



Attention - John Baylay
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Date 19 June, 2003
Your Ref DC/0640538
Our Ref P/MAC/JF/037101
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BY FAX & POST: 0121 569 4072

Dear Sirs

**PLANNING APPLICATION AT TEMPLE WAY, TIVIDALE, WARLEY
REF NO. DC/03/40538
OUR CLIENT: RHODIA CONSUMER SPECIALITIES LIMITED**

We are instructed by Rhodia Consumer Specialities Limited to submit representations in relation to the above planning application.

Our client objects to the proposed development for the following reasons:-

1. The proposed residential development is too close to our client's adjoining Rattlechain landfill site resulting in two conflicting land uses being adjacent to one another;
2. The proposed development is contrary to several policies contained in the emerging Sandwell Unitary Development Plan ("UDP").

We will address each of these concerns in turn.

The proximity of the development to the Rattlechain Landfill Site

Our client has operated the Rattlechain Landfill Site (Rhodia / Albright & Wilson lagoon), adjacent to the northern boundary of the proposed development site for the disposal of chemical waste since 1948.

We have been provided with a copy of a report prepared by Sladen Associates entitled "*Geo-Environmental Appraisal - proposed housing development, Temple Way, Tividale*". Our client does not take issue with the findings of this report but we draw your attention, in particular, to Section 5.2.1 of the Report which sets out the details of the types of waste that can currently be found in the lagoon. Particular reference should be made to the following paragraphs:-





“The waste is a high water content effluent slurry from the Albright & Wilson works in Oldbury. A number of waste drums, believed to be of the order of 100 per year in 1990, are also believed to have been deposited in the lagoon. The majority of the waste is calcium phosphate, which settles out on the bed of the lagoon and forms a very loose/very soft sediment. As of about 1990, the thickness of the sediment was up to about 11.5 metres. The deepest part of the lagoon has a base elevation of about 104 metres AD”. (page 12 of the Report)

Reference should also be made to the following paragraphs of the Report:-

“Some elemental phosphorus was previously included in the wastes but production of elemental phosphorus in Oldbury ceased before 1990. The most common metals in the sludge, apart from calcium, are believed to be chromium, copper, iron, magnesium, sodium, nickel, lead and zinc. Non metallic contaminants include fluorine, sulphur, and silicon, probably in the form of fluoride, sulphur and silicon.”

Clearly the geotechnical and chemical properties of the wastes will pose significant challenges to the final decommissioning and restoration of the lagoon. Of relevance to the present study however, is the potential impact on the proposed residential development and in particular whether the known potential hazards pose any significant potential risk for future housing site users”. (page 12 of the Report)

Although the report concludes, at paragraph 5.2.3, that there is unlikely to be any flow of ground water from the Rhodia lagoon towards the proposed development site, our client is concerned that a stretch of water lying close to a residential development would create an invitation for children to play in the lagoon or on its edge. Given the nature of the waste being deposited in the lagoon there can be no doubt that the lagoon is heavily contaminated and not at all suitable for swimming, paddling or boating.

Notwithstanding the fact that our client’s site is adequately fenced and secured, there remains a real concern and risk that children will nevertheless enter upon the site. One reason for this concern is the absence of any open space within the proposed development. Consequently, children are even more likely to seek to encroach onto our client’s site and to play in and around the vicinity of the lagoon.

Whilst we acknowledge that there is an area of open space allocated under Policy OS2 in the emerging UDP adjacent to the site, no indication has been provided as to how and when this open space will be implemented with the aim of encouraging children to that location.

Waste is currently delivered to the site by tanker along the western side of the proposed development site along John’s Lane and pumped into the lagoon at a point adjoining the northern boundary of the proposed development site.



It is beyond doubt that these arrangements will cause tankers to travel very close to the rear of the houses forming part of the proposed development and discharge their load into the lagoon in very close proximity to the rear of the houses to the north of the development. It is likely that these two aspects will be of immediate concern to the occupiers of the houses and that our client's operation will be threatened by pressure from the residents for our client's lawful and legitimate use of the lagoon to be halted. This in turn would have a very serious effect on our client's operations at Trinity Street, Oldbury which could result in possible closure and loss of employment.

The proposed development is contrary to several policies contained in the emerging Sandwell Unitary Development Plan ("UDP")

As indicated above the Sladen Associates report concludes that migration of ground water from the lagoon to the development site is unlikely. Nevertheless, **Policy PC5 - Pollution Control** of the emerging UDP provides that:-

"The Council will only permit pollution - sensitive developments in close proximity to potentially polluting uses where it can be shown that there would be no detrimental impact on the health or amenity of future occupiers. Where appropriate, conditions or planning obligations will be applied to ensure any impacts are minimised"

In our view, delivery of waste by tanker to our client's site and the disposal of waste into a lagoon in very close proximity to residential development can have nothing other than a detrimental impact on the amenity of the residents who might occupy the proposed development.

Policy PC5 in the emerging UDP originates from PPG23 "Planning and Pollution Control" which emphasises that in addition to determining the location of development which may give rise to pollution, **"the planning system should also control development in proximity to potential sources of pollution"**.

Paragraph 11.15 of the emerging UDP provides that this is to ensure that the occupants of the new development are protected from potential pollution and furthermore, that existing potentially polluting processes should not face unreasonable constraints on their operations.

Consequently, for the reasons set out above, it is our considered view, that allowing the proposed development on the site adjoining our client's landfill site would be contrary to Policy PC5 of the emerging UDP.

Reference should also be made to **Policy H9** of the emerging UDP relating to the **Relationship Between Residential and Industrial Uses**. Policy H9 states:-

"New housing will not be permitted in normal circumstances near to uses that currently, or have the potential to, have adverse impact on the environment in terms of noise, pollution, traffic congestion or access problems"

In our view the proximity of the proposed residential development to our client's landfill site taken together with the fact that the waste is currently delivered to site by tanker along John's Lane and pumped into the lagoon at a point adjoining the northern boundary of the proposed development site places the proposed development in direct conflict with Policy H9 of the emerging UDP.

Further, paragraph 3.38 of the emerging UDP recognises that **“housing development in inappropriate locations can also impose significant constraints on existing industry and threaten its viability”**.

As indicated above, our client is concerned that the proposed development will inevitably lead to pressure from residents of the proposed site for the cessation of its operations and the total winding down of the legitimate use of the Rhodia lagoon. This will inevitably have a serious effect on our client's operations at Trinity Street, Oldbury with its possible closure and loss of employment.

Policy E5 - Relationship between Industry and Other Uses, of the emerging UDP seeks to address the problem caused by conflicting sites. Policy E5 states:-

“Proposals that may adversely affect, or be adversely affected by existing industry operating in appropriate locations will not be permitted unless the adverse effects can be reduced to an acceptable level. Where this is to be achieved by means of a buffer, the new development would be required to provide and maintain the buffer. An appropriate buffer may take a variety of forms which is open space, a landscaped area, a wall or other physical barrier”.

It is clear from the application for the proposed development that no such buffer is currently proposed as part of the development, contrary to the requirements of Policy E5.

Further, paragraph 4.18 of the emerging UDP states that to date, where new developments have been introduced near to existing industry the onus has been on the industrial activity to mitigate any adverse affects on neighbouring uses. It is recognised that this has, at times, placed an unreasonable burden on industry and it is now considered that the new development should be responsible for ensuring that any potential adverse effects are minimised to an acceptable level. Thus, where the introduction and continued maintenance of a buffer can satisfactorily reduce these conflicts, the buffer must be provided by the new development.

In our view the provision of a buffer is essential in this instance to reduce the potential for conflict between our client's site and proposed residential use.

Further reference to the need for a buffer in the emerging UDP is to be found at **Policy WM4-Buffer Zones Around Landfill Sites**.

Policy WM4 states:-

“where necessary, buffer zones will be defined around landfill sites on which new residential developments or other sensitive uses will not normally be permitted”.

In our view, the provision of a buffer zone is essential in this instance and the current proposed development clearly conflicts with Policy WM4.

References should also be made to **Policy WM4A - Development in the Vicinity of Waste Management Facilities**, which states:-

“The Council will not grant planning permission for any development proposal in the vicinity of waste management facilities, where the proposed development would unduly restrict or constrain the activities permitted to be carried out within that facility.”

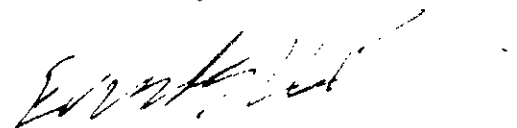
As indicated above, were residential housing to be allowed on the proposed development site there is a very real risk that this would unduly restrict or constrain our client’s activities permitted to be carried out in the future.

It is clear therefore that there are a number of policies in the emerging UDP which acknowledge the problems of locating residential development adjacent to existing industrial uses and a number of measures are provided in the UDP necessary to overcome or minimise these problems. However, it is our view that the current application for the proposed development includes no means of overcoming or minimising any of the conflicts between the two land uses.

In light of the above our client respectfully requests that planning consent for the proposed development be refused in its present form. We look forward to hearing from you with your comments on our client’s concerns.

We should be grateful if you could provide us with a copy of the Planning Officer’s Report three days before the Committee Meeting.

Yours faithfully,



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Dear Sirs

**PLANNING APPLICATION AT TEMPLE WAY, TIVIDALE, WARLEY
REFERENCE NO: DC/03/40538
OUR CLIENT: RHODIA CONSUMER SPECIALITIES LIMITED**

We write further to your fax dated 24th June 2003 enclosing copy letter received from Weightman and Vizards.

It is noted that the letter from Weightman and Vizards does not seek to address any of the concerns raised in our earlier letter to you dated 19th June 2003 and instead deals largely with concerns raised by the Cramer and Warner Report.

The only paragraph of relevance to my client's concerns is the penultimate paragraph which makes reference to the need for perimeter security to the Rhodia site.

On this point, we refer to the comment made in our earlier letter that notwithstanding the fact that our client's site is adequately fenced and secured, there remains a real concern and risk that children will nevertheless enter upon the site.

This risk and indeed the risk of other adverse impacts is recognised in Policies **H9** (Relationship Between Residential and Industrial Uses); **E5** (Relationship Between Industry and Other Uses); and **WM4** (Buffer Zones Around Landfill Sites) where it is recognised that housing should not be permitted close to uses that are currently, or have the potential to, have adverse impacts on the environment and, where new housing is to be permitted, it is a requirement that a buffer zone be provided by the developer.

The planning application, in its current form, makes no allowance for a buffer zone of the sort required in the emerging UDP.

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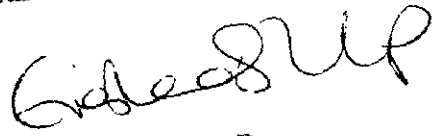
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In light of the above comments and those made in our previous letter to you dated 19th June 2003 our client respectively requests that planning consent for the proposed development will be refused in its present form.

Yours faithfully,



EVERSHEDS LLP

Sandwell Metropolitan Borough Council Development House, West Bromwich										
DATE		01 JUL 2003								
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2000

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Dear Sirs

**PLANNING APPLICATION AT TEMPLE WAY, TIVIDALE, WARLEY
REFERENCE NO: DC/03/40538
OUR CLIENT: RHODIA CONSUMER SPECIALITIES LIMITED**

We write further to our previous correspondence in relation to the above matter and in particular to your fax dated 23 July 2003 enclosing copy letter received from Messrs Weightman Vizards and your subsequent letter to the Environment Agency.

We have been provided with a copy of a report prepared by Ove Arup & Partners Ltd, dated July 2003, entitled "*Summary and Review of Geo Environmental Assessment Work*". We do not propose to deal in detail with the Report but would draw your attention to sections 3.5 and 4.4 of the Report which confirm the high levels of contamination that exists in and around the lagoon including the presence of "a number of dangerous chemicals".

We note Messrs Weightman Vizards' contention that the existence of the Environment Agency regime for preventing and mitigating environmental impact is a material factor to be considered by the Council in determining the above planning application. As I am sure you are aware it would be wrong for the Council to simply rely on the fact that our client's site has the appropriate waste management licence administered by the Environment Agency when *considering the issue of environmental risks posed by this development*

We note that Messrs Weightman Vizards refer to the Gateshead case in their submissions. Another feature of this case was that the court stressed that the judgment in that case should not be regarded as *carte blanche* for applicants for planning permission to ignore the pollution implications of their proposed development and say "leave it all to the E.P.A".

Another feature of the Gateshead case was that it confirmed the status of public fears concerning development as a material consideration. Glidewell L.J. that:

"Public concern is, of course, and must be recognised by the Secretary of State to be, a material consideration for him to take into account."



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Further, in the case of *Newport Borough Council v Secretary of State for Wales* [1998] Env. L.R. 174 it was held that even where the fears and concerns of the public have been shown to be unjustified they may nevertheless remain a material consideration.

This decision is of particular relevance in this instance given that, irrespective of the fact that our client's site is adequately fenced and secured, there remains a real concern and risk that children will nevertheless enter upon the site. Given the nature of the waste being deposited in the lagoon, and when one considers the conclusions reached in paragraphs 3.5 and 4.4 of the Ove Arup Report there can be no doubt that the lagoon is heavily contaminated and not at all suitable for swimming, paddling and boating.

Accordingly, we trust that proper weight will be given to the very real issue of the potential risks to public safety as outlined above.

In light of the above comments and those made in our previous letters to you dated 19th and 27th June 2003 our client respectively requests that planning consent for the proposed development be refused in its present form.

Yours faithfully,



EVERSHEDS LLP