APP/E1855/V/11/2153273

LAND AT HARTLEBURY TRADING ESTATE, HARTLEBURY, WORCESTERSHIRE

CLOSING SUBMISSIONS ON BEHALF OF MERCIA WASTE MANAGEMENT

Introduction

1. On 10 May 2011 the Secretary of State called in this application for an energy from waste ("EfW") facility, known as EnviRecover, with a capacity to treat 200ktpa of residual non hazardous municipal solid waste ("MSW") and to produce some 15.5MW of electricity of which approximately 13.5MW would be exported to the National Grid. The Secretary of State identified four principal matters on which he wishes to be informed, briefly, the extent to which the proposal complies with: the development plan; PPS10; the advice in PPS1 Climate Change Supplement; and with national Green Belt policies.

2. On 1 March 2011 (before the application was called in) Worcestershire County Council ("WCC" or "the Council") unanimously resolved to grant planning permission for EnviRecover. Unsurprisingly, therefore, WCC and the applicant, Mercia Waste Management ("MWM"), are in broad agreement on the issues identified by the Secretary of State and both parties contend that planning permission should be granted.

3. The unanimous support of the 14 member strong Planning & Regulatory Committee of the Council should weigh heavily in favour of the development. The conclusions of those elected members, representing the interests of all the County's residents, that the proposal would simultaneously meet an identified need for waste management facilities in the area, a similar need for renewable energy generation and thereby deliver significant climate change benefits (climate change is, of course, the Government's principal concern for sustainable development) should be accorded significant weight. There is no evidence to support assertions of impropriety or bias on the Council's part. The Members who took the decision were fully and properly informed on all relevant issues, not just by a very comprehensive Committee Report ("CR") prepared by KB but also by inspections of the site and its surroundings and a number of operational EfW plants. The Members were fully aware of the nature and volume of the local opposition, but of course had to take a decision with the interests of the whole community in mind.

4. Of the main parties to this inquiry only WAIL object to the development. A number of individual third parties have spoken in opposition, but in the main they are supporters of WAIL and have taken similar points against the proposal. WAIL is a somewhat amorphous body: although it has a constitution and officers, there is no formal membership and it is not possible to identify how many local residents subscribe to the case it has presented. PV suggested that those who had added their names to WAIL's website and/ or signed the petition could be counted as supporters but, even if right, the 2,500 or so such people would represent a tiny proportion of the population of the two Counties in whose interests this proposal was approved by the Members.

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

landfilling of prodigious quantities of waste and exporting more for incineration out of county both of which its constitution is doctrinally opposed to.

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

6. EnviRecover would address three distinct but interrelated strands of Government policy none of which should be ignored or considered in isolation: namely, waste, energy and climate change. It would be wrong, for example, to focus on waste policy to the exclusion of policies on energy and climate change. The WPR makes it plain that waste management policy falls within the wider energy policy context.[1] Similarly, WS2007 emphasises that recovering energy from waste which cannot be sensibly reused or recycled is an essential component of a well-balanced energy policy and underlines the importance of maximising energy recovery from the portion of waste which cannot be recycled.[2] Given the fundamental importance of sustainable development, it is energy and climate change policies which, if anything, should take precedence over waste policy should there be any conflict arising between these different strands (after all addressing climate change is the Government's principal concern for sustainable development).[3] There is, however, no conflict at all.

Waste

7. The Government recognises that in order to achieve its key waste planning objectives a step change in the way waste is handled will be required as well as significant new investment in waste management facilities.[4] Those key waste planning objectives include: to meet and exceed the diversion targets in the Landfill Directive (the key driver of national waste policy) for biodegradable municipal waste in 2010, 2013 and 2020 and to increase diversion from landfill of non-municipal waste and secure better integration of treatment for municipal and non-municipal waste; to secure the necessary investment in infrastructure needed to divert waste from landfill and for the

[1] WSL4, pp.33 (as does WS2007 (WSL5, p.76, pp.18)).
[2] WSL5, p.76. The advice to maximise opportunities for renewable and low-carbon sources of energy supply is reiterated in the PPS1 CCS (NPP3, pp.13). Paragraph 40 of that document goes further and states that an application for a development which will make a contribution to the delivery of, amongst other things, the Government's Climate Change Programme and energy policies "*should expect expeditious and sympathetic handling of the planning application.*"
[3] NPP3, pp.3.
[4] NPP8, pp.1.

management of waste; and to get the most environmental benefit from that investment, through increased recycling of resources and recovery of energy from residual waste using a mix of technologies.[5] The Government will ensure that the market demands these new waste management facilities by, inter alia, increasing Landfill Tax.[6]

8. The WPR[7] announced the Government's objective for a zero waste economy in which material resources are re-used, recycled or recovered wherever possible, and only disposed of as the option of very last resort. Zero waste does not mean that no waste is produced. Rather it means that only the minimal amount of waste possible is sent to landfill such that it is truly a last resort. Government policy does not distinguish between MSW and C&I in this regard: it is a key objective of WS2007 to secure the better integration of treatment of both.[8] And so landfill tax does not discriminate between the two and neither does the WPR when it states that sending any waste to landfill which could have been recovered is "clearly wrong."[9] The Council recognise this and expressly say in the CR that the plant would make a significant contribution to the amount of treatment capacity required to avoid waste being disposed of to landfill and would not stifle other reduction, reuse and recycling initiatives.[10] The rWFD[11] and 2011 Regulations[12] impose a legal duty on MWM not to accept at EnviRecover waste which should be treated higher in the hierarchy and conditions attached to the permit are directed at this too.[13] Appeal decisions have repeatedly confirmed that EfW plants do not deter recycling and WS2007 makes plain that vigorous energy from waste is compatible with high levels of recycling.

9. Whilst all three strands of Government policy are neutral on technology choice,[14] the WPR provides explicit policy support for the provision of EfW facilities in the form of thermal treatment. It expressly recognises the environmental and economic benefits of

[5] WSL5, pp.23.
[6] Landfill Tax for MSW and C&I waste is currently £48 per tonne and will rise by £8 per tonne per year, reaching £80 per tonne by 2014. The latest indications are that the rises will continue.
[7] The WPR forms alongside WS2007, PPS10 and waste local plans and development Plan documents the Waste Management plan for England as required by Article 28 of the WFD. It is the Government's intention to review all these national documents and release a consolidated National Waste Management Plan in 2012.
[8] WSL5, p.11.
[9] WSL4, pp.240.
[10] PA8, pp.191.
[11] WSC1, Article 15.
[12] WSL2, reg.12.
[13] CD.EP1, condition 2.3.3(c).
[14] To which subject we return in the context of addressing WAIL's case.

recovering energy from residual waste and makes it clear that there is considerable scope for additional EfW capacity to be provided:

> "*Our horizon scanning work up to 2020 and beyond to 2030 and 2050 indicates that even with the expected improvements in prevention, re-use and recycling, sufficient residual waste feedstock will be available through diversion from landfill to support significant growth in this area, without conflicting the drive to move waste further up the hierarchy.*"[15]

10. Indeed, the scale of waste derived renewable energy from thermal combustion envisaged in the WPR is vast: it envisages a threefold increase by 2020.[16] As both PPS10 and WS2007 recognise, the planning system is pivotal to the adequate and timely provision of new waste management facilities.[17] If that is ever to be delivered, having regard to the lead time for these type of facilities, planning permissions need to be granted and now. The UK Renewable Energy Roadmap sets outs a series of actions, timetables and targets for the renewable energy generation. It deals at length with EfW and explains that the explicit statement of the Government's commitment to EfW in the WPR is as a result of the difficulties that industry has experienced in gaining consents.[18]

11. The reasons why the Government are so supportive of EfW are clear and are in part precisely because EfW reaches beyond mere waste management and addresses energy and climate change to which we shortly turn:

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[15] WSL4, pp.214. This is consistent with the message in EN-3 which states that the recovery of energy from the combustion of waste, where in accordance with the waste hierarchy, will play an increasingly important role in meeting the UK's energy needs (NPP15, pp.2.5.2, see also pp.3.3.10).
[16] WSL4, pp.215.
[17] See, for example, NPP8, pp.1. EN-1 makes the related point in the context of energy generating infrastructure that there is a requirement for substantial and timely private sector investment which is precisely what MWM seeks to deliver. NPP14, pp.2.2.25. As to the applicability of the NPSs to this scheme LBS confirmed in XX her agreement that the NPSs were material and that weight could be attached to them. This position was contrary to the way in which PT XX'd KB. Indeed, PT tried to revisit LBS' very clear answers in RE-X but LBS was extremely fair and did not seek to change her clear position. She was right not to do so for EN-1 specifically states it is a material consideration (pp.1.2.1) (EN-3 the same). Further it refers to the need not just for nationally significant infrastructure but for both small and large scale generators of renewable energy (pp.2.1.2). The draft PPS on the low carbon future (DNP1) tells us that we should read across its provisions into the planning system (see pp.4. and policy LCF.14.2). If that were not all obvious enough, the Chief Planning Officer letter (NPP14A) put in by PT demonstrates the point conclusively: it spends a whole section on the relevance of the NPSs to the planning system. As LBS agreed, where that letter refers to the development plan it is a reference to the 1990 Act system (given that the IPC makes its determinations having regard to the NPSs).
[18] ESL5, pp.3.142-3.146.

> *"The benefits of recovery include preventing some of the negative greenhouse gas impacts of waste in landfill. Preventing these emissions offers a considerable climate change benefit, with the energy generated from the biodegradable fraction of this waste also offsetting fossil fuel power generation, and contributing towards our renewable energy targets. Even energy from the non-biodegradable component, whilst suffering from the negative climate impacts of other fossil fuels, has additional advantages in terms of providing comparative fuel security, provided it can be recovered efficiently."* [19]

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

12. Having set out the broad scheme of national waste policy, we turn to consider the Secretary of State's second issue and EnviRecover's compliance with PPS10. PPS10 is a very significant material consideration. It is the Government's principal national planning policy document on sustainable waste management. It is clear on its face that it may supersede policies in the development plan which are inconsistent with it.[20] We address the development plan below but it is plain that in many respects (such as references to BPEO and the proximity principle)[21] the development plan policies on waste have been materially overtaken by the latest national policy. Moreover, PPS10 has been recently updated to reflect the rWFD. In the circumstances compliance with PPS10 is the perhaps the best indicator of this proposal's fit with up to date waste policy.

13. In our submission EnviRecover would meet the Government's overall objectives for waste by using waste as a resource and source of energy and reducing substantially the amount of waste that is being landfilled. EnviRecover alone would virtually eliminate all the residual MSW from the two Counties for which there is no residual recovery capacity and which, in its absence, will perforce be landfilled. It would represent the positive planning required by paragraph 2 by providing sufficient new management facilities of the right type, in the right place and at the right time (more realistically, very belatedly); in other words, the adequate and timely provision of facilities which PPS10 states is the pivotal role of the planning system.[22]

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[19] WSL4, pp.208.
[20] NPP8, pp.5 and 23.
[21] See, for example, policy WD.1 of the Structure Plan (DP2, p.120).
[22] NPP8, pp.1.

14. PPS10 sets out a number of key planning objectives[23] ("KPOs") to which the Secretary of State has drawn particular attention and with which EnviRecover fully accords in that it would:

(i) As all parties agree, assist in driving the management of Worcestershire's and Herefordshire's residual MSW (and potentially C&I waste) up the waste hierarchy,[24] use waste as a resource and look to disposal as the last option. At present the authorities are heavily reliant on landfill as well as some out of county third party EfW which is wholly unsustainable. In 2010/11 some 191kt of Worcestershire's and Herefordshire's residual MSW was landfilled and just over 18,000 tonnes was sent to remote out of county EfW facilities. Furthermore, NR estimates that some 250kt of C&I from Worcestershire alone was landfilled.[25] There is no alternative residual waste treatment capacity in the two Counties, no proposals in the planning pipeline for such capacity and no known interest from any quarter to promote recovery capacity. EnviRecover, therefore, would and only EnviRecover could deliver the required step change in the management of the two Counties' waste, thereby ensuring all the authorities' residual MSW would be diverted from landfill and eliminating the need to transport a sizeable quantity of waste to EfW out of county;[26]

(ii) Help communities take more responsibility for their own waste and would represent timely (NR perhaps more properly describes it as overdue) provision of waste management facilities to meet the needs of the two Counties. EnviRecover represents perhaps the key facility to be provided under the PFI contract which envisaged a single residual waste treatment facility serving both of the Counties. This strategy has again been endorsed by the JMWMS Review 2009. Despite these long term and oft tested plans, no in county solution has been delivered to date (the contract was signed in 1998) as a result the Counties have been reliant not just on landfill but also on using out of county EfWs (as far distant as Coventry, Wolverhampton and Nottingham). This situation will persist until an in

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[23] NPP8, pp.3.
[24] The Council and MWM are agreed that EnviRecover would in no way deter recycling and other management routes higher up the hierarchy, although it should be noted that the injunction not to do so at paragraph 25 of PPS10 only applies to waste disposal facilities.
[25] MWM2, pp.6.2.4.
[26] NPP8, pp.3, 1st key planning objective.

county solution comes forward. There can surely be no better example of a facility helping a community take more responsibility for their waste than EnviRecover which would allow the two Counties for the first time to contemplate stopping the export of waste to distant facilities in other local authority areas. In addition, in so far as EnviRecover provides some C&I capacity, it will also provide an appropriately located facility for the local business community to take responsibility for their own waste;[27]

(iii) Make a significant contribution to implementing the national waste strategy and, more particularly, to meeting the landfill diversion targets set out in WS2007.[28] The two Counties have no operational residual recovery facilities and so failed to meet the 2010 target. The next target is 78 per cent. recovery by 2015. Given the lead times for large scale recovery facilities this target will be difficult to achieve but if EnviRecover is granted planning permission now there is a real prospect that EnviRecover could be operational by the end of 2015 and so ensure the Counties meet the target;[29]

(iv) Help secure the recovery of waste without endangering human health and without harming the environment and enable waste to be disposed of in one of the nearest appropriate installations. EnviRecover has been the subject of a full environmental impact assessment which concludes that there are no significant or unacceptable impacts remaining following the adoption of appropriate mitigation measures. No party has challenged the adequacy of the ES. The Environment Agency has already issued an environmental permit confirming it is satisfied that EnviRecover is acceptable from a pollution control perspective.[30] The facility will not, therefore, either endanger human health or harm the environment. In circumstances where waste is being transported over long distances to EfW outside of the two Counties and prodigious amounts of waste are being landfill in the area, it is hard to conceive of a better example of an appropriate installation

[27] NPP8, pp.3, 2nd key planning objective.
[28] WSL5, p.11.
[29] NPP8, pp.3, 3rd key planning objective.
[30] EP1.

albeit that the PPS10 KPO refers to the *disposal* of waste in the nearest appropriate installation and EnviRecover is, of course, a *recovery* facility;[31]

(v) Clearly reflect the concerns and interests of communities, the needs of waste collection authorities, waste disposal authorities and business, and encourage competitiveness by the provision of much needed waste treatment capacity (as well as the generation of renewable energy) within the two Counties not least so as to enable the Authorities to meet their recovery and landfill diversion targets.[32] In particular, as described in the submitted planning application documents (Planning Application Document Part 4: Community Involvement Statement) MWM has canvassed public opinion about residual waste treatment by way of the "Attitudes to Waste and Recycling" telephone survey. In this exercise 1,300 residents, on a 50:50 split across Herefordshire and Worcestershire, were telephoned between 7 and 14 September 2009. The key results from the survey showed that 83 per cent. supported the policy of not sending waste to landfill; 81 per cent. felt that their own waste should be dealt with locally; 89 per cent. said it was acceptable to treat residual waste and to get some sort of value from it; and 92 per cent. felt that an EfW plant was an acceptable specific technology (after it had been explained to them that this referred to a facility where residual waste was burned and the heat captured to produce either heat or electricity). There is widespread support for energy recovery in the JMWMS.[33] Moreover, EnviRecover will met the needs of local businesses by providing a cost effective route for waste management that avoids the cost of landfill tax to the extent that the facility takes C&I waste;

(vi) The sixth KPO is to protect the Green Belt but at the same time to recognise the particular locational needs of some types of waste management facilities which should be given significant weight as should the wider environmental and economic benefits of sustainable waste management. There can be really no dispute that the site meets all the locational requirements identified in PPS10.[34] It

[31] NPP8, pp.3, 4th key planning objective.
[32] NPP8, pp.3, 5th key planning objective.
[33] WSL7, pp3.6.3.
[34] The locational requirements are set out at paragraphs 17 – 21 of PPS10. These include the cumulative effect of previous waste disposal facilities on the well-being of the local community. There is no suggestion that

is agreed by all parties that the site is appropriately situated in relation to waste arisings. The site lies within a ring of the most populated towns in the two Counties. It is the only site within a level 1 area which has been identified as suitable for large scale facilities of up to 250ktpa throughput and a stack height of 80m.[35] There are excellent transport links, the site benefits from an extant permission for industrial uses, the site search has demonstrated that there is no more sustainable alternative in terms of locations otherwise appropriate or available for this development and that the principle of development at this location is established through the extant planning permission. PPS10 is clear that these matters should be given significant weight as should the wider environmental and economic benefits we have identified elsewhere both in determining the Green Belt issue specifically and in the planning balance more generally; and

(vii) Supports sustainable waste management through the design and layout of the development. The facility has been designed to ensure its landscape and visual impact is minimised by sinking the building and stack some eight metres into the ground and ensuring that the built form is tightly wrapped around the plant to limit the size of the building to that functionally required. And, of course, it is the design of the plant (and capital investment in the necessary equipment) which makes provision for the generation of electricity and the supply of heat to local users.[36]

15. It is manifestly clear that EnviRecover would deliver the PPS10 KPOs and is an excellent fit with the rest of the policy guidance in PPS10. In our submission, the proposal's compliance with PPS10 should be accorded significant weight. EnviRecover would help the two Counties comply with its legal duty to apply the waste hierarchy as

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EnviRecover would have any materially harmful impacts in relation to noise, traffic, odour, dust and, furthermore, any visual impacts would be of a wholly different nature to the visual impacts of the existing landfill site. In the circumstances, it cannot be suggested that EnviRecover will have a cumulative impact in combination with the existing landfill site.

[35] DP5, p.36, policy WCS2 and DP7, p.43.

[36] NPP8, pp.3, 7th key planning objective.

a priority order and to curtail the wholly unsustainable practice of landfilling by using waste as a resource.[37]

Energy

16. There can be no doubt that EnviRecover would make a significant contribution to the similarly pressing need for renewable and low carbon energy.[38] The UK is committed to a target of producing 15 per cent. of its total energy from renewable sources by 2020.[39] As NR said both the West Midlands region and Worcestershire are "failing miserably" against this target. In the West Midlands only 3.8% of energy consumed in the region is generated from renewable sources, thereby failing by a considerable margin the 2010 renewables target (of 10 per cent.). In Worcestershire it is even worse at 2.9%. In previous appeal decisions the Secretary of State has concluded that the greater the need, as indicated by failure to meet targets, the greater the weight to be attached to the renewable energy contribution.[40] In exporting 13.5 MW of electricity EnviRecover would make a very material contribution (additional 6.9%) towards increasing regional renewables generation. At the County level the contribution would be remarkable and increase generation by up to 82.5%. The plant would generate sufficient electricity for the domestic needs of circa 22,500 households.

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[37] Which is what the rWFD seeks to achieve as the Chief Planner reminded local planning authorities in March of this year (WCC2, App.A).

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

[39] NPP14, pp.3.4.1.

[40] See NR12, pp.16.

17. The extremely poor level of renewable energy generation in the Region and in Worcester is the antithesis of the Government's aims. The unremitting message from the Government is one of urgency: the Energy White Paper seeks to provide a positive policy framework to facilitate and support investment in renewable energy;[41] the aim of UK Renewable Energy Strategy is *radically* to increase the use of renewable energy;[42] and the UK Low Carbon Transition Plan records that the *scale of change* we need in our energy system is *unparalleled.*[43] The draft NPPF also stresses the *urgent need* to restructure the economy to meet the twin challenges of global competition and a low carbon future[44] and seeks to support the delivery of renewable and low carbon energy by, inter alia, requiring local planning authorities to design their policies to maximise renewable and low carbon energy development while ensuring that adverse impacts are addressed satisfactorily[45]and by directing them to apply the presumption in favour of sustainable development when determining planning applications as well as not to require applicants for energy development to demonstrate need.[46] In short, the exhortation to industry is to provide as much renewable energy capacity as swiftly as possible. It is notable but unsurprising that KB distils precisely this same message from Government policy. It is absolutely clear that Government policy requires that significant weight should be given to a proposal's provision of renewable energy. As a result it should be no surprise that the Energy White Paper makes it clear that local authorities should look favourably upon planning applications for renewable energy developments.[47] It provides:

> "*New renewable projects may not always appear to convey any particular local benefit, but they provide crucial national benefits. Individual renewable projects are part of a growing proportion of low carbon generation that provides benefits shared by all communities both through reduced emissions and more diverse supplies of energy, which helps the reliability of our supplies. This factor is a material consideration to which all participants in the planning system should give <u>significant weight</u>*

[41] ESL1, pp.5.3.67 is important it provides, amongst other things: (1) applicants will no longer have to demonstrate need for renewable energy or for the particular proposal to be sited in a particular location, (2) that planners should create an attractive environment for innovation and in which the private sector can bring forward investment in renewable and low carbon technologies and (3) give a clear steer to decision makers that in considering applications they should look favourably on renewable energy developments.
[42] ESL3, Summary.
[43] ESL4, p.36.
[44] DNP2, pp.71.
[45] DNP2, pp.152.
[46] DNP2, pp.153.
[47] ESL1, pp.5.3.67.

when considering renewable proposals. These wider benefits are not always immediately visible to the specific locality in which the project is sited. However, the benefits to society and the wider economy as a whole are significant and this must be reflected in the weight given to these considerations by decision makers in reaching their decisions."[48]

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

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

19. Climate change needs to be approached in tandem with energy policy. Energy policy is central to tacking climate change. Indeed, PPS1 CCS expressly states that polices and priorities on climate change are set out inter alia in the Energy White Paper. The White Paper itself states that renewables are key to the strategy to tackle climate change. PPS22 makes a similar point:

> *"The development of renewable energy, alongside improvements in energy efficiency and the development of combined heat and power, will make a vital contribution to these aims*
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> ...
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> *Increased development of renewable energy resources is vital to facilitating the delivery of the Government's commitments on both climate change and renewable energy. Positive planning which facilitates renewable energy developments can contribute to all four elements of the Government's sustainable development strategy."* [49]

[48] ESL1, p.157 & 158, Box 5.3.3 Renewables statement of need.
[49] NPP11, p.6.

20. PPS1 CCS sets out the Government's belief that climate change is the greatest long term challenge facing the world today and that addressing climate change is the Government's principal concern for sustainable development.[50] It further highlights the importance of planning as a delivery mechanism, the urgent need for action on climate change[51] and sets a number of KPOs.[52] Climate change could hardly be given greater weight in Government policy. The importance of climate change is reflected in the stiff carbon saving targets: the Government aims to cut emissions of carbon dioxide emissions by 60% by 2050 and make 'real progress' towards that target by 2020. Again, EnviRecover will make a significant contribution to the PPS1 CCS KPOs in that it will:

(i) Make a full and significant contribution to delivering the Government's Climate Change Programme and energy policies and in doing so contribute to global sustainability. As we have already identified EnviRecover would deliver 13.5MW of electricity to the grid which would otherwise have been generated by the combustion of fossil fuels. In addition, the plant will be CHP ready and able to exploit any opportunity for the export of heat. The WRATE analysis demonstrates the immense carbon benefit in recovery over landfill and that EnviRecover is the best overall environmental outcome that Member States are required to encourage. As SO explained in XIC, EnviRecover as compared to landfill could save some 53,000 tonnes of CO_{2e}. To put that in context WCC (one of, if not the County's largest employers), carbon footprint in 2009/10 was 55,618.[53] In other words EnviRecover would effectively eliminate WCC's carbon footprint;[54]

(ii) Providing jobs, services and infrastructure needed in this area and secure the highest viable resource, energy efficiency and reduction in emissions. The construction of EnviRecover would support 452 person years of gross employment, and deliver potentially over 200 person years of local employment.

[50] NPP3, pp.3.
[51] NPP3, pp.6.
[52] NPP3, pp.9.
[53] MWM26, p.6.
[54] NPP3, pp.9, 1st key planning objective.

This equates to 45 permanent construction jobs, 20 of which being local permanent jobs.[55] When operational EnviRecover would provide some 42 full-time equivalent jobs. In addition, ongoing spend on supplies and maintenance over the operational life of the plant would support a further 9 full-time equivalent jobs.[56] It is further expected that this level of employment will generate around £1.62 million of net additional GVA per annum within the Worcestershire LEP area. The proposal would also potentially support employers in the area through reduced waste costs and as a potential source of cheaper and more secure power. That the proposal would exceed the R1 co-efficient even without the export of heat demonstrates that EnviRecover would be an efficient generator of energy; [57]

(iii) Help secure the fullest possible use of sustainable transport for moving freight. EnviRecover is ideally located in relation to the waste arisings in the two Counties and so minimise waste miles and bring about an end to the wholly unsustainable practice of exporting waste to EfW outside of the two Counties;[58]

(iv) Help provide resilience to climate change by driving down the carbon impact of waste management in the two Counties and thereby help to reduce their vulnerability to climate change;[59]

(v) Cause no significant or unacceptable impacts on ecology and biodiversity as demonstrated by the ES and the grant of the Environmental Permit. Furthermore, the proposed landscaping scheme for the site will create new habitats and enhance existing habitats to the benefit of local ecology;[60]

(vi) Plainly reflect the development needs and interests of the two Counties and will help contribute to tackling climate change through the provisions of renewable energy and by enabling diversion from landfill;[61] and

[55] MWM2, App.NR17, p.26.
[56] MWM2, App.NR17, p.26.
[57] NPP3, pp.9, 2nd key planning objective.
[58] NPP3, pp.9, 3rd key planning objective.
[59] NPP3, pp.9, 4th key planning objective.
[60] NPP3, pp.9, 5th key planning objective.
[61] NPP3, pp.9, 6th key planning objective.

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

21. The Council has expressly agreed that EnviRecover is consistent with the advice in PPS1 CCS and "demonstrably" complies with the KPOs making a full contribution to delivering the Government's Climate Change programme and energy policies and, in doing so, contribute to global sustainability.[62] It follows that the applicant should, in line with paragraph 40 of the CCS, expect to receive expeditious and sympathetic handling of this application from the Secretary of State. Of course, any difference of emphasis on climate change in the CCS with other national policy is intentional and should, as the foreword explains, be resolved in favour of the CCS.

22. PV sought to demonstrate that SO's climate change benefit calculation was in error and that in fact there would be a net increase in carbon emissions. There were several iterations to his evidence. The first was the written statement WAIL4 which contended there would be a climate change burden of some 8ktpa of CO2. Yesterday we were invited to delete this from the statement as part of paragraphs 1.6 – 1.14 had been "overtaken by events." PV explained in XX this meant parts of his evidence had been made untenable by SO's rebuttal (MWM11). The second iteration was the supplementary evidence (WAIL4A) which PV produced after SO had given evidence and related to matters on which PT had not XXd SO. SO responded to this in MWM30 but without the advantage of being able to explain it in person or be XXd on it. Yesterday we had in effect a third iteration of PV's evidence, given orally in extensive XIC and reliant on a confusing selection of numbers drawn from various sources which was very difficult to follow and delivered in part after SO had had to depart the inquiry and which again had never been put in XX of SO. It could hardly have been presented in a more disjointed and unsatisfactory manner. However, this further evidence did produce the welcome concession that, after all, PV's calculations had been in error and

[62] PI5, pp.6.37.

he now accepted that EnviRecover would provide climate change benefits as compared with landfill but only to the tune of 1ktpa of CO2.

23. To have reached a conclusion that landfill was superior to EfW in terms of climate change effects was always manifestly absurd and flew in the face of clear Government advice and accepted wisdom. For example, the WPR[63] emphasises the considerable climate change benefits of EfW as compared with landfill and the Inspector in the Severnside decision clearly considered that EfW would result in "very substantial reductions in GHG emissions"[64] which was in turn accepted by the Secretary of State. These benefits are also stated clearly in some of PV's own documentation.[65]

24. So in terms of the principle, PV agrees with SO that EnviRecover would have a net overall beneficial climate change effect when compared with landfill. The extent of that benefit has been grossly underestimated by PV, not that we properly understand how the 1ktpa has been derived. We do at least know that he has used a biogenic content of only 50%, which is far too low: Arup's report[66] refers to that being a conservative assumption (no doubt deliberately so to avoid over-subsidising renewable energy producers) and that recent DEFRA research suggests that it might be as high as 68%. Indeed, footnote 60 suggests that 68% was the best available proxy for all MSW. As SO explained and PV accepted, reducing the biogenic content of the material incinerated is likely to raise the CV of the feedstock and therefore increase the electricity output. We also know that PV used in his calculation a carbon intensity for the displaced energy derived solely from a CCGT power station and not the 50:50 balance between coal and gas power generation that SO had used in his base case. This has resulted in an unrealistically low level of climate change benefits for the EfW plants as compared with landfill which, if it were correct, would apply across the board to all EfW plants and would make it difficult to reconcile with the strong national policy preference for EfW as compared with disposal in a landfill. SO stands firmly behind his net carbon benefit for the project of some 53ktpa. He is the expert in this field and PV is not and we submit that on this matter his evidence should clearly be preferred to that of PV.

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[63] WSL4, pp.208.
[64] ID5, pp.222.
[65] Namely WAIL4A, App.6 (see the final sentence on p.13) and App.9, p.2, 4th column 4th bullet.
[66] MWM30, p.161.

25. WAIL also seek to argue that EnviRecover would not make a full contribution to the climate change programme in that there is no guarantee that it would export heat. Again, this is misconceived. Even without export of heat the plant is to be regarded as an efficient energy producer (as defined in the rWFD) and its export of electricity to the national grid is a significant contribution to renewable energy generation in this area. In addition, the facility would be "CHP ready" and, therefore, fully able to exploit any heat demand in the vicinity. As stated in WS2007, particular attention should be given to siting the plant where it could maximise the opportunity for CHP.[67] Paragraph 27 of PPS1 CCS[68] provides that planning authorities should pay particular attention to fostering the development of new opportunities to supply proposed and existing development with renewable and low carbon energy. Such opportunities could include co-locating potential heat customers and heat suppliers and, as SO said in evidence, the application site has good potential in this regard. The application site is located at the heart of an extensive trading estate where there is excellent potential for demand for heat from proximate occupiers. The Applicant has carried out a number of heat studies and, as SO explained, has identified a number of potential users including the two brickworks and a food manufacturer, together with the potential for new firms to come to the trading estate attracted by the supply of renewable energy. Wienerberger is watching the applicant's progress with much interest having identified the potential benefits of taking heat to pre heat the combustion air for the brick kilns.[69] As SO explained, MWM are not in a position to make contractual commitments to supply heat to Wienerberger in advance of planning permission. This is precisely the situation envisaged by the WPR which highlights the potential difficulty in securing customers in advance of construction of the plant.[70] The CHP potential of the proposal should, therefore, be accorded considerable weight. Decision makers now routinely give weight to CHP potential or readiness.[71] LBS agreed in XX that weight was given to the CHP potential of the proposed plants at Avonmouth, Severnside and Rookery South. In all those cases there was no legally committed heat offtake, but rather an opportunity to supply heat should demand exist once the plant was operational. There is no reason to

[67] See WSL1, p.79, pp.28 and see EN-1, NPP14, pp.4.6.3 and 4.6.5.
[68] See also pp.20, 4th bullet of the same document (NPP3).
[69] See MWM2, App.NR5.
[70] WSL4, pp.237.
[71] See, for example, Severnside (ID5, pp.224).

take a different approach in this application. Conditions attached to the EP ensure that the opportunity for CHP is fully exploited.

Conclusions

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

27. It is difficult to see how EnviRecover could fit any better with PSS10 and PPS1 CCS. The conclusion which we invite in relation to the Secretary of State's issues B and C is that there is a compelling requirement and urgent need to deliver this form of infrastructure now in order to fulfil the policies on waste and climate change that those documents set out. WAIL has accepted that the need to provide recovery capacity in the two Counties, where remarkably none exists or is proposed, to assist in reducing the very large quantity of waste being landfilled is compelling and urgent. There is no other technology put forward that could remotely treat the quantity of waste that EnviRecover would manage, still less another site that would be suitable and available for such purpose. LBS accepted that the only site relied on by WAIL as a potential alternative for EnviRecover was unbankable and undeliverable and both she and PV accepted that WAIL were not able to suggest an alternative proposal to deal with this waste.

National policy: other matters

28. The Government has now published the draft NPPF.[72] It is a document which has caused much public debate. However, it follows and is entirely in the accord with the direction of travel set out in the earlier Ministerial Statement, PfG,[73] a document which took immediate effect and is being afforded significant weight in recent decisions of the

[72] DNP2.
[73] OD1.

Secretary of State, including in one of the most recent EfW appeal decisions: Severnside where 47 jobs were created which is a comparable figure to this proposal (42 jobs full time jobs).[74] PfG is overwhelmingly supportive of development: it identifies the promotion of economic growth and jobs as a top priority and states that there should be a clear expectation that the default answer to development and growth should be yes except where it would compromise the sustainable development principles.

29. The draft NPPF builds on PfG and is clear that local planning authorities should approve development that accords with relevant policies of statutory plans (as here) without delay and also grant planning permission where the plan is absent, silent, indeterminate or where relevant policies are out of date unless the adverse impacts of allowing development *"would significantly and demonstrably"* outweigh the benefits when taken against the policies in the document as a whole.[75] Paragraph 26 requires that planning applications should be determined in accordance with the NPPF itself in the absence of up to date and consistent plans. MWM's evidence demonstrates that there would be no material harm arising from implementation of the scheme and, importantly, significant and substantial benefits would flow from a grant of planning permission.

30. The NPPF is only a draft. It has caused controversy and may change. It is none the less a material consideration and as the PINS Advice Note observes it does give a clear indication of the Government's direction of travel. PfG, however, is an extant Ministerial Statement promulgating up to date Government policies and the approach to decision making and should, therefore, be accorded significant weight.[76] Promoting sustainable economic growth and jobs is stressed to be the Government's top priority to which the answer should wherever possible be 'yes'. The present proposal represents both economic and sustainable development and will provide new employment open to local people. As such it is deserving of the "particular weight" referred to in the final paragraph of PfG.

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[74] See Severnside (ID5, pp.249: "The recent ministerial statement on Planning for Growth would lend strong support to the grant of planning permission, given the employment that the scheme would provide and the economic growth it would encourage").
[75] DNP2, pp.14.
[76] OD1.

31. These extant and emerging policies are in line with policy EC10 of PPS4 which provides that the local planning authorities should adopt a positive and constructive approach towards planning applications for economic development and that planning applications which secure sustainable economic growth should be treated favourably. This application is deserving of that favourable treatment.

Need

32. Need may be dealt with relatively shortly in closing given the measure of agreement between the parties on this issue. The Council and MWM are clear that EnviRecover represents a missing and much needed part of the waste management infrastructure in the two Counties. Whilst WAIL does not quite put its name to that sentence, LBS confirmed in XX that there is a considerable need for such waste management facilities[77] and that WAIL still hold the views it expressed in SoCG2, namely, that:

    (i) There is a need for new infrastructure in the UK to facilitate sustainable waste management and to move waste higher up the waste hierarchy and away from landfill;[78]

    (ii) EnviRecover would make a contribution to the amount of treatment capacity required to avoid waste being disposed of to landfill;[79] and

    (iii) There is an established need for renewable energy generation nationally, regionally and locally.[80] In this context, LBS further agreed in XX that the decision maker should assume the need for EnviRecover has been demonstrated and that the need is urgent. Of this agreement there can be no doubt. PT intervened in the XX to say that he had not heard LBS agree to the word urgent. LBS expressly confirmed she had.

33. All parties agree that neither waste nor energy policy requires an applicant to demonstrate need. LBS confirmed she agreed in XX. She was right to do so. Paragraph

[77] By reference to WAIL1, pp.5.6.20.
[78] PI7, pp.5.1.
[79] PI7, pp.5.17.
[80] PI7, pp.5.23.

22 of PPS10[81] makes it clear that there is no requirement to demonstrate a quantitative or market need for a scheme where it is consistent with an up-to-date development plan (note, paragraph 22 does not say that proposals must show need where in conflict with the development plan). The development plan here is plainly not up to date with and so does not reflect national policy: both the RS (even though published after PPS10)[82] and the WCSP (which was published well before PPS10)[83] refer to concepts such as the proximity principle and BPEO which do not form part of extant waste management policy. In such circumstances, paragraph 23 of PPS10 applies. It provides that, before the development plan is updated to reflect PPS10, planning authorities should ensure that proposals are consistent with PPS10. We have already demonstrated EnviRecover's excellent fit with PPS10. In the context of energy, EN-1 provides that applications for energy infrastructure should be assessed on the basis that the need for those types of infrastructure has been demonstrated by the Government and that the need for renewable electricity generation is urgent.[84] Indeed, there is no limit on energy generation – the policy thrust is clear: it is as much as possible and as soon as possible. As to climate change, PPS1 CCS emphasises that applicants for energy development are not required to demonstrate overall need.[85] Furthermore, Secretary of State appeal decisions confirm that a demonstration of need is not a requirement of policy. By way of example, the Inspector at Eastcroft concluded that the need argument raised before him was not relevant.[86] As did the Inspector at Cornwall.[87]

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34. LBS further agreed in XX that neither waste nor energy policies sought to place a rigid cap on waste management capacity.[88] In doing so LBS took the contrary position to that taken by PT in the questions he put to KB the day before. However, LBS was plainly right. A series of appeal decisions over the years confirms as much (see, for example, Ince Marshes[89] and Ineos[90]). The most recent confirmation came at the Severnside

[81] NPP8.
[82] See, for example, policy WD3 DP1, p.96.
[83] See, for example, policy WD1 DP2, p.120.
[84] NPP14, pp.3.1.3 and p.27, pp.3.4.5.
[85] NPP3, pp.20.
[86] ID7, pp.344. With which the Secretary of State expressly agreed. See his decision letter, pp.28.
[87] ID3, pp.1840: "*... national waste and energy policy do not require need to be demonstrated...*"
[88] This agreement was contrary to the way in which PT XX's KB the day before.
[89] ID2, pp.11.124-11.126.
[90] ID9, pp.3.5(d).

Inquiry.[91] Indeed, in awarding costs to the Appellant the Inspector at Severnside took account of the fact that the Council had been advised that there is no rigid cap on capacity but had not taken that advice on board in advancing its case.[92]

35. In the light of these uncontroversial matters LBS agreed that it did not much matter what the detailed numbers show given Government policy on need and the agreement of all parties that there is an urgent need for recovery capacity to be provided in the two Counties. Nevertheless we make the following further point in relation to need:

(i) NR's Appendix 10, in which he sets out MWM's detailed case on need, was not challenged. LBS' initial stance had been that the need assessment was "flawed" because it had not taken account of the fall in arisings. However, and very significantly, NR's assessment was based on the recession affected arisings for 2010-2011 and considered what waste was actually being landfilled and which, as agreed by LBS, should be regarded as needing to be diverted from continued landfilling by providing recovery capacity. NR took fully into account increased recycling rates and assumed that the Counties would meet and indeed well exceed the recycling targets for both MSW and C&I waste. Together with C&I waste (which must now be regarded as MSW), he demonstrated that there would be a requirement for at least 400ktpa of recovery capacity in both near and long terms,[93] in other words at least double EnviRecover's capacity. LBS expressly agreed that EnviRecover's capacity of 200ktpa fits extremely well (and with a measure of prudence) in the range of capacity forecast to be required in the Entech Report.[94] LBS was also able to agree, looking only at MSW, that the facility was appropriately sized;

(ii) The scale of this need no doubt partly explains why LBS accepted that the numbers did not actually matter. It also led her to accept that AD for separately collected food waste could not possibly be an alternative to EnviRecover since it would at best address only less than 10% of the total residual waste requiring

[91] ID5, pp.234.
[92] ID5, costs decision pp.68-69.
[93] MWM2, App.NR10, p.13, pp.44.
[94] WAIL11, p.53. Entech concluded that the capacity of 220ktpa would be appropriate.

recovery capacity if it were to be diverted from landfill which she accepted was the imperative in national waste policy as set out in WS2007;[95]

(iii) In so far as there was any argument on need it related to the likelihood of MSW arisings increasing in the future. WAIL's position is, in so far as we understand it, informed only by an analysis of the historic data contained in LBS' appendix B. A number of points should be noted with regard to that data. First, it is partial (it excludes streams such as Bring tonnages and commercial waste collected by districts in the residual category).[96] This can be seen by comparing the 2010/11 figure within LBS appendix B (364,366) with the figure for the same year of 396,152 provided in the Entech report.[97] Secondly, as KB pointed out in evidence whilst the data is relied on to demonstrate that there has been a decrease in MSW arisings, over the 10 year period covered by the data the fall is minimal (less than 3.5 per cent) and certainly no proper basis on which to conclude it will continue. Thirdly, the Entech report – which is WAIL's own evidence to the inquiry – and which deals with the whole MSW waste stream indicates that there has, in fact, been an increase in arisings between 2008/9 and 2010/11. Moreover, WAIL does not provide its own forecast of waste arisings. It simply suggests – without any working whatsoever – that MSW arisings will not increase in the future and we think implied it would fall. But LBS could not, when invited to do so, point to an informed commentator who has said arisings will continue to fall. Indeed the opposite is true for in adopting the position it had (at least prior to XX of LBS), WAIL set itself against both informed commentators as well as the evidence before the inquiry (some of it WAIL's own). First, DEFRA who are, LBS agreed, the "horse's mouth" when it comes to waste and waste statistics. DEFRA has undertaken a forecasting exercise. Indeed, it has run two different models both of which forecast increasing amounts of MSW.[98] Secondly, their own evidence in the form of the Entech Report which as LBS agreed is an independent review of the waste management treatment capacity required in the two Counties and which forecasts increasing amounts of MSW up to 2030/31.[99] Thirdly, the options

[95] WSL5, p.28-29, pp.23.
[96] WAIL1, App.B, p.21.
[97] WAIL11, p.2, Table 1.1. It should be noted that this figure is a forecast.
[98] MWM16, p.29 and 30.
[99] WAIL15, p.2, Table 1.1.

appraisal for the JMWMS 2009 assumes a growth rate for MSW.[100] Fourthly, the data underpinning the emerging WCS again forecasts an increase in MSW.[101] Fifthly, the Revisions to the RS also assumed an increase in MSW arisings.[102]

(iv) LBS agreed that the two Counties are currently landfilling prodigious quantities of municipal waste (191,326 tonnes in 2010/11[103]) (and NR estimates that approximately 460,000 tonnes of C&I and MSW are being landfilled in the two Counties), that the situation will persist unless and until further recovery capacity such as that provided by EnviRecover comes forward and that it is (adopting the Government's own words) "clearly wrong"[104] to allow the current position to continue. As a result of which agreement LBS accepted that there was a compelling and urgent need to divert waste from landfill;

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

(vi) Whilst it has not been seriously suggested during the course of the inquiry that EnviRecover would somehow inhibit recycling we deal with the point shortly. First, NR's entire analysis on the required recovery capacity is predicated on the Counties meeting and exceeding their recycling targets. Secondly, EnviRecover is being promoted as the key element of an integrated waste management contract which provides for all forms of waste management. Thirdly, the evidence suggests that high levels of recycling and energy from waste are compatible.[105] Fourthly, in so far as C&I is concerned there is a significant commercial driver to recycle given the respective costs of the different forms of waste management. In Cornwall the Inspector dealt with the same arguments in a similar context (the promotion of an EfW under a PFI Contract which would utilise any spare

[100] WCC6, pp.2.1 (leading to a residual treatment capacity of 250,000 tonnes which indicates that EnviRecover is prudently sized).
[101] MWM2, NR App.10, p.8, Table NR10-1.
[102] DP4, p.149, Table 5.
[103] MWM2, App.NR10, p.8, Table NR4-2, the addition of columns D and E.
[104] WSL4, pp.240.
[105] WSL5, p.78, pp.23.

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capacity to treat C&I). He concluded that the facility would not act as a deterrent to the recycling of wither MSW or C&I.[106]

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

Secretary of State's Issue A: the development plan

37. The Secretary of State's first issue is the extent to which the application complies with the development plan. The development plan in this area comprises: the West Midlands Regional Spatial Strategy ("the RS"), the Worcestershire County Structure Plan ("the WCSP") and the Wychavon District Local Plan ("the WLP"). The statutory test, properly formulated, is whether the application accords with the development plan as a whole.[107]

38. NR undertook an extensive analysis of the proposal's fit with the development plan in his Appendix NR14. The only development plan policy conflict identified in WAIL's statement of case is with the Green Belt policies in the WLP[108] (SR7 and SR8) and no other. We address these policies below (as well as policy D39 of the WCSP which also deals with development in the Green Belt). The case developed by LBS in her proof on WAIL's behalf accords with the limited case as set out in WAIL's statement of case, save to say that LBS states that policy WD1 of the WCSP is relevant (not, note, that there is conflict with it) and in the context of policy WD2 of the same document LBS sets out WAIL's case on need with which we have already dealt. NR's analysis is far more wide ranging than the policies identified by WAIL. Aside from those policies identified above,[109] NR's analysis was wholly unchallenged.

39. In light of NR's analysis and the lack of challenge to it, we submit that the application is in overall conformity with the relevant policies of the development plan and,

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[106] ID3, pp.1882-1889.
[107] In *R v Rochdale MBC ex parte Milne (No.2)* [2001] Env. L.R. 22 at 50 Mr Justice Sullivan (as he was then) held that for the purposes of section 54A of the 1990 Act it is enough that a proposal accords with the development plan considered as a whole and that it does not have to accord with each and every policy therein. The same principle should apply to section 38(6) of the 2004 Act.
[108] PI4, pp.2.4.5 and see proof of evidence pp.5.3.11.
[109] In addition in XX NR was taken to policies, EN1, WD1, WD2 and WD3 of the RS and policy CTC.1 of the WCSP.

accordingly, the proposals must enjoy the presumption in favour of permission being granted for development which accords with the development plan set down by section 38(6) of the 2004 Act.

40. However, there is a slight difference between the Council and MWM on this issue. The Council believes that that the proposal conforms with the development plan save that it is not in accord with the Green Belt and landscape and visual policies.

41. As KB explained in XIC, the Council's landscape officer was heavily involved in the Council's assessment of the scheme's landscape and visual impact. Significant weight should be accorded then to the fact that the landscape officer did not object to the proposal. Moreover, KB's conclusion, premised on the landscape officer's advice and her own judgment, is that the visual and landscape impact is not so significant to justify the refusal of the application. In XIC KB elaborated on her view of the harm. She said that some harm would arise from the fact that the proposal would be visible in some viewpoints but that harm would be clearly outweighed by the benefits of the proposal. It is not clear how this position translates into a conflict with development plan policies and, if it does, with which policies the conflict is said to arise.

42. Moreover, although KB's position was informed by advice from the Council's landscape offer, MWM is the only party to have adduced specific expert evidence. JM concludes that there is no material landscape harm and accordingly the evidence before the inquiry (for it was left largely unscathed following WAIL's XX and was not challenged in any way by the Council) is that there can be no conflict with landscape and visual policy.

43. The reality is that, if there is something between the Council and MWM on this particular issue, it is a distinction without difference: JM recognises that EnviRecover will be seen from some vantage points and that there will be some harm which arises as a result, albeit that the harm would not be material and so not represent a conflict with policy. It is difficult to see why KB's position should be different from this.

44. As to the policies on Green Belt within the development plan, the starting point is to note that both the Council and MWM agree that there are VSCs (albeit there are some

small differences in how the Council and MWM arrive at that conclusion) to justify the proposed development in the Green Belt. If the Secretary of State agrees that there are indeed VSCs then the proposal would of course accord with national Green Belt policy and LBS agreed that this would follow. In our submission the proposal would also, therefore, accord with the Green Belt policies within the development plan properly applied. Again, LBS agreed with this.

45. Policy D39 of the WCSP[110] provides that where development is inappropriate (as here), it will only be allowed where VSCs exist to outweigh the harm to the Green Belt (as we contend here). Accordingly, this policy addresses the precise circumstances into which EnviRecover falls as inappropriate development and, if the Secretary of State agrees with the Council and MWM that there are VSCs there is no conflict with this policy.

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46. Policies SR7 and SR8 of the WLP also deal with development in the Green Belt (and the latter, specifically, with Hartlebury Trading Estate).[111] However, as NR explained in evidence, neither is relevant to this application. Policy SR8 incorporates criteria which are lifted straight from PPG2 Annex C (although strangely it omits infill development which is expressly included in the Annex). The criteria identify what comprises appropriate development. Since there is no reference in policy SR8 to VSCs it is plainly only dealing with what constitutes appropriate development and is not the relevant policy for dealing with inappropriate development. If it were otherwise, SR8 would be inconsistent with the very national policy it is designed to propagate. If applied in a manner consistent with PPG2, as we submit it should be, there is no conflict. The same analysis applies to SR7. LBS expressly agreed with this interpretation of the policies.

47. As to the remaining policies on which NR was XXd, these may be dealt with shortly. Policy EN1 of the RSS expressly encourages energy from waste.[112] Further, the supporting text is clear that the region should aim to contribute as far as possible to green house gas reduction[113] and the generation of renewable energy.[114] EnviRecover contributes significantly to both those aims. Policies WD1 - 3 have all been over taken

[110] DP2, p.76.
[111] DP3, p.23 and 24 respectively.
[112] DP1, p.86.
[113] DP1, pp.8.48.
[114] DP1, pp.8.49.

by events: the WD1 targets have been superseded (albeit that EnviRecover would contribute to meeting the targets), WD2 again relies on data which is not the most up to date and both WD2 and WD3 rely on outmoded waste management concepts such as BPEO and the proximity principle which are no longer form part of extant policy. The waste policies within the Structure Plan are predicated the same concepts.

48. Two landscape policies were put to NR in XX by PT: policy CTC.1 of the WCSP and ENV1 of the WLP. The following short points should be made. First, the approach to landscape is demonstrably out of step with up to date national policy in that those policies address local landscape designations, namely SLAs and AGLV. Current Government policy expressly and repeatedly states that local landscape designations should not be used in themselves to refuse consent.[115] If there was any doubt about the applicability of that policy in the current case, PPS1 CCS which repeats the same policy is clear that it supersedes polices contained in a development plan which has not yet been updated to reflect that PPS.[116]Of course, the application site lies well outside such local landscape designations and, therefore, at the bottom of the landscape hierarchy in this area. Secondly, and in any event, given JM's evidence that there is no material landscape harm and KB's that there is no harm sufficient to justify a reason for refusal in such circumstances, it is hard to see how there can be said to be conflict with these policies. Thirdly, both policies address landscape character, a matter different and distinct from visual impact, as JM made clear. Just because a building may be seen in the landscape does not mean that it will materially harm landscape character. As is plain from the ES, and LBS agreed in XX, a key landscape characteristic of all the relevant landscape character description units is the impact of commercial development in the landscape. JM made clear why, in his opinion, formed after a careful and transparent process fully in line with recommended guidelines set out in GLVIA,[117] there would be no material harm to the landscape hereabouts.

The emerging development plan

[115] See EN-1 (NPP14, pp.5.9.14), PPS7, pp.24, PPS1 CCS (NNP3, pp.20, 2nd bullet) and PPS22 (NPP11, pp. 15).
[116] NPP3, pp.11, 4th bullet.
[117] MWM8, App.JM7.

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49. The emerging development plan comprises: the Worcestershire Waste Core Strategy – Submission Document (June 2011) including its Addendum (October 2011) ("WWCS"); the South Worcestershire Development Plan (September 2011) ("SWDP"); and Regional Spatial Strategy for the West Midlands Phase 2 Revision (including the recommendations of the Panel Report) ("the RS Rev 2").

50. NR extends his analysis of the proposal's fit with the development plan to the emerging development plan in his Appendix NR14. Furthermore the Council and MWM agreed that the proposal accords with the overall objectives within the emerging development plan.[118] We deal with each briefly in turn.

Worcestershire Waste Core Strategy

51. NR sets out his detailed analysis on proposal's compliance with the WWCS policies in his appendix 14. We do not repeat that analysis. However, the following points should be noted. First, the Hartlebury Trading Estate is within the highest level of the geographical hierarchy for the location of waste management facilities, as set out in Policy WCS1 and confirmed by KB in XIC. Secondly, the proposal would accord with all aspects of Policy WCS2 which specifically sets the policy tests for the development of 'other recovery' facilities. The supporting text to the policy indicates that 'other recovery' facilities include thermal treatment and recovery facilities. Thirdly, the Hartlebury Trading Estate represents a 'compatible land use' for 'other recovery' facilities within the meaning of Policy WCS4. Significantly the WCS now contains a policy which deals with inappropriate development in the green belt: policy WCS10.[119] It expressly recognises that waste management facilities may, even if representing inappropriate development, be permitted provided that VSCs exist. In part for these reasons NR concludes (as does the Council) that the proposal complies with the emerging WWCS. Albeit that both the Council and MWM agree that no significant weight can be accorded the WWCS as it is yet to be independently examined and as NR identifies in his proof there are a large number of objections which will be considered when it is examined.

The South Worcestershire Development Plan

[118] PI, pp.6.11.
[119] DP5A, p.31.

52. The Council and MWM agree that no significant weight can be accorded to the SWDP given it is at the very early stages of its preparation with no early prospect of adoption. Moreover, the applicant has lodged objections to parts of the SWDP which have some relevance to the EnviRecover proposal[120] (the Council has made similar representations)[121] and with good reason. Policy SWDP46, which is one of the few relevant to the proposal, is fundamentally flawed for a number of reasons not least the approach it adopts in deeming that energy from waste is not renewable energy. That approach is wholly contrary to law and national policy. We have explained above why the energy derived from biodegrable fraction of waste is renewable energy. We note that NR concludes that the proposals are in general conformity with relevant policies contained within the SWDP, with the exception of that policy.

Regional Spatial Strategy for the West Midlands Phase 2 Revision

53. The RS Rev 2 has been through examination and is the subject of a Panel report but in light of the Government's intention to scrap Regional Strategies (and the power to do so now exists) all parties are agreed that only very limited weight can be attached to it. Nevertheless all parties also agree that the evidence base which supports that Revision is relevant.[122] NR identifies in his appendix NR14 that policies W1, W2, W3, W5 and EN1 of the RS Rev 2 are the most relevant to the proposed development and concludes that EnviRecover would be in full compliance with the requirements of these policies.

Secretary of State's Issue D: Green Belt

54. All parties are agreed that the proposal is inappropriate development in the Green Belt. Accordingly, in order for planning permission to be granted VSCs need to exist which clearly outweigh the harm to the Green Belt caused by the inappropriateness and any other harm. Government policy expressly recognises that infrastructure projects are likely to be inappropriate development when located in the Green Belt.[123]

Very special circumstances

[120] MWM2, App.NR15.
[121] WCC11.
[122] PI7, pp.6.10.
[123] NPP14, pp.5.10.17.

55. Decision makers are specifically required in the context of waste management proposals to give significant weight to the locational needs of waste management facilities together with the wider environmental and economic benefits of sustainable waste management.[124] As is recognised in the Secretary of State's call in letter.[125] This is an important concession which is not afforded to most other types of development. Significantly however, a similar message is to be found in the context of renewable energy and climate change. Policy LCF14.2 of the draft PPS: Planning for a Low Carbon Future in a Changing Climate recognises that when located in the Green Belt many renewable energy projects will comprise inappropriate development and provides that VSCs in such circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.[126] It is quite different from the commentary in Annex E of PPG2 in relation to affordable housing, MSAs, football stadia, and gypsy sites. No other form of development has the positive emphasis regarding VSCs that is applied to waste management and energy proposals. The Secretary of State in the Todmorden decision[127] stressed at paragraph 16 that energy policy in that Green Belt case was of considerable importance and should weigh very heavily in the planning balance. Indeed, Wychavon District Council only recently granted planning permission for a wind farm in the Green Belt and concluded that the production of what was a very small amount of renewable energy amounted to very special circumstances.[128] Furthermore, EN-1 requires consideration to be given to the extent to which the development would have limited or no impact on the fundamental purposes of Green Belt designation. This demonstrates that LBS' approach that "green belt is green belt" is misplaced and that, at least in respect of energy infrastructure, national policy recognises that some parts of the green belt may be less sensitive than others and in which case VSCs may be more easily demonstrated. Therefore all three strands of national policy to which EnviRecover would contribute (waste, energy and climate change) exceptionally identify specific matters which could comprise VSCs for the type of development proposed.

[124] PPS10, pp.3, 6th bullet.
[125] PI.1.
[126] The same message is to be found in paragraph 13 of PPS22 (NPP11) and paragraph 2.3.5 of EN-3 (NPP15).
[127] MWM2, App.NR12.
[128] ID.11.

56. Importantly in this regard it can now be reported to the Secretary of State that LBS agreed in XX that the following matters could amount to VSCs: the compelling and urgent need for the proposal that LBS had earlier agreed existed; the fact that there is no other suitable and alternative site in the two Counties (as all parties now agree); the proposal's renewable energy generation as well as the implications of failure as set out in NR's evidence[129] (and to which we turn later in these submissions).

57. Of course as set out in opening the Council and MWM are agreed that VSCs exist in that:[130]

(i) EnviRecover would provide 200ktpa of valuable and much needed recovery capacity in an area which currently has no residual recovery capacity, enabling it to meet more sustainably its waste management capacity needs and thereby reduce its dependence on continued extensive landfilling;

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

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

(iv) EnviRecover would bring the substantial climate change and economic benefits as already described in these submissions.

[129] MWM2, p.65-67.
[130] The agreed VSC are set out in detail at pp.6.40 of SoCG1 (PI5).

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

59. NR sets out his analysis of the VSCs in great detail in his proof of evidence.[131] That analysis was simply not challenged during the inquiry and we invite the Inspector and the Secretary of State to adopt NR's evidence on this issue. In our submission the factors set out above and the further matters indentified by NR are deserving of very considerable weight. Individually and collectively they are "very special" considerations which go directly to the heart of key national, regional and local policy objectives. Against these very considerable advantages, EnviRecover would give rise to only very limited harm.

60. If the Secretary of State accepts that the proposed plant is urgently needed, as WAIL has, it is common ground that this site is the only one suitable in the entirety of the two Counties for such a project. There has been an exhaustive study of alternative sites and, whatever points have been raised about covenants affecting Ravensbank, the unequivocal evidence of LBS was that she accepted JP's evidence (MWM13) and NR's evidence at paragraph 9.4.10 in the light of which she accepted that that site (the only one put forward by WAIL) was unbankable and undeliverable for a project similar in type to EnviRecover.

The purposes & objectives of including land in the Green Belt

61. There would be no conflict with any of the purposes for which Green Belts are designated or the positive roles encouraged for green belts in respectively paragraphs 1.5 and 1.6 of PPG2. The fundamental aim of green belt policy is to prevent urban sprawl by keeping land permanently open. The application site is not open countryside but forms part of an active and large trading estate which adjoins a prominent landfill

[131] MWM2, p.90-113.

site. It enjoys planning permission for major built development (5 industrial units with a floorspace of 138,600 sq ft) and will inevitably, regardless of the outcome of this application, not remain open (which is NR's unchallenged evidence at paragraph 2.3.3) and so would not conflict with that purpose. LBS also recognised that this permission "presents a precedent for development on the site." The briefest glance at a map demonstrates EnviRecover would not conflict with the second purpose, namely, to prevent neighbouring towns from merging into one another. The third purpose, to protect the countryside from encroachment, cannot be offended by a proposal which is contained within an existing trading estate and MDS. Nor is there any suggestion that EnviRecover would impact on the setting or special character of an historic town. As to the final purpose, it should be noted that whilst the proposal would not directly assist urban regeneration by the use of derelict and other urban land (at least in line with the intention of behind PPG2), it would bring a previously used, disturbed, vacant site back into beneficial use. This would occur by way of the development of a high quality, architect designed series of buildings, with integrated landscaping, that would meet an established waste management and renewable energy generation need. Thus derelict land would be regenerated and the proposal would not undermine wider urban regeneration. By its very nature the proposal cannot significantly contribute to the achievement of the objectives for the use of land in the Green Belt but nor does the site is its current state. It is not a site which makes any significant contribution to retaining or enhancing attractive landscapes near to where people live, as JM explained. The site itself can barely be seen from outside the trading estate. However, the reuse of vacant land and the beneficial ecological effects of the landscaping would contribute to a limited degree to the fourth and fifth objectives.

Visual amenities of the Green Belt and effect on openness

62. JM set out a careful analysis on visual and landscape impact, addressing no fewer than 47 separate viewpoints including the 26 suggested by WAIL. In none of them did he find the effect of the proposed development would be significant. This informed his judgment that the development would not have any substantive effect on the actual or perceived openness of the Green Belt or the visual amenities of the Green Belt (JM paragraphs 3.1.31 & 3.1.49). In respect of each viewpoint he set out his opinion on the sensitivity of the viewpoint and the magnitude of the change which then in accordance with the accepted guidelines informed his judgment on the significance of the change.

Although LBS commented that this involved judgments at all three steps, significantly she not once gave her own opinion on these important steps or attempted to approach the matter in the transparent and structured way recommended by GLVIA. Instead she jumped straight to a pure judgment but without any explanation of how she got there apart from using expressions such as "huge scale". Where there is conflict between the expert evidence of JM and the evidence LBS, who is a self-confessed non expert in LVIA, we submit that JM's evidence should be preferred.

WAIL and third party matters

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

Covenants and alternative sites

64. Covenants may be dealt with shortly. As LBS agreed, covenants are not a land use planning consideration. In so far as the application site is concerned, WAIL point to a number of residential properties on Walton Road which benefit from a covenant prohibiting nuisance and annoyance[132] and say that there is a risk that one of those properties will seek to enforce the covenant. However, none of these residents has come before the inquiry and indicated such an intention. WAIL has provided no evidence to that effect. Indeed PT made it clear he has no instructions from any of the residents of those properties. Moreover, LBS confirmed that WAIL does not even suggest that the construction and operation of EnviRecover would breach the covenant. LBS said she would have to take legal advice on the latter point. Of course, any legal advice would take into account the existing development surrounding those residential properties (HTE, the brickworks (and their chimneys) and the landfill sites (which are closer than the project site))[133] and the expert evidence which uniformly concluded that the proposal would cause neither nuisance nor annoyance.[134] KB further confirmed in answering a question from the Inspector that the issue of nuisance and annoyance has been considered by the Council in determining the application and that the Council had concluded that material harm would not arise in planning terms and that, in any event, any harm could be controlled through conditions and the environmental permit. Finally, LBS confirmed that WAIL does not argue that the proposal would be undeliverable on the application site. That concession should mark the end of the issue. It was a surprise, therefore, to see WAIL refer to *Davies*, a case that LBS confessed that she had not read even though she had referred to it in her written evidence. That case does not, however, assist WAIL. A covenant must be construed in the context of the whole deed in which it sits as well as the situation on the ground to which it relates. Paragraph 4 of *Davies* explains that a particular feature of the benefited properties was their views of the Thames. Each of the properties had designed views of the river providing the owners a "waterside lifestyle." The claimed breach was a building that took those views away thus radically changing the nature/ principal feature of the benefited properties. The facts could not be farther from the situation here where there is, as we have said above,

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[132] WAIL1, App.A, p.7 and 18.
[133] LBS agreed by reference to JM's assessment of VP26 (the viewpoint which most closely approximates the location of the residential properties) that the proposed development would only be visible above the trees and in a view which already features industrial buildings and a prominent stack.
[134] The position of JM, NR and KB.

existing industry and, indeed, a landfill site intervening between the application site and the benefited properties. The contrast between the two factual scenarios neatly demonstrates the dangers of referring to caselaw without proper analysis.

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65. As to Ravensbank, LBS made it clear in XX that she entirely accepts the contents of MWM13 which explains the lengths[135] to which MWM went in order to deliver Ravensbank. We note in passing that LBS agreed that MWM had used best endeavours in this regard. As a result, she further agreed that this application would be unbankable[136] and undeliverable on the Ravensbank site. With that concession so fell WAIL's case on alternative sites.

66. In any event it should be noted that from a policy perspective there is not any general requirement to consider alternatives or to establish whether the proposed development represents the best option.[137]

67. As a result, LBS confirmed that Ravensbank should be discounted as an alternative site and that WAIL had identified no other alternative site. She agreed that it can now be reported to the Secretary of State that it is common ground that the application site is the only suitable and available site for this project in Herefordshire and Worcestershire.

68. Nonetheless in closing PT went back to Ravensbank and suggested that the burning of RDF on that site would not breach the covenant on the basis that RDF is not waste. Of course, the covenant does not even refer to waste. It refers to rubbish or refuse. The R in RDF of course refers to refuse. But even if the covenant referred to waste, PT's approach is wholly misconceived and based on a fundamental misunderstanding of *OSS v Environment Agency*. Admittedly it is a case and subject that is hard to follow but there is no excuse for suggesting that there is an end of waste test in paragraph 63. No such test is there set out. Instead, the approach is outlined in paragraph 59. In order to determine if a material has ceased to be waste regard has to be had to the holder's intention to discard and, more significantly, in the context of materials that have been passed onto another for a use of some sort, a series of objective indicators derived from

[135] Including substantial financial offers to the beneficiaries and seeking defective title insurance (the latter is referred to by NR in MWM2, pp.9.4.10).
[136] Meaning banks would decline to finance the project as is evidenced by the letter from Credit Agricole at App.1 of MWM13.
[137] NPP14, pp.4.4.1.

the policy of the WFD. Paragraph 63 comes at the end of a passage in which the court had looked at two previous decisions evaluating specific materials (one of which concluded that a waste derive fuel was still waste) and judging whether the decisions were right. Here there is no evidence whatsoever as to the composition of the material WAIL propose, its characteristics or how it will treated. The end of waste test cannot be applied. Accordingly, there is no basis on which PT can suggest that a generic and unspecified RDF is not waste.

69. In any event and as a matter of fact and practice RDF is burnt in cement kilns and/ or energy from waste plants both of which have to be WID compliant. They are WID compliant because they burn waste. This was an advocates point. No evidence was lead upon it. It was predicated on a failure to understand the law.

Alternative technologies

70. Government policy is clear: proposals for alternatives which are vague or inchoate can be excluded from the consideration on the grounds that they are neither important nor relevant.[138] To describe WAIL's proposals on alternatives as vague or inchoate would be, we suggest, overly generous. The highest WAIL puts its case on alternative technologies is to identify the mere possibility of an unspecified alternative having lesser environmental effects than this project. But it does so in the absence of any concrete proposal, in the absence of any evidence whatsoever and in circumstances where LBS agreed that there is a compelling and urgent need for recovery capacity. It is a wholly unpersuasive position to adopt.

71. Before dealing with the technologies to which WAIL rely on, two preliminary points should be made. First, the Government does not generally think it appropriate, subject to encouraging AD for food waste, to express a preference for one technology over another and regards technology choice is a commercial matter for the promoter.[139] In the case of energy policy there is a fundamental reason not to do so: to ensure that there is a security of supply through a diverse range of technologies.[140]

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[138] NPP14, pp.4.4.3.
[139] WSL5, p.79, pp.27.
[140] See EN-1, NPP14, pp.3.3.5 which provides: "*There are likely to be advantages to the UK of maintaining a diverse range of energy sources so that we are not overly reliant on any one technology (avoiding dependency*

72. Secondly, an inordinate amount of time was spent in XX of SO and KB on the Annex D options appraisal for the JMWMS 2009 and the two versions of the Applicant's WRATE assessment. Of course, the Secretary of State cannot pronounce on the appropriateness of the Strategy, but it has now been adopted by all the constituent Councils and LBS regarded it as an important document deserving of weight. The options appraisal which underpins the Strategy was subject to consultation and its preferred option was endorsed by the overwhelming majority of those who participated. Its chosen option of a single EfW plant is entirely unsurprising and a logical decision given the vast amount of recovery capacity required in the two Counties. EfW is the chosen route for many if not most WDAs and is encouraged by Government as a sustainable, prudent and reliable method of treating waste. Selective criticisms of a number of the tables in Annex D did nothing to displace the overall conclusion that EfW was the most suitable option. The same applies to the WRATE assessments. Neither WAIL witness had any experience in such assessments whereas SO is clearly very knowledgeable in this specialist field. His evidence showed unswervingly that the EfW options were demonstrably superior to all others. Moreover, WAIL could not seem to understand that the autoclave option with landfill performed significantly worse than EfW with or without power. It was only autoclave with all residue recycled that performed better than EfW without CHP (and only before weighting). As we describe below, no one has successfully found a recycling outlet for an autoclave output. As NR said he could not really understand why the autoclave + recycling options were even assessed as an option given that that option had only just proved itself to be undeliverable in the two Counties. Autoclave + recycling is a far better option than autoclave + combustion which WAIL now advocated. Again, WAIL just don't seem to understand this despite all the clear and uniform evidence from NR, SO and KB. As a result WAIL relied on an option that cannot be delivered, unilaterally dismissed the Council's own assessment of what factors were important to them and ignored EnviRecover's CHP potential. It was an approach which was wholly unjustified.

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on a particular fuel or technology type)." And at pp.3.1.2: "*The Government does not consider it appropriate for planning policy to set targets or limits on different technology.*"

73. In written evidence AD appeared to be WAIL's preferred alternative technology, however at the inquiry WAIL focused instead on autoclave. As LBS conceded in XX autoclave was not mentioned in her written evidence save by reference to the options appraisal. Whatever was behind the change of approach, the decision to push autoclave did not help WAIL's case.

74. Not least because autoclave has already been tried on the application site and failed. In 2003 planning permission was granted for an autoclave facility on the application site. As KB explained the planning permission was subject to a Grampian condition which required an outlet for the fibre which would be produced by the autoclave output to be found. Between 2003 and 2005 MWM and ESTECH (the provider of the technology) sought to find such an outlet. Indeed, as NR explained in XIC, MWM spent over £1 million in trying to find a workable solution for which it received no compensation. Despite taking the very best advice available (indeed, ESTECH were advised by PT's firm DLA Piper and MWM by Clifford Chance) the deal could not be closed. There was simply no viable market for the fibre. In 2006 all parties agreed to move on. Shortly thereafter ESTECH thought they had found a solution, namely, exporting the fibre to China for recycling. Talks resumed. But again, it became clear quickly that even this was not workable. For WAIL now to contend that the Councils should revert back to this failed approach is extraordinary.

75. WAIL attempts to support its position by reference to Sterecycle and Wakefield were wholly misplaced. The only evidence WAIL adduced with regards to Sterecycle was a marketing brochure.[141] NR, however, has worked for Sterecycle since 2009 and as a result knows its history and operations well. LBS, sensibly in the circumstances, confirmed that she did not dispute NR's evidence in relation to Sterecycle.

76. He explained that no use or market whatsoever has been found for Sterefibre (the output from the process). Instead, it languishes at the bottom of a quarry at Hampole landfill in Doncaster in an ever growing pile. As NR said, it is literally a mounting problem. The EA have tested Sterefibre and will not let it be put to land. Indeed the tests were such that the EA will not let it be landfilled. EA object even to its temporary

[141] WAIL12.

storage without a special membrane. However, planning permission has been refused for that membrane. So significant has this problem become that Sterecycle sought NR's advice in developing an EfW facility to be fed by Sterefibre conveyed direct from the autoclave. That the EfW capacity is identical to the autoclave capacity speaks eloquently of the latter's success or rather lack of. It almost goes without saying it would have been far preferable in environmental terms to recover the original residual waste straight into an EfW facility without going through an unnecessary, unproductive and energy consuming intermediary process. NR summed it up neatly: Sterecycle has spent an awful lot of money turning residual waste into residual waste.[142]

77. WAIL's only evidence in relation to Wakefield was a short press article.[143] In the circumstances the matter consumed a disproportionate amount of inquiry time. It is not clear that WAIL knew that the Wakefield proposed contract was unique in proposing autoclave, has been at preferred bidder status for some four years without being able to close and that the AD element of the proposal has been radically reduced. SO, who has been advising the potential funders of the scheme, pointedly declined to accept that it was a probability that the contract would close. He would only say it was a possibility. Moreover, that Wakefield pursues autoclave is its political choice. Herefordshire and Worcestershire have not made the same choice for very sensible environmental and economic reasons. This is simply not the forum in which to try to revisit the two Counties waste management strategy. Significantly, neither LBS nor PV were able to identify any commercial end user for the output from the autoclave process. In an extraordinary denouement at the inquiry, WAIL was compelled to confirm that the output from AC and AD would have to be incinerated and therefore use the very process that WAIL was formed to oppose. They could hardly say it should go to landfill and were therefore compelled to adopt incineration along the lines of what might eventuate at Rotherham. Putting the best face that he could on it, PV described this form of incineration as nice, not naughty and that it would be an "elegant solution". That WAIL, an action group founded with the express purpose of resisting incineration, should be backed into relying on incineration is the clearest demonstration that it really has no sensible alternative option to EnviRecover.

[142] In addition, there was a serious explosion at Sterecycle towards that end of 2010 that killed a man and put the operation out of action until towards the middle of this year.
[143] WAIL6.

78. AD has not been pursued in oral evidence. In any event, LBS agreed in XX that AD did not amount to an alternative to this proposal because it is only suitable for the treatment of separately collected food waste.[144] Moreover, there will be a very large quantity of C&I food waste available for AD if and when this proposal is operation so that EnviRecover would in no way deter the promotion of an AD plant. Indeed, it is only through measures such as separate food collections that the Councils will be able to meet and exceed their recycling targets that NR assumed in his residual need assessment.

Ecology and European protected species

79. The Chancellor's recent comments on the Habitats Regulations could have been uttered with WAIL's attempt to use this legislation as an obstacle course to stand in the way of development in mind. A degree of reality and proportion should be applied. Numerous surveys of the application site over a prolonged period have revealed the presence of three GCNs presumed to have been washed down onto the site during a dewatering process on the nearby landfill site. LBS confirmed that she did not contest any of MWM's ecological evidence. This is not a key site for GCNs (it is certainly not a breeding site as is Ravensbank). However, GCN having been found, MWM will have to gain a derogation license.

80. Article 12 of the Directive provides that Member States must establish a system of strict protection for EPS. Some derogation from that system of strict protection is permitted by Article 16 which provides in so far as relevant that:

> "*1. Provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, Member States may derogate from the provision of Articles 12, 13, 14 and 15(a) and (b);*
>
> ....
>
> *(c) in the interests of public health and public safety, or <u>for other imperative reasons of overriding public interest</u> including those of a social*

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

or economic nature and beneficial consequences of primary importance for the environment;..."

81. The Habitats Directive is transposed into domestic law by the Conservation of Habitats and Species Regulations 2010. Article 12 is implemented by the Regulation 41 which provides:

> "*(1) A person who:*
>
> *(a) deliberately captures, injures or kills any wild animal of a European protected species,*
> *(b) deliberately disturbs wild animals of any such species,*
> *(c) deliberately takes or destroys the eggs of such an animal, or*
> *(d) damages or destroys a breeding site or resting place of such an animal,*
>
> *is guilty of an offence.*"

82. Article 16 is implemented by Regulation 53 which provides in so far as relevant:

> "*(1) Subject to the provisions of this regulation, the relevant licensing body may grant a licence for the purposes specified in paragraph (2).*
>
> *(2) The purposes are:*
>
> ...
>
> *(e) preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment;*
>
> ...
>
> *(9) The relevant licensing body must not grant a licence under this regulation unless they are satisfied:*
>
> *(a) that there is no satisfactory alternative; and*
> *(b) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.*"

83. Regulation 9(5) is important. It imposes a duty on a planning authority when determining an application for planning permission as follows:

> "*...a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions.*"

84. The Secretary of State is now the competent authority for the purposes of the Habitats Regulations and, accordingly, he must have regard to the requirements of the Habitats Directive so far as they may be affected by the grant of planning permission. A role which is to be distinguished from the role of the licensing authority, Natural England.

85. The Supreme Court has only very recently considered precisely what the duty to have regard to the Habitats Directive entails for a planning authority when deciding whether or not to grant planning permission (see *R (oao Morge) v Hampshire County Council* [2011] 1 W.L.R. 268). Lord Brown said[145] in *Morge* that it is Natural England who bear the primary responsibility for policing the strict protection afforded to EPS by article 12 (both in the sense of prosecuting offences and issuing licenses which permit derogation from article 12). He observed[146] that the implementation of a planning permission used to be a defence to an offence under the Habitats Regulations but that was no longer so. Lord Brown regarded that change as an important consideration when determining the nature and extent of the duty on a planning authority under the Habitats Regulations when determining whether or not to grant a planning permission. He rejected the Court of Appeal's articulation of that duty (and thereby overturning the judgment in *Woolley*) saying:

> "*29. In my judgment this goes too far and puts too great a responsibility on the planning committee whose only obligation under regulation 3(4)* [the predecessor to regulation 9(5)] *is, I repeat, to "have regard to the requirements of the Habitats Directive so far as [those requirements] may be affected by" their decision whether or not to grant a planning permission. Obviously, in the days when the implementation of such a permission provided a defence to the regulation 39 offence* [now regulation 41] *of acting contrary to article 12(1), the planning committee, before granting a permission, would have needed to be satisfied either that the development in question would not offend article 12(1) or that a derogation from that article would be permitted and a licence granted. Now, however, I cannot see why a planning permission (and, indeed, a full planning permission save only as to conditions necessary to secure any required mitigating measures) should not ordinarily be granted save only*

[145] At pp.26.
[146] At pp.27.

in cases where the planning committee conclude that the proposed development would both (a) be likely to offend article 12(1) and (b) be unlikely to be licensed pursuant to the derogation powers. After all, even if development permission is given, the criminal sanction against any offending (and unlicensed) activity remains available and it seems to me wrong in principle, when Natural England have the primary responsibility for ensuring compliance with the Directive, also to place a substantial burden on the planning authority in effect to police the fulfilment of Natural England's own duty."[147]

86. It is now clear that the planning authority should only refuse where it concludes that Natural England would be unlikely to grant a licence and that where a planning authority has any doubt on the matter that doubt should be resolved in the applicant's favour and (all other things being equal) planning permission granted. WAIL, however, invert this test set down by the Supreme Court.

87. As NR confirmed, there is no suggestion whatsoever that Natural England would be likely to refuse any licence in this case. LBS also confirmed that it was no part of WAIL's case (despite the way PT formulated the test in XX) that an application for a licence was likely to be refused. Natural England has not objected to the scheme. Furthermore, it will only consider a licence application in circumstances where EnviRecover has been granted planning permission. The very decision to grant planning permission for this type of development in the Green Belt will determine the IROPI and NSA tests as LBS accepted. In any event, it is now agreed by WAIL that the application site is the only suitable and available site in the two counties. The examples of developments which would offend Article 12 but which would pass the derogation tests under Article 16 given by Natural England in its guide on how to get a licence[148] are revealing. The guide is provided in the context of an application for the actual grant of a license not the light touch test required of a planning decision maker. The NE examples include: a development of 5 houses (including three affordable units) on the edge of a village and a barn conversion to holiday let accommodation which was identified as being able to generate income for the farmer and supplement the local green and sustainable tourist economy by providing opportunities for access to the

[147] At pp.29.

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

countryside for walkers and cyclists.[149] It hardly needs to be said but those benefits pale into insignificance when compared to what EnviRecover would deliver to the local economy, to required infrastructure and renewable energy.

88. Moreover, MWM has undertaken a detailed analysis of the derogation tests and concluded that the tests are likely to be met.[150] WAIL has simply not engaged in such an exercise. In short, there has been a recent clarification of the law (by the highest court in the land) which makes it clear that the primary duty in considering the derogation tests rests upon Natural England and that a planning authority is only obliged to give 'light touch' consideration to the derogation tests and should only refuse planning permission where it concludes that Natural England would be unlikely to grant a licence. All of the evidence points precisely the other way: that Natural England would be likely to grant a licence and, accordingly, there is nothing to prevent the Secretary of State granting planning permission for this development. If follows that there is no conflict with policy ENV6.

Health

89. Perhaps not unexpectedly, there is concern amongst third parties about the effects of the proposal on health. WAIL does not share this concern. LBS made it clear that WAIL specifically do not contend that the proposal will cause harm to health. WAIL's complaint is limited to the perception of health risks to which we turn below.

90. The Government is quite clear on the proper delineation between the planning and pollution control regimes. Paragraph 10 of PPS23[151] provides:

> "*The planning and pollution control systems are separate but complementary. Pollution control is concerned with preventing pollution through the use of measures to prohibit or limit the release of substances to the environment from different sources to the lowest practicable level. It also ensures that ambient air and water quality meet standards that guard against impacts to the environment and human health. The planning system controls the development and use of land in the public interest. It plays an important role in determining the location of development which may give rise to pollution, either directly or from traffic generated, and in ensuring that other developments are, as far as possible, not affected by*

[149] APP/0/52, p.9-11.
[150] See CD.PA7, p.21-31.
[151] NPP13.

major existing, or potential sources of pollution. The planning system should focus on whether the development itself is an acceptable use of the land, and the impacts of those uses, rather than the control of processes or emissions themselves. Planning authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced. They should act to complement but not seek to duplicate it."

91. The Government reiterates that advice in PPS10[152] and tells decision makers to avoid carrying out their own detailed health assessments and instead to draw upon Government advice and research as well as consultation with the relevant health authorities and agencies.[153] In this case there were no objections whatsoever from any technical consultee on health grounds. Moreover, the EA has already granted the permit[154] so that the Secretary of State can be informed that the EA is clearly satisfied that MWM will operate the plant in accordance with both BAT and the stringent requirements of WID which are designed to avoid any impact on human health. EN-3 at paragraph 2.5.43 expressly requires planning decision makers to assume that there will be no adverse impacts on health where the plant meets the requirements of WID (and the permit would not have been granted unless the plant would do so). The statement in WS2007 that there is no credible evidence of adverse health outcomes for those living near incinerators could not make the Government's position on the matter any clearer.[155] The Inspector at Ince Marshes regarded that statement as a full answer to those arguing against incineration of waste on the basis of the precautionary principle.[156] The HPA, the Government's statutory advisor on health matters, has said that, whilst it is not possible to rule out adverse health effects with complete certainty, any potential damage to health of those living close-by is likely to be very small, if detectable.[157]

Perception

92. However, the public's concerns or perceptions in relation to health and air quality are themselves capable of being material considerations. This is the basis on which WAIL

[152] NPP8, pp.5 and 30.
[153] NPP8, pp.31.
[154] EP1.
[155] WSL5, pp22 of Chapter 5.
[156] ID2, pp.11.24.
[157] OD2. Paragraph 30 of PPS10 also states that modern, well-run and well-regulated waste management facilities operated in line with current pollution control techniques and standards should pose little risk to human health.

makes its case. Appendix A to PPS23 lists issues which may be relevant to the determination of a planning application. The penultimate issue refers to "*the objective perception of unacceptable risk to the health and safety of the public arising from the development.*" Perceptions that are based on emotions, personal prejudices or information which is factually incorrect plainly cannot be objectively held. Here, there is no reliable evidence to suggest that perceptions of health risk are objectively justified. Thus although perceptions, even those unsupported by objective evidence, are capable of being material planning considerations, very little or no weight should be attributed such unjustified perceptions of health risk. That position is supported by case law. In *Gateshead MBC* v *Secretary of State for the Environment*,[158] where there was public concerned about an increase in the emission of noxious substances from a proposed clinical waste incinerator, Lord Justice Glidewell in the Court of Appeal, with whom Lords Justices Hoffman and Hobhouse agreed, held that if public concern could not be objectively justified then it could not be conclusive. He continued:

> "*If it were, no industrial – indeed very little development of any kind – would ever be permitted.*"[159]

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

> "*...the position giving rise to doubts in the mind of the public, concern over health effects of incineration of waste, is one that is in direct conflict with a position taken by the Government in a statement of national policy (paragraph 22 of Chapter 5 of Waste Strategy for England). Such a statement will not satisfy everyone but should act to allay anxiety amongst the public at large. My conclusion is that although the proposal raises public anxiety this should not carry great weight in relation to the planning decisions on the proposals before the Secretary of State.*"[160]

94. There are significant factors in this case that should ameliorate any concerns the public have. First and foremost it is not suggested that the EnviRecover will have a detrimental effect on health. Secondly, as we have already identified, the EA has issued the permit which it could not have done if the proposal was not WID compliant. Thirdly, the public have had a number of opportunities to air their concerns on this issue. The Applicant provided a health expert at the public exhibitions MWM held

[158] [1994] 1 P.L.R. 85.
[159] [1994] 1 P.L.R. 85 at 95.
[160] ID2, pp.11.28.

before submitting the planning application and SO was asked to make a presentation to the Community Liaison Group. Fourthly it is very clear that the public's views on this issue have been taken fully into account. As KB made clear the Council considered health issues in detail and were fully aware of the public's concerns when determining the application. Indeed, the Council invited a representative of the HPA to the planning committee meeting who reiterated that a modern well run incinerator does not pose a significant risk to human health. Further, as the Inspector at King's Cliffe[161] noted the inquiry process itself provides a direct link between the public and the decision maker so that the public will know that their views will be taken into account. For all these reasons, the perception of health impacts should not be accorded any significant weight in this decision. Paragraph 7.33 of the King's Cliffe decision letter draws attention to the advice in the Annex to PPS23 that for perceived risk to be material to a planning consideration there must be a clear demonstration of the land use planning consequences. LBS in XX agreed that she had no evidence of any land use planning manifestation arising from the perceptions she put forward. Nor has such a clear demonstration emerged in any other evidence given at the inquiry.

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

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

Consultation

96. There is no substance to WAIL's complaint in relation to public consultation. MWM conducted extensive and numerous consultation exercises the details of which are set out in SoCG1[162] and the document from MWM's communications consultants, Sauce, which was written in response to WAIL's criticisms and is found at appendix NR18 of NR's proof. In any event, LBS agreed in XX that there had been extensive consultation. This took place both before and after the application was made with several meetings of the CLG set up by MWM and two public exhibitions. Her complaint was that the process had been a mere box ticking exercise. This was unfair and, of course, MWM was under no obligation to consult the community at all. Moreover, it became clear that LBS' real complaint was that public were not consulted on alternatives. This was a complaint without foundation for the consultation exercises were specifically on this application. It was pointed out to LBS that the public had been consulted, in any event, on alternatives in the context of the JMWMS. On hearing this she complained that that consultation had not been specific to this application site. In trying to have it both ways, LBS revealed that no consultation exercises could possibly have satisfied WAIL. In light of which its criticisms on this issue should be paid little regard.

Deterrent effect of EfW

97. During the third parties session reference was made to the deterrent effect of EfW facilities and Mrs Jones produced a letter from a company called Arctic Spas which operate from the trading estate in which the company claimed its business would be adversely affected by EnviRecover. It is noteworthy that Arctic Spas did not feel so strongly as to either object to the development or attend the inquiry in person. As a result, this inquiry has not debated deterrent effects but others have. In Cornwall the issue was investigated in some depth and a considerable amount of evidence was adduced. The Inspector had no hesitation in concluding that the evidence from around the country is that the presence of an EfW facility does not discourage or deter nearby economic activity.[163] There is no basis on which to depart from that conclusion in this case.

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[162] PI5, pp.3.13-3.17.
[163] ID.3, pp.2078 and 2079.

Setting of Waresley House

98. In a letter to PINS dated 15 August 2011 Wychavon District Council sets out an objection to the application on the basis of its impact on the setting of Waresley House Mansions which is a Grade II* Listed Building. It is an objection without substance. It was not even raised in the WDC committee report. It is purely a Members' point. Moreover, it flies in the face of the clear advice from English Heritage who has said that EnviRecover would not materially affect the setting of any built heritage asset. Indeed, EH has recently concluded that the setting has been seriously compromised and degraded.[164] Nonetheless both JM and NR have reassessed the impact on the setting of listed buildings and each confirms that no unacceptable impacts would occur.

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

100. It should also be said that LBS confirmed that it was no part of WAIL's case that the proposal would impact on the Conservation Area.

101. WDC also objected on the basis of noise but there are agreed noise conditions and the WDC EHO has expressly agreed those conditions so that objection was totally misplaced.

Implications of not proceeding with the development

102. If the Government is serious that it wants to treble thermal treatment capacity by 2020 it must start to grant consents now. Development of this nature has a very long lead in time. The EnviRecover project began back in 2007. If consent is granted now it could be operational in 2015 some 8 years after the project was initiated. The delays involved if consent is now refused would be significant. NR's estimate of a similar period of time was not contested. Those delays would be bad enough in their own right, but it

[164] MWM7, pp.4.3.8.

needs to be remembered that this would be additional to the delay that has already occurred following the dismissal of the Kidderminster appeal in 2002. If two major waste management projects failed the appetite of the waste management industry to bring forward further proposals in the area might be seriously undermined.

103. Of course during the period of delay the two Counties would be condemned to continuing the wholly unsustainable practice of landfilling prodigious quantities of waste. During which time significant financial costs would be incurred including: the ongoing payment of landfill tax (if the Counties continue to landfill approximately 200ktpa in 2014 the tax bill alone would be £16m); the payment of any penalties for failing to meet landfill diversion targets; the need to pay spot market prices and additional transportation costs to use out of county third party waste treatment facilities (assuming any such capacity is available); the legal, technical and other professional costs associated with either varying or re-letting the waste management contract; increased capex costs for any new facility (NR advises that historic capex increases within the past 10 years have been as high as 15 per cent per annum although are likely to decrease to around 5); and, finally, all the economic benefits associated with the delivery of EnviRecover facility would either be deferred or simply not realised. In Cornwall, the Inspector gave similar matters substantial weight.[165] We submit that the same approach should be adopted here.

Conclusion

104. We return to the key message in paragraph 1 of PPS10. The planning system is pivotal to the adequate and timely provision of the waste management facilities. It is agreed that there is a compelling and urgent need for EnviRecover. Without it, the two Counties are compelled to manage unsustainably large quantities of waste by landfill at the very bottom of the hierarchy. What is required is "positive planning." Only if the Secretary of State's decides to grant planning permission now can the two Counties be provided with the only available opportunity for waste management facilities of the right type in the right place and at the right time. We submit that not only does the balancing exercise come down decisively in favour of EnviRecover but that the proposal enjoys no fewer than five presumptions in favour of development: first, it

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[165] ID3, pp.2123.

accords with the relevant provisions of the development plan and therefore enjoys the statutory presumption in favour of planning permission. Secondly, the proposal enjoys the presumption in EN1[166] to grant planning permission for an energy generator which plainly accords with the policies set out in that NPS. Thirdly, the presumption in PfG in favour of development which provides valuable employment and other economic benefits. Fourthly, the expeditious and sympathetic handling required of development which contributes to the delivery of the KPOs set out in the PPS1 CCS.[167] Fifthly, the presumption contained in policy EC10 of PPS4 in respect of economic development.

105. For all these reasons we invite the Inspector to recommend and the Secretary of State to grant planning permission subject to the agreed conditions.

RICHARD PHILLIPS QC

MARK WESTMORELAND SMITH

2 December 2011

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MWS's notes of additional comments made orally at the end of submissions in response to WAIL's closing:

One has to observe as a matter of surprise in the opening paragraph of his submissions PT has misunderstood or misinterpreted the Applicant's position on the development plan. We hope we have made it plain that we say there is no conflict with landscape policies. As to the GB policies, we say that the fact of VCSs makes this development compliant with the GB policies. Further PT failed to recognise the important concessions made by LBS on this matter. LBS readily accepted that if VSCs can be demonstrated then the development is compliant with GB policy and not a departure from it. And so at pp.1.5 of WAIL's closing we do not accept that MWM agrees that there is a breach of development plan policy.

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[166] CD.NPP14, pp.4.1.2.
[167] CD.NPP3, pp.40.

p.3: PT submits that the WCS should be accorded little weight however in RE-X LBS said the WCS was somewhat progressed and it should be accorded some weight [in has been suggested to me she said some significant. Please check your notes]

pp.2.1: here PT overlooks p.23 of SoCG2 (which LBS expressly agreed in XX represents WAIL's position (pp.6.13)) in which WAIL agrees that in the context of key objectives this proposal would move the management of waste up the waste hierarchy

pp.2.1.1: again, PT does not pay proper regard to concessions of LBS in XX, as she agreed NR's assessment on need makes full allowance for the Councils meeting and exceeding recycling targets. She further agreed that there would be more than sufficient waste left by this plant for treatment by other technologies. If recycling rates are to be met then the Councils will have take actions such as adopting separate food collections. Any such actions will not compete with this proposal

pp.2.1.2/3: I have serious doubts about the propriety of taking these points in light of LBS concession that there is a need for this development

pp.2.1.3: PT does not seem to understand that PPS10 pp.4 last bullet applies to disposal and not recovery. He ignores the clear answer he had from KB in relation to this passage. And, moreover, his submissions are at odds with WAILs agreement that the proposal drives waste up the waste hierarchy

There is no test that an EfW should only be permitted where the local community would support it – if that were the case, the waste management industry would have to down tools. These applications always give rise to considerable objection

p.5: the MP could not appear at the inquiry and so did not have his views tested. It appears that he does not understand that the PFI Contract is in fact flexible as confirmed by the Clifford Chance letter

p.6: the Options Appraisal: PT says in pp.2.2 that it failed to consider intermediate treatment. That is wrong. It considered both AC and AD (albeit the later only in the long list). He refers

to the costs of EfW but he does not mention SO's clear answer that that table was (a) not referring to actual costs and (b) that if the EfW costs were adjusted than so to should the costs of the other technologies by adjusted accordingly. It is grossly unfair to criticize the appraisal to fail to consider autoclave with direct combustion when WAIL only alighted on that solution yesterday

pp.3.2.1: comparison with landfill is the right thing to do as if this proposal fails the waste will go to landfill. Secondly, since no alternative scheme has been put forward by WAIL it is unfair to say that we have not considered an alternative. If WAIL had forward a sensible option in time the applicant could have considered it

pp.3.2.2: carbon intensity – WAIL seek to compare the carbon intensity of EfW with a national average of all energy generation which includes nuclear which of course has no carbon output. The fair comparison is with all fossil fuel generation (the carbon intensity of which is 590g). EfW performs better than fossil fuel generation (WAIL7)

pp.3.2.3: note the 450g is a standard that does not apply to renewable energy power generation

pp.3.2.6: PT says EfW is the worst performing option. One only needs to stand back and consider the logic of that assertion. It means EfW could never be permitted as there would always be better options. That is absurd. How can that stance be reconciled with the specific policy support for EfW in WPR and the Governments aim to increase in thermal treatment capacity threefold by 2020. It is plain from EN-1 that an applicant to does not have to demonstrate that his proposal represents the best option (EN-1, pp.4.4.1). On flexibility: nothing in the contract that prevents flexibility

pp.4.4.5: PT refers to the proposal being highly conspicuous in the GB: JM said it would be conspicuous (not highly conspicuous) from three vantage points. JM explained that whilst the development would be visible it would not have a materially significant effect on landscape or visible amenity

p.16: PT says NR said an autoclave facility could be built in 18 months. Where does that get him? There is no proposal. The suggestions have been inchoate in the extreme. Where is the

site, the funding, the operator, the planning permission, the permit? Is there any appetite in the industry for autoclave given the difficulties in finding an output? – There are huge, huge uncertainties

p.18: PT refers to EfW shut down: we are not sure why submissions on this subject have been made when the SOCG with his client provides that WAIL raises no traffic or highways objection to the proposal nor has there been any suggestion of harm to residential amenity