

Wrexham County Borough Council
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Head of Team
Stuart Reston

Date: 16 March 2017

HSE Ref.: 4.2.1.5843
Your Ref.: P/2016/0505

For the attention of Kevin Hughes

Dear Mr Hughes

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

Application No: 16/03938/FUL

**Proposal: Outline application for residential development (232 dwellings) and
access**

**Location: Former Air Products site, Llangollen Road, Acrefair, Wrexham LL14
3HW**

Thank you for your email of 10 March 2017, advising HSE that Wrexham County Borough Council is minded to grant planning permission for planning application P/2016/0505, 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 dangerous substances'.

HSE is a statutory consultee for developments in the vicinity of major hazard sites by virtue of Article 14 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012. The proposed development relates to a residential development within middle zone of a major hazard site – Flexsys Rubber Chemicals Ltd.

HSE provides its land use planning (LUP) advice to enable the Planning Authority to comply with the objective of Article 13 of 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.

As explained in paragraph A6 of Circular 20/01, HSE normally considers its role to be discharged when it is satisfied that the Planning Authority is acting in full understanding of HSE's LUP advice received and of the consequences to public safety that could follow.

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.

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 the Secretary of State, HSE would not wish to pursue the matter further. **However the HSE's LUP advice, for the purposes of Article 13 of the Seveso III Directive, 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. You may wish to note that the HSE normally publishes such cases on its website.**

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."

HSE notes that the Report to the Head of Environment and Planning dated 6 March 2017, states that 'Flexsys has ceased operations a number of years ago, the chemicals have gone from the site and buildings demolished and cleared. The hazardous substances consent however, remains on the site but I would consider it unlikely the Council would support any future application for new industrial buildings of a similar use.'

Since 2010, HSE has advised Wrexham County Borough Council on a number of occasions that the Council, as the Hazardous Substances Authority, should consider revoking the hazardous substances consent for the Flexsys Rubber Chemicals Ltd site in accordance with the provisions of the Planning (Hazardous Substances) Act 1990. Had the Council revoked the hazardous substances consent, there would have been no need for the Council to consult HSE on the subsequent planning applications in the vicinity of the site, or to subsequently approach HSE again regarding the possible request to call-in those applications which HSE advised against.

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, so the hazardous consent could be revoke under Section 14 (d) of the Planning (Hazardous Substances) Act 1990 Act.

When the Council notifies HSE that the hazardous substances consent has been formally revoked, HSE will remove the CD and there would be no need to consult HSE on developments in the vicinity of the site.

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.

Yours sincerely



Gerard Adderley

Statutory and Commercial Land Use Planning Advice

cc. Mr H Tucker, CEMHD 5H, Bootle
Mrs J Eccles, CEMHD 2A, Bootle

ADDENDUM

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."