

Report to Planning Committee

Application Number: 2013/0497 and 2013/0500

Location: Land South of Colwick Loop Road, Colwick,
Nottinghamshire, NG4 2FS

Proposal: 2013/0497 Construction of A4 public house with restaurant facilities & associated managerial residential accommodation at first floor (full application) & A3 restaurant or A5 hot food takeaway (outline application)

2013/0500 Construction of A1 retail unit with ancillary restaurant & concession units (petrol filling station & car wash) and service yard, car parking, landscaping & highways works (full application) & B1/ B2 / B8 employment uses (outline application)

Background

Planning Applications 2013/0497 and 2013/0500 were presented to Planning Committee on the 30th October 2013; members were minded to grant planning permission for both applications subject to a number of planning conditions. As a result of Hazardous Substances Consents in place for Total Oil Refinery Ltd and for the former Esso Petroleum Company Ltd and Chevron Ltd and the Development Proximity Zones that have been established by the Health and Safety Executive (HSE) the applications were subject to consultation with the HSE.

The HSE advised against both developments. In relation to application 2013/0497 the HSE advised against because of the existence of the Total Oil Refinery Ltd and Chevron Ltd Hazardous Substance Consents. Whilst in relation to 2013/0500 the HSE advised against the application because of the existence of the Esso Petroleum Company Ltd and Chevron Ltd Hazardous Substance Consents. The Esso and Chevron hazardous consents were revoked after the Committee Reports were drafted.

Given the nature of the applications there remained a requirement for both applications to be referred to the HSE following the resolution to grant both applications at Planning Committee on 30th October 2013. The 0497 application was referred because of the 'advise against' decision made and because the HSE need to be kept informed of decisions made in relation to applications that could affect sites where hazardous substances are stored. The 0500 application was referred to the HSE for the latter reason. The HSE have powers to call in the applications so

that they could be determined by the Secretary of State.

As a consequence of this referral the HSE e-mailed the Council on the 6th November and have made the following comments in relation to the applications:

HSE Comments 2013/0497

“The HSE wrote to Gedling Borough Council on 27 June 2013, providing HSE's advice in respect of planning application 2013/0497, which is that there are sufficient reasons, on safety grounds, for advising against the granting of planning permission. There were two reasons for this;

a) the proposed development involves an 'indoor use by the public' development type (sensitivity level SL2), which is sited within the inner zone of the Chevron Ltd site;

b) the proposed development involves a public house/restaurants and a takeaway restaurant which will be located within the Development Proximity Zone (DPZ) of Total Lindsey Oil Refinery Ltd, a large-scale petrol storage site. HSE's 'Land use planning advice around large-scale petrol storage sites' set out in circular SPC/Tech/Gen/43, explains that HSE will advise against any proposals to site occupied buildings with the DPZ.

As the hazardous substances consent of the Chevron Ltd site has now been revoked, (a) no longer applies. However, the hazardous substances consent for the Total Lindsey Oil Refinery Ltd site remains in place so HSE's advice is still that we advise against the granting of planning permission.

On pages 10 and 16 of the Report to the Planning Committee of 30 October 2013, it is suggested that HSE's concerns could be addressed by including the following condition in the planning permission;

'The public house or restaurant element shall not be brought into use until either: a) The hazardous substances consents for both the Total Lindsey Oil Refinery Ltd and Chevron Ltd have been are revoked, or b) A report relating to the respective element has been submitted to the LPA outlining the level of risk posed by the presence of the Total Lindsey Oil Refinery Ltd together with details of any proposed mitigation measures and the LPA have agreed in writing that they are satisfied with the conclusions of the Report so to allow the respective element to be occupied. Any mitigation measures proposed in the report to be approved in writing by the Borough Council shall be implemented in accordance with the approved report.'

This condition is not acceptable to HSE and its inclusion in the planning permission would not enable HSE to reconsider its advice.

However, HSE would be prepared to withdraw its advice if the condition were to be revised as follows:

'No part of the development shall be occupied until the hazardous substances consent for the Total Lindsey Oil Refinery Ltd site at Colwick Industrial Estate has

been formally revoked.'

HSE would be grateful for Gedling Borough Council's views on this suggestion. Should Gedling Borough Council still be minded to grant planning permission without including a condition which is acceptable to HSE, the HSE must advise you that the HSE is giving serious consideration to requesting that the Secretary of State call-in this planning application for his own determination. As HSE has until 22 November 2013 to decide this, HSE would be grateful if you would respond as quickly as possible, or extend the time limit for HSE to give further consideration to this matter."

HSE Comments 2013/0500

"HSE wrote to Gedling Borough Council on the 27 June 2013 and provided HSE's advice in respect of this planning application, HSE only referred to the risks from the Esso Petroleum Company Ltd and Chevron Ltd sites, the hazardous substances consent for which have since been revoked. That advice was subsequently reflected in the comments on page 6 of the Report to the Planning Committee on 30 October 2013.

The reason for not mentioning the proximity of the development to the Total Lindsey Oil Refinery Ltd site in the letter was because unfortunately when the application was considered, the presence of the petrol filling station was overlooked. The petrol filling station is not referred to in the description of the proposal on the application form, although 'PFS kiosk' is included in the list of non-residential floorspace, and the drawings showing the petrol filling station were submitted with the planning application.

Nevertheless, although the hazardous substances consents for the Esso and Chevron sites have been revoked, as the consent for the Total site remains in place, the HSE would still advise against the granting of planning permission in this case. The reason for this is that the petrol filling station lies within the inner zone of the Total site, and along with the supermarket, forms part of the 'indoor use by the public' development type considered within PADHI+. As the total floor space of that development type exceeds 5,000 square metres, the sensitivity level of the development is SL3. In applying the PADHI straddling rule to this development type, it is considered to lie within the inner zone of the Total site and PADHI+ therefore advises against it. This is the advice that Gedling Borough Council should have obtained from PADHI+ in respect of those elements of the proposed development within Total's inner zone. If the petrol filling station were to be sited within the outer zone of the Total site, PADHI+ would not advise against the granting of planning permission.

Despite the omission in the letter from HSE of 27 June 2013, the Total Oil Refinery Ltd site is considered on page 20 of the Report to the Planning Committee, where it is concluded that HSE would not advise against the granting of planning permission in respect of that site. As I explain above, that is not correct.

In the circumstances, it appears that the Planning Committee have reached the decision to grant planning permission in this case without having taken into account HSE's correct advice. I should be grateful if you would let me know what action you

propose to take to remedy this.

Given that HSE has until 22 November 2013 to decide whether or not to request that this planning application be called in by the Secretary of State for his own determination, I should be grateful if you would let me know as a matter of urgency what action you propose to take, and if you are still minded to grant permission, extend the time limit for HSE to give further consideration to this matter.”

Applicant and HSE Discussion

A meeting was held at the Borough Council Offices on the 11th November, which involved the Applicant City Estates and also the HSE. At the meeting HSE clarified a number of points in relation to how they apply their policies. City Estates advised that they wish to proceed with the applications as determined by the Borough Council at Planning Committee on the 30th October.

Planning Considerations

The comments received from the HSE are material planning considerations and therefore the implications of these comments need to be considered by Members and a decision made in relation to how Gedling Borough Council as Local Planning Authority wishes to proceed.

Below I will discuss the implications of the comments for each application in turn and set out my recommendations on how I consider that Gedling Borough Council as Local Planning Authority should proceed.

The comments from the HSE have been shared with the applicants of the Planning Applications (Sainsbury's Supermarkets and City Estates). The applicants have advised that they would not wish to make changes to the wording of condition 4 of Planning Application 2013/0497 that was agreed by planning committee and that they do not wish to alter Planning Application 2013/0500 in relation to the location of the petrol filling station.

Planning Consideration of HSE Comments Planning Application 2013/0497

The HSE comment that condition 4 agreed by planning committee on the 30th October is not acceptable. This is because the condition provides the opportunity for the applicants to submit a report in order to assess the level of risk posed by the presence of the Total site. The wording of the condition would enable any mitigation measures required to be secured so as to ensure that the level of risk posed by the presence of the Total site would be appropriate.

It is my opinion that the wording of the condition as written meet the requirement set out in paragraph 186 and 187 in the National Planning Policy Framework that:-
'Local planning authorities should approach decision taking in a positive way to foster the delivery of sustainable development.'

And

'Local planning authorities should look for solutions rather than problems, and decision takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.'

In my view if it can be found that the actual risk of allowing this development to take place next to the Total site is considered to be acceptable and that where necessary appropriate mitigation measures can be secured, that this development with the significant improvements that it would make to the economic, social and environmental conditions of the area would be a sustainable development. The condition as worded therefore facilitates the delivery of the site but still enables the risk of the Total site to be adequately assessed.

The wording of the condition in my view also meets the tests set out in paragraph 206 of the National Planning Policy Framework. This requires conditions to be imposed only where they are necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects.

As the condition enables Gedling Borough Council as Local Planning Authority to fulfil its duties in terms of approaching decision making in a positive way and meets the tests set out in paragraph 206 of the National Planning Policy Framework, it is my opinion that condition 4 should remain as worded in relation to the risk assessment. However, the comments of HSE do indicate that the Hazardous Substance Consent in relation to Chevron Ltd has now been formally revoked.

Therefore reference to this consent should be removed from the planning condition. Members should also note that if the applicants did prepare a risk assessment report and if it were submitted to the Council in order to discharge condition 4, Officers would consult the HSE. Even though the Corporate Director under delegated powers can determine discharge of planning condition applications, it is considered that in this instance that due to the sensitivity of the issue that the decision to determine such an application should be referred to Planning Committee. This would provide Members with the opportunity to consider such a report and any proposed mitigation measures. Members would then determine whether the condition could be discharged.

If an application to discharge Condition 4 of 0497 were to be refused then the applicant does have the right to appeal the decision.

Planning Considerations of HSE Comments Planning Application 2013/0500

The HSE have now advised that they advise against the development proposed in planning application 2013/0500. This is because the petrol filling station would be located within the inner zone of the consultation zones for the purposes of the Total Oil Refinery. The HSE would consider the petrol filling station to be classed as an indoor use by the public and the HSE would view it as part of the superstore floor area. The development as a whole would therefore be considered by the HSE as having a sensitivity level of SL3, hence they would advise against because of the presence of the Total site.

This advice differs from that given in the response from HSE in June of this year, as the HSE did not refer to the Total site. However, the comments received by the HSE in relation to planning application 2013/0500 are a material planning consideration which members need to consider.

Clarification has been sought with the HSE in relation to their approach to developments and how they apply PADHI (PADHI (planning advice for developments near hazardous installations) is the name given to the methodology and software decision support tool developed and used in HSE. It is used to give land use planning (LUP) advice on proposed developments near hazardous installations).

The HSE have verbally confirmed that if the petrol filling station had been submitted separately from the superstore, that the HSE would not advise against the development. This is because PADHI states that developments for use by the general public where the total floor space is between 250 sqm up to 5000 sqm are categorised as level 2, less than this developments are considered to be level 1. In relation to petrol filling stations PADHI advises that it is the total floor space and not the forecourt which should be considered. The petrol filling station retail area has a gross external floor area of 111 sqm, it is therefore less than 250 sqm and as a consequence it would be level 1 and would receive a 'Don't Advise Against', within the inner zone of the Development Proximity Zone.

The petrol filling station and the proposed superstore are not contiguous with each other, and the use of the petrol filling station is not dependent upon the use of the superstore. The petrol filling station has been proposed as a concessionary unit. Given these facts and because the petrol filling station could reasonably have been submitted as a separate planning application, which would have received a 'Don't Advise Against' decision using PADHI I do not consider the response of the HSE to be reasonable.

Another option that has been considered by Officers, is to attach another condition to the 0500 application that would be similar to condition 4 of 0497. However, I have discounted this option because of the issues set out in the preceding paragraph. With regard to the planning decision taken it is my opinion that no changes are required to be made and that the applicants should not be requested to alter the form of the development.

In relation to the HSE comments, I would advise members that the application together with the plans and supporting documents were forwarded to the HSE and that this was done because of the complexity of the issues surrounding the Hazardous Substance Consents.

Conclusion

The HSE have requested that they be advised of how Gedling Borough Council wishes to proceed in relation to the comments they have made (which are set out above). However, because the applications are subject to a resolution by planning committee, it is for members of the committee to determine how to reply to the HSE.

The HSE have also requested an extension of time to enable them to give further consideration to the matter.

In my opinion the Corporate Director should be given authorisation to:-

- 1) Alter condition 4 of 2013/0497 to remove the reference to the Chevron Hazardous Substance Consent;
- 2) Write to the HSE to advise that no alteration should be made to condition 4 of 2013/0497 part b in relation to the ability for the applicants to submit a report for a risk assessment in relation to the risk posed by the presence of the Total Oil Refinery and that no alteration is to be made in relation to planning application 2013/0500;
- 3) Agree an extension of 14 days from the 22nd November to enable the HSE to further consider whether to call in the applications.

As indicated above any application received to discharge condition 4 of 2013/0497 if the condition is as set out below, the application *will be referred to Planning Committee for determination*:

'The public house or restaurant element shall not be brought into use until either: a) The hazardous substances consents for the Total Lindsey Oil Refinery Ltd has been revoked or b) A report relating to the respective element has been submitted to the LPA outlining the level of risk posed by the presence of the Total Lindsey Oil Refinery Ltd together with details of any proposed mitigation measures and the LPA have agreed in writing that they are satisfied with the conclusions of the Report so to allow the respective element to be occupied. Any mitigation measures proposed in the report to be approved in writing by the Borough Council shall be implemented in accordance with the approved report.'

Recommendation:

That Members give authorisation to the Corporate Director to:

- 1) alter condition 4 of 2013/0497 to remove the reference to the Chevron Ltd Hazardous Substance Consent, so that the condition reads:-**

'The public house or restaurant element shall not be brought into use until either: a) The hazardous substances consents for the Total Lindsey Oil Refinery Ltd has been revoked or b) A report relating to the respective element has been submitted to the LPA outlining the level of risk posed by the presence of the Total Lindsey Oil Refinery Ltd together with details of any proposed mitigation measures and the LPA have agreed in writing that they are satisfied with the conclusions of the Report so to allow the respective element to be occupied. Any mitigation measures proposed in the report to be approved in writing by the Borough Council shall be implemented in accordance with the approved report.'

- 2) write to the HSE to advise that no alteration should be made to condition 4 of 2013/0497 part b in relation to the ability for the applicants to submit**

a report for a risk assessment in relation to the risk posed by the presence of the Total Oil Refinery and that no alteration is to be made in relation to the resolution and the form of development proposed in planning application 2013/0500; and

- 3) write to the HSE to agree an extension of 14 days from the 22nd November to enable the HSE to further consider whether to call in the applications.**