



Department for
Communities and
Local Government

Joanne Demetrius
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Our Ref: APP/M1900/V/13/2192045

7 July 2014

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 77)
APPLICATION BY VEOLIA ENVIRONMENTAL SERVICES LTD
CONSTRUCTION AND OPERATION OF A RECYCLING AND ENERGY
RECOVERY FACILITY – LAND AT NEW BARNFIELD, HATFIELD
APPLICATION REF: 6/2570-11**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, David Richards BSocSci Dip TP MRTPI, who held an inquiry on dates between 10 September and 25 October 2013 in relation to your application under Section 77 of the Town and Country Planning Act 1990 for the demolition of existing library buildings and construction and operation of a Recycling and Energy Recovery Facility (RERF) for the treatment of Municipal, Commercial and Industrial Wastes together with ancillary infrastructure, including bulking/transfer facilities, administration/visitor centre, landscaping, habitat creation, drainage and highway improvement works (application ref 6/2570-11 dated 16 November 2011).
2. On 28 January 2013, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your application be referred to him instead of being dealt with by the waste planning authority, Hertfordshire County Council (“HCC”), because the proposal involved matters giving rise to substantial cross boundary or national controversy.

Inspector’s recommendation

3. The Inspector recommended that the application should be refused. For the reasons given below, the Secretary of State agrees with the Inspector’s conclusions and agrees with his recommendation. A copy of the Inspector’s report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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Procedural Matters

4. The Secretary of State has taken account the Environmental Statement (ES) which was submitted, together with the further information submitted in May 2012 and July 2013 (IR12). He agrees with the Inspector that the Environmental Statement together with the further information submitted reasonably complies with the provisions of Schedule 4 of the Environmental Impact Assessment (EIA) regulations, and he has taken into account the Environmental Information as defined in the regulations in reaching his decision on the application.

Matters arising after the close of the inquiry

5. The Secretary of State wrote to the main inquiry parties on 1 May 2014 inviting comment on:
 - the Inspector's report into the examination of the Hertfordshire Waste Site Allocations Plan;
 - the possible relocation of Southfield School;
 - the planning practice guidance which was published on 6 March 2014; and
 - any material change in circumstances, fact or policy, which may have arisen since the close of the inquiry which the parties considered relevant.
6. The responses received were circulated for further comment on 20 May. A list of the representations received is set out in Annex A to this letter. The Secretary of State has given careful consideration to these representations.
7. The Secretary of State also received other correspondence submitted too late to be considered by the Inspector, as set out in Annex B to this letter. He has carefully considered these representations but, as they do not raise new matters that would affect his decision, he has not considered it necessary to circulate them to all parties.
8. Copies of the representations listed in Annexes A and B can be made available on written request to the address at the foot of the first page of this letter.

Policy Considerations

9. In deciding this application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case, the development plan consists of the Hertfordshire Waste Core Strategy and Development Management Policies Development Plan Document – November 2012 (WCS), and the saved policies of the Welwyn Hatfield District Plan 2005 (WHDP).
11. The Secretary of State considers that the development plan policies most relevant are those identified by the Inspector at IR29-39 and 41-43.
12. The Report of the Examination into the Hertfordshire Waste Site Allocations Local Plan (WSALDD) was published on 24 March 2014. As the emerging WSALDD is

at a relatively advanced stage the Secretary of State attaches significant weight to its policies as proposed to be modified by the Examination inspector.

13. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (“the Framework” - March 2012) the associated planning practice guidance (March 2014), the Community Infrastructure Levy (CIL) Regulations 2010 (as amended), The Waste Framework Directive (WFD) 2008/98/EC; The Waste Incineration Directive (WID) 2000/76/EC and 1137/2008; The EU Landfill Directive 1999; Waste Strategy for England 2007; The Waste (England and Wales) Regulations 2011; Planning Policy Statement 10: *Planning for Sustainable Waste Management* 2011 (PPS10); The Government Review of Waste Policy in England 2011; The DEFRA Guide on Applying the Waste Hierarchy 2011; The DEFRA Guide to Energy from Waste February 2013 (revised in February 2014); National Policy Statement (EN-1) 2011; and National Policy Statement (EN-3) 2011
14. The Waste Management Plan for England, which was published in December 2013 after the Inquiry closed, was circulated to the main and Rule 6 parties for comment; and that responses were received from Veolia Environmental Services, HCC, New Barnfield Action Fund and Welwyn Hatfield Friends of the Earth/Herts Without Waste (IR45). The Secretary of State has taken into account the comments received in reaching his decision on the application.
15. The Secretary of State has had regard to the Updated Planning Policy - Planning for Sustainable Waste Management, which was published in draft form in July 2013 as a proposed replacement for PPS10. However, as this document is in draft form and may be subject to change it has limited weight.
16. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LB Act), the Secretary of State has paid special regard to the desirability of preserving those listed structures and listed historic parkland or their settings, or any features of special architectural or historic interest which they may possess, that are potentially affected by the proposed development. The Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance conservation areas, as required by section 72(1) of the LB Act.

Main issues

17. The Secretary of State considers that the main considerations in this case are those set out by the Inspector at IR722 and also the provisions of the emerging WSALDD as proposed to be modified by the plan examination inspector.

Emerging WSALDD

18. The Secretary of State has had regard to the fact that Inspector who held an inquiry into the WSALDD endorsed the allocation of New Barnfield for waste management uses including thermal treatment. He has given careful consideration to the assessment on this allocation in the WSALDD Examination report of 24 March and to relevant policies in the adopted development plan including WHDP Policy RA6, the thrust of which is set out at IR41-42. As the WSALDD inspector noted at paragraph 101 of his report, the terms of the allocation mean that, unless

there is a demonstration of very special circumstances, new buildings on the site should not have a greater impact on openness than the existing buildings. The Secretary of State does not consider that any points in the post inquiry representations affect the conclusion at IR1056 that planning permission for the proposed development will only be granted if very special circumstances are found to exist.

Effect on the Green Belt

19. The Secretary of State notes that the estimated volume of the proposed RERF will be 585,000 m³, almost 20 times the volume of the existing buildings (IR728). He agrees with the Inspector that, in addition to the harm by reason of inappropriateness, there would be substantial actual harm to the openness of the Green Belt (IR729). He also agrees with the Inspector that, notwithstanding the mitigating effect of established planting in the surrounding landscape, the site occupies a prominent location; and that the landform and existing planting would only be partially effective in screening the development (IR729). He agrees with the Inspector that, for the reasons at IR730, the proposal would contribute significantly to the sprawl of a large built up area and the encroachment of development in the countryside (IR730).
20. The Secretary of State agrees with the Inspector that the proposal would fail to comply with the criteria (iii) and (iv) of Policy RA6 of the WHDP by a substantial margin (IR731). He agrees with the Inspector that Policy RA6 remains consistent with the approach to the development of previously developed sites in the Green Belt set out in the Framework and can therefore be accorded considerable weight (IR732). He notes that the proposal would involve building on parts of the site that are presently open, including the car park (IR733); and he agrees that it would involve a very large increase in the volume of built development on the site (IR733). He also agrees that the practical effect of failure to comply with these considerations arising from Policy RA6 and the Framework would be a severe impact on openness of the Green Belt which would be readily apparent, particularly in views towards the site from the south, but also from South Hatfield, the cemetery, other open land to the west of the site and from parts of Hatfield House and Park (IR734).
21. Though the site of the proposed building is already developed, the Secretary of State also considers that the building's very large bulk and visual prominence compared with existing structures would be detrimental to the visual perception of the remaining gap between Hatfield and Welham Green. For this reason he considers that the proposed building would be harmful in terms of another of the purposes of the Green Belt - to prevent neighbouring settlements merging into one another.
22. For the reasons at IR738-739 the Secretary of State agrees with the Inspector's conclusion that, while the site adjoins the employment area, the nature of the proposed development would be substantially different in its impacts on the character of the Green Belt than the existing buildings on the site (IR739). For the reasons given at IR740 the Secretary of State agrees with the Inspector that the proposed building would stand out in relation to existing development on the existing Employment Area. He also agrees with the Inspector that, viewed from the south and west, the proposed building would have a clear impact on openness; and that while the land between the site and Welham Green to the south is

affected by pylons and structures associated with keeping horses and livestock, the higher ground to the west of the site has the character of attractive countryside (IR741). He notes that the setting for the proposed building was characterised as urban fringe in the ES, and as semi-rural in a Council committee report (IR741), but he agrees with the Inspector that the setting for the proposed building does not have the negative associations sometimes implied by the 'urban fringe' description to any great extent (IR741).

23. The Secretary of State notes that Welwyn Hatfield Borough Council has approved a 'New Barnfield Master Planning Brief' as informal guidance, which refers to the principle of 2000 m² of additional floorspace being acceptable but this relates to limited infilling within the Major Developed Site under Policy RA5 of the WHDP (IR742). He agrees with the Inspector that, in any event, this would be subject to restrictions on height and the requirement for the proposal to have no greater impact on the purposes of including land within the Green Belt and that, in the absence of very special circumstances, this would not justify a development of the scale of the application proposal (IR742).

Landscape and Visual Effects

24. Like the Inspector, the Secretary of State does not disagree with CABE's assessment that the proposed building represents high quality design in its own right, and would incorporate materials which would mitigate the visual impact to some degree (IR767). However, for the reasons at IR743-765 and 767-777, the Secretary of State agrees with the Inspector that the proposal, though well designed in its own right, fails to pay appropriate attention to the character and appearance of the surroundings, and would be viewed as an alien and intrusive structure in the landscape and surrounding area. Moreover, although the extensive on-site landscaping proposed, including ground modelling and planting, would partially soften the appearance of the building and provide some mitigation by year 15, it could not be wholly effective in view of the scale and prominent siting of the structure (IR777).

Effect on Heritage Assets

25. In determining this application, the Secretary of State attaches considerable importance and weight to the desirability of preserving any listed buildings and their settings, any listed historic parkland and any conservation areas that may be affected by the proposed building. He has therefore given very careful consideration to the Inspector's assessment of impacts on heritage assets as well as to post-inquiry representations on this matter in response to his letter of 1 May. For the reasons at IR778-839, he agrees with the Inspector that the development would result in significant harm to a number of heritage assets, themselves recognised as being of exceptional significance, although the harm would be to the setting of the assets, and would in no case vitiate altogether or very much reduce the significance of the assets (IR840). He agrees with the Inspector that the harm would be less than substantial in all cases, and that the applicable test is therefore that set out in paragraph 134 of the Framework (IR840). The Secretary of State considers this further in the planning balance below.

Noise

26. For the reasons set out at IR841-851, the Secretary of State agrees with the Inspector that the noise impact of the plant on residential receptors would be acceptable (IR851).
27. For the reasons at IR852-855, the Secretary of State agrees with the Inspector that there is no evidence to support the contention that the effects of traffic noise on residential properties would be unacceptable (IR856). For the reasons at IR857-862, he agrees with the Inspector that the evidence demonstrates that the development would not have unacceptable noise impacts on Southfield School (IR863).

Effect on Southfield School

28. Southfield School is at present temporarily relocated on a site at Woods Avenue, Hatfield. The Secretary of State accepts the advice of the County Council in its post inquiry representations dated 19 May 2014 that, in the absence of any final definite plans for the retention of the school at its present site in Hatfield, any consideration of the current planning application should assume that the school would return to the Southfield School site.
29. For the reasons at IR864-871, the Secretary of State agrees with the Inspector that the evidence does not demonstrate there would be actual harm to the health, educational and social well-being or safety of children attending the school as a result of noise or other effects arising from the operation of the facility or the increase in HGVs (IR872). Nevertheless, he agrees with the Inspector that parents of children with special needs, and indeed parents in general, may understandably perceive that a large waste treatment facility would be an unsuitable neighbour for a school (IR872). He notes that the New Barnfield Action Fund suggest that the presence of the proposed building would inevitably result in parents seeking places elsewhere for their children, putting pressure on the viability of the school and the council's ability to offer satisfactory choices to parents of children with special needs (IR872). While he agrees with the Inspector that the practical effect of such considerations is unquantifiable, he agrees that the proposed changes to the access, the proposals for noise attenuation at the front of the school and the visual dominance of the proposed building itself would have a harmful effect on the setting and context of the school, which needs to be weighed in the overall planning balance (R872).

Highways and Traffic

30. The Secretary of State agrees with the Inspector's assessment of traffic and road safety issues at IR873-887 and 890-891.
31. For the reasons given the Secretary of State agrees with the Inspector that there would be some harm to the amenity of users of the footpath and cycleway (IR888). However, he also accepts that if planning permission is not granted for the proposed building, then the New Barnfield site would have redevelopment potential consistent with development plan and national policy prevailing at the time, which could generate a significant amount of traffic including a possible increase in the number of HGVs (IR889).

Air quality and health and equality impacts

32. The Secretary of State agrees with the Inspector's assessment at IR893-904. He also agrees that the evidence to show that the proposed facility would give rise to significant health or equality issues in the community, or that it would result in mental health issues, is lacking. Similarly, he agrees that there is no evidence which conclusively demonstrates that the proposal would have an adverse effect on local property markets or regeneration (IR05).

Ecology

33. For the reasons at IR906-909, the Secretary of State agrees with the Inspector that the effects of the development on ecology would be acceptable (IR910).

Need for the development

34. For the reasons at IR912-944, the Secretary of State agrees with the Inspector that the capacity of the RERF would allow Hertfordshire to achieve 100% diversion of local authority collected residual waste from landfill when the plant is built, and would provide capacity for a significant element of the substantial quantities of residual commercial and industrial (C&I) waste produced in the County. For the reasons given he also agrees with the Inspector that there appears little realistic alternative in the short term other than to continue disposal of high levels of waste to landfill and export of waste to areas outside Hertfordshire; and that, while it is possible that in the medium to longer term other treatment facilities would be developed to meet this deficit, and the contract between HCC and Veolia allows for this to happen in the event of planning permission not being granted for the RERF at New Barnfield, there is likely to be very significant delay in such alternative facilities coming on stream (IR945).

Technology choice

35. For the reasons at IR946-954, the Secretary of State agrees with the Inspector that the technology platform adopted in this case represents a rational choice in the light of the nature of the waste to be treated, the current state of technological development and the need for a robust and reliable process (IR955).

Alternative Sites Assessment

36. For the reasons at IR956-976, the Secretary of State agrees with the Inspector that the 2013 Alternative Site Assessment (ASA) provides sufficient detail to allow a conclusion to be reached on the suitability and availability of potential alternatives (IR976). On the basis of the evidence, and the particular sites canvassed by objectors at the Inquiry, the Secretary of State agrees that there is no obvious alternative site that would perform significantly better in environmental terms and that is suitable for the use proposed and available for a development of the scale proposed at New Barnfield. Moreover, he accepts that many of the sites which score highly in the ASA are in the Green Belt, and would accordingly be inappropriate development for which it would be necessary to demonstrate the existence of very special circumstances. The Secretary of State also accepts it is likely that these sites would have significant visual and landscape impacts, which could only be mitigated in part, in common with the application proposal. Many alternative sites would also have significant heritage impacts, though the Secretary of State agrees with the Inspector it is unlikely that they would affect an ensemble of the significance of that at Hatfield House and Park (IR977).

37. For the reasons given, the Secretary of State also agrees with the Inspector that there are no available sites within the Employment Land Areas of Search which would be of sufficient size to accommodate the proposed development (IR978).
38. The Secretary of State has had regard to Welwyn Hatfield Borough Council's (WHBC) argument that the WCS requires provision of a range of sites, and that waste arisings could be treated at a number of smaller sites, each of which would have less environmental impact than the application proposal. He agrees with the Inspector that, while this argument appears attractive, there are no alternative proposals either in the development pipeline, or promoted by landowners/developers of a scale sufficient to address the identified problem (IR979).
39. The Secretary of State agrees with the Inspector that it is significant that no alternative proposal is being progressed through the WSALDD, or by way of a planning application; and he acknowledges some force in WHBC's argument that while the Waste Disposal Authority and the successful contractor are pursuing the current application there is little incentive for any other proposals to come forward, particularly as far as local authority collected residual waste is concerned (IR980). He also agrees with the Inspector that the WCS does allow for a more dispersed pattern of provision, and that it would be reasonable to expect that HCC and Veolia have considered what options would be available to them in the event of planning permission being refused (IR980). He agrees with the Inspector that there is little reason to doubt that this would involve a continuation of landfill, at least while alternative methods of treatment to take waste up the hierarchy, which may well include energy from waste by incineration, were progressed (IR980).
40. The Secretary of State agrees with the Inspector that the evidence does not altogether rule out an alternative solution for the treatment of residual waste, which may involve a more dispersed pattern of provision; and he notes that the WCS and WSALDD have been progressed on that basis (IR981). However he also agrees with the Inspector that an alternative solution is likely to involve considerable delay (IR981). The Secretary of State also agrees that plant capable of handling lesser tonnages would not necessarily be proportionately smaller, or less visually intrusive than the New Barnfield proposal (IR981).

Urgency of need

41. The Secretary of State has given careful consideration to the timescale over which the proposal would be implemented if permission were granted (IR982), and he agrees with the Inspector that similar delays could be expected before alternative provision comes on stream (IR982). He also agrees with the Inspector that, with the exception of the permission at Ratty's Lane, there is no other treatment capacity in the pipeline which could accept the volumes of residual waste predicted in the WCS (IR983).

Carbon Balance and Climate Change

42. The Secretary of State agrees with the Inspector's assessment of carbon balance and climate change issues at IR984-987. In reaching this view he has had regard to post inquiry representations. He accepts the Inspector's conclusion that there is no reason to discount the findings of the AEA Technology peer review, which confirmed the processes to be used would be reasonably waste management

processes that are correctly modelled in the assessment, and endorsed the assessment as a whole (IR998).

43. For the reasons at IR989, the Secretary of State agrees with the Inspector that it is reasonable to make the assessment of climate change benefits using marginal technology at the present time as the appropriate comparator (IR989).

Opportunities for Combined Heat and Power (CHP)

44. For the reasons at IR990-995, the Secretary of State agrees with the Inspector that the scheme would be CHP ready and is located on the edge of a significant urban area, offering some potential for the development of a CHP network, including the possibility of supply to areas of new development which may come forward through the development plan process. However, in view of acknowledged uncertainties over the extent of the market, the costings of the supply network and the timing of provision, he also agrees that little weight can be attached to the prospects for CHP in the overall planning balance (IR996).

Compliance with the development plan and other relevant policy

45. For the reasons at IR997-1036 and 1044-1049, the Secretary of State agrees with the Inspector that the proposal does not, on a balanced assessment, accord with the provisions of the development plan when considered as a whole. Given that the Green Belt policies require very special circumstances (VSCs) to be demonstrated for planning permission to be granted, he agrees that if VSCs were to be found to exist, then the development could be said to accord with policy in that respect, which could change the overall assessment of compliance with the development plan (IR1050).
46. The Secretary of State agrees with the Inspector's assessment of the extent to which the proposal complies with national policy at IR1037-1043.

Prematurity

47. The Secretary of State agrees with the Inspector's assessment at IR1051-1057 (notwithstanding that the guidance referred to at IR1051 has been replaced by the relevant part of the planning practice guidance). For the reasons given he agrees that although the proposed development would not absolutely preclude other treatment capacity coming forward on other sites, it would absorb all of the residual local authority collected waste stream and considerable quantities of residual commercial and industrial waste, which may adversely affect the investment prospects for other developments. To that extent, he agrees with the Inspector that to grant planning permission would be highly likely to prejudice the outcome of the WSALDD process (IR1057).

Planning conditions and obligation

48. The Secretary of State has considered the Inspector's reasoning and conclusions on conditions (IR707-714). He is satisfied that the conditions proposed at Annex A of the Inspector's report are reasonable and necessary, and would meet the tests of paragraph 206 of the Framework. However, he does not consider that these conditions overcome his reasons for refusing the application.
49. The Secretary of State has also had regard to the submitted planning obligation, the Inspector's comments at IR715-721, national policy set out at paragraphs 203-

205 of the Framework, the planning guidance and the CIL Regulations. He agrees with the Inspector that while Item 1 of the planning obligation (the Byway 23 Improvement contribution) would be beneficial in providing an alternative route for cyclists, it is not necessary to the grant of planning permission and therefore cannot be given any weight in the determination of the application (IR719). As regards Item 2, the 'Hatfield House scheme', for the reasons at IR721 he agrees with the Inspector that no weight can be given to the possibility of mitigation of the impacts on historic heritage assets in reaching a conclusion as to the acceptability of the development (IR721). With the exception of Items 1 and 2, the Secretary of State considers that the planning obligation complies with regulation 122 of the CIL Regulations 2010 and the tests at paragraph 204 of the Framework, and can be given weight in support of the proposal. However, he does not consider that the planning obligation overcomes his reasons for refusing the application.

The planning balance and overall conclusion

50. The Secretary of State agrees with the Inspectors assessment at IR1058-1071 of the individual benefits and harms if the proposed development were to proceed.
51. The Secretary of State considers that substantial weight should be given to the Green Belt harm by reason of inappropriateness (IR1072). He considers that the harm to the openness of the Green Belt is real and he gives substantial weight to this harm (IR1072). He also gives weight to the harm to the perception of a gap between Hatfield and Welham Green in line with the Green Belt aim to prevent neighbouring settlements merging into one another.
52. The Secretary of State considers that there is further significant harm to the character and appearance of the area, and to the amenity of residents and users (particularly the enjoyment of the countryside, the footpath and cycle network, and the outlook from the most affected properties). He considers that there would be significant (though less than substantial) harm to the setting of the ensemble of heritage assets at Hatfield House and Park, and he attaches considerable weight and importance to this harm. Due primarily to the scale of the development, the Secretary of State considers that the mitigation proposals would not be fully effective in mitigating these impacts; that this harm would endure for at least the life of the scheme (c. 25 years); and that the existence of such a large building would be a material factor in considering the future potential of the site at that time (IR1072). He accepts that the New Barnfield site has some redevelopment potential in the event of this application being refused, but that this would be informed by relevant development plan policies and the advice in paragraph 89 of the Framework, and would be unlikely to have the impact of the proposed development other than in very special circumstances. Accordingly, he considers that little weight can be given to the fallback position (IR1072).
53. The Secretary of State considers that there are also a number of material considerations which weigh in favour of the proposal, of which substantial weight should be attached to the need for additional treatment capacity in Hertfordshire which would enable the movement of waste up the hierarchy, the increase in self-sufficiency within Hertfordshire that would result, the climate change benefits, and the ability to deliver 26 MW of dispatchable energy to the grid. He accepts that there are no available sites or proposals in the pipeline which would deliver comparable benefits in a similar time frame, and that the delay in the achievement of climate change and other benefits which would arise from a refusal of planning

permission also weighs substantially in favour of the scheme (IR1073). He considers that less weight attaches to the potential for CHP and to the employment effects of the scheme, though these would still be positive (IR1073).

54. The Secretary of State agrees with the Inspector that the scheme provides a classic illustration of the problems encountered in seeking to locate large scale infrastructure in an area which is affected by major planning constraints; and he agrees that although the waste management case for the proposal is very strong, it must be balanced against the substantial weight to the identified Green Belt harm, and other harm (IR1074). He notes that the WCS allows for development in the Green Belt to meet this need, subject to the demonstration of very special circumstances; and he agrees with the Inspector that this is a pragmatic recognition of the extent of the Green Belt in Hertfordshire, particularly the southern, more heavily populated part of the County, where most of the waste is generated. The Secretary of State has had regard to PPS10 which advises that Green Belts should be protected, but that in determining planning applications the particular locational needs of some types of waste management facilities, together with the wider environmental and economic benefits of sustainable waste management, are material considerations that should be given significant weight in determining whether proposals should be given planning permission (IR1075). However, the Secretary of State considers that this does not in any way override the need to demonstrate the existence of very special circumstances if planning permission is to be granted; and is simply one factor that needs to be taken into account, albeit one that carries significant weight (IR1075).
55. The Secretary of State attaches great importance to Green Belts. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The Secretary of State agrees with the Inspector that substantial weight should be attached to a number of material considerations which amount to a strong case for the development on waste management grounds. However, he also agrees with the Inspector that they do not clearly outweigh the harm to the Green Belt and other harm identified. The objections to the development in this location are equally strong. Accordingly, he agrees with the Inspector's conclusion that the very special circumstances necessary to justify the development do not exist (IR1076).

Formal Decision

56. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby refuses your application for the demolition of existing library buildings and construction and operation of a Recycling and Energy Recovery Facility (RERF) for the treatment of Municipal, Commercial and Industrial Wastes together with ancillary infrastructure, including bulking/transfer facilities, administration/visitor centre, landscaping, habitat creation, drainage and highway improvement works on land at New Barnfield, Hatfield (application ref 6/2570-11 dated 16 November 2011).
57. This letter serves as the Secretary of State's statement under regulation 24(2) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.

Right to challenge the decision

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

59. A copy of this letter has been sent to Hertfordshire County Council and the other main inquiry parties. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Julian Pitt

Authorised by the Secretary of State to sign in that behalf

Annex A

Representations received from inquiry parties in response to Secretary of State's letters of 1 and 20 May 2014

Correspondent	Date of letter
Beth Harries – English Heritage	16 May 2014
Simon Chivers - Welwyn Hatfield Borough Council	19 & 28 May 2014
Joanne Demetrius – Veolia Environment	19 & 29 May 2014
Ian Leech – Hertfordshire County Council	19 & 29 May 2014
Richard Buxton – Environmental & Public law (on behalf of New Barnfield Action Fund and Gascoyne Cecil Estates)	19 & 29 May 2014
Valerie Dorantt – Welwyn Hatfield Friends of the Earth & Dr John Webb – Herts Without Waste	19 & 29 May 2014

Annex B

Other representations received after the inquiry closed

Correspondent	Date of letter
Anne Main MP	25 October 2013 & 11 February 2014
Susan Salter	25 October 2014
Robert Gordon – Hertfordshire County Council & John Dean – Welwyn Hatfield Borough Council	21 November 2013
Estelle Brachlianoff – Veolia Environment	4 December 2013, 25 March & 4 April 2014
Eduardo Santos	17 January 2014
Joanne Demetrius – Veolia Environment	22 January 2014
Kathryn & Dave White	2 February 2014
Martin Curmi	4 February 2014
B Percival	9 February 2014
Emily Flack	9 April 2014
John Webb	14 April 2014
Keith McGurk - Veolia Environment	16 April 2014
Shlomo Downen	3 June 2014

Report to the Secretary of State for Communities and Local Government

by David Richards BSocSci Dip TP MRTPI

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

Date: 19 February 2014

Land at New Barnfield, Hatfield

Hertfordshire County Council

Town and Country Planning Act 1990

Application by Veolia Environmental Services Ltd

**Construction and operation of a Recycling and Energy Recovery Facility
(RERF)**

Inquiry opened on 10 September 2013 and closed on 25 October 2013

Land at New Barnfield, Hatfield

File Ref: APP/M1900/V/13/2192045

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ABBREVIATIONS

AOD	Above Ordnance Datum
AONB	Area of Outstanding Natural Beauty
AD	Anaerobic Digestion
ADEPT	Association of Directors of Environment, Economy, Planning and Transport
ASA	Alternative Sites Assessment
ATT	Advanced Thermal Treatment
CCGT	Combined Cycle Gas Turbine
C & I	Commercial and Industrial (Waste)
CHP	Combined Heat and Power
CO ₂	Carbon Dioxide
DCLG	Department of Communities and Local Government
DEFRA	Department for the Environment and Rural Affairs
DMRB	Design Manual for Roads and Bridges
EA	Environment Agency
EfW	Energy from Waste
EiP	Examination in Public
EH	English Heritage
EIA	Environmental Impact Assessment
ELAS	Employment Land Areas of Search
ES	Environmental Statement
EP	Environmental Permit
FRA	Flood Risk Assessment
GB	Green Belt
GCE	Gascoyne Cecil Estates
GRWP	Government Review of Waste Policy 2011
HA	Highways Agency
ha	hectare
Herts WoW	Herts without Waste
HGV	Heavy Goods Vehicle
HIA	Health Impact Assessment
HCC	Hertfordshire County Council
JMWMS	Joint Municipal Waste Management Strategy 2007
ktpa	kilo tonnes per annum
LACW	Local Authority Collected Waste
LATS	Landfill Allowance Trading Scheme
LDD	Local Development Document
LP	Local Plan
LVIA	Landscape and Visual Impact Assessment
MBT	Mechanical Biological Treatment
MDS	Major Developed Site in the Green Belt
MSW	Municipal Solid Waste
MW	Megawatt
NBAF	New Barnfield Action Fund
NE	Natural England
NOx	Oxides of Nitrogen
NPPF	National Planning Policy Framework
OBC	Outline Business Case
para	paragraph
PCU	Passenger Car Unit

PDL	Previously Developed Land
PEC	Predicted Environmental Contribution
PFI	Private Finance Initiative
PoE	Proof of Evidence
PM	Particulate Matter
PPS 10	Planning Policy Statement 10: Sustainable Waste Management
PROW	Public Right of Way
RCV	Refuse collection vehicle
RERF	Recycling and Energy Recovery Facility
RSS	Regional Spatial Strategy
SELCHP	South East London Combined Heat and Power
SoCG	Statement of Common Ground
SoS	Secretary of State
SRF	Solid Recovered Fuel
SSSI	Site of Special Scientific Interest
tpa	tonnes per annum
VES	Veolia Environmental Services (Applicant)
VSC	Very Special Circumstances
WCA	Waste Collection Authority
WCS	Waste Core Strategy (CD C1)
WDA	Waste Disposal Authority (HCC)
WFD	Waste Framework Directive
WH FoE	Welwyn Hatfield Friends of the Earth
WHBC	Welwyn Hatfield Borough Council
WHDP	Welwyn Hatfield District Plan (CD C3)
WFD	Waste Framework Directive
WID	Waste Incineration Directive
WPA	Waste Planning Authority (HCC)
WSALDD	Waste Site Allocations Local Development Document
WSP	WSP Site Assessment for Waste Management Facilities (CD M3)
WTS	Waste Transfer Station
WRATE	Waste and Resources Assessment Tool for the Environment (software)
ZTV	Zone of theoretical visibility

File Ref: APP/M1900/V/13/2192045
Land at New Barnfield, Hatfield

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 28 January 2013.
- The application is made by Veolia Environmental Services Ltd to Hertfordshire County Council.
- The application Ref 6/2570-11 is dated 16 November 2011.
- **The development proposed is 'Demolition of existing library buildings and construction and operation of a Recycling and Energy Recovery Facility (RERF) for the treatment of Municipal, Commercial and Industrial Wastes together with ancillary infrastructure, including bulking/transfer facilities, administration/visitor centre, landscaping, habitat creation, drainage and highway improvement works. RERF facility will comprise of (i) Mechanical Pre-Treatment (MPT) process for the further recovery of recyclables from incoming wastes and; (ii) and Energy Recovery Facility (ERF) for the remaining residual waste fraction'.**
- The reason given for making the direction was that the proposal concerns matters that give rise to substantial cross boundary or national controversy.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application: its consistency with the development plan for the area; its conformity with the matters contained in Planning Policy Statement 10: Planning for Sustainable Waste Management and the National Planning Policy Framework; the impact of the proposed development on the significance of a designated heritage asset; any other matters the Inspector considers relevant.

Summary of Recommendation: I recommend that planning permission is refused.

Procedural Matters

1. The Inquiry opened on 10 September 2013 and sat for 22 days, closing on 25 October 2013. An evening session was held at the Fielder Centre, Hatfield on 22 October 2013.
2. I am grateful to the programme officer, Mr Graham Groom and his assistant, Mrs Joanna Vincent, for their efficiency in the running of the Inquiry programme and document handling.
3. I undertook accompanied site visits to Hatfield House and Park on 23 September 2013, in advance of the heritage sessions, and to the Application site and other agreed locations in the surrounding area on 17 October 2013. I also made many unaccompanied visits to viewpoints and other locations which could be seen from the public domain during the Inquiry, including sites assessed in the Alternative Sites Assessment.
4. The Application is dated 16 November 2011 and was submitted to Hertfordshire County Council (HCC) as Waste Planning Authority (WPA). It was accompanied by an Environmental Statement (ES) which was prepared following a scoping exercise undertaken jointly with HCC.
5. Following initial consideration of the planning application HCC commissioned an independent review of the ES and made a formal request for further information under Regulation 22 of the 2011 Regulations in April 2012. The further information was submitted by the Applicant in May 2012 and publicised in accordance with the Regulations.

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6. **The application was considered by HCC's Development Control Committee on 24 October 2012.** The Committee resolved to grant planning permission subject to conditions, a S.106 obligation and the referral of the application to the Secretary of State (SoS) as a departure application.
 7. The application was called in for determination by the SoS on 28 January 2013. The reason given for the Direction was that the proposal gives rise to matters that give rise to substantial cross boundary or national controversy.
 8. The adequacy of the ES was questioned by the New Barnfield Action Fund (NBAF) on 28 March 2013, with a request for further information on a number of matters including the Alternative Sites Assessment, the exclusion of Southfield School from the ES and clarification of a number of points relating to proposed mitigation of impacts on Southfield School, the visual and Green Belt impact of the proposal, and the composition and calorific value of waste.
 9. An internal review, dated 19 April 2013, of the adequacy of the ES was undertaken by the Planning Inspectorate on behalf of the Secretary of State. The ES was given a C rating overall, indicating that it could be regarded as just satisfactory despite some omissions or inadequacies. A number of criteria were scored A or B.
 10. While not accepting that the ES was deficient, Veolia submitted further information on 24 July 2013 to address the points raised by NBAF, including an updated Alternative Sites Assessment, details relating to the operational noise model used in the planning application and an updated set of the verifiable photomontages provided with the ES. Additional information was also submitted in respect of photomontages addressing the winter views from Hatfield House and a report which considers the impact of the temporary relocation of Southfield School to Howe Dell. This additional information was provided on a voluntary basis to assist the Inquiry. It was publicised in accordance with the regulations.
 11. In his closing submissions, Counsel for NBAF referred to the doubts raised in the letter of 28 March 2013, but confirmed that, in the light of the review undertaken by the Planning Inspectorate, NBAF does not persist with the allegation.
 12. I am satisfied that the ES, together with the further information submitted in May 2012 and July 2013, reasonably complies with the provisions of Schedule 4 of the Environmental Impact Assessment (EIA) Regulations. I have taken into account the Environmental Information as defined in the regulations in reaching my conclusions and recommendation.
 13. An application for an Environmental Permit was submitted to the Environment Agency (EA) on 11 January 2012 and the Permit (CD P1) formally issued on 4 April 2013, accompanied by the Decision Document (CD P2).

The Site and Surroundings

14. New Barnfield is located 0.25 km south of the urban edge of Hatfield within the Green Belt, and 0.3 km north of Welham Green. The application site lies to the east of Junction 2 of the A1M, with good access to the wider strategic road network serving this part of Hertfordshire. The eastern site boundary adjoins the Travellers Lane Employment Area, comprising a series of large distribution warehouses and offices, currently occupied by Mitsubishi Electric (UK branch office) and a large Tesco distribution centre.

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15. The site is owned by HCC and extends to some 12.62 hectares in total. Southfield School, which is a special school for children with moderate learning difficulties, lies immediately adjacent to the northern boundary of the site. The school building is currently vacant, following a temporary move to new buildings at **Howe Dell**. HCC's intention is for the school to move back to the Southfield site after completion of the RERF. Access to Southfield School is also by Travellers Lane. The East Coast mainline railway runs to the east of the Employment Area, with stations at Hatfield and Welham Green.
 16. The New Barnfield site is separated into two distinct areas by a security fence that runs through the site approximately north to south. The eastern part of the site is developed and occupied by buildings, areas of hardstanding including 255 parking spaces and areas of scrub and hardstanding, totalling 5.27 hectares. The buildings on this part of the site have a footprint of 7,570m², and are mostly single-storey but with some two-storey elements. The hardstanding covers an area of some 13,000 m²
 17. The western area is some 7.35 hectares of predominantly open undeveloped land, and includes the former school playing fields and a broad leaved woodland plantation. The area of the school playing fields has been re-graded in order to provide level platforms and there is an embankment running east to west across the central area of the site. The woodland to the west is part of recent planting by the HCC rural estates department as part of the Watling Chase Community Forest project.
 18. New Barnfield is one of a cluster of uses that gain access to the major road network via Travellers Lane and South Way. The areas of land to the south and west are typically characterised by open fields including pasture and paddocks with well defined field boundaries and incorporating a network of public rights of way and informal footpaths. The Great North Cycle Way 12 runs across the site access and along the eastern boundary.
 19. Between the early 1960s and 1990, the New Barnfield Centre was used wholly for educational purposes (Hatfield Grammar School). Until recently the site was occupied by a mix of uses related to the Hertfordshire Library Service and the Park Educational Support Centre. HCC has subsequently taken the decision to vacate the premises in order to be able to offer vacant possession to the current applicant if planning permission is granted by the Secretary of State following this Inquiry. These services have been relocated elsewhere, and the buildings are currently vacant.
 20. The nearest residential properties are those to the north of South Way with the closest receptors being those that adjoin the boundary with South Way on Far End, Brickfields and Old Leys. These are located approximately 270 m from the northern boundary of the proposed operational area of the site. The nearest residential properties at Welham Green are those on Parsonage Road and Parsonage Lane. These will be located approximately 280 m from the southern boundary of the application site.
 21. The eastern boundary of Southfield Cemetery would be some 366 m from the western boundary of the operational area of the application site.
 22. Hatfield House and Park (Grade 1 listed) is located to the north east of the application site. The southern boundary of Hatfield Park (Millwards Park) lies

some 360 m from the north-eastern application site boundary. Hatfield House itself lies approximately 2.1 km from this boundary.

23. The Wildlife Site referred to as Grasslands North of Parsonage Road (Identified as WS100 in the WHDP) adjoins the southern part of the application site and the western part of the application area is located within the Mimmshall Valley Landscape Character Area.
24. There are two statutorily designated sites within 10 km of the application site. These are Wormley Hoddesdon Park Woods which are designated as Special Areas of Conservation (SAC) and located some 8.2 km to the east of the application site. Water End Swallow Holes are designated as a Site of Special Scientific Interest (SSSI) and are located about 1.5 km to the south of the site.

Planning Policy

The Development Plan

25. It is common ground between Veolia, HCC and WHBC that the Development Plan comprises the Hertfordshire Waste Core Strategy and Development Management Policies Development Plan Document – November 2012 (WCS), and the saved policies of the Welwyn Hatfield District Plan 2005 (WHDP).

Waste Core Strategy

26. The WCS covers the period 2011 to 2016. Following public examination and subsequent modifications, it was found sound by the Secretary of State (SoS) and was adopted by HCC in November 2012.
27. The WCS sets out seven strategic objectives:
 - SO1. To promote the provision of well designed and efficient facilities, that drive waste management practices up the waste hierarchy and are located to ensure no harm to human health and the environment, and which will reduce waste volumes to be disposed to landfill.
 - SO2. To locate waste recycling, handling and reduction facilities as close as practicable to the origin of waste.
 - SO3. To facilitate the increased and efficient use of recycled waste materials in Hertfordshire (for example as aggregate).
 - SO4. To facilitate a shift away from road transport to water and rail transport as the principal means of transporting waste.
 - SO5. To prevent and minimise waste, but where waste cannot be avoided, maximise the recovery value (including energy and heat) from waste.
 - SO6. To work with all partners in the County to encourage integrated spatial planning, aligning with other local waste strategies and local authority objectives which take account of waste issues, recognising that waste management generates employment and is part of the infrastructure which supports businesses and communities.
 - SO7. To work with all neighbouring waste authorities to manage the **equivalent of the county's own waste arisings.**

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28. The policies of the WCS which are of particular relevance to the consideration of the proposal are set out below:
29. Policy 1 states that provision will be made for a network of waste management sites that drive waste management practices up the waste hierarchy and are sufficient to provide adequate capacity for existing and future waste arisings within the county, and for any agreed apportionment for waste arisings from outside the county. It identifies broad areas of search for the provision of sites for Local Authority Collected Waste (LACW) as shown on the key diagram. Waste management facilities for waste that is not LACW will be brought forward on existing strategic sites, Employment Land Areas of Search (ELAS) and Allocated Sites. To ensure flexibility for the waste management industry, and for the use of newer technologies, there will be provision for a mixture of small, medium and large waste management sites as appropriate. New and emerging waste management technologies will be encouraged.
30. Policy 1A sets out a positive approach to the consideration of development proposals that reflects the presumption in favour of sustainable development contained in the NPPF. It confirms that planning applications which accord with the policies of the WCS will be approved without delay.
31. Policy 3 states that proposals for the treatment of waste which maximise recovery and where appropriate generate and recover heat and/or power will be acceptable in principle, provided that the proposal is for the recovery of energy from waste that cannot reasonably be dealt with at a higher level in the waste hierarchy. Proposals for the recovery of energy from waste that help to deliver identified energy opportunities in Hertfordshire will be encouraged. In considering such proposals the Waste Planning Authority (WPA) will have regard to the benefits of maximising energy recovery and the protection of the environment and human health.
32. Policy 6 addresses proposals in the Green Belt. It states that applications for new and/or expansion of existing waste facilities within the Green Belt will be required to demonstrate very special circumstances sufficient to outweigh the harm to the Green Belt together with any other harm identified. It then lists a number of criteria to be taken into account as material considerations:
- i. The need for the development cannot be met by alternative suitable non-Green Belt sites;
 - ii. The need to find locations as close as practicable to the source of the waste;
 - iii. The availability of sustainable transport connections;
 - iv. The site characteristics;
 - v. Any specific locational advantages of the proposed site; and
 - vi. The wider economic and environmental benefits of sustainable waste management, including the need for a range of sites.
33. Policy 9 states that waste management facilities should be well located in relation to the strategic road network as defined in the Local Transport Plan unless it can be demonstrated that it can meet an identified local need. Support will be given

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- to proposals which utilise forms of transport other than by road including water or rail.
34. Policy 10 requires that proposals for waste management facilities must have regard to measures that minimise greenhouse gas emissions and to climate change risks that will affect the development over its lifetime. Proposals must demonstrate how these challenges will be effectively addressed and/or managed.
35. Policy 11 sets out general criteria for addressing waste planning applications. Planning applications for such facilities will be granted provided that:
- i. the siting, scale and design of the development is appropriate to the location and character of the surrounding natural and built environment;
 - ii. the landscaping and screening of the site is designed to effectively mitigate the impact of the proposal;
 - iii. the proposed operation of the site would not adversely impact upon amenity and human health;
 - iv. the proposed development would not adversely impact upon wildlife habitats, the natural, built or historic environments;
 - v. the proposed operation of the site would not adversely impact upon wildlife habitats, the natural, built or historic environment;
 - vi. adequate provision is made for the restoration, aftercare and management of the site to an agreed after-use;
 - vii. applications for hazardous waste facilities should satisfactorily address issues of safety and risks to human health, wildlife habitats, the natural built and historic environment;
 - viii. proposals on Greenfield sites can demonstrate that no better suitable previously developed land (PDL) is available;
 - ix. there would not be an unacceptable adverse cumulative impact on the area; and it is not in conflict with other policies in the WCS.
36. Policy 12 requires waste management facilities to contribute to resource efficiency, the reduction of carbon emissions and the effective management of climate risk. As a minimum, proposals will be required to address the principles of sustainability by incorporating, amongst other things, good and innovative design with payout principles that allow for the effective sorting, recycling or composting of waste where appropriate; demonstrate that that no significant noise or light intrusion will arise from the development and include measures to minimise adverse impact on human health, amenity and wildlife habitats; and the natural and built environment. In particular facilities should be enclosed within a building wherever possible which, along with plant and machinery, should be in keeping with the surrounding setting and landscape/townscape.
37. Policy 13 requires that the provision for vehicle movement within the site, the access to the site or the conditions of the local highways network are such that the traffic impacts likely to be generated would not have an adverse impact on highway safety, the effective operation of the highway network, amenity, human health, and the natural and historic environment.

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38. Policy 15 states that proposals should ensure that Public Rights of Way (PROW) are not adversely affected, or where this is not possible, safe and convenient alternative provision is made or suitable replacement Rights of Way is secured. The use of Rights of Way to obtain vehicle access to a site will not be permitted unless it can be clearly demonstrated that the safety of Rights of Way users can be adequately protected. Proposals should enhance the public rights of way network through the creation of new Rights of Way and/or open space, or the improvement of exiting access.
39. Policy 17 is concerned with the protection of sites of international and national importance, including Areas of Outstanding Natural Beauty (AONB), SSSIs, Listed Buildings and their settings and Historic Parks. Proposals will be permitted where it can be demonstrated that they would not have an irreversible impact on such designated sites. They should be conserved and where possible opportunities sought to enhance them. Policy 18 sets out a similar approach to assets of regional and local significance. Where there are unavoidable negative impacts on such assets adequate mitigation measures should be proposed to address the impacts and/or compensation provided for their replacement. Policy 19 sets out requirements for protection and mitigation to protect and safeguard **Hertfordshire's diversity of natural and historic environmental assets and** minimise impacts of development, including measure to minimise visual intrusion and any adverse impact on the local landscape and countryside.

Welwyn Hatfield District Plan

40. The WHDP remains part of the development plan until such time as the Local Development Framework is adopted. A number of local policies have been saved.
41. The key WHDP policy for the purposes of this report is Policy RA6, which identifies the appeal site as a major developed site (MDS) in the Green Belt. The policy states that complete or partial development will be permitted within the boundaries of the MDSs identified on the proposals map, subject to the specified criteria amongst which the following are of particular relevance to the application proposal:
- i. Proposals should have no greater impact on than the existing development on the openness of the Green Belt and the purposes of land (sic) including land within it, and wherever possible should have less impact.
 - ii. Proposals should make a positive contribution to achieving the objectives for use of land in the Green Belt
 - iii. Proposals should not occupy a greater footprint of the site than the existing buildings, excluding temporary buildings, open spaces with direct external access and areas of hardstanding, unless this would achieve a height reduction to the benefit of visual amenity;
 - iv. Buildings should not exceed the height of the existing buildings;
42. Policy RA5 permits some limited infilling within the MDSs provided that the proposal will have no greater impact on the purposes of including land within the Green Belt than the existing development, the proposal should not exceed the height of the existing buildings, and the proposal should not lead to a major increase in the developed proportion of the site.

43. Other WHDP policies of relevance are

- RA 10 Landscape regions and character areas
- RA 11 Watling Chase Community Forest
- R 5 Waste Management
- R7 Groundwater and surface water
- R 11 Biodiversity and Development
- R 15 Wildlife sites
- R 17 Trees, woodlands and hedgerows
- R 18 Air Quality
- R 19 Noise and Vibration Pollution
- R 20 Light Pollution
- R 28 Historic Parks and Gardens
- R 29 Archaeology
- SD 1 Sustainable Development
- D 2 Character and context

European and National Guidance

44. The following advice and guidance is also relevant to the determination of the application. The Waste Framework Directive (WFD) 2008/98/EC; The Waste Incineration Directive (WID) 2000/76/EC and 1137/2008; The EU Landfill Directive 1999; Waste Strategy for England 2007; The Waste (England and Wales) Regulations 2011; PPS 10: *Planning for Sustainable Waste Management* 2011; The Government Review of Waste Policy in England 2011; The DEFRA Guide on Applying the Waste Hierarchy 2011; The DEFRA Guide to Energy from Waste February 2013; The National Planning Policy Framework 2012 (the Framework); National Policy Statement (EN-1) 2011; National Policy Statement (EN-3) 2011.
45. The Waste Management Plan for England was published in December 2013, after the Inquiry closed. In view of its potential relevance the document was circulated to the main and Rule 6 parties with a request for comment. Responses were received from Veolia Environmental Services, Hertfordshire County Council, New Barnfield Action Fund and Welwyn Hatfield Friends of the Earth/Herts Without Waste. Welwyn Hatfield Borough Council and English Heritage responded that they had no further comment to make. A draft of the document dated July 2013 was before the Inquiry as CD E10. I have taken into account the comments received in reaching my conclusions.

The Proposed Development

46. The application seeks planning permission for the development of a Recycling and Energy Recovery Facility (RERF) on land at New Barnfield, Travellers Lane, Hatfield, for the treatment of up to 380,000 tonnes of municipal, commercial, industrial and healthcare waste per annum.
47. A domed shaped building would house all the waste management facilities. These would comprise a front end mechanical pre-treatment (MPT) stage, energy recovery, bulking/transfer facilities and an administration/visitor centre. The proposal includes landscaping, habitat creation, drainage and new highway improvement works. The existing library buildings and training facility would be demolished.

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48. The RERF would be 170 m long, 150 m wide and 41 m high from adjoining ground level. It would have a footprint of approximately 18,887 m² with additional areas of hardstanding measuring approximately 6,428 m². There would be two emission flues which would be 75m high from the adjoining ground **level. Waste would be imported by HGV's which will drive into the building and** off-load the waste. Within the tipping and recycling area, air will be held under negative pressure to retain odours. It will then be drawn into the combustion chamber. There will be separate tipping bays for waste to be mechanically pre-treated and for waste going directly to the waste bunker.
 49. The residual waste will be sorted and shredded mechanically to separate out the different elements of the waste stream. Waste material such as plastics, paper and cardboard will be removed for further recycling. Bulkier wastes will be shredded if necessary.
 50. Low level healthcare waste collected by local authorities will be brought to the RERF facility. This would be taken to a dedicated area within the main tipping hall. Non-hazardous healthcare waste suitable for combustion (including bandages and dressings from residences, care homes and veterinary services) will be deposited into the combustion waste bunkers. Any unsuitable healthcare waste will be segregated and bulked up to be taken for treatment at an appropriate facility.
 51. Following MPT the recovered recyclates will be bulked up and transferred to materials re-processors, whilst the remaining residual wastes will be deposited into the combustion waste bunkers prior to combustion. This residual waste (which includes waste for which recycling is uneconomic or impractical) will be burnt in a sealed combustion chamber. The hot flue gases produced will pass through a high-efficiency boiler to produce steam which will run a steam turbine to generate electricity. Some of the energy produced will be used by the plant itself (around 4 MW) and up to 26 MW of energy (net) will be exported to the national grid via an underground cable.
 52. The flue gases will be treated and passed through filters to collect the flue gas treatment residues (or fly ash), which will equate to some 3% of waste input and will be transported off-site for appropriate treatment, storage or disposal. After combustion about 22% of the waste will comprise bottom ash. The bottom ash will be sent to a facility where ferrous and non-ferrous metals will be recovered and a secondary aggregate produced for re-use in the construction industry.
 53. The RERF would operate continuously 24 hours a day, 365 days a year. Waste would be received between the hours of 0700 and 2100 daily, throughout the week. Mechanical pre-treatment would take place between the hours of 0600 to 2000 Monday to Friday and between 0600 to 1500 on Saturdays with no MPT permitted on Sundays/Bank Holidays.
 54. It would be constructed so as to be able to provide power and heat off take and ready for Combined Heat and Power (CHP). A grid connection can be made about 1.5 km west of the site. No pylons or over site cables would be required to make the grid connection.
 55. There would be approximately 458 daily vehicle movements (229 in and 229 out) associated with the RERF proposal and included within this are 372 HGV movements (186 in and 186 out).

THE CASE FOR VEOLIA ENVIRONMENTAL SERVICES

(The cases for the main and rule 6 parties below are reported substantially in the form of their closing submissions)

Introduction

56. After over 5 weeks of evidence at this inquiry the issue comes down to this: whether the benefits of this proposal are enough to justify the grant of planning permission. Opponents to the scheme say it is an easy answer: they are not. Their case can be simply made because the observable effects of the development are easily understood and readily depicted on plans, drawings and by photomontages - and they are local. They have a more difficult task with the claimed effects which are non-observable because the reality is that those effects are feared rather than real. On the other hand the benefits are more indirect, less immediately observable and are not solely local but are none the less there and important for wider society – including of course for local people in the larger scheme of things. We submit that these benefits do outweigh the unwelcome effects of the development, are very real and are supported by policy at all levels. The benefits address essentially two matters: the need for a more sustainable way to manage our waste and the need to reduce our reliance on energy from fossil fuels. Both matters make a vital contribution to addressing climate change. **As the NPPF says:** 'Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions and in providing resilience to the impacts of climate change and supporting the delivery of renewable and low carbon energy and associated infrastructure. This is central to the economic, social and environmental dimension of sustainable development.¹ The seemingly remote nature of those issues and associated concerns such as energy security and reliability should not mask their importance for society. Addressing climate change is of fundamental importance to all of us; it is an environmental benefit - perhaps it might be said the fundamental environmental benefit without which all others are in jeopardy and that is why policy has to be and is clear and unambiguous in its support for sustainable waste management and for energy generated from low carbon and renewable sources. We will address that policy support first.

Waste Legislation and Policy

57. Policy in this field essentially derives from the revised overarching Waste Framework Directive of 2008² in which Article 4 provides that the waste hierarchy should apply as a priority order in waste management and waste prevention legislation and policy. The hierarchy is in the priority order of prevention, re-use, **recycling, 'other recovery such as energy recovery'³ and** - as a last and final resort - **disposal, typically in landfill. Recovery is defined as 'any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function in the plant or in the wider economy'⁴** and Annex II sets out a list of recovery operations including R1 – use of waste principally as a fuel to generate energy.

¹ CD D1 Para 93

² CD E1

³ Waste Framework Directive (CD E1 Article 4.1(d))

⁴ Ibid Article 3.15

To qualify as R1 the energy efficiency of the plant has to be equal to or above 0.65 applying the formula there set out. There has been no serious challenge in this inquiry to the fact that the proposed plant would meet the requirements of the formula as the Environment Agency have explained.⁵ The proposed RERF is therefore a recovery operation. Deposit of waste into land by landfill by contrast is a disposal operation at the bottom of the hierarchy as is non-efficient incineration.⁶ The residual waste in Hertfordshire is overwhelmingly now disposed of in distant locations outside of the county in these totally unacceptable ways.

58. This European legislation has been transposed into our domestic law by the Waste Regulations 2011 in which Regulation 12 requires that all involved in waste management must apply the waste hierarchy as a priority order and Regulation 35(2)(d) sets out a duty on all involved to confirm that they have applied the hierarchy in all their dealings with waste.
59. PPS10 is the prime source of Government policy on waste and planning and its first paragraph echoes this overall objective of producing less waste, using it as a resource wherever possible and moving the management of waste up the hierarchy disposing of it only as a last resort. The document recognises that this **means significant new investment in waste management facilities and that 'the planning system is pivotal to the adequate and timely provision of the new facilities that will be needed.'** **What must be assured therefore is** adequate provision provided in a timely way to meet a need which exists now. Mr Chivers (for WHBC) accepted that now is the right time to make this provision. Planning strategies must provide a framework for communities to take more responsibility for their own waste and must enable sufficient and timely provision of waste management facilities to meet the needs of their communities and the identified **needs of their area. This is the 'step change' in the way waste is handled of which** PPS10 speaks.
60. The Government Review of Waste Policy (GRWP) in England 2011 carries through these objectives with express support for recovery by way of EfW with a whole section devoted to support for EfW.⁷ The Government supports efficient energy recovery from residual waste and sees it as being able to deliver environmental benefits, reduce carbon impacts and provide economic opportunities. The **Government's first overarching goal is to ensure that recovery of energy from waste and its place in the waste hierarchy is understood and valued by households, businesses and the public sector in the same way as re-use and recycling.** It recognises that recovery of energy from waste makes an important **contribution to the UK's renewable energy targets, minimising waste to landfill and helping to meet UK carbon budgets. The Government's '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 with the drive to move waste further up the hierarchy.⁸ Much of the opposition to this project is simply a direct contradiction of this clear Government policy and we are confident the Inspector and SoS will recognise it as such and reject it accordingly. The recently produced

⁵ See RK V/2.5 Appendix A and SK V/11.3 Appendix 3, as at Shrewsbury CD F1 § 103-106

⁶ CD E1 Article 3.19 and Annex 1

⁷ CD E5 p.63 and see especially paras 207, 212-219.

⁸ Ibid para 214

DEFRA statistics⁹ do not change this position. Under the heading 'Updates Since Previous Analysis' the central forecast for household waste arisings has been increased since the February 2013 report which 'reflects the new data that has since become available'. These are the new data for the last three quarters. So there seems to be a small but continued growth in household waste arisings. The most recent data for recycling shows 'slightly lower than expected household recycling' with the Government working on the assumption that household recycling will reach 50% in 2020. C&I waste is forecast to relate directly to economic growth and because the rate of economic growth has more recently been lower than previously forecast the expected arisings for C&I arithmetically are seen as 'falling slightly.'

61. Government policy at the national level could not be clearer: there is an immediate need to move the management of waste up the hierarchy and recovering energy from waste is a valuable and important way to achieve that and local planning strategies must enable that to happen in a sufficient way to meet the needs and in a timely way to address the immediacy of the problem.
62. The Waste Core Strategy¹⁰ seeks to - and properly read and applied does - achieve that. Its first strategic objective is to promote the provision of well designed and efficient facilities that drive waste management practices up the waste hierarchy and are located to ensure no harm to human health and which reduce waste volumes to be disposed to landfill. This plant would help to achieve that objective. It is a further objective to prevent and minimise waste but where waste cannot be avoided to maximise the recovery value (including energy and heat) from waste. This RERF will recycle more of the hitherto residual waste and then generate enough electricity for 50,000 households. Policy 1 enshrines these objectives in requiring provision to be made for a network of waste management facilities that drive waste management practices up the waste hierarchy and are sufficient to provide adequate capacity for existing and future waste arisings within the county with a mixture of small, medium and large waste management sites as appropriate. When assessing whether the proposal is in accordance with the development plan the plan must be read as a whole with inevitably some policies pointing one way and others another but in our submission these strategic objectives and this policy setting out the 'Strategy for the Provision of Waste Management Facilities' must be borne in mind throughout the exercise. Realistically, given the inevitable scale and nature of the necessary infrastructure, those objectives could not be met at all without some adverse impacts on some interest or interests of acknowledged importance and if a conflict with a policy which sought no adverse impacts on such interests rendered the whole project out of accord with the development plan the whole exercise of plan-making would be pointless and sensible decision making would be stymied.

Energy Policy

63. There is an overarching piece of legislation from which the policies flow, that is the Climate Change Act 2008, which establishes a long-term framework to tackle climate change by encouraging a transition to a low carbon economy in the UK with a reduction of at least 34% in greenhouse gas emissions by 2020 and at least 80% by 2050. The Renewable Energy Directive sets a target for the UK to

⁹ INQ/WHBC/5B put before the inquiry on 23 October 2013

¹⁰ CD C1

achieve 15% of its energy consumption from renewable energy sources by 2020 **and that is the Government's policy.**

64. These legislative goals find policy expression in the national policy statements on energy. The cross-over between waste and energy policy is clear from the national policy statement for energy EN-1 and for renewable energy EN-3.
65. It might have been hoped that it would now be taken as a given that those national statements are material considerations in determinations under the Town and Country Planning Act 1990, such as this one, but it became necessary **to take the inquiry to the EN's themselves, to the Shrewsbury DL where the Inspector so accepted¹¹ and to the NPPF which makes the matter clear beyond doubt. In any event whilst 'nationally significant infrastructure projects'** are classified as including those electricity generating stations generating more than 50 megawatts, the RERF can generate 26 megawatts - enough for all the electricity needs of all the homes in the Borough of Welwyn Hatfield or one in ten of all the households in the whole of Hertfordshire.¹² On any view that is a significant level of electricity generation. At Shrewsbury the Inspector agreed that the 7-8 MW generated would make a significant and useful contribution to **meeting the UK's targets for energy from renewable sources and towards meeting energy security objectives.**¹³ The over three times greater contribution from the RERF deserves even greater weight.
66. EN-1 recognises that the UK needs to wean itself off a high carbon energy mix in order to reduce greenhouse gas emissions and to improve the security, availability and affordability of energy through diversification. It identifies that future renewable energy generation is likely to come from five sources of which the fourth it lists is EfW observing that the principal purpose of the combustion of waste is to reduce the amount of waste going to landfill in accordance with the Waste Hierarchy and to recover energy from that waste as electricity or heat. It makes clear that the energy produced from the biomass fraction of waste is renewable. It also points out that biomass and EfW also have the advantage that **they can be used to generate 'dispatchable'** power, providing peak load and base load electricity on demand. As more intermittent renewable energy electricity comes onto the UK grid, the ability of biomass and EfW to deliver predictable, controllable electricity is increasingly important in ensuring the security of UK supplies.
67. It is also notable that EN-1 expressly addresses the urgency of the need for new renewable and low carbon energy infrastructure and points out that to hit the **15% target by 2020** 'it is necessary to bring forward new renewable energy generating projects as soon as possible. The need for new renewable electricity generation projects is therefore urgent.' That is worth emphasising given some of the cases put forward in opposition to this project. The urgency of this energy **need must be in addition to the urgency to deal with Hertfordshire's waste higher up the hierarchy as landfill fills up and contracts end.**
68. Further, the policy statement is realistic about impacts observing that the development of new energy infrastructure, at the scale and speed required to

¹¹ CD F1 DL29

¹² V/1.1 paras 3.34.1 and 2 and WCS (CD C1) para 2.6 and WHBC Emerging Core Strategy (C4) para 2.15 - 2.18

¹³ CD F1 para DL20, 126 and 136

meet the current and future need is likely to have some negative effects on biodiversity, landscape /visual amenity and cultural heritage. It recognises the possibility of mitigation of some of **these effects but concludes:** 'however, the impacts on landscape/visual amenity in particular will sometimes be hard to **mitigate.**' Expressly dealing with **visual impact it recognises that** 'all proposed energy infrastructure is likely to have visual effects for many receptors around **proposed sites.**' EN-3 also recognises that proposals may come forward in the Green Belt and will then have to satisfy the test of very special circumstances but points out that such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.

69. Again a lot of the objection to the RERF is a simple contradiction of the policy position the Government takes in terms of EfW, the renewable energy from it and the urgency to provide it. A planning inquiry is not a forum for changing Government policy no matter how much some sought to politicise the process.

The messages from waste and energy policy

70. The messages are clear that for the sake of addressing climate change and to achieve sustainable development we must move away from landfilling waste and from generating most of our energy from fossil fuels. It is a core planning principle of the NPPF to support the transition to a low carbon future in a changing climate and to encourage the use of renewable resources (including the biomass fraction of waste) by the development of renewable energy.
71. The need to move away from landfilling waste is urgent. It is bad for the climate, for the environment and therefore for people. The space for landfill is in any event filling up and there is no case for passing the buck to neighbours. Communities have to take responsibility for their own waste.
72. The need to move away from generating so much energy from fossil fuels is also urgent. It is again bad for the climate, for the environment and ultimately for people.
73. To meet these needs will involve a step change in the provision of infrastructure. That infrastructure is likely to be big and visible. The wider and crucial environmental benefits of addressing climate change and achieving sustainable development need to be weighed in the balance against the inevitable local impacts of providing the necessary infrastructure and they should carry significant weight.
74. That legislative and policy context must always be borne in mind when addressing the arguments that have been advanced against the proposal.

Need for the RERF

75. This inquiry has been luckier than many in that there is a very up to date WCS adopted in November 2012, which has expressly addressed the need for new waste infrastructure. In our submission this inquiry should proceed on the basis that the figures in the WCS are sound as the basis upon which this application is determined. Any other approach is to fly in the face of the plan-led system.
76. Policy 1 requires provision of waste management facilities that are sufficient to provide adequate capacity for existing and future waste arisings in the county. The concern is that there might be not enough capacity. That concern is also to

be found in PPS10 where the advice is that WCSs need to be reviewed every 5 years or sooner if there are signs of under-provision of waste management capacity or of over-provision of disposal options (i.e. landfill) where these would undermine movement up the waste hierarchy. Table 6 indicates a LACW capacity shortfall that has to be addressed of 276,000 tpa by 2016. Table 9 indicates a comparable C&I shortfall in capacity of 397,000 tpa. That means a total shortfall in capacity to be addressed of 673,000 tpa by 2016.

77. The tables provide indicative **facility numbers' with paragraphs 3.11 and 3.16** of the reasoned justification in identical terms explaining that those numbers are arrived at by simply arithmetically dividing the shortfall by the potential size of a **facility and going on to say clearly that 'facilities could therefore come forward in a range of sizes that will meet the identified shortfall.'** There is no prescription as to size. If one simply takes from the capacity shortfall of 673,000 tpa by 2016 the overall capacity of the RERF at 380,000 tpa that still leaves nearly 300,000 tpa not provided for. Even if all **of the Ratty's Lane scheme comes forward at 160,000 tpa** that still leaves over 130,000 tpa capacity shortfall to be provided possibly by some of the schemes referred to in the Background Paper to the Waste Sites Allocation Local Development Document (WSALDD).¹⁴
78. However, firstly the actual residual waste figure for the RERF is 352,000 as 28,000 tpa can be added to the recycling figures by the front-end recycling facility. Secondly, only the 60,000 tpa Anaerobic Digestion (AD) scheme at **Ratty's Lane looks to** be a genuinely viable proposal and many of the Background Paper schemes are for specialist waste streams or scrap metal schemes and do not address the residual waste capacity shortfall that the RERF seeks to address. Veolia rely on the note put in by HCC on those schemes¹⁵ in response to **WHBC's** unannounced tables (put in by Mr Fletcher) which address only the position in 2026 – and which have the other shortcomings identified in the HCC note - and not the urgent need in 2016. So the continuing capacity shortfall to be met by other proposals on other potential sites at potentially varying sizes is in excess of 250,000 tpa (673,000 – 352,000 at RERF = 321,000 – **60,000 at Ratty's Lane = 261,000**).
79. The WCS Inspector was faced with similar arguments about need. She was fully aware of the RERF proposal.¹⁶ She observed that if the waste arisings were such as to amount to only the capacity of one large facility that might prevent the emergence of other facilities and technologies which could deal with waste in the longer term at a higher level in the waste hierarchy. She concluded however that **'the overall waste** arisings for LAC and C & I waste on a reasonable forecast related to reasonable growth assumptions are likely to be far in excess of an amount that could be said **to be limiting in that way.**'¹⁷ That conclusion fits with the simple calculations above.
80. There is therefore clearly an urgent need by 2016: the RERF can make a substantial contribution to meeting it by 2017 if planning permission is given next year and there may need to be some continued unwanted landfill probably out of the county or some other stop gap arrangements for a very short period before the RERF can come on stream. Mr Kosky (for Veolia) explained how neighbouring

¹⁴ CD M29 p.19 and 20

¹⁵ INQ/HCC/13

¹⁶ WCS IR (CD M6) para 69

¹⁷ Ibid para 66

counties are not in a position in actual or policy terms or both to take **Hertfordshire's waste. If the RERF does not come on stream there is no provision** for meeting that urgent shortfall in capacity.

81. A number of points have been sought to be made against this clear need case and none of them bears serious analysis.

Combined treatment of LACW v C & I

82. There appears to be an argument that because the LACW shortfall is 276,000 tpa by 2016 any facility or facilities should only be of a size to address the LACW need. Firstly, the requirement in Policy 1 does not differentiate between LACW and C & I waste. **Secondly, nor should it because it is a 'key objective' of** Government policy in the Waste Strategy England to encourage the integration of the management of LACW and C & I waste. These waste streams share similar properties and the issues they raise in terms of climate change and sustainability are the same, as Government policy recognises¹⁸. Thirdly, the WCS Inspector looked at LACW and C & I waste together in reaching her conclusions on need: see above.¹⁹ Fourthly, Veolia are contractually bound to take up to the capacity figure of 352,000 tpa if that level of waste is generated and not recycled²⁰ and so by being capable of taking the full LACW figure of 276,00 tpa this is a 75% LACW facility in any event. There is no policy support anywhere for C & I waste having a lower priority for its management than LACW.

Over sized?

83. Related to this misconceived argument about C & I waste is the argument that the proposed RERF is oversized for the need and would prejudice other management methods further up the waste hierarchy. This argument was in effect rejected by the WCS Inspector in the passage from her report quoted above²¹ namely that the arisings are such that there is no such risk.
84. Mr Fletcher (for WHBC) nevertheless sought to promote this argument in a number of misconceived ways. These are addressed in the following paragraphs, but it is worth observing that what PPS10 is particularly concerned about is waste **disposal** facilities prejudicing movement up the hierarchy. It provides that applicants for permission for waste **disposal** facilities need to demonstrate that their proposal does not prejudice movement up the hierarchy.²² The proposed RERF is not a disposal facility; it is a recovery facility and so this requirement in PPS10 does not apply. In any event, as we have shown, there is an urgent need for the RERF which will not prejudice the movement of waste up the hierarchy. This is a view shared by the Government which identifies sufficient residual waste through diversion from landfill for significant growth in EfW, without conflicting with the drive up the hierarchy.²³
85. Nevertheless, Mr Fletcher (for WHBC) firstly sought to challenge the arisings figures. In response, this inquiry is not the forum for challenging the figures in a recently adopted waste development plan. Secondly, the arisings figures were in

¹⁸ GRWP 2011 CD E5 §153 shaded box and §234

¹⁹ M6 para 66

²⁰ See INQ/HCC/ 4

²¹ CD M6 para 66

²² CD D2 para 25

²³ GRWP 2011 CD E5 para 214

fact challenged before the WCS Inspector and she expressly supported them. She **saw the reason for the challenge: 'the reason why Representatives seek** to force lower estimates of waste throughout the plan period is to obviate any policy proposal based on need for a single high-capacity treatment facility in the short **term.'**²⁴ She of course knew about this proposal.²⁵ She rejected these arguments, saying that they **'strain the data and its interpretation'**.²⁶

86. WHBC then pursued an argument based on lower housing figures than in the abolished RSS. This was factually wrong in that the housing figures used to inform the WCS were the lower draft RSS figures. It was then argued that Councils were now putting forward housing figures at about 40 - 50% of the RSS figures. Again this was wrong as WHBC itself illustrates by using 83% of the draft RSS figures. Mr Chivers (for WHBC) later disclaimed this argument and said that WHBC were not resiling from their emerging Core Strategy figures. Again this argument was run before the WCS Inspector and expressly rejected by her²⁷. The WCS itself records substantial population growth of 20.6% for Hertfordshire and 35.2% growth for Welwyn Hatfield.
87. Veolia is content to rely on the WCS figures for waste arisings but there should be no complacency about their future profile. As the UK moves into recovery from the recession so the figures for waste arisings are beginning to show signs of an upward movement. (See the most recent figures for Hertfordshire showing **a 3.49% increase when comparing the first quarter's returns for last year with this year's figures.**²⁸) Further this accords with the concerns expressed by county officers well placed to observe these things in their ADEPT letter.²⁹ The recent data relied upon in the new DEFRA forecasts³⁰ also show small increases in household waste arisings and slightly lower rates of recycling.
88. WHBC then attacked the recycling figures in the WCS suggesting that a 75% **recycling rate is 'not unreasonable'** and arguing that if there was recycling at that level there would be less residual waste and so the capacity of the RERF would not be needed. The Government has addressed the nature of residual waste and **recycling in the EfW Guide to the Debate explaining that 'residual waste is mixed waste that cannot be usefully recycled. It may contain materials that could theoretically be recycled if they were perfectly separated and clean, but these materials are currently too contaminated for recycling to be economically or practically feasible. It may also be that there is currently no market for the material or that it is uneconomic to take to market.'**³¹ It is these practical and economic considerations which are missing from much of the opposition case on this issue of recycling.
89. On a national level in its Government Review of Waste Policy in England 2011 the Government does not seek to impose on individual councils even the 50% recycling target recognising the difficulties particularly in dense urban areas – such as where there are many flats³². Mr Fletcher (for WHBC) was not aware

²⁴ CD M6 para 64

²⁵ Ibid para 69

²⁶ Ibid paras 64 and 67

²⁷ Ibid para 54-55

²⁸ INQ/V12

²⁹ SK V/11.4 App. 2

³⁰ INQ/WHBC/5B – see p.6 and see paragraph 5 above of these Closing Submissions

³¹ CD E7 para 17

³² CD E 5 para 150,151

whether there are many flats in Hertfordshire. The WCS looks to 60% recycling.³³ Again this argument was rehearsed before the WCS Inspector.³⁴ She observed that kerbside collection has achieved increased recycling rates in the short term but found that improving further upon these is likely to prove increasingly challenging especially in more densely populated urban areas. She clearly **thought that concern was relevant to Hertfordshire. She found the WCS's recycling target to be 'likely to prove realistic.'**

90. Furthermore the Government expressly looked at this issue in the EfW Guide to the Debate of February 2013.³⁵ **It concluded that: 'this is not a fundamental issue arising from energy from waste as a process but rather as a result of opportunities not being taken to separate and remove materials from residual waste.'** Those opportunities are taken in Hertfordshire and the WCS Inspector expressly commended them.³⁶ The MRF facility will allow for even more recycling of waste (28,000 tpa) from what up to then had been part of the residual waste stream. The Debate went on to say that provided the right action is taken to ensure separation and pre-treatment options are optimised – as they are here – it is a risk that can be effectively addressed. The Government pointed to experience elsewhere in Europe to show high recycling rates co-existing with high levels of EfW.
91. **Mr Fletcher's response that the Government had been selective in its use of these figures. That argument cannot be seriously entertained. The Government sees it as positive that some countries have imported waste for EfW which would otherwise have been landfilled³⁷ and it expressly commends the use of EfW plant to recover energy from C & I waste pointing out: 'At present 50% of C&I waste goes to landfill presenting a significant opportunity for those authorities and plants able to exploit it.'**³⁸ That opportunity can be exploited here to mutual benefit. Recyclable waste is a valuable material and it makes sound commercial sense to recycle it. Mr Zukowskyj's (NBAF) assertions based on his reading of the documentation for the withdrawn Fieldes Lock application that there is not enough C & I waste **flies in the face of the WCS, of Veolia's evidence as major operators in this area³⁹, of the fact that that application was primarily not addressing Hertfordshire and of the Government's position in the Debate document and in the GRWP 2011. The Government's view is that 'the need to optimise the residual waste being used by EfW plant could potentially support and drive greater recycling across a range of materials'**⁴⁰. That potential can be realised here. And it must be borne in mind that there is a statutory duty on all concerned in waste management to apply the waste hierarchy in all their dealings with waste⁴¹ so that if recycling opportunities are available they must be taken and there is a duty to report and confirm that the duty has been carried out.⁴²

³³ CD C1 para 3.10

³⁴ CD M6 para 56-57

³⁵ CD E7 para 56-61

³⁶ CD M6 para 57

³⁷ CD E7 para 58 cf Mr Fletcher's para 2.11 re Sweden

³⁸ Ibid para 61

³⁹ Mr McGurk V/1/1 and his oral evidence that he was confident that Veolia would capture a significant part of the over 350,000 tpa C&I waste needing treatment capacity as shown in the WCS Table 9.

⁴⁰ CD E7 para 60

⁴¹ Regulation 12 of the Waste Regulations 2011

⁴² Regulation 35(2)(d) of the 2011 Regulations.

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92. Finally it is worth noting that the Inspector at Ardley in Oxfordshire faced with similar arguments about the proposed plant being over-sized recommended permission for a plant for 135,800tpa of MSW out of its overall capacity of 300,000 tpa and he was content for C&I to make up the difference although only **some 100,000 tpa was forecast and observed 'it would seem prudent to provide for excess capacity rather than a possible shortfall.'**⁴³ Given the need to move waste up the hierarchy that is a sensible approach although in Hertfordshire other facilities will still be needed. The Government have looked at the PFI funding for this scheme on three occasions the latest in February of this year and have concluded that a need exists for it to come forward supported by public funding. They have now withdrawn PFI funding in Norfolk but it remains in place in Hertfordshire adding even more weight to this point.
93. The 2013 Eunomia⁴⁴ Report that Mr Fletcher (WHBC) claimed to show there is excess capacity was comprehensively addressed by Mr. Kirkman (Veolia) in his rebuttal evidence⁴⁵ and in his evidence in chief and he showed conclusively that the report is unreliable and inaccurate and that in this part of the country certainly there is no such excess.

A number of smaller facilities?

94. Related to and seeking to build on these other misconceived arguments is the argument that there should not be one facility but a number of smaller ones dotted around the county. Mrs Hoey advanced this argument for WHBC. It has already been shown that the waste arisings are such that with the RERF coming forward there would still be a need for other facilities to meet the shortfall in capacity.
95. The WCS is not prescriptive as to the number of facilities or their sizes. The network of facilities referred to in Policy 1 applies to all types of waste management facilities such as transfer stations, in vessel composting and anaerobic digestion facilities which exist and are planned for the county. The sizes and number of facilities referred to in Tables 6 and 9 are clearly and **expressly 'indicative' and 'potential' figures. The policy seeks a 'mixture of small, medium and large waste management sites as appropriate' without prescription** as to actual sizes or numbers. The WCS Inspector rightly observed that the WCS does not through its policies promote a single high-capacity waste treatment facility⁴⁶ but she does not suggest that such a facility would not accord with the policies of the WCS and she was clearly content for any such scheme to be judged on its merits and she was fully aware of the nature of this proposal as a single, centralised EfW facility on a specific site.⁴⁷
96. **In fact representations were made to her for an 'alternative strategy founded** upon a localised, small-scale approach largely featuring anaerobic digestion on the grounds that this would represent the most flexible approach if supported by ever higher recycling and composting rates and concurrently by the progressive reduction of waste⁴⁸ – in other words all the arguments that have been advanced

⁴³ CD F5 para 16.89

⁴⁴ CD M23 and especially Figure 18

⁴⁵ V/2.4 para 6 and 7

⁴⁶ CD M6 para 66

⁴⁷ Ibid para 69

⁴⁸ CD M6 para 72

yet again at this inquiry to oppose the RERF. She concluded that 'the submitted evidence has not been adequate to demonstrate that such an approach would be capable of delivering waste treatment capacity effective over the full range and quantity of waste arisings during the plan period. This is particularly so in the short term, during the early part of the plan period when it will be necessary to find alternative provision to deal with the waste to be diverted from landfill outside the county – not only because of the drive away from landfill for all but the most untreatable residual waste, but because in 2017 many of the County Council's current contracts for landfill outside Hertfordshire come to an end. To be *justified*, the Core Strategy must take account of deliverability'.⁴⁹

97. It is submitted that her reference to 'the full range of waste arisings' is clearly a reference to LACW and C & I waste both needing to be managed and her reference to the 'full quantity of waste' is another implicit endorsement of the figures which now find themselves in Tables 6 and 9. Her point is that when you take all that into account this alternative strategy could not be relied upon to deliver what is needed to manage waste in Hertfordshire particularly in the early years of the Plan and from 2016/17. And she plainly is right. The procurement process did not produce any solution from the waste industry and from the market other than a one-site solution.⁵⁰ The RERF substantially helps to meet the needs that she identifies in that passage in the early years of the plan period to address the diversion of waste from landfill and specifically to address the end of landfill contracts outside the county. Anaerobic digestion is suitable for specific homogeneous waste streams and not for the whole range of residual waste that the RERF can manage. EfW has the flexibility to deal with that range.⁵¹ Nothing in the evidence before this inquiry alters the correctness of the WCS Inspector's conclusions.
98. The support which objectors sought to find for the small facility multi-site approach from Government policy proved to be misplaced and relied to a large extent on selective quotation. Firstly the report to DEFRA on Economies of Scale Waste Management Optimisation Study by AEA Technology showed that the practical optimum scale for an EfW facility is 400,000 tpa⁵² and that at capacities below that size 'costs are significantly higher'.⁵³ Mr Fletcher (for WHBC) sought to make two criticisms of this study; firstly that it looked at urban, sub-urban and rural examples – but that is only in respect of transportation costs and the different locations make virtually no difference to the practical optimum size figure.⁵⁴ His second point was that the report did not address policy but nor of course did it purport to and in fact there is no support for smaller sites per se in policy.
99. The EfW Guide to the Debate does not provide such support. It does say a network of smaller sites provides potential benefits such as shorter transport distances, proximity to heat users, reduced visual impact and a sense of community dealing with its own waste. However, we need to look at each of those potential benefits in turn on the evidence before this inquiry. We can see

⁴⁹ CD M6 para 73

⁵⁰ Iain Leech PoE for HCC

⁵¹ See RK V/2.1

⁵² CD J9 p.47-48 and p.62 and Executive Summary fourth unnumbered page and fifth unnumbered page Table B

⁵³ Ibid p.62 last bullet point

⁵⁴ Ibid p.28 Figure 2.6.4.2

that Mr. Kerr's analysis (for WHBC) once it had been corrected by the other transportation witnesses showed that the proposed RERF provides a major advantage in transportation over the existing situation and that the multi-site option made only comparatively small extra savings which were swamped by the advantages of the RERF coming forward in a timely fashion to meet the current need, as Mr Aumonier (for Veolia) demonstrated in his rebuttal evidence⁵⁵.

100. Secondly, proximity to heat users is largely determined by actual location rather than being an in-principle advantage and New Barnfield is well located to provide heat to potential customers. Reduced visual impact again depends on a specific site but **Veolia's unchallenged evidence** is that plants of much smaller capacity than the RERF still need to be substantial buildings some 30 m high at least with stacks of at least 65m.⁵⁶ It is questionable whether those who are promoting a multi-site option fully appreciated the size of even comparatively modest facilities. As to the sense of community dealing with its own waste, it **must be borne in mind that the RERF is planned to deal with Hertfordshire's waste** and not for any imported from outside. So far as Welwyn Hatfield itself having a sense of a community looking after its own waste it must be noted that the Council have objected to every single proposed waste facility allocation in the Borough.
101. On the other hand the Guide to the Debate goes on to identify the benefits of a larger plant. **Veolia's**⁵⁷ unchallenged evidence explains the greater efficiencies achieved by larger plants as referred to in the Guide. The IPC accepted at the Rookery South proposal that the benefits in sustainability terms of having a single large plant would be significant as compared with the option of developing a number of smaller plants even if they were positioned more closely to the source of the waste.⁵⁸ **Veolia's witnesses** also explained the economies of scale which are supported by the AEA Report to DEFRA referred to above. The benefit of a railhead must be looked at in the context of a County with a road-based waste collection system and north – south rail routes.⁵⁹ **NBAF's assertion that there is such a solution has no basis in any real evidence. As to the 'availability of large industrial heat customers'**, that again is site specific but the location of New Barnfield alongside Tesco and other potential commercial heat users is a clear advantage and the absence of expressed interest at this stage is perfectly normal as the Shrewsbury Inspector and other Inspectors and the SoS have accepted.⁶⁰
102. Reliance by WHBC on the Joint Municipal Waste Management Strategy 2007 as support for a strategy of a number of small plants was based on a misunderstanding of the references to a 60 - 80,000 tonne facility as part of such a strategy when it was only being put forward as a potential way to address the short term problems coming about in 2017 with the end of the existing landfill contracts.
103. Finally the argument advanced by WHBC that WCS had placed its supposed strategic requirement for a number of smaller facilities in criterion vi) to the

⁵⁵ See now the amended and agreed position in INQ/V/22 replacing HCC8. Mr. Aumonier's response is in V/7.4 and see now also INQ/V/17 §15 & 16

⁵⁶ V/2.5 App.B

⁵⁷ V/7.1 para 139

⁵⁸ CD F 6 para 5.33

⁵⁹ See also CD M3 para 3.2.10 p.9

⁶⁰ CD F1 para 138, F3 para 245 and F9 para 629

Green Belt Policy 6, and its reference to 'a need for a range of sites' bears no analysis when the approach of the WCS these issues for example in Tables 6 and 9 and in their reasoned justifications is examined, leaving aside the implausibility of a fundamental strategy being so tucked away that no one else had spotted it. Further, Policy 3 expressly supporting EfW contains no indication - let alone prescription - of size or numbers of such facilities.

104. The planning risks associated with a multi-site strategy must also be borne in mind in that it would be necessary to find more than one site and so more than one landowner prepared to make it available and the concerns of more than one set of immediate neighbours would have to be addressed in the context of even smaller capacity facilities being large buildings with tall stacks and in that same context the relationship with neighbouring land uses would also have to be addressed in a county with wide ranging constraints including the Green Belt, ecological sites and many heritage assets of the highest significance and value, **as the Alternative Sites Assessment ('ASA'⁶¹) illustrates. As Mr Leech pointed out in observing that 26 of the 36 sites assessed at Stage 2 of the ASA are within 3kms of a Grade 1 or II* listed heritage asset: 'This is a common constraint' in this county⁶².**

105. In our submission the evidence has therefore established a clear, compelling and urgent need for this facility in terms of both waste management and energy generation.

Green Belt

106. The extent of this constraint in the county has been best expressed by the **WCS Inspector who observed: 'In terms of policy constraint, the entire county except for a very small area of north-west Hertfordshire and a somewhat larger, predominantly rural area of north-east Hertfordshire is designated as Green Belt. The urban areas themselves are closely surrounded by Green Belt. Within the Green Belt, many forms of waste management facility entail built development which would have to be justified only on the basis of very special circumstances.'**⁶³ **She even repeated her views of the extent of this constraint: 'A very large proportion of Hertfordshire's area is designated as Green Belt. In particular, the central and south-western parts of the county, where there is most urbanisation and where towns are closely spaced leaving the intervening narrow rural areas most vulnerable to outward urban sprawl and infill development, are protected under Green Belt designation'.**⁶⁴ To calculate as a percentage the precise area of the county as Green Belt is futile we would submit: what matters is that where the people are and so where the waste is generated is predominantly Green Belt and in reality most of the county is.

107. The WCS Inspector pointed out that the WCS responded to this situation in two ways – firstly by emphasising existing employment areas within urban areas as potential locations for waste management development and secondly, by setting out a range of criteria potentially to be taken into account as material considerations applicable to waste management development in the Green Belt.⁶⁵

⁶¹ SK V/11.3 Appendix 1.

⁶² IL Rebuttal PoE H-IL04 para 2.4

⁶³ CD M6 para 12

⁶⁴ Ibid para 25

⁶⁵ Ibid para 26

In the reality those potential employment areas have not produced actual sites for the waste facilities that are needed. None of them has been put forward for allocation by landowners or waste operators⁶⁶. They are for the most part now completely occupied and under pressure for commercial space.

108. Mr Leech (for HCC), who dealt with each of these sites in his evidence, concluded that none is available or deliverable and he was not challenged by cross-examination in any way. So whilst the WCS put forward non-Green Belt employment sites as potential locations for waste management facilities and so **as the Inspector accurately reported was to that extent 'not reliant upon Green Belt for the delivery of sites sufficient to meet capacity shortfalls'**,⁶⁷ reality has shown that such sites are not available or deliverable to meet those capacity shortfalls and so the second limb of the WCS approach comes into play. The **Inspector acknowledged that 'given the extent of the Green Belt and its close relationship to so many urban areas in the county it is likely that proposals may be made there.'**⁶⁸ And so she supported and found to be sound the approach taken by the WCS which she **considered to be 'consistent with the local distinctiveness required of development plan documents in that it acknowledges and responds to the context of Green Belt prevalence in Hertfordshire and provides specific examples of material considerations which are of relevance to waste management development in that context.'**⁶⁹ That is a reference to Policy 6.
109. What is important is that she recognised the likelihood of sites being put forward in the Green Belt because of the distinctive nature of the prevalence of Green Belt and she found to be sound in those circumstances a policy which recognised that in looking at very special circumstances a number of material considerations would have to be looked at. She recognised too that the Areas of Search contain Green Belt land⁷⁰ and she was satisfied that a policy approach which gave support to and indeed encouraged proposals coming forward in those Areas of Search in the second paragraph of Policy 1 was sound. (The WHBC case seemed to try to make something of the fact that that second paragraph of Policy 1 expressly refers to LACW but even leaving aside the general policy encouragement for integration of LACW and C & I waste management, the fact that the RERF is being brought forward in response to a local authority contract and is obliged to take all the LACW up to its full capacity clearly entitles it to that policy support).
110. Indeed the WCS Inspector responded to representors who sought to have waste management facilities excluded from the Green Belt by observing that such an approach does not recognise the very special circumstances test in the NPPF **and, most importantly, would not on that very account 'prove deliverable'**⁷¹. In other words a WCS that failed to recognise the realities of this county that mean it is likely that facilities will come forward in the Green Belt could not deliver the infrastructure that the Plan itself recognises is urgently needed.

⁶⁶ IL PoE para 5.35

⁶⁷ M6 para 31

⁶⁸ Ibid para 26

⁶⁹ M6 para 29

⁷⁰ Ibid para 31

⁷¹ Ibid para 32

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111. This approach of the WCS commended by the WCS Inspector is consistent with PPS10 which recognises that with proposals put forward in the Green Belt significant weight should be given to the locational needs of some types of waste management facilities as well as to the wider environmental and economic benefits of sustainable waste management. It is also consistent with the suggested approach in the consultation draft replacement which leaves such considerations to decision making in the particular local context. The local **context here necessarily involves a consideration of the 'local distinctiveness' as the WCS Inspector put it of 'the context of Green Belt prevalence in Hertfordshire.'**⁷² In addition the RERF is entitled to enjoy the weight given to the wider environmental benefits associated with increased generation of low carbon and renewable energy recognised in the NPPF and in EN-3.
112. **The 'likelihood' of proposals coming forward in the Green Belt has been shown** by the emerging WSALDD where 15 sites are put forward, 11 of which are in the Green Belt and those which are not Green Belt are not within Areas of Search shown in the WCS because they are in the predominantly rural under-populated areas of the county in North and East Herts. For 9 of the 15 sites, including the **application site, 'thermal treatment' is 'a use considered suitable in principle' and** of those 6 are in the Green Belt. The three not in the Green Belt are Sunnyside, Buntingford in East Herts, Bury Mead Road, Hitchin and the New Barn at J10 of the A1(M) both in North Herts. None of those three is in an Area of Search in the WCS. Sunnyside is therefore remote from waste arisings, was only 2 hectares originally and is not now promoted by the landowner so is not available.⁷³ Bury Mead Road, Hitchin is similarly remote, with access along residential roads with a constraining railway bridge and other constraints.⁷⁴ The New Barn is similarly remote in the far north of the county, is only 2.3 hectares in size and with considerable access constraints.⁷⁵ No one at this inquiry has seriously contended that any of the three non-Green Belt draft allocations for thermal treatment is a suitable alternative to the application site.
113. This is the context in which the material considerations in Policy 6 of the WCS need to be looked at in relation to this application.

WCS Policy 6

114. **The Policy provides: 'Applications for new waste management facilities within the Green belt will be required to demonstrate very special circumstances sufficient to outweigh the harm to the Green belt together with any other harm identified.'** While Policy 6 does not include the adverb 'clearly' the applicants are content that the Inspector and the SoS should proceed on the basis that harm needs to be clearly outweighed by the very special circumstances.
115. The purposes of the Green Belt need not be repeated here and the judgment as to the degree of harm is largely a planning judgment which does not bear detailed consideration in submissions such as these. What we will do is to point to particular factors relevant to that judgment.

⁷² M6 para 29

⁷³ See H - IL2 para 3.50 and A30b para 4.21 – sieved at Stage 1

⁷⁴ See H - IL2 para 3.56-62 and A30b Site 13

⁷⁵ See H - IL2 para 3.63 -66 and A30b Site 35

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116. Firstly of course the effect on openness, the question of any sprawl of a built up area and the degree of encroachment into the countryside must all be considered in the context of the application site being previously developed land. **That it meets the definition of 'pdl' as set out in the NPPF and in the WCS is not in dispute.** It is not open land, it is a part of the built up area and it is not countryside now in its present condition in real terms whatever its status in planning policy. In fact planning policy recognises its current condition as a **'major developed site' in Policy RA6 and Policy RA5 of the WHDP.** That is the main significance of that policy context. The applicants have never suggested that the proposed RERF would meet the criteria of Policy RA6. Those criteria are **there to determine what development would be 'appropriate development' in Green Belt terms and therefore absolved of the need to show very special circumstances at all.** The applicant's position on this has not changed. Mr Chivers (WHBC) accepts that the area of previously developed land on the application site is sufficient to accommodate the proposed RERF and the internal site vehicle circulation.⁷⁶ **Mr Kosky's** (Veolia) drawing illustrates this⁷⁷ and gives a total of 20,570 m² for the existing built and impermeable area and 25,305 m² for the proposed RERF and its impermeable area.
117. Policies RA5 and RA6 are also relevant in terms of what could be expected to happen on the land if the RERF were not to proceed. There is no limitation on the nature of the use for redevelopment and infill that would be acceptable through those policies. The HCC have decided that the uses that were on the land are redundant or can better be provided elsewhere and have provided those services elsewhere or through other means. The County Council have an asset in that land whose redevelopment and infilling are supported by policy both in the District Plan and now through the NPPF.⁷⁸ It is wholly unrealistic to expect that those uses will return or that this major developed site will revert to Greenfield. The HCC have a statutory duty to use their assets in a reasonable way. Given the business uses on Travellers Lane it can be expected that this previously developed land would be redeveloped and used for similar built uses in the future if the RERF did not proceed. Of course to benefit from Policy RA5 and RA6 any proposal would have to meet the criteria in the policies unless very special circumstances were relied upon but even meeting those criteria, significant business development could be accommodated on this site.
118. A judgement as to the character of the immediate area is also necessary in order to determine the degree of any harm to the Green Belt and here different views have been expressed in the past. WHBC pray in aid the views of the District Plan Inspector while HCC draw attention to the views of the Inspector who considered the application for Southfield School who expressed the view **that: 'the area in the vicinity of the application site is essentially urban in character'**.⁷⁹ In so reporting his judgment he expressly agreed with the view of **the HCC (at paragraph 3.12) that he had reported earlier in these terms: 'The (GB) no longer completely separates Welham Green from Hatfield either visually or structurally. Since the Welham Green industrial area was allowed to extend northwards as far as the A1001, there has been no intervening Green Belt land east of Travellers Lane. Looking south from the built up area of Hatfield, views**

⁷⁶ WH/SC/1 para 4.4 p.48

⁷⁷ V/11.3 Appendix 2

⁷⁸ CD D1 para 89 6th bullet point.

⁷⁹ INQ/HCC 3B para 4.9

are dominated by the substantial pedestrian and cycle bridge over the A1001 and the latest office block near the roundabout. The extensive buildings of the New Barnfield Centre, immediately to the south of the application site, give it an **essentially urban character.**'

119. Of course it is right as objectors point out that the Inspector was dealing with a different application site but his judgment is as to the character of the area in the vicinity of his application site and he based it on express reference to judgments and views reported earlier as to the wider area including the New Barnfield Centre now the RERF application site, the Travellers Lane industrial area and indeed the relationship with Welham Green. He would have been as well placed to take account of any difference in levels in forming that judgment as the Inspector at this Inquiry is.
120. **So far as 'preventing neighbouring towns merging into one another' is** concerned it may in fact be wondered whether any separation between Hatfield and Welham Green is the kind of structural gap that the Green Belt serves to maintain. In any event we invite the Inspector to form his view with the remaining open fields illustrated in Photomontage P6 and P8⁸⁰ and with the degree of impact illustrated in P20 in mind. There is no actual physical coalescence of course and the degree of intervisibility is limited.
121. The setting and special character of historic Hatfield will be addressed when we consider heritage issues specifically but there is very limited if any intervisibility between the Conservation Area of Old Hatfield and the proposed RERF.
122. Finally as to assisting urban regeneration by encouraging the recycling of derelict and other urban land, we submit that that purpose is essentially addressed at avoiding development on undeveloped Green Belt land in order to encourage the use of urban land instead which might otherwise remain derelict and/or unused. The application site is itself already developed, its last uses were redundant or moved elsewhere and it itself needs a new beneficial use. Urban regeneration is not advanced by it remaining as it is. **Veolia's** evidence is that where they have built ERFs such as in Newhaven on the edge of the new South Downs National Park that has been a positive effect if anything on economic activity and that accords with the study by Cluttons into the economic effects of EfW on a town.
123. In our submission therefore the harm to the Green Belt by reason of inappropriateness and any other harm is very limited in the circumstances of this **case where the WCS anticipates that 'inappropriate development' in Green Belt** terms is likely to be needed to meet the urgent need for new waste infrastructure and where the site in question is already a major developed site whose contribution to the purposes of the Green belt is therefore limited.

Very Special Circumstances

124. Policy 6 then goes in to identify six material circumstances which may be relevant to determining whether there are very special circumstances sufficient to outweigh any harm. We shall now address each of those in turn.

⁸⁰ CD O2 (a)

i) The need for the development that cannot be met by alternative suitable non-Green Belt sites

125. This criterion requires a determination of what the need for the development is. The need here is a pressing need for substantial new infrastructure to manage **the county's needs away from landfilling and short-term contracts** outside the county. By 2016 in excess of 670,000 tpa capacity to deal with residual waste will be needed. Even allowing for the comparatively small and in many cases specialist facilities referred to in the Background Paper to the WSALDD there is a need by 2016 for substantial new infrastructure in the county. The RERF can meet that need by 2017. There is nothing else before this inquiry which in any way can begin to meet that need. Mr Leech told us that there are not even discussions with any potential developers or landowners about even addressing that need. What is needed is timely and adequate provision. The RERF is the only way of making that provision.
126. The advice in EN-1 on the consideration of alternatives is relevant in this context. The Policy Statement advises that given the level and urgency of need for new energy infrastructure (including EfW) **the decision maker 'should, subject to any relevant legal requirements (e.g. under the Habitats Directive) which indicate otherwise, be guided by the following principles when deciding what weight should be given to alternatives.'**⁸¹ There is nothing in any legal requirements relevant to the Green Belt which requires a different approach and indeed the Habitats Directive requirements are essentially consistent with this approach given the recent case law which we shall refer to when addressing ecology.
127. The advice is that consideration of alternatives should be proportionate, in other words not expecting an unreasonable amount of investigation into the alternatives. It should be guided by whether there is a realistic prospect of the alternative delivering the same infrastructure capacity in the same timescale as the proposed development. Where there are targets – and we would submit also where as here the development plan expresses a quantified need – for the development, there should be consideration of whether in fact more than the proposed development will be needed – as we have submitted is the case here. Alternatives which are not commercially viable or where the sites are not physically suitable can be excluded as not being important or relevant, as can alternative proposals which are vague or inchoate.
128. The fact is that no suitable alternative site has been put forward in the evidence by any of the parties to the inquiry. Veolia and HCC have given evidence in writing some 6 weeks before the inquiry began (and in rebuttal evidence a week before the inquiry) and in oral evidence that there is no alternative suitable site. Mr Leech (HCC) was not asked any questions at all on that evidence despite him examining in considerable detail at all potential sites both in the Report to Committee⁸² and in his evidence. It was not put to him in any way that he is wrong about his conclusion on this issue in his Committee Report or in his written and oral evidence.
129. Mr Kosky (Veolia) was asked questions about his methodology in his ASA but again it was never put to him that there is a suitable alternative site or that any

⁸¹ CD D3 para 4.4.3

⁸² CD B1

of his conclusions on any of the individual sites he considered were wrong. WHBC's witness on alternatives had not visited any when she wrote her evidence and precious few by the time she gave evidence. The list given by Mrs Hoey (for WHBC) **in response to the Inspector's questions** showed very little knowledge of the sites or understanding of the issues, and provides a good example of what is meant by inchoate alternative proposals. In these circumstances it is not proposed to summarise the contents of the ASA. Mr Leech (HCC) looked independently at the sites and formed his own independent judgments, which are commended to the SoS.⁸³ Criticisms have been made of the methodology and the scoring system but it was approved by the HCC, by the independent consultants whom they engaged for a disinterested assessment of the assessment and by the relevant officer at PINS who awarded it a grade A. HCC have also independently assessed the suitability of a number of sites that were referred to in consultation responses and within Statements of Case and those in the ASA.⁸⁴ The universal conclusion is that there is no suitable alternative site or sites.

130. WHBC put the burden of proof on the applicants. Planning inquiries are not suitable forums for deciding matters on the burden and standard of proof. There is an inquiry and the Inspector and the Secretary of State are entitled to look at all the evidence before the inquiry from whatever source and determine whether in the words of Policy 6 the need for this development can or cannot be met by suitable non-Green Belt sites.

131. The only witness who has explicitly put forward alternative sites is Mr Zukowskyj (NBAF). He seems to suggest Roehyde Quarry and Fieldes Lock. **Roehyde Quarry is dealt with in the ASA and in Mr Leech's evidence**⁸⁵. It does not begin to meet the test in Policy 6 i) because it is itself a Green Belt site. It is objected to in the ASA by WHBC and by St Albans City and District Council. It is remarkable that Mr Zukowskyj put forward a ZTV which he prepared over the weekend at the end of the fourth week of the inquiry and which purports to show the RERF visible from over 15kms away in the Chilterns AONB but he maintains that a development at Roehyde in the Green Belt to the west of the A1(M) in the countryside between Hatfield and St Albans would scarcely be visible. There are obvious and serious highway access objections and the off the cuff suggestion of **a solution from the witness table never put to any of the applicants' or HCC** witnesses for them to deal with despite the clear evidence from both those parties that there is no suitable alternative is not worthy of serious consideration.

132. Fieldes Lock is dealt with in the ASA⁸⁶ and by Mr Leech⁸⁷. It is not in an Area of Search in the WCS and is in the south-east of the county not well located to waste arisings and collections. It was promoted by Veolia for a SRF power station with additional natural gas fired generation to serve North London and with the SRF to arrive by rail. It needed the rail feed because it is a compact site which could not accommodate the road based collections needs of this county and so could not accommodate the kind of EfW plant proposed, let alone the front-end recycling facility too. It is a site safeguarded as an aggregates railhead in the

⁸³ H-IL2 para 5.34 to 46 and H-IL 04 Section 2 and para 3.49-78

⁸⁴ IL Rebuttal PoE H-IL04 para 2.1

⁸⁵ Site 8 in the ASA and addressed by Mr Leech at his H-IL2 paras 5.44-46 and H-IL04 paras 3.72-75

⁸⁶ ASA Site 24

⁸⁷ H-IL2 paras 5.42-43 and H-IL 04 para 3.96

statutorily adopted Hertfordshire Mineral Local Plan Review of 2007.⁸⁸ The landowners may well wish to remove that designation but it is there in the statutory development plan and the Veolia DCO application was objected to by HCC for that and highway reasons⁸⁹. Veolia may well have been hopeful that these objections could be resolved but the fact is that the application was withdrawn and they remain as acknowledged constraints. The site has never either separately or in combination with Site 12 been put forward by the Waste Planning Authority as an allocation in the whole WSA process.

133. We submit therefore that the proper conclusion in relation to criterion i) of Policy 6 is that the need for this development cannot be met by an alternative suitable non-Green Belt site nor indeed by an alternative suitable Green Belt site. We would also draw attention to the Hartlebury inquiry where the Inspector concluded that if the current project failed that would involve considerable delay with continued landfilling at considerable cost both financial and in climate change terms.⁹⁰ An alternative would need to be cogently preferable to justify such consequences. There is none here. This first material consideration in Policy 6 is part of the very special circumstances in this case and adds weight to that case.

ii) The need to find locations as close as practicable to the source of waste; and

iii) The availability of sustainable transport connections; and

v) Any specific locational advantages of the proposed site

134. This second criterion is a very interesting material consideration that perhaps has not had the attention it deserves in this inquiry because the objectors cannot sensibly seek to argue that the application site is not very well placed in relation to the source of waste arisings. The application site is well located within the Area of Search C shown on the key diagram Map 1 and that Map illustrates how well located the site is in relation to the main centres of population.

135. The road based transportation advantages of this site should be beyond dispute. We should therefore immediately put aside any suggestion by WHBC and some others that there is any practical alternative to a road based facility. Notwithstanding the understandable encouragement in the WCS to use water and rail where practical, it also recognises that Hertfordshire's transport system means that there is a high reliance on road transport and that alternative modes of transport are not always feasible. That is consistent with the WSP reports that the Borough Council have referred to a number of times and which recognise that the emphasis has to be on transportation in Hertfordshire via the road network. Reflecting this reality, there is no policy requirement in the WCS that rail and/or water transport is used. Such proposals are of course given policy support, but what policy 9 - notably entitled 'Sustainable Transport' - requires is that waste management facilities are well located in relation to the strategic road network. In that key respect this centrally placed site has ideal credentials, as Mr. **Fulcher's evidence confirmed. It** cannot be an accident that Tesco has chosen to locate a major distribution centre on an adjacent site. The application site in this respect offers a real opportunity in such a constrained county where the WCS

⁸⁸ INQ/V/15 Minerals Policy 10

⁸⁹ INQ/HCC/12

⁹⁰ CD F7 paras 11.62 and 11.64

expressly recognises the 'severe capacity problems on the county's road network'⁹¹. The network serving the site has sufficient capacity and that is a real advantage of the application site in these circumstances and, it should be noted, a conspicuous disadvantage of many putative alternatives including Fieldes Lock. Any concerns regarding impact on local amenity by reason of highway capacity need have to be seen in this context and the likely greater impact of any **alternative, as Mr. Fulcher's assessment of the theoretical alternative underlying Mr. Kerr's comparative exercise** shows.⁹²

136. **As seen from Mr. Kerr's proof, the WHBC's stance was based on its** understanding that the single site solution would be worse than the existing position. That of course is simply wrong, as the now agreed figures show⁹³:

Existing position – 9,365,028 km tones pa generated; 775, 564 vehicle km; and 932 tpa of CO₂

One site strategy – 5,030,869 km tonnes pa; 457,302 vehicle km; and 409 tpa of CO₂⁹⁴

137. Mr. Kerr is to be commended for frankly admitting that he '**got it completely wrong first time**' – saying he misunderstood what he had been told. Nonetheless, WHBC is not to be commended for the way it has eagerly put forward contentious points that are obviously untenable.

138. **The consequence of Mr. Kerr's agreement with Mr. Fulcher's assessment** is that Mr. Kerr now agrees:

- (a) The one site strategy would result in significant savings (in both km tonnes and CO₂ emissions, as seen from the figures above) over the existing disposal dominated position. Those savings are of course small compared to the very significant savings from moving from landfill to increased energy recovery.
- (b) An increase in facilities has the potential to reduce the km tonnes and CO₂ emissions, as Veolia acknowledged. However, the agreed figures show:
- (c) The savings over a one site strategy by a three site strategy are even less than Mr. Kerr had originally assessed. Moreover, even those figures have to be viewed with caution as they take no account of C & I waste.
- (d) They are of course not a true comparison since the sites/locations used for the calculations are NOT supported in evidence by WHBC. That is why Mr. Kerr referred to them as theoretical. They therefore bear no relationship whatsoever to reality.
- (e) They also bear no relationship to reality in another important way. Even the original savings claimed by Mr Kerr would be counterbalanced by a delay of only 104 days in the commencement of operations at the RERF. That trivial period would on the now agreed figures be even shorter (at best just above half of that – with e.g. the CO₂ '**savings**' reduced from

⁹¹ WCS CD C1 para 2.22

⁹² **Mr. Fulcher's Rebuttal proof,V/3.4** at paras 2.2.14-2.2.16 on pp.8-9

⁹³ INQ/V/22

⁹⁴ WH/PK/1/Appendix C – Table 3.3b

437 to 236 or 173 t CO₂-eq per annum).⁹⁵ That is even is without taking account of the additional savings arising from the recent IPCC Report.⁹⁶

iv) The site characteristics

139. We propose to deal with visual impact and landscape character and the relationship with Southfield School in relation to this material consideration but heritage matters will be addressed separately.

Visual Impact and Landscape

140. Government guidance and policy statements recognise that the new infrastructure needed to address sustainable waste management and sustainable energy generation is likely to be in large buildings that many people will be able to see.⁹⁷ Such infrastructure is always likely to be accommodated in large buildings. Policy promotes good design and there can be no doubt that the design has been very carefully considered and developed in this case by architects of international repute and experience whose works feature as exemplars of good design in the Government guidance on designing waste infrastructure. CABE have highly commended the design and their comments as to the assimilation of the building into the landscape and the area were taken into account as part of the iterative process explained in the DAS in evidence. They are not criticisms of the design and were not left unaddressed, as Mrs Roe seemed to think. Having said that, Government guidance is realistic in **acknowledging**: 'the nature of much energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area.'⁹⁸ So in other words it would be unrealistic and inappropriate to set that as a test of the acceptability of such a proposal although here CABE consider that the design does have the potential to enhance the character of Travellers Lane⁹⁹.

141. It is also to be noted – no doubt in recognition of the realities we have just been addressing – **that PPS10 Annex E advises under the heading of 'Visual Intrusion' that it is 'the need to protect landscapes of national importance (National Parks, AONBs and Heritage Coasts)' that is to be considered (and this exact wording is carried through into the new consultation draft)**. EN-1 advises **that** 'local landscape designations should not be used in themselves to refuse consent, as this may **unduly restrict acceptable development**'. **There is no impact** on any landscape of national importance or on views from any such landscape here. Mr Zukowskyj's **weekend ZTV** (for NBAF) is wholly unhelpful - portraying a Hertfordshire without buildings or trees. His suggestion that there would be significant views from the Chilterns AONB - flies in the face of common sense when the boundary is over 15kms from the application site; when Mr Flatman (for WHBC) assessed the degree of visual intrusion at VP 41 5.4 kms from the **application site as 'glimpse/none'; when neither of the statutory bodies with** responsibility for the protection of the AONB, namely the Conservation Board and Natural England has objected and when none of the witnesses has suggested a place from which such views might be obtained. Mr Chard followed the advice

⁹⁵ Mr. Aumonier's rebuttal proof, V/7.4, para 8 & 9 on p.4

⁹⁶ INQ/V/17 para 15-16.

⁹⁷ CD D3 EN-1 para 5.9.8 , para 5.9.18, CD D4 EN-3 para 2.5.49-52. The Companion Guide to PPS10 whilst not a CD recognises that much needed facilities of this kind are inevitably large structures at para 8.31 on p.91

⁹⁸ CD D3 para 4.5.1 last sentence

⁹⁹ See letter from CABE 20/12/2011 – CD B4(2) at fourth page

in the GLVIA in agreeing the study area with the competent body, namely HCC as WPA through the process of the Scoping Report and the Scoping Opinion and WHBC who were consulted did not suggest any other area. The realistic and sensible view was that there would not be views of any significance beyond 15 kms and so that is where the study area rightly ended – before the boundary with the AONB.

142. The advice as to how to mitigate visual impact in EN-3 by design, materials and landscaping has been followed to the letter.
143. Nevertheless there will be significant effects on views and on the landscape. That has always been fully acknowledged in the ES and in the evidence. It could not be otherwise if the need is to be met. Tables 8.3 and 8.4 in the ES¹⁰⁰ and in **Mr Flatman's evidence set out the judgments of the landscape witnesses**. There was **a great deal of evidence in the inquiry about ZTV's and photomontages but** we do not need to address it because in the end in terms of the photomontages it was only the views shown in P2 from the Travellers Lane roundabout and from the houses nearby, in P9 from the access and in P11 from the Marshmoor railway bridge – not, it might be thought, a sensitive view – where there was any professional disagreement on the extent of effect and those disagreements were not great.
144. The visible plume is simply condensed water. The water vapour content of the plume will, on some occasions, condense into visible water droplets, before **evaporating again a short distance downwind**. **Mr Barrowcliffe's Table E1**¹⁰¹ (for Veolia) shows that during daylight hours typically there will be no plume for over three-quarters of the time and when it is visible it will be typically less than 50m long. His experience is that these modelling results tend to over-estimate the visibility of the plume. On almost all those occasions when it is visible it will be seen to have drifted sideways from the stack and will be seen as discrete ragged elements rather than one continuous plume. The position of a viewer must be borne in mind too: a person would almost always see a plume obliquely and not at the full length suggested by the modelling results. A good example is a viewer in the area of Hatfield House which is to the north-east so with the plume dispersing on a south-west wind **the observer would see the plume 'end-on'** and so much shorter than the modelled length. We submit that the claimed effects of the plume have therefore been much exaggerated.
145. In any event the Inspector will form his own judgments of these visual matters but in the context of the need for the development, the comparatively limited area over which views may be obtained and of the policy advice on these matters. In our submission the visual effects and the effects on landscape character are disbenefits but they are not such as to attract such weight as not to be capable of being outweighed by the substantial benefits.

Southfield School

146. The school is of course the responsibility of the County Council and the Applicants rely on their evidence and submissions on educational matters.

¹⁰⁰ Having been adjusted to take account of winter views and then adjusted again to take account of the fully rendered representations of the RERF, the judgments remain as originally set out in the ES

¹⁰¹ V/5.3 Appendix E2

147. It is to be noted that the children are all brought to school in vehicles and will not be pedestrians along the access road. This must largely answer any concern about the psychological effect of lorries passing. It should also be remembered that the School has co-existed with the Tesco distribution centre and its HGV traffic for many years.

148. There is also of course concern about any noise impact on the school. That was dealt with only briefly in Mr. **Watts' proof (for WHBC) and he acknowledged** that the particular matters he had raised there had been shown to be complied with. In particular:

- (a) In light of the issue of the background levels, it should be noted that extensive manned daytime noise measurements were carried out to the front and rear of the school. Mr. Watts did not bring forward any of his own measurements for these locations.¹⁰²
- (b) Mr. Watts agreed that the appropriate Guidance in relation to assessing the noise impact on the school was Building Bulletin 93 (BB93) that **was used for Veolia's assessment.**
- (c) He accepted that BB93 would be met with regards to the requirement for suitable outside teaching areas. Veolia's assessment of a maximum of 5dB increase to the rear of the school is a worse case and assumes the tipping doors are permanently open, which will not in practice be the case as the EA recognised.¹⁰³ However, with additional mitigation the noise levels can be reduced to only a 3dB increase in noise levels to the rear of the school and result in substantial areas to the rear of the school below 50 dB(A) thereby meeting the standard in BB93 (still based on a worse case of the tipping hall doors being permanently open).¹⁰⁴
- (d) Mr. Watts had expressed concern (in his original proof) that the internal standard of 30dB LAeq could only be achieved with the windows to the classroom closed. However, he accepted that a ventilation system could be installed in the school which would result in an improvement over the internal noise climate, both with open and closed windows.¹⁰⁵ The s.106 planning obligation secures the funding for such mitigation. It is noted that the BC did not express any specific concern with regard to the noise impact on the school.

149. Mr. Zukowskyj expressed a concern about the potential for the plant to cast a shadow over the school and its grounds. The matter was addressed in Additional Environmental Information provided to HCC¹⁰⁶ but the actual relationship between the school and the plant has now been illustrated on INQ/V/21 which shows that even during the winter when the sun is at its lowest this will not be a problem.

150. The potential effect of vibration from lorries on the children and their education during the operation of the plant has very belatedly been raised at the inquiry even though none of the witnesses for the applicants were asked about it, and

¹⁰² See the 2nd. para. on p.4 of Mr. Maneylaws' Rebuttal proof, V/4.4.

¹⁰³ Decision Document, CD- P2 at p.77 (1st para. under "Non-residential receptors"). See also the Applicant's Note on the Operation of the Tipping Hall Doors, INQ/V/2.

¹⁰⁴ Mr. Maneylaws' Rebuttal proof at 2.6.1-2.6.4 on p.14

¹⁰⁵ See para 10.4 of Mr. Watts' Main proof and para 2.6.11-12 of Mr. Maneylaws' Rebuttal, V/4.4 on pp.15-16

¹⁰⁶ CD A17 para 6.3 p.30 and Appendix 6

Veolias witness was not asked even though he dealt with vibration. It has not been raised as an issue by the WHBC. The fact is that there is no technical evidence before the inquiry that it would be a problem.

151. The Applicants are confident that there would not be any unacceptable effect on the children at the school by reason of traffic, noise, vibration, overshadowing or any other effect on their environment. The children would be coming to an environment where the plant was already in operation and already part of the environment of what for most of them would be a new school.

vi) The wider economic and environmental benefits of sustainable waste management, including the need for a range of sites.

152. This criterion is a further expression of the recognition of such benefits referred to in PPS10 where the waste management proposed is moving waste up the hierarchy. To be added are the wider economic and environmental benefits of generating low carbon and renewable energy. We have already made our submission as to how the RERF achieves these benefits and if we do not repeat those submissions now we are nevertheless confident that those benefits will be recognised by the Inspector and the SoS and given the substantial weight they **deserve. We have addressed the reference to a 'range of sites'** and made our submissions as to how this RERF can make an essential and fundamental contribution to that range whilst other facilities will still be needed.

153. In summary the material considerations listed in the six numbered sub-paragraphs of Policy 6 all show how the proposal does establish very special circumstances which justify this grant of planning permission. Paragraphs i), ii), iii), v) and vi) exemplify the very real benefits and advantages of this site and this proposal. An analysis in terms of sub-paragraph iv) which simply refers to the site characteristics shows that given the inevitable nature and scale of this proposal it can be developed on this site with acceptable results.

Heritage

154. The Government's approach to these matters is set out in Chapter 12 of the NPPF and the most relevant and helpful guidance is to be found in paragraphs 131 to 134. In summary the great value of heritage assets is recognised and in deciding planning applications account needs to be taken of the desirability of sustaining and enhancing the significance of heritage assets¹⁰⁷. The significance of a heritage asset can be harmed by development within its setting¹⁰⁸ and harm can only be justified where it is outweighed by public benefits. Substantial harm to the significance of a heritage asset can only be justified where it is shown that that substantial harm is necessary to achieve substantial public benefits that outweigh that harm.¹⁰⁹ Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, that harm should be weighed against the public benefits of the proposal.¹¹⁰ There is a statutory duty to have special regard to the desirability of preserving a listed building or its setting¹¹¹ and to pay special attention to the desirability of

¹⁰⁷ CD D1 para 131

¹⁰⁸ CD D1 para 132

¹⁰⁹ CD D1 para 133

¹¹⁰ Ibid para 134

¹¹¹ S.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990

preserving or enhancing the character and appearance of a Conservation Area¹¹². The setting of the Conservation Area is not included within that duty.

155. Policies 11, 17 and 18 of the WCS do not contain the balancing exercise of harm against benefits that the NPPF sets out and simply set as a test of acceptability no adverse impact. We invite the Inspector and the SoS to adopt the approach in the NPPF. Whilst the WCS was adopted after the NPPF was published and seeks to ensure their consistency there is a clear mismatch here which we would invite the Inspector and SoS to address by applying the **Government's approach in the NPPF**. The likely reality is that the inconsistency was simply not picked up in the latter stages leading to adoption. The NPPF approach is in any event a material consideration which must be taken into account.
156. We do not need to identify the heritage assets in these submissions: they are well known to the inquiry. Veolia recognises we are dealing with assets of the highest -indeed extraordinary - significance individually and in combination.
157. There would however, be no actual physical harm to or loss of any heritage asset itself, for which a clear and convincing justification would be required in accordance with the Framework. (Substantial harm should be exceptional for Grade II listed buildings and comparable assets and wholly exceptional for Grade I and comparable assets).¹¹³ We submit that those references in the Framework are references to harm to or loss of the asset itself and that the language makes that clear¹¹⁴. There is also sense then in a cascade of advice in terms of degree of harm. Below loss of or harm to the asset itself is substantial harm to the significance of the asset and below that less than substantial harm to the significance of the asset with the relevant tests of acceptability flowing from the relevant degree of harm. In fact in this case that issue is not core to what has to be decided here. What is in issue here is what is the degree of harm – substantial or less than substantial – to the significance of assets and in turn whether that harm is outweighed by public benefits.
158. '**Significance**' is fundamental to that issue. It is defined in the Annex 2 **Glossary to the NPPF as 'the value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence but also from its setting'**. So significance is the value because of the heritage interest as understood in one of those four named ways. Here we are essentially concerned with the last three. The glossary also explains that '**elements of a setting ...may affect the ability to appreciate the significance of an asset.**'
159. So in our submission what has to be considered in this context is what effect the ability to see the RERF would have on the ability to appreciate the significance of these marvellous heritage assets. It is not the same as visual **amenity or the enjoyment of a view for the view's sake. It is the appreciation of significance that is fundamental here. And appreciation is meant in terms of understanding, we submit – and not simply of enjoyment.** The English Heritage

¹¹² s.72 *ibid*.

¹¹³ CD D1 §132

¹¹⁴ See too CD D5 PPS5 Practice Guide p.29 § 93 where that same phrase "wholly exceptional" is clearly used in the context of loss of the highest graded assets.

guidance entitled 'The Setting of Heritage Assets'¹¹⁵ is very helpful in understanding this distinction. Under the heading of 'Appreciating Setting' it explains that 'the opportunity it affords to appreciate the significance of a heritage asset is an important aspect of setting.'¹¹⁶ That sentence ends with a reference to footnote 8 on page 29 which in turn explains: 'It should be noted that the opportunity a setting affords to appreciate the significance of a heritage asset is not necessarily the same as the wider public enjoyment of that setting, some aspects of which may have no bearing on that significance.' In our submission what has to be considered here is what effect a view of the RERF would have on the ability to understand the significance and so value of the heritage asset because of its architectural, artistic or historic interest. This is the approach rightly adopted by the Inspector in the Shrewsbury inquiry when the facility was proposed on the boundary of the registered battlefield. What the Inspector assessed was what effect that would have on the ability to understand and appreciate the battle¹¹⁷. Clearly there are other considerations here of architecture and art and specific history but the approach is the right one.

160. So we submit the questions that the Inspector has to ask himself and guide the SoS upon are: would the visibility of the RERF from certain parts of the heritage assets negatively affect the ability to appreciate i.e. understand the value of those assets in architectural, artistic or historic terms; and if, and where that is so, would it be to a substantial or less than substantial degree. As 'Seeing the History in the View' says: 'ultimately assessment of the level of effect will be down to professional judgment'¹¹⁸ and whilst Mr Neale (EH) has formed one professional judgment Mr Harris (Veolia), Mr. Brown (HCC) and Prof Tregay and Dr Carter (GCE) have all formed the professional judgments that the degree of harm is less than substantial. And those judgments were formed before we had the benefit of the recent explanation of what 'substantial harm' to significance means. It means 'such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced.'¹¹⁹ It has also been formulated in these terms: 'Substantial harm is if the adverse impact goes to the heart of why the place is worthy of designation – why it is important enough to justify special protection.'¹²⁰

161. Can it seriously be suggested that such views as could be obtained of the proposed RERF from the heritage assets would mean that the significance of these assets – their value in heritage terms – was vitiated altogether or even very much reduced? They would still be extraordinary assets of great significance in architectural, artistic and historic terms and any view of the RERF could not possibly go to the heart of why those places are worthy of their designations. That remains the case whether one looks at individual views or the cumulative experience of visiting the heritage assets and having different views.

162. We do not seek to take up time seeking to identify where views might be obtained or the degree of view that might be obtained as the Inspector has been able to form his own judgments on his site visits. We do simply point out that none of the views where the RERF might be seen was a view expressly designed

¹¹⁵ CD H3

¹¹⁶ *ibid* p.8

¹¹⁷ CD F1 para 64 -69 especially the approach in paragraph 69

¹¹⁸ CD H4 p.18

¹¹⁹ INQ /V/5 *Bedford Borough Council v SSCLG and Nuon UK Ltd* [2012] EWHC 4344 (Admin) at §25

¹²⁰ INQ/HCC/2 NPPG on line at p.6 of 9.

as a view save for the defensive view from the turret of the Old Palace and the significance of that view could still be appreciated even with comparatively distant and limited a view of the RERF. It seems to be common ground with EH that the roof of the House – the leads – were not intended or designed to have a role in enabling appreciation of the landscape as was the case elsewhere¹²¹. It is **notable that Mr Neale’s key viewpoints that he identified in his written evidence** would not be affected at all by the presence of the RERF¹²² and he makes no reference in that evidence to the setting of the House and Park southwards **beyond Millward’s Park or south**-westwards towards the application site as having any special value or making any special contribution to the significance of the house or park.

163. We would point out too that the extent and significance of the views have been exaggerated in some of the evidence. Views from the new car park is a case in point. A comparison with photomontage P12 makes that clear.¹²³ It is interesting that in the lavishly illustrated guidebooks published on behalf of the Estate there is not a single photograph which could not be taken again with the RERF in place without any change in the view shown in the photograph. Attempts to show otherwise with his choices of a photograph from the roof looking due west, a view straight down the main south drive and views of some trees in the park were not persuasive.
164. The Applicants do not enter into the debate about planting because it is Mr **Harris’s** evidence that such planting is not necessary. We do however observe **that the Estate’s concerns** about planting and woodland and their retention would have greater force if they had been prepared to put before the Inquiry the Woodland Management Plan that clearly exists and had been entered into with the Forestry Commission. In any event it appears that The Wilderness which provides most of the relevant screening is a long standing feature whose future does not appear to be in doubt. The harm would be less than substantial in any event. The Applicants have nevertheless entered into the planning obligations to pay for the landscaping that the HCC consider appropriate. If the SoS shares our view that such landscaping is not necessary then he will give no weight to that obligation because it will have failed the test of necessity in Regulation 122 of the Community Infrastructure Levy Regulations 2010 but he will know the Applicants are legally bound to make the payment in any event. It would of course be entirely inappropriate to make the provision of landscaping within the grounds of Hatfield House and Park a necessary condition precedent to the development going ahead, as was suggested in GCEs closing. The SoS will only grant planning permission if he is satisfied it is in the public interest that this development should proceed. It would be wholly illogical then to attach a condition which placed the power to determine whether the development could proceed in private hands. That is not the way the planning system operates or should operate. That point remains valid whether or not the SoS shares our view that such landscaping is not necessary.
165. In terms of the other heritage assets, the same approach to considering significance and any potential harm and the degree of such harm to that significance should of course be adopted and it is therefore important that in

¹²¹ CD H9 EH letter p.4 and see CD A25 Heritage Report p.10

¹²² See JN’s PoE para 6.43,44,45 and 7.6, 7.8

¹²³ CD O2(a)

terms of Gobions Folly Arch it is clear that its site was chosen to form a 'dramatic, romantic silhouette on the skyline **when viewed from the gardens**' and therefore from the north-east looking in a south-westerly direction in which view the RERF would not be visible.¹²⁴ It is common ground with EH that any harm to other heritage assets is at worst less than substantial.

166. The harm to heritage assets is therefore we submit less than substantial and the public benefits that we have already discussed in these submissions are such as to outweigh that harm.

Ecology

167. The BC has not pursued any ecological objection or concerns at the Inquiry. NBAF and the GCE have done so but only on a limited basis, as put to Dr. Riley (for Veolia). HCC are satisfied on this issue, as are Natural England and the EA.¹²⁵

168. The nature conservation interests of the site and surrounding area have been fully assessed and there is not any substantive criticism of this assessment.¹²⁶ Likewise any likely impacts have been thoroughly assessed in accordance with the statutory regime and relevant guidance and the assessments have been accepted by the appropriate bodies.¹²⁷ Any representations that there have been on the ecological aspects have been summarized and addressed in section 7 of **Dr. Riley's** proof.¹²⁸

169. **Two issues arise from the NBAF's/Estate's case:**

(1) *The impact of emissions on local wildlife sites, particularly having regard to the critical levels and loads. However, the EA has concluded that the forecast emissions and resulting effects are acceptable.*¹²⁹

170. The critical levels for vegetation are not used as limits. Background concentrations are taken into account but the further increase that would arise is assessed and the probable ecological effect determined. That ecological effect is not simplistically related to the critical level and thus an existing exceedance of that level does not in itself equate to an ecological effect.¹³⁰ A site can be above the critical level but still have diverse botanical fauna. In fact, studies have shown that the effect of adding further nitrogen, where there are already high background levels, is such that it has a much smaller ecological effect than it would do if the background nitrogen deposition rate was low.¹³¹

171. GCE also raised a specific concern regarding the potential effects of the stack emissions on the Park, and in particular on Millwards Park. As Dr. Riley explained, **in answer to the Inspector's questions on this (with reference to CD-A29F, Local Wildlife Sites Information from VES)**, the 7% increase in ammonia is not in practice ecologically significant, as it only amounted to a level which was in ecological terms virtually the same as existing and thus of negligible effect. He

¹²⁴ CD H 18 p.95 and p.88

¹²⁵ See CDs- Q1 and Q2.

¹²⁶ See sections 4 & 5 of Dr. Riley's main proof, V/8.1.

¹²⁷ Section 6 of Dr. Riley's main proof, V/8.1, at p.16.

¹²⁸ V/8.1 at p.25.

¹²⁹ CD-P2 pp. 45-50.

¹³⁰ See e.g. para 3.3.3 - 3.3.8 on pp. 4-7 of Dr. Riley's Rebuttal proof, V/8.4.

¹³¹ Para. 3.3.5 on p.5 of V/8.4.

also explained that 93% of the ammonia comes from existing sources, mainly from grazing rather than traffic.

(2) The second issue raised by the NBAF is the relevance of alternative sites with regard to European Protected Species (EPS)

172. The presence of bats and great crested newts has been assessed and fully taken into account.¹³² NBAF appear to suggest that the Applicant has to demonstrate that there is no alternative site that does not disturb an EPS. That is **misconceived and not consistent with case law, as also detailed in Dr. Riley's evidence.**¹³³ As set out there, in the judgment of Lindblom J. in *R (oao Prideaux v Buckinghamshire County Council* [2013] EWHC 1054 (Admin) if a site is not a 'satisfactory' alternative for reasons that have nothing to do with European Protected Species, then it is not relevant as to whether the alternative site(s) would cause less damage to a European Protected Species. With regard to an objector's comment that all alternative sites should have been subjected to consideration as to whether they would have a lesser effect on European Protected Species than the selected development site, Lindblom J. held (in paragraph 109 of the judgment) that 'None of the alternatives was acceptable. It was not necessary to compare their potential impacts, if any, on European Protected Species. Whatever the result of that exercise might have been, none of **the alternatives was going to 'resolve the problem or specific situation for which the derogation [was to be] sought'** - as it is put in paragraph 36 of the European Commission's guidance document'.
173. Further, following the approach in *Prideaux* and the earlier authorities referred to in that case, in light of the advice available and in the absence of ongoing objection from Natural England, the Secretary of State can lawfully conclude that the derogation tests for the EPS under regulation 9(5) of the Species and Habitats Regulations are at least likely to be met (see paras 85-86, 93-105, 112-123 of *Prideaux*).
174. Finally, NBAF also allege that the ecological impacts of the temporary move of Southfield School to Howe Dell have not been properly assessed and taken into account. In so far as that may be material, which the Applicant does not accept, the matters raised are based on two important factual errors as Dr. Riley details and thus those concerns in any event have no basis.¹³⁴
175. Thus, in conclusions on this, no significant residual adverse effects on nature conservation and biodiversity would result from the construction or operation of the RERF and a positive effect on ecology would result from the ecological habitat creation measures.¹³⁵ Policies 11, 17 and 18 of the WCS which seek to protect ecological interests are satisfied.

Highway Capacity and Safety

176. **As noted above much of Mr. Kerr's evidence (for the Borough Council)** presented what has now been admitted to be a significantly erroneous assessment of the comparative kilometres travelled and CO2 produced between the existing position, the New Barnfield proposals and a three-site theoretical

¹³² V/8/1 – sections 4-6

¹³³ Ibid at pp. 27-31

¹³⁴ **Dr. Riley's Rebuttal Proof, V/8.4 at section 4.2 on p.8.**

¹³⁵ As confirmed by Dr. Riley in § 6.6.1 on p.24 of his main proof, V/8.1.

alternative. The other matters raised by Mr. Kerr are limited in scope and substance.

177. Mr. Kerr takes no issue with the Application in terms of:

- (a) The capacity of the road network. Both the Highways Agency and local highways authority were satisfied on these aspects.¹³⁶
- (b) Any highways safety implications on that road network.
- (c) The only limited safety point he raised, and it has to be said rather inexplicably raised, was in relation to the ghost island adjacent to the Mitsubishi access.

178. Mr. **Edwards'** (NBAF) concerns were seen, when he gave his oral evidence, to be based primarily on a wider campaign seeking improved cycle awareness, safety and cycle path provision which fall well outside the scope of this application. With regard to safety concern relating to the access, which supported a request for signals at the crossings, the position is:

- (a) The access way as shown on the Means of Access Plan Option 2B (within CD-A13, the Application Plans) has of course been subject to a stage 1 safety audit that includes consideration of the safety and pedestrian safety¹³⁷.
- (b) There would be no vehicles turning across a cycle on the access way; apart from the crossing area on each lane of the access road, the footpath/cycleway (which is part of the National Cycle Route 12, The Great North Way) would be separate from the road. So those fears are not relevant to the access road south of the Travellers Lane roundabout. With regard to the main local roads, they are part of the strategic network and already carrying significant traffic including HGVs.
- (c) With regard to the crossing of the access road by those on the footpath/cyclepath, vehicles travelling towards the RERF would slow down to turn right and have a clear view of pedestrians/cyclists crossing or about to cross. Drivers departing from the RERF would have a clear view ahead of the crossing. There is therefore very unlikely to be any material safety implications of those crossing movements.
- (d) Concern about HGVs queuing back, was not noticeably pursued. There is no likelihood of queuing back from the RERF up to the crossing.¹³⁸
- (e) This was not a concern thrown up by the Stage 1 Safety Audit and there is no need to incorporate traffic.

179. With regard to concern in respect of the Mitsubishi access, there is no substance in this point whatsoever:

- (a) Guidance in TD 42/95: Geometric Design of Major/Minor Priority Junctions is not relevant to this aspect¹³⁹. Of relevance is Manual for Streets and the visibility splay for the Mitsubishi access of 4.5m x 70m in each direction is more than adequate to ensure good visibility both to and from approaching vehicles.

¹³⁶ See in particular sections 4 & 5 of Mr. Fulcher's main proof, V/3.1, including § 5.2.11 on p.41 which shows that it was a worst case in terms of assessing the traffic impact.

¹³⁷ INQ/HCC/9, including Annex A the Stage 1 Checklists

¹³⁸ Mr. Fulcher's Rebuttal, V/3.4, at 4.1.2-4.1.3 on pp.17-8.

¹³⁹ See INQ/V/20

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- (b) This type of arrangement is by far from uncommon even in this area – see the examples in INQ/V/11.
 - (c) This type of road marking is actually allowed for in the Highway Code – rule 130 (INQ/V/11).
 - (d) If there were any remaining doubt about this, then clearly the Stage 1 Safety Audit would have brought any safety issues on this to light – one of the questions is “Can all accesses be used safely?”¹⁴⁰

180. With regard to more general concerns raised by the NBAF and other residents, the library use, which ended as recently as December 2012 generated more traffic, although of course significantly fewer HGVs than for the RERF.¹⁴¹ Although that use has ceased, it is unrealistic to compare the proposal with a nil use of the application site, given that it is previously developed land and has the benefit of Local Plan policies RA5 and RA6 with the potential for significant development. Moreover, as noted above the estimated daily two-way flow of 360 HGVs is very much a worst case and the use of waste bulkers has the potential to reduce vehicle movements.¹⁴² Whether and to what degree HGVs are intimidating depends upon the circumstances. Travellers Lane already serves a significant number of articulated lorries from Tesco.¹⁴³ There is also the Mitsubishi HQ within 15m of the footway. The Tesco related traffic (including it is acknowledged cars) is itself greater than that for the RERF by a factor of no less than four.¹⁴⁴ With regards to any intimidation by the HGVs, it is important to take into account that the peak times for the HGVs related to the RERF would be outside the usual peak hours.¹⁴⁵ Further, empirical evidence of usage of the access road by pedestrians and cyclists was provided, which shows low levels of usage in the area including the Travellers Lane.¹⁴⁶ It should also be noted that children were brought to and taken from Southfield School in vehicles and were not pedestrians on the relevant roads.

181. Mrs. Roe expressed concern about the right hand turn into Southfield School. However that turning movement will actually be improved with a dedicated turning lane of more than adequate width and with better visibility for vehicles leaving the school.¹⁴⁷

182. Thus, there is no highway related objection that can be substantiated. The Applicant can of course understand and sympathise with concerns regarding the possible impact of additional HGVs. However, given the existing industrial context and use of Travellers Lane by the Tesco Distribution Centre in particular, the impact on the amenity of any users of the footpath/cycleway is unlikely to be as great as they fear and by no means unacceptable.

Noise and Vibration

183. The noise issues raised by the Borough Council must be put into context:

¹⁴⁰ INQ/HCC/9 at Annex A on p. A/1.

¹⁴¹ See Table PF/M2 on p. 3 of Mr. Fulcher’s Rebuttal Appendices, V/3.5.

¹⁴² Mr. Fulcher’s main proof at 5.2.11 on pp. 41-2.

¹⁴³ See PF/A3 on p.5 of Mr. Fulcher’s Appendices, V/3.3.

¹⁴⁴ As stated in para. 5.2.10 on pp. 40-1 of Mr. Fulcher’s main proof, V/3.1.

¹⁴⁵ See Mr. Fulcher’s table PF/M2 on p.3 of his Rebuttal Appendices, V/3.5.

¹⁴⁶ Mr. Fulcher’s Rebuttal proof, V/3.4 at 4.1.4-7 on pp. 18-19.

¹⁴⁷ Mr. Fulcher’s main proof, V/3.1 at 5.3 on p.43-4.

- (a) The BC does not raise any noise issues in respect of the additional traffic on the highway network. That position is consistent with the assessment carried out by the Applicant and is in contrast to the unsubstantiated, even if understandable, concerns of residents in this respect (e.g. Mrs. Roe for NBAF).
- (b) Similarly, although some residents raised concerns about construction noise (including construction traffic), that was fully assessed by the Applicant, WHBC took no issue with that assessment and raised no issues at all on construction noise.
- (c) The same was true of construction vibration.¹⁴⁸ **Veolia's** evidence was not challenged on this nor is there any other technical evidence before the Inquiry.

184. Further, the noise issue needs to be considered having regard to the relevant policies and standards:

- (a) Developments may result in additional noise but the relevant policies are aimed at preventing significant and unacceptable noise.¹⁴⁹ Policy also **recognises that noise may be capable of mitigation, and the BC's own** Local Plan policy and Supplementary Design Guidance specifically advocates the use of such measures to ensure development is acceptable.¹⁵⁰
- (b) The Noise Policy Statement for England (NPSE, 2010) also recognises that the minimization of noise should be reasonable and balanced.¹⁵¹
- (c) There are no specific noise level standards in local policy or guidance or in the NPSE. It was agreed with WHBC at the outset of consideration of any noise implications of the RERF that the acceptable and most appropriate methodology for assessing operational daytime and night-time noise impacts is provided by BS4142.¹⁵² The EA has not suggested that BS4142 is not the appropriate methodology.¹⁵³ We note that reference is made to taking account of peaks of noise but the use of LAEq does take account of peaks and the BS4142 does not require any additional account being taken of that.¹⁵⁴
- (d) Under that agreed methodology, a difference of around +5dB between the rating level and the background level is of marginal significance.¹⁵⁵ Although it ultimately makes no meaningful difference given the evidence, it was incorrect to suggest that the SOAL (Significant Observed Value Effect) under the NPSE is equivalent to +5dB.¹⁵⁶ That approach (as did the approach of Mr. Watts on noise conditions) clearly departs from BS4142 and is not appropriate.¹⁵⁷

185. Turning to WHBC's specific concern, this is based largely upon what they considered to be inadequate background noise readings, particularly in respect of

¹⁴⁸ Mr. Maneylaws' main proof, V/4.1 at pp.22-3.

¹⁴⁹ NPPF (CD-D1) at para 123; NPSE (CD-G10) at 1.7 and 2.22; Local Plan (CD-C3) policy R19.

¹⁵⁰ CD-G1 at § 3.14-3.15.

¹⁵¹ In para 5.5 on p. 6 of Mr. Watts' main proof.

¹⁵² See Mr. Maneylaws main proof, V/4.1 at para 2.4.5 on p.8; and Mr. Watts' proof at 3.1 on p. 4 & 6.5 on p.6.

¹⁵³ See e.g. CD-P2 at section 6.5.5 on p.75

¹⁵⁴ See e.g. Closing on behalf of NBAF at §23 & 25

¹⁵⁵ CD-G8 at section 9 on p.6.

¹⁵⁶ At 6.14 on p. 9 of his main proof.

¹⁵⁷ Mr. Maneylaws Rebuttal proof, V/4.4, section 2.2.

nearby residential properties. However that was not through want of trying on the part of the Applicant.¹⁵⁸ The Applicant and its consultants cannot force people to allow them onto their property. More background readings might have been preferable but, as is clear from all the evidence, in the circumstances they are not necessary to be satisfied that with the appropriate mitigation measures the RERF would not result in unacceptable noise impacts. The conditions agreed between the Applicant and the WPA would ensure this.

186. HCC's own noise consultants raised this matter themselves but concluded that **'nevertheless the baseline monitoring is considered reliable'**. The EA expressed no difficulty with using the baseline provided. Indeed the use of manned measurements, which had to be employed, has benefits as it allows for an assessment of the appropriateness of the measure noise levels.¹⁵⁹
187. However, as was demonstrated, using even the very lowest reading that Mr. Watts put forward from a single receptor (Far End, R2) does not change the conclusion of the acceptability of the proposals.¹⁶⁰ It simply cannot be properly contested that other receptors should be assumed to be lower. The character of the area with major roads and night-time activity at the Tesco distribution centre **seems consistent with the Applicant's evidence on background noise levels. There** is no evidence whatsoever before the Inquiry to support WHBC position on this for other receptors, though they have had every opportunity to provide such evidence.
188. With regard to the WHBC readings for R2, it should be noted in particular:
- i. **That Mr. Maneylaws' conclusion** (for Veolia) that it makes no difference to the acceptability of the proposals was based upon taking the readings at face value.¹⁶¹ That is notwithstanding concern that they could be unrepresentative because of the shielding effect of the fence – an effect that would not apply in the same way to upper floor bedrooms.
 - ii. The L90 readings obtained by WHBC for night-time at R2 were: 31.5dB, 33dB 36.5dB and 38.2dB.¹⁶² This was compared to **Veolia's** 41dB. The night-time rating level is 32.6dB.¹⁶³
 - iii. Even the highest impact is +1.1dB (32.6dB - 31.5dB) well below the +5dB marginal impact figure in BS 4142 and indeed in practical terms this even complies with Mr. Watts own stricter (non-BS4142) test of the rating level being equal or below the background level.¹⁶⁴ Of course for the 3 other higher readings, the rating level would be below (and indeed in 2 cases well below) the background levels.
189. Mr. Watts accepted that - save only for his resorting to relying upon a tonal correction at night-time¹⁶⁵. However, there is no basis for that. There are no activities at night (11pm – 7am) - the doors, front and back, of the RERF are all shut; there are no HGV movements; the tipping hall and MPT will not be

¹⁵⁸ Mr. Maneylaws' Rebuttal proof, V/4.4, para 2.1.1-2.1.3 on pp2-5.

¹⁵⁹ At 2.1.4 on p. 5 of Mr. Maneylaws' Rebuttal, V/4.4 and as he explained in his evidence in-chief.

¹⁶⁰ V/4.4 §2.3 & Appendix A on p.32

¹⁶¹ Table A2 of Appendix A to Mr. Maneylaws' Rebuttal proof and para. 2.3.6 on p. 11 of that proof.

¹⁶² Table in § 7.10 on p. 13 of Mr. Watts' main proof, WH/MW/1.

¹⁶³ Table 6.4 on p.28 of Mr. Maneylaws' main proof, V/4.1.

¹⁶⁴ § 6.10 on p.9 of Mr. Watts' main proof.

¹⁶⁵ There is no dispute that such a correction in accordance with § 8.1-2 of BS4142 (CD-G8) is appropriate for the daytime and that was allowed for in the Applicant's assessment.

operational. Mr. Maneylaws (for Veolia) also presented a one-third octave band analysis from a comparable facility in accordance with BS7445, which as he said gave no indication of any likely significant tonal component and thus there was no need for a narrow-band analysis. The questions put to Mr. Maneylaws on this however appeared to misunderstand the way the one-third octave band readings are to be interpreted to indicate a likely problem. A problem might be indicated by third octave band levels which are 5dB or more above the levels in both of the adjacent bands, and not just in one. There is no example of that in any of the twelve third octave band levels from the comparable facility.

190. WHBC's case on the night-time tonal correction issue amounted to no more than speculation based upon general industrial premises. No evidence was presented as to why those are comparable to a modern energy from waste facility of this nature. Those assertions were made without even having visited such a facility. Moreover, no evidence was presented of a single noise complaint against a modern facility of this nature, let alone one that is relevant to the circumstances of New Barnfield. So, WHBC's allegations were totally without any relevant supporting evidence.
191. In summary **WHBC's noise objection is not supported by the HCC's independent noise consultants, or the Applicant's noise consultant, who** objectively explained why at the Inquiry, or by the EA who considered the issue in detail as seen from the decision document on the environmental permit.¹⁶⁶ WHBC had the opportunity to make representations and provide such information as they considered appropriate to the EA and took that opportunity.¹⁶⁷ The EA took those representations into account and nonetheless considered the proposals to be acceptable in noise terms. The evidence before this Inquiry, objectively assessed, robustly confirms that conclusion on this issue.
192. Concern about the potential for any noise effects on the school has been dealt with above.

Health and Air Quality

193. There is no need to take inquiry time on these issues. An environmental permit has been issued by the EA¹⁶⁸ who have the statutory duty to ensure that the plant can be and is operated without harm to human health. Planning guidance could not be more clear that the planning system should not seek to duplicate such controls and should operate on the basis that those other regulatory regimes will be operated effectively¹⁶⁹. That approach has been followed in every single appeal and call in decision on an EfW proposal¹⁷⁰. In 2009 the Health Protection Agency issued a statement to the effect that there is no significant risk of harm to health from the operation of modern properly regulated waste incinerators¹⁷¹. Professor Bridges has reviewed the literature since that date and has found no reason for that conclusion not to stand¹⁷². Air quality has been professionally and appropriately addressed by Veolia using conservative

¹⁶⁶ CD-P2 at pp. 74-78

¹⁶⁷ CD-P2 at p.101

¹⁶⁸ CD P1 & P2

¹⁶⁹ CD D2 PPS10 §26-27 & §30-31

¹⁷⁰ CDs F1-9

¹⁷¹ See **Professor Bridges' proof, V/6.1 para 4.7** on p. 25 and CD K1

¹⁷² V/6 e.g. at §9.2 p.79 and Appendix 6. See also INQ/V/8 & 8A

assumptions¹⁷³. That evidence has not been challenged. **Mr Barrowcliffe's** evidence expressly considered the minimal contribution to local air quality from road traffic¹⁷⁴. Professor Bridges has used that analysis to satisfy himself that there is no significant risk to human health here. He has given evidence to a like effect in many inquiries¹⁷⁵ and his evidence has always been accepted. He expressly said that the very small contribution to emissions from road traffic would not have a significant effect on health. All the studies relied upon and analysis undertaken allows for the wide range of people in the population.

Prematurity

194. This issue has largely been overtaken by events. The examination into the WSALDD will conclude in early November. The SoS will be likely to have the benefit of the reports of that Inspector and of the Inspector reporting this inquiry. Our Inspector will have had the benefit of some 19 days of evidence and 2 days of submissions on the acceptability of this proposal on this site. The concern with the issue of prematurity is that a decision should not be taken on an application for planning permission which should be taken in the context of preparing a development plan. Before the WSALDD can be adopted a decision will have been taken on this application on the basis of all the evidence which has been heard here. That is an entirely appropriate sequence of events.

Climate Change Considerations

195. The Welwyn Hatfield Friends of the Earth (FoE) and Herts without Waste (Herts WoW) through Eunomia sought to attack the climate change credentials of these proposals. It is difficult to understand, given the very substantial support for EfW found in a wide range of policy documents, why opponents of such a facility think that the precise carbon saving levels are of any relevance. But the fact is that it is a vehicle employed by objectors to try to de-rail proposals for ERFs of the type proposed notwithstanding the GRWP 2011 making it clear that the policy is technology neutral.¹⁷⁶ The reference to AD is unrealistically latched onto by all objectors, who overlook that this technology is not appropriate for a mixed waste stream. The WCS Inspector readily understood this position and the implications of these arguments.¹⁷⁷

196. As Mr. Aumonier states in his comprehensive dismissal of these contentions **and Eunomia's** customary criticisms of his WRATE analysis, the renewable energy credentials of the RERF are indisputable.¹⁷⁸ His experience was that Eunomia appear to wish to portray EfW in a poor light, and to ignore the objective sourcing of data. For example, the precise residual waste composition is an argument simply used to distract from this, since it would require very significant changes indeed in waste composition for the benefits of the New Barnfield scheme to change substantially.¹⁷⁹ As referred to above, the recent IPCC report increase his estimated carbon savings from a reduction of 61,000 to a reduction

¹⁷³ V/5.1 section 6.

¹⁷⁴ V/5.1 p.8. See also INQ/V/9 para 1.6-1.12.

¹⁷⁵ E.g CD F1

¹⁷⁶ CD E5 para 207 on p.63.

¹⁷⁷ CD M6 para 72 on p.18.

¹⁷⁸ See INQ/V/17-19.

¹⁷⁹ INQ/V/17 §10 on p.4

of between 73,000 – 96,000 tonnes of carbon dioxide emission in the year studied (depending upon which Greenhouse Warming Potential is used).¹⁸⁰

197. The WRATE analysis is put forward as a broad indication of the likely savings. A similar attempt to belittle these savings, notwithstanding the clear policy support, was made at Shrewsbury. The Inspector rejected Shrewsbury FoE's argument (supported by Eunomia) that the WRATE analysis was deeply flawed. He recognised that it was an aid to analysis and to help inform the judgment. He concluded that it added confidence to his judgment about the overall carbon savings. The same applies here but of course there are much greater savings and much greater benefits from electricity generation and potential CHP than for the smaller plant at Shrewsbury.
198. **In simple terms, notwithstanding their criticisms, Eunomia's analysis in any case indicates that the New Barnfield RERF would deliver climate change benefits compared with landfill. Its analysis does not account for the benefits of CHP. Neither does it acknowledge or account for the revised Greenhouse Warming Potential. That would have the same effect upon the results of its calculations. This is why we say Eunomia's arguments are flawed and in any event amount to nothing of any consequence. The climate change credentials of the scheme remain beyond any meaningful dispute.**
199. CHP merely adds to those benefits. **The RERF is to be constructed 'CHP ready'**. A study has been carried out to determine the potential for customers for the heat. The proximity of business users to the application site adds confidence that customers will be found. Newhaven is an example of where interest in taking the heat has been expressed at an early stage¹⁸¹. The capacity to take heat can be fitted to already existing businesses. In Hatfield the proposals to extend the urban area into the Green Belt for more than 2,000 homes provide a further potential opportunity where retrofitting would not be necessary. In these times of ever-increasing heating bills the suggestions that the heat could not be economically supplied ring rather hollow. It is not what the authors of the Heat Plan see as the position. Those conclusions should not be doubted simply because understandable considerations of commercial confidentiality mean that the cost and pricing forecasts are not revealed.
200. The fact is that the position here is as it has been at many EfW plants which have been granted planning permission by Inspectors and SoSs who have taken into account the potential benefits of heat offtake. Potential customers are reluctant to identify themselves when permission is not secured and when hard commercial bargaining may be in the offing. Conditions are attached requiring reporting of the potential for heat use. Here as in most cases the EA have attached a condition to the permit requiring regular review and reporting of the potential for heat use. Those Inspectors and SoSs have been satisfied that it is appropriate to give weight to the potential benefits of heat use in those circumstances. Those circumstances pertain here and so that weight should be put in the scales in favour of this proposal.

¹⁸⁰ Ibid para 16 on p.7.

¹⁸¹ See Mr McGurk's evidence V/1.1

Accordance with the Development Plan

201. The development plan must be looked at as a whole in order to determine whether this proposal is in accordance with it. This inquiry has the benefit of the most recent component of the plan directly addressing the infrastructure necessary to move the management of waste up the hierarchy. It is a strategic objective of the WCS to provide for sufficient infrastructure to meet the need that the plan identifies.¹⁸² The WCS encourages in principle the provision of energy recovery facilities which can meet that need by moving the management of waste up the hierarchy.¹⁸³ It expressly recognises that proposals for waste management facilities are likely to come forward in the Green Belt and acknowledges that very special circumstances will be needed to justify such proposals and sets out a list of potential considerations material to determining whether there are such very special circumstances¹⁸⁴. In our submission that policy framework essentially means that if it is decided that there are very special circumstances such as to justify a particular proposal, that proposal is in **accordance with the development plan as a whole. The plan's objective is to** provide the framework for such proposals to come forward provided they meet the tests set for their acceptability. There are policies which seek to protect individual interests of acknowledged importance but an adverse effect on one or even more such interests in our submission cannot render an entire proposal out of accord with the development plan when it is otherwise helping to achieve the strategic objectives of the plan and satisfies the tests set in the policy most directly relevant to it.

202. So here the decision whether this proposal is in accordance with the development plan ultimately comes down to whether the Inspector and the SoS are satisfied that there are very special circumstances which justify it. We have already addressed at some length each of the material considerations set out in paragraphs i) to vi) of Policy 6 and we do not repeat those submissions. The position we would submit is that there are very special circumstances for the following reasons:

- i. there is a compelling and urgent need for this infrastructure to address the shortfall in waste management capacity in the county;
- ii. the RERF will move the management of waste up the waste hierarchy to a level with substantial policy support;
- iii. it will provide 28,000 tpa additional recycling capacity in the county;
- iv. it will provide 352,000 tpa recovery capacity for residual waste in a county where no such capacity now exists;
- v. it will generate 26 MW of renewable and low carbon energy to the local grid significantly increasing the amount of renewable energy generation in the county and contributing towards meeting the **Government's targets for renewable energy generation;**
- vi. the site has good potential to export heat;
- vii. the site is well located in relation to waste arisings in the county and within an Area of Search for such facilities in the development plan;

¹⁸² CD C1 SO1 and Policy 1

¹⁸³ CD C1 Policy 3

¹⁸⁴ Ibid Policy 6

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- viii. the site is previously developed land and identified as a major developed site in the District Plan with a recognised potential for substantial redevelopment and infilling on the site;
 - ix. the WPA is promoting its allocation for this type of development through the plan process
 - x. there is no other suitable alternative site within Hertfordshire outside the Green Belt or indeed at all;
 - xi. the WPA agrees that there is no suitable alternative site having been preparing its WSALDD for some years and having been seeking sites for that period of time.
 - xii. This proposal has been secured to meet the needs of the county through a public procurement process which has been supervised by the Government and which remains supported by PFI credits after three reviews of such projects by the Government and recent decisions elsewhere to remove such support.
 - xiii. It would bring substantial climate change benefits;
 - xiv. It is well located in relation to the strategic road network to meet the road based waste collection system of the county
 - xv. bottom ash will be recycled as a secondary aggregate;
 - xvi. the site is available now to meet the need and if permission is granted it will be in operation by 2017 ;
 - xvii. the implications of the failure of this proposal are that very substantial amounts of waste would continue to be landfilled predominantly out of the county or to a much lesser extent exported out of the county and incinerated;
 - xviii. that further delay would be for many years.
 - xix. The construction of the facility would provide jobs for some 350 people and its operation would provide over 50 permanent jobs.¹⁸⁵

203. We submit that these very special circumstances outweigh such harm as has been identified and therefore the proposal accords with Policy 6 of the WCS and the development plan read as a whole.

204. If contrary to our submissions the Inspector and SoS consider that there is a failure to accord with the development plan nevertheless all the benefits we have addressed are material considerations which in our submission justify a grant of planning permission despite any such conflict.

The Planning Balance

205. The final planning balance in effect takes into account all those matters we have just addressed. We submit that bearing in mind the scale of the infrastructure proposed which is necessary to meet the need in this county the harm is surprisingly localised. In essence they are visual effects including we acknowledge on the Green Belt and its openness and the effects on heritage assets. We do not seek to belittle the importance and value of any of those interests and in particular we recognise the exceptional value of the heritage assets but we are confident in our evidence that such harm as there is less than substantial and is readily capable of being outweighed by the public benefits.

¹⁸⁵ CD A14a para 4.18.4 and 4.12

206. We invite the Inspector and the SoS to conclude that the planning balance comes down in favour of the grant of planning permission.

THE CASE FOR HERTFORDSHIRE COUNTY COUNCIL

Introduction

207. The purpose of these Closing Submissions is to identify the case for the Waste Planning Authority (WPA) on the central issues of need, which is closely linked to concerns relating to prematurity and delay, Green Belt and Heritage issues together with the relationship with policy at all levels, and to conclude on the section 38(6) test and the planning balance. As the planning and education authority it is also appropriate to respond on concerns relating to the operation of Southfields School.

208. There is no need for these submissions to review all the issues canvassed as material considerations at this Inquiry. First, because they are a prelude to full submissions made on behalf of Veolia as applicant. Second, because these other matters relevant to **the WPA's** case are considered in evidence or the report to committee (CD B5).

Need

209. At the heart of this case lies a demonstrable need for Hertfordshire to deal with its own residual waste, rather than exporting it to other counties, and to drive the residual waste, the vast majority of which currently goes to landfill, up the waste hierarchy.

210. These needs are urgent. The quantity of LACW and non-LACW waste currently being shipped to out-of-county landfill is simply unsustainable. The status quo has serious adverse environmental impacts and is contrary to both national and local policy.

The scale and nature of the need

211. Chapter 3 of the WCS demonstrates the scale of the need for final treatment facilities in Hertfordshire. The WCS figures have not been seriously challenged during this Inquiry. They were subject to rigorous scrutiny during a public examination in 2012 and are a robust evidence base on which to proceed.

212. The salient facts derived from the WCS are as follows:

- (1) Hertfordshire exports nearly 3.5m tpa and is a net exporter of waste to the tune of at least 1m tpa in 2010;
- (2) It collects some 537,468 tpa of LACW, of which some 45% is disposed of by landfill¹⁸⁶;
- (3) Forecast future LACW arisings are anticipated to decline from the figures of 2010 but there will remain, after account is taken of recycling and composting initiatives, a shortfall of remaining residual LACW of between 276,000 to 232,000 tpa in the period to 2026;

¹⁸⁶ **CD C1.** WCS, Table 4, p23. An additional 7.7% which is sent to Edmonton EfW facility. Edmonton is not R1 compliant and therefore is treated as disposal rather than recovery.

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- (4) Existing C&I waste arisings are in the order of 1m tpa plus, whereas capacity within the County is assessed at 575,000 tpa, of which landfill forms 204,000 tpa;
 - (5) The anticipated future shortfall of capacity for C&I waste in the period to 2026 is estimated to range from 390,000 in 2016 to 370,000 by 2026;

213. Thus, according to the WCS, the shortfall that has to be catered for if the County is to attempt to be self-sufficient is in the order of 666,000 tpa in 2016, reducing to 602,000 tpa in 2026.

214. The WCS also demonstrates the urgency of the need: in relation to both LACW and C&I waste the biggest need is the most urgent need. This was also recognised by the WCS Inspector who concluded that there was an **'identified short term need'** for final treatment facilities in Hertfordshire.

215. Mr Fletcher (for WHBC) contended that there is no urgent need because 'only 455kt of waste is going Landfill every year'. Notwithstanding that this contention is contrary to the conclusions of the WCS Inspector, there are a number of reasons why his understanding of the true position is wrong:

- (1) His conclusion that 455,000 tonnes of LACW and C & I waste go to landfill each year is undoubtedly a significant underestimate. It ignores the C&I waste which is exported out of county (apparently over 400 kt per annum) in respect of which there is no information in the WCS as to its final treatment.
- (2) In respect of LACW waste - for which the WCS does provide reliable figures in relation to final treatment - 45% (241 ktpa of 537 ktpa) of it goes to Landfill. This is a substantial proportion.
- (3) His observation to **the effect that 'waste is not piling up in the streets'** should be regarded as flippant at best and symptomatic of the quality of evidence relied on. **It is not even clear that Mr Fletcher's position was shared by his client, WHBC.**

WSA Capacity Report (CD M29)

216. The shortfalls identified by the WCS have been updated by the WSA Waste Capacity Report to take into account additional waste treatment capacity approved and pending since November 2011 (**'pipeline development'**). In doing so it should be noted that it has not been subject to the same level of intense scrutiny as the WCS. Whilst the figures are relevant, they should not be treated as infallible. None of the additional developments identified in the capacity report are currently operational and there can be no certainty that they will meet the identified shortfalls or when they will do so. The identified additional capacity is therefore theoretical.

217. Notwithstanding those qualifications the following propositions can be derived from the figures as set out within the Capacity Report:

- (1) Even if it is assumed that all pipeline development, including New Barnfield, came forward immediately and operated to maximum capacity there would be a net shortfall of capacity in relation to

combined residual LACW and C&I waste arisings. The shortfall would be 103,000 tpa in 2016¹⁸⁷; 71,000 tpa in 2021¹⁸⁸; and 32,000 tpa in 2026.¹⁸⁹

- (2) New Barnfield is the only pipeline development which will contribute to meeting the shortfall in relation to residual LACW;
- (3) New Barnfield is one of four pipeline developments which the Capacity Report identifies as having the potential to contribute to meeting the shortfall in capacity for residual C&I waste. If approved, New Barnfield is likely to be the biggest contributor in terms of meeting this particular need.

218. Furthermore, the WSA Capacity Report significantly overestimates the prospective capacity to treat residual waste.

219. The waste management facility at Brycelands, being primarily a skip-waste recycling plant and not a final treatment facility, will contribute its C & I capacity (65,000 tonnes per annum) to the composting and recycling requirements, not the residual C & I waste arisings. Likewise, the ASM Metal Recycling Centre at Kings Langley, as the name suggests, will contribute its capacity (25,000 tonnes per year) to meeting the shortfall in C & I composting and recycling requirements.

220. **In reality only New Barnfield and Ratty's Lane have any potential to contribute** to meeting the shortfall in capacity identified in the WCS in relation to residual C&I waste.

Meeting the Need

Capacity of New Barnfield

221. **It is central to WHBC's case** that the capacity of New Barnfield is too great and will prejudice the treatment of waste higher up the waste hierarchy. It should not be forgotten that the Inspector in the Ardley Landfill case warned that it is important to avoid over precision in assessing capacity issues.¹⁹⁰ **WHBC's case** on this issue was distinctly disjointed. It has also clearly evolved over time. Mr Fletcher (for WHBC) failed to grapple with the extent to which New Barnfield would meet the shortfall of capacity identified in the WCS for treating residual waste (and what shortfall in capacity would remain if New Barnfield were granted permission).

222. As the Inquiry began WHBC deployed a different, and wholly new attack in relation to the predicted C & I arisings in the WSA Capacity Report. On the face of it this report predicts that, in relation to residual C & I waste, there will be a 3,000 tonne surplus of capacity in 2021 and a 20,000 surplus of capacity in 2026. While superficially attractive this argument suffers from three fundamental flaws:

¹⁸⁷ [CD M29] Table 11 (LACW 96,000 tonnes shortfall + C&I 7,000 tonnes shortfall) = 103 ktpa

¹⁸⁸ [CD M29] Table 12 (LACW 74,000 tonnes shortfall - C&I 3,000 tonnes surplus) = 71,000 tonnes

¹⁸⁹ [CD M29] Table 13 (LACW 52,000 tonnes shortfall - C&I 20,000 tonnes surplus) = 32,000 tonnes

¹⁹⁰ [CD F5], para 16.89 See also CD F4, para 2115

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- (1) In reality neither Brycelands nor ASM Metal Recycling Centre will contribute to meeting the shortfall in capacity in relation to residual C & I waste. This removes 90,000 tonnes from the potential capacity, thereby turning the predicted surplus into a predicted shortfall.
 - (2) It ignores the fact that the Capacity Report predicts significant shortfalls in capacity in relation to residual LACW (74,000 tonnes in 2021 and 52,000 tonnes in 2026). This means that even if all pipeline development were to come forward there would still be a net shortfall in provision for residual LACW and C & I waste arisings throughout the plan period;
 - (3) The authors of the Capacity Report have wrongly assumed that New Barnfield will only process 180,000 tonnes of LACW per annum notwithstanding that LACW arisings for 2016, 2021 and 2026 are all far greater than this amount. HCC will in fact be obliged to deliver, and Veolia obliged to accept, virtually all residual LACW arisings collected, up to maximum of 352,000 tonnes per year. This means that New Barnfield would process all the residual LACW arisings as predicted within the WCS (276,000 tonnes in 2016, 254,000 tonnes in 2021 and 232,000 tonnes in 2026) and have far less capacity to process residual C & I waste than has been assumed in the WSA Capacity Report.¹⁹¹ The effect of this erroneous assumption, therefore, is to create the illusion that there will be a surplus of capacity in relation to C & I waste when, in fact, there will be none.

223. Mr Fletcher then produced tables purporting to show that if the total pipeline development were built there would be a surplus of capacity by 2026, and relied on the tables to justify the claim that the **'plant would dominate the whole area'**. This was no more than a last minute effort designed to bolster a weak case. However, it should not be allowed to obscure the true position facing Hertfordshire. It is flawed in the following respects:

- (1) It ignores the position in 2016 and 2021 when the predicted shortfall in capacity in relation to residual waste is significantly greater (and therefore the need is significantly greater);
- (2) It assumes that all pipeline development will come forward and all operate at full capacity;
- (3) **It erroneously identifies Ratty's Lane as contributing 160,000 tonnes per annum towards the shortfall.** 60,000 tonnes of this capacity is Anaerobic Digestion which will contribute towards the C & I waste composting and recycling requirements;

¹⁹¹ Assuming that the residual LACW arisings are as predicted within the WCS, New Barnfield will have the capacity to process 104,000 tonnes of residual C & I waste in 2016, 126,000 tonnes in 2021 and 148,000 tonnes in 2026. The WSA Capacity report has assumed that it will capacity to process 200,000 tonnes of residual C & I waste per annum

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- (4) It relies on the capacities of ASM Metal Recycling and Brycelands which, as noted above, will not in fact meet the shortfall in capacity of facilities for treating residual C & I waste
 - (5) It seeks to rely on Edmonton and Lakeside, neither of which are within the county, and the former of which is not a recovery facility.

224. The reality is that the proposed RERF is not oversized. It compares favourably with the practical optimum scale identified by the AEA report for Defra (2007) of 400 ktpa for an EfW plant¹⁹². It is of a scale that is not inconsistent with the WCS. Even in the unlikely event that all of the pipeline development comes forward and operates to capacity, there will be a net shortfall in provision of between 103,000 tonnes and 32,000 tonnes per annum throughout the plan period (183,000 tonnes and 112,000 tonnes if ASM and Brycelands are discounted). It is therefore clear that a number of facilities for processing residual waste would be needed in addition to New Barnfield and the pipeline developments.

225. In contrast, without New Barnfield, Hertfordshire would be left with no extant proposal for dealing with its residual LACW and, of the pipeline developments, **only Ratty's Lane which may process some of its residual C & I waste**. Refusal would be tantamount to preserving the status quo, at least for the foreseeable future.

226. Once the contention that the RERF is oversized is seen for the fallacy it is then **the parasitic argument that it would 'crowd out' future technological improvements** falls away. The outstanding net shortfall provides more than **sufficient 'headroom' to allow Hertfordshire to benefit from more speculative forms of waste management** should they become a realistic proposition in the future.

227. All of this was recognised by the Inspector into WCS. Having heard similar arguments to those advanced at this Inquiry she concluded:

*'...if it could be demonstrated that waste arisings in all amounted only to the capacity of a single large facility, it might be possible to demonstrate that such a single facility, if developed in the short term, would prevent the emergence of other facilities and technologies which could deal with waste, in the longer term, at higher level in the waste hierarchy. **Here, however, the overall waste arisings for LAC and C & I waste, on a reasonable forecast related to reasonable growth assumptions, are likely to be far in excess of an amount that could be said to be limiting in that way.***

Alleged over-reliance on C & I waste

228. Linked to the argument that the proposal is oversized is the contention that it will rely too heavily on C & I waste. This contention is, perhaps, based on the misapprehension that New Barnfield would process only 180,000 tonnes of LACW per annum. **In light of the 'LACW first' obligations within the Residual Waste**

¹⁹² [CD J9], Table B Executive Summary & p62

Treatment Contract, the make-up of waste processed by New Barnfield is likely to be in the region of 70:30 LACW to C & I Waste.¹⁹³

229. In any event, there is much policy support for the integration of LACW and C & I waste streams. **In the 'Waste Strategy for England (2007)' one of the Government's 'key objectives' was to 'increase diversion from landfill of non-municipal waste and secure better integration of treatment for municipal and non-municipal waste'**.¹⁹⁴ Support for a mixed waste-stream is continued in recent national guidance. The 2013 DEFRA publication **'Energy from Waste: A guide to the Debate (CD E7)' actively promotes EfW's processing C & I waste** in addition to LACW, stating that 'at present 50% of commercial and industrial waste goes to landfill presenting a significant opportunity for those authorities and plants able to exploit it.' A similar emphasis is found in the appeal decisions before the inquiry.

Recycling rates

230. Finally, WHBC made a somewhat half-hearted attempt in evidence to dilute the case on need by arguing that if recycling rates were to increase above the 60% target adopted for the purpose of the WCS this would reduce the quantity of residual waste. However, this is again to re-open many of the arguments which were made – and lost – at the WCS EIP. Representors argued that a recycling target of 60% was too low. The Inspector rejected their concerns explaining that the target was likely to prove **'realistic'** and finding the recycling assumptions in the WCS to be sound.¹⁹⁵

231. In contrast the suggestion that recycling rates could be increased substantially above 60% target in the WCS is wholly unrealistic, especially in the short term. The suggestion that recycling rates for C & I could reach above 90% illustrates the lack of realism in the submissions of WHBC. There is no evidence before this Inquiry of that level of recycling has been achieved anywhere in the world, let alone this country.

232. Of far more relevance (and weight) is the national guidance on the subject. The Government Review of Waste Policy in England 2011 (GRWP), having recognised that the Waste Framework Directive sets a 50% recycling target for LACW, concludes specifically in relation to EfW that: **'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 from landfill to support significant growth in this area, without conflicting with the drive to move waste further up the hierarchy.'**¹⁹⁶

233. **Mr Fletcher indicated that he believed the Government's view might have changed since the publication of the 2011 reports.** In support of this contention he mentioned the DEFRA 2020 Waste Arisings and Treatment Capacity Report. **The updated version of this report, far from supporting WHBC's positions,** undermines it. On the latest available data across the UK as a whole household recycling recently achieved a rate of 43%. It is predicted to reach 50% by 2020.

¹⁹³ Based on 276,000 tonnes of LACW (2016) and 104,000 of C&I.

¹⁹⁴ [CD E4] p11, ix

¹⁹⁵ [CD M6], para 57

¹⁹⁶ [CD E5], para 217

The latest data shows that 52% of C&I waste is being recycled, and the report 'assumes' a 62% rate will be achieved by 2020.¹⁹⁷

Prematurity

234. In the context of such urgent need for final waste management facilities in Hertfordshire and of such a long process of time since 2004 in realising the waste development plan framework it is, perhaps, somewhat anomalous that objections are being raised on the grounds that the grant of planning permission for this RERF would be premature.
235. In any event objections based on prematurity grounds are misconceived for the following reasons:
- (1) First, Hertfordshire has an adopted Waste Core Strategy and Development Management Policies DPD (CD C1). The Core Strategy element '**sets out the vision, objectives and spatial strategy for Waste in Hertfordshire up to 2026**', while the Development Management policies provide '**the more local and operational policies that will guide the county council's decision making when it considers waste planning applications**'. Accordingly, the allegation that a decision to grant **planning permission would not be the result of a 'plan-led' system** is false. Hertfordshire has a very recently adopted spatial strategy. It has translated that spatial strategy into development control policies. If, as HCC contends, the proposed RERF is in accordance with the WCS policies, then granting planning permission will be the outcome of a plan-led system not contrary to it.
 - (2) Secondly, the alleged prematurity is to a Waste Site Allocations LDD ('**WSALDD**'). That plan is at the stage of examination where the issue for New Barnfield is solely whether the allocation is sound. The plan is not concerned with high level strategy; whether one site, multiple site or any site. Nor is it concerned with making a choice between technologies for driving residual waste up the hierarchy. By contrast this Inquiry is concerned with a far more testing question; namely, whether New Barnfield is an appropriate site for the proposal in question. Necessarily the examination of the latter question involves considering in depth all facets of the proposal against established land use policies. This inquiry is a far better qualified forum for assessing that question.
 - (3) Thirdly, it is plain that the grant of planning permission would not '**prejudice the outcome of the DPD process**' which is, ultimately, the criterion set out in Government Policy for refusals on prematurity grounds. As illustrated above, were New Barnfield granted planning permission, there would still be a need for additional final treatment facilities to process residual waste. The most likely location for these facilities would be on sites allocated within the WSA. Furthermore, the WSA performs many functions beyond the allocation of sites for final treatment facilities in relation to residual waste. Other waste management facilities will be necessary: composting facilities, Household Waste Recycling Centres, End of Life Vehicle Recovery

¹⁹⁷ INQ/WHBC/05A

centres, Processing Sites for Recyclables and Waste Transfer Stations¹⁹⁸, amongst others, will be needed. The allocation of sites within the WSA will help direct all of these types of facilities.

- (4) Fourthly the 'General Principles' document makes it plain that, even if a proposed would prejudice an emerging DPD, the decision-maker retains discretion as to whether to refuse on such grounds. When exercising that discretion the consequences of delay caused by refusal must be a highly relevant consideration.

Consequences of delay

236. Refusal of this proposal would entail a substantial delay in providing a solution to the dual needs identified above. Those that urge delay on grounds of prematurity must face the real-world consequences of such a delay.

237. If planning permission was granted it is likely that the plant would be operational from late 2017.¹⁹⁹ If this application is refused it is wholly unrealistic to assume that an alternative facility (or facilities) would be operational before the end of the decade. In all likelihood the delay would be significantly more. In his closings for WHBC, Mr Beglan made light of the delay, putting it in the order of 1-2 years. This is quite implausible given the time necessary for procurement, planning and construction. It is to be contrasted with the evidence on Mr Leech for HCC, with experience of these matters, who considers that the delay would be in the order of 6 years.²⁰⁰

238. Delay would have the following particular consequences:

- (1) Hertfordshire would continue to export a large proportion of its waste to out-of-county Landfills, with the adverse environmental consequences that entails (in particular, greenhouse gas emissions both from the additional transport miles and from landfill itself). A shortfall in meeting the need in early years of a plan cannot be rectified or made up later in the plan period;
- (2) It would mean that Hertfordshire, and indeed the UK as a whole, would not benefit from the 26MW of low carbon energy for the period of the delay;
- (3) The potential for CHP for the area would be lost, at least for the duration of the delay;
- (4) It is unlikely in the current climate that the £115.3m in PFI credits would be available for any alternative;
- (5) The cost of the procurement and planning process would have been wasted;

¹⁹⁸ See CD C5, Table 2.1 p7

¹⁹⁹ RX(RPL) McGurk (Day 1)

²⁰⁰ HCC/IL/4, para 3.119

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- (6) There is no obvious alternative to which HCC can turn in the event of refusal. The WDA would be faced with the need to review its strategy, try and identify a new one with a reference case that could go to the market to find a real alternative. Even if possible it would take a considerable time.
 - (7) The last point reinforces the wisdom of following the advice of EN1 para 4.4 on alternative sites.

239. A number of these factors were identified in the Ardley Landfill Site decision as weighing in favour of the grant of permission.²⁰¹ The costs of delay would, if anything, be greater in this case.

Delay and the Procurement Process

240. **NBAF made much of the 'procurement cart before the planning horse' point** and the alleged unyielding commitment by HCC to the reference site after 2008. However, this is quite unjustified. We ask the Secretary of State to consider the following:

- (1) This implies that the WPA should have called a halt to the procurement process in 2008 and sat on its hands until the Waste Sites Allocation **DPD ('WSA')** could be delivered. Some 5 years on that process is as yet incomplete.
- (2) In fact the technical options appraisal to the PFI bid **'looked at a range of criteria and modelled both a single site and two site solution (with waste transfer stations) with the single site (plus two waste transfer stations) performing best'**.
- (3) The reference site was no more than that. However, having been selected it was necessary to make it available so that it could function as such. That is why the library resources were relocated.
- (4) The procurement process was in fact technology and site neutral, in the sense that EfW was preferred, but with consideration given to Mechanical Biological Treatment (MBT) and Advanced Thermal Treatment (ATT), singly or in different combinations and at any sites.
- (5) It was treated by the market as a reference site and in the event single site solutions were offered on other sites, one such offer making it to the final round.
- (6) So long as the market was offering the prospect of more than one site it would not have been sensible for HCC to have promoted a single strategic site in the WSA as advocated by NBAF and WHBC in their closing submissions.
- (7) **NBAF's** closing submissions seem to suggest that HCC changed consultants so that they could conveniently scope New Barnfield back in.

²⁰¹ [CD F5], para 7.73 and 7.202-7.203. See also F4, para 2110 onwards

In fact Vincent and Gorbing considered it appropriate to scope New Barnfield back in because it had been excluded by WSP on size grounds: ***'It is considered that the size of the previously-developed area of land at the New Barnfield Centre has been underestimated in the WSA'***. V & G were correct²⁰² as it had been excluded by WSP on the grounds of size from all three scenarios they were considering.

241. It is recognised that recent DEFRA guidance extols the virtues of postponing the procurement process until the relevant Local Plans have been adopted, and accepted that this would be preferable in a perfect world. But in this case the timetable was inimical to that outcome, and doing so would have resulted in yet further delay.

Alternative strategies and alternative sites

242. Objectors are aware that to have any sensible basis for objecting to the proposals it is necessary to be able to propose some form of alternative strategy to drive these substantial volumes of waste up the hierarchy for sound environmental reasons and to ensure that international obligations to that effect are complied with and to reduce reliance on unsustainable sources of energy. The evidence produced to the inquiry cannot be said to be any form of a credible alternative.

(a) Alternative Technologies

243. Some advocated alternative technologies (principally NBAF and Herts Without Waste). The important point here is that the application proposal would move the waste higher up the hierarchy. The solution to the treatment of LACW waste has to proceed by way of public tender. That process was technologically neutral. The market without exception chose thermal treatment as the best solution. There is no alternative technology option before the Inquiry as a solution to the **pressing problem of landfilling Hertfordshire's LACW and C & I waste arisings**.

244. Some witnesses expressed nostalgia for landfill. Others, such as Mr Fletcher (WHBC) and Mr Bee (Herts without Waste) expressed complacency as to the **existing situation because 'the waste is not piling up on the streets'**. That is **simply perverse. The current quantity of Hertfordshire's waste going to landfill or its equivalent in the hierarchy is both unsustainable and unacceptable**. It is a situation which should be remedied at the earliest opportunity.

(b) Alternative Strategies

245. Other parties, principally WHBC, embraced the idea of the multiple site approach. This would require the provision of a range of facilities spread around the County to manage by thermal treatment the volumes of residual LACW and C&I waste. This may be shortly dismissed:

- i. It is not a requirement of national policy.
- ii. It is not a requirement of the WCS.
- iii. WHBC has not sought to propose such a solution via its objections to either the WCS or the WSA.

²⁰² See WSP CDM3 at A A table.

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- iv. It seeks support from the proximity principle but this ignores the essential flexibility of that doctrine. It must yield to a sensible degree to the acknowledged difficulties in *'finding suitable sites, and partly due to viability issues for the waste industry such as economies of scale'*.
 - v. The economies of scale of larger plants are a relevant and important consideration as identified above. In fact the proposal is only at the acknowledged threshold of securing those advantages [CD J9 Table B Executive Summary].
 - vi. Larger proposals more readily provide the opportunity for CHP and the ability to meet R1 standard.
 - vii. Whilst the benefits of alternative means of transport to road cannot be secured at this site the same is true of most sites within the County.
 - viii. Such a strategy has not been advanced by reference to any identified network of specific sites. This is despite the fact that the WCS has been emerging since 2004 and WHBC are on record as opposing the use of New Barnfield for a single site solution since c.2008.
 - ix. Mr Kerr (for WHBC) was merely referred by his client to a list of three postcodes or nodal junctions as notional locations for the three site solutions in his evidence. He was not instructed to and did not assess any specific site for its suitability for use for this purpose. None of the other witnesses for WHBC advanced any identified strategy. All they did was to rely on the potential capacity of the sites emerging for allocation for use for thermal treatment within in the WADPD. This was to ignore the careful consideration of the suitability of each such site in the unchallenged evidence of Mr Leech for HCC.
 - x. Mr Kerr (for WHBC) purported to evaluate the benefits of such a strategy in terms of transport sustainability in his proof of evidence. His exercise demonstrated a substantial advantage in favour of the multiple site strategy as against either the single site strategy or existing situation, which itself was preferable to the single site strategy. That evidence was withdrawn. He conceded that in fact the single site strategy before the inquiry was a substantial advantage over the existing situation (reduction of circa 30%) and the multiple site strategy was only marginally preferable.
 - xi. Mr Aumonier (for Veolia) in his rebuttal neatly placed this difference in terms of transport sustainability in the context of the overall reduction in CO₂ emissions. It is wholly insignificant compared with the consequences of continuing the current pattern of unsustainable waste disposal whilst we wait for a solution to be found for this pressing problem.
 - xii. The issue of delay would come into sharp focus if this strategy was to be preferred as it would rely on procurement and the planning process being undertaken over three sites in the face of hostility from three affected communities. A number of witnesses referred to the fact that no waste proposal was welcomed and most were strongly opposed by the communities within which they are located. Mr Fletcher (WHBC) said: *'No waste facilities are popular wherever they are'*. It should also be remembered that WHBC opposes all the proposed allocated site within the WADPD in its administrative area.
 - xiii. There is no guarantee that GB development would be avoided as 6 of the 9 sites proposed in the WSA are located within the GB.
 - xiv. Issues of scale would remain as there is no direct correlation between the capacity of any given facility and its size and scale. Mr Mc Gurk (for

Veolia) voiced considerable doubt as to the viability of the multiple site strategy both in economic terms and in terms of practicability.

(c) Alternative Sites

246. This requires consideration from two perspectives; the adequacy of the alternative site selection process undertaken by the Applicants and the occasional, fleeting, reference to the potential of other specific sites for this purpose in the evidence of objectors. The SoS should be aware none of the sites discussed below were advanced to the inquiry by their owners as suitable for this purpose, they have no operators associated with them and there have been no pre-application enquiries made as to their suitability of use for the canvassed purpose.
247. Mr Leech (for HCC) informed the inquiry that in the case of the ELAS (Employment Land Allocation Sites) 'none of these areas have been actively promoted by any landowner during the call for sites. As a result there is no evidence to suggest that any of these sites would be available or deliverable or to give any confidence that they would come forward in the near future to allow the urgent provision of a residual waste treatment facility'. None are true alternatives in the sense identified in EN-1 para 4.4. Mr Leech was right to advise **members** 'It is important that a realistic and pragmatic approach is taken when judging alternative sites'.
248. The Alternative Sites Assessment (ASA) was subject to some concerns on assessment by HCC. Those concerns were addressed by the delivery of further information and an updated study for the purposes of this inquiry of July 2013.
249. In light of the evidence as it has emerged after testing by cross examination it is notable that in the evidence to the Inquiry none of the objectors have identified a clear alternative to New Barnfield which is likely to perform significantly better. For completeness the position with respect to those sites to which any reference of substance was made by other parties is as follows.

Roehyde Quarry

- i. The site is in the Green Belt.
- ii. It is a greenfield site in the sense that it is subject to a post extraction restoration condition.
- iii. It is subject to a substantial highway constraint in terms of the formation of a safe point of entry and egress for HGVs in close proximity to the roundabout giving access to the A1M and the A414.
- iv. It has been subjected to the landfill of waste which could hinder construction and affect costs and viability of any proposed RERF.
- v. Its allocation for thermal treatment is subject to unresolved objections from WHDC on highway, Green Belt and residential amenity grounds.
- vi. St Albans City and District Council likewise objects to its allocation on Green Belt and visual amenity grounds.
- vii. It is in similar proximity to Hatfield House as the application site.

Fieldes Lock, Hoddesdon

- i. It is constrained by size.

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- ii. It is a safeguarded rail fed aggregates facility, currently in use and protected by policy 10 of the Minerals Local Plan (2007).
 - iii. It is located outside any identified area of search for the purposes of Policy 1 of the WCS, on the extreme SE boundary of the County.
 - iv. The withdrawn application was also subject to a highway objection from HCC.

Ratty's Lane, Hoddesdon

- i. The site is subject to planning permission for use for a merchant facility for C&I waste treatment comprising 100,000 tpa of ATT capacity and 60,000 tpa for and AD plant.
- ii. It is not therefore available for this proposal.
- iii. Its size is insufficient for it to be substitute in any event.
- iv. **Locationally it is poorly suited to deal with the County's waste arisings.**

Fieldes Lock and Ratty's Lane combined

250. This suggestion was rejected by Mr Kosky (for Veolia) as an option because its cumulative impacts would be greater, the sites are physically divorced and could not be amalgamated. Both very close to Lea Valley Park and have a RAMSAR site within 1 km and zone 3 flood risk as well as a G1LB within 2km.

251. **WHBC's closing submissions** referred to Waterdale. The WSP (CD M3) rejected it in 2008 on the ground of size (2.5 ha), and therefore insufficient in area for a medium to large sized waste facility. It is a Waste Transfer Station (WTS) central to the strategy adopted for waste management for the County in any event. WSA discloses that there is only limited capacity on the site in the light of the permitted extension to the WTS.

252. In conclusion no one has advanced a credible alternative site strategy, whether a single or multiple site strategy. Mr Shapps MP referred to offers made by him to HCC to assist in the search for an alternative site, which he said were ignored both by HCC and Veolia. Mr Shapps was not able to identify a suitable site or sites to be considered at the inquiry. He advocated awaiting the result of the WSA. However this will result in the allocation of sites, none of which are a genuine alternative to New Barnfield, and not to the pursuit of applications. It is not a vehicle for the urgent delivery of a solution to the pressing practical problems faced by the WDA.

Heritage

Legal Tests

253. The decision maker has certain statutory duties imposed upon him by the Planning (Listed Buildings and Conservation Areas) Act 1990. In the case of development which affects a listed building or its setting the requirement imposed by section 66 is 'to have special regard to the desirability of preserving the building or its setting...'. Whereas s.72 provides **that** 'special attention should be paid to the desirability of preserving or enhancing the character and **appearance of that area**'.

254. Approaching the issue from first principles one would not anticipate any difference in substance between paying special attention and having special

regard. Both alert the decision maker to the need to pay particular care to the relevant issues identified in each section.

255. But the matter to which he should pay special regard or attention is different. In the case of the listed building it is the preservation of that building or its setting whereas in the case of the conservation area it is the wider consideration of preserving or enhancing.
256. In terms of setting that may require a flexible approach given the fact that settings may well change over time. It must refer to the setting either as it appears at the time of the application or as it would be if the proposal in question is built. For example, it is arguable on the evidence in this case that the appeal site is invisible from the Hatfield ensemble yet, if developed, it could become visible and when visible it could form part of the setting within which the heritage assets are experienced.
257. We have the benefit of judicial authority on the point which, alas, is conflicting :
- (1) In *East Northants*²⁰³ Lang J explained as follows: *'In my judgment, the inspector did not at any stage in the balancing exercise accord 'special weight', or considerable importance to 'the desirability of preserving the setting'. He treated 'harm' to the setting and the wider benefit of the wind farm proposal as if those two factors were of equal importance...In so doing, he applied the policy without giving effect to the section 61 duty, which applies to all listed buildings, whether the 'harm' has been assessed as substantial or less than substantial.'* (para 46)
 - (2) In *Bedfordshire Mr Justice Jay* disagreed with this analysis: *'Mr Newcombe's forceful submission was that special regard and special weight were incongruent concepts, and I agree. The focus is on the regard, not the according of weight pursuant to that regard. Special regard may lead to the giving of special weight but it does not necessarily do so. The treating of factors as being of equal importance may be evidence that an inspector has not had special regard, but this does not necessarily follow.'* (para 36). He went onto specifically disavow Lang J's assessment in para 46 (see para 40)

258. We submit that Jay J. is plainly correct for the reasons that he gives. It must remain a fundamental tenet of planning law that that matters of weight are for the decision maker and the decision maker alone²⁰⁴. What these sections are doing is to require a heightened level of scrutiny to be given to these issues not, per se, to ascribe some arbitrary weight to them. Happily there appears to be agreement with EH on **this issue as in closing they commended Jay J's** assessment in Bedford to the Inquiry.²⁰⁵

259. It should be noted that Mr Brown (for HCC), who had the benefit of the Lang J's decision only when writing his PoE, out of caution approached the matter by

²⁰³ *East Northamptonshire DC v Secretary of State for Communities and Local Government* [2013] EWHC 473

²⁰⁴ *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 WLR 759 at p780 *per* Lord Hoffman

²⁰⁵ EH Closing, para 3

ascribing special weight to these considerations. That means that he applied a higher test than the statute requires and his judgements may all accordingly be regarded as conservative.

Policy Tests

Proper Interpretation of paragraphs 132 to 134 of NPPF

260. Paragraphs 132 to 134 of the Framework set out the national policy tests to be applied in relation to designated heritage assets. During the course of the Inquiry, Mr Price-Lewis QC correctly characterised the policy as providing a **'cascade' of protection for designated** heritage assets.

261. On this interpretation the highest level of protection is afforded where proposed development would cause direct harm to, or loss of, designated heritage assets. At the very top of the cascade are proposed developments that would cause substantial harm to, or the loss of, designated heritage assets of the highest significance - **which can only be permitted in 'wholly exceptional' circumstances (para 132)**. Slightly less protection is afforded in circumstances where the proposed development would cause substantial harm to, or loss of, grade II listed buildings, parks or gardens – which can only be permitted in **'exceptional' circumstances (para 132)**. [Referred to below as **exceptionality tests'**].

262. The level of protection when the proposed development would cause indirect harm to a designated heritage asset is both lower and qualitatively different. In particular, where indirect harm would be caused, the policy incorporates a balancing exercise: weighing the harm against the public benefits derived from the development. So, where the development would lead to substantial harm to, or total loss of, significance of a designated heritage asset, permission should only be granted where the substantial harm or loss is necessary to achieve substantial public benefits (para 133). The lowest level of protection (at least in relation to designated heritage assets) is afforded to development proposals which will cause less than substantial harm to the significance of a designated heritage asset, where the harm must be weighed against the public benefits of the proposal (para 134). (referred to below as **'balancing tests.'**)

263. Although Mr Neale (for EH) **said he had 'always read' the phrase 'harm to significance' in paragraphs 133 to 134 to incorporate both direct and indirect harm**, there are a number of factors which support Mr Price-Lewis QC's **cascade** interpretation:

(1) Firstly, a close textual analysis favours this approach. Paragraph 132 talks of **'harm to or loss of [a designated heritage asset]'**. In contrast paragraphs 133 and 134 refer to development which will **'lead to [substantial/less than substantial] harm to [or total loss] of significance of a designated heritage asset**. There are a number of factors which indicate that the drafters of the NPPF intended to distinguish between direct harm – when the exceptionality tests are to be applied - and indirect harm- when the balancing tests are to be applied:

- i. The primary pointer as to the correct interpretation comes from **the drafter's omission of the word 'significance' in the paragraph 132 tests**. This omission was clearly intentional: in order to

distinguish between harm caused *directly* to the asset itself and harm which is caused *indirectly*, to the significance of the asset.

- ii. **Additionally, the phrase 'lead to'** – which is incorporated in relation to the balancing tests, but omitted from the exceptionality tests paragraph – lends further support to this interpretation. The phrase is not needed in the paragraph 132 test because the development will *directly* cause the harm or loss in question. In contrast it is included in the paragraphs 133 and 134 tests, because the development in question would not **directly harm the asset, but would 'lead to' harm to the significance of the asset** (for instance by diminishing the **asset's** setting).
- (2) **Secondly, the 'cascade' interpretation explains why the drafters of the Framework incorporated the balancing tests in addition to the exceptionality tests.** In contrast, the interpretation which Mr Neale assumed to be correct would render paragraphs 133 and 134 otiose. **On Mr Neale's interpretation, where there would be substantial harm to a designated heritage asset, decision makers would have to first apply one of the exceptionality tests - regardless of the type of harm in question (indirect or direct) – and then, additionally, go on to apply the balancing tests in paragraphs 133 and 134.** The exceptionality and balancing tests would therefore cover entirely the same ground. In contrast the cascade interpretation gives a separate function to the tests.
- (3) Thirdly, the philosophy underlying paragraphs 132 to 134 becomes evident when the cascade interpretation is applied. It is to give the highest protection to the designated heritage assets when the asset itself will be harmed, and less protection when the harm will not be to **the asset, but to the asset's significance. Such a distinction is readily understandable:** whilst harm to significance may be reversible (for instance, in the instant case, if the RERF is decommissioned and therefore removed from the setting), harm to the asset itself is likely to be permanent.

264. Accordingly, on a proper interpretation of these paragraphs, the **'exceptionality' tests in paragraph 132 apply only to direct harm and therefore it would be inapposite to apply them to this development.**

265. In any event, even if the above interpretation is wrong, it makes no practical difference in this case. This is because the level of harm caused by the **development to heritage assets falls well below the 'substantial' threshold and therefore, even on Mr Neale's interpretation, the 'exceptionality' tests in paragraph 132 are not triggered.**

The 'substantial harm' threshold

266. The threshold of substantial harm is an important one in the Framework: it **acts as a trigger for the 'exceptionality' tests in paragraph 132 and demarcates the boundary between the two 'balancing' tests in paragraphs 133 and 134.** The Framework itself is silent as to what constitutes substantial harm. However, we

now have the benefit of both judicial authority and draft national guidance on the subject. Both illustrate the height at which the threshold is set.

267. In *Bedford Borough Council v Secretary of State for Communities and Local Government* [2012] EWHC 4344²⁰⁶ Mr Justice Jay upheld a decision in which the Inspector had **interpreted substantial harm as meaning 'something approaching demolition or destruction'** (Paragraph 22). In rejecting the contention that the inspector was falsely comparing the physical with the non-physical, Mr Justice Jay explained that '[w]hat the inspector was saying was that for harm to be substantial, the impact on significance was required to be serious such that very much, if not all, of the significance drained away' (Paragraph 24). This approach – in particular the high threshold which the Inspector had applied to **'substantial harm'** – was lawful. Moreover the judge went on to recast the test in his own words, as follows:

'In the context of non-physical or indirect harm...one was looking for an impact which would have such a serious impact in significance of the asset that its significance was either vitiated altogether or very much reduced.' (Paragraph 25)

268. In addition the Planning Practice Guidance, which has been published in draft form and is a material consideration,²⁰⁷ also emphasises the height of the threshold for substantial harm, explaining that:

'A key factor in determining whether the works constitute substantial (i.e. serious) harm is if the adverse harm goes to the heart of why the place is worthy of designation – why it is important enough to justify special protection. This has to be assessed at the time of decision in all cases.'

269. Accordingly, in considering whether the RERF would cause substantial harm to the significance of the heritage assets in question – in particular to the Hatfield House ensemble – **it is appropriate to ask the question 'would the RERF have such a serious impact on the setting of Hatfield House (and its ensemble) that its significance would be either 'vitiating altogether' or 'very much reduced'?' And a key consideration when answering that question is whether the adverse impact 'goes to the heart of why the place is worthy of designation.'** In cross-examination Mr Neale (for EH) accepted that in light of the recent judicial guidance the threshold of establishing substantial harm was **'very high'**.

270. None of the heritage experts had the benefit of either the Bedford judgment or the draft guidance when coming to their conclusions in their written evidence. In fact, as Mr Brown (for HCC) explained, when he came to the conclusion that in no case would the harm to the significance of the heritage assets affected by the **RERF be substantial he was applying a 'somewhat lower' threshold for substantial**

²⁰⁶ It appears that the citation and date on the transcript is wrong. Contrary to the transcript the hearing took place on Friday 26th July 2013 (not 2012)

²⁰⁷ The Planning Practice guidance – in the section **'About the Beta'** – explains in relation to decision-taking that *"The Government considers that where the planning practice guidance published in draft on this web-based resource during Beta is a material consideration, it is likely to have limited weight. However, it is for the decision taker to determine the weight of this guidance in any individual decisions."* See <http://planningguidance.planningportal.gov.uk/beta/>

harm. Mr Harris (for Veolia) explained that the Bedford judgment 'reinforced his views' that there would be no substantial harm to the significance of the heritage assets.

Whether the RERF would cause substantial harm to the significance of heritage assets?

***Hatfield House ensemble*²⁰⁸**

Overview

271. Even if one was to apply a somewhat lower threshold than that suggested by Mr Justice Jay or as outlined in the draft national guidance, the SoS can be confident that the proposed RERF would not cause substantial harm to the significance of the Hatfield House ensemble.

272. The SoS can and should rely on the fact that three independent heritage experts, whilst acknowledging that the RERF would cause harm to the significance of Hatfield House and its related heritage assets, have all assessed that level of harm as being less than substantial. Indeed, Professor Tregay who was initially instructed on behalf of Gascoigne Cecil Estates (GCE) to independently assess the impact of the proposal, concluded in his report that 'the harm to the significance of both Hatfield House and its Park resulting from the proposed development is less than 'substantial harm' (with reference to NPPF para 133)²⁰⁹. Given the authority of Professor Tregay the Estate expressly endorsed his analysis through Mr Clegg's evidence, although they then distanced themselves from his conclusions on the grounds that it was 'subjective'. This creates a dilemma. They offer no alternative expert evidence from which one could reach a different conclusion and his analysis still stands and is before the inquiry. Their best point was that the Professor apparently adjusted his view in his letter dated 10 September 2012 in the light of his understanding of the Estate's management proposals for Millwards Park. However, he still did not state in terms that the harm to the significance of these or any of the heritage assets within the ensemble would be substantial.

HCC's case

273. HCC's case in relation to the impact of the proposed development on the significance of the Hatfield House ensemble is set out in detail with Mr Brown's evidence. It can be summarised as follows:

- (1) HCC do not seek to down-play the significance of the ensemble of heritage assets at Hatfield House. Hatfield House alone is of 'outstanding' architectural, artistic and historic interest²¹⁰ and, taken together, the ensemble is of 'exceptional interest';
- (2) Whilst HCC accepts that the proposal would fall within the setting of the Hatfield House ensemble, the application site currently makes no particular contribution to the setting of the House or Palace. As to the

²⁰⁸ Shorthand used at the Inquiry to represent Hatfield House, the Old Palace and Hatfield Park

²⁰⁹ CD H12 LDA Design Report 'Response to New Barnfield Planning Application and Further Information submitted by Veolia in June 2012'

²¹⁰ H/AB/2, para 6.03

Park, Mr Brown explains that, although the park is generally inward looking, where views to open countryside are possible from within the Park, such views contribute to its significance. However, as views between the Park and the site are screened by intervening trees, again the site currently makes no particular contribution to the setting of the Park. Further, for reasons set out in the submissions on the Green Belt, this site cannot be said to function or appear as open countryside.

- (3) When built there is potential for part of the RERF – sometimes the top of the dome, but most often just the flues – to intrude into certain views from the House, Palace and Garden. Accordingly it is accepted that the proposal would have an impact on the significance of the ensemble by virtue of a visual change in the setting.
- (4) The impact on the significance of the House would be very limited, in particular, for the following reasons:
- i. The proposed development would not be seen in the important views from the house along the North or South Avenues. As the analysis of Deborah Evans shows, it was the North and South Avenues which were designed by Lord Salisbury to *'anchor... his house and garden in the landscape'*. Views along these axial routes, including the Riding – *'Salisbury's great processional route'* - would remain unaffected by the development. Mr Neale (for EH) accepted that these axial views would not be affected, save for in views from the roof and, potentially, some from the 2nd floor. There is perhaps some parallel with the test used in the Shrewsbury decision²¹¹ to the effect that the proposal in question was not dominating, commanding or controlling of views of the asset in point. We also refer in this context to the Garden History Society Guidance²¹² which refers to the significance of designed views. The proposal will have no material influence on such views.
 - ii. It was accepted by Mr Neale that views of the development from **the roof were of 'limited importance' because there was no** evidence, historically, that the roof was intended to be accessed.
 - iii. There are no views towards the house, from the axial routes or elsewhere, in which the proposed development would be seen.
 - iv. Whilst the chimney of the proposed development might be seen from some of the second floor rooms in the east wing (a view which do not encompass the historically important axial routes), it would not appear as a conspicuous feature in these views. Moreover, these are views which already encompass modern development, in the form of Hatfield New Town and its tower blocks.

²¹¹ CD F1 para 50.

²¹² CD H8 para 1.2

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- (5) The impact on the significance of Old Palace, likewise, would be very limited. In particular:
- i. Apart from the top of the turrets, no part of the proposed development would be seen from the Old Palace or its immediate surroundings.
 - ii. Much of the panorama visible from the Turrets is made up of the Salisbury/Cecil domain. However, the panorama also includes **areas outside the Estate's domain. Unsurprisingly, these areas** have been developed, amongst other things, to house the citizens of Hatfield, as well as to meet their employment, retail and recreational needs. Mr Neale considered that **'the setting is already greatly harmed by the new town**. That may be so, but that is as much the real, modern world.
 - iii. The proposed RERF also forms part of the real, modern world. It is fanciful to argue that the addition of the proposed development to this wide panorama which already encompasses modernity, and at a substantial distance from the ensemble, would cause substantial harm to the heritage value of the Old Palace. In reality its impact on the significance of the Old Palace would be minimal.
- (6) The impact on the significance of the Park would be greater, but the **harm is still well below the 'substantial' threshold. Mr Brown's assessment of the harm as 'moderate' is supported by the following:**
- i. Views of the RERF from within the park would be limited as it would often be screened by the extensive tree cover.
 - ii. Of the three key views identified by Mr Neale - in which the **"house appears in its full magnificence amidst gardens, park and wider landscape"** - only the view from the West Garden will be affected by the development. The RERF would not be visible the view from the south-east towards the house and country beyond - the view capture in numerous historical paintings, including King George III reviewing the troops. And as noted above, the **'fine views'** from the hill to the south, down the Riding towards the house would be entirely unaffected.
 - iii. Although the RERF will be visible from certain parts of the West Garden, it would only be visible when looking away from the **house: therefore the house's 'full magnificence'** would be unaffected. Moreover, the location within the West Garden selected for the photomontage (Photomontage P23) is clearly not a focal point. It is a glimpsed view, taken off the pathway in a somewhat awkward spot. Nor is it representative of views from the West Garden: as Mr Brown explains, a viewer only has to move a short distance away within the West Garden for both the dome and chimney to be screened from view. Additionally, within a few years the existing relatively young trees to the south of the West Garden will provide additional screening. Furthermore, as has been explained in relation to the Old Palace turrets, modern

development has already intruded into the views from this section of the park, in the form of Hatfield New Town and particularly its tower blocks.

- iv. Whilst more extensive views of the RERF would be possible from the new visitor car park, the Walled Kitchen Gardens and the areas around the Orchard House and Dairy Cottage, there are no planned views from these locations and they could not be considered key or focal views. The visitor car park – which it is fair to say is the viewpoint from which the RERF will be most prominent – is a section of the Park in which much modern **development is evident. The visitor centre, the children’s play area and mini-train and the car park itself all reduce the sensitivity of this section of the park. As Mr Billingsley explains, it is not part of the pristine historic parkland.**
- (7) Although the plume *may* intermittently be seen in some of the above **views, it would only be visible for a ‘fraction of the time’.** According to modelling for the Environmental Permit it would be present for 30-40% of all hours, with an average length of 52-67m. When coming to his conclusions on the impact of the development on the significance of the heritage assets, Mr Brown had taken the presence of the plume into account. However, it is to be noted that he had originally undertaken assessment on a worst case basis: assuming that the plume would be present for longer and be significantly taller than the modelling predicts.
- (8) The proposed offsite planting at Hatfield House, whilst not necessary to avoid substantial harm to the significance of the ensemble, would help to reduce the visual impact of the RERF on those viewpoints which will be most affected. Although GCE are unwilling to discuss the proposals in the midst of an adversarial process, in the event that permission were granted, the SoS can be confident that common sense will prevail and mitigation planting will be implemented. The developer is offering to fund the planting to the tune of over £30,000. And Mr Fauvel (for GCE) whilst objecting to the proposal, did accept that if the development did go ahead **‘we would want to screen views of it’.** In doing so, the Estate would be following the advice of its adviser Professor Tregay who, in his report, concluded that **‘there is potential for well placed mitigation planting within Hatfield Park to reduce the visibility of the RERF, including the plume to some extent’** and specifically suggested that section 106 payments would be appropriate.

English Heritage’s assessment

274. Mr Neale is a lone voice amongst the heritage experts. His is the only assessment that concludes the proposal will cause significant harm to the significance of the Hatfield House ensemble. He reached that conclusion and wrote his evidence before the Bedford case. In light of the latest judicial and governmental guidance on the threshold for substantial harm Mr Neale accepted **that the significance of the Hatfield House ensemble would not be ‘vitiated altogether’.** However, he maintained that its significance would be **‘very much reduced’** (although he qualified this statement by saying that the test was **‘difficult to interpret.’**).

275. This assessment suffers from a number of serious flaws. Most significantly he fails to assess with any rigour or clarity whether, and to what degree, the setting of the heritage assets – most pertinently the wider countryside in which the RERF will sit - contributes to the significance of the heritage assets. In doing so he has failed to apply **EH's own guidance**²¹³ and, in particular, step 2 of the proposed methodology. In cross-examination Mr Neale attempted to defend his assessment by arguing that Step 2 considerations were **'imbedded throughout my proof of evidence'**. In reality, however, his assessment of the contribution that the wider countryside makes to the significance of the heritage assets is restricted to sweeping generalisation that the **'experience of the house and its gardens and park necessarily encompasses the experience of the wider landscape'**. That may be so, but it tells us nothing of how, and to what degree, that wider landscape contributes to the heritage value of the assets.

276. **Mr Williams' closely**-reasoned closing submissions on behalf of EH bear careful examination on this issue. Although he makes a **passing reference to Mr Neale's** assessment at the beginning of this section, it is telling how little of the reasoning **he draws from his own expert's evidence. Instead he is driven to employ his** advocate skills: relying on a negative case (**'...it is not the case that land beyond the park was not intended to contribute positively to the setting of the house and the significance of the park.'**); drawing inferences (**'The fair inference is that given the topography and landscape setting of the park in countryside on all sides...the wider setting was intended to and did contribute to the setting and significance of the Park'**) and making assertions unsupported by reference to evidence (**'The correct analysis is that the informal and functional elements complement the formal elements and the wider more open parkland setting is highly important.'**) The simple explanation as to why Mr Williams has had to work so hard during this section of his closing is that the analysis of step 2 was not undertaken with any rigour by Mr Neale.

277. As Mr Williams recognised, the EH guidance identifies a non-exhaustive checklist of potential attributes of a setting that may impact on the heritage value of an asset. These attributes include, but are not limited to, visibility. The guidance goes on to explain that:

*'A sound assessment process will identify [the most relevant attributes] at an early stage, focus on them, and be clear as possible what weight attaches to them. In doing so, it will generally be useful to consider, in so far as possible, the way these attributes have contributed to the significance of the assets in the past... the implication of change over time, and their contribution in the present.'*²¹⁴

278. **This analysis is singularly lacking in Mr Neale's** assessment. The consequence of omitting Step 2 is that Mr Neale has not properly established the baseline against which the effects of the development can be assessed.²¹⁵ His approach is to assume that if the RERF is visible it must be harmful. This approach is too

²¹³ H3 'The setting of heritage assets (2011)' p15

²¹⁴ H3 'The setting of heritage assets (2011)' p18

²¹⁵ *Ibid.* The guidance explains that *"This assessment of the contribution to significance made by setting will provide the baseline for establishing the effects of a proposed development on significance, as set out in 'Step 3...It will, therefore, be particularly focused on the need to support decision-making in respect of the proposed developments."*

simplistic: it tells us nothing about the degree to which the RERF will (or will not) impact on the attributes of the setting which **contribute to the assets' historical value**.

279. **Furthermore, Mr Neale's premise that if the RERF can be seen from a particular viewpoint it is necessarily harmful tends to cause an exaggeration in his assessment of the consequences of the development. There are a number of examples in which this is evident:**

- (1) **Turrets of the Old Palace** - the failure to assess how the attributes of the wider countryside contribute to the significance of the Old Palace – and in particular his failure to consider the implications of change over time – leads to an exaggeration in his assessment of the harm which will be caused by the development. Whilst views from the turrets of the open countryside are no doubt an attribute which contribute towards the Old Palace significance, regard must be had to changes in panorama over time: most notably the modern development of New Hatfield. The harm caused would be much greater if the westerly views were of the open countryside, unchanged since the 15th Century. But that is not the baseline: the current panorama includes, within close proximity, the presence of 20th century development, some of it of a utilitarian and architecturally undistinguished character.
- (2) **Visitor Car Park** - His assessment of the impact of views of the RERF from the Visitor Car Park are also exaggerated. This is an area which is already substantially influenced by modern development, some of it of a plainly commercial character, and at the interface for the visitor of the modern world and the ensemble.

280. It is necessary, at this stage, to address a contention which featured **prominently in Mr Williams' closing** on behalf of EH. That is the effect that **existing, modern development, which has already harmed the asset's** significance, has on the assessment process. Mr Williams begins by saying that it **is important to 'account properly for historic development that has already impacted on the significance of the asset'**. This is plainly correct, but it begs the question- **what does 'account properly' mean?**

281. The answer Mr Williams gives is as follows: '[t]he fundamental point is that previous developments that have harmed the significance of an asset cannot be prayed in aid of a development that causes further harm. This would lead to death by a thousand cuts for irreplaceable assets. Instead the proper approach is to take that harm into account and consider whether further development will compound that harm'. **In effect, Mr Williams' is arguing that a setting of an asset** which already has harmful development within it necessarily has an increased sensitivity to further development. However this rigid approach finds no support in either EH guidance or in the evidence of Mr Neale (who does not address this **issue at all**). **Moreover, the logical conclusion of Mr Williams' position would be** that a setting which has already been altered, or harmed, by development is more sensitive to further development than a setting which has remained wholly unchanged by development over time. This cannot be correct as a matter of generality. In particular, we feel confident that if the RERF were being proposed in the wider countryside to the east of the Hatfield ensemble, EH would be praying in aid the largely unspoilt and unchanged character of the open

countryside as an attribute of Hatfield House's setting which contributes greatly to its significance.

282. It is the a matter of professional judgment whether, how and to what degree change in the setting – including any change by way of modern development – affects the contribution that the setting currently makes to the significance of the heritage asset. This establishes the baseline. It is then at Step 3 that the effect of the proposed development on the significance of the asset is assessed, measured against this baseline.
283. This is the approach taken by Mr Brown (for HCC) who explains, in his Step 2 analysis, that the views from the House and Old Palace to the west already detract from the significance of the heritage asset.
284. **Returning to Mr Neale's analysis, it can fairly be said that he has forgotten one** of the basic tenets of assessment; namely that visibility does not necessarily equate with adverse impact. Moreover, his assessment was strongly influenced by his view that modern development provides, **and the RERF would provide,** 'a discordant element' in the setting. That implies that the wider setting beyond the boundaries of this enormous estate should preferably be preserved as some facsimile of C17 landscape. This is an unduly fastidious approach particularly when the development in question has been designed as an exemplar of good modern design and commended as such by CABE. We invite the conclusion that at such a respectful distance there is no need to fear any substantial diminution in the significance of this magnificent ensemble which has the abundant strength stemming from its intrinsic qualities and the sheer size to maintain all its significance in the modern world should this proposal proceed.

The future management of Millwards Park and the Estate.

285. The RERF would be far more conspicuous in key views if it were not screened by the substantial number of trees within the Park.
- (1) The Cecil Family and Estate have been in the business of preserving and enhancing Hatfield House for over 400 years. A large part of that management function has been landscaping – including that required in order to screen from or to react to modern development (e.g. construction of Great North Railway and relocation of A1000). There is no reason to believe that such responsible management will not continue for the foreseeable future.
 - (2) It is therefore fanciful to suggest, for instance, that large parts of the Wilderness could be felled at the whim of any new Marchioness from time to time wishing to make her mark on the gardens. Causing such reckless damage is not the Cecil tradition or style and in the modern world is perfectly susceptible to control through the TPO regime if it were ever required. The SoS should base his decision on the simple observation that as a landowner the Estate has considerable latitude to order tree planting within its wide bounds to allow for external influences and views it would prefer to minimise for whatever reason.
 - (3) Millwards Park – The Estate have a management plan over a 20 year period, starting in 2008 agreed with Forestry Commission. If this management plan showed significant changes were proposed to

Millwards Park the Estate should have disclosed a redacted version. They choose not to disclose, but did not claim that management plan would require significant levels of felling. The Estate's intentions in this regard were not made absolutely clear, but it is clear that open deer park as it may appear on some estates is not what is contemplated and that would not be in character with the history of this deer park. The change is from continuous coniferous cover to a more open structure with self-sown native stock rising in the place of felled conifers. It was described as CCF – Continuous Cover Forestry, felling being staged in blocks so as to ensure a mixed age structure throughout the park to provide continuity of crop and continuity of cover over the woodland looked at as a whole. Continuity of cover was also implied by Professor Tregay in his letter. Change will therefore be implemented gradually and the result will not be radically different in terms of permeability of views. Millwards Park would still provide substantial screening. The RERF would not interfere with these plans.

- (4) A feature of the management of the Park since the coming of the railway in C19 and then the modern highways has been the creation of a vegetative screen at the western edge. There is no suggestion that this screen would not continue or that the occupants of HH would want to open up views of the existing modern world beyond the pale.
- (5) Mr Richards, in his closing for GCE, referred to the risk of loss of mature trees over 20 to 30 years. That may be so; but he misses the point that woodland cover such as this is based on succession. That is how we have ancient woodlands. As one tree gives way another takes its place in the woodland canopy. Moreover, if planning were to proceed on the basis that we should provide for catastrophic hurricanes that occur once in 200 or 300 years or so nothing that required landscaping would ever be built because one could never rely upon the screening. Likewise with disease; itself less of an issue where, as here, there is a mix of species.
- (6) The key was provided in the GCE closing. The process was described, accurately from the evidence, as a '***process of planned gradual change***'. The concern was that there was no agreement as yet in place with GCE '***to dove-tail that process of planned gradual change with any need to screen views of the proposed RERF***'. Thus, there is plainly a capability to dovetail planting for screening purposes with the new management regime. Moreover we were assured by GCE that they will be a good neighbour to the RERF in this context.
- (7) The section 106 obligation provides for that opportunity to be taken up **together with an appropriate sum**. GCE's real concern appeared to be that they would now wish for more by way of compensation. They seek new negative conditions to allow GCE the whip hand over the delivery of the RERF that they oppose. This is strongly resisted as a matter of principle. The need is for delivery. Further, the estate having raised the issue of mitigation unilaterally decided to withdraw from the process of negotiation; it is too late to come back to the table to ask for more.

Other Heritage assets

286. None of the heritage experts consider that there will be substantial harm caused to the significance of other heritage assets (designated or otherwise). It is **HCC's case that very limited harm will be caused to the significance of the Old Hatfield Conservation Area and North Mymms Park, and no material harm caused to the significance of Gobion's Folly Arch or Brocket Hall.** Whilst EH considers that the harm caused to the significance of these assets to be slightly greater (for instance, the impact on the Arch is said to be less than substantial, but still of some consequence) this assessment suffers from the same flaws in methodology as identified in relation to the Hatfield House ensemble. Moreover, we can ask whether there is any view identified from the Old Hatfield Conservation Area or St Etheldreda's Church other than that potentially gained from the tower of the Church?

Landscape and visual effects

287. Substantial volumes of evidence on this topic have been submitted to the inquiry by three expert landscape witnesses supported by many photomontages and similar exercises. In fact the sheer volume of material and the arid technical debates aired within them masks the close community of view between the professional witnesses.

288. There is substantial agreement as to the principal viewpoints that should be used for the purposes of assessment. Whether the ZTV should be taken at either 25km or 15km radius of the site it is the case that despite the scale of the proposal the visual and landscape effects are principally confined to areas within 1 km of the site. WHBC's closing was mainly concerned with the effects on the local footpath network where receivers are transitory. Suggestions that it could be seen from the escarpment of the Chilterns AONB were not supported in evidence nor were they supported by any objection from those with statutory responsibility for its protection (viz. English Nature and the Chilterns AONB Management Board). The difference in terms of landscape and visual effects between the witnesses relates principally to three viewpoints only and can fairly be described as marginal and one of degree which will be judged in the course of the site view and requires no further comment.

Green belt issues

(a) National Policy

289. There is no issue that the development proposes inappropriate development on a site located within the Green Belt and that well established general principles now enshrined in the Framework paras 87 and 88 that require the decision maker to identify the harm arising from its inappropriateness and other harm and ask whether such harm is clearly outweighed by any very special circumstances. It also well established as a matter of law that VSC may arise from a combination of circumstances that may not be special in themselves but are special when viewed in combination.²¹⁶

²¹⁶ *R(on the application of Basildon District Council) v First Secretary of State* [2004] EWHC 2759 at [9] – [10] *per* Sullivan J

290. The first issue is to consider the contribution made currently by the site to the GB in this area. Here there is a conflict of views between two inspectors considering this broad area in the not too distant past.

291. The relevant considerations are:

- i. The site is PDL and an allocated MDS.
- ii. The PDL element as defined by the WCS includes the curtilage of the structures thus including the hardstandings and surfaced car parking areas on site.
- iii. The buildings on site currently are a mixture of single and two storey covering an area of 1.6 ha and having an estimated combined built area of 7,570 m², and an impermeable area (i.e. hardstanding etc) of 13,000 m² and a volume of 29,600 m³.
- iv. The MDS policy 6A of the adopted WHBCLP would permit the redevelopment of the site within the MDS boundary in any event.
- v. A Master Plan adopted by WHBC would permit an extension to those buildings of approximately 2,000 m²²¹⁷.
- vi. The site is located contiguous to the Southfield School and its curtilage which is another developed site washed over by the GB.
- vii. The site is across the road from but at a higher level than the Travellers Lane Industrial Area in general and the major Tesco Depot and UK Mitsubishi headquarters building in particular.

292. On any view therefore the contribution the site can make to fulfilling GB functions is already substantially compromised. A large part of it is no longer open countryside. To that extent it can no longer check the unrestricted sprawl of the built up areas of South Hatfield and Welham Green that are separated by the designated GB land to the west of the application site that is genuinely open countryside. The second GB purpose is also covered by this observation. It has no role as such in preserving the setting and special character of historic towns and the consequences for the Old Hatfield CA are considered in the heritage section of these submissions.

293. It is accepted that the appeal proposals would further compromise such limited contribution as the site currently makes to the GB in this location. There would be a very substantial increase in the volume of built development. But perhaps more relevant to openness is the area of PDL is now 20,570m² and would increase to 23,305 m² as illustrated in the comparative footprint drawing. Indeed, the WSALLD EiP inspector has apparently indicated that he would anticipate that any allocated site within the GB would be released from the GB on the undertaking of appropriate reviews by the relevant district planning authorities under the duty to co-operate. He no doubt had paragraphs 85 and 182 of the Framework in mind when making those observations.

294. Current national policy as expressed in PPG10²¹⁸ states that the locational needs of waste management facilities, together with the wider environmental and economic benefits of sustainable waste management, are material considerations that should be given significant weight. The emerging amendments to PPS10 suggest that this automatic weighting of these factors will be discontinued and

²¹⁷ CD M9

²¹⁸ CD-D2 para 3

decision makers will be advised to continue to apply the familiar VSC test to all relevant considerations. Thus it will be a case specific issue as to the weight that should be attached to the locational needs of waste management facilities and the economic benefits of sustainable waste management. In this case we remain of the view that, however assessed, the locational needs of waste management facilities in an area so constrained by Green Belt designations are a material consideration to which significant weight should be attached. Likewise, given the scale of the current volumes of waste disposed of lower down the hierarchy, the economic benefits of waste management proposals such as these, that drive waste further up the hierarchy, cannot be overemphasised. Moreover, it remains the case that **EN.3 advises that these VSC 'may include the wider environmental benefits associated with increased production of energy from renewable resources'**.²¹⁹

(b) Development Plan Policy

295. The relevant development plan for the purposes of s.38(6) is the WCS and the saved policies of the WHBCLP.
296. The WHBCLP contains conventional GB policies that were not drafted with the needs of the WCS in mind. It has a policy relating to MDS sites, policy 6A, that in a conventional way restricts redevelopment to the footprint etc of the existing structures on site. In the unlikely event that a RERF could comply with such a policy the application would not be an exception to GB policy and would be acceptable in GB terms with no further ado. However, that is plainly not the case and this policy is therefore of limited relevance. It is notable that such emphasis was laid upon this policy by Mr Chivers (for WHBC) in his PoE. This was doing no more than to set up a straw man for the sole purpose of knocking it down again. This curious emphasis demonstrates the extent to which WHBC is out of touch with the realities of this case.
297. The WCS is unusual as development plan in that it contains policies which anticipate applications coming forward on GB sites and provides a list of potential material considerations for the decision maker. This is an express recognition within the context of the WCS of the extent of the constraints in the County for the identification of waste sites and was found to be sound as an expression of local distinctiveness²²⁰.
298. WHBC's closing submissions seek to draw support from the WCS Inspector's conclusion at para 31 to the effect that the WCS is not reliant upon GB sites to make good the shortfalls in capacity. However, that must be seen in the context of the report as a whole including the approval of a specific policy relating to proposals in the GB as discussed in paras 25, 26 and 29. Also the inspector does not say that the required range of sites can be provided without use of GB sites. Now we have the position in the WSALDD. That disposes of the point. A cursory glance at the WSALDD reveals a large number of the proposed allocation sites are perforce located within the GB. Moreover there is no available alternative non-GB site for this proposal.

²¹⁹ CD-D4 para 2.5.35

²²⁰ CD M6 para 29

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299. Policy 6 requires the demonstration of VSC and sets out some six criteria as a non-exclusive list of material considerations in that context.
300. First is the requirement to demonstrate that the need for the development cannot be met by an alternative suitable non-GB site. The need has already been demonstrated above. We have made our submission as to alternative sites. No alternative sites have been proposed in the evidence of objectors. This criterion is clearly met on the evidence.
301. Second there is the need to find locations as close as possible to the source of waste. The point was well captured by WSP: ***'The proximity principle should be taken in context with other key ideologies; it is not an over-riding issue of itself. What is most important is to ensure that an adequate network of facilities is provided to manage Hertfordshire's waste in the most effective manner.'***²²¹ The site is well located in relation to the strategic road network and therefore accords with policy 9, the relevant sustainable transport policy of the WCS. It is a good location given the highway pattern of the County. As Mr Leech (for HCC) observed ***'The site is very well located to arisings in Welwyn Hatfield, Hertsmere and St Albans. Access is easy and quick from the east and the north and the location could not be bettered'***. This is a close fit with the proximity principle as expressed in the Hertfordshire context.
302. Third, there are no rail or water connections, but they are rare within the County. Nevertheless the site complies with the sustainable transport policy of the WCS as identified above.
303. Fourth, the site characteristics are such that it lends itself well to this form of development with respect to its size, its location close to a substantial industrial area, its location to the principal road network, its relative lack of wider visual impact, and the fact that it is no longer open countryside but is already severely hampered in the positive role it can play in performing acknowledged GB functions or objectives.
304. Fifth, the site has clear locational advantages which are well identified in the evidence. In addition to those already identified it is located on the edge of the urban area and PDL but it is not directly proximate to nearby residential receptors. There is a level difference but the site is not prominent, there is an opportunity for good screening to the western (countryside) area and it is already a very well screened site.
305. Sixth, the wider economic and environmental benefits of this proposal are manifest and widely acknowledged. It is difficult to think of any contribution to waste management within the County that could bring wider economic or environmental benefits given the scale at which the arisings that would be diverted to this plant are currently being disposed of by landfill.
306. The last clause of the criterion is ***'... including the need for a range of sites'***. Mrs Hoey (for WHBC) construed this to mean that the application proposal should itself in some sense confirm a range of sites. There is no policy peg to support her preference for the multiple site strategy. As a matter of law the policy is to be taken in context and therefore to refer to the justification as set out in the supporting text, particularly paras 4.62 to 4.68, and the analysis of the

²²¹ WSP CD M3 2.6.6.

EiP to the effect that in order to achieve the range of sites required meet the spatial strategy of the WCS it may be necessary to locate some facilities in the GB.

307. In any case there is no support for the suggestion made by **WHBC's witnesses** to the effect that the proposal would stifle other proposals coming forward or the provision of a range of sites within the SADPD as we have submitted in the section on prematurity.
308. Therefore, all six of the criteria to policy 6 are relevant and positive contributors in favour of the application. Green Belt policy is complied with in this case provided that the VSC test is satisfied.

Southfield School

309. This is a primary school which makes provision for children with special educational needs including a proportion within the autism spectrum. Such children can be vulnerable to disturbance from noise and sensitive to changes in their surroundings.
310. From the outset the school has been identified as a sensitive receptor. After taking professional noise and other advice it was decided by HCC, in conjunction with the education authority, that it would be appropriate to relocate the school so as to avoid the disruption caused by the construction of the RERF should permission be given to this application. Accordingly in August 2013 the school vacated the school for a temporary building at Howe Dell in Hatfield. It is proposed that the school will return to the Travellers Lane site after the construction of the RERF should planning permission be granted by the Secretary of State.
311. It is therefore important to assess the noise and disturbance implications of the operation of the plant for the successful operation of the school. In summary the worst case noise increase at the rear of the school, would have been less than or equal to an increase of 5 dB, but with appropriate attenuation measures being employed in the construction of the RERF that will decrease to no more than 3 dB. Even without mitigation there are areas external to the north of the school with noise levels below 50 dB(A) and they will be substantially increased with the attenuation measures in place. With the mitigation proposed the internal noise climate will be an improvement on that currently prevailing²²². As for traffic noise after mitigation: there will be a negligible increase in LAeq levels and a slight increase in LAMax levels to the front of the school²²³. Mr Watts for WHBC confirmed his agreement with that assessment and its adequacy in cross examination. WHBC closings provided three pages of evidence on noise, none of which addressed the School, and which related to residential amenity. There was no reference made to the satisfaction of the EA with respect to that issue.
312. The experience of the move to Howe Dell has been successful and the staff of the school have proved that, with appropriate advice and support, there need be no justifiable concerns as to the implications of the return to Southfield School as such. This was the evidence of Mrs Caroline Wells, an expert with considerable qualifications and experience in this area as the former advisor to HCC on these

²²² V/4.4 para 4.2.2.

²²³ V/4.4 para 4.2.4

matters and currently the Director of an organisation that specialises in the education of those with autism and in that capacity the manager of a special school specialising in pupils with autism.

313. Concerns as to the likely health impacts upon pupils from the operation of the school were expressed by a number of witnesses. In the case of Mrs Eames her evidence was not objective and was exaggerated. There is no evidence that the return to Southfield would be harmful to the pupils as she alleged. The evidence submitted by her is that, in theory, the move has the potential to harm the pupils. That evidence is coincident with the Health Impact Assessment. But the staff of the school should have adequate strategies in place supported by the autism unit of the education authority to ensure that no undue harm actually arises. Mrs Wells was the only witness to speak to the experience of the success of the move to Howe Dell and she was of the view that it had been responsibly and carefully handled so that it was a success. Mrs Eames accepted that the experience of the success or otherwise of that move would be a relevant consideration with which to judge the likelihood of harm arising.
314. At the evening session Mrs Griffin, a local resident and local autism volunteer worker, criticised Mrs Wells evidence. Her concerns relating to vibration have no basis in the submitted evidence. The issue was scoped out of the assessment of the operational phase as the operational RERF would not include any potentially significant source of vibration. His assessment was unchallenged even by Mr Watts who assessed these matters on behalf of WHBC. The issue of vibration was satisfactorily addressed by the Environment Agency in the Permit.
315. It is fair to make two further general submissions as to the evidence of Mrs Griffin. First, she does not have either the experience or qualifications enjoyed by Mrs Wells in the education of those with autism. Second, her evidence is not disinterested. She is a local resident and her evidence displays a degree of animus against Hertfordshire **County Council's services by reference to a survey** that was not provided until after her evidence had been given. In her statement this survey was used to discredit the value of the services provided by HCC for children with autism as if its contents were applicable to Southfield School. Reference to the survey does not support that view. In fact the major failings alleged were at secondary level and the survey was concerned with all schools, both special and mainstream, and only 20% of the respondents were concerned with primary education. With respect she provides no good reason to set aside the carefully considered evidence of Mrs Wells.
316. Mrs Dreda Gordon also provided evidence on these issues for NBAF in her capacity both a local resident and a retired teacher who had formerly taught at the school. Her evidence must be assessed on the basis that it was written without knowledge of the noise evidence generally and therefore is not based on the results of the substantial noise attenuation measures now proposed. It appeared that her principal point was the perception of the location of the new school to parents of pupils at the school or to parents of potential pupils. This hardly goes to the heart of the issue and, in any event, comes from a witness with no knowledge whatever of a modern, well operated and regulated RERF facility. Mrs Wells in contrast had visited the modern RERF at Newhaven and had been favourably impressed by the quality of the operation generally, the relative lack of noise externally and the value of its visitor centre as an educational resource.

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317. At an early stage the Governing Body of the school expressed concerns that it had at that time not been adequately demonstrated to them that the proposal could operate without causing harm to the operation of the school, its pupils and staff. Their concerns related primarily to noise impacts from the operation of the plant and HGV traffic. These have been addressed above. Whilst some pupils on the autism spectrum may have a high sensitivity to disturbance the noise assessments have been made worst case with the assumption that the entrance doors to the RERF would be left open, which would not be the case in practice. Even on this basis it was demonstrated that there will be an abundance of areas within the grounds at the rear of the school where noise levels will be well below 55 dBa which is regarded as the standard which should not ideally be exceeded (BB93). In fact there will be substantial areas to the north of the school with noise levels below 50 dB(A) which is regarded as perfectly acceptable for the purposes of outdoor learning. If the measures for noise attenuation proposed by Veolia are undertaken as proposed the internal noise environment within the school will be both better than existing and also well within the only relevant published standard both with open and closed windows.
318. Throughout the school day there would be a flow of HGVs attracted by the plant passing by the school entrance in addition to the flow to Tesco and cars to Mitsubishi attracted to Travellers Lane which is set further away from the school. The noise and disturbance element implication of that traffic flow has been addressed and demonstrated to be negligible. Mrs Wells saw no reason to believe that the visual implications of this traffic should be harmful. Her observation was that children at the school played ordinarily and loudly within the school grounds and so were unlikely to be disturbed in their play by external influences. In terms of highway safety there is no issue as all the children are delivered to the school by vehicle and none walk or cycle to school. HCC is satisfied in any event that appropriate and safe arrangements have been made for highway users in terms of the access to the site from the A1001 Southway.
319. The plant would be seen from some of the rear school windows that face in the appropriate direction and from the school grounds. It will be a permanent feature in the landscape with which the pupils can become familiar. Mr Billingsley addressed the significance of this view and the opportunities to mitigate such views by planting within the school site in his evidence. There is no reason to believe that sight of this well designed and managed proposal at such a distance and softened by planting should be the cause of any harm.
320. The RERF would cast a shadow over the grounds of the school for part of the day but the evidence demonstrates that this should not be an important issue and it was not proposed as such in the cross examination of Mrs Wells.
321. The proposals include a noise attenuating barrier of 2.4m in height at the front of the school and an acoustically tight gate. There is nothing sinister about these and they will be provided within a landscaped framework.
322. It is significant that the closing on behalf of NBAF referred solely on the **'perception to parents' point. Whilst extensive reference was made to the** objection from the governing body that objection is solely concerned with matters on which no reliance is placed by NBAF in their closing; namely, noise from the operation of the plant and that from HGV traffic. The only witness to refer to the perception point was Mrs Gordon who referred to it in chief as an afterthought.

323. In conclusion, it appears to those without full knowledge of the evidence or the nature of the operation of a modern, well managed and operated RERF that there is an obvious and harmful incongruity between it and the school. However true that may be at a superficial level it is simply not borne out by the evidence. There is no **reason to believe that 'operation return' should be any more difficult than 'operation remove' which was so successfully undertaken at the beginning of this academic year.** The noise from the operation of the plant with appropriate attenuation measures in place should not inhibit the full use of the school grounds as an educational resource. The measures in place for attenuating sound at the front of the school and within the building itself should prove to be an improvement over the existing which itself was **described as providing 'a tranquil environment'** by Mrs Gordon²²⁴. Appropriately landscaped it should not be a harmful element when seen from the school and its shadow effects are well within the ambit of acceptability.

Development plan and emerging policy

General Principles

324. Before turning to the specifics it is worth highlighting some basic principles of planning law which bear upon this application. As will be well known section 70(2) of the TCPA 1990 requires the decision-maker to have regard to all material considerations, including the development plan. Section 38(6) of the PCPA 2004 creates a statutory presumption in favour of proposals that comply with the development plan: the decision is to be made in accordance with the plan unless material considerations indicate otherwise.

325. Conformity with the development plan does not mean that it has to comply with each criterion of every policy, or even that it has to comply with every policy. As long ago as 1997 the House of Lords explained what, even then, must have been trite law:

*' [The decision-maker] will also have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will require to assess all of these and then decide whether in light of the whole plan the proposal does or does not accord with it. '*²²⁵

326. HCC accept that the proposal does not comply with all of the policies in the WCS. However in light of the relevant policies when read as a whole, the proposal is in accordance with the plan.

327. The suggestion that there is any inconsistency between the approach taken by HCC in the Committee report (CR)²²⁶ and the position taken at this Inquiry is specifically rejected. Mr Leech (for HCC) was asked why in his proof he concluded

²²⁴ NBAF/4/2 para 4.

²²⁵ *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447. Although this related to section 18A of the Town and Country Planning Scotland Act 1972 that section is in the same terms as section 38(6) and the analysis of the House of Lords has been applied to section 38(6) on numerous occasions by the higher courts.

²²⁶ [CD B1]

that the proposal was in accordance with the Development Plan, when a contrary conclusion was reached in the CR. He explained in response that at the time of **the Officer's report the WCS was not adopted as part of the Development Plan.** This was an honest and accurate answer. The CR explained that the WCS was not part of the Development Plan and outlined the Local Plans that it was comprised of at that time. The CR also indicated that the emerging WCS was a material consideration and that significant weight would be given to its policies since it had been found sound and was due to be adopted imminently.

328. Accordingly, there has been no inconsistency, still less a change of view, since **the CR. At the time of the CR, HCC's position was that the proposal complied with** the WCS as a whole. That is still its position at this Inquiry. The difference is that whereas at the time of the CR the WCS fell on one side of the section 38(6) balance – as a weighty material consideration – it now falls on the other – as part of the Development Plan.

329. It was suggested that the reason for this difference in stance was that Mr **Leech had been 'leaned on'**. This suggestion was rejected as **'ridiculous'**, as it plainly was. This was a serious attack on the credibility and independence of a professional witness unsupported by a shred of evidence.

Consistency with Development Plan policies

330. **HCC's case in relation to** the conformity of the proposal with the Development Plan is set out in detail in Mr Leech's proof of evidence.²²⁷ We rely on that evidence and in this section seek only to outline the major points in relation to each relevant policy:

Policy 1 – Strategy for Provision of Waste Management Facilities –

The proposal would comply with this policy:

- i. It falls within an identified area of search for LACW.
- ii. The contention that because the proposal will deal with C & I waste it would only fully comply with policy 1 if it is allocated within the WSA is erroneous. As noted above the primary purpose of the RERF at New Barnfield, as reflected in the contractual obligations, is to process LACW. The processing of C & I Waste is a secondary function. **WB's submission** to the contrary that it might become its main function²²⁸ is ludicrous. As the note on the contract²²⁹ makes plain the first call on the plant is LACW waste. In any event, New Barnfield is allocated within the emerging WSALDD.
- iii. As identified above, there will be a need for additional Waste Management Facilities other than New Barnfield to deal with residual C&I waste, as well as other waste streams. There is no denying that New Barnfield will be a large waste management facility, but it will be one component part of mix of sites of a variety of sizes.

²²⁷ HCC/ILA/2, Section 4 pp15 - 40

²²⁸ Para 30

²²⁹ HCC 4

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- iv. The RERF would be a major component of the network of waste management facilities that will drive waste management practices up the waste hierarchy, as well as providing a significant element of the capacity for waste arisings within the county.

Policy 1A – Presumption in favour of Sustainable Development

– for the reasons outlined in Mr Leech’s proof, in particular the significant environmental benefits identified, the proposal would accord with Policy 1A

Policy 3 - Energy & Heat Recovery

The proposal would comply with this policy:

- i. The contention by WHBC that the waste to be processed at New Barnfield could reasonably be dealt with at a higher level in the waste **hierarchy was based solely on Mr Fletcher’s evidence** that the RERF was oversized.²³⁰ As explained above this evidence is demonstrably wrong;
- ii. There has been no (and could not be any) serious challenge to the fact that New Barnfield will be a recovery, rather than a disposal, facility in Waste Framework Directive terms;
- iii. New Barnfield will produce 26MW of low carbon electricity per year. In the light of the fact that Policy 3 requires generation and recovery of **‘heat and/or power’**, this is sufficient for the proposal to comply with Policy 3 (i.e. there is no requirement for heat production as well as power);
- iv. However, New Barnfield would be CHP-ready. Much time has needlessly been spent at this Inquiry criticising the reliance by the applicant and HCC on the CHP-ready capabilities of the proposal. The argument appears to be that, because there is no contract in place with a consumer of the heat, the CHP element cannot be properly taken into account. This is to ignore government policy, numerous decisions of the Secretary of State and, ultimately, market reality. It is the location of the site, and the **potential** for heat customers, which is of relevance at the planning stage. Mr Aumonier (for Veolia), who has a great deal of experience in relation to operation of CHP facilities, explained that in light of the location and nearby uses there was a **‘good and realistic potential’** to supply heat from the site.

Policy 6 – Green Belt

– for the reasons outlined above, and in light of the VSCs on which we will conclude, there would be compliance with this policy.

²³⁰ WHBC/SHC, para 2.8

Policy 7 – General Criteria for assessing planning applications outside of identified locations

– the applicability or otherwise of this policy depends on whether the site is allocated in the WSA. However, even if applicable, for the reasons set out in **Mr Leech’s proof, it is satisfied. It is notably that Mr Chivers does not suggest** otherwise in his proof of evidence and that Mr Leech was not challenged in cross-examination on this policy. In Closing NBAF raised two concerns²³¹. The first relied on a flawed analysis of arisings as already demonstrated. The **second relied on the ‘crowding out’ point which has already been addressed.**

Policy 9 – Sustainable Transport

– Policy 9 is complied with. None of the rule 6 parties have contended that the site is not well-located in relation to the strategic road network facility and WHBC expressly accept that it is. The contention that the proposal is only partly compliant with Policy 9 because it does not make use of water or rail transport is based on a misinterpretation of the policy. The mandatory element of Policy 9 is the location relative to the strategic road network. Above and beyond this the policy will provide support for proposals which utilise other modes of transport, but this is not an obligatory requirement. The reason such an approach is taken is explained in the explanatory text which notes that ***‘as Hertfordshire’s complex transport system means there is a high reliance on road transport, it is recognised that alternative modes of transport are not always feasible.’***²³²

Policy 10 – Climate Change

There is clear and full compliance with this policy:

- i. Diverting the waste from landfill to the RERF will ensure that significant savings are made in the quantity of greenhouse gas emissions caused by **Hertfordshire’s waste regime. So too will reducing the transport miles** involved in exporting the waste out of county, albeit to a far lesser extent. Mr Aumonier gives evidence that, even on a conservative set of assumptions, New Barnfield is likely to save in the order of 61,000 - 96,000 tonnes of CO₂ equivalents per annum (based on the WRATE **analysis for 2020/2021**). **And this assumes a ‘power-only’ output: if the plant generates heat for consumption the savings could be doubled.**
- ii. **WHBC’s** position that there is only partial compliance with the policy cannot be sustained. His concern is that a single waste facility would fail to maximise the reduction of vehicle emissions. However evidence which purported to show that the proposal would produce an increase in CO₂ emissions over the current situation was withdrawn by Mr Kerr. The latest transport model, as agreed between the highways witnesses, indicates that there would in fact be a 56% reduction in CO₂ emissions produced by transportation. Whilst a multiple-site strategy might, theoretically, make further savings these are not as significant.

²³¹ Para 17.

²³² [CD C1], para 4.82

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- iii. **In any event, Mr Aumonier's evidence illustrates that the reduction in carbon emissions achieved by the operation of the RERF dwarfs any reduction in emissions achievable from reducing further the transport miles.** In his rebuttal proof of evidence Mr Aumonier explained that, even on the savings on carbon generation from transport originally claimed by Mr Kerr, it would take just 104 days of operation of the plant to counterbalance the total savings that Mr Kerr originally contended a multi-site strategy would make over a 25 year period. Updating this **calculation to take account of Mr Kerr's amended evidence and the increase in the predicted CO₂ savings**, means that the RERF would need only to be operational for a mere 20 days in order to outstrip all of the savings a multiple site strategy would even in theory make over a 25 year period. Any carbon emissions savings of a multiple site strategy would be swept away by the inevitable delay caused by refusal.
- iv. Accordingly, delaying the grant of planning permission in order to achieve the theoretical benefits of the multiple site strategy would be contrary to the imperatives of Policy 10. In contrast the climate change benefits offered by this proposal must weigh substantially in its favour.

Policy 11 – General Criteria for Assessing Waste Planning Applications

This policy is dealt with at length in Mr Leech's proof. There is substantial, but not complete, compliance. In particular, HCC accepts that criteria i) (in terms of scale), ii), iii) (visual amenity only), iv) (historic environment only) and x) would not be fully complied with.

Policies 12 (Sustainable Design Construction and Demolition), 13 (Road, Transport and Traffic), 15 (Rights of Way) and 16 (Soil, Air and Water)

Mr Leech explains in his proof why the proposal would comply with each of these policies. His assessment was not challenged.

Policies 17 (Protection of Sites of International and National Importance) and Policy 18 (Protection of Regional and Local designated Sites and areas)

Both Mr Leech and Mr Chivers agreed that, save for the impact on heritage assets, there is compliance with these policies.²³³ The degree of non-compliance is dependent, therefore, on the assessment of the degree of harm to the heritage assets, a matter which is addressed above and also on the degree of compliance of these policies with the Framework to the extent that they are expressed in absolute terms. The latter is addressed in the evidence of Mr Brown and Mr Leech.

Policy 19 (Protection and Mitigation).

It is HCC's case that this policy is fully complied with. WHBC accept that the proposal 'largely' complies with it. NBAF closings refer to offsite mitigation at

²³³ WH/SC/1, para 2.17 and 2.18 Mr Chivers also maintains there is non-compliance with criterion xii) of Policy 18 in terms of the visual impact on Bunchley's Pond

Hatfield House in this context. This is in error as criterion (ii) relates to the loss of existing planting not the provision of new planting.

331. It is clear that there is substantial compliance with the Development Plan policies and that, viewed as a whole, the proposal complies with the Development Plan.

Local Plan Policy - WHBCLP

Policy RA6 – see section on Green Belt.

CLT9/CLT13

These policies are not applicable. In brief:

- i. The site has not been in substantial educational use since closure of the school in 1990;
- ii. The buildings in their current state not suitable for re-use;
- iii. Previous services provided on the site which met community leisure facilities have been met by relocation;
- iv. As HCC 10 proposes it is therefore suitable for other alternative uses.

332. Significantly there was no reference to this material by WB or HR in Closing.

Emerging Policy – WSALDD (CD C5)

333. It is accepted that the WSA policies can be given no weight given the level of unresolved objections. However, that cuts both ways and no weight also can be given to the allegations of departure from the site specific brief made by WHBC.

334. Moreover the proposed policy WSA2 only requires that the **brief be 'taken into account'**, not that it is prescriptive. Such briefs are described in terms as 'a guide to potential development' within the explanatory text.

335. In any event by the time the Secretary of State makes his decision the report of the examination should be available.

Miscellaneous

336. There are certain issues which it is not necessary to address in any detail in closing:

Health impacts - HCC's position is recorded in the Report to Committee [CR or CD B1] at paras to . Subsequently the EA issued the operating permit [CD P1] for the facility which will adequately address health issues so as to avoid causing any substantial harm to the health of human receptors within the area. Policy requires that this judgment should primarily be made by the Environment Agency and the Health Protection Agency who share statutory responsibilities in this area and we endorse the submissions made by the appellants to this effect. In this case Veolia have taken it a step further by calling evidence from Professor Jim Bridges, an expert in this field of international renown. In the light of his evidence in particular the concerns expressed by Mrs Margaret Eames can only be described as unfortunately exaggerated and without any credible scientific foundation.

Ecology – HCC’s position is set out in the Committee Report section 16 (p91). No evidence has been led to the inquiry to call that assessment into question or to require further examination. That position has been confirmed by the evidence given to the inquiry by Dr Riley.

Noise –In terms of noise and residential amenity HCC called no evidence and relied upon the professional assessment from its own independent advisors and the conclusions reached by the EA with respect to this matter in issuing the operating permit. We make no further submission on the matter which was adequately addressed in the CR²³⁴ and the evidence of Mr Maneylaws.

HCC Response to the cases for WHBC and NBAF

337. It is instructive to contemplate what the opponents to this scheme offer as an **alternative solution to the pressing need to move this County’s residual waste up** the hierarchy and away from landfill or its equivalent year after year.

- (1) First, await the adoption of the WSA despite the fact that this will be about 10 years from the commencement of a search for a solution through a Local Plan and five years or more since the procurement process was commenced.
- (2) Then select a site suitable only for a small EfW to comply with a preference for an incremental solution to the problem.
- (3) Select that site outside the boundaries of WHBC since they oppose all allocated sites within.
- (4) Ensure that the site is not located in the GB.
- (5) Secure procurement for that site despite no market interest in the dispersed option in the last round.
- (6) Secure planning permission for that facility in the teeth of local opposition. So do not expect any site to be volunteered by the community in which it is located.
- (7) Then, if planning permission is secured, and an operator is secured part only of the problem will be solved in a less efficient way. Landfill will continue on a substantial scale.
- (8) Do not however seek more facilities since it is too early in the plan period and alternative technologies may later emerge (WB p.65).

338. What is on offer is not properly described as a solution. It is a recipe for prevarication, obstruction and delay. For long into the foreseeable future vast quantities of waste that might otherwise be converted into useful, renewable,

²³⁴ CD B1 – section 13.

energy will be put into the ground. This might be anticipated from a residents opposition group but it is deeply depressing that it should also come from a local authority.

Very special circumstances and public benefits

339. We now turn to address the tests required by Green Belt and Heritage policies as set out above. We list them the principal features briefly below:

Need - The proposal would meet the urgent and demonstrable need for a sustainable waste treatment facility in Hertfordshire. The RERF would have the capacity to process all residual LACW in the county for the WCS plan period, and make a significant contribution to the processing of C & I waste. **WHBC's** protestations in closing to the effect that the need is not urgent do not bear **scrutiny. Perhaps the most revealing among them is the suggestion in WBHC's** closing to the effect that it is acceptable that no solution be found before 2026!

Waste Hierarchy - The proposal would result in Hertfordshire waste being moved up the Waste Hierarchy. The presence of the front-end MPT, designed to remove recyclables from the residual waste, is projected to boost current recycling rates by up to 3%. Perhaps more significantly, as the RERF is R1 compliant and therefore constitutes an energy recovery operation, the residual waste– the vast majority of which is currently landfilled - would be moved up the waste hierarchy.

Self-Sufficient – The vast majority of LACW and C & I waste currently produced by Hertfordshire is transported out-of-county for treatment. The proposal would go a long way to ensure that Hertfordshire is self-sufficient in respect of its waste arisings.

Deliverable – The proposal at New Barnfield is deliverable and would meet the extant need within a reasonable time-frame. WHBC accepted in closing that the proposal would provide '*speed and certainty of delivery*'. Given the scale of the need and the delay to date in addressing it this is a very significant material consideration. There is no realistic prospect of an alternative achieving the same infrastructure capacity in the same time-scale.

Renewable Energy – The proposal will generate up to 26MW of low carbon energy in the form of predictable and controllable electricity available to the national grid (enough to power 50,000 homes), assisting in the improvement of **the UK's energy security. WBHC's characterisation of this benefit as 'as small contribution to overall targets and would in any event be likely to be made by other facilities coming forward in accordance with the WSA** is insupportable, in light of the evidence. A contribution that would power all the homes in a settlement of 50,000 homes must be substantial and must be welcome. Moreover, there are no proposals emerging from the WSA, only potential sites as we have already observed.

Climate Change benefits – There will be a significant net saving in greenhouse gas emissions as a result of the off-setting of emissions from fossil-fuel based power and the substantial diversion of residual waste from landfill. This has been addressed in detail above.

Combined Heat and Power – The RERF would be CHP ready and there are numerous potential users of this capability in the near vicinity.

Locational Benefits – The site has many locational advantages, including its central location, its relationship with the main road network, the proximity to other industrial uses and the suitability of the existing road access²³⁵.

Use of existing developed site - The site is already substantially developed, with the existing buildings on site occupying a total area of 7,570m² (and some 13,000m² including hard standing). The proposal would see a minor increase in built development on site.

High Quality Design – CABE considered the proposal to be an ambitious and inspiring building, and were of the view that the bold architecture has the potential to enhance the character of the area.

Socio-economic Benefits – The proposed development would provide up to 350 jobs during the construction phase and approximately 52 once operational. Moreover, the project has already attracted a PFI award of £115.3m. That has survived three DCLG reviews. This is measure of the degree of public importance identified with the project by central government. WHBC have made many ex post facto complaints as to the procurement process, which have been demonstrated to proceed largely from false assumptions in the section on prematurity above, but have provided no documentation of any complaint at the time it was undertaken.

340. **HCC's** view is that these many and significant advantages of these proposals significantly outweigh any genuine adverse impacts that would flow from the development and future operation of the plant. Collectively they provide a substantial and weighty body of very special circumstances sufficient to clearly outweigh all identified harms including the definitional harm to the Green Belt. Likewise they provide an exceptional body of public benefits to outweigh the less than substantial harm likely to arise to the special interest of the heritage assets with which we are concerned at this inquiry.

341. Accordingly, we invite you Sir to recommend to the Secretary of State that it would be appropriate to grant planning permission to this proposal subject to appropriate conditions and the receipt of the proposed s.106 agreement at the earliest opportunity.

THE CASE FOR WELWYN HATFIELD BOROUGH COUNCIL

Introduction

342. The dome will be 170m x 150m x 41m set within an operational area of 5.27 ha within a site of some 12.62ha in total. The two emission flues will rise a further 35m above the level of the dome to 75m in height. The footprint of the dome will be 18,887m². Existing buildings on site are limited to 7,570m² comprising single and two storey structures.²³⁶ That is the true identified extent of the MDS area (c. 1.6 ha).

²³⁵ HCC Committee Report [CD B1], paras 8.44 to 8.59

²³⁶ A2/3/2.2

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343. It is now known that the volume of the proposed RERF will be 585,000m³.²³⁷ That is an increase in volume in the order of 2,000% from the existing volume of built form on site which is 29,600m³. The limited extent of the second floor element of the old school building has now also been ascertained at 6,400m³. Accordingly, more than 75% of the existing built form was single storey and low key.
344. Those facts were apparently not known to the County Council when it made its resolution, which may be thought surprising. Changes in volume are particularly relevant to assessing development within the Green Belt.
345. Various terms have been used during the inquiry to describe development on this scale – but it is simply massive (or colossal) in the most basic sense of those words. It will become the dominant feature in a whole series of representative views chosen for their sensitivity and will dominate the skyline in a number of important views. There is no getting away from the significant adverse visual impact that development of this scale in this location will cause.
346. The location is of central importance not just because it is located in a part of the Green Belt subject to great development pressure, but because it is at an elevated location, and an outlier to the ridge as illustrated on plan V/9.3C MDC 3. EH has made detailed representations setting out the substantial/serious harm that will be caused to the ensemble of significant heritage assets. Simply put, it is not easy to think of a location less suitable in spatial planning or visual amenity terms for such a scale of development.
347. The level of local objection to the proposals is enormous and, being based on proper planning criticisms, should be given substantial weight. Of 6,310 representations on the scheme 6,300, or over 98% were against this proposal. The continued promotion of this Proposal in the face of this opposition, has been the antithesis of more flexible dispersed solutions such as those achieved in Hampshire, where the public was given a meaningful voice in terms of having an input into the location, scale and distribution of residual waste provision.²³⁸

The Development Plan

The Waste Core Strategy: Main Features of the Strategy

348. The WCS is recently adopted development plan policy. It represents part of the local translation of the NPPF, EN-1, EN-3 and PPS10, and is one of the main planks in the local policy balance. The other key waste document is the emerging WSAD and the extent to which the two are intended to work in tandem is highlighted throughout the WCS.
349. The WCS was drawn up bearing in mind that over half of the county is designated GB, but still recognises that development in the GB is not *'justified'* but may have to be *'considered'*. The Applicants and HCC are keen to rely upon **both the WCS and the Inspector's report underpinning it. For present purposes a key finding of that report²³⁹ was that it simply was not necessary to develop the GB in order to meet the current need for waste provision on the figures accepted**

²³⁷ INQ / V4

²³⁸ B1 / 9 / 3.23

²³⁹ M6 / 9 / 31

by the WCS Inspector. It is important to approach Policy 6 WCS, and the other policies of the WCS, with that finding firmly in mind.

350. Equally, both the Applicant and HCC have emphasised the need to consider compliance with the Development Plan as a whole. However, in that regard Mr Leech (for HCC) was entirely clear that each of the main policies upon which WHBC founds its case are core policies of their respective plans.
351. In construing the policies of the plan, which are at the beginning of their plan cycle and intended to remain in force and to govern development until 2026, it is also important to have in mind both the vision and objectives of the WCS over that period.
352. The vision provides that:

'Through engagement with the community and working with partners, by 2026, Hertfordshire will be waste aware and responsible, and the county council and its partners will lead the county in its adoption, promotion and implementation of the waste hierarchy. Members of the general community, industry, local councils and the county council alike will place significant emphasis on waste prevention, reduction, reuse and recycling, with waste disposal to landfill minimised.²⁴⁰ A mix of established, newer emerging technologies and waste recycling markets that maximise recovery value are being embraced to ensure that waste is innovatively and effectively managed within Hertfordshire.

Waste management facilities will be well designed, appropriately sized and sensitively located so that they reduce the environmental and social impacts, meet the needs of communities and businesses, and seek enhancement of the locality. Sufficient waste management facilities (to reduce, reuse, recycle) will be located as close as practicable to the origin of waste, making use of sustainable transport links, where practicable, to ensure existing and new communities deal with their own waste, especially in relation to areas where future growth is likely to occur.'

353. Accordingly, it is clear that the vision of the plan is to engage both the community and partners in seeking provision that is well designed, appropriately sized, and sensitively located precisely so that environmental and social impacts are minimised and, indeed, that the area is enhanced. The vision seeks to avoid local overprovision, to encourage and embrace both new and emerging technologies across the plan period, and to make provision in a way that is sustainable paying particular regard to the factors already identified above, the provision of sustainable modes of transport, and the proximity principle.
354. Similarly, the strategic objectives provide qualitative targets to progress the vision. They include meeting the proximity principle (SO2), facilitating the increased and efficient use of recycled materials (SO3), facilitating a shift away

²⁴⁰ Though the document notes at C1/16/2.40 that *"The existing Westmill landfill site in the county has planning permission until 2017. This site is currently operating at below its annual permitted capacity and has considerable void space remaining, however planning permission would be required before this could be utilised."* No particular case has been advanced as to why any necessary planning permission would not be forthcoming.

from road transport to water and rail transport as the principal means of transporting waste (SO4). SO6 encourages working with all partners to encourage integrated spatial planning (which must in turn be best informed and achieved by the plan led process).

355. The Proposal fails to comply both with the Vision and the listed Strategic Objectives for the reasons set out in more detail below.
356. The recycling rates adopted for the purposes of the Plan are 60% for LACW in 2031, 55% for Commercial waste, 60% for Industrial waste both (apparently) in 2026. One issue identified as one facing the county (i.e. going forward) is **"a need for an appropriate spread of facilities, including a variety of types and locations"**.
357. Those recycling rates would not have to be adjusted far for the figures to be significantly affected.²⁴¹ HCC has enjoyed good rates of recycling which continue to improve. By way of further example Bedfordshire looks to improve from 45% to 66% over its plan period, and there is nothing to say that is unrealistic. Accordingly, for the purposes of sensitivity testing this application for a site of strategic size it is not unreasonable to consider it against what the circumstances would be if the 75% rate advocated by Mr Fletcher²⁴² for this purpose were applied. Documents before the inquiry suggest that with appropriate facilities and services in place C&I recycling rates could be made much higher – above 90%.
358. Table 2 provides links between Strategic Objectives and particular policies. It is notable, in particular as part of the context of Policy 6, that in addressing the GB issue it identifies the issue as **'Extensive coverage of Green Belt, restricting the land available for waste developments'**. The identified option/solution is **"Well designed, sized and sensitively located facilities; Encourage the use of brownfield land through employment land allocation of sites; Feed into District/Borough reviews of Green Belt.'**
359. The manifest inconsistency of the Proposal with each of the underlined features of the solution demonstrates the substantial failure to comply with policy that is further evidenced by testing the Proposal against the most relevant policies of the plan.
360. Another feature of the plan is that it recognises the limitations of the C&I data that was then available (and which has been superseded by the 2009 C&I data²⁴³ and most recently the February 2013 production and the October 2013 update of the 2020 DEFRA Paper (below)). Like the WCS Inspector²⁴⁴, who accepted that the data upon which the planned capacity might require review **'sooner rather than later'**, the plan itself identifies the need for review (in particular in relation to C&I waste) before 2026 in order to inform required levels of capacity. All of this is substantially inconsistent with permitting what may be the only plant actually required for dealing with residual waste over the entire plan period (and which will be the only plant actually required to deal with LACW residual wastes

²⁴¹ WH-ATF / 5 / 2.15 – 2.17

²⁴² WH-ATF / 5 / 2.14 (the rate used by the East of England Regional Technical Body for the review of the East of England Plan 2009)

²⁴³ Agreed to be a more appropriate dataset than the 2003 data: Aumonier XC Day 3, c. 15:30, Fletcher WH-ATF / 13 / 3.14 – 3.17

²⁴⁴ M6 / 16 / 63

arising) within 2 years of the adoption of the WCS itself; before its sister document the WSAD has even been adopted; and using technology which is mature rather than being either new or emerging so potentially constricting the available marketplace for those technologies to develop.

361. In light of the contract length of 25 years, it represents an irrevocably inflexible approach, contrary to both the aspiration and policy of the plan. By supporting a very large EfW on this site there is a real danger the SoS will end up promoting a technology which is lower down the waste hierarchy rather than maximising the potential for recycling. The risk is that for many years the Proposal will not drive waste up the hierarchy, but rather keep it only one rung from the bottom. The importance of the mechanisms for review in these circumstances is clear. Such an approach would also be inconsistent with the more general observation of the WCS Inspector, consistent with a multi-site approach, that she would expect a more dispersed pattern of waste facilities for C&I provision.²⁴⁵

The Waste Core Strategy: Specific Failures to comply with Policies

362. How then, does the scheme measure up against specific policies in the Development Plan? Simply put, the proposal substantially fails to comply with amongst other policies, Policies 6 and 11, which are undoubtedly key policies for present purposes.

363. It is notable that HCC in a report commended by Veolia as being detailed and comprehensive concluded that there were clear breaches of the Development Plan including WCS Policy 11²⁴⁶ and Policy D2 DP²⁴⁷. The report was written by Mr Leech, HCCs planning witness at the Inquiry. To the extent that Veolia and HCC now suggests that there is in fact no breach of the Development Plan looked at as a whole that approach strains credibility and should not be accepted.

364. **WCS Policy 6:** This policy, like the other policies above, was accepted as a core policy for present purposes. It is the policy dealing directly with GB matters and seeking to apply the option/solution identified above. All agree that it sets out the normal GB test for considering inappropriate development. It then goes on to set out factors which might establish a sufficiently strong case to make out very special circumstances. There is no requirement to meet any individual consideration, but they are all particularly directed to considering the strength or weakness of any case advanced in VSC in the local context. The onus in that regard is firmly upon the Applicant. It was also accepted that it is *'incumbent on [the] applicant to demonstrate there are no suitable alternative sites'* and the criteria to be taken into account in Policy 6 must be considered, applying that fundamental rule.

i) The need for the development that cannot be met by alternative suitable non-GB sites.

365. This question has to be answered within the plan led context and bearing in mind the timeframe of the plan.

²⁴⁵ M6 / 7 / 19

²⁴⁶ B1/82/14.62

²⁴⁷ B1/81/14.58

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366. The threshold for the test is deliberately and appropriately high, referring to development that cannot be met by alternatives, not (for example) development that may not be met by alternatives.
367. The WCS Inspector has already decided that adequate provision can be made without the use of GB sites. Accordingly, the need for this development (a facility to treat residual waste) can be met by alternative non-GB sites.
368. The threshold is deliberately high in another linked respect in that the wording of the policy clearly considers whether the need for the development might be met by a range of non-GB sites. Not only is that the clear effect of the language it is entirely logical in terms of GB policy. It follows that it is simply not sufficient to say that the development requires a single large site for which there is no immediately available non-GB alternative. It is necessary to demonstrate that the need could not be met over a number of non-GB sites. That exercise, critical to providing any real force to the VSC case, is wholly absent.
369. Moreover, and in any event, there are other ways of making similar provision involving a more policy compliant approach in seeking a range of sites. Such an approach would obviously widen the pool of potential sites, and provide for more flexible development of waste provision over time (and the plan period).
370. The limitations of the ASA exercise are also important to this question and they are considered separately below - but it is clear that the ASA does not provide for any comparative assessment of planning merits, is not intended to be a site selection tool, gives no (real or other) weighting to GB issues, and cannot sensibly be considered a substitute for the Site Allocations process. It provides no answer to the policy considerations set out above.

ii) The need to find locations as close as practicable to the source of waste.

371. The provision of a single very large centralised facility will not provide the same benefits of proximity as a more dispersed pattern of development. That point is only reinforced in the local context by the considerable degree of dispersal of settlements across Hertfordshire. The differences between the Proposal and indicative alternatives considered for the purpose of demonstrating the point are significant. The indicative position is now summarised in INQ/V/22. Moving from a one site to three site strategy has the following effects:
- i. In terms of km tonnes it produces a reduction of 37% (3,150,636 / 5,030,689)
 - ii. In terms of vehicle km (on the assumptions made) it produces a reduction of 30% (321,738 / 457,302)
 - iii. In terms of CO2 generated (on the assumptions made) it produces a reduction of 26% (409 / 280).
 - iv. Accordingly, there are significant advantages to be gained from a multi-site strategy in terms of better compliance with the proximity principle (itself a theme of the WCS). The advantages to be gained by a three site strategy are even greater if Waterdale is included in place of the indicative A1/A414 location within the analysis.

iii) The availability of sustainable transport connections.

372. Bearing in mind the discussion above it is entirely clear that this criterion relates to the prospect of connections by water and/or rail which the WCS specifically seeks 'to facilitate'. Such a special advantage (especially in a site of such size) might provide some force to a case based on VSC. Here, there is no prospect of such a connection; and so the size of the proposal counts against it. It is notable that the DEFRA EfW guide strikes a very similar note in terms of what advantages may flow from appropriately located large scale facilities.²⁴⁸ Those potential advantages will not be obtained by the Proposal, which will indisputably limit the prospects of any future proposal of scale being so located.

iii) The site characteristics.

373. Site characteristics include landscape and visual impact considerations. There is no reason to exclude other value held by the site for example in protecting the purposes of the GB. This consideration clearly militates against the development.

iv) Any specific locational advantages of the proposed site.

374. The proximity of the site to the primary road network is acknowledged, but the weight to be accorded to that criterion in the policy has to be understood in context bearing in mind the emphasis on sustainable transport connections. The issue of CHP is dealt with separately below, but in this case it does not provide a factor of any real weight in support of the proposal.

v) The wider economic and environmental benefits of sustainable waste management, including the need for a range of sites.

375. Two things are immediately apparent about this consideration. Firstly it reinforces the need for a range of sites in order to more closely comply with other policy requirements. Secondly, it does not, in the local translation of national policy, accord any specific or greater level of weight to the wider economic and environmental benefits of sustainable waste management. That, of course, is consistent – appearing within a policy dealing with the GB - with the view that sufficient provision could be made without resorting to GB sites. This consideration plainly militates against an overlarge centralised facility.

376. **WCS Policy 11:** This policy is another core policy for present purposes. It sets out the general criteria for assessing Waste Planning Applications albeit within the context of a permissive policy. The limbs of this policy are, accordingly, requirements, and not simply matters to be taken into account. They are drafted specifically within a waste plan on the basis that they ought to be capable of being met by appropriately located development which conforms to the vision and strategic objectives of the Plan.

i) The siting, scale and design of the development is appropriate to the location and character of the surrounding natural and built environment.

377. The Proposal is in clear and stark conflict with this criterion, Mr Leech (for HCC) agreed, at least in relation to scale.

ii) The landscaping and screening of the site is designed to effectively mitigate the impact of the proposal.

²⁴⁸ E7 / §154

378. The Proposal is also in clear and stark conflict with this criterion. The proposal could not be fully (and therefore effectively) mitigated.

iii) The proposed operation of the site would not adversely impact upon amenity and human health.

379. The Proposal is in stark conflict here both due to the amenity impacts relating to visual harm but also due to the risk of noise impact affecting amenity. Visual harm is not disputed HCC.

iv) The proposed development would not adversely impact upon wildlife habitats, the natural, built or historic environments.

380. Here the evidence and submissions of English Heritage / Gascoyne Cecil Estate demonstrate substantial alternatively serious adverse impacts on key heritage assets such as Hatfield House and Park.

381. The Proposal also fails to comply with Policy 11(x) due to its non-compliance with Policy 6.

382. **WCS Policy 1:** It is also notable that the Proposal fails to comply with Policy 1. This policy contains the overall strategy for the provision of waste management facilities. The Proposal will deal with a substantial amount of C & I waste. The WCS proceeds on the basis that the split may be 180 ktpa LAWC and 200 ktpa C & I. The 180 ktpa represents the extent of the level of waste the WDA is obliged to provide under the 'put or pay' provisions contained in the Contract. On any view, only between 276 ktpa (2016) to 232 ktpa (2026)²⁴⁹ of residual LACW remains to be treated, accordingly it is clear that a substantial amount of residual C & I waste will be processed at the proposal. It is unrealistic to describe the amount of C & I that may be processed as a 'top up' or supplemental. It is entirely possible that the main function of the Proposal may become to deal with C&I waste.

383. Policy 1 provides that waste management facilities for waste that is not LACW will be brought forward on existing strategic sites, Employment Land Areas of Search (ELAS) and Allocated Sites (AS). New Barnfield is not yet an Allocated Site because the WSA has not been adopted. It is not, but might have been made - if this were intention by those in forward planning - a strategic site. Equally, if the identified need were considered urgent by those responsible for forward planning, making express provision for a strategic site would have been one obvious way of dealing with such a concern. Nor does the Proposal fall within an ELAS. However, the total number of Allocated Sites (now 15) (by definition considered by HCC to be deliverable) and the number of ELAS sites (in the order of 60) gives some indication as to the breadth of distribution sought by the Plan, as identified from the policies providing for a range of sites and close compliance with the proximity principle. Accordingly, the Proposal fails to comply with Policy 1.

384. In light of the failures to comply set out above the Proposal also fails to comply with Policy 1A which seeks to apply the presumption in favour of sustainable development.

²⁴⁹ C1 / 26 / Table 6

The Draft Site Allocations Waste Local Development Document (WSALDD)

385. The site is identified as a proposed allocation at Inset 39 of the WSALDD. There is strong objection to the proposal which is to be considered shortly in the EiP. Accordingly, applying normal principles derived from paragraph 216 NPPF the proposed allocation cannot yet be given significant weight.
386. However, as foreshadowed above, what is notable about the submission version of the document is that Inset 39 recognises the particular sensitivity of the site by continuing within its supporting text to draw the line for proposed development tightly around the existing built structures in a way consonant with Policy RA6. Changes to the text of policy Inset 39 have been proposed during the EiP but none affect this approach. It would not be right to 'cherry pick' from the proposed Allocation. A key role of the WSA (when adopted) is to optimise the distribution of waste facilities over the county. That recognition simply reinforces the error of attempting to force a strategic application outside of (and before the conclusion of) the plan process.

Welwyn Hatfield District Plan (DP)

387. **Policy RA6:** Policy RA6 insofar as it relates to this particular site has a strong pedigree. It became part of the Local Plan in 1998 following detailed and clear observations by the Alterations Inspector²⁵⁰ which, in the forward planning of the LPA (and the WPA come to that) have been adhered to in the 15 years that have since passed. The policy was restated without material change in the 2005 local plan, and as we have seen passed through into the WSALDD in the text accompanying Inset 39. All of that is consistent with the sensitive nature of the site and the high level of policy protection it enjoys. The Alterations Inspector was quite clear that he did not want to see the GB boundary adjusted to exclude the New Barnfield site.²⁵¹
388. The site specific decision made in relation to Southfield School (a different parcel of land) as long ago as 1993 should not command any real weight in current circumstances. The Policy is fully compliant with the NPPF. The reason for the Alterations Inspector acceding to HCC seeking an MDS is also relevant: The inspector concluded based on HCC evidence that the site had become a permanent part of HCC operations for the uses then operating there – which were low key uses more consistent with preserving the GB and which attracted and still attract the additional protection of Policies CLT9 and CLT 13.
389. Veolia's **stated position** was that it was 'never seeking to comply with RA6' and had sought to argue that the Proposal could comply with that core policy.
390. The most relevant criteria of RA6 are:
- i) Proposals should have no greater impact than the existing development on the openness of the Green Belt and the purposes of including land within it, and wherever possible should have less impact.*
391. It is entirely clear that the Proposal wholly fails to comply with this criterion, which is central to the protection of the most fundamental quality of the GB: its permanent openness.

²⁵⁰ M11

²⁵¹ M11 / 12 / 2.38

ii) Proposals should make a positive contribution to achieving the objectives for use of land in the Green Belt set out in paragraph 4.7.

392. Likewise the Proposal substantially fails here. The proposed benefits of the scheme are makeweights dwarfed by the harm the Proposal does to the GB generally and in terms of the objectives identified in paragraph 4.7;

iii) Proposals should not occupy a greater footprint of the site than the existing buildings, excluding temporary buildings, open spaces with direct external access and areas of hardstanding, unless this would achieve a height reduction to the benefit of visual amenity.

393. This criterion, consistent with the general approach to GB, shows the continuing sensitivity of the site. Taking it into account demonstrates the extent of the change in policy terms between what would be permitted on this site by way of acceptable redevelopment and the Proposal. It is important to the consideration of the weight to be given to the PDL status of the hardstanding that, by this adopted development plan policy, it is expressly removed from consideration in relation to the footprint of any new proposal. That observation only becomes stronger when twinned with the observations made by the Alterations Inspector in relation to the hardstanding/car park;

iv) Buildings should not exceed the height of the existing buildings.

394. This criteria, consistent with the general approach to GB, continues the proper focus on height (and so volume) of replacement structures. It militates strongly against the height and volume of the Proposal;

v) The proposal should be brought forward in the context of a master planning brief for the site as defined in paragraph 15.15;

395. The existing 2000 masterplan²⁵² well illustrates the limited ability of the site to accept further development.

vii) Any new development must be acceptable in terms of its impact on the highway network, including highway safety.

396. There are significant deficiencies in the proposed junction design. When a junction is being re-engineered with the introduction of a further lane the applicable guidance should be followed. There is no support in guidance the for proposed design of ghost island with traffic turning right out of the Mitsubishi HQ across the ghost island into an oncoming line of traffic. It is likely to be an unexpected manoeuvre to the oncoming traffic, especially if a vehicle is turning right into Mitsubishi.

397. **Policies CLT9 / CLT13:**²⁵³ These policies are intended to ensure that redundant educational facilities are put to community, leisure or recreation purposes unless it is demonstrated (a) that the buildings are unsuitable for such re-use or (b) there is no local need for such facilities.

398. The policies are by definition intended to apply to redundant buildings formerly put to educational use. The site was put to such use as a school site and latterly

²⁵² M9

²⁵³ C3/162 and C3/166

as a central library resources centre and a Park Education Centre which remained present on the site until 2012 and 2011 respectively. (INQ/HCC/06 identifies the current users of the site as at 2006 listing the following: 1. Schools Library Service (1,200m²), 2. Canteen Block (1,350m²), 3. Central Resources Library (1,930m²), 4. Training Rooms (860m²), 5. Offices (800m²) and 6. Education Support Centre (520m²)).

399. The supporting text to the plan is part of the plan and provides at para 11.22 why such buildings are subject to the policy. It says 'As such buildings are designed with the ability to accommodate large numbers of students, teachers and support staff, and they are often used by the community out of school hours, they are considered to be suitable, in principle, for occupation by community uses in general. Should an educational facility no longer be required for its original purpose, the Council will first review whether such facilities should be retained for community uses . . . '.
400. Thus it is the design of the building that renders it in principle suitable for community uses in general. There is no suggestion that language does not apply here. Exception (b) above provides for the exceptional case where that general expectation is not met and thereby reinforces the strength of the normal rule. It is entirely clear that the building was an educational facility and (according to HCC) it is no longer required for its original purpose. It is also worth bearing in mind that the current reason the site is vacant is precisely because it has been vacated with a view to this proposal being brought forward as a result of it being proposed as the reference site in the Outline Business Case.
401. Those uses of the site have not been abandoned (no case has been made that they have), but if the uses had been abandoned potentially leaving the site or part of the site with a nil use that can hardly assist the Proposal overall. The reality is that the site retains lawful D1 use.
402. Therefore, the policy applies. Neither the applicant nor HCC have sought to demonstrate either (a) or (b). It follows that CLT 9 militates strongly against the proposal providing as it does, for the protection of valuable community spaces. CLT 13 provides further protection making it clear that planning permission will not be granted for proposals involving either the loss of community facilities or the loss of land allocated for such purposes unless it can be demonstrated that either there is no longer a need for them or there is an acceptable alternative means of meeting the need. Neither the applicant nor HCC have sought to demonstrate compliance with this policy.

The Emerging District Plan

403. The Applicant seeks to put some weight on this document in particular in relation to (1) proposed housing NW of Hatfield and (2) the idea that GB land will have to be lost for housing through the plan led process.
404. As to the second of these, there is no good analogy between on the one hand a planning application seeking to demonstrate very special circumstances precisely because the site on which it is proposed has since 1998 and before been preserved as part of the GB, and on other hand the deliberate allocation of land through the plan led process which looks sequentially at the allocation of land starting with the urban area and moving out as required. The first is almost the logical opposite of the second. The Emerging Plan therefore provides no

support for **Veolia's** argument as a matter of logic, but in any event it is at an early consultation stage and accordingly commands little weight.

405. As to the first point the proposed allocation is on the opposite side of Hatfield to the Proposal and accordingly cannot sensibly be said to lend weight to any of the arguments deployed in favour of the Proposal (CHP). If it is finally placed in this location or nearby it will be located c. 4km away from the Proposal.
406. A related point is that draft PPS10 (below) demonstrates that the policy background is moving strongly against such facilities being located within the GB. The direction of travel has been reversed in that regard.

Conclusion in relation to the Development Plan

407. It is therefore clear that the Proposal is in substantial conflict with the WCS, the WSA and the DP for all the reasons set out above.

National policy

EN-1, EN-3

408. As set out above it is clear that the WCS represents the local translation of amongst other national guidance the NPPF, EN-1, EN-3, and PPS10. Accordingly, those documents, which have been accorded some weight in relation to a number of **inspector's decisions where plans have** generally predated the production of those documents, should be accorded less weight here: They have already been taken into account in the production of local plans in accordance with the plan led process. In any event, as Mr Kosky accepts, they are primarily directed towards NSIP and require in the field of NSIP the application of different statutory tests.²⁵⁴ In particular, there is no good analogy between the tests for advancing alternative sites for a project of the scale of a NSIP, which will not sit beside a WSA designed expressly for that purpose, and a WCS which will very shortly sit beside an adopted WSA.

Draft PPS 10²⁵⁵

409. Conversely, '**draft PPS 10**' has, as yet – for obvious reasons - no local translation. As Mr Kosky accepted it should be accorded (at least) some weight at its present stage. Consultation closed on 23 September 2013 and it seems likely that the final form of the guidance will be in place by the time the SoS decides this application.
410. Be that as it may the weight to be given to the currently relevant passages in that document (paragraphs 26 and 27) which appear under the heading of '**Green Belt**' is heightened by the following facts. Firstly, they are central and not peripheral to the new guidance, and secondly are expressly said to be in line with the commitment in the Coalition Agreement. For those reasons they are unlikely to be subject to significant change through the consultation process, notwithstanding the substantial level of objection to the changes. Mr Kosky (for

²⁵⁴ XX Kosky c.13:35

²⁵⁵ D8

Veolia) realistically adopted as a working assumption that the relevant passages were substantially in the form in which the final document would be issued.

411. The impact that these policies have on the VSC case is significant, and capable of tipping the balance against the VSC case if it ever was in favour of it. There are two particularly important changes proposed. The first is that locational needs are no longer to be given significant weight as a matter of general policy. The second is that the wider environmental and economic benefits are no longer to be given significant weight as a matter of general policy. The text could not be clearer, stating that 'This means that, under national planning policy, these planning considerations should not be given more significant weight compared to others when planning applications are decided for waste facilities in the Green Belt.' **The new guidance represents a fundamental** rebalancing of the factors that are routinely placed into the planning balance in cases of this kind. The weight to be given to those two factors has been deliberately downgraded.
412. Moreover, the express purpose of the changes is set out at the end of paragraph 26 – it is to maintain stringent protection against inappropriate development in the GB. It does that by fully restoring the weighting that previously existed. Stringent protection of the GB is maintained by requiring any harm to the GB to be accorded substantial weight, and providing that the two kinds of benefit that had previously been given significant policy weight no longer have that status, but are instead to be ranked as any other material consideration. Lastly, it is also notable that the draft reinforces co-operation between authorities and (where it is genuinely required in response to particular locational needs) consideration of the definition of GB boundaries through the plan led process.

PPS 10

413. In any event, the extant version of PPS 10 does not materially dilute the approach required by the NPPF in the present case because there are no particular locational factors that require a RERF to be in the GB, and the Applicant cannot demonstrate that the proposal would not prejudice the treatment of waste within the waste hierarchy. The proposal can and should be located within the urban area at a size that is more related to it becoming one of a range of sites designed to meet the likely need for treating residual waste over the plan period. The proposal fails to accord with four of the criteria in Annex E (visual intrusion, built heritage, traffic and access, and noise and vibration). PPS 10 does not provide any such support **for Veolia's case that** PDL should be preferred '**wherever possible**'. Para 21 does not use that phrase, which is located in the section of the guidance dealing with the plan led approach, and sets out a list of **criteria that WPA's should take** into account in deciding which sites and areas to identify for waste management facilities. That list includes giving a priority to PDL but also includes 4 other considerations set out in para 21(i) which, significantly, include physical and environmental constraints on development and the exhortation to support the sustainable movement of waste, seeking when practicable and beneficial to use modes other than road transport.
414. Further, paragraph 20 of PPS 10 illustrates weaknesses in the present application. It requires authorities to consider a broad range of sites including industrial sites, looking for opportunities to co-locate facilities together and with complementary facilities. The site is not an industrial site (or any of the kinds of areas contemplated by paragraph 20) and does not provide for co-location.

415. Linked to that, the proposal is premature given its scale. It is inevitable that granting permission for this proposal would have a predetermining effect on the site allocations yet to be made.

416. Nor do EN-1, EN-3 require a substantially different approach to be taken to the issue of GB harm in this case. However, the emphasis on plan led development continues within these documents. And they are consistent with the idea that procurement should follow after proper planning: The DEFRA Guide (see further below) is explicit on that issue and advises that such an approach is 'vital'.²⁵⁶

The Defra Guide to Energy from Waste²⁵⁷

417. The document provides a comprehensive discussion of the topic. It is an up-to-date and a more sophisticated analysis of the issues presented by EfW development in light of recent experience. It emphasises:

- a. The importance of the plan led process and consultation within that process **which is said to be 'vital'**. Para **186** advises that 'This early step in the process of developing local plans is critical to shaping proposals. This is especially pertinent given the emphasis placed by Government on an up-to-date Local Plan being the keystone of the planning system against which individual planning **applications will be judged.**';
- b. Consistent with that, that plans should be complete before procurement commences (and not the reverse as happened here);
- c. The need for full consideration of the size and scale of site. It is apparent from reading the section headed "**Scale and Site**" that very little of it favours the Proposal;
- d. It provides a summary of the key differences between various energy from waste technologies (which Mr McGurk did not seriously disagree with).

Effect on Green Belt

418. It cannot reasonably be denied that the Proposal will have a substantial impact on the openness of the GB. The value of this land has been identified objectively by the Alterations Inspector as reflected in the DP. Understanding the local topography is key. As regards the view down Travellers Lane towards the appeal site there is a substantial change which cannot be appreciated from the photomontage because the photomontage is a 180 degree field of view, and everything is pushed into the background. Mr Flatman (for WHBC) considered that view was subject to major-moderate adverse change because in the existing view, Tesco is at much lower elevation, part of the Travellers Lane industrial site. Prior to any tree/vegetation removal, it is completely distinct from the site location. The major-moderate assessment signifies there is a huge change.

²⁵⁶ E7 / 162 - "It is this apparent, but necessary, step from a broad output-based specification to a clear proposal with only limited scope for modification that can give rise to the 'behind closed doors' feel of the process. This is why identifying and taking opportunities to influence the adopted plans and policies **prior to procurement commencing** is so vital."

²⁵⁷ E7

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419. In terms of the purposes of the GB the following effects arise. The development will bring significant sprawl due to its sheer size and urbanising effect; it would erode part of a critical gap between Hatfield and Welham Green.²⁵⁸ Equally, there can be no real doubt that the Proposal would cause encroachment. It will also affect the setting of Hatfield (which is a historic town). The serious impact in landscape and visual amenity terms can be easily appreciated from the available documents.
420. All of those harms add substantially to the definitional harm caused by inappropriate development. All of them are entitled to substantial weight in accordance with the NPPF.²⁵⁹
421. Moreover, the following additional observations can be made in relation to the likely level of landscape / visual harm.

Zone of Theoretical Visibility (ZTV) modelling

422. The modelling employed to inform about the full likely visibility of the proposal has a number of significant shortcomings. It is limited to a radius of 15 km, which by way of example (just) misses the Chilterns AONB. Views from the AONB would have received very high sensitivity and so been capable of registering a significant impact even with a magnitude of change of very low. Mr **Flatman's evidence** (for WHBC) was that there were potential views from the scarp edge due to its elevated position, and that a 25 km radius would have been appropriate for a structure of this height applying the best available advice contained in the Scottish National Heritage guidance. Mr Chard (for Veolia) was not able to discount the prospect of significant impacts outside the existing 15km radius. The choice of radius is all the more surprising in light of Mr **Chard's** acceptance that the stack could be visible at 15 miles (24 km) on a clear day.²⁶⁰
423. Significantly, the ZTV it is based on a single vertical line taken to represent a line between the flues. Accordingly, it has no horizontal dimension. That means that the potential visibility of the structure is likely to be significantly understated because of the width of the dome which is up to 170m at its base reducing towards the top of the dome. The point can easily be tested by looking at the broad extent of visibility noted at 20m height (taken as half way up the dome).²⁶¹ if horizontal dimensions were added to the model the areas in which such substantial parts of the dome would remain visible could be expected to be much greater. Similarly, the flues themselves have no horizontal dimension. These are things that might easily have been accommodated within a more detailed modelling exercise.
424. The model under-represents the likely impact on the parkland at Hatfield House. As Mr Flatman explained progressive removal of forestry plantations will certainly open up views onto the estate and give rise to further visual impacts.
425. The model, contrary to guidance, did not use OS landform profile when the landform is, on any view, not simple. Nor was any bare earth model provided.

²⁵⁸ A view substantially shared by Mr Chivers, Vincent and Gorbing, and the Alterations Inspector: [WH-SC/51/4.10-4.12]. Saved policy GBSP1 pays particular regard to the need to prevent settlements merging. [WH-SC PoE / 53 / 4.12]

²⁵⁹ D1/20/88

²⁶⁰ V / 9.1 / 48 / 6.36

²⁶¹ At which height the dome appears to have a similar width to its ground width: See e.g. INQ/V/21 produced on 23.10.13.

Methodology

426. The use of intermediate categories of magnitude is a significant departure from the actual methodology provided for the analysis.

Photomontage

427. Mr Flatman has detailed in his evidence the issues arising from the photomontages produced for this inquiry. The Applicant cannot escape from the fact that 40 deg extracts should have been provided sooner (and in compliance with the Advice Note) because the Design Hive documents of July 2013²⁶² included in their methodology for the first time statements explaining the usefulness of the 40 degree extracts. The new text said [O2/5/2.8] specified within ' . . . Panoramic views should only be viewed when curved to a cylindrical shape whose radius is equal to that of the calculated viewing distance. When viewed on site, panoramic photomontages should be accompanied by A3 size 40° rectilinear cropped sections to better assess the visual impact of a proposed scheme'.

428. The constraints of the site and attempts to fit part of the structure within the MDS designation have meant that the Applicant has had only limited ability to refine the layout of the proposed design on site. The limited ability to plant to the NW and the need for a substantial retaining wall are further indicators of those constraints.

429. The plume will be at c. 60m length for c. 25%-30% of the time. The plume will have an additional adverse impact, and requires to be considered cumulatively with the impact of the dome and flues. Nor does the methodology cope adequately with the temporal nature of the flume.

The level of harm

430. Mr Flatman (WHBC) provides in his tables 8.3 and 8.4²⁶³ the level of harm caused in landscape and visual amenity terms. In fact in terms of visual impact there is little between Mr Flatman and Mr Chard (Veolia), both agree that significant impacts arise from a wide variety of representative receptors. It follows that the visual impact of the proposal in its surrounds will be significantly **damaging and that factor should be accorded substantial weight. Mr Flatman's** analysis should be preferred where they differ for the summary reasons he gives in his notes column and because he has corrected applied the methodology provided by Mr Chard without using intermediate categories. The extent of the visual harm caused can also be judged by reference to the '*relatively extensive local network*' of PROW where both the view and skyline will be dominated by the Proposal.

WHLP Policy R19 – Noise:

431. Policy R19 provides that proposals will be refused if the development is likely to generate unacceptable noise for other land uses.

432. The Proposal is of strategic size and has been the subject of considerable investment in terms of supporting information. In those circumstances it is

²⁶² O2 / 5 / 2.8, c.f. A20 / 6 / 2.7

²⁶³ Now found in INQ/WHBC/10 and INQ/WHBC/11

surprising and unsatisfactory that no adequate noise baseline survey exists in relation to nearby residential receptors. The need for such baseline surveys, upon which all further analysis of the site realistically depends, means that the Applicant is unable to demonstrate that the Proposal will not generate unacceptable noise impacts. Lack of a robust baseline means that there can be significant underestimation of the impact of noise from the facility. **Veolia's** witness has therefore based his judgment on wholly inadequate data; and there is no sufficient noise impact assessment. RPS (who reviewed the modelling for HCC the purposes of Regulation 22), had concluded that the baseline assessment was inadequate.²⁶⁴ They indicated that was an issue of '**High Importance**'.

433. WHBCs indicated that the assumptions used to inform the baseline substantially overstated the level of background noise. Mr Maneylaws (for Veolia) accepted that a robust baseline must be established. He agreed there were major differences in the baseline data provided available to URS and the WHBC collected data. He accepted that the reason for the limited measurements taken related to short notice being given and having to comply with project timescales. However, the Applicant has since had ample time to improve on this assessment, but has not taken the opportunity to do so. Thus the total level of assessment relating to nearby residential dwellings remains a total of 3 hours of measurements during the day and 3 hours at night. There is no apparent accounting for changes in background noise levels throughout the night, differences that may be apparent throughout the week compared to weekends, and any influence from the prevailing wind.
434. The data that Mr Maneylaws had to apply was supplied to him by the Applicant. He had to assume it was fit for purpose. He accepted that LAeq measurements, where relied upon for assessment, mask significant noise because of the averaging effect. If the noise levels are in reality significantly more intrusive, it may not be practicable to reduce the noise by imposing conditions because of the variety of different noise sources creating a combined noise level. It would be necessary to reduce noise energy by 50% to achieve a 3 dB reduction. Accordingly, if it transpires that a reduction of or near to that level is required it is not easy to see how it might be realised.
435. As outlined within BS 4142 a correction of +5 dB should be applied if the noise is tonal, contains distinct impulses or is irregular enough to attract attention. In relation to tonal variation there was no evidence from the Applicant demonstrating an absence of irregular noise at night. The plant has lots of equipment that might be tonal for example fans and turbines. A narrow band analysis would indicate very clearly whether such tonal elements existed, but no narrow band analysis had been carried out. Nor, as a further example of important limitations in the data, is there any time history chart for any comparable facility. Accordingly, it is appropriate to apply the tonal + 5dB correction in considering the available material.
436. As a result it is not possible to be confident that no unacceptable noise issues will arise and the Proposal fails to accord with Policy R19.

²⁶⁴ INQ/WHBC/3 p. 29 / 5.3.2

Heritage

437. On matters of heritage the Council respectfully adopts the submissions made by English Heritage and Gascoyne Cecil Estates. Those considerations deserve to be accorded the greatest weight.

Very special circumstances

438. It is against the very heavy burden of harms set out above that the case for VSC must be tested. In relation to GB harm the case in VSC must clearly outweigh the identified harms.

439. It is for the Applicant to make this case good. It is a weak case for the following reasons. The great reliance on the Major developed Sites (MDS) status is misplaced. **HCC's Committee Report did not even refer to the MDS still less** rely upon it. With the adoption of the WCS and subsequent developments the case on need has shifted firmly against the proposal at its present scale with the consequent inability to show it will not prejudice the waste hierarchy. It is likely to stifle or hinder further advances over the plan period and the imperative to drive waste further up the hierarchy. Equally, the suggestion of urgency is overstated and insufficient to overcome either the risks to the waste hierarchy over the plan period or the imminence of the production of the WSA. The ASA is no substitute for a full consideration of what sites should be allocated or following the correct order of events where proper planning would take place prior to procurement. The other benefits associated with the Proposal (nos. (viii) to (xi)) will arise in any event by virtue of the delivery of suitable sites through the plan led process.

(i) and (ii) - Need

440. **There was no doubt in the WCS Inspector's mind that the plan led process** would produce adequate capacity and that it was not necessary to use GB land. That is the essential backdrop to the question of need. Against that backdrop no positive case is alleged (with any detail) by either the Applicant or HCC that alternative provision cannot be made for waste in the meantime. The WDA has not appeared and no detail in relation to the existing contractual and proposed future contractual arrangements with other providers of waste facilities has been provided. It would be absurd **to assume that the WDA has no 'Plan B'** in the event that permission is refused and there is no good evidence to that effect. Veolia have only undertaken general research into facilities available in neighbouring counties, without any particular regard as to how long such facilities might remain available to HCC if required. That is important bearing in mind the plan period of 2026 and that adequate provision will have been made by, if not before, that stage.

441. Accordingly, whilst there is need there is nothing to say it is presently urgent in the sense it cannot be met. The WCS does not support such an analysis and does not describe the need as either urgent or pressing (or in any other similar way). Nor did either HCC or the inspector apparently consider that it was necessary to insert a policy into the WCS dealing with urgent need.

442. That submission is not a suggestion either that further residual waste provision is not needed, or that EfW has no local place, but it demolishes the suggestion that it is necessary to make provision now at a strategic scale on GB land outside the plan led process which is imminently to be completed with a view to

optimising the spatial planning of waste provision. It reduces significantly the weight that might otherwise be accorded to the VSC. Mr Kosky (for Veolia) gave a clear timeframe for the 5-6 year delay which he said might accrue if permission were refused. Bearing in mind the proposal will not be operational for 4 years the additional delay he envisages is of the order of 1-2 years (consistent with the certainty an adopted LP will bring).

443. The advantage provided by the Proposal in that context is the speed and certainty of delivery. Those are material factors, but they are simply to be counted in the balance.
444. Speed should not be given undue weight in light of: (a) the imminence of the Site Allocations process, and so the full local Waste Plan, being completed; (b) the historical failings in both the production of the waste plan (as set out in the evidence of NBAF) and the procurement process. The draft Allocations are proposed precisely on the basis they are considered to be deliverable. There is therefore no good reason to think that sufficient of those allocations will not be taken up (the benefits to prospective developers of having the certainty of a finalised plan are well understood). It is probable that many potential operators/owners have not actively pursued plans during the currency of this application knowing that it is (a) supported by PFI credits and (b) in addition, has been supported for a substantial period of time by the WDA and (then) the WPA, and continues to be so, for development on HCC land. In that regard the careful language in the HCC note giving the view of the WDA is important. They say the **choice of Reference Site did not 'determine'**²⁶⁵ the solution that would ultimately be procured, but that word suggests that the choice was material and probably influential. However, the WDA have not appeared to explain further their position.
445. As to delivery the points made above about the imminent completion of the plan led process are relevant here too, but on the footing that the capacity gap identified in the WCS is most pressing before 2017 (in fact until 2015/16) the Proposal will not assist because it will not be operational until late 2017.
446. The context of this application is critical in terms of properly assessing the weight to be accorded to the need case. The national context is one of improving datasets demonstrating the capacity effects of a glut of recent permissions for facilities dealing with residual waste. Thus the picture continues to develop and the figures require careful consideration and reflection. This can best be done over the plan period, by adopting the incremental style that was so obviously in favour in 2007 when the relevant authorities when a partnership approach prevailed, fostering local co-operation between authorities with a view to carrying public opinion with them.²⁶⁶
447. The potential problems of overprovision are well recognised in both the policy documents and recent events. The Veolia plant in Sheffield has been the subject of repeated applications **to vary conditions in order to 'feed the plant'** using waste from outside Sheffield. The parallel with a situation in which (even assuming the WCS figures) a surplus of 20,000 tonnes will result in relation to C&I waste by 2026 favours a more incremental approach. Apart from having to draw C&I waste in from farther afield, the other risk is that advancements in technology

²⁶⁵ INQ/HCC/7

²⁶⁶ See document M4

and further progress up the waste hierarchy may be stifled or impeded. Mr Kirkman (for Veolia) accepted that new technologies could come forward during the plan period. This proposal would **drive a coach and horses through the Plan's** vision of encouraging and embracing new and emerging technology over this plan period.

The general and local position on waste arisings

448. The levels of residual waste arising were analysed by Mr Fletcher in his evidence for WHBC (summary tables in INQ/WHBC/7 and 8). Using the 2026 figures he calculates residual waste arising at 602 ktpa using the WCS figures and analysis. Looking broadly at the potential residual waste facilities they exceed that figure (he puts the figure at 630 ktpa) once New Barnfield is included but without taking into account any further development post 2013, and without making any allowance for other EFW possibilities nearby over the plan period (Edmonton and Lakeside are provided as examples). This analysis demonstrates the likely impacts of building New Barnfield so early in the plan period.
449. **By a series of notes produced after Mr Fletcher's evidence the Applicant and HCC** seek to depart from that analysis which is substantially based on the WCS Tables. If they wish to adopt the WCS then for consistency they should accept **Mr Fletcher's analysis** of those figures. However, if the WCS is to be departed from then it is right to bear in mind that the Applicant and WHBC agree that the 2009 DEFRA dataset is now the preferable dataset to use and the 2020 Figures before the inquiry indicate substantial trends downwards in waste arising, based on the prospect of increased recycling trends over the relevant period. Accordingly, applying the broad thrust of the up-to-date data suggests that the WCS tables may be unduly pessimistic and in any event require the early review that was contemplated as a possibility by the WCS Inspector.

(iii) – Major Developed Sites / Previously Developed Land

450. The MDS is, in the context of this particular application, really of no assistance to Veolia. Whilst the MDS might be of considerable assistance in support of a scheme close to the scale of the existing development (and in substantial compliance with the aims and objectives of RA6), because of the huge disparity between the existing built form on the site and the proposal the MDS provides no support.
451. The policy position created by RA6 also demonstrates the limited weight that can be given to the areas of PDL deliberately excluded from calculating the proper extent of any redevelopment of the site. PDL remains only one factor in the list at para 21 of PPS10 and requires to be considered by reference to the particular facts and applicable policy in this case, as well as the sensitivity of the site. Once that approach is taken no real weight should apply to the areas of hardstanding, and only limited weight can be given to the areas that are built form in the consideration of a proposal of such massively different scale.

(iv) - Within an area of search

452. It is true the Proposal lies within an area of search, but to rely on this feature is to emphasise that the approach should be plan led without taking it to its logical conclusion: namely that the draft WSA does not support development of this scale at this location. In any event the presence of the site within the area of search does not mean it presently complies with Policy 1 for the reasons set

out above. Further, the site may well be removed from the draft Allocations as a result of the representations made against its proposed allocation.

(v) - The ASA

453. The limitations in the ASA appear to be common ground, most if not all appearing in the text of the third iteration of the document itself. The purpose of the document is not to demonstrate VSC. It is instead designed to meet the lesser threshold set out in the Trusthouse Forte case. It is a stand alone document not linked to any particular policy consideration of the WCS (for example Policy 6). For those reasons:

454. It is not a site finding tool or exercise;

- i. It ignores any otherwise suitable areas of land where more than de minimis land assembly would be required;
- ii. It does not have any weightings, and no specific weighting for GB policy;
- iii. It did not consider any other MDS sites;
- iv. It does not offer any planning appraisal of any site or seek to make any planning judgments in relation to any site;
- v. Related to that, it only contains one criterion for mitigation because it is **"necessarily [a] limited consideration"** of the alternatives.
- vi. The ASA judgments relating to availability of sites are made against the backdrop of this application and for reasons already set out it is unlikely that other viable and suitable sites will be actively put forward during the currency of the application. Accordingly it is bound to understate potential alternatives for that additional reason.
- vii. Moreover, the ASA suffers from the various other difficulties outlined in evidence to the inquiry.

(vii) Single centralised facility

455. As long ago as 2006 Eunomia, acknowledged experts in the field, had assessed the issues confronting HCC. They considered the flexibility of various technologies, and grate incineration did not fare well. Of the five recommendations they suggested, none was a one plant solution. Mr McGurk (for Veolia) accepted that an incremental approach became more suitable (i) as the WPA moved closer to potential surplus of capacity, (ii) in the event that there was significant uncertainty in C&I figures, and (iii) as the possibility of dealing with waste in the RERF that might otherwise be dealt with higher in the hierarchy increased.

456. In addition to the policy points made above that support a multi-site strategy, there are clear potential advantages of a multi-site strategy in terms of the dispersal pattern through the county, having regard to the large towns within the north of the county, and bearing in mind the main road network has a N to S bias that would also favour a more dispersed form of waste provision. Thus the proximity principle lends strong support to the consideration of such a strategy. There are several successful examples of smaller scale EfW plants in operation. The relevant economies of scale probably stop at around 200 ktpa, and CD J9 did not provide support for significant economies of scale above that figure because

the discussion in J9 is predicated on a number of local authorities acting as an effective group thereby expanding the area of search without any effective competition. That is not the situation in Hertfordshire especially bearing in mind the competition there will be for the C&I waste on which the facility will depend.

457. As pointed out earlier, the WCS Inspector expected a more dispersed pattern of waste facilities for C&I waste and so whilst integration of LACW and C&I together is supported by the current Waste Strategy for England, that would normally be on the basis that the C&I dealt with would be a small proportion of **the overall waste accepted. That in turn is consistent with the "top up" thesis on which this Proposal was originally advanced, but which on current figures looks unlikely to be the reality (esp. having regard to the 180 / 200 ktpa split adopted for the purposes of the WCS analysis). Mr Fletcher's experience was that most plants using C&I top up took in about 10% C&I waste. The proposal may operate as roughly a 50/50 split.**
458. Based on the adopted WCS and the emerging WSA (with a number of allocations marked as appropriate for EfW), it would not be sensible to discount the idea of an alternative configuration of sites coming forward to meet the identified need in a policy compliant way.

(viii) CHP / Electricity

459. The proposal is CHP ready. No more of any real weight can be said on its behalf at this stage. Insofar as WHBC is able to test the limited information provided by the Applicant the following points can be made. They have not identified or entered into any arrangements with particular users of heat who have said they will take advantage of heat generation, including the two most obvious potential users: Tesco and Mitsubishi. Both policy and practice recognise the substantial costs involved in translating potential provision to actual provision of heat. Para 81 of the DEFRA guide notes that many such plants lack heat customers due to location or the relative cost of alternatives. The approximate cost is put at £1M / km and Mr Aumonier did not substantially disagree with applying that costing to the Primary Network identified for the four options contained within the Heat Plan. The Secondary Network will add additional cost.
460. The contractual obligations on the Applicant in this respect are very limited being (boiled down to their essentials) to co-operate with HCC and act reasonably in good faith.²⁶⁷
461. **The DEFRA guide refers to looking for sites 'with good potential'** for use of heat through CHP through the plan led process. This site does not have such a level of potential. It would likely rely on retrofitting in relation to existing properties and the costs involved in that. Such retrofitting is not impossible, but the costs and location mean that the site does not have good potential for CHP.

²⁶⁷ Clause 43.2 of the Contract provides: *"It is acknowledged that the Facility has been designed to allow the provision of combined heat and power (CHP) when such provision becomes feasible in the context of adjoining and/or neighbouring properties and developments. If the Authority so requires, the Parties shall work together in good faith to develop such combined heat and power potential and shall co-operate and act reasonably in relation to Authority Change Notices or Contractor Change Notices issued in respect of CHP. This anticipated change is facilitated by the Authority's original OJEU contract notice and envisaged by the Parties entering the Contract, subject to third party dependencies, technical and economic feasibility."* (Emphasis supplied)

462. There are examples of potential users of heat being identified before planning permission is granted, and the importance of that point will be shaped by the particular circumstances of the case. It is clear that substantial effort has been put into trying to get potential users onside and yet nothing solid has materialised.

463. In those circumstances the CHP ready nature of the Proposal should not attract any real weight.

464. The contribution of 26 MW is a small contribution to overall targets and would in any event be likely to be made by other facilities coming forward in accordance with the WSA.

(viii) – (xi) Other benefits of the scheme

465. These are all benefits of the scheme (save in relation to the driving of waste up the hierarchy which has been dealt with above). However, all of those benefits would be expected to arise in association with other facilities coming forward in accordance with the WSA. In those circumstances they cannot afford any real weight to a case requiring VSC to be demonstrated.

The Alleged Fallback Position

466. The various fallbacks put forward on behalf of Veolia are fanciful. It is highly unlikely that this county council site will be put to B2 / B8 use. It is notable that there is no suggestion of a fallback position within the HCC Committee Report, nor did HCC pursue such a contention in evidence to the Inquiry. Speculation as to whether if B class use were introduced to the site it would be more likely to be B1, or B2 / B8 uses is no more than that.

467. Introduction of B2 / B8 (or B1) would be contrary to the application of CLT 9 and 13 set out above (and the determination would be made by WHBC as LPA). The extent of any permitted redevelopment would in reality make the site an unattractive proposition for B2 / B8 use. Accordingly, the alleged fallbacks advanced by the Applicant are unrealistic, not supported by any evidence, and should not be given any weight. As pointed out above it can hardly advance the **Applicant's** case to say that any previous use has been abandoned, but the reality is the site retains lawful D1 use.

Local Finance Considerations and Cost

468. This point is pursued by HCC but not by the Applicant. It has been a surprising feature of this inquiry that the WDA has chosen not to provide any direct evidence which might be challenged. WHBC's evidence to the following effect therefore stands unchallenged:

469. The Proposal does not demonstrate the broad consensus required by the DEFRA guidance (bearing in mind the 98% of representations made against the scheme, and the resistance of other bodies including WHBC and English Heritage during this application).

- a. The application arises from a procurement exercise conducted by the WDA alone, and not by a partnership of authorities²⁶⁸, and not by any

²⁶⁸ And c.f. the incremental approach in doc M4

logical progression through the stages of the Waste Development Plan documents.

- b. The approach to planning risk in the application for PFI credits was deeply flawed for the reasons set out in detail in section 3 of WH-SC3.
- c. Accordingly very little weight should be given to the award of PFI credits as a LFC.
- d. Neither the Applicant nor HCC have advanced a positive case to say that the PFI credits would be lost in the event of a refusal of permission. Mr McGurk (for Veolia) appeared to accept that the credits would not be lost as a consequence of refusal. Mr Leech for HCC) suggests refusal **'could jeopardise'** the funding but offers no further elaboration or primary documents to support his contention. The WDA has offered no direct evidence on the point.

Miscellaneous matters

Hartlebury

470. The Appellant has relied upon two previous decisions in particular. It may be helpful therefore to say just a few words about those decisions.

471. Hartlebury is obviously distinguishable on its facts. It was concerned with a site within the Hartlebury Trading Estate with units varying from 50m² to 10,750m², there was an established fallback position for 12,871m² of industrial building units. The ways in which the GB was said to be affected were very different, and there was no suggestion of significant harm to visual amenity.²⁶⁹

Shrewsbury

472. Shrewsbury concerned an integrated package of proposals and therefore involved an entirely different contractual framework. The particular plant of 90 ktpa under consideration had very different dimensions, the appeal site had an entirely different planning history, the visual and landscape considerations were of a different order, EH had no remaining objection to the scheme²⁷⁰. The context for CHP was also different. The landscape harm in that case does not appear to have been treated as significant, and the level of visual impact was of a different order.

Prematurity

473. The applicable guidance remains within The Planning System – General Principles. It is fortified by the core planning principle of a plan led approach contained in the NPPF. Paragraph 17 of the General Principles states that a prematurity refusal may be justified where:

'a proposed development is so substantial...that granting permission could prejudice the DPD by pre-determining decisions about the scale, location, or phasing of new development which are being addressed in the DPD'.

²⁶⁹ CD F7

²⁷⁰ CD F1

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474. It is common ground, at least between WHBC and HCC, that the proposal is of strategic scale, and that, if the Proposal is permitted it would become a de facto (or back door) strategic site.²⁷¹ At 380,000 tpa it is nearly twice the threshold of a plant recognised as large by the WCS.²⁷² Accordingly there can be no real debate about whether the proposal is substantial enough to give rise to a prematurity argument.
475. Mr Leech (for HCC) accepts in terms that granting permission for this facility would not permit thereafter the adoption of a smaller multiple facility approach to LACW²⁷³ (consistent with the HCC view that the Proposal was intended substantially to and (even on the WCS figures) will comfortably overprovide in relation to all remaining residual LACW). Table 6 WCS²⁷⁴ provides those figures as 276 ktpa in 2016, 254 ktpa in 2021, and 232 ktpa in 2026.
476. Accordingly, the spatial strategy will have been pre-determined by permitting more than enough capacity to treat the entire residual LACW stream for the entire county. Equally, it pre-determines the issue of location prior to the WSA being found sound and being adopted. It does so in relation to a site that is under direct challenge through the WSA process, and notwithstanding the locational factors identified within the WSA in relation to thermal treatment facilities.²⁷⁵
477. The WSALDD is currently going through its EiP which will conclude on 6 November 2013 and accordingly it is at a very advanced stage. A decision to **grant planning permission would render otiose the Inspector's consideration of the New Barnfield site and the capacity of other sites more generally.**
478. **HCC's suggestion**²⁷⁶ that this inquiry has considered all the sites before the WSA Inspector in as much depth as will occur at the examination is misconceived. The WSA is the sister document to the WCS and contains the allocations and delivery strategy necessary for the WCS to be realised. In the normal way the WSA Inspector will have a scope that the Inspector does not have: the WSA Inspector will review the allocation sites²⁷⁷ and ELAS in relation to a proposed submission document that has been through previous consultation and which is supported by an SEA, SA and AA²⁷⁸, and which is put forward a sound document which is justified and effective.²⁷⁹
479. In those circumstances it is clear that permitting this development in advance of the adoption of the WSA would be premature applying the test in paragraph 17 of General Principles.

²⁷¹ IL / 15 / 4.3 and 29 / 4.67

²⁷² C1 / 28 / Table 9

²⁷³ IL / 11 / 3.7

²⁷⁴ C1 / 26 / Table 6

²⁷⁵ C5 / 8 / Table 2.1 entry 8

²⁷⁶ IL / 13 / 3.13

²⁷⁷ **Tested through HCC's site selection methodology** (about which neither the Applicant nor HCC have raised a point at this inquiry) [C5/15/4.9]

²⁷⁸ C5 second page in (unnumbered)

²⁷⁹ **I.e. "Justified** – based on proportionate evidence and the most appropriate strategy when considered against reasonable alternatives; **Effective – deliverable;** " [C5/ii]

Conclusion

480. The Proposal is contrary to adopted policy at every level. The breaches are stark and substantial. The Proposal amounts to inappropriate development causing substantial harm by the Green Belt. The harm includes definitional harm, substantial harm to openness by increasing volume 20 fold over what the MDS Policy would permit to a total volume of 585,000m³. There is additional harm to the purposes of the GB (in particular encroachment, urban sprawl and avoiding coalescence). There is very significant visual impact harm and landscape harm to the GB. All of those harms are entitled to substantial weight applying the NPPF. Additional harm of the greatest weight arises through the failure to conserve important heritage assets. The case on VSC is substantially weakened by the proposed changes contained in the draft PPS 10 and the recognition that it is a priority of the Coalition Government to re-establish stringent protection of the GB. The other factors supporting the case of VSC will soon be met by alternative forms of waste provision which may well provide better support to moving waste up the hierarchy. More recent policy, in particular that in the DEFRA guide, reinforces the need for the plan led process to deal with what are in effect strategic allocations. The strategic nature of the proposal and its determinative impact on the strategy and spatial distribution of residual waste facilities serve to demonstrate its prematurity in light of the imminently to be adopted WSA.

481. The proposal is the wrong proposal, in the wrong place, at the wrong time (i.e. premature).²⁸⁰ The inspector is respectfully invited to recommend to the Secretary of State that the application is refused.

THE CASE FOR ENGLISH HERITAGE

Introduction

482. English Heritage (EH) appears at this inquiry in order to inform the SoS of its views on the effect of the proposed development on a number of designated **heritage assets as requested in the Secretary of State's letter of 28th January 2013.**

Relevant Legislation

483. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the application to be determined in accordance with the development plan, unless material considerations indicate otherwise. The heritage witness for each main party considers that the proposals do not comply with the relevant heritage and conservation policies in relevant Local Plans, namely policy 11 of the Waste Core Strategy 2012 and policy R28 of the Welwyn Hatfield District Plan 2005. The National Planning Policy Framework is a material consideration for the purposes of section 38(6) (addressed below).

484. It is also agreed that the proposed development would have a material impact on the setting of listed buildings and the conservation area. Sections 66 and 72 of the Planning (Listed Building and Conservation Areas) Act 1990 are therefore engaged. These provisions require the SoS to pay special regard to the

²⁸⁰ Mr Chivers was XX about WH-SC / 32 / 3.6 where he discusses timing of providing residual treatment. That observation was made in the context of document M4 and the incremental provision discussed therein. It was not dealing with the issue of prematurity which is dealt with expressly elsewhere in the proof WH-SC/58/5.1-5.2

desirability of preserving each listed building in question or its setting or any features of special architectural or historic interest which it possesses and to pay special attention to the desirability of preserving or enhancing the character or appearance of the Old Hatfield conservation area. (Some guidance on this duty is provided in Bedford²⁸¹, paragraphs 33 to 40).

National Policy

485. The Framework identifies as one of its core planning principles the conservation of heritage assets in a manner appropriate to their significance. One of the three roles of sustainable development is an environmental role which includes protecting and enhancing the historic environment. The economic, social and environmental roles should be sought jointly and simultaneously; and pursuing sustainable development involves seeking positive improvements in the quality of the historic environment.
486. The weight to be given to the conservation of an asset is influenced by the **importance of the asset**. 'Conservation' is defined²⁸² as the process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance. In any case, great weight should be given **to the asset's conservation. The more important the asset the greater the weight** should be. Any harm to the significance of the asset requires clear and convincing justification. In this case English Heritage is concerned principally with heritage assets that are listed (or registered) at Grade I.

Preliminary issue re paragraph 132 of the Framework

487. Veolia advances a submission that the 4th and 5th sentences of paragraph 132 of the Framework do not include indirect harm by way of development in the setting of an asset. This is a novel point and like many novel points it is a bad one. The reason it is bad is simple. It involves reading those two sentences entirely out of context. The first two sentences of 132 expressly refer to the significance of a heritage asset in the context of conserving (as defined in Annex 2) such assets. It is these sentences that make clear that the weight to be given **to the asset's conservation turns on its significance. The second sentence makes** explicit that significance can be harmed by direct (alteration or destruction) or indirect (development in the setting) means. **Sentence 3 makes explicit that 'as** heritage assets are irreplaceable any harm should require clear and convincing **justification'**. The next two sentences set the degree of justification required in specific cases of harm. Such harm clearly includes the harm just identified in the preceding sentence, that is harm to significance by development in the setting.
488. Policy must be given its ordinary meaning, consistent with its objective, and read in context²⁸³. It is wholly unrealistic to suggest that having in sentence 2 made explicit that the significance of an asset can be harmed by development in its setting, that in sentence **4 the Framework excludes from 'harm to a designated asset'** indirect harm caused by development in its setting. When one **has regard to the definition of 'heritage asset'**²⁸⁴ which makes clear that an asset is only a **heritage asset where it has 'significance' the applicant's argument falls**

²⁸¹ INQ/V5

²⁸² NPPF Annex 2: Glossary

²⁸³ Tesco Stores Limited v Dundee City Council [2012] 2 P & CR 9, Paragraphs 18 and 19.

²⁸⁴ Framework Annex 2, p 52: A building, monument, site place, area or landscape identified as having a degree of significance meriting consideration in planning decisions because of its heritage interest.

apart completely. That definition identifies that it is only the significance of the **asset that merits consideration in planning decisions**. The applicant's suggestion also fails a common-sense test. **As interpreted by Veolia the 'loss of a designated heritage asset'** will in any event and inevitably involve substantial harm or loss of significance. However, the reason it matters is because of the significance, that is the heritage value, that is lost – not the structure itself. The only reasonable interpretation, and one entirely consistent with the core principle²⁸⁵ of 'conserving assets in a manner **appropriate to their significance**' is that the conservation of designated assets is directed at that which makes the asset worthy in heritage terms of protection, that is its significance (so defined). Thus it is correct to describe 132 as a Prologue setting the terms for paragraph 133 and 134.

Preliminary issue re 'substantial' harm and policy approach

489. **The Framework uses the phrase 'substantial harm to the significance of a designated asset'**. There is no current planning policy guidance on what is meant by substantial. It appears to be common **ground that 'substantial' is synonymous with 'serious'**, although by itself substituting one word for another advances matters little. This is particularly the case where, as here, professional judgment has been exercised as to the concept of substantial harm in a way that was consistent with the use of either term.
490. The emerging national planning guidance can only be given limited weight as it remains the subject of consultation. This may have changed by the date of the SoS's decision in this case. EH has made a consultation response. In the circumstances a debate as to the precise language used in this document will not assist the SoS.
491. The judgment in *Bedford BC v SSCLG and Nuon UK Ltd*²⁸⁶ is of relevance. **There are two aspects of the judge's decision that require consideration. The judgment by its nature is a statutory review of an Inspector's decision. As such the ground of challenge was that the approach taken to the question of substantial harm was unlawful. The Judge held that it was not (paragraphs 22 – 24). Such a judgment does not lay down a precise formula for interpreting the policy following Tesco. This is particularly the case because the judge did not endorse the Inspector's phraseology, but found it lawful. In paragraph 26 the Judge expressed a view that the Inspector's formulation 'may' put the matter too highly and held that he could uphold the decision because the Inspector's own formulation incorporated a degree of flexibility²⁸⁷. In reality therefore the judgment sets the test as a matter of interpretation as 'serious harm to the significance of the heritage asset' (paragraphs 21, 25 and 26).**
492. The second consideration **is the Judge's paragraph 25 in which he offers some guidance on the application of the serious harm test. As in Tesco (paragraph 19), this test is an example of policy that requires the exercise of professional judgment. The prime question of judgment in this case is whether the**

²⁸⁵ Framework 17(10)

²⁸⁶ INQ/V5

²⁸⁷ *'Substantial' and 'serious' may be regarded as interchangeable adjectives in this context, but does the phrase 'something approaching demolition or destruction' add a further layer of seriousness as it were? The answer in my judgment is that it may do so, but it does not necessarily. All would depend on how the inspector interpreted the adjectival phrase 'something approaching'. It is somewhat flexible in its import. I am not persuaded the Inspector erred in this respect.*

development causes substantial, that is serious, harm to the significance of the relevant heritage assets.

493. The Judge expressed a range of such harm, which included serious harm to the significance of the asset so that its significance was very much reduced. It is clear from the judgment itself that (a) this is a matter of professional judgment and (b) that it would apply to a potentially broad range of situations. In relation to physical harm although the judge did not consider that **the phrase 'something approaching demolition or destruction'** was erroneous (although it may put the matter too highly), he considered that a case of serious damage to the structure of a building would meet that test (paragraph 25).
494. EH submits that the proper approach does not focus on paragraph 132 alone, it begins with the antecedent paragraphs such that the task for the decision-maker is as follows:
- (a) The decision-maker must identify and assess the particular significance of the affected heritage asset(s) [NPPF129];
 - (b) The significance is the value of the asset to this and future generations because of its heritage interest, that is its heritage value as a result of its architectural, artistic and historic interest, which includes that derived from its setting [NPPF Annex 2 p56];
 - (c) The decision-maker must consider the desirability of sustaining and enhancing the significance of heritage assets [NPPF 131]
 - (d) In considering the impact the decision-maker must give the conservation of the asset at the minimum great weight, and where the asset is of a particularly high level of importance the weight given to its conservation must be particularly great [NPPF 132]. Conservation is the process of maintaining and managing change to a heritage asset in a way that sustains and where appropriate enhances its significance [NPPF, Annex 2, p51 emphasis added];
 - (e) If that impact is found to be substantial harm to the significance of an asset that is Grade I, that is the highest national grading of heritage value, then such harm to such a nationally important asset will only be justified by wholly exceptional circumstances [NPPF 132];
 - (f) In deciding whether that harm is substantial the decision-maker, informed by a proper understanding of the significance of the asset, should consider whether the harm is serious to those elements of historic interest that give the asset its significance and how much reduced that significance would be [Bedford];
 - (g) The decision-maker must bear in mind that significance can derive from a number of different elements of heritage value which may overlap (archaeological, historic, artistic, architectural), and may be the result of contributions made by the structure, fabric, location or setting of an asset.
495. EH strongly resists the suggestion advanced by Veolia that substantial harm should be such that jeopardises the listing. EH is aware of no policy support for

an argument that equates substantial harm with the continuing protection of the **asset as a building of 'special' interest**²⁸⁸. Such an argument appears to rest on a deep misunderstanding of why buildings are listed, and such an argument would itself be entirely inconsistent with the Bedford judgment referred to above. **Take for example the Judge's example in paragraph 25 where there is serious damage** to the structure of a listed building. That would cause substantial harm to significance. However, it would not affect the historic interest of the building or any particular interest deriving from setting or potentially the architectural interest of the building, such that it would not come close to jeopardizing the listing of the building.

496. Of course, between now and the decision there may be further policy or judicial guidance, which would require the SoS to consider the issue afresh. If so, the SoS will be informed by the parties.
497. EH also reminds the SoS that in its view whether the harm caused in this case is substantial or less than substantial is not the central issue in terms of the heritage issues. The Framework requires a view on this matter as a result of paragraphs 133 and 134. However, the core principle set out in the Framework applies in either scenario. Paragraph 17 sets out as a core land-use planning principle to conserve heritage assets in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of this and future generations. The protection and enhancement of the historic environment forms part of the environmental component of sustainable development²⁸⁹. It is for this reason, and due to the irreplaceable nature of the historic environment, **that great weight must be given to the assets' conservation, and any harm** requires clear and convincing justification. This is in the context of national policy that seeks positive improvement and enhancement of the historic environment. In paragraph 494 **above the words 'and enhancing'** are emphasised because this is an important part of ensuring that assets are conserved (and hence part of the definition of conservation) and enjoyed and appreciated by this and future generations. The Applicant proposes no enhancement of any aspect of the heritage value of Hatfield through these proposals. The encouragement of positive improvements and jointly seeking the three strands of sustainable development is so that the need for the RERF is not set at conflict with conservation of heritage assets but in line with it. It is particularly in this regard that the proposals have failed.

The Significance of the Heritage Assets

498. **The primary subject of Mr Neale's evidence is the** effect of the development on Hatfield House, Hatfield Old Palace, and the historic gardens and park of Hatfield **House, as well as on St Etheldreda's Church** and the Old Town of Hatfield (a Conservation Area). Hatfield House, the Old Palace and **St Etheldreda's Church** are all listed at Grade I. The gardens and park are registered at Grade I. North Mymms Park is listed at Grade I and the Folly Arch, Gobions Park is listed at Grade II*. In these submissions **the terms 'Hatfield' and 'the Ensemble'** are used to refer to the above assets excluding North Mymms and Gobions.
499. Mr Neale's evidence for EH provides a thorough explanation of the significance of the heritage assets. This covers the history of the ensemble of assets together

²⁸⁸ Section 1 Planning (Listed Buildings and Conservation Areas) Act 1990

²⁸⁹ Paragraph 7 NPPF

with those elements of association, including associations with Elizabeth I and James I as well as with the Cecil family over the generations. It places the survival of Hatfield in its current form and setting in the context of other houses of the late 16th and 17th centuries of similar courtier connection and associations and architectural aspirations, scale and opulence. Of these, Hatfield sits alongside Burghley as sole survivors in their original form.

500. Witnesses for Veolia and HCC were quick to agree that the ensemble is of 'extraordinary' and 'exceptional' significance. There was also a consensus that due to the high degree of inter-relationship between the assets at Hatfield in terms of matters that give rise to the significance of each asset it was appropriate to consider the conservation and significance of the ensemble.

The Role of Setting

501. **At this inquiry setting has two main roles. First, an asset's setting can make a positive contribution to the significance of an asset. Secondly, it may also allow a greater appreciation of the significance of an asset.** In this case the setting of Hatfield House and the Old Palace includes the park and gardens, which are themselves a designated heritage asset as a registered grade I park and garden. It is common ground that the park and gardens form a part of the setting of the House and Palace that contributes to the significance of the asset directly in that they form part of the original design of the estate lending status to the House. The park and grounds also allow the significance of the House and Palace to be greater appreciated, for example by allowing the House to be seen in its prominent position within the park and appreciating in views from the House how the House was sited and designed to make use of the surrounding landscape. Thus in this case, in large part the setting of the House has additionally such significance in its own right that it is registered at grade I. The Park is thus highly significant itself and a major contributor to the significance of the House.

502. In each case the role of setting is not simply to provide visual connection but one founded in understanding and experience of the asset. It embraces historical, visual and associative connections, and such interrelationships add to significance. For example, in this case, if standing in the west gardens there is an inter-dependency between the significance of the Palace, House and Park as a result of the historical, artistic and architectural associations between the three. In addition, it is the experience and understanding of the three that one assesses not simply the visibility. CD H3 explains the potentially wide range of factors that influence how a setting contributes to significance²⁹⁰.

503. In addressing the impact of the development the decision-maker must concern himself not with harm to the setting per se but to harm to the significance of the asset, that is its heritage value. The setting of an asset is a broad and flexible concept. It may be altered by evolution of the asset, for example removal of trees or further built development, or by new development remote from the asset. It is a clear error to seek to assess the impact on the significance of the asset by reference to the contribution that a particular application site presently makes to the asset. There is no basis for this in the Framework or in the Setting of Heritage Assets. The error can be easily seen. A site that presently makes a neutral or adverse contribution to the significance of the asset may be developed

²⁹⁰ H3, p19

in a way that has an adverse impact on the significance of the asset or a positive impact. Equally a site that makes a positive contribution may be developed in a way that has an adverse or positive impact on the significance of the asset. In this way any approach that focuses on considering whether those elements of the setting that make a positive contribution to the significance of the asset primarily are affected is entirely misguided. It is critical to understand how the setting (as opposed to any proposed application site) contributes to the significance of the **asset in order properly to understand the asset's significance as a whole (step 2)**²⁹¹. However, that should not be taken forward to read step 3 as being an assessment of the effect of the proposal on the elements of the setting that make a positive contribution to significance. Step 3, consistent with the approach required by the Framework, is to assess the effect of the proposed development on the significance of the asset. Both **Veolia's** and **HCC's** have allowed the above error to permeate their understanding²⁹².

504. Equally important is to account properly for historic development that has already impacted on the significance of the asset. In this case the most obvious example is the post-war development of Hatfield new town to sit alongside the Old Town. The fundamental point is that previous developments that have harmed the significance of an asset cannot be prayed in aid of a development that causes further harm. This would lead to death by a thousand cuts for irreplaceable assets. Instead, the proper approach is to take that harm into account and consider whether further development will compound that harm. So one starts here with an extraordinary ensemble of assets with a severely compromised setting to the west.

The Contribution of setting in this case

505. To understand fully the significance of the house and the contribution made to its significance it is necessary to understand the significance of the grounds. For this reason an appraisal of the significance of the park and gardens was prepared by Ms Evans, a landscape architect employed by EH who specialises in historic landscape. She is well-placed to appraise the park and gardens and the contribution made by them to the significance of the Park itself and the role it has played over time. Veolia and HCC have not informed their appraisals of the assets by any input from a heritage landscape specialist. It is submitted that as a result their witnesses have misunderstood the park and underplayed its significance.

506. Mr Harris (for Veolia) does recognise that the Park represents one of the finest designed landscapes in Britain, and that one of the critical roles it performs is providing a wider, open landscape that provides an open, rural setting. Mr Brown (for HCC) agrees that a key characteristic of the **park is its 'generally open nature with small blocks of woodland; this allows for views across and out of the Park and provides the setting (or part of the setting) of various heritage assets. As a result the whole of the Park is of exceptional interest'**. Such an assessment is

²⁹¹ The 5 steps in H3 are:

Step 1: Identify which heritage assets and their settings are affected; Step 2: assess whether, how and to what degree these settings make a contribution to the significance of the heritage asset(s); Step 3: assess the effects of the proposed development, whether beneficial or harmful, on that significance; Step 4: explore the ways of maximising enhancement and avoiding or minimising harm; Step 5: make and document the decision and monitor outcomes.

²⁹² As it was inelegantly referred to in XX

consistent with the role of the Park in providing a setting to equal the status and magnificence of the house. This role is fulfilled by the extent of the Park itself, and the land uses within it, but also by the surrounding landscape. The House itself sits in a prominent position in the landscape. The land to the east of the park contributes to the significance of the Park itself and as part of the setting of the assets as the land to the east remains open countryside. Formerly the entire park would have been surrounded by agricultural landscape save the limited Old Town as was to the immediate west of the House. Mr Harris (for Veolia) distinguishes however the role of the land to the south and west, that is the land affected by the development of the new town and associated modern interventions. This distinction is erroneous, and in any event does little to affect the significance/contribution of the park. It is erroneous because it is not the case that the land beyond the park was not intended to contribute positively to the setting of the house and the significance of the park.

507. Ms Evans view (based upon a detailed review of the archival information and cartographic evidence available, as well as her understanding of landscapes of that time) is that the park is characterised by a relative lack of formality beyond the principal north/south axis, its open nature, dispersed woodland and woodland blocks creating a sense of expanse with the surrounding countryside visible as a continuing rural backdrop. This continued to be the case over time, and the Park was managed as a working and rural landscape, and the later 18th century concepts of designed parkland were not embraced at Hatfield. EH suggests that the true significance of the Park has been misunderstood by the Applicant by assessing it in many ways as if it were such an 18th century designed. So, it is **false to suggest that the absence of 'eye catchers'** implies that the land outside the park was not intended to contribute to the significance of the park. In the 17th century such devices would not have been used, as was accepted. The fair inference is that given the topography and landscape setting of the park in countryside on all sides (apart from the very limited development at the Old Town) the wider setting was intended to and did contribute to the setting and significance of the Park and House. Whilst recognising that the extract of John **Harris's book is not direct evidence of the setting of Hatfield it evinces the design** intent of grand country houses of the period. Even where a garden and grounds have highly formalized elements these are not intended to cut off the house from the surrounding landscape, but complement it as a display of the grandeur of the house, park and estate and thus the status of its creator.

508. **Veolia's conclusion** that the significance of the park derives no additional values from the landscape within which it sits appears to be founded 293 on two points: that the park has strong boundary planting to its edges which intentionally screen out views; and that the park was set aside as a visually distinct landscape. Neither of these bears scrutiny and neither is supported by evidence. The old maps and surveys referred to in evidence show no more than limited boundary **planting around Millward's Park to the south where the park** pale was, and to the south west nothing at all other than traditional field boundaries. The notion that the landscape was set aside is thoroughly disproved by consideration of the field pattern in the south west of the park where the field pattern in the area of Lawn Farm is entirely consistent within and without the park. The theory also suffers once one recognises that for the first 250 years of

²⁹³ 4.3.21

the park the Great North Road passed through the park. Finally, this approach ignores the topography of the site. The past maps show low key boundary **planting and a pale around Millward's only, with the park itself largely open with** some broadleaf woodland. There is no suggestion of large belts of trees to the south and west of the park. This remains the case now but for the modern commercial conifer plantation which serves primarily a different purpose. The topography of the south and south west of the park including Millward's Park is such that the land slopes down to what is now the A1000. So perimeter planting as shown would not have the effect of screening views out or in any sense making the park inward-looking. The **Applicant's** analysis is flawed from the outset and is not reliable. This is very important because if significance is not understood then the impact on significance cannot be.

509. From its inception the Park has provided and been intended to provide a functional, open landscape of various estate roles (recreation, hunting, agriculture, horticulture) with formal designed elements to emphasise the status and grandeur of the estate and house. Veolia and the HCC rightly identify that the formal elements of the park, principally the north and south axial landscaped approaches are important designed elements of the setting. However, due perhaps to a misapplication of design principles of a later period, they take from this that it should only be the formal elements that are seen as significant contributors to the significance of the park and the setting of the house. This is incorrect. The correct analysis is that the informal and functional elements complement the formal elements and the wider more open parkland setting is highly important.
510. Mr Brown (for HCC) recognised that the views outside the park do contribute to its setting²⁹⁴. This is entirely consistent with the landscape paintings of the House which show the House sitting in its surrounding landscape²⁹⁵. Again, the suggestion that the landscapes are painted from one specific viewpoint rests on the **Applicant's misunderstanding of the designed formality of the park. This is** not a park where set vistas were identified within the grounds other than the approaches – which necessarily lead to the house and show it in its full glory. The paintings show how the house was intended to sit in its landscape. The park and grounds were not intended only to be enjoyed from a very limited number of viewing points – as may be the case in an 18th century or picturesque composition. It is the very informality, openness and rural nature of the park that lends it to be enjoyed through ones experiences as one moves around the park. **This element is entirely absent from the applicant's analysis.** It is false to assume that, where a park has internal looking designed elements, the external views cannot contribute. There was a change to the alignment of the GNR and railway but as a result of the open, informal and functional nature of the majority of the park for agriculture and recreation this did little to alter the character of the park itself or the contribution the park and its setting made to the significance of the House, or indeed the significance of the Park as a heritage asset in its own right.
511. As to other areas of the estate attention is drawn to the differing roles of elements of the estate. Of most relevance to this inquiry are the areas surrounding Home Farm and Millward's Park, including the routes to and across these areas, and the formal West Gardens. The area around Home Farm has a

²⁹⁴ 6.47

²⁹⁵ See JN App 9 (George III); JN App fig 9; A25 plates 18 and 20.

long history of agriculture and horticulture, and this has been developed not only to meet a functional need but as part of an experimental and educational role²⁹⁶. It was not uncommon to retain fields within parkland landscapes, and in this case the evidence suggests the fields on south-west facing slopes formed part of the Park and they remain within the registered boundary. EH considers buildings such as Orchard Farm to have been designed to be seen, that is ornamental, because the family and guests would have passed them and appreciated them, and the experimental farm and walled garden would have been accessible to certain other visitors.

512. **Millward's Park was incorporated into the Park as a pre-existent medieval deer park and was managed as woodland pasture until the 20th century. The South Riding led to/from the northern edge of Millward's Park to the House. In the mid 19th century the Great North Road was diverted from the north of Millward's Park to the south, and the railway followed (c.1850). Prior to this diversion travellers on the GNR would have passed Millward's Park to the south as they traversed the park and been drawn to see the House to the north along the South Riding.**
513. Since the original construction of the House the West Gardens have been laid out formally to provide contrast, recreation and repose. These were not maintained consistently through the years. During the mid- and late- 19th century, however, gardens in the Jacobean manner were revived, and this work was continued by the Dowager Marchioness in the 1980s. The restored gardens add to the significance of the house, park and Old Palace.
514. In conclusion, it is submitted that the evidence is entirely supportive of the conclusion that the setting of the House in its park and wider landscape was essential to the conception and use of Hatfield House its gardens and park, and adds very greatly to the appreciation and understanding of the House and the broader historic site.
515. It is also highly relevant that the setting of the House, Palace, gardens and Park has already been seriously compromised. It was agreed that certainly part of the setting of these assets has been substantially harmed as a result. This confirms **EH's position that harm within the setting of an asset can amount to substantial harm**, and also confirms that land outside the Park has a role (either positive or negative) in fixing the significance of the designated heritage assets. More significantly, and bearing in mind the H3 guidance on how to take into account previous unsympathetic development, this increases the consequences of further harm by the development. The SoS is reminded that there is in this case agreement that the development causes material harm to these heritage assets. This harm must be added to the pre-existing harm in order to assess the harm in conservation terms of the heritage assets in question. There may be differences in terminology – whether one sees this harm as cumulative or compound or whether the sensitivity of the setting is seen as enhanced – matter little. The critical issue is the consequence of the development on the significance of the assets.

Harm to Significance

516. These submissions do not repeat the evidence in relation to which the Inspector has been assisted by his own site visits and the illustrative material

²⁹⁶ JN 4 paras 19, 21 and EH4: *Gardeners Chronicle - 1874*

before the inquiry. Instead, these submissions identify broad matters of approach and importance in relation to the key areas. They should not be taken as reviewing the whole of the case as set out in the evidence.

Approach

517. The guidance in H3 has been set out above. There are a number of key points which appear to have become a little lost in the applicant's analysis:

- (i) Visibility is important in that it is the cause of the impact in this case. However, it does not dictate the degree of impact. This derives from a number of elements past and present (and potentially future) founded on a proper understanding of the place and its heritage value. This goes both ways. It would be perfectly possible for a development that had a large visual impact to have a positive impact on the significance of the asset;
- (ii) The impact of visibility will depend on the sensitivity of the viewing point in terms of the relationship between assets. As an example, the West Garden is a location where the associations between the Old Town, Church, Old Palace and House are experienced. In addition, in heritage terms one is concerned with the ability to appreciate and understand the asset rather than a fixed view point.
- (iii) Such an understanding encompasses an appreciation of how the estate would have appeared previously and why. Changes over time are relevant and may have reduced or enhanced the significance of the asset. However, in assessing the impact regard should be had to the **'potential for appreciation of the asset's significance** in the present and the **future'**, which includes interpretation of the asset and its setting, and also makes allowance for changes within the setting that may be temporary. EH considers that the weight to be given to potentially changeable features depends on their permanence and the likelihood of change. A distinction should be drawn between, for example, woodland that has been in existence for hundreds of years and managed as part of the park, such as Coombe Wood, and more recent coniferous commercial planting such as that in **Millward's Park, where there is a known intent to alter it.** This applies a fortiori to the spring Christmas tree plantation to the north-west of MP. Similarly, a good example is the **visitor's car park and children's family farm to the West-south-west of the house.** This is a very recent introduction and he is confident the **car park will move again as part of the estate's improvement regime.** To base judgments on the impact of the significance of a Jacobean house and park on such recent and temporary elements would not be a proper assessment, and even more so in relation to the view from a turret of the building where Elizabeth I held her first council.
- (iv) Fundamental to the understanding of the impact in addition to the significance and character of the heritage asset is an appreciation of the character and appearance of the proposed development that will be seen. This is not a question of subjective design preference, but what the impact is on the appreciation of the heritage value of the asset. A large, futuristic, industrial facility is entirely incongruous with the sense of place within the setting of the heritage asset. The sense of place of the asset varies as between the West Gardens and Home Farm, and again from within for example the Long Gallery. Each location however

is associated with the others and provides an experience and appreciation of the heritage value of the place which combine to create the significance of the place. The introduction of such an incongruous and discordant element, especially set in the context of existing harm through new Hatfield, directly undermines the heritage value of the asset, that is its significance.

Hatfield House Views South

518. Views to the south are from the principal rooms in the principal elevation down a designed long reaching landscape view. As a result these views are very sensitive to change and here the setting contributes majorly to the significance of the asset. The visibility of the facility will depend on which floor one is in, with views from the first floor being limited to the plume. The plume will have an adverse impact when seen on its own, and when seen together with the chimney (and in other views the dome) the plume will exacerbate the harm caused.

The Park

Millwards Park

519. **Millward's Park slopes broadly down** towards the A1000. Currently within the park itself views out are limited by the conifers. At present **Millward's Park is part of a Grade I registered park dating from a medieval deer park Millward's Park is** ripe for enhancement, and the Gascoyne-Cecil Estate has stated its clear intent to bring it back into management as a more open woodland. This will inevitably increase the visibility to the south and west as this regime is brought into being. As an aide-memoire comparison of A24 photos 4 to 5 on the location plan shows the stretch of potential visibility. Mr Brown (for HCC) assesses the harm to the significance as being between moderate and serious depending upon the degree of opening up resulting from the management.

Home Farm/Kitchen Garden

520. In this area²⁹⁷ there will be a real appreciation of the dome and chimney. This is a location of historic agricultural and horticultural use, and openly and educationally so – not to be written off as a backwater of the estate. The existing character is entirely consistent with the historic character, which in turn was fundamental to the role of the Park. This is confirmed by the degree of connection through the Wilderness to the house.

West Garden

521. In this area²⁹⁸ the dome, chimney and plume will be appreciable and will have a discordant, incongruous and harmful impact on the character and understanding of the asset entirely at odds with the key characteristics of the garden and its role as an area of repose from the House and Palace conveying aesthetic and sensory experiences.

522. **The facility will also be visible to an extent from the visitors' car park.**

²⁹⁷ A24, photos 12 and 13, A30e photomontage 24

²⁹⁸ A24 photo 11, A30E photomontage 23

Other matters

523. In each case the Inspector will be aware that at times there will be additional impact caused by the plume, and potentially night lighting.

The Old Palace

524. The Old Palace has close associations with the House, Park, Church and Old Hatfield. It is a place of exceptional significance. The view from the turret is acknowledged by all experts as having served at least in part a surveillance role. It offers long views down towards the south. At present, there is a detracting element in these views caused by the visitor car park and to a modest degree the family farm. However, these impacts are short term, and the long view out to the south is largely a view of landscaped countryside. This view is entirely characteristic of the historic setting of the Palace and contributes to its significance. The view to the west has been significantly detracted from by new Hatfield. As referred to above this increases the sensitivity of the setting rather than reduces it. The view to the south²⁹⁹ is entirely consistent with the historic setting (in contrast to the view west), and the introduction of the facility (or the mitigation) into this view will be very harmful. This is a principal view from the Old Palace. It is suggested that **Veolia's approach of compartmentalising** elements of the setting is not helpful to a full understanding of either setting or impact on significance.

Other assets

525. EH relies on the assessments of significance and impact on the Old Town and **St Etheldreda's church set out in Mr Neale's proof of evidence in paragraphs 6.48-6.51** and in section 9.

526. Mr Neale has also assessed the significance and impact on North Mymms Park³⁰⁰ and the Folly Arch at Gobions. North Mymms is listed at Grade I and the Folly Arch at II*. In each case Mr Neale has found material harm to significance (but less than substantial). This is also addressed in the Statements of Common Ground.

Mitigation Planting

527. The weight to be given to any mitigation planting is very much reduced as a result of it being unsecured at the time of the decision. It cannot therefore be relied upon in arriving at conclusions as to the degree of impact on the significance of the heritage assets concerned.

528. If the planting is accepted it offers a heritage lose-lose. It is only delivered in connection with a development that harms the significance of heritage assets. However, rather than offering a countervailing heritage enhancement such as is sought by the Framework (see above) the planting introduces further elements of heritage harm. The proposed planting in the Wilderness may be provided in sufficiently low intensity to maintain the character of the area, subject to details being agreed. However, a heavy amount of tall, deep shelterbelt planting is proposed in the vicinity of the walled Kitchen Garden involving some 700 trees spanning 20m x over 100m. As referred to above, historically this land has been

²⁹⁹ A30e P22

³⁰⁰ 8.2 to 8.9

open and in an agricultural/horticultural role. There is no historic evidence of any more than an orchard in the late 19th century, which would have comprised relatively low fruit trees, coupled with a single line of trees to the north. Further, this area provides openness which enables the long views that Mr Harris extolled from the Old Palace to the south. The introduction of heavy tree planting here is accordingly out of character with the historic role, function and appearance of this part of the Park, and detracts from the significance of the heritage assets.

529. In relation to area D there is no justification for additional planting here in heritage terms. The existing plantation here is an accident of history being an abandoned attempt to grow Christmas trees. In due course this will be removed by the estate and the land returned to pasture – its historic use and so a heritage enhancement. Instead, as a result of the development, this area will be planted. Again, this is uncharacteristic and detracts from the significance of the Park.

530. This mitigation reflects a conflict with heritage principles because the RERF proposals conflict with the conservation of the heritage asset. In this case, it is agreed that this is not a minor conflict with a low grade asset, but rather on any case highly material harm to an ensemble of assets of extraordinary significance. The mitigation attempts to make the harm less bad by offering alternative harm, that is non-historic belt planting that will in part hide the development. This goes right to the heart of heritage policy in that it recognises material harm to an irreplaceable asset. For this reason H3 and the Framework drives developers and planning authorities to design out harm to heritage assets. In this case the design and siting decisions have meant that mitigation is required, cannot be provided on-site, and comes at an exacerbating heritage cost within the Grade I registered Park itself. This is entirely contrary to policy. Hatfield House and especially the Park are assets that should be enhanced under heritage policy. The **estate's management plans** will (in the absence of the RERF) do so.

Conclusion

531. Veolia asserts that EH takes an impermissible approach to the harm in relation to cumulative harm. The particular point made – that EH summed up a number of less than substantial harms to assets to make one substantial harm overall – arises from a misreading of the letter³⁰¹. The letter makes perfectly clear that assessed individually there is substantial harm to Hatfield House Park, House and Palace. Mr Harris misunderstands a reference to harm to lesser assets within the **Park. English Heritage's position has always been that the harm to each principal asset at Hatfield would be substantial**, and that is the view expressed to the SoS.

532. This **in turn highlights the shortcomings in Veolia's approach**. This was a scheme designed and sited with precious little understanding of the significance of the assets on which it would impact³⁰². The Heritage Report then produced was justly criticised by **HCC's witness** for failing to recognise the extent of interconnection between the **assets so that the value of the 'ensemble of heritage assets'** was underplayed. This criticism was well-founded and **the Applicant's witness** has continued to take a disjointed approach to the assets.

³⁰¹³⁰¹ H10, dated 1 Aug 2012

³⁰² See **EH's consultation response** H9 - 7 Feb 2012; and e.g. ES did not even identify Old Palace – ES Chapter 14.

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533. Mr Brown (for HCC) conceded that as expressed in his proof it was necessary to read across between assets in order to understand the true significance of the assets and thus the impact of them. It is critical to understand significance fully before impact can be assessed.
534. EH of course recognises that this is a matter of professional judgment. It is also apparent from the range of views expressed by experts that there is unquestionably a moderate degree of harm as a minimum. The SoS should note the true position of Professor Tregay (**GCE's adviser**) where the conclusion expressed following **in H13** 'further research on the landscape history of Hatfield Park' is that if a new management regime is **introduced then the RERF will be** 'far more visible and far more damaging, resulting in very substantial harm to the **heritage environment**'. This chimes with Mr Brown's **conclusion in H14**. However his assessment **of 'less than substantial harm'** **relies heavily upon the substantial** number of mature trees within the Park. There is a risk that some of these trees could be lost over the next twenty to thirty years (particularly as a result of storm damage) and this could radically change the potential visual impact of the proposed development. More seriously, the woodland in the southern section of the Park on either **side of Duke's Ride (known as Millward's Park)** consists almost entirely of conifers and these will be felled within the next five to ten years **opening up views from the Park. As a result of this certain change to Millward's** Park it is considered that there **is the potential for 'substantial harm'** to the significance of the Park.
535. Mr Brown (for HCC) altered his position in light of Bedford although continues to term the harm serious (but not so serious as to amount to substantial harm). Mr Harris (for Veolia) does not attribute a degree of harm although he recognises harm. The point that stands clear is that there will be serious harm to the Park which forms the setting of the house and contributes to its significance. Whether that serious harm amounts to substantial harm has been debated but on any score a finding of less than substantial harm relies on the presence of vegetation. This reliance is placed in relation to the Park and the House through reliance on the Southern Approach trees and the Wilderness, as well as the Old Palace (Wilderness and new proposed planting). Whilst weight can be placed on such planting the weight must recognise that through the trees a colossal facility of industrial nature and scale entirely antipathetic to the character of Hatfield House and Park and the intimate character of the Church and Old Town would be developed.
536. In summary, the RERF would cause substantial harm to the significance of Hatfield House, the Old Palace and the Park. This is an exceptional Jacobean house which remarkably remains in the ownership and viable use of the family who created it. It is worthy of enhancement not harm.
537. These submissions close where they began. It is the duty of the decision-maker to pay special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses and to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Whether ultimately quantified as substantial or less policy requires these assets to be conserved in a manner appropriate to their significance. The significance of the Hatfield assets is unquestionable. Their conservation is to be given the greatest possible weight.

THE CASE FOR NEW BARNFIELD ACTION FUND

Introduction

538. These closing submissions seek to address the matters which the Secretary of State indicated that he wished specifically to be addressed and those matters which were identified by the inspector at the pre-inquiry meeting. They will refer to the totality of the evidence before the inquiry; where reference is made to oral **evidence, they are based on the notes taken by the NBAF 'team'**. It is accepted that the inspector will wish to check such references against his own notes.

539. In its Statement of Case (doc NBAF1) NBAF casts doubt on the legal adequacy of the Environmental Statement. However, given that PINS on behalf of the Secretary of State has reviewed the matter and taken no point on it, NBAF does not persist with the allegation.

Consistency with the development plan for the area.

540. The relevant component parts of the statutory development plan are the Hertfordshire Waste Core Strategy (2012)³⁰³ ('the WCS') and the saved policies on the Welwyn Hatfield District Plan (2005)³⁰⁴ ('the WHDP'). It is useful, in deciding whether a proposal accords with the development plan, to consider policies relating to the proposed site, and policies relevant to the type of development proposed.

541. The policies that relate in particular to the site at New Barnfield ('NB') are WCS P1 and P6, and WHDP RA6.

542. The NB site is within an area of search identified in WCS P1 and it is within these broad areas that the WCS expects waste management facilities for Local Authority Collected waste ('LACW') to be brought forward. However WCS P7 anticipates that within these broad areas, allocations will be made, so it cannot be assumed that anywhere in a broad area receives site specific support. The VES proposal is not solely for the management of LACW. It is intended to treat a significant amount of residual Commercial and Industrial (C&I) waste. P1 anticipates that such waste will be managed on existing strategic sites, Employment Land Areas of search (ELAS) and allocated sites. The NB is none of these. The contract between VES and HCC as WDA provides that all LACW will be delivered to the NB site. The WCS itself foreshadows 276,000 tonnes of such waste in 2016 and 232,000 tonnes in 2026³⁰⁵. This will amount to 72% and 61% respectively of the capacity of the proposed VES recycling and energy recovery facility ('RERF'); the remaining capacity will be taken up by treating C&I waste. NBAF submits that it cannot sensibly be said that the proposed RERF is a LACW **facility with 'top up' (or ancillary) C&I capacity**; at the scale proposed it is plainly a facility designed for its capacity to treat substantial amounts of C&I waste at a location which receives no support at all from WCS P1 in advance of a site specific allocation.

³⁰³ CD C1

³⁰⁴ CD C3

³⁰⁵ CD 1, p 26, table 6

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543. WCS P6 applies to the NB site as it lies within the green belt. It requires **applicants to demonstrate 'very special circumstances'** ('VSC') in terms that reflect national policy (or should be read as so doing), ie that the harm to the green belt and any other harm is clearly outweighed by other considerations. Policy 6 also, however, provides for six criteria / 'material considerations' that must be had regard to / taken into account as part of the VSC balance.
544. Criterion i) is that the 'need for the development that cannot be met by alternative suitable non-Green Belt sites.' That this should have been included in a sound **WCS in Hertfordshire is not surprising given the examining inspector's** report (CD M6): that
- '31. Some existing Hertfordshire waste sites occur in the Green Belt. The Council expects that some of these existing sites may have potential for future waste uses and could demonstrate locational need in accordance with submission CS Policy 3 (Policy 6 via FPC 210) if a planning application were to be made for new facilities. However, the evidence is that the Core Strategy is not reliant upon Green Belt for the delivery of sites sufficient to meet capacity shortfalls.** Though the Areas of Search (AoS) as diagrammatically drawn contain some Green Belt land, any proposal on a site in Green Belt, **even if clearly within an Area of Search**, would be **required to meet the terms of Core Strategy Green Belt policy.'** (emphasis added by NBAF.)
545. So, the reason for the criterion is clear: it is not in principle necessary to have development in the green belt; if it is proposed it must be on the basis that it is shown (by an applicant) that the **need** cannot be met on non-green belt **sites** (plural). This policy thus anticipates that an applicant should be prepared to disaggregate its proposal to meet need onto more than one non-green belt site.
546. It is agreed that the VES Alternative Site Assessments ('the ASA') **is not a 'tool'** which discharges this burden, nor was it ever intended to be – so much is clear from its Introduction³⁰⁶ which sets out its purpose and limitations. There is simply no evidence before the inquiry that discharges the requirements of criterion i). The SoS **should be very wary of any submission from VES along the lines of 'no one at this inquiry has suggested a suitable alternative that is available and deliverable'. Such a submission would be a ruse to distract attention from what is a fundamental weakness in the VES/HCC cases: neither has addressed criterion i) properly.**
547. Criterion iii) requires consideration of 'the availability of sustainable transport connections'. Sustainable transport is the subject of WCS P9 which provides, *inter alia*, that 'support will be given to proposals which utilise forms of transport other than road including by water or rail.' VES have been at pains to point out that waste collection in Hertfordshire is a road-borne operation; of course it is. But that does not mean that all LACW must arrive at an EfW plant the county by road. By including a reference to rail transport in the WCS the WPA must surely be taken to have accepted that it was practical /deliverable (otherwise the policy would not have been found to be sound). There has been no assessment by VES in the context of this application as to any alternative strategy that would include (at least in part) moving waste by rail. It is dismissed on the basis that the rail links in Hertfordshire generally run north-south. That may be the case, but the
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³⁰⁶ CD A30b / Kosky App 1

Fieldes Lock ASA (in support of a rail-served EfW plant) identified many other sites with the potential for rail connection. There is no evidence that they could not play a part as LACW road-rail transfer stations. There is similarly no evidence that east-west rail links could not be achieved just outside the county boundary. The Fieldes Lock needs assessment included as part of its secondary study area waste arisings in Hertfordshire – presumably on the basis that such waste was treatable at a Fieldes Lock rail served EfW plant. The SoS should not and cannot expect NBAF to produce evidence that a rail (or part rail) served solution is deliverable. What the SoS should do, in the context of the WCS P6 assessment, is to conclude that VES have not properly considered the availability of sustainable transport connections and count that against them in the VSC balance required by P6. The potential availability of rail transport is another reason why disaggregation is important under criterion i).

548. Criterion ii) and vi) relate, *inter alia*, to the well known ‘proximity principle’. **NBAF’s case postulates that a multi-site strategy is likely to be environmentally preferable in terms of veh/km and hence CO₂ emission savings than a ‘single large site’ strategy. That case was closely aligned to the same point being taken by WHBC and NBAF therefore left the production of the evidence base to WHBC. The state of the evidence base at the end of the inquiry now appears to be that summarised in INQ/V/22. The ‘Summary’ table still shows benefits in terms of CO₂ saving as between the existing situation and both the revised one-site and three-site strategies, and for a revised three-site strategy over a revised one-site strategy³⁰⁷. The Secretary of State again should not be distracted by the inevitable VES submission that any such savings will be swept away by the delay in approving an EfW plant in Hertfordshire; we will return to ‘urgency of the need’ again later in these submissions.**
549. **The other element of criterion vi) is consideration of the ‘wider economic and environmental benefits of sustainable waste management’. This is an echo of national policy in PPS10 and EN1 and 3. NBAF notes however, that the SoS is currently minded to remove from national policy the reference upon which this part of criterion iii) is based. We note the SoS’s custom and practice not to give significant weight to emerging national policy that remains subject to consultation, but it is a material consideration nevertheless.**
550. However, even giving credit for wider environmental benefits, there can be no sensible doubt that overall that application proposal does not score well against the listed criteria in WCS P6.
551. WHDP RA6 applies specifically to the NB site. It requires that redevelopment proposals should not have a greater impact on the openness of the green belt. That policy requirement is plainly not met in this case by a proposal for structure that is many times greater by footprint, volume and is four times as high as the tallest building now on the site. There is no substantial positive contribution to the purposes of the green belt, but it would be churlish not to acknowledge **enhanced public access to the wider ‘planted’ part of the application site.**
552. **Overall, the answer to the question “is the proposed development consistent with the policies in the development plan that relate to the NB site?” is a resounding “no”.**

³⁰⁷ It is accepted that the revised figures do not show as substantial a benefit as had originally been the case in the WHBC submitted evidence, but there is nothing NBAF can do about that.

Policies relating to the type / nature of the development proposed

553. WCS P7 contains general criteria for assessing planning applications for waste management facilities outside of identified locations. Because the WSA LDD has not yet identified LACW sites, VES are required to demonstrate how the proposal will contribute to the JMWMS (2007). Because the proposal contains a substantial C&I element, VES will need to demonstrate how it contributes to the overall spatial strategy for waste management in the county.
554. **NBAF's** concern is two-fold:
- a. First that the size of the plant is justified on quantities of both LAC and C&I waste that are no longer robust. It is accepted that the SoS will start consideration of this issue with the figures in the WCS that were examined at oral hearing in late 2011 and reported as sound by the inspector in July 2012. But the key point is that Veolia's own consultants needs assessment for its Fieldes Lock application assessed that the total suitable LAC and C&I residual waste arisings in Hertfordshire would by 2026 be substantially less (439,608 tonnes) than the figure in the WCS (641,000 tonnes). This means that the NB plant would need to treat all bar 60,000 tonnes of the residual suitable waste in the county. Given the competition for contracts for treating C&I waste in neighbouring counties and the evidence of the risk of over capacity regionally and nationally, there is very considerable doubt whether there is a need for the size of facility that VES is proposing. Given the harmful environmental impacts directly attributable to the size/scale of the facility, it is submitted that this becomes an important material consideration.
 - b. NBAF's other main concern is that approving such a large scheme leaves effectively no room/capacity for another important element of the county's waste strategies – the desire for flexibility in order to take advantage of new/future waste management technologies.**
555. While the proposal plainly would score creditably with many elements of the five numbered criteria in P7, it does not meet them all. In particular, with respect to criterion iii), while it might be said to be proximate to the major urban areas of Hatfield, Welwyn and St Albans, it cannot be so in respect of those in the North, West and East of the County. Approving this application will effectively put an end to any strategy based on a network of sites for local energy recovery.
556. WCS P11 contains general criteria for assessing (all) waste planning applications. It is a permissive policy subject to compliance with ten listed criteria.
557. Criterion i) requires, in particular, the scale of the development to be appropriate to the location and character of the area. Scale has already been considered in the context of policies P6 and RA6 above. Astonishingly, VES suggests that the scale is in keeping with the area because it is in keeping with the character of the Travellers Lane (TL) industrial estate. This is nonsense. The NB site is quite separate and a wholly different character to the TL site; there is a clear physical demarcation between them. The TL site is in any event significantly lower than the NB site to the extent that the base of the RERF will be at an equivalent height to the roof of the Tesco depot.

558. That scale is a fundamental issue is obvious when the requirements of criterion ii) are considered. While VES has done its best with on-site mitigation, bunding and planting, such landscaping is simply unable to effectively mitigate the impact of the proposal because it is so huge.

559. Criterion iii) specifically requires consideration of the effect on amenity and human health. The effect on visual amenity will be enormous and is illustrated in the photomontage evidence before the inquiry³⁰⁸. There will be significant adverse impact on the daily lives of very many local residents: as they walk the network of local public footpaths which include recognised nature walks, as they picnic and fish at Bunchleys, as they cycle national route 12 for whatever purpose, as they play or relax at recreation grounds in South Hatfield or at the new sports ground off South Way, as they travel to and from work, as they gather on the village green in Wellham Green, as they bury and visit the graves of their dead. That there may be wider significant adverse visual impacts is unknown because the applicants did not extend its ZTV analysis beyond 15km. The consequences of this failing are largely dealt with by WHDC, but Mr **Zukowskyj's evidence showed that important views were initially missed inside the 15km radius, and his 'bare earth' 25km ZTV³⁰⁹** shows that wider viewpoints should have been checked. No doubt the submission will inevitably come from VES that no one has suggested anywhere within the AONB from which any harmful view will be obtained; to that we reply, first, that it is for the applicant to check, not hard-pressed local people, and second, it is very difficult to do such checks without a blimp flying.

560. **There is also the effect on the 'amenity' of Southfield School. Children with special needs relating to autism attend this school. They do so because their parents express a preference for this special school rather than mainstream education for their children. Children with these special needs come from all over the county to be educated at Southfields School; for the children who attend there, it is obviously considered to be the most suitable for them. Those with the responsibility of meeting these children's needs, the school's governors, object to the proposed REFR as their very close neighbour. Those governors include the Headteacher and members of staff, so it cannot be said that the governing body lacks professional expertise. If the school is to survive, parents must want to continue to send their children there. The first impression they will have when visiting the school once it returns is of a large, dominant, futuristic structure with tall chimneys protruding from the top of it and a solid acoustic fence³¹⁰. They may well pause in the 'ghost right turn' lane while HGVs liveried in VES colours and markings pass to the left and right of them. When they tour the grounds, they will be met by more 2.4m acoustic fencing, some of it atop a large bund. The RERF will 'float' above boundary planting and inevitably catch their eyes³¹¹.** They may hear peaks of noise emanating from the waste site next door. They may wonder what effect the sight and sounds of the REFR will have on the concentration of their children on their lessons if they attend this school. They may wonder if their autistic children will cope with these daily sights and sounds. They may well fear for the effects of what is being emitted from the flues. These are not irrational concerns; they have all been made by rational governors,

³⁰⁸ See in particular CD 02

³⁰⁹ INQ/NBAF/7

³¹⁰ See photomontage P9

³¹¹ See photomontage P21

teachers, parents and residents. They may not be reassured by planting, special glazing, the promise of ear defenders or any other expert opinion offered at this inquiry on behalf of VES or the WPA. There is a very real risk that they will **instead say 'thank you, but no thank you' and chose what they regard to be sub-optimal mainstream education instead.** NBAF is convinced that if there is a real commitment to parental choice and to meeting the needs of autistic children in the county, no one in their right mind would have sited this proposal next to Southfield School. The SoS may also wonder why, if there is no risk of harm to these children, the County Council did not call the Headteacher or any teacher (who after all are their employees) to give evidence at this inquiry and state categorically that there was no risk of harm. The obvious conclusion to draw is that no teacher was prepared to do so. The same applies to current parents; not one has appeared at this inquiry to support the proposal.

561. **While it has been no part of NBAF's case at this inquiry to suggest that the Environment Agency was wrong to issue the permit for this facility, and the EA cannot be relied on to effectively 'police' its operation, the Health Impact Assessment submitted with the application³¹², as Mrs Roe notes, identifies residual health risks as a result of the visual impact of the proposal.**
562. The impact of noise on amenity is also a relevant consideration under criterion iii). This includes noise from the plant and HGV travelling to and from it. NBAF has called no expert evidence on noise, and adopts the expert evidence and submissions of WHBC. Members of NBAF note the very real doubt over the **reliability of the 'baseline' noise assessment and** urge the Secretary of State to examine this with particular care. To local residents, it seems counter intuitive to accept that there will be no unacceptable increase in noise over a baseline if that baseline is not reliable. It is similarly counter intuitive to accept that there will be no unacceptable increase in noise from the volume of increased traffic expected **here if one considers 'average' noise and not 'peaks' of noise, and again asks the Secretary of State to give particular attention to these concerns.**
563. Criterion iv) of WCS P11 requires that development (and in the case of criterion v) its operation 'should not adversely impact on the historic environment'. NBAF relies on the evidence and submissions of the Gascoigne Cecil Estate ('GCE') in respect of the ensemble of assets at Hatfield. However, the concern goes wider because there will be adverse impact on other heritage assets including North Mymms House, Gobions Folley Arch, Brockett Hall all of which fall to be considered and all of which are given special statutory protection. There can be no doubt that there will be significant adverse impacts on heritage assets as a result of this development. With regard to wildlife habitats, NBAF has called no expert evidence, but they fear there will be a greater impact than that assessed in the Environmental Information now before the inquiry. In particular, emissions from the flues are likely to increase deposits of chemicals in areas where concentrations are already above existing thresholds. Again, to do so appears to members of NBAF to be counter intuitive and the Secretary of State is again asked to examine the expert (re)assurances with particular care.
564. The requirement of criterion vi) for adequate provision for restoration appears to be met by a proposed condition. On the basis that the proposed development is not for the treating of material quantities of hazardous waste, criterion vii)

³¹² CD A10

does not apply and/or the issue with regard to human health has been dealt with under the EA permit.

565. Criterion viii) does apply because at least part of the site is greenfield land. The issue arises because of the scale of the proposed RERF. VES have simply not sought to reduce the scale of the development so that it might be accommodated on previously developed land. For the reasons set out below under the heading of 'alternative sites', NBAF submits the requirement of this criterion has not been discharged.
566. For the reasons set out in the closing submissions of GCE, the requirement of criterion ix) has not been met in respect of cumulative impact. For the reasons **set out in these submissions, criterion x) (a 'catch all')** has not been met.
567. For the reasons set out above, and in the submissions of GCE, VES have not met the requirement of WCS policy 12. In particular, the futuristic RERF building is not in keeping with the surrounding setting and landscape / townscape. While the building may have been commended by CABE, its comments, as Mrs Roe notes in her proof, were not unreservedly favourable. This building may not look **'out of place' in another setting, but as the photomontage show, is wholly out of** keeping on the NB site.
568. As regards WCS P17 – protection of sites of national and international importance – NBAF adopts the evidence and submissions of GCE.
569. WCS P19 requires developers to minimise the impact of development through mitigation and by positive contribution to environmental objectives. NBAF accepts that VES is proposing all that it reasonable can in respect of the application site itself. While the overall impact is undoubtedly negative, NBAF would be churlish not to welcome the increased woodland planting and opportunities for increased public access. The off-site planting and mitigation at Southfield School is also noted. However, NBAF notes the VES have not taken the opportunity to make contributions to offsite mitigation or compensation in respect of harm to community amenity for example at the recreation grounds, Bunchleys, or improvements to national route 12 cycleway. In respect of off-site mitigation / compensation at Hatfield House, its gardens and parkland, NBAF adopts the submissions of GCE. Overall, NBAF submits that policy 19 is not satisfied.
570. WHDP CLT9 applies to redundant educational establishments. Where they are shown to be surplus to requirements, reuse for community facilities is preferred unless it can be shown the buildings are unsuitable. This site was once largely in educational use, and more latterly was partly occupied by educational establishments (the Educational Support Centre and the Schools Library Service – see INQ/HCC/6).
571. In the event that the Secretary of State decides that the Central Resources Library building³¹³ effectively replaced the former educational use, then policy CLT13 applies. The library was plainly moved off site by HCC as landowner in indecent haste with the express purpose of clearing the site for the VES RERF. For the reasons given by Mrs Roe for NBAF, there was plainly no lack of need for library facilities and the alternative provision is plainly not acceptable. Despite having been the material cause of this downgrading of library services, no

³¹³ Building 3 on INQ/HCC/6

contribution from VES towards library services appears to have been offered or required by HCC. NBAF notes this with dismay.

572. Overall, the conclusion NBAF invites the SoS to reach on the question as to whether the proposed development is consistent with the policies in the development plan that relate to the type of development proposed (i.e. this RERF) is that there are significant elements of inconsistency along with some consistency.

Is the application in accordance with development plan (s38(6))?

573. The Secretary of State will no doubt be well aware that the correct legal test is to consider the development plan as a whole and not to each and every policy in the development plan. In *R v Rochdale Metropolitan Borough Council, ex p Milne* (31 July 2000). Sullivan, J noted that (at ¶47-9):

574. The LPA should have regard to the provisions of the development plan as a whole, that is to say, to all of the provisions which are relevant to the application under consideration for the purpose of deciding whether a permission or refusal would be **'in accordance with the plan'**.

575. It is not at all unusual for development plan policies to pull in different directions. A proposed development may be in accord with development plan policies which, for example, encourage development for employment purposes, and yet be contrary to policies which seek to protect open countryside. In such **cases there may be no clear cut answer to the question: 'is this proposal in accordance with the plan?'**...I regard it as untenable the proposition that if there is a breach of any one policy in a development plan a proposed development **cannot be said to be 'in accordance with the plan'**.

576. In this case it is submitted that the judgment should be that the proposed development is not in accordance with the development plan as a whole. As concluded above, there is plainly inconsistency with the policies that relate to development of the NB site, and while the policies in respect of the type of **proposed development might be said to 'pull in opposite directions'** the inconsistencies are substantial, particularly in respect of the impact on heritage assets and the impact on local amenity and landscape character in view of the sheer size of the proposal. This is, of course, contrary to the view urged on the Secretary of State at this inquiry by VES and the WPA. As to the credibility of the VES position, NBAF leaves that to the SoS without further comment, but the position of the WPA is surprising given that in a very carefully crafted report to committee the very clear conclusion was reached that it was not³¹⁴.

577. The Secretary of State should be satisfied that the development plan indicates a refusal of planning permission, and should therefore consider whether there are any other material considerations which indicate a grant.

National Waste and Energy Policy

578. The Secretary of State will no doubt be treated to submissions from Veolia, along the same lines as he was in the Shrewsbury appeal³¹⁵ and many others.

³¹⁴ CD B1 para 213

³¹⁵ CD F1

NBAF's evidence did not condescend to a close analysis of this policy. WHDC's case dealt with it in more detail.

579. As a result, these closing submissions from NBAF will not detain the Secretary of State on this matter unduly. NBAF accepts that the proposal offers wider environmental benefits by providing a material amount of renewable and sustainable electricity, which would contribute to national and local targets for renewable energy. The NPPF recognises that all communities have a responsibility **to help increase the use and supply of 'green' energy. However, national policy** makes it clear that this does not mean that the need for renewable or low carbon energy automatically overrides environmental protections and the legitimate planning concerns of local communities. NBAF also accepts the need for Hertfordshire to find a sustainable method of disposing of or managing such part of its waste that cannot be reused or recycled. The issue is what that sustainable method should be.
580. However, while current national policy provides that wider environmental benefits can be afforded significant weight, it is also undoubtedly the case that new renewable and low carbon energy infrastructure should only be provided in locations where the local environmental impact is acceptable. For the reasons set out above, the NB site is not such a location for infrastructure of the scale proposed by Veolia.
581. **In this context NBAF notes, in particular, the SoS's very recent assurance³¹⁶ that he remains committed to the 'stringent approach' set out in the Coalition Agreement to the protection of the green belt. This commitment should be given very substantial weight in this decision; NBAF does not understand this commitment to be 'out to consultation' even though it is mentioned in the draft replacement to PPS10. As a result of that commitment, NBAF commends the SoS for the approach he currently intends to take in the replacement to PPS10 to remove references to 'locational needs' and 'wider environmental and economic benefits' from national policy as it applies to green belt applications and urges him to be characteristically robust in considering any responses he might get to his current consultation that seek to water-down such an approach.**

Prematurity

582. It is clear³¹⁷ that arguments that an application is premature are unlikely to justify a refusal of planning permission other than in exceptional circumstances; it is likely to be limited to situations where both:
- a. the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan, and
 - b. the emerging plan is at an advanced stage but has not yet been adopted.
583. NBAF submits that both are clearly made out in this case. This is not a case in which refusal of planning permission is sought on grounds of prematurity where a draft Local Plan has yet to be submitted for examination, quite the reverse. The

³¹⁶ CD D8 para 26

³¹⁷ See general Policy and Principles CD D7, paras 7 - 19

WSA LDD is well into the examination process; oral hearings have commenced **and the NB 'session' will take place within a few weeks of this inquiry closing.**

584. There can seldom have been such an extraordinary situation. It obviously exists because it was anticipated by VES and the WPA that this planning application (made in late 2011) would be ready for determination once the inspectors report into the examination of the WSA LDD was available. In such circumstances, with no doubt VES and the WPA anticipating a favourable report from the examining inspector, it was expected to be able to give very substantial **weight to the emerging LDD's 'allocation' of the NB site. That there has been some 'slippage' of the WSA LDD timetable from that anticipated in late 2011 is no surprise;** what is surprising is that the WPA did not seek to slip its consideration of the planning application similarly. It pressed ahead thus causing the situation in which we now find ourselves.
585. That a grant of permission for the development proposed would prejudice the outcome of the plan-making process cannot seriously be open to doubt. A grant would pre-determine:
- a. Whether there should be waste management development at the NB site – ie should it be allocated at policy WSA2; and if so
 - b. What matters should be included in the "waste site brief" (see p137) that are required to be taken into account. This will include whether thermal treatment should be included in the list of potential uses, and whether the scale (footprint) of any proposed development should be limited as currently proposed by the WPA.**
586. If permission is granted for the VES proposal it will determine where and how LACW is dealt with (there will be no continuing debate on the large one-site / small multi-site strategy), it will determine that development of this scale should take place in the green belt (there will be no continuing debate as to whether sites in the green belt are necessary at all for this scale development). To that will be added predetermination of the treatment of a large amount of the residual C&I waste arisings.
587. These matters and others are currently the subject of representation and consideration in the examination. Indeed, as Doc HHC/10 shows, the examining inspector is looking at very many of the same issues that are being considered at this inquiry.
588. The response of Veolia and HCC is essentially to make three points: first, this inquiry is a better forum to give detailed consideration to these matters as the examining **inspector is confined to a single day's examination and this inquiry considered evidence on 19 days;** second, that reaching a conclusion as to the **future of the NB site is 'urgent';** third the **NB site is within an 'area of search'** identified in the WCS. All three points are bad ones.
589. The examination of the WSA LDD is not confined to the oral hearings. The examination process starts with the submission of the plan and ends with the inspector's report. The inspector takes all the time that he/she needs, and determines what matters need further exploration at oral hearing; if the examining inspector thinks more than the currently scheduled day is necessary, time will be added. At an inquiry the inspector endures what the parties think he/she needs to hear.

590. To the extent that the WPA is concerned that the process of identifying a sustainable solution for dealing with the counties residual waste has taken a long time, NBAF agrees. However, the reason why this is so lies solely at the door of the HCC – there is no complete development plan in place. The solution was always in the hands of the WPA. It could have made a strategic allocation in the WCS. Given that the WCS process itself was somewhat tortuous (it began in 2004, sustained a substantial hiccup in mid-2008 with the withdrawal of the first submission draft, and only concluded in late 2012³¹⁸) it is surprising that this course was not adopted. One credible explanation as to why it was not is that HCC was keen to postpone thorny issues to the WSA LDD process; it would seem that by late June 2011 when submission to the SoS took place (and the WPA had thus supposedly reached a firm conclusion as to its preferred strategy) Veolia was the preferred bidder and the signing of the procurement contract was only weeks away. Veolia did not make representations to HCC or the WCS examination that New Barnfield should be identified or allocated as a strategic site. Secondly, the WPA has not even shown the intellectual honesty of submitting a WSA LDD with a development brief for the NB site that corresponds with the planning application from VES that it supports at this inquiry. Thirdly, if the matter is so urgent that, in effect, a decision of this magnitude ought / needs to be taken outside the parallel plan-making process, then the WPA should have been open and said so and either submitted a different WSA LDD or delayed submission until after this application was determined. It did neither, and now that the present ludicrous position is clear, it seeks to hide behind a smoke-screen of urgency.

591. The New Barnfield site is indeed within area of search C in the WCS key diagram. However, WCS policy 7 expressly anticipates that the WSA LDD will identify sites within it to be allocated and the WCS Inspector in any event anticipated that the strategy did not require the use or allocation of land in the green belt³¹⁹.

592. If the WSA LDD examining inspector deletes or calls for the New Barnfield allocation to be substantially modified, then the members of NBAF reasonably ask, what then? The answer from Veolia and HCC is a shrug of the shoulders. The real answer is that this simply shows that the determination of this application now is premature.

Emerging local plan documents

593. The WSA LDD is the only such document. The report to committee was unequivocal³²⁰: no weight should be given to it. The position is happily agreed and wholly consistent with para 215 of the NPPF.

Impact on the significance of designated heritage assets

594. NBAF adopts the submissions of GCE on this issue. The additional harm to other assets including North Mymms House, Gobions Folly Arch and Brockett Hall also fall to be **considered individually and in the 'cumulative/combined' impact analyses.**

³¹⁸ CD C1, para 4

³¹⁹ CD M6, para 31

³²⁰ CD B1, para 4.16

Green Belt – very special circumstances

595. The applicable test has already been set out above. The harm that falls to be considered is:

- a. Harm by reason of inappropriateness (ie definitional harm). The **Secretary of State's policy and practice is to give this substantial weight** and nothing different should apply here.
- b. Harm by reason of actual loss of openness (see above).
- c. Harm by reason of conflict with the purposes of including land within the green belt.
- d. Prematurity - if this is not sufficient of itself to result in the refusal of this application, then there is harm nonetheless which falls to be taken into account in the balance of harm and other considerations.
- e. Impact on the significance of designated heritage assets – once again, if there is not sufficiently substantial free-standing harm to result in the refusal of this application, then there is harm nonetheless which falls to be taken into account in the balance of harm and other considerations.
- f. Landscape and visual impact with knock-on effects on the enjoyment of wildlife (see above).
- g. **Harm to local amenity from noise, HGV fumes (air quality) and 'non-flue emissions' harm to health (see above).**
- h. Harm to Southfield School (see above).
- i. Any harm to highway safety (see above).
- j. Any harm caused by over-capacity by virtue of disincentives to improved recycling rates and inability to take advantage of new technologies.
- k. The failure of VES to properly mitigate the impact of the proposed development and its failure to take opportunities to compensate for harm that could not be mitigated.
- l. The strength of local opposition.

596. This last point is plainly a material consideration; the question is what weight should be afforded to it. The local opposition is long standing. As already **identified under 'prematurity' above, the Waste LDF in Hertfordshire began life in 2004 and stalled in 2008.** So far as the search for sites is concerned, HCC received a report from WSP on its requirement for waste treatment facilities in the county capable of treating up to 400,000 tonnes of waste a year³²¹ that excluded the New Barnfield site, but obviously that did not meet with HCC approval as they then appointed Vincent & Goring (V&G) who promptly scoped it back in again³²²; on the basis of discussions with HCC as WDA, V&G did so on the basis of a 200,000 tpa facility with a building footprint of c10,000m² and a building height of 15 to 20m³²³. Later that year in October, a Mr Brian Owen **(Development Control Manager) at HCC indicated to WDA colleagues that 'whilst the proposal would represent a departure from national and development plan policy, a planning application could be considered favourably' subject to the demonstration of VSCs.**³²⁴

³²¹ CD B10, para 1.1

³²² Ibid, para 2.2

³²³ Ibid, para 2.11

³²⁴ Ibid, letter dated 21 October 2008 in App 7J

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597. At about the same time, in late 2008, the County Council as WDA began its procurement process. The Cabinet meeting report of 20 October 2008³²⁵ makes it clear that the New Barnfield site was to be the reference site, and that 'the County Council has the opportunity to supply a site which it already owns ... This is very advantageous as such sites are difficult to obtain and may be expected to command high site values for large scale facilities'³²⁶. The minutes of that Cabinet meeting³²⁷ show that the report's recommendation was accepted, and that the NB site was indeed to be the reference site for an increased capacity of 270,000tpa EfW and CHP plant, that Cabinet resolved to approve "the immediate initiation of a project to achieve the relocation of all of the current service activities on New Barnfield by April 2011 at the latest" and that the County Council should pursue a strategy in which it undertook much of the environmental, technical and permitting work necessary to secure planning permission but that the successful bidder in the procurement process would be expected to submit the planning application after April 2011.
598. In 2009 the New Barnfield reference site was adopted by VES. In late 2009 a revised 'preferred options 2' WSA document was consulted on³²⁸. All the while in 2009 it is plain³²⁹ that the WDA, WPA and property owning arms of HCC were engaged in the various tasks and strategies approved by Cabinet in late 2008.
599. As explained to the inquiry by Grant Shapps MP, NBAF was formed by then, and he had first been asked to intervene in early 2008. He made an offer to the leader of HCC to find an alternative to the NB site in his constituency which was rebuffed. He gave evidence that he formed the view that the New Barnfield project had acquired unstoppable momentum; subsequent events proved he was entirely correct.
600. NBAF thus invites the SoS to conclude, as it does, that as from 2009 at the latest, HCC was not seriously considering anything other than a very financially favourable arrangement, which would see a very large EfW facility on the New Barnfield site. Once the procurement contract was awarded to Veolia in July 2011, HCC announced in its own publication and to the local media³³⁰ that VES had been selected to develop a RERF at NB. The capacity of the facility had by this time jumped to 380,000tpa. Yet all the while, so far as plan-making is concerned, the WCS put on a fig-leaf of capacity, technology and site neutrality, and the WSA to this day includes a development brief that describes a facility of a much smaller scale than in reality was being worked on behind the scenes and is supported by the WPA at this inquiry.
601. It is plain also that Cllr Mrs Mandy Perkins (of WHDC) is quite correct in her assessment that a significant problem in this case is that 'the procurement cart has been put before the planning horse'. Despite repeated assurances that planning permission could not be assumed for a large RERF at New Barnfield, HCC never had a 'plan B' in place, it had invested huge amounts of resources in New Barnfield, stood to gain financially from a grant of permission, had closed its mind to any serious consideration of an alternative and did not encourage or require Veolia to conduct a proper ASA. Veolia's witnesses confirmed they had

³²⁵ CD B11

³²⁶ Ibid paras 5.1 & 6.2

³²⁷ CD B12

³²⁸ CD C5, para 1.4(i)

³²⁹ See E-mails at INQ/NBAF/02

³³⁰ INQ/NBAF/03

not considered or assessed any other site, nor had they seen any evidence that any equivalent predecessor expert consultant had done so either.

602. It is small wonder that NBAF members and local supporters are not simply cynical about the site selection process; they are furious. The SoS should take the opportunity to put an end to this nonsense on behalf of the local community.
603. In the VSC balance, there is thus considerable harm which should be accorded very significant weight.
604. **The 'other considerations' which fall to be weighed on the other side of the balance are:**

- a. The need in Hertfordshire to move waste up the hierarchy.
- b. The need to secure environmental benefits to make a material contribution to reversing / slowing down climate change.
- c. The economic benefits attributable to jobs in the construction and operational phases.
- d. The mitigation / compensatory benefits delivered by the planning obligation (to the extent that they have not been taken into account by **a 'net' assessment of harm – so as to avoid 'double counting'**).

605. There is one consideration relied on by Veolia that has not yet been considered in these submissions – **'alternative sites'**. **It has already been submitted above** that the VES ASA is not a document that addresses the requirements of WCS P6. But as also noted, it did not profess to do so. What it did profess to do, was to **demonstrate that there was no viable alternative site in existence 'which is available and deliverable to VES which could accommodate the proposed RERF development at substantially the same scale as that submitted in the application, with lesser overall environmental impact'**. **It was 'designed to be a comparative impact assessment tool with an analytical planning component to mainly assess the deliverability of the best performing sites albeit it one with 'no specific weighting against a site in the green belt' and which does not make any planning judgments on the overall suitability of an alternative site coming forward'**³³¹. Hedged about with such caveats, it is **not surprising that it concluded 'On this basis, as no viable alternative site which could accommodate the proposed RERF with a substantially lower environmental impact has been identified, the ... suitability of the application site falls to be determined on its own merits ...'**³³².

606. It is submitted that the ASA does not succeed in achieving even the very limited aims it set itself. The ASA is essentially the product of a three-stage process; but at each stage there are material defects as identified by Mr Zukowskyj in his supplementary proof of which the main points are here highlighted:

- a. **The 'stage 1' sifting was not carried out against absolute objectively verifiable criteria.** Where this had been done previously in 2008, the NB site has been sifted out, only to be scoped back in again by Vincent & Goring. The stage 1 sifting did not adopt a precautionary approach to uncontrolled events. It also contained inconsistent judgments on ostensibly the same criterion.

³³¹ ASA, paras 1.16 – 1.18

³³² Ibid, para 1.30

b. The stage 2 assessment was flawed:

- i. The numeric scoring system failed to prioritise appropriately.
- ii. The criteria selected overlapped inappropriately.
- iii. Appropriate criteria were omitted without convincing explanation. To compound matters such criteria were included in the Fieldes Lock ASA.
- iv. The scoring of impact on heritage assets was too blunt – being limited to an assessment of distance only. Again, there was no convincing explanation as to why this was, and to compound matters, more appropriate consideration was included in the Fieldes Lock ASA.
- v. Substantive detail in the stage 2 process was factually inaccurate and the scoring included arithmetical errors.
- vi. The NB site was thus 'demoted' in the order of merit.**
- vii. The scores for some other sites including in particular land adjacent to Hoddesdon Power Station, land NE of Hoddeston Power Station and Roehyde Quarry were materially in error
- viii. Some sites not in the green belt should have been considered to be available.

c. The stage 3 assessment was flawed:

- i. It contained inconsistencies so that equivalent descriptions at NB were downplayed.
- ii. Because it relied in part on flawed information or judgments derived from stage 2.
- iii. He inconsistencies also affected the judgments reached at other sites including Roehyde Quarry, land North East of Hoddeston Power Station and Harper Lane, Radlett.

607. The ASA does not therefore convincingly exclude there being a reasonable **alternative. It is VES who seeks to rely on the 'no alternative site' material** consideration, and it has failed to produce reliable evidence to make good its claim.

Conditions and Planning Obligations

608. NBAF adopts the submission of GCE in respect of the need for off-site planting and landscape management conditions and the weight that can be given to the proposed planning obligation for a financial contribution to planting at Hatfield House.

609. NBAF adopts the submissions of WHDC in respect of noise conditions.

Conclusions

610. For the reasons set out above, the proposal is contrary to the development plan as a whole and there are no other material considerations of sufficient

weight to indicate determination of this application other than in accordance with the development plan.

611. In particular there are compelling and free-standing reasons to refuse this application even in circumstances where the Secretary of State reaches the conclusion that the development plan indicates approval:

- a). VES have not demonstrated that other considerations clearly outweigh the harm to the green belt and other harm.
- b). Approving this application in advance of the adoption of the WSA LDD is premature, so it ought to be refused.
- c). The proposed development would cause substantial harm to the extraordinarily important ensemble of heritage assets at Hatfield and such harm has not been shown to be necessary to achieve substantial public benefits that outweigh that harm.

612. NBAF respectfully reminds the SoS that before he reaches his decision in this case there may well be a need to seek further written comments from the parties/re-open this inquiry. The following likely future events are able to be identified at this stage:

- a). The report of the inspector following the examination of the WSA LDD.
- b). The publication of new national waste policy to replace PPS10.
- c). The post-consultation publication of new national planning guidance.

613. However, for the reasons set out above, this planning application ought to be refused.

THE CASE FOR GASCOYNE CECIL ESTATES (GCE)

Introduction

614. The ensemble of heritage assets at Hatfield is undoubtedly of national importance. The description and significance of the component parts of the ensemble is not in dispute as set out in the evidence of EH. We are concerned **here 'with a place of extraordinary significance'**³³³. The SoCG (doc S1) between VES and EH **accepts that we are also concerned here with 'one of the most historic sites in England'. There is nowhere else in Hertfordshire where there is such a fine and important ensemble.**

615. The importance of this ensemble and the need to have well in mind the potential for harm to the assets (including harm to their setting) should have been clear to the proponents of the development at the outset to anyone. The same applies to anyone judging whether such development should be allowed to proceed. In short, the Hatfield ensemble should have been, and should remain, a **'red flag' from the start to finish of the process, from site selection, technology choice and the design of a proposal, to final decision-making.** For Veolia and HCC this has not been the case.

³³³ EH/1/1 para 6.2

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616. For reasons set out in the submissions and evidence of NBAF, GCE is of the view that the planning application by Veolia, and the willingness of HCC to approve it had, by 2012, achieved an unstoppable momentum. The determination of this planning application therefore calls for the closest scrutiny by the SoS of the justification for this scale of development on the New Barnfield site.
617. It is far from clear that the potential effects on the heritage ensemble were **properly taken into account in the adoption of the 'reference case' in the** procurement process, site selection (including the consideration of alternatives) following the award of the procurement contract, the determination of the appropriate scale of development, the judgments reached in the ES and in the further and subsequent information. Indeed, it is wholly questionable whether EIA in this case has been an iterative process – i.e. one that informed the key decisions of site selection, scale of development and the need for mitigation.
618. GCE are also concerned that Veolia did not engage fully with the estate at the pre-application stage and before; had it done so it would have better appreciated the harm that would be caused. The assessment of harm in the ES and at subsequent procedural stages was understated as a result.
619. These concerns were fully communicated to Veolia and HCC when the planning application was notified in early December 2011 (CD H11). The first contact with GCE was in early October 2011, the first known visit to the estate took place on 19 October 2011 (apparently a visit had taken place while the estate was open to the public during the summer). What is clear is that no real or proper attempt was made by VES before the application was submitted to engage with GCE either to understand the importance of the estate or to discuss mitigation or compensatory provision.
620. Meetings were held between Veolia and GCE in May 2012 following which Veolia submitted further information in May and June 2012 (CD A17, A18, A23-27). CGE then commissioned LDA Design to respond; its report was produced in August 2012 (CD H12) and while expressing concern, the conclusions reached were as follows:
- a. **The harm to 'Hatfield House and its Park' would be 'less than substantial' in** planning policy terms but the impact would be harmful nonetheless and not justified.
 - b. **Concerns were expressed about the applicant's assessment methodology** and alternative sites assessment.
 - c. That the claim in the DAS for an iterative design process could not be substantiated.
 - d. That **the applicant's assessment relied on planting /screening on land it did** not control.
 - e. That mitigation and compensation would be necessary if the development **was to proceed. LDA Design's 'initial analysis' was that mitigation** opportunities existed but that **'the scope and effectiveness of such mitigation would need to be the subject of a specialist study' and that further** compensatory measures would need to be agreed/secured to retain and manage existing planting relied on by VES in its assessment.
621. **This report was not however, LDA Design's 'last word' on the application. In** September 2012, following further research on the historical significance of the

park in particular and a better understanding of the work planned to be **undertaken to Millward's, LDA Design advised the WPA (see CD H13) that its view now was that there would be 'very substantial harm to the heritage environment' and that new information available to LDA Design 'dramatically increases the level of concern that we have about the impacts of Veolia's proposed development on the heritage environment at Hatfield House and Park.'**

622. Thereafter, LDA Design played no real active part in the process. GCE left planning and heritage issues to EH. GCE did not progress discussions about mitigation / compensation because of its objection in principle to the proposed development.

What is the 'harm' to the significance of the heritage assets in the ensemble without off-site mitigation?

623. All parties agree that we are concerned here with potential effects of development within the setting of heritage assets. It also appears that some harm will arise is accepted by VES; the principal concern of VES appears to have **been to demonstrate that the resulting harm will be 'less than substantial'.**

624. What matters in assessing whether a proposal causes substantial harm is the impact on the significance of the asset. As the NPPF makes clear, significance **derives not only from a heritage asset's physical presence, but also from its setting.** A key factor in determining whether the works constitute substantial (i.e. serious³³⁴) harm is if the adverse impact goes to the heart of why the place is worthy of designation – why it is important enough to justify special protection.

625. There is a further dispute that the Secretary of State will need to determine: should he only consider and assess the harm to each individual heritage asset in **the ensemble, confining himself to 'one pigeon hole at a time', or should he consider the ensemble as a group?**

626. CGE adopts that evidence and the submissions of EH. In summary, the **presence of the RERF as an 'industrial colossus' would harm the appreciation of the historic character and associations of the heritage assets with which it would be fundamentally at odds; it would harm the aesthetic quality and tranquillity of the place; it would subvert the grandeur of the house, the beauty of its gardens, the rugged pastoral nature of the park, the venerable atmosphere of the old palace, the intimate character of St Etheldreda's church and the old town.**

627. EH, the expert public body expressly charged with preserving and enhancing heritage assets is firmly of the opinion that the harm that would be caused by the **prosed RERF is 'substantial' or if less than this, it is nonetheless 'severe'**

628. Witnesses for GCE offered the perspective of the owners and managers of the estate. In describing the harm to the house, old palace and registered park as **'substantial' the word was being used the in its ordinary and natural sense and not ascribing to it any 'planning' or 'legal' meaning.** Once GCE was satisfied that EH was taking a keen interest in the RERF application and would play an active part in the application process, GCE saw no need to persist in instructing planning consultants of its own. CGE accordingly relies on the specialist planning / heritage evidence of Mr Neale of EH.

³³⁴ Para 21 of Bedford BC v SSCLG at doc INQ/V/5.

629. The harm identified by the GCE is set out below:

a. The RERF would be intrusive in views from the house, gardens, old **palace and park. Understandably having been effectively 'bounced' by** this planning application, the GCE is deeply suspicious of the VES visual assessment and photographic illustrations. All parties appear to accept the danger of relying on the photomontage evidence alone. The inspector will not doubt carefully report the results of his site visits to the Secretary of State.

b. The effect of views of the RERF on the enjoyment of public visitors to the estate. These visitors comprise those who pay to tour the house and grounds (currently open 6 months of the year) and the local residents of **Old Hatfield who make use of the 'permissive pass' scheme to walk in** the park on a daily basis. Such visitors are important to the estate in its quest to preserve and enhance the historic significance of the heritage assets, which it does as both a private and public benefit.

c. The effect of the presence of the RERF on the Cecil family and its visitors. The family has been in residence for 400 years. Mr Clegg explained the importance of this in terms of the active management of the estate and the conservation and enhancement of the heritage assets **for the public benefit. Mr Clegg's evidence that the continued occupation** by the family would be put at risk of the RERF development was to proceed was not challenged.

d. The ability of the family and estate to manage their assets for the life of the RERF in order to preserve it as a heritage site for future (private and public) generations. The VES and WPA assessment of impact is **based on a current 'snap shot' of the landscape. No account was taken** of the fact that we are dealing here with an ever-changing landscape nor of the need for such a landscape to be managed, and where appropriate restored, in order to preserve its significance.

630. Mr Fauvel explained the on-going process of the management of the estate and in particular:

a. That there could be no certainty that the south-ride/avenue would not need to be replanted during the lifetime of the RERF. He reported that both lines of narrow leaf Lime were in poor health and that the outer line had recently **been the subject of 'crown reduction' as a result.** Replanting of the avenue trees on the estate has been a feature of estate management both recently and throughout its existence³³⁵.

b. Millward's is to be gradually returned to more open and historically authentic parkland; the current 'snapshot' will not remain. No agreement with the estate is yet in place to dovetail that process of planned gradual change with any need to screen views of the proposed RERF.

³³⁵ The inquiry heard of the recent replanting of the north avenue after the failure of the previous planting, and the 'succession planning' arrangements in place for the south avenue.

c. The 'Wilderness' planting which does now screen views of the proposed RERF to a degree, can also not be relied on for the proposed life of the RERF without the agreement of the estate. This area has always been subject to change because planting therein changes with each new marchioness. The very name 'The Wilderness' is the description given to the scheme of the 6th marchioness. The 5th marchioness had a 'shrubbery'. The current incumbent (the 7th) has planned to gradually establish an 'arboretum' in its place. This process of generational change is historically authentic and part of the significance of the heritage importance of the estate. Neither VES nor the WPA have consulted the current marchioness on keeping the wilderness planting in place let alone reached any agreement.

d. The vulnerability of the estate to the opening up of key views to the RERF by future acts of nature, namely wind and disease. Records of previous storms (in particular those in 1795 and 1987) show unpredicted and serious loss of trees. The over-mature Scots pine trees on the ridge at north of the walled garden were currently vulnerable to storm loss or damage within the lifetime of the RERF. The inquiry was reminded of the devastating effect that disease can have. There is a particular concern at present with the threat of red-band needle blight in the pine trees on the estate which would rapidly expose the park to much greater views of the RERF.

e. The trees north of the walled garden are also vulnerable to felling in the event that GCE continues to implement the planning permission it has for a new estate office. In the event that employees and visitors were routinely admitted to this area felling and re-planting would be required in order to ensure their health and safety.

631. The failure by Veolia and HCC to engage with GCE while plans for the New Barnfield site were at a formative stage has led to fundamental inadequacies in the assessment of the impact on the ensemble of heritage assets and a proper understanding of what is planned for the estate over the lifetime of the RERF.
632. **HCC's heritage witness was not instructed until August 2012 and had had no involvement in the selection of NB as the 'reference' site in the procurement process or the production of the WSALDD.**
633. His assessment emphasises that the impact of the RERF on the significance of Hatfield House results from its height/mass and stresses the importance of intervening trees, particularly those within the gardens and park. As to the park it is again the height/mass of the REFR that is key together with intervening **vegetation. Having correctly identified the 'ensemble of exceptional interest of a fine example of a sophisticated courtier landscape of the seventeenth century, together with its earlier episcopal and royal connections' he identifies the most notable views to be affected and that the plume would be visible from a wide number of locations within the gardens and park. He accepts that even with the planned gradual (as opposed to 'clear felling') restoration of Millward's there will be periods when the RERF could be prominent in views from the park. Very importantly he notes and accepts the importance of the existing screening effect of the mature trees within the park on 'key views'. Against that background he concludes that there will be a 'moderate' impact (not harm).**

634. This is broadly consistent with his September 2012 report to the WPA prior to its resolution to approve (CD H14) in which it was concluded:

a. There were 'major weaknesses' in Veolia's assessment of impact including a failure to consider the loss of existing tree screening as this was of 'particular importance' in reaching the judgment that the RERF would cause 'less than substantial harm', that the plume is likely to have an impact, that the impact on the settings of Orchard House and Dairy Cottage had not been understood, and that there was a failure to understand the importance of the Hatfield ensemble. The result was that 'limited weight' was to be given to the Veolia's June 2012 conclusions.

b. The proposed RERF's size means that even at distance it would be a prominent feature in the landscape 'unless screened from view'. He identified the views in which it would be 'most noticeable'.

c. However, it was 'important to note' that the REFR would be 'far more dominant in key views' if it was not screened by the mature trees in the park.

d. His conclusion that there would be 'less than substantial harm' 'relies heavily upon the substantial numbers of mature trees within the Park. There is a risk that some of these trees could be lost over the next twenty to thirty years (particularly as a result of storm damage) and this could radically change the potential visual impact of the proposed development'.

e. Beneficial restoration at Millward's has the capacity to cause 'substantial harm' unless GCE takes into account the presence of the RERF.

f. Overall it was concluded that 'for the avoidance of doubt, it is considered that if an appropriate programme of tree planting is not provided, the proposed development will result in 'substantial harm' to the significance of Hatfield Park.

635. In the officer's report to committee (CD B1) the WPA accepted its consultant's advice, but suggested that the GCE objection on the basis of proposed changes in Millward's had been 'overstated' on the basis that most views from the house would be screened by 'the tree belt directly south of the house' and trees 'on a corner of the north west part of the park' which was assumed to be 'retained'. A financial contribution to maintenance of the woodland was assumed 'to ensure that adequate screening would be maintained'. On these assumptions it was concluded 'overall' the harm would be 'less than substantial'.

636. Veolia's evidence to the inquiry confirms that the Applicant's assessment of the impact on cultural heritage was not complete at the time the planning application was submitted. It must therefore be the case that the decision to submit the application at New Barnfield was not fully informed by the effect on heritage assets.

637. Their assessment is predicated on the effectiveness of existing planting being maintained allowing the conclusion that the harm to the individual heritage assets would be less than substantial. Veolia's witness considered that it is not

appropriate for the SoS to take into account the potential for individual heritage assets (each sustaining less than substantial harm to their significance) to give **rise to a combined effect that is 'substantial'**.

638. **Veolia's approach involves a highly constrained and close reading of the policy in the Framework, relying on references to harm to 'a' heritage asset. It ignores the overall aim of policy to sustain and enhance heritage assets and the historic environment generally. It defies common sense particularly in a truly exceptional case where a proposed development of substantial scale clearly impacts on an ensemble of heritage assets agreed to be the most important in the county and of high importance nationally. Furthermore, such cumulative or collective harm is plainly a 'material consideration' even if it is one not expressly recognised in the Framework or elsewhere in government policy. The weight to be given to such harm, and the consequences of it being 'substantial' should plainly be the same as other 'substantial' heritage harm set out in the Framework.**
639. Veolia also assess harm caused by the RERF against a baseline that includes the existing harm caused, in particular, by the modern buildings of new Hatfield **to the west. No assessment has been made of the 'cumulative' harm that the RERF would contribute.**
640. **Nor does Veolia's assessment consider views from the park itself. It concludes that views from the house are dependent on screening at 'the Wilderness' (see also para 6.1.30). It is plain that this assessment of harm is predicated on the current planting 'snap shot'.**

Can the existing off-site screening at the park and gardens be relied on to remain in place?

641. It has been noted above that both Veolia and HCC assume and rely on the current planting being retained in place for the life of the RERF (at least the 25 years of the current contract). In particular the planting on the ridge to the north of the walled garden and that in the wilderness are relied on, as well as the plantation of conifers north-west of Millward's. **Further, it is assumed that GCE will carry out the restoration of Millward's in a manner that does not open up harmful views of the RERF.**
642. The existing planting on the ridge north of the walled garden is now over-mature and cannot be relied on to remain in place for the life of the RERF. It may require removal for health and safety reasons in any event. The position with regards to The Wilderness has also been explained. The conifer planting north-west of Millward's **is an historical anomaly and is the remains of a now abandoned 'Christmas tree' undertaking. Both CGE witnesses expressed concern that the planning system should expect the estate to conduct its restoration plans at Millward's driven by a desire to avoid harm from the RERF rather than by the most effective outcome for the estate.**
643. GCE cannot control the weather. The estate has suffered storm damage in the past and it would be foolish to discount it over the next 25 years or more. If the RERF is built and the key screening elements suffer loss, views will open up which even proponents of this development agree has the potential to cause **substantial harm. The conifers on the estate (including those at Millward's and north of the walled garden) are vulnerable to disease. If disease strikes in the next 25 years, substantial harm to the significance of the house itself in particular will result.**

644. Without any legal agreement in place, it cannot be assumed that the existing off-site screening at the park and gardens will remain in place or relied on in reaching a conclusion that the **harm would be 'less than substantial'**. Even with such an agreement, the screening is vulnerable to storms and disease; in the event of loss or damage, there is no agreement in place to secure further mitigation or other compensatory measures.

What does DP policy indicate should be the consequence of such harm?

645. While VES and the WPA do not accept 'substantial harm' they do accept 'less than substantial harm' which is significant.

646. Criterion iv) of policy 11 of the WCS (CD C1) indicates that proposed development which adversely impacts upon the historic environment will not be **supported. This is made doubly clear in the supporting text for 'assets which are considered important in Hertfordshire' and that it is important that these are protected.** It was agreed that the ensemble is the most important in the county. Regard is also to be had to the cumulative impact of the development with existing development/activity in the area.

647. Policy 17 of the WCS contains similar provisions, but in the case of Listed Buildings and their settings and historic parks, provides that where possible opportunities should be sought to enhance them.

648. In accordance with para 215 of the Framework, full weight should be given to policies 11 and 17 in so far as they relate to adverse impacts on heritage assets. The WCS was adopted after publication of the NPPF and there is no indication of an early review being necessary as a result of any non-compliance. The WCS makes specific reference to the NPPF having been taken into account; indeed policy 1A was included to make it sound. Para 4.5 of the WCS makes it clear that all its policies have been shaped to reflect sustainable development objectives. Paras 4.94-98 contain a clear local justification for the approach adopted. In any event, at the time the plan was in its earlier stages of preparation, the then **extant PPS5 contained a 'substantial harm' / 'less than substantial harm'** distinction, so the concept was not a new one.

649. There is no mechanism in place to secure off-site mitigation on GCE land. That the harm to heritage assets should be mitigated (in order both to protect and safeguard such assets as well as minimise impact) is clear from policy 19 of the WCS.

What does the NPPF indicate should be the consequence of such harm?

650. The attempt by Veolia to exclude the operation of para 133 of the Framework **on the basis that any harm here is not being caused to the 'asset' (because harm only arises to their settings)** is wholly misconceived. If there is harm to the significance of the asset because of development within its setting then there is plainly harm to the asset. To read paragraph 133 and paragraph 134 in the constrained way contended for by Veolia is to create a lacuna in what is plainly meant to be a logical policy cascade: if substantial harm to the asset is caused by **development within its setting, then on Mr Harris's interpretation, neither para 133 or 134 would apply.** If this approach was accepted the significance of a heritage asset could be harmed by, say, development in a zone covering 350 degrees around it but para 133 would never be engaged because there was no harm to the asset itself.

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651. If the SoS agrees with EH, GCE, NBA and WHBC that there will be substantial harm to the ensemble of heritage assets at Hatfield, then para 133 of the Framework is clear: consent should be refused unless it can be demonstrated **that the substantial harm is 'necessary' to achieve substantial public benefits. For the reasons submitted by NBAF, VES have not shown 'necessity'.**
652. If the harm to heritage assets is found to be **'less than substantial'** then para 134 of the NPPF applies: the harm should be weighed against the public benefits of the proposal.
653. **HCC's witness accepted that the range of harm he assessed and contended for was on a spectrum of 'moderate' to 'substantial' depending on the future management regime of trees on the GCE estate. That simply serves to re-enforce the need for Veolia to reach agreement with the GCE over the future management regime (felling/planting) in order to avoid 'substantial harm'.**
654. In the final analysis, the SoS is asked to endorse the view of EH: only the most compelling case could justify such harm and in the consideration of a place of such extraordinary significance, it is enhancement that the SoS should be considering, not harm.

What is the (residual) harm with off-site mitigation proposed by the HCC?

655. Having recognised in the committee report the need to secure mitigation planting in the park and gardens HCC set about designing such a scheme. GCE facilitated a site visit on 19 April 2013 for HCC and its heritage and landscape consultants but took no part in drawing up the scheme.
656. **The scheme that was presented to the inquiry is shown in Mr Billingsley's appendix 2 (in doc H/JB/03). EH's witness concluded that the mitigation identified would be of 'doubtful value'. It has obviously been devised to screen views from the house and gardens without consideration of the historic character of the park; it will take many years to become effective, perhaps the whole life of the RERF; and the effectiveness of some of that which is proposed is questionable. Views would remain conspicuous and intrusive.**
657. Witnesses for GCE made similar criticisms. The problem with this scheme is that it was conceived without any regard to the needs of the estate and any **consideration of its plans for the future. Professor Tregay's 'initial analysis' in the LDA Design report (CD H11, para 6.2) was that there is 'potential for well placed mitigation planting within Hatfield Park'. The proposed scheme would not achieve this.**
658. Off-site mitigation planting on GCE land has not been agreed. That proposed by HCC is **wholly inadequate. GCE's witness was asked whether GCE would 'engage in debate' if the SoS granted planning permission. His reply was positive** in that he indicated that harmful views would need to be screened. He explained, however, that it had been the policy of the estate not to become involved in detailed discussions while they objected to the proposed development.
659. If the RERF is to proceed, then it should only be allowed to do so if a scheme of mitigation discussed and agreed by GCE is put in place. Such a scheme would **need to comprise both mitigation planting and 'contingency planning' for a considerable period in the future. Where mitigation is not possible, compensatory measures may need to be agreed. The RERF would be operated by VES for the life of the existing contract. If that contract is not renewed, control of the RERF**

reverts to HCC who will determine its future. There is no guarantee that it would be demolished and the site restored. If the RERF is to proceed, it is plain that **VES will need to be a 'good neighbour' to the GCE and vice versa. The mutual** needs of VES and GCE must be coordinated by agreement. There can be no justification for effectively compelling GCE to manage the estate in ways which would be harmful to the public interest of preserving and enhancing the heritage assets.

How should such mitigation be secured?

660. The present mitigation mechanism before the inquiry is the s106 obligation to **pay £30,216.75 by way of 'Landscape Contribution' to be applied to the 'Hatfield House Scheme'**. The total cost in Table 1 does not precisely match that in the obligation (but the difference is immaterial), but what is proposed is a 5 year maintenance period, when it is clear that any mitigation planting needs to be effective for the life of the RERF. Further, and much more problematic, the planting is all on land that is not within the control of VES. There is thus no certainty that the mitigation offered by the s106 can be delivered.

661. What is plainly needed in the event that the RERF is to proceed is a fresh scheme that covers planting and other aspects of the management of the estate. It should be the subject of a condition. There plainly needs to be a mechanism to secure the delivery of the scheme for off-site landscaping and maintenance at Hatfield House and Park. The following is suggested:

'No development shall take place until a scheme of landscaping works and maintenance at Hatfield House and Park has been submitted to and approved in writing by the waste planning authority.'

'No development shall take place until an agreement has been entered into and signed to secure the implementation of the approved scheme for landscaping works and maintenance at Hatfield House and Park.'

662. It is clear that if the RERF is built the trees must remain if harm is to be avoided, or they must be replaced effectively before removal. The suggested conditions thus obviously meet the Secretary of State's requirements in Circular 11/95.

663. In effect, GCE contends (in the event that the SoS is against it on its primary case and determines to grant permission) for a delivery mechanism that is no different from that which is often required of developers who do not (yet) control all of the necessary land.

Conclusions

664. The proposed development is not consistent with the policies in the development plan that relate to heritage assets or the mitigation of harm thereto.

665. The proposed development would cause substantial harm to the extraordinarily important ensemble of heritage assets at Hatfield and such harm has not been shown to be necessary to achieve substantial public benefits that outweigh that harm. This alone indicates that the application should be refused.

666. In the event that the harm is less than substantial, it is still very significant harm that falls to be weighed in the planning balance. GCE relies on the submissions of NBAF as to how that balance should be conducted.

OTHER INQUIRY APPEARANCES

667. **Margaret Eames** is a public health professional with over 20 years experience in epidemiological and public health research. She considers that the Health Impact assessment (CD A10) and the EA Decision Document on the permit (Q2) have omitted several important and serious health threats arising from the proposal to locate a RERF in South Hatfield. There are also equality impacts. The proposal will expose the nearby population to adverse health risks from the considerably increased diesel fumes from HGVs servicing the site. This will widen inequalities in health in Hatfield.
668. There are several vulnerable groups affected by this proposal. Southfield School provides for children with special needs, many of whom are affected by Autistic Spectrum Disorder or **Asperger's Syndrome (ASD/AS)**. Such children are known to react badly to change. If the RERF is not built there would have been no need to move them, at great public expense, from Southfield School, which is specially suited to cater for their needs, with a **'light-filled' atrium and sensory room** based in quiet and peaceful sensory surroundings. The temporary site at Howe Dell is on a busy, noisy road and not as suitable for special needs children. HCC has not acted in their best interests.
669. The proposal will also lead to increased respiratory and cardiovascular disease from lorry fumes is likely for those living on roads within 800 m of the site, particularly those close to the Travellers Lane roundabout. HGVs emit diesel PM_{2.5} particles which carry proven serious risks to health. The HIA (CD A10) refers to 130 HGVs per day, whereas the actual figure will be closer to 400, 25 per hour at peak times. In order to determine the potential for health impacts there should be a requirement to install an air quality monitor at **Travellers Lane roundabout, whether the scheme is built or not**. **The Applicant's modelling of increases in particulates and NO₂ from HGVs is inaccurate and at risk of seriously underestimating health impacts on the resident population.** The reliance on mean annual air quality measurements smoothes out short term pollution peaks, which are most dangerous to health. Mean data will not tell you of a day when a 44 tonne lorry stands congested at the roundabout belching out fumes, whilst a baby is being pushed along in a pram on the pavement. It is these peak values that are dangerous to the health of a small child or an older person.
670. The increase in HGVs will be harmful to the health of cyclists using the bridge and cycle-way. At least 30 houses and flats are located close to the roundabout whose health will be affected, particularly those already suffering from respiratory disease. There are over 700 houses and a population of some 2000 within **800 yards of the roundabout**. **St Christopher's Nursing Home**, with 150 elderly and infirm residents, is approximately 800 yards from the Travellers lane roundabout and there are 36 bungalows for elderly and vulnerable people in Southdown Court and Southway Close. Increased noise will be harmful to the mental health of the population, resulting in a likely increase in depression, anxiety and possible psychotic illness.
671. The EA permit is fundamentally flawed in that the EA simply did not consider the health effects of increased HGV traffic and emissions of particulate matter.
672. **Tom Ryan** spoke on behalf of **Old Hatfield Community Forum**. The Forum is an independent group of residents, commercial businesses, retailers, and local churches in Old Hatfield and the Hatfield House Estate. The Forum strongly supports WHBCs case that the proposed RERF is much too big and will compete

for waste which would otherwise be re-cyclable. The increase in traffic will cause severe local environmental impacts. The RERF will deter investment which is sorely needed for the regeneration of Hatfield and Old Hatfield. There is a serious risk that there will not be enough feedstock to supply a RERF of this capacity, with adverse consequences for Hertfordshire tax-payers. The high capital and operating costs mean that the RERF will represent poor value for money. HCC have not set out the full costs for the proposal and have not subjected these costs to independent scrutiny and review, but have focused on their ownership of the site. This should be irrelevant to proper economic appraisal of the best option to pursue.

673. HCC ruled out possible alternatives much too soon, for example anaerobic digestion, which is being promoted by Defra, or Mechanical Biological Treatment (MBT) which is being pursued in Essex. It should have considered a modular approach, or a range of smaller facilities closer to the sources of waste, using different technologies to ensure flexibility. There are a number of serious deficiencies in HCC's options appraisal so there can be no certainty that the construction of the RERF is the most efficient and economic option. It is not justified by any evidence that has been submitted to external review.
674. **Adrienne Nix** has lived in Hatfield since 1986 and is a resident of the **Millward's Estate** whose home would be some 300 m from the plant. Hatfield is famous for aviation which once employed 10,000 people. This industry has been successfully replaced by the University of Hertfordshire which has developed a strong reputation. The University aims to achieve a recycling rate of 90% by 2014/15 which compares very favourably with Hertfordshire's objective of 60% by 2026. **The siting of a plant to process the whole county's waste at New Barnfield** will be highly damaging to the communities of South Hatfield and Welham Green. Hatfield families deserve to enjoy their back gardens, open spaces and recreation grounds, with clean air, without toxic fumes from an incinerator and HGVs, without smells, and without vermin. These communities include thousands of people aged from 0 – 90, all of whom are sensitive receptors.
675. HGVs will pass within 20 metres of homes in this part of Hatfield, an increase of 360 movements a day, arriving and departing continuously from 7am to 9pm. The plant itself will operate continuously. Millwards Recreation Ground and the **nature walk beside Bunchley's Pond will be harmed. Cycle route 12** would become dangerous and intimidating as users would have to negotiate two separate carriageways and HGVs. It would no longer be safe for young families. The whole area would be spoiled by the visual dominance of the dome and its chimneys. This impact cannot be mitigated. The plumes would be visible day and night, and a reminder of the emission of deadly nano-particles. **The Applicant accepts that 'the change is likely to impact negatively on the mental health and wellbeing of some of the local residents as views of the natural environment can be restorative and reduce stress.'** **The additional pollution will** be harmful to children and young people, of whom there are some 4,819 under the age of 18, and approximately 27,000 attending the University. The University has plans to building a new sports ground near the Park and Ride, which would be affected by the emissions. There are some 30,000 hazardous substances that end up in residual waste, which could end up being deposited, on gardens, wildlife sites, allotments and recreation grounds. The Cemetery is at present very peaceful and tranquil, but this ambience would be taken away by the incinerator. The library at New Barnfield was an excellent local resource that has

been taken away. While the Council says there is no alternative we have to start managing resources more carefully as neither landfill nor mass incineration are acceptable solutions for unsustainably high levels of consumption. The only option is to re-use and recycle. There is a lot of scope for increased rates. 60% is too low as a target. Much higher rates are likely to be achieved in the life of the project. The only reason that Veolia are building an incinerator to accommodate 380,000 tonnes a year is that it would not otherwise be commercially viable, as HCC are only committed to 180 tonnes. Professor Ian Williams of Southampton University advises a cautious approach to the building of EfW plants, as volumes of waste continue to drop raising questions over the supply of feedstock.

676. Veolia has itself questioned the viability of CHP elsewhere without public sector support to underwrite a commercial price for the heat. HCCs decision to promote the construction of the RERF is undemocratic, and ignored the strong opposition of local people. Potential alternatives have not been explored. If planning permission is granted, the outcome will be highly detrimental to the quality of life in South Hatfield and Welham Green for many years to come. Many local people rely on the free and pleasant things which the local environment offers to support their emotional, physical and environmental well-being. The RERF will have a devastating effect on the environment and should not be allowed to proceed.
677. **Valerie Dorantt** is joint coordinator of Welwyn Hatfield Friends of the Earth, and a resident of South Hatfield. The proposal is for an RERF with a capacity of approximately 380,000 tonnes. The claimed primary purpose is to divert Hertfordshire's LACW from landfill. **The amount sent to landfill had been** decreasing annually since 2006 with 197,658 tonnes being the latest published figure (2011/2012). Overall recycling reached 50.4% in 2011 but rates vary across the waste collection authorities. There is therefore scope for a considerable increase in recycling. Much of what is in the current residual waste stream is not genuinely residual, as it could be recycled, composted or treated by anaerobic digestion if the correct infrastructure was in place. It is important to consider whether or not there will be enough genuinely residual combustible waste of the right composition to burn throughout the lifetime of the facility. **The Defra Guide to EfW (CD E7) states that 'energy from waste infrastructure has a long lifetime and changes in the composition and biogenic content of residual waste over time can affect both how efficiently a plant operates and its relative environmental impact ...'**
678. European and national waste policy is driving a move towards greater reduction at source, reuse and recycling of waste, and continued reductions in residual waste. Achieving these aspirations would mean that by 2020 there would be further reductions in waste arisings, far less residual waste with incineration limited to non-recyclable non-compostable material. The need for this particular facility at this particular time has not been established, and therefore the very special circumstances to justify inappropriate development in the Green Belt do not exist.
679. The proposal has not properly addressed water supply and demand considerations, as required by paragraph 94 of the framework. Hertfordshire is suffering from serious water stress and assessments for the county show that the vast majority of rivers and groundwater sources are over-abstracted, with an identified risk that lack of water might be a constraint on growth. The applicant states that approximately 70,000m³ of water from the local mains supply would

be required each year. The facility would therefore have a direct significant impact on future water resources, requiring water to be imported and adversely affecting chalk streams of international importance. This should weigh against the development in considering the planning balance.

680. **Mick Bee** is a member of Herts without Waste. The case for the incinerator is **based on the existence of an 'urgent and compelling need' to reinforce the very special circumstances required.** There have been great changes in the way waste is managed over the past two decades. The best projections are that overall waste will continue to decrease, and that rates of reuse, recycling and diversion from landfill will increase. This is happening, regardless of the ADEPT letter, which should be given no weight. The Waste Review 2011 (CD E5) states at **paragraph 230 that 'Waste infrastructure has a long lifetime and therefore changes in the composition and potential volumes of waste in the future cannot be ignored in the development and selection of technologies now.'** The composition of residual waste may change in future with a reduction in its calorific value.
681. The Government continues to place emphasis on the reduction in waste arisings and the role that Local Authorities can play in making this happen. The draft National Waste Management Plan (CD E10) anticipates that waste prevention measures will ensure continuing progress towards decoupling growth and waste arisings, and continued growth in the recycling of key materials such as glass, metals plastics and paper. **In the light of the Government's vision, the 'urgent and compelling need' is to do everything possible to raise the level of recycling and composting. This makes Hertfordshire's WCS recycling target of 60% by 2026 look modest, which it is compared with targets which have been set elsewhere for example Nottinghamshire, Scotland and Wales, where targets of 70% have been set. A survey of 'black bag' waste carried out in North Herts in 2010 found that over 60% was potentially recyclable or compostable. Of that approximately 33% was for waste which would ideally go for anaerobic digestion. This indicates plenty of scope to achieve a 70% target. For C&I waste the 2009 North-West of England survey found that 97.5% of landfilled C&I waste was potentially recyclable. Management of C&I waste should be facilitated but not overprovided for, as better regulation and incentives will reduce the volumes which need to be treated.**
682. The key question is will there be enough feedstock to support the RERF in 20 years time when every usable scrap of waste is captured and every scrap is usable? Dire consequences have been predicted by proponents of the scheme if planning permission is not granted. However in the short term it would be preferable, economically as well as environmentally, to reinforce the drive to increased recycling, send some residual waste (currently 17% to Edmonton and Lakeside, and maintain the level of landfill (currently 35%). This would allow for work to be carried out on further increasing recycling rates. One way would be to promote separation of food waste for anaerobic digestion which is cheaper and more benign than incineration. Medium and longer term options could include the commissioning of Mechanical Recovery Facilities (MRFs) to enable increased recycling capture or the export of waste to Europe, where there is a demand for waste to feed high-efficiency CHP plants. Other emerging technologies should also be explored. There is no compelling urgency as national landfill reduction targets are well on course to being met.

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683. **Dr John Webb** is also a member of Herts WoW. **Veolia's life cycle analysis of greenhouse gas omissions, undertaken through modelling using Waste Resources Assessment Tool for the Environment (WRATE), is possibly flawed.** However, despite repeated requests, Herts WoW has been unable to obtain the software files necessary to undertake this analysis. Whilst a report of certain assumptions and results was made available the specific data sets needed to validate the model were not forthcoming. The hope was to obtain an independent professional evaluation of the WRATE data regarding the soundness of the claimed benefits in terms of emissions and hence the climate change effects. This has not been possible. However on the basis of the information that was obtained, Eunomia has concluded that not only were there problems with the assumptions used, Veolia had failed to demonstrate their carbon claims. Without this validation the **applicant's case cannot reasonably be given any weight as regards climate change benefits.**
684. **Councillor Mark Mills- Bishop** agreed that diversion of waste from landfill would be a good thing and that the plant would produce renewable energy. However he considered that New Barnfield is the wrong place for an incinerator having regard to its Green Belt location, the scale of the proposal and the additional HGV traffic it would generate. If such a development were to go ahead it would have a substantial long lasting and adverse effect on the community which he represents.
685. **Clive Bennett** has been a resident of the parish of North Mymms for over 40 years. The Site is an a plateau of sensitive Green Belt Land, which helps prevent the coalescence of South Hatfield and Welham Green. There is a special needs school and a resource library, and the area also contains protected wildlife and nature walks. The footprint of development will be doubled, and the proposed building would be four to five times the height of the building to be demolished. The building would be visible over a large area of the surrounding countryside. It would be inappropriate development which would harm the openness of the Green Belt. The site is close to four other schools, a nursing home, a recreation ground and the Grade 1 listed Hatfield House and Park. The additional traffic will exacerbate existing congestion on the road network. Delay and congestion could result in waste vehicles being caught up in gridlock. The success of proposed mitigation is not guaranteed and cannot be relied upon. For a plant of this scale direct access from a dual-carriageway is essential. Access to New Barnfield is no more suitable than Fieldes Lock, which has been rejected as an alternative by Veolia because of the single carriageway access.
686. **Cllr Les Page** represents Welham Green on the Borough Council. He also spoke for Cllr Keith Pieri. It is common sense that this proposal should not go **ahead. It would be close to peoples' homes, causing an increase in noise and pollution from lorries for 12 hours a day.** It would be an unsuitable neighbour for a special needs school. It is unfair that local taxpayers who are opposed to the development are having to contribute to HCCs costs in support of the case, as well as directly funding the opposition case.
687. **Ray Stevens** is vice chairman of Welham Green Residents Association. His concern is that drivers of waste lorries might run out of tachograph time, requiring them to shut the vehicle down overnight. The local primary school, which is already undersubscribed, might be at risk of closing if people sell-up and move away because of the RERF, with a loss of 30 staff.

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688. **Marian Goodwin** said that since British Aerospace closed its two factories in the 1990s Hatfield town centre had been allowed to deteriorate. When it came under attack for this, local people have defended the town from the suggestion that it is ugly. But this makes it more important to defend what exists of the natural environment. Every tree, every green space and every inch of open land is priceless, and so is the protection of the Green Belt and the rural setting of the town. The Framework requires that planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment. The building will have a serious impact on the built environment. It is difficult to imagine such a proposal being made within 250 metres of homes, and requiring a special needs school to be moved, in Welwyn, Hitchin, Knebworth or Hertford. Hatfield has a proud commercial and historic heritage, being the home of the Comet and other legendary aircraft, the place where Princess Elizabeth spent much of her childhood and held her first Council of state as Queen Elizabeth I, and an importance staging post on the Great North Road. Hatfield House is home to one **of the UK's most distinguished noble families. This is the fabric of the natural, built and historic environment which surrounds New Barnfield.** The promoters of the scheme have not properly addressed this section of national policy. They have largely ignored local and national policies in place to protect the site. HCC have failed to protect a vulnerable part of the county and have shown a cavalier attitude to planning policy.
689. Hatfield residents have a very special connection to New Barnfield. Many families have connections with Hatfield School on the site. Walkers gain access to the countryside from there; people walk there dogs there; there was a special needs school and a valuable community resource where people could go to borrow specialised creative material on the arts, literature and music. It did not cease to have an educational function in 1990 when the school was closed. The Central Resources Library provided educational resources until it was moved to Welwyn garden City to make way for the incinerator. There is a covenant on the land which requires that it should only be used for educational purposes.
690. **Chris Brazier** is a Parish and District Councillor for Colney Heath. The development will have a huge impact on heritage sites and a possible loss of visitor income to the UK. It would be visible from a number of key heritage sites, with a plume of up to 282 metres visible over a wide area. The increase in HGVs would add to existing congestion on local roads. It is not sustainable to locate this type of development so close to houses. Development in the Green Belt could lead to the coalescence of settlements and urban sprawl, contrary to advice in the Framework. There are better sites for an incinerator away from residential areas and near major transport links, such as the A1(M) between Baldock and Royston where the impact would be less intrusive. Siting the incinerator next to a special needs school can only have a damaging effect on the children. The County Council neglected to take account of thousands of signatures objecting to the development.
691. **Cllr Mandy Perkins** is the Executive member for Planning and Business on WHBC. The Council has opposed the incinerator plans on a cross-party basis since 2009. WHBC Councillors are not NIMBYs and understand the importance of having a coherent countywide strategy to deal with waste in a sustainable manner. The Council is a signatory to the Joint Municipal Waste Strategies prepared in 2002 and 2007. The 2007 Strategy proposed an incremental approach to providing the capacity to deal with residual waste, to allow the

County to respond to increased recycling rates and emerging treatment technologies. It did not propose specific locations or types of facility, and certainly nothing like the scheme before this Inquiry. The present plan emerged very shortly after the 2007 Strategy was signed, and is at odds with key elements of the agreed Strategy. In 2008 Herts CC submitted the outline business case to Defra with New Barnfield as the reference site, and energy from **waste as the reference technology**. While Herts CC's position was that bidders in the procurement process would be free to come up with other sites, it very soon became clear that a process had been put in place leading inexorably to the selection of New Barnfield as the actual site for the development, culminating in the final dispersal of the Central Resources Library in 2012.

692. Similarly, measures to relocate Southfield school were put in train before a final decision was made on the contract with Veolia to provide a waste plant at New Barnfield. The choice of location, next to a special school is particularly inappropriate. The proposal to provide a large energy from waste facility, in the Green Belt, in a visually prominent location, and next to a special school simply does not make sense. The proposal has not fully taken into account the adverse environmental effects on local residents of large numbers of HGVs around the Travellers Lane roundabout junction. Veolia and HCC have simply got it wrong in terms of size and location.
693. The application process has pre-empted the outcome of the development plan process, to which WHBC has contributed strong and cogently argued representations at each stage since 2008. The Council opposed the choice of a single central waste treatment site predetermined by the procurement process at the WCS hearings in 2011, in favour of a more flexible strategy for a small number of facilities around the County. A decision on this application, which could determine the whole pattern of waste treatment activity in the county for the next 25 years, should await the outcome of the Waste Sites Allocation Document currently at the examination stage. The procurement cart has been put before the planning horse, and the SoS should give serious consideration to refusing planning permission on the basis of non-compliance with adopted planning policies, and the adverse environmental effects of which this Inquiry has heard.
694. **Linda Clark** is a Hatfield Town Councillor for Hatfield East and current Mayor. Opposition to the scheme is not the preserve of a few interested parties but the populace as a whole. Many residents of Hatfield value the community they live and appreciate the largely pleasant environment it provides. If the scheme goes ahead, residential and commercial communities will be affected by the increase in Traffic, particularly HGVs, the effect of emissions, the regrettable visual impact of such an imposing building, and the loss of Green Belt. Even with every attempt to alleviate noise and disruption, Southfield School would be adversely affected. The presence of the RERF close to the cemetery would not be conducive to an atmosphere of peace and tranquillity. Additional traffic would reduce the efficiency and attractiveness of the park and Ride facility at Angerland. There would be adverse effects on Hatfield House and Estates, and the countryside footpaths will not be so readily accessible or enjoyable. New Barnfield is not a neglected derelict site; it is a loved part of the town and an important asset as it stands. The incinerator would change everything for the worse, undoing some of the progress that has been in Hatfield made with the coming of the University, new businesses and communities as well as harming its outstanding historic heritage and tourist attractions.

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695. **Grant Shapps MP** has represented the constituency in parliament since 2005. He first became involved with the New Barnfield proposals in 2008. As an MP he is fully aware of the commitment through PPS10 to dealing as sustainably as **possible with the country's waste. In 2008 however he had immediate concerns** that New Barnfield was not the correct site for a major waste treatment facility. In addition to being in the green belt, where strict restraint policies apply, there would be significant environmental effects on Southfield School and residents of southern Hatfield through noise and HGV traffic movements. There would be substantial visual impact due to its location on the upper slopes of a hill and **therefore visible for miles around. The notion of a 'reference site' as the basis for** applying for credits under the PFI scheme, and to provide certainty for bidders proposing to operate a facility is understood. While it was open to bidders to propose alternative sites it always seemed likely that the identification of New Barnfield as the reference site would create momentum for the actual location of the facility there.
696. He recognises the difficulty of finding acceptable locations for waste facilities and was prepared to enter into dialogue with HCC to discuss other options. Once the procurement process commenced he met with the four selected bidders and invited them to consider alternative strategies and locations, including potential sites in the constituency, but without success. The importance of achieving value for money through the PFI process is recognised by the Government, which has recently withdrawn PFI credits from a scheme in Norfolk. It is important to look critically at large EfW schemes to ensure that they represent the best solutions for dealing with waste, in terms of economics and sustainability.
697. **He is keenly aware of the Government's commitment in the framework and** the recently published Defra Energy from Waste Guide to a plan-led process for determining the location of waste infrastructure development. This Inquiry is taking place between two sets of hearings of the examination into the Waste Sites Allocation Document. That document sets out a range of possible sites across the county for the location of waste treatment facilities of different types and scales. It surely makes sense for the results of that independent examination to be known and properly considered before any decision is made on this scheme. It could be that the results of that examination would open up **possibilities for the burden of dealing with the county's waste being handled at a** small number of sites around the county, possibly including a site in Welwyn Hatfield, rather than the whole weight of the environmental effects falling on the New Barnfield site and on a community which is already working hard to address substantial challenges, for example seeking to regenerate its town centre.
698. **Ann Griffin** is a volunteer for the Hertfordshire Branch of the National Autistic Society with many years experience as a parent/carer working with the officers of the Council and providing telephone helpline advice. Southfield School is a designated special school which indicates that it is a school for children whose needs cannot be met in mainstream schools. They require specialist teaching and care to enable them to reach their potential. They often have high sensory needs. The evidence presented on behalf of HCC is inaccurate and incomplete in several key respects. Tesco lorries do not travel as closely to the school as HGVs going to the RERF will, so comparisons are misleading. The evidence has not indicated that acoustic barriers will mitigate noise from the plant sufficiently, or vibration for HGVs travelling constantly back and forth.

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699. Sensitivity to noise is one of the least recognised aspects of autism, but one which causes great distress to many children. It may not be the absolute change in noise levels but the pitch or tone, which has not been properly addressed by the Applicant. Even noise which would not be noticed by most people can cause some children to be distracted, or to experience actual pain. Desensitisation, as **referred to by HCC's** witness, requires time and professional input, and may not be successful in alleviating anxiety. Similar considerations apply to light changes and visual disturbance. Planning and preparation for the return of the school to Travellers Lane would be intensive and consuming of staff resources. The evidence does not deal with the effects of disruption and noise on staff.
700. Any comparison with Radlett Lodge school is misleading as, although it is located on a busy road, it does not have the same intensity of HGV traffic as would happen here. The physical layout is very different. Whilst it is true that no child walks to school there should be consideration for children who are sitting in taxis or family vehicles trying to get into the school. Mainstream schools often do not deal with the sensory issues of children with autism. There is considerable dissatisfaction with school placements in Hertfordshire amongst parents of children with autism, as evidenced in a recent survey undertaken by the Hertfordshire branch.
701. **Maureen Cook** is a local councillor and resident of Hatfield. Of the many hundreds of people she has spoken to, not one resident is in favour of siting an incinerator at New Barnfield. The strength of local feeling was ignored by HCC when the decision on the planning application. She finds it hard to avoid the conclusion that voting proceeded on party lines. She was told that rescinding the contract with Veolia would be at enormous cost to the taxpayers of Hertfordshire. It is wrong to even consider putting an incinerator next to a special needs school. The children of Southfield School have been shunted about, at a cost of £4 million spent on transferring to the Howe Dell site. The design of the scheme is vastly intrusive and would have a huge impact on the area. There would be a drastic increase in HGV vehicles. It would spoil an area of natural beauty which **is Green Belt and enjoyed and looked after by Hatfield's residents**. Emissions from the plant and traffic will be a risk to health and will be damaging to ecology and protected species. It is wrong to locate the plant so close to cemeteries which should offer peace and tranquillity.
702. **Andrew Bousfield** is a reporter concentrating on health related stories. He referred to a large amount of information he received from **'whistleblowers'** from within the energy recovery industry. He submitted a redacted letter from a worker in the industry concerning the measurement of particulate emissions, and particularly fine particulates which are not filtered by the lungs (PM_{2.5}) The evidence of health effects of PM_{2.5} – including increased stroke and heart attack risk, cardiovascular disease, cancer risk and respiratory illness is beyond any serious doubt. Particulate emissions from stacks are not monitored continuously, but tested on two or three days a year by a certified company. If a test is failed there is no obligation to inform the EA, but a further test could be done later, with only the later test result reported to the EA. It is suggested that the operator might simply reduce the load under incineration to pass for that year. There appears to be no available dataset which measures the effect of PM_{2.5} particles from incinerators on local air quality. The use of bag filters is only 65 – 70% effective for PM_{2.5}, and only 5 – 30% below that level. The only way to be sure that the population will be protected from PM_{2.5} emissions would be to carry

out a proper base line measurement at affected sites and then carrying out regular monitoring measurements after commissioning.

703. **Mrs Salter** urged viewing of a video film by Jeremy Irons which, she said, illustrated the health hazards posed by Incinerators.

WRITTEN REPRESENTATIONS

704. A total of 6,310 representations were received by way of letters, online representations, E-mails and leaflet responses at application stage, of which 6300 were objections, with 10 in support. There were six main issues that were raised by over half the respondents to the consultation. Almost 90% of respondents were concerned that there would be increased noise, pollution, congestion or danger from the traffic that would be generated by the proposal. Almost 85% were concerned that there would be health risks arising from the incinerator emissions or increased traffic. Over 80% believed that the development would have an unacceptable on the local landscape. Almost 80% were opposed to developing the plant on Green Belt land. 78 % of residents were concerned that there would be an adverse effect on residential amenity, including the loss of footpaths and cycle routes. 59% were concerned that local wildlife, including protected species, would be adversely affected by the development.
705. Other issues raised included concern over the impact on local schools and particularly Southfield School, loss of library facilities, the principle of incineration as a means of dealing with waste as opposed to increased recycling, property devaluation and effects on mental health and well-being.
706. In addition, there were some 920 responses in total to the notification of the Inquiry and submission of additional information by the Applicant in July 2013. Not all, but the very large majority, were objections. Some were simply re-iterating and re-affirming comments made at the Application stage. There was also some duplication where respondents commented on the notification of the Inquiry and again in response to the notification of additional information. Where particular issues were specified the issues of substance which are material to the outcome of the decision making process are reflected in the evidence submitted to the Inquiry and covered in the cases set out above.

CONDITIONS

707. A round table session was held at the Inquiry to consider draft conditions in the event of permission being granted by the Secretary of State, which had previously been included in the SOCG between Veolia and HCC. (Doc S3). A revised version containing minor amendments was circulated by HCC in an E-mail dated 22 October (Doc S3(a)). I emphasised at the session that this discussion was without prejudice to the position of objectors and did not indicate any pre-judgment of the outcome of the Inquiry or my recommendation to the SOS. Following the discussion a further revised set of conditions agreed between Veolia and HCC was put in to the Inquiry on the final day. Where there is a measure of agreement, I deal briefly with the reason for the condition, and concentrate below on those suggested conditions which gave rise to some dispute. I have considered the need for the suggested conditions in the light of the advice in Circular 11/95, and where necessary I have made some minor changes in the interests of precision. The Condition numbers referred to below are as set out in the Schedule of Conditions attached to this report.

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708. Conditions 1 and 2 concern the commencement of development and would be necessary to facilitate proper monitoring of construction operations. Condition 3 is necessary to ensure that the development would be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning. Condition 4 would be necessary to avoid any direct impacts on pupils at Southfield School during construction works. Condition 5 (Hours of Operation) would restrict times at which waste could be imported and would be necessary to protect the amenity of residents of the area. Conditions 6 and 7, concerning HGV movements, would be necessary for similar reasons. Conditions 8, 9, 25 and 46 are concerned with access and travel arrangements, and would be necessary in the interests of highway safety and reducing the need to travel.
709. Condition 10 (site waste management plan) would be needed to minimise waste generation during construction. Condition 11 (External Storage) and would be necessary to protect the amenity of the area.
710. Conditions 12 to 16 inclusive address noise. WHBC expressed a number of concerns regarding the proposed noise conditions, following on from the case put in evidence. A primary concern was with the adequacy of the baseline survey. Without an adequate baseline survey, WHBC argue that the Applicant is unable to demonstrate that the proposal will not generate unacceptable noise impacts. I have considered these concerns in sections xx – xx of my report, where I have concluded that notwithstanding the limitations on the data contained in the baseline survey undertaken by the Applicant, the data provides an adequate basis for assessing the noise impacts of the proposal. Notwithstanding this conclusion, it was accepted by the Applicant that additional noise baseline data should be provided before commencement. Condition 12 would be necessary to ensure this work is carried out. The draft condition put forward by WHBC was unnecessarily detailed and prescriptive, and I consider that a condition requiring a scheme to be approved by the Waste Planning Authority and thereafter implemented would be preferable. Condition 13 would be necessary to ensure that a detailed scheme for noise propagation modelling is carried out. Condition 14 would be necessary to secure a scheme of noise minimisation to be approved and implemented. Condition 15 would be necessary to put in place a framework for noise monitoring following commissioning. It adopts the same approach of requiring a scheme to be approved in writing by the Waste Planning Authority and subsequently implemented. Again, the detailed criteria suggested by WHBC would be over-prescriptive and unnecessary, particularly in respect of the lack of evidence that noise from the plant would have any particular tonal qualities. Condition 16 would be necessary to set a reasonable level for noise emitted from the plant in relation to background levels. For reasons set out in paragraphs 848 – 849 of my report below, I do not consider that it would be necessary to apply a + 5dB correction at night to allow for the possibility of a tonal element in the noise from machinery and plant.
711. Conditions 17, 18, 19 and 20 would be needed to minimise impacts on the community during construction and operation of the plant and ensure that a responsive complaints system is put in place. Conditions 21, 22 (Materials) and 37 (Landscaping scheme) would be needed to ensure a satisfactory appearance to the development, together with mitigation of visual impacts. Condition 23 (Acoustic Fencing) relates to boundary treatment at Southfield School and would be needed to minimise noise levels experienced by pupils of the school. Condition 24 requires details of a lighting scheme (including aviation warning and safety lights) to be approved, and would be necessary to minimise the effects of

light spillage and to ensure a satisfactory appearance. Conditions 26 and 27 (Drainage), 28 (Flood Risk) and 29 to 33 inclusive (Groundwater protection) would be necessary to deal appropriately with drainage, prevent any increased risk of flooding and ensure to provide a means of dealing with any site contamination and associated risks to groundwater. Condition 34 would be necessary to prevent pollution in the event of leakage of oil, fuel or chemicals.

712. Conditions 35 (Protected Species), 36 (Habitat Management Scheme) and 38 (Vegetation Clearance) would be necessary in the interests of nature conservation. Conditions 39, 40 and 41 (Archaeological Works) would be necessary to ensure that any archaeological interest on the site is properly evaluated and recorded. Conditions 42 (Monitoring of annual waste throughput) and 47 (Publication of emissions monitoring data) would be necessary to allow monitoring of the operation of the plant and ensure that relevant information is made available in the public domain. Details of a scheme for the decommissioning of the plant (Condition 43) would be necessary to ensure restoration of the site following any decommissioning in the interests of the appearance of the area.

713. Condition 44 (Grid Connection) would be necessary to ensure the recovery of energy from the combustion of waste. Condition 45 (Combined Heat and Power) would be needed to ensure that opportunities for CHP provision are explored in the interests of energy efficiency and avoiding climate change. Condition 48 (Visitor Centre) would be needed to ensure that the visitor centre would be made available for educational and community purposes.

714. A draft condition concerning vehicle routeing would be unnecessary as it would duplicate a provision of the S106 obligation.

S106 OBLIGATION

715. An executed obligation by agreement between the Applicant and HCC dated 25 October 2013 was put in on the same day, having previously been submitted in draft form and subject to discussion at the Inquiry.

716. The document places the following obligations on the Developer (as set out in Schedule 1), conditional upon the grant of planning permission:

- 1) To pay a contribution of £16,800 to HCC to be applied towards the costs of **resurfacing Byway 23 to improve access to cyclists ('the Byway 23 Improvement Contribution');**
- 2) To pay a contribution of £30,216.75 to HCC to be allocated to the managers or owners of Hatfield House to implement a landscaping and tree planting scheme for screening purposes within the grounds of **Hatfield House illustrated on Plan 3 attached to the deed ('the Hatfield House scheme');**
- 3) To pay a contribution of £4,221.50 to HCC to be allocated for expenditure on screen planting within the grounds of Southfield School **illustrated on Plans 5 and 6 attached to the deed. ('the Southfield School scheme');**
- 4) To pay a contribution of £24,000 to be allocated for the installation of secondary glazing, acoustic absorbent linings and ventilation to the

windows of classrooms located at the rear of the school illustrated on Plan 4 attached to the deed;

- 5) A series of measures including signage, Site User Rules, disciplinary code, and provision for record keeping designed to ensure that drivers of HGVs travelling to or from the site use only permitted routes shown on the routing plan and avoid roads in areas shown hatched red on the New Barnfield HGV Route Locality Plan attached to the deed;

717. The deed includes obligations on HCC to make the contributions available for the intended purposes, to repay any money which is unspent after a defined period. In the case of the Hatfield House scheme, payment of the contribution is made conditional on the satisfactory agreement of the said owners or managers that the contribution is to be applied by them or on the behalf to the carrying out of the scheme.

718. To be given weight in the determination of a planning application the provisions of a S106 obligation must be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

719. I consider that Items 3), 4) and 5) set out above are necessary to make the development acceptable and meet the other statutory tests set out in the Community Infrastructure Levy Regulations 2010. While Item 1 (the Byway 23 Improvement contribution) would be beneficial in providing an alternative route for cyclists, it is not necessary to the grant of planning permission and therefore cannot be given any weight in the determination of the application.

720. The necessity of the Hatfield House Scheme was a matter in dispute at the Inquiry. The Veolia and HCC considered it would be beneficial but not necessary to make the development acceptable, in view of what they considered to be less than substantial harm to Hatfield House and the related ensemble of heritage assets.

721. The obligation would not be binding on GCE. At the Inquiry, the **Estate's** representatives made it clear that the imposition of any requirement to carry out planting would be unwelcome, and for that reason I do not consider that the imposition of a Grampian style condition, as put forward by GCE in closing, would meet the test of reasonableness. It would effectively place control over the implementation of the permission in the hands of a party which is opposed to the development in principle. While, the stance of GCE might alter if permission were granted, and Mr Fauvel accepted that the Estate would want to mitigate any visual harm if the development went ahead, no reliance can be placed on its co-operation being forthcoming. While I have concluded that the harm to the ensemble would be less than substantial in the light of the Bedford case, it still requires to be weighed against the public benefits of the proposal, in accordance with paragraph 134 of the Framework. In the circumstances that mitigation planting within the Park cannot be required by obligation or by condition, I do not consider that any weight should be given to the possibility of mitigation of impacts on historic heritage assets in reaching a conclusion as to the acceptability of the development. **I am also mindful of EH's submissions that such a requirement for planting would represent a 'heritage lose-lose':** The establishment of screening belts would not be an enhancement of the asset as required by the Framework but would tend to promote a greater sense of

enclosure in a part of the Grade 1 listed parkland, which has hitherto retained a degree of openess.

INSPECTOR'S CONCLUSIONS

[The numbers in square brackets refer to the source paragraphs in the report]

Considerations

722. After hearing the evidence at the Inquiry, reading the written representations and inspecting the site and surroundings the main considerations in this case are:

- Effect on the Green Belt
- Landscape and visual effects
- Effect on heritage assets
- Noise
- Effect on Southfield School
- Highways and Traffic
- Air Quality
- Health and Equality
- Ecology
- Need for the development
- Technology choice
- Alternative sites
- Urgency of Need
- Carbon balance and climate change
- Opportunities for Combined Heat and Power
- Compliance with the Development Plan and other relevant policy
- Prematurity

723. It is common ground that the development would be inappropriate development in the Green Belt. Such development is, by definition, harmful to the Green Belt, and should not be approved except in very special circumstances. **Substantial weight should be given to any harm to the Green Belt. 'Very special circumstances' (VSC) will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.** [289]

724. It is also accepted that the proposal would involve harm to heritage assets of exceptional significance. The degree of harm was disputed, and in particular whether it would amount to substantial or less than substantial harm, as defined in Section 12 of the Framework. If the harm to the significance of assets is found to be substantial, the application of paragraph 133 of the Framework requires

that permission should be refused, unless it can be demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh the harm or loss. If the harm to significance is less than substantial then paragraph 134 requires that the harm should be weighed against the public benefits of the proposal. [269, 614, 690]

725. The Inquiry also considered the extent to which the proposal was in accordance with the provisions of the Development Plan. The Framework requires that development proposals that accord with the development plan should be approved without delay.
726. Extensive evidence was presented to the Inquiry on the potential environmental and human effects of the proposal. These conclusions consider firstly the extent of these effects and whether they amount to harm. The Inquiry also considered need for the proposal and a number of other material considerations which, in the submissions of Veolia and HCC, amount to the existence of VSCs which clearly outweigh the harm to the Green Belt, and other harm. These considerations are then evaluated, before an overall balancing exercise is carried out to determine whether VSCs exist.

Effect on the Green Belt

727. The Green Belt boundary in this area is defined in the Welwyn Hatfield District Plan (WHDP). It runs along the north side of South Way and includes the Travellers Lane roundabout and a wedge of land to the south of Millwards. It follows the route of National Cycle Path 12 to the east side of the application site. Travellers Lane Industrial area and Welham Green are excluded from the Green Belt.
728. The proposal would be a very large building in the Green Belt. The RERF itself would be a flattened dome measuring some 170 m by 150 m, with a height of some 41 m, and twin flues rising to some 75 m above the base of the dome. Existing buildings on the site have an area of 7,570 m², the greater part of this being single storey. The estimated volume of existing buildings on the site is 29,600 m³, with only some 6,400 m³ of this comprising the first floor accommodation. The estimated volume of the proposed RERF will be 585,000 m³, almost 20 times the volume of the existing buildings. [48, 293, 342, 343, 685]
729. In addition to the harm by reason of inappropriateness there would be substantial actual harm to the openness of the Green Belt. By any standards, and notwithstanding the mitigating effect of established planting in the surrounding landscape, the site occupies a prominent location at an elevation of some 100m AOD. Though the ground rises to approximately 110 metres to the west of the site, the landform and existing planting would only be partially effective in screening the development. [345, 346, 418, 420, 684, 685, 688, 695]
730. Veolia and HCC place considerable emphasis on the relationship of the site with the established Travellers Lane Employment Area, and on the fact that this strip of development on the western side of the railway effectively links Hatfield and Welham Green. It is argued that the application site, being already developed, contributes little or nothing the purposes of the Green Belt. However, to my mind, in view of its very substantial physical presence in comparison with what presently exists on site, the proposed development would contribute significantly to the sprawl of a large built up area and the encroachment of development in the countryside. [419]

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731. The site is identified as a Major Developed Site (MDS) in Policy RA6 of the WHDP. Criterion (iii) of policy RA6 requires that proposals should not occupy a greater footprint of the site than the existing buildings, and criterion (iv) that buildings should not exceed the height of the existing buildings. The application proposal would fail to comply with these criteria by a substantial margin.
732. The Framework makes no reference to MDS in the Green Belt. However paragraph 89 provides relevant guidance. It sets out defined exceptions to the principle that the construction of new buildings should be regarded as **inappropriate, including (as the sixth bullet point) 'limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.** Neither Veolia or HCC have argued that the proposal is anything other than inappropriate development. Policy RA6 remains consistent with the approach to the redevelopment of previously developed land in the Green Belt set out in the NPPF, and can therefore be accorded considerable weight.
733. The boundary of the MDS in the WHDP includes the now redundant school/library buildings and is limited to some 1.6 ha of the application site area. This is tightly drawn around the existing buildings, in accordance with the recommendation of the Local Plan Inspector (CD M11), who also made specific reference to the exclusion from the MDS boundary of **'the extensive car park from which there is a view across open countryside'**. By way of comparison, the **'operational' site area of the application site would be 5.27 ha and the total site area would be 12.62 ha.** The RERF proposal would involve building on parts of the site that are presently open, including the car park. Furthermore, it would involve a very large increase in the volume of built development on the site. The existing buildings are for the most part single-storey, with some two storey development some 9 metres high, and a chimney stack of some 12 metres. [291]
734. The practical effect of failure to comply with these considerations arising from Policy RA6 and the Framework would be a severe impact on openness of the Green Belt which would be readily apparent, particularly in views towards the site from the south, but also from South Hatfield, the cemetery, other open land to the west of the site and from parts of Hatfield House and Park. [123]
735. A fundamental area of disagreement in evidence concerned the nature of the existing site and its contribution to the purposes of the Green Belt. Veolia and HCC emphasised the existing continuity of development between Hatfield and Welham Green, and the close relationship of the application site to the existing employment area.
736. Apparently conflicting approaches have in the past been taken to this by two Inspectors, one who dealt with the Inquiry into the WHDP, and one who dealt with a "departure" application for Southfield School. The LP Inspector concluded as follows: **'This is a substantially developed site, formerly a school with adjoining playing fields now used for grazing. It lies in a critical strip of Green Belt separating Hatfield from Welham Green [...]. On plan it looks as if the gap between the two communities has been breached by an industrial estate but this lies at a lower level with the former school buildings standing out together with Parsonage Farm at a much higher level, giving a visual impression that the two communities are clearly separated.'** (CD M11, para 2.37) He recommended that

the boundary should be drawn more tightly around the existing buildings, to exclude the extensive car park from which there is a view across the open countryside. [118, 119]

737. The Southfield School Inspector concluded as follows on Green Belt: *'I agree with the point that the area in the vicinity of the application site is essentially urban in character, and the application site is not part of an area which is structurally important in Green Belt terms. To my mind, it makes only a limited contribution to the character of the Green Belt.'* However he went on to say: *'I have come to the conclusion that, if a single storey building ... were to be erected in the eastern half of the site, close to the New Barnfield Centre, the intrusion into the Green Belt would be minimised. If in addition, landscaping were carried out as proposed both within the application site and on the adjacent land .. this would not only restrict visual intrusion, it would ... enhance this part of the Green Belt.'* (INQ-HCC-3B, para 4.9) [118, 119, 388]
738. I accept that there is a difference in approach to the significance of the Green Belt in these two reports, though I find it hard to understand the phrase *'urban in character'* as applying to the remaining gap between the current application site and Welham Green, and the open land to the west. In any event, the Southfield School Inspector was considering a different site, and a very different proposal, which he concluded would not undermine the Green Belt. [119, 120, 291]
739. My conclusion in relation to this development is that, while the site adjoins the employment area, the nature of the proposed development would be substantially different in its impacts on the character of the Green Belt than the existing buildings on the site. These are a maximum of two stories in height, set in extensive grounds which include open areas and car parking areas. Although large buildings, they have very little visual impact when viewed from outside the site owing to the ability of existing planting to screen buildings of this height effectively.
740. The Tesco depot and Mitsubishi premises are also undoubtedly large buildings. However they are not in the Green Belt. Due to the landform hereabouts they are set at a lower level than the application site, so that, for example, the top of the Tesco building is approximately on a level with the base of the proposed RERF. This is clearly apparent from the Photomontages P09 & P11 (CD O2), which illustrate how the RERF would stand out in relation to existing development on the Employment Area, and the low key impact of existing development on the application site. [120, 418, 557]
741. Viewed from the south and the west, the RERF would have a clear impact on openness. While the land between the site and Welham Green to the south is affected by pylons and structures associated with keeping horses and livestock, the higher ground to the west of the site has the character of attractive countryside. The setting for the RERF was characterised as urban fringe in the ES, and as semi-rural in the HCC committee report. In my assessment it does **not have the negative associations sometimes implied by the 'urban fringe'** description to any great extent.
742. I note that WHBC has approved a *'New Barnfield Master Planning Brief'* (CD M9) as informal guidance, which refers to the principle of 2000 m² of additional floorspace being acceptable. This relates to limited infilling within the MDS under Policy RA5 of the WHDP. In any event, it would be subject to restrictions on height and the requirement for the proposal to have no greater impact on the

purposes of including land within the Green Belt and, in the absence of very special circumstances, would not justify a development of the scale of the application proposal. [291]

Landscape and Visual Effects

Methodology

743. WHBC and NBAF criticised the methodology of the Landscape and Visual Impact Assessment (LVIA) underpinning the ES. It was suggested by Mr Flatman (for WHBC) that the assessment of the zone of visual influence was flawed, being limited to a radius of 15 km, whereas a radius of 25 km would have been more appropriate, and would have included sensitive viewpoints from the Chilterns AONB. While a 25 km radius is recommended in the current Scottish National Heritage (SNH) guidance for turbines of 71 – 85 m for windfarm developments in complex landscapes³³⁶, I am satisfied from my site visits that there would be very limited visibility of the development from beyond 15 km. Mr Flatman did not identify any specific viewpoints in the AONB where he said there would be any visual impact of significance. While there are no doubt locations in the AONB from which the development could be seen in the far distance on very clear days, **I do not consider that such views would be harmful to its character. A 'blimp' photograph (CD A 14b ES: Site Context Photograph 26 – Receptor P41) illustrates the potential view of the plant from a footpath near Symondshyde Farm at distance of some 5.4 km from the site. The visual impact is assessed in Table 8.4 of the ES at Years 1 and 15 as 'Minor Adverse – Neutral'. While Mr Flatman questioned the use of intermediate categories of sensitivity and magnitude of effect in the ES, he appears to have accepted that the magnitude of change would be 'Very Low', and did not suggest in his evidence that the impact from this point would be greater than 'Minor Adverse'. It therefore seems highly unlikely that views from a significantly greater distance would have a greater impact.** [141, 288, 422, 559]
744. WHBC and NBAF also criticised the failure to produce a bare earth model to inform the LVIA. Cllr Zukowskyj (NBAF) produced his own bare earth model which he submitted towards the end of the Inquiry. It was suggested that the **Applicant's assessment failed to pick up all possible locations from which views of the development could be obtained.** However, given the existence of extensive belts of trees and woodland, including roadside planting, a bare earth model is of limited utility in assessing the effect of actual visual impacts. [141]
745. In my opinion, the LVIA undertaken together by the Applicant, together with further information provided in May 2012 and July 2013 and evidence to the Inquiry, represents a satisfactory basis for assessing the likely significant visual effects of the scheme. The flying of the blimps on two occasions allowed a thorough assessment to be made of likely viewpoints. I acknowledge that there are some viewpoints which were apparently not picked up from the ZVIA (for example the higher ground at the north end of Stanborough Park, and the view from the southbound A1 (M) near Welwyn Garden City). Nevertheless the assessment identifies representative views (including winter views) from sensitive locations. The rendered visualisations do not seek to minimise impacts, though I have also found the 40 degree crops provided in response to Mr

³³⁶ SNH Visual Representations of Windfarms: Good Practice Guidance, 2006 (CD 011)

Flatman's criticisms helpful, in addition to the earlier imagery based on panoramic views. [423, 425, 427]

Landscape character

746. The application site comprises the redundant school/library building with open space located in the western part of the site. There are a number of public footpaths which surround the boundaries of the site and connect with the wider public rights of way (PROW) network.

747. The topography of the area surrounding the application site is varied, characterised by a combination of ridgelines, plateaux and river valleys, including the River Colne to the west and the River Lea to the north. The site lies on the western outlier of a ridge line which runs approximately north-south, reaching an elevation of some 120 m AOD within Coombe Wood, to the north-east. It lies at an elevation of between 92 – 108 m AOD.

748. The areas from which the most open views towards the application site and the proposed built form include:

- the northern edge of the residential area of Welham Green, some 300 metres to the south of the site;
- public and informal footpaths on open land at near-distance to the north, north west, west and south west of the site;
- Within the urban area of South Hatfield at near to middle-distance to the north and north-west of the site;
- Within the urban area of Welham Green at middle distance to the south of the application site
- Ridgelines and open area of landscape at long distance to the south-east, south, south-west, and north-west of the site.

749. There would also be limited views from publicly accessible areas of Hatfield House and Parkland. The heritage impacts of the proposal are dealt with in a separate section of this report.

750. In terms of landscape character, the ES identifies the site as lying partially within the Mimms Hall Valley Landscape Character Area (29), as defined in the Landscape of Hertfordshire – Character Assessment, published by HCC (CD O6). Mimms Hall Valley is described as running in a north/south direction around Welham Green. A string of high points runs centrally along the area and the lands falls away slightly to the east at the boundary of the Hatfield Estate. The settlements of Hatfield and Potters Bar form respectively the northern and southern boundaries of the character area. It is confined in the east and west by major transport corridors (the A1(M) and the railway line). The western part of the site lies within this character area. The eastern part is excluded as lying within the urban area of Hatfield.

751. The valley slopes and floor of the Mimms Hill Brook are described as having a wooded farmland character, with rectangular field compartments along the valley slopes. The influence of the major transport routes are said to give it an urban-edge rather than a rural character. Wooded farmland is prominent throughout the area. The farmland is predominantly arable, with small fields of pasture with fenced boundaries edging the settlements and the Royal Veterinary College. It is

noted that the area is well used for informal recreation. The condition of the landscape is assessed as moderate, with a high impact of built development

752. **Veolia's team carried out its own localised assessment of landscape character** for the ES. It broadly concurs with the above description of the wider area but identifies a number of subsidiary areas, emphasising the developed character of Travellers Lane Industrial Area (L1), the predominantly residential character of the settlements of Welham Green (L2)and South Hatfield (L6), and the influence of the major transport routes (L5 and L6). Area L3 (Urban Fringe: Welham Green) is described as comprising a series of paddocks used for horse grazing, lying to the south of a gentle ridgeline and scrub woodland associated with New Barnfield. The assessment notes gaps in the hedgerow structure with the majority of boundaries formed by post and wire or post and rail fencing, but with some intact hedgerows and trees sloping up to the ridgeline which create a tiered pattern of vegetation, helping to assimilate urban influences, such as stable buildings and vehicles. It also draws attention to a row of pylons extending from east to west across the area.
753. Area L4 (Urban Fringe: South Hatfield) includes the existing complex of buildings on the site and associated woodland and grassland, Hatfield cemetery and Southfield School. The sub area is described as lying on and to the north of a gentle ridge, with expansive views to the west and north from the exposed higher ground to the west of the application site. The influence of roads to the west, north and east is noted, as well as the neglected appearance of some of **the buildings, and 'somewhat incoherent' landscape structure. The tiered pattern** and mitigating effect of vegetation referred to in L3 above is also considered to apply to L4.

Close views

754. The HCC Committee Report (CD B1) considers visual impact at paragraphs 14.55 – 14.63. **It acknowledges that 'the proposed facility would be very large in size and height and would therefore be highly visible and incapable of complete screening'. It states that the proposal would have a significant adverse visual impact** from these viewpoints closest to the application site. These include Southfield School, Bunchley's Pond, residential properties forming the northern boundary of Welham Green and views from within South Hatfield.
755. The degree of impact is best illustrated in the winter photomontage views submitted with the additional environmental information May 2012, and the 40 degree extracts produced in response to WHBCs criticisms of the wider angle imagery. They show representative views from the most affected locations. These are most conveniently available in CD O2.
756. **Photomontage P1 illustrates the winter view from Millward's Recreation ground** at Year 1. The base of the dome would be screened by dwellings and tree branches, though a substantial proportion of the upper dome and flues would be prominent and in marked contrast with the scale of residential development. The effect is assessed in the LVIA as moderate adverse
757. Photomontage P3 illustrates the view from an informal footpath north of **Bunchley's pond. In my judgment the proposed RERF would have a substantial adverse impact** on the character of the landscape. The existing buildings are substantially screened, with only the school chimney having any visual effect of any significance. In contrast, the incongruity and alien character of the proposed

development would be seen at its starkest from this location. The area is accessible and well used by residents of South Hatfield in particular, and is accessible by a network of formal and informal footpaths. The presence of the building would also result in significant harm to the amenity and enjoyment of users. P4 shows the changes in view from a location closer to South Way and P6 from Dellsome Lane to the south-west of the site. P7 and P8 show views from the northern edge of Wellham Green at a distance of some 300 metres. These again confirm the prominence and incongruity of the proposed development in the semi-rural landscape. P6, P7 and P8 also illustrate how existing development on the site and the Travellers Lane Industrial area is substantially screened by the landform and planting in views from this direction. [688, 689]

758. P5 shows changes to the view from the Welwyn-Hatfield Lawn Cemetery. The base of the development would be below the intervening ridgeline when viewed from this location, but the upper part of the dome and flues would be intrusive and would harm the experience of those attending funerals and interments, and relatives and others visiting graves. [694]
759. P9 illustrates the substantial degree of physical change that would result from the provision of the new access, and the development itself. I accept that the existing access is not a country lane, the Central Resources Library having generated a significant volume in its own right, and Travellers Lane having an existing volume of HGVs. Nevertheless there would be a loss of existing planting to provide for access, together with wider roadways, new carriageway markings, the substantial presence of the RERF itself and the greater visibility of the roofs of Southfield School. All of this would have an urbanising effect on the character of the area which is apparent from P9. I have commented elsewhere (para 888 below) on the harm to amenity arising from these changes in the context of use of the cycleway and footpath network, and the experience of staff, pupils and visitors to Southfield School (para 872 below). [418]
760. Photomontage P11 illustrates the view from the Railway Bridge by Welham Green station. Here the engineering structures in the foreground and buildings of **the Traveller's Lane Industrial Area provide a more appropriate context for the RERF building**. Nevertheless, it well illustrates the difference in site levels between the existing industrial development and the application site, and the prominence of the RERF in relation to other buildings.
761. Amongst the more sensitive receptors would be views from residential properties. There would be a number of views from the northern edge of Welham Green, particularly for properties on Parsonage Poad, Pooleys Lane and Dellsome Lane. A number of properties would experience a significant visual effect, assessed in the ES as Moderate - Major Adverse, or Moderate to Moderate-Major Adverse at Year 1. While there would be some additional screening effect from maturing vegetation and landscaping by Year 15, the upper section of the dome and flues would still be prominent.
762. There would also significant views from properties in South Hatfield, including those at Millwards (Photomontage P2) and at Far End, Brickfield, Northdown Road and Southdown Road (Photomontage P10). The impact on individual properties would depend on the orientation of principal windows and there would be some fragmentation of views arising from the intervening landform and planting. Nevertheless it is likely that residents of these properties would be acutely aware of the presence of the RERF from moving about in the locality and

using the recreational open areas, even if direct views from their properties were limited. Views from affected upper floor windows are likely to be particularly significant. [559, 688]

763. A number of the most noticeable effects would be from local rights of way within 300 – 400 metres of the site. The distinctive domed form of the main RERF building would be prominent from a number of these footpaths. While the lower parts of the dome would be screened to some degree by established hedgerows and woodland planting, the upper part and the flues would be clearly visible breaking the skyline. The effects would be most extensive to the south and west as shown for example in Photomontages P4, P6 and P8. [559]

Medium distance Views

764. Photomontages P15 – P17 illustrate the effects in open viewpoints lying in an arc from south-east to south-west of the application site, at distances of approximately 2 km. The development would retain a significant physical presence in the landscape at these distances, and would be seen as an alien feature in the predominantly rural landscape.

Longer distance views

765. As would be expected, there would be ameliorative effects from intervening landform, planting and built development as distance from the site increases, as is illustrated by Photomontages P18 (Colney Heath) and P19 (St Albans Road/University). That is not to say that there would not be longer distance views of the upper part of the dome, and the flues. The flues in particular would be visible over quite a wide area. **HCC's assessment was that there would be a moderate adverse impact overall when considering the visibility of the facility from the wider areas.** Notwithstanding the criticisms of the assessment methodology I consider that to be a reasonable conclusion which was not significantly challenged by Mr Flatman on behalf of WHBC.

Design

766. Much emphasis was placed by Veolia and HCC on the quality of design, which was endorsed by CABE in the design review. The relationship of the proposed building to its surroundings **is described in the DAS as follows: 'The architectural response has been informed by the urban fringe location, reconciling the transition from built up area to open countryside, with an organically inspired form. This will provide an attractive and adaptable outer 'skin' providing light, ventilation, protection, energy generation and acoustic insulation'. The principal external materials used would be steel roofing, white fabric sheeting and photovoltaic cells (light blue in colour)**

767. I do not disagree with **CABE's assessment that the proposed building** represents high quality design in its own right, and would incorporate materials which would mitigate the visual impact to some degree. For example, the sloping domed roof would soften the profile of the building and the use of lighter, recessive materials would help to reduce the impact against the skyline. However it would still remain a very large building for which there are few comparable existing references in the locality. The Tesco and Mitsubishi premises are large industrial/commercial premises but their height and relationship to the surrounding landform mean that they are far less prominent in the surrounding area than the RERF would be. The existing buildings on the site,

though set at a higher level than neighbouring industrial/commercial development, are generally well screened by existing vegetation, and not intrusive in the surrounding landscape. [142]

768. In contrast, a substantial proportion of the upper parts of the dome and flues are not capable of being effectively screened, and would remain prominent for the life of the development. The two existing blocks of flats in Hatfield, though of a different form and in a different context, give an indication of the visual prominence of a building of some 40 metres in height.
769. I acknowledge that there are some vertical elements in the area such as overhead gantries on the railway, electricity pylons and most significantly the **communications masts at Brookman's Park**. While these have some adverse impact, the height of the gantries is much lower, and the other engineering structures do not have the intrusive bulk that the dome of the RERF would represent.
770. The conclusion in HCC's committee report was that, notwithstanding some positive design features, *'the sheer size of the building would be imposing and detract from the semi-rural character of the western part of the site and land beyond. Therefore, the proposal would not accord with Policy D2 of the Welwyn Hatfield Plan which requires all new development to respect and relate to the character and context of the area.'* Nothing in the evidence to the Inquiry has led me to reach a different conclusion. [567]

Effect of the Plume

771. WHBC, NBAF, GCE and other objectors were particularly concerned about the impact of the plume.
772. There is little doubt that the plume, when visible, would draw attention to the RERF, and would be an unwelcome reminder of its purpose for residents and others with strong objections to the development. The Applicant predicts that a plume would be visible above the stack on 122 days out of 365 days in the year, some 33% of the time during daytime hours. The average length of the plume would be some 64 metres, but in some conditions it could extend to some 253. This would be a very rare occurrence, estimated at some 0.2% of the time.
773. The appearance of the plume would vary according to weather conditions. It may rise vertically in clear, cold conditions but would trail horizontally from the top of the flue in windier conditions. It is likely to appear more prominent when seen against a clear blue sky than in cloudy conditions.
774. When visible the plume, which would consist of condensed water vapour, would have an inherently transitory effect. Other than in periods of very still weather its shape and height would change frequently and though it would be highly visible at times, I do not consider that it would add significantly to the degree of visual harm resulting from the proposal, or harm which might be considered to arise from the perception of the presence of the facility. [144, 429]

Mitigation

775. Veolia has identified potential for beneficial effects on landscape features and amenity through the landscape proposals: the provision of 2.08 hectares of woodland on the application site, providing new glades and rides; new wildflower

planting of 1.5 hectares of land, and long term management of the landscape features of the site.

776. I do not discount the significance of the benefits which would flow from these additions to the areas of land available for public use, nor the associated habitat creation. Nevertheless, the RERF would be a very substantial building and cannot be screened completely. While there would be some softening of the appearance of the building, particularly the lower parts of the dome, the degree **to which this would 'anchor the building' in the landscape is limited. In a number of key views from the locality there would be little change on the magnitude of the impacts after 15 years or reduction in the residual significance of the effects from Year 1 of operation.** [569]

Conclusion on Landscape and Visual Impacts

777. There would be some residual impacts on views from residential properties **which are described in the ES as 'moderate adverse' after mitigation at year 15. The residual impact on Bunchley's Pond and the recreation land at the rear of Southfield School is assessed as 'moderate to moderate-major adverse'. Use of the term 'moderate' may seem to downplay what in my assessment would be quite significant adverse effects affecting those receptors within close range of the site, but the ES states that 'moderate' effects should be considered significant.** I conclude that the proposal, though well designed in its own right, fails to pay appropriate attention to the character and appearance of the surroundings, and would be viewed as an alien and intrusive structure in the landscape and surrounding area. The extensive on-site landscaping proposed, including ground modelling and planting, would partially soften the appearance of the building and provide some mitigation by year 15, but cannot be wholly effective in view of the scale and prominent siting of the structure. [142, 143, 145, 431]

Effect on Heritage Assets

778. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker to have special regard to the desirability of preserving a listed building or its setting. Section 72 requires that special attention should be paid to the desirability of preserving or enhancing a conservation area. [253, 484]

779. National policy advice on the approach to conserving and enhancing the historic environment is set out in paragraphs 126 – 141 of the Framework. Paragraph 132 advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight **should be given to the asset's conservation. The more important the asset, the greater the weight should be.** Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of designated heritage assets of the highest significance, including grade I and II* listed buildings and Grade I and II* registered parks and gardens should be wholly exceptional. [154, 486]

780. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, Paragraph 133 of the Framework requires that consent should be refused, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that

outweigh that harm or loss. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, paragraph 134 requires that the harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. [651, 652]

Legal submissions

781. Considerable forensic expertise and close textual analysis was applied to the interpretation of Paragraphs 132 – 134 of the Framework, to establish a proposition that the drafters of the NPPF intended to distinguish between direct harm – **to which the ‘exceptional’ test in paragraph 132 applies** - and indirect harm, where the balancing test in para 134 is appropriate. This was pursued in **Mr Price-Lewis’s cross examination of Mr Neale (EH), and summarised in HCC’s closings**. The logical consequence of this interpretation is that it would be difficult to envisage circumstances where development in the setting of a heritage asset, however damaging to its significance, could ever amount to **‘substantial harm’**. [260 - 265]
782. **Particular emphasis was placed on the omission of the word ‘significance’** in relation to the paragraph 132 test, it being suggested that this omission was intentional, in order to distinguish between the harm caused directly to the asset itself and harm which is caused indirectly, to the significance of the asset. Thus it was argued for Veolia and HCC that the philosophy underlying paragraphs 132 to 134 is to give the highest protection to the designated heritage assets when the asset itself will be harmed, and less protection when the harm will not be to the asset itself, **but to the asset’s significance**. [263, 487]
783. In my assessment this interpretation, ingenious though it is, does not survive a plain reading of these paragraphs in the context of the approach to the protection of heritage assets in Section 12 and Annex 2 of the Framework. The first three sentences of paragraph 132 are plainly concerned with the impact on the significance of designated heritage assets. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. It therefore seems implausible that the intention of the drafters was to exclude consideration of development within the setting of an asset from the exceptionality test. Such a reading would be at odds with the sense of paragraph 133, **which expressly refers to ‘substantial harm to or total loss of significance of a designated heritage asset’ requiring consent to be refused unless there are substantial public benefits that outweigh that harm or loss**. [157 – 159, 488, 494, 650]
784. The recent judgment in *Bedford BC v SSCLG and Nuon UK Ltd* [2012] EWHC 4344 (Doc INQ/V5) was brought to the attention of the Inquiry and agreed to be of relevance. In the judgment Mr Justice Jay upheld an appeal decision involving the erection of wind turbines in which the Inspector had interpreted substantial harm as meaning **‘something approaching demolition or destruction’**. **In rejecting a contention that the Inspector had set too high a threshold for harm to be considered substantial the Judge explained that ‘what the Inspector was saying was that for harm to be substantial, the impact on significance was required to be serious such that very much, if not all, of the significance was drained away’**. **The inspector’s formulation of substantial harm as ‘something approaching demolition or destruction’ did not set the bar too high. ‘Substantial’ and ‘serious’ might be regarded as interchangeable adjectives in that context, but the phrase ‘something approaching demolition or destruction’ did not necessarily add a**

further layer of seriousness: all would depend on how the inspector had **interpreted and applied the adjectival phrase 'something approaching' which was** somewhat flexible. The inspector had not erred in that respect. In any event, the inspector's conclusion was not one which no reasonable inspector could have reached. [160, 257, 267, 489, 492, 493]

785. The judgment is not prescriptive as to where the threshold between **'substantial' and 'less than substantial' lies, but confirms that the Inspector's** conclusion in this case was lawful. However Mr Justice Jay recast the test in his **own words, as follows: 'In the context of non-physical or indirect harm .. one was** looking for an impact which would have such a serious impact on significance of the asset that its significance was either vitiated altogether or very much **reduced.'** [267, 491]
786. Reference was also made to the Planning Practice Guidance (the Beta **Guidance), which has been published in draft form. It advises that 'A key factor** in determining whether the works constitute substantial harm is if the adverse harm goes to the heart of why the place is worthy of designation – why it is important enough to justify special protection. This has to be assessed at the **time of the decision in all cases.'** The draft guidance is a material consideration at this stage but until such time as it is adopted I consider it should be accorded little weight. However if adopted in its present form before the SoS issues his decision, it would clearly be a highly relevant consideration. [268, 490, 495]
787. The application site lies some 2 km from Hatfield House, a Grade I listed building. There are two other grade I listed buildings close to Hatfield House – The Old Palace and the Church of St Etheldreda. These buildings are set within Old Hatfield Conservation Area, which also includes the Old Town of Hatfield. The Park within which Hatfield House is set is Grade I registered parkland and extends to within approximately 300 m of the application site boundary (CD A25, page 31). The higher parts of the dome and the flues would be some 500 m from the edge of the Park (H/AB/2 para 6.38). [272, 498]
788. Hatfield House was recognised as being of outstanding architectural, artistic and historic interest, and it was not in dispute that these assets, individually and collectively as a heritage ensemble, are of the highest significance (PL96). [499, 500, 614, 623]
789. Following requests arising from concerns of English Heritage (EH) and Gascoyne Cecil Estates (GCE), the applicant submitted additional information on heritage matters in June 2012 (Heritage Report: Additional information and Setting Assessment (CD A25)). The Report was accompanied by photomontage images (CD A23) and blimp assessment views (CD A24). It concluded that there would be less than substantial harm to all the identified assets.
790. The history and development of the various assets is fully documented in evidence to the Inquiry and there is no need to repeat it at length. There was a substantial measure of agreement between the parties in respect of the historical development of the assets and their architectural, historical, cultural and aesthetic value. It was not argued that there would be no harm to the various assets. [273]
791. The key area of disagreement relates to the assessment of harm, and in **particular whether it would amount to 'substantial' or 'less than substantial' harm** as defined in paragraphs 132 – 134 of the Framework. A further key area of

difference was over the significance of the parkland as the setting for Hatfield House. EH contended that the House and Park were intended to be viewed in their wider landscape setting. [271, 508, 623]

792. **In contrast, Veolia and HCC's witnesses argued that the park was designed as a closed setting for the House, with views to and from the House to areas further afield being of little or no significance. Their position is summarised in this extract from Mr Harris's proof: (V/10.1 para 4.3.17) '*Hatfield Park is essentially an inward looking asset as, other than on its west side, it has strong boundary planting to its edges which intentionally separate the park from outside influences. The park was set aside as a landscape that was visually distinct from the outside and was created to provide a controlled landscape for the benefit of Hatfield House. Although incidental views to the surrounding landscape from within the park are possible particularly from some of the more open aspects, such as on its western side, there is no evidence that these were designed to complement or contribute to the historical value of the garden.*'** [273]

793. Mr Brown (for HCC) puts it as follows: '*The varied character of the park allows for many different views within and across its designated area. In contrast, as a result of the enclosing belts of trees and woodland (both within the perimeter and beyond), there are limited opportunities to see out of the park.*' (H/AB/2 para 6.38).

794. The setting of the ensemble has undoubtedly changed over the four centuries since the construction of the House, and the laying out and evolution of the parkland. The alignment of the Great North Road has been moved westwards on successive occasions to provide a greater degree of privacy and containment to the House and Park. The medieval road ran through sections of the parkland, passing close to the Old Palace and through Old Hatfield. The road was re-aligned away from Hatfield House in the late 18th or early 19th century (following the alignment of the drive between Marrowes Lodge and the Pepperpot Lodges) and was then realigned again to sweep around the southern and western edges of the park, following the line of the present A1000. More recently it was replaced by the A1(M) to the west of Hatfield New Town. The construction of the mainline railway in the 19th century was the occasion of further change to the setting of the House and the remodelling of entrances to the park. And in the 20th century the development of Hatfield New Town to the west and Welwyn Garden City to the north-west has had a profound effect on the setting of the ensemble at Hatfield. The New Town in particular can be viewed from the upper floors of the House. [\[639\]](#)

795. **Millward's Park, formerly the Middle Park, is of medieval origin and until the 19th century was used as a deer park and was of a more open character, planted with beech and oak. Until the 1820s it lay beyond the Great North Road. By the mid 19th century woodland planting had taken place and in more recent times, it has been planted as a commercial conifer wood.**

Blimp photographs and verified photomontages

796. A series of photographs were taken for the updated environmental information June 2012. A blimp was flown on the site at a height of 75m above ground level (101 metres AOD), to mark the height of the top of the flues, with a pennant at 41.2 metres, to mark the height of the dome.

797. For views where the blimp would be visible, a series of verifiable photomontages were prepared (CD A30e), which, to my mind, give a reliable indication of the visual impact of the proposed development from those locations.

Impact on Hatfield House

798. The blimp photographs (CD A24) show a number of representative views from the House itself. The proposed development would be visible from a limited number of rooms within the House, and from the roof (also referred to in **evidence as 'the leads'**). **Photograph 16 shows a view from a window at the eastern end of the Long Gallery on the first floor.** The development would be screened by the planting in the Wilderness. Photograph 17, taken from the Myrtle Room on the second floor, and photograph 18, from the adjoining Rose Room show that there would be no view of the development from these rooms. Photograph 18 was criticised by GCE as the direction of the development would in any event be obscured by the mullion. However this emphasises that views from this window in the direction of the development would be oblique. I saw on the accompanied site visit to the House and Park that the Wilderness would provide an effective screen in the view from this window. [518]

799. Similar considerations and conclusions apply in respect of Photographs 19 (Hazel Room, second floor) and 20 (Beech Room, second floor). The accompanied site visit allowed me to see that, notwithstanding the GCE criticisms of the photographs, the Wilderness planting would be effective in screening the development from these rooms.

800. Photographs 9 – 10 are taken from the roof levels of Hatfield House. The blimp was not visible from the location of at the southern edge of the roof on the western wing of the House, due to the screening effect of the tree planting in the Wilderness. The blimp is however perceptible above the treeline in Photograph 9, taken from a higher elevation on the roof of the west wing. From this location the upper parts of the flues, together with any aircraft warning lights, would be visible. [273]

801. I conclude that the visual impact of the proposed development on the House itself would be very limited. The evidence of the representative views indicate that the building itself would not be visible at all from the ceremonial rooms of the house, nor from the private suites. I acknowledge that a view of the flues from the higher parts of the roof could be considered to be intrusive. However, there is little or no evidence to show that the House was designed to afford views of the wider countryside and setting from the roof. It is not open to the public. While it can be accessed (with permission) without serious difficulty, the surface is ridged, and it is necessary to exercise caution. It was said that it was often used by the family and guests, and may in the past have been used to observe particular events such as the Royal Review. However, I do not consider that this level of harm would amount to substantial harm as described in the Framework. [162, 273, 518, 629]

802. I accept that the continued health and viability of the Wilderness is crucial to protect the outlook from the south front of the house from potentially harmful views, which could amount to substantial harm to the significance of the house. However, while catastrophic harm arising from a storm or the spread of disease cannot be ruled out, it would be wrong to make the assessment of impact on that basis. The planting at the Wilderness is part of the current character of the Park and it is reasonable to assume that any decisions on future management of this

feature would take account of its screening value in the event of permission for the development being granted. [285, 518, 534, 535, 629, 630, 634, 637, 641 - 644]

Impact on Hatfield Old Palace

803. The Old Palace stands as one of the few remaining Tudor Palaces and is **therefore of considerable evidential value. It is described in Pevsner as '... the foremost monument of medieval domestic architecture in the county, and one of the foremost monuments of medieval brickwork in the country.'** (EH2, App 7). The main architectural value is derived from the internal construction. The continuous timber roof of 11 bays is recognised as an important example of late medieval construction.
804. The development would not be visible from the lower levels of the Old Palace, nor from the courtyard which forms its immediate setting. However the blimp was visible in Photograph P8 (CD A24) taken from the turret of the Old Palace, and the pennant is also perceptible above the tree line. The extent to which the building would be seen is also illustrated in rendered photomontage P22 (CD A30e, July 2013). This indicates that the upper part of the dome and the flues would be a prominent and incongruous intrusion in the parkland landscape. Notwithstanding that CABE found the building to be well designed, the flattened dome, the cladding and the flues of the RERF, as seen from this location, give the building a markedly alien appearance, when contrasted with the formal west garden in the foreground, individual trees in the middle ground and the denser planting visible on the skyline. Views of Hatfield New Town are also historically incongruous, but are an unalterable fact. I acknowledge that the intrusion of the relocated visitor car park, together with the timber fencing and animal shelters associated with the farm park are themselves somewhat incongruous and discordant visual elements, though there is a rationale for their presence related to the economic realities of current management practices on historic estates. The same cannot be said of the RERF. [273, 279, 280, 283, 504, 515, 517, 524, 639]
805. Nevertheless, the Framework requires the proposal to be assessed on the basis of the impact of the significance of the asset, in this case the Old Palace. There is some evidence that the turret served as a look out to forewarn occupiers of approaching travellers along the Great North Road, and to survey the surrounding landscape. The Heritage Assessment (CD 25) acknowledges that the proposed development will interrupt historic views to the south from the turrets, albeit that it notes that the turret at present is not generally accessible to the general public (CD A25 section 2.5.3). GCE said in evidence that a scheme to allow public viewing from the turret in future was being looked at, but there did not appear to be any firm proposals on the table at the time of the Inquiry. [524]
806. The exceptional significance of the Palace, deriving from the architecture and the associations with the Bishops of Ely, Queen Elizabeth I and the Cecil family is not disputed and is set out in detail in the evidence to the Inquiry. It is accepted that views from the turret may have had some historical importance. However the route of the Great North Road has been moved to the west, and the social, historical and political context for the turret has evolved radically. In any event it is only one part of the significance of the Old Palace.
807. In the light of the Bedford judgement, the assessment by Mr Harris on behalf of Veolia, supported by Mr Brown on behalf of HCC, that the harm to the asset would be less than substantial is convincing. Notwithstanding some harm to the aesthetic value of the Old Palace, its special historic and architectural significance

could continue to be appreciated. It would not be 'vitiating altogether or very much reduced'. [162, 629]

Impact on Hatfield Park

808. Hatfield Park is a Grade 1 registered park and garden. It is recognised as one of the foremost heritage assets in the Country. It is a large area extending from east to west by over 2 km and from north to south by approximately 4 km. Hatfield House lies close to the western boundary at the heart of the parkland landscape, where it is set within the formal West and East Gardens, adjacent to the Old palace and Old Hatfield. The Home Park, a heavily wooded area, extends to the northern limit of the Park. The eastern boundary is defined by historic **woodland such as Brickkiln Wood and Conduit Wood. To the south lies Millward's Park**, adjacent to the modern A1000. [506]

809. A detailed description of the origins and evolution of Hatfield Park is included in CD A25 Heritage Report: Additional Information and Heritage Assessment, June 2012. It provides the immediate setting for the House and the Old Palace, and for a number of other listed buildings within the Park boundary.

810. The earliest park or parks at Hatfield were associated with the medieval **Bishop's palace or earlier hunting lodges. The character of the park has** continued to evolve since Hatfield House was built in the early part of the 17th century. **Formal gardens were laid out at that time by Robert Cecil's gardener, Mountain Jenings, with planting by John Tradescant the Elder.** These appear to have fallen into decline in the late 17th century and by the mid 19th century they were removed to make way for the more fashionable open landscape made famous by Lancelot Brown. As fashions changed again the formal gardens were re-instated after 1828 by the second Marquess to Jacobean designs, but on higher terraces to the west and east of the house. The park and gardens have continued to evolve to the present time and now present a mosaic of open grassland, interspersed with individual and small groups of trees, tree lined avenues, woodland and gardens. It also includes a number of other heritage assets. [509, 513]

811. A number of specific views have been identified in CD A25 and are generally recognised as contributing to the significance of the park due to their historic associations or because the view is an important aspect within the landscape:

- To and from Hatfield House along the South Avenue, the early 17th Century approach to the house from the south.
- To and from Hatfield house along the North Avenue and into the Home Park
- **Down the Duke's Ride** in both northerly and southerly directions. This ride formed the historic approach to the house from the Great North Road.
- To and from the Pepperpot Lodges and Marrowes Lodge in the east, along the former route of the Great North Road
- From the high ground on the eastern side of the park towards the House. These views were often used in paintings and other depictions of the House in its setting.
- **From Keeper's Lodge in the Home Park in a southerly direction across the open parkland.** [509]

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812. The significance of the Park is analysed in Section 2.4.1, which identifies the evidential, historical, aesthetic and communal significance of the Parkland as a whole.
813. The areas of the Park most likely to be affected by the development are through the corridor in the western area of the park close to the walled kitchen gardens, the visitors' car park and the West Garden. The existing built and natural environment allows intermittent views within this area, and from some areas the flues and dome will be visible.
814. Blimp Photograph 11 (CD A24) and Photomontage P23 (CD A30e) illustrate a view from a point in the West Garden. They show that the upper part of the dome and the flues would be visible from that specific viewpoint. However, on the accompanied site visit it was seen to be a view that would be glimpsed in passing. That is not to say that the glimpse of the development would not be intrusive, and detract from the experience and enjoyment of visitors and others of the historic and aesthetic ambience of this part of the Park. Nevertheless it would be a transient experience, and the development would be screened in most views by perimeter walls and enclosures, and by trees and shrubs both within and beyond the West Garden. The lower terrace, seen in the middle ground of Photomontage P23, is at a significantly lower level than the photograph location, where the ability to see beyond the boundary of the park to the development would be commensurately reduced. [273, 517, 521]
815. Blimp photograph 13 (CD A24) and Photomontage P24 (CD A30e) are taken from the field north of Orchard House in the western part of the Park to the south-west of Hatfield House, and show that the cap of the dome and the flues would be visible above the walled garden and the denser coniferous planting of **Millward's Park**. The effect on Orchard House in particular was raised by EH. They considered it had some of the characteristics of a *ferme ornee*, though this is not referenced in the listing description or the register description of the park. Here again, the view of the development is quite locationally specific, and would be seen in a gap between tree planting adjacent to the wall. While I acknowledge the significance of Orchard House and the walled garden, and accept that even this limited view would represent an unwelcome intrusion in the historic parkland landscape, the degree of harm would remain less than substantial in my judgement. [161, 273, 517, 520]
816. Photograph 12 (CD A24) indicates that from this location (view from the field north of the walled kitchen gardens, looking south), only the flues would be seen. The harm would be less than substantial.
817. Rendered Photomontage P12 (CD O2) shows a potential winter view of the development from the new car park, adjacent to the visitor farm. It shows recent changes to the agricultural landscape of this part of the Park to diversify **the range of attractions and accommodate visitor's needs**. The upper part of the dome would be visible in a gap in established planting above a low ridge. In this particular angle of view the flues would be screened. The appearance of the development would be uncharacteristic of the Parkland, though the degree of intrusion would be limited by existing planting, even in the winter view, and the harm to the significance of the asset less than substantial in my assessment. [161, 163, 279, 522]
818. The area of the Park closest to the proposed development - **Millward's Park** - was originally a medieval deer park. It lay on the other side of the then route of

the Great North Road. From the 19th century dense conifer planting has taken place, resulting in a significant change to its character from the more open deer park. The dense planting means that there are at present very limited opportunities for views towards the proposed development. [512, 519]

819. **Photograph 4 (CD A24) was taken just inside Millward's Park where it adjoins the A1000 in the vicinity of Marshmoor, approximately 50 m to the west of the southern driveway. From this location only the top of the flue would be visible above the rooftop of the dwelling opposite. In view of the dense planting, the harm would be less than substantial. [161]**
820. **Mr Fauvel (for GCE) indicated the Estate's intention to reduce the density of planting in Millward's Park in future, replacing the dense stands of conifers with a more open, deciduous woodland cover. The intention would be to fell the existing conifer woodland in 5 hectare blocks, and allow natural regeneration of native deciduous varieties. While there were no firm plans before the Inquiry, a programme of gradual restoration to continuous canopy woodland would align well with modern forestry practice, and to my mind represents a rational approach to the management of this part of the Park which would offer benefits in terms of the restoration of a landscape type more in keeping with the historic appearance of the Park, as well as a more diverse ecology. [285]**
821. There is an obvious risk that, were the development to go ahead, areas of significant felling would open up views of the completed development, particularly as the ground levels rise to the east away from the A1000, while replacement tree growth would take some time to re-establish effective screening. It may be that the process could be managed to avoid the creation of substantial gaps on the screening. **I note that GCE's heritage consultant (Prof Tregay) did not originally identify this as an issue and accepted that the harm to the Parkland would be less than substantial, but revised his position having been advised of GCE's intentions with regard to Millward's Park. Mr. Brown (for HCC) also identified the potential for visual harm if felling resulted in more views out of the park being available. However while he considered that there may be a period when the dome and chimney of the proposed development could become prominent in some views from within Millward's Park, the intention is to provide continuous forestry cover and that change would occur gradually. [285, 519, 534, 535, 620, 621, 630, 633, 634, 641]**
822. There is some evidence for the historical continuity of the parkland with the rural and agricultural landscape beyond. EH made reference to the detailed analysis of Ms Evans, a specialist on historic landscapes, whose report expresses her view that the park is characterised by a relative lack of formality beyond the principal north/south access, its open nature, dispersed woodland and woodland blocks creating a sense of expanse, with the surrounding countryside visible as a **continuing rural backdrop. The Applicant's Heritage Report: Additional Information and Setting Assessment (CD A25) recognises that 'a historic connection with the agricultural landscape is also evident, and this remains important in the modern eastern boundary where the Registered Park and Garden links seamlessly with the agrarian land beyond.'** It is reasonable to infer that this would have been the case on the western side also, before the coming of the railway in the 19th century and the development of the New Town in the 20th, with the exception of the close relationship of the estate with Hatfield Old Town. Parts of the western area of the Park retain a more open agricultural

character, for example the area where the visitor farm has been established. [285, 505, 507, 510, 511]

823. Whether or not this was an intentional part of the design and layout of the park was hotly disputed. A prominent position was selected for the house, which was intended in part to display the wealth and influence of the owner. The house would have had extensive views over the countryside to the west now occupied in part by the New Town, and would have been prominent in views from that direction. The historical mapping is open to interpretation but neither the **Salisbury survey of c 1608 (EH2, fig 6) nor the Surveys of Millward's Park**, Home Park and Lawn Farm (EH2, figs 6 and 7 - circa 1824) indicate systematic boundary planting designed specifically to isolate the house visually from the wider countryside. A similar impression is gained from the 1786 plan in Mr **Brown's evidence (H/AB/3)**. The maps show no obvious differences in the field patterns in the area of Lawn Farm and those outside the Park. The extent of **boundary planting at Millward's Park appears limited and the more open** character of the park at that time is likely to have afforded views to the west and **south, particularly from the 'tongues' of higher ground shown in the 1777 plan in H/AB/3.** [273, 285, 506, 508, 514]
824. There was however consensus that the design and management of the Park has evolved and continues to do so. A greater sense of enclosure along parts of the western boundary has resulted, and it is a fact that this part of the park has become more inward looking, so that views do indeed focus on the House at the centre of a contained domain, rather than to or from the surrounding open countryside. This is evident from the ca.1880 plan in H/AB/3, which shows a greater density of planting on much of the Park perimeter, though not in the area **to the west of what is now 'the Wilderness', near to the walled garden**, which remained substantially open at this time. [285]
825. **The report notes that 'to the south and west this association has been lost as industrial development and infrastructure has encroached on the southern boundary of the park.'** (page 24)
826. At present the application site makes little if any contribution to the significance of the identified heritage assets, though as a matter of geography and topography it is part of the setting of Hatfield Park. The existing development on the site is low-rise and screened by established planting. As such its contribution to significance of the heritage assets may be described as neutral. However it is plainly possible for it to be developed in a manner that would change the nature of its contribution to the setting, whether for good or ill. [273, 503, 624]
827. Having regard to the impacts identified above, I conclude that while the harm to Hatfield Park would be significant, it would be indirect harm which would fall below the threshold of substantial harm. Applying the approach of Mr Justice Jay in the Bedford case, it would not have such a serious impact that the significance **of the asset 'would be vitiated altogether or very much reduced'**. **The Park is** very extensive, and much of it would be unaffected by the proposal. The key views identified in para 811 above would not be compromised. While the views addressed in the Blimp Study (CD A24) and the verified photomontages are not exhaustive, and there may well be other points in the Park from which the upper parts of the development could be viewed, I consider that the viewpoints discussed, though of necessity representative, are the product of a genuine and

serious effort on the part of the Applicant to identify the worst case heritage impacts. [267, 273]

828. Accordingly the Park would retain very much of its evidential, aesthetic and historic significance as the setting for Hatfield House and the associated ensemble. [161, 629]

Impact on St Etheldreda's Church (Grade I listed) and the Old Town (Old Hatfield Conservation Area)

829. After the palace and the house, the principal building of the old town is the **church of St Etheldreda, the dedication reflecting Hatfield's connection with Ely.** It is described comprehensively in the evidence to the Inquiry, and its significance, individually and as part of the ensemble is unchallenged.

830. Old Hatfield is an attractive town, now largely Georgian in appearance. It has two principal streets, Church Street and Fore Street, descending the hill to either side of the churchyard, the latter being a particularly fine example of a Georgian street. The presence of the gate to the Old Palace (Listed Grade II*) and at the **top of Fore Street recall the town's medieval origins.**

831. The Old Town is most obviously appreciated from within its streets, though there are places in which it can be appreciated within larger views. Particular attention was drawn to views across the roofscape from the north and west, of which the most dramatic is that from the viaduct entering the park, from which the valley below, the town rising to the south-east and the church set against the backdrop of the trees can be seen. [525]

832. It was acknowledged that there was likely to be a view of the development **from the top of the tower of St Etheldreda's Church, though no photographic** assessment was made. In my estimation, the impact is likely to be similar to that from the turret of the Old Palace. That is, while there would be harm to the outlook, it would not be such as to vitiate altogether or very much reduce the significance of the asset. [525]

833. Photograph HH24 (Blimp Study Winter Views – (A30 e (3))) shows a view from the viaduct looking south. The blimp is scarcely perceptible amongst distant trees, indicating that only the very top of the flues would be visible, at most, and a distance in excess of two kilometres.

834. No other specific views were referred to, where the development would be seen in the setting of the conservation area. In my judgment the development would have minimal impact on the setting of the conservation area. Its character and appearance would be preserved. [286, 525, 629]

Other Heritage Assets

835. There are a number of other Listed Buildings the settings of which would be **affected to some degree by the proposal. Gobion's Folly Arch is a II* Listed** Building which lies some 4 km to the south east of the Application site. While it was argued that it was built as a prominent eye-catcher to be viewed from within **Gobion's Park, it has an afterlife as a striking historic feature in its own right.** Photograph 36 (CD A24) shows the blimp as being visible through the arch at a considerable distance above a planted ridge line. This indicates that the upper part of the flues, aviation lights and plume would be visible through the arch when looking northwards from the greenspace to the south of the arch. The

communications masts at Brookman's Park would not feature in this alignment, and the visible parts of the development would detract from the experience and enjoyment, though in a limited way, and the arch could still be appreciated from different angles without the intrusion of the flues. I consider that the harm would be less than substantial. [165, 626]

836. Similar considerations apply to views obtainable from the Grade 1 Listed North Myms Hall. Photographs 22 – 31 (CD A24) illustrate the extent to which the blimp was visible from various locations in the House and Park. Photographs 24, 25, and 31 indicate that the upper parts of the flues, aviation lights and plume would be visible from various locations within the park, and Photographs 26, 27, 28 illustrate potential views from the first and second floor of the Hall. These elements would be intrusive as the aspect of the park looking toward the development has a parkland character relatively free from intrusive structures, notwithstanding the pylon which is just visible in the inset Photograph 26. Nevertheless, having regard to the Bedford case, I would assess the harm as being less than substantial. [165, 286]

837. Photographs 32 – 35 show that visibility of the development would be very limited from the Grade 1 Listed Bocket Hall and surrounding parkland, due to the distance, intervening landform and established planting, and I conclude that the harm would be less than substantial. [165, 286]

838. Photograph 21 shows a representative view from historic Verulamium, some 9 km to the west of the Application site. It indicates that the development would be screened by the landform and tree cover, and I conclude that there would be no material harm to the significance of the asset.

Effect of the Plume

839. My overall conclusion on the effect of the plume is that it would add little to the degree of visual harm experienced at any particular location over and above the effect of the dome and flues. I acknowledge with regard to heritage assets, for example Hatfield House, that the plume would on occasion be visible above screening even though the development itself was not. However, I do not consider that this would itself amount to substantial harm, as it would not vitiate or very much reduce the significance of the asset. [273, 518, 523]

Conclusion on heritage assets

840. The development would result in significant harm to a number of heritage assets, themselves recognised as being of exceptional significance. The harm would be to the setting of the assets, and would in no case **'vitate altogether or very much reduce'** the significance of the assets. In the light of the evidence and the Bedford judgment I consider that the harm would be less than substantial in all cases. The applicable test is therefore that set out in paragraph 134 of the Framework. I consider this further in the balancing exercise.

Noise

841. There was widespread concern about the effects of noise on sensitive receptors, particularly on the adjacent Southfield School, and on dwellings in South Hatfield.

842. WHBC considers that, notwithstanding the material submitted with the ES, no adequate baseline survey exists in relation to nearby residential receptors with

the consequence that the Applicant is unable to demonstrate that the proposal will not generate unacceptable noise impacts. [432]

843. **WHBC's starting point was that the background noise measurements taken by Mr Maneylaws (for Veolia) were short term and do not provide a reasonable account of ambient and background noise. They referred to concerns raised by RPS, who undertook a review of the Applicant's noise survey for HCC, and found that *'the baseline assessment is inadequate. There is insufficient data to provide robust evidence that the baseline evidence adopted for the assessment are representative in accordance with BS4142'*. In response the applicant explained that difficulties had been encountered in undertaking a more comprehensive survey, primarily because of the difficulty in gaining permission to place recording equipment on privately owned residential property. [184, 185, 432]**
844. RPS acknowledged these problems, but stated that no further evidence had been proposed to demonstrate that the noise levels measured at each location are representative of the sensible minimum noise levels. However they concluded that the baseline noise levels determined from the short-term surveys undertaken for the ES appear reasonable and provided an approximate indication of the representative background noise level. On this basis the assessment of operational noise in the ES was considered to be an adequate indication of possible environmental effects and demonstrates that it is likely that the proposed development can be designed such that adverse noise effects are not likely to occur. RPS accordingly concluded there was sufficient information to determine the planning application. They advocated further assessment to confirm the representative background noise levels to allow noise levels to be defined and recommended the attachment of an appropriate planning condition. [185, 186]
845. **The assessment made by Veolia's team was based on two measurements at Southfield School, of 3 hours and 43 minutes (front) and 31 minutes (rear). A single measurement of 31 minutes duration of levels by the cycle path outside Southfield School was taken. Measurements were made at three other locations in South Hatfield. Separate measurements were made for daytime and night-time, each lasting one hour. [148]**
846. WHBC undertook its own measurements which show recorded background noise levels which are at times below those measured by Veolia. The location of the measurements was Receptor R2 (Far End), a dwelling backing onto South Way. The WHBCs readings showed noise levels as much as 11dB (LAeq) and 9 dB (L90) lower during the night and 9db (LAeq) and 6db (L90) during the day than those taken by Mr Maneylaws at Monitoring Location M4 (Rear of 4 Strawberry Field).
847. **Mr Maneylaws undertook a BS4142 assessment using Mr Watt's measurements for Receptor R2 (V/4.4 App A). This shows that using Mr Watt's lowest daytime measurement (45 db (L90)) the predicted increase in noise levels would be 0.1 db above the rating level. On the same basis for the night-time readings, the predicted increase would be 1.1 db. For most of the readings the predicted levels from the RERF would be below the rating level. In all cases the rating level would be below the average (LAeq) measurements taken by Mr Watts. These results assume that there would be no additional mitigation to reduce internal noise levels to the tipping hall. Thus the highest predicted increase of 1.1 db would be**

substantially below the Figure of +5 dB figure below which BS 4142 considers any increase to be of marginal significance. [187, 188]

848. WHBC argued that a +5db(A) correction should be applied at night-time in accordance with paragraph 8.2 of BS 4142 which advises that a correction should be applied if one or more of the following features are expected to be present for new or modified noise sources: the noise contains a distinguishable, discrete, continuous note (whine, hiss, screech, hum etc); the noise contains distinct impulses (bangs, clicks, clatters or thumps); the noise is irregular enough to attract attention. [189, 435]
849. WHBC questioned the data from noise sources provided to Mr Maneylaws by Veolia. However they did not produce any contrary evidence to demonstrate that similar plants did emit noise with those characteristics. In the absence of such evidence there is no reason to suggest that a modern enclosed plant would produce intermittent noise or noise with a distinguishable tonal characteristic. There would be no movement to or from the RERF by HGVs at night. The tipping hall and the MPT would not be operational. The doors would be kept closed. In the circumstances, it is unnecessary to apply the +5db(A) correction at night-time. [189, 190, 434]
850. **Mr Watt's (WHBC) also argued that reliance on LAeq measurements can mask individual noise incidents because of the averaging effect.** However, he accepted that BS4142 is the most appropriate methodology for assessing operational daytime and night-time noise impacts, which recommends the use of LAeq measurements. [148, 184]
851. While acknowledging, as did Mr Maneylaws, that a more extensive baseline survey would have been desirable, the noise impacts of the plant in operation would have been acceptable even using the lower readings obtained by Mr Watts. Mr Watts also suggested that measurements made at other locations might have produced even lower background levels. However there is no other survey evidence to demonstrate this. Given the characteristics of the area, with a number of commercial premises, a main road and a mainline railway nearby, this would seem unlikely. On this basis, it can be concluded that the noise impact of the plant on residential receptors would be acceptable. It is significant that the EA also used this method of assessment in considering the permit, and also concluded that the noise impact would be acceptable. [432, 433]

Noise impact of HGVs.

852. Mrs Roe (NBAF) put forward a view shared by many in the community that an increase in HGV movements along South Way and on the roundabout junction with Travellers Lane would have unacceptable noise impacts for residents living nearby. She drew attention to the HCC committee report (CD B1 para 8.48) which states that traffic to the proposed incinerator would not directly pass any **residential properties. However there are a number of dwellings on Millward's Estate that are located adjacent to the roundabout.**
853. The roundabout already serves a busy depot which generates some 1000 HGV movements a day. Nevertheless there would be a considerable increase in the number of HGVs over current levels, with up to 372 daily movements generated by the RERF.

854. The noise impacts of traffic were assessed in the ES. Calculations were carried out according to the methodology in CTRN³³⁷ to assess the change in noise levels to properties along the local road network resulting from the addition of operational traffic. The Basic Noise Level (i.e. the noise level at 10 metres from the side of the road taking into account flow, speed, composition, road surface and gradient) was calculated for two scenarios 2016 without the development and 2021 with the development (Section 7.5.6 ES). The calculations for 2021 with the development show predicted increases of below 1 dBL_{A10,18hr} along South Way with the development. There is a predicted increase of 1.6 dB south of Travellers Lane, but there are no residential properties at this location. (This refers to the stretch of Travellers Lane south of the junction with South Way.)

855. I acknowledge that the existing BNLs along South Way are quite high (ranging from some 70 – 74 dBL_{A10,18hr} at present) but that would not be unusual for a high capacity road of this nature, which already serves the Travellers Lane Industrial Area. In making assessments of noise impacts it is standard practice to compare existing levels with predicted increases. Increases of below 1 dB can be assessed as negligible in the context of existing levels. [562]

856. Accordingly, there is no evidence to support the contention that the effects of traffic noise on residential properties would be unacceptable. WHBC did not put forward an argument based on the noise effects of traffic. [191]

Noise effects on Southfield School

857. Mitigation proposals for the school site include provision of a 2.4 metre high noise barrier along the frontage and an acoustic gate across the entrance. The predicted increases in noise levels to the front of the school with the mitigation in place is 0.6 dB(A) L_{Aeq,1hr} arising from traffic serving the RERF. The highest levels for individual noise events (LA max) levels are predicted to decrease by 2.2 dB(A) due to the effect of the acoustic fence.

858. WHBC and members of NBAF also raised concerns about the potential of operational noise from the RERF to interfere with the well-being of children and the teaching environment both internally and externally at the rear of the school. The school provides for the needs of children on the autism spectrum who may be particularly sensitive to noise, and can be disturbed and distressed by loud noises.

859. The significance of noise effects on the school in terms of acceptable internal noise levels and external noise levels to outdoor areas was assessed in the ES **using the guidance in BB93 'Acoustic Design of Schools'**. The measured daytime noise level to the rear of the school was 47 dB LAeq. The predicted level with the RERF in operation would be 52 dB LAeq, a 5 dB(A) increase. This figure assumes that the doors to the tipping hall will be permanently open, which will not be the case in practice, and so may be considered to be a worst case estimate. Additional mitigation in the form of internal insulation to the tipping hall could, if required, limit the increase to 3 dB at the rear of the school.

860. BB93 sets out the acoustic performance standards and recommended internal noise levels for various types of classroom uses, including special educational needs (SEN). It states that an internal ambient noise level of 30 dB L_{Aeq,30min} is

³³⁷ Calculation of Road Traffic Noise - Department of Transport, Welsh Office 1990

required. For external areas an upper limit of 60 db $L_{Aeq,30min}$ is recommended for areas used for formal and informal teaching and recreational areas. Ideally, 55 dBA should not be exceeded, and at least one area should be provided for outdoor teaching where levels are below 50 dBA $L_{Aeq,30min}$.

861. The evidence demonstrates that these external standards will be achieved. Figure B2 of Doc V/4.4 shows that much of the grounds to the rear of the school will experience noise levels of below 52 dBA, with a significant part below 50 dBA. [148, 311, 316, 317, 694]
862. Internal noise levels were predicted to be substantially below the 30 dBA level required with windows closed. However in recognition that it would be highly desirable for windows to be openable in summer the Applicant has proposed further mitigation in the form of a secondary glazing scheme with staggered openings and acoustically lined reveals which would permit the opening of windows at the rear of the school to be secured by S106 obligation. This can achieve a reduction of 20 – 25 dB from outside to inside, which would mean that the standard can be met with openable windows. [148, 311]
863. Accordingly, the evidence demonstrates that the development would not have unacceptable noise impacts on the school. [698]

Effect on Southfield School

864. Southfield School caters for children with special needs, including children with **Autism Spectrum Disorder and Asperger's Syndrome (ASD/AS)**. HCC has moved Southfield School to new premises at Howe Dell in recognition that construction activity would be incompatible with the school remaining in situ. However, the intention is that the school would return to its original premises after completion of the RERF.
865. Cllr Gordon taught at the school for seven years and was concerned that, as is widely recognised, children with ASD/AS may be hypersensitive to sensory stimuli so that levels of noise and vibration, for example from passing lorries, can be disturbing to them. The potential for such effects were recognised in the Health Impact Assessment (CD A10). In addition a number of objectors considered that the development would cause harm to the School by visual intrusion and potential overshadowing. It was suggested that the proposed noise mitigation (erection of an acoustic barrier and gates) would give the school a forbidding appearance.
866. Mrs Wells gave evidence on behalf of HCC. She has 13 years teaching experience in mainstream and special education, including autism and complex learning difficulties. While she fully recognised that children with ASD/AS may experience particular sensitivity to noise and changes in light conditions, there are recognised techniques available to reduce potential anxiety by helping children understand the source of such events so that it is not unknown. These experiences are part of everyday life and need to be addressed and managed, and not avoided. She considered that any light changes and shadows cast as a result of the construction of the RERF should have no adverse effect on the pupils as these are everyday experiences which need to be managed as a matter of course.

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867. I have addressed the issue of operational noise and noise from HGVs in paras 841 - 863 above where I conclude that the evidence demonstrates that the development would not have unacceptable noise impacts on the school.
868. With regard to visual intrusion, the plant would be seen from some of the rear school windows and from the school grounds. HCC consider that it will be a permanent feature in the landscape with which pupils would become familiar. Additional planting was proposed which could be secured through the S106 obligation to provide mitigation of the visual impact.
869. **HCC's landscape witness considered the development would** result in a high magnitude of change on a medium sensitivity receptor giving rise to a moderate significant adverse effect. However he argued that the proposed mitigation works would within 5-10 years reduce the magnitude of change to moderate and the significance to moderate/minor. Whether it is correct to consider a special **needs school as a 'medium sensitivity receptor' is a matter of judgment, but to my mind the categorisation underestimates the adverse visual impact of the development on the school and the amenity pupils, staff and visitors.** I accept that the proposed planting would have some screening effect but it would not wholly screen the building, and the visual dominance (apparent from Photomontage P21 – CD O2) would continue to be a residual adverse effect throughout the life of the plant. [319]
870. However, with regard to overshadowing, criticisms of the assessment in the ES were acknowledged and a revised assessment presented to the Inquiry (INQ/V/14). While there would clearly be some overshadowing of the school grounds at certain times of day, particularly in midwinter, the revised assessment shows that the school grounds would receive substantially in excess of 2 hours of sunlight on 21 March, and therefore that the recommendations in the Building Research Establishment (BRE) Guidance – **'Site layout planning for daylight and sunlight: A guide to good practice' 2011 would be complied with.** [149, 320]
871. With regard to the potential for further disruption arising from the return of the school to **the Traveller's Lane site, the move to the Howe Dell site appears to** have been managed successfully and, with careful planning and preparation, I consider that there is no reason why the return to the original site should not also be managed successfully. [312]
872. I do not consider that the evidence demonstrates that there would be actual harm to the health, educational and social well-being or safety of children attending the school as a result of noise or other effects arising from the operation of the facility or the increase in HGVs. Nevertheless, I appreciate that these are highly sensitive matters, and that parents of children with special needs, and indeed parents in general, may understandably perceive that a large waste treatment facility would be an unsuitable neighbour for a school. NBAF suggest that the presence of the RERF would inevitably result in parents seeking places elsewhere for their children, putting pressure on the viability of the school and HCCs ability to offer satisfactory choices to parents of children with special needs. While the practical effect of such considerations is unquantifiable, I acknowledge that the proposed changes to the access, the proposals for noise attenuation at the front of the school and the visual dominance of the RERF itself would have a harmful effect on the setting and context of the school, which needs to be weighed in the overall planning balance. [150, 313, 314, 318, 322, 323, 560, 686, 692, 701]

Highways and Traffic

873. A number of objectors expressed concern over the potential for the increase in HGVs using the road network and proposed access to the RERF via South Way and Travellers Lane roundabout to impact on the safety of pedestrians, other road users and cyclists. [685, 686, 689, 694]
874. The main highway network serving the proposed RERF via the Travellers Lane roundabout is of a high standard with capacity to absorb the traffic generated by the proposal. Some concern was expressed by objectors over the capacity of A1 (M) Junction 2. However, the Highways Agency did not raise any issue in respect of the capacity or operational safety of this junction.
875. The previous use of the site as a library generated some 472 daily vehicle trips between 07.00 and 19.00 (Survey October 2011). Veolia predicts that the total daily movements generated by the RERF on each weekday will be 458 of which up to 372 will be by HGVs. Although the total is slightly lower than that for the established use, there is a much higher proportion of HGVs. The proportion for the library traffic was calculated to be 6% whereas it is expected to be 79% for the RERF.
876. A comparison was made between library related traffic and the estimated volume of RERF traffic during the morning and evening peak commuter hours, expressed as passenger car units (PCUs).³³⁸ The profile of traffic associated with the RERF and the profile of traffic on South Way are different. The development traffic would build up to a peak between 13.00 and 14.00 and then subside. As a result the periods when development traffic is predicted to be greatest occur when the other traffic on the roads is lower than expected during the commuter **peaks. Veolia's assessment shows that even in terms of passenger car units,** there would be a reduction in the overall numbers of units entering and leaving the application site during both the morning and evening peak periods. There would be a reduction in the flow of traffic on Travellers Lane north of the roundabout during the morning and evening peaks.
877. The assessment of impact was based on a worst case assumption that all municipal waste would be brought to the site directly by refuse collection vehicles (RCVs). In practice it is expected that waste from seven of the Council collection areas would be bulked at waste transfer stations (WTS) before being brought to the site. If two further WTS are implemented in accordance with the adopted WCS, the number of HGVs movements on a weekday could be reduced by approximately 20%. [180]
878. It is accepted that HGV traffic to and from the RERF would increase at other times of day, outside the morning and evening peaks, when the network would otherwise be less busy. Many objectors considered that the greater proportion of HGVs would be intimidating to children and others attending the school. It was also contended that without additional crossing facilities, the additional HGV traffic would cause danger to cyclists and pedestrians, particularly users of Southfield School and the Route 12 footpath/cycleway, as well as being harmful to their enjoyment of the route.

³³⁸ Passenger car units assign different values of 'units' according to vehicle type. A passenger car is 1 unit. An HGV is assigned a value of 2.3 units. All development traffic with the exception of staff, visitors and 'other' deliveries was assigned a value of 2.3 PCUs.

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879. There would be substantial changes to Travellers Lane and the current site access road to accommodate the increase in HGV traffic. This section of Travellers Lane is at present a single carriageway road with double yellow lines on both sides. It is a cul-de-sac which terminates at the entrance to the Tesco Welham Green distribution centre. The site of the former Central Resources Library and Southfield School share an access off this road, the junction with Travellers Lane being a simple priority junction.
880. The detailed design for the proposed access arrangement is shown in Means of Access Plan Option 2B (within CD-A13). A new junction with Travellers Lane would be created to the north of the existing junction. Travellers Lane would be re-aligned and widened to accommodate a right turn facility into the site access road. The site access road would have separated in and out carriageways at the junction with Travellers Lane. A cycle and pedestrian crossing would be provided near to this junction to accommodate the realigned Route 12. A dedicated right turn lane in the site access road would be provided to accommodate vehicles turning right into Southfield School. A 3 metre wide pedestrian/cycle path would be provided into the school.
881. HCC Committee report (CD B1 para 12.24) states that the predicted level of **50 HGV movements between the hours of 11.00 and 12.00, 'would represent a significant adverse impact with regards to the degree of change in HGV movements'.** However the report considered that this impact would be mitigated.
882. I deal with the issues of visual amenity and noise elsewhere in my conclusions. With regard to highway safety, there are three main areas of concern:

School children and visitors to the Southfield School

883. The school caters for children with special needs, and all children attending it arrive in specially provided transport. While I understand the apprehension that HGV traffic would put such vehicles, and those used by staff and visitors, at increased risk, the evidence does not support this. Such vehicles already encounter HGVs on Travellers Lane, without any evidence of accidents having occurred. The higher hourly number of HGVs would be outside the main school pick-up and drop-off times. Between these times there would inevitably be fewer arrivals and departures to and from the school, and the gates would be closed. A new right turn lane would be provided, to allow vehicles to wait for a safe gap before crossing. Automatic barriers would be provided at the RERF entrance, to encourage approaching vehicles to slow down. The access arrangements to the school include provision for cyclists and pedestrians alongside the access road travelling from the direction of South Hatfield to the school and the RERF. Such users would not be brought into conflict with HGVs. [147, 181]

Cyclists and pedestrians

884. The access arrangements would have an effect on National Cycle Route 12, which is both a long distance cycle route from London to Grimsby, and a local foot and cycle path used by commuters, schoolchildren and for general leisure and recreation activity. Mr Edwards (for NBAF) pointed out that when the Tesco depot was built, a large spiral foot and cycle bridge was provided over South Way to keep HGVs away from the cycle route. The current proposal relies on a surface level crossing of the new access road. While the route currently crosses the existing site access, he suggested that the increase in HGV traffic represents

a much greater threat to cyclists. He argued that mitigation should be undertaken to improve cycle safety on local and county roads, including provision of a signal controlled crossing, an alternative route from Dellsome Lane across Angerland Common to the park and ride traffic lights on South Way, and a cycle path along the north side of South Way. If planning permission is granted, this should be required before the construction of the incinerator begins.

885. To my mind the configuration of the access and crossing would allow reasonable and adequate intervisibility between drivers and cyclists or pedestrians. Users would be able to wait in safety for a gap in the traffic before crossing either arm of the access. Based on the observed flows, usage of the crossing by cyclists and others would be too infrequent to justify provision of a signal controlled crossing. [178, 180, 675]
886. It was suggested that at busy periods there could be congestion which would cause HGVs to queue at the entrance to the site, compromising visibility and creating a further hazard for cyclists and others. However I consider that there is sufficient length of access road on the approach to it to accommodate a number of vehicles, in the event of immediate access to the site not being obtainable. Two weighbridges would be provided to speed up the processing of vehicles arriving at the site. In these circumstances, the likelihood of HGVs queuing back to the crossing is remote. [178]
887. With regard to improvements to the wider network, it would have to be shown that such improvements were made necessary by the development, if they were to be the subject of conditions, or a planning obligation. While they would no doubt be desirable, I do not consider that they would be necessary to make the development acceptable. [178]
888. I do, however, accept that there would be some harm to the amenity of users of the footpath and cycleway. While Travellers Lane is already used by HGVs, and the New Barnfield access was used by a considerable number of vehicles, the increase in the proportion of HGVs would change perceptions of route safety, particularly for younger and less experienced cyclists. A regular stream of large vehicles would be likely to be perceived as threatening. The physical changes to the character of the route would make the experience of using this section of the route less pleasant. Although it cannot be described as a country lane, the existing route is generally well separated from the carriageway in a wide verge, with trees and shrubs imparting a transitional semi-rural character notwithstanding the large Tesco Depot and the Mitsubishi premises. Many of these trees would be removed to accommodate the highway alterations, and to maintain visibility splays. The widened carriageways, higher standard junctions and road markings, together with the changes in the nature of traffic would be detrimental to the enjoyment of users.
889. It remains, however, the case that if planning permission is not granted for the RERF, then the New Barnfield site would have redevelopment potential consistent with development plan and national policy prevailing at the time, which could generate a significant amount of traffic including a possible increase in the number of HGVs. [180]

Safe operation of the Mitsubishi junction

890. Representations were made on behalf of SEGRO who own the nearby Mitsubishi premises with access from Travellers Lane. Mr Kerr for WHBC

questioned the proposed arrangement which would require vehicles emerging from the Mitsubishi site to turn right across a ghost island between the proposed cycle crossing and the right-turn lane into the reconfigured access way. He considered that this would not be best practice and could result in confusion arising from north bound drivers failing to anticipate a right turn movement from the Mitsubishi access. This in turn could lead to the possibility of collision.

891. I accept that the arrangement is not ideal in highway design terms. Nevertheless there are overall safety benefits arising from the incorporation of the right turning lane into the site access. There is no policy prohibition on vehicles crossing hatched areas or requirement for such features to be avoided. The access arrangements were considered acceptable in a Stage 1 safety audit. The junction would have adequate visibility of 4.5 m x 70 in each direction, to allow drivers exiting the site to do so safely and without risk of collision. [179]

Other safety concerns

892. A number of residents referred to accidents which had occurred on the local highway network. While any accident is regrettable, the record of accidents in recent years does not support the view that the proposal would create an unusual or unacceptable risk of accidents occurring.

Air Quality

893. Mrs Eames considered the Health Impact Assessment (CD A10) to be deficient in a number of respects. She contended that that the development will expose the nearby residential population to adverse health risks arising from the considerable increased diesel fumes from HGVs. She considers that this will **widen inequalities in health in Hatfield and WHBC's area.** (Eames 1.1) She drew attention to several vulnerable groups and three areas of concern: The effects on children at Southfield School; the health of residents within 800 metres of the Travellers Lane roundabout; the health of cyclists and pedestrians using the local area. Of particular concern were the effects of PM_{2.5} particles from vehicle and flue emissions. [667, 668, 675]

894. There is no dispute that emissions, including particulates, from the combustion process and vehicle exhaust emissions are potentially harmful to human health. However the key considerations are the concentration of such substances in the environment, and the predicted contributions arising from the development, including the RERF itself and transport to and from the plant. [702]

895. As regards emissions from the plant, the Environment Agency issued an Environmental Permit on 3 April 2013, which lays down stringent conditions for emissions from the RERF. The approach to the consideration of health impacts is clearly set out in PPS 10: Planning for Sustainable Waste Management. **Paragraph 27 advises that 'the planning and pollution control regimes 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 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 and should focus on whether development is an acceptable use of land, and the impacts of those uses on the development and use of land. Waste Planning authorities should work on the**

assumption that the relevant pollution control regime will be properly applied and enforced.' [561]

896. Paragraph 30 states that *'modern, appropriately located, 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. The detailed consideration of a waste management process and the implications, if any, for human health ifs the responsibility of the pollution control authorities.'*
897. This advice has informed and underpinned many recent decisions by the SoS, and is highly relevant to the current application. [193]
898. Mrs Eames also pointed out that the EA permit did not take into account air pollution from lorries. However, these impacts were considered in the EIA and reported in the ES (CD A14c, App 9.1). The ES reported the results of a dispersion modelling exercise for 16 receptor locations, including residential properties along South Way and adjacent to the roundabout. The increase in NO₂ concentrations, as an annual average, was very small, being 0.8% at the most affected receptor. Increases in PM₁₀ concentrations at the residential receptors of most concern were an order of magnitude lower, i.e less than one tenth of one per cent. For example at the most affected receptor (HR 11 - adjacent to the roundabout) the annual average concentration of PM₁₀ is predicted to increase by less than 0.1 µg/m³ or about 0.1% of the current value. The predicted environmental concentration (PEC) would remain well below the relevant AQS for PM_{10S}. As Mr Barrowcliffe (for Veolia) responded in his rebuttal statement **(INQ/V9), 'concentrations for PM_{2.5} could be taken as the same values as PM₁₀, since almost all the particulate matter emitted by vehicle exhausts is in this finer fraction.'** [669, 670, 671, 675]
899. Mrs Eames also suggested that the ES figure of 15 HGVs/hour increase on which the assessment was based is flawed, and a figure of 25 should have been used. However the ES was based on the assessment of 381 HGVs per day, as stated in paragraph 3.6.13 of the ES (CD A14c, App 9.1). The data was modelled using the standard proprietary dispersion modelling package ADMS-Roads. Even taking into account the higher figure of 25 vehicles/hour, the increase in traffic related particulate emissions above baseline would be insignificant. [669]
900. The ES recognises growing interest in PM_{2.5} as an air pollutant due to research indicating an association with health impacts. It is subject to a statutory air quality (AQS) standard in the UK in accordance with the European Directive on Clean Air for Europe. It is possible that EU and UK standards for particulate emissions will be lowered in future if the scientific consensus indicates that health benefits would ensue. In the meantime, the application must be assessed on the basis of currently adopted AQS which indicates that the predicted increases in particulates from traffic effects would not be significant.
901. Mrs Eames referred to the possibility of pedestrians breathing in fumes from stationary vehicles. However, the highest flows attributable to the RERF are predicted to be outside peak hours, when congestion at the roundabout would be less likely. [669]
902. Mr Bousfield presented a heavily redacted letter alleging widespread regulatory failure on the part of the EA. In the absence of any evidence which could be tested these allegations cannot carry any weight. In any event, PPS 10 is clear that decision makers should work on the assumption that the relevant pollution

control regime will be properly applied and enforced. The permit makes specific provision for abnormal operations. [702]

Health and Equality Impacts

903. Mrs Eames considers that the air quality modelling does not reflect the real impact emissions have on residents living in Millwards, Travellers Lane and the 2000 residents living nearby on other roads, i.e. the young, the sick, the elderly, learning disabled children and pregnant mothers. The studies on which current policy is based do, however, take into account effects on a wide range of people. **Public Health England's³³⁹ current (2009) advice is as follows: 'While it is not possible to rule out adverse health effects from modern, well regulated municipal waste incinerators with complete certainty, any potential damage to the health of those living nearby is very small, if detectable. This view is based on detailed assessments of the effects of air pollutants on health and on the fact that modern and well managed municipal waste incinerators only make a very small contribution to local concentrations of air pollutants.'** **The ES has demonstrated that, in this instance, the contribution of an increase in HGV traffic to background levels would also be very small.** [336, 561]
904. **PHE's website states that 'PHE will review its advice in light of new substantial research on the health effects of incinerators published in peer reviewed journals. To date, PHE is not aware of any evidence that requires a change in our position statement.'**
905. While I understand that the proposed RERF is highly controversial locally, the evidence to show that it would give rise to significant health or equality issues in the community, or that it would result in mental health issues, is lacking. Similarly, there is no evidence which conclusively demonstrates that it would have an adverse effect on local property markets or regeneration. **The Applicant's evidence is that this has not occurred in Newhaven, despite similar fears expressed when plans for that facility were being considered.** [667, 672, 674]

Ecology

906. The ES shows that the additional contribution of the RERF to annual average NOx concentrations at Oxleys Wood and Howe Dell would be 1.7% and 3.3% respectively of the critical level for NOx and that existing concentrations are in excess of this critical level. (V/5.1 para 7.2).
907. I understand the view that if existing concentrations already exceed critical levels it may appear counter intuitive to reach a conclusion that an increase, however small, would be acceptable. Nevertheless it is reasonable to assess the relative increase in pollutant contributions attributable to the development in the context of existing levels, and the likelihood of any harm arising from the increase. Dr Riley (for Veolia) drew attention to empirical studies which indicate that where background nitrogen deposition is already at a high level, adding more nitrogen has less and less effect because more competitive species already have sufficient nitrogen such that nitrogen availability ceases to be limiting to their growth. [170, 171]
908. The ES concluded that, given the very small increase in NOx, relative to existing concentrations, it is most unlikely that any effect would be significant.

³³⁹ On 1 April 2013 the Health Protection Agency became part of Public Health England (PHE).

The predicted increase in NOx concentrations and nutrient nitrogen deposition attributable to the proposed RERF at Water End Swallow Holes SSSI is 0.7 of the critical level and 1.15 of the critical load respectively. No objection has been raised by the EA or Natural England.

909. Detailed consideration was given by the EA to potential ecological impacts on sensitive receptors as set out in the Permit Decision Document (CD P2). The effects on Wormley-Hoddesdonpark Woods SAC, Water End Swallow Holes SSSI, and Howe Dell Wood and Oxleys Wood local wildlife sites, as well as 26 Local Wildlife sites and 3 Ancient Woodland sites were assessed. The EA's conclusions are set out at paragraph 5.4 of the decision document. For all these sites, the **EA reviewed the Applicant's assessment and concluded that emissions from the development will have no likely significant effects on the ecology of the sites.** Natural England was consulted as part of this process and did not raise any objection to the development.
910. No other evidence was put to the Inquiry that contradicted the findings of the EA, and in the circumstances I conclude that the effects of the development on ecology would be acceptable.
911. Hatfield Against Incineration (HAI) considers that there are reasonable alternatives to the New Barnfield site and consequently one of the relevant tests for obtaining a great crested newt licence cannot be met. The issuing of a licence is a separate process, but this is a factor which Natural England would be required to take into account. As far as the grant of planning permission is concerned, need and the availability of alternative sites is considered elsewhere in this report, where it is concluded that need has been demonstrated and there is no other suitable and practical alternative site available for a development of this type available at the present time. The Amphibian Mitigation Strategy (CD A22) proposes improvements to amphibian habitat in comparison with the existing situation. If planning permission is granted by the SoS, these matters **would inform English Nature's consideration of the application for a licence.** [172, 173, 563].

Need for the development

Waste Core Strategy (WCS)

912. The WCS (CD 01) is an up to date statement of the vision, objectives and spatial strategy for waste planning in Hertfordshire up to 2026. It was adopted in November 2012 and is part of the development plan. It was subject to examination in late 2011, with the Inspector appointed by the SoS finding it sound in 2012. Strategic Objective SO1 sets out the objective of promoting the provision of well designed and efficient facilities, that drive waste management practices up the waste hierarchy and are located to ensure no harm to human health and the environment, and which reduces waste volumes to be disposed to landfill. [75, 211]

Local Authority Collected Waste (LACW)

913. From Table 4 of the WCS it can be seen that actual Local Authority Collected Waste (LACW) arisings in 2010/11 stood at 537,468 tonnes, of which 47.3 % were composted or recycled, 7.7 % sent for EfW disposal outside the County, and the remaining 45% (241,847 tonnes) residual LACW was sent to landfill. The figures were **updated for the Inquiry.** Paragraph 5.17 of Mr Leech's evidence (for

HCC) shows that some 538,187 tonnes of LACW was collected in 2011/12 (H/IL2 Table 5.1). Of this, some 200,725 tonnes went to landfill, 139,744 tonnes outside Hertfordshire and 61,607 tonnes within Hertfordshire at Westmill Landfill near Ware. 73,365 tonnes was sent for incineration with energy recovery. [212]

914. Table 6 of the WCS sets out future residual LACW waste treatment capacity requirements. Forecast arisings are predicted to be 564,000 tonnes in 2016, falling slightly to 546,000 tonnes by 2026. After recycling and composting, it is predicted that there will be 276,000 tonnes of residual waste requiring treatment or disposal in 2016, falling to 232,000 tonnes in 2026. It has been assumed that the recycling rate will rise to 60% by 2031, from the recorded 2010/11 rate of 47%. [76, 212, 215]
915. In accordance with European and National waste policy, HCC does not consider that continued reliance on landfilling its residual waste is an acceptable or sustainable option. In any event there are growing constraints on landfill capacity which might be available in future. In 2011/12 139,744 tonnes were sent to landfill outside Hertfordshire and 61,607 tonnes within Hertfordshire at Westmill Landfill near Ware. The planning permission for landfill at Westmill runs until 2017. Stewartby landfill in Bedfordshire, which took 64,028 tonnes in 2011/12, is now closed. Bletchley, which took 71,679 tonnes has planning permission until 2022, and Milton, which took 4,037 tonnes, has planning permission until 2020. 73,365 tonnes were taken for incineration with energy recovery to Edmonton in North London and the Lakeside EfW plant at Colnbrook in Berkshire.

Commercial and Industrial (C & I) Waste

916. It was estimated in 2006 (the latest date for which figures are available) that some 1,023,242 tonnes of C & I waste was produced in Hertfordshire. The predicted figure for 2016 is 1,059,000 tonnes and 1,062,000 by 2026 (CD 01, Table 9). The source data which informs the forecast total C & I Waste arisings were provided by SLR in their updated Waste Forecasts for Hertfordshire in November 2011. They assume an increase in recycling rates to 55% for commercial waste and 60% for industrial waste by 2030. [212]
917. Existing capacity for the treatment of C & I waste is set out in Table 7 of the WCS. It shows a throughput of 575,000 tonnes per annum (tpa) at processing and disposal sites within the County at September 2011, of which 313,000 tonnes were recycled or transferred, some 58,000 tonnes composted, and 204,000 tonnes landfilled.
918. For non-hazardous C & I waste, Hertfordshire depends on treatment facilities elsewhere and within the County. The last remaining landfill site in Hertfordshire is at Westmill, near Ware. It has planning permission to operate until 2017 and has a maximum annual capacity of 350,000 tonnes, though as it operates below capacity currently there may be void space left after 2017. Nevertheless a principal objective of the WCS is to move away from dependence on landfill, and it aims to achieve a diversion rate from landfill of 93% by 2026.
919. WCS Table 9 indicates that remaining residual C & I waste available for treatment will amount to some 436,000 tonnes in 2016, reducing to 409,000 tonnes by 2026.

The Capacity Gap

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920. Mr Kosky, for Veolia, undertook a review of waste disposal in neighbouring counties. His conclusions were broadly unchallenged. All counties are pursuing a greater degree of self-sufficiency, in accordance with National Waste Policy. Hertfordshire currently exports considerable volumes of waste to landfill in Essex and Buckinghamshire, which cannot be regarded as an acceptable or sustainable strategy for the disposal of its residual waste. These counties are responding to the challenges through a number of different technologies, but the assumption must be that their priorities will be to process waste arising within their own boundaries.
921. There are no operational EfW facilities in the neighbouring counties of Bedfordshire, Essex, Cambridgeshire or Bedfordshire. A resolution has been passed to grant planning permission for the construction of an EfW facility at Calvert landfill in Buckinghamshire, but it is not yet operational. A development consent order (DCO) has been made for an EfW facility at Rookery Pit South in Bedfordshire. It has not yet been implemented and the holder of the DCO has announced that they are ceasing operations in the UK, which introduces a considerable element of uncertainty as to its future. Planning permission was granted by the SOS for an EfW plant at Rivenhall near Braintree in Essex but it is not yet operational.
922. A number of concerns were raised by objectors relating to the validity of forecasting of waste arisings and treatment capacity. The forecasts of waste arisings were based on work originally carried out by the East of England Regional Technical Advisory Body for Waste to inform the review of the Regional Spatial Strategy (since abolished). The figures were also subjected to sustainability appraisal and Strategic Environmental Assessment. Additional work for the WPA carried out by SLR Global Environmental Solutions produced very similar projections. Both the forecasts and the overall strategy were found sound by the appointed Inspector, and the WCS was adopted in November 2012. The plan period runs to 2026. [554]
923. **Herts WoW dispute that there is an 'urgent and compelling need' to provide** treatment capacity in the form of the proposed RERF. The government is predicting that the UK is on course to meet its landfill targets by 2020. They argue that the responsibility of the WPA is to deal with LACW arising in the County, as opposed to the treatment of C & I waste. They place emphasis on the decline in residual LACW in recent years which has taken place in response principally to increased re-cycling rates and the landfill tax regime. The capacity of the RERF at 380,000 tpa would substantially exceed the quantities of residual waste LACW predicted to arise in the plan period. They argue that this has led the proponents of the scheme to place undue reliance on the availability of C & I waste to provide the balance. [680]
924. Table 6 of the WCS forecasts that 276,000 tonnes of residual LACW waste will need to be treated in 2016, falling to 232,000 tonnes by 2016. While footnote 27 to the table states that this includes a proportion of potentially untreatable waste **that is assumed to be 70,000 tonnes, it was explained by Veolia's witness that** these included problematic arisings such as street sweepings which could in fact be accepted and treated at the RERF.
925. The assumed recycling rate underlying these forecasts is 60% by 2031. Objectors argued that improved re-cycling rates could achieve significant further inroads into these quantities which would in turn aggravate the problem of

excess capacity. They consider that the need to deliver the required feedstock could reduce incentive for the WDA to increase recycling rates.

926. The same point was put to the Inspector at the WCS examination. She commented that the high recycling rates at Household Waste Recycling centres do not represent the full picture of household recycling. Kerbside collection has also been successful, but improving them further is likely to be increasingly challenging, especially in more densely populated urban areas. She found that the WCS recycling target of 60% is at least likely to prove realistic, whereas the achievement of a very high rate of recycling in the short term (2015 -17) is not. She concluded on balance that the recycling assumptions of the WCS were sound. (CD M6, paragraph 57). [357]
927. As Herts WoW argued (Mick Bee), it is necessary to consider the availability of feed stock over the projected life of the project, not just the short term. Objectors pointed to higher re-cycling rates achieved in some other EU countries. Some UK authorities were already adopting higher targets for recycling and composting, for example 70% by 2025, which was accepted as being balanced **and realistic in the Inspector's report on** the Nottinghamshire WCS. Wales and Scotland have adopted a similar target. [680]
928. There is evidence in recent years of a substantial decline in the amount of residual C & I waste going to landfill nationally. The data for 2009 quoted in the WMPE (CD E10) indicates that 47.9 million tonnes of waste was generated by businesses. The corresponding figure for 2002 – 3 was 67.9 million tonnes, a decline of some 29% over the intervening period. The survey estimated that 52% of C & I waste was recycled or reused in 2009 and 24 % was sent to landfill. The Government forecasts a continuing decline in C & I waste arisings to 2020. However the 2009 data need to be treated with some caution as it may in part be a consequence of the severe downturn in economic activity pertaining at the time. While the long term objective of de-coupling waste from economic growth remains an important aim of policy, the temporary effects of recession cannot be altogether discounted. [677, 680]
929. With regards to LACW, a letter from the Association of Directors of Environment, Economy, Planning and Transport (ADEPT), to the SoS for Environment, Food and Rural Affairs dated 13 July 2013 reported signs of a reversal in a previously observed downward trend in household waste arisings, and a reduction in re-cycling rates. The response from government was that its own analysis suggested that LACW tonnages and landfill tonnages have in fact been falling, while household recycling, reuse and composting rates showed an increase over the previous year. [87, 680]
930. The questions of waste arisings and recycling rates were key issues debated in **the context of the examination of the WCS in 2012. The Inspector's report** concluded that the WCS is founded upon adequate statistics and forecasts of the waste to be managed (CD M6, paragraph 67). She acknowledged the longstanding difficulties in obtaining accurate data relating to waste but found that there was nothing unconventional in the data sources on which the WCS is based.
931. The source data which informs the forecast total C & I waste arisings in Hertfordshire was provided by SLR in their updated waste forecasts for Hertfordshire dated October 2011. These forecasts predicted that by 2016, 1,059,000 tonnes would be produced with 397,000 tonnes of residual waste

requiring treatment. By 2026, this figure is estimated at 1,062,000 tonnes, although due to greater predicted recycling approximately 370,000 tonnes of residual waste would require treatment. These predictions assume that additional recycling/composting capacity would be available by 2026. [76]

932. While I appreciate that environmental groups such as Herts WoW and Welwyn Hatfield FoE consider that Hertfordshire still has a considerable distance to travel before all possibilities for the elimination, preparation for re-use, recycling and composting of waste are exhausted, the WCS was found sound by the Inspector, including the statistical underpinning for the forecasts of waste arisings and assumptions on re-cycling rates. It provides the up-to-date development plan context for the assessment of the RERF proposal. I note that the WCS Inspector recognised that the figures for waste arisings may need to be amended over time, and perhaps sooner rather than later (CD M6, paragraph 64). However, no other data on which a reliable conclusion could be founded was presented to the Inquiry and it would not be appropriate for me to re-open the issue of soundness of the statistical basis of the WCS. [360, 449, 554, 677]
933. I acknowledge that elsewhere higher long term recycling targets have been adopted – 70% in the Nottinghamshire WCS for example and similar targets in Scotland and Wales. However, in common with the Hertfordshire WCS Inspector I accept that the achievement of a very high recycling rate in the short term is unlikely to be achievable. Even in the recent past, the achievement of a 60% recycling rate would have seemed very ambitious. Hertfordshire authorities have already made substantial progress in this direction, and recycling rates in the County currently compare well with the current proportion for England as a whole (43% in 2011/12), and with the national objective of 50% reuse or recycling of household waste by 2020, which is also the current EU target. (The Waste (England and Wales) Regulations 2011). [88, 89, 230, 231, 232, 356, 357, 681]
934. Many objectors were concerned that, on the basis of forecast waste arisings in the WCS, the proposed RERF would be considerably larger than needed to treat residual LACW waste, even in 2016. Nevertheless it is a key objective of National Waste Policy to secure diversion from landfill of non-municipal waste and secure better integration of treatment for municipal and non-municipal waste (CD E4 p. 11). There remains a sizable amount of C & I waste going to landfill. Energy recovery from this waste would accord with the waste hierarchy. The Government Waste Policy Review 2011 recognises that opportunities for growth **in energy recovery exist for C & I waste, for example residual mixed 'household like' commercial waste.** (CD E5, paragraph 234). There is no policy support for requiring these waste streams to be treated separately. Given the inherent undesirability and cost of continuing to send such waste to landfill, the option presented by the RERF for treatment with energy recovery is likely to be attractive to the market. [228, 229, 457, 542, 677, 682]
935. Table 9 of the WCS identifies a shortfall of capacity for the treatment of non-hazardous C & I waste of 397,000 tonnes in Hertfordshire in 2016, falling to 370,000 tonnes in 2026. Footnote 9 to the table indicates that planning **permission has been granted for 160,000 tpa treatment capacity at Ratty's Lane, Hoddesdon** which would reduce the capacity shortfall when operational. This would be for the treatment of C & I waste. However 60,000 tonnes would be for Anaerobic Digestion and would therefore be counted towards recycling/composting capacity, leaving a contribution of 100,000 tonnes of residual C & I treatment capacity if implemented (INQ/HCC/13). [77, 216, 217, 220]

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936. Even if this capacity were to be implemented there would still be 297,000 tonnes of C & I waste remaining available for treatment in 2016. Added to the 276,000 tonnes of residual LACW waste, the combined waste streams available would amount to 573,000 tonnes in 2016. The comparable figure for 2026 would be 502,000 tonnes. The capacity of the RERF is 380,000 tpa, of which 28,000 tonnes would be recovered mechanically and should be added to the recycling targets. On the basis of the WCS projections, there would still be a substantial amount of residual waste requiring treatment. [76, 217, 224, 226, 227, 449, 554]
937. Veolia are contracted to accept all residual LACW waste from Hertfordshire up to the RERF capacity of 352,000 tonnes. The WCS residual LACW volumes (276,000 tonnes in 2016, 232,000 tonnes in 2026) predicted would mean that the primary purpose of the facility would be for the treatment of LACW waste. However the use of additional capacity to recover energy from C & I waste would accord with the waste hierarchy. It is possible that the balance will change in future on the basis of the WCS projection of 546,000 tpa of LACW and a recycling rate of 60% in 2026, resulting in a tonnage of some 218,000 of residual waste available for treatment by the RERF. The contract requires HCC to deliver a minimum of 180,000 tpa. This would allow for recycling rates to exceed 60% without the WDA incurring a penalty. The WCS predictions indicate that there will be sufficient quantities of residual C & I waste generated in Hertfordshire to make up the balance up to the RERF capacity. The contract includes flexibility to allow the authority to exercise other strategic options, which could include accepting waste from other sources. In that event, there is a contractual income-sharing arrangement which could further reduce costs to HCC (V/1.1 ¶ 4.46) [82]
938. Mr Fletcher (for WHBC) and others argued that the capacity of the RERF is such that its demand for feedstock would discourage the movement of potentially recyclable waste further up the hierarchy. In my view, however, the statutory duty on HCC as WPA, and the 2011 Regulations which require everyone involved in waste management and waste producers to take all reasonable measures to apply the waste hierarchy, will continue to exert pressure on the industry to ensure that waste which can be prevented, reused or recycled will be. The ongoing transition to the treatment of waste as a valuable resource, supported by the operation of market and proportionate regulatory mechanisms, would ensure that waste which can be made use of will not remain in the residual waste stream. [58, 83, 91, 221, 361]
939. With regard to waste prevention, it is clear that the Government sees this as playing a growing role in reducing waste arisings in future. The commitment to work towards a longer term vision of a zero waste economy, and the challenges in doing so, are set out in the Waste Review 2011 (CD E5). The draft Waste Management Plan for England (CD E10) was published for consultation in July 2013. The final version was published in December 2013, and an opportunity was given for the parties to comment on its implications for consideration of the proposal. It gives a statistical picture of recent trends, identifying significant progress in waste management over the past few years. Recycling and composting of household waste has increased to 43%; Commercial and Industrial Waste has declined from 67.9 million tonnes in 2002 - 3 to 47.9 million tonnes in 2009 and rates of recycling and reuse are 52%. Local authorities have reduced the amount of waste they send to landfill by about 60% since 2000. [233, 678, 681]

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940. However, it seems to me to be very unlikely that initiatives for waste minimisation, re-use, enhanced re-cycling and composting will lead to the elimination of all residual waste in the short or medium term, in view of the substantial quantities predicted in the WCS. All such measures are highly desirable and consistent with national and local waste policy, but require substantial investment in infrastructure and collection and treatment systems, all of which require time and resources. It would be unrealistic for the WPA to plan on the basis that these issues will resolve themselves given time. As the WCS Inspector concluded, in my view reasonably, *'The existing municipal waste contracts for landfilling expire in 2017. The pressure is to move away from landfill in any case. It is a matter of national planning policy, at PPS10 paragraph 12, that the pattern of waste management facilities should look forward over a sufficient period to prove attractive to investment, but not constrain movement up the waste hierarchy. The Core Strategy should enable waste management developers to provide facilities, recognising that the available technologies change over time. It would not be sound to continually defer provision in the hope that technology will change, in the face of identified short-term need.'* [85, 232, 675]
941. The Inspector who granted permission for an EfW plant at Battlefield near Shrewsbury recognised that the uncertainties make it impossible to come to a clear view about the likely availability of municipal waste over the lifetime of the proposed plant. However, he accepted that available and suitable C & I waste would be likely to make good any shortfall. (CD F1, para 119)
942. Herts WoW also questioned whether the calorific value of C & I waste would be suitable for energy recovery, particularly if better recycling rates lead in time to a reduction in the organic fraction. WHBC argued that it would be impossible to source material similar in composition to the residual LACW, as the opportunities for reduction, reuse and recycling are far greater in C & I waste. In rebuttal, **Veolia's witness stated that the company's experience was that business waste collected under commercial contracts is broadly similar in composition to household waste, and as a major company operating in the field Veolia would be able to select the sources from which residual C & I waste might be obtained, and thus to ensure a suitable calorific content.** Given that substantial quantities of residual C & I waste that will need treatment, it is reasonable to assume that the operator of the facility would be able to source waste of a suitable calorific content. Support for this view may be found in GRWP 2011 (CD E5, paras 213/214) in which it is noted that energy recovery is an excellent use of many wastes that cannot be recycled and could otherwise go to landfill. It goes on to **say that '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 with the drive to move waste further up the hierarchy'.**
943. Finally, WHBC suggested that the predictions of future household and employment growth which fed into the arisings data were flawed. Following abolition of the East of England Plan (RSS) it was argued that it is unclear how future housing growth will compare with the rate of growth that was set out in the RSS. However, notwithstanding the abolition of the RSS, housing delivery is a key priority of national planning policy. The matter was considered by the WCS Inspector. Her report (CD M6 para 54) confirms that housing targets in the RSS were not relied on to forecast population growth in the WCS. They are justified

by the household projections adopted by the constituent districts of Hertfordshire in their own Core Strategy DPDs, all of which are lower than the adopted RSS figures. WHBC for example, is putting forward plans for substantial growth in housing to the north-west of Hatfield. Local authorities are being required to provide for the housing needs on the basis of evidence based evaluations of need. In any event, I do not consider that the forecasts for LACW and C & I waste arisings in the WCS (Tables 6 and 9) are inconsistent with the forecast in the Waste Management Plan for England that overall waste arisings are expected to stay relatively flat over the next few years with only modest changes forecast between now and 2020. [86]

Conclusion on need

944. At present, most residual waste is sent to landfill, some within the County, but the majority to neighbouring Counties. Hertfordshire also exports some waste for incineration at the Edmonton EcoPark in North London, and to the Lakeside EfW plant at Colnbrook in Berkshire but with no long term contracts secured. The Edmonton facility is expected to have a life until the end of 2020 subject to some capital investment and greater maintenance. While some energy is recovered it **is not R1 compliant and is therefore classed as a 'disposal' operation rather than 'recovery'**. (V/1.1 para 3.6) [57]

945. The capacity of the RERF would allow Hertfordshire to achieve 100% diversion of LACW residual waste from landfill when the plant is built, and would provide capacity for a significant element of the substantial quantities of residual C & I waste produced in the County. There appears little realistic alternative in the short term other than to continue disposal of high levels of waste to landfill and export of waste to areas outside Hertfordshire. While it is possible that in the medium to longer term other treatment facilities would be developed to meet this deficit, and the contract between HCC and Veolia allows for this to happen in the event of planning permission not being granted for the RERF at New Barnfield, there is likely to be very significant delay in such alternative facilities coming on stream. [79, 225, 337]

Technology choice

946. Para 230 of the Government Review of Waste Policy in England 2011 (GRWP) **states that 'Waste infrastructure has a long lifetime and therefore changes on the composition and potential volumes of waste in the future cannot be ignored in the development and selection of technologies now. There is a need to ensure that innovation, technology mix and flexibility is encouraged and optimised to ensure the right long term capacity, while considering the energy outputs and carbon impacts of technologies.'**

947. WHBC argued that granting permission for a very large EfW plant at New Barnfield would promote a technology which is lower down the waste hierarchy rather than maximising the potential for recycling. It was argued that there are a number of technologies which could be developed during the WCS plan period, which might enable residual waste to be dealt with in a more sustainable way, but that potential would be pre-empted by a decision to permit a very large plant using incineration technology with a life of 25 years. In contrast an incremental approach, which WHBC advocates, was considered to be more appropriate in circumstances where there are questions about the future availability of feedstock for a large plant, uncertainty about C & I waste figures, and as the

possibility of dealing with waste in the RERF that might otherwise be dealt with higher up the hierarchy is increased.

948. Similar points were made on behalf of NBAF, Herts without Waste, Welwyn Hatfield Friends of the Earth, and a number of individual objectors. The general point was that single large plant would reduce pressures to improve prevention, reuse and recycling as well as squeezing out the flexibility to take advantage of new/future waste management technologies. (HR 17)
949. Many objectors considered that incineration is an outdated technology, and that new and emerging technologies offer the prospect of treating waste in a more environmentally sustainable way. However, while incineration has been around for a long time, there has been significant technological innovation which has led to much greater efficiency and cleaner emissions. This is recognised in PPS 10. The Defra Energy from Waste Guide 2013 (CD E7) also states that the **poor historical image of EfW plants in the UK is persistent but outdated: 'the introduction of landfill diversion targets in the mid 1990s helped drive a new generation of EfW plants, designed to meet new strict emission standards, and provide valuable low carbon energy. The technology is proven and reliable, and is able to deal with a wide variety of wastes.**
950. Of the principal available alternative technologies, there is no evidence that gasification/pyrolysis offers environmental or energy recovery benefits which are greater than conventional incineration. While there is ongoing technological innovation in the field, the systems are not commercially proven for the **treatment of LACW. CD E7 recognises that while such 'advanced thermal treatments' have 'the potential to convert energy from waste more efficiently through steam generation they are technically difficult, relatively unproven at commercial scale, and some of the generated energy is used to power the process, reducing the overall benefits.'** (CD E7, page 5)
951. Anaerobic Digestion (AD) is growing in importance and is supported by government for the treatment of suitable wastes. It is suitable for the treatment of the organic fraction of waste, for example food waste, which in turn requires this waste to be separated. There appears to be scope for greater use of AD in Hertfordshire, if the appropriate collection/separation systems are put in place, though it would only be suitable for a proportion of residual LACW and C & I waste. A high **proportion of the output ('digestate') requires further treatment or disposal.** Only higher grade digestate, from source segregated waste is suitable for application to agricultural land. [97, 673, 682]
952. MPT (Mechanical Pre Treatment) and Mechanical Biological Treatment (MBT) have gained popularity as they offer a way to extract further amounts of recyclates from residual waste. However the additional recyclates are inevitably likely to be of a lower quality than those separated at source. Nevertheless MPT is technically feasible and the Application scheme includes a facility to recover some 28,000 tonnes annually of additional recyclable materials including metals, plastics, inert materials and possibly some fibre fractions. A high proportion of the output requires onward treatment, which might include landfill or thermal treatment. Again only high grade residues are suitable for applying to agricultural land, unlikely to be achievable from mixed LACW waste. [90, 673, 682]
953. **The WCS is 'technology neutral' though the vision for Waste Management in 2026, set out in paragraph 2.2, embraces 'a mix of established, newer emerging technologies and waste recycling markets that maximise recovery value to**

ensure that waste is innovatively and effectively managed within Hertfordshire'. **Paragraph 4.13 of the WCS recognises that 'there are a number of different technologies that could come forward as the UK waste industry seeks to meet the challenge of diversion from landfill. It aims (paragraph 4.14) to ensure a balanced approach, ensuring that there is enough flexibility that sufficient sites can come forward to meet the county's needs for a range of different types of waste management facility, but without allowing for an over provision of sites that would detract from the overall objective of meeting the requirements of sub-regional apportionment.'**

954. A key focus of objection to the application scheme is a perception that **incineration is not 'innovative' and will preclude other technologies. However, as** the Defra guide points out, this is a misinterpretation based on older installations. To my mind it is readily understandable that the Applicant has selected a commercially proven technology as the platform underpinning the contract with HCC, for a project which will require very substantial investment supported by PFI credits. The ability of the proposed plant to comply with the R1 efficiency formula and so be classified as a recovery facility, even without CHP, has been confirmed by the EA. Incineration is recognised in national guidance as having a part to play in waste treatment and energy generation, with the flexibility to deal with a wide range of residual wastes. [57, 673]
955. In summary, I consider that the technology platform adopted represents a rational choice in the light of the nature of the waste to be treated, the current state of technological development and the need for a robust and reliable process. [243]

Alternative Sites Assessment

956. The HCC Committee Report addressed the criticism of the proposal to **recommend a single facility to treat Hertfordshire's residual municipal waste as follows: 'There has been the suggestion that two or three smaller EfW facilities located in the west, north and east of Hertfordshire would be more sustainable and flexible to any future changes in waste volumes than a single, centrally located facility ... However, that is a purely speculative alternative strategy. There is no evidence that it would secure operator interest, that suitable, available or deliverable sites could be identified or that a strategy could be put in place to meet an urgent need. Three alternative sites would need to be identified and planning permission secured for all three facilities to ensure sufficient capacity. The need for three planning permissions would cause much greater uncertainty on terms of being able to deliver the required facilities.'** (CD B1 8.69 – 8.70.) [245]
957. **Extensive criticism was made of the Applicant's Alternative Sites Assessment** by WHBC and NBAF. WHBC argued that the judgments relating to the availability of sites are made against the backdrop of the New Barnfield application. It is unlikely that other viable and suitable sites will be actively put forward during the currency of the application. WHBC considers that the ASA is fundamentally flawed as it was undertaken on the basis of trying to find an alternative site for a single large facility. [246, 370, 454]
958. The ASA was first submitted with the application in 2011 (CD A12). A revised version, which responded to comments and criticisms from WHBC, was prepared as part of the further environmental information submitted in 2012 (CD A15). A further update, to include assessment of Heritage Matters, was issued in July

2013 (CD A30b). The applicant has confirmed that the ASA is not a site finding tool or a comparative planning appraisal exercise. The ASA did not seek to justify the selection of the site as it was not selected from a pool of sites although the WDA undertook their own site selection appraisal and of the deliverability of the site selected. The ASA undertaken by Veolia was predicated on a post-selection basis and aims to compare the relative environmental impacts of the RERF proposal sites against other sites of equal or less environmental impact which are potentially available to the developer. [248, 546, 605]

959. The assessment followed a 3 stage process. Stage 1 was a preliminary screening process, which screened out sites that were unsuitable by reason of size, shape, topography or which had serious obstacles to delivery, such as significant impact on residential amenity or sensitive ecological receptors. Stage 2 involved a more detailed desk top appraisal, informed by a site visit. The sites were scored and ranked against a set of criteria designed, amongst other things, to enable rural and urban sites to be compared on a consistent basis, with no weighting. Stage 3 comprised a broad qualitative analysis of the top twelve performing sites, bringing professional judgment to bear on the factual points based appraisal. [606, 607]
960. The ASA makes no distinction between sites in the Green Belt and brownfield sites or allocated non Green Belt sites in assessing suitability. Essentially WHBC's position is that if Green Belt considerations had been properly assessed in the ASA, then the New Barnfield site should have been screened out at an early stage as being wholly unsuitable for a development of the scale and nature of the application proposal. WHBC also considers it inexplicable that the New Barnfield site survived the Stage 1 sieve in view of its proximity to Southfield School which caters for special needs. While the existence of Southfield School was recognised in the ASA with a score of 3, the relationship between these land uses should have been treated as a show-stopper at Stage 1. [606, 607]
961. Criticism was also made of the way mitigation was handled in the ASA. WHBC considered it unreasonable that no assessment was made of a range of possible mitigations for each site in relation to the various assessment criteria.
962. Although not able to carry out a comprehensive site assessment, I visited a number of sites referred to by WHBC as having potential for further investigation. No comprehensive alternative assessment was put before the Inquiry however. While there is no onus on objectors to propose a workable network of alternative sites, without systematic relevant information the extent to which a challenge to **Veolia's ASA can be meaningfully reviewed is limited. In any event, to my mind,** the ASA (July 2013) is comprehensive in its coverage of potential sites, and contains adequate information on which to base an assessment of potential alternatives. It is true that the ASA looks only at sites which might be suitable to accommodate a single large facility of the scale of the proposed RERF. It does not rule out the existence of smaller sites which may be suitable to accommodate small or medium scale facilities, or other technologies. Nevertheless, I consider that the principle set out in EN 3 that the assessment of alternatives should be proportionate is applicable in this instance. In that regard I find that the level of information provided in the ASA is satisfactory for the purpose of assessing the suitability and availability of alternative sites. While some of the professional judgements and rankings made in the ASA may be open to question, the assessment of site availability appears to me to be based on a sound and candid

appraisal of the large number of sites considered. It was not substantially challenged in cross examination. [454, 606, 607]

963. A number of potential alternative sites were canvassed by objectors. I have visited the sites referred to but my ability to assess the suitability of the sites was inevitably constrained by the limited extent of the evidence available to me. [242, 246]

Site S1 Maylands Industrial Estate – Hemel Hempstead

964. Maylands is an existing industrial area to the east of Hemel Hempstead with good access to the M1. Part of it is identified as an employment land area of search (ELAS) in the WSALDD. It consists of a modern business park with a range of large and medium scale industrial uses in operation. It scores highly (68 points) in the ASA as potentially suitable for an ERF. However the two areas of land identified as having potential are not currently available. The former Mammoth site has been purchased and redeveloped for plant storage. The former Buncefield Oil depot is not included in the ELAS and is not currently available. Development of the scale of the RERF could not be achieved elsewhere at Mayfield without substantial acquisition and relocation of other existing businesses on the estate. [131, 249]

Site S8 Roehyde Quarry, Hatfield

965. The site is a former quarry which has been backfilled. Part of it is used for vehicle storage. It lies between the A414 and the A1 (M) at Junction 3. It scores **highly in the ASA (59 points) and is described as 'strategically well located site in terms of waste.'** The existing access is located very close to the busy A1 (M) junction and it is likely that a substantial improvement would be needed to accommodate use for waste treatment. Although the site levels are some 5 metres below the surrounding land development, a plant of similar size to the Application proposal would be visually prominent in the Green Belt. The site is allocated for thermal treatment in the emerging WSALDD, but is the subject of objection by WHBC.

Site S9 -Westmill Quarry – near Ware

966. The site is an existing major landfill site in the Green Belt, with planning permission running until 2017. It is allocated for thermal treatment in the WSAD and scores 59 in the ASA. However the site is owned by a mineral operator and leased by a waste operator, and so its availability to the current applicant is highly unlikely. Development of the scale of the RERF would be visually prominent in the Green Belt. Much of the site consists of an active quarry and an active landfill. The only area that could potentially accommodate a large building of this kind has planning permission for a soil repair centre.

Site S7 - Tyttenhanger Quarry

967. This is a large quarry site which is being worked progressively, and subject to restoration conditions. It has planning permission for mineral extraction/processing until 2032. It is a preferred site within the Hertfordshire Minerals Local Plan and is essential for its long term contribution to the mineral land bank in Hertfordshire. It lies in the Green Belt adjacent to the M25 Junction 22 and is thus well related to the strategic highway network. Development of the scale of the RERF would be visually prominent. Tyttenhanger House (Grade I

listed) and Salisbury Hall (Grade II* listed) lie within 1 km of the site. It is not allocated for thermal treatment in the WSADPD.

Site S15 Harper Lane Rail Loop – Radlett

968. The site was unsuccessfully promoted by the current owner as a potential thermal treatment site in the procurement process. It is served by an existing rail loop which provides potential for rail access from the Midland Main Line, although rail links with other parts of Hertfordshire (i.e. not close to the Midland Main Line) are indirect. The local area is subject to existing restrictions on HGV movements which might limit its ability to receive waste by road transport. The site is not allocated for thermal treatment and is not in an area of search in the WSALDD.

Site S 12 - land adjacent to Hoddesdon Power Station

969. The site adjoins an established industrial area and is next to a gas fired power station. It was also the subject of a bid by the current Applicant for an ERF using rail borne Solid Recovered Fuel from NE London Waste Authority. Veolia subsequently withdrew from the bidding process. Although the Strategic Road network is high quality, the location in the south-east part of Hertfordshire close to the Essex border would be less convenient to receive waste from other parts of the County. [249]

970. A resolution to grant planning permission for a smaller merchant ERF was granted in 2010 which has yet to be implemented. It clearly remains a potential site for thermal treatment, but is not large enough to accommodate a facility of the scale proposed at New Barnfield.

971. The site itself does not have direct access to the rail network. It was suggested by Cllr Zukowskyj for NBAF that the site could be developed together with Site S 24 -land NE of Hoddesden Power Station. However this site is reserved in the Hertfordshire Minerals Local Plan as a rail linked aggregates depot. The practicalities of conjoining the two sites had not been explored and they appear on the ground to be two distinct sites divided by an access which serves other properties in the area of Fieldes Lock. [132, 249]

Waterdale, nr Watford

972. As an existing Transfer Station which is likely to retain this function in any future strategy, Waterdale was sieved out at Stage 1. It is well located in relation to the strategic road network but is not large enough to accommodate a transfer station and an ERF of the scale proposed at New Barnfield. [249]

Conclusion on Alternative Sites

973. There is no statutory requirement for applicants for planning permission to consider alternative locations. The Environmental Impact Assessment **Regulations require that an ES need only include 'an outline of the main alternatives studied by the applicant or appellant and an indication of the main reasons for his choice, taking into account the environmental effects.'**

974. It is however accepted that consideration of alternatives may be necessary in certain cases. The lead judgement on this matter is Trusthouse Forte Hotels Ltd

v SoS for the Environment 1987³⁴⁰, in which Mr Justice Brown states that **'..where there are clear planning objections to development on a particular site it may be relevant and necessary to consider whether there is a more appropriate site elsewhere. This is particularly so when the development is bound to have adverse effect and the argument in support of the application is that the need for the development outweighs any planning disadvantages.'**

975. Some useful principles for the assessment of alternatives are set out in the National Policy Statement for Energy EN-1 (CD D3). Although this guidance is for the consideration of Nationally Significant Infrastructure Projects (NSIPs), the same principles can be sensibly applied to large projects which fall below the NSIP threshold. The guidance states that the consideration of alternatives in order to comply with policy requirements should be carried out in a proportionate manner, and that the consideration of alternatives should be guided by whether there is a realistic prospect of the alternative delivering the same infrastructure capacity (including energy security and climate change benefits) in the same timescale as the proposed development. [127]
976. Many detailed criticisms were made of the Applicant's ASA, and I acknowledge that some of the scoring of sites involves individual judgement, which in turn would affect the rankings. The level of assessment of, for example, heritage impacts is not in any way as detailed as has been undertaken for the New Barnfield proposal. Nevertheless it would be unreasonable and disproportionate to expect that level of analysis in a review of potential alternative sites. I consider that the 2013 ASA provides sufficient detail to allow a conclusion to be reached on the suitability and availability of potential alternatives. [129, 370, 454]
977. On the basis of the evidence before me, and the particular sites canvassed by objectors at the Inquiry, I conclude that there is no obvious alternative site that would perform significantly better in environmental terms and that is suitable for the use proposed and available for a development of the scale proposed at New Barnfield. Many of the sites which score highly in the ASA are in the Green Belt, and would accordingly be inappropriate development for which it would be necessary to demonstrate the existence of very special circumstances. It is likely that they would have significant visual and landscape impacts, which could only be mitigated in part, in common with the application proposal. Many would also have significant heritage impacts, though it is unlikely that they would affect an ensemble of the significance of that at Hatfield House and Park. [104, 112, 245, 298]
978. There are no available sites within the Employment Land Areas of Search which would be of sufficient size to accommodate the proposed development. Ms Hoey (for WHBC) suggested that HCC and Veolia should have acted earlier to secure a potential site at Maylands Industrial Estate in Hemel Hempstead, which was the highest scoring site in the ASA. However the fact remains that that site is no longer available and is very unlikely to become so. The site at Hoddesdon has planning permission for a smaller thermal treatment plant, which has yet to be implemented. However it is not large enough to accommodate the proposed form of development, and its non-central location makes it less suitable than the application site to receive and process LACW waste generated in Hertfordshire. [107, 108, 129, 247]

³⁴⁰ *Trusthouse Forte Hotels Ltd v Secretary of State for the Environment* [1987] 53 P & CR 293 QBD

979. A key plank of WHBC's argument is that the WCS requires provision of a range of sites, and that waste arisings could be treated at a number of smaller sites, each of which would have less environmental impact than the appeal proposal. While this argument is attractive on its face, there are no alternative proposals either in the development pipeline, or promoted by landowners/developers of a scale sufficient to address the identified problem. [94, 371, 456]

980. It is significant that no alternative proposal is being progressed through the WSALDD, or by way of a planning application. I acknowledge some force in **WHBC's argument that while the WDA and the successful contractor are pursuing** this Application there is little incentive for any other proposals to come forward, particularly as far as LACW waste is concerned. The WCS does allow for a more dispersed pattern of provision, and it would be reasonable to expect that HCC and Veolia have considered what options would be available to them in the event of planning permission being refused. On the evidence available there is little reason to doubt that this would involve a continuation of landfill, at least while alternative methods of treatment to take waste up the hierarchy, which may well include EFW by incineration, were progressed. [97, 128, 238]

981. The evidence does not altogether rule out an alternative solution for the treatment of residual waste, which may involve a more dispersed pattern of provision. It is apparent that the WCS and WSALDD have been progressed on that basis. However I accept that this is likely to involve considerable delay. As was pointed out at the Inquiry, plant capable of handling lesser tonnages would not necessarily be proportionately smaller, or less visually intrusive than the New Barnfield proposal. A plant capable of processing 200,000 tonnes may still require a building of some 30 metres in height, with flues in excess of 65 metres, which would have a substantial physical presence. [62, 100, 238, 440]

Urgency of need

982. In the light of the ASA, finding alternative acceptable sites will not be an easy task. Experience with large and medium scale waste projects suggests that they are likely to be hard fought and unwelcome to local communities. If this scheme does get permission it would be some 10 years from the start of procurement to the commencement of operations, and 7 years since the submission of the planning application. Such lead times do not seem unusual for significant pieces of infrastructure, and similar delays could be expected before alternative provision comes on stream. [442]

983. HCCs existing contracts for disposal to landfill and incineration at Edmonton expire in 2017. The planning application for Westmill landfill only runs until 2017, albeit that it is likely that void capacity is likely to remain after that. With the exception of **the permission at Ratty's Lane (which could process some 100,000 tonnes of residual C & I waste if built)** there is no other treatment capacity in the pipeline which could accept the volumes of residual waste predicted in the WCS. [80, 439]

Carbon Balance and Climate Change

984. **Mr Kerr's evidence (for WHBC) was designed to show that, by reducing the overall distance travelled by waste, a two or three site strategy would achieve significantly greater climate change benefits in reducing carbon emissions than the single facility proposed at New Barnfield.** The figures originally put forward by Mr Kerr were challenged by Veolia, and a revised set of figures agreed at the

Inquiry (Doc INQ/V/22). The comparative figures for alternative strategies were as follows (figures in tonnes CO₂ equivalent per annum (t CO₂ eq))

Baseline situation – transport of waste to landfill	932 t CO ₂ eq
Central facility at New Barnfield	409 t CO ₂ eq
Dispersed (three site) strategy	280 t CO ₂ eq

[136, 245]

985. **In response Mr Aumônier referred to Veolia’s WRATE analysis, and compared the annual transport emissions with Veolia’s assessment of the overall benefits of the scheme in electricity only mode resulting from avoided landfill emissions, offset electricity generation and materials recovery.** This amounted to 61,000 t CO₂ eq per annum for the baseline year of 2020/21.³⁴¹ This assessment is based on the treatment of 352,000 tpa of residual waste. Not all the waste treated will be **MSW, and it is necessary to make an adjustment to reflect this.** Mr Kerr’s figure was 222,235 tpa and on this basis Mr. Aumônier considered it reasonable to assume that 63% (38,500 t CO₂ per annum) would be attributable to MSW. [196, 198, 245]

986. I accept, as Mr Beglan pointed out in closing for WHBC (INQ/WHBC/1 para 26 ii), that the absolute figures for the reduction in km tonnes travelled, vehicle kilometres and CO₂ emissions would appear striking. However using the revised calculations that were agreed by Mr Kerr at the Inquiry, a saving of 129 t CO₂ eq per annum due to reduced transport represents a very small proportion of the overall saving, approximately 0.33% of the overall greenhouse gas emissions that would be avoided every year by the RERF. Over the projected 25 year life of the project, the emissions saving on transport would be less than 10% of the emissions saved by the plant in a single year of operation.

987. I accept the likelihood that some gas emissions from landfill would also be recovered for use in electricity generation, which would partially offset the savings made by the RERF. However the fact that continued reliance on landfilling for this type of waste is inherently undesirable for policy and environmental reasons cannot be set aside lightly. While it is likely that there would be some savings in waste miles and consequent emissions, these would be heavily outweighed by the overall climate change benefits of energy recovery. Even a short delay in the provision of alternative treatment facilities such as the RERF would eliminate any carbon change benefits arising from a reduction in waste miles travelled. [138, 330]

988. **The applicant’s WRATE assessment was also criticised by Herts WoW and Hatfield FoE.** The concern expressed was that without access to the full WRATE analysis, Herts WoW and their consultants were unable to verify the climate change benefits made by Veolia, and accordingly that no weight should be given to these in the overall assessment of the scheme. The particular data sought concerned user defined processes, for which Veolia claimed commercial confidentiality as a justification for withholding them. Nevertheless, a peer review was commissioned from AEA Technology which confirmed that the processes to be used are reasonable waste management processes and that they

³⁴¹ V/7.4 Mr Aumonier did not accept Mr Kerr’s underlying assumptions, but was content to use his figures for the purpose of examining the substance of the objection.

are correctly modelled in the assessment, as well as endorsing the assessment as a whole. I have no reason to discount the findings of AEA Technology on this matter. [195, 197, 683]

989. Herts WoW also challenged the use of Combined Cycle Gas Turbine (CCGT) as an appropriate comparator for electricity generated by the proposed RERF in **Veolia's WRATE analysis. However, the recent DEFRA document 'Energy from Waste – A guide to the debate Feb 2013'** (CD E7) provides support for the use of CCGT in making such an assessment at the present time. Footnote 29 on page **18 states that 'A gas fired power station (Combined Cycle Gas Turbine – CCGT) is the current standard comparator as this is the 'marginal' technology if you wanted to build a new power station'. It is not disputed that the absolute level of climate change benefit will vary over time, as the energy mix changes and decarbonises. However it is reasonable to make the assessment of benefits using the marginal technology at the present time as the appropriate comparator.**

Opportunities for Combined Heat and Power

990. The EA has confirmed that the RERF has the potential to comply with the R1 criterion operating in electricity only mode, and therefore should be treated as a recovery facility. Nevertheless, it is accepted that the climate change benefits would be substantially greater if it were to provide Combined Heat and Power (CHP). The plant would be CHP ready, with medium pressure steam off-takes capable of providing steam or hot water up to 120°C for district heating. **However there are as yet no firm proposals for CHP. The Applicant's experience** of the costs of district networks and the associated timing issues meant that it was not considered appropriate to include proposals for a heat network in the waste contract. [199]

991. There are acknowledged problems in negotiating contracts for CHP in advance of the grant of planning permission, in that there is no certainty for potential users that the scheme will ultimately come forward. Veolia has prepared a heat plan but it was not before the Inquiry as it was considered by the Applicant to contain commercially sensitive information. A summary report was included in **Mr Aumonier's evidence at Appendix K. Detailed costs estimates** are not included in the summary report, but only broad indications of cost with no specific figures attached.

992. Potential heat consumers within 2 km, 4 km, 8 km and 15 km radii were identified. The assessment involves a high level review of the potential for a heat network, and tentatively identifies a reasonable rate of return on investment to support the commercial and industrial sectors and the significant educational area. It acknowledges uncertainties in respect of the Renewables Obligation/Renewable Heat Incentive which have implications for the further development of a network and its extension to include residential areas. Of the two options considered to offer most potential, Option 1 would deliver heat to the commercial area to the south of New Barnfield (Travellers Lane Industrial Area), the Education sites adjacent to Junction 3, the commercial area of Hatfield to the north-west (across the A1 (M)) and the commercial area to the north east, near the station. The cost of crossing the motorway is acknowledged as a specific issue. Option 2 would cover the same areas, with the addition of an industrial **site to the west (on St Alban's Road), and commercial sites near to the town centre.**

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993. Extension to include the residential areas of Hatfield would significantly increase the heat demand and also the peak loads. The report acknowledges that the heat demand would not be met by the facility on its own, but would have to be supplemented by standard gas boilers to meet peak demands. Further extension to include industrial and commercial areas of Welwyn Garden City would require significant additional pipework along the A1000 corridor.
994. The development of a heat network which would allow the RERF to deliver CHP is clearly one which will require separate financial appraisal from the current project. The desirability of a partnership approach with HCC is canvassed in the report, particularly if the network was to be extended to include residential areas, but such an arrangement cannot be assumed. Potential users were contacted, and while some positive responses were received from consultees, these are not before the Inquiry, so it is not possible to evaluate the degree of interest.
995. It is not unusual for CHP schemes to have long lead times before they can be **delivered. The Applicant's SELCHP scheme is a case in point. It is clear that** there are many issues to be resolved before heat could begin to be delivered to customers. The developer would need to be assured of the existence of effective demand at a price which would make the investment economic. Potential customers would need to be confident of a reliable supply with some assurance that it would be in their long term financial interests to switch from conventional provision. Notwithstanding proximity to Travellers Lane Industrial Area, there is no obvious demand for continuous process heat as opposed to seasonal requirements for space heating. Mr Aumônier reasonably concluded that in reality, the decision as to whether to proceed with the supply of heat will always be one to be made by the developer as a commercial entity, based on its corporate objectives, and taking into account its appetite for commercial risk, as well as negotiations with potential customers and their objectives. [101]
996. The scheme would be CHP ready and is located on the edge of a significant urban area, offering some potential for the development of a CHP network, including the possibility of supply to areas of new development which may come forward through the development plan process. However, in view of acknowledged uncertainties over the extent of the market, the costings of the supply network, and the timing of provision little weight can be attached to the prospects for CHP in the overall planning balance. [100, 200, 459 – 463, 675]

Compliance with the Development Plan and other relevant policy

997. The following section on policy compliance relies on my conclusions on specific issues set out above.

Waste Core Strategy – adopted November 2012 (WCS)

Strategic Objective S01: *To promote the provision of well designed and efficient facilities that drive waste up the hierarchy and are located to ensure no harm to human health and the environment and which reduce waste volumes to be confined to landfill*

998. The development would be well designed as a building and efficient as a waste treatment plant. As a recovery facility it would move waste up the hierarchy when compared to continuing reliance on landfill. The requirement for the RERF to operate within the stringent emission limits of the environmental permit would ensure no harm to human health. The increase in HGV traffic to and from the

site would not result in a significant worsening of local air quality conditions such as to be of significance for human health. However the design would be out of character with its surroundings, in part due to its scale and dominance in the local landscape, and the limited scope for mitigation on such a prominent site, resulting in serious visual harm to the character and appearance of the area, and to the openness of the Green Belt. [6. [12]

Strategic Objective SO3: ***To facilitate the increased and efficient use of recycled waste materials in Hertfordshire (for example as aggregate).***

999. The mechanical recovery facility which is part of the scheme would separate a further 28,000 tonnes of incoming waste for recycling. This would further enhance recycling rates in the County. The requirement for HCC to deliver a contractual minimum of 180,000 tonnes LACW waste annually would allow for further increases in recycling rates which would not result in the diversion of waste which could be driven further up the hierarchy. The WCS indicates that a shortfall in C & I waste treatment capacity would remain even after the RERF was commissioned. There is some potential for bottom ash to be recycled as aggregate. [353]

Strategic Objective SO6: ***To work with all partners in the county to encourage integrated spatial planning, aligning with other local waste strategies and local authority objectives which take account of waste issues, recognising that waste management generates employment and is part of the infrastructure which supports businesses and communities.***

1000. It is difficult to assess the extent to which the scheme complies with the objective or not. HCC has engaged on a lengthy process of consultation with the constituent Districts, though this has not achieved unity of purpose in relation to the procurement process and potential site allocations. Welwyn Hatfield is a key objector to this scheme, preferring to see a distributed network of waste treatment sites. However it is perhaps unlikely that consultation and engagement, however diligently undertaken, will produce unanimity in relation to a highly contentious proposal. [469]

Strategic Objective SO7: ***To work with all neighbouring waste authorities to manage the equivalent of the county's own waste arisings.***

1001. The proposal would provide capacity for processing all of the County's residual LACW waste and a substantial amount of C & I waste. The scheme would be a significant move towards the achievement of this objective.

Policy 1: ***Strategy for the provision for Waste Management Facilities***

The policy makes provision for a network of waste management facilities that drive waste management practices up the hierarchy and are sufficient to provide adequate capacity for existing and future waste arisings in the county and for any agreed apportionment from outside the county. Five areas A – E are identified for new appropriate and adequate LACW waste management facilities. Facilities for non-LACW waste will be brought forward on existing strategic sites, Employment Land Areas of Search (ELAS) and Allocated Sites. To ensure flexibility for the waste management industry and for use of newer technologies, there will be provision for a mixture of small, medium and large waste management sites as appropriate. New and emerging waste management and processing techniques will be encouraged. [76, 330]

1002. WHBC, NBAF, Herts WOW and Hatfield FOE all consider that the capacity of the New Barnfield scheme is such that there will effectively be no requirement or incentive for other waste operators to bring forward the network of sites or new and emerging waste management processes and techniques for which the Policy provides. They argue that in backing the scheme the WPA has effectively put all its eggs in one basket. This argument has considerable force. On the one hand HCC appears to be promoting a network of sites through Policy 1 and the Sites Allocation Document (currently at examination). On the other, through its contractual relationship with the Applicant, it is fully committed to promoting the New Barnfield scheme subject to planning permission being obtained. Notwithstanding that it has different legal entities for the two separate purposes, there is clearly some tension between the role of HCC as Waste Planning Authority, and its role as Waste Disposal Authority. [330, 616, 617, 691, 695]

1003. Veolia and HCC argue that Policy 1 does not require the provision of a network of sites, or a mixture of large, medium and small sites, so that the provision of a single large facility at New Barnfield would not prevent other large, medium or small sites coming forward elsewhere in the County. In policy terms that is clearly the case. However in practical terms, a facility that would cater for all the LACW arisings and a variable but in any case substantial proportion of C&I waste, backed by the Waste Planning Authority and its contractual partner, would account for a large proportion of potentially valuable waste which might otherwise support investment in other solutions and technologies. This may **explain in part why very few other proposals for reducing Hertfordshire's current level of dependence on landfilling have come forward.** [62, 383]

1004. WHBC also draw attention to the WCS Inspector's comment at para 31 (CD M6) that 'the evidence is that the CS is not reliant on Green Belt for the delivery of sites sufficient to meet capacity shortfalls'. However, in response to the contention of objectors to the WCS that all waste management should be excluded from the Green Belt, she went on to say that to do so would not accord with national planning policy in the Framework which makes provision for very special circumstances (para 33). Although New Barnfield is not an allocated site at present as a matter of fact, it is proposed for allocation in the WSALDD. I do not consider that, as argued by WHBC, it should be treated as being in conflict with Policy 1 because it includes provision for C & I waste.

Policy 1A: Presumption in Favour of Sustainable Development

1005. The Policy reflects the presumption set out in the Framework. It provides that planning applications that accord with the policies of the plan will be approved without delay, unless material considerations indicate otherwise. Whether the proposal should be considered to be sustainable development is a matter I shall address in the planning balance. [330, 384]

Strategic Objective SO5 and Policy 3: Energy and Heat Recovery

1006. SO5 aims to prevent and minimise waste, but where waste cannot be avoided, maximise the recovery of value (including energy and heat) from waste. Policy 3 provides that proposals for the treatment of waste which maximise recovery and where appropriate, generate and recover heat and/or power, will be acceptable in principle, provided that the proposal is for the recovery of energy from waste that cannot reasonable be dealt with at a higher level in the waste hierarchy.

1007. I have concluded that the capacity of the RERF would not prevent further increase in rates of re-use and recycling in Hertfordshire, and it would therefore comply with this aspect of Policy 3.

1008. The EA has certified that the RERF can achieve the efficiency needed for it to be classed as a recovery facility, and therefore it would contribute to moving waste up the hierarchy. A reliable supply of 26 MW of electricity (equivalent to the demand from 50,000 dwellings) is small in national terms, but locally significant and a significant benefit to be weighed in the final balance. Opportunities for the use of heat for CHP is uncertain. Given the location near to Hatfield there is some potential for heat to be supplied to commercial and institutional users, though there is no obvious user of year round process heat as opposed to seasonal space heating. The economics of supply of heat to householders is likely to require a partnership with public authorities, which cannot be taken for granted. In the circumstances, little reliance can be placed on the contribution of CHP to energy recovery. Nevertheless, the proposal is partially compliant with this objective and policy. I acknowledge the difficulties inherent in identifying customers for heat at a stage when there can be no certainty that the scheme will be built. [57, 63, 65, 330]

Policy 6: Green Belt

1009. Policy 6 requires that applications for new and/or expansion of existing waste management facilities within the Green Belt will be required to demonstrate very special circumstances (VSCs) sufficient to outweigh any harm to the Green Belt together with any other harm identified. The policy identifies six criteria to be taken into account as material considerations, which I consider below.

1010. It was not disputed that the Framework provides that VSCs will not exist unless the Green Belt and other harm is **clearly** outweighed by other considerations. Veolia and HCC were content that the SoS would adopt this approach in determining the application. [114]

1011. Harm to the Green Belt, to the character and appearance of the surroundings and to the amenity of residents and users of the countryside, to Southfield School, and to Heritage Assets is considered in the relevant sections of my report above. In addition to harm by reason of inappropriateness, to which substantial harm is attached, I conclude that there would be serious harm to openness and to the purposes of including land in the Green Belt, and to the character and appearance of the surrounding area. There would also be significant harm to the amenity of residents of South Hatfield and Welham Green, to the enjoyment of users of the countryside, cycleway and footpath networks, and to the setting and environs of Southfield School. The degree of harm to Heritage Assets is assessed as less than substantial in accordance with the provisions of the Framework, but is nevertheless accepted as being significant, and accordingly to be weighed against the public benefits of the proposal. [543]

(i) The need for the development that cannot be met by alternative suitable non-Green Belt sites

1012. I have considered these issues in the relevant sections above where I conclude that there is a clear need for additional capacity to process residual LACW and C&I waste and reduce the current reliance on landfill, as confirmed in the WCS. There is no realistic short term prospect of this need being met except by the Application scheme. The alternative promoted by WHBC, of a network of smaller

sites distributed across the County, is vague and inchoate, though this is in part attributable to the procurement process focusing the attention of the WDA and its commercial partner on the New Barnfield scheme. Be that as it may there is a likelihood of significant delay in bringing forward alternative operational facilities with the capacity of the application proposal. In the meantime, there is likely to be continued reliance on landfill and export to neighbouring counties. [104, 124, 125, 129, 133, 297, 300, 303, 365, 369, 544]

(ii) The need to find locations as close as practicable to the source of waste.

1013. This criterion relates to the fulfilment of Strategic Objective SO2. The development would process all LACW waste produced in Hertfordshire together with a significant quantity of C & I waste. Objectors considered that a range of disposal facilities distributed across the County would enable waste to be dealt with closer to its origin. While that may be so the site is well located to receive waste from all parts of the County. The New Barnfield proposal would achieve significant savings in waste haulage in comparison with the existing situation where the waste is sent to landfill and thermal treatment outside the County. There are opportunities for economies of scale and greater efficiency available from a single large facility. In any event there is no available alternative strategy based on a range of smaller sites in the short term. There are likely to be significant delays in finding sites, developing practical solutions, obtaining planning permission and implementing alternative proposals. Having regard to the short term practicability of alternative solutions, the scheme accords reasonably with this objective. [134, 135, 238, 301, 303, 354, 371, 548]

1014. The WCS recognises that over half the land in Hertfordshire is designated as Green Belt, and much of the more populous southern part of the County outside **towns and settlements, which generate the greater proportion of the County's** waste and where the pressures for development are strongest, is covered by the Green Belt. [106]

1015. The current advice in PPS10: Planning for Sustainable Waste Management is **that planning authorities should 'protect green belts but recognise the particular locational needs of some types of waste management facilities when defining green belt boundaries and, in determining planning applications, that these locational needs, together with the wider environmental and economic benefits of sustainable waste management, are material considerations that should be given significant weight in determining whether proposals should be given planning permission.'** (CD D2, para 3)

1016. DCLG has published a consultation on updated national waste policy: Planning for sustainable waste management. The draft proposes to remove the reference in PPS10 quoted above. If it becomes approved policy guidance this would mean that the locational needs and wider environmental and economic benefits of sustainable waste management should not be given more significant weight compared to others when planning applications are decided for waste facilities in the Green Belt. Little weight can lawfully be attached to this proposed change at present, but if approved as guidance it would be relevant to the SoS decision on the application.

(iii) The availability of sustainable transport connections. This criterion relates to the fulfilment of Strategic Objective SO4.

1017. The New Barnfield proposal would be wholly dependent on road transport. As a matter of fact it would not facilitate a move towards rail or water transport, and would not meet the objective. However, while the desirability of making use of rail and water transport where available is self-evident, practicality and economic considerations cannot be disregarded. Given the overwhelming reliance on road transport for the collection of waste, the lack of identified opportunities for road/rail or road/water transfer stations, and the predominantly north/south pattern of the railway routes in the County which emphasise movement to and from London, it is difficult to see this objective being achieved in the lifetime of the current Core Strategy. The dispersed strategy favoured by WHBC would be similarly reliant on road transport, and while the haulage distances would be lower than the one site strategy, other factors need to be taken into account. The evidence indicates the carbon savings that might be achieved by a dispersed strategy would be heavily outweighed by the continuing emissions of landfill gas consequent upon any further delay in the provision of additional capacity [101, 135, 245, 302, 372, 547].

iv) The site characteristics

1018. **I have considered the site's characteristics at length elsewhere in the report.**

The site has good road access, along high capacity roads which would minimise potential effects of traffic on residents. However as a Green Belt site, albeit one that is in part identified as a Major Developed Site and adjoins a large employment site, I have concluded that there would be serious harm to the openness of the Green Belt, and significant harm to the character and appearance of the area, and the enjoyment of users of the adjoining countryside and footpath network. The existence of the environmental permit demonstrates acceptance by the regulator that there would be no unacceptable risk of harm to the health of pupils, staff, parents and visitors. Mrs Wells gave evidence for HCC that the juxtaposition of the school with the RERF could be managed so that there would be no harm to the educational well-being of pupils, and the proposed visitor centre would represent an excellent learning opportunity. I accept that concerns over noise are capable of being addressed through conditions and by the mitigation that has been offered. Nevertheless I consider there would be some harm to the amenity of the school site, and have reservations over the compatibility of the proposed use with a special needs school, which would have a very close relationship with the development. [303, 373]

v) Any specific locational advantages of the proposed site

1019. As discussed above, the site has good road access and is well located to receive waste arisings from the most populous party of the County. [304, 374, 555]

vi) the wider economic and environmental benefits of sustainable waste management, including the need for a range of sites.

1020. The first part of this criterion reflects the current advice in PPS10. From a waste management point of view, the site has clear advantages as being the only site available for a development of this scale deliverable in the short to medium term. There are no alternative schemes currently being progressed by the industry capable of dealing with the range and volumes of residual waste in Hertfordshire in a manner which would increase recycling rates and allow for

energy recovery. On the evidence of Veolia's ASA it is highly unlikely that a site of the sufficient size could be found to accommodate a comparable development on a non-Green Belt site, for example an ELAS. Much of the western part of the County is covered by Green Belt and/or AONB designation. The central part including the A414 and A1 corridors are substantially Green Belt up as far as the border with Bedfordshire. A site in the north-east of the County would involve waste being hauled over considerable distances from population centres in the west of the County. It is very likely that any such alternatives would be highly controversial and hard fought by affected communities. [106, 108, 152, 238, 305, 375, 549]

1021. It is also the case that if planning permission is not forthcoming, the strong likelihood is that landfill would continue to play a significant role in the disposal of **Hertfordshire's residual waste pending the delivery of alternative facilities.** [238]

Policy 11: General criteria for Assessing Waste Planning Applications

1022. Policy 11 lists a number of criteria that planning applications for waste will be **expected to comply with. The Policy is framed positively ('planning permission will be granted...')** conditional upon each of the criteria being met (provided that ...). **Many of these criteria have been discussed in relation to other policies** However for completeness I briefly summarise my conclusions in relation to each of the criteria. [376]

(i) the siting, scale and design of the development is appropriate to the location and the character of the area.

1023. The development would be a very large building. While the site itself is not particularly prominent, a building of this scale would be. Although well designed in its own right and in relation to its function on a prominent site it would not be appropriate to the location in the Green Belt between South Hatfield and Welham Green. [377, 557]

(ii) the landscaping and screening of the site is designed to effectively mitigate the impact of the proposal.

1024. The proposal incorporates extensive landscaping. However it is acknowledged that screening can only partially mitigate the visual impacts of such a large building. I acknowledge that this is likely to be an issue for any development of this scale located in the Green Belt, and would also apply to sites in existing urban areas. Even facilities designed to handle a lower throughput could have significant visual and other environmental impacts. For example a thermal treatment plant designed to handle 200,000 tonnes could be some 30 metres in height, with flues of 65 metres. However, the elevation of the site at approximately 100m AOD, close to the top of a ridge with a maximum height of some 110 metres, is a particular issue with the suitability of this site for a development of this scale. [68, 378, 558]

(iii) the proposed operation of the site would not adversely impact on amenity and human health

1025. There would be harm to the amenity of users of the adjacent countryside, the cycle way and the footpath network. The building would also be intrusive in the outlook of some residents of South Hatfield and Welham Green and those moving about and using the recreation grounds, and therefore harmful to their amenity. The effect on human health is substantially a matter for the Environmental

Permit. The permit ensures that there would be no significant risk of harm to human health from operations. There is no convincing evidence that the increase in HGV traffic would have a significant effect on human health. [379, 559]

(iv) the proposed development would not adversely impact on wildlife habitats, the natural, built and historic environment

1026. Any effects on wildlife habitats would either be not significant or capable of satisfactory mitigation. There would be significant harm to important heritage assets, though this is assessed at less than substantial harm in accordance with the Framework advice. The development plan is not determinative in this respect, and the harm must be weighed against the wider public benefit in accordance with paragraph 134 of the Framework. [380, 563, 646]

(v) the proposed operation of the site would not adversely impact upon wildlife habitats, the natural, built or historic environments.

1027. The effects on habitats and the natural environment were considered in the Permit Application and were considered acceptable. There is no evidence that the operation of the site would adversely impact on built or historic environments.

1028. Criteria vii) and viii) are not applicable to this proposal. Criterion ix) addresses cumulative impact. I was not made aware of any significant proposals for development in the locality which would require the proposal to be assessed on **this basis. Criterion x) is a 'catch-all' which makes reference to lack of conflict** with other policies in the WCS. I have identified above where I consider the proposal is in conflict with other policies.

Other WCS Policies

1029. The development would be broadly compliant with Policy 9: ***Sustainable Transport*** as it is well located to the strategic road network. It would also comply with ***Policy 10: Climate Change*** as it would contribute to the minimisation of greenhouse gas emissions and climate change risks. With regard to ***Policy 15: Rights of Way*** the proposal would be harmful to the amenity of some existing rights of way, though it would also create new publicly accessible open space. The harm and benefits are matters to be weighed in the overall balance. Protection of Soil, Air and Water in accordance with Policy 16 are secured by the Environmental Permit, or can be achieved through the attachment of conditions. With regard to Policies 17 and 18 I do not consider that the proposal would have an irreversible adverse impact on the matters listed in the policy. Harm to heritage assets is more appropriately dealt with in the context of the advice in the Framework. Policy 19 requires mitigation measures to minimise the impact of development on natural and historic assets. The proposal includes measures designed to do this as far as possible though I have concluded that some aspects of the development cannot be fully mitigated. [330, 569, 647, 649]

Welwyn Hatfield District Plan

1030. The plan was adopted in April 2005, and certain policies have been saved.

1031. The key policies to which the parties have referred is Policy RA6 Major developed Sites in the Green Belt (Redevelopment)

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1032. My conclusions on Green Belt impacts are set out elsewhere (Paras 727 – 742 above). The policy allows for complete or partial redevelopment within the boundaries of the identified Major Developed Sites. The redevelopment proposed would extend beyond the boundary of the defined area. It is not in dispute that the proposal cannot comply with the following criteria: i) – No greater impact on openness; iii) – Not occupy a greater footprint than the existing and iv) – Not exceed the height of existing buildings. Criterion (ii) refers to the objectives for the use of land set out in the Green Belt formerly included in PPG 2; Green Belts. This has been replaced by Para 81 of the Framework, which advises local planning authorities to plan positively to enhance the beneficial use of the Green Belt, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land. The scheme includes proposals to make additional land available for public access, with new planting and biodiversity benefits. These weigh in favour of the application. However in other respects there would be some harm to recreational use of the Green Belt by walkers, cyclists and others and looked at in the round the development would be harmful to visual amenity. These are matters to be weighed in the overall planning balance. Criteria v) and vi) have been satisfactorily addressed by the Applicant. I have concluded in relation to (vii) that impacts on the highway network and highway safety would be acceptable, so criteria vii) is met. [116, 296, 331, 387, 390 – 396, 551]
1033. My overall conclusion on Policy RA6 is that the proposal clearly fails to comply in the key respects summarised above.
1034. Policy CLT 9 addresses Use of Redundant Educational Facilities. The policy states that planning permission will be granted for the development or re-use of redundant educational establishments that are surplus to educational requirements, for community, leisure or recreation purposes. Where applicants can demonstrate that the buildings are unsuitable for re-use or there is no local need for community, leisure or recreation facilities, other suitable uses such as housing will be considered. [570]
1035. While the closure and relocation of the Central Resources Library has occasioned some bad feeling in the community, alternative provision has been made elsewhere and it is now unlikely that this resource will return to the site. Again whether that provision is as convenient or satisfactory is not a matter for me. The buildings on the application site have been vacant for some time. As far as I am aware, they do not feature in HCCs future plans for the provision of educational or community facilities. As a matter of fact the application proposal would not comply with the policy. In the light of the policy, WHBC argues that the County Council cannot rely on redevelopment for B1 use as a fall back position in the event of planning permission being refused.
1036. In the event of planning permission being refused, the future use of the site is a matter which will require careful consideration, which may be informed by the WSADPD when it is adopted, or the emerging Welwyn Hatfield Development Plan Framework. In the event of the SoS concluding that very special circumstances exist which justify the grant of permission, I would not regard failure to comply with this policy as being a significant obstacle to the grant of permission. [331, 397 – 402, 571, 689]

National Planning Policy

1037. National planning policy on waste remains as set out in PPS 10: ***Planning for Sustainable Waste Management*** at the present time. Key Planning Objectives are set out in paragraph 3. The proposal would move waste up the hierarchy and through the delivery of electricity to the grid and recycling an additional 28,000 tonnes per annum complies with the objective of treating waste as a resource. It would be classified as a recovery facility rather than disposal.
1038. It would ensure that Hertfordshire takes responsibility for its own waste, though I acknowledge that this responsibility would fall disproportionately on communities in the immediate area, particularly South Hatfield and Welham Green. It would help implement the national waste strategy. The existence of the Environmental Permit would ensure that it would secure the recovery of waste without harming human health. There would however be considerable harm to the environment identified elsewhere in this report. With regard to the requirement to dispose of waste in one of the nearest appropriate installations, the site is well placed to receive waste generated in the County of Hertfordshire. While a more distributed pattern of treatment provision could reduce the need to transport waste still further, the New Barnfield location would achieve a substantial improvement on the current situation.
1039. The proposal clearly does not reflect the concerns and interests of the communities that would be most affected. It would however meet the needs of waste collection authorities and scores highly in respect of the needs of the waste disposal authority and its contractor. In my judgement it would be an efficient way of treating residual waste in Hertfordshire. However, with all residual LACW waste and a substantial amount of residual C & W waste going to a single treatment plant there must be reasonable doubt that it would encourage competitiveness in a Hertfordshire context.
1040. The current guidance with respect to development in the Green Belt is that the particular locational needs of some types of waste management facilities, together with the wider environmental and economic benefits of sustainable waste management are material considerations that should be given significant weight in determining whether proposals should be given planning permission. These are matters which I shall address in the planning balance. [111, 294]
1041. The Government has published draft replacement waste planning guidance for consultation³⁴². Paras 26 of the document states that ***'The Government's policy is clear that most new development is inappropriate in the Green Belt and should not be permitted other than in very special circumstances'***. Paragraph 27 goes on to say that ***'to reflect this approach, the updated policy removes the former reference in policy that waste planning authorities should give significant weight towards locational needs and wider environmental and economic benefits when considering waste planning applications in the Green Belt. This means that, under national planning policy, these planning considerations should not be given more significant weight compared to others when planning applications are decided for waste facilities in the Green belt. Applications for facilities located in the Green Belt will still need to be considered by waste planning authorities on their individual planning merits having regard to the ..local waste plan and other material considerations, with the weight to be given on particular planning***

³⁴² Updated national waste planning policy: Planning for sustainable waste management – Consultation July 2013

considerations being for the decision maker, subject to the circumstances of each particular case.' [409]

1042. It may well be that such changes have been the subject of objections, and therefore until the revised guidance is approved little weight should be given to the proposed changes. If adopted guidance is issued in whatever form before the SOS determines the application it will clearly be material to his decision. [410 - 412, 581, 612]

National Policy Statements EN1 and EN3

1043. Relevant statements of government policy are also set out in the Overarching National Policy Statement for Energy, July 2011 (EN-1) and the National Policy Statement for Renewable Energy Infrastructure (EN-3). Although these apply specifically to proposals for National Significant Infrastructure Development (NSID), the underlying principles are applicable to schemes which do not meet the thresholds. Moving towards a low carbon economy and achieving energy security are key objectives of Government policy. A significant increase in the **UK's renewable** energy capacity is a fundamental part of this response, with a need to provide resilience by ensuring diversity in the range of supply, as older plant comes to the end of its life. The advice confirms that energy produced from the bio-mass fraction of waste is a significant source of renewable and low carbon energy. Only waste that cannot be re-used or re-cycled and which would otherwise go to landfill should be used for energy recovery. Biomass-fuelled plant can help to deliver predictable, controllable electricity to complement more intermittent sources, such as wind power. To hit the UK commitment to sourcing 15% of energy from renewable sources by 2020 it is necessary to bring forward new renewable electricity generating projects as soon as possible. EN-3 reaffirms the commitment to renewable energy infrastructure and the role of biomass energy, particularly schemes which combine heat and energy production. [64, 65, 66, 67, 72, 111, 126, 408, 578]

Conclusion on compliance

1044. The policies of the development plan, as discussed above, pull in different directions. Case law has established that where a planning application is in accordance with some policies in the development plan but in contravention of **others, the decision maker's task is to decide, in the light of the plan taken as a whole, whether the application accords with it. Furthermore, that 'it would be difficult to find any project of significance that was wholly in accord with every relevant policy of the development plan. ... It is enough that the proposal accords with the development plan considered as a whole. It does not have to accord with each and every policy therein'**³⁴³. [62, 201, 325, 573 - 575]

1045. I have found that the proposal would comply with some aspects of development plan policy. With regard to the WCS it would comply in part with Policy 1 insofar as it is located within one of the areas of search. It would be a large site which would not necessarily preclude the bringing forward of other small and medium waste management sites. The RERF technology would be an established recovery technology which would provide capacity for the treatment of all LACW waste and a significant proportion of C & I waste generated in the County. I share the concerns of objectors that it would occupy such a prominent

³⁴³ Para 163, R v Rochdale ex parte Milne 2000. Sullivan J.

place in treatment capacity which could inhibit investment in alternative facilities and technologies. [201, 330]

1046. WCS Policy 1A relates to sustainable development, and reflects advice in the Framework. This is a matter for the overall balancing exercise.

1047. The proposal would comply generally with WCS Policy 3, although the prospects for CHP are no more than tentative, and cannot be relied on. I do not consider it would divert waste that could reasonably be dealt with at a higher level in the hierarchy. WCS Policy 6 requires applications for new proposals in the Green Belt to demonstrate very special circumstances. The proposal would comply generally with criteria (i) and (ii). As regards criterion (iii), the proposal would not promote a switch to non-road transport, but there are no realistic alternative proposals which would not be similarly dependant on road transport. With regard to criterion iv), while I acknowledge that the access characteristics of the site are favourable, in other respects, particularly its Green Belt prominence, and the effects on openness and the character and appearance of the surroundings weigh heavily against the proposal. The effects on heritage assets would be less than substantial, but nevertheless would be significantly adverse. Criterion v) relates to any specific locational advantages of the site, and the site would be well located to serve the waste treatment needs of the County. With regard to criterion vi) there would be public benefit for Hertfordshire residents in that waste would be treated efficiently and in accordance with the waste hierarchy. With regard to local financial considerations, while value-for-money would no doubt have formed part of the procurement process and the award of PFI credits to the project, there was no information before the Inquiry which would have enabled me to reach any meaningful conclusion in terms of wider costs and benefits. [202, 238, 469]

1048. WCS Policy 11 sets out general criteria for the consideration of applications. The proposal would substantially fail to accord with the relevant provisions of this policy, particularly in respect siting, scale and design, screening, amenity effects, although I accept that there would be no material harm to human health or the natural environment.

1049. While some of the criteria of WHDP Policy RA6 would be complied with there would be substantial failure to comply with the key criteria i), iii) and iv) in respect of the impact of redevelopment on the Green Belt. While the Framework no longer refers to MDS, the criteria it sets out for the consideration of redevelopment of sites in the Green Belt are very similar, and I therefore accord substantial weight to non-compliance with the policy. The development would not comply with Policy CLT 9, though for reasons set out in paras 1034 – 1036 above, I do not consider that this would be an obstacle to the grant of permission in the event that VSCs are found to exist. [116, 576]

1050. In conclusion the areas of non-compliance summarised above, particularly in relation to site specific considerations, lead me to the conclusion that the proposal does not, on a balanced assessment, accord with the provisions of the development plan when considered as a whole. In any event, the Green Belt policies require VSCs to be demonstrated for planning permission to be granted. If VSCs are found to exist, then I accept that the development could be said to accord with policy in that respect, which could change the overall assessment of compliance with the development plan. [202, 326, 572]

Prematurity

1051. The Planning System: General Principles is extant guidance. Paragraph 17 **advises that** 'in some circumstances, it may be justifiable to refuse planning permission on grounds of prematurity where a DPD is being prepared or is under review, but it has not yet been adopted. This may be appropriate where a **proposed development is so substantial that granting permission could prejudice the DPD by predetermining decision about the scale, location or phasing of new development which are being addressed in the policy of the DPD**'. For planning permission to be refused on prematurity grounds there must be a clear demonstration of how the grant of permission would prejudice the outcome of the DPD process. [235]
1052. The Hertfordshire Waste Sites Allocation Local Development Document (WSALDD) has been submitted to the SoS for examination, and examination hearings took place before and after the Inquiry into this application proposal. The WSALDD is therefore at an advanced stage, but there have been substantial objections to the policies which limits the weight that can be given to it at this stage. If it is found sound with or without modification and is adopted before the SoS determines this Application then clearly it will have the full weight of the development plan and will be material to the determination. [235, 477]
1053. The submission document identifies 16 allocated sites which are considered by **HCC to be the most suitable locations to manage the county's existing and future** waste arisings during the plan period. Given that over half the County is designated as Green Belt, there are recognised difficulties in finding sites outside the Green Belt that can be considered suitable to accommodate waste management facilities. New Barnfield is one of the allocated sites. [306]
1054. In addition to allocated sites the LDD identifies Employment Land Areas of Search (ELAS), where HCC considers that waste management uses may be compatible, but which have little immediate potential for redevelopment.
1055. It is of note, however, that if the draft LDD is adopted in its submitted form, the present application would not conform to the site brief set out in pages 136 – 139 of the WSALDD. The brief is not specific as to the scale of development or the technology. However, it states that **'New Barnfield is identified as a 'Major Developed Site in the Metropolitan Green Belt' as identified in the Welwyn Hatfield District Plan – April 2005. Very special circumstances apply in order to justify the site's redevelopment. Any development should confine development to the site's existing footprint, with circulation/parking being acceptable on the current surrounding developed land. Consideration will need to be given to the possible effects of any facility regarding the neighbouring Southfield School to the north. Any application submitted for waste related development will be subject to the relevant policies in the development plan**'. [235, 386, 612]
1056. In the final analysis, planning permission for this development will only be granted if very special circumstances are found to exist. This would remain the case were the WSALDD to be adopted in its current form. It is apparent that an earlier incarnation of the WCS was withdrawn leading to the timetable for adoption being considerably extended, with consequent delay in the preparation of the WSALDD. In such circumstances, it is not unusual for planning applications to proceed in advance of the final adoption of the policy framework. [444, 584]

1057. However, the application scheme would provide capacity for the treatment of **all of Hertfordshire's residual LACW, and a substantial proportion of residual C & I Waste**. It is so substantial in waste treatment terms that it will dominate the treatment of LACW and C & I waste in the County for many years to come. While it would not absolutely preclude other treatment capacity coming forward on other sites, it would absorb all of the residual LACW stream and considerable quantities of residual C & I waste, which may adversely affect the investment prospects for other developments. To that extent its approval would be highly likely to prejudice the outcome of the DPD process. The frustration and disillusion with the processes of procurement and planning that has been expressed by the local community is understandable in the circumstances. [194, 240, 241, 307, 415, 479, 582, 583, 585, 586, 587 – 592, 596 – 602, 693, 697]

Balancing exercise

1058. It is common ground that the development would be inappropriate development in the Green Belt. Such development is, by definition, harmful to the Green Belt, and should not be approved except in very special circumstances. **Substantial weight should be given to any harm to the Green Belt. 'Very special circumstances' (VSC) will not exist unless the** potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

1059. It is also accepted that the proposal would involve harm to heritage assets of exceptional significance. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the duty to have special regard to the **desirability of preserving the settings of listed building as follows. 'In considering** whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case maybe, the Secretary of State shall have special regard to the desirability of preserving the building or any features of special architectural interest which it possesses'. Paragraph 131 of the Framework provides amongst other things that account should be taken of the desirability of new development making a positive contribution to local character and distinctiveness. Paragraph 132 states that **'when considering the** impact of a proposed development on the significance of a **heritage asset, great weight should be given to the asset's conservation. The** more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm **should require clear and convincing justification.'** The degree of harm to the ensemble of assets at Hatfield House and Park, and other heritage assets in the locality was disputed, and in particular whether it would amount to substantial or less than substantial harm, as defined in Section 12 of the Framework. I have found the degree of harm to the significance of the relevant heritage assets to be less than substantial. In the circumstances, paragraph 134 of the Framework requires that the harm should be weighed against the public benefits of the proposal. However, it is clear that the statutory duty set out in Section 66 (1) of the Act applies whether or not the harm to significance is assessed as substantial or less than substantial.

1060. Substantial weight attaches to the Green Belt harm. In addition to the harm by reason of inappropriateness, serious harm would arise from the loss of openness. For reasons set out in full in the body of these conclusions there would be also serious harm to the character and appearance of the area,

including the setting of Southfield School, notwithstanding extensive proposed landscaping, which would have a limited mitigating effect even after 15 years. There would also be harm to the amenity of cyclists, pedestrians and users of the recreational footpath network in the vicinity of the site to which I attach significant weight

1061. I have also identified significant harm to heritage assets, including the ensemble at Hatfield House and Park which are acknowledged as being of the highest significance. The S106 obligation would provide funding for tree planting, which could in time screen some views of the development from the House and Park. Such planting would be at the discretion of the Estate however, and cannot be relied upon to mitigate harm. In any event, the additional block planting proposed would be a compromise which would be at odds with the more open **character of this part of the Park. In view of the ownership issues and the 'in-principle' opposition of the Estate to the proposal**, a Grampian style condition could not be relied upon to secure mitigation. In addition there would be harm to the setting of **Millward's Park, particularly if it were to be managed to create a more open parkland landscape in the future, as intended by the estate.** While I have found the harm to heritage assets would be less than substantial in the terms of paragraph 134 of the Framework, considerable weight should nevertheless be attached to it. [653 - 663]
1062. I have found that there would be no material harm in respect of ecology and natural habitats (subject to mitigation which is proposed as part of the scheme, and a licence being obtained in respect of Great Crested Newts), traffic and transport, air quality and health, and issues of equality. However, it is well established that absence of harm cannot be treated as a positive factor in making a case for very special circumstances.
1063. A number of material considerations weigh in favour of the proposal. For reasons set out in full above, I consider that the proposal would offer clear advantages in waste management terms for the treatment of residual LACW and C + I Waste in Hertfordshire. This would be so in comparison with the existing situation. It would be R1 complaint which allows it to be classified as a recovery operation. Energy recovery together with a front end mechanical treatment plant to remove an additional 28,000 tonnes of recyclables would move waste up the **hierarchy. It would offer a major step forward in the County's ability to treat its own residual waste, without continuing to rely substantially on export to neighbouring areas.** [330, 604]
1064. The proposal would offer certainty of delivery. It has been selected through the procurement process and PFI credits of £115.3 million are available. I note that though there has recently been a review of PFI credits for waste facilities in parts of England, the position remains unchanged as regards New Barnfield. I am aware of a covenant on the site in favour of the Homes and Communities Agency. However this is not a matter which is material to the consideration of planning issues. I have no reason to believe that the existence of the covenant would unduly delay the implementation of the scheme if permission is granted. [92, 202, 238, 330, 349, 469, 689, 696]
1065. No suitable alternative site is available for a development of this scale. While the emerging WSALDD identifies a number of specific sites and Employment Land Areas of Search, there are no realistic available non-Green Belt sites. Identified Green Belt sites would require very special circumstances to be demonstrated.

In any event there are no other schemes being sponsored or promoted by the industry which could make a comparable contribution to the extent of the treatment capacity deficit identified in the WCS. [109, 110, 330]

1066. While an alternative strategy of a number of smaller treatment sites distributed throughout the County has been canvassed by objectors, there are no firm development proposals in the pipeline which could meet the residual need as identified in the WCS in the short to medium term, making allowances for the fact that the RERF would not be operational until 2017 at the earliest. The procurement process did not produce any proposals from the industry other than a one-site solution. I acknowledge that the lack of alternative treatment options may in part result from the commitment of HCC and Veolia to the delivery of the New Barnfield scheme, but that is a fact which cannot now be altered. It may be possible to deliver an alternative network of provision in the longer term, in accordance with the WCS and the emerging WSALDD, but this would be highly likely to involve continued reliance on landfill and/or the export of waste to neighbouring areas for treatment in the short to medium term, which is undesirable for environmental and policy reasons. In view of the uncertainties and delay involved, very little reliance can be placed on this outcome in the determination of this Application. [98, 99, 104, 237]

1067. The evidence shows that there would be substantial climate change benefits, which would arise mainly from diversion of waste from landfill and energy recovery. There would also be significant benefits from the reduction in waste miles travelled that the scheme would make possible in comparison with the existing situation. While a more dispersed pattern of provision would potentially enable waste to be treated closer to source, there are no reasonable prospects of such an alternative network being developed in the same time frame as the RERF. In the meantime, the climate change effects of continuing landfill would heavily outweigh any enhanced benefits from a putative reduction in waste miles travelled. [330]

1068. A further clear benefit, to which substantial weight attaches, would be the **delivery of some 26 MW of 'dispatchable'** electricity to the grid. While this would be small in national terms, the achievement of Government renewable energy targets are dependant on the rapid delivery of many different schemes, from small to large, and using a range of technologies. This aspect of the proposal derives strong support from relevant national and local policy. [238, 464]

1069. The location of the scheme, on the edge of Hatfield in the southern, more heavily populated part of Hertfordshire, offers some potential for further efficiency by means of Combined Heat and Power. However I give this little weight in circumstances where the proposals for CHP are at most tentative and **uncertain, notwithstanding the Applicant's heat Energy Plan, which was only** available to the Inquiry in redacted form. I would regard the opportunity to provide CHP as a minimum requirement for selecting a location for an EfW plant. The scheme complies with this minimum requirement, but it is not a material consideration which carries weight in judging whether VSCs exist. [100, 101, 239, 330, 374]

1070. The scheme would provide up to 350 jobs during the construction phase and approximately 52 once operational. While this weighs in favour of the application, the construction phase benefits would be relatively short term and the processing of the tonnages of waste identified in the WCS would in any event generate

employment of a commensurate scale, so I attach little weight to it in assessing whether VSCs exist in this case. [330]

1071. Lastly, there would be significant benefit from the additional planting and habitat creation on the western part of the site.

1072. In summary I find that substantial weight should be given to the Green Belt harm by reason of inappropriateness. The harm to openness is real, and there is further significant harm to the character and appearance of the area, and to the amenity of residents and users (particularly the enjoyment of the countryside, the footpath and cycle network, and the outlook from the most affected properties). In addition there would be significant (though less than substantial) harm to the setting of the ensemble of heritage assets at Hatfield House and Park. In accordance with Section 66(1) of the Act, when considering whether to grant planning permission for development which affects a listed building or its setting, decision makers must have special regard to the desirability of preserving the building or any features of special architectural interest which it possesses. Due primarily to the scale of the development, the mitigation proposals would not be fully effective in mitigating these impacts. This harm would endure for at least the life of the scheme (c. 25 years) and the existence of such a large building would be a material factor in considering the future potential of the site at that time. I acknowledge that the New Barnfield site has some redevelopment potential in the event of this application being refused, but that would be informed by the advice in paragraph 89 of the Framework, and would be unlikely to have the impact of the RERF other than in very special circumstances. Accordingly I give it little weight as a fallback position. [117, 467, 595, 666,]

1073. There are also number of material considerations which weigh in favour of the proposal, of which substantial weight should be attached to the need for additional treatment capacity in Hertfordshire which would enable the movement of waste up the hierarchy, the increase in self-sufficiency within Hertfordshire that would result, the climate change benefits, and the ability to deliver 26 MW of dispatchable energy to the grid. There are no available sites or proposals in the pipeline which would deliver comparable benefits in a similar time frame, and the delay in the achievement of climate change and other benefits which would arise from a refusal of planning permission also weighs substantially in favour of the scheme. Less weight attaches to the potential for CHP and the employment effects of the scheme, though these would still be positive. [202, 330, 579]

1074. This scheme provides a classic illustration of the problems encountered in seeking to locate large scale infrastructure in an area which is affected by major planning constraints. The waste management case for the proposal is very strong, but must be balanced against the substantial weight to the identified Green Belt harm, and other harm.

1075. The WCS allows for development in the Green Belt to meet this need, subject to the demonstration of very special circumstances. This is a pragmatic recognition of the extent of the Green Belt in Hertfordshire, particularly the southern, more heavily populated part of the County, where most of the waste is generated. At the time of writing paragraph 3 of PPS10 advises that Green Belts should be protected, but that in determining planning applications, the particular locational needs of some types of waste management facilities, together with the wider environmental and economic benefits of sustainable waste management,

are material considerations that should be given significant weight in determining whether proposals should be given planning permission. However this does not in anyway override the need to demonstrate the existence of very special circumstances if planning permission is granted. It is simply one factor that needs to be taken into account, albeit one that carries significant weight. [106, 294]

Recommendation

1076. The Government attaches great importance to Green Belts. VSCs will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. I attach substantial weight to a number of material considerations which amount to a strong case for the development on waste management grounds. However, in my judgment they do not clearly outweigh the harm to the Green Belt and other harm identified. The objections to the development in this location are equally strong. Accordingly I conclude that the very special circumstances necessary to justify the development do not exist and recommend that planning permission should be refused. [202, 330, 480, 611]

1077. In the event of the SoS reaching the conclusion that very special circumstances do exist which clearly outweigh the harm to the Green Belt, the material considerations taken into account may also be considered to outweigh the harm to the setting of heritage assets in accordance with the provisions of Paragraph 134 of the Framework. If so, permission should be granted subject to the conditions set out in Annex A to this report.

David Richards

INSPECTOR

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Robert Williams of Counsel	
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FOR NEW BARNFIELD ACTION FUND:

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Cathy Roe	
Claire Taylor	Green Belt
Cllr Dreda Gordon	Effect on Southfield School
Adam Edwards	National cycle route
Cllr Zukowskyj	

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Adrienne Nix	
Valerie Dorantt	Welwyn Hatfield Friends of the Earth
Mick Bee	Herts without Waste
Dr John Webb	Herts without Waste
Margaret Eames	
Cllr Mark Mills-Bishop	Herts CC – Hatfield Rural
Cllr Mandy Perkins	Welwyn Hatfield BC
Clive Bennett	
Raymond Stevens	
Marian Goodwin	
Grant Shapps MP	
Anne Griffin	
Cllr Chris Brazier	Colney Heath PC
Cllr Linda Clark	Hatfield Town Council
Cllr Maureen Cook	Herts CC and Welwyn Hatfield BC
Cllr Les Page	Welwyn Hatfield BC
Andrew Bousfield	
Mrs Salter	

Documents

Statements of Common Ground

S1	Statement of Common Ground between English Heritage and Hertfordshire County Council
S2	Statement of Common Ground between Hertfordshire County Council, Welwyn Hatfield Borough Council and Veolia ES Hertfordshire Limited
S3	Statement of Common Ground between Veolia ES Hertfordshire Limited and Hertfordshire County Council
S3(a)	Amended list of conditions circulated by HCC on 22 October 2013
S4	Statement of Common Ground between Veolia ES Hertfordshire Limited and English Heritage

Statements of Case

VES1	Veolia Statement of Case
H1	Statement of Case on behalf of Hertfordshire County Council
WH1	Statement of Case of Welwyn Hatfield Borough Council
EH1	Statement of Case of Historic Buildings and Monuments Commission for England (English Heritage)
GCE1	Statement of Case of Gascoyne Cecil Estates known as Hatfield House
NBAF1	Statement of Case of New Barnfield Action Fund

Application

A1	Design and Access Statement
A2	Planning and Sustainability Statement November 2011
A3	Transport Assessment (URS Scott Wilson Ltd) November 2011
A4	Landscape and Biodiversity Management Strategy (Barton Willmore Landscape Planning and Design) 7 th November 2011
A5	Statement of Community Involvement (November 2011)
A6	Climate Change Statement (November 2011)
A7	Flood Risk Assessment (November 2011)
A8	Drainage Management Plan (November 2011)
A9	Tree Survey (Forbes-Laird Arboricultural Consultancy - October 2011)
A10	Health Impact Assessment for New Barnfield Recycling & Energy Recovery Facility (ERM) 15 th November 2011
A10a	Equalities Impact Assessment of 2011
A11	Photomontage Location Plan – Verifiable photomontage images P1-P19
A12	Alternative Sites Assessment November 2011

A13 Plans

- § 19207/21-1/B – Site Plan
- § 111109_Site Plan – Site Plan (A1)
- § 111109 Site Plan – Site Plan (A3)
- § 2/2.GB.21/J – Level +0.00
- § 3/2.GB.21/J – Level +7.00
- § 4/2.GB.21/J – Levels +13.00, +17.00 and +21.00
- § 5/2.GB.21/J – Vehicles Circulation Plan
- § 6/2.GB.21/J – Visitors Route Plan
- § 7/2.GB.21/J – Comparative Footprint
- § 19207/20A – Site Location Plan
- § 19207/21A – Site Plan
- § 19207/LA/03/D – Landscape Sections
- § 19207/LA/11-1/D – Landscape Proposals Sheet 1 of 3
- § 19207/LA/11-2/D – Landscape Proposals Sheet 2 of 3
- § 19207/LA/11-3/D – Landscape Proposals Sheet 3 of 3
- § 19207/LA/14 – Landscape Proposals Plan
- § 19207/LA/12-1-3/B – Tree Removal Strategy Sheet 1 of 3
- § 19207/LA/12-2-3/B – Tree Removal Strategy Sheet 2 of 3
- § 19207/LA/12-3-3/B – Tree Removal Strategy Sheet 3 of 3
- § 20/2.GB.21/J – Long Section
- § 21/2.GB.21/J – Cross Section
- § 22/2.GB.21/J – South-East Facade
- § 23/2.GB.21/J – North-West Facade
- § 24/2.GB.21/J – North-East Facade
- § 25/2.GB.21/J – South-West Facade
- § 30/2.GB.21/J – Administration Plan 1/2
- § 31/2.GB.21/J – Administration Plan 2/2
- § 32/2.GB.21/J – Gate House and Welfare Facilities
- § ST-2222-1-C – Means of Access Plan Option 2B

June 2012 – Drawings from Heritage Study

- § 19207/L32 – Tree Removal Strategy Sheet 1 of 3
- § 19207/L33 – Tree Removal Strategy Sheet 2 of 3
- § 19207/L34 – Tree Removal Strategy Sheet 3 of 3

[Click here to view A13 documents](#)

- A14a Environmental Statement Volume 1 (includes Non-Technical Statement)
- A14b Environmental Statement Volume 2
- A14c Environmental Statement Volume 3
- A14d Environmental Statement Volume 4
- A14e Environmental Statement Volume 5
- A14f Environmental Statement – Contents List

Submission

- A15 Alternative Sites Assessment (May 2012)
- A16 Rebuttal Statement in respect of representations made by Welwyn Hatfield Borough Council to the New Barnfield application
- A17 Additional Environmental Information (URS Infrastructure & Environment UK Limited)

A18	Regulation 22: Further Information (URS Infrastructure & Environment UK Limited)
A19	Photomontage Location Plan - Verifiable photomontage images P1, P3, P5, P9, P10, P12, P20, P21 (winter views)
A20	Verifiable photomontage images, methodology and supporting evidence - New Barnfield, Hatfield Phase III May 2012 (Designhive Media Ltd)
A21	Bat Mitigation Strategy May 2012 - 47061784 (URS Infrastructure & Environment UK Limited)
A22	Amphibian Mitigation Strategy May 2012 - 47061784 (URS Infrastructure & Environment UK Limited)

Submission

A23	Photomontage Location Plan - Verifiable photomontage images P22, 23 and 24
A24	Blimp Photographs - Heritage Study Location of Photographs 1-13 Hatfield House Park and Old Palace
A25	Heritage Report: Additional Information and Setting Assessment June 2012 (URS Infrastructure & Environment UK Limited)
A26	Plume Visibility Table (15th June 2012)
A27	Verifiable photomontage images, methodology and supporting evidence - New Barnfield, Hatfield Phase IV June 2012 (Designhive Media Ltd)

Submission

A28	Consolidated Quantitative Assessment of Operational Traffic Effects (URS Infrastructure & Environment UK Limited)
A29a	URS Letter re local Wildlife Sites (dated 18 th October 2012)
A29b	URS Letter re Southfield School (dated 4th September 2012)
A29c	URS Letter re Hatfield House (dated 5th September 2012)
A29d	URS Letter re Local Wildlife Sites (dated 31st August 2012)
A29e	URS Letter re further information (dated 16th July 2012)
A29f	Local Wildlife Sites Information Parts 3, 4 and 5

Submission

A30a	Environmental Statement Addendum (URS Infrastructure & Environment UK Limited) Volume 1
A30b	Environmental Statement Addendum (URS Infrastructure & Environment UK Limited) Volume 1 Appendix 1 - Alternative Site Assessment Update
A30c	Environmental Statement Addendum (URS Infrastructure & Environment UK Limited) Volume 2 (Non-heritage photomontages + methodology)
A30d	Additional Information (URS Infrastructure & Environment UK Limited) - Howe Dell Environmental Report

A30e Additional Information (URS Infrastructure & Environment UK Limited) - Hatfield House winter blimp assessment + photomontages + methodology

Committee

B1	Hertfordshire County Council Development Control Committee Report
B2	Committee Report – Appendix (Summary of Public Consultation and Responses)
B3	Hertfordshire County Council Development Control Committee Minutes
B4	Statutory Consultees and Interested Parties Responses and Representations - to be available in hard copy at Inquiry Library
B5	Report on New Barnfield planning application to WHBC Planning Control Committee 29 March 2012
B6	Minutes of WHBC Planning Control Committee Meeting 29 March 2012
B7	Report on additional information for New Barnfield planning application to WHBC Planning Control Committee on 19 July 2012
B8	Minutes of WHBC Planning Control Committee Meeting 19 July 2012
B9	Report to HCC Cabinet 20 October 2008 on Options for Future Waste Management: Outline Business Case
B10	Appendices 4E, 4F and 7J to the Outline Business Case referred to in the HCC Cabinet report
B10a	Appendices 7G and 7I to the Outline Business Case referred to in the HCC Cabinet report
B11	Report to HCC Cabinet 20 October 2008 on Vacation of Site of New Barnfield, Hatfield
B12	Minutes of the HCC Cabinet meeting on 20 October 2008
B13	Report to HCC Waste Management Cabinet Panel 14 April 2009 on Waste Management Spatial Strategy
B14	<i>Not Allocated</i>
B15	Minutes of the Waste Management Cabinet Panel meeting on 14 April 2009
B16	HCC Waste Management Cabinet Panel Minutes and Agenda Item B, 7 March 2013

Planning Policy

C1	Hertfordshire Waste Core Strategy & Development Management Policies Development Plan Document 2011-2026
C2	Hertfordshire Waste Local Plan
C3	Saved policies of Welwyn Hatfield District Plan 2005
C4	Welwyn Hatfield Borough Council – Emerging Core Strategy November 2012
C5	Hertfordshire Waste Site Allocations Local Development Document : Proposed Submission November 2012
C6	Hertfordshire Waste Site Allocations Preferred Options – January

2008

National

- D1 National Planning Policy Framework 2012
- D2 Planning Policy Statement 10: Planning for Sustainable Waste Management (March 2012)
- D3 National Policy Statement EN1 2011
- D4 National Policy Statement EN3 2011
- D5 PPS 5 Historic Environment Planning Practice Guide English Heritage 2010
- D6 Ministerial Statement by Rt Hon Greg Clark MP – Planning for Growth (23 March 2012)
- D7 Planning System – the General Principles – National Planning and Guidance
- D8 Updated National Waste Planning Policy Consultation - 2013

European

- E1 The Waste Framework Directive 2008/98/EC
- E2 The Waste Incineration Directive 2000/76/EC & 1137/2008
- E3 The EU Landfill Directive 1999
- E4 Waste Strategy for England 2007
- E5 The Government Review of Waste Policy in England 2011
- E6 The Waste (England & Wales) Regulations 2011
- E7 The DEFRA Guide to Energy from Waste 2013
- E8 Design Guide on Waste Facilities
- E9 The DEFRA Guide on applying the Waste Hierarchy 2011
- E10 Waste Management Plan for England (Consultation Draft) July 2013
- E11 EC Directive 2009/28 on the promotion of the use of energy from renewable sources
- E12 Guidance for Local Planning Authorities on applying the European Union Waste Framework Directive – DCLG – Dec 2012
- E13 EU Press Release dated 4th July 2013 – EU Targets in Waste Management
- E14 EU Press Release 2013 – EC Review of Waste Legislation
- E15 European Parliament – Resolution on a Resource-Efficient Europe, dated 24 May 2012
- E16 Guidelines 2008/98 on Waste on the interpretation of the R1 Energy Efficiency formula for incineration facilities dedicated to the processing of municipal solid waste according to Annex II of Directive 2008/98/EC on Waste

Relevant appeal decisions

- F1 Energy from Waste facility and household recycling centre at Battlefield Enterprise Park, Vanguard Way, Shrewsbury, Shropshire – Appeal Decision Ref: APP/L3245/A/11/2146219)

F2	Energy from Waste Facility at Dunbar Landfill, Oxwell Mains, Dunbar – Appeal Decision (Ref: APP/PPA/210/2012)
F3	Renewable Energy Plant at Former Sevalco Site, Severn Road, Avonmouth, Bristol –Appeal Decision (Ref: APP/Z0116/A/10/2132394)
F4	Waste to energy plant at Rowstowrack Farm, St Dennis, Cornwall Appeal Decision (Ref: APP/D0840/A/09/2113075)
F5	Energy from Waste Facility at Ardley Landfill Site, Ardley, Oxfordshire – Appeal Decision (Ref: APP/U3100/A/09/2119454)
F6	Energy from waste plant, Rookery South Pit, Bedfordshire (Ref: IPC Panel decision - EN0100011)
F7	Energy from waste facility, Oak Drive, Hartlebury, Worcestershire (Ref: APP/E1855/V/11/2153273)
F8	Generating Station, Lostock, Northwich Cheshire. Ref: DPI/A0665/11/10/LI A0665)
F9	Biomass fuelled renewable energy plant, Manchester Ship Canal, Trafford (APP/F5540/A/12/2174323)
F10	Green Lane Salford Decision (Ref : APP/U4230/A/11/2162115)
F11	Wadlow Farm, Six Mile Bottom Road, West Wrattling, Cambridgeshire. 26 August 2009 (Ref. APP/W0530/A/07/2059471)
F12	Energy from Waste plant, Land off Pochin Way etc, Middlewich, Cheshire: Appeal Decision Ref: APP/R0660/A/10/2129865
F13	Energy from Waste plant, Land at former Rufford Colliery, Rainworth, Notts: Appeal Decision Ref: APP/L3055/V/09/2102006
F14	Resource Recovery Park, Ince Marshes, Cheshire. Appeal Ref: APP/Z0645/A/07/2059609
F15	Sinfin Lane, Sinfin Derby. Appeal Ref: APP/C1055/A/10/2124772
F16	Inoeos Chlo, Energy from Waste CHP Generating Station, Runcorn, Cheshire. 16 September 2008 BERR Ref: 01.08.10.04/BC
F17	Twinwoods Appeal Decision APP/K0235/A/10/214593

Noise

G1	Supplementary Design Guidance of the Welwyn Hatfield District Plan
G2	British Standard BS 5228-1: 2009 Noise and Vibration Control on Construction and Open Sites. Part 1: Noise
G3	British Standard BS 8233: 1999 Sound Insulation and Noise Reduction for Buildings – Code of Practice
G4	Building Bulletin 93 Acoustic Design of Schools
G5	British Standard BS 5228-2: 2009 Noise and Vibration Control on Construction and Open Sites. Part 2: Vibration
G6	British Standard BS 7385-2: 1993 Evaluation and Measurement for Vibration in Buildings – Part 2: Guide to Damage Levels from Groundborne Vibration

G7	International Standard ISO 9613-2: 1996 Acoustics – Attenuation of Sound During Propagation Outdoors – Part 2: General Method of Calculation
G8	British Standard BS 4142: 1997 Method for Rating Industrial Noise Affecting Mixed Residential and Industrial Areas
G9	Calculation of Road Traffic Noise, DoT and the Welsh Office, 1988
G10	Noise Policy Statement for England (NPSE) – DEFRA – March 2010

Heritage assets

H1	Statutory Designation
H2	The Register of Parks and Gardens English Heritage 2010
H3	The setting of heritage assets English Heritage 2011
H4	Seeing the History in the View English Heritage 2011
H5	Understanding Place: Conservation Area Designation, Appraisal and Management English Heritage 2011
H6	Conservation principles English Heritage 2008
H7	Guidance on Tall Buildings English Heritage 2007
H8	Garden History Society Planning Conservation Advice Note (PCAN) 11, Development in the setting of historic designed landscapes, undated
H9	English Heritage letter 07 Feb 2012
H10	English Heritage letter 01 August 2012
H11	Gascoyne Cecil Estates letter 19 Jan 2012
H12	LDA design report 2012
H13	Gascoyne Cecil letter dated 10 September 2012
H14	The Woodhall report to HCC September 2012
H15	English Heritage letter dated 11 October 2012
H16	Report on potential offsite planting at Hatfield Park and Garden on behalf of Hatfield County Council July 2013
H17	Letter to Hatfield County Council from Peter Clegg of Hatfield House, dated 11 July 2012
H18	New Light on Gobions – Anne Rowe & Tom Wilkinson, <i>Garden History</i> 40: 1
H19	English Heritage Listing Entry for Gobions Folly Arch

Renewable energy

J1	Mainstreaming Sustainable Development: the Government's vision and what this means in practice. Defra, February 2011.
J2	Planning our electric future: a white paper for secure, affordable and low-carbon electricity. DECC, July 2011.
J3	UK Renewable Energy roadmap. DECC, July 2011.
J4	Meeting the Energy Challenge - Energy White Paper. DTI, May 2007.
J5	HM Government, The UK Renewable Energy Strategy. TSO, July 2009

J6	Government response to the consultation on proposals for the levels of banded support under the Renewables Obligation for the period 2013-2017 and the Renewables Obligation Order 2012. DECC, July 2012.
J7	Annual Energy Statement. DECC, July 2010.
J8	Annual Energy Statement. DECC, November 2012.
J9	Economies of Scale – Waste Management Optimisation Study, published by Defra, researched by AEA Technology, April 2007

Health

K1	Health Protection Agency Report 2009/2010
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Air quality and emissions

L1	The Air Quality Strategy for England, Scotland, Wales and Northern Ireland 2008
L2	The Air Quality Standards Regulations 2010 (SI 2012)
L3	Correspondence between Veolia and Gascoyne Estates on plume visibility
L4	Welwyn Hatfield Borough Council (2012) Air Quality Updating and Screening Assessment in fulfillment of the Part IV of the Environment Act 1995 Local Air Quality Management

Waste

M1	<i>Not Allocated</i>
M2	Reports from Atkins (2012) commissioned by the Borough Council to inform its response to consultation on the planning application
M3	WSP Site Assessment for Waste Management Facilities HCC May 2008
M4	Hertfordshire Joint Municipal Waste Management Strategy 2007; Strategy and Action Plan
M5	<i>Not Allocated</i>
M6	Inspectors Report on the Hertfordshire Waste Core Strategy
M7	Draft Municipal Waste Spatial Strategy, Vincent and Gorbing for Hertfordshire County Council, July/August 2009
M8	Hertfordshire Waste Procurement Project Site Search Summary Report, Vincent and Gorbing for Hertfordshire County Council, July/August 2009
M9	New Barnfield Resources Centre, Hatfield, Hertfordshire – Master Planning Brief (2000) – HCC/Vincent and Gorbing
M10	Report by Eunomia for Hertfordshire Waste Partnership – Management of Residual Wastes – May 2006
M11	Inspector's Report (1997) of Public Local Inquiry into Representations made to the Welwyn Hatfield District Plan Alterations No 1 – Extract relating to New Barnfield
M12	WHBC Representations on HCC Minerals and Waste Development Framework Waste Site Allocations Preferred Options January 2008
M13	WHBC Representations on HCC Minerals and Waste Development Framework Waste Core Strategy and Development policies Preferred

	Options 2 and Waste Site Allocations Preferred Options 2 (December 2009)
M14	WHBC Representations on Proposed Submission version of Waste site Allocations Local Development Document (December 2012)
M15	HCC Response to representations made during pre-submission consultation for the Waste Site Allocations Document, February 2012
M16	Letter from DCLG to Iain Leech (HCC) regarding call-in – 28 January 2013
M17	Hertfordshire County Council – ISFT: A WRATE assessment of the VES (UK) proposed solution
M18	Hertfordshire Waste Procurement Project – Planning Audit Trail, October 2008 by ERM
M19	HCC Herts Waste Development Document – Site Selection Study Final Report June 2006 by Entec UK Ltd
M20	Planning for Waste Management Facilities, Aug 2004 (ODPM)
M21	HAI Objection to Regulation 22 submission, July 2012
M22	Covanta Rookery Pit need assessment
M23	Report by Eunomia - Residual Waste Infrastructure Review – May 2013
M24	Report by Eunomia – Climate Change Impacts of Residual Waste Treatment, 2011
M25	2011 Briefing Report: the Future of Landfill, December 2011 by Tolkgvig Consulting
M26	North West of England Commercial & Industrial Waste Survey 2009, Environment Agency
M27	London’s Wasted Resource: Mayor’s Municipal Waste Management Strategy
M28	Hertfordshire County Council Development Services Report
M29	Waste Capacity Report, June 2013

Legislation

N1	Town and Country Planning Act 1990
N2	The Planning (Listed Buildings and Conservation Areas) Act 1990

Landscape

O1	Landscape Institute Advice Note 01/11 – Photography and photomontage in landscape and visual impact assessment
O2	Consolidated Non Heritage Inquiry Photomontages July 2013: Verifiable Photomontage Images 1 – 12, 15 – 21 (rendered, winter conditions)
O3	Watling Chase Community Forest Plan Review 2001
O4	Guidelines for Landscape and Visual Impact Assessment (GVLIA), Edition 2
O5	GVLIA, Edition 3
O6	Herts County Council Landscape Character Assessments
O7	National Countryside Character Vol 6 East of England
O8	Natural England National Character Area; LCA 110 Chilterns
O9	Landscape Character Assessment, Guidance for England/Scotland

O10	Correspondence between Mr Brian Owen and Mr Steven Kosky
O11	SNH Guidance Visual Assessment of Wind Farms, Good Practice Guidance, 2006
O12	SNH Guidance Visual Assessment of Wind Farms, Consultation Draft May 2013
O13	SNH Guidance Visual Assessment of Wind Farms, Best Practice, 2002
O14	Herts County Council Validation List (for planning applications)
O15	HCC Regulation 22 request letters (and non Reg22 requests) (same document as O10)
O16	BS5837: 2005
O17	BS5837: 2012

Environmental

P1	Environment Agency Permit (Number EPR/MP3637FL) dated 3 April 2013
P2	Environment Agency Decision Document issued 3 April 2013

Ecology

Q1	Natural England consultation response 30 th January 2012
Q2	Environment Agency consultation response 13 th January 2012
Q3	Hertfordshire & Middlesex Wildlife Trust response 25/9/12
Q4	Hatfield Against Incineration response to planning application, undated
Q5	Hertfordshire Biological Records Centre initial comment December 2011

Inquiry Documents Submitted by Veolia Environmental Services (UK) plc Proofs of Evidence

VES/1/1	Proof of Evidence - Keith McGurk - Company Overview
VES/1/1a	Errata to Proof of Evidence - Keith McGurk - Company Overview
VES/1/2	Summary to Proof of Evidence - Keith McGurk - Company Overview
VES/1/3	Appendix to Proof of Evidence - Keith McGurk - Company Overview - Index
VES/1/3a	Appendix to Proof of Evidence - Keith McGurk - Company Overview - Authorities Requirements
VES/1/3b	Appendix to Proof of Evidence - Keith McGurk - Company Overview - NLWA - Memorandum of Information
VES/1/3c	Appendix to Proof of Evidence - Keith McGurk - Company Overview - Defra Survey of Commercial and Industrial Waste Arisings 2010
VES/1/3d	Appendix to Proof of Evidence - Keith McGurk - Company Overview - Veolia Environmental Statement Non-Technical Summary August

	2012
VES/1/3e	Appendix to Proof of Evidence - Keith McGurk - Company Overview - Environment Agency - Energy from Waste Plants
VES/1/3f	Appendix to Proof of Evidence - Keith McGurk - Company Overview - Hertfordshire Waste Procurement Programme - Final Business Case
VES/1/4	Rebuttal of Proof of Evidence - Keith McGurk - Company Overview
VES/2/1	Proof of Evidence - Richard Kirkman - Technology Choice
VES/2/2	Summary to Proof of Evidence - Richard Kirkman - Technology Choice
VES/2/4	Rebuttal to Proof of Evidence - Richard Kirkman - Technology Choice
VES/2/5	Appendix to Rebuttal to Proof of Evidence - Richard Kirkman - Technology Choice
VES/2/5a	Additional letter dated 23.08.13 regarding Rebuttal to Proof of Evidence - Richard Kirkman - Technology Choice
VES/2/5b	Additional letter dated 11.06.13 regarding Rebuttal to Proof of Evidence - Richard Kirkman - Technology Choice
VES/3/1	Proof of Evidence - Paget Fulcher - Transportation and Highways
VES/3/2	Summary to Proof of Evidence - Paget Fulcher - Transportation and Highways
VES/3/3	Appendices to Proof of Evidence - Paget Fulcher - Transportation and Highways
VES/3/4	Rebuttal to Proof of Evidence - Paget Fulcher - Transportation and Highways
VES/3/5	Appendices to Rebuttal to Proof of Evidence - Paget Fulcher - Transportation and Highways
VES/4/1	Proof of Evidence - Alfred Maneylaws - Noise and Vibration
VES/4/2	Summary to Proof of Evidence - Alfred Maneylaws - Noise and Vibration
VES/4/3	Appendices to Proof of Evidence - Alfred Maneylaws - Noise and Vibration
VES/4/4	Rebuttal to Proof of Evidence - Alfred Maneylaws - Noise and Vibration
VES/5/1	Proof of Evidence - Roger Barrowcliffe - Air Quality
VES/5/2	Summary to Proof of Evidence - Roger Barrowcliffe - Air Quality
VES/5/3	Appendices to Proof of Evidence - Roger Barrowcliffe - Air Quality
VES/6/1	Proof of Evidence - Dr Jim Bridges - Health Issues Relating to Stack Emissions
VES/6/2	Summary to Proof of Evidence - Dr Jim Bridges - Health Issues Relating to Stack Emissions
VES/6/3	Appendices to Proof of Evidence - Dr Jim Bridges - Health Issues Relating to Stack Emissions

VES/7/1	Proof of Evidence - Simon Aumonier - Renewable Energy, Carbon ice & Climate Change
VES/7/2	Summary to Proof of Evidence - Simon Aumonier - Renewable Energy, Carbon Balance & Climate Change
VES/7/3	Appendices to Proof of Evidence - Simon Aumonier - Renewable Energy, Carbon Balance & Climate Change
VES/7/4	Rebuttal to Proof of Evidence - Simon Aumonier - Renewable Energy, Carbon Balance & Climate Change
VES/7/5	Extract from Simon Aumonier: Note on C&I Waste Arisings Method
VES/8/1	Proof of Evidence - Dr James Riley - Ecology
VES/8/2	Summary to Proof of Evidence - Dr James Riley - Ecology
VES/8/3	Appendices to Proof of Evidence - Dr James Riley - Ecology
VES/8/4	Rebuttal to Proof of Evidence - Dr James Riley - Ecology
VES/8/5	Appendices to Rebuttal to Proof of Evidence - Dr James Riley - Ecology
VES/9/1	Proof of Evidence - Matthew D Chard - Landscape and Visual
VES/9/2	Summary to Proof of Evidence - Matthew D Chard - Landscape and Visual
VES/9/3	Appendix to Proof of Evidence - Matthew D Chard - Landscape and Visual - Index
VES/9/3a	Appendix to Proof of Evidence - Matthew D Chard - Landscape and Visual - Impact Assessment Methodology
VES/9/3b	Appendix to Proof of Evidence - Matthew D Chard - Landscape and Visual - Landscape Character Assessment and Policy Content Summary
VES/9/3c	Appendix to Proof of Evidence - Matthew D Chard - Landscape and Visual - Schedule of Most Representative Sensitive Viewpoints
VES/9/3d	Appendix to Proof of Evidence - Matthew D Chard - Landscape and Visual - Illustrative Material Plans part 1
VES/9/3d	Appendix to Proof of Evidence - Matthew D Chard - Landscape and Visual - Illustrative Material Plans part 2
VES/9/3e	Appendix to Proof of Evidence - Matthew D Chard - Landscape and Visual - Site Appraisal Photographs
VES/9/3f	Appendix to Proof of Evidence - Matthew D Chard - Landscape and Visual - Site Context Photographs part 1
VES/9/3f	Appendix to Proof of Evidence - Matthew D Chard - Landscape and Visual - Site Context Photographs part 2
VES/9/3f	Appendix to Proof of Evidence - Matthew D Chard - Landscape and Visual - Site Context Photographs part 3
VES/9/4	Rebuttal to Proof of Evidence - Matthew Chard - Landscape
VES/9/5a	Appendix A to Rebuttal to Proof of Evidence - Matthew Chard - Landscape
VES/9/5b	Appendix B to Rebuttal to Proof of Evidence - Matthew Chard - Landscape - <i>Available in hard copy only at Inquiry Library</i>
VES/10/1	Proof of Evidence - Andrew Harris - Cultural Heritage

VES/10/2	Summary to Proof of Evidence - Andrew Harris - Cultural Heritage
VES/10/3	Appendices to Proof of Evidence - Andrew Harris - Cultural Heritage
VES/11/1	Proof of Evidence - Steven Kosky - Planning
VES/11/2	Summary to Proof of Evidence - Steven Kosky - Planning
VES/11/3	Appendices to Proof of Evidence - Steven Kosky - Planning
VES/11/4	Supplementary Proof of Evidence - Steven Kosky - Planning
	Signed Final Section 106 Agreement and plans between the County Council and Veolia
INQ/V/01	Opening Statement on behalf of Veolia
INQ/V/02	RERF - Operation of the Tipping Hall Doors
INQ/V/03	Portsmouth Facilities and School Locations
INQ/V/04	Volume of RERF
INQ/V/05	Judgement Beford BC v SoS DCLG
INQ/V/06	Stack Aviation Lighting Note
INQ/V/07	Note on WRATE caps results
INQ/V/08	Rebuttal to Health Evidence given by Margaret Eames by Dr Jim Bridges
INQ/V/08a	Addition Rebuttal to Statement of Margaret Eames by Dr Jim Bridges
INQ/V/09	Rebuttal to Statement of Margaret Eames by Roger Barrowcliffe
INQ/V/10	Footway/Cycleway Note
INQ/V/11	Crossing Hatching on Travellers Lane
INQ/V/12	Residual Waste Trends Note
INQ/V/13	Response to Transport Questions from Mick Bee
INQ/V/14	Overshadowing Assessment
INQ/V/15	Minerals Policy 10 - extract from Hertfordshire Minerals Local Plan Review - Adopted March 2007
INQ/V/16	Note in response to points raised by Tony Fletcher in evidence
INQ/V/17	Response to Herts Without Waste 'Summary of a Rebuttal to Mr Simon Aumonier's Evidence
INQ/V/18	Response to Mr Webb's 'Statement Regarding WRATE Life Cycle Assessments' on behalf of Herts Without Waste
INQ/V/19	Response to WHFoE 'Rebuttal of Mr Simon Aumonier's Evidence'
INQ/V/20	Applicability of the Design Manual for Roads and Bridges (DMBR) to Junction Layout on Travellers Lane
INQ/V/21	Southfield School and the RERF Building - Revised VES Shadow Diagram - Explanatory Note
INQ/V/22	Agreed Spreadsheet Calculation of CO2 Emissions and Vehicle Kilometres
INQ/V/23	New Barnfield s106: Estimated Cost for Noise Mitigation to Southfield School
INQ/V/24	Closing Submission on behalf of Veolia

Inquiry Documents Submitted by Hertfordshire County Council

H-IL1	Summary to Proof of Evidence - Iain Leech - Planning
H-IL2	Proof of Evidence - Iain Leech - Planning
H-IL3	<i>Not Allocated</i>
H-IL4	Rebuttal to Proof of Evidence - Iain Leech - Planning
H-IL5	Appendices to Rebuttal to Proof of Evidence - Iain Leech - Planning
H/AB/1	Summary to Proof of Evidence - Andrew Brown - Heritage
H/AB/2	Proof of Evidence - Andrew Brown - Heritage
H/AB/3	Appendices to Proof of Evidence - Andrew Brown - Heritage
H-JB01	Summary to Proof of Evidence - Jonathan Billingsley - Landscape
H-JB02	Proof of Evidence - Jonathan Billingsley - Landscape
H-JB03	Appendices to Proof of Evidence - Jonathan Billingsley - Landscape
H-JB04	Rebuttal to Proof of Evidence - Jonathan Billingsley - Landscape
H-VV1	Proof of Evidence - Vetti Vettivellu - Highways
H-VV2	Appendices to Proof of Evidence - Vetti Vettivellu - Highways
H-VV3	Rebuttal to Proof of Evidence - Vetti Vettivellu - Highways
H-VV4	Appendices to Rebuttal to Proof of Evidence - Vetti Vettivellu - Highways
H-CW1	Proof of Evidence - Caroline Wells - Education
INQ/HCC/1	Opening Submission on behalf of Hertfordshire County Council
INQ/HCC/2	National Planning Practice Guidance Extract
INQ/HCC/3A	Decision Letter 12 February 1993
INQ/HCC/3B	Inspectors Report 6 October 1992
INQ/HCC/4	Note on Contract
INQ/HCC/5	Lighting Plan
INQ/HCC/6	Diagram of New Barnfield Centre - Existing Site Users
INQ/HCC/7	New Barnfield as the 'Reference Site'
INQ/HCC/8	Comparison Transport Tables for One Site/Three Site Strategy
INQ/HCC/9	Road Safety Audit
INQ/HCC/10	Site Allocations - New Barnfield Centre and Travellers Lane
INQ/HCC/11	Note by Caroline Wells on behalf of HCC: Response to Mrs Griffin's written comments
INQ/HCC/12	HCC Consultation Document in Response to Fieldes

	Locke Application
INQ/HCC/13	Response to Technical Note of Mr Fletcher (WHBC)
INQ/HCC/14	Letter to Inspector from RDC Bowler - Hertfordshire Property & Technology dated 22 October 2013
INQ/HCC/15	Southfield School Estimate of Costs for Offsite Planting
INQ/HCC/16	Price Quote from Arborcare for resurfacing of Bridleway dated 13 February 2013
INQ/HCC/17	Closing Submission on behalf of Hertfordshire County Council

Inquiry Documents Submitted by Welwyn Hatfield Borough Council

WH/AH/1	Proof of Evidence - Anthea Hoey - Site Selection and Alternative Sites Assessment
WH/AH/1A	Appendices to Proof of Evidence - Anthea Hoey - Site Selection and Alternative Sites Assessment
WH/AH/2	Supplementary Proof of Evidence - Anthes Hoey - Site Selection and Alternatives Sites Assessment
WH/ATF/1	Proof of Evidence - Tony Fletcher - Waste Hierarchy, scale and size of proposed facility
WH/PK/1	Proof of Evidence - Patrick Kerr - Transport
WH/PK/2	Figures and Table Appendices to Proof of Evidence - Patrick Kerr - Transport
WH/PK/3	Site Access Appendix to Proof of Evidence - Patrick Kerr - Transport
WH/MF/1	Proof of Evidence - Mark Flatman - Landscape and Visual Issues
WH/MF/1A	Appendices to Proof of Evidence - Mark Flatman - Landscape and Visual Issues
WH/MF/2	Addendum to Proof of Evidence - Mark Flatman - Landscape and Visual Issues
WH/MF/2A	Appendix 1 - Addendum to Proof of Evidence - Mark Flatman - Landscape and Visual Issues
AH/MF/2B	Appendix 2 - Addendum to Proof of Evidence - Mark Flatman - Landscape and Visual Issues
WH/MW/1	Proof of Evidence - Marcus Watts - Environmental Health
WH/MW/2	Supplementary Proof of Evidence - Marcus Watts - Environmental Health
WH/SC/1	Proof of Evidence - Simon Chivers - Green Belt, Planning Policy and Planning Balance
WH/SC/2a	Appendix A to Proof of Evidence - Simon Chivers - Green Belt, Planning Policy and Planning Balance
WH/SC/2b	Appendix B to Proof of Evidence - Simon Chivers - Green Belt, Planning Policy and Planning Balance
WH/SC/2	Supplementary Proof of Evidence - Simon Chivers - Green Belt, Planning Policy and Planning Balance
WH/SC/3	Rebuttal Proof of Evidence - Simon Chivers - Green Belt, Planning Policy and Planning Balance

WH/SC/3a	Appendices to Rebuttal Proof of Evidence - Simon Chivers - Green Belt, Planning Policy and Planning Balance
INQ/WHBC/01	Opening Submission on behalf of Welwyn Hatfield Borough Council
INQ/WHBC/02	RPS Noise & Vibration ES Chapter Technical Review
INQ/WHBC/03	Extract from RPS Reg Review date June 2012
INQ/WHBC/04	Extract from DECC on Electricity Generation Figures – June 2013
INQ/WHBC/05	DEFRA Forecasting 2020 Waste Arisings
NQ/WHBC/05A	DEFRA Forecasting 2020 Waste Arisings and Treatment Capacity - Revised February 2013 Report
NQ/WHBC/05B	DEFRA Forecasting 2020 Waste Arisings and Treatment Capacity - Analysis to Inform the Review of Defra Financial Support for the Norfolk County Council Residual Waste Treatment Project
INQ/WHBC/06	Comparison Transport Tables for One Site/Three Site Strategy
INQ/WHBC/07	Technical Note Waste Core Strategy 2012 – Landfill
INQ/WHBC/08	Technical Note Waste Core Strategy 2012 – Waste Capacity
INQ/WHBC/09	Location of WHBC Background Noise Measurements
INQ/WHBC/10	Errata to Mark Flatman Evidence – Visual Effects Table
INQ/WHBC/11	Errata to Mark Flatman Evidence –Landscape Effects Table
INQ/WHBC/12	WHBC - Comments in Relation to HCC Proposed Environmental Conditions
INQ/WHBC/13	List of Barton Willmore viewpoints visited/ not visited by Mark Flatman, on behalf of Welwyn Hatfield Borough Council
INQ/WHBC/14	Closing Submission on behalf of Welwyn Hatfield Borough Council

Inquiry Documents Submitted by English Heritage

EH/1/1	Proof of Evidence - John Neale
EH/1/2	Appendices to Proof of Evidence - John Neale
INQ/EH/01	Opening Submission on behalf of English Heritage
INQ/EH/02	Not Allocated
INQ/EH/03	The Artist and the Country House
INQ/EH/04	Supplement to the Gardeners Chronicle 1874
INQ/EH/05	Closing Submission on behalf of English Heritage

Inquiry Documents Submitted by New Barnfield Action Fund

NBAF/1/1	Proof of Evidence - Cathy Roe
NBAF/1/2/1	Appendices to Proof of Evidence - Cathy Roe

NBAF/1/2/2	Appendices (Amenity Map)
NBAF/1/2/3	Appendices (photo locations)
NBAF/1/3	Summary to Proof of Evidence - Cathy Roe
NBAF/1/4	Supplementary Proof of Evidence - Cathy Roe
NBAF/2/1	Proof of Evidence - Paul Zukowskyj
NBAF/2/2	Appendices to Proof of Evidence - Paul Zukowskyj
NBAF/2/3	Supplementary Proof of Evidence - Paul Zukowskyj
NBAF/2/4	Appendices 1 to Supplementary Proof of Evidence - Paul Zukowskyj
NBAF/2/5	Appendices 2 to Supplementary Proof of Evidence - Paul Zukowskyj
NBAF/2/6	Appendices 3 to Supplementary Proof of Evidence - Paul Zukowskyj
NBAF/2/7	Summary to Supplementary Proof of Evidence - Paul Zukowskyj
NBAF/3/1	Proof of Evidence - Claire Taylor
NBAF/3/2	Supplementary Proof of Evidence - Claire Taylor
NBAF/4/1	Proof of Evidence - Cllr Dreda Gordon
NBAF/4/2	Rebuttal to Proof of Evidence - Cllr Dreda Gordon
NBAF/5/1	Proof of Evidence - Anastasia Nicholas
NBAF/5/2	Appendices to Proof of Evidence - Anastasia Nicholas
NBAF/6/1	Proof of Evidence - Adam Edwards
NBAF/6/2	Appendices to Proof of Evidence - Adam Edwards
INQ/NBAF/01	Opening Submission on behalf of New Barnfield Action Fund
INQ/NBAF/02	Response to Environmental Information request dated 11 September 2013
INQ/NBAF/03	Extract from HCC Horizons Magazine - Autumn 2011
INQ/NBAF/04	South Hatfield and Welham Green Walking Group
INQ/NBAF/05	OS map extract showing Welham Green and the New Barnfield Site
INQ/NBAF/06	Extract from the Local Plan proposals map showing the extent of the Green Belt in the Parish of North Mymms
INQ/NBAF/07	New Barnfield Zone of Theoretical Visibility
INQ/NBAF/08	Closing Submission on behalf of New Barnfield Action Fund

Inquiry Documents Submitted by Gascoyne Cecil Estates

HH/1/1	Proof of Evidence - Gavin Fauvel
HH/2/1	Proof of Evidence - Peter Clegg
HH/2/1	Supplementary Proof of Evidence - Peter Clegg

INQ/HH/01	Opening Submission of behalf of Gascoyne Cecil Estates known as Hatfield House
INQ/HH/02	Closing Submission of behalf of Gascoyne Cecil Estates known as Hatfield House

Annex A: Conditions

Time Limit

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Not less than fourteen days prior notice in writing shall be given to the Waste Planning Authority of the intended date for the commencement of any development under the terms of this permission including site preparation and construction works (but excluding the installation of boundary fencing and any construction compound) for the development of the Recycling and Energy Recovery Facility (hereinafter the RERF). Within seven days of the commencement of the development the developer shall notify the waste Planning Authority in writing which shall be hereinafter referred to as the Commencement Date. Not less than seven days prior notice shall be given by the operator to the Waste Planning Authority in writing of the intended date for the commencement of first importation of waste to the RERF, which shall be referred to hereinafter as the Commissioning Date.

Approved plans

- 3) Except as required by any other condition attached to this planning permission the development hereby permitted shall be carried out in accordance with the approved plans comprising:

- 19207/21-1/B Site Plan
- 111109_Site Plan Site Plan (A1)
- 111109 Site Plan Site Plan (A3)
- 2/2.GB.21/J Level +0.00
- 3/2.GB.21/J Level +7.00
- 4/2.GB.21/J Levels +13.00, +17.00 and +21.00
- 5/2.GB.21/J Vehicles Circulation Plan
- 6/2.GB.21/J Visitors Route Plan
- 7/2.GB.21/J Comparative Footprint
- 19207/20A Site Location Plan
- 19207/21A Site Plan
- 19207/LA/03/D Landscape Sections
- 19207/LA/11-1/D Landscape Proposals Sheet 1 of 3
- 19207/LA/11-2/D Landscape Proposals Sheet 2 of 3
- 19207/LA/11-3/D Landscape Proposals Sheet 3 of 3
- 19207/LA/14 Landscape Proposals Plan
- 19207/LA/12-1-3/B Tree Removal Strategy Sheet 1 of 3
- 19207/LA/12-2-3/B Tree Removal Strategy Sheet 2 of 3
- 19207/LA/12-3-3/A Tree Removal Strategy sheet 3 of 3
- 20/2.GB.21/J Long Section
- 21/2.GB.21/J Cross Section
- 22/2.GB.21/J South-East Façade
- 23/2.GB.21/J North-West Façade
- 24/2.GB.21/J North-East Façade
- 25/2.GB.21/J South-West Façade
- 30/2.GB.21/J Administration Plan 1 / 2
- 31/2.GB.21/J Administration Plan 2 / 2

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- 32/2.GB.21/J Gate House and Welfare Facilities
 - ST-2222-1-C Means of Access Plan Option 2B

Southfield School

- 4) With the exception of site investigation, site set up, habitat and ecological works, no development shall take whilst the school is occupied for educational purposes.

Hours of operation

- 5) The RERF may operate for 24 hours a day and 7 days a week including during bank and public holidays under the terms of this permission. This shall include receipt of waste from the Tipping Hall / Waste Bunker. There shall be no importation of waste to the site except during the hours of 0700 and 2100 daily, 7 days a week.

HGV Movements

- 6) There shall be no more than 372 HGV movements in total (186 in/186 out) to and from the site on any one week day, 128in/128 out on Saturdays and 28in/28 out on Sundays.

HGV Emergency Protocol

- 7) Before the Commissioning Date, an HGV emergency protocol shall be submitted to and approved in writing by the waste Planning authority. The protocol shall set out exceptional circumstances whereby HGV movements shall be allowed outside the hours approved under Condition 5, subject to the approval of the Waste Planning Authority. The protocol shall include a procedure for notifying local residents and businesses of any out of hours emergency HGV movements. The RERF shall be operated in accordance with the approved protocol at all times.

Signage

- 8) Before the Commencement Date, a scheme of signage shall have been submitted to and approved in writing by the local planning authority. The submitted scheme shall include specifications for road signs warning drivers of pedestrians/cyclists to be located at an approved point near the access road crossing and signs for other road users warning them of the presence of HGVs. The approved scheme shall be implemented prior to the Commissioning Date and the signage shall thereafter be retained throughout the period of the operation of the RERF.

Access Arrangements

- 9) Within 12 months of the Commencement Date full engineering details including road specification, drainage, pedestrian crossing details and street lighting of the new access road serving the site from Travellers Lane shall have been submitted to and approved in writing by the Waste Planning Authority. The development hereby permitted shall not be first brought into use until these highway works have been constructed in accordance with the approved details. The highway works shall thereafter be retained throughout the period of operation of the RERF. Prior to the Commissioning Date all parking / turning / servicing areas shall be surfaced and marked and thereafter retained throughout the period of operation of the RERF.

Site Waste Management Plan

- 10) Prior to the Commencement Date a detailed Site Waste Management Plan shall have been submitted to and approved in writing by the Waste Planning Authority. The Plan shall identify the main waste materials expected to be generated by the development during construction and subsequent operation of the Site and set out measures for dealing with such materials so as to minimise waste and to maximise re-use, recycling and recovery, including:
- i. Any additional information on waste generated prior to the construction phase including detailed site investigation activities and contract documentation.
 - ii. The intended arrangements for managing construction waste (including the re-use of bulk earthworks on site).
 - iii. The proposed measures for waste minimisation during the construction phase and during subsequent site operation. The Plan shall thereafter be implemented in accordance with the approved details throughout the construction period and throughout the period of operation of the RERF.

External Storage of Goods

- 11) There shall be no external storage of materials on site except in the case of emergencies.

Noise Baseline Survey

- 12) No development shall take place until a scheme for the measurement and reporting of baseline noise levels has been submitted to and approved in writing by the Waste Planning Authority. The scheme shall include:
- i. Confirmation of all off site noise sensitive properties and locations
 - ii. Confirmation of noise monitoring locations
 - iii. Survey methodology
 - iv. Reporting procedures

Prior to the commencement of the development the baseline noise levels survey shall be carried out in accordance with the approved scheme and the results submitted for the written approval of the Waste Planning Authority.

Noise Propagation Modelling

- 13) Prior to the commencement of development a scheme detailing the noise propagation modelling throughout the construction and operational period using SoundPLAN or other suitable programme shall be submitted for the written approval of the Waste Planning Authority. The approved scheme shall be implemented in full.

Noise Minimisation Scheme

- 14) Prior to the Commencement Date an On-Site Construction and Operation Noise Minimisation Scheme shall have been submitted to and approved in writing by the Waste Planning Authority. The Scheme shall include details

of the noise attenuation measures to be applied during the construction phase, and during subsequent operation of the Site, including:

- i. Details of how all vehicles and mechanical plant employed at the Site shall be fitted with exhaust silencers which shall be maintained **in accordance with the manufacturer's specification**.
- ii. Details of all plant and machinery which shall be used, including selection of sound reduced compressors fitted with acoustic enclosures, and fitting of mufflers or silencers in accordance with **manufacturer's recommendations to all ancillary pneumatic percussive tools** employed at the Site.
- iii. A requirement that machines in intermittent use shall be shut down or throttled down in the intervening periods when not in use.
- iv. Details demonstrating how all ancillary plant such as generators, compressors and pumps shall be positioned so as to take into account noise sensitive receptors.
- v. A scheme for the operation of external doors to minimise periods when they would be open.

The Scheme shall be implemented in accordance with the approved details throughout the construction period and throughout the period of operation of the RERF. All vehicles and plant based at and operating within the Site which requires reversing alarms shall be fitted with attenuated reversing alarms. Details of the types of reversing alarm proposed to be fitted to vehicles and plant under the terms of this condition shall have been submitted and approved in writing by the local planning authority prior to the Commissioning Date. The approved alarms shall be fitted to all relevant plant and vehicles and shall thereafter be retained in accordance with the submitted scheme throughout the period of operation of the RERF.

Noise Monitoring Scheme

- 15) Prior to the Commissioning Date a scheme providing for the monitoring of noise levels attributable to the RERF shall have been submitted to and approved in writing by the Waste Planning Authority. The scheme required by this condition shall make provision for the following:
 - i. An initial period of noise monitoring for an approved period following the Commissioning Date including an octave band analysis and the results to be provided to the Waste Planning Authority.
 - ii. Provision for the operator to undertake subsequent noise monitoring at an approved location or locations in the event that a complaint attributable to noise emission from the Site has been received by the Waste Planning Authority and subsequently notified to the operator following evaluation by the Waste Planning Authority.

The scheme shall be implemented in accordance with the approved details throughout the period of operation of the RERF.

Noise levels

- 16) Noise emitted from plant located at the site shall not exceed the existing background noise level at any time by more than 5dB(A) at any noise sensitive property (as shown on plan number N1) when measured and corrected in accordance with BS 4142: 1997.

Dust Management Scheme

- 17) Prior to the Commissioning Date a dust monitoring and management scheme for the operation of the RERF shall have been submitted to and approved in writing by the Waste Planning Authority. The scheme shall include provision for:
- i. An initial survey at approved receptor locations surrounding the Site for an approved period following the Commissioning Date.
 - ii. Provision for subsequent monitoring at an approved location or locations in the event that a complaint which has been evaluated and notified to the operator by the Waste Planning Authority attributable to dust emission from the Site.
 - iii. Identification of dust generating activities.
 - iv. Submission of measures and identification of thresholds to minimise emissions into the atmosphere from dust generating activities.

The scheme shall be implemented in accordance with the approved details throughout the period of operation of the RERF.

Complaints Procedure

- 18) Prior to the Commencement Date a scheme setting out procedures for dealing with complaints in relation to noise, dust, litter, odour and other amenity related matters shall have been submitted to and approved in writing by the Waste Planning Authority. The scheme shall set out a procedure for recording and responding to complaints received directly from third parties to the operator and those notified by the Waste Planning Authority. This shall include:
- i. point of contact details for logging a complaint
 - ii. Investigation of the complaint.
 - iii. Reporting the results of the investigation to the complainant/ Waste Planning Authority.
 - iv. Implementation of any remedial actions approved by the Waste Planning Authority within an approved timescale.

The scheme shall be implemented in accordance with the approved details throughout the period of operation of the RERF.

Construction Environmental Management Plan

- 19) Before the Commencement Date a Construction Environmental Management Plan providing details about environmental control procedures during the construction phase shall have been submitted to and approved in writing by the Waste Planning Authority. The Plan shall incorporate the following details:

-
- i. Identification of construction noise limits;
 - ii. Construction noise monitoring scheme;
 - iii. Proposed dust management measures;
 - iv. Proposals for hours of working, which limit the carrying out of construction works to between 0730 and 1900 hours on Mondays to Saturdays with no construction on Sundays and Bank Holidays with the exception of specified construction activities as set out within the Plan;
 - v. **Details of the construction workers' compound including car parking;**
 - vi. Proposed wheel cleaning measures;
 - vii. Proposed measures for protecting water resources;
 - viii. Proposed measures for handling wastes during construction;
 - ix. Proposed measures for routing of construction traffic and deliveries;
 - x. Details of the phasing of the construction works;
 - xi. Proposed measures for the protection of retained trees and hedges.

The Construction Management Plan shall be implemented fully in accordance with the approved details for the duration of the construction works being carried out on the Site.

Operational Management Plan

- 20) Before the Commissioning Date, an Operational Management Plan shall be submitted to and approved in writing by the Local Planning Authority. This Plan shall include the following details:
 - i. sheeting of open vehicles to prevent windblown litter;
 - ii. pollution control measures to prevent run off from process areas (including during a storm event);
 - iii. management of windblown debris within the site;
 - iv. management of tipping hall entrance to ensure that doors are only open to allow vehicles to enter and exit;
 - v. contingency plans for spillages of oils and hydrocarbons from vehicles and stored materials.
 - vi. emissions monitoring and reporting methods;
 - vii. dust management including dust from the Bottom Ash;
 - viii. establishment of a Community Liaison Group to communicate performance of the facility and address any concerns or issues (including membership and frequency of meetings).
 - ix. management of the visitor facility (including parking arrangements).

The Management Plan approved shall be implemented for the duration of the operational life of the RERF, unless otherwise agreed in writing by the Waste Planning Authority.

Materials

- 21) Prior to their installation, the details of all surface treatment works for the proposed buildings and structures including brickwork, cladding and colours (BS reference) shall have been submitted to and approved in writing by the Waste Planning Authority
- 22) Details of the design of all fences or gates to be erected, their position and a timetable for their implementation shall have been submitted to and approved in writing by the Waste Planning Authority prior to the Commissioning Date and shall be implemented in accordance with the approved details and thereafter retained.

Acoustic Fencing

- 23) Prior to the reoccupation of Southfield School, acoustic fencing and a solid gate shall be installed on the school boundary in accordance with details to be submitted to and approved in writing by the Waste Planning Authority.

Lighting Scheme

- 24) Within 6 months of the Commencement Date a lighting scheme shall have been submitted to and approved in writing by the Waste Planning Authority. The submitted scheme shall include the following details:
 - i. Hours of use of external lighting and internal lighting that would be visible externally;
 - ii. The exact location and specification of any external lighting;
 - iii. The specification including height for any fixed or mobile structures;
 - iv. The intensity of the lights;
 - v. The identification of areas to be illuminated and any measures to prevent light spilling on to areas outside the Site;
 - vi. Measures such as shrouding to minimise disturbance through glare;
 - vii. Measures to minimise disturbance to bats from lighting;
 - viii. **Details about any translucent parts of the building's external fabric or cladding, including the degree of transparency of materials, and any measures to minimise light spillage.**

No aviation warning or safety light shall be fitted to the flue stack unless details of the proposed lighting have first been submitted to and approved in writing by the local planning authority. The lighting scheme, along with any aviation warning or safety lights, shall be implemented in accordance with the approved details and thereafter retained throughout the period of operation of the RERF.

Heavy Goods Vehicle Parking

- 25) There shall be no queuing or parking of HGVs on the site access road or on Travellers Lane.

Foul and Surface Water Drainage Works

- 26) Within six months of the Commencement Date, a scheme for the drainage of all water from inside the RERF shall be submitted to and approved in

writing by the Waste Planning Authority. The approved scheme shall be implemented in full prior to the RERF coming into operation and thereafter retained throughout the life of the RERF.

Surface Water Drainage

- 27) Before the Commencement Date, a surface water drainage scheme for the site (based on sustainable drainage principles and including an assessment of the hydrological and hydro-geological context of the development) shall be submitted and approved in writing by the Waste Planning Authority. Once approved, the scheme shall be implemented in full prior to the RERF coming into operation, and thereafter retained throughout the life of the RERF.

Flood Risk

- 28) Before the Commencement Date, a scheme for managing flood risk shall be submitted to and approved in writing by the Waste Planning Authority. The scheme shall provide details of the following mitigation measures as set out in the Flood Risk Assessment, Revision 02, Final, November 2011:
- i. Limiting the surface water run-off generated by the 1 in 100 chance in any year critical storm event to Greenfield rates;
 - ii. Provision of compensatory storage on site to attenuate all storm events up to and including the 1 in 100 chance in any year event;
 - iii. Optimised use of sustainable drainage systems including green roofs and rainwater harvesting.

Groundwater Protection

- 29) Before the Commencement Date the following components of a scheme to deal with the risk associated with contamination of the site shall each be submitted to and approved in writing by the Waste Planning Authority
- i. A site investigation scheme, based on the Preliminary Risk Assessment, to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 - ii. The site investigation results and the detailed risk assessment and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 - iii. A verification plan providing details of the data that will be collected in order to demonstrate the works set out in (b) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
- 30) Prior to the Commissioning Date, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Waste Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a long-term monitoring and

maintenance plan) for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Waste Planning Authority.

- 31) Reports on monitoring, maintenance and any contingency action carried out in accordance with a long term monitoring and maintenance plan (as provided for in condition 30 above) shall be submitted to the Waste Planning Authority as set out in that plan. On completion of the monitoring programme a final report demonstrating that all long term site remediation criteria have been met and documenting the decision to cease monitoring shall be submitted to and approved in writing by the Waste Planning Authority.
- 32) If, during development, contamination not previously identified is found to be present at the site then no further development within 10m of the contaminated area (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Waste Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.
- 33) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Waste Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

Storage of Oils, Fuels or Chemicals

- 34) Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank, vessel or the combined capacity of interconnected tanks or vessels plus 10%. All filling points, associated pipework, vents, gauges and sight glasses must be located within the bund or have separate secondary containment. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework shall be located above ground and protected from accidental damage. All filling points and tank/vessels overflow pipe outlets shall be detailed to discharge downwards into the bund.

Protected Species

- 35) Before the Commencement Date, Great Crested Newt and Bat mitigation schemes shall be submitted to and approved in writing by the Waste Planning Authority. Once approved, the schemes shall be implemented in full.

Habitat Management Scheme

- 36) Prior to the Commissioning Date a habitat management scheme shall have been submitted to and approved in writing by the Waste Planning Authority. The plan shall provide clarification of the habitat management

measures to be implemented. The scheme shall include details of proposed measures for the management of:

- i. Proposed tree / woodland areas;
- ii. Grassland;
- iii. Ponds;
- iv. The Great Crested Newt and bat habitat;
- v. Monitoring scheme of habitat areas and species;
- vi. Submission of monitoring information to the Waste Planning Authority.

Operations shall be carried out in accordance with the approved details throughout the period of operation of the RERF.

Landscaping Scheme

37) Before the Commencement Date a scheme for the permanent landscaping / screening and planting of the Site shall have been submitted to and approved in writing by the Waste Planning Authority. The scheme shall include:

- i. A detailed plan of all established trees and shrubs and existing planting within the Site which are to be retained and measures for their protection during construction;
- ii. A detailed plan of the location of the proposed planting areas to supplement the Landscape Masterplan accompanying the ES.
- iii. Details and specification of planting including the species, specification, origin, method and density of planting, protection, addition of soil ameliorants, and a timetable for implementation.
- iv. All existing hedgerows, shrubs and trees on the margins of the Site which are shown to be retained in accordance with the scheme and all new planting at the Site shall be retained and protected from damage throughout the period of operation of the RERF in accordance with the approved scheme.
- v. Any plants, shrubs or grass areas that are dead, dying or diseased within the first five years following planting shall be replaced by equivalent stock/seed in the next planting season. Details of any replacement planting shall be submitted to and approved in writing by the Waste Planning Authority before being carried out.

The approved Scheme shall be implemented in the first planting season following the commencement of development or in accordance with the approved timetable.

38) All vegetation and tree clearance shall only take place outside of the peak bird-breeding season (March to August inclusive) unless otherwise a pre-clearance survey which shows that no breeding birds are present, nesting or commencing nesting within the vegetation to be affected has been submitted to and approved in writing by the Waste Planning Authority.

Archaeological Works

- 39) No demolition/development shall take place until an Archaeological Written Scheme of Investigation has been submitted to and approved by the Waste Planning Authority in writing. The scheme shall include an assessment of archaeological significance and:
- i. A programme and methodology of site investigation and recording as suggested by the archaeological evaluation;
 - ii. A programme for post investigation assessment;
 - iii. Provision to be made for analysis of the site investigation and recording;
 - iv. Provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v. Provision to be made for archive deposition of the analysis and records of the site investigation;
 - vi. Nomination of a competent person or persons/organisation to undertake the works set out within the Archaeological Written Scheme of Investigation.
- 40) The demolition/development shall take place/commence in accordance with the programme of archaeological works set out in the Written Scheme of Investigation approved under Condition 37.
- 41) Prior to the Commissioning Date the site investigation and post investigation assessment shall be completed in accordance with the programme set out in the Written Scheme of Investigation approved under Condition 37 and the provision made for analysis and publication where appropriate.

Monitoring

- 42) Within 12 months of the Commissioning Date, a monitoring schedule shall be submitted to and approved by the Waste Planning Authority. The schedule shall set out a timetable for the submission of annual waste throughput figures to the Waste Planning Authority including the amount of waste recycled on an annual basis in accordance with the approved monitoring schedule.

Decommissioning

- 43) Not less than 6 months prior to any planned date for the permanent decommissioning of the development hereby permitted the operator shall submit in writing to the Waste Planning Authority a scheme for the proposed decommissioning of any elements of the development which are not required in connection with the subsequent after use of the Site and a timetable for these works. Such plans shall make provision for leaving the Site in a condition suitable for future development or full site restoration. No works of decommissioning shall take place until the scheme has been approved in writing by the Waste Planning Authority. The decommissioning shall be carried out in accordance with the approved scheme.

Grid Connection

- 44) No combustion of waste shall take place at the RERF apart from during commissioning until a grid connection to a substation has been installed and is capable of transmitting electricity generated by the RERF. No waste may then be combusted at the RERF unless electricity is also being generated by the RERF and is being transmitted to the national grid, except during periods of maintenance, inspection or repair, or at the direction of the holder of a licence under section 6(1) (b) or (c) of the Electricity Act 1989, who is entitled to give such direction in relation to transmission of electricity from the RERF to the national grid.

Combined Heat and Power scheme

- 45) Before the Commencement Date, a scheme shall be submitted and approved in writing by the Waste Planning Authority setting out a scheme for the investigation of opportunities to provide off site power and heating and details of on site infrastructure and pipe work to ensure the RERF would be ready to provide off site heating and power.

Travel Plan

- 46) Before the Commencement Date, a travel plan shall be submitted to and approved in writing by the Waste Planning authority. The travel plan shall encourage the use of public transport by staff and visitors to the site and include provision of buses to bring construction workers to the site during construction works. Once approved, the travel plan shall be implemented in full.

Publication of emissions monitoring data

- 47) Before the Commissioning Date, a protocol setting out the publication of emissions monitoring data online and on a monthly basis as well as publication of contact details and a complaints procedure shall be submitted to and approved in writing by the Waste Planning Authority. Once approved, the protocol shall be implemented in full.

RERF Visitor Centre

- 48) Before the Commissioning date, a protocol for the wider use of the visitor centre for local educational and community uses shall be submitted and approved in writing by the Waste Planning Authority. The Visitor Centre shall then be operated in accordance with the approved protocol at all times.



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.