APPLICATION NUMBER: 19/00001/HAZ

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO.	CASE OFFICER	DATE
19/00001/HAZ	Mark Caine	1 April 2019

Address: Vita Cellular Foams Ltd Soudan Mills Soudan Street Middleton M24 2GB

Proposal: Application to vary hazardous substances consent D37049 to increase the storage allowance of Tuleune Diisocyanate to a maximum of 380 tons

PUBLICITY	**Weekly list expired?**	Y	**Site notice expired?**	N/A
	Neighbour letters expired?	Y	**Press Notice expired?**	N/A

DELEGATION	**Significant departure from local plan?**	N	**Contrary to national policy?**	N
	Applicant a Council Member or officer?	N	**Contrary to previous decision?**	N
	Major with 10 or more objections and recommending approval?	N	**Called in or Planning Panel objection?**	N

COMMENTS	**Planning Panel comments received?**	N/A
	Neighbour comments received?	Y

EIA	**Screening opinion completed and saved to Onbase?**	N/A

CONDITIONS	**Pre-commencement conditions proposed?**	N/A
	Pre-commencement conditions agreed (or notification period expired)?	N/A

RECOMMENDATION	GRANT SUBJECT TO CONDITIONS

CHECKED AND SIGNED OFF BY: AT **DATE: 01.04.2019**

SITE

This application relates to a large red brick mill building that is located on Soudan Street, Middleton. It is located in a predominantly residential area. The applicant's supporting statement sets out that Vita Cellular Foams UK Ltd is the largest producer of Block Polyurethane Foam in the UK. Touluene Diisocyanate is one of the main raw materials in the manufacture of flexible polyether polyurethane foams at this site.

Anticipated expansion of its manufacturing operations will result in the site changing from a 'Lower Tier' regulated site to an Upper Tier Establishment under the COMAH Regulations.

PROPOSAL

Consent is sought under Section 13 of the Planning (Hazardous Substances) Act 1990 to vary the Planning (Hazardous Substance) Consent reference D37049.

Due to increased production requirements the proposed variation is required to ensure that the Hazardous Substance Consent reflects what is being stored and processed on the site and aligns with the COMAH Notification submitted on the 31 March 2016 and the proposed COMAH Safety Report.

It is proposed to increase to increase the storage allowance of Tuleune Diisocyanate to a maximum of 380 tonnes.

RELEVANT PLANNING POLICY

National Guidance

National Planning Policy Framework (NPPF) – February 2019

National Planning Practice Guidance (PPG)

RELEVANT SITE HISTORY

D37049 – Application for Hazardous Substances (Deemed Consent) – Prior approval not required – October 1999.

CONSULTATION RESPONSES

Electricity North West - No comments received.

Health And Safety Executive - (Haz Sub Consents) -

1. The Health and Safety Executive (HSE) has assessed the risks to the surrounding areas from the likely activities resulting from granting the consent to increase the storage of toluene diisocyanate to 380te.

2. Only the risks from hazardous substances for which the Consent relates have been assessed. HSE has assessed the risk of harm from the consented quantity of hazardous substances for which Consent is sought. Risks arising from any other substances which may be present, other than those covered by this application, have not been taken into account in this assessment.

3. In considering this application for Consent, HSE has made the assumption that the requirements of the Health and Safety at Work etc. Act 1974, and all relevant statutory provisions, are met at the establishment.Accordingly, HSE advises that you should direct the applicant's attention to section 29 of the Planning

(Hazardous Substances) Act 1990. This makes it clear that nothing in any Consent granted can require or allow the building or operation of an establishment which does not comply with the relevant statutory provisions and to the extent that any consent purports to require or allow any such thing it is void. On this basis, HSE has concluded that the risk to the surrounding population arising from granting consent are so small that **there are no significant reasons, on safety grounds, for refusing the Application for Hazardous Substances Consent (19/00001/HAZ) as proposed.**

4. Following Government advice that particulars in the application form do not automatically become conditions of consent, it would be beneficial to include a condition such as:

   "The Hazardous substances shall not be kept or used other than in accordance with the particulars provided on the application (19/00001/HAZ) and as per the TDI storage locations identified in "Document C(i)" accompanying the application..

5. As a result of the assessment of risk to public safety, HSE conclude that the zero consultation distance at the site boundary remains valid and therefore no map has been produced for the site.

6. When consent is granted, please send a copy of all the consent documents to HazSubCon.CEMHD5@hse.gov.uk so that our records can be updated.

Environment Agency - Have no objection in principle to the proposal, but wish to make the following comments:

Environment Agency position

Vita are applying to increase the storage of TDI from 100 tonnes to 380 tonnes. Potential for air emissions is the remit of the HSE under the PHS regulations.

GM Fire Service - No comments received.

Middleton Planning Panel - "Danger to triple present level"

REPRESENTATIONS

The applicant has posted notices adjacent to the site and in the local press. Letters of notification were sent to surrounding neighbours. As a result of this notification procedure one letter of objection has been received, the contents of which can be summarised as follows:

- An application to increase an amount of a very hazardous substance is absurd. The vita foam factory sits within a very busy residential area with a high volume of home owners and surrounded by schools. The factory already lets off a strange smell due to the substances used, an increase will not only make this worse but can also increase the chances of residents inhaling the substances. Not only is TDI very toxic, it has been the cause of many explosions, causes asthma and reactive airways dysfunction syndrome. By increasing any amount of storage the residents and children in this area are being put at higher risk of danger. This is not a substance that should be allowed to be casually increased in a built up area.

ANALYSIS

Paragraph 3.13 of the government guidance entitled 'Hazardous substances consent: a guide for industry 2012' stipulates:

“If a substance is covered by a deemed consent but you wish to exceed the terms of the standard conditions, you will need to apply to the hazardous substances authority for the relevant conditions to be removed or varied.”

Whilst this guidance was withdrawn on 7 March 2014 and replaced by the PPG, the PPG is silent in respect of varying deemed consents. Nonetheless, paragraph: 089 Reference ID: 39-089-20161209 states that for changes to an existing consent, an application can be made to the hazardous substances authority to vary or revoke any conditions on a previous consent. Furthermore, Section 13 of the Planning (Hazardous Substances) Act 1990 applies to an application for hazardous substances consent without a condition subject to which a previous hazardous substances consent was granted.

In the absence of any substantive evidence to the contrary the LPA considers that the conditions of a deemed consent can be varied, and have assessed this application accordingly.

The LPA’s hazardous substance register confirms that deemed consent was granted in 1999 (Ref: D37049) for the storage of 220 tonnes of Toluene Diiscyanate on this site.

The Planning (Hazardous Substances) Regulations 2015 requires consultation with the COMAH competent authority, which in this (and most) cases comprises the Health and Safety Executive and the Environment Agency.

Paragraph 45 of the Framework 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.*”

The HSE has assessed the risk of harm to the surrounding areas from the likely activities resulting from granting the consent to increase the storage of Toluene Diiscyanate to 380 tonnes. They have concluded that the risk to the surrounding population would be so small that there are no significant reasons, on safety grounds for refusing the application for refusing the application for Hazardous Substances Consent (19/00001/HAZ) as proposed. They have also confirmed that there remains no change in the zero consultation distance from the boundary, however consider it necessary for the following condition to be attached to any consent:

“The Hazardous substances shall not be kept or used other than in accordance with the particulars provided on the application (19/00001/HAZ) and as per the TDI storage locations identified in Document C(i) accompanying the application.”

The LPA are satisfied that such a condition is reasonable and necessary, however has reworded it in the interests of precision.

The EA has also been consulted and further to requesting additional information has also not raised any objections to the proposal.

Having regard to the representations from the HSE and the Environment Agency, it is not considered that the proposal would result in any unacceptable risk to the public, surrounding land or the environment which would warrant refusal of the application.
The proposal is therefore in accordance with the requirements of the Planning (Hazardous Substances) Act 1990, the Planning (Hazardous Substances) Regulations (2015) and the Framework.

As such the decision notice will update the wording conditions a and b from the original deemed consent (Ref: D37049) but, for the avoidance of doubt, will be include an additional condition to define the permission including the approved amount of storage, and how it is to be stored .

RECOMMENDATION Grant subject to the following conditions:

a) The maximum aggregate quantity of substance that may be present-
   (i) on, over or under the land to which the claim for the consent relates;
   (ii) on, over or under other land which is within 500 metres of it and controlled by the same person; or
   (iii) in or on a structure controlled by the same person any part of it which is within 500 metres of it.
   at any one time shall not exceed the established quantity and:

b) to the relevant conditions stated in Schedule 1 of The Planning (Hazardous Substances) Regulations 2015 , other than in relation to named substance 26 - Toluene Diisocyanate and named substance 34 Petroleum Products c) Gas Oil including Diesel.

c) The amount and type of hazardous substances hereby approved shall not be kept or used other than in accordance with the details provided in the application for Hazardous Substances Consent Variation Referenced Document B and the TDI storage locations identified in Document C(i) Ref 'Middleton site, Comah Plan Issue A'.

Report Author Mark Caine