



**PROOF of EVIDENCE**

**of**

**LOUISE BROOKE-SMITH BSc(Hons), DipTP, FRICS, MRTPI**

**representing**

**WORCESTERSHIRE RESIDENTS AGAINST INCINERATION AND LANDFILL  
(WAIL)**

**CALL IN INQUIRY WITH RESPECT TO PROPOSALS BY MERCIA WASTE  
MANAGEMENT FOR THE ERECTION OF THE MERCIA ENVIRECOVER  
PROPOSALS AT HARTLEBURY, WORCESTERSHIRE  
PLANNING APPLICATION Ref 10/000032  
APPEAL Ref. APP/E1855/V/11/2153273**

**OCTOBER 2011**



**SITE ADDRESS:**  
**Hartlebury, Worcestershire**

**DATE ISSUED: October 2011**

**JOB REFERENCE: 1561/5068**

**EVIDENCE PREPARED BY:**  
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A handwritten signature in grey ink, appearing to read "Louise Brooke-Smith".



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**(i) QUALIFICATIONS AND EXPERIENCE**

*My name is Louise Brooke-Smith and I am Director of Brooke Smith Planning Consultants Ltd., Chartered Planning and Development Consultants based in Birmingham.*

*I hold an Honours Bachelor Degree in Urban Land Economics and a Post Graduate Diploma in Town Planning. I am a Fellow of the Royal Institution of Chartered Surveyors and Professional Member of the Royal Town Planning Institute.*

*Over the past 24 years, I have gained extensive experience of the planning system and have worked within both the public and private sectors before forming my own Consultancy.*

*I have been instructed by Worcestershire Residents Against Incineration and Landfill (referred to here on in as WAIL), to object to the proposals pursued by Mercia Waste Management to create an energy from waste facility on land at Hartlebury, Worcestershire.*

*I have visited the site and surrounding area on a number of occasions.*

*My evidence has been prepared under the jurisdiction of both the Royal Town Planning Institute and the Royal Institution of Chartered Surveyors. As such, the evidence I present includes facts which I regard as being relevant to the opinions which I express. I draw attention to any matter that would affect the validity of those opinions.*

*I confirm that my duty to the Inspector as an expert witness over-rides any duty to those instructing me that I have understood this duty and comply with it, giving my evidence impartially and objectively.*

**(ii) SCOPE OF EVIDENCE**

*Further to the Call-in of the proposals by the Secretary of State, WAIL decided to*

*continue to pursue its objections raised at the application stage of proceedings. This Proof of Evidence expands upon the formal 'Rule 6 Statement of Case' which was presented on behalf of WAIL earlier this year and demonstrates that the proposed development does not accord with fundamental principles as set out in relevant national, regional and local planning policy and guidance and furthermore very exceptional circumstances do not exist to overcome the fundamental non-compliance.*

*While a Statement of Common Ground (SoCG1) has been agreed between the Applicant and Worcestershire County Council (WCC), this understandably reflects the fact that the proposals were supported by the planning authority. Hence a great number of matters are the subject of common agreement between those parties.*

*A second version of the Statement of Common Ground (SoCG2) has been agreed between the Applicant, WCC and WAIL. As such I make only passing comment on the nature of the proposal, the relevant planning history of the site and the relevant national, regional and local policy context, all of which are agreed matters in terms of their existence – although there is some debate as to the weight that should be attached to some emerging documents.*

*SoCG2 was discussed at the Pre-Inquiry Meeting held at County Hall on the 23<sup>rd</sup> August 2011 when a number of issues were resolved.*

*These included agreement that, notwithstanding the submission of a formal Rule 6 Statement which reflected WAIL's substantial objections to the proposals lodged at the application stage, some technical matters would not be the subject of formal evidence at the Inquiry.*

*Reflecting this, and the request by the Secretary of State to consider four specific areas, the evidence presented within this submission covers relevant planning policy including land use and waste management issues as covered in European, National, Regional and Local adopted and emerging planning documents. Specifically my evidence addresses the; The Development Plan; PPS10 – Sustainable Waste Management; Planning and Climate Change Supplement to Planning Policy Statement 1; and Planning Policy Guidance Note 2 (PPG2); Green Belts.*

*I also address the following matters, as raised and agreed at the Pre-Inquiry Meeting; the approach and deliberation taken with respect to the site search; relevant covenants affecting potential sites and the subject site; propriety; public consultation and local environmental concerns in terms of fear and anxiety as opposed to technical evidence relating to air quality or ecological factors.*

## **1.0 APPLICATION PROPOSAL DETAILS**

- 1.1 Details of the proposal, which was confirmed on the 10<sup>th</sup> May 2011 as being the subject of a formal call-in by the Secretary of State for his determination, are set out in section 2 of the Statement of Common Ground (SoCG2). Details of the documents submitted with the planning application (ref. 10/000032) are set out in Appendix A of SoCG2.
- 1.2 In advance of the Inquiry, under Regulation 19 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, the Secretary of State (SoS) requested the Applicant to review part of its Environmental Statement and provide further information in the form of a revised Non-Technical Summary highlighting the main alternatives that had been considered, plus an assessment of the significant environmental effects of the scheme's electrical grid connection.
- 1.3 I can confirm that this additional information was received by WAIL and has been reviewed. My evidence takes into account this additional information.

## **2.0 SITE DESCRIPTION AND RELEVANT BACKGROUND**

- 2.1 A description of the site and surrounding area is set out in Section 3 of SoCG2 together with a summary of relevant planning history.
- 2.2 I do not believe that there is any contention between parties as to the location and providence of the site. However I do feel it important to highlight some key elements relating to the planning restrictions currently affecting the site.
- 2.3 It is noted that the extant permission supporting development at the Hartlebury Estate has allowed development to take place over a number of years and there is a claim by the Applicant that consent for development at the subject site has been previously confirmed and implemented. I have no reason to question this but would highlight the fact that the development approved concerned standard B1, B2 and B8 units common at industrial and trading estates in the 1980's. Some units were completed,

save for development at the application site (plot H600). While this presents a precedent for development on the site, the proposals bear little resemblance in terms of use or scale to the Mercia Waste proposals. I therefore consider this to be a non-issue. The application proposal is rightly the subject of a Call-in Inquiry as a result of its scale and impact. I surmise that had the development reflected the scale of other industrial property in the vicinity, it may not have been the subject of Call-In.

- 2.4 Indeed, in December 2004 planning permission for a municipal waste management 'autoclave' facility was granted by the County Council on the application site, to manage 100,000 tpa of waste. The proposal was pursued to meet the needs of the Joint Municipal Waste Management Strategy (JMWMS) (CD-WSL7). While a subsequent planning application permitted in May 2006 amended the site layout, the development, which was significantly smaller than that now proposed, has never come forward and both planning permissions have now expired. As noted at paragraph 281 of the Officer's report to WCC Committee (CD-PA8), the Director of Planning, Economy, and Performance gives little weight to these circumstances. It is accepted that there are other significant industrial estates within the two Counties and it is considered that the land use by itself does not represent a very special circumstance.
- 2.5 The autoclave proposal was not pursued and I understood that the promoters did not proceed with implementation of that planning permission; it is believed there was subsequently a change in company ownership.
- 2.6 Of further note is the extant local planning policy within the Wychavon District Local Plan (2006) and restrictions imposed for this site with relation to the height and footprint of new development, to regularise new build across the Estate. The application proposals greatly exceed these restrictions.
- 2.7 As will be highlighted later in my evidence, covenants protecting the amenity of local residential occupiers are considered pertinent to the case – simply on the basis that the presence of covenants affecting an alternative site for the proposed development, meant that the site in question, at Ravensbank, was dismissed, i.e. covenants have already influenced this case and while not normally relevant to a planning discussion,



if only for the purposes of fairness, the impact of covenants on the application site should be a matter of consideration.

- 2.8 The proposal would be in breach of Restrictive Covenants contained in the Conveyance dated 10th September 1980 and made between (1) The Secretary of State for Defence and (2) Lansdown Estates (Hartlebury) Limited imposed to protect the surrounding area from noise, nuisance and/or annoyance and are binding on Worcestershire County Council as the leasehold owners of the site and the other owners/occupiers for the time being of the Trading Estate. A copy of this Conveyance is attached at Appendix WAIL-A.
- 2.9 Notwithstanding the proposed operation of the incinerator, it is contended that the scale of the building and chimney stack would themselves constitute a nuisance and/or an annoyance following the recent Court of Appeal decision in the case of *Davies v Dennis and Others* (2009) EWCA Civ 1081.

### **3.0 PLANNING POLICY**

- 3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions on applications for planning permission to be taken in accordance with the adopted development plan for the area unless material considerations indicate otherwise. The documents of relevance to the call-in inquiry have been identified in Appendix A of SoCG2 and are presented as Core Documents.
- 3.2 The SoS has highlighted a number of key areas. I consider it expeditious to review and comment upon all relevant policy while addressing those key areas in Section 5 below, rather than setting out any separate analysis.

#### 4.0 LOCAL REPRESENTATIONS BY WAIL

4.1 To assist the Inspector, it is considered important to clarify the context of WAIL's existence, its role in the planning process to date and its overall stance with regard to the proposals.

4.2 In terms of the stance taken to date, this can be summarised as follows;

- The grant of consent for this proposal will lead to the unsustainable movement of waste and/or will pull waste down the accepted waste management hierarchy and as such will conflict with fundamental objectives of national and European waste policy
- The grant of consent will impede or frustrate the viable or successful development of other existing or planned facilities for the treatment of waste which are superior to the application proposals
- Given the evidence presented to date, the Applicants have failed to consider or discount alternatives. The proposals concern a structure that is simply of a scale that is inappropriate in a Green Belt location and no very special material circumstances exist that would outweigh this fundamental position.

4.3 The role of WAIL not only reflects good planning practice and the pursuit of a democratic system – but also reflects the Government's ethos of 'Big Society' as advocated through 'Open Source Planning' issued by the Conservative Party in 2010. This document has influenced much of the direction and fundamental thought behind the emerging Localism Bill and then 'bottom up' approach to planning.

4.4 WAIL is a limited company with an Executive Committee and was formed in January 2010 as a direct response to the incinerator proposals. A meeting was held in the Village Hall in January 2010 attended by over 400 local residents. The group was promoted by the two local parish Councils (Hartlebury and Elmley Lovett) who attended the meeting and decided that the group should represent the residents on

behalf of the respective parish councils. Its general membership is therefore taken from the immediate vicinity of the proposals.

- 4.5 The group instigated an online petition signed by 500 people which was presented to WCC during the statutory consultation period, prior to the application's determination. The key concerns raised by local residents reflect the stance set out above at paragraph 4.2. A hard copy petition was also submitted with a further 2,300 names and this petition has continued to grow. It is important to note that the population of Hartlebury is 2600 and of Elmley Lovett is 347 (National Office of Statistics September 2001). Thus the petitions are considered to be a strong reflection of local feelings.
- 4.7 WAIL submitted extensive written objections to the Incinerator proposals which reflected the concerns of local residents. These took the form of two formal submissions, which were noted in the Officer's report to WCC Committee at paragraphs 154 and 155.
- 4.8 The group felt that the representation of their concerns was not given due consideration. This influenced the decision to proceed with the objections once it was confirmed that the Secretary of Statement was to Call-In the case. For the avoidance of any risk of the Applicants claiming that WAIL's opposition to the proposals was the reason for the Call-in being made, it is considered that the rationale for the Call-in is principally due to the nature and scale of the proposal and the fact that it lies within the designated Green Belt.

## 5.0 CONSIDERATION OF THE CASE

5.1 Correspondence of the 10<sup>th</sup> May 2011, issued through the Planning Inspectorate, sets out the key areas that the SoS feels are pertinent to the case. Reflecting this, my evidence addresses the following matters in turn; The Development Plan; PPS10 – Sustainable Waste Management; Planning and Climate Change Supplement to Planning Policy Statement 1; Planning Policy Guidance Note 2 (PPG2); Green Belts.

5.2 As noted above, my evidence also addresses the matters agreed at the Pre-Inquiry Meeting relating to the approach and deliberation taken for the site search; relevant covenants affecting potential sites and the subject site; propriety; public consultation and local concerns in terms of fear and anxiety.

### 5.3 The Development Plan

5.3.1 As agreed in the SoCG2, the Development Plan comprises of the following adopted documents;

- West Midlands Regional Spatial Strategy (WMRSS) (CD-DP1/DP4)
- Worcestershire County Structure Plan (WCSP) (CD-DP2)
- Wychavon Local Plan (WLP) (CD-DP3)

5.3.2 Paragraphs 57 to 65 of the WCC Committee Report, which it is understood was prepared by external consultants (ERM) sets out a summary of these documents. In general this is considered a fair reflection but I would like to highlight the following matters;

#### **The West Midlands Regional Spatial Strategy (WMRSS)**

5.3.3 I note and accept the explanation of WCC's stance at paras 58 to 60 of the Committee Report with respect to the WMRSS, i.e. that notwithstanding the High Court judgement relating to the Cala Homes challenge and the confusion over the status of the document as part of the development plan for Worcestershire, it is a matter for the decision maker to decide whether any issue is a material

consideration in the determination of any planning application. It is also in their domain as the weight to give to that consideration.

### **Worcestershire County Structure Plan (WCSP)**

- 5.3.4 A number of saved policies contained in the Worcestershire County Structure Plan are relevant. Of particular note is Policy WD1 which seeks to manage waste in line with the Best Practicable Environmental Option (BPEO), the proximity principle, regional self-sufficiency and in line with the waste hierarchy. While the concept of BPEO is no longer used in national policy, it remains a common sense approach.
- 5.3.5 Policy WD2 indicates that additional facilities will be required to recycle, compost or recover at least 47.9 million tonnes of municipal waste until 2021. Table 4 supporting the policy identifies that Worcestershire will need to deliver 164,000 tonnes per annum of municipal waste recovery capacity and Herefordshire will need to deliver 45,000 tonnes per annum
- 5.3.6 WCC considers that there will be sufficient waste to supply the proposed development and not impact upon other forms of waste treatment such as recycling. It states that in 2009/10 37% and 44% of recycling of municipal waste were achieved in Herefordshire and Worcestershire respectively meaning that average recycling across the two authorities met the WSE 2007. Reference has been made to the new materials reclamation facility at Norton and an assumption made that increased recycling will take place. It is certainly hoped so. Indeed, it is hoped that the targets should not be seen as maxima, but as minima and the goal should be to considerably exceed target.
- 5.3.7 The argument pursued by the Applicant and endorsed by WCC is that the by achieving the maximum recycling targets, sufficient waste will exist to supply the proposed development at Hartlebury. It is considered this is flawed approach, particularly given the information now issued by WCC further to a specific request by WAIL, and attached at Appendix WAIL-B. This shows figures for the waste treated over the past ten years and indicates that the residual waste (municipal solid waste available for incineration after taking into account recycling and composting, is clearly decreasing. This is the waste that will feed the proposed incinerator.

- 5.3.8 A reduction of municipal waste arisings and/or increased recycling will inevitably reduce further the amount of that waste stream available to be treated in the proposed development. The Applicants contend that any shortfall of arisings could be secured from commercial and industrial wastes and potentially be imported from a wider area. I consider that this is trying to justify the existence of the scheme, as opposed to presenting it as a means to unequivocally address a clear need.
- 5.3.9 Officers noted (at para 190 in the WCC Committee Report (CD-PA8)) that the Applicants cannot rely on sufficient information or survey work to fully provide accurate data for the C&I arisings for Worcestershire and Herefordshire and assumptions have been made that previous figures will simply continue. This is not considered to be a realistic or acceptable way of justifying the construction of this scheme in this location, or indeed in any location.
- 5.3.10 In terms of the proposals using waste as a resource by recovering and exporting electricity, significant concerns are raised. While the proposed technology may be the best in terms of incineration, only a small proportion of the waste's calorific value is recovered through electricity generation and provided to the Grid, and no definitive use of heat has been confirmed by the Applicant's own admission. Indeed, this element was not included within the application. This is in contrast to other locations eg Ravensbank where there is a far better potential to make use of the heat produced.

### **The Wychavon Local Plan**

- 5.3.11 While relevant policies are set out in the SoCG2, I contend that the proposed development is a departure from the Wychavon Local Plan 2006 which specifically prohibits development of this nature in Green Belt locations. The adopted local policy supports national Green Belt policy, which is discussed below. I support Wychavon District Council's assessment of the proposals, in that it held them to be contrary to adopted policies and, in the absence of very special circumstances, unacceptable.

### **Emerging Policy**

5.3.12 I note that the Worcestershire Waste Core Strategy (WWCS)(CD-DR5/6/7) is yet to be adopted but, together with the South Worcestershire Joint Core Strategy (SWJCS) (CD-DP8), is progressing as part of the Local Development Framework. It is considered that these emerging documents emphasise the value of and need to protect the Green Belt and encourage a ‘zero waste’ approach and hence better reflect the recent national policy review and European guidance on waste matters. As such they should be afforded some weight. In particular I note that Government’s Review of Policy (CD-WSL4) as issued in June 2011 and discussed later in my evidence, gives a clear indication of travel and present Government thinking in terms of policy and will influence the WWCS and SWJCS.

5.3.13 The Waste Core Strategy for Worcestershire County Council states in WCS2 that waste must be sorted to allow optimised recycling before energy recovery; thereafter the greatest practicable recovery of energy must be achieved. Areas of Outstanding Natural Beauty should be protected and while the application site does not lie within an AONB, such areas lie in close proximity. I contend that the proposed plant is disproportionate to existing development and will be clearly visible from many areas. It will appear as a huge feature on the landscape, particularly the stack and the plume, both locally and at a distance, including from Clent, Malvern, Abberley and Bredon Hills. This matter is discussed later in my evidence.

5.3.14 The special circumstances put forward to justify the grant of permission need to be properly balanced against the clear harm to the openness of the Green Belt in this location. As will be discussed later in my evidence, I do not believe that the case is proven but moreover the development conflicts with Policy D39 of the Worcestershire County Structure Plan (adopted 2001), Policy SR7 and SR8 of the Wychavon District Local Plan (adopted June 2006) and Government advice contained within Planning Policy Guidance Note 2: Green Belts

5.3.15 The proposed development is of such a scale that it would not be appropriate or integrate into the landscape character of the area, to the detriment of that character, contrary to policy ENV1 of the approved Wychavon District Local Plan 2006

5.3.16 I consider that these proposals should only be permitted where they do not have an adverse impact on the local environment and in this situation, no over-riding evidence, constituting very special circumstances, has been presented that means that the scheme complies with adopted policy and national guidance. Moreover, the proposals are not supported by emerging waste management policies.

### **Supplementary Guidance**

5.3.17 Supplementing these adopted statutory documents, I consider that the **Joint Municipal Waste Management Strategy (JMWMS) 2004** and its **First Review 2009** (CD-WSL7) comprises a local but important strategy.

5.3.18 Any Municipal Waste Management Strategy make choices about the technologies used to treat waste, focusing on municipal waste i.e. waste collected from the home and any other types of waste collected by waste collection authorities. A MWMS provides a long-term service development strategy for municipal waste. Although municipal waste represents a relatively small element of the waste that must be addressed by local planning authorities, it is important in a number of respects. Waste generated by consumers is often the ultimate end point of the activities of the producers of the other waste streams (e.g. commercial and industrial, agricultural) and as such policies focused on municipal waste can have an up-stream impact on other sources of waste generation. It is also the waste stream that is under direct control of local authorities and can therefore be planned for through more prescriptive strategies.

5.3.19 It is important for Waste Development Frameworks to co-ordinate with an area's Municipal Waste Management Strategy (MWMS). WDFs are not about making technological choices. Instead they provide the sites which will enable the delivery of the MWMS. MWMSs therefore address the 'how' while Waste DPDs address the 'where'.

5.3.20 By not prescribing specific waste management technologies for different sites, it is hoped that they will encourage innovation and provide more flexibility for the waste management industry to come forward with proposals for facilities incorporating any technology as appropriate, including any new technologies that may be developed in



the future. MWMSs need to take account of current legislation governing waste management and any changes that are known or anticipated.

- 5.3.21 The JMWMS sets the framework for the management of municipal waste for the local authorities comprising Herefordshire and Worcestershire to 2034. It endorses the need to use residual waste as a resource for energy recovery and presents a target of recovering a minimum of 78% of waste produced by 2015. The target states that a minimum of 33% of municipal waste is to be recycled and/or composted, a maximum of 22% landfilled and the remainder will be treated through energy recovery.
- 5.3.22 It must be highlighted that there are fundamental differences between the JMWMS 2004 and the First Review 2009. With reference to JMWMS 2004, at paragraphs 3.5.3 and 3.5.4 the Committee considered in light of emerging technologies and best practices that the appropriate means of recovery of waste was through autoclaving and not incineration. Paragraph 5.1.2 highlights that autoclaving is a suitable recovery process in terms of meeting the waste hierarchy and this is supported by paragraph 5.7.1 which states that 45% of recovered waste could be dealt with by using this technique.
- 5.3.23 Making reference to paragraph 5.7.6, it can be seen that the Committee were recognising emerging technologies that aim to deliver more sustainable waste management solutions, thus it is therefore surprising that the First Review 2009 failed to consider as part of these emerging technologies anaerobic digestion and autoclaving as a solution. Instead, they have chosen to return to incineration, which had been dismissed in 2004, and had been expressly ruled out as a process at paragraph 5.7.5 of the JMWMS 2004.
- 5.3.24 Relating to this, at a Community Liaison Group meeting in February 2010, it was stated by the Applicant's representative that if the local authorities had separate food collection processes then alternative technologies would be more suitable. It could be argued that these technologies would include anaerobic digestion and autoclaving and hence a reliance on incineration could be avoided. A copy of the minutes of the CLG meeting (February 3<sup>rd</sup>) is attached at Appendix WAIL-C.

5.3.25 Finally with respect to the 'Development Plan' I consider it is important to comment on the issue of prematurity. While the Waste Core Strategy and the Joint Municipal Waste Management Strategy 2009 (JMWMS 2009) have yet to be formally adopted, the latter has progressed some way and hence should be given weight.

5.3.26 "The Planning System: General Principles" annexed to PPS1 Delivering Sustainable Development ("the Annex") contains the following statement:

*1. In some circumstances, it may be justifiable to refuse planning permission on grounds of prematurity where a DPD is being prepared or is under review, but it has not yet been adopted. This may be appropriate where a proposed development is so substantial, or where the cumulative effect would be so significant, that granting permission could prejudice the DPD by predetermining decisions about the scale, location or phasing of new development which are being addressed in the policy in the DPD. A proposal for development which has an impact on only a small area would rarely come into this category. Where there is a phasing policy, it may be necessary to refuse planning*

*2. Otherwise, refusal of planning permission on grounds of prematurity will not usually be justified. Planning applications should continue to be considered in the light of current policies. However, account can also be taken of policies in emerging DPDs. The weight to be attached to such policies depends upon the stage of preparation or review, increasing as successive stages are reached. For example:*

*Where a DPD is at the consultation stage, with no early prospect of submission for examination, then refusal on prematurity grounds would seldom be justified because of the delay which this would impose in determining the future use of the land in question.*

*Where a DPD has been submitted for examination but no representations have been made in respect of relevant policies, then considerable weight may be attached to those policies because of the strong possibility that they will be adopted. The converse may apply if there have been representations which oppose the policy. However, much will depend on the nature of those representations and whether there are representations in support of particular policies.*

*Where planning permission is refused on grounds of prematurity, the planning authority will need to demonstrate clearly how the grant of permission for the development concerned would prejudice the outcome of the DPD process.*

5.3.27 The Annex makes clear, prematurity is of very limited application. Whilst it acknowledges that it may be appropriate to refuse planning permission on grounds of prematurity where a development plan document (DPD) is being prepared but has not yet been adopted, it equally recognises that this would only be the case where granting permission could prejudice the DPD by predetermining the scale, location or phasing of new development which are being addressed in a policy in the DPD. While WCC considers the latter situation applies in the case of the Waste Core Strategy (WCS), I contend it may not apply in the case of the JMWMS.

#### **5.4.0 PPS10 – Sustainable Waste Management**

5.4.1 The management of waste is an integrated decision making process using guidance set at the European, National, Regional and Local levels and in order to comment on PPS10 in full, I consider that it is important to review the context of the document ;

5.4.2 Planning Policy Statement 10 (PPS 10) in its revised form as issued in March 2011, updates the previous document (PPS10) issued in 2005, which in turn replaced Planning Policy Guidance Note 10 (Planning and Waste Management) originally published in 1999. It forms part of the national waste management plan for the UK and policies provide guidance, inter alia, on; how waste planning authorities must discharge their responsibilities; the requirement for regional planning bodies in terms of waste management; and plan making at a local level. The policies complement other national planning policies and need to be read in conjunction with Government policies for sustainable waste management, in particular those set out in the National Waste Strategy (2007) and the subsequent Government review of policy in 2011.

5.4.3 The key planning objectives of PPS10 are, inter alia, to;

- *help deliver sustainable development through driving waste management up the waste hierarchy, addressing waste as a resource and looking to disposal as the last option*
- *enable sufficient and timely provision of waste management facilities to meet the needs of their communities help implement the national waste strategy*
- *help secure the recovery or disposal of waste without endangering human health and without harming the environment,*
- *enable waste to be disposed of in one of the nearest appropriate installations;*
- *reflect the concerns and interests of communities, the needs of waste collection authorities, waste disposal authorities and business,*
- *encourage competitiveness*
- *protect green belts*
- *ensure the design and layout of new development supports sustainable waste management*

5.4.4 While many extant PPSs will be the subject of further review and replacement shortly by the National Planning Policy Framework (NPPF), I note that draft NPPF does not provide guidance on waste management. Instead it confirms that the Waste Management Statement (PPS10) will remain in place until the National Waste Management Plan is published – due in 2012. Related to this, it is important to comment upon the Government’s Review of Waste Policy in England 2011 as this represents to the most up to date position in terms of Government ethos and direction. I contend that this is material to the determination of the application proposals and I discuss this below. In advance, however, I consider it is important to comment on the European context;

### **European Policy**

- 5.4.5 At a European level, the **revised Waste Framework Directive (2008/98/EC, rWFD)** (CD-WSL1) (as amended by EC Directive 91/156/EEC) sets a framework for waste management across Member States. It defines certain terms, such as 'waste', 'recovery' and 'disposal', to ensure that a uniform approach is taken across the EU.
- 5.4.6 At paragraph 6, the rWFD states *'The first objective of any waste policy should be to minimise the negative effects of the generation and management of waste on human*

*health and the environment. Waste policy should also aim at reducing the use of resources, and favour the practical application of the waste hierarchy.'*

5.4.7 Paragraph 31 recognises that the '*waste hierarchy generally lays down the best overall environmental option in waste legislation and policy...*'. The waste hierarchy is presented at Article 4(1) of the rWFD as: a, prevention; b. preparing for re-use; c. recycling; d. other recovery, e.g. energy recovery; and e. disposal.

5.4.8 Article 4(2) requires '*Member States shall take measures to encourage the options that deliver the best overall environmental outcome.'*

5.4.9 Article 3(15) defines 'recovery' as '*any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function...*'. Annex II of the rWFD sets out a non-exhaustive list of recovery operations, which includes the category R1: Use principally as a fuel or other means to generate energy. A footnote in the Annex confirms that this category includes incineration facilities dedicated to the processing of municipal solid waste but only where their energy efficiency is equal to or above a set threshold is classified as a recovery facility where it meets set criteria. WCC confirmed it was satisfied that the proposed development will meet the threshold set out and thus should properly be considered a recovery facility. I concur, but as a recovery plant rather than a disposal operation, it means that the facility could be sited in location where it could take advantage of a ready market for heat, such as at a large industrial estate at Ravensbank where covenants would not preclude a recovery operation. This matter is discussed later in my evidence.

### **National Waste Strategy 2007**

5.4.10 The National Waste Strategy for England (WSE 2007) (CD-WSL5) set out the Government's policy and strategy on waste management and disposal. The key objectives of the strategy are as follows:

- *more emphasis on waste prevention and re-use*
- *meet and exceed Landfill Directive diversion targets*
- *increase diversion from landfill of non-municipal waste, through increased treatment*

- *secure investment in infrastructure to divert waste from landfill*
- *increase recycling of resources and recovery of energy*
- *promotes anaerobic digestion*

5.4.11 It sets targets for the management of municipal waste: recycling and composting of household waste – at least 40% by 2010, 45% by 2015 and 50% by 2020 recovery of municipal waste – 53% by 2010, 67% by 2015 and 75% by 2020. These targets sit above those set in the West Midlands Regional Spatial Strategy (WMRSS) where Policy WD1 presents the following targets:

- *to recover value from at least 40% of municipal waste by 2005; 45% by 2010; and 67% by 2015*
- *to recycle or compost at least 25% of household waste by 2005; 30% by 2010; and 33% by 2015*
- *to reduce the proportion of industrial and commercial waste which is disposed of to landfill to at the most 85% of 1998 levels by 2005*

#### **National Waste Strategy Policy Review 2011**

5.4.12 It is considered important to now comment upon the Government's Waste Policy Review, issued in June 2011. This states as follows;

*'Waste management in England has come a long way over the past 10 years; waste going to landfill has nearly halved since 2000; household recycling rates have climbed to 40 %; waste generated by business declined by 29% in the 6 years to 2009 and business recycling rates are above 50%'*

5.4.13 While this is positive, the Government remains under an obligation as a member of the EU to continue to introduce measures to separate the growth in waste from growth in the economy. It is considered that the measures taken represent a cultural shift with the general population engaged in reducing and recycling waste. Economic and policy measures are still in place and will continue to suppress waste arising in the future, as reflected in the policy review, and emphasised by key facts published by DEFRA on its web site and noted below. However, these conclusions undermine the case advanced by the Applicants.

General Key facts and figures – as set out on the DEFRA website October 2011;

- *Around 40% of waste from households is currently recycled, as of 2011, compared to 11% in 2000/01.*
- *The average residual waste per person has reduced by 76kg since 2006/07 to 275kg/person/year*
- *52 per cent of commercial and industrial waste was recycled or reused in England in 2009, compared to 42 per cent in 2002/3.*
- *55% of municipal waste generated in the UK is sent to landfill, compared to an EU-27 average of 40%.*
- *According to RecycleNow, UK recycling saves more than 18 million tonnes of carbon dioxide a year – equivalent to taking 5 million cars off the road.*
- *UK produces approximately 7 million (5 in England) tonnes of food waste per year and about 90 million (40-60 in England) tonnes animal slurry and manure that could realistically be available for utilisation by Anaerobic digestion technology.*
- *In England this could generate at least 3-5 TWh electricity per year by 2020 (a heat equivalent of 6-10TWh)*
- *The UK water industry treats 66% of sewage sludge by AD, generating in the region of 1TWh per year of electricity in 2010.*
- *The diversion of biodegradable wastes to AD can reduce greenhouse gas emissions from landfill. For example, capturing the biogas from one tonne of food waste will save between 0.5 and 1 tonne of CO2 equivalent.*
- *Direct emissions from the waste management greenhouse gas inventory sector in the UK accounted for 3.2% of the UK's total estimated emissions of greenhouse gases in 2009, or 17.9 Mt CO2e compared to 59 Mt CO2e in 1990. Of the 2008 total, 89% arises from landfill, 10% from waste-water handling and 2% from waste incineration (these figures are rounded).*

5.4.14 Reflecting this, the Government's Policy Review's findings, set out a series of actions for the future. These include commitments to:

- *Work with business on a range of measures to prevent waste occurring wherever possible, ahead of developing a full Waste Prevention Programme by December 2013;*

- *Explore the potential for new voluntary responsibility deals to drive waste prevention and recycling, including in the hospitality sector and with the waste management industry and for direct mail, textiles, and construction waste;*
- *Launch a grant funding scheme for innovative reward and recognition schemes which could incentivise people to do the right thing;*
- *Encourage councils to sign new Recycling and Waste Services Commitments, setting out the principles they will follow in delivering waste services to households and businesses.*
- *Provide technical support to councils and businesses who want to see recycling-on-the-go schemes grow,*
- *Consult on the case for increased recovery targets for packaging waste, in time for a final decision in the 2012 Budget;*
- *Consult on introducing a restriction on the landfilling of wood waste and review the case for introducing landfill restrictions on other materials, including textiles and biodegradable waste;*

5.4.15 The Review of Waste Policy, sets out policies and a series of actions designed to help move towards a zero waste economy in England. This is a serious target with sorting and recycling to be maximised before energy recovery. Thereafter energy recovery must be optimised.

5.4.16 I am advised that this matter was the subject of a meeting at County Hall, arranged by WAIL, for the benefit of officers and Elected Members of WCC with Professor Paul Connett, a world renowned Zero Waste Expert. However, Members and Officers were deprived of the benefit of learning about real alternatives including segregated waste collections; AD, recycling and recycling parks, leading to Zero Waste. WAIL is led to believe that they were encouraged not to attend and this has been endorsed by Cllr Maurice Broomfield in his letter, dated 11<sup>th</sup> October 2011, to the Inquiry .

5.4.17 Alongside the Waste Policy Review, the Government has also published an Anaerobic Digestion Strategy and Action Plan (June 2011) which encourages this form of waste treatment -extracts are attached at Appendix WAIL-H. Key actions include guidance on the cost and benefits of AD to developers and local authorities, evidence on the value of digestates, developing skills and training for AD operators, and highlighting 'best practice' projects that deliver community benefits



- 5.4.18 Reflecting this, I contend that the development proposals fail to address the *waste hierarchy* as set out at Appendix C of PPS10, and at Article 3 of rev Waste Framework Directive 2007 and then recently defined and explained in DEFRA's 'Guidance on Applying Waste Hierarchy' (June 2011). A copy of this document is attached at Appendix WAIL-D. If built, this incinerator will burn materials which according to policy should be recycled or composted in preference to schemes comprising of energy recovery. The declared composition of municipal waste contains approximately 63% of material that could be composted or treated by anaerobic digestion. Alternative treatments exist, that are fully supported by the Government's recently published policy review.
- 5.4.19 The current policy review and the draft national policy statements, endorse alternative means of waste management and encourage support by relevant local authorities. The pursuit of an incinerator in the application site would be in direct conflict with this. I believe it has been helpful to have the Government Policy Review issued over the summer, thus giving all parties the opportunity to review their position and consider thoroughly whether the proposals in hand are the best way forward. I contend that they are not.
- 5.4.20 As noted above, the Government clearly gives specific encouragement to local authorities to develop anaerobic digestion. This application, and the case presented in its favour, excludes consideration of this method of waste disposal. I discuss below that the opportunities of further recycling and more appropriate waste management treatment would be lost due to the massive waste requirement to feed the proposed incinerator.
- 5.4.21 Indeed, the development would not drive waste further up the hierarchy. In contrast, an incinerator would potentially be a disincentive to adopt more sustainable means of treating waste. It has the potential to prejudice the movement of waste up the waste hierarchy.
- 5.4.22 The most important statement of Government policy to emerge over the summer is the recognition of the fact that waste is a finite and diminishing resource. Para 207 of the June 2011 Waste Policy Review, "Energy Recovery" section states;

*“...residual waste will eventually become a finite and diminishing resource”.*

5.4.23 Waste is and will always be a finite resource. Government simply now recognises that is a diminishing resource and the Policy Review makes it clear that the Government’s intention is to increase the downward pressure on the production of waste. This is important because it emphasises the critical importance of acknowledging existing and planned capacity in considering whether there is any need for further facilities to address this ever diminishing resource, either now or in the future.

5.4.24 Government guidance seeks to ensure that waste need is first identified and apportioned to sub-regions such as Hereford and Worcestershire, or local authority areas, and that provision is accordingly made to meet the identified need of those local areas and that the process is monitored and amended if necessary.

5.4.25 As noted earlier, the **Joint Municipal Waste Management Strategy for Herefordshire and Worcestershire 2004-2034** was published in 2004 and set the framework for the management of municipal waste in the two Authorities until 2034. There was a commitment to review the Strategy at least every three years with a requirement to take into account new technologies. However the first review didn’t take place until November 2009 (JMWMS 2009). And, as I have noted earlier, singularly failed to consider processes including anaerobic digestion which had been endorsed within the Government National Waste document of 2007 and remains a national goal.

5.4.26 The 2009 Review did however confirm principles, policies and targets for waste management across Worcestershire and Herefordshire and aims to: deliver the waste hierarchy; respond to climate change challenges by viewing waste as a resource; provide services that are customer focussed and value for money; and foster partnership working. Those policies, of direct relevance to this planning application, are:

- *Policy 7: 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.*

- *Policy 16: Waste management methods will promote sustainable waste management by considering and balancing environmental, social and economic impacts. Both established and emerging technologies will be considered to enable a flexible approach to the waste treatment methods that will be adopted.*

5.4.27 At paragraph 3.6.2, the JMWMS 2009 introduces a residual waste appraisal that considered options for the management of wastes remaining after recycling and composting. A commitment is made that the conclusions of that appraisal should inform the decision on any application for planning permission for a waste treatment solution for Herefordshire and Worcestershire. That appraisal included a list of seven shortlisted options for treating residual waste. These included a range of technology types, number of facilities and geographic locations:

- *Option A – a single EfW facility*
- *Option B – a single EfW facility with combined heat and power (CHP)*
- *Option C – two Mechanical Biological Treatment (MBT) facilities, located on two separate sites, one with on-site combustion*
- *Option D – two MBT facilities, each with off site combustion*
- *Option E – a single autoclave*
- *Option F – two autoclaves, located on separate sites*
- *Option G – one EfW facility located out of county*

5.4.28 The seven options were assessed against 14 criteria encompassing environmental, social and economic matters. The criteria did not include Green Belt specifically but, inter alia, looked at the potential to secure planning consent.

5.4.29 The appraisal concluded that Option B (a single EfW facility with CHP) presented the best option. This was initially followed by a single site autoclave (Option E) and then by Option A for a single EfW facility.

5.4.30 Option B, concerning the delivery of CHP, is not guaranteed by the current proposal which more accurately should be described as Option A.

5.4.31 The Joint Municipal Waste Management Strategy (JMWMS) was reviewed in 2009. Annex D details the Residual Options Appraisal, where it was concluded that Option

B (a single EfW facility with CHP) performed the best overall when all criteria were considered equally. When considering whether some criteria were more important than others, it is understood that when the criteria of Cost and Reliability were given greater weight Option A (a single EfW facility) performed best (singularly in relation to Cost, alongside other options in relation to Reliability). This change in emphasis is important to note as it introduces a commercial element that I comment upon later in my evidence, relating to propriety. The application site is owned by the WCC and the promotion of the scheme is a joint endeavour between the Applicant and WCC. This will inevitably have some financial implications.

5.4.32 Page 26 of Annex D of the Residual Options Appraisal advises that Options A and B would only be developed on sites with suitable and secure outlets for the heat and/or electricity produced and it must be noted that the Applicants have not achieved this at Hartlebury

5.4.33 Furthermore, neither the JMWMS 2009 review options appraisal nor the Applicant's WRATE assessment included anaerobic digestion. It was discounted prior to the options assessment. Given the Waste Strategy of 2007 and the Government's review of Waste Policy in 2011 and the clear endorsement of anaerobic digestion, it is considered that this was a wholly unacceptable omission at the assessment stage.

5.4.34 As part of the JMWMS Review, an appraisal was undertaken of recycling and composting options. A separate food waste collection was considered as part of the appraisal, but discounted. Although it was recognised that this option could significantly raise the recycling performance, it was not pursued because 'minimisation' was preferred. i.e. saving money on collection costs and encouraging residents to reduce their spending on food through a 'hate waste - love food' promotion by WCC.

5.4.35 Notwithstanding this stance, Wychavon District Council is one authority that does provide a separate food waste collection service and so it is clear it is a feasible option. Wychavon also achieves higher recycling rates than other district councils in Worcestershire. A Waste and Resource Action Programme endorsed by DEFRA, supports weekly separate waste food collections as a way of decreasing the amount of waste sent to landfill.

5.4.36 DEFRA's advice on 'Applying the Waste Hierarchy' of June 2011 encourages recovery options such as anaerobic digestion and composting in comparison to landfill and incineration without energy recovery. However, in section 2.2, some waste materials are listed which are not in keeping with the waste hierarchy order, and should be dealt with using specific waste management options. Anaerobic digestion is environmentally better than composting and other recovery options when the waste is predominantly food material, and when waste is a mixture of food waste, dry anaerobic digestion followed by composting is preferred.

5.4.37 With reference to residual waste as is set out by the Applicants, 63% is biodegradable and hence is capable of being treated by way of anaerobic digestion. In other words, it is quite clear that the Applicants proposals do not meet the waste hierarchy as expressed in Government advice as recently in June 2011.

#### **Need as a requirement of Policy**

5.4.38 To further endorse this, I comment on 'need' as a requirement of policy. Article 28(2) and (3) of the rev Waste Framework Directive provide as follows:

*"2. The waste management plans shall set out an analysis of the current waste management situation in the geographical entity concerned, as well as the measures to be taken to improve environmentally sound preparing for re-use, recycling, recovery and disposal of waste and an evaluation of how the plan will support the implementation of the objectives and provisions of this Directive.*

*3. The waste management plans shall contain as appropriate and taking into account the geographical level and coverage of the planning area, at least the following;*

*(d) sufficient information on the location criteria for site identification and on the capacity of future disposal or major recovery installations, if necessary;"*

5.4.39 This implies a structured approach in which all plans must understand the relationship between existing and future waste arising and existing and future capacity to meet

that waste. This requires a consideration of need and is the basis for plan making established by PPS10 which requires waste strategies to “*reflect...the needs of waste collection authorities*”, “*provide sufficient opportunities to meet management of all waste streams*”, “*consider the need for additional waste management capacity...*” and take account of “*the extent to which existing and consented waste management capacity not yet operational would satisfy any identified need*”<sup>1</sup>.

5.4.40 There is therefore a relationship between the prescriptive approach required by the Directive and the approach adopted by national waste policy. This approach is further reflected in EN-1 and EN-3. Paragraph 3.2.3 of EN-1 put the matter clearly:

*“The IPC should therefore give substantial weight to considerations of need”*

5.4.41 And EN-3 at paragraph 2.5.66 makes it clear that need is to be understood by reference to adopted development plan strategy. EN-3 at paragraph 2.5.67 emphasises the importance of “taking into account existing capacity” in deciding whether there is any existing scope for further permissions having regard to the published strategy in the development plan.

5.4.42 Finally, 2.5.70 of EN-3 requires that a given proposal:

*“...is in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England...”*

5.4.43 As I have noted above in 5.3.7, the Applicants have failed to demonstrate need taking into account existing capacity. As such, the proposal conflicts with the waste strategy in the adopted development plan. Consequently, a grant of consent here will prejudice the achievement of essential waste management objectives concerning the waste hierarchy and the sustainable movement of waste.

5.4.44 In order to achieve a meaningful understanding of need it is first necessary to agree a geographical boundary within which the assessment is considered. It is of course recognised that waste crosses administrative boundaries but in order to understand

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the relationship between arisings and capacity it is essential to establish a workable area within which the comparison is made.

- 5.4.45 The Applicants have proposed in their formal submissions that MSW may need to be supplemented and hence some focus needs to be given to C&I. (This is notwithstanding the notes of the CLG Committee meeting held on February 3<sup>rd</sup> where it was minuted that the facility would only treat municipal solid waste as opposed to C&I). Regardless of any element of misinformation, which I comment upon later in my evidence, the Applicants appear to accept that even this form of non-hazardous solid waste has diminished over the last ten years as a result of the successful implementation of waste policy objectives and requirements and will decrease further in the future as these policies continue to impact. The evidence therefore represents the high point, not the low point, of waste which is available to the appeal site.
- 5.4.46 Notwithstanding the waste arisings figures presented by the Applicant, it is expected that the rate of annual increase in waste arisings will continue to reduce as a result of legislative and financial measures which encourage greater waste minimisation and recycling.
- 5.4.47 I consider the Applicant has not demonstrated that the proposed development has been sized appropriately to cater for current and anticipated levels of waste and that it runs a risk of being insufficiently flexible to cater for future changes to waste management practices, targets and policies.
- 5.4.48 Forecasts of the level of municipal waste arising for Worcestershire and Herefordshire need to ensure that sufficient waste can be supplied to the operation. As the data issued by WCC and presented at Appendix WAIL-B indicates, the waste stream is reducing as other forms of waste treatment are adopted. There is therefore great concern that the development will not run at capacity and its development will require waste to be delivered from further afield to justify its use.
- 5.4.49 Whilst there may be commercial waste potentially available to make good any gap in supply, a requirement to source such a high and sustained feed has the potential to make the proposal more commercially risky. Indeed, if a high proportion of feed needs to be sourced from private non-municipal waste sources, this weakens the

extent of the 'public good' justification which is presented to justify establishing a large waste management building in the Green Belt.

5.4.50 I consider that the development risks cornering Worcestershire into an inflexible long-term waste management scenario which could restrict the potential to achieve higher recycling rates, in conflict with key objectives of PPS10.

5.4.51 By way of overview to this section, there are two key aspects of relevance to this Inquiry, firstly the waste hierarchy and secondly the sustainable management of waste. The waste hierarchy is defined in Article 4 of the rev Waste Framework Directive and this accords with the amendment to PPS10 paragraph 1. Article 4(2) which applies to individual planning decisions provides:

*“when applying the waste hierarchy...Member States shall take measures to encourage the options that deliver the best overall environmental outcome”.*

5.4.52 If the Inspector concludes that there is a potential to deal with waste at a different location than the application site and that would lead to a better *“overall environmental outcome”* then he is under an obligation to reject this proposal. Similarly if he concludes that the proposal does not represent the best environmental option in terms of the processing of waste, particularly in the light of latest Government advice then again he must be in a position to refuse this proposal.

5.4.53 I consider that pursuing a case for development at the Hartlebury site, is flawed and it is essential that, in making a decision at this Inquiry, the Inspector considers whether a different site (existing or planned) will or may provide a better overall environmental outcome.

5.4.54 I contend that the test is that the application proposal should offer the “best” environmental outcome having regard to the waste hierarchy and proximity considerations. The Applicants have failed to provide any comparative assessment of environmental outcomes. However, some things are obvious. The application site is in the heart of a rural area, remote from the large conurbations which will provide its feedstock. It is realistically only accessible by road and has little opportunity to use the power generated in any direct way.



- 5.4.55 As such I contend that the application proposals are likely to operate in an unsustainable manner by drawing waste down the hierarchy or by frustrating its movement up the hierarchy. From the case presented to date, the proposals have not been shown to deliver the “*Best overall environmental outcome*”. As such, any grant of consent will conflict with the Waste Framework Directive.
- 5.4.56 In summary, I contend that the development proposal does not accord with national policies contained within PPS10.
- 5.4.57 Furthermore, PPS10 paragraph 21 identifies that communities who have “done their bit” should be precluded from having to bear further facilities.
- 5.4.58 Hartlebury and the immediate surrounding area has been the location for three landfill sites - one of which is still in operation and causing concern in the community. A further site at Waresley, which is now being “capped”, has been hazardous and has been the source over the past two years of considerable distress to the local inhabitants. Clearly, the community feels that the cumulative effect of previous and ongoing problems should preclude it from having to bear this new proposed facility in accordance with PPS10.
- 5.4.59 The planning application states that the Hartlebury site is well located for the landfills should a breakdown occur. Waresley landfill site is unlikely to re-open for landfilling for a minimum of 10 years, if at all. Any suggestion that such residuals are diverted to Hartlebury landfill must be clearly specified in the application as there already exists substantial traffic problems through Hartlebury village and Station Road including the level crossing. If this were to be considered, it would require a full report from the Highways Authority.
- 5.4.60 On the evidence presented to date, there is no basis to conclude that the proposals tick the boxes of the waste management principles established in the rWFD, the WSE 2007, Policy Review 2011, PPS10, the WMRSS, the JMWMS and policy WD1 of the Structure Plan. I remain of the opinion that they are not the best way of addressing those policies and that a better approach could be taken that far better addresses the adopted and indeed emerging policies.

### **5.5.0 Planning and Climate Change Supplement to Planning Policy Statement 1**

- 5.5.1 I contend that the development proposal does not represent sustainable development nor provides flexibility to deal with changes in the future. It makes no use of the potential for combined heat and power generation and this element is specifically excluded from the planning application. Heat uptake is simply not a realistic proposition as no major users lie in the vicinity, i.e. no market exists. I contend, therefore, that the proposals do not produce sustainable renewable energy and hence could not be considered to be in accordance with Planning Policy Statement; Planning and Climate Change Supplement to Planning Policy Statement 1.
- 5.5.2 This sets out how planning should contribute to reducing emissions and stabilising climate change and take into account the consequences. The Supplement states that Applicants for planning permission should consider how well their proposals for development contribute to the Government's aim of a low-carbon economy and they are adapted for the expected effects of climate change.
- 5.5.3 The Supplement promotes the delivery of decentralised and renewable or low-carbon energy. While CHP may be recognised as delivering improved fuel efficiency and energy from waste technologies, as noted elsewhere in this evidence, the proposed application does not include heat uptake and cannot be described as being bona fide CHP.
- 5.5.4 I contend that the proposals would not make a full contribution to delivering the Government's climate change programmes and energy policies and hence would not assist in contributing to global sustainability. Based on the information presented to support the application, only 55% of the energy generated can be considered as renewable and less than half of that is actually used to generate electricity. For the 167,000 tonnes of CO<sub>2</sub> that will be emitted only 106,000 MWh will be exported to the Grid and no heat uptake is confirmed. That means a substantial amount of thermal energy is wasted, at the expense of Green Belt amenity. The proposed incinerator would not displace fossil fuel but exceed the grid intensity emissions and be a climate change burden. There will be a net increase in CO<sub>2</sub>, directly opposing the Government's climate change requirements and low carbon renewable energy

policies. The reliance on waste incineration to generate electricity for 30 years is not sustainable.

- 5.5.5 The Government's Waste Policy Review of June 2011 states that incineration of non-biodegradable waste gives rise to significant Green House Gases. Furthermore, Article 1 of the Waste Framework Directive notes that the Directive *"lays down measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use."*
- 5.5.6 It is of note, in terms of greenhouse gas emissions, that Natural England, when commenting on the proposals found that the carbon savings attributed to the proposal compared with current waste management practice, were quite small when considered in the context of the likely emissions arising from waste transport overall in the two counties. Natural England noted that the heat component of the CHP category of the proposal has yet to be confirmed fully and advised WCC that it needed to seek to achieve greater certainty in the matter.
- 5.5.7 In terms of transport and climate change, despite the rail sidings that once featured at the Hartlebury RAF base, no mention is made in the ES of rail as a transport option. This is considered odd in view of the 66-98 HGV movements (each day, seven days per week) anticipated in the ES. The proximity of the existing rail line and the 30 year lifespan of the development suggest that a rail halt option serving the site should have been actively considered if the development were to demonstrate its true environmental credentials and its full encouragement of a low carbon economy.
- 5.5.8 The draft NPPF notes at paras 148 through to 153, encouragement for the transition to a low carbon economy in a changing climate. Specifically at para 152, encouragement is given to increase the use and supply of renewable and low-carbon energy. This reflects PPS1 Climate Change paragraph 43 and 44 guides the determination of applications for planning permission which may have implications for existing or proposed sources of renewable energy.

5.5.9 In terms of weight, as material consideration, the foreword to PPS1 CC indicates that it is the senior planning policy document on climate change. Furthermore, the Government has now reviewed its policy on climate change and has published for consultation (CD-DP1) “*Planning for a Low Carbon Future in a Changing Climate*” where policy LCF15 expressly carries forward paragraphs 43 and 44 of PPS1 CC. This emphasises the importance which the Government attaches to that approach and is considered to be of significance to the determination of this appeal.

5.5.10 Policy LCF15 notes that ‘*In determining planning applications, planning authorities should consider the likely impacts of proposed development on:*

- i. existing or other proposed development and their supply of, or potential for using, decentralised energy; and,*
- ii. existing, or proposed, sources of renewable or low carbon energy supply and associated infrastructure.*

5.5.11 *LCF15.2 notes that ‘Where proposed development would prejudice renewable or low carbon energy supply, consideration should be given as to how the proposed development could be amended to make it acceptable. Where this is not achievable planning permission should be refused.’*

5.5.12 The issue is therefore to consider whether the grant of consent for one proposal might prejudice another. As I noted earlier, waste is a finite resource and the application site will be chasing the same waste produced in H&W and potentially further a field. A tonne captured by the appeal site is a tonne lost to other facilities.

5.5.13 The environmental benefit of treating waste relates to the size of the facility; its proximity to major sources of waste; and the mode of transportation. The appeal proposal is a remote, road based facility and is in conflict with PPS1 CC paragraph 43, 44 and the Consultation Draft..

5.5.14 WAIL have significant concerns over the validity of the figures relating to energy production presented to date by the Applicant and this is covered in a supplementary written statement to be presented to the Inquiry. Furthermore, any

value of the electricity sold to the grid is small in comparison to the overall capital. There will be no incentives to local people. There is only a negligible economic benefit, are 30 jobs a good return set against the expense of £120,000,000 to build the incinerator.

**5.5.15 Planning Policy Statement 22: Renewable Energy (PPS 22)** notes 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. Positive planning that facilitates renewable energy developments can contribute to all four elements of the Government's sustainable development strategy:

- *social progress which recognises the needs of everyone – by contributing to the nation's energy needs, ensuring all homes are adequately and affordably heated; and providing new sources of energy in remote areas;*
- *effective protection of the environment – by reductions in emissions of greenhouse gases and thereby reducing the potential for the environment to be affected by climate change;*
- *prudent use of natural resources – by reducing the nation's reliance on ever diminishing supplies of fossil fuels; and*
- *maintenance of high and stable levels of economic growth and employment – through the creation of jobs directly related to renewable energy developments, but also in the development of new technologies. In rural areas, renewable energy projects have the potential to play an increasingly important role in the diversification of rural economies.*

5.5.16 It is not accepted that the application proposals will make a realistic or definitive contribution to the supply of renewable energy, which outweigh the fundamental Green Belt objections.

5.5.17 While it is acknowledged that Policy EN1 of the WMRSS encourages local authorities, through development plans, to encourage proposals for the use of renewable energy resources, including biomass, onshore wind power, active solar systems, small scale hydro-electricity schemes and energy from waste combustion and landfill gas, this proposal simply does not guarantee a reasonable provision.

5.5.18 The Worcestershire Climate Change Strategy Review 2009 sets out the local context for reducing the impacts on climate change and providing renewable energy. Key objectives of the Strategy relevant to this proposal are:

- To increase the proportion of energy used in the County that is generated from renewable sources.
- Contribute to the local delivery of National Indicator 186 – 1.9 percent local reduction in CO<sub>2</sub> emissions from 2005 levels - this equates to a reduction of at least 27750 tonnes CO<sub>2</sub> from the business & public sector by 2011. In the longer term to achieve the transition to a low carbon society and economy with minimum reliance on fossil fuels.

5.5.19 I contend that the proposals do not fully address this and certainly not to the extent that would constitute very special material circumstances that should outweigh the fundamental Green Belt objections, discussed below.

#### **5.6.0 Planning Policy Guidance Note 2 (PPG2); Green Belts**

5.6.1 Green Belt policy as found within Planning Policy Guidance Note 2; Green Belts clearly advises that inappropriate development in Green Belt locations need to be supported by very special circumstances.

5.6.2 Paragraph 3.2 advises that;

*‘Inappropriate development is, by definition, harmful to the Green Belt. It is for the Applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.’*

5.6.3 Policies D.39 of the Worcestershire Structure Plan and SR7 of the Wychavon Local Plan present restrictions to development in the Green Belt. Policy SR8 of the Wychavon Local Plan relates specifically to the Hartlebury Trading Estate as a major developed site in the Green Belt. The policy refers to, and repeats the expectations

of, Annex C of PPG 2, in regard to development at major developed sites. In short, this policy requires redevelopment to:

- *have no greater impact than the existing development on the openness of the Green Belt and the purposes of including land within it, and where possible have less;*
- *contribute to the achievement of the objectives for use of land in Green Belts, and have regard for the provisions of Policy ECON1 (Employment Land);*
- *not exceed the height of existing buildings; and*
- *not occupy an area larger than the footprint of existing buildings, unless this would achieve a reduction in height, which would benefit visual amenity.*

5.6.4 The proposed development does not conform to Policy D.39 of the Worcestershire Structure Plan, or Policies SR7 and SR8 of the Wychavon District Plan and hence, as inappropriate development in the Green Belt, very special circumstances must be shown by the Applicant to justify the approval of the proposed development.

5.6.5 This stance is accepted by the Applicant and the County Council in both the formal submission and the Report to Committee and that a clear case needs to be demonstrated to overcome its inappropriateness in terms of scale.

5.6.6 PPS 10, PPS 22 and the Consultation on Planning Policy Statement: Planning for a Low Carbon Future in a Changing Climate (March 2010) provide an indication of the very special circumstances that may exist to support waste and energy development proposals proposed in the Green Belt. At paragraph 3, PPS 10 advises that the particular locational needs of waste management facilities, *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.*

5.6.7 Paragraph 13 of PPS 22 states;

*'When located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development, which may impact on the openness of the Green Belt. Careful consideration will therefore need to be given to the visual impact of projects, and developers will need to show very special circumstances that clearly outweigh any harm by reason of inappropriateness and any other harm if projects are*

*to proceed. Such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources’.*

5.6.8. WCC considered that three issues were pertinent; very special circumstances to justify inappropriate development; impact on the openness of the Green Belt; and visual impact on the Green Belt. I concur with this summary.

### **Very Special Circumstances**

5.6.9 Further to PPS 10 I acknowledge that the Applicant’s submissions have considered the locational, environmental and economic benefits and impacts resulting from the proposal.

5.6.10 The Applicant has been led by the principle that a single facility should be provided in Worcestershire and contends the proposal site is the only site appropriate and available for the proposed development. It contends this has direct environmental and economic benefits in terms of reducing the distance that waste has to travel. This stance is supported by WCC.

5.6.11 In terms of site search, the applicant and WCC both asserted that there were no other more sustainable alternatives and that this in itself was given significant weight (para 275 WCC Committee Report). However this is patently not the case as the Applicants own site search found that Ravensbank was more suitable but not pursued due to perceived concerns with restrictive covenants. The application site is contended as having ‘excellent transportation connectivity’ (para 276 WCC Com Report), and this in itself will bring ‘environmental benefits, including road safety and fuel efficiency’. It is contended that the proposal is ‘readily supported by the existing waste transfer infrastructure, avoiding the need to develop new waste transfer stations, with consequent environmental and economic benefits.’

5.6.12 I fail to understand what infrastructure makes the application site so suitable that it outweighs the presumptions against development. If anything, due to the conspicuous omission of any use of rail, I contend that the infrastructure is woefully poor.



- 5.6.13 The Applicant states that the site is located in an area that does not contain ‘insuperable environmental constraints’, nor would significant or unacceptable environmental impacts occur as a result of the development. I strongly contest this.
- 5.6.14 The Director of Planning, Economy and Performance states that the proposal site is located on a significant industrial estate and that previous planning consent has been granted for a strategic municipal waste management facility at this location. However, she accepts that there are other significant industrial estates within the two Counties and it is considered that the land use by itself does not represent a very special circumstance. I concur with this.
- 5.6.15 The emerging Worcestershire Waste Core Strategy does include the Hartlebury Trading Estate as having potential to be suitable for a large scale waste management facility. Due to its emerging status it is in the Inspector’s hand as to the weight given to this document. However, no specific form of waste management is proposed.
- 5.6.16 The Applicant contends that the site is in an area where electricity can be readily exported, subject to economically viable grid connection and there are realistic opportunities to facilitate the export and use of heat recovered from the combustion process. This is contested. The matter has not been confirmed, no specific user has contractually agreed to use the heat and at the moment the ability for businesses on the Estate to utilise low carbon energy produced by scheme, is aspirational and should not be afforded significant weight.
- 5.6.17 The Applicant similarly contends that being situated close to a potential market for the clay soils and bottom ash constitute very special circumstances. While the Applicant has provided information to show that both the clay (extracted to reduce the ground level) and the bottom ash (resulting from the combustion process) are technically capable of being used for brick and/or block manufacture, no formal agreement has been confirmed. Again, it is considered that this matter is aspirational and should be afforded limited weight.
- 5.6.18 The Applicant also promotes very special circumstances because of the proximity of adjacent landfill facilities. This raises a number of concerns; firstly that the Applicant

expects some waste to be disposed of to landfill and that there may be shut down periods, where recourse to a disposal facility would be appropriate.

5.6.19 The Applicants contend that without their proposals the residual municipal waste stream is likely to be transported to out-of-county treatment facilities or disposed of to landfill. This is a sweeping comment and assumes the status quo in terms of waste management and does not take into account the Government's recent encouragement for anaerobic digestion.

5.6.20 The Applicant states that this is a development that would enable statutory targets in relation to landfill diversion and waste recovery to be met and there is no other residual waste treatment capacity operating or proposed in Herefordshire or Worcestershire otherwise capable of delivering the sustainable waste management infrastructure now required. While there is a need to provide capacity for the sustainable management of residual wastes arising within the two authorities, the case pursued by WAIL makes it clear that there are alternatives which accord with Government's latest policy review and the waste hierarchy. Furthermore there remains the fundamental Green Belt objection.

5.6.21 Finally, the very special circumstances proposed by the Applicant rely in the relationship to waste arisings. WCC have suggested that should the proposal be granted planning permission, then it would be appropriate to restrict the source of residual waste. A condition (d) restricting the proposals to only treat those wastes sourced from within the administrative boundaries of Worcestershire and Herefordshire has been proposed.

5.6.22 This may be ultra vires, as I highlight later in my evidence.

5.6.23 The special circumstances put forward to justify the grant of permission need to be properly balanced against the clear harm to the openness of the Green Belt in this location, and on balance, I do not believe that the case is proven. The development conflicts with Policy D39 of the Worcestershire County Structure Plan, Policy SR7 and SR8 of the Wychavon District Local Plan and Government advice contained within Planning Policy Guidance Note 2: Green Belts

5.6.24 The proposed development is of such a scale that it would not be appropriate or could integrate into the landscape character of the area, to the detriment of that

character, contrary to policy ENV1 of the approved Wychavon District Local Plan 2006

5.6.25 Furthermore, Article 13 of the rWFD requires that waste management should be carried out '*without adversely affecting the countryside or places of special interest.*'

5.6.26 I do not feel that a case has been proven and consider that the presumption against its construction should stand. I consider it to be inappropriate development which causes harm, and that no very special circumstances exist to justify the granting of consent.

### **Visual Impact Issues**

5.6.27 The proposals concern buildings 3 times the height of existing development plus an 80 metre high chimney, which may be a pre-requisite to the proposed activity proposed, but I consider to be entirely disproportionate to other development in the vicinity, in this rural environment.

5.6.28 I consider that the proposed development would have an impact upon the visual amenity of the Green Belt, and contend that given the size and nature of the development, no conditions could be applied to mitigate this impact. It has been suggested by the Applicant that because this location already accommodates a number of industrial operations, power lines and commercial properties, that a further structure would not be overly prominent. I am of the opinion that the bulk of the main structure and the height of the chimney would be overly dominant and very obtrusive thus impacting upon the visual amenity of the area.

5.6.29 The Inspector has been presented with substantial material (which is undisputed) describing the location, appearance, dimensions and profile of the proposals. There is, however, dispute as to the number of locations within the area from which the proposals will be seen, the nature and severity of its visual impact and the overall acceptability of erecting a structure of this size and scale in this location.

5.6.30 I have reviewed the Landscape Assessments accompanying the application and am aware that further work will be presented to the Inquiry. While at the time of compiling

this evidence I am not yet able to comment on this additional evidence, I have considered the evidence to date and find that it underestimates the sensitivity of, and/or magnitude of effects on the area. The proposed development will have a significant adverse effect on the landscape and visual setting of the wider character of the area and furthermore would create an adverse perception of the area by local residents and visitors. Considerable care has been given to the re-instatement of landfill sites in the area and the development of a new incinerator will undermine those environmental improvements.

- 5.6.31 The benefits put forward in support of the proposals by the Applicant and associated mitigation proposals are insufficient to justify the adverse visual impact on nearby areas and the associated potential for adverse perception of the site by local residents and visitors.
- 5.6.32 Of relevance is the Government's current Big Society ethos and its manifestation in terms of emerging planning policy. This includes both the Localism Bill, to be enacted towards the end of the year, and the Draft National Planning Policy Framework which was issued for consultation in July 2011 and it expected to replace the extant PPGs and PPSs early in 2012.
- 5.6.33 As I have noted earlier, the Localism Bill endorses a bottom up decision making process where the local community is invited and indeed expected to take an active and positive role in the decision making. The creation of well informed and articulate residents groups is encouraged and decision makers and developers are encouraged to consult positively and effectively to ensure that local development is appropriate.
- 5.6.34 The NPPF and its accompanying Impact Assessment, while in draft form at the time of completing this evidence, replaces extant national policy with a succinct framework. Inter alia, it encourages sustainable development while still protecting the natural and historic environmental. The Planning Inspectorate, in correspondence of July to Chief Planning Officers, advises that the Draft NPPF should be of material consideration in the determinations of development proposals.
- 5.6.35 In terms of protecting the Green Belt, the NPPF notes at paras 133 through to 147 that the original five purposes of the Green Belt, as set in PPG2, remain in place and

will be endorsed. The prevention of urban sprawl and the protection of the character of Green Belt, in terms of openness and permanence, will continue to be fundamental goals.

5.6.36 Reflecting this, paras 142 and 143 endorse the stance that;

*'Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstance. Planning Authorities should ensure that substantial weight is given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm, is clearly outweighed by other considerations.'*

5.6.37 Para 146 of draft NPPF further notes that;

*'When located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development. In such cases developers will need to demonstrate very special circumstances if projects are to proceed. Such very special circumstances may include wider environmental benefits associated with increased productions of energy from renewable sources'*

5.6.38 It is of further note that David Cameron, in correspondence with the National Trust in September 2011 (Appendix WAIL-E), confirmed that;

*'...we must ensure the appropriate protections for our magnificent countryside. This is why our reforms will maintain protections for the Green Belt, for National Parks and Areas of Outstanding Natural Beauty. And as you know, the framework insists on high environmental standards and good design. Poorly-designed and poorly-located development is in no-one's interest.'*

5.6.39 The NPPF addresses the natural environment at para 163 through to 175 and endorses the protection of valued landscapes. The aim should be to minimise adverse effects on the local and natural environment. When determining planning applications, local planning authorities should, inter alia, consider if the proposals introduce 'significant harm' which could be avoided through locating the proposals at an alternative site with less harmful impacts (para 169).

5.6.40 In summary, I consider that the proposals would impact negatively upon the Green Belt in terms of visual impact and are not supported by very special considerations. They would not, therefore accord with PPG2.

#### **OTHER MATTERS;**

#### **5.7.0 Covenants**

5.7.1 Covenants protecting surrounding land and property against noise, nuisance and annoyance also affect the proposed site. This is detailed in the 1980 Conveyance noted earlier in my evidence and attached at Appendix WAIL-A. Factors that constitute 'annoyance' could include noise, light pollution or damage to the visual scenery. In *Davies v Dennis*, the test for nuisance and 'annoyance' was found to be objective and should be judged by robust and common sense standards. Applying this to the Hartlebury site, it is clear that the construction of an incinerator would breach these restrictions, both in terms of the existence of the proposed building and tall stack and also the use of the same, and would have a negative impact on the view and cause increased noise levels. Increased traffic caused by vehicles delivering waste will also create an annoyance for residents and have unfavourable consequences for local highways. Restrictive covenants affecting the Ravensbank site only prevent noisy activities or those which will cause a nuisance, which are clearly less restrictive than those at Hartlebury.

5.7.2 It must also be highlighted that the Hartlebury covenants are for the benefit of not only the industrial estate, but of the adjoining land, including residential properties. They should therefore be afforded greater strength than those on Ravensbank which are solely for the users of the industrial estate.

#### **5.8.0 Propriety**

5.8.1 It is understood that Mercia Waste Management currently operates Herefordshire and Worcestershire's 25 year Private Finance Initiative (PFI) contract for the management of municipal waste.

5.8.2 I do not live locally but I am advised that a high proportion of local residents have indicated considerable unease with the decision making process associated with this case. This reflects the basic elements of the case, i.e. the promotion of a large dominant incinerator in a Green Belt location and that the proposals by Mercia Waste Management are part of a long standing PFI agreement with the County Council coupled with the fact that the land is under the County Council's control. Furthermore, it is understood that the Applicant's costs of the case and Inquiry proceedings are being indemnified by Herefordshire and by Worcestershire County Councils in the event of refusal.

5.8.3 While the Inquiry is welcomed and will allow all key issues to be discussed and assessed under formal proceedings, the relationship between the operator and the Council is considered to present a biased case that local residents have little financial or technical means to fully address.

5.8.4 This issue of propriety is something which the Inspector may wish to take into consideration.

### **5.9.0 Sequential Site Search**

5.9.1 As noted earlier, Article 13 of the rWFD requires that waste management should be carried out '*without adversely affecting the countryside or places of special interest.*' Article 16(1) of the rWFD requires Member States to take appropriate measures '*to establish an integrated and adequate network*' of facilities for the recovery of waste. Article 4(2) continues with the intention that the network should enable the Community as a whole to become self-sufficient '*and to enable Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste.*' Article 4(3) requires waste to be recovered '*in one of the nearest appropriate installations, by means of the most appropriate methods and technologies, in order to ensure a high level of protection for the environment and public health.*'

5.9.2 Para 20 and 21 of PPS 10 advises local authorities in regard to identifying locations for new waste management development. As noted earlier in this evidence, PPS 10

states that a broad range of locations should be considered for waste management facilities, including industrial estates. Green Belt locations are not endorsed.

- 5.9.3 The WMRSS sets out the locational criteria through policy WD3 for locating future waste management facilities. The policy is largely aimed at delivering sites through development plans, but seeks to deliver sites in line with the proximity principle and in line with the Best Practicable Environmental Option (BPEO). As I noted earlier, this term is no longer used in national policy but does reflect a reasonable approach.
- 5.9.4 Structure Plan policy WD.2 requires that *‘Facilities for the handling and treatment of waste should be located as near to its place of origin as possible. They should not conflict with the aims and policies in the Structure Plan, and should preferably be located within buildings on existing or proposed industrial estates where the infrastructure and surrounding uses are appropriate....’*
- 5.9.5 The search selection process followed is summarised at paragraphs 40 onwards of the WCC Committee Report. As discussed earlier, the exercise established that the preferred option was an EfW facility located in Worcestershire, but to serve both that County and Herefordshire, that would generate electricity and heat as identified in the JMWMS.
- 5.9.6 During the search, a key criterion used by the Applicant was to ensure the facility would be located as near to the principal areas of waste arisings as can be achieved. This assessment included the recognition that most of the waste to be treated, almost two thirds, originates in Worcestershire, with just one third generated in Herefordshire.
- 5.9.7 Nevertheless, there remains some concern that the site selection criteria did not appear to take into account the Green Belt. Indeed, the independent assessment conducted by ERM did not appear to mention that the site lay within the Green Belt. I consider that as a Green Belt location, the application site should have been excluded at stage 1 of the site search.
- 5.9.8 That said, it is understood that WCC assessed the sequential search undertaken by the Applicant, and found it to be sound.



- 5.9.9 Of further note, the Applicants instigated ‘independent legal advice’ which was recorded in the WCC Committee Report at paragraph 44 as concluding that the *‘process of site selection was not flawed or contrary to policy’*.
- 5.9.10 It appears that the Members were clearly advised that ‘independent legal advice’ had been sought and hence may have been under the assumption that the search was thorough and complete without any risk of challenge. On behalf of WAIL, I have requested to view the *‘independent legal advice’*. My request has been refused by the Applicant’s agent in an exchange of emails (Appendix WAIL-F), on the basis that the advice had been secured to support viability matters. It *‘did not influence the Site Search Exercise (either its methodology or finding). It was an independent review of the approach and findings requested by the shareholders to support their investment in the project. The only relevance to the shareholders was the confirmation that; ‘the process of site selection was not flawed or contrary to policy’*.
- 5.9.11 This raises my concern that the quality of the site search was not reviewed and Members may have been misled into thinking that the site search was complete, thorough and unchallengeable. In contrast, I contend that too little regard was given to the constraints which meant that one particular site was dismissed and this brings into question that other sites may not have been thoroughly assessed.
- 5.9.12 The application site was not the first choice for a location of an incinerator in Worcestershire. The preferred site at Ravensbank was discounted due to the existence of covenants. In the absence of evidence to the contrary, it is considered that too little effort may have been put into addressing these covenants.
- 5.9.13 Although there are the usual extensive covenants on the industrial estate, I believe that on close examination there may well be nothing which should have necessarily prevented the ‘energy from waste’ plant being sited at Ravensbank. Although nuisance covenants burden the land, these are not as strong as those in the 1980 Conveyance for Hartlebury where the latter includes the restriction of use by way of ‘annoyance’ which is not mentioned in the Ravensbank covenants. This has been discussed in more detail above. This indicates that the covenants at Ravensbank are less onerous, which does not seem to have been taken into account.

5.9.14 The Conveyance dated 4th December 1992 relating to Ravensbank (and presented at Appendix WAIL-G) contains a restrictive covenant preventing the burning of any rubbish or refuse on site. This covenant should be read in conjunction with other restrictions which allow class B1, B2 and B8 industrial use of the land, and thus should be interpreted purposively, using a 'common sense' approach. This approach has been used in previous cases concerning restrictive covenants, including *Martin v David Wilson Homes Ltd*, *Smith v Garrard* and *Jarvis Homes Ltd v Marshall and another*. It is clear the covenant's aim was to prevent the burning of trade waste, rather than to prevent the use of the land for industrial purposes.

5.9.15 I am aware that restrictive covenants would not normally be a planning issue, but they have relevance here, as I understand this was given as a key reason for Ravensbank, (the preferred site), not being pursued. As the Applicant has brought this into the arena by way of the site selection process, I would argue that it is therefore relevant and would contend that the overall process was flawed.

5.9.16 I maintain that to abandon the preferred site at Ravensbank which had far better CHP opportunities, in favour of a Green Belt site in Hartlebury with no confirmed opportunities for heat uptake, was an error of judgement and of more concern, may have been influenced by the County Council's ownership of the site. Little indication has been given by the Applicant in terms of how the covenant could have been addressed and so there is increasing scepticism as to how effectively the matter was pursued.

### **5.10.0 Public Perception**

5.10.1 Given its substantial petition and its ongoing community liaison, I consider WAIL to be a significant indicator of local interest into, and concern over, the proposals. It is contended that there is genuine and significant public concern about the perceived health effects of emissions from the proposed development in this location.

5.10.2 It is clear that, notwithstanding the decision by the Environmental Agency to approve a licence for the scheme, the information provided on health matters by the Applicant

have failed to allay the significant public concerns in relation to health matters. The scale of the proposed building and the visibility of the stack and plume have the potential to serve as a visual constant reminder, rightly or wrongly exacerbating the concerns of local residents.

- 5.10.3 The scale and visual impact of the proposed facility has the potential to impact adversely on the general enjoyment of the area and that the benefits of the proposals are insufficient to outweigh the potential for negative public perception of the facility. As highlighted elsewhere in my evidence, the site lies in a particularly sensitive location, close to the villages of Hartlebury and Elmley Lovett. The Inspector will need to take a judgement as to the impact the proposals will have on the statutory Conservation Area within Hartlebury and whether or not the proposals protect or enhance this area.
- 5.10.4 The proposals give the wrong message with respect to waste management which is unfortunate given the significant progress that has been made in recycling through the implementation of the kerbside collection system across the area.
- 5.10.5 However, this is dependent on the continued goodwill / cooperation of the public. Residents have expressed concerns that recycling levels will fall if the facility becomes established as there will be a perception that that waste 'will all be burned anyway'.
- 5.10.6 Negative public perception, fear and anxiety over the proposals are considered to be a material consideration and should be taken into account by the Inspector, given other case law on the matter.
- 5.10.7 The principle of this matter is found in *R v Stockport ex parte Smith* - CO/159/2001 where a planning application for a "street lamp" mast at Gatley was approved on the advice of a planning official that health was not a material consideration. Local residents applied for leave to apply for a Judicial Review. This was granted on the basis that: "It is arguable that actual and perceived health risks are relevant to the siting of these masts, and that the latter was not taken into account."
- 5.10.8 While the case did not come to Court because One2One conceded, and agreed not to erect the mast. The issue of anxiety has since been reflected in other cases.
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- 5.10.9 Of direct relevance is the public concern raised at the waste facility proposals in Kidderminster in 2002. In dismissing the appeal, the Inspector supported Worcestershire County decision to refuse planning permission. He concluded that the public perception of risk was '*a negative factor of some significance*' and set out a number of issues which exacerbated the public's perception of risk. These included the fact that scientific claims of public safety in the past had proved to be wrong and the Environment Agency was not able to state categorically that any waste management option was safe. Studies were not able to prove that there was no link between incineration and health, only that no link has been proven.
- 5.10.10 The Inspector heard that there were many examples where licence conditions have not been observed and as such there was doubt whether pollution control regimes would have been properly applied and enforced and that judgements on pollution control issues are correct. As such the public's perception of risk was very different from scientific estimates.
- 5.10.11 The Inspector listed a number of factors adding to perceived risks which had been set out by the developer:. These included involuntary risks (such as pollution); whether risks are avoidable by personal precautions; where some people suffer the consequences while others gain the benefit; forms of death that arouse particular dread, such as cancer; danger to small children, pregnant women or future generations; man-made rather than natural sources and concerns amplified by the media or pressure groups.
- 5.10.12 In that case, the Inspector referred to Guidelines for Environmental Risk Assessment and Management (DETR, July 2000) which listed many of the above, plus: risks which are the subject of controversy; risks thought to be poorly understood by science; risks where consequences are delayed and may cause hidden or irreversible damage; factors which play a role in generating media interest; widespread exposure to risk, even at a low level; and the presence of a strong visual impact – which serves as a constant reminder.
- 5.10.13 He also noted that people had experience of the smell of an emission cloud from a chimney on the same site for many years, and could expect the plume from the

incinerator stack to affect the same parts of town and there was a lack of credibility in the developer.

5.10.14 In summary, I contend that genuine public concern is important and a material consideration, particularly where it has been expressed in relation to a specific location, as is the case in Hartlebury. The genuine concern has manifested itself in terms of a strong petition of local residents and an active and vocal residents group in the form of WAIL.

5.10.15 It is also important to note the cumulative impact of other landfill sites in the area. Local residents have had to endure the proximity of three successive landfill sites over the past 30 years with all the associated problems during that period, albeit with the assurance that these sites will eventually be restored to agricultural and recreational use within the Green Belt. There is a general perception within the local community that the proposed incinerator will place a further unacceptable burden on the area and a long term blot on the landscape.

5.10.16 The existing PFI contract, entered into more than 10 years ago, has created a monopoly situation in favour of the Applicant, which provides for a single incinerator solution for the diversion of waste from landfill for the counties of Worcestershire and Herefordshire. There is a general concern locally that this has placed the County Councils in an untenable position from which extraction is difficult without serious financial penalties. The local community consider that this is not a justifiable reason to commit further substantial public expense, when better and cheaper technologies now exist and have overtaken the existing contract.

### **Local Concerns over Environmental issues**

5.10.17 I consider due to inadequacies with the surveys undertaken by the Applicant, it was unclear whether the proposals would impact on bats and greater crested newts in the vicinity. It is now accepted that this impact can be addressed and is not challenged by WAIL. This position was confirmed at the Pre-Inquiry Meeting.

5.10.18 However, there remains perception issues with local employers concerned about air quality and the potential loss or relocation of jobs from local employers. WAIL has

been approached with these concerns by the Directors of Essentially Yours, ecological cosmetics manufacturers who are based on the Hartlebury Estate.

### 5.11.0 Public Consultation

5.11.1 Turning to the extent and manner in which public consultation took place in advance and through the application period, it is acknowledged that the Applicants did engage with the community. However, it is important to note the nature and effect of this consultation given that it is a condition of compliance with the Waste Framework Directive that the public are permitted to participate in the decision making process of certain plans and programmes.

5.11.2 With respect to 'public participation' Article 31 of the Directive provides:

*Member States shall ensure that relevant stakeholders and authorities and the general public have the opportunity to participate in the elaboration of the waste management plans and waste prevention programmes, and have access to them once elaborated, in accordance with Directive 2003/35/EC or, if relevant, Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment. They shall place the plans and programmes on a publicly available website."*

5.11.3 The planning system attaches the highest importance to actively engaging the public in the consideration of proposals which affect them. This is not only emphasised at para 40-142 of PPS1 but is also advanced in the emerging Localism Bill.

5.11.4 It is important to review the nature and effectiveness of the community dialogue as there is a local view that the community consultations comprised of a 'box ticking exercise' and did not reflect or respond to the concerns raised or suggestions made by local residents.

5.11.5 I consider that any good consultation or public engagement should pass four basic tests of;

- Being undertaken at an early stage of proceedings where there is a clear opportunity for informed groups to influence and shape development
- Being meaningful and concerning real tools and techniques rather than being a token gesture of presenting facts of the proposed development and inviting comments
- Being inclusive and reaching out to the community
- Being balanced and representative in mapping the proposals, identifying any gaps and taking action to address any shortfalls.

5.11.6 On a general comment on the nature of consultations, I note the Statement issued by Terence J Harrop on the 17<sup>th</sup> October 2011 and presented to the Inquiry. This refers to the approach made by a representative of the Applicant which was considered to be intimidatory and not reflecting the essence of positive public consultation.

5.11.7 That said, and having reviewed the general consultation process undertaken by the Applicants, I find that the nature, extent and methods adopted fall short of those required of a meaningful and proactive approach. As the Statement of Community Involvement sets out, while the process did involve the formation of a Community Liaison Group to which local residents and councillors were invited and this met on 6 occasions, concerns have since been raised as to its effectiveness. I am advised that those attending the CLG felt that the Applicants were simply using the exercise as a box-ticking exercise, rather than as a means of constructive dialogue. Furthermore, that there was confusion over the scope and nature of the proposals being presented by the Applicant and their agent.

5.11.8 I draw the Inspector's attention to the confusion over whether the proposals were or were not to be dependant on the importation of commercial and industrial waste. The minutes of the CLG meeting on the 3<sup>rd</sup> February (Appendix WAIL-C) confirms that the proposals were presented to the community on the basis that they 'would only treat Municipal Solid Waste'.

5.11.9 Notwithstanding the confusion as to the source and/or nature of the feedstock, the proposals have been presented as a facility with the potential to receive C&I waste regardless of origin, i.e. that the market decides what waste will be treated at the

site. To counter this a planning condition restricting waste imports to Hereford and Worcestershire has been proposed by WCC.

5.11.10 However, such a condition could fail the tests in Circular 11/95 and would thereby be unlawful. In theory there would be no reason why this proposal could not source 100% of its feed stock from outside the county borders. Such an “open” permission must be contrasted with what the Applicants have proposed to date and with what the public were told or indeed what Elected Members were presented with in terms of the officer’s recommendation. It is hoped that parties have not been misled on this matter.

5.11.11 The Government has firmly endorsed the high importance attached to the provision of accurate information as the essential underpinning of this type of major application. In the Review of Waste Policy in England 2011:

*“...based on clear evidence. We want to reach a stage where, as a result of effective engagement, applications which reach the formal planning process should present local politicians with the best possible evidence and a less polarised debate.”*

5.11.12 In summary of this section, I have concerns over the nature of, and approach taken, with respect to the public consultation associated with the proposals and suggest that these fall short of the accepted requirements. Indeed, at times the consultation appears to have misled the community into thinking that the facility would only treat a specific form of waste and that this would be restricted to the counties of Worcestershire and Herefordshire only.



## 6.0 SUMMARY OF CASE FOR WAIL

- 6.1 I contend that the proposed energy from waste proposals should not be built in this location in the Green Belt.
- 6.2 Other waste management solutions are preferable and available to divert waste from landfill and to generate and use truly renewable and sustainable energy. Another site is available, at Ravensbank, which would not need to show “very special circumstances” and would better support the use of heat. The present proposal does not satisfy these criteria.
- 6.3 The basis for the scheme, the relationship with the County Council and the capital cost of the proposed incinerator is itself prohibitive. It will mean that the public purse will be committed to a £120 million project over a 25 year period. This is far too big a commitment in the light of new alternative and Government preferred schemes which are clearly endorsed in the June 2011 Review of Waste Policy and the promotion of Anaerobic Digestion schemes.
- 6.4 It is considered that Anaerobic Digestion is a far more sustainable, economical and environmentally preferred alternative to remove biodegradable waste from landfill. It would comply with PPG2 for protection of Green Belt and accord with national waste policies and climate change advice. Together with recycling and segregated waste collection systems and suitably located autoclave facilities, it would provide for a far better waste management system to serve the community.
- 6.5 I consider that there are significant public concerns about the potential impact of an incinerator form of energy from waste technology and a negative perception which should be taken into account in determining the proposals. Modern energy recovery facilities are industrial in nature and this must be reflected in the selection of appropriate locations. The location of energy from waste facilities need careful consideration and the scale and design of buildings should reflect their location and setting.
- 6.6 There are particular sensitivities associated with the application site. This includes the fact that the mass burn process would necessitate an exceptionally large building in

the Green Belt thus introducing adverse visual impact on the character of surrounding area.

- 6.7 The benefits put forward in support of the proposals by the Applicant and associated mitigation proposals are insufficient to justify the adverse visual impact on nearby areas and the associated potential for adverse perception of the site by local residents and visitors.
- 6.8 The harm is very significant and no planning conditions would in any way mitigate the sheer size and scale of this development nor reduce its impact on the visual amenity and openness of the Green Belt.
- 6.9 The proposed location for the incinerator, situated to the north of the two counties, is not a suitable location to minimise the tonne miles of waste carried across the two counties and is, therefore, contrary to the proximity principle which requires waste arisings to be dealt with locally.
- 6.10 Indeed, the Planning Inspector made comment in his decision on the proposed Kidderminster incinerator: “...and when considered in relation to all of Herefordshire & Worcestershire, it is seen to lie in a relatively remote northern corner.” The Hartlebury site is only some 3.7 miles from the Kidderminster site and so the same observation would apply.
- 6.11 A grant of consent here would conflict with the waste management policies found in the RSS, WSP and WLP and will conflict with national advice in PPG2 and emerging NPPF. It will divert waste from recycling and other options higher up the hierarchy and/or leading to the unsustainable movement of waste by road. Furthermore, the grant of consent here would prejudice other existing and planned sources of renewable energy and would thereby conflict with important national policy objectives.
- 6.12 In conclusion, I consider that the proposals should be refused on grounds that the proposals are a significant departure from development plan policy. The scale of the building is inappropriate in this location and insufficient very special circumstances exist to counter the strong and fundamental protection in place reflecting its Green location within the Green Belt.

6.13 Accordingly, the Inspector is respectfully invited to recommend to the Secretary of State that the grant of planning permission for this proposal, be refused.

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**October 2011**