



The Mining and Lands Commissioner  
In the matter of The CONSERVATION AUTHORITIES Act

AND IN THE MATTER OF

An appeal against the refusal to issue  
permission to erect a silo on Municipal  
Lot 72, Ann Street, in the City of  
London in the County of Middlesex.

B E T W E E N :

MOBILE MIX CONCRETE PRODUCTS (1971) LTD.

Appellant

- and -

UPPER THAMES RIVER CONSERVATION AUTHORITY

Respondent

S. Lerner, Q.C., for the appellant.  
R. J. Flinn, Q.C., for the respondent.

The appellant applied to the respondent for permission under O.Reg. 755/73 to erect a silo and other improvements on 72 Ann Street in the City of London. The application was amended by withdrawing the other matters. The respondent refused the permission requested in respect of the silo. The appellant appealed to the Minister of Natural Resources under the provisions of The Conservation Authorities Act. The power and duty of hearing the appeal were assigned to the Mining and Lands Commissioner by O.Reg. 454/79. The appeal was heard in London on October 29, 1979.

The application was, in effect, an amendment or extension of a previous application that was dealt with by this tribunal by its decision dated March 24, 1977. Much of the evidence heard in the present appeal related to matters other than the issue of whether the silo, which has already been erected, should be permitted in the floodplain. While the batching plant dealt with in the earlier hearing

contained a silo or an overhead loading device, for reasons that were not placed before this tribunal, the appellant decided to enlarge the capacity of the device and replaced it with a silo having a capacity of 100 tons.

The plans for the silo were prepared by the manufacturer, Tripp, Vogt, Trottier Limited of Tillsonburg. The silo was constructed of steel. According to the plans it has a diameter of eleven feet and an overall height of thirty feet. The lower six feet are tapered creating a funnel for the loading of vehicles. The silo was supported by steel girders two of which were erected on the existing foundation of the batching plant and two of which were erected on concrete footings that had been poured for the purpose at a location distant approximately 12 feet from the foundation of the batching plant and measured westerly therefrom i.e., closer to the Thames River. The girders stand approximately twenty-five feet high and are braced only above a point ten feet above the foundation in order that cement mix trucks may be driven underneath.

The foundations reach five feet above ground with the result that there is an overall space of thirty vertical feet between the ground and lowest part of the silo. The top of the silo is sixty feet above the ground level. It may be that some of the earth under the silo has been excavated to permit trucks to back under the supporting structure with the result that these distances are greater than mentioned.

M. J. Bacon, a planner with Proctor and Redfern Limited, gave evidence for the appellant but was unable to assure this tribunal that the manufacturer's plans had been prepared with any consideration of flood proofing of the supports. He admitted that there would be a very substantial weight erected on high supports with a comparatively small base. He was unable to provide any evidence of the size or the depth of the footings or the risk of the footings being eroded in the event of a regional storm. Both Bacon and the engineer of the respondent evidenced that there was a risk of large trees and other floating debris being held by the four girders causing constriction in

the event of a regional storm.

There is the further issue of whether the girders, considering that when the silo is full they support a weight in excess of 200,000 pounds, are of sufficient strength and are adequately affixed to prevent movement or collapse from an impact of a heavy floating object such as a large log or automobile, keeping in mind that in a regional flood there would be a depth of water of approximately eight feet at the natural elevation and perhaps more if the natural elevation has been lowered as a result of construction.

Assuming, without finding, that the proposal falls within the principle of the earlier decision, this tribunal was not assured that adequate engineering precautions had been taken in connection with the erection of such a large container which, when filled, would have a weight in excess of 100 tons and which, if toppled from its narrow base, would create a significant constriction of the mid or upper portion of the floodplain.

Counsel for the appellant pointed out that it was not reasonable to expect an applicant to bear the costs of establishing the degree of flooding or the risks of flooding. This point related to evidence given by Bacon of possible change in the criteria of a regional storm. However, the evidence clearly established that the greater part of the site, if not the entire site, was within the 1937 floodline which would equate with the maximum observed floodline used by other conservation authorities in their jurisdiction and it is not necessary in the view of this tribunal for an appellant to establish the regional flood elevations. For the time being the standards adopted in the London area have reference to the known flood that has occurred in the past. The floodline that has been adopted by the respondent has been acknowledged by this tribunal in all cases arising in the London area as something less than the regional flood elevation. Even if there were to be future changes in the criteria of a regional storm it is most unlikely that the criteria would be less than the recorded experience.

However, while in the opinion of this tribunal it is not essential for an appellant to establish the degree of flooding, the

onus of establishing that a proposal, which is obviously within a floodplain, would be adequately floodproofed should rest with the appellant as it is the appellant that seeks to establish an exception to the prohibition contained in the law as made by the regulation. There was no evidence to assist this tribunal in this regard.

IT IS ORDERED that the appeal in this matter be and is hereby dismissed.

IT IS FURTHER ORDERED that no costs shall be payable by either of the parties to this matter.

DATED this 7th day of November, 1979.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.