

It is fundamental to this Examination that the question of Hazardous Substances Consent must be considered as would be required for a normal (<50MWh) local Planning Consent conducted by a Local Planning Authority under the Planning (Hazardous Substances) Act 1990. Since under the terms of the same Act a nationally-determined application may include "deemed consent" for Hazardous Substances, thus by-passing the provisions of the P(HS)A 1990, it is essential that the Examination considers in detail the requirements for and controls on Hazardous Substances set out in the P(HS)A 1990 but in any case required under the terms of the land-use Planning provisions of the Seveso III Directive from which the P(HS)A 1990 is inherited.

The Battery Energy Storage Systems (BESS) proposes for Sunnica remain under-specified but on the basis of land allocation could exceed 3000 MWh which would make the battery compounds the largest BESS installation in the world. This is 60 times larger than a 50 MWh BESS system which would be dealt with under normal Planning procedures. It is clearly intolerable if proper consideration of Hazardous Substances were by-passed, when the level of hazard, measured by energy storage capacity, and thus by tonnage of hazardous substances, is 60x larger than the hazard which would be subject to such controls under normal Planning rules under P(HS)A 1990.

For avoidance of doubt, the issues to be heard involve controlled Hazardous Substances given in Part 3 "Substances used in Processes" of the Schedule to the Planning (Hazardous Substances) Regulations 2015. Part 3 deals with Hazardous Substances when it is "reasonable to foresee" listed Hazardous Substances "being generated during loss of control of the processes" i.e. battery accidents or battery "fires" (a misnomer). It is certain that listed Hazardous substances in Parts 1 and 2 of the Schedule are in fact generated during accidents, therefore consideration of Part 3 is fundamental.

For further avoidance of doubt, the writer is aware of the current position of the Health and Safety Executive (HSE) which considers (for reasons I believe legally untenable) that BESS are exempt from the law. This I believe to be (i) wrong (ii) ultra vires. Moreover the response from HSE as Statutory Consultee from HSE is defective in that while the possible requirement for Hazardous Substances Consents (as under P(HS)A 1990) is explicitly pointed out, the critical "loss of control" provisions under Part 3 of the Schedule to the P(HS)Regulations 2015 are not mentioned. Yet it precisely when "control of the processes is lost" (i.e. battery accidents or fires) that the most dangerous hazards to public health and safety do arise.

The law is clear; the legislative intentions are clear; the question of Hazardous Substances generated in Battery accidents/fires must be consider comprehensively as part of the appraisal of technological safety.