

Agenda Item No. 4.1

DERBYSHIRE COUNTY COUNCIL

REGULATORY – PLANNING COMMITTEE

9 October 2017

Report of the Strategic Director – Economy, Transport and Communities

- 1 APPLICATION FOR A HAZARDOUS SUBSTANCES CONSENT AT THE ENTHOVENS WORKS, DARLEY DALE, MATLOCK
APPLICANT: H J ENTHOVEN & SONS
HAZARDOUS SUBSTANCES CONSENT APPLICATION CODE NO: CH3/0117/85**

3.1077.9

Introductory Summary

This application falls to Derbyshire County Council, as the Hazardous Substances Authority, to determine and relates to the well-established and extensive H J Enthoven & Sons Lead Smelter Works at Darley Dale, Matlock. The application seeks permission for a Hazardous Substances Consent to allow continuation of the storage of specified substances following changes introduced by the Planning (Hazardous Substances) Regulations 2015 (the Regulations). I consider the application meets the requirements set out in the Regulations and it accords with the sustainable development principles as set out in the National Planning Policy Framework (NPPF). The application is therefore recommended for approval.

(1) **Purpose of Report** To enable the Committee to determine the application.

(2) **Information and Analysis**

Site and Surroundings

The application site lies within the large established H J Enthoven Works site situated in a rural and prominent location off Oldfield lane, Warren Carr, Darley Dale, which is 1.5 kilometres south-west of Darley Dale and 5 kilometres north of Matlock. The works site, which rises in level in a general east-west direction, extends to approximately 60 hectares and comprises of a complex of high sided, steel-sheeted industrial buildings, enclosed compounds and open yards with the main two storey office buildings lying close to the site entrance off Oldfield Lane. All access to the site is via Oldfield Lane from two separate points to the site both located on the south-western boundary of the site fronting Oldfield Lane. The south-easterly access is for heavy goods vehicles, whilst a second access, close to the main office

buildings, is used for lighter traffic and for office staff. All site boundaries are secured by steel fencing and there is a 24 hour monitored security system in place. The nearest residential properties are those fronting Oldfield Lane, located approximately 400 metres to the east.

Details of the Application

H J Enthoven & Sons have been processing lead at this site for a considerable number of years and no significant changes are proposed. This application is submitted as part of the new controls imposed under the Control of Major Accident Regulations 2015 (Seveso 111 Directive) and as part of the need for Hazardous Substances Consent introduced by the recent changes to the Regulations.

The works receive approximately 130,000 tonnes per annum of lead acid batteries, the majority of which are collected locally, and these are initially tipped inside a building. Deliveries of the batteries are only accepted during weekdays from 0630 hours to 1800 hours. The spent batteries are then collected by machine and crushed through a hammer mill before being separated in a wet process, collecting three main fractions which comprise:

- Metallic lead;
- Lead paste (comprising lead oxide and sulphate); and
- Plastic (battery outer case fraction).

The lead fractions are then dried and processed through one of three of the works site furnaces to produce metallic lead in 25Kg rectangular ingots, 3 tonne blocks and lead shot. The majority of the product, however, is in ingot form. All plastics are washed and hot extruded to produce polypropylene pellets for re-use.

Although small quantities of lead scrap and other lead based materials are processed at the site, the majority of substances received at the site are car and lorry batteries.

Site activities are controlled by an Environmental Permit and the applicant company is licenced by the Environment Agency (EA) as an Approved Battery Treatment Operator (ABTO). This requires the applicant company to provide accurate reports to the EA of consignment notes, weighbridge details, photographs, invoices and other relevant information.

Following detailed correspondence with the Health and Safety Executive (HSE), and the EA, the applicant company has clarified a substantive list of substances for which consent is sought. In the application submitted, consent is being sought for multiple substances, and these include specified quantities of:

- Arsenic and Selenium
- Luperox
- Sodium Nitrate
- Liquefied petroleum gas (LPG)
- Oxygen
- Diesel
- Ferric Chloride
- Hydrochloric Acid
- Sodium Metal
- Calcium Metal

These materials are all stored in sealed tanks and sealed containers on various locations within the works yard. However, all of the above are below the controlled quantity and do not require a consent even after applying the addition rule as set out in the Regulations. The specific substances requiring consent (as assessed by the HSE), are as follows:

- Lead Oxide; and
- Other lead compounds.

Following further consultation, the HSE considers that lead oxide should only be treated as an environmental hazard. It is these lead compounds which have triggered this application. At the Enthoven's site, therefore, the identified hazardous materials (in accord with the Regulations) are:

Substance Category	Part No	Maximum Capacity
Lead Oxide	Part 1 H2 Acute Toxic H3 STOT E1 Hazardous to aquatic Environment E2 Hazardous to aquatic Environment E2	20,000 tonnes

With regard to lead and lead oxides, these are stored in the large 'Materials Free' Building close to the south-west boundary of the site, the covered bays, the 'Battery Storage Building' and the enclosed 'Dryer Unit Building', all adjacent to the north-eastern boundary of the works site. Access to these areas is strictly controlled and by specified company staff members only. The works site has a contained drainage system so any potential leakages would be retained within the works boundaries.

Consultations

In determining an application for hazardous substances consent, the Hazardous Substances Authority must take into account the results of consultations held in relation to that application. The HSE and the EA acting jointly, are the Control of Major Accident Hazards competent (COMAH) Authority. Consultations have been carried out and the following comments have been received:

Health and Safety Executive

HSE has assessed the risks to the surrounding population arising from the proposed operations and has concluded that these risks are so small that there are no significant reasons on safety grounds for refusing this application, provided that a series of conditions, as set out below, are imposed on the consent.

Environment Agency and Environmental Health Officer (Derbyshire Dales District Council)

No objection.

Other Consultees

Councillor Atkin, as County Council Ward Member, Derbyshire Dales District Council Planning and Derbyshire County Council's Emergency Planning team, have all been consulted with no responses received.

Publicity

In accordance with the Regulations, the application has been advertised (by the applicant company) in the Matlock Mercury on 19 January 2017 asking for any comments to be sent to the County Council by 10 January 2017. The application has also been advertised by several site notices which were placed in prominent locations on the site boundary including the site entrance gates where members of the public could easily read the notices. No representations have been received by the County Council as a result of this publicity.

Planning Considerations

This is not an application for planning permission and it does not concern any proposal to change the activities at the site. It is an application to update the site's Hazardous Substances Consent following recent changes to the Regulations. The application site is used for the recycling of car and lorry batteries, and as a waste recycling facility which falls to the County Council as the relevant Hazardous Substances Authority to determine this application.

The Hazardous Substances Consent process ensures that necessary measures are taken to address the risks of major accidents and limit their consequences to people and the environment. This is a key part of the controls for storage and use of hazardous substances which could, in quantities at or above specified limits, present a major off-site risk. The system of Hazardous Substances Consent does not replace requirements under health and safety legislation.

Under the Regulations, the COMAH competent authority is the HSE and the EA, acting jointly. They advise hazardous substances authorities on the nature

and severity of the risk to persons in the vicinity and the local environment arising from the presence of a hazardous substance at an establishment. Hazardous Substances Consent is required for the presence of hazardous substances at any establishment that falls within the scope of the Seveso III Directive. The 'categories of substances' that require Hazardous Substances Consent are listed in Part 1 of Schedule 1 of the Regulations. The list of hazardous substances, subject to controls in Schedule 1 of the Regulations, is split into Part 1 and Part 2. The rule governing the addition of hazardous substances, known as the addition rule, applies when substances in Part 2 are present below their individual controlled quantity, together with substances from the same classification in Part 1. Some of the thresholds for requiring consent had been changed by the Regulations coming into force. This application became necessary as a result of these changes.

The Hazardous Substances Authority can impose conditions, including conditions as to how and where substances are kept and the times substances may be present, or requiring permanent removal within a certain time. Conditions as to how a substance is to be kept or used may only be imposed if the COMAH competent authority has advised that such conditions should be imposed.

The NPPF provides guidance on the planning considerations in relation to hazardous substances. In setting out how the planning system should contribute to and enhance the natural and local environment, Paragraph 109 states that it should prevent both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability. Paragraph 172 directs that planning policies should be based on up-to-date information on the location of major hazards and on the mitigation of the consequences of major accidents.

H J Enthovens & Sons utilises leading edge and best available technologies throughout its processing operations, combining energy efficiency, good productivity and high environmental standards. The site has a long history of successfully managing the storage of hazardous substances and other waste materials. The Council, as Waste Planning Authority, has not received any complaints about the site activities. The site is subject to strict environmental controls through the permitting regime which complements the hazardous substances controls. I am satisfied, therefore, that there are no unacceptable risks to the environment or public amenity associated with this application.

HSE and the EA have considered this application and the HSE has provided an assessment of the risk of harm from the maximum quantity of hazardous substances for which consent is being sought. Risks which may arise from the presence of other substances have not been taken into account in this assessment. HSE has concluded that the risks to the surrounding population

arising from the proposed operation are such that there are no significant reasons, on safety grounds, for refusing Hazardous Substances Consent, provided the conditions listed in the Officer's Recommendation are imposed on the consent.

Conclusion

I am satisfied that the COMAH competent authority, has concluded that there are no reasons to not grant consent based on safety grounds as set out in the Regulations. Having had regard to local needs and conditions, the local plan, and other material considerations, there are also no reasons not to grant consent on planning policy grounds. Therefore, I recommend that consent should be granted for the application, subject to the conditions advised by HSE.

(3) **Financial Considerations** The correct fee of £400 has been received.

(4) **Legal Considerations** This is an application submitted under the Planning (Hazardous Substances) Act 1990 and the Planning (Hazardous Substances) Regulations 2015, which falls to this Authority to determine as the relevant Hazardous Planning Authority for land used for the disposal of refuse or materials.

This is a function prescribed by regulations under the Local Government Act 2000 as a function that cannot be exercised by the Executive.

In dealing with such application, the Authority must have regard to any material considerations, including:

- a) any current or contemplated use of land to which the application relates;
- b) the way in which land in the vicinity is being used or is likely to be used;
- c) any planning permission that has been granted for development of land in the vicinity;
- d) the provisions of the development plan; and
- e) any advice which the HSE has given following consultations.

The Authority may grant Hazardous Substances Consent either unconditionally or subject to conditions, or may refuse consent. Full reasons must be stated for any conditions imposed, and any refusal.

The consent must include a description of the land to which it relates, a description of the hazardous substance to which it relates, and a statement of the maximum quantity of each hazardous substance allowed by it to be present at any one time.

I do not consider that there would be any disproportionate impacts on anyone's human rights under the European Convention on Human Rights as a result of this consent being granted subject to the conditions referred to in the Officer's Recommendation.

- (5) **Environmental and Health Considerations** As indicated in the report.

Other Considerations

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

- (6) **Background Papers** File No. 3.1077.9
Application documents submitted under a covering letter from H J Enthoven and Sons dated January 2017. Letters from the Health and Safety Executive dated 9 May 2017, the Environment Agency dated and Environmental Health Officer at Derbyshire Dales District Council various dates.

- (7) **OFFICER'S RECOMMENDATION** That the Committee resolves to **grant** consent for the storage of substances of the nature and quantities set out in the hazardous substances application CH3/0117/85, subject to the following conditions:

Condition

- 1) The hazardous substances shall not be kept or used other than in accordance with the particulars provided on the application form and supporting letter, nor outside the areas marked for storage of the substances on the plan which formed part of the application (Ref No. 000016227 dated 8 December 2016).

Reason: To ensure conformity with the details of the application as approved and to clarify its scope.

Note to Applicant

- 1) Your attention is drawn to Section 29 of the Planning (Hazardous Substances) Act 1990.

Mike Ashworth
Strategic Director – Economy, Transport and Communities

