

APPENDIX 3

Statement on the proposed remediation of historical pollution resulting from the Bayer CropScience site Hauxton

Ref: S/2307/06/F

This statement of objection is made on behalf of Mssrs Elliott of Church Road Hauxton. I wish to emphasise however, as an Expert Witness, my position is neutral with my primary duty to this Committee. I would offer the same advice if acting for the applicant.

Both this written statement and the verbal statement to be made at the meeting of the Planning Committee on Wednesday the 3rd of October at 2.00pm are made in accordance with the Council's guidance document, *Public Speaking at Planning Committee Meetings*, as a result they are necessarily brief. I will be willing to expand and clarify any point if required.

1. INTRODUCTION

- 1.1 The comment most regularly made in respect of this application is that it is complex. That is indeed the case and it is essential I take a few moments to explain how complex.
- 1.2 This site has used / produced / developed / processed / stored, very many highly toxic chemicals for over half a century. If we could take the time to list them all the number may run into thousands rather than hundreds.
- 1.3 Prior to the taxing systems of regulation in place today, these “icides” were considered of most value if they were powerful and persistent. The more persistent they were in the environment, the less often they had to be applied. When it was discovered that they were too persistent, and also in some cases, potentially bio-accumulative, they had to be banned. Unfortunately that was too late for sites like this one which had already allowed significant volumes of these dangerous chemicals to escape into the ground and migrate to surrounding land.
- 1.4 The modern planning system decides primarily on the best location for a development. If an application were to be submitted for this chemicals factory today, on this site, it would be hard to find a worse or higher risk location. It is close to human habitation, it is directly adjacent to significant bodies of surface water and food production, and it overlies a shallow major aquifer.
- 1.5 As a result of these exceptional risks the site has been subject to the highest tier of pollution regulation in existence in Europe, and probably the world, that being:

The Control of Major Accident Hazard (COMAH) Regulations 1999

This legislation was introduced over 20 years ago following catastrophic environmental disasters such as Seveso and Bhopal. As a result modern sites are located in more remote areas away from populations and other high risk receptors.

*insect, herb, fung, acar, verm etc

1.6 As well as the COMAH Regulations there is a whole host of other pollution control legislation which has applied to this site over the years.

1.7 That being the case it would be reasonable for the layman to expect that the site would have been properly and adequately controlled by Government Regulators. Unfortunately that has not been the case. For the sake of brevity I can not consider this matter here, but suffice to say action is being taken to bring to the attention of the Centre, via the Parliamentary Ombudsman, important and repeated failures in the Regulation of this most hazardous site.

2.0 REMEDIATION

2.1 As the chemistry of these lands are so very complex, so are the means necessary to bring them back into beneficial use. Some of the chemicals are less dense so they stay close to the surface, others are more dense and therefore sink down deeply polluting important aquifers below for generations. Some degrade naturally over a few decades, other are persistent and will not go away without complex treatment.

2.2 I have been dealing with contaminated land problems for twenty years, including some of the worst gasworks, hazardous waste landfills, WWII chemical weapons installations, other COMAH sites, etc. This is, by far, the most difficult I have encountered to date. I doubt if I will ever work on a worse case.

It is very important that its impact on the local environment is not underestimated.

2.3 Another consultant (Robert Long Consultancy) employed by your Council to investigate the pollution in 2002 said:

“Given the time that has elapsed since chemicals such as TBA, MCPA and Schradan were kept on the factory site or used in agriculture in the UK, the range and concentration of chemicals currently found in groundwater beneath the factory may be unique to this site”.

2.4 A series of processes must be undertaken to effectively remediate the lands impacted by this site. This will take time, years rather than months.

2.5 The developers employed a reputable firm of consultants to develop a remediation strategy in 2005. This outlined, *inter alia*, a **3 year main treatment phase** followed by **long term** monitoring and aftercare. This was based on a development assumption of **residential with no gardens**. Clean up targets for contaminants in both soils and groundwaters were to be developed.

2.6 This company is no longer employed by the developer.

2.7 The Regulation of remediation is also very complex. As *Contaminated Land* and a *Special Site* as defined in the Environmental Protection Act 1990 it must meet certain criteria. **These criteria are considerably less, however, than the criteria that must be met for this development.**

2.8 It is **absolutely essential**, therefore that there is no presumption that the Environment Agency will act as planning enforcement authority in a development of this kind. They have no duty to do this, and are not equipped to do it.

3.0 THE COUNCIL'S ROLE

3.1 This is the highest risk contaminated site anyone here will likely come across in their lifetime. It is most likely the most significant and complex development ever to occur (past present and future) in the locality. The proposal is to develop the highest risk site for the highest risk land use, ie houses with private gardens. These factors together make the proposal exceptional.

3.2 What the Council must do in circumstances like these is spelled out clearly by the Secretary of State in PPS 23. I will list a few key requirements below:

- a) particularly sensitive land uses includes **houses with gardens**, schools, nurseries or allotments.
- b) LPAs and intending developers should recognise that contamination may pose problems on land other than the originating site. For example, **contaminants may migrate** onto land that has no specific association with the contaminating industrial use.
- c) The developer is responsible for ensuring the development is safe and suitable for use.
- d) The assessment of risk should be carried out by the applicant **before the application is determined**.
- e) Where contamination is known or suspected or the proposed use would be particularly vulnerable, LPAs should require the applicant to provide **with the application** such information as is necessary to determine whether the development can proceed.
- f) LPAs will need to be satisfied that the development can be carried out **safely without unacceptable risks** to neighbours or other offsite receptors.
- g) if it becomes apparent that the necessary remediation is not viable or practicable or the ES demonstrates unacceptable adverse impacts, **this could leave the LPA vulnerable to a claim for compensation**.

3.3 The Secretary of State goes on to explain where LPAs should **refuse** permission (precised):

- a) Where information has not been provided that demonstrates the removal of contamination and unacceptable risk;
- b) Where the LPA considers unacceptable risk exists and cannot be dealt with adequately; or
- c) The steps needed to deliver an appropriate development and deal with unacceptable risk are not already in place and cannot be secured by suitable planning conditions.

3.4 With the current application, a) and c) apply. With regard to b), the Authority is not in a position to judge.

3.5 That being the case, if the Authority are to take into consideration the Secretary of State's guidance, which it must*, I would respectfully suggest that it has no alternative but to refuse planning permission.

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'Checked' Expert Witness
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NB There is an addendum below.

* PPSs set out the Government's core policies and principles on the most important aspects of land use planning. The policies in this statement and accompanying annexes should be taken into account by LPAs (etc) They are also material to decisions on individual planning applications. Where these policies are not reflected adequately in local development documents, or taken into account in relevant development control decisions, the First Secretary of State may use his powers of direction to seek changes to the documents or may intervene in the consideration of planning applications. This PPS and associated annexes carry equal weight. (paragraph précised) [PPS Intro]

Addendum

PLANNING ENFORCEMENT

If at anytime the Authority is minded to approve this or future applications for remediation, I would strongly advise that careful consideration be given to the enforcement of planning regulation. This process would be both exceptionally difficult and time consuming. It would, in my view, be reasonable for the Council to require, perhaps via a planning obligation, sufficient funds to be provided by the developer to allow the Authority to employ an expert to act as independent observer for the duration of the remediation and any post remediation conditions. This would provide both the Authority and occupiers with a comprehensive independent assessment of the works and engender long term confidence in the site enabling definitive search responses and allowing free and unhindered property transactions in the future. It would also demonstrate the Authority's commitment to this project particularly and the environment generally.

This matter is also covered by the Secretary of State in PPS 23:

"Planning obligations may require payments to the LPA, eg for ongoing monitoring or maintenance or as a bond to cover the contingency of future action triggered by the monitoring."

"The assessment of the presence of contamination and of the significance of the risks that may be posed requires careful professional judgement and competent expert advice"

"Considerable effort and expense can be saved if an applicant and LPA agree to place reliance on the expertise of a single impartial expert of this kind with regard to technical matters"