

LOCATION: Land formerly known as British Gas PLC (Eastern), Barnet Holder Station, Albert Road, New Barnet, London, Herts EN4 9SJ

REFERENCE:	B/04148/14	Received:	27.06.2014
		Accepted:	02.12.2014
WARD:	East Barnet	Expiry:	N/a

APPLICANT: McLagan Investments Ltd (Comp. No. 02127156)(ASDA Stores Ltd)

PROPOSAL: Application to revoke the hazardous substance consent relating to the Barnet gas holder pursuant to The Planning (Hazardous Substances) Act 1990

RECOMMENDATION

To authorise the making of an Order subject to confirmation by the Secretary of State to revoke the Hazardous Substance Consent no. P/MT/AM/N2416M dated 19 Dec 1992 and subsequent continuation deemed to have consent 15 Mar 2001.

1. MATERIAL CONSIDERATIONS

1.1 Background and Procedural Matters

Introduction

This report recommends the revocation of the Hazardous Substance Consent for the Barnet gas holder on the former East Barnet Gas Works site. The gas holder has not been used for at least 5 years and does not form part of the infrastructure network for the supply of gas, according to National Grid. The Hazardous Substance Consent otherwise represents a significant planning constraint to redevelopment of the former East Barnet Gas Works site in the New Barnet Town Centre Framework (Nov 2010).

Planning benefit

The revocation procedure is necessary to remove the safeguarding restrictions around the former East Barnet Gas Works to enable the residential redevelopment of the southern portion of the site. The application Ref: B/04834/14 for a residential-led scheme of 306 residential units, as well as 116sqm of retail floorspace (Use Class A1-A5) and 558sqm of flexible commercial floorspace (Use Class A3/D1/D2) is currently under consideration.

However, the gas holder and its hazardous substance consent act as a constraint to redevelopment. Specifically, sensitive uses such as residential are precluded in proximity to hazardous sites such as gas holders as set by the Health and Safety Executive (HSE) who are the safeguarding authority. HSE maintain the statutory consultation zones around gas holders as required by Article 16 of the Town and Country Planning (Development Management Procedure) (England) Order 2010.

If ASDA sought to progress with their current application for residential development with the Hazardous Substance Consent still in place, HSE would object on health and safety grounds. The council would be obliged to take such a material planning consideration into account in the assessment. Amendments to the scheme in an effort to address the safety issue may variously not fully address the concerns of HSE; could result in a less efficient and sub-optimal use of the site; and/or render the scheme economically unviable.

In the current situation (and 'do nothing' option) the HSE would make an assessment of the hazard and risk posed by the gas holder using its methodology PADHI – (Planning Advice for Development Near Hazardous Installations)". The assessment of risk produces a map with three risk contours (Inner, Middle and Outer) which plot risk in relation to proximity to the gas holder. As seen in **appendix 2**, the outer zone almost entirely covers the site of the proposed residential development ref: B/04834/14.

Therefore, seeking to revoke the Hazardous Substance Consent will remove this development constraint and thereby enable the site to come forward in a more efficient and viable way. This will also allow the planning benefits of the scheme to be maximised including optimised new housing delivery and urban design and renewal.

It is further noted that unlocking brownfield sites for redevelopment and the associated regenerative potential and benefit accords with the Sustainable development principle which underlines UK planning, as guided by the National Planning Policy Framework (NPPF). The identified landuse priority for the former East Barnet Gas Works site is housing, as expressed locally in the New Barnet Town Centre Framework as well as nationally (NPPF) and regionally (The London Plan). Allowing the safeguarding restriction to continue to preclude redevelopment of the site is odds with planning policy and guidance, least of all the NPPF.

Should the council be minded to authorise the revocation procedure, the HSE have provided advice on applying a grampion condition, restricting any planning approval subject to the revocation of the Hazardous Substance Consent. On this basis, the HSE has indicated that it is possible to determine the planning application (Ref: B/04834/14) ahead of the revocation of the Hazardous Substance Consent.

Procedural matters

The legislation governing hazardous substances is the Planning (Hazardous Substances) Act 1990 ("the Act"). In addition to granting consent, Section 14 of the Act contains powers to revoke consents, recognising that there are instances where it is expedient to do so and thereby removing this development constraint. Section 14(2) allows for a Hazardous Substance Authority (the council) to revoke a consent, where the hazardous substance has not been present on the land for at least 5 years. It should be noted that any revocation will only take effect when it is confirmed by Secretary of State ("SoS") pursuant to Section 15 of the Act.

The Hazardous Substance Consent to be revoked is no. P/MT/AM/N2416M dated 23 December 1992. This was a 'deemed consent' for an 'established quantity' of a hazardous substance because the gas works and its gas holder(s) pre-dated the Planning (Hazardous Substances) Act 1990 and which came into force in 1992. Transitional arrangements were in place at the time for existing situations which could make a claim for 'deemed consent' could be made where the hazardous substance had been present for the 12 months preceding the Act. British Gas PLC (Eastern) had deemed consent confirmed by LB Barnet on 23 December 1992.

A further continuation of the abovementioned deemed consent was sought by Transco on 19 December 2000 and this continuation will also need to be revoked. The requirement to make a continuation application was triggered by Part 3, Section 5(3) of the 1992 Regulations because of a change in site circumstance namely, part disposal for the site for telecommunications purposes. National Grid have confirmed that consent was deemed to have been given on 15 March 2001 in accordance with the Regulations as there is no record of written confirmation being given by the borough. National Grid have clarified that it was common in past for boroughs not to formally confirm continuation applications given the deemed consent provision.

1.2 Key Relevant History

According to UK National Grid, the presence of a gas works on the site is recorded on the 1867 OS plan. This gas works was located at the southern end of the site adjacent to the railway and originally manufactured town gas from coal. Over the 20th century the works extended northwards. During the 1930's 4 gas holders were present on the site. The sole remaining holder was constructed by the Barnet & District Gas & Water Company, and put to work in 1934. The holder is column guided, has 4 concentric lifts and had a capacity of 2,000,000 cu ft of gas.

With the coming of North Sea gas in the 1960's and 1970's, the gas works was demolished and a high pressure pipeline installed which enters the site at the northwest corner. A single gas holder for low pressure storage was retained to cope with the diurnal peak demands on the gas supply system.

With increasing use of the pipelines to store gas, the requirement for gas holders has fallen away completely; there are now no operational gas holders left within National Grid and a number have been earmarked for demolition. The site currently houses a pressure reduction site associated with the high pressure pipeline, and an operational depot.

1.3 Public Consultation and Views Expressed

This report seeks authorisation from the Council to enact the revocation procedure. There is no public consultation exercise required. However, it should be noted that if the council resolves to authorise making the Order, the Act requires notice to be served on all interested parties for a period of at least 28 days. This will be undertaken by officers following Member's approval of this report, involves letters, site notice and newspaper advertisement publicising the proposed Order.

Meantime, it should be noted that council officers have sought the informal advice of the Health and Safety Executive (HSE) and UK National Grid and no objections raised subject to the material considerations identified in this report. Both organisations will be consulted formally if the council is minded to authorise making the Order.

2. DESCRIPTION OF THE SITE, SURROUNDINGS AND PROPOSAL

The former East Barnet Gas Works is bound by properties of Albert Road East and Albert Road West to the south, Victoria Recreation Ground and Westbrook Crescent residential properties to the east, Hertford Road residential properties to the north and Network Rail track to the west. The site is bisected by a pedestrian footbridge providing an east-west link across the site and connecting with a foot tunnel underneath Network Rail land.

To northern portion of the site is where National Grid maintain an active use and where the subject gas holder is situated. The active use of the site involves a pressure reduction installation associated with the high pressure pipeline, and an operational depot.

To the south of the footbridge, the site is cleared and hoarded off. A right of way is maintained to provide access to the active part of the site in the north with Albert and Victoria Road. It is on this disused part of the site where residential development is proposed under application Ref: B/04834/14.

It should be noted that the high pressure gas line is subject to HSE safeguarding however, the risk contours are different and far less extensive as compared to the gas holder risk contours. The proposed residential development falls outside the risk contours of the high pressure pipeline and therefore, there is no objection on public safety grounds. In any event, the high pressure gas line is part of the active network and as such, there are no grounds to revoke its consent under Section 14(2) of the Act.

3. MATERIAL CONSIDERATIONS

The Council is being requested to exercise its powers as the Hazardous Substance Authority under section 14(2) of the Planning (Hazardous Substances) Act 1990 to revoke the hazardous substance consent for the Barnet gas holder.

Pursuant to section 14(2) of the Act, specifying the criteria for which it may be expedient to revoke, National Grid has confirmed that the site has not been used for the storage of gas in the last 5 years. Therefore, it is expedient to revoke, resulting in the planning benefit of lifting a significant constraint, leading to more optimised and viable form of development as currently proposed under application Ref: B/04834/14.

In respect of legal implications, the following is noted:

- A person can request to appear before the inspector appointed by the Secretary of State before the order is confirmed. If a request is made, a public inquiry may be held to consider representations before the order is confirmed, and the Council would be required to attend and defend their reasons for making the order.
- Pursuant to Section 16 there is no liability in relation to Orders made under Section 14(2) to pay compensation to affected parties.

In respect of the financial implications of pursuing the revocation Order, ASDA Stores Ltd is providing an indemnity agreement to cover the Council's administrative and legal costs of making the Order and in the event of a public inquiry being called by the SoS.

4. EQUALITY AND DIVERSITY ISSUES

Section 149 of the Equality Act 2010, which came into force on 5th April 2011, imposes important duties on public authorities in the exercise of their functions, including a duty to have regard to the need to:

- “(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”

For the purposes of this obligation the term “protected characteristic” includes:

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- sex; and
- sexual orientation.

Officers have in considering this application and preparing this report had regard to the requirements of this section and have concluded that a decision to revoke the Hazardous Substance Consent for the Barnet gas holder will not have any equality implications. The revocation will not involve any prohibited conduct, nor have any effect whatsoever to persons with protected characteristics, to their opportunities or to their relationships.

5. CONCLUSION

The Council is being requested to exercise its powers as the hazardous Substance Authority under section 14(2) of the Planning (Hazardous Substances) Act 1990 to

revoke the hazardous substance consent no. P/MT/AMN2416M dated 19 Dec 1992 and subsequent continuation deemed to have consent 15 Mar 2001 for the Barnet gas holder.

The planning benefit of revoking the Hazardous Substance Consent is that a major planning constraint is lifted enabling a more optimal and viable development to be pursued as is the case with the current proposal (Ref: B/04834/14) for a residential-led redevelopment in the southern portion of the former East Barnet Gas Works site.

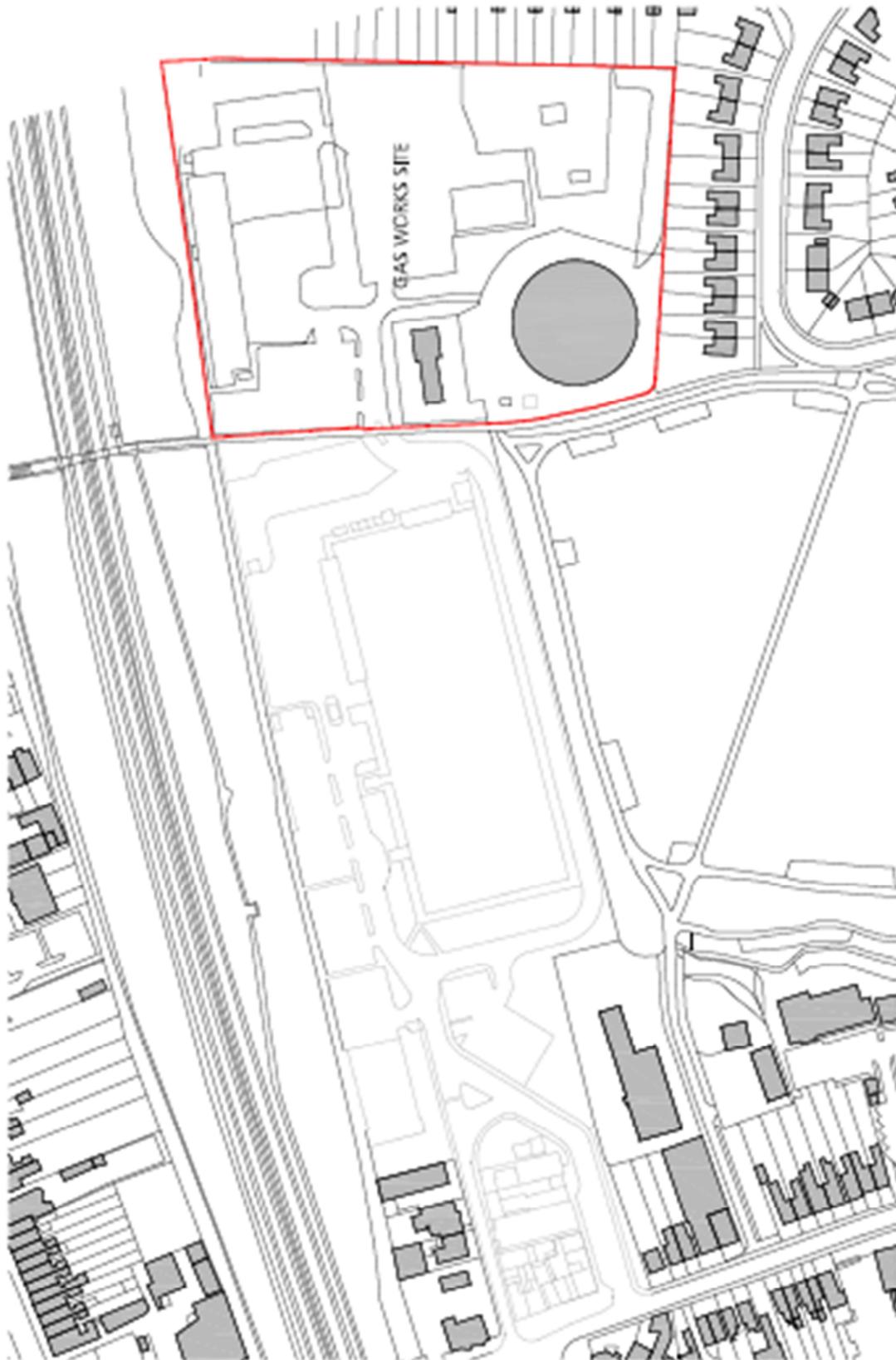
It is considered expedient to make the revocation order as the circumstances satisfy one of the relevant determining criteria for consideration in section 14(2) of the Act. Namely, that the Barnet gas holder has not been used to store gas for over 5 years as confirmed by National Grid.

Further in pursuance to 14(2) of the Act, there is no liability for payment of compensation through revoking the consent. ASDA Stores Ltd are providing an indemnity agreement to cover the council's legal and administrative costs in making the Order and in the event that the SoS calls a public inquiry.

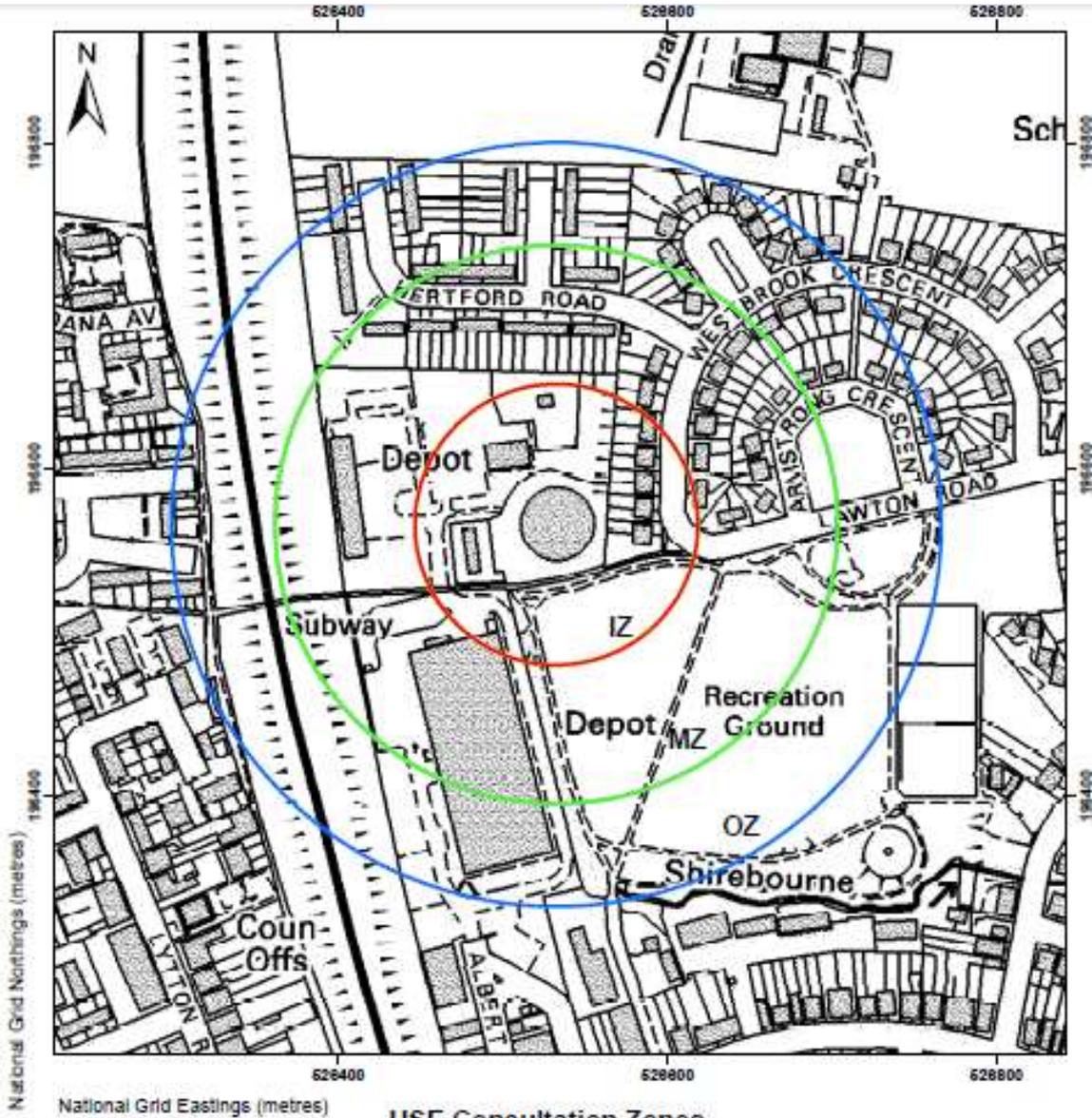
It is recommended that the committee authorise the making of the Order to revoke the Hazardous Substance Consent no. P/MT/AM/N2416M.

APPENDIX 1: PLANS OF THE PROPOSED DEVELOPMENT

Site layout and context as proposed



APPENDIX 2: HSE Risk Contours



HSE Consultation Zones

Transco PLC, Barnet Holder Station,

HSE HID CI5 Ref: H0937
Grid Ref: TQ 265 965

Prepared - November 2008

This map supersedes all previous or undated maps

- IZ = Inner Zone
- MZ = Middle Zone
- OZ = Outer Zone

