

Head of HID CEMHD5: Mr S Reston

Southwark Council
Chief Executive's Department
Planning Division
Development Management (5th floor - Hub 2)
PO Box 64529
LONDON SE1P 5LX

Your ref. 13/AP/2782

Our ref. 4.2.1.3900.

FAO: Mr R O'Connor, Senior Planning Officer - Strategic Applications

Date: 31 January 2014

Dear Mr O'Connor

Location: 8-24 SYLVAN GROVE, LONDON, SE15 1PE

Application: Demolition of existing building on site and the construction of a part five, part six and part eight storey building comprising 1046sqm of commercial space at ground floor level and 73 residential units above (20 X 1 bed, 25 X 2 bed, 28 X 3 bed) with associated car parking, plant, refuse facilities and landscaped amenity deck (ref 13/AP/2782).

1. I refer to Southwark Council's letter dated 12 December 2013, my email of 18 December to Ms Lewis and other exchanges on this application, particularly your email of 20 December including your approved, delegated report, dated 20 December, which resolved to grant permission, subject to legal agreement, against the Health and Safety Executive's (HSE's) public safety advice. Thank you for agreeing to extend the time allowed for the HSE to consider its position until 31 January 2014.

2. As you are aware, under Article 16 of the Town and Country Planning (Development Management Procedure) (England) Order 2010, HSE is a statutory consultee for certain proposed development within our Consultation Zones around major accident hazard establishments and pipelines. HSE's role in the land use planning (LUP) system is to provide independent and impartial advice on public safety so that local planning authorities (LPAs), such as yourselves, can:

- implement the land use planning recommendations of the Government's Advisory Committee on Major Hazards (ACMH); and
- control proposed development that would increase the risk or consequences of a major accident at establishments, like the Old Kent Road Gasholder Station, as required by Article 12 of EU Directive 96/82/EC as amended by Directive 2003/105/EC (the Seveso II Directive).

You may wish to note that the National Planning Policy Framework, at paragraph 2, states, "*Planning policies and decisions must reflect and where appropriate promote relevant EU obligations and statutory requirements.*"

3. For the avoidance of doubt, I can inform you that the Old Kent Road Gasholder Station remains a notified establishment under the Seveso II Directive and that, consequently, it is our understanding that the UK's obligations to prevent and mitigate the consequences of potential major accidents, including through the control of development in the vicinity, should continue. Any enquiries regarding the future of the gasholders should be direct to the operator which is currently Southern Gas Networks plc.

4. In view of our acknowledged expertise, LPAs are guided (paragraph A5, Circular 04/2000) not to override HSE's advice without the most careful consideration and indeed the Courts¹ have held that on technical matters, LPAs, whilst not bound to follow the advice from statutory bodies such as HSE, should nevertheless give "*great weight*" to a statutory body's advice when determining a planning application. However, as stated in paragraph A6 of the Circular, HSE normally considers its role to be discharged when it is satisfied that an LPA is acting in full understanding of our LUP advice and of the consequences that could follow.

5. In the present case, through the PADHI LUP advice delivery system² and as confirmed in my email of 18 December 2013 to Ms Lewis, HSE has advised that the level of residual risk to people at the development would be sufficient for planning permission to be refused. Furthermore, to assist the council in its understanding of HSE's advice for this application, I informed Ms Lewis in my email that an initial assessment indicated that:

- people inside the proposed part 5, part 6, part 8 storey building should be reasonably protected against the thermal and blast effects of foreseeable major accidents at the gasholder station;
- however, people outdoors, for example around the building, at the amenity deck or on the roof terraces, could be at least seriously injured, and all vulnerable members (eg children) are predicted to be killed; and
- in view of the expected severe nature of the major accidents it is unlikely that any meaningful outdoor mitigation could be provided against them.

I can now inform you that these predictions have been confirmed by more detailed assessment. You may also wish to note that HSE's major accident predictions for gasholders are similar to those of the gas industry generally and of Southern Gas Networks in particular.

6. However, as is also stated in paragraph A6 of Circular 04/2000, HSE requests call-in only in cases of exceptional concern or where important policy or safety issues are at stake. In order to determine whether the present case meets our criteria for this exceptional action, the HSE has examined the application in detail and, after careful consideration and on the basis that the council fully understands the major accident risks to people at the development, I can inform you that HSE has decided that application ref 13/AP/2782 is not one for which we will request call-in.

7. I must, however, emphasise that HSE's decision not to request call-in of this application does not mean that we have withdrawn our advice against the proposal which remains that there are sufficient public safety grounds for permission to be

¹ Regina v Tandridge District council Ex parte Al Fayed, The Times Law Report 28 January 1999

² Planning Advice for Developments near Hazardous Installations (<http://www.hse.gov.uk/landuseplanning/methodology.htm>)

refused. Furthermore, the decision in this case should not be seen as setting a precedent for other applications around major accident hazards in the borough.

8. You may wish to note that, in due course, HSE will publish this letter on our Internet website. As the council has already included at least one other statutory consultee's (Transport for London's) response on your Internet application record, we would request that you also include both this and our PADHI advice letter on your Internet record.

9. Please do not hesitate to contact me if you require clarification of HSE's position.

Your sincerely



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