

DEVELOPMENT MANAGEMENT COMMITTEE – 7 DECEMBER 2016

Application Number	S/16/0276/PREAPP
Proposal	Revocation of Hazardous Substances Consent
Location	Marshgate Drive, Hertford, Hertfordshire SG13 7AQ
Applicant	National Grid
Parish	Hertford
Ward	Hertford Castle

Date of Registration of Application	Not applicable
Target Determination Date	7 December 2016
Reason for Committee Report	Revocation of Hazardous Substances Consent
Case Officer	Tom Gabriel

RECOMMENDATION

That the Hazardous Substances Consent be revoked.

1.0 Summary

1.1 The owners of the site – National Grid – have not used the site for the purposes of gas storage for many years and wish to sell it. The presence of a Hazardous Substances Consent (HSC) on a site can act as a barrier to redevelopment and therefore its revocation is necessary to remove the safeguarding restrictions around the site to enable its redevelopment for sensitive purposes, such as residential use. The presence of the consent serves no purpose.

2.0 Site Description

2.1 The location of the site is shown on the attached OS extract. It comprises a number of parcels of land to the north of Mead Lane between Marshgate Drive and a curved road between Mead Lane and Collier House, to the south of the River Lea Navigation. The site comprises a number of buildings and structures including two gasholders.

2.2 All of the land between Mead Lane and the River Lea Navigation and between Marshgate Drive and the curved road was owned by British Gas in the 1980s. In the intervening period however, parcels of the land have been sold off.

2.3 The site is within the area of the Mead Lane Urban Design Framework (2014) where the land is identified for employment and residential redevelopment uses. Policy HERT2 of the East Herts District Plan Pre-Submission Consultation (2016) promotes the site for a range of dwelling types and mix, including for affordable housing, and for 3,000 sqm of B1 employment floorspace.

3.0 Background to Proposal

3.1 A Hazardous Substance consent (HSC) was granted on this site in December 1992 (Ref: 3/92/1507/HS). This was for the storage of natural gas in water-sealed gas holders. However, the site owner – National Grid – has confirmed that the site has not been used for gas storage for many years, and they have applied to have the consent revoked so that they can pursue the redevelopment of the site.

3.2 Paragraph 74 of the Planning Practice Guidance states that:

- ‘Redundant hazardous substances consents can be a barrier to development. Sometimes a consent is no longer required by an operator. For example, a facility may have shut down or a site redeveloped. However, unless the hazardous substances consent is revoked, then Health and Safety Executive (HSE) consultation zones are still likely to apply. Hazardous substances authorities should be proactive about revoking consents that are no longer required’.

3.3 Under Section 14 of the Planning (Hazardous Substances) Act 1990 as amended, a hazardous substances consent may be revoked. Section 14 (1) of the Act allows revocation irrespective of any circumstances, while Section 14 (2) allows revocation if the hazardous substances have not been present on the site for at least five years or there has been a material change of use of the land. National Grid has confirmed that the site has not been used for gas storage for a period in excess of five years.

3.4 The revocation procedure is necessary to remove the safeguarding restrictions around the site that are imposed by an HSC to enable its redevelopment for sensitive purposes, such as residential use. If an application were to be submitted for this use with the HSC still extant, the HSE would object on health and safety grounds. This would be a material consideration in the determination of any applications on the site. The revocation of the HSC would remove the development constraint on the site and therefore enable the site to come forward in a more efficient and viable way.

4.0 Key Policy Issues

- 4.1 While there are no specific policies relevant to this case in the East Herts Local Plan (2007) or in the East Herts District Plan Pre-Submission Consultation (2016), the National Planning Policy Framework (NPPF) and the Planning Policy Guidance (PPG) promote sustainable development. Removing barriers to the redevelopment of a site and therefore promoting its regeneration potential, accords with the principles of sustainable development as advocated by the NPPF and the PPG.
- 4.2 Paragraph 7 of the NPPF states that there are three dimensions or roles to sustainable development – economic, social and environmental. The economic role is concerned with contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation. The social role is concerned with supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations, and by creating a high quality built environment. The environmental role is concerned with contributing to protecting and enhancing the natural, built and historic environment and, as part of this, helping to improve biodiversity, and mitigate and adapt to climate change including moving to a low carbon economy.
- 4.3 The revocation of the HSC on the site would enable and promote the re- use of the site for a variety of purposes, which would contribute to achieving the three roles of sustainable development.
- 4.4 Paragraph 9 of the NPPF states;
- ‘Pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people’s quality of life, including (but not limited to):
- making it easier for jobs to be created in cities, towns and villages;
 - moving from a net loss of bio-diversity to achieving net gains for nature;
 - replacing poor design with better design;
 - improving the conditions in which people live, work, travel and take leisure; and
 - widening the choice of high quality homes’
- 4.5 The removal of constraints to the redevelopment of the site would be in accordance with these objectives of sustainable development. The revocation of the HSC at the Hertford Gasholder site would therefore be

of significant benefit to the site and this part of Hertford as a whole. Allowing the HSC to remain on the site and to preclude its redevelopment would be contrary to the sustainability thrust of the NPPF and the PPG.

5.0 Summary of Consultee Responses

- 5.1 There is no public consultation exercise involved with the revocation of an HSC. However, if the Committee resolves to authorise the revocation of the consent, the legislation requires that notice is served on all interested parties and that they be given a period of 28 days to make any representations before the revocation is confirmed.
- 5.2 The revocation must be confirmed by the Secretary of State, under Section 15 of the Act, before it takes effect.

6.0 Planning History

- 6.1 The following planning history is of relevance to this proposal:

Ref	Proposal	Decision	Date
3/92/1507/HS	Claiming a Deemed Hazardous Substances Consent (Established Presence) for the storage of natural gas in water-sealed gas holders	Deemed	3 rd December 1992

7.0 Material Considerations

- 7.1 Pursuant to Section 14 (2) of the Planning (Hazardous Substances) Act 1990, National Grid has confirmed that the site has not been used for the storage of gas for many years. It is therefore considered expedient to revoke the HSC in order to remove a restriction on the site inhibiting its redevelopment potential. This would promote the site in line with Policy HERT2 of the Pre-Submission Consultation draft of the emerging District Plan and would assist in achieving the expectation that a proportion of the overall windfall allowance for the district will be accommodated in Hertford.
- 7.2 Where the HSC has not been relied on for five years, or the use of the land has changed materially since the consent was granted, it may be revoked without compensation being payable to the owner.
- 7.3 Moreover, if there has been a change to the person in control of part of the land, the consent is automatically revoked (unless an application for the continuation of the consent is made). While there have been

changes to the ownership of the land since the HSC was granted, it is not clear whether this has had the effect of revoking the consent on that land only or on the whole of the land to which the consent originally related. As the presence of the consent may therefore still act as a barrier to redevelopment unless it is formally removed, it is felt appropriate to seek the Committee's approval to revoke the HSC.

7.4 Notwithstanding that the HSC has not been relied on for many years and it may be viewed as having been automatically revoked, it is considered appropriate to formally revoke the consent for the reasons laid out above.

7.5 In respect of the legal implications of a committee resolution to revoke the HSC, the following is noted;

- A person can request to appear before the Inspector appointed by the Secretary of State before the order is confirmed. If a request is made, a public inquiry may be held to consider representations before the order is confirmed and the Council would be required to attend and defend their reasons for making the order.
- Pursuant to Section 16, there is no liability in relation to Orders made under Section 14 (2) to pay compensation to affected parties.

7.6 Given that the site has not been used for gas storage for many years it is considered unlikely that any objections to the revocation will be made, and it is not anticipated likely that a public inquiry would be necessary in this case.

8.0 Conclusion

8.1 The Council is being requested to exercise its power as the Hazardous Substances Authority under Section 14 (2) of the Planning (Hazardous Substances) Act 1990 to revoke the hazardous substances consent on the site dated 3 December 1992.

8.2 The potential planning benefit of revoking the consent is that a significant planning constraint would be lifted from the site thereby enabling its redevelopment in accordance with Policy HERT2 of the East Herts District Plan Pre-Submission Consultation 2016.

8.3 It is considered expedient to make the revocation order as the circumstances satisfy one of the relevant determining criteria for consideration under Section 14 (2) of the Act, that the gas holder has not been used for over five years, as confirmed by National Grid.

- 8.4 There is no liability for the payment of compensation through revoking the consent.
- 8.5 It is therefore recommended that the Committee authorise the making of the Order to revoke the Hazardous Substance Consent on the site.