Case No: HQ07X00890/HQ070396

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 5 September 2007

BEFORE:

MR JUSTICE HODGE

BETWEEN:

(1) CHRISTOPHER TAYLOR
(2) NICHOLAS LILLEY
(3) MARK TANNER
(4) MARTIN EUSTICE
(5) HENRY MESSER-BENNETTS

Claimants

- and -

WILLS BROTHERS LTD

Defendant

MR J HYAM (instructed by Richard Buxton Environmental & Public Law) appeared on behalf of the Claimants

MR D LAMMING (instructed by DMH Stallard) appeared on behalf of the Defendant

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Judgment
(As Approved by the Court)

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1. MR JUSTICE HODGE: Pawton Store dairy unit is a farm in North Cornwall. It currently houses about 960 dairy cows, about 800 of which are milked daily. They produce a great deal of manure which needs to be processed as slurry.

2. From at least 2005, there have been complaints about the smells produced from the farm. The smell is described as being a "signature odour" from Pawton. It appears that the owners of Pawton introduced a new system of slurry management. It includes three large storage lagoons and a system of flood washing slurry through the dairy units rather than scraping the slurry as occurs, I understand, in more conventional dairy farm units. It seems likely that this slurry periodically produces anaerobic substances. These produce very bad smells and it is these smells that the complainants are objecting to.

3. Various attempts have been made over the last two years to persuade the defendant to reduce the smells but apparently without success. So, on 19 March 2007 five neighbours near Pawton Farm (including three farmers who themselves conduct, as I understand it, dairy operations) commenced this litigation. The claimants seek an injunction and damages from Wills Brothers Ltd, the defendant, arising from the defendant's activities which are described as a nuisance caused by the operations at Pawton Store.

4. The case comes before me today because the claimants now want an interim injunction prohibiting the nuisance allegedly caused by Pawton Store Farm. I note that a trial window is set for the New Year.

5. I have to say, having read through the papers, that I have sympathy with the claimants who have clearly had to put up with some pretty unpleasant smells. Further, although I do not decide this, it does seem that matters might have proceeded, in the sense of sorting the smell out, rather more swiftly than they have. It is always a problem when this kind of proceedings have to be started as I imagine they do nothing for goodwill locally.

6. The matter came before Mr Justice McKinnon on 6 June 2007. The claimants were then asking for an interim injunction. Evidence was before the judge, but a compromise was reached. The claimants have instructed an agri-environment expert, Mr Peter Danks. It was agreed that he would visit the defendant's premises for the purpose of assessing the efficacy of the steps taken by the defendant to manage slurry and manure in a way that could avoid nuisance, and to consider the institution of proper methods of odour monitoring together with physical and chemical monitoring of effluents.

7. Mr Danks had previously prepared a report about the flood washing system in March 2007 after visiting Pawton Store Farm. The defendant agreed to a further visit and gave various undertakings as ? about giving information. This was set out without precise clarity, in a witness statement that had been filed. The defendants company agreed to completely empty one of the three lagoons. (?) also agreed to empty the other two lagoons which appear to contain the largest amount of slurry. They have permeable covers which is said to help prevent the odour from escaping. The defendant's company agreed to use the empty lagoon called "lagoon 3" to harvest winter rainfall from the yards and roads. They also completely agreed to flush flood

wash, the unit on a daily basis using around 40,000 gallons of clean water. The defendant also agreed to provide various information to Mr Danks and the whole matter was adjourned generally with permission to come back to the court should there be further problems.

8. After that date the claimants' case is that the "signature odour" continued. It is not said to be continuous in the sense that it is there every day, but it happens regularly. A schedule was produced in evidence setting out a number of dates from 12 June to 16 July when there was a strong smell, said to be called the "Pawton smell". A schedule was also produced from North Cornwall District Council setting out a log of complaints they had received about smells between 23 July and 7 August. Mr Danks's assistant smelt the smell on13 July. One of the claimants', Mr Eustice, is quoted in his solicitor's letter as having smelt the smell on between four and five occasions between the end of July and the beginning of September. I am satisfied that the smell is there or thereabouts and is continuing.

9. The defendant put in nine or ten witness statements, all dated 28 August, from a whole series of local residents. Geographically it is probably right to say that they appear as neighbours at all faces on the clock, if you take Pawton Store as the centre of the clock. Most of them accept there has been a bad smell, certainly in 2005/06. But in the main they they say that in August 2007 the smell has not been happening recently. I quote from a Mr Ireland who says:

> "The odour situation however appears to have much improved and when I do notice a smell now it is much reduced and acceptable. Living in the countryside, I expect to encounter a certain level of bad smells as this is normal in rural areas."

10. The claimants' expert Mr Danks, has produced two reports which I have considered. The defendant has also instructed an expert, GL Designs Ltd led by a Mr Lochhead. Mr Lochhead says that the original flushing system has changed. It has changed to respond to the advice and concerns raised by Mr Danks in his report. It is his view that the system is able to operate properly as it does not need 40,000 gallons of clean water and that the way in which muck is subsequently spread on the land should not cause any particular problems. It is his general view that the current system should be given a chance to "bed in" and be managed, otherwise any changes might create odour as no one will understand how to manage the system. I do not consider the defendant's expert gives, as it were, a clean bill of health. But his report does suggest that the system is just about operating acceptably at the moment.

11. I can appreciate how unpleasant it must be to be subjected to a signature odour of the type complained about. The injunction asked for is a requirement that the defendant:

> "… operates and maintains the slurry system currently in place at Pawton Store in such a way as to avoid further nuisance odours in the locality; and
>
> (b) That the Defendant limits the operations at Pawton Store to such a level that such operations will not place undue strain on the

> slurry management system at Pawton Store (to include, so far as may be necessary to avoid nuisance occurring, reducing the number of cows being milked to the site);"

12. It was put in argument for the first time, I think, that perhaps a reasonable number of cows to be milked at the site is 700 rather than the 800 out of the 960 as are currently living on the Wills Brothers Ltd farm.

13. It is also clear to me that there has been a breakdown of confidence, to say the least, between the claimants and the defendant. The claimants say that nothing happens when complaints are put in to the defendant. Changes only occur under pressure. That is why they have come to court; that is why they went for the interim injunction before Mr Justice McKinnon; that is why they are here today. It is their case that on the balance of convenience the court should grant the injunction sought.

14. The defendant, on the other hand, says, "Not so". ? has cooperated. ? has made changes to the flood washing system; they broadly follow the suggestions of the claimants' expert. The defendant company's own expert somewhat disagrees with the way in which the water is used at the premises but he says it is working reasonably. It is that experts view that the system should be given time to bed down and with a trial period where it is hoped the claimants can be satisfied that the signature odour has been dealt with.

15. I am satisfied having considered the papers with some care and heard the very helpful arguments from both counsel, that there is, in fact, a serious question to be tried. I understand that it is the defendant's case that there is, not, and never has been, any nuisance but it is also clearly the claimants' case that there certainly has. In my judgment, the evidence points towards there being an issue which is, should it happen, be proper to be tried. I have to say in parenthesis that I hope very much that a trial does not happen. This quite important issue ought to be sorted out with goodwill between all the parties. It is not something that, even if it does come to court, is likely to result in anybody being completely satisfied with whatever result comes out of a hearing.

16. I have to make an order which has the least risk of causing injustice. Breaking injunctions can lead to proceedings of contempt. Contempt proceedings are very severe and the penalties can be quite severe. On the other hand, we have a group of claimants who have clearly, over quite a considerable period, suffered from a very unpleasant odour. But the evidence, in my judgment, suggests both that it has not gone away but that it is not there at the level it was before the amendments were made by the defendant to the operating system in the summer of this year.

17. Balancing those issues up, recognising that it can be very unpleasant to experience unpleasant smells, but it is at the same time a very serious matter if a party faces contempt proceedings, it does not seem to me that this is a case where I should order an interim injunction. I am reinforced in my view about that because of the understandable difficulty that, in my judgment, the claimants have had in framing an injunction in a way that means a failure to abide by the order of the court can be clearly established.

18. I do not say that the wording used might not be appropriate should, as a result of this hearing, there continue to be repetition of the signature odour that may need claimants will wish to come back to court. This is the second time they have been to court. Matters have improved, though not as much as they had hoped. If matters do not improve, I anticipate that a judge looking at the situation in, say, two or three months time might take a different view to the one I am taking today. But be that as it may, I am not satisfied that the balance of convenience points towards an injunction way.

19. On the other hand, I do think there should be some kind of order and/or undertaking by the defendant along the lines set out in items (c) and (d) of the draft order, plus the proposals made in the very recent letter from their solicitors, DMH Stallard. That letter is dated 29 August and the items I refer to are at the end and are numbered 5.1 to 5.5.

20. So, in sum, I do not propose to grant an injunction and hope that counsel might be able to put together some wording which, if they want me to, I can approve in form of an order which incorporates the two points I have just made.

21. I am minded to make no order as to costs.