

Decision No. C.33/79

/MN170128

IN THE MATTER of the Town and Country
Planning Act 1977

AND

IN THE MATTER of an appeal under section
69 of the Act.

BETWEEN

ROGER JOHN NIXON AND
OTHERS
(Appeal No. 409/78)

Appellants

AND

OXFORD COUNTY COUNCIL

Respondent

AND

RONALD THOMAS JEAL

Applicant

BEFORE THE PLANNING TRIBUNAL

(Mr P.R. Skelton, S.M. Chairman Number Three Division
Sitting Alone Pursuant to Section 135)

HEARING at CHRISTCHURCH on the 11th day of December 1979

COUNSEL: Mr A. Hearn for the Appellants
Mr G.C.P. Beadel for the Applicant

FINAL DECISION

172

By an interim decision dated the 19th day of April 1979,
the Tribunal determined that this appeal be disallowed
and that the respondent's decision granting consent be
confirmed subject to a revision of the conditions to be
attached to that consent.

At page B1267, we said:

"We will delay issuing a final decision until the
matter of the conditions is resolved. If this can
be done by consent between the parties then an appro-
priate memorandum can be lodged with the Registrar.
If that is not possible, we shall sit again to resolve



any matters relating to the conditions which still require our attention. Leave is reserved to any of the parties to apply for a further fixture accordingly."

In August 1979, the applicant applied to the Registrar for a further fixture pursuant to that leave. Although I indicated that a fixture could be made for the Tribunal's sittings in Christchurch in November 1979, this was not done. The applicant was anxious to have the matter resolved. Accordingly, I saw counsel for all parties in my Chambers on Friday the 30th day of November 1979. I was informed that the only matter outstanding related to proposed condition 8 and that, although the other conditions could not be imposed by consent, there was no opposition to the other conditions as proposed by the applicant. After hearing counsel, it appeared to me that the applicant had obtained additional evidence since the hearing of the appeal which indicated that it may not be necessary to have a condition covering all the matters referred to in proposed condition 8. In any event part of that condition involved a matter still in dispute between the applicant and the appellants.

It is open to the Tribunal to review its decision on new and important evidence becoming available or on a change of circumstances - see s.160(1). There was no dispute that this could include the review of an interim decision as it relates to comments made by the Tribunal in the course of that decision, concerning proposed conditions. It was agreed by counsel that the matters raised by the interim decision concerning proposed condition 8 should be reviewed and that matter reheard, in the light of this new evidence. Hence by consent of counsel, and acting pursuant to s.135 of the Act, I ordered accordingly.

Because it was impractical to arrange an early fixture involving at least a quorum of the division of the Tribunal which gave the interim decision, it was again agreed by counsel, pursuant to s.135, that I should determine the matter still in issue relating to proposed condition 8, sitting alone. Accordingly, I gave a fixture for Tuesday the 11th day of December 1979. I record here that counsel for the respondent, Mr Milligan advised me at that time, that he would be unable to attend and that he did not wish to be heard on behalf of the Council.

When the matter came on for hearing before me on the 11th day of December 1979, Mr Beadel, counsel for the applicant produced a set of conditions, numbered 1 to 11 (but excluding no. 8), which he said were not opposed by the respondent.

Counsel for the appellants, Mr Hearn confirmed that this was so and also confirmed that whilst he was not instructed to consent to the imposition of those conditions on behalf of the appellants, he did not wish to make any submissions in opposition to them.

This leaves me with the disputed proposed condition no. 8.

In the decision given by the respondent granting the consent at first instance, condition 8 read as follows:

"That the Industry be restricted to the sawing, stacking, planing and dressing of timber and the manufacture of small timber products within the framework of the existing operation."

In our interim decision at page B1266, we made the following comment concerning condition 8:

"We consider that it should be reworded to make it clear that there is to be no stacking of treated timber on the site. Whilst we appreciate that there was no application before us relating to possible discharges of waste into natural water, nevertheless we consider it proper at this stage to try to ensure that the necessity for such an application is avoided by restricting the use of the land accordingly."

Our comment in the interim decision was based on evidence we had heard in the course of the appeal relating to the appellant's concern about possible pollution of a water race which is used for stock purposes. In giving evidence before me on the 11th day of December, Mr Jeal acknowledged the existence of the water race and that some of the appellants used it.

Having heard further evidence from Mr Jeal and from a principal Forester with N.Z. Forest Service, Mr Clifton, I am satisfied that some restriction should be placed on the applicant's use of the land with regard to the stacking of treated timber. Mr Jeal confirmed what he had said at the original hearing that there was no intention to actually treat the timber at the mill site and that it was treated at Darfield. The treated timber which it is proposed should be stacked in the open at the site includes timber for fence-posts, stakes, batons, and other treated timber for supply to the local building trade. I am also satisfied, on the evidence of Mr Jeal, that it would be unreasonable to prohibit the stacking of treated timber in the open on the site. I did not understand Mr Hearn to quarrel with that proposition and no evidence was called by the appellants to the contrary.

The question remains as to what restriction should be placed on the applicant's use of the land for the stacking of treated timber? Mr Beadel produced two alternative suggestions for a new condition 8. The first alternative read as follows:

"That the Industry be restricted to the sawing, stacking, planing and dressing of timber and the manufacture of small timber products within the framework of the existing operation provided that treated timber shall not be stacked in the open."

The second alternative read as follows:

"That the Industry be restricted to the sawing, stacking, planing and dressing of timber and the manufacture of small timber products within the framework of the existing operation provided that treated timber shall not be stacked in the open within fourteen days after treatment."

For the reasons already given, I do not consider it necessary to give any further consideration to the first alternative. So far as the second alternative is concerned, the issue resolved itself into a question of the time factor. Mr Jeal said that treated timber would not be picked up from Darfield for at least twelve hours after it has been treated, and in some cases, it would be some days thereafter. Mr Clifton said that between ten and twelve hours after the timber has been treated, it was a reasonable proposition to allow it to be stacked in the open. This opinion was based on the fact that the preservatives are quickly fixed in the wood and that the dripping of preservatives from the timber, immediately after it leaves the treatment cylinder, has abated after that period of time. Mr Clifton also told me, however, that the fixing process continues for some days, and although it is rapid, if subjected, for example to rain, the stacked treated timber could discharge, some of the preservative materials over an additional period of some 24 hours or so. I am also satisfied having heard Mr Clifton, and this is no reflection on him, that little thought has been given, from a potential water pollution point of view, to problems associated with the stacking of timber in the open following treatment. However, that matter, raised quite properly by the appellants on this appeal, is recognised by the applicant as being a matter which should be under some control.

On the evidence before me, I think a period of fourteen days is too long. But on the other hand, a period of twelve hours as contended for by Mr Beadel at the hearing,

is too short. The period to be fixed within these parameters must of course be somewhat arbitrary. On the basis of the evidence put before me, it seems to me that a period of seven days would be sufficient. Accordingly, I conclude that there should be in condition 8 a provision relating to the stacking of treated timber and that the condition should be worded in the second alternative advanced by Mr Beadel except that the word "fourteen" should be replaced by the word "seven".

For all the foregoing reasons, the final determination of the Tribunal on this appeal is as follows:

The consent confirmed by the interim decision of the Tribunal dated the 19th day of April 1979 is subject to the following conditions:

1. The mill shall be sited on the land as shown in the application. Three new buildings may be erected, two being additional to those at present on the site, and one to replace the existing shed which is to be demolished. Sawdust bins are not included in the expression "buildings".
2. The erection to the approval of the County, of screening by planting or fencing against the western, eastern and southern boundaries and in those locations where operations are visible from residential areas on the State Highway.
3. The surfacing of the traffic areas within the site with a coarse chip to alleviate dust nuisance.
4. The respondent shall seal Mill Road from a point thirty feet north of the Mill gate to the intersection of State Highway 72.
5. The erection of a sign displaying the firm's name and purpose only, so that neither the sign or structure are obtrusively visible from the residential area.
6. That a fire hydrant be installed on Mill Road at the applicant's expense.
7. That the hours of work are limited to:-
7.30 am to 5.30 pm Monday to Friday
7.30 am to 12.30 pm Saturdays
closed on Sundays and Public Holidays.
8. That the Industry be restricted to the sawing, stacking, planing and dressing of timber and the manufacture of

starting @ 0645

small timber products within the framework of the existing operation provided that treated timber shall not be stacked in the open within seven days after treatment.

9. The noise created by the operation of the Mill shall not raise the background noise level at the nearest boundary to greater than 45 DBA and the L 10 to greater than 55 DBA.
10. That these conditions are in addition to those stipulated under ordinance 9 (1.3) (a) and (b).
11. That on the commencement of the milling operations on the new site, then contemporaneously with that, all present operations will cease at the present site in Coney Street and all buildings and plant associated with that use will be either removed or rendered inoperable for the purposes of the saw milling Company's activities.

DATED at CHRISTCHURCH this 13th day of December 1979.



P.R. Skelton
(P.R. Skelton, SM)
Chairman
Number Three Division