



Department for  
Communities and  
Local Government

Graham Bolton  
The Graham Bolton Planning Partnership Ltd  
Onward Buildings  
207 Deansgate  
Manchester  
M3 3NW

Our Ref: APP/A3010/A/13/2201459  
Your Ref: 06/2497/PA/CI

21 October 2014

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY JG PEARS (NEWARK) LTD  
MARNHAM ROAD, LOW MARNHAM, NEWARK, NOTTINGHAMSHIRE, NG23  
6SL - APPLICATION REF 30/11/00005**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mrs K A Ellison BA MPhil MRTPI, who held a public local inquiry on 14-17, 21-23 and 30 January 2014 into your client's appeal against a decision of Bassetlaw District Council (the Council) to refuse planning permission for a biomass fuelled combined heat and power plant, auxiliary boilers, product silos, new offices, revised trailer and car parking, associated facilities, landscaping and internal circulation roads at Marnham Road, Low Marnham, Newark, Nottinghamshire, NG23 6SL in accordance with application reference 30/11/00005 dated 20 December 2011.
2. On 20 December 2013 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990 on the grounds that it involves proposals of major significance for the delivery of the Government's climate change programme and energy policies.

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

3. The Inspector recommended that planning permission be granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with her 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. In reaching this position the Secretary of State has taken into account the Environmental Statement (ES) which was submitted in December 2011 and the revised Environmental Statement (revised ES) submitted in August 2012 (IR26). The Secretary of State agrees with the Inspector (IR235) that the revised ES provides adequate information on the likely main impacts of the proposed development and the mitigation measures that may be required so that it is adequate and meets the requirements of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.
5. Having had regard to the Inspector's comments at IR4, the Secretary of State agrees with her that the notification procedure referred to in that paragraph was carried out in accordance with the spirit of the Inquiries Procedure Rules and that no prejudice has been caused to parties with an interest in the appeal.

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

6. The Secretary of State wrote on 11 July 2014 to the main inquiry parties, inviting comment on the implications for this case of the Court of Appeal decision in *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council and others* [2014] EWCA Civ 137. The responses received were circulated to the main parties for further comment on 28 July 2014. In coming to his decision on the appeal before him the Secretary of State has taken into account the representations received in this respect, which are listed at Annex A to this letter.
7. The Secretary of State is also in receipt of the following correspondence received following the close of the inquiry: J V Machin dated 9 April; J V Machin dated 23 April; Charles Low dated 20 May; and from yourself on behalf of your client dated 22 September 2014. He has carefully considered these representations but does not consider that they raise new matters that would affect his decision. Copies of the representations referred to in paragraphs 6 and 7 can be provided on application to the address at the bottom of the first page of this letter.

### **Policy considerations**

8. In deciding the appeal 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.
9. In this case the development plan comprises the Bassetlaw Core Strategy and Development Management Policies DPD (CSDMP) which was adopted in 2011. The Secretary of State considers that the development plan policies most relevant to the appeal are those identified by the Inspector at IR14-19.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework); the planning guidance; the National Policy Statements, the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for

Renewable Energy (EN-3); the Bassetlaw Landscape Character Assessment; and the CIL regulations.

11. 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 potentially affected by the proposals before him or their settings or any features of special architectural or historic interest which they may possess.

### **Main issues**

12. The Secretary of State considers that the main issues in this case are those identified by the Inspector at IR236.

### **Landscape character and visual impact**

13. For the reasons given by the Inspector at IR237-242 the Secretary of State agrees with her view at IR243 that the Landscape and Visual Impact Assessment's conclusion that the landscape is of medium sensitivity, which is in line with that of the Landscape Character Assessment, provides an appropriate basis for the evaluation of landscape effects. He also agrees with the Inspector, for the reasons given at IR244-246 that, in weakening the landscape pattern, the proposal would have a moderately adverse effect on its character (IR246). The Secretary of State has carefully considered the Inspector's assessment of visual effects at IR247-257 and, on the issue of external lighting associated with the Combined Heat and Power (CHP) plant, agrees that this would not materially add to the visibility of the overall site in the landscape except for the chimney (IR257). Having also had regard to the Inspector's comments at IR258-263, the Secretary of State agrees with her conclusion at IR263 that, despite measures to mitigate the impact, the proposal would exert an urbanising influence on this rural landscape, to the detriment of the pastoral character of the policy zone and it would fail to demonstrate compatibility with policies to safeguard landscape character, as sought by CSDMP policy DM10A(i)

### **Effect on the heritage interest of listed buildings**

14. The Secretary of State agrees with the Inspector's reasoning and conclusions regarding the effect on the heritage interest of listed buildings at IR264-274. In terms of the Grade 1 listed St Wilfrid's Church, he notes that, having viewed the church and its surroundings, the Inspector sees no reason to take issue with the analysis of its significance provided by the appellant (IR265). The Secretary of State has also taken into account the response of English Heritage when consulted about the proposed Thermal Oxidiser that the existing factory with its associated chimneys is recognised as already having had a harmful impact (IR266).
15. The Secretary of State has given careful consideration to the Inspector's assessment on views in respect of St Wilfrid's at IR267-270, and has taken into account the concern of Pears Action Group (PAG) that, because the CHP plant would intrude into several different views of and from the church, there is a risk of cumulative harm (IR272). He agrees with the Inspector's conclusion at IR272

that, although the effect on the more important views close to the church would be offset to some extent by a reduction in ambient noise levels, particular harm to the setting would arise with regard to the medium distance views of the church in relation to the village, especially from the south (IR272). However, he has also taken into account the Inspector's view that the high quality interior of St Wilfrid's, which has been identified as the key element of heritage interest would not be affected by the proposal and that there was general agreement that the harm to significance would be less than substantial in the terms of Framework paragraph 134. With regards The Grange, for the reasons given at IR271 the Secretary of State agrees with the Inspector that there would be some harm to its immediate environs (IR272).

16. For the reasons given by the Inspector, like her, the Secretary of State does not agree with the appellant's argument that CSDMP policy DM8 is not wholly consistent with the Framework and should attract less weight (IR273). Overall he agrees with the Inspector that the proposal would result in less than substantial harm to the significance of the church and the farmhouse, but would nevertheless be contrary to LP policy DM8. The Secretary of State has come to his conclusions on this matter taking into account his duties in the LB Act as set out in paragraph 11 above and attaches considerable weight and importance to the harm he has identified to the St Wilfrid's Church and the Grange.

#### Living conditions

17. Having had regard to the Inspector's comments at IR275-276, the Secretary of State, like the Inspector, acknowledges the wealth of evidence from PAG and local residents that living conditions have already suffered as a consequence of the existing operation (IR276). However, he agrees with her that when assessing the impact of the proposal on living conditions, the focus must be on the likely effects of the appeal proposal itself rather than any problems associated with the existing rendering operation (IR276).

#### The adequacy of the local highway network and HGV movements

18. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR277-282. He agrees that the evidence does not suggest that the local highway is inadequate to cater safely for the additional traffic which would be generated by the proposals (IR279) and also that, given the number and timing of the additional traffic movements, the proposal would not impose an unacceptable level of further intrusion on the occupants of dwellings that sit very close to the road (IR282).

#### Emissions of odour and noise

19. The Secretary of State agrees with the Inspector's reasoning and conclusions regarding emissions of odour and noise at IR283-286. In respect of the smell from passing lorries, he notes that it seems that offensive odours do escape from these vehicles on occasions, notwithstanding the controls in place, and agrees that if that pattern was repeated there would appear to be some risk of additional harm to local amenity in this respect (IR284). The Secretary of State also notes that there is evidence that the community has not raised objections to the use of

chicken litter on fields in the locality or its presence on the road network and, like the Inspector, he considers that whilst the possibility of spillages in relation to the feedstock for the CHP plant cannot be ruled out, any effect on amenity would be very limited (IR284). He has taken into account that the Noise Assessment indicates that there would be an enhancement with regard to the current noise environment at Church Farm Cottage (IR285) and he agrees that any improvement in terms of odours from the animal rendering process does not constitute a planning consideration that could weigh in favour of the proposals (IR286).

#### Evidence as to the effect of predicted emissions on human health

20. For the reasons given at IR287-289, the Secretary of State agrees with the Inspector's conclusion that, although the concerns expressed by PAG and others living locally are understandable, the evidence does not suggest that the predicted emissions from the proposed development would have an adverse effect on health and that, in the absence of objective justification, these concerns can be accorded little weight (IR290).

#### Contribution to the climate change programme and energy policies

21. The Secretary of State notes that the CHP plant would produce 30 tonnes of steam per hour for factory use as well as 7Mw of electricity; and that it is expected that 4Mw would be exported to the National Grid on weekdays and 9Mw at weekends (IR291). For the reasons given by the Inspector he agrees that it is reasonable to assess the proposal on the basis that it would save some 138,300 to 172,700 tonnes CO<sub>2</sub> per annum (IR291). The Secretary of State also agrees that the scheme would overcome the particular problem faced by CHP schemes, in being located specifically to serve an identified end user for the heat produced in energy generation and that, although there may well be competition in the future for supplies of poultry litter or coppice wood, there appears to be a fair prospect of establishing a reasonably secure fuel supply (IR293). Overall, like the Inspector (IR294) he concludes that the proposal would make a valuable, if modest, contribution to the delivery of the Government's climate change programme and energy policies.

#### Compliance with the development plan

22. Having had regard to the Inspector's reasoning at IR295-309, the Secretary of State agrees with the Inspector that the proposal can call on the support of 'key' CSDMP policy DM10 (IR310), although he also agrees that this is qualified by the fact it is unable to demonstrate compatibility with DM4 and DM8 (IR306); that DM7 also provides particular support (IR310); and that there is also support from DM1 (IR310). He agrees that conflict would arise in respect of CSDMP policy DM4 (IR303) and with DM8 (IR305). In respect of DM8, he has taken into account his duties in the LB Act as set out in paragraph 11 above, and has given considerable importance and weight to the harm he has identified to St Wilfrid's and to the Grange. However he shares the Inspector's conclusion that the overall balance weighs in favour of the proposal and it can be judged as being in accordance with the development plan taken as a whole (IR310).

### Whether the proposal would constitute sustainable development

23. The Secretary of State has had regard to the Inspector's assessment of whether the proposal would constitute sustainable development at IR311-319. Having also had regard to Framework paragraph 14, the Secretary of State is not of the view that this is a case where the development plan is absent, silent or relevant policies are out-of-date. However, he shares the Inspector's assessment that, against the policies in the Framework as a whole, the proposal represents a sustainable form of development (IR319).

### Conditions

24. The Secretary of State has considered the proposed conditions at Annex 1 to the IR, the Inspector's comments at IR320-324, national policy set out at paragraphs 203 and 206 of the Framework and the planning guidance. He is satisfied that the proposed conditions, as reproduced at Annex B of this letter, are necessary and meet the other tests identified at paragraph 206 of the Framework.

### Obligation

25. The Secretary of State has considered the planning obligation submitted by the appellant, the Inspector's comments at IR325, national policy set out at paragraphs 203-205 of the Framework, the planning guidance and the CIL regulations. He agrees with the Inspector (IR325) that the measures in the submitted planning obligation are necessary to make the development acceptable in planning terms, and is satisfied that they meet the other tests set out in the CIL regulations.

### Overall Conclusions

26. The Secretary of State has had regard to the Inspector's overall conclusions at IR326. He has found that the proposal would exert an urbanising influence on the rural landscape and would fail to demonstrate compatibility with policies to safeguard landscape character; and that it would also result in less than substantial harm to the significance of St Wilfrid's church and the Grange to which he attaches considerable importance and weight. However, the Secretary of State has also found that the proposal overcomes the particular problem faced by CHP schemes by being located specifically to serve an identified end user and would make a valuable if modest contribution to the delivery of the Government's climate change programme and energy policies. Overall, the Secretary of State concludes that the proposals are in accordance with the development plan taken as a whole and that, considered against the policies of the Framework as a whole, that the proposal represents a sustainable form of development.

### Formal Decision

27. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for a biomass fuelled combined heat and power plant, auxiliary boilers, product silos, new offices, revised trailer and car parking,

associated facilities, landscaping and internal circulation roads at Marnham Road, Low Marnham, Newark, Nottinghamshire, NG23 6SL in accordance with application reference 30/11/00005 dated 20 December 2011 subject to the conditions at Annex B of this letter.

28. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
29. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
30. 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**

31. 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.
32. A copy of this letter has been sent to Bassetlaw District Council and the Pears Action Group. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**James Henderson**

Authorised by Secretary of State to sign in that behalf

## **Annex A**

<b>Representations received in response to the letter of 11 July 2014</b>	
18 July 2014	Bassetlaw District Council
24 July 2014	Pears Action Group
25 July 2014	Graham Bolton Partnership

<b>Representations received in response to the email of 28 July 2014</b>	
30 July 2014	Bassetlaw District Council
3 August 2014	Pears Action Group
4 August 2014	Graham Bolton Partnership



## **Annex B – planning conditions**

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans and drawings:

- Location Plan – 1:50000
- 2008-1546-24 Existing Site Plan 1:500
- 2008-1546-25D Proposed Site Plan 1:500
- 2008-1546-26A Location Plan – Site Edged Red 1:1250
- 2008-1546-27A CHP Plant Plans and Elevations 1:200
- 2008-1546-28A CHP Plant Elevations 1:200
- 2008-1546-29 – Office Building 1:100
- 2008-1546-30 – Security Lodge Building 1:100
- 2008-1546-31C – Site Elevations 1:500
- 2008-1546-36 – Tank Farm 1:200
- 2008-1546-37 – Lorry Wash 1:100
- 2008-1546-38 – Proposed Earth Bund Sections 1:500
- 2008-1546-52 – Proposed Earth Bund Section D
- Landscape Mitigation Plan, dwg no 414A.02C

3) No development shall take place until a scheme for the phased implementation of the development has been submitted to and approved in writing by the local planning authority.

4) No development shall take place other than in accord with the approved phasing scheme until full details of both hard and soft landscape and boundary treatment, including security and acoustic fencing and indications of all existing trees and hedgerows on the land and details of any to be retained, together with measures for their protection in the course of development, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. Soft landscape works shall include planting plans, written specifications (including cultivation and other operations associated with plant and grass establishment), schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate and implementation programme.

5) No development shall take place other than in accordance with the approved phasing scheme until an Ecological and Landscape Management Plan for the establishment and on-going maintenance of the approved landscaping and planting scheme has been submitted to and approved in writing by the local planning authority. The Plan shall also detail proposals to promote biodiversity including protection of the sand martin nesting area, provision of bat roosting features and opportunities for nesting birds. The landscaping scheme shall be managed in accordance with the terms of the approved management plan.

6) No development shall commence until samples of all external materials have been submitted to and agreed in writing by the local planning authority. Development shall be carried out as approved.

7) No development shall commence until a scheme for all outdoor lighting of the development, including the recommendations encompassed in the Environmental Statement revised, and the site has been submitted to and agreed in writing by the local planning authority. The Scheme shall include details of the location, height, design, sensors, hours of operation and luminance of all proposed lighting and a programme for its installation. The lighting shall be designed to minimise the potential annoyance of light spillage to areas beyond the factory premises and shall be implemented in full accordance with the approved details.

8) No HGVs delivering to or from the combined heat and power plant shall enter or leave the site except between the hours of 07:00 am to 19:00, Monday to Friday, and 07:00 to 13:00 on Saturdays.

9) Before the combined heat and power plant is brought into use, the revised access, parking and turning areas shall be laid out in accordance with the approved plans and surfaced and drained in accordance with details to be submitted to and approved in writing by the local planning authority. The parking and turning areas shall not be used thereafter for any purpose other than the parking or turning of vehicles.

10) The CHP plant shall not be brought into use until a Travel Plan has been submitted to and approved in writing by the local planning authority. The Travel Plan shall set out proposals (including targets, a timetable and enforcement mechanism) to promote travel by sustainable modes and shall include arrangements for monitoring of progress of the proposals. The Travel Plan shall be implemented in accordance with the timetable set out in that plan.

11) The development hereby permitted shall be carried out in accordance with the Flood Risk Assessment (FRA) August 2012, FRA Addendum and the following mitigation measures detailed within the FRA: -

- i. The proposed site run/off has been reduced by the proposed roof runoff collection and the additional surface runoff will be dealt with on site using the existing water treatment plant.
- ii. Provision of compensatory flood storage as detailed in section 5.2.1 of the FRA Addendum.
- iii. Finished floor levels are set no lower than 8.3m above Ordnance Datum (AOD).
- iv. Minimum flood protection floor level of no lower than 9m AOD for the fuel store and turbine rooms.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the approved timing/phasing scheme.

12) Aviation warning lighting to with a minimum intensity of 25 candela omni-directional red light or equivalent infra-red light shall be fitted at the highest practicable point of the chimney when first erected in accordance with details to be submitted to and agreed in writing by the Local Planning Authority and maintained permanently thereafter.

13) Should the rendering plant cease to operate the CHP plant shall cease operation and be removed within 12 months of the closure of the rendering plant.

14) Within 6 months of the commencement of development of the combined heat and power plant, a scheme shall be submitted to and approved in writing by the local planning authority to restore the land to its condition before development of the combined heat and power plant took place (or as otherwise agreed in writing by the local planning authority). The scheme shall address the removal of the boiler house and fuel storage buildings and the chimney and include details of restoration, including a timetable for restoration works. The restoration works shall be carried out in accordance with the approved details and within such timescale as specified.

15) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- v. wheel washing facilities
- vi. measures to control the emission of dust and dirt during construction
- vii. a scheme for recycling/disposing of waste resulting from demolition and construction works
- viii. hours of demolition or construction works, which shall not take place outside 07.00-19.00 Mondays to Fridays and 07.00-13.00 on Saturdays and not at any time on Sundays or Bank Holidays.

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

by Mrs K.A. Ellison BA, MPhil, MRTPI

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

Date 22 April 2014

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Town and Country Planning Act 1990

Bassetlaw District Council

Appeal by

JG Pears (Newark) Ltd

Inquiry held on 14-17, 21-23 and 30 January 2014

Marnham Road, Low Marnham, Newark, Nottinghamshire NG23 6SL

Report: APP/A3010/A/13/2201459

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## Abbreviations

AQA	air quality assessment
BSEM	British Society for Ecological Medicine
CS	Core Strategy
CD	Inquiry Core Document
EA	Environment Agency
EH	English Heritage
EN-1	Overarching National Policy Statement for Energy
EN-3	National Policy Statement for Renewable Energy Infrastructure
ES	Environmental Statement
ESr	Revised Environmental Statement
NPPF	National Planning Policy Framework
LVIA	Landscape and Visual Impact Assessment
GLVIA/ GLVIA3	Guidelines for Landscape and Visual Impact Assessment, Third Edition, Landscape Institute
HPA	Health Protection Agency
ID	Inquiry Document – document submitted during the Inquiry
LCA	Landscape Character Assessment
MBM	Meat and bone meal
PAG	Pears Action Group
PPG	Planning Practice Guidance, March 2014
SCG	Statement of Common Ground
TOx	Thermal Oxidiser
VP	viewpoint
XX	cross examination

**Appeal Ref: APP/A3010/A/13/2201459**

**Marnham Road, Low Marnham, Newark, Nottinghamshire NG23 6SL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by JG Pears (Newark) Ltd against the decision of Bassetlaw District Council.
  - The application Ref 30/11/00005 dated 20 December 2011 was refused by notice dated 12 April 2013.
  - The development proposed is a biomass fuelled combined heat and power plant, auxiliary boilers, product silos, new offices, revised trailer and car parking, associated facilities, landscaping and internal circulation roads.
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**Summary of recommendation**

The appeal be allowed and planning permission granted subject to condition

**Preliminary Matters**

1. The appeal was recovered for determination by the Secretary of State by letter dated 20 December 2013, on the grounds that it involves proposals of major significance for the delivery of the Government's climate change programme and energy policies. This report briefly sets out the respective cases of the parties and deals more fully with their submissions in the Conclusions section, citing documents before the Inquiry where appropriate.
2. On 31 October 2013 the Pears Action Group was granted Rule 6(6) status under the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000. The Group is referred to as PAG throughout this Report.
3. It was not possible to arrange a pre-inquiry meeting. Instead, a note dated 27 November 2013 was issued to establish the procedural and administrative arrangements for the Inquiry. A further note to address additional procedural matters and to advise the parties of the likely main considerations was issued on 9 January 2014.
4. By letter of 13 December 2013, the Planning Inspectorate required the Council to give notice of the arrangements for the inquiry no later than two weeks before the inquiry was due to open, in accordance with the Inquiries Procedure Rules<sup>1</sup>. The documentation submitted in relation to this<sup>2</sup> indicates that statutory consultees and members of the public who had responded to the planning application were given notice by letter or email dated 21 November 2013. In further support of the level of local awareness, PAG provided extracts from local newspapers which contained reports referring to the opening of the inquiry on 14 January<sup>3</sup>. Although the notification procedure took place at an earlier date than required, the Council confirms that it covered the relevant matters. The notification was carried out in accordance with the spirit of the Inquiries

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<sup>1</sup> SI.2000 No. 1625 The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000

<sup>2</sup> ID 01, bundle

<sup>3</sup> ID 02, Newark Advertiser, Retford Times



Procedure Rules and I am satisfied that no prejudice has been caused to parties with an interest in the appeal.

5. I visited the appeal site the day before the Inquiry was due to open, in the company of representatives of the Council and the Appellant, PAG having elected not to be represented. I toured the rendering plant, during which time the various processes carried out on site were explained. I was also able to view those parts of the site where development is proposed. On 24 January I carried out an inspection of the wider locality accompanied by representatives of all three main parties, which comprised a more detailed inspection of Low Marnham village as well as visits to other villages in the area and an inspection of the road network between Ragnall and Carlton on Trent. I made other unaccompanied visits to the general area at various times while the inquiry was in progress.
6. One of those was on the evening of Wednesday 15 January when I took note of a distinct and extremely unpleasant odour not only at Low Marnham itself but also affecting a much wider area. I referred to this when resuming the Inquiry the following morning. Although the Appellant pointed out that there may have been other causes of this odour such as the sugar beet factory at Newark, residents were adamant that this was the odour they had identified as emanating from the Pears site. I am informed that the odour from the sugar beet factory has a somewhat sweet character. The odour I encountered could not be described as such. In this respect, I note the comments of the Council's Senior Pollution Control Officer, that the odour is 'distinct' and 'easily recognisable'<sup>4</sup>. Consequently, I take the view that this was, indeed, the odour which residents have described.
7. Statements of Common Ground have been submitted between the Appellant and the Council and between the Appellant and PAG<sup>5</sup>.
8. A Planning Obligation was submitted relating to the treatment of existing and proposed chimneys on the site, should planning permission be granted. I return to this matter later in my report.
9. The main parties were provided with the opportunity to submit comments in relation the Planning Practice Guidance, which was published on 6 March 2014. One response was received and it has been taken into account in writing this report<sup>6</sup>.

## **The Site and Surroundings**

10. The factory premises of J G Pears (Newark) Ltd lies on the south western edge of Low Marnham and covers an area of some 8.1ha. The village contains a number of residential properties, including farm units, as well as a Parish Hall, but no services or retail facilities. The Parish Church, St Wilfrid's, a Grade 1 listed building, is no longer in active use though it remains consecrated and is regularly open to the public. The village of High Marnham and the disused Marnham power station lie approximately 1-1.5km to the north. Since the submission of the planning application, the five cooling towers on that site have been

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<sup>4</sup> JGP 18 Q5

<sup>5</sup> CD64 and CD68 respectively

<sup>6</sup> ID 26

demolished. The River Trent and the Trent Valley Way, a long distance footpath, run north-south approximately 1km to the east of the site. The village of Normanton-on-Trent is situated just under 1km to the west, with a poultry farm and shed on the land between.

11. The appeal site, which can be described as an inverted L shape, is level and is bounded on the west, east and southern boundaries by intermittent mature tree planting and almost continuous 3-4m high bunding. The bund on the eastern boundary is effectively a private flood defence augmenting the two Environment Agency-maintained defences between the site and the River Trent, which is tidal at this location. A row of mature poplar trees lies on the northern boundary, with some hedgerow planting, while in the north eastern corner, closest to Low Marnham, is an earth bund and an array of Leylandii trees up to 12m in height. Apart from the village, beyond the site on all boundaries are open fields, field hedges, trees and a scattering of farm buildings.
12. Access to the site is off Marnham Road, a C-class road, at the northwest corner of the site. Within the site a service road along the northern boundary leads to the car park, offices and despatch yard adjoining the process building at the eastern end. The site comprises a number of industrial buildings, the largest being the process building, with external plant and equipment primarily located on its south side. A water treatment plant, comprising concentric tanks, is located towards the southern end of the site, with plant room building and bio-filter beds adjoining the eastern boundary to the south. A large trailer shed and garage has recently been constructed on the southern boundary. There is open storage of tanks and items of equipment on much of the remaining areas of the site.

## **Planning Policy**

13. The development plan for Bassetlaw consists of the Core Strategy and Development Management Policies, adopted December 2011. The Statement of Common Ground between the Appellant and the Council agrees that policies DM1, DM4 and DM10 are relevant, a statement endorsed by PAG. However, other policies were referred to during the course of the inquiry so that they are included in this summary.
14. Policy CS1 sets out the settlement hierarchy for Bassetlaw. Low Marnham falls within the category of 'all other settlements', meaning that it is identified as being unsuitable for growth. In relation to economic development, Policy CS9 supports developments which would deliver rural employment opportunities of a scale and type appropriate to the settlement and surrounding land uses
15. Policy DM1 applies to any area outside a development boundary. Part A sets out general principles and states, among other things, that proposals for standalone economic development will be supported where they can demonstrate that new buildings are located and designed to minimise their impact on the character and appearance of the surrounding countryside and that the scale, design and form of the proposal in terms of both buildings and operation will be appropriate for its location and setting. Policy DM3 also applies to any area outside a development boundary. At part B(i), it supports the redevelopment of a site for the existing permitted use subject to considerations of appropriateness and locational need.

16. Policy DM4 deals with design and character. Part A criterion (ii) requires all major development proposals to demonstrate that they complement and enhance the character of the built, historic and natural environment. Criterion (iii) requires the scale of the proposal to be appropriate to the existing settlement and surrounding area and to be in line with the levels for proposed growth set out in policies CS1 – CS9.
17. Policy DM7 gives particular support to economic development proposals which, among other things, would deliver or contribute to opportunities for the growth of an indigenous businesses or bring significant, good quality inward investment opportunities to the District.
18. Policy DM8 is concerned with the historic environment. Part B sets out a presumption against development that would be detrimental to the significance of a heritage asset. It notes that the setting is an important aspect of an asset's special architectural or historic interest and expects proposals to consider scale, design, materials, siting and views away from and towards the heritage asset.
19. Policy DM10, part A is supportive of proposals which seek to use renewable and low carbon energy provided they are compatible with policies to safeguard the built and natural environment including heritage assets and their setting and landscape character. It also sets out specific support for the co-location of compatible heat consuming and heat producing development. The reference to "landscape character" within this policy reflects its use in Policy DM9C, which refers to the Bassetlaw Landscape Character Assessment (LCA). Policy DM10 also requires that the proposals should not result in unacceptable impacts in terms of visual appearance, pollution or traffic generation or in an unacceptable cumulative impact. At part B, the policy expects proposals for heat producing development to consider the feasibility of utilising waste heat for heat-consuming development. It gives support to proposals that will ensure the co-location of compatible heat producing and heat consuming development. At part C, the policy expects major development proposals to deliver specific low carbon and renewable energy infrastructure, in line with assessments of feasibility and overall viability.
20. With regard to landscape impact, the site and locality fall within National Landscape Character Area 48, the Trent and Belvoir Vales. A more finely grained analysis is provided by the Bassetlaw Landscape Character Assessment , which takes the five Regional Character Areas within the district and then further subdivides them into policy zones . Those zones are, in turn, set within a grid of policy aims based on an assessment of landscape condition and sensitivity ranging from 'conserve' for zones where the condition is good and of high sensitivity through to 'create' for those where the condition is poor, with low sensitivity. The appeal site lies within policy zone 18 of the Trent Washlands Regional Character Area (TW PZ 18 Low Marnham) , where the policy is to "conserve and create", since both condition and sensitivity have been assessed as moderate. The land to the west, between the appeal site and Normanton on Trent, falls within the Mid Nottinghamshire Farmlands, where the policy is to conserve (MN PZ 12 Normanton on Trent ) since the condition is assessed as good and sensitivity as high. The references to 'sensitivity' should be taken as equating to the

term 'susceptibility' employed in the most recent edition of the Guidelines for Landscape and Visual Impact Assessment .

21. National planning policy is set out in the National Planning Policy Framework (NPPF). At its heart is a presumption in favour of sustainable development. Core planning principles relevant to this proposal are those which seek to enhance and improve the places in which people live their lives; support the transition to a low carbon future; recognise the intrinsic character and beauty of the countryside; and encourage conservation of heritage assets in a manner appropriate to their significance. Further guidance is provided in relation to good design (paragraph 56); the key role which planning can play in helping to secure radical reductions in greenhouse gas emissions (identified as being central to sustainable development) as well as the approach to be taken to such planning applications (paragraphs 93-98); that the planning system should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes (paragraph 109) and encouraging the re-use of previously developed land (paragraph 111); it sets out the respective responsibilities of the planning and pollution control regimes (paragraph 122); and it emphasises that great weight should be given to the conservation of a designated heritage asset although, where harm is less than substantial, it should be weighed against the public benefits of the proposal (paragraphs 126-134).
22. Supporting information is provided within the Planning Practice Guidance (PPG), which now incorporates guidance on proposals for renewable and low carbon energy . Although all communities have a responsibility to help increase the use and supply of green energy, this does not mean that the need for renewable energy automatically overrides environmental protections and the planning concerns of local communities . It is important that the planning concerns of local communities are properly heard in matters that directly affect them. It also notes that transport links are a particular consideration for the use of biomass technology.
23. National Policy Statements (NPS) also form part of national planning policy. Although these were issued to assist in the assessment of nationally significant infrastructure projects, both the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy Infrastructure (EN-3) state that they are likely to be a material consideration for relevant applications under the Town and Country Planning Act 1990, which should be judged on a case by case basis . They are supportive of combined heat and power projects and provide guidance in relation to assessing the landscape and visual impacts .Landscape character and visual impact

## The Proposals

24. The main elements of the proposed Combined Heat and Power plant and associated developments<sup>7</sup> are:
  - Fuel Reception and Processing Hall (14m high)
  - Fuel Storage (12m-16.4m high)
  - Boiler house (28m high)

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<sup>7</sup> CD33, paragraphs 2.13-14

- Air cooled condenser – (1 no, 15m high)
- Ash Houses – clean and MBM (both 12m high)
- Chimney (50m high and 3m external diameter)
- Turbine hall (15.4m high)
- Auxiliary boilers (12m high)
- New offices (6.5m – 7.5m high) and parking area
- Weighbridge and associated access control lodge (3m – 4m high)
- Revised and extended internal roads
- Marshalling and manoeuvring area outside the fuel reception building and associated vehicle wash down area
- Trailer Parking Areas
- Existing Bund (3m high) with landscaping with galvanised palisade security fence (2m – 3.5m high)
- Noise attenuation fence/bund (max 5m) at certain locations

25. The total floorspace area would be some 6,500 sqm.

26. An Environmental Statement was submitted in December 2011<sup>8</sup>. Following a request from the Council for further information a revised Environmental Statement (ESr) was submitted in August 2012<sup>9</sup>.

### **Planning background**

27. A record of planning decisions relating to the appeal site is set out at the appendix to SCG1<sup>10</sup>. It indicates a history of animal rendering dating back to 1994 with a continuing process of development and growth during the past two decades. PAG draw attention to an appeal decision in 1995 concerning a condition which governed hours of operation<sup>11</sup>.

28. A revision to planning permission 30/10/00007, the replacement vehicle workshop, was approved in order to reposition that building closer to the boundary, which has given rise to some revisions to the appeal plans, most notably with regard to the depth of planting proposed along the southern boundary<sup>12</sup>. Construction of this building appeared to be largely complete at the time of my site inspection. Application 13/00933/FUL concerning the tank farm and silos is listed as 'pending' but was granted planning permission on 4 December 2013<sup>13</sup>. An application for a Thermal Oxidiser (TOx) was under consideration at the time of the inquiry. Its purpose would be to treat the non-condensable gases which have been identified as the main source of complaints about odour emissions from the plant.

### **Other Agreed Facts**

29. Within the Statement of Common Ground between the Appellant and the Council, it is agreed that the development is unlikely to have any adverse environmental effects in terms of odours, noise, emissions or human health and that the environmental permit would ensure compliance with the relevant standards.

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<sup>8</sup> CD18

<sup>9</sup> CD33

<sup>10</sup> CD64

<sup>11</sup> ID 05 T/APP/A3010/A/95/254947/P2 dated 30 November 1995

<sup>12</sup> Dwg 414A.02 Rev C (also PR Appx 4, Fig 20)

<sup>13</sup> ID 21 13/00933/FUL

There are no objections to the increase in lorry movements, which should be restricted during the evenings and at weekends. There are no objections on the grounds of potential flooding or adverse effects on wildlife. With regard to landscape matters, the viewpoints for the visualisations were agreed between the parties.

30. Between the Appellant and PAG, it is agreed that the estimated maximum number of net additional HGV movements is 17 per full working day and that no vehicle movements resulting from the transport of fuel and removal of ash should take place outside the hours of 7am to 7pm or after 1pm on a Saturday or at any time on a Sunday.

### **The Case for Bassetlaw District Council**

31. The Council's case is based upon the unacceptable impact on landscape character and significant harm to visual amenity. The main points are as follows<sup>14</sup>
32. The main elements of the development are now familiar. The development would be located within the confines of the existing site. The existing site operates a general industrial use falling within Class B2 of the Use Classes Order 1987. The CHP proposal is asserted to be an ancillary item of plant to the use of the site for the processing of animal by-products. The application is not one for a personal permission. It forms no part of the Appellant's case to suggest that if permission were refused the continued use of the site would be or would become unviable.

### **Statutory Development Plan**

33. Section 38(6) of the 2004 Act requires that the determination of the appeal be made in accordance with the Statutory Development Plan unless material considerations indicate otherwise. The Core Strategy (CS) has set out a clear settlement hierarchy with the main focus of development (including employment development) focussed in higher order settlements. Low Marnham does not even qualify as a "rural service centre", the lowest order of named settlements identified for development in the policy. Consequently, CS9 "All Other Settlements" applies to the appeal location that supports rural employment opportunities "of a scale and type appropriate to the settlement and surrounding land uses". Throughout the course of the case up to the Opening on behalf of the Appellants there was no suggestion that the CS was out-of-date or conflicted with policies contained within the NPPF.
34. KH in her evidence identifies the three policies that are agreed to be relevant in the consideration of the appeal, policies DM1, 4 and 10. They are also identified in SCG1. It recognises them as the three policies that are relevant in the consideration of the appeal proposal. It cannot therefore be "inappropriate" to use these policies in the consideration of the appeal application.
35. Policy DM1: The introduction of a new issue by the Appellant suggests that this policy has no application because the proposal is not "standalone". The correct interpretation of the policy means that "standalone" can encompass completely new proposals and ancillary extensions to an existing development. To interpret it otherwise would imply that an existing "standalone development" could not be expanded either on or off site. The policy requires new buildings to be located

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<sup>14</sup> Based on closing submissions at ID 23

and designed to minimise their impact upon the character and appearance of the countryside and requires consideration of whether the scale, design and form of the proposal (both building and operation) will be appropriate for its location and setting. This is a consideration that goes beyond whether the building is appropriately designed to meet the function for which it is intended.

36. The current proposal is ancillary to an existing B2 use. The question remains whether a B2 use of the scale and form proposed would be appropriate for its location. It is the Council's case, developed later in relation to the landscape character and visual amenity impact, that it would be inappropriate for this location that is essentially rural in character. A B2 use does not require a rural location.
37. Policy DM3: It is accepted that Policy DM3 did not feature in the Council's stated reason for refusal. That does not preclude the decision-maker from considering relevant policies. This policy is relevant to the issues in this case. The policy in principle supports redevelopment of a site for the existing permitted use, a general industrial one falling within Class B2 of the 1987 Order. This is supported other than where this is clearly no longer appropriate. The examples given in the policy include residential amenity or wider sustainability issues.
38. The policy therefore raises the question for determination as to whether the development proposal is inappropriate. The history of this site shows that there has been significant growth in the activity since the 1970s. There is no realistic prospect of effective mitigation. The site is fully occupied and a pitifully small margin of land is available upon which to attempt to ameliorate any impact. That is demonstrated most clearly by the uncontested fact that it was the owner of The Grange that permitted the Appellants to enter his own land in order to provide some limited mitigation of their development to his property. The Appellants also refer in their evidence to offers over a number of years to purchase further land to ameliorate the existing impact with no success. The Appellants cannot successfully screen the existing site, let alone any additional impact caused by the appeal proposals. This position is of the Appellants' own making and the local area should not be required to accept further impact that cannot be sufficiently mitigated.
39. Policy DM4: The Appellants in the Inquiry have suggested that this policy is not applicable and only applies to residential development. This is clearly an incorrect interpretation of the policy, which applies to all development. Had it been intended that it was limited to residential development only, that could have been easily stated.
40. There is no dispute that this proposal should be regarded as a "major development" within the context of the policy and therefore Part A is applicable. Part A criterion (ii) is a requirement to complement and enhance the character of the built, historic and natural environment. This policy sits comfortably with current NPPF policy, especially the core land use planning principles and Chapter 11, Conserving and enhancing the natural environment. Criterion (iii) requires the scale of the proposal to be appropriate to the existing settlement and surrounding area. A decision-maker could only conclude that criterion (iii) was satisfied if a nine-storey building (for that is the equivalent height of the boiler house building) together with a 50 m chimney was regarded as an appropriate scale to the existing settlement of Low Marnham.

41. Policy DM10: This is a relevant policy. However, the assertion by the Appellant that it is the “dominant policy” is nowhere reflected in either the Planning Statement or the revised Environmental Statement (ESr). The assertion is of very recent origin. There is no justification by reference to the authority cited to ignore or not apply other relevant policies in the CS. On the contrary, to do so would be to fall into error because they are policies of the statutory development plan that are material and relevant to the proposal.
42. The reference to “landscape character” within Policy DM10 A(i) should bear the same meaning as used in DM9. As such, the development proposal can be expected to enhance the distinctive qualities of the landscape character policy zone in which they would be situated as set out in the Bassetlaw Landscape Character Assessment (LCA). The requirement in Policy DM10, read together with DM9, requires that proposals will be expected to respond to the local recommendations made in the LCA by safeguarding, enhancing, conserving, restoring, reinforcing or creating landscape forms and features accordingly. In short, and as will be developed later, the development proposal does not meet the requirements set out in Policy DM10.
43. The appeal site falls within TW PZ 18 Low Marnham within CD73. The policy is to “conserve and create”. The character’s summary shows it to be ‘a flat, open landscape which is largely in arable use.’ It is clearly rural in both appearance and character. Included within the landscape actions to “conserve and create” is to: “conserve pastoral character and promote measures for enhancing the ecological diversity of alluvial grasslands” and: “conserve the rural character of the landscape by concentrating new development around existing settlements of Low Marnham [and others].” The development also exerts an influence over MN PZ 12 in CD73. The policy there is to “conserve”.
44. Paragraph 5.1 of SCG1 states: “The Core Strategy and Development Management Policies are, consequently, up-to-date and should be accorded full weight.”
45. The appeal proposal is contrary to the provisions contained in the Statutory Development Plan. A determination in accordance with such requires the decision-maker, as a starting point, to refuse the application. The grant of planning permission can only lawfully be made in circumstances where the decision-maker considers that “other material considerations” indicate otherwise.

### ***National Policy***

46. Aspects of national policy including NPPF and National Policy Statements; especially the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy Infrastructure (EN-3) are capable of being material considerations.
47. The NPPF is an up-to-date statement of Government policy. Paragraph 6 identifies that Paragraphs 18-219 of the NPPF taken as a whole constitute the Government’s meaning of what sustainable development is for the planning system. As such, it incorporates Chapter 11 that deals with “conserving and enhancing” the natural environment.
48. To be sustainable all three components - economic, social and environmental - should be achieved. Paragraph 12 provides: “This National Planning Policy



Framework does not change the statutory status of the Development Plan as the starting point for decision-making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise. It is highly desirable that local planning authorities should have an up-to-date plan in place."

49. As is acknowledged in SCG1, this Council has an up-to-date plan in place. More particularly, in this context, up-to-date means consistent with NPPF.
50. An important consideration is whether the presumption in favour of sustainable development is engaged in this particular case. It is considered by the Council that the development cannot bring into play Paragraph 14 in support of the case, for two reasons. In respect of decision-taking, the policy is engaged only where the Development Plan is "absent, silent or relevant policies are out-of-date." That situation does not arise in this case. Furthermore, the presumption only applies in respect of those cases where it can be concluded, within the meaning of the NPPF, that the development proposal is sustainable.
51. This latter point is considered by Mrs Justice Lang in *William Davies Ltd v. Secretary of State* [2013] EWHC 3058 where the following appears in Paragraph 37:

"In my judgment, the Inspector and the Secretary of State directed themselves correctly by asking the question whether the proposed development was 'sustainable development'. At the Inquiry, the Claimants did not dissent from the Inspector's analysis that the fourth main issue was 'Whether the appeal scheme represents sustainable development to which the Framework's "presumption in favour" should apply.' (Paragraph 317). In their written submissions to the Inspector, the Claimants expressly referred to this question. I accept Mr Maurici's submission that Paragraph 14 NPPF only applies to a scheme which has been found to be sustainable development. It would be contrary to the fundamental principles of NPPF if the presumption in favour of development in Paragraph 14 applied equally to sustainable and non-sustainable development."
52. The LPA's case is therefore that Paragraph 14 of NPPF is not engaged because: (a) in the context of decision-making, relevant policies are contained within the CS, they are relevant and "up-to-date"; and (b) in any event, the proposal does not represent sustainable development.
53. Dealing with the question of whether the development is sustainable, it is accepted that the appeal proposal represents sustainable technology. However, that is not the same thing as an unequivocal acceptance that therefore the development is inherently sustainable in the context of NPPF. Otherwise, any development involving renewable energy proposals would automatically be sustainable development. It is clear that the recently issued Planning Practice Guide requires a more sophisticated analysis. It is understood that GB in xx accepted the force of this point; namely, that development involving sustainable technology is not invariably sustainable development as defined in the NPPF.
54. It can be recognised that the development proposal is likely to be able to demonstrate that it meets the "economic" component of sustainability by (inter alia) providing employment and economic efficiency to the business to secure

existing employment. However, the social and environmental components of sustainability are, to the LPA, the key issues.

55. The LPA accept the Appellant's categorisation that the impact on The Grange, for example, will be a "substantial adverse visual effect". That issue goes to the social component of sustainability. The impact is not limited to that one individual property. There is recognition in the LVIA that the proposed structures would be visually prominent and it would make the views "more urban in character". The upshot of their own analysis is that the development proposal does not sit comfortably with the requirements of sustainable development encompassing social and environmental components. Indeed, it is noteworthy that nowhere does GB attempt to address the social and environmental components of sustainability.
56. There are a number of policies in the NPPF to be applied in this case that "pull both ways". As part of the core principles in Paragraph 17 support for the development can be derived from encouragement in the use of renewable resources and deployment of low carbon fuels and securing beneficial economic development including employment generating activities. Conversely, Paragraph 17 also deals with issues including: enhancement and improvement to the places in which people live their lives; recognising the intrinsic character and beauty of the countryside; and contributing to conserving and enhancing the natural environment.
57. The context of the development benefits also need to be clear. The benefits associated with noise and smell must be seen in light of paragraph 122 of the NPPF as the process is controlled by the pollution control regime. The required assumption, in the determination of the planning appeal, proceeds upon the basis that the pollution control regime will be applied. This requires the operator to ensure that noise does not significantly affect amenity and that Best Available Techniques are adopted to prevent or minimise noise. A similar high standard of control applies to smell.
58. The concept of enhancement is a theme throughout the NPPF. Enhancement is a higher threshold to that of mere "acceptability". The case put forward by the Appellants in interpreting NPPF<sup>15</sup> as only marking the threshold of proposals involving renewable energy as being "acceptable" must be rejected. There is a necessity to read the Framework as a whole. That must mean, in locations that are specifically identified, including the requirement to "protect and enhance". It is the case on behalf of the LPA that NPPF and the CS require a threshold higher than mere "acceptability" and engage specifically the requirement to "enhance the natural and local environment"<sup>16</sup>.
59. It was no part of the Appellant's case advanced at the time of the LPA determination of the application to suggest that the appeal proposal represents an "enhancement". It is PR that has changed the case to one of asserted enhancement notwithstanding the loss of the cooling towers at High Marnham that were the significant detracting feature and a diminution in the landscape mitigation proposed.

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<sup>15</sup> CD72, paragraph 98

<sup>16</sup> CD72, paragraph 109

60. Relevant to the determination of this appeal are the National Planning Statements for Energy and particularly renewable energy<sup>17</sup>.
61. It is important that, in addressing weight, regard is had to the fact that the policy is directed to proposals that by their very nature have to be of "national significance". Equally important is that the context for the advice is an assertion in the Government's belief that there is an "urgent need for nationally significant infrastructure projects"<sup>18</sup>. As such, there is a presumption in favour of such projects.<sup>19</sup> The policies recognise a hierarchy of importance from development proposals in AONB and National Parks, those that are outside but which may affect them and "other areas"<sup>20</sup>. The policy clearly recognises (in the context of national infrastructure projects) the need to pay "particular attention" to policies in the Statutory Development Plan and the visual impact of a proposal. CD75 expressly incorporates the advice highlighted in respect of landscape assessment.
62. The introduction of Planning Practice Guidance<sup>21</sup> in July 2013 is of some interest. The LPA suggests that the reason for the introduction of such a document was to re-calibrate the tipping point in the planning balance. The document reflects a concern that environmental impacts and impacts upon local communities were not being given sufficient weight in decisions involving renewable and low carbon technology. The House of Commons Library document<sup>22</sup> states: "The Government's aim in this guidance was to make clear that the need for renewable energy did not automatically override environmental protections and the planning concerns of local communities." Page 6 states unequivocally: "It also aimed to ensure sufficient weight was given to landscape and visual impact concerns."

### ***The Council's Case against the Proposal***

63. The Council's case to justify the refusal of planning permission is based upon two components that are consequent upon the development: unacceptable impact on landscape character; and significant harm to visual amenity.

### ***Protected Landscapes***

64. Unusually, the Appellants' Landscape Consultant advances the argument for an interpretation of NPPF. This argument does not appear in the evidence of the Planning Consultant. The Appellants, through PR<sup>23</sup>, assert unequivocally: "In my view, the Framework is also very clear about what is defined as a 'valued' landscape - it is those listed in footnote 9 of para 14, ie National Parks and AONBs." It is an interpretation that is unsupportable.
65. Firstly, as a matter of the English language, footnote 9 begins "For example". It cannot therefore be an exhaustive list of all the matters that are addressed. Secondly, if national policy at Paragraph 109 was intended to define "valued landscapes" in precisely the same terms as those listed, it could have said so

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<sup>17</sup> CD74 and CD75

<sup>18</sup> CD74 paragraph 3.31

<sup>19</sup> CD74 paragraph 4.1.2

<sup>20</sup> CD74 p97

<sup>21</sup> CD76

<sup>22</sup> KH Appendix 1

<sup>23</sup> PR Rebuttal paragraph 2.1

economically. The use of an alternative description, namely “valued landscapes”, conveys with clarity that something different from an AONB or a National Park was intended to be conveyed by the use of that expression. Furthermore, the National Planning Policy Guidance confirms Landscape Character Assessments as the tool to inform the value of landscapes.<sup>24</sup> It cannot be an expression that was used in ignorance of the NPPF. Thirdly, exactly the same expression is used in respect of both “plan-making” and “decision-taking”. The interpretation would make sense only if, in plan-making, the Government had intended to restrict policy formulation to landscape areas that were either AONBs or National Parks. The advice at Paragraph 113 likewise would make no sense on PR’s interpretation<sup>25</sup>.

### ***Landscape Effects***

66. Consistent with GLVIA 3, the matter to be addressed is the effect of the proposal on the physical landscape or townscape and the potential to change its character.<sup>26</sup> Features of historical or cultural importance can add value to the landscape as well as having value in their own right. The GLVIA 3 provides: “The fact that an area of landscape is not designated either nationally or locally does not mean that it does not have any value.”<sup>27</sup>
67. A key issue to be considered in the assessment was the effect of the proposal on the landscape character and amenity of the areas identified in Figure 1 of BM’s evidence. There should be no dispute but that the proposal is accepted to be the cause of significant harm. The ESR<sup>28</sup> at Paragraph 19.12 states: “With one exception, in each case it is concluded that either no significant harm will arise from the proposed development or that there are suitable and appropriate mitigation measures either in place or to be undertaken which will abate the harm which might otherwise arise.” Paragraph 19.13 continues: “The one exception is the impact of the proposed scheme upon the character and appearance of the landscape and countryside and also upon the visual amenity of local people and others using local footpaths.”
68. Indeed, the ESR accepts in unequivocal terms that: “It is unavoidable that the proposed biomass fuel CHP plant is large scale and with tall buildings and a chimney.” It continues: “Mitigation measures to ameliorate the impact of the scale and appearance of the CHP plant element of the development are proposed but they will not fully mitigate the adverse impact.” It adds: “This is an issue to be weighed against the benefits of the scheme and the policy considerations as detailed in the Planning Statement.”
69. Again, this should be a point of agreement that arises from the Appellants’ own analysis including that contained within the LVIA. Harm is specifically identified:

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<sup>24</sup> BM rebuttal 2.21 and Appendix

<sup>25</sup> NPPF paragraph 113: *Local planning authorities should set criteria based policies against which proposals for any development on or affecting ... landscape areas will be judged. Distinctions should be made between the hierarchy of international, national and locally designated sites, so that protection is commensurate with their status and gives appropriate weight to their importance and the contribution they make to wider ecological networks.*

<sup>26</sup> BM 3.1.2

<sup>27</sup> CD 77, paragraph 5.26

<sup>28</sup> CD33

"Whilst the introduction of the proposed buildings will have very little impact in terms of loss of existing landscape features, the proposed structures would be visually prominent in the landscape as they are taller and greater in mass than the existing buildings on the site. This would have the effect of urbanising the landscape character further."<sup>29</sup>

70. That is an unequivocal recognition of harm to landscape character. It is provided in the context of the landscape character assessment conducted by the Appellants that incorporated the Bassetlaw LCA. Therefore, it has resonance with CS policies DM9 and DM10.

### ***Areas of Dispute***

71. No Public Inquiry would be complete without a degree of rancour between the landscape experts on both sides. The areas of dispute relate essentially to two matters: (a) effect on landscape area; and (b) whether the sensitivity of the landscape to the proposed development has been adequately assessed.
72. The LVIA assessment<sup>30</sup> provides a table in which High Sensitivity is assessed in the context of the landscape character being "free of visual detractors." BM does not accept that a highly sensitive landscape must necessarily be free of visual detractors<sup>31</sup>. In terms of magnitude, the criteria High and Medium<sup>32</sup> both require inconsistency with landscape character and physical alteration to landscape pattern. This would exclude Character Areas not physically affected by works. BM also considers that assets contributing to the landscape character have not been addressed - including Listed Buildings, Historic Settlement Areas and the park and garden at Marnham Hall. The LVIA emphasises the presence of the cooling towers of the former power station, now removed. A significant flaw in the approach adopted in this particular case is, having placed some reliance upon the relationship to the existing cooling towers of the power station to the proposal, the Appellants then fail to assess the effects of their removal when given the opportunity in the revised ES.
73. BM makes the point<sup>33</sup> that following the removal of the cooling towers the appeal proposal would become the main detractor in this landscape. That is demonstrated by reference to the photomontages<sup>34</sup> and in particular RT15, 17 and 24. The approach of BM is, it is submitted, undoubtedly correct. The judgment should be considering the change to the landscape as it currently presents (or by reference to committed development). The historic presence of the cooling towers is therefore of very limited value to the assessment in this case.
74. The existing facility maintained by J G Pears (Newark) Limited is a detractor that affects the condition of the landscape and the characteristic features such as agricultural land use and settlement patterns. The photomontages illustrate that the scale, mass and height of the new structure represent a substantial change

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<sup>29</sup> CD39 paragraph 5.12

<sup>30</sup> CD39 p5

<sup>31</sup> BM 3.4.3

<sup>32</sup> CD39, Table, p7

<sup>33</sup> BM paragraph 3.4.13

<sup>34</sup> CD52

when compared to the existing view. BM considers<sup>35</sup> that the result is cumulative. That is, that the existing harm is reinforced and made worse.

### ***St Wilfrid's Church:***

75. The Church and its setting is of national importance having been designated a Grade I Listed Building. It is in the context of the village and its townscape value that BM's evidence is directed.<sup>36</sup> The Church and its churchyard is the centrepiece of the village. This is an important piece of townscape in its own right. The argument advanced by the Appellants that it is landscape not townscape is mere semantics. The LVIA defines (as does CM) the effect on the setting of the Church as Slight Adverse. However it is the LPA case that the effect on the townscape, that is its surroundings as part of the village landscape, will be significant

### ***Bassetlaw Landscape Character Assessment***<sup>37</sup>

76. The site lies within Policy Zone TW PZ 18 Low Marnham (part of the Trent Washlands). The site, however, is only about 100 m from the adjacent Policy Zone MN PZ 12 Normanton-on-Trent. A dispute arises as to whether the extent of this latter policy zone covers the settlement of Normanton-on-Trent. To some extent there is a degree of ambiguity. However, a close reading of the text associated with this section of the LCA demonstrates (as indeed does its title) that the settlement of Normanton-on-Trent has been carefully analysed and is part and parcel of the assessment for Policy Zone MN PZ 12.
77. In respect of TW PZ 18, both landscape condition and sensitivity is described as "Moderate". The policy here is to conserve and create, including small scale woodlands where appropriate. In respect of MN PZ 12 the Mid-Nottingham Farmlands are the subject of this policy and the characteristic features include open arable farmland and long distance views. The sensitivity is described as "Very High". The policy here is to "conserve". It is considered that the impact on the identified Landscape Character Assessments both insofar as they are within the policy of the Core Strategy and of some materiality to the determination of this appeal in their own right, produce harmful effects on character, particularly of the two Policy Zones referred to.
78. The point should be self-evident, but given the height of the proposed development, its influence upon landscape character is likely to be widespread. Furthermore, it cannot be effectively screened or integrated within the landscape setting. Little comfort can be derived from the reference to "concentrating new development around existing settlements of Low Marnham ..." <sup>38</sup>. Such an approach lacks sophistication and wholly ignores scale and context. The advice would be of equal application to new residential development. A residential development consisting of a nine storey apartment block could not be regarded as in keeping with the character area assessment identified around Low Marnham. Likewise, a nine storey building together with a 50 m chimney is, self-evidently, of a magnitude wholly outside the contemplation of the exhortation to

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<sup>35</sup> BM paragraph 3.4.24

<sup>36</sup> BM p23 et seq

<sup>37</sup> CD73

<sup>38</sup> CD73 TW PZ 18, landscape actions

the location of further development within the PZ. Furthermore, it is important not to ignore the immediately adjacent policy zone that emphasises openness. It is also important to emphasise that the condition of the area has improved by the removal of the significant detractor consisting of the cooling towers. There has been no assessment of the character of Low Marnham village. The village as a whole should be rated as high because it is where people live and work, includes valued assets and has a strong sense of place. BM therefore concludes that the sensitivity should be high<sup>39</sup>.

### ***Local Landscape Character***

79. The evidence of the LPA emphasises:

- The openness of the landscape consisting of large arable fields, some divided by ditches and not hedgerows;
- Some limited tree cover - predominantly at field boundaries and around settlements;
- Much of the land between the village of Normanton and the river is flat and low lying;
- Settlements make an important contribution to character - church towers create landmarks. The settlement are attractive built environments with distinctive enclosed character; There is a network of well used public footpaths;
- In terms of detractors, there are some distant views of the chimney at Cottam Power Station at 10 km to the north plus remaining power lines.

80. The current site with buildings about 14m high is out of scale with its surroundings in the village. This can be seen from the Appellants' own LVIA<sup>40</sup> and in particular VP5, 6 and 7. The existing facilities are also out of character and are not appropriate to the existing rural landscape character area. This is recognised in the LVIA<sup>41</sup>.

### ***Sensitivity***

81. The LPA considers that the LVIA underestimated the landscape sensitivity<sup>42</sup>. This is primarily because:

- It is primarily based on consideration TW PZ 18 and no account was properly taken of the immediately adjacent MN PZ 12.
- The LCA is sound and appropriate for informing development management decisions.
- It demonstrates that the character and setting of Low Marnham was not adequately assessed by the Appellants. It should have been described as being of high sensitivity.
- There was reliance on the cooling towers. That approach is not appropriate.
- The presence of the existing rendering facility increases sensitivity by making the area more vulnerable to change.

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<sup>39</sup> BM paragraph 3.5.42

<sup>40</sup> CD39

<sup>41</sup> CD39 paragraphs 6.5-6.6

<sup>42</sup> BM p37 et seq

## ***Magnitude of Change***

82. The LPA draws attention to the fact that the proposal doubles the height of the existing buildings and that of the chimney. The photomontages<sup>43</sup> that were produced following the preparation of the LVIA demonstrate the changes. Attention is in particular drawn to RT8 (Grange Farm) and RT15 (Normanton-on-Trent). Consideration of the impact on MN PZ 12 was a continuing issue at the Inquiry. It should be noted that view RT15 is from within that policy zone. This was not challenged by the Appellant. RT17 and 24 combined show substantial changes from the baseline. The colour treatment and architectural detailing are incapable of overcoming the inappropriateness of the structures in terms of their general appearance and scale in this rural setting.
83. It is therefore considered that there is a “high” sensitivity and magnitude of change and the proposal should be properly characterised as “Substantial Adverse” in terms of the effect upon the village and surrounding countryside character<sup>44</sup> consistent with the finding of significant harm in the Appellant’s ESR.

## ***Visual Effects***

84. The LVIA itself asserts that in the absence of mitigation there would be substantial adverse effects for viewpoints (VP) 8, 20, 23 and 24. In addition, there would also be an impact on public right of way 10 (VP26) that would lie between substantial and moderate. These assessments are consistent with the finding of significant harm reported in the ESR. BM Appendix 8 contains a table showing the changes as differences in professional judgment between that contained in the LVIA and the Council’s evidence.
85. The areas of dispute between BM and PR include:
- Some of the VPs are ascribed as “Low sensitivity” in the LVIA because of their location on side roads. However, they should be represented as more sensitive receptors including houses or as locations accessible to pedestrians;
  - There is continued reliance upon to the presence of cooling towers that have since been demolished;
  - There is very little analysis of views from communities or properties affected. This is limited to one dwelling.
86. To an extent, this understatement of effects would be apparent from a consideration of VP9. This is a view from the churchyard similar to VP 1 and the cross sections presented by PR, where the intervening cottage would obscure much of the new structures. As demonstrated by BM’s sections a minor change in position would result in a much more open view where the new chimney and buildings (at twice the height) would not result in “minor” change as asserted in the LVIA<sup>45</sup> but a change that would be ‘readily noticeable’ and hence significant.
87. The GLVIA3 rightly places an importance upon views from residential properties. BM calculates 12 properties with clear views of the development and a further 14 with partial views. The Appellants are dismissive of the numbers of those affected. That may speak volumes as to the weight given by them to local

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<sup>43</sup> CD52

<sup>44</sup> BM 3.7.18

<sup>45</sup> CD39 p23



concern but, it is submitted, their dismissal is completely irrelevant in the consideration of this appeal. Those properties would be detrimentally affected to a significant degree. The impact on The Grange is of this level. It should be borne in mind that the owner of The Grange has enabled the Appellants to enter onto his land to provide the sparse landscaping that currently exists (and which it is proposed not to be enhanced) as part of this proposal. The development, the subject of this appeal, would in combination with the existing facility dominate the outlook as is clear from RT8 in the photomontage<sup>46</sup>.

### ***Mitigation***

88. It should be noted that the landscape proposals have been amended - by way of reduction. CD39, Figure 20 Rev B shows the landscape proposals that were assessed as part of the LVIA process. The Cumulative Visual Impact Assessment<sup>47</sup> (and in PR's evidence) produces a further Figure 20 Rev C with material changes being apparent. No explanation was given for the rationale behind the changes, though one reason for the omission in the south west corner is a change in the location of the trailer store closer to the site boundary, thus reducing the space available for planting.

89. The effect of the changes would be to lose over 3,500sqm of woodland. Nevertheless, as is recognised in the ESr<sup>48</sup>:

"While planting around the boundaries, whether as reinforcement of existing vegetation or new planting in areas of little or no existing vegetation, will assist, the scale of the CHP building is such that the plant will be visually dominant in some views."

90. BM makes the point<sup>49</sup> that almost all of the available land is developed for the purposes of the industrial activities with new planting reliant upon narrow strips at the margins. These include strips of woodland only 5 metres wide, some hedges being planted and in some cases, such as the northern boundary facing the Grange, no new planting at all. Consequently, an effective planting scheme is simply not possible.

91. Having asserted in his evidence in chief that "a woodland belt of between 10 and 25 metres wide is proposed around the bulk of the perimeter" PR conceded in XX that this could only be provided on the southern boundary, suggesting that this was the most sensitive area to view. In fact the site can be viewed from all sides. PR's prescription is appropriate but unachievable, as are the Appellants' further assertions of "comprehensive upgrading of the landscape treatment around the plant."

### ***Architectural Design***

92. A question remains of whether the design and colour chosen would have a substantive bearing on the impact of the building. The assessment in the LVIA had already addressed the design and colour. It therefore is the case that as the residual impact is referred to in the LVIA and the ESr it represents "double-

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<sup>46</sup> CD52

<sup>47</sup> CD51

<sup>48</sup> CD33 paragraph 11.25

<sup>49</sup> BM paragraph 5.10

counting” to suggest that architectural design and selection of colour could reduce the significance of effects further. They have already been taken into account<sup>50</sup>.

93. In response to the LPA case the receiving landscape has been expanded to a regional scale to cover the whole of the Trent Vale/Trent Washlands. PR draws attention to very large landscapes with “numerous substantial infrastructure” proposals. Effectively, the Appellants have needed to cast the “character” net from Gainsborough down to Nottingham<sup>51</sup>. Hence the Appellants’ reference to Cottam Power Station 9–10 km away, West Burton Power Station 16 km away and a Beet Factory some 14 km away. These developments are identified, with an increasing sense of desperation, by the Appellants as having some effect and partly defining the character of the Appeal Site. Such an approach needs to be rejected. These developments have no significant influence on the character of the Appeal Site, nor would they constitute a justification for other infrastructure.

### **Conclusions**

94. The Council invites the Inspector to conclude and report to the SoS:

- that the development proposal is contrary to the provisions contained within the Statutory Development Plan;
- that the CS is up-to-date and the relevant policies against which the proposal is to be judged are consistent with NPPF. The CS should be accorded full weight;
- that there would be an unacceptable impact upon the landscape character;
- that there would unacceptable harm to visual amenity of local residents;
- that the proposal does not represent a sustainable form of development because of the environmental and social impact of the proposal when considered against the policies of the NPPF as a whole and consequently cannot engage the presumption contained in paragraph 14;
- that overall notwithstanding the proposed use of renewable and low carbon energy technology, the harm clearly outweighs such benefits.

### **The Case for Pears Action Group**

95. The case for the Pears Action Group challenges the benefits of the proposal to the community, refers to its landscape and visual impact including the effect on heritage assets and the additional impact of this proposal on local communities. The main points are as follows<sup>52</sup>.
96. The Action Group in general terms entirely supports and adopts the case made by the Council. In addition it makes particular submissions which reflect the various concerns of local residents anxious to live safe and peaceable lives whilst entirely accepting their responsibility to help increase the use and supply of green energy. The National Planning Policy Framework has recognised that there has been an imbalance within the planning system which tended to exclude rather than include people and communities. In part, declared the Minister for Planning, people have been put off from getting involved because Planning itself

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<sup>50</sup> BM paragraph 5.18

<sup>51</sup> BM Rebuttal p3 et seq

<sup>52</sup> Based on closing submissions at ID 22

has become so elaborate and forbidding - the preserve of specialists rather than people in the communities<sup>53</sup>.

97. Thus it is that, for the many months this application has proceeded through the Bassetlaw Planning Committee and to this appeal, the residents of the villages and countryside affected have developed their case and collated their evidence with the purpose of showing the very serious and entirely well founded reservations which demonstrate why this Appeal should be dismissed.
98. The Planning Practice Guidance on Renewable and Low Carbon Energy<sup>54</sup> is quite explicit that the need for renewable energy does not automatically override environmental protections and the planning concerns of the Community and, as is well known, the environmental impact must be acceptable. The planning concerns of this community should be properly heard. These proposals fundamentally and profoundly affect us, as shown by the 500 or so letters of objection, the large numbers who have travelled daily from their homes to be present at the Inquiry and those who have signed the petitions and who have appeared as objectors. These concerns should not simply be heard but acted upon, for it would be a great pity if the promise of the hearing of these reservations was seen simply as lip service paid to concerns prior to an almost automatic allowing of the appeal.

### ***Brief History***

99. The general history has been well rehearsed but it is of note that the industrialisation of this site, confined though it is, began by the allowing of an Appeal in 1995 in respect of Condition 9 of a grant of planning permission pursuant to an Application 1/30/95/1<sup>55</sup> which allowed a removal of a working hours and vehicular activity restriction. The result of that removal has been demonstrated by the evidence of residents at the Inquiry who have spoken of the damage done to the environment and their amenity by heavy lorries driving past their houses by day and night, in many cases giving rise to sleep deprivation and, during the day, unacceptable noise and emission of odours from the lorries' cargoes. The emission of odours has been a particularly serious feature of the Appellant's inability to regulate its activities so as to be a good neighbour. The number of complaints to the local environmental health authority (633 in 2013), together with episodes attested to by local residents and, significantly, the Inspector's own experience, graphically demonstrate the fact that the expectation of the Inspector in the 1995 appeal that "the removal of Condition 9 would not unacceptably harm the general living conditions of the local residents on account of smell and noise" has, nineteen years later, proved to be spectacularly misplaced.

### ***The over- reliance on NPS-EN1 and NPS-EN3 by the Appellant***

100. If these two documents did not exist, the Pears' Proposal would fail at the first hurdle. The Appellant admits that they apply to significant infrastructure projects of national importance having an electrical power output in excess of 50MW. His

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<sup>53</sup> NPPF Ministerial foreword

<sup>54</sup> CD 76

<sup>55</sup> ID 05

own proposal has an electrical power output of 7MW. Despite this the Appellant relies on these two documents.

101. The two documents permit relaxation of the usual planning constraints concerning matters of scale and visual intrusion into the landscape. This is due to the fact that the buildings required to house a significant infrastructure project of national importance with electrical power output exceeding 50MW are inevitably huge. Relaxation of planning constraints must therefore be invoked otherwise no such projects could gain approval.
102. There are no such grounds for this proposal. The scale and extent of the buildings are a straightforward result of his choice of fuel for the CHP plant and not, per-se, a direct consequence of his change to a CHP plant. The Appellant's biomass fuels are of a low calorific density (not much energy per cubic metre) and so require a large storage volume. The fuels have to be blended together requiring a very large blending and mixing building. The nature of the fuels requires a physically much larger boiler for efficient combustion than a fossil fuel boiler.
103. The Appellant admits this; his own submissions tell us that the new CHP boiler is a straightforward 'like-for-like' replacement in terms of energy output. The existing boiler house is relatively modest in size, a factor which was no doubt taken into account when it was approved. A new gas or tallow-fired CHP boiler would probably fit into the existing boiler house.

#### ***The choice of biomass for the CHP plant***

104. The Appellant invokes two factors:
- the need to be competitive in the market
  - security of fuel supply
105. As for the former, the Appellant switched from tallow to gas three years ago on simple commercial grounds. We have no argument with this. J.G. Pears (Newark) Ltd continues to trade profitably using this fuel and the Appellant makes no case that the continued use of gas will put his business in peril. In fact, the Appellant said that the only other rendering plant currently seeking planning permission in the UK proposes to use gas as a fuel<sup>56</sup>. Gas is a pole of the UK's energy policy. Alternatively, a connection to the gas grid, 12km away to the East would be even better, obviating the need for road transport.
106. As to the second, the Appellant's case is illusory. The on-farm generation of power in the agri-industry is booming, with on-farm biomass boilers and anaerobic digesters becoming increasingly popular. Poultry litter is among the raw materials for these. As for wood, a national deficit of the order of at least 10 million tonnes is predicted in the immediate future due to its utilisation by major power generators such as the nearby Drax and Eggborough plants.<sup>57</sup> However,

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<sup>56</sup> GB XX

<sup>57</sup> [www.carbonbrief.org](http://www.carbonbrief.org): Industry group Back Biomass told us in May it expects Drax power station to burn seven million tonnes of biomass and Eggborough around eight million every year. The comparable figure for the UK's annual wood harvest is five million tonnes, so that would mean burning a lot of wood.

at present, both are very attractive commercially and we have no doubt that this is the primary driver in the Appellant's proposal.

107. The PAG would have no objection to the Appellant upgrading his operation by installing a gas CHP boiler. The 10% efficiency gain over his existing fuel consumption will substantially improve his profitability, since, from his own evidence, fuel costs represent 50% of his overall costs. A gas CHP plant would remove ALL the disadvantages of the Appellant's biomass proposal, obviating the need for large, visually intrusive on-site structures, all the additional transport, and the possible noxious emissions. It would very substantially reduce the capital investment needs. It would be a 'win-win' for all parties.

### ***The nature of the fuel Proposal***

108. Regarding 'nature', the Appellant's choice of fuels dramatically changes the nature of the Low Marnham operation. At present, using gas, boiler chimney emissions are not contentious and largely consist of oxides of nitrogen and sulphur both of which, although health risks, are, on a relative scale, 'benign pollutants'. The new proposal also emits these two pollutants but in addition will burn:

- wood, releasing tars and other aromatic hydrocarbons, all known carcinogens
- poultry litter, releasing heavy metals, dioxins, furans and even though it is not present in poultry food, arsenic<sup>58</sup>
- meat and bone meal (MBM), releasing prions, widely known to be CJD carriers. This fuel is so potentially toxic that the ash has to be buried in landfill.

109. The boiler chimney emissions are thus vastly different from existing emissions and should not be released in proximity to residential areas, where exposure will be on a permanent, continuous basis.

110. At present, the concern of residents regarding emissions is focussed solely on odour which has been a long-term, persistent and recurring theme. Residents attest that this odour is so pernicious and penetrating that it is detectable inside houses and, with regard to outdoor impact, is of such concentration and repulsive nature that quiet enjoyment of the outdoors is not possible when a light breeze conveys it to whichever community. This is despite an operational permit condition that expressly forbids such odours beyond the site boundary<sup>59</sup>. Under these circumstances it is not difficult to imagine the horror of local residents when faced with the prospect of chimney emissions as described above. The Appellant's bland assurances that chimney emissions will never exceed safe limits ring very hollow given the long term history of failure to control odour.

### ***The wider community benefit***

111. The Proposal conveys no significant wider community benefit. The Appellant's own figures attest that taken over the long-term, the average delivery of electricity to the nation will be 5MW<sup>60</sup>. Out of the 39MW of resources consumed, this represents 12.8%, the remaining 87.2% accruing to the Appellant. When

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<sup>58</sup> CD42, AQA and HHRA Assessment, Table 4.1

<sup>59</sup> JGP01 condition 2.6

<sup>60</sup> Based on CD33, Fig 3.1 (4MW on 5.5 weekdays, 9MW on 1.5 weekend days)

balanced against the decrease in quality of life for local communities, this 5MW benefit is disproportionately small.

112. Other public benefits have been mentioned in evidence and during the course of the Inquiry. It has been suggested that economic benefits would accrue from the provision of 35 new jobs at the plant, but since local unemployment is virtually non-existent this would simply create long-distance unsustainable commuting. It has been claimed that the construction phase of the development would boost the economy temporarily, but this could be claimed for any capital project, such as a large housing estate. Indeed its effect on the local communities in terms of increased traffic may well be deleterious, and again it would necessitate more long-distance unsustainable commuting since local unemployment levels are so low. A further 'benefit' has been cited in the reduction of noise and odour, but since both appear currently to exceed permitted limits, this should be seen more as a reduction in harm rather than an actual benefit.

### ***The carbon footprint***

113. The Appellant's case is grossly overstated. The Appellant admits that his study is not a whole-life exercise. Consequently it excludes CO<sub>2</sub> generated from the following activities:

- manufacture, transport, erection and final demolition of the larger boiler (compared with use of conventional fuel) and associated equipment. Idem the larger boiler house and the whole of the fuel handling and storage buildings
- manufacture, distribution and spreading of the artificial fertiliser used as a substitute for the poultry litter (the manufacture of artificial fertiliser is hugely energy intensive)
- transport of Thetford's replacement poultry litter 'poached' by Low Marnham
- manufacture and ultimate disposal of the 17 additional HGVs required for fuel and ash transportation
- transport of wood as a fuel from Canada, Russia or Scandinavia when the UK enters its wood-deficit period. The nearby Drax (4,000MW) and Eggborough (2,000MW) are converting to wood-chip fuel. These two alone will use 8 million tonnes, 3 million more than the UK's annual harvest of 5 million tonnes.

### ***Landscape and visual impact***

114. New renewable and low carbon energy infrastructure should be delivered 'in locations where the local environmental impact is acceptable'<sup>61</sup>.
115. It is beyond question, and conceded by the Appellants, that the development will be prominent in the landscape. It is worth reiterating that since High Marnham Power Station was demolished, the landscape of the Low Marnham area is one of very few in the district where the landscape character has actually improved over the last few years. This leaves the Pears proposals still more incompatible, since they will no longer be seen in the context of even larger structures. The scale, mass and height of the proposed development would detract from the character and appearance of the landscape and the suggestion

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<sup>61</sup> CD 76 paragraph 3

that the Bassetlaw Landscape Character Assessment gives tacit support to a proposal of this scale cannot reasonably be justified.

116. The Council's evidence is that 26 properties would have clear or partial views of the proposals<sup>62</sup>. These numbers, though small, represent a significant proportion of the local population. For example, 10 properties at Low Marnham were identified which would suffer a severe visual impact, particularly the Grade II listed building, The Grange. There are only 19 dwellings in Low Marnham, so the 10 properties comprise over half the village. This impact amounts to an impact on the community itself, not just on individual householders. There would also be significant adverse visual impacts on the nearby village of Normanton-on-Trent and on heavily used local footpaths, the footpath along the River Trent and the well-used cycle routes, which cross the Trent at High Marnham.

### ***Mitigation***

117. The Appellants' witnesses agree that the proposals cannot be screened by landscaping but consider that low level screening will provide adequate mitigation. In this, they rely on the advice given in EN-1 and EN-3, which is inapplicable for the reasons already expounded.
118. Putting EN-1 and EN-3 to one side, it is entirely reasonable to expect that large structures which are not in keeping with the local landscape character and which would be entirely adverse in terms of visual impact, should be screened by landscaping in order to mitigate their impact. No additional land is proposed for screening along the northern boundary, where the impact on listed buildings and Low Marnham is worst. The proposed planting to the eastern boundary is only 5m wide and even along the southern and western boundaries, where the proposed planting belt is at its widest, it varies between about 8m and 20m in depth. Only about 20% of the site boundary will be planted to a depth of 20m and about half the boundary has 5m or less. This will not provide sufficient planting to mitigate the landscape and visual impact of the development. The Appellants' failure to provide landscaping up to the present time, notwithstanding the requirement of Condition 5 para 14 of the 1995 grant of Permission<sup>63</sup>, does not provide any encouragement, in any event, that they will comply with a landscaping condition with any enthusiasm.

### ***The effect of the proposal on the heritage interest of nearby listed buildings with particular regard to their setting.***

119. The proposed development does not comply with the Bassetlaw policy DM 8. National policy states 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...development within its setting'<sup>64</sup>. A Grade I listed building, such as St Wilfred's church at Low Marnham, counts as a nationally important heritage asset. It has been admitted that views from the church and churchyard would be affected by the proposed development. Views of its tower have signalled the

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<sup>62</sup> BM Proof, Table 1

<sup>63</sup> ID 05

<sup>64</sup> NPPF paragraph 132

existence of the settlement since the 15th century and are a heritage as well as a landscape asset. Taken individually, the damage to the individual viewpoints of which its setting is comprised may be considered to be 'less than substantial'. However there are so many viewpoints from which the setting would deteriorate, that their cumulative impact would be substantial. It would be 'death by a thousand cuts'.

120. It is instructive to consider English Heritage's view, which can be inferred from their response to the application 13/01231/FUL, yet to be determined. They consider that the existing development has a harmful impact on the setting of the church, and that the addition of a 30m chimney would add to the harm in a cumulative manner<sup>65</sup>. Although they state that the harm from a single 30m chimney would not be sufficient grounds to refuse an application, it would be instructive to have known their view on the proposal of the present Appeal for a 50m chimney, lit at night, and a building 28m tall, 32m long and 24m wide. Approving such an application might be seen to set a troubling precedent for future decisions.
121. If the Secretary of State were to decide that the effects of the development were less than substantial, then NPPF paragraph 134 would apply. English Heritage's advice is that 'public benefits in this sense will most likely be the fulfilment of one or more of the objectives of sustainable development as set out in the NPPF, provided the benefits will enure for the wider community and not just for private individuals or corporations<sup>66</sup>. The proposed development does not meet this criterion, in that it does not provide sufficient public benefit to justify the harm to the setting of the church.

***The effect of the proposal on the living conditions of local residents.***

122. The local highway is inadequate to carry without danger and inconvenience any but the lightest of heavy commercial traffic and compares unfavourably with the major highway networks which suitably and sensibly serve similar operations, for example at Trafford and at the Pears factory at Market Harborough which affords easy and convenient access to the A6. It is clear that the traffic flows projected by the Appellants will constitute an exacerbation of this situation. Evidence has been provided as to the difficulties experienced in Ragnall and Sutton on Trent<sup>67</sup>. Attention is drawn to the further complications which will be caused by access from the site in Hemplands Lane in Sutton-on-Trent where there is to be a new village centre and residential estate.
123. The evidence of the distress and anxiety caused to residents by the present volume and nature of traffic travelling on Pears business to and from Low Marnham is clear. In particular, those who live on or near the Ragnall - Carlton Road apprehend and expect a clear acceleration of the already intolerable damage to their health and quality of life if this appeal is allowed. The noise and odour emissions from the nature of the proposed traffic must be an exacerbation of the state of affairs which already obtains. It is one in which Mr Ford (for example) living near Grassthorpe bridge is regularly upset by the malodorous emissions emanating from poorly sealed heavy lorries carrying degenerating

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<sup>65</sup> BDC 02, letter from English Heritage 14 January 2014

<sup>66</sup> PAG 12

<sup>67</sup> District Councillor Christine Rose and Mr Fishwick



material to Pears factory, as are motorists, pedestrians and cyclists<sup>68</sup>. Much of the additional Pears traffic will comprise loads of chicken litter, an inherently malodorous and unpleasant substance carried in very large heavy lorries.

124. All the Appellant's proposals as to the management of prospective escapes have been predicated upon the expectation that they will exercise regular and entirely responsible and effective control over their emissions. The history of their willingness and capability to manage their emissions under the terms of their present operating permit strongly suggests that it would fly in the face of the empirical evidence now available to maintain that expectation. Thus, for example:

- there were 24 emissions between 15th August 2012 and 2nd January 2013, emissions that is to say which fall within the prohibition of the permit PPC/A2/13/v2<sup>69</sup>
- there were 633 complaints from residents during 2013<sup>70</sup> which did not necessarily result in a proper officer being able to identify them, particularly those that occurred late at night or in the early hours of the morning. Not untypical of the consequences is Dr Moloney's experience of it occurring on "several occasions when the smell was so bad from Pears that I was forced to leave my home, temporarily relocating just for some respite"<sup>71</sup>
- the historical emissions and their effect are also summarised by the Council's Senior Pollution Control Officer<sup>72</sup>
- the possible consequences of emissions which would result from a failure of control have been spoken to by Dr Clayton, Dr Nelson and Mr Hamilton.

### **Conclusion**

125. This is an appeal from the unanimous decision of the Planning Committee of Bassetlaw District Council to the Secretary of State: a government which is committed to localism and which declares a commitment to listen to the views of local communities which are likely to be affected by the proposals. Encouragement is to be given to technologies to be developed in the right places – but not places such as Low Marnham which is demonstrably the wrong place. 627 signatures on petitions, 500 written submissions opposing the development including three from the medical profession and the evidence of witnesses and objectors represent the concerns a huge cross-section of the community. The Community has spoken! Let it not be for nothing!

### **The Case for persons who spoke at the inquiry**

126. **Madeline Barden, Resident and Parish Councillor, Dunham, Ragnall, Fledborough and Darlton Parish Council:** Every household in Ragnall had written to object to the planning application. She emphasised that it would be residents who would suffer the consequences of this development. Notwithstanding the level of regulation, there had been over 560 complaints in the last year. The plant is a bad neighbour, exuding obnoxious odour, noise and light pollution. The site has been developed slowly but consistently, even though

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<sup>68</sup> complaints referred to by County Councillor Laughton and Councillor Rose

<sup>69</sup> PAG 09 Statement by Amy Ogden

<sup>70</sup> PAG 13 supplementary note by C Lowe

<sup>71</sup> Dr Clayton, Dr Moloney and Dr Nelson

<sup>72</sup> PAG 09

the further development and other measures aimed at addressing odour have failed to cure the problem. The economic losses would not be compensated for by the creation of 35 jobs.

127. As a matter of common sense, this tiny village of 18 houses which sits on 6 miles of unclassified road is not the right place for a CHP plant. The development would dwarf the church and the chimney would be seen for miles. If the Government is genuine about localism, the views of local people should carry more weight because they know and care about their area. The track record and competency of the company should be part of the process.<sup>73</sup>
128. ***Christine Fisher, a resident of Weston since 1975:*** has lived in Weston long enough to tell the difference between the smell from Pears and that from the sugar beet factory. She was dismayed at the reliance placed on the efficacy of the existing regulatory system. The level of opposition based on emissions, traffic and light pollution shows how little protection it has provided for the local environment. The location on the edge of a district council boundary has made co-ordinated action difficult for residents. Opposition to unpopular development is difficult to resource in the context of difficult decisions about public spending. In this way, our democracy is damaged<sup>74</sup>.
129. ***Maurice Jordan, Resident and Parish Councillor Normanton-on-Trent with Marnham Parish Council:*** At every meeting some issue about the Pears plant is raised, most frequently the obnoxious smell but also the large lorries using country roads and the spillages, which occur every few months. Outside leisure pursuits or barbecues on a warm summer evening are impossible for residents due to the intense smell, causing unacceptable living conditions. The plant does not operate in line with its operating licence. If the appeal succeeds, not only will the existing unacceptable conditions continue but also a monstrosity of an industrial unit will be inflicted on the landscape<sup>75</sup>.
130. ***Alison Purser, a resident of Grassthorpe for 38 years:*** as a cyclist, she is aware of the increased size, weight and number of HGVs using the unclassified road from Sutton-on-Trent to Ragnall. This causes deterioration in the condition of the road surface, particularly along the edges, which is the normal line for cyclists. One of only two cycle routes that bridge the River Trent between Nottingham and the Humber Estuary is accessed from Fledborough. The ability to enjoy fresh air while cycling is affected by the nauseous stench, which can be encountered several miles away and is different from the sugar beet factory. She has known the site since 1975. It has grown in stages from a small agricultural building so that now it is out of proportion to its setting. Living in the neighbouring District, she was unaware that the Permit did not allow egress of odour beyond the boundary and did not know who to complain to. Claims that further developments would resolve the problem of noxious odour have proved unsuccessful so that she has no confidence that the new development would be any better run or regulated than the current plant<sup>76</sup>.

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<sup>73</sup> ID 06

<sup>74</sup> ID 07

<sup>75</sup> ID 08

<sup>76</sup> ID 09

131. **Richard Spink, Resident of The Grange and Parish Councillor Normanton-on-Trent with Marnham Parish Council:** development on the site has grown over the last 19 years so that now The Grange, a Grade II listed building and a prominent feature in the local landscape is 175m from the edge of this site. The view from the house has changed considerably and would become one of a building to a height of 28m and a chimney of 50m. He is affected by odours from the factory when the wind is from the south. He cannot enjoy the garden in the summer or open the windows and the smell can be very distressing for visitors. Sometimes, when he comes home, he finds the smell is trapped inside the house<sup>77</sup>.
132. **Frank Smith, Resident and Parish Councillor Normanton-on-Trent with Marnham Parish Council:** he confirms that there are complaints and issues related to the Pears plant at every meeting. In his view the smell has worsened recently. There are also complaints about lorries, particularly at Grassthorpe Bridge and with regard to spillages. Although the manager of the plant attends Parish Council meetings, the situation has not improved. The effect is particularly felt in the summer, when people seek to enjoy the outdoors. Further development on the site would allow the existing unacceptable effect on living conditions to continue as well as inflicting an industrial unit and pollution on the locality.
133. **Ms D Burton, Resident of Low Marnham for 34 years:** when the wind is in her direction, she can smell the factory, hear the noise and smell the smoke. The impact of the smell cannot be measured and, even though it is reported, nothing seems to get done. Although the management are very good, they are used to the smell. As regards the Air Quality Assessment, she confirms Mr Lowe's analysis that wind conditions vary from place to place such that the wind turbine at Tuxford may be turning even though the one at Clifton is not. The villages of Low Marnham and High Marnham, along with the 800-year-old Church, are associated with the Cartwright family, who lived at the Hall. Of the three sons, one invented the power loom, another was an explorer who brought the Eskimos and was summoned to meet the king and the third was in the American government. This brings tourists, walkers and cyclists to the village. The factory should be landscaped so it cannot be seen. The smell should be controlled before planning permission is granted<sup>78</sup>.
134. **Gerry Murray, Resident of High Marnham:** on Thursday morning the Inspector stated she had driven past the factory and had noticed an odour. He confirms this was not from the sugar beet factory but from JG Pears. The odour continued for the next two evenings. Since Pears are unable to prevent an odour at present, this does not bode well for the future. As an example of the effect of the smell, he describes the reaction and colourful language of a taxi driver when he was returning home from holiday last July and the lingering presence of the smell, an unwelcome visitor inside his house<sup>79</sup>.
135. **Fiona Cunningham, Landlady, Brownlow Arms, High Marnham (also on behalf of Harry Keegan and Alexandra Grainger):** the pub has a large beer

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<sup>77</sup> ID 10

<sup>78</sup> ID 11

<sup>79</sup> ID 12

garden and play area and draws its custom from local caravan parks, users of the footpath networks, cyclists and those using the river for fishing or water skiing. The smell was noticeable when she took over the pub in 2005 but it has become more frequent since 2010. Her customers complain. They are unable to eat outside. Amongst regular customers, the chat around the bar is often about the factory, the smell, the spillages and noise levels. About 18 months ago the smell got worse. It now permeates all through the pub. She understands this may be due to a new filtering system. The smell seems to be at its worst at weekends and Bank Holidays, a key time for her business, when residents and caravanners are enjoying the outdoors. Last year a new chimney was installed but it made no difference. It was at this point she began to see that the Council was finally listening. The smell was particularly bad over the Christmas period. Lately, customers from South Clifton, on the eastern side of the Trent, have begun to comment on the disgusting smell which is reaching their village.

136. More recently, she has taken up cycling. She has encountered chicken remains in the road and observed liquid pouring out of the back of lorries going into Pears. She has been involved in one near miss and has observed lorries struggling to cross the bridge at Grassthorpe. The smell when the lorries pass is unbearable, forcing her off her bike until it dispels.
137. It has been proven that the existing facility is not managed satisfactorily and although it may be argued that the factory works within government guidelines, this has worked to the detriment of local residents. Although such plants are needed, they should be more stringently monitored. There is mistrust of what this factory may be discharging. Decisions made today affect our tomorrows and the next generation<sup>80</sup>.
138. **Fiona Cunningham, pp Harry Keegan Aged 12:** states that the air feels like it is choking him. More lorries may cause more accidents as well as more rubbish in gardens close to the road. There is not much room to pass when a lorry is coming over the bridge at Grassthorpe and waiting for one to move over can cause a massive traffic jam. The smell is so unbearable for people camping in the countryside that they are up all night<sup>81</sup>.
139. **Fiona Cunningham, pp Alexandra Grainger Aged 14:** she tends to go riding by herself and has been made very cautious after hearing of an accident involving a Pears lorry and a horse and rider - so much so that she now takes other routes for her own safety and the concern of her parents<sup>82</sup>.
140. **Karen Walker, Resident and farmer, Sutton-on-Trent:** her house is situated one metre from the road, on a slight bend, with straighter sections to north and south so that vehicles tend to be travelling at higher speeds. She has experienced unpleasant spills on this bend. Her house is affected by heavy traffic passing at speed – the pots rattle in the cupboard, cracks are appearing in roadside rooms. Any increase will make existing problems much worse. The chicken litter to supply the CHP plant will smell and blow around. The narrow country lanes will be even worse for pedestrians, cyclists and horse riders. As a horse rider, she notes that the road is more difficult – it is an accident waiting to

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<sup>80</sup> ID 13

<sup>81</sup> ID 13

<sup>82</sup> ID 13

happen. The new building will appear extremely overbearing, when riding between the small, attractive villages<sup>83</sup>.

141. **Susan Oakes, Owner, Ragnall Guest House:** she has been running her guest house for more than nine years and thinks in that time the number of tractors has more than doubled, which is almost exclusively related to the JG Pears factory. Every tractor is followed by a disgusting smell which lingers until the next one comes along. Her house is a listed building and the smell enters through the sash windows, causing guests to complain. The smell and the noise from the lorries is affecting her business. When the smell is unbearable, guests do not turn up. Lorries cause noise and vibration day and night. Pictures fall off the walls. There are cracks in the ceiling and walls. She lives in fear of a heavy vehicle leaving the road and going into her house. The road surface is cracking, causing difficulties for another resident of Ragnall who has poor eyesight. It is a safety hazard in a quiet village<sup>84</sup>.
142. The proposed development will make things worse. How can it be better for the environment to bring this fuel from all over the country through our village in huge, dirty, smelly lorries? Then there is the worry of pollution. Burning chicken litter will release poisonous chemicals that may contaminate the air and food. Her own child had a liver tumour which, she was told, was due to her exposure to something when pregnant. This should not happen to someone else.
143. She suffered particularly over Christmas, when Pears changed the filters. It smelt for weeks. It was embarrassing when her family came to stay as they could not even go to the local pub, The Brownlowe, as the smell put them off their food
144. **Elizabeth Boneham, Resident, Sutton-on-Trent:** after leaving the A1, the HGVs travelling to Pears pass her home, before taking a sharp, right-hand bend onto Hemplands Lane. They travel at regular intervals, into the early hours of the morning and their numbers have increased over recent years. Although the increase may be only 17 vehicles each way, she does not consider an extra 34 vehicles a day to be insignificant. If you were to join her for a barbecue in her garden, on a summer afternoon, just when taking that first sip of a refreshing drink or taste of the lovingly prepared food, you might inhale the most putrid smell imaginable. This would leave you nauseous for several moments before carrying on, in the hope of finishing the meal before the next lorry passes. There have been numerous spills of flesh, blood and grease. Recently, her daughter experienced one at Carlton-on-Trent, arriving with the wheels of her car covered in the revolting cocktail. She took photographs and witnessed several vehicles struggling to grip the road surface. If planning permission is granted and the number of HGVs increases, the nuisance that they cause on local roads will ultimately end in tragedy.<sup>85</sup>
145. **Sue Hallett, Resident, Low Marnham:** when she moved to Low Marnham 14 years ago she was warned of the smell but it has got much worse over the years. The noise of lorries reversing can be heard at one in the morning and

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<sup>83</sup> ID 14

<sup>84</sup> ID 14: See photographs of vehicles passing her house, accidents in 2012 and 2013 and the condition of the road in Ragnall

<sup>85</sup> ID 16

lorries travel through the village in the early hours. The smell is terrible. She has concerns about the chemicals used to clear up the spillages. It is not possible to plan a barbecue or garden party or to open windows in the summer, owing to the noise and smell coming from the factory.

146. ***Sue Chase, Resident, Grassthorpe***: rather than a technical or scientific report, she gives an honest account of what it is like to live day and night in the vicinity of the Pears plant. She has lived in Grassthorpe for 28 years and has witnessed the development over the past 17 years. She fails to understand how the continual expansion of this plant has been allowed, despite its inadequacies. There has been so much expansion that she can see the plant from her garden. She objects to the size and height of the appeal proposals and the light pollution from the existing and proposed buildings. As a cyclist, she considers the local road network is unsuitable for HGVs, with their stench and spillages. In addition, she describes the adverse effects which the smell can have on day to day life such as summer barbecues, washing hanging outdoors and being woken in the early hours by the smell entering her house. She considers the communities deserve some compensation if the proposals go ahead.<sup>86</sup>
147. ***Phillip Warriner, Resident and operator of the chicken farm*** across the road from the site: like so many others, Mr Warriner refers to the smell from the plant, which he considers to be particularly bad at weekends. Since July 2008, he has noticed there is more traffic to the plant, especially at weekends. As a result, he has no confidence that the amenity of residents will be protected from adverse effects at weekends. Although it has been agreed that the proposal would result in an average of 17 additional HGV movements to and from the proposed CHP plant per working day, this would amount to some 234 per week, which is more than residents should be expected to put up with. He has concerns about the arrangements for the storage of chicken manure and the risks of rodent or fly problems. He is also concerned about any increase in light emissions from the plant, since he considers these are already strong enough to possibly affect his chickens.
148. ***Ann Chambers, Resident of Normanton on Trent***: she has driven a pony and carriage for about thirty years. There has been a series of developments at the plant, all of which were supposed to address the smells but the bio-filters, the covers over the filter beds, the chimneys – none have fixed the problems. In spite of the bio-filters, she still regularly sees tractors with trailers removing effluent from the plant. As regards HGVs, she has noticed increased problems with traffic. 34 additional vehicle movements would equate to one every quarter of an hour on this unclassified road. Although HGVs are not supposed to travel through Normanton on Trent, they frequently do so and she encountered two the previous week. Discussions of traffic problems at Parish Council meetings show the problems in effectively controlling lorry movements. This is not an agricultural business and the refusal of planning permission should be upheld.<sup>87</sup>

### Written representations

149. The committee report notes that one letter of support for the planning application was received with over 500 letters of objection, including

<sup>86</sup> ID 17

<sup>87</sup> ID 18

representations from the Pears Action Group<sup>88</sup>. A number of written representations were also received as a result of the notification of the Inquiry and during the period the Inquiry was sitting. Some who submitted representations also appeared at the Inquiry. Since most of the points have already been summarised either as part of the case for the Pears Action Group or by individuals who spoke at the Inquiry, they are not set out in detail here. However, the main points raised were:

- visual impact, the scale of the proposed development, its impact on rural views and the countryside, the inadequate provision for mitigation and the effect on the setting of St Wilfrid's church;
- the current level of odour emissions from the plant which, when they occur, can be detectable for miles around and are described as an overpowering stench causing nausea and gagging, permeating the inside of houses as well as the space outside, sufficient to disrupt sleeping and eating and affecting the primary school in Normanton-on-Trent
- the risk to health from potential emissions
- other adverse impacts associated with the existing plant, especially with regard to: its unsightly, dominant appearance; the noise and light pollution it generates; and it being unsuited to a rural location;
- the adverse effect on amenity associated with existing HGV movements with regard to: odour from lorries as they pass through villages, affecting residents' use of their gardens and houses; noise, particularly at Ragnall, Grassthorne and Sutton on Trent; effects on other road users, namely walkers, horse riders and cyclists; and the risk to health and the distressing character of spillages from vehicles as they bring material to the plant

150. In response to the appeal proposal, residents reiterated these concerns. It was noted that some of these issues may be outside the remit of the appeal inquiry but many residents expressed the view that the existing control system had demonstrably failed to protect their amenity and that their communities were blighted. Attention was also drawn to recently issued national policy, that the need for renewable energy should not automatically override environmental protections and the planning concerns of local communities<sup>89</sup>.

### Consultees

151. No objections were received in relation to highways, flooding, pollution control or environmental health. Objections from three parish councils, those of Normanton-on-Trent with Marnham, Sutton-on-Trent and South Clifton, reflect the concerns of local residents. Newark and Sherwood District Council raised concerns regarding vehicle movements, visual impact and sustainability. These responses are summarised within the committee report<sup>90</sup>.

### The Case for JG Pears Ltd

152. The Appellant's case is that the landscape and visual impact would not be unacceptable, that harm would not be caused in other respects and that the

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<sup>88</sup> CD56 and LPA Questionnaire

<sup>89</sup> CD76, paragraph 5

<sup>90</sup> CD58

proposal would bring economic benefits and contribute to measures to combat climate change. The main points are as follows<sup>91</sup>.

153. There are SCGs<sup>92</sup> with both the LPA and the Pears Action Group (PAG) which cover a range of agreed matters, some of which are of significance in the light of the way the Inquiry has proceeded. It is assumed that they will be taken into account as agreed matters, for example, in the SCG with the LPA that the development is unlikely to have any adverse environmental effects in terms of odours, noise and emissions or any unacceptable impacts on human health<sup>93</sup>; and in the SCG with PAG for example, an estimated net additional HGV movements of 17 per full working day, within agreed hours<sup>94</sup>.
154. The answers given by the Council's witnesses in cross examination were, in a number of instances, materially different from the evidence originally contained in the proofs of evidence. It is in the circumstances particularly important that whatever was previously written should be read in the light of the witnesses' subsequent response.
155. Before dealing with the main considerations, it is necessary to address an issue which permeated much of the evidence offered by PAG to the inquiry. In common with virtually all proposals for the combustion of any type of material this proposal has attracted wide-ranging objections from a significant number of local people as well as others. In considering the objections raised however, this case presents some unusual features that require particular care in the handling and consideration of the evidence. There is on site an existing, consented and permitted rendering facility. That facility is unpopular locally and has attracted wide-ranging adverse comments. A good deal of the evidence at the Inquiry has been focused on attacking the existing facility either for its impacts in a variety of different ways or as a consequence of the transport of animal by-products.
156. This inquiry is not concerned with the regulation of the existing facility. The Secretary of State's policy requires all concerned to proceed on the basis that the existing facility will be appropriately managed and regulated under the terms of its existing planning permission and environmental permit. There is no evidence which enables conclusions reached about the impacts of processing animal by-products or the transport of them to be equated with any alleged impacts arising from the burning of the range of fuels proposed for the CHP or the transport of any of those fuels to the proposed development.
157. Chicken litter has been declared in the evidence from PAG to be unsatisfactory in a number of different ways related to odours when transported, dangers to health in its raw form and dangers to health when it is combusted. Yet chicken litter has been spread on fields in the locality and even deposited on the public highway, all apparently without adverse comment as to its potential adverse effects<sup>95</sup>. In addition of course, chicken litter is already burnt at other facilities elsewhere in the country and, subject to appropriate regulation, causes no difficulty and no identified harm to human health.

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<sup>91</sup> Based on closing submissions at ID 24

<sup>92</sup> CD64 & 68

<sup>93</sup> CD64 paragraph 6.1.1

<sup>94</sup> CD68 paragraphs 6.1.1-6.1.2

<sup>95</sup> JGP 12, 13 and 14



158. The reality is that the objections to the appeal proposal are related more to the existing plant than the current proposal. Ironically the evidence shows that permitting the appeal proposal would be likely to improve odour control from the existing plant<sup>96</sup>, it will reduce the noise of the existing plant experienced at Low Marnham<sup>97</sup> and provide the opportunity to address comprehensively the lighting for the whole site and the landscaping around it, with clear and identified benefits flowing from each of those matters. In the circumstances the merits of the appeal proposals should not be confused with a consideration of objections raised to the existing plant. Any relevant cumulative issues relate to landscape and visual issues.

***The effect of the proposal on landscape character and the visual impact of the development***

159. The agreed “key”<sup>98</sup> Development Plan policy related to renewable energy and low carbon energy proposals is policy DM10<sup>99</sup>. The policy is drafted so as to comprehensively address all planning issues that might arise from such proposals. It is the Council’s case that it is up to date. That policy requires such proposals to be compatible with policies to safeguard the built and natural environment and also to not result in an unacceptable impact in terms of visual appearance among other things. The reference to policies to safeguard the built and natural environment is an effective redirection to policies DM8 and DM9 and in particular in respect of landscape character to policy DM9C.

160. It was agreed<sup>100</sup> that in the circumstances of this case, the policy imposed no requirement that this proposal should enhance the landscape character of the area. The reasons for that appropriately made concession were obvious from a consideration of the National Policy Statements EN1 and EN3<sup>101</sup>. Thus the policy requirement resolved to proposals being expected to respond to the local recommendations made in the Bassetlaw LCA<sup>102</sup> by conserving, restoring, reinforcing or creating landscape forms and features according to its recommendations. The effect of the proposals on landscape character therefore essentially resolves itself to a consideration of the compatibility or otherwise of the proposal with the approach set out in the LCA. It is relevant to note that there exists on the appeal site at the present time, as an essential part of the baseline landscape character, a substantial number of buildings and vertical elements such as chimneys which have of course been permitted as being acceptable in landscape and visual terms by the Council. There is no evidence<sup>103</sup> that any of this was permitted on the basis that its landscape impacts were unacceptable but for other reasons it should be granted planning permission.

161. It was quite clear from BM’s approach that his view was that those elements were substantially harmful to both landscape character and visually<sup>104</sup>. Mr

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<sup>96</sup> CD 56, EHO consultation reply

<sup>97</sup> CD 33 Chapter on Noise effects

<sup>98</sup> KH XX

<sup>99</sup> CD69 Core Strategy

<sup>100</sup> KH XX

<sup>101</sup> CDs 74 and 75: see for example section 4.5 of EN1

<sup>102</sup> CD 73

<sup>103</sup> KH XX

<sup>104</sup> BM paragraphs 3.6.3, 3.6.4, 3.6.6, 3.7.15 and 3.7.19

Moore's evidence on this matter varied somewhat. In the first instance he accepted that it was clear from his proof that he regarded the existing development as being unacceptable in landscape and visual terms, notwithstanding the fact it had planning permission. On further reflection he decided that that was not his position and that the development should be regarded as acceptable, albeit that it continued to have the substantial, in his view, harmful impacts on both landscape character and visually. Be that as it may it is plain that for him the starting point was an existing development which was in one way or another substantially harmful from a landscape and visual point of view. Such an approach was bound to and did substantially affect his judgement.

162. That is a fundamentally inappropriate starting point for the assessment of either landscape or visual harm arising from a proposed development. As Mr Moore accepted, there is nothing in the GLVIA3 guidance<sup>105</sup> which would support such an approach. It follows, from the fact that that clearly was Mr Moore's approach, that his assessment of the acceptability of the appeal proposals was always going to be skewed by his view of the inappropriateness of what has already been granted planning permission.

163. The policy position from the Framework<sup>106</sup> is clear and was agreed<sup>107</sup>. That is not that the Framework looks for no impact from proposals of this kind but, rather, for acceptable impacts bearing in mind, as is clear from EN1 and EN3, that the national policy recognises that proposals of this kind will inevitably be of a certain scale in order to accommodate their functional requirements. Such an approach would be consistent with a sensible interpretation of Policy DM10 and DM9 of the CS. Ms Hulse's proof of evidence makes clear, and she confirmed it in xx that these are fully relevant to this case. She did not argue for anything less than full weight being given to them.

164. There has been some consideration of whether or not the appeal site constitutes a "valued" landscape. At the end of the day it may not matter very much whether or not a particular conclusion is reached on this point because ultimately it was agreed that what mattered was the response of the proposal to the guidance contained in the Bassetlaw LCA<sup>108</sup>. In addition it was expressly conceded that this is not a case where the Council is arguing for any obligation to enhance. Nonetheless we should be clear that in the Appellants' view the valued landscapes referred to in paragraph 109 of the Framework do not include those which are, for example, simply the landscape around a particular settlement which might be valued by its community for a variety of reasons but is otherwise not particularly identified as being of any special significance. Any other approach results in the requirement to "protect and enhance"<sup>109</sup> being applied to any landscape in respect of which any local community can come forward and say that it is valued. That, we respectfully submit, is not the intention of the Framework which is rather that valued landscapes should be those which have been objectively identified as being of some particular significance as a

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<sup>105</sup> CD77

<sup>106</sup> CD72, paragraph 98

<sup>107</sup> BM XX

<sup>108</sup> BM XX

<sup>109</sup> CD72 NPPF paragraph 109

consequence of objective assessment by reference to identified criteria. It is of assistance to note that whilst footnote 9 on page 4 of the Framework is not intended to be an inclusive list of what might be valued landscapes, the flavour of what is intended to be included is obvious.

165. For landscapes outside those which have been identified as being valued, the approach promoted<sup>110</sup> is to adopt a criteria-based approach which allows valued landscapes to be appropriately protected and other landscapes to be subject to criteria for their protection reflecting their significance. That is not to say that landscapes outside those identified as being valued are not of any value at all. That is clearly neither the intention of the Framework or the Planning Practice Guidance on renewable and low carbon energy<sup>111</sup>. However it plainly is not the intention of either the Framework or the Practice Guidance that landscapes outside the valued category should be subject to the “protect and enhance” requirement at paragraph 109. Such an approach would be quite inconsistent with the approach in EN1 and EN3 and would result in a policy framework which would make it extraordinarily difficult for any built development to take place in the countryside, particularly any energy infrastructure development.
166. Before turning to the LCA it is important to note that with regard to the Framework’s policy on design, principally paragraph 56, the Council makes no complaint in its Reason for Refusal or its evidence at the Inquiry that:
- The appeal proposals have been poorly designed;
  - That they could in any sense be bettered by way of the design of them<sup>112</sup>;
  - That the Council accepts that care has been taken with the design<sup>113</sup>.
167. It was accepted<sup>114</sup> that given that design is a “key” aspect of sustainability the positive comments about the design of the proposal contained in BM’s evidence were an indication of sustainability of the appeal proposals.
168. In terms of landscape effects, the following matters should be noted by way of introduction:
- (i) It is explicit in the GLVIA<sup>115</sup> that elements which currently contribute to or make up the landscape in the study area should be taken into account. That does not include any judgment about the acceptability of such elements;
  - (ii) With regard to landscape character assessment the Council’s position is that the GLVIA’s guidance in relation to townscape areas and assessment of them applies to Low Marnham as an area where the built development is “dominant”<sup>116</sup>;
  - (iii) The LCA makes it clear that it is an aid to development control decisions and not intended to be more than that<sup>117</sup>;
  - (iv) The LCA is not there to prevent development taking place or to fossilise the area<sup>118</sup>;

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<sup>110</sup> CD72 NPPF paragraph 113

<sup>111</sup> CD76

<sup>112</sup> note the absence of criticism from BM at paragraph 5.15

<sup>113</sup> BM paragraph 3.7.13

<sup>114</sup> BM XX

<sup>115</sup> CD 77 paragraph 5.4

<sup>116</sup> BM XX

<sup>117</sup> CD73 Executive Summary at paragraph 1

- (v) Where the LCA is referenced in CS Policy DM9C, the expectation is not to comply with it but rather to respond to its recommendations. Thus references to the policy for a particular area being to conserve or create are not generalised references requiring development to conserve and create but rather to conserve or create in the context of the particular guidance given in the LCA for the Policy Zone being referred to;
- (vi) The boundaries of the relevant Policy Zones in the LCA have been carefully drawn on a considered basis with no basis existing for trying to flex them so as to bring within any particular zone an area which had been deliberately excluded;
- (vii) There is nothing in the LCA for the adjacent Policy Zone covering Normanton on Trent, MN PZ 12, which indicates that control is required outside the zone so as to preserve any element of landscape character. It was agreed that if such had been intended or required then the LCA could have said so;
- (viii) The “prescriptions” for the different Policy Zones have been carefully drawn so as to reflect what is thought to be appropriate by way of development or no development, having regard to the characteristics of the zone and its sensitivities.

169. With regard to Low Marnham, the relevant LCA Policy Zone is TW PZ 18. In respect of that area the policy is a “conserve and create” policy. We have agreed that, in respect of the sub-heading related to landscape features, no adverse impact is suggested such as to bring the proposal into conflict with that element of the LCA’s guidance<sup>119</sup>. In fact as was agreed in cross examination the proposals will positively support the LCA’s guidance in relation to landscape features by way of the provision of small scale woodland planting and hedgerow tree planting in the areas around the site. Accordingly not only is there no conflict with the LCA in respect of landscape features, the proposals are positively supported by the LCA.

170. With regard to built features, Mr Moore agreed that it was inconceivable that those who prepared the LCA were not aware of the existing plant in making recommendations with regard to built development. Those recommendations include taking an approach to conserving the rural character of the landscape by concentrating “new development” around existing settlements of Low Marnham among others. That approach is clearly linked to the final relevant bullet point which is the promotion of sensitive design and siting of any new agricultural or industrial/commercial buildings. That reference to industrial or commercial buildings was not universal to all of the Policy Zones but something which had clearly been particularly considered in relation to the relevant Policy Zone for the appeal proposal. The upshot is that with regard to built features the landscape actions consistent with the conserve and create approach have expressly endorsed concentrating new development around Low Marnham and expressly countenanced that it might include industrial or commercial buildings. The policy prescription could well have said, if it was thought necessary, that the industrial or commercial buildings should be of only small scale. No such reference is present such that the inference in the context of the unmissable existing plant is that the prospect of significant scales of industrial or commercial buildings were

<sup>118</sup> CD73 paragraph 1.20

<sup>119</sup> BM Proof paragraph 3.3.12

not being ruled out as inappropriate or as undermining the landscape character of the area.

171. Mr Moore agreed that the LCAs and the formulation of the policy prescriptions for the Policy Zone will have fully taken into account any aspects of the sensitivity of the relevant Policy Zone. In these circumstances the following matters can be regarded as agreed:

- (i) The existing base line for landscape character purposes includes substantial scale industrial buildings with significant vertical features including chimneys; they are a part of the character of this area;
- (ii) The existing development at Low Marnham, agreed as unmissable, is not described in the LCA as being out of character or of any particular significance. If it was thought to be significantly harmful or inappropriate, it is inconceivable that the policies' prescription should be as it is, to encourage new industrial and commercial development around Low Marnham.
- (iii) The development proposed has been sited so as to relate to the existing features as recommended in the LCA;
- (iv) On this basis the proposals do not represent a new feature of an entirely different character to that which already exists, rather they are adding to the existing in exactly the way the LCA promotes as a policy objective.

172. In these circumstances whilst clearly the proposals involve buildings and vertical features of a significant scale, having regard to the approach in the LCA and the agreed position with regard to the care taken with their design, the landscape impacts should be regarded as acceptable and fully according with the approach set out not only in the Framework but also in EN1 and EN3 with regard to proposals, so far as possible, and consistent with maintaining their functionality responding to the landscapes in which they are situated.

173. It is now quite clear that it is no part of the authority's case to rely on any heritage impact. In addition Mr Moore agreed that there had been an earlier Historic Landscape Assessment undertaken in Nottinghamshire which would, of course, have had regard to heritage features. It was agreed that the Historic Landscape Assessment had been taken into account in the current Bassetlaw LCA and the formulation of its policy proposals.

174. With regard to visual effects, the Appellants have always accepted that this proposal is of a large scale and will have visual effects which when assessed in accordance with the identified methodology would produce what the methodology characterised as "substantial adverse" outcomes. However the fact that that is the product of the assessment of certain view points does not make the development unacceptable in visual terms.

175. In this instance it is the Council's position that the area in which the appeal site lies cannot be regarded as sparsely populated, it is according to Mr Moore well settled. In those circumstances it is really quite remarkable that there should be such a limited range of properties with any clear view or partial view of the proposals. The highest the Council was able to put it was that some 12 properties were estimated to have a clear view of some part of the appeal proposals. The bulk of those were within Normanton, in respect of which there

are now substantial areas of new woodland planting<sup>120</sup> which in due course will yet further obscure any view from any property in Normanton. In the light of Mr Warriner's evidence one can confidently expect that the planting will be maintained properly because of its importance to his chicken enterprise.

176. As to other properties with clear views, the four at High Marnham are agreed to be elevated and with a significant panorama before them in which the appeal proposals would be a relatively small incident. In respect of both Normanton and High Marnham, the distance from any relevant properties to an appropriate point on the site was in the order of a kilometre.
177. We note that Mr Moore regarded the clear views as the ones which were of significance which means that only 12 properties at worst could be regarded as having what the Council would regard as some significant view in relation to a proposal which is admitted to be of a significant scale. That the numbers of properties is so limited and the visual effects overall so limited, is a tribute to the wisdom of the LCA's approach as to the appropriate location for industrial commercial development and also the skill and care taken by the Appellants in the design and location of the proposals.
178. In respect of Low Marnham one property was identified as being a property with a clear view, that is The Grange. That property sits at a distance of about 330 metres from the main elements of the proposed development, beyond the existing substantial process building, and any consideration of the impact of the new development on the property should take into account the fact that it already has clear views of the existing plant which is identifiable as an industrial structure. The PAG evidence from Ms Bennet-Samuels was that in the current view the existing plant is already "dominant". What is proposed therefore is not something which is different in character to that which can already be seen but simply a further urbanising element. It is of course correct that in accordance with the adopted methodology the identified impact is "substantially adverse" but that is not a judgment on acceptability for the particular view, let alone for the proposal as a whole. Whilst it is undeniable that the proposals will have visual impacts, those visual impacts are remarkably limited and fully consistent with the approach identified in either EN1 or EN3 and the Framework.
179. In these circumstances the Appellants submit:
- (i) The effect of the proposal on the landscape character when considered against the background of the LCA should be regarded as acceptable being appropriately located and not representing the introduction of any new adverse character element;
  - (ii) In terms of visual impacts, whilst there will most certainly be visual impacts and impacts which will be obvious from some locations, these are limited to the scale of what is seen as opposed to any change in character and they have been mitigated in precisely the way anticipated by EN3, with good quality screening around the lower parts of the site to ensure that those elements are not generally capable of being viewed from outside the site;
  - (iii) The proposed landscaping scheme secured by condition will be capable of delivering not only the desired mitigation with regard to lower level views but also landscape character and visual benefits anticipated by the LCA.

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<sup>120</sup> BM XX

- (iv) The impact of night time views and the effects of lighting at the site would be capable of improvement in the implementation of the appeal proposals with a condition requiring the submission of a lighting scheme for the whole plant.

***The effect of the proposal on heritage interests of nearby listed buildings with particular regard to their setting***

180. The Council presents no evidence that the setting of any listed building would be adversely affected so as to impact on the building's significance<sup>121</sup>. To the extent that any case is continued to be advanced in this regard, the careful, rigorous and thorough assessment undertaken by Dr Miele shows that there is nothing in this proposal which would have any materially adverse impact on the significance of any heritage asset. There is nothing in the recent correspondence with English Heritage<sup>122</sup> in relation to the thermal oxidiser proposal which is inconsistent with Dr Miele's evidence.
181. PAG's assessment of harm was admitted to be absent the consideration of any element of the relevant EH advice on setting or any assessment of the heritage significance of the listed buildings. It cannot in the circumstances be accorded any weight.

***The effect of the proposal on the living conditions of local residents with particular reference to the adequacy of the local highway network, HGV movements and emissions of odour and noise, evidence as to the effect of predicted emissions from the proposal development on human health***

182. Whilst PAG asserts the inadequacy of the road network, there is no objective assessment which would support this view. The Appellants' position set out in the Transport Assessment<sup>123</sup> is fully supported by the position of the Highway Authority in all material respects. The reality is that the network is fully capable of supporting not only the existing traffic but also the very modest increase which would arise as a result of the appeal proposals. There is no evidence which could justify any different conclusion based on the application of any relevant transport planning guidance. The Highway Authority agrees with that view.
183. With regard to HGV movements and emissions of odour and noise, these are all matters which are subject to regulation by other legislation<sup>124</sup>. So far as emissions of odour from vehicles on the highway are concerned, it is to be noted that the permit for the existing plant<sup>125</sup> requires that appropriate measures should be taken to ensure that material is safely and properly transported to the site. That includes measures to have vehicles washed down after they have delivered their loads. The reality is of course that much of the evidence focuses not on the unacceptability of the additional deliveries of either biomass or chicken litter for the current proposal but rather complaints about the operation of the existing plant. In that regard the objectors are not able to point to a single proved breach of any relevant condition of the existing permit or any of the

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<sup>121</sup> BM and KH XX; KH Rebuttal, paragraph 4.13

<sup>122</sup> BDC 02

<sup>123</sup> CD43

<sup>124</sup> GB evidence in chief

<sup>125</sup> JGP 01

regulations related to the carriage of animal by-products which has occurred in circumstances where the regulatory authority has thought it appropriate to take action. The e mail correspondence with the regulators does not support the view that there is any significant problem with regard to the transport of raw material.

184. As to noise and disturbance arising from vehicles, the levels of vehicle movement are in reality very low. If movements of this scale were to be regarded as unacceptable on the public highway then it is likely that there would be very many areas of the country where development would be completely sterilised as a consequence of complaints about noise. There is no independent and objective assessment of noise levels which would support the view that either as to peak levels of noise or as to measurements over any relevant time period, the noise from vehicles should be regarded as unacceptable. As in other respects, the complaint, in reality, is about the operation of the existing plant. It would be positively perverse to suggest that a situation which had been permitted as a consequence of the grant of planning permission should now be regarded as unacceptable so as to contribute to the refusal of planning permission for a proposal which adds but marginally to the numbers of vehicles and not in any event during the sensitive night time period.
185. Evidence as to the effect of predicted emissions from the proposed development on human health lacks objective rigour. Mr Lowe's evidence is admitted to be no more than a questioning of certain elements of the air quality assessment<sup>126</sup>. For the reasons set out in the response statement from Mr Othen<sup>127</sup>, the Appellants do not accept that those complaints are justified. In any event, as paragraph 122 of the Framework makes clear, these are all matters which are regulated by other regimes, principally in this instance the regime relating to the grant of environmental permits. In that respect there is in place a rigorous and carefully regulated regime which ensures the highest level of protection for both the environment and public health as a consequence of the UK having faithfully implemented the European Directives relating to emissions from plants of this kind.
186. Reliance is placed by PAG on the BSEM report related to the incineration of waste materials. The HPA's position with regard to that report and the continued use of incineration of material is quite clear<sup>128</sup>. There is, in the circumstances, no basis for giving any weight at all to the BSEM report or for regarding the predicted emissions from the proposed development as having any adverse implications for human health. As regards the perception of harm and the extent to which that should be regarded as carrying any weight, there is no objectively evidence that the proposal would be likely to lead to any actual harm to the health of any persons either in the vicinity of the site or in the wider area. Whilst some evidence has been given by PAG as to potential harm, that evidence was based on either a false factual premise, for example the existence of arsenic in chicken feed; or is simply speculation as to what might occur; or is based upon discredited material such as the BSEM paper; or more fundamentally is based on

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<sup>126</sup> PAG 01

<sup>127</sup> JGP 02

<sup>128</sup> CD 80 and 81



the assumption that the regulatory agencies involved in the regulation of activities at the appeal site simply cannot be relied on to protect public health<sup>129</sup>.

187. Perception of harm to health is capable, as a matter of law, of constituting a material consideration in the determination of a planning appeal. However this proposition must be applied with caution. In *Gateshead MBC v. Secretary of State for the Environment* (1994) where there was public concern about an increase in the emissions of noxious substances from a proposed clinical waste incinerator, Glidewell LJ in the Court of Appeal noted that public concern which could not be objectively justified could not be decisive. He continued "If it were, no industrial – indeed very little development of any kind – would ever be permitted"<sup>130</sup>.
188. Further it is clear that the Secretary of State's policy, in dealing with the proposals such as this, is one which does not accord material, let alone, decisive weight to the factor. National policy makes it clear that matters of health and pollution are the responsibility of the pollution control regime and not the planning process<sup>131</sup>. A distinction is to be drawn between the pollution control regimes and the planning system, which are separate but complementary. The former seeks to prevent pollution through the adoption of measures to restrict or prohibit the release of substances to the environment to the lowest practicable level. It also ensures that ambient air and water quality standards which guard against the impacts to the environment and to human health are set at appropriate levels. Very much the same policy as is set out in the Framework remains in place for waste proposals<sup>132</sup>.
189. By contrast with the pollution control regime, the planning system controls the use of land and the development of land in the public interest. It is clear that planning authorities should concern themselves with implementing the planning strategy and the development plan and not with the control of processes which are a matter for the pollution control authorities<sup>133</sup>. That approach is reinforced by the assumption required to be made in accordance with paragraph 122 of the Framework, an assumption which it is clear PAG have been unwilling to make.
190. The approach which the Appellants in this case suggest is the correct one has been followed in a number of other cases including the Ince Marshes case where the Inspector said:

"The position giving rise to doubts in the mind of the public, concern over health effects of incineration of waste, is one that is in direct conflict with the position taken by Government in a statement of national policy (paragraph 22 of Chapter 5 of Waste Strategy for England). Such a statement will not satisfy everyone but should act to allay anxiety amongst the public at large. My conclusion is that, although the proposal raises public anxiety, this should not

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<sup>129</sup> see for example Mr Lowe's evidence and the clear statement that the regulatory agencies simply cannot be relied upon

<sup>130</sup> ID 04, paragraph 95

<sup>131</sup> CD72, NPPF paragraph 122

<sup>132</sup> JGP 05 PPS10

<sup>133</sup> JGP 05 PPS10 paragraph 26

carry great weight in relation to planning decisions on the proposals before the Secretary of State.”<sup>134</sup>

191. That stance continues to be the one held by the Secretary of State. In a relatively recent decision on a proposed waste energy plan in Cornwall, the Secretary of State said:

“The Secretary of State agrees with the Inspector’s reasoning and conclusions with regard to the impact of the proposal on health as set out in IR2086-2104. He agrees that there is nothing arising from evidence in this case to justify taking a different view from national policy that the use of the facility would [not] affect the health of those living in the locality and that there is nothing in the evidence to warrant an intervention in a matter which is properly to be dealt with by another regulatory regime, that of the permit.”<sup>135</sup>

192. That position was upheld in the High Court and subsequently in the Court of Appeal.

193. The issue of public perception of health impacts was also considered in a case involving a waste disposal facility in Sinfin, Derby. In that case the Inspector noted that the HPA and PCT had not objected to the proposals. The Inspector commented:

“Whilst I understand the concerns expressed by those in the local community as to potential health impacts...these concerns are not supported by any objective review of the evidence. They are also not supported by those who have responsibility for safeguarding public health.”<sup>136</sup>

194. The Inspector concluded that there was no evidence that the proposal would adversely affect the health of local people and hence no conflict with any of the related development plan policies in this regard.

195. In the Sinfin decision the Inspector commented *“The City Council suggests that this is an unusual case. In my experience, most major proposals for waste management facilities are deeply controversial”*. In dealing specifically with the issue of perception he found *“I give the benefits that will be generated by the proposed development very substantial weight, particularly in respect of the waste management and renewable energy benefits. In my judgment, the fact that local concerns and anxieties seem to have been based on perception rather than substantive or proven evidence mean that they cannot outweigh the benefits I have identified nor the fact that the proposal complies with the development plan.”*<sup>137</sup>

196. The consistency of the approach by the Government and other decision makers on this issue is evident from other proposals such as that related to the decision by the Secretary of State for Energy and Climate Change in relation to Lostock Works<sup>138</sup>. In particular, the Decision Letter states that the Secretary of State “wholly accepts the conclusions of the Inspector with regard to the proper

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<sup>134</sup> JGP 07 paragraph 11.28

<sup>135</sup> JGP 08

<sup>136</sup> JGP 09 para 116

<sup>137</sup> JGP 09 paragraph 123

<sup>138</sup> JGP 15

distinction between the planning process and the pollution control regime". The Inspector had noted in her report that:

"National Policy in EN1, PPS10 and WS2007 all say that decision makers should work on the assumption that the appropriate pollution control regimes would be properly applied and enforced by the regulator".

197. In applying his own policy to the circumstances of this case the Secretary of State should, we submit, come to the view that there is no basis for the refusal of planning permission relying on any perceived impacts to human health. The perceptions and concerns raised by PAG are focused on emissions to air from the proposed plant and risk from the road transport of material. In this case the relevant pollution control regime is the Environmental Permitting regime operated either by the local authority or in other cases by the Environment Agency. Any health concerns are matters for consideration of the pollution control authorities who are required by way of the Regulations, implementing EU Directives, to ensure that any emissions from the plant or any consequences arising from any aspects of its operation should not pose a threat to either the environment or public health.
198. In this instance it is clear from the terms of the existing permit<sup>139</sup> that any future permit will contain a wide range of conditions designed to control the operation of the plant such that the necessary performance standards with regard to emissions to air and other matters are complied with over the operational life of the plant. The conditions will also require appropriate monitoring regimes to be put in place as well as the keeping of records that will need to be made available to the regulatory authority. For the purposes of determining this appeal, the proper approach must be that the regulatory authorities will apply the appropriate standards and enforce them through the environmental permitting regime.
199. In relation to the current proposal it is relevant to note that submitted with the application was a report from Professor Bridges<sup>140</sup> which addresses public health and other concerns. There are no representations on the application from any responsible body, indicating that the consequences of the operation of the appeal proposal are not likely to give rise to any material risk to either the environment or public health. Indeed, the proposals are likely to give rise to benefits in certain areas which should weigh in favour of them. In these circumstances, there is simply no basis for a rejection of the appeal proposals in relation to matters related to health or the perception of harm to health.

***The extent to which the proposal would contribute to the delivery of the Government's climate change programme and energy policies***

200. This matter has been fully addressed in the ESr<sup>141</sup>. No part of the assessment of the benefits of proposals with regard to climate change has been disputed. It is accordingly to be taken as a matter of agreement that the total savings of carbon dioxide by using poultry litter as a fuel rather than land spreading it, together with the estimated savings from substitution of this renewable energy

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<sup>139</sup> JGP01

<sup>140</sup> CD 54

<sup>141</sup> CD33

source in place of fossil fuel derived energy, is between 138,300 tonnes CO2 p.a. and 172,700 tonnes CO2 p.a.<sup>142</sup>. That is a very substantial contribution to the policy objective linked, as it is, to the effective use of steam in the rendering process. The importance of CHP is clear from EN1 and 3 and from Core Strategy Policy DM10B. The ability to utilise fully the significant steam produced by the proposal should be regarded as a significant benefit and accorded substantial additional weight<sup>143</sup>.

201. PAG had a number of alternative suggestions with regard to the fuelling of the rendering plant. The use of gas by way of a piped supply would not deliver any significant benefits in terms of the climate change programme. The suggested production of Category 1 tallow on site is unrealistic, since it would require installation of a new processing line and the importation of substantial quantities of Category 1 material. Accordingly, the Appellants submit that the proposals will make a substantial and meaningful contribution to the Government's climate change programme, entirely in accordance with the policies in the Framework and in the National Policy Statements. Whilst such a benefit does not automatically override other, and in particular, environmental considerations, it is without doubt a significant benefit to which substantial weight should be accorded.

### ***The adequacy of the Environmental Statement***

202. There has been no suggestion from the Council that the Environmental Statement in its current form is anything other than adequate. The Appellants have received no notification from either the Secretary of State or PINS that there is any deficiency in the Statement. Such deficiencies as might be said to arise as a result of PAG's criticisms are groundless in as much as they are not supported by any objective evidence from an appropriately qualified source. The Appellants have made clear at all and every stage of the process that they are ready, able and willing to supply any further environmental information which might reasonably be required.

### ***Whether the proposal complies with the Development Plan***

203. There is no issue with the Council that as a consequence of the requirements of the Framework<sup>144</sup> there is a need to consider the extent to which any relevant policies in the DPD are consistent with the Framework in order to decide what weight to give the DPD policies<sup>145</sup>. Before turning to the relevant policies in the Development Plan it is necessary to set out the approach which should be adopted to the requirement in Section 38(6) of the Act that the determination should be in accordance with the plan. The following principles are clear<sup>146</sup>:
- (i) There is a single determination involved in the grant of planning permission subject to conditions;
  - (ii) The imposition of conditions and the provisions of the S106 Agreement can effect the "accordance" of the determination with the Development Plan;

<sup>142</sup> CD33 paragraph 18.44

<sup>143</sup> CD 74, EN 1 paragraph 4.6.8

<sup>144</sup> CD72 NPPF paragraph 215

<sup>145</sup> KH paragraph 6.36

<sup>146</sup> Cummins v. London Borough of Camden and the Secretary of State (2001) EWHC 1116 (Admin)

- (iii) The requirement to be in accordance with the Plan is not an accordance with each and every relevant policy of the Plan;
- (iv) In many circumstances a proposed development may be in accordance with Development Plan policies with respect to one aspect of the policies and yet be contrary to other policies. In such cases there may be no clear cut answer to the question whether the proposal is in accordance with the Plan. In such circumstances a judgment is required bearing in mind such factors as the importance of the policies which are complied with or infringed.
- (v) It is untenable to suggest that if there is a breach of any one policy in a Development Plan the proposed development cannot be said to be in accordance with the Plan;
- (vi) For the purposes of Section 38(6) 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;
- (vii) In cases where policies may pull in different directions it may be necessary to decide which is the dominant policy, whether one policy compared to another is directly as opposed to tangentially relevant or should be seen as the one to which greater weight is required to be given;
- (viii) The formulation of certain policies requires a purposive approach to their accordance with a proposal. Where a policy welcomes one type of development, one which elicits a more frosty greeting may be seen as not according with the plan even though no express breach is involved.

204. There are a series of policies which are potentially relevant to the appeal proposal but it is now a matter of agreement there is one policy which is the "key" policy for proposals of this kind and that is Policy DM10<sup>147</sup>. Accordingly, in the first instance in considering the compliance or otherwise of this proposal with the Development Plan it is to policy DM10 that one should look, being the policy which is directly relevant to a proposal related to renewable and low carbon energy, and which has been, as a policy, specifically designed to take into account all relevant aspects of proposals of this kind.

205. Policy DM10 starts by making it clear that the policy framework is one which is supportive of proposals that seek to utilise renewable and low carbon energy to minimise CO<sub>2</sub> emissions. Having regard to the acceptance by the Council of the material extent to which the present proposals involve the use of renewable energy sources and the extent to which they will reduce carbon dioxide outputs it is clear that the Development Plan starts from a position of supporting proposals of this kind<sup>148</sup>. Having set out that welcome, the policy then sets out a number of criteria which "also" need to be demonstrated. An argument emerged from the Council that the "also" was to be taken as implying that such proposals should accord with all earlier policies of the CS. That approach is not consistent with the wording of the policy which makes clear in the criteria which other policies there should be a cross reference to.

206. The first criterion is that the proposal should be compatible with policies to safeguard the built and natural environment including heritage assets and their setting, landscape character and features of recognised importance for

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<sup>147</sup> KH XX

<sup>148</sup> for the non-contentious recording of the proposal's performance in this regard see the ESR (CD33) Chapter 18 pp.134-143

biodiversity. CM's conclusions on the inconsistency of DM8 with the Framework were not challenged, the policy should not be accorded any material weight.

207. In relation to heritage assets and their setting, the Council mounts no case against the appeal proposals and does not contradict the painstaking and thorough assessment of the significance of St. Wilfred's Church and the impact or lack of impact of the appeal proposals on the significance of that asset<sup>149</sup>. Whilst PAG do suggest harm to the setting of the Church, no evidence has been proffered by any appropriately qualified person or to comply with, for example, the English Heritage guidance<sup>150</sup>. CM's conclusions accord entirely with the Council's original conclusions as to the absence of any impact that should be regarded as material in terms of the determination of the application. In terms of the Framework, this is a paragraph 134 case in which there is an extremely limited degree of residual harm which is simply not capable of properly founding a refusal.
208. With regard to the next element, landscape character, the relevant policy to which regard should be had is clearly Policy DM9C. The proposal's compliance with Policy DM9 is not repeated. It is sufficient to note at this stage that compliance or not with DM9C depends on the extent to which the proposal has had proper regard to the LCA, in which respect the evidence arising from the cross examination of Mr Moore and Mr Rech's evidence is in happy agreement. It is not possible to point to a Development Plan policy which supports the refusal of planning permission, bearing in mind the Council's acceptance that there is no basis for regarding policies DM10 or DM9C as imposing any obligation in this case to enhance the character of the landscape in the area. As to the final element, features of recognised importance for biodiversity, the evidence is of modest benefits.
209. Criteria (ii) and (iii) are not prayed in aid by the Council in terms of any basis for refusing planning permission. Criterion (iv) requires there should not be "unacceptable" impacts in terms of visual appearance, pollution or traffic generation. That approach of considering unacceptable impacts is entirely consistent with the approach in the Framework<sup>151</sup>.
210. With regard to visual appearance, it is clear that whilst there are impacts, there is no basis for regarding the change as producing anything which could be regarded as unacceptable either for the area as a whole or for any individual property. In terms of noise, the proposal will produce benefits<sup>152</sup>. No case arises with regard to pollution beyond that which has already been considered, in regard to the effect of the proposal on the living conditions of local residents. With regard to traffic generation, there is no basis for refusing planning permission having regard to the extent of the proposed increase in vehicle movements and the existence of regulatory regimes designed to deal with the way in which loads of either fuel for the proposed plant or raw material for the rendering facility are transported.

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<sup>149</sup> CM Proof

<sup>150</sup> CM Appendix 5

<sup>151</sup> CD72 NPPF paragraph 98

<sup>152</sup> see ESr (CD33) paragraph 14.25 p.111 and CD 40, Noise Assessment, Executive Summary page 1 penultimate paragraph on the current position

211. Finally, criterion (v) of Policy DM10 relates to unacceptable cumulative impacts in relation to the factors referred to earlier in the policy. The Council's Reason for Refusal does not raise any cumulative impact issue. It is not appropriate to take that which has previously been judged as being acceptable in all regards and to add that to the current proposal to make the outcome unacceptable. The appropriate starting point with regard to, for example, landscape and visual impacts is to note, as the Council has accepted in cross examination, that the current proposal has been regarded as acceptable in all material respects. As pointed out and accepted in cross examination, there is no evidence from the Council that planning permission was only granted for any element of the current facility because of some exceptional circumstance which overcame any particular identified impact. The judgment therefore as to acceptability in terms of the addition of the appeal proposals is the baseline of the acceptability in all relevant respects of the current proposal. Against that baseline and for the reasons identified in evidence<sup>153</sup>, there is no basis for regarding cumulative impacts as producing any ground for refusing planning permission.
212. Policy DM 10 continues with Sections B and C to which regard should be had. It is quite clear from DM10B that there is clear and unqualified support for this proposal as one which as a heat producing development has demonstrated consideration of the feasibility of utilising its waste heat for heat-consuming development. The policy gives support to proposals that will ensure the co-location of compatible heat producing and heat consuming development. Having regard to the importance which the Government attaches to CHP<sup>154</sup>, this cannot be regarded simply as some makeweight or inconsequential matter. This proposal as a result of the co-location with the rendering facility provides the opportunity to sustainably generate the significant energy requirement for the rendering facility and to fully utilise the high quality steam generated by the process. It therefore produces an entirely policy compliant outcome in relation to a positive requirement that is wholly consistent with the national policy.
213. Policy DM10C related to major development requires that such proposals will be expected to deliver specific low carbon and renewable energy infrastructure in line with assessments of feasibility and overall viability. Once again and uncontroversially the proposal is entirely consistent with that requirement which is itself consistent with national policy.
214. The outcome of a consideration of the proposal's performance against the most obviously relevant policy in the Development Plan is that, properly construed, the proposal is fully compliant with that policy and any relevant and up to date policy, such as DM9, required to be engaged with as a result of the requirements of Policy DM10.
215. The Council's Reason for Refusal recites policies DM1 and DM4 which are alleged to be relevant and infringed by the appeal proposals. It is not the Appellants' case that they should be disregarded, they are part of the Development Plan and must be considered but the approach to the Plan as a whole and to these general policies should reflect the submissions set out above.

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<sup>153</sup> PR, CM, DR

<sup>154</sup> in EN1 and EN3 (CDs 74 and 75)

216. With regard to DM1 this is a general development management policy. It is entirely inappropriate to attempt to use a general development management policy to defeat a proposal which has demonstrated its compliance with the “key” policy in the Development Plan, specifically designed to address proposals of the kind being considered. To take such an approach risks putting the Development Plan at war with itself. The starting point with regard to Policy DM1 therefore is that, reading the Development Plan as a whole, this policy is not there to undermine proposals which have complied with more specific Development Plan policies related to the specific form of development.
217. Beyond that and in relation to Policy DM1A it is clear that this proposal is not for “standalone economic development”. It is explicit in the Council’s evidence that the appeal proposal is directly related to and in that sense ancillary to the rendering facility<sup>155</sup>. In such circumstances references to the reasoned justification for Policy DM1 will not avail the Council. Policy DM1A simply does not apply to this development. If that submission is rejected then as to DM1A(i), the Council accepts that the proposal has been designed to minimise its impact upon the character and appearance of the countryside<sup>156</sup>.
218. With regard to DM1A(ii) it is accepted that the development requires this specific location and that in those circumstances there are no other suitable sites. The policy’s preference for the use of brownfield land is fully met by the appeal proposal. As to requirement (iii), long term viability, no issue arises. The position in relation to scale design and form has already been discussed. It is fundamental to an understanding of the Appellant’s position that the scale of the proposal is directly driven by the power requirements of the rendering plant and the functional requirements in order to accommodate the plant. The Council does not dispute that that is so and neither does it dispute that, given that the scale and form are driven by the functional requirement, the design has been executed in as good a way as could be and with care<sup>157</sup>.
219. As to criterion (vi) the proposal will not create significant or exacerbate existing environmental issues. Indeed, in terms of odours, the appeal proposal will provide a high temperature, consistent treatment of odours leading to an improved system of abatement resulting in a material benefit<sup>158</sup>. The Consultation Reply from the Council’s Senior Pollution Control Officer<sup>159</sup> noted:
- “Should all the control methods prescribed within the EIA be implemented and the site operated within the parameters prescribed by their environmental permit, odour from the proposed operations are not conceded likely to cause harm, concern or annoyance. The proposal of the site to incinerate non-condensable gasses in the CHP plant at a consistent and continuous temperature is considered to be an improvement on the current odour abatement system employed at the site”.

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<sup>155</sup> KH paragraph 6.49

<sup>156</sup> BM XX

<sup>157</sup> BM XX

<sup>158</sup> CD33 ESr paragraph 17.21

<sup>159</sup> CD58, memorandum dated 15th October 2012, paragraph 4



220. With regard to highway safety problems, the last element in DM1A(vi), there is no evidence of an existing highway safety problem and no reasonable basis for concluding that the very modest additional traffic would create such a problem.
221. As to Policy DM4, this relates to design and character. It seems clear that Section A of the Policy is largely driven by a desire to impose requirements as to the design of major urban extensions. The criteria appear in the main to be curiously ill-formulated to relate to proposals of this kind. So much was apparent from cross examination of Ms Hulse. As to Section B of the Policy again, a number of the requirements appear to be singularly ill-fitted to relate to proposals of this kind further supporting the submission that it is to Policy DM10 that one should be looking for the relevant criteria. To the extent that the criteria are relevant, the proposal complies with them.
222. It is then necessary to consider a policy which is not raised in the refusal but considered in the evidence that is Policy DM3 related to general development in the countryside. Policy DM3B relates to the re-use of previously developed land in rural areas. The Council accepts<sup>160</sup> that the proposal complies with that requirement which itself reflects an important matter set out in the Framework. Policy DM7 seeks to secure economic development and this proposal will deliver or contribute to opportunities for the growth of an indigenous business (see DM7A(iii)). It will also bring a substantial and good quality inward investment opportunity to the district by way of a proposal which involves expenditure in the order of £45M in a location where it is clear that economic development and the employment associated with it should be welcome<sup>161</sup>.
223. The proposal complies with the most relevant element of the Development Plan. The mainstay of the Council's case related to landscape character and visual impact on the countryside is addressed by way of the proposal's compliance with the LCA criteria. In these circumstances the Secretary of State should reach the conclusion that the proposal complies with the most obviously relevant Development Plan policy and is accordingly to be regarded as entitled to the grant of planning permission unless material considerations indicate otherwise.

***Having regard to the identified harm and the economic social and environmental benefits, whether the proposal constitutes sustainable development.***

224. The extent to which the proposal is harmful is identified in the evidence. It is important to draw a distinction between the extent to which the appeal proposal is alleged to be harmful as opposed to harmful impacts which are alleged to arise from the operation of the current rendering facility. Properly judged, the harm to the landscape character of the area and the visual impact on the countryside and any impact on visual amenity should be regarded as acceptable in its own right.
225. The benefits of the proposal which are capable of being taken into account in considering the extent to which the proposal is a sustainable development include the following:

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<sup>160</sup> KH XX

<sup>161</sup> JGP04, unemployment figures for travel to work areas

- (i) The very substantial renewable energy benefits and the associated significant carbon dioxide emission reduction from the utilisation of renewable fuel sources;
- (ii) The support that is given to the provision of a safe, secure and economic fuel source for the efficiency and competitiveness of the facility, where the following propositions were accepted without demur<sup>162</sup>:
  - a. The rendering industry is vital to the operation of the agri-food business in the UK, without safe means of disposal of animal by-products the industry could not operate<sup>163</sup>;
  - b. The Appellants are the largest single facility for the processing of avian by-products in the country<sup>164</sup>;
  - c. Efficient operation of the plant contributes to the efficiency of the poultry products industry and the downstream supplies of meat and bone meal and tallow<sup>165</sup>;
  - d. The industry is a vital element in the safe healthy and lawful treatment of animal by-products, it operates in the national interest<sup>166</sup>;
  - e. The structure of the industry is such that preservation of competition is likely to be the best way of ensuring service is economically provided<sup>167</sup>;
  - f. The Appellants are one of the independent companies that is not in a large group and as such they need to remain competitive<sup>168</sup>.
- (iii) There will be a material noise reduction for Low Marnham which will be a benefit not only in terms of the residual amenity of Low Marnham but also with regard to the heritage interest in St. Wilfred's Church;
- (iv) The removal of two chimneys and the avoidance of the erection of a third consented chimney some 32 metres high;
- (v) Creating economic activity in construction with an investment in the order of £45M;
- (vi) Creating rural employment by way of some 35 additional jobs in a travel to work area where unemployment rates are very high;
- (vii) Reducing odorous emissions in a way that is most effective and energy efficient.

226. With regard to the issue of sustainability, the Framework makes clear that planning plays a key role in securing radical reductions in greenhouse gas emissions, minimising vulnerability and 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 dimensions of sustainable development<sup>169</sup>. Proposals of this kind

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<sup>162</sup> KH XX

<sup>163</sup> GB paragraph 3.6

<sup>164</sup> GB paragraph 3.8

<sup>165</sup> GB paragraph 3.8

<sup>166</sup> GB paragraph 3.10

<sup>167</sup> GB paragraph 3.4

<sup>168</sup> GB paragraph 3.15

<sup>169</sup> CD72 paragraph 93

engage with all aspects of what is sustainable development and accordingly are entitled to significant weight.

227. To consider whether the presumption identified in paragraph 14 of the Framework operates in this case, it is first necessary to make an assessment as to whether the proposed development is indeed sustainable<sup>170</sup>. In the light of the matters set out above it is impossible to conclude that the proposal is anything other than sustainable development. Although the Inquiry has heard a very substantial amount of evidence about what are alleged to be the adverse impacts of the existing rendering facility, none of those detract from the sustainability credentials of the appeal proposals. These are in large measure admitted by the Council and have not been contested by PAG. A proposal's entitlement to be classified as sustainable, rather like compliance with the Development Plan, is not to be tripped up by matters which are at worst of limited significance, having regard to extent to which the proposal complies with the major elements of the criteria for sustainable development for proposals of the kind being considered.
228. The proposal should properly be regarded as sustainable development and the presumption in favour of such development therefore applies to it. In addition, in terms of the decision taking section of paragraph 14:
- (i) The proposal accords with the Development Plan properly construed;
  - (ii) If the conclusion is reached that it does not, then that could only be because any relevant policy relied on was out of date on the basis that it is not in accordance with the Framework. In that event, planning permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, there being no specific policies in the Framework which indicate that development should be restricted in this location. In order to significantly and demonstrably outweigh the very substantial benefits which accrue from the appeal proposal, it would be necessary to identify something much more cogent than, for example, the landscape character or visual impact issues raised by either the Council or PAG.

### ***Conditions and Undertakings***

229. The list of conditions is in substance agreed. With regard to the condition related to the removal of the appeal proposals if the rendering plant were to cease operation, the Appellant does not wish to contest the imposition of such a condition but draws attention to the fact that it needs to comply with the policy test for the imposition of conditions. As to the undertaking, that secures certain of the benefits which the proposal can deliver and does so without any objection from the Council either as to its substance or form. Taken together, the conditions and the undertaking will ensure that the benefits of the proposal will be delivered.

### ***Conclusions***

230. The existing rendering facility on the appeal site performs a very important role with regard to the safe and efficient treatment of animal by-products for a section of the agri-food industry in the UK that is itself very important. It is quite

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<sup>170</sup> KH Appx 2,

clear from the evidence that so far from being careless about the operation of the facility the Appellants have worked cooperatively, carefully and consistently with the regulatory authorities to invest in the plant and seek improvements to its operation. Whilst it is quite clear that the operation has not been trouble-free, the Appellant's commitment to ensuring that solutions to any identified problems are found is equally clear.

231. The appeal proposal is part of the process of providing solutions and improving the sustainability of the existing rendering facility. Currently the Appellants are reliant on a fuel source which is burdensome from the point of view of imports into the UK, not reliable for the same reason and not sustainable involving simply the combustion of gas in relation to a facility which is extremely energy dependent. The performance of the appeal proposals relative to the Government's objective for low carbon and renewable energy are clear and uncontested. They will perform in a way which respects all relevant elements of the Government's policy addressing climate change issues. The evidence offered in opposition is in large measure focussed on drawing attention to the deficiencies of the current operation rather than the appeal proposals, exaggerated in material respects. Although the impression was given that spillages of animal by-products on the highway was a frequent occurrence and a very serious problem, a resident remarked that it was not that often, every so many months<sup>171</sup>. Some of the other evidence does not accord with that gathered by the regulatory authorities who have every possible interest in ensuring that animal by-products are properly and safely transported.
232. It is ironic that very many of the complaints which are made about the existing facility and its operation are complaints which the appeal proposal offers the opportunity of directly and effectively addressing, that is in relation to odours. That is not a proposition which relies on the objectors accepting the view of the Appellants, but is a view offered by the regulatory authorities.
233. It will be necessary in judging the merits of the appeal proposals to carefully isolate the evidence which relates to them as opposed to the existing facility and its operation, bearing in mind that there is no evidence which satisfactorily or clearly identifies the operation of the appeal proposals with any of the alleged impacts to arise from the existing facility. In circumstances where the proposals are so effective in delivering a substantial and important element of Government policy on climate change and where a range of very significant other benefits are offered, planning permission should be granted subject to the imposition of appropriate conditions and the proffered undertaking.

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<sup>171</sup> Mr M Jordan, in answer to a question from the Inspector

## **Inspector's Conclusions**

### ***Introduction***

234. The following conclusions are based on the evidence given at the Inquiry, the written representations and my inspection of the site and its surroundings. In this section the figures in parenthesis [ ] at the end of paragraphs indicate source paragraphs from this report.

### ***Environmental Statement***

235. PAG questioned the adequacy of the Environmental Statement (ESr) with regard to the human health risk assessment. However the points made at the start of the Inquiry were directed towards the conclusions which the ESr draws and the provisions which might be made for monitoring the impact of the process<sup>172</sup>, rather than any deficiency in the information supplied. These matters are considered at a later point in this report. The ESr provides adequate information on the likely main impacts of the proposed development and the mitigation measures that may be required so that it is adequate and meets the requirements of the relevant Regulations. [202]

### **Main considerations**

236. The evidence indicates that the main considerations in this appeal are:

- (i) the effect of the proposal on landscape character and the visual impact of the development;
- (ii) the effect of the proposal on the heritage interest of nearby listed buildings, with particular regard to their setting;
- (iii) the effect of the proposal on the living conditions of local residents, with particular reference to the adequacy of the local highway network and HGV movements; emissions of odour and noise; and evidence as to the effect of predicted emissions on human health;
- (iv) the extent to which the proposal would contribute to the delivery of the Government's climate change programme and energy policies;
- (v) whether the proposal complies with the development plan;
- (vi) having regard to any identified harm and any economic, social and environmental benefits, whether the proposal would constitute sustainable development.

### ***Landscape character and the visual impact***

237. The one area identified within the ESr where mitigation measures would not be sufficient is in respect of the impact on the landscape and visual amenity. The points at issue therefore relate to the sensitivity of the landscape and the magnitude of change, from which an assessment of the significance of the effect is arrived at. This, in turn, informs the judgement as to the overall effect on landscape character and visual impact. [72-74, 81, 115, 171]

238. A number of matters were raised to challenge the LVIA conclusion that the sensitivity of the landscape should be determined as medium.

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<sup>172</sup> PAG 01

## **Sensitivity**

239. GLVIA3 places greater emphasis on the use of informed professional judgement which sees the 'significance' of an effect as being located on a spectrum. In relation to landscape effects, greatest significance would be given to major negative effects on aspects key to the character of nationally valued landscapes whereas reversible effects on aspects which contribute to, but are not key to, the character of landscapes of community value, would be of least significance. Similarly, visual effects on people who are particularly sensitive to changes in views are more likely to be significant, as would be the introduction of new, intrusive elements into a view<sup>173</sup>. The indicative criteria for determining sensitivity which the LVIA sets out would be broadly consistent with this approach.
240. At national level, the character of the Trent and Belvoir Vales area is described as having a flat and open nature. Its key characteristics are summarised as being a gently undulating landform, an open, arable landscape with a strongly rural feel, having frequent, nucleated villages yet also influenced by the power stations along the River Trent and large sugar beet factories<sup>174</sup>. Within this larger area, I am informed that the towers at the Staythorpe power station have been reduced in size and I was able to observe that there are no longer any cooling towers at High Marnham<sup>175</sup>. As a result, some lessening in the influence of power stations is likely to have occurred. However, I understand that Staythorpe power station is still operational and I was able to observe that the pylons and substation are still in place at High Marnham. Consequently, even though these changes will have been important for the localities directly affected, I consider they are not so extensive as to have materially altered the overall balance between rural and industrial influences within the national landscape character area.
241. Although the appeal site is within policy zone TW PZ 18 (Low Marnham) of the Bassetlaw LCA, the boundary with the adjoining policy zone, MN PZ 12 (Normanton-on-Trent) lies less than half a mile to the west<sup>176</sup>. Given the flat and open nature of the landform and the height and massing of the appeal proposals, the visual effects of the development would be felt beyond the policy zone within which the site lies<sup>177</sup>. In view of the recognised influence of industrial activity on the wider landscape, it is reasonable for regard to be had to the possible impact of this proposal on the adjacent zone also. However, although MN PZ 12 is assessed as being of very high sensitivity, there is nothing in the LCA to indicate that the area around Low Marnham should also be ascribed a higher level of sensitivity. [77-78, 168]
242. In this respect it should be noted that, although zone MN PZ 12 bears the name 'Normanton-on-Trent', the village itself has been assigned to a different policy zone<sup>178</sup> (Fig 18). The point was explored at the Inquiry as to whether this was an error in the LCA, especially since the descriptive material for the

<sup>173</sup> GLVIA3 quoted in PR at paragraph 4.14

<sup>174</sup> CD39 Appendix 1 National Character Area 48, Trent and Belvoir Vales, Natural England

<sup>175</sup> CD33, LVIA, records these as being 104m tall

<sup>176</sup> CD39, paragraph 3.17

<sup>177</sup> There was no dispute that the development would be visible from Normanton-on-Trent

<sup>178</sup> CD73, TW PZ 43

Normanton-on-Trent zone (tab 3) specifically comments on the character of the village and this in turn appears to have helped shape the assessment of landscape condition. For somewhat opaque reasons related to the need to maintain continuity with an earlier piece of work on landscape character, it was established that the policy zone boundary had intentionally been drawn to exclude Normanton-on-Trent<sup>179</sup>. Given the care with which the policy zone boundaries appear to have been formulated, this again points to an approach which does not expect the considerations or prescriptions of one policy zone to be applied to an adjoining zone. Furthermore, since the LCA has also had regard to heritage features, it is reasonable to expect that the assessment of sensitivity within TW PZ 18 already takes into account the presence of listed buildings within Low Marnham. [75, 76, 168]

243. As such, I consider that the LVIA's conclusion that the landscape is of medium sensitivity, which is in line with that of the LCA, provides an appropriate basis for the evaluation of landscape effects.

### **Character**

244. The analysis of landscape condition for TW PZ 18, Low Marnham refers to industrial units in another part of the zone as 'detracting features'. In this regard, the appeal site likewise contains industrial buildings and structures which are functional in appearance and lack sensitivity to their rural setting. However, since these buildings and structures are in place, they constitute part of the baseline against which the appeal proposal should be assessed (alongside others with planning permission). [80, 160]
245. The appeal scheme would introduce buildings and structures of materially greater mass and height than presently on site, notably the boiler house (28m) and the fuel storage building (over 16m at its tallest) as well as the chimney (50m). It would amount to some 6,500sqm of floor area and would cover an area of approximately 3ha. The greater bulk of the buildings would draw attention to the presence of the site. Their appearance and the increased density of development within the site would convey the industrial character of the use more clearly than at present. At this more detailed scale, the influence of the former High Marnham power station on the local landscape has been much diminished following the removal of the cooling towers. As a result, I agree that the more intensively developed Pears site would become the most visible industrial feature in the locality. As the LVIA notes, the development would 'further urbanise' the landscape character<sup>180</sup>. [24, 25, 55, 69]
246. The proposal would reinforce a feature which, although already in existence, is nevertheless at odds with the predominantly rural character of the landscape. In weakening the landscape pattern, I consider that the proposal would have a moderately adverse effect on its character. [70, 83, 172]

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<sup>179</sup> Mr Rech's practice had been involved in compiling the LCA; the boundaries were arrived at having regard to work on Mature Landscape Areas

<sup>180</sup> CD39 5.12

## Visual effects

247. In the expert evidence concerning visual effects, some of the differences related to disagreements as to the sensitivity of receptors, others to the magnitude of change<sup>181</sup>. There was also criticism that many of the viewpoints had been assessed on the basis of road users even though there were residential properties nearby, a further indication that the degree of sensitivity had been understated.
248. The finding in the LVIA that the effect on the view from The Grange (viewpoint 8) would be substantially adverse was not disputed. Despite some screen planting along the northern boundary of the site, there are already clear views of the existing development from the road into Low Marnham as it passes The Grange (viewpoints 7 and 8). The upper parts of the boiler house, chimney and fuel storage building would all be visible beyond the existing process building<sup>182</sup>. Since this road would be used mainly by those living in or visiting the village and there would be partial views from several other properties<sup>183</sup>, I agree that the viewpoint should have medium sensitivity. With a high magnitude of change, this indicates the significance would be substantially adverse. [55, 82, 87, 116]
249. Further into the village, there are views from the street adjacent to Church Farm and the churchyard (viewpoints 6 and 9). Notwithstanding any screening provided by the process building, the proposed development would be readily noticeable at viewpoint 6, due to the height of the chimney and the boiler house. Given the position of the viewpoint in the heart of the settlement and close by the church, I prefer the Council's assessment that this view would have high sensitivity and a high magnitude of change so that the significance would also be substantially adverse. However, Church Farm would interpose in some views from the churchyard so that the Appellant's assessment of moderate or slight significance from viewpoint 9 would be reasonable. [86]
250. Viewpoints 16 and 17 from the south west of the site were some of the locations where PAG suggested the sensitivity had been underestimated. However, despite the proximity of Holly Farm to the site, views towards the development would be limited by other farm buildings so that the level of sensitivity adopted appears reasonable. Although the Council did not fully agree with the assessment of magnitude for viewpoint 17, this did not affect the finding as to significance. I agree that the significance of the effect would be moderate to slight from these viewpoints. There was agreement that there would be a substantial adverse effect on viewpoints 23 and 24, from the public right of way leading south from Low Marnham and looking north westwards. Viewpoint 25, from the flood bank slightly further east is at a greater distance so that the effect was agreed to be substantial or moderate adverse.<sup>184</sup>

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<sup>181</sup> BM Appendix 8

<sup>182</sup> CD52, RT8

<sup>183</sup> BM Fig 4; MBS 5.6

<sup>184</sup> See also CD52 RT17, RT18 and RT24



251. These are the viewpoints nearest to Low Marnham. Since the effect for most is assessed as substantially adverse, it is clear that the proposal would give rise to considerable harm in relation to views from Low Marnham and the immediate vicinity. [84, 116, 174]
252. The main medium distance views would be from the neighbouring settlements of High Marnham, about 1km to the north and Normanton-on-Trent, a similar distance to the west. There would also be a view from about 1km distant from the footpath to the south east (viewpoint 20), which the LVIA concludes would constitute a substantial adverse effect.
253. From High Marnham, I consider that the assessment of low sensitivity at viewpoint 11, Hollowgate Lane, fails to give sufficient weight to the presence of residential properties which have views towards the appeal site and beyond. However, there would be partial views of the development in the context of the existing plant set within a wide landscape, so that the effect would be moderate rather than substantial adverse. In the absence of any firm evidence that the view between Marnham Hall and St Wilfrid's Church is a designed vista, I am not persuaded that the magnitude of change to viewpoint 10 would be any greater than medium so I accept the LVIA assessment that the significance would be moderate. From the representations of many of those who live locally, it is clear that the local road network is used by cyclists and horse riders, as PAG suggests. However, even though they would normally be travelling at slower speeds than motorists, they would still be passing through the landscape so that it is reasonable to apply a low level of sensitivity at viewpoints such as 12, at the intersection of Hollowgate Lane and Fledborough Road, and 13 at Polly Taylor's Road. I agree, therefore, with the LVIA findings of slight significance in relation to these viewpoints.
254. Although viewpoints 14 and 15 are from the direction of Normanton-on-Trent, they are placed at the point of the bridleway, some 100m east of residential properties. From this perspective, the site would at one time have been seen in relation to the High Marnham cooling towers so that, following their removal, the appeal proposal would become the main detractor in the view<sup>185</sup>. Whilst the effects from the bridleway are likely to be at the levels assessed, I consider that these viewpoints do not fully represent the significance of the impact from Normanton-on-Trent.
255. The assessment in the LVIA that the effect would be of slight significance on the whole in relation to medium distance views tends to underestimate the sensitivity of receptors so that, in relation to High Marnham and Normanton-on-Trent, the effect would be of greater significance than indicated.
256. The Council and PAG raised issues in relation to the magnitude of the change in longer distance views (viewpoints 18, 19, 21-23 and 25-27), with the Council's overall conclusions being that the effects would be of slight to moderate impact, compared to the findings of slight to negligible in the LVIA. In these longer distance views, it seems to me that the development would not be so readily noticeable, except perhaps from the direction of Grassthorpe, where the removal of the cooling towers would allow the boiler

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<sup>185</sup> CD52, RT15

house and chimney to be more readily seen<sup>186</sup>. In this respect, it should be noted that aviation warning lights would be required on the chimney, which would also draw attention to its presence at night, particularly in views from a distance.

257. PAG, alongside a number of residents, also referred to the visual impact of lighting in use on the existing site, which draws attention to its presence in the landscape at night. For amenity reasons, a condition has been suggested which would control the timing of vehicle movements but this would also limit the need for external activity (and thus, lighting) at night, except for the darker, winter months. In addition, it would be possible to take account of this through consideration of changes to the lighting scheme for the site as a whole, which is also the subject of a suggested condition. On that basis, I consider that any external lighting associated with the CHP plant would not materially add to the visibility of the overall site in the landscape except, as noted above, for the chimney. [126, 128, 146, 147, 158]

### ***Effect on landscape character and visual impact***

258. Policy DM10 expects proposals for renewable and low carbon energy to demonstrate compatibility with policies to safeguard landscape character. This should be assessed with reference to policy DM9, which expects new proposals in the countryside to be sensitive to their landscape setting. DM9 goes on to say that proposals will be expected to enhance the distinctive qualities of the landscape character policy zone within which they would be situated and to respond to the local recommendations made in the LCA. In my view, the references in policy DM9 to the landscape character policy zone '*within which (a proposal) would be situated*' and to '*local recommendations*' indicate that the policy is concerned with the specific policy zone wherein the development would occur. Thus, even though there may well be effects beyond a particular policy zone, DM9 does not require a proposal to enhance the qualities of, or respond to the recommendations in, other zones. Consequently, it is the landscape actions within TW PZ 18 Low Marnham, rather than MN PZ 12 Normanton-on-Trent, which form the basis for assessing whether this proposal would be compatible with policies to safeguard landscape character. [43, 168]
259. In pursuit of the aim to conserve and create, the landscape actions within TW PZ 18 include to strengthen the level of tree cover by creating small woodlands and to enhance ecological diversity as well as to concentrate new development around existing settlements and to promote the sensitive design of new industrial buildings.
260. In adding to an existing industrial feature, acknowledged to have the effect of further urbanising the landscape, the proposal would fail to conserve pastoral character. Although it may well be possible to bring forward a landscaping scheme which would enhance the overall appearance of the site and enhance ecological diversity, the scope for this would appear to be quite limited, since the areas of planting within the proposal as it now stands would be some 3,500sqm less than was indicated at the time the LVIA was carried out. Also, very little detail was provided as to the means by which the ecological value

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<sup>186</sup> CD52 RT17

of the area might be enhanced. As such, although it would mitigate the effect of the development to some degree, I consider that it would not enhance the overall appearance of the site and it has not been shown that it would enhance ecological diversity. [88-91, 169, 179]

261. As regards the location close to Low Marnham, the LCA gives no indication of desired size or scale of any new development, merely referring to 'concentrating' it around settlements. However, in order for development to conserve the rural character, it follows that it would have to be commensurate with the settlement in question. Otherwise, such an aim would be of little help in achieving the intended purpose. The existing animal rendering plant has an established visual impact in its own right, with buildings of approximately 14m in height and 20m chimneys<sup>187</sup>. It already appears dominant in relation to the very small settlement of Low Marnham, which contains less than 20 properties. The introduction of much larger structures and further intensification of development within the site would add to that dominance. As such, I consider that the location of this proposal would not alleviate its effect on the landscape. [78, 171, 179]
262. No points were made that the design of the buildings could have been improved upon, bearing in mind their function. I agree that measures such as the curved roof shapes and variation in colour and tone of the new buildings would create more aesthetically pleasing structures than the very functional buildings currently on site. In this respect, the visual impact of the proposal would be mitigated. [172]
263. Despite measures to mitigate the impact, the proposal would exert an urbanising influence on this rural landscape, to the detriment of the pastoral character of the policy zone. In my view, it would fail to demonstrate compatibility with policies to safeguard landscape character, as sought by Local Plan policy DM10A(i).

### **Effect on the heritage interest of listed buildings<sup>188</sup>**

264. Whilst there are a number of listed buildings within the locality of the appeal site, PAG's particular concerns relate mainly to the effect on the setting of the Grade 1 listed St Wilfrid's Church, although points were also made in relation to The Grange, a Grade II listed farmhouse.
265. Only the Appellant has provided an expert analysis of the significance of St Wilfrid's Church and the other listed buildings in the locality. The analysis notes that St Wilfrid's, which lies to the north east of the appeal site, is a 13th century church with later parts of quality. It is set within its historic churchyard and has survived the 19th century without being "Victorianised". The high grade listing is due to the extent of the surviving fabric, particularly the high quality interior, with it being a little less special externally<sup>189</sup>. It was accepted by PAG that this assessment followed the process set out by English

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<sup>187</sup> CD39 p34

<sup>188</sup> This section is informed by the NPPF Glossary which defines 'setting' as the surroundings in which a heritage asset is experienced and 'significance' as the value of a heritage asset because of its heritage interest.

<sup>189</sup> CM 5.1-5.36

Heritage<sup>190</sup>. Having viewed the church and its surroundings, I see no reason to take issue with the assessment which has been provided by the Appellant.

266. PAG draws attention to the response from English Heritage when consulted on the proposed Thermal Oxidiser. Thus, although the immediate setting of churchyard and village can be described as having retained its integrity, the existing factory with its associated chimneys is recognised as already having had a harmful impact<sup>191</sup>.
267. As the Appellant notes, the better quality views of St Wilfrid's are generally those which are close to the church, since they allow appreciation of the complete composition. This is particularly so from the south west, within the village and the churchyard<sup>192</sup>. It is possible to appreciate the cultural value of the church, as the focal point of the settlement from within the village<sup>193</sup>. In views from the south west, the Pears site lies to the rear so that the appeal proposal would have little effect on these key views. There would, however, be views out of the village towards the proposed development, including from points near the church<sup>194</sup>. Given the limited views available, there would nevertheless be a slight adverse effect on the setting in this respect. It is also of note that the noise from the existing plant is readily audible from this location<sup>195</sup>. Although the Noise Assessment is directed primarily at the risk of an increase in night time noise levels, it does conclude that the use of acoustic barriers will lead to a reduction in noise levels at Church Farm Cottage, adjacent to St Wilfrid's<sup>196</sup>. It would be reasonable therefore, to expect that there would be a similar improvement with regard to noise levels within the churchyard. This would be of minor benefit to the setting.
268. The most important medium distance views consist of the one in silhouette from the north, when travelling down the lane from High Marnham and those of the church in relation to the village from the south and south east<sup>197</sup>. The 50m chimney and other taller buildings would be likely to be visible in the background to Low Marnham in views from the north so that they would intrude into this key view of the church and village. From the footpath network to the south of the village, the removal of the High Marnham cooling towers has allowed the church tower, unremarkable as it may be, to acquire a more significant landscape presence than hitherto<sup>198</sup>. The existing process building and other structures on the site are already a significant feature in these views. Whilst the new buildings would be further away from the church than the existing ones, they would add substantially to the dominance of the site in these views, as a result of the greater bulk and more overtly industrial appearance of the appeal proposal. This would materially detract from an appreciation of the church in relation to the village.

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<sup>190</sup> MBS XX

<sup>191</sup> BDC 02 letter from English Heritage 14 January 2014; see also CM 6.1.G and 6.1.K

<sup>192</sup> CM 5.18 and 6.1.A; see also photographs CM Appx 12

<sup>193</sup> CM 6.1.C

<sup>194</sup> CM Appx 8; PR Appx 8; BM rebuttal;

<sup>195</sup> CM 6.2.E

<sup>196</sup> CD40, paragraphs 5.8-5.11

<sup>197</sup> CM 6.1.G, 6.8, 6.2.C

<sup>198</sup> CM 6.2.A; CD52 viewpoint RT24

269. The Appellant draws attention to several ways in which the impact of the proposed development on views from the south would be lessened: that one would tend to look towards either the church or the appeal site from this perspective, meaning that it is not possible to focus on both in the same view; that this view of the church is constrained by the layout and planting of the churchyard; that the existing boiler house and chimney would be removed; and that the recently approved tank farm is to be constructed on a part of the site closer to the village<sup>199</sup>. However, even taking these factors into account, I consider that the proposal would amount to substantial harm to these medium-distance views of the church and village from the south.
270. Although the church tower can be identified in some longer distance views, it is relatively low and has no notable feature such as a spire<sup>200</sup>. Thus whilst the proposed CHP plant would also be visible in the same views, this would not materially affect the setting of the church.
271. The Grange is an early 18<sup>th</sup> century farmhouse which looks directly towards the northern side of the appeal site. Despite the planting along this boundary, the existing factory is clearly visible from this location so that the greater bulk of the proposed development would be similarly apparent. Since it is necessary to face away from the appeal site in order to admire The Grange, the two would not be seen in the same glance so that the proposed CHP plant would not intrude into this view<sup>201</sup>. However, since this is a farmhouse it seems to me that outward views and the extent to which the surrounding area might retain its predominantly rural quality do make some contribution to its significance. Whilst the existing plant is already a highly visible feature I consider that, due to the scale and character of the development now proposed, it would result in a minor negative effect on the setting of the farmhouse.
272. The CHP plant would intrude into several different views of and from the church, so that PAG points to the risk of cumulative harm or death by a thousand cuts. Although the effect on the more important views close to the church would be offset to some extent by a reduction in ambient noise levels, particular harm to the setting would arise with regard to the medium distance views of the church in relation to the village, especially from the south. There would also be some harm to the immediate environs of The Grange. The high quality interior of St Wilfrid's, which has been identified as the key element of heritage interest, would not be affected by this proposal so that there was general agreement that the harm to significance would be less than substantial, in the terms of NPPF paragraph 134. However, the existence of that harm would bring the proposal into conflict with the presumption against such development contained in Local Plan policy DM8. [119, 121, 180-181]
273. The Appellant contends that the drafting of this policy is not wholly consistent with the Framework, since the policy states that the setting 'is' rather than 'may be' an important aspect of an asset's special interest and it does not allow for the weighing up of harm against benefit, meaning that less weight

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<sup>199</sup> CM 6.1.A

<sup>200</sup> CM 6.2.A

<sup>201</sup> CM 5.26

should attach to any conflict with this policy<sup>202</sup>. I do not agree. In the first place, this is a strategic policy which covers a wide range of matters relating to the historic environment. Read as a whole, the policy sets out a supportive approach to development, within the context of protecting the significance of a heritage asset. A process of weighing benefit against harm would be inherent in the application of the policy, even if this is not set out in so many words. It follows that no harm could be attributed, where a setting was not important to the historic interest of an asset.

274. I agree with the assessment that the proposal would result in less than substantial harm to the significance of the church and the farmhouse. Nevertheless, it would be contrary to Local Plan policy DM8.

### **Living conditions**

275. In putting the case for local residents, PAG draws particular attention to the guidance<sup>203</sup> that the need for renewable energy should not automatically override environmental protections and the planning concerns of local communities, advice which was fervently endorsed by many of those members of the public who appeared at the Inquiry. They were keen to ensure that their voice was properly heard in relation to this matter which, they felt, would affect them so directly. However, it is important to bear in mind that the focus should be on the planning concerns of these local communities. In this respect, national guidance is equally clear that the planning concerns would be those which relate to the acceptability of the use of the land and the impact of that use, rather than the control of processes or emissions, where these are subject to approval under pollution control regimes. [98, 185]
276. It is also necessary to keep in mind that the appeal is concerned with possible effects of the proposed CHP plant, not those associated with the existing animal by-product processing operation. It is a well-established planning principle that each proposal must be considered on its own merits. I acknowledge the wealth of evidence from PAG and local residents, supported by the written statement of the Council's Senior Pollution Control Officer, that living conditions have already suffered as a consequence of the existing operation. In this respect, I am conscious that many of those who commented on the adverse effects of the odour from the plant are likely to be generally accustomed to the sort of strong odours which can be encountered as part and parcel of life in a rural location, such as those associated with agricultural activities or the care of animals. Along with my own observations (I have in mind the odour noted during one of my unaccompanied site visits) I am not convinced that residents' objections were been exaggerated or unrealistic. Nevertheless, when assessing the impact of this proposal on living conditions, the focus must be on the likely effects of the appeal proposal itself rather than any problems associated with the existing rendering operation. [5, 126-149, 155, 156, 233]

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<sup>202</sup> in accordance with NPPF paragraph 215

<sup>203</sup> Now incorporated in PPG, Renewable and low carbon energy, at Paragraph: 003 Reference ID: 5-003-20140306

### ***The adequacy of the local highway network and HGV movements***

277. Residents' main concerns relate to the effects of HGVs travelling to and from the appeal site using the C class road which runs between Ragnall in the north to Sutton-on-Trent in the south, a stretch of just under 6 miles<sup>204</sup>. The road is similar in character to many rural roads, being single carriageway, narrowing at certain points and containing sharp bends (notably near Grassthorpe and Ragnall). The national speed limit applies, except where the road passes through settlements, (mainly linear in form) and there is an absence of footways and street lighting along much of its length<sup>205</sup>.
278. The maximum of 17 additional HGV movements and controls over hours of operation are matters agreed within the Appellant's Statement of Common Ground with PAG. In this respect, the local highway authority is satisfied that there is robust evidence to support these estimates<sup>206</sup>. [30]
279. In the context of a rural road, it is not surprising that more vulnerable road users such as pedestrians, cyclists and horse riders would perceive large vehicles as dominating the road space and placing them at increased risk, particularly where, as in this case, the road is bordered by deep drainage ditches and parts of its surface are showing signs of wear. However, it does not follow that the road network is inadequate or unsafe. Such a view would not be consistent with the accident data<sup>207</sup>, even allowing for the fact that not all incidents will be captured by the data, such as those which do not involve personal injury. The information in the Transport Assessment includes records which go back beyond the recommended three year period yet even in that case, the evidence does not suggest that the cluster of accidents south of Grassthorpe, for example, was related to the presence of HGV traffic<sup>208</sup>. Nor do the records support the reference to a fatal accident at Ragnall within the past two years. As such, the evidence does not indicate that the local highway is inadequate to cater safely for the additional traffic which would be generated.
280. The Appellant's traffic surveys indicate that in relation to the existing operation, some 11 HGVs enter or leave the Pears site each hour, just under half of which will head north, the remainder heading south<sup>209</sup>. Accordingly, the Appellant suggests that if traffic for the CHP plant was to follow a similar pattern, 10 of the additional HGV movements would be southwards, between the site and Sutton on Trent, with the remainder taking the route north towards Ragnall<sup>210</sup>.
281. The survey data also indicates that JG Pears traffic currently accounts for some 25% of HGV traffic through Grassthorpe and Sutton-on-Trent<sup>211</sup>. Although residents appear to be much more aware of JG Pears vehicles than

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<sup>204</sup> JGP16, paragraph 2

<sup>205</sup> DR 2.2-2.19

<sup>206</sup> Consultee response 17 January 2013, LPA questionnaire

<sup>207</sup> DR Appx 5

<sup>208</sup> CD43 paragraphs 3.7-3.12

<sup>209</sup> DR Table 2 and CD44 paragraphs 7-12

<sup>210</sup> DR 3.6

<sup>211</sup> CD44 paragraphs 10-17

other HGV traffic, the findings of the Appellant's survey data appear to be broadly comparable with those from another survey conducted by Nottinghamshire County Council<sup>212</sup>. Also, the survey results for Sutton-on-Trent, the largest village along the route and the most sensitive area of the highway network, recorded average hourly flows of 16-25 HGVs along Hemplands Lane. Thus whilst there is some justification for residents' concerns over traffic levels from the Pears plant, the evidence indicates that there are other significant sources of HGV traffic in the locality<sup>213</sup>. There is little reason therefore, to expect that the limited number of additional HGV movements associated with the CHP plant would materially affect levels of road safety along the route, even taking into account the new village centre proposed at Sutton-on-Trent and the location of the youth club, to the north of the village.

282. In addition, the Appellant intends that this traffic should be confined to daytime hours, which could be ensured by way of a condition. I accept that passing HGV traffic is likely to be noticeable from within dwellings such as those at Ragnall which sit very close to the road. However, given the number and timing of these additional traffic movements, I consider that the proposal would not impose an unacceptable level of further intrusion on these occupants. Likewise, even though there are indeed several properties situated close to the road where occupants are likely to be aware of passing traffic, especially HGVs, the limited increase over existing traffic levels could be expected to have a correspondingly modest effect on the amenity of those residents.

### ***Emissions of odour and noise***

283. A consistent theme running through residents' representations in relation to the appeal proposals has been the distress, inconvenience and, for some, adverse effect on business, experienced as a result of odour emissions from the plant. According to PAG's analysis of the Council's record of complaints, there had been 633 complaints as to odour which had occurred on 176 days in 2013<sup>214</sup>. Those emissions have affected several villages across quite a wide area, with the Council's Senior Pollution Control Officer commenting that the residents in the surrounding villages 'have been denied access to living conditions which foster a complete state of physical, mental and social well-being' due to these odour emissions<sup>215</sup>. The risk of further emissions of odour is thus a highly sensitive matter in this locality.
284. Many residents expressed concerns that the smell from passing lorries loaded with poultry litter might affect them in a similar way to that from the lorries which currently carry animal by-products. However, as with the existing operation, those transport arrangements would be subject to controls through the pollution control regime. Given the numerous reports from residents, it seems that offensive odours do escape from these vehicles on occasions, notwithstanding the controls in place. If that pattern was repeated, there would appear to be some risk of additional harm to local amenity in this

<sup>212</sup> JGP17 paragraphs 6.2-6.3, CD44 paragraph 15

<sup>213</sup> For example, the Parry Business Park, CD79

<sup>214</sup> PAG 13

<sup>215</sup> PAG 09 concluding paragraph



respect. Spillages, although extremely unpleasant, appear to have been relatively infrequent and I heard that arrangements are in place for them to be reported, allowing them to be dealt with speedily. There is also evidence that the community has not raised objections to the use of chicken litter on fields in the locality or its presence on the road network. Thus, whilst the possibility of spillages in relation to the feedstock for the CHP plant cannot be ruled out, I consider that any effect on amenity would be very limited.

285. Residents living in Low Marnham commented on the audibility of the existing factory, which includes vehicle reversing alarms as well as noise from the processing plant. The Noise Assessment notes that with controls over hours of delivery and collection, vehicle movements associated with the CHP plant would normally take place during the daytime. It also notes that the use of acoustic barriers would lead to a reduction in noise levels at Church Farm Cottage<sup>216</sup>. Overall therefore, this would represent an enhancement with regard to the current noise environment, a matter confirmed by the Council's Senior Pollution Control Officer<sup>217</sup>.
286. It is also of note that the proposed CHP plant would operate continuously so that it is expected to provide consistent and continuous high temperatures. This would permit incineration of the non-condensable gases from the animal rendering process. It appears these gases are responsible for the worst of the odours. The scepticism of residents on this point is entirely understandable, based on the apparently disastrous inadequacies of the current system of odour control. Nevertheless, the Council's Senior Pollution Control Officer also expects an improvement<sup>218</sup>. However, since this is a matter which falls within the remit of the current environmental permit and would redress an effect arising from the process, I consider this does not constitute a planning consideration which could weigh in favour of the proposal. [112, 122-124]

### ***Evidence as to the effect of predicted emissions on human health***

287. The main source of fuel for the CHP plant would be poultry litter, although it would also make use of meat and bone meal (MBM) and coppice chip wood. Up to 350T of material per day would be used. One boiler would be used to burn poultry litter and wood, with the meat and bone meal being burned in the other. The Appellant confirms that the CHP plant would operate in line with the Waste Incineration Directive. Although the process would be regulated through the pollution control regime, the Appellant advises that an application for a permit has not yet been made. It is unclear at this stage whether the Council would remain as the regulator or whether responsibility would pass to the Environment Agency. In any event, national planning policy is clear that the appeal proposal should be assessed on the assumption that the permitting regime will operate effectively.
288. PAG expresses concern as to the risk of undesirable pollutants being released, owing to the characteristics of the proposed feedstock. It mistrusts the data which underpins the Air Quality Assessment (AQA) and Human

<sup>216</sup> CD40, paragraphs 5.8-5.11

<sup>217</sup> JGP18, Q6

<sup>218</sup> CD56 memo from Senior Pollution Control Officer, 15 October 2012, confirmed in JGP18

Health Risk Assessment (HHRA)<sup>219</sup>. The use of meteorological data from Waddington is challenged (the AQA notes Waddington is some 19km to the south east of the appeal site). Whilst several residents commented on noticeable differences in wind speeds between the two locations, no objective data is provided to support the claim that the Waddington data should not be taken to be representative of weather patterns at Low Marnham. Reflecting their experiences with odour emissions from the plant, residents were also concerned that the area would be 'blanketed' in a similar fashion by emissions from the proposed chimney. However, the Appellant points out that the emissions from the CHP plant would be released with an upward velocity of 15m/s and would rise further because they would be warmer than the ambient air. Also, wind speeds at heights of 50m are higher than those at ground level<sup>220</sup>. The dispersion patterns of these emissions would not be the same as those of the odours from the rendering operation. In the absence of any technical evidence to the contrary, I see no reason to take issue with the conclusions of the AQA. As such, no weight can be attached to the comparisons with odour emissions.

289. PAG draws attention to the report from the BSEM<sup>221</sup>, which alleges emissions such as those from the proposed CHP plant would present considerably greater risks to health than previously thought, arguing this lends force to the contention that the health effects would be unacceptable. In this respect, although PAG withdrew evidence in relation to risks of emissions of arsenic, it was pointed out that emissions of other pollutants could interact with existing health conditions and there was evidence that the Trent Valley has a high burden of respiratory diseases<sup>222</sup>. However, the Health Protection Agency (HPA) identifies a number of failings in the BSEM report. It also confirms its own position continues to be that, while adverse health effects cannot be ruled out with complete certainty, modern incinerators make only a very small contribution to local concentrations of air pollutants<sup>223</sup>. Dr Clayton confirmed that there were a number of other potential environmental influences on the local pattern of respiratory diseases such as the presence of other power stations and the A1 which passes through the area. In addition, the view given by the Council's Senior Pollution Control Officer is that the results in the AQA are considered to be accurate, reliable and based upon a recognised and trustworthy prediction of emissions<sup>224</sup>. [108-110]

290. Thus, although the concerns expressed by PAG and others living locally are understandable, the evidence does not suggest that the predicted emissions from the proposed development would have an adverse effect on health. In the absence of objective justification, these concerns can be accorded little weight. [187, 188]

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<sup>219</sup> CD42

<sup>220</sup> GB Appx F; JGP 02

<sup>221</sup> WH, Appx 1, The Health Effects of Waste Incinerators, 4<sup>th</sup> Report of the British Society for Ecological Medicine 2<sup>nd</sup> ed, 2008

<sup>222</sup> Dr CPL Clayton, evidence in chief and answers to Inspector's questions

<sup>223</sup> CD80 and CD81

<sup>224</sup> CD56 memo from Senior Pollution Control Officer, 15 October 2012

## Contribution to the climate change programme and energy policies

291. The rendering process has a requirement for steam and the CHP plant is designed to meet that need as well as to produce electricity. It will produce 30 tonnes of steam per hour for factory use as well as 7Mw of electricity. It is expected that 4Mw would be exported to the National Grid on weekdays and 9Mw at weekends, when the factory's energy demands are lower. The CHP plant would attain a total plant efficiency of 64%<sup>225</sup> and has been issued with a CHPQA Certificate, in accordance with the CHP Quality Assurance Programme<sup>226</sup>. PAG questions whether the estimated level of savings in carbon dioxide would be achieved, pointing to a number of other factors which might have been taken into account in reaching the figure of 138,300 tonnes CO<sub>2</sub> pa to 172,700 tonnes CO<sub>2</sub> pa. However, it seems to me that considerable uncertainty would attach to matters such as whether and to what extent anticipated supply of poultry litter to the appeal CHP plant would be obtained through diversion of supply to an existing plant like the one referred to at Thetford. As such, I do not accept that less reliance should be placed on the estimate provided by the Appellant. It is reasonable therefore, to assess the proposal on the basis that it would save some 138,300 tonnes CO<sub>2</sub> pa to 172,700 tonnes CO<sub>2</sub> pa. [113]
292. The Government's commitment to a reduction in greenhouse gas emissions is set out in the Climate Change Act 2008, supported by targets in the Carbon Plan, December 2011, which also notes the specific contribution that CHP offers for energy efficiency and lower emissions<sup>227</sup>. NPPF expects planning to play a key role in securing reductions in greenhouse gas emissions and looks to local planning authorities to support the move to a low carbon future and help increase the use and supply of low carbon energy<sup>228</sup>.
293. Although the amount of energy exported from the proposed CHP plant would be small by national standards, even at weekends, the plant would become a net exporter of energy. It would also overcome the particular problem faced by CHP schemes, in being located specifically to serve an identified end user for the heat produced in energy generation. Conformity with other control regimes means that the use of tallow as a fuel source would be unrealistic and, although there may well be competition in the future for supplies of poultry litter or coppice wood, the Appellant company already has commercial links with potential suppliers so that there appears to be a fair prospect of establishing a reasonably secure fuel supply<sup>229</sup>.
294. The company makes no pretence that the proposal is driven by anything other than commercial considerations, having regard to the range of incentives for using renewables and the penalties for emitting carbon<sup>230</sup>. Nevertheless, by virtue of the estimated savings in CO<sub>2</sub> and the migration to a renewable form of energy, I consider that the proposal would make a

<sup>225</sup> CD33 paragraphs 4.4-4.5 and Fig 3.1

<sup>226</sup> CD74, paragraph 4.6.3

<sup>227</sup> GB paragraphs 4.2.1-4.2.4

<sup>228</sup> NPPF paragraphs 93, 95, 97

<sup>229</sup> GB Appx C: Letter from Moy Park

<sup>230</sup> GB Appx C: statement by A Collins, Operations Director, JG Pears

valuable, if modest, contribution to the delivery of the Government's climate change programme and energy policies<sup>231</sup>. [105, 106, 107, 200, 201]

### Compliance with the development plan

295. There was some discussion at the Inquiry as to whether policy DM1 was, in fact, a relevant policy for the purposes of this appeal since, although it states it is applicable to any area outside a development boundary, it then sets out general principles for proposals for 'standalone economic development'. In this respect I note that, except for a passing reference to the status of the proposal as being supportive of an existing facility rather than a standalone development<sup>232</sup>, there had been no issue between the parties as to the relevance of policy DM1 throughout the numerous exchanges during the very lengthy period of time since the application was submitted.
296. It was confirmed for me at the Inquiry that the relevant authority is *Tesco Stores Limited v Dundee City Council* and that the test is that the policy should be read objectively and in context<sup>233</sup>. The matter of whether the appeal proposal represents 'standalone economic development' is a logically prior question to whether the proposal accords with Local Plan policy DM1.
297. Conflicting advice was proffered at the Inquiry. Having regard to context, the Council advises that the correct interpretation is that "standalone" can encompass completely new proposals and ancillary extensions to an existing development. For the Appellant it was argued that, since this proposal is acknowledged to be ancillary to the existing animal by-product operation, it should not be regarded as 'standalone'. [35, 217]
298. Taken in isolation, I agree that the word 'standalone' does suggest something independent and complete in itself, which is clearly not the case with this proposal. However, the word should be understood in the context of the development plan in which it is employed. The preceding paragraphs note that Bassetlaw is primarily a rural district and that policies DM1-DM3 have been formulated in response to the development pressures it faces, including the need for policy to provide for the sustainable expansion of rural businesses<sup>234</sup>. Of the three policies in this group, only DM1 explicitly deals with economic development. Thus, the reference to 'expansion of rural businesses' strongly suggests that some of the proposals towards which the policy is directed will not be independent or complete in themselves. Moreover, all three policies begin with the statement that they apply '*to any area outside a Development Boundary*', indicating that the location of a proposed development was probably one of the main considerations for those who prepared the Plan.

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<sup>231</sup> The modest nature of this contribution, in turn, suggests that EN1 and EN3 should be accorded limited weight in relation to this proposal.

<sup>232</sup> GB 8.23

<sup>233</sup> *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13: '*policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context*' (paragraph 18)

<sup>234</sup> CD69 paragraphs 5.3-5.4

299. Interpretation of policy is a legal matter. However, reading the policy as a whole in the context of this section of the Plan, it seems to me that the word 'standalone' should be taken as relating to the policy's opening statement, being a reference to the location of a proposal outside a development boundary, rather than to any intrinsic characteristics such as whether it is complete in itself. This would reflect the land use planning concern, which relates to the justification for a location outside a development boundary, rather than the economic or operational status of an enterprise, which is not normally a land use planning matter. On that basis, I am inclined to favour the interpretation put forward by the Council as being the proper understanding of this policy.
300. Since this appeal concerns economic development in a rural area, the proposal would gain support from policy DM1 provided it had been designed and located to minimise the impact upon the character and appearance of the countryside, that the specific location was required and that it was appropriate for its location and setting.
301. It seems to me that the Council's argument that a B2 use would be inappropriate in this rural location fails to take account of the consequences of interpreting the word 'standalone' as encompassing ancillary extensions. In such circumstances, it would be incumbent on the decision maker to have proper regard to the needs of the existing business when applying the test of whether or not a proposal was appropriate in a particular location and setting. The existing business seeks to remain competitive and ensure a secure supply of energy. By its nature, a heat-driven CHP plant such as this requires close links between the point of production and the point of consumption. The evidence is clear that this CHP plant must be located close to this factory so as to fulfil the intended function of providing steam for this animal by-product processing operation. It could not serve that purpose effectively if it was located elsewhere. Also, there was no dispute that the scale and form of the CHP plant relate to the particular requirements of this plant and that due care has been taken with its design. Although it is the case, in my assessment, that the proposal would result in some harm to the character and appearance of the countryside, it follows the prescriptions in the LCA as to location and design so as to minimise that impact. Notwithstanding the harm to the countryside therefore, I consider that the proposal does satisfy the relevant provisions of policy DM1 and therefore draws support from it.
302. In the event that policy DM1 did not apply, it would be possible to assess the proposal with regard to policy DM3, insofar as it supports proposals for the re-use of previously developed land in rural areas. This would raise similar considerations to those in policy DM1, of appropriateness and the need for a rural location. In my view, it would again require that regard should be had to the circumstances of the existing business and the particular characteristics of this CHP scheme so that the reasoning would generally follow that set out above. However this policy does also seek to test whether redevelopment for the permitted use is still appropriate. The Council's assessment that there is insufficient space for landscaping, together with the comments from PAG and residents as to the incremental nature of the plant's expansion and the effects of the growth in HGV traffic, could be taken to indicate that the current operation might, in effect, have outgrown this site, meaning that further development would not be appropriate. Although harm

to the surrounding countryside would occur as a result of this proposal, this would arise from the inherent characteristics of the CHP plant rather than a deficiency in space allowed for landscaping. Only limited effects have been identified in association with the additional HGV movements. It has not been shown therefore, that redevelopment for the existing use is no longer appropriate. On that basis, I consider that the proposal would satisfy the relevant requirements of policy DM3 and so would draw support from it.

303. In its wording, policy DM4 applies to all major development. As a strategic level policy, it is not unexpected that some of its provisions may be of greater relevance to residential rather than economic development. However, the requirements to complement and enhance the character of the built, historic and natural environment and to be appropriate in scale to the existing settlement and surrounding area are of general application and so have a bearing on the appeal proposal. There would be some harm to the setting of listed buildings and the already dominant relationship between the appeal site and Low Marnham would be accentuated. As such, the proposal would be in conflict with policy DM4.
304. The economic benefits of the proposal in terms of an investment of about £45 million and creation of about 35 additional jobs were not disputed. Whilst there may be little in the way of direct economic benefit to Low Marnham, especially if unemployment levels in the immediate area are lower than in the travel to work area<sup>235</sup>, the jobs created and investment attracted would be beneficial to the District as a whole, which is the focus of policy DM7, so that the proposal would attract the particular support of that policy.
305. Given my findings in relation to the impact on the setting of St Wilfrid's church and The Grange, the proposal would fall foul of policy DM8 and its presumption against development which would be detrimental to the significance of heritage assets.
306. Policy DM10 was acknowledged to be a 'key' policy. The appeal proposal draws support from the policy on the basis of its use of renewable and low carbon energy. It draws additional support as a proposal which would ensure the co-location of compatible heat producing and heat consuming development. That support must be qualified, however, by the fact that it is unable to demonstrate compatibility with policies DM4 and DM8, which seek to safeguard the environment and heritage assets as well as the visual harm.
307. In its favour, the proposal would attract the express support of policies DM1 (or DM3 if it is not seen to be a standalone proposal), DM7 and DM10. On the other hand, it would conflict with policies DM4 and DM8.
308. For the Appellant the argument is put that, as the proposal complies with the most obviously relevant Development Plan policy, planning permission should be granted unless material considerations indicate otherwise. However there would be a risk, with such a formulaic approach, that a breach of other development plan policies concerned with, for example, the effect on heritage assets or landscape, would be relegated to the status of 'other material considerations'. Moreover, policy DM10 expressly requires consideration of

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<sup>235</sup> JGP04, BDC 01

other factors since it expects a proposal to demonstrate compatibility with other safeguarding policies. It does not necessarily pull in a different direction from policies DM4 and DM8. Consequently, a decision on whether this policy was 'dominant' would be of limited assistance in reaching a balanced conclusion in relation to conformity with this particular development plan. [159, 204]

309. Looking at matters which weigh against the proposal, the requirement in S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the setting of a listed building means that the conflict with policy DM8 must carry significant weight. However, the conflict with policy DM4 arises from the characteristics of the proposal as a renewable and low carbon energy project rather than from failings in the design approach itself. Although limited weight should be attached to EN1 and EN3, it is of note that, given the constraints of this type of development, the policy expectation here is to minimise harm to the landscape or visual harm due to intrusive appearance<sup>236</sup>. Taking into account the indicated landscaping and the undertaking to remove structures which would no longer be required, I am satisfied that the impact of this proposal on its surroundings would be minimised so far as is reasonable and appropriate. Since the proposal does not run counter to the underlying intention of that policy, which was to remedy a disappointing quality of design<sup>237</sup>, I consider that the conflict with policy DM4 should carry a lesser amount of weight.
310. As for the matters which weigh in favour, the proposal can call on the support of the 'key' policy, DM10. Also, policy DM7 provides 'particular' support. Along with the support from policy DM1, I consider that the overall balance weighs in favour of the proposal and it should be judged as being in accordance with the development plan taken as a whole. [203]

### **Whether the proposal would constitute sustainable development**

311. Bearing in mind the points with regard to whether some policies may not be relevant or may not be consistent with national policy, or the relative weight to be attached to landscape impacts, it may be the case that a finding was reached that the proposal was not in conformity with the development plan. In such an event, it would be necessary to consider whether the presumption in favour of sustainable development was engaged. That should be assessed with regard to paragraphs 18-219 of the Framework, taken as a whole. [48-52, 225-228]
312. There would be economic benefits associated with the proposal in terms of investment and job creation so that it would support the rural economy. It would also help build a strong, competitive economy since the rendering industry is a vital part of the larger, agri-food business in the UK, through its function of providing for the safe disposal of animal by-products. It was claimed that the company itself is probably the largest single poultry processing unit in the country. However, it seems to me that the gains for the Appellant company primarily represent a private rather than a public

<sup>236</sup> CD74 5.9.8; CD75 2.5.51

<sup>237</sup> CD69 paragraph 5.10

benefit and so should attract a lesser degree of weight, notwithstanding the contribution it may make to maintaining the competitiveness of the rendering industry. In these respects, the proposal would accord with the economic dimension of sustainable development.

313. So far as the social dimension is concerned, the proposal can be seen as causing a limited degree of harm for residents through its adverse effects on views of and from St Wilfrid's Church and the visibility of the CHP plant in views from High Marnham and Normanton-on-Trent as well as from various points on the local network of footpaths and roads. Since many properties are also close to the road, there would be slight adverse effect associated with the increase in HGV traffic.
314. With regard to the environmental dimension, good design is a key aspect of sustainable development. In relation to biomass, EN3 notes the need to take into account that such a proposal would require a building able to host fuel reception and storage facilities, the combustion chamber and abatement units so that mitigation would be achieved primarily through aesthetic aspects<sup>238</sup>. Bearing in mind that there was no evidence that the design was flawed, I consider that this proposal does represent good design, within the constraints of a proposal for a piece of energy infrastructure.
315. Another key part of the environmental dimension relates to securing reductions in greenhouse gas emissions and supporting the delivery of renewable and low carbon energy. The proposal would achieve this through delivering savings in CO<sub>2</sub>, the use of biomass fuel sources and through its status as a Good Fuel Quality CHP<sup>239</sup>.
316. The planning system is also expected to contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes. The argument was put that the scope of the term 'valued' was set out within footnote 9 to NPPF paragraph 14, namely National Parks, Areas of Outstanding Natural Beauty or Local Green Spaces. Landscapes outside those designations may still be valued and subject to criteria-based policies for their protection but would not benefit from the requirement to "protect and enhance".
317. Having regard to the principle that a policy should be read in context, the purpose of the examples within the footnote is to convey the circumstances where an exception may need to be made when applying the presumption in favour of sustainable development. It is deliberately framed to address a limited number of factors. On the other hand, paragraph 109 takes a much broader approach since it provides a framework for the formulation of planning policies and the approach to development management. This broader approach becomes more evident with a reading of subsequent paragraphs such as 113. In addition, the Planning Practice Guidance expects local plans to include strategic policies for the conservation and enhancement of the natural environment, including landscape<sup>240</sup>. On that basis, I consider that 'valued' at paragraph 109 should not be taken to be the equivalent of

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<sup>238</sup> CD75 paragraphs 2.5.49, 2.5.51

<sup>239</sup> CD78 and CD79

<sup>240</sup> Paragraph: 001 Reference ID: 8-001-20140306



'designated' in the footnote to paragraph 14. In this instance, the value of the local landscape is set out in the LCA. The proposal would fail to protect and enhance the local landscape within the terms of the LCA. In that respect, I consider that it would not accord with the environmental dimension of sustainable development. [64, 65, 164, 165]

318. With regard to heritage assets, great weight must attach to the harm to the significance of St Wilfrid's church as a Grade 1 listed building, even though it would be less than substantial. The harm to The Grange must also carry weight commensurate with its status as a Grade II listed building. Against this, should be weighed the public benefits of the proposal. These would comprise the economic benefits, the reduction in carbon emissions, the use of renewable energy and the lower level of ambient noise. To my mind, these benefits would be sufficient to outweigh the limited harm which would be caused to the significance of the heritage assets.
319. The assessment of whether a proposal represents sustainable development is to be made against the policies in the Framework as a whole. Although the proposal does not accord with all aspects of the environmental dimension it does satisfy the key components of design and reducing greenhouse gas emissions. Also, whilst there would be some harm in relation to social considerations, this would be limited in nature. Considered against the policies in the Framework as a whole, I consider that the proposal does represent a sustainable form of development.

### **Conditions and Planning Obligation**

320. Although the conditions were prepared and agreed with regard to advice in the former circular, I have considered them in the light of the recently published Planning Practice Guidance. The parties reached a measure of agreement at the Inquiry about possible conditions in the event that planning permission was granted. They are set out in the Schedule of Conditions attached to this report.
321. A condition requiring that development is carried out in accordance with the approved plans is necessary for the avoidance of doubt and in the interests of good planning. Given the various elements of the proposal, a scheme of phasing is reasonable to ensure the development takes the agreed form. A high quality scheme of landscaping will be essential in order to ensure that the impact of the development on the landscape is minimised, along with a management plan to ensure it continues to provide mitigation. The provision of a management plan would make it unnecessary for the condition to specify replacement of any trees or shrubs within a set period of time. Details of external materials are necessary to ensure the satisfactory appearance of the completed development. The proposals would affect a large proportion of the site so that a condition to allow assessment of a scheme for the whole site would be reasonable to protect the amenity of residents and to minimise the effect on the character and appearance of the countryside.
322. Given the characteristics of the local road network, a condition to control the hours of HGV movements would be reasonable to protect the living conditions of residents along the route. Amendments were suggested by PAG to address the timing and daily number of vehicle movements. However, the evidence does not show that such measures would be necessary in the

interests of road safety. A condition requiring provision and retention of parking and turning areas is necessary in the interests of highway safety. Given the rural location of the site, a Travel Plan is necessary to promote the use of sustainable forms of travel. A number of measures were identified by the Environment Agency in view of the findings of the Flood Risk Assessment so that a condition is necessary to prevent flooding by ensuring the satisfactory storage of and disposal of surface water from the site. Aviation warning lights on the chimney are necessary in the interests of air safety.

323. The justification for the location of the CHP plant rests on its connection with the rendering plant but it could continue to function even if the rendering plant ceased operation. To reflect this, the Council suggests a condition requiring removal of the CHP plant should the rendering plant cease to operate. Although not opposed by the Appellant, the justification for such a condition is questioned. My assessment of the proposal acknowledges that the connection with the rendering plant is a central consideration if the location of this proposal is to be seen as appropriate. As such, I agree with the Council that the condition would be reasonable in order to protect the character and appearance of the countryside. A Construction Method Statement is necessary to protect the living conditions of residents.
324. Consideration was given at the Inquiry to the possibility of a condition on noise levels, based on the findings of the Noise Assessment that background levels at night should be lower as a result of the appeal proposal. However in the light of the discussion and bearing in mind that the proposed CHP plant has not been shown to be a source of additional noise, I consider that a condition on this matter would not reasonably relate to the development proposed. Further conditions were suggested by PAG with regard to fuel mix, pest control and monitoring of emissions from the chimney. However since they relate to the industrial process rather than the use of the land, they fall outside the remit of planning control.
325. The submitted Planning Obligation undertakes to remove two existing chimneys and a third where construction has commenced and the permission is extant. It also undertakes to duct gaseous emissions from the proposed Thermal Oxidiser through the chimney of the CHP plant and to remove the 30m chimney associated with the Thermal Oxidiser. These measures would be carried out after the CHP plant was commissioned and would ensure that the impact of the development on the landscape could be minimised. They are necessary to make the development acceptable in planning terms.

## **Overall conclusions**

326. There is, without doubt, very strong local sentiment against any further development of the appeal site, as expressed by PAG and supported by members of the various Parish Councils as well as the written and oral evidence of so many of those who live locally. It is also reflected in the unanimous nature of the decision by the Council's Planning Committee. However, having paid careful attention to the impact on the environment and the planning concerns of this community, the evidence shows that the proposal is in accordance with the development plan as a whole. It also represents a sustainable form of development.

## **Recommendation**

327. I recommend that the appeal be allowed, subject to the conditions in the attached Appendix.

*K.A. Ellison*

Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

John Barrett of Counsel

He called

Barry Moore, CMLI, FCIHT	Director, Moore Environment
Katrina Hulse, BA(Hons), MA, MRTPI	Director, DLP Planning Ltd

### FOR THE APPELLANT:

Martin Kingston QC

He called

Phillip Rech, BA, BPhil LD, CMLI	Director, FPCR
David Roberts IENG, FIHE, FCIHT	Director, SCP Transportation Planners and Infrastructure Designers
Dr Chris Miele MRTPI, IHBC, FRHS, FSA	Montagu Evans
Graham Bolton BA(Hons) MRTPI	Managing Director, Graham Bolton Partnership

### FOR THE PEARS ACTION GROUP:

His Honour JV Machin DL

He called

Cllr Christine Rose	Member, Newark and Sherwood District Council, Sutton-on-Trent ward,
John Whittaker	Resident, Sutton-on-Trent
John Ford	Resident, Grassthorne
Colin Fishwick	Resident, Ragnall
Dr Charles Clayton MBBS, DCH, DCR, CO, DRCOG (CHECK)	Resident, Normanton-on-Trent
Charles Lowe	Resident, Normanton-on-Trent
Margaret Bennett	Resident
Samuels BA, MA, DipLD, MA Arch	

Proofs from the following witnesses were also offered and taken as read:

Cllr Bruce Laughton	Member, Nottinghamshire County Council, Southwell and Caunton Division
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Cllr Keith Isard	Member, Bassetlaw District Council, Tuxford and Trent ward
Cllr Frank Smith	Normanton-on-Trent Parish Council
John Whittaker	Resident, Sutton-on-Trent
Dr Katie Moloney	GP, Sutton-on-Trent

The following persons spoke at the Inquiry:

Madeline Barden	Resident and Parish Councillor, Dunham, Ragnall, Fledborough and Darlton
Christine Fisher	Resident
Maurice Jordan	Resident and Parish Councillor Normanton-on-Trent with Marnham
Alison Purser	Resident
Richard Spink	Resident and Parish Councillor Normanton-on-Trent with Marnham
Frank Smith	Resident
Ms D Burton	Resident
Gerry Murray	Resident
Fiona Cunningham	Landlady, Brownlow Arms, High Marnham
Karen Walker	Resident
Susan Oakes	Owner, Ragnall Guest House
Elizabeth Boneham	Resident
Sue Hallett	Resident
Sue Chase	Resident
Phillip Warriner	Resident
Ann Chambers	Resident

## CORE DOCUMENTS

- 1 Graham Bolton Planning Partnership letter 12.02.2011 Re: County matter
- 2 Bassetlaw District Council's letter 12.08.2011 Re: County matter
- 3 Graham Bolton Planning Partnership letter 14.07.2011 Seeking a Scoping Opinion
- 4 Bassetlaw District Council letter 29.09.2011 Re: determination and EIA Development
- 5 Original Planning Application validated 13th January 2012 reference number 30/11/00005
- 6 Bassetlaw District Council validation letter 13.01.2012
- 7 Updated Extended Phase 1 Habitat Survey July 2011
- 8 Graham Bolton Planning Partnership letter 01.11.2012 jV HGV movements
- 9 Planning Statement December 2011
- 10 Design Statement December 2011
- 11 Access Statement December 2011
- 12 Graham Bolton Planning Partnership letter 21.12.2011 and supporting documents including  
Application Forms  
Location Plan 1:50000  
2008-1546-24 Existing Site Plan 1:500  
2008-1546-25 Proposed Site Plan 1:500  
2008-1546-26 Location Plan jV Site edged red 1:1250  
2008-1546-27 CHP Plant Plans and Sections 1: 200  
2008-1546-28 CHP Plant Elevations 1:200  
2008-1546-29 Office Building jV floor and elevations 1:100  
2008-1546-31 Proposed Site Elevations 1:500
- 13 Bassetlaw District Council's letter 29.12.2011 requesting further Information to validate application
- 14 Graham Bolton Planning Partnership letter 09.01.2012 submitting additional information or amended plans & CD Version 2 containing the validated planning application:  
Application Forms to include the revised plan ref. nos. and new or amended plans as listed:-  
Location Plan jV 1:50000  
2008-1546-24 Existing Site Plan 1:500  
2008-1546-25A Proposed Site Plan 1:500  
2008-1546-26 Location Plan jV Site Edged Red 1:1250  
2008-1546-27A CHP Plant Plans and Elevations 1:200  
2008-1546-28A CHP Plant Elevations 1:200  
2008-1546-29 jV Office Building 1:100  
2008-1546-30 jV Security Lodge Building 1:100  
2008-1546-31A jV Site Elevations 1:500  
2008-1546-36 jV Tank Farm 1:200  
2008-1546-37 jV Lorry Wash 1:100  
2008-1546-38 jV Proposed Earth Bund Sections 1:500  
Location Plan 1:50,000
- 15 Weighbridge Specification 11.01.2012
- 16 Site Ownership certificate & agricultural holdings certificate
- 17 Pre-application Consultation Report December 2011
- 18 Environmental Statement December 2011 & Appendices ES1-ES6 including proposed site plan

- 19 Environment Agency's letter 06.03.2012
- 20 Bassetlaw District Council letter 10.04.2012 jV requesting additional environmental information
- 21 Graham Bolton Planning Partnership letter 20.04.2012 re Further Environmental Information request
- 22 Graham Bolton Planning Partnership letter 23.04.2012 re extension of time
- 23 Bassetlaw District Council letter 01.05.2012 jV agreeing visualisations viewpoints
- 24 Graham Bolton Planning Partnership letter 04.05.2012 to Environment Agency
- 25 Environment Agency letter 30.05.2012
- 26 Graham Bolton Planning Partnership letter 31.05.2012 jV re: representations of the Environment Agency
- 27 Graham Bolton Planning Partnership letter 12.06.2012
- 28 Graham Bolton Planning Partnership letter 15.06.2012
- 29 Graham Bolton Planning Partnership letter 14.08.2012 including:  
Plan ref 2008-1546-25D, Proposed Site Plan  
Plan ref 2008-1546-26A, Location Plan  
Plan ref 2008-1546-31C, Proposed Site Elevations  
Plan ref 2008-1546-52, Proposed Earth Bund Section D
- 30 Environment Agency letter 12.10.2012
- 31 Graham Bolton Planning Partnership letter 06.11.2012 re EA comments
- 32 Environmental Statement Non-Technical Summary Revision August 2012
- 33 Environmental Statement Revision jV August 2012
- 34 Site Plan jV Treated Effluent Discharge Route
- 35 Archaeology Assessment June 2011
- 36 Geological Assessment 09.09.2009
- 37 Flood Risk Assessment November 2011
- 38 Flood Risk Assessment Addendum jV August 2012
- 39 Landscape and Visual Impact Assessment December 2011
- 40 Noise Impact Assessment and Appendices
- 41 Light Pollution Study 09.11.2011
- 42 AQA & HHRA Assessment 29.11.2011
- 43 Transport Assessment November 2011
- 44 Further Traffic Survey, Technical Note June 2012
- 45 Mr Hamilton's report/letter 29.02.2012 jV HGV movements
- 46 Mr Hamilton's report 03.09.2012
- 47 Graham Bolton Planning Partnership letter 01.11.2012 re Mr Hamilton's report of 3 September 2012
- 48 Mr Hamilton's report 16.11.2012
- 49 Mr Hamilton's letter 26.11.2012
- 50 Graham Bolton Planning Partnership letter 14.01.2013 re Mr Hamilton's reports
- 51 Cumulative Visual Impact Assessment and plan July 2012
- 52 Visualisations submitted with Further Environmental Information, August 2012
- 53 Flue Gas & Emissions report July 2012
- 54 Health risk of Dioxin Emissions July 2012
- 55 Update on Background Air Quality July 2012
- 56 Consultees' responses/objections (on CD)
- 57 Resume of objections and representations and answers, GBPP August 2012
- 58 LPA's committee report dated 20.03.2013 (and Cttee Agenda)

- 58A LPA's committee minutes of 20.03.2013 (and Cttee Agenda 10.04.13)
- 59 Graham Bolton Planning Partnership letter 05.10.2012 iV extension of time
- 60 Graham Bolton Planning Partnership letter 31.01.2013 iV extension of time
- 61 LPA's decision notice dated 12.04.2013
- 62 Appeal Form dated 8th July 2013
- 63 Grounds of Appeal
- 64 Statement of Common Ground
- 65 Appellant's Statement of Case
- 66 LPA's Statement of Case
- 67 Pears Action Group Statement of Case
- 68 Pears Action Group Statement of Common Ground
- 69 Bassetlaw District Local Development Framework Core Strategy and  
Development Management Policies DPD, December 2011
- 70 Bassetlaw Renewable and Low Carbon Energy Study, February 2010
- 71 Bassetlaw Climate Change Strategy
- 72 National Planning Policy Framework
- 73 Bassetlaw Landscape Character Assessment (extracts)
- 74 Overarching National Policy Statement for Energy(EN-1)
- 75 National Policy Statement for Renewable Energy Infrastructure July  
2011(EN-3)
- 76 Planning Practice Guidance on Renewable and Low Carbon Energy (July  
2013)
- 77 GLVIA (extracts)
- 78 CHPQA Certificate No. F03657890 issued to J G Pears Newark iV dated 7  
June, 2013
- 79 Appeal Decision ref. APP/B3030/A/11/2148086, dated 15 June, 2011 iV Re.  
Parry Business Park, Grassthorne Road, Sutton-on-Trent
- 80 Health Protection Agency's response to the British Society of Ecological  
Medicine report, The Health Effects of Waste Incinerators, 4th report
- 81 Health Protection Agency's Press Release iV 24 January, 2012



## **INQUIRY DOCUMENTS**

ID 01	Letter of notification and associated documents
ID 02	Plan of HGV route Ragnall – Carlton on Trent, as requested by the Inspector
ID 03	Newspaper extracts relating to the holding of the Inquiry
ID 04	Gateshead MBC v Secretary of State for Environment, 12 May 1994, [1995] Env LR 37
ID 05	Appeal decision T/APP/A3010/A/95/254947/P2
ID 06	Statement by Madeline Barden
ID 07	Statement by Christine Fisher
ID 08	Statement by Maurice Jordan
ID 09	Statement by Alison Purser
ID 10	Statement by Richard Spink
ID 11	Statement by Ms D Burton
ID 12	Statement by Gerry Murray
ID 13	Statement by Fiona Cunningham, incl H Keegan & A Grainger
ID 14	Statement by Karen Walker
ID 15	Statement and attachments by Susan Oakes
ID 16	Statement by Elizabeth Boneham
ID 17	Statement by Sue Chase
ID 18	Statement by Ann Chambers
ID 19	List of suggested conditions
ID 20	Notes for accompanied site visit
ID 21	Planning permission 13/00933/FUL 4 December 2013, Tank farm etc
ID 22	Closing submissions, Pears Action Group
ID 23	Closing submissions Bassetlaw DC
ID 24	Closing submissions, JG Pears
ID 25	Letter to parties 11 March 2014 concerning publication of Planning Practice Guidance (PPG)
ID 26	Response to PPG dated 18 March 2014 from Graham Bolton Planning Partnership

### **DOCUMENTS submitted by Bassetlaw District Council**

BDC 01	Nottinghamshire CC Employment Bulletin November 2013
BDC 02	Letter from English Heritage 14 January 2014

### **DOCUMENTS submitted by Pears Action Group**

PAG 01	Suggested condition relating to chimney emissions
PAG 02	Supplementary note from Charles Lowe 16 January 2014
PAG 03	Extracts: ES, CD18, p25; EN1, p3; EN3 p5
PAG 04	Supplementary note from Charles Lowe 17 January 2014
PAG 05	Extract from Natural England landscape character area 48, Trent and Belvoir Vales
PAG 06	Extracts from GLVIA pp 46-47 & 99
PAG 07	Illustrative masterplan, Brookside development, Rothley
PAG 08	Elevations, East of Exeter Energy Centre
PAG 09	Statement dated 21 January 2014 by Miss A Ogden, Senior Pollution Control Officer, Bassetlaw District Council
PAG 10	Extract ES p 105, lighting
PAG 11	Plan 2008 546-61 Rev D Proposed Thermal Oxidiser,

- PAG 12 Extract, The setting of heritage assets: English Heritage, p2  
 PAG 13 Supplementary note from Charles Lowe 22 January 2014: summary of BDC complaints file  
 PAG 14 Email correspondence submitted by C Rose concerning site at Hemplands Lane, Sutton-on-Trent

**DOCUMENTS submitted by JG Pears Ltd**

- JGP 01 Pears' Enviromental Permit  
 JGP 02&02A Fichtner note and errata (02A) re.'decreased'  
 JGP 03 Complaints – BDC graph for Jan 2008-Aug 2012  
 JGP 04&04A Unemployment data, ONS Labour Market, TTWAs, Dec 2013, & plan (04A) of TTWAs  
 JGP 05 PPS 10 – Extract  
 JGP 06 Extract APP/F5540/A/12/2174323 Land south of Manchester ship canal  
 JGP 07 Extract APP/K2420/A/13/2202261 Land east of Wolvey Road  
 JGP 08 Extract APP/D0840/A/09/2113075, Land at Rostowrack Farm  
 JGP 09 Extract APP/C1055/A/10/2124772 Disused land adj 1-5 Railway Cottages, Sinfin Lane  
 JGP 10&10A Errata, P Rech FPCR and Dr C Miele, Montagu Evans  
 JGP 11 Email 17 January 2014, AmyOgden-RobWright, NottsCC Trading Standards re. Spillages, sewage sludge and chicken litter  
 JGP 12 Email 11 September 2012 A Collins to A Ogden, sewage sludge spreading Normanton  
 JGP 13 Photo, poultry litter spreading, land south of JGPears site, 8 August 2013  
 JGP 14 Photographs and Email 15 August 2012 re poultry litter spreading/spillages  
 JGP 15 Extracts DPI/A0655/11/10 Electricity Generating Station, Lostock  
 JGP 16 SCP Accident Data Clarification Note  
 JGP 17 SCP Case Presentation  
 JGP 18 Statement by Amy Ogden, Senior Pollution Control Officer, Bassetlaw District Council dated 28 Januar 2014, in answer to questions posed by the Appellant company  
 JGP 19 Flyer of unknown origin, circulating in area on 19 January 2014

## Appendix 1 List of suggested conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and drawings:
  - Location Plan – 1:50000
  - 2008-1546-24 Existing Site Plan 1:500
  - 2008-1546-25D Proposed Site Plan 1:500
  - 2008-1546-26A Location Plan – Site Edged Red 1:1250
  - 2008-1546-27A CHP Plant Plans and Elevations 1:200
  - 2008-1546-28A CHP Plant Elevations 1:200
  - 2008-1546-29 – Office Building 1:100
  - 2008-1546-30 – Security Lodge Building 1:100
  - 2008-1546-31C – Site Elevations 1:500
  - 2008-1546-36 – Tank Farm 1:200
  - 2008-1546-37 – Lorry Wash 1:100
  - 2008-1546-38 – Proposed Earth Bund Sections 1:500
  - 2008-1546-52 – Proposed Earth Bund Section D
  - Landscape Mitigation Plan, dwg no 414A.02C
- 3) No development shall take place until a scheme for the phased implementation of the development has been submitted to and approved in writing by the local planning authority.
- 4) No development shall take place other than in accord with the approved phasing scheme until full details of both hard and soft landscape and boundary treatment, including security and acoustic fencing and indications of all existing trees and hedgerows on the land and details of any to be retained, together with measures for their protection in the course of development, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Soft landscape works shall include planting plans, written specifications (including cultivation and other operations associated with plant and grass establishment), schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate and implementation programme.
- 5) No development shall take place other than in accordance with the approved phasing scheme until an Ecological and Landscape Management Plan for the establishment and on-going maintenance of the approved landscaping and planting scheme has been submitted to and approved in writing by the local planning authority. The Plan shall also detail proposals to promote biodiversity including protection of the sand martin nesting area, provision of bat roosting features and opportunities for nesting birds. The landscaping scheme shall be managed in accordance with the terms of the approved management plan.

- 6) No development shall commence until samples of all external materials have been submitted to and agreed in writing by the local planning authority. Development shall be carried out as approved.
- 7) No development shall commence until a scheme for all outdoor lighting of the development, including the recommendations encompassed in the Environmental Statement revised, and the site has been submitted to and agreed in writing by the local planning authority. The Scheme shall include details of the location, height, design, sensors, hours of operation and luminance of all proposed lighting and a programme for its installation. The lighting shall be designed to minimise the potential annoyance of light spillage to areas beyond the factory premises and shall be implemented in full accordance with the approved details.
- 8) No HGVs delivering to or from the combined heat and power plant shall enter or leave the site except between the hours of 07:00 am to 19:00, Monday to Friday, and 07:00 to 13:00 on Saturdays.
- 9) Before the combined heat and power plant is brought into use, the revised access, parking and turning areas shall be laid out in accordance with the approved plans and surfaced and drained in accordance with details to be submitted to and approved in writing by the local planning authority. The parking and turning areas shall not be used thereafter for any purpose other than the parking or turning of vehicles.
- 10) The CHP plant shall not be brought into use until a Travel Plan has been submitted to and approved in writing by the local planning authority. The Travel Plan shall set out proposals (including targets, a timetable and enforcement mechanism) to promote travel by sustainable modes and shall include arrangements for monitoring of progress of the proposals. The Travel Plan shall be implemented in accordance with the timetable set out in that plan.
- 11) The development hereby permitted shall be carried out in accordance with the Flood Risk Assessment (FRA) August 2012, FRA Addendum and the following mitigation measures detailed within the FRA:-
  - i. The proposed site run/off has been reduced by the proposed roof runoff collection and the additional surface runoff will be dealt with on site using the existing water treatment plant.
  - ii. Provision of compensatory flood storage as detailed in section 5.2.1 of the FRA Addendum.
  - iii. Finished floor levels are set no lower than 8.3m above Ordnance Datum (AOD).
  - iv. Minimum flood protection floor level of no lower than 9m AOD for the fuel store and turbine rooms.The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the approved timing/phasing scheme.
- 12) Aviation warning lighting to with a minimum intensity of 25 candela omni-directional red light or equivalent infra-red light shall be fitted at the highest practicable point of the chimney when first erected in accordance with details to be submitted to and agreed in writing by the Local Planning Authority and maintained permanently thereafter.

- 13) Should the rendering plant cease to operate the CHP plant shall cease operation and be removed within 12 months of the closure of the rendering plant.
- 14) Within 6 months of the commencement of development of the combined heat and power plant, a scheme shall be submitted to and approved in writing by the local planning authority to restore the land to its condition before development of the combined heat and power plant took place (or as otherwise agreed in writing by the local planning authority). The scheme shall address the removal of the boiler house and fuel storage buildings and the chimney and include details of restoration, including a timetable for restoration works. The restoration works shall be carried out in accordance with the approved details and within such timescale as specified.
- 15) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - i. the parking of vehicles of site operatives and visitors
  - ii. loading and unloading of plant and materials
  - iii. storage of plant and materials used in constructing the development
  - iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - v. wheel washing facilities
  - vi. measures to control the emission of dust and dirt during construction
  - vii. a scheme for recycling/disposing of waste resulting from demolition and construction works
  - viii. hours of demolition or construction works, which shall not take place outside 07.00-19.00 Mondays to Fridays and 07.00-13.00 on Saturdays and not at any time on Sundays or Bank Holidays.

## 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: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for permission to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: 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 4: 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.