

Mr Andrew Williamson
Walker Morris
Kings Court
Kings Street
Leeds
LS1 2HL

Our Ref: APP/K0235/A/10/2141593

9 February 2012

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY MR N BASTON (BIOGEN POWER LTD)
APPLICATION REF: 09/01258/FULWME
TWINWOODS BUSINESS PARK, THURLEIGH ROAD, MILTON ERNEST, BEDS**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Elizabeth Hill BSc(Hons) BPhil MRTPI, who held an inquiry between 4 and 11 May, and which was closed in writing on 26 May 2011, into your client's appeal against the refusal of Bedford Borough Council (the Council) to grant planning permission under section 78 of the Town and Country Planning Act 1990 for an energy recovery facility (ERF) to accept and process locally produced wastes to produce heat and power, in accordance with application ref: 09/01258/FULWME.

2. The appeal was recovered for the Secretary of State's determination on 19 May 2011, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves proposals for development of major importance having more than local significance.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed subject to conditions. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation. The Secretary of State therefore dismisses the appeal and refuses planning permission. 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 and Addendum submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (IR2 and IR13.1-13.3). The Secretary of State considers that the environmental information as a whole meets the requirements of these regulations and that sufficient information has been provided for him to assess the environmental impact of the application.

5. Following the close of the inquiry the Secretary of State received a number of letters of objection to the proposal which he has taken into account. However, he does not consider that this correspondence raises any new issues which would affect his decision or require him to refer back to parties prior to reaching his decision.

Matters arising after the close of the inquiry

6. On 19 October 2011 the Secretary of State referred back to inquiry parties as, before reaching a decision on this appeal, he wished to take into account their views on the implications of the Infrastructure Planning Commission's decision, on 13 October, to grant development consent (DC) to Covanta Rookery South Limited's application for an energy from waste plant in Bedfordshire (Rookery Pit) (the Rookery South (Resource Recovery Facility) Order 2011 – see paragraph 16 below). A list of those responding is set out in Annex A below. On 23 November 2011 the Secretary of State circulated these letters to those responding, inviting any further comments, and stating that he would then proceed to a final decision. Further representations were received from those parties at Annex A marked with an asterisk. The Secretary of State has carefully considered all of the representations received in his determination of this case. Detailed consideration of the issues is set out below.

Policy considerations

7. 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. In this case, the development plan for the area in which the appeal proposal lies comprises the East of England Plan (2008); the Milton Keynes and South Midlands Sub-Regional Strategy (2005); the Bedford Core Strategy and Rural Issues Plan (2008) (CS); and the saved policies of the Bedfordshire and Luton Minerals and Waste Local Plan (2005) (MWLP). The Secretary of State agrees with the Inspector that the development plan policies most relevant to the appeal are those which are described at IR5.2.

8. The Secretary of State considers that the revocation of Regional Spatial Strategies has come a step closer following the enactment of the Localism Act on 15 November 2011. However, until such time as the East of England Plan is formally revoked by Order, he has attributed limited weight to the proposed revocation in determining this appeal.

9. The Secretary of State has taken into account as a material consideration the consultation draft of the Bedford Borough Council Allocations and Designations Development Plan Document (ADDPD) (IR5.3). However, as this document is still at an early stage of preparation, the Secretary of State gives it only limited weight.

10. As for the emerging Central Bedfordshire, Bedford Borough Council and Luton Borough Council Waste Core Strategy (WCS), the Secretary of State notes that this document has now reached "consultation on soundness stage" (November 2011). It is an indication of the future direction of waste development in the area but it is not at a stage where it could be considered to have significant weight.

11. Other material considerations which the Secretary of State has taken into account include those European and national policy documents listed at IR5.5; *The Planning System: General Principles*; Circular 11/95: *Use of Conditions in Planning Permission*;

Circular 05/2005: *Planning Obligations*; and the Community Infrastructure Levy (CIL) Regulations 2010 and 2011. He has also taken account of the Written Ministerial Statement of the Rt Hon Greg Clark MP, on *Planning for Growth*, dated 23 March 2011.

12. The draft National Planning Policy Framework which was published for consultation on 25 July 2011 is a material consideration. However, as this is a consultation document and is subject to change, he has given it little weight.

13. The Secretary of State agrees with the Inspector's assessment of the development plan and emerging policy as set out in IR12.3-12.8.

Main Issues

14. The Secretary of State agrees with the Inspector that the main issues in this case are those set out in IR12.1.

Need

15. The Secretary of State considers that the Inspector's assessment of need as set out in IR12.12-12.21, and on the basis of the information then before her, was accurate. In the circumstances at the time, a need for the facility had been demonstrated, as there would be a capacity gap for a facility of the size proposed in 2015/16 when the plant would be commissioned. He also agrees that it would have been in accordance with policy W3 of the MWLP (IR12.21).

16. The Secretary of State has gone on to consider the implications for this case of the DC for Rookery Pit, and those comments received in response to his reference back to inquiry parties. In addressing this matter the Secretary of State is aware that the DC is subject to special parliamentary procedure (SPP) before it can come into effect. SPP applies if an Order authorises the compulsory acquisition of land (or rights over land) belonging to a local authority or a statutory undertaker, and that body makes a representation about the application and does not withdraw it by the end of the examination. SPP is now underway and likely to take a number of months to complete. However, given the scale and likely development timeframe for the Rookery South facility, the Secretary of State takes the view that the Parliamentary process is unlikely to cause significant delay to the development. He is satisfied that, notwithstanding SPP, the DC amounts to a reasonable expectation that the Rookery Pit proposal will be built without undue delay.

17. Clearly the implications of the Rookery South DC for the appeal proposal are significant in terms of capacity and location of all potential future waste provision, including those on a much smaller scale. In assessing the impact of this additional capacity the Secretary of State is mindful of the fact that the appellant's witness has acknowledged that an approval to both the Rookery Pit and the appeal proposals would represent an excess of capacity (IR6.33). The Secretary of State therefore considers that, notwithstanding the possibility of a temporary gap between the completion of the proposal before him and Rookery Pit, there is no urgency to identify further waste provision in the plan area.

Prematurity

18. Had the Rookery Pit proposal not been granted DC, then the Secretary of State would have agreed with the Inspector's assessment of prematurity as set out in IR12.9-

12.11. However, given this consent for the Rookery Pit proposal, and the likely submission of the WCS for examination scheduled for later this year, the Secretary of State considers that granting permission for this sizeable ERF on a site that is not a preferred site is premature ahead of the emerging WCS. In his opinion, it would be more appropriate to assess the adequacy or otherwise of the unallocated site before him by way of the WCS, as he believes to do otherwise would prejudice the emerging WCS by predetermining decisions about the scale, location or phasing of new development. The Secretary of State sees that as being contrary to the guidance in paragraph 17 of The Planning System: General Principles.

Location/spatial strategy

19. The Secretary of State agrees with the Inspector's reasoning and conclusions on location/spatial strategy, as set out in IR12.22-12.29. He agrees that the location of the proposed development on previously-developed land has some support in PPS10 and the potential for the use of heat and power on site is supported by PPS22. The proposal would be on an existing industrial site, supported by MWLP policy W13. He accepts that although this would be in a rural area, the other policy support and the fact that it is on previously-developed land and in an industrial area, would outweigh policy objections, in terms of policy CP14. He further agrees that, although the travel distances from the south of the county are high, the appellant has demonstrated that their adverse effects would be insignificant compared to the benefits of preventing waste going to landfill, in terms of CO₂ (IR12.29). Notwithstanding the locational merits of the proposed site, it is not identified in the emerging WCS as a preferred site. It therefore appears to the Secretary of State that any change to the status of the site in that respect would be better dealt with by way of the emerging WCS.

Catchment area

20. Notwithstanding the impact of the Rookery Pit proposal, the Secretary of State agrees with the Inspector's reasoning and conclusions on the catchment area, as set out in IR12.30-12.35, except with respect to the point regarding Circular 11/95 in paragraph 21 below. He agrees that transport costs associated with waste are such that it is unlikely that significant amounts of waste would be brought in from any considerable distance; that the market is likely to ensure that waste arisings are necessarily treated close to their source; and that, in the current economic climate it is important that planning restrictions do not impose unnecessary burdens on business (IR12.34).

21. The Secretary of State does not agree with the Inspector that a planning condition seeking to restrict the source of waste would necessarily fail to meet the tests of Circular 11/95 (IR12.35). He notes that such conditions have been imposed in the past and sees no reason why they should not in the future, were they couched effectively, deemed appropriate, and in line with relevant policies and guidance. However, in the circumstances of this case, where it is estimated that waste would primarily be sourced within the plan area and therefore be in line with the development plan (IR12.33), and in view of his observations in the preceding paragraph, he is satisfied that such a condition would not have been necessary had he been minded to grant consent.

Traffic generation and highway safety

22. For the reasons given in IR12.36-12.43, the Secretary of State agrees with the Inspector that there is no compelling evidence that additional traffic brought about by the proposal, including HGVs, would be excessive or that it would give rise to problems with highway safety. He therefore agrees that it would be in accordance with policy GE23 of the MWLP, which covers the suitability of the local road network to provide access for such development (IR12.43).

Living conditions

23. The Secretary of State agrees with the Inspector's reasoning and conclusions on living conditions, as set out in IR12.43-12.54. He notes that evidence submitted to the inquiry demonstrates low levels of risk to human health, in terms of both carcinogenic and non-carcinogenic effects (IR12.50), and no significant health impact from material entering the food chain (IR12.51). He agrees with the Inspector that there would have been no reason on health grounds to depart from national policy on this matter, the detailed information for which is more properly dealt with by means of the environmental permitting regime (IR12.53).

Visual impact/landscape

24. The Secretary of State agrees with the Inspector's reasoning and conclusions on visual impact/landscape, as set out in IR12.55-12.59. He agrees that as the proposal, if it were to be built, would be set among other large and bulky buildings it would not be dominant in views of the business park from the surrounding area (IR12.57). He also agrees that, though the new stack would be more visible than the existing stack, careful use of materials for both the building and the stack would help to prevent any adverse effects of the development in views of it from the surrounding area (IR12.58). Like the Inspector, therefore, he concludes that the proposal would not be harmful to the character and appearance of the area and would be in accordance with policy GE9 of the MWLP, policy CP24 of the CS and policies NE12 and NE20 of the BBLP (IR12.59).

Human Rights

25. The Secretary of State agrees with the Inspector (IR15.1) that, for the reasons given, there would be no violation of local residents' human right by the granting of planning permission for the proposal.

Condition and obligations

26. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions and obligations as set out in IR11.1-11.10 (except with respect to the catchment issue considered in paragraphs 20 and 21 above). He does not consider that the proposed conditions and obligations overcome his reasons for dismissing the appeal.

Overall conclusions

27. Having weighed up all of the material considerations, the Secretary of State concludes that though there are a number of material considerations in favour of the proposal, these are outweighed by the need, in the light of the Rookery Pit DC, to undertake a thorough assessment of the development of other facilities, in order to ensure that there is no prejudice to the scale, location or phasing of new development

which is being addressed in the WCS. He therefore does not consider that there are any material considerations of sufficient weight which would justify granting planning permission.

Formal Decision

28. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for an energy recovery facility to accept and process locally produced wastes to produce heat and power, in accordance with application ref: 09/01258/FULWME, dated 4 June 2009.

Right to challenge the decision

29. 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.

30. A copy of this letter has been sent to Bedford Borough Council and those who appeared at the Inquiry. A notification letter has been sent to other parties who asked to be informed of the decision.

Yours faithfully

Jean Nowak

Authorised by Secretary of State to sign in that behalf

ANNEX A

List of respondees to invitation to comment on planning appeal at Twinwoods Business Park

Cllr Alison Foster
Cllr Jane Walker
Robin Raynolds, Chairman Twinwoods Action Group
N C Baston, Biogen Power*
Paul Rowland, Bedford Council*
Gerry Stafford
Brian Inasll
Greg Pidgeon
Stephen Freshwater
Deborah Inskip (on behalf of North Bedfordshire parish councils)*
Damon Goodyear*
Amy Church
Edward and Alison Bean
Siobhan Atkin
Catherine E Hill
C A Smith and Family
S Smith
Ann Bird
Jane Walker
Sue Stapley
Jackie Barker
Dave Shiers
Linda Ludbrook
Simon Ludbrook
Tim Coggins
Lindy Lloyd
Andrew Facey
Abigail Watkin
Dave Lewin
David White
Toby Cosh
Tom Honeywell
Nick Boardman
B White
Sylvia Juras
Mr & Mrs Gilbert
J Carr
Anne and John Wilson
N C Baston, Biogen Power
Louise Sullivan
Mr and Mrs J Shepherd-Stubbs
Mr and Mrs Marvell
Derek Hayhoe
Ann Kirk
David Nicholson
Philip Taylor

Allie Elend
Laura Andrew
Leslie and Colin Goepfert
Gwendoline Tobin
Charlotte Sansom
Andy Combe
Catherine Robson
Roger Sansom
Sam Kellow
Sarah Terzeon
Colin Haine
Mr and Mrs Girling
Martin Kavanagh
D B Purser
Mr & Mrs S Baillie
Jeremy Clayson
N L Devonshire
D W Warrick
P M Turton
Ann Bird
Sandra Kelsey
D C Aynsley
Ruth Bender
G Aynsley
V G Hitchin
John Alsop
Steve & Angela Edmonds
W Shortland
P A Vine
Philip Wilson
Martina Wilson
Dr Mike Furby
Dr Elisabetta Ciampi
TP & NJ Honeywell
A & ME Mathie



Report to the Secretary of State for Communities and Local Government

by Elizabeth Hill BSc(Hons), BPhil, MRTPI

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

Date 19 July 2011

BEDFORD BOROUGH COUNCIL

APPLICATION BY MR N BASTON (BIOGEN POWER LTD)

SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990

TWINWOODS BUSINESS PARK, THURLEIGH ROAD, MILTON ERNEST, BEDS

Inquiry opened on 4 May 2011

Twinwoods Business Park, Thurleigh Road, Milton Ernest, Beds

File Ref: APP/K0235/A/10/2141593

File Ref: APP/K0235/A/10/2141593

Twinwoods Business Park, Thurleigh Road, Milton Ernest, Beds

- 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 Mr N Baston (Biogen Power Ltd) against the decision of Bedford Borough Council.
- The application Ref 09/01258/FULWME, dated 4 June 2009, was refused by notice dated 1 June 2010.
- The development proposed is an energy recovery facility to accept and process locally produced wastes to produce heat and power.

Summary of Recommendation: The appeal should be allowed, subject to the conditions set out in Annex 1.

1. Procedural Matters

- 1.1 The inquiry opened on 4 May 2011 and sat for 5 days, on 4-6 and 10-11 May 2011. Following the submission of a unilateral undertaking, it was closed in writing on 26 May 2011.
- 1.2 An Environmental Statement (ES) was submitted with the application. The information within the ES was supplemented by further information following a request under Regulation 19 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (EIA Regs) from the Council. This included additional material on traffic and transport, noise, air quality and waste audit.
- 1.3 An accompanied visit to the site and the Business Park area was held on 10 May 2011. The surroundings of the appeal site and viewpoints of the site from the nearby countryside and villages in the area were visited unaccompanied during the inquiry. Unaccompanied visits were also made to proposed waste sites in the emerging Waste Core Strategy (WCS) after the last sitting session.
- 1.4 The appeal was recovered for decision by the Secretary of State (SoS) by means of a Direction, dated 19 May 2011. The reason given for the Direction was that the appeal involves proposals for development of major importance having more than local significance.
- 1.5 Bedford Borough Council refused the application for the following reasons:
 1. *"There is no overriding short-term need for the provisions of additional permitted waste recovery capacity within the Plan Area. Therefore, to permit the development would be contrary to saved Policy W3 of the Adopted Waste and Minerals Local Plan 2005.*
 2. *The proposed development would be contrary to the spatial strategy of the development plan and it is considered that there are no material considerations of sufficient weight to justify an exception being made to the strategy. The application is therefore contrary to PPS10 and Policies CP1, CP3 and CP14 of the Adopted Bedford Borough Core Strategy and Rural Issues Plan April 2008. Furthermore, having regard to PPS1, it is deemed that the proposed development is so significant that granting planning permission could prejudice the emerging Waste Core Strategy by predetermining decisions about the location and phasing of new development, which are being addressed in the Development Plan Document.*

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3. *The applicant is unwilling to enter into an acceptable and justified catchment restriction for the source of the waste brought to the facility, and has not satisfied PPS10, Policy WM3 of the East of England Plan 2008 and saved Policy W3 of the Adopted Minerals and Waste Local Plan.*"
- 1.6 A Statement of Common Ground (SoCG) was submitted at the inquiry, having been signed on 13 April 2011. It covers the background to the application, the details of the proposed development, the site description and the surrounding area, planning issues, planning policy, the reasons for refusal and a schedule of application documents and drawings.
- 1.7 A signed and dated unilateral undertaking was submitted by the appellants. This offered planning obligations in respect of: a contribution to the provision/enhancement of a bridleway from the access to the business park on Thurleigh Road to the junction of Thurleigh Road and Coplowe Lane; the implementation and maintenance of a Landscape Scheme; a Heavy Goods vehicle (HGV) route; and a proposed reduction in B8 floorspace on the industrial estate.
- 1.8 A subsequent planning application has been submitted for a similar proposal on the site Ref 10/02851/FULWME, which was refused planning permission by notice dated 29 March 2011. The reasons for refusal related to the character, design, scale and height of the buildings; the relationship of the proposed facility to waste arisings; the level of HGV traffic in local villages; and, being contrary to the spatial strategy and prematurity in respect of the emerging WCS.
- 1.9 This report includes a description of the site and its surroundings, the appeal proposal, planning policy, the main points of the cases for the parties and my conclusions and recommendation. I have listed the documents submitted including proofs of evidence. They are as originally submitted and do not take account of how evidence may have been affected by questioning. Opening and closing submissions are also included and are annotated in pen to reflect their delivered content. Conditions to be imposed, if the SoS is minded to grant permission, are annexed to the report with my comments.

2. The Site and Surroundings

- 2.1 The appeal site is about 2.4ha and lies within the Twinwoods Business Park which totals about 48.5ha. The Business Park was formerly a Government Defence Evaluation and Research Agency (DERA), which, amongst other things, was used for wind tunnel testing and is regarded by the main parties as being previously-developed land. It is largely surrounded by agricultural land, although there are a number of employment uses nearby, including those on the former Thurleigh airfield. The appeal site itself currently contains disused buildings, which comprise a large building, which formerly housed a wind tunnel with offices and a library, and a boiler house with associated 38m chimney stack, oil tanks, transformers, and pipes which supplied steam/heat to the rest of the complex. For the site layout see plan 23586-L32.dwg (planning application boundary plan).
- 2.2 The site fronts onto the main access road for the Business Park. This leads to the entrance at Thurleigh Road, which is the only entrance since the closure of the access road to the site from Clapham to business park traffic. From Thurleigh Road access for HGVs is provided to the A6 at Sharnbrook roundabout. The closest area of the nearest settlement, Milton Ernest, is over 1km from the site. There are other residential properties at Rutter's Farm, about 750m away, and 3 Milton Road, about 790m away. In addition, the Yarl's Wood Immigration Centre,

which houses detained immigrants, is about 75m away with the nearest residential units about 120m away.

- 2.3 The site is not the subject of any statutory or local landscape, ecological or heritage designations, although it is recognised by the Council's archaeological officer that the site potentially contains archaeological features of significance. The Wildlife Trust for Bedfordshire, Cambridgeshire, Northamptonshire and Peterborough has requested that the Environment Agency (EA) examine the air quality assessment for its effect on Yarl's Wood County Wildlife Site which is nearby. This would be likely to be undertaken as part of the environmental permitting process.

3. Planning History

- 3.1 The planning history of the site is set out in the SoCG. In short, the site was part of DERA for over 50 years. An application for planning permission was made in 2002 for a change of use to B1, B2 and B8 uses, which was subsequently granted on 23 March 2007, following the submission of S106 and S278 agreements, which required the monitoring of the use and occupancy of the site, a travel plan, the monitoring of the highway network and extensive improvements to it. The permission allows gross floor areas of 35,000m² of B1, 9,110m² of B2 and 9,900m² of B8 uses.
- 3.2 The appeal site lies in an area of the site where B1, B2 or B8 use is allowed, although the use applied for is sui generis. Other permissions on the site include an indoor sky diving centre (using a vertical wind tunnel), a waste transfer station, a motor racing and a data centre (granted planning permission in 2009 (Ref 09/01085/MAF), although not yet built). Parts of the site are unused and are being actively marketed.

4. The Proposed Development

- 4.1 The planning application documents and drawings are listed in Schedule 1 of the SoCG. One of the application drawings is numbered incorrectly. The Part Proposed Elevations, dated June 2009 and numbered 08-1425-P01E, should read 08-1425-P01F.
- 4.2 The proposed Energy Recovery Facility (ERF) would comprise the following elements:
- the main process building (152mx50mx20m in height)
 - a turbine generator building (16mx8m), housing a steam turbine
 - an air cooled condenser (in a 17mx 38m enclosure)
 - a 58m high exhaust stack
 - offices and parking.
- 4.3 The external ancillary facilities include the following:
- an air-cooled condenser
 - weighbridge
 - service yard for incoming vehicles carrying waste

- internal vehicular access and parking
 - balancing pond for surface water as part of SUDS scheme
 - landscaping/boundary treatment.
- 4.4 If the appeal were to be allowed the plant would open in 2015, after a two year construction programme and environmental permitting. It would employ a staff of 30 over 3 eight-hour shifts over a 25 year operational period. Further jobs would be created through the construction process.
- 4.5 The appellant states that the ERF would have the capacity to generate 11.2MW of low-carbon electrical power and, allowing for the needs of plant, 10MW of electricity could be exported to the business park or via an existing link to the National Grid. In addition, there is the potential for 20MW of usable heat energy which could be exported to other users of the business park, using existing site infrastructure.
- 4.6 The ERF would have the capacity to accept a maximum of 120,000 tonnes per annum (tpa) of non-hazardous waste, following the on-site removal of 4,000 tpa of ferrous waste. The waste would come from a variety of sources: commercial and industrial (C&I); construction and demolition (C&D); and, municipal solid waste (MSW). The process used to generate energy from the waste would be gasification, with gas driven off and then enriched with oxygen before being burned to raise steam to run a turbine and generate power. The gasification process is regarded as Advanced Conversion Treatment (ACT) under the Renewable Obligations Order 2009 (ROO 2009) and would qualify for double Renewable Obligation Certificates (ROCs). Whilst it would not be a mass burn incineration process, it would meet the requirements of the Waste Incineration Directive (WID) **[CD7/1]**.

5. Planning Policy

- 5.1 The development plan for the area includes: the East of England Plan (2008) (RSS) **[CD4/15]**; the Milton Keynes and South Midlands Sub-Regional Strategy (2005) (SRS) **[CD4/17]**; the Bedford Borough Core Strategy and Rural Issues Plan (2008) (CS) **[CD3/3]**; the saved policies of the Bedfordshire and Luton Minerals and Waste Local Plan (2005) (MWLP) **[CD3/1]**.
- 5.2 Policies ENG2, WM1, WM2 and WM3 of the RSS cover renewable energy targets and waste management within the region. The SRS has no specific proposals for waste management but notes at paragraph 47 that facilities are required across the area. The Strategy concentrates economic growth in a number of areas, including Northampton, Milton Keynes, Bedford, Luton/Dunstable/Houghton Regis and Corby/Kettering/Wellingborough. The CS has no specific waste policies but identifies a growth area, which includes Bedford, Kempston and part of Marston Vale, generally with restraint in the rural areas. The site lies within the rural area but close to the Key Service Centre of Clapham. Policies CP1, CP3, CP5, CP11, CP13, CP14 and CP15 are the most relevant to the appeal. The most relevant saved policies of the MWLP are W2, W3, W7 and W13. Certain saved policies of the Bedford Borough Local Plan 2002 (BBLP) **[CD3/6]** are still in force. These include landscape policies NE12 and NE20, which are relevant to this proposal.
- 5.3 Emerging development plan policy exists in the form of: the draft East of England Plan to 2031 (March 2010) (draft RSS) **[CD4/16]**, the Central Bedfordshire,

Bedford Borough Council and Luton Borough Council Waste Core Strategy Preferred Options Consultation Document (July 2010) (POWCS) **[CD3/2]** and the consultation draft of the Bedford Borough Council Allocations and Designations Development Plan Document (ADDPD) **[CD3/11]**.

- 5.4 The draft RSS has not progressed far, although the Technical Paper on Waste **[CD4/18]** for the Plan prepared by the East of England Regional Technical Advisory Body (RTAB) on Waste is of relevance to the appeal. The POWCS is still at an early stage. The most relevant policies are: Statement 13, Waste Core Policy 1, Waste Core Policy 2, Waste Core Policy 3 and Waste Core Policy 4. In addition, Technical Evidence Paper 2 (TEP2) **[CD3/8]** sets out alternative forecasts for waste arisings in the plan area for the period to 2027/28 and the need for waste recovery based on a preferred "low growth" scenario. The ADDPD confirms that minerals and waste allocations will be made as part of the Minerals and Waste Development Framework.
- 5.5 Documents containing European and National Policy and Guidance for this appeal include: the revised Waste Framework Directive 2008/98/EC, 19 March 2008 (rWFD); the Waste Incinerator Directive (WID), 2000; Planning Policy Statement 1: Delivering Sustainable Development (PPS1) and its supplement Planning and Climate Change (PPS1 Supplement); Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7); Planning Policy Statement 10: Planning for Sustainable Waste Management (PPS10) and its Companion Guide (CG); Planning Policy Statement 22: Renewable Energy (PPS22) and its CG; and, Planning Policy Statement 23: Planning and Pollution Control (PPS23). In addition, the Waste Strategy for England 2007 (WS2007) and its updates are relevant. Draft national policy exists in the form of the National Policy Statements for Energy Infrastructure (NPS) on energy EN-1 and EN-3, which were laid before Parliament on 23 June 2011 and a draft supplement to PPS1 and PPS22: Planning for a Low Carbon Future in a Changing Climate.

6. The Case for the Appellant

Introduction

- 6.1 The documents for the appellants have the prefix A. Evidence was Mr Leeson on Need, Mr Owen on Planning Policy, Mr Bright on Landscape, Mr Stoaling on Air Quality and Mr Brant on highways and transport sustainability. The material points are:
- 6.2 The SoCG **[3]** provides the background and procedural aspects to the appeal and were also summarised in the appellant's opening submissions. These included the adequacy of the environmental information before the inquiry. Neither the authority nor any of the consultees have suggested that the environmental information supplied is inadequate. Although local objectors have sought more information throughout the inquiry process, none have claimed that there is a material inadequacy in the environmental information which would prevent a valid determination of the appeal.
- 6.3 The Inspector raised concerns about alternative sites at the start of the inquiry and the appellant sought to address those concerns in the evidence in chief of Mr

Owen. He confirmed that, in the ES¹, the appellant had briefly considered alternative sites as set out at section 2.5 (page 7 of **CD 2/2(5)**). More comprehensive 'environmental information' is before the inquiry in the core documents. In particular **CD 3/9** provides a Sustainability Appraisal and Preliminary Assessment of the Waste Core Strategy Preferred Options together with Policy Appraisal Matrices at appendix 1 and the detailed Site Appraisal Matrices at appendix 2. Despite the appellant's criticism of these documents (as evidenced in their representations to the Core Strategy consultation, **CD5/5**) the underlying information is more than adequate to enable a proper determination to be made in this case. No further concerns have been raised in relation to the adequacy of the environmental information.

Main Issues

6.4 The main issues identified by the Inspector and not amended by the Council have been reformulated by the appellant as follows; whether: -

- the proposal is in accordance with the spatial strategy having regard to the need for it, its location, and the catchment it is likely to serve;
- the proposal is harmfully premature to the emerging WCS;
- the proposal is likely to have unacceptable impacts on the local highway network;
- the proposal is likely to have unacceptable impacts on its landscape setting and visual amenity; and
- the proposal is likely to have unacceptable impacts on amenity including air quality and health related issues.

The Development Plan

6.5 The SoCG **[3]** sets out the relevant development plan and other policy background to the appeal. In *R v Rochdale Metropolitan Borough Council ex parte Milne* (2001) Env. L. R 22, Sullivan J confirmed that "for the purpose of section 54A it is enough that the proposal accords with the development plan considered as a whole. It does not have to accord with each and every policy therein" (Para 50). In this case the policies relating to waste in the East of England Plan 2008 and the saved policies of the WLP, contrast with those of Policy CP14 of the CS, which seeks to locate development in the rural area within or on the edge of key service centres.

6.6 The Council Officers' Report to Committee **[CD1/1]** suggests that most weight attaches to the specific waste policies of the development plan, in particular WM1, WM2 and WM3 of the RSS together with policies W1, W3 and W13 of the MWLP. Mr Owen set out a similar appreciation of the policy background in section 4 of his proof **[A2/1]** and Mr Warren (for the Council), when questioned, accepted that greater weight should be attached to relevant waste policies, rather than generic policies. The CS **[CD 3/3]** does not seek to deal with waste issues and is not part of the development plan scheme dealing with this topic. The tension between the application of policies CP11 and CP14 of the CS to the

¹ Relating to the first application which is the subject of this appeal. In addition, the Environmental Statement for the second application (**CD 2/4(5)**) submitted by the Appellant (for development which is identical in nature to the appeal proposal) provides further information on the alternative sites considered.

proposals is not determinative. Each policy is predicated on mutually exclusive premises. Both cannot apply to the same site with equal force. As the officers' analysis in their reports to committee **[CD 1/1 and CD1/4]** on both planning applications suggest, the allocation of the Business Park as an employment site takes precedence over the more generic rural policies, as agreed by Mr Warren.

- 6.7 It is true that reduced weight applies to RSSs given the Government's intention to revoke them². However, the Court's decision in the Cala Homes case (see Mr Owen's proof, para 4.54 of **A2/1**) confirms that RSSs remain as part of the Statutory Development Plan. There was no dissent in the Inquiry from any witness to the view that the information which had led to the content of the RSSs remained cogent. Mr Warren confirmed that the policies need to be considered in the light of subsequent changes to National and European policy including the rWFD **[CD4/1]** and WS2007 **[CD4/3]** but where current policies remain consistent with these later expressions of policy they should be given significant weight. The method of calculation of the R1³ figure for energy efficiency, and the figure to be attained to classify for R1, remains unaltered in Annex II and its footnote in the rWFD. Mr Hill's criticism **[IP9]** of the efficiency of the process did not alter the fact that his own calculation demonstrated an R1 figure, consistent with the guidance, was above the prescribed target of 0.65. His extracts from the Sinfin Lane Waste Treatment Facility Environmental Permit (EP) application serves to confirm this. Likewise, the direction of travel of government policy towards zero waste to landfill **[CD5/1]** is a factor to be considered but where existing policies may be read as consistent with this objective they should continue to hold significant weight.
- 6.8 Mr Owen sets out the appellant's position in respect of the RSS at paras 4.54 to 4.66 of his proof. The appeal proposal is consistent with the Waste Management objectives of policy WM1. The waste management targets set out in policy WM2 are not to be read as fixed maxima. Indeed, to do so would be inconsistent with the rWFD. The duty in Article 4(2) when applying the hierarchy obliges Member States to encourage options that deliver the best overall environmental outcome. Mr Leeson's need assessment **[A1/1]** reflects the aim to maximise diversion from landfill, and is consistent with policy WM2 and the rWFD. The first key objective of PPS10 (para 3) describes disposal as "the last option". Mr Leeson did not waiver in his view, when questioned, on the topic particularly in relation to paragraph 11.6 [page 72, **CD4/15**]. Indeed policy WM2 itself confirms "the objectives are to eliminate land filling of untreated municipal and commercial waste by 2021 and secure at least the following minimum level of recovery ..." (emphasis added).
- 6.9 Policy WM3 deals with imported waste and its principal relevance to this Inquiry turns on the interpretation of the word "primarily" which appears in the final sentence. Despite the slightly differing contexts both Mr Owen and Mr Warren agreed that the word 'primarily' in policies WM3 and W3 of the MWLP had the same meaning.

² The party's case is based on closings given before the outcome of the Court of Appeal judgement, known as Cala 3. This is discussed in the conclusions.

³ R1 is defined in Annex II to the rWFD which defines recovery operations. R1 is a use principally as a fuel or other means to generate energy. The R1 figure is an energy efficiency measure derived from a formula in the footnote to the Annex. To qualify as recovery the R1 value for the incineration process needs to be greater than 0.65.

6.10 Policy W1 of the MWLP sets out the key principles for waste management. Mr Warren confirmed that the appeal proposal would help meet the strategic objectives of the plan including county self-sufficiency (subject to catchment restrictions) and meeting the waste hierarchy. His outstanding concern related to whether the appeal proposal was well located in relation to the proximity principle (criterion (d)). However, he confirmed that the proposal would be consistent with MWLP policy W13 and he accepted that facilities for recovery of energy from local waste will be an essential element in achieving the core aims of the waste strategy (para 5.12.2). He further accepted that the proposal would meet the locational preferences of the policy in particular criterion (iii). He accepted the policy analysis of officers in the committee report on this point [page 15, **CD1/1**].

6.11 Thus the dispute between the principal parties boils down to differences on location and catchment.

Location

6.12 In the analysis of this topic it is important not to elide the concepts of county self-sufficiency and the proximity principle. Whilst the concepts overlap, they are not the same thing.

6.13 The highest order expression of self-sufficiency and proximity is to be found in article 16 of the rWFD [**CD4/1**]. The concept of "nearest appropriate installation" (NAI) is to be found in article 16 (3). NAI applies to the disposal of all wastes, but for recovery applies only to mixed municipal waste collected from private households. Thus C&I Waste is not subject to the requirement to be recovered to the NAI. Waste Strategy 2000 sought to apply the proximity principle to all forms of waste streams and management, but experience quickly showed that the lack of flexibility in catchments prohibited the bringing forward of much needed infrastructure. Hence PPS10 requires only disposal to be subject to NAI (paragraph 3 fourth key objective). Likewise, Waste Strategy 2007 relaxed the application of the NAI principle to be compliant with the position as then expressed in the 2006 Waste Framework Directive. The rWFD has overtaken events in relation to "black bag" waste and all policies, including W1(d) of the MWLP, should now be read in this context.

6.14 The fallacy in the Council's reasoning is that they equate the administrative boundaries of the local plan area with the NAI principle. Mr Warren's case rests upon the proposition that "the site is not well located to receive Bedford Borough's, Central Bedfordshire's and Luton's waste arising as a whole given its locational relationship with the main settlements and areas of population" (para 5.11 proof [**C1**]- emphasis added). This formulation of the proposition is wrong for two reasons. Firstly, it ignores the acceptability, in principle, of some cross border movement of waste. The principles of NAI apply to geography, settlement pattern and waste arisings not administrative boundaries; a point readily accepted by Penelope Sowter when questioned. Secondly, where the local plan policy itself envisages more than one local facility, it is not appropriate to look at the plan area only 'as a whole'. The appeal proposal could be the NAI for a significant part of the plan area, and for parts of two neighbouring areas.

6.15 Mr Brant for the appellant sets out an assessment of travel distances in section 7 of his original proof [**A5/1**] and in his rebuttal [**A5/4**]. Following questions, he re-examined the accuracy of his original table 20 and produced an amended

version. The differences were slight and did not alter his assessment of the significance of the CO₂ case. It is important to note that the purpose of his evidence was not to directly demonstrate that the location of the facility was the NAI for its proposed catchment but rather the significance of the CO₂ issue compared to the delay in moving waste up the hierarchy.

- 6.16 Mr Brant's revised table 20 **[A13]** perplexed local objectors and was subject to prolonged and intense questioning. The difficulties arose because Mr Brant's GIS based methodology blended the easily understood "point to point distances" with the less easy to appreciate weightings attributed to "population density" and "propensity to transport" factors. His email of 10 May 2011 (09:44) **[A19]** together with his population centroid plan provides more detail. The variable inputs to the model were the identification of the notionally contracted waste (which he attributed to mid Bedfordshire as a neutral location) and the relative unattractiveness of transporting waste over long distances (he used the value of 1.5 in an exponential scale between 1 and 2). Despite cross examination, the evidence demonstrates the fairness of the input assumptions and that there is little to choose between the preferred options and the appeal site in terms of location compared to the timing of delivery of facilities and the need to move waste up the hierarchy.
- 6.17 Mr Brant's further rebuttal **[A23]** provides a detailed response to Mr Freshwater's criticisms **[IP2 & 11]** which, though superficially attractive, are misplaced. Mr Bean's extracts from the Council's Housing and Employment Monitoring Reports 2009-10 **[IP12]** illustrate take up rates in the growth areas within the Council's area but do not assimilate the wider context of growth in adjacent areas. The second page of this rebuttal quantifies, at least in part, the adverse effects on transportation distances of moving his notional MSW contract from Mid Bedfordshire to Luton. He conceded the point when questioned but was cautious about the degree of the effect, which he felt would be small. His further work proves his point. Mr Warren did not demur from Mr Brant's general point about significance in cross-examination. Similar results were achieved in the Avonmouth case **[CD5/13]**.
- 6.18 It is important to note that the Council's claims about the poor location of the appeal proposal were not backed up with any compelling technical evidence. The sort of analysis carried out by Mr Brant could easily have been undertaken by the Council or its advisors in order to provide a cogent basis for their case. Nor is any such exercise to be found in the emerging Waste Core Strategy **[CD3/2]**, the Sustainability Appraisal **[CD3/9]** or the Technical Evidence Papers **[CD3/8]**. Neither did local objectors produce any proper analysis. The assertion that the appeal proposals were "conspicuously poorly located" was not supported by evidence. Any analysis of the topic, certainly for multiple facilities, would not have started with the plan area as a whole, would not have excluded some cross border movement and would have used some form of gravity modelling to work out optimal but probably overlapping catchments for each prospective facility.
- 6.19 In the absence of any clear evidence of harm due to location to "the sustainable movement of waste" (para 21 (i) PPS10 and Policy WM1 RSS, 3rd bullet). It is better to concentrate on the broader locational policies of the development plan and PPS10.
- 6.20 Mr Warren acknowledged that "the site has some positives" (para 5.6 of his proof **[C1]**) and he confirmed that these were supported by policy, particularly

the important priority given to the re-use of previously-developed land, as set out in PPS10 para 21(ii), RSS para 2.2(v) and policy W13 (criteria iii and iv) of the MWLP. He accepted and agreed with the way in which officers had dealt with the topic in the report to committee.

- 6.21 The appeal site scored well in terms of its location in the Sustainability Appraisal for the POWCS. Appendix 2 of the Appraisal **[CD3/9]** confirms (at page 33) that "the site is well located in terms of its proximity to Bedford and access onto the strategic road network (A6) and therefore has the potential to reduce the mileage travelled by waste, if the site were to serve these local communities". The site is given the green light under this heading in the appraisal. There was no cross-examination of Mr Warren on this point because he had not reviewed the documents. Whilst the appellant criticised some of the work by Environ in this appraisal, which did not include information from the ES and other information about the site, nonetheless the transportation work does at least provide an independent view of the alternatives on a like-for-like basis.
- 6.22 Furthermore, there is absolutely no criticism by the Council of the appeal proposals under any of the headings of the Locational Criteria of paragraph 21 and Annex E to PPS10. In addition, the Council made no case that the appeal site scored poorly in the Sustainability Appraisal.

Catchment

- 6.23 This issue turns on the interpretation of the word "primarily".
- 6.24 At paragraph 5.33 of his proof, Mr Warren confirms that "the Council has reached a position where it believes that a rate of imported wastes to the site of 80% from within the plan area and 20% from outside the plan area meets the spirit and intention of policy at the national, regional and local level". No evidence was produced by the Council to support its contention that this particular split would meet these policies. The Inspector's Report on the Cambridgeshire and Peterborough Minerals and Waste Core Strategy did not prescribe an 80/20 split. The Council's case on this matter was unsubstantiated, as conceded by their witness.
- 6.25 By contrast, Mr Leeson produced a note of catchment restrictions at waste management sites in the East of England **[A14]**. The examples related to the much larger area of Peterborough and Cambridgeshire combined. The percentage restrictions had to be seen in the context of the large geographic area combined with a further catchment based on a radius distance which in each case overlapped administrative boundaries. A number of appeal decisions have demonstrated reluctance on the part of Inspectors to accept catchment restrictions, for example, Ince Marshes Ref APP/Z0645/A/07/2059609 **[CD7/6]**. Similarly, in the appeals in Nottingham (APP/Q3060/A/08/2063129) **[CD7/5]** and at Avonmouth (APP/Z0116/A/10/2132394) **[CD5/13]** catchment restriction conditions were not imposed. Nonetheless, both main parties agree that restrictions can be appropriate and each site must be looked at on its own merits.
- 6.26 As such, the proposal was agreed for a 60:40 split with 60% of waste to be sourced from the plan area, and 40% from two adjacent areas (Milton Keynes and Northamptonshire). This was based on analysis of the location of the site and commercial realities. It was accepted that the appeal proposal would only come to fruition in the event that the scheme was able to source at least one of the main MSW contracts within the plan area. An assessment of the tonnages

from such sources led Mr Owen to the view (at para 5.43) that "under normal operating conditions it is anticipated that a minimum of 65% of waste is expected to be sourced from within the plan area". The suggested 60% threshold allows some margin for flexibility on this assessment.

6.27 As a matter of language there is no reason to interpret the word 'primarily' any more restrictively. The word primarily is not defined within either the MWLP or the RSS. Its ordinary meaning is simply "for the most part". As Mr Owen stated in evidence in chief, a figure of 51% would meet the literal interpretation of the word and was not contradicted by the Council. Indeed, he accepted that if a larger percentage had been intended other words such as 'predominantly' might have been used. The principle of net self-sufficiency does not proscribe cross border movements and it would be self defeating to do so. In this case there are growth areas south of Bedford, but also in adjacent authority areas, set out in the SRS **[CD4/17]**. The principles of NAI are not confined to administrative boundaries and there is nothing in either the letter or the spirit of policy which would not be met by the proposed 60:40 catchment restriction. If the appellant is right about this, then the Council's policy objection founded on the 'proximity principle', falls away.

Need

6.28 Given the above analysis the appeal proposals are consistent with relevant up to date development plan policies and are in accordance with paragraph 22 of PPS10, which states that "planning authorities should not require applicants for new or enhanced waste management facilities to demonstrate a quantitative or market need for their proposal".

6.29 Nonetheless, as an added planning benefit, Mr Leeson has demonstrated **[A1/1]** that there is an urgent need for the ERF in order to meet part of this capacity shortfall. In this context, the POWCS identifies the need for additional recovery capacity of over 200,000 tonnes per annum by 2015/16 even after allowance for the full capacity at Goosey Lodge⁴. This shortfall in waste recovery capacity will become an acute problem for Councils and private sector waste producers in the sub region during this period. In addition there are few facilities in Northamptonshire and although a site has been allocated in Milton Keynes Waste DPD **[CD6/18]**, there is no indication that there is a firm proposal on the site.

6.30 Although there was some dispute about the need figures between the principal parties their overall positions were not quantitatively dissimilar. The differences stem from the fact that the appellant's evidence fully took on board the recent DEFRA report **[CD6/7]** showing a significant reduction in C&I wastes but challenged the Council's figures in relation to the prospective provision of capacity at Goosey Lodge. The net effect of these differences roughly balanced each other out.

6.31 The Council sought to rely upon the figures in its POWCS but the DEFRA report post-dated the emerging strategy **[CD3/2]** and its technical papers **[CD3/8]**. The point about Goosey Lodge was noted by the Council as a concern (but for

⁴ Goosey Lodge is an energy recovery operation on the edge of Bedfordshire (near Rushden, Northants) which uses C&I and MSW, mainly processing animal by-products and other non-hazardous waste, including agricultural and food products

different reasons - see footnote 6 at page 36 of the technical papers). Mr Leeson's evidence at paragraphs 6.10 – 6.28 of his proof regarding the effect of taking a significant increase of MSW at Goosey Lodge was not seriously challenged. Mr Warren had visited the operators of that plant the day before the Inquiry started and he reported that the owners were considering the potential for accepting further biomass wastes, which is not surprising given that the facility has been operating significantly under capacity for a number of years. It is not put forward as a strategic site in the POWCS. Mr Leeson confirmed that he knew of no other operation in the UK which had made a similar change to its operation, which was not contradicted by the Council.

6.32 Therefore, as at the date of the close of the Inquiry there is a clear need for the facility. This is a matter which should be given significant weight in the determination process.

6.33 A proposal on one of the preferred option sites in the POWCS has been significantly advanced. The proposals for Rookery Pit South are currently before the Infrastructure Planning Commission (IPC). The hearings are due to commence on 13 May 2011 and are scheduled to finish by the end of July. A decision might be anticipated by the end of the year or early next. However, there are over 1,000 objections to the proposal including several planning authorities, statutory bodies and this Council **[A6 & A7]**. The appeal site is referred to at paragraph 9.6.2 at page 54 of A6. The nature of the Council's case at this inquiry has not been reported to the IPC. This appeal proposal is likely to be determined first. In such circumstances regard should be had to the proposals on the Rookery site but it would be inappropriate to assume that a Development Consent Order (DCO) will be granted. Mr Leeson confirmed that the scale of the Rookery proposal if developed, would probably freeze out other proposals proximate to it, including the appeal scheme. Mr Leeson acknowledged that an approval to both the Rookery Pit scheme and the appeal proposals would represent an excess of capacity. However, he considered that this was only a notional point as both were unlikely to be built. In such circumstances there is no planning harm which needs to be managed by either a refusal or delay in granting planning permission in the present case. Mr Leeson addressed this proposition directly in re-examination. He confirmed one of the key planning objectives of PPS10 (paragraph 3) was to encourage competitiveness. A grant of permission to the appeal proposals would simply allow for greater competition in the forthcoming local authority procurement processes for MSW. In Mr Leeson's opinion, this would be: "a good thing, having several alternatives makes for competitive tendering". The scale of the Rookery Pit proposal is over 5 times larger than the appeal proposal and it is difficult to see, therefore, how a grant of permission in the present case could be seen as fatal, in itself, to its prospects for the grant of a DCO.

6.34 Overall, there is no need for undue concern about the emerging proposals for Rookery Pit and the appeal scheme should be determined expeditiously having regard to its own merits.

Prematurity

6.35 Paragraph 5 of PPS10 sets out the decision making principles in relation to this topic. It confirms that any refusal of planning permission on the grounds of prematurity will not be justified unless it accords with the policy in The Planning System: General Principles. The first example immediately following paragraph

18 states *"where a DPD is at the consultation stage, with no early prospect of submission for examination, then a refusal on prematurity grounds would seldom be justified because of the delay which this would impose in determining the future use of the land in question"*. The current Waste Core Strategy is at an early stage and will not be ready for submission for examination until next year. It was agreed that this could not be described as 'early' in the context of the example given in the guidance. The Council have conceded (paragraph 5.22 of Mr Warren's proof) that "Refusal on prematurity grounds on its own would not be justified".

- 6.36 The point is further underlined at paragraph 9.8.7 page 57 of the Council's representations to the IPC **[A6, A7]** where it is confirmed that "the emerging Waste Core Strategy carries little weight in decision making however until it reaches submission stage". A refusal, even partially on the grounds of prematurity, cannot be sustained on this analysis. However, even the primary preconditions for a prematurity argument are not present in this case. The appeal proposal is not "so substantial" that granting permission could prejudice the DPD by predetermining decisions about scale or location of new development which are to be addressed in the DPD.
- 6.37 Mr Warren accepted that the scale of the appeal proposals was at the small end of the spectrum for such facilities. He could not offer any explanation for the identification of the 75,000 tonne threshold for 'strategic facilities' in the POWCS, **[CD5/5]**. The Council does not appear to be making a prematurity argument against the Rookery proposal which is over 5 times larger. Overall, there is no substance to the prematurity point.

Impacts on the Local Highway Network

- 6.38 The proposals would be unlikely to have a detrimental effect upon the free flow and safety of existing road users in the locality **[A5/1 & 5/2]**. A detailed Transport Assessment was submitted as part of the planning application. The highways and transport policy team of Bedford Borough Council confirmed **[CD1/1]** that the assessment was adequate and satisfactorily assessed the traffic impact of the proposal. Further highways information was submitted with the second application **[CD2/4]**. The identified level of impact on Bedford Town Centre was deemed to be acceptable. Highway issues were not identified in the reasons for refusal of the application.
- 6.39 The detailed impact assessment tables show that there is considerable spare capacity in the network. In particular, tables 8, 9 and 10 (pages 25 and 26 of Mr Brant's proof) demonstrate the proportional increases in traffic attributable to the proposed development would be small.
- 6.40 The assessment of impacts did not take into account the likely fallback position of some other form of traffic generating development taking place as part of the existing planning permission for B1, B2 and B8 uses. The appeal site forms part of the larger Twinwoods Business Park which is currently under utilised. Although residents have become accustomed to the relatively low activity levels at the estate, the evidence demonstrates that considerably greater activity occurred in the past and would likely occur again, at some point in the future, under the terms of the extant planning permission. Mr Brant sets out the analysis of the B8 floorspace sacrifice on page 42 of his evidence. The landowner has agreed to relinquish part of the B8 permission in a manner designed to neutralise the effect

of the 'new' 90 HGV trips per day associated with the appeal proposals. This point did not appear to be taken on board in the evidence of local objectors.

- 6.41 Local people remain sceptical about the likely effectiveness of the lorry routing agreement on the basis that one cannot entirely legislate for individual driver behaviour. Whilst this is true, to a degree, there is no doubt that lorry routing agreements can and do have a considerable effect. This was confirmed by Mr Burridge [IP13] who stated that as an employee of a responsible company he had always followed such directions. The principal contract underpinning the viability of the scheme is likely to be one of the local authority MSW contracts. In this context a routing agreement is likely to be capable of being enforced by the commercial arrangements which would be put in place. Likewise, the majority of C&I waste will likely be via significant contracts. Waste lorries can readily be identified and reported for transgressions of the weight restrictions. Whilst the system is unlikely to be perfect, a vigilant community combined with proper planning controls is likely to be highly effective in addressing local concerns.
- 6.42 In any event, this concern is just as applicable to any prospective users of the business park and it is difficult to see what else could be done to address the issue save for greater lobbying for enforcement of the current restrictions. The emerging ADDPD identifies Twinwood Business Park as an existing employment site. If the problems of 'rat running' were of such significance then this policy approach would need to be altered. Such an approach would then need to de-prioritise the reuse of the existing brownfield elements on the site which are significantly under used. In effect this would reverse the priority given to brownfield land in the RSS, the WLP, the CS and emerging policy. Such an approach would not be tenable.

Impacts on Landscape and Visual Amenity

- 6.43 The appellant's evidence is set out in the landscape and visual assessment and landscape character assessment forming part of the environmental statement and in the evidence of Mr Bright. Paragraph 5.1.2 of his proof [A3/1] says that: -

"There is little doubt that there will be no substantive effects upon landscape character because the development will not affect existing sensitive features and will in the long run and in conjunction with the masterplan, likely lead to an improvement, over and above the current landscape.

The visual effects have been thoroughly assessed and in most cases the significance of the effect will be below a threshold whereby the effects may be considered as significant in terms of environmental impact assessment (EIA)".

- 6.44 That evidence was the product of comprehensive and careful analysis and was not materially challenged in the Inquiry process. The appeal proposal would be in the middle of existing buildings on the business park and would not have an unacceptable impact even without mitigation. Nonetheless, the appellant is committed to the delivery of the landscape masterplan. The effects of this are described in the ES and at section 3.2 of Mr Bright's proof.
- 6.45 The Council's committee report [CD1/1], on page 26, summarises the landscape impacts as follows: -

"To conclude on the issue of landscape and visual impact, it is considered that, subject to the implementation of the landscaping proposals, the main reception hall, building and stack would not be visually intrusive or harm landscape views, particularly those across the valley of the River Ouse. From those vantage points where the facility would be most noticeable, it would still be seen in the context of the existing Twinwoods estate. As such, it is judged that the proposal would not be at odds with PPS7, policy GE9 and GE18 of the MWLP and saved policies NE12 and NE20 of the BBLP".

6.46 The appellant agrees with this analysis.

Residential Amenity/Air Quality/Health Risks and Perception of Harm

6.47 Mr Stoaling gave evidence on behalf of the appellant in respect of air quality issues **[A4/1]**. His section 3, on legislative and planning policy and section 4 on the permitting regime sets the relevant context. The Inspector specifically asked to be addressed on the relationship between the planning and permitting regimes. Paragraph 10 of PPS23 confirms the complementary nature of the regimes. The planning system is to focus on the acceptability of the land use rather than the control of the processes or emissions. Paragraphs 26 to 28 of PPS10 deal with division of responsibilities between planning and pollution control authorities. Paragraph 29 makes it clear that local environmental impacts should be taken into account in determining planning applications for waste management facilities. In particular the locational criteria at Annexe E (g) and (h) deal with emissions to air, including dust and odours. Waste planning authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced. Paragraphs 30 and 31 of PPS10 provide advice on health issues. Local authorities are advised to avoid carrying out their own health studies. Rather, they are directed to draw on government advice and research, and consultation with relevant health authorities and agencies, when determining the locational implications of planning applications.

6.48 In this case it is plain that the planning authority did follow that advice. It is clear from the officers' report to committee that there was a comprehensive and detailed analysis of the topic in the report, principally to be found under the topics of pollution control, air quality, odour and dust on pages 22-24 **[CD1/1]**. The Environment Agency was consulted and raised no objection on air quality and health grounds. The Agency are aware of the acute local interest in the topic given the direct contact with them by some objectors but no objection or further comment has been forthcoming.

6.49 Likewise, no other relevant health authority has objected. Dr Inskip was aware of the role of health authorities in the process but had not sought to lobby them in the context of his objection.

6.50 Mr Goodyear produced a substantial statement **[IP5]** highlighting what he claimed to be deficiencies in the air quality modelling work. There was a lengthy and detailed cross examination of Mr Stoaling on the topic. In the end his concerns boiled down to the identification of erroneous Pasquill categories in the initial odour assessment and concern about the input parameters to the ADMS model. A written rebuttal to the Inquiry addressed each of Mr Goodyear's points in turn **[A12]**. Mr Stoaling also produced a Human Health Risk Assessment (HRA) **[A4/3]** which, in scope and detail, amounts to the type of work normally associated with an environmental permit application rather than a planning

application. At the end of cross examination it was clear that Mr Stoaling had addressed most of Mr Goodyear's concerns with the exception of information on the input parameter of the Monin-Obukhov length. Mr Goodyear advised the Inquiry that he anticipated the correct length for this parameter should have the value of one. Mr Stoaling confirmed the following day, by producing extracts from the inputs parameters to the model that, in fact, the Monin-Obukhov length did have a value of one **[A9]**.

6.51 Although Mr Goodyear questioned the use of Pasquill stability classes B and C, it was confirmed by Mr Stoaling that the Pasquill classes were not relevant to the outcome of the odour assessment process. The key issues in the assessment are wind speed and direction. These parameters were correct in the assessment and the conclusions of the work carried out in the original ES may safely be relied upon. Mr Goodyear wrongly extrapolated this error into other parts of the analysis including the ADMS modelling, which was confirmed by Mr Stoaling as irrelevant to the process **[A11]**.

6.52 Mr Stoaling's review of the previous work and his own validation of the modelling provides a solid forensic platform upon which to go on to consider the health effects.

6.53 Mr Stoaling deals with these issues comprehensively in section 9 of his main proof under the headings of Odour, Fugitive Dust (and Stack PM10) Traffic Emissions, Dioxins, Modelling approach, Health impacts and Performance in other similar facilities. His review of the topic properly references government guidance and advice from other agencies including advice from the Health Protection Agency. This review is precisely the type of exercise envisaged in paragraph 31 of PPS10. It is sufficient in itself to demonstrate that there is no justifiable reason for withholding planning permission on these grounds. However, in the light of the significant, late increase in the number of objections (many of which related to health concerns) Mr Stoaling did bring forward and complete the HRA that the appellant's consultants were undertaking as part of the background to an environmental permit application. This assessment shows that the potential risks to health arising from the operation from the Bedford ERF are all well within the limits prescribed by the WID, the Environment Agency and even the United States Environment Protection Agency (US-EPA).

6.54 Dr Nuno Faria was concerned about some aspects of the HRA. There was a lengthy cross examination of Mr Stoaling by him. Dr Faria referred to various other published works during the course of this cross examination, which was later supplied to the inquiry **[IP3]**. The provision of this additional information by Dr Faria was helpful but Mr Stoaling confirmed via an email **[A20]** that these authorities raise no new points that need to be addressed separately from the evidence already given.

6.55 Overall, the appellant invites a finding that there is no sufficient risk to human health or associated issues arising out of the operation of the proposed EFW that would justify withholding planning permission on those grounds.

6.56 Beyond a reasoned assessment of risk lies the issue of public perception. Public fears can be a material planning consideration. **[IP10]** However, that does not mean that it will be so in every case in which it is raised, or that it will be given significant weight. Whilst it may have some relevance in some cases (there was

reference to the Sinfin Lane case near Derby **[CD7/7]**) the facts of the present case do not support adverse findings on these grounds.

6.57 Firstly, the topic should be approached with caution. Whilst unfounded fears can sometimes have land use planning consequences which ought properly to be taken into account it is important not to appease that fear in itself. In the present case the two potential land use consequences claimed to result from the fear, apart from individual human anxiety, is the potential depopulation of local villages and the effects on Mr Towler's business.

6.58 Whilst some people may regard Milton Ernest and other surrounding villages as less pleasant places to live if the EFW were permitted, there is no credible evidence to suggest this will lead to a likely, harmful loss of population. Milton Ernest and the other villages have a great many advantages as pleasant places to live. The presence of the existing stack on site and the process emissions from it over a great many years do not seem to have had an impact on the popularity of the villages. The villages are all some distance from the appeal site, which sits in the heart of an established industrial complex. In the circumstances the appellant submits that there is no sufficient evidence to warrant a refusal on this ground.

6.59 Likewise, Mr Towler's concerns **[IP8]** are not justified by the evidence. Neither Mr Towler nor Ms Towler produced any evidence to demonstrate that the effects on the family's farm were likely to be justified. There are a considerable number of ERFs constructed in the UK and Europe. Despite a scientific background, Ms Towler did not seek to review or produce any relevant literature and produced no objective evidence to justify the family's concerns. Instead she preferred to rely upon a blend of reason and emotion. She claimed the emotional responses spoke for themselves. They do, but not to the validity of her point. There is no forensically robust basis upon which the appeal could reasonably be refused on these grounds.

6.60 It was suggested that the Towler family had, "a right not to have their reputation tainted" (as an organic farming business). Human rights were mentioned but, in the end, Miss Towler did not report back to the Inquiry as to whether a specific infringement was being claimed by her or her family.

6.61 On 10 May 2011, Mrs Turner **[IP14]** gave further evidence of her fears about pollutants and the effect they may have on her farming and horticultural activities. She claimed this fear was based upon two research papers. Mr Stoaling produced a further rebuttal to this suggestion via email (also dated 10 May 2011 at 12:04 **[A21]**). In this he confirmed that the context for the papers were that the animals (goats) were fed, under laboratory conditions, up to one third of the lethal dose of dioxins. This had an adverse effect on the goats. It is difficult to see how this data could provoke even an emotional response which would be relevant to the proposed development. Mr Stoaling's rebuttal goes on to confirm that "the location of maximum Ground Level Concentration has also been classified as a 'farm'". This together with his irrigation assumptions takes the worst case scenario. He remains confident in his HRA.

Overall Conclusion

6.62 Overall, a determination to allow the appeal and grant permission would be a determination in accordance with the development plan. The location and its proposed catchment meet the terms of the RSS and the MWLP including when

considered in the light of the most up to date policy. This includes the rWFD and the 2011 Regulations implementing it into UK law, as well as the direction of travel of the Government's policy towards zero waste to landfill.

6.63 Although there is no requirement to prove need there is, nonetheless, a compelling case on these grounds.

6.64 The local highway network has considerable spare capacity and there would be no unacceptable impacts on the local highway network arising from the proposals, without mitigation. This is especially so in the light of the appellant's offer to offset traffic generation against existing permitted capacity for B8 development.

6.65 The proposal will have no harmful significance on its local landscape setting or visual amenity. Rather, the implementation of the masterplan will improve things.

6.66 The proposal will have no material impacts upon residential and other amenity arising from air quality or health related issues. There is no sufficient evidence to justify refusal on the grounds of the claimed adverse land use consequences of public fear which would, in itself, be unjustified by reference to reasoned analysis.

6.67 The appeal scheme will therefore help meet the overall objectives of important policies without materially contradicting others, whilst at the same time meeting a compelling need. For these reasons the appeal should be allowed and planning permission granted, subject to conditions and the terms of the unilateral undertaking.

7. The Case for Bedford Borough Council

The material points are:

7.1 This is an application for a waste recovery plant which is one level higher in the Waste hierarchy than disposal at landfill. It is quite clear that policy at all levels is in favour of communities taking responsibility for their own waste. This is so in National, Regional and Waste Local plan levels. Policy also seeks to ensure that waste is dealt with close to the source of its arising and that there is not importation in the Plan area. This is a site that is in the wrong place to meet sustainably the arisings in Bedford Borough, Central Bedfordshire and Luton. It would involve waste being transported further from the source of waste.

7.2 In addition a Core Strategy is being promoted by the Waste Planning Authority. The Preferred Options Core Strategy **[CD3/2]** has already been widely consulted upon. A combined Pre-submission draft is due to be submitted in the autumn 2011. It is quite clear that better located sites have been found that can meet the needs for waste in the area. The regional targets can be met easily on the preferred sites. It is thus premature to be promoting a site which is contrary to the location of sites promoted in the Core Strategy which are conspicuously better in locational terms.

7.3 This is an application that has been objected to by all levels of democratically elected people and bodies. The relevant Parish Councils have all objected and spoken against it. Bedford Borough Council has refused it twice. The MP for the area and the neighbouring MP have both objected. The Waste authorities cannot

be accused of failing to find preferred sites. They have in fact in the Preferred Options found more than enough sites to meet the need.

Policy on waste and location of waste development

National Policy

7.4 National policy seeks to make communities responsible for their own waste. One of the key objectives in PPS10 is to:

“Provide a framework in which communities take more responsibility for their own waste ..”

7.5 The key objective is for communities to take responsibility for their own waste. It does not say that communities should take responsibility for the same amount of waste as is produced in their area.

Regional Policy

7.6 The RSS is part of the Development Plan. The currently correct position legally is that it is correct to give weight to the ministerial statement and Chief Planner’s letter issued on 10 November 2010. This is set out in the Advice produced by the Inspectorate dated 24 March 2011. However this ministerial statement is being challenged in the Cala 2 litigation which the Court of Appeal is currently considering. The Court of Appeal case began on Thursday 5 May 2011 and the Court has now reserved judgment. Thus the position may change during the consideration of this appeal.

7.7 The Regional policy in the adopted RSS **[CD4/15]** similarly says that waste planning authorities should take responsibility for waste within their own administrative areas. Policy WM4 provides that:

“In developing policies in their waste local development documents, and when considering proposals for waste management facilities waste planning authorities should take responsibility for waste arising within their own administrative areas.”

7.8 This is a policy that clearly applies to development control decisions on waste management facilities from the face of the policy. The supporting text (paragraph 11.15) of the RSS adopted 3 years after PPS10 (July 2005) is clear that national guidance promotes local responsibility for waste. It says:

“National guidance promotes local responsibility for waste with the region and each constituent local authority providing so far as possible for management of their own wastes.”

7.9 This was an approach that the appellant in this case did not agree with and thought was misplaced. Their approach was out of step with national and regional policy. The mention of the word equivalent in the supporting text (paragraph 11.6) that deals with targets does not change the position in the RSS policy. Policy WM4 which deals expressly with development control policies must take priority. It is the policy for waste authorities to take responsibility for the arising within their own administrative areas.

7.10 All parties are agreed that the emerging RSS **[CD4/16]** should be given less weight because it is unlikely ever to be concluded policy. However this contains the same policy in WM4 that:

".. when considering proposals for waste management facilities, waste planning authorities should take responsibility for waste arising within their own administrative areas. "

7.11 This policy is not to be read so strictly that it should be applied if it would increase the distances of travel or result in a worse mode of transport. This is explained in the supporting text at 12.28:

"The national policy that communities must take responsibility for their own waste is interpreted as an approach where waste planning authorities plan to manage the waste arising within their own administrative areas subject to consideration of distances travelled and modes of transport"

7.12 However here the effect of this proposal is to increase the distances travelled in comparison with the preferred sites. This proposal does not offer any preferred mode of transport to road travel.

7.13 In other words the basis for National and Regional policy is that each waste authority should be responsible as far as possible for its own waste.

Waste Local Plan

7.14 The relevant policies (W1, 2 and 3) and more of the Bedfordshire and Luton Minerals and Waste Local Plan (MWLP) have been saved in 2007, post the adoption of PPS10. They are consistent with Government and Regional policy in that they seek to ensure that the community will have responsibility for its own waste.

7.15 There are 3 important principles that are set out in policies W1, W2 and W3. Firstly, it is a "*strategic objective*" of the plan to seek "*to achieve county self-sufficiency in managing local wastes*". This is set out in Policy W1. It was confirmed by Mr Owen in cross-examination.

Secondly, it is the aim of the MWLP to reduce the importation of waste. This is set out in W2 which provides that:

"The aim of the plan is to reduce the quantity of imported waste over the plan period 2000-2015.."

Thirdly, consistently with the NAI requirement in the Directive, Article 16, the MWLP seeks to site alternative treatment plant close to the source of the waste. It uses the term 'proximity principle' however it was accepted by the appellant that while the language may have changed the principle still applies. The MWLP provides that:

"The proximity principle indicates that it is more appropriate to site such alternative treatment plant close to the source of the waste, thus minimising the need for bulk transport". **[CD3/1, 5.3.2]**

7.16 In relation to the purpose of these policies this application clearly fails. It is because of its location, poorly sited for the centre of population and hence arisings. It would, unless controlled, inevitably import waste from outside the administrative area and not ensure self sufficiency.

7.17 The interpretation of planning policy is clearly a matter which often involves an understanding of the "thinking and purposes" that underlie the policy (Virgin Cinema v Secretary of State Environment [1998] 2 PLR 24 at page 29 second

paragraph). A legalistic approach to the interpretation of plan policies is to be avoided (R v Rochdale MBC CO/292/2000 at §51)

7.18 The interpretation of Policy W3 must take into account:

- the aim of the plan to reduce importation of waste;
- the strategic objective to achieve county self sufficiency in managing local waste; and,
- the principle of siting alternative treatment plant close to the source of waste.

7.19 When that purposive interpretation rather than a legalistic interpretation is given it can be seen that policies W1-W3 of the MWLP cannot be satisfied if the plant is not well sited to reduce the importation of waste and create self sufficiency and reduce length of journeys. The appellant's legalistic interpretation of policy W3 does not assist. All it argued was that if there was over 50% of imported waste the application should be refused. Mr Owen accepted readily that the policy does not say when development should be permitted.

7.20 The appeal development fails to respect the strategic objective and aim of the policies and so does not comply with them. It is thus contrary to the adopted MWLP. Policy W1 is dealing with the topic of key principles, W2 deals with imported waste and W3 county self sufficiency. These are policies that are critical to the overall objectives of the waste local plan. They are not peripheral policies that can be set aside (see paragraph 51 of Rochdale, above).

7.21 It is possible to impose a catchment area condition in this case. This was common ground between Mr Warren and Mr Leeson at the inquiry. Clearly such a condition will not make up for the wrong location and it would be preferable for such a facility to be on one of the preferred sites in the POWCS. However if a condition is to be imposed the Council's evidence is that it should be the 80% from within the catchment area to accord with the aim and principles in the policies above. There have been other occasions when such a condition has been imposed. The Secretary of State has imposed such a condition at Rivenhall (condition 27). Similarly the East Sussex condition has a higher percentage from within the Plan area than being sought here as do the Sheffield and Hampshire cases **[C2]**. The Peterborough cases submitted by the appellant would not have the effect of ensuring the policies are complied. Mr Leeson for the appellant did not support the condition that had been originally offered, of just a 32 mile radius, because again that would not satisfy the policy.

7.22 It is not correct to view policy W13 as encouraging of these proposals. It only supports energy recovery facilities where they are part of an integrated waste management system in which priority is given to recovery of materials. Mr Owen confirmed that recovery of materials in this context meant recycling in distinction from energy recovery. Mr Owen did not point to any system as part of this application in which priority is given to recovery of materials. The expectation of the plan is that: *"it is expected that they [EfW/ERF facilities] will be developed as part of fully integrated sites, which include capacity for materials recovery and/or waste management plant"* (paragraph 5.12.9 MWLP). The appellant relied upon the words *"essential element"* in 5.12.2. However that must be read in context. In the same paragraph of the MWLP it provides that:

"However waste management systems that are based solely or primarily on energy recovery will not generally be the most sustainable solution. The WPA will not support EfW proposals unless they form part of an integrated system, in which priority is given to materials recovery."

- 7.23 The reasoned justification of the MWLP at 5.12.6 and 5.12.7 does not encourage extra provision of ERF and warns of crowding out of recycling which is clearly higher up the waste hierarchy. At 5.12.8 it repeats the proximity principle: that ERF should be located close to the major source of waste.
- 7.24 Thus the development is contrary to the critical principles and aims that underlie the location of development in the MWLP. It is contrary to the proximity principle to put this plant away from the arisings. It is contrary to the objective of achieving county self sufficiency to put this plant on the northern extreme of the waste authority catchment area. It will not help with the aim of reducing the quantity of imported waste. It is a development only one up in the hierarchy from landfill and does not receive that much encouragement from policy W13.

Bedford Borough Core Strategy

- 7.25 The CS **[CD3/3]** is clear where development should be. It should be in sustainable locations, which for waste is clearly close to the arisings. Policy CP3 sets out the location of development in the growth area. This site is conspicuously badly located for the growth area. The growth area is broadly in the urban area or in the Key Service Centres which are to the South of Bedford. There is no proven need for this to be located in a Rural Policy Area and it is not on the edge of a key service centre so it fails policy CP14. The appellant suggested that there was a tension between policies CP14 and CP11. However this development does not accord with policy CP11. This is not the high value knowledge industry that the plan speaks of encouraging in the first paragraph. Nor has the appellant demonstrated that there are community and environmental benefits as is required by the last paragraph.
- 7.26 It is correct that the CS does not deal directly with waste policy however it is relevant as being part of the development plan. It is also relevant because it shows where development is going to take place in Bedford Borough Council area which is highly material to waste policy.

Prematurity

- 7.27 It is a development that is premature. The Waste Core Strategy consultation document **[CD3/2]** has been widely consulted on. It has selected preferred sites for waste recovery. This site is not one of those preferred sites. It would clearly prejudice the Core Strategy to give permission for this site which is not a preferred site ahead of that strategy being promoted. It would be antithesis of a plan led approach to give permission for a non plan site before the plan has come forward.
- 7.28 This development would clearly *"prejudice the DPD by predetermining decisions about the scale, location or phasing of new development."* (PPS1 General Policy and Principles paragraph 17). If permission were to be granted it would be for a sizeable ERF plant not on a preferred site. Mr Leeson, for the appellant, contended that the grant of this scheme would mean that there was no need for any further facility even in the whole of the catchment area of Rookery South. It would thus prevent, if he is right, the preferred sites coming forward.

- 7.29 It may be that generally a refusal on prematurity grounds would seldom be justified where there is not early prospect of a submission for examination. However here there has already been extensive consultation on a preferred options document with numerous detailed technical papers. The pre-submission draft of a combined waste and minerals core strategy is forecast for autumn 2011 and the submission draft will follow in 2012. Thus there is a clear prospect of a submission draft of the document in the not too distant future.
- 7.30 The location of the preferred sites is based on clear planning justification to put the recovery sites in good locations for the plan area. This is set out in the preferred options. Spatial distribution is explained in paragraph 4.7 of POWCS. This explains where the majority of the population is and considers the location of existing facilities. At 4.21ff of the Preferred Options **[CD3/2]** the document explains why the preferred sites were selected. A key consideration is the existing imbalance between the distribution of population and the location of waste facilities in the Plan area (at paragraph 4.23). This imbalance influenced the selection of the preferred sites. The Sustainability Appraisal (sometimes referred to as the traffic light document) **[CD3/9]** was only one factor in the selection exercise. From the explanation in the Waste Core Strategy Preferred Options it is clear that the fundamental spatial justification took higher priority in the selection of the preferred sites for recovery plant.
- 7.31 Thus this site is premature and ahead of the Waste Core Strategy. This together with the fact that this site is not a preferred site and would exacerbate the problem of distribution of the facilities makes a powerful reason for refusal. It is not a technical prematurity reason relying only on the fact that it is before the Core Strategy but also that it is in essence a bad location as has been revealed by the logic of that document and the spatial distribution of population and facilities.

Vehicle miles additions

- 7.32 The preferred sites were picked following a careful study of the disparity between the provision of existing facilities which is heavily skewed to the North of the Plan area in contrast to population and arisings which are to the south. An examination of the plans reveals this. **[CD3/2, p 33]**
- 7.33 This explains why in transportation terms the preferred sites are better located to serve the location of the arisings. Table 2 of the rebuttal **[A5/4]** confirms that Twinwoods is further on average than the centroids of each of the authority or former authority areas than any of the preferred sites. In other words it is worse in transportation terms than all of the 3 preferred sites. This is a significant difference being a difference of over 10 km one way than each of the sites. Thus every lorry on average would have to go 20 km further if it was going from the centroids to Twinwoods and returning than any of the other sites.
- 7.34 The evidence **[A13, Table 20]** shows that again the Twinwoods site was the worst performing of those looked at. Twinwoods was worse than each and every preferred site in transport terms. However the accuracy of that assessment depends on two critical manual inputs. The first is that the MSW contract was won for Mid Beds. This is clearly more favourable to the appellant than if it were won by Luton, which is equally possible **[A23]**.
- 7.35 If the MSW was spread over the former Mid Bedfordshire and South Bedfordshire that would have been less favourable to the appellant as was

accepted by Mr Brant in cross-examination. That would have been a medium option that was possible. Even for Bedford BC, Elstow North is better placed to the centroid (Table 2 of the Rebuttal **[A5/4]**). That was the first assumption that was favourable to the appellant and not apparent from the proof.

7.36 The second and potentially more significant matter was the sensitivity to travel selected weight of 1.5. This was done by Mr Brant unilaterally without talking to Mr Leeson. It does not tally with what Mr Leeson said people were actually doing. Revised Table 20 assumes that for Twinwoods waste would not come in any volume from Luton to the facility because (only 6.69%), although the later evidence sets the C&I figure higher at 12.01%. Thus the sensitivity to travel that was assigned manually was assumed to be so high that operators would not take waste in any quantity on that journey. However that assumption does not accord with how operators are currently behaving. The evidence is that waste from Bedford was currently making the journey to incinerators in Coventry and Birmingham. Thus the reality is that drivers of waste do not behave in the way modelled. This raises severe doubts over taking the 1.5 factor. If there is a willingness to travel further, clearly more waste would be assumed to come from Luton and South Beds with worse vehicle miles additions by comparison with the preferred sites.

7.37 No witness at the Inquiry spoke to the CO₂ figures. If permitted, the Covanta scheme at Rookery Pit South would open as is scheduled at around the same time as the appeal scheme and would divert trade from Covanta from the Council's area. This would worsen the CO₂ position by the increased emissions from greater travel distances. The evidence of Mr Brant confirms this to be the case even if he does not correctly assess the extent of this. The appellant made clear for the first time in their evidence to this Inquiry that the development would not proceed without a municipal waste contract **[A2/1, paragraph 4.3]**. They are not bidders for the Central Bedfordshire MSW contract. Mr Leeson did not know if any of the bidders actually relied upon this site for their bids to the authority. This may well mean that it would not be built until after it was originally intended even if permission is granted. It is unclear thus whether in reality it would provide for any period when other sites were not on stream. Even if it did the assumptions in the CO₂ analysis in the second ES, which no witness at the Inquiry dealt with directly, assumed that all the waste would otherwise go to Landfill. This did not sit with the evidence of Mr Leeson who said that currently some Bedfordshire waste went to Coventry and Birmingham to ERF sites. Thus even if this site could open before further other better located capacity it may save a longer journey for a short period only to perpetuate longer journeys for the long term.

7.38 In conclusion it is a major disadvantage of this site that it will mean that there are longer journeys to service the centres of arising and population of the Waste Authority Area. This was a key consideration of the POWCS and is borne out by the evidence at the Inquiry.

Need

7.39 National and Regional policy is such that what waste authorities are asked to do is to provide for the apportionment in their areas. If vastly more capacity is provided it clearly would not serve the end goal of self sufficiency of local authority areas. It is not desirable to overprovide for recovery lower down the

waste hierarchy. The RSS clearly does not say that authorities should over provide for energy recovery which is the lowest in the hierarchy after landfill.

7.40 The method of working out need in the RSS is clear. It says that:

"The targets should be applied to the tonnages forecast to arise within each waste planning authority area and recovery capacity equivalent to these amounts should be provided." **[CD4/15, paragraph 11.6]**

7.41 The targets are set out in the RSS. They are described as challenging but achievable and are for MSW 50% in 2010 rising to 70% in 2015 and for C&I 72% rising to 75% for the same years. There is no dispute about the targets.

7.42 The methodology is clear. One multiplies the targets by the tonnages forecast to arise. In the end this was accepted in cross-examination by Mr Leeson. He offered no policy justification for his alternative method of looking at the amount that went to landfill.

Arisings

7.43 Thus it is necessary to look at arisings. The reality is that if anything the authority has taken higher numbers than Mr Leeson thought appropriate.

-MSW. For MSW Mr Leeson took lower numbers for arisings. He took a figure of 306,000 **[A1/1, paragraph 4.4]** in 2009/10 whereas the figure the authority took for the same year was 326,633 **[CD3/8, page 29]**.

-C&I. For C & I the figures are similar. Mr Leeson took a figure of 428,000 **[A1/1, paragraph 4.20]** whereas the figure the authority took was 504,116 **[CD3/8 page 32]**.

- C&D. For construction and demolition the amount that could be recovered was in any event small. Mr Leeson estimated it at 11,000 tonnes **[A1/1, paragraph 4.28]**.

Product of Arisings and Targets

7.44 The Council used lower arisings figures than the RSS. This was reasonable in the light of information that arisings had been declining. Indeed the appellant's witness suggested that arisings should be even lower. But whichever figure was taken the methodology remained the same to calculate the capacity required.

Existing Facilities

7.45 There is no dispute about any of the existing facilities' capacity apart from Goosey Lodge. Even at Goosey Lodge it is accepted that under planning legislation it is able to take 255,000 tonnes of controlled waste **[A1/1, paragraph 6.13]**. The EP allows 438,000 tpa. In this context it was surprising that the appellant through Mr Leeson sought to rely on a statement in a footnote to a technical paper which was factually incorrect and which he knew was incorrect **[CD3/8 page 36]**. The authority after writing the technical paper discovered further information about the complicated planning history of Goosey Lodge which showed the footnote to be incorrect.

7.46 Furthermore it is apparent that Goosey Lodge in fact in the last 12 months reported actually took 50,000 tonnes of controlled waste **[CD6/12 and A1/1 paragraph 6.12]**. In cross-examination Mr Leeson explained that he thought

this would double. Thus there clearly is a way that they are able to take organic biodegradable waste which does not compromise their ROCS presumably from either MSW or C&I streams.

- 7.47 The only point that remained of Mr Leeson's was a commercial point. He seemed to suggest Goosey Lodge should not be treated as capacity for waste even though it is allowed to take such waste but does not do so because it was not in their commercial interest. However he took this point without having spoken to the operator, Ancillary Component Limited, and without knowing how much they charge or receive for animal by-products. The evidence on this point of Mr Warren is to be preferred. He spoke to Mr Henson from Ancillary Component Limited. Mr Henson told him that with relaxations in the rules post BSE the animal by-products was a diminishing waste stream and he was actively considering moving further into waste. Provided that the waste was sorted into the biodegradable part there was no difficulty in keeping the ROCS.
- 7.48 Thus it is clearly permissible in existing capacity figures to have regard to the current useable capacity for controlled waste which is permitted and capable technically of being used. The operator is actively considering expanding the controlled waste take which is currently 50,000 tonnes because their other stream is diminishing.

Overall figures

- 7.49 The result is that the amount of tonnes that are required which is set out in 5.1 of Mr Warren's proof of 93,106 tonnes in 2013/14 rising to 238,460 by 2027/8 can easily be met on the preferred sites. It is of course correct that the authorities support the principle of such development at the location of Rookery Pit South but not the scale of the Covanta proposals.
- 7.50 The size of the preferred sites by comparison with this site clearly demonstrates that there is easily sufficient capacity at the preferred sites to meet the regional need. The Covanta proposals are for 585,000 tonnes which clearly dwarfs the need. The other sites of Elstow North is 6.5 ha. Brogborough is 15.4 ha and Rookery Pit South is 107.2ha. That all compares with 2.29ha at this site. The reserve site is 24.11 ha. Thus there is no difficulty in meeting the regional need on the preferred sites. No reduction should be made for the existing capacity at Goosey Lodge. Even if a reduction is made the demand figures can still easily be met at the preferred sites.
- 7.51 Thus the need for this facility is not so great that it justifies putting it in the wrong place ahead of the Core Strategy.

Overlapping controls

- 7.52 The authority have been asked to consider the policy on what is the relationship between the controls of the Environmental Permitting regime and whether those matters can be considered as material considerations on the planning applications.
- 7.53 It is difficult to improve upon the formulation of Government policy on this issue in PPS10 and PPS23. The relevant paragraphs of PPS10 are 2.6ff and of PPS23 is paragraph 10.

Conclusions

- 7.54 This development has been universally objected to by all the democratically elected organisations. This is not a waste authority that has refused to find sites for such development. In fact the emerging Waste Core Strategy has more than enough sites to meet the Regional need.
- 7.55 This development is contrary to National, Regional and Waste Local Plan Policy that seeks waste authorities to be self-sufficient, site plant close to waste arising and not import waste. It is contrary to the location of development in the Core Strategy. It is contrary to the emerging Waste Core Strategy by promoting a new facility not on a preferred site. It is premature and in the wrong location and will result in further longer HGV journeys. It is not needed because the Regional need when worked out with the best forecast of arisings can easily be met on preferable sites.

8. Other local authority groups

The material points were:

- 8.1 **Bletsoe Parish Council, Mr E Bean (Chair) [10 and IP11]**. Concern was expressed that, although the planning decision had been made by Bedford Borough Council, their officers had not felt able to appear and defend it, following officers' positive recommendations for a second application on the site which had subsequently been overturned. Local people expected the implementation of policy that would protect them and the countryside from such inappropriate development. The problems had been made worse by the creation of unitary authorities with waste being handled by an adjoining authority and with a lack of resources. The lack of wider consultation had prevented them from being a Rule 6 party to the appeal and local people and their representatives had to do their best in fighting the appeal.
- 8.2 The site had been developed in the post-war period for aeronautical research, including wind tunnels, and had not changed much apart from the later addition of the Yarl's Wood IDC. The same roads serve the site from that period. The site had declined from the late 1960s to 1997. In recent years there had been little traffic and the main road to the site from Clapham had closed to reduce costs in July 2010. There had been significant problems of rat running to the site by drivers bypassing Sharnbrook roundabout. The waste would all need to come in by road and there would also be lorries taking other material, like bottom ash away. The recovery of energy from the plant was also questioned. There had been problems with similar plants like the flagship Isle of Wight plant which had been repeatedly closed due to high dioxin levels and there had been little electricity generated. The infrastructure for the District heating system proposed for use on the site had not been used for over 15 years and would need to be replaced before use. There had been concerns about other gasification plants in this country and elsewhere in Europe about emissions.
- 8.3 The appellant's evidence from Mr Brant seemed extensive but relied on data collected before 2000 and had little regard for the new development in the growth area (about 16,270 houses and about 75ha of new employment land over the period 2001-2021) set out in policies CP6, CP10 and CP11 of the CS **[CD3/3]** and the Council's monitoring reports **[IP12]**. The evidence presented lacked clarity and was not supported by a confidence check pinpointing notional centroids of the respective models. The amount of waste from Luton and South

Bedfordshire had been understated. This had led to the model of the vehicle movement and the implication for CO₂ being flawed. The model had not been re-run, leaving only flawed information before the inquiry. The growth area south of Bedford means that the waste arisings has moved southwards towards the sites proposed in the emerging waste strategy **[CD3/8]** and away from Twinwoods and Goosey Lodge. The evidence on transport also did not take into account the need for waste to first go to the waste transfer station at Elstow in the south and then to Twinwoods in the north.

8.4 Mr Leeson's evidence shows that there is need for a facility but our view is that it would be better met south of Bedford. The discounting of Goosey Lodge is based only on the uncertainty of the operator's intentions, when it is clear that there is spare capacity and the operator is seeking to diversify. The sites at Rookery South and Elstow should not be discounted on the basis that they might not be granted permission or consent. The Rookery South proposal by Covanta is only objected to by the Council in terms of its scale, likely catchment area and overprovision **[A6, A7]**. It is a preferred location in the emerging WCS and a smaller facility there might be acceptable.

8.5 There are concerns about CO₂ emissions and achievable energy recovery **[IP9]**, supported up by data from the proponents of the Derby Sinfin site at permitting stage. There is also significant concern about the health and safety of detainees at the Yarl's Wood IDC and public safety concerns if an evacuation were required. Although the part of the centre which was destroyed by fire has not been rebuilt there is permission for this, or an alternative use as a medium secure unit, adding 400 further people. In addition, there are other users of the business park, like Bodyflight, which could be at risk.

8.6 Twinwoods is poorly located in terms of need, sustainability, location, transport, traffic impact, journey distances, access, waste hierarchy, catchment area and public safety. The issues of emissions, public health and safety and traffic are a major cause of public fear and concern and nothing has been put forward to allay those fears or evidence that would justify setting aside the locational recommendations of the emerging WCS. As such the appeal should be dismissed.

8.7 **Milton Ernest Parish Council, Mrs D Inskip, Chair. [11]** The PC's conclusions are that there is no proven need for the facility in north Bedfordshire. The plant would not contribute to zero landfill as 25% by weight bottom ash still has to be removed and the process is only one step up from landfill. The site would not fulfil the proximity criteria (NAI) and the 60:40 split proposed would mean more CO₂ emissions compared to sites in the south of the county. The immediate area already contributes over 10MW of energy (1.8 MW from Biogen Greenfinch, 2.1MW from Biogen Westwood and 7MW from Goosey Lodge). A similar amount is promised from the plant but the evidence **[IP9]** suggests that this rarely happens and significant investment in infrastructure would be needed if the electricity and heating systems were to be used.

8.8 PPS10 says such development should only be considered if human health would not be endangered or the environment damaged. In this case the proposal would be contrary to policy CP2 of the CS **[CD3/3]** which requires development to enhance human health and safety, due to emissions, and the character and quality of local landscapes are preserved and where possible enhanced, as the building and 58m high stack will be visible for miles around. It would also be

contrary to policy CP11 of the CS since specific community and environmental benefits would not accrue from the site and policy CP13 as it would not support the rural economy or housing in the rural area, with only 30 jobs being created and significantly more likely to be discouraged. The area is covered by countryside policies and borders on a green infrastructure opportunity zone in the Great Ouse valley.

- 8.9 The appellant's response **[A22]** to local residents is welcomed but seems to exclude Thurleigh. The traffic levels for HGVs on Milton Road in this area are already high. This is likely to increase, as are the numbers through Milton Ernest since the weight restrictions are less likely to be enforced with police cut-backs. The village's Grade I listed church would be likely to be damaged as a result. In addition, contrary to the appellant's assertions, the EA were not asked about the air quality modelling, rather than them having no comments. Finally, although there might be the legislation in place to prosecute firms which emit excess dioxins and PM2.5 (as in a recent case in Massachusetts) by that time it is too late and damage has been done to the local population, the rural economy and generations to come.
- 8.10 **Thurleigh PC, Mr D Goodyear, Member [IP5]** There are two main concerns: air quality and transport. Comments on air quality relate to the second application but were informed by the material before the inquiry. Concerns about air quality relate to land use and should not be left until the permit stage for consideration. There is also a lack of information about the safety of the plant, including missing sections from the process diagrams, no assessment of accident scenarios, concerns about the dispersion modelling and the lack of ADMS validation for particulates. The model used incorrect Pasquill stability classes B and C in assessing odours and therefore the buffer zones are incorrectly specified. The modelling gives an overoptimistic view of air quality at sensitive receptors due to the value used for surface roughness and might have used further parameters equivalent to stability B and C and an incorrect precipitation factor. No sensitivity analysis has been performed, in particular at times of extreme cold and calm experienced in winter.
- 8.11 In terms of transport, there is a preference at all levels of policy for sites that comply with the proximity principle and that can be served by different modes of transport, other than road. Four other locations comply with these policies and the appeal site does not do so. There is strong evidence that the roads used will not be those identified by the appellant when HGVs deliver waste and take away bottom ash. The traffic flow assessments show an intention to ignore the county's waste management needs. A large proportion of the movements are shown to and from the M1 via the A428 or the western by-pass. If the catchment area is constrained by condition then the effects shown on Bedford town centre will be incorrect.
- 8.12 **Thurleigh PC, Mr M Towler, Chair. [IP8]** Mr Towler is a local organic farmer, with 500 breeding ewes, a farm shop and holiday lets. He and 6 other named local farmers are concerned about the effect of dioxins in emissions from the proposal being deposited on areas used for growing food and then eaten by humans. The finer particles are the most harmful and create the greatest threat though with minimal legal consequence to the polluter, since it is difficult to prove, for example a recent case in Iceland. The HRA **[A4/3]** produced at the Inquiry shows the risk to farmers but not the risk to sheep which graze outside all year. Dioxins are known to damage human fertility and it is likely that the

fertility of the sheep and the health of their offspring would be adversely affected. Concerns about the cumulative effects of pollutants from the plant have not been addressed by the appellant, despite a number of requests for information. Customers will be driven away and its adverse effects will impact on the livelihoods of local farmers and the community.

8.13 North Beds Villages Liaison Group, Cllr Mrs J Walker. The group represents a number of parishes to the north of Bedford. The group wishes to ensure that the widespread local concern about the proposed development, as expressed to prospective councillors during the canvassing for the local elections, is taken into account. Issues raised by local people included: health matters; traffic and transport; and, the urbanisation of the countryside and landscape. The main issue raised was the unfavourable relationship of the proposal to growth areas in the county. The site has been difficult to market, due to its rural location and rundown ex-military style buildings but the proposal would have a significant effect on the local community and there is a need for other alternatives to be considered.

9. Interested parties

In summary, the material points were:

9.1 Cllr D McMurdo (District Councillor for Sharnbrook). The main concerns were the highway infrastructure, which in the rural hinterland were not built for modern traffic. The appeal application was regrettable and it had not been widely advertised or consulted on, resulting in a large response later on. Local communities were concerned that the proposal went beyond local waste management and waste would be required from a wider area to supply the 24-hour operation of the burner. He accepted that there was a need locally but that the proposal was in the wrong place. The A6 was no longer a trunk road, and it was some distance to trunk roads like the A45 to the north and the A421 to the south of Bedford. The access roads to the site were not good and there was little confidence locally that the lorry routing agreement would be adhered to, especially with the existing behaviour of drivers of vehicles over 40 tonnes in the locality, or conditions enforced. The issue was important to Sharnbrook, which lies in the Ouse Valley, in terms of the effect on the landscape which would be blighted for many years by the 58m stack. The development would be a large disadvantage for the local community. The brownfield site on the business park would have a negative effect on the take-up of vacant floorspace on the business park.

9.2 Mr R Reynolds, Chair Twinwoods Action Group. The formation of the action group has been as a response to a real and present fear of local residents and businesses to the proposal. There is no proven track record for such facilities in the UK. Another incinerator run by Energos on the Isle of Wight had exceeded Environment Agency (EA) limits on dioxins by over 8 times. In this case the permit would be applied for after the inquiry, when health effects should be considered now. The Health Protection Agency has said that modern incineration is safe but there is no certainty about this in the longer term. The cocktail of chemicals emitted by these facilities make it more difficult. The emissions are filtered but that does not take out nanoparticles which can have a severe adverse effect on health, especially asthma, as well as cancer from dioxins. As a result there is fear across all sections of the community, especially parents as there are a number of schools in the shadow of the site. The localised foggy weather along

the Ouse valley does not appear to have been taken into account when looking at the dispersion of emissions.

- 9.3 There would be an adverse impact on local businesses, including farmers with cereal crops and livestock and fishing, due to acid rain and emissions. There would be odour from the plant which is only measured by the EA at the plant rather than local villages and the number of deliveries would mean that doors were often open allowing odour to escape. The construction of the facility would not encourage the use of waste as a resource or recycling. Local business might welcome cheap electricity and heating but there would be more CO₂ produced than from a gas-fired power station. It would also be lower down the waste hierarchy than other solutions and local people would have to take the impact of a large amount of waste for 25 years, including municipal waste for which there is currently no contract in place. If the facility at Rookery South were to be built it would be difficult to source sufficient waste locally. The proposal would have a negative effect on investment locally and only 30 long-term jobs would be created, which would outweigh any benefit.
- 9.4 There would be a wider highway impact than set out by the appellant, due to the use of rat runs, and HGVs would end up on local roads. The access road from the strategic highway network is unsuitable for such traffic. As such the proposal would be contrary to policy GE23 of the WLP **[CD3/1]** and policy BE30 of the Bedford Borough Local Plan 2002 **[CD3/6]**. The site is a landmark with historic connections to Glenn Miller and Concorde, noted for its high technological work and sporting links. The landscape would be adversely affected by the size of the buildings and the height of the smokestack, which would be double the height of the buildings, and seen for miles around. It would adversely affect the character of the landscape and be contrary to policy CP28 of the CS **[CD3/3]**. In summary, local people are highly concerned about the effects of the proposal and their fears need to be taken into account in the decision.
- 9.5 **Miss A Smith, local resident and school student.** She did not wish to see the development and had serious concerns about dioxins being emitted from incinerators, which she knew caused cancer. She was also worried about the effects on her own health, as she has brittle asthma, and on others, as the chances are that the development could cause harm to human health. She was also concerned about the number of vehicles that would turn onto Thurleigh Road from the A6 and go through Milton Ernest. The primary school uses the village hall on the opposite side of Thurleigh Road for additional accommodation and dinners and pupils have to cross the road which would become busier, potentially with more HGVs. Accidents have already happened in the vicinity. The health and safety of the people of Milton Ernest need to be taken into account in the decision.
- 9.6 **Ms S Smith, resident Milton Ernest.** She was concerned about the method of waste disposal proposed at the site, which she said was unproven technology. Waste would be drawn in from a large area, possibly even from north London, with traffic through Bedford Town Centre. There was local concern that instead of recycling, waste would be turned into carcinogenic material which could enter the foodchain through emissions from the plant. There would be an increase in traffic both into and out of the site. There are already problems at the junction of Thurleigh Road and the A6. Some HGVs already use Thurleigh Road and do follow the lorry route to the business park. Lorries ignoring the signs are sometimes followed by residents but there seems to be little enforcement of the

restrictions. Future generations should be considered and the development should not be allowed.

- 9.7 Ms W Shortland, resident, Milton Ernest.** Her main concerns were the increase in HGV traffic in the village and the unsuitability, in terms of width, of Thurleigh Road to carry such traffic. The cumulative health risk to local residents in terms of air pollution, contamination of vegetables and farm shop food, which was giving rise to fear in the local community and which could make people, particularly those with children, want to move away from the area. In addition the area would be blighted by the visual impact of the stack, rubbish and liquid waste on local roads.
- 9.8 Mr S Freshwater, Twinwoods Action Group. [IP2]** The group has major concerns about HGV movements in the area generated by the development. Experience elsewhere like Brogborough has shown such vehicles introduce pollution, in terms of waste bags, litter and liquid along roads. The proposal would not comply with MWLP **[CD3/1]** policies GE1, GE22 and GE23 which require proposals to minimise road transport and consider forms of transport other than roads. The local road network is narrow and being damaged by existing traffic levels, and there is no alternative other than road transport and no public transport for workers. The road up to the site from Clapham has been closed bringing more traffic through the village. The Rookery Pit site has two rail lines next to it and is better served by the local road network as well as being closer to the sources of waste arising. The traffic survey submitted by the appellant is flawed, for example, including buses as HGVs. The appellant's own figures show the extent of vehicles ignoring the weight limit. The residents' survey shows likely traffic increase in Milton Ernest of 15.9% over a 12 hour period and up to 23% at times during the working day. Similar points were made about the effects of traffic on the village, its residents and facilities and the enforcement problems for the police.
- 9.9 Mr C Smith, local resident, Coplar Farm.** The farm is one of the closest to the proposal, which is on a high plateau, visible for miles around. Main concerns were: an increase of HGV traffic on unsuitable roads: pollution the exact nature of which is not known, but likely to include dioxins, which are linked to cancer and would be deposited in the local area and towards the village of Thurleigh, entering the foodchain through soils and watercourses. The bottom ash would include heavy metals which would need to be transported away and would be a further health hazard to residents and wildlife. There would be light pollution from the plant as well as noise, smell and mess. The buildings at Twinwoods should be re-used but not for this type of waste plant.
- 9.10 Dr N Faria, local resident and research chemist. [IP3]** His main concerns were the production of nanoparticles and the effectiveness of abatement equipment in preventing health problems, supported by 19 research papers. The papers show that the filtration processes are inefficient at removing nanoparticles, which although they might only make up 5% of the total mass form the flue gas can be 65% of the number of particles released. Large scale emissions of nanoparticles were possible while still complying with the EU Directive limits. The chemical composition is different from other particulates with high levels of heavy metals. These cause lung injury and can access the cardiovascular system and result in tumours in the lung and the risk of ischaemic heart disease. Risk assessment models for nanoparticles are limited in their

usefulness and are used usually in association with bigger particles and new research continues to emerge on their risks.

9.11 Dr T Inskip, local resident and GP. [IP4] He treats residents in Bedford and the surrounding area including Yarl's Wood IDC. There are about 400 residents who are kept there for varying amounts of time on the premises, a significant proportion of which are pregnant women. Recent advice from DEFRA is that without plasma gasification or vitrification such plants should be viewed as incinerators. Research papers on incineration (see also Dr Faria and the attached paper to IP4) show that such plants can have significant health risks. Of particular concern is the effect on the foetus of pregnant women in Yarl's Wood, which are especially vulnerable and on which there is little data. A single exposure to a toxic pollutant in the early stages of pregnancy can be critical. There is no evaluation of the emission of nanoparticles in the application, against which the body has little defence. The exact effect of the chemicals or combinations of them in the emissions is unknown but have been shown to be linked to health problems, which would be multiplied by long exposure. The cost to the NHS could be significant and would not be offset by the benefits of the proposal. Another potential cost could be the evacuation of detainees at Yarl's Wood which cost £42million when the riot took place in 2003. Other residents have a choice about where they live but the detainees do not and would be exposed to risks from the plant.

9.12 Mr A Burt, MP for NE Bedfordshire. [IP6] From his own local knowledge of the area he wished to support the views of the local people. Their main concerns were: the traffic and speeds on the A6 and the lack of local infrastructure for heavy commercial traffic; the visual intrusion of the development across a wide area; the adverse effect that the development would have on attracting clean, high tech businesses to Twinwoods; the probable import of waste from a wide area with increased road traffic; and, the fears of local residents about the risk to their health from the plant and the effect on those close by at Yarl's Wood.

9.13 Ms P Sowter, local resident. [IP7] The first part of the evidence concerned health and the environment, especially the effects of nanoparticles less than PM_{2.5} on human health, as set out in presentations referenced to Professors Connett and Howard. The concerns are similar to those given by Dr Faria, above, with the effects on pregnant women and children similar to those set out by Dr Inskip, above. The disposal of fly ash, which would be taken to a site near Cheltenham, could be a problem with toxins leaching into water. Mechanical Biological Treatment (MBT) is suggested instead, to include: in-vessel composting; mechanical separation; anaerobic digestion and materials recovery. At present Bedford Borough (called North Bedfordshire in the statement) cannot process food waste and has limited glass recycling, although many other products can be recycled. Residual waste goes to landfill. Other more sustainable solutions exist without the need for the proposal. These include creating a small MBT plant for Bedford Borough, sharing larger MBT plants with other authorities – Cambridgeshire and Central Bedfordshire are mentioned. MBT is more flexible than investing in a capital-intensive incinerator with declining waste totals.

9.14 Mr T Hill, Chair UKWIN, evidence for Twinwoods Action Group. [IP9]. On carbon dioxide emissions and renewable energy, the evidence draws on information submitted for the environmental permit for the proposed plant at Sinfin Lane, Derby and compares the proposal with it. The emissions are shown to be in excess of a gas-fired power station for CO₂ by a factor of 6, for electricity

supply only, and would be a significant contribution to global warming. This would hold true even if a proportion of the feedstock (say 30%) was genuinely renewable. The facility would also be inefficient in terms of energy recovery, using Sinf Road data without MBT. The parasitic load is well below that of Sinf Road and needs justification and the output seems high for the amount of waste being input. The application gives no assurance that heat would be supplied to nearby users. This would increase the energy recovery capacity if it were supplied. Waste volumes, in terms of commercial and industrial waste have decreased by 29% in England according to the DEFRA figures (2009), whereas the application assumes an ongoing increase. In addition, increased recycling is likely to reduce the calorific value of residual waste. The proposed facility would not make a positive contribution to the climate change programme, nor secure the highest viable resource and energy efficiency, nor would it be technological innovation, as required by the Climate Change Supplement to PPS1. The extent of the CO₂ emissions is inconsistent with Government plans and the amount of feedstock from genuinely renewable resources would not mean that renewable energy was produced as set out in PPS22 [CD4/7].

9.15 Mr P Johnson, local resident, Thurleigh [IP10]. The main objections relate to the suitability and safety of the proposed gasification technology to be used at the plant, which have given rise to fear in the local population, which can be a material planning consideration. The technology for the plant in the UK will be supplied by Energos, which is linked to Biogen. The only plant in operation by the company is on the Isle of Wight, part of a demonstration project for DEFRA. Few hours of operation were achieved and subsequently the plant was closed for significantly breaching dioxin levels. It was acknowledged by the operator to be quick and cheap, as it used some existing plant, and was relatively simple to operate. Incinerators are associated with serious toxic pollutants, despite being subject to the WID and environmental law. The EA review of pyrolysis and gasification (PG1) highlighted the lack of data on emissions from these processes. Pollutants are measured only 4 times a year, which might miss peaks, and there is the problem of the collection and disposal of highly toxic fly ash. The process does not include the vitrification of toxins or plasma gasification, which contravenes the Stockholm Convention, which required the elimination of persistent organic pollutants (POPs). The operating company also has links to ENER-G, which was associated with the Byker ash scandal, where fly ash was used on allotments and public footpaths. In conclusion, the information available shows that there is uncertainty surrounding the safety of the technology and its long-term consequences for the community.

9.16 Ms J Towler, local resident and research scientist. The main concerns were for the family organic farm, which would be down wind of the facility and the countryside initiatives associated with it. These had been the subject of magazine and newspaper articles. She has a background in organic chemistry and understands the way that toxins like dioxins, furans and PCBs could be deposited through rainfall and enter the foodchain through meat. This would have an adverse effect on the farm business, as the food sold through the farm shop would lose its status as being healthy and local. The toxins associated with an incinerator in Iceland caused problems of dioxin pollution of milk and beef. Local residents are aware of the operator's track record and are concerned about the facility.

- 9.17 **Mr A Burridge, local resident [IP13]**. As a retired HGV driver, his view was that it would be difficult to control lorry movements to the site and keep accurate records of them. The site is not viable as it is too far away from the source of the waste. The site is prone to fog since it is on a high plateau and the local weather is a concern for the dispersal of emissions from the site, which would be a concern for local organic farmers, wildlife and local communities.
- 9.18 **Ms C Dickenson, Yarl's Wood Befrienders' Association**. The association is for voluntary visitors to the Yarl's Wood IDC. Members of the organisation agree with the Home Office letter of 14 April 2011. There are about 400 detainees, many of them in poor health with diseases that challenge their immune systems and chest, like TB, although they have healthcare facilities. These people have no choice other than to be there and cannot leave. Some stay for some considerable length of time and would be exposed to the emissions from the plant. The special circumstances of having these people next to the incinerator need to be considered.
- 9.19 **Ms M Turner, local resident [IP12]**. Ms Turner would be one of the closest residents to the site, living at Rutter's Cottages. Her house has a large vegetable patch and she grows as much as she can for the family and has a herd of rare breed Guernsey goats, used for milk, yogurt and cheese. The HRA **[A4/3]** sets out a number of generic exposure scenarios, including Farmer Adult and Child which define the pathway to which human receptors would be exposed and the degree of exposure. The highest risk to the Farmer Adult and Child groups was at Rutter's Farm. It also had the highest cumulative risk, cancer risk and lead risk but the assessment did not take into account the fact that animals were being bred there or that rainwater was used for irrigation. Attached research papers show the risks to goat milk and changes to the goat itself. Although the daily levels of particulates are within agreed limits, experience elsewhere shows that these can be exceeded in error and by then it would be too late for the health and safety of her family and animals.

10. Written Representations

- 10.1 A number of written representations were received by the Council at planning application stage, which are bundled with document **2**. These included the responses from statutory consultees. The responses from the **EA** concerned mainly matters which might be the subject of suitably-worded conditions concerning: drainage, dealing with potential contamination from previous uses of the site and flood risk. They also comment that they support the proposal for an ERF subject to: the maximum use of residual waste; it not undermining more sustainable waste management; it being consistent with an integrated and adequate network of recovery facilities; and, energy recovered and used consistent with BAT. They comment that the growth of C&I waste arisings might be lower than stated according to the ADAS study and that only 5% C&D waste is normally suitable for heat treatment methods of recovery. A bespoke environmental permit would also be necessary and at the time of the inquiry had not been applied for. The local **Health Protection Unit** had no objections and referred to the advice of the national Health Protection Agency on this type of development **[CD7/4]**.
- 10.2 At inquiry stage, written representations include those from **Bodyflight**, which is a neighbouring use on the business park, using a vertical wind tunnel for parachute jumps and other leisure activities. They support the use, subject to a

condition limiting the amount of daily HGV movements on the site, odour control and green benefits from the proposal. They would be interested in purchasing electricity from the plant. **Three local residents** have also supported the proposal as a sustainable means of waste treatment. One of the supporters requires lorry routing, speed restrictions in Milton Ernest to 20mph and control of toxic emissions. There is also support at planning application stage from the **East of England Development Agency (EEDA)**, on the grounds that it would reduce CO₂ emissions by diverting waste from landfill and would represent innovative high technology, and **East of England Local Government Association (EELGA)**, on the grounds that the size of the proposal is appropriate and would not draw in waste from far away. They also comment that the development would support the principle of communities managing their own waste and would be in conformity with the RSS.

- 10.3 Home Office (Detention Services)**, letter dated 14 April 2011. The Yarl's Wood Immigration Removal centre contains about 400 detainees, mainly adult females, couples and families with children over 18. There is access to the open air and the centre, including bedrooms, is naturally ventilated. The main concerns are: further HGV movements which would lead to noise and dust, with excessive demands on the local roads, especially now that Twinwoods Road has been closed; air quality and odour, including the health of those detained under duress; noise from the plant itself; and, natural light to the buildings of the centre. **Home Office (General Property)**, dated 20 April 2011 say that if the plant were to be completed they would be interested in taking renewable power on competitive terms.
- 10.4 Richard Fuller, MP for Bedford.** The letter supports the views of Alistair Burt MP. The main concerns are: the amount of HGV traffic which would run down the A6 and through Bedford, resulting in congestion and environmental problems; the visual impact of the proposed buildings which would be seen over a wide area; and, the potential conflict with the Borough Council's economic development aspirations for the area.
- 10.5 Other Parish Councils.** A further 8 Parish Councils have objected. These include Felmersham and Radwell PC, Sharnbrook PC, Wilden PC, Colmworth PC, Stevington PC, Clapham PC, Oakley PC and Ravensden PC. The objections mainly covered: HGV traffic in the rural area and other roads, odours and emissions from the proposal, the distances from the waste sources and the suitability of the business park for this type of development.
- 10.6 Other objections.** There was a petition of over 700 names **[IP15]**, based around 7 main areas of objection. These included: additional traffic on rural roads, including construction traffic; the location of the site in relation to waste arisings; the safety of the process; the proximity to Yarl's Wood immigration centre; the lack of compliance with landscape policies for the area; and, the discouragement of high-tech businesses to the business park. A number of written objections based around a proforma covering similar matters were received and in addition, a number of individual objections were received, including local farmers and one business on the business park. The matters raised are covered in the main considerations.

11. Conditions and Obligations

11.1 A list of the proposed conditions is attached at Annex 1 and the final version of the planning obligation is document **5**.

Conditions

- 11.2 The proposed conditions have been considered in the light of the advice in Circular 11/95: The Use of Conditions in Planning Permissions. In addition to the standard condition requiring development to commence within three years of the planning permission, it is proposed that a condition should be imposed which requires the development to be carried out in accordance with the submitted plans, drawings and specifications. This is important as the submitted plans define the scope and extent of the development. A Construction Management Plan (CMP) would be necessary to protect the living conditions of neighbouring occupiers and highway safety. A condition limiting the hours of noisy work on site during construction would be needed to protect the living conditions of neighbours nearby. Although local residents requested a later start on a Saturday, the suggested condition uses standard hours for the construction industry.
- 11.3 The amount and source of the waste to be brought onto the site needs to be controlled to ensure the development is carried out as approved and to protect the living conditions of nearby occupiers. The amount of waste was questioned by local residents as it is slightly higher than for the permission, but the amount includes ferrous material which would be removed and not processed on the site. The suggested condition defining the catchment of the area from which the waste was derived has not been imposed for the reasons set out below. Written daily records would be needed to ensure the monitoring of the waste accepted on site. Similarly the number of HGV movements would need to be controlled by condition. Local residents were concerned about an extra 4 movements over and above those in the transport assessment but these relate to materials other than waste processed on the site, as set out in Mr Brant's evidence **[A5/1 - Table 6 and 5.13]**.
- 11.4 The need for conditions requiring further details of the access from the estate road and visibility splays was disputed by the appellant, since the general access arrangements are shown on plan 08-1425-PO1F. However, this does not show sufficient detail for the Highway Authority. The further work on producing a scheme would not be unduly onerous for the appellant and would provide the highway authority with some control over the detail of the access. Details of the site office and weighbridge would also need to be submitted and agreed and parking for vehicles and cycles laid out and retained. A condition would be required for CCTV monitoring the site access. Although the appellant objects to this condition, which would cover all traffic and not just vehicles coming to the plant, it would provide a means of remotely monitoring the lorry routing scheme and weight restrictions in Milton Ernest. The traffic surveys carried out show that the traffic restrictions are currently flouted and the camera would be a visible deterrent and means of enforcing the restriction, as the police have limited resources to monitor the roads in the area. Access to the CCTV output could be a matter for agreement through the proposed liaison group, see below, as part of the scheme.

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- 11.5 Conditions would be needed to ensure lorry wheels and chassis are clean when leaving the site and that all materials are imported and exported in enclosed, containerised or sheeted vehicles. Whilst local people are concerned that sheeting might not be sufficient, if properly carried out it should contain materials within a lorry. Separate regulations cover the transport of hazardous materials. A speed limit for vehicles within the facility would improve highway safety within it. A traffic management plan would be required to co-ordinate deliveries and prevent queuing and a signing scheme would advise HGV drivers of the need to avoid roads with weight restrictions. The operation of the ERF plant would be continuous but a condition restricting the hours for HGV movements would be necessary to safeguard the living conditions of nearby occupiers.
- 11.6 An archaeological survey of existing building and structures is necessary as a record of the former use of the site, to be submitted within 3 months of its completion, together with a scheme for a programme of archaeological work on the site. An acoustic fence would be needed to screen the HGV delivery yard to protect neighbouring occupiers from noise. Noise would also need to be monitored. It was agreed that detailed operational matters concerning noise should be conditioned as part of the environmental permit. Conditions would be needed to minimise noise from vehicle audible warning and from plant. In order to contain odour, conditions would be required to ensure that waste was only stored inside the building and the doors to it closed, except when being used by vehicles and a scheme for odour management needs to be submitted and approved.
- 11.7 A scheme for the protection of retained trees and a timescale for any to be removed would be needed, in addition to a landscape scheme covering hard and soft landscaping for the site. The inclusion of a timescale would mean that the condition to protect nesting birds would not be necessary. A feasibility scheme for combined heat and power would be required to assess the opportunities for recovery. This would need to be demonstrated as part of the environmental permit and be in the appellant's financial interests to pursue. The bottom ash operations would not need to be controlled by condition since this operation would be adequately controlled through the environmental permitting process. A scheme for fencing around the facility would also be required. A flood risk assessment has been carried out and the surface water drainage would need to be carried out in accordance with that assessment. There is an existing drainage system to the business park but a further condition is needed to ensure foul drainage is implemented prior to the commissioning of the plant. A scheme for the investigation of possible contamination of the site and its treatment, if necessary, would be necessary due to the previous use of the site and a foundation risk assessment would be required to prevent piling or other foundations allowing the pollution of groundwater.
- 11.8 Details of lighting for the plant would be required to prevent light pollution of nearby properties and highways. Samples of external materials would need to be submitted and approved to ensure that the plant was in keeping with its setting. A copy of the planning consent needs to be kept available so that the extent of the permission can be checked at any time. A scheme for a liaison group would be needed, to include local PCs, which would allow for the monitoring of the plant and its effects on the local environment. The operational aspects of the plant would be subject to environmental permitting and it would be for local groups to

ensure that such matters could also be reviewed by the liaison group, together with the EA, as part of the permitting conditions, rather than at this stage.

Obligation

11.9 There is a unilateral undertaking **[5]** submitted by the appellant and signed by the appellant, site owner and mortgagee. The obligations include the payment of £15,000 towards the improvement to the bridleway which runs from the entrance of the business park along Thurleigh Road to its junction with Coplowe Lane. This follows an objection at planning application stage by the British Horse Society about the adverse effect of the development on the bridleway. The undertaking also provides for the implementation of the landscaping plan for the business park as a whole, which is a benefit of the scheme. However, no reason for this part of the undertaking was given at the inquiry. Such matters can be the subject of Grampian planning conditions and conditions are to be preferred to planning obligations. I attach little weight to this part of the undertaking and have amended the landscaping condition for the site to include the business park as a whole. Reasonable endeavours are to be used to ensure that the HGV route and weight restrictions are used with instructions to the owners and drivers of these vehicles being given and written instructions to form part of any contract with independent hauliers. The site owner also agrees to reduce the available B8 floorspace allowed by planning permission 02/00885/COU by 2,150 sqm, in order to offset HGV movements from the site.

11.10 National advice on planning obligations is set out in Circular 05/2005: Planning Obligations and the Community Infrastructure Levy (CIL) Regulations 2010. Together they set out the policy tests for obligations and for making financial provision for works and services. With the exception of the section on the landscaping scheme, the obligation would be necessary from a planning point of view, directly related to the proposed development, reasonably related in scale and kind to the development being proposed and reasonable in all other respects. The provisions fairly and reasonably relate to the proposal both in scale and kind and seek to off-set or to reduce some of the impacts of the proposed development.

12. Conclusions

12.1 From the previous submissions and representations, the main considerations in this case are:

- the relevant policies of the development plan and the weight to be given to emerging policy, including the extent to which the emerging WCS could be prejudiced by any decision to grant planning permission;
- whether there is a need for additional waste recovery capacity in the Plan area;
- whether the development would be contrary to the spatial strategy in the current and emerging development plan; and,
- whether a catchment restriction for the source of waste brought to the facility would overcome policy objections to the proposal.

In addition, there are those matters raised by Parish Councils, local groups and local residents:

- traffic generation and highway safety;

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- living conditions of local occupiers in terms of health and air quality (including dust and odour); and,
 - landscape.

12.2 In the following paragraphs the figures in brackets (n) refer to earlier paragraphs of my report which contain material on which I have based my conclusions.

Development Plan

12.3 The Development Plan for the purpose of this appeal includes the RSS, SRS, MWLP and the CS. These documents are given statutory force by Section 38 (6) of the Planning and Compulsory Purchase Act 2004, which is clear that planning decisions must be determined in accordance with the development plan unless material considerations indicate otherwise. (5.1-5.2, 7.1)

12.4 RSSs are likely to be abolished with the passage of the Localism Bill and the weight which they should be accorded has been diminished. It was established as part of the Cala 2 appeal that the RSS remains part of the development plan but that its weight is a matter for the decision-maker. The result of the Cala 3 appeal, which was announced after the sitting sessions had finished, did not change this position. I asked for submissions at the inquiry on this matter. It was agreed by the main parties that, although the RSS remained part of the development plan, the proposal to abolish it reduces its weight. I agree with that comment in the consideration of this appeal. (7.6)

12.5 Nevertheless, the policies under consideration in this appeal (WM1, WM2 and WM3) are still broadly in accordance with the rWFD and PPS10. Policy WM1 is an overarching policy, setting out sustainable waste management objectives. Policy WM2 sets targets for waste management including minimum levels of recovery for municipal and commercial and industrial waste. Policy WM3 is concerned with reducing the volume of imported waste from outside the region, including London and the south-east, with an emphasis on each region managing its own waste. However, it does not completely preclude cross-border movements where there is clear benefit. The EELGA say that the proposal is in conformity with the RSS. The draft RSS has been prepared within the context of current policy. As it is at an early stage and unlikely to proceed to being adopted policy, limited weight should be afforded to it. However, policy WM4 continues the policy of regional and sub-regional self-sufficiency. The SRS allocates growth areas within the sub-region. These include the area south of Bedford but also Milton Keynes and areas of Northamptonshire. (6.5, 6.8, 6.10, 7.7-7.13, 10.2)

12.6 The saved policies of the MWLP, adopted in 2005, are still in force. The plan is somewhat out-of-date, since it refers to Best Practicable Environmental Option (BPEO) and the proximity principle, which are no longer referred to by PPS10 and other policy documents. Policy W1 sets key principles for waste management, including the achievement of county self-sufficiency in the management of local waste. Policy W2 aims to reduce the quantity of imported waste in the period up to 2015. Policy W3 covers county self-sufficiency and does not allow facilities intended primarily for the management of imported waste by any means other than landfill. Policy W13 sets out criteria for energy from waste plants, including the requirement for recovery and locational criteria. (6.6, 6.10, 7.14-7.25)

- 12.7 In terms of the CS, growth areas, mainly to the south of Bedford, have been put forward to implement the SRS for the wider area. The site lies in the rural area where there is constraint but in the emerging AADPD, the business park is shown as an existing employment site. There is a need in this case to ensure that the development plan is considered as a whole, in accordance with the judgment in *R v Rochdale Metropolitan Borough Council* (2001) Env. L. 22, paragraph 50. (6.5-6.6, 7.26-7.27)
- 12.8 In addition there is the WCS, which has reached preferred options stage. Policy 6 and Statement 13 defines the spatial strategy for strategic waste recovery with 3 sites and a reserve located in the central area of the county. However, the Council, along with neighbouring Councils in former Bedfordshire, intend to submit a joint minerals and waste core strategy, together with allocations, in a single document. A pre-submission draft is likely to be issued in Autumn 2011, with a submission draft in 2012. At this stage the DPD has little weight. However, its technical evidence papers include some of the detailed background to waste management in the county. (5.4, 7.21, 7.28-7.31)

Prematurity

- 12.9 The second reason for refusal includes a statement that any approval in this case would be prejudicial to decisions on the location and phasing of new development, which are being addressed in the WCS. The Council say in their proof that refusal of the application on this matter on its own would not be justified. This is reinforced by their closing submissions, which acknowledge that the prematurity argument is seldom justified. They do not raise it in their submissions on Rookery Pit South, which is such a large development that it would have a significant effect on waste policy for the area. (6.33, 6.35-6.36, 7.28)
- 12.10 The principles of determining waste planning applications are set out in paragraph 5 of PPS10, which says that decision makers should have regard to The Planning System: General Principles, which is attached to PPS1, in matters of prematurity. This says that planning permission could be refused where granting it might prejudice decisions about the scale, location or phasing of new development which are being addressed in a DPD. However, although potential strategic sites have been identified in the south of the county, the WCS is only at an early stage and substantial changes to it, including being incorporated into a single document, are envisaged. The proposed development would be sizeable, but not so large that it would completely prevent the development of other facilities in the plan area in due course. (6.35, 7.29)
- 12.11 The POWCS is an indication of the future direction of waste development in the area but it is not at a stage where it could be considered to have significant weight and therefore it should not necessarily prevent the determination of planning applications. That approach is not supported by current policy in The Planning System: General Principles. As such, although the policies of the WCS need to be taken into account in the decision, it is at such an early stage that it does not, in itself, prevent a decision being taken on the application. (6.36)

Need

- 12.12 Paragraph 22 of PPS10 says that there is no need for appellants to demonstrate the need for a quantitative or market need for the proposal, where the development plan is up-to-date. Although the adopted development plan

policies in respect of waste are not up-to-date, their policy thrust has been shown to reflect current Government and European policy. In addition, there is no dispute that the project would be classified as a renewable energy project and paragraph 20 of the Climate Change Supplement to PPS1 says that planning authorities should not require applicants to demonstrate the overall need for such projects. As such, there was no explicit requirement to show need in this case. Nevertheless, as the lack of short-term need was a reason for refusal by the Council, it should be addressed. (5.5, 6.28)

- 12.13 There is limited capacity in the existing landfill facility at Stewartby and the POCWS identifies sites which would be suitable as replacement landfill sites. However, this does not overcome the need to meet the European and national targets for recovery and the system of landfill tax and Landfill Allowance Trading Scheme (LATS), which provide incentives to reduce waste going to landfill. Furthermore, Government's aspiration is for zero waste to landfill. Paragraph 2.59 of the POWCS indicates the need for the development of recovery facilities in the plan area. (6.29, 7.40)
- 12.14 As an ERF, the proposal is only on the next level up from landfill in the waste hierarchy but the calculations for the plant clearly show that it would be a recovery facility, having a R1 value over 0.65, under the rWFD. The targets for recovery are set out in the RSS. The efficiency of the plant in terms of recovery would be checked as part of the permitting process. In addition, it would process residual waste, mainly from C&I and potentially MSW sources after recyclable ferrous metals had been taken out, and would allow the movement of waste up the hierarchy. (6.7, 9.14)
- 12.15 The SoCG, in paras 5.1 – 5.7, sets out the agreed waste arisings, based on the low growth expectations in the POWCS. The additional recovery capacity required in 2015/16, taking into account existing and consented capacity, is 200,734 tonnes in the targets set in policy WM2 of the RSS. However, in evidence there were differences between the parties, with the authority stating higher amounts for waste arisings than the appellant. For MSW this was 306,000tpa for the appellant in 2009/10, compared with 326,633tpa for the Council. For C&I it is 428,000tpa for the appellant against 504,116tpa for the Council. For C&D only a small amount (around 11,000 tonnes) is estimated to arise by the appellant. The differences between main parties are that the appellant took the arisings figure from the more recent DEFRA report which showed a reduction in C&I waste and post-dated the POWCS and its Technical Papers. When multiplied by the targets, they result in the recovery capacity needed, once existing capacity has been taken into account. (6.29, 7.44)
- 12.16 The rest of the sites in the county with existing recovery capacity are agreed, with the exception of Goosey Lodge. The amount of waste which can be accepted under planning approval at this site is 255,000 tpa and, under the environmental permit, 438,000 tpa. In the main it deals with animal by-products and was agreed to have been operating below its full capacity for some time. Both the main parties accept that there is further capacity at Goosey Lodge to accept more waste of animal or plant origin, which would count as biomass, and not lead to financial loss on ROCs. The extent of the potential capacity at Goosey Lodge is disputed between the two main parties. Despite Mr Warren's visit there prior to the inquiry, where he was told that diversification was being considered, it would mean commercial decisions, the winning of contracts and possibly changes to the plant, which only has a 25m stack, and its permit. These factors

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- make any changes at this site and the timescale for them uncertain. (6.30- 6.31, 7.46-7.47)
- 12.17 The shortfall in capacity set out in Table 15 of TEP2 has been updated by Mr Warren's proof, with some slight reductions. The figure for recovery capacity in 2015/16, which is when the facility would be likely to be commissioned is given in the proof as 188,734 tonnes, compared with 200,734 tonnes under the low growth scenario in Table 15. These both take into account the use of the capacity under the planning consent at Goosey Lodge and the possibility that it might be more fully used in the future. Nevertheless, by 2015/16, whichever set of figures are used, the capacity gap exceeds the size of the proposed facility. (6.29, 7.50)
- 12.18 In addition, the Council take some account of cross-border movements from Milton Keynes and Northamptonshire in proposing an 80:20 split in the catchment of the proposed plant, with 20% coming from outside the plan area. Whilst a site has been allocated in the Milton Keynes Waste DPD for recovery facilities, there are few recovery facilities in Northamptonshire at present, with only one facility planned. (6.14, 6.24, 6.27, 6.29)
- 12.19 In the MWLP area, the only alternative facility where there is a firm proposal is Covanta ERF at Rookery Pit South, which is one of the preferred sites in the POWCS. The proposal is currently being examined, in respect of a DCO, by the IPC. The Council objects to this proposal on grounds including its size, which is 585,000 tpa. Whilst it is possible that this proposal might be granted its DCO, paragraph 3 of PPS10 encourages competition between facilities and it would be for the market to determine what would be built. The POWCS also identifies Elstow North and Brogborough and a reserve site at Thorn Turn for recovery facilities, all south of Bedford. These are larger sites than the proposal, which gives some flexibility for their development but none of these sites have firm proposals for their development. However, the size of the proposed development is unlikely to deter development later on in the plan period, if need increases in the growth areas to the south. (6.33, 7.50-7.51)
- 12.20 The choice of waste technology is a commercial decision taken by operators. At the inquiry the facilities in the north of the county for anaerobic digestion (AD) were mentioned but these are generally smaller, non-strategic projects. One local resident expressed a view that waste treatment should be by Mechanical Biological Treatment (MBT). The nearest facility for this is in Cambridgeshire and no support was given by the Council to this idea. The proposed plant would not have an MBT facility, with only ferrous metals being recovered, but would still move waste up the hierarchy. In addition, the plant is capable of being part of a network of facilities, as envisaged by the rWFD, and would not be contrary to policy W13 of the MWLP. Whilst local people are concerned about the design of the plant in this particular facility, ERFs have been built in this country and elsewhere in Europe and are seen as a reliable means of delivering key waste policy objectives. (6.14, 7.22-7.23, 9.13)
- 12.21 Therefore I conclude that a need for the facility has been demonstrated, as there would be a capacity gap for a facility of a size proposed in 2015/16 when the plant would be commissioned. As such, it would be in accordance with policy W3 of the MWLP.

Location/spatial strategy

12.22 A number of documents at various levels give guidance on the location of waste facilities. PPS10 paragraph 3 makes reference to waste being disposed of in one of the NAIs and in paragraphs 20 and 21 priority is given to development on industrial sites and previously-developed land. Further criteria are set out in Annex E to the PPS, which are covered elsewhere in this report. PPS10 also says that facilities proposed on unallocated sites should be favourably considered when they are in accordance with the PPS and the development plan. Paragraph 24 of PPS22 says that in deciding locations, decision-makers should recognise that there are other considerations, like connections to the Grid and the potential to use heat generated from the project which may influence the most suitable locations for such projects. (5.5, 6.19-6.20, 7.4)

12.23 The proposal is on previously-developed land on an industrial site. It has permission for B1, B2 and B8 uses. Technically, there would be a loss of employment land but this is offset by the job creation provided and the support given by national policy in PPS10 for development on such sites. Local people say that other employment-creating development would be discouraged but there is no compelling evidence to support this assertion. In any event, EEDA says that the plant would represent highly innovative, advanced conversion technology, which would demonstrate the region's commitment to environmental technologies. Policy CP11 covers employment land but concerns additional new allocations of up to 75 ha, where high value knowledge-based industries will be encouraged. Existing employment sites are to be protected by the policy and the draft ADDPD includes Twinwoods Business Park as an existing employment site. The site is not allocated for waste uses but paragraph 24 of PPS10 says that unallocated sites should be considered favourably where they are in accordance with its guidance. (This paragraph also mentions the WCS, but that has little weight at its current stage.) The text to policy CP11 notes that all sectors of the economy will need to grow and the proposal has the support of the EEDA and EELGA. (2.1, 3.1, 5.4, 6.20, 7.26, 10.2)

12.24 However, the site also lies in the Rural Policy Area, as defined in the CS. Policy CP14 sets out the criteria for development within the rural area, which include whether there is a proven need for it to be located there, and be focussed on the edge of key service centres. The nearest of these centres is Clapham, which is some distance away. Other development is restricted to that serving local needs and the vitality of rural communities. The Council treats it as a departure from this policy and from the spatial strategy which concentrates development in the Growth Area. However, the site is previously-developed and has policy support from PPS10 and also MWLP policy W13 which supports ERF plants on land designated or allocated for industrial uses. In the sustainability appraisal for the POWCS, the site is noted as having a good location in respect of Bedford and the strategic road network. Although it was not subsequently one of the preferred options sites, it was only just below the 4 sites which were chosen for allocation. (5.2, 6.17, 7.22, 7.26, 9.1, 10.4, 10.6)

12.25 In addition, there is an existing link to the National Grid close to the site and an existing heating system on the business park, although this would be likely to need renewal before use. The facility would have the potential to supply heat and electricity to other users on the business park and nearby, some of whom have already expressed an interest in it. There is also the potential for the supply of electricity and heating/cooling for the data centre which has been

granted planning permission. (Since this has not been started, it has little weight in this decision.) Nevertheless, all of the above are positive factors in the location of the facility. (4.5)

- 12.26 European and national policy requires communities to deal with their own waste and use the NAI. It is envisaged that this will be provided by a network of facilities. This principle is continued through the policies of the RSS and the MWLP. Currently the largest centres of population in Bedfordshire are in the south of the county, especially Luton, with Bedford further north. The future development of the county has been set out in the SRS and the CS which allocates most growth to Luton/Dunstable/Houghton Regis. Therefore the greatest concentration of waste arisings are in the south of the county and will continue to be so. However, the SRS also allocates growth areas to the north and west of Bedford, as well as the north of Marston Vale, and in Northamptonshire and Milton Keynes which are also reasonably close to the site, although outside the East of England region. (6.13-6.14, 6.26, 7.15-7.16, 10.2)
- 12.27 Although the site is away from the growth area and there is concern about the sustainability of the proposal in terms of travel, it is important to examine the overall sustainability benefits in terms of CO₂ emissions. The gravity model for C&I waste put forward in Mr Brant's rebuttal proof stated that the advantage of the scheme in terms of diverting waste from landfill outweighed the emissions as a result of transport by a significant extent. This was also true of the Avonmouth case. The GIS data was from the 2001 Census, it used a notional waste contract in mid-Bedfordshire, weighted by the propensity to transport the waste, to work out the significance of the CO₂ issue identified by Mr Warren in his proof. Local people questioned the use of data from 2001 which does not show most of the recent development in the County but this was the most recent available. They also queried whether the model should have been re-run to include Luton as the notional area, which was larger and further away than mid-Bedfordshire, and trips to and from Elstow Waste Transfer Station (WTS). The weighting on the propensity to travel was also queried since some waste from Luton is currently going to be incinerated in Birmingham and Coventry. However, this was not supported by written evidence and it was later confirmed, in response to an Inspector's question, to relate to a limited amount of waste. (6.15-6.18, 7.34-7.35)
- 12.28 Whilst the proportion of waste coming from Luton appears low at 6.69%, the gravity model takes into account the distance travelled and the propensity to travel and breaks it down by the proportion of C&I waste, taking into account the overall distance from other potential catchments in the study area. Waste might not necessarily travel via Elstow WTS since it is C&I waste and could come from a variety of sources. The model compares the effect on CO₂ emissions of the reduction due to bringing the ERF on stream three years ahead of alternative schemes with the increased emissions resulting from transport over the same 3 year period. The assessment of the results by the appellant shows that there would be substantially more benefit in diverting waste away from landfill than the additional distances travelled to this site, when compared with others which might come forward. The effect on CO₂ reduction was supported by EEDA. The model assumes that the appellant would win contracts to process waste ready for 2015/16 when the plant would become operational. Moreover, it is only one of a number of ways of assessing the sustainability of the proposal. Nevertheless, the

model shows that the CO₂ from transport would be significantly outweighed by the diversion of waste from landfill. (6.15-6.17, 7.37-7.38, 10.2)

- 12.29 In conclusion, the location of the proposed development on previously-developed land has some support in PPS10 and the potential for the use of heat and power on site is supported by PPS22. The proposal would be on an existing industrial site, supported by MWLP policy W13. Although this would be in the rural area, the other policy support and the fact that it is on previously-developed land and an industrial area would outweigh policy objections, in terms of policy CS14. The travel distances from the south of the county are high but the appellant has demonstrated that their adverse effects would be insignificant compared to the benefits of preventing waste going to landfill, in terms of CO₂.

Catchment area

- 12.30 The third reason for refusal was based around the appellant's offer in his letter of 13 April 2010 to agree to a source radius of 32 miles and that no more than 50% waste would be sourced from outside the MWLP area. At the inquiry this position was altered to being 60% from within the plan area. The appellant's estimate is that it would be likely that around 65% of the waste would be sourced from this area, but that 60% would give flexibility. The Council's view is that the restriction should be 80% in order to meet the development plan policy. (6.26-6.27, 7.21)
- 12.31 Policy WM3 of the RSS refers to not allowing facilities which deal primarily with waste arising outside the region. It was agreed at the inquiry that policy MWLP policy W3 has a similar meaning for the county. The Council have proposed a planning condition which would require 80% of the waste to be sourced from within the WMLP area. There are examples from the adjoining authority, Cambridgeshire and Peterborough where catchment area conditions have been imposed, although these relate to a larger geographic area and this approach has now been incorporated into planning policy in their Minerals and Waste Core Strategy. The Council has said that there are other such examples, although it needs to be considered whether such a condition would be appropriate in this case. The POCWS, which has little weight, has put forward Waste Core Policy 4, which says that operators of large, new facilities will be required to enter into legally binding arrangements to restrict the origin of the waste they receive. (5.4, 6.24, 7.21, 7.23)
- 12.32 Nevertheless, there have also been other examples where such conditions have not been imposed. In the appeal decisions which are before the inquiry, none have imposed catchment conditions. At Ince Marshes, the proposal was for a merchant ERF facility and the Inspector said that as it was responding to the market, it would not be appropriate to seek to control the origins of the waste by condition or obligation. Similarly, a catchment restriction was not imposed in the quoted appeals in Nottingham and Avonmouth. (6.25, 7.21)
- 12.33 In the appeal case, the appellant has said that about 65% of the waste would come from the plan area. Although this would more than meet the policy imperatives in Policy WM3 of the RSS and W3 of the WMLP which relates to waste being sourced "primarily" within the plan area. However, there is no development plan support for the imposition of conditions covering catchments. In terms of national policy, key objectives from PPS10 include: the need for communities to manage their own waste; enabling waste to be managed at the

NAI; and encouraging competitiveness. PPS10 Companion Guide (CG) at paragraph 6.46 says that waste movements across boundaries should not be arbitrarily restricted, where it meets other objectives such as moving waste up the hierarchy. (6.25, 7.19)

12.34 Transport costs associated with waste are such that it is unlikely that significant amounts of waste would be brought in from any considerable distance. (The matter of the waste being transported from Luton to Coventry and Birmingham for incineration has been dealt with above). The market is likely to ensure that waste arisings are necessarily treated close to their source. In the current economic climate it is important that planning restrictions do not impose unnecessary burdens on business. Some local businesses have expressed support for the potentially cheaper power that the plant would bring. If the appellant were to be successful in gaining MSW contracts, transport costs would still be a factor in ensuring that the waste originated locally. (6.26, 7.37, 10.1-10.3)

12.35 In addition to the issue of the reasonableness of imposing such a condition against the guidance in PPS10 and its CG, there is the issue of enforceability. It could be difficult to establish the origins of waste and whether it had been sourced from within the plan area. Such a condition would not meet the tests of Circular 11/95: The Use of Conditions in Planning Permissions and therefore it should not be imposed.

Other considerations

Traffic generation and highway safety

12.36 This section deals with the impacts of the proposed development on the highway network. The effect of the proposed development on highway safety was not a reason for refusal and did not form part of the Council's case at the inquiry. There were no objections to the proposal from the highway authority, subject to the imposition of suitably-worded conditions. (6.37)

12.37 The wider traffic generation impacts have been discussed above under spatial strategy. Whilst there are no other available means of transport for bringing waste to site, it is relatively close to the A6. Waste coming from the main population areas in the county would have to go through Bedford town centre, until a further section of Bedford ring road is completed. Nevertheless the strategic road network in the area has spare capacity and the junctions within Bedford are designed to deal with the anticipated HGV traffic. (6.20, 9.5, 10.4)

12.38 A Transport Assessment was carried out and submitted as part of the ES. Local people had concerns about its accuracy and completed their own survey of the existing traffic situation on the A6 at Milton Ernest. Using the same assumption of traffic growth over the same period and for the same opening date, the objectors showed that in every category their results were higher. Over a 12 hour period the impact was 15.9%, which residents consider excessive. The impact was even higher during the construction phase. (6.38-6.39, 8.11)

12.39 With 90 additional HGV movements per day in the operational stage (94 with materials other than waste) local residents would notice a significant change in lorry movements on the designated routes in the area. However, this has to be weighed against the significant spare capacity on the existing roads. Levels of use on the A6 in the local area are 40% of the capacity to the north and 60% of

capacity to the south and Thurleigh Road 40% of capacity to the west and 25% of capacity to the east of the business park. The accident record for the area, including the A6 and Thurleigh Road, shows 21 accidents over a 5-year period, with no fatalities and only 5 serious accidents, none of which were attributed to highway design. The level of accidents is not excessive for the volume of traffic on these roads. (6.40)

12.40 In addition, the business park is relatively underused at present but is being actively marketed. Other uses, such as B8, would be likely to generate high numbers of HGV movements and this could occur under the existing consents covering the business park. The appellant has offered as part of the unilateral undertaking to reduce the B8 floorspace which can be developed by means of the unilateral undertaking. The amount of floorspace would be decreased by the amount that would generate the same number of HGV trips as the proposal, which would help to ensure that future HGV traffic levels were the same as that envisaged when the business park was originally granted planning permission. (6.40)

12.41 Local people have submitted evidence, including photographs, that the weight restriction for Thurleigh Road in Milton Ernest is not being observed by HGV drivers and the appellant's Transport Assessment also shows HGVs using the road. Their concern is that further HGVs will choose to ignore the restrictions on the narrow roads through the village, especially as it is a quicker route to the business park, and that there would be a risk to other users of the road and pedestrians as a result. There are other roads in the area, for example in Thurleigh, Bletsoe and Renhold, which could suffer similar "rat-running" problems. On the site visit to Milton Ernest I was shown damage caused by HGVs to the kerbs and verges of Thurleigh Road. (6.41, 8.2, 8.9, 9.1, 9.4, 9.5, 9.7, 9.8, 9.9, 9.12, 10.4, 10.5, 10.6)

12.42 Nevertheless the site is capable of being served by roads which avoid such routes. Signage was required by condition to the planning permission for the employment use of the business park and would be required by any permission granted on this application. Compliance and enforcement would be a matter for the police. Whilst it might have a lower priority than other enforcement issues when resources are limited, lack of enforcement of another regime is not a matter that ought to influence planning consent. In a use such as this it is highly likely that deliveries would be made by contracted operators and they could be issued with the appropriate instructions. The evidence given shows that responsible HGV drivers would follow the instructions and the operator has commercial sanctions to use if contractors are seen flouting the weight restrictions. (6.41, 9.17)

12.43 Whilst it would not be possible to use any other means of transport other than the road to access the site, there is no compelling evidence that the additional traffic, including HGVs, would be excessive or that it would give rise to problems with highway safety. As such it would be in accordance with policy GE23 of the MWLP, which covers the suitability of the local road network to provide access for such development.

Living conditions

12.44 The effect of the proposed development on health was not a reason for refusal and did not form part of the Council's case at the inquiry. Many local residents

are concerned that the proposed development would give rise to emissions which might harm their health. Air quality matters are usually considered as part of environmental permitting, since emissions vary with the process and at that stage require HRA. Nevertheless, locational factors need to be covered by spatial planning in order to ensure that any potential land use problems are tackled at this stage. PPS10 says at Annex E that for air emissions, including dust and odours, considerations will include the proximity of sensitive receptors and the extent to which adverse emissions can be controlled through the use of appropriate and well-maintained equipment. (6.47, 10.1)

12.45 Although no permit has been applied for at this stage the appellant is aware of the need to apply for one and there is no reason to believe that the permit would not be properly applied and enforced. Without both a planning consent and environmental permit in place the plant could not operate. Paragraph 30 of PPS10 says that modern, well-run and well-regulated facilities should pose little threat to human health and that decision-makers should rely on Government advice and research and consultation with relevant health authorities and agencies. In this case there have been no objections from the local Health Protection Unit, which refer to the advice of the HPA, or relevant health authority. These matters are normally considered at environmental permit stage, rather than planning application stage. (6.48, 7.53-7.54, 10.1)

12.46 Local residents' concerns were about two main areas: the direct effect of emissions on people living close to the site; and, the effect of any potential toxins entering the foodchain through soil deposition and the subsequent contamination of farm animals, crops and other produce.

12.47 Their evidence particularly concerned the presence of particulates in air emissions. Air quality standards were introduced in June 2010 in the Air Quality Standards Regulations 2010, which cover smaller particles (PM_{2.5}). Air quality modelling was included in the ES, using the ADMS model and local meteorological data from Bedford aerodrome which is only about 3.5km away. It therefore takes into account the localised weather patterns. Detailed criticisms of the ADMS model were made by a local resident. However, it was subsequently shown that the criteria for roughness in the model did not use the Pasquill categories which were referred to by the objector and the input parameter in the Monin-Obukhov length had been correct. Normally the adequacy of the modelling would be examined by the EA through the environmental permitting process. However, the worst case scenario would be well below the European and national limits set for emissions from such facilities. (6.50-6.51)

12.48 The nearest residents to the site are the 400 or so people detained at Yarl's Wood IDC. They are detained for varying lengths of time and no children are kept there. There was an absence of data on the numbers of people who might be exposed for any significant length of time, but, by its nature, the centre's population is transitory, even if detainees are more likely to have underlying health problems than the local population. The same would be likely to be true even if the IDC is extended in accordance with an existing planning permission. Single exposures of women in early pregnancy to emissions might be a concern if the emissions were high and not sufficiently regulated but this is not the case with such facilities which are subject to permitting conditions and regular inspections. Complaints that such inspections are not sufficiently regular, leading to situations like those at the Isle of Wight plant, are matters for the EA in enforcing the conditions of the permit. Although there were concerns that the

IDC might need evacuation if there were problems at the plant, emergency procedures would be likely to be covered by the permitting process. (8.5, 8.8, 9.11, 9.12, 9.18)

- 12.49 Detailed evidence was submitted with reports and academic studies on the medical effects of nanoparticles on human health. The local Health Protection Unit had no objections to the proposal but referred to the advice from the Health Protection Agency (HPA). A relatively recent study by the HPA **[CD7/4]** dated February 2010 has concluded that “any potential damage to the health of those living close by is likely to be very small, if detectable”. Similarly on the risk of cancer: “any potential risk of cancer due to residency near to municipal waste incinerators is exceedingly low and probably not measurable by the most modern techniques”. (6.47- 6.48, 9.10, 9.11, 10.1)
- 12.50 The HRA, which was submitted during the inquiry, is the type of detailed study normally submitted as part of the permit application and not as part of a planning application. However, it covers some of the points which were raised by local people, in examining the potential direct effects of inhalation and the indirect effects of material entering the foodchain, using a model developed by the US-EPA, which is approved by the EA. The findings are specific to the proposed plant and show low levels of risk to human health, in terms of both carcinogenic and non-carcinogenic effects, and, more specifically, from exposure to dioxins, furans and lead. (6.53-6.54, 8.12, 9.2-9.3, 9.5-9.7, 9.9)
- 12.51 The assessment also demonstrates that there would not be a significant health impact from material entering the food chain, which was a concern of local people and farmers. The evidence produced by a local goat-keeper was based on the feeding of goats with high concentrations of dioxins under laboratory conditions. This would not be representative of the likely emissions from the plant or local conditions. (6.55, 9.7, 9.9, 9.16-9.17, 9.19)
- 12.52 Local residents expressed their fears about impacts on health and the effect that it might have on their communities if people decided to move away. Fear is capable of being a material planning consideration but the courts have found that it will seldom, if ever, be a reason for withholding planning permission if it is not well-founded. The appeal at Sinfin Lane, Derby (Ref APP/C1055/A/10/2124772), in which weight was given to the fears of local residents, was in an area where air quality standards were already poor. It was the cumulative effect of the proposal and the existing air quality which led to the Inspector giving weight to fear in this case. The ES shows negligible adverse effect as a result of the proposed development in terms of air quality and that mitigation measures on site would overcome any occasional odour nuisance at the IDC, which would be controlled through a suitably-worded condition. Whilst there might be a greater psychological effect on detainees, since they cannot spend time away from the site, the evidence submitted by the appellant shows that there would be little harm to human health as a result of the development. Therefore little weight is attached to fear in this case. (6.56-6.61, 9.12)
- 12.53 Therefore I conclude that, from the evidence presented, there is no reason on health grounds to depart from national policy on this matter, the detailed information for which is more properly dealt with by means of the environmental permitting regime.

12.54 Finally on living conditions, concern was expressed that the height and bulk of the building might adversely affect daylight and outlook at the IDC. There were also concerns about noise from the process and vehicle movements. However, the building is sufficiently far away from the IDC for there not to be a harmful impact on daylight and outlook and noise issues would be subject to control through suitably-worded conditions. Local residents have also raised concerns about light pollution and odour. These could be covered by suitably-worded conditions to protect the living conditions of local people and, in the case of light, wildlife. (9.9, 10.3)

Visual impact/ landscape

12.55 The site lies on a plateau which overlooks the Great Ouse valley. A Landscape Character Assessment has been undertaken for the county and is a tool utilised by the Council in recognising the valuable features of each character area, which need be taken into account when dealing with new development. The application site occupies an elevated position within the Renhold Clay Farmland landscape character area. This is dominated by arable farmland with scattered woodlands and varying amounts of field hedgerows. (6.43, 8.8, 8.13)

12.56 The buildings of the former use on the site are large, bulky and distinctive. The taller elements, like the vertical spinning tower, and the adjacent water tower can be seen from quite a significant distance in views along the A6 and from the opposite side of the River Great Ouse. In addition, the site is quite dominant in views from the nearest dwellings, especially Rutters Farm and Cottages and local rights of way, especially bridleways BW7 and BW29. The existing stack is relatively slender and its impact on the landscape is more limited and diminishes with distance. (6.43)

12.57 The proposed main building would be a similar height to the vertical spinning tower, although it would be further back on the site. It would be large and bulky but it would be set among other large and bulky buildings and therefore would not be dominant in views of the business park from the surrounding area. The proposed use of different cladding materials would help to break up its mass. In the longer term the landscape master plan would introduce structural planting that would improve views of the general estate area, including the proposal, from nearby. The new stack would be higher than the existing one by 20m, at 58m. Its proposed cladding in stainless steel would make it less obvious in views against the sky and would diminish its impact. Nevertheless, its increased height and slight increase in width would make it visible from a greater distance than the existing chimney, up to a range of about 3.5km, including the village of Bletsoe. (6.44, 9.1, 9.7, 9.12, 10.4, 10.6)

12.58 Whilst there would be changes to the appearance of the site within the landscape, the business park is already dominated by large, bulky buildings. The new stack would be more visible than the existing stack but the careful use of materials for both the building and the stack would help to prevent any adverse effects of the development in views of it from the surrounding area. (6.45)

12.59 Therefore I conclude that the proposed development would not be harmful to the character and appearance of the area and would be in accordance with policy GE9 of the MWLP, policy CP24 of the CS and policies NE12 and NE20 of the BBLP.

13. Environmental Statement

- 13.1 It has not been suggested in any of the submitted evidence before the inquiry or closing submissions that the ES, as supplemented by the additional material submitted under Regulation 19 of the EIA Regs, was inadequate or that the consultations and publicity undertaken on it were unsatisfactory. (6.2)
- 13.2 The ES gives limited coverage of alternatives to the proposed development. However, this is not necessarily required as part of the EIA process. Further information on alternative sites has been submitted in the form of core documents for the inquiry to address the first reason for refusal on the need for the facility. The ES submitted with a second application on the site in 2010 included information on the alternative sites included in the POWCS. Information has also been submitted on the Council's submissions on the application for a DCO for an ERF plant at Rookery Pit by Covanta, which is currently under examination by the IPC.
- 13.3 I consider that the ES provides adequate information on the likely main impacts of the proposed development and the mitigation measures that may be required. As such, I take the view that the ES is adequate and meets the requirements of the relevant Regulations.

14. Planning Balance

- 14.1 The proposed development would provide a number of benefits: principally it would meet the need for waste recovery which would exist in the MWLP area and would arise by the commissioning date of the plant, in 2015. It would also have the capability to provide CHP. There is no certainty that any other proposals like Rookery Pit South, which the Council opposes, will gain consent in that period or that there will be a commercial decision to include other types of biomass in the feedstock at Goosey Lodge. The proposed development would provide a facility that would result in waste being diverted away from landfill. As a recovery plant it would move the management of waste up the waste hierarchy, to help meet waste recovery targets, albeit to a limited extent.
- 14.2 The site is previously-developed land on an existing employment site, with planning permission for B1, B2 and B8 uses, which is to be allocated as such in the emerging ADDPD. As the site is outside any settlement boundary, the Council considers that it is in the countryside and it is also located away from the growth area to the south of Bedford. The Council's aspiration for high value knowledge based jobs is set out in policy CP11 of the CS, but this relates mainly to new allocations and also refers to the prevention of the loss of existing employment land. Technically the use would be a sui generis use, rather than an industrial one, but national policy in PPS10 directs waste development to such sites.
- 14.3 The proposal would be located outside the growth area and the main area of waste arisings in Bedfordshire, although there are other growth areas in Northamptonshire and Milton Keynes which might also use the plant. The main concerns are whether the site would represent sustainable development in terms of its location. The proposed site can only be accessed by road and there are no objections by the highway authority in terms of the roads likely to be used. The gravity model put forward by the appellant shows that, in terms of CO₂ emissions, the benefit after three years of diverting waste from landfill would outweigh the effect of road miles travelled by HGVs. Even if, as local residents

suggest, the model understates certain parameters, such as the estimates of road miles from the population centroids, the benefit in terms of preventing the landfilling of the waste at an early date would outweigh the locational disadvantage many times over.

- 14.4 The POWCS puts forward 3 sites and a reserve site in the south of the county but the DPD has little weight as it is only at preferred options stage. The rWFD requires waste to be disposed of at the NAI and similar "proximity principle" requirements are in the adopted development plan policies. The site is relatively close to Bedford, even though it is on the opposite side to the growth area, and it would be capable of taking a proportion of the waste from Northamptonshire for which there are few facilities at present. Some of the waste from Luton currently travels for incineration in Birmingham and Coventry and the use of this site would be more sustainable than that solution, even though the amount of waste going by this route is acknowledged to be small. The outcome of the DCO application for the Covanta proposal at Rookery Pit South is unknown. If it were to be approved, its size would mean that it would be unlikely that this proposal would be implemented. If it were to be refused, the inquiry was not made aware of any other firm proposals in the south of the county. The proposal is not of a scale which would prevent that in due course. Therefore the plant could be capable of being the NAI for locally arising waste at present.
- 14.5 The plant would produce electricity from a renewable source, for which there is already a link to the National Grid only 20m away from the site, on the business park. As such it would make some contribution to reducing the dependence on fossil fuels. It also offers the potential to make use locally of heat generated. In addition, 30 jobs would be created, in accordance with the Government's Planning for Growth policy.
- 14.6 The other considerations put forward by local residents and others include landscape, highways and health issues. No harm was found on landscape or highways matters. The use of the existing highways infrastructure was acceptable to the highways authority and although there would be a noticeable difference in HGV traffic on the designated routes. Enforcement of weight restrictions would be a matter for the police. The unilateral obligation offered would ensure that guidance was offered to HGV drivers on lorry routes.
- 14.7 Although the RSS and MWLP are out-of-date, their strategies of moving waste away from landfill and dealing with it higher up the waste hierarchy is compliant with national waste planning policy in PPS10, the national waste strategy in WS2007, national policy on renewable energy in the PPS22 and the Climate Change Supplement to PPS1 and the National Planning Statements for Energy Infrastructure EN1 and EN3.

15. Human Rights

- 15.1 Comments have been made by an objector that the proposal would violate Article 2 of the European Convention on Human Rights (ECHR), which is the right to life (and health). The representations were made to the effect that local residents' rights under Article 2 of the ECHR would be violated if the appeal were allowed because of the adverse effect of the emissions from the plant on human health. I do not consider them to be well-founded because the emissions from the plant would be subject to scrutiny as part of the environmental permitting process carried out by the EA. Granting planning permission would not approve

the process to which the objection is made. As a result, there will be no violation of local residents' human rights by the granting of planning permission for the site.

16. Recommendation

16.1 I recommend that the appeal be allowed subject to the conditions set out in Annex B.

E A Hill

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Ground of Counsel	instructed by the Solicitor, Bedford Borough Council
He called	
Spencer Warren	Heaton Planning, on behalf of Bedford Borough Council
BSc(Hons), DipTP, MRTPI	

FOR THE APPELLANT:

Mr A Williamson BA, DipTP, MRTPI of Counsel	Walker Morris Solicitors, agent for the appellant
He called	
Mr R Bright BA (Hons), DipLA, CMLI	Bright and Associates
Mr K Owen BA(Hons), BTP, MRTPI, FIQ	SLR Consulting Ltd
Mr N Brant MSc, CMILT	As above
Mr M Stoaling	As above
BSc(Hons), MSc, MIAQM, MEnvSci, CEnv	
Mr J Leeson BA(Hons), MSc, FGS, CGeol, GDL	As above

OTHER LOCAL AUTHORITIES

Bletsoe PC	Mr E Bean, Chair
Milton Ernest PC	Mrs D Inskip BSc(Hons) Chemistry, Chair
Thurleigh PC	Mr M Towler, Chair
	Mr D Goodyear BSc(Hons), MSc, MIMA, Member
North Beds Villages Liaison Group	Cllr J Walker (and Bedford Borough Council Clapham Ward)

INTERESTED PERSONS:

Cllr D McMurdo	Bedford BC (Sharnbrook)
Mr R Reynolds	Chair, Twinwoods Action Group
Miss A Smith	Local resident
Ms S Smith	Local resident
Ms W Shortland	Local resident
Mr S Freshwater	Local resident and Twinwoods Action Group
Mr C Smith	Local resident
Mr P Johnson	Local resident
Dr N Faria Degree in Chemistry, "Licenciatura" (MChem Equivalent), Univ. of Aveiro, Portugal (1999)	Local resident and chemist
PhD, Birkbeck College	
Dr T Inskip	Local resident and GP
MBChB, DRCOG, DCH, MRCP	

Mr A Burt, MP	MP for North East Bedfordshire
Ms P Sowter	Local resident
Mr T Hill CEng,MIMechE	Chair, UKWIN for Twinwoods Action Group
Ms J Towler	Local resident
Ms C Dickenson	Yarl's Wood Befrienders' Association
Ms M Turner	Local resident

INQUIRY DOCUMENTS

1	Letters of notification
2	Letters in response
3	Statement of Common Ground
4	Appellant's Opening Submissions
5	Unilateral undertaking (final version)
6-7	Council's suggested conditions, with comments from the appellant, v1 and v2
8-9	Suggested conditions from local residents, v1 and v2
10	Closing submissions – Mr E Bean
11	Closing submissions – Mrs D Inskip
12	Closing submissions - Council
13	Closing submissions and attachments - Appellant
14	Recovery Direction

DOCUMENTS SUBMITTED BY THE APPELLANT

A1/1 & 1/2	Proof and summary – Mr Leeson
A2/1 & 2/2	Proof and summary – Mr Owen
A3/1, 3/2 & 3/3	Proof, appendices and summary – Mr Bright
A4/1 & 4/2	Proof and summary – Mr Stoaling
A4/3	Health Risk Assessment – Mr Stoaling
A5/1, 5/2, 5/3 & 5/4	Proof, figures and appendices, summary, rebuttal of Mr Warren's proof – Mr Brant
A6	Bedford Borough Council's Written Representations on the application for a Development Consent Order by Covanta at Rookery South Pit, Stewartby, Beds.
A7	Comments on written representations and responses to ExA First Written Questions, as 7.
A8	Sustainability Appraisal Preliminary Assessment for Waste Core Strategy Preferred Options and Appendix 2 – Site Appraisal Matrices (replacement for incorrect document at CD3/9).
A9	Screen Print – ADMS Modelling – minimum Monin-Obukhov length.
A10	Additional page to appeal Ref APP/C1055/A/10/2124772 (CD7/7)
A11	E-mail and attached information on the use of ADMS modelling
A12	Written response to Mr Goodyear's submission.
A13	Amended table 20 and table on CO ₂ emissions v1 and v2
A14	Catchment restrictions at waste management sites in the East of England
A15	East of England Regional Waste Management Strategy 2002 Summary
A16	East of England Landfill Capacity 2009
A17	Summary of Waste returns for Elstow Transfer station
A18	EA information and returns on Sidegate Lane Landfill site,

	Wellingborough, Northants
A19	E-mail and plan of population centroids, Bedfordshire
A20	E-mail response to Dr Faria's evidence
A21	E-mail response to Ms Turner's evidence
A22	Biogen's response to local residents' letters of objection
A23	Rebuttal of residents' evidence on proximity

DOCUMENTS SUBMITTED BY THE COUNCIL

C1	Proof and appendices – Mr Warren
C2	Note on the use of conditions to restrict waste catchment areas

DOCUMENTS SUBMITTED BY INTERESTED PERSONS

IP1	Statement, Mrs D Inskip
IP2	Statement, Mr S Freshwater
IP3	Statement and 19 attached documents, Dr N Faria
IP4	Statement and document, Dr T Inskip
IP5	Statement, Mr D Goodyear
IP6	Statement Mr A Burt, MP
IP7	Statement and documents, Ms P Sowter
IP8	Statement, Mr M Towler
IP9	Statement and documents, Mr T Hill
IP10	Statement, Mr P Johnson
IP11	Statement – understated levels of waste – S Beds
IP12	Housing and Employment Annual Monitoring Reports, 2009-2010, Bedford Borough Council
IP13	Statement, Mr A BurrIDGE
IP14	Statement and appendices, Ms M Turner
IP15	Petition and covering document

INQUIRY CORE DOCUMENTS

CD1 APPEAL DOCUMENTS AND ASSOCIATED CORRESPONDENCE

CD 1/1	Bedford Borough Council Planning Committee Report (inc. draft conditions) 27 th May 2010.
CD 1/2	Bedford Borough Council Planning Committee Meeting Minutes 27 th May 2010.
CD 1/3	Bedford Borough Council Planning Decision Notice dated 1 st June 2010
CD 1/4	Bedford Borough Council Planning Committee Report (inc. draft conditions) 7 th March 2011
CD 1/4A	Bedford Borough Council Planning Committee 7 th March 2011 – Meeting Minutes
CD 1/5	Bedford Borough Council Planning Decision Notice / letter 29 th March 2011
CD 1/6	Bedford Borough Council Planning Committee Report 28 th March 2011
CD 1/7	Planning Authority Statement of Case

CD2 APPLICATION DOCUMENTATION AND DRAWINGS

CD 2/1	Scoping Report by Parsons Brinckerhoff. July 2008
	<u>2009 Planning Application and EIA Documents</u> <u>09/01258/FULWME</u>
CD 2/2 (1)	Planning Application Forms & Certificates. June 2009.
CD 2/2 (2)	Planning Statement. June 2009. Entec UK Ltd
CD 2/2 (3)	Design and Access Statement. June 2009. Entec UK Ltd
CD 2/2 (4)	Sustainability Statement. June 2009. Entec UK Ltd
CD 2/2 (5)	Environmental Statement (including chapters, figures and appendices). June 2009. Entec UK Ltd
CD 2/2 (6)	Non Technical Summary. June 2009. Entec UK Ltd Included in Environmental Statement CD 2/2 (5).
CD 2/3	Regulation 19 request for further information. 27 October 2009
	<u>2010 Planning Application and EIA Documents</u>
CD 2/4 (1)	Planning Application Forms & Certificates. November 2010.
CD 2/4 (2)	Planning Statement. November 2010. SLR Consulting Ltd
CD 2/4 (3)	Design and Access Statement. November 2010. SLR Consulting Ltd
CD 2/4 (4)	Sustainability Statement. November 2010. SLR Consulting Ltd
CD 2/4 (5)	Environmental Statement. Volume 1 (Text and appendices). November 2010. SLR Consulting Ltd
CD 2/4 (6)	Environmental Statement. Volume 2 (Drawings). November 2010. SLR Consulting Ltd
CD 2/4 (7)	Non Technical Summary. November 2010. SLR Consulting Ltd

CD3 LOCAL AND COUNTY LEVEL PLANNING POLICY DOCUMENTS

CD 3/1	Bedfordshire and Luton Minerals and Waste Local Plan First Review
CD 3/2	Central Bedfordshire Council, Bedford Borough Council and Luton Borough Council Waste Core Strategy Preferred Options Consultation Document, July 2010.
CD 3/3	Bedford Borough Core Strategy and Rural Issues Plan (CSRIP) 2008
CD 3/4	Core Strategy emerging Allocations and Designations Plan
CD 3/5	Core Strategy Allocations and Designations Plan – Site Appraisal Consultation Document (extract)
CD 3/6	Bedford Borough Local Plan
CD 3/7	Milton Ernest Parish Plan – 2010
CD 3/8	Waste Core Strategy Preferred Options, Technical Evidence Paper 2, Assessment of the need for additional waste management capacity, June 2010
CD 3/9	Waste Core Strategy – Strategic Environmental Assessment
CD 3/10	Central Bedfordshire Core Strategy – November 2009
CD 3/11	Central Bedfordshire Site Allocations Document – January 2010

CD4 EUROPEAN, NATIONAL AND REGIONAL PLANNING POLICY DOCUMENTS

	<u>European</u>
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CD 4/1	The revised Waste Framework Directive (EU Waste Framework Directive 2008/98/EC adopted by the European Parliament and the Council on 19 November 2008)
CD 4/2	Waste (England and Wales) Regulations 2011 (issued 28 March 2011)
	<u>National</u>
CD 4/3	Waste Strategy 2007
CD 4/4	PPS 1 Delivering Sustainable Development. 2005
CD 4/5	PPS 10 Planning for Sustainable Waste Management. 2005
CD 4/6	Planning for Sustainable Waste Management: A Companion Guide to PPS 10. 2006.
CD 4/7	PPS 22 Renewable Energy. 2004
CD 4/8	PPS 23 Planning and Pollution Control. 2004
CD 4/9	Draft PPS: <i>Planning for a Low Carbon Future in a Changing Climate</i> , a supplement to PPS 1 & PPS 22
CD 4/10	Draft National Policy Statement on energy EN-1
CD 4/11	Draft National Policy Statement on energy EN-3
CD 4/12	Chapter 12 of the Joint Strategy for Sustainable Construction Issues. June 2008
CD 4/13	Landfill Directive 1999/31/EC was transposed into domestic legislation by the Landfill (England and Wales) Regulations which came into force on the 15 June 2002.
CD 4/14	Stage Two: Consultation on the transposition of the Waste Framework Directive (Directive 2008/93/EC), Defra and WAG, July 2010
	<u>Regional</u>
CD 4/15	Regional Spatial Strategy for the East of England. 2008
CD 4/16	Draft East of England Plan to 2031, March 2010
CD 4/17	Milton Keynes and South Midlands Sub - Regional Strategy. March 2005.
CD 4/18	Technical Paper on Waste for the Review of the East of England Plan, East of England Regional Technical Advisory Body on Waste, September 2009

CD5 OTHER PUBLICATIONS, DOCUMENTS AND GUIDANCE

CD 5/1	Transcript of Secretary of State, Caroline Spelman speaking at Futuresource, 15 June 2010
CD 5/2	Terms of Reference for a Review of Waste Policies, Defra, 29 July 2010
CD 5/3	The Environmental Services Association. Position paper regarding the imposition of catchment areas for waste
CD 5/4	Twinwoods Business Park – 2007 Planning Consent 02/00885/COU, Conditions & Section 278 agreement.
CD 5/5	Biogens representations to the Waste Core Strategy Preferred Options Consultation – June 2010.
CD 5/6	Approved Landscaping Masterplan for the Twinwoods site. Included in CD 2/4 Environmental Statement
CD 5/7	Ministerial Statement regarding economic growth during the 2011 Budget by Greg Clark.
CD 5/8	The Data Centre Officers' Report

CD 5/9	Letter from Twinwoods Business Park letting agent
CD 5/10	Letter from DCLG 31 March 2011 – Amendment to PPS 10
CD 5/11	ODPM Guidance Note on Employment land Review. December 2004
CD 5/12	Ince Marsh Appeal. APP/Z0645/A/07/2059609
CD 5/13	Decision of Viridor Avonmouth Appeal of planning application 09/04470/F and amendment

CD6 NEED

CD 6/1	Waste Strategy Annual Progress Report 2008/09, Defra, October 2009
CD 6/2	The BEaR Project Business Case, Central Bedfordshire Council, Spring 2010
CD 6/3	Municipal Waste Statistics for 2009/10, Local Authority Data, Defra, November 2010
CD 6/4	Detailed Assessment of East of England Waste Arisings for the East of England Regional Assembly, Urban Mines, March 2009
CD 6/5	Study into Commercial & Industrial Waste Arisings, ADAS on behalf of East of England Regional Assembly, April 2009
CD 6/6	Figure 13 of Detailed Assessment of East of England Waste Arisings for the East of England Regional Assembly, Urban Mines, March 2009 See core document CD 6/4.
CD 6/7	Commercial and Industrial Waste Survey 2009. Final Report. Jacobs on behalf of Defra, December 2010
CD 6/8	Business Demography 2009, Table 3.1 Count of Active Enterprises for 2009, Office for National Statistics
CD 6/9	East of England Construction and Demolition Waste Arisings – Final report, BRE for Environment Agency, August 2009
CD 6/10	Official Journal of the EU, Contract Notice 2010/S 103-156875, issued by Central Bedfordshire Council regarding refuse and waste related services, May 2010
CD 6/11	Extra item for Planning Committee 25 May 2010, Application No 09/01258/FULWME – Please see core document CD 1/1.
CD 6/12	E-mail D Peachey, Central Bedfordshire Council to J Leeson, 17 January 2011
CD 6/13	England and Wales, Incineration Throughput 2009, Environment Agency
CD 6/14	http://www.wykesengineering.co.uk/anccomb.html
CD 6/15	Renewable Energy Foundation. Renewable Energy Data, Issue 10, Monthly Generation Statistics, Biomass, August 2010
CD 6/16	http://www.e-roc.co.uk/graph.cfm which shows value of ROC auctions over the past two years
CD 6/17	Shore Energy Renewable Energy Fuel Production and Recycling Facility- Environmental Statement, Grettton Brook Road, Corby, GP Planning, November 2008
CD 6/18	Milton Keynes Waste Development Plan Document, adopted in May 2008
CD 6/19	OJ Prior Information Notice 2011/S 48-078986, UK-Milton Keynes: refuse disposal and treatment, 10 March 2011

CD7 AIR QUALITY

CD 7/1	DIRECTIVE 2000/76/EC on the incineration of waste
CD 7/2	EA Incineration Position Statement. 'Our Role'. Bullet 1, page 1.
CD 7/3	How to comply with your environmental permit. Additional guidance for: Horizontal Guidance Note H1 - Annex (f). April 2010 (ref: GEHO0410BSIL-E-E)
CD 7/4	R L Maynard, H Walton, F Pollitt and R Fielder (February 2010) <i>The Impact on Health of Emissions to Air from Municipal Waste Incinerators</i> . HPA Document Ref. RCE 13.
CD 7/5	Report to the Secretary of State for Communities and Local Government by Stephen Roscoe (Inspector). Appeal by Waste Recycling Ltd. Eastcroft Energy from Waste Facility, Off Incinerator Road, Cattle Market Road, Nottingham. File Ref: APP/Q3060/A/08/2063129. Page 22, Para 134.
CD 7/6	Report to the Secretaries of State for Communities and Local Government and for Business, Enterprise and Regulatory Reform by Simon Gibbs (Inspector). Appeal by Peel Environmental Ince Ltd. Relating to a Refuse Derived Fuel Plant & a Resource Recovery Park on Land at Ince Marshes, Cheshire. File Ref: APP/Z0645/A/07/2059609. Page 134, Para 11.24
CD 7/7	Appeal Decision by Ruth V MacKenzie (Inspector). Disused land adjacent to 1-5 Railway Cottages, Sinfin Lane, Sinfin, Derby. Appeal Ref: APP/C1055/A/10/2124772. Page 8, Para 44.
CD 7/8	Determination of an Application for an Environmental Permit under the Environmental Permitting (England & Wales) Regulations 2010. DRAFT Decision document recording the decision making process. United Utilities Waste Operations Ltd. Sinfin Lane, Derby. P33, section 5.1.2.7
CD 7/9	Determination of an Application for an Environmental Permit under the Environmental Permitting (England & Wales) Regulations 2007. DRAFT Decision document recording the decision making process. Viridor Waste Management Limited, Ardley Energy from Waste Facility. P56, section 7.3.3
CD 7/10	Blank
CD 7/11	Determination of an Application for an Environmental Permit under the Environmental Permitting (England & Wales) Regulations 2010. Decision document recording the decision making process. Sita UK Limited. Cornwall Energy Recovery Centre, St Dennis, St Austell, Cornwall. Page 51, section A3.4.9.
CD 7/12	Determination of an application for a PPC Permit under the Pollution Prevention and Control (England and Wales) Regulations 2000. Decision document recording the decision making process. Veolia ES Recovery Nottinghamshire Ltd. Rufford Energy Recovery Facility. Page 137, response 79.
CD 7/13	HPA Chemical Hazards and Poison Division HPA response to the British Society for Ecological Medicine report. [Note: This is a response to the 2005 ECOMED report]
CD 7/14	blank
CD 7/15	Appeal Decision by Elizabeth C Ord (Inspector). Land adjacent to

	Stalbridge Dock, Dock Road, Port of Garston, Liverpool. Appeal Ref: APP/Z4310/A/09/2117527. P10, para's 53 and 57.
CD 7/16	blank
CD 7/17	EPUK Development Control: Planning For Air Quality (2010 Update) . Released 21 st April 2010
CD 7/18	Environment Agency. Sector Guidance Note 5.01. <i>The Incineration of Waste</i> .

CD8 TRANSPORT

CD8/1	Design Manual for Roads & Bridges (DMRB) Volume 6: Section 1 Part 1 – Highway Link Design Section 2 Part 6 – Geometric Design of Major / Minor Priority Junctions
CD 8/2	Guidelines on Transport Assessment, DCLG & DfT. Paragraph 4.19
CD 8/3	Design Manual for Roads & Bridges Volume 5 Section 1 Part 2 – Traffic Flow Ranges for the Assessment of New Rural Roads
CD 8/4	Guidelines for Environmental Impact Assessments 2006, IEMA
CD 8/5	Guidelines on Transport Assessment, DCLG & DfT. Paragraph 4.45

PLANS SUBMITTED AT THE INQUIRY

- A Coloured plan of preferred sites, map 4.1 of the Waste Core Strategy POWCS, submitted by the Council.
- B Highways plan agreed by the appellant and local residents

PHOTOGRAPHS SUMITTED AT THE INQUIRY

- 1-7 HGVs on the local road network, submitted by Milton Ernest PC
- 8-9 Photos to and from the site and Rutters Cottages, submitted by Ms Turner

ANNEX 1 - Conditions

1. The development shall be carried out strictly in accordance with the particulars of the development, plans and specifications contained in the application and Environmental Statement except as modified by conditions of this permission. The approved plans and particulars comprise: application form (dated 4 June 2009, Planning Supporting Statement (June 2009), Drawing No. 23586-L32, Figure 3.7, applicant's letter dated 28th January 2010 and appendices A, B, D, E and F referred to therein, Entec's e-mail dated 16 March 2010, applicant's e-mails dated 23rd and 29th March 2010, Drawing Nos. BP1003/1A, 08-1425-P01 Rev F, 08-1425-P-03 Rev C, 08-1425-P04 Rev C, 08-1425-P05 Rev C, 08-1425-P06 Rev C, 08-1425-P09, 08-1425-P11, 08-1425-P08, 08-1425-P07, 08-1425-P10, 1168(63) E01 and Figure 12.2(a).
2. The development hereby permitted shall begin not later than 3 years from the date of this permission. Written notification of the date of commencement shall be sent to the Local Planning Authority within 7 days of such commencement.
3. No development shall take place until a detailed Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority. The CMP shall include provision for: traffic management, times, routes and means of access and egress for construction traffic and delivery vehicles including the export of construction and demolition waste from the site; the parking of vehicles and site operatives; loading and unloading of plant and construction materials; storage of plant and materials used in the construction of the development; wheel wash facilities and other measures necessary to control the deposition of mud and debris on surrounding roads; and dust suppression measures. The CMP shall be implemented as approved at all times through the development process.
4. Construction activities audible beyond the boundary of the site, including HGVs entering and leaving the site, shall only take place between the following times:
 - 0730 to 1800 hours Mondays to Fridays;
 - 0800 to 1300 hours Saturdays;and, at no time on Sundays or Public/Bank Holidays.
5. No more than 124,000 tonnes of waste shall be imported to the operational site in any calendar year.
6. Records of the daily tonnages of waste imported to the ERF hereby permitted, including separately that sourced from the Bedford Borough, Central Bedfordshire and Luton Borough unitary authority areas, shall be maintained at all times and made available for inspection by officers of the Local Planning Authority within 7 days of any written request. A yearly summary shall be submitted to the Local Planning Authority for each calendar year of operation by the 1 March and shall cover the preceding year.
7. There shall be no more than 94 Heavy Goods Vehicle (HGV) movements¹ entering and exiting the operational site per full working day (pro-rata for part days) in connection with the development hereby permitted. A daily record of number of HGV vehicles entering and exiting the operational site shall be

maintained at all times and shall be made available for inspection by the Local Planning Authority within 7 days of any written request.

¹ An HGV (a vehicle of gross vehicle weight exceeding 7.5 tonnes) entering and leaving the site equals 2 movements for the purposes of this condition.

8. No development shall commence until detailed plans and sections of the new vehicular entrance from the estate road into the ERF plant has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to the commissioning of the ERF.
9. Visibility splays shall be provided at the junction of the ERF area and the estate road prior to the commencement of the development. The minimum dimensions to provide the required splay lines shall be 2.4 metres measured along the centre line of the proposed access along the line of the channel of the estate access road. All areas shall thereafter be kept free of all obstructions to visibility above carriageway level.
10. Construction of the weighbridge and entrance office shall not commence until details of the design of the weighbridge and entrance office have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to the commissioning of the ERF.
11. No development shall take place until a scheme for provision of vehicle parking space has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to the commissioning of the ERF plant and thereafter the space shall be kept available for parking at all times.
12. No development shall take place until a scheme for the parking of cycles on the site and access thereto has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before the commissioning of the plant and thereafter retained for that purpose.
13. No development shall take place until a CCTV camera has been installed which monitors the site entrance at the junction with the C32 Thurleigh Road in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of:
 - (a) the column and cameras to be used;
 - (b) the area to be covered; and
 - (c) the capability for remote access viewing.The approved CCTV system shall be fully functional prior to the import of waste to the site and shall thereafter be used at all times in accordance with the approved details.
14. No vehicle shall leave the site and enter the public highway unless its wheels and chassis are clean.
15. All materials on loaded HGVs entering and leaving the site shall be in enclosed, containerised or sheeted vehicles.

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16. No vehicle shall move around the facility at a speed greater than 10mph, and speed limit signs to that effect shall be erected and maintained in prominent positions throughout the life of the site.
 17. No development shall take place until a Traffic Management Plan for the operational phase of the site has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall include measures to co-ordinate deliveries and exports of material (avoiding the weight ban in Milton Ernest as appropriate) to prevent queuing and waiting on the highway.
 18. No development shall take place until a highway signing scheme has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall instruct HGV drivers to access and egress the site via the A6 and its junction with the Sharnbrook roundabout (Mill Road). The approved scheme shall be implemented prior to the commissioning of the ERF.
 19. The ERF plant hereby permitted may operate continuously. No HGVs shall enter or leave the site except between the following times:

0730 to 1800 hours Mondays to Fridays

0800 to 1300 hours Saturdays

and, at no time on Sundays or Public/Bank Holidays.
 20. No demolition of existing buildings and structures on the site shall take place until a Level 2 Standing Building Assessment Recording has been undertaken and a copy of the full report of that assessment submitted to the Local Planning Authority within 3 months of its completion.
 21. No preliminary groundworks or demolition of existing buildings and structures lower than 0.25 metres above existing ground level shall take place until the applicant, agent or developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, which has first been submitted to and approved in writing by the Local Planning Authority.
 22. A close-boarded timber acoustic fence, with a minimum surface weight of 7kg/m², shall be erected around the HGV delivery yard in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before the commissioning of the ERF hereby permitted.
 23. In accordance with results of the BS4142 assessment at the nearest sensitive receptors as set out in Tables 9/14 and 9/15 of the Environmental Statement, as amended by the Regulation 19 information, the rating level from noise sources on the operational site shall:

- not exceed the recorded background (LA90) at the boundary of the Yarl's Wood Immigration Detention Centre (residential and offices) by more than 1dB;

- be at least 4dB below the recorded background (LA90) at the nearest property in Milton Ernest and at No.3 Milton Road.
 24. No development shall commence until a scheme for the monitoring and control of noise from the operational site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include provision for:

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- noise monitoring and recording locations and procedures to assess compliance with the limits specified in condition 23 of this permission;
 - presentation of results to the Local Planning Authority
 - procedures to be adopted in the event of complaints or the maximum permitted noise levels in condition 23 of this permission being exceeded.

Thereafter, no development shall take place except in accordance with the scheme as approved in writing.

25. No reversing beepers or other means of audible warning of reversing plant shall be fixed to, or used on, any plant, other than those which use white sound.
26. All vehicles, plant and machinery used on site shall use equipment that minimises noise output.
27. The fast-acting doors to the Waste Reception Halls shall be kept closed at all times other than during the course of entry and egress of vehicles to and from the Waste Reception Halls. No waste shall be stored or stockpiled outside the Reception Halls at any time.
28. No development shall commence until a scheme for odour management, which shall include odour abatement equipment and procedures to be adopted in the event of complaints, in the event of plant closure or shutdown has been submitted to and approved in writing by the Local Planning Authority. Thereafter, no development shall take place except in accordance with the approved scheme.
29. Prior to commencement of the development hereby permitted, a scheme for the protection and retention of existing trees at the northern end of the ERF plant area, and identification of any trees to be felled, shall be submitted for the written approval of the Local Planning Authority. The approved scheme shall be complied with at all times.
30. No development shall take place until a detailed scheme of hard and soft landscaping for the site and the business park has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of tree, shrub and aquatic planting and surface materials for car parking, pedestrian access and circulation areas. The approved scheme shall be implemented within the first planting season following completion of the built development or to a timetable agreed in writing with the Local Planning Authority. Thereafter, all planting shall be managed and maintained for a period of 5 years from the date of planting and any failed, damaged or missing plants during this period shall be replaced with others of a similar size and species and maintained satisfactorily until established.
31. Prior to commissioning of the ERF plant hereby permitted, a Combined Heat and Power (CHP) Feasibility Review, assessing potential commercial opportunities for the export of heat from the plant, shall be submitted to and approved in writing by the Local Planning Authority. The Review shall provide for the ongoing monitoring and full exploration of potential commercial opportunities to use heat from the plant as part of a good quality CHP scheme (as defined in the CHPQA Standard issue 3 January 2009 which sets out the definitions, criteria and methodologies for the operation of the UK's CHP Quality Assurance (CHPQA) programme), or any superseding or amending standard, and for the provision of subsequent reviews of such commercial opportunities as necessary.

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32. The ERF hereby approved shall not be commissioned until a scheme for the fencing of its boundary has been submitted to and approved in writing by the local planning authority. The scheme shall include the position, height, design and colour of the fencing and shall be carried out as approved.
33. No development shall take place until a detailed supplementary surface water drainage plan for the whole site has been submitted to and approved in writing by the Local Planning Authority. The submitted plan shall follow on from the Drainage Impact Assessment contained within the Flood Risk Assessment (FRA) in Appendix C of the Environmental Impact Assessment by including the detailed information:
- (i) Drawings and cross-sections of the proposed on-site surface water drainage system showing positions and dimensions of all components forming that system, including piped systems, storage devices, flow control devices, inspection chambers and swales;
 - (ii) Full details of the maintenance regime of the entire drainage network, including frequency of maintenance and responsible parties;
 - (iii) Details of overland flood flow paths, including depths, velocities, and direction which shall be relied upon in the event of failure of the surface water drainage system.

The approved scheme shall be implemented in full prior to the commissioning of the ERF.

34. No development shall take place until a scheme for the disposal of foul water has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to commissioning of the ERF.
35. Prior to commencement of the development hereby permitted, a contaminated land assessment and associated remedial strategy shall be submitted to and approved in writing by the Local Planning Authority and contain the following elements in line with the guidance in 'Contaminated Land: A Guide for Developers':
- (i) A Phase 1 Preliminary Risk Assessment (desk study) detailing the history of the site uses and identify and evaluate all potential sources and impacts and/or groundwater contamination;
 - (ii) Where the preliminary risk assessment under (i) identifies potentially unacceptable risks at the site, a suitably qualified and accredited person shall carry out and submit for the prior written approval of the Local Planning Authority:
 - a Site Investigation, including relevant soil, soil-gas, surface and groundwater sampling in accordance with quality assured sampling and analysis methodology and detailing all investigative works and sampling on site, together with the results of any analysis, risk assessment to any receptors and a proposed Remediation Strategy.

Any necessary remedial works shall be undertaken in full accordance with the Remediation Strategy as may be approved, and subject to a quality assurance scheme, to demonstrate compliance with the approved methodology and best practice.

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- (iii) If during the remedial works under (ii) previously unknown contamination is encountered, the works shall cease (unless otherwise agreed in writing by the Local Planning Authority) and shall not resume until such time as an amended remediation strategy showing how the unsuspected contamination will be dealt with, has been submitted to and approved in writing by the Local Planning Authority.
- (iv) Following completion of the works under (ii) and (iii), a Verification / Validation Report shall be submitted for the written approval of the Local Planning Authority. The Verification Validation Report shall include details of the completed remedial works, including documentation detailing the waste materials removed from the site, quality assurance certificates to show that the works have been carried out in full accordance with the approved methodology and details of any post-remedial sampling and analysis as necessary to show the site meets the required clean-up criteria.
36. No piling or any other foundation design using penetrative methods shall be carried out on any part of the site until a Foundation Risk Assessment has been submitted to and approved in writing by the Local Planning Authority which demonstrates that there is no unacceptable risk of pollution of groundwater from the proposed works.
37. Details of the location, height, design, sensors, hours of operation and luminance of external lighting for the ERF (which shall be designed to minimise the potential nuisance of light spillage and glare on nearby properties and highways), shall be submitted to and approved by the Local Planning Authority before any permanent external lighting is used on site. The approved scheme shall be implemented and complied with throughout the life of the approved development.
38. No development shall take place until samples of all external materials have been submitted to and agreed in writing by the Local Planning Authority. Only the agreed external materials shall be used in the building works.
39. A copy of this planning permission, including relevant documents and plans and schemes subsequently approved pursuant to it, shall be displayed on site during working hours in a location which is readily accessible to any person undertaking the development.
40. No development shall commence until the appellant, or their agents or successors in title has submitted to, and received written approval from, the Council a scheme and programme for the establishment of a Liaison Committee. The Parish Councils of Bletsoe, Milton Ernest and Thurleigh shall be invited to join the liaison committee, together with the Environment Agency. Thereafter the Liaison Committee shall be constituted, established and operated in full accordance with the approved details.

Annex 2 - ABBREVIATIONS USED IN REPORT

ACT	Advanced Conversion Treatment
AD	Anaerobic Digestion
ADAS	Environmental consultancy formerly known as Agricultural Development Advisory Service
ADDPD	Allocations and Designations Development Plan Document
ADMS	Atmospheric Dispersion Model
Appellant	Mr N Baston (Biogen Power Ltd)
BAT	Best Available Technique
BBC	Bedford Borough Council
BPEO	Best Practicable Environmental Option
BS 4142	British Standard for rating industrial noise affecting mixed residential and industrial areas
C&I	Commercial and Industrial Waste
C&D	Construction and Demolition Waste
CG	Companion Guide
CHP	Combined Heat and Power
CHPQA	Combined heat and power quality assurance
CLG	Department for Communities and Local Government
CMP	Construction Management Plan
Council	Bedford Borough Council
CS	Bedford Borough Core Strategy and Rural Issues Plan
CSM	Common Standards Monitoring
DCO	Development Consent Order
DEFRA	Department of the Environment, Food and Rural Affairs
DERA	Defence Establishment and Research Agency
DPD	Development Plan Document
EA	Environment Agency
ECHR	European Commission on Human Rights
EEDA	East of England Development Agency
EEGLA	East of England Local Government Association
EfW	Energy from Waste
EIA Regs	Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999
EP	Environmental Permit
ERF	Energy Recovery Facility
ES	Environmental Statement
HGV	Heavy Goods Vehicle
HPA	Health Protection Agency
HRA	(Human) Health Risk Assessment
HWRC	Household Waste Recycling Centre
IDC	Immigration Detention Centre
IPC	Infrastructure Planning Commission
LATS	Landfill Allowance Trading Scheme
LDS	Local Development Scheme
MBT	Mechanical Biological Treatment
MRF	Material Recycling Facilities
MSW	Municipal Solid Waste
MWLP	Bedfordshire and Luton Minerals and Waste Local Plan
NAI	Nearest Appropriate Installation
NPSs	National Policy Statements
PCT	Primary Care Trust

PM	Particulate Matter (the figure after the letters represents particle size)
POWCS	Preferred Options Waste Core Strategy (Central Bedfordshire, Bedford Borough and Luton Borough)
POPs	Persistent Organic Pollutants
PPS	Planning Policy Statement
ROC	Renewables Obligation Certificate
ROO2009	Renewable Obligation Order 2009
RSS	Regional Spatial Strategy
RTAB	Regional Technical Advisory Body
SoCG	Statement of Common Ground
SoS	Secretary of State (for Communities and Local Government)
SUDs	Sustainable Urban Drainage scheme
TEP2	Technical Evidence Paper 2 (to POCWS)
tpa	Tonnes per annum
WCS	Waste Core Strategy
rWFD	revised Waste Framework Directive
WHO	World Health Organisation
WID	Waste Incineration Directive
WPA	Waste Planning Authority
WS2007	Waste Strategy for England 2007
WTF	Waste Treatment Facility
WTS	Waste Transfer Station

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.