

From: Diane.Savage@hse.gov.uk
To: silvertowntunnel
Cc: Jim.Neilson@hse.gov.uk; Stuart.Reston@hse.gov.uk; Dave.Painter@hse.gsi.gov.uk; Peter.Harper@hse.gsi.gov.uk; Tony.Williams@hse.gov.uk; Gary.Lang@hse.gov.uk; Karen.Fearon@hse.gov.uk; Erol.Mertcan@tsol.gsi.gov.uk; John.Birch@hse.gov.uk; Dave.Adams2@hse.gov.uk
Subject: FW: NSIP - Proposed Silvertown Tunnel - HSE Deadline 6 Response (SILV-354)
Date: 05 April 2017 16:30:44
Attachments: [image001.png](#)
[image004.png](#)
[NSIP - Proposed Silvertown Tunnel - HSE Deadline 6 Response \(Word Version\)\(5\).DOCX](#)
[NSIP - Proposed Silvertown Tunnel - HSE Deadline 6 Response \(PDF Version\).PDF](#)

Application by Transport for London (TfL) for an Order Granting Development Consent – Proposed Silvertown Tunnel

Dear Examining Authority

Please note there is a minor typographical error in the second paragraph of our reply to point 8.3 (ref e-mail below and attachment).

8.3 Please could HSE provide an update and clarification to the Panel on its advice to the LPA in respect of the Studio 338 application to re-build the night club, recommending that it is refused on public safety grounds?

The second sentence should read “Studio 338 is a public house which has an indoor space of more than 250 square metres, and also an external events space”.

Regards

Diane

Diane Savage | Land Use Planning Policy | Strategy Unit: Chemicals, Explosives & Microbiological Hazards Division - Health & Safety Executive | 2.2 Redgrave Court, Merton Road, Bootle L20 7HS | | +44 (0) 20 3028-4522) :
Diane.Savage@hse.gov.uk
www.hse.gov.uk | <http://hse.gov.uk/landuseplanning>



HSE is engaging with stakeholders to shape a new strategy for occupational safety and health in Great Britain [Find out more](#) and join the conversation #HelpGBWorkWell

From: Dave MHPD Adams **On Behalf Of** NSIP Applications
Sent: 05 April 2017 15:53
To: 'silvertowntunnel'
Cc: Jim Neilson; Stuart Reston; Dave Painter; Peter Harper; Tony Williams; Gary Lang; Karen Fearon; 'Erol Mertcan'; John Birch
Subject: NSIP - Proposed Silvertown Tunnel - HSE Deadline 6 Response (SILV-354)

Application by Transport for London (TfL) for an Order Granting Development Consent – Proposed Silvertown Tunnel

Dear Examining Authority,

In response to Deadline 6 (5 April 2017) and the request for electronic submissions as email attachments, HSE as Interested Party (SILV-354) is attaching one document (in both Word and PDF Format). The document comprises:

1. HSE's written submission of the main points of our oral case to the Issue Specific Hearing (ISH) on any other outstanding issues including Environmental Matters (28/3/17).
2. HSE's response to Action Point 11 arising from the ISH.

Kind regards,

Dave Adams
Dave.MHPD.Adams
CEMHD4 Policy, Chemicals, Explosives & Microbiological Hazards Division, Health and Safety Executive.
Desk 76, 2.2, Redgrave Court, Merton Road, Bootle, Merseyside L20 7HS
0151 951 3408 dave.mhpd.adams@hse.gov.uk

1 Written submission of the main points of the Health and Safety Executive (HSE)'s oral case to the Issue Specific Hearing on 28 March 2017 on any other outstanding issues including Environmental Matters.

The submission is numbered according to the ISH agenda items.

8.1 Please can RB of Greenwich provide an update on when the Brenntag application to modify its Hazardous Substances Consent (HSC) is likely to be determined?

As HSE advised in its Deadline 4 submission (REP4-003), HSE has been re-consulted by Royal Borough Greenwich (RBG) on the 2012 Brenntag hazardous substances consent application (application ref 12/1247/H). RBG has indicated that additional recent information, including the flood risk assessment, which was not part of the application when HSE provided its advice in 2012 should now be taken into account (29th February 2017). Consequently, HSE must undertake complex technical assessment so as to reassess the residual risk arising from the Brenntag establishment in order to reconsider whether there are sufficient public safety grounds or not for advising RBG against granting consent.

Furthermore, Brenntag Chemicals have indicated that the basis on which HSE provided its advice in 2012 may no longer be acceptable to them, and that the constraints imposed by the information that RBG have now asked HSE to take into account may also not be acceptable to them.

HSE is seeking clarification from RBG and Brenntag of the information to be included in the assessment so that the work can be completed.

Whilst HSE is working with Brenntag and RBG to establish an appropriate basis on which HSE should provide its advice, it will be for RBG as the hazardous substances authority to make that decision and, if necessary, to impose conditions on the consent.

This is not a trivial piece of work; there is still not complete clarity on the basis on which HSE should provide its advice. Therefore although HSE is making progress, HSE will not have provided its advice to RBG before the end of the examination on 11th April.

[post-hearing update:

Since the ISH on 28 March, HSE has spoken to RBG and has requested written clarification on the status of the content of the revised flood risk assessment.

HSE has also met with Brenntag who have undertaken to clarify certain information that they are willing to be taken forward as conditions of consent.]

8.2 Further to the Health and Safety Executive (HSE)'s response to the Panel's SWQs [REP4-002], please could the Applicant and HSE provide an update regarding whether there is yet agreement in respect of the draft wording for the Grampian style Requirements that would be required, in view of HSE's ongoing advice in respect of this application?

HSE welcomes the inclusion of Grampian requirements to address HSE's concerns by the Examining Authority (ExA) in their preferred Development Consent Order (DCO). However, HSE's position remains as stated in our response to SWQ HSS2.1 (REP4-004) which is that HSE does not accept the principle of the two part requirements.

HSE has provided its advice to the Silvertown Tunnel Examining Authority, and consequently to the Secretary of State (SoS), in line with agreed national policy and on the basis of published methodologies. Further explanation of this is given below in our separate response to Action Point 11. Throughout the examination the basis of HSE's public safety advice was unchallenged.

HSE has retained the position from the beginning of the examination that the mechanisms for resolving its concerns are contained as powers within the planning system (REP1-080 Section 6).

HSE provides its advice in the context of land uses legally permitted by the planning system, which could be reinstated at any time. Any assessments provided in accordance with the second part of the proposed requirements, as included in the ExA's preferred DCO Schedule 2 Part 1 Requirements 17 and 18, would be based on a moment in time and would not align with government policy on land use development controls around major accident hazard sites (See HSE's written representation REP1-080 paragraph 3.7 and Planning Practice Guidance paragraph 74).

It is HSE's understanding that a gas holder can be recommissioned at relatively short notice – e.g. a small number of weeks. Furthermore, re-notification under COMAH is a straightforward process which can be carried out online.

HSE does not agree with the second part of the proposed two-part requirements. However, if the ExA is minded to include the second limb of the requirement, then HSE wishes to be excluded from further consultation on that limb. HSE does not have the experience or knowledge to carry out or assess the adequacy of traffic flow predictions and so would not be in a position to provide a helpful consultation response. Including HSE as a consultee in the second limb may mean HSE repeating to the SoS that there is sufficiently high risk to people on the proposed new dual carriageway for HSE to advise against its use.

8.3 Please could HSE provide an update and clarification to the Panel on its advice to the LPA in respect of the Studio 338 application to re-build the night club, recommending that it is refused on public safety grounds?

HSE provided its advice to Royal Borough of Greenwich (RBG) on the planning application for the redevelopment of Studio 338 (planning application reference 16/3945/F) on 23rd January 2017. As the ExA is aware, HSE advises against granting permission for Studio 338 on public safety grounds.

The Studio 338 site is within the inner zones of EGGS and Brenntag – at the highest level of residual risk from both major accident hazards. Studio 338 is a public house which has an indoor space of more than 250 metres, and also an external events space. The proposed redevelopment would expose large numbers of the public to risk of fire and explosion from the gasholder and toxic gas from Brenntag in circumstances in which effective escape would be difficult if not impossible.

HSE were asked by RBG whether the advice against could be overcome through the use of Grampian conditions. HSE responded by stating that whilst HSE is willing to consider withdrawing its advice against the proposal, it seems that any condition that would be acceptable to HSE would be unlikely to also be acceptable to the applicant. The Grampian-style conditions which might enable HSE to withdraw its public safety advice relate to both the hazardous substances consents and the maximum number of people that would be permitted to be present at any one time

HSE has not had any further contact from RBG regarding Studio 338 since February 2017.

8.4 Please could the Applicant and HSE provide an update in respect of the licensed explosive storage site at (or near) Thames Wharf. Has agreement now been obtained on this matter, in terms of whether the facility would have to cease operating during construction and/or whether it would be re-located?

HSE's position in relation to the licensed explosive site has not changed since the submission of its Written Representation (See Section 9 of REP1-080).

If the development of the Silvertown Tunnel goes ahead HSE will modify the explosives license appropriately.

HSE has not been able to establish General Marine's plans for the explosive licensed site. The current site was licensed for the 2012 Olympics and retains the license for other fireworks events. HSE is not aware of the berth being used for any explosives other than fireworks.

It is not possible to say how the license may need to be modified until details of the works associated with the Silvertown Tunnel are known. As outlined in HSE's Written Representation (REP1-080) restrictions may be placed on the types or quantities of explosives that may be handled, or when explosives may be handled.

2 HSE response to Issue Specific Hearing 28th March 2017 Action Points

Action Point 11

Whilst this point was not raised in the ISH, the Panel would be grateful if the HSE could explain why, as they state that their advice regarding the East Greenwich Gasholder (EGG) site is provided in accordance with government stated policy, (as contained in Planning Practice Guidance on hazardous substances paragraph 068), whether (a) any change to this document is likely to occur in the foreseeable future; (b) why do they consider it to be "policy" as it appears to be entitled "guidance" on the gov.uk website; and (c) as their advice is based on guidance/(policy?), not legislation, whether, in their view, in the light of the discussions that have been held at the ISHs for the Silvertown Tunnel project, they consider that their interpretation of this paragraph of the planning guidance document may be too restrictive in terms of the advice that they can offer in situations such as this?

HSE response

Taking each question in turn. The ExA asks:

(a) whether any change to this document is likely to occur in the foreseeable future;

DCLG owns the Planning Practice Guidance document and recently updated the Hazardous Substances section to reflect changes arising from Planning (Hazardous Substances) Regulations 2015. While there might be further amendments to reflect the Planning (Hazardous Substances) (Amendment) Regulations 2017, HSE is not aware of any proposed amendments to paragraph 068.

(b) why do they consider it to be "policy" as it appears to be entitled "guidance" on the gov.uk website;

HSE has a statutory advisory role in the land use planning process, providing independent public safety advice. In giving such advice, HSE recognises that safety implications, however important, cannot be divorced from other relevant planning matters and policies.

Government policy on taking account of hazardous substances in the planning system has developed over a number of years and been recorded in a number of planning circulars, the most recent of which was DETR circular 04/2000 Planning Controls for Hazardous Substances. This circular was confirmed by the Secretary of State (SoS) as National/Government Policy, and has been recognised as such in a number of public inquiries over the years. When government policy and guidance on planning was rationalised into the National Planning Policy Framework (NPPF), the circulars, including 04/2000, were replaced by detailed information on hazardous substances and incorporated into a section of Planning Practice Guidance (PPG) on hazardous substances. HSE's understanding is that Government policy on planning for development around major hazards, such as the gasholder station and Brenntag at Greenwich, has not changed.

(Further background context)

HSE continues to follow the policy position in paragraph 068 of PPG when providing public safety advice to planning decision makers in respect of the residual risks of a major accident

from hazardous substances permitted to be present under the Planning (Hazardous Substances) Act 1990 and relevant regulations. These permissions establish the land use that allows the presence of specified hazardous substances up to a maximum permitted quantity. These hazardous substances can be present at any time without any further permissions or notifications being required. Permissions for hazardous substances belong to the relevant area of land specified in the hazardous substances consent and endure until revoked, irrespective of the operational status of the site. They also remain in place if ownership of the entire area of land to which the consent relates changes. Therefore, HSE provides safety advice in respect of the permitted land uses for the storage of hazardous substances. HSE's advice can be taken into account when long-term decisions are made concerning development or change of use in the vicinity of major hazard sites. This advice on future land use is maintained irrespective of the day-to-day operational situation regarding the inventory of hazardous substances. HSE's experience across the whole spectrum of major hazard sites is that sites do change their inventory of hazardous substances and their operations from time to time.

(c) as their advice is based on guidance/(policy?), not legislation, whether, in their view, in the light of the discussions that have been held at the ISHs for the Silvertown Tunnel project, they consider that their interpretation of this paragraph of the planning guidance document may be too restrictive in terms of the advice that they can offer in situations such as this?

HSE bases its advice on government policy as contained in NPPF and PPG and on the legal entitlement for the presence of hazardous substances. In that respect, HSE's advice is based on legislation, however it is planning legislation not safety legislation. HSE is acting as the government's safety adviser in this context, as explained in PPG. HSE's safety advice will continue to be based on the potential risk to people from the proposed land uses in the vicinity of major hazards, taking into account the maximum quantity of hazardous substances that are permitted to be present. However, HSE recognises that in the rare circumstance that planning decision makers consider this advice too restrictive then it is open to them to take other matters into consideration.

