

IN THE HIGH COURT OF JUSTICE

KINGSLAND CUP DIVISION

BETWEEN:

**THE KING (on the application of
OSMIA WILDLIFE TRUST)**

Claimant

v

LUCORUM DISTRICT COUNCIL

Defendant

and

B. EATER PRODUCTS LTD

Interested Party

JUDGMENT ON PERMISSION

Mr Justice Jonellus:

1. I have before me an application for permission to bring judicial review proceedings against a decision of Lucorum District Council to grant planning permission.
2. The chemical thiamethoxam was banned in the UK in 2018 following findings in academic trials that a trace of this toxin can disrupt bees' ability to navigate and reproduce, significantly reducing chance of survival.
3. In 2022, the United Kingdom became a World Apian Convention signatory (referred to as "WACS"), having undertaken to take all reasonable measures to reverse the decline in bee numbers within its territory by 2050. The Rt Honourable Beatrice Wallace MP, the Secretary of State for the Environment, Food and Rural Affairs, issued a statement on 23 July 2022 following ratification of the Convention as follows:

“Protecting and where possible increasing biodiversity is essential to maintaining a healthy ecosystem, upon which we all rely. The significant decline in the populations of bees and other pollinators is something that all those serious about protecting our common home should be concerned about. That is why the Government is proud that the UK is now a WACS, committed

to finding ways to reverse the decline in bee populations in our country. This will require action across government and in local government, so that this concern is taken seriously both in our farming policies but also in decision-making in other areas such as planning and infrastructure development. Further guidance will be issued by my department in the coming months. We will also seek to include preservation of pollinator numbers as an environmental outcome under Part 6 of the Levelling Up and Regeneration Act 2023.”

4. As of today’s date, no further guidance has been issued and Part 6 of the 2023 Act has not been brought into force.
5. In January 2024, however, the Secretary of State approved the emergency authorisation for the use of thiamethoxam as a seed treatment to protect sugar beet crops from yellows virus (“YV”) carried by aphids. The department explained in an info sheet:

“Sugar beet plants infected with YV can be significantly reduced in size and can have a lower sugar content, and higher impurities. This leads to a lower overall yield of sugar beet and a reduced output of sugar resulting in financial losses to growers. In 2020, the last year that no neonicotinoid seed treatments were used, 25% of the national sugar beet crop was lost, which resulted in approximately £67 million of total economic loss across the industry. Accordingly, the minister concluded that emergency authorisation was justified.”

6. On 14 June 2024 an application for planning permission was made by B.Eater Products Ltd (the Interested Party in these proceedings) to Lucorum District Council (the Defendant) for the following development:

“Erection of a building to be used for the manufacture of agrochemicals (use class B2) together with ancillary buildings and associated car parking.”

7. The planning application explained that the site would be used to produce high-grade pesticides and fungicides for use on farms within the UK and abroad, but that the precise pesticides to be produced and their quantities would depend on market demand and factors such as regulation and innovation. It was noted however that it was reasonably likely that the plant would, at least initially, produce some pesticides containing neonicotinoids such as thiamethoxam. The developer explained, however, that, in light

of the restrictions on thiamethoxam's use in the UK, most of the thiamethoxam produced by the plant will be exported.

8. Osmia Wildlife Trust, the Claimant in these proceedings, whose activities are focussed on the area within which the application site is located, objected to the application. Their submission included the following text:

“The Council must carefully consider the potential adverse impact of the products made at this proposed facility on bees. We are very concerned that thiamethoxam will be produced here, despite being banned in this country because of its devastating effects on bees. Notwithstanding this ban, research published last year found harmful neonicotinoids present in more than 10% of English rivers, home to 3,800 invertebrate species. The environmental risks posted by pesticides will range from very high to virtually absent depending on factors such as pesticide use patterns, the toxicity of the pesticide, the conditions of exposure of non-target organisms, and the type of ecosystem exposed. At the moment from the application it is very difficult to understand how the pesticides including thiamethoxam produced at this plant are likely to be used. But what we do know is that even very small amounts of thiamethoxam can be devastating to bees. It would be contrary to the UK's status as a WACS to consent a facility that manufactures such a harmful substance.”

9. Osmia Wildlife Trust submitted the abstract of a paper (which it said was unavailable in full as it was behind a paywall) in which it was asserted that for every 500kg of thiamethoxam-based pesticide used on farmland, there was likely to be a 10% loss in the local invertebrate population.
10. An environmental impact report was submitted by consultants instructed by B. Eater Producted Ltd which assessed the potential environmental impacts arising from the construction of the plant and any emissions produced by that plant. No reference was made in this report to the potential impacts of pesticides, especially neonicotinoids, on invertebrates when the pesticides are ultimately used on farmland.
11. The application was referred to the Council's planning committee for determination. Before the meeting, the Council's professional planning officers wrote a report for the

committee members which recommended that they grant planning permission. It included the following section:

“Officers note that whilst many of the pesticides that would ultimately be produced could cause significant harm to biodiversity both in the UK and abroad, this is not a matter that needs to be taken into account at this stage. This is because it is difficult to measure such effects with any certainty: not only is it impossible to know which pesticides would be produced at the plant but also where and how they might be used.”

12. The planning committee considered the application on 16 August 2024. During the debate on the application, members expressed their concern about the reduction in levels of pollinators generally, but voted to accept the officers’ recommendation. Planning permission was granted on 21 August 2024.
13. The Osmia Wildlife Trust issued judicial review proceedings on 25 September 2024 alleging that the Council’s decision to grant planning permission was unlawful on two grounds:

Ground 1: Applying Finch v Surrey County Council [2024] UKSC 20; [2024] P.T.S.R. 988, the Council erred in failing to assess the impacts of pesticides, and, in particular, neonicotinoids, on biodiversity as part of its environmental impact assessment.

Ground 2: In deciding to grant planning permission, the Council failed to have regard to a material consideration (Derbyshire Dales District Council v Secretary of State [2009] EWHC 1729 (Admin); [2010] 1 P & CR 19 at [17]-[26]) namely the UK’s obligations as a WACS and the Secretary of State’s statement of 23 July 2022.

14. I consider that it is arguable that the Council’s decision was unlawful on both grounds and therefore direct that permission be granted and the claim listed for a full hearing into the merits of their case.