

Title: Hazardous Substances Consents (HSC)

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Portfolio Holder: Councillor Sinnott & Councillor King

Wards of the District directly affected: All

Approvals required	Date	Name
Portfolio Holder	07/06/24	Councillor Sinnott Councillor King
Finance		Betty Gong
Legal Services	07/06/24	Sue Mullins
Chief Executive	03/06/24	Chris Elliott
Director of Climate Change	03/06/24	Dave Barber
Head of Service(s)	28/06/24	Marianne Rolfe Phil Clarke
Section 151 Officer		Andrew Rollins
Monitoring Officer	03/06/24	Graham Leach
Leadership Co-ordination Group		
Final decision by this Committee or rec to another Cttee / Council?	No Recommendation to: Council	
Contrary to Policy / Budget framework?	No	
Does this report contain exempt info/Confidential? If so, which paragraph(s)?	No	
Does this report relate to a key decision (referred to in the Cabinet Forward Plan)?	Yes – Ref 1,466	
Accessibility Checked?	Yes	

Summary

The purpose of this report is to

Formalise the Hazardous Substances Consents process and revise the scheme of delegations to officers for this process.

Recommendation(s)

- (1) That Cabinet notes the Hazardous Substances Consents Process (Appendix 1).
- (2) That Cabinet recommends to Council that delegated authority HCP (16) is revised to give delegated authority to the Head of Place, Arts and Economy, instead of the Head of Safer Communities & Leisure, to:

exercise the Council's powers under the Planning (Hazardous Substances) Regulations 1992 (as amended by the Planning (Control of Major-Accident Hazards) Regulations 1999 & 2015) and associated Regulations, and that authority be delegated to the Head of Place, Arts and Economy to authorise appropriate named individuals, after consultation with the COMAH, relevant Ward Councillors, Chair and Vice Chair of Planning Committee and Solicitor acting for the Council, to grant, or refuse hazardous substances consents either unconditionally or subject to conditions and if necessary take all appropriate action to take enforcement to ensure compliance with these regulations.

1 Reasons for the Recommendation

- 1.1.1 The Planning (Hazardous Substances) Act 1990 and the Regulations made under that Act, requires hazardous substances consent (HSC) to be obtained for the presence of hazardous substances on, over, or under land unless the quantities of substances are below the controlled quantities listed in Schedule 1 to the Planning (Hazardous Substances) Regulations 2015. Warwick District Council (WDC), in its role as Local Planning Authority, has responsibility for administering regulations in relation to the control of hazardous substances and determines HSC applications as well as enforcing controls, in conjunction with Environmental Health colleagues.
- 1.1.2 Controls ensure that hazardous substances can be kept or used in significant amounts only after the responsible authorities have had the opportunity to assess the degree of risk arising to persons in the surrounding area, and to the environment. They are concerned with the storage and use of hazardous substances which could, in quantities at or above specified limits, present a major off-site risk.
- 1.1.3 Where the presence of a hazardous substance is directly associated with a proposed development, local planning authorities can exercise a degree of control over the siting and use of hazardous substances through the development management process. This consent procedure allows for control to be exercised over the presence of hazardous substances whether or not an associated development requiring planning permission is involved. It is geared to regulating the storage and use of hazardous substances. It will enable breaches of control which may present serious risks to be dealt with quickly and effectively.

- 1.1.4 The controls are planning controls. They do not replace or duplicate the requirements of the Health and Safety at Work etc. Act 1974, or the relevant statutory provisions defined in Part I of that Act. Even after all reasonably practicable measures have been taken to ensure compliance with the requirements of the 1974 Act, there may remain the residual risk of an accident which cannot entirely be eliminated. The controls will ensure that this residual risk to people in the vicinity or to the environment is considered before a hazardous substance is allowed to be present in a controlled quantity. The extent of this risk will depend upon where and how a hazardous substance is to be present; and the nature of existing and prospective uses of the application site and its surroundings.
- 1.1.5 If consent is required, applicants will need to apply for consent to the hazardous substances authority (in this case, WDC). It is important that applications provide all the relevant information as decisions on incomplete applications can be delayed. An application for consent must include the information set out in regulation 5 of the Planning (Hazardous Substances) Regulations 2015.

1.2 **Decision Making**

- 1.2.1 The responsibility for deciding whether the risk is tolerable for the community and hence whether a particular proposal to store or use a hazardous substance is one for the local hazardous substances authority, in this case Warwick District Council (WDC).
- 1.2.2 The first thing WDC will do is to make sure the application is in order. This will involve ensuring it meets the requirements set out in the Planning (Hazardous Substances) Regulations 2015. If the application is in order, WDC will acknowledge it and send a copy of the application to the Control of Major Accident Hazards (COMAH) competent authority. WDC will place details of the application on the register of consent applications, which is available to anyone who wants to see it. If WDC does not consider the application is in order, it will tell the applicant why.
- 1.2.3 WDC must then consult the Control of Major Hazards (COMAH) competent authority and others as required by legislation. These include fire and civil defence authorities, other relevant planning authorities and public utilities. Natural England should also be consulted where it appears to the hazardous substances' authority that an area of particular natural sensitivity or interest may be affected. A full list of relevant authorities is available in Appendix 2 (a&b).
- 1.2.4 The (COMAH) competent authority (usually the Health and Safety Executive (HSE) and the Environment Agency (EA) acting jointly) advise WDC 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. It will recommend granting an application, granting an application with conditions attached or refusal of an application.

For nuclear sites, the COMAH competent authority is the Office of Nuclear Regulation and the EA, acting jointly.

The COMAH competent authority is a statutory consultee and must be consulted by WDC before HSCs are granted.

Before reaching a decision, WDC will need to weigh up all the comments received,

including those from the COMAH competent authority. It will take account of local needs and conditions, the local plan, and any other material considerations.

In view of its acknowledged expertise in assessing the off-site risks presented by a hazardous substance, any advice from the COMAH competent authority that hazardous substances consent should be refused should not be overridden without the most careful consideration. Where a hazardous substances authority is minded to grant consent against COMAH competent authority advice, it should notify the COMAH competent authority and allow 21 days for the COMAH competent authority to give further consideration. During that period the COMAH competent authority will consider whether to request that the Secretary of State for Communities and Local Government calls in the application for determination.

- 1.2.5 WDC may grant consent, either with or without conditions (including conditions as to how and where substances are kept and the times when substances may be present, or requiring permanent removal of substances within a certain time), or may refuse it. If it refuses consent or grants it subject to conditions, it should provide full reasons for the decision. This will help the applicant to decide whether or not to contest the decision. The requirements for approval are set out in the Planning (Hazardous Substances) Act 1990 and the Planning (Hazardous Substances) Regulations 2015.
- 1.2.6 Conditions on how a substance is to be kept or used may only be imposed if the Health and Safety Executive (or in the case of nuclear sites, the Office of Nuclear Regulation) has advised that such conditions should be imposed. Where the COMAH competent authority is considering imposing a condition that restricts the location of a substance within a site, it should try to avoid imposing undue restrictions on relatively small amounts of that substance being located elsewhere in the establishment. For example, a condition may allow a hazardous substance to be stored in a moveable container in a different area of a site from where it has previously been stored provided the quantity does not exceed 10% of the controlled quantity. This avoids situations where, for example, a relatively small amount of a substance in a moveable container in a different part of the site (e.g. a gas canister to service a staff kitchen), or which is covered by the '2% rule', would otherwise be a breach of the condition.
- 1.2.7 The Secretary of State also has the power to call-in an application for their own determination. This will be very much the exception, for example where an application raises issues of more than local importance. Where an application is called-in, the hazardous substances authority must inform the applicant.
- 1.2.8 Under the nationally significant infrastructure planning regime hazardous substances consent can be deemed to be granted by a development consent order. The aim in doing so is to provide a 'one stop shop' for consenting for nationally significant infrastructure projects. A deemed consent can also be issued in certain other circumstances by the government where consent is required for a development by a statutory undertaker or local authority which requires government authorization.
- 1.2.9 WDC should provide applicants with a decision within 8 weeks from receipt of a valid application, but any extension to this 8-week period has to be agreed in writing with the applicant.

1.3 **Scheme of Delegation**

- 1.3.1 The current delegation is to the Head of Safer Communities and Leisure. The proposal is to move this delegation to the Head of Place, Arts and

Economy as this is considered a more appropriate decision maker for this instance. In addition to this the delegation at present is to grant but not refuse licences under this regulation. This would mean if officers were minded to refuse an application the, at present, the decision would need to be taken by Council. Having reviewed the approach of other authorities recognising the technical requirements of these decisions, the strong guidance is that the advice of the COMAH should be followed. Therefore it is proposed that the delegation is revised to allow officers to refuse the applications as well. To provide assurance and member engagement it is also considered appropriate to revise the delegation so that the relevant Ward Councillors, Chair and Vice Chair of Planning Committee are consulted on any proposed decision before it is taken. In addition to this due to the complex and sensitivities around any potential licence a Solicitor acting for the Council will also be consulted.

2 Alternative Options

- 2.1 The Cabinet could decide to delegate the consideration and determination of these applications to a Committee. This could be based on the anticipation that any application is likely to attract public scrutiny and attention. However, the number of applications to be considered is likely to be limited and require significant technical knowledge. Therefore, it is recommended that delegated authority is given to officers for these applications, especially being mindful of the guidance that the recommendation from COMAH should be always followed.

3 Legal Implications

- 3.1 The relevant legislation regarding Hazardous Substances Consent (HSC) has been identified as follows:
- The Planning (Hazardous Substances) Regulations 2015
 - The Town and Country Planning (Development Management Procedure) (England) Order 2015 (Regulation 18 and Schedule 4)
 - The Town and Country Planning (Local Planning) (England) Regulations 2012 (Regulation 10(1)(a) and (b))
- 3.2 The relevant paragraphs regarding HSC in the National Planning Policy Framework (NPPF) have been identified as follows:
- Paragraph 2 - EU obligations and statutory requirements
 - Paragraph 45 - consulting appropriate bodies when planning, or determining applications, for development around major hazards
 - Paragraph 174 (e) - preventing unacceptable risk to development
- 3.3 The NPPF defines what is meant by major hazards as 'sites and infrastructure, including licensed explosive sites and nuclear installations, around which Health and Safety Executive (and Office for Nuclear Regulation) consultation distances to mitigate the consequences to public safety of major accidents may apply.'
- 3.4 The Enforcement of hazardous substances controls is the responsibility of Warwick District Council.
- 3.5 Warwick District Council must liaise with the COMAH competent authority where contraventions give rise to health and safety or environmental concerns. The COMAH competent authority may consider whether action is also appropriate

under Control of Major Accident Hazards Regulations 2015 or other relevant health, safety, or environmental legislation.

3.6 An appeal can be made to the Secretary of State if WDC:

- refuses to grant consent;
- refuses an application for a continuation of consent upon change in ownership of part of the land;
- refuses to grant any consent, agreement or approval required by a condition imposed on a consent;
- refuses an application to vary or remove conditions attached to a previous grant of consent;
- grants consent but imposes conditions which are unacceptable to the applicant; or
- fails to reach a decision within the statutory time limit of 8 weeks, or any longer period agreed with the applicant.

The relevant legislation is detailed in Appendix 1.

4 Financial Services

4.1 Any application will be added to the Council's planning case management system and displayed on the website.

4.2 For applications where no one substance exceeds twice the controlled quantity, currently the fee for application (amount set in the Regulations) is £250. For proposals involving the presence of a substance in excess of twice the controlled quantity, currently the fee is £400. Where an application is for the removal of conditions attached to an existing consent or for the continuation of a consent upon partial change in ownership of the land, the fee currently stands at £200.

5 Corporate Strategy

5.1 Warwick District Council has adopted a Corporate Strategy which sets three strategic aims for the organisation. There are no direct implications of the decision in respect of each of the three themes from this report. This is because the report is about providing a statutory function for protecting the public and wider community from harm.

6 Environmental/Climate Change Implications

6.1 There are no identified implications on protected characteristics by this report's recommendations.

7 Analysis of the effects on Equality

7.1 There are no identified impacts on protected characteristics by this report's recommendations.

8 Data Protection

- 8.1 There are no identified data protection matters identified by this report's recommendations.

9 Health and Wellbeing

- 9.1 HSCs seek to allow businesses to thrive in a sustainable and safe way. The COMAH competent authorities assess each application relevant to its proposed location and consider the potential impacts on residents and the environment. Any recommended conditions will be placed on any approval and WDC will enforce these conditions.

10 Risk Assessment

- 10.1 The significant risk for the Council at present is ensuring there is an appropriate and robust procedure in place to determine any applications. The report brings forward updated and considered appropriate control measures which have been developed through discussions with other local authorities who already have such licences in place.

Supporting documents:

- The Planning (Hazardous Substances) Act 1990
<https://www.legislation.gov.uk/ukpga/1990/10/contents>
- Planning (Hazardous Substances) Regulations 2015
<https://www.legislation.gov.uk/uksi/2015/627/contents/made>
- the Health and Safety at Work etc. Act 1974
<https://www.legislation.gov.uk/ukpga/1974/37/contents/enacted>