

Wrexham County Borough Council
Planning and Regulatory
Guildhall
Wrexham
LL11 1AY

Date: 18 March 2021

HSE Ref.: 4.2.1.6814
Your Ref.: P/2020/0627

For the attention of Sharon Holman

Dear Ms Holman,

**Town and Country Planning (Development Management Procedure) (Wales)
Order 2012 as amended**

Application No: P/2020/0627

Proposal: Residential development of 34 dwellings

Location: Wrenbury Court, Wrenbury Way, Cefn Mawr, Wrexham

Chemicals, Explosives and
Microbiological Hazards Division

Gerard Adderley

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Head of Team
Stuart Reston

1. Thank you for your email of 2 March 2021 advising HSE that Wrexham County Borough Council is minded to grant permission for planning application P/2020/0627 which HSE advised against, giving HSE 21 days' notice in which to consider whether or not to request that Welsh Ministers call-in the application for their own determination, in accordance with paragraph A5 of The National Assembly for Wales Circular 20/01 – Planning controls for hazardous substances.

2. HSE is a statutory consultee for developments in the vicinity of major hazard sites and major accident hazard pipelines by virtue of Article 14 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 as amended. The proposed development lies within the HSE consultation distance of a major hazard site, Flexsys Rubber Chemicals Ltd, Ruabon Works, Cefn Mawr, Wrexham.

3. HSE provides its land use planning advice to enable the Planning Authority to comply with the objective of Article 13 of the retained EC Directive 2012/18/EU, (the Seveso III Directive – see addendum). Its objective is to control proposed development around designated sites that would increase the risk or consequences of a major accident. HSE's advice in this case is due to the number of dwellings which are proposed within the middle zone of the HSE consultation distance of the major hazard site.

4. As explained in paragraph A6 of the National Assembly for Wales Circular 20/01 'Planning Controls for hazardous substances', which covers handling development proposals around hazardous installations, HSE normally considers its role to be discharged when it is satisfied that the Planning Authority is acting in full understanding of HSE's land use planning advice received and of the consequences to public safety that could follow.

5. As also explained in that paragraph, HSE will consider recommending call-in only in cases of exceptional concern or where important policy or safety issues are at stake.

6. Having considered the intention of Wrexham County Borough Council to grant planning permission in this case, and the offered opportunity to request that the application be called in for determination by Welsh Ministers, HSE would not wish to pursue the matter further. **However, the HSE's land use planning advice remains that there are sufficient reasons, on safety grounds, for advising against the granting of planning permission in this case, and HSE's decision does not mean that this advice is withdrawn.**

7. In coming to this conclusion HSE was mindful, among other factors, of the views expressed in Chapter 5 of the First Report of the Advisory Committee on Major Hazards (ACMH) and Chapter 4 of the Second Report of ACMH. In these reports it was stated that:

"... the siting of developments should remain a matter for planning authorities to determine, since the safety implications, however important, could not be divorced from other planning considerations." and

"... local authorities are well placed to take proper account of the full range of local factors, including safety issues, which are relevant to a planning decision."

8. HSE acknowledges that the final decision on whether to grant planning permission rests with Wrexham County Borough Council. We are satisfied that if planning permission is granted the Council will be acting in full understanding of HSE's advice and the consequences that could follow should a major accident occur involving the major hazard site.

9. It is noted that the Committee Report includes the following comments regarding the former Flexsys Rubber Chemicals Ltd site:

'Hazardous Substance Consent (HSC) remains extant on this site even though the site is now decommissioned and has been cleared for some time.....Whilst the Flexsys site does still benefit from a HSC, there is no clear intention of the site being reoccupied for a use that would benefit from that Consent, and the Council is aware of the landowner's intentions to seek a mixed used remediation and regeneration of the site.'

10. HSE has advised Wrexham County Borough on a number of occasions that, as the hazardous substances authority, the Council should consider revoking the hazardous substances consents for the former Flexsys Rubber Chemicals Ltd site, in accordance with the Planning (Hazardous Substances) Act 1990. Had the Council revoked the hazardous substances consents there would have been no need to consult HSE on subsequent planning applications in the vicinity of the site, and to subsequently approach HSE regarding the possible request that those applications which HSE had advised against be called-in by Welsh Ministers.

11. Paragraph 70 of Circular 20/01 advises hazardous substances authorities that::

'It may be undesirable for a hazardous substances consent which has fallen into disuse to continue to have effect, however, as it could restrict unnecessarily the uses to which neighbouring land can be put. Moreover, a hazardous substances consent for the presence of a substance in connection with a particular use of land may not necessarily be apt in respect of other uses.'

12. As it appears that the hazardous substances have not been present on the Flexsys Rubber Chemicals Ltd site for at least five years in quantities equal to or exceeding the controlled quantities, the hazardous substances consents could be revoked under Section 14(d) of the Planning (Hazardous Substances) Act 1990.

13. If the Council notifies HSE that the hazardous substances consent for the former Flexsys Rubber Chemicals Ltd site has been formally revoked, HSE will remove the consultation distance around the site and there will be no need to consult HSE on future proposed developments around the site.

Yours sincerely



Gerard Adderley
Statutory and Commercial Land Use Planning Advice

cc. **Mr H Tucker, HSE, CEMHD5H, Bootle**
Mr P Gray, HSE CEMHD2B, Bootle

Land use planning requirements of the Seveso III Directive

Article 13 of the Directive requires land-use planning controls to apply to all establishments within the scope of the Directive; this includes major accident hazard pipelines:

1. "Member States shall ensure that the objectives of preventing major accidents and limiting the consequences of such accidents are taken into account in their land-use planning and/or other relevant policies. They shall pursue these objectives through controls on:

a. the siting of new establishments;

b. modifications to existing establishments covered by Article 11;

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

Member States shall 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, areas of public use and areas of particular natural sensitivity or interest, and, in the case of existing establishments, of the need for additional technical measures in accordance with Article 5 so as not to increase the risks to people.

2. Member States shall ensure that all competent authorities and planning authorities responsible for decisions in this area set up appropriate consultation procedures to facilitate implementation of the policies established under paragraph 1. The procedures shall be designed to ensure that technical advice is available, either on a case-by-case or on a generic basis, when decisions are taken."