

Case Name: *Valero Logistics UK Ltd & Anor v Plymouth City Council* [2021] EWHC 1792 (Admin) (30 June 2021)

Full case: [Click Here](#)

Commentary: This case offers guidance on the approach that should be taken to planning decision-making in the context of sites with serious health and safety risks – another regulatory regime can be relied upon as long as that other regime is capable of regulating the relevant issues.

The Defendant, Plymouth City Council, granted planning permission for a development comprising a change of use from Class C3 residential use with an ancillary private helipad to commercial heliport at Victoria House, Plymouth (the 'Site').

The Claimants operate distilled fuel storage depots, the closest of which is approximately 125 metres from the Site. The depots are "establishments" regulated under the Control of Major Accident Hazards Regulations (SI2015/483) (the 'COMAH sites') because of the dangers to human health and the environment that the products handled and stored there present. Highly flammable fuel is regularly unloaded from a dock approximately 400 metres from the Site and conveyed by over-ground pipes to the COMAH sites, where it is stored in above-ground tanks.

The Claimants challenged Plymouth City Council's decision to grant planning permission on the following inter-related grounds:

- Ground 1 – the Defendant failed to consider a material consideration by not considering the risks posed by the development to the COMAH sites.
- Ground 2 – the Defendant misunderstood the "fallback" position and, by relying on that misunderstanding, it skewed the process by which it made the decision.
- Ground 3 – the Defendant acted irrationally by relying on the existence of other regulatory regimes in deciding to grant permission.
- Ground 4 – the Defendant erred in law by granting permission to an application that conflicted with the development plan when no other material considerations justified such a decision.
- Ground 5 – the decision was irrational.

The Claimants pointed to the "potentially catastrophic consequences of a helicopter crashing onto highly flammable fuel" and said that what unites the grounds is "a decision-making process and decision that abdicates responsibility for the dangers created by the proposed development".

The Claimants submitted that the Defendant failed to engage with the scale of the risk posed to the COMAH sites by commercially operated helicopters flying at low heights over large quantities of highly flammable fuel: "To the extent the Defendant recognised any risk, it sought to off-load it onto the Civil Aviation Authority ('CAA') even though the CAA did/does not have the mandate or the expertise to evaluate the consequences on the ground of crashing aircraft or to take land-based decisions accordingly. These remain the safety responsibilities of others including the Defendant who is said to have been, and remains, in denial about this."

The claim failed on all grounds.

Mrs Justice Thornton found that it was clear that the planning officer and committee members understood that the risks to the COMAH sites from a helicopter crash were a key issue in their consideration of the planning application. In doing so, Mrs Justice Thornton recognised that committee members are “not specialist risk assessors”, reports of planning officers must not be subject to “hypercritical analysis” and the same must apply “with even greater force” to oral discussions at committee meetings.

The Site would not be a licensed aerodrome. However, the Site is in a “congested area” of a city within the meaning of the Rules of the Air Regulations 2015 and the Air Navigation Order 2016, bringing it within the CAA’s regulatory scope under Regulation 5 of the Rules of the Air Regulations 2015/840. This means the CAA has the power to refuse permission for helicopters to take off/land at the proposed heliport and in deciding whether to grant permission for take off/landing at the Site the CAA will consider both surroundings and risk to third parties. On this basis, Mrs Justice Thornton confirmed that the CAA could regulate the Site in due course to ensure the safety of helicopter take offs/landings in relation to the COMAH sites and the Defendant had properly satisfied itself that this was the case.

Mrs Justice Thornton held that the Defendant had taken sufficient account of the risks posed and it was ultimately a matter of planning judgment as to whether the risks and mitigation measures (helicopter technical and organisational requirements, specific COMAH site requirements and regulation by the CAA) were acceptable – the Defendant formed a view that they were acceptable, a view that Mrs Justice Thornton considered the Defendant was entitled to make and it was not open to the Court to “retest the merits of the proposed development”.

For further commentary on this case, in the context of a wider discussion about human safety and the planning system, please see Simon Ricketts’ recent blog post: [Safety & Planning – SIMONICITY](#)

Case summary prepared by Nikita Sellers