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# **Assessment of the planning application for a waste transfer station, AWE Aldermaston**

Report prepared for:  
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## **Introduction**

This report is a formal complaint against the proposals by AWE Aldermaston to construct a waste transfer station on the Aldermaston site.

The report is an assessment of the planning application, submitted to Berkshire County Council, by AWE Aldermaston for a chemical waste transfer station. It considers the evidence available with the application, and comments upon the actions which Berkshire County Council, as local planning Authority on waste matters, should take. As well as commenting upon the application, the report outlines the procedures by which the application has been made, and how it should proceed - this additional information is for the benefit of those commissioning the report.

The proposed facility is a completely new building - in statements reproduced in the *Newbury Weekly News* it is intended that once the proposed facility is operational, the existing facility will be demolished. The existing facility has just received a waste license<sup><1></sup> covering the operation of the existing transfer station. This report therefore assumes that any new facility will be operated in the same manner, and with the same waste volumes, as the existing facility.

I visited Berkshire County Council on 21st April, and obtained copies of the application (a copy of the existing waste license followed in the post). Unfortunately the officers refused to copy the other information on the file as it related to a waste license application, which they did not consider a public document. Other than the application, the existing waste license, and local newspaper articles, there appears to be no other publicly available information on this development.

## **The Application**

AWE Aldermaston have Crown status, and as such do not need to apply for planning permission. However, under the terms of DoE Circular 18/84<sup><2></sup> they must consult with the relevant local authority. The 'application', as such it is, therefore consists only of a letter<sup><3></sup> informing BABTIE Public Services Ltd - acting as planning agents on behalf of Berkshire County Council, that the development is going ahead.

Under paragraph 12 of Part IV of the Circular, the local planning authority (LPA) are directed to treat the application as they would any other statutory

planning application. Such applications are also given the same publicity (paragraph 18) under existing planning guidance - in this case DoE Circular 15/92<sup><4></sup>. Within an eight week period from the application being registered, the LPA must give their decision on the application, or after a longer period if this is agreed.

Paragraphs 19-27 of the Circular deal with the processing of the application. The LPA should consider the application, as they would any other, against the policies in the development plan. The development plan, as well as the statutory structure/local plans, can be considered to include national guidance too, and so Ministerial Circulars and Planning Policy Guidance Notes are relevant as well.

Where the LPA fail to respond within eight weeks, or the agreed period, the applicant may assume that there is no objection to the proposal. Where objections are received, the Department of the Environment will consider the need to hold some sort of inquiry procedure. This will normally be done by means of written representations, but a formal non-statutory public inquiry may be held. In either case, the appointed inspector will report to the Secretary of State for the Environment. In turn, the Secretary of State will determine the result, which is then notified to those objecting.

Objections must be made to the Secretary of State, as well as the Crown agency applying for planning permission. Where the Crown agency consider that the objections are material, they will normally inform the Secretary of State to resolve the objections (either by direction, or by an inquiry).

Another option which may be employed by AWE Aldermaston is a 'Special Development Order' (SDO). The SDO<sup><5></sup> covers a number of atomic establishments, and allows (under section 3) development to go ahead under the condition that...

- \* The development is not less than 120 yards from the perimeter of the 'prohibited place'; and
- \* The height of any building, plant or machinery, or structure or erection of the nature of plant or machinery shall not exceed 30 feet, or, at a distance of not less than 200 yards from the above-mentioned perimeter, 50 feet.

It is not clear if the SDO is/will be used in this case, but the development falls within the terms set out under section 3.

## Waste Regulations

Does this application require an environmental statement? The opinion of the officers of BABTIE Public Services during my visit was that a statement was not required.

From a point of view of the waste management project, and the need for an environmental statement, we must consider the 'deposit' of waste. Does a transfer station class as the depositing of waste (normally associated with landfill sites) under Section 33 of the Environmental Protection Act 1990?

A definition of 'deposit' is given in annex 2, paragraph 2.10, of Dept. of the Environment Circular 13/88. This states that 'deposit' includes...

*'...both permanent and temporary deposit, ie. final disposal, or any temporary deposit on land or in containers pending final disposal, treatment or recovery elsewhere'.*

As such, even though this development is a 'transfer station', it must be regarded in the same class as any site for the final deposit of waste - such as a landfill site.

From reading the information submitted with the application, it appears that a significant function of this development will be the storage, chemical treatment and transfer of '*special waste*', as defined within the Special Waste Regulations and the Hazardous Waste Directive<sup><6></sup>. In addition to the information available in the existing waste license, there were also a list of substances in the draft waste license (unfortunately the planning/waste officers I met on my visit would not copy this for me when I requested it). This data confirms that the materials handled in this plant fall within the '*special waste*' class.

As stated in Schedule 1 of the Environmental Assessment Regulations, and the EC Directive on Environmental Assessment<sup><7></sup>, it is a mandatory requirement that an environmental statement (ES) be submitted with any application for, '*a waste disposal installation for the incineration or chemical treatment of special waste*'<sup><8></sup>. There are no indicative criteria for this type of development (Schedule 1 projects are mandatory, and so indicative criteria are unnecessary), and so we would normally assume that an ES is required - ie, planning permission cannot be granted without an EA being conducted.

However, Article 1(4) of the Directive gives an exemption to projects, '*servicing national defence purposes*'. The question must be, does this development

constitute part of our national defence?

Paragraph 49 of DoE Circular 15/88<sup><9></sup> considers development by Crown agencies. It states that the Regulations do not bind a Crown agency, but that the agency will submit an ES, where it is required, with the planning application required by Circular 18/84. It goes on to state...

*'The Ministry of Defence will, in appropriate circumstances and subject to considerations affecting national security, provide environmental statements in respect of **major** defence projects... even though the Directive does not require EA (environmental assessment) for these types of development'* [my emphasis].

The test as to whether this development requires an ES is, as I see it, two-fold:

1. *Does the development form an integral part of our national defence?* I would argue it does not. The treatment/disposal of waste can be handled as easily by an external contractor as the Ministry of Defence, and the mixing/processing of the wastes would render any information gained from their analysis useless;

2. *Is an ES appropriate for this application?* The EA Circular notes that the Ministry of Defence will submit an ES *where appropriate*. There could be some argument about indicative criteria were this a Schedule 2 project, but as it falls into Schedule 1 (mandatory ES), I would consider that an ES would be appropriate.

I therefore consider, applying these tests, that an ES should have been submitted with the planning application, as directed by the EA Circular.

## **Planning Policy**

As an environmental statement has not been submitted there are two options open to the Authority - either reject the application now under the guidance provided in Circular 18/84, or request that the applicant submit an environmental statement and then re-advertise the application for the statutory period when the ES has been submitted.

If the LPA do ask for an environmental statement, it must be requested because of the obligation under Schedule 1 of the EA Regulations. This is because a Schedule 2 project would involve the consideration of the location, indicative criteria and surrounding development (a waste transfer station does not pose

significant risk when it is surrounded by a nuclear bomb factory).

In consideration of this application, the Authority should apply the policies outlined in the new PPG23<sup><10></sup>. This outlines the relevant issues concerning environmental statements, the assessment of risk, and the consideration of alternative sites. The policies in PPG23 would, as I interpret them, advise that this application be refused. The standard of the application is very poor, there is insufficient information on the safety of the materials stored, of the possible impact of fire or accident, and there is little consideration of the wider national guidelines on special/hazardous waste management. Also, international obligations<sup><11></sup> such as Agenda 21 and conventions on the handling/management of toxic wastes appear to have been ignored.

## **Conclusion**

This report has focused on the legal/planning aspects surrounding this application. There has been no consideration of the technical/safety aspects because this information is not available.

The applicant should have submitted an environmental statement as this project comprises elements which fall into Schedule 1 of the EA Regulations (for which an ES is mandatory). Without the ES, the Authority cannot make a decision upon this application. Should the LPA proceed and raise no objection to the application, we would consider such action sufficient grounds to warrant a complaint to the European Commission for breach of the Environmental Assessment Directive.

We believe that the wisest option for the Authority is refusal, since refusal would precipitate an inquiry at which the relevant issues could be debated. However, planning guidance recommends that the LPA request the submission of an environmental statement where one is required, so this must be done in the first instance. After this there are three possible results...

1. The applicant refuses to produce an ES, and the LPA approves the application anyway - in such a situation we would complain to the Secretary of State for the Environment and the European Commission;
2. The applicant refuses to produce an ES, and appeals to the Secretary of State for the Environment;

3. The applicant produces an ES - it is then up to the LPA to re-advertise the application in accordance with the Regulations.

**If AWE Aldermaston do not produce an ES, the LPA must refuse the application. The LPA are obliged to do this under current planning guidance since all Schedule 1 projects must have an ES, and under Circular 18/84, the LPA must consider the application like any other statutory application. If AWE Aldermaston produce an environmental statement, then we will consider it an produce another response as part of the consultation procedure that is required as part of an application involving an ES. However, on the evidence presented by the applicant so far, we would advise refusal.**

## **References**

1. Waste Disposal License No. 54/12/4/342. Granted to Hunting-Brae Ltd (trading as AWE Aldermaston), 29th March, 1995. License covers the treatment, transfer and temporary storage of waste.
2. Applications are made under Part IV of Dept. of the Environment/ Welsh Office Circular 18/84 - 'Crown Land and Crown Development' - dated 3rd August, 1984.
3. Letter from I.D. Ward, Site Planning Officer, AWE Aldermaston, to R.J. Higgs, BAPTIE Public Services, Berkshire County Council - 21/2/95.
4. Department of the Environment/Welsh Office Circular 15/92 - 'Publicity for Planning Applications' - dated 3rd June, 1992.
5. The Town and Country Planning (Atomic Energy Establishments Special Development) Order, 1954. Statutory Instrument No. 982/1954. This order also notes another SDO applying specifically to Aldermaston - SI. 826/1950
6. Control of Pollution (Special Waste) Regulations 1980 - SI. 1709/1980, and the EC Directive on Hazardous Waste, 91/689/EEC (OJ. 377, 31/12/91).
7. Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 - SI. 1199/1988, and the EC Directive Concerning the Assessment of the Environment Effects of Certain Public and Private Projects,

85/337/EEC (OJ. L175, 5/7/85).

8. Paragraph 9, page 26, 'Environmental Assessment - A guide to the procedures', Dept. of the Environment/Welsh Office, 1989.  
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9. Dept. of the Environment/Welsh Office Circular 15/88 - 'Town and Country Planning (Assessment of Environmental Effects) Regulations, 1988', dated 12th July, 1988.

10. Dept. of the Environment, Planning Policy Guidance No.23 - 'Planning and Pollution Control', July 1994.

11. Dept. of the Environment Planning Policy Guidance No.1 - 'General Policy and Principles', March 1992. Paragraph 4 of this PPG notes that 'international obligations' - for example the Agenda 21 programme, or the Paris Convention agreements - must be considered as 'material' when making planning decisions.

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