Judicial Communications Office

16 September 2025

COURT DISMISSES APPEAL AGAINST LANDFILL SITE ODOUR

Summary of Judgment

The Court of Appeal[1] today dismissed an appeal brought by Noeleen McAleenon ("the appellant") against a decision to dismiss her judicial review for an alleged failure to investigate a nuisance odour which was emanating from Mullaghglass landfill site in Lisburn, operated by Alpha Resource Management Ltd. In 2019, the appellant was one of several individuals who had made complaints about an odour. She claimed she had experienced physical symptoms and was forced to keep her windows shut. The appellant first made a complaint to the Lisburn and Castlereagh City Council ("LCCC") on 31 December 2019 and in response they referred her to the NI Environment Agency ("NIEA") in the belief that the primary responsibility for monitoring the site rested with the agency.

The appellant's solicitors wrote to the LCCC, NIEA and the Minister of the Department of Agriculture, Environment and Rural Affairs ("DAERA") in January 2021 asking them to exercise their powers to manage the site more effectively and to eliminate odours and fumes affecting the appellant's property. In later correspondence, the appellant's solicitors raised concerns about the hydrogen sulphide ("H_2S") emitted from the site and the consequent health impacts that would have on the appellant and other individuals nearby. Over the next few months, the LCCC, NIEA and DAERA began to take steps to investigate the complaints, including odour monitoring visits. The conclusion was that there was no statutory nuisance in respect of odour production and the escape of gases from the site.

The appellant lodged judicial review proceedings on 21 May 2021. The High Court dismissed the appellant's application on 25 May 2022. This decision was subject to appeal before the Court of Appeal and then the Supreme Court. In the interim, the appellant moved from the area and the site is now closed and has not caused any major concerns of late.

The UKSC remitted the case back to the Court of Appeal with the core issues being:

- Did the LCCC breach its statutory duty to investigate complaints about statutory nuisances pursuant to section 64(b) of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 ("the 2011 Act)?
- Did the NIEA and DAERA breach their statutory duties and/or act unlawfully by failing to identify a level of lifetime exposure to H_2S that posed a risk?
- Did all three respondents breach the appellant's rights under article 8 of the ECHR?

Relevant law

[1] The panel was Keegan LCJ, Treacy LJ and Horner LJ. Keegan LCJ delivered the judgment of the court.

The court set out the statutory obligations on the LCCC, NIEA and DAERA in paras [19] – [37] of the judgment, followed by the human rights obligations under article 8 of the ECHR at paras [38] – [41].

The role of an appellate court, when assessing the lawfulness of a public authority's decision-making is supervisory only. Accordingly, it is for the public authority to determine on the information available to it the facts which are relevant to the existence and exercise of its powers, subject to review by a court according to the usual rationality standard. The key question for the court in this case was whether the respondents had done enough to justify their decision in light of all the circumstances.

Interpretation of the duty on the LCCC under section 64(b) of the 2011 Act

The appellant contended that the High Court judge ("the judge") incorrectly interpreted the LCCC's duty set out in the 2011 Act. She claimed that the judge erred in finding that the LCCC's misdirection stating that the NIEA had primary responsibility for regulating the site was not material; and that he erred in interpreting the LCCC's statutory duty as discretionary.

The court said that in assessing the competing arguments in this case, the evidence filed was key. This evidence, which was unchallenged, illustrated the logical and reasonable investigative steps taken by the LCCC in response to complaints about the Mullaghglass site. It illustrated that the LCCC took steps both alone and in concert with other regulatory bodies such as the NIEA. Moreover, the appellant had not effectively argued what further steps the LCCC should reasonably have taken in absence of misdirection related to the role of the NIEA. The court concluded that it therefore could not be said that the alleged misdirection had any material impact.

The court agreed with the judge's analysis of the LCCC's duty:

> "Put simply, the LCCC had a discretion as to how to discharge its duty. The wording of "reasonably practicable" means that a step shall be taken if it is practicable unless in all the circumstances that would not be reasonable. It does not mean that all possible steps must be taken, only those that are reasonable … This is the approach followed by the judge when he considered the steps the LCCC had taken. Furthermore, we agree that the LCCC's discretionary duty must be viewed in light of the overlap between its regulatory functions under the 2011 Act and those performed by the NIEA under the 2013 Regulations."

The court referred to the evidence on behalf of the LCCC which listed the steps it had taken following receipt of the appellant's complaint, including attending the landfill site, establishing weekly meetings, sending odour diaries to a number of complainants and daily odour monitoring activities. It said that, having considered the statutory obligation imposed on LCCC and the evidence, it was satisfied that the judge had not erred in his assessment of this issue and dismissed the first ground of appeal.

NIEA and DAERA's obligations

The crux of the appellant's contention against the NIEA and DAERA was that these respondents had a duty under the Pollution Prevention and Control (Industrial Emissions) Regulations

(Northern Ireland) 2013 ("the 2013 Regulations") to engage with standards and guidance adopted in England about lifetime exposure to H_2S. NIEA and DAERA maintained that this contention boils down to a claim that there is a legal obligation on the relevant public authorities to produce more specific guidance on the relevant values of H_2S emissions. The court agreed that this was now the primary question at issue in this appeal: "the issue in this case is whether duties to regulate mean that there is a need for a clear understanding as to whether there is an unsafe level of lifetime exposure to H_2S."

The appellant did not suggest that the English guidelines must be adopted. Rather she contended that the NIEA and DAERA have not engaged in a sufficiently diligent manner with the English guidelines, which had reached conclusions about the levels of H_2S that pose a risk. In particular, it was suggested that the respondents have a duty to keep up to date with best practice and technical standards as they develop over time. Moreover, the appellant latched onto the indication by the judge that "no landfill site in the United Kingdom operates with a particular H_2S emission requirement or guidance figure in its permit." She contended that this misses the key point in her argument, which is that the English authorities have adopted a clear guidance level for lifetime exposure to H_2S and were working towards it. She submitted there was nothing equivalent in Northern Ireland and that the judge failed to recognise that other tools were being used in England to ensure H_2S emissions levels were below safe limits. The failure to review UKHSA standards was also a failure to take reasonable steps to acquaint decision makers with relevant information.

The appellant further contended that, following from the above, NIEA and DAERA have not acted consistently and in accordance with the Environment (Northern Ireland) Order 2002 ("the 2002 Order") and the Emissions Directive (2010/75/EU). She submitted that the provisions of both the 2002 Order and the Emissions Directive make it clear that the objective of the legislation is the elimination of pollution. The 2013 Regulations recognise that achieving this objective will require authorities to keep up to date with technical standards that develop with time. Similarly, it was contended that the authorities must consider emission limit values which NIEA and DAERA have failed to do in respect of H_2S emissions. The argument was that there is a need to assess whether there was a harmful lifetime level of exposure to H_2S emissions at the Mullaghglass landfill site. Currently, there is no clear lifetime guideline that NIEA or the PHA are working towards or applying, and neither NIEA nor DAERA have offered adequate evidence to illustrate why they have not adopted appropriate guidelines.

Against this argument, the NIEA and DAERA underlined the fact that there is no evidence that any landfill site in England has an emission limit for H_2S in its permit. In this regard reliance was placed upon a decision of the Court of Appeal in England & Wales of *Richards*[2] which was brought by an asthmatic child who complained that he suffered harm due to emissions emanating from a nearby landfill site. The appellant suggested that the NIEA should be regulating the Mullaghglass landfill site against an emission limit that is not in its permit and is not contained in any enforceable guidance.

The court commented that the guidance issued by the UKHSA and Environmental Agency in England was specific to a particular site and was not intended to apply across the board: "The trial judge was therefore correct to reject the appellant's argument in the court below." It said the NIEA had taken its public advice from the PHA and had acted upon that advice accordingly in

[2] *R (Richards) v Environment Agency* [2021] EWHC 2501 (Admin).

regulating the Mullaghglass landfill site. It said that logically it followed that the appellant's appeal must also be directed against the PHA for not adopting a long-term exposure level - although they are not party to this appeal:

> "In any event, we are cognisant of the fact that the court should be slow to interfere with advice given by an expert public health agency on scientific and medical issues … Furthermore, should the appellant's appeal succeed, the court would have to go further than substituting its view for the view of the NIEA, it would also be usurping the advice of the PHA in Northern Ireland and setting a standard itself. We are also in an area where no legal obligation to publish highly specific guidance on the relevant values of H_2S emissions has been identified."

The court noted that the evidence was of critical relevance in its analysis. Evidence was presented that NIEA's regulation of the site involved monitoring Alpha's compliance with its permit conditions by carrying out regular site inspections and identifying permit breaches and adopting an approved Odour Management Plan which included measures to prevent or minimise odours. It set out NIEA's response to the odour complaints, which mainly required action to be taken by Alpha due to non-compliance with permits, such as reducing the size of the working face to minimise potential fresh waste odour impacts; carrying out on-site ambient methane gas monitoring and inspections; carrying out daily odour assessments; setting up teams to oversee regulation of the site; using a monitor to measure H_2S samples in the Antrim and Newtownards areas to provide context and comparison with the Mullaghglass landfill site; and engaging with PHA, LCCC and BCC through meetings and inspections.

Evidence was also submitted that NIEA had spoken to UKHSA who confirmed that there was no condition in the environmental permit issued to which requires ambient air levels to meet a proposed standard or that there was no H_2S limit imposed on a similar landfill site. Evidence also confirmed that NIEA takes its advice from the PHA NI, which has advised that the UKHSA guidance value in respect of long-term exposure to H_2S is not a guidance value that NIEA should be adopting as the context is completely different to the site in England and Wales. The evidence highlighted considerable interactions between PHA, NIEA and DAERA which the court said was obviously relevant.

The court said that drawing all the evidence together, it clearly demonstrated thorough engagement with the approach adopted by the UKHSA in England and a fulfilment by NIEA of its statutory duties under the 2013 Regulations:

> "This court cannot go further into a specialist area and substitute its own view when specialist agencies including the PHA have addressed the issue. The case law clearly states it is not within the court's powers to direct a public authority to publish specific guidance or prescribe specific details for guidance. However, the appellant's case seems to be focused on whether NIEA/DAERA have breached obligations by failing to keep up to date with best available techniques and standards followed in England and Wales. Suffice to say at this point, as the Court of Appeal stated in *Richards*, it is not for this court to proscribe standards that the authority must accept. In any event, the evidence in this case is comprehensive, assessing the effects of short-term, medium-term, and long-term exposure to hydrogen sulphide in the subject area. Whether or not the PHA can in future be challenged about specific guidelines in relation to lifetime exposure to H_2S remains to be seen and is not something this court has been asked to

> adjudicate upon. In any event we expect that the PHA will continue to monitor the situation across the United Kingdom cognisant of any emerging international standards as regards lifetime exposure to H_2S."

The court rejected this ground of appeal on the basis of the evidence before it.

Article 8 compliance

NIEA and DEARA contended that the appellant must firstly establish ongoing victim status to make a successful complaint under article 8 of the ECHR. The judge was satisfied on the evidence available that the applicant had met the minimum level of severity required to engage her article 8 rights. In making this finding, the judge referred to the European Court of Human Rights ("ECtHR") case of *Fadeyeva v Russia* [2007] 45 EHRR 10 in which the complainant submitted that the state had breached her rights under article 8 of the ECHR by failing to protect her private life and home from severe environmental nuisance arising from the activities of a nearby steel plant.

The appellant contended that the NIEA and DAERA failed to take account of the UKHSA's guidance values for H_2S, failed to assess lifetime exposure risks, and failed to demonstrate how they are aiming to achieve exposure less than that level. She also contended that the extent to which there is a need for an assessment of the levels of lifetime exposure to H_2S that cause harm is a matter of 'general principle', and the court should therefore assess for itself whether article 8 has been violated. In addition, the appellant submitted that article 8 requires there to be publicly available information about how H_2S levels are tested and assessed, as well as the effects of long-term exposure risks. Finally, the appellant contended that the judge failed to address the historic illegality of NIEA and DAERA's conduct, as many of the steps taken by them occurred after issue was raised by the appellant through correspondence and/or commencing litigation.

The court considered the competing arguments submitted by the appellant and on behalf of NIEA and DAERA. It also referred to the issue of where the appellant currently resides to inform whether she has victim status and standing to bring proceedings as it was submitted that the Mullaghglass site closed in November 2022, and if the appellant is no longer a resident there, it cannot be the case that she meets the threshold for lifetime exposure.

While the court found some strength in this argument regarding victim status, it said it was not minded to reject the appellant's claim given that the regulator has not implemented a standard to monitor the risks and effects of long-term exposure. The court proceeded on the basis that article 8 was engaged. Having conducted its own assessment of the Convention arguments, it was not convinced by the appellant's arguments on this appeal point. That was because assuming that the appellant has met the minimum level of severity required to engage her article 8 rights, it was satisfied that the appropriate level of due diligence had been exercised and so then any interference with article 8 rights was justified and a claim for a breach must fail. In adopting this approach, the court was satisfied that it had complied with its obligations under section 6 of the 1998 Act and applied the principles established by the ECtHR:

> "On the basis of the evidence we find that the latitude accorded to public authorities to regulate dangerous activities has not been exceeded. It is not the court's role to substitute its view for that of the public authorities who are specialist in this area. For the sake of completeness, we record our view that the *Verein KlimaSeniorinnen Schweiz* case does not assist the appellant, as it concerned the duty of states to urgently protect

against the global climate change emergency and the importance of setting national goals in accordance with international treaties like the Paris Agreement. It has not been suggested thar there is a global emergency or international treaty in respect of long-term exposure to hydrogen sulphide which places NIEA/DAERA under an analogous obligation."

Conclusion

In conclusion the court recognised the frustration of this appellant and others when unpleasant odours in the urban environment from landfill affects their lives and the lives of their children. However, within the context of judicial review, applying *Faydeava* and *Richards* the appellant cannot maintain a case against the respondents to this claim.

Returning to the questions posed in this appeal the court answered them as follows

(i) The LCCC did not breach its statutory duty to investigate.
(ii) NIEA and DAERA did not breach its statutory duty by failing to identify a level of lifetime exposure to H_2S which posed a risk.
(iii) There has been no breach of the appellant's human rights.

Accordingly, the court affirmed the decision of Humphreys J and dismiss this appeal.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available shortly on the Judiciary NI website (https://www.judiciaryni.uk/).

ENDS

If you have any further enquiries about this or other court related matters please contact:

Alison Houston
Lady Chief Justice's Office
Royal Courts of Justice
Chichester Street
BELFAST
BT1 3JF

E-mail: LCJOffice@judiciaryni.uk

Judicial Communications Office