

**ITEM 1**

**Application for Hazardous Substances Consent for the storage of Liquefied Petroleum Gas at Unit 53/64 M1 Commerce Park, Markham Lane, Duckmanton, Chesterfield for AvantiGas Ltd.**

Local Plan: Economic Growth Area

Ward: Hollingwood and Inkersall

1.0 **CONSULTATIONS**

Ward Members	No representations received.
Environmental Services	No comments received.
Environment Agency	No comments received.
Bolsover District Council	No comments to make.
Derbyshire Constabulary	No objections to the scheme.
DCC Highways	No objection
Highways England	No objection
Health & Safety Executive	Comments received see report.
Neighbours/Site Notice/Advert	No representations received

2.0 **THE SITE**

2.1 The application site is situated within the former Markham Colliery site at Markham Vale and is part of the former

colliery site which has not been redeveloped for new industry and warehousing. The site lies to the east of the M1 and is positioned close to the administrative boundaries with Bolsover and North East Derbyshire District Council to the east of the Borough of Chesterfield.

- 2.2 The works site is generally level and is positioned with an agricultural field to the west separating the site from the M1, open caravan storage (Bolsover Caravans) to the south and south east and other commercial uses within the former Markham Colliery buildings to the north and east including a number of vehicle repair and maintenance centres. The land to the rear of all the units fronting Markham Lane is all used as hard surfaced parking areas. The application site was previously used for vehicle parking by ADR Vehicles.
- 2.3 Yard 73 extends to an area of approximately 1930 square metres and comprises of an open storage and hardsurfacing compound with the main AvantiGas Ltd two storey office buildings lying to the east in unit 63 off Markham Lane. All access to the site is via Markham Lane from a single access point to the group of units to the north.
- 2.4 All site boundaries to yard 73 are secured by steel fencing and there is a lighting system and 24 hour monitored security CCTV system in place. Access to yard 73 is from the north west corner via a security gate.
- 2.5 The nearest residential properties are those fronting Erin Road, located approximately 315 metres to the north.



### 3.0 **RELEVANT SITE HISTORY**

3.1 CHE/19/00031/FUL - Installation of gas tank at yard 73 M1 Commerce Park for Avanti Gas Ltd – Approved 30<sup>th</sup> April 2019.

### 4.0 **THE PROPOSAL**

4.1 The application is submitted for a Hazardous Substances Consent for the storage of Liquefied Petroleum Gas of up to 24 tonnes in a vessel at yard 73 and up to 3 tonnes in 3 No 1 tonne vessels at units 53 and 64 M1 Commerce Park. The 24 tonnes vessel is the one which was given planning permission in April last year under CHE/19/00031/FUL. The 3 No 1 tonnes vessels are located to the north east corner of the Avanti Gas Ltd compound.



4.2 The 24 tonnes LPG vessel does not need Hazardous Substances Consent (HSC) on its own as up to 24 tonnes is a controlled/permitted quantity under the regulations however it was noted on the site inspection that there were 4 smaller tanks immediately adjacent to the compound of the

24 tonnes vessel which collectively trigger the need for Avanti Gas Ltd to apply for HSC. The HSC application is therefore made in retrospect.

4.3 Yard 73 is used primarily for the parking of LPG tankers with occasional loading and off loading to site storage vessel or tanker to tanker. The submission indicates a daily quantity of up to 23 tonnes. Units 53/64 involve LPG supply for third party commercial office space via pipework and commercial unit in the form of Autogas supply and filling of vehicles. An average of 15 tonnes a year is used.

4.4 Yard 73 and the facilities at units 53/64 have been developed in line with the relevant Liquid Gas UK code of practice with additional measures of gas detection and overfill protection in place.

4.5 Yard 73 is used exclusively for the storage of LPG and is operated by Avanti Gas Ltd only as one of the many hazardous sites owned and operated throughout the UK. Avanti Gas Ltd have many years experience in Upper and Lower Tier COMAH establishments, incident prevention and control. The site has been designed using well established process safety and risk assessment techniques (HAZOP).

## 5.0 **PROCEDURES**

5.1 This application falls to Chesterfield Borough Council, as the Hazardous Substances Authority, to determine and relates to the well-established Avanti Gas Ltd operation across the UK. The application seeks permission for a Hazardous Substances Consent to allow continuation of the storage of specified substances in line with the regulations introduced by the Planning (Hazardous Substances) Act 1990 and the Planning (Hazardous Substances) Regulations 2015.

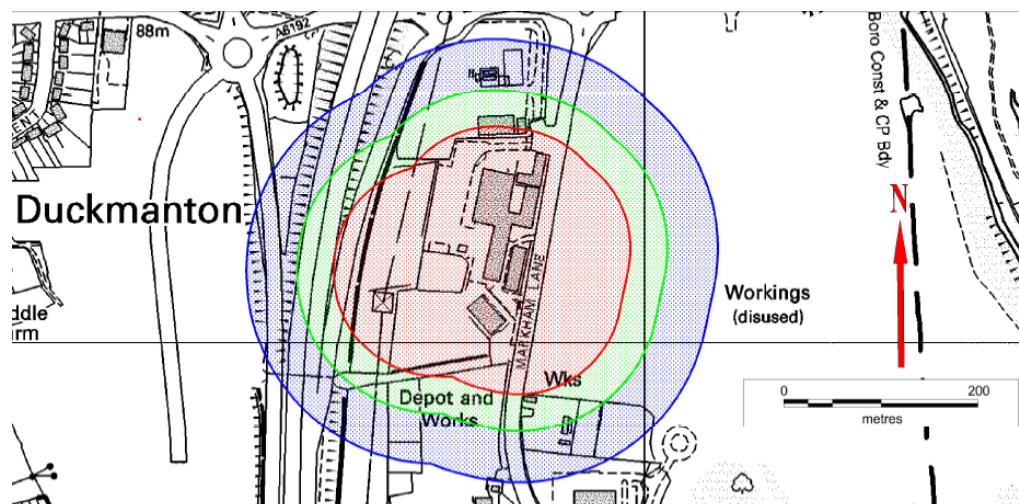
- 5.2 The Councils Constitution refers at P220 to carrying out all non-executive functions of the authority as Hazardous Substances Authority under the Planning (Hazardous Substances) Act 1990, including the determination of applications for hazardous substances consent. The scheme delegates decisions to officers under P230D where after consultation with the Assistant Director - Health and Wellbeing, to determine claims for Deemed Hazardous Substances Consent. It is the case therefore that the determination of an application for Hazardous Substances Consent is a matter for planning committee.
- 5.3 In determining an application for hazardous substances consent, the Hazardous Substances Authority must take into account any material considerations including:
- a) any current or contemplated use of land to which the application relates;
  - b) the way in which land in the vicinity is being used or is likely to be used;
  - c) any planning permission that has been granted for development of land in the vicinity;
  - d) the provisions of the development plan; and
  - e) any advice which the HSE has given following consultations. The HSE and the EA acting jointly, are the Control of Major Accident Hazards competent (COMAH) Authority.
- 5.4 The Authority may grant Hazardous Substances Consent either unconditionally or subject to conditions, or may refuse consent. Full reasons must be stated for any conditions imposed, and any refusal. The consent must include a description of the land to which it relates, a description of the hazardous substance to which it relates, and a statement of the maximum quantity of each hazardous substance allowed by it to be present at any one time.
- 5.5 Consultations have been carried out and the following comments have been received:

### 5.5.1 Health and Safety Executive

HSE has assessed the risks to the surrounding areas population arising from the proposed operations and likely activities arising from the maximum quantity of hazardous substances for which consent is being sought and has concluded that the risks to the surrounding population are so small that there are no significant reasons, on safety grounds, for refusing Hazardous Substances Consent. HSE comment that it would be beneficial to include the following condition:

*The hazardous substances shall not be kept or used other than in accordance with the particulars provided on the application forms, nor outside the areas marked for storage of the substances on the plans which formed part of the application, specifically Substance Location Plan Duckmanton Hazardous Consent Boundaries drawing number A11528.*

On the basis of the above assessment, HSE has prepared a “3-zone map” comprising a consultation zone, the outer of the zones marked on the map, which will become in force on the back of the Hazardous Substances Consent.



### 5.5.2 Environment Agency

No objection received.

### 5.5.3 **Other Consultees**

Ward councillors, Bolsover District Council, Environmental Services, Derbyshire Constabulary, the Highway Authority and Highways England have all been consulted with no adverse responses received.

### 5.5.4 **Publicity**

In accordance with the Regulations, the application has been advertised (by the applicant company) in the Derbyshire Times on 23<sup>rd</sup> January 2020 and by Site Notice on 17<sup>th</sup> January 2020. No representations have been received as a result of this publicity.

5.5.5 Letters have also been sent to 24 neighbouring business units also with no representations being received.

## 6.0 **PLANNING CONSIDERATIONS**

6.1 This is not an application for planning permission and it does not concern any proposal to change the activities already operating at the site. It is an application for Hazardous Substances Consent arising solely as a consequence of the proximity of other nearby LPG storage facilities, which together, exceed the trigger for such a licence. It is the case therefore that beyond the general allocations within the development plan, it is not of direct relevance to the determination of the application. In this case the site is shown to be in an industrial and commercial area where such proposals can be accepted. Industrial and commercial operations are encouraged in this location as an area of economic growth. It is also the case that planning permission has already been granted for the use and the vessels and which considered the impacts of such matters as design and appearance, highways and protection of the local environment for example.



- 6.2 The Hazardous Substances Consent process is to ensure that necessary measures are taken to address the risks of major accidents and limit their consequences to people and the environment. This is a key part of the controls for storage and use of hazardous substances which could, in quantities at or above specified limits, present a major off-site risk. The system of Hazardous Substances Consent does not replace requirements under health and safety legislation. Under the Regulations, the COMAH competent authority is the HSE and the EA, acting jointly. They advise hazardous substances authorities, such as the Borough Council, 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 at an establishment. This is the primary material consideration in this case.
- 6.3 The Hazardous Substances Authority can impose conditions, including conditions as to how and where substances are kept and the times substances may be present, or requiring permanent removal within a certain time. Conditions as to how a substance is to be kept or used may only be imposed if the COMAH competent authority has advised that such conditions should be imposed.
- 6.4 The NPPF provides guidance on the planning considerations in relation to hazardous substances. Paragraph 45 states that Local planning authorities should consult the appropriate bodies when considering applications for the siting of, or changes to, major hazard sites, installations or pipelines, or for development around them.
- 6.5 The site is appropriately located in a primarily industrial and commercial area at some distance away from the nearest residents which are located in Duckmanton on the other side of the M1 corridor. The site is most closely surrounded by uses with low occupancy such as the agricultural field to the west, caravan storage to the south and car parking areas to

the north. Slightly further away is the Great Bear distribution depot/warehouse and Viridor Waste and Landfill site. The Markham Vale area is however a growth area for business investment and where new B1, B2 and B8 industrial uses are encouraged. Avanti Gas Ltd are already situated within the area and are required to comply with the regulations regarding their operations and environmental standards. The company has a history of successfully managing the storage of hazardous substances and the Council has not received any complaints about the site activities.

6.6 It is considered that there are no unacceptable risks to the environment or public amenity associated with this application. The standards required in the regulations are being met. The HSE and the EA have been consulted and have considered this application. HSE has provided an assessment of the risk of harm from the maximum quantity of hazardous substances for which consent is being sought and concluded that the risks to the surrounding population arising from the proposed operation are such that there are no significant reasons, on safety grounds, for refusing Hazardous Substances Consent, provided the conditions listed in their response is imposed on the consent.

6.7 There are no other material planning considerations which would justify anything other than an approval for the Hazardous Substances Consent in this case.

## 7.0 **HUMAN RIGHTS ACT 1998**

7.1 Under the Human Rights Act 1998, which came into force on 2<sup>nd</sup> October 2000, an authority must be in a position to show:

- Its action is in accordance with clearly established law
- The objective is sufficiently important to justify the action taken

- The decisions taken are objective and not irrational or arbitrary
- The methods used are no more than are necessary to accomplish the legitimate objective
- The interference impairs as little as possible the right or freedom

7.2 It is considered that the recommendation is objective and in accordance with clearly established law and regulations .

7.3 The recommended condition is considered to be no more than necessary to control details of the development in the interests of amenity and public safety and which interferes as little as possible with the rights of the applicant.

## 8.0 **STATEMENT OF POSITIVE AND PROACTIVE WORKING WITH APPLICANT**

8.1 The following is a statement on how the Local Planning Authority (LPA) has adhered to the requirements of the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 in respect of decision making in line with paragraph 38 of the February 2019 National Planning Policy Framework (NPPF).

8.2 Given that the proposed development does not conflict with the NPPF, it is considered to be 'sustainable development' and there is a presumption on the LPA to seek to approve the application. The LPA has impose a condition recommended by the Health and Safety Executive and has been sufficiently proactive and positive in proportion to the nature and scale of the consent applied for.

## 9.0 **CONCLUSION**

9.1 The COMAH competent authority, has concluded that there are no reasons to not grant consent based on safety grounds as set out in the Regulations. Having had regard to local

conditions, the local plan, and other material considerations, there are also no reasons not to grant consent on planning policy grounds.

## 10.0 **RECOMMENDATION**

10.1 It is recommend that Hazardous Substances Consent should be granted for the application in this case, subject to the condition advised by HSE as follows.

1. The hazardous substances shall not be kept or used other than in accordance with the particulars provided on the application forms, nor outside the areas marked for storage of the substances on the plans which formed part of the application, specifically Substance Location Plan Duckmanton Hazardous Consent Boundaries drawing number A11528.

Reason:

1. To ensure conformity with the details of the application as approved and to clarify its scope.