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**Evidence to Islwyn Borough Council on
Frontier Plastics Irradiator Application.**

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A). Arguments against granting planning permission for the development.

The following information details the information found during a search of the Frontier Plastics planning application file, and contrast this information with the report to council by the Chief Planning Officer, Mr. P. Davy. The information is in three parts, firstly the technical arguments, secondly the planning policy arguments, and final a number of 'material' reasons for refusal. The greater part of this document was presented to the council on Thursday 27th of May - the text has been reproduced with the reasons for refusal for the benefit of councillors.

Technical:

The Chief Planning Officer has been very selective in his interpretation of the statutory consultees and consultants responses. Though he reproduces much of Mr. Freke's criticisms of the report I produced on behalf of IRATE, He fails to quote passages from a number of consultees responses which support my own interpretation of the facts.

There is a wealth of data in the file on geology. The environmental statement, submitted with the original application, gives a large volume of information on the stability of the site. However, Applied Geology (who compiled the reports for Frontier Plastics) qualify their assessment by stating...

"Where data available from previous site investigation reports, supplied by the client, has been used it has been assumed that the information is correct. No responsibility can be accepted by Applied Geology for inaccuracies within the data supplied."

(Env. statement general notes (Ref.GN1), para. 2).

Johnson, Poole and Bloomer, geological consultants employed by Islwyn Borough Council, noted the following about Applied Geology's findings...

- i). The interpretation of the fault lines on the site is incorrect. There is some doubt as to the accuracy of their mapping of the faults from the trial boreholes, and they have completely misunderstood the throw of one fault.
- ii). The statement refers to a 'desk study' undertaken by Applied Geology, but only an extract of the desk study is listed in the assessment, and no reference material has been quoted to validate the findings of the study.
- iii). Though Applied Geology outline possible foundations for the plant, they do not specify how the foundations for the plant should be designed to minimise the risk of subsistence. Also, though the report refers to vibration stabilisation of parts of the site, Johnson, Poole and Bloomer consider that this will be ineffective given the soil conditions.

The report of the councillors' site visit to Plymouth written by Dr. Lambert is also quoted in the committee report, but only such quotes which emphasise the positive aspects of the development. For examples...

"Scenario's exist where the shield could be breached, and if so, it would necessitate

evacuation. Radiation levels would be around 3 Sieverts per hour at 100 metres."

An exposure to radiation of 3 Sieverts per hour would mean that a member of the public would exceed the National Radiological Protection Board's emergency reference level for public exposure in six seconds. Dr. Lambert goes on to state that...

"...however, it would need to be emphasised that the plant should be constructed on stable ground and security maintained.... contingency plans would need to be drawn up with emergency services and the local authority."

In addition, though the Chief Planning Officer includes all of Mr. Freke's criticisms of my report, he neglects to point out that Dr. Lambert makes the same points on transport risks. Dr. Lambert states...

"Any transport movements would be carried out with the cooperation of the emergency services, but present a potential hazard even though carried out under IAEA standards... Refuelling the irradiator also represents an additional dose risk to employees." [my emphasis].

The UK Panel on Gamma and Electron Irradiation, who are the Governments consultative panel on matters relating to the regulation and safety of irradiation plant, state that...

"Under IAEA regulations and the Health and Safety at Work Act, the plant operator has a duty to ensure the safe transport of radioactive materials to and from the site - even where they are imported into this country".

(UK Panel on Gamma and Electron Irradiation report, para. 4.1).

They also point out...

"all possible hazards (including those arising during abnormal operations, such as non-routine maintenance and source loading) should be considered even though it is subsequently decided that nothing needs to be done about the possibility because it is clearly bizarre".

(UK Panel on Gamma and Electron Irradiation report, para. 2.3).

The risk assessment submitted by the company does not represent the type of assessment specified by the UK panel. It is merely an operating manual, with the risks on 'controllable' incidents only considered. It is not a quantified risk assessment which considers all factors such as transport accidents and land subsidence.

Dr. Lambert in his report also specifies that the risk of land subsidence should be included in the hazard assessment. The NRA also note that there has been no study of the groundwater aquifer beneath the site. This is of concern as groundwater movement is one of the primary promoters of land subsidence.

Finally, I will conclude the technical evidence by examining Mr. Freke's interpretation of my report, and the Chief Planning Officers' quoting of this interpretation. Not only does Mr. Freke misrepresent the content of my report, but he has also failed to take note of the latest

work on transport accidents by the US. Federal Emergency Management Agency (FEMA). He is correct in stating that in a normal accident less than 0.1% of the cargo may be released. However, he fails to note that I am working on the scenario of an accident with a severe fire, such as a collision with a lorry carrying volatile materials (e.g., petrol). In such an incident both FEMA and our own Ministry of Defence agree that 15 - 20% of solid matter can be carried away in particulate form.

Mr. Freke's assessment on behalf of TRAD Ltd. is in fact critical of the environmental statement, although you would not think so from extracts presented by the Chief Planning Officer. For example, in his comments on paragraph 5.9 of the statement Mr. Freke states...

"...adequate so far as it goes but does not cover all the ground that should be considered."

The report by TRAD Ltd. also states that a risk assessment should be produced, and provision for the safe transport of materials on and off the site made.

The Institute of Environmental Assessment, the UK authority on the production and content of environmental assessments, were employed by Islwyn to look at Frontier's information. They also concluded that there were many weaknesses in the report, particularly in terms of, *"supporting photos, maps and documents."*

Planning policies:

The planning arguments against this development have not changed. Mr. Davy cites three other similar developments but all of these comparisons can be ruled out because of recent changes in planning policy.

In Plymouth, permission was given in 1980 before the current Town and Country Planning Acts and policy guidances, and the current 'Use Class' regulations, were introduced. The irradiator in Daventry can be ruled out for the same reason. There is also the comment given by officers from the Plymouth planning authority during the site visit, to the effect that a similar application today may not have succeeded. The development in Craven District can be completely ruled out, because the plant was built within the existing cartilage of the factory building, and so was not classed as development under the regulations existing in 1986.

I still maintain that the local authority could have exercised the right to ask for an environmental assessment for the irradiator if they had so wished, but such a request would need to have been made within 21 of registering the application.

Next, I dispute the Chief Planning Officers' interpretation of the Use Classes Order. In consultation with other planning consultants working on other projects I am involved with, and after lengthy telephone conversations with the Department of the Environments' Planning Inspectorate in Bristol, the Use Classes Order is not applicable in this case, as this development does not fit into any class, nor is it 'sui generis'. A revision of the Use Classes Order is pending at the moment, but it is not likely until the consolidation and revision of the

General Development Order. In such cases where a development does not fall into a Use Class and is not sui generis, it is up to the local authority to interpret the usage of the land as they see fit, within the guidance given in planning Acts and guidances, and any statutory local plans.

In this case, the irradiator cannot be classed as general industrial use. There are only 11 irradiation plants operational in the UK., and the process they carry out is strictly regulated by national and international guidelines. As such, it cannot be classed as B2 - general industrial. This gives the first grounds for refusal as it has been zoned for B2 industrial use only (Islwyn Deposit Plan, policy EP1).

There are also policies contained in the Gwent development plan which are drafted after the proposals in the draft planning policy guidance, "Planning, Pollution and Waste Management". For example, a material reason for rejection is that the development is contrary to policies E7 and E9 of the Gwent Structure Plan draft.

Planning Policy Guidance 14, and the draft planning policy guidance on, "Planning, Pollution and Waste Management" themselves are also related to this development, and are material reasons for refusal.

Finally, section 54A of the Town and Country Planning Act 1991 requires that the local authority keeps development within the confines of the local development plans, unless some significant benefit to the local community can be gained through the development. As stated above, this development runs contrary to the Islwyn and Gwent plans. It is also difficult to see how a high risk development with a low density of job creation could be deemed as beneficial when another development, entailing less risk, could be built on the same site and create more jobs.

There are a number of planning grounds for the refusal of this application - grounds which can be proven and substantiated in any subsequent planning appeal. The Chief Planning Officer states on page 6516 of his report that...

"Local opposition to a proposal however large and vocal, is not by itself reasonable ground for refusal of a planning application, unless that opposition is supported by substantial evidence."

In the compilation of this report I have used solely information gained from the information contained in the Frontier Plastics application files. By adding together the figures mentioned in correspondence, I estimate that Islwyn Borough have paid around £2000 to consultants to produce reports on the safety aspects of this application - however, Mr. Davy seemed to have ignored, either by bias or negligence, the warnings various consultants have offered on the safety of this development, and chose instead to list only the positive comments. The information and planning policies I have outlined represents sound 'planning' reasons for refusal of this application, and I argue that it meets the criteria for refusal specified by Mr. Davy in his report to committee.

I must also add a word or two about Mr. Davy and his report. Every year I see twenty or thirty large scale applications, and follow them through the planning process to a determination. I also have many friends who are council officers, a number of whom are planning officers, and often in difficult planning applications I have ended up working with

the members and officers of an authority rather than against them. With this experience I can honestly say that Mr. Davy's committee report was one of the worst I have ever seen. I justify this on the grounds that...

i). At the end of the report he failed to list source and background papers, as required by the Local Government (Access to Information) Regulations.

ii). I have viewed all the information available to the **public** on this application (some files were removed before I viewed the reports), and from the responses from statutory consultees and employed consultants, I cannot visualise how any officer could have drawn a completely positive conclusion over this issue. The way his report is written, given the evidence available to him, was biased against any critical observations on the application, and in no way meets the 'neutral' position required of all planning staff.

iii). In a letter to Mr. Davy on March 26th, also presented to him by local residents, I presented a series of planning arguments which were absolutely material to this case. Courtesy, and the European Commissions Access to Information Regulations, should have meant that within six weeks he should have replied to my arguments, stating whether or not he agreed with them, and if so why not. He refused to reply to my arguments on points of planning policy and planning law, and even now he has still not made a sound case to justify the position he has taken over this application.

I consider that Mr. Davy has, considering my experience with planning departments across the country, been extremely partisan, and I would hope that if local councillors are not prepared to review the conduct of the planning authority in this case, then the Local Commissioner will.

B). Grounds for Refusal.

There seemed to be some doubt between councillors in the full council over what constituted 'material considerations' for refusal of the application. There are a number of arguments which councillors opposed to the application used to justify refusing the application, and I have taken these arguments and fitted them into planning policies which would be difficult to contest at an appeal.

As there is not a defined position over which class of development this application falls into, in terms of a planning appeal, we should not hold this as our primary objection. But it is possible to make a sound refusal on existing policy guidances, 'stand alone' policies in the local development plans, and on points of case law which have cropped up in other applications.

The objections to this application most relevant are numbered 1 to 3. The grounds stated under objections 4 to 6 are also valid, but would be harder to support at an appeal. The objections to this application are...

1). This application is contrary to the advice presented by the Department of the Environment/Welsh Office in Planning Policy Guidance 14 (1990).

Paragraph 2 of PPG 14 states...

"The purpose of these guidelines is to principally advise local authorities, landowners and developers on the exercise of planning controls over development on land which is unstable *or is potentially unstable* The aim is not to prevent the development of such land, *though in some cases that may be the appropriate response*" [my emphasis].

Paragraph 4 goes onto state...

"The effects of ground instability vary in their nature... At their most extreme, they may threaten life and health or cause damage to buildings and structures, so generating public alarm. Whilst alarm may or may not be justified, public perception of the risks is such that it cannot be ignored."

Paragraph 20 states...

"When reaching decisions on development proposals, local planning authorities have a duty to take all material considerations into account. The stability of the ground is a material consideration which should be taken into account when deciding a planning application."

It is important that there is absolute certainty about the stability of the land ground under this application is absolute - the resultant effects of any ground collapse could have very serious effects across the whole district. Underground void do not only collapse downward - they can also migrate laterally. Pressure grouting and vibration stabilisation of the ground are not therefore absolute guarantees of ground stability. Also, any works to construct a 'raft' on which the irradiator can settle may in themselves promote greater ground subsidence. The irradiator itself is an extremely dense object, and presents a ground stress well in excess of any normal industrial development - though foundation works can reduce this stress, there

comes a point where the increasing area of foundation works produce very little benefit for the increase in ground stress they cause.

2). Conflict with local development plan policies.

The basic assumption in UK planning regulations is that development should be allowed. However, the Town and Country Planning Act and the newly revised Planning Policy Guidance No.1 ("General Policy and Principles") qualifies this by stating that development should fall within the guidance of the local development plan (Town and Country Planning Act s.72(2)). Where development outside of the plan is allowed there must be material considerations in favour of it (Town and Country Planning Act s.54(A)).

The Gwent Structure Plan outlines the following criteria for the siting of employment generating developments:

E7: "there will be a presumption against the establishing of industries which have the *potential* for causing severe harm to people or severe damage to property or the natural environment over a large area." [my emphasis]

E9: "there will be a presumption against the establishing of industries which have the *potential* for causing major environmental pollution by virtue of the nature or materials stored, processed or manufactured." [my emphasis]

It should also be noted, while considering these policies, that Gwent County Council voted to oppose this development.

3). It is an inappropriate land use for this area.

The Islwyn deposit plan contains the following policies...

EP1: "16.62ha at Newbridge Road, Pontllanfraith, is allocated for development for B1, B2 and B8."

The Use Classes Order is not applicable in this case, as this development does not fit into any class, nor is it 'sui generis'. In such cases where a development does not fall into a Use Class and is not sui generis, it is up to the local authority to interpret the usage of the land as they see fit, within the guidance given in planning Acts and guidances, and any statutory local plans. In this case, the irradiator cannot be classed as general industrial use. There are only 11 irradiation plants operational in the UK., and the process they carry out is strictly regulated by national and international guidelines. It is unlike any other general industrial procedure, and as such, it cannot be classed as B1 (business, general use), B2 (general industrial use) or B8 (storage or distribution).

4). The doubts expressed by consultants on the stability of land, and the failure to be able to guarantee that land subsidence will not take place mean that the development of this site will be in contradiction to the Government's White Paper on the Environment.

The Government's White Paper on the environment, "This Common Inheritance", outlines the Government's policy on the environment. In relation to planning and development control it states....

"Planning control is primarily concerned with the type and location of new development and changes. Once broad land uses have been sanctioned by the planning process, it is the job of pollution control to limit the adverse effects that operations may have on the environment. But in practice there is common ground. In considering whether to grant planning permission for a particular development, *a local authority must consider all the effects, including potential pollution; permission should not be granted if that might expose people to danger.*" [my emphasis].

5). The construction of this plant on this site would be contrary to the advice available from Government authorities and other consultants.

There are two case laws admissible within this context. *Stringer v. Minister for Housing and Local Government* (1970) 1 WLR 1281, and another case developed from the 1970 case, *RMC Management Services Ltd v. Secretary of State for Environment* (1972) 222 EG 1593. The latter judgement states...

"In principle it seems to me that any consideration which relates to the use and development of land is capable of being a planning consideration. Whether a particular consideration falling within a broad class is material in any given case will depend upon the circumstances".

The most relevant issue in this case is the safety of the irradiator under **all** conditions. There are three items which are material in this case - the judgement of the World Health Organisation on what constitutes 'health', the report from the UK Panel on Gamma and Electron Irradiation, and Dr. Lamberts report of the site visit by councillors to the Plymouth irradiation facility.

i). The World Health Organisation maintain that health is not a state of purely physical well-being - it is a state of complete physical, mental and social well-being. There has been opposition to this proposal from local schools, shops, and the medical profession. To go ahead with development would constitute a threat to the well-being of the community because of the stress and concern it would cause.

ii). The UK Panel on Gamma and Electron Irradiation, who are the Government's consultative panel on matters relating to the regulation and safety of irradiation plant, state that...

"all possible hazards (including those arising during abnormal operations, such as non-routine maintenance and source loading) should be considered even though it is subsequently decided that nothing needs to be done about the possibility because it is clearly bizarre".

(UK Panel on Gamma and Electron Irradiation report, para. 2.3).

The above has not been considered in detail by the applicant, especially in relation to land subsidence as they consider that any such risk can be reduced to a minimum by foundation design.

iii). The report of the councillors' site visit to Plymouth written by Dr. Lambert states that...

"..it would need to be emphasised that the plant should be constructed on stable ground and security maintained...."

also...

"Any transport movements would be carried out with the cooperation of the emergency services, **but present a potential hazard even though carried out under IAEA standards**" [my emphasis].

As yet, the applicant has been unable to prove that the integrity of the plant, and of materials transport, can be guaranteed 100%.

6). The adverse effects of this development on the local community, and in regards of the risk it present, are contrary to the advice given in the draft planning guidance on Planning, Pollution, and Waste Management (June 1992 draft).

Part 3 of the draft deals with material considerations. This states...

"Of particular significance will be the economic, social and environmental impacts of the development, including impacts on land, water resources and air quality, where there is a risk of pollution" (para. 3.1).

"More specific considerations include:...

...the potential for land contamination and measures of protection, restoration and aftercare...

...the risk of toxic spillage, whether on site or on access roads...

...transport requirements arising from the need to transport polluting substances or waste..."

Paragraph 3.15 of the draft states...

"...a development that can satisfy pollution control requirements may still be considered by the local planning authority to present an unacceptable risk of a serious pollution incident or levels of exposure, which would have wider land use implications..... They may take account of the likelihood of any environmental, social or economic consequences arising from such a risk, and could refuse planning permission where such risks are considered unacceptable in land use planning terms and cannot be overcome by appropriate planning conditions".

It seems clear that the risk of subsidence is one which cannot be completely resolved by

planning conditions, and as this development presents such a risk if there were to be an incident which, quite conceivably, breached the radiation shield, the advice in this guidance would indicate refusal of permission.

C). Planning Appeals and Inquiries Procedure.

I see it as very likely that Frontier Plastics will appeal, and for this reason, it is vitally important that the application is refused for the right reasons. The first encounter went in our favour, but the Welsh Office is a much more difficult nut to crack because we have no rights of access to the initial appeal process. The best thing we can do is support the council.

As yet, Islwyn have not refused the application - they have just decided to. It is up to the Chief Planning Officer, the Borough Solicitor and leading councillors to agree the conditions of refusal. If these are in any way presented incorrectly, or do not refer to points of planning policy and law, Frontier Plastics can win the appeal. It is very important that the right reasons for refusal are selected - for example, the points I outlined in the previous section (*primarily, points 1 to 3*).

The Chief Planning Officer will draw up the refusal under delegated powers. I highly recommend that the councillors who voted to refuse the application make sure that the notice of refusal is brought back to committee, and that the conditions for refusal are scrutinised carefully. When the authority finally issues the notice of refusal, the appeal clock begins - an appeal cannot be lodged before this. From the date of issue, the applicant has six months in which to lodge the appeal. Once the appeal has reached the Welsh Office, the Secretary of State will appoint an inspector to supervise the appeal, or if he wishes, decide it himself - the latter is done rarely.

The inspector will first write to each party and demand a letter outlining their respective case for/against the development. Over 80% of appeals are decided on written evidence alone, mainly because it costs very little. However, if either party wish it, the case can be heard by an inspector in public - but both sides will think hard before such an action because of the possibility of the costs being awarded against them.

Whether the case goes to a written or public inquiry, **it is very important that the conditions of refusal are correct because it is the condition of refusal which is the subject of the inquiry - not the plant itself.** The plant only becomes relevant if there was an environmental statement involved, which there was not in this case. The conditions of refusal I have selected above have been chosen very carefully so that each point can be backed up with evidence.
