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London
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Our Ref: APP/M2460/A/11/2150748
Your Ref: PH/WPF/B3391-00170

Date 28 June 2012

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY BIFFA WASTE SERVICES LIMITED
AT NEWHURST QUARRY, ASHBY ROAD EAST, SHEPSHED,
LEICESTERSHIRE, LE12 9BU
APPLICATION REFERENCE: 2009/2497/02 (2009/C166/02)**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, P J Asquith MA(Hons) MA MRTPI, who held a public local inquiry which opened on 8 November 2011 into your client's appeal against a decision of Leicestershire County Council (the Council) to refuse planning permission for the construction and operation of an Energy Recovery Facility (ERF) and ancillary facilities, comprising offices and welfare facilities, visitor centre, bottom ash recycling and maturation, access roads and weighbridge facilities, crew drop-off shelter, electrical compound, together with peripheral landscaping and security fence at Newhurst Quarry, Ashby Road East, Shepshead, Leicestershire, LE12 9BU in accordance with application reference 2009/2497/02 (2009/C166/02) dated 11 December 2009.
2. On 15 April 2011, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990 because the appeal relates to proposals of major significance for the delivery of the Government's climate change programme and energy policies.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission be granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural Matters

4. In reaching his decision the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, the addendum produced in conjunction with the second application and the further information requested by the Council (IR1.7), and the Inspector's comments at IR12.3. Like the Inspector, the Secretary of State is satisfied that the requirements of the Regulations have been met and he considers that sufficient information has been provided for him to assess the environmental impact of the application.
5. The Secretary of State notes that the Appellant wishes that the amendments contained within the second application relating to the materials for the ERF, the mitigation planting and financial contributions to the listed building restoration be considered as part of this appeal (IR1.6). He also notes that these changes have been fully consulted upon as part of the Council's consideration of the second application and, like the Inspector, he considers that no substantial prejudice would arise from consideration of these amendments as part of the appeal (IR1.6).

Matters arising after the close of the inquiry

6. The Secretary of State is in receipt of representations which were not seen by the Inspector or were received following the close of the Inquiry from D Pearson (17 November 2011), Tracy Robinson (17 and 24 November 2011), Nicky Morgan MP (24 November 2011, 23 February 2012, and 7 June 2012), Roy Kershaw (15 December 2011) and the Rt Hon Stephen Dorrell MP (12 January 2012). However he does not consider that these constitute new evidence or raise new issues which need to be referred back to parties before he proceeds to a decision.
7. Furthermore, the Government published the National Planning Policy Framework (March 2012) (NPPF) after the close of the inquiry. This document replaces the national planning policy documents set out in its Annex 3. Following its publication, the Secretary of State wrote to interested parties on 19 April 2012 seeking their views on the implications, if any, for these appeals. On 15 May, the Secretary of State circulated the responses, inviting further comments, and stating that he would then proceed to a decision. Responses to the Secretary of State's letters on this matter are listed at Annex A i) and ii) below.
8. The Secretary of State has carefully considered all of these representations in his determination of these appeals. He considers that for the most part, the issues raised in relation to the NPPF cover those already rehearsed at the inquiry. In considering these further representations the Secretary of State wishes to make clear that he has not revisited issues which are carried forward in the NPPF or development plan documents, and which have therefore already been addressed in the IR, unless the approach in the NPPF leads him to give different weight.

9. Copies of all representations referred to in paragraph 6 above and listed in Annex A i) and ii) are not attached to this letter but may be obtained on written request to the address or the email address at the foot of the first page of this letter.

Policy considerations

10. In deciding the application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
11. In this case, the development plan comprises the 2009 East Midlands Regional Plan (the RS), saved policies of the 2002 Leicestershire and Rutland Waste Local Plan (WLP), the 2009 Leicestershire and Leicester Waste Development Framework Core Strategy and Development Control Policies (CS), and saved policies of the 2004 Charnwood Borough Council Local Plan (CBLP). The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR3.3 - 3.10.
12. Other material considerations which the Secretary of State has taken into account include the NPPF, Planning Policy Statement (PPS) 10: Planning for Sustainable Waste Management, Circular 11/95: Use of Conditions in Planning Permission, the Community Infrastructure Levy (CIL) Regulations 2010 and 2011, the Ministerial Statement by Rt Hon Greg Clark MP - Planning for Growth (23 March 2011), the UK Renewable Energy Roadmap (2011), Waste Strategy for England 2007 and supporting annexes, Government Review of Waste Policy in England (2011), Anaerobic Digestion Strategy and Action Plan (2011), UK Low Carbon Transition Plan (July 2009), the UK Renewable Energy Strategy (2009), the East Midlands Energy Challenge, Overarching National Policy Statement for Energy (EN-1) and National Policy Statement for Renewable Energy Infrastructure (EN-3).
13. With regard to emerging policy (IR3.11) the Secretary of State notes from documents CD/D8 and CD/D9 that the Leicestershire and Leicester Waste Development Framework Site Allocations Development Plan Document which was submitted to the Secretary of State in May 2011, has been withdrawn. He attaches no weight to this document.
14. The Secretary of State considers that the revocation of Regional Strategies has come a step closer following enactment of the Localism Act on 15 November 2011. However, until such time as the East Midlands Regional Plan is formally revoked by order, he has attributed limited weight to the proposed revocation in determining this appeal.
15. The Secretary of State has taken into account the Grade I, II* and II listed buildings within Garendon Park and their setting (IR12.5). In deciding the application he has had special regard to the desirability of preserving the buildings or their settings or any features of special architectural or historic interest which they may possess in accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Main issues

Landscape and visual impact

16. For the reasons given by the Inspector at IR12.7 - 12.18 the Secretary of State agrees with his assessment at IR12.19 that there would be an inevitable impact in terms of perception from within and impact upon the Area of Particularly Attractive Countryside (APAC) and the Charnwood Forest but these would be quite localized. He also agrees that this would amount to conflict with CBLP Policy CT/7 and CS Policies WCS10 and WDC5 (IR12.19). In reaching this view, for the reasons given by the Inspector, the Secretary of State agrees with him that the weight to be attached to the APAC designation is diminished in relation to its applicability to the proposals (IR12.18).
17. The Secretary of State agrees with the Inspector's reasoning at IR12.20 - 12.24 and with his assessment that, in general landscape terms, there would be some urbanising impact but, overall, having regard to visual intrusiveness within panoramic views where the ERF would occupy only a limited percentage of any view, this would be mostly slight to moderately adverse (IR12.24).

Heritage assets

18. The Secretary of State agrees with the Inspector's reasoning and conclusions regarding heritage assets at IR12.25-12.36. Like the Inspector he considers that the listed buildings of the Triumphal Arch (grade I) and the Temple of Venus (grade II*) are of the highest significance, and are highly sensitive to direct impact (IR12.26). However, the Secretary of State notes that, in light of the mitigation proposals which would re-create the former geometric tree-lined avenues in the south western portion of Garendon Park, English Heritage suggests that there would be benefit to the designated heritage assets by returning a level of authenticity to the planting arrangement and setting of the buildings (IR12.30). Overall, he shares the assessment of the Inspector and of English Heritage that the impact on heritage assets would be less than substantial (12.33). The Secretary of State also agrees with the Inspector that, given the proposed mitigation, there would be no conflict with CS Policies WCS10 or WDC2 in respect of the proposal's impact on the heritage assets (IR12.34). The Secretary of State has considered the proposals in the Appellant's Unilateral Undertaking for the repair and restoration of the Temple of Venus and the Triumphal Arch at paragraph 26.

Scheme benefits

19. The Secretary of State agrees with the Inspector's reasoning and conclusions on the scheme's benefits at IR12.37 - 12.46. He shares the Inspector's view that the proposed scheme would comply with national waste policy contained in PPS10: *Planning for Sustainable Waste Management* and the Waste Strategy for England 2007, and also that it would accord with the main strategic policies of the development plan relating to the location of waste management facilities (IR12.37). He further agrees that the proposal would make a significant contribution to delivering the Government's Climate Change programme and energy policies (IR12.44), and also that the plant would assist in resource

husbandry and reliance on primary aggregates (IR12.45). The Secretary of State has furthermore taken into account that the scheme would provide employment opportunities (IR12.45) and agrees with the Inspector that indirect jobs may also be created and that local employers may be supported through the plant's operation (IR12.45).

20. Overall, like the Inspector the Secretary of State considers that the proposal would accord with the thrust of RS Policies 1, 38 and 40 (IR12.46). He notes that there is agreement that there is accordance with CS Policy WCS2, and he agrees with the Inspector that there is also accordance with the intent of CS Policy WCS4 (IR12.46). In conclusion, the Secretary of State agrees with the Inspector that the proposal is underpinned by strong national and local policy support in terms of its potential contribution to achieving climate change and energy objectives, sustainable waste management and economic benefits (IR12.46).

Need

21. For the reasons set out by the Inspector at IR12.47 - 12.48 the Secretary of State agrees with him that there is a clear need to provide in excess of 500,000 tonnes per annum (tpa) of recovery capacity to ensure that waste is treated higher up the hierarchy than landfilling (IR12.48). For the reasons given by the Inspector, the Secretary of State also agrees with his conclusion that the proposal would assist in achieving a greater level of self-sufficiency in terms of waste management, and that the ability if the proposal to make a significant contribution on this front, in accepted accord with national waste policy, carries considerable weight (IR12.49).

Other matters

Health and air quality

22. For the reasons given at IR12.50 - 12.58, the Secretary of State agrees with the Inspector's conclusion at IR12.59 that, whilst understandable, no great weight should be attached to concerns about the possible impacts of the proposal upon health, air quality or perceived anxiety over these matters. Like the Inspector, he considers that there is no reason to suppose that the plant would operate other than in accordance with the Environment Permit or that, should there be any non-compliance, the Environment Agency would not act in accordance with its enforcement powers conferred through the environmental permitting regime. (IR12.53).

Traffic, localism, quarry restoration and further matters

23. The Secretary of State agrees with the Inspector that, overall, the site is very well placed in relation to the strategic highway network to facilitate ready and relatively sustainable access to likely centres of major waste arisings (IR12.61). He also agrees that there is no reason to suggest that the public has not been fully engaged with this proposal either at the lengthy application stage or within the context of the appeal (IR12.63). The Secretary of State sees no reason to disagree with the Inspector's reasoning and conclusions in respect of quarry

restoration at IR12.64, or in respect of the further matters identified at IR12.65 - 12.66.

Conditions

24. The Secretary of State has considered the conditions which were discussed at the Inquiry which are set out at Annex A to the IR, the Inspector's comments at IR11.1 - 11.8 and IR12.67 - 12.71, and national policy as set out in Circular 11/95. He considers that suggested conditions 32, 35, 38A, 44 and 45 would not satisfy all of the tests of Circular 11/95 but is satisfied that the remaining conditions, which are reproduced and renumbered at Annex B to this letter, are reasonable and necessary and meet the other tests in Circular 11/95.

Obligation

25. The Secretary of State has considered the Appellant's Unilateral Undertaking, the Inspector's comments at IR11.9 - 11.10 and IR12.72 - 12.74, NPPF paragraph 204 and the CIL regulations. Like the Inspector, he is satisfied that those obligations identified at IR12.72 are necessary and compliant with the CIL Regulations 2010.

26. However, for the reasons given by the Inspector at IR12.73 - 12.74 the Secretary of State agrees that the funding and carrying out of the suggested restoration works to listed the Temple of Venus and the Triumphal Arch within Garendon Park would fail the tests of necessity and direct relationship to the proposed development as set out in the CIL Regulations (IR12.74). Although he agrees that this obligation is highly laudable in its own right, like the Inspector, the Secretary of State has not taken it into account in arriving at an overall assessment of the proposal (IR12.74).

Overall Conclusions

27. The Secretary of State agrees with the Inspector's planning balance and overall conclusions at IR12.75 - 12.77. He agrees that the proposal would have some limited adverse impact on the appearance and character of the area and would result in conflict with CBLP Policy CT/7 and CS Policies WCS10 and WDC5 (IR12.75). The Secretary of State further agrees that there would be an impact on the heritage assets of Garendon Park but that this would be less than substantial as a result of the proposed planting mitigation strategy (IR12.75).

28. However, the Secretary of State has found (paragraph 20 above) that the proposal is underpinned by strong national and local policy support in terms of its potential contribution to achieving climate change and energy objectives, sustainable waste management and economic benefits. Overall, he shares the Inspector's conclusion (IR12.77) that the benefits of the scheme are substantial and compelling, and agrees with him that these considerations outweigh the harm by way of impact on the appearance and character of the area, heritage assets and conflict with certain policies of the development plan.

Formal Decision

29. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for the construction and operation of an Energy Recovery Facility (ERF) and ancillary facilities, comprising offices and welfare facilities, visitor centre, bottom ash recycling and maturation, access roads and weighbridge facilities, crew drop-off shelter, electrical compound, together with peripheral landscaping and security fence at Newhurst Quarry, Ashby Road East, Shepshed, Leicestershire, LE12 9BU in accordance with application reference 2009/2497/02 (2009/C166/02) dated 11 December 2009 subject to the conditions at Annex B.
30. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
31. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
32. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to challenge the decision

33. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
34. A copy of this letter has been sent to Leicestershire County Council and Charnwood Against Incinerator (CHAIN). A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Richard Watson

Authorised by Secretary of State to sign in that behalf

i) Correspondence received following the Secretary of State's letter of 20 April 2012

Name / Organisation	Date
Mr Brian Stormont	Undated
Biffa	25 April 2012
Dr Badiani	2 May 2012
Councillor Max Hunt	3 May 2012
Dr Richard Woolley	3 May 2012
Mr Richard Loades-Wiffen	4 May 2012
CHAIN	7 May 2012
Dr Geoff Mason	9 May 2012
Ms Anita Jones	9 May 2012
Nicky Morgan MP	10 May 2012
Mr P G Cockrell	11 May 2012
Leicestershire County Council	11 May 2012

ii) Correspondence received following the Secretary of State's letter of 9 May 2012

Name / Organisation	Date
Leicestershire County Council	17 May
Mr P G Cockrell	21 May
Biffa	22 May
Ms Anita Jones	22 May
Leicestershire County Council	23 May

Schedule of conditions

1. The development hereby permitted shall begin before the expiration of three years from the date of this permission.
2. Unless otherwise required by this permission the development shall be carried out in accordance with the following details:
 - a) the planning application reference 2009/2497/02 and accompanying Environmental Statement (ES);
 - b) accompanying drawing nos. NH3/1, NH3/2, NH3/3, NH3/4a, NH3/4b, NH3/5, NH3/6, NH3/7, NH3/8, NH3/9, NH3/10, NH3/12, NH3/13 and NH3/14.
 - c) letter dated 28th April 2010 and attached supplementary information including letter dated 23rd April 2010 from SLR addressed to Geoff Wise of the Highways Agency, Additional Supporting Information Relating to the Global Warming Potential (CO₂) document, Additional Supporting Information for the Archaeology and Cultural Heritage Assessment document and Additional Supporting Information for the Landscape and Visual Impact Assessment document dated April 2010, unless otherwise superseded by the details contained in the Addendum to the ES dated October 2011.
 - d) Additional Supporting Information for the Landscape and Visual Impact Assessment document dated July 2010, unless otherwise superseded by the details contained in the Addendum to the ES dated October 2011.
 - e) Addendum to the Environmental Statement dated October 2011.
3. An Ecological and Landscape Management and Mitigation Plan shall be prepared for the application site and shall be submitted to and approved in writing by the County Planning Authority prior to the commencement of development. The Management Plan thereby approved shall specify a strategy to promote biodiversity within the landscaped areas and balancing ponds. The strategy shall also include details of the means of protection to safeguard key ecological and landscape features during the course of construction works and shall include a programme for the implementation and management of the approved works. The Management Plan and strategy shall be implemented in accordance with the agreed programme.
4. A copy of this permission, the plans and documents referred to in condition No. 2 above, including any other plans and documents subsequently approved in accordance with any condition of this permission, shall be kept available on site for the duration of the development.

Materials

5. Prior to the commencement of construction of the ERF building, a schedule of all the materials to be used externally in the construction of the building shall be deposited with and approved in writing by the County Planning Authority. The building shall be erected and thereafter maintained in accordance with the details approved under this condition.

Site Access Provision and Use

6. The development shall not be brought into use until such time as the existing priority junction of the site access on to Ashby Road (A512) has been upgraded to a signalised junction (as illustrated on drawings NH 3/13, NH 8-3 and NH 8-4) in accordance with details that shall first have been submitted to and approved in writing by the County

Planning Authority. The proposed junction shall incorporate facilities for pedestrians/cyclists to cross from the northern side of Ashby Road into the proposed development and footway/cycleway facilities provided to access the development.

7. Before works commence on the access alterations, the existing bus stop within Ashby Road adjacent to the site entrance shall be relocated in accordance with details that shall first have been submitted to and approved in writing by the County Planning Authority. Such details shall include the provision of a footway link from the relocated bus stop back to the site access and any necessary highway alterations such as bus lay-by that may be required.
8. No vehicular access gates, barriers, bollards, chains or other such obstructions are to be erected across the access road serving the site, unless the details of them have first been submitted to and approved in writing by the County Planning Authority.
9. Before the development commences, details of the routing of construction traffic shall be submitted to and approved in writing by the County Planning Authority. During the period of construction, all traffic to and from the site shall use the agreed route at all times.
10. For the period of the construction of the development, vehicle parking facilities shall be provided within the site and all vehicles associated with the development shall be parked within the site.
11. No part of the development shall commence until details of a Green Travel Plan containing a travel-to-work, car use strategy, contractor-operated mini bus service, and co-ordination of deliveries for the construction phase of the site as a whole has been submitted to and agreed in writing by the County Planning Authority.
12. No part of the development shall be brought into use until details of a Green Commuter Plan containing a travel-to-work, car use and car parking management strategy for the site as a whole have been submitted to and agreed in writing by the County Planning Authority. The Plan shall comprise proposals to reduce car dependence and vehicle emissions and to establish and encourage the use of alternative transport modes for journeys to and from work and during working hours. Details of the proposals shall include measures to secure increases in car sharing, public transport use, cycling and walking, proposals for car parking restrictions and controls and details of on-site facilities to promote alternative modes of travel to the site. The plan shall make provision for relevant surveys, review and monitoring mechanisms, targets, timescales, phasing programmes and on-site management responsibilities. It shall be implemented and subject to regular review in accordance with the above approved details.
13. The total number of Heavy Goods Vehicle (HGV) movements associated with the site shall not exceed a daily maximum of 242. Records of such movements shall be maintained on a daily basis and shall be made available to the County Planning Authority within five working days of such a request being made. All records shall be kept on site for at least 12 months.
14. The car parking shown on the approved plans shall be completed before the development hereby approved is occupied or brought into operation and thereafter shall be kept free of obstruction and available for the parking of vehicles associated with the development.
15. The development hereby permitted shall not be brought into use until the highway scheme shown on drawing no. H001 and dated 04/10 accompanying the letter from SLR dated 23rd April 2010 addressed to Geoff Wise Esq. has been fully completed.

Protection of Trees, Shrubs and Hedgerows & Protected Species

16. The development shall not be commenced until hedgerows and trees to be retained and in close proximity to the works are protected in accordance with BS5837:2005. When installed the means of protection shall be maintained in situ until the development hereby approved becomes operational.
17. No works that involve the removal of trees, shrubs, hedgerows, scrub and other vegetation including habitats used by ground nesting birds and buildings shall be undertaken during the months of March to August inclusive unless the area has first been checked by a qualified ecologist and an action plan agreed in writing with the County Planning Authority.

Protection of the Environment

18. Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing by the County Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved in writing by the County Planning Authority:
 - i) A preliminary risk assessment which has identified:
 - all previous uses;
 - potential contaminants associated with those uses;
 - a conceptual model of the site indicating sources, pathways and receptors;
 - potentially unacceptable risks arising from contamination at the site.
 - ii) A site investigation scheme, based on (i) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 - iii) The site investigation results and the detailed risk assessment (ii) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 - iv) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (iii) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
19. Piling or any other foundation designs using penetrative methods shall not take place other than with the express written approval of the County Planning Authority, which may be given for those parts of the site where it has been demonstrated, through the submission of a detailed scheme, that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.
20. The development hereby approved shall not begin until a surface water drainage limitation scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the County Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.
21. The development hereby permitted shall not be commenced until such time as a scheme to ensure that the site is not at flood risk from Shortcliff Brook has been submitted to and

approved in writing by the County Planning Authority. The scheme shall be fully implemented and subsequently maintained, in accordance with the timing/phasing arrangements embodied within the scheme.

22. Prior to the commencement of development a scheme for the disposal of foul and surface waters shall be submitted to and agreed in writing by the County Planning Authority. The scheme shall be implemented and thereafter maintained for the life of the development in accordance with the approved details.
23. Any facilities for the storage of oils, fuel or liquid chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The size of the bunded compound shall be at least equivalent to the capacity of the tanks plus 10%. If there is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank plus 10%. All filling points, vents and sight glasses must be located within the bund. There must be no drain through the bund floor or walls.
24. The construction of the development hereby permitted shall not commence until there has been submitted to and approved in writing by the County Planning Authority a Construction Management Plan. The plan shall include all construction and construction operative vehicular movements, construction operation hours, all construction vehicular routes to and from site, construction delivery hours, expected number of construction vehicles per day, car parking for contractors, specific measures to be adopted to mitigate construction impacts in pursuance of the Environmental Code of Construction Practice and a scheme to encourage the use of public transport amongst contractors. The development shall be carried out strictly in accordance with the approved Construction Management Plan.
25. Prior to the commencement of development, details of an air quality monitoring regime to track any changes in local nitrogen dioxide levels from the construction phase through to six month full operational status of the facility shall be submitted and agreed in writing by the County Planning Authority. The air quality monitoring shall be undertaken in accordance with the agreed scheme.

Noise

26. The noise levels arising from the development when measured at any noise sensitive property shall not exceed 55dB(A) L_{Aeq} over any one hour (free field) during the hours of 07:00 – 23:00 and 42dB(A) L_{Aeq} 1 hour (free field) during the hours of 23:00 – 07:00.
27. Measures shall be taken to ensure that the operations carried out on the site do not give rise to noise nuisance or disturbance in the locality. Such measures shall include:
 - a) the effective silencing and maintenance of all engines, exhausts, machinery, plant and equipment, whether fixed or mobile;
 - b) the location and organisation of on-site operations so as to minimise any noise impact on nearby properties;
 - c) the minimisation, so far as is practicably and legally possible, of the level and penetration of noise emissions from reversing warnings fitted to vehicles.

Lighting

28. Prior to the commencement of the development, a lighting scheme shall be submitted to and agreed in writing by the County Planning Authority. The Scheme shall include details of the location, height, design, sensors, hours of operation, luminance and intensity of light spread of all proposed lighting and a programme for its installation. The lighting shall be

designed to minimise the potential nuisance of light spillage to the locality, and shall be implemented in full accordance with the approved details.

29. Notwithstanding condition No. 28, no lighting source shall be directly visible (or visible by reflection) to trunk road users.

Hours of operation

30. No HGV shall enter or exit the site except between the hours of 06:00 to 22:00 Mondays to Fridays inclusive and between the hours of 07:30 and 16:00 on Saturdays. No HGV shall enter or leave the site on any Sunday or Public/Bank holiday.

Complaints

31. Following the receipt of any complaint about operations on site affecting neighbouring land users or the environment, the operator shall, within 24 hours, notify the County Planning Authority of the complaint, details of the investigation and if relevant, any mitigation measures taken.

Miscellaneous

32. The development shall not begin operating unless a route to the boundary of the site capable of accommodating pipework for heat off-take purposes has been identified and has been approved in writing by the County Planning Authority. The route shall thereafter be reserved for this purpose.
33. Prior to the commencement of any works on the site a badger survey shall be carried out by an appropriately licensed ecologist to determine whether a sett has been dug within 30 metres of the site to be developed. If the survey concludes that a sett is present then no works shall commence on the site until an appropriate licence has been granted by Natural England.

Reclamation

34. Within six months of the commencement of the development, a detailed scheme for the reclamation of the parts of the site outside the red line but within the blue line on plan No. NH2/2 shall be submitted to and approved in writing by the County Planning Authority. The reclamation scheme shall not include floating reed beds and shall be carried out in its entirety within one year of the County Planning Authority's written approval.

Aftercare

35. Following the reclamation of any part of the site in accordance with the agreed reclamation scheme, the reclaimed land shall be treated and managed over a period of five years in accordance with an aftercare scheme, which has previously been agreed in writing with the County Planning Authority. The agreed scheme shall provide a strategy for the five-year aftercare period and shall specify the steps that are to be taken in order to bring the newly restored land to the required standard for the approved biodiversity-led after-use. The scheme shall:
- a) be submitted for the written approval of the County Planning Authority within six months of the date of approval of the corresponding reclamation scheme submitted under condition no. 34 above.

- b) provide an outline strategy, having regard to the guidance contained in Mineral Planning Guidance Note 7 (MPG7) (or any superseding Government guidance on the reclamation of mineral sites) for the five-year aftercare period. This shall specify the steps to be taken and the period during which they are to be taken to return the land to beneficial use and shall provide for annual meetings between the operator, the County Planning Authority and other agencies as appropriate in respect of the restored areas of the site;
- c) provide for the annual submission and implementation of a detailed programme of aftercare works having regard to MPG7 (or any superseding Government guidance on the reclamation of mineral sites) and other relevant guidance regarding biodiversity action plan targets.

Waste Acceptance

- 36. No waste shall be accepted at the site other than in accordance with a Waste Acceptance scheme approved under the terms of the Environmental Permit issued (or thereafter amended) by the Environment Agency in consultation with the County Planning Authority.

Blasting

- 37. Every blast shall be designed with a 95% confidence level that ground vibration levels recorded at any vibration sensitive property arising from any blast shall not exceed a peak particle velocity of 6mm per second measured in any mutually perpendicular plane. No blast shall exceed a peak particle velocity of 12mm per second as measured at any vibration sensitive property.
- 38. Prior to the commencement of the development, a blast monitoring scheme shall be submitted to and agreed in writing by the County Planning Authority. The Scheme shall include details of:
 - a) blast monitoring at agreed locations including the use of permanent/fixed monitors to assess whether the limits specified in condition No. 37 have been complied with;
 - b) the type of monitoring equipment to be used;
 - c) presentation of blast design and monitoring results, including details of dates, times, prevailing weather conditions and comments on significant blast results;
 - d) maintenance and availability of monitoring results;
 - e) procedures to be implemented if blasting exceeds approved levels; and
 - f) a methodology to keep the scheme under regular review subject to written agreement with the County Solicitor.
- 39. Except in an emergency no secondary blasting shall be carried out without the prior written approval of the County Planning Authority. In emergency situations, the County Planning Authority shall be notified of operations within 24 hours.
- 40. Prior to the commencement of blasting operations details of the methods employed to minimise air overpressure from blasting operations shall be submitted to the County Planning Authority for approval. Each blast shall be undertaken in accordance with the approved scheme.
- 41. No blasting shall be undertaken on the site except between the hours of 10:00 and 16:00. No blasting shall be undertaken on any Saturday, Sunday or Public/Bank Holiday.

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, Queens 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 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

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. 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 under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: 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 report of the Inspector's report of the inquiry or hearing within 6 weeks of 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.



Report to the Secretary of State for Communities and Local Government

by P J Asquith MA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 9 February 2012

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY BIFFA WASTE SERVICES LIMITED

THE CONSTRUCTION AND OPERATION OF AN ENERGY RECOVERY FACILITY AND ANCILLARY FACILITIES AT NEWHURST QUARRY, ASHBY ROAD EAST, SHEPSHED, LEICESTERSHIRE, LE12 9BU

Inquiry opened on 8 November 2011

Newhurst Quarry, Ashby Road East, Shepshed, LE12 9BU

File Ref: APP/M2460/A/11/2150748

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File Ref: APP/M2460/A/11/2150748

Newhurst Quarry, Ashby Road East, Shepshed, Leicestershire, LE12 9BU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Biffa Waste Services Limited against the decision of Leicestershire County Council.
- The application Ref. 2009/2497/02 (2009/C166/02), dated 11 December 2009, was refused by notice dated 20 October 2010.
- The development proposed is described as the construction and operation of an Energy Recovery Facility (ERF) and ancillary facilities, comprising offices and welfare facilities, visitor centre, bottom ash recycling and maturation, access roads and weighbridge facilities, crew drop-off shelter, electrical compound, together with peripheral landscaping and security fence.

Summary of Recommendation: That the appeal be allowed and planning permission granted subject to conditions.

1. Procedural Matters

- 1.1. The Inquiry sat on the 8 to 11 and 15 to 18 November 2011 at Loughborough Town Hall. On 10 November an evening Inquiry session was held at Shepshed High School. This was to allow those who wished to speak and were unable to attend the main sessions to be heard.
- 1.2. The Inquiry was in connection with an appeal which has been recovered for determination by the Secretary of State by letter of 15 April 2011. The reason for recovery was that the appeal relates to proposals of major significance for the delivery of the Government's climate change programme and energy policies.
- 1.3. Before the opening of the Inquiry I made an accompanied familiarization visit to the appeal site particularly as the main body of the site is not visible from public vantage points. Following the close of the Inquiry a further accompanied visit was made to the site and surroundings and to a large number of surrounding viewpoints on 24 November. I had earlier made unaccompanied visits to other viewpoints within the area.¹
- 1.4. A Pre-inquiry meeting was held on 5 September in Shepshed to discuss the procedural arrangements for the Inquiry in order to ensure its smooth and efficient running².
- 1.5. Following Leicestershire County Council's (LCC³) refusal of permission, dialogue continued between it, the Appellant and statutory consultees, in particular with English Heritage (EH). A revised application followed, submitted on 26 April 2011. This was largely identical to the appeal scheme. However, in order to seek to address some of the Council's concerns the new application incorporated changes to some of the external materials and the colour scheme for the Energy Recovery Facility (ERF). Mitigation tree planting,

¹ An itinerary and route map is at Doc 33

² A note of the meeting is at Doc 34

³ A list of abbreviations used throughout is at Annex B

and funding for restoration work to two listed buildings in Garendon Park (the Triumphal Arch, listed Grade I and the Temple of Venus, listed Grade II*) were also offered through the mechanism of a Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990. Archaeological site investigations were carried out within Garendon Park to assess the potential impact of mitigation tree planting there. LCC is satisfied that if mitigation planting was undertaken it would not impact unacceptably on the archaeological integrity of Garendon Park. As a consequence, it does not now contest the fifth reason for refusal in respect of the appeal application⁴. The second application was refused on 13 October 2011⁵ for (save for minor changes to the wording of refusal reason 1) the same reasons applying to the appeal application and without the reason relating to archaeological investigation⁶.

1.6. The Appellant wishes the amendments contained within the second application relating to the materials for the ERF, the mitigation planting and financial contributions to the listed building restoration to be considered as part of this appeal. LCC has agreed to this approach. The changes have been fully consulted upon as part of the Council's consideration of the second application and it considers no interests would be prejudiced as a result. I have seen nothing to contradict this assessment and, in accordance with the principles established in *Bernard Wheatcroft Ltd v the Secretary of State for the Environment (43 P&CR 233, Forbes J)*⁷, I consider no substantial prejudice would arise from consideration of these amendments as part of this appeal.

1.7. An Environmental Statement (ES) under the Town and Country Planning (Environmental Assessment) (England and Wales) Regulations 1999, as amended, was submitted with the appeal application⁸. An Addendum to the ES was produced in conjunction with the second application⁹. This was to assess the changes that were incorporated into the second application. In addition, LCC requested further information comprising an assessment of the likely significant effects of Combined Heat and Power (CHP) connections from the proposed ERF in terms of the potential effects on the habitats of protected species, together with appropriate mitigation measures.

1.8. An Environmental Permit (EP) was determined by the Environment Agency (EA) on 8 June 2011¹⁰.

2. The Site and Surroundings

2.1. The appeal site of some 15.5ha forms part of the Charnwood Quarry complex which comprises two former hardstone quarries - Newhurst Quarry and Longcliffe Quarry¹¹. The complex is bisected by the M1 motorway, the larger

⁴ CD/C2 Addendum, CD/ B5, para 340 & WPA, para 2

⁵ The date on the decision notice, the application was considered by the Council on 10 October

⁶ CD/A6

⁷ WPA 9, para 4

⁸ CD/A2

⁹ CD/A4

¹⁰ CD/M1

¹¹ See SoCG (CD/C2), CD/A2, Section 2 and CD/B5, paras 11-14 Doc

Newhurst Quarry, the location of the site, lying to the immediate west of the motorway and to the south-west of its junction 23 with the A512. The site lies within a triangular area bounded by the M1, the A512 to the north and Ingleberry Road (B591) to the west and is approximately 5km to the west of Loughborough town centre and 1.5km to the south-east of the centre of Shepshed.

- 2.2. Quarrying has now ceased. The appeal site is broadly rectangular in shape. It incorporates land between the Newhurst Quarry void and the M1. The void, which is not part of the appeal site but is within the control of the Appellant, is now partially filled with water. The quarry is about 90m deep compared with the surrounding ground levels and has a series of steep terraced rock faces. The northern faces of the quarry are designated as a Site of Special Scientific Interest (SSSI) for their exposure of geological features. The former Longcliffe Quarry on the opposite side of the motorway is also not affected by the proposal.
- 2.3. To the immediate north-western side of the site are single-storey office buildings of Hanson Aggregates/Midland Quarry Products. Access from the site onto the A512 is also to the north-west alongside these. The site forms a plateau on which the former aggregate processing plant for the quarry was situated although the plant has now been removed. The former weighbridge close to the site entrance still exists.
- 2.4. A belt of predominantly deciduous woodland planting exists along the eastern and north-eastern edges of the site, established as quarry screening, whilst the southern and western edges are characterised by disused quarry workings and ancillary land. The land rises to the south as open countryside. The nearest residential properties to the site are farms and outlying properties along Ingleberry Road to the south-west, about 500m from the site. To the north and north-west, along the frontage to the A512, is a belt of industrial/commercial development including a Highways Agency depot, GLW Feeds, BOAL UK, a truck stop, Charnwood Brick and Meggitt Polymer Solutions. Beyond these, further to the north-west, are residential areas of Shepshed. To the east of the M1 and south of the A512 is open agricultural land which leads further to the east to the fringes of Loughborough and the Loughborough University campus. The grade II listed registered park and garden of Garendon Park lies to the east of the M1 and north of the A512.

3. Planning Policy

- 3.1. The Development Plan at the time of the Inquiry included Regional Spatial Strategy 8 (RS) The East Midlands Regional Plan (March 2009)¹², the Leicestershire and Rutland Waste Local Plan (LRWLP) (adopted September 2002), Leicestershire and Leicester Waste Development Framework Core Strategy and Development Control Policies (LLWDFCS) (adopted October 2009) and the Charnwood Borough Council Local Plan (CBLP) (adopted January 2004).
- 3.2. The following planning policies and policy documents and guidance were considered by the Appellant and LCC as relevant to the appeal.

¹² CD/D1

*LRWLP*¹³

- 3.3. Saved Policy WLP 7 sets out criteria against which all proposals for waste management development should take account. WLP 15, also saved, indicates that it is proposed to release land at Newhurst Quarry for the establishment of a new waste disposal site for industrial/commercial and household/civic amenity waste.

*LLWDFCS*¹⁴

- 3.4. The Council's reasons for refusal refer to Policies WCS10, WCS12, WDC2 and WDC5. WCS10 indicates that the strategy for environmental protection is to protect and enhance the natural and built environment of the framework area. This is to be achieved by ensuring that waste development has no unacceptable adverse impact on a range of specified matters including the character and quality of the landscape, historic and cultural features of acknowledged importance, and residential amenity. Policy WCS12 aims to ensure that waste development within or adjacent to Charnwood Forest (CF) minimises harm and development reflects and complements the character of the surrounding landscape.
- 3.5. Under Policy WDC2, planning permission will not be granted for waste management development that would have significant adverse effects on sites of national historic importance or on their character, appearance and/or setting of sites of national importance unless there are overriding reasons of national importance for development in that location which clearly outweigh its likely impacts. Permission for waste management development within the countryside will not be granted under Policy WDC5 unless it can be demonstrated that the development is such that it cannot be accommodated within urban areas, there is an overriding need for it and the landscape character of the area will not be harmed.
- 3.6. Other policies not referred to in the reasons for refusal but considered relevant include WCS2, 4, 6 and 14 and WDC1, 3, 8, 10 and 13.

*CBLP*¹⁵

- 3.7. The reasons for refusal refer to the following saved policies: Policy EV/1 seeks to ensure a high standard of design in all new development which should, amongst other matters, respect and enhance the local environment; Policy EV/9 states that planning permission will not be granted for development which would adversely affect the character or setting of parks and gardens of historic or landscape significance (which include Garendon Park); Policies CT/1 and CT/2 seek to strictly control development within defined areas of countryside and ensure that its character and appearance would not be harmed; and Policy CT/7, relating to defined Areas of Particularly Attractive Countryside (APACs) (within which the appeal site partially lies), is permissive of development providing it would not detract from the essentially undeveloped rural character of the landscape or diminish the visual amenities

¹³ CD/D3

¹⁴ CD/D4

¹⁵ CD/D5

afforded by important viewpoints by, amongst other matters, introducing prominent, visually obtrusive or incongruous elements.

- 3.8. Other policies not referred to within the reasons for refusal but considered relevant include saved Policies EV/2, EV/8 and EV/40. Charnwood Borough Council in its written submission¹⁶ refers also to saved Policy CT/20.

RS Policies

- 3.9. The Appellant has referred to the following RS policies as relevant to the proposals: Policy 1, sets out the regional core objectives, amongst which is the reduction of the causes of climate change by minimising emissions of CO₂; Policy 38, relates to regional priorities for waste management and which include promoting the treatment of waste higher up the waste hierarchy; and Policy 40 sets out regional priorities for low carbon energy generation, which include the promotion of Combined Heat and Power (CHP) infrastructure. The Council has also referred to Policy 31, which seeks to protect and enhance the region's natural and heritage landscapes. Policy SRS5 exhorts the promotion of the creation of a Sherwood Forest Regional Park.
- 3.10. Charnwood Borough Council refers also to RS Policies 26 and 30¹⁷. The former states that sustainable development should ensure the protection, appropriate management and enhancement of the region's natural and cultural heritage whilst the latter encourages statutory and voluntary bodies to deliver a significant increase in woodland cover in the East Midlands.

Emerging Policy

- 3.11. The Leicestershire and Leicester Waste Development Framework Site Allocations Development Plan Document (May 2011)¹⁸ was submitted to the Secretary of State in May 2011. Newhurst Quarry had been an allocated site in the Preferred Options document but within the submitted version has been removed as a preferred site. A Hearing into the plan has been held, the Appellant having made representations that the plan makes inadequate provision for the management of residual Commercial and Industrial (C&I) waste and that Newhurst should be allocated.

National Planning Policy

- 3.12. The following national policy and guidance has been referred to:
- UK Renewable Energy Roadmap, July 2011¹⁹
 - Planning Policy Statement (PPS) 1 – Delivering Sustainable Development²⁰
 - PPS1 Supplement – Planning and Climate Change²¹
 - PPS4 – Planning for Sustainable Economic Growth²²

¹⁶ Doc 22

¹⁷ Ibid

¹⁸ CD/D12

¹⁹ CD/H9

²⁰ CD/E1

²¹ CD/E2

PPS5 – Planning for the Historic Environment²³

PPS7 – Sustainable Development in Rural Areas²⁴

PPS9 - Biodiversity and Geological Conservation²⁵

PPS10 – Planning for Sustainable Waste Management²⁶

PPS22 – Renewable Energy²⁷

PPS23 – Planning and Pollution Control²⁸

Ministerial Statement by Rt Hon Greg Clarke MP, 23 March 2011 – Planning for Growth²⁹

Draft National Policy

Government Draft Presumption in Favour of Sustainable Development, 15 June 2011³⁰

Draft National Planning Policy Framework, July 2011³¹

Other Material Waste, Energy and Climate Change Policy

Waste Strategy for England 2007 and supporting annexes³²

Government Review of Waste Policy in England, June 2011³³

Anaerobic Digestion Strategy and Action Plan, June 2011³⁴

The UK Low Carbon Transition Plan (July 2009)³⁵

The UK Renewable Energy Strategy 2009³⁶

The East Midlands Energy Challenge³⁷

Overarching National Policy Statement for Energy (EN-1)³⁸

National Policy Statement for Renewable Energy Infrastructure (EN-3)³⁹

²² CD/E3

²³ CD/E4

²⁴ CD/E5

²⁵ CD/E6

²⁶ CD/E7

²⁷ CD/E8

²⁸ CD/E9

²⁹ CD/E11

³⁰ CD/E12

³¹ CD/E10

³² CD/F1

³³ CD/F2

³⁴ CD/F6

³⁵ CD/H4

³⁶ CD/H5

³⁷ CD/H6

³⁸ CD/H7

³⁹ CD/H8

4. Planning History

- 4.1. Quarrying has been undertaken at Newhurst Quarry since the 19th century although no extraction operations have taken place since about 2000, all processing equipment having been removed from the site. A stand-alone concrete batching plant at the south-eastern end of the quarry site and beyond the appeal site boundary was removed in 2010⁴⁰.
- 4.2. The Appellant secured an interest in the site in 2006 and made an application for an Integrated Waste Management Facility (IWMF) in June 2007 comprising front-end material recycling, composting and transfer with landfilling in the quarry. Planning permission was granted subject to the conclusion of a Section 106 Agreement and permission was issued in February 2009⁴¹. At the time of the Inquiry this permission had not been implemented. However, it was indicated on behalf of the Appellant that it was the intention that this would be done prior to the time-limiting condition of 13 February 2012 in order to keep the permission live in the event of the appeal for the ERF being refused; work on discharging the pre-commencement conditions imposed on the planning permission was in hand.

5. The Proposal⁴²

- 5.1. The application seeks permission for the erection of an ERF which would accept up to 300,000 tonnes per annum of non-hazardous residual waste derived from municipal and/or commercial and industrial sources within Leicestershire and, potentially, south Nottinghamshire and south Derbyshire. The proposal would comprise an energy from waste (EfW) plant. This would use highly-regulated technology to extract energy from waste through thermal treatment by combustion from residual waste that remains after materials suitable for recycling and composting have been removed. Enough heat would be produced to generate some 25 megawatts (MW) of electricity (though, of this, some 4MW would be used for powering the facility itself (the parasitic load), therefore allowing 21MW to be exported). Heat could also be exported off-site subject to the identification of suitable end users.
- 5.2. The appeal site is some 15.5ha within which the development footprint (i.e. excluding peripheral landscaping works) measures around 4.7ha whilst the footprint of the ERF building would occupy some 21,700m².
- 5.3. All the major elements associated with the ERF would be totally enclosed within the purpose-designed building. This would be some 240m in length, have a maximum width of some 70m, be roughly ovoid in shape and orientated along an approximate north-south axis within the site. There would be a curving roofline resulting in the height of the building varying

⁴⁰ BWS 1/2, para 5.1

⁴¹ A copy of the decision notice is at CD/06 and plans are at Doc 34

⁴² This section provides a brief summary of the proposals. Fuller descriptions can be found in CD/A1, Chapter 3, CD/A2, Chapter 3, CD/A4, Chapter 2, CD/B1, paras 13-72, CD/B5, paras 15-72 and CD/C2. Plans referenced NH3/1 – NH3/14 can be found in CD/A4

from around 14m to a maximum height of 47m⁴³. The facility would have two flue stacks to discharge treated flue gasses into the atmosphere. These would be located immediately adjacent to each other on the western side of the building and would be some 96.5m in height.

5.4. The building would include:

- a waste reception hall with storage bunker, shredder and waste feed system;
- boiler hall with grate, combustion chamber and a heat recovery boiler;
- turbine room with steam turbine for generating electricity;
- flue gas treatment hall with equipment to clean combustion gases;
- facility for discharging air pollution control residue silos and other ancillary equipment;
- the two flue stacks;
- air-cooled condensers for cooling and recycling steam from the generating process;
- ancillary areas, control room etc.

5.5. In addition to the above, there would be provision for staff and visitor facilities arranged over two floors and orientated at right angles to the main building.

5.6. The northern section of the building would be used solely for the maturation of Incinerator Bottom Ash (IBA). The area would be positively drained using concrete hardstanding, have concrete walls, partially open to allow light and natural ventilation to assist with the maturation process of the IBA, and would be roofed to prevent excessive rainwater entering the IBA lagoon.

5.7. The ES indicates that, given the size of the building, the aim is not to camouflage the structures but to integrate them with the surrounding landscape setting whilst at the same time celebrating the ERF's function. The building would be clad in a combination of metal and translucent materials. An alternative colour scheme and variations to the detailing of the cladding materials formed part of the revised second application made to the Council and which the Appellant wishes to be considered within the context of this appeal.

5.8. The site access would be via that existing off the A512 (Ashby Road East) and would incorporate highway improvements including a new signalised junction, realignment works, new left-turning lane and the movement of an existing bus stop⁴⁴. Within the site there would be access roads, a weighbridge and gate house, crew drop-off shelter and storage for the collection and recycling of rainwater runoff and its attenuation.

5.9. The margins of the ERF within the appeal site would be landscaped as a combination of rocky heathland/acid grassland and woodland/scrub edge to

⁴³ See drawings NH3/7- 3/10

⁴⁴ See CD A/4, drawing NH 3/13

complement the Charnwood Forest heath landscape. The existing tree belts to the north and east and the exposures of the geological SSSI within the quarry void would be retained. For the purposes of Environmental Impact Assessment it has been assumed that the quarry would be allowed to recharge and be restored in accordance with the permitted restoration scheme approved under the Environment Act 1995 review of planning permissions⁴⁵. Notwithstanding this, the eastern shoreline would be modified to accommodate volumes of surplus cut material and to create a new access track from the proposed car park adjacent to the ERF building to the lake.

- 5.10. In addition to the creation of heathland areas, appropriate management would be undertaken to develop areas towards a mosaic with semi-natural grassland.
- 5.11. In light of the potential impact upon the Garendon Park registered park and garden a package of mitigation planting works are proposed within the Park (and which would be secured by means of the proffered Unilateral Undertaking). These would seek to partially reinstate the radial avenues and other formal planting within the southern section of the Park around the listed White Lodge, Triumphal Arch and Temple of Venus. Between the formal avenues planted with limes a woodland pasture character of predominantly oak, birch, hawthorn and elm would be created, the whole scheme covering an area of about 30ha.

*Process description*⁴⁶

- 5.12. The operation of the ERF would consist of five key elements that would incorporate two production lines operating side-by-side:

Waste reception

- 5.13. Incoming waste brought by HGVs would discharge their loads into an enclosed tipping hall. A shredder would process bulky wastes and a waste storage bunker would provide at least five days of waste storage capacity at the normal rate of throughput. Waste would be loaded from the storage bunker into each combustion chamber via feed shutters and air locks.

Combustion

- 5.14. Each of the furnaces would be fitted with a reciprocating grate that transports, mixes and turns the waste as it passes through the furnace. During its passage through the furnace the waste would undergo drying, ignition, combustion and burnout. The burnt waste from primary combustion on the moving grate would be removed as IBA. Once primary combustion has taken place and volatile gases generated, complete combustion of these gases would take place in the upper sections of the furnace.

Energy Recovery

- 5.15. Heat from combustion of the waste is recovered using a heat recovery boiler to form steam. The high pressure steam produced drives a steam turbo-

⁴⁵ See SoCG para 4.2, (CD/C2)

⁴⁶ A schematic diagram of the process is at Fig 3-6 within CD/A2

generator to provide electricity. The electrical power generated, minus the parasitic load used within the facility itself, would be exported to the National Grid via underground cables. The power generation and auxiliary equipment would be able to extract further energy from the partially cooled steam or hot water after it has been through the turbines. The waste heat would be recovered as hot water, low pressure steam or as high pressure steam, depending on the end-use requirements.

Flue Gas Treatment

- 5.16. An air pollution control (APC) would treat all flue gas prior to release to the atmosphere to ensure that emissions meet European Union Waste Incineration Directive (2000/76/EC) (WID) standards⁴⁷. The treatment would be designed to control the release of nitrogen oxide gases, dioxins, furans and gaseous mercury through the use of neutralising agents. The exhaust gases would then be filtered to trap fine particulate matter through bag-type filters and APC residues which would be collected in enclosed silos. The cleaned gases would then pass to the atmosphere via the twin flue stacks, one to serve each process line, and the emissions continuously monitored.

Residue Handling

- 5.17. Three main solid waste residues would be generated: IBA; APC residues (including boiler ash or fly ash); and metals.

IBA

- 5.18. This amounts to about 25% of the waste imported to the ERF. IBA is cooled and then matured in the northern section of the ERF. It can be used in concrete and concrete block construction, replacing up to 50% of aggregates traditionally used, and has been used in road construction.

Fly Ash and APC residues

- 5.19. These are residues removed from the flue gases, together with other contaminants and represent about 3% by mass of the waste feedstock. Because of their high PH content they are classified as a hazardous waste and would therefore be contained in enclosed silos or bags before removal off site in enclosed tankers to hazardous waste landfill.

Metal Recovery

- 5.20. Following combustion of the wastes, metals are separated from the IBA by electromagnetic separators for ferrous metals and would comprise typically about 2% to 5% of the waste feedstock.

Operating Hours

- 5.21. The facility would operate on a continuous basis, 24 hours a day, 365 days a year. Waste delivery to the facility would occur between 06.00 and 20.00 Mondays to Fridays and 07.30 to 16.00 on Saturdays. There would be no deliveries on Sundays or Bank Holidays. The operating hours would be the

⁴⁷ CD/G3

same as those for the Integrated Waste Management Facility for which extant planning permission exists.

Transport

- 5.22. The ES indicates that the facility would generate on average 146 HGV movements a day. The extant permission for the IWMF on the site sets a daily limit of 286 vehicle movements per day. The proffered Unilateral Undertaking sets out a routeing arrangement which would preclude HGV movements through Shepshed.

Employment

- 5.23. It is estimated that the construction of the facility would provide employment for about 200 and, when operational, some 38 to 40 on a shift basis.

6. Other Agreed Matters

Statement of Common Ground and its Addendum⁴⁸

- 6.1. The SoCG covers areas of agreement between LCC and the Appellant relating to site description, description of the proposed development, planning history, policy, the development plan and main issues. It is agreed that the potential impact of traffic has been addressed properly and that the proposal is acceptable in highway terms.
- 6.2. There is agreement that issues of emissions, air quality and health impacts should be controlled primarily by conditions of the already-approved Environmental Permit (EP) and, where relevant, planning conditions in the event of permission being granted; for the purposes of the application and appeal the issue has been properly addressed and the scheme would not result in an unacceptable impact in respect of these matters.
- 6.3. Subject to proposed mitigation measures being implemented in full, noise from the plant could be adequately controlled through conditions and it is agreed that no unacceptable impact would result.
- 6.4. It is agreed that control of potential impacts on geology, hydrogeology and hydrology should be controlled via conditions of the EP and planning conditions, these matters have been properly addressed and no adverse impacts would result.
- 6.5. Subject to suitable conditions relating to the protection of protected species there is agreement that there would be no adverse impact on flora and fauna.
- 6.6. It is agreed that the potential impact of the proposal on climate change has been appropriately addressed and that the chosen technology is unlikely to have a significant impact on climate change.

⁴⁸ CD/C2

- 6.7. The Addendum confirms that the Appellant's completion of archaeological works at Garendon Park satisfies LCC that the proposed mitigation planting would not unacceptably impact on the Park's archaeological integrity. As such, the Council does not contest refusal reason No. 5 on the decision notice.

7. The Case for the Appellant (Biffa Waste Service Ltd)

Introduction

- 7.1. The main issue between the Appellant and LCC identified by the Inspector in opening the Inquiry was: the impact of the development on the appearance and character of the surrounding area, on the character and setting of Garendon Park (the Park), a designated Grade II listed historic park and garden, and on the setting of Grade I, II* and II listed buildings and whether any harm to those heritage assets is outweighed by the benefits of the scheme. Mr Noakes for LCC was clear in cross-examination (XX): if the Secretary of State does not accept the Council's case on landscape and cultural heritage there would be no reason to withhold planning permission. This main issue is addressed in dealing with refusal reasons 1 – 3 under the heading 'landscape and visual impact' and refusal reasons 4 and 6 under the heading 'cultural heritage'.
- 7.2. Whilst not in issue between the main parties, third parties have raised a number of further matters including the impact of the development on:
- Air quality and health
 - Energy efficiency
 - Transport and highways
 - Restoration of the quarry
- 7.3. These issues are addressed in a separate section on third parties, save for energy efficiency, which is considered in the context of the policy support for this form of development and which is firstly addressed below.

National waste, energy and climate change policies

- 7.4. As an introduction to this topic, LCC accepts that the appeal proposal would comply with national waste policy contained in PPS10 and the Waste Strategy for England 2007 (WS2007)⁴⁹ as well as the main strategic policies of the Development Plan relating to the location of waste management facilities.
- 7.5. EfW facilities address three distinct but interrelated strands of Government policy none of which should be ignored or considered in isolation: namely, waste, energy and climate change. It would be wrong, for example, to focus

⁴⁹ LCC 3/1, para 8.2.7

on waste policy to the exclusion of policies on energy and climate change. The Government's Review of Waste Policy makes it plain that waste management policy falls within the wider energy policy context.⁵⁰ Similarly, the WS2007 emphasises that recovering energy from waste which cannot be sensibly reused or recycled is an essential component of a well-balanced energy policy and underlines the importance of maximising energy recovery from the portion of waste which cannot be recycled.⁵¹ Given the fundamental importance of sustainable development, it is energy and climate change policies which, if anything, should take precedence over waste policy should there be any conflict arising between these different strands (after all, addressing climate change is the Government's principal concern for sustainable development)⁵². There is, however, no conflict at all.

Waste

- 7.6. The Government recognises that in order to achieve its key waste planning objectives a step change in the way waste is handled will be required as well as significant new investment in waste management facilities.⁵³ Those key waste planning objectives include: to meet and exceed the diversion targets in the Landfill Directive (the key driver of national waste policy) for biodegradable municipal waste in 2010, 2013 and 2020 and to increase diversion from landfill of non-municipal waste and secure better integration of treatment for municipal and non-municipal waste; to secure the necessary investment in infrastructure needed to divert waste from landfill and for the management of waste; and to get the most environmental benefit from that investment, through increased recycling of resources and recovery of energy from residual waste using a mix of technologies.⁵⁴ The Government will ensure that the market demands these new waste management facilities by, inter alia, increasing Landfill Tax.⁵⁵

⁵⁰ (As does the WS2007 (CD/F1, p76, para 18)) CD/F2, para 33

⁵¹ CD/F1, para 76. The advice to maximise opportunities for renewable and low-carbon sources of energy supply is reiterated in the PPS1 Supplement, Planning for Climate Change CD/E2, p13. Paragraph 40 of that document goes further and states that an application for a development which will make a contribution to the delivery of, amongst other things, the Government's Climate Change Programme and energy policies "should expect expeditious and sympathetic handling of the planning application"

⁵² CD/E2, para 3

⁵³ CD/E7, para 1

⁵⁴ CD/F1, para 23

⁵⁵ Landfill Tax for MSW and C&I waste is currently £48 per tonne and will raise by £8 per tonne per year, reaching £80 per tonne by 2014

- 7.7. The Government Review of Waste Policy in England 2011⁵⁶ (WPR2011) announced the Government's objective for a zero waste economy in which material resources are re-used, recycled or recovered wherever possible, and only disposed of as the option of very last resort. Zero waste does not mean that no waste is produced. Rather it means that only the minimal amount of waste possible is sent to landfill such that it is truly a last resort.⁵⁷ Mr Noakes agreed in XX that Government policy did not distinguish between MSW and C&I. He was right to do so: it is a key objective of WS2007 to secure the better integration of treatment of both,⁵⁸ Landfill Tax does not discriminate between the two and neither does the WPR2011 when it states that sending any waste to landfill which could have been recovered is "clearly wrong."⁵⁹
- 7.8. It is not altogether clear from Mr Noakes's evidence that the Council understands this or the objective to meet and exceed diversion targets.⁶⁰ The Council's approach appears to be aimed only at meeting landfill diversion targets and then continuing to landfill prodigious quantities of waste rather than seeking to maximise landfill diversion in accordance with the waste hierarchy. Such an approach is contrary to the whole thrust of national policy and the relevant legal requirements. Indeed, Members were advised that there is no legal obligation on waste planning authorities to maximise landfill diversion.⁶¹ That advice was plainly wrong as was demonstrated in XX of Mr Noakes when he was taken through the Waste Framework Directive and the Waste (England and Wales) Regulations 2011 (which transpose this into UK law) and which contain the clearest obligation on both plan-making bodies and waste handlers and producers to apply the waste hierarchy as a priority order. It is only where none of the options above disposal are available that landfill should be contemplated. Policy is clear that this remainder is expected to be a small amount.⁶²

⁵⁶ This forms alongside the WS2007, PPS10 and waste local plans and Development Plan documents the Waste Management Plan for England as required by Article 28 of the EU Framework Directive on Waste (CD/G1). It is the Government's intention to review all these national documents and release a consolidated National Waste Management Plan in 2012. The Council questioned the status of the Review of Waste Policy in England 2011 (CD/F2): it is, however, the most up-to-date statement of Government policy (Nicky Morgan MP was clearly happy that it expressed current policy, oral evidence). Moreover, it contains commitments (see the forward and para 275 and the Department of Energy and Climate Change (DECC) interpreting the Review in the same way (UK Renewables Roadmap para 3.146 (CD/H9) (see also para 3.148 which refers to actions outlined in Review of Waste Policy) and states in terms "*the analysis we have undertaken across the breadth of policies will now guide the decisions and actions of this Government*" (para 275)

⁵⁷ Nicky Morgan MP was out of touch with Government policy when she suggested that "zero waste economy" meant simply "zero waste". John Leeson explained that it was Caroline Spellman who first coined the phrase. The terms of reference for the Review were published shortly after the coalition took office (CD/F4). That document is also clear that a zero waste economy means zero waste to landfill. The Review reflects the same meaning: see para 240

⁵⁸ CD/F1, p11

⁵⁹ CD/F2, para 240

⁶⁰ See the comments of the Inspector at Ardley Landfill Site, Oxfordshire Inquiry report: CD/N2, paras 1680 and 1681

⁶¹ See CD/B5, para 311, LCC3/1, para 9.3.6 and LCC3/3, para 4.6

⁶² See CD/F1, p9, CD/J19, p5

- 7.9. Consequently, there should be no suggestion that it is acceptable to carry on landfilling in the prodigious quantities envisaged by the Council. However, Mr Noakes did suggest in written evidence that diversion of waste from landfills should not be *"at the expense of leaving permitted landfill sites unrestored"*⁶³ and, of course, there are numerous quarries in Leicestershire, as dealt with comprehensively in Mr Leeson's rebuttal evidence.⁶⁴
- 7.10. However, it is not necessary to address this matter in detail, given: first, the clear legal imperative to drive the treatment of waste up the hierarchy; secondly, Mr Noakes's agreement in XX that there are other ways to restore quarries, that it is not necessary to restore a quarry to its original levels and that, in any event, there are still significant amounts of inert waste that could be used if such a restoration was desirable. Moreover, he confirmed that the Council has not carried out any lifecycle analysis to support any scenario of continued landfilling. There is, therefore, no justification for the Council to give any priority to continued landfilling over EfW; to the contrary, there is a legal obligation to prefer EfW to landfilling and so it is entirely misconceived for LCC to claim there is sufficient capacity to manage waste in the framework area on account of the very large landfill capacity there. Mr Leeson demonstrated the need for additional recovery capacity in the waste planning area is clear and urgent. This is addressed in further detail below.
- 7.11. Whilst all three strands of Government policy are neutral on technology choice,⁶⁵ the WPR2011 provides explicit policy support for the provision of EfW facilities. It expressly recognizes the environmental and economic benefits of recovering energy from residual waste and makes it clear that there is considerable scope for additional EfW capacity to be provided:

*"Our horizon scanning work up to 2020 and beyond to 2030 and 2050 indicates that even with the expected improvements in prevention, re-use and recycling, sufficient residual waste feedstock will be available through diversion from landfill to support significant growth in this area, without conflicting the drive to move waste further up the hierarchy."*⁶⁶

⁶³ LCC3/1, para 9.4.4

⁶⁴ BWS/5/3, p7-9

⁶⁵ Neither waste nor energy policy require a consideration of the advantages of one technology over the other (see WS2007, CD/F1, p79, para 27). In the case of energy policy there is a fundamental reason not to do so: to ensure that there is a security of supply through a diverse range of technologies. See CD/H7, para 3.3.5 (EN-1) which provides: *"There are likely to be advantages to the UK of maintaining a diverse range of energy sources so that we are not overly reliant on any one technology (avoiding dependency on a particular fuel or technology type)."* Also at para 3.1.2: *"The Government does not consider it appropriate for planning policy to set targets or limits on different technology."* Of course, as Mr Noakes confirmed in XX, the Council takes no point on alternative technologies

⁶⁶ CD/F2, para 214. This is consistent with the message in EN-3 which states that the recovery of energy from the combustion of waste, where in accordance with the waste hierarchy, will play an increasingly important role in meeting the UK's energy needs (CD/H8, para 2.5.2, and see also para 3.3.10)

- 7.12. Indeed, the scale of waste-derived renewable energy from thermal combustion envisaged in the WPR2011 is vast: it envisages a threefold increase by 2020.⁶⁷ As both PPS10 and WS2007 recognise, the planning system is pivotal to the adequate and timely provision of new waste management facilities.⁶⁸ If that is ever to be delivered, having regard to the lead time for these type of facilities, planning permissions need to be granted and now. The UK Renewable Energy Roadmap sets out a series of actions, timetables and targets for renewable energy generation. It deals at length with EfW and explains that the explicit statement of the Government's commitment to EfW in the WPR2011 is as a result of the difficulties that industry has experienced in gaining consents.⁶⁹
- 7.13. The reasons why the Government is so supportive of EfW are clear and are in part precisely because EfW reaches beyond mere waste management and addresses energy and climate change which is turned to below:

*"The benefits of recovery include preventing some of the negative greenhouse gas impacts of waste in landfill. Preventing these emissions offers a considerable climate change benefit, with the energy generated from the biodegradable fraction of this waste also offsetting fossil fuel power generation, and contributing towards our renewable energy targets. Even energy from the non-biodegradable component, whilst suffering from the negative climate impacts of other fossil fuels, has additional advantages in terms of providing comparative fuel security, provided it can be recovered efficiently."*⁷⁰

Energy

- 7.14. Perhaps the starting point is that Mr Noakes agreed Mr Lowden's evidence on climate change and renewable energy policy (subject to his views on the weight to be ascribed to the National Policy Statements).⁷¹ There can be no doubt that the appeal scheme would make a significant contribution to the similarly pressing need for renewable and low carbon energy.⁷² The UK is

⁶⁷ CD/F2, para 215

⁶⁸ See, for example, CD/E5, para 1. EN-1 makes the related point in the context of energy generating infrastructure that there is a requirement for substantial and timely private sector investment, which is precisely what the Appellant seeks to deliver (CD/H7, para 2.2.25)

⁶⁹ CD/H9, paras 3.142-3.146

⁷⁰ CD/F2, para 208

⁷¹ Specifically, he does not dispute the contents of BWS/2/1, pp29 – 46. As to the applicability of the National Policy Statements to this scheme, EN-1 specifically says it is a material consideration (CD/H7, para 1.2.1) and refers to the need for both small- and large-scale generators of renewable energy (para 2.1.2) and, as Mr Noakes admitted, he cannot support his suggestion that the weight to be applied to the policy in the National Policy Statements should be proportionate to the size of the facility proposed. Further, he could not provide any reason whatsoever that it should not be applied with full vigour

⁷² Energy efficiency: EfW is both renewable and low carbon energy. There is no dispute between the Council and the Appellant that the energy produced from the biomass fraction of the waste feedstock would be renewable and the remainder low carbon. Mr Noakes confirmed this in XX. However, there has been some suggestion from third parties that the scheme would not produce renewable energy. This is wrong. Article 2 of the EU Directive 2009/28/EC

committed to a target of producing 15% of its total energy from renewable sources by 2020.⁷³ Mr Noakes, fairly, acknowledges that the proposed facility would contribute towards meeting this target and said that significant weight should be afforded to this contribution.⁷⁴ The Regional Strategy records that, at present, renewable energy makes a minor contribution to the region's capacity and that the East Midlands lags behind other English regions. What APP/3-2⁷⁵ demonstrates is that this proposal would produce more power than all the consented wind farms and sewage gas generating schemes in the County and considerably more than all the landfill gas generating stations.

- 7.15. The unremitting message from the Government is one of urgency: the Energy White Paper seeks to provide a positive policy framework to facilitate and support investment in renewable energy;⁷⁶ the aim of the UK Renewable Energy Strategy is *radically* to increase the use of renewable energy;⁷⁷ and the UK Low Carbon Transition Plan records that the *scale of change* we need in our energy system is *unparalleled*.⁷⁸ The draft NPPF also stresses the *urgent need* to restructure the economy to meet the twin

(CD/G8) on the promotion of the use of energy from renewable sources defines "energy from renewable sources" as meaning "... *energy from renewable non-fossil sources, namely wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases*". "Biomass" is in turn defined as meaning "... *the biodegradable fraction of products, waste and residues from biological origin from agriculture (including vegetal and animal substances), forestry and related industries including fisheries and aquaculture, as well as the biodegradable fraction of industrial and municipal waste*". So, the biomass fraction of industrial and municipal wastes is a source of renewable energy. The PPS1 supplement on planning and climate change also defines EfW as a renewable energy supply, stating: "*Renewable and low-carbon energy: includes energy for heating and cooling as well as generating electricity. Renewable energy covers those energy flows that occur naturally and repeatedly in the environment – from the wind, the fall of water, the movement of the oceans, from the sun and also from biomass. Low-carbon technologies are those that can help reduce carbon emissions. Renewable and/or low-carbon energy supplies include, but not exclusively, those from biomass and energy crops; CHP/CCHP (and micro-CHP); waste heat that would otherwise be generated directly or indirectly from fossil fuel; energy-from-waste; ground source heating and cooling; hydro; solar thermal and photovoltaic generation; wind generation*" (CD/E2, p6). It follows that EfW infrastructure provides a supply of renewable energy which is realised through the use of fuel from a renewable energy source (i.e. the biodegradable fraction). The distinction between source and supply allows recognition of the renewable energy benefits of EfW, and its encouragement, whilst avoiding at the same time promoting the combustion in EfW power stations of fossil fuel-derived wastes. The biomass fraction of MSW is up to 68% of the feedstock. The remainder of the energy produced in the EfW is low carbon energy

⁷³ CD/H7, para 3.4.1

⁷⁴ Reflecting the advice in the CEO's Report to Committee of October 2010, CD/B1, para 311

⁷⁵ An agreed note between the Council and the Appellant

⁷⁶ CD/H1, para 5.3.67 is important as it provides, amongst other things: (1) applicants will no longer have to demonstrate need for renewable energy or for the particular proposal to be sited in a particular location; (2) that planners should create an attractive environment for innovation and in which the private sector can bring forward investment in renewable and low carbon technologies; and (3) give a clear steer to decision-makers that in considering applications they should look favourably on renewable energy developments

⁷⁷ CD/H5, Summary

⁷⁸ CD/H4, p36

challenges of global competition and a low carbon future⁷⁹ and seeks to support the delivery of renewable and low carbon energy by, inter alia: requiring local planning authorities to design their policies to maximise renewable and low carbon energy development while ensuring that adverse impacts are addressed satisfactorily⁸⁰; and by directing them to apply the presumption in favour of sustainable development when determining planning applications as well as not to require applicants for energy development to demonstrate need.⁸¹ In short, the exhortation to industry is to provide as much renewable energy capacity as swiftly as possible. It is absolutely clear Government policy requires that significant weight should be given to a proposal's provision of renewable energy. As a result, it should be no surprise that the Energy White Paper makes it clear that local authorities should look favourably upon planning applications for renewable energy developments.⁸² It provides:

*"New renewable projects may not always appear to convey any particular local benefit, but they provide crucial national benefits. Individual renewable projects are part of a growing proportion of low carbon generation that provides benefits shared by all communities both through reduced emissions and more diverse supplies of energy, which helps the reliability of our supplies. This factor is a material consideration to which all participants in the planning system should give significant weight (emphasis added) when considering renewable proposals. These wider benefits are not always immediately visible to the specific locality in which the project is sited. However, the benefits to society and the wider economy as a whole are significant and this must be reflected in the weight given to these considerations by decision makers in reaching their decisions."*⁸³

- 7.16. When taken to the Regional Strategy, Mr Noakes *agreed* that there was an urgent need for the provision of additional sources of supply of renewable energy if targets are to be met in the region. The purpose behind the plan produced by the Council showing the location of landfill gas, wind turbines, energy recovery facilities etc. (WPA 3) was, therefore, curious. If it was to suggest in any way that the appeal proposal would have a negative effect on renewable energy generation in the region by displacing renewable energy generated from landfill then it betrays a lack of understanding of the relative benefits of landfill gas and EfW.
- 7.17. First, as Mr Noakes agreed, approximately 20% of the methane generated from landfill escapes even the best capture systems. As Mr Leeson explained, methane is approximately 21 times more pernicious a greenhouse gas than CO₂. Secondly, landfill gas is not harvested straightaway but takes a significant period to build up. Thirdly, landfill gas is

⁷⁹ CD/E10, para 71

⁸⁰ Ibid, para 152

⁸¹ Ibid, para 153

⁸² CD/H1, para 5.3.67

⁸³ CD/H1, pp157 & 158, Box 5.3.3 Renewables Statement of Need

grossly less efficient than EfW. As Mr Leeson explained, the same 300,000 tonnes of waste per annum would produce 2MW after several years (perhaps up to ten years) in landfill (thereafter the gas produced declines 50% every 7 years) compared with 21MW net per annum delivered from year one through EfW. Therefore, whilst landfill does produce power, it is a hugely inferior way to do so (Mr Noakes's words) both in environmental and efficiency terms. As to the former, Mr Leeson explained that 90% of the waste industry's greenhouse gas emissions come from landfill. Mr Noakes was plainly right, therefore, to agree that there was no basis whatsoever for preferring landfill over recovery at the proposed facility.

CHP

- 7.18. As stated in WS2007, particular attention should be given to siting the plant where it could maximise the opportunity for CHP.⁸⁴ Paragraph 27 of PPS1 Supplement on Planning and Climate Change (PPS1 CCS)⁸⁵ provides that planning authorities should pay particular attention to fostering the development of new opportunities to supply proposed and existing development with renewable and low carbon energy. Such opportunities could include co-locating potential heat customers and heat suppliers and, as Mrs Tappenden said in evidence, the appeal site is ideally located in this regard in the Shepshed industrial strip. Indeed, the Appellant already has two firm expressions of interest in CHP (from Meggitt⁸⁶ and GLW Feeds⁸⁷). Both have a high and constant heat demand – precisely the characteristics of heat use well suited for CHP. Meggitt also propose to build a new facility near the appeal site which could be supplied with CHP from the start, avoiding the more expensive process of retrofitting.
- 7.19. Meggitt further advise that cheaper heat will permit it to be more competitive and so potentially win more work thus providing further jobs in the locality. If GLW Feeds takes CHP from the plant, it would be able to cease using its coal-fired boiler with significant environmental benefits. It is clear from comments made at the Inquiry evening session that the current emissions from the GLW Feeds coal boiler concern third parties. Mrs Tappenden also explained that there has been a further expression of interest from BOAL – another suitable heat user – but that company has asked the Appellant to resume discussions if and when it gains a planning permission (precisely the situation envisaged by the WPR, which highlights the potential difficulty in securing customers in advance of construction of the plant).⁸⁸ Significant weight should therefore be given to the excellent CHP potential of the appeal scheme.
- 7.20. There are further and significant economic benefits such as: cost savings on waste management; reduced fuel costs; and the ability to supply all the

⁸⁴ See CD/F1, p79, para 28 and EN-1, CD/H7, paras 4.6.3 and 4.6.5

⁸⁵ See also para 20, 4th bullet of the same document (CD/E2)

⁸⁶ BWS1/2, Appx BWS1/1/C in which Meggitt explain that it is a large manufacturer and employer with an electricity usage of 9815167KW per annum on its existing Ashby Road site alone. The new site which it is also to occupy at Ingleberry Road is likely to have similar usage)

⁸⁷ APP/4

⁸⁸ CD/F2, para 237

advantages of CHP.⁸⁹ Particular economic benefits flow from the recovery of energy: energy recovery provides security of supply utilising home-grown, *dependable* residual waste thereby lessening dependence on insecure foreign imports of energy; EfW is *diversified* energy in accordance with Government policy to have a wide range of different energy generators and move away from the concentration on coal, gas and nuclear energy; EfW plants represent a dispersal of generating stations, known as *distributed* energy, and lessen the dependence on a small number of very large centralised plants; and the energy produced in EfW plants is not intermittent in nature and subject to the vagaries of the weather like most other renewable energy but is, in modern parlance, *dispatchable*. It is energy that meets what could be described as the four 'Ds': that is, such energy would be dependable, diversified, distributed and dispatchable.

Climate change

- 7.21. PPS1 CCS sets out the Government's belief that climate change is the greatest long-term challenge facing the world today and that addressing climate change is the Government's principal concern for sustainable development.⁹⁰ It further highlights the importance of planning as a delivery mechanism, the urgent need for action on climate change⁹¹ and sets a number of key planning objectives.⁹² Mr Noakes agreed that climate change could hardly be given greater weight in Government policy. The importance of climate change is reflected in the stiff carbon saving targets: the Government aims to cut carbon dioxide emissions by 60% by 2050 and make 'real progress' towards that target by 2020.
- 7.22. Of course, climate change must be approached in tandem with energy policy for energy policy is central to tackling climate change. PPS1 CCS expressly states that policies and priorities on climate change are set out, inter alia, in the Energy White Paper. The White Paper itself states that renewables are key to the strategy for tackling climate change. PPS22 makes a similar point:

"The development of renewable energy, alongside improvements in energy efficiency and the development of combined heat and power, will make a vital contribution to these aims

...

*Increased development of renewable energy resources is vital to facilitating the delivery of the Government's commitments on both climate change and renewable energy. Positive planning which facilitates renewable energy developments can contribute to all four elements of the Government's sustainable development strategy."*⁹³

⁸⁹ CD/F2, para 236

⁹⁰ CD/E2, para 3

⁹¹ Ibid, para 6

⁹² Ibid, para 9

⁹³ CD/E8, p6

7.23. The Secretary of State has recovered jurisdiction for taking the decision in this appeal because he regards the proposed project to be of major significance for the delivery of the Government's climate change programme and energy policies. In the circumstances, it is surprising that the Council has not properly dealt with climate change in considering this application and appeal and, in particular, how climate change policies interact with the issues and policies on which the Council's opposition to this proposal rests. It is instructive to measure the proposal against the key planning objectives set out in the PPS1 CCS. Mr Noakes agreed that the proposal would contribute to all of the relevant key planning objectives. It was regrettable, therefore, that Council Members were not informed about the merits of the proposal in this regard in the relevant reports to committee (nor did the key planning objectives feature in Mr Noakes's evidence). The decision of Mr Noakes not to give any evidence on climate change when it was a principal reason for the Secretary of State's intervention in the decision-making process looks decidedly odd, if not bizarre. The proposal would, as Mr Noakes conceded, contribute to the key planning objectives in that it would:

- i) Make a significant contribution to delivering the Government's Climate Change Programme and energy policies and in doing so contribute to global sustainability.⁹⁴ The Appellant's Waste and Resources Assessment Tool for the Environment (WRATE) assessment demonstrates the very significant climate change benefits that the project would achieve as compared with landfilling the waste as its feedstock. The WRATE analysis is unchallenged and, in particular, Mr Noakes confirmed his acceptance that the appeal proposal (operating without CHP (which would, of course, deliver further benefits)) would result in a net carbon benefit of some 87,000 tonnes of CO_{2e} per annum.⁹⁵ That is a huge (or, as Mr Noakes agreed, "humungous" and "very, very significant") saving. To put it in context, LCC's own carbon footprint in 2010/11 was 80,217 tonnes CO_{2e}.⁹⁶ The Council is the largest employer in the County. It also demonstrates that the appeal proposal is the *best overall environmental outcome* that EU Member States are required to encourage.⁹⁷
- ii) Provide jobs, services and infrastructure needed in this area and secure the highest viable resource, energy efficiency and reduction in emissions. The appeal proposal would not only provide direct jobs but construction and indirect jobs, as well as potentially supporting employers in the area through reduced waste costs and as a potential source of cheaper and more secure power;⁹⁸
- iii) Help provide resilience to climate change by driving down the carbon impact of waste management in the area and thereby help to reduce vulnerability to climate change;⁹⁹

⁹⁴ CD/E2, para 9, 1st key planning objective

⁹⁵ CD/A2, Tab.14/1, p3

⁹⁶ CD/D17A, p6

⁹⁷ CD/G1, Art.4(2)

⁹⁸ CD/E2, para 9, 2nd key planning objective

⁹⁹ CD/E2, para 9, 4th key planning objective

- iv) Cause no significant or unacceptable impacts on ecology and biodiversity as demonstrated by the ES and the grant of the Environmental Permit;¹⁰⁰
 - v) Plainly reflect the development needs and interests of the County and would help the County contribute to tackling climate change through the provisions of renewable energy and by enabling diversion from landfill;¹⁰¹ and
 - vi) Induce competitiveness by providing recovery capacity at a competitive gate fee which would encourage businesses to recover waste and only dispose of it as a last resort and by providing a cheap and secure supply of renewable energy to local businesses which would underpin their competitiveness in a wholly sustainable manner, thereby mitigating and adapting to climate change.
- 7.24. In addition, Mr Noakes agreed that the proposal complies with the decision-making principles set out at paragraph 10 of the PPS1 CCS.
- 7.25. Any conflict with other national policy should be resolved in favour of the PPS1 CCS.¹⁰² This proposal demonstrably complies with all the relevant key objectives in PPS1 CCS. That should be of no surprise given the clear conclusions of the WRATE analysis.

Conclusions

- 7.26. The appeal proposal positively addresses three global policy aims and the urgent need for infrastructure to achieve them: first, the provision of urgently needed waste management capacity critical for the diversion of Leicestershire's waste from landfill; secondly, providing much needed renewable and low carbon energy with potential exploitation of CHP, thereby increasing energy security and contributing to renewable energy targets; and, thirdly, reducing the carbon dioxide that would otherwise be emitted to generate energy and displacing the harmful methane emissions that arise from landfilling.

Need

- 7.27. It is important to note that there is no reason for refusal in relation to need.¹⁰³ The topic arises only in the context of the balancing exercise. Of

¹⁰⁰ CD/E2, para 9, 5th key planning objective

¹⁰¹ CD/E2, para 9, 6th key planning objective

¹⁰² CD/E2, p1

¹⁰³ All three distinct policy strands make it clear that there is no requirement to demonstrate need. Paragraph 22 of PPS10 (CD/E7) makes it clear that there is no requirement to demonstrate a quantitative or market need for the proposal where proposals are consistent with an up-to-date development plan (note, it does not say that proposals must show need where in conflict with the development plan). PPS1 CCS emphasises that applicants for energy development are not required to demonstrate overall need (CD/E2, para 20). EN-1 provides that applications for energy infrastructure should be assessed on the basis that the need for those types of infrastructure has been demonstrated by the Government and that the need for renewable electricity generation is urgent (CD/H7, paras 3.1.3 and 3.4.5). Indeed, there is no limit on energy generation – the policy thrust is clear: it is as much as possible and as soon as possible. Numerous Secretary of State appeal decisions reflect this position: the Inspector at the Eastcroft appeal concluded that the need argument raised

course, meeting what Mr Leeson describes as a clear and urgent need for this facility would be a real benefit.¹⁰⁴ The Council does not argue with that proposition. Indeed, the Members were advised to afford significant weight to the fact that the appeal proposal would contribute to meeting the need for waste management facilities in the County.¹⁰⁵ Mr Noakes agreed that the definition of need in the CEO's Report was appropriate, namely that waste which remained to be treated after recycling and composting had taken place and for which there is no existing *treatment* capacity.¹⁰⁶ In other words, any waste that is *disposed* of in landfill will comprise potential need for treatment capacity. This is wholly in conformity with the waste hierarchy: waste currently landfilled at the very bottom of the hierarchy should be driven up the hierarchy and if, as here, there are no facilities for that waste to be treated then a need is clearly established for the appropriate scale of treatment facilities.

- 7.28. There is nothing between the parties on arisings: indeed, Mr Noakes adopted Mr Leeson's arising figures. Arisings, therefore, can be taken shortly. In 2009 there was some 620,000 tonnes of waste arisings in the Leicestershire and Leicester Waste Framework area that went to landfill. Mr Leeson described this as a very significant amount of waste going to landfill and certainly not the small amount contemplated in Government policy. Going forward, he estimates that over the lifetime of the plant between 550,000 tpa and 580,000 tpa¹⁰⁷ of residual waste would be available for recovery at the appeal scheme. This is a range which has been expressly agreed by the parties.
- 7.29. It is important to appreciate what that range represents: it is the residual waste available to this facility. The range has already taken account of recycling rates (and assumes the Council meets its ambitious targets) as well as existing (albeit very limited) recovery capacity. The range is such that only new operational recovery capacity would reduce it.¹⁰⁸ In short, it is that amount of waste which is available to be diverted from landfill and should, in accordance with the hierarchy, be treated at the "other recovery" level. It is a range which reflects the definition of need in the CEO's report to committee.
- 7.30. The further point needs to be made that it is only operational recovery capacity which would reduce the amount of residual waste available and that, therefore, in assessing need no account should be taken of consented

before him was not relevant (CD/N8, Inspector's Report para 344 (with which the Secretary of State expressly agreed (Secretary of State's Decision Letter, para 28); as did the Inspector at Cornwall (CD/N4, Inspector's Report para 1840: "...*national waste and energy policy do not require need to be demonstrated...*"); at Ince Marshes it was held that neither waste nor energy policies sought to place a rigid cap on waste management capacity (CD/N1, Inspector's Report paras 11.124-11.126) and the Inspectors at Ineos (CD.N7, para3.5(d)) and Severnside held likewise (CD/N13, para 234)

¹⁰⁴ BWS/5/1, para 8.7

¹⁰⁵ CD/B1, para 291

¹⁰⁶ Ibid, para 296

¹⁰⁷ Comprising between 210,000 and 233,000 tpa of MSW arisings and about 345,000 tpa of C&I. Again, this breakdown is agreed

¹⁰⁸ If the Council were to exceed its recycling target that would also reduce the range

capacity for which there is no guarantee that it will be implemented. This point needs to be emphasised because of the way Mr Noakes's evidence was structured and the way Mr Leeson was cross-examined.

- 7.31. The Rookery decision letter states that the correct approach, following explicit guidance in National Planning Statement EN-3,¹⁰⁹ is to take into account only existing operational capacity.¹¹⁰ This is by no means a new approach. Indeed, at Severnside the Appellant was awarded costs in part because of the Council's unreasonable reliance on consented rather than operational capacity in the face of appeal decisions clearly indicating this was the wrong approach.¹¹¹ If one looks at Mr Noakes's evidence (see WPA 7 summary table) one would be forgiven for thinking that the area had a surplus of capacity. Even he was constrained to describe this as a "theoretical surplus" for, as Mr Leeson pointed out, the area is a net exporter of waste because a large quantity of the claimed capacity is not operational. This operational/consented issue can no longer be considered controversial given recent appeal decisions and so it was a surprise to hear the Council cross-examine on the basis of consented capacity and to see Mr Noakes placing such reliance on consented capacity. It seems as though the scales were only removed from the Council's eyes after the re-examination of Mr Lowden when previous appeal decisions were looked at. This was a late stage in the Inquiry for the Council to agree to this.
- 7.32. The short point is that against the range of 550,000 tpa to 580,000 tpa there is virtually no operational recovery capacity within the framework area at all. Table 6/1 on page 37 of Mr Leeson's proof identifies the status of additional merchant waste recovery capacity in Leicestershire and, as he explained in oral evidence, there is only 25,000 tpa from Shawell Quarry which is operational.¹¹² There are no EfW facilities in the area. Mr Noakes informed the Inquiry (through WPA 6¹¹³) that Logix Park, Manor Farm and Sunningdale Road are all operational and sought to add 364,000 tpa to the existing capacity. However, that is to misunderstand the agreed arisings range of 550,000-580,000 tpa which looks at residual waste needing to be recovered. All of the above facilities are recycling facilities and so have already been accounted for in the agreed range. That they are now operational makes no difference to Mr Leeson's need case.¹¹⁴ Indeed, to score them again as capacity would be double counting.
- 7.33. Moreover, in the case of Sunningdale Road, the operator has a five-year contract with Rutland Borough Council and another contract with Walsall Borough Council. It does not appear to treat any waste from the Council's area. Furthermore, the Environmental Permit allows the treatment of only

¹⁰⁹ CD/H8 para 2.5.67

¹¹⁰ CD/N10, para 5.15

¹¹¹ CD/N13 (Inspector's Report on Costs), paras 68 and 69

¹¹² BWS 5/1. Shawell Quarry is a Material and Biological Treatment (MBT) plant with a capacity of 50,000 tpa. However, as Mr Leeson explained it produces residues of approximately 25,000 tpa which need further treatment

¹¹³ The update of Tables 2.1 and 2.2 of the Waste Needs Assessment of February 2011 (CD/J1)

¹¹⁴ As Mr Leeson pointed out in evidence it may contribute to get from the current 620,000 tpa down into the range but no more

75,000 tpa¹¹⁵ (and this should have been the figure included in WPA 6). As a result, WPA 6 simply does not reduce the amount of available residual waste or therefore diminish the extent of the need for additional recovery capacity. As Mr Leeson concluded, there is no justification for the continued disposal of 550,000-580,000 tpa of waste to landfill going forward when it is clearly practicable to recover a large proportion of that residual waste in EfW.

- 7.34. The clear conclusion to draw from this is that there is a compelling need to provide in excess of 500,000 tpa of recovery capacity to ensure that waste is treated higher in the hierarchy than the method of very last resort. That need is urgent. There is no other recovery capacity in the offing. LCC's Cabinet Report of 26 July 2011 on the procurement of long-term waste treatment facilities¹¹⁶ provides no justification to sit back and do nothing for a period of years. The Council complains that it has been knocked off course by the decision to withdraw Private Finance Initiative credits from its long-term procurement, but in truth that procurement would never have delivered more than 180,000 tpa of recovery capacity and was plainly insufficient to meet the need already identified. Rather than moaning about this turn of events, the Council should take action immediately to ensure that alternative waste recovery capacity is provided, particularly in the light of the extended lead times involved. That it should not welcome 300,000 tpa of recovery capacity seems quite extraordinary. The justification for doing so – that there is sufficient landfill capacity – is rank heresy given national waste policy which the Council expressly accepts the appeal proposal complies with¹¹⁷ and that that should be accorded significant weight.
- 7.35. Accordingly, there can really be no other conclusion to be drawn from the largely agreed evidence before the Inquiry that there is a compelling and urgent need for additional recovery capacity in the waste plan area. This need is deserving of very considerable weight being attached to it. It is little short of shocking that so much waste continues to be landfilled and that there is such a meagre provision of recovery capacity. It is little short of shocking too that the Council seems so blithely to contemplate continuing to landfill 300,000 tpa of waste that could, and should, be recovered in the proposed facility saving some 87,000 tonnes of carbon emissions each year of its operational life.

National policy: other matters

- 7.36. The Government has now published the draft NPPF.¹¹⁸ It is a document which has caused much public debate. However, it follows and is entirely in accord with the direction of travel set out in the earlier Ministerial Statement, Planning for Growth,¹¹⁹ a document which took immediate effect

¹¹⁵ APP/13

¹¹⁶ CD/B3

¹¹⁷ CD/B1, paras 277 & 311

¹¹⁸ CD/E10

¹¹⁹ CD/E11

and is being afforded significant weight in recent decisions of the Secretary of State, including in one of the most recent EfW appeal decisions: Severnside where 47 jobs were created - a comparable figure to this proposal.¹²⁰ Planning for Growth is overwhelmingly supportive of development: it identifies the promotion of economic growth and jobs as a top priority and states that there should be a clear expectation that the default answer to development and growth should be 'yes' except where it would compromise sustainable development principles. Mr Noakes agreed that particular weight should be applied to Planning for Growth.

- 7.37. The draft NPPF builds on Planning for Growth and is clear that local planning authorities should approve development that accords with relevant policies of statutory plans (as here) without delay and also grant planning permission where the plan is absent, silent, indeterminate or where relevant policies are out-of-date unless the adverse impacts of allowing development "*would significantly and demonstrably*" outweigh the benefits when taken against the policies in the document as a whole.¹²¹ Paragraph 26 requires that planning applications should be determined in accordance with the NPPF itself in the absence of up-to-date and consistent plans. The appellant's evidence demonstrates that there would be no material harm arising from implementation of the appeal scheme and, importantly, significant and substantial benefits would flow from a grant of planning permission.
- 7.38. The NPPF is only a draft. It has caused controversy and may change. It is nonetheless a material consideration and it does give a clear indication of the Government's direction of travel. Planning for Growth, however, is an extant Ministerial Statement promulgating up-to-date Government policies and the approach to decision-making and should, therefore, be accorded significant weight.
- 7.39. These extant and emerging policies are in line with Policy EC10 of PPS4 which provides that the local planning authorities should adopt a positive and constructive approach towards planning applications for economic development and that planning applications which secure sustainable economic growth should be treated favourably. This application is deserving of that favourable treatment.

Development plan

- 7.40. The Council does not rely on a single policy from the RS (which at the time of the Inquiry was still current) to support its refusal of planning permission. In doing so, the Council has ignored important policies on energy, renewable energy and climate change with which the appeal scheme would comply, including Policies 1, 38 and 40. The RS also emphasises: the imperative of reducing landfill; the need for recovery capacity; the provision

¹²⁰ See Severnside (CD/N13) Inspector's Report, para 249: "The recent ministerial statement on Planning for Growth would lend strong support to the grant of planning permission, given the employment that the scheme would provide and the economic growth it would encourage."

¹²¹ CD/E10, para 14

of waste management facilities in the three cities sub area; and encouragement to CHP and large-scale grid-connected renewable energy plants.¹²²

- 7.41. Although reasonably recently adopted, and although it sends the appropriate messages about encouraging EfW, the Leicestershire and Leicester Waste Development Framework Core Strategy and Development Control Policies (LLWDFCS)¹²³, in fact, has a very pro-landfill slant and, given the way in which its policies have been applied in this case, it is plainly antithetical to the Government's Review of Waste Policy (WPR2011) in being far too lax towards continued landfill.
- 7.42. The Sites Allocation DPD was proposing to allocate additional landfill sites. Policy WCS1 only seeks to divert landfill to meet the landfill diversion targets. Paragraph 4.4 refers to the minimum requirement for new landfill capacity (which surely should be referring to maximum). Paragraph 4.12 only contemplates a need for more sustainable waste management methods as the availability of landfill declines and statutory requirements for more and more sustainable methods take effect (in other words, carry on landfilling until capacity is exhausted).
- 7.43. The LLWDFCS does, however, also give encouragement to recovery; EfW with CHP is stated to be the best economic solution for the county.¹²⁴ Moreover, the appeal site lies within the area specifically identified for strategic waste management facilities in Policy WCS2 and it is agreed that the site qualifies as a strategic site. The facility would also accord with the sequence of Policy WCS4, at least at priority (ii), as Mr Noakes confirms in his proof (although he contradicts himself in his rebuttal claiming that it is a greenfield site, which is demonstrably wrong). The LLWDFCS further recognises that EfW will need to play a "full and integrated part in local and regional solutions"¹²⁵ and that such facilities could help divert waste away from landfill.¹²⁶ Landfill is stated to be needed whilst new alternative waste management facilities become established, which implies that such facilities should be promoted to reduce the quantities of waste that are still landfilled.¹²⁷
- 7.44. There is no need to review the policies cited by the Council in its reasons for refusal which relate to landscape and visual impact, and impacts on heritage assets given that they were fully addressed during evidence and that there is little dispute on how they should be interpreted. It has been common ground that those policies are designed to prevent unacceptable or substantial harm and that, even where this is not stated, that is how they should be applied. CBLP Policy CT/7 on the Area of Particularly Attractive Countryside (APAC) has been extensively considered. Ms Eddleston agreed that undue weight should not be placed on it and that the policy was out-of-

¹²² CD/D1, paras 3.3.57, 3.3.65, 3.3.73, 3.3.76, 3.3.84 and 3.3.93

¹²³ CD/D4

¹²⁴ Ibid, para 4.15

¹²⁵ Ibid, para 4.41

¹²⁶ Ibid, para 4.43

¹²⁷ Ibid, para 4.45

date and sympathy with current Government advice. It is deserving of very little weight.

- 7.45. The remaining development plan documents may be dealt with shortly. The Leicestershire and Rutland Waste Local Plan is now defunct and no reliance is placed upon it by the Council. As to the CBLP generally, as Mr Noakes agreed in XX, it adds nothing to the policies contained in the LLWDFCS and, indeed, says nothing on waste management.
- 7.46. The statutory test, properly formulated, is whether the appeal scheme accords with the development plan as a whole.¹²⁸ In the light of Mr Lowden's evidence, it is submitted that the appeal scheme is in overall conformity with the relevant policies of the development plan (even though it may not comply with every single policy) and, accordingly, the proposals must enjoy the presumption in favour of permission being granted for development which accords with the development plan set down by section 38(6) of the 2004 Act.

Landscape: reasons for refusal 1-3

- 7.47. Landscape and visual impact is at the heart of the Council's case. It is the foundation of three of the remaining five reasons for refusal and has some bearing too on the other two relating to impact on heritage assets. Despite this, the Council did not carry out its own Landscape and Visual Impact Assessment (LVIA) as Ms Eddleston candidly acknowledged. It was a strange omission given the apparent centrality of landscape to the Council's case and the reality that, as Mr Sharpe explained in giving his evidence for LCC, only through following the guidelines and carrying out a thorough assessment is it possible to fully understand the landscape and visual effects of a development. Furthermore, there has been no indication that the Council understands the current national policy approach to assessing landscape and visual impacts for development of this nature.
- 7.48. The Government plainly recognises that large-scale infrastructure projects will have inevitable landscape and visual consequences which will be hard to mitigate.¹²⁹ EN-1 identifies a clear hierarchy of landscape protection with a markedly different approach to nationally-designated areas from others.¹³⁰ It advocates that such projects should be severely limited in the most attractive landscapes, that is to say those that are nationally-designated. Outside such areas, policy should not unduly restrict infrastructure development: decision-makers should assess whether any adverse impacts would be so damaging that it would not be offset by the benefits (emphasis

¹²⁸ In *R v Rochdale MBC ex parte Milne (No.2)* [2001] Env. L.R. 22 at 50 Mr Justice Sullivan (as he was then) held that for the purposes of section 54A of the 1990 Act it is enough that a proposal accords with the development plan considered as a whole and that it does not have to accord with each and every policy therein. The same principle should apply to section 38(6) of the 2004 Act

¹²⁹ CD/H7, para 1.7.2

¹³⁰ Ibid, section 5.9. As Mr Sharpe notes in para 3.2 of BWS 3/4, it is a hierarchy which is reflected in the RS

added) including the need for the project.¹³¹ Indeed, current Government policy expressly and repeatedly states that local landscape designations should not be used in themselves to refuse consent.¹³² If there was any doubt about the applicability of that policy in the current case, PPS1 CCS (which rehearses the same policy) is clear that it supersedes policies contained in a development plan which has not yet been updated to reflect that PPS.¹³³

- 7.49. So the message from Government is clear: whilst the most attractive nationally-designated landscapes must be protected, the urgent national need¹³⁴ for renewable energy projects and the environmental and climate change benefits which such development delivers must be weighed against the inevitable landscape harm. PPS22 is explicit that the wider environmental and economic benefits of all proposals for renewable energy, whatever their scale, should be afforded significant weight (emphases added)¹³⁵. This message is encapsulated in the Government's current advice on plan-making: policies should be designed to promote and encourage rather than restrict development of renewable energy resources.¹³⁶
- 7.50. The Rookery decision is a good example of the recent application of these policies. The landscape harm caused by that proposed facility was severe. The Commissioners concluded that the size and scale of the proposed facility was "a major disbenefit" and that the development would "dominate" and "overwhelm" the area.¹³⁷ Substantial weight was afforded to the adverse impact on landscape. However, the Commissioners concluded that the Government's strong support and urgent need for energy-generating plants outweighed the adverse impacts of the development in landscape and visual terms.¹³⁸ It should be noted that in the final balancing exercise no reference was made to the fulfilment of waste management needs, the EfW plant was considered purely in terms of renewable energy and that alone was enough to outweigh severe landscape harm.

The appeal site and surroundings

- 7.51. As the Council acknowledged in opening, the appeal site is well contained within the local landscape with existing screen planting limiting views into the site.¹³⁹ Ms Eddleston also agreed that the land rises fairly steeply to the south and south-west.¹⁴⁰ It is in this area, as she conceded, that most of

¹³¹ Ibid, para 5.9.15

¹³² See EN-1 (CD/H7, para 5.9.14), PPS7 (CD/E5, para 24), PPS1 CCS (CD/E2, para 20, 2nd bullet) and PPS22 CD/E8, para 15 (which also applies the same hierarchy of protection to landscape (see also para 11))

¹³³ CD/E2, para 11, 4th bullet

¹³⁴ CD/H7, para 3.4.1

¹³⁵ CD/E8, para 1(iv)

¹³⁶ CD/E2, para 19 and CD/E8, para 1(ii)

¹³⁷ CD/N10, para 5.58 and para 6.25

¹³⁸ Ibid, para 6.26

¹³⁹ Council's opening, para 6

¹⁴⁰ See also CD/K7, Shephed under "Setting in the landscape." Strangely given this concession, Ms Eddleston attempted to suggest that the appeal site was properly described as

the intact parts of Charnwood Forest (CF) lie, so that views of the appeal site are largely obscured by landform and vegetation from those areas of the CF.¹⁴¹ It follows that the views from the 'best' parts of CF are very largely unaffected by the presence of the EfW. These hills rise considerably higher than the proposed building at 139m above Ordnance Datum (AOD) and in some cases, such as Ives Head, higher than the stacks at 190m AOD. Mr Sharpe explained that it was an extremely unusual feature of this proposal that the surrounding landscape was, in places, larger than development of this type. This demonstrates that the building is not out of scale with the landscape.

- 7.52. The site itself is a disused quarry which is already subject to significant urban influence. It is flanked by roads and/or industry on three sides. It is adjacent to the M1, junction 23 and the A512 (described as forming a strong east-west corridor in the landscape).¹⁴² In addition to the roads, there are significant industrial buildings and commercial uses in the locality (reflecting the large strip of employment land to the north of the A512 (and immediately north of the appeal site) allocated on the proposals map of the CBLP):¹⁴³ the Hanson offices to the west, the Klobber distribution centre west of these, GLW Feeds, the Junction 23 truck stop, the Highways Agency depot, Meggit Polymers and Charnwood Brick are located both to the north and south of the Ashby Road. There are no public rights of way which cross the appeal site or which run down the southern side of the A512.
- 7.53. The Council was clear in opening (reflecting equally clear advice in both CEO's reports to committee on the two applications) that the appeal proposal meets the locational requirements of the development plan and that the appeal site is acceptable in principle¹⁴⁴ for waste management facilities including EfW, landfill, Material and Biological Treatment (MBT), in-vessel composting and a materials recovery facility.¹⁴⁵ Of course, those locational requirements include consideration of the landscape and visual impacts of development.¹⁴⁶ Further, there is an extant planning permission for a major waste management facility on the appeal site and, moreover,

having a "rugged upland character with many exposed crags and rocky knolls" (by reference to CD/K8, p.109, Charnwood Landscape Character Area) but when asked to demonstrate this by reference to a document during the course of the Inspector's questions she could only turn to the OS map which, of course, is a different matter from a landscape character assessment. All Ms Eddleston could do was point to the contours and suggest it was an upland area. However, this assertion ignored the reality of the contours: the appeal site is at approximately 95m AOD whereas ground to the south of it rises to over 200m AOD as she later acknowledged. Ms Eddleston also said the A512 marked the cut-off between the flat land and the upland but then agreed that the site was at about the same level as the road. These assertions did not inspire confidence in her judgement

¹⁴¹ Agreed by Ms Eddleston in XX

¹⁴² CD/K7, Shepshed under "Built form and pattern"

¹⁴³ CD/D5

¹⁴⁴ Council's opening, para 7(a)

¹⁴⁵ CD/D7, p58

¹⁴⁶ See for example PPS10 (CD/E7), p23, Annex E, c. Visual intrusion. Albeit that the emphasis is on the need to mitigate by design and to protect landscapes of national importance wholly in line with the latest national policies in relation to development of this nature which is turned to below

the quarry, of which the appeal site forms part, is allocated for major waste management purposes in the development plan. The allocation is significant. The most recent assessment of suitability of sites for development of this nature in the area concluded that the appeal site was the most sustainable option for an EfW facility.¹⁴⁷ In particular, there is no better site in terms of countryside and landscape impacts (one of the key sustainability issues identified in the study).¹⁴⁸

- 7.54. Both Ms Eddleston and Mr Noakes confirmed that the Council is not suggesting that there is any alternative site in the County where there would be less impact than this proposal. The impacts on the countryside and landscape of the appeal site were adjudged to be non-significant.¹⁴⁹ These judgements were made in full knowledge of the APAC¹⁵⁰ (as well as the National Forest and proposed Regional Park). The appeal site has therefore been assessed for its suitability for major waste management facilities both in the context of plan-making and in development control decisions and has been found to be suitable. This reflects its location at the junction of the A512 and M1 corridors and the industrial nature of the Shepshed strip in which the appeal site is located. It should also be said that the existing planning permission includes an attenuation pond that would require some of the existing screening trees in the east of the site to be removed. That would not be the case under the current proposal.

Area of Particularly Attractive Countryside (APAC)

- 7.55. There have been numerous attempts over the years to protect the CF which, as Ms Eddleston agreed, all came to nothing. It has been rejected both as a National Park and as an Area of Outstanding Natural Beauty.¹⁵¹ In the end, the protection it was afforded was as an APAC. But this is a local landscape designation which, to adopt the Council's advocate's words, the Government now counsels against. The APAC designation was made in both the CBLP and the Leicestershire Structure Plan (LSP) both of which were adopted prior to the publication of the latest Government advice on local landscape designations. The APAC was expressly removed from the most recent update of the LSP in 2005 following that advice.¹⁵² Ms Eddleston was right to recognise that the CBLP and original LSP were out of sympathy and date with current Government guidance and that undue weight should not be placed on APAC policy. Whilst she may appreciate that now, it is not altogether clear the Council did when refusing planning permission; one of the three reasons for refusal rests solely on the APAC, although the reality is that the APAC supports not just one reason for refusal but all three.
- 7.56. It is suggested that reason for refusal 2 (RR2), in the light of Ms Eddleston's position and the removal of the APAC from the LSP, does not amount to a proper basis for the refusal of planning permission. In any event, CT/7, the

¹⁴⁷ CD/D6, p vi (the second one)

¹⁴⁸ Ibid, p vi (the first one). The conservation and enhancement of the quality of the countryside and landscape was a key objective

¹⁴⁹ Ibid, p xii

¹⁵⁰ CD/D7, p58

¹⁵¹ As is described in CD/K7, p18

¹⁵² As explained in CD/K7, para 4.3

policy on which refusal reason 2 is based, states that development will be permitted where the proposal would not detract from the essentially undeveloped rural character of the landscape. As already made clear and as the Council has accepted, the appeal site is part of an urban fringe area which contains degraded landscape and a large number of urban elements: it is neither undeveloped nor rural and Policy CT/7 contemplates pockets of degraded or ordinary landscape within the APAC.¹⁵³ Ms Eddleston's response to this was to say the characteristics of the site were a "minor consideration." Of course, if the localized impacts of the plant are only a minor consideration and the focus should be at the Landscape Character Area and Landscape Character Type level then the impacts of the proposal at those levels will inevitably be less significant.

National Forest

7.57. There is no reference to the National Forest (NF) in the decision notice whatsoever. Nor, as Ms Eddleston confirmed, is it part of the Council's case that there is conflict with Policies SRS5 of the RS and WCS11 of the LLWDFCS which are the specific policies which deal with the National Forest. It follows that the proposal's impact on the NF simply does not form part of the case against the development. However, the following points are noted from the National Forest strategy. First, as Ms Eddleston recognised, there are simply no policies which seek to resist development in the NF; indeed, the strategy recognises that urban growth is an integral part of the NF's evolution. Secondly, the appeal site falls within the Shepshed Urban Fringe Landscape Character Type¹⁵⁴ and she agreed that the key characteristics of the Charnwood Landscape Character Area could not be applied to that Landscape Character Type. Thirdly, the importance of the junction 23 gateway must be seen in context: there are some 13 gateways to the NF¹⁵⁵ and the signage on the M1 both north- and south-bound is positioned such that drivers wishing to visit the National Forest would naturally exit at junction 22. The mitigation planting at Garendon Park that is proposed would represent a substantial increase in trees on the fringes of the NF.

Charnwood Forest

7.58. Charnwood Forest is not an administrative area and has no definitive boundary¹⁵⁶ Whilst there can be no doubt that CF has an identifiable character and is valued by both residents of Leicestershire and visitors to the area, as already identified, the land rises to the south and south-west of the appeal site¹⁵⁷. It is in this area that most of the intact parts of CF lie so

¹⁵³ CD/D5, p111, para 6.32

¹⁵⁴ CD/K7, Fig. 5

¹⁵⁵ CD/K8, p14

¹⁵⁶ CD/K7, para 7.1

¹⁵⁷ See also CD/K7, Shepshed under "Setting in the landscape." Strangely given this concession, Ms Eddleston attempted to suggest that the appeal site was properly described as having a "rugged upland character with many exposed crags and rocky knolls" (by reference to CD/K8, p108, Charnwood LCA). But when asked to demonstrate this by reference to a

that views of the appeal site from those areas of the CF are largely obscured by landform and vegetation and consequently are almost entirely unaffected by the proposed development.¹⁵⁸ Ms Eddleston agreed that was the case and this is a key concession especially in light of the fact that her proof of evidence focused on the CF to a significant degree.¹⁵⁹ This is graphically demonstrated by the Appellant's Zones of Theoretical Visibility (ZTVs) where land to the south and south-west of the appeal site is almost entirely uncoloured.¹⁶⁰

- 7.59. It is clear that the Council sees no in-principle objection to waste management facilities within either the NF or CF given the allocation of the appeal site and, indeed, a number of other site allocations for waste management facilities within the boundaries of both.
- 7.60. As to the proposals for the CF Regional Park, Ms Eddleston explained that its boundaries are yet to be defined by each local planning authority and the current 'working' boundary may yet be subject to change. Nor are there as yet any development control policies in relation to it. Finally, the CF Regional Park does not feature in the reasons for refusal.

Sustainable Urban Extension (SUE) and Science Park

- 7.61. The significant development which is proposed in the area must be taken into account in assessing landscape and visual impacts. Substantial developments are proposed in the form of the sustainable urban extension (effectively fusing Shepshed and Loughborough) and comprising 3,500 dwellings with a new distributor road connecting the A512 to the A6, as well as a 50 hectare science park to the south (within the APAC). The delivery of both of those proposals would have a pronounced landscape and visual impact on all of the proposed Regional Park, the NF, CF and the APAC. It is clear that the plan-making authorities in the area are content to impose major developments on these areas and the reliance of the Council in this case on the APAC and CF, in particular, must be seen in this light. The supporting documents recognize that the proposals are on the edge of the CF and the landscape does not have the same character as the more intact areas to the south.¹⁶¹

Design & mitigation

document during the course of the Inspector's questions, she could only turn to the OS map which, of course, is an different matter from a LCA. All she could do was point to the contours and suggest it was an upland area. However, this assertion ignored the reality of the contours: the appeal site is at approximately 95m AOD whereas ground to the south of it rises to over 200m AOD as she later acknowledged. This assertion did not inspire confidence in her judgement.

¹⁵⁸ Agreed by Ms Eddleston in XX

¹⁵⁹ Ms Eddleston deals with the CF in her proof over some 7 pages (LCC1/2, pp7-15)

¹⁶⁰ See BWS 3/4, BIFFA 3/4/1

¹⁶¹ CD/D16, para 3.6. An approach which undermines Ms Eddleston's criticism of Mr Smith's greater focus on the landscape impacts around the appeal site.

- 7.62. The Government places great importance on the design of renewable energy projects. Design goes beyond aesthetic considerations. Functionality, including fitness for purpose and sustainability, is equally important.¹⁶² However, good design is also a means by which landscape and visual impacts may be reduced as national policy recognises.¹⁶³ As Mr Smith explained, the Appellant went to considerable lengths in designing the facility to ensure it was a high quality design which minimized the landscape and visual impacts: the north-south orientation ensures that the more sensitive rural viewpoints to the south of the site have the potential to see only the narrower elevation of the structure (albeit as the ZTVs show this area is well protected by landform and vegetation in any event); the curvilinear roof is designed to echo the raised form of the hills to the south of the appeal site; the articulation of the roof planes reduces the visible mass of the building and creates interest; and the use of materials is appropriate to the setting.
- 7.63. Mr Smith further explained that the building was not designed to be visible but to be a positive statement from where it would be seen. For example, at junction 23 where it will be highly visible, it will operate as a gateway into Shepshed, the CF and NF. It is perhaps for these reasons that, as Ms Eddleston made clear in her consultation response,¹⁶⁴ there is no dispute between the parties that the appeal proposals are of high quality design. Indeed, she commends the curvilinear form¹⁶⁵ and states that the landscape master plan is acceptable.¹⁶⁶ Furthermore, CABE did not raise any objection to either the form or the scale of the proposals, albeit that body did have some other reservations. Ms Eddleston also accepted that the scale of the proposal is dictated by its function¹⁶⁷ and confirmed that the Council does not criticise the footprint or siting of the proposal. As she agreed in XX, any concerns that the Council has in relation to either materials or colours can be addressed by the proposed conditions. Furthermore, she agreed that the Council was not suggesting any design changes which would lessen the landscape and visual impact. It is submitted, therefore, a very successful design which does precisely what current policy requires: it reduces the landscape and visual impacts insofar as possible whilst ensuring the plant can function efficiently and provide reasonable landscaping.
- 7.64. Reference was made in the Council's closing submissions to the heights of various EfW schemes (see paragraphs 8.3 and 8.4). However, this is an advocate's point, it is not evidence led by witnesses and is to some extent contrary to the evidence. Mr Noakes made it plain that the Council sought no alternative technology for EfW; he could have taken the point but expressly didn't. Ms Eddleston was asked whether there were any other design issues that the Council relied upon that might have helped landscape and visual impacts and she answered no. With reference to the Rookery

¹⁶² CD/H7, para 4.5.1

¹⁶³ Ibid, para 4.5.2

¹⁶⁴ CD/B1, para 189 which Ms Eddleston confirmed remains her position in XX

¹⁶⁵ Ibid, para 249

¹⁶⁶ Ibid, para 191

¹⁶⁷ APP/14 is a comparison of height and capacity of EfWs, which indicates a building height of 46m for a throughput of 300,000 tpa is about average

decision the reason the plant there is lower than the current proposal is because it was the express wish of the authorities (including EH) that it be reduced to the bare minimum. The form of the building that was sought was a tight rectangular box placed around the technology. Ms Eddleston, however, preferred the curvilinear design of the present proposal and not a box-like structure.

- 7.65. The restoration scheme¹⁶⁸ would mitigate the plant's impact in respect of both the landscape and visual impacts and the cultural heritage impacts. The effects of this proposal are shown in the Appellant's Virtual Reality (VR) model of trees viewed from the Temple of Venus.¹⁶⁹ It shows that it would be possible gradually to reduce the visual impact of the proposed facility over time with screening beginning to be effective after about 10 years, or seven after the plant commences operation. Whilst it would take around 20 years for the proposed planting fully to screen the development, the residual benefits of the planting would be permanent. The Guidelines for Landscape and Visual Impact Assessment (GLVIA) indicate that more weight is usually given to effects that are permanent.¹⁷⁰ More importantly, the planting's permanent visual impact would be beneficial. Mr Malim described this as a permanent legacy for the Park.
- 7.66. Mr Smith also explained that the growth rates used are conservative and could be enhanced by irrigation and by mulching as well as by planting larger stock. However, growth rates in more mature stock after planting are often much slower than for younger transplants and light standards and for that reason he prefers the use of younger stock which would establish more quickly and continue to grow healthily throughout its life¹⁷¹.
- 7.67. As a result of the planting scheme, Mr Smith concludes that the effects of the development would be less than significant after approximately ten years from White Lodge and would be slight to moderate from the Temple of Venus at the same time. In this regard, it should be noted that the ERF would take three years to construct. The proposed planting would be implemented immediately. As a result, the tree heights shown in the VR model still depicting five years after planting can thus also be described as showing planting two years after completion of the plant. Similarly, the ten year VR model still relates to seven years after completion.

Landscape & visual impacts

- 7.68. The following preliminary points should be noted. First, as recorded by the SoCG, the Council agrees that the Landscape and Visual Impact Assessment (LVIA) followed the process set out in GLVIA¹⁷² and that the viewpoints used are appropriate representative viewpoints for assessing the visual effects of

¹⁶⁸ CD/K10

¹⁶⁹ BWS 3/3, BIFFA 3/3/12

¹⁷⁰ CD/K2, para 7.23 and BWS 3/4 para 2.9

¹⁷¹ BWS 3/4, paras 2.10 – 2.12

¹⁷² Ms Eddleston's criticism that there was a lack of transparency in the Appellant's assessment should be read in this light

the proposed development.¹⁷³ Ms Eddleston exhibited some reluctance to confirm the latter point in evidence but she was able to confirm that she herself had not suggested any other viewpoints despite having every opportunity to do so and, as identified above, neither did she or the Council carry out her/its own LVIA. As Ms Eddleston conceded, she had not even identified the sensitivity of viewpoints or the magnitude of impacts, still less the significance of those impacts, for any of the viewpoints despite criticising the Appellant's judgements. In other words her approach was directly contrary to unequivocal advice in GLVIA to carry out impact assessments in a structured and transparent way so that it was clear how her subjective judgements had been reached. There was no attempt in her re-examination to explain how she had reached her subjective judgements and the Inquiry was not well informed in any event as to what these judgements were.

- 7.69. Secondly, the criticisms levelled at Mr Smith by Ms Eddleston that he focused too much on the effects of the proposals on the appeal site and its surrounds and so ignored the wider landscape character impacts were unfair. As she conceded in XX, Mr Smith deals with the wider effect on the Landscape Character Areas (LCAs) in each and every viewpoint he addresses in his proof of evidence.¹⁷⁴ Thirdly, as Ms Eddleston agreed, there is no rigid demarcation between LCAs, rather one blends into another.¹⁷⁵ As Mr Smith noted, the reality is that the boundary of the CF is such a transitional zone and is expressly recognised by the fact it falls within the Shepshed Urban Fringe Landscape Character Type (LCT). It was only the more detailed LCA appraisals which addressed these more localised differences in landscape character, something which it was not possible to do at a national, regional or county scale.
- 7.70. Mr Smith addresses landscape impacts in some detail in his proof of evidence.¹⁷⁶ He concludes that appeal site and its context has little in common with the descriptions of intact rural landscapes within Natural England's National Character Area 73, the East Midlands Landscape Character Assessment's Forested Ancient Hills Character Area, the Leicester, Leicestershire and Rutland Landscape and Woodland Strategy's Charnwood Forest Character Area or Charnwood Borough Council's Bradgate and Beacon Character Area.
- 7.71. However, he concludes that the appeal site does accord with the descriptions of the Shepshed Fringe Settlement within the Charnwood Forest Landscape and Settlement Character Assessment and the Urban Fringe LCT described within the National Forest Landscape Character Assessment: it is only these two assessments which provide a more detailed analysis of landscape character, acknowledging that the boundary between the CF and neighbouring settlements is not abrupt, but transitional. This is plainly right: the site and its context are strongly associated with the urban fringe characteristics of the southern edge of Shepshed and bear little relation to

¹⁷³ CD/C2, para 8.1.5

¹⁷⁴ See, for example, BWS 3/1, VP3 p47, para 170

¹⁷⁵ The documents recognise as much. See CD/K7, para 7.8

¹⁷⁶ BWS 3/1, pp35 – 44

the rural characteristics of Charnwood Forest. Given this and the extant permission for a waste management facility on site, Mr Smith concludes that the significance of landscape impacts would be 'slight adverse' by virtue of the scale of the plant, with the site remaining part of the Shepshed Urban Fringe.

- 7.72. However, as Mr Smith points out, the development would also create beneficial effects. The architectural quality of the proposal far exceeds that of the existing permitted development and the design is particularly appropriate to the location of the appeal site. The undulating roof planes echo the form of the uplands at the heart of the CF. The materials incorporate both the rock and timber of the adjacent Charnwood landscape but also include modern materials suitable for this urban fringe location next to a motorway junction. These factors, combined with the positive associations (Mr Smith was clear that if a building has a positive use it will be better appreciated by the public) of creating renewable energy, could potentially change the perception of this development over time.

Visual impacts

- 7.73. It has already been identified that the overall visibility of the development, even taking the worst case scenario shown in the ZTVs, is contained to the south-west, south and south-east by higher ground to a surprising extent. Whilst views from the north and north-east appear from the ZTVs to be more extensive, Mr Smith explained that, in reality, many of the potential views from these areas are screened by existing buildings and/or structural vegetation.
- 7.74. Mr Smith's analysis of the agreed viewpoints is set out in detail in his proof of evidence.¹⁷⁷ Ms Eddleston confirmed that where she is silent on a viewpoint, the Appellant's assessment is unchallenged. Judgement on the visual impact of the proposal needs to be reached with the aid of the evidence, the photomontages and on the basis of site views in particular. It is suggested, however, that Ms Eddleston's criticisms of Mr Smith's assessment are misplaced. In XX she was asked to consider the magnitude of visual effects having regard to the GLVIA guidelines for a selection of viewpoints the assessment of which she had criticised.¹⁷⁸
- 7.75. With regards to viewpoint 2¹⁷⁹ she agreed that there was no loss of features in the view, the proportion of the view taken up by the plant is extremely small, there are already urbanising features in the view (pylons and Shepshed) reducing any contrast with the proposed development and it is a long range view at the extremity of material visibility.
- 7.76. As to viewpoint 3¹⁸⁰ Ms Eddleston agreed, again, there was no loss of features in the view, the proportion of the view taken up by the plant is extremely limited, the stacks would be below the skyline, the Ratcliffe power

¹⁷⁷ BWS/3/1, pp44-63

¹⁷⁸ CD/K2, para 7.36

¹⁷⁹ CD/A4, NH7/22

¹⁸⁰ Ibid, NH7/23 and 7/46

station would be visible (to which the walkers' attention is drawn as a feature of interest in the National Forest, Charnwood Peaks 15-mile walk guide)¹⁸¹ such that contrast would be limited. Furthermore, again, it is a longer distance view.

- 7.77. Ms Eddleston agreed similar points in relation to viewpoint 11:¹⁸² there would be no loss of features, the proportion taken up by the plant would be small, there are existing and prominent pylons (which the plant would be substantially below), the plant would be below the skyline (not accounting for the plume) and there are built structures in Shepshed including GLW Feeds which she described as quite clearly visible from this location.
- 7.78. Only two of the agreed representative viewpoints would experience significant visual impacts: viewpoint 6 (junction 23 of the M1) and viewpoint 17 (White Lodge, Garendon Park). Neither of these viewpoints is located within the APAC.
- 7.79. Viewpoint 6 is within a largely urban context. The introduction of this building of high quality design in an area where no such quality exists would, it is submitted, be beneficial. It could become a positive landmark and fitting gateway to CF which would be wholly in accord with the recommendation made to create and enhance the gateways to Shepshed particularly from the motorway.¹⁸³
- 7.80. In the case of viewpoint 17, the proposed planting, as already described, would gradually screen views of the appeal scheme so that the visual impacts would commensurately reduce.

Plume

- 7.81. Ms Eddleston does not challenge the results of the Appellant's plume assessment. Her advice is that, whilst plume length prediction is not an exact science, the approach taken by the Appellant is the best available. The percentage of time the plume is visible¹⁸⁴ is short – between an average of 7.2% to 10.7% of the time in the years 2004 to 2008.¹⁸⁵ The maximum plume length is approximately 200m but the maximum average is 41m and it should be recalled the original LVIA assumed a plume length of 500m.¹⁸⁶ Moreover, it is the winter months where the plume is most likely to be visible and by some margin.¹⁸⁷ There are fewer people enjoying the outdoors for less time during the winter¹⁸⁸ and, further, as Ms Eddleston agreed, it is generally right that there is more often cloud in winter than summer; in such conditions there would be little contrast between the plume and cloud such that the plume may in reality not be clearly visible.

Lighting

¹⁸¹ CD/K21

¹⁸² CD/A4, NH7/15 and 7/29 and BIFFA 3/3/11

¹⁸³ CD/K7, Shepshed under "Recommendations"

¹⁸⁴ Note visibility is limited to certain quadrants only (see APP/7)

¹⁸⁵ See BWS 3/3/C, p2

¹⁸⁶ APP/7

¹⁸⁷ See BIFFA 3/3/C

- 7.82. Ms Eddleston expressed some concern about lighting to which three short points are made. First, the suggestion that lighting the appeal scheme would cause harm needs to be tempered with a little reality: the appeal site is adjacent to a well-lit roundabout at junction 23 and the motorway itself. Secondly, lighting around the building would be designed to minimise the potential for light pollution (and, of course, the permitted waste management facility scheme also includes external lighting). Insofar as the building itself is concerned, Mr Smith explains that the polycarbonate cladding panels would allow natural daylight into the operational areas and any light spillage could be minimised by using materials with low light transmission values. Thirdly and in any event, the Council retains further control as to the levels of luminosity that the plant would be permitted to emit through the agreed condition¹⁸⁹, as Ms Eddleston acknowledged in XX.

Conclusions in relation to landscape

- 7.83. The fact that the proposal would be visible in the landscape is not of itself a reason to object to the development, especially given the panoramic views in which the plant would be seen and of which the plant would occupy only a very limited percentage. The views from the most sensitive parts of the CF are well screened. Moreover, national policy protects nationally-designated landscapes, which this is not. In areas of local designations the approach should be more of a light touch and, of course, the renewable energy and climate change benefits of this proposal must be afforded significant weight. Mr Smith's evidence has not been undermined in any way. He concludes that the landscape impact is not significant. It is the same for visual impact, save for two viewpoints which are both outside the APAC and where there would be longer term benefit. The need for waste management facilities and renewable energy mean that the limited landscape and visual impact is clearly outweighed.

Cultural heritage – reasons for refusal 4 & 6

- 7.84. The proposal's impact on the Park and listed structures within it comprises the second area of controversy between the Appellant and the Council and is reflected in refusal reasons 4 and 6.

The heritage assets

- 7.85. The heritage assets are comprehensively described in the application and appeal documentation. Mr Sharpe for LCC agreed in XX that the Appellant has complied with Policy HE6 of PPS5¹⁹⁰ and, specifically, that the significance of the heritage assets had been properly described.

¹⁸⁸ Which is demonstrated by the visitor numbers at Beacon Hill which decline during the winter months (see LCC 1/5, Appx3)

¹⁸⁹ See suggested condition 28

¹⁹⁰ CD/E4. Further, he confirmed that he did not dispute any of the contents of Mr Malim's Appendix 3, which provides further historic details of the Park (BWS 4/1/C)

- 7.86. The Park and the listed buildings it contains are separated from the appeal site by the M1, junction 23 and the A512. There is no dispute that any impacts on the heritage assets will, as a result, be indirect and consequently affect only their setting. Mr Sharpe agreed in XX (although it was not recognised in his proof) that a distinction must be made between impact on the heritage assets themselves and the impact on their setting. Further, it was agreed that there was also a distinction between the significance of the assets themselves and their settings so that the importance attached to, say, a Grade I listed building would not necessarily apply to its setting, which might be degraded in character. He further agreed that for there to be material harm to the setting, the development must affect the significance of the heritage asset itself or the appreciation of it.
- 7.87. However, it is not clear that Mr Sharpe bore this in mind when he assessed the magnitude of impacts in his written evidence. Indeed, his criticism¹⁹¹ of Mr Malim's assessment that a moderate adverse impact would result from the appeal scheme¹⁹² was as a result of his failure to make this distinction. He conflated the significance of asset with its setting as did LCC's Counsel in XX of Mr Malim. The listed buildings are of the highest significance and therefore properly categorised as highly sensitive to direct impact. However, here the impacts are indirect and on setting alone¹⁹³. The setting itself is not of high sensitivity but medium at best. In re-examination Mr Malim confirmed that the sensitivity of the setting of the listed buildings was medium and low for the Park's setting. Table 4 of his proof is clear: a medium impact on a medium sensitivity equates to moderate significance, not high as Mr Sharpe has assumed (because he had the sensitivity of the assets themselves in mind and not their setting). It is submitted that Mr Sharpe's failure to distinguish between the assets and their settings fatally undermines his evidence and the conclusions he reached.
- 7.88. The Park itself is in a generally unsatisfactory condition with major localised problems, it is under threat from a major expansion and is declining.¹⁹⁴ That description is apt not only because of the presence of major arterial roads but more significantly because of the fact that the felling of the parkland trees has completely stripped away an integral and essential part of the Park and the setting of the listed buildings.¹⁹⁵ For these reasons Mr Sharpe was able to agree in XX that the Park was "seriously degraded." It is important to recognise in assessing any impacts on the significance of the Park that, as he eventually conceded in XX, it is inward looking (the vistas terminated at the Park boundary).¹⁹⁶ This is because it was designed to

¹⁹¹ See para 2.3 and 2.4 of Mr Sharpe's rebuttal

¹⁹² BWS 4/1, para 3.6.35

¹⁹³ Mr Malim emphasised that it is the impact on setting that is at the heart of the Council's objection

¹⁹⁴ According to the Heritage at Risk Register East Midlands 2010, BWS 4/1/B, p.9

¹⁹⁵ As described by Mr Sharpe in his second consultation response (CD/P34) and as stated in the Heritage at Risk Register (BWS 4/1/B, p9)

¹⁹⁶ Mr Sharpe agreed in XX that the south-west avenue was not aligned with Broadhurst Hill or any other point of interest beyond the Park. Although he subsequently sought to retreat from what he had agreed in XX, Mr Malim demonstrated precisely why Mr Sharpe had been right to agree the point in XX

enhance the private enjoyment of the landowners and did not have the public (or public access) in mind.

- 7.89. Although the three listed buildings were positioned on a ridge, their prominence was to enhance the glimpsed views along narrow vistas within the Park rather than to represent eye-catchers for the general public outside the Park. That these structures might have been seen in longer distance views from elevated land is incidental and there is no evidence that this was ever part of the original landscape setting for those structures. Broadhurst Hill was demonstrated to be no more than a chimera: none of the vistas were aligned on external landscape features and there is no reliable evidence of any prominent hill terminating the south-west vista from the Temple of Venus.
- 7.90. As to the listed structures, Mr Sharpe does not take any issue with the Appellant's condition survey of the listed buildings which sets out in detail the damage and disrepair to both the Triumphal Arch and the Temple of Venus.¹⁹⁷ The Appellant has undertaken to carry out the works specified in the condition report¹⁹⁸ and Mr Sharpe agreed in XX that this was "an important and welcome benefit." He further recognised that if repair work is not carried out now the listed buildings will continue to deteriorate. A significant proportion of the works identified in the condition survey were described as urgent. Mr Sharpe agreed that it was highly desirable that the works were done at the earliest moment and so abandoned any suggestion in his written evidence that the works were not urgent.

Policy

- 7.91. At the heart of the approach required by PPS5¹⁹⁹ is the need to balance harm and benefit. For the first time in Government policy a distinction is made between the heritage assets on the basis of their importance such that substantial harm to Grade I and II* assets should be wholly exceptional and in the case of Grade II exceptional.²⁰⁰ This distinction should inform the balancing exercise. Importantly in this case, PPS5 is explicit that where development would mitigate against the effects of climate change that public benefit should form part of the balancing exercise in favour of the development.²⁰¹ There is no other type of development which has attracted

¹⁹⁷ CD/L20. The Heritage At Risk Register indicates that the Triumphal Arch and the Temple of Venus are both priority C (C) which means the buildings are in slow decay with no agreed solution (BWS 4/1/B, p9)

¹⁹⁸ Through the Section 106 obligation which itself sets out the list of works to be carried out

¹⁹⁹ CD/E4

²⁰⁰ As Mr Sharpe agreed, refusal reason 4 applies only to the Park, which is a grade II asset, so that even if the harm was considered to be substantial, contrary to the Appellant's submissions, the test to be applied in the context of that reason for refusal would be the exceptional test and not the wholly exceptional test

²⁰¹ Policy HE.1. A policy which is reflected in EN-1 which provides: "*In considering the impact on the historic environment as set out in Section 5.8 of EN-1 and whether it is satisfied that the substantial public benefits would outweigh any loss or harm to the significance of a designated heritage asset, the IPC should take into account the positive role that large-scale renewable projects play in the mitigation of climate change, the delivery of energy security*"

such policy dispensation. It is a measure of the extreme importance attached by Government to climate change and must be accorded considerable weight. Here, as the WRATE analysis (unchallenged by LCC) shows,²⁰² the proposed development makes a significant contribution to tackling climate change. Remarkably, this key policy was not drawn to Members' attention in either CEO's reports to committee²⁰³. Mr Sharpe's proof fails to mention it too. The balancing exercise (which is addressed below) carried out in the CEO's reports and by Mr Noakes at the Inquiry (although not by Mr Sharpe who deliberately left this task for others) was seriously flawed in that there was no regard to this important policy.

- 7.92. Moreover, any harm caused by the development is not properly described as substantial. First, Mr Sharpe agreed that the harm should be measured taking into account the proposed mitigation. The mitigation planting scheme is addressed in detail below. Suffice it to say that English Heritage (EH) commends the restoration scheme for the Park as a rare opportunity to enhance the setting of the heritage assets and better reveal their significance and, as already stated, Mr Sharpe described the proposed works to the listed buildings as an important and welcome benefit.
- 7.93. Secondly, substantial harm equates to fundamental damage. That is the view of Mr Malim²⁰⁴ and it echoes precisely the views of the Commissioners of the IPC in the Rookery decision.²⁰⁵ Thirdly, if the impact of the proposed development (which is some distance away and separated by a motorway) is to be described as substantial, one has to ask what would be the appropriate description of the harm if the same building was proposed within the Park itself and close to the listed structures or if the development had some direct impact on those structures? It surely cannot be said that the development would fundamentally damage the setting of the heritage assets: as in the Rookery case, views of the plant from the listed buildings would only occupy a small portion of the panoramic views enjoyed by them.²⁰⁶ The setting of these structures is essentially the Park in which the geometric landscape was created. It did not extend to areas beyond.
- 7.94. The Park itself may have a wider setting in which its surroundings play some part, but clearly, as Mr Sharpe accepted, EH is unconcerned about the development's impact on the setting of the Park. This is surely right given the extent to which the modern world has impinged on the fringes of the Park, a process which is likely to continue with the SUE/Science Park extension that, it is suggested, is highly likely to occur. If the Secretary of State agrees that the harm to the listed structures is less than substantial then Mr Sharpe agreed that reason for refusal 6 falls away.²⁰⁷

and the urgency of meeting the national targets for renewable energy supply and emissions reductions." (CD/H8, para 2.5.34)

²⁰² CD/A2, Tab 14

²⁰³ CD/B1 & B5

²⁰⁴ BWS 4/1, Table 3, p19

²⁰⁵ CD/N10, para 5.72

²⁰⁶ Ibid

²⁰⁷ Agreed by Mr Sharpe in XX

- 7.95. As Mr Sharpe agreed, the principal policy to which the Secretary of State should have regard is PPS5 Policy HE10. It is the policy which addresses directly development which affects the setting of heritage assets. Significantly, the reasons for refusal do not allege conflict with this policy but only HE9.1. Importantly, Policy HE10.2 provides that local planning authorities should identify opportunities to enhance or better reveal the significance of a heritage asset. This is precisely what this scheme does, as EH fully recognises. It restores what Mr Sharpe described as an integral part of the essential character of the listed buildings which has been completely stripped away. It may well be for this reason that the cultural heritage reasons for refusal do not refer to this policy and it has been no part of the Council's case that the appeal proposal conflicts with it. That is highly significant given that Mr Sharpe agrees it is the principal policy by which this development should be judged.
- 7.96. The Council failed to undertake a proper balancing exercise at all. First, the exercise was conducted on the premise that the harm caused by the development was substantial such that the test to be applied was the "wholly exceptional" test. For the reasons set out above this was wrong and infected the remainder of the balancing exercise. The committee reports wrongly suggested that Mr Sharpe considered the harm to be substantial. Whilst he came to that conclusion in his evidence for the purposes of the Inquiry, no such judgement was expressed in his consultation responses.²⁰⁸
- 7.97. Secondly, the only benefit placed into the balance is that the proposal would meet the waste disposal needs of the County.²⁰⁹ No account is taken of the national and urgent need for renewable energy or the climate change benefits brought by the proposal (contrary to the express requirements of Policy HE.1 (which was not dealt with)). Climate change is not even mentioned in Mr Sharpe's evidence. As such, the Council's approach to the fundamental balancing exercises that national policy requires of decision-makers, was manifestly flawed. By contrast, the Rookery decision engaged with Policy HE.1 and it was decided that the urgent need for energy generation overcame less-than-fundamental harm to heritage assets (which included Grade I assets). National policy, properly applied, does not require permission to be refused in the present circumstances: to the contrary, there would be compelling reasons to permit the development.
- 7.98. Turning, briefly, to the development plan policies relied on in the reasons for refusal, Mr Sharpe agreed that both WCS10 and WDC2 of the LLWDFCS, having been adopted prior to the publication of PPS5, were out of sympathy and date with it and that PPS5 must take precedence as it reflects current Government policy. The same comments necessarily apply to WCS12 of the LLWDFCS; moreover, it is not a policy which relates to listed buildings specifically but to the CF. As to CBLP Policy EV/9, which is cited in refusal reason 4, it also predates PPS5, and, as Mr Sharpe agreed, adds nothing to the LLWDFCS policies which specifically address proposals for waste

²⁰⁸ CDs/P31 and P34

²⁰⁹ CD/B1, para 290. This benefit was described as "substantial" in the first CEO's report but downgraded to "limited" in the second without any explanation (CD/B5, para 338)

management facilities. The proposal does not therefore conflict with the policies identified in refusal reasons 4 and 6.

English Heritage and the restoration scheme

- 7.99. In XX Mr Sharpe was taken through the detailed history of EH's advice throughout the application and appeal process. A number of points should be distilled from that history.
- 7.100. First, as he agreed in XX, the views of EH, the Government's statutory advisor on cultural heritage matters, should be accorded "considerable weight." This is a significant concession and brings into question the whole basis of the Council's cultural heritage case. This answer also told the Inquiry everything it needs to know about the Council's suggestion that EH placed too much emphasis on the extant planning permission; as Mr Sharpe conceded, it is clear that EH fully understood that the current proposal is significantly larger than the buildings permitted under the extant planning permission.²¹⁰
- 7.101. EH did not attend the Inquiry expressly because it has concluded after careful analysis that the mitigation offered by the Appellant is sufficient to reduce any impact on cultural heritage assets to less than substantial. There is no dispute that that conclusion applies to the setting of both the Park and the listed buildings. Mr Sharpe also agreed that EH had looked at the matter holistically such that the harm to the whole assemblage of heritage assets had been reduced to less than substantial. Further, EH has said the restoration scheme would regain part of the Park's character in the south-western area and would enhance both the setting and appreciation of the listed buildings. It described the application as a rare opportunity to enhance and safeguard the historic character of Garendon and to reveal and reinforce the role of the listed buildings in the landscape.²¹¹ Mr Sharpe conceded that this was a "really significant point".
- 7.102. Now that EH is satisfied that the proposed restoration scheme would take this opportunity, this development should not be resisted but welcomed in cultural heritage terms. As referred to in relation to landscape, the planting would reduce any impact over time and form a permanent enhancement to setting of the listed buildings as well as to the fabric of the seriously degraded Park. Even without taking account of non-heritage related benefits in the balancing exercise required by PPS5 Policies HE9 and 10, this enhancement of the setting of the heritage assets should be seen as a highly significant public benefit which alone would justify the residual harm that would be caused. EH's decision to leave all balancing in the hands of

²¹⁰ CD/L9

²¹¹ CD/L13

LCC is highly significant and demonstrates its satisfaction with the appeal proposal.

- 7.103. Secondly, the Council agrees that EH's views were formed as a result of a scrupulous formal approach over a sustained period which the Council do not criticise in any way and which resulted in the restoration scheme which is now proposed. It now appears that EH had the local MP, Nicky Morgan, hovering and any infringement of normal procedures would have been detected; she had considerable contact with the Regional Director²¹². Indeed, Mr Sharpe agreed that EH did precisely what is required by Policy HE1.2 of PPS5. Moreover, his views at the time of his second consultation response – which addressed the earlier and more limited planting proposal – appeared to preview the position now held by EH. He concluded that: the formal planting scheme was clearly an integral part of the essential character of the listed buildings; the reinstatement of their immediate surroundings would be beneficial; and the restoration scheme would eventually reduce the visibility of the new facility from some locations, notably near to the built heritage assets, and lessen the impact of the proposed development on their setting.²¹³ Indeed, Mr Sharpe agreed in XX that the views he recorded in his second consultation response, and to which he still adhered, accord with those now held by EH.
- 7.104. However, in written and oral evidence Mr Sharpe was somewhat more equivocal. He wanted the Secretary of State to take the importance of the more recent changes to the setting of heritage assets into account (such as the felling of many of the trees in the 1780s)²¹⁴ and appeared to suggest that there may be merit in retaining the Park as an open landscape. This appeared to be a direct contradiction of his opinion in the second consultation response and may have been advanced to try to undermine the basis for EH's decision not to pursue its objection at the Inquiry. However, Mr Sharpe declined to advise the Secretary of State what weight such considerations should attract, but in the end he said that he would prefer to see the restoration of the formal planting over the retention of the landscape denuded of trees as it is now. This must be correct.
- 7.105. Thirdly, in considering Mr Sharpe's criticisms of the restoration scheme it should be recalled that he made little or no attempt to understand properly EH's views on it. He did not meet, write to or attempt to speak with any EH officers. Moreover, he declined to set out what would be acceptable to him. His obsession with a full and accurate restoration scheme is totally contrary to the position taken by EH which expressly said it did not insist on a replica of the original Park.²¹⁵ Further, as Mr Sharpe conceded, nowhere in all the

²¹² Doc 18 and verbal responses to XX

²¹³ CD/P34

²¹⁴ Mr Sharpe agreed in XX that the structure of the geometric planting was present until about 1943 when it was removed for wartime exigencies. This does not sit comfortably with his proof of evidence at para 7.16 when he suggests the original layout had not existed for centuries

²¹⁵ See CDs/L14 and L21

extensive suite of correspondence from EH is it suggested that only a full restoration scheme would do²¹⁶.

- 7.106. The Council's case gives the impression that EH officers were misled by what the Appellant had told it. Mr Malim indicated that he was unaware of EH ever having said that it wanted a 360° landscaping treatment round the Temple. Its acceptance of the final mitigation scheme is a demonstration that this could not have been the case²¹⁷. EH made it explicit that it wanted the mitigation scheme to concentrate on the area to the south-west of the Temple and that the scheme was reasonable and proportionate. It is not correct to say, as the Council does, that EH was forced into this position by the landowner.
- 7.107. It is difficult to reconcile fully Mr Sharpe's insistence on a full scheme including planting to the north of the east-west line formed by the Triumphal Arch and the Temple of Venus with paragraph 7.13 of his proof in which he recognised that it is justifiable to concentrate the proposed planting in the area most directly affected. In any event, as he recognised in XX, the scheme is as full as it can possibly be given the land available.²¹⁸ He also conceded that moving the denser planting from the south-east of the Temple of Venus to the south-west was a practical and sensible way of achieving mitigation. And, of course, this proposal must be evaluated in light of the fact that the local planning authorities are contemplating substantial development such as the SUE and Science Park extension which would result in the Park being surrounded by built development and the Park being further fragmented by a major new distributor road.
- 7.108. Mr Sharpe's insistence on an exact replica of the original designed setting sits uncomfortably with his apparent enthusiasm for the totally faux "restoration" illustrated in CD/D15²¹⁹. In the end, he conceded that the scale of the proposed restoration must be proportionate to the development but declined to advise the Secretary of State whether the proposed scheme was proportionate: presumably he had formed no view on this or, if he had, he was not willing to reveal it. The only evidence before the Inquiry is, therefore, that the restoration scheme is proportionate and that to require the Appellant to restore the entire Park, especially when the impact is confined to the south-western portion of it, would be disproportionate.
- 7.109. In any event, the restoration scheme represents a real opportunity for benefit now and has been developed in the light of the land offered by the

²¹⁶ The Council claims that EH has been led astray (see paragraphs 8.19- 8.25 below). However, whatever EH might have assumed about the scheme on the appeal site which benefits from the extant planning permission, there are two undeniable facts: EH had taken the view that the appeal proposal would give rise to substantial harm to setting but that post-mitigation this would fall to less than substantial because there the mitigation scheme was acceptable. This was not dependent upon whatever view EH might have had regarding the extant scheme.

²¹⁷ CD/L9

²¹⁸ In XX Mr Sharpe agreed the 'wine glass' and the south-west avenue reflected the original scheme and the south and south-east avenues went as far as they could given the land available

²¹⁹ A concept Masterplan showing how the SUE and the Park might be developed

landowners.²²⁰ The suggestion that the planting scheme and restoration works lose some of their benefit because of the prospective inclusion of the Park in the SUE ignores the fact that what may emerge in the Charnwood Borough Council Core Strategy is a matter of conjecture. Further, as Mr Sharpe conceded, there is, in any event, as yet no allocation and, even if allocated, no guarantee that a planning permission would be sought, granted and implemented nor what restoration benefits any such scheme would offer.

- 7.110. In the meantime the assets continue to deteriorate, “worryingly” in Mr Sharpe’s opinion. There is nothing before the Inquiry to enable the conclusion that the benefits that would be achieved by the present appeal proposal would be achieved by any other development, still less in a similar timescale. Although Mr Sharpe may want more, this is genuinely a ‘bird in hand’ situation. His preference for £60,000 per annum over a single £150,000 down payment may be understandable but this approach was not acceptable to EH, no doubt with proportionality and reasonableness in mind. Further, he portrays a failure to comprehend what is actually being offered under the Section 106 obligation: the Appellant would carry out the agreed works whatever the actual cost and would provide a bond of £150,000 so that the Council may do the same in default.
- 7.111. Fourthly, as Mr Sharpe agreed, refusal reason 4 was specifically drafted to reflect EH’s position as at the time of the refusal of the first application (that is to say that there was no ‘in principle’ objection but there were concerns over mitigation).²²¹ Now EH does not object to the proposal on the basis of the revised restoration scheme, refusal reason 4 is, properly analysed, fully addressed. It was strange, therefore, to see the same reason for refusal in the context of the second application even though EH had withdrawn its objection by the time the second application was refused.

Conclusion

- 7.112. Far from causing unacceptable cultural heritage impacts, this development represents a rare opportunity better to reveal and appreciate the significance of the Park and its listed structures and the contribution of their setting wholly in accord with PPS5 Policy HE10.2. The proposed mitigation agreed with EH would assist in reducing the risk to these important assets and could lead to their removal from the Heritage at Risk Register. This is precisely in line with the benefits envisaged in the PPS5 Planning Practice Guide and surely should not be an opportunity to be missed.²²² Mr Malim was firmly of the view that, even considering only the heritage issues, the balance of the harm and benefits was firmly in favour of the proposal. He said the result was the same even if the repairs to the listed buildings were set aside and ignored. And, of course, the restoration of the Park is wholly in accord with EH’s recently approved Setting Guidance.²²³

²²⁰ This land also being that which is best positioned to mitigate any impacts caused by the development. EH described the land offered as very encouraging (CD/L21)

²²¹ As explained in CD/L15

²²² CD/L3, para 79

²²³ CD/L4

7.113. The rug was rather pulled from underneath LCC's feet on this objection when EH turned from opposition to commendation, but the Council determined to soldier on by putting forward a series of objections to the restoration of the Park which are contrived, have gone nowhere and contradicted its earlier enthusiasm for such works. The Council professes not to understand EH's change in stance. However EH's reasoning is clearly revealed when one reads the chronology of events which is contained in the correspondence and meeting minutes. Mr Malim emphasised how positive EH's letter of 7 June 2011 was.²²⁴ Moreover, the Council, in marked contrast to EH and PPS5 Policy HE1.2, has shown no desire to engage with either the Appellant or EH in order to address its concerns and seek to lessen the impact of the proposal. Finally, the Council has demonstrated that it does not understand the balancing exercise required by policy and that failure has underlain and, therefore undermined, its cultural heritage objection.

Third parties

Health, air quality and perception

7.114. Whilst there is no reason for refusal in relation to health, perhaps not unexpectedly, there is concern amongst third parties about the effects of the proposal on health. However, the fact that there are no objections whatsoever to this proposal from the Council,²²⁵ the EA, the Health Protection Agency (HPA) or the Primary Care Trust is an indication that such concerns are ill-founded. Mr Noakes confirmed these issues were fully ventilated by third parties at the time of both decisions, that Members were fully aware of the strength of opposition on this ground and that the Committee was advised to attach little weight to air quality, emissions and health impacts.²²⁶ Officers' advice that refusal on these grounds "could not be sustained" was plainly accepted.

7.115. In any event, health is principally an issue for the EA and the pollution control regime. The Government is quite clear on the proper delineation between the planning and pollution control regimes. Paragraph 10 of PPS23²²⁷ provides:

"The planning and pollution control systems are separate but complementary. Pollution control is concerned with preventing pollution through the use of measures to prohibit or limit the release of substances to the environment from different sources to the lowest practicable level. It also ensures that ambient air and water quality meet standards that guard against impacts to the environment and human health. The planning system controls the development and use of land in the public interest. It plays an important role in determining the location of development which

²²⁴ CD/L9

²²⁵ Mr Noakes confirmed in XX that this position had been arrived after the issues had been fully ventilated

²²⁶ CD/B5, para 399

²²⁷ CD/E9

may give rise to pollution, either directly or from traffic generated, and in ensuring that other developments are, as far as possible, not affected by major existing, or potential sources of pollution. The planning system should focus on whether the development itself is an acceptable use of the land, and the impacts of those uses, rather than the control of processes or emissions themselves. Planning authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced. They should act to complement but not seek to duplicate it."

- 7.116. The Government reiterated that advice in PPS10.²²⁸ It tells waste planning authorities to avoid carrying out their own detailed health assessments and instead advises that, drawing from Government advice and research and consultation with the relevant health authorities and agencies, they should have sufficient advice on the health implications, if any, of proposals.²²⁹ Paragraph 30 of PPS10 further explains that modern, well-run and well-regulated waste management facilities operated in line with current pollution control techniques and standards should pose little risk to human health. The Council plainly received sufficient advice from the relevant health authorities to be properly informed on this matter; despite being well aware, as Mr Noakes confirmed, of the considerable public concerns and objections on health grounds, it decided that there was no sustainable health-related objection after a very detailed analysis of all the issues raised by third parties in the CEO's reports.²³⁰
- 7.117. The EA has granted an Environmental Permit and so it clearly is satisfied that the Appellant would operate the plant in accordance with both Best Available Technology and the stringent requirements of the Waste Incineration Directive²³¹ (WID) which are designed to avoid any impact on human health. There was no evidence before the Inquiry to suggest that the plant would not operate in this manner. Of course, the third parties had the opportunity to – and did (see below) – make representations through the course of the permitting process that were taken into account in the decision to grant the permit. PPS10 tells planning decision-makers to assume that the EA, the statutory body with control over pollution control matters, will properly apply and enforce the Environmental Permitting regime.²³² Furthermore, EN-3 at paragraph 2.5.43 requires planning decision-makers to assume that there will be no adverse impacts on health where the plant meets the requirements of WID (and the permit would not have been granted unless the plant would do so) and does not exceed local air quality standards. The statement in WS2007 that there is no credible evidence of adverse health outcomes for those living near incinerators could not make the Government's position on the matter any clearer.²³³ The Inspector at Ince Marshes regarded that statement as a full answer to those arguing against incineration of waste on the basis of the precautionary

²²⁸ CD/E7, paras 5 and 30

²²⁹ Ibid, para 31

²³⁰ CD/B5, paras 369 – 399

²³¹ CD/G3

²³² CD.E7, para 27. Expressly endorsed by the Ince Marshes Inspector (CD/N1, para 11.27)

²³³ CD.F1, para 22 of Chapter 5

principle.²³⁴ The HPA, the Government's statutory advisor on health matters, has said that, whilst it is not possible to rule out adverse health effects with complete certainty, any potential damage to health of those living close-by is likely to be very small, if detectable.²³⁵

7.118. The Appellant has provided a full response to the issues raised principally by Mr Cockrell, Cllr Hunt, Dr Cotton²³⁶ and Mr Ogrodzinski on air quality.²³⁷ Again, neither the EA, the Council (after detailed consideration of the matter) nor Charnwood Borough Council objected to the scheme on air quality grounds. This is rightly so given that the development would not cause exceedences of the relevant air quality objectives and limits, detailed modelling having been undertaken as part of the EIA. In granting an EP the EA acknowledged that the impact of topography surrounding the site upon plume dispersion was considered and its own check modelling confirmed the Appellant's predictions²³⁸. Mr Stoaling has addressed Mr Cockrell's criticisms of the EA directly and concluded that none of the points raised affect the overall conclusion that the development would not have unacceptable impacts on air quality. The Council expressly considered what Mr Cockrell described as the discrepancies between applications in some detail in the second CEO's report.²³⁹ In doing so, the Council asked the EA and the Charnwood Environmental Health Officer to comment on the issues he raised. Both replied that the conclusion the development would not have unacceptable impacts on air quality stands²⁴⁰. It should be further noted that Mr Cockrell's complaint to the Ombudsman has already been considered and rejected (albeit that at the time of the Inquiry he was appealing it).

7.119. However, the public's concerns or perceptions in relation to health and air quality are themselves capable of being material considerations. Appendix A to PPS23 lists issues which may be relevant to the determination of a planning application. The penultimate issue refers to "*the objective perception of unacceptable risk to the health and safety of the public arising from the development*."²⁴¹ Perceptions that are based on emotions, personal prejudices or information which is factually incorrect plainly cannot be objectively held. Here, there is no reliable evidence to suggest that perceptions of health risk are objectively justified. Thus although perceptions, even those unsupported by objective evidence, are capable of being material planning considerations, very little or no weight should be attributed such unjustified perceptions of health risk. That position is supported by case law. In *Gateshead MBC v Secretary of State for the*

²³⁴ CD.N1, pp11.24

²³⁵ BWS/5, para 6.6

²³⁶ Dr Cotton is Public Health Engineer whose principal expertise appears to be in water supply and sanitation as opposed to air quality. In any event, the issues they raised were not outside of the matters covered by Mr Stoaling

²³⁷ BWS/5

²³⁸ Ibid, para 5.9

²³⁹ CD/B5, paras 396 – 397

²⁴⁰ CD/R22

²⁴¹ CD/E9, Appx A, p12

Environment,²⁴² where there was public concern about an increase in the emission of noxious substances from a proposed clinical waste incinerator, Lord Justice Glidewell in the Court of Appeal, with whom Lords Justices Hoffman and Hobhouse agreed, held that if public concern could not be objectively justified then it could not be conclusive. He continued:

*"If it were, no industrial – indeed very little development of any kind – would ever be permitted."*²⁴³

7.120. The Inspector in the Ince Marshes case followed that reasoning. He said:

*"...the position giving rise to doubts in the mind of the public, concern over health effects of incineration of waste, is one that is in direct conflict with a position taken by the Government in a statement of national policy (paragraph 22 of Chapter 5 of Waste Strategy for England). Such a statement will not satisfy everyone but should act to allay anxiety amongst the public at large. My conclusion is that although the proposal raises public anxiety this should not carry great weight in relation to the planning decisions on the proposals before the Secretary of State."*²⁴⁴

7.121. In this regard, the evidence given by Dr Badiani at the Inquiry evening session was most unfortunate, particularly given his position in the community, for understandably residents of Shepshed will place great weight on his opinion. His repeated mantra that everything he said was "fact...cannot be denied...cannot be refuted" was not merely wrong but, given the chilling health consequences he alleged would result if this development went ahead, downright alarmist. For example, his reliance on the 4th report of the British Society for Ecological Medicine (BSEM) on the Health Effects of Waste Incinerators report was wholly misplaced. As the Council explained in the CEO's report, the BSEM report, his principal source of information (Dr Badiani explained he had "absolutely no teaching on the health effects of incineration" but had read into the subject), has been both denied and refuted by the HPA which was extremely critical of the methodologies used; it had identified numerous misleading statements, general inaccuracies within the document and unsubstantiated assertions.²⁴⁵ Many of the reports he referred to related to old style, pre-WID incinerators or hazardous waste incinerators and, as the Committee was advised,²⁴⁶ have no application to modern, well-run plant subject to the regulatory regime operated by the EA. Dr Badiani's plea for the precautionary principle to be invoked and permission be refused was inappropriate given the advice in PPS23²⁴⁷ and the HPA position set out in its response to the BSEM report.²⁴⁸

²⁴² [1994] 1 P.L.R. 85

²⁴³ [1994] 1 P.L.R. 85 at 95

²⁴⁴ CD/N1, para 11.28

²⁴⁵ CD/B5, para 382

²⁴⁶ CD/B5, para 393

²⁴⁷ CD/E9, para 6

²⁴⁸ BWS/5, p.18, para 6.11

- 7.122. Furthermore, public concern has been courted: Mr Kershaw for CHAIN, for example, explained that he had distributed some 3,000 leaflets in Shepshed and Loughborough to ensure a good turnout at the evening session of the Inquiry. Such action by itself is, of course, not to be criticised, but when public reaction is stimulated in this way those who do so have a special responsibility to impart information that is accurate and not deliberately alarmist. The postcard “printed and promoted” by the British National Party during the course of the then elections was bound to cause residents concern (*“Emissions of toxic fumes, dioxins and carcinogenic particles could seriously endanger the health of local residents”*).²⁴⁹ The founding members of CHAIN were responsible for drafting the headnote to the petition which was widely circulated in the area; amongst other assertions, it contended that the emissions from the plant *would endanger the health of residents*. Again, this would cause concern if not alarm in those who read it which would be unjustified because there is no evidence to support it. If this were not enough, Dr Badiani relied on a document that has been examined and shown to be wholly flawed by the Government’s statutory health advisor (and which Mr Noakes agreed in XX was properly described as dangerous material likely to give rise to a large amount of concern). In these circumstances it cannot properly be said that the health concerns and perceptions of the local community are objectively (even if sincerely) held. They are not deserving of weight.
- 7.123. There is no need either to go behind the Government’s position, which is based on detailed expert advice, or to intervene on a matter which is an express regulatory issue within the competence of the EA. The Council does not take a different approach and Mr Noakes in XX said that little weight should be given to health and air quality issues and nearly as little to perception.

Traffic

- 7.124. Traffic was raised as a concern by Cllr Tassell on behalf of Shepshed Town Council and CHAIN. Congestion undoubtedly occurs at peak periods on the A512 and at junction 23, but this is an everyday experience across urban Britain. However, it is important to note that Cllr Tassell expressly accepts that any impact on local roads (meaning all relevant parts of the highway network including the motorway)²⁵⁰ is not sufficient to warrant a refusal of planning permission. She also accepted that the LCC Planning Committee was fully aware of the local traffic conditions but had not considered it appropriate to raise it as a reason for refusal. It is submitted that that should be the end of the matter. In any event, there is no objection from the local highway authority or Highways Agency (HA). As the highway authority noted, the proposed development would not increase traffic generation over and above that permitted by the extant planning permission. The Transport Assessment is particularly robust given the use of 2006 baseline data when the highway authority states that actual flows have fallen from that level. There is therefore no basis to refuse this

²⁴⁹ CD/B1, p98. Mr Kershaw agreed that no weight should be given to the BNP postcard

²⁵⁰ As confirmed by Cllr Tassell in XX

proposal on traffic issues. Mr Noakes confirmed that the appeal site was in fact favourably located adjacent to the strategic highways network and close to a major source of waste arisings in the County, namely Loughborough, which is the County's largest settlement.

Quarry restoration

- 7.125. Dr Mason's concern in relation to the restoration of Newhurst Quarry is entirely addressed by the proposed quarry reclamation condition²⁵¹. Once this condition was pointed out to Dr Mason he was able to confirm that he was suitably reassured. He made it plain that he did not advocate full restoration to former ground level and that there could often be advantages with low level restoration and flooded voids.

Localism

- 7.126. Many objectors have referred to the Government's localism agenda and the Localism Act (as from 15 November 2011). However, section 38(6) of the 2004 Act provides that planning decisions should be made in accordance with the development plan unless material considerations indicate otherwise. Paragraph 27 of "The Planning System: General Principles" provides that local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon valid planning reasons. The Localism Act has not changed that position. If local opinion were to be decisive in the determination of applications for waste management facilities there would be little likelihood of any gaining permission. What the Localism Act does is give communities the opportunity to be integrally involved in local plan-making: it does not change the application of section 38(6) of the 2004 Act.
- 7.127. In any event, this case is quite different from an application for, say, a shop or some housing where it can fairly be said that the benefits and effects will be largely confined to the locality and, therefore, local opinion should be a significant factor. Here, by contrast, the EfW proposal has a direct relevance to key national planning policies and objectives and provides crucial benefits to the nation (hence the Secretary of State's direct involvement): in such a case, whilst of course the local community must have the fullest opportunity to engage in the Inquiry process, the decision should properly have full regard to this national dimension. It should be said that given the population sizes of both Shepshed and Loughborough the number of active CHAIN members (185) does not seem particularly high. A similar observation might be made about the number of signatories on the petition and number of objections given the leafleting that went on: Inquiries of this nature almost always attract substantial opposition and in this case the volume of objection is by no means out of the ordinary. The Government expressly recognises in the WPR2011 that EfW technology is often not well

²⁵¹ Docs 3 & 4

understood by the public and that perceptions are often shaped by outdated or incomplete information which can lead to negative and emotive responses.²⁵² It says that overcoming such barriers through a credible evidence base is key to the delivery and growth of EfW.²⁵³

Other matters

- 7.128. In XX of the Appellant's witnesses it was suggested that the implementation of this scheme, should planning permission be granted, was in some way contingent upon the award to the Appellant of a contract for handling the Council's MSW. The answers provided by the Appellant's witnesses could not have been clearer: no reliance is placed on such an award of a MSW contract – albeit that the scheme would be ready and available to help the Council in this regard – as Mrs Tappenden said, the Appellant would not have invested the significant funds in the application and appeal processes if that were the case. The fact that it has made such an investment is a good indication of its confidence that permission would be implemented should planning permission be granted.
- 7.129. Given that there is some 348,000 tpa²⁵⁴ of C&I waste currently going to landfill there is an obvious, ready and captive market (given the requirements of regulation 12 of the Waste (England and Wales) Regulations 2011) for the facility without recourse to MSW. Furthermore, as Mrs Tappenden explained, the first application was submitted on the basis that the plant would take MSW or C&I, or both, given that the Appellant recognised that it may not be awarded the MSW contract. The Appellant was challenged to name a merchant EfW facility which was operational: Mr Leeson referred to Grundon's Lakeside EfW at Colnbrook, seen prominently from the M25 in the vicinity of Heathrow. There are further such facilities which have recently been granted consent (such as SITA, Severnside) and still more being promoted in applications and appeals.

Reason for refusal 5: archaeology

- 7.130. Following the completion by the Appellant of archaeological investigation works in Garendon Park, the County Archaeologist has now confirmed that he is satisfied that the proposed Park restoration would not impact unacceptably on the archaeological integrity of Garendon Park.

The balancing exercise

- 7.131. In the first CEO's report Members were advised that the proposal: first, would meet the locational requirements of the development plan at the strategic and local levels;²⁵⁵ secondly, would drive waste up the hierarchy

²⁵² CD/F2, para 231

²⁵³ Ibid, para 232

²⁵⁴ 2009. BWS 5/1, para 4.45

²⁵⁵ CD/B1, para 273

whilst not having a detrimental impact on long-term recycling rates;²⁵⁶ thirdly, would assist in achieving self-sufficiency in terms of waste management for the waste plan area; fourthly, should be afforded significant weight for its compliance with waste policy and for its renewable energy provision²⁵⁷; and fifthly, would contribute to meeting a significant need for waste management facilities.²⁵⁸

- 7.132. In XX Mr Noakes accepted that these issues represented five features to be afforded significant weight in favour of the scheme and that the Members had been so advised. However, when it came to the balancing exercise, the only benefit weighed in the balance was the need for waste management facilities for C&I waste and that was emphasised to be of local significance only and incapable of constituting a national benefit.²⁵⁹ As a result, the exercise was manifestly flawed and failed to take any account, for example, of climate change benefits, which is the very reason that jurisdiction of the appeal has been recovered. Mr Noakes's suggestion that the benefits that had not been expressly included in the balancing exercise used to advise Members were "inherently understood to be included" is, it is suggested, an implicit acceptance that the exercise was flawed. The reality is that climate change has been virtually ignored both in the Council's decision-making processes and again in Mr Noakes's evidence.
- 7.133. Conducted properly, it is contended that the balancing exercise comes down very decisively in favour of this proposal being permitted. The appeal scheme would deliver a number of significant and tangible benefits which should be given substantial weight. They have been covered already in some detail but they are drawn together here in summary form. The appeal scheme would:
- (i) Divert some 300,000 tpa of residual non-hazardous waste from landfill, thereby avoiding the release of substantial quantities of harmful greenhouse gases, including methane, and making a substantial contribution to combating climate change (indeed, saving a "humungous" 87,000 tonnes of CO_{2e} per annum);
 - (ii) Directly accord with national energy policy and so help to diversify the supply of energy and provide dependable, dispatchable and distributed energy;
 - (iii) Provide the Waste Plan area with valuable and much-needed recovery capacity, enabling it to meet more sustainably its waste management capacity needs and thereby reduce its dependence on continued extensive landfilling in flagrant disregard of the waste hierarchy;

²⁵⁶ Ibid, para 277

²⁵⁷ Ibid, para 311

²⁵⁸ Ibid, para 378

²⁵⁹ Ibid, para 378

- (iv) Help to reduce the cost of managing waste for local businesses by providing a more competitive method of waste management for C&I waste for which no Landfill Tax would be payable;
- (v) Generate approximately 21MW of renewable and low carbon energy for export to the local grid providing sufficient power for about 42,000 homes;²⁶⁰
- (vi) Be CHP-enabled. The appeal site is favourably located to exploit CHP. The Appellant has already received expressions of interest in CHP from two local firms. The facility would be able to take advantage of any future opportunities for heat demand;
- (vii) Produce 75,000 tpa of secondary aggregates from the IBA recycling operation which would help reduce the reliance on primary aggregates, husbanding them for future generations, as well as reducing the energy expended in winning such minerals;
- (viii) Provide 38 to 40 jobs. The employment opportunities at the ERF would be skilled. In addition, a significant number of construction jobs would be created over the three year construction period. The facility would also support the local economy and indirect employment through the need for services, supplies etc. This is precisely the form of development supported by Planning for Growth and for which the default answer should be 'yes';
- (ix) Act as a positive gateway from junction 23 of the M1 to Shepshed, the NF and CF; and
- (x) As recognised by EH, provide real benefits to Garendon Park through the proposed planting, described by Mr Malim as a "lasting legacy" for the registered park: this represents, as EH has stated, a rare opportunity to allow for a better understanding of the Park and its associated heritage assets, which is a key aspiration of PPS5, together with the repair of two distinguished listed structures, the Triumphal Arch and Temple of Venus.

- 7.134. Against this, the landscape and visual impacts are for the most part not significant. The appeal site is agreed by the Council to be suitable in principle for major-scale waste management facilities, is located in an area identified in the LLWDFCS for strategic-scale waste management facilities and is well located to treat waste arisings in the Waste Plan area.
- 7.135. It is part of a disused quarry, lies within the Shepshed urban fringe, is bordered on two sides by strategic roads and sits within an industrial/commercial context. It lies outside any nationally-designated landscape and

²⁶⁰ APP/12

would have very limited effect on views from the more sensitive parts of CF to its south. The Council's objection on landscape and visual grounds sits uncomfortably with its apparent endorsement of major expansion of Loughborough. Overall, the residual impacts on landscape, visual amenity and heritage assets have been demonstrated to be limited and these impacts are decisively outweighed by the numerous and significant benefits that the development would secure.

Conclusion

7.136. Not only does the balancing exercise come down decisively in favour of the appeal scheme but the proposal enjoys not less than five presumptions in favour of development: first, it accords with the relevant provisions of the development plan and therefore enjoys the statutory presumption in favour of planning permission. The Council has not advanced any other material consideration to require the appeal to be dismissed if found to accord with the development plan. Secondly, the proposal enjoys the presumption in EN-1²⁶¹ to grant planning permission for an energy generator which plainly accords with the policies set out in the National Policy Statements; it is not suggested that a statutory presumption applies but comfort is drawn in respect of this proposal from the policy presumption in EN-1. Thirdly, the presumption in Planning for Growth is in favour of development which provides valuable employment and other economic benefits. Fourthly, the presumption is in favour of development which contributes to the delivery of the key planning objectives set out in the PPS1 CCS.²⁶² Fifthly, the presumption contained in Policy EC10 of PPS4 in respect of economic development. For all these reasons, planning permission should be granted subject to the agreed conditions and the Section 106 undertaking.

8. The Case for the Council (LCC)

- 8.1. The 'active' reasons for refusal in this case concern harm to landscape character and visual impact, and harm to heritage assets. It is appropriate to record at the outset that Mr Noakes accepted in XX that had the Council found no such harm, then it would have granted permission for the proposed EfW plant. He accepted that if the Secretary of State (SoS) now finds no such harm, then there is no other good reason that the Council relies on to withhold planning permission.
- 8.2. The Council also accepts, as it always has done, that the appeal site is suitable in principle for an EfW plant. The issue here is one of scale, and in particular the height of the main building (46m) which would rise high above the existing fully mature woodland screen on the northern and eastern boundaries of the site, so that the upper section 'floats' up to 21m above the tops of the trees. The top of the proposed main building would be also be 17m higher (AOD) than the existing GLW Feeds building to the north, which itself has attracted adverse criticism in visual impact terms.

²⁶¹ CD.H7, para4.1.2

²⁶² CD/E2, para 40

- 8.3. The Appellant's answer to the 'scale' criticism is that it relates to the technology used in EfW: in effect this demands buildings of this scale. This is not supported by the evidence. It was put to Mrs Tappenden in XX that plants of much more modest height are technically possible. The Eastcroft, Nottingham decision shows the plant when extended would have a throughput of 250,000 tpa and a height of 28m²⁶³. The Ardley, Oxfordshire decision was for a 300,000 tpa plant with a height of 29m-36m²⁶⁴. Indeed, in that case the evidence was that reducing the capacity to 240,000 tpa would lower the height of the building by 6m²⁶⁵.
- 8.4. The National Policy Statement EN-3 notes that EfW which are nationally significant infrastructure projects (NSIPs) are "unlikely to be less than 25m in height"²⁶⁶; which shows that at least some will be at or about 25m high. The XX of Mrs Tappenden was picked up by Mr Smith in his evidence. He volunteered to produce a list of EfW plants showing their height and throughput²⁶⁷. This shows that the appeal proposal is towards the top end of the scale. Curiously, the height given for Eastcroft is 32m, which does not appear to tally with the appeal decision (see above). What the list also does not show is that the appeal proposal at 46m, is 3m higher than the NSIP at Rookery South²⁶⁸. In light of submissions from the Appellant that the public benefits of the proposal are inexorably linked to buildings of this scale/height it should be borne in mind that the same benefits are deliverable by plant in buildings that are much lower.
- 8.5. It is also appropriate to note that the Appellant accepts that there will be some residual harm both to landscape character and visual impact, and to the setting of heritage assets, to place in the planning balance. The issue between the parties is (a) the nature and significance of that harm and (b) what weight should the SoS as decision-maker attach to it. Once these issues are resolved, the SoS will need to carry out the s38(6) balance: the development plan and other material considerations. In this case reference has been made to the suite of Energy National Policy Statements and to the Rookery South decision by the Infrastructure Planning Commission; however, while these are material considerations in this appeal, the 2008 Act provides for a different balancing exercise. It is important that the SoS bears this in mind when considering these parts of the evidence.

Heritage Assets

- 8.6. The reasons for refusal allege harm to the setting of Garendon Park (Grade II Historic Park & Garden), and to the setting of listed buildings within the Park: The Triumphal Arch (Grade 1), and the Temple of Venus (Grade II*). The Council also alleges harm to the setting of White Lodge (Grade II). Of

²⁶³ CD/N8, Inspector's Report, paras 3 & 39

²⁶⁴ CD/N2, Inspector's Report, paras 4.9 & 4.11

²⁶⁵ Ibid, paras 8.16, 7.10-11, 9.24

²⁶⁶ CD/H8, para 2.5.49

²⁶⁷ APP/14

²⁶⁸ CD/N10, para 5.50

the other listed buildings in the vicinity (including The Lodge (Grade II) at the entrance to the Park off the A512), the Council raises no issue of harm.

8.7. There has been an issue as to the proper interpretation and application of PPS5. Mr Malim for the Appellant accepted in XX:

a) The appeal planning application is an application for 'consent' for the purposes of the 'Development Management' Policies HE6 to HE10 in PPS5²⁶⁹.

b) The 'setting' of a heritage asset can contribute to its significance (HE6.1).

c) Policy HE7.1 requires decision-makers to assess the significance of the asset(s) that may be affected by a development proposal, and in this case the assets are Garendon Park and the listed buildings.

d) HE8 does not apply in this case because assets of concern are covered by HE9.

e) The proper reading of the somewhat complicated third sentence of HE9.1 on the facts of this case is: "Significance can be harmed ... through ... development within its setting", so that one assesses the asset not its setting for harm arising from development within its setting.

f) HE9.1 recognises that "substantial harm" can arise to an asset as a result of an adverse impact in its setting.

g) In order to accurately assess the significance of any harm, it is necessary to adopt a transparent methodology to identify:

- i) The sensitivity of the asset; and
- ii) The magnitude of the impact.

h) If, after assessment, the harm to the significance of the asset is "substantial", then PPS5 requires the balancing exercise in HE9.2 to be carried out. If the harm is less than substantial (but nonetheless still harmful) then the balancing exercise in HE9.4 applies. In either case the principles in HE10 are applicable (a proposition with which Mr Sharpe for the Council agrees).

i) If it is found that harm to Garendon Park or White Lodge is "substantial", then a grant of planning permission would be "exceptional"; if substantial harm arises to the Triumphal Arch or the Temple of Venus, then a grant of planning permission would be "wholly exceptional".

8.8. The methodology adopted in the ES and by Mr Malim to assess the significance of harm to heritage assets is, the Council accepts, appropriately transparent. The application of the methodology (in respect of assessing the significance of assets) appeared to cause some trouble to Mr Malim in XX, but he did not contend for any different methodology. Therefore, the SoS can confidently adopt the methodology in this case.

²⁶⁹ CD/E4, p6

- 8.9. Table 2 in Mr Malim's proof²⁷⁰ distinguished between 'Heritage Assets' and 'Other cultural heritage features' which, as his paragraph 3.4.1 notes, can include sites of national importance which are not designated. Mr Malim eventually accepted in XX that in this case sensitivity for all relevant assets is 'high' because they are all 'heritage assets' of 'national' importance. The qualification Mr Malim kept adding in XX was not relevant to the sensitivity of the asset but rather to its significance. That showed an attempt to step outside the parameters of the transparent model which had been adopted thus casting doubt on the transparency of the whole assessment process.
- 8.10. As to magnitude, the issue between the parties is relatively simple to define: having regard to Table 3 in Mr Malim's proof²⁷¹, is the change to the settings of the heritage assets (individually and collectively) caused by the proposed development "fundamental" or "partial"? Mr Malim agreed, and Mr Sharpe does not demur, that it is answering this question that will lead the SoS to the appropriate level of magnitude in the methodology.
- 8.11. Under the methodology Table 4, the sensitivity (high) and magnitude are then applied to assess the significance of the impact²⁷². As it happens, it matters not at this stage whether the magnitude change to the setting of the assets is fundamental (high) or partial (medium): in either case the significance of the impact is "major", the greatest value in the methodology. It naturally follows, as Mr Malim and Mr Sharpe both agree, that "substantial harm" (in PPS5 terms) results.
- 8.12. Of course this is not fatal to the Appellant's case, but it means, inexorably, that a grant of planning permission would be wholly exceptional, and that the appropriate balancing exercise is that under Policy HE9.2.
- 8.13. The HE9.2 balance requires consideration of whether there are "significant public benefits that outweigh that harm" including both 'heritage' and non-heritage benefits. Indeed, HE1.3 expressly requires that the public benefit of mitigating the effects of climate change be included.
- 8.14. EH maintained an objection to permission from the time of the first application until June 2011. It was only upon receipt of the current mitigation planting scheme and compensation package that it was prepared to downgrade its outright opposition to permission being granted; until then EH maintained, rightly, that the development would cause substantial harm to the heritage assets, now its position is that while harm remains, it is 'less than substantial' and for the decision-maker to weigh in the planning balance²⁷³.
- 8.15. The harm that EH and the Council both recognise arises from the introduction of a large industrial building into the setting of the heritage assets in an area where there are already other detractors causing harm. The development thus has an individual and cumulative adverse effect. The mitigation planting to screen the development from views from the listed

²⁷⁰ BWS 4/1, p18

²⁷¹ Ibid, p19

²⁷² Ibid, p20

²⁷³ CD/L9

buildings on the ridge will take a considerable time to be partially effective (10 years) and to reach maturity (20 years and beyond). Even then, it will not be effective in mitigating the harm in the south of the southern part of Garendon Park.

- 8.16. Further, both Mr Malim and EH appear convinced that the 'views out' from the Park are not a significant matter because the Park was designed to be inward looking. This conclusion is arrived at because there is assessed to be no correlation between views down the historic avenues of trees laid out and a 'feature' (monument or hill) beyond the boundaries of the Park. This is not borne out by the available evidence. An account from a 1745 visit to the Park²⁷⁴ particularly mentions a view down an avenue to a "hill covered with heath". Mr Malim's suggestion (made for the first time in XX) that this must have been a reference to Shepherd's Hill inside the Park is not convincing: he identified Shepherd's Hill and it is not in the correct place to be at the end of any of the potentially relevant avenues²⁷⁵.
- 8.17. Second, Mr Sharpe claims that the long south-westerly avenue from the Temple aligns with another hill (which is no longer there having been quarried away). Establishing precisely which hill this might have been proved problematic. Mr Sharpe was convinced it was Broadhurst Hill²⁷⁶, but was somewhat thrown off his stride when faced with the 1754 map at CD/L22. Broadhurst Hill is mentioned on the Map, but the picture of the hill sits on the page north-west of Garandon (not south-west). The 1754 map is of course diagrammatic; just how diagrammatic in the case of Broadhurst Hill is only apparent when one considers Mr Malim's candidate for the missing hill. Looking at the 1886 map²⁷⁷ he suggested the only hill in the correct line might have been Morley Hill near Morley Farm, where the 1886 map also has evidence of quarrying. However, when one looks at the 1754 Map Morley's Hill (sic) (with the gallows on top) is shown even further 'north' than Broadhurst Hill. The 1754 Map shows no hills immediately south west of Garendon. It is submitted that the map detail there is far too 'busy' to include them; they are simply shown in a space left blank for the purpose to the north and west of Garendon (there is no other detail depicted). So, there is credible historic evidence for Mr Sharpe's hypothesis, which is to be preferred to that of Mr Malim.
- 8.18. The result is that Mr Malim and EH both underestimate the harm caused to the assets because development in their setting is plainly more significant than they had assumed as a result of outward as well as inward looking avenues.
- 8.19. In addition, EH has been led astray, if not misled, by the assumption that had "driven" their engagement with the proposed development (see CD/L9). This was the "knowledge" that the existing 'fall-back' consent from 2007 would cause harm to the heritage assets in any event. Thus, as Mr Malim accepted in XX, EH adopted the harm caused by the 2007 scheme as a

²⁷⁴ BWS 4/1/C

²⁷⁵ Inspector's note: Shepherd's Hill is shown on the eastern edge of the Park in Figure 1 within BWS 4/1/C

²⁷⁶ WPA 5

²⁷⁷ APP/9

baseline for assessment of that caused by the appeal scheme. In fact, there is no such harm. Mr Smith for the Appellant accepted in XX that, using the levels information (which was not disputed)²⁷⁸, the height of the buildings granted permission in 2007 would be below the top of the trees on the eastern and northern edge of the appeal site. That being the case, the only possible views giving rise to harm would be through the trees in winter. There would be an effective winter screen because of the depth of planting. If this is accepted, then it is clear EH was under a serious misunderstanding.

8.20. EH also accepted the April 2011 partial planting mitigation scheme²⁷⁹ under a misapprehension, for while it said²⁸⁰ that it revealed the significance of the historic layout of the Park and the setting of the listed building, and was an improvement to the previous July 2010 scheme²⁸¹, it also found it to be reasonable and proportionate on the basis, inter alia, that it “most importantly” was put forward with the support of the landowner. That landowner support had been a long time in coming, as EH was well aware.

8.21. In June 2010, the Appellant sought out a meeting with EH in order to establish whether its objection was one of principle or whether there was room to explore a potential solution. The minutes of that meeting (CD/L15) show²⁸²:

- a) The Appellant now had more time now it had not been selected for the next stage of the PFI bid²⁸³.
- b) The Appellant's opportunity to offer mitigation planting was restricted in that it was “not the most influential developer”²⁸⁴; house-builders had the land under option. The Council suggested bringing forward a planting scheme in tandem with the house-builders' scheme for a sustainable urban extension (SUE) to Loughborough.
- c) EH advised that it was the “southern end of the Park” which was of “most concern” (i.e. it was not the only concern) and that regard should be had to the whole Park²⁸⁵. However, it appears that the “southern end of the Park” was not defined clearly.
- d) EH wanted an holistic approach to be taken of the historic environment and the buildings within it²⁸⁶.
- e) Actions agreed included the Appellant speaking to the landowner to seek a commitment and advising EH and the Council of the result.

²⁷⁸ LCC 1/5, Appx1

²⁷⁹ CD/L12

²⁸⁰ CD/L9

²⁸¹ CD/L11

²⁸² CD/L15

²⁸³ Ibid, para 2

²⁸⁴ Ibid, para 6

²⁸⁵ Ibid, para 12

²⁸⁶ Ibid, para 15

- 8.22. The July 2010 scheme that emerged included planting both north and south of the ridge restoring the 360° treatment to the Temple, with avenues at all points of the compass but with planting limited to the slopes of the ridge and the 'wine glass bowl' at White Lodge²⁸⁷. EH's reaction was delivered on 10 September 2010²⁸⁸. As Mr Malim confirmed in XX, it applauded the far greater historic understanding of the assets, the 360° treatment of the Temple and the 'wine glass bowl', but was thoroughly disappointed with planting only along the ridgeline and not further into the southern area of the Park. The lack of continuing with the avenues further south it put down to the landowner's desire/need to continue farming the land. EH maintained its objection on the grounds of 'substantial harm'.
- 8.23. In fact, as CD/L16 shows, at this time, the landowner was not in a position to agree any land for planting. On 7 July 2010 the Appellant suggested that the house-builders give up their option on land south of the ridge to make it available to the appeal scheme for planting. It did not ask for land north of the ridge to enable the 360° Temple treatment to be delivered. This letter shows that the 'excuse' offered to EH that the land was needed for farming was not the real barrier to a reasonable and proportionate planting scheme coming forward; it was that the land was under option.
- 8.24. After planning permission was refused, the Appellant met EH again²⁸⁹ (the Council was not present as the invitation to do so had been issued at short notice). The Appellant told EH it could now offer more land "south of the buildings". EH was very encouraged. The meeting concluded with the Appellant being encouraged to obtain written confirmation of the land that was on offer.
- 8.25. In March 2011 a new scheme was submitted to EH²⁹⁰. More planting was put forward but all south of the ridge. This, it is submitted, is not what EH originally wanted particularly with regard to the holistic treatment of the Park and buildings, and the 360° treatment of the Temple in particular. EH was plainly under the impression that the landowner would or could only make available land south of the ridge. In fact, nothing was further from the truth. The reason why only land south of the ridge was included was because that was all the Appellant had asked for. To this day, the SoS cannot know whether some modest further land north of the ridge could be provided to allow restoration of the 360° treatment at the Temple. Far from revealing the historic setting of the Temple, the current scheme wholly misrepresents it. At no stage is there any historical justification for a semi-circle of planting at the Temple. Mr Sharpe stated in XX that he could not understand why EH moved its position on land north of the ridge. He identified the importance of the treatment of the immediate surroundings of the listed buildings (including the Temple) in his consultation response to the planning application²⁹¹. The SoS can now be sure why EH moved its

²⁸⁷ CD/L11, Figs 1, 5, & 7. The 'wine glass bowl' refers to the shape of the planted avenue

²⁸⁸ CD/L13

²⁸⁹ CD/L21

²⁹⁰ CD/L17

²⁹¹ CD/P34

position: it was under the misapprehension that it was simply not possible to be delivered.

- 8.26. Mr Malim agreed in XX that mitigation based on restoration of a heritage landscape is, in principle, acceptable²⁹² but so long as it accords with general principles²⁹³ that include, importantly in this case, execution in accordance with compelling evidence. There is compelling evidence for the 360° treatment at the Temple and without it Mr Sharpe was quite correct to regard the Appellant/EH approved scheme as failing to “better reveal the significance of the asset” (see PPS5, Policy HE10.1). Indeed, Mr Sharpe wrestled with the idea that the July 2010 scheme that EH rejected might be preferable on the basis that it restored something of the historic layout in the vicinity of the listed buildings, with an indication of the radiation of avenues out from them, while keeping the remainder of the southern end of the Park as an echo/pointer to the substantial felling of trees as a result of ‘the Dame’s legal difficulty’²⁹⁴ and the later more complete wartime clearance as the nation went ‘digging for victory’. In re-examination Mr Malim was tempted to suggest that there was no evidence as to how many trees were in fact felled as a result of the December 1777 court case; he must have forgotten that contained in his own evidence²⁹⁵ that only “fragments survived”.
- 8.27. Therefore, the substantial harm to the heritage assets is not appropriately mitigated, the planting restoration scheme does not of itself amount to a sufficiently positive contribution (HE10) to deliver substantial public benefits that of itself outweighs the harm (HE9.2). In fact, contrary to the view taken by EH and for the reasons set out above, the harm to the heritage assets by development in their setting remains substantial, so that (on the state of the planning balance thus far) wholly exceptional reasons are still required for a permission to be granted.

Landscape Character and Visual Impact

- 8.28. The SoS can be confident that the proposed EfW building was designed or conceived to be a landmark building; it was always meant to make a statement and was always going to be visually prominent in the landscape. This much is clear from the Design and Access Statement²⁹⁶ and the proof of evidence of Mr Smith in which he describes it as a “positive landmark on the urban edge”, a “positive landmark” and “suitable gateway” for the Charnwood Forest and a “fitting gateway for Loughborough and Shepshed”²⁹⁷.
- 8.29. The appeal application was prepared because the Appellant judged the site to be “ideal” to support its PFI bid²⁹⁸. Its consultants, SLR, were instructed

²⁹² CD/L3, paras 142 & 176

²⁹³ Ibid, para 160

²⁹⁴ CD/L12, Appx B

²⁹⁵ BWS 4/1/C, p8, 3rd para

²⁹⁶ CD/A3

²⁹⁷ BWS 3/1, paras, 267, 269 & 352

²⁹⁸ BWS 1/2, para 6.1

to commence EIA in September 2008²⁹⁹ as it decided to run the planning application and PFI bid in tandem and before SLR were instructed. Therefore, as Mr Smith confirmed in XX, the Landscape and Visual Impact Assessment did not inform the choice of site. Further, Mrs Tappenden confirmed in XX that the scale of the building was effectively determined by the plant provided by the Appellant's commercial plant-supplier partner. It is therefore clear that the EIA/LVIA process did not influence the scale of the building either. Mr Smith confirmed in XX that LVIA experts had no opportunity to reduce the scale of the building, merely its form.

- 8.30. It should therefore come as no surprise to the SoS that the Appellant now presents the building as a 'gateway' and seeks to justify it as such and, much to the incredulity of local people (as was evident from the contributions at the evening Inquiry session in particular), seeks to advance the case that it will be a positive presence in the landscape and not a negative one.
- 8.31. Mr Smith was at least forthright in XX in agreeing what a 'gateway' building should be: an announcement that the observer is entering through a gate into a zone being described by the building; a positive statement selling what is to come. In this case, the building is intended to serve as a gateway to both the CF and the NF.
- 8.32. The Charnwood Forest Landscape and Settlement Character Assessment, Shepshed character sheet³⁰⁰, ought to have caused the Appellant to pause before promoting the appeal scheme as a suitable gateway:
 - a) The assessment focuses on the southern urban fringes of the town when the majority of built development is north of the A512, which is a strong east-west corridor.
 - b) Existing industrial and commercial development marks the southern edge of the town (which Fig 001 of CD/K7 shows is the line of the A512).
 - c) Existing detractors (as Mr Smith agreed in XX) are the southern entrances to the town which are not well defined, the busy road junctions and the motorway junction and the adjoining depot.
 - d) The assessment recommends improvement to the southern entrances of the town and the creation and enhancement of gateways particularly from the motorway.
 - e) The appeal site quarry is identified as being adjacent to the motorway, but is screened from view and is therefore not a gateway. The assessment recommends the continuation of such woodland screening, and therefore, it is submitted, that appeal site is not a candidate for 'gateway' development.
- 8.33. Mr Smith accepted in XX that the appeal scheme would make no contribution to the need for new gateways on the north side of the A512, and would not amount to an enhancement of the currently open views from

²⁹⁹ BWS 2/1, para 1.6

³⁰⁰ CD/K7

the motorway junction over the highway depot warehouse buildings specifically identified as a candidate gateway site in the study. He was adamant that the appeal building would create a positive contribution and be the “defining character of that gateway” to Shepshed and the CF. This is simply not credible. From the motorway junction in particular, and in the wider landscape generally, the EfW building would be seen ‘floating’ on top of the woodland in which it sits. It says nothing about the character of the CF which one is entering.

- 8.34. The quality of the landscape is recognised in the CBLP as an Area of Particularly Attractive Countryside (APAC)³⁰¹. The Appellant has sought to ‘make mischief’ with this policy on the basis of the advice in PPS7, paragraph 25. But, as Mr Smith accepted in XX, Policy CT/7 in the CBLP is a character-based policy and the Council does not rely on the fact of the local designation, but instead does so on the basis that “it is based on a formal and robust assessment of the qualities of the landscape concerned”³⁰². Indeed, given that Policy CT/7 was ‘saved’ by the SoS after the publication of PPS7 indicates that the SoS must have been satisfied that it met the criteria in PPS7 for maintaining such local designations. Further, the APAC designation does not extend to the ‘front’ of the appeal site, indicating that the boundary must have been drawn with some care. That Mr Smith struggles to see why that should have been the case is nothing to the point. The drawing of the boundary must have been taken to be deliberate following careful local analysis. As Ms Eddleston explains³⁰³, and as was accepted by Mr Smith in XX, the delivery of a Charnwood Forest Regional Park still lives on underpinned by local authority action and is actively supported by the local community.
- 8.35. The APAC designation arose after a lengthy but ultimately unsuccessful history of the promotion of the Charnwood Forest as an AONB³⁰⁴. The quality and value of the landscape character is thus appropriately recognised by the local designation. The Appellant’s assessment of the landscape character is flawed in a crucial respect. What was assessed was expressly the sensitivity of the “application site”³⁰⁵. There was no proper assessment of the area likely to be affected as is recommended³⁰⁶. The result was an underestimate of the sensitivity of the landscape and the magnitude of the impact in the assessment³⁰⁷ because it proceeded on the narrow basis that the site was already in industrial use at a large scale.
- 8.36. So far as the National Forest is concerned, the character to be announced by the Appellant’s proposed gateway should be new woodland landscape³⁰⁸, attractive forest uses in which natural growth of the urban areas is to contribute. But where development which is “out of scale with its setting” and will undermine the Forest’s aims it should respect and add to the overall

³⁰¹ CD/D5, Proposals Map extract

³⁰² CD/E5, PPS7, para 25

³⁰³ LCC 1/1, paras 3.2.32-34 & 37

³⁰⁴ LCC 1/1, p11, accepted by Mr Smith in XX

³⁰⁵ CD/K11, para 7.140

³⁰⁶ CD/K2, paras 7.16, 7.17 & 6.15

³⁰⁷ CD/K11, Table 7-5

³⁰⁸ CD/K8

quality of the Forest³⁰⁹. When faced with the suggestion in XX that the proposal would not fit the description of an appropriate gateway to the National Forest, Mr Smith's answer, was that the "woodland corner" is the gateway to the Forest. Of course, the "woodland corner" is already present, so to that extent the gateway is already there; what is not needed or appropriate is up to 21m of translucently-clad building floating atop it. Members of the public attending the Inquiry generally listened to the evidence with respect and decorum; but this suggestion by Mr Smith was met with muted derision. As the RS notes, the Charnwood Forest is "special to the people of the East Midlands"³¹⁰ and Policy 31 calls for respect and enhancement to its character with the rural and urban fringe areas in particular needing enhancement. The appeal scheme is not what is called for locally or in development plan policy.

- 8.37. In terms of the visual impact of the development, the impact at viewpoint 6 - junction 23 of the M1 - was assessed by the Appellant as "moderate/substantial adverse"³¹¹. One only needs to look at the relevant photomontage to accept the point. However, this is precisely the view that the Appellant relies on as a positive 'gateway'. Alive to the paradox, no doubt, Mr Smith in his proof at paragraphs 194-199 (elaborated upon in oral evidence) laboured to explain that he saw the building as being of high quality with the potential to create beneficial impacts. This potential would be realised, he opined, when the sustainable purpose of the building was recognised by people, for example, by providing CHP benefits to local businesses. First, this is unlikely to be the view of local residents who would not so benefit directly, and secondly visitors entering through the gateway would have no such knowledge. While he gave examples of similar buildings elsewhere, he could give no real evidence to underpin his opinion that local people would come to regard this sort of building positively, view it with pride or would come to regard the proposed EfW building as having an "intriguing purpose". The suggestion that the building might become a 'beacon of sustainability' was adopted with verve by Mr Smith without his realising, one suspects, that the original comment had been made with heavy irony.
- 8.38. The effect of a plume emanating from the stack (the estimates at Doc APP/7 is the best available evidence) at all viewpoints will simply add to the 'beacon' and the visual impact.
- 8.39. The assessment of the visual impact at viewpoint 7 (near Lubcloud Farm) needs very careful handling³¹². The April 2010 additional information³¹³ described the EfW building as being "seen as part of the lower lying settled areas in the middle distance" and "seen as part of the built up area of Loughborough". Mr Smith would accept no criticism of these assessments in XX, but if this is an example of the professional judgment that has

³⁰⁹ Ibid, sections 3.1 & 3.2

³¹⁰ CD/D1, para 3.3.21

³¹¹ CD/K11, paras 7.192-7)

³¹² There is a photomontage at BWS 3/3/5

³¹³ CD/K12

permeated the LVIA, then the SoS should treat with extreme caution the central judgments within it.

- 8.40. There were inconsistencies in the approach taken in respect of the assessment of views. For example, at viewpoint 16 (Temple of Venus) a critical judgement was that the viewpoint was not generally accessible by the public. No adjustment was made for the fact that the land is being promoted for development as a SUE by the same landowner as at the appeal site, which would open up the Park as a town park. Yet at viewpoint 4 and viewpoint 5 sensitivity was reduced on the basis that a Science Park extension was being promoted. It may be that neither the SUE nor the wider extension to the Science Park may come to pass, but the approach in the LVIA ought at least to be consistent.
- 8.41. Elsewhere, the opinions expressed are simply not supported by the evidence they purport to rely on. A good example is "tree growth". The rate of expected growth of the trees planted to screen views of the development from viewpoint 16 (The Temple) is critical to an assessment of the reliability of the montages at BWS 4/1/A, Fig 14 and BWS 3/3. Mr Smith indicates the growth rate assumptions are conservative and could be enhanced³¹⁴. However, the expert advice on which he relied included no such advice³¹⁵; on the contrary, the growth rates were heavily caveated. In XX Mr Smith said he was relying on his own experience of mulching and irrigation, but that evidence should have been in his proof so it could be properly scrutinised.
- 8.42. In terms of the impact on landscape character and visual impact, the harm identified in the Council's reasons for refusal should be accepted. If it is, then breaches of the development plan policy alleged will follow.

The Planning Balance

- 8.43. The Council recognise that the planning balance in this case includes considerations that weigh in favour of the Appellant. They are, in particular, the need to address climate change, the need for additional renewable energy generating capacity, the need to divert waste from landfill and treat it further up the waste hierarchy, and the need to 'plan for growth' to aid economic recovery.
- 8.44. In respect of climate change and PPS1 CCS³¹⁶ the Council submits:
 - a) It is a key priority, not the key priority (p1); even though it is the Government's principal concern (para 3) this does not and cannot mean that it will always outweigh other factors in a planning balance, albeit that the need to address climate change is urgent (para 6).

³¹⁴ BWS 3/4 para 2.10

³¹⁵ BWS 3/3/D

³¹⁶ CD/E2

- b) The Council has not precluded the supply of renewable energy by a local approach to landscape (para 20); the Council's approach has been based on a character-based assessment.
- c) The Council did not fail to give this planning application expeditious handling; the Appellant did not even begin to address the serious objection from EH until after the application was refused.
- d) However, the Council accepts that diverting 300,000 tpa from landfill to the proposed EfW will save 87,000 tpa Co_{2e} equivalent for as long as the Council has a shortage of this type of capacity (of which more below).

8.45. In respect of renewable energy and PPS22³¹⁷, the Council submits:

- a) The wider environmental and economic benefits are material considerations to which significant weight will be given (para 1(iv)).
- b) However, applicants are still required to minimise environmental and social disbenefits through careful consideration, inter alia, of scale (para 1(viii)). In this case, no such careful consideration was given – for the reasons given above, the scale of the building was effectively fixed before any consideration was given to the environmental impact.
- c) Planning permission should only be granted where heritage assets are not compromised and where adverse effects are clearly outweighed by benefits (para 11).
- d) The Council has not used a local landscape designation 'in itself' as a reason for refusing planning permission (para 15), it has instead done so based on objective and transparent professional judgment (para 19).

8.46. The Council makes the following submissions on the National Policy Statements on Energy – EN-1 (CD/H7) and EN-3 Renewable Energy Infrastructure (CD/H8):

- a) They have the potential to be material considerations in this case³¹⁸; but they should be read against the background that they were issued to be the principal policy documents in the determination of NSIPs.
- b) NSIPs are large-scale which play a particularly vital role in energy delivery³¹⁹. The UK needs, in particular, large-scale development in order to meet national targets³²⁰ so it should come as no surprise that development that is so large as to be able to make a 'real difference' at a national level should be subject to a generally more permissive regime.

³¹⁷ CD/E8

³¹⁸ CD/H7, para 1.2.1

³¹⁹ Ibid, paras 1.7.2 & 2.1.2

³²⁰ Ibid, para 3.1.1

- c) The “presumption” in the 2008 Act that applies in NSIP cases³²¹ cannot oust the statutory approach in s38(6) in the 2004 Act which applies in this appeal.
- d) Even with NSIPs, the consideration of impact on heritage assets³²² closely mirrors that in PPS5 so that there is no reason not to apply PPS5 with full force in this appeal.
- e) In principle the approach to the benefits of renewable energy is no different to PPS22 and PPS10³²³.
- f) Any difference to the approach to heritage assets is justified on the basis that renewable energy projects covered by the NPS are “large-scale”³²⁴.
- g) Indeed, the scale of NSIPs is a running theme in the NPS³²⁵.
- h) The requirement to set out the contribution to waste recovery targets must take into account existing capacity, but does not require potential capacity to be necessarily excluded³²⁶. In any event, as NPS guidance this requirement can be applied on a case by case basis.

8.47. In respect of the need to treat waste up the hierarchy the Council submits:

- a) Landfill is at the bottom of the waste hierarchy, an “R1” recovery EfW plant (such as the appeal proposal) is above it.
- b) The waste hierarchy applies in priority order³²⁷ and Mr Noakes accepted in XX that the appeal proposal would meet the policy objectives of PPS10 and WS2007.
- c) Local authorities are required to plan to be able to treat the equivalent of waste arisings in their area, but there is no requirement for individual authorities to be self-sufficient in terms of waste infrastructure³²⁸ (WPR2011 (CD/F2, para 263))

8.48. In the framework area (Leicester & Leicestershire) the following matters are agreed:

- a) Total waste arisings are 1,600,000 tpa.
- b) The consented treatment capacity is of the same order of magnitude³²⁹.
- c) The ‘mix’ of treatment capacity is 78% recycling, 7% recovery and 15% landfill.

³²¹ Ibid, para 4.1.2

³²² Ibid, paras 5.8.14-5.8.18

³²³ CD/H8, para 2.5.2

³²⁴ Ibid, para 2.5.34

³²⁵ CD/H8, for example paras 2.5.13, 2.5.49, 2.5.52

³²⁶ Ibid, para 2.5.67

³²⁷ CD/G1, Art 4

³²⁸ CD/F2 (WPR2011), para 263

³²⁹ WPA 9 and XX of Mr Leeson

d) The treatment capacity 'up the hierarchy' is therefore 'skewed' towards recycling (Leicestershire recycles about 51% of its waste – one of the highest rates in the country) (it has set a target for recycling of 58%) leaving a shortage of recovery capacity of about 550-580,000 tpa³³⁰ of which the MSW component is 210-230,000 tpa.

- 8.49. The Council is 'short' of recovery capacity not least because, without warning, DEFRA cancelled its PFI credits in October 2010 causing the planned provision of 180,000 tpa new recovery capacity to fail overnight. The SoS needs to be clear that the Council is now considering 'plan B' (see CD/B3) and realistically expects delivery of a replacement project of at least the size to deal with residual MSW arisings (see above) by 2020 (allowing for an appropriate lead-in and construction phases). Therefore, the shortage of recovery capacity should not be regarded as a long-term problem, but one that arises in the short/medium term. The weight that should be given to the shortage of capacity to move waste up the hierarchy should therefore be reduced as a result of the temporary nature of the problem and the cause of it. The Council's members and residents would find it very difficult to understand if one SoS gave undue weight to the consequences of the sudden withdrawal of support by another Government department. This is particularly so in circumstances where the WPR2011³³¹ is clear that the Government is trying to move to a position where local communities are less hostile/more supportive of EfW proposals.
- 8.50. In respect of "Planning for Growth" the Council acknowledges the economic benefits that would accrue if the appeal scheme was allowed in terms of jobs and spending in the local economy.
- 8.51. However, despite the undoubted factors that carry significant weight in the planning balance in the Appellant's favour, the Council's assessment remains that they are not outweighed by the very significant harm that would arise to the heritage assets, landscape character and visual amenity. This harm arises essentially because the Appellant has promoted development on an appropriate site but at an inappropriate scale. The Council has granted consent for substantial waste treatment operations on the site but in circumstances where the height of the buildings is appropriate to context. The Appellant has chosen the right site, but the wrong type of facility for it³³². The appeal should therefore be dismissed.

9. Representations by other parties appearing at the Inquiry

CHAIN (Charnwood Against Incinerator)

- 9.1. CHAIN represents a group of local residents and individuals opposed to the scheme³³³. It does not have a formal constitution or any set vision

³³⁰ Mr Leeson, EiC

³³¹ CD/F2, para 260

³³² CD/E7, (PPS10) para 2

³³³ Inspector's note: CHAIN did not request Rule 6 status. However, on the basis that it was understood to articulate the concerns of local residents it was considered reasonable to allow its primary representative, the Secretary Roy Kershaw, to make a brief opening statement at the Inquiry to assist in setting the scene. Mr Kershaw was also permitted to make a brief

statement. The group has about 185 formal supporters and, whilst not having an agenda against waste incinerators per se, its concern lies with the specific proposal, the subject of the appeal³³⁴. Evidence was presented to the Inquiry principally by Mr Kershaw, and by Mr Ogradzinski on health and air quality matters. From the various documents submitted in the context of the Inquiry (CH/1 – CH/14) the gist of its case is summarised below.

- 9.2. The Appellant's case for the proposal is based on three Government objectives of diversion of waste from landfill, increasing the generation of renewable energy, and cutting CO₂ emissions and combating climate change. Although the incinerator project might make a contribution towards reaching these objectives it would only do so to a limited extent and this would certainly not outweigh the many negative impacts³³⁵.
- 9.3. There are many ways to divert waste from landfill. LCC has been successful in recycling and there is every reason to believe this will continue. There are other more environmentally-friendly ways of treating waste that are already available such as MBT, anaerobic digestion and autoclave treatment. Other technologies are now being developed. The building of the proposal would inhibit the development of these other technologies since most waste would be diverted to the facility. LCC is confident it can reach landfill diversion targets without the proposal.
- 9.4. The scheme does not include CHP. The export of heat is not part of the scheme and the installation would generate electricity with little or no use of waste heat. The result of this is that the incinerator would generate less than 21MW of electricity for the National Grid whilst wasting 60MW of heat energy³³⁶. This would be only a meagre contribution to the UK's energy needs.
- 9.5. It is also highly questionable that the energy generated could be classed as renewable. A Government statement notes that electricity from EfW facilities *that can demonstrate* CHP is to be considered as renewable energy. The proposal does not demonstrate CHP. The Government's definition of renewable energy is "those energy flows that occur naturally and repeatedly in the environment – from the wind, the fall of water, the movement of the oceans, from the sun and also from biomass". Much of the incinerated material is derived from fossil fuels so the process would not be consistent with this definition.
- 9.6. Having regard to carbon emissions, the Appellant compares incineration with landfill of the same tonnage of waste. But the 300,000 tpa of waste would not be diverted to landfill. Therefore the comparison is not legitimate. The Appellant has also claimed in the past that the electricity generated by an incinerator would lessen the UK's reliance on fossil fuel power stations which are one of the main sources of carbon dioxide emissions. But any new power station will need to incorporate carbon capture or similar technologies so that

closing statement (CH/14) (with the agreement of the Appellant) drawing together the group's submissions

³³⁴ Mr Kershaw XX

³³⁵ CH/14

³³⁶ CH/4A

their carbon emissions will be substantially reduced. The Appellant has declined to include carbon capture in the facility and since the main emission from the flues would be carbon dioxide and carbon monoxide, as well as nitrogen oxide and sulphur dioxide, the negative impact on climate change of the facility would be significant.

- 9.7. In terms of impact on the surrounding countryside the proposal would undermine a number of important environmental policies. LCC's efforts to establish CF as a regional park would be significantly impaired. The NF has recently been given the go-ahead by Government to continue its work and the proposal would be a significant setback to this progress. The Borough Council's proposed Core Strategy includes the opening up of the listed Garendon Park as a country park of regional, if not national, significance. The incinerator would be visually intrusive in the landscape, lowering the prestige and degrading the rural setting of the Park³³⁷. Junction 23 is an important gateway to both the NF and CF. An incinerator at this point would provide totally the wrong image for such a beautiful and accessible countryside. Whatever the merits or otherwise of the design of the building, such a structure would simply be out of place if built at this location³³⁸.
- 9.8. The impacts on local roads and junction 23 of the M1 are considerably underestimated. The highway authority based its advice mainly on information included in the ES but did not challenge or investigate any of the claims made. The estimate of 242 HGV movements per day is disputed. The full extent of the Junction 23 Lorry Park and Service Centre (Truck Stop)³³⁹ has not been taken into account by the HA and plans for a new Science Park at Loughborough University and 3,500 homes on the Garendon Estate within the SUE have not been considered. In other words, the advice from the HA is based on inadequate and sometimes erroneous information.
- 9.9. There is no question that air quality would deteriorate in the area because of emissions from the incinerator and the daily movements of HGVs. The only question is by how much. Charnwood Borough Council figures already show air quality in the vicinity of the incinerator is worse than almost any part of Charnwood. It is difficult to see how national air quality standards would not be breached by the additional emissions from the incinerator and the associated vehicle movements.
- 9.10. The EA, Appellant and LCC have all rejected claims that the incinerator would cause health problems in Shepshed and Loughborough. They claim that the HPA says that incinerator emissions are safe. In fact the HPA only says that there is currently no evidence to link cancer with incinerator emissions³⁴⁰. It has recently updated its online statement saying "The HPA will review its advice in light of new substantial research on the health effects of incinerators published in peer reviewed journals". However, it will not change its current statement until this has been completed. The HPA is currently in talks with university researchers to commission a trial to investigate the relationship between incinerator emissions and birth defects in human populations in the

³³⁷ CH/2

³³⁸ CH/13

³³⁹ CH3 & CH/3A

³⁴⁰ CH/5, CH/6, CH/7, CH/8 & CH/9

UK, provoked by mounting research evidence. It also admits a lack of understanding in nano-particle toxicity but regards any particulate emission as toxic/harmful³⁴¹. There is a significant and growing body of peer-reviewed research evidence that suggests a precautionary approach should be taken towards the siting of incinerators near to densely populated areas. We are in a time of scientific uncertainty about the true impacts of incinerators. However, there is sufficient evidence in recent research literature to demonstrate a plausible risk between proximity to incinerator emissions and human health. On this basis a precautionary approach should be taken and the scheme rejected.

- 9.11. Plans to restore and regenerate Newhurst and Longcliffe Quarries are included in both the quarrying and landfill planning permissions. These would be put on hold for at least 30 years if the appeal is allowed and it is not acceptable to local residents who have had to put up with major disruption for many years.
- 9.12. Both the Appellant's applications for the proposed incinerator were unanimously refused by elected representatives. A total of 2,039 representations from affected communities objected as well as there being 1,361 signatures on various petitions³⁴². Only three representations supported the applications. The Localism Bill (now Act) aims at strengthening the role of local communities in planning decisions and it is clear that Charnwood residents are united in their opposition. The Appellant should not use its financial and legal muscle to bulldoze through development that is clearly opposed by the vast majority of Charnwood residents.

Nicky Morgan MP³⁴³

- 9.13. Ms Morgan was speaking as MP for Loughborough and on behalf of her constituents. Having read the SoCG and other documents and, in the light of all the proofs of evidence and other evidence at the Inquiry, her remarks were confined to three areas.

Constituency correspondence

- 9.14. The Appellant's scheme is the largest single issue raised with her as Loughborough's MP where the communication has not been drafted by a third party campaigning organisation. A total of about 100 constituents made contact about the incinerator, all bar three or four opposing the scheme, and in quite a lot of cases there were communications from the same constituents on four separate occasions³⁴⁴. As well as concern about the sheer scale and visual impact of the scheme, constituents also mentioned worries about health impacts, including air quality, and transport.
- 9.15. People of the area feel extremely proud of the beautiful landscape in this part of Leicestershire and it is necessary to put on record how strongly people feel about the proposal being a major blot on the landscape if it was to be built;

³⁴¹ CH5/ CH/6

³⁴² CH/1

³⁴³ Ms Morgan indicated that she was relying on her second statement (Doc 18) which was read out at the Inquiry

³⁴⁴ In light of two planning applications and two consultations by the EA on the Environmental Permit process

this is particularly so in light of the impact it would have on Garendon Park and the heritage assets there and it is not clear that there is actually a need within Leicester and Leicestershire for the capacity it would provide. To say, as Mr Smith for the Appellant does³⁴⁵, that the siting and scale of the proposed development reflects and complements the surrounding landscape and that it would become a positive landmark and suitable gateway feature for CF is an affront to local residents.

The position of English Heritage

- 9.16. It is believed that the Appellant has misrepresented the position of EH in relation to the proposal. In his evidence Mr Smith asserts that:

"the mitigation package for the proposed ERF also includes the provision of a restoration scheme for Garendon Park, which includes conservation work on the listed structures and the recreation of woodland and avenues on part of the estate. These proposals have been designed in consultation with EH, which has welcomed the scheme and state that it reduces the impact of the proposed development to 'less than substantial'; as a result they are not appearing at this Inquiry".

- 9.17. Having contacted the East Midlands Planning Director for EH he has said, *inter alia*, that:

"... to say however that we welcome a restoration scheme is not to say that we necessarily 'welcome' an entire 'scheme' comprising potentially harmful proposals and their mitigation...the conservation of listed structures, while to be welcomed, does not constitute 'mitigation' of the impact of the proposals. We have made clear our view that in this case the impact of the proposed development after mitigation constitutes 'less than substantial harm'. We make this kind of judgement routinely but there is no automatic connection with our decision whether or not to appear at a Public Inquiry. Nationally we receive some 17,000 statutory notifications each year... and we only appear at a handful of Public Inquiries. Appeals are a matter for the decision-making authority ...".

- 9.18. Based on this reply, Mr Smith's interpretation of EH's position is not correct.

Government policy on waste and incinerators

- 9.19. It is worth reiterating remarks made to Ms Morgan by the Minister of State at the Department of Energy in a House of Commons debate on the National Policy Statements on Energy on 18 July 2011:

"The important thing to remember about any form of energy-from-waste technologies is that they sit at the very bottom of the waste hierarchy³⁴⁶. Before we reach that point, we must first ensure that there is waste prevention and reduction, as well as reuse and recycling".

³⁴⁵ BWS 3/1

³⁴⁶ Inspector's Note: This statement is factually incorrect; see the waste hierarchy at CD/F2, p11

- 9.20. The other Minister in DECC, Charles Hendry, confirmed that statement of Government policy in a meeting with Ms Morgan on 14 November 2011. The emphasis is on waste prevention, at the top of the hierarchy, which would suggest that it is not automatically the case that all waste which is not landfilled should be burnt. Government policy is clearly to reduce the overall amount of waste so there is less waste to be disposed of generally.
- 9.21. On behalf of the Appellant, evidence of Mrs Tappenden and Mr Leeson refers to a policy of 'zero waste to landfill'. This is not accurate as Government policy – as clearly shown in both WPR2011 and in the Coalition Agreement is to "work towards a 'zero waste' economy" – the two things are different.
- 9.22. In July 2010 the SoS for Energy & Climate Change said to Ms Morgan "We support modern energy generation from waste where local communities want it and where it makes good environmental sense". It is clear that the local community, local councils and their elected councillors do not want the Appellant's incinerator near Shepshed. The WPR2011 says in relation to energy recovery it wants the right fuel, right place and right time". This test is not met by the proposal.

Patrick Cockrell

- 9.23. Because the matter of establishing an incinerator facility was of great public interest the EA has a policy to publish a Draft Permit Consultation document for scrutiny and comment prior to the granting or otherwise of an Environmental Permit. This consultation document was flawed and not fit for purpose because it contained a large number of errors in three key tables which the decision-making process relied upon, thereby misleading those who were consulted. The purpose of the Draft Consultation document is to explain and demonstrate how the EA had reached its decision. The relevant authorities and the public never had the opportunity to see this corrected document.
- 9.24. The EA was notified of these errors two months before the final EP was issued on 8 June 2011 and it was stated that these challenged the credibility of the consultation process, that the errors should be corrected and the process repeated. Despite this complaint the EA refused to go out to consultation again and went on to issue the EP. A formal complaint to the EA was made by Mr Cockrell and the matter was brought to the attention of the Ombudsman in September 2011, with the support of Nicky Morgan MP³⁴⁷.
- 9.25. It would appear that the EA failed to vet its document prior to publication and, as a result, the consultation process manifestly failed and wasted a large amount of public time and effort; a scientific/technical report that bases its conclusion on numerical data must be judged by the accuracy of such data and their necessary manipulation. The granted EP should therefore be withdrawn until the Ombudsman's decision is known.

Air Quality

- 9.26. Air quality monitoring by Charnwood Borough Council shows that one of the worst areas of pollution in Charnwood is Ashby Road Central and Ashby Road

³⁴⁷ Inspector's Note: at the time of the Inquiry this matter was still with the Ombudsman

East on the A512 close to the appeal site. The proposal, and emissions from associated HGV movements, are likely to exacerbate the situation. There are questions about the accuracy of the air quality data; there are significant differences between data presented in the first and second planning applications, varying from +2000% to -79%. Air pollution data from the adjacent BWL Feeds industrial plant were not included in the first application but were in the second. From the second application data the modelling demonstrates the potential for polluting effects to exceed national air quality limits when background levels of pollution are added to the combined Process Contributions³⁴⁸.

- 9.27. This problem is compounded further when the exhaust fumes from hundreds of HGVs needed to service the incinerator are taken into account. The pollutants that are at the margins of the limits (or exceed them?) are PM₁₀ (short-term) and SO₂ (long-term). Taking 100% as the national standard limit Mr Cockrell's calculations show PM₁₀ at 107% and SO₂ at 111%. Traffic emissions would have the effect of increasing these values further.
- 9.28. In the Draft EP and Final EP it appears there are no references to the BWL feed mill and its polluting effects. This is disconcerting when the question was raised with the EA as to how it had modelled the feed mill; it said that the emissions from the feed mill had been included in the 'background concentration' and so were not included and yet the Appellant's modelling of the feed mill did demonstrate potentially heavy pollution exceeding national limits.
- 9.29. It must also be asked how the EA controls on the EP for the feed mill are being monitored and whether the controls on the EP granted for the incinerator are linked in any way at all to the feed mill. Or is it the case that the controls are totally independent and so the current and proposed situation has the potential to exceed national limits, to the detriment of public health? Certain national standards/limits have been incorrectly stated and the Appellant's choice of selecting data applicable to different years is questionable, including the use of predicted data values.
- 9.30. The Appellant and the EA have attempted to explain the discrepancies between the data in the first and second planning applications, the EA consultation document and the EP when responding to queries from LCC and the Borough Council. The queries and responses are listed in the CEO Report of October 2011³⁴⁹ although it is believed that these responses have not explained these discrepancies adequately.

County Cllr Max Hunt³⁵⁰

- 9.31. He objects to the proposal based on: its non-compliance with the Council's Waste Development Framework and also the Borough Council's extant planning policies including WDF 10; emissions and associated risks to health; and damage to the economic and educational reputation of Loughborough.

³⁴⁸ See PGC 1-1 and CD/B5, paras 153-159 and 398

³⁴⁹ CD/B5

³⁵⁰ Doc 1, C Cllr Hunt confirmed that he was not speaking on behalf of LCC but in his own capacity and on behalf of the named residents in Doc 1

- 9.32. The Newhurst site has been given a permit by LCC for landfilling and re-landscaping and this opportunity would be lost if the proposal goes ahead. Using a disused quarry for landfilling would avoid the need to excavate an alternative site and would be out of sight from the surrounding area. The proposed scheme would harmfully impact on the NF and CF and, being viewed from Garendon Park, would detract from the rural idyll anticipated for it.
- 9.33. There is insufficient household waste in the county to make an incinerator viable. However, if permission is to be granted it should be conditioned to require full disclosure as to what the road transfer and waste transfer station plans are required to feed the proposal and no municipal household waste should be brought in from outside Leicestershire.
- 9.34. The design of the plant is well behind leading industrial standards and is not designed to extract the most energy from waste, it discourages recycling and does nothing for reuse. Benchmarked against other systems being developed in other counties and cities the proposal is a retrograde one. If allowed it would be more of a monument to history, not the future.
- 9.35. Atmospheric emissions and risk are perhaps the most common concerns of the public. Whilst there may be assurances that the plant aims to minimise risk, unplanned emissions would be released at some point. Concerns regarding the health effects from incinerator plant emissions forced the HPA to give a position statement in September 2009 which indicated that, whilst modern, well-managed incinerators make only a small contribution to local concentrations of air pollutants, it is possible that such small additions could have an impact on health. Many toxicologists criticise and dispute this report as not being comprehensive epidemiologically, thin on peer-review and comment on the effects of fine particles on health. The Scottish Protection Agency's comprehensive health effects research concluded 'inconclusively' on health effects in October 2009 and its authors stressed 'the small but important effects might be impossible to detect'.
- 9.36. History offers many examples of supposedly safe, exhaustively-tested substances later proved to be anything but, DDT and Thalidomide being two obvious examples. In short, in respect of incinerators the jury is still out and alternative waste disposal methods should be preferred. Recent data have been published strengthening evidence that fine particulate pollution plays an important role in both cardiovascular and cerebrovascular mortality, showing that the danger is greater than previously realised. With each publication the hazards of incineration are becoming more obvious and more difficult to ignore.
- 9.37. Damage to the reputation of Loughborough University is a material consideration. The university offers exceptional facilities for sport and fitness with many national sporting stars training here. It will be the host facility for the Japanese in their preparations for the 2012 London Olympics. The consideration given to environmental conditions by athletes, coaches and sporting organisations was demonstrated by the concerns expressed at the choice of Beijing for the last Olympics. When originally suggested as a site for an incinerator the University asked critics to downplay their response in order not to imperil their application for the national UK Olympic 'holding camp'. Although that application was lost, the critics were advised that competitors

would take advantage of a proposal for an incinerator to discredit Loughborough's reputation.

County Cllr Christine Radford³⁵¹

- 9.38. Cllr Radford supported the recommendation to refuse planning permission for the proposal and supports the concerns of local residents. If the proposal goes ahead it would undermine the County's ambitious scheme to make CF into a regional park. LCC has now on two occasions refused the proposal. There is solidarity amongst the Charnwood community against the project; this is shown by the 3,500 residents registering objections either through letters, e-mails or petitions. Over 300 people, nearly everybody against the scheme, attended the first public meeting in Shepshed about the incinerator. All political parties locally are against the scheme. Given the almost universal opposition by the local communities in Shepshed, Loughborough and surrounding areas, adequate weight should be given to these views, particularly in light of the Government's localism agenda.

Cllr Roy Campsall³⁵²

- 9.39. The siting and emissions from the proposed incinerator and associated HGVs would significantly affect the wildlife heritage of the area. Newhurst Quarry is an SSSI with evidence of Great Crested Newts, foraging badgers, commuting bats and a nesting pair of peregrine falcons. The mature woodland on the proposed site is home to the only rookery to be found locally, containing around 30 nests.
- 9.40. Ecological surveys in the Garendon Estate and Park and CF have identified over 103 different species of bird life at Garendon and 93 in CF; there are protected mammals and bats and a short distance from the appeal site is a local nature reserve. There can be no doubt as to the ecological importance of the area with many SSSIs and designated sites of wildlife or geological importance. Emissions from the incinerator and associated HGVs would inevitably have a negative impact on local wildlife and biodiversity. The incinerator would help to block off the wildlife corridor that exists from the CF to Garendon Park and estate. The scheme would have an unacceptable impact on local wildlife and the surrounding countryside as well as visual impact.

Dr Andrew Cotton³⁵³

- 9.41. He objects to the proposal and takes issue with a number of assumptions within the ES in relation to dispersion and air quality.
- 9.42. The dispersion modelling exercise was not carried out using data from the appeal site. The results of the modelling – which are highly complex to interpret – are actually based on data that is not from the site but from East

³⁵¹ Doc 13, Cllr Radford is the County Councillor for Shepshed

³⁵² Doc 15, Cllr Campsall is a Charnwood Borough Councillor for Garendon Ward, Loughborough

³⁵³ Doc 21

Midlands Airport some 8.5km to the north. These data relate to the completely flat topography on the flood plain of the River Trent, whereas the appeal site is on one side of the steepest slopes in the Charnwood Forest. By its own admission the ES, Appendix 6.1 highlights the sensitivity to meteorological data and, in particular, points out the problems of the effects of excessive localised turbulence caused by rapid variations in topography. Applying a correction factor for local topography to a set of meteorological data that do not apply to the site is inconsistent and misleading. It may well be the “best approximation in the circumstances that we have no data” but until local on-site data are used in the modelling the results and sensitivity analysis are not representative of what would happen to the plume from the stacks.

- 9.43. The effect of excessive local topographically-induced turbulence is to increase pollution at ground level in Shepshed and this aspect has not been correctly modelled. The pollution plume would make landfall greater than 1,000 m from the stack when the wind is from the north or north-east. The dispersion would be minimal and the pollution concentrations could be expected to be those that are actually emitted from the stack; the emphasis in the application is almost entirely on pollution values that assume significant diffusion. Neither is it clear what the local temperature effects of the plume would be in terms of rapid landfall in these circumstances. The logical conclusion from the air quality and dispersion studies (unstated in the ES) is that the most unsuitable place to locate a source of air pollution dependent upon turbulent dispersion is in an area where the local topography changes rapidly. It is generically inappropriate to seek sites like the appeal site for an EFW plant in areas of steep topography change such as the northern slopes of the CF; the optimum dispersion claimed by the Appellant is best achieved in areas of flat topography.
- 9.44. The drawings submitted as part of the application nowhere give any indication of the visual impact of the proposed stacks. If a series of longitudinal sections are plotted the full extent of the visual intrusion becomes apparent. For example, the stacks and plume would be visible from the entire northern part of CF, including popular beauty spots at Charley, Ulverscroft and Beacon Hill. The only site from which it would not be visible is in a direct line of sight of Ives Head. The Charnwood Lodge and Timberwoods Hill are important nature reserves of the Leicestershire & Rutland Wildlife Trust. These are in a direct line of sight with the stacks and, given their elevation, the plume from them would make landfall directly on these sites within 1-2km of the discharge. The potential temperature impacts of this on microclimate in the event of limited dispersion are not considered in the application.

Dr Matthew O’Callaghan³⁵⁴

- 9.45. Local residents and others have raised concerns about a number of aspects of the proposal including increased traffic, potential negative effects on local wildlife and ecology, impact on the NF/CF and potential harm from emissions, particularly for those suffering from asthma and other respiratory diseases.

³⁵⁴ Doc 2

In particular, his concern focuses on visual impact of the proposal and its effect on the reputation of Loughborough University.

- 9.46. The development would create a structure that would dominate the landscape, it would adversely affect the NF and the proposed Charnwood Forest Regional Park since it would rise above the forest canopy creating a tall structure sticking out like a sore thumb. It would be completely out of character with Garendon Park. Junction 23 is a major gateway into Loughborough and the proposal would have an adverse impact on the reputation of the university. It could have a significant negative impact on students' choice of university and undermine its national reputation for sport. The proposal would be counter to RP Policies 2, 26, 38 and SRS 5, LLWDFCS Policies WCS 10 and 12, WDC 2 and 5, CBLP EV/1(i), CT/1, CT/2, CT/7 and EV/9 and PPS5 Policy HE9.1.

Dr Geoff Mason³⁵⁵

- 9.47. Dr Mason's concerns centre around the restoration of Newhurst Quarry. He considers the proposal should be rejected because the Appellant's original landfill restoration of the quarry void was being substituted with a natural flooding restoration without regard to timeframe. In restoration terms the voids of Newhurst and the neighbouring Longcliffe Quarries should be considered together. If the appeal succeeds then, because the incinerator operation uses up all of the allowance of HGV movements, it would prevent any restoration of either quarry void that requires any sort of solid fill, leaving only water or air. Newhurst will eventually flood but only over an extended timeframe that could be between 50 and 100 years, which will be greater than the lifetime of the incinerator. An alternative would be to pipe water to the site to reduce the period. However, this would still leave Longcliffe Quarry un-restored which, because of its nature, could not be fully restored by flooding even though the lower part is starting to flood.
- 9.48. If the water draining to Longcliffe could be transferred by a culvert to the Newhurst void the rate of flooding of the latter could be increased so allowing it to be flooded in a period approaching that of the life of the incinerator. This would have the benefit that it would leave the water level in the two quarries in a fixed position in the long-term. If the water level at Newhurst is stable then the walls around it could be restored providing significant long-term potential for activities such as scuba diving, fishing, walking and even a cove with a beach. After the incinerator is removed it would become a greenfield site again.
- 9.49. Longcliffe Quarry could be adapted as a suitable location for via ferratas (cabled footpaths and walkways providing safe but exposed mountain experiences). There would be space for walking, running, mountain biking and horse riding, and scuba diving could be especially safe if the water body was kept shallow. A great attraction of this holistic approach is that the Longcliffe restoration could start immediately and restoration be completed long before the Newhurst void was filled with water – restoring one quarry now in return for letting the other flood over an extended period.

³⁵⁵ Docs 3 & 4

Dr Badiani³⁵⁶

- 9.50. Dr Badiani is a GP practising in Shepshed. He indicates that the area has a huge problem with respiratory diseases, asthma as well as chronic obstructive pulmonary disease (COPD) which is above the national average. His theory is that this is partly because Shepshed lies in a valley and the M1 is within 0.75km of housing within the town. It is therefore extremely disappointing that any consideration has been given to the development of a waste incinerator that would also be close to the centre of Shepshed. Whilst not having teaching on the health effects of waste incineration at medical school, he has researched how a possible incinerator could affect the local population.
- 9.51. It would result in an increase in traffic and noise. In terms of health effects even modern incinerators result in some discharge of dioxins within the environment and these are classified by the World Health Organisation as a class 1 human carcinogen. Studies in Amsterdam, Belgium and France have shown significant abnormalities in mothers living close to incinerators whilst those in Japan have shown peak infant deaths and congenital malformation in people living within a two-kilometre radius of an incinerator.
- 9.52. There are likely to be respiratory problems for people living round an incinerator. PM_{2.5} are tiny particles emitted from incinerators which cannot be captured because of their tiny size. These can affect the respiratory system, can enter the bloodstream through the lungs, enter human cells and affect DNA. Dioxins and heavy metals can attach to PM_{2.5} particles and increase their toxicity. Whilst there is stringent monitoring of PM_{2.5} in the USA there is no present monitoring in the UK. Exposure over a period can reduce life expectancy. The effects of PM_{2.5} can increase morbidity and illness in people with asthma and COPD, increase hospital admissions and affect children's respiratory function. Even finer particles than PM_{2.5} are more toxic and penetrate even further into the human body but they are a largely unknown entity and their danger unexplained. It is impossible to capture all gases emitted by incinerators and mercury gases, nitrogen oxide and ozone gases are associated with various diseases. Those most susceptible to the impact of the incinerator would be pregnant women, breast-feeding infants and children. Without certain knowledge of what pollution is produced by incinerators, their quantities, environmental fate or health effects, it is impossible to ensure their safety. It is clear from this that the proposal violates the precautionary principle and hence European law. If an incinerator is needed it should be sited far away from heavily populated areas.

Stefan Ogradzinski³⁵⁷

- 9.53. WPR2011 urges the prioritization of efforts to manage waste to fall in line with its published waste hierarchy. This clearly positions incineration at the bottom of the priority list alongside landfill, especially if there is little or no accompanying energy recovery plan. The preferred options of reuse, recycling and recovery, as well as preventative measures in material design and manufacturing, are encouraged and are associated with solving significant problems in the way the waste burden is perceived and managed. They call

³⁵⁶ Doc 9³⁵⁷ Doc 5

for innovation in the development of solutions that are sustainable whether that be in the design and manufacturing of new recyclable or re-useable materials or in the recovery of existing materials that are not currently able to be recycled or re-used.

- 9.54. If the incinerator is allowed it will be burning waste for 25-30 years and the pressure to feed it will be profound. Waste will be preferably channelled towards incineration just because the facility is there. This will effectively stifle opportunities to invest in the development of alternative innovative solutions. There would be a clear disincentive to finding new ways to reuse, recycle and recover waste, contrary to the Government's waste policy.

Sue Morrell³⁵⁸

- 9.55. The best examples in the world show that waste management without incineration is possible and are through options that encourage innovative industry and employment. Examples are the Southern Metropolitan Regional Council in Western Australia, which has a Resource Recovery Centre that diverts 85% of waste from landfill. In Canberra waste landfill was reduced by 40% in six years from 1996 to 2002, recycling 64% of its waste stream and creating 200 jobs. These indicate that it is not necessary to go down the incineration route.
- 9.56. Many more jobs could be created by reuse and recycling than by incineration and tying local authorities into long-term contracts which require a constant waste stream to incinerators. The initial creation of jobs through allowing the incinerator would remain a static figure whereas job-creation through alternatives would grow significantly and create opportunities for new small and medium enterprises.
- 9.57. An incinerator would act as a disincentive to local authorities to improve recycling rates. In Warwickshire there has been an almost flat-lining of their recycling rates and a doubling of waste going to incineration for energy recovery between 2008 and 2011; the need to feed a hungry incinerator is beginning to override the need to meet reasonable targets for reuse, recycling and composting. Leicestershire could lead the way in the East Midlands by continuing with its use of alternative technologies such as the MBT plant at Cotesbach, which processes municipal waste so efficiently that only around 15% goes to landfill, the rest going for reuse, recycling and composting. There is a demonstrable need for alternatives such as these, which can be privately financed at a much lower cost than incineration. The potential economic cost to the taxpayer of a council unable to fulfil its waste contract to a company operating an incinerator over 25 years could be huge and the impact of this alone weakens the economic case of the need for an incinerator.

Brian Stormont³⁵⁹

- 9.58. The country should achieve the German rate of some 87% waste recycling. This could be achieved by taking all foodstuffs collected weekly – as in Surrey

³⁵⁸ Doc 7

³⁵⁹ Doc 6

– to a strategically-placed anaerobic digester. Other items should be collected for recycling. In terms of disposing of the residue, smaller incinerators more distantly-sited from large populations could be provided within the county on some of its many disused airfields. There should be no reason why the Appellant is not asked to provide plans for greatly reduced but well-dispersed sites that would be unlikely to require the height of stacks now proposed. It is particularly unpalatable that to achieve maximum efficiency for the plant waste would be brought from other counties.

Malcolm Whitmore³⁶⁰

- 9.59. The proposal would be a massive intrusion within the Charnwood landscape with stacks towering close to the height of local hills and emphasised by a smoke plume. The gypsum factory at Barrow on Soar is an example of a large industrial building desecrating the landscape from many Charnwood beauty spots. The appeal proposal is significantly larger and will have an even greater impact on the landscape. The LCC policy of establishing CF as a regional park is supported and Shepshed is not the place for an incinerator towering over one of its gateways.
- 9.60. There would be long-term threats to health; air quality is already poor, contributing to rising asthma incidence. There would be massive volumes of toxic ash left by incineration to blight the area for generations.
- 9.61. There is a need to boldly tackle the waste problem at source and reduce waste by taking more aggressive measures to move to a more sustainable lifestyle. A costly health-threatening eyesore that allows waste to carry on as usual should not be allowed. There are better ways to deal with waste than incineration.

David Walker³⁶¹

- 9.62. The most important reason the proposal should be refused is that permission for quarrying was granted subject to strict conditions that the site should be restored after use. The contention that disused mineral extraction sites are previously-developed, with the assumption that they would be suitable for uses such as an incinerator, have been overturned in two recent appeals at Rufford Colliery and Sandyforth opencast coal site. Even if the site has not yet been restored in line with conditions associated with planning permissions for quarrying, it is still to be considered a greenfield site. Restoration conditions provide for public access, the planting of appropriate trees and shrubs and a bird management scheme. The site has considerable potential for walking, climbing and the enjoyment of the countryside. If the incinerator is located at Newhurst it would not be possible to fulfil the restoration conditions and it would diminish the quality of life (which is in part measured by the opportunity to enjoy greenfield space) not only for existing inhabitants of Shepshed and Loughborough but also for the inhabitants of any new development that might occur.

³⁶⁰ Doc 8, speaking as a resident and representative of Woodhouse Parish, about 5km to the south of the appeal site

³⁶¹ Doc 10

Carol Weller³⁶²

- 9.63. The Appellant has no experience of running a waste incinerator. As a company it has a record of being prosecuted for breach of EPs and Health & Safety regulations resulting from the mismanagement of its landfill operations. Although incinerators are subject to guidelines on their monitoring, where there are incidents of mismanagement these are often not picked up until after the event when toxins have already escaped to the atmosphere. There is concern that the residents of Shepshed, Loughborough and the surrounding area would become guinea pigs for a company which has an already appalling track record on health and safety. There is no confidence in the Appellant's ability to run an incinerator.

Lynda Needham³⁶³

- 9.64. GPCPG has been in existence since 2006, formed to protect the Grade II listed park and its landscape setting. This is a unique area, accessible from the doorstep of three communities, containing various types of public rights of way with permitted formal access to the listed site with 14 listed buildings. The group is actively campaigning to retain this open space that supports food production, no-cost exercise, history and legend; a legacy that in future would be seen as an asset for Leicestershire for tourism, allowing managed access to the Park and providing managed income for security and restoration. It should not be seen as just a place on a map to be used as a bargaining tool to serve inappropriate development that would have an adverse impact on this whole area. No amount of tree planting could possibly hide the enormity of the proposal when seen from the well-known landmark of the Temple of Venus.

Diane Pearson³⁶⁴

- 9.65. She has great concerns about the huge volume of waste required to feed the incinerator and the wide range of materials that would be brought to it. Any load coming to the incinerator would be burned, with the Appellant taking no responsibility for the content. Without careful checking and on-site sorting this would be irresponsible. The effect on the environment and health from burning a varied feedstock is unknown. Local people would be guinea pigs in an experiment yet there is no way of assessing the impact.
- 9.66. None of the materials the Appellant is soliciting require incineration in order to divert them from landfill. Most importantly, alternative more flexible means to achieve diversion are available in Leicestershire.
- 9.67. The Government confirmed in the WPR2011 that anaerobic digestion is its preferred means of recovering energy from food and other biodegradable waste and there are examples within the area. Only a small amount of residual material remains after these processes, which has been rendered inert so that it will not decompose, to produce methane and can be safely

³⁶² Doc 11, Chair of CHAIN

³⁶³ Doc 12, Chair of Garendon Park and Countryside Protection Group (GPCPG)

³⁶⁴ Doc 14

landfilled or, if thermal treatment is chosen, it can be handled in much smaller processes than that proposed.

- 9.68. The Appellant's ambition to be involved in all aspects of waste management engenders fears that the company's overall prime consideration will be feeding the incinerator.
- 9.69. Leicestershire has one of the highest recycling and composting rates in the country (over 52%), ahead of the national target. A target of 70% recycling is possible, as achieved in the Flanders region of Belgium, and this could provide far more job opportunities than could result at Newhurst.
- 9.70. Thirty per cent of waste put into the burner remains as ash residue which would be landfilled. The safety of its use as aggregate is now being questioned. Pollution control residues (IBA) are highly toxic and costly to dispose of.
- 9.71. In the absence of the incinerator the commercial and industrial and municipal sectors would be encouraged to increase recycling rates using better segregation of waste to reduce contamination, thus improving the quality and value of recyclables, separate collection of compostable material for aerobic digestion and food waste for anaerobic digestion. The earth's finite resources will leave little choice but to dig up what has already been landfilled to recycle materials there, as is happening at the Remo Project in north-eastern Flanders.
- 9.72. Energy from incineration of mixed waste cannot be considered renewable because it is produced from finite material resources. Fossil fuels are finite and therefore processes which rely on fossil fuels or materials derived from them would not be consistent with this definition. The prime purpose of the proposal is the disposal of waste by incineration and that incineration with such a limited amount of energy generation lies at the bottom of the waste hierarchy.

Harris Chapman³⁶⁵

- 9.73. His views are founded on conversations with students and staff from almost every part of the university. It is taking considerable effort to persuade Loughborough students to actively take a stance on the issue of the incinerator proposal for one good reason; students feel as though they have all the time in the world to study, analyse and make informed decisions. But this generation is in the midst of discovering that textbooks are being re-written on a daily basis and that the tried and tested ways of producing and consuming are no longer applicable to the future. What is worse is that, not only are there no quick fixes, but if we actively pursue the ways our parents lived, then in 30 years the world will be rife with humanitarian disasters as the real effects of climate change become the norm.
- 9.74. As engineers of tomorrow we feel the answer is in technology, that everything that can be built today will be designed to avert the impacts of climate change, put a halt to environmental pollution and reduce the strain on natural

³⁶⁵ Doc 17, Chair of a society of Loughborough Students Union engaging with environmental policies. His statement was read out at the Inquiry on his behalf

resources. But the world won't wait for us to graduate. The energy sector is realising that we need to consider how much energy we use and so should the waste sector. If the Appellant was to commit to developing schemes that enabled us to reduce the amount of energy we dispose of, as opposed to recovering what is disposed of at great cost, then it would be actively ensuring that this much-needed future will become a reality sooner rather than later. We know now that there are more dangers to be found through using up energy compared with reducing how much energy we use in the first place.

- 9.75. We don't want to spend the future finding out what is really coming out of the stacks of the incinerator. There are more positive, innovative and vital steps that can be taken to ensure the bigger question is being answered that faces everyone today; will we be able to reduce our consumption of the world's resources, reduce the amount of CO₂ released into the atmosphere and lead a sustainable lifestyle before the changing climate forces us to? The realities of the development will ensure that whilst it is operational it will pervert the course of the aim to reduce the amount of wasted energy in our society to begin with.

Additional oral submissions

Tony Marmont

- 9.76. Supports the proposal. The question has to be asked: if waste continues to go to landfill where will it be put? In Europe only Greece, Spain and Ireland produce more waste than the UK. Landfill produces methane which in terms of greenhouse gas emissions is 21 times worse than CO₂. It would be far better to put effort into waste reduction at a time when world resources are being used up at seven times the ability to renew them.

Penny Wakefield, Cynthia Pople, Richard Woolley, Anita Jones, Ross Rooney, Richard Loades-Whiffen, Roger Smith, Jonathan Wortley, Alan Brassey, Jacqueline Compton³⁶⁶

9.77.

- The proposal would overpower an area of significant beauty, the impact being heightened by the presence of the flue stacks at what is a gateway to the NF. It would be an eyesore from locations within the CF.
- The presence of the building could serve as a distraction for motorway drivers, leading to accidents.
- The assessment of air quality is questionable when data from Castle Donington have been used. There is concern about the likely effects on health from emissions from the plant and the addition to local and cumulative air pollution.
- Some PM_{2.5} particles are worse than asbestos in terms of effect on human health. The HPA do not know what the implications are for the concentration of ultra-fine particles in the human body. The fact that

³⁶⁶ All oppose the proposal. The points raised by the various speakers are summarised

Cambridge University is setting up a review of health effects raises concerns. Incinerators should not be on the doorstep of large populations.

- The proposal could have a negative effect on Loughborough University in terms of student numbers, and therefore have economic consequences for the town, as well as impacting on student health.
- Does the current national economic down-turn affect the predicted need for this type of facility? The scheme could also have an adverse impact on house prices and make it more difficult for people to move.
- The proposal would add to traffic congestion.

10. Written Representations

10.1. The following summarise the gist of the written representations made within the context of the appeal.

Charnwood Borough Council³⁶⁷

10.2. Following consultation by LCC the Borough Council resolved to object to the proposal on the basis of the height, size, colour and visual impact of the building and flue stacks and the effect these would have on the appearance of the landscape, which is protected by CBLP Policies CT/1, CT/2 and CT/7 as being within an APAC. The Council supports LCC in its opposition to the development for refusal reasons 1 to 3 set out in the decision notice.

10.3. The Council is not able to question the accuracy of the illustrative material presented with the application but it takes a different view to the Appellant on the interpretation of the impact from that material. It is always the case that photography, and montages generated from it, do not satisfactorily reproduce the impact of development in the distance due to the flattening effect of the two-dimensional representation and it does not draw out the impact of distant features in the same way as the naked eye. Nor do the presentations reflect that there are often moving views which provide a constantly changing scene whereby features in the landscape can be momentarily screened but then revealed and accentuated as a result. The development would be discernible from a number of distant locations, would be seen within the forest landscape and would be alien to it. The main concern is, however, the view that would be had from closer locations.

10.4. Despite the efforts of the designers, the Council fails to appreciate how the towering structure and its stacks, with the sharp outline of its roof, the junction between materials, flat vertical elevations and sloping elevations in any way reflect the context of the delicate, organic outlines of woodlands and

³⁶⁷ Doc 22

individual tree groups. The angles and curves of the roof would be entirely uncharacteristic of the local topography and the scale, forms and external appearance would be entirely at odds with the character of the local landscape. It would breach the skyline in views from the A512 and M1 at junction 23. The overall impression would be of a building with an overpowering, almost glowering, appearance in the landscape, which surrounding tree planting would not obscure.

- 10.5. There does not seem to have been any assessment of the extent to which the development would be seen from the B591 Ingleberry Road. It seems reasonable to assume that the proposal would breach the skyline to a considerable extent and would intrusively impact on a view from within the typical CF agricultural landscape.
- 10.6. The building would not be seen to be associated with the GLW building to the north side of Ashby Road. That building is now well screened and sits lower in the landscape. It has an honest, simple verticality that reflects its function. The development would not be seen as part of the built-up area to the west alongside the A512 where buildings are generally low in scale and height and within the urban area of Shepshed.
- 10.7. There is concern about the night-time impact of the building with its lighting, including the probable need for aircraft warning lights on the stacks. The building would sit in a mature landscape and could not be substantially further screened.
- 10.8. The development would be seriously detrimental to the character and appearance of the landscape and the APAC. It would not only be prominent and feature in the wider CF landscape but also in the general rural approaches, not only for local residents but also for the many visitors to the area. Whilst the degree of detriment will be a matter of judgement to be weighed against other planning considerations, the balance lies firmly with the development plan's policy intention to continue to protect the character of the CF landscape and the rural amenities of the area generally.
- 10.9. The Council was consulted on the second application and is of the view that the changes made in terms of materials and colouring of the building do not address the serious concerns over its height, size, colour and visual impact and that of the flue stacks. The building would retain the sharply-defined outline of its form, mass, architectural articulation and appearance. This would not be mitigated by the suggested use of colours suggestive of the surrounding countryside.
- 10.10. Furthermore, there is concern that whilst the general principle of a restoration of the Garendon Park landscape is desirable, the partial restoration which is designed specifically for mitigating the impact of the proposal that is otherwise unacceptably intrusive, represents an arbitrary and potentially insensitive and un-prioritised approach. There is no evidence to suggest that the listed structures are in such a state that they are at immediate risk and the additional woodland planting would not preserve the setting of the heritage assets within the Park or better reveal their significance. As such, the proposals would not meet the intentions of PPS5 Policy HE10.

10.11. It is questioned whether the proposed landscape alteration would actually be of any substantial benefit in terms of its primary screening role during the operational life of the incinerator. The use of the development to secure the partial wider restoration of the Park and its landscape goes beyond what is necessary to deal with the impact of the development and could be judged to be outside the remit of a Section 106 obligation and the CIL Regulations. The reinstatement of the parkland landscape and the carrying out of restoration works to the listed structures is not what is necessary to make the development acceptable in terms of its relationship to the landscape and the structures, or acceptable in any other way in planning terms. It would have only limited questionable benefits and the carrying out of the works within the Park would not be related to the functioning of the development or to minimising its scale and impact in the wider landscape. Little or no weight should therefore be attached to the offer to carry out the mitigation works. The appeal scheme, including the changes introduced from the second application, should be rejected.

Other Written Representations³⁶⁸

- 10.12. The following is a summary of the various points raised in other written representations.
- 10.13. General concern about emissions from the plant, impact on health and air quality when combined with pollution from traffic.
- 10.14. The impact on the appearance and character of the area would not be outweighed by benefits of the proposal.
- 10.15. Other options for recycling should be explored.
- 10.16. The scheme would add to congestion and access to and from the M1, particularly if there is an incident on the motorway.
- 10.17. The Appellant has a lack of experience in managing incinerators. It has a poor record of breaches of EPs and health and safety regulations. Breaches of standards, accidents or malfunctions could have adverse health effects.
- 10.18. Enthusiasm to recycle may decline and the exploration of other solutions may diminish if incineration is seen as the answer to waste disposal.
- 10.19. The proposal is not appropriate for a gateway location to the CF and NF and would make a mockery of their status. It would adversely impact on local residents and those who visit this area of attractive countryside.
- 10.20. The status of Loughborough University as one of the most attractive campus environments and a university of international standing may be put at risk.
- 10.21. The scheme could result in Shepshed being associated in the minds of those passing as an industrial wasteland with a consequent degeneration in its prospects.

³⁶⁸ Docs 23-31

- 10.22. Recent figures show a sharp drop in total MSW landfilling by the Council. There are doubts as to the amounts of waste necessary to supply the proposal.
- 10.23. There are concerns about the EA's ability to adequately monitor the operation with the implications this might have for health.
- 10.24. Insufficient weight has been given to the fact that the health of residents in the local area is already compromised by the effects of emissions from existing developments and an additional load should not be imposed.
- 10.25. There has been a failure to adequately consider alternative locations with opportunities for less impact on roads and air quality.
- 10.26. The site provides a poor location near rising land that will not assist in atmospheric dispersion from the stacks.
- 10.27. The opportunity would be lost if the proposal goes ahead for beneficial restoration of Newhurst Quarry.
- 10.28. The selection of an incinerator when there are other means available of dealing with waste represents a failure to comply with the Stockholm Convention on Persistent Organic Pollutants (POPs). The Appellant, agencies and authorities have all failed to prove that the proposed incinerator would not cause any significant harm, let alone any harm at all.
- 10.29. To demonstrate a link between incineration and cancer would take a very large epidemiological study a very long time to gather the necessary data. However, there is a large body of international evidence available that highlights the potential hazards of toxins that incineration produces and exposes to public health. In some countries such as the USA the potential dangers to health are recognised and a precautionary approach has been adopted. Incineration is a grave cause for concern in respect of nanoparticle-induced toxicity as plumes of such particles are produced. There is a large body of peer-reviewed evidence available that points to a causal relationship between detrimental health and incineration underlining the need for a precautionary approach.
- 10.30. The HPA has announced plans to commission research into mounting evidence that very small particles emitted by incinerators have led to increasing numbers of people suffering breathing problems when living downwind. The EA has backed calls for the research. Still too little is known about the health effects of incinerators in terms of their generation of particulates to allow an EP. The fact that the HPA has commissioned research indicates that it doesn't have sufficient facts to make statements about the health impact of incinerators. Decisions on incinerators should be postponed until the results of the study are known and the precautionary principle applied.
- 10.31. The proposal would undermine preferred alternative treatments of waste including recycling, MBT with anaerobic digestion (AD) of separated household and/or commercial biodegradable waste. There has been no consideration of the separate collection of food waste in the evaluation of alternatives. When considered along with MBT, AD has been shown to give the best environmental outcome. In the absence of the incinerator C&I and MSW

sectors would be encouraged to increase recycling rates by better segregation of waste to reduce contamination thus improving the quality and value of recyclables, separate collection of compostable material and separate collection of food waste for anaerobic digestion.

- 10.32. Incineration is an environmentally unfavourable way to deal with food in mixed waste. Energy derived from burning food waste is neither sustainable nor renewable. Alternative technologies are available to compost biodegradable material when submitted as unsorted waste. Alternative, well-established, non-incinerator waste-to-energy technologies provide greatly superior compliance with the Integrated Pollution Prevention and Control (IPPC) Directive (2008).
- 10.33. The design for the flue-gas treatment does not represent the most modern equipment or the best available technology and this would lead to emissions of POPs at an average level around 75% higher than those achieved by incinerators with modern flue-gas treatment systems. Modern flue-gas treatment systems for the reduction of POPs also substantially reduce the levels of other air pollutants of concern, especially particulates and nitrogen oxides. LCC has an independent responsibility to require the Appellant to adopt feasible alternative technologies in order to comply with the IPPC Directive (2008). The need for the best available flue-gas treatment systems is particularly important in view of the particular local conditions, the variability of the mixed-waste feedstock and the risk of abnormal operations. The fact that advanced flue-gas treatment systems are commercially available, and are implemented in other incinerators, demonstrates that the flue-gas treatment system proposed does not satisfy IPPC Directive requirements in regard to the best available technology for the minimisation of POPs or other air-borne pollutants.
- 10.34. The incinerator would be an inefficient means of producing electricity with only 18-20% of the heat generated used, the rest being wasted. Energy from mixed waste cannot be considered renewable because it is produced from finite material resources.
- 10.35. Charnwood Borough Council has a Zero Waste Policy. This does not mean zero waste to landfill; it means recognising that all materials are finite and valuing them by minimising waste creation, reusing, recovering and recycling them.
- 10.36. The concerns of many local people should not be swept aside.
- 10.37. Incineration of domestic waste is the only viable alternative solution to current methods of disposal via landfill of quarries in Leicestershire. Landfilling in hardrock quarries has two major disadvantages of creating methane, a far more potent greenhouse gas than CO₂, it creates no benefit to the community and the immense leisure potential of quarries is lost. Restoration of quarries can provide first-rate leisure facilities for activities such as diving, mountain biking and rock climbing.

Representations at the application stage

- 10.38. Having regard to public comments at the planning application stage in respect of the first application, some 1,545 representations of objection were

received by the Council. These are summarised within the CEO's report to committee of 15 October 2010³⁶⁹. In addition, there was a written petition of objection containing 927 signatures, an electronic petition with some 423 signatures objecting to the proposal and 529 separate representations in the form of a postcard, the latter objecting to the use of incineration close to residential areas and suggesting that anaerobic digestion should be the preferred method of dealing with waste arisings. There were three representations in support.

10.39. In respect of the second application there were some 402 representations and a written petition containing 57 signatures objecting to the scheme, with two representations in support. These are summarised in the CEO's report of 10 October 2011³⁷⁰.

11. Conditions and Section 106 Obligation

Conditions

- 11.1. A list of suggested conditions in the event that the Secretary of State should wish to grant planning permission, together with accompanying reasons for their imposition, has been produced³⁷¹. These conditions were discussed at the Inquiry and supersede those listed within the SoCG.
- 11.2. There is agreement as to the necessity and relevance of the conditions between the Appellant and LCC in respect of the majority of the conditions that are listed in Annex A.
- 11.3. The Appellant suggested in discussion of the conditions that Condition 32 (relating to the submission of an updated CHP Feasibility Review) was unnecessary: it would be commercial lunacy not to facilitate CHP from the plant; there would be sufficient commercial drivers to ensure that this was pursued; and it is a fundamental part of the planning regime, as referred to within PPS10 and PPS23, that there should be no duplication covered by other control regimes³⁷². LCC suggested that in circumstances where there are planning imperatives for control, such as the need to ensure energy recovery, simply because an EP has been issued first should not lead to an abrogation of responsibility to ensure adequate control. However, if it is considered that Condition 32 should not be imposed then LCC was prepared to accept Condition 33, the wording of which has been agreed with the Appellant.
- 11.4. Condition 35 would require the removal of buildings should the plant cease operations for two years. The Appellant considers there to be no justification for such a condition on a permanent planning application; for example is a permission for an office building ever seen having a condition for its removal if un-let for a period? Furthermore, it considers that the condition may make it difficult to finance the development scheme as banks may be reluctant to lend on the basis of an asset with zero residual value. This may be especially so

³⁶⁹ CD/B1, paras 258-266

³⁷⁰ CD/B5, paras 268-273

³⁷¹ WPA 11 & APP/21. The reasons for the two conditions in APP/21 are contained within WPA 11. A composite list is at Annex A with agreed wording for conditions 33 and 38 within APP/21 being substituted for those in WPA 11

³⁷² APP/19 Much of the Appellant's comments on conditions is at paras 110-113

where that requirement could theoretically arise at any time within the expected lifetime of the asset if for any unexpected reason there had to be a temporary shut-down for a period exceeding that stipulated in the condition. There may also be anti-competitive effects at play, which would be unlawful.

- 11.5. Condition 38A relates to waste acceptance and indicates that the plant shall not operate unless the operator is applying a specified Pre-Sorted Residual Waste Acceptance Scheme. The details of such a scheme suggested by the Council is attached as an appendix to Annex A. The Appellant questions the need for this. It suggests there is no evidential basis for the imposition of such a condition for it is the explicit evidence of the Council, as confirmed by Mr Noakes in XX, that the facility would not have a detrimental impact on recycling rates in the county.³⁷³ In the circumstances, a waste acceptance condition cannot be necessary. That conclusion is corroborated by the following three further reasons. First, the facility is already subject to extremely detailed waste acceptance criteria under the Environmental Permit (which does not distinguish between MSW and C&I).³⁷⁴ The proposed condition imposed on the planning permission would, at best, simply be duplication of control and contrary to the advice in paragraph 32 of PPS10 and, at worst, lead to confusion between the two regimes.
- 11.6. Secondly, there are significant commercial drivers which ensure waste producers recycle. The median cost of recycling per tonne is approximately £15 compared with £70 or £80 for landfilling or sending waste to be recovered in an EfW facility. No commercial operator would therefore unnecessarily send waste to landfill or an EfW facility. Thirdly, if not persuaded by economics, waste producers and operators are in any event under a statutory duty to apply the waste hierarchy.³⁷⁵ Furthermore, the imposition of such terms put the commercial viability of the plant in real danger: it would place demands on customers not required by competing facilities, driving potentially recoverable wastes away from the facility and could therefore be anti-competitive. In all the circumstances there is no proper justification for the imposition of such a condition.
- 11.7. The Appellant suggests that if it is nonetheless considered that there should be a waste acceptance condition, it should be no more than a simple requirement to submit and obtain approval for a scheme to deal with this matter rather than an elaborate waste acceptance plan lifted from another operator's planning permission (SITA, Severnside)³⁷⁶. This was tailored to the particular contracts and assets that operator had in the area (such as a MRF facility around the corner from Severnside) and where the circumstances are wholly different from Newhurst. The wording of Condition 38 has been agreed between the Appellant and LCC if Condition 38A is considered unacceptable.

³⁷³ LCC 3/1, para 8.2.7. The proof refers to MSW but in XX Mr Noakes agreed that there would be no detriment to recycling rates. The Appellant suggests he was right to agree to this: as Mr Leeson's evidence shows, high recycling rates go hand in hand with high levels of EfW (see BWS 5/3, Table 2/1)

³⁷⁴ An explanation of which is set out in APP/6

³⁷⁵ Regulation 12 of the Waste (England and Wales) Regulations 2011, CD/G7

³⁷⁶ CD/N13

11.8. Suggested Conditions 44 and 45 relate to the operation of the facility so as to achieve an R1 energy efficiency rating. The Appellant considers these to be unnecessary: Mr Noakes agreed the Appellant's R1 calculation³⁷⁷ and, indeed, that the required level was comfortably exceeded even without CHP.³⁷⁸ There is no other or contrary evidence and certainly no evidence that the plant would fall below the level of efficiency required by the R1 formula. Moreover, condition 1.2.1 of the Permit³⁷⁹ (under the title energy efficiency) mandatorily requires the operator to ensure the energy is recovered with a high level of energy efficiency and to monitor opportunities to improve the energy recovery and efficiency and take those opportunities. The condition would therefore represent a duplication of control. Furthermore, the Permit condition does not allow the operator to rest upon its laurels once the R1 co-efficient is met. It requires the operator to take any opportunities to increase the efficiency of the plant even if the plant meets the R1 formula. That is a far higher obligation than simply holding a R1 certificate or meeting the R1 formula. Mr Noakes was asked for examples of where the Secretary of State has found it necessary to impose such a condition in previous appeal decisions but he was unable to provide one. The Appellant suggests it is plainly in the commercial interests of the operator to ensure the plant is as efficient as possible, for energy saved and harvested represents real money.

Unilateral Undertaking³⁸⁰

11.9. The Appellant's proffered planning obligation in the form of a Unilateral Undertaking would secure the following:

- The payment of a contribution of £150,000 to facilitate the conservation and preservation of listed structures on the Garendon Estate, in particular the Triumphal Arch and the Temple of Venus;
- The delivery of off-site planting of dispersed woodland and tree-lined avenues within Garendon Park;
- The regulation of routes to be taken by HGVs visiting the site such that they do not use roads through Shepshed (other than the A512) unless collecting waste from the town; and
- The cessation of all mineral extraction on the site and an undertaking not to carry out any further development included in planning permission 2007/1987/02 for the integrated waste management facility.
- The establishment of a Liaison Committee comprising representatives of the Appellant, the site owner, the EA, the County, Borough and Town Councils whose purpose would be to assist in the exchange of information relating to the Newhurst Quarry site.

³⁷⁷ BWS 1/2, Appx BWS 1/1/B. The EA considers the proposal to be a waste management installation. Under the terms of Annex II of the Waste Framework Directive an EfW facility can be classed as a waste recovery operation where the R1 energy efficiency requirement is met. The proposal is expected to meet the energy efficiency requirement and even without CHP would be significantly above the R1 threshold

³⁷⁸ Mr Kershaw accepted the same

³⁷⁹ CD/M1, p2

³⁸⁰ APP/20

11.10. LCC suggests that the offer of £150,000 towards the repair of the listed buildings represents a benefit that would fail the test of necessity and would not be compliant with the Community Infrastructure Levy (CIL) Regulations 2010. This is the only obligation against which such a suggestion is made. The Appellant rejects this assessment on four grounds: EH endorses and welcomes this obligation, not on the basis of the payment of £150,000 but on the basis that the agreed works would be carried out; there is sound policy backing for that which LCC describes as 'compensation'. RSS Policy 1(g) encourages adequate "mitigation or compensation" for unavoidable damage; given Mr Sharpe's stance that £150,000 was an insufficient sum and that he wanted "more" it seems remarkable that LCC argues that the repairs are not necessary; and the repair of the listed buildings would directly improve the significance and appreciation of these assets and would help to offset the impact caused by the development on their setting³⁸¹.

³⁸¹ APP/19, paras 114-115

12. Conclusions

General introduction

- 12.1. In these conclusions, the numbers in brackets [] indicate preceding paragraphs in the report where the relevant information can be found.
- 12.2. Following the refusal of planning permission for the proposed Energy Recovery Facility (ERF), the Appellant continued dialogue with Leicestershire County Council (LCC), the planning authority in respect of this proposal, and statutory consultees. This resulted in a second application being submitted to and subsequently considered and refused planning permission by the Council. The scheme subject to the revised application was, in essence, identical to the first save for proposed mitigation tree planting and funding for restoration work of two listed buildings within Garendon Park and changes to materials and the colour scheme for the ERF building. I have taken account of the proposed changes within the revised application in reaching my conclusions, as requested by the Appellant. There was no disagreement with this approach at the Inquiry and I am satisfied that no interests would be substantially prejudiced as a result. [1.5, 1.6]
- 12.3. An Environmental Statement was produced in accordance with the Town and Country Planning (Environmental Assessment) (England and Wales) Regulations 1999, as amended. I have taken account of this and an Addendum to it produced in conjunction with the second application in arriving at my conclusions and recommendation and I am satisfied that the requirements of the Regulations have been met. [1.7]
- 12.4. LCC accepts that, but for its assessment of harm to landscape character and heritage assets and the visual impact of the scheme, there is no reason why planning permission should be withheld. It is solely in relation to these aspects that the Council's reasons for refusal relate and they provided the main focus of debate at the Inquiry. Archaeological investigation works have been carried out by the Appellant in Garendon Park. The County Archaeologist is satisfied that the proposed tree planting restoration of the Park as part of the proposed mitigation scheme would not impact unacceptably on the Park's archaeological integrity. As a consequence, LCC does not contest refusal reason No. 5 of its decision notice. [1.5, 6.7, 7.1]
- 12.5. Having regard to the above, the principal consideration in this case is the impact of the development on the appearance and character of the surrounding area, on the character and setting of Garendon Park (the Park), a designated Grade II listed historic park and garden, and on the setting of Grade I, II* and II listed buildings and whether any harm to these matters is outweighed by benefits of the scheme. Nonetheless, other matters of concern to many interested persons include the scheme's impact on air quality and health, energy efficiency, road congestion and the restoration of Newhurst quarry adjoining the application site. These are therefore also addressed. [7.1, 7.2, 8.1]
- 12.6. The Council accepts that the proposal would comply with national waste policy contained in PPS10, the Waste Strategy for England and the main

strategic policies of the development plan relating to the location of waste management facilities. It further accepts that the site is suitable in principle for an Energy from Waste (EfW) plant. Extraction operations at the Newhurst Quarry site have ceased and at the time of the Inquiry there was an extant planning permission for an Integrated Waste Management Facility. The Appellant was taking steps to ensure that this permission would be kept alive in the event that this appeal does not succeed. The site has been assessed as suitable for major waste management facilities both in the context of plan-making and development management decisions. However, in terms of individual proposals landscape and visual impact must be considered. [4.1, 4.2, 7.4, 7.53, 7.54, 8.2]

Landscape and visual impact

- 12.7. Within the Charnwood Borough Local Plan (CBLP) the site is shown to lie within the National Forest (NF) and the rear portion of it is within an Area of Particularly Attractive Countryside (APAC), a local designation that arose from the unsuccessful promotion of the Charnwood Forest (CF) as an Area of Outstanding Natural Beauty and, previously, as a National Park. The site is well contained, with existing screen planting along its boundary with the M1 motorway and to the north-east adjacent to the A512, and the land rises quite steeply to the south and south-west. This combination of factors limits views into the site from public vantage points. In this regard, most of the ERF building and its accompanying infrastructure would be screened from beyond the site. [2.4, 3.7, 7.55, 8.34-8.36]
- 12.8. The structure would be large, being some 240m in length with a maximum width of 70m. Its height would vary from around 14m to a maximum of 47m, the accompanying twin flue stacks being some 96.5m in height. As such, the upper parts of the building and the flues would be seen from various vantage points above the surrounding trees and landform. For the Council, in terms of the visual impact, it is the scale of the structure rising above the surrounding trees that is harmful. [5.3, 7.51, 7.55, 8.2, 8.35]
- 12.9. LCC does not criticise the footprint or the siting of the plant and there is acceptance by it that the structure is of a high quality design in itself. I have no reason to disagree. The curvilinear shape, and the articulation and differences in height of the roof elements, together with the building's essentially north-south orientation parallel to the motorway, represent a bold attempt to respond to context. Variations sought in detailed external materials and colour treatment within the second application, to better respond to the natural colours of the surrounding countryside, are matters that could be controlled by means of imposed conditions. Nonetheless, the perceived visual impact would arise from the projection of the building and its flues rising above the adjoining trees and landform. [7.62, 7.63, 8.2, 10.4, 10.9]
- 12.10. The height of the building, as with its width and overall size, is dictated by its function. LCC has sought to suggest by reference to other EfW plants that the building's height could be lower. However, there is no evidence to suggest that the Appellant was asked during the course of the processing of the applications to consider a redesign or the use of alternative technology to reduce the height. [7.64, 8.3]

- 12.11. Extensive landscape and visual impact assessment has been undertaken within the ES by the Appellant in the context of the application and in respect of the appeal. LCC has not undertaken its own assessment but has commented upon and criticised that of the Appellant. The assessment, which has included the production of photomontages, visual representations and modelling, has been useful in aiding appreciation of the likely visual impact of the proposal. However, these all have limitations and, whilst having regard to them, I have principally based my assessment on what I saw on my site visits. [7.47, 10.3]
- 12.12. The part of the site that lies within the APAC is on the northern fringe of this wider designation with the whole site being flanked to three sides by roads – the M1 and A512 – and commercial premises. There are significant industrial and commercial uses along the northern side of the A512, including the prominent GLW feed mill. The site has more of the character of an urban fringe area than the agricultural and wooded countryside further to the south and south-west or that part of the APAC extending to the eastern side of the motorway. The Council accepts this. [2.1, 2.3, 2.4, 7.52, 7.56]
- 12.13. Policy CT/7 of the Charnwood Borough Local Plan (CBLP) seeks to protect the essentially undeveloped rural character of the landscape, and to not diminish the visual amenities afforded by important viewpoints. However, it is also clear that it is recognised that within the APAC there may be pockets of relatively ordinary landscape. In the limited views there would be of the upper parts of the ERF and its stacks from within the APAC to the east, the development would be seen in conjunction with the tall, albeit lower, utilitarian structure of the GLW feeds mill. The Borough Council considers it is reasonable to assume that the plant would be visible from the B591, Ingleberry Road, to the south-west. However, the Appellant's Zones of Theoretical Visibility show this not to be the case, as accepted by LCC. As noted on my visits, landform and vegetation would provide considerable screening from this direction so that from relatively close quarters any impact would be considerably mitigated. [7.56, 7.58, 10.5]
- 12.14. Landform and vegetation would considerably limit views of the proposal from elsewhere within the APAC further to the south and south-west within those areas of the CF which are most intact and clearly rural. From what is evidently a popular public vantage point of Beacon Hill the building and stacks would be seen in the middle distance but would not break the skyline. The development would be seen in what is a panoramic view to the north and north-east but this would be in conjunction with the urban form of Loughborough, from which it would not appear greatly separated, and the more distant and prominent (on a clear day) structures at Ratcliffe Power Station and the East Midlands Airport.
- 12.15. There would be closer views from limited parts of the bridleway to the east of Lubcloud Farm looking in an easterly and north-easterly direction where the upper section of the plant and the stacks would rise above intervening trees and form a middle-ground feature. However, these again would be but an element of a panoramic view where the GLW building is also partly seen, with Loughborough and Ratcliffe Power Station providing further backdrops in the flatter, lower landscape. [8.39]

- 12.16. Any plume from the stacks would increase the prominence and presence of the plant. However, based on calculations and weather conditions the unchallenged predicted occasions when this would be visible is within the region of 7 – 11% of the time and then this would be most likely in winter months when fewer people are likely to be enjoying recreation outdoors within the CF. Prominence would be further heightened, however, if air safety warning lights would need to be provided to the stacks. [7.81, 8.38]
- 12.17. Similarly with lighting, the partial use of translucent panelling for the walling of the ERF would increase the prominence of the building to some degree. Nonetheless, the plant would be adjacent to the lit section of the M1 and its junction 23 and suggested conditions could ensure light spillage and luminance would be minimised. Furthermore, the development needs to be seen within the context that lighting would in any case be a feature of the Integrated Waste Management Facility which benefits from extant planning permission. [7.82]
- 12.18. The APAC is a local landscape designation and was removed from the updated Leicestershire Structure Plan since national policy guidance, and specifically that in PPS7, no longer supports such designations; whilst nationally-designated landscapes require particular protection all other landscape should be protected equally for its character and beauty. The Climate Change Supplement to PPS1 (PPS1 CCS) and PPS22 also make it clear that the local approach to protecting landscape should not preclude the supply of renewable energy other than in the most exceptional circumstances. On the other hand, the policy is a character-based one following from an assessment of the qualities of the landscape, was 'saved' after publication of PPS7, and currently remains part of the development plan. I consider that the weight to be attached to this policy is, however, diminished in relation to its applicability to the proposal in light of this national guidance. [7.48]
- 12.19. The site's position on the fringe of the APAC and partially outside it, its nature and relationship with surrounding commercial and industrial development, proximity to the M1 and the large degree of screening from within the APAC, would limit the extent and magnitude of the scheme's impact in both landscape and visual terms. Nonetheless, there would be an inevitable impact in terms of perception from within and impact upon the APAC and the CF but these would be quite localized. This would amount to conflict with CBLP Policy CT/7, which seeks to protect the APAC's essentially undeveloped rural character. By the same token, there would also be conflict with Policies WCS10 and WDC5 of the Leicestershire and Leicester Waste Development Framework Core Strategy and Development Control Policies (LLWDFCS) which variously seek to protect the character of CF and countryside. [7.55, 8.34]
- 12.20. Whilst there are proposals to create a CF regional park, boundaries have yet to be formally defined and a current putative boundary may be subject to change. There are as yet no development management policies relating to it and conflict with such a regional park did not feature as part of the Council's reasons for refusal. In these circumstances little weight should be accorded to this. [7.60, 8.34]

- 12.21. There would be changing but relatively limited views over short distances of the upper portion of the plant and stacks for travellers along the M1. A principal view would be that obtained at junction 23 with the A512 where the development would rise above the existing trees alongside the eastern and north-eastern sides of the site. Here it would be an imposing structure visible at relatively close quarters. However, it would be seen within the context of the urban features of the road and motorway and, in some views, in conjunction with the GLW feed mill. Nonetheless, from this point I have no reason to disagree with the Appellant's own assessment of the visual impact as being 'moderate/substantial adverse'. [7.79, 8.37]
- 12.22. Although the Appellant argues that the plant would act as a positive statement at the entrance to Shepshed, the CF and the NF, and act as a fitting gateway to the latter, I consider this to be somewhat overplaying its likely contribution. Similarly, I find it hard to believe that, realistically, for most people its presence would come to be recognised as a positively-accepted development because of its association with sustainable purposes. Nonetheless, in terms of the effect on the NF, the Council has not referred to impact upon it directly in its reasons for refusal and it is not part of its case that there would be conflict with either Policies SRS5 of the RS or WCS11 of the LLWDFCS, policies dealing specifically with the NF. There are no policies which seek to resist development within the NF, the boundary of which encompasses urban as well as countryside areas. [7.57, 8.33, 9.15]
- 12.23. The site falls within the Shepshed Urban Fringe Landscape Character Type within the Charnwood Forest Landscape and Settlement Character Assessment, which is substantially different in character to the more rural areas to the south. The A512 at this point provides only one of thirteen gateways to the NF and is one that is likely to be used to a lesser degree for those approaching along the M1 because of the positioning of signage there. [7.57, 8.37]
- 12.24. From more distant viewpoints to the east, north and north-east elements of the plant and its stacks would be visible. However, in most of these the development would be seen in association with the urban forms of Shepshed or Loughborough and often in conjunction with intervening features such as electricity pylons. In general landscape terms there would be some urbanising impact but, overall, having regard to visual intrusiveness within panoramic views, where the ERF would occupy only a limited percentage of any view, this would be mostly slight to moderately adverse.

Heritage assets

- 12.25. There is no dispute between the Appellant and LCC that the heritage assets of the registered historic park and garden of Garendon Park and the listed structures within it have been properly described in terms of their significance in accordance with Policy HE6 of PPS5. Similarly, there is no dispute that any impact of the proposal on these heritage assets would be indirect and consequently would only affect their setting. [7.85, 7.86]
- 12.26. Furthermore, it was agreed that there is a distinction between impact on heritage assets themselves and impact on their setting. There is also a distinction between the significance of an asset and its setting. The listed buildings of the Triumphal Arch (grade I) and the Temple of Venus (grade

II*) are of the highest significance and are highly sensitive to direct impact. But in this case any impact would be indirect and would be on setting alone. The Temple, the Arch and the registered Park are included in EH's Heritage at Risk Register on account of their vulnerability to impact upon their setting from development and their poor material condition. The degraded character of the Park has, in part, resulted from the felling of parkland trees, which has also removed an integral part of the setting of the listed buildings. [7.85-7.88]

- 12.27. Having regard to the registered grade II park and garden, it has a setting within which its surroundings play some part. The upper parts of the ERF building and its twin stacks would rise above the surrounding trees along the site's eastern and north-eastern borders and would be visible from within the Park where the proposal would appear as an industrial building in a predominantly rural landscape. However, modern development has already had an impact on the Park and its setting with, in particular, the M1 motorway cutting off a part of the original Park. The motorway now forms a western boundary to the Park. From within the Park it is partially visible and traffic is audible.
- 12.28. The ERF would be close to but not contiguous with the Park, being separated from it by the M1 and junction 23 and would appear in many views in conjunction with the GLW feeds mill and a telecommunications mast to its north. If development was to take place of the mooted Sustainable Urban Extension, directly alongside the Park, and possibly comprising some 3,500 dwellings with a connecting road between the A512 and the A6 through it, and Science Park to the south of the A512, these would further impinge upon it. [7.61, 7.94]
- 12.29. English Heritage (EH), like the Appellant, considers that views out from the Park are not a significant matter because the Park was designed to be inward-looking, views stopping at the Park boundary. The Appellant considers this to be the case based on the lack of correlation between views down the historic avenues of trees and any feature beyond the Park's boundary, which would have provided a terminal vista. Based on the available evidence, I do not find LCC's suggestion to the contrary to be convincing. The three listed buildings of the Temple of Venus, the Triumphal Arch and White Lodge are positioned along a ridge. They might have been seen (as they can be now) in longer-distance views from without the Park. Nonetheless, I consider it more probable that their positioning was to take advantage of narrow vistas within the Park rather than being specifically designed as features to be seen beyond its boundaries. As such, the likely absence of designed views out from the Park reduces the significance of features beyond its boundaries in terms of impact on its setting. It is not reasonable to suggest, therefore, that harm to setting has been underestimated on this basis. [7.88, 7.89, 8.16, 8.18]
- 12.30. EH's latest views on the proposal are those following the formulation of the mitigation scheme as part of the Appellant's second application. This would involve more extensive tree planting within the Park to partially recreate the 18th century layout. LCC accepts that EH's assessment should be accorded considerable weight given its role as the Government's advisor on heritage matters. Up until this point EH had maintained that the

development would cause substantial harm to the heritage assets of the Park and its listed structures. However, in light of the mitigation proposals, which would in part re-create the former geometric tree-lined avenues in the south-western portion of the Park, it suggests that there would be benefit to the designated heritage assets by returning a level of authenticity to the planting arrangement and setting of the buildings. EH's overall conclusion on the enhanced mitigation scheme is that it would reduce the level of harm from substantial to less than substantial, as defined by Policy HE9.4 of PPS5 [5.11, 7.94, 7.101, 8.25, 10.10]

- 12.31. LCC has sought to suggest EH's assessment of the upgraded mitigation scheme was based on a misunderstanding or misapprehension of what might be deliverable having regard to the landowner's wishes or commitments. It has also sought to suggest that by only providing a semi-circular planting layout around the Temple of Venus, rather than full 360° restoration, the proposal misrepresents the historic setting of this asset rather than revealing it. The historical evidence does point to a 360° landscaping treatment around the Temple and the initial suggested mitigation scheme included this. Nevertheless, EH has accepted the appropriateness of the scheme as submitted with the second application and which the Appellant wishes to be considered. Whatever the background to the evolution of the scheme in terms of the landowner's intentions or commitments, I share the EH view that what has been put forward is both reasonable and proportionate in relation to the development proposed. [7.99-7.108, 8.19-8.26]
- 12.32. The scheme would assist in regaining part of the Park's character and significance in its south-western sector as well as enhancing the setting of the listed buildings. It would not be an exact replica of what once existed (and makes no claim to be so) since the scheme would see areas of denser planting concentrated to the south-west of the Temple rather than to its south-east. However, this is a function of the practical and sensible mitigation whereby the tree planting would help to reduce the visibility of the ERF from some locations within the Park, in particular near to the three listed buildings on the ridge. It would benefit the designated heritage assets by helping to reveal their significance by restoring a level of authenticity to the planting arrangement, and setting of the buildings.
- 12.33. In the short-term the screening effect of tree planting would be only partial, and less effective after leaf-fall, and it would not be until the trees reached a level of maturity, probably beyond 20 years, that most views of the proposed facility from close to the listed buildings would be largely obscured. There would also be a remaining impact on the southern portion of the Park beyond the proposed planting. Consequently, the introduction of an industrial building of the nature of that proposed would have both an individual and cumulative impact harmful to the setting of the heritage assets. However, in terms of the assessment methodology adopted, I agree that EH's assessment that the impact would be less than substantial is the correct one. [8.15, 8.20, 8.25, 7.103, 7.105, 7.106]
- 12.34. I have no reason to disagree with the concession made at the Inquiry by the Council's witness on heritage matters that both Policies WCS10 and WDC2 of the LLWDFCS referred to within the Council's reasons for refusal,

having been adopted prior to the publication of PPS5, are out of sympathy with it and that the latter should take precedence as a reflection of Government policy. Similarly, Policy WCS12 pre-dates PPS5 and, in any event, refers to the CF rather than listed buildings. CBLP Policy EV/9, cited within the Council's fourth reason for refusal also pre-dates PPS5 and adds nothing to the LLWDFCS policies which specifically address proposals for waste management facilities. Furthermore, Policy WCS10, in seeking to protect the environment, requires there to be no unacceptable adverse impacts from waste development proposals and Policy WDC2 only prohibits waste management development that would have significant adverse effects on sites of national historic importance. Given the proposed mitigation I consider there would be no conflict with LLWDFCS Policies WCS10 or WDC2 in respect of the proposal's impact on the heritage assets. [7.98]

12.35. In terms of impact on heritage assets, given that I concur with the EH assessment that the level of harm is less than substantial, it is necessary to weigh the public benefit of the proposal against the harm caused to those assets in accordance with PPS5 Policy HE9.4. Policy HE1.3 reiterates this but with specific reference to climate change objectives. This is carried out in assessing the planning balance in paragraphs 12.75 to 12.77 below. Furthermore, Policy HE10 specifically concerns applications for development affecting the setting of heritage assets. HE10.2 urges the identification of opportunities for changes in setting to enhance or better reveal the significance of a heritage asset. In terms of the immediate setting of the listed structures within the Park, the proposed mitigation/restoration planting would assist in this objective, even though it clearly would not lead to the full replication of the Park layout that is evidenced from historic records. This needs to be added into the consideration of the balance. I consider the possibility of the repair and restoration of the Temple of Venus and the Triumphal Arch in the context of the Unilateral Undertaking in paragraphs 12.73 and 12.74 below. [7.112]

12.36. From the foregoing, the proposal would have some adverse impact upon landscape, visual amenity and designated heritage assets. This impact has to be balanced against any benefits it may bring, particularly in terms of the Government's climate change, and waste management objectives as made clear in PPS5 Policy HE1, PPS CCS and PPS22. These benefits are therefore now considered.

Scheme benefits

12.37. LCC accepts, and I have no reason to disagree, that the proposed scheme would comply with national waste policy contained in PPS10 and the Waste Strategy for England 2007 (WS2007). It would also accord with the main strategic policies of the development plan relating to the location of waste management facilities. The Council further recognises that considerations weighing in favour are: the need to address climate change; the need for additional renewable energy generating capacity; the need to divert waste from landfill and treat it further up the waste hierarchy; and the need to plan for growth to aid economic recovery. [7.4, 8.43]

12.38. The Government review of Waste Policy in England 2011 (WPR2011) sets out the objective of aiming for a zero waste economy in which material resources are re-used, recycled or recovered wherever possible and only

disposed of as the option of very last resort. Even though Leicestershire has large quantities of quarries, there is a clear legal imperative to drive the treatment of waste up the hierarchy away from landfill. The provision of EfW would assist in this. The WPR2011 provides support for such facilities not only in the context of waste management but also having regard to low carbon and renewable energy provision and climate change. Although there has been criticism by third parties that the scheme would not produce renewable energy, there is no dispute between the Council and the Appellant that the energy produced from the biomass fraction of the waste feedstock would be renewable and the remainder low carbon. By reference to Article 2 of EU Directive 2009/28/EC and PPS1 CCS this latter assessment is clearly more accurate. [7.7-7.11, 7.14, 9.5, 9.72]

- 12.39. Having regard to energy generation, the scheme would produce a net 21 megawatts of energy for export to the National Grid, providing sufficient power for about 42,000 homes. This would assist in striving towards the UK's commitment to a target of producing 15% of its total energy from renewable sources by 2020. It would also make a contribution to renewable energy in the East Midlands, which currently lags behind other regions in renewable energy provision. The proposal would produce more power than all the permitted wind farms and sewage gas generating schemes in Leicestershire and considerably more than all the landfill gas generating stations. [7.14]
- 12.40. Urgency in provision of renewable energy is exhorted in the UK Renewable Energy Strategy, by the UK Low Carbon Transition Plan and the draft National Planning Policy Framework. By reference to the Regional Strategy the Council accepts the urgent need for the provision of additional sources of supply of renewable energy. The scheme would accord with the Energy White Paper indication that individual renewable projects should provide benefits shared by all communities, both through reduced emissions and more diverse supplies of energy, helping the reliability of supplies. This should be given significant weight. It would also be more beneficial than schemes for energy generation from landfill gas where: some 20% of methane (which is considerably more pernicious as a greenhouse gas than CO₂) evades capture systems; gas generation takes time to build up; and energy generation is far more inefficient. [7.14, 7.15, 7.17, 10.37]
- 12.41. The energy recovery of the scheme would assist in: providing security of supply using home-produced residual waste, which would lessen dependence on insecure foreign imports of energy; diversifying energy generation in line with Government policy to move away from a concentration on coal, gas and nuclear energy; helping lessen dependence on a small number of centralised generating plants; and providing a constancy of supply, unlike some other forms of renewables which are weather-dependent. The Appellant has made reference to the Overarching National Policy Statement for Energy (EN-1) relating to nationally-significant infrastructure projects and draws support from the imperatives contained within this policy. However, the appeal scheme falls below the thresholds to which this applies and is not subject to it or the provisions of the Planning Act 2008. Nonetheless, the proposal is a substantial scheme and would make a significant contribution in terms of low carbon and renewable energy

provision. In this regard, some support may be legitimately claimed in terms of the general thrust of presumptions within EN-1. [7.20, 7.136, 8.46]

- 12.42. The proposed plant would also be enabled to provide Combined Heat and Power (CHP) and in respect of which the WS2007 indicates particular attention should be given to siting facilities where the opportunity for CHP can be maximised. The site is felicitously positioned for providing heat to potential customers within the immediate vicinity well suited to make use of this, with expressions of interest having been provided by existing firms within the industrial/commercial strip alongside the A512. The relatively short distances to these potential users and their commercial/industrial nature would suggest that the ERF would be particularly fortuitously located to maximise the benefits of CHP. Savings in their waste management and reduced fuel costs are advantages to these local businesses that could result. [7.18, 7.19, 7.133]
- 12.43. In terms of climate change, jurisdiction for making the decision in this case has been recovered on the basis that the project is regarded to be of major significance for the delivery of the Government's climate change programme and its energy policies. PPS1 CCS indicates the Government's belief that climate change is the greatest long-term challenge facing the world today and addressing it is therefore its principal concern for sustainable development. It notes the urgent need for action on climate change and that tackling this is a key Government priority. I accept the Appellant's contention that climate change should be approached in tandem with energy policy since the latter is central to tackling climate change. The Energy White Paper indicates that renewables are key to the strategy for tackling climate change. PPS1 CCS defines EfW as a renewable energy supply. There is acceptance on behalf of LCC that the proposal would contribute to key planning objectives set out within this Statement. [7.14, 7.21-7.23]
- 12.44. In the above regard, the proposal would make a significant contribution to delivering the Government's Climate Change programme and energy policies and in so doing contribute to global sustainability in line with objectives within PPS1 CCS. The Appellant's unchallenged Waste and Resources Assessment Tool for the Environment (WRATE) assessment demonstrates the significant climate change benefits achievable as compared with landfilling the feedstock that it could use. Even operating without CHP, the proposal would result in a net carbon benefit of some 87,000 tonnes of CO₂ per annum. This would represent a very large saving and, putting it in context, would be larger than the LCC's own existing carbon footprint, the Council being the County's largest employer. Benefits would be increased further with heat export to local users which, although can not be guaranteed, would be a realistic prospect given the expressed and nearby interest. The proposal would fulfil the objective of PPS1 CCS of helping to provide resilience to climate change by driving down the carbon impact of waste management in the area and thereby helping to reduce vulnerability to climate change. [7.23]
- 12.45. The Incinerator Bottom Ash recycling operation associated with the plant would produce considerable volumes of secondary aggregates, assisting in resource husbandry and reliance on primary aggregates. The cost of

managing waste for local businesses could be reduced by the proposal providing a more competitive method of waste management for commercial and industrial waste for which no Landfill Tax would be payable. The scheme would provide employment opportunities both at the construction and commissioning phase, which itself is likely to take in the region of three years, and then when operational. It is estimated that construction would involve some 200 employees and the plant when operating would employ 38 to 40 on a shift basis. Indirect jobs may be created and local employers may be supported through the plant's operation by reducing waste costs and being a potential source of cheaper and more secure power. The Ministerial Statement 'Planning for Growth' is supportive of development, identifying the promotion of economic growth and jobs as a top priority, with the clear expectation that development should be allowed except where this would compromise sustainable principles. This reinforces advice in Policy EC10 of PPS4 which urges a positive and constructive approach towards planning applications for development that secure sustainable economic growth. LCC acknowledges the economic benefits that would accrue in terms of jobs and spending in the local economy. [5.18, 5.23, 7.36, 7.38, 7.39, 7.133, 8.50]

- 12.46. The proposal would accord with the thrust of RS Policies 1, 38 and 40 which respectively seek to reduce the causes of climate change by: minimising emissions of CO₂; promoting the treatment of waste higher up the waste hierarchy; and promoting CHP infrastructure. There is agreement that the site qualifies as a strategic waste site and would therefore accord with Policy WCS2 of the LLWDFCS. Within this Core Strategy the site would accord with the intent of Policy WCS4 relating to the sequence for locating waste sites. The LLWDFCS recognises that in achieving a sustainable waste management system, incineration with energy recovery will need to play a full and integrated part in local and regional solutions in avoiding the negative effects of landfill; energy from waste with CHP is stated as being the best economic solution for the county. Policy WCS6 is conditionally permissive of incineration that would provide for the recovery of energy from waste. The proposal is therefore underpinned by strong national and local policy support in terms of its potential contribution to achieving climate change and energy objectives, sustainable waste management and economic benefits. [3.9, 7.40, 7.43, 8.43]

Need

- 12.47. Although LCC has not raised the issue of need for the proposal in the reasons for refusal, and there is no requirement on the part of the Appellant to demonstrate a quantitative or market need, the Appellant has addressed this within the context of the planning balance exercise. The Council accepts that waste which remains to be treated after recycling and composting has taken place is waste for which there is no existing treatment capacity. Waste that is disposed of in landfill will comprise a potential need for treatment capacity. There is agreement that over the projected lifetime of the ERF between 550,000 tonnes per annum (tpa) and 580,000 tpa of residual waste would be available for recovery at the plant from within the county, these figures having already taken account of recycling rates as well as the limited existing recovery capacity; it is the amount of waste which is available to be diverted from landfill and should be treated up the waste

hierarchy at 'other recovery' level. The proposal would not have a detrimental impact on long-term recycling rates. [7.27-7.29]

12.48. The Council has sought to place reliance on recycling capacity for which permissions have been granted but which are not operational. However, previous decisions on ERF facilities indicate that this is not the correct approach to take. They should not be taken into account as, for a variety of reasons, they may never come to fruition. This is supported by specific reference, albeit within the context of nationally significant infrastructure projects, in National Planning Statement EN-3. Furthermore, the evidence of potential recovery capacity, properly interpreted, suggests that there would be relatively little inroad made into the reduction of available residual waste even if consented capacity was taken into account. There is a clear need to provide in excess of 500,000 tpa of recovery capacity to ensure that waste is treated higher up the hierarchy than landfilling, the method of last resort. [7.30, 7.31, 7.32]

12.49. With a capacity of 300,000 tpa the proposal would make a considerable contribution to moving residual waste up the hierarchy whilst still pointing to a requirement for additional recovery facilities, which could include alternative methods that some objectors consider to be preferable. As the Appellant states, there appears to be no other meaningful recovery capacity on the horizon. LCC is now considering options that could result in the delivery of a replacement facility to take the place of a planned provision of recovery capacity that failed because of the withdrawal of Private Finance Initiative credits. Whilst this could deal with much of the Municipal Solid Waste (MSW) arisings within the county, it would not be likely to be operational until about 2020 and would only handle some 180,000 tpa of the 550,000-580,000 combined C & I and MSW arisings. Such a partial solution is therefore still some eight years away. In the meantime there remains a requirement to address the residual waste arisings and the proposal would assist in achieving a greater level of self-sufficiency in terms of waste management. The ability of the proposal to make a significant contribution on this front, in accepted accord with national waste policy, should carry considerable weight. [7.34, 7.35, 7.131, 8.49, 9.53, 9.54, 9.57, 9.67, 9.71, 10.31, 10.32]

Other Matters

Health and air quality

12.50. The possible health implications of the operation of the ERF represent an issue that concerns many local residents. The matter was fully considered by LCC in determining both planning applications. Permission was not refused on this basis in light of the absence of objection from the Environment Agency (EA), the Health Protection Agency (HPA), the Primary Care Trust and the Borough Council's Environmental Health Officer. Health is principally an issue for the EA and the pollution control regime and PPS23 sets out the delineation between the planning and pollution control systems; the planning system should focus on whether a development itself is an acceptable use of land and the impacts of those uses, rather than the control of processes or emissions themselves. [7.114, 7.115, 9.45, 9.50-9.52, 9.60]

- 12.51. PPS10 re-iterates this advice and states that modern, well-run and well-regulated waste management facilities, operated in line with current pollution control techniques and standards, should pose little risk to human health. The EA has granted an Environmental Permit (EP) for the operation of the plant. It is therefore clearly satisfied that the plant would be operated in accordance with Best Available Technology and in accordance with the requirements of the Waste Incineration Directive (WID), designed to avoid impact on human health. PPS10 indicates that there should be an assumption that the relevant pollution control regime (as applied by the EA) will be properly applied and enforced. Although dealing with nationally significant infrastructure projects, EN-3 requires planning decision-makers to assume that there will be no adverse impacts on health where a plant meets the requirements of WID and does not exceed local air quality standards. There is no reason to suppose that a similar assumption should not apply in this case. [7.115, 7.117]
- 12.52. Some concerned residents and local representatives have suggested rejection of the scheme on the basis of the precautionary principle. This is in light of scientific uncertainty about the risk of incinerators to health and recent research literature suggesting a plausible risk between the proximity to incinerator emissions and human health. It is also stated that the HPA is currently in talks with university researchers to commission a trial to investigate any links between incinerator emissions and birth defects. Forceful reference was made by a local GP at the evening session of the Inquiry to dioxin emissions and possible health impacts. However, his views relied heavily on a report that has been strongly criticised and refuted by the HPA, together with other reports which referred to old style pre-WID incinerators or hazardous waste incinerators. These have no application to modern, well-run operations subject to the EA's regulatory regime. [7.121, 9.77, 10.29, 10.30]
- 12.53. There is every reason to suppose that the plant would operate in accordance with the EP and that, should there be any non-compliance, the EA would act in accordance with its enforcement powers conferred through the environmental permitting regime. I accept that understanding of these issues is still evolving, including that of the possible role of nano-particles in respect of emissions and health. Nonetheless, the HPA, the Government's statutory advisor on health matters, has said that whilst it is not possible to rule out adverse health effects with complete certainty, any potential damage to health of those living close-by is likely to be very small, if detectable. Furthermore, WS2007 indicates at paragraph 22 of Chapter 5 that there is no credible evidence of adverse health outcomes for those living near incinerators. This takes account of research into long-term exposures when emissions from incinerators were much greater than they are now. No more recent Government advice has been drawn to attention. [10.29]
- 12.54. There is no reason to suppose that the plant would not be run in accordance with the EP that has already been granted. The EA, in issuing the Environmental Permit, has stated that it does not consider harmful effects would occur and, as such, it does not consider the precautionary principle has any application. In light of clear national guidance, to which considerable weight should be attached, and the absence of objections from

statutory bodies concerned with health impacts, I consider it would be inappropriate to apply a precautionary principle and reject the proposal on the basis of possible health effects. [7.114, 7.117, 9.63]

- 12.55. Concerns have been raised by some interested parties about air quality if the plant was to operate, having regard to emissions from it, associated emissions from HGV's serving the facility and the combined effects of these with existing traffic emissions and those from nearby industrial operations. Criticisms have been levelled against dispersal modelling and the fact that meteorological data used in it was not from the site and related to an area with different topography. Air quality assessment and modelling was carried out and described in the ES. The EA also carried out its own modelling to check predictions and concluded that emissions from the proposal would not cause significant pollution. Neither are there any objections to the scheme on the basis of compliance with air quality limits and objectives from either the Borough or the County Councils. A suggested condition (No. 25) to be imposed if planning permission is granted relates to air quality monitoring. [7.118, 9.26-9.30, 9.35, 9.41-9.43]
- 12.56. Criticisms have been levelled by an interested party, Mr Cockrell, of the EA's handling of its decision-making process in the issue of the EP. At the time of the Inquiry this was an issue still in the hands of the Ombudsman although Mr Cockrell's initial complaint had been rejected. With reference to air quality, assessment was updated to accompany the resubmitted planning application relating to the ERF. This was primarily as a result of new EA guidance. Some typographical and transposition errors were also corrected. This updating and correction have not altered the assessment of either the Borough Council's Environmental Health Officer or the EA that, whilst there would be some increases in ambient concentrations of some airborne pollutants, these increases would not be significant in the context of the ability to meet air quality objectives. On the basis of the available evidence I have no reason to come to a contrary view. [7.118, 9.23-9.25]
- 12.57. As acknowledged by the Appellant, public concerns and perceptions in relation to health and air quality are themselves capable of being material considerations to be taken into account. PPS23 Appendix A indicates that a matter for consideration in determining individual applications is the objective perception of unacceptable risk to health and safety of the public arising from development. Case law suggests that if public concern can not be objectively justified then it can not be conclusive since this would effectively put a brake on the realisation of most development. [7.119]
- 12.58. There is little doubt that the proposal has resulted in public anxiety. This has, in part, probably been stoked by publicity material produced on the one hand by the British National Party in the context of local elections and, quite separately, by CHAIN in its petition against the scheme, which referred to the proposal endangering the health of local residents. However, perceptions that are based on emotions, personal prejudices or information that is factually incorrect cannot be objectively held. Those public bodies charged with commenting on the likely health effects of a proposal have expressed no objections on this basis. This and the fact that the scheme's detailed operation would be regulated through the Environmental Permitting

regime administered by the EA, should provide a degree of comfort and allay many public anxieties. [7.122, 9.36]

- 12.59. On the basis of the above I consider that, whilst understandable, no great weight should attach to concerns about the possible impacts of the proposal upon health, air quality or perceived anxiety over these matters.

Traffic

- 12.60. Shepshed Town Council, CHAIN and individual objectors have raised concerns about traffic that would be generated by the proposal, particularly in respect of what are perceived to be congestion problems on local roads. Neither the local highway authority nor the Highways Agency has raised objections to the scheme either in terms of volumes of traffic that would be generated, highway capacity and safety, or the proposed modifications to the site junction arrangement with the A512. The ES indicates that the plant in its operational phase would generate considerably fewer HGV movements per day than the Integrated Waste Management Facility for which there is extant planning permission. Traffic does not feature as a reason for refusal and it is an agreed position between the Appellant and LCC in the Statement of Common Ground that the proposal is acceptable in highway terms. [5.22, 6.1, 7.124, 9.8, 10.16]

- 12.61. There is no evidence to suggest there would be any discernible worsening of the operation of the existing highway network as a result of the proposal. Nor is there any evidence to suggest that the presence of the ERF plant would be a distracting feature for users of the M1 that might result in an increased risk of accidents. The proffered Unilateral Undertaking would establish a routing arrangement that would preclude HGV movements through Shepshed (except for any waste collection there and use of the A512) thereby protecting residential amenity and local highway operation. Overall, the proposed site is very well placed in relation to the strategic highway network to facilitate ready and relatively sustainable access to likely centres of major waste arisings. [5.22, 7.124, 9.77]

Localism

- 12.62. Reference has been made to the Government's localism agenda, now enshrined in the Localism Act 2011. Any decision-maker must determine planning applications on planning grounds, with section 38(6) of the Planning and Compulsory Purchase Act 2004 requiring decisions to be made in accordance with the development plan unless material considerations indicate otherwise. Decisions should not be made solely on the basis of the number of representations or signatures on a petition, whether they are for or against a proposal. The Localism Act has not changed the application of section 38(6). Nor has it changed the advice within paragraph 27 of the companion to PPS1, The Planning System; General Principles, namely, that local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission unless it is founded on valid planning reasons. [7.126, 9.14, 9.38, 12.62]
- 12.63. There is force in the Appellant's argument that in this case the ramifications of the proposal have direct relevance in relation to key national planning policy objectives; whilst the public must have the fullest

opportunity to engage in the process leading to determination, the ultimate decision should have full regard to this national dimension. There is no reason to suggest that the public has not been fully engaged with this proposal either at the lengthy application stage or within the context of the appeal. [7.127, 9.22]

Quarry restoration

12.64. The ERF plant and associated infrastructure would not occupy any part of the present void of the former Newhurst Quarry but the latter is within the ownership of the Appellant. Proposed condition No. 36 requires a plan for the reclamation of those parts of the site beyond the application site but within the Appellant's ownership to be submitted, agreed and subsequently implemented. This would therefore allow appropriate restoration to be fully considered and acted upon. There is no dispute between the Appellant and LCC in relation to this. Although there have been suggestions that restoration of Newhurst should take place in tandem with that of the former Longcliffe Quarry on the eastern side of the M1, this latter site is not shown as being within the Appellant's ownership. [2.1, 2.2, 7.2, 7.125, 9.47-9.49]

Further Matters

12.65. There is agreement between the Appellant and LCC that subject to control through the operation of the EP and the imposition of suitable conditions: noise from the plant can be adequately mitigated; impacts on geology, hydrogeology and hydrology can be similarly addressed with no negative impacts; and that flora and fauna and protected species can be safeguarded adequately. There is no substantive evidence to come to a contrary view on these matters. [6.3-6.5]

12.66. Some concern has been expressed about the possible impact of the ERF on the reputation of, and the ability to attract students to, Loughborough University. However, there is no substantive evidence to support this contention. [9.37]

Conditions and section 106 Unilateral Undertaking

Conditions

12.67. Conditions to be imposed should the Secretary of State be minded to grant planning permission were discussed at the Inquiry and are listed together with the reasons for their imposition at Annex A. I have considered these having regard to Circular 11/95, The Use of Conditions in Planning Permissions. The conditions as listed are as discussed save for minor presentational drafting changes and corrections. There is agreement as to the relevance and necessity of most of the conditions between the Appellant and LCC and I have no reason to disagree. [11.2]

12.68. Having regard to those conditions which were in dispute, I consider suggested condition No. 32 (relating to potential CHP use) to be unnecessary since it effectively duplicates the requirements of the existing issued EP. The imposition of condition No. 33, however, would ensure the safeguarding of a route to accommodate pipework to the boundary of the site to allow export of heat to potential users and would therefore serve to prevent the stymieing this potential benefit. [11.3]

- 12.69. I agree with the Appellant that there appears to be no justification for the Council's suggested condition No. 35. This seeks to secure the removal of the ERF and restoration of the site in the event of the cessation of use of the building for waste management purposes exceeding two years. This would be unduly onerous given the nature and scale of the scheme and would be unreasonable. [11.4]
- 12.70. There also appears to be no sound justification for the imposition of suggested condition No. 38A, which would prohibit the commercial operation of the site without the application of an agreed Pre-Sorted Residual Waste Acceptance Scheme. Such a suggested scheme is set out in the appendix to Annex A. To impose such a condition would duplicate control that exists under the EP and which provides extremely detailed waste acceptance criteria. It would be contrary to advice within PPS10. At paragraph 32 this indicates that it should not be necessary to use planning conditions to control the pollution aspects of a waste management facility where that facility requires a permit from the pollution control authority. Confusion could also be caused through such a condition. The wording of a simplified condition (No. 38) has been agreed which would tie waste to be accepted to that within an acceptance scheme approved under the EP. Although to some extent also this would also represent duplication, it would have the advantage of providing certainty as to what would be acceptable by reference to a single identified scheme. [11.5-11.7]
- 12.71. Duplication would also arise with the terms of the EP if suggested conditions Nos. 44 and 45 were to be imposed relating to the achievement of an R1 energy efficiency rating. The Permit mandatorily requires the operator of the facility to ensure energy recovery with a high level of efficiency, to monitor opportunities to improve energy recovery and efficiency and to take those opportunities. There is nothing to contradict the evidence that the proposed facility would not comfortably exceed the R1 rating, even without CHP. As such, I do not consider these conditions to be necessary. [10.33, 10.34, 11.8]

Unilateral Undertaking

- 12.72. The Appellant's proffered Unilateral Undertaking would secure the delivery of the off-site planting within Garendon Park and its subsequent management in accordance with a Landscape and Ecological Management Plan. This is an essential aspect of the mitigation of the impact of the proposal on the heritage assets of the Park. The Undertaking would also regulate the routing of HGVs visiting the facility so that roads (other than the A512) through Shepshed were avoided, except when waste was being collected from there. In addition, it would secure the cessation of mineral working at the site associated with the planning permission for the Integrated Waste Management Facility. I have no reason to disagree with LCC's acceptance that these obligations are necessary and are compliant with the Community Infrastructure Levy (CIL) Regulations 2010. [11.9, 11.10]
- 12.73. The Undertaking also provides for the carrying out of repair works identified in the Appellant's condition survey to the listed Temple of Venus and the Triumphal Arch within the Park. These works would be clearly beneficial in assisting in the upkeep of these nationally-important structures, they are endorsed by EH and welcomed by LCC and could lead to the

removal of these assets from the EH Heritage at Risk Register. However, and notwithstanding the undoubted benefit that would arise and the willingness of the Appellant to fund the works, I am not convinced that this obligation would be compliant with CIL Regulation 122. [10.11]

- 12.74. For an obligation to be taken into account in a planning decision to which the CIL Regulations would apply it needs to be: necessary to make the development acceptable in planning terms; be directly related to the development; and be fairly and reasonably related in scale and kind to the development. Whilst the latter requirement would be fulfilled, I have already concluded that there would be no direct impact of the proposal on the listed structures; the impact would be on their setting alone and would not involve unavoidable damage to the structures for which compensation might be appropriate. It is the planting within the Park that is the direct mitigation of the scheme. In this regard the funding and carrying out of the suggested restoration works would fail the tests of necessity and direct relationship to the proposed development. Therefore, whilst highly laudable in its own right, I have not taken this particular obligation into account in arriving at an overall assessment of the proposal. This does not, however, affect the balance of my conclusions set out below. [11.10]

The planning balance and overall conclusion

- 12.75. It is hard to imagine the location of an EfW plant of the size and nature of the present proposal that would not have some impact on the appearance and character of the area in which it was to be sited. In this case, on a site which lies close to the edge of an area of attractive countryside and close to nationally-recognised heritage assets, the proposal, because of its height, scale and vertical components of flues, would have some limited adverse impact on the appearance and character of the area. It would result in conflict with Policy CT/7 of the CBLP and Policies WCS10 and WDC5 of the LLWDFCS. However, the impact on the heritage assets of Garendon Park would be less than substantial as a result of the proposed planting mitigation strategy. This latter impact needs to be weighed against the public benefit of the mitigating effects of climate change resulting from the proposal in accordance with PPS5 Policy H1.3.
- 12.76. The harm to the above interests of acknowledged importance has to be set against the benefits that would be derived from the scheme proceeding. The proposal would meet the locational requirements of the development plan at the strategic and local level whilst contributing to meeting a significant need for waste management facilities. It would divert a considerable volume of residual non-hazardous waste from landfill and move it further up the waste hierarchy whilst not having a detrimental impact on long-term recycling rates. In so doing, it would produce significant amounts of renewable and low carbon energy in the form of electricity to be exported to the National Grid coupled with the potential to export heat for use off-site, in accordance with national energy policy in PPS22.
- 12.77. The proposal would assist in avoiding the release of substantial volumes of greenhouse gases and thereby contribute to combating climate change in accordance with both national and regional planning policy in PPS1 CCS and the RS. It would assist in achieving self-sufficiency in terms of waste management for the waste plan area and there would be general

accordance with national waste policy in PPS10 and WS2007. The proposal would represent sustainable economic development, would create jobs and would accord with the presumption in Planning for Growth and Policy EC10 of PPS4. PPS22 is explicit in stating that the wider environmental and economic benefits of proposals for renewable energy are material considerations that should be accorded significant weight. The benefits of the scheme are substantial and compelling. They are material considerations that outweigh the harm by way of impact on the appearance and character of the area, heritage assets and conflict with certain policies of the development plan.

Recommendation

12.78. I recommend that the appeal be allowed and planning permission granted subject to the conditions set out in Annex A but excluding condition Nos. 32, 35, 38A, 44 and 45.

P J Asquith

INSPECTOR

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Cllr Roy Campsall

Charnwood Borough Councillor for
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Diane Pearson

Loughborough resident

Cllr Christine Radford

County Councillor, Shepshed

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David Walker	Loughborough resident
Dr Badiani	Shepshed GP
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Rosemary Cornforth	Shepshed resident
Penny Wakefield	Ellistown resident
Stefan Ogrodzinski	Shepshed resident and business owner, on behalf of CHAIN
Sue Morrell	Volunteer, CHAIN
Cynthia Popley	Chairman of Shepshed Town Council
Richard Woolley	Shepshed resident
Anita Jones	Shepshed resident
Ross Rooney	Shepshed resident
Richard Loades-Whiffen	Shepshed resident
Roger Smith	Shepshed resident
Jonathan Wortley	Shepshed resident
Alan Brassey	Shepshed resident
Dr Geoff Mason	Loughborough resident
Roy Kershaw	Secretary, CHAIN
Joan Tassell	Shepshed Town Council
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Dr Matthew O'Callaghan	Prospective Parliamentary Candidate for Loughborough

Nicky Morgan MP

MP for Loughborough

Dr Andrew Cotton

Shepshed resident

Jacqueline Compton

Loughborough resident

DOCUMENTS

CORE DOCUMENTS

A: *Planning Application Documents*

- CD/A1** Planning and Sustainability Statement (December 2009)
- CD/A2** Environmental Statement (December 2009)
- CD/A3** Design and Access Statement (December 2009)
- CD/A4** Environmental Assessment – Addendum Report (October 2011)
- CD/A5** LCC Decision Notice dated 20th October 2010
- CD/A6** LCC Decision Notice dated 13 October 2011

B: *Committee Reports*

- CD/B1** Report of the Chief Executive to the Development Control and Regulatory Board 15th October 2010
- CD/B2** Minutes of 15th October 2010 meeting
- CD/B3** Report of the Director of Environment and Transport to Cabinet 26 July 2011
- CD/B4** Minutes of 26th July 2011 meeting
- CD/B5** Report of the Chief Executive to the Development Control and Regulatory Board 10th October 2011
- CD/B6** Minutes of 10th October 2011 meeting
- CD/B7** CBC Committee Report 29 April 2010

C: *Planning Appeal Documents*

- CD/C1** Biffa Grounds of Appeal
- CD/C2** Statement of Common Ground and Addendum
- CD/C3** Draft Section 106 Obligation

D: *Development Plan and Associated Documents*

- CD/D1** RSS 8 - East Midlands, Regional Plan, Department for Communities and Local Government, March 2009.
- CD/D2** The Regional Waste Management Strategy for the East Midlands, East Midlands Regional Assembly, January 2006
- CD/D3** Leicestershire and Rutland Waste Local Plan (Adopted September 2002)
- CD/D4** Leicestershire and Leicester Waste Development Framework Core Strategy and Development Control Policies (Adopted October 2009)
- CD/D5** Charnwood Borough Local Plan (Adopted January 2004)
- CD/D6** Leicestershire and Leicester Waste Development Framework Site Allocations DPD Sustainability Appraisal Report June 2006

- CD/D7** Leicestershire and Leicester Preferred Options Site Allocations DPD (June 2006)
 - CD/D8** Letter Chief Executive LCC to Rt Hon Bob Neill MP dated 5th August 2011
 - CD/D9** Letter from Rt Hon Bob Neill MP to Chief Executive LCC dated 16 September 2011
 - CD/D10** Leicestershire Structure Plan 1991-2006
 - CD/D11** Leicestershire, Leicester and Rutland Structure Plan 1996 to 2016
 - CD/D12** Leicestershire and Leicester Waste Development Framework Site Allocations Submission Version Document May 2011
 - CD/D13** Charnwood Borough Council Cabinet Report on the Local Development Scheme dated July 2011
 - CD/D14** Charnwood Borough Council – Charnwood 2026 – Planning for our Next Generation – Further Consultation 2008
 - CD/D15** Developers' Response to Charnwood Borough Council's Further Pre-Submission Consultation – December 2008
 - CD/D16** Charnwood Borough Council – Charnwood 2021 – Science Park Preferred Option – February 2006
 - CD/D17** LCC Carbon Management Plan – March 2009
 - CD/D18** Nottingham Declaration on Climate
-

E: National Planning Policy and Ministerial Statements

- CD/E1** Planning Policy Statement 1 - Delivering Sustainable Development
- CD/E2** Planning Policy Statement 1 Supplement - Planning and Climate Change
- CD/E3** Planning Policy Statement 4 - Planning for Sustainable Economic Growth
- CD/E4** Planning Policy Statement 5 - Planning for the Historic Environment
- CD/E5** Planning Policy Statement 7 - Sustainable Development in Rural Areas
- CD/E6** Planning Policy Statement 9 - Biodiversity and Geological Conservation
- CD/E7** Planning Policy Statement 10 - Planning for Sustainable Waste Management
- CD/E8** Planning Policy Statement 22 - Renewable Energy
- CD/E9** Planning Policy Statement 23 - Planning and Pollution Control
- CD/E10** Draft National Planning Policy Framework (July 2011)
- CD/E11** Ministerial Statement by Rt. Hon Greg Clarke MP 23rd March 2011 - Planning for Growth
- CD/E12** Government Draft Presumption in Favour of Sustainable Development - 15th June 2011

F: Waste Strategy and Associated Documents

- CD/F1** Waste Strategy for England 2007 (May 2007) and Supporting Annexes
- CD/F2** Government Review of Waste Policy in England (June 2011)
- CD/F3** Waste Strategy Annual Progress Report 2008/09, Defra, October 2009
- CD/F4** Terms of Reference for a Review of Waste Policies, Defra, 29 July 2010
- CD/F5** House of Commons, Environment, Food and Rural Affairs Committee, Waste Strategy for England 2007. Third Report of Session 2009–10, Volume I
- CD/F6** Anaerobic Digestion Strategy and Action Plan: A commitment to increasing energy from waste through Anaerobic Digestion. Published by DECC and DEFRA - June 2011

G: Waste Legislation Documents

- CD/G1** European Union Framework Directive on Waste (Directive 2008/98/EC) 12th December 2008.
- CD/G2** European Union Council Directive 99/31/EC on the Landfill of Waste 26th April 1999
- CD/G3** European Union Waste Incineration Directive (2000/76/EC)
- CD/G4** Environmental Permitting (EP) (England and Wales) Regulations 2007
- CD/G5** European Union Directive on Waste (2006/12/EC) 5th April 2006
- CD/G6** European Union Directive on the Promotion and use of Energy from Renewable Resources (2009/28/EC) 23rd April 2009
- CD/G7** Waste (England & Wales) Regulations 2011, SI 2011 No 988, Made 28 March 2011.
- CD/G8** Stage Two: Consultation on the transposition of the Waste Framework Directive (Directive 2008/93/EC), Defra and WAG, July 2010
- CD/G9** Waste Directive (75/442/EEC) 15 July 1975

H: Energy and Climate Change Documents

- CD/H1** Energy White Paper (May 2007)
- CD/H2** Energy Act 2008
- CD/H3** Climate Change Act 2008
- CD/H4** The UK Low Carbon Transition Plan (July 2009)
- CD/H5** UK Renewable Energy Strategy 2009
- CD/H6** The Regional Energy Strategy
- CD/H7** Overarching National Policy Statement for Energy (EN-1)
- CD/H8** National Policy Statement for Renewable Energy Infrastructure (EN-3)
- CD/H9** UK Renewable Energy Roadmap - published by DECC July 2011
- CD/H10** Carbon Plan
- CD/H11** Review of the Generation of Costs DECC June 2011

J: Waste Needs Information and Statistics

- CD/J1** Waste Needs Assessment, Leicestershire County Council and Leicester City Council, February 2011
- CD/J2** Outline Business Case. Waste PFI, Leicestershire County Council, April 2008
- CD/J3** Municipal Waste Statistics - Local Authority data for 2009/10. Defra 4 November 2010
- CD/J4** England and Wales: Waste Deposit Trends - Landfill deposits by site type, waste type and sub-region 2000/1 to 2009 (CDX)
- CD/J5** Business Demography 2009, Table 3.1 Count of Active Enterprises for 2009, Office for National Statistics (CDX)
- CD/J6** Response to HMRC Consultation: Modernising Landfill Tax Legislation Response to HMRC by Scottish & Southern Energy July 2009
- CD/J7** Commercial and Industrial Waste Survey 2009, Final Report. Jacobs on behalf of Defra, May 2011
- CD/J8** Municipal Waste Management Statistics for 2009/10, Defra Statistical Release 14 November 2011

- CD/J9** The Economics of Waste and Waste Policy, Waste Economics Team, Environment and Growth Economics, Defra, June 2011
- CD/J10** ONS Population projections 2008-2033, published 27 May 2010
- CD/J11** Gate Fees Report, 2011. Comparing the cost of alternative waste treatment options, WRAP, 2011
- CD/J12** England and Wales: Waste Deposit Trends, 2000/1 to 2010, Environment Agency (CDX)
- CD/J13** Local Authority Collected Waste Statistics - Quarterly Statistics Release, October – December 2010, Defra, August 2011 (CDX)
- CD/J14** England and Wales. Incineration Inputs and Capacity 2009, Environment Agency and
- CD/J15** England and Wales. Incineration Inputs and Capacity 2010, Environment Agency
- CD/J16** East Midlands - Waste Inputs & Capacity 2010, Environment Agency, September 2011
- CD/J17** Waste Data Overview – June 2011
- CD/J18** Waste Needs Assessment – June 2008
- CD/J19** Commercial and Industrial Waste in England, Statement of aims and actions, Defra

K: *Landscape and Visual Documents*

- CD/K1** Landscape Character Assessment (Countryside Agency 2002)
- CD/K2** Guidelines for Landscape and Visual Impact Assessment, 2nd edn (the GLVIA - LI/IEMA 2002)
- CD/K2A** Landscape Institute Advice Note 01/09: Use of photography and photomontage in landscape and visual assessment
- CD/K3** Landscape Institute Advice Note 01/11: Photography and photomontage in landscape and visual impact assessment
- CD/K4** Visual Representation of Windfarms – Good Practice Guidance (Scottish Natural Heritage, March 2006)
- CD/K5** Countryside Character Volume 4: East Midlands, National Character Area 73: Charnwood, Countryside Agency (1999)
- CD/K6** Leicestershire, Leicester and Rutland Landscape and Woodland Strategy (2001)
- CD/K7** Charnwood Forest Landscape and Settlement Character Assessment (2008)
- CD/K8** National Forest Strategy 2004-2014 (2004)
- CD/K9** East Midlands Regional Landscape Character Assessment (2010)
- CD/K10** Garendon Park Partial Restoration Scheme (included in CD/A4)
- CD/K11** Landscape and Visual Impact Assessment (LVIA) (included in CD/A2)
- CD/K12** SLR Consulting Ltd, (Ref: 403-0034-00308), Proposed Energy Recovery Facility at Newhurst Quarry, Leicestershire, Additional Supporting Information for the Landscape and Visual Impact Assessment, April 2010
- CD/K13** SLR Consulting Ltd (Ref: 403-0034-00308), Proposed Energy Recovery Facility at Newhurst Quarry, Leicestershire, Additional Supporting Information for the Landscape and Visual Impact Assessment, July 2010
- CD/K14** Charnwood Borough Council, Charnwood 2021 Science Park Preferred Option, February 2006
- CD/K15** 6Cs Green Infrastructure Strategy, Volume 1, Sub-Regional Strategic Framework (2010)

- CD/K16** Visualisation Standards for Wind Energy Developments, The Highland Council, January 2010
- CD/K17** Leicestershire Regional Planning Report, 1932
- CD/K18** Dower Report on National Parks in England and Wales, 1945
- CD/K19** Hobhouse Report, National Parks Committee, 1947
- CD/K20** The Charnwood Round – a map/guide to the 33 mile challenge walk around Charnwood Forest (pub. Cordee Books)
- CD/K21** Charnwood Peaks – 15 mile long walk (pub. The National Forest)
- CD/K22** Exploring the landscape of Charnwood Forest and Mountsorrel (pub. British Geological Survey)

Note : *given the age of the reports at CD/K18, CD/K19 and CD/K20 copies of these documents are not provided*

L: Cultural Heritage Documents

- CD/L1** Wind Energy and the Historic Environment English Heritage 2005
- CD/L2** Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment English Heritage 2008
- CD/L3** Historic Environment Planning Practice Guide for PPS5 English Heritage, CLG, DCMS 2010
- CD/L4** The Setting of Heritage Assets: English Heritage Guidance (Consultation Draft) 2010
- CD/L5** Letter English Heritage to LCC asking for full assessment and photomontages 15th February 2010
- CD/L6** Proposed Energy Recovery Facility at Newhurst Quarry, Leicestershire: Additional Supporting Information for the Archaeology and Cultural Heritage Assessment (SLR Consulting April 2010)
- CD/L7** Letter English Heritage to LCC dated 10th May 2010
- CD/L8** letter Biffa to English Heritage confirming funds for repairs to listed buildings 7th June 2011
- CD/L9** Letter English Heritage to LCC dated 7th June 2011
- CD/L10** e-mail LCC to SLR dated 7th October 2011
- CD/L11** Garendon Park Partial Restoration, Version, July 2010
- CD/L12** Garendon Park Partial Restoration, Version, April 2011
- CD/L13** Letter English Heritage to LCC dated 10th September 2010
- CD/L14** Email English Heritage to Biffa 12th April 2011
- CD/L15** Notes of meeting between English Heritage, Biffa and LCC 16th June 2010
- CD/L16** Letter Biffa to Savills dated 7th July 2010
- CD/L17** Letter Biffa to English Heritage dated 30th March 2011
- CD/L18** Heritage at Risk Register, English Heritage 2010
- CD/L19** Letter Biffa to LCC dated 16th September 2010
- CD/L20** Condition Survey, The Temple Of Venus & The Triumphal Arch for Biffa by Peter Rogan 28th February 2011
- CD/L21** Notes of Minutes between Biffa and English Heritage dated 10 December 2010
- CD/L22** Medieval Plans of Charnwood
- CD/L23** Email EH to SLR dated 21 May 2010

M: Permit Documents

- CD/M1** Environmental Permit Number EPR/TP3036KB 24th June 2011 Newhurst Energy Recovery Facility - issued by the Environment Agency
- CD/M2** Newhurst Energy Recovery Facility, Shepshed, Leicestershire. Appendix 14/1 (to Environmental Permit Application) Carbon Footprint Assessment, SLR Consulting Ltd on behalf of Biffa Waste Services Ltd, October 2009

N: Relevant Planning Appeals Including Decision Notices and Inspectors' Reports

- CD/N1** Ince Marshes Inspector's report dated 3 October 2008 and Secretary of State's Decision Letter dated 11th August 2009 (PINS ref: APP/20645/A/07/205609)
- CD/N2** Ardley, Oxfordshire (APP/U3100/A/09/2119454),
- CD/N3** Rufford, Nottinghamshire (APP/L3055/V/09/2102006),
- CD/N4** St Dennis, Cornwall (APP/D0840/A/09/2113075),
- CD/N5** Avonmouth (APP/Z0116/A/10/2132394)
- CD/N6** Oxwell Mains, Dunbar (P/PPA/210/2012)
- CD/N7** Runcorn, Cheshire (Ineos) - Department for Business Energy and Regulatory Reform decision notice referenced 01.08.10.04/8C dated 16th September 2008.
- CD/N8** Eastcroft Inspector's reports dated 10 December 2008 and Secretary of State's Decision Letter dated 12th February 2009 (PINS ref: APP/Q3060/S/2036129/NWF)
- CD/N9** Belvedere, Bexley Inspector's report dated 16 December 2005 and Secretary of State's Decision letter dated 15th June 2006 (PINS ref: GDBC/C/003/00001)
- CD/N10** Rookery South Resource Recovery Facility Order – 13 October 2011
- CD/N11** [2005] EWHC 1110 (Admin)
- CD/N12** Planning Permission Ref 98/0569/7 dated 26 March 1999
- CD/N13** Severnside, Inspector's Report dated 18 July 2011 and Secretary of State's Decision letter dated 15 September 2011 (PINS ref: APP/P0119/A/10/2140199)

O: Miscellaneous

- CD/O1** Section F Bioenergy and Waste in 2050 Pathways Analysis, HM Government, July 2010 (CDX)
- CD/O2** Article in Lets Recycle 6th June 2011 - Waste Exports Soar to Meet RDF Demand
- CD/O3** The Impact on Health of Emissions to Air from Municipal Waste Incinerators - Published by the Health Protection Agency - September 2009
- CD/O4** LCC planning application ref 2011/C472/02, Environmental Statement, Section 7 Landscape and Visual
- CD/O5** Scoping Request by Biffa in 2006 ahead of application no. 2007/1987/02
- CD/O6** Planning permission no. 2007/1987/02 and associated S106 agreement
- CD/O7** Leicestershire County Council Outline Business Case – Wast

P: Consultee Responses to Application No. 2009/2497/02

CD/P1 Letter Severn Trent Water to LCC dated 23rd December 2009
CD/P2 Email LCR NHS to LCC dated 4th January 2010
CD/P3 Letter Highways Agency to LCC dated 12th January 2010
CD/P4 Letter Natural England to LCC dated 22nd January 2010
CD/P5 Letter Charnwood Borough Council EHO to LCC dated 26th January 2010
CD/P6 Letter CABE to LCC dated 5th February 2010
CD/P7 Letter Highways Authority to LCC Planning dated 10th February 2010
CD/P8 Email LCC Ecology Section to LCC Planning dated 15th February 2010
CD/P9 Letter English Heritage to LCC dated 15th February 2010
CD/P10 Letter Health Protection Agency to LCC dated 18th February 2010
CD/P11 Letter National Forest to LCC dated 10th February 2010
CD/P12 Letter Environment Agency to LCC dated 24th February 2010
CD/P13 Letter LCC Landscape Officer to LCC Planning dated 25th February 2010
CD/P14 Letter LCC Rights of Way to LCC Planning dated 25th February 2010
CD/P15 Letter LCC Archaeology to LCC Planning dated 26th February 2010
CD/P16 Letter East Midlands Airport to LCC dated 22nd February 2010
CD/P17 Letter CPRE to LCC dated 10th March 2010
CD/P18 Letter Charnwood Borough Council to LCC dated 6th May 2010
CD/P19 Email & Attachment Charnwood Borough Council EHO to LCC dated 3rd March 2010
CD/P20 Email & Attachment Highways Agency to LCC dated 9th March 2010
CD/P21 Letter Shepshed Town Council to LCC dated 24th March 2010
CD/P22 Email & Attachment Highways Agency to LCC dated 30th March 2010
CD/P23 Email LCC Ecology Section to LCC Planning dated 5th May 2010
CD/P24 Letter Biffa to LCC dated 16th September 2010
CD/P25 Letter English Heritage to LCC dated 10th September 2010
CD/P26 Letter English Heritage to LCC dated 7th October 2010
CD/P27 Letter LCC Landscape Officer to LCC Planning dated 21st September 2010
CD/P28 Letter English Heritage to LCC dated 10th May 2010
CD/P29 Letter Highways Agency to LCC dated 6th May 2010
CD/P30 Letter LCC Landscape Officer to LCC Planning dated 12th May 2010
CD/P31 Letter LCC Historic Buildings Officer to LCC Planning dated 17th May 2010
CD/P32 Letter CABE to LCC dated 13th May 2010
CD/P33 Letter LCC Archaeologist to LCC Planning dated 30th September 2010
CD/P34 Email LCC Historic Buildings Officer to LCC Planning dated 23rd September 2010

R: Consultee Responses to Application No. 2011/1119/02

CD/R1 Letter Charnwood Borough Council to LCC dated 21st June 2011
CD/R2 Letter CPRE to LCC dated 29th June 2011
CD/R3 Letter Civil Aviation Authority to LCC dated 11th May 2011
CD/R4 Letter National Grid to LCC dated 13th May 2011
CD/R5 Letter Central Networks to LCC dated 18th May 2011
CD/R6 Letter Environment Agency to LCC dated 18th May 2011
CD/R7 Letter Health Protection Agency to LCC dated 25th May 2011
CD/R8 Letter Highways Agency to LCC dated 31st May 2011
CD/R9 Letter National Forest to LCC dated 1st June 2011
CD/R10 Letter English Heritage to LCC dated 7th June 2011
CD/R11 Letter CABE to LCC dated 13th June 2011
CD/R12 Letter from East Midlands Airport dated 17th June 2011

CD/R13 Letter Woodhouse Parish Council to LCC dated 28th June 2011
CD/R14 Letter from Shepshed Town Council to LCC dated 30th June 2011
CD/R15 Letter from Charnwood Borough Council EHO to LCC dated 30th June 2011
CD/R16 Email from LCC Archaeologist to LCC Planning dated 8th July 2011
CD/R17 Letter Environment Agency to LCC dated 12th July 2011
CD/R18 Letter LCC Landscape Officer to LCC Planning dated 12 July 2011
CD/R19 Letter Highway Authority to LCC Planning dated 13th September 2011
CD/R20 Email LCC Ecology to LCC Planning dated 14th September 2011
CD/R21 Email LCC Rights of Way to LCC Planning dated 15th September 2011
CD/R22 Email Charnwood Borough Council EHO to LCC dated 19th September 2011
CD/R23 Letter Natural England to LCC dated 15th August 2011
CD/R24 Letter Environment Agency to LCC dated 29th July 2011
CD/R25 Letter Environment Agency to LCC dated 5th September 2011

Biffa witness documents

Witness 1, Mary Tappenden

BWS 1/2 Proof of evidence, summary and appendices

Witness 2, Jeremy Smith

BWS 3/1 Proof of evidence
BWS 3/2 Summary of proof of evidence
BWS 3/3 Appendices and drawings
BWS 3/4 Rebuttal proof of evidence

Witness 3, Tim Malim

BWS 4/1 Proof of evidence
BWS 4/1/A Appendix 1, Drawings and figures
BWS 4/1/B Appendix 2, Listing descriptions
BWS 4/1/C Appendix 3, Garendon Park further details
BWS 4/2 Summary of proof of evidence

Witness 4, John Leeson

BWS 5/1 Proof of evidence
BWS 5/2 Summary of proof of evidence
BWS 5/3 Rebuttal proof of evidence

Witness 5, Christopher Lowden

BWS 2/1 Proof of evidence
BWS 2/2 Summary of proof of evidence

Appellant's additional documents

BWS/5 Air quality information, Matthew Stoling
APP/1 The proposed expansion of Loughborough Science and Enterprise Park,
Planning Statement

- APP/2 The proposed expansion of Loughborough Science and Enterprise Park, Design and Access Statement
- APP/3-2 Note and commentary on WPA3
- APP/4 Letter from GLW Feeds, 20 November 2009
- APP/5 Letter from Ballast Phoenix, 9 November 2011
- APP/6 Environmental Permit controls regarding the acceptance of recyclable materials for combustion at Newhurst ERF
- APP/7 Additional analysis of the frequency and length of plume generation
- APP/8 Note from T Malim on the derivation of 'moderate adverse' impact to Garendon Park and its listed buildings
- APP/9 1886 OS Map: alignment of the SW avenue, Garendon Park
- APP/10 Modern OS Map: alignment of the SW avenue, Garendon Park
- APP/11 List of agreed plans
- APP/12 Letter from SLR of 14 November 2011 regarding the electrical output of Newhurst ERF
- APP/13 Sunningdale Road Environmental Permit
- APP/14 Jeremy Smith's comparison of height and capacity of Energy from Waste plants
- APP/15 SLR memorandum of 14 November 2011 – response to issues raised in 'Health Issues- points for consideration' by Stefan Ogrodzinski
- APP/16 Matthew Stoaling's response to Dr Badiani's statement
- APP/17 SLR letter of 23 April 2010 to the Highways Agency
- APP/18 Inquiry opening statement
- APP/19 Inquiry closing submissions
- APP/20 Signed Unilateral Undertaking
- APP/21 Suggested wording for conditions 33 and 38

Leicestershire County Council witness documents

Witness 1, Lesley Eddleston

- LCC 1/1 Proof of evidence
- LCC 1/2 Appendices to proof of evidence
- LCC 1/3 Summary of proof of evidence
- LCC 1/4 Rebuttal proof of evidence
- LCC 1/5 Appendices to rebuttal proof of evidence
- LCC 1/6 Summary of rebuttal proof of evidence

Witness 2, John Sharpe

- LCC 2/1 Proof of evidence
- LCC 2/2 Summary of proof of evidence
- LCC 2/3 Rebuttal proof of evidence

Witness 3, Christopher Noakes

- LCC 3/1 Proof of evidence
- LCC 3/2 Summary of proof of evidence
- LCC 3/3 Rebuttal proof of evidence

LCC's additional documents

WPA 1	Environment Agency Briefing Note regarding qualifying for R1 status using the R1 energy rating efficiency formula
WPA 2	Letter from Biffa of 16 September 2005 relating to Leicestershire County Council and Leicester City Council Waste Development Framework – Land questionnaire
WPA 3	Plan showing locations of landfill gas, wind turbines, energy recovery facilities etc
WPA 4	Plans showing levels information at the appeal site
WPA 5	Plan of the south west alignment, Garendon Park
WPA 6	Update to Tables 2.1 and 2.2 of the Waste Needs Assessment dated February 2011 (CD/J1)
WPA 7	Revised tables for LCC/3/1, Christopher Noakes proof of evidence
WPA 8	Copy of the public notice of the Inquiry
WPA 9	Inquiry opening statement
WPA 10	Inquiry closing submissions
WPA 11	List of suggested conditions and reasons

Documents of other interested parties/persons appearing at the Inquiry

CHAIN

CH/1	Opening statement
CH/2	Landscape and visual impact
CH/3	Highways and transportation
CH/3A	Highways and transportation (presented by J Tassell)
CH/3B	Series of photographs of traffic on the M1 and A512
CH/4	Energy efficiency
CH/4A	Energy efficiency
CH/5	Health issues - points for consideration (S Ogrodzinski)
CH/6	Health issues - points for consideration (expanded) (S Ogrodzinski)
CH/7	Response to BWS/5 on air quality (S Ogrodzinski)
CH/8	The Impact on Health of Emissions to Air from Municipal Waste Incinerators Health Protection Agency submitted by S Ogrodzinski
CH/9	Toxic Potential of Materials at the Nanolevel Science 311, 622 (2006), submitted by S Ogrodzinski
CH/10	Restoration conditions
CH/11	Charnwood Borough Council Core Strategy
CH/12	Letter from Roy Kershaw, Secretary CHAIN, relating to CHAIN leaflet, network and level of opposition
CH/13	Letter from Roy Kershaw, Secretary CHAIN, relating to Lesley Eddleston's evidence regarding gateways to the National Forest
CH/14	Closing statement on behalf of CHAIN

OTHER STATEMENTS

Doc 1	Statement by C Cllr Max Hunt and additional letter of 10 November 2011 regarding conditions
Doc 2	Statement by Dr Matthew O'Callaghan
Doc 3	Powerpoint presentation Dr Geoff Mason
Doc 4	Additional statement by Dr Mason relating to his Powerpoint presentation
Doc 5	Statement by Stefan Ogrodzinski on the stifling of innovation

Doc 6 Statement by Brian Stormont
Doc 7 Statement by Sue Morrell
Doc 8 Statement by Malcolm Whitmore
Doc 9 Statement by Dr Badiani
Doc 10 Statement by David Walker
Doc 11 Statement by Carol Weller
Doc 12 Statement by Lynda Needham
Doc 13 Statement by C Cllr Christine Radford
Doc 14 Statement by Diane Pearson
Doc 15 Statement by Cllr Roy Campsall

Doc 16 Statement by Anita Jones
Doc 17 Statement by Harris Chapman (read out by Diane Pearson)
Doc 18 Statement of Nicky Morgan MP, with attached e-mails with English Heritage
Doc 19 Submission by Nicky Morgan MP (largely superseded by Doc 17)
Doc 20 Statement by Patrick Cockrell with attached Appendices PGC 1 and supplementary extract from Defra Air Quality Strategy
Doc 21 Letter from Dr Andrew Cotton, 15 November 2011 (read out at the Inquiry) with CV and letter of 8 November 2011

ADDITIONAL DOCUMENTS AND THOSE HANDED IN AT THE INQUIRY

Doc 22 Statement on behalf of Charnwood Borough Council
Doc 23 Note from Mrs R A Cornforth, 10 November 2011
Doc 24 Letter from Heidi Gibbins, 10 November 2011
Doc 25 Letter from Mr and Mrs Henderson, 10 November 2011
Doc 26 Letter from Lee and Allan Scott, 10 November 2011
Doc 27 Undated letter from Arthur Shaw, handed in at the Inquiry on 10 November 2011
Doc 28 Letter from Dr and Mrs R G Bardsley, 9 November 2011
Doc 29 Letter from Ms Tracey Robinson, 3 November 2011
Doc 30 Letter from Keith Kondakor, 10 November 2011
Doc 31 Bundle of letters submitted in response to the appeal prior to the Inquiry
Doc 32 Itinerary and route map for the accompanied site visit on 24 November
Doc 33 Bundle of plans relating to the extant planning permission (2007/1987/02) for a Waste Management Facility at Newhurst Quarry

ANNEX A

Suggested planning conditions

1. The development hereby permitted shall begin before the expiration of three years from the date of this permission.
2. Unless otherwise required by this permission the development shall be carried out in accordance with the following details:
 - a) the planning application reference 2009/2497/02 and accompanying Environmental Statement (ES);
 - b) accompanying drawing nos. NH3/1, NH3/2, NH3/3, NH3/4a, NH3/4b, NH3/5, NH3/6, NH3/7, NH3/8, NH3/9, NH3/10, NH3/12, NH3/13 and NH3/14.
 - c) letter dated 28th April 2010 and attached supplementary information including letter dated 23rd April 2010 from SLR addressed to Geoff Wise of the Highways Agency, Additional Supporting Information Relating to the Global Warming Potential (CO₂) document, Additional Supporting Information for the Archaeology and Cultural Heritage Assessment document and Additional Supporting Information for the Landscape and Visual Impact Assessment document dated April 2010, unless otherwise superseded by the details contained in the Addendum to the ES dated October 2011.
 - d) Additional Supporting Information for the Landscape and Visual Impact Assessment document dated July 2010, unless otherwise superseded by the details contained in the Addendum to the ES dated October 2011.
 - e) Addendum to the Environmental Statement dated October 2011.
3. An Ecological and Landscape Management and Mitigation Plan shall be prepared for the application site and shall be submitted to and approved in writing by the County Planning Authority prior to the commencement of development. The Management Plan thereby approved shall specify a strategy to promote biodiversity within the landscaped areas and balancing ponds. The strategy shall also include details of the means of protection to safeguard key ecological and landscape features during the course of construction works and shall include a programme for the implementation and management of the approved works. The Management Plan and strategy shall be implemented in accordance with the agreed programme.
4. A copy of this permission, the plans and documents referred to in condition No. 2 above, including any other plans and documents subsequently approved in accordance with any condition of this permission, shall be kept available on site for the duration of the development.

Materials

5. Prior to the commencement of construction of the ERF building, a schedule of all the materials to be used externally in the construction of the building shall be deposited with and approved in writing by the County Planning Authority. The building shall be erected and thereafter maintained in accordance with the details approved under this condition.

Site Access Provision and Use

6. The development shall not be brought into use until such time as the existing priority junction of the site access on to Ashby Road (A512) has been upgraded to a signalised junction (as illustrated on drawings NH 3/13, NH 8-3 and NH 8-4) in accordance with details that shall first have been submitted to and approved in writing by the County Planning Authority. The proposed junction shall incorporate facilities for pedestrians/cyclists to cross from the northern side of Ashby Road into the proposed development and footway/cycleway facilities provided to access the development.
7. Before works commence on the access alterations, the existing bus stop within Ashby Road adjacent to the site entrance shall be relocated in accordance with details that shall first have been submitted to and approved in writing by the County Planning Authority. Such details shall include the provision of a footway link from the relocated bus stop back to the site access and any necessary highway alterations such as bus lay-by that may be required.
8. No vehicular access gates, barriers, bollards, chains or other such obstructions are to be erected across the access road serving the site, unless the details of them have first been submitted to and approved in writing by the County Planning Authority.
9. Before the development commences, details of the routeing of construction traffic shall be submitted to and approved in writing by the County Planning Authority. During the period of construction, all traffic to and from the site shall use the agreed route at all times.
10. For the period of the construction of the development, vehicle parking facilities shall be provided within the site and all vehicles associated with the development shall be parked within the site.
11. No part of the development shall commence until details of a Green Travel Plan containing a travel-to-work, car use strategy, contractor-operated mini bus service, and co-ordination of deliveries for the construction phase of the site as a whole has been submitted to and agreed in writing by the County Planning Authority.
12. No part of the development shall be brought into use until details of a Green Commuter Plan containing a travel-to-work, car use and car parking management strategy for the site as a whole have been submitted to and agreed in writing by the County Planning Authority. The Plan shall comprise proposals to reduce car dependence and vehicle emissions and to establish and encourage the use of alternative transport modes for journeys to and from work and during working hours. Details of the proposals shall include measures to secure increases in car sharing, public transport use, cycling and walking, proposals for car parking restrictions and controls and details of on-site facilities to promote alternative modes of travel to the site. The plan shall make provision for relevant surveys, review and monitoring mechanisms, targets, timescales, phasing programmes and on-site management responsibilities. It shall be implemented and subject to regular review in accordance with the above approved details.
13. The total number of Heavy Goods Vehicle (HGV) movements associated with the site shall not exceed a daily maximum of 242. Records of such movements shall be

maintained on a daily basis and shall be made available to the County Planning Authority within five working days of such a request being made. All records shall be kept on site for at least 12 months.

14. The car parking shown on the approved plans shall be completed before the development hereby approved is occupied or brought into operation and thereafter shall be kept free of obstruction and available for the parking of vehicles associated with the development.
15. The development hereby permitted shall not be brought into use until the highway scheme shown on drawing no. H001 and dated 04/10 accompanying the letter from SLR dated 23rd April 2010 addressed to Geoff Wise Esq. has been fully completed.

Protection of Trees, Shrubs and Hedgerows & Protected Species

16. The development shall not be commenced until hedgerows and trees to be retained and in close proximity to the works are protected in accordance with BS5837:2005. When installed the means of protection shall be maintained in situ until the development hereby approved becomes operational.
17. No works that involve the removal of trees, shrubs, hedgerows, scrub and other vegetation including habitats used by ground nesting birds and buildings shall be undertaken during the months of March to August inclusive unless the area has first been checked by a qualified ecologist and an action plan agreed in writing with the County Planning Authority.

Protection of the Environment

18. Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing by the County Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved in writing by the County Planning Authority:
 - i) A preliminary risk assessment which has identified:
 - all previous uses;
 - potential contaminants associated with those uses;
 - a conceptual model of the site indicating sources, pathways and receptors;
 - potentially unacceptable risks arising from contamination at the site.
 - ii) A site investigation scheme, based on (i) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 - iii) The site investigation results and the detailed risk assessment (ii) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 - iv) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (iii) are complete and identifying

any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

19. Piling or any other foundation designs using penetrative methods shall not take place other than with the express written approval of the County Planning Authority, which may be given for those parts of the site where it has been demonstrated, through the submission of a detailed scheme, that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.
20. The development hereby approved shall not begin until a surface water drainage limitation scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the County Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.
21. The development hereby permitted shall not be commenced until such time as a scheme to ensure that the site is not at flood risk from Shortcliff Brook has been submitted to and approved in writing by the County Planning Authority. The scheme shall be fully implemented and subsequently maintained, in accordance with the timing/phasing arrangements embodied within the scheme.
22. Prior to the commencement of development a scheme for the disposal of foul and surface waters shall be submitted to and agreed in writing by the County Planning Authority. The scheme shall be implemented and thereafter maintained for the life of the development in accordance with the approved details.
23. Any facilities for the storage of oils, fuel or liquid chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The size of the bunded compound shall be at least equivalent to the capacity of the tanks plus 10%. If there is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank plus 10%. All filling points, vents and sight glasses must be located within the bund. There must be no drain through the bund floor or walls.
24. The construction of the development hereby permitted shall not commence until there has been submitted to and approved in writing by the County Planning Authority a Construction Management Plan. The plan shall include all construction and construction operative vehicular movements, construction operation hours, all construction vehicular routes to and from site, construction delivery hours, expected number of construction vehicles per day, car parking for contractors, specific measures to be adopted to mitigate construction impacts in pursuance of the Environmental Code of Construction Practice and a scheme to encourage the use of public transport amongst contractors. The development shall be carried out strictly in accordance with the approved Construction Management Plan.
25. Prior to the commencement of development, details of an air quality monitoring regime to track any changes in local nitrogen dioxide levels from the construction phase through to six month full operational status of the facility shall be submitted and agreed in writing by the County Planning Authority. The air quality monitoring shall be undertaken in accordance with the agreed scheme.

Noise

26. The noise levels arising from the development when measured at any noise sensitive property shall not exceed 55dB(A) L_{Aeq} over any one hour (free field) during the hours of 07:00 – 23:00 and 42dB(A) L_{Aeq} 1 hour (free field) during the hours of 23:00 – 07:00.
27. Measures shall be taken to ensure that the operations carried out on the site do not give rise to noise nuisance or disturbance in the locality. Such measures shall include:
 - a) the effective silencing and maintenance of all engines, exhausts, machinery, plant and equipment, whether fixed or mobile;
 - b) the location and organisation of on-site operations so as to minimise any noise impact on nearby properties;
 - c) the minimisation, so far as is practicably and legally possible, of the level and penetration of noise emissions from reversing warnings fitted to vehicles.

Lighting

28. Prior to the commencement of the development, a lighting scheme shall be submitted to and agreed in writing by the County Planning Authority. The Scheme shall include details of the location, height, design, sensors, hours of operation, luminance and intensity of light spread of all proposed lighting and a programme for its installation. The lighting shall be designed to minimise the potential nuisance of light spillage to the locality, and shall be implemented in full accordance with the approved details.
29. Notwithstanding condition No. 28, no lighting source shall be directly visible (or visible by reflection) to trunk road users.

Hours of operation

30. No HGV shall enter or exit the site except between the hours of 06:00 to 22:00 Mondays to Fridays inclusive and between the hours of 07:30 and 16:00 on Saturdays. No HGV shall enter or leave the site on any Sunday or Public/Bank holiday.

Complaints

31. Following the receipt of any complaint about operations on site affecting neighbouring land users or the environment, the operator shall, within 24 hours, notify the County Planning Authority of the complaint, details of the investigation and if relevant, any mitigation measures taken.

Miscellaneous

32. Prior to the commissioning of the development, an updated Combined Heat and Power (CHP) Feasibility Review assessing potential commercial opportunities for the use of heat from the development shall be submitted to and approved in writing by the County Planning Authority. This shall provide for the ongoing monitoring and full exploration of potential commercial opportunities to use heat from the

development as part of a Good Quality CHP scheme (as defined in the CHPQA Standard issue 3), and for the provision of subsequent reviews of such commercial opportunities as necessary. Where viable opportunities for the use of heat in such a scheme are identified, a scheme for the provision of necessary plant and pipework to the boundary of the site shall be submitted to, approved in writing by and deposited with the County Planning Authority. Any plant and pipework installed to the boundary of the site to enable the use of heat shall be installed in accordance with the agreed details.

33. The development shall not begin operating unless a route to the boundary of the site capable of accommodating pipework for heat off-take purposes has been identified and has been approved in writing by the County Planning Authority. The route shall thereafter be reserved for this purpose.
34. Prior to the commencement of any works on the site a badger survey shall be carried out by an appropriately licensed ecologist to determine whether a sett has been dug within 30 metres of the site to be developed. If the survey concludes that a sett is present then no works shall commence on the site until an appropriate licence has been granted by Natural England.

Cessation of Use

35. By no later than two years from the commencement of development, a scheme shall be submitted to and approved in writing by the County Planning Authority detailing how the site would be restored in the event of a cessation of the use of the building for waste management operations exceeding two years. The scheme shall allow for the removal of the building and the stacks and include details of reclamation and aftercare of the site. The approved revised scheme shall be fully implemented within 24 months of the cessation of the use of the building for waste management purposes.

Reclamation

36. Within six months of the commencement of the development, a detailed scheme for the reclamation of the parts of the site outside the red line but within the blue line on plan No. NH2/2 shall be submitted to and approved in writing by the County Planning Authority. The reclamation scheme shall not include floating reed beds and shall be carried out in its entirety within one year of the County Planning Authority's written approval.

Aftercare

37. Following the reclamation of any part of the site in accordance with the agreed reclamation scheme, the reclaimed land shall be treated and managed over a period of five years in accordance with an aftercare scheme, which has previously been agreed in writing with the County Planning Authority. The agreed scheme shall provide a strategy for the five-year aftercare period and shall specify the steps that are to be taken in order to bring the newly restored land to the required standard for the approved biodiversity-led after-use. The scheme shall:

- a) be submitted for the written approval of the County Planning Authority within six months of the date of approval of the corresponding reclamation scheme submitted under condition no. 36 above.
- b) provide an outline strategy, having regard to the guidance contained in Mineral Planning Guidance Note 7 (MPG7) (or any superseding Government guidance on the reclamation of mineral sites) for the five-year aftercare period. This shall specify the steps to be taken and the period during which they are to be taken to return the land to beneficial use and shall provide for annual meetings between the operator, the County Planning Authority and other agencies as appropriate in respect of the restored areas of the site;
- c) provide for the annual submission and implementation of a detailed programme of aftercare works having regard to MPG7 (or any superseding Government guidance on the reclamation of mineral sites) and other relevant guidance regarding biodiversity action plan targets.

Waste Acceptance

- 38. No waste shall be accepted at the site other than in accordance with a Waste Acceptance scheme approved under the terms of the Environmental Permit issued (or thereafter amended) by the Environment Agency in consultation with the County Planning Authority.
- 38A. No commercial operations shall take place at the site unless the operator is applying the Pre-Sorted Residual Waste Acceptance Scheme. For the purposes of this condition, that Scheme is the most recent of either the version attached to this permission or a revision to that version which has been approved, in writing, by the County Planning Authority or recommended, in writing, by an arbitrator appointed under the terms of clause 12 to the Scheme.

Blasting

- 39. Every blast shall be designed with a 95% confidence level that ground vibration levels recorded at any vibration sensitive property arising from any blast shall not exceed a peak particle velocity of 6mm per second measured in any mutually perpendicular plane. No blast shall exceed a peak particle velocity of 12mm per second as measured at any vibration sensitive property.
- 40. Prior to the commencement of the development, a blast monitoring scheme shall be submitted to and agreed in writing by the County Planning Authority. The Scheme shall include details of:
 - a) blast monitoring at agreed locations including the use of permanent/fixed monitors to assess whether the limits specified in condition No. 39 have been complied with;
 - b) the type of monitoring equipment to be used;
 - c) presentation of blast design and monitoring results, including details of dates, times, prevailing weather conditions and comments on significant blast results;
 - d) maintenance and availability of monitoring results;
 - e) procedures to be implemented if blasting exceeds approved levels; and

- f) a methodology to keep the scheme under regular review subject to written agreement with the County Solicitor.
- 41. Except in an emergency no secondary blasting shall be carried out without the prior written approval of the County Planning Authority. In emergency situations, the County Planning Authority shall be notified of operations within 24 hours.
- 42. Prior to the commencement of blasting operations details of the methods employed to minimise air overpressure from blasting operations shall be submitted to the County Planning Authority for approval. Each blast shall be undertaken in accordance with the approved scheme.
- 43. No blasting shall be undertaken on the site except between the hours of 10:00 and 16:00. No blasting shall be undertaken on any Saturday, Sunday or Public/Bank Holiday.
- 44. The Energy from Waste facility which comprises part of the development hereby approved shall be operated such that it achieves an R1 energy efficiency rating in accordance with Annex II of the revised Waste Framework Directive 2008 and as calculated in accordance with the "guidelines on the interpretation of the R1 energy efficiency formula" published by the European Union on 1 July 2011 or any subsequent published guidance addressing the same interpretation.
- 45. An annual report reviewing and presenting the R1 energy efficiency rating achieved over the preceding twelve months shall be submitted to the County Planning Authority within one month of the anniversary of the Commissioning Date. In the event that the report confirms that the R1 energy efficiency rating has not been achieved over the preceding twelve months a scheme of remedial actions shall be submitted for the written approval of the County Planning Authority within two months of the report submission date and the remedial actions shall be implemented as approved.

Reasons for Conditions

1. To comply with the requirements of Section 91 of the Town and Country Planning Act, 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2, 4. For the avoidance of doubt and to ensure that the development is carried out and thereafter operated in accordance with the approved conditions and in a satisfactory manner in the interests of the amenity of the area.
3. To enhance the application site in the interests of visual amenity and biodiversity (Policy WDC17 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
5. To enable the County Planning Authority to adequately control the development to minimise its impact on the amenities of the local area (Policy WCS10 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
- 6,7,8 & 14. In the general interests of highway safety (Policy WDC17 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
9. To ensure that construction traffic associated with the development does not use unsatisfactory roads to and from the site in the interests of highway safety (Policy WDC17 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
10. To ensure that adequate off-street parking provision is made in order to reduce the possibilities of development of the site leading to on-street parking problems in the area during construction (Policy WDC17 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
- 11&12. To ensure that adequate steps are taken to provide a transport choice/choice in mode of travel to and from the site (Policy WDC17 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
13. To enable the County Planning Authority to monitor the number of HGVs associated with the development permitted in order to ensure that the development does not have an unacceptable impact on the local and strategic highway networks (Policy WDC10 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
15. To ensure that the M1 Motorway continues to serve its purpose as part of a national system of routes for through traffic in accordance with Section 10 (2) of the Highways Act 1980 by minimising disruption on the trunk road resulting from vehicles accessing the application site and in the interests of road safety.

16. In the interests of the landscape and visual amenities of the area and to enhance the development and biodiversity of the area (Policy WDC17 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
17. In order to protect breeding birds (Policy WDC17 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
- 18 & 23. To protect the quality of the water environment (Policy WDC12 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
19. Piling can create the formation of preferential pathways by which contamination can detrimentally impact groundwater (Policy WDC12 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
20. To prevent the mobilisation of contaminated material which could then pose a risk to groundwater and surface waters (Policy WDC12 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
21. To ensure the site is not at flood risk (Policy WDC12 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
22. To ensure that the development is provided with a satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution (Policy WDC17 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
24. In order to minimise the impacts on residential amenities and the local and strategic highway network (Policy WDC17 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
25. To enable the County Planning Authority to monitor the impact of the development on local air quality (Policy WCS10 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
- 26, 27 and 28 & 30. In the interests of local amenity (Policy WDC17 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
29. In the interests of local amenity and highway safety (Policy WDC17 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).

- 31. To ensure that the County Planning Authority is informed of all complaints relating to site operations so that any necessary remedial action can be taken in the context of the conditions attached to this permission.
- 32&33. To ensure that the operator of the development seeks to ensure that the maximum CHP potential from the site is realised in the interests of sustainable development and in accordance with Government policy objectives (Policy WCS6 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
- 34. In order to minimise disturbance to protected species in and around the development site (Policy WCS10 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
- 35. To ensure that in the event of the development becoming redundant, that the visual impact of the development on the surrounding landscape character and the Garendon Park and listed structures therein is minimised (Policies WCS10 and WCS12 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
- 36. To ensure that those areas outside the operational site areas are restored in an orderly manner and to a condition capable of beneficial after-use (Policy WDC17 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
- 37. To ensure that the restored areas of the site are brought back to a condition suitable for long-term beneficial use in the interests of bio-diversity (Policy WDC17 of the Leicestershire and Leicester Waste Development Framework Core Strategies and Development Control Policies Document).
- 38,38A. To ensure that the facility recovers energy only from truly residual waste and to ensure that recyclable materials are not disposed of in accordance with the waste hierarchy.
- 39, 41 To minimise the adverse impact of blasting on the local community
& 43. environment.
- 40&42. To enable the blasting effects of the development to be adequately monitored during the course of the operations.
- 44&45. To ensure that the Energy from Waste facility operates as a waste recovery operation and not a disposal operation, in accordance with Government policy objectives and the waste hierarchy.

Appendix to the Annex A on conditions

Pre-sorted residual waste acceptance scheme relating to suggested condition No. 38A

1. All contracts with customers for the ERF will require segregation of commercial and industrial waste prior to collection; the contracts will provide for appropriate practices to be set up to encourage segregation including:
 - 1.1 Sufficient bins will be provided to customers in order to facilitate the segregation of commercial and industrial waste into recyclable and residual streams;
 - 1.2 Customers will be charged according to the weight collected but at different rates for the recyclables and the residual waste. The rate for the recyclables will reflect the true economics of recycling but will be less than for the disposal of residual waste, thereby incentivising the recycling of as much waste as possible i.e. the more that is recycled and the lower the weight of the residual waste bin, the lower the fee charged to the customer;
 - 1.3 Customers will be educated on how to segregate waste and how it will be beneficial to them through the provisions of a waste audit.
2. In supplying a waste collection service to its customers, the ERF Operator will require its customers to sign a commitment to put their recyclable materials only into recycling containers and residual materials only into residual containers so that residual waste does not contaminate recyclables and no recyclable waste is placed in the residual waste container. Feedback will be provided to the customer if the ERF Operator finds that a customer is not appropriately segregating their recyclable materials.
3. Recyclable materials will be processed at a Materials Recycling Facility (MRF). Recyclable streams shall include glass containers, metals, wood, cardboard, plastics and waste electricals and electronics, if collected. Non-recyclable residual materials from the MRF will be sent to the ERF.
4. Save for that waste collected by the ERF Operator from customers, other waste will be transported to the ERF site via waste transfer stations where it will have been pre-sorted and materials which are reasonably and economically recyclable will have been removed, e.g. clean wood, cardboard, metal.
5. The ERF facility will not accept waste from individuals arriving at the site. Such persons will be redirected to a MRF or waste transfer station where the waste will be sorted before onward transportation to the ERF.
6. The ERF Operator agrees to undertake regular audits of residual waste to check the waste is pre-sorted, residual waste.
7. Any waste delivered to the ERF which (prior to tipping into the waste bunker) is suspected of having high recyclables content will be redirected to a MRF for pre-treatment to remove the recyclables. In the event that any particular source of waste is identified and suspected of not being pre-sorted, that

material shall be delivered to a transfer station or pre-treatment site to allow recovery of any readily and reasonably recyclable material prior to delivery to the NERF.

- 7.1 The source of the suspect waste will receive a waste audit if they are a customer. If they are a third party delivering materials to the ERF that third party will be reminded of their obligations to only deliver pre-sorted residual waste, and if they are incapable of complying will be offered either a MRF or a transfer station as a delivery point so that any reasonably and readily recyclable materials may be removed prior to onward transfer to the ERF of the remaining residual waste.
8. To demonstrate compliance with condition No. 7, the ERF Operator will produce on demand documentary evidence to show the pre-ERF recycling and residual tonnages of commercial and industrial waste and thereafter will provide to the County Planning Authority annually the recycled and residual waste tonnages of commercial and industrial waste. This will be provided on the basis that the County Planning Authority treat such information received as commercially confidential information.
9. If monitoring officers from the County Planning Authority identify regular deliveries of waste from a particular source that have not been pre-sorted, then that authority may direct the ERF Operator to ensure that waste from the identified source is not delivered directly to the ERF until such time as either pre-sorting can be demonstrated, or the waste stream is delivered to a pre-treatment facility, transfer station or MRF, to ensure that any practicably and readily recyclable materials are removed prior to delivery to the ERF.
10. Consistent with the Environment Agency's approach to pre-treatment, residual municipal waste is deemed to be pre-sorted where kerbside recycling collections are also undertaken.
11. The above procedures shall be reviewed by the ERF Operator on an annual basis on 31 January in order to allow flexibility over time to address changing waste management requirements and improvements over time to source segregation and reasonable, practicable recycling. The review shall be submitted to the County Planning Authority for agreement.
12. Following the review, if either the ERF Operator or the County Planning Authority require revisions to the scheme which are not agreed by the other, the matter of whether any revisions are to be included in the scheme shall be referred to an arbitrator (appointed in default of agreement by the parties by an officer of the Chartered Institute of Waste Management). The arbitrator shall have sufficient experience and knowledge of the waste industry to arbitrate between the parties and make recommendations on the reasonable and practicable measures to ensure that only pre-sorted residual wastes are delivered to the ERF.
13. Upon conclusion of arbitration, any revisions to the scheme that are recommended by the arbitrator shall be the findings of the review and shall be implemented by the ERF Operator.

ANNEX B

ABBREVIATIONS USED IN THE REPORT

AOD	Above Ordnance Datum
APAC	Area of Particularly Attractive Countryside
APC	Air Pollution Control residues
CABE	Commission for Architecture and the Built Environment
CBLP	Charnwood Borough Council Local Plan
CF	Charnwood Forest
C&I	Commercial and Industrial Waste
CHP	Combined Heat and Power
DECC	Department of Energy and Climate Change
DEFRA	Department of Environment, Food and Rural Affairs
EA	Environment Agency
EiC	Examination in Chief
EfW	Energy from Waste
EH	English Heritage
EIA	Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999
ERF	Energy Recovery Facility
EP	Environmental Permit
ES	Environment Statement
HPA	Health Protection Agency
IBA	Incinerator Bottom Ash
IWMF	Integrated Waste Management Facility
LCA	Landscape Character Area
LCT	Landscape Character Type
LCC	Leicestershire County Council
LLWDFCS	Leicestershire and Leicester Waste Development Framework Core Strategy and Development Control Policies
LRWLP	Leicestershire and Rutland Waste Local Plan
LVIA	Landscape and Visual Impact Assessment
MBT	Material and Biological Treatment
MSW	Municipal Solid Waste
MW	Megawatts
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Projects
PCT	Primary Care Trust
PFI	Private Finance Initiative
PPG	Planning Policy Guidance
PPS	Planning Policy Statement
PPS1 CCS	Planning Policy Statement 1, Supplement on Planning and Climate Change
RSS	Regional Spatial Strategy
SoCG	Statement of Common Ground
tpa	Tonnes per annum
WID	Waste Incineration Directive
WRATE	Waste and Resources Assessment Tool for the Environment
WPR2011	Government Review of Waste Policy in England 2011

WS2007 Waste Strategy for England 2007
XX Cross-examination