for planning permission for the erection of three silos, the construction of a lorry park with ancillary facilities, associated surface water balancing ponds, access and landscaping, on a site close to the River Spin, which is a Site of Special Scientific Interest (“SSSI”) and a Special Area of Conservation (“SAC”). The River was liable to flood and located 100 meters downstream was the village of Tor. The Environment Agency objected to the proposed development.

An environmental impact assessment (“EIA”) screening opinion stated that although the Site was in a sensitive area, the development was not likely to have significant effects on the environment and an EIA was not required, subject to appropriate safeguarding measures.

The LPA’s development control committee (“Committee”) initially decided that neither an EIA was required under the regulations implementing Council Directive 85/337/EEC (“EIA Directive”), nor an Appropriate Assessment (“AA”) under the regulations implementing Council Directive 92/43/EEC (“Habitats Directive”). The Committee accordingly delegated powers to the senior planning officer to approve the development, subject to the imposition of appropriate conditions.

The Committee reconsidered the application in the light of representations from Mr Smith and others, residents of Tor, who were concerned about pollution damage arising from the proposed development. The planning officer’s report for the Committee concluded that neither an EIA, nor an AA, was required; there would not be a likely significant effect on the River and that the requirements of the Directives had been satisfied. The Committee approved the application and granted permission, subject to conditions relating to the monitoring and, when necessary, restoration of water quality in the drainage network. The conditions were imposed on the basis of the precautionary principle.

Mr Smith and others formed an action group and brought a claim for judicial review, seeking to quash the decision to grant planning permission. . The High Court (Administrative Court) has recently handed down a decision in the matter.

HELD (Administrative Court, Green J): The Committee had acted irrationally in adopting seemingly contradictory positions: its decision that no EIA or AA was required conflicted with its decision to impose conditions for the protection of water quality. The first decision suggested that the Committee thought there was no material risk of pollutants entering the river, whereas the second decision suggested that it considered there was such a risk. The Judge exercised her discretion to quash the planning permission.

The Appellant (Pickles Limited) appeals on the grounds that the Judge erroneously conflated the separate legal tests involved in determining (a) whether an EIA is required, (b) whether an AA is required, and/or (c) whether water quality monitoring and restoration conditions were appropriate.