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Line Manager
Mr A J Williams

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Your Ref: LTGDC-08-120-FUL
HSE Ref: HID CI5 4.2.1.987

cc: Mr J Allen, LTGDC
Mr J Cruddas, CLG
Ms L Waring, CLG
Ms P Roberts, GOL

**The Town and Country Planning (General Development Procedure) Order 1995
EU Directive 96/82/EC (the Seveso II Directive) as amended by EU Directive 2003/105/EC
Proposed development of land at 60 Portree Street and Lanrick House, Lanrick Road**

Dear Mr Steadman

1. I refer to earlier and recent exchanges between the London Thames Gateway Development Corporation (LTGDC) and the Health and Safety Executive (HSE) regarding proposals for the residential-led development of the land at 60 Portree Street and Lanrick House, Lanrick Road, Poplar E14. In particular I refer the letter dated 3 August 2009 from your Mr J Allen, LTGDC Director of Planning to HSE's Mr A Hodkinson, enclosing a copy of a Quantified Risk Assessment (QRA) produced by Atkins at the request of LTGDC to enable the Planning Committee to fully understand the risks that people at the proposed development would be exposed to if permission were granted, and HSE's initial response in the letter from Mr Hodkinson to you dated 5 August.

2. Mr Hodkinson's letter of the 5 August refers to the meeting between LTGDC and HSE on 21 July about the proposed development of Devon Wharf, and to a letter sent subsequently to your Director of Planning by myself confirming the matters discussed and specifically HSE's concerns regarding another, similar Atkins QRA. This letter supersedes that of 5 August. As you are aware I have notified the development corporation that I wish to speak in support of HSE's advice at the committee meeting on 13 August, but given the limited speaking time available to me and the strength of our concerns, HSE formally requests that this letter is brought to the attention of the Planning Committee members before the proposal is considered at the meeting.

3. For the avoidance of doubt, it remains HSE's view that intensive residential-led development on the Portree Street/Lanrick Road site, close to the major hazard gasholder station, is undesirable, and the Executive continues to advise that the level of residual risk is sufficiently high that planning permission should be refused on public safety grounds.

HSE

4. The HSE is a non-departmental public body of Crown status with a national and international reputation as a well-respected regulator and an authority on risk. The Executive's standing is such that the Government has designated it as joint Competent Authority (CA), with the Environment Agency in England, for the purposes of EU Directive 96/82/EC (the "Seveso II Directive") as amended by EU Directive 2003/105/EC. The Seveso II Directive has the overall objectives of preventing major accidents at major hazard establishments, such as the Poplar Gasholder Station, and mitigating the effects of any that do occur. One of HSE's roles as joint CA is to provide decision-makers with independent land use planning (LUP) public safety advice on the "residual risk"¹ to people at certain proposed development around major hazard sites.

HSE's LUP advice

5. HSE's LUP advice is based on Government-agreed principles and framework, see for example Planning Circular 04/2000. It is currently delivered promptly and transparently through the PADHI (Planning Advice for Developments near Hazardous Installations) scheme which is a codification of that given by the Executive over the last 30 years or more.

6. Under Article 10 of the Town and Country Planning (General Development Procedure) Order 1995, as amended (the "GDPO"), decision-makers are required to consult HSE on certain planning proposals around major hazard establishments and to take into account the Executive's representations when determining associated applications. This is to ensure that the UK complies with Article 12 of the Seveso II Directive which has the specific objective of controlling certain new development; including residential areas, buildings and areas of public use; around major hazard establishments when the development is such as to increase the risk or consequences of a major accident. In essence decision-makers should ensure that new development does not significantly worsen the situation should a major accident occur.

7. However the Government committee of experts, the Advisory Committee on Major Hazards (ACMH), which originally proposed HSE's role in the LUP system did recognise "*the remote possibility that in some instances a local planning authority may not feel inclined, for a variety of reasons, to follow the advice of the Executive on particular applications for potentially hazardous developments or other developments in their vicinity.*" As a consequence, arrangements were set up so that in this rare circumstance (about 2% of consultations), a planning authority is required by Planning Circular 04/2000 to formally notify HSE of its intention to grant against the Executive's advice. This is so that HSE can decide whether or not to request the Secretary of State to call-in the application for his own determination.

8. HSE's consideration of call-in should not be confused with its LUP advice delivered through PADHI: it is the latter which is provided to enable LUP decision-makers to comply with the objectives of Seveso II, Article 12. In line with Government policy, HSE normally requests call-in only in cases of exceptional concern (there have been only 4 such requests over the last 30 years). However if the HSE decides not to make such a request this does not mean that the Executive has withdrawn its advice against permission, which remains on file and in the future is likely to be published on the our website. A decision not to request call-in does not disregard the HSE's LUP advice.

¹ residual risk - that risk which unavoidably remains even after all control measures legally required by health and safety at work legislation, including related parts of the Seveso II Directive, have been taken by the operator of a major hazard site.

Development Plan Policies on Public Safety

9. It is HSE's understanding that decision-makers are required to determine planning applications in accordance with development plan policies unless material considerations indicate otherwise. HSE was, therefore, surprised that what we understood to be the relevant development policies on public safety did not appear to have been considered in the report to the Planning Committee (Report No: LTGDC/09/PC34). We feel that these policies are of great importance to this case because they give context to and indications of the weight to be given to HSE's LUP advice.

10. To HSE's knowledge, the relevant policies include:

- Policy 4A.34 of the London Plan (consolidated 2008), including the guiding para 4.95;
- Policy DEV54 of the Tower Hamlets Council adopted UDP (1998), as saved by direction of the Secretary of State; and
- Policy DEV23 of Tower Hamlets Council Core Strategy and Development Control Plan, Interim Planning Guidance (October 2007).

11. Policy 4A.34 of the London Plan is based on Regulation 6(1)(c)(ii) of the Town and Country Planning (London Spatial Development Strategy) Regulations 2000 which in turn implements Seveso II, Article 12 and, therefore, it appears clear that both Policy DEV54 of the UDP and Policy DEV23 of the Interim Planning Guidance should be interpreted with the objective of controlling new development where it is such as to increase the risk or consequences of a major accident.

The weight to be given to HSE's LUP advice

12. As mentioned previously, HSE's role in the LUP process is to provide independent advice on the residual risks from major accidents to people at certain proposed new development. In this context, Planning Circular 04/2000 guides decision-makers that:

"A5. In view of their acknowledged expertise in assessing the off-site risks presented by the use of hazardous substances, any advice from HSE that planning permission should be refused for development for, at or near a hazardous installation or pipeline,, should not be overridden without the most careful consideration."

13. Furthermore the Courts (Regina v Tandridge District Council, Ex parte Al Fayed, Times Law Report 28 January 1999) have decided that on technical issues, local authorities, while not bound to follow the advice of statutory bodies such as the HSE, "*should nevertheless give great weight to their advice*" when determining planning applications.

14. A published external review of past planning appeal decisions in which the HSE was involved concluded:

"It is clear the HSE's risk policies are largely upheld on appeal. It is viewed as a competent and expert body, and its advice provides considerable support to PA decisions."

and in more recent planning appeals where HSE's LUP advice was material to the decision, the Executive's PADHI advice has been upheld and permission refused, in one case even when further challenged in the High Court.

14. In a very recent case concerning the redevelopment of the Oval Cricket Ground near to Kennington Gasholder Station, following detailed technical challenges to HSE's LUP advice by experts including Atkins (Dr D Deaves), the Secretary of State in his decision letter concluded that:

"23. the HSE PADHI Advice Against the application is justified on a cautious best estimate basis".

Furthermore, he decided that the HSE's safety advice was of such overwhelming weight that:

"if the proposed development were located where no development currently exists it should not be allowed."

15. In the Portree Street/Lanrick Road case before the Planning Committee, HSE understands that the existing use of the land is mainly low population-density industrial uses, and that no multi-storey, residential development is currently present. Furthermore, the HSE understands that the applicant has informed the London Borough of Tower Hamlets that the amendments to the development scheme include:

- a "Significant increase the number of family properties", and
- the "Quantum of play space has increased to reflect an increased child yield".

The Planning Committee may wish to note the guidance in Planning Circular 04/2000, para A12, that decision-makers should have particular regard to:

"developments involving the most vulnerable sections of the community, such as the very young,"

The Atkins QRA

16. The Atkins QRA is a lengthy and complex document which HSE has found difficulty in understanding, principally because it lacks clarity in certain of the assumptions and methods that underpin the risk predictions. However based on the details available, HSE has concluded that the QRA contains no useful additional information on the residual risk to people at the proposed development and that consequently it provides no basis to alter our safety advice against the proposed development at Portree Street/Lanrick Road: in fact, Atkins predictions appear to confirm our advice against the development.

17. Whilst HSE does not agree with Atkins methodology, in particular the use of a "best estimate" methodologies (QRA Section 1.2) rather than the HSE's "cautious best-estimate"² approach as agreed by Government for LUP safety advice, the Planning Committee may wish to note that:

- Atkins' Total Risk (Dangerous Dose) levels (QRA Table 5-8, p30) for this case are not dissimilar to the HSE's equivalent predictions on which our LUP advice is based;
- Atkins' Sensitivity of Risk Results (QRA Table 5-9, p31) for increased fireball frequency x5 (Dangerous Dose) are higher than HSE's equivalent predictions; and
- either of the above Atkins' risk predictions confirm the location of the Portree Street/Lanrick Road site within HSE's Middle Consultation Zone (see HSE's three zone consultation map attached to this letter) and consequently just confirm HSE's LUP advice against the proposal on safety grounds through the PADHI scheme. Unfortunately, Atkins do not mention this fact in Section 2, "LTGDC Decision-Making", of their additional Technical Note (Appendix 3 to the Planning Addendum Report).

18. It is HSE's understanding that Atkins do not disagree with use of the PADHI to provide sound LUP advice: they have even described the PADHI scheme in a report to other clients as a *"robust and transparent basis for providing land use planning advice."*

² cautious best-estimate - a Government-agreed approach to LUP safety advice whereby in the face of uncertainty some over-prediction is preferred when justification of an assumption or method is difficult. This approach is similar to the precautionary principle.

19. The Planning Committee may also wish to note that Atkins, in Section 6 of the QRA, have used only "voluntary"³ risk benchmarks against which to draw conclusions about the significance of the residual risks to people at the proposed development. It is widely accepted in the risk assessment community, and fully agreed by HSE, that such benchmarks are inappropriate when judging the significance of risks which are imposed on people and from which they gain little or no direct benefit. This latter type include the residual risks arising from major hazard establishments and are commonly known as involuntary risks. The committee may wish to note that examples of involuntary risk benchmarks are that of being struck by lightning (0.1 chances per million/year, cpm/yr) and of being struck by a meteorite (0.00006 cpm/yr).

20. In Section 3 "Interpreting the Atkins QRA results", bullet point d), of their Technical Note (Appendix 3 to the Planning Addendum Report), Atkins state that the individual risk comparison benchmarks they have used are "*similar to those in Appendix 4 of R2P2.*" Committee members may wish to note that "R2P2" (short-hand for "Reducing risks, protecting people - HSE's decision-making process") is an HSE publication almost entirely devoted to explaining the Executive's framework for judging the significance of voluntary-type risks, mostly to workers, i.e. not residual risks, when making enforcement decisions under health and safety at work legislation. It should then not be surprising that the risk benchmarks it contains are also of the voluntary-type and, consequently, unsuitable, in HSE's view, for judging the significance of involuntary LUP residual risk.

21. In Section 6 of their QRA and in the additional Technical Note, Atkins also attempt to draw conclusions about the significance of the residual risks to people at the proposed Portree Street/Lanrick Road development using HSE's R2P2 framework for voluntary-type risks. In this respect, the QRA misrepresents HSE's views on the significance of levels of residual involuntary risk in the LUP context. Committee members may wish to note that major accident risks which have been reduced to "Tolerable" or "Broadly Acceptable" levels (these are names of risk bands in the R2P2 framework, not indications of the levels of risk which HSE considers to be tolerable or broadly acceptable to people in all circumstances) by the operator under health and safety at work legislation may still be sufficiently high in LUP terms for planning permission to be refused for new development which would increase the consequences of a major accident: this is the case with the Portree Street/Lanrick Road development.

22. In Section 3, bullet point e), of their Technical Note (Appendix 3 of the Planning Addendum Report), Atkins note correctly that para 137 of R2P2 (in a short section after the description of HSE's framework for judging levels of voluntary-type risks) states that "*a different situation arises altogether (for HSE) when giving advice to planning authorities*". This is a clear statement by HSE that the R2P2 framework is not appropriate for LUP advice. However, Atkins then go on and appear to base further judgements on risk benchmarks given in paras 138 and 139. Committee members may wish to note that the benchmarks in paras 138 and 139 of R2P2 contain well-known typographical errors (which are obvious when they are read together with para 137 before them).

23. It is HSE's understanding that senior members of Atkins are well aware of these "typos" in R2P2 and, consequently, we are puzzled by their apparently heavy reliance on these incorrect benchmarks in their QRA and additional Technical Note. However, for the avoidance of doubt HSE confirms that the involuntary, residual risk benchmarks used by HSE for providing LUP advice as stated in paras 138 and 139 of R2P2 are wrong: the units of the benchmarks should

³ voluntary risks - those risks which people are exposed to because they chose voluntarily to part-take in a particular activity because of the "benefits" they gain.

be "risk of dangerous dose or worse" and not "risk of death" as published. Consequently committee members may wish to note that Atkins' predicted risk of Dangerous Dose in Tables 5-8 and 5-9 of the QRA actually exceed the 1 in a million per year corrected benchmark for housing development in para 139 of R2P2 and that, therefore, their predictions when used with the PADHI scheme confirm HSE's LUP advice against the proposed Portree Street/Lanrick Road development on safety grounds.

24. In HSE's view, Atkins attempt to draw conclusions about the significance of the increase in the level of Local Societal Risk (LSR) that would occur as a result of the proposed development is premature. Whilst the Government has decided in principle to include LSR in LUP decisions, as yet they have made no decision on the method or benchmarks against which increases in this type of risk could be judged. Committee members may wish to note, however, that it is highly likely that LSR when introduced would be used with the PADHI LUP advice, and not as a replacement for it.

Yours sincerely

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