

WARD: Gorse Hill & Corn 112609/HAZ/23
brook

DEPARTURE: No

Application for revocation of Hazardous Substances Consent (ref: H/HSD/36015) dated 19 October 1992 (the Deemed Consent) and Hazardous Substances Consent (ref: H/HSC/49526) dated 10 July 2000 (the Continuation Consent) under Section 14 of the Planning (Hazardous Substances) Act 1990 (the 1990 Act)

National Grid Transco, Thomas Street, Stretford, Manchester, M32 0HT

APPLICANT: National Grid Property Holdings Limited

AGENT: CMS Cameron McKenna Nabarro Olswang LLP

RECOMMENDATION: THAT THE REVOCATION ORDER BE MADE AND SUBMITTED TO THE SECRETARY OF STATE FOR CONFIRMATION

EXECUTIVE SUMMARY

This report identifies the available revocation procedures under the Planning (Hazardous Substances) Act 1990 ('the Act') and the implications with regard to hazardous substances consents H/HSD/36015 and H/HSC/49526 relating to the storage of natural gas at the National Grid site at Thomas Street in Stretford. The report recommends that the revocation order be made and then submitted to the Secretary of State for confirmation under section 14(2) of the Act.

SITE

The application relates to a former National Grid gas holder and depot site located in Stretford. It is bounded by Thomas Street to the north-east and the Bridgewater Canal to the south-west. It also sits between the Longford Industrial Estate and the office building of RAC House. The site is presently vacant. Three disused gas holders accommodated on site were demolished in 2019 following the approval of application ref. 93993/DEM/18). The underground holder voids remain.

The freehold owner of the site is Property Capital Plc (as of 31st January 2024), having previously been National Grid.

PROPOSAL

The site is the subject of a Hazardous Substances Consent (HSC) and a continuation consent pursuant to that. This is a legal requirement when having regard to the storage

of a hazard substance (natural gas) above a defined limit; a longstanding, historic function of the site.

The application is made on behalf of both National Grid and Property Capital Plc. The application submission, which draws upon National Grid's knowledge of the site, refers to the three gas holders having being purged to air by June 2010. Accordingly, when having regard to their more recent demolition, the submission confirms that natural gas has not been stored at the site for a period of at least five years. However, National Grid does not have the ability to surrender its HSC, and thus it remains in place. Property Capital Plc is seeking to redevelop the site, it is explained, but the existence of the HSC represents a significant constraint to development. The ability to terminate the HSC rests with Trafford Council in its role as local planning authority and Hazardous Substance Authority (HSA). National Grid and Property Capital Plc have therefore applied to the Council for the formal revocation of the HSC.

DEVELOPMENT PLAN

For the purposes of this application the Development Plan in Trafford comprises:

- The **Trafford Core Strategy**, adopted 25th January 2012; The Trafford Core Strategy is the first of Trafford's Local Development Framework (LDF) development plan documents to be adopted by the Council; it partially supersedes the Revised Trafford Unitary Development Plan (UDP), see Appendix 5 of the Core Strategy.
- The **Revised Trafford Unitary Development Plan (UDP)**, adopted 19th June 2006; The majority of the policies contained in the Revised Trafford UDP were saved in either September 2007 or December 2008, in accordance with the Planning and Compulsory Purchase Act 2004 until such time that they are superseded by policies within the (LDF). Appendix 5 of the Trafford Core Strategy provides details as to how the Revised UDP is being replaced by Trafford LDF.
- The **Greater Manchester Joint Waste Plan**, adopted 1st April 2012 now forms part of the Development Plan in Trafford and will be used alongside district-specific planning documents for the purpose of determining planning applications.
- The **Greater Manchester Joint Minerals Plan**, adopted 26th April 2013 now forms part of the Development Plan in Trafford and will be used alongside district-specific planning documents for the purpose of determining planning applications.

PRINCIPAL RELEVANT CORE STRATEGY POLICIES

W1 – Economy

L3 – Regeneration and Reducing Inequalities

L5 – Climate Change

PROPOSALS MAP NOTATION

Main Industrial Area

Priority Regeneration Area

PRINCIPAL RELEVANT REVISED UDP POLICIES/PROPOSALS

E7 – Main Industrial Areas

H9 – Priority Regeneration Area – Gorse Hill

PLACES FOR EVERYONE

Places for Everyone (PfE) is a joint Development Plan Document being produced by nine Greater Manchester districts (Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Tameside, Trafford and Wigan). It identifies the quantum of new housing and employment development, supports the delivery of key infrastructure, and protects environmental assets. The Plan was submitted to the Secretary of State for Levelling Up, Housing and Communities in February 2022, and its Examination in Public commenced on 02 November 2022. Hearings sessions concluded on 05 July 2023. Consultation on Main Modifications started on 11 October 2023 and closed on 6 December 2023. On 14 February 2024, the Inspectors' report was published, confirming that with the Main Modifications and further limited modifications suggested by the Inspectors, that Places for Everyone is sound and legally compliant. The Council intends to adopt the plan in March 2024, along with all the other authorities involved, and Places for Everyone will be formally adopted on 21 March 2024. Consequently the plan is as advanced as it can be without being adopted and thus very substantial weight can be attached to its policies.

NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

The MHCLG published the revised National Planning Policy Framework (NPPF) on 20 December 2023. The NPPF will be referred to as appropriate in the report.

NATIONAL PLANNING PRACTICE GUIDANCE (NPPG)

The National Planning Practice Guidance was first published in March 2014, and it is regularly updated, with the most recent amendments made in November 2023. The NPPG will be referred to as appropriate in the report.

RELEVANT PLANNING HISTORY

H/HSD/36015 – Deemed Hazardous Substances Consent
Granted, 19.10.92

H/HSC/49526 - Continuation of Hazardous Substances Consent following a change in control of part of the land
Granted, 10.07.00

93993/DEM/18 - Demolition of 3 disused gas holders. (Consultation under Schedule 2, Part 11 of the Town and Country Planning (General Permitted Development) (England) Order 2015
Prior approval approved, 26.04.18

APPLICANTS' SUBMISSION

A letter requesting revocation of the HSC and associated submissions.

CONSULTATIONS

Cadent Gas – No objection, subject to informative (to advise the applicant to contact Cadent Gas prior to carrying out any development works on site and for the purposes of providing some guidance notes)

Environment Agency – No objection

Health and Safety Executive (Hazardous Substances) – No objection, subject to the Council notifying HSE once the HSC has been revoked

Trafford Council: Contaminated Land – No objection

REPRESENTATIONS

The application was advertised on site, in the press and by way of individual letters. No responses have been received.

OBSERVATIONS

Background

1. In its capacity as local planning authority and Hazardous Substance Authority, 'HAS' (as described under the Planning (Hazardous Substances) Act 1990) on 22nd December 2023 the Council received a letter from CMS Cameron McKenna Nabarro Olswang LLP on behalf of National Grid and Property Capital Plc to formally apply for the revocation of the following Hazardous Substance Consents (HSC) currently in place at the site on Thomas Street, Stretford:
 - H/HSD/36015: Deemed Hazardous Substances Consent; and
 - H/HSC/49526: Continuation of Hazardous Substances Consent following a change in control of part of the land.
2. These were granted to British Gas and to BG Transco Plc respectively. However, the current owner of the site and the beneficiary of the consents is Property Capital Plc (having transferred ownership from National Grid during the course of the application process).
3. In 2018 National Grid applied to the Council to demolish the disused gas holders on site (ref. 93993/DEM/18). Prior approval was granted on 26.04.18 with the officer report confirming that: '*The application is a notification under Schedule 2, Part 11 of*

the Town and Country Planning (General Permitted Development) (England) Order 2015 for the demolition of the site's three redundant gasholders to prepare the site for unspecified future redevelopment.

4. The approved demolition and dismantling works are understood to have been completed during 2019. A site visit has confirmed that the structures are not in place.
5. Since that time the site has laid vacant and it exhibits some signs of dereliction and abandonment. The application submission refers to Property Capital Plc's intention to redevelop the site.
6. As the storage of gas ceases to be a function of the site and with no prospect of the use recommencing, the HSC for the site is no longer needed. The purpose of the application is for the Deemed Consent and the Continuation Consent referred to in paragraph 1 to be revoked and for the site to be removed from the Council's Hazardous Substances register.

Legal Framework

7. The Planning (Hazardous Substances) Act 1990 allows for a HSC to be revoked under section 14. Trafford Council, as HSA, can make a revocation order under section 14(1) or (2) of the Act. The revocation will be subject to confirmation by the Secretary of State under section 15 of the Act (even if it is unopposed). Section 16(1) of the Act makes it clear that compensation, which would otherwise be payable for a revocation or modification using powers under section 14(1), is not payable for a revocation if it is made under section 14(2) of the Act.
8. The risk of compensation being sought from the Council would not apply if the Deemed Consent/Continuation Consent are revoked under section 14(2). Under section 14(2) the HSA may revoke a hazardous substances consent if it appears to them:
 - (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.

9. The applicants have confirmed that they consider section 14(2)(c) would be the applicable power as the one hazardous substance (natural gas) at the site has not been present on, over or under the HSC land for at least a five year period in a quantity equal to or above the stated limit.

Assessment

10. The application constitutes a formal request by National Grid and Property Capital Plc for the HSC to be revoked by the Council. It is a further indicator of market interest in the future re-use of the site; a brownfield site which is presently inactive and which clearly offers some redevelopment potential which would support wider regeneration objectives. Notwithstanding the site's location within an allocated employment area (with reference to the Composite Proposals Map accompanying the statutory development plan), it is evident that any sustainable, active use of the site is not dependent on the existing HSC which no longer serves a useful purpose. Any subsequent proposal would be subject to a planning application which would be judged on its merits in the context of relevant planning policies and guidance and any other material considerations.
11. Trafford Council, as the HSA, may make an Order to revoke the Deemed Consents. However, in accordance with section 15(1) of the Act, the Order shall not take effect unless it is confirmed by the Secretary of State. If Members support the recommendation, this officer report will be used to provide the 'Statement of Reasons' that is required to accompany the Order under a subsequent referral to the National Planning Casework Unit.
12. Under section 15(3) of the Act, when the HSA submits an Order under section 14 to the Secretary of State for confirmation, there is a requirement for the HSA to serve notice of the Order:
 - (a) on any person who is an owner of the whole or any part of the land to which the order relates;
 - (b) on any person other than an owner who appears to them to be in control of the whole or any part of that land;
 - (c) on any other person who in their opinion will be affected by the Order.
13. Any persons "affected by the Order" have at least 28 days to notify the Secretary of State that they wish to challenge the Order and be heard at a public inquiry.
14. The applicants have confirmed that they support the revocation of the Deemed Consent and the Continuation Consent and that they will not challenge the making of the Order.

Financial Implications

15. Section 16 of the Act includes provisions relating to compensation. Compensation is only payable by a HSA upon the revocation of a HSC when such a revocation is made under section 14(1) of the 1990 Act. No compensation is payable by the Council as HSA when such a consent is revoked, where the revocation order is made under one of the specified grounds in section 14(2).

16. The applicants have confirmed that the Deemed Consent/Continuation Consent have not been relied on for over 5 years and that on this basis a revocation order can be made under section 14(2)(c), and as a result, no compensation will be payable. This is confirmed in the Hazardous Substance Guidance produced by the Government, which states:

“Where a consent has not been relied on for 5 years, or the use of the land has changed materially since the consent was granted, it may be revoked without compensation being payable.”

17. This is corroborated by the application submission: National Grid and Property Capital Plc, as joint applicants, have confirmed that the revocation order that is sought does not attract compensation and that the Council as HSA will not expose itself to a financial claim by making the order. Anyone seeking compensation would have to show they have suffered damage in consequence of the revocation order being made. Neither National Grid (as former freehold owner), nor Property Capital Plc (as current freehold owner) is aware of any other party with land owning interests, other than reserved rights which are not affected, and confirmation of the title information has been provided to corroborate this. The applicants have suggested, however, that notice is served on the following three adjoining landowners at the point the Order is referred to the Secretary of State under section 15(3) of the Act: Cadent Gas Ltd, SST (UK) Ltd (Cellnex), and Premier Pensions Trustees Ltd.

Other Considerations

18. Cadent Gas has been consulted on the application in accordance with the Council's practices. The response confirms a position of 'no objection' subject to the provision of an advisory note on the decision notice for the purposes of reminding the applicant – ahead of any redevelopment works - of the existence of operational infrastructure in proximity to the site. The consultation response also asks for some guidance notes to be forwarded to the applicant. It is not possible to attach an advisory note to the decision in the manner envisaged by the consultee. However, it is confirmed that the consultation response and accompaniments have been forwarded to the applicant; in response it has been confirmed that the applicant is aware of its responsibilities and that it will adhere to the requirement to consult with Cadent Gas prior to any redevelopment taking place which could affect its apparatus.

CONCLUSION

19. It is considered that there are positive environmental implications from revoking the Deemed Consent/Continuation Consent for the storage of natural gas on the site. It would confirm the removal of a hazardous use from the Stretford area, which is densely populated. It would also assist with preparing the site for re-use, thereby enabling the redevelopment of inactive, brownfield land and supporting wider regeneration objectives. This would be in line with several policy principles of the Trafford Core Strategy, including Policy W1 (Economy) and Policy L3 (Regeneration and Reducing Inequalities), as well as the NPPF and the emerging PfE (see Policy JP-Strat5 (Inner Area Regeneration)).
20. In addition, natural gas is a fossil fuel which, when burned, may contribute to the adverse effects of climate change through the CO₂ emissions that would be produced. Therefore, the revocation of the HSC would also be consistent with global, national and local objectives associated with transitioning away from fossil fuels and placing greater reliance on renewable and low carbon energy sources. This is also expressed in the NPPF as well as Policy L5 (Climate Change) of the Core Strategy, and Policy JP-S2 (Carbon and Energy) of PfE.
21. The site has ceased to be used for the purpose of natural gas storage. It is not considered that there is any reason to refuse to revoke the consent, and National Grid and Property Capital Plc have confirmed that they would not seek compensation and in any event compensation is not payable since the Order would be made under section 14(2) of the Act. Therefore, it is recommended that the revocation order be made under section 14(2) of the Act and then submitted to the Secretary of State for confirmation.

RECOMMENDATION:

That an Order, under section 14(2) of the Planning (Hazardous Substances) Act 1990, revoking hazardous substances consents H/HSD/36015 (Deemed Consent) and H/HSC/49526 (Continuation Consent), to remove consents for the storage of natural gas at the National Grid site at Thomas Street, Stretford, M32 0HT, be made and submitted to the Secretary of State for confirmation.

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