Legal Viewpoint: Why health and safety is becoming everybody's business

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In a case from Plymouth, the High Court has considered the approach that planning decision-makers should take when dealing with schemes that pose serious health and safety risks. It concluded that another regulatory regime can be relied upon as long as that other regime is capable of regulating the relevant health and safety issues.

The city council had granted planning permission for change of use of a house from class C3 residential use with an ancillary private helipad to a commercial heliport. The claimants challenged the decision on several interrelated grounds, centred on the council's alleged failure to consider the risks posed by the site's proximity to distilled fuel storage depots that they operate. All the depots are "establishments" regulated under the Control of Major Accident Hazards (COMAH) Regulations 2015 because of the dangers to human health and the environment presented by the products handled and stored in them.

The claimants argued that the council's decision "abdicates responsibility for the dangers created by the proposed development" – namely, the potentially catastrophic consequences of a helicopter crashing onto highly flammable fuel. They maintained that, to the extent that the council did recognise any risk, it had sought to "offload it" onto the Civil Aviation Authority (CAA), even though that body does not have the relevant mandate or expertise to manage it.

The heliport would not be a licensed aerodrome. However, the application site was in a "congested area" of the city, bringing it within the CAA's regulatory scope under regulation 5 of the Rules of the Air Regulations 2015. This meant the CAA had the power to refuse permission for helicopters to take off or land at the proposed heliport. In deciding whether to permit such operations, the CAA will consider the surroundings and the risk to third parties.

In dismissing the claim, Mrs Justice Thornton was satisfied that the council had taken reasonable steps to understand the risks posed by the application site's proximity to the COMAH sites, recognising that committee members are not specialist risk assessors and that the CAA was capable of regulating the proposed development. In her view, it was ultimately a matter of planning judgement as to whether the risks and mitigation measures, in the form of general helicopter technical and organisational requirements, specific COMAH requirements and regulation by the CAA, would be acceptable. Councillors had been entitled to reach the view that these measures were acceptable on the evidence before them, she ruled.

The revised National Planning Policy Framework, published since the court ruling, places no more emphasis on safety than previous versions. It refers to fostering "safe places" within the meaning of "sustainable development" and calls for planning decisions to promote "safe communities" and "public safety". The requirement in paragraph 45 reflects the approach taken by the High Court in this case: "Local planning authorities should consult the appropriate bodies when considering applications for the siting of, or changes to, major hazard sites, installations or pipelines, or for development around them."

On the one hand, there is a considerable onus on planning decision-makers to consider matters outside their traditional remit in assessing safety risks and whether other regulatory regimes are capable of managing risks sufficiently. However, the legal and policy context makes it difficult for local planning authorities to do anything other than assent to advice they receive, placing a lot of power in the hands of public bodies like the CAA, Public Health England and the Environment Agency. Public safety in planning is, therefore, increasingly becoming everybody's business.

Case: *Valero Logistics UK Ltd and Another v Plymouth City Council*

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