

REPORT TO THE PLANNING COMMITTEE OF 5th April 2022

Meeting: Planning
Date: 5th April 2022
Subject: Revocation of Hazardous Substance Consent (HSC) 01/00459/HAZ, Unit 3320, @Merck Ltd, Hunter Boulevard, Magna Park, Lutterworth.
Report of: Development Planning Manager
Cabinet Member: Cllr Jonathan Bateman
Status: Recommendation to Planning Committee.

1 Purpose of the Report

- 1.1 To decide a request from VWR International Limited (VWR) to revoke the Hazardous Substances Consent the Council issued in August 2001 at Unit 3320, Hunter boulevard, Magna Park. The report thereafter outlines the reasons for revoking this consent and sets procedures involved in doing this.

2 Recommendation:

- 2.1 **That Committee resolves to make a revocation order under s14(2) of the Planning (Hazardous Substances) Act 1990, i.e. revoking the Hazardous Substances Consent ref 01/00459/HAZ for at Unit 3320, Hunter Boulevard, Magna Park, subject to its confirmation by the Secretary of State under Section 15 of the Act.**

3 Summary of Reasons for the Recommendations

- 3.1 In response to request from the site occupier and operator VWR International Limited (VWR) in the interests of removing the hazardous substance consent (HSC) on the site.

Relevant History

- 3.2 01/00459/HAZ was granted 22nd August 2001 to MERCK for hazardous substances consent. A copy extract of the decision follows:

Copy extract from 01/00459/HAZ decision notice:

Part I - Particulars of application

Date of application: 9th April 2001

Application number: 01/00459/HAZ

Location:

Application for hazardous substances consent, Unit 3320, Hunter Boulevard, Magna Park.

Part II - Particulars of decision

In pursuance of its powers under the Planning (Hazardous Substances) Act 1990, the Harborough District Council grants Hazardous Substances Consent in accordance with the details contained in the application subject to the following conditions:

1. The Hazardous substance(s) shall not be kept or used other than in accordance with the application particulars provided in Form 1, as amended by the letter dated 2.5.01 attached to and forming part of this consent nor outside the area(s) marked for storage of the substance(s) on the plan which formed part of the application.

Reason: For the avoidance of doubt.

Form 1 of the consent (referenced in the decision above) includes:

Description	Category in Schedule 1 to the 1992 Regulations	Maximum quantity
Very toxic	Category 1	7,000 kg
Toxic	Category 2	60,000 kg
Highly flammable	Category 8	20,000 kg
Organic substances	Category 3	15,000 kg

3.3 The proposal is being brought to this Committee as revocation is not a delegated decision under the constitution. It is also a matter of public interest.

Applicant request

3.4 The applicant VWR International Limited (VWR) first emailed Harborough District Council (HDC) in January 2021 that it wished to 'give up' the "Organics" allowance from the HSC. VWR to confirm its request that HSC be revoked. It stated the revocation is due to the site's inventory not currently falling or currently planned to fall at or above the thresholds required for the consent. The current consent is described as unreflective of the changes in material types since its original approval. It advises if the company position changes in the future, it would follow the latest regulations and apply for a new consent. At that time the request was made pursuant to s14(1) of the Planning (Hazardous Substances) Act 1990. As s14(1) introduced potential compensation the Council asked for clarification of any third-party interest (e.g. a landlord).

3.5 VWR by letter of 9th November 2021 changed its revocation request as now pursuant to s14(2) of the Planning (Hazardous Substances) Act. See copy letter at Appendix 2.

- 3.6 The expected decision and confirmation procedure for revocation, should the recommendation be accepted shall follow:

HSC revocation: indicative programme decision and confirmation procedure.	
Seek Planning Cttee approval to proceed with revocation	5 th April 2022 planning committee.
Serve Notice of intention to revoke the planning consent	By end May 2022 for a 28 day consultation period
Send Order to Sec of State for confirmation	By Autumn 2022.
Consent revoked	Winter 2022.

4 Impact on Communities

- 4.1 The file to application 01/00459/HAZ shows community objection at the time that proposal was considered. Bitteswell Parish Council objected in a 3-page letter received by HDC 15th May 2001. The revocation of HSC is not likely to raise complaint or objection given that background of objection to its grant.

5 Key Facts

- 5.1 The Local Planning Authority has responsibility as a Hazardous substance consent Authority.
- 5.2 The 2001 consent was granted to Merck. Section 17 Planning (Hazardous Substances) Act 1990 states under Revocation of hazardous substances consent on change of control of land: *(1) A hazardous substances consent is revoked if there is a change in the person in control of part of the land to which it relates, unless an application for the continuation of the consent has previously been made to the hazardous substances authority*
In this case Merck confirmed to HDC by letter 10th May 2002 that VWR International Limited (VWR) was another Merck group company that would be operating the HSC granted.

6 Legal Issues

- 6.1 The Planning (Hazardous Substances) Act 1990 allows for a HSC to be revoked under s.14. This Authority, as Hazardous Substance Authority, can make a revocation order under s.14 (1) or (2) of the Act. The revocation will be subject to confirmation by the Secretary of State under s.15 of the Act (even if it is unopposed). S.16 (1) of the Act makes it clear that compensation, which would otherwise be payable for a revocation or modification using powers under s.14(1), is not payable for a revocation if it is made under s.14(2) of the Act.
- 6.2 Whilst the risk of compensation being sought from the Council would not apply if the consent was revoked under s.14(2), there are a number of criteria that must be satisfied, these are as follows:
- a) That there has been a material change in the use of the land to which the HSC relates; or

- b) Planning permission has been granted and commenced for development of the site and would involve making a material change in the use of the land; or
 - c) In the case of a HSC which relates only to one substance, that the substance has not for at least five years been present on, over or under the land to which the consent relates in a quantity equal to or exceeding the controlled quantity or
 - d) In the case of a HSC which relates to a number of substances, that none of those substances has for at least five years been so present.
- 6.3 The VWR letter at Appendix 1 shows the above criteria d) applies – no relevant substance has been stored at site for at least five years. Revocation of the consent under s.14(2) is therefore possible.
- 6.4 It is therefore proposed that the consent be revoked under s.14 (2) of the Act. Although s.16 of the Act includes provisions relating to compensation VWR has confirmed in writing that it would not challenge or seek compensation if the Council proceeded with the revocation of consent order. Ordinarily, anyone seeking compensation will have to show they have suffered damage in consequence of the revocation order being made.
- 6.5 However, whilst the risk of seeking compensation does not appear to be an issue, particularly given VWR assurance on this, the matter is nevertheless brought to the Committee's attention and its authority is sought to revoke the consent and to make an Order in accordance with the procedures set out under s14(2) of The Planning (Hazardous Substances) Act 1990.
- 6.6 There is a requirement to notify all relevant landowning and leasehold interests in accordance with part 15(3) of the 1990 Act who "will be affected by the Order". Any persons "affected by the Order" have at least 28 days to notify the Secretary of State that they wish to challenge the Order and be heard at a public inquiry. VWR has been asked to confirm what interested parties exist so they can be notified by the Council.
- 6.7 Other interested parties who are those who need to be consulted on any proposed new application for consent listed in Regulation 10 of the Planning (Hazardous Substances) Regulations 1992 will also be served notice. These include the Health and Safety Executive and the Environment Agency.
- 6.8 This Committee report will be used to provide the Statement of Reasons that is required to accompany the Order to the Secretary of State
- 6.9 By utilising the revocation process under s.14(2) of the Act the Council will not be liable to claims for compensation that could arise if the revocation were undertaken via the process in s.14(1) notwithstanding the assurances provided by VWR.

7 Resource Issues

- 7.1 There are no direct financial resources. In respect of wider resources, none are identified as the request shall be met from within existing resources.

8 Equality Impact Assessment Implications/Outcomes

- 8.1 None Identified

9 Impact on the Organisation

- 9.1 The Council has a statutory duty as a Hazardous substance Consent Authority to decide this request. Should the Council not determine or refuse the request there may be a right of appeal available to the Secretary of State.

10 Community Safety Implications

- 10.1 None Identified.

11. Carbon Management Implications

- 11.1 None Identified

12. Risk Management Implications

- 12.1 Whilst there is a risk of compensation being requested if revocation is made under s14(1) of the Planning (Hazardous Substances) Act 1990 this does not apply under s14(2). It is proposed to revoke under s14(2) of the Planning (Hazardous Substances) Act 1990, under s14(2) to negate compensation risk.

- 12.2 There are positive environmental implications from revoking the consent for the continued storage of hazardous materials to the currently authorised amounts at the site. It reduces a potentially hazardous use.

13 Consultation

- 13.1 None required

14 Options Considered

- 14.1 Not to amend revoke the HSC. This may result in potentially leaving the District Council exposed in terms of future sue of the site and potentially an appeal to the Secretary of State.

15 Background Papers

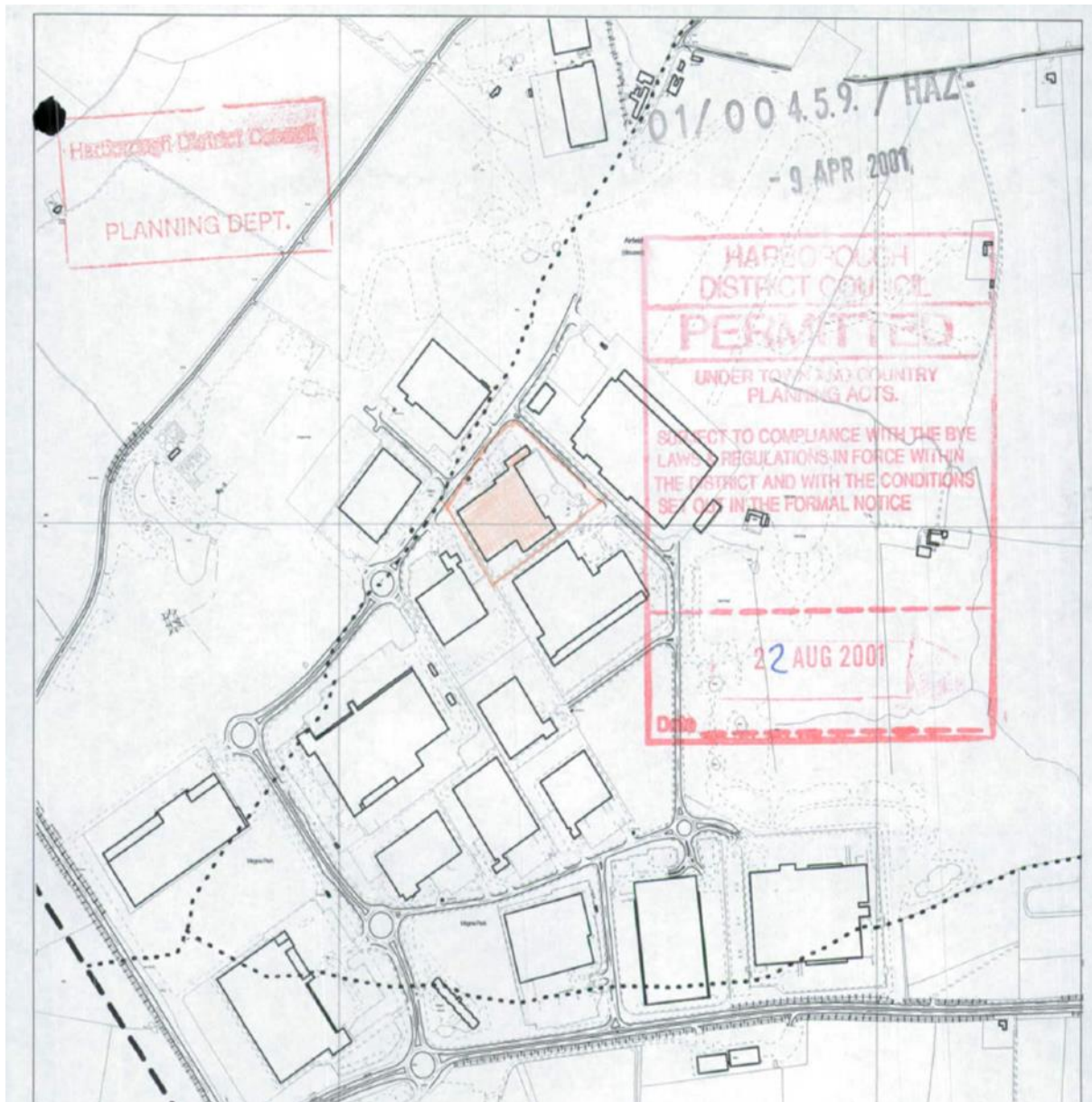
- 15.1 [The Planning \(Hazardous Substances\) Act 1990](#)

- 15.2 [The Planning \(Hazardous Substances\) Regulations 2015](#)

Appendix 1 : 01/00459/HAZ application location plan.

Appendix 2: VWR International letter to HDC 9th November 2021.

Appendix 1 : 01/00459/HAZ application location plan



Appendix 2 VWR letter



VWR International Ltd
Hunter Boulevard, Magna Park
Lutterworth, Leicestershire LE17 4XN
United Kingdom
t +44 (0) 1455 558 600

Harborough District Council Planning Department
F.A.O Adrian Eastwood
The Symington Building
Adam and Eve Street
Market Harborough
Leicestershire,
LE16 7AG

Ref: Hazardous Substance Consent - 01/00459/HAZ

Date: Tuesday 9th November 2021

Dear Mr Eastwood,

Further to our previous discussions and correspondence, I write to update you and provide further information that should support the revocation, and hopefully appease the nervousness relating to compensation from interested third parties (of which there are none).

VWR International Limited, originally an arm of Merck which was sold and established as VWR Internal Limited in 2004 and subsequently purchased by Avantor in 2017, have held exclusive, leased occupancy of the site for over 30 years. The site was purposefully created for Merck for the storage and distribution business.

I joined the VWR International Limited in January 2021 as Environmental, Health & Safety, Security and Sustainability Manager for the UK & Ire, forming part of the UK Senior Leadership Team and responsible for the EHSSS performance of the UK & Ireland Avantor business.

Your request to obtain confirmation from interested parties was not unreasonable considering the approach we had taken, however the ownership structure for the site is reasonably complex and it could take some time to procure the necessary responses from those parties confirming that they have no interest in the revocation. We have therefore considered our options and an alternative approach is now proposed which should expedite the process and eliminate any perceived risk for the local authority too.

We have discussed other alternatives with our legal team who have advised that pursuant to section 14(2) of the Planning (Hazardous Substances) Act 1990, the authority may revoke a hazardous substance consent if the substance or substance to which the consent relates has not for at least five years been present on, over or under the land to which the consent relates in a quantity equal to or exceeding the controlled quantity.

Having reviewed a number of internal archived documents dating back to 2012 reports and discussions with the Region North Director of Operations and UK Director of Operations, who coincidentally started his VWR career at Lutterworth site when it first opened, I can confirm the Lutterworth site has not relied on the hazardous substance consented limits for in excess of 5 years.

We are advised that a revocation order under section 14(2) does not trigger any potential compensation liability for the authority. For this reason, we think this would be a more straightforward process and would be grateful if the authority would consider making an order under this provision.

I hope this clarification, now alleviates your concerns regarding compensation and progress can be made to close this matter out promptly.
