Ministry of Housing,
Communities &
Local Government

9 March 2026

Tim Gibbs
Halton Borough Council,
Municipal Building,
Kingsway,
Widnes, WA8 7QF

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Our Ref: APP/D0650/V/24/3352472

Dear Tim Gibbs

LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 and 320
APPLICATION BY SOG LTD
AT HEATH BUSINESS AND TECHNICAL PARK, HEATH ROAD SOUTH, RUNCORN, CHESHIRE, WA7 4QX
APPLICATION REF: 22/00569/OUT

APPLICATION FOR A PARTIAL AWARD OF COSTS

1. I am directed by the Secretary of State to refer to the enclosed letter notifying you of his decision on the above named appeal.

2. This letter deals with Halton Borough Council ('the Council')'s application for a partial award of costs against the Health and Safety Executive ('HSE'). The application as submitted and the response of the HSE are recorded in the Inspector's Costs Report (CR), a copy of which is enclosed.

3. In planning inquiries, the parties are normally expected to meet their own expenses, and costs are awarded only on grounds of unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process. The application for costs has been considered in the light of the Planning Practice Guidance, the Inspector's Costs Report, the parties' submissions on costs, the inquiry papers and all the relevant circumstances.

4. The Inspector's conclusions and recommendation with respect to the application are stated at paragraphs CR4.1-4.23. The Inspector recommended that a partial

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award of costs is justified on the basis of that unreasonable behaviour by the HSE resulting in unnecessary or wasted expense to the Council, as described in PPG, has been demonstrated with regard to the areas of uncommon ground at paragraph 82 of the Public Safety Statement of Common Ground.

5. Having considered all the available evidence, and having particular regard to the Planning Practice Guidance, the Secretary of State agrees with the Inspector's conclusions in his report and accepts his recommendations. Accordingly, he has decided that a partial award of costs, as specified by the Inspector at paragraph CR4.22 is warranted on grounds of unreasonable behaviour on the part of the HSE.

6. Accordingly, the Secretary of State, in exercise of his powers under section 250(5) of the Local Government Act 1972 and sections 78 and 320 of the Town and Country Planning Act 1990, HEREBY ORDERS that the HSE shall pay to the Council its partial costs of the inquiry proceedings limited to this matter and to the expense related to the Council needing to prepare evidence for the Inquiry, spend time at the Inquiry in cross-examination in exploring the points of uncommon ground, and also in writing its closing submissions as it relates to these points, such costs to be taxed in default of agreement as to the amount thereof.

7. You are invited to submit to the HSE details of those costs, with a view to reaching agreement on the amount. Guidance on how the amount is to be settled where the parties cannot agree on a sum is at paragraph 44 of the Planning Practice Guidance on appeals, at http://tinyurl.com/ja46o7n

Right to challenge the decision

8. This decision on your application for an award of costs can be challenged under section 288 of the Town and Country Planning Act 1990 if permission of the High Court is granted. The procedure to follow is identical to that for challenging the substantive decision on this case and any such application must be made within six weeks from the day after the date of the Costs decision.

9. A copy of this letter has been sent to the HSE.

Yours faithfully,

Emma Hopkins

This decision was made by Minister of State for Housing and Planning, Matthew Pennycook MP, on behalf of the Secretary of State, and signed on his behalf

Planning Inspectorate

Costs Report to the Secretary of State

by OS Woodwards MRTPI

Inspector appointed by the Secretary of State

Date 08 December 2025

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATIONS BY

SOG Ltd and Halton Borough Council

HEATH BUSINESS AND TECHNICAL PARK, HEATH ROAD SOUTH, RUNCORN, CHESHIRE, WA7 4QX

Inquiry opened on 30 September 2025. Site visit on 17 October 2025.

File Ref: APP/D0650/V/24/3352472

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

TERM	DEFINITION/DESCRIPTION
CFD	Computational Fluid Dynamics
CMC	Case Management Conference
CZs	Consultation Zones
D/CR	DENZ/CRUNCH
DRIFT3	Dispersion of Releases Involving Flammables or Toxics 3
HSA	Hazardous Substances Authority
HSC	Hazardous Substances Consent
HSE	Health and Safety Executive
LUP	Land Use Planning
PoE	Proof(s) of Evidence
PPG	Planning Practice Guidance
RCC	Runcorn Chemical Complex
SoC	Statement of Case
SoCG	Statement of Common Ground
SoS	Secretary of State

File Ref: *APP/D0650/V/24/3352472*
Heath Business and Technical Park, Heath Road South, Runcorn, Cheshire, WA7 4QX

- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- Application A: The application for full costs is made by SOG Ltd against the Health and Safety Executive (HSE).
- Application B: The application for partial costs is made by Halton Borough Council (the Council) against the HSE.
- The Inquiry was in connection with an application for:
  i. up to 545 residential units including dwellinghouses (use class C3) and senior living and extra care (use class C2) with ancillary car and cycle parking;
  ii. ancillary floorspace for flexible E use classes (including office, conference centre, retail, leisure [including food and beverage]), F2 use classes (including meeting places for the local community), and a hotel (use class C1);
  iii. sui generis use classes including STEAM spaces, a drinking establishment and a vertical farm;
  iv. the principle of highways access and servicing arrangements; and,
  v. infrastructure provision, inclusive of a new living machine (emerging wastewater treatment technology), and all other associated works including re-configuration of existing building on site, landscaping, public realm, and biodiversity improvements

Summary of Recommendation:
Application A: That the application for an award of full costs be refused
Application B: That the application for an award of partial costs be allowed in part

1. PROCEDURAL MATTERS

1.1 The Inquiry was in relation to planning application Ref 22/00569/OUT that was called-in by the Secretary of State (SoS) for determination on 19 September 2024, using the powers at s77 of the Town and Country Planning Act 1990 (as amended). Part of the reason for the call-in is that the SoS stated that they are particularly interested in the extent to which the proposed development raises issues of risk to public safety.

2. THE APPLICATIONS FOR COSTS

Application A: SOG Ltd against the HSE

2.1 The application was made in writing[1], and supplemented by oral additions at the Inquiry. The application is made in two forms. The first for full costs and the second for partial costs arising from the HSEs non-compliance with the Inspector's directions at the first Case Management Conference (CMC) and the late disclosure of evidence[2] in relation to Computational Fluid Dynamics (CFD) modelling. The below is written from the perspective of SOG Ltd.

[1] Appendix 3, ID19.1
[2] RD188

Full application

2.2 The only reason for the Inquiry is the HSEs decision to request a call-in. The HSEs opposition to the application and its request for a call-in were both unreasonable.

Consultation Zones

2.3 The Consultation Zones (CZs) are of central importance in the context of public safety. The HSE accepts that the CZs for the Runcorn Chemical Complex (RCC) are out-of-date. The HSE accepts that the CZs are based on models that it considers unscientific, not fit for purpose, and which it no longer uses. It is SOG Ltd's alleged failure to comply with the HSEs Land Use Planning Methodology (LUP Methodology) which has led to the call-in, but the HSE has not followed the LUP Methodology either. It requires[3] site-specific values to be obtained for items not in the Hazardous Substances Consent (HSC).

2.4 This is particularly important here because risk from the RCC is driven by liquid chlorine pipelines, which are not addressed in the HSCs. The CZs were based on the pipelines at the time of assessment in 1994, at 2.9 km in length and extending to the boundary of the RCC. The pipelines are now only 300 m in length and located hundreds of metres from the boundary. Despite this, the HSE has not only failed to update its risk assessment, ie the CZs, but has refused to consider doing so.

CFD modelling

2.5 The HSE refused to engage with SOG Ltd's CFD work during the currency of the planning application. It only requested further CFD details six weeks before the Inquiry was originally due to be held in February 2025.

Development Plan

2.6 The HSE accepts that the proposal accords with the Development Plan. Given the flaws with its own evidence and its acceptance that it does not address planning considerations other than risk, the HSE cannot reasonably maintain that planning permission should be refused.

Call-in

2.7 SOG Ltd acknowledges that Planning Practice Guidance (PPG) suggests[4] that costs do not ordinarily apply to the substance of the case for call-in Inquiries. However, this is not a prohibition on costs. Here, there is good reason for a costs award to be made. The application was only called-in following a request by the HSE. It is therefore inarguable that the Inquiry has only been necessary because of the HSE. If it is accepted that the HSE's opposition to the application is unreasonable then the application to call-in the planning application was similarly unreasonable. In this circumstance, the entire costs of the Inquiry are entirely due to the conduct of the HSE. This is a procedural point as well as a substantive one.

[3] Paragraph 10, Annex 3 - HSEL14
[4] Paragraph: 034 Reference ID: 16-034-20140306

2.8 The HSEs request for a call-in was itself based on incorrect and materially misleading information. It relied upon a site location plan at Figure 3[5], which was obtained from a website set up by local residents in opposition to the proposed development, and was out-of-date and inaccurate. Therefore, when deciding to call-in the application, the SoS would have assumed that the HSEs objection was reasonable, which it was not, and determined the request on the basis of a site layout which was inaccurate.

Partial application

Inspector's directions at the first CMC

2.9 At the first CMC in November 2024, it was agreed that the parties would proceed on the basis that the s321 Direction had been granted in order to allow for the proper preparation of the Inquiry whilst waiting for the outcome of the decision of the SoS on the s321 application. The HSE did not comply with this agreement. It failed to provide SOG Ltd with an unredacted copy of its Statement of Case (SoC). SOG Ltd could have been provided with an unredacted SoC because it was always going to end up being a Schedule 2 party in any case. The HSE should therefore be liable to the costs of SOG Ltd associated with the second CMC.

Late evidence regarding CFD modelling

2.10 At the second CMC, a compressed timetable was agreed to allow the Inquiry to proceed with a delay of only one week. At the exchange of Proofs of Evidence (PoE) as agreed at the second CMC, the HSE did not provide any evidence regarding CFD modelling. This was only provided at the exchange of rebuttal PoE. The CFD PoE contained extensive technical evidence[6] which SOG Ltd had no prior notification the HSE would be relying upon. SOG Ltd had no opportunity to respond in the one week period before the opening of the Inquiry. This was accepted by the Inspector and the Inquiry was adjourned until September 2025.

2.11 The following chronology clearly demonstrates that the late evidence relating to CFD modelling and the issues it raised constituted unreasonable behaviour:

- 14 October 2022 – SOG Ltd first advised the HSE that it was intending to produce CFD modelling of the risk posed by the RCC;
- October 2022 – report issued to HSE raising numerous concerns with the HSEs risk modelling at RCC;
- 18 January 2023 – a report is published by the HSE responding to the above report but this is not provided to SOG Ltd until the exchange of PoE for the Inquiry;
- 12 January 2024 – at a meeting, SOG Ltd presented information on its CFD modelling to the HSE. The HSE made no requests for additional CFD information following the meeting;
- 20 May 2024 – the Council's resolution to grant planning permission was made;
- 19 September 2024 – the SoSs decision to call-in the application was made;

[5] Pdf page 14, ID25
[6] 36 pages in length, 44 references, and appended 187 pages of scientific papers and correspondence

- 25 November 2024 – the first CMC was held. At the time, the HSE stated that it had not decided whether or not to field a CFD witness; and,
- 16 December 2024 – the first time the HSE requests CFD modelling details from SOG Ltd.

2.12 Whilst the application was being considered, the HSE did not raise concerns regarding technical matters related to CFD modelling. Nor did it request further information regarding it. It was less than two months before the original opening date of the Inquiry that the HSE requested technical information. Seeking to raise new substantive technical issues for the first time at the Inquiry stage is a quintessential example of unreasonable behaviour.

2.13 The late submission of the CFD PoE was despite the fact the HSE must have known earlier that it would be relying on this evidence, because an appendix to the Technical PoE[7] was written by the same person as eventually authored the CFD PoE. The CFD PoE, whilst titled a 'rebuttal' was in fact a first PoE that could and should have been shared at the exchange of PoE stage. In particular, the following matters should all have been addressed in a PoE not a rebuttal:

- The contents of the CFD PoE relating to the concerns raised in the same author's 2023 report;
- Concerns relating to the Fluidyn CFD model based on experience at the Heath School Inquiry; and,
- In-principle objections to the use of CFD.

2.14 These are clearly procedural points, and the HSE should therefore be liable to the costs of SOG Ltd associated with the aborted Inquiry dates and the adjournment of the Inquiry, the second CMC, and the additional work required to address the CFD modelling evidence.

Application B: The Council against the HSE

2.15 The application was made in writing[8], and supplemented by oral additions at the Inquiry. It is made on the basis that the HSE has acted in a procedurally unreasonable manner in three respects, which fall within the scope of lack of co-operation with other parties, delay in providing information, not agreeing factual matters, and introducing substantial fresh evidence at a late stage necessitating an adjournment. These are all matters set out in PPG[9]. The below is written from the perspective of the Council.

Statement of Case

2.16 Rule 6(6) of The Town and Country Planning (Inquiries Procedure) (England) Rules 2000 (the Rules) required the HSE to provide a copy of its SoC to the statutory parties by 15 November 2024. Rule 2 defines a SoC as containing the full particulars of the case. However, the HSE delayed the provision of its full SoC until after the s321 Direction had been determined, which led to the Council needing to address new matters in its PoE.

[7] Appendix 10, RD007
[8] ID20
[9] Paragraph: 047 Reference ID: 16-047-20140306

2.17 The HSEs redacted SoC omitted significant particulars of the HSEs case. There is nothing in the Rules which removes this requirement to parties where there is a direction under s321 that is yet to be determined. In addition, the HSE had agreed that the Council should be part of the s321 Direction, if granted. It is not the s321 Direction itself which caused the issue. The first CMC confirmed[10] that the HSE agreed that all parties should proceed on the basis that the s321 Direction had been granted, and the Council was always going to be included as a Schedule 2 party. So, the Council should have been permitted access to the material in any event.

2.18 A s321 Direction was applied for in the Pavilions case so the HSE should have known that the application would take some time to be determined.

2.19 Even if the HSE was entitled to withholding its SoC from the Council, there was no reason why it could not have informed the Council by other means of the issues it would be raising and matters it would be relying upon. This is particularly so given that the HSE knew that the Council knew the content of the HSCs and the substances present at the application site.

2.20 One of the main consequences of delaying the unredacted SoC was that the Council could not have reasonably known that the HSE would be relying on, at least to some extent, the fact there is HSC for toxic substances other than chlorine. That the Council knows what's in the HSC is irrelevant, what is relevant is wanting to know which of those substances would be relied upon by the HSE. Other substances had not formed part of the HSEs case at the Pavilions Inquiry. As a result, the Council was put to unnecessary additional expense in having to address the issue in its rebuttal PoE.

New evidence

2.21 The other main consequence of the failure to provide a timely unredacted SoC was that the Inquiry had to be pushed back a week and the timetable for the exchange of evidence seriously abbreviated, leaving only four working days before the Inquiry was scheduled to open to consider any rebuttals. In this regard, the HSE submitted substantial new evidence at the rebuttal stage, the first 'rebuttal' CFD PoE. This was the first time that the HSE took issue with the principle of CFD modelling. It was this which necessitated the adjournment of the Inquiry in February 2025. As a direct consequence, the Council was put to wasted expense in terms of both legal and officer costs and the costs of the venue.

Statement of Common Ground

2.22 The HSE failed to agree factual and other matters in the Public Safety Statement of Common Ground (SoCG) which could reasonably have been agreed at that time. In particular, the matters at Paragraph 82, which were set as matters of uncommon ground in the Public Safety SoCG, should have been matters of express agreement. These matters are that methodology used to generate the HSEs CZs is unable to take account of topography of the land or deposition of toxic gasses, the DENZ/CRUNCH (D/CR) model is no longer in use by the HSE,

[10] Paragraph 5, ID27

and D/CR model has not been validated against the Jack Rabbit II trials. All these matters were eventually agreed under cross-examination.

Overall

2.23 The unreasonable conduct of the HSE caused the Council to incur wasted or unnecessary expense including additional legal and officer costs associated with having to deal with issues in its rebuttal PoE, the various costs entailed by the adjournment of the inquiry in February 2025, and those which could have been saved if the HSE had been prepared to agree all the matters which it could reasonably have been expected to agree in the Public Safety SoCG.

3. THE RESPONSES BY THE HSE TO THE CLAIMS FOR COSTS

3.1 The response by the HSE was made orally at the Inquiry. The HSE dealt with both applications for costs in the same response, which is how I have structured the section below. The below is written from the perspective of the HSE.

Call-in

3.2 PPG is clear that, where an application is called-in, it is not envisaged that a party would be at risks of costs for unreasonable behaviour relating to the substance of case or action before the call-in decision. The costs decision for the Pavilions case expressly recognised this, and the award of costs was only on procedural grounds.

3.3 The HSE is a statutory consultee. It can have costs awarded against it, as set out in PPG[11]. However, the allegations of unreasonable behaviour should be drawn at an early stage, and both of the applications for costs were made at a late stage. Whilst there was extensive correspondence from SOG Ltd in the lead-up to the Inquiry, none of it set out clear grounds for an application for costs.

3.4 The request for a call-in cannot lead to an award of costs because the decision on whether or not to call-in an application is made by the SoS. Therefore, an award of costs would effectively be an attack by the SoS on the SoS's own decision. In terms of the detail, the HSE accepts that Figures 2 and 3 in the request for a call-in are not the most up-to-date drawings of the proposed development. This was an error. However, there is no information that this influenced the SoS's decision to call-in the application one way or another.

HSE SoC

3.5 The SoC was provided in redacted form because it would have been inappropriate to pre-determine the s321 Direction. That was also the position of the Inspector. This isn't in the Rules but they do not address this point satisfactorily so little can be read into this point. The SoC had to be made publicly available, so it needed to be redacted. It was also open to the Council or SOG Ltd to request, under Rule 6(8), more information.

3.6 The Council is the Hazardous Substances Authority (HSA). It therefore has full knowledge of the hazardous substances on the RCC. In any event, there was no

[11] Paragraph: 055 Reference ID: 16-055-20140306

delay regarding the reference to substances other than chlorine, or any additional work, because neither the Council nor SOG Ltd rely upon the additional substances to any extent.

CFD modelling

3.7 CFD modelling has never been part of the HSEs case, which is why it was not mentioned in the SoC. It was not clear what information would be provided by the Council or SOG Ltd with regard to CFD modelling. CFD was not mentioned in the SoC for either party, instead referring to updated consequence analysis. The HSE asked for information from SOG Ltd with regard to CFD modelling in December 2024, and repeated this request at the second CMC in early-2025. At this stage, it was unclear on the extent to which CFD modelling would be a part of the evidence of the other parties at the Inquiry. The CFD modelling evidence was first received by HSE on 27 January 2025. The HSE responded quickly, including working over a weekend, to provide its CFD PoE on 3 February 2025.

3.8 Some background evidence which supported SOG Ltd's CFD case was not provided to the HSE until 17 March 2025. SOG Ltd has been reluctant to share information with the HSE throughout the process, which is surprising given that the French Working Group guidelines require such sharing with the regulator, which in this case is the HSE. Therefore, all delays relating to CFD evidence have been generated entirely by the conduct of SOG Ltd. In any event, delays to CFD evidence have not resulted in any extra delay or expense because the Inquiry was postponed to September 2025 from its original date in February 2025.

Public Safety SoCG

3.9 The Public Safety SoCG problem arose because the basis of the agreement needed to be qualified with reference to an impasse on Dispersion of Releases Involving Flammables or Toxics 3 (DRIFT3). This is why agreement could not be made on the points raised by the Council at that stage.

4. INSPECTOR'S CONCLUSIONS

4.1 PPG advises[12] that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. There is overlap between the two claims for costs. I have therefore structured my conclusions by the points raised, rather than splitting it into two sections for the different claims. I make it clear throughout to which party my conclusions apply.

Unreasonable behaviour

HSE SoC [2.9, 2.16 to 2.20, 3.5 to 3.6]

Substantive

4.2 The HSE submitted its SoC on 15 November 2024, in accordance with the timetable set out in the start letter. However, this was a redacted version[13]. The

[12] Paragraph: 030 Reference ID: 16-030-20140306
[13] HSEL03

unredacted version[14] was only submitted following the issuing of the s321 Direction on 27 January 2025. Of particular relevance is that all of paragraph 29 and part of paragraph 32 v. were redacted, which set out that the HSEs case would rely on the risks posed by several toxic gasses in addition to chlorine.

4.3 I acknowledge that the Council and appellant would have been aware of the existence of the other toxic gasses, because the Council is the HSA. That paragraphs 9 and 15 were also redacted, which listed the several toxic gasses at the RCC in addition to chlorine, is not therefore of concern. However, the Council's Report to Committee stated that chlorine was the primary concern and only considered chlorine with regard to risk from the RCC[15]. SOG Ltd's RAS Reports[16] in support of the planning application both focussed on chlorine as the key driver of risk. SOG Ltd's CFD model[17] only considered the release of chlorine for its scenarios. None of the HSEs objections to the planning application[18] included reference to specific toxic gasses, including chlorine. Chlorine had been the only toxic gas of concern at the Pavilions Inquiry, which also involved the HSE as an objector for a site in the inner zone around the RCC.

Procedural

4.4 It is open to the Inspectorate to require that a party provide further information in relation to the SoC[19]. The Inspectorate requested that the unredacted version of the SoC be provided by 27 January 2025, with which the HSE complied. However, as well as the Council and SOG Ltd, the Inspectorate also did not have any reason to believe that the redacted elements of the SoC included reference to additional toxic gasses to chlorine.

4.5 The HSE requested the s321D on 23 October 2024. As confirmed in the Pre-CMC Note and the Post-CMC Note[20], the parties all agreed to proceed as if the s321 Direction was in place from the time of the request, ie pending the eventual decision by the SoS. The direction was made by the Inspectorate to proceed as if the s321 Direction was in place. This was sensible because to make evidence public that would eventually need to be restricted would negate the entire purpose of the s321 Direction.

4.6 However, the s321 Direction process includes an allowance that certain parties and persons be provided access to the restricted material, ie those listed on Schedule 2. This is for the obvious reason that those closely involved with the Inquiry need full access to the evidence. The HSE therefore had sensible work arounds. Firstly, there was no reason why the HSE could not share an unredacted version of the SoC with the parties likely to be included in Schedule 2, ie key members of SOG Ltd's and Council's Inquiry teams. Or, alternatively, the HSE could have simply verbally told those persons which toxic gasses in addition to chlorine its case would be relying upon.

[14] RD001
[15] Paragraphs 6.235 to 6.262, CRM01
[16] SDL03 and SDL21
[17] RD212
[18] CR18, CR19, CR22, CR23
[19] Rule 6(8) of the Rules
[20] Paragraph 5, ID27

Overall

4.7 It was not, therefore, reasonably foreseeable that the HSEs case would rely upon toxic gasses in addition to chlorine as part of its case. There were reasonable methods to respect the s321 Direction whilst still providing the Council and SOG Ltd with the information they required to prepare their cases. The redacting of the SoC so that the fact the HSEs case would rely on toxic gasses in addition to chlorine was therefore unreasonable behaviour.

CFD modelling evidence [2.5, 2.10 to 2.14, 2.21, 3.7 to 3.8]

4.8 The HSEs SoC does not mention CFD modelling. Nor does it mention a specific witness with regard to CFD modelling. At the CMC on 25 November 2024, the HSE stated that it reserved its position with regard to fielding a witness and producing evidence regarding CFD modelling[21]. The HSEs first PoE with regard to CFD modelling was submitted on 3 February 2025, which was the deadline for rebuttal statements. The PoE includes a critique of SOG Ltd's CFD PoE and also general commentary on the utility of CFD modelling and other modelling. It is technical and complex and it was not reasonable to expect SOG ltd to respond to the PoE in the one week that remained until the opening of the Inquiry, as it was scheduled at that time. The lateness of the HSEs PoE was, therefore, the key drive in the postponement of the Inquiry.

4.9 However, and crucially, SOG Ltd did not provide full details of its case, ie the CFD modelling, to the HSE until January 2025. In more detail, SOG Ltd's CFD report is dated March 2023. However, it was not submitted with the planning application, as confirmed in the list of submission documents contained in the General SoCG. The Council's Officer's Report refers to the CFD model and its results[22], although it's unclear if this was with regard to the cross-references to the CFD model rather than as a result of having reviewed the model itself. SOG Ltd's SoC, from November 2024, does not mention CFD, and instead refers to the work by RAS. The RAS Report dated January 2024[23] refers to the CFD modelling but doesn't provide the full information. CFD modelling is not mentioned in the General SoCG, rather referring to 'modern modelling techniques'[24]. SOG Ltd's CFD PoE was regarding the CFD report, albeit providing different information and analysis, and not including the CFD report itself.

4.10 The HSE did not request details of the CFD modelling throughout the planning application process, or until December 2024 during the appeal process. This includes following a meeting held in January 2024. It is also evident that the HSE were considering the issue of CFD from an early stage of the case, as evidenced by the report it produced in this regard in 2023. I also agree that certain elements of the HSEs CFD PoE could have reasonably be provided without regard to SOG Ltd's CFD report [2.13]. However, the substantive elements of the HSEs case regarding SOG Ltd's CFD model could only be written after reviewing the specific model. It could also not have been clear to the HSE whether or not it would be

[21] Paragraph 8, ID27
[22] Paragraphs 6.250 to 6.252, CRM01
[23] Page 24, SDL35
[24] Paragraph 3.2.3, SOG02

required to field a CFD witness until it had had the opportunity to review the CFD model.

4.11 Therefore, whilst the Inquiry was delayed from its scheduled opening in February 2025 because of late evidence from the HSE regarding CFD modelling, the primary reason for the provision of the late evidence was the delay by SOG Ltd in providing its full CFD model to the HSE for review. This did not, therefore, constitute unreasonable behaviour by the HSE.

Public Safety SoCG [2.22, 3.9]

4.12 The matters at paragraph 82 of the Public Safety SoCG, which were set as matters of uncommon ground, include that the D/CR models are unable to take account of topography, that those models are no longer in use by the HSE, and that they have not been validated against the JRII trials. All of these points are clear, as was shown during cross-examination at the Inquiry and as set out in my Recommendation. The explanation by the HSE that they could not be agreed in the SoCG due to an impasse on DRIFT3 is unconvincing. The SoCG could have been qualified to make reference to ongoing DRIFT3 work whilst also acknowledging the situation with regard to the D/CR models. This therefore constitutes unreasonable behaviour on behalf of the HSE.

The call-in [2.7 to 2.8, 3.2 to 3.4]

4.13 The application was only called-in following a request by the HSE. However, the HSEs case, as a whole, is not unreasonable. The proposal is within an 'inner zone' and results in a strong 'advise against development' based on the LUP Methodology. Whilst my Recommendation shows that there are elements of this on which I place limited weight, the overall judgment is finely balanced. It is clearly in the public interest to properly discuss such proposals, particularly with regard to as important an area as risk and public safety. The call-in request, in-principle, was not, therefore, unreasonable behaviour.

4.14 The HSEs request for a call-in was based on incorrect and materially misleading information. It relies upon a site location plan at Figure 3[25], which was obtained from a website set up by local residents in opposition to the proposed development, and was out-of-date and inaccurate. Therefore, when deciding to call-in the application, the SoS would have determined the request on the basis of a site layout which was inaccurate. This therefore constitutes unreasonable behaviour on behalf of the HSE.

Consultation Zones [2.3 to 2.4]

4.15 The HSE has so far failed to update the CZs relating to RCC. The existing LUP Methodology and risk assessment is deficient in many respects, as set out in my Recommendation. However, the HSE has been open about many of these weaknesses in its evidence. The discussion around CZs is also only one part of the consideration of public safety, which is multi-faceted. For example, there are the complex considerations of applying risk assessments to on-site inventory versus the HSCs, or how to measure risk. The HSE is in the middle of attempting

[25] Pdf 14, ID25

to update its modelling and therefore CZs using DRIFT3, including extensive validation work, again as explored in depth in my Recommendation. Whilst the liquid chlorine pipelines have been found by all parties to be the key drivers of risk, they are not the only driver, and the risk assessment considers the cumulative impact of different risks.

4.16 The overall approach to risk in the context of CZs and the wider LUP Methodology therefore required testing in detail at the Inquiry. HSEs approach to the CZs was not, therefore, unreasonable behaviour.

Development Plan [2.6]

4.17 S38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) is clear that the determination of planning applications should be made with regard to the Development Plan, unless material considerations indicate otherwise. The HSE accepts that the proposal accords with the Development Plan. However, its objection to the proposals on the grounds of public safety are an important material consideration. There is, on the case of all parties, some risk to the future occupiers and users of the proposed development from the RCC. This is a clear case of an important material consideration that requires full consideration. As I have set out in my Recommendation, it has not been satisfactorily demonstrated that the public safety risks would be acceptable. It is, therefore, plainly not unreasonable behaviour for the HSE to maintain an objection in this regard.

Wasted expense

HSEs SoC [4.2 to 4.7]

4.18 With regard to the SoC and the second CMC, that further meeting was required primarily in relation to CFD modelling evidence, which I have found not to constitute unreasonable behaviour. The second CMC would therefore have been required irrespective of the approach taken by the HSE to its SoC and redaction. There was not, therefore, wasted expense to either the Council or SOG Ltd with regard to the second CMC as it related to HSEs SoC.

4.19 The delay in telling the Council and SOG Ltd that the HSE would be considering toxic gasses in addition to chlorine resulted in some expense to both parties in preparing and delivering their cases in this regard. However, as set out in my Recommendation, the additional gasses potentially contribute to the risk to public safety and it was therefore necessary to consider them. In addition, the primary driver of the delay of the Inquiry was in relation to CFD evidence. The production of the evidence in relation to additional gasses did not, therefore, lead to the delays to the programme. In other words, the evidence needed to be tested and did not, by itself, lead to delays in the Inquiry process. There was not, therefore, wasted expense to either the Council or SOG Ltd in this regard.

Public Safety SoCG [4.12]

4.20 The unreasonable behaviour by the HSE that I have identified directly led to the Council needing to prepare evidence for the Inquiry, spend time at the Inquiry in cross-examination in exploring the points of uncommon ground, and also in writing its closing submissions as it relates to these points. The unreasonable behaviour of the HSE therefore led to wasted expense by the Council in these regards.

The call-in [4.13 to 4.14]

4.21 The proposal includes substantial built form within an 'inner zone' area near a hazardous installation. It raises important and substantive risks with regard to public safety, as set out in detail in my Recommendation. There is therefore nothing before me to suggest that the SoS would have made a different decision, ie decided not to call-in the application, even if the drawings submitted to him were accurate. The unreasonable behaviour by the HSE in this regard did not, therefore, lead to wasted expense by either the Council or SOG Ltd.

Conclusions

4.22 I therefore find that unreasonable behaviour by the HSE resulting in unnecessary or wasted expense to the Council, as described in PPG, has been demonstrated with regard to the areas of uncommon ground at paragraph 82 of the Public Safety SoCG. I therefore recommend that a partial award of costs is justified, limited to this matter and to the expense related to the Council needing to prepare evidence for the Inquiry, spend time at the Inquiry in cross-examination in exploring the points of uncommon ground, and also in writing its closing submissions as it relates to these points.

4.23 The behaviour of the HSE with regard to CFD evidence, CZs and the Development Plan was reasonable. In addition, although I find that there was unreasonable behaviour by the HSE with regard to redaction of its SoC, this did not result in wasted expense by either SOG Ltd or the Council. I therefore recommend that the applications for awards of costs in those regards is refused.

5. RECOMMENDATIONS

5.1 **Application A: That the application for an award of costs be refused.**

5.2 **Application B: That the application for an award of partial costs be allowed in part.**

O S Woodwards
INSPECTOR

Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, King's Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.