



Appeal Decision

Site visit carried out on 30 June 2015

by Mrs J A Vyse DipTP DipPBM MRTPI

an Inspector appointed by the Secretary of State for the Environment, Food & Rural Affairs

Decision date: 29 July 2015

Appeal Ref: APP/EPR/14/285

Site at Unit 1, Thames Wharf, Dock Road, Silvertown, London E16 1AF

- The appeal is made under Regulation 31(2)(b) of the Environmental Permitting (England and Wales) Regulations 2010.
- The appeal is made by McGee Group Limited against the decision of the Environment Agency to issue an Environmental Permit subject to conditions.
- The permitted activity is waste treatment operations for soil and aggregates.
- The Permit, No EPR/LB3032AR, was issued on 12 March 2014.
- The condition in dispute is No 2.4, which requires an improvement programme. In particular part 2.4.1 states that 'The operator shall complete the improvements specified in Schedule 1 Table S1.3 by the date specified in that Table unless otherwise agreed in writing by the Environment Agency.'

Decision

1. For the reasons that follow, the appeal is dismissed.

Procedural Matters

2. Although the appeal form states that the appeal is against Table S1.3, that table is associated with permit condition 2.4. As set out in the Environment Agency's written statement,¹ the appellant has clarified that the appeal relates to the condition as a whole, as opposed to the date set out in the table for implementation of the particular requirement. I shall deal with the appeal on that basis. That is reflected in the header above.
3. Condition 2.4 reads:

2.4 Improvement Programme

- 2.4.1 *The operator shall complete the improvements specified in Schedule 1 Table S1.3 by the date specified in that Table unless otherwise agreed in writing by the Environment Agency.*
- 2.4.2 *Except in the case of an improvement which consists only of a submission to the Environment Agency, the operator shall notify the Environment Agency within 14 days of completion of each improvement.*

Table S1.3 Improvement Programme Requirements

Reference	Requirement	Date
1	<i>All wastes must be stored and treated within a fully enclosed building with doors over access and egress points.</i>	12/3/2017

¹ The appellant has not submitted any statement to contradict this.

Main Issue

4. The main issue in this case is whether the requirement set out in Table S1.3 is reasonable and necessary in the interest of safeguarding human health and preventing pollution.

Reasons for the Decision

5. Fine particulate pollution has a significant impact on health and is a major public health issue in London. The Environment Agency has identified four priority areas where waste operators are contributing to breaches of a UK air quality objective. Dock Road, which is located close to an Air Quality Management Area for PM₁₀ and NO_x, is currently one of those areas. Operators of sites near those locations, including the appellant, are required to do all that is feasible to minimise particulate emissions.
6. The permitted facility imports, stores and treats up to 209,000 tonnes of waste per annum (including concrete, bricks, stone, soil, tiles and ceramics) producing soil, soil substitutes and aggregates which are then transferred elsewhere. The waste is treated primarily by crushing, grinding and screening, operations which have the potential to produce significant particulate emissions.
7. Since 2007, air quality in the Dock Road area has been closely monitored, the appeal site lying at the centre of the monitoring area. The monitoring results led to the imposition of the bespoke permit condition that is in dispute.
8. In addition to the permit conditions, the temporary planning permission under which the site operates² is subject to a number of conditions. Condition No 29 required the submission of an enclosure plan by 23 September 2014, with all areas where tipping, processing, and storage of dusty material is undertaken to be enclosed within six months of the approval of that plan. In addition, condition No 30 requires that all materials must be processed within the enclosed area to be approved under condition 29, including materials being delivered to or removed from the site and loading/unloading. However, there is no evidence to indicate that the required details have been submitted pursuant to condition No 29, or that such have been approved by the local planning authority. Moreover, no building pursuant to conditions 29 and 30 is on site, with the operations continuing in the open air.
9. It is clear that the Environment Agency, the London Borough Of Newham and the Greater London Authority, have been committed to improving air quality in the Dock Road area, through the enclosure of potentially dusty operations, for quite some while before the appellant was required to apply for an Environmental Permit in April 2013.³ That commitment is demonstrated, in part, by the Agency's ongoing Amenity Action Plan - Air Quality Dock Road, the latest iteration of which is dated August 2014. The Action Plan reports on air quality in the Dock Road area, setting out ongoing and future actions for the active management of waste operations. It identifies several sources of PM₁₀, including the appeal site.

² Application No 14/00551/VAR which itself is renewal of application No 06/01657/LTGDC for temporary change of use and development to provide accommodation for four waste recycling and transfer businesses, including construction of buildings for materials processing, fleet vehicle and equipment maintenance, office and staff welfare, provision of external storage areas for materials and equipment and other related works.

³ Prior to then, the company had been operating under a local authority Part B permit.

10. The application for the Environmental Permit indicated that dust management measures were limited to dampening down stock piles, minimising drop heights, avoiding double handling where possible and suspending operations in particularly windy conditions. There was no mention of enclosing operations. The Environment Agency deemed the use of dampening equipment as a necessary but not sufficient measure, partly on the basis that the collapse of the main sewer serving the area had led to flooding on Dock Road. During dry weather, when the water dries out, it leaves a dusty deposit that is released into the air with each passing vehicle movement.
11. At the time of my visit, repair works to the sewer were being undertaken. However, the evidence of the Environment Agency is that, even with the dust management measures set out above in place, there is still a risk of significant PM₁₀ emissions from the site.
12. I recognise that there is some uncertainty about the future of the appeal site beyond 2017, pending a decision on the Silvertown Thames Crossing project, the land take for which, I understand, includes the appeal site. I am mindful, in this regard, that the erection of the required building would be a considerable expense for the appellant and, it seems, might only be in place for a relatively short period. That calls in to question whether it would be economically viable for the appellant to incur that expense. However, environmental health is a serious matter. The Agency advises, and it is not disputed, that other operations in the Dock Road area have been required to enclose their operations. I also saw that there are blocks of flatted residential accommodation on the far side of the Dockland Light Railway, which is elevated at this point, with further residential blocks under construction. There are also people who work in the locality. With all that in mind, it seems to me that the Environment Agency has shown a great deal of latitude in its requirements, making a number of concessions over the time that the permit was being determined⁴ which ultimately have allowed the appellant to carry out its operations outside any enclosed building until March 2017, notwithstanding the well documented problems with air quality in the area.
13. The uncontested evidence of the Environment Agency shows that, since the granting of the Permit in 2014, dust emissions in the Dock Road area continue to be of concern. Indeed, the local Council reports that it has received more than 40 dust complaints relating to the appeal site since 2007. Whilst the date for compliance with the appealed permit condition is only some 20 months before the planning permission expires, with economic implications for the viability of the business, I am not persuaded that that is sufficient reason not to comply with the condition, given the implications of non-compliance in terms of particulate emissions for public health. I am mindful in this regard that the appellant has known since 2014 (via the planning permission and the permit) that a building was required to enclose the operations.
14. Accordingly, for the reasons set out above I conclude, on balance, that the appeal should not succeed and disputed condition 2.4, on Permit EPR/LB3032AR, dated 12 March 2014, should be retained.

Jennifer A Vyse

INSPECTOR

⁴ The permit application was made in April 2013, with the permit not being issued until March 2014

