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PLANNING POLICY 4

INTRODUCTION

4.1 When undertaking EIAs and preparing an ES, it is conventional practice to carry out a review of relevant planning policy. This is not an express requirement of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, but the exercise acts as a useful checklist in terms of the environmental topics considered in the EIA, and allows the conclusions reached by the EIA / ES to be assessed against planning policy objectives and requirements.

4.2 It is considered that this approach identifies and isolates the key environmental issues associated with a particular development, and in arriving at a judgement of the overall merits of the development balanced against its environmental effects. In this respect, it is not the role or purpose of the ES to set out the planning balance, but to objectively consider those policies relevant to the scheme being assessed.

4.3 Generally speaking, the application must be determined in accordance with the content of the development plan unless material considerations indicate otherwise (section 38(6) of the Planning and Compulsory Purchase Act 2004). Sub Section 5 of Section 38 states that, "*if to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published (as the case may be)*". Furthermore, paragraph 5 of Planning Policy Statement 10 "*Planning for Sustainable Waste Management*" (2005) provides that in considering planning applications for waste management facilities before development plans can be reviewed to reflect the requirements of PPS 10, regard is to be given to the policies in PPS 10 as material considerations which may supersede policies in the development plan.

4.4 Policies in the development plan will conventionally seek to safeguard environmental interests, and will aim to resist developments which are likely to give rise to significant adverse environmental and amenity effects.

4.5 It is considered that the 'overall thrust' of the development plan, taken as a whole, and not in accordance with each policy of the plan is the key requirement when determining any application (ref R (Cummins) v. Camden LBC)

4.6 In the context of Section 38(6) of the 2004 Act, the following formally adopted documents are considered to be given most weight:

- Hampshire, Portsmouth, Southampton and New Forest National Park Minerals and Waste Core Strategy 2007; and
- Winchester District Local Plan Review- saved policies (Adopted 2006)

LEGAL BACKGROUND

4.1 Schedule 4 to the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 does not make any specific reference to the inclusion of an assessment of planning policy. However, Chapter 6 of the DTLR Good Practice Guide on the preparation of an ES includes a section on "Policies and Plans". Paragraph 6.1 states that "*An ES should include a section on policies and plans which are relevant to the environmental assessment of the development in question*". The objective for this is to "*demonstrate how these policy guidelines have been taken into account in developing the project and compiling the ES, and to provide a picture of the decision making context in which the environmental impacts will be evaluated*".

4.2 It can be seen that there is some ambiguity between the Regulations and the guidance provided by the Government. However, it is clear, from published guidance, that the Government is committed to a plan led system, with the Development Plan forming the basis of all planning decisions. Accordingly, policies and plans play an important role in determining any planning application. In the spirit of the guidance, therefore this Chapter provides an overview of the policies that have been considered in undertaking the EIA.

4.3 National policy relating to waste management, like many other matters including Environmental Impact Assessment, is derived from a number of European Directives.

INTERNATIONAL POLICIES

- Directive 2008/98/EC on Waste (Waste Framework Directive)
- Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste
- Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste

NATIONAL POLICY CONSIDERATIONS

4.7 The following National overarching planning policy considerations have also been considered:

- EN-1 Overarching National Policy Statement for Energy; July 2011
- EN-3 Renewable Energy; July 2011
- PPS10 – Planning for Sustainable Waste Management; 2011; and
- National Planning Policy Framework (NPPF), 2012

EN-1

4.8 Section 3 of EN-1 confirms the following:

- the UK needs all types of energy infrastructure in order to achieve energy security at the same time as reducing greenhouse gas emissions;

- it is for the industry to propose new energy projects;
- the government does not consider it appropriate for planning policy to set targets or limits on different technologies;
- applications covered by EN-1 should be considered on the basis that the government has demonstrated that there is a need; and
- decision makers should give substantial weight to the contribution projects make towards satisfying this need.

4.9 EN-1 goes on to confirm at paragraph 3.3.10 that in order to diversify and decarbonise electricity generation the government is committed to increasing dramatically the amount of renewable energy generation. Paragraph 3.4.1 confirms that the government is committed to sourcing 15% of its total energy from renewable sources 2020 and that new projects need to come forward urgently to ensure that this target is met.

4.10 Finally paragraph 3.4.4 of EN-1 recognises the ability of energy from waste to deliver predictable, controllable renewable electricity which is seen as important in ensuring the security of UK energy supplies.

4.11 Finally, the NPS provides advice in Part 5 on "*Generic Impacts*", For landscape, paragraph 5.9.8 comments that "*Virtually all nationally significant energy infrastructure projects will have effects on the landscape. … the aim should be to minimise harm to the landscape, providing reasonable mitigation where possible and appropriate*". The guidance also affords a high level of protection for National Parks and AONBs (i.e. national designations). For local landscape designations, paragraph 5.9.14 states that such designations should not be used in themselves to refuse consent, as this may unduly restrict acceptable development. In determining planning applications, the key test is whether the impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project.

EN-3

4.12 EN-3 acknowledges (paragraph 2.5.2) that the recovery of energy from the combustion of waste will play an increasingly important role in meeting the UK's energy needs, and the biomass fraction of waste can also contribute towards the UK's renewable energy targets. EfW also forms an important element of waste management strategies in England and Wales. The document stresses that it is not necessary to be concerned about the type of technology used.

4.13 The NPS also provides guidance in terms of the likely impacts of energy from waste schemes, and states (paragraph 2.5.43) that where a modern EfW plant meets the requirements of WID and will not exceed local air quality standards, it should not be regarded as being detrimental to health. In respect of visual impact it also states (paragraph 2.5.50) that good design will go some way to mitigate adverse landscape and visual impacts, and that the design and use of materials should reflect the local landscape context.

PPS 10

4.14 PPS 10 – Planning for Sustainable Waste Management remains the latest Government policy on planning for waste management facilities and objectives for sustainable waste management. The proposed development has therefore been considered against these objectives (paragraph 3 of PPS10) as follows:

- *Help deliver sustainable development through driving waste management up the waste hierarchy, addressing waste as a resource and looking to disposal as the last option, but one which must be adequately catered for;*
- *Provide a framework in which communities take more responsibility for their own waste, and enable sufficient and timely provision of waste management facilities to meet the needs of their communities;*
- *Help implement the national waste strategy, and supporting targets, are consistent with obligations required under European legislation and support and complement other guidance and legal controls such as those set out in the Waste Management Licensing Regulations 1994*; *and*
- *Reflect the concerns and interests of communities, the needs of waste collection authorities, waste disposal authorities and business, and encourage competitiveness.*

4.15 Paragraph 17 of PPS10 advises that waste planning authorities need to identify sites for new waste management facilities to meet the needs of their area.

4.16 Paragraph 20 of PPS10 advises that in looking for sites waste planning authorities should consider a broad range of locations including industrial sites and opportunities to co-locate facilities. Paragraph 21 then goes to set out the matters to have regard to which include the extent to which proposals support the policies of PPS10; the cumulative effect of previous waste disposal facilities; the capacity of the local highway infrastructure; the priority given to previously developed land and the physical and environmental constraints on the site, which have been considered in the ES and set out below.

4.17 Annex E of PPS 10 sets out the main factors waste planning authorities should take into account when testing the suitability of a site for waste management purposes, as follows:

1. *"protection of water resources, considerations will include the proximity of vulnerable surface and groundwater. For landfill or landraising, geology conditions and the behaviour of surface water and groundwater should be assessed both for the site under consideration and the surrounding area. The suitability of locations subject to flooding will also need particular care"* – See Chapter 9 of the ES.

2. *"land instability, locations, and/or the environs of locations, that are liable to be affected by land instability will not normally be suitable for waste management facilities"* – see Chapter 10 of the ES.

3. *"visual intrusion, considerations will include (i) the setting of the proposed location and the potential for design-led solutions to produce acceptable development; (ii) the need to protect landscapes of national importance (National Parks, Areas of Outstanding Natural Beauty and Heritage Coasts)"* – See Chapter 11 of the ES.

4. "*nature conservation, considerations will include any adverse effect on a site of international importance for nature conservation (Special Protected Areas, Special Areas of conservation and RAMSAR sites) or a site with a nationally recognised designation (Site of Special Scientific Interest, National Nature Reserve)"* – see Chapter 12 of the ES.

5. *"historic environment and built heritage, considerations will include any adverse effect on a site of international importance (World Heritage Sites) or a site or building within a nationally recognised designation (Scheduled Monuments, Conservation Area, Listed Buildings, Registered Historic Battlefields and Registered Parks and Gardens"* – see Chapter 13 of the ES.

6. *"traffic and access, considerations will include the suitability of the road network and the extent to which access would require reliance on local roads"* – see Chapter 6 of the ES.

7. *"air emissions, including dust, consideration will include the proximity of sensitive receptors and the extent to which adverse emissions can be controlled through the use of appropriate and well maintained and managed equipment"* – see Chapter 7 of the ES.

8. *"vermin and birds, considerations will include the proximity of sensitive receptors. Some waste management facilities, especially landfills which accept putrescible waste, can attract vermin and birds, and may be influenced by the distribution of landfill sites"* – all waste handling activities will take place within buildings and the site will have a vermin management plan as part of the Environmental Permit.

9. *"noise and vibration, considerations will include the proximity of sensitive receptors. The operation of large waste management facilities in particular can produce noise both inside and outside buildings. Intermittent and sustained operating noise may be a problem if not kept to acceptable levels and particularly if night-time working is involved"* – see Chapter 8 of the ES.

10. *"litter, can be a concern at some waste management facilities"* – all waste handling activities would take place inside the building and a litter management system would be maintained as part of the Environmental Permit; and

11. *"potential land use conflict, likely proposed development in the vicinity of the location under consideration should be taken into account in considering site suitability and the envisaged waste management facility"* – see Chapter 15 of the ES.

NPPF

4.18 The NPPF confirms that is does not contain specific waste policies but local planning authorities should still have regard to its policies so far as they are relevant. Key issues that have been identified as relevant include the presumption in favour of sustainable development and the approach of the NPPF to meeting the challenge of climate change by moving towards a low carbon economy and renewable energy generation.

4.19 In respect of climate change the NPPF identifies the key role the planning system has to play in supporting the delivery of renewable energy which is considered central to the economic, social and environmental dimensions of sustainable development. In helping to increase the use and supply of renewable energy local planning authorities must recognise the responsibility on all communities to contribute to energy generation and have a positive strategy to promote renewable energy with policies designed to maximise renewable energy whilst ensuring that adverse impacts are addressed.

LOCAL PLANNING POLICY

Legislative Background

4.4 The Planning and Compulsory Purchase Act 2004 (PCPA 2004) has introduced new requirements on Local Planning Authorities to prepare a new portfolio of Development Plan Documents (DPDs) that together will form the Councils Local Development Framework (LDF). These Development Plan Documents will replace the existing Structure and Local Plans for the "Shire" areas, and Unitary Development Plan (UDP) for Unitary Authorities. Leicestershire County Council was previously responsible for preparing the Structure Plan and the Mineral and Waste Local Plans, whilst the individual Borough and District Councils were responsible for preparing the Local Plans. The County Council is now responsible for preparing the Minerals and Waste Development Framework, which will comprise a "Core Strategy" and several DPDs, including a site specific allocations DPD and a Proposals Map.

4.5 To maintain continuity in the development plan system during transition to the new LDFs, the new arrangements provide for the existing adopted Structure Plan and the Minerals, Waste and District Local Plans to be 'saved': the PCPA 2004 initially provided for such plans to be saved for a period of three years, or until replaced by the emerging DPDs. After this transitional period (*i.e.* post September 2007) the PCPA 2004 provides that each planning authority must seek a direction from the Secretary of State as to which policies are to be saved. Policies which are no longer to be used are deleted; this is usually because they either duplicate other national, regional or local planning policies, or because they are not needed.

4.6 On 6 July 2010 the Secretary of State (SoS) for Communities and Local Government revoked the Regional Spatial Strategies. However, following a challenge in the High Court by CALA Homes (South) Limited, the Honourable Justice Scales quashed the 6 July revocation. The SoS, through a letter issued by the DCLG Chief Planner, has indicated that the Coalition Government will press ahead with abolition of the RSSs, and that this should be taken into account in any planning decisions. This has been challenged by CALA; however the High Court has ruled that the claim for Judicial Review failed. As such, the South East Plan (the RSS) still forms part of the Development Plan.

4.7 In relation to this planning application, the Minerals and Waste Development Scheme provides that the Development Plan (now termed "*saved Development Documents*") currently comprises:

- The South East Plan 2008
- Hampshire, Portsmouth, Southampton and New Forest National Park Minerals and Waste Core Strategy 2007; and
- Winchester District Local Plan Review- saved policies (Adopted 2006)
- Draft Hampshire Minerals and Waste Plan 2011

The South East Plan 2008 – Regional Spatial Strategy for the South East

4.20 The South East Plan is the Regional Spatial Strategy (RSS) for the South East, adopted in May 2009.

4.21 The following policies are considered to be relevant to the application:

- Policy W3: Regional Self Sufficiency;
- Policy W4: Sub Regional Self-Sufficiency;
- Policy W5: Targets for Diversion from Landfill;
- Policy W17: Location of Waste Management Facilities; and
- Policy NRM9: Air Quality.

4.22 Policies W3 and W4 deal with regional and sub regional waste self sufficiency and require waste planning authorities to make overall provision for the overall amount of waste arising in the region and then to plan for net self sufficiency within their own individual areas.

4.23 Policy W5 sets out overall diversion targets for the diversion of waste from landfill by encouraging the re-use, recycling and thermal treatment (energy recovery) of waste.

4.24 Policy W17 is intended to ensure that waste development is located in suitable areas. It states that particular emphasis should be given to previous or existing industrial sites with good accessibility from existing urban areas or major new or planned development, as well as good transport links and compatible land use.

4.25 Policy NRM9 seeks to sustain the downward trend in air pollution in the region by encouraging the use of best practice during construction and assessing the potential impacts of new developments on internationally designated nature conservation sites. It is important to note that the operation will be controlled under an Environmental Permit thus emissions to air will be strictly regulated.

4.26 In summary, regional waste policy recognises the acute shortage of waste management facilities in the South East, which are required for the region to meet its landfill diversion targets. In terms of suitable sites, the policies support existing industrial or brownfield sites with good transport connections and accessibility from existing urban areas.

Hampshire, Portsmouth, Southampton and New Forest National Park Minerals and Waste Core Strategy

4.27 The Hampshire Minerals and Waste Core Strategy contains the following policies, which are considered relevant to this planning application:

- S5 Capacity Requirements;
- S16 Location of Waste Management;
- S17 Co-location, Systems and Infrastructure;
- DC1Sustainable Minerals and Waste Development;
- DC2 Sites with International and National Designations;
- DC3 Visual Impact on Landscape and Townscape;
- DC4 Heritage
- DC6 Highways;
- DC7 Biodiversity;
- DC8 Pollution, Health, Quality of Life and Amenity;
- DC10 Water Resources;
- DC11 Flooding; and
- DC13 Waste Management and Recycling (including Aggregate Recycling Facilities).

4.28 Policy S5 confirms the need for new waste recovery capacity in Hampshire and policy S16 provides guidance on the location of new waste facilities and seeks to provide capacity within areas of planned areas of major new development or within the North East Hampshire and South Hampshire areas shown on the Key Diagram. The proposed site does not fall within either of these areas but paragraph 24.7 of the Core Strategy recognises the potential for permission to be granted outside of these areas on windfall (unexpectedly available) brownfield sites with good access to the proposed minerals and waste lorry routes.

4.29 The Core Strategy also contains a suite of development control policies against which the proposed development has been considered. Policy DC1 deals with sustainable design and requires that waste developments are designed and constructed to use water and energy efficiently.

4.30 In respect of DC2 the proposed development has no adverse impacts on sites of international and national nature conservation importance.

4.31 Policy DC3 deals with landscape and visual matters and waste development will only be permitted if due regard is given to likely visual impacts and the need to maintain and enhance the landscape character of the area. If necessary additional design, landscaping and screening should be proposed.

4.32 Policy DC 4 deal with heritage matters and waste development will be permitted where due regard is given to the likely need to protect and safeguard heritage sites and their setting.

4.33 Policy DC6 deals with highways and waste recovery facilities will be permitted where they have a suitable access to the Minerals and Waste Lorry Route and they pay due regard to the likely volume and nature of traffic proposed and the suitability of the proposed access. Consideration should also be given to highway capacity, pedestrian safety, congestion, environmental impacts and whether any highway improvements are necessary and can be carried out without any unacceptable impacts.

4.34 Policy DC7 considers biodiversity and requires that due regard is given to the likely effects of the development on biodiversity and where possible this should be conserved and enhanced. Development likely to impact upon locally designated sites and protected species will only be permitted if the merits of the development outweigh the likely impacts.

4.35 Policy DC8 covers pollution, health, quality of life and amenity and requires that permission will only be granted if due regard is given to pollution and amenity impacts and there is unlikely to be an unacceptable impact on health and/or quality of life. Policy DC10 deals with water resources and development will only be permitted if it is unlikely to have an unacceptable impact on ground and surface water and due regard is given to water conservation and efficiency. Policy DC11 considers flooding and permission will only be granted in accordance with the conclusions of a flood risk assessment and where it does not create an unacceptable risk of off site flooding.

4.36 Finally policy DC13 confirms that waste management development will be permitted provide it re-uses previously developed land; has good access to the minerals and waste lorry route and incoming waste will be subject to pre-treatment to maximise recycling.

Winchester District Local Plan Review - saved policies

4.37 The Winchester District Local Plan which confirms that the proposed site is currently designated as open countryside.

4.38 The policy approach for the location of new waste development has already been reviewed as part of the Hampshire Minerals and waste Core Strategy and the approach in the Winchester Plan, notably policy CE4 is not considered relevant to waste development as it is designed to deal with

District matter planning applications. Other policies in respect of local nature conservation sites (CE9) and landscape character (CE5) have been considered but they do not raise any new issues on those matters already covered in the Hampshire Minerals and Waste Core Strategy.

The Draft Hampshire Minerals and Waste Plan (2011)

4.39 The Draft Hampshire Minerals and Waste Plan (2011) has not yet been adopted although has been considered as a material consideration. but cannot be afforded full weight in the decision making process. The following policies were reviewed:

- Policy 1 (climate change);
- Policy 2 (habitats and species);
- Policy 3 (landscape) which will not be affected by the proposed development;
- Policy 4 (countryside);
- Policy 6 (heritage);
- Policy 9 (public health and safety);
- Policy 11 (traffic);
- Policy 12 (high quality design);
- Policy 26 (capacity requirements for new waste recovery;
- Policy 27 (energy from waste and diversion away from landfill); and
- Policy 28 (location of new waste management development)

4.40 Policy 1 deals with climate change reflecting the clear change in Government policy in the period since the adoption of the Core Strategy. Development should minimise its impact on the causes of climate change by being located and designed to help reduce greenhouse gas emissions, develop energy from waste facilities and avoid areas of vulnerability to climate change.

4.41 Policy 2 covers habitats and species and requires that development should not have an undue adverse effect and where possible should enhance designated habitats and species. Where development will have an undue adverse impact it will only be permitted where its merits outweigh the likely impacts and therefore the planning decision will need to undertake this balancing exercise having regard to the need for the development and the mitigation measures proposed.

4.42 Policy 3 protects designated landscape which will not be affected by the proposed development. Policy 4 deals with the protection of the countryside and identifies that development in the open countryside will not be permitted unless it provides for the suitable re-use of brownfield land and that the highest standards of design and operation are applied.

4.43 Policy 6 covers heritage assets and development should protect and where possible enhance such assets including their settings. Policy 9 protects public health, safety and amenity and development should not cause adverse public health and safety impacts or unacceptable adverse amenity impacts. Policy 10 deals with flooding and development should not increase the risk of flooding elsewhere and if appropriate incorporate sustainable drainage

systems to manage surface water run off. Policy 11 deals with traffic and development should minimise the impact of its generated traffic and include highway improvements to mitigate any adverse effects. Policy 12 requires that development should not cause unacceptable adverse visual impacts and should maintain the character of the landscape. It also requires the design of built facilities to be of a high quality and to contribute to achieving sustainable development.

4.44 Policy 26 of the emerging Plan identifies the need for new recovery capacity over the Plan period. Policy 27 deals with energy from waste and requires that proposals should divert waste from landfill; either provide CHP at the start or as a minimum generate electricity and have the capability to supply CHP and provide sustainable arrangements to manage residues from the process.

4.45 Policy 28 deals with the location of new waste management development and seeks to divide waste development into separate categories, which does not sit well with the schemes such as the proposed development which are seeking to co-locate activities. However a common feature that runs through the location of all waste developments set out in the policy is the re-use of previously developed land. And in the supporting text to the policy at paragraph 5.2.64 it is recognised that larger scale enclosed facilities (requiring sites of between 2-4 ha and a throughput in excess of 100ktpa) are likely to be located either on larger industrial estates or large brownfield sites.

PLANNING POLICY CONCLUSIONS

4.46 The summary review of national, regional and local planning policies undertaken above confirms that the application site is considered to comply with the locational requirements for new waste management development. It will however be necessary for the planning decision to weigh the national and local need for renewable energy and waste recovery capacity against the local impacts on the nature conservation value of the site and the visual impact of the proposed new access.