

Planning Committee – 24 February 2010

Report of the Growth and Development Manager

Prepared By: Maria Casey – Planning and Litigation Solicitor

Purpose of Report

To obtain approval from Members for the making of an Order under S14(2) of the Planning (Hazardous Substances) Act 1990 to revoke the Hazardous Substances Consents dated 23 November 1992 and 30 November 1993 (HSCs) at Dairy House Farm, Stoke Hill, Henlade, Taunton, Somerset, TA3 5NB (the Site), subject to confirmation by the Secretary of State.

1. Background

- 1.1 The HSCs in force on the Site (Ref Nos 31/92/011HS and 37/93/012HS) allow for the storage of 60 tonnes of Liquefied Petroleum Gas (LPG). Due to the existence of the HSCs, a Consultation Zone was established. Proposals for future development at the Site and/or on land adjacent/near to the Site are referred to consultees to consider possible effects on public safety. The Health and Safety Executive (HSE) is a consultee.
- 1.2 The Site has not been used for the storage of hazardous substances for a number of years and on 4 November 2005 permission was granted for a change of use on the Site to use the Site for vehicle storage.
- 1.3 Even though LPG is no longer used or stored at the Site and there has been a material change of use of the Site, it is almost certain that the HSE would 'Advise Against' any planning application for development on the Site and against any other developments within the Consultation Zone. Until the HSCs are revoked it is difficult to deal with development proposals relating to the Site and relating to land within the Consultation Zone.

2. Revocation of the Hazardous Substances Consents

- 2.1 The Planning (Hazardous Substances) Act 1990 (the Act) allows for HSCs to be revoked under Section 14. This Authority, as Hazardous Substances Authority, can make a revocation order under S14(1) or (2) of the Act. The revocation will be subject to confirmation by the Secretary of State under S15 of the Act (even when it is unopposed). S16(1) of the Act provides that compensation is payable for a revocation or modification using powers under S14(1). Compensation is therefore not payable for a revocation or modification using powers under S14(2).
- 2.2 The grounds under which revocation can be made are set out in S14(2) as being:-
 - a) that there has been a material change of use of land to which a hazardous substances consent relates; or
 - (b) that planning permission [or development consent] has been granted for development the carrying out of which would involve a

material change of use of such land and the development to which the permission [or development consent] relates has been commenced; or

(c) in the case of a hazardous substances consent which relates only to one substance, that that substance has not for at least five years been present on, over or under the land to which the consent relates in a quantity equal to or exceeding the controlled quantity; or

(d) in the case of a hazardous substances consent which relates to a number of substances, that none of those substances has for at least five years been so present.

2.3 As stated in paragraph 1.2 above, permission for change of use of the Site was granted on 4 November 2005 under Application Number 37/2005/011. The development proposal was for Change of Use of Land and Erection of Building for Vehicle Storage. As a result, an Order can be made under S14(2)(b) and the Council will not be liable for any claim for compensation.

3. Recommendation

- 3.1 That Hazardous Substances Consents ref. 31/92/011HS and 37/93/012HS be revoked.
- 3.2 That the Committee authorise the Legal and Democratic Services Manager to prepare a Revocation Order under S14 of the Planning (Hazardous Substances) Act 1990 for the Secretary of State to confirm. A draft Order is attached at the Appendix to this Report.
- 3.3 That the authority of the Committee be conditional on the agreement in writing of the owner of the Site to the revocation including a statement to the effect that they will not suffer loss and do not intend to claim compensation on the revocation of the HSCs.

4. Reasons for Recommendation

The Site is no longer used for the storage or use of materials stipulated in the HSCs and the continuation of the HSCs is no longer relevant.

In preparing this report the Officer has considered fully the implication and requirements of the Human Rights Act 1998

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APPENDIX

TAUNTON DEANE BOROUGH COUNCIL REVOCATION OF HAZARDOUS SUBSTANCES CONSENT ORDER No 1 of 2010

**DAIRY HOUSE FARM STOKE HILL HENLADE TAUNTON
SOMERSET TA3 5NB**

PLANNING (HAZARDOUS SUBSTANCES) ACT 1990 – SECTION 14(2)(b)

WHEREAS

1. Taunton Deane Borough Council (the Authority) is the Hazardous Substances Authority for the area.
2. On 3 November 1992 MGA GAS SUPPLIES of Dairy House Farm, Stoke Hill, Henlade, Taunton, Somerset, TA3 5NB (MGA) claimed from the Authority a deemed consent for the storage of Liquefied Petroleum Gas (LPG), with an established quantity of 60 tonnes on land described in the Schedule to this Order (the Land).
3. The Authority registered such deemed consent under reference number 31/92/011HS on 3 November 1992 (the First Deemed Consent).
4. On 30 November 1993 MGA claimed from the Authority a second deemed consent for the resiting of two LPG tanks on the Land. The Authority registered the second deemed consent under reference number 37/93/012HS (the Second Deemed Consent).
5. On 5 September 2005 MGA applied to the Authority for planning permission for a change of use and erection of a building for vehicle storage at the Land. The Authority granted planning permission for the application under reference number 37/2005/011 on 4 November 2005 (the 2005 Permission).
6. It appears to the Authority, having regard to all material considerations, that it is practical to revoke the Deemed Consents since having regard to the 2005 Permission effecting a material change of use of the Land, the continued existence of the Hazardous Substances Consents is no longer relevant and might unreasonably blight what might otherwise be reasonable development according to the Development Plan

NOW THEREFORE the Authority as Hazardous Substances Authority and in pursuance of Section 14(2)(b) of the Planning (Hazardous Substances) Act 1990 and all powers enabling hereby make the following order:-

1. The Hazardous Substances Consents being the First Deemed Consent and the Second Deemed Consent relating to LPG are revoked.
2. This Order shall be cited as Taunton Deane Borough Council Revocation of Hazardous Substances Consent Order No 1 of 2010

SCHEDULE

Land at Dairy House Farm, Stoke Hill, Henlade, Taunton, Somerset, TA3 5NB shown edged red on the plan attached hereto.

THE COMMON SEAL of)
TAUNTON DEANE BOROUGH)
COUNCIL was hereunto affixed)
in the presence of)

The office of the Secretary of State for Communities and Local Government hereby confirms the foregoing Order