

Report for Resolution

Report to Planning Applications Committee
Date 23 August 2012
Report of Head of Planning Services
Subject 11/02097/H Cropscience UK Ltd Sweet Briar Road
Norwich NR6 5AP

Item
5(6)

SUMMARY

Description:	Variation to previous hazardous substances consent 09/01443/H 'Storage of notifiable hazardous substances - full site review for all hazardous substances stored and used on site, incorporating (i) additional consent required as a result of changes to the classification of some substances in the Regulations, (ii) some generic storage to allow for some flexibility of storage on site, (iii) alterations to existing consents required for increased quantities of some substances and reduced quantities or removal of consent for some substances no longer required'.
Reason for consideration at Committee:	Member's Request
Recommendation:	Approve
Ward:	Wensum
Contact Officer:	Mark Brown Senior Planning Officer 01603 212505
Valid Date:	6th December 2011
Applicant:	Bayer CropScience
Agent:	Stuart Brook

INTRODUCTION

Background information

1. This item concerns an application for hazardous substances consent. As such applications are only received infrequently, the following information has been included to provide contextual information regarding the application process and purpose.
2. Since the coming into force of the Planning (Hazardous Substances) Act 1990 in June 1992, the presence on, over or under land of any hazardous substance in excess of the controlled quantity has required consent from the hazardous substances authority (usually the same council or body that would act as the local planning authority and, in this case, Norwich City Council). Applications are made to the hazardous substances authority, which is required by regulations to consult with the Health and Safety Executive and the Environment Agency (and others) and is empowered to grant consent either unconditionally or subject to such conditions as it thinks fit (although any condition relating to how a hazardous substance is to

be kept or used may be imposed only if the HSE has advised that any consent should be subject to such condition(s)), or to refuse it.

3. Separate Regulations administered by the Health and Safety Executive implement the majority of the Seveso II Directive, which concerns the Control of Major Accident Hazards. Hazardous substances consent (hsc) is required for the presence of hazardous substances present at any COMAH sites (which are mainly related to the chemical industry). But these sites will also need to meet the wider health and safety requirements of the Seveso II Directive, which include notifying the Competent Authority (the Health and Safety Executive and the Environment Agency) of the presence of dangerous substances and to have in place major-accident prevention policies. It can also include requirements to prepare a safety report, to which there is public access, the preparation and testing of on-site and off-site emergency plans and informing members of the public likely to be affected by a major accident.
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5. In addition to these controls, the Environment Agency is also responsible for monitoring the site as a Part A1 site under the Integrated Pollution Prevention and Control (IPPC) Regulations under the Pollution Prevention and Control Act 1999. These controls relate to the control of pollution to air, land and ground water.
6. Hazardous Substance Consent controls give hazardous substances authorities (hsa) the opportunity to consider whether the proposed storage or use of the proposed quantity of hazardous substance is appropriate in a particular location, having regard to risks arising to persons in the surrounding area and to the environment. If consent is agreed, a consultation zone will be established within which proposals for future development will also be referred to consultees to consider possible effects on public safety. Such a consultation zone exists for the application site.
7. The following is taken directly from the central government Circular 04/00: 'Planning controls and hazardous substances':

'Purpose Of The Controls

The hazardous substances consent controls are designed to regulate the presence of hazardous substances so that they cannot be kept or used above specified quantities until the responsible authorities have had the opportunity to assess the risk of an accident and its consequences for people in the surrounding area and for the environment. They complement, but do not override or duplicate, the requirements of the Health and Safety at Work etc Act 1974 and its relevant

statutory provisions (defined at s.53 of that Act) which are enforced by the Health and Safety Executive. Even after all reasonably practicable measures have been taken to ensure compliance with the requirements of the 1974 Act, there will remain a residual risk of an accident which cannot entirely be eliminated. These controls ensure that this residual risk to persons in the surrounding area and to the environment is properly addressed by the land use planning system. (Paragraph 9)

Local planning authorities are able to exercise a degree of control over those substances through the development control system where the presence of hazardous substances is directly associated with a proposed development. But there are situations in which hazardous substances may be introduced onto a site, or used differently within it, without there being any associated development requiring an application for planning permission. The hazardous substances consent provisions enable specific controls to be exercised over the presence of hazardous substances whether or not associated development is involved. Hazardous substances authorities will be able to decide whether, in the light of the residual risk, and having regard to existing and prospective uses of a site and its surrounding environment, the proposed presence of a hazardous substance is an appropriate land use of that site.' (Paragraph 10)

The circular goes on to state:

The role of HSE and the Environment Agency is to advise the hazardous substances authority on the risks arising from the presence of hazardous substances. HSE has the expertise to assess the risks arising from the presence of a hazardous substance to persons in the vicinity; the Environment Agency has the expertise to assess and advise upon the likely risks arising to the environment. However, the decision as to whether the risks associated with the presence of hazardous substances, either to persons or to the environment, are tolerable in the context of existing and potential uses of neighbouring land is one which should be made by an elected authority (the hazardous substances authority). (Paragraph 41)

In considering hazardous substances consent applications, or planning applications for development at or in the vicinity of sites at which hazardous substances are present, authorities must have regard to the provisions of the development plan, so far as it is material to the application [...].(Paragraph 46)

The Site

Location and Context

8. The Bayer Cropscience site covers a large area of land to the west of Sweet Briar Road within the north-west part of Norwich. The site extends along the highway for this part of the outer ring road and is bounded by Hellesdon Road to the west. Hellesdon Hall Road separates two parts of the site to the north with the site extending to the local authority boundary to the north and with the Marriot's Way adjoining the boundary of the site to the south.
9. A site of special scientific interest is to the south-east of the site, with county wildlife sites to the south, south-east and south-west of the site. The overall site is partly developed with other buffer land to the south and to the west separating the site from nearby residential uses.

Relevant Planning and Hazardous Substance History

10. The site has been in use as a chemical works since the mid-1950's and has incrementally changed to respond to the requirements of the company and safe operations on the site.
11. There have been five previous applications for Hazardous Substances Consent on the site. The details of the applications can be summarised as follows:

4HS9204/H – Storage and use of bromine (160 tonnes) (Deemed Consent Granted 08/12/1992)

4/1999/0915/H – Storage and use of notifiable hazardous substances as specified within the application (38 different hazardous substances with a total quantity of 2,313 tonnes) (Deemed Consent Granted 02/02/2000)

4/2000/0193/H – Storage and use of substances to manufacture NTBN (2-nitro-4-trifluoromethyl benzonytrile) (5 different hazardous substances with a total quantity of 338 tonnes) (Consent Granted 15/06/2000)

09/00124/H - Storage of notifiable hazardous substances - Anhydrous Ammonia (5 tonnes), Sodium nitrite (30 tonnes), Sulphur Dioxide (12 tonnes), Chlorobenzene (120 tonnes), Acetone (75 tonnes), Cuprous Chloride (5 tonnes), Thisa (100 tonnes). (Consent granted 17/08/2009)

09/01443/H - Storage of notifiable hazardous substances - full site review for all hazardous substances stored and used on site, incorporating (i) additional consent required as a result of changes to the classification of some substances in the Regulations, (ii) some generic storage to allow for some flexibility of storage on site, (iii) alterations to existing consents required for increased quantities of some substances and reduced quantities or removal of consent for some substances no longer required. (Consent granted 15/10/2010)

The above full site review (ref. 09/01443/H) led to the revocation of the original consents (ref. 4HS9204/J, 4/1999/0915/H, 4/2000/0193/H and 09/00124/H) for the site. This revocation was confirmed by the Secretary of State on 6 August 2012.

The full site review also resulted in a reassessment of the risks associated with the site and a change to the consultation zone map which amended and reduced the areas around the site where consultation with the HSE is necessary prior to the grant of planning permission for new development.

The current application seeks to vary this current consent on the site ref. 09/01443/H.

12. In addition to the above hsc applications, there have been a significant number of planning applications relating to the operations on the site over the years, including some for fencing, portacabins, offices and training facilities, for example. Of the more recent planning applications, those most relevant to the storage and processing of chemicals on the site include:

09/01545/F - Installation of a new containment bund, new tanker off-loading bay and a new methanol storage tank. (Approved - 05/03/2010)

10/01317/F - Provision of cover over existing pond within existing effluent treatment plant. (Approved - 13/10/2010)

11/01884/F - Extension to the site effluent facilities to be located in the vicinity of

N91 building. (Approved - 20/12/2011)

Equality and Diversity Issues

There are no significant equality or diversity issues.

The Proposal

13. The application covers a number of proposed changes to the hazardous substances used and stored on the site. It includes new requirements due to changes in classification (determined under the CHIP regulations), one minor increase in quantity of substance with existing consent and a new location for a solvent following a replacement and relocation of the storage vessels to meet the current site engineering standards. In addition the application provides some additional information on an existing process and includes updated plans of the site to cover infrastructural changes and changes to substance locations.
14. The application does cover a new process but this is a process to treat some of the existing waste effluent streams on site, which primarily improves the quality of waste for disposal.

Representations Received

15. Advertised on site and in the press by the applicant in accordance with the Regulations prior to the submission of the application. In addition, the ward councillors also independently publicised the application by way of a local newsletter. One representation was received via the local councillors, together with a separate representation from the (then) two ward councillors, citing the issues as summarised in the table below.
- 16.

Issues Raised	Response
Is a new substance applied for- it was understood that the application sought a revision to the previous consent?	Only in relation to the new effluent treatment process on site; this produces a new waste substance as a by-product of this process.
The application proposes an increase in one substance from 200 to 250 tonnes – concerns expressed about the potential for this to present increased risks on the site.	This has been assessed as part of the application process by both HSE and EA. The additional storage is required to provide a buffer quantity at the new effluent treatment plant and for the various steps through that process, both in terms of locations and process requirements.
Concern that the reclassification on some substances implies that new information or understanding on the hazardous nature of those substances has arisen which may not have been considered	The reclassification has arisen as a result of the CLP Regulation (European Regulation (EC) No 1272/2008 on Classification, Labelling and Packaging of Substances and Mixtures) which

previously.

seeks to harmonise the classification of hazardous substances across the EU. Transitional arrangements are in place and, in the UK, the CHIP4 regulations (Chemicals (Hazard Information and Packaging for Supply) Regulations 2009) have been amended to align with the CLP regulation. The proposed addition of these substances to the consent on site arises as a result from the need to comply with the CLP regulation rather than as a result of any new understanding on the risks of the chemicals.

Consultation Responses

17. **Health and Safety Executive** – the risks to the surrounding population arising from the proposed operations are so small that there are no significant reasons, on safety grounds for refusing Hazardous Substance Consent. Recommend conditions requiring compliance with submitted details, the flashpoint of gas oil/ diesel to be greater than 55°C. No change to the existing consultation zone map is recommended.
18. **Environment Agency** – It is noted that the changes to the effluent treatment plant propose to enhance treatment of the existing waste effluent streams on site. We have no objections to the proposal but it will require a variation to the Environmental Permit before the process is operational. The storage and handling of materials on site must be in accordance with the EA's environmental permitting guidance and storage guidance available from the HSE.
19. **Natural England** – no specific comments in relation to proposed variation; note the site lies adjacent to an SSSI and state that the stringent control of the quality of any discharge from the chemical installation is particularly important.
20. **Norfolk County Council, Emergency Planning** – The changes proposed will not have an impact on the emergency management process and therefore make no comment.
21. **Norfolk County Council, Planning Authority** – no comments
22. **Broadland DC, Fire Officer, Norfolk Constabulary, National Grid** – no response received

ASSESSMENT OF PLANNING CONSIDERATIONS

Relevant Planning Policies

National Planning Policy Framework:

Paragraph 17 – Core planning principles

Paragraph 172 – Public safety from major accidents

Section 1 – Building a strong, competitive economy

Section 11 – Conserving and enhancing the natural environment

Relevant policies of the adopted East of England Plan Regional Spatial Strategy 2008

NR1 – Norwich Key Centre for Development and Change

Relevant policies of the adopted Joint Core Strategy for Broadland, Norwich and South Norfolk 2011

1 – Addressing climate change and protecting environmental assets

5 – The economy

12 – The remainder of the Norwich urban area

Relevant saved policies of the adopted City of Norwich Replacement Local Plan 2004

EP3 –Health and Safety Consultation

EP5 – Air Pollution

EMP7 – Single employer sites

NE7 – Protection of locally designated sites of nature conservation interest

Relevant policies of the development management policies development plan document – regulation 19 pre-submission consultation draft

DM11 – Protecting against environmental hazards

DM16 – Supporting the needs of business

Site allocations and site specific policies development plan document – regulation 19 pre-submission consultation draft

Other Material considerations

Circular 04/00: 'Planning controls and hazardous substances'

Written Ministerial Statement: Planning for Growth March 2011

Principle of Development

Policy considerations

23. The most relevant development plan policies and central government guidance are indicated above. In addition to this, Circular 04/00 is also particularly relevant.
24. The policies and guidance above require the authority to take into account issues relating to the impact of the proposed presence of hazardous substances on the surrounding area in terms of their impact both on the local population and the environment.
25. In addition to this, Policy EMP7 states: 'The sites identified as single employer sites will be retained in their primary industrial use and development providing for appropriate expansion of the industries concerned will be permitted, subject to the need for improved access provision if necessary.'
26. In relation to policy EMP7, the text of the Local Plan states: 'Certain employment sites are occupied primarily by single large employers. These are important firms, employing considerable numbers of people and the main objective of this Plan will be to maintain their position and provide for any appropriate level of expansion which is feasible within their sites.'

Other Material Considerations

27. Section 9(2) of the Planning (Hazardous Substances) Act 1990 indicates that other material considerations, as well as the above, include: any current or contemplated use of the land to which the application relates; the way in which land in the vicinity is being used or is likely to be used; any planning permission that has been granted for development of land in the vicinity; and any advice which the HSE have given following consultations.
28. The site is currently used as a chemical plant and has been used as such for some considerable time. The current application would suggest that this current land use is not envisaged to cease in the foreseeable future. The use of the land in the vicinity of the site is not considered likely to change materially in the future. The site continues to be shown as an employment site within the emerging development plan document draft policies map and no specific allocations are proposed within the immediate vicinity of the site.
29. Permissions have been granted on the site over time, which support its continued use as a chemical plant. Permissions have also been granted for other uses and development around the site following consultation with the HSE and taking into account the advice provided with regards to risk. Even taking into account the limited weight that it is considered should be accorded to the emerging development management policies and site allocations development plan documents, it is considered that there are no developments existing or proposed in the vicinity that would suggest that the current application should be refused, not least because the risks associated with the operation of the site would not change if the application is granted.
30. The advice provided by the HSE is that there are no significant safety grounds for refusing the current application.
31. Advice received from the Environment Agency and other consultees does not

contradict this advice or suggest that the current application would be in conflict with the other regulatory controls that exist on the use of the site, such as the COMAH and Environmental Permit regulations.

32. These other regulations also ensure that the quality of the effluent discharged from the site is controlled and the current application seeks consent in part to undertake a new treatment process which would enhance the treatment of effluent on site. The comments of Natural England regarding the potential impact on the SSSI are therefore considered to be addressed.

Conclusions

33. The proposed variations to the existing Hazardous Substance Consent on the site are considered unlikely to result in any significant increase in risk to human health or the environment and would not conflict with any existing or proposed use of the site or the land around the site. Therefore, subject to the imposition of conditions as recommended by the HSE, it is considered that the grant of consent is acceptable.

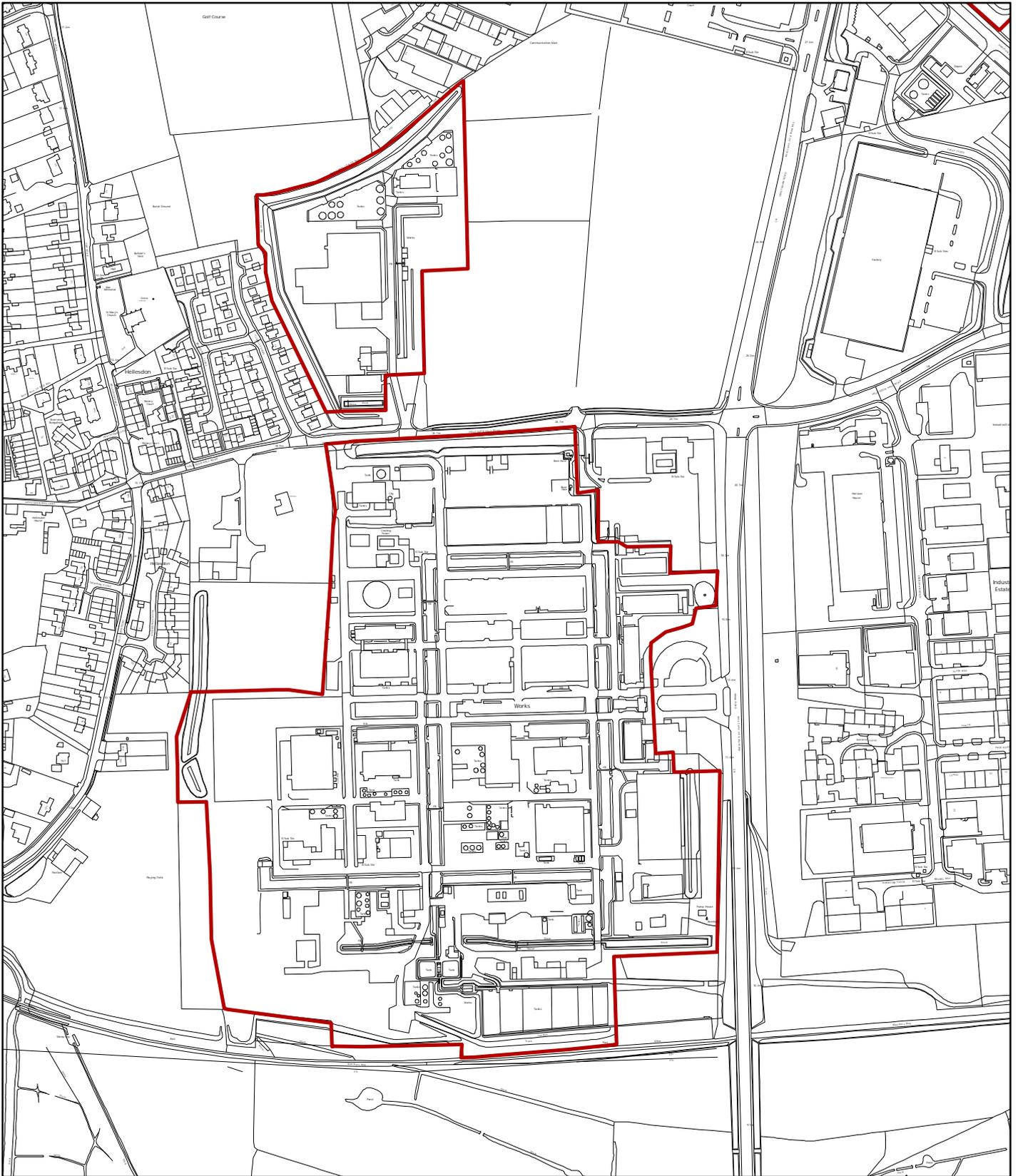
RECOMMENDATIONS

To approve Application No 11/02097/H at Bayer CropScience, Sweet Briar Road, Norwich and grant hazardous substance consent, subject to the following conditions:-

1. The Hazardous Substances shall not be kept or used other than in accordance with the application particulars provided in Form 1, nor outside the area(s) marked for storage of the substance(s) on the plan which formed part of the application.
2. The flashpoint of Gas Oil / diesel shall be greater than 55°C

(Reasons for approval:

The proposed variations to the existing Hazardous Substance Consent on the site are considered unlikely to result in any significant increase in risk to human health or the environment and would not conflict with any existing or proposed use of the site or the land around the site. Therefore, subject to the imposition of conditions as recommended by the HSE, it is considered that the grant of consent is acceptable and in accordance with the relevant policies of the NPPF, policy NR1 of the East of England Plan 2008, policies 1, 5 and 12 of the adopted Joint Core Strategy for Broadland, Norwich and South Norfolk 2011, saved policies EP3, EP5, EMP7 and NE7 of the City of Norwich Replacement Local Plan 2004 and policies DM11 and DM16 of the development management policies development plan document – regulation 19 pre-submission consultation draft 2012.)



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Planning Application No 11/02097/H

Site Address Cropsience Uk Ltd Sweet Briar Road

Scale 1:5,000



NORWICH
City Council

PLANNING SERVICES

