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Tower Hamlets Council
Planning & Building Control
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Your refs. PA/11/02716
& PA/11/03548

Our ref. 1.2.1.1207

For the attention of Ms E Bailey, Strategic Applications Planner

Date: 16 February 2012

Dear Ms Bailey

Consultation with the Health and Safety Executive under Article 16, the Town and Country Planning (Development Management Procedure) (England) Order 2010

Mixed-use redevelopment of part of the existing Aberfeldy Estate, Poplar, London E14 (Applications ref. PA/11/02716 & PA/11/03548)

1. I refer to the recent exchanges between the Council and HSE regarding the two applications for mixed-use redevelopment of part of the Aberfeldy Estate, Poplar, and the associated recently published reports to your Strategic Development Committee (SDC) for their meeting on 16 February 2012.

2. Mr J Murray, Head of HSE's HID C15 Unit, wrote to Mr O Whalley, the Council's Head of Planning & Building Control, on 10 February proposing a way forward by means of Grampian planning conditions, and included some initial important comments on the SDC reports. Mr Murray also said we would endeavour to provide further comments to assist Council officers and members of the SDC in their consideration of the important public safety aspects of these applications. The further advice annexed to this letter fulfils this commitment, and we would ask that officers reconsider their recommendations in the light of these comments and that at least SDC members are provided with a copy of them before the applications are considered on the 16 February.

3. Please do not hesitate to contact me if you require clarification of these matters.

Yours sincerely



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cc. Mr J Allen, LTGDC Director of Planning
Mr P Minoletti, LTGDC Planning Development Manager

Annex to HSE letter dated 16 February 2012

The Health and Safety Executive (HSE) further advice on the public safety aspects of the proposed mixed-use redevelopment of part of the existing Aberfeldy Estate, Poplar, London E14 (Applications ref. PA/11/02716 & PA/11/03548)

A1. Mr J Murray, Head of HSE's HID CI5 Unit, wrote to Mr O Whalley, the Council's Head of Planning & Building Control, on 10 February and included some initial important comments on the Strategic Development Committee (SDC) reports on these two applications. Mr Murray also said HSE would endeavour to provide further comments to assist Council officers and members of the SDC in their consideration of the important public safety aspects of the applications. The further, but non-exhaustive, advice below, which repeats the initial important comments for completeness, fulfils this commitment.

HSE's land use planning advice

A2. I can confirm that HSE's advice to the Council for both the applications is that there are sufficient public safety grounds for permissions to be refused. As noted in the SDC reports, the Council obtained this formal advice from HSE through the PADHI¹ delivery system. You may wish to note that the status of this advice is not diminished by being delivered in this way.

A3. PADHI is a codification of the advice given by HSE on a wide range of proposed development over more than 30 years and, after use for several years within HSE to provide formal land use planning (LUP) advice, was made directly available to Local Planning Authorities with cross-Government agreement. You may wish to note that the quality of the advice delivered through PADHI was considered in detail at the recent public inquiry into the proposed development of the former Ram Brewery, Wandsworth following which the Secretary of State (SoS) agreed that it gave a satisfactory level of advice on public safety for land use planning purposes.

A4. It is the HSE's advice delivered through PADHI which national planning policy, as set out in Planning Circular 04/2000², directs should not be overridden without the most careful consideration. This formal advice should not be confused with the HSE's framework for deciding whether or not to request 'call-in', on those rare occasions that an LPA resolves to grant permission against our public safety advice. The criteria against which HSE makes such decisions are set intentionally very high indeed to reflect the exceptional nature of this course of action by ourselves - in fact HSE has requested the SoS to call-in applications on only six occasions in more than 35 years.

¹ PADHI - Planning Advice for Developments near Hazardous Installations.

² As recognised in writing by the Secretary of State on a number of occasions including, for example, in his letter dated 1 March 2007 calling-in the planning application for 33- 37 The Oval, Bethnal Green.

A5. However, separately from our framework for requesting call-in, I can inform you that the level of risk to occupants of the proposed developments would be of serious concern. HSE previously conveyed this further advice to the Council in a telephone conversation between myself and Mr Bell, your Strategic Applications Manager, and in Mr Murray's letter to Mr Whalley, your Head of Planning & Building Control. This advice regarding the level of risk was also given to the applicant at a meeting in August 2012.

Proposed Grampian conditions

A6. In view of the serious concern regarding the risk to occupants of the proposed developments, Mr Murray, in his letter your Head of Planning & Building Control, drew the Council's attention to certain publically-available information regarding the future of gasholder stations operated by National Grid Gas, which includes the Poplar Gasholder Station (PGS). This was also discussed with the applicant at our meeting with them last August.

A7. National Grid Gas (NGG) is currently considering the potential for accelerating their decommissioning of gasholder stations in London, including PGS. On the Ofgem website, NGG has published a Business Case for supplying gas over future years which states they initially intend to decommission all their gasholders before April 2013 and then demolish them over the next 13 years (2026).

A8. Therefore, in view of:

a) the applicant's stated timetable in which, even if construction commenced in October 2012, Phase 1 of the Aberfeldy redevelopment (Application ref. PA/11/03548) would not be available for occupation for 5 years (September 2017) and construction of the full development (ref. PA/11/02716) would not be complete until September 2025 at the earliest, and in view of;

b) the Government-agreed framework in which land use controls around major accident hazard sites (MAH), such as PGS, are based on the extant Hazardous Substances Consent for the MAH;

Mr Murray proposed that, should the Council resolve to support the two applications, you do so only on the basis that Grampian conditions are attached to the permissions which would prevent occupation of any part of the development until the Hazardous Substances Consent (HSC) for PGS has been formally revoked by the Council acting as Hazardous Substances Authority.

A9. This type of Grampian condition has been applied successfully elsewhere, including to recent permissions for the former Battersea Power Station site and for Imperial Wharf/Chelsea Creek Fulham, near gasholder stations, and has enabled development to proceed quickly where it might not otherwise have been allowed. Based on previous agreements between developers, local planning authorities and HSE, suitable Grampian conditions for the present cases might be worded along the following lines:

"No part of the development hereby allowed shall be occupied until the hazardous substances consent ref. as continued by hazardous substances consent ref. and ref. PA/01/01202 for the Poplar Gasholder Station, Leven Road, London E14 has been revoked in its entirety in accordance with the Planning (Hazardous Substances) Act 1990 as amended and written confirmation of the revocation has been issued by the Hazardous Substances Authority."

A10. If Grampian conditions, which prevent occupation until the HSC has been formally revoked by the Council, were attached to any permissions granted for the current cases, then I can confirm, as stated by Mr Murray in his letter to the Council's Head of Planning & Building Control, that we would withdraw our formal advice against the applications.

HSE's initial important comments on the SDC reports

A11. Following an initial read of the reports to the SDC meeting on 16 February, Mr Murray provided the following important initial comments.

a) The description of the detail and rationale behind HSE's advice lacks substance and it is disappointing that officers did not seek an explanation of our advice for these cases before preparing these important aspects of the reports. I understand, however, that your Strategic Applications Manager was informed a few weeks ago, during a telephone conversation with HSE (Mr Williams), that the level of risk to people at the development was of serious concern.

b) The applicant's safety consultant has applied the Case Societal Risk (SRI) methodology in a way that is misleading and incompatible with HSE's Comparison Values. The consultant's reports do not provide a sound basis for informed decision-making by the Council. Furthermore, I can confirm that HSE has not accepted an occupancy rate of only 2 people/unit for the development: in fact our assessment so far indicates that a development-specific rate of over 3 people/unit could be appropriate for Phase 1 on a Cautious Best Estimate³ basis.

c) It is our understanding that HSE's framework for considering whether to request 'call-in', on those rare occasions that a local planning authority wishes to grant permission against our advice, cannot be a material planning consideration because it only applies after an authority has resolved to grant through committee or under delegated powers. This matter has been raised with Tower Hamlets' planning officers in the past and HSE had understood the Council accepted this position.

d) It is misleading to refer to a notification to HSE that an authority has resolved to grant permission against our advice as "formal consultation". Formal consultation

³ Cautious Best Estimate (CBE) - this is a recognised approach to predicting the risk and consequences of major accidents which accepts some over-estimation when justification of assumptions and methods is difficult. CBE is an accepted approach within the EU for allowing for uncertainties in LUP risk assessment, and was described by the Planning Inspector to the Oval Cricket Ground public inquiry as the "requisite" basis for providing LUP advice around major accident hazards, such as gasholders.

with HSE, as required by law, should have already occurred through the PADHI system. In the present cases, it is our land use planning advice that there are sufficient public safety grounds for permission to be refused, and it is these formal representations that the Council is required not to override without the most careful consideration. Furthermore, I must repeat that, based on our work so far, the level of risk to people at the development would be of serious concern.

A12. To expand on point (c) above, we note that Council officers in the reports specifically direct SDC members to consider HSE's criteria for deciding whether to request 'call-in' (as set out in the Executive's "*Criteria document for Land Use Planning cases of serious public safety concern*") when weighing the public safety risks against the benefits of the schemes. As previously stated, HSE has set these criteria intentionally very high indeed to reflect the exceptional nature of this course of action by the Executive - in fact HSE has requested the SoS to call-in applications on only six occasions in more than 35 years. I must emphasise that it is HSE's formal representations against the two applications, as delivered through PADHI, which the Council is legally required to take into account, and which you are directed by national planning policy (as set out in Circular 04/2000) not to override without the most careful consideration, and not the Council officers' interpretation of HSE's call-in criteria.

A13. To assist the Council in its consideration of the public safety risks to occupants of the developments. You may wish to note that, depending on the exact type and nature of the development involved, HSE advises against on public safety grounds certain proposed development with an SRI value exceeding 2,500 (significant risk), but advises against almost all proposed development with an SRI value exceeding 35,000 (substantial risk).

Relevant planning policy on major accident hazards

A14. In their reports, Council officers draw attention to the "*significant constraint to development*" the Poplar Gasholder Station (PGS) imposes on the proposed applications. They also draw attention to relevant planning policy including the Mayor of London's London Plan Policy 5.22 and the Council's UDP Save Policies DEV53 and DEV54, Adopted Interim Planning Guidance DEV23 and draft Policy DM30 of the Managing Development DPD (2012) which officers state, "*notes how development will not be supported if it involves new development in close proximity to hazardous installations where it would be a significant threat to health and the environment.*" It is HSE's understanding that Policy CP3, of the Council's Adopted Interim Planning Guidance, which states:

"The Council will proactively work to protect and enhance the quality of the environment, ensure the prudent use of natural resources, and contribute to tackling climate change. Measures will include, but not be limited to, ensuring all development, over its lifetime: ...

e) prevents people and the environment from being at risk from hazardous substances. "

also applies to these applications, and we would draw your attention specifically to the Council Policy DEV23 which states:

"The Council will resist proposals for new development, redevelopment or an intensification of an existing use which involves the storage or use of notifiable quantities of hazardous substances or development in close proximity to such uses, where it would cause a significant hazard to health, and that risk cannot be mitigated to the satisfaction of the Health and Safety Executive."

A15. Planning controls were first introduced around major accident hazards (MAH) in the 1970s, and related national and local planning policies originate from the recommendations of the Government's Advisory Committee on Major Hazards (ACMH). The scope of these policies was later broadened to deliver the requirements of EU Directive 96/82/EC as amended by Directive 2003/105/EC (the Seveso II Directive). The Seveso II Directive has the objectives of preventing major accidents and, importantly for LUP purposes, limiting the consequences of any that may occur, with a view to ensuring a high level of protection for people and the environment. Specifically, Article 12 of the Directive requires these objectives to be pursued by Member States (in England this responsibility falls to local planning authorities) through the control, in the vicinity of a MAH such as the Poplar Gasholder Station, of certain development including:

"new developments such as transport links, locations frequented by the public and residential areas in the vicinity of existing establishments, where the developments are such as to increase the risk or consequences of a major accident."

A16. You may wish to note that it appears to be common ground between parties that the two applications, if they were to proceed, would increase both the risk and consequences of a major accident at the gasholder station.

A17. Article 12 also requires those formulating planning and other related policies to:

"ensure that their land use and/or other relevant policies and the procedures for implementing those policies take account of the need, in the long term, to maintain appropriate distances between establishments covered by this Directive and residential areas, buildings and areas of public use, major transport routes as far as possible, recreational areas and areas of particular natural sensitivity or interest, so as not to increase the risks to people."

A18. As previously mentioned the Secretary of State has recognised Planning Circular 04/2000 as national planning policy for the control of MAHs and proposed development in their vicinity. The Government has tasked HSE to provide the necessary independent and impartial land use planning (LUP) advice on public safety to enable Local Planning Authorities (LPAs) to deliver the controls recommended by ACMH and required by the Seveso II Directive. Also as previously mentioned, the Circular specifically direct that LPAs should not override HSE's LUP advice on public safety without the most careful consideration, and you

may wish to note that, separately, the Courts⁴ have decided that on technical matters, LPAs, whilst not bound to follow the advice from statutory bodies such as HSE, an authority should nevertheless give "*great weight*" to a statutory body's advice when determining a planning application.

Third-party assessment of public safety

A19. In their reports Council officers appear to rely significantly on the third-party assessments of public safety provided by Renaissance Risk (RR). In turn RR state that they have, "*relied on the accuracy of the Atkins work in undertaking this assessment.*" You may wish to note that Atkins gasholder assessments were considered in technical detail at both the public inquiries into the proposed development of the Oval Cricket Ground (CG) and the former Ram Brewery, Wandsworth. In both instances, the Secretary of State agreed with the Planning Inspectors, that the Atkins assessments should be treated "*with extreme caution*". Furthermore Atkins has now provided clarification of their more recent gasholder assessments, prompted by comments by RR, which included the following statement (twice):

"It should be noted that the current view of Atkins is that Dr Deaves [the supervisor of the Atkins gasholder assessments, including for the Aberfeldy proposals] has provided a graphical representation of how [the HSE's LUP consultation] zones could be adjusted based on applying the uncertainties associated with ignition frequencies. However, it should be recognised that the current zones set by HSE are based on a Cautious Best Estimate approach; and that the Oval and Ram Brewery Public enquiries did not conclude that HSE zones [and therefore the Executive's LUP advice based upon them] should be revised."

It is HSE's understanding that RR are aware of the clarification from Atkins.

A20. You may wish to note that following detailed consideration of HSE's LUP advice against the Oval CG and Ram Brewery proposals, the Secretary of State agreed with the Planning Inspectors that our advice against the proposals had been justified in both cases. Indeed, in two other reports prepared by RR concerning proposed development in the vicinity of gasholders, one dated as late as 9 January 2012, you may also wish to note that RR have included a warning that, "*There is little doubt that if this planning application were to go to an Inquiry [presumably appeal or call-in], the Planning Inspector and the Secretary of State (SoS) would again be likely to agree with HSE's interpretation and application of PADHI.*" This appears to confirm that, in RR's opinion, a further independent review of HSE's LUP advice around gasholders would again find it to be justified. It is unclear why RR has not included a similar warning in their assessment reports for the two Aberfeldy applications.

A21. As mentioned earlier, I must emphasise that RR has applied the HSE's Case Societal Risk (SRI) methodology in a way that is misleading and incompatible with our Comparison Values, and that their reports do not provide a sound basis for

⁴ Regina v Tandridge District council Ex parte Al Fayed, The Times Law Report 28 January 1999

informed decision-making by the Council. Furthermore you may wish to note that in attempting, incorrectly, to draw conclusions about the strength of our LUP advice by reference to a proposal's position in the 'PADHI Matrix', they have relied upon an HSE document that is out-of-date and was withdrawn some time ago.

A22. Furthermore, you may wish to note that in their assessments RR appear to have relied upon HSE's 'Closed' evidence to the Oval CG public inquiry and also appear to have included a selective quotation from HSE's Closed evidence in their report dated 26 October 2011. As RR should be aware, all the Closed evidence to Oval CG inquiry remains subject to a confidentiality agreement and a Secretary of State's Section 321 Direction which prevents its disclosure to other than named individuals. Consequently I am unable to comment further on these matters other than to say that the complete quotation, when seen in context, does not support RR's interpretation. The Council may wish to seek clarification of the sources of RR's information and, if necessary, take legal advice regarding the continued publication of this report on their website.

A J Williams
HM Principal Specialist Inspector of Health and Safety
Health and Safety Executive
16 February 2012