

**FALKIRK COUNCIL**

**Subject:** REMOVAL OF CONDITION ATTACHED TO HAZARDOUS SUBSTANCES CONSENT P/10/0582/HAZ TO ALLOW STORAGE OF ETHANOL IN WAREHOUSES M, N AND S, INCREASING THE OVERALL MAXIMUM STORAGE QUANTITY TO 41,000 TONNES AT STORAGE UK, GRANGE LANE, GRANGEMOUTH FK3 8EG FOR DIAGEO (SCOTLAND) LTD - P/12/0597/HAZ

**Meeting:** PLANNING COMMITTEE

**Date:** 18 September 2013

**Author:** DIRECTOR OF DEVELOPMENT SERVICES

**Local Members:** Ward - Grangemouth

Baillie Joan Paterson  
Councillor David Balfour  
Councillor Allyson Black  
Councillor Robert Spears

**Community Council:** No Community Council

**Case Officer:** Bernard Whittle (Development Management Co-ordinator), Ext. 4875

**UPDATE REPORT**

**1. INTRODUCTION**

- 1.1 Members will recall that on 11 March 2013 a special meeting of the Planning Committee agreed to grant the above mentioned hazardous substances consent application. Also, the Committee agreed that officers write to the Scottish Ministers asking that a national investigation be undertaken into the effects of black mould on premises in the vicinity of bonded warehouses. The purpose of this report is to advise members of the response received from Scottish Ministers and to provide recommendations in respect of the response.

**2. BACKGROUND**

- 2.1 Letters were sent on 27 March 2013 to the Cabinet Secretary for Rural Affairs and the Environment, Richard Lochhead MSP and the Minister for Environment and Climate Change, Paul Wheelhouse MSP. A response was received on 1 July 2013 and is appended for information (appendix 1).

- 2.2 In summary the response from Ministers is that the Scottish Government considers that investigation of the incidence of black mould is an issue to be taken forward at individual local authority level rather than on a national basis. The Scottish Government considers there is not enough evidence to support a national survey. Also, Ministers advise that if the Council considers the mould is a statutory nuisance then it can take action under the Environmental Protection Act 1990 (EPA).
- 2.3 Members are advised that the Council has previously commissioned Health Protection Scotland to investigate and report on occurrences of black mould in the vicinity of the Diageo site at Glasgow Road, Denny. Surveys were undertaken with regard to the potential health impacts resulting from the presence of black mould on structures and vegetation near the Diageo site. The report of this investigation concluded that the black mould is common, naturally occurring and is no risk to the health of a normal person. No direct link between the incidence of black mould and the storage of whisky was proven.
- 2.4 The Falkirk Council Environmental Protection Unit has been consulted regarding the response from Scottish Ministers. The Unit advises that, with regard to the Grangemouth site, taking into account the findings of the Health Protection Scotland report, there is not a statutory nuisance and it would not be appropriate for the Council to take action under the EPA.

### **3. CONCLUSION**

- 3.1 The Scottish Government advise that there is not enough evidence to support a national investigation into the health and environmental effects of black mould and suggest that this is a local issue to be dealt with individually by local authorities. The Council has previously commissioned Health Protection Scotland to investigate the incidence of black mould. No statutory nuisance has been identified. It is not considered appropriate to take action under the Environmental Protection Act 1990

### **4. RECOMMENDATION**

- 4.1 It is recommended that Members note the content of this report.

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**Director of Development Services**

**Date: 6 September 2013**

### **LIST OF BACKGROUND PAPERS**

1. Falkirk Council Structure Plan
2. Falkirk Council Local Plan
3. The Planning (Hazardous Substances) (Scotland) Act 1997
4. Health Protection Scotland Report in respect of black mould.
5. Environmental Protection Act 1990.
6. Letter of objection received from Grangemouth Yacht Club, Grange lane, Grangemouth, FK3 8EG on 19 November 2012

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504875 and ask for Bernard Whittle, Development Management Co-ordinator.

Chief Medical Officer and Public Health Directorate  
Public Health Division

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Mr Bernard Whittle  
Development Management Co-ordinator, Planning & Transportation  
Falkirk Council  
Abbotsford House  
Davids Loan  
FALKIRK  
FK2 7YZ



Your ref: BW/GA  
Our ref: 2013/0009092  
1 July 2013

Dear Mr Whittle

Thank you for your letters of 27 March 2013 to the Cabinet Secretary for Rural Affairs and the Environment, Richard Lochhead MSP and the Minister for Environment and Climate Change, Paul Wheelhouse MSP respectively calling for a national investigation into the health and environmental effects of black mould in the vicinity of bonded warehouses. Your correspondence has been passed to me for reply and I apologise for the time it has taken to do so.

I note from your correspondence that there has been previous concerns raised around the presence of these moulds and at that time the Scottish Government sought advice about whether there was enough evidence to support a national survey. This advice is still appropriate. I suggest that the issue might usefully be taken forward at the individual local authority level rather than on a national basis. This would help to focus any outputs and support the delivery of local priorities.

The Environmental Protection Act 1990 (EPA) enables local authorities to investigate such issues and determine whether a statutory nuisance exists. Section 79 (1) e) of the EPA defines any accumulation or deposit which is prejudicial to health or a nuisance as a statutory nuisance. There is, however, no objective measure for what constitutes a statutory nuisance - each individual case is for investigation by an environmental health officer who will decide whether the law is being breached according to the specific circumstances of the case.

In determining whether or not a particular accumulation or deposit amounts to a statutory nuisance it is necessary for a local authority to consider whether or not it is "prejudicial to health or a nuisance" and it is the responsibility of the local authority to ensure compliance with the legislation. Local authorities must satisfy themselves that a statutory nuisance exists to enable them to take action under the EPA.

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Where the local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, it must serve an abatement notice under section 80 of the EPA. The statutory nuisance regime also makes provision for the use of fixed penalty notices.

Procedural guidance on statutory nuisance is available on the Scottish Government website. <http://www.scotland.gov.uk/Publications/2009/01/23142152/0>. In this particular case I would draw your attention to section 3, and the advice on "best practicable means". You may wish to take legal advice before considering issuing any abatement notice.

I hope that this information is of use to you.

*A Stuart*

ANNETTE STUART

**FALKIRK COUNCIL**

**Subject:** REMOVAL OF CONDITION ATTACHED TO HAZARDOUS SUBSTANCES CONSENT P/10/0582/HAZ TO ALLOW STORAGE OF ETHANOL IN WAREHOUSES M, N AND S, INCREASING THE OVERALL MAXIMUM STORAGE QUANTITY TO 41,000 TONNES AT STORAGE UK, GRANGE LANE, GRANGEMOUTH, FK3 8EG FOR DIAGEO (SCOTLAND) LTD - P/12/0597/HAZ

**Meeting:** PLANNING COMMITTEE

**Date:** 27 February 2013

**Author:** DIRECTOR OF DEVELOPMENT SERVICES

**Local Members:** Ward - Grangemouth

Councillor David Balfour  
Councillor Allyson Black  
Councillor Joan Paterson  
Councillor Robert Spears

**Community Council:** Grangemouth

**Case Officer:** Bernard Whittle (Development Management Co-ordinator), Ext. 4875

**1. DESCRIPTION OF PROPOSAL / SITE LOCATION**

- 1.1 This application seeks hazardous substances consent to vary the terms of existing hazardous substances consent, reference P/10/0582/HAZ, to increase the amount of ethanol that can be stored on the site from 25,000 tonnes to 41,000 tonnes and, to permit ethanol to be stored within other parts of the warehouse premises.
- 1.2 The application site comprises a warehouse situated to the north west of Grangemouth Town Centre at the junction of Grange Lane and South Bridge Street. The warehouse is divided into 18 separate units. The site adjoins the River Carron to the north, the Old Dock and Junction Dock to the east and south, business premises to the west and vacant business land to the south west.

**2. REASON FOR COMMITTEE CONSIDERATION**

- 2.1 This application requires consideration by the Planning Committee because it has been called in by Councillor Spears.

### **3. SITE HISTORY**

- 3.1 Hazardous substances consent reference H/2004/0004 seeking consent to store 10,000 tonnes of ethanol within the premises was granted in March 2005.
- 3.2 Hazardous substances consent reference 06/0906/HAZ seeking a continuation of consent (ref: H/2004/0004) for the storage of 10,000 tonnes of ethanol following a change in control of part of the site was granted in March 2007.
- 3.3 Hazardous substances consent reference P/10/0582/HAZ seeking consent for the storage of 25,000 tonnes of ethanol within the premises was granted in December 2010.

### **4. CONSULTATIONS**

- 4.1 Scottish Natural Heritage have no objection to the proposal.
- 4.2 The Health and Safety Executive (HSE) advises that there are no significant reasons for refusing hazardous substances consent on safety grounds. The Executive does however request the inclusion of a condition relating to the use and storage location of the substance(s) to which the application relates and an informative confirming the strength of the ethanol/water mix to be stored.
- 4.3 The Scottish Environment Protection Agency do not wish to comment.
- 4.4 British Gas Transco have not made comment.
- 4.5 Scottish Power Energy Networks have not made comment.
- 4.6 Fife Council have not made comment.
- 4.7 The Council's Roads Development Unit have no objection to the proposal.
- 4.8 Scottish Water have not made comment.
- 4.9 The Council's Environmental Protection Unit have no objection to the proposal.
- 4.10 Ineos Manufacturing (Scotland) Ltd have not made comment.
- 4.11 A response was received from Essar Oil (UK) Ltd which now operates a nearby pipeline. They confirm that the pipeline is unaffected by the proposal.
- 4.12 The Council's Emergency Planning Unit have no objection to the proposal.

## **5. COMMUNITY COUNCIL**

- 5.1 Grangemouth Community Council initially lodged a holding objection pending consideration of the application by the Health and Safety Executive (HSE). On the receipt of comments from the HSE the Community Council withdrew their holding objection on the basis that the proposal does not change the existing established HSE consultation zones for the site and the proposals do not impact on sites allocated for development in the Falkirk Council Local Plan.

## **6. PUBLIC REPRESENTATION**

- 6.1 A letter of objection was received from Grangemouth Yacht Club, situated at the Old Dock. The Club objects to the proposals on the ground that they consider existing use of the premises to store ethanol is causing a fungus to grow on their boat decks, ropes, sails and hatch covers as well as on their moorings, pontoons and landing decks. The Club is concerned that the fungus causes surfaces to be slippery and, as a consequence, the Club considers there is a risk of persons falling. The Club is also concerned about the time and expense for Club members to remove the fungus.

## **7. DETAILED APPRAISAL**

- 7.1 When assessing applications for hazardous substances consent, section 7(2) of the Planning (Hazardous Substances) (Scotland) Act 1997 requires that the planning authority shall have regard to any material considerations and, in particular:
- (a) to any current or contemplated use of the land;
  - (b) to the way in which land in the vicinity is being used or is likely to be used;
  - (c) to any planning permission that has been granted for development of land in the vicinity;
  - (d) to the provisions of the Development Plan; and
  - (e) to any advice from the Health and Safety Executive.

### **7a *Current or Contemplated Use of the Land***

- 7a.1 The proposal relates to the use of existing warehouse premises. No material change of use or physical operations requiring planning permission is proposed. The current use of the site for the storage of ethanol is established as evidenced by the history of previous consents detailed in paragraph 3. The premises are within an area identified in the Falkirk Council Local Plan as a business and industrial area with potential for redevelopment but there are no planning permissions for redevelopment of the application site or planning applications pending consideration.



**7b      *Use of Land Within the Vicinity***

- 7b.1    The application site lies within a well established industrial area with no housing in close proximity. Land to the south of the site is identified in the Local Plan for port related general industrial/storage development (ED.GRA02 and ED.GRA03) and for general industrial, storage or retail development (ED.GRA05). Provided the ethanol is managed and stored in the manner described in the application its presence is consistent with land uses in the immediate vicinity and would not result in an additional constraint on the proposals in the Local Plan for the redevelopment of these sites.

**7c      *Planning Permission in the Vicinity***

- 7c.1    The proposed consent would not have adverse consequences for any planning permissions which have been granted in the vicinity.

**7d      *The Development Plan***

***Falkirk Council Structure Plan***

- 7d.1    Policy ECON.8, 'Petrochemical and Chemical Industries' states:

*Proposals for new petrochemicals and chemicals development will be supported within Grangemouth and at Kinneil Kerse subject to environmental health and safety considerations and provided that they are compatible with the regeneration of Grangemouth Docks, Town Centre or Bo'ness Town Centre.*

- 7d.2    The supporting text for this Policy emphasises the major economic importance of the chemical companies in Grangemouth in both a Scottish and a local context. The opportunity to build on the presence in the town of these companies is stated as a key goal of the Economic Strategy of the Council but the potential impact on other development opportunities is noted. It is recognised that a careful balance needs to be struck between maximizing the economic benefits of the chemical industries and minimising constraints on regeneration of Grangemouth Docks and the town centre.
- 7d.3    This proposal would not alter the HSE hazard consultation zones associated with the existing use of the site for the storage of ethanol or further constrain the regeneration of Grangemouth Docks or the town centre. The HSE do not advise against the proposal and have concluded that the risks to the surrounding population arising from the proposed operations are so small that there are no significant reasons, on safety grounds, for refusing hazardous substances consent. Accordingly, the proposal accords with Structure Plan Policy ECON.8.

## **Falkirk Council Local Plan**

7d.4 Policy EP3 'Existing Business and Industrial Areas with Potential for Redevelopment' states:

- (1) *Within the business and industrial areas with potential for redevelopment identified on the Proposals Map, the Council will consider favourably proposals for comprehensive redevelopment for other uses which:  
are appropriate in terms of the character of the surrounding area;  
are satisfactory in terms of environmental, access, traffic generation and other detailed considerations; and  
comply with other Local Plan policies.  
Pending any such redevelopment, use of these sites for Class 4, 5 or 6 development will continue to be supported.*
- (2) *Changes of use or redevelopment of other business/ industrial land or premises within the Urban Limit which are not safeguarded under Policy EP2 may be permitted subject to amenity, environmental, access, traffic generation and other detailed considerations.*

7d.5 The application site lies within an area identified in the Local Plan as a business and industrial area with potential for redevelopment. Policy EP3 supports proposals for comprehensive redevelopment for other uses in this area but, pending any such redevelopment, continues to support use of the area for business, industrial and storage uses. There is no current scheme for the comprehensive redevelopment of the area. The continued use of the premises for storage purposes does not conflict with the Policy and, given the advice of the HSE that the proposal would not change the existing hazard consultation zones, does not introduce any further constraint to prejudice potential future redevelopment. Accordingly, the proposal accords with Policy EP3.

7d.6 Policy EP19 'Hazardous Substances Consent' states:

*There will be a general presumption against applications for hazardous substances consent which would extend the hazard consultation zones within urban areas beyond their present coverage or prejudice the development of sites allocated in the Local Plan.*

7d.7 The proposal would not extend the hazard consultation zones associated with existing consented use of this site and so will not prejudice the development of sites allocated in the Local Plan. The proposal accords with Policy EP19.

7d.8 Accordingly, the proposal complies with the Development Plan

## **7e Health and Safety Executive Advice**

7e.1 The HSE do not advise against the proposal and have concluded that the risks to the surrounding population arising from the proposed operations are so small that there are no significant reasons, on safety grounds, for refusing hazardous substances consent.

- 7e.2 The HSE have previously identified consultation zones around the site in relation to the existing consented use of the premises and have advised that this proposal does not require these zones to be changed. A plan identifying the zones is attached (Appendix 1). The inner and middle consultation zones are tight to the boundary of the application site. The outer zone extends over part of the Junction Dock and Old Dock and over land to the west of South Bridge Street but these areas already fall within the HSE outer, middle and inner consultation zones associated with consents relating to Calachem, Syngenta and Firmin Coates.

**7f Material Considerations**

- 7f.1 The material considerations to be assessed are the consultation responses and representation received.

**7g Consultation Responses**

- 7g.1 No objections have been received from consultees. The HSE advise that there are no significant reasons on safety grounds for refusing hazardous substances consent subject to a condition relating to the use and storage location of the ethanol and an informative confirming the mixture of the substance .

**7h Representation Received**

- 7h.1 To date a causative link between fungus growth and the storage of ethanol has not been scientifically proven. Even if a link were proven the fungus relates to an existing phenomenon. It would be problematic to establish the specific impact of the proposed increase in the amount of ethanol stored. Also, with regard to the provisions of The Planning (Hazardous Substances) (Scotland) Act 1997, it would not be competent to impose conditions requiring fungus to be removed.

**8. Conclusion**

- 8.1 The use of the premises for the storage of ethanol is already established. The HSE do not advise against the proposal to increase the amount stored and have concluded that the risks to the surrounding population arising from the proposed operations are so small that there are no significant reasons, on safety grounds, for refusing Hazardous Substances Consent. The proposal does not change the existing HSE hazard consultation zones for the site and does not introduce any new constraints that would prejudice the Local Plan allocations for the future redevelopment of this area.

**9. RECOMMENDATION**

**9.1** It is recommended that the Committee grant Hazardous Substances Consent subject to the following condition(s):-

- (1) The hazardous substances shall not be kept or used other than in accordance with the particulars provided on the application form, nor outside the areas marked for storage of the substances on the plan which formed part of the application. The storage areas are those shown on the 'ROSSCO properties' untitled/undated plan as included in the consent application which shows locations A through to S.

**Reason(s):-**

- (1) To ensure the safe keeping of the substances at all times.

**Informative(s):-**

- (1) Please note, the substances covered by the existing consent (reference P/10/0582/HAZ) and that covered by this application (reference P/0597/HAZ) is category B6, which in the case of the existing/proposed activities at this site restricts the substance to ethanol/water mixtures at less than 70% ethanol by volume as confirmed by the applicant (email from the applicant to HSE dated 12/11/12).

**Pp**

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**Director of Development Services**

**Date: 19 February 2013**

### **LIST OF BACKGROUND PAPERS**

1. Falkirk Council Structure Plan
2. Falkirk Council Local Plan
3. The Planning (Hazardous Substances) (Scotland) Act 1997
4. Letter of objection received from Grangemouth Yacht Club, Grange lane, Grangemouth, FK3 8EG on 19 November 2012

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504875 and ask for Bernard Whittle, Development Management Co-ordinator.

# Planning Committee

## Planning Application Location Plan

**P/12/0597/HAZ**

This plan is for location purposes only. It should not be interpreted as an exact representation of the application site.



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Appendix 2

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