

**PUBLIC INQUIRY INTO PROPOSED DEVELOPMENT OF AN ENERGY FROM  
WASTE PLANT ON LAND AT HARTLEBURY, WORCESTERSHIRE**

**CLOSING SUBMISSIONS ON BEHALF OF  
WORCESTERSHIRE COUNTY COUNCIL**

1. In the Report to the County Council's Planning and Regulatory Committee which met to consider Mercia Waste Management Ltd's application on 1<sup>st</sup> March 2011, members were advised that there was an ongoing need to reduce the amount of waste that the Country produces going to landfill. It is clear from the evidence before this inquiry that, so far as the two counties of Worcestershire and Herefordshire are concerned, that need has now become urgent and compelling.
2. Much time at the inquiry has been spent considering the precise quantities of municipal waste (MSW) arising in the two counties. However, there is no continuing dispute that the amounts arising are indeed prodigious, with unacceptable levels being disposed of to landfill. On Ms Brooke-Smith's own figures, 364,366 tonnes of contract waste have arisen in the year 2010 - 2011<sup>1</sup>. This figure, appearing in her summary table does not however include all waste and omits, for example, bring tonnages. Miss Berry refers to the quantities in the JMWMS 2009 identifying that 243,080 tonnes would remain to be diverted from landfill in 2010; and Mr Roberts said that 209,471 tonnes actually went to landfill

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<sup>1</sup> Appendix WAIL B

in 2010/11.<sup>2</sup> The figures appear to have declined during the recession and with the introduction of Landfill Tax. However as the economy improves these figures are likely to rise as demonstrated by Figures A.2 and A3 in DEFRA's report: the Economics of Waste and Waste Policy.<sup>3</sup> This will be so even with the achievement of a 60% recycling/composting target as explained by Miss Berry<sup>4</sup>.

3. The figures that have been produced in relation to MSW do not include Commercial and Industrial Waste (C & I). In the Committee Report it was stated that in 2009 approximately 650,000 tonnes of C & I waste were produced across the two counties<sup>5</sup>. Mr Roberts' figure is 601,790 tonnes in 2010/11, rising to 879,366 in 2035/36. As the inquiry has heard, the distinction between these two categories of waste is now abandoned and the need to take steps to avoid the disposal to landfill of waste that has formerly been classified as C & I also needs to be urgently addressed.
4. At present there are no recovery facilities operating within the two Counties.
5. A continued dependence upon landfill would result in the emission of methane gas, which contributes to global warming, and is environmentally unsound. It also imposes a massive financial burden on the council tax payers of both authorities; which is likely to increase. A continuation of landfill is also of course contrary to the aims of WAIL.
6. The development of policies to ensure that waste is diverted from landfill is an obligation of the UK government, which is required by the revised Waste Framework Directive to ensure that waste management plans are established. These should provide a strategy for waste management which accords with the

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<sup>2</sup> Appendix NR10, Table NR4-2

<sup>3</sup> MWM 16

<sup>4</sup> Proof para 4.2.8

<sup>5</sup> PA8, para 190

hierarchy laid down in the Directive and which involves disposal to be used only as a matter of last resort. Preference in the hierarchy is given to recovery, which includes energy recovery. Annex II includes in the definition of recovery operations “R1: Use principally as a fuel or other means to generate electricity”.

7. The Government’s overarching strategy is to be found in the Waste Strategy for England 2007. This adopts the waste hierarchy, with energy recovery above disposal, and provides among the key policy objectives the increased use of recycling and the recovery of energy. It is also explained that “recovering energy from waste which cannot sensibly be reused or recycled is an essential component of a well-balanced energy policy”<sup>6</sup>.
8. The waste hierarchy is incorporated in the Waste Review of 2011 which also explains that a “zero waste economy” is an economy which strives towards sending zero waste to landfill. Renewed emphasis is given to the importance of recovering energy from waste, with recognition of the climate change benefits that it can bring.
9. Locally, the relevant waste strategy is to be found in the Joint Municipal Waste Management Strategy for Herefordshire and Worcestershire 2004 -2034, the current version of which was published in 2009 and has now been adopted by all the authorities in the two counties. Policy 7 provides that the local authorities will actively seek to provide waste management services in a manner that minimises greenhouse gas emissions and other impacts that contribute to climate change. The strategy itself is technology neutral but it does refer to Annex D, the residual options appraisal. This appraisal did consider Energy from Waste (EfW), with and also without Combined Heat and Power (CHP), and also options with 1 or 2 site

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<sup>6</sup> Page 76, para 17

autoclaves. Option 1 (EfW + CHP) was ranked first overall. Although the 1 site autoclave also scored highly, coming second, this was on the basis that the process would provide for recycling<sup>7</sup>. Table 15 in the WRATE report<sup>8</sup> shows that with fibre recycled as fibreboard the autoclave sites scored 10, but with the fibre landfilled the autoclaves' score dropped to 4. Both EfW options scored 10. It was a feature that EfW consistently scored well.

10. The proposal by MWM for an EfW plant at the Hartlebury Trading Estate will meet the need for a facility that will involve the treatment of MSW arising in the two counties. Moreover, it will do so in a manner that is entirely consistent with the relevant waste strategies at all levels.
11. It will comprise a built facility for the combustion of 200,000 tonnes per annum of residual waste. It will enable energy to be recovered from the waste: initially 15 MW of electricity, of which 13.5 MW will be exported to the grid. This could increase to 20MW with 17MW net export. It also contains the potential to export heat. As such it achieves the objective of moving the treatment of this waste up the hierarchy, and not least by avoiding the use of landfill will provide a significant environmental benefit.
12. It is very suitably located within an established substantial trading estate, and is as the map at Mr Roberts' NR9 shows, very well positioned in respect of the main centres from which the waste arises. It is readily accessible via the Lorry Route Network , with both Crown Lane and the A 449 being of a suitable standard for operational HGV traffic. There is no Highway Authority objection to the proposal.
13. As Miss Berry explained, the facility will be suitably sized. There is no doubt that, even with increasing levels of recycling, very substantial quantities of waste will

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<sup>7</sup> Annex D para 2.2.3

<sup>8</sup> Othen App 2

remain, especially when the amount of C & I waste is considered. Moreover, as Ms Brooke-Smith agreed in xx, the very substantial quantity of waste that will remain, far exceeding 200,000 tonnes, will still give opportunities for the development of new technologies. By no means will the facility stifle recycling.

14. The Government's principle planning policy in relation to waste management is PPS 10. The key objectives include the delivery of sustainable development through driving waste management up the waste hierarchy, with disposal as the last option; enabling the sufficient and timely provision of waste management facilities to meet the needs of communities. It also confirms the protection given to green belts, but recognises the particular locational needs of some types of waste management facilities in determining planning applications, and that these locational needs, together with the wider environmental and economic benefits of sustainable waste management, are material considerations that should be given significant weight in determining applications for planning permission.
15. MWM's application is entirely consistent with the planning policy guidance in PPS 10. It will provide a necessary part of the waste management infrastructure required within Herefordshire and Worcestershire. It will drive waste up the hierarchy and will certainly facilitate the national waste strategy.
16. It is agreed that the development plan for the proposal comprises the West Midlands Regional Spatial Strategy (RSS) and the saved policies of the Worcestershire County Structure Plan and also of the Wychavon District Local Plan.
17. In her proof of evidence Miss Berry reviews the relevant policies in these plans in considerable detail. Her review is similar to the planning policy summary which she included in the Committee Report, which Ms Brooke-Smith acknowledged

was “a fair reflection” of the policies.<sup>9</sup> Her conclusion is that, apart from the saved Structure and Local Plan policies in relation to the Green Belt, and landscape and visual impact, the proposal is in conformity with the development plan policies. Apart from Green Belt and landscape and visual matters there has been no discussion of these policies, and her conclusions are unchallenged.

18. Although she considers that it is entitled to only limited weight, Miss Berry also reviewed relevant provisions of the emerging Worcestershire Waste Core Strategy. Draft Policy WCS2 indicates that facilities for waste management will be permitted within level 1, which provides for recovery. Draft policy WCS4 also establishes that industrial land is compatible with other recovery. The proposed EfW facility which, located on the Hartlebury Estate would be within level 1, and at a site identified for large scale facilities, and also utilises previously developed industrial land would be in complete conformity with these policies.

19. Contrary to Ms Brooke-Smith’s contention<sup>10</sup> the emerging South Worcestershire Development Plan should be given no weight. Not only is it at a very early stage of development, it is also very seriously flawed. Draft policy SWDP 46 and the statement at paragraph 27, that energy from waste is not deemed to be a renewable source of energy, are fundamentally flawed. The County Council has made representations, and has made it clear that if the policy remains unchanged it would formally object to the policy<sup>11</sup>.

20. Before turning to consider the landscape and visual impacts and green belt policy, it is appropriate to address the contribution the proposal will make to the delivery of the Government’s Climate Change programme and energy policies.

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<sup>9</sup> Proof para 5.3.2

<sup>10</sup> Proof parar5.3.12

<sup>11</sup> CD – WCC - 11

21. The PPS 1 Supplement at paragraph 3, states that *“The Government believes that climate change is the greatest long-term challenge facing the world today. Addressing climate change is therefore the Government’s principal concern for sustainable development.”* There is an urgent need for low carbon and renewable energy supply, as identified in the following national policy:

- Overarching National Planning Statement for Energy – EN1, 2011.
- National Planning Statement for Renewable Energy Infrastructure – EN3, 2011.
- Meeting the Energy Challenge – Energy White Paper, 2007.
- The UK Renewable Energy Strategy, 2009.
- The Planning and Climate Change Supplement to PPS1, 2007.
- PPS 22 – Renewable Energy, 2004.

22. This urgent and fundamental need has not been disputed. The EnviRecover Facility, which meets the R1 ‘recovery’ classification threshold, will deliver low carbon energy supply, of which a significant proportion can be classed as renewable.

23. It has also been agreed between all parties that there will be an overall climate change benefit as a result of the proposal and by diverting waste from landfill. Whilst the actual figures have been debated, and some disagreement still exists, Mr Vernon did conclude that even applying the most conservative assumptions during each part of the calculation, there is still a net benefit.

24. Concern about the proposed facility’s landscape and visual impact has been a major factor in motivating local opposition to the scheme. It is an aspect which the County Council, and Miss Berry acting on its behalf, has taken very seriously. The topic is considered in detail in the Committee report and in Miss Berry’s evidence.

She explained that in carrying out an assessment on this matter she worked closely with the County Council's Landscape Officer, Ms Patton. She is a professionally qualified Chartered Landscape Architect with considerable experience of undertaking landscape and visual impacts. Ms Patton was involved at the scoping stage identifying additional viewpoints she wished to see included. She also recommended that the balloon be flown, to indicate the height of the proposed building. She made a number of visits to the site and the area, on her own and accompanied by others. Her advice was passed on to Miss Berry and fed into her report. Miss Berry also carried out her own assessment, making several visits herself.

25. Undoubtedly the proposed facility, will be visible from a number of locations. Visibility of itself does not however necessarily give rise to an adverse impact. In the case of each viewpoint the potential impact was considered. It was assessed that there would be a minor to moderate impact from the viewpoints considered, with the exception of the Waresley Park residential area and at Elmley Lovett where the assessment noted an impact of moderate to major significance. On more detailed consideration it was concluded that the impact would not be significant, given the distance from the site and the fact of the facility's location within the existing large trading estate. Although it would be substantially larger than existing buildings, the Trading Estate would always provide the context in which the facility would be seen.
26. It is also considered that the proposed facility would not cause any harm to the Hartlebury Conservation Area or the AONB. Natural England has raised no objection.



27. In the light of the careful assessment they have undertaken, neither Miss Berry, nor the County Landscape Officer nor the County Design Unit Manager consider there is any basis for objecting to the proposal on the grounds of landscape or visual impact.
28. The site is within the Green Belt, and it is agreed that in accordance with PPG 2 it would not comprise appropriate development. In that regard it is therefore contrary to Wychavon District Local Plan policies SR 7 and SR 8. Planning permission should therefore only be granted if very special circumstances can be established. In considering the degree of harm to the Green Belt in this location that would result from the proposed development, it is necessary to consider the degree of harm to the purpose of including the land in the Green Belt in accordance with paragraph 1.5 of PPG 2. The site is fully enclosed within the boundary of the Trading Estate, and will not extend that boundary. The development of the site will not involve the sprawl of any built up area; it will not involve the merger of any towns; it will not encroach into the countryside; and there is no concern in this case about the setting and special character of any historic town. It can be seen therefore that there is no harm to any of the relevant Green Belt purposes.
29. Regarding other objectives of Green Belt policy, Miss Berry considers that, as the site is located within the boundaries of the existing trading estate, the proposal would not impact upon access to the open countryside, opportunities for outdoor sport or recreation, or the retention of the land for agricultural, forestry or related uses. She does however accept that, in accordance with the assessment considered above, the proposed development would have an impact upon the visual amenity

of the Green Belt, but it would not be an impact of such significance as to justify refusal.

30. To balance against the harm that automatically arises by virtue of the proposal comprising inappropriate development, and the very limited additional harm that would arise in this case, a number of very special circumstances have been identified in favour of the proposed development.
31. First, and most importantly, the proposed EfW facility will meet a real need, which Ms Brooke-Smith on behalf of WAIL has accepted can fairly be described as urgent and compelling. The facility is urgently needed to enable the statutory targets in relation to landfill diversion and energy recovery to be met.
32. There are no other more sustainable site alternatives available.
33. The site is at the optimum location to serve the overall pattern of waste arisings within Worcestershire and Herefordshire, as demonstrated by the map at Mr Roberts' NR9.
34. The site enjoys excellent transportation connectivity.
35. The proposed facility would bring climate change benefits, not least through the reduction of greenhouse gas emissions.
36. The operation of the site will enable the recovery of 15 MW of electricity, of which 13.5MW will be exported. The area in which the site is located is suitable for the export of electricity with opportunities to achieve a viable grid connection. There are also opportunities to facilitate the export of heat. Although no contractual arrangements have been made yet, this is not surprising given the long lead time involved. It is however significant that 2 occupiers of the Estate have expressed interest in the use of heat from the site.

37. There are locational benefits from being situated close to a potential market for the clay soils and bottom ash.
38. There are no insuperable environmental constraints or significant or unacceptable environmental risks that would occur as a result of the development.
39. Economic benefits would result from the sale of the electricity and the employment opportunities that would result from the development.
40. The site has excellent links to existing waste management infrastructure, and has the locational advantage of being situated next to landfill facilities.
41. These very special circumstances, both individually and in combination, outweigh the harm to the Green Belt in this location and justify the grant of planning permission in this case. They were set out in the Committee Report and also in Miss Berry's evidence. It is now the case that WAIL, through the evidence of Ms Brooke-Smith in the course of xx, accept that there is indeed a compelling need, and they also acknowledge the locational advantages identified in the previous paragraph. What they apparently do not accept is that there is no alternative available. However in making vague suggestions about alternative technologies and a possible alternative site, it is clear, and indeed has been confirmed, that they are not in fact advancing any positive alternative proposal to this inquiry.
42. This raises the question of the role which consideration of alternatives can play in a case such as this. As a general proposition the fact that alternatives exist, even more acceptable alternatives, does not justify the refusal of planning permission. However in cases where there are clear objections to development on a particular site it may be relevant to consider alternatives which are less harmful. However it is of course axiomatic that for an alternative to be considered it must indeed be a genuine alternative, and where a proposal is put forward to meet a particular need

any valid alternative must fully meet that need.<sup>12</sup> It is immediately apparent that none of the suggestions put forward by WAIL meets that crucial requirement.

43. Among the alternatives discussed in the evidence is autoclave with anaerobic digestion (AD). Such a facility is not operated now anywhere. Rotherham, which is operated by Sterecycle is one of the examples cited. It does not however involve any AD. The product of the autoclave is a fibre for which the operators have been unable to find an end use. At the moment the only option appears to be landfill or combustion, and until more positive action is taken with regard to it, it is being stored in a quarry. So far as Wakefield is concerned, the contract is not yet completed, and any plant is yet to be constructed, let alone operated in a manner which demonstrates its commercial feasibility. The most relevant example is Estech, which was a proposal for an autoclave facility on the present application site. However the proposal failed to be implemented because no beneficial use could be found for the product. This was despite many attempts, costing millions of pounds.

44. It is evident therefore that an autoclave process is not a deliverable way of treating waste. Inevitably it results in a product that requires further treatment, or is disposed of to landfill.

45. AD is only encouraged for source separated food waste and is inappropriate for tackling the quantities or range of materials found in residual waste. Either on its own, or in combination with autoclave, it is not an alternative to the proposal being considered in this case. In any event it could be brought forward together with, rather than as an alternative to, the application proposal.

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<sup>12</sup> See eg *Trusthouse Forte Hotels Ltd v Secretary of State for the Environment* (1986) 53 P & CR 293; *R ota Jones & Howe v N Warwickshire DC* [2001] EWCA Civ 315 ; and *Derbyshire Dales DC v SSCLG* [2009] EWHC 1729 (Admin).

46. So far as Ravensbank is concerned, the site is not available for combustion of waste, as conceded by WAIL. Any suggestion that autoclave fibre can be burnt at Ravensbank because it is not waste is not accepted. It would not satisfy end of waste criteria, not least because it would require further processing prior to combustion, and it would be subject to the more stringent requirements of the Waste Incineration Directive than would a normal fuel that is not, and never has been, waste.
47. It is apparent therefore that there is no alternative efficacious process or site which is capable of meeting the compelling need which has been identified, and agreed across the parties. The only facility which is indeed capable of doing so is the proposed EnviRecover Facility at the application site. This is truly a very special circumstance.
48. The restrictive covenants affecting the application site provide no bar to the grant of planning permission. The presence of restrictive covenants is not properly a planning matter. In any case the presence of the facility on the Trading Estate would not constitute a nuisance or annoyance to those residents who might be entitled to the benefit of the covenants. They are a considerable distance from the site and their enjoyment of their properties will not be affected by the presence of the Facility on a part of the Estate which is remote from them.
49. Three great crested newts (GCN) have been found on the site after extensive surveys were carried out. It will be necessary to obtain a licence from Natural England to capture and remove them from the site. This has been subject to ongoing discussions with Natural England, who raise no objections to the proposal. In the light of the material which has been provided in the supplementary evidence before the inquiry, the County Council can see no reason

why the necessary licence will not be obtained in due course, and the presence of the newts should not constitute a bar to the grant of planning permission.

50. Many members of the public who have raised objections to the proposal have expressed concerns about the adverse effect on health that they fear will be caused by emissions from the incinerator. The County Council is very conscious of these concerns, and it is an aspect that was given careful consideration at the Committee meeting. The Committee Report explains that the planning application was accompanied by assessments for the potential impacts on human health through air quality and through impacts of pollutants on agricultural land and the subsequent ingestion of food from such land<sup>13</sup>. Representatives of the Worcestershire NHS (PCT) and the Health Protection Agency attended the meeting, and Members were advised that “emissions from a well-managed and well-regulated EfW facility would not have any measurable impact on the health of local people.”<sup>14</sup>

51. It is unfortunate that Ms Brooke-Smith marred her evidence by including an unwarranted and irresponsible allegation of impropriety and bias against the County Council. The allegations were not based on any evidence because, as she frankly admitted, she did not have any to put forward. She had no evidence to support the allegation that the County Council had agreed a costs indemnity with the Applicants, and it was explained to her that this was wrong. Nor did she have any evidence that Councillors had been dissuaded from attending a meeting with Professor Connett, and she accepted that the letter, which was sent to Councillors, far from dissuading them from attending, correctly advised Members that, should

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<sup>13</sup> Committee report PA8, para 322.

<sup>14</sup> Minutes PA 8, page 18.

they attend, they should be aware of their responsibilities as potential decision makers.

52. Although Ms Brooke-Smith stated that WAIL members felt that the representation of their concerns was not given due consideration, that is not a view that she personally shared. She understood the dual role performed by the Council as both WDA and CPA, and she was aware of the Chinese Wall that prevented the Council improperly confusing these roles. She accepted that it was entirely proper for the Council, as CPA to seek independent objective advice from Ms Berry and that her report fairly and comprehensively set out the representations that had been made by WAIL. WAIL also attended the Committee meeting and Mr Kirby made a power point presentation to the Committee on their behalf.
53. There can be no doubt that the members of the Planning and Regulatory Committee were fully informed of all the relevant planning issues, including of course the concerns expressed by members of WAIL .Fully informed as they were, the Committee Members decided that the very special circumstances and the benefits that would flow from the proposal, outweighed its harmful effects. Accordingly they resolved unanimously that they would approve the application.
54. It is now hoped that the Secretary of State will reach the same conclusion.

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