

19<sup>th</sup> July 2012

Mr Nick Roberts  
Axis  
Camellia House  
76 Water Lane  
Wilmslow  
Cheshire  
SK9 5BB

Our Ref: APP/E1855/V/11/2153273  
Your Ref: NR/cl/1176-01

Dear Mr Roberts,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
APPLICATION BY MERCIA WASTE MANAGEMENT LIMITED  
AT PLOT H, 600 OAK TREE DRIVE, HARTLEBURY TRADING ESTATE,  
HARTLEBURY, WORCESTERSHIRE, DY10 4JB  
APPLICATION REF: 10/000032/CM**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mr Terrence Kemmann-Lane, JP DipTP FRTPI MCMI, who held a public local inquiry between 22 November and 2 December 2011 into your client's application for an energy from waste facility for the combustion of non hazardous waste and the recovery of energy, comprising the energy from waste facility buildings and associated infrastructure (including: an excavated development platform; site access; internal roads; weighbridges; car parking; fencing; drainage works; and landscaping) at Plot H, 600 Oak Drive, Hartlebury Trading Estate, Hartlebury, Worcestershire, DY10 4JB in accordance with application number 10/000032/CM, dated 30 April 2010.
2. On 10 May 2011, the Secretary of State directed, in pursuance of section 77 of the Town and Country Planning Act 1990, that the application be referred to him instead of being dealt with by the relevant planning authority, Worcestershire County Council.

**Inspector's recommendation and summary of the decision**

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

## **Procedural Matters**

4. In reaching this position the Secretary of State has taken into account the Environmental Statement and the four additional submissions submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. Like the Inspector (IR6.3), he is content that the Environmental Statement, in its composite form with the additional information, complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the application.

## **Matters arising after the close of the inquiry**

5. Following the close of the inquiry, the Secretary of State received representations from: Kirsten Dowty (dated 12 December 2011); Councillor Felicity Norman, member for Leominster North (dated 14 December 2011); from Mr and Mrs J and A Clarke (dated 10 January 2012); and from Peter Taylor, DLA Piper UK LLP on behalf of Worcestershire Residents Against Incineration and Landfill (WAIL) (dated 3 February 2012). The Secretary of State has taken account of these representations but is satisfied that they did not raise matters which require him to refer back to parties on the representations prior to reaching his decision.
6. The Government published the National Planning Policy Framework (the Framework) in March 2012, following the close of the inquiry. This document replaces those Planning Policy Guidance notes and Planning Policy Statements, Minerals Planning Guidance notes, Circulars and Letters to Chief Planning Officers set out in its Annex 3. Following the publication of the Framework the Secretary of State wrote to interested parties on 19 April 2012 seeking their views on its implications, if any, on the proposal before him. On 9 May 2012 the Secretary of State circulated the responses, inviting further comments, and stating that he would then proceed to a decision. A list of those responding is set out in Annex A below.
7. The Secretary of State has carefully considered all of the representations received in his determination of this case. He considers that for the most part the issues raised cover those already rehearsed at the inquiry. In considering these further representations the Secretary of State also wishes to make it clear that he has not revisited issues which are carried forward in the Framework and which have therefore already been addressed in the IR. Notwithstanding that the majority of former national planning guidance has been replaced by the Framework, the Secretary of State considers that the main issues identified by the Inspector remain essentially the same.
8. Copies of the correspondence referred to at paragraphs 5 - 7 above are not attached to this letter but may be obtained on written request to the above address.

## **Policy considerations**

9. 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.

10. In this case, the development plan comprises the West Midlands Regional Spatial Strategy published in 2008 (RSS), the saved policies of the Worcestershire County Structure Plan 1996 – 2011 adopted in 2001 (SP), and the saved policies of the Wychavon District Local Plan adopted in 2006 (LP). The Secretary of State considers that the development plan policies most relevant to the appeal are those listed by the Inspector at IR4.1.
11. The Secretary of State considers that the revocation of Regional Strategies has come a step closer following the enactment of the Localism Act on 15 November 2011. However, until such time as the RSS is formally revoked by Order, he has attributed limited weight to the proposed revocation in determining this appeal.
12. The Secretary of State has also had regard to the Inspector's comments on the emerging Worcestershire Waste Core Strategy, the emerging South Worcestershire Development Plan and the RSS for the West Midlands Phase 2 Revision and his view that the proposal accords with the overall objectives of those emerging documents in so far as he considered that they carried any weight (IR11.35). For the reason given by the Inspector, the Secretary of State shares his view that very little weight can be attached to the Phase 2 RSS Revision (IR11.35). Having also had regard to paragraph 2.13.3 of the representation submitted by WAIL on 3 May 2012 and to paragraphs 2.2.6 – 2.2.10 of your representation dated 24 May 2012, the Secretary of State sees no reason to disagree with the weight given by the Inspector (IR11.35) to the emerging Worcestershire Waste Core Strategy and the emerging South Worcestershire Development Plan.
13. Other material considerations which the Secretary of State has taken into account include: *Planning Policy Statement 10: Sustainable Waste Management*; Circular 11/95: *The Use of Conditions in Planning Permission*; the Waste Strategy for England 2007; the National Policy Statement for Energy (EN-1) (July 2011); the National Policy Statement for Renewable Energy Infrastructure (EN-3) (July 2011) and the Joint Municipal Waste Management Strategy for Herefordshire and Worcestershire 2004-2034; and the Written Ministerial Statement (WMS) of the Rt Hon Greg Clark MP *Planning for Growth* (March 2011).

### **Main issues**

14. The Secretary of State considers that the main issues in this case are:
  - a) The Development Plan;
  - b) PPS10 – Sustainable Waste Management;
  - c) Climate Change;
  - d) Green Belt;
  - e) Other matters; and
  - f) Conditions.

### The development plan

15. Having had regard to the Inspector's analysis at IR11.7 – 11.14, the Secretary of State concurs with his conclusion that the impact of the proposed development on the environmental assets and landscape character which development plan policies seek to protect and enhance is that it does not amount to harm and that the environment and landscape would be protected (IR11.14). He has given careful consideration to the Inspector's comments at IR11.16 – 11.22 and agrees with the Inspector that, based on the evidence presented, the development is unlikely to adversely affect the conservation status of the local newt population (IR11.19), and that the EnviRecover Facility would be in accordance with the policies of the development plan on Ecological and Nature Conservation matters (IR11.22).
16. For the reasons given by the Inspector (IR11.23 -11.24) the Secretary of State shares his view that the application proposal is in conformity with development plan policies in relation to transport matters (IR11.24) and, for the reasons given at IR11.25 – 11.26, he too concludes that it is in conformity with policies for Surface Water, Flood Risk and Groundwater (IR11.26). The Secretary of State also sees no reason to disagree with the Inspector's analysis and conclusions in respect of Archaeology and Cultural Heritage (IR11.27) and Air Quality and Health (IR11.28 – 11.29) and Noise and Vibration matters (IR11.30 -11.32).
17. In conclusion on this matter, like the Inspector (IR11.34), the Secretary of State is satisfied that, subject to his later consideration of Green Belt policy, the EnviRecover Facility is in conformity with the aims of the development plan.

### PPS10 – Sustainable Waste Management

18. The Secretary of State has given careful consideration to the Inspector's analysis at IR11.36 – 11.42. For the reasons set out in IR11.37 – 11.42, he agrees with the Inspector's conclusion that, subject to the consideration of the relationship of the proposal to Green Belt policies, and the Key Planning Objective to protect Green Belts, which is considered below, the application proposal is in accordance with the advice in PPS10, meeting the Key Planning Objectives in that it diverts waste from landfill, thus delivering sustainable development through driving waste management up the waste hierarchy and it helps implement the national waste strategy (IR11.43).

### Climate Change

19. The Secretary of State has considered the Inspector's analysis at IR11.44 – 11.55. Paragraphs 93 - 98 of the Framework make clear the continuing importance Government attaches to ensuring that planning plays a key role in reducing greenhouse gas emissions and supporting the delivery of renewable and low carbon energy and associated infrastructure. The Secretary of State has had regard to the fact that the application proposal would deliver 13.5 MW of electricity to the grid which would otherwise have been generated by the combustion of fossil fuels (IR11.45). He has also taken account of the fact that the applicant's evidence indicates that the EnviRecover facility as compared to landfill could save some 53,000 tonnes of CO<sub>2</sub> (IR11.45). Whilst he has had

regard to the other evidence submitted on this matter, in common with the Inspector and for the reasons he gives, the Secretary of State considers that greater weight attaches to the scientific evidence of the applicant (IR11.46 - 11.47). He also agrees with the Inspector's reasoning and shares his view that the CHP potential of the proposal is a very positive factor to be weighed in the balance of the decision on this case (IR11.48). The Secretary of State sees no reason to disagree with the points made by the Inspector at IR11.49 – 11.54. In conclusion on this matter, the Secretary of State considers that Energy from Waste offers considerable climate change benefits as compared with landfill and that these are fully encompassed by this proposal (IR11.55). He has identified no significant conflict with national policy as set out in the Framework in respect of climate change.

### Green Belt

20. The Secretary of State has had regard to the fact that the participants at the inquiry agreed that the application proposal is inappropriate development in the Green Belt (IR11.56) and he sees no reason to disagree with that view. As set out at paragraph 87 of the Framework inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In line with paragraph 88 of the Framework, the Secretary of State attributes substantial weight to the harm which the scheme would cause to the Green Belt.
21. The Secretary of State has had regard to the Inspector's analysis of whether the application proposal complies with the purposes of the Green Belt (IR11.57). A number of parties have pointed out that the Framework does not refer to major developed sites in the Green Belt. However, the Secretary of State agrees with the Inspector that: the site is situated within the built-up area of an extensive industrial estate; it has an extant planning permission for industrial development; and it is very likely that the site will be developed in some urban form in the future, as allowed for under development plan policies (IR11.57). Given these considerations, the Secretary of State shares his view that the site has no direct role in checking unrestricted sprawl, in preventing the merging of towns or in safeguarding the countryside from encroachment. The Secretary of State also agrees with the Inspector's comments in respect of the fourth and fifth purposes of the Green Belt (IR11.57).
22. Turning to the visual amenity of the Green Belt, the Secretary of State agrees with the Inspector's analysis and concurs with his view that there would be minimal effect on the openness of the Green Belt since the site is clearly within an existing trading estate and the additional impact is so small (IR11.58). Much of the Inspector's assessment of the scheme in relation to paragraph 1.6 of PPG2 is now relevant to paragraph 81 of the Framework and the Secretary of State sees no reason to disagree with the Inspector's remarks (IR11.59).
23. The Secretary of State has given very careful consideration to the Inspector's comments at IR11.60 – 11.64 and he sees no reason to disagree with his analysis. He agrees that there is a compelling and urgent need for the facility as proposed and that there is no other suitable alternative site within Herefordshire and Worcestershire. He further agrees that, if this proposal fails, very substantial

amounts of waste would continue to be landfilled, or would be exported and landfilled or incinerated outside the area. In conclusion on this matter, having given substantial weight to the harm that would arise in this case, the Secretary of State is satisfied that the other considerations listed by the Inspector at IR11.64 clearly outweigh the potential harm to the Green Belt and that very special circumstances have been demonstrated in this case.

#### Other matters

24. The Secretary of State has considered the Inspector's remarks at IR11.66 -11.67 and he sees no reason to disagree with his analysis. Having had regard to IR11.71, the Secretary of State agrees with the Inspector that Mercia Waste Management Ltd conducted fully adequate consultation exercises. For the reasons given by the Inspector at IR11.72 and in view of his conclusions at paragraph 23 above, the Secretary of State is satisfied that Natural England is not unlikely to grant a mitigation license in respect of great crested newts. However, the Secretary of State does not agree with the Inspector (IR11.72) that a decision maker is only obliged to give "light touch" consideration to this matter, and, in his determination of this case, he has had regard to the requirements of the Habitats Directive in so far as they may be affected by the grant of planning permission in this case.
25. In relation to the Inspector's consideration of the public perception of health concerns (IR11.69 – 11.70), the Secretary of State observes that PPS23 has now been replaced by the Framework. Paragraph 122 of the Framework states that "local planning authorities should focus on whether the development itself is an acceptable use of the land, and the impact of the use, rather than the control of processes or emissions themselves where these are subject to approval under pollution control regimes. Local planning authorities should assume that these regimes will operate effectively." Having taken account of this statement and the Inspector's analysis at IR11.70, the Secretary of State concurs with the Inspector that there is no evidence to suggest that perceptions of health risk are objectively justified and he attributes very little weight to the matter.

#### Conditions

26. The Secretary of State has considered the proposed conditions, the Inspector's comments at IR12.1 – 12.6 and national policy as set out in Circular 11/95. He is satisfied that the conditions set out in the Annex to the IR and attached as Annex B to this letter are reasonable and necessary and meet the tests set out in the Circular.

#### Overall Conclusion

27. The Secretary of State has had regard to the comments of parties about the weight to be given to LP policy SR8. However, in view of his conclusions above on the scheme's conformity with the development plan (paragraph 17) and on Green Belt issues (paragraph 23 above), he does not consider it necessary for him to consider whether policy SR8 or other policies in the plan should attract reduced weight following the publication of the Framework.

28. The Secretary of State has found that there is a compelling and urgent need for the facility as proposed and that there is no other suitable alternative site within Herefordshire and Worcestershire. He has also concluded that there are very special circumstances which clearly outweigh the potential harm to the Green Belt in this case. The Secretary of State concludes overall that he finds the application to be in accordance with the development plan and with national policy. He has identified no other material considerations of sufficient weight to determine the application other than in accordance with the development plan.

### **Formal Decision**

29. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants planning permission for an energy from waste facility for the combustion of non hazardous waste and the recovery of energy, comprising the energy from waste facility buildings and associated infrastructure (including: an excavated development platform; site access; internal roads; weighbridges; car parking; fencing; drainage works; and landscaping) at Plot H, 600 Oak Drive, Hartlebury Trading Estate, Hartlebury, Worcestershire, DY10 4JB in accordance with application number 10/000032/CM, dated 30 April 2010 subject to the conditions at Annex B.

30. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

31. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

32. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

### **Right to challenge the decision**

33. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

34. A copy of this letter has been sent to Worcestershire County Council and Worcestershire Residents Against Incineration (WAIL). A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours sincerely

**Christine Symes**

Authorised by Secretary of State to sign in that behalf

## Annex A

Name	Date
Peter Luff MP	24/4/2012
Ken Metcalf	27/4/2012
Dawn Bradley	27/4/2012
County Councillor Maurice Broomfield	27/4/2012
Parish Councillor Jenny Jones	29/4/2012
Alan Williams	29/4/2012
Christine Howard	30/4/2012
Graham Howard	30/4/2012
Anthony Muller, Natural England	30/4/2012
Shaun, Carolyn and Jemma Lewis	30/4/2012
J, L and A Martins	01/05/2012
Jeremy Lawson	01/05/2012
Gillian and John Sanderson	01/05/2012
Laura Meredith	01/05/2012
Ward Cllr Mark Hubbard, for <i>It's Our Country</i>	01/05/2012
Richard Meredith	02/05/2012
Alison Elwell-Thomas	02/05/2012
SKJ and CA Trezise	02/05/2012
Andrew Brookes	02/05/2012
Louise Brookes	02/05/2012
Chris Greatbatch	02/05/2012
Steve Brown for Wyre Forest Green Party	02/05/2012
Phillip Oliver, for Wyre Forest Friends of the Earth	02/05/2012
Michael Maughan	03/05/2012
Mark Hibberd, MKH Building Services	03/05/2012
Lynne Muir-Smith	03/05/2012
Tony Smith	03/05/2012
Mary and Terry Thornton	03/05/2012
Kirsten Berry, for Worcestershire County Council	03/05/2012
Stephen Phillips	03/05/2012
Bridget Smith and Robert Rowe	03/05/2012
Steven Wilde	03/05/2012
Ivan Pagett	03/05/2012
Roy and Lynda Townsend	03/05/2012
Louise Brooke-Smith, for WAIL	04/05/2012
Mr R & Mrs J Hadley	03/05/2012
Chris Blundell	03/05/2012
Peter Taylor & Joanne Latham	03/05/2012
Mr & Mrs A M Broome	03/05/2012
Andy Stinton	03/05/2012
Peter Maughan	03/05/2012
Mrs H L Jones	03/05/2012
Thomas Steiger	03/05/2012
Doris Steiger	03/05/2012
Nick Roberts, AXIS	04/05/2012
Diane Grove	04/05/2012



Mr S Tranter	04/05/2012
E M Jones	04/05/2012
Tony Jauncey	04/05/2012
Michael Harvey	04/05/2012
Margaret and Andrew Murcott	04/05/2012
Chris Crean, for West Midlands Friends of the Earth	04/05/2012
V L Nicholl	04/05/2012
Mr and Mrs J Maughan	04/05/2012
Kirsten Berry, for Worcestershire County Council	18/05/2012
Eve Jones	23/05/2012
C A Jones	23/05/2012
A Brookes	23/05/2012
Phillip Oliver	23/05/2012
Louise Brooke-Smith, for WAIL	23/05/2012
Nick Roberts, AXIS	24/05/2012

**CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby approved shall only be carried out in accordance with the following documents and drawings, except for where measures are required by the conditions set out elsewhere in this permission which shall take precedence over those documents listed here.

**Documents:**

- The Planning Application Document Volume 1 and 2 – April 2010
- The Environmental Statement Volume 1 - Main Report and Volume 2 Technical Appendices – April 2010
- The Transport Assessment – April 2010

**Drawings and Figures:**

- Drawing Number 1204 PL0002 (Part 5 of the Planning Application Document Volume 2) – Planning Application Boundary Plan – April 2010
- Drawing Number 1204 PL0003 (Part 5 of the Planning Application Document Volume 2) – Proposed Site Plan – April 2010
- Drawing Number 1204 PL0004 (Part 2 of the Planning Application Document Volume 1 (Appendix 2 of the Design and Access Statement) – Proposed Traffic Plan – April 2010
- Drawing Number 1204 PL0005 (Part 5 of the Planning Application Document Volume 2) – Proposed Basement Floor Plans – April 2010
- Drawing Number 1204 PL0006 (Part 5 of the Planning Application Document Volume 2) – Proposed Ground Floor Plan – April 2010
- Drawing Number 1204 PL0007 (Part 5 of the Planning Application Document Volume 2) – Proposed First/Second Floor Plans – April 2010
- Drawing Number 1204 PL0008 (Part 5 of the Planning Application Document Volume 2) – Proposed Third / Fourth Floor Plans – April 2010
- Drawing Number 1204 PL0009 (Part 5 of the Planning Application Document Volume 2) – Proposed Roof Plan – April 2010
- Drawing Number 1204 PL0010 (Part 5 of the Planning Application Volume 2) -Visitor Centre Route Plans – April 2010
- Drawing Number 1204 PL 0011 ( Part 5 of the Planning Application Document Volume 1) – Proposed Site Sections AA and BB – April 2010
- Drawing Number 1204 PL 0012 ( Part 5 of the Planning Application Document Volume 1) – Proposed North Elevation – April 2010
- Drawing Number 1204 PL 0013 (Part 5 of the Planning Application Document Volume 1) – Proposed East Elevation – April 2010
- Drawing Number 1204 PL 0014 ( Part 5 of the Planning Application Document Volume 2) – Proposed South Elevation – April 2010
- Drawing Number 1204 PL 0015 ( Part 5 of the Planning Application Document Volume 2) – Proposed West Elevation – April 2010
- Drawing Number 1204 PL 0016 ( Part 5 of the Planning Application Document Volume 2) – Proposed Turbine Building Elevations – April 2010
- Drawing Number 1204 PL 0017 ( Part 5 of the Planning application Document Volume 2) – Proposed Weighbridge Plan and Elevations – April 2010

- Drawing Number 1202 PL0018 ( Part 5 of the Planning Application Document Volume 1) – Virtual Samples Board – April 2010
- Drawing 900-01-001 Rev A - Landscape Proposal – April 2010, accompanying letter from Axis dated 15 November 2010
- Drawing 900-01-002 – Proposed Foul and Surface Water Drainage Layout ( Part 5 of the Planning application Document Volume 2) – April 2010
- Drawing 900-01-003 – Site Features (Part 5 of the Planning Application Document Volume 2) – April 2010
- Drawing – Detailed Hard and Soft Landscape Scheme (900-01-004) –November 2010, accompanying letter from Axis dated 15<sup>th</sup> November 2010
- Figure 12 of the Transport Assessment – Proposed Site Access Arrangements & Internal HGV Queuing Space – April 2010

3 The operator shall ensure that the amount of wastes treated at the facility hereby approved does not exceed 200,000 tonnes per year.

4 The operator shall notify the County Planning Authority of the date of the start of each phase of development in writing at least 5 working days prior to each phase. The phases of development to be notified are: commencement; commissioning; and operation.

5 No material shall be accepted at the site directly from members of the public, and no retail sales of waste or processed materials to members of the public shall take place at the site.

#### *Construction Environment Management Plan*

6 No development hereby permitted shall commence until a Construction Environment Management Plan (CEMP) is submitted to and approved in writing by the County Planning Authority. The approved CEMP shall be implemented for the duration of the development prior to operation. The CEMP shall address the following issues:

##### Hours of working

i) A scheme (consistent with paragraph 5.8.5 of the Environmental Statement , Volume 1, Main Report ( April 2010)) providing details of the construction operations, including the days and hours of working for construction of the development hereby approved, shall be submitted for the written approval of the County Planning Authority.

##### Travel Plan

ii) The route to be used for vehicular access during construction of the development hereby approved shall only be in accordance with a Travel Plan to be submitted to and approved in writing by the County Planning Authority.

##### Ecology

iii) A procedure to address the clearance of vegetation on site outside the bird breeding season (generally recognised to be late March — August inclusively) or under the supervision of a suitably qualified and experienced ecologist. No vegetation shall be cleared during the bird breeding season.

iv) A detailed procedure for the trapping and translocation of reptiles under the supervision of a suitably qualified and experienced ecologist; this should follow the recommendations set-out in the Reptile Survey and Mitigation Plan (Argus Ecology, July 2010).

- v) Details of exclusion fencing around the site.
- vi) Details for the protection of receptor sites and associated linking habitats throughout the construction stage. These should include retention of a works "biodiversity-log" to record any operations within or affecting the receptor areas.
- vii) A procedure to ensure that during the construction phase all trenches / excavations / pipes are closed-off overnight, or if unavoidable, are fitted with wood or earth escape ramps, to allow any trapped wildlife to escape.
- viii) A plan to identify all trees to be retained on site and details of their protection.
- ix) Management of Japanese knotweed.
- x) All ecological works prescribed in this condition shall incorporate any mitigation measures that have been proposed, agreed or implemented pursuant to condition 39).

#### *Dust*

- xi) A scheme to demonstrate how the impacts of dust shall be minimised during the construction of the development and during extraction of the clay and removal off site.
- xii) A scheme to demonstrate that no mud, dust or debris shall be deposited on the public highway.

#### *Noise*

- xiii) A scheme to minimise and mitigate the impacts of noise and vibration (including on-site vehicles, plant and machinery) during the construction phase of the development.

#### *Visual Impact*

- xiv) A scheme to show how construction works on site will be managed to mitigate their visual impact, including keeping the site tidy and details for the storage of materials.

#### *Ground Water/ Contaminated Land*

- xv) A Method Statement providing details of the data that will be collected in order to demonstrate that the investigative and remediation works set out in the Environmental Statement Volumes 1 and 2 are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. The Plan shall include results of any additional sampling and monitoring carried out to support the construction phase.

- xvi) A Validation Report confirming that the site remediation criteria set out in the Method Statement have been satisfactorily met and any additional investigation results.

#### *Land Drainage*

- xvii) Details of the foul and surface water management during the construction phase.

#### *Highway Safety and Access*

7 The only means of access and egress to the site shall be from Oak Drive as shown in Drawing Number 1204 PL0003 (Figure 5.1 of the Environmental Statement) – Proposed Site Plan and in Figure 12 - Proposed Site Access Arrangements & Internal HGV Queuing Space of the Transport Assessment.

8 The route to be used for vehicular access during operation of the development hereby approved shall only be in accordance with a Travel Plan to be

submitted to and approved in writing by the County Planning Authority prior to the operation of development.

9 All loads of waste materials carried on HGV into and out of the development hereby approved shall be enclosed or covered so as to prevent spillage or loss of material at the site or on to the public highway.

10 Heavy goods vehicles associated with operation of the development hereby approved shall only enter or exit the site between 06:00 hours and 19:00 hours.

11 No development hereby permitted shall operate until the driveway, parking for site operatives and visitors and vehicular turning spaces (marked on the ground for cars and commercial vehicles to turn so that they may enter and leave the site in a forward gear), are consolidated, surfaced and drained in accordance with details that shall have been submitted to and approved in writing by the County Planning Authority. These areas shall thereafter be retained and kept available for those uses at all times.

#### *Materials, Design and Layout*

12 Notwithstanding the submitted details, no development hereby approved shall commence until a detailed scheme for the external appearance of the buildings including the chimney stack hereby approved have been submitted to and approved in writing by the County Planning Authority. Such scheme shall include details of:

- i) the type and colours of all external construction materials; and
- ii) the design and layout of all external cladding materials.

The approved details shall be implemented for the duration of the development.

#### *Landscaping*

13 Notwithstanding the submitted details, no development hereby approved shall commence until a detailed scheme for landscaping of the site has been submitted to and approved in writing by the County Planning Authority. Such scheme shall include details of:

- i) hard landscaping, including surface treatment finishes and colours;
- ii) how the existing trees that are to be retained are to be protected during the construction operations (to be in accordance with BS5837:2005);
- iii) the position, species, density and initial sizes of all new trees and shrubs;
- iv) the interface with the surface water drainage scheme as set out in condition 33);
- v) the interface with the nature conservation schemes as set out in conditions 6) and 17);
- vi) details of the design and the height of the security fencing and gates along the site's boundaries;
- vii) the programme of implementation of the approved scheme; and
- viii) the arrangements for ongoing management of the scheme and subsequent maintenance;
- ix) The works prescribed in this condition shall incorporate any mitigation measures that have been proposed, agreed or implemented pursuant to condition 39). The approved details shall be implemented for the duration of the development.

14 The landscaping details as shown on drawing reference 900-01-001 Rev A and dated April 2010 and/or as supplemented/updated by the details approved pursuant to condition 13 above shall be implemented within the first available planting season (the period between 31 October in any one year and 31 March in the following year) following the commissioning of the development. All planting and seeding undertaken in accordance with the scheme approved under condition 13 above shall be maintained and any plants which within five years of planting or seeding die, are removed, damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the County Planning Authority.

15 All areas of soft landscaping shall be created in accordance with a soil management plan that shall be submitted to and approved in writing by the County Planning Authority prior to commencement of the development. The soil management plan shall include details of the soil materials to be used, including their source, depth of application and suitability as a growing medium

#### *Lighting*

16 Prior to the commissioning of the facility details of all external lighting and other illumination proposed at the site shall be submitted to the County Planning Authority for approval in writing. These details shall include the height of all lighting, the intensity of lighting (specified in Lux levels), spread of light, including approximate light spillage levels (in metres), and any measures proposed to minimise impact of the floodlighting or disturbance through glare (such as shrouding) and the times when such lighting will be used. The approved scheme shall be implemented for the duration of the development. No lighting or illumination shall be affixed to or emitted from the chimney stack higher than the level of the boiler house roof. Any lighting that is fixed to the chimney stack shall relate to emissions monitoring only and shall be switched off when not in use.

#### *Nature Conservation Management Plan*

17 No development shall commence on site until details of a Nature Conservation Management Plan (NCMP) have been submitted to and approved in writing by the County Planning Authority. The approved NCMP shall be implemented for the duration of the development. The NCMP shall address the following issues:

- i. A habitat management strategy which addresses the ongoing maintenance schedule of the site (including receptor habitats) for the benefit of biodiversity.
- ii. Particular reference shall be made to address the enrichment of the receptor sites for reptiles (e.g. through the provision of compost piles to encourage invertebrate prey for slow-worms) in order to maintain flower-rich grassland in preference to nettle and scrub. Particular reference to be made to management procedures to maintain favourable habitat for slow-worms in the linking habitat corridor across the Sewage Treatment Site access.
- iii. A lighting strategy to demonstrate minimisation of light pollution from the development with regards to foraging/commuting bats.
- iv. An ongoing management strategy to ensure the functional integrity of the buffer area including the rows of poplar trees on the eastern portion of the site: to include tree management/planting measures to ensure Middle Covert is protected.

- v. Details of all biodiversity monitoring.
- vi. The works prescribed in this condition shall incorporate any mitigation measures that have been proposed, agreed or implemented pursuant to condition 39).

#### *Pollution*

18 If during development or site remediation, contamination not previously identified in the site investigation report is found to be present at the site then no further development shall be carried out until the developer has submitted an addendum to the Method Statement of the CEMP (refer condition 6) and obtained written approval from the County Planning Authority for it. This addendum to the Method Statement shall detail how this unsuspected contamination shall be dealt with and the timescales within which those works will be undertaken and shall be implemented as approved.

19 Within three months of completion of the remediation detailed in the Method Statement of the CEMP (and addendum, as applicable) a report shall be submitted to the County Planning Authority that provides verification that the required contamination remediation works have been carried out in accordance with the approved Method Statement(s). Post remediation sampling and monitoring results shall be included in the report to demonstrate that the required remediation has been fully met. Future monitoring proposals and reporting shall also be detailed in the report and implemented as approved in writing by the County Planning Authority. The development hereby approved shall not be operated unless this condition is discharged in writing by the County Planning Authority.

20 Clean, uncontaminated rock, subsoil, brick rubble, crushed concrete and ceramic only shall be permitted as infill materials.

#### *Emissions*

21 Prior to the operation of the development hereby approved, details of the type of vehicle alarms to be used by on-site plant and vehicles shall be submitted to and approved in writing by the County Planning Authority. Only such approved alarms shall be used for the duration of the development.

22 All vehicles, plant and machinery operated solely within the site shall be maintained in accordance with the manufacturer's specification at all times, this shall include the fitting and use of effective silencers.

23 Prior to the operation of the development hereby approved a scheme for the management and mitigation of dust shall be submitted in writing for the written approval of the County Planning Authority. The approved scheme shall be implemented for the duration of the development.

24 All doors to the building shall be kept closed except to allow entry and exit.

25 No handling, deposit, processing, storage or transfer of waste shall take place outside the confines of the buildings hereby approved.

#### *Noise*

26 Throughout duration of operations of the development hereby approved noise from the site shall not exceed the levels set out below at the receptor locations

identified at Figure 12.1 of the Environmental Statement, Volume 1, Main Report when measured in terms of an LAeq 1 hr level (free field) based on the BS4142 rating levels plus 5dB, between the hours of 07.00 and 22.00:

- Manor Lane: LAeq, 1-hour 37 dB.
- Crown Lane: LAeq, 1-hour 46 dB.
- Walton Road: LAeq, 1-hour 39 dB.
- Ryeland Lane: LAeq, 1-hour 35 dB.

27 Throughout operation of the development hereby approved noise from the site shall not exceed the levels set out below at the receptor locations identified at Figure 12.1 of the Environmental Statement, Volume 1, Main Report when measured in terms of night time criteria levels (5-minutes), based on the BS4142 rating level plus 5dB between the hours of 22.00 and 07.00:

- Manor Lane: LAeq, 5-min 35dB
- Crown Lane: LAeq, 5-min 39dB
- Walton Road: LAeq, 5 min 35dB.
- Ryeland Lane: LAeq, 5-min 35 dB.

28 Noise compliance monitoring shall be undertaken at the four noise sensitive locations identified in conditions 26 and 27 in accordance with the methodology set out in BS4142: 1997 'Method for rating industrial noise affecting mixed residential and industrial areas'. Any prediction calculations necessary to show compliance must report the method of calculation in detail and the reason for using it. The development hereby approved shall not be operated unless a scheme setting out arrangements for such monitoring, including relevant timescales and reporting procedures has been submitted to and approved in writing by the County Planning Authority.

#### *Drainage*

29 There shall be no discharge of foul or contaminated drainage from the development hereby permitted into either the groundwater or any surface waters, whether direct or via soakaways.

30 Surface water from vehicle parking and hard standing areas shall be passed through an interceptor of adequate capacity prior to discharge. Roof drainage shall not be passed through any interceptor.

31 Soakaways shall only be used in areas on site where they would not present risk to groundwater.

32 Water pipes used to serve the development shall not be susceptible to residual contamination on the site and buried services must be laid within a 0.5m surround of clean sand in areas of ash and graphite fill.

33 Notwithstanding the submitted details, no development hereby approved shall commence until details for surface water run-off limitation, surface water drainage and foul water drainage to be implemented throughout the operation of the development have been submitted to and approved in writing by the County Planning Authority. The drainage works shall be completed in accordance with the details and timetable agreed. The surface water drainage channel shall be designed to cope with 1 in 100 year (+30% for climate change) event. In addition, in designing the surface water drainage scheme reference



should be made to the Wychavon District Council Supplementary Planning Document that deals with the use, harvesting and disposal of surface water.

34 The development hereby approved shall not operate unless a scheme of maintenance for any ordinary watercourse, culvert or drainage ditch has been submitted to and approved in writing by the County Planning Authority. Such approved scheme of maintenance shall be implemented for the duration of the development.

*Other Matters*

35 The development hereby approved shall not operate until the operator has demonstrated, in writing, to the County Planning Authority that the connection to the district network has been made to enable electricity generated by the facility to be supplied to the district network.

36 No development hereby approved shall commence until details of clay extraction and consequent management of the extracted materials (associated with the creation of the reduced level development platform) have been submitted to and approved in writing by the County Planning Authority. The clay extraction works shall be completed in accordance with the approved details.

37 No development hereby approved shall commence until details of clay extraction and consequent management of the extracted materials (associated with the creation of the reduced level development platform) have been submitted to and approved in writing by the County Planning Authority. This shall include the levels (above ordnance datum) of the base of the reduced level platform. The clay extraction works shall be completed in accordance with the submitted and approved details.

38 On permanent cessation of the development hereby approved, the operator shall inform the County Planning Authority within 30 days in writing that all operations have ceased. Thereafter the site shall be restored within a period of 24 months in accordance with a scheme to be submitted for the written approval of the County Planning Authority prior to the cessation of operations. This shall include for the removal of all buildings, chimney stack, associated plant, machinery, waste and processed materials from the site.

39 A great crested newt mitigation strategy (the GCN Strategy) shall be submitted to the County Planning Authority for approval in writing prior to the commencement of works on site. The GCN Strategy shall be designed to satisfy Regulation 44(3) (b) of the Habitats Regulations to ensure no negative impact on the local great crested newt population and to provide compensation by small-scale relocation and exclusion of newts, combined with habitat creation or enhancement on-site. This should include details of how great crested newts will be safely removed from the development footprint prior to construction; how the habitats within the site will be enhanced for use by great crested newt and details of a monitoring programme. Implementation of the GCN Strategy shall not be taken as commencement of the development.



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# Report to the Secretary of State for Communities and Local Government

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

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

Date: 31 January 2012

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Section 77 Town and Country Planning Act 1990

Worcestershire County Council

Mercia Waste Management Limited

An energy from waste facility for the combustion of non hazardous waste and the recovery of energy, comprising the energy from waste facility buildings and associated infrastructure (including: an excavated development platform; site access; internal roads; weighbridges; car parking; fencing; drainage works; and landscaping)

Inquiry held on 22-25 November, 29 November-2 December 2011

Plot H, 600 Oak Drive, Hartlebury Trading Estate, Hartlebury, Worcestershire, DY10 4JB

File Ref(s): APP/E1855/V/11/2153273

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## Abbreviations

AC	Autoclave
AD	Anaerobic Digestion
AGLV	Area of Great Landscape Value
AOD	Above Ordnance Datum
AONB	Area of Outstanding Natural Beauty
APC	Air Pollution Control
BAT	Best Available Techniques
BPEO	Best Practicable Environmental Option
C&I	Commercial and Industrial
CEMP	Construction Environment Management Plan
CCGT	Combined Cycle Gas Turbine
CCS	Climate Change Supplement
CHP	Combined Heat and Power
CLG	Community Liaison Group
CPA	County Planning Authority
CV	Calorific Value
DCLG	Department of Communities and Local Government
DEFRA	Department for Environment, Food and Rural Affairs
EA	Environment Agency
EfW	Energy from Waste
EHO	Environmental Health Officer
EP	Environmental Permit
EPS	European Protected Species
ERM	Environmental Resources Management
FGT	Flue Gas Treatment
GCN	Great Crested Newts
GHG	Green House Gas
GLVIA	Guidelines for landscape Visual Impact Assessment (Landscape Institute)
GVA	Gross Value Added
HGV	Heavy Goods Vehicle
HPA	Health Protection Agency
IBA	Incinerator Bottom Ash
IPC	Infrastructure Planning Commission
IROPI	Imperative Reasons of Overriding Public Interest
JMWMS	Joint Municipal Waste Management Strategy
LEP	Local Enterprise Partnership
MBT	Mechanical Biological Treatment
MDS	Major Developed Site (in the Green Belt)
MSW	Municipal Solid Waste
MW	Municipal Waste
MWM	Mercia Waste Management
NCMP	Nature Conservation Management Plan
NE	Natural England
NHS	National Health Service
NPPF	National Planning Policy Framework
NPS	National Planning Statement
NSA	No Satisfactory Alternative
NSIP	National Significant Infrastructure Project

PfG	Planning For Growth
PFI	Public Finance Initiative
PPG	Planning Policy Guidance
PPS	Planning Policy Statement
RCV	Refuse collection vehicle
RDF	Refuse Derived Fuel
RS	Regional Strategy
RSS	Regional Spatial Strategy
rWFD	Revised Waste Framework Directive
RX	Re-Examination
SLA	Special Landscape Area
SOCG	Statement of Common Ground
SWDP	South Worcestershire Development Plan
TPA	Tonnes per Annum
VSC	Very Special Circumstances
W.A.I.L.	Worcestershire Residents Against Incineration & Landfill
WCC	Worcestershire County Council
WCS	Waste Core Strategy
WCSP	Worcestershire County Structure Plan
WDA	Waste Disposal Authority
WDC	Wychavon District Council
WID	Waste Incineration Directive
WLP	Wychavon District Local Plan
WMRSS	West Midlands Regional Spatial Strategy
WPR	Waste Policy Review
WRATE	Waste and Resource Assessment Tool for the Environment
WSE 2007	Waste Strategy for England 2007
XIC	Examination-in-Chief
XX	Cross-Examination

**File Ref: APP/E1855/V/11/2153273**

**Plot H, 600 Oak Drive, Hartlebury Trading Estate, Hartlebury,  
Worcestershire, DY10 4JB**

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 10 May 2011.
- The application is made by Mercia Waste Management Limited to Worcestershire County Council.
- The application Ref 10/000032/CM is dated 30 April 2010.
- The development proposed is an energy from waste facility for the combustion of non hazardous waste and the recovery of energy, comprising the energy from waste facility buildings and associated infrastructure (including: an excavated development platform; site access; internal roads; weighbridges; car parking; fencing; drainage works; and landscaping).
- The reason given for making the direction was that the proposals may conflict with national policies on important matters.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application:

A) Development Plan

The extent to which the proposed development is in accordance with the development plan for the area including any 'saved policies'. The extent to which the proposed development is consistent with emerging changes to the development plan including the Worcestershire Waste Core Strategy and the South Worcestershire Joint Core Strategy, including consideration of the weight to be attached to them:

B) PPS10 – Sustainable Waste Management

The extent to which the proposed development delivers the policies set out in Planning Policy Statement 10: Planning for Sustainable Waste Management and in particular complies with the Key Planning Objectives to:

- (a) deliver sustainable development through driving waste management up the waste hierarchy; and
- (b) help implement the national waste strategy; and
- (c) protect green belts but recognise the particular locational needs of some types of waste management facilities when defining detailed green belt boundaries and, in determining planning applications, that these locational needs, together with the wider environmental and economic benefits of sustainable waste management, are material considerations that should be given significant weight in determining whether proposals should be given planning permission;

(C) Planning and Climate Change Supplement to Planning Policy  
Statement 1

The extent to which the proposed development is consistent with advice in the Planning Policy Statement: Planning and Climate Change Supplement to Planning Policy Statement 1, and in particular complies with the Key Planning Objective to:

(a) make a full contribution to delivering the Government's Climate Change Programme and energy policies, and in doing so contribute to global sustainability;

(D) Planning Policy Guidance Note 2 (PPG2): Green Belts

The extent to which the proposed development is consistent with Government policies in Planning Policy Guidance Note 2: Green Belts, with particular regard to:

(a) whether the proposed development is inappropriate development in the Green Belt and, if it is inappropriate, whether very special circumstances exist which clearly outweigh the harm to the Green Belt caused by reason of its inappropriateness, and any other harm;

(b) the extent to which the scheme would be consistent with the purposes of including land in the Green Belt;

(c) whether the proposed development would harm the visual amenities of the Green Belt by reason of its siting, material and design;

(d) the extent to which the proposed development might contribute to the achievement of the objectives for the use of land in Green Belts as set out in paragraph 1.6 of PPG2;

and any other issues which the Inspector considers appropriate.

**Summary of Recommendation: The application be approved.**

## **1.0 Procedural Matters**

1.1 I held a pre-inquiry meeting to discuss procedural and programming matters at Worcestershire County Hall on Tuesday 23 August 2011. At this meeting, on the basis of information then available, including the identification of parties to the inquiry, their representation and numbers of witnesses, I determined a draft programme for the inquiry which covered the dates 22-25 November, 29 November-2 December 2011. I also identified 'other issues which the Inspector considers appropriate' as those which were identified by Worcestershire Residents Against Incinerators and Landfill (WAIL) as being important issues for the inquiry. These were covenants, propriety, sequential site search, public perception of health concerns, public consultation, and local environmental concerns (protected species).

1.2 On the day of the pre-inquiry meeting I also made an unaccompanied visit to the area surrounding the application site and viewed the site from the public highway.

1.3 The inquiry sat for 8 days. Following the close of the inquiry I carried out an accompanied site inspection on Tuesday 13 December 2011.

1.4 This report contains a brief description of matters dealt with in the Statements of Common Ground, the gist of the representations made at the inquiry, and my conclusions and recommendations. Lists of appearances, documents and plans are attached. I have attached all documents and plans submitted to the inquiry, including proofs of evidence. The proofs are as originally submitted; unless expressly stated they do not take account of how the evidence may have been affected by cross-examination or other aspects of the inquiry.

## **2.0 Agreed Facts**

2.1 On 28 July 2011 a Statement of Common Ground (CD-P15), agreed between the Applicant and The County Council, was submitted. The two parties are effectively in full agreement as to the merits of the application and the planning permission which they contend should be the outcome. At the Pre-Inquiry Meeting I asked for a Statement of Common Ground (SOCG) to be agreed between the principal parties and the Rule 6 party, Worcestershire Residents Against Incinerators and Landfill (WAIL), whose objections to the application effectively covered all of the material objections which have been raised to the proposal. On 1 September 2011 this new SCG, (CD-P17), was submitted, having been signed on behalf of Mercia Waste Management (MWM), Worcestershire County Council (WCC) and WAIL. The following headings provide brief details of the relevant parts of the second SCG.

## **3.0 The Site and Surroundings**

3.1 The planning application site comprises 3.56 hectares (ha) of land at the Hartlebury Trading Estate. The Trading Estate is located within the Green Belt, approximately 7km to the south-east of Kidderminster and 1.5km to the east of Hartlebury. It covers an area of approximately 75ha (180 acres) and is served by a purpose-built access via Crown Lane, off the A449 dual carriageway.

3.2 The site is currently vacant, but was used in the 1930s – 40s as part of a railway siding. The site is now colonised by varying degrees of scrub vegetation and includes a number of mature trees. Other features of the site include:



- An unmade access track which runs northwards from Oak Drive and then turns northwest towards the private sewage treatment works which serves the Trading Estate;
- A former railway siding for goods embankment which runs east-southeast/west-north-west across the central section of the site;
- A small ditch/watercourse which runs through the site in a broadly north/south direction emerging from a culvert on the southern boundary of the site with Oak Drive;
- A small hard standing area of circa 45 metres x 25 metres in the south western corner, which is temporarily being used as a lorry park by an adjacent unit.

3.3 To the immediate north of the site is Waresley Landfill Site, operated by Biffa Waste Services, and Waresley Brickworks and clay extraction quarry, operated by Wienerberger. Forming the southern boundary of the site is Oak Drive, the estate road from which the site will be accessed, beyond which is a range of industrial/commercial units. There are also existing industrial units located to the west of the site, as is the private sewage works that serves the Trading Estate and which immediately abuts the site's north-west corner. On the eastern part of the site there is a block of poplar trees. Immediately beyond these (and outwith the site) lies a small block of woodland known as Middle Covert, beyond which are further industrial units.

3.4 The nearest residential properties to the application site comprise of a small number of isolated dwellings, the closest of which (known as Bellington) is situated circa 300 metres to the south east of the site. Further isolated properties are located approximately 700 metres to the north east of the site, known as New House Farm. Waresley House, which is a Grade II listed building and Waresley Park residential estate (consisting of approx 100 residential dwellings) are located over 1km to the west of the proposal site. Hartlebury village is situated about 1.5 km to the North West, on the other side of the A449.

3.5 The Hartlebury Trading Estate is occupied by a range of commercial, industrial and storage uses. There is a good degree of variation in the building type across the estate (including old MOD buildings and modern units). The size of the units varies greatly from circa 50 m<sup>2</sup> to 10,750 m<sup>2</sup>.

## **4.0 Planning Policy**

4.1 Dealing here only with development plan policies, the policies relevant to the proposal comprise the following

*West Midlands Regional Spatial Strategy (WMRSS)*

WD1 Targets for Waste Management in the Region

WD2 The Need for Waste Management Facilities – by Sub-Region

WD3 Criteria for the Location of Waste Management Facilities

EN1 Energy Generation

EN2 Energy Conservation

QE1 Conserving and Enhancing the Environment

QE3 Creating a high quality built environment for all

QE5 Protection and enhancement of the Historic Environment

QE6 The conservation, enhancement and restoration of the Region's landscape

QE7 Protecting, managing and enhancing the Region's Biodiversity and Nature Conservation Resources

## T10 Freight

### *Worcestershire Structure Plan (saved policies)*

WD1 Waste Hierarchy  
WD2 Location of Waste Handling and Treatment Facilities  
WD3 Waste Management Facilities  
EN3 Waste to Energy  
SD1 Prudent Use of Natural Resources  
SD2 Care of the Environment  
SD3 Use of Previously Developed Land  
SD4 Minimising the Need to Travel  
CTC1 Landscape Character  
CTC2 Skylines and Hill Features  
CTC5 Trees, Woodlands and Hedgerows  
CTC8 Flood Risk and Surface Water Drainage  
CTC9 Impact on Watercourses and Aquifers  
CTC10 Sites of International Wildlife Importance  
CTC11 Sites of National Wildlife Importance  
CTC12 Sites of Regional or Local Wildlife Importance  
CTC15 Biodiversity Action Plan  
CTC16 Archaeological Sites of National Importance  
CTC17 Archaeological Sites of Regional or Local Importance  
CTC19 Areas and Features of Architectural Significance  
CTC20 Conservation Areas  
T1 Location of Development  
T15 Freight/Goods Transfer  
T19 Airfields  
D38 General Extent & Purposes of the Green Belt  
D39 Control of Development in the Green Belt

### *Wychavon District Local Plan (saved policies)*

GD2 General Development Control  
SR7 Development in Green Belt  
SR8 Major Development Site in the Green Belt – Hartlebury Trading Estate  
ENV1 Landscape Character  
ENV5 Sites of Regional or Local Wildlife Importance  
ENV6 Protected Species  
ENV 14 Setting of Listed Buildings  
SUR1 Built Design  
SUR2 Landscape Design  
ECON1 Protection of Existing Employment Land  
ECON11 Freight

## **5.0 Planning History**

5.1 Hartlebury Trading Estate was, during the late 1930s to early 1940s, developed as a Royal Air Force Maintenance Unit base. This involved the construction of railway sidings off the Kidderminster - Droitwich railway line and a number of structures which by 1974 comprised some 118 buildings ranging in size from 100 sq ft to 57,000 sq ft and totalling approximately 1.1 million sq ft. The development did not include any runways.

5.2 The Estate was included within the West Midlands Green Belt in 1973. Towards the end of 1974 the Ministry of Defence announced that the unit would close and in the late 1970's the site was purchased by Lansdown Estates (Hartlebury) Ltd. The planning position was subsequently confirmed through the issue of an Established Use Certificate in April 1981. On the 5th February 1981 Lansdown Estates submitted an outline planning application for the development of a further 650,000 sq ft of industrial/warehouse units on land which included the application site. This application was called-in by the Secretary of State and subsequently approved following agreement on the upgrading of Crown Lane to form a suitable access to the Estate. Following the grant of outline planning permission there have been a number of new developments on Hartlebury Trading Estate, and a number of applications that have been granted planning permission.

5.3 On 8 December 1999 Wychavon District Council granted detailed planning permission (reference number W/99/0662) for the development of units for industrial and storage purposes within use classes B1, B2 and B8 on Plots H2a, H294 and H600. Following the grant of planning permission, plots H2a and H294 have been fully developed and as such, the planning permission in so far as it relates to Plot H600 (the application site) is saved in perpetuity. In terms of Plot H600, the consent permits circa 138,600 sq ft (12,871 m<sup>2</sup>) of industrial building units.

5.4 In December 2004 planning permission for a municipal waste management facility was granted by the County Council on the application site. The proposal was for an autoclave facility that would have managed 100,000 tpa of waste. There was also a subsequent planning application permitted in May 2006 that amended the site layout. However, the development has never come forward and both planning permissions have now expired.

## **6.0 The Proposals**

6.1 The development comprises an Energy from Waste facility based around the 'Main Building' which would contain the waste reception hall, waste bunker, boiler hall, flue gas treatment (FGT) facility, bottom ash bunker and silo, Air Pollution Control (APC) reagent silos and APC residue silos, education/visitor centre and staff facilities. This building would have a floor plate area of approximately 6,177m<sup>2</sup> and would be 43m high. In addition, there would be a turbine, sub-station and air cooled condensers which would be located in a separate building referred to as the 'Turbine Complex Building'. The Turbine Complex Building would have a floor plate area of approximately 1,500m<sup>2</sup> and would be 16m high, located to the west of the Main Building. A pipe bridge would connect the Turbine Complex Building to the Main Building.

6.2 The floor plate of the Main Building would be set 8m below the original site level at approximately 39m above ordnance datum (AOD). This would reduce the building height to 35m in relation to the surrounding ground level. The main staff and visitor access to the building would be via a pedestrian bridge leading from the car park. In addition there would be a stack (chimney) 83m in height of which 8m would be below the surrounding ground level resulting in a stack height of 75m above ground level.

6.3 The application is supported by an Environmental Statement and four additional submissions under Regulation 19.<sup>1</sup> These relate to a Revised Non-Technical Summary<sup>2</sup>, the Grid Connection<sup>3</sup>, the Heat Off-Take Connection<sup>4</sup> and a Great Crested Newt Impact Assessment<sup>5</sup>. I am satisfied that the Environmental Statement, in its composite form with the additional information, satisfies the requirements of the 1999 Regulations.

## **7.0 The Case for Mercia Waste Management**

### **Introduction**

- 7.1 On 1 March 2011 (before the application was called in) Worcestershire County Council ("WCC" or "the Council") unanimously resolved to grant planning permission for EnviRecover. Unsurprisingly, therefore, WCC and the applicant, Mercia Waste Management ("MWM"), are in broad agreement on the issues identified by the Secretary of State and both parties contend that planning permission should be granted. The unanimous support of the 14 member strong Planning & Regulatory Committee of the Council should weigh heavily in favour of the development. The conclusions of those elected members, representing the interests of all the County's residents, that the proposal would simultaneously meet an identified need for waste management facilities in the area, a similar need for renewable energy generation and thereby deliver significant climate change benefits (climate change is, of course, the Government's principal concern for sustainable development) should be accorded significant weight.
- 7.2 There is no evidence to support assertions of impropriety or bias on the Council's part. The Members who took the decision were fully and properly informed on all relevant issues, not just by a very comprehensive Committee Report ("CR") prepared by Miss Berry but also by inspections of the site and its surroundings and a number of operational EfW plants. The Members were fully aware of the nature and volume of the local opposition, but of course had to take a decision with the interests of the whole community in mind.
- 7.3 Of the main parties to this inquiry only WAIL object to the development. A number of individual third parties have spoken in opposition, but in the main they are supporters of WAIL and have taken similar points against the proposal. WAIL is a somewhat amorphous body: although it has a constitution and officers, there is no formal membership and it is not possible to identify how many local residents subscribe to the case it has presented. It suggested that those who had added their names to WAIL's website and/or signed the petition could be counted as supporters but, even if right, the 2,500 or so such people would represent a tiny proportion of the population of the two Counties in whose interests this proposal was approved by the Members.

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<sup>1</sup> Regulation 19 of the Town and Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999.

<sup>2</sup> CD-PA4

<sup>3</sup> CD-PA5

<sup>4</sup> CD-PA6

<sup>5</sup> CD-PA7

- 7.4 WAIL's constitution contains doctrinal abhorrence of both incineration and landfill: hence the 'I' and L' in its acronym. However, like so much of the case it has presented at the inquiry, even its constitution has shifted somewhat during this fortnight. There are two great ironies in its case as presented. First, it ends the inquiry actually advocating incineration, the very process that it is vehemently opposed to, because it has been driven to accept that there is no other satisfactory route for the output of Autoclav/Anaerobic Digestion which it professes to favour. Secondly, WAIL has conceded that it has no alternative proposal to deal with the "compelling and urgent need," which it accepts exists, to divert waste from landfill and, therefore, the refusal of planning permission for EnviRecover which it advocates will actually condemn the two Counties to further prolonged landfilling of prodigious quantities of waste and exporting more for incineration out of county both of which its constitution is doctrinally opposed to.

National waste, energy and climate change policies (incorporating the Secretary of State's issues B and C)

- 7.5 EnviRecover would address three distinct but interrelated strands of Government policy none of which should be ignored or considered in isolation: namely, waste, energy and climate change. It would be wrong, for example, to focus on waste policy to the exclusion of policies on energy and climate change. The Waste Policy Review makes it plain that waste management policy falls within the wider energy policy context.<sup>6</sup> Similarly, Waste Strategy 2007 emphasises that recovering energy from waste which cannot be sensibly reused or recycled is an essential component of a well-balanced energy policy and underlines the importance of maximising energy recovery from the portion of waste which cannot be recycled.<sup>7</sup> Given the fundamental importance of sustainable development, it is energy and climate change policies which, if anything, should take precedence over waste policy should there be any conflict arising between these different strands (after all addressing climate change is the Government's principal concern for sustainable development).<sup>8</sup> There is, however, no conflict at all.

## Waste

- 7.6 The Government recognises that in order to achieve its key waste planning objectives a step change in the way waste is handled will be required as well as significant new investment in waste management facilities.<sup>9</sup> Those key waste planning objectives include: to meet and exceed the diversion targets in the Landfill Directive (the key driver of national waste policy) for

<sup>6</sup> CD-WSL4, pp.33 (as does WS2007 (CD-WSL5, p.76, pp.18)).

<sup>7</sup> CD-WSL5, p.76. The advice to maximise opportunities for renewable and low-carbon sources of energy supply is reiterated in the PPS 1 CCS (NPP3, pp.13). Paragraph 40 of that document goes further and states that an application for a development which will make a contribution to the delivery of, amongst other things, the Government's Climate Change Programme and energy policies "should expect expeditious and sympathetic handling of the planning application."

<sup>8</sup> NPP3, pp.3.

<sup>9</sup> NPP8, pp.1.

biodegradable municipal waste in 2010, 2013 and 2020 and to increase diversion from landfill of non-municipal waste and secure better integration of treatment for municipal and non-municipal waste; to secure the necessary investment in infrastructure needed to divert waste from landfill and for the management of waste; and to get the most environmental benefit from that investment, through increased recycling of resources and recovery of energy from residual waste using a mix of technologies.<sup>10</sup> The Government will ensure that the market demands these new waste management facilities by, inter alia, increasing Landfill Tax.<sup>11</sup>

- 7.7 The WPR<sup>12</sup> announced the Government's objective for a zero waste economy in which material resources are re-used, recycled or recovered wherever possible, and only disposed of as the option of very last resort. Zero waste does not mean that no waste is produced. Rather it means that only the minimal amount of waste possible is sent to landfill such that it is truly a last resort. Government policy does not distinguish between MSW and C&I in this regard: it is a key objective of WS2007 to secure the better integration of treatment of both.<sup>13</sup> And so landfill tax does not discriminate between the two and neither does the WPR when it states that sending any waste to landfill which could have been recovered is "clearly wrong."<sup>14</sup> The Council recognises this and expressly says in the Committee Report that the plant would make a significant contribution to the amount of treatment capacity required to avoid waste being disposed of to landfill and would not stifle other reduction, reuse and recycling initiatives.<sup>15</sup> The rWFD<sup>16</sup> and 2011 Regulations<sup>17</sup> impose a legal duty on MWM not to accept at EnviRecover waste which should be treated higher in the hierarchy and conditions attached to the permit are directed at this too.<sup>18</sup> Appeal decisions have repeatedly confirmed that EfW plants do not deter recycling and WS2007 makes plain that vigorous energy from waste is compatible with high levels of recycling.

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<sup>10</sup> CD-WSL5, pp.23.

<sup>11</sup> Landfill Tax for MSW and C&I waste is currently £48 per tonne and will rise by £8 per tonne per year, reaching £80 per tonne by 2014. The latest indications are that the rises will continue.

<sup>12</sup> The WPR forms alongside WS2007, PPS10 and waste local plans and development Plan documents the Waste Management plan for England as required by Article 28 of the WFD. It is the Government's intention to review all these national documents and release a consolidated National Waste Management Plan in 2012.

<sup>13</sup> CD-WSL5, p.11.

<sup>14</sup> CD-WSL4, pp.240.

<sup>15</sup> CD-PA8, pp.191.

<sup>16</sup> WSC1, Article 15.

<sup>17</sup> CD-WSL2, reg.12.

<sup>18</sup> CD-EP1, condition 2.3.3(c).

- 7.8 Whilst all three strands of Government policy are neutral on technology choice,<sup>19</sup> the WPR provides explicit policy support for the provision of EfW facilities in the form of thermal treatment. It expressly recognises the environmental and economic benefits of recovering energy from residual waste and makes it clear that there is considerable scope for additional EfW capacity to be provided:

*"Our horizon scanning work up to 2020 and beyond to 2030 and 2050 indicates that even with the expected improvements in prevention, re-use and recycling, sufficient residual waste feedstock will be available through diversion from landfill to support significant growth in this area, without conflicting the drive to move waste further up the hierarchy."*<sup>20</sup>

- 7.9 Indeed, the scale of waste derived renewable energy from thermal combustion envisaged in the WPR is vast: it envisages a threefold increase by 2020.<sup>21</sup> As both PPS10 and WS2007 recognise, the planning system is pivotal to the adequate and timely provision of new waste management facilities.<sup>22</sup> If that is ever to be delivered, having regard to the long lead time for these types of facilities, planning permissions need to be granted and now. The UK Renewable Energy Roadmap sets out a series of actions, timetables and targets for the renewable energy generation. It deals at length with EfW and explains that the explicit statement of the Government's commitment to EfW in the WPR is as a result of the difficulties that industry has experienced in gaining consents.<sup>23</sup>

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<sup>19</sup> This subject returned to in the context of addressing WAIL's case.

<sup>20</sup> CD-WSL4, pp.214. This is consistent with the message in EN-3 which states that the recovery of energy from the combustion of waste, where in accordance with the waste hierarchy, will play an increasingly important role in meeting the UK's energy needs (NPP15, pp.2.5.2, see also pp.3.3.10).

<sup>21</sup> CD-WSL4, pp.215.

<sup>22</sup> See, for example, NPP8, pp.I. EN-1 makes the related point in the context of energy generating infrastructure that there is a requirement for substantial and timely private sector investment which is precisely what MWM seeks to deliver. NPP14, pp.2.2.25. As to the applicability of the NPSs to this scheme Ms Brook-Smith confirmed in XX her agreement that the NPSs were material and that weight could be attached to them. This position was contrary to the way in which Mr Taylor XX'd Miss Berry. Indeed, Mr Taylor tried to revisit Ms Brook-Smith's very clear answers in RE-X but Ms Brook-Smith was extremely fair and did not seek to change her clear position. She was right not to do so for EN-1 specifically states it is a material consideration (pp.1.2.1) (EN-3 the same). Further it refers to the need not just for nationally significant infrastructure but for both small and large scale generators of renewable energy (pp.2.1.2). The draft PPS (Planning for a Low Carbon Future in a Changing Climate, CD-DMP1, Policy LCF 14.2 vii) tells us that we should read across its provisions into the planning system. If that were not all obvious enough, the Chief Planning Officer letter (NPP14A) put in by Mr Taylor demonstrates the point conclusively: it spends a whole section on the relevance of the NPSs to the planning system. As Ms Brook-Smith agreed, where that letter refers to the development plan it is a reference to the 1990 Act system (given that the IPC makes its determinations having regard to the NPSs).

<sup>23</sup> ESL5, pp.3.142-3.146.

- 7.10 The reasons why the Government is so supportive of EfW are clear and are in part precisely because EfW reaches beyond mere waste management and addresses energy and climate change, which is shortly turned to:

*"The benefits of recovery include preventing some of the negative greenhouse gas impacts of waste in landfill. Preventing these emissions offers a considerable climate change benefit, with the energy generated from the biodegradable fraction of this waste also offsetting fossil fuel power generation, and contributing towards our renewable energy targets. Even energy from the non-biodegradable component, whilst suffering from the negative climate impacts of other fossil fuels, has additional advantages in terms of providing comparative fuel security, provided it can be recovered efficiently."*<sup>24</sup>

Secretary of State's Issue B: EnviRecover's compliance with PPS10

- 7.11 Having set out the broad scheme of national waste policy, the Secretary of State's second issue and EnviRecover's compliance with PPS10 is now considered. PPS10 is a very significant material consideration. It is the Government's principal national planning policy document on sustainable waste management. It is clear on its face that it may supersede policies in the development plan which are inconsistent with it.<sup>25</sup> The development plan is addressed below but it is plain that in many respects (such as references to BPEO and the proximity principle),<sup>26</sup> the development plan policies on waste have been materially overtaken by the latest national policy. Moreover, PPS10 has been recently updated to reflect the rWFD. In the circumstances compliance with PPS10 is perhaps the best indicator of this proposal's fit with up to date waste policy.
- 7.12 It is submitted that EnviRecover would meet the Government's overall objectives for waste by using waste as a resource and source of energy and reducing substantially the amount of waste that is being landfilled. EnviRecover alone would virtually eliminate all the residual MSW from the two Counties for which there is no residual recovery capacity and which, in its absence, will perforce be landfilled. It would represent the positive planning required by paragraph 2 by providing sufficient new management facilities of the right type, in the right place and at the right time (more realistically, very belatedly); in other words, the adequate and timely provision of facilities which PPS10 states is the pivotal role of the planning system.<sup>27</sup>

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<sup>24</sup> CD-WSL4, pp.208.

<sup>25</sup> NPP8, pp.5 and 23.

<sup>26</sup> See, for example, policy WD.1 of the Structure Plan CD-DP2, p.120).

<sup>27</sup> NPP8, pp.1.



7.13 PPS10 sets out a number of key planning objectives<sup>28</sup> ("KPOs") to which the Secretary of State has drawn particular attention and with which EnviRecover fully accords in that it would:

(i) As all parties agree, assist in driving the management of Worcestershire's and Herefordshire's residual MSW (and potentially C&I waste) up the waste hierarchy,<sup>29</sup> use waste as a resource and look to disposal as the last option. At present the authorities are heavily reliant on landfill as well as some out of county third party EfW which is wholly unsustainable. In 2010/11 some 191,000 tonnes of Worcestershire's and Herefordshire's residual MSW was landfilled and just over 18,000 tonnes was sent to remote out of county EfW facilities. Furthermore, Mr Roberts estimates that some 250,000 tonnes of C&I from Worcestershire alone was landfilled.<sup>30</sup> There is no alternative residual waste treatment capacity in the two Counties, no proposals in the planning pipeline for such capacity and no known interest from any quarter to promote recovery capacity. EnviRecover, therefore, would and only EnviRecover could deliver the required step change in the management of the two Counties' waste, thereby ensuring all the authorities' residual MSW would be diverted from landfill and eliminating the need to transport a sizeable quantity of waste to EfW out of county;<sup>31</sup>

(ii) Help communities take more responsibility for their own waste and would represent timely (Mr Roberts perhaps more properly describes it as overdue) provision of waste management facilities to meet the needs of the two Counties. EnviRecover represents perhaps the key facility to be provided under the PFI contract which envisaged a single residual waste treatment facility serving both of the Counties. This strategy has again been endorsed by the JMWMS Review 2009. Despite these long term and oft tested plans, no in-county solution has been delivered to date (the contract was signed in 1998) as a result the Counties have been reliant not just on landfill but also on using out of county EfWs (as far distant as Coventry, Wolverhampton and Nottingham). This situation will persist until an in-county solution comes forward. There can surely be no better example of a facility helping a community take more responsibility for their waste than EnviRecover which would allow the two Counties for the first time to contemplate stopping the export of waste to distant facilities in other local authority areas. In addition, in so far as EnviRecover provides some C&I capacity, it will also provide an appropriately located facility for the local business community to take responsibility for their own waste;<sup>32</sup>

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<sup>28</sup> NPP8, pp.3.

<sup>29</sup> The Council and MWM are agreed that EnviRecover would in no way deter recycling and other management routes higher up the hierarchy, although it should be noted that the injunction not to do so at paragraph 25 of PPS10 only applies to waste disposal facilities.

<sup>30</sup> CD-MWM2, pp.6.2.4.

<sup>31</sup> CD-NPP8, pp.3, 1<sup>st</sup> key planning objective.

<sup>32</sup> CD-NPP8, pp.3, 2<sup>nd</sup> key planning objective.

(iii) Make a significant contribution to implementing the national waste strategy and, more particularly, to meeting the landfill diversion targets set out in WS2007.<sup>33</sup> The two Counties have no operational residual recovery facilities and so failed to meet the 2010 target. The next target is 78 per cent recovery by 2015. Given the lead times for large scale recovery facilities this target will be difficult to achieve but if EnviRecover is granted planning permission now there is a real prospect that EnviRecover could be operational by the end of 2015 and so ensure the Counties meet the target;<sup>34</sup>

(iv) Help secure the recovery of waste without endangering human health and without harming the environment and enable waste to be disposed of in one of the nearest appropriate installations. EnviRecover has been the subject of a full environmental impact assessment which concludes that there are no significant or unacceptable impacts remaining following the adoption of appropriate mitigation measures. No party has challenged the adequacy of the ES. The Environment Agency has already issued an environmental permit confirming it is satisfied that EnviRecover is acceptable from a pollution control perspective.<sup>35</sup> The facility will not, therefore, either endanger human health or harm the environment. In circumstances where waste is being transported over long distances to EfW outside of the two Counties and prodigious amounts of waste are being landfill in the area, it is hard to conceive of a better example of an appropriate installation albeit that the PPS10 KPO refers to the *disposal* of waste in the nearest appropriate installation and EnviRecover is, of course, a *recovery* facility;<sup>36</sup>

(v) Clearly reflect the concerns and interests of communities, the needs of waste collection authorities, waste disposal authorities and business, and encourage competitiveness by the provision 'of much needed waste treatment capacity (as well as the generation of renewable energy) within the two Counties not least so as to enable the Authorities to meet their recovery and landfill diversion targets.<sup>37</sup> In particular, as described in the submitted planning application documents (Planning Application Document Part 4: Community Involvement Statement) MWM has canvassed public opinion about residual waste treatment by way of the "Attitudes to Waste and Recycling" telephone survey. In this exercise 1,300 residents, on a 50:50 split across Herefordshire and Worcestershire, were telephoned between 7 and 14 September 2009. The

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<sup>33</sup> CD-WSL5, p.11.

<sup>34</sup> CD-NPP8, pp.3, 3<sup>rd</sup> key planning objective.

<sup>35</sup> CD-EP 1.

<sup>36</sup> NPP8, pp.3, 4<sup>th</sup> key planning objective.

<sup>37</sup> NPP8, pp.3, 5<sup>th</sup> key planning objective.

key results from the survey showed that 83 per cent supported the policy of not sending waste to landfill; 81 per cent felt that their own waste should be dealt with locally; 89 per cent said it was acceptable to treat residual waste and to get some sort of value from it; and 92 per cent felt that an EfW plant was an acceptable specific technology (after it had been explained to them that this referred to a facility where residual waste was burned and the heat captured to produce either heat or electricity).<sup>38</sup> There is widespread support for energy recovery in the JMWMS.<sup>38</sup> Moreover, EnviRecover will meet the needs of local businesses by providing a cost effective route for waste management that avoids the cost of landfill tax to the extent that the facility takes C&I waste;

(vi) The sixth KPO is to protect the Green Belt but at the same time to recognise the particular locational needs of some types of waste management facilities which should be given significant weight as should the wider environmental and economic benefits of sustainable waste management. There can be really no dispute that the site meets all the locational requirements identified in PPS10.<sup>39</sup> It is agreed by all parties that the site is appropriately situated in relation to waste arisings. The site lies within a ring of the most populated towns in the two Counties. It is the only site within a level 1 area which has been identified as suitable for large scale facilities of up to 250ktpa throughput and a stack height of 80m.<sup>40</sup> There are excellent transport links, the site benefits from an extant permission for industrial uses, the site search has demonstrated that there is no more sustainable alternative in terms of locations otherwise appropriate or available for this development and that the principle of development at this location is established through the extant planning permission. PPS10 is clear that these matters should be given significant weight as should the wider environmental and economic benefits identified elsewhere both in determining the Green Belt issue specifically and in the planning balance more generally; and

(vii) Supports sustainable waste management through the design and layout of the development. The facility has been designed to ensure its landscape and visual impact is minimised by sinking the building and stack some eight metres into the ground and ensuring that the built form is tightly wrapped around the plant to limit the size of the building to that functionally required. And, of course, it is the design of the plant (and capital investment in the necessary equipment) which makes provision

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<sup>38</sup>CD-WSL7, pp3.6.3.

<sup>39</sup> The locational requirements are set out at paragraphs 17 — 21 of PPS10. These the cumulative effects of previous waste disposal facilities on the well-being of the local community. There is no suggestion that EnviRecover would have any materially harmful impacts in relation to noise, traffic, odour, dust and, furthermore, any visual impacts would be of a wholly different nature to the visual impacts of the existing landfill site. In the circumstances, it cannot be suggested that EnviRecover will have a cumulative impact in combination with the existing landfill site.

<sup>40</sup> CD-DP5, p.36, policy WCS2 and DP7, p.43.

for the generation of electricity and the supply of heat to local users.<sup>41</sup>

- 7.14 It is manifestly clear that EnviRecover would deliver the PPS10 KPOs and is an excellent fit with the rest of the policy guidance in PPS 10. It is submitted that the proposal's compliance with PPS10 should be accorded significant weight. EnviRecover would help the two Counties comply with its legal duty to apply the waste hierarchy as a priority order and to curtail the wholly unsustainable practice of landfilling by using waste as a resource.<sup>42</sup>

## Energy

- 7.15 There can be no doubt that EnviRecover would make a significant contribution to the similarly pressing need for renewable and low carbon energy.<sup>43</sup> The UK is committed to a target of producing 15 per cent of its total energy from renewable sources by 2020.<sup>44</sup> As Mr Roberts said both the West Midlands region and Worcestershire are "failing miserably" against this target. In the West Midlands only 3.8% of energy consumed in the region is generated from renewable sources, thereby failing by a considerable margin the 2010 renewables target (of 10%). In Worcestershire it is even worse at 2.9%. In previous appeal decisions the Secretary of State has concluded that the greater the need, as indicated by failure to meet targets, the greater the weight to be attached to the renewable energy contribution.<sup>45</sup> In exporting 13.5 MW of electricity EnviRecover would make a very material contribution

<sup>41</sup> CD-NPP8, pp.3, 7<sup>th</sup> key planning objective.

<sup>42</sup> Which is what the rWFD seeks to achieve as the Chief Planner reminded local planning authorities in March of this year (WCC2, App.A)'.

<sup>43</sup> Energy efficiency: EfW is both renewable and low carbon energy. Article 2 of the EU Directive 2009/28/EC on the promotion of the use of energy from renewable sources defines "energy from renewable sources" as meaning "... *energy' from renewable non fossil sources, namely wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases*". "Biomass" is in turn defined as meaning "... *the biodegradable fraction of products, waste and residues from biological origin from agriculture (including vegetal and animal substances), forestry and related industries including fisheries and aquaculture, as well as the biodegradable fraction of industrial and municipal waste.*" So that the biomass fraction of industrial and municipal wastes is a source of renewable energy. PPS1 CCS also defines EfW as a renewable energy supply, stating: "*Renewable and low-carbon energy: Includes energy for heating and cooling as well as generating electricity. Renewable energy covers those energy flows that occur naturally and repeatedly in the environment – from the wind, the fall of water, the movement of the oceans, from the sun and also from biomass. Low-carbon technologies are those that can help reduce carbon emissions. Renewable and/or low-carbon energy supplies include, but not exclusively, those from biomass and energy crops; CHP/CCHP (and micro-CHP); waste heat that would otherwise be generated directly or indirectly from fossil fuel; energy-from-waste; ground source heating and cooling; hydro; solar thermal and photovoltaic generation; wind generation*" (CD.NPP3, p.6). It follows that EfW infrastructure provides a supply of renewable energy which is realised through the use of fuel from a renewable energy source (i.e. the biodegradable fraction). The distinction between source and supply allows recognition of the renewable energy benefits of EfW, and its encouragement, whilst avoiding at the same time promoting the combustion in EfW power stations of fossil fuel derived wastes. The biomass fraction of MSW is up to 68% of the feedstock (see CD-MWM2, App. NR13, p.162). The remainder of the energy produced in the EfW is low carbon energy.

<sup>44</sup> CD-NPP14, pp.3.4.1.

<sup>45</sup> See NR12, pp.16.

(additional 6.9%) towards increasing regional renewables generation. At the County level the contribution would be remarkable and increase generation by up to 82.5%. The plant would generate sufficient electricity for the domestic needs of circa 22,500 households.

- 7.16 The extremely poor level of renewable energy generation in the Region and in Worcester is the antithesis of the Government's aims. The unremitting message from the Government is one of urgency: the Energy White Paper seeks to provide a positive policy framework to facilitate and support investment in renewable energy;<sup>46</sup> the aim of UK Renewable Energy Strategy is *radically* to increase the use of renewable energy;<sup>47</sup> and the UK Low Carbon Transition Plan records that the *scale of change* we need in our energy system is *unparalleled*.<sup>48</sup> The draft NPPF also stresses the *urgent need* to restructure the economy to meet the twin challenges of global competition and a low carbon future<sup>49</sup> and seeks to support the delivery of renewable and low carbon energy by, inter alia, requiring local planning authorities to design their policies to maximise renewable and low carbon energy development while ensuring that adverse impacts are addressed satisfactorily<sup>50</sup> and by directing them to apply the presumption in favour of sustainable development when determining planning applications as well as not to require applicants for energy development to demonstrate need.<sup>51</sup> In short, the exhortation to industry is to provide as much renewable energy capacity as swiftly as possible. It is notable but unsurprising that Miss Berry distils precisely this same message from Government policy. It is absolutely clear that Government policy requires that significant weight should be given to a proposal's provision of renewable energy. As a result it should be no surprise that the Energy White Paper makes it clear that local authorities should look favourably upon planning applications for renewable energy developments.<sup>52</sup> It provides:

*"New renewable projects may not always appear to convey any particular local benefit, but they provide crucial national benefits. Individual renewable projects are part of a growing proportion of low carbon generation that provides benefits shared*

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<sup>46</sup> CD-ESL1, pp.5.3.67 is important it provides, amongst other things: (1) applicants will no longer have to demonstrate need for renewable energy or for the particular proposal to be sited in a particular location, (2) that planners should create an attractive environment for innovation and in which the private sector can bring forward investment in renewable and low carbon technologies and (3) give a clear steer to decision makers that in considering applications they should look favourably on renewable energy developments.

<sup>47</sup> CD-ESL3, Summary.

<sup>48</sup> CD-ESL4, p.36.

<sup>49</sup> DNP2, pp.71.

<sup>50</sup> DNP2, pp.152.

<sup>51</sup> DNP2, pp.153.

<sup>52</sup> CD-ESL1, pp.5.3.67.

*by all communities both through reduced emissions and more diverse supplies of energy, which helps the reliability of our supplies. This factor is a material consideration to which all participants in the planning system should give significant weight (emphasis added) when considering renewable proposals. These wider benefits are not always immediately visible to the specific locality in which the project is sited. However, the benefits to society and the wider economy as a whole are significant and this must be reflected in the weight given to these considerations by decision makers in reaching their decisions.*<sup>53</sup>

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

Climate change and the Secretary of State's Issue C: EnviRecover's compliance with PPS1 CCS

- 7.18 Climate change needs to be approached in tandem with energy policy. Energy policy is central to tackling climate change. Indeed, PPS 1 CCS expressly states that policies and priorities on climate change are set out inter alia in the Energy White Paper. The White Paper itself states that renewables are key to the strategy to tackle climate change. PPS22 makes a similar point:

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

*...*

*"Increased development of renewable energy resources is vital to facilitating the delivery of the Government's commitments on both climate change and renewable energy. Positive planning which facilitates renewable energy developments can contribute to all four elements of the Government's sustainable development strategy."*<sup>54</sup>

- 7.19 PPS1 CCS sets out the Government's belief that climate change is the greatest long term challenge facing the world today and that addressing climate change is the Government's principal concern for sustainable development.<sup>55</sup> It further highlights the importance of planning as a delivery

<sup>53</sup> CD-ESL1, p.157, Box 5.3.3 Renewables statement of need.

<sup>54</sup> CD-NPP11, p.6.

<sup>55</sup> CD-NPP3, pp.3.

mechanism, the urgent need for action on climate change<sup>56</sup> and sets a number of KPOs.<sup>57</sup> Climate change could hardly be given greater weight in Government policy. The importance of climate change is reflected in the stiff carbon saving targets: the Government aims to cut emissions of carbon dioxide by 60% by 2050 and make 'real progress' towards that target by 2020. Again, EnviRecover will make a significant contribution to the PPS 1 CCS KPOs in that it will:

(i) Make a full and significant contribution to delivering the Government's Climate Change Programme and energy policies and in doing so contribute to global sustainability. As already identified, EnviRecover would deliver 13.5MW of electricity to the grid which would otherwise have been generated by the combustion of fossil fuels. In addition, the plant will be CHP ready and able to exploit any opportunity for the export of heat. The WRATE analysis demonstrates the immense carbon benefit in recovery over landfill and that EnviRecover is the best overall environmental outcome that Member States are required to encourage. As Mr Othen explained in XIC, EnviRecover as compared to landfill could save some 53,000 tonnes of CO<sub>2</sub>e. To put that in context WCC (one of, if not the County's largest employers), carbon footprint in 2009/10 was 55,618.<sup>58</sup> In other words EnviRecover would effectively eliminate WCC's carbon footprint;<sup>59</sup>

(ii) Providing jobs, services and infrastructure needed in this area and secure the highest viable resource, energy efficiency and reduction in emissions. The construction of EnviRecover would support 452 person years of gross employment, and deliver potentially over 200 person years of local employment. This equates to 45 permanent construction jobs, 20 of which being local permanent jobs.<sup>60</sup> When operational EnviRecover would provide some 42 full-time equivalent jobs. In addition, ongoing spend on supplies and maintenance over the operational life of the plant would support a further 9 full-time equivalent jobs.<sup>61</sup> It is further expected that this level of employment will generate around £1.62 million of net additional GVA per annum within the Worcestershire LEP area. The proposal would also potentially support employers in the area through reduced waste costs and as a potential source of cheaper and more secure power. That the proposal would exceed the R1 co-efficient even without the export of heat demonstrates that

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<sup>56</sup> CD-NPP3, pp.6.

<sup>57</sup> CD-NPP3, pp.9.

<sup>58</sup> CD-MWM26, p.6.

<sup>59</sup> CD-NPP3, pp.9, 1<sup>st</sup> key planning objective.

<sup>60</sup> CD-MWM2, App.NR17, p.26.

<sup>61</sup> CD-MWM2, App.NR17, p.26.

EnviRecover would be an efficient generator of energy;<sup>62</sup>

(iii) Help secure the fullest possible use of sustainable transport for moving freight. EnviRecover is ideally located in relation to the waste arisings in the two Counties<sup>63</sup> and so minimise waste miles and bring about an end to the wholly unsustainable practice of exporting waste to EfW outside of the two Counties;<sup>64</sup>

(iv) Help provide resilience to climate change by driving down the carbon impact of waste management in the two Counties and thereby help to reduce their vulnerability to climate change;<sup>65</sup>

(v) Cause no significant or unacceptable impacts on ecology and biodiversity as demonstrated by the ES and the grant of the Environmental Permit. Furthermore, the proposed landscaping scheme for the site will create new habitats and enhance existing habitats to the benefit of local ecology;<sup>66</sup>

(vi) Plainly reflect the development needs and interests of the two Counties and will help contribute to tackling climate change through the provisions of renewable energy and by enabling diversion from landfill;<sup>67</sup> and

(vii) Underpin competitiveness by providing a cheap and secure supply of renewable energy to local businesses in a wholly sustainable manner and thereby mitigating and adapting to climate change. EnviRecover will also provide some C&I recovery capacity at a competitive gate fee which will encourage businesses to recover waste and only dispose of it as a last resort.

7.20 The Council has expressly agreed that EnviRecover is consistent with the advice in PPS1 CCS and "demonstrably" complies with the KPOs making a full contribution to delivering the Government's Climate Change programme and energy policies and, in doing so, contribute to global sustainability.<sup>68</sup> It follows that the applicant should, in line with paragraph 40 of the CCS, expect to receive expeditious and sympathetic handling of this application from the Secretary of State. Of course, any difference of emphasis on climate change in the CCS with other national policy is intentional and should, as the foreword explains, be resolved in favour of the CCS.

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<sup>62</sup> CD-NPP3, pp.9, 2<sup>nd</sup> key planning objective.

<sup>63</sup> See map at CD-MWM29'

<sup>64</sup> CD-NPP3, pp.9, 3<sup>rd</sup> key planning objective.

<sup>65</sup> CD-NPP3, pp.9, 4<sup>th</sup> key planning objective.

<sup>66</sup> CD-NPP3, pp.9, 5<sup>th</sup> key planning objective.

<sup>67</sup> CD- NPP3, pp.9, 6<sup>th</sup> key planning objective.

<sup>68</sup> P15, pp.6.37.



- 7.21 Mr Vernon sought to demonstrate that Mr Othen's climate change benefit calculation was in error and that in fact there would be a net increase in carbon emissions. There were several iterations to his evidence. The first was the written statement CD-WAIL4 which contended there would be a climate change burden of some 8,000 tpa of CO<sub>2</sub>. Next the inquiry was invited to delete this from the statement as part of paragraphs 1.6 — 1.14 had been "overtaken by events." Mr Vernon explained in XX this meant parts of his evidence had been made untenable by Mr Othen's rebuttal (CD-MWM11). The second iteration was the supplementary evidence (CD-WAIL4A) which Mr Vernon produced after Mr Othen had given evidence and related to matters on which Mr Taylor had not XXd Mr Othen. Mr Othen responded to this in CD-MWM30 but unfortunately without the advantage of being able to explain it in person or be XXd on it. Lastly there was in effect a third iteration of Mr Vernon's evidence, given orally in extensive XIC and reliant on a confusing selection of numbers drawn from various sources which was very difficult to follow and delivered in part after Mr Othen had had to depart the inquiry and which again had never been put to him in XX. It could hardly have been presented in a more disjointed and unsatisfactory manner. However, this further evidence did produce the welcome concession that, after all, Mr Vernon's calculations had been in error and he now accepted that EnviRecover would provide climate change benefits as compared with landfill but only to the tune of 1,000 tpa of CO<sub>2</sub>.
- 7.22 To have reached a conclusion that landfill was superior to EfW in terms of climate change effects was always manifestly absurd and flew in the face of clear Government advice and accepted wisdom. For example, the WPR<sup>69</sup> emphasises the considerable climate change benefits of EfW as compared with landfill and the Inspector in the Severnside decision clearly considered that EfW would result in "very substantial reductions in GHG emissions"<sup>70</sup> which was in turn accepted by the Secretary of State. These benefits are also stated clearly in some of Mr Vernon's own documentation.<sup>71</sup>
- 7.23 So in terms of the principle, Mr Vernon agrees with Mr Othen that EnviRecover would have a net overall beneficial climate change effect when compared with landfill. The extent of that benefit has been grossly underestimated by Mr Vernon, not that it was possible to properly understand how the 1,000 tpa has been derived. It is at least known that he has used a biogenic content of only 50%, which is far too low: Arup's report<sup>72</sup> refers to that being a conservative assumption (no doubt deliberately so to avoid over-subsidising renewable energy producers) and that recent DEFRA research suggests that it might be as high as 68%. Indeed, footnote 60 suggests that 68% was the best available proxy for all MSW. As Mr Othen explained and Mr Vernon accepted, reducing the biogenic content of the material incinerated is likely to raise the CV of the

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<sup>69</sup> CD-WSL4, pp.208.

<sup>70</sup> CD-ID5, pp.222.

<sup>71</sup> Namely WAIL4A, App.6 (see the final sentence on p.13) and App.9, p.2, 4<sup>th</sup> column 4<sup>th</sup> bullet.

<sup>72</sup> CD-MWM30, p.161.

feedstock and therefore increase the electricity output. We also know that Mr Vernon used in his calculation a carbon intensity for the displaced energy derived solely from a CCGT power station and not the 50:50 balance between coal and gas power generation that Mr Othen had used in his base case. This has resulted in an unrealistically low level of climate change benefits for the EfW plants as compared with landfill which, if it were correct, would apply across the board to all EfW plants and would make it difficult to reconcile with the strong national policy preference for EfW as compared with disposal in a landfill. Mr Othen stands firmly behind his net carbon benefit for the project of some 53,000 tpa. He is the expert in this field and Mr Vernon is not and it is submitted that on this matter his evidence should clearly be preferred to that of Mr Vernon.

- 7.24 WAIL also seek to argue that EnviRecover would not make a full contribution to the climate change programme in that there is no guarantee that it would export heat. Again, this is misconceived. Even without export of heat the plant is to be regarded as an efficient energy producer (as defined in the rWFD) and its export of electricity to the national grid is a significant contribution to renewable energy generation in this area. In addition, the facility would be "CHP ready" and, therefore, fully able to exploit any heat demand in the vicinity. As stated in WS2007, particular attention should be given to siting the plant where it could maximise the opportunity for CHP.<sup>73</sup> Paragraph 27 of PPS 1 CCS<sup>74</sup> provides that planning authorities should pay particular attention to fostering the development of new opportunities to supply proposed and existing development with renewable and low carbon energy. Such opportunities could include co-locating potential heat customers and heat suppliers and, as Mr Othen said in evidence, the application site has good potential in this regard. The application site is located at the heart of an extensive trading estate where there is excellent potential for demand for heat from proximate occupiers. The Applicant has carried out a number of heat studies and, as Mr Othen explained, has identified a number of potential users including the two brickworks and a food manufacturer, together with the potential for new firms to come to the trading estate attracted by the supply of renewable energy. Wienerberger is watching the applicant's progress with much interest having identified the potential benefits of taking heat to pre heat the combustion air for the brick kilns.<sup>75</sup> As Mr Othen explained, MWM are not in a position to make contractual commitments to supply heat to Wienerberger in advance of planning permission. This is precisely the situation envisaged by the WPR which highlights the potential difficulty in securing customers in advance of construction of the plant.<sup>76</sup> The CHP potential of the proposal should, therefore, be accorded considerable weight. Decision makers now routinely give weight to CHP potential or

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<sup>73</sup> See CD-WSL1, p.79, 1p.28 and see EN-1, CD-NPP14, pp.4.6.3 and 4.6.5.

<sup>74</sup> See also pp.20, 4 bullet of the same document (CD-NPP3).

<sup>75</sup> See CD-MWM2, App.NR5.

<sup>76</sup> CD-WSL4, pp.237.

readiness.<sup>77</sup> Ms Brook-Smith agreed in XX that weight was given to the CHP potential of the proposed plants at Avonmouth, Severnside and Rookery South. In all those cases there was no legally committed heat offtake, but rather an opportunity to supply heat should demand exist once the plant was operational. There is no reason to take a different approach in this application. Conditions attached to the EP ensure that the opportunity for CHP is fully exploited.

## Conclusions

- 7.25 EnviRecover positively addresses three global policy aims and the urgent need for infrastructure to achieve them: first, the provision of urgently needed waste management capacity critical for the diversion of Herefordshire's and Worcestershire's waste from landfill; secondly, providing much needed renewable and low carbon energy with potential exploitation of CHP, thereby increasing energy security and contributing to renewable energy targets; and, thirdly, reducing the carbon dioxide that would otherwise be emitted to generate energy and displacing the harmful methane emissions that arise from landfilling.
- 7.26 It is difficult to see how EnviRecover could fit any better with PPS10 and PPS1 CCS. The conclusion which is invited in relation to the Secretary of State's issues B and C is that there is a compelling requirement and urgent need to deliver this form of infrastructure now in order to fulfil the policies on waste and climate change that those documents set out. WAIL has accepted that the need to provide recovery capacity in the two Counties, where remarkably none exists or is proposed, to assist in reducing the very large quantity of waste being landfilled is compelling and urgent. There is no other technology put forward that could remotely treat the quantity of waste that EnviRecover would manage, still less another site that would be suitable and available for such purpose. Ms Brook-Smith accepted that the only site relied on by WAIL as a potential alternative for EnviRecover was unbankable and undeliverable and both she and Mr Vernon accepted that WAIL were not able to suggest an alternative proposal to deal with this waste.

## National policy: other matters

- 7.27 The Government has now published the draft NPPF.<sup>78</sup> It is a document which has caused much public debate. However, it follows and is entirely in accord with the direction of travel set out in the earlier Ministerial Statement, PfG,<sup>79</sup> a document which took immediate effect and is being afforded significant weight in recent decisions of the Secretary of State, including in one of the most recent EfW appeal decisions: Severnside where 47 jobs were created which is a comparable figure to this proposal (42 jobs full time jobs).<sup>80</sup> PfG

<sup>77</sup> See, for example, Severnside (CD-ID5, pp.224).

<sup>78</sup> CD-DNP2.

<sup>79</sup> CD-OD 1 .

<sup>80</sup> See Severnside (ID5, pp.249: "The recent ministerial statement on Planning for Growth would lend strong support to the grant of planning permission, given the employment that the scheme would

is overwhelmingly supportive of development: it identifies the promotion of economic growth and jobs as a top priority and states that there should be a clear expectation that the default answer to development and growth should be yes except where it would compromise the sustainable development principles.

- 7.28 The draft NPPF builds on PfG and is clear that local planning authorities should approve development that accords with relevant policies of statutory plans (as here) without delay and also grant planning permission where the plan is absent, silent, indeterminate or where relevant policies are out of date unless the adverse impacts of allowing development "*would significantly and demonstrably*" outweigh the benefits when taken against the policies in the document as a whole.<sup>81</sup> Paragraph 26 requires that planning applications should be determined in accordance with the NPPF itself in the absence of up to date and consistent plans. MWM's evidence demonstrates that there would be no material harm arising from implementation of the scheme and, importantly, significant and substantial benefits would flow from a grant of planning permission.
- 7.29 The NPPF is only a draft. It has caused controversy and may change. It is none the less a material consideration and as the PINS Advice Note observes it does give a clear indication of the Government's direction of travel. PfG, however, is an extant Ministerial Statement promulgating up to date Government policies and the approach to decision making and should, therefore, be accorded significant weight.<sup>82</sup> Promoting sustainable economic growth and jobs is stressed to be the Government's top priority to which the answer should wherever possible be 'yes'. The present proposal represents both economic and sustainable development and will provide new employment open to local people. As such it is deserving of the "particular weight" referred to in the final paragraph of PfG.
- 7.30 These extant and emerging policies are in line with policy EC10 of PPS4 which provides that the local planning authorities should adopt a positive and constructive approach towards planning applications for economic development and that planning applications which secure sustainable economic growth should be treated favourably. This application is deserving of that favourable treatment.

#### Need

- 7.31 Need may be dealt with relatively shortly given the measure of agreement between the parties on this issue. The Council and MWM are clear that EnviRecover represents a missing and much needed part of the waste management infrastructure in the two Counties. Whilst WAIL does not quite put its name to that sentence, Ms Brook-Smith confirmed in XX that

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provide and the economic growth it would encourage").

<sup>81</sup> CD-DNP2, pp.14.

<sup>82</sup> CD-OD1.

there is a considerable need for such waste management facilities<sup>83</sup> and that WAIL still hold the views it expressed in SoCG2, namely, that:

- (i) There is a need for new infrastructure in the UK to facilitate sustainable waste management and to move waste higher up the waste hierarchy and away from landfill;<sup>84</sup>
- (ii) EnviRecover would make a contribution to the amount of treatment capacity required to avoid waste being disposed of to landfill;<sup>85</sup> and
- (iii) There is an established need for renewable energy generation nationally, regionally and locally.<sup>86</sup> In this context, Ms Brook-Smith further agreed in XX that the decision maker should assume the need for EnviRecover has been demonstrated and that the need is urgent.

7.32 All parties agree that neither waste nor energy policy requires an applicant to demonstrate need. Ms Brook-Smith confirmed she agreed in XX. She was right to do so. Paragraph 22 of PPS 10<sup>87</sup> makes it clear that there is no requirement to demonstrate a quantitative or market need for a scheme where it is consistent with an up-to-date development plan (note, paragraph 22 does not say that proposals must show need where in conflict with the development plan). The development plan here is plainly not up to date with and so does not reflect national policy: both the RS (even though published after PPS 10)<sup>88</sup> and the WCS (which was published well before PPS 10)<sup>89</sup> refer to concepts of the proximity principle and BPEO which do not form part of extant waste management policy. In such circumstances, paragraph 23 of PPS 10 applies. It provides that, before the development plan is updated to reflect PPS 10, planning authorities should ensure that proposals are consistent with PPS 10. EnviRecover's excellent fit with PPS10 has already been demonstrated. In the context of energy, EN-1 provides that applications for energy infrastructure should be assessed on the basis that the need for those types of infrastructure has been demonstrated by the Government and that the need for renewable electricity generation is urgent.<sup>90</sup> Indeed, there is no limit on energy generation – the policy thrust is clear: it is as much as possible and as soon as possible. As to climate change,

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<sup>83</sup> By reference to WAIL1, pp.5.6.20.

<sup>84</sup> P17, pp.5.1. P17, pp.5.17. <sup>80</sup>P17, pp.5.23.

<sup>85</sup> P17, pp.5.17

<sup>86</sup> P17, pp.5.23.

<sup>87</sup> NPP8.

<sup>88</sup> See, for example, policy WD3 CD-DP1, p.96.

<sup>89</sup> See, for example, policy WD 1 CD-DP2, p.120.

<sup>90</sup> CD-NPP14, pp.3.1.3 and p.27, pp.3.4.5.

PPS 1 CCS emphasises that applicants for energy development are not required to demonstrate overall need.<sup>91</sup> Furthermore, Secretary of State appeal decisions confirm that a demonstration of need is not a requirement of policy. By way of example, the Inspector at Eastcroft concluded that the need argument raised before him was not relevant.<sup>92</sup> As did the Inspector at Cornwall.<sup>93</sup>

- 7.33 Ms Brook-Smith further agreed in XX that neither waste nor energy policies sought to place a rigid cap on waste management capacity.<sup>94</sup> In doing so she took the contrary position to that taken by Mr Taylor in the questions he put to Miss Berry the day before. However, Ms Brook-Smith was plainly right. A series of appeal decisions over the years confirms as much (see, for example, Ince Marshes<sup>95</sup> and Ineos<sup>96</sup>). The most recent confirmation came at the Severnside Inquiry.<sup>97</sup> Indeed, in awarding costs to the Appellant the Inspector at Severnside took account of the fact that the Council had been advised that there is no rigid cap on capacity but had not taken that advice on board in advancing its case.<sup>98</sup>
- 7.34 In the light of these uncontroversial matters Ms Brook-Smith agreed that it did not much matter what the detailed numbers show given Government policy on need and the agreement of all parties that there is an urgent need for recovery capacity to be provided in the two Counties. Nevertheless the following further points are made in relation to need:

(i) Mr Roberts' Appendix 10, in which he sets out MWM's detailed case on need, was not challenged. Ms Brook-Smith's initial stance had been that the need assessment was "flawed" because it had not taken account of the fall in arisings. However, and very significantly, Mr Robert's assessment was based on the recession affected arisings for 2010-2011 and considered what waste was actually being landfilled and which, as agreed by Ms Brook-Smith, should be regarded as needing to be diverted from continued landfilling by providing recovery capacity. Mr Roberts took fully into account increased recycling rates and assumed that the Counties would meet and indeed well exceed the recycling targets for both MSW and C&I waste. Together with C&I waste (which must now be regarded as MSW), he demonstrated that there would be a requirement for at least 400,000 tpa of recovery capacity in both near and long

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<sup>91</sup> CD-NPP3, pp.20.

<sup>92</sup> CD-ID7, pp.344. With which the Secretary of State expressly agreed. See his decision letter, pp.28.

<sup>93</sup> CD-ID3, pp.1840: "... *national waste and energy policy do not require need to be demonstrated...*"

<sup>94</sup> This agreement was contrary to the way in which Mr Taylor XX's Miss Berry the day before.

<sup>95</sup> CD-ID2, pp.11.124-11.126.

<sup>96</sup> CD-ID9, pp.3.5(d).

<sup>97</sup> CD-ID5, pp.234.

<sup>98</sup> CD-ID5, costs decision pp.68-69.

terms,<sup>99</sup> in other words at least double EnviRecover's capacity. Ms Brook-Smith expressly agreed that EnviRecover's capacity of 200,000 tpa fits extremely well (and with a measure of prudence) in the range of capacity forecast to be required in the ENTEC Report.<sup>100</sup> She was also able to agree, looking only at MSW, that the facility was appropriately sized;

(ii) The scale of this need no doubt partly explains why Ms Brook-Smith accepted that the numbers did not actually matter. It also led her to accept that AD for separately collected food waste could not possibly be an alternative to EnviRecover since it would at best address only less than 10% of the total residual waste requiring recovery capacity if it were to be diverted from landfill which she accepted was the imperative in national waste policy as set out in WS2007;<sup>101</sup>

(iii) In so far as there was any argument on need it related to the likelihood of MSW arisings increasing in the future. WAIL's position is, in so far as it is understood, informed only by an analysis of the historic data contained in Ms Brook-Smith's appendix B. A number of points should be noted with regard to that data. First, it is partial (it excludes streams such as Bring tonnages and commercial waste collected by districts in the residual category).<sup>102</sup> This can be seen by comparing the 2010/11 figure within Ms Brook-Smith appendix B (364,366) with the figure for the same year of 396,152 provided in the Entech report.<sup>103</sup> Secondly, as Miss Berry pointed out in evidence whilst the data is relied on to demonstrate that there has been a decrease in MSW arisings, over the 10 year period covered by the data the fall is minimal (less than 3.5 per cent) and certainly no proper basis on which to conclude it will continue. Thirdly, the Entech report — which is WAIL's own evidence to the inquiry — and which deals with the whole MSW waste stream indicates that there has, in fact, been an increase in arisings between 2008/9 and 2010/11. Moreover, WAIL does not provide its own forecast of waste arisings. It simply suggests — without any working whatsoever — that MSW arisings will not increase in the future and it appears implied that it would fall. But Ms Brook-Smith could not, when invited to do so, point to an informed commentator who has said arisings will continue to fall. Indeed the opposite is true for in adopting the position it had (at least prior to XX of Ms Brook-Smith), WAIL set itself against both informed commentators as well as the evidence before the inquiry (some of it WAIL's own). First, DEFRA who are, Ms Brook-Smith agreed, the "horse's mouth" when it comes to waste and waste statistics. DEFRA has undertaken a forecasting exercise. Indeed, it

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<sup>99</sup> CD-MWM2, App.NR10, p.13, pp.44.

<sup>100</sup> CD-WAIL11, p.53. ENTEC concluded that the capacity of 220,000 tpa would be appropriate.

<sup>101</sup> CD-WSL5, p.28-29, pp.23.

<sup>102</sup> CD-WAIL1, App.B, p.21.

<sup>103</sup> CD-WAIL11, p.2, Table 1.1. It should be noted that this figure is a forecast.

has run two different models both of which forecast increasing amounts of MSW.<sup>104</sup> Secondly, their own evidence in the form of the Entech Report which as Ms Brook-Smith agreed is an independent review of the waste management treatment capacity required in the two Counties and which forecasts increasing amounts of MSW up to 2030/31.<sup>105</sup> Thirdly, the options appraisal for the JMWMS 2009 assumes a growth rate for MSW.<sup>106</sup> Fourthly, the data underpinning the emerging WCS again forecasts an increase in MSW.<sup>107</sup> Fifthly, the Revisions to the RS also assumed an increase in MW arisings.<sup>108</sup>

(iv) Ms Brook-Smith agreed that the two Counties are currently landfilling prodigious quantities of municipal waste (191,326 tonnes in 2010/11)<sup>109</sup> (and Mr Roberts estimates that approximately 460,000 tonnes of C&I and MSW are being landfilled in the two Counties), that the situation will persist unless and until further recovery capacity such as that provided by EnviRecover comes forward and that it is (adopting the Government's own words) "clearly wrong"<sup>110</sup> to allow the current position to continue. As a result of that agreement Ms Brook-Smith said that there was a compelling and urgent need to divert waste from landfill;

(v) Of course there are significant quantities of C&I waste in the two Counties. In terms of C&I it would be wholly in accord with Government advice to treat C&I together with MSW; and lastly,

(vi) Whilst it has not been seriously suggested during the course of the inquiry that EnviRecover would somehow inhibit recycling, the point is dealt with shortly. First, Mr Roberts' entire analysis on the required recovery capacity is predicated on the Counties meeting and exceeding their recycling targets. Second, EnviRecover is being promoted as the key element of an integrated waste management contract which provides for all forms of waste management. Thirdly, the evidence suggests that high levels of recycling and energy from waste are compatible. Fourthly, in so far as C&I is concerned there is a significant commercial driver to recycle given the respective costs of the different forms of waste management. In Cornwall the Inspector dealt with the same arguments in a similar context (the promotion of an EfW under a PFI Contract which

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<sup>104</sup> CD-MWM16, p.29 and 30.

<sup>105</sup> CD-WAIL15, p.2, Table 1.1.

<sup>106</sup> CD-WCC6, pp.2.1 (leading to a residual treatment capacity of 250,000 tonnes which indicates that EnviRecover is prudently sized).

<sup>107</sup> CD-MWM2, NR App.10, p.8, Table NR10-1.

<sup>108</sup> CD-DP4, p.149, Table 5.

<sup>109</sup> CD-MWM2, App.NR10, p.8, Table NR4-2, the addition of columns D and E.

<sup>110</sup> CD-WSL4, pp.240.



would utilise any spare capacity to treat C&I). He concluded that the facility would not act as a deterrent to the recycling of either MSW or C&I.<sup>111</sup>

- 7.35 It is therefore no surprise that the parties are agreed that there is a compelling and urgent need for residual recovery capacity in the two Counties.

#### Secretary of State's Issue A: the development plan

- 7.36 The Secretary of State's first issue is the extent to which the application complies with the development plan. The development plan in this area comprises: the West Midlands Regional Spatial Strategy ("the RS"), the Worcestershire County Structure Plan ("the WCSP") and the Wychavon District Local Plan ("the WLP"). The statutory test, properly formulated, is whether the application accords with the development plan as a whole.<sup>112</sup>
- 7.37 Mr Roberts undertook an extensive analysis of the proposal's fit with the development plan in his Appendix NR14 (within CD-MWM2). The only development plan policy conflict identified in WAIL's statement of case is with the Green Belt policies in the WLP<sup>113</sup> (SR7 and SR8) and no other. These policies are addressed below (as well as policy D39 of the WCSP which also deals with development in the Green Belt). The case developed by Ms Brook-Smith in her proof on WAIL's behalf accords with the limited case as set out in WAIL's statement of case, save to say that Ms Brook-Smith states that policy WD1 of the WCSP is relevant (not, note, that there is conflict with it) and in the context of policy WD2 of the same document Ms Brook-Smith sets out WAIL's case on need which has already been dealt with. Mr Roberts' analysis is far more wide ranging than the policies identified by WAIL. Aside from those policies identified above,<sup>114</sup> Mr Roberts' analysis was wholly unchallenged.
- 7.38 In light of Mr Roberts' analysis and the lack of challenge to it, it is submitted that the application is in overall conformity with the relevant policies of the development plan and, accordingly, the proposals must enjoy the presumption in favour of permission being granted for development which accords with the development plan set down by section 38(6) of the 2004 Act.
- 7.39 However, there is a slight difference between the Council and MWM on this issue. The Council believes that that the proposal conforms with the development plan save that it is not in accord with the Green Belt and landscape and visual policies.

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<sup>111</sup> CD-ID3, pp.1882-1889.

<sup>112</sup> In *R v Rochdale MBC ex parte Milne (No.2)* [2001] Env. L.R. 22 at 50 Mr Justice Sullivan (as he was then) held that for the purposes of section 54A of the 1990 Act it is enough that a proposal accords with the development plan considered as a whole and that it does not have to accord with each and every policy therein. The same principle should apply to section 38(6) of the 2004 Act.

<sup>113</sup> PI4, pp.2.4.5 and see proof of evidence pp.5.3.11.

<sup>114</sup> In addition in XX, Mr Roberts was taken to policies, EN1, WD1, WD2 and WD3 of the RS and policy CTC.1 of the WCSP.

- 7.40 As Miss Berry explained in XIC, the Council's landscape officer was heavily involved in the Council's assessment of the scheme's landscape and visual impact. Significant weight should be accorded then to the fact that the landscape officer did not object to the proposal. Moreover, Miss Berry's conclusion, premised on the landscape officer's advice and her own judgment, is that the visual and landscape impact is not so significant to justify the refusal of the application. In XIC Miss Berry elaborated on her view of the harm. She said that some harm would arise from the fact that the proposal would be visible in some viewpoints but that harm would be clearly outweighed by the benefits of the proposal. It is not clear how this position translates into a conflict with development plan policies and, if it does, with which policies the conflict is said to arise.
- 7.41 Moreover, although Miss Berry's position was informed by advice from the Council's landscape officer, MWM is the only party to have adduced specific expert evidence. Mr Mason concludes that there is no material landscape harm and accordingly the evidence before the inquiry (for it was left largely unscathed following WAIL's XX and was not challenged in any way by the Council) is that there can be no conflict with landscape and visual policy.
- 7.42 The reality is that, if there is something between the Council and MWM on this particular issue, it is a distinction without difference: Mr Mason recognises that EnviRecover will be seen from some vantage points and that there will be some harm which arises as a result, albeit that the harm would not be material and so not represent a conflict with policy. It is difficult to see why Miss Berry's position should be different from this.
- 7.43 As to the policies on Green Belt within the development plan, the starting point is to note that both the Council and MWM agree that there are VSCs (albeit there are some small differences in how the Council and MWM arrive at that conclusion) to justify the proposed development in the Green Belt. If the Secretary of State agrees that there are indeed VSCs then the proposal would of course accord with national Green Belt policy and Ms Brook-Smith agreed that this would follow. In our submission the proposal would also, therefore, accord with the Green Belt policies within the development plan properly applied. Again, Ms Brook-Smith agreed with this.
- 7.44 Policy D.39 of the WCSP<sup>115</sup> provides that where development is inappropriate (as here), it will only be allowed where VSCs exist to outweigh the harm to the Green Belt (as contended here). Accordingly, this policy addresses the precise circumstances into which EnviRecover falls as inappropriate development and, if the Secretary of State agrees with the Council and MWM that there are VSCs, there is no conflict with this policy.
- 7.45 Policies SR7 and SR8 of the WLP also deal with development in the Green Belt (and the latter, specifically, with Hartlebury Trading Estate).<sup>116</sup> However, as Mr Roberts explained in evidence, neither is relevant to this application. Policy SR8 incorporates criteria which are lifted straight from PPG2 Annex C

<sup>115</sup> CD-DP2, p.76.

<sup>116</sup> CD-DP3, p.23 and 24 respectively.

(although strangely it omits infill development which is expressly included in the Annex). The criteria identify what comprises appropriate development. Since there is no reference in policy SR8 to VSCs it is plainly only dealing with what constitutes appropriate development and is not the relevant policy for dealing with inappropriate development. If it were otherwise, SR8 would be inconsistent with the very national policy it is designed to propagate. If applied in a manner consistent with PPG2, as it is submitted it should be, there is no conflict. The same analysis applies to SR7. Ms Brook-Smith expressly agreed with this interpretation of the policies.

- 7.46 As to the remaining policies on which Mr Roberts was XXd, these may be dealt with shortly. Policy EN1 of the RSS expressly encourages energy from waste.<sup>117</sup> Further, the supporting text is clear that the region should aim to contribute as far as possible to green house gas reduction<sup>118</sup> and the generation of renewable energy.<sup>119</sup> EnviRecover contributes significantly to both those aims. Policies WD1 - 3 have all been over taken by events: the WD1 targets have been superseded (albeit that EnviRecover would contribute to meeting the targets), WD2 again relies on data which is not the most up to date and both WD2 and WD3 rely on outmoded waste management concepts such as BPEO and the proximity principle which no longer form part of extant policy. The waste policies within the Structure Plan are predicated on the same concepts.
- 7.47 Two landscape policies were put to Mr Roberts in XX by Mr Taylor: policy CTC1 of the WCSP and ENV1 of the WLP. The following short points should be made. First, the approach to landscape is demonstrably out of step with up to date national policy in that those policies address local landscape designations, namely SLAs and AGLV. Current Government policy expressly and repeatedly states that local landscape designations should not be used in themselves to refuse consent.<sup>120</sup> If there was any doubt about the applicability of that policy in the current case, PPS1 CCS which repeats the same policy is clear that it supersedes policies contained in a development plan which has not yet been updated to reflect that PPS.<sup>121</sup> Of course, the application site lies well outside such local landscape designations and, therefore, at the bottom of the landscape hierarchy in this area. Secondly, and in any event, given Mr Mason's evidence that there is no material landscape harm and Miss Berry's that there is no harm sufficient to justify a reason for refusal in such circumstances, it is hard to see how there can be said to be conflict with these policies. Thirdly, both policies address landscape character, a matter different and distinct from visual impact, as

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<sup>117</sup> CD-DP1, p.86.

<sup>118</sup> CD-DP1, pp.8.48.

<sup>119</sup> CD-DP1, pp.8.49.

<sup>120</sup> See EN-1 (NPP14, pp.5.9.14), PPS7, pp.24, PPS1 CCS (NPP3, pp.20, 2<sup>nd</sup> bullet) and PPS22 (NPP11, pp. 15).

<sup>121</sup> CD-NPP3, pp.11, 4<sup>th</sup> bullet.

Mr Mason made clear. Just because a building may be seen in the landscape does not mean that it will materially harm landscape character. As is plain from the ES, and Ms Brook-Smith agreed in XX, a key landscape characteristic of all the relevant landscape character description units is the impact of commercial development in the landscape. Mr Mason made clear why, in his opinion, formed after a careful and transparent process fully in line with recommended guidelines set out in GLVIA<sup>122</sup>, there would be no material harm to the landscape hereabouts.

#### The emerging development plan

- 7.48 The emerging development plan comprises: the Worcestershire Waste Core Strategy — Submission Document (June 2011) including its Addendum (October 2011) ("WWCS"); the South Worcestershire Development Plan (September 2011) ("SWDP"); and Regional Spatial Strategy for the West Midlands Phase 2 Revision (including the recommendations of the Panel Report) ("the RS Rev 2").
- 7.49 The Submission Document for the WWCS has been prepared, but an addendum has been published upon which consultation has been undertaken. Thus its submission form remains to be decided. There are a large number of objections to the policies including those relevant to this proposal. It is considered that there is no significant weight that can be attached to this emerging document. The South Worcestershire Development Plan is in the very early stages of preparation, currently at the preferred options stage. Given that this is the position, it should carry no material weight. The Phase 2 Regional Strategy has been through examination and is subject of a Panel report. In the light of the legislation allowing for Regional Strategies to be scrapped, very little weight can be attached to it. Nevertheless, Mr Roberts extends his analysis of the proposal's fit with the development plan to the emerging development plan in his Appendix NR14. Furthermore the Council and MWM agree that the proposal accords with the overall objectives within the emerging development plan.<sup>123</sup> Dealing with each briefly in turn:

#### Worcestershire Waste Core Strategy

- 7.50 Mr Roberts sets out his detailed analysis on proposal's compliance with the WWCS policies in his appendix 14. That analysis is not repeated. However, the following points should be noted. First, the Hartlebury Trading Estate is within the highest level of the geographical hierarchy for the location of waste management facilities, as set out in Policy WCS1 and confirmed by Miss Berry in XIC. Secondly, the proposal would accord with all aspects of Policy WCS2 which specifically sets the policy tests for the development of 'other recovery' facilities. The supporting text to the policy indicates that 'other recovery' facilities include thermal treatment and recovery facilities. Thirdly, the Hartlebury Trading Estate represents a 'compatible land use' for 'other recovery' facilities within the meaning of Policy WCS4. Significantly the WCS now contains a policy which deals with inappropriate development in

<sup>122</sup> CD-MWM8, App JM7

<sup>123</sup> CD-DPI, pp.6.11.

the green belt: policy WCS10.<sup>124</sup> It expressly recognises that waste management facilities may, even if representing inappropriate development, be permitted provided that VSCs exist. In part for these reasons Mr Roberts concludes (as does the Council) that the proposal complies with the emerging WWCS.

#### The South Worcestershire Development Plan

- 7.51 The Council and MWM agree that no significant weight can be accorded to the SWDP given it is at the very early stages of its preparation with no early prospect of adoption. Moreover, the applicant has lodged objections to parts of the SWDP which have some relevance to the EnviRecover proposal<sup>125</sup> (the Council has made similar representations)<sup>126</sup> and with good reason. Policy SWDP46, which is one of the few relevant to the proposal, is fundamentally flawed for a number of reasons not least the approach it adopts in deeming that energy from waste is not renewable energy. That approach is wholly contrary to law and national policy. It has been explained above why the energy derived from biodegradable fraction of waste is renewable energy. Mr Roberts concludes that the proposals are in general conformity with relevant policies contained within the SWDP, with the exception of that policy.

#### Regional Spatial Strategy for the West Midlands Phase 2 Revision

- 7.52 The RS Rev 2 has been through examination and is the subject of a Panel report but in light of the Government's intention to scrap Regional Strategies (and the power to do so now exists) all parties are agreed that only very limited weight can be attached to it. Nevertheless all parties also agree that the evidence base which supports that Revision is relevant.<sup>127</sup> Mr Roberts identifies in his appendix NR14 that policies W1, W2, W3, W5 and EN1 of the RS Rev 2 are the most relevant to the proposed development and concludes that EnviRecover would be in full compliance with the requirements of these policies.

#### Secretary of State's Issue D: Green Belt

- 7.53 All parties are agreed that the proposal is inappropriate development in the Green Belt. Accordingly, in order for planning permission to be granted VSCs need to exist which clearly outweigh the harm to the Green Belt caused by the inappropriateness and any other harm. Government policy expressly recognises that infrastructure projects are likely to be inappropriate development when located in the Green Belt.<sup>128</sup>

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<sup>124</sup> CD-DP5A, p.31.

<sup>125</sup> CD-MWM2, App.NR15.

<sup>126</sup> CD-WCC11.

<sup>127</sup> P17, pp.6.10.

<sup>128</sup> CD-NPP14, pp.5.10.17.

## Very special circumstances

- 7.54 Decision makers are specifically required in the context of waste management proposals to give significant weight to the locational needs of waste management facilities together with the wider environmental and economic benefits of sustainable waste management.<sup>129</sup> As is recognised in the Secretary of State's call in letter.<sup>130</sup> This is an important concession which is not afforded to most other types of development. Significantly however, a similar message is to be found in the context of renewable energy and climate change. Policy LCF14.2 of the draft PPS: Planning for a Low Carbon Future in a Changing Climate recognises that when located in the Green Belt many renewable energy projects will comprise inappropriate development and provides that VSCs in such circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.<sup>131</sup> It is quite different from the commentary in Annex E of PPG2 in relation to affordable housing, MSAs, football stadia, and gypsy sites. No other form of development has the positive emphasis regarding VSCs that is applied to waste management and energy proposals. The Secretary of State in the Todmorden decision<sup>132</sup> stressed at paragraph 16 that energy policy in that Green Belt case was of considerable importance and should weigh very heavily in the planning balance. Indeed, Wychavon District Council only recently granted planning permission for a wind farm in the Green Belt and concluded that the production of what was a very small amount of renewable energy amounted to very special circumstances.<sup>133</sup> Furthermore, EN-1 requires consideration to be given to the extent to which the development would have limited or no impact on the fundamental purposes of Green Belt designation. This demonstrates that Ms Brook-Smith's approach that "green belt is green belt" is misplaced and that, at least in respect of energy infrastructure, national policy recognises that some parts of the green belt may be less sensitive than others and in which case VSCs may be more easily demonstrated. Therefore all three strands of national policy to which EnviRecover would contribute (waste, energy and climate change) exceptionally identify specific matters which could comprise VSCs for the type of development proposed.
- 7.55 Importantly in this regard Ms Brook-Smith agreed in XX that the following matters could amount to VSCs: the compelling and urgent need for the proposal that Ms Brook-Smith had earlier agreed existed; the fact that there is no other suitable and alternative site in the two Counties (as all parties now

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<sup>129</sup> PPS10, pp.3, 6<sup>th</sup> bullet.

<sup>130</sup> Pl.1

<sup>131</sup> The same message is to be found in paragraph 13 of PPS22 (NPP11) and paragraph 2.3.5 of EN-3 (NPP15).

<sup>132</sup> CD-MWM2, App.NR12.

<sup>133</sup> CD-ID.11.

agree); the proposal's renewable energy generation as well as the implications of failure as set out in Mr Roberts' evidence<sup>134</sup> (which is turned to later).

7.56 Of course, the Council and MWM are agreed that VSCs exist in that:<sup>135</sup>

- (i) EnviRecover would provide 200ktpa of valuable and much needed recovery capacity in an area which currently has no residual recovery capacity, enabling it to meet more sustainably its waste management capacity needs and thereby reduce its dependence on continued extensive landfilling;
- (ii) The application site has considerable locational advantages: it is at (or very close to) the optimum location to treat the waste arisings within Worcestershire and Herefordshire; it has excellent transportation links; there are no insuperable environmental constraints; electricity can be readily exported; is favourably located to exploit CHP potential; and there is a potential local market for the use of bottom ash in brick making on the trading estate or elsewhere for recycling for secondary aggregates;
- (iii) The proposed EnviRecover facility would generate approximately 13.5MW of renewable and low carbon energy for export to the local grid providing sufficient power for about 22,500 homes. In doing so it would significantly increase the amount of renewable energy generation in both the Region and Worcestershire and so contribute towards meeting the Government's targets for renewable energy generation; and
- (iv) EnviRecover would bring the substantial climate change and economic benefits as already described.

7.57 Ms Brook-Smith in XX expressly agreed (i), (iii) and (iv) and did not challenge (ii), apart from some criticism that no use was made of rail and describing the CHP potential as "aspirational". However, Mr Roberts demonstrated that rail usage would be wholly impracticable and hopelessly unviable. As to CHP, as already explained, almost inevitably, CHP is aspirational, but that has not prevented decision makers attaching weight to it.

7.58 Mr Roberts sets out his analysis of the VSCs in great detail in his proof of evidence.<sup>136</sup> That analysis was simply not challenged during the inquiry and the Secretary of State is invited to adopt Mr Roberts' evidence on this issue. It is submitted that the factors set out above and the further matters identified by Mr Roberts are deserving of very considerable weight. Individually and collectively they are "very special" considerations which go directly to the heart of key national, regional and local policy objectives. Against these very considerable advantages, EnviRecover would give rise to only very limited harm.

7.59 If the Secretary of State accepts that the proposed plant is urgently needed, as WAIL has, it is common ground that this site is the only one suitable in the

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<sup>134</sup> CD-MWM2, p.65-67.

<sup>135</sup> The agreed VSC are set out in detail at pp.6.40 of SoCG1 (PI5).

<sup>136</sup> CD-MWM2, p.90-113.

entirety of the two Counties for such a project. There has been an exhaustive study of alternative sites and, whatever points have been raised about covenants affecting Ravensbank, the unequivocal evidence of Ms Brook-Smith was that she accepted Mr Plant's evidence (CD-MWM13) and Mr Roberts' evidence at paragraph 9.4.10 in the light of which she accepted that that site (the only one put forward by WAIL) was unbankable and undeliverable for a project similar in type to EnviRecover.

The purposes & objectives of including land in the Green Belt

- 7.60 There would be no conflict with any of the purposes for which Green Belts are designated or the positive roles encouraged for green belts in respectively paragraphs 1.5 and 1.6 of PPG2. The fundamental aim of green belt policy is to prevent urban sprawl by keeping land permanently open. The application site is not open countryside but forms part of an active and large trading estate which adjoins a prominent landfill site. It enjoys planning permission for major built development (5 industrial units with a floorspace of 138,600 sq ft) and will inevitably, regardless of the outcome of this application, not remain open (which is Mr Roberts' unchallenged evidence at paragraph 2.3.3) and so would not conflict with that purpose. Ms Brook-Smith also recognised that this permission "presents a precedent for development on the site." The briefest glance at a map demonstrates EnviRecover would not conflict with the second purpose, namely, to prevent neighbouring towns from merging into one another. The third purpose, to protect the countryside from encroachment, cannot be offended by a proposal which is contained within an existing trading estate and MDS. Nor is there any suggestion that EnviRecover would impact on the setting or special character of an historic town. As to the final purpose, it should be noted that whilst the proposal would not directly assist urban regeneration by the use of derelict and other urban land (at least in line with the intention behind PPG2), it would bring a previously used, disturbed, vacant site back into beneficial use. This would occur by way of the development of a high quality, architect designed series of buildings, with integrated landscaping, that would meet an established waste management and renewable energy generation need.
- 7.61 Thus derelict land would be regenerated and the proposal would not undermine wider urban regeneration. By its very nature the proposal cannot significantly contribute to the achievement of the objectives for the use of land in the Green Belt but nor does the site in its current state. It is not a site which makes any significant contribution to retaining or enhancing attractive landscapes near to where people live, as Mr Mason explained. The site itself can barely be seen from outside the trading estate. However, the reuse of vacant land and the beneficial ecological effects of the landscaping would contribute to a limited degree to the fourth and fifth objectives.

Visual amenities of the Green Belt and effect on openness

- 7.62 Mr Mason set out a careful analysis on visual and landscape impact, addressing no fewer than 47 separate viewpoints including the 26 suggested by WAIL. In none of them did he find that the effect of the proposed development would be significant. This informed his judgment that the development would not have any substantive effect on the actual or perceived openness of the Green Belt or the visual amenities of the Green Belt (Mr Mason



paragraphs 3.1.31 & 3.1.49). In respect of each viewpoint he set out his opinion on the sensitivity of the viewpoint and the magnitude of the change which then in accordance with the accepted guidelines informed his judgment on the significance of the change. Although Ms Brook-Smith commented that this involved judgments at all three steps, significantly she not once gave her own opinion on these important steps or attempted to approach the matter in the transparent and structured way recommended by GLVIA. Instead she jumped straight to a pure judgment but without any explanation of how she got there apart from using expressions such as "huge scale". Where there is conflict between the expert evidence of Mr Mason and the evidence of Ms Brook-Smith, who is a self-confessed non expert in landscape visual impact assessment, it is submitted that Mr Mason's evidence should be preferred.

#### WAIL and third party matters

- 7.63 Before turning to the issues WAIL raised, it is necessary to deal with Rufford.<sup>137</sup> Rufford was clearly perceived by WAIL as its safe haven during this inquiry. However, that perception was not well founded. Not only is Rufford the subject of a High Court challenge but it is plain that the evidence before the Inspector was deficient in material respects. The Inspector could not even be certain on the evidence before him that the proposal would meet the R1 coefficient, perhaps the most fundamental aspect of an energy from waste facility (paragraph 1199). That conclusion alone was fatal to the application since it compelled the Inspector to conclude that the proposal was not for a recovery facility but rather was disposal, the very lowest means of managing waste. The conclusion that the proposal did nothing to move waste up the waste hierarchy in turn swept away a raft of overt policy support that would otherwise have been applicable. Furthermore, the applicant does not appear to have provided a satisfactory WRATE analysis (paragraphs 1217, 1227 and 1229). In addition, the Inspector clearly wanted further information on the contract, which was not provided (paragraphs 1201 and 1218). To put it mildly, the evidence before the Inspector at that inquiry does not appear to have been comprehensive. It is not clear why the Inspector concluded the Rufford proposal would not produce renewable energy, when the same Inspector considered the SITA's Severnside proposal, having been presented with comprehensive evidence on all matters, had no hesitation in concluding that Severnside would generate renewable energy and would be a recovery facility. Just as in Severnside, on the evidence MWM has produced for this inquiry the Rufford conclusions simply cannot apply to EnviRecover.

#### Covenants and alternative sites

- 7.64 Covenants may be dealt with shortly. As Ms Brook-Smith agreed, covenants are not a land use planning consideration. In so far as the application site is concerned, WAIL point to a number of residential properties on Walton Road which benefit from a covenant prohibiting nuisance and annoyance<sup>138</sup> and say that there is a risk that one of those properties will seek to enforce the covenant. However, none of these residents has come

<sup>137</sup> CD-WAIL10

<sup>138</sup> CD-WAIL1, App.A, p.7 and 18.

before the inquiry and indicated such an intention. WAIL has provided no evidence to that effect. Indeed Mr Taylor made it clear he has no instructions from any of the residents of those properties. Moreover, Ms Brook-Smith confirmed that WAIL does not even suggest that the construction and operation of EnviRecover would breach the covenant. Ms Brook-Smith said she would have to take legal advice on the latter point. Of course, any legal advice would take into account the existing development surrounding those residential properties (HTE, the brickworks (and their chimneys) and the landfill sites – which are closer than the project site)<sup>139</sup> and the expert evidence which uniformly concluded that the proposal would cause neither nuisance nor annoyance.<sup>140</sup> Miss Berry further confirmed in answering a question from the Inspector that the issue of nuisance and annoyance has been considered by the Council in determining the application and that the Council had concluded that material harm would not arise in planning terms and that, in any event, any harm could be controlled through conditions and the environmental permit.

- 7.65 Finally, Ms Brook-Smith confirmed that WAIL does not argue that the proposal would be undeliverable on the application site. That concession should mark the end of the issue. It was a surprise, therefore, to see WAIL in closing submissions refer to *Davies*, a case that Ms Brook-Smith confessed that she had not read even though she had referred to it in her written evidence. That case does not, however, assist WAIL. A covenant must be construed in the context of the whole deed in which it sits as well as the situation on the ground to which it relates. Paragraph 4 of *Davies* explains that a particular feature of the benefited properties was their views of the Thames. Each of the properties had designed views of the river providing the owners a "waterside lifestyle." The claimed breach was a building that took those views away thus radically changing the nature/principal feature of the benefited properties. The facts could not be further from the situation here where there is, as stated above, existing industry and, indeed, a landfill site intervening between the application site and the benefited properties. The contrast between the two factual scenarios neatly demonstrates the dangers of referring to caselaw without proper analysis.
- 7.66 As to Ravensbank, Ms Brook-Smith made it clear in XX that she entirely accepts the contents of MWM13 which explains the lengths<sup>141</sup> to which MWM went in order to deliver Ravensbank. We note in passing that Ms Brook-Smith agreed that MWM had used best endeavours in this regard. As a result, she further agreed that this application would be unbankable<sup>142</sup> and

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<sup>139</sup> Ms Brook-Smith agreed by reference to Mr Mason's assessment of VP26 (the viewpoint which most closely approximates the location of the residential properties) that the proposed development would only be visible above the trees and in a view which already features industrial buildings and a prominent stack.

<sup>140</sup> The position of Mr Mason, Mr Roberts and Miss Berry.

<sup>141</sup> Including substantial financial offers to the beneficiaries and seeking defective title insurance (the latter is referred to by Mr Roberts in MWM2, pp.9.4.10).

<sup>142</sup> Meaning banks would decline to finance the project as is evidenced by the letter from Credit Agricole at App. 1 of MWM13.

undeliverable on the Ravensbank site. With that concession so fell WAIL's case on alternative sites.

- 7.67 In any event it should be noted that from a policy perspective there is not any general requirement to consider alternatives or to establish whether the proposed development represents the best option.<sup>143</sup>
- 7.68 As a result, Ms Brook-Smith confirmed that Ravensbank should be discounted as an alternative site and that WAIL had identified no other alternative site. She agreed that it can now be reported to the Secretary of State that it is common ground that the application site is the only suitable and available site for this project in Herefordshire and Worcestershire.
- 7.69 Nonetheless in closing Mr Taylor went back to Ravensbank and suggested that the burning of RDF on that site would not breach the covenant on the basis that RDF is not waste. Of course, the covenant does not even refer to waste. It refers to rubbish or refuse. The R in RDF of course refers to refuse. But even if the covenant referred to waste, Mr Taylor's approach is wholly misconceived and based on a fundamental misunderstanding of *OSS v Environment Agency*<sup>144</sup>. Admittedly it is a case and subject that is hard to follow but there is no excuse for suggesting there is an end of waste test in paragraph 63. No such test is there set out. Instead, the approach is outlined in paragraph 59. In order to determine if a material has ceased to be waste regard has to be had to the holder's intention to discard and, more significantly, in the context of materials that have been passed onto another for a use of some sort, a series of objective indicators derived from the policy of the WFD. Paragraph 63 comes at the end of a passage in which the court had looked at two previous decisions evaluating specific materials (one of which concluded that a waste derive fuel was still waste) and judging whether the decisions were right. Here there is no evidence whatsoever as to the composition of the material WAIL propose, its characteristics or how it will be treated. The end of waste test cannot be applied. Accordingly, there is no basis on which Mr Taylor can suggest that a generic and unspecified RDF is not waste. This is a wholly inaccurate point without any evidential support, raised for the first time on day 7 of the inquiry. It is a misguided attempt to resuscitate the Ravensbank site.
- 7.70 In any event and as a matter of fact and practice RDF is burnt in cement kilns and/or energy from waste plants both of which have to be WID compliant. They are WID compliant because they burn waste. This was an advocate's point. No evidence was lead upon it. It was predicated on a failure to understand the law.

#### Alternative technologies

- 7.71 Government policy is clear: proposals for alternatives which are vague or inchoate can be excluded from the consideration on the grounds that they are neither important nor relevant.<sup>145</sup> To describe WAIL's proposals on

<sup>143</sup> CD-NPP14, pp.4.4.1.

<sup>144</sup> CD-WAIL17

<sup>145</sup> CD-NPP14, pp.4.4.3.

alternatives as vague or inchoate would be overly generous. The highest WAIL puts its case on alternative technologies is to identify the mere possibility of an unspecified alternative having lesser environmental effects than this project. But it does so in the absence of any concrete proposal, in the absence of any evidence whatsoever and in circumstances where Ms Brook-Smith agreed that there is a compelling and urgent need for recovery capacity. It is a wholly unpersuasive position to adopt.

- 7.72 Before dealing with the technologies on which WAIL rely, two preliminary points should be made. First, the Government does not generally think it appropriate, subject to encouraging AD for separately collected food waste, to express a preference for one technology over another and regards technology choice as a commercial matter for the promoter.<sup>146</sup> In the case of energy policy there is a fundamental reason not to do so: to ensure that there is a security of supply through a diverse range of technologies.<sup>147</sup>
- 7.73 Secondly, an inordinate amount of time was spent in XX of Mr Othen and Miss Berry on the Annex D options appraisal for the JMWMS 2009 and the two versions of the Applicant's WRATE assessment. Of course, the Secretary of State cannot pronounce on the appropriateness of the Strategy, but it has now been adopted by all the constituent Councils and Ms Brook-Smith regarded it as an important document deserving of weight. The options appraisal which underpins the Strategy was subject to consultation and its preferred option was endorsed by the overwhelming majority of those who participated. Its chosen option of a single EfW plant is entirely unsurprising and a logical decision given the vast amount of recovery capacity required in the two Counties. EfW is the chosen route for many if not most WDAs and is encouraged by Government as a sustainable, prudent and reliable method of treating waste. Selective criticisms of a number of the tables in Annex D did nothing to displace the overall conclusion that EfW was the most suitable option.
- 7.74 The same applies to the WRATE assessments. Neither WAIL witness had any experience in such assessments whereas Mr Othen is clearly very knowledgeable in this specialist field. His evidence showed unswervingly that the EfW options were demonstrably superior to all others. Moreover, WAIL could not seem to understand that the autoclave option with landfill performed significantly worse than EfW with or without power. It was only autoclave with all residue recycled that performed better than EfW without CHP (and only before weighting). As described below, no one has successfully found a recycling outlet for an autoclave output. As Mr Roberts said he could not really understand why the autoclave + recycling options were even assessed as an option given that that option had only just proved itself to be undeliverable in the two Counties.
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<sup>146</sup> CD-WSL5, p.79, pp.27.

<sup>147</sup> See EN-1, NPP14, pp.3.3.5 which provides: "*There are likely to be advantages to the UK of maintaining a diverse range of energy sources so that we are not overly reliant on any one technology (avoiding dependency on a particular fuel or technology type).*" And at pp.3.1.2: "*The Government does not consider it appropriate for planning policy to set targets or limits on different technology.*"

Autoclave + recycling is a far better option than autoclave + combustion which WAIL now advocated. Again, WAIL just do not seem to understand this despite all the clear and uniform evidence from Mr Roberts, Mr Othen and Miss Berry. As a result WAIL relied on an option that cannot be delivered, unilaterally dismissed the Council's own assessment of what factors were important to them and ignored EnviRecover's CHP potential. It was an approach which was wholly unjustified.

- 7.75 In written evidence, Anaerobic Digestion appeared to be WAIL's preferred alternative technology; however at the inquiry WAIL focused instead on autoclave. As Ms Brook-Smith conceded in XX autoclave was not mentioned in her written evidence save by reference to the options appraisal. Whatever was behind the change of approach, the decision to push autoclave did not help WAIL's case.
- 7.76 Not least because autoclave has already been tried on the application site and failed. In 2003 planning permission was granted for an autoclave facility on the application site. As Miss Berry explained the planning permission was subject to a Grampian condition which required an outlet for the fibre which would be produced by the autoclave output to be found. Between 2003 and 2005 MWM and ESTECH (the provider of the technology) sought to find such an outlet. Indeed, as Mr Roberts explained in XIC, MWM spent over £1 million in trying to find a workable solution for which it received no compensation. Despite taking the very best advice available (indeed, ESTECH were advised by Mr Taylor's firm DLA Piper and MWM by Clifford Chance) the deal could not be closed. There was simply no viable market for the fibre. In 2006 all parties agreed to move on. Shortly thereafter ESTECH thought they had found a solution, namely, exporting the fibre to China for recycling. Talks resumed. But again, it became clear quickly that even this was not workable. For WAIL now to contend that the Councils should revert back to this failed approach is extraordinary.
- 7.77 WAIL attempts to support its position by reference to Sterecycle and Wakefield were wholly misplaced. The only evidence WAIL adduced with regards to Sterecycle was a marketing brochure.<sup>148</sup> Mr Roberts, however, has worked for Sterecycle since 2009 and as a result knows its history and operations well. Ms Brook-Smith, sensibly in the circumstances, confirmed that she did not dispute Mr Roberts' evidence in relation to Sterecycle.
- 7.78 He explained that no use or market whatsoever has been found for Sterefibre (the output from the process). Instead, it languishes at the bottom of a quarry at Hampole landfill in Doncaster in an ever growing pile. As Mr Roberts said, it is literally a mounting problem. The EA have tested Sterefibre and will not let it be put on land. Indeed the tests were such that the EA will not let it be landfilled. EA object even to its temporary storage without a special membrane. However, planning permission has been refused for that membrane. So significant has this problem become that Sterecycle sought Mr Roberts' advice in developing an EfW facility to be fed by Sterefibre conveyed direct from the autoclave. That the EfW capacity is identical to

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<sup>148</sup> CD-WAIL12.

the autoclave capacity speaks eloquently of the latter's success or rather lack of. It almost goes without saying it would have been far preferable in environmental terms to recover the original residual waste straight into an EfW facility without going through an unnecessary, unproductive and energy consuming intermediary process. Mr Roberts summed it up neatly: Sterecycle has spent an awful lot of money turning residual waste into residual waste.<sup>149</sup>

- 7.79 WAIL's only evidence in relation to Wakefield was a short press article.<sup>150</sup> In the circumstances the matter consumed a disproportionate amount of inquiry time. It is not clear that WAIL knew that the Wakefield proposed contract was unique in proposing autoclave, has been at preferred bidder status for some four years without being able to close and that the AD element of the proposal has been radically reduced. Mr Othen, who has been advising the potential funders of the scheme, pointedly declined to accept that it was a probability that the contract would close. He would only say it was a possibility. Moreover, that Wakefield pursues autoclave is its political choice. Herefordshire and Worcestershire have not made the same choice for very sensible environmental and economic reasons. This is simply not the forum in which to try to revisit the two Counties waste management strategy. Significantly, neither Ms Brook-Smith nor Mr Vernon were able to identify any commercial end user for the output from the autoclave process. In an extraordinary denouement at the inquiry, WAIL was compelled to confirm that the output from AC and AD would have to be incinerated and therefore use the very process that WAIL was formed to oppose. They could hardly say it should go to landfill and were therefore compelled to adopt incineration along the lines of what might eventuate at Rotherham. Putting the best face that he could on it, PV described this form of incineration as nice, not naughty and that it would be an "elegant solution". That WAIL, an action group founded with the express purpose of resisting incineration, should be backed into relying on incineration is the clearest demonstration that it really has no sensible alternative option to EnviRecover.
- 7.80 AD has not been pursued in oral evidence. In any event, Ms Brook-Smith agreed in XX that AD did not amount to an alternative to this proposal because it is only suitable for the treatment of separately collected food waste.<sup>151</sup> Moreover, there will be a very large quantity of C&I food waste available for AD if and when this proposal is operation so that EnviRecover would in no way deter the promotion of an AD plant. Indeed, it is only through measures such as separate food collections that the Councils will be able to meet and exceed their recycling targets that Mr Roberts assumed in his residual need assessment.

## Ecology and European Protected Species

<sup>149</sup> In addition, there was a serious explosion at Sterecycle towards that end of 2010 that killed a man and put the operation out of action until towards the middle of this year.

<sup>150</sup> CD-WAIL6.

<sup>151</sup> This wholly accords with Government policy (see, for example, WSL4, pp.220). Note also that the Inspector in Cornwall records that separate food collection has not always been a success and that some WDAs have stopped separately treating food waste on the grounds of cost (ID3, pp.1886).

- 7.81 The Chancellor's recent comments on the Habitats Regulations could have been uttered with WAIL's attempt to use this legislation as an obstacle course to stand in the way of development in mind. A degree of reality and proportion should be applied. Numerous surveys of the application site over a prolonged period have revealed the presence of three GCNs presumed to have been washed down onto the site during a dewatering process, on the nearby landfill site. Ms Brook-Smith confirmed that she did not contest any of MWM's ecological evidence. This is not a key site for GCNs (it is certainly not a breeding site as is Ravensbank). However, GCN having been found, MWM will have to gain a derogation license.
- 7.82 Article 12 of the Directive provides that Member States must establish a system of strict protection for European Protected Species (EPS). Some derogation from that system of strict protection is permitted by Article 16 which provides in so far as relevant that:
- "1. Provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, Member States may derogate from the provision of Articles 12, 13, 14 and 15(a) and (b);*
- ....*
- (c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment;..."*
- 7.83 The Habitats Directive is transposed into domestic law by the Conservation of Habitats and Species Regulations 2010. Article 12 is implemented by the Regulation 41 which provides:
- "(1) A person who:*
- (a) deliberately captures, injures or kills any wild animal of a European protected species,*
- (b) deliberately disturbs wild animals of any such species,*
- (c) deliberately takes or destroys the eggs of such an animal, or*
- (d) damages or destroys a breeding site or resting place of such an animal, is guilty of an offence."*
- 7.84 Article 16 is implemented by Regulation 53 which provides in so far as relevant:
- "(1) Subject to the provisions of this regulation, the relevant licensing body may grant a licence for the purposes specified in paragraph (2).*
- (2) The purposes are:*
- (e) preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment;*
- (9) The relevant licensing body must not grant a licence under this regulation unless they are satisfied:*
- (a) that there is no satisfactory alternative; and*
- (b) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range."*

- 7.85 Regulation 9(5) is important. It imposes a duty on a planning authority when determining an application for planning permission as follows:  
*"...a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions."*
- 7.86 The Secretary of State is now the competent authority for the purposes of the Habitats Regulations and, accordingly, he must have regard to the requirements of the Habitats Directive so far as they may be affected by the grant of planning permission. A role which is to be distinguished from the role of the licensing authority, Natural England.
- 7.87 The Supreme Court has only very recently considered precisely what the duty to have regard to the Habitats Directive entails for a planning authority when deciding whether or not to grant planning permission (see *R (oao Morge) v Hampshire County Council* [2011] 1 W.L.R. 268).<sup>152</sup> Lord Brown said<sup>153</sup> in *Morge* that it is Natural England who bears the primary responsibility for policing the strict protection afforded to EPS by article 12 (both in the sense of prosecuting offences and issuing licenses which permit derogation from article 12). He observed<sup>154</sup> that the implementation of a planning permission used to be a defence to an offence under the Habitats Regulations but that was no longer so. Lord Brown regarded that change as an important consideration when determining the nature and extent of the duty on a planning authority under the Habitats Regulations when determining whether or not to grant a planning permission. He rejected the Court of Appeal's articulation of that duty (and thereby overturning the judgment in *Woolley*) saying:  
*"29. In my judgment this goes too far and puts too great a responsibility on the planning committee whose only obligation under regulation 3(4) [the predecessor to regulation 9(5)] is, I repeat, to "have regard to the requirements of the Habitats Directive so far as [those requirements] may be affected by" their decision whether or not to grant a planning permission. Obviously, in the days when the implementation of such a permission provided a defence to the regulation 39 offence [now regulation 41] of acting contrary to article 12(1), the planning committee, before granting a permission, would have needed to be satisfied either that the development in question would not offend article 12(1) or that a derogation from that article would be permitted and a licence granted. Now, however, I cannot see why a planning permission (and, indeed, a full planning permission save only as to conditions necessary to secure any required mitigating measures) should not ordinarily be granted save only in cases where the planning committee conclude that the proposed development would both (a) be likely to offend article 12(1) and (b) be unlikely to be licensed pursuant to the derogation powers. After all, even if development permission is given, the criminal sanction against*

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<sup>152</sup> D-MWM35

<sup>153</sup> At pp.26.

<sup>154</sup> At pp.27.



*any offending (and unlicensed) activity remains available and it seems to me wrong in principle, when Natural England have the primary responsibility for ensuring compliance with the Directive, also to place a substantial burden on the planning authority in effect to police the fulfilment of Natural England's own duty.*"<sup>155</sup>

- 7.88 It is now clear that the planning authority should only refuse where it concludes that Natural England would be unlikely to grant a licence and that where a planning authority has any doubt on the matter that doubt should be resolved in the applicant's favour and (all other things being equal) planning permission granted. WAIL, however, invert this test set down by the Supreme Court.
- 7.89 As Mr Roberts confirmed, there is no suggestion whatsoever that Natural England would be likely to refuse any licence in this case. Ms Brook-Smith also confirmed that it was no part of WAIL's case (despite the way Mr Taylor formulated the test in XX) that an application for a licence was likely to be refused. Natural England has not objected to the scheme. Furthermore, it will only consider a licence application in circumstances where EnviRecover has been granted planning permission. The very decision to grant planning permission for this type of development in the Green Belt will determine the Imperative Reasons of Public Interest (IROPI) and No Satisfactory Alternative (NSA) tests as Ms Brook-Smith accepted. In any event, it is now agreed by WAIL that the application site is the only suitable and available site in the two counties. The examples of developments which would offend Article 12 but which would pass the derogation tests under Article 16 given by Natural England in its guide on how to get a licence<sup>156</sup> are revealing. The guide is provided in the context of an application for the actual grant of a licence not the light touch test required of a planning decision maker. The NE examples include: a development of 5 houses (including three affordable units) on the edge of a village and a barn conversion to holiday let accommodation which was identified as being able to generate income for the farmer and supplement the local green and sustainable tourist economy by providing opportunities for access to the countryside for walkers and cyclists.<sup>157</sup> It hardly needs to be said but those benefits pale into insignificance when compared to what EnviRecover would deliver to the local economy, to required infrastructure and renewable energy.
- 7.90 Moreover, MWM has undertaken a detailed analysis of the derogation tests and concluded that the tests are likely to be met.<sup>158</sup> WAIL has simply not engaged in such an exercise. In short, there has been a recent clarification of the law (by the highest court in the land) which makes it

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<sup>155</sup> At pp.29.

<sup>156</sup> To which Natural England refer in its letter dated 1 November 2011 (PA13(a): [http://www.naturalengland.org.uk/Images/wml-g12\\_tcm6-4116.pdf](http://www.naturalengland.org.uk/Images/wml-g12_tcm6-4116.pdf)

<sup>157</sup> APP/O/52, p.9-11.

<sup>158</sup> See CD.PA7, p.21-31.

clear that the primary duty in considering the derogation tests rests upon Natural England and that a planning authority is only obliged to give 'light touch' consideration to the derogation tests and should only refuse planning permission where it concludes that Natural England would be unlikely to grant a licence. All of the evidence points precisely the other way: that Natural England would be likely to grant a licence and, accordingly, there is nothing to prevent the Secretary of State granting planning permission for this development. It follows that there is no conflict with policy ENV6.

## Health

- 7.91 Perhaps not unexpectedly, there is concern amongst third parties about the effects of the proposal on health. WAIL does not share this concern. Ms Brook-Smith made it clear that WAIL specifically do not contend that the proposal will cause harm to health. WAIL's complaint is limited to the perception of health risks to which is turned below.
- 7.92 The Government is quite clear on the proper delineation between the planning and pollution control regimes. Paragraph 10 of PPS23<sup>159</sup> provides:
- "The planning and pollution control systems are separate but complementary. Pollution control is concerned with preventing pollution through the use of measures to prohibit or limit the release of substances to the environment from different sources to the lowest practicable level. It also ensures that ambient air and water quality meet standards that guard against impacts to the environment and human health. The planning system controls the development and use of land in the public interest. It plays an important role in determining the location of development which may give rise to pollution, either directly or from traffic generated, and in ensuring that other developments are, as far as possible, not affected by major existing, or potential sources of pollution. The planning system should focus on whether the development itself is an acceptable use of the land, and the impacts of those uses, rather than the control of processes or emissions themselves. Planning authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced. They should act to complement but not seek to duplicate it."*
- 7.93 The Government reiterates that advice in PPS 10<sup>160</sup> and tells decision makers to avoid carrying out their own detailed health assessments and instead to draw upon Government advice and research as well as consultation with the relevant health authorities and agencies.<sup>161</sup> In this case there were no objections whatsoever from any technical consultee on health grounds.

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<sup>159</sup> CD-NPP13.

<sup>160</sup> CD-NPP8, pp.5 and 30.

<sup>161</sup> CD-NPP8, pp.31.

Moreover, the EA has already granted the permit<sup>162</sup> so that the Secretary of State can be informed that the EA is clearly satisfied that MWM will operate the plant in accordance with both BAT and the stringent requirements of WID which are designed to avoid any impact on human health. EN-3 at paragraph 2.5.43 expressly requires planning decision makers to assume that there will be no adverse impacts on health where the plant meets the requirements of WID (and the permit would not have been granted unless the plant would do so). The statement in WS2007 that there is no credible evidence of adverse health outcomes for those living near incinerators could not make the Government's position on the matter any clearer.<sup>163</sup> The Inspector at Ince Marshes regarded that statement as a full answer to those arguing against incineration of waste on the basis of the precautionary principle.<sup>164</sup> The HPA, the Government's statutory advisor on health matters, has said that, whilst it is not possible to rule out adverse health effects with complete certainty, any potential damage to health of those living close-by is likely to be very small, if detectable.<sup>165</sup>

## Perception

- 7.94 However, the public's concerns or perceptions in relation to health and air quality are themselves capable of being material considerations. This is the basis on which WAIL makes its case. Appendix A to PPS23 lists issues which may be relevant to the determination of a planning application. The penultimate issue refers to *"the objective perception of unacceptable risk to the health and safety of the public arising from the development."* Perceptions that are based on emotions, personal prejudices or information which is factually incorrect plainly cannot be objectively held. Here, there is no reliable evidence to suggest that perceptions of health risk are objectively justified. Thus although perceptions, even those unsupported by objective evidence, are capable of being material planning considerations, very little or no weight should be attributed such unjustified perceptions of health risk. That position is supported by case law. In *Gateshead MBC v Secretary of State for the Environment*,<sup>166</sup> where there was public concern about an increase in the emission of noxious substances from a proposed clinical waste incinerator, Lord Justice Glidewell in the Court of Appeal, with whom Lords Justices Hoffman and Hobhouse agreed, held that if public concern could not be objectively justified then it could not be conclusive. He continued: *"If it were, no industrial — indeed very little development of any kind*

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<sup>162</sup> CD-EP1.

<sup>163</sup> CD-WSL5, pp22 of Chapter 5.

<sup>164</sup> CD-1D2, pp.11.24.

<sup>165</sup> CD-OD2. Paragraph 30 of PPS10 also states that modern, well-run and well-regulated waste management facilities operated in line with current pollution control techniques and standards should pose little risk to human health.

<sup>166</sup> [1994] 1 P.L.R. 85.

—would ever be permitted." <sup>167</sup>

7.95 The Inspector in the Ince Marshes case followed that reasoning. He said: *"...the position giving rise to doubts in the mind of the public, concern over health effects of incineration of waste, is one that is in direct conflict with a position taken by the Government in a statement of national policy (paragraph 22 of Chapter 5 of Waste Strategy for England). Such a statement will not satisfy everyone but should act to allay anxiety amongst the public at large. My conclusion is that although the proposal raises public anxiety this should not carry great weight in relation to the planning decisions on the proposals before the Secretary of State."* <sup>168</sup>

7.96 There are significant factors in this case that should ameliorate any concerns the public have. First and foremost it is not suggested that the EnviRecover will have a detrimental effect on health. Secondly, as already identified, the EA has issued the permit which it could not have done if the proposal was not WID compliant. Thirdly, the public have had a number of opportunities to air their concerns on this issue. The Applicant provided a health expert at the public exhibitions MWM held before submitting the planning application and Mr Othen was asked to make a presentation to the Community Liaison Group. Fourthly it is very clear that the public's views on this issue have been taken fully into account. As Miss Berry made clear the Council considered health issues in detail and were fully aware of the public's concerns when determining the application. Indeed, the Council invited a representative of the HPA to the planning committee meeting who reiterated that a modern well run incinerator does not pose a significant risk to human health. Further, as the Inspector at King's Cliffe <sup>169</sup> noted the inquiry process itself provides a direct link between the public and the decision maker so that the public will know that their views will be taken into account. For all these reasons, the perception of health impacts should not be accorded any significant weight in this decision. Paragraph 7.33 of the King's Cliffe decision letter draws attention to the advice in the Annex to PPS23 that for perceived risk to be material to a planning consideration there must be a clear demonstration of the land use planning consequences. Ms Brook-Smith in XX agreed that she had no evidence of any land use planning manifestation arising from the perceptions she put forward. Nor has such a clear demonstration emerged in any other evidence given at the inquiry.

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<sup>167</sup> [1994] 1 P.L.R. 85 at 95.

<sup>168</sup> CD-1D2, pp.11.28.

<sup>169</sup> The Inspector at King's Cliffe (ID1) was Ken Smith. Mr Smith decided Kidderminster in 2002 when he found that the perception of health impacts was a negative factor of some significance. WAIL relies on this finding. However, matters have moved on since that decision not least the publication of PPS10, PPS23, WS07, the NPSs and the HPA's statement on the health effects of incinerators. In King's Cliffe which he decided this year and in which perception of health risks in relation to low level radioactive waste was a key issue he found that the genuine public concerns should only be given limited weight.

- 7.97 The perception issue was very largely related to human health, but Ms Brook-Smith maintained that it had relevance to the community's attitude to recycling and that it might discourage local residents from recycling. But this too cannot be objectively justified. Local people have been well informed about recycling efforts across the two Counties and, if only as a result of this inquiry, have knowledge of the very large quantities of waste being landfilled. EnviRecover should be perceived as a highly sustainable and commendable method of treating waste, driving waste management up the hierarchy as WAIL accept in the SoCG2 and not deterring treatment higher in that hierarchy. It should be seen as a spur to the local community to participate further in measures to treat its waste sustainably rather than relying on its waste to be landfilled or incinerated outside the county.

### Consultation

- 7.98 There is no substance to WAIL's complaint in relation to public consultation. MWM conducted extensive and numerous consultation exercises the details of which are set out in SoCG1<sup>170</sup> and the document from MWM's communications consultants, Sauce, which was written in response to WAIL's criticisms and is found at appendix NR18 of Mr Roberts' proof. In any event, Ms Brook-Smith agreed in XX that there had been extensive consultation. This took place both before and after the application was made with several meetings of the CLG set up by MWM and two public exhibitions. Her complaint was that the process had been a mere box ticking exercise. This was unfair and, of course, MWM was under no obligation to consult the community at all. Moreover, it became clear that Ms Brook-Smith's real complaint was that the public were not consulted on alternatives. This was a complaint without foundation for the consultation exercises were specifically on this application. It was pointed out to Ms Brook-Smith that the public had been consulted, in any event, on alternatives in the context of the JMWMS. On hearing this she complained that that consultation had not been specific to this application site. In trying to have it both ways, Ms Brook-Smith revealed that no consultation exercises could possibly have satisfied WAIL. In light of which its criticisms on this issue should be paid little regard.

### Deterrent effect of EfW

- 7.99 During the third parties session reference was made to the deterrent effect of EfW facilities and Mrs Jones produced a letter from a company called Arctic Spas which operate from the trading estate in which the company claimed its business would be adversely affected by EnviRecover. It is noteworthy that Arctic Spas did not feel so strongly as to either object to the development or attend the inquiry in person. As a result, this inquiry has not debated deterrent effects but others have. In Cornwall the issue was investigated in some depth and a considerable amount of evidence was adduced. The Inspector had no hesitation in concluding that the evidence from around the country is that the presence of an EfW facility does not discourage or deter nearby economic activity.<sup>171</sup> There is no basis on which to

<sup>170</sup> CD-PI5, pp.3.13-3.17.

<sup>171</sup> CD-ID.3 pp.2078 and 2079.

depart from that conclusion in this case. In the Eastcroft case,<sup>172</sup> which concerned an addition to an existing plant, since there was no actual evidence of existing harm, therefore the Inspector determined there would be none from the proposal.

#### Setting of Waresley House

7.100 In a letter to PINS dated 15 August 2011 Wychavon District Council sets out an objection to the application on the basis of its impact on the setting of Waresley House Mansion which is a Grade II\* Listed Building. It is an objection without substance. It was not even raised in the WDC committee report. It is purely a Members' point. Moreover, it flies in the face of the clear advice from English Heritage who has said that EnviRecover would not materially affect the setting of any built heritage asset. Indeed, EH has recently concluded that the setting has been seriously compromised and degraded.<sup>173</sup> Nonetheless both Mr Mason and Mr Roberts have reassessed the impact on the setting of listed buildings and each confirms that no unacceptable impacts would occur.

7.101 If contrary to these submissions, the Inspector or Secretary of State concludes that there is harm to the setting of the listed building, a balancing exercise must be undertaken. PPS5 is clear that where proposals which deliver climate change benefits cause harm to heritage assets, the decision makers should weigh the public benefit of mitigating the effects of climate change against any harm to the significance of heritage assets.<sup>174</sup> In this case the benefits are so great and the harm so small that the only conclusion which can be properly reached is that the application is acceptable in heritage asset terms.

7.102 It should also be said that Ms Brook-Smith confirmed that it was no part of WAIL's case that the proposal would impact on the Conservation Area.

7.103 WDC also objected on the basis of noise but there are agreed noise conditions and the WDC EHO, who acts as EHO for the whole county, has expressly agreed those conditions so that objection was totally misplaced.

#### Implications of not proceeding with the development

7.104 If the Government is serious that it wants to treble thermal treatment capacity by 2020 it must start to grant consents now. Development of this nature has a very long lead in time. The EnviRecover project began back in 2007. If consent is granted now it could be operational in 2015 some 8 years after the project was initiated. The delays involved if consent is now refused would be significant. Mr Roberts' estimate of a similar period of time was not contested. Those delays would be bad enough in their own right, but it needs to be remembered that this would be additional to the delay that has already occurred following the dismissal of the Kidderminster appeal in 2002. If two major waste management projects failed the appetite of the

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<sup>172</sup> CD-ID7

<sup>173</sup> CD-MWM7, pp.4.3.8.

<sup>174</sup> CD-NPP6, Policy HE1.3.

waste management industry to bring forward further proposals in the area might be seriously undermined.

7.105 Of course during the period of delay the two Counties would be condemned to continuing the wholly unsustainable practice of landfilling prodigious quantities of waste. During which time significant financial costs would be incurred including: the ongoing payment of landfill tax (if the Counties continue to landfill approximately 200ktpa in 2014 the tax bill alone would be £16m); the payment of any penalties for failing to meet landfill diversion targets; the need to pay spot market prices and additional transportation costs to use out of county third party waste treatment facilities (assuming any such capacity is available); the legal, technical and other professional costs associated with either varying or re-letting the waste management contract; increased capital expenditure costs for any new facility (Mr Roberts advises that historic expenditure costs increases within the past 10 years have been as high as 15% per annum although are likely to decrease to around 5%); and, finally, all the economic benefits associated with the delivery of EnviRecover facility would either be deferred or simply not realised. In Cornwall, the Inspector gave similar matters substantial weight.<sup>175</sup> It is submitted that the same approach should be adopted here.

#### Overall Conclusion

7.106 To return to the key message in paragraph 1 of PPS10: the planning system is pivotal to the adequate and timely provision of the waste management facilities. It is agreed that there is a compelling and urgent need for EnviRecover. Without it, the two Counties are compelled to manage unsustainably large quantities of waste by landfill at the very bottom of the hierarchy. What is required is "positive planning." Only if the Secretary of State's decides to grant planning permission now can the two Counties be provided with the only available opportunity for waste management facilities of the right type in the right place and at the right time. We submit that not only does the balancing exercise come down decisively in favour of EnviRecover but that the proposal enjoys no fewer than five presumptions in favour of development: first, it accords with the relevant provisions of the development plan and therefore enjoys the statutory presumption in favour of planning permission. Secondly, the proposal enjoys the presumption in EN1<sup>176</sup> to grant planning permission for an energy generator which plainly accords with the policies set out in that NPS. Thirdly, the presumption in PfG in favour of development which provides valuable employment and other economic benefits. Fourthly, the expeditious and sympathetic handling required of development which contributes to the delivery of the KPOs set out in the PPS1 CCS.<sup>177</sup> Fifthly, the presumption contained in policy EC10 of PPS4 in respect of economic development.

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<sup>175</sup> CD-1D3, pp.2123.

<sup>176</sup> CD.NPP14, pp.4.1.2.

<sup>177</sup> CD.NPP3, pp.40.

7.107 For all these reasons the Secretary of State is invited to grant planning permission subject to the agreed conditions.

## 8.0 The Case for Worcestershire County Council

- 8.1 In the Report to the County Council's Planning and Regulatory Committee which met to consider Mercia Waste Management Ltd's application on 1 March 2011, members were advised that there was an ongoing need to reduce the amount of waste that the Country produces going to landfill. It is clear from the evidence before this inquiry that, so far as the two counties of Worcestershire and Herefordshire are concerned, that need has now become urgent and compelling.
- 8.2 Much time at the inquiry has been spent considering the precise quantities of municipal waste (MSW) arising in the two counties. However, there is no continuing dispute that the amounts arising are indeed prodigious, with unacceptable levels being disposed of to landfill. On Ms Brooke-Smith's own figures, 364,366 tonnes of contract waste have arisen in the year 2010 - 2011<sup>178</sup>. This figure, appearing in her summary table does not however include all waste and omits, for example, bring tonnages. Miss Berry refers to the quantities in the JMWMS 2009 identifying that 243,080 tonnes would remain to be diverted from landfill in 2010; and Mr Roberts said that 209,471 tonnes actually went to landfill in 2010/11.<sup>179</sup> The figures appear to have declined during the recession and with the introduction of Landfill Tax. However as the economy improves these figures are likely to rise as demonstrated by Figures A.2 and A3 in DEFRA's report: the Economics of Waste and Waste Policy.<sup>180</sup> This will be so, even with the achievement of a 60% recycling/composting target as explained by Miss Berry<sup>181</sup>.
- 8.3 The figures that have been produced in relation to MSW do not include Commercial and Industrial Waste (C & I). In the Committee Report it was stated that in 2009 approximately 650,000 tonnes of C & I waste were produced across the two counties<sup>182</sup>. Mr Roberts' figure is 601,790 tonnes in 2010/11, rising to 879,366 in 2035/36. As the inquiry has heard, the distinction between these two categories of waste is now abandoned and the need to take steps to avoid the disposal to landfill of waste that has formerly been classified as C & I also needs to be urgently addressed.
- 8.4 At present there are no recovery facilities operating within the two Counties. A continued dependence upon landfill would result in the emission of methane gas, which contributes to global warming, and is environmentally unsound. It also imposes a massive financial burden on the council tax payers of both authorities; which is likely to increase. A continuation of landfill is also of course contrary to the aims of WAIL.

<sup>178</sup> CD-WAIL2, Appendix WAIL B

<sup>179</sup> CD-MWM2, Appendix NR10, Table NR4-2

<sup>180</sup> CD-MWM 16

<sup>181</sup> CD-WCC1, Proof para 4.2.8

<sup>182</sup> CD-PA8, para 190



- 8.5 The development of policies to ensure that waste is diverted from landfill is an obligation of the UK government, which is required by the revised Waste Framework Directive to ensure that waste management plans are established. These should provide a strategy for waste management which accords with the hierarchy laid down in the Directive and which involves disposal to be used only as a matter of last resort. Preference in the hierarchy is given to recovery, which includes energy recovery. Directive Annex II includes in the definition of recovery operations "R1: Use principally as a fuel or other means to generate electricity".
- 8.6 The Government's overarching strategy is to be found in the Waste Strategy for England 2007. This adopts the waste hierarchy, with energy recovery above disposal, and provides among the key policy objectives the increased use of recycling and the recovery of energy. It is also explained that "recovering energy from waste which cannot sensibly be reused or recycled is an essential component of a well-balanced energy policy"<sup>183</sup>.
- 8.7 The waste hierarchy is incorporated in the Waste Review of 2011 which also explains that a "zero waste economy" is an economy which strives towards sending zero waste to landfill. Renewed emphasis is given to the importance of recovering energy from waste, with recognition of the climate change benefits that it can bring.
- 8.8 Locally, the relevant waste strategy is to be found in the Joint Municipal Waste Management Strategy for Herefordshire and Worcestershire 2004 -2034, the current version of which was published in 2009 and has now been adopted by all the authorities in the two counties. Policy 7 provides that the local authorities will actively seek to provide waste management services in a manner that minimises greenhouse gas emissions and other impacts that contribute to climate change. The strategy itself is technology neutral but it does refer to Annex D, the residual options appraisal. This appraisal did consider Energy from Waste (EfW), with and also without Combined Heat and Power (CHP), and also options with 1 or 2 site autoclaves. Option 1 (EfW + CHP) was ranked first overall. Although the 1 site autoclave also scored highly, coming second, this was on the basis that the process would provide for recycling<sup>184</sup>. Table 15 in the WRATE report<sup>185</sup> shows that with fibre recycled as fibreboard the autoclave sites scored 10, but with the fibre landfilled the autoclaves' score dropped to 4. Both EfW options scored 10. It was a feature that EfW consistently scored well.
- 8.9 The proposal by MWM for an EfW plant at the Hartlebury Trading Estate will meet the need for a facility that will involve the treatment of MSW arising in the two counties. Moreover, it will do so in a manner that is entirely consistent with the relevant waste strategies at all levels.
- 8.10 It will comprise a built facility for the combustion of 200,000 tonnes per annum of residual waste. It will enable energy to be recovered from the waste: initially 15 MW of electricity, of which 13.5 MW will be exported to the grid. This could increase to 20MW with 17MW net export. It also contains the potential to export

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<sup>183</sup> CD-WSL5, Page 76, para 17

<sup>184</sup> CD-WSL7, Annex D para 2.2.3

<sup>185</sup> CD-MWM5, App 2

- heat. As such it achieves the objective of moving the treatment of this waste up the hierarchy, and not least by avoiding the use of landfill will provide a significant environmental benefit.
- 8.11 It is very suitably located within an established substantial trading estate, and is as the map at Mr Roberts' NR9 shows, very well positioned in respect of the main centres from which the waste arises. It is readily accessible via the Lorry Route Network, with both Crown Lane and the A 449 being of a suitable standard for operational HGV traffic. There is no Highway Authority objection to the proposal.
- 8.12 As Miss Berry explained, the facility will be suitably sized. There is no doubt that, even with increasing levels of recycling, very substantial quantities of waste will remain, especially when the amount of C & I waste is considered. Moreover, as Ms Brooke-Smith agreed in xx, the very substantial quantity of waste that will remain, far exceeding 200,000 tonnes, will still give opportunities for the development of new technologies. By no means will the facility stifle recycling.
- 8.13 The Government's principle planning policy in relation to waste management is PPS 10. The key objectives include the delivery of sustainable development through driving waste management up the waste hierarchy, with disposal as the last option; enabling the sufficient and timely provision of waste management facilities to meet the needs of communities. It also confirms the protection given to green belts, but recognises the particular locational needs of some types of waste management facilities in determining planning applications, and that these locational needs, together with the wider environmental and economic benefits of sustainable waste management, are material considerations that should be given significant weight in determining applications for planning permission.
- 8.14 MWM's application is entirely consistent with the planning policy guidance in PPS 10. It will provide a necessary part of the waste management infrastructure required within Herefordshire and Worcestershire. It will drive waste up the hierarchy and will certainly facilitate the national waste strategy.
- 8.15 It is agreed that the development plan for the proposal comprises the West Midlands Regional Spatial Strategy (RSS) and the saved policies of the Worcestershire County Structure Plan and also of the Wychavon District Local Plan.
- 8.16 Miss Berry reviewed the relevant policies in these plans in considerable detail, similar to the planning policy summary which she included in the Committee Report. Ms Brooke-Smith acknowledged that this was "a fair reflection" of the policies.<sup>186</sup> The following is the thrust of Miss Berry's review of policy.
- 8.17 In relation to Landscape and Visual Impact, the key development plan policies are contained in the WMRSS (policies QE1, QE3, QE5 and QE6), the Worcestershire Structure Plan (policies SD2, CTC1, CTC2 and CTC20) and Wychavon District Council Local Plan (policies GD2, ENV1, SUR1 and SUR2). These policies seek to protect and enhance environmental assets and landscape

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<sup>186</sup> CD-WAIL1, para 5.3.2

character (and including specific reference to the sky line) requiring a high standard of design and full consideration of the design principles of, and potential impacts that might arise from, development proposals.

- 8.18 The visual impact of the proposed development was considered from many representative viewpoints around the inquiry site. The assessment at each location determined that there would be a minor to moderate impact from the viewpoints assessed, with the exception of the Waresley Park residential area and at Elmley Lovett where the assessment noted an impact of moderate to major significance. The assessment considered these locations in more detail and concluded that there would not be a significant environmental impact, given the distance from the site and the presence of the existing trading estate (although it recognises that the existing buildings are much smaller) and the landfill sites.
- 8.19 The submitted design was considered to be the best option causing least visual impact and integration with the existing setting. The application also proposes lowering the ground level of the site by 8m in order to reduce the final height of all the buildings, consequently reducing their visual impact. The Applicant has proposed mitigation measures to minimise light pollution. Light pollution can be appropriately controlled through the recommended condition. The plume visibility has been modelled by the Applicant, demonstrating that the plume would be visible for around 28% of the time, with more than half of this period being during hours of darkness. The plume would be most visible during cold, still conditions in the winter months when the days are short. The Applicant, therefore, concludes the plume would be visible for less than 14% of operational time and does not present a significant adverse visual impact.
- 8.20 Neither the County Landscape Officer nor the County Design Unit Manager object to the proposal, suggesting that decisions regarding the external finish of the buildings and site details are pursued through the recommended condition m. Also the County Landscape Officer does not consider the Hartlebury Conservation Area to be adversely affected by the proposed development.
- 8.21 The EnviRecover Facility will not cause any adverse impact on the AONB. During the consultation on the proposal, Natural England concluded that the EnviRecover Facility would not adversely affect any statutorily protected areas (including the AONB) and therefore raised no objection.
- 8.22 The proposed EnviRecover Facility would require built development, which exceeds the height of buildings already present on the Hartlebury Trading Estate and these structures will be visible, to varying degrees, from a number of locations. However, the fact that a structure is of itself substantial and visible does not necessarily lead to an adverse environmental impact. This is a subjective judgement but having taken account of the submitted information and the views of the statutory advisors, the visual and landscape impacts of the proposed EnviRecover Facility are not considered sufficiently significant to justify refusal of the application.
- 8.23 The relevant policies in relation to Ecology and Nature Conservation are presented in the WMRSS (policy QE7) the Worcestershire Structure Plan (policies CTC5, CTC10, CTC11, CTC12 and CTC15) and Wychavon District Council Local Plan (policies GD2, ENV5 and ENV6). These policies seek to

protect protected species; habitats and wildlife of international, national, regional and local importance.

- 8.24 The Environmental Statement submitted alongside the planning application contained a detailed Ecology and Nature Conservation assessment. In response to a holding objection from Natural England and the County Ecologist, it was requested that the Applicant submitted additional ecological information. This information has been separately consulted upon. In addition to general ecology matters, there were specific concerns held in regard to great crested newts (GCN) and noctule bats.
- 8.25 Natural England and the County Ecologist both withdrew their objections on consideration of the additional environmental information provided in November 2010 and considered this information to be adequate. It was noted that the site is in close proximity to areas that do accommodate GCN; and that whilst unlikely, there was the potential for the site to be used as a corridor to move between areas. Therefore, on-going monitoring of GCN in relation to the site's development and operation would need to be carried out. Natural England and the County Ecologist requested that this is achieved through the preparation and implementation of both a Nature Conservation Management Plan and the Construction and Environment Management Plan.
- 8.26 The Applicant chose to commence reptile translocation works during Spring 2011. This was undertaken in order to enable construction work to commence promptly. During these works, two great crested newts (GCN) were identified on site. A third GCN was found on site in 16 September 2011. In October 2011 the Applicant voluntarily submitted a Regulation 19 report on potential effects on GCN. During reptile exclusion works on the inquiry site during 2011 the presence of a small number of GCN were identified. The environmental information (October 2011) also refers to GCN pond surveys undertaken within 500m of the inquiry site in Spring 2011. This concludes that there are four ponds within 500m of the inquiry site that are used by GCN, the closest of which being 300m from the inquiry site. The environmental information notes that Natural England has been consulted and has confirmed that a European Protected Species Licence would be required to move GCN from the inquiry site.
- 8.27 The Regulation 19, Submission 3b<sup>187</sup> has been prepared and submitted to provide a summary of work undertaken prior to and following submission of the EnviRecover planning application, in respect of GCN, and an update on the status of GCN at the inquiry site. In relation to works undertaken after the Committee meeting of 1 March 2011, Submission 3b presents, and where relevant considers:
- a. survey data of ponds within 500 metres of the inquiry site;
  - b. information of the GCN found on the inquiry site, including discussion of how they may have reached the site;
  - c. details of communication held with Natural England;
  - d. mitigation proposals;
  - e. appraisal of risks to GCN; and
  - f. the three statutory tests that must be met before a derogation licence can be granted:

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<sup>187</sup> CD-PA7

- i. imperative reasons of overriding public interest (IROPI);
- ii. that there is not satisfactory alternative; and
- iii. maintaining favourable conservation status.

- 8.28 The Applicant notes that the presence of three GCN indicates a small population. Submission 3b considers that the most likely explanation for their presence on the inquiry site is as a result of the GCN entering drainage ditches to the north, being transported downstream and consequently deposited onto the inquiry site. This is noted to have occurred during periods when there were high levels of water flow within the open water ditches on the inquiry site as a result of discharges from a lagoon (identified as Pond 8 in Submission 3b) as part of the nearby landfill site operated by Biffa.
- 8.29 However, Natural England has no further comments to make on the subject of mitigation and/or compensation. The County Ecologist has reviewed the scheme and has requested that details of the mitigation proposals and future management of the site in respect of GCN are included within the Nature Conservation Management Plan for the site. It is considered that this addresses the content of Mr Casey's representations<sup>188</sup> submitted in response to consultation on this additional environmental information, and no further comment is made.
- 8.30 The mitigation measures presented in the application documents and Submission 3b have been reviewed and Natural England's advice noted that, based on the information provided, the development is unlikely to adversely affect the conservation status of the local newt population.
- 8.31 The Applicant concludes (at paragraph 7.12 of Submission 3b) "it is demonstrably the case that development of the EnviRecover facility, with its associated significant sustainability, energy and economic benefits, is imperative for reasons of overriding public interest." It is agreed that there is an established need in the public interest for the EnviRecover Facility in relation to both waste treatment and energy supply. The Facility will enable value to be recovered from residual waste, diverting it from disposal to landfill. There are demonstrable environmental benefits to be gained from the supply of low carbon and renewable energy, which may be further enhanced by the provision of steam to the Brickworks. There would also be economic benefits in the form of employment and the sale of electricity to the national grid.
- 8.32 In relation to alternatives; it is agreed that an appropriate range of alternatives has been assessed, by the Applicant and Worcestershire County Council, both in terms of sites and solutions. Further, it is concluded that no satisfactory alternative exists.
- 8.33 The third test relates to the maintenance of favourable conservation status. The Applicant (paragraph 9.2 of Submission 3b) makes reference to the Great Crested Newt Mitigation Guidelines (Whitehurst 2001) advising that it has been used at all stages of the assessment to date. *"The survey methods, site assessment, impact of the development, method statement and mitigation and enhancement proposals have all been formulated based on the principles and detailed recommendations in the guidelines. As such it can be concluded that the proposed development works at the site would allow for the maintenance of*

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<sup>188</sup> CD-PA13b

*favourable conservation status of Great Crested Newt on and around this site."* It is noted that the Applicant has discussed its approach to mitigation with Natural England - this is set out in Appendix E of Submission 3b, and that Natural England confirms this is an accurate record. However, Natural England otherwise provides no commentary on the appropriateness of the mitigation and compensation or on the likelihood of the necessary licence being granted.

- 8.34 On the basis of the information available, it is concluded that adequate surveys have been undertaken to establish the status of GCN on the inquiry site and that the mitigation and compensation approach outlined in Submission 3b would be appropriate, such that favourable conservation status of GCN should be maintained. Worcestershire County Council Ecologists advise that details of the mitigation proposals and future management of the site will need to be included within the Nature Conservation Management Plan. This can be achieved through the addition of the suggested condition.<sup>189</sup> There are consequent amendments required to the recommended conditions 'g', 'n v.' and 'r' that are set out in SOCG2. These have been incorporated into the set of conditions set out in CD-PI9.
- 8.35 It is expected that the GCN Strategy would need to be incorporated into an application to Natural England for a European Protected Species licence; therefore a collaborative approach between Natural England, the County Planning Authority and the Applicant would be required to ensure consistency.
- 8.36 Submission 3b advises that the Secretary of State should consider the likelihood of Natural England granting a licence and should only refuse planning permission where this is considered to be unlikely. Clearly, the decision on the proposed development of the EnviRecover Facility rests with the Secretary of State, but, for the reasons set out above, it is considered that the three statutory tests can be satisfied and consequently that it is therefore likely that Natural England will grant the requisite licence to enable development of the inquiry site.
- 8.37 The inquiry site is also in close proximity to a small wood called Middle Covert, which accommodates noctule bats. The submitted information concludes that there is unlikely to be an adverse impact, a conclusion with which Natural England concurs. Concerns have been raised about the shadowing effect caused by the building and chimney stack on the Middle Covert. However, this matter has been adequately addressed through additional modelling provided by the Applicant. To this end it is important that the rows of poplar trees on the eastern boundary of the site are retained. Whilst this already formed part of the proposal on submission, their protection and on-going management is also required through the imposition of recommended condition r.<sup>190</sup>
- 8.38 Local representation has raised concern about the potential for adverse impacts on the River Stour Floodplain, Hartlebury Common and Wilden Meadows and Marsh. The Environmental Statement identifies each of these Sites of Special Scientific Interest (in addition to others). Natural England comments on these sites, recognising that they are located within 5 kilometres of the inquiry site, and concurs that that the proposal will not have a significant effect on the interest features of the designated sites. On the basis of the information and

<sup>189</sup> CD-PI9 (condition 'nn')

<sup>190</sup> See recommended conditions within SOCG2 – CD-PI7

advice it is concluded that there will not be an adverse impact on the Sites of Special Scientific Interest. This conclusion is not affected by the additional environmental information provided by the Applicant.

- 8.39 There will be some impacts during the construction of the proposed Facility in the form of the loss of two oak trees, a habitat mosaic of grassland, scrub, tall herb vegetation and a partly culverted ditch. Whilst mitigation of these is not possible, they are compensated for in the form of a new water course, two attenuation ponds and landscape planting. This loss is acceptable.
- 8.40 A Reptile Survey and Mitigation Plan was prepared which sets out the measures to avoid deliberate killing or injury during construction works and provides for the long term maintenance of populations on site through habitat enhancement measures. Adoption of these measures will make it possible to maintain or increase the population size and condition of the local slow-worm and grass snake population. Implementation of this Plan is required through the recommended condition r. Therefore, the EnviRecover Facility would be in accordance with the policies of the development plan on Ecological and Nature Conservation matters.
- 8.41 The relevant development plan policies in relation to Transport matters are set out within the WMRSS (policy T10), the Worcestershire Structure Plan (policies SD4, T1, T15 and T19) and Wychavon District Council Local Plan (policy GD2 and ECON11). These policies aim to: enable the delivery of development close to urban areas to reduce the need to travel; ensure that a site is easily accessible via the Lorry Route Network; avoid significant impacts on the road network, including safety; avoid adverse environmental impact on residential amenity; promote the use of rail and water to transport waste; and avoid impacts on airfields. The Environmental Statement submitted with the application concludes that development and operation of the EnviRecover Facility would not result in a material impact on operational or environmental conditions over the local highway network. Development traffic flow increases would generally be low when compared to baseline flow demand. Further, the core local haulage routes of Crown Lane and the A449 are of a suitable standard to accommodate operational HGV traffic and have few immediate sensitive receptors.
- 8.42 The Applicant proposes a routeing strategy that shows all operational HGV movements to/from the site using Crown Lane to access the A449 dual carriageway. Improvements to Crown Lane were undertaken some years ago to provide access to the Hartlebury Trading Estate from the A449. Crown Lane is a suitable industrial standard local distributor road corridor, with no frontage residential property and provides the most direct access from the Hartlebury Trading Estate to the County Strategic Road Network (the A449).
- 8.43 It is important to note that no objection has been received from either the Highways Agency or the County Highways Officer. The routeing strategy is appropriate and due to weight and width restrictions on many of the local roads surrounding the site, it would be difficult for HGV to use these in any event.
- 8.44 Considered has been given to the use of rail with this development, recognising the sustainability benefits that this mode of transport can bring. However, the EnviRecover Facility is intended to manage wastes arising within Worcestershire and Herefordshire and principally residual municipal wastes. The road based

system for collecting these wastes is already established. These road movements and those associated with transporting outputs from the proposal (the clay materials, incinerator bottom ash and APC residues) are demonstrated not to result in unacceptable impacts, including in relation to the carbon footprint of the EnviRecover Facility. The EnviRecover Facility is in conformity with development plan policies in relation to transport matters.

- 8.45 The relevant development plan policies in relation to Surface Water, Flood Risk and Groundwater matters are set out within the Worcestershire Structure Plan (policies CTC8 and CTC9) and Wychavon District Council Local Plan (policy ENV18). These policies aim to ensure that development does not occur in the floodplain; development does not increase the risk of flooding and will not cause pollution of surface water or groundwater, it will not have an adverse effect on groundwater resources, and it will not cause detriment to the existing regime of a watercourse or its environment.
- 8.46 The Environmental Statement accompanying the planning application includes an assessment of flooding and surface water. The inquiry site does not lie within a flood plain and is classed as Flood Zone 1; therefore, the risk of fluvial flooding is minimal. Both the Environment Agency and Wychavon District Council's Land Drainage Officer have been consulted on the application and neither raises any objection.
- 8.47 The site investigations did identify the presence of asbestos cement board, noted in one trial pit. This indicates the possibility that asbestos board may be present within the made ground elsewhere on the site. As such this would need further assessment as part of the detailed construction design phase ground investigation and would likely warrant some form of reactive remediation plan. This is a matter appropriately dealt with by the recommended condition g.
- 8.48 Once the proposed Facility is in use, it would be operating on sealed hard standings that would prevent oils / lubricants or wastes from penetrating into the underlying natural ground. Further, the Environmental Permit that has been issued will ensure that suitable systems are put in place to control the potential for contamination. It is concluded that the EnviRecover Facility is in conformity to the development plan policies for Flood Risk and Groundwater.
- 8.49 There are also a number of relevant policies in relation to Archaeology and Cultural Heritage. These are set out within the WMRSS (policy QE5), Worcestershire Structure Plan (policies CTC16, CTC17 and CTC19) and Wychavon District Council Local Plan (policies GD2 and ENV14).
- 8.50 There is a scheduled ancient monument located approximately 500 metres to the southeast of the site known as the medieval village of Elmley Lovett. Wychavon District Council has objected to the proposal due to impacts on the setting of Waresley House Grade II\*. It is therefore important to consider the application in this context. The Environmental Statement correctly identifies Waresley House as Grade II\* listed. The ES concludes that no cultural heritage feature would experience any effect of greater than minor significance upon their setting and many would experience no material effect at all.
- 8.51 Neither English Heritage (see Appendix D) nor the County Archaeologist have raised any objections and are satisfied with the conclusions of the



Environmental Statement. It is agreed that the EnviRecover Facility is in conformity to development plan policies for Archaeology and Cultural Heritage.

- 8.52 Development plan policies for Air Quality and Health are set out within the Wychavon District Council Local Plan (policies GD2 and ENV20). These seek to ensure that permitted development will not give rise to pollution including pollution to air.
- 8.53 The application is accompanied by a detailed air quality dispersion model. This concludes that the chimney stack offers suitable dispersion and is designed to ensure that all substances are sufficiently dispersed by the time they reach ground level, that even if someone were to live their whole life close to the plant, there would be no significant impact on their health. The substances include: oxides of nitrogen, particles, sulphur dioxide, acid gases, carbon monoxide, metals, dioxins, organic compounds and ammonia. The dispersion results in a negligible impact on the surrounding air quality, such that further mitigation is not required. It is also concluded that the impacts from HGV movements to and from the proposed Facility on air quality are insignificant.
- 8.54 The submitted information also notes that there may be potential impacts from the construction phase, from dust. Mitigation measures have been suggested by the Applicant to be included as part of the Construction Environmental Management Plan.
- 8.55 The application is also accompanied by assessments for the potential impacts on human health through air quality and through impacts of pollutants on agricultural land and the subsequent ingestion of food from such land. Both assessments conclude that there would be a negligible impact resulting from the proposed development. The Worcester NHS (Primary Care Trust) has considered carefully the submitted analysis relevant to health effects and advises that there would be no significant risk to health from the facility as long as it is operated within the established regulations. It is important to note that the regulation of emissions is undertaken by the Environment Agency. An Environmental Permit has been issued for the EnviRecover Facility. It is concluded that the EnviRecover Facility is in accordance with the development plan in relation to air quality and health matters.
- 8.56 Development plan policies for Noise and Vibration are set out within the WMRSS (policy QE3 and QE6) and Wychavon District Council Local Plan (ENV20). These seek to ensure that permitted development will not give rise to adverse impacts from noise. The submitted environmental information demonstrates that there will not be significant adverse impact from noise. The Environmental Health Officer raised no objection, but requested conditions limiting noise from the operations to an increase of not more than 5 dB over background noise. It is concluded that the proposed facility should not cause harm through noise and that the operations can be appropriately controlled through the recommended conditions aa), bb) and cc) as set out in the SOCG2<sup>191</sup>. The EnviRecover Facility is in accordance with the development plan in relation to noise and vibration matters.

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<sup>191</sup> CD-PI7

- 8.57 The final area of relevance of the development plan policies to the EnviRecover Facility is in relation to Sustainable Development which is set out within the Worcestershire Structure Plan (policy SD3). The policy seeks the reuse and regeneration of previously developed urban land. The site has been previously developed and it is concluded the EnviRecover Facility is therefore in conformity with policy SD3.
- 8.58 Therefore, Miss Berry's overall conclusion in relation to these development plan policies is that the EnviRecover Facility, apart from the saved Structure and Local Plan policies in relation to the Green Belt, and landscape and visual impact, is in conformity with the development plan policies. There has been no discussion of these policies, apart from Green Belt and landscape and visual matters, and her conclusions are unchallenged. It is contended that the landscape and visual impacts are not so significant as to justify refusal of the application. The case in relation to Green Belt matters is addressed later, with the consideration of very special circumstances.
- 8.59 Although she considers that it is entitled to only limited weight, Miss Berry also reviewed relevant provisions of the emerging Worcestershire Waste Core Strategy. Draft Policy WCS2 indicates that facilities for waste management will be permitted within level 1, which provides for recovery. Draft policy WCS4 also establishes that industrial land is compatible with other recovery. The proposed EfW facility which, located on the Hartlebury Estate would be within level 1, and at a site identified for large scale facilities, and also utilises previously developed industrial land would be in complete conformity with these policies.
- 8.60 Contrary to Ms Brooke-Smith's contention<sup>192</sup> the emerging South Worcestershire Development Plan should be given no weight. Not only is it at a very early stage of development, it is also very seriously flawed. Draft policy SWDP 46 and the statement at paragraph 27, that energy from waste is not deemed to be a renewable source of energy, are fundamentally flawed. The County Council has made representations, and has made it clear that if the policy remains unchanged it would formally object to the policy<sup>193</sup>.
- 8.61 Before turning to consider the landscape and visual impacts and green belt policy, it is appropriate to address the contribution the proposal will make to the delivery of the Government's Climate Change programme and energy policies.
- 8.62 The PPS 1 Supplement at paragraph 3, states that *"The Government believes that climate change is the greatest long-term challenge facing the world today. Addressing climate change is therefore the Government's principal concern for sustainable development."* There is an urgent need for low carbon and renewable energy supply, as identified in the following national policy:
- Overarching National Planning Statement for Energy – EN1, 2011.
  - National Planning Statement for Renewable Energy Infrastructure – EN3, 2011.
  - Meeting the Energy Challenge – Energy White Paper, 2007.
  - The UK Renewable Energy Strategy, 2009.
  - The Planning and Climate Change Supplement to PPS1, 2007.

<sup>192</sup> CD-WAIL1, para5.3.12

<sup>193</sup> CD – WCC - 11

- PPS 22 – Renewable Energy, 2004.
- 8.63 This urgent and fundamental need has not been disputed. The EnviRecover Facility, which meets the R1 'recovery' classification threshold, will deliver low carbon energy supply, of which a significant proportion can be classed as renewable.
- 8.64 It has also been agreed between all parties that there will be an overall climate change benefit as a result of the proposal and by diverting waste from landfill. Whilst the actual figures have been debated, and some disagreement still exists, Mr Vernon did conclude that even applying the most conservative assumptions during each part of the calculation, there is still a net benefit.
- 8.65 Concern about the proposed facility's landscape and visual impact has been a major factor in motivating local opposition to the scheme. It is an aspect which the County Council, and Miss Berry acting on its behalf, has taken very seriously. The topic is considered in detail in the Committee report and in Miss Berry's evidence. She explained that in carrying out an assessment on this matter she worked closely with the County Council's Landscape Officer, Ms Patton. She is a professionally qualified Chartered Landscape Architect with considerable experience of undertaking landscape and visual impacts. Ms Patton was involved at the scoping stage identifying additional viewpoints she wished to see included. She also recommended that the balloon be flown, to indicate the height of the proposed building. She made a number of visits to the site and the area, on her own and accompanied by others. Her advice was passed on to Miss Berry and fed into her report. Miss Berry also carried out her own assessment, making several visits herself.
- 8.66 Undoubtedly the proposed facility will be visible from a number of locations. Visibility of itself does not however necessarily give rise to an adverse impact. In the case of each viewpoint the potential impact was considered. It was assessed that there would be a minor to moderate impact from the viewpoints considered, with the exception of the Waresley Park residential area and at Elmley Lovett where the assessment noted an impact of moderate to major significance. On more detailed consideration it was concluded that the impact would not be significant, given the distance from the site and the fact of the facility's location within the existing large trading estate. Although it would be substantially larger than existing buildings, the Trading Estate would always provide the context in which the facility would be seen.
- 8.67 It is also considered that the proposed facility would not cause any harm to the Hartlebury Conservation Area or the AONB. Natural England has raised no objection.
- 8.68 In the light of the careful assessment they have undertaken, neither Miss Berry, nor the County Landscape Officer nor the County Design Unit Manager consider there is any basis for objecting to the proposal on the grounds of landscape or visual impact.
- 8.69 The site is within the Green Belt, and it is agreed that in accordance with PPG 2 it would not comprise appropriate development. In that regard it is therefore contrary to Wychavon District Local Plan policies SR 7 and SR 8. Planning permission should therefore only be granted if very special circumstances can be established. In considering the degree of harm to the Green Belt in this

location that would result from the proposed development, it is necessary to consider the degree of harm to the purpose of including the land in the Green Belt in accordance with paragraph 1.5 of PPG 2. The site is fully enclosed within the boundary of the Trading Estate, and will not extend that boundary. The development of the site will not involve the sprawl of any built up area; it will not involve the merger of any towns; it will not encroach into the countryside; and there is no concern in this case about the setting and special character of any historic town. It can be seen therefore that there is no harm to any of the relevant Green Belt purposes.

- 8.70 Regarding other objectives of Green Belt policy, Miss Berry considers that, as the site is located within the boundaries of the existing trading estate, the proposal would not impact upon access to the open countryside, opportunities for outdoor sport or recreation, or the retention of the land for agricultural, forestry or related uses. She does however accept that, in accordance with the assessment considered above, the proposed development would have an impact upon the visual amenity of the Green Belt, but it would not be an impact of such significance as to justify refusal.
- 8.71 To balance against the harm that automatically arises by virtue of the proposal comprising inappropriate development, and the very limited additional harm that would arise in this case, a number of very special circumstances have been identified in favour of the proposed development.
- 8.72 First, and most importantly, the proposed EfW facility will meet a real need, which Ms Brooke-Smith on behalf of WAIL has accepted can fairly be described as urgent and compelling. The facility is urgently needed to enable the statutory targets in relation to landfill diversion and energy recovery to be met.
- 8.73 There are no other more sustainable site alternatives available.
- 8.74 The site is at the optimum location to serve the overall pattern of waste arisings within Worcestershire and Herefordshire, as demonstrated by the map at Mr Roberts' NR9.
- 8.75 The site enjoys excellent transportation connectivity.
- 8.76 The proposed facility would bring climate change benefits, not least through the reduction of greenhouse gas emissions.
- 8.77 The operation of the site will enable the recovery of 15 MW of electricity, of which 13.5MW will be exported. The area in which the site is located is suitable for the export of electricity with opportunities to achieve a viable grid connection. There are also opportunities to facilitate the export of heat. Although no contractual arrangements have been made yet, this is not surprising given the long lead time involved. It is however significant that two occupiers of the Estate have expressed interest in the use of heat from the site.
- 8.78 There are locational benefits from being situated close to a potential market for the clay soils and bottom ash.
- 8.79 There are no insuperable environmental constraints or significant or unacceptable environmental risks that would occur as a result of the development.

- 8.80 Economic benefits would result from the sale of the electricity and the employment opportunities that would result from the development.
- 8.81 The site has excellent links to existing waste management infrastructure, and has the locational advantage of being situated next to landfill facilities.
- 8.82 These very special circumstances, both individually and in combination, outweigh the harm to the Green Belt in this location and justify the grant of planning permission in this case. They were set out in the Committee Report and also in Miss Berry's evidence. It is now the case that WAIL, through the evidence of Ms Brooke-Smith in the course of xx, accept that there is indeed a compelling need, and they also acknowledge the locational advantages identified in the previous paragraph. What they apparently do not accept is that there is no alternative available. However in making vague suggestions about alternative technologies and a possible alternative site, it is clear, and indeed has been confirmed, that they are not in fact advancing any positive alternative proposal to this inquiry.
- 8.83 This raises the question of the role which consideration of alternatives can play in a case such as this. As a general proposition the fact that alternatives exist, even more acceptable alternatives, does not justify the refusal of planning permission. However in cases where there are clear objections to development on a particular site it may be relevant to consider alternatives which are less harmful. However it is of course axiomatic that for an alternative to be considered it must indeed be a genuine alternative, and where a proposal is put forward to meet a particular need any valid alternative must fully meet that need.<sup>194</sup> It is immediately apparent that none of the suggestions put forward by WAIL meets that crucial requirement.
- 8.84 Among the alternatives discussed in the evidence is autoclave with anaerobic digestion (AD). Such a facility is not operated now anywhere. Rotherham, which is operated by Sterecycle is one of the examples cited. It does not however involve any AD. The product of the autoclave is a fibre for which the operators have been unable to find an end use. At the moment the only option appears to be landfill or combustion, and until more positive action is taken with regard to it, it is being stored in a quarry. So far as Wakefield is concerned, the contract is not yet completed, and any plant is yet to be constructed, let alone operated in a manner which demonstrates its commercial feasibility. The most relevant example is Estech, which was a proposal for an autoclave facility on the present application site. However the proposal failed to be implemented because no beneficial use could be found for the product. This was despite many attempts, costing millions of pounds.
- 8.85 It is evident therefore that an autoclave process is not a deliverable way of treating waste. Inevitably it results in a product that requires further treatment, or is disposed of to landfill.
- 8.86 AD is only encouraged for source separated food waste and is inappropriate for tackling the quantities or range of materials found in residual waste. Either on

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<sup>194</sup> See eg *Trusthouse Forte Hotels Ltd v Secretary of State for the Environment* (1986) 53 P & CR 293; *Rota Jones & Howe v N Warwickshire DC* [2001] EWCA Civ 315 ; and *Derbyshire Dales DC v SSCLG* [2009] EWHC 1729 (Admin).

its own, or in combination with autoclave, it is not an alternative to the proposal being considered in this case. In any event it could be brought forward together with, rather than as an alternative to, the application proposal.

- 8.87 So far as Ravensbank is concerned, the site is not available for combustion of waste, as conceded by WAIL. Any suggestion that autoclave fibre can be burnt at Ravensbank because it is not waste is not accepted. It would not satisfy end of waste criteria, not least because it would require further processing prior to combustion, and it would be subject to the more stringent requirements of the Waste Incineration Directive than would a normal fuel that is not, and never has been, waste.
- 8.88 It is apparent therefore that there is no alternative efficacious process or site which is capable of meeting the compelling need which has been identified, and agreed across the parties. The only facility which is indeed capable of doing so is the proposed EnviRecover Facility at the application site. This is truly a very special circumstance.
- 8.89 The restrictive covenants affecting the application site provide no bar to the grant of planning permission. The presence of restrictive covenants is not properly a planning matter. In any case the presence of the facility on the Trading Estate would not constitute a nuisance or annoyance to those residents who might be entitled to the benefit of the covenants. They are a considerable distance from the site and their enjoyment of their properties will not be affected by the presence of the Facility on a part of the Estate which is remote from them.
- 8.90 Three great crested newts (GCN) have been found on the site after extensive surveys were carried out. It will be necessary to obtain a licence from Natural England to capture and remove them from the site. This has been subject to ongoing discussions with Natural England, who raise no objections to the proposal. In the light of the material which has been provided in the supplementary evidence before the inquiry, the County Council can see no reason why the necessary licence will not be obtained in due course, and the presence of the newts should not constitute a bar to the grant of planning permission.
- 8.91 Many members of the public who have raised objections to the proposal have expressed concerns about the adverse effect on health that they fear will be caused by emissions from the incinerator. The County Council is very conscious of these concerns, and it is an aspect that was given careful consideration at the Committee meeting. The Committee Report explains that the planning application was accompanied by assessments for the potential impacts on human health through air quality and through impacts of pollutants on agricultural land and the subsequent ingestion of food from such land<sup>195</sup>. Representatives of the Worcestershire NHS (PCT) and the Health Protection Agency attended the meeting, and Members were advised that "emissions from a well-managed and well-regulated EfW facility would not have any measurable impact on the health of local people."<sup>196</sup>

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<sup>195</sup> CD- PA8, para 322.

<sup>196</sup> Minutes PA 8, page 18.

- 8.92 It is unfortunate that Ms Brooke-Smith marred her evidence by including an unwarranted and irresponsible allegation of impropriety and bias against the County Council. The allegations were not based on any evidence because, as she frankly admitted, she did not have any to put forward. She had no evidence to support the allegation that the County Council had agreed a costs indemnity with the Applicants, and it was explained to her that this was wrong. Nor did she have any evidence that Councillors had been dissuaded from attending a meeting with Professor Connett, and she accepted that the letter, which was sent to Councillors, far from dissuading them from attending, correctly advised Members that, should they attend, they should be aware of their responsibilities as potential decision makers.
- 8.93 Although Ms Brooke-Smith stated that WAIL members felt that the representation of their concerns was not given due consideration, that is not a view that she personally shared. She understood the dual role performed by the Council as both WDA and CPA, and she was aware of the Chinese Wall that prevented the Council improperly confusing these roles. She accepted that it was entirely proper for the Council, as CPA to seek independent objective advice from Miss Berry and that her report fairly and comprehensively set out the representations that had been made by WAIL. WAIL also attended the Committee meeting and Mr Kirby made a power point presentation to the Committee on their behalf.
- 8.94 There can be no doubt that the members of the Planning and Regulatory Committee were fully informed of all the relevant planning issues, including of course the concerns expressed by members of WAIL. Fully informed as they were, the Committee Members decided that the very special circumstances and the benefits that would flow from the proposal, outweighed its harmful effects. Accordingly they resolved unanimously that they would approve the application.
- 8.95 It is now hoped that the Secretary of State will reach the same conclusion.

## **9.0 The Case for Worcestershire Residents Against Incinerators and Landfill (WAIL)**

### **Issue A – the Development Plan**

- 9.1 Dealing firstly with four issues raised by the Secretary of State, these are proposals which are in clear conflict with the adopted Development Plan for the area. Both the applicant and the Council accept through the SOCG<sup>197</sup> and <sup>2</sup><sup>198</sup>, that there are breaches of Development Plan policy in respect of Green Belt. The following policies are of particular relevance.
- 9.2 Wychavon District Local Plan 2006<sup>199</sup> Policy SR7 and SR8. The proposals are in conflict with the general restrictive Green Belt policies of SR7. SR8 Green Belt policies relate specifically to development proposals at Hartlebury Trading Estate. Any proposals must meet the particular criteria of SR8 requiring any

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<sup>197</sup> CD-P15

<sup>198</sup> CD-P17

<sup>199</sup> CD-DP3

development in particular not to exceed the heights of existing buildings and not to lead to an increase in the developed portion of the site. These proposals have over 100,000 sq ft floor coverage (5 times the average floorspace of existing buildings) and with a chimney stack at 75m above ground level (existing buildings a maximum of 15m). These are substantial development proposals far in excess in size of any other buildings on the Hartlebury Trading Estate. There is clearly a breach of SR8.

9.3 Worcestershire County Structure Plan<sup>200</sup> (Policy D39) provides for a presumption against inappropriate development in the Green Belt. It is agreed by all parties that this is inappropriate development in the Green Belt. D39 provides for development where very special circumstances are met (PPG2 test). If it has not been shown that very special circumstances do exist, these proposals conflict with D39.

9.4 The proposals impact upon a European Protected Species (Great Crested Newts). ENV6 of the Wychavon District Local Plan restricts development in such circumstances unless three policy tests are met:

- imperative cases of overriding public interest;
- no reasonable alternatives;
- requirement to maintain favourable conservation status.

It is the case that in WAIL's view the applicant fails to meet the first two policy tests (echoing the legal tests of the habitat directive) of ENV6.

9.5 There has been an exhaustive trail through the relevant adopted development plan documents. It is WAIL's contention that these proposals breach general criteria based policies within such development plan policies relating in particular to the impact of these proposals on the landscape and countryside. It is also submitted that they do not provide for transportation links other than by road and fail to meet a general requirement to promote development which can be served other than by road transport.

9.6 The agreement by all parties that there is a breach of development plan policies (notably in respect of the Green Belt) means that with reference to s38(6) PCPA 2004, these are proposals which in the context of adopted development control policy there is a presumption against this development.

9.7 The applicant refers to several emerging development plan policies in support of locational aspects of their proposals not least the emerging Worcestershire Waste Core Strategy Submission Document<sup>201</sup> which identifies Hartlebury Trading Estate as a possible location for waste management facility. Two points can be made:

- i) this is a submission core strategy and little weight should be attached to the same;
- ii) whilst identifying the Hartlebury site, the applicant's own site selection search identified the alternative site at Ravensbank to be preferable taking all material planning considerations into account.

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<sup>200</sup> CD-DP2

<sup>201</sup> CD-DP5



- 9.8 In short, there is significant adopted development plan conflict with these proposals; any emerging development plan policies give little if any support for these proposals. On the first issue raised by the Secretary of State there is a clear finding on the facts that this proposal cannot be supported.

#### Issue B - PPS10: Planning For Sustainable Waste Management

- 9.9 These proposals fail several of the key principles of PPS10 paragraph 3 in respect of the Waste Hierarchy. Whilst it is acknowledged that these proposals will assist in diverting waste away from landfill to recovery there are other options against which this outcome can be achieved. Conversely these proposals will do nothing (in fact hinder) any further driving of waste up the waste hierarchy for the following reasons:
- i) there is a real risk that proposals at 200,000 tons per annum will discourage more waste going into recycling or other better environmental options eg anaerobic digestion. Reference business case by ENTEC<sup>202</sup> prepared for WCC and reference within "risk" section (Risk 14) where WCC are "too successful" in achieving higher levels of recycling.
  - ii) The Waste Arisings figures in Ms Brooke-Smith's Appendix "B"<sup>203</sup> are instructive and show a consistent reduction of residual waste levels from 350,000 tonnes pa in 2001-2 to 200,000 tonnes pa 2010. Conversely there has been consistently improving recycling levels (15,700 tonnes pa) 2001-2002 to 121,558 tonnes pa (2010-2011). These figures show a consistent pattern - no "low hanging fruit" in the early 2000's with flattening out as submitted by Miss Berry of WCC. These patterns are both pre-recession and current and show reducing residual waste levels regardless of economic activity as shown by a continued fall in waste arising in the face of increased housing numbers. This was acknowledged by Mr Roberts who then stated "that no-one really knows". We should not be building a 200,000 tonnes EfW in the face of such clear doubt that in terms of such municipal waste arising (which is the rationale for this proposal) a need for a facility of this size to service municipal waste arisings at the recovery level will continue to be required (reflecting a "risk" as identified by the previously cited ENTEC report). What is termed the "decoupling in the DEFRA Economics Report (2011) between economic growth on the one hand and waste arisings on the other ie a breach of the link between the two appears quite apparent from the Ms Brooke-Smith appendix B figures<sup>204</sup>. It is these actual figures which show robust evidence of waste arising patterns. There is a downward trend for municipal residual waste which all the evidence with reference to the last 10 years indicates will continue.
  - iii) The above facts in respect of municipal waste recovery will act as a disincentive to seek to drive residual waste up the waste hierarchy by increasing levels of recycling or use of anaerobic digestion for food waste. It is this very point which PSS10 para 4 last bullet point refers to when planning authorities are cautioned against: "over provisions of disposal options where this would undermine movement up the waste hierarchy". It is not accepted that "disposal" options in this context simply refer to landfill; a commonsense

<sup>202</sup> CD-WAIL 11

<sup>203</sup> Cd-WAIL2

<sup>204</sup> CD-WAIL2, App B

interpretation is to caution against over provision at one waste management level where this would undermine movement up the waste hierarchy which is a key objective of the 2011 Waste Review (para 3)<sup>205</sup>. A 200,000 tonnes pa EfW will provide no incentive on the part of WCC or individual authorities to either encourage or bring about for instance separate food waste collection systems (currently operated by only one authority within the two counties -Wychavon District Council) where such food waste would be dealt with by incineration rather than the preferred anaerobic digestion (seen very much as the preferred environmental option: 2011 Waste Review paragraph 221).

iv) The applicants seek to maintain a need for a 200,000 tonnes pa facility by saying that any shortfall will be made up by "similar" Commercial and Industrial arisings in line with the Waste Directive and UK policy changes. But the same point made in respect of municipal waste can be made in respect of Commercial and Industrial waste. For example a substantial tonnage per year of food waste (60,000-70,000 tonnes per year is Mr Roberts' estimate)<sup>206</sup> comprises Commercial and Industrial food waste. That part of the waste for the EfW will most likely be in the form of substantial amounts of food waste is directly contrary to the above mentioned Government policy of seeking to divert more food waste to anaerobic digestion.

v) These proposals do not meet the concerns of the local community; quite the reverse: they are not seen by the local community as proposals which in any way empowers the local community in terms of those factors of participation and understanding identified in the 2011 Waste Review (para 261 in particular). There is significant and widespread opposition to these proposals with objections from amongst others thousands of local residents (including WAIL), Parish Councils, Wychavon District Council, Local Councillors, Peter Luff MP and South Worcestershire Council (through their emerging Core Strategy). These are not people or authorities or organisations that do not recognise the need to divert more waste from landfill; but they do consider that these proposals do not represent the best option in so doing. Reference letter of objection from Peter Luff MP fully supporting the objection made by Hartlebury Parish Council with particular reference to and concern in respect of, reducing flexibility to bring forward any emerging technology for waste disposal for at least 30 years.

vi) These proposals will not encourage competitiveness or innovation.

vii) These proposals will harm the Green Belt at this location which is a weighty consideration in deciding this application. There is no need for the needs of waste management recovery for Worcestershire and Herefordshire to be situated in the Green Belt.<sup>207</sup>

9.10 PPS10 paragraph 4 requires an appraisal of options for the planned provision of new waste capacity. WCC comment on Joint Municipal Waste Management Strategy "Residual Options Appraisal" 2009<sup>208</sup>. But this document was flawed. It failed to consider any options which provided for intermediate treatment by

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<sup>205</sup> CD-WSL4

<sup>206</sup> Given in xx

<sup>207</sup> PPS10, para 3

<sup>208</sup> CD-WSL7

autoclaving with any one of the several technologies which are most recently identified in the 2011 Waste Review<sup>209</sup> paragraph 229 ie anaerobic digestion; or direct combustion, or gasification or pyrolysis or Plasma Arc. The 2009 Options Appraisal identified autoclaving as being a better option with reference to a WRATE analysis than an EfW proposal. However, this result was then subject to weighting against what was deemed key criteria of the JMWM Councils: namely cost, reliability and resource depletion. The conclusions are flawed. They significantly under estimated the cost of a EfW; and failed to consider either resource depletion or reliability of an autoclave option when combined with combustion so as to produce both recycling and the ability for CHP. In short the Options appraisal failed to consider a combination of technologies (in this instance autoclave with direct combustion on site) as endorsed in the 2011 Waste Policy Review paragraph 229. The failure of the County Council to consider all realistic options in a robust review is contrary to PPS10 requirements and is a significant flaw on the part of the County Councils.

9.11 PPS10 paragraph 24 provides that in considering applications for waste management sites, the decision makers must consider favourably sites which are consistent with policies in PPS 10, including paragraph 21 criteria. For reasons as set out above the proposals are not consistent with PPS 10 policies. In respect of paragraph 21 criteria:

- i) These are proposals in the Green Belt, and this is inappropriate development in this respect and contrary to PPG2 advice to protect the Green Belt for its own sake from inappropriate development. In addition there will be visual harm to this part of the Green Belt.
- ii) Hartlebury has been the subject of landfill facilities for many years. These additional proposals are in conflict with PPS10 advice to consider the cumulative effect of previous waste disposal facilities and respect (and will have a significant effect on) the wellbeing of the local community, environmental quality and economic potential; in this respect objections have been raised by businesses on Hartlebury Trading Estate.
- iii) This is not a proposal which allows for transport infrastructure other than by road transport.
- iv) Whilst the site is on the edge of Hartlebury Trading Estate it is agreed with Officers of WCC (Officer Report paragraphs 310-313)<sup>210</sup>, that bearing in mind the planning history of this site and the sheer size of the proposal which is of out of all scale with any existing buildings on the Estate that this proposal should be judged solely on its own merits.
- v) In conclusion on the second matter raised by the Secretary of State these are proposals which are not in accordance with PPS10.

#### Issue C - PPS1 Supplement: Planning and Climate Change

9.12 PPS1 Supplement: Planning and Climate Change at paragraph 9 bullet point 2 provides as follows:

"In providing for the homes, jobs, services and infrastructure needed by communities, and in renewing and shaping the places where they live and

<sup>209</sup> CD-WSL4

<sup>210</sup> CD-PA8

work secure the highest viable resource and energy efficiency and reduction in emissions."

9.13 An EfW plant in respect of emissions is not the highest viable resource:

- i) the applicants merely carried out an exercise in comparing an EfW proposal in terms of carbon emissions with landfill. This is not the correct approach. PPS1 Supplement paragraph 9 refers to viable options being considered;
- ii) it is to be noted that CO<sub>2</sub> emissions from the EfW plant will be on the applicant's own evidence 568g CO<sub>2</sub>kwh (Othen Proof of Evidence at 4.4.2)<sup>211</sup>. This can be compared unfavourably with the national average for 2010 of 449g CO<sub>2</sub> Kwh for electricity generation;
- iii) the Government's policy aim is to bring carbon emissions down by 80% by 2050. The EfW proposals will be operating at carbon emission levels which will be significantly above present day average electricity generation or carbon emission levels. The Emissions Performance Standard for new fossil fuel facilities will require CO<sub>2</sub> emissions no higher than 450g CO<sub>2</sub> Kwh; again far lower than these proposals;
- iv) It is instrumental in assessing options for waste recovery to consider 2007 Waste Review Annex E Table E1 (Vernon additional statement appendix 9)<sup>212</sup> which sets out an energy from waste technology matrix. Direct combustion ie EfW performs the worst (saving 232 Kg CO<sub>2</sub> equivalent when compared with landfill) when compared with other options: including Refuse Derived Fuel or solid recovered fuel derived from an MBT process (the process characteristics including autoclave) where there is a saving up to 570kg CO<sub>2</sub> per tonne of waste compared with landfill. This represents a saving compared to EfW of 68,000 tonnes CO<sub>2</sub> per year;
- v) the WRATE analysis for autoclave in the County Council's Residual Options Appraisal and also the Fichtner 2010 WRATE appraisal found that autoclave ranked above EfW in terms of being a better option in reducing CO<sub>2</sub> emissions. Fichtner 2011<sup>213</sup> was "less discriminatory" (Othen XX) and it is submitted that the two earlier WRATE analyses are a more robust evidence base. Autoclave by itself scored highly; when combined with the process that delivers energy eg RDF, it is considered to be a significantly better option than an EfW alternative (Vernon statement);
- vi) the applicant's case is flawed in only considering an EfW facility against a landfill alternative. When other viable options are considered (as set out in Waste Strategy for England 2007<sup>214</sup>) it is the worst performing option. And in terms of options as described in the 2007 Waste Review Table E1, these are all technologies which are described in the 2011 Waste Review at paragraph 229 and therefore seen by the Government as viable options. Paragraph 230 of the 2011 Waste Review refers to the need to ensure that innovation, technology, mix and flexibility is encouraged and optimised to ensure the right long term capacity whilst considering the energy output and carbon impact of technologies.

<sup>211</sup> CD-MWM4

<sup>212</sup> CD-WAIL4A

<sup>213</sup> CD-MWM5, App B

<sup>214</sup> CD-WSL5

- 9.14 In conclusion on the subject of PPS1 and Climate Change an EfW plant as proposed performs poorly both in terms of alternative viable options (as described in the 2007 and 2011 Waste Review); and in terms of both average electricity CO<sub>2</sub> emissions now, and targets going forward, will be contrary to the Government policy requirements to significantly reduce present day electricity generating carbon emissions.

Issue D - Green Belt: PPG2

- 9.15 The application proposal lies within the Green Belt. It is common ground between all parties that this is inappropriate development in the Green Belt with reference to PPG2 paragraph 3.1.
- 9.16 PPG2 paragraph 3.2 makes it clear that inappropriate development is by itself harmful to the Green Belt. Paragraph 3.2 also confirms that the Secretary of State will attach substantial weight to harm to the Green Belt. It is for the applicant with reference to paragraph 3.2 to show very special circumstances ("VSC") to justify inappropriate development.
- 9.17 In respect of the intention of Green Belt policy, PPG2 paragraph 1.4 states that the fundamental aim is to prevent urban sprawl by keeping land predominantly open: the most important attribute of Green Belt is its openness. Whilst Hartlebury Trading Estate is defined in the Local Plan as a major development site any proposals must be considered against the criteria contained in paragraph C3/4 of PPG2. The substantial nature of the proposal means that these proposals do not meet such criteria, hence this being an inappropriate development.
- 9.18 In addition to protecting the Green Belt for its own sake, PPG2 paragraph 3.15 requires that the visual amenities of the Green Belt should not be injured. All parties agreed that there will be harm to the visual amenities of the Green Belt - but to varying degrees. Mr Mason on behalf of the Applicant produced evidence of the visual effects of the proposal<sup>215</sup>. In terms of such evidence:
- i) by its nature any conclusions are partly subjective which is a point accepted also by WCC, Director of Planning, Economy and Performance in the Officer's Report<sup>216</sup> at paragraph 253 when in considering a structure which is "substantial and visible" concluded that whether or not this led to an adverse environmental impact was a subjective judgment to be made by each individual;
  - ii) Mr Mason in XX betrayed a lack of knowledge with reference to some of the conclusions reached: eg reference to visual perception at Waresley Park being seen in the context of radio masts - and then not being able to identify where these were;
  - iii) Mr Mason accepted that findings of significance in respect of several of the viewpoints depended on a subjective analysis that those proposals are seen "in the context of adjacent industrial development". It is not considered that such a conclusion is reasonable when comparing the impact of the very substantial new development which will totally dwarf the existing development on the estate and in the surrounding environment;

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<sup>215</sup> CD-MWM8, Apps JM1 and JM2

<sup>216</sup> CD-PA8

- iv) the impact will be most obviously felt by parties living nearby in residential homes and most notably on Waresley Park. In landscape terms this will run contrary to PPG2 paragraph 1.6 bullet point 3: which requires the use of land to fulfil an objective to retain attractive landscapes and enhance landscapes, near to where people live. And this is an area of the Green Belt which Mr Mason describes at paragraph 3.1.46 of his proof<sup>217</sup> as relatively "unspoilt" and "open countryside";
- v) with reference to PPG2 paragraph 3.15 these proposals will be highly conspicuous within the Green Belt;
- vi) therefore in terms of the Green Belt and the impact of the same with reference to the points asked by the Secretary of State:
  - inappropriate development and VSC do not exist;
  - the fundamental purpose of including land in the Green Belt - to keep it permanently open - will be harmed;
  - the visual amenities of the Green Belt will be harmed;
  - the proposals will not contribute to, but will harm the objectives for the use of land in the Green Belt.

### Very Special Circumstances

- 9.19 The applicants contend that VSC exist. Mr Roberts says as follows at paragraph 8.2.11 of his Proof of Evidence<sup>218</sup>:

"Given that there is a clear need for a single major residual waste treatment facility (EfW facility) to serve the joint authorities...."

The applicant's case is that such a need can only be taken up by the present EfW proposal and that the application site is the only location available.

- 9.20 It is accepted on behalf of WAIL that there is a need for further major residual waste treatment facilities. However, it is not considered with reference to what is the best option that this need should take the form of an EfW plant; and it is considered that Hartlebury (lying in the Green Belt) is an inappropriate location for such a facility.
- 9.21 In terms of the type of waste management facility WAIL's conclusions are that an Autoclave Facility with combustion is the best option to meet the needs of the two counties. The following points should be considered:
- i) an autoclave facility to meet the need was the technology choice of JMWMS in 2004. Planning Permission for an autoclave facility was granted for such a facility. The development did not take place, it is understood through Miss Berry on behalf of WCC due to the failure of the proposed operator Estech to find an end user for the fibre produced by the process. Miss Berry confirmed (in cross examination) that autoclave at this time was the preferred option and only failed due to the lack of an end user for the produced fibre;
  - ii) with reference to the WRATE analysis of WCC of 2009<sup>219</sup> autoclave by itself was seen as a better environmental option than an EfW plant;

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<sup>217</sup> CD-MWM7

<sup>218</sup> CD-MWM1

<sup>219</sup> CD-WSL7

iii) the combination of an autoclave with combustion will ensure a market for the end product. In the two WRATE assessments carried out on behalf of the applicant the only autoclave option considered has been with fibre recycled as fibre or Autoclave with fibre landfilled. It is regrettable that neither the applicant nor WCC has seen fit to assess an option of an autoclave with one of the technologies set out in 2011 Review<sup>220</sup> paragraph 229;

9.22 Such a process and technology would have several advantages over the present proposals:

- i) reduced CO<sub>2</sub> emissions; a key factor in this Inquiry. It is WAIL's case that the claimed CO<sub>2</sub> savings put forward by the applicant are too high and on a robust and conservative calculation and on Mr Vernon's figures<sup>221</sup> a saving of 1,000 tonnes CO<sub>2</sub> (being nearer the mark) is benefit but not of the significance claimed;
- ii) increased recycles (of 1,000,000 tonnes over 25 years);
- iii) higher caloric value of the fibre following the autoclave process and displacing power from the National Grid by CHP;
- iv) production of an end user including in particular Refuse Derived Fuel ("RDF");

9.23 Miss Berry in cross examination accepted all these points. Autoclaving with combustion is the process which Mr Roberts has obtained planning permission for Sterecycle in Rotherham. The addition of combustion following the autoclave process is an option which has not been considered by WCC.

9.24 In particular the addition of combustion to the autoclave process was an option as set out before which for whatever reason had not been considered by WCC. Miss Berry agreed that the production of RDF would be an end use which had been missing from the original autoclave planning permission in 2004 which ultimately did not come forward.

9.25 On the evidence therefore it is not possible, it is submitted, for the Secretary of State to conclude that the only way for the waste management recovery needs of the two counties to be met is by an EfW. The VSC which the applicant pleads on this point do not exist.

9.26 In terms of location the site selection process carried out on behalf of Mercia concluded initially that Ravensbank, a site outside the Green Belt, was the preferred location of a EfW plant. However, a restrictive covenant on the land preventing the "burning of rubbish" (waste) meant the site was discounted. Miss Berry in cross examination stated that burning of RDF in the light of WAIL's alternative proposal (see above 9.22) would also fall foul of this restrictive covenant. In response to a question put to Miss Berry in XX that RDF produced from the combustion of certain material following autoclaving would not constitute the burning of waste; Miss Berry said "once a waste always a waste". This betrays, regrettably, a fundamental misunderstanding of what constitutes (or not as the case may be) "waste" as a matter of law. In the Court of Appeal case of *R (OSS Group Limited) and Environmental Agency and Others and DEFRA (2007) EWCA CIV 611*, reference was made to an earlier

<sup>220</sup> CD-WSL4

<sup>221</sup> Given aurally in XIC

European Dutch case (*Icopower BV v Secretary of State*) 14 May 2003 when in that case waste was processed to form "fluff" (or fibre). The product was formed into "energy pellets" which were then used to produce electricity and heat following combustion. The Court found that once in the form of "energy pellets" and as "equivalent to regular fuels" they could not be characterised as waste under Article 1(a) of the Waste Framework Directive.

- 9.27 On the basis of the above the Court of Appeal in the OSS case concluded (paragraph 63) "that waste stops being waste 'the end of waste test' where the holder has converted the waste material into a distinct, marketable product which can be used in exactly the same way as an ordinary fuel and with no worse environmental effect".
- 9.28 In the present instance the matter which is produced from the conversion of this waste during the process ceases to be waste on meeting the 'end of waste test'. The burning of the same would not therefore constitute the burning of waste and the process would not be in breach of the Ravensbank Restrictive Covenant.
- 9.29 Therefore the applicant cannot conclude that the application site is the only site available. In fact Ravensbank, the initially preferred site, is available for a waste recovery operation as described above.
- 9.30 In terms of the need for a new waste recovery facility the refusal of the application will not on any reasonable view constitute a delay of seven to eight years as concluded by Mr Roberts. It is submitted that planning permission for an autoclave facility at Ravensbank (or elsewhere) could be achieved reasonably quickly. It would not have the contentious policy issues of inappropriate Green Belt development. The JMWMS Options Report July 2009<sup>222</sup> at paragraph 2.4.2.2 refers to the PFI contract with Mercia for the disposal of residual waste and states that "with the appropriate contract variation, it would be feasible to deliver any of the technologies listed through its existing contract". The shortlisted options (including autoclaving) are said at 2.4.2.2 of the JMWMS report to be all "of reasonably proven nature". The proposed EfW would take two to three years to construct and be operational. Mr Roberts' cross examination confirmed that an autoclave plant could be built, from the grant of planning permission in 18 months. Even allowing for a combustion facility any timescale is comparable with the present proposals. What is equally as important however is that the right decision is made for a facility which will be operational for up to 30 years. Mr Roberts made mention of the possible presence of Great Crested Newts at Ravensbank. If the applicant considers (which they do) that the legal requirements in respect of protected species can be met at Hartlebury then without doubt they can be met at Ravensbank.

#### Heat Off-Take at Hartlebury

- 9.31 It is considered that little weight should be given for the potential for heat off-take at Hartlebury. Only one possible business has been identified - Wienerberger - who have only expressed an in principle interest subject to a variety of caveats. Indeed the applicants own environmental permit application

<sup>222</sup> CD-WSL7



2010 described the site as having "little demand" at that stage for heat off-take. In any event the potential heat off-take to Wienerberger is very small (less than 4%).

#### Hartlebury restrictive covenants

- 9.32 "Retained land" (including residential property in the vicinity of the application site) has the benefit of a restrictive covenant preventing uses on the application site which may cause noise, nuisance or annoyance to the beneficiaries of the covenant. In the case of *Davies and Dennis 2009 EWCA CIV 1081*<sup>223</sup> it was found that annoyance could extend to activities including the erection of potentially "annoying" buildings. In the present instance it is considered that the construction of proposed EfW could reasonably be found to be in breach of the restrictive covenants due to the sheer size of the building; the stack and associated activity including increased traffic. This of itself, whilst not a planning matter as such, is relevant in terms of raising a real and genuine question as to the delivery of this proposal.

#### Great Crested Newts

- 9.33 These proposals impact upon a European Protected Species (GCN). In terms of the impact on the integrity of the affected species the Applicant has accepted the need to meet the requisite legal tests namely,
- an imperative need of overriding public interest;
  - no satisfactory alternative;
  - requirement to maintain favourable conservation status.
- 9.34 WAIL have not brought evidence re (c) (and in respect of (a) and (b) this will to a reasonable extent depend upon the decision of the Secretary of State for this proposal as to whether or not Natural England will grant the requisite licence.
- 9.35 It is WAIL's submission however that as noted above, there is a satisfactory alternative and therefore there is no imperative need of overriding public interest.
- 9.36 The applicants have made reference to the case of *R (Morge) v Hampshire County Council (2011) 1 AER744*. However in this instance the applicant accepts that the integrity of the site upon which a protected species has been found has been affected and the three legal tests have therefore been invoked.

#### Other matters

- 9.37 As to the relevance of EN-1<sup>224</sup> and EN-3<sup>225</sup>, these are policy documents which are directed at proposals for nationally significant infrastructure projects (NSIP). This is not an NSIP and it is debateable whether EN-1 and EN-3 are applicable to proposals of this nature. In any event the proposals must be seen in the light of Green Belt advice contained in PPG2 and PPS10.
- 9.38 Wakefield/Sterecycle: Wakefield MBC are intending by February 2012 to sign a PFI contract with Shanks/Babcocks to provide waste management facilities to

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<sup>223</sup> CD-WAIL18

<sup>224</sup> CD-NPP14 – Overarching National Policy Statement for Energy, July 2011

<sup>225</sup> CD-NPP15 – Overarching National Policy Statement for Renewable Energy, July 2011

meet the requirements of the area by way of autoclave. The proposal is substantial; designed for up to 340,000 tonnes per year and it is submitted a clear indication that autoclave is seen as a viable waste management option as reflected by the Government in its 2011 waste review as a recognised technology (and indeed by WCC itself by reference to its 2009 option study). Sterecycle (for whom Mr Roberts acts) have obtained planning permission to provide CHP at their autoclave site in Rotherham and have planning permission for up to 200,000 tonnes per year.

- 9.39 EfW "Shutdown": WAIL through their written submissions highlighted the fact that in the event of EfW not being operational for whatever reason and if the Hartlebury landfill site was required for landfill then in such circumstances road access into the village would be severely affected to the real detriment of residents.

#### Conclusion

- 9.40 In conclusion these proposals are contrary to development plan policies; contrary to the principles and policy requirements of PPG2; PPS10 and PPS1: Climate Change, there are no VSC which outweigh these policy conflicts with reference to Green Belt policy in particular and local and national planning policies in general. WAIL asks that this application be refused.

### 10.0 Interested Persons and Written Representations

10.1 Documents submitted to the Planning Inspectorate before the opening of the inquiry by other interested persons and parties are contained in Document PINS1. Representations made by those speaking at the inquiry are listed in section N of the 'Core Document List', carrying the prefix CD-TP, together with written representations submitted during the course of the inquiry. The following paragraphs provide an amalgam of the views.

10.2 Many of the representations make the same or similar points to those put to the inquiry by WAIL. The main points can be summarised as: The proposal will harm the amenities of the Green Belt and there are no "very special circumstances" to justify siting the proposed incinerator in the Green Belt. The basic report informing the County on waste management options remains flawed and incomplete, as modern anaerobic digestion was not considered as a technical solution. It is unwise to commit large sums of money for 25 years at this uncertain and cash-constrained time for local authorities and the country as a whole. Alternative solutions for diverting waste from landfill exist and could be implemented quickly. If the County chose anaerobic digestion to divert biodegradable waste from landfill, this could be accomplished at roughly half the cost of the proposed incinerator. This is the wrong time for the County to saddle its residents with an outdated, expensive and unnecessary incinerator; a decision that will be regretted for decades if it is granted planning permission. The incinerator is claimed to be capable of being a combined heat and power unit, but this is highly speculative and there are no firm proposals or commitments from any potential users. Not sufficient consultation. Concern that there is not enough waste material locally that will lead to waste being transported from further afield. The Council has a conflict of interest. Facility will produce toxic fly ash requiring disposal elsewhere. Air pollution concerns. Reduces materials available for recycling. Large lorries will disrupt the local community, and should it be necessary to

shut down the incinerator for break downs etc, the only lorry route to take waste to landfill is through the village. There are existing businesses on the trading estate which will have to move away, with loss of local employment, if this proposal gets built.

10.3 A particular concern, raised by Ms Louise Brookes, is about noise affecting especially residents of Waresley Park, about 1 km from the application site. Attention is drawn to the amphitheatre shape of the surrounding land. In particular this concern is in relation to noise which is imperceptible to most people, but which can be perceived by some, especially a concern at night, and low frequency noise is a particular concern. Noise and vibration is a complex science: submitted references to research are relied upon. It is feared that tonal noises from an incinerator may be intermittent and inconsistent, along with a constant drone or vibration. Noise disturbance can lead to detrimental health issues, including mental health and cardiovascular issues due to stress and nuisance.

## 11.0 Conclusions

- 11.1 In reaching my conclusions, I have taken into account the Applicant's Environmental Statement and other environmental information that was produced in accordance with the Town and Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999.[6.3]<sup>226</sup>
- 11.2 I first deal with the matters identified by the Secretary of State as those on which he particularly wished to be informed.

### A) The Development Plan

- 11.3 The development plan for the area in which the application site is situated comprises the West Midlands Regional Spatial Strategy, the saved policies of the Worcestershire County Structure Plan, and the Wychavon District Local Plan. In terms of the requirement set out in section 38(6) of the 2004 Act, the consideration is whether the proposal accords with the development plan considered as a whole.[7.36, 8.15]
- 11.4 The total development plan policies against which this proposal should be judged are set out at paragraph 4.1 above. Very few proved to be controversial in this inquiry. WAIL seeks to show that the development falls foul of policies SR7 and SR8 of the Local Plan and D39 of the Structure Plan, both dealing with development in the Green Belt.[7.37, 9.2, 9.3] Because the conclusion on the balance of judgement about the Green Belt issues revolves around very special circumstances, I deal with the Green Belt when I turn to the Secretary of State's fourth matter. At that point all of the policy and other issues which must be considered to weigh in the balance of very special circumstances will have been considered.
- 11.5 In addition, WAIL identifies policies WD1 and WD2 of the Structure Plan (waste hierarchy and location of waste facilities), ENV6 (European Protected Species) of the Local Plan and more generally the criteria based policies relating to the impact of development on the landscape and countryside, and alternative modes of transport.[7.37, 9.1, 9.4, 9.5]
- 11.6 The Secretary of State wishes to be informed of the relationship of the proposed development to the development plan as a whole. I therefore turn to look at the main policies having an impact on the judgement about this planning application, including those which WAIL cites as justifying refusal of permission.
- 11.7 In relation to Landscape and Visual Impact, the key development plan policy is contained in the WMRSS (policies QE1, QE3, QE5 and QE6), the Worcestershire Structure Plan (policies SD2, CTC1, CTC2 and CTC20) and Wychavon District Council Local Plan (policies GD2, ENV1, SUR1 and SUR2).[8.17] These policies seek to protect and enhance environmental assets and landscape character, requiring a high standard of design and full consideration of the design principles of, and potential impacts that might arise from, development proposals.

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<sup>226</sup> Numbers in square brackets refer to paragraphs in this report

- 11.8 At my formal site visit and tour of the surroundings<sup>227</sup> I considered the visual impact of the proposed development from many representative viewpoints around the inquiry site. The assessment at each location, made on behalf of the Applicant, and agreed on behalf of the County Council, determined that there would be a minor to moderate impact from the viewpoints assessed, with the exception of the Waresley Park residential area and at Elmley Lovett where the assessment noted an impact of moderate to major significance.
- 11.9 It has to be said that the EnviRecover proposal is for a building that is very large in the context of the existing buildings on the trading estate. I fully appreciated that, and was helped in my assessment by existing physical features, in particular the stand of tall poplar trees which run up part of the eastern side of the site and which rise to a height of about 29m alongside the highest part of the development, the Boiler Hall, which has a maximum height of 35m above ground level.<sup>228</sup> [6.2] I was also aided by the assessment which was carried out by Mr Mason which included an assessment of the viewpoints put forward by WAIL.<sup>229</sup> [7.41, 7.42, 7.47, 8.18, 9.18] The conclusions of that assessment were that there would not be a significant environmental impact, given the distance from the site and the presence of the existing trading estate (although it recognises that the existing buildings are much smaller) and the landfill sites.
- 11.10 I agree with the findings of this assessment. For the most part the proposed development, including its tall thin chimney stack which rises to a height of 75m, [6.2, 9.2] would have very small to medium magnitude, and slight to moderate significance.
- 11.11 An example which well represents the concerns of local people is the view from Visual Receptors at Waresley, where residential properties look across panoramic views from an elevated location.<sup>230</sup> They look across existing development at the Hartlebury Trading Estate. The proposed development would be clearly seen in this panorama, but would be below the high land in the distance, and in my judgement the magnitude would be small with at most a moderate significance. I agree that it would be a new feature, but it would not amount to a change in the nature of the view.
- 11.12 There are public Visual Receptors from which the magnitude and significance would be greater. An example of this would be the viewpoint at the road junction south of the site. This viewpoint is from a lower level in relation to the proposal, and in consequence the highest part of the building and the stack stand out above the skyline. Nevertheless, the building is seen in the context of existing industrial buildings, and it would not look out of place in the scene. I accept the assessment that the magnitude would be medium and the significance minor. There are individual residential receptors from which the development would have a somewhat greater magnitude and significance.<sup>231</sup> But these are private views, and given the small number of properties affected,

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<sup>227</sup> See plan CD-PI8 for site visit itinerary

<sup>228</sup> See application plans 1204 PL0003 'Proposed Site Plan' and 1204 PL0011 'Proposed Sections AA & BB' : CD-PA1

<sup>229</sup> CD-MWM8: JM1, JM2

<sup>230</sup> For example, Viewpoint 3, CD-MWM8, JM1

<sup>231</sup> For example, Viewpoint WVP7, CD-MWM8, JM1

in terms of the balance against the desirability of the development, in my opinion the harm is not of sufficient weight to amount to harm which justifies refusal of permission.

- 11.13 An example of where the development would stand out on the skyline would be from the public footpath south of Rylands Farm.<sup>232</sup> Here the proposal would be distinct on the skyline above the intervening landfill. The building and stack would be seen with very little else in the view to indicate the presence of other industrial buildings. Nevertheless, given the intervening distance and the relative insignificance of the building in the panorama, in my judgement the development would not impact on the general landscape character.
- 11.14 I note that neither the County Landscape Officer nor the County Design Unit Manager object to the proposal. Also the County Landscape Officer does not consider the Hartlebury Conservation Area to be adversely affected by the proposed development.[8.20] During the consultation on the proposal, Natural England concluded that the EnviRecover Facility would not adversely affect any statutorily protected areas (including the AONB) and therefore raised no objection.[8.21] I agree with these assessments. I also agree that the plume would probably be visible for less than 14% of operational time and does not present a significant adverse visual impact.[8.19] My conclusion on the impact of the proposed development on the environmental assets and landscape character which the policies seek to protect and enhance is that it does not amount to harm and that the environment and landscape would be protected.
- 11.15 The relevant policies in relation to Ecology and Nature Conservation are found in the WMRSS (policy QE7), the Worcestershire Structure Plan (policies CTC5, CTC10, CTC11, CTC12 and CTC15), and Wychavon District Council Local Plan (policies GD2, ENV5 and ENV6). These policies seek to protect protected species, and habitats and wildlife of international, national, regional and local importance.[8.23] The Environmental Statement submitted alongside the planning application contained a detailed Ecology and Nature Conservation assessment. In response to a holding objection from Natural England and the County Ecologist, it was requested that the Applicant submit additional ecological information. This information has been separately consulted upon. In addition to general ecology matters, there were specific concerns held in regard to great crested newts (GCN) and noctule bats.[8.24]
- 11.16 The Applicant chose to commence reptile translocation works during Spring 2011.[8.26] This was undertaken in order to enable construction work to commence promptly. During these works, two GCN were identified on site. A third GCN was found on site in 16 September 2011. Subsequently, Natural England has confirmed that a mitigation licence will be required to capture and move GCN from the inquiry site, prior to the commencement of any development. A Regulation 19, Submission 3b,<sup>233</sup> has been prepared and submitted to provide a summary of work undertaken prior to and following submission of the EnviRecover planning application, in respect of GCN, and an update on the status of GCN at the inquiry site. The Submission 3b presents, and where relevant considers: [8.27]

<sup>232</sup> For example, Viewpoint 9, CD-MWM8, JM1

<sup>233</sup> CD-PA7

- a. survey data of ponds within 500 metres of the inquiry site;
- b. information of the GCN found on the inquiry site, including discussion of how they may have reached the site;
- c. details of communication held with Natural England;
- d. mitigation proposals;
- e. appraisal of risks to GCN; and
- f. the three statutory tests that must be met before a derogation licence can be granted:
  - i. imperative reasons of overriding public interest (IROPI);
  - ii. that there is not satisfactory alternative; and
  - iii. maintaining favourable conservation status.

11.17 The Applicant notes that the presence of three GCN indicates a small population. Submission 3b considers that the most likely explanation for their presence on the inquiry site is as a result of the GCN entering drainage ditches to the north, being transported downstream and consequently deposited onto the inquiry site. This is noted to have occurred during periods when there were high levels of water flow within the open water ditches on the inquiry site as a result of discharges from a lagoon (identified as Pond 8 in Submission 3b) as part of the nearby landfill site operated by Biffa.[8.28] Natural England has no further comments to make on the subject of mitigation and/or compensation.[8.29] The County Ecologist has reviewed the scheme and has requested that details of the mitigation proposals and future management of the site in respect of GCN are included within the Nature Conservation Management Plan for the site.[8.29]

11.18 However, in order to gain the necessary licence to capture and move the GCN, three statutory tests must be met:

- a. that the relevant authority be satisfied that the proposal is for the purposes of *"preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment"*;
- b. that the relevant authority be satisfied that *"there is no satisfactory alternative"*; and
- c. that the appropriate authority be satisfied the *"the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range."*

11.19 The Applicant has discussed its approach to mitigation with Natural England - this is set out in Appendix E of Submission 3b<sup>234</sup>, and Natural England confirms this is an accurate record. However, Natural England makes no comment on the likelihood of the necessary licence being granted.[8.33] On the basis of the information available, I conclude that an adequate survey has been undertaken to establish the status of GCN on the inquiry site and that the mitigation and compensation approach outlined in Submission 3b would be appropriate, such that

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<sup>234</sup> CD-PA7

favourable conservation status of GCN should be maintained. The details of the mitigation proposals and future management of the site will need to be included within the Nature Conservation Management Plan. This can be achieved through the addition of the suggested condition.<sup>235</sup> There are consequent amendments required to the recommended conditions 'g', 'n v.' and 'r' that are set out in SOCG2. These have been incorporated into the set of conditions set out in CD-PI9.[8.34] Based on the evidence presented, I consider that the development is unlikely to adversely affect the conservation status of the local newt population.

- 11.20 The application site is also in close proximity to a small wood called Middle Covert, which accommodates noctule bats. It is important that the rows of poplar trees on the eastern boundary of the site are retained since they help provide a buffer between the development and Middle Covert. Whilst this already formed part of the proposal on submission, their protection and on-going management is also required through the imposition of recommended condition r.[8.37]
- 11.21 Local representation has raised concern about the potential for adverse impacts on the River Stour Floodplain, Hartlebury Common and Wilden Meadows and Marsh. The Environmental Statement identifies each of these Sites of Special Scientific Interest (in addition to others). Natural England comments on these sites, recognising that they are located within 5 kilometres of the inquiry site, and concurs that that the proposal will not have a significant effect on the interest features of the designated sites.[8.38] On the basis of the information and advice it is concluded that there will not be an adverse impact on the Sites of Special Scientific Interest.
- 11.22 A Reptile Survey and Mitigation Plan has been prepared which sets out the measures to avoid deliberate killing or injury during construction works and provides for the long term maintenance of populations on site through habitat enhancement measures. Adoption of these measures will make it possible to maintain or increase the population size and condition of the local slow-worm and grass snake population. Implementation of this Plan is required through the recommended condition r. I conclude, therefore, that the EnviRecover Facility would be in accordance with the policies of the development plan on Ecological and Nature Conservation matters.
- 11.23 The relevant development plan policies in relation to Transport matters are set out within the WMRSS (policy T10), the Worcestershire Structure Plan (policies SD4, T1, T15 and T19) and Wychavon District Council Local Plan (policy GD2 and ECON11).[8.41] These policies aim to enable the delivery of development close to urban areas to reduce the need to travel; ensure that a site is easily accessible via the Lorry Route Network; avoid significant impacts on the road network, including safety; avoid adverse environmental impact on residential amenity; promote the use of rail and water to transport waste; and avoid impacts on airfields. The Environmental Statement submitted with the application concludes that development and operation of the EnviRecover Facility would not result in a material impact on operational or environmental conditions over the local highway network. Development traffic flow increases would generally be low when compared to baseline flow demand. Further, the

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<sup>235</sup> CD-PI9 (condition 'nn')



core local haulage routes of Crown Lane and the A449 are of a suitable standard to accommodate operational HGV traffic and have few immediate sensitive receptors.[8.41]

- 11.24 The Applicant proposes a routeing strategy that shows all operational HGV movements to/from the site using Crown Lane to access the A449 dual carriageway.[8.42] No objection has been received from either the Highways Agency or the County Highways Officer. I consider that the routeing strategy is appropriate and, in any event, due to weight and width restrictions on many of the local roads surrounding the site, it would be difficult for HGV to use these.[8.42, 8.45] Consideration has been given to the use of rail with this development, but it is shown to be impractical for waste which is collected primarily by vehicle from the kerbside.[8.44] I consider that the EnviRecover Facility is in conformity with development plan policies in relation to transport matters.
- 11.25 The relevant development plan policies in relation to Surface Water, Flood Risk and Groundwater matters are set out within the Worcestershire Structure Plan (policies CTC8 and CTC9) and Wychavon District Council Local Plan (policy ENV18). These policies aim to ensure that development does not occur in the floodplain; development does not increase the risk of flooding, will not cause pollution of surface water or groundwater, and it will not have an adverse effect on groundwater resources, and it will not cause detriment to the existing regime of a watercourse or its environment.[8.45]
- 11.26 The Environmental Statement accompanying the planning application includes an assessment of flooding and surface water.[8.46] The inquiry site does not lie within a flood plain and is classed as Flood Zone 1; therefore, the risk of fluvial flooding is minimal. The site investigations did identify the presence of asbestos cement board, noted in one trial pit.[8.47] As such this would need further assessment as part of the detailed construction design phase ground investigation and would likely warrant some form of reactive remediation plan. This is a matter appropriately dealt with by the suggested condition g. Once the proposed Facility is in use, it would be operating on sealed hard standings that would prevent oils/lubricants or wastes from penetrating into the underlying natural ground.[8.48] Importantly, the Environmental Permit that has been issued will ensure that suitable systems are put in place to control the potential for contamination. I conclude that the EnviRecover Facility is in conformity with the development plan policies for Surface Water, Flood Risk and Groundwater.
- 11.27 There are also a number of relevant policies in relation to Archaeology and Cultural Heritage. These are set out within the WMRSS (policy QE5), Worcestershire Structure Plan (policies CTC16, CTC17 and CTC19) and Wychavon District Council Local Plan (policies GD2 and ENV14).[8.49] There is a scheduled ancient monument located approximately 500 metres to the southeast of the site known as the medieval village of Elmley Lovett. Wychavon District Council has objected to the proposal due to impacts on the setting of the Grade II\* Waresley House. The Environmental Statement concludes that no cultural heritage feature would experience any effect of greater than minor significance upon their setting and many would experience no material effect at all. Neither English Heritage (see Appendix D) nor the County Archaeologist have raised any objections and are satisfied with the conclusions of the Environmental Statement.[8.50, 8.51] I share this opinion and consider that

the EnviRecover Facility is in conformity to development plan policies for Archaeology and Cultural Heritage.

- 11.28 Development plan policies for Air Quality and Health are set out within the Wychavon District Council Local Plan (policies GD2 and ENV20).[8.52] These seek to ensure that permitted development will not give rise to pollution including pollution to air.[8.52] The application is accompanied by a detailed air quality dispersion model. This concludes that the chimney stack offers suitable dispersion and is designed to ensure that all substances are sufficiently dispersed by the time they reach ground level, and that there would be no significant impact on health. The dispersion results in a negligible impact on the surrounding air quality, such that further mitigation is not required. It is also concluded that the impacts from HGV movements to and from the proposed Facility on air quality are insignificant.[8.53] The submitted information also notes that there may be potential impacts from the construction phase, from dust. Mitigation measures have been suggested by the Applicant to be included as part of the Construction Environmental Management Plan.[8.54]
- 11.29 The application is also accompanied by assessments for the potential impacts on human health through air quality and through impacts of pollutants on agricultural land and the subsequent ingestion of food from such land. Both assessments conclude that there would be a negligible impact resulting from the proposed development. The Worcester NHS (Primary Care Trust) advises that there would be no significant risk to health from the facility as long as it is operated within the established regulations.[8.55] The regulation of emissions is undertaken by the Environment Agency. I conclude that the EnviRecover Facility is in accordance with the development plan in relation to air quality and health matters.
- 11.30 Development plan policies for Noise and Vibration are set out within the WMRSS (policy QE3 and QE6) and Wychavon District Council Local Plan (ENV20). These seek to ensure that permitted development will not give rise to adverse impacts from noise.[8.56] The submitted environmental information demonstrates that there will not be significant adverse impact from noise. The Environmental Health Officer raised no objection, but requested conditions limiting noise from the operations to an increase of not more than 5dB over background noise levels.[8.56]
- 11.31 Ms Louise Brookes has a particular concern in relation to noise which is imperceptible to most people, but which can be perceived by some, especially low frequency noise and at night. She fears that tonal noises from an incinerator may be intermittent and inconsistent, along with a constant drone or vibration. She notes that noise disturbance can lead to detrimental health issues, including mental health and cardiovascular issues due to stress and nuisance. She relies on submitted references to research[10.3], but there appears to be no firm conclusions drawn in this material, and much is made of the need for further research. Certainly I consider that the evidence put to this inquiry does not amount to a matter which should stand against the grant of permission. It appears to me that this is a matter for government: if scientific evidence were sufficiently strong in suggesting that there is a need for greater control over specific aspects of noise than is already provided for in policy and guidance, no doubt there would be revisions promulgated.

- 11.32 I conclude that the proposed facility should not cause harm through noise and that the operations can be appropriately controlled through the recommended conditions aa), bb) and cc) as set out in the SOCG2<sup>236</sup>, and that the EnviRecover Facility is in accordance with the development plan in relation to noise and vibration matters.
- 11.33 The final area of development plan policies of relevance to the EnviRecover Facility is in relation to Sustainable Development which is set out within the Worcestershire Structure Plan (policy SD3). The policy seeks the reuse and regeneration of previously developed urban land: the site has been previously developed.[8.57]
- 11.34 Therefore, my overall conclusion in relation to these development plan policies is that the EnviRecover Facility is in conformity with the aims of the Development Plan, subject to consideration of Green Belt policy which I deal with under the Secretary of State's matter D.
- 11.35 There are three emerging development plan documents: the Worcestershire Waste Core Strategy, the South Worcestershire Development Plan and the Regional Spatial Strategy for the West Midlands Phase 2 Revision.[7.48] The Submission Document for the first has been prepared, but an addendum has been published upon which consultation has been undertaken. Thus its submission form remains to be decided. There are a large number of objections to the policies including those relevant to this proposal. I consider that there is no significant weight that can be attached to this emerging document.[7.49, 8.17, 9.7] The South Worcestershire Development Plan is in the very early stages of preparation, currently at the preferred options stage. Given that this is the position, I consider that it should carry little material weight.[7.49, 7.51, 8.60] The Phase 2 Regional Strategy has been through examination and is subject of a Panel report. In the light of the legislation allowing for Regional Strategies to be revoked, very little weight can be attached to it.[7.49] To the extent that it is necessary, the Applicant's witness carried out an analysis of the proposal against these emerging policies. On the basis of that evidence I find that the proposal accords with the overall objectives of the emerging development plan in so far as they have any weight.[7.49, 7.51]

#### B) PPS10 – Sustainable Waste Management

- 11.36 The EnviRecover facility is promoted on the basis that it will deal with the residual Municipal Solid Waste for the two counties of Worcestershire and Hereford. However, it would potentially be able to handle the Commercial and Industrial Waste which currently goes to landfill.[7.13] Government policy does not distinguish between MSW and C&I, it being a key objective of Waste Strategy for England 2007 to secure better integration of treatment of both.[7.7, 8.3]
- 11.37 All parties agree that the EnviRecover facility would assist in driving the management of the two counties' residual waste up the waste hierarchy, using waste as a resource and look to disposal as a last option.[7.13, 9.9] However, WAIL considers that there are other options for achieving this outcome and that

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<sup>236</sup> CD-PI7

there is a real risk of discouraging more waste from going into recycling or other better environmental options, such as anaerobic digestion.[9.9] It points to a reduction of residual waste levels from 350,000 tonnes pa in 2001/2 to 200,000 tpa in 2010/11 (MSW), and consistently improving recycling levels[9.9 i)] which it considers leads to a risk of there being insufficient MSW to fuel the facility or that it would lead to waste going to incineration instead of being moved higher up the waste hierarchy. As for any element of C&I, WAIL points to substantial tonnages of food waste, within that category, of 60,000-70,000tpa [9.9, iv)], and claims that there has been a failure to consider any options providing for intermediate treatment by autoclaving with any of the several available technologies identified in the 2011 Waste Review. In particular there has been a failure to consider the combination of technologies such as autoclaving combined with combustion.[9.10] Additionally, WAIL point to the PPS10 advice to consider the cumulative effect of previous waste disposal facilities and respect the wellbeing of the community, and that this is not a proposal which allows for transport infrastructure other than by road transport.[9.11] It therefore considers that the application proposals are not in accordance with PPS10.

- 11.38 The reduction in residual MSW over recent years is very welcome, even though there may be uncertainties as to how much of this may be due to economic circumstances, and how much to other factors. Certainly from the imperative of government policy one would expect there to be a continuing downward trend. However, in 2010/11 some 191,000 tonnes of Worcestershire's and Hereford's residual MSW was landfilled and just over 18,000 tonnes was sent to out of county EfW facilities. In addition it is estimated that some 250,000 tonnes of C&I waste from Worcestershire alone was landfilled.[7.13] Just taking the general scale of these tonnages, it appears clear that the capacity of EnviRecover of 200,000 tpa would leave much to be done in terms of prevention and preparing for reuse and recycling.
- 11.39 Nor do I see the opportunities for anaerobic digestion being diminished by EnviRecover, or sufficient food waste being separated out to the extent that it makes any real indent into the quantity of waste available and suitable for EfW.[7.80] It is clear that there is no prospect in sight of kerb-side collection of separate food waste in the two counties, in addition to the present collection system in Wychavon.[9.9, iii)]
- 11.40 A good deal of inquiry time was taken exploring the contention that there are other, better, technologies that had been overlooked by the County Council. Initially, in written evidence, anaerobic digestion had been WAIL's preferred alternative technology, but at the inquiry the preference moved to Autoclaving (without combustion), until its own case was under examination, at which point Autoclaving combined with combustion on site became the preferred solution.[7.75, 7.79, 9.10] It criticised the County Council's choice, partly on the basis that the 2009 Options Appraisal identified autoclaving as being a better option through WRATE analysis than an EfW proposal.[9.10] However, it was only autoclave with all residue recycled that performed better than EfW without CHP (and only before weighting), and the evidence at the inquiry was clear, from an expert witness with actual involvement in a scheme which had sought to recycle the fibre residue from an autoclave, no one has successfully found a recycling outlet for an autoclave output.[7.74, 7.75] The support for its case by reference to Sterecycle and Wakefield

was totally unconvincing in the face of the evidence of Mr Roberts who had worked with Sterecycle since 2009, and Mr Othen's evidence regarding Wakefield where he had been advising potential funders of the scheme.[7.77, 7.79] In any event the Government, in Waste Strategy for England 2007, does not generally think it appropriate to express a preference for one technology over another, subject to encouraging AD for separately collected food waste, and regards technology choice as a commercial matter for the promoter.[7.72]

- 11.41 As to the cumulative effect of previous waste disposal facilities, it is true that Hartlebury has been the subject of landfill facilities for many years.[9.11, bullet 2] However, there is no substantial evidence that EnviRecover would have any materially harmful impacts in relation to noise, traffic, odour, or dust. The only point of any substance arising from the evidence before me is that, should the facility be closed down for maintenance or a fault, waste would have to be carried by lorry to landfill through the village. I regard the likelihood of this being anything other than a rare occurrence as being unlikely, and I do not agree that EnviRecover would have a significant cumulative impact in combination with the landfill.
- 11.42 Finally, in relation to the criticisms that the proposal is not in accordance with PPS10, there is the dependence of the site on road transport alone for the delivery of waste. However, the EnviRecover Facility is intended to manage wastes arising with Worcestershire and Herefordshire and principally residual municipal wastes. The road based system for collecting these wastes is already established. These road movements and those associated with transporting outputs from the proposal (the clay materials, incinerator bottom ash and APC residues) are demonstrated not to result in unacceptable impacts, including in relation to the carbon footprint of the EnviRecover Facility.[8.44] I conclude that the fact that the site does not have a rail connection does not stand against the proposal.
- 11.43 Subject to the consideration of the relationship of the proposal to Green Belt policy, and the Key Planning Objective to protect Green Belts, with which I deal later, I consider that the application proposal is in accordance with the advice in PPS10, meeting the Key Planning Objectives in that it diverts waste from landfill, thus delivering sustainable development through driving waste management up the waste hierarchy and it helps implement the national waste strategy.

### C) Planning and Climate Change Supplement to Planning Policy Statement 1 (PPS1 CCS)

- 11.44 Energy policy is central to tackling climate change. PPS 1 CCS expressly states that policies and priorities on climate change are set out inter alia in the Energy White Paper<sup>237</sup>. The White Paper itself states that renewables are key to the strategy to tackle climate change. PPS22 at page 6 makes a similar point - that "Increased development of renewable energy resources is vital to facilitating the delivery of the Government's commitments on both climate change and renewable energy." [7.18] The first Key Planning Objective

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<sup>237</sup> Energy White Paper 'Meeting the Challenge (May 2007)

of PPS 1 CCS is "Make a full and significant contribution to delivering the Government's Climate Change Programme and energy policies and in doing so contribute to global sustainability."

- 11.45 EnviRecover would deliver 13.5MW of electricity to the grid which would otherwise have been generated by the combustion of fossil fuels.[7.19, 7.56, 8.79] In addition, the plant will be CHP ready and an opportunity for the export of heat.[7.24] The WRATE analysis demonstrates the carbon benefit in recovery over landfill. EnviRecover as compared to landfill could save some 53,000 tonnes of CO<sub>2</sub>e. As it was put on behalf of the Applicants, EnviRecover would effectively eliminate Worcestershire County Council's carbon footprint.[7.19, (i)]
- 11.46 WAIL, through the evidence of Mr Vernon, in the duly submitted evidence sought to demonstrate that Mr Othen's climate change benefit calculation was in error and that in fact there would be a net increase in carbon emissions of some 8,000 tpa of CO<sub>2</sub>. This was followed by supplementary evidence produced after Mr Othen had given evidence, which deleted part of the submitted evidence and which had clearly resulted from Mr Othen's rebuttal. Lastly a third version of Mr Vernon's evidence was given orally in extensive XIC which contained the concession that, after all, Mr Vernon's calculations had been in error and he now accepted that EnviRecover would provide climate change benefits as compared with landfill but only to the tune of 1,000 tpa of CO<sub>2</sub>. [7.21]
- 11.47 I find the Applicant's evidence more convincing, on the basis that it is produced by a professional, experienced in these specific considerations, who carries the duty to the inquiry as an expert witness which over-rides any duty to those instructing him. This conclusion means that I place less weight on the scientific evidence of WAIL generally than on that of the Applicant.
- 11.48 WAIL also seek to argue that EnviRecover would not make a full contribution to the climate change programme in that there is no guarantee that it would export heat.[7.24, 9.31] Quite clearly the facility would be "CHP ready" and, therefore, fully able to exploit any heat demand in the vicinity.[7.24] Opportunities for co-locating potential heat customers and heat suppliers should be given particular encouragement and, it seems to me, the application site has good potential in this regard. There have been expressions of interest, particularly from Wienerbergers.[7.24] The lack of a contract for the supply of heat at the present stage is far from surprising, but rather is to be expected. Indeed, it would be surprising if the Applicant and another company had been in a position to make contractual commitments at this stage. The CHP potential of the proposal is, therefore, meritorious and should be regarded as a very positive factor to be weighed in the balance of the decision on this case.
- 11.49 The second Key Planning Objective of PPS 1 CCS includes providing jobs, services and infrastructure needed in the area and securing the highest viable resource, energy efficiency and reduction in emissions. When operational EnviRecover would provide some 42 full-time equivalent jobs, with ongoing spend on supplies and maintenance over the operational life of the plant supporting a further 9 full-time equivalent jobs. It is expected that this

level of employment will generate around £1.62 million of net additional GVA per annum within the Worcestershire LEP area. Potentially the proposal would also support employers in the area through reduced waste costs and as a potential source of cheaper and more secure power. The proposal would exceed the R1 co-efficient even without the export of heat which indicates that EnviRecover would be an efficient generator of energy [7.19 (ii), 7.63]

- 11.50 The third Key Planning Objective of PPS 1 CCS includes helping secure the fullest possible use of sustainable transport for moving freight. EnviRecover does not have the advantage of being located where non-road transport can be utilised, but it is well located in relation to the waste arisings in the two Counties inasmuch as it is close to the major urban areas<sup>238</sup> from which will come the majority of waste arisings. As a result I am satisfied that 'waste miles' will be minimised and the unsustainable practice of exporting waste to EfW outside of the two Counties will be ended or at least greatly reduced.[7.19, (iii)]
- 11.51 The fourth Key Planning Objective of PPS 1 CCS is to help provide resilience to climate change. I accept that EnviRecover would help drive down the carbon impact of waste management in the two Counties and thereby helps to reduce vulnerability to climate change.[7.19, (iv)]
- 11.52 The fifth Key Planning Objective of PPS 1 CCS is to conserve and enhance biodiversity. The Environmental Statement and the grant of the Environmental Permit shows that there would be no significant or unacceptable impacts on ecology and biodiversity, and the proposed landscaping scheme would create new habitats and enhance existing habitats to the benefit of local ecology.[7.19, (v)]
- 11.53 The sixth Key Planning Objective of PPS 1 CCS is to reflect the development needs and interests of communities and enable them to effectively tackle climate change. The proposal would help contribute to the two Counties tackling climate change through the provisions of renewable energy and by enabling diversion from landfill.[7.19, (vi)] Thus the wider community would effectively tackle climate change, even though those represented by WAIL consider that there are (or may be) other technologies and locations which it would prefer.
- 11.54 The seventh Key Planning Objective of PPS 1 CCS is to respond to the concerns of business and encourage competitiveness and technological innovation. The proposal would provide a cheap and secure supply of renewable energy to local businesses in a sustainable manner and provide some C&I recovery capacity at a competitive gate fee. This would encourage businesses to recover waste and only dispose of it as a last resort. It cannot reasonably be claimed that EnviRecover is technologically innovative, but it has the advantage of being a tried and tested technology, with known costs and a reasonable time scale for implementation.[7.13]
- 11.55 I conclude that there are considerable climate change benefits of EfW as compared with landfill which are fully encompassed by this proposal, and that to a very large extent it is consistent with advice in the PPS1 CCS

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<sup>238</sup> See map at CD-MWM29

#### D) Planning Policy Guidance Note 2 (PPG2): Green Belts

- 11.56 It is now possible to turn to the final matter identified by the Secretary of State: the extent to which the proposed development is consistent with Government policies in Planning Policy Guidance Note 2: Green Belts. There is unanimous agreement among the participants at the inquiry that the proposed development is inappropriate development in the Green Belt.[7.53, 8.69, 9.15]. As paragraph 3.2 of PPG2 makes clear, inappropriate development is of itself harmful and substantial weight attaches to that harm. It is necessary to show very special circumstances to justify such development. [9.16] Before examining the robustness of the arguments for accepting that there are very special circumstances, I consider that the other questions posed under this matter should be addressed.
- 11.57 The first of these is the extent to which the scheme would be consistent with the purposes of including land in the Green Belt. These purposes are set out in paragraph 1.5 of PPG2. I can take the first three together: to check the unrestricted sprawl of large built-up areas; to prevent neighbouring towns from merging into one another; to assist in safeguarding the countryside from encroachment. The application site is situated within the built up-area of an extensive industrial estate and is identified as a Major Developed Site in the Green Belt.[5.2] It has an extant planning permission for industrial development and it is very likely that the site will be developed in some urban form in the future, as allowed for under development plan policies.[7.13] From this I conclude that the site has no direct role in checking unrestricted sprawl, in preventing the merging of towns or in safeguarding the countryside from encroachment. I also consider that it does not assist in preserving the setting and special character of an historic town (the fourth purpose). To the extent that the site is urban land, its inclusion in the Green Belt cannot reasonably be seen as encouraging the recycling of derelict or other urban land (the fifth purpose) as it would have this encouragement in any event.
- 11.58 The next question posed under this matter is whether the proposed development would harm the visual amenities of the Green Belt by reason of its siting, material and design. I have considered the landscape and visual impact of the application proposal at paragraphs 11.7 to 11.14 above. There I conclude that the impact of the proposal on the environmental assets and landscape character which the policies<sup>239</sup> seek to protect and enhance is that it does not amount to harm and that the environment and landscape would be protected. That conclusion must mean that the development would not harm the visual amenities of the Green Belt by reason of its siting, material and design. In particular I conclude that there would be minimal effect on the openness of the Green Belt since the site is clearly within an existing trading estate and the additional impact is so small.
- 11.59 The last question raised under this matter is the extent to which the proposed development might contribute to the achievement of the objectives for the use

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<sup>239</sup> Development plan policies contained in the WMRSS (policies QE1, QE3, QE5 and QE6), the Worcestershire Structure Plan (policies SD2, CTC1, CTC2 and CTC20) and Wychavon District Council Local Plan (policies GD2, ENV1, SUR1 and SUR2).[11.7]



of land in Green Belts as set out in paragraph 1.6 of PPG2. These are to: provide opportunities for access to the open countryside for the urban population; provide opportunities for outdoor sport and outdoor recreation near urban areas; retain attractive landscapes, and enhance landscapes, near to where people live; to improve damaged and derelict land around towns; secure nature conservation interest; and retain land in agricultural, forestry and related uses. Quite clearly the proposed development does not contribute to the first two objectives, nor the fourth and sixth. Nor do I think that it can be said to be a use of land that meets the third objective, to retain attractive landscapes, and enhance landscapes, near to where people live. As to the fifth objective, to secure nature conservation interest – the purpose of the proposed use as a power from waste facility does not in itself have a positive role to play. Nevertheless, by responding to the existence of present biodiversity on the site and in the surroundings, including protected species, the proposal includes measures which will maintain and increase biodiversity.[8.33, 8.34, 8.35, 8.36, 8.37, 8.39, 8.40]

11.60 In the light of the previous section of this report, including paragraphs 11.56 to 11.59 above, it is now appropriate to turn to the question of whether other considerations clearly outweigh the harm to the Green Belt caused by reason of its inappropriateness, and any other harm.

11.61 There is agreement among all three main parties to this inquiry (albeit in part through concessions in XX) that there are very special circumstances arising from the compelling and urgent need for the proposal, the fact that there is no other suitable and alternative site in the two Counties, the proposal's renewable energy generation, and the implications of the failure of this proposal.[7.59, 8.73] I accept these as considerations of very considerable weight.

11.62 With regard to the last of these points, the evidence is clear that the EnviRecover project began back in 2007 and that, with permission now, it could be operational in 2015 some 8 years after the project was initiated. The delays involved if consent is now refused would be significant, possibly of a similar period of time. In addition there has been the delay that has already occurred following the dismissal of the Kidderminster appeal in 2002. I am inclined to agree that if two major waste management projects failed, the appetite of the waste management industry to bring forward further proposals in the area might well be seriously undermined.[7.104] During any such delay, the two Counties would have to continue the practice of landfilling very large quantities of waste, during which time significant financial costs would be incurred including: the ongoing payment of landfill tax; the payment of any penalties for failing to meet landfill diversion targets; the need to pay spot market prices and additional transportation costs to use out of county third party waste treatment facilities; the legal, technical and other professional costs associated with either varying or re-letting the waste management contract; and increased capital expenditure costs for any new facility.[7.105]

11.63 I also agree with the submission by the Applicant (with which the County Council agrees)[7.56]:

that EnviRecover would provide 200ktpa of recovery capacity in an area which currently has no residual recovery capacity, enabling it to

meet more sustainably its waste management capacity needs and thereby reduce its dependence on continued extensive landfilling;

the application site has considerable locational advantages: it is at (or very close to) the optimum location to treat the waste arisings within Worcestershire and Herefordshire; it has excellent transportation links; there are no insuperable environmental constraints; electricity can be readily exported; it is favourably located to exploit CHP potential; and there is a potential local market for the use of bottom ash in brick making on the trading estate or elsewhere for recycling for secondary aggregates;

the proposed EnviRecover facility would generate approximately 13.5MW of renewable and low carbon energy for export to the local grid providing sufficient power for about 22,500 homes. In doing so it would significantly increase the amount of renewable energy generation in both the Region and Worcestershire and so contribute towards meeting the Government's targets for renewable energy generation; and

EnviRecover would bring substantial climate change and economic benefits.

11.64 My overall conclusion on the relationship of the application proposal to Green Belt policy, in the light of the various conclusions which I have reached in this report, is that the harm by reason of inappropriateness is clearly outweighed by other considerations which, in all the circumstances of this case, amount to very special circumstances. These considerations are [11.60 – 11.63]:

- there is a compelling and urgent need for the Energy from Waste facility as proposed;
- there is no other suitable alternative site within Herefordshire and Worcestershire;
- the implications of the failure of this proposal are that very substantial amounts of waste would continue to be landfill, or exported and landfilled or incinerated outside the area;
- if permission is now given it is likely that the facility would be in operation by 2015, but if refused, further delay could be another 8 years or so;
- that delay would be likely to dampen the appetite of the waste industry to bring forward another scheme which, in any event, would be costly to the Waste Authority and to the promoter of an alternative scheme;
- the facility would provide 200ktpa of recovery capacity in an area without residual recovery capacity;
- the site is well located in relation to major centres of waste arisings;
- the facility has the potential to export heat, and bottom ash for recycling as secondary aggregate;
- it would generate 13.5MW of renewable and low carbon energy to the local grid, significantly increasing the amount of renewable energy generation in the Region and Worcestershire and contributing towards meeting the Government's targets for renewable energy generation;

- it would bring substantial climate change and economic benefits.

### Other Matters

11.65 The following paragraphs deal with other matters raised in the inquiry which should be briefly mentioned.

#### Propriety

11.66 I cannot see that the allegation of impropriety and bias against the County Council is based on any evidence. Indeed it was admitted on behalf of WAIL that there was not any to put forward.[8.92] The dual role performed by the Council as both WDA and CPA should be well understood by anyone taking an interest in local government. In this case there was a 'Chinese Wall' put in place that prevented the Council improperly confusing these roles. It was entirely proper for the Council, as CPA to seek independent objective advice from Miss Berry and that her report fairly and comprehensively set out the representations that had been made by WAIL. WAIL also attended the Committee meeting and Mr Kirby made a PowerPoint presentation to the Committee on their behalf.[8.93] I am left without any doubt that the members of the Planning and Regulatory Committee were fully informed of all the relevant planning issues and that the decision was based on proper planning considerations.

#### Covenants

11.67 As Ms Brook-Smith agreed, covenants are not a land use planning consideration. In so far as the application site is concerned, Ms Brook-Smith confirmed that WAIL does not suggest that the construction and operation of EnviRecover would breach a covenant. In response to a question from me Miss Berry confirmed that the issue of nuisance and annoyance has been considered by the Council in determining the application and that the Council had concluded that material harm would not arise in planning terms and that, in any event, any harm could be controlled through conditions and the environmental permit. In evidence, Ms Brook-Smith confirmed that WAIL does not argue that the proposal would be undeliverable on the application site.[7.65]

#### Sequential search for sites

11.68 Ms Brook-Smith confirmed that Ravensbank should be discounted as an alternative site and that WAIL had identified no other alternative site. She agreed that it can now be reported to the Secretary of State that it is common ground that the application site is the only suitable and available site for this project in Herefordshire and Worcestershire.[7.68]

#### Public perception of health concerns

11.69 The proper delineation between the planning and pollution control regimes is clearly set out in paragraph 10 of PPS23, which provides:

*"The planning and pollution control systems are separate but complementary. Pollution control is concerned with preventing pollution through the use of measures to prohibit or limit the release of substances to the environment from different sources to the lowest practicable level. It also ensures that ambient air and*

*water quality meet standards that guard against impacts to the environment and human health. The planning system controls the development and use of land in the public interest. It plays an important role in determining the location of development which may give rise to pollution, either directly or from traffic generated, and in ensuring that other developments are, as far as possible, not affected by major existing, or potential sources of pollution. The planning system should focus on whether the development itself is an acceptable use of the land, and the impacts of those uses, rather than the control of processes or emissions themselves. Planning authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced. They should act to complement but not seek to duplicate it."*[7.92]

11.70 That advice is reiterated in PPS 10 and tells decision makers to avoid carrying out their own detailed health assessments and instead to draw upon Government advice and research as well as consultation with the relevant health authorities and agencies. In this case there were no objections whatsoever from any technical consultee on health grounds. Moreover, the EA has already granted the permit so that the EA is clearly satisfied that MWM will operate the plant in accordance with both BAT and the stringent requirements of WID which are designed to avoid any impact on human health. EN-3 at paragraph 2.5.43 expressly requires planning decision makers to assume that there will be no adverse impacts on health where the plant meets the requirements of WID (and the permit would not have been granted unless the plant would do so). The statement in WS2007 that there is no credible evidence of adverse health outcomes for those living near incinerators could not make the Government's position on the matter any clearer. Nevertheless, the public's concerns or perceptions in relation to health and air quality are themselves capable of being material considerations. Appendix A to PPS23 lists issues which may be relevant to the determination of a planning application. The penultimate issue refers to "the objective perception of unacceptable risk to the health and safety of the public arising from the development." Perceptions that are based on emotions, personal prejudices or information which is factually incorrect cannot be objectively held. Here, there is no evidence to suggest that perceptions of health risk are objectively justified, and I consider that very little or no weight should be attributed to such unjustified perceptions of health risk.[7.93, 7.94,]

#### Public consultation

11.71 There is clear evidence that MWM conducted fully adequate consultation exercises the details of which are set out in SoCG1 and the document from MWM's communications consultants, Sauce, which was written in response to WAIL's criticisms<sup>240</sup>. In any event, Ms Brook-Smith agreed in XX that there had been extensive consultation.[7.98]

<sup>240</sup> CD-MWM3, appendix NR18

## Local environmental concerns (protected species)

11.72 I have dealt with matters relating to Great Crested Newts within paragraphs 11.15 to 11.22. Here I only need to make a point about the derogation tests. MWM has undertaken a detailed analysis of the derogation tests and concluded that the tests are likely to be met. It is clear that the primary duty in considering the derogation tests rests upon Natural England and that a planning authority is only obliged to give 'light touch' consideration to the derogation tests and should only refuse planning permission where it concludes that Natural England would be unlikely to grant a licence. The essence of the three statutory tests that must be met before a derogation licence can be granted are:

- imperative reasons of overriding public interest (IROPI);
- that there is not satisfactory alternative; and
- maintaining favourable conservation status.

If the Secretary of State agrees with my conclusions that there is a compelling requirement and urgent need for this proposal which diverts waste from landfill, thus delivering sustainable development through driving waste management up the waste hierarchy and that it helps implement the national waste strategy, as summarised in paragraph 11.64 above, that would amount to a clear indication that there are imperative reasons of overriding public interest. It is clear that there is no satisfactory alternative and it is likely that favourable conservation status would be maintained by the scheme.

## **Overall Conclusion**

11.73 I consider that EnviRecover complies well with PPS10 and PPS1 CCS, and that there is a compelling requirement and urgent need to deliver this form of infrastructure now in order to fulfil the policies on waste and climate change. There is a need to provide recovery capacity in the two Counties, where no other exists or is proposed, to assist in reducing the very large quantity of waste being landfilled: this need is compelling and urgent. It has not been possible for any deliverable alternative proposal to deal with this waste to be suggested. Further, the proposal meets the requirements of development plan policy: I have identified no additional harm to the harm by reason of inappropriateness, and I have concluded that the need to demonstrate very special circumstances before permission can be granted for inappropriate development in the Green Belt has been met. I consider that planning permission should be granted, subject to conditions which I deal with below.

## **12.0 Conditions**

12.1 Planning conditions have been suggested by the County Council and were contained in the Committee Report prepared by the Director of Planning, Economy and Performance. They are set out in the Statement of Common Ground 2 (CD-PI7). WAIL's agreement to the draft conditions was given without prejudice to its case, and with the following reservation. WAIL considers that the period for implementation should be reduced from 5 years to 3 years. WAIL also considers that condition jj) should apply to the commencement of the development, not operation. The Applicant does not take any significant issue with the suggested conditions, but questions

whether it is necessary to limit waste to be treated at the site solely to that arising from within Worcestershire and Herefordshire (condition d).

12.2 I held a session during the inquiry to consider the suggested conditions, to hear the arguments relating to the above contentious issues and to explore my own questions. The result of that session is that revised conditions were tabled, set out in CD-PI9 and CD-PI9A. I consider these conditions and the need for them below, with the resulting conditions that I recommend set out in the Annex to this report. Rather than adopt the somewhat ungainly lettering system for the conditions [a) to mm)], I simply number them [1 to 39].

12.3 Dealing first with the conditions under dispute, condition 1 sets the time period within which the development must begin as required by section 91(1)(a) of the Town and Country Planning Act 1990 (as amended). It is agreed between the Applicant and the County Council that this should be a period of 5 years, rather than the standard 3 years. Since the urgent need [7.31] for the facility and the length of time taken so far to reach this stage has been such an important part of the Applicant's case, and since it is asserted that the facility could be operational by the end of 2015 [7.13, 7.104], a start within 3 years appears to be entirely feasible and desirable.

12.4 Condition d (numbering in schedule within Statement of Common Ground 2) restricts the waste to be received at the facility to that which arises in the 2 counties. The Applicant objects to this on the basis that the origin of waste from waste transfer stations may not be readily identifiable, there is no longer a proximity principle, the contract with the 2 Counties and the fact that any C&I waste will be taken to the nearest facility means that this will be largely self regulating, there is substantially more waste in the 2 counties than can be treated, and if there were not sufficient waste from within the 2 counties, would it be right for the facility not to be able to operate? I find these arguments persuasive and consider that there is no justification for the suggested condition which fails the test of necessity.

12.5 With reference to suggested condition jj) (becomes condition 35 in the recommended conditions in the Annex below) I see no need to amend the text to refer to commencement of development instead of operation, since financial imperatives should ensure that the connection with the grid is made at the appropriate time.

12.6 I consider that the other conditions are required for the following reasons:

- 2) & 3) to provide certainty as to the details of the scheme being permitted;
- 4) to enable monitoring of the construction, commissioning and operation of the facility;
- 5) to prevent unintended operations which could raise additional considerations;
- 6) To ensure that the construction phase is managed in the interests of public amenity, convenience and safety, in the interests of ecology and biodiversity and the prevention of pollution,
- 7) to 11); in the interests of highway safety
- 12) to 15) in the interests of a satisfactory appearance and landscaping of the development;
- 16) to control light pollution;

- 17) in the interests of nature conservation;
- 18) to 20) to ensure that any contamination on site is identified and any necessary remediation is carried out;
- 21) to 28) to ensure that emissions of dust, noise, etc from the site are limited to acceptable levels;
- 29) to 34) to ensure that the details of drainage are satisfactory;
- 35) to ensure that an electricity connection has been made;
- 36) to control the management of extracted materials;
- 37) to ensure suitable liaison arrangements with the local community;
- 38) to ensure that the site is restored to a satisfactory state at the permanent cessation of the facility;
- 39) to secure a mitigation strategy for Great Crested Newts.

### **13.0 Recommendation**

13.1 For the reasons that I have set out above I consider that the application should be granted planning permission, subject to the conditions referred to, and I recommend accordingly.

## ANNEX

### CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby approved shall only be carried out in accordance with the following documents and drawings, except for where measures are required by the conditions set out elsewhere in this permission which shall take precedence over those documents listed here.

#### Documents:

- The Planning Application Document Volume 1 and 2 – April 2010
- The Environmental Statement Volume 1 - Main Report and Volume 2 Technical Appendices – April 2010
- The Transport Assessment – April 2010

#### Drawings and Figures:

- Drawing Number 1204 PL0002 (Part 5 of the Planning Application Document Volume 2) – Planning Application Boundary Plan – April 2010
- Drawing Number 1204 PL0003 (Part 5 of the Planning Application Document Volume 2) – Proposed Site Plan – April 2010
- Drawing Number 1204 PL0004 (Part 2 of the Planning Application Document Volume 1 (Appendix 2 of the Design and Access Statement) – Proposed Traffic Plan – April 2010
- Drawing Number 1204 PL0005 (Part 5 of the Planning Application Document Volume 2) – Proposed Basement Floor Plans – April 2010
- Drawing Number 1204 PL0006 (Part 5 of the Planning Application Document Volume 2) – Proposed Ground Floor Plan – April 2010
- Drawing Number 1204 PL0007 (Part 5 of the Planning Application Document Volume 2) – Proposed First/Second Floor Plans – April 2010
- Drawing Number 1204 PL0008 (Part 5 of the Planning Application Document Volume 2) – Proposed Third / Fourth Floor Plans – April 2010
- Drawing Number 1204 PL0009 (Part 5 of the Planning Application Document Volume 2) – Proposed Roof Plan – April 2010
- Drawing Number 1204 PL0010 (Part 5 of the Planning Application Volume 2) -Visitor Centre Route Plans – April 2010
- Drawing Number 1204 PL 0011 ( Part 5 of the Planning Application Document Volume 1) – Proposed Site Sections AA and BB – April 2010
- Drawing Number 1204 PL 0012 ( Part 5 of the Planning Application Document Volume 1) – Proposed North Elevation – April 2010
- Drawing Number 1204 PL 0013 (Part 5 of the Planning Application Document Volume 1) – Proposed East Elevation – April 2010
- Drawing Number 1204 PL 0014 ( Part 5 of the Planning Application Document Volume 2) – Proposed South Elevation – April 2010
- Drawing Number 1204 PL 0015 ( Part 5 of the Planning Application Document Volume 2) – Proposed West Elevation – April 2010
- Drawing Number 1204 PL 0016 ( Part 5 of the Planning Application



Document Volume 2) – Proposed Turbine Building Elevations – April 2010

- Drawing Number 1204 PL 0017 ( Part 5 of the Planning application Document Volume 2) – Proposed Weighbridge Plan and Elevations – April 2010

- Drawing Number 1202 PL0018 ( Part 5 of the Planning Application Document Volume 1) – Virtual Samples Board – April 2010

- Drawing 900-01-001 Rev A - Landscape Proposal – April 2010, accompanying letter from Axis dated 15 November 2010

- Drawing 900-01-002 – Proposed Foul and Surface Water Drainage Layout ( Part 5 of the Planning application Document Volume 2) – April 2010

- Drawing 900-01-003 – Site Features (Part 5 of the Planning Application Document Volume 2) – April 2010

- Drawing – Detailed Hard and Soft Landscape Scheme (900-01-004) – November 2010, accompanying letter from Axis dated 15<sup>th</sup> November 2010

- Figure 12 of the Transport Assessment – Proposed Site Access Arrangements & Internal HGV Queuing Space – April 2010

3 The operator shall ensure that the amount of wastes treated at the facility hereby approved does not exceed 200,000 tonnes per year.

4 The operator shall notify the County Planning Authority of the date of the start of each phase of development in writing at least 5 working days prior to each phase. The phases of development to be notified are: commencement; commissioning; and operation.

5 No material shall be accepted at the site directly from members of the public, and no retail sales of waste or processed materials to members of the public shall take place at the site.

#### *Construction Environment Management Plan*

6 No development hereby permitted shall commence until a Construction Environment Management Plan (CEMP) is submitted to and approved in writing by the County Planning Authority. The approved CEMP shall be implemented for the duration of the development prior to operation. The CEMP shall address the following issues:

##### Hours of working

i) A scheme (consistent with paragraph 5.8.5 of the Environmental Statement , Volume 1, Main Report ( April 2010)) providing details of the construction operations, including the days and hours of working for construction of the development hereby approved, shall be submitted for the written approval of the County Planning Authority.

##### Travel Plan

ii) The route to be used for vehicular access during construction of the development hereby approved shall only be in accordance with a Travel Plan to be submitted to and approved in writing by the County Planning Authority.

##### Ecology

iii) A procedure to address the clearance of vegetation on site outside the bird breeding season (generally recognised to be late March — August inclusively) or under the supervision of a suitably qualified and experienced ecologist. No vegetation shall be cleared during the bird breeding season.

iv) A detailed procedure for the trapping and translocation of reptiles under the supervision of a suitably qualified and experienced ecologist; this should follow the recommendations set-out in the Reptile Survey and Mitigation Plan

(Argus Ecology, July 2010).

- v) Details of exclusion fencing around the site.
- vi) Details for the protection of receptor sites and associated linking habitats throughout the construction stage. These should include retention of a works "biodiversity-log" to record any operations within or affecting the receptor areas.
- vii) A procedure to ensure that during the construction phase all trenches / excavations / pipes are closed-off overnight, or if unavoidable, are fitted with wood or earth escape ramps, to allow any trapped wildlife to escape.
- viii) A plan to identify all trees to be retained on site and details of their protection.
- ix) Management of Japanese knotweed.
- x) All ecological works prescribed in this condition shall incorporate any mitigation measures that have been proposed, agreed or implemented pursuant to condition 39).

*Dust*

- xi) A scheme to demonstrate how the impacts of dust shall be minimised during the construction of the development and during extraction of the clay and removal off site.
- xii) A scheme to demonstrate that no mud, dust or debris shall be deposited on the public highway.

*Noise*

- xiii) A scheme to minimise and mitigate the impacts of noise and vibration (including on-site vehicles, plant and machinery) during the construction phase of the development.

*Visual Impact*

- xiv) A scheme to show how construction works on site will be managed to mitigate their visual impact, including keeping the site tidy and details for the storage of materials.

*Ground Water/ Contaminated Land*

- xv) A Method Statement providing details of the data that will be collected in order to demonstrate that the investigative and remediation works set out in the Environmental Statement Volumes 1 and 2 are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. The Plan shall include results of any additional sampling and monitoring carried out to support the construction phase.
- xvi) A Validation Report confirming that the site remediation criteria set out in the Method Statement have been satisfactorily met and any additional investigation results.

*Land Drainage*

- xvii) Details of the foul and surface water management during the construction phase.

*Highway Safety and Access*

7 The only means of access and egress to the site shall be from Oak Drive as shown in Drawing Number 1204 PL0003 (Figure 5.1 of the Environmental Statement) – Proposed Site Plan and in Figure 12 - Proposed Site Access Arrangements & Internal HGV Queuing Space of the Transport Assessment.

8 The route to be used for vehicular access during operation of the development hereby approved shall only be in accordance with a Travel Plan to be

submitted to and approved in writing by the County Planning Authority prior to the operation of development.

9 All loads of waste materials carried on HGV into and out of the development hereby approved shall be enclosed or covered so as to prevent spillage or loss of material at the site or on to the public highway.

10 Heavy goods vehicles associated with operation of the development hereby approved shall only enter or exit the site between 06:00 hours and 19:00 hours.

11 No development hereby permitted shall operate until the driveway, parking for site operatives and visitors and vehicular turning spaces (marked on the ground for cars and commercial vehicles to turn so that they may enter and leave the site in a forward gear), are consolidated, surfaced and drained in accordance with details that shall have been submitted to and approved in writing by the County Planning Authority. These areas shall thereafter be retained and kept available for those uses at all times.

#### Materials, Design and Layout

12 Notwithstanding the submitted details, no development hereby approved shall commence until a detailed scheme for the external appearance of the buildings including the chimney stack hereby approved have been submitted to and approved in writing by the County Planning Authority. Such scheme shall include details of:

- i) the type and colours of all external construction materials; and
- ii) the design and layout of all external cladding materials.

The approved details shall be implemented for the duration of the development.

#### *Landscaping*

13 Notwithstanding the submitted details, no development hereby approved shall commence until a detailed scheme for landscaping of the site has been submitted to and approved in writing by the County Planning Authority. Such scheme shall include details of:

- i) hard landscaping, including surface treatment finishes and colours;
- ii) how the existing trees that are to be retained are to be protected during the construction operations (to be in accordance with BS5837:2005);
- iii) the position, species, density and initial sizes of all new trees and shrubs;
- iv) the interface with the surface water drainage scheme as set out in condition 33);
- v) the interface with the nature conservation schemes as set out in conditions 6) and 17);
- vi) details of the design and the height of the security fencing and gates along the site's boundaries;
- vii) the programme of implementation of the approved scheme; and
- viii) the arrangements for ongoing management of the scheme and subsequent maintenance;
- ix) The works prescribed in this condition shall incorporate any mitigation measures that have been proposed, agreed or implemented pursuant to condition 39). The approved details shall be implemented for the duration of the development.

14 The landscaping details as shown on drawing reference 900-01-001 Rev A and dated April 2010 and/or as supplemented/updated by the details approved pursuant to condition 13 above shall be implemented within the first available planting season

(the period between 31 October in any one year and 31 March in the following year) following the commissioning of the development. All planting and seeding undertaken in accordance with the scheme approved under condition 13 above shall be maintained and any plants which within five years of planting or seeding die, are removed, damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the County Planning Authority.

15 All areas of soft landscaping shall be created in accordance with a soil management plan that shall be submitted to and approved in writing by the County Planning Authority prior to commencement of the development. The soil management plan shall include details of the soil materials to be used, including their source, depth of application and suitability as a growing medium

#### *Lighting*

16 Prior to the commissioning of the facility details of all external lighting and other illumination proposed at the site shall be submitted to the County Planning Authority for approval in writing. These details shall include the height of all lighting, the intensity of lighting (specified in Lux levels), spread of light, including approximate light spillage levels (in metres), and any measures proposed to minimise impact of the floodlighting or disturbance through glare (such as shrouding) and the times when such lighting will be used. The approved scheme shall be implemented for the duration of the development. No lighting or illumination shall be affixed to or emitted from the chimney stack higher than the level of the boiler house roof. Any lighting that is fixed to the chimney stack shall relate to emissions monitoring only and shall be switched off when not in use.

#### *Nature Conservation Management Plan*

17 No development shall commence on site until details of a Nature Conservation Management Plan (NCMP) have been submitted to and approved in writing by the County Planning Authority. The approved NCMP shall be implemented for the duration of the development. The NCMP shall address the following issues:

- i. A habitat management strategy which addresses the ongoing maintenance schedule of the site (including receptor habitats) for the benefit of biodiversity.
- ii. Particular reference shall be made to address the enrichment of the receptor sites for reptiles (e.g. through the provision of compost piles to encourage invertebrate prey for slow-worms) in order to maintain flower-rich grassland in preference to nettle and scrub. Particular reference to be made to management procedures to maintain favourable habitat for slow-worms in the linking habitat corridor across the Sewage Treatment Site access.
- iii. A lighting strategy to demonstrate minimisation of light pollution from the development with regards to foraging/commuting bats.
- iv. An ongoing management strategy to ensure the functional integrity of the buffer area including the rows of poplar trees on the eastern portion of the site: to include tree management/planting measures to ensure Middle Covert is protected.
- v. Details of all biodiversity monitoring.
- vi. The works prescribed in this condition shall incorporate any mitigation measures that have been proposed, agreed or implemented pursuant to condition 39).

### *Pollution*

18 If during development or site remediation, contamination not previously identified in the site investigation report is found to be present at the site then no further development shall be carried out until the developer has submitted an addendum to the Method Statement of the CEMP (refer condition 6) and obtained written approval from the County Planning Authority for it. This addendum to the Method Statement shall detail how this unsuspected contamination shall be dealt with and the timescales within which those works will be undertaken and shall be implemented as approved.

19 Within three months of completion of the remediation detailed in the Method Statement of the CEMP (and addendum, as applicable) a report shall be submitted to the County Planning Authority that provides verification that the required contamination remediation works have been carried out in accordance with the approved Method Statement(s). Post remediation sampling and monitoring results shall be included in the report to demonstrate that the required remediation has been fully met. Future monitoring proposals and reporting shall also be detailed in the report and implemented as approved in writing by the County Planning Authority. The development hereby approved shall not be operated unless this condition is discharged in writing by the County Planning Authority.

20 Clean, uncontaminated rock, subsoil, brick rubble, crushed concrete and ceramic only shall be permitted as infill materials.

### *Emissions*

21 Prior to the operation of the development hereby approved, details of the type of vehicle alarms to be used by on-site plant and vehicles shall be submitted to and approved in writing by the County Planning Authority. Only such approved alarms shall be used for the duration of the development.

22 All vehicles, plant and machinery operated solely within the site shall be maintained in accordance with the manufacturer's specification at all times, this shall include the fitting and use of effective silencers.

23 Prior to the operation of the development hereby approved a scheme for the management and mitigation of dust shall be submitted in writing for the written approval of the County Planning Authority. The approved scheme shall be implemented for the duration of the development.

24 All doors to the building shall be kept closed except to allow entry and exit.

25 No handling, deposit, processing, storage or transfer of waste shall take place outside the confines of the buildings hereby approved.

### *Noise*

26 Throughout duration of operations of the development hereby approved noise from the site shall not exceed the levels set out below at the receptor locations identified at Figure 12.1 of the Environmental Statement, Volume 1, Main Report when measured in terms of an LAeq 1 hr level (free field) based on the BS4142 rating levels plus 5dB, between the hours of 07.00 and 22.00:

- Manor Lane: LAeq, 1-hour 37 dB.
- Crown Lane: LAeq, 1-hour 46 dB.
- Walton Road: LAeq, 1-hour 39 dB.

- Ryeland Lane: LAeq, 1-hour 35 dB.

27 Throughout operation of the development hereby approved noise from the site shall not exceed the levels set out below at the receptor locations identified at Figure 12.1 of the Environmental Statement, Volume 1, Main Report when measured in terms of night time criteria levels (5-minutes), based on the BS4142 rating level plus 5dB between the hours of 22.00 and 07.00:

- Manor Lane: LAeq, 5-min 35dB
- Crown Lane: LAeq, 5-min 39dB
- Walton Road: LAeq, 5 min 35dB.
- Ryeland Lane: LAeq, 5-min 35 dB.

28 Noise compliance monitoring shall be undertaken at the four noise sensitive locations identified in conditions 26 and 27 in accordance with the methodology set out in BS4142: 1997 'Method for rating industrial noise affecting mixed residential and industrial areas'. Any prediction calculations necessary to show compliance must report the method of calculation in detail and the reason for using it. The development hereby approved shall not be operated unless a scheme setting out arrangements for such monitoring, including relevant timescales and reporting procedures has been submitted to and approved in writing by the County Planning Authority.

#### *Drainage*

29 There shall be no discharge of foul or contaminated drainage from the development hereby permitted into either the groundwater or any surface waters, whether direct or via soakaways.

30 Surface water from vehicle parking and hard standing areas shall be passed through an interceptor of adequate capacity prior to discharge. Roof drainage shall not be passed through any interceptor.

31 Soakaways shall only be used in areas on site where they would not present risk to groundwater.

32 Water pipes used to serve the development shall not be susceptible to residual contamination on the site and buried services must be laid within a 0.5m surround of clean sand in areas of ash and graphite fill.

33 Notwithstanding the submitted details, no development hereby approved shall commence until details for surface water run-off limitation, surface water drainage and foul water drainage to be implemented throughout the operation of the development have been submitted to and approved in writing by the County Planning Authority. The drainage works shall be completed in accordance with the details and timetable agreed. The surface water drainage channel shall be designed to cope with 1 in 100 year (+30% for climate change) event. In addition, in designing the surface water drainage scheme reference should be made to the Wychavon District Council Supplementary Planning Document that deals with the use, harvesting and disposal of surface water.

34 The development hereby approved shall not operate unless a scheme of maintenance for any ordinary watercourse, culvert or drainage ditch has been submitted to and approved in writing by the County Planning Authority. Such approved scheme of maintenance shall be implemented for the duration of the development.

### *Other Matters*

35 The development hereby approved shall not operate until the operator has demonstrated, in writing, to the County Planning Authority that the connection to the district network has been made to enable electricity generated by the facility to be supplied to the district network.

36 No development hereby approved shall commence until details of clay extraction and consequent management of the extracted materials (associated with the creation of the reduced level development platform) have been submitted to and approved in writing by the County Planning Authority. The clay extraction works shall be completed in accordance with the approved details.

37 No development hereby approved shall commence until details of clay extraction and consequent management of the extracted materials (associated with the creation of the reduced level development platform) have been submitted to and approved in writing by the County Planning Authority. This shall include the levels (above ordnance datum) of the base of the reduced level platform. The clay extraction works shall be completed in accordance with the submitted and approved details.

38 On permanent cessation of the development hereby approved, the operator shall inform the County Planning Authority within 30 days in writing that all operations have ceased. Thereafter the site shall be restored within a period of 24 months in accordance with a scheme to be submitted for the written approval of the County Planning Authority prior to the cessation of operations. This shall include for the removal of all buildings, chimney stack, associated plant, machinery, waste and processed materials from the site.

39 A great crested newt mitigation strategy (the GCN Strategy) shall be submitted to the County Planning Authority for approval in writing prior to the commencement of works on site. The GCN Strategy shall be designed to satisfy Regulation 44(3) (b) of the Habitats Regulations to ensure no negative impact on the local great crested newt population and to provide compensation by small-scale relocation and exclusion of newts, combined with habitat creation or enhancement on-site. This should include details of how great crested newts will be safely removed from the development footprint prior to construction; how the habitats within the site will be enhanced for use by great crested newt and details of a monitoring programme. Implementation of the GCN Strategy shall not be taken as commencement of the development.

## APPEARANCES

### FOR THE APPLICANT:

RICHARD PHILLIPS QC	Instructed by: Axis, Camellia House, 76 Water
MARK WESTMORELAND SMITH	Lane, Wilmslow, Cheshire, SK9 5BB
of Counsel	

They called:

Nicholas Roberts BA(Hons), DipLA, MLI	of Axis
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Jonathan Mason BSc (Hons), DipLA, MLI	of Axis
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Stephen Othen MEng MA CEng MIChemE	Fichter Consulting Engineers Ltd
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### FOR THE COUNTY PLANNING AUTHORITY:

JOHN HOBSON QC	Instructed by: Head of Legal Services, Worcestershire County Council
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He called:

Kirsten Berry BA(Hons) DipTP MRTPI	of Environmental Resources Management Ltd
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### FOR WORCESTERSHIRE RESIDENTS AGAINST INCINERATORS AND LANDFILL (WAIL):

PETER TAYLOR	Solicitor, Partner, DLA Piper UK LLP
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He called:

Louise Brook-Smith BSc (Hons), DipTP FRICS, MRTPI	Brook Smith Consultants Ltd
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Philip Vernon CChem MRSC prof MICME	Chairman of Technical Committee and Director of WAIL Ltd
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INTERESTED PERSONS:

Mr Ian Brough	on behalf of Mr Roy Richardson, local resident
Mr Alan Jones	local resident
Mrs Eve Jones	local resident
Mrs Louise Brooks	local resident
Mr John Holden	Vice Chair of Hartlebury Parish Council
Mr Phillip Oliver	Coordinator, Wyre Forest Friends of the Earth
Councillor Broomfield	County Council for local area
Ms Jane Green	Resident of Coventry

## DOCUMENTS

## CORE DOCUMENTS LIST

## A. Planning Application Documents

REF	DOCUMENT
<b>CD-PA1</b>	Planning Application Document (2 Volumes), Environmental Statement (3 Volumes) and Transport Assessment  i) <a href="http://www.worcestershire.gov.uk/PublicAccess/tdc/DcApplication/application_detailview.aspx?caseno=L1WFA1RY00800associated-documents">http://www.worcestershire.gov.uk/PublicAccess/tdc/DcApplication/application_detailview.aspx?caseno=L1WFA1RY00800associated-documents</a>
	CD-PA1 a) Planning Application Document Volume 1
	CD-PA1 b) Planning Application Document Volume 2
	CD-PA1 c) Environmental Statement Volume 1 – Main Report
	CD-PA1 d) Environmental Statement Volume 2 – Technical Appendices
	CD-PA1 e) Environmental Statement Volume 3 – Non-Technical Summary
	CD-PA1 f) Transport Assessment
<b>CD-PA2</b>	Regulation 19 Submission No.1 – Protected Species Clarification  <a href="http://www.worcestershire.gov.uk/upload/publicaccess/EfW-AddInfo-ProtectedSpeciesClarificationNote%20(1748).pdf">http://www.worcestershire.gov.uk/upload/publicaccess/EfW-AddInfo-ProtectedSpeciesClarificationNote%20(1748).pdf</a>
<b>CD-PA3</b>	Green Belt Synopsis  <a href="http://www.worcestershire.gov.uk/upload/publicaccess/EfW-AddInfo-GreenBeltSynopsis%20(1749).pdf">http://www.worcestershire.gov.uk/upload/publicaccess/EfW-AddInfo-GreenBeltSynopsis%20(1749).pdf</a>
<b>CD-PA4</b>	Regulation 19 Submission No.2a – Revised Non-Technical Summary
<b>CD-PA5</b>	Regulation 19 Submission No.2b – Grid Connection
<b>CD-PA6</b>	Regulation 19 Submission No.3a – Heat Off-take Connection
<b>CD-PA7</b>	Regulation 19 Submission No.3b – Great Crested Newt Impact

	Assessment
<b>CD-PA8</b>	Report to Planning and Regulatory Committee – Tuesday 1 March 2011 and Minutes
<b>CD-PA9</b>	Consultation responses received in connection with the planning application (consultees and WAIL)
	CD-PA9 a) Western Power Distribution (formerly Central Networks)
	CD-PA9 b) Government Office West Midlands
	CD-PA9 c) Wolverhampton Halfpenny Green Airport
	CD-PA9 d) National Grid
	CD-PA9 e) Hampton Lovett and Westwood Parish Council
	CD-PA9 f) Highways Agency
	CD-PA9 g) Hereford and Worcester Fire and Rescue Service
	CD-PA9 h) Elmbridge Parish Council
	CD-PA9 i) West Midlands Leaders Board
	CD-PA9 j) County Councillor Maurice Broomfield
	CD-PA9 k) Stourport Town Council
	CD-PA9 l) Worcestershire Primary Care Trust
	CD-PA9 m) Wychavon District Council - EHO
	CD-PA9 n) Ombersley and Doverdale Parish Council
	CD-PA9 o) Rushock Parish Council
	CD-PA9 p) Hartlebury Parish Council
	CD-PA9 q) Worcestershire Wildlife Trust
	CD-PA9 r) Natural England
	CD-PA9 s) Natural England (second response)
	CD-PA9 t) Environment Agency
	CD-PA9 u) Wychavon District Council
	CD-PA9 v) Elmley Lovett Parish Council
	CD-PA9 w) Stone Parish Council
	CD-PA9 x) Chaddersley Corbett Parish Council
	CD-PA9 y) Health and Safety Executive (HSE)
	CD-PA9 z) County Archaeologist
	CD-PA9 aa) Wyre Forest District Council
	CD-PA9 bb) County Engineer – Environmental Services
	CD-PA9 cc) Upton Warren Parish Council
	CD-PA9 dd) Wychavon District Council - Land Drainage Officer
	CD-PA9 ee) English Heritage
	CD-PA9 ff) County Landscape Officer
	CD-PA9 gg) County Ecologist
	CD-PA9 hh) WAIL First Objection (July 2010)
<b>CD-PA10</b>	AXIS responses to consultees and WAIL
	CD-PA10 a) AXIS response to Wychavon DC Objection (23

	August 2010)
	CD-PA10 b) AXIS response to WAIL First Objection (2 September 2010)
	CD-PA10 c) AXIS response to Natural England Objection (13 September 2010)
	CD-PA10 d) AXIS response to County Council comments on architecture (15 October 2010)
	CD-PA10 e) AXIS response to County Council comments on landscape (3 November 2010)
	CD-PA10 f) AXIS second response to County Council comments on architecture (15 November 2010)
<b>CD-PA11</b>	Consultation responses received in connection with Regulation 19 Submission No.1 - Protected Species Clarification and the Green Belt Synopsis and AXIS responses
	CD-PA11 a) Wolverhampton Halfpenny Green Airport
	CD-PA11 b) Highways Agency
	CD-PA11 c) County Landscape Officer
	CD-PA11 d) English Heritage
	CD-PA11 e) Wyre Forest District Council
	CD-PA11 f) WAIL Second Objection (November 2010)
	CD-PA11 g) AXIS response to WAIL Second Objection (1 December 2010)
<b>CD-PA12</b>	Consultation responses received in connection with Regulation 19 Submission No.2a and 2b
	CD-PA12 a) Central Networks
	CD-PA12 b) Natural England
<b>CD-PA13</b>	Consultation responses received in connection with Regulation 19 Submission No. 3a and 3b
	CD-PA13 a) Environment Agency
	CD-PA13 b) Mr Casey
	CD-PA13 c) Natural England
	CD-PA13 d) Worcestershire County Council
	CD-PA13 e) Unused

## B. Development Plan Documents and Emerging Development Plan Documents

REF	DOCUMENT
<b>CD-DP1</b>	Regional Spatial Strategy (RSS) for the West Midlands including Phase 1 Revisions (January 2008)  <a href="http://www.wmra.gov.uk/documents/RSS%20Full%20Doc%20Jan%2008.pdf">http://www.wmra.gov.uk/documents/RSS%20Full%20Doc%20Jan%2008.pdf</a>

<b>CD-DP2</b>	<p>The Worcestershire County Structure Plan 1996-2011 – Saved Policies (June 2011)</p> <p><a href="http://www.worcestershire.gov.uk/cms/environment-and-planning/strategic-planning/structure-plan.aspx">http://www.worcestershire.gov.uk/cms/environment-and-planning/strategic-planning/structure-plan.aspx</a></p>
<b>CD-DP3</b>	<p>The Wychavon District Local Plan – Saved Policies (June 2006)</p> <p><a href="http://www.wychavon.gov.uk/cms/pdf/wdc-planning-lp-plan-local_plan2-for-web.pdf">http://www.wychavon.gov.uk/cms/pdf/wdc-planning-lp-plan-local_plan2-for-web.pdf</a></p>
<b>CD-DP4</b>	<p>Regional Spatial Strategy (RSS) for the West Midlands Phase 2 Revision</p> <p><a href="http://www.wmra.gov.uk/Planning_and_Regional_Spatial_Strategy/RSS_Revision/RSS_Revision_Phase_2/Preferred_Option.aspx">http://www.wmra.gov.uk/Planning_and_Regional_Spatial_Strategy/RSS_Revision/RSS_Revision_Phase_2/Preferred_Option.aspx</a></p>
	<p>CD-DP4 a)</p> <p>West Midlands RSS Phase Two Revision Report of the Panel (September 2009)</p> <p><a href="http://www.wmra.gov.uk/documents/wmrssphase2panelreport.pdf">http://www.wmra.gov.uk/documents/wmrssphase2panelreport.pdf</a></p>
	<p>CD-DP4 b)</p> <p>West Midlands RSS Phase Two Revision Addendum to Panel Report</p> <p><a href="http://www.wmra.gov.uk/documents/66054_Final%20Addendum.pdf">http://www.wmra.gov.uk/documents/66054_Final%20Addendum.pdf</a></p>
<b>CD-DP5</b>	<p>Emerging Worcestershire Waste Core Strategy Submission Document (June 2011)</p> <p><a href="http://www.worcestershire.gov.uk/cms/pdf/WCStrategy%20submission%20document%2005%2007%202011.pdf">http://www.worcestershire.gov.uk/cms/pdf/WCStrategy%20submission%20document%2005%2007%202011.pdf</a></p>
	<p>CD-DP5 a) Emerging Worcestershire Waste Core Strategy Addendum to the Submission Document (October 2011)</p> <p><a href="http://www.worcestershire.gov.uk/cms/pdf/WCS%20Addendum%20to%20Submission%20Document.pdf">http://www.worcestershire.gov.uk/cms/pdf/WCS%20Addendum%20to%20Submission%20Document.pdf</a></p>

<b>CD-DP6</b>	Emerging Worcestershire Waste Core Strategy Background Document – Arisings and Capacity (16 June 2011)  <a href="http://www.worcestershire.gov.uk/cms/pdf/2011-06-16%20Arisings%20and%20capacity.pdf">http://www.worcestershire.gov.uk/cms/pdf/2011-06-16%20Arisings%20and%20capacity.pdf</a>
	CD-DP6 a) Addendum to Arisings and Capacity (16 August 2011)  <a href="http://www.worcestershire.gov.uk/cms/pdf/2011%2008%2015%20Addendumto%20Arisings%20and%20Capacity.pdf">http://www.worcestershire.gov.uk/cms/pdf/2011%2008%2015%20Addendumto%20Arisings%20and%20Capacity.pdf</a>
	CD-DP6 b) Annex A to Arisings and Capacity (3 October 2011)  <a href="http://www.worcestershire.gov.uk/cms/pdf/2011%2009%2020%20Annex%20to%20Arisings%20and%20Capacity%20-%20calculations%20for%20Zero%20Waste.pdf">http://www.worcestershire.gov.uk/cms/pdf/2011%2009%2020%20Annex%20to%20Arisings%20and%20Capacity%20-%20calculations%20for%20Zero%20Waste.pdf</a>
<b>CD-DP7</b>	Emerging Worcestershire Waste Core Strategy Background Document – Identifying Areas of Search (21 March 2011)  <a href="http://www.worcestershire.gov.uk/cms/pdf/2011%2003%2021%20Areas%20of%20Search.pdf">http://www.worcestershire.gov.uk/cms/pdf/2011%2003%2021%20Areas%20of%20Search.pdf</a>
<b>CD-DP8</b>	South Worcestershire Development Plan (SWDP) Public Consultation Document (September 2011)  <a href="http://www.swdevelopmentplan.org/wp-content/uploads/2011/09/SWDP_PO_Main_Document_2011.pdf">http://www.swdevelopmentplan.org/wp-content/uploads/2011/09/SWDP_PO_Main_Document_2011.pdf</a>

### C. National Planning Policy

REF	DOCUMENT
<b>CD-NPP1</b>	Planning Policy Statement 1: Delivering Sustainable Development (PPS1)  <a href="http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningpolicystatement1.pdf">http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningpolicystatement1.pdf</a>
<b>CD-NPP2</b>	The Planning System: General Principles - annexed to PPS1 Delivering Sustainable Development

	<a href="http://www.communities.gov.uk/documents/planningandbuilding/pdf/147396.pdf">http://www.communities.gov.uk/documents/planningandbuilding/pdf/147396.pdf</a>
<b>CD-NPP3</b>	<p>Planning Policy Statement: Planning and Climate Change - Supplement to Planning Policy Statement 1 (PPS1 Supplement)</p> <p><a href="http://www.communities.gov.uk/documents/planningandbuilding/pdf/ppsclimatechange.pdf">http://www.communities.gov.uk/documents/planningandbuilding/pdf/ppsclimatechange.pdf</a></p>
<b>CD-NPP4</b>	<p>Planning Policy Guidance 2: Green Belts (PPG2)</p> <p><a href="http://www.communities.gov.uk/documents/planningandbuilding/pdf/155499.pdf">http://www.communities.gov.uk/documents/planningandbuilding/pdf/155499.pdf</a></p>
<b>CD-NPP5</b>	<p>Planning Policy Statement 4: Planning for Sustainable Economic Growth (PPS4)</p> <p><a href="http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningpolycystatement4.pdf">http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningpolycystatement4.pdf</a></p>
<b>CD-NPP6</b>	<p>Planning Policy Statement 5: Planning for the Historic Environment (PPS5)</p> <p><a href="http://www.communities.gov.uk/documents/planningandbuilding/pdf/1514132.pdf">http://www.communities.gov.uk/documents/planningandbuilding/pdf/1514132.pdf</a></p>
<b>CD-NPP7</b>	<p>Planning Policy Statement 9: Biodiversity and Geological Conservation (PPS9)</p> <p><a href="http://www.communities.gov.uk/documents/planningandbuilding/pdf/147408.pdf">http://www.communities.gov.uk/documents/planningandbuilding/pdf/147408.pdf</a></p>
<b>CD-NPP8</b>	<p>Planning Policy Statement 10: Planning for Sustainable Waste Management (PPS10)</p> <p><a href="http://www.communities.gov.uk/documents/planningandbuilding/pdf/1876202.pdf">http://www.communities.gov.uk/documents/planningandbuilding/pdf/1876202.pdf</a></p>
<b>CD-NPP9</b>	<p>Planning for Sustainable Waste Management: Companion Guide to Planning Policy Statement 10 (PPS10 Companion Guide)</p>

	<a href="http://www.communities.gov.uk/documents/planningandbuilding/pdf/150805.pdf">http://www.communities.gov.uk/documents/planningandbuilding/pdf/150805.pdf</a>
<b>CD-NPP10</b>	Chief Planning Officer letter of 31 March 2011 - Update to PPS10  <a href="http://www.communities.gov.uk/documents/planningandbuilding/pdf/1876312.pdf">http://www.communities.gov.uk/documents/planningandbuilding/pdf/1876312.pdf</a>
<b>CD-NPP11</b>	Planning Policy Statement 22: Renewable Energy (PPS22)  <a href="http://www.communities.gov.uk/documents/planningandbuilding/pdf/147444.pdf">http://www.communities.gov.uk/documents/planningandbuilding/pdf/147444.pdf</a>
<b>CD-NPP12</b>	Planning for Renewable Energy: A Companion Guide to PPS22 (PPS22 Companion Guide)  <a href="http://www.communities.gov.uk/documents/planningandbuilding/pdf/147447.pdf">http://www.communities.gov.uk/documents/planningandbuilding/pdf/147447.pdf</a>
<b>CD-NPP13</b>	Planning Policy Statement 23: Planning and Pollution Control (PPS23)  <a href="http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningpolicystatement23.pdf">http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningpolicystatement23.pdf</a>
<b>CD-NPP14</b>	Overarching National Policy Statement for Energy (EN-1) July 2011 (NPS EN-1)  <a href="http://www.decc.gov.uk/assets/decc/11/meeting-energy-demand/consents-planning/nps2011/1938-overarching-nps-for-energy-en1.pdf">http://www.decc.gov.uk/assets/decc/11/meeting-energy-demand/consents-planning/nps2011/1938-overarching-nps-for-energy-en1.pdf</a>
<b>CD-NP14A</b>	DCLG 'Dear Chief Planning Officer' Letter of 9 <sup>th</sup> November 2009 regarding National Policy Statements
<b>CD-NPP15</b>	National Policy Statement for Renewable Energy Infrastructure (EN-3) July 2011 (NPS EN-3)  <a href="http://www.decc.gov.uk/assets/decc/11/meeting-energy-demand/consents-planning/nps2011/1940-nps-renewable-energy-en3.pdf">http://www.decc.gov.uk/assets/decc/11/meeting-energy-demand/consents-planning/nps2011/1940-nps-renewable-energy-en3.pdf</a>



**D. Draft National Policy**

REF	DOCUMENT
<b>CD-DNP1</b>	Planning Policy Statement: (Consultation) Planning for a Low Carbon Future in a Changing Climate (draft Low Carbon PPS)  <a href="http://www.communities.gov.uk/documents/planningandbuilding/pdf/1499780.pdf">http://www.communities.gov.uk/documents/planningandbuilding/pdf/1499780.pdf</a>
<b>CD-DNP2</b>	Draft National Planning Policy Framework July 2011 (draft NPPF)  <a href="http://www.communities.gov.uk/documents/planningandbuilding/pdf/1951811.pdf">http://www.communities.gov.uk/documents/planningandbuilding/pdf/1951811.pdf</a>

**E. Waste Strategies and Legislation**

REF	DOCUMENT
<b>CD-WSL1</b>	Revised Waste Framework Directive (2008/98/EC)  <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:312:0003:0003:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:312:0003:0003:EN:PDF</a>
<b>CD-WSL2</b>	SI2011/988, The Waste (England and Wales) Regulations 2011 (Waste Regulations 2011)  <a href="http://www.legislation.gov.uk/ukxi/2011/988/pdfs/ukxi_20110988_en.pdf">http://www.legislation.gov.uk/ukxi/2011/988/pdfs/ukxi_20110988_en.pdf</a>
<b>CD-WSL3</b>	Environmental Permitting Regulations (England and Wales) 2010 (EPR 2010)  <a href="http://www.legislation.gov.uk/ukxi/2010/675/pdfs/ukxi_20100675_en.pdf">http://www.legislation.gov.uk/ukxi/2010/675/pdfs/ukxi_20100675_en.pdf</a>
<b>CD-WSL4</b>	Government Review of Waste Policy in England (June 2011) (Waste Review 2011)  <a href="http://www.defra.gov.uk/publications/files/pb13540-waste-policy-review110614.pdf">http://www.defra.gov.uk/publications/files/pb13540-waste-policy-review110614.pdf</a>

<b>CD-WSL5</b>	Waste Strategy for England 2007 (WSE 2007)  <a href="http://archive.defra.gov.uk/environment/waste/strategy/strategy07/documents/waste07-strategy.pdf">http://archive.defra.gov.uk/environment/waste/strategy/strategy07/documents/waste07-strategy.pdf</a>
<b>CD-WSL6</b>	Guidelines on the Interpretation of the R1 Energy Efficiency Formula  <a href="http://ec.europa.eu/environment/waste/framework/pdf/guidance.pdf">http://ec.europa.eu/environment/waste/framework/pdf/guidance.pdf</a>
<b>CD-WSL7</b>	The Joint Municipal Waste Management Strategy for Herefordshire and Worcestershire 2004-2034 First Review (November 2009) (JMWMS)  <a href="http://www.herefordshire.gov.uk/docs/Environment/waste_strategy_headline_strategy.pdf">http://www.herefordshire.gov.uk/docs/Environment/waste_strategy_headline_strategy.pdf</a>
<b>CD-WSL8</b>	Briefing Note on Qualifying for R1 status using the R1 energy efficiency formula  <a href="http://publications.environment-agency.gov.uk/PDF/GEHO0911BUGD-E-E.pdf">http://publications.environment-agency.gov.uk/PDF/GEHO0911BUGD-E-E.pdf</a>

## F. Energy / Renewables Strategies and Legislation

<b>REF</b>	<b>DOCUMENT</b>
<b>CD-ESL1</b>	Energy White Paper 'Meeting The Energy Challenge' (May 2007)  <a href="http://www.decc.gov.uk/assets/decc/publications/white_paper_07/file39387.pdf">http://www.decc.gov.uk/assets/decc/publications/white_paper_07/file39387.pdf</a>
<b>CD-ESL2</b>	UK Biomass Strategy (May 2007)  <a href="http://www.decc.gov.uk/assets/decc/what%20we%20do/uk%20energy%20supply/energy%20mix/renewable%20energy/explained/bioenergy/policy_strat/1_20091021164854_e_@@_ukbiomassstrategy.pdf">http://www.decc.gov.uk/assets/decc/what%20we%20do/uk%20energy%20supply/energy%20mix/renewable%20energy/explained/bioenergy/policy_strat/1_20091021164854_e_@@_ukbiomassstrategy.pdf</a>
<b>CD-ESL3</b>	The UK Renewable Energy Strategy (July 2009)

	<a href="http://www.decc.gov.uk/assets/decc/what%20we%20do/uk%20energy%20supply/energy%20mix/renewable%20energy/renewable%20energy%20strategy/1_20090717120647_e_@@_theukrenewableenergystrategy2009.pdf">http://www.decc.gov.uk/assets/decc/what%20we%20do/uk%20energy%20supply/energy%20mix/renewable%20energy/renewable%20energy%20strategy/1_20090717120647_e_@@_theukrenewableenergystrategy2009.pdf</a>
<b>CD-ESL4</b>	The UK Low Carbon Transition Plan (July 2009)  <a href="http://www.decc.gov.uk/assets/decc/white%20papers/uk%20low%20carbon%20transition%20plan%20wp09/1_20090724153238_e_@@_lowcarbontransitionplan.pdf">http://www.decc.gov.uk/assets/decc/white%20papers/uk%20low%20carbon%20transition%20plan%20wp09/1_20090724153238_e_@@_lowcarbontransitionplan.pdf</a>
<b>CD-ESL5</b>	UK Renewable Energy Roadmap (July 2011)  <a href="http://www.decc.gov.uk/assets/decc/11/meeting-energy-demand/renewable-energy/2167-uk-renewable-energy-roadmap.pdf">http://www.decc.gov.uk/assets/decc/11/meeting-energy-demand/renewable-energy/2167-uk-renewable-energy-roadmap.pdf</a>
<b>CD-ESL6</b>	Renewable Energy Capacity Study for the West Midlands (March 2011)  <a href="http://www.telford.gov.uk/site/scripts/download_info.aspx?fileID=2884&amp;categoryID=200105">http://www.telford.gov.uk/site/scripts/download_info.aspx?fileID=2884&amp;categoryID=200105</a>

## G. Environmental Permit

REF	DOCUMENT
<b>CD-EP1</b>	Environmental Permit Number EPR/XP3935TX and Environment Agency Decision Document

## H. Relevant Inquiry Decisions / Appeal Decisions

REF	DOCUMENT
<b>CD-ID1</b>	East Northants (King's Cliffe) - Secretary of State letter dated 24 May 2011 and conclusions of the Inspector's Report dated 16 February 2011 (PINS Ref: APP/K2800/A/10/2126938)  <a href="http://www.pcs.planningportal.gov.uk/pcsportal/fscdav/READONLY?OBJ=COO.2036.300.12.3133906&amp;NAME=/11-05-24%20IR%20Resource%20Management%20Facility%20King's%20Cliffe%202126938.pdf">http://www.pcs.planningportal.gov.uk/pcsportal/fscdav/READONLY?OBJ=COO.2036.300.12.3133906&amp;NAME=/11-05-24%20IR%20Resource%20Management%20Facility%20King's%20Cliffe%202126938.pdf</a>

<b>CD-ID2</b>	<p>Ince Marshes, Cheshire - Secretary of State letter dated 11 August 2009 and conclusions of the Inspector's Report dated 3 October 2008 (DBERR Ref: 01.08.10.04/36C and PINS Ref: APP/Z0645/A/07/2059609)</p> <p><a href="http://www.pcs.planningportal.gov.uk/pcsportal/fscdav/READONLY?OBJ=COO.2036.300.12.1139160&amp;NAME=/09-08-11%20IR%20Land%20adj%20to%20Manchester%20Ship%20Canal%202059609.pdf">http://www.pcs.planningportal.gov.uk/pcsportal/fscdav/READONLY?OBJ=COO.2036.300.12.1139160&amp;NAME=/09-08-11%20IR%20Land%20adj%20to%20Manchester%20Ship%20Canal%202059609.pdf</a></p>
<b>CD-ID3</b>	<p>St Dennis, Cornwall - Secretary of State letter dated 19 May 2011 and conclusions of the Inspector's Report dated 3 March 2011 (PINS Ref: APP/D0840/A/09/2113075)</p> <p><a href="http://www.pcs.planningportal.gov.uk/pcsportal/fscdav/READONLY?OBJ=COO.2036.300.12.3119717&amp;NAME=/Decision.pdf">http://www.pcs.planningportal.gov.uk/pcsportal/fscdav/READONLY?OBJ=COO.2036.300.12.3119717&amp;NAME=/Decision.pdf</a></p>
<b>CD-ID4</b>	<p>Port of Garston, Liverpool - Inspector's Report dated 5 October 2010 (PINS Ref: APP/Z4310/A/09/2117527)</p> <p><a href="http://www.pcs.planningportal.gov.uk/pcsportal/fscdav/READONLY?OBJ=COO.2036.300.12.2399689&amp;NAME=/2117527%20Decision.pdf">http://www.pcs.planningportal.gov.uk/pcsportal/fscdav/READONLY?OBJ=COO.2036.300.12.2399689&amp;NAME=/2117527%20Decision.pdf</a></p>
<b>CD-ID5</b>	<p>Sevenside, South Gloucestershire - Secretary of State letter dated 15 September 2011, relevant extracts and conclusions of the Inspectors Report dated 18 July 2011 (PINS Ref: APP/P0119/A/10/2140199)</p> <p><a href="http://www.pcs.planningportal.gov.uk/pcsportal/fscdav/READONLY?OBJ=COO.2036.300.12.3499746&amp;NAME=/11-09-15%20IR%20Sevenside%20Works%20Hallen%202140199.pdf">http://www.pcs.planningportal.gov.uk/pcsportal/fscdav/READONLY?OBJ=COO.2036.300.12.3499746&amp;NAME=/11-09-15%20IR%20Sevenside%20Works%20Hallen%202140199.pdf</a></p>
<b>CD-ID6</b>	<p>Avonmouth, Bristol - Secretary of State letter dated 6 April 2011 and conclusions of the Inspector's Report dated 3 February 2011 (PINS Ref: APP/Z0116/A/10/2132394 )</p> <p><a href="http://www.pcs.planningportal.gov.uk/pcsportal/fscdav/READONLY?OBJ=COO.2036.300.12.3001411&amp;NAME=/11-04-06%203-in-1%20Sevalco%20Site%20North%202132394.pdf">http://www.pcs.planningportal.gov.uk/pcsportal/fscdav/READONLY?OBJ=COO.2036.300.12.3001411&amp;NAME=/11-04-06%203-in-1%20Sevalco%20Site%20North%202132394.pdf</a></p>
<b>CD-ID7</b>	<p>Eastcroft, Nottingham - Secretary of State letter dated 12 February 2009 and conclusions of the Inspector's Report dated 10 December 2008 (PINS Ref: APP/Q3060/A/08/2063129)</p>

	<a href="http://www.pcs.planningportal.gov.uk/pcsportal/fscdav/READONLY?OBJ=COO.2036.300.12.608449&amp;NAME=/09-02-12%20IR%20Eastcroft%20EfW%20Facility%20Nottingham.pdf">http://www.pcs.planningportal.gov.uk/pcsportal/fscdav/READONLY?OBJ=COO.2036.300.12.608449&amp;NAME=/09-02-12%20IR%20Eastcroft%20EfW%20Facility%20Nottingham.pdf</a>
<b>CD-ID8</b>	<p>Belvedere, Bexley - Secretary of State letter dated 15 June 2006 (Ref: GDBC/C/003/00001)</p> <p><a href="https://www.og.decc.gov.uk/EIP/pages/projects/RiversideDecisionConsent.pdf">https://www.og.decc.gov.uk/EIP/pages/projects/RiversideDecisionConsent.pdf</a></p>
<b>CD-ID9</b>	<p>Ineos Chlor, Runcorn - Secretary of State letter dated 16 September 2008 (DBERR Ref: 01.08.10.04/8C)</p> <p><a href="https://www.og.decc.gov.uk/EIP/pages/projects/IneosDecisionConsent.pdf">https://www.og.decc.gov.uk/EIP/pages/projects/IneosDecisionConsent.pdf</a></p>
<b>CD-ID10</b>	<p>Rookery South Resource Recovery Facility - IPC Panel's Decision and Statement of Reasons dated 13 October 2011 (IPC Reference EN0100011)</p> <p><a href="http://infrastructure.independent.gov.uk/wp-content/ipc/uploads/projects/EN010011/2.%20Post-Submission/Procedural%20Decisions/Statement%20of%20Reasons.pdf">http://infrastructure.independent.gov.uk/wp-content/ipc/uploads/projects/EN010011/2.%20Post-Submission/Procedural%20Decisions/Statement%20of%20Reasons.pdf</a></p>
<b>CD-ID11</b>	<p>Wind turbine development at Brine Pits Farm, Wychbold, Wychavon - Wychavon District Council Planning Approval Notice dated 11 December 2008 (LPA Ref: W/08/02650/PN)</p> <p><a href="http://81.171.139.151/WAM/doc/Decision-590619.pdf?extension=.pdf&amp;id=590619&amp;location=volume2&amp;appid=1001&amp;contentType=application/pdf&amp;pageCount=4">http://81.171.139.151/WAM/doc/Decision-590619.pdf?extension=.pdf&amp;id=590619&amp;location=volume2&amp;appid=1001&amp;contentType=application/pdf&amp;pageCount=4</a></p> <p>Wychavon District Council Committee Report dated 11 December 2008</p> <p><a href="http://81.171.139.151/WAM/doc/Committee%20Report%20(Final)-586856.doc?extension=.doc&amp;id=586856&amp;location=volume2&amp;appid=1001&amp;contentType=application/msword&amp;pageCount=1">http://81.171.139.151/WAM/doc/Committee%20Report%20(Final)-586856.doc?extension=.doc&amp;id=586856&amp;location=volume2&amp;appid=1001&amp;contentType=application/msword&amp;pageCount=1</a></p>
<b>CD-ID12</b>	Unused

**I. Other Documents**

<b>REF</b>	<b>DOCUMENT</b>
<b>CD-OD1</b>	Chief Planning Officer letter of 31 March 2011 and Written Ministerial Statement: Planning for Growth of 23 March 2011  <a href="http://www.communities.gov.uk/documents/planningandbuilding/pdf/1878047.pdf">http://www.communities.gov.uk/documents/planningandbuilding/pdf/1878047.pdf</a>
<b>CD-OD2</b>	Health Protection Agency statement – 'The Impact on Health of Emissions to Air from Municipal Waste Incinerators' (September 2009)  <a href="http://www.hpa.org.uk/ProductsServices/ChemicalsPoisons/IntegratedPollutionPreventionControlIPPC/ippcIncineration/">http://www.hpa.org.uk/ProductsServices/ChemicalsPoisons/IntegratedPollutionPreventionControlIPPC/ippcIncineration/</a>

**J. Public Inquiry Documents**

<b>REF</b>	<b>DOCUMENT</b>
<b>CD-PI 1</b>	DCLG (on behalf of the Secretary of State) Call-In Letter 10 May 2011
<b>CD-PI 2</b>	Statement of Case on behalf of the Applicant (July 2011)
<b>CD-PI 3</b>	Statement of Case on behalf of Worcestershire County Council (July 2011)
<b>CD-PI 4</b>	Statement of Case on behalf of WAIL (July 2011)
<b>CD-PI 5</b>	Statement of Common Ground 1 (July 2011)
<b>CD-PI 6</b>	Planning Inspector's Notes of Pre-Inquiry Meeting dated 23 August 2011
<b>CD-PI 7</b>	Statement of Common Ground 2 (September 2011)
<b>CD-PI 8</b>	Site Visit Itinerary
<b>CD-PI 9</b>	Draft Conditions as at 30 <sup>th</sup> November 2011
<b>CD-PI 9A</b>	Revised Conditions ('KK' and 'MM')

## K. Proofs of Evidence and Other Documents Submitted During the Inquiry by Mercia Waste Management

REF	DOCUMENT
<b>CD-MWM1</b>	Proof of Evidence of Nicholas Roberts (Planning Policy and Need / Benefits)
<b>CD-MWM2</b>	Appendices to Proof of Evidence of Nicholas Roberts
<b>CD-MWM3</b>	Summary Proof of Evidence of Nicholas Roberts
<b>CD-MWM4</b>	Proof of Evidence of Stephen Othen (Technical Evidence)
<b>CD-MWM5</b>	Appendices to Proof of Evidence of Stephen Othen
<b>CD-MWM6</b>	Summary Proof of Evidence of Stephen Othen
<b>CD-MWM7</b>	Proof of Evidence of Jonathan Mason (Landscape and Visual Impact)
<b>CD-MWM8</b>	Appendices to Proof of Evidence of Jonathan Mason
<b>CD-MWM9</b>	Summary Proof of Evidence of Jonathan Mason
<b>CD-MWM10</b>	Rebuttal Proof of Evidence Nicholas Roberts (Planning Policy and Need / Benefits)
<b>CD-MWM11</b>	Rebuttal Proof of Evidence Stephen Othen (Technical Evidence)
<b>CD-MWM12</b>	Written Statement in Response to Mr. Terence J. Harrop (WAIL 5)
<b>CD-MWM13</b>	Matters Relating to Restricted Covenants at Site Located at Ravensbank, Bromsgrove
<b>CD-MWM14</b>	Response to Submission of Mr Casy Relating to Great Crested Newts (CD-PA13b)
<b>CD-MWM15</b>	Extracts from Commercial and Industrial Waste in England: Statement of Aims and Actions 2009 (Defra, October 2009)
<b>CD-MWM16</b>	Extracts from The Economics of Waste and Waste Policy (Defra, June 2011)
<b>CD-MWM17</b>	Extracts from Gate Fees Report: Comparing the Cost of Alternative Waste Treatment Options (Wrap, 2011)
<b>CD-MWM18</b>	Further Extracts from, Anaerobic Digestion Strategy and Action Plan: A Commitment to Increasing Energy From

	Waste through Anaerobic Digestion (Defra)
<b>CD-MWM19</b>	Further Extracts from Guidelines for Landscape and Visual Impact Assessment, Second Edition (The Landscape Institute with the Institute of Environmental Management and Assessment)
<b>CD-MWM20</b>	Wychavon DC's Refusal of Planning Permission for Further Housing at Waresley Park, Hartlebury
<b>CD-MWM21</b>	Further Extracts from Wychavon DC's Local Plan, Adopted June 2006
<b>CD-MWM22</b>	The Town and Country Planning (Green Belt) Direction (ODPM, 2005)
<b>CD-MWM23</b>	The Town and Country Planning (Consultation) (England) Direction 2009 (DCLG)
<b>CD-MWM24</b>	Opening Statement
<b>CD-MWM25</b>	Rotherham Metropolitan Borough Council, Planning Permission Conditions ref RB2010/0491 (FUL) (August 2010)
<b>CD-MWM26</b>	Extracts from Worcestershire County Council, Carbon Managements Plan 2011-2016
<b>CD-MWM27</b>	Comments on Letter from Friends of the Earth dated 19 <sup>th</sup> July 2011 (Fichtner)
<b>CD-MWM28</b>	Letter from Herefordshire and Worcestershire Chamber of Commerce produced in response to Mr. Ian Brough's submission on behalf of Mr. Roy Richardson (CD-TP5)
<b>CD-MWM29</b>	Map showing the location of Hartlebury and the Ravensbank Site
<b>CD-MWM30</b>	Fichtner response to Mr. Vernon's Supplementary Proof (WAIL 4A)
<b>CD-MWM31</b>	Letter to the Directors of Mercia Waste Management from Clifford Chance re: Waste Management Service Agreement, dated 30 <sup>th</sup> November 2011
<b>CD-MWM32</b>	Extracts from 'Well Disposed: Responding to the Waste Challenge' Local Government Audit Commission Report, September 2008
<b>CD-MWM33</b>	Closing Submissions
<b>CD-</b>	Mercia Waste Management Response to Wychavon District



<b>MWM34</b>	Council (TP14A & B)
<b>MWM35</b>	Morge (FC) (Appellant) v Hampshire CC (Respondent)

**L. Proofs of Evidence and Other Documents Submitted During the Inquiry by Worcestershire County Council**

<b>REF</b>	<b>DOCUMENT</b>
<b>CD-WCC1</b>	Proof of Evidence of Kirsten Berry
<b>CD-WCC2</b>	Appendices to Proof of Evidence of Kirsten Berry
<b>CD-WCC3</b>	Summary Proof of Evidence of Kirsten Berry
<b>CD-WCC4</b>	Supplementary Proof of Evidence of Kirsten Berry – Additional Regulation 19 Information
<b>CD-WCC5</b>	Opening Statement
<b>CD-WCC6</b>	Annex D, Residual Options Appraisal, Environmental Report (ERM, July 2009) <a href="http://www.worcestershire.gov.uk/cms/pdf/Annex%20D%20Residual%20Options%20Appraisal.pdf">http://www.worcestershire.gov.uk/cms/pdf/Annex%20D%20Residual%20Options%20Appraisal.pdf</a>
<b>CD-WCC7</b>	Summary of Axis representations made in accordance with Regulation 28 (2) on the Waste Core Strategy for Worcestershire Publication Document (Regulation 27)
<b>CD-WCC8</b>	PAS 110:2010 Specification for whole digestate, separated liquor and separated fibre derived from the anaerobic digestion of source-segregated biodegradable materials
<b>CD-WCC9</b>	City of Wakefield MDC – Waste Management PFI: South Kirby Site Planning Application, Planning Supporting Statement (VT Environmental Engineering) (Extract p14)
<b>CD-WCC10</b>	City of Wakefield MDC – Waste Management PFI: South Kirby Site Planning Application, Environmental Statement (VT Environmental Engineering) (Extract p8 - 11)
<b>CD-WCC11</b>	Letter from WCC to Worcester City Council dated 25 <sup>th</sup> November 2011. South Worcestershire Development Plan: Preferred Options Consultation
<b>CD-WCC12</b>	Letter from Mark Middleton (WCC) to All County Councillors re: Proposed EFW Plant at Hartlebury Trading Estate dated 11 <sup>th</sup> May 2010
<b>CD-</b>	Closing Submissions

**WCC13****M. Proofs of Evidence and Other Documents Submitted During the Inquiry by Worcestershire Residents Against Incineration and Landfill (W.A.I.L.)**

<b>REF</b>	<b>DOCUMENT</b>
<b>CD-WAIL1</b>	Proof of Evidence of Louise Brooke-Smith
<b>CD-WAIL2</b>	Appendices to Proof of Evidence of Louise Brooke-Smith
<b>CD-WAIL3</b>	Summary Proof of Evidence of Louise Brooke-Smith
<b>CD-WAIL4</b>	Written Statement Prepared by Philip Vernon on behalf of W.A.I.L.
<b>CD-WAIL4A</b>	Mr. Philip Vernon Supplementary Proof of Evidence (Including Appendices)
<b>CD-WAIL5</b>	Written Statement of Terence J. Harrop (Former Chairman of W.A.I.L.)
<b>CD-WAIL6</b>	Details of Wakefield MBC's Proposed Waste Management Facilities
<b>CD-WAIL7</b>	Energy Statistics – Extract from Dukes Digest UK
<b>CD-WAIL8</b>	Housing and Population Data for Herefordshire and Worcestershire
<b>CD-WAIL9</b>	Presentation to the EPRG Spring Conference by Professor Michael Grubb, Faculty of Economics, Cambridge University
<b>CD-WAIL10</b>	Rufford Colliery, Nottinghamshire – Inspectors Decision and Report via Secretary of State
<b>CD-WAIL11</b>	WCC's Draft TA Contract Negotiation (ENTEC Sep 2009)
<b>CD-WAIL12</b>	Sterecycle Process – Details of Sterecycle Process
<b>CD-WAIL13</b>	Severn Waste Services, Envirecover Facility, EP Application Supporting Information (Fichtner, June 2010)
<b>CD-WAIL14</b>	Opening Statement
<b>CD-WAIL15</b>	Planning Our Electric Future: A White Paper for Secure, Affordable and Low-Carbon Electricity (Dept of Energy and Climate Change, July 2011)
<b>CD-</b>	Closing Submissions

<b>WAIL16</b>	
<b>CD-WAIL17</b>	OOS v Environment Agency
<b>CD-WAIL18</b>	Davies v Dennis and Others

**N. Documents Submitted by Interested Third Parties (Received 14 November onwards)**

<b>REF</b>	<b>DOCUMENT</b>
<b>CD-TP1A</b>	Louise Brookes – Cover Letter
<b>CD-TP1B</b>	Louise Brookes – Environmental Noise and Health in the UK
<b>CD-TP1C</b>	Louise Brookes – Proposed Criteria for the Assessment of Low Frequency Noise Disturbance
<b>CD-TP1D</b>	Louise Brookes – Incinerator Noise
<b>CD-TP1E</b>	Louise Brookes – Extract from Worcestershire Waste Core Strategy Regulation 27 Statement page 77
<b>CD-TP1F</b>	Louise Brookes – Extract from Herefordshire County Council Committee Minutes (7 January 2010)
<b>CD-TP1G</b>	Louise Brookes – Extract from Environmental Statement: Site Selection
<b>CD-TP1H</b>	Louise Brookes – Letter from Phipps and Pritchard LLP to Mrs. Meredith re: Waresley Park, Hartlebury dated 5 <sup>th</sup> July 2010
<b>CD-TP1I</b>	Louise Brookes – Letters from the Environment Agency to Mrs. Meredith (8 <sup>th</sup> November 2010) and Mrs. Brookes (14 <sup>th</sup> November 2010)
<b>CD-TP1J</b>	Louise Brookes – Letter from Caroline Spellman MP to Mrs. Brookes dated 11 <sup>th</sup> October 2011
<b>CD-TP1K</b>	Louise Brookes – Suite of submissions concerning pollution
<b>CD-TP1L</b>	Louise Brookes – Suite of submissions concerning recycling
<b>CD-TP1M</b>	Louise Brookes – Suite of submissions concerning potential problems
<b>CD-TP1N</b>	Louise Brookes – Suite of submissions concerning emissions, health and environment
<b>CD-TP1O</b>	Louise Brookes – Suite of submissions concerning ash.

<b>CD-TP1P</b>	Email to Louise Brookes from Antonia Mochan, EU Commissioner dated 25 <sup>th</sup> October 2011
<b>CD-TP1Q</b>	Louise Brookes - Extracts From Proof of Evidence of Mr. Keith Kondakor from recent Incinerator Inquiry in Shrewsbury
<b>CD-TP1R</b>	Louise Brookes – Third Party Statement
<b>CD-TP2</b>	Mr. Alan Jones
<b>CD-TP3</b>	Ms. Judith Leavesley
<b>CD-TP4</b>	Mr. John Holden (Hartlebury Parish Council)
<b>CD-TP5</b>	Mr. Ian Brough on behalf of Mr. Roy Richardson
<b>CD-TP6</b>	Ms. Jane Green
<b>CD-TP6A</b>	Ms. Jane Green – Submission as delivered
<b>CD-TP7</b>	Cllr. Broomfield
<b>CD-TP8</b>	Mr. Phillip Oliver (Wyre Forest Friends of the Earth)
<b>CD-TP9</b>	Unused
<b>CD-TP10</b>	Mrs. Eve Jones
<b>CD-TP10A</b>	Mrs. Eve Jones – Letter from Arctic Spas dated 17 <sup>th</sup> November 2011
<b>CD-TP10B</b>	Mrs. Eve Jones – Landfill Data Tables
<b>CD-TP10C</b>	Mrs. Eve Jones – Further Documentation referred to 'in passing' during appearance
<b>CD-TP11</b>	Anonymous Representation Received by WCC
<b>CD-TP12</b>	Mr. John Hamilton (Essentially Yours Ltd)
<b>CD-TP13</b>	Mr. S. Mannon
<b>CD-TP14A</b>	Wychavon District Council – Cover Letter to Inspectorate 9 <sup>th</sup> December 2011
<b>CD-TP14B</b>	Wychavon District Council – Committee Minutes November 2011

**O. Documents Received in PINS before Inquiry Opening**

<b>PINS1</b>	Documents Submitted by Interested Third Parties
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## **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.