



Department for
Communities and
Local Government

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CHESTER
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Dear Sir,

Our Ref: APP/M0655/A/13/2201665
Your Ref: 1423-01

23 October 2014

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY 3C WASTE LTD
AT ARPLEY LANDFILL SITE, FORREST WAY, SANKEY BRIDGES,
WARRINGTON, WA4 6EX
APPLICATION REF 2011/19244**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Alan Boyland BEng(Hons) DipTP CEng MICE MCIHT MRTPI, who held a public local inquiry which sat on 18-21 & 25-27 February inclusive, and 4 & 5 June 2014 into your client's appeal against a decision of Warrington Borough Council (the Council) to refuse planning permission for the extension of operational life of Arpley Landfill facility to 2025, including: re-profiling; revised sequence of landfill phasing and restoration works; extension of the operational life of the existing leachate treatment facility and landfill gas utilisation plant; and other ancillary developments including offices, weighbridges, wheel washes, fencing etc. associated with the operations of the landfill in accordance with application reference 2011/19244, dated 6 December 2011.
2. On 26 July 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 for significant development in the Green Belt (GB).

Inspector's recommendation and summary of the decision

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

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Procedural Matters

4. In reaching this position the Secretary of State has taken into account the Environmental Statement (ES) which was submitted with the planning application (IR10.1). The Secretary of State is content that the ES complies with the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and that sufficient information has been provided for him to assess the environmental impact of the application.

Matters arising after the close of the inquiry

5. The day after the close of the Inquiry the Government published new planning guidance (IR1.13). The Secretary of State notes that the statutory parties to this appeal were invited to comment on the implications of the publication of the planning guidance and related cancellations (IR1.13).
6. On 15 August the Secretary of State wrote to the main inquiry parties and David Mowat MP inviting comments on the following matters:
 - a) the implications, if any, of the High Court decision of Patterson, J. on Redhill Aerodrome Ltd v SSCLG and others;
 - b) the letters received following the close of the Inquiry from David Mowat MP dated 20th March 2014 and 18th June 2014. These enclosed a letter from the Leader of Halton Borough Council relating to Halton Borough Council's use of the Arpley Landfill Site;
 - c) the adoption by the Council of the Warrington Local Plan Core Strategy (WLPCS) on 21st July 2014
7. The Secretary of State received responses to this letter from the Council dated 28th August and the appellant dated 4th September and these were circulated to the main inquiry parties and David Mowat MP for further comment on 10th September. Further comments were received from the appellant and the Council, both dated 16th September. In coming to his decision on the appeal before him the Secretary of State has taken into account these representations.
8. On 9th October 2014, the Court of Appeal set aside the judgment and Order of Patterson J dated 18th July 2014. As such, and given the parties responses on this matter, the Secretary of State does not consider it necessary to revert to the parties prior to reaching his decision in this appeal.
9. The National Planning Policy for Waste (NPPW) together with planning guidance on waste was published on 16th October 2014. Respectively these have replaced Planning Policy Statement (PPS) 10: Planning for Sustainable Waste Management and Planning for sustainable waste management: a companion guide to PPS10; and the Secretary of State gives no weight to these documents. He has taken into account the NPPW and the planning guidance on waste in his consideration of this case. The Secretary of State has also carefully considered whether or not there should be consultation of parties on the implications of the publication of these documents to the cases they made to the inquiry but has decided that further consultation is not necessary. He is satisfied that the thrust of the Updated national waste policy: Planning for sustainable waste

management – Consultation and PPS10, which were both before the inquiry, are sufficiently carried forward in the NPPW, to the extent that the policies in these documents are relevant to this appeal. Similarly, the Secretary of State considers that the thrust of the guidance in the PPS10 companion guide is sufficiently carried forward in the planning guidance on waste, to the extent that the guidance in these documents is relevant to this appeal.

10. The Secretary of State is also in receipt of correspondence from Andie Harper dated 24th March and 28th September received following the close of the inquiry. He has carefully considered this correspondence but is satisfied that it does not raise any new issues which affect his decision. Copies of these representations, and those referred to in paragraph 7 above, are not enclosed but may be obtained on written request to the address at the foot of the first page of this letter.

Policy considerations

11. 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.
12. In this case the development plan includes the Warrington Local Plan Core Strategy 2014 (WLPCS). This has superseded the saved policies of the Warrington Unitary Development Plan (UDP) which had development plan status at the time of the inquiry (IR5.2). In light of this, where the Inspector has assessed the proposal against the UDP, these policies are now given no weight by the Secretary of State. The Secretary of State considers that the development plan policies most relevant to the appeal include WLPCS policies CS1, CS5, QE5, QE6 and MP8.
13. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework), the planning guidance, the Community Infrastructure Levy (CIL) regulations and the other documents identified by the Inspector at IR5.4-5.6 although he observes in respect of the Updated national waste policy: Planning for sustainable waste management – Consultation (IR5.6) that the Government has now published its finalised NPPW as referred to at paragraph 9 above.

Main issues

14. The Secretary of State considers that the main issues in this case are:-
 - a) Whether the harm by reason of inappropriateness in the GB, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development;
 - b) The need for an extension of landfilling at this site to 2025; and
 - c) The effects of the landfill site and/or traffic generated by it on the environment and the living conditions of residents, particularly in terms of odour, air quality and dust.

The fall-back position

15. The Secretary of State has had regard to the Inspector's comments at IR10.5-10.9. He notes that it seems to be accepted that the landform as it currently exists is, at least in parts, neither desirable nor stable and notes the Inspector's view that it cannot be assumed that if the appeal were dismissed there would be an immediate cessation of tipping and associated traffic (IR10.7). He also agrees that, in the absence of planning permission for the separate 5-year extension proposal, it does not represent a fall-back in this instance (IR10.8).

Green Belt

16. The Inspector reports that there is no doubt that the Arpley site is within the GB (IR10.10). The Secretary of State observes that no party has indicated that this does not remain the case in light of the adoption of the WLPCS and he has considered the appeal on that basis. The Secretary of State has had regard to WLPCS policy CS5 which indicates that development proposals within the GB will be approved where they accord with relevant national policy. He observes that it is undisputed that the appeal proposal represents inappropriate development in the GB in terms of the Framework (IR10.11). As reported by the Inspector (IR10.11) Framework policy is that inappropriate development is by definition harmful to the GB and should not be permitted except in very special circumstances (VSCs), and that VSCs will not exist unless the potential harm to the GB through inappropriateness and any other harm is clearly outweighed by other considerations.
17. The Secretary of State agrees with the Inspector at IR10.13 that there would also be harm to openness, although this would be temporary, but there would be no effect on the permanence of the GB. He also agrees with the Inspector's assessment of the proposal in relation to the purposes of the GB (IR10.14-10.15) and is satisfied that no conflict with the Framework arises in this respect. Like the Inspector (IR10.16), the Secretary of State considers that the re-use of the existing deposits of canal dredgings on the site, especially if they are contaminated, would accord with Framework policy to encourage the beneficial use of the GB, such as through providing access and opportunities for sport and recreation and by improving damaged and derelict land.

Need

18. After careful consideration, and setting aside issue of the use of the site by Halton Borough Council (HBC) the Secretary of State agrees with the Inspector's analysis of need at IR10.18-10.41. In respect of the use of the site by HBC he has also taken into account the post inquiry representations in this respect, including the letter from the Leader of the HBC enclosed with the letters of David Mowat MP dated 20th March and 18th June, and the letter from the Divisional Manager – Waste and Environment Improvement at HBC enclosed with the submission of 4th September from FCC Environment on behalf of your client. The Secretary of State is of the view that the post inquiry representations show that there is some uncertainty about HBC's on-going use of Arpley, but he also observes that the FCC Environment submission states that local authority collected waste from Halton represents just 1.79% of the total projected waste

inputs to the Arpley site for the period 2015-2025. He furthermore notes that the Inspector reports that the HBC letter before the inquiry does not suggest that there is no alternative to its use of Arpley (IR10.35); the Secretary of State considers that the same can be said of the post inquiry representations in respect of Halton's use of the site.

19. Overall, and having considered the post inquiry representations, the Secretary of State shares the conclusions of the Inspector at IR10.42: that there might remain a need for continued landfilling at Arpley in the short term to secure acceptable restoration of the site and to meet the needs of Merseyside and Halton until the 30 year resource recovery contract becomes fully operational, probably in 2016 or 2017; and that the need for Arpley beyond about 2017 is not compelling. In coming to these conclusions, he also agrees with the Inspector that the appeal proposal at Arpley would run counter to the policy to drive waste up the hierarchy for the reasons given (IR10.41).

Effect on the environment and living conditions

20. The Secretary of State agrees with the Inspectors assessment of the proposals on the environment at IR10.44-10.46 and on living conditions at IR10.47-10.57. He agrees that there would be some short/ medium term deterioration in air quality (affecting areas including designated Air Quality Management Areas), although the effects of the proposal would be very limited and possibly less than those of existing sources and other developments that have been permitted by the Council (IR10.45). In terms of fine PM_{2.5} and PM₁₀ particulates, the Secretary of State notes that the appellant's evidence that the change in their levels would be imperceptible and the significance of the effect would be negligible is substantially unchallenged (IR10.46). He shares the Inspector's conclusions at IR10.58 that the extension of operations to 2025 would result in continuing harm to the living conditions of residents in the area around the site and the routes leading to it, particularly in respect of odours and Heavy Goods Vehicle traffic. The Inspector reports that in respect of the then emerging WLPCS, the proposals conflict with criterion 11 of policy CS1, and criterion 8 of policy QE6, and would not support the aim of policy MP8 to move waste up the waste hierarchy (IR10.59). The Secretary of State agrees (although notes that the aims of MP8 in respect of the waste hierarchy relate principally to his findings at paragraph 19 above, rather than to the effect on the environment and living conditions) and observes that these policies are substantially unchanged in the adopted WLPCS and now form part of the development plan.

Overall Balance and Conclusions on Green Belt

21. The Secretary of State has had regard to the Inspector's overall balance and conclusions on the GB at IR10.75-10.79. He agrees that the proposal would represent inappropriate development in the GB and that this is by definition harmful (IR10.75). The Secretary of State also agrees that the proposal would cause temporary harm to the openness of the GB, but would not affect its permanence and not harm the purposes for including land within it (IR10.75). In accordance with national policy in the Framework he attaches substantial weight to this harm to the GB. Like the Inspector he concludes that the proposals would support the beneficial use of the GB through the provision of access and

opportunities for sport and recreation and through improving damaged or derelict land (IR10.75).

22. The Secretary of State agrees with the Inspector that there would be no significant harm in respect of air quality but concludes, like him, that there would be harm to the living conditions of nearby residents in a number of respects which would be mitigated to some extent but not negated (IR10.76). The Secretary of State has found at paragraph 19 above that there might remain a need for continued landfilling at Arpley in the short term, but that the need for Arpley beyond about 2017 is not compelling.
23. Having had regard to the setting aside by the Court of Appeal on 9th October of the judgment and Order of Patterson J. dated 18th July 2014, overall the Secretary of State concludes, like the Inspector (IR10.78) that the harm by reason of inappropriateness in the GB and the other harm he has identified is not clearly outweighed by other considerations so as to amount the very special circumstances necessary to justify the development. He considers that the proposals conflict with criterion 3 of WLPCS policy CS1 and with policy CS5.

Conditions

24. The Secretary of State has considered the Inspector's comments at IR10.61-10.72, the conditions he recommends in Annex C of the IR, national policy set out at paragraphs 203 and 206 of the Framework and the planning guidance. The Secretary of State is satisfied that the conditions in Annex C are reasonable and necessary and would meet the other tests at paragraph 206 of the Framework. However, he does not consider that the conditions would overcome his reasons for dismissing the appeal.

Obligation

25. The Secretary of State has considered the unilateral undertaking submitted by the appellant, the Inspector's comments at IR10.73-10.74, national policy set out at paragraphs 203-205 of the Framework, the planning guidance and the CIL regulations. He agrees with the Inspector (IR10.74) that the undertaking would meet the tests set out in paragraph 204 of the Framework and in Regulation 122 of the CIL regulations 2010. However he does not consider that it overcomes his reasons for dismissing the appeal.

Overall Conclusions

26. The Secretary of State concludes that there is conflict with WLPCS policies in respect of CS1, CS5, QE6 and MP8. He also concludes that the harm to the GB by way of inappropriateness and the other harm he has identified is not outweighed by considerations in favour of the proposal such to provide the very special circumstances necessary to justify allowing the appeal.

Formal Decision

27. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the extension of the operational life of Arpley Landfill facility to 2025, including: re-profiling; revised sequence of landfill phasing and restoration works; extension of the operational life of the existing leachate treatment facility and landfill gas utilisation plant; and other ancillary developments including offices, weighbridges, wheel washes, fencing etc. associated with the operations of the landfill in accordance with application reference 2011/19244, dated 6 December 2011 at Arpley Landfill Site, Forrest Way, Sankey Bridges, Warrington, WA4 6EX.

Right to challenge the decision

28. 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.

29. A copy of this letter has been sent to Warrington Borough Council and Mr John Mulhall.

Yours faithfully

James Henderson

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by Alan Boyland BEng(Hons) DipTP CEng MICE MCIHT MRTPI

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

Date: 16 June 2014

TOWN & COUNTRY PLANNING ACT 1990

WARRINGTON BOROUGH COUNCIL

APPEAL BY 3C WASTE LTD

**ARPLEY LANDFILL FACILITY, FORREST WAY, SANKEY BRIDGES,
WARRINGTON**

Inquiry opened on 18 February 2014

Arpley Landfill Site, Forrest Way, Sankey Bridges, Warrington, WA4 6EX

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Arpley Landfill Site, Forrest Way, Sankey Bridges, Warrington, WA4 6EX

- 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 3C Waste Ltd against the decision of Warrington Borough Council.
- The application Ref 2011/19244, dated 6 December 2011, was refused by notice dated 1 February 2013.
- The development proposed is extension of operational life of Arpley Landfill facility to 2025, including: re-profiling; revised sequence of landfill phasing and restoration works; extension of the operational life of the existing leachate treatment facility and landfill gas utilisation plant; and other ancillary developments including offices, weighbridges, wheel washes, fencing etc. associated with the operations of the landfill.

Summary of Recommendation: That the appeal be dismissed

1. Procedural Matters

Statements of Common Ground (SoCGs)

- 1.1 A Statement of Common Ground, agreed between the appellant and the Council and dated 14 November 2013 was submitted ('the main SoCG')¹. This records their agreement on a number of matters, including:

- Site description;
- Description of the proposal;
- The planning application process (including a schedule of the application documentation);
- Relevant planning policies;
- That the whole site is in the Green Belt²;
- That the impacts of the proposal on Great Crested Newts, a protected species, have been properly assessed as negligible and so the Council would withdraw its 2nd reason for refusal;
- That discussions were ongoing with a view to agreeing matters in respect of reason for refusal no.3;
- The appropriate guidance in respect of odours;
- That the following matters are not relevant to the reasons for refusal and 'are not ... for consideration before this appeal'³:
 - Highways and transportation
 - Landscape and visual
 - Ecology and nature conservation
 - Geology, soils and hydrogeology
 - Surface water quality and flood risk
 - Noise and vibration
 - Archaeology and cultural heritage
 - Aerodromes and safeguarding;
- Areas of disagreement;

¹ CD4.6

² Through policy GRN1 in the Warrington Unitary Development Plan, adopted in 2006 – CD5.1 & CD 5.7 (para 6.1 in the SoCG refers)

³ Nevertheless, the SoCG indicates some remaining differences of view on traffic flows and assessment of the effects thereof.

- A set of draft conditions; and
- That the appellant would enter into a legal undertaking to secure certain matters relating to the proposed development.

1.2 Subsequently an addendum to the SoCG, agreed between the above parties and dated 29 January 2014 was submitted ('the SoCG addendum')⁴. This supplements, partially amends and records further agreement on the following matters:

- Traffic baseline figures;
- Factual information on waste arisings;
- Points of agreement on the additional vehicle emissions assessment work to be provided in support of the appeal; and
- Points of agreement on the additional odour assessment work to be provided in support of the appeal.

1.3 I have had regard to these SoCGs in coming to my conclusions and recommendation, but also recognise that others who were not parties to them do not necessarily share the agreements indicated in them.

Withdrawal of reason for refusal no.2

1.4 By letter dated 7 January 2014⁵ the Council confirmed that, as indicated in the main SoCG, its second reason for refusal of the application would not be contested at the Inquiry. This following submission of further ecological surveys and assessments relating to Great Crested Newts⁶.

Pre-Inquiry Meeting

1.5 On 18 November 2013 I held a Pre-Inquiry Meeting to discuss procedural matters relating to the Inquiry. There was no discussion of the merits of any of the cases, either in support or objection. A note of the meeting⁷ was sent to all statutory parties and to interested persons and bodies known to be wishing to appear at the Inquiry, or considering seeking to do so. It was also posted on the Inquiry website, along with links to Inquiry documents as they were submitted.

The Inquiry

1.6 The Inquiry opened on 18 February 2014. It sat on 18-21 & 25-27 February inclusive, and 4 & 5 March 2014.

1.7 I was ably assisted in the organisational and procedural aspect of the Inquiry by a Programme Officer, Yvonne Parker. In that capacity she was an independent officer of the Inquiry, working under my direction and responsible solely to me. She greatly aided the efficient running of the proceedings, but played no part in the Inquiry itself, or in the drafting of this report apart from collating the documents list. The conclusions and recommendations herein are mine alone.

⁴ CD4.9

⁵ CD4.10

⁶ CD4.6 appendices B & C

⁷ INQ/1

Site Visits

- 1.8 I made unaccompanied visits to the area around the appeal site, including the Saxon Park residential area and the highway network leading to it, on various occasions before, during and after the Inquiry (including a visit several weeks afterwards). I did so at different times of day including early in the morning, in the hour before the site opened to vehicles carrying incoming waste.
- 1.9 On 28 February 2014 I inspected the site, accompanied by representatives of the appellant and the Council and by Mr Mulhall⁸. During that visit I heard no evidence or representations.

Planning Obligation

- 1.10 At the Inquiry the appellant submitted a certified copy of a completed unilateral undertaking given under s.106 of the Act⁹. The undertaking, by the appellant and others with an interest in the land to Warrington Borough Council, sets out obligations (subject to the usual contingencies) relating to:
- Vehicle routing;
 - Moore Nature Reserve;
 - Extended aftercare period;
 - Permissive paths;
 - Arpley Community Liaison Group; and
 - (Review and early) cessation of development.
- 1.11 The appellant indicated that, although this was given in the form of a unilateral undertaking rather than an agreement, the Council had assisted in many aspects of its preparation, including instigation of the provisions with regard to review and early closure.
- 1.12 The Council accepted that the obligation meets the statutory requirements, and no contrary view was expressed. The substantive provisions are addressed below.

Planning Practice Guidance

- 1.13 On 6 March 2014, the day after the Inquiry closed, the Government launched new national Planning Practice Guidance (PPG), an on-line suite of guidance¹⁰. It also cancelled a number of previous guidance documents. I have taken into account the submissions by the appellant¹¹ in response to an invitation to statutory parties in this appeal to comment on the implications of the publication of the PPG and related cancellations. No other party made submissions on the matter.

⁸ Rule 6(6) Party.

⁹ CD4.11.2

¹⁰ <http://planningguidance.planningportal.gov.uk/blog/guidance/>

¹¹ FCC/X1

Terminology

- 1.14 Strictly speaking, landfill is the filling of voids below ground level, while forming a raised landform by depositing waste above ground is landraising. The Arpley site largely falls into the latter category, but for convenience in this Report I shall refer to both as 'landfill' reflecting the practice adopted in most of the evidence and submissions.

Conversion factor – weight to volume

- 1.15 For obvious reasons waste arisings are normally measured and presented in data by weight whereas voids are measured by volume. The appellant's suggested conversion factor of 0.94 tonnes per cubic metre, based on measurements taken on site at Arpley¹², was undisputed at the Inquiry. However, materials such as soils may have higher densities than refuse.

2. The Site and Surroundings¹³

- 2.1 The site and its surroundings are as described in the Environmental Statement (ES)¹⁴ and the main SoCG¹⁵.
- 2.2 In summary, it is some 160 hectares in extent and located about 2 km south-west of Warrington town centre. It is bounded to the north by the River Mersey, which is tidal at this point, and to the south by the Moore Nature Reserve, which was created pursuant to the main planning permission (see section 3 below). About 100m south of the nature reserve is the Manchester Ship Canal, with an area of warehousing in the intervening strip.
- 2.3 To the east and south-east are the elevated West Coast Main (railway) Line and Warrington to Chester line, with industrial/commercial development beyond. To the west, south and south-east the wider area is largely agricultural; to the north and east it is mainly urban. However north of the site, on the opposite bank of the river are a wastewater treatment works (WwTW – referred to by some as the sewage works) operated by United Utilities, a civic amenity/recycling site beyond and the restored Gateworth landfill site. Some 4km west of the centre of the site is the large Fidlers Ferry power station.
- 2.4 Access to the site is via a dedicated road link to Forrest Way via a bridge over the River Mersey. Forrest Way leads to Barnard Street, which also serves the WwTW and civic amenity/recycling site. These roads are subject to a 20mph speed limit. Barnard Street links to Liverpool Road (west) and Old Liverpool Road (East), which are often referred to jointly as Liverpool Road. This runs roughly east-west, linking at both ends with the A57 Sankey Way (via a short length of Thewlis Street at the eastern end) and hence with the wider road network¹⁶. Sankey Way between the two

¹² FCC/1B part II para 3.27

¹³ Based on uncontested documentary material as indicated and my own observations

¹⁴ CD1.2 vol 1, section 1.3 and figs. 1.1-1.3

¹⁵ CD4.6 section 2

¹⁶ CD1.2 vol 1 figs. 1.4 & 3.1

- ends of Liverpool Road is a dual carriageway; the other roads referred to are single carriageways.
- 2.5 On the east side of Forrest Way are a college and industrial/commercial premises, including a building supplies yard and a concrete batching plant. Beyond these is the Saxon Park residential area of some 360 dwellings on the site of a former steelworks. The west side is currently undeveloped (but see next section).
- 2.6 Barnard Street has only limited direct frontage access but is bordered by industrial and residential premises, and Liverpool Road has frontage industrial/commercial and residential development over its whole length.
- 2.7 The site features and current operations are described in detail in the Planning Statement that accompanied the application¹⁷. Three of the five phases in the landfill as permitted in 1986 (see below) have been filled. Two of these, covering some 100 hectares in the western and southern parts of the site, have largely been restored to grassland and woodland. The third, in the centre/north of the site, has been capped but not yet restored. Filling in a further central phase was ongoing, with some cells filled and about to be capped and active filling and cell construction continuing in the remainder. Landfilling in the fifth phase, in the eastern part of the site, has not commenced. The main structures on the site are the site office, weighbridge and office and gas utilisation plant (GUP)¹⁸, which currently has a single flue stack.
- 2.8 I saw on my visit to the site itself and on other occasions in views from the bridge that there were many gulls around the working area. Smells of landfill were apparent around the working area and to a lesser extent on the capped but unrestored area. On none of my many visits to the surrounding area was I able to detect any such odours identifiably emanating from the tip itself, but I recognise that this is dependent on factors such as wind strength and direction. At all times there was a light plume of visible smoke from the GUP stack.
- 2.9 The existing wheel wash on the site is a drive-through water bath with shaker bars to dislodge dirt. However, at the time of my visit to the site the 'water' was more in the nature of a mud slurry which lorries had carried on to the roadway beyond. Although on most of my visits a road sweeper was in operation on the access road to the site and Forrest Way, there was a film of mud on the road when it was damp, turning to dust when dry. I also saw pieces of litter and objects, which had apparently fallen from passing vehicles, on verges and in gutters.
- 2.10 On an early morning visit I saw waste lorries arriving from soon after 0700 hours and queuing for the weighbridge back almost to the roundabout on the south side of the bridge. However, as far as I could see, none were admitted to the site before 0800.

¹⁷ CD1.1 tab 2 sections 1.4 & 1.8-1.10

¹⁸ CD1.1 tab 2 section 1.9

3. Planning and Environmental Permitting History

The appeal site

- 3.1 Planning permission for a waste disposal site at Arpley was granted by the former Cheshire County Council on 30 May 1986 (ref. 1/17988)¹⁹. The permission was subject to 16 conditions, including one limiting waste disposal operations to a period of 25 years from commencement. Another required removal of buildings, plant and machinery, and restoration and landscaping, within one year of the end of the 25 year period (or of the cessation of operations if earlier).
- 3.2 The Council considers that the commencement date was 13 October 1988²⁰, giving a closure date of 13 October 2013. The appellant indicates that the information it has is unclear but suggests that the end date might have been November 2013 [6.24].
- 3.3 Since the 1986 permission a number of amendments to it and variations of conditions attached to it have been granted²¹. The appellant points out that some of these were under s.73 of the Act and they gave rise to new free-standing permissions, which have been implemented so the site operations are no longer governed by the 1986 permission²². The Council does not challenge this. Nevertheless it is convenient for the purposes of this appeal to refer to the 1986 permission as a proxy for the suite of permissions to which the operations on the site were/are subject.
- 3.4 It has not been suggested that any of the subsequent permissions has altered the requirement for waste disposal operations on the site to cease 25 years from the commencement date. However, any issues concerning enforcement of that condition are separate from the appeal that is the subject of this Report and I do not address them.
- 3.5 Landfill operations on the site are regulated by the Environment Agency under Environmental Permit no. EPR/BS7668IH granted in 2004 and most recently varied on 13 December 2013 (ref. EPR/BS7668IH/V007)²³.
- 3.6 Current and past site operations are described in the ES²⁴. Evidence for the Council, which the appellant has not disputed, indicates that the site has accepted municipal, and commercial and industrial (C&I) waste and a small volume of construction and demolition waste. The volume of waste deposited is some 6.5 million cubic metres short of that needed to complete the development in accordance with the 1986 permission.²⁵
- 3.7 An application to continue tipping for a further 5 years, until October 2018, was submitted by the appellant to the Council on 10 October 2013 (ref. 2013/22598). The stated aims of this application were to meet a short-

¹⁹ CD8.1

²⁰ WBC/1B para 5.2

²¹ CD1.2 vol.1 section 4.0; WBC/1B para 5.2; WBC/1C appx A; FCC/1B part 1 para 2.3.2; FCC/1C appx NR1 p3

²² FCC/1B para 2.3.2

²³ CD4.4 para 2.10; CD2.1; CD2.2

²⁴ CD1.2 vol.1 section 5.1

²⁵ WBC/1B para 5.4; FCC/1B part 1 para 2.4.1

term need and to provide an acceptable landform. It would involve tipping of some 1.65 million m³ of material²⁶. The appellant stresses that it represents a contingency closure plan should this appeal not be allowed, and the application was without prejudice to the merits of the appeal scheme²⁷. At the Inquiry it was confirmed that the application had been refused²⁸. That decision is not the subject of this appeal, and I do not address the merits of the 5-year scheme.

- 3.8 A further application has been made to the Council for construction of three 23m high exhaust emission stacks (and removal of the existing single 25m stack) at the GUP (ref. 2013/22130)²⁹. At the time of the Inquiry this application had not been determined, and again I do not address its merits.

Off-site

- 3.9 A number of separate planning permissions have been granted on and around the site for developments ancillary to the landfill operations³⁰. However, permissions to provide for access to a railhead nearby have lapsed unimplemented.
- 3.10 Planning permissions for the residential development Saxon Park were granted in 2004 (for 339) dwellings and 2010 (for a further 74 dwellings)³¹.
- 3.11 Permission has also been granted for a business park in the west side of Forrest Way, subject to conditions limiting unit sizes and imposing time limits on HGV use with a view to deterring large-scale operators³². However, this permission is as yet unimplemented.

4. The Proposal

- 4.1 The proposed development is described in:
- the Planning Statement submitted with the application³³;
 - the ES³⁴;
 - the main SoCG³⁵; and
 - evidence for the appellant³⁶.
- 4.2 The key features are:
- Extension of the life of the site for approximately 12 years, from October 2013, involving creation of void space of some 6.5 m³ within the previously permitted volume (the volume at 1 January

²⁶ CD9.27

²⁷ FCC/1B part 1 section 2.4; FCC/1C appx NR1 p3

²⁸ Oral submissions by both parties

²⁹ FCC/1C appx NR1 p5

³⁰ FCC/1C appx NR1 pp.4 & 5; WBC/1C appx A

³¹ CD8.4; WBC/1B paras 7.33-34

³² WBC/2B paras 2.8 & 2.9; FCC/2G para 2.2.3; FCC/2H para 2.2

³³ CD1.1 tab 2 para 1.1.3 & sections 1.5-1.8

³⁴ CD1.2 vol 1 section 1.2

³⁵ CD4.6 section 3

³⁶ FCC/1B part 1 section 2.2;

2014 is put in evidence as some 6.8 million m³, based on the actual volume at 13 October 2013)³⁷;

- Reprofilling of the landfill, increasing its height in some parts but reducing the footprint, enabling the boundary to be moved further from residential properties;
- A revised phasing sequence;
- A restoration scheme using reclaimed dredging deposits on the site;
- Extension of the commitment to provide and maintain the Moore Nature Reserve until 2030; and
- A cap on HGV vehicle movements.

5. Planning Policy and Guidance

- 5.1 The planning policy and guidance context for this appeal is set out in the main SoCG³⁸. However, since that document was prepared the (Defra) Waste Strategy for England 2007 has been superseded by the *Waste Management Plan for England 2013* (WMPE)³⁹. Further detail is provided in evidence for the main parties⁴⁰.
- 5.2 The development plan for the area includes the saved policies in the *Warrington Unitary Development Plan* (UDP)⁴¹.
- 5.3 The emerging *Warrington Borough Council Local Plan Core Strategy* (LPCS)⁴² was submitted for examination in September 2012. A *Revised Post Submission LPCS*⁴³ was submitted in August 2013. Amongst the amendments, policy CS4 referred to in the first reason for refusal of the application is renumbered CS5 and criteria 4 and 7 in policy QE6, referred to in reasons for refusal 3 and 4 become criteria 5 & 8⁴⁴. At the time of the appeal Inquiry the process of examining the LPCS was under way. In due course it will supersede the UDP as part of the development plan, but has not yet been adopted.
- 5.4 There is no Waste Plan for Warrington, but the Council published a *Waste and Minerals Background Paper* in May 2012⁴⁵.
- 5.5 The *Greater Manchester Joint Waste Development Plan Document*⁴⁶ was published in April 2012 by the Association of Greater Manchester Authorities on behalf of the 10 constituent authorities in the former Metropolitan County. Similarly in 2013 Halton Council together with the Merseyside Councils of Knowsley, Liverpool City, Sefton, St Helens and Wirral published their *Joint Waste Local Plan*⁴⁷.

³⁷ CD9.27; FCC/1C appx NR6 row 45

³⁸ CD4.6 section 5

³⁹ CD7.5

⁴⁰ FCC/1B part 1 section 3; WBC/2B section 3

⁴¹ CD5.1; CD5.1.1; CD5.7

⁴² CD5.2

⁴³ CD5.3

⁴⁴ CD4.6 para 4.6

⁴⁵ CD5.4

⁴⁶ CD5.6

⁴⁷ CD5.5

- 5.6 National policies and guidance in the following, amongst others, are material considerations:
- *National Planning Policy Framework (NPPF)*;
 - *Planning Policy Guidance (PPG)*;
 - *Planning Policy Statement (PPS) 10: Planning for Sustainable Waste Management* and the accompanying companion guide;
 - *Planning for Sustainable Waste Management: Companion Guide to PPS10*;
 - *Waste Management Plan for England* (Defra, Dec 2013)⁴⁸;
 - *Government Review of Waste policy in England* (Defra)⁴⁹; and
 - *Updated national waste planning policy: Planning for sustainable waste management – Consultation* (DCLG July 2013)⁵⁰, though as this may subject to change before being finalised it carries reduced weight.

6. The Case for 3P Waste Ltd

The material points are⁵¹:

Introductory Matters

Background

- 6.1 The mere existence of landfill void does not generate waste nor does it drive waste down the waste hierarchy. If the existence of landfill void meant that the Waste Hierarchy was being undermined, then by now Arpley would have been filled and this application and appeal would have been unnecessary.
- 6.2 Instead what has happened in the last quarter of a century since Arpley was permitted by Cheshire County Council is that there has been a substantial change in how waste is handled in the UK. A variety of measures have come together which collectively have driven large volumes of waste to higher levels in the hierarchy. That, together with the downturn in the global economy over the last 7 years, has meant that Arpley's void has not been filled.
- 6.3 That does not however mean that there is no need for facilities to manage residual waste, nor that the demand for such remains anything other than significant. Whilst the waste management landscape continues to change and the ability to predict future waste arisings and residual waste disposal requirements remains as challenging as ever, what can be said with confidence is that there is clear and ongoing need for landfill void. Indeed this is one of the few areas of agreement in this case. The issue between the parties is not whether landfill is needed in general but whether it is needed here.

⁴⁸ CD7.5

⁴⁹ CD7.1

⁵⁰ CD7.4

⁵¹ Based, except as indicated, on submissions for the appellant - FCC/INQ1 & 2

- 6.4 Thus the starting point for consideration of this appeal is that:
- (i) there presently exists a strategic landfill which is incomplete and within which remains a large void space;
 - (ii) landfill, had it been completed in the manner anticipated by the planners of a quarter of a century ago, would have brought it much close to the more recently constructed houses at Saxon Park than is now proposed;
 - (iii) there is a demonstrable and ongoing need for landfill capacity in the region, in particular from the Merseyside authorities in the short term and from commerce and industry in the longer horizon;
 - (iv) to make landfill available to deal with residual waste arisings where alternative options do not subsist is not inconsistent with the objectives of the Waste Hierarchy; and
 - (v) it is in the public interest to reconcile the last two of these matters.
- 6.5 Had Arpley been located even more remotely from housing with an access directly from strategic road network which did not take vehicles close to housing, then it is doubtful that this Inquiry would ever have been necessary or that the scheme would have been in any way controversial. The political controversy arises from the fact that the landfill is not divorced from a residential population and that on occasion the impact of the operation of the landfill has impacted upon the amenity of local residents, albeit that for the most part such complaints simply have not been substantiated⁵².
- 6.6 Moreover it is said that locals, especially those in Saxon Park, had a reasonable expectation that landfill activities would have been brought to an end by now, and that this adds to the weight to be given to concerns arising from future amenity impacts.
- 6.7 Of course it could be said that, in granting permission for housing in that location whilst the landfill was still in operation, WBC necessarily accepted that residential development and the landfill could properly co-exist in that location. Moreover it could be said that the expectation that the landfill would close in 2013 must have been tempered by the fairly obvious fact that the anticipated extent of the development was plainly not being achieved. Thus there must always have been an obvious risk that tipping would have needed to persist beyond 2013. Indeed WBC themselves fully anticipated such an occurrence in the background evidence to their emerging Local Plan⁵³.
- 6.8 The appellant's case is that whilst some impacts may be experienced from time to time, properly managed the impacts would be limited and the ongoing need for landfill capacity in this part of the north west is such that

⁵² Inspector's note: In this context substantiated means independently verified via a source other than the complainant as being valid and attributable to the landfill and/or associated operations. It was confirmed by the appellant at the Inquiry that the fact that a complaint may be unsubstantiated does not necessarily mean that it is unfounded.

⁵³ CD5.4 para 3.14

the risk of such impacts is substantially outweighed by the need for additional landfill capacity, and capacity in this location.

- 6.9 That position is underscored by the fact that as of shortly before the Inquiry it was understood to be the agreed position between the Environment Agency (EA) and the appellant that, in order to achieve an appropriate restoration of the existing void, there is a need to import many thousands of tonnes of material to the site. That is to say that, if the appeal scheme is rejected and no other permission is forthcoming, disposal will continue at the site so as to achieve an appropriate restoration profile.
- 6.10 Such an eventuality will, necessarily involve the importation of vast quantities of inert materials, such as soils and potentially municipal solid waste (MSW) so as to achieve an agreed landform.
- 6.11 In terms of the appellant's case this means that the entirety of the LPA's evidence in terms of vehicle emissions, traffic movements and highway impacts is based upon an entirely flawed baseline position of no tipping activity at all taking place at Arpley beyond October 2013⁵⁴. Whereas on any sensible basis there will need to be continued substantial vehicular activity in order to achieve a suitably restored site, a matter not addressed at all by the LPA's witnesses. Taking in inert material instead of waste would also actually increase the number of vehicles compared to taking waste, because of the smaller vehicles which would be used and lower tonnage per vehicle.

The appellant

- 6.12 The appellant, 3C Waste Ltd, is wholly owned by FCC recycling (UK) Ltd, the parent company of which is FCC Environment (UK) Ltd. This in turn is part of the international group Fomento de Construcciones y Contratas SA (FCC).⁵⁵

Progression of the application and appeal

- 6.13 There are two important features of this case as it progressed. The first is that as the Inquiry proceeded, the issues continued to narrow; and the second is the demonstrably fair way that the local planning authority (LPA) approached its case, albeit with the notable exception of its odour witness.
- 6.14 That fair approach stands in contrast to the manner in which the application itself was progressed and considered. Whilst there is not to be an application for costs, it should be noted at the outset that the reason why this matter has ever had to come to appeal is because politically this particular LPA has from the outset set its face against the grant of any further permission at Arpley on the grounds of political and not land use issues. Given the importance of Arpley to the regional economy, together with the many statements of national policy about the importance of the planning system facilitating economic development, that is a position which is deeply regretted.

⁵⁴ Referred to as the 'do nothing' scenario – CD4.9 para 5.7

⁵⁵ FCC/4B para 1.1

A change in the planning balance

- 6.15 At the time that the application was rejected by Members it was asserted by the LPA, in its reasons for refusal, that there was clear evidence of demonstrable harm to amenity by reason of odour, dust, oxides of nitrogen (NO_x) and particulate matter (PMs). It was also contended that there was insufficient information provided in respect of Great Crested Newts.
- 6.16 The case now being put is quite different. Rather than alleging that there would be an adverse effect upon amenity, each of the witnesses has come forward and sought to critique the evidence now relied upon by the appellant. Dr Gibson (odour), Mr Talbot (air quality) and Ms Goodall (dust and particulates) each accepted that their fundamental point was that the appellant had not provided sufficient evidence to demonstrate that there would not be an impact, but in the case of Mr Talbot and Ms Goodall they had simply critiqued the work of Ms Hawkins⁵⁶ and had not presented an assessment of their own. Dr Gibson had presented some initial work of his own undertaken prior to the exchange of proofs, but even he accepted that his point was that of casting doubt upon the conclusions of Ms Hawkins work and not setting his own modelling work up as a comparative assessment to demonstrate harm.
- 6.17 Indeed whilst Dr Gibson did undertake work which showed that, if one tweaked the inputs of his model, then unsurprisingly that impacted upon the outturn. He accepted in terms that he was only presenting that information as a sensitivity test and not as a rival model to that of Ms Hawkins' work. His point was that he did not think that the conclusions of his and her modelling (ie. very limited predicted impact) were reflective of the actual complaints record. With respect his conclusions in that regard were quite wrong.
- 6.18 Thus of the 4 original reasons for refusal, one has been abandoned and two of the remaining three are not actually supported by any technical evidence since the technical evidence addresses itself to the proposition that the appellant has not proved that there would not be harm, rather than the proposition that there would be.
- 6.19 Even on the first reason for refusal, the information now available from the Whitehead application has seriously undermined the previous position of Urban Vision that there would not be any need in Greater Manchester since Pilsworth North and Whitehead would meet the need. The Viridor application in respect of Whitehead⁵⁷, produced on day 1 of the Inquiry, means that no proper reliance can be placed upon the anticipated capacity at Whitehead for the remaining period of the Greater Manchester Waste Local Plan (GMWLP), ie. to 2027. Under the application before Salford and Wigan the most that might be tipped at Whitehead will be 1 million m³, though it may be nil and Viridor do not expect tipping to take place beyond 2020 at that site in any event.

⁵⁶ The appellant's witness on air quality, dust and odour

⁵⁷ CDs 8.5-8.8

- 6.20 In short the planning balance has substantially altered since this application was considered by members of the LPA. Little wonder that it has chosen not to field any witness to provide evidence as to what the planning balance was or is now.
- 6.21 The position is clear. There is a demonstrable need for the proposed landfill for the entire period, though the trigger mechanism should provide some comfort to the Secretary of State to take account of the vagaries of prediction. And there are other benefits to the promotion of this site, chief amongst which is that this proposal takes advantage of an extension to a well run facility which is geographically and physically well set to accommodate substantially more waste material over time.

An unfinished landfill – the obvious fall back point

- 6.22 The central concern of the decision maker will of course be the balance required by paragraph 88 of the National Planning Policy Framework (NPPF) to determine whether very special circumstances exist. Added to the harm by virtue of inappropriateness is necessarily the potential impact on amenity.
- 6.23 It is common ground that, had things gone to plan back in 1986 when Arpley was first permitted, it would have ceased receiving waste by now and would have been part-way through capping of the final phase. Moreover the landfill would have extended much farther to the east and would have been closer and more visible to those in Saxon Park. As it is, the welcome effect of waste being driven up the waste hierarchy, together with the effect of recession in more recent years, has meant that Arpley is nowhere near being tipped to that extent. Indeed there is seemingly a common recognition that even to restore Arpley there is a need to import substantial additional quantities of waste in order to fill void which is obvious on site and to create a stable landform.
- 6.24 This appeal does not address the current basis upon which the landfill is operating. However, after briefly flirting with enforcement action which was plainly misconceived, the LPA is taking a realistic approach⁵⁸. The appellant understands that tipping should have ended sometime in November 2013, but the information is not clear from the documents from the mid 1980s inherited by the operating Company. The important point for this appeal is that it appears to be accepted that the tipping which is presently taking place is consistent either with the appeal being allowed or with the need to import material to facilitate restoration.
- 6.25 Discussions have been ongoing for some considerable time between Warrington Borough Council (WBC), the Environment Agency (EA) and the appellant as to what should be done if the appeal fails. Whilst there is no formal agreement, both the EA and the LPA have identified that their preference is for Option 3 which is set out in the Terraconsult technical report of Jan 2014⁵⁹. That is presently being worked up by the appellant, and would require both planning permission and a variation of the permit

⁵⁸ FCC/4B para 4.9 and oral submissions for the Council

⁵⁹ CD9.23.2

before it could be agreed formally. However, for the purposes of this appeal this is the only realistic alternative on the table with any reasonable likelihood of coming forward if both the 12- and 5-year extensions are rejected on appeal.

- 6.26 Thus it is an important material consideration that must be weighed into the overall planning balance that there is a realistic 'fall back' in this case⁶⁰. That is to say that if permission is not granted then there would still need to be importation of approximately 580,000m³ of material in order to fill the existing void and to restore the landform to an appropriate landform. Approximately half of that volume would be waste, with the remainder being made up of inert material. Given that the density of the latter is substantially greater than that of wastes that means that the material would amount to approaching 1 million tonnes.
- 6.27 Moreover the inert material is not straightforward to source since it is itself used widely as a resource to facilitate engineering projects. Additionally the EA cannot yet say whether this would be imported as a restoration or disposal operation. If the latter then there would be a substantial cost to the appellant to engineer inert landfill cells, which would be passed to those disposing at Arpley, making the import such huge quantities of inert material very challenging.
- 6.28 Perhaps of more concern in a land use context is that the vehicles which would be used to import the material are likely to be at the smaller end of the range, with the flow of materials being seasonally concentrated in the times of greatest activity in the building industry. Thus there would be larger numbers of smaller vehicles seasonally focused entering the site in order to tip large quantities of inert material, preceded by at least a further year's worth of waste tipping even if the appeal is dismissed.
- 6.29 That is of relevance since all of the modelling which has taken place in terms of particulate matter (PM), nitrogen oxides (NOx) and odour has worked on the assumption that the worst case would be 2014, and that the site would be closed by then. In fact the real position is that Arpley will be open and receiving wastes at that point and will continue to do so until Option 3 or some other agreed alternative has been completed. What that means is that the modelling has assumed an extreme worst case scenario which uses a zero baseline in terms of activity at the site which simply will not happen – thereby making the outputs of the modelling exceptionally robust.

Green Belt Policy & benefits

- 6.30 National policy is clear and has been for decades, that where one is proposing a use which is inappropriate in the Green Belt there is a need to demonstrate very special circumstances (VSC). It is a common misapprehension that this means that one needs to point to circumstances which comprise VSC as an initial threshold to surmount as a precursor to undertaking the planning balance. In fact the clear position from para 88 of the NPPF is that VSC will not exist unless the harm by virtue of

⁶⁰ Snowden v SOSE [1980] JPL 740

inappropriateness together with any other harm is clearly outweighed by other material considerations.

- 6.31 It is common ground that there is a need for VSC to be established in this case before planning permission can be granted since Arpley lies within the adopted GB south of Warrington.
- 6.32 A diverting exercise has been undertaken to determine whether or not the site was within the GB at the time that planning permission was granted. It is however common ground that whatever the original position that does not alter the balance required under paragraph 88. Nonetheless the position appears to be as follows⁶¹:
- (i) In 1986 Arpley was within the Designated Area of the New Town⁶², but importantly it was also within the general extent of the GB established by the Cheshire Structure Plan (SP) as set out in the key diagram⁶³;
 - (ii) The actual detailed boundaries of the GB were not formally established until the mid 2000s⁶⁴;
 - (iii) however what is clear and undisputed is that, at the time of the 1986 decision, detailed boundaries of the GB were being promoted in the Outer Warrington Local Plan (OWLP). This showed the appeal site primarily lying within GB. In 1986 this plan had reached an advanced stage in its preparation and therefore would have been afforded substantial weight;
 - (iv) Waste disposal is one of a number of uses which within the OWLP was considered potentially as an appropriate use within the Green Belt; and
 - (v) At the time Arpley was first considered the LPA considered the site to lie within the Green Belt⁶⁵.
- 6.33 Whilst the past policy position is not straightforward, it seems tolerably clear that Arpley was identified within the Green Belt and that it was treated as such when it was granted permission. The policy position has altered to an extent given the draft policy in the OWLP was more favourable to landfill. Nonetheless, based upon the above agreement there is no real point to be made either way which is determinative of the issues in this case.
- 6.34 The determinative point in this case, as noted, is whether or not very special circumstances exist, in accordance with NPPF para 88. That is to say whether the harm by way of inappropriateness, together with any other harm is clearly outweighed by the benefits in planning and land use terms. The harm relied upon by the LPA comprises the potential for this

⁶¹ CD9.28

⁶² For the purposes of the New Town Act 1981

⁶³ CD9.28 para 1.2 & appx B (it appears that the site lies in that part of the New Town Designated Area in the vicinity of Moore, where Green Belt had 'encroached' into the New Town Designated Area.

⁶⁴ CD9.28 para 1.8 & appx K

⁶⁵ CD9.24 para 8.1.3

landfill to give rise to amenity impacts, which as set out below, now seems to rest largely upon unwarranted inferences from a deeply equivocal complaints record. As against that the appellant principally relies upon the clear and ongoing need for landfill to continue at Arpley in order to meet a regional need for residual waste disposal.

6.35 In addition to that need, which is addressed below, there are other circumstances that also weigh into the balance of circumstances in favour of the proposal. These have been elucidated in the appellant's evidence⁶⁶, but in summary are as follows:

(i) *Need is better accommodated as an extension to an existing site rather than a new landfill.*

This proposition is common ground as between Messrs Martin and Roberts. Importantly the proposals do not involve a physical extension beyond that which was originally permitted, but rather a temporal extension;

(ii) *The landform at Arpley is unfinished and there is a need to import substantial amounts of material in any event, much of which would be more sustainably used elsewhere.*

As noted above, Option 3 is the current preference of the EA and has been 'agreed' with the LPA as the closure option which the Appellant has been asked to work up. The tipping which is presently taking place on site is entirely consistent with Option 3. However that a closure option is required is a recognition by all parties that there remains substantial void space at Arpley and that the current landform cannot be left without substantial additional material being brought in to achieve restoration.

Rationally therefore the fact that additional capacity exists at Arpley within the physical void makes it an obvious location to which the regional need for residual waste disposal should be, in part, directed.

(iii) *Arpley is peculiarly well appointed to sustainably accommodate landfill by reason of the existence of the Ship Canal dredgings;*

In addition to the physical infrastructure which exists at Arpley to accommodate additional landfill (the Gas Utilisation Plant (GUP), the leachate plant, the dedicated road access etc) Arpley is unique in the North West (NW) in having the dredgings from the Manchester Ship Canal available to it to provide temporary/daily cover.

In all other landfills in the NW, sourcing inert waste to use as daily cover is exceptionally difficult whereas at Arpley that material is readily available⁶⁷. Indeed the use of such material, the 'waste' of a century of dredging the Canal, is plainly an eminently sustainable use of such a resource. Dredgings are also used in restoration, but because of the consistency of the material it cannot be used as an engineering material or bulk fill. Nonetheless it is significant that at

⁶⁶ FCC/1B part II; FCC/1D

⁶⁷ FCC/1B part II para 3.29 & oral evidence by Mr Roberts

Arpley there is a substantial amount of such material available, well in excess of that which would be needed throughout the period for which permission is sought.

- (iv) *The original planning permission authorised disposal over a wider area than that which is being sought to be tipped in this instance.*

Whilst the past grant of permission on land does not mean that a formerly permitted land use is an appropriate use of land for all time, nonetheless it does plainly demonstrate that at that time the local planning authority had formed the view that landfilling was an appropriate use of land. In this instance that is important for two reasons.

Firstly, the grant of planning permission was for an area of land that extended much further to the east than has presently been tipped, and indeed further than is proposed to be tipped. Secondly, the grant of planning permission in respect of Saxon Park, back in 2002, and in respect of earlier residential development at what is now the Saxon Park site, was in the full knowledge of both the existence of the landfill as well as the fact that the extent of activities would have extended to the opposite bank of the Mersey had tipping gone to plan over the last decade⁶⁸.

That does not mean that concerns from the residents of Saxon Park can be discounted, but rather that it places those concerns into context. That is to say that the LPA at the time of the grant of permission for housing did not consider that land use to be incompatible with the landfill to the south; and those residents will have purchased and moved into those properties in the expectation that the landfill operation would be taking place and was consented to extend even closer than is proposed now.

- (v) *Tipping would significantly extend the life of one of the largest GUPs in the UK which presently produces 15MW of renewable energy.*

Despite the scepticism of Mr Martin for the Council, the generation of energy from a GUP is explicitly recognised as a renewable form of energy⁶⁹. The effect would be to extend the energy generation curve by a further dozen years. Thus, because the amount of renewable energy is substantial and the effect of the extension of the lifetime for gas generation is plainly significant this is a factor which in its own right should be afforded substantial weight.

- (vi) *Arpley is very well related to the strategic road network and the likely source of the waste.*

As noted below in the context of transportation it is recognised by the LPA that Warrington is uniquely well placed to serve regional requirements, being located mid-way between the cities of Manchester and Liverpool and sits between the M56 to the south, the M62 to the north and the M6 to the east. If one were seeking to locate a regional resource in a location which could best serve the

⁶⁸ CD8.4 p.10 (for Saxon Park Committee Report and planning history)

⁶⁹ FCC1-B Part I para 2.2.13

region, then one would be hard pressed to find a better location than adjacent to the Warrington urban area.

- (vii) *Finally there would be public benefits from the grant of permission, by way of an extension of the management of the Moore Nature Reserve to 2030 as well as the creation of a network of footpaths secured for the next 30 years.*

Whilst these factors are not of themselves determinative, nonetheless they comprise far from insignificant public benefits of the proposal, and moreover benefits which are consistent with the purposes of including land within the Green Belt.

- 6.36 Additionally, the grant of permission would achieve improved mitigation when compared to the current position, thereby reducing the propensity for complaints together with facilitating a mechanism to address any future problems. This would be secured via the imposition of a modern suite of conditions on the planning permission providing for:
- (i) the installation of a new wheel wash facility, including a jet washing facility;
 - (ii) the requirement for an odour management plan (OMP) to fall within the jurisdiction of the LPA and not just the EA;
 - (iii) the opportunity, via the OMP, to significantly improve the addressing of any complaints directly between the LPA and the appellant, and not being reliant upon the vagaries of the EA; and
 - (iv) the introduction of a 24 hour manned hotline, which is being introduced in any event.
- 6.37 It is also important to note that Mr Martin rightly accepted that planning permission for the proposed use would properly be characterised as a 'temporary use' of land. Thus the long term integrity of the Green Belt would be maintained by the creation of a properly-restored land form over which the public would have access, adjacent to an ecological resource of significance. The long term openness of the Green Belt would accordingly be preserved.

Need

- 6.38 The closing submissions for the Council should be contrasted with Mr Martin's evidence and the answers given by Mr Roberts in cross-examination. The 2011 application⁷⁰ has been contrasted with the need case assessed Mr Roberts' appendix NR6⁷¹ and the restriction proposed in the s.106 planning obligation⁷².
- 6.39 Mr Roberts addresses why the first two are different⁷³. The reason in summary is that the 2011 application was critiqued by Urban Vision who pointed out the availability of void space at Pilsworth⁷⁴. The evidence

⁷⁰ Relating to the appeal proposal.

⁷¹ FCC1-C appx NR6

⁷² CD4.11.2

⁷³ FCC1-B Part II para 1.6

⁷⁴ CD3.7

given at this Inquiry is responsive to the Council's own case as well as covering the geographical areas covered by the two adopted waste local plans. To do otherwise would be unreal. There is simply nothing in that point.

- 6.40 In reference to the s.106 plan⁷⁵, the Council's submissions make a persuasive point but it is not right. It confuses need with reasonable restrictions on the grant of planning permission. The s.106 plan does not comprise a 'bottom drawer' need case. It is responsive to the Council's opening where it was suggested that Arpley could draw from a very wide geographic area. The appellant has not been asked in respect of discussions on the s.106 to reduce the area but in any event all that the plan in the s.106 does is to restrict the inputs to adjacent areas to the one where need has been established. The s.106 plan area includes Cheshire West and Chester who support the appeal proposal. It is a red herring.
- 6.41 It is quite clear that the LPA had approached this Inquiry by wrongly assuming that Mr Roberts had seriously miscalculated his assessment of need in NR6. By the end of cross-examination of Mr Martin it was difficult to see where the LPA's criticisms remain. Importantly, as with other areas of evidence, the LPA has not produced a freestanding assessment of need to set against that of Mr Roberts, but has chosen instead to critique his evidence.
- 6.42 Nonetheless the following propositions appear to be agreed:
- (i) There is only one operational landfill within Merseyside, namely Lyme and Wood Pits which has only two more years or so of operation before it closes⁷⁶. This is not in dispute. At present most of Merseyside's Local Authority Collected waste (LACW)/Municipal Solid waste (MSW) is directed to Arpley and most of its Commercial and Industrial (C&I) waste goes to Lyme and Wood Pits. In future, the latter will be closed, and after 2017 much of the LACW/MSW will be directed to the new Energy from Waste (EfW) plant in Teesside;
 - (ii) There are no residual waste landfill sites identified within Merseyside, whose recently adopted Waste Local Plan (WLP) is predicated upon the exporting of residual waste requiring landfill out of the sub-region, most probably to Arpley. In the view of Merseyside Environmental Advisory Service (MEAS), Merseyside would need up to 300,000 m³ per annum capacity to accommodate its residual C&I waste up to 2030⁷⁷;
 - (iii) Mr Roberts has properly tabulated the likely closing dates of a number of landfills within the Mersey-belt sub-region⁷⁸. Thus whilst Greater Manchester and Merseyside's LACW/MSW are properly shown as reducing substantially in the near future in the table, the need for capacity remains by reason of the continued requirement

⁷⁵ CD4.11.2 plan 4

⁷⁶ CD5.5 paras 2.108 & 2.109

⁷⁷ CD5.5 paras 2.109 – 2.111 & table 2.8

⁷⁸ FCC/1C appx NR6

for residual waste together with the reduction of capacity by reason of closures;

- (iv) Whilst capacity may exist in landfills outside the area studied by Mr Roberts in his appendix NR6, voidspace in locations such as Gowy and Whinney Hill cannot simply be added into the capacity side of the equation without also adding the demands upon that space from their own catchments. That is an exercise which is not presented in evidence by the LPA – thus the assertion that there may be capacity at those facilities capable of accommodating waste from the study area of NR6 is both unproven, and inherently unlikely.

It is unproven because the LPA has not sought to undertake a rival capacity exercise to even begin to prove the proposition. It is also unlikely since Whinney Hill requires substantial clay extraction before voidspace could be created, whereas Gowy's planning permission expires in 2016. Save for a positive comment in a draft plan which can be afforded little weight, it is in precisely the same position as Arpley – no planning permission, located in the Green Belt. Whilst it has potential voidspace available, it serves a different catchment to the appeal site and it is locally politically unpopular. Indeed no application has yet been submitted at Gowy.

- (v) The Greater Manchester Joint Waste Plan (GMWLP) recognises that there is a significant shortfall in capacity for residual disposal for the plan period (up to 2027), and has accordingly made two allocations for additional capacity at Whitehead and Pilsworth North, for 4Mm³ and 2Mm³ respectively⁷⁹.

Policy 2 of the GMWLP posits that Whitehead will have been engineered by 2014 and would be available for the receipt of waste by now whereas Pilsworth North will not come forward until towards the end of the plan period (ie. 2023)⁸⁰.

However no application has been submitted to permit 4Mm³ of waste at Whitehead let alone has engineering commenced to receive it. Any application at Whitehead or Pilsworth North would have to conform to the capacity requirements of policy 2 of the GMWLP as well as policy 7. The former would seem to phase Pilsworth North to the end of the plan period, and would seem to be unsupportive of the application which has just been lodged at Whitehead. The latter applies national policy to both sites. Since both lie within the Green Belt, that means that for each very special circumstances would have to be demonstrated despite the sites being 'allocated' within the plan. In other words the policy context which faces applications at each of those two sites is not different in that regard to that facing Arpley – a point Mr Martin for the Council accepted albeit with reluctance. One might properly observe that this provides one of the least supportive policies for an allocation that one could imagine.

⁷⁹ CD5.6; FCC/1B part II para 4.10

⁸⁰ CD5.6 p37

- (vi) Mr Roberts' appendix NR6⁸¹ shows that as at the end of 2025, with properly reducing MSW and with C&I being held level (although not growing in line with Defra forecasts) and assuming the availability of Arpley, there is still a need for an additional (ie. presently without planning permission) 2.2Mm³ of landfill capacity in the Mersey Belt sub-region.

6.43 The remaining issues between the parties appear to comprise:

- (i) Is there evidence to assume that C&I arisings will reduce over the next 12 years?
- (ii) What non-hazardous capacity should be assumed to be available at Pilsworth?
- (iii) What non-hazardous capacity should be assumed to be available at Whitehead?
- (iv) Are other sites likely to be available?

The future of C&I

6.44 Nowhere in his proof⁸² does Mr Martin for the Council provide any evidence that C&I residual waste will continue to decline such that the volumes assumed in Mr Roberts' appendix NR6 have been overstated. The Council's assertion in closing submissions of a decline in C&I waste is founded on no evidence and is in conflict with Defra predictions. It is, at best, speculative. The highest Mr Martin puts it is that increases in Landfill Tax could result in more diversion from landfill and that it should be borne in mind that C&I waste is price sensitive and not typically subject to long term contracts. In oral evidence he went further and stated it was in his view 'unlikely' that residual C&I tonnages to landfill will be maintained, although he acknowledged the difficulties in forecasting. He felt fiscal drivers and policy would result in reduced landfilling of residual C&I waste, though this is again speculative.

6.45 The appellant submits, for the following reasons, that Mr Martin is incorrect and Mr Roberts' more detailed assessment should be preferred:

- (i) The Mersey Belt sub-region has seen huge strides forward in the diversion of C&I waste from landfill, but the measures by which this has been achieved are now mature (including the fiscal drivers referenced by Mr Martin for the Council), with Landfill tax at its highest scheduled rate this year⁸³.
- (ii) C&I waste is indeed sensitive to price and consequently the incentives that already exist to commercial operators to divert waste from landfill are already huge, yet large tonnages continue to be tipped⁸⁴.
- (iii) Policy aspiration alone will not divert C&I waste from landfill.

⁸¹ FCC/1C

⁸² WBC/1B

⁸³ FCC/1B part II paras 1.10-17

⁸⁴ FCC/1B part II paras 1.9-1.13 & 3.12-20

- (iv) There are fundamental economic barriers, recognised by both government and market analysts⁸⁵, to delivering C&I waste treatment capacity that may further divert this waste stream from landfill.
- (v) Under all scenarios modelled by Defra⁸⁶, it is forecast that C&I waste arisings will undergo post recessionary growth, nevertheless the forecasts in NR6 adopt the conservative assumption that no growth will exist.
- (vi) Mr Martin expressed surprise⁸⁷ that the total quantum of Greater Manchester C&I waste forecast to go to landfill⁸⁸ should be so large. The real surprise is that Urban Vision (his own firm, which was responsible for the GMWLP) predicts (post the diversion of MSW to the new treatment facilities) that over 800,000 tpa will continue to go to landfill⁸⁹ - a considerably higher forecast than that adopted by Mr Roberts in his appendix NR6.
- (vii) Mr Roberts' longer term forecasts of Merseyside C&I waste requiring landfill are also verified by the Merseyside Joint Waste Plan⁹⁰.

Whitehead

- 6.46 In preparation for the Inquiry Mr Roberts had made the point with force in his proof that, irrespective of the identification of sites within the GMWLP, until a planning application had been submitted and approved there could be no certainty that actual capacity would be delivered at either Pilsworth North or Whitehead. Thus his assessment⁹¹ assumes (rightly) that by the 2020s there would be no landfill capacity available within Merseyside and only one (Pilsworth South Extension) in operation in Greater Manchester. His reasoning was that the planning process can throw up any number of uncertainties which may result in capacity not being available.
- 6.47 Serendipitously, on day 1 of the Inquiry the parties were informed that a planning application had been made for Whitehead⁹². When that was carefully perused it proved to be the polar opposite of that which had been expected in the GMWLP. What is proposed is not for 4Mm³ of void being created and tipping commencing in 2014. Rather permission is sought for a scheme that allows one of two alternatives. In scenario 1 only 1Mm³ of waste would be accommodated out of an importation of 1.6Mm³ so as to facilitate restoration of the existing (closed) facility. In scenario 2 almost no waste would be imported and a far more minimal restoration would be consented. Mr Roberts plausibly speculated that the application, if granted, would in effect enable Viridor to postpone restoration of the site by several years, which would seem to be the motivation behind an otherwise rather odd planning application.

⁸⁵ FCC/1B part II paras 1.14-16 & 3.17-19

⁸⁶ CD7.7; FCC/1B part II para 3.12

⁸⁷ In examination in chief

⁸⁸ FCC/1C appx NR6

⁸⁹ FCC/1B Part II para 3.22

⁹⁰ FCC/1B Part II para 3.24-25

⁹¹ FCC/1C appx NR6

⁹² CDs 8.5-8.8

- 6.48 What is clear from appendix 12⁹³ of the planning application as well as the nature of the application itself (which results in complete restoration of the site with public access over the totality of the future allocated area⁹⁴) is that tipping is not expected to continue beyond 2020 and there is no intention therefore to tip Whitehead in accordance with the aspirations of the GMWLP. Even then there is no guarantee that the application will be granted by the LPA, not least since it involves proposals which are inconsistent with policy 2 of that Plan⁹⁵.
- 6.49 The knowledge of that application and the formal intention of Viridor at a stroke puts at least a 3Mm³ 'hole' in the capacity available for waste within Greater Manchester (GM) for the next decade and a half. It will be noted that Mr Roberts' appendix NR6 only assumes that 2.2Mm³ will come to Arpley from GM, as the worst case.
- 6.50 Thus the intentions of the GMWLP in respect of its landfill allocations seem to have been thwarted at the first hurdle. Mr Martin contends⁹⁶ that there is nonetheless a monitoring report which suggests that the extent of the need may have been overstated. Unhappily, that report is factually wrong and is irreconcilable with any of the other data before the Inquiry⁹⁷. Thus it reduces to a simple assertion that there may not be a need for as much capacity as assumed in the recently adopted (and found sound) local plan – but that is a proposition which is evidentially unsubstantiated and can be afforded no weight unless and until it is explained and then tested.
- 6.51 In submissions the Council invited the inference that Whitehead may not deliver beyond 1Mm³ because Viridor are supporting the view that the need is not as great as is presented in Mr Roberts' appendix NR6. That is contrary to the evidence. Firstly, there is nothing within the planning application documentation that supports the suggestion that the motivation is a lack of need, and secondly it is in conflict with conclusions in respect of need in the GMWLP, which has recently been found sound.
- 6.52 Thus Whitehead can be assumed to provide at most 1Mm³ of voidspace at some point in the next decade, though it may very well be substantially less.

Pilsworth

- 6.53 Pilsworth has both hazardous and non-hazardous consented capacity, which cannot be used inter-changeably. Mr Martin appeared to have seriously under-estimated the hazardous capacity of Pilsworth based upon a misinterpretation of an email⁹⁸ which specified the capacity of a single engineered cell rather than the landfill overall. On the evidence the consented capacity at Pilsworth is that which is known as Pilsworth South and is a little over 5Mm³.

⁹³ CD8.8

⁹⁴ CDs 8.6 & 8.7

⁹⁵ CD5.6

⁹⁶ WBC/1B appx C

⁹⁷ FCC/1D para 2.9ff

⁹⁸ CD8.3

- 6.54 Policy 2 of the GMLP expects that Pilsworth North will come on stream in 2023, and will add a further 0.4Mm³ of capacity in that year with the remainder of the anticipated 2Mm³ being used over the following 4 years.
- 6.55 Mr Roberts' appendix NR6⁹⁹ shows that, assuming no capacity at Pilsworth North and Whitehead, there is a deficit of 2.2Mm³ by the end of 2025. Since most of Pilsworth North is projected to accommodate capacity in the following 3 years it follows that, if Whitehead did produce 1Mm³ of void and if Pilsworth comes forward as expected in the plan (though there is as yet not even an application), then there would still be a clear and unequivocal need for the whole of Arpley. Greater Manchester will not be able to accept waste from Merseyside, Halton and Warrington without detriment to its ability to manage its own¹⁰⁰.
- 6.56 Or put another way, absent Arpley – with Pilsworth North coming forward only after 2022, with Whitehead delivering only a maximum of 1Mm³ and with no other landfill coming forward within GM or Merseyside – then there is a gaping hole in the need for additional landfill capacity, with no other plausible candidate able to fill it save for Arpley. It is little wonder there is significant support for this proposal from the Merseyside Authorities, Cheshire West and Chester Council and Halton Borough Council.
- 6.57 There is even good spatial planning sense in such an approach. There is logic behind having a facility which can accommodate primarily GM waste (ie Pilsworth) in the East of the region and one which can accommodate both GM and Merseyside's waste further west¹⁰¹. In an era of regional planning that might have been a conclusion open to a regional plan. As it is, in the present system one has to form a view on the merits of each case. There is at least a reasonable indication that this is the intent of the Merseyside Waste LP¹⁰² and acknowledged as a scenario in WBC's Waste and Minerals Background Paper¹⁰³, which will inform its future Minerals and Waste Local Plan..
- 6.58 Thus whilst the Council was right to ask Mr Roberts where that notion was supported in policy, his response was equally right; it is supported by sound spatial planning principles and by the approach of the Merseyside authorities to the outcome of this appeal. Indeed it is difficult to see what plan B might otherwise be, save perhaps Pilsworth North being advanced to an earlier point of delivery and the entire region running out of landfill capacity in the next decade, to the obvious detriment of the regional economy.
- 6.59 The need for Arpley to be permitted, far from diminishing over time, has only strengthened, and in particular has strengthened as the Inquiry has progressed.

⁹⁹ FCC/1C

¹⁰⁰ FCC/1B part II para 4.11

¹⁰¹ FCC/1B Part II paras 1.20-22

¹⁰² CD5.5

¹⁰³ CD5.4

Is Energy from Waste (EfW) the panacea?

- 6.60 Finally it is worth noting that, whilst WBC has refused the application for a five year extension made to it last October, the case for a short term need for additional capacity is, with respect, unanswerable. Even if the Teesside EfW is operational by the end of 2016 it will not be fully operational until it has been 'hot tested' for several months and thus it will not be available until well into 2017. Even then the experience of other EfWs such as Ineos and Ferrybridge is that delays for such projects are frequent and to be expected. Thus for the next five years there is an obvious and unanswerable need to accommodate both MSW as well as C&I waste from Merseyside.
- 6.61 Thereafter there was a suggestion from the Council that capacity might exist at Ineos to accommodate waste that would otherwise result in material being landfilled at Arpley. Mr Roberts explained that at present 1.5Mm³ of refuse-derived fuel (RDF) is exported from the UK each year and that there is a substantial underprovision for EfW plants in the UK. Moreover the spare capacity at Ineos is presently being brokered across the UK as a result, and in particular brokered to MSW producers who are able to ensure the longer contracts favoured by EfW plants. It is of course excellent news that additional capacity will soon be available to eat into the huge volumes of RDF that are presently exported abroad (including that produced from Warrington's LACW) but that is something of a red herring when considering the need for residual waste disposal capacity.

Odour*General points*

- 6.62 The methodology used by Ms Hawkins is that which was advocated by Dr Gibson (who appeared at the Inquiry as a witness for the Council) following his review of the Environmental Statement, that is ADMS v5 rather than GasSimv2.
- 6.63 There is no national standard for odour assessment. However, there is agreement as to the standards which have been used¹⁰⁴. What is assessed is the 98th percentile (which represents a very small proportion of time when a level may be exceeded – approx. 14 hours per month) using an impact criterion of 1.5 ou_E/m³ to assess impact upon amenity.
- 6.64 Complaints have been considered to establish the local baseline position. However there are serious issues with the complaints, which are explored below. In particular there appears to have been a breakdown in communication between the public bodies involved, but more importantly not all complaints have been notified to the appellant to enable investigations and to take action. This is important since there is more than one odour source locally and complaints must be 'substantiated' to be given weight.

¹⁰⁴ Defra Odour Guidance for Local Authorities and EA H4 guidance in respect of Environmental Permits

- 6.65 The EA rightly categorises the current operation as a Category 3 site – ie. ‘transitory causing few complaints’ but no change in operation needed. As Mr Blake indicates:

‘As part of the Environment Agency’s environmental permitting charging scheme the Environment Agency use the compliance classification scheme to determine how well a facility is performing each year and provides a risk rating from A to F, with bands D, E and F the poorest performing compliance bands. Arpley Landfill benefits from an Environment Agency operator performance classification of Band A, which reflects the sites procedures and systems, and a compliance classification of Band B.’¹⁰⁵

- 6.66 Once restored the site will not give rise to odour issues. The concern is the continuation of the operational phase. To that end the empirical evidence of Ms Hawkins, as well as any inference that can be drawn from the complaints, is that this site will continue to operate as a category 3 site in future.

Amenity impact?

- 6.67 The starting point to note is that the statutory nuisance regime under the Environmental Protection Act 1990 (EPA) operates in respect of odour nuisance from premises. In respect of Arpley that is monitored and enforced by the Environmental Health Officers (EHOs) of Warrington¹⁰⁶. The starting point for the consideration of this case is that for all of the hyperbole that has been brought to bear about the present operation, there has never been the slightest hint that such proceedings have ever even been considered, let alone taken.
- 6.68 The reason for that may have been unwittingly provided by Dr Gibson for the Council, whose appendices bear close scrutiny. Indeed the conclusions within his appendices stand in somewhat stark contrast to his proof. Within appendix K¹⁰⁷ he explains that the 5 OU_e/m³ (98%ile) criterion is widely used as a proxy for the existence of statutory nuisance. Indeed he quotes from Ramsey J. in a statutory nuisance case¹⁰⁸, who indicated that he was not willing to consider an odour concentration as low as 1.5 OU_e/m³ (98%ile) to comprise a statutory nuisance, but that by the time 5 OU_e/m³ (98%ile) was reached a statutory nuisance would have been proven. Ironically that case involved a nuisance from a sewage works such as that which lies to the north of the appeal site, and which on any view has been responsible for a considerable number of the complaints which have been attributed to the appeal site, for all of Dr Gibson’s misplaced belief that the two smells are readily distinguishable.
- 6.69 In Dr Gibson’s appendix K he presumably sought to draw attention to the 5 OU_e/m³ threshold since, on his calculations at the time, there were

¹⁰⁵ FCC/4B para 5.2.8

¹⁰⁶ Before proceedings could be issued under the EPA, the consent of the Secretary of State would need to be sought and obtained. However there is no reason to think that such consent would be withheld in an appropriate case.

¹⁰⁷ WBC/5C p61

¹⁰⁸ Dobson v Thames Water [2011] EWHC 3253 (TCC)

indeed breaches of that threshold and therefore in his judgment a likelihood of complaints¹⁰⁹.

- 6.70 What then happened is telling. Dr Gibson, having concluded that the 5 OU_e/m³ (98%ile) was breached, criticised the use of the GasSim model and asked for the work to be re-done using an alternative methodology and approach using odour emission rates derived using olfactrometry testing expressed as odour emission rates. Ms Hawkins' firm then undertook such an assessment. However, so did Dr Gibson and his results are of enormous significance in this case. On the basis of the far more detailed work he concluded¹¹⁰, using what he considered at the time to be appropriate input parameters, that not only would there not be a breach of the 5 OU_e/m³ threshold at any residential property but there would not be a breach of the 1.5 OU_e/m³ threshold, which is the limit of detectability of odour in the field. He concluded¹¹¹:

'In conclusion, if the modelling inputs suggested by Smith Grant are correct then the modelling would suggest that there is unlikely to be harm to residential amenity.' (emphasis added)

This was the Council's own evidence.

- 6.71 The different conclusions arise principally from the use of the more appropriate bespoke Meteorological Office data for the site.
- 6.72 Dr Gibson goes on¹¹² to suggest that the modelling output may be inconsistent with the complaints record, and it is common ground that modelling is an inherently uncertain exercise. However what he then went on to do was to tweak the coefficient for surface roughness from 0.3m, as a sensitivity test¹¹³. However even then his conclusions come nowhere near exceeding 5 OU_e/m³. Indeed by and large they only just exceed 1.5.
- 6.73 In his very late rebuttal¹¹⁴ Dr Gibson goes on to tweak the Monin Obukhov (M-O) length assumed in his two models, which again shows that there may be some exceedences of the 1.5 OU_e/m³ threshold at Saxon Park. However he was exceptionally keen to stress in both instances that he was not seeking to argue that those values should be used, rather that they present sensitivity analyses which show that if those values are used that the outturn will alter.
- 6.74 With respect both exercises take him no further. Ms Hawkins explains why the surface roughness factor that she has used (as has Dr Gibson) is appropriate for the nature of the ground lying between Arpley and nearby receptors (it is within the agricultural range but not at the lowest end which would correspond to flat fields). Similarly the M-O length she used is the one appropriate for a study of a site adjacent to a large urban area, corresponding to the sort of air disturbance caused by anthropomorphic

¹⁰⁹ WBC/5C p80

¹¹⁰ WBC/5C appx L p92

¹¹¹ WBC/5C appx L p94

¹¹² Ibid

¹¹³ WBC/5C appx L p90

¹¹⁴ WBC/5D

influences. Again Dr Gibson was prepared to accept that she was 'not wrong' to do so.

- 6.75 Thus using appropriate inputs and an appropriate model the result is that modelling predicts that for 98% of the time the 1.5 OU_e/m³ level would not be exceeded at residential properties, and that there would be nothing like a breach of the nuisance level of 5 OU_e/m³.
- 6.76 That does not, however, mean that there will not be detectable and unwelcome instances where odour is experienced. There are differential degrees of sensitivity in olfactory responses, and inevitably for some there will occur the recognised experience of their becoming over-sensitised to the smell, such that any odour being experienced will result in an adverse reaction, however slight and transitory the experience may be, simply because it is from an unwelcome source.
- 6.77 More importantly, the 98%ile threshold means that for 2% of the time there will be an exceedence of the threshold, and so there will be the potential for unwelcome odours for around 175 hours a year. With respect to Dr Gibson, the complaints evidence is entirely consistent with occasional and transitory impacts not with a habitual and regular odour nuisance being caused.
- 6.78 It is also worth reflecting that the conclusions to Dr Gibson's appendix L contended that more work needed to be done. In respect of both modelling and complaints analysis it has been – both of which have tended to strongly support Ms Hawkins' conclusions and not those of Dr Gibson.
- 6.79 Finally, in this context, it is worth noting that the Environment Agency, who have experience of a wide range of landfill sites across the UK, including ones which are the subject of statutory nuisance cases (including the two on which Dr Gibson is advising) are able to put this site and the level of complaints into its proper context. They have repeatedly categorised complaints here as being within category 3, ie:
- "...there is a presumption against attending incidents classed as category 3, however we are aware of the sensitivity of the site to local residents and often carry out our routine site visits..."¹¹⁵.*
- 6.80 Category 3 is defined as follows:
- "Odour that has a minimal effect on human senses:*
- *odour that is transitory and offensive to human senses, causing few complaints but not warranting a change of behaviour of those exposed, e.g. one or two complaints a week;*
 - *an issue which is not on-going.*
- Odour that has a minor effect on amenity value:*
- *odour resulting in a minor or transitory effect in local amenities and leisure areas;*

¹¹⁵EA PPC compliance officer, quoted in FCC/3H para 4.3.2

- *likely to involve amenities which are not generally heavily populated or an odour which does not restrict the use of the amenity. This includes public footpaths.*¹¹⁶

- 6.81 What the EA say may be contrasted with what the Council and interested persons say are rare visits. If it were the case that this site is subject to appalling odours on a habitual basis, one would have expected a different response and a different approach from the EA.
- 6.82 Thus Ms Hawkins' work, far from being undermined by Dr Gibson's approach, is substantially supported by it, with his sensitivity testing proving no more than if one tweaks the inputs then that will alter the outturn of the model. On that basis the 1.5 OU_e/m³ contour does not cross any residential properties.
- 6.83 The final issue that remains then is whether or not one can properly conclude from the complaints data that the model is seriously flawed. With due respect to the enthusiasm of the Council's case, Ms Hawkins' professional judgment is that the level of complaints, both in terms of frequency and content, manifestly do not mean that one can conclude that the model's output is flawed, even allowing for the uncertainties of modelling on which the Council relies.
- 6.84 That is not surprising given the elements of robustness in Ms Hawkins' approach. Two only perhaps are worth highlighting:
- (i) *Odour emission rates (OERs)*
- Counsel for the LPA sought in cross-examination to argue that there were a number of different variables which fundamentally impacted upon the model, focusing in particular upon the weather, albeit that both Dr Gibson and Ms Hawkins accept that they have used the best data available – ie the Met Office bespoke data. In response Ms Hawkins repeatedly indicated that it was the OERs that were the principal variable and that she had chosen an extremely robust figure.
- That is to say that she had taken the highest figure of six measures of freshly tipped waste (ie. 13.1). Dr Gibson had used 6.5 in his assessment as an appropriate figure based upon his professional research. Thus Ms Hawkins had used a rate double that considered appropriate by her counterpart. That fact is worth bearing carefully in mind when considering the criticism raised by the Council that odour whilst waste was being tipped is likely to be higher. Of course that is so, but given that it is impossible to measure, that any effect will necessarily be transitory and that Ms Hawkins uses a highly robust OER, then the criticism leads the LPA nowhere.
- Secondly, on the evidence the most odorous waste is LACW/MSW. C&I waste tends to have been pre-treated and contains substantially reduced quantities of degradable material that may give rise to odours. On the evidence 85% of the current material tipped at site is LACW, but within 4 -5 years the majority of the input will be the

¹¹⁶ FCC/3H para 4.3.2

materially less odourous C&I waste. Again this gives an obvious robustness to the assessment; what has been used is the highest measured OER from a point with the highest likely component of MSW.

(ii) *Areas stripped*

Ms Hawkins has assumed for the purposes of the model that tipping is taking place across the entirety of the current operational phase, that the previous phase has not yet been restored and that the next phase has already been stripped¹¹⁷. In other words her worst case has assumed that the area of some 33 football pitches (more than 200,000m³) has been exposed at one time and could potentially generate odour. In reality those operations will be phased so as to minimise the extent of the area from which odour escapes can take place.

Again this introduces a substantial element of robustness to the appraisal.

Odour from Vehicles

- 6.85 It is accepted that from time to time that there will be a transitory effect from a passing vehicle, but proper sheeting of vehicles will undoubtedly substantially mitigate that effect.
- 6.86 In order to support his assessment that this gives rise to a real issue, Dr Gibson makes a series of odd assumptions. He assumes a worst case of a HGV stationary at traffic lights for 30 seconds with waste emitting a smell at an OER of 4 times that which he assumed for freshly tipped waste (despite it sitting passively in the back of a lorry) emitting from a surface area of 9m², rather than from the edge of an incorrectly secured tarpaulin. That is to say he has had to make a series of heroic and implausible assumptions in order to substantiate the technical argument that problems might arise on a regular basis.
- 6.87 In fact, by doing so, Dr Gibson proves quite the opposite – that for a properly sheeted vehicle with non-agitated waste passing a person on the road there is unlikely in most instances to be an issue.

Mitigation of Odour

- 6.88 In cross-examination the LPA sought to place reliance upon page 38 of the 'Sniffer' report¹¹⁸, where it is suggested that one of the means of minimising the propensity for amenity impacts is to locate the proposed landfill away from receptors. Curiously the attention of the Inquiry was not drawn to page 37 of the same document which identifies a suite of measures of which location is but one. The others comprise:
- Waste delivery routing;
 - Size of operational cells;
 - Flank Management;

¹¹⁷ FCC/3C appx 2 sub-appx C

¹¹⁸ CD9.4

- Leachate Drainage Blanket;
- Excavation into old wastes;
- Waste (daily) cover.

- 6.89 Whilst there would be some very limited disturbance of old wastes in order to minimise the geographic extent of the proposed development, it would be minimal as operations would involve overtipping of old waste rather than excavation of it. Disturbance would be limited to accidental excavation in the surface wastes during the stripping of the covering membrane and regulating soils. In all other respects the measures set out in the Sniffer report are all being addressed as part of the existing operations and are being taken forward as part of the proposals.
- 6.90 Thus in an 'appeal allowed' world, the traffic accessing the site will be subject to a suitable routing arrangement to minimise impacts. Ironically that routing approach had been undertaken successfully in 2012 but was discontinued at the request of a Councillor, for reasons which remain opaque.
- 6.91 The operational elements of the treatment of waste once tipped are all being undertaken at present on site in any event, but the introduction of the Odour Management Plan (OMP) will provide an extra degree of regulatory control for the first time by the Council.
- 6.92 Further the availability of a vast quantity of dredgings from the former Ship Canal provides a ready source of daily cover, such that there is no constraint upon the use, extent and availability of daily cover.

Complaints

- 6.93 As the first week of the Inquiry progressed, and the very modest aims and extent of the Council's technical case on matters such as odour, dust, particulates and the like became clear, the more the stress that was placed by the Council upon the making of complaints by local people. It is therefore necessary to deal with this topic in a little detail, rather than being seduced by a more superficial assessment of the simple number of complaints.
- 6.94 Before looking at the complaints data in a little detail, some general points and themes can be addressed. The opening submissions for the Council took a point about the EA's classification of the complaints relating to the site, querying how it could be found that the complaints fell into category 3 if they were not routinely investigated and site visits were not often made. That is a poor point, for three reasons:
- (i) It is an uncontroversial concept of the planning system that it proceeds on the basis that regulators under other statutory regimes have performed and will perform their duties reasonably;
 - (ii) In any event, Mr Smith for the Council accepted that the authority had not made any representations to the EA that it was not performing its tasks properly or that it ought to change the rating given to the appeal site so far as compliance with the operator's duties were concerned; and

- (iii) It can be seen from the EA inspection records that they do regularly attend the site and the majority confirm that Agency officers experienced no off-site odour
- 6.95 Further, when the Council refers to verifying complaints, it means no more than simply assessing whether an odour was detectable, and often 'detected' at a different location and/or date from the complaint¹¹⁹. It does not follow that, on the relatively small number of occasions that odour complaints have been verified, anyone has formed a view that those detectable odours had any effect upon anyone's amenity at all, still less an effect of a particular degree. That diminishes the weight to be attached to the simple fact that a complaint has been verified, in those relatively few instances where the Council can point to verification.
- 6.96 The Council also claims that the odours from the sewage treatment works and from the landfill can readily be distinguished. That is not correct, as will be shown later.
- 6.97 Mr Smith referred to a population profile report in his evidence, pointing out that the area containing the landfill has a lower rate of happiness than other parts of Warrington. That evidence is useless because the report referred to¹²⁰ sets out no reasons at all for this finding and does not even begin to claim that the landfill is the cause, a cause or in any way connected with that rate of contentment. There could be a whole host of social, economic or environmental factors at play, about which the reader is entirely uninformed.
- 6.98 The site operator has raised the issue that complaints have not been passed onto it from the Council either at all or sufficiently quickly to allow for meaningful investigation¹²¹. Local people have made the same point¹²². As shown below, complaints are still not passed on quickly or at all. This seriously hampers the operator's ability to investigate complaints and to defend itself against mistaken or malicious complaints.
- 6.99 Mr Smith also sets out the importance of verifying complaints and contends that complaints are often sent to the Environment Agency having been validated and that a large proportion are validated¹²³, though in cross-examination he rowed back on the last point, stating that 'some, well many' are validated. As is shown below, these contentions are incorrect.
- 6.100 Mr Smith also accepted that verification of complaints needs to be prompt, because of the intermittent and transient nature of odours. Again, it will be shown below that prompt verification is very much the exception, rather than the rule.
- 6.101 For reasons which are understandable, but which do not help in deciding what weight can be attached to the complaints, the data have been

¹¹⁹ Mr Smith in cross-examination

¹²⁰ WBC/6C p86 (Health and Wellbeing Lifestyle Survey 2013)

¹²¹ FCC/4C vol 1, tab 8, p278 and oral evidence

¹²² Ibid p236 and oral evidence

¹²³ WBC/6B paras 4.6-7, 4.22 & 4.26

anonymised. For many of them, there is no locational information available at all. For others, there are postcodes. That means that it is not possible to form any reliable view about the number of complainants. One cannot tell, for example, whether there is a small number of repeat complainants or a larger number of people who complain with less frequency. Mr Smith said that there are repeat complainants and the data does contain instances of references to people who have complained more than once.

- 6.102 However, the inquiry did learn from Mr Hardie that between April 2009 and February 2011 a total of 70 complaints were made to the EA. Of those, 52 (74%) were from one man, a Mr Fance, who lived about 1.5km from the appeal site. His sad death in December 2012 cannot be an explanation for the change in the making of complaints in 2013, because the complaints stopped at the end of January 2013 when the planning application was refused and recommenced in August 2013 when the appeal was made. The Council's closing submissions did not grapple with this point; in particular they pointed to evidence that there are not just a handful of people complaining. This is contrary to evidence regarding Mr Fance.
- 6.103 There are three sources of complaints data: those made to the Council, those made to the EA and complaints information in the FCC odour logs. These overlap to some degree, in that the same complaints can appear in up to all three sources of data.
- 6.104 Dealing first with the detailed data from the years 2012 to 2013¹²⁴, and beginning with those made to the Council, analysis shows that the claims made for the robustness of the data and the rigour with which complaints are investigated are simply not correct
- 6.105 The Council received a total of 59 complaints (highlighted in yellow boxes in column 2 of the summary sheets)¹²⁵. Of those, only 9 can be substantiated as being complaints about Arpley landfill¹²⁶. The source of 4 of the odours complained about was shown not to be the landfill. But those complaints show a number of other features:
- (i) 34 of them reveal that the Council took no steps to investigate the complaint itself¹²⁷. That degree of a lack of investigation by the Council is not acknowledged let alone grappled with by the authority in its closing submissions. Its reference to lack of investigation of complaints is entirely directed at the EA. The extent of the Council's own lack of investigation is simply ignored;

¹²⁴ Summary in CD9.18; the Council also produced its own version in A2 format at CD9.21 pp.10-28.

¹²⁵ The numbers at the beginning of each of the following sub-paragraphs aggregate to a sum greater than 59, because some of the complaints exhibit more than one of the features dealt with

¹²⁶ CD9.18 p53, table in the middle of the page

¹²⁷ CD9.21 master sheets lines 4, 8, 11, 17, 19, 30, 35, 45, 46, 52, 65, 73, 78 [smell from vehicle], 81, 87, 95, 109, 122, 126, 138, 153, 165, 228, 230, 243, 244, 262 [vehicle smell], 275, 279, 301 [about 'deep chemical gas' smell], 310, 319, 323

- (ii) 46 of the 59 complaints were not passed to the site operator by the Council¹²⁸, a point not acknowledged or grappled with by the authority;
- (iii) 6 of them show that when the Council officer investigated, he or she did not go to the location where the complaint originated from¹²⁹ or there are no details of the location visited¹³⁰, a point not acknowledged or grappled with by DMQC in closing;
- (iv) 3 of them show that Council's officers investigated at times materially later than the time or date when the complaint was made or the date to which the complaint related¹³¹, a point not acknowledged or grappled with by the Council in closing;
- (v) 11 of them show that the Council's investigations were fairly prompt but did not support the complainant as to the existence¹³² or strength¹³³ of any odour a point not acknowledged or grappled with by DMQC in closing;
- (vi) 8 of them show confusion as to the reported origin of the odour¹³⁴;
- (vii) 4 of them show that the complaint was about a source which was not the landfill, but which have been ascribed to the landfill by the Council officer with no sound basis for so doing¹³⁵. This was ventilated in evidence but no attempt made by the Council to deal with it in closing; and
- (viii) 8 complaints were investigated by FCC and found no odour, another source for the odour or were otherwise not attributable to the landfill¹³⁶.

6.106 There is a further interesting feature about the 2012 and 2013 complaints made to the Council. The bar chart¹³⁷ shows a complete absence of complaints after January 2013, when the Council refused the planning application, and before the end of July, when this appeal was made. The Council themselves point out that may be connected to the planning process. That is a point which undermines the robustness of the complaint data. It is indicative of a desire to lodge objections to the planning application and appeal, rather than a genuine expression of an ongoing problem which interfered with amenity. Mr Smith provides direct evidence to support that submission. He sets out an email¹³⁸, clearly sent to more than one recipient in, it appears July 2013 (that is, at the end of the 'quiet

¹²⁸ Master sheets lines 8, 11, 12, 24, 30, 34, 35, 45, 46, 52, 56, 65, 68, 69, 73, 78 [vehicle smell], 87, 90, 95, 103, 109, 122, 126, 137, 138, 146, 153, 159, 165, 170, 178, 228, 230, 242, 243, 244, 262 [vehicle smell], 275, 279, 301, 310, 319, 323, 330, 333, 342

¹²⁹ Master sheets lines 69 [and too late], 146, 178, 179

¹³⁰ Master sheets lines 24, 170

¹³¹ Master sheets lines 68 [next day], 69 [and wrong location], 137 [no odour]

¹³² Master sheets lines 12, 34, 59, 87, 330 [no comment on inspection findings]

¹³³ Master sheets lines 103, 137, 179, 181, 333 [compare entry to WBC/6B p23 re complaint 167280], 343 [reported as very strong, cf WBC/6B pp.24-25 which found very faint odour]

¹³⁴ Master sheets lines 12, 65, 68, 81, 95, 109 [sickly chemical smell reported], 154, 170

¹³⁵ Master sheets lines 56 [read with WBC/6C p329], 153, 165, 179

¹³⁶ Master sheets line 4, 19 cf 20, 56 cf 58, 59, 65 cf 67, 69 cf 71, 81 cf 85, 154

¹³⁷ CD9.21 p53

¹³⁸ WBC/6B bottom of p26

period' shown on the bar chart¹³⁹). This points out that the operator had referred to the small number of complaints and then says:

'In a nutshell, we are all making their lives easier by not reporting.....It only takes a minute, let's not make their lives easier!'

- 6.107 That demonstrates that complaints were being actively solicited. The invitation to complain is not tempered by any reference to a need for complaints to be genuine or for any effect on amenity or well-being to exist. The express motivation for the solicitation is to make the operator's life harder.
- 6.108 Nor is it the case, as claimed by the Council during the course of the Inquiry, that there is only one example of this. Mr Smith was cross-examined about another instance. In June 2013 someone emailed a number of people with a message including the following¹⁴⁰:
- 'My point though, is that I want to ask you all to contact the above two phone numbers whenever you smell anything and report it.'*
- 6.109 This again suggests that complaints were being actively solicited in respect of all and any instances of odour, regardless of their effect. The point about soliciting of complaints is entirely ignored by the Council in closing and no attempt was made to deal with it.
- 6.110 As for the complaints made to the EA in 2012 and 2013, only 5 of the 170 were substantiated by the Agency as coming from the landfill. The Council does not dispute this summary, indeed Mr Smith's figure for complaints validated by the Agency is 1.
- 6.111 However, the Council mis-characterises this evidence. Repeated reference was made to the Agency's site visits. The visit on 21st August 2012 has been referred to as an example of a case where on-site practices caused odours which provoked complaint. The problem identified on site, whilst a breach of the Environmental Permit and described as 'a considerable source of odour' did not produce off-site effects. That is clear from the Agency's report of the site visit which records an off-site investigation near Ridley Drive, Malpas Drive and Snowberry Crescent, with the only smell which was noticed being a 'faint sewage odour at Ridley Drive', not a landfill odour. The original of the report also expressly says that 'No other odours were noted' - words which for some reason do not appear in the Council's summary¹⁴¹. Some of the complaints made on the same date as this site visit, to which the Council referred, also refer to sewage smell¹⁴² or were not investigated by anyone other than by the Agency with the result just noted¹⁴³, and the FCC investigation noted sewage odour¹⁴⁴. The Council deals with this matter in closing but persists in pursuing the same erroneous inferences from evidence.

¹³⁹ CD9.18 p53

¹⁴⁰ WBC/6C p28

¹⁴¹ CD9.21 p8

¹⁴² CD9.21, master sheets line 81

¹⁴³ Ibid lines 81, 82, 83 and 84

¹⁴⁴ Ibid lines 85 and 86

- 6.112 The other 2012 instances of odours being mentioned by the Agency were odours on-site only (24 Feb & 30 April 2012) or faint odours off-site which did not reveal any non-compliance with the permit (June 2012).
- 6.113 The FCC odour logs summary shows¹⁴⁵ that of the 127 complaints made to or brought to the attention of the operator, only 1 could be substantiated as coming from the Arpley landfill. The others were positively not attributable to Arpley or were not investigated or could not be investigated because the complaint was not referred to the operator with sufficient speed.
- 6.114 The problems identified with the complaints made to the Council are not confined to the 2012-13 period. Analysis of the pre-2012 complaints data shows that similar issues arise. 16 examples were put in cross-examination of Mr Smith and display a similar paucity of investigation by the Council, of passing complaints on to the operator, of confusion as to the source of the odour, of investigation not supporting the complaint made and so on. A few striking examples may be noted:
- (i) Complaints have been logged as attributable to the landfill when evidence shows that not to be the case:
 - The complaint on 21.9.10¹⁴⁶ was logged as referable to the landfill when officer investigation found a different type of odour and the complainant was reporting changes to the odour between sewage odour and landfill odour;
 - The complaint made on 25.11.11¹⁴⁷ referred to sewage smell and officer investigation found no odour of any kind, and yet the complaint was recorded as attributable to the landfill; and
 - The complaint made on 28.11.11 of 'acetone type chemical smell' was logged by an officer as landfill gas after detecting a 'very slight' landfill gas odour;
 - (ii) The Council has recorded that 'there is a lot of confusion on the types of odour' that are complained about to the extent that site visits to the landfill and the effluent treatment works were offered¹⁴⁸, and that complainants were unable to distinguish between odours from landfill and muck spreading¹⁴⁹ or sewage¹⁵⁰. In these circumstances it is quite surprising that the Council's advocate has felt it able to make the submission when dealing with the two sources that they can have the same characteristics. The evidence points to the precise opposite results; and
 - (iii) An example of a complaint made on the basis of landfill gas was investigated by the operator and found to be a chemical odour around Unilever¹⁵¹ or a 'soap type' odour¹⁵².

¹⁴⁵ CD9.18 p47

¹⁴⁶ WBC/6C pp.210-211

¹⁴⁷ Ibid pp.292-293

¹⁴⁸ Ibid pp.218-219 (complaint made on 9.11.10)

¹⁴⁹ Ibid pp.278-279 (complaint made 4.8.110)

¹⁵⁰ Ibid pp.288-289 (complaint made 17.11.11)

¹⁵¹ Ibid pp.234-235 (complaint made 6.1.11)

The features of complaints data to which attention has been drawn are far more extensive than those cited in the Council's submissions (para 7.36 below) would suggest.

- 6.115 The complaints data is detailed and pays careful reading. The conclusion to be drawn from this detailed review of the complaints data is a simple one. It is simply not safe to use the making of complaints to the Council, the Agency or the operator as a basis for concluding that the landfill operations can be shown to have a materially harmful impact upon the amenity of local people to such a degree as to mean that the appeal should be dismissed. When the complaints data is properly understood, it can be seen that the Council's factual case on odours is as weak as its technical case on the same subject.

Other Pollutants

NO_x

- 6.116 It should be a compulsory part of the training of any expert witness presenting evidence at a planning inquiry to stand back and to ask 'so what?' when they view their conclusions. Unlike Dr Gibson, Mr Talbot has not sought to present modelling of his own to substantiate the reason for refusal, nor has he sought to explain how the reasons for refusal might be warranted on the basis of the appellant's evidence. Rather he has limited himself to critiquing the evidence of the appellant and explaining certain technical shortcomings within it.
- 6.117 In his written evidence it seemed to be suggested that he concluded that his criticisms meant that Ms Hawkin's work was so flawed that no reliance could be placed upon it. Happily he readily accepted that that was not his contention when pressed in cross examination. Rather his point, he explained, was that reliance could be placed upon her work but that a certain caution must be applied to her conclusions. What that presumably means is that the decision maker can place weight upon Ms Hawkins conclusions but has to be mindful that modelling is an imprecise exercise.
- 6.118 His principal point was that the measurements taken of NO₂/NO_x in Warrington between 2010 and 2012 did not reflect the reducing NO_x which is assumed as part of the 2013 Defra Vehicle Emissions Toolkit used to model NO_x. Thus, it was suggested it might have been better to hold the vehicle emissions of NO_x at 2010 levels when modelling in the base year of 2014.
- 6.119 The first and clearest response to that contention is that Ms Hawkins has not just referred to the 2009 Defra guidance. Rather she used the more up to date technical information issued by Defra in 2013, which takes full account of the different composition in the national vehicle fleet – ie a greater proportion of older cars and a larger proportion of diesels as a result of the difficult economic circumstances, and which is widely believed to have led to the fact that NO₂/NO_x has not reduced as expected. The use of the 2013 released information effectively supersedes interim 2012

¹⁵² Ibid pp.246-247

guidance which suggested holding the vehicle emissions of NO_x for some vehicle types at the base year of the assessment.

- 6.120 The second point in response is that Ms Hawkins has used the only toolkit available to undertake such modelling. That is not a personal invention but is issued by Government and is not unreasonably presumed to be fit for purpose absent evidence to the contrary. Mr Talbot's contention that there is evidence to the contrary is based upon the outturn of monitors in a very limited geographical part of Warrington, from which he infers that the composition of the vehicle fleet locally may be different to that nationally. With respect that is implausible, and a conclusion based upon a far too narrow data set.
- 6.121 If the LPA had truly wanted to assert such a proposition then it would have needed to look at a wider geographic area (such as the whole town) which it simply has not done. As it is, it must be remembered that, whilst the vehicle component of NO₂/NO_x is significant, it is not the most significant and that other factors such as the effect of major power generators such as the nearby Fiddlers Ferry power station impact far more upon the background NO₂/NO_x. In this case Ms Hawkins speculates that the proximity to the main West-coast railway station of Warrington Bank Quay may also have affected the results.
- 6.122 If a case was properly to be made to displace the only nationally approved toolkit, then Mr Talbot's work falls a long way short of the sort of compelling evidence that would be needed.
- 6.123 The third point is that the baseline against which Mr Talbot judges the worst case effect is in any event an unreal one – ie that vehicles would no longer be accessing Arpley at that point. In reality, even if this appeal is dismissed then there is a high probability that heavy goods vehicle traffic will continue to need to access Arpley in order to achieve a proper restoration for some time to come. Thus Ms Hawkins' model in 2014 represents an obviously robust scenario. That is not simply because tipping has continued but also because under the 1986 consent restoration would have been continuing. Therefore, the baseline is very robust.
- 6.124 The fourth point is the 'so what?' one. That is to say, where does Mr Talbot's work actual get him? On the basis of his conclusions he was not able to say that any of the impacts set out in Ms Hawkins' tables were wrong¹⁵³. That is to say that the impacts are in practice not disputed. Thus by 2025 every impact would be 'negligible' or less, and in 2014 every impact would be 'slight' or less with one exception.
- 6.125 That one exception is at the junction of Barnard St and Old Liverpool Road where there would be a 7.43% increase in the maximum annual mean concentration of NO₂ (relative to the assessment level) and where the guidance rates the change as medium with a moderate adverse impact. However that does not mean that this is of itself objectionable. Indeed this is the junction through which traffic from the proposed Forrest Way Industrial Estate extension would pass in significantly greater numbers

¹⁵³ FCC/3I tables 8.1 & 8.2

were that permission were taken up. Moreover the effect would be for only a limited time since, as background NO₂ levels reduce between 2014 and 2025, within a comparatively short period the effect will similarly reduce from moderate down to the projected negligible level in 2025. And it will not be forgotten that the effect is moderate by comparison to the assumption that there will be no HGVs on the road generated by Arpley by that point – which as noted above is plain wrong.

- 6.126 Finally it is worth noting that, whilst the effect of the proposal would be to produce additional traffic, some of which will contribute to overall NO_x levels within Air Quality Management Areas (AQMA), the overall scale of that addition should not be forgotten. Ms Hawkins' evidence indicates that:

*'With regard to the Parker Street AQMA however only 27 Appeal site HGVs (resulting in 54 two way movements) are expected in 2014 to travel via Liverpool Road North (A5061) each day, and hence potentially passing close to the Parker Street AQMA. This forms 0.8% of the HGV flow and 0.22% of the total traffic flow of 24,765 AADT and hence cannot be considered to be significant.'*¹⁵⁴

In reality the effect of the proposal on the overall air quality of the area is very limited indeed and could not conceivably warrant the dismissal of this appeal.

PM_{2.5} & PM₁₀

- 6.127 In opening and at the outset of Ms Goodall's evidence, it was made clear for the Council that this issue is not determinative and that it could not of itself warrant the dismissal of the appeal. With respect that is an entirely realistic approach which is entirely reflective of the limited amount of evidence produced in this case.
- 6.128 Unlike the position in respect of NO_x there is no AQMA which has been declared based upon concerns arising from the emission of PMs. Also, like NO_x, the position of the LPA is not that there is actual evidence that there is a problem which will arise in respect of PMs but rather that it does not consider that the appellant has proven that there would not be a problem. However, when one reads Ms Goodall's evidence carefully, it is little more than a technical critique of the modelling and explains how it is that improvements might be afforded to the approach. These are all unequivocally addressed in Mr Hawkins' rebuttal¹⁵⁵. It is emphatically not asserted that the LPA has sought to undertake work of its own which substantiates the reason for refusal.
- 6.129 Thus the only technical work which models the issue of PMs is that of Ms Hawkins. It was not alleged by Ms Goodall that her limited criticisms mean that reliance could not be placed upon the work, which therefore stands for all practical purposes uncontradicted.

¹⁵⁴ FCC/3H para 2.3.6

¹⁵⁵ FCC/3H

- 6.130 The conclusions of that work are most conveniently set out in tables by Ms Hawkins¹⁵⁶. These identify that in each of the three routing scenarios, for both PM₁₀ and PM_{2.5} and both at 2014 and 2025, the magnitude of change would be 'imperceptible' and the significance of the resultant effect would be 'negligible'. In short the issue of impacts from particulate matter is demonstrably not a matter that ought to have been ever raised against the proposals.

Dust & mud on the road

- 6.131 To replace the existing wheel wash, which is a wheel-bath type, requires the grant of planning permission. From the time of the application back in 2011 the intention of the appellant has been to bring forward an improved wheel wash so as to reduce reliance upon the use of the street sweeper, which is necessarily only effective if mud has been deposited on the highway in the first place. It has long been recognised that better approach is to minimise mud on vehicles at the point that they leave the site.
- 6.132 Thus, as described by Mr Blake¹⁵⁷, it is proposed that in the event that the appeal is allowed that the wheel wash will be replaced by one which involves not simply driving lorries through a tank of water, but through a wash which also involves jet washing the vehicle. Such a facility will in the opinion of the appellant as well as Ms Goodall, fully resolve this concern.
- 6.133 With the benefit of hindsight it is perhaps regrettable that the consent for this facility has been tied up with the complexities of the planning process at Arpley. Nonetheless this provides a clear and complete solution to this issue which will also result in a substantial amelioration of fugitive dust arising from such depositions on the roads around the appeal site.

Highways & Transportation Issues

- 6.134 There is no reason for refusal which relates to highway capacity or safety – indeed there is agreement that the highway network has the capacity safely to accommodate the traffic from the appeal proposal. Nevertheless, highways and transportation issues are relevant because Mr Hughes' evidence provides the basis for assessment of numbers and distribution of development traffic which, in turn, informs the assessment of issues relating to dust, particulates, NO_x emissions and odour.
- 6.135 The appellant's highways' evidence, given by Mr Hughes¹⁵⁸, ended up being entirely unchallenged by the Council. To some extent that is understandable, given that the focus of the Council's concerns about emissions of various kinds, but there are some matters about which Mr Hughes gives evidence, with which Mr Rowland disagreed but which went entirely unchallenged when Mr Hughes gave evidence.
- 6.136 The appellant's assessment of traffic generation was prepared on the agreed basis that the no-scheme situation would be a closed landfill,

¹⁵⁶ FCC/3I tables 8.3 & 8.4

¹⁵⁷ Oral evidence

¹⁵⁸ FCC/2C & FCC/2E – 2I inclusive

generating no traffic. In the real world that would not be the case because of the need to provide imported materials to achieve satisfactory restoration of the site in the event that this appeal is dismissed. When this issue was first ventilated at the Inquiry, the Council seemed to be concerned that the appellant was seeking to resile from the Statement of Common Ground¹⁵⁹ or to introduce detailed new evidence. That is not the case at all. The point was made to emphasise that the appellant's assessment of the traffic generation of the appeal scheme, and the attendant effects of emissions of various kinds, is plainly overstated and thus conservative. The Council has not sought to argue that that is not the case.

- 6.137 Even with the overstated effects of allowing the appeal, it is important to note that the Council's own advisors, Atkins, considered that the effect of removing landfill-related HGV traffic from the local roads which have been discussed at the Inquiry might not be perceptible and might even lead to an increase in the perceived effects of the other HGV traffic which remains¹⁶⁰.
- 6.138 The Council also argues that Barnard Street, Forrest Way and the lengths of Liverpool Road and Old Liverpool Road east and west of the Barnard Street junction are not appropriate for use by Heavy Goods Vehicles. That contention does not stand up to scrutiny.
- 6.139 First, those roads cannot fairly be described as residential in nature. They provide access to substantial amounts of commercial and industrial units. Mr Rowland agreed that the list set out in Mr Hughes' Technical Note No. 1¹⁶¹ was accurate. It is to be noted that that list is of existing premises and so does not include the proposed Forrest Way Business Park.
- 6.140 The Council granted outline planning permission in 2007 for a substantial business park at Forrest Way¹⁶², which would take its secondary access from that road and its primary access from Barnard Street. All HGV traffic arriving at and leaving the Business Park would therefore have to use Barnard Street and Liverpool Road. The development is sizeable, comprising 3,230 m² of B1 office space, 6,937 m² of B1 Research and Development or light industrial use, 2,680 m² of B2 general industrial use and 9,477 m² of B8 use.
- 6.141 A condition was imposed to limit the size of the B8 units to no more than 4,465 m², apparently for the purpose of reducing the amount of HGV traffic to and from those units. However, Mr Hughes' evidence, to which Mr Rowland gave no reasoned opposition, was that the limitation might have the effect of increasing the numbers of HGV movements. Mr Rowland, somewhat surprisingly, had not looked at the TRICS database to check what Mr Hughes was arguing. Mr Hughes' evidence on this topic ought therefore to be accepted. The Forrest Way Business Park could generate over 310 two-way HGV movements per day between 0600 and 2000

¹⁵⁹ CD4.6

¹⁶⁰ CD3.3 p56 paras 12.3 & 12.4

¹⁶¹ CD3.10 p3, para 2.1.3 bulleted list

¹⁶² WBC/2B paras 2.8 & 2.9

hours. Of course, that traffic generation would be permanent over the life of the Business Park and not time-limited in the way that traffic generation from the appeal scheme would be.

6.142 The Forrest Way Business Park permission is instructive for four reasons:

- (i) The LPA must have concluded that the additional HGV traffic on these local roads was acceptable;
- (ii) Those views were formed in spite of the proximity of the Trans-Pennine Trail;
- (iii) The LPA must also have accepted that HGV traffic using the highways from 0600 hours was acceptable; and
- (iv) Those views must have been formed in the context that the new HGV traffic could acceptably co-exist with traffic to and from Arpley landfill until the landfill closed.

6.143 Mr Rowland takes a point about the accessibility of the Arpley Landfill site. That point was not pursued by the Council with Mr Hughes. There is no element of any reason for refusal which asserts that the appeal site is remote from waste arisings and therefore in an unsustainable location, or any other point similarly expressed. Mr Rowland referred to a 2004 study for the former ODPM '*Planning for Waste Management Facilities: A Research Study*' in connection with this and other points. He did so without drawing attention to that document's status. It is not policy or guidance and the document contains an express warning to that effect¹⁶³.

6.144 The historic information about the sources of arisings disposed of at Arpley shows that the site is well located to them¹⁶⁴. The main sources are or have been Halton, Liverpool, Greater Manchester, Warrington and Local Authority Collected Waste from Merseyside. Arpley is clearly well located to serve those sources of waste.

6.145 That submission can be supported by what is set out in the revised Submission Draft of the emerging Warrington Core Strategy. The draft document sets out in the clearest of terms just how well located and accessible Warrington is:

*'Warrington lies at the hub of the regions communication network. The M6, M56 and M62 motorways intersect within the borough, providing good access to all parts of the region and beyond...This connectivity has enabled the borough to develop a strong resilient economy.....'*¹⁶⁵.

6.146 It is a different matter to say that there are limited options for gaining access into the Arpley site itself. The reasons for refusal set out the alleged harmful effects of accessing Arpley via the local road network, and the specific issues are dealt with elsewhere in this case.

¹⁶³ WBC/3C, top of p6

¹⁶⁴ FCC/2G figures MPH7a (input origins by vehicle numbers) & 7b (input origins by tonnage)

¹⁶⁵ CD5.3 p13 para 2.11

- 6.147 Mr Rowland also criticised the Alternative Access Study written by Mr Hughes¹⁶⁶. However, those criticisms were not put to Mr Hughes at all. The position is that the Study was a high level study dealing with issues of cost, land ownership and planning status that would arise if alternative access into Arpley was to be provided. Mr Rowland correctly accepted that the cost of a means of access was material to considering its planning merits. The Study did not purport to be a full environmental assessment of the options, which Mr Rowland accepted would only be prepared if the access option had been found to be realistic in the higher level work.
- 6.148 All of the alternative access options had significant problems with combinations of land assembly, planning and costs issues and were shown to be unattractive in the high level study.
- 6.149 Rail access and water-borne access to Arpley are not presently feasible because the relevant contractual arrangements for the transportation of waste by such routes are not available. But the operator has not ruled those means of transportation out of consideration should such contracts become available and feasible from the operator's viewpoint.
- 6.150 It is instructive to note that despite all his criticism of the Alternative Access Study, Mr Rowland does not suggest that any of the alternative means of access considered ought to be pursued or would be viable or practicable. It is an empty exercise of criticism for its own sake.
- 6.151 In fact, Mr Rowland's evidence¹⁶⁷ is entirely built upon unsupported assertion. When his evidence is considered in detail, it can readily be seen that the contention of significant harm being created by the appeal proposal is entirely unsupported by any reasoned evidence at all¹⁶⁸. It is a true non-sequitur.
- 6.152 Further still, it would not be enough for Mr Rowland to point to some harm. He accepted in cross-examination that planning permission should be refused for highways reasons if residual effects would be severe¹⁶⁹. Mr Rowland does not even claim that would be the case, still less provide evidence of such a state of affairs.
- 6.153 Mr Rowland provides no assessment of the environmental impact of the development traffic. Insofar as those environmental effects are ones addressed by the Council's other witnesses, that is understandable. However, there are other aspects of environmental impact of types, which Mr Hughes assesses¹⁷⁰ but which Mr Rowland does not.
- 6.154 When Mr Rowland was cross-examined on this point, he sought to appropriate Mr Hughes' evidence to make his point for him, pointing to the sole example where Mr Hughes considers that there would be an effect of more than negligible or slight significance. But that is the only example of such an impact and, of course, has to be read in the light of all of the

¹⁶⁶ FCC/2C appx MPH4

¹⁶⁷ WCC/2B

¹⁶⁸ WCC/2B section 4, particularly para 4.42

¹⁶⁹ National Planning Policy Framework (CD6.1) para 32

¹⁷⁰ FCC/2G section 5.2

other aspects of the environmental assessment conducted by Mr Hughes. There has been not one word of criticism from the Council about the scope, methodology or outputs of that assessment and it can therefore be safely relied upon.

- 6.155 In fact, the highest that Mr Rowland goes is to argue that the traffic distribution set out by Mr Hughes and built upon by Ms Hawkins, ought to be sensitivity tested. Three points ought to be made about Mr Rowland's evidence in this regard:
- (i) There is no evidential basis whatever for the 33% / 66% split that Mr Rowland advocates;
 - (ii) None of his colleagues actually mention, let alone use that distribution in their evidence; and
 - (iii) The appellant has used Mr Rowland's unsupported and unreasoned alternative distribution and tested its impacts on the issues covered by Ms Hawkins¹⁷¹. It makes no difference to the outputs of the assessment.
- 6.156 Mr Rowland also took a point in his evidence that the use of the traffic distribution which existed in 2010 to assess the transport impacts of the proposal was inappropriate given (i) the change in patterns of arisings since 2010 and (ii) the differences between that distribution and the distribution inherent in the patterns of arisings and disposals set out in Mr Roberts' appendix NR6¹⁷². That point misunderstands the nature of the two exercises and compares apples with pears.
- 6.157 Of course the pattern of waste arisings would vary over the 12 year period if the appeal succeeds. But the Transport Assessment (TA) has to address the impacts in an opening year and design year on a consistent basis in order to allow for proper and comprehensible comparisons to be made. The 2010 distribution is a perfectly reasonable scenario to use over the life of the whole scheme, not on a month to month or year to year basis, in order to establish the likely transport effects and other effects which depend upon the traffic generation and distribution.
- 6.158 Mr Rowland's evidence also refers to the condition of the highways. That cannot be material to the decision to be made in this appeal, because the pavement condition is a result of inadequate maintenance, not the result of extraordinary traffic. So much is clear from:
- (i) The content of the Atkins Pavement Condition Report, which sets out that deterioration is limited to life expired materials or inadequate street works restoration¹⁷³;
 - (ii) Appreciating that the WBC Public Realm Manager's Report¹⁷⁴ is written on the erroneous basis that the appeal scheme would add more HGV traffic to the highway when compared to the current conditions and yet still concludes that some road lengths are in need

¹⁷¹ FCC/3H section 2.7

¹⁷² FCC/1C

¹⁷³ CD3.5 particularly paras 4.1 - 4.7

¹⁷⁴ CD3.15

of maintenance¹⁷⁵, the present road condition is partly the result of poor workmanship¹⁷⁶ and that a “do-nothing” approach is not appropriate¹⁷⁷;

- (iii) The fact that the Council, as highway authority, has never brought proceedings pursuant to section 59 of the Highways Act 1980 to recover the expenses of dealing with extraordinary traffic; and
- (iv) The fact that Counsel to WBC has revealed¹⁷⁸ that he has advised the authority that it has no basis for seeking to recover maintenance costs from the Appellant.

6.159 Finally, Mr Rowland raised the prospect of imposing a condition requiring an average daily vehicle cap as well as or instead of the maximum cap. That idea can be afforded no weight, because Mr Rowland disavowed any intention or ability to advocate any particular figure for such a cap or any period over which it should be calculated. Nor has he claimed that such a cap is necessary, let alone established why that is the case.

6.160 Ultimately, the totality of the Council’s highways evidence leads absolutely nowhere.

Conclusions

6.161 For all of the heartfelt concerns expressed eloquently and passionately by some of the local residents, the decision maker must inevitably weigh the planning balance dispassionately and in the public interest. In this instance it is plain that there is a substantial need for the proposed development which more than outweighs the comparatively limited impacts. The appellant places particular reliance with regard to need on the strong letter of support by MEAS on behalf of all the Merseyside Authorities¹⁷⁹, the recent supportive letter from Halton Borough Council¹⁸⁰, as well as supportive letters from Cheshire West and Chester Council¹⁸¹. Together these provide powerful support for the conclusion that in terms of need the appellant is right and the Council is wrong.

6.162 That is not to say that the concerns which have been expressed by third parties are of no moment, rather that properly analysed there is no reason to consider that the site will not be properly managed, and that subject to the imposition of the proposed conditions such impacts will be limited, and well within the bounds of acceptability.

6.163 Overall, there is not a proper basis to withhold consent for this regionally important scheme, and the appellant accordingly invites the Secretary of State to allow this appeal.

¹⁷⁵ Ibid p4

¹⁷⁶ CD3.15 para 8.4

¹⁷⁷ Ibid para 10.10

¹⁷⁸ Oral submission by David Manley QC

¹⁷⁹ CD9.19

¹⁸⁰ CD9.22.1

¹⁸¹ CD9.22.2; FCC/1C appx NR10

Appellant's post-Inquiry representations re. Planning Practice Guidance (PPG)

- 6.164 This guidance was published after the close of the Inquiry. Some of the categories within it are irrelevant to the appeal proposal¹⁸². Others relate largely to procedural matters rather than to the substantive issues in this case¹⁸³.
- 6.165 The remaining categories, mostly relating to environmental considerations, may be material to the decision on this appeal¹⁸⁴. On the basis of the assessments to which the appeal proposal has been subject, and of the proposed mitigation, it accords with the principles and guidance set out in the PPG¹⁸⁵.
- 6.166 At the same time as publication of the PPG, many previous planning guidance documents were cancelled. Of these, 29 could have been relevant to the appeal proposal and have been referred to in the application and appeal documentation. In many cases the salient guidance within them has been directly replaced in the current guidance. Their cancellation does not materially affect the appellant's case¹⁸⁶.
- 6.167 Publication of the PPG and cancellation of existing guidance has no adverse consequences for the case made by the appellant. In a number of respects the PPG provides continued and reinforced support for the appeal proposal, which remains consistent with national planning policy and guidance¹⁸⁷.

7. The Case for Warrington Borough Council

*The material points are*¹⁸⁸:

Whether the harm by reason of inappropriateness in the Green Belt and any other harm are outweighed by very special circumstances (VSCs)?

- 7.1 In this case the definitional harm is underscored by harm to openness both by reason of the increased footprint of the landfill and by the fact of day-to-day operational activity which is highly visible.
- 7.2 The Council is cognisant of benefits such as gas utilisation, including the added value of energy generation, and filling of the remaining void. However, other sites also have gas utilisation plants (GUPs) so the benefits in this respect are essentially neutral. Similarly, while filling the existing void space would make full use of the infrastructure, the same is true of the sites at Pilsworth South, Gowy and Whitehead. Creation of permissive

¹⁸² FCC/X1 para 2.2.2

¹⁸³ FCC/X1 para 2.2.3

¹⁸⁴ FCC/X1 para 2.2.4

¹⁸⁵ FCC/X1 sections 2.3-2.13

¹⁸⁶ FCC/X1 section 3

¹⁸⁷ FCC/X1 section 4

¹⁸⁸ Based, except as indicated, on submissions for the Council – opening (given orally) and WBC/INQ1

footpaths is a benefit, albeit time-limited, as is extended care of the nature reserve. These benefits carry limited weight.

- 7.3 The key VSC relied upon is need. The burden lies squarely upon the appellant to demonstrate that the benefits of allowing the appeal 'clearly outweigh' harm (NPPF para 88). In this case it must be demonstrated that there a full 12-year need for landfilling of the site. The review/early closure mechanism has no role to play in demonstrating need, save to underline the need for caution in seeking to ascribe certainty to the need case.
- 7.4 The appellant has sought in the appeal to recast the need case promulgated through the Environmental Statement (ES). At the time of the application need was assessed by reference to the sub-regional catchment area as shown on the site location plan in the ES¹⁸⁹. The area included the western part of Greater Manchester but not the northern, eastern or southern parts. In Mr Roberts' evidence¹⁹⁰ at the Inquiry the catchment is taken as the Mersey Belt sub-region, extended to include Rochdale, Oldham, Temeside, the City of Manchester and Stockport. In the s.106 obligation¹⁹¹ the 'locally sourced waste area' is a much larger area that even that assessed by Mr Roberts. These are not modest increases in the catchment area.
- 7.5 The Council has grave reservations about the interim review mechanism in the s.106 obligation¹⁹². It suggests that the long-term need case is speculative, and the concern is that if insufficient waste is being sourced, the operator might simply look further afield to make up the quantity. Moreover, only 95% of the material has to come from the defined area – 300,000 tonnes (not a trivial amount; it is equivalent to more than the arisings from Merseyside and Halton) could be sourced from elsewhere.
- 7.6 No evidence has been adduced regarding all the capacities of all the existing landfill sites in and proximate to the extended area from which waste might be drawn. If the extended area is part of the need case, such information would be necessary. This shows just how flawed the need case is in this appeal.
- 7.7 For understandable reasons, the appellant has overstated the need case. In seeking to argue that Arpley has a specific strategic role to play in meeting Greater Manchester and Merseyside residual waste needs it has advanced a position that is neither articulated in the Greater Manchester Waste Local Plan (2012) (GMWLP)¹⁹³ or the Merseyside Joint Waste Plan (2013) (MJWP)¹⁹⁴, though the latter acknowledges a need to look beyond its boundaries for non-inert landfill capacity. Indeed, insofar as the GMWLP looks to meet Greater Manchester needs within Greater Manchester, the appellant's approach is contrary to a Plan tested and found to be sound within the last two years.

¹⁸⁹ CD1.1 fig 1.1

¹⁹⁰ FCC/1B part II fig 1 and FCC/1C appx NR6

¹⁹¹ CD4.11.2 plan 4

¹⁹² Ibid part VII

¹⁹³ CD5.6

¹⁹⁴ CD5.5

Local Authority Collected Waste (LACW)

- 7.8 In 2011 a key driver for this appeal application was Merseyside, Halton and Warrington LACW.
- 7.9 Matters have moved on. In December 2013 Merseyside Waste Disposal Authority (MWDA) announced that it had procured a 30-year waste resource and recovery project in behalf of the Merseyside and Halton Waste Partnership ('the Sita contract')¹⁹⁵. That purports to take LACW arisings, which currently come to Arpley, from 2016¹⁹⁶ (Mr Roberts suggests full receiving capacity would be achieved in 2017, but that is speculation). Whether it is 2016 or 2017, Merseyside and Halton LACW waste cannot justify a permission at Arpley to October 2025.
- 7.10 Further and in any event, it has been confirmed that the recent refusal of the separate application for a 5 year extension at Arpley is likely to be appealed. It is all but impossible to think of a reason why it would not be. Short-term needs can be considered in that forum. The best evidence the Council has regarding restoration is that Option 3 is preferred by the EA. That would accommodate circa 300,000 tonnes of LACW, ie about one year of Merseyside/Halton's arisings, in any event.
- 7.11 Greater Manchester LACW is contracted to the Ineos RDF facility at Runcorn as from 2014. Ineos has a 100,000 tonnes uncontracted capacity under Phase 1 and a 275,000 tonnes uncontracted capacity under Phase 2. Some of this could deal with commercial and industrial (C&I) waste in Mr Martin's view. The appellant, on whom lies the burden of proof, has not shown that it could not. No evidence has been produced to this end, nor has it been shown that attempts have been made to secure such evidence.
- 7.12 LACW needs at any level, therefore, cannot justify the application. Moreover, the Ineos facility has a potential role to play in addressing some unspecified level of C&I arisings.

C&I Waste

- 7.13 Mr Roberts' NR6 model¹⁹⁷ assumes C&I arisings to be constant to 2025 at 285,556 tonnes pa from Merseyside/Halton/Warrington and 556,630 tonnes pa from Greater Manchester and Wigan.
- 7.14 That approach is unduly pessimistic. National policy is to reduce further the amount of C&I sent to landfill by, for example, further restricting the material than can go to landfill¹⁹⁸. The AEA report¹⁹⁹ assumes a marginal increase in C&I arisings, but expressly states that it makes no assumptions regarding policy initiatives²⁰⁰. Mr Roberts acknowledged in cross-examination that if his approach was right it would amount to 'a measure of failure' of national policy objectives. Given past success in this area, such pessimism is not justified.

¹⁹⁵ WBC/1C appx E

¹⁹⁶ CD9.19

¹⁹⁷ FCC/1C appx NR6

¹⁹⁸ CD7.1 pp. 9, 64 & 65

¹⁹⁹ CD7.6

²⁰⁰ Ibid, eg. pp. 20 & 45

- 7.15 There is some uncertainty as to where C&I waste from Greater Manchester and Merseyside is going at present. The evidence assumes that a lot is going to Lyme & Wood Pits due to competitive gate pricing, and that is probably correct. (It certainly is not going to Arpley which devotes 85% of its throughput to LACW from Merseyside/Halton). Other sites such as Clayton Hall are no doubt playing a part.
- 7.16 However, it cannot be assumed that all Merseyside's and Greater Manchester's C&I residual arisings will look for disposal in those areas. Mr Roberts explained²⁰¹ that proximity and gate price are the key determinants of where C&I goes for disposal. Accordingly, comprehensive data on prices in the extended area now being considered would be required for a full assessment.
- 7.17 Moreover, it could well be that sites outside Greater Manchester and Warrington are well located to take the target arisings. The appellant's evidence does not address this and therefore draws an incomplete and unrealistic picture. For example Mr Roberts agreed in cross-examination that, if clear needs existed, there was no reason that Gowy would not seek an extension of its life and therefore could play a role in relation to C&I waste from the Wirral and parts of Greater Manchester.
- 7.18 To suggest that the aggregate C&I arisings to 2025 will therefore be 841,986 tonnes pa is highly pessimistic, and to suggest that it and some modest LACW will all need disposal in Greater Manchester and at Arpley is simplistic.

Capacity

- 7.19 Pilsworth South and Extension: Viridor (the operator) has stated that the voidspace as at August 2013 was some 6.36 Mm³ less 66,000 m³ identified for stable, non-reactive hazardous waste²⁰². This information post-dates data on its planning application for extension which led the Arpley appellant to conclude a total of some 5.10 Mm³ of non-hazardous voidspace. The most up-to-date information is preferable, but the range is therefore 5.10 – 5.70 Mm³. Its annual input ceiling is 500,000 tonnes pa. Plainly, Pilsworth South on its own can therefore, if necessary, take a significant percentage of the arising assumed in Mr Roberts' appendix NR6²⁰³. The suggestion that it is poorly located to meet Merseyside and Halton's needs is rejected; Liverpool, Sefton and Knowsley are well located in relation to the M62 and from there the M60 and the M66.
- 7.20 Whitehead is the subject of two development scenarios, the second, according to Mr Martin, invited by Greater Manchester Waste to minimise the risk of restoration being delayed if the site is not actively used. Scenario 1 would provide circa 1 Mm³ of non-hazardous capacity. If there really is demand, it is difficult to see why any permitted and allocated space will not be taken up. It was put to Mr Roberts²⁰⁴ that an extended planning permission at Arpley might reduce the chances of the GMWP

²⁰¹ Oral evidence

²⁰² CD8.3

²⁰³ FCC/1C

²⁰⁴ In cross-examination for the Council

allocations being granted planning permission; he agreed that in general terms a reduction in need, for example because they are Green Belt sites, could have that effect. Self-evidently it may also dilute any commercial incentive to bring them forward.

- 7.21 The appellant notes that Viridor say they do not see a need for Whitehead beyond 2020 and that their restoration Master Plan is inconsistent with the allocated site (4 Mm³ capacity) coming forward. Presumably at the present time Viridor do not see needs arising on the scale the appellant does. But matters may change. At the GMWP examination the Inspector must, by definition, have been satisfied that the allocation was deliverable. The reality is that commercial operators will remain flexible. The Arpley restoration proposals such as footpaths may well be contingent upon landfilling not resuming as the Master Plan is not consistent with exploitation of the 4 Mm³ capacity. The appellant is asking for a recent allocation in a recently adopted Plan to be dismissed on the basis of supposition. That is wholly inappropriate.
- 7.22 Pilsworth North has 2 Mm³ of potential capacity. That is seen as a longer-term site, although if needs become pressing it is difficult to see why it would not be brought forward.
- 7.23 The appellant did not include Whitehead or Pilsworth North in the NR6 assesment. Given their allocated status that was surprising. The argument that they do not have planning permission and are in the Green Belt is unconvincing; they have a development plan presumption in their favour and if a clear need for them arises then there is no reason they should not come forward. Need is the justification being claimed for continued landfilling in the Green Belt at Arpley.
- 7.24 Gow has 1.9 Mm³ of unused capacity and it is safeguarded in the Cheshire West and Chester submitted Plan with a presumption in favour of consent²⁰⁵. In this case Mr Roberts very fairly accepted that if needs existed it may well come forward.
- 7.25 The appellant's reluctance in initial submitted evidence to engage with Gow, Whitehead or Pilsworth North tells its own tale. On the face of the figures there is no clear need case for an Arpley extension to 2025. That should be the end of the matter and on that basis the appeal should be dismissed.

The effect upon the living conditions of local residents

- 7.26 Before the Secretary of State could grant permission in this case he would need to be confident that there was no unacceptable risk of odour pollution²⁰⁶.
- 7.27 The fact that the site is governed by the EA permitting regime does not allow the planning decision-maker to avoid fully engaging with the odour issue. The permit requires odour beyond the boundary to be prevented or minimised, but minimisation does not equate with acceptability. Moreover,

²⁰⁵ CD5.10

²⁰⁶ CD9.3 para 2.3

if odour does occur off site but appropriate steps have been taken to minimise the risk of escape then the permit is satisfied²⁰⁷.

- 7.28 Landfills are generally recognised to be a source of odour issues²⁰⁸. The problem is complex because responses to odour are not uniform and people have varying sensitivities²⁰⁹. For this reason it has been suggested that landfills should be 'remote' from sensitive receptors²¹⁰. In this context Ms Hawkins fairly agreed²¹¹ that if no landfill existed at Arpley it would be an unusual place to put one given the proximity of Saxon Park, for example.
- 7.29 However, at the time of the decision to grant planning permission for the Saxon Park development it was not obvious that landfilling would continue beyond 2013. The decision was made on the basis that beyond that date there would only be restoration works at Arpley.

Modelling

- 7.30 It is acknowledged that Dr Gibson's modelling does not demonstrate a likelihood of complaints using the site specific data that Ms Hawkins uses.
- 7.31 However, modelling cannot demonstrate that odour problems have not occurred or will not occur in the future; it can only identify the potential for problems within highly qualified parameters. For example, Ms Hawkins herself states that odour modelling contains 'inherent uncertainty'²¹². The reasons are obvious, for example fresh incoming waste can vary in odour intensity depending on the weather and age of the waste material, the weather will influence emission rates with a wet surface reducing rates and atmospheric pressures can influence dispersion. Similarly, modelling cannot capture odours released during tipping (it was suggested for the appellant²¹³ that this was brief and transitory, but tipping is also fairly constant) and it cannot tell us about the odour released from passing vehicles which is a recognised problem which is ultimately difficult to control.
- 7.32 Another big problem is that modelling assumes that the plant is operating as it should. However, the WBC complaints data sheet²¹⁴ makes it plain that plant failures in ways that can impact on the potential for off-site odours are not unusual.
- 7.33 The modelling in this case has been subject to criticism by Dr Gibson. One of the most obvious concerns is that it was only in the December 2013 exercise that a sample of aged waste was taken. Ms Hawkins accepted²¹⁵ that the sample was limited and there is no evidence to allow the conclusion that it was representative of the aged waste that will be

²⁰⁷ CD9.3 para 2.1

²⁰⁸ CD9.5 p10

²⁰⁹ CD9.5 pp.16 & 17

²¹⁰ CD9.4 p38)

²¹¹ In cross-examination for the Council

²¹² FCC/3H para 4.4.15

²¹³ Counsel for the appellant in re-examination of Ms Hawkins

²¹⁴ CD9.21 pp.8 & 9

²¹⁵ Oral evidence

exposed during re-profiling. None of this makes a positive case to demonstrate a probability of unacceptable odour, but it does indicate that in making a judgment about likely future odour impacts Ms Hawkins' modelling work is of limited value. The evidence of local residents further reinforces the conclusion that there is something wrong with the modelling.

- 7.34 Counsel for the appellant noted that C&I waste would be a significant element of Arpley's inputs and asked if that might have a significant impact upon odour emissions, ie by way of reduction. The answer "potentially" was no doubt not the one he was hoping for. It cannot be assumed that future tipping will be significantly less potentially offensive in terms of odour than past tipping. It is accepted that a large part of the waste would be C&I, but the appellant is seeking through the s.106 obligation to be able to collect waste from a much larger area and there is nothing to guarantee that this would be in this category. Odour is very much an issue.

Complaints

- 7.35 While there is a political dimension to opposition to this proposal, there are also valid planning objections.

- 7.36 The integrity of the complaint history is a key consideration in this case. The appellant has understandably tried to dilute complaints, submitting that:

- (i) In the absence of complainant details we cannot know if the complaint history is driven by a handful of people only.

That is true, but this is a universal problem arising from the necessity for data protection.

- (ii) There is very little in the way of confirmation/verification of the complaints.

That is true, but hardly surprising. The EA do not seek to verify complaints²¹⁶ and the operator has been hampered by late receipt of complaints on a regular basis and, for reasons that are unclear, did not seek to achieve off site corroboration of complaints in 2013 save on a couple of occasions. Another part of the problem is that complaints often occur outside office hours, ie. at weekends when people are at home or early or late when inversions are more common²¹⁷.

- (iii) The Waste Water Treatment Works (WwTW) is a source of odour and probably a major culprit.

It is clear that the WwTW can be a source of odour, which is all the more reason for protecting the public from additional sources of odour. It is, however, fanciful to suggest that as a general rule people mistake WwTW odour for landfill odour. No doubt they can have overlapping characteristics but to suggest that is a normal

²¹⁶ CD9.21

²¹⁷ CD9.21 EA email

misconception is not credible. Members of the public at the Inquiry were incensed at the suggestion that they could not differentiate between odours from the WwTW and from the landfill site.

- (iv) The EA have not raised an odour objection to the appeal.

It would be extraordinary for the EA to object to a planning application in respect of a site they had permitted and were not actively enforcing against.

- (v) The company's daily check does not reveal an off site problem²¹⁸.

As this 'check' consists of a specific employee (we are not told that he has been screened for any insensitivities or sensitivities to odours) driving into work along the same route (presumably with his windows open while inhaling deeply) before tipping has even started²¹⁹, only very limited weight can attach to this exercise.

Complaint history

- 7.37 A complaint history can only tell part of the story. People who complain are often angry and/or upset, but there will be others who, while suffering harm to their amenity, do not complain for a whole range of reasons.
- 7.38 The complaint logs²²⁰ are of interest in that often complaints are clustered - a pattern consistent with specific events causing a problem, which is what one would expect.
- 7.39 The EA's own records are consistent with the clear fact of, and general potential for, off site problems, for example:
- 'A faint waste type odour' noted in Great Sankey while a site inspection revealed poor waste cover²²¹;
 - '... faint transient odours along Forrest Way from both landfill and sewage works sources'²²²; and
 - 'An odour typical of waste was noted during an assessment in October 2012'. This was prior to the site visit, therefore off site. It is also noted that a leachate drain was open 'causing an odour due to the release of landfill gas'²²³.
- 7.40 The point is a simple one. EA visits to the site are rare – apparently about one every two months²²⁴. Yet off site odours or management failures resulting in the potential for off site odours are noted. It is not good enough for the appellant to dismiss events as 'faint' odours on occasions; odours can be fairly transient and so the EA's record is a snapshot in time in respect of an issue which, by its very nature, can be changeable. The fact is, however, that EA officers are, on their limited visits, picking up off site odours. That goes a long way to suggesting that the complaint

²¹⁸ FCC/4B para 8.2.2

²¹⁹ Mr Blake, oral evidence.

²²⁰ CD9.21

²²¹ FCC/4C vol 1, appx NB8 p241

²²² FCC/4C vol 1, appx NB8 p254

²²³ FCC/4C vol 1, appx NB8 p284

²²⁴ FCC/4C vol 1, appx NB8; CD9.21

records are reflective of genuine complaints properly referable to the Arpley landfill site.

- 7.41 Additional corroboration lies with the WBC complaints data sheet for 21st August 2012²²⁵: an EA Inspector notes a site failure which was a 'considerable source of odour'. At the time no off-site odour was noted, but around the day in question there was a clear spike in complaints. That suggests that people are correctly identifying the source of odours and telephoning the EA etc with a justifiable grievance.

NO₂

- 7.42 NPPF Paragraph 124 states that planning decisions should be consistent with the AQMA Action Plan; that is to reduce NO₂ levels to below the annualised average target threshold of 40 µg/m³.
- 7.43 While Ms Hawkins' categories of 'negligible', 'slight adverse', 'moderate adverse' etc apply equally within or without an AQMA, she accepted²²⁶ that a 'slight adverse' impact is, in a planning context, more serious in an AQMA than outside it. It follows that the weight accorded to such an impact in an AQMA must be greater than outside an AQMA.
- 7.44 Ms Hawkins' evidence²²⁷ shows that there are various locations in which the development increases the exceedence over 40 µg/m³, and at Lanes End the development actually causes the threshold to be breached, as opposed to the 'do nothing' scenario. Counsel for the appellant made the point that the 'do nothing' scenario is not realistic given the need for restoration, but in the absence of an approved scheme or trip data in respect of it, it is not possible to make any assumptions as to what the NO₂ outcomes are likely to be. The point he makes, while correct, effectively seeks to pray in aid the appellant's own dilatory conduct in promoting a restoration scheme. The appellant has known for a long time that the site should close in 2013, and should have had a restoration scheme in place well before then. The best evidence we have for 2014 is Mr Hawkins' table of NO₂ increases²²⁸ as presented, and that must form the basis of decision-making.
- 7.45 There is an issue between the parties as to how long these exceedences over 40 µg/m³ will last. The appellant's case is that by 2025 all receptors will be comfortably below. That is over-optimistic, and that as health issues are involved in an AQMA a precautionary approach should be taken. The appellant has used Defra-based reduction assumptions, which is ordinarily a sensible course in the absence of local data. However, local data does exist and should be used²²⁹. It does not reveal any clear downward trend²³⁰.

²²⁵ CD9.21 p8

²²⁶ In cross-examination

²²⁷ FCC/3I table 8.1

²²⁸ Ibid

²²⁹ CD9.12 para 34

²³⁰ WBC/3B paras 3.4.5 & 3.4.6

- 7.46 It is acknowledged that the local data samples are modest in number, but that cannot justify simply ignoring them as Ms Hawkins has done. While it may be pessimistic to use limited local data, it would be unduly optimistic to assume reductions on line with national projections. The sensible approach is to acknowledge the local data while recognising policy aims to reduce NO₂ and to note a probable reduction in NO₂ levels but, in the AQMA, not necessarily at the rate the national projections assume.
- 7.47 The appeal proposal would result in a short/medium term deterioration in air quality in an AQMA. That is a serious matter and contrary to policy objectives. It must therefore weigh against the scheme.

Particulate matter (PM₁₀/PM_{2.5})

- 7.48 Dust is a problem²³¹. While dust suppression measures offer considerable mitigation, they are already in place, yet there is a problem now.
- 7.49 The particular concern is PM_{2.5}. The Council does not suggest that this could be a reason for refusal of itself, but there is no safe level for exposure and such particles are known to be capable of serious health impacts²³². Road traffic and re-suspension of dust are the main sources²³³. Ms Hawkins evidence indicates²³⁴ that re-suspension can count for up to 28% of roadside PM₁₀, which suggests a relatively high level of PM_{2.5}. The simple fact is that allowing the appeal would increase roadside levels on the main journey routes.

8. The Cases for Interested Persons

Persons appearing at the Inquiry

The material points²³⁵ are:

*Mr Mulhall (Rule 6 party, resident of Old Liverpool Road)*²³⁶

- 8.1 The appellant's case is based on need, but residents have needs too. There are strong local objections to this controversial proposal for a 12-year extension of landfilling at Arpley²³⁷.
- 8.2 The local authorities in the Mersey Belt and elsewhere should take responsibility for disposing of their own waste arisings. They have failed to do this despite knowing that Arpley was due to close in October 2013²³⁸.
- 8.3 The site has caused untold misery to residents in the locality and along routes leading to it. Particular issues are²³⁹:

²³¹ WBC/4C appx J

²³² WBC/4B paras 6.5.12 & 6.5.13

²³³ WBC/4B para 7.2

²³⁴ FCC/3G para 6.4.6

²³⁵ A number of interested persons referred to effects of the landfill facility on local property values. Since that is not a planning consideration, I do not report on these matters.

²³⁶ Mr Mulhall also raised further concerns regarding alleged actions and inactions on the parts of Warrington Borough Council, the Environment Agency and other bodies; I do not report these matters as they are not material to the decision on this appeal.

²³⁷ MUL/INQ1 and oral submissions

²³⁸ MUL/INQ1

- Intimidation from lorries travelling to and from the site;
 - Dust;
 - Noise;
 - Odour; and
 - Flies.
- 8.4 In 2012 the site imported some 700,000 tonnes of waste. With an average load of 16 tonnes, that equates to about 155 lorries per day. The appellant now wants to increase this to 250 vehicles (500 movements) per day, representing a 410 tonnes per annum increase in imports, decreasing to 184 from 2021. This would give rise to greater increases in the emissions of particulates and NO₂ than has been assessed²⁴⁰.
- 8.5 The appellant's claim that the site opens at 0800 hours is a fallacy. Lorries begin to arrive at the site just after 0700. Many park on the access road; others wait in Liverpool Road and Old Liverpool Road, very close to residential properties. Lorries travelling to and from the site intimidate pedestrians and other road users. They also cause noise, vibrations, and putrid odours from their loads and leachate dripping from loads onto the road. They deposit mud and litter on roads. The existing wheel wash is ineffectual and, while a sweeper operates on Forrest Way, it leaves a film of slurry that turns to dust in dry weather. Complaints are not heeded, and when breaches are observed it is not always possible to note details of the vehicles concerned²⁴¹.
- 8.6 Forrest Way was originally constructed solely to serve the landfill site. It now also serves a cement works and the Saxon Park homes. It is questionable whether the road, and particularly its narrow footway, is suitable for its present use²⁴².
- 8.7 There are persistent problems of odours, dust and flies from the site itself. The EA has been reactive rather than proactive in its role as regulator. Notably, in 4 of 5 visits to the site in response to complaints it detected odours off-site, yet all but one of the complaints was recorded as 'unsubstantiated'²⁴³.
- 8.8 The adverse effects of poor air quality on human health have been independently established. Particulates, particularly PM_{2.5}, are the most damaging. NO₂ emissions have not been taken into account, yet levels in the UK already exceed EU limits, especially in urban areas²⁴⁴.
- 8.9 There should be no further landraising on the site. There is void space available in the sand pit area and adjacent to the Manchester Ship Canal²⁴⁵.

²³⁹ Oral submissions

²⁴⁰ Oral submissions

²⁴¹ MUL/INQ1 & INQ2 and oral submissions

²⁴² MUL/INQ2

²⁴³ MUL/INQ2, MUL/INQ4-8 inclusive and oral submissions

²⁴⁴ MUL/INQ3 and oral submissions

²⁴⁵ MUL/INQ/1

- 8.10 For the above reasons the Secretary of State is urged to agree with local residents and dismiss the appeal²⁴⁶.
 - 8.11 If he were nevertheless minded to extend the life of the site this should be limited to 3 years, with the permitted input halved to 700,000 tonnes per annum reducing by 15% cumulatively in each of the 3 years. This would allow the Mersey Belt authorities to make other arrangements, including recycling. Also, the s.106 should be signed by the Chief Executive of WBC²⁴⁷.
- David Mowat MP (Member for Warrington South)*²⁴⁸
- 8.12 Pursuant to the EU Waste Directive, UK policy and regulations require those in the waste business to have regard to the waste hierarchy. Landfill is at the bottom of the hierarchy. Much of the EU now sends less than 5% of waste to landfill; in the UK the percentage is many times higher, and the north-west region has more landfill than the national average.
 - 8.13 There is a serious lack of intent to address this. Allowing the appeal proposal for a 12-year extension to landfilling here would run contrary to the direction of policy and regulation as it would fail to encourage the moving of waste up the hierarchy. It is difficult to justify on a brownfield site and even more so in the Green Belt where 'very special circumstances' (VSCs) are required to justify inappropriate development.
 - 8.14 The appellant claims that there are no current realistic alternatives. Even if that were true, it does not justify granting permission for a further 12 years unless it is also claimed that there can be no alternative(s) within that period. However, WBC has determined to cease sending its waste to Arpley from 2015, and the figures show that there is sufficient capacity elsewhere in the region to accommodate the waste volumes from there that the appellant says need to be dumped at Arpley. While WBC has a duty to co-operate, this runs both ways. It is unacceptable for other authorities to treat Arpley as a repository for waste for which they have failed to make provision themselves. Therefore there is no need for this site to meet local or regional requirements, and hence there are no VSCs to justify it.
 - 8.15 An all-party petition with over 6,000 signatures from Warrington has been presented to Parliament. 98% of the signatories were in favour of immediate closure of the Arpley site for reasons including the effects of traffic, flies, dust, noise, odour and vibration.
 - 8.16 Traffic issues have been addressed by others, but the site is in a very poor location, close to the heart of a town centre. It is notable that the appellant has not seriously considered other modes such as rail or water.
 - 8.17 While the landfill site pre-dates some of the surrounding residential and commercial developments, the amenities of these must be given due

²⁴⁶ MUL/INQ1

²⁴⁷ MUL/2 and oral submissions

²⁴⁸ MOW/1 and oral submissions

weight in considering this new proposal. Residents have made clear in written representations and at the Inquiry the sheer misery that they suffer as a result of the landfill operations. It will no doubt be argued that they already live with these effects and so there would be no additional loss of amenity. However, residents will have chosen their homes here with the legitimate expectation (based on conditions attached to the planning permission) that the site would close in 2013, and so have factored a *temporary* loss of amenity into their decisions. Therefore, extending the operational life of the landfill would result in an additional loss of amenity.

- 8.18 Arpley has served its purpose for 25 years but, given the current nature of its surroundings and the roads leading to it, its continued use is no longer appropriate. The appellant has failed to demonstrate that there are VSCs to justify allowing it in the Green Belt. The Secretary of State is urged to reach a similar conclusion.

*Andrew Harper (Saxon Park resident)*²⁴⁹

- 8.19 The application is based on need for landfill to meet local needs. It does not take account of better environmental solutions such as recycling and incineration. WBC has already followed this approach, so waste would have to come from further afield, adding to pollution and road congestion. However, authorities in the region will have been seeking alternatives to Arpley in anticipation of its closure. No compelling evidence of need has been put forward.
- 8.20 Saxon Park begins about 400m from the entrance to the landfill site. As the FCC website states, large organisations need to be good neighbours. But the company does not live by that at Arpley. It is defensive, not engaging, and dismissive of residents' concerns. Complaints are dismissed as 'unsubstantiated', which appears to mean simply that they have not been checked. It is accepted that the landfill site is not the only source of odours and other impacts in the locality, and that FCC is not entirely to blame for them, but it is a major one. This proposal would be rejected if it involved a new landfill site.
- 8.21 Flies and gulls from the landfill site spoil the enjoyment of gardens, the children's playground and the locality generally. They make keeping homes clean a constant battle, and in summer flies and odours often necessitate keeping windows and doors closed even in warm and hot weather.
- 8.22 Smells from parked, waiting and passing landfill lorries can be horrendous, especially for people walking on nearby paths, especially on Monday mornings when they have been left loaded over the weekend. No attempts seem to be made to clean or disinfect the vehicles. Vehicles arrive between 0715 and 0800 every morning and wait on the access road.
- 8.23 The only vehicular access to Saxon Park, and the primary pedestrian and cycle access, is via Forrest Way and Barnard Street. There is a further

²⁴⁹ HARP/1 and oral submissions except as indicated

pedestrian access via a level crossing to Old Liverpool Road, but signs and locked barriers prevent use by vehicles even as an emergency access. Nor is it a 'dedicated footway/cycle route' as claimed by the appellant; it is a private access to a factory. For this reason and because it crosses the railway, it is not ideal for pedestrians.²⁵⁰

- 8.24 The sizes and numbers of trucks serving the landfill site makes them intimidating to pedestrians and cyclists, who are fearful of using Forrest Way and Barnard Street. These include children, students at the College in Forrest Way and users of the Trans Pennine which runs along it. Lorries frequently flout the 20mph speed limit, which is not enforced. They sometimes park partly on footways, and there is the potential for broken down vehicles to block access for other traffic, including emergency vehicles, to Saxon Park. The junctions on the route to and from Arpley are inadequate for these large vehicles, making their use hazardous and intimidating for other road users
- 8.25 The wheel wash on site is completely ineffective, and lorries deposit filth and dust on Forrest Way. The road is almost permanently discoloured by this, and the very dirty spray thrown up by lorries is a major problem. They also drop larger debris, which is hazardous to pedestrians, cyclists and vehicles. The lorries are causing physical deterioration of the road surface and sinking of gullies and manholes, again adding to hazards faced by other road users.
- 8.26 The application offers no assurance that the old linings in the waste cells on the site will be able to contain the additional load and volume of leachate that would be involved. Nor is there any reassurance about the environmental impacts of failure on groundwater, the River Mersey and local residents. The application does not include evidence of measures to address constant exceedences of EA leachate level requirements under the operating licence.
- 8.27 Residents are concerned about the yellow smoke emitted from the flue of the GUP, and are not convinced by the operators' assurances that it is non-toxic. The appellant claims that the proposal to replace the single stack with 3 flues will address the smoke issue, but the application does not make this clear.
- 8.28 The application does not offer substantive and enforceable solutions to issues raised. The 'good consultation and liaison' referred to in the application has been ineffective and inconsistent. Many elements have not been instituted or were not sustained. For example, improvements in litter picking and road sweeping prior to the application were not maintained after its rejection by WBC. After so many broken promises, residents are cynical about the prospects of current ones being kept in the event of the appeal being allowed.
- 8.29 Local people, whose lives are ruined and put at risk by continued operations must be listened to. There should be no continuation of landfilling at Arpley.

²⁵⁰ HARP/2

*Phoebe Barton (Saxon Park resident)*²⁵¹

- 8.30 Flies are a major problem, especially for families with young children. Smells cause nausea, and make it necessary to keep windows closed. Children are terrified of the lorries, which are intimidating. There are many traffic offences, but enforcement is impossible. Landfill sites should be further away from people.

*Councillor Pat Wright (Member of WBC for Bewsey & Whitecross Ward)*²⁵²

- 8.31 Residents on Liverpool Road are also affected by HGVs. These pass close to homes (in some cases just 3.5m away) from 0700 on. The lorries cause massive tailbacks at peak times, and in snowy weather get stuck on the bridge leaving Saxon Park completely cut off for emergency vehicles. Waste loads cause foul smells and fly infestations.
- 8.32 The Ward has one of the worst health inequalities in the town, with a life expectancy for males 10 years less than for one living in a more affluent area. The Council's Health and Wellbeing Board had pledged to improve public health and wellbeing, and seeks an end to factors affecting the lives of residents, including odour and pollution from traffic emissions. These include finer PM_{2.5} particulates which have significant health effects.
- 8.33 If the site were to carry on for another 12 years residents would be subject to continuation of the odour, flies, dirt, dust and HGV emissions. The Secretary of State is asked to dismiss the appeal.

*Robert Hardie (Member of Walton Parish Council)*²⁵³²⁵⁴

- 8.34 The Parish is not affected by traffic arising from the Arpley site and, being to the south, suffers less from odour than other areas. There are plagues of flies, but again less so than in other locations.
- 8.35 Concerns remain despite the lapsing of the railhead permission²⁵⁵. A quayside, 'Port Warrington', is being developed on the Ship Canal east of Moors Nature Reserve and will be able to operate when a rail siding is built to serve it. That would enable waste to be brought in by rail from further afield, or by ship even from America.
- 8.36 Original proposals at Arpley envisaged a landfill 50m high and with a life of 30 years. The Council limited it to 30m high and 25 years. It was also proposed that the tip would be restored for agriculture, woodland and public open space in accordance with Green Belt purposes. However, it now seems that the site is too contaminated to be used for agriculture because of the use of dredgings for cover and that the land will be too unstable to allow public access for many years. This is inappropriate use of land in the Green Belt.

²⁵¹ Oral submissions

²⁵² WRI/1

²⁵³ South of the Manchester Ship Canal, approx 500m from the site

²⁵⁴ HARD/2 and oral submissions

²⁵⁵ FCC/1C appx NR1 p4, refs 98/37914 & 2003/01889

- 8.37 There will always be a need for landfill for waste that cannot be recycled, but recycling rates in Manchester and Merseyside are relatively low.
- 8.38 It is claimed that there are no suitable alternatives to continued tipping at Arpley. There are few people living near the Gowy site, so expansion there would be unlikely to attract many objections. It is hard to believe that waste authorities in Manchester and Merseyside have been unaware of the imminent closure of Arpley and have made no alternative provision. It is a poor argument that a new tip would be inconvenient. Arpley is just the easy option.
- 8.39 There is a history of noxious industry along Liverpool Road, but the days of mixing residential areas and unpleasant industry have passed. Trucks passing along the road cause vibrations, they drop dirt and debris and, whether full or empty, they leave behind dust and malodours that get into houses.
- 8.40 Whereas the nearby Stobart lorry depot causes few if any complaints, the behaviour of drivers of waste lorries is antisocial. They seem to be rewarded by the number of loads carried with no effective sanctions for transgressions.
- 8.41 There appears to be no effective action on flies, or on gulls which are attracted by the waste and cause a nuisance in the surrounding area. The excuse proffered is that measures against gulls could adversely affect birds at Moore Nature reserve and flights out of Liverpool Airport; this shows contempt for nearby residents.
- 8.42 It was inferred by the appellant that because complaints about odour diminished after the planning application was refused they had not been real complaints. In fact 52 of the 70 complaints between April 2009 and February 2011 came from a Mr Fance. He was a caring and active contributor to the community and took considerable trouble to identify the source of odours. WBC has accepted that he was knowledgeable and consistently correct in describing odour²⁵⁶. Sadly he died in December 2012, and this was the reason for the reduction in complaints.
- 8.43 The management procedures for the site, as described by Mr Blake²⁵⁷, are not adhered to in practice. Most EA visits result in an admonishment; the laboratory used for analysis was admitted not to have been up to standard; a cell construction was outside specification; leachate levels are high, sometimes excessively so, due to breakdown, increasing the risks of leakage; air leak tests are unable to detect how many small leaks are occurring. The site appears to be badly run, with the minimum spent to ameliorate nuisances.
- 8.44 25 years of nuisances is too long, and it is time for respite. Landfilling should not be permitted to continue.

²⁵⁶ WBC/6C p13

²⁵⁷ FCC/4B

*Norman Crompton (Saxon Park resident)*²⁵⁸

- 8.45 Residents have been complaining about smells for years, though it is difficult to know who to complain to. It is not difficult to distinguish between smells from waste and those from sewage. The EA rarely comes out to verify complaints so many have been classified as unsubstantiated, but more recently WDC has substantiated many of them.
- 8.46 It is embarrassing to invite friends because of the disgusting odours. Windows and doors have to be kept closed to keep flies out, and numerous gulls deposit droppings. The source of these cannot be proved, and it is possible that some emanate from the United Utility waste water facility, but flies and gulls are attracted to waste by the smells, and humans can detect them too.
- 8.47 Parents fear for the safety of their children cycling to and from school because of landfill trucks speeding on Barnard Street and Forrest Way. The 20mph speed limit and bollards are widely ignored, with many lorries exceeding 30mph as confirmed by observations by the local police. Veolia have generally been good at controlling the speed of their vehicles, but FCC/3C Waste usually respond that complainants are mistaken and make them feel as if they are being a nuisance. One day an accident might occur, and a loaded lorry is, because of its mass, far more dangerous than a car at the same speed.
- 8.48 The roads are dirty, and debris falling from trucks causes problems such as damage to car tyres from screws and bolts. The operator does an outstanding job in cleaning roads to and from the site – but only when the conditions are to be observed. It never engages with residents and disgracefully tries to depict complaints as anything but genuine. If this were a proposal for a new site it would not have been approved.

*Steven Norris (local resident)*²⁵⁹

- 8.49 Children living locally have never known life without the stench of over-ripe waste that covers the area. A further 5 years²⁶⁰ might not seem long, but for a child it is a very long time. The smell deters parents from taking children to the local playground, causes adverse comments from visitors and makes planning outdoor leisure and social events difficult because one does not know when the stink will come and how long it will last. It forces families to go by car further afield so that the children can enjoy the sunshine. Local residents cannot enjoy their homes, gardens and communities as others can.
- 8.50 It is suggested that if the problem were bad people would complain more. But people face a host of pressures in their lives; smell from the landfill is just an added insult that compounds the problems and issues they already have to put up with. The fact that they do not have the energy to complain does not mean that they want to live next to a stinking landfill site.

²⁵⁸ CRO(N)/1

²⁵⁹ NOR/1

²⁶⁰ This refers to the separate application that is not the subject of this appeal.

8.51 Complaining is difficult. If problems arise at a weekend one can only leave a message, so by the time someone comes out to check days later the complaint will be recorded as unsubstantiated. The EA records complaints but does nothing about them. So people feel there is no point in complaining, but that does not mean that the effects are bearable or people do not care. It is notable that parties from opposite sides of the political fence are standing shoulder to shoulder in trying to rid the community of this site.

8.52 Residents simply ask for a safe and clean place to raise their families. This has to stop sometime, and it should stop now.

*Gavin Stead (Saxon Park resident)*²⁶¹

8.53 Residents suffer rotten cabbage smells and noise, especially from early morning deliveries (often before 0700). There is dirt on the roads (the operator made an effort during the Inquiry to keep the road clean, but this is not normal) and rubbish from the trucks collects by the houses. Flies overrun houses and leave excrement all over interior fittings.

8.54 Trucks are driven at excessive speed, with no regard to pedestrians or other traffic, with the risk of fatal accidents. They vibrate the bridge as they take a run-up to get over it. These can be felt in the houses, and they raise concerns that the structure and foundations of the bridge are being damaged. They park along the road, creating blind spots for other drivers.

8.55 3C Waste is not a good corporate citizen. It has never reached out proactively to discuss mitigation with local residents, but ignores their views and treat them with contempt. That it has continued to operate after expiry of the planning permission speaks volumes for its approach in the future. No doubt it will continue to act with such disdain for the Council and local populace in 12 years' time by ignoring conditions with impunity.

*Gordon Pirie (resident of Liverpool Road)*²⁶²

8.56 Liverpool Road also experiences problems. The Arpley landfill site has been a blight on Warrington, especially Penketh, Sankey and Sankey Bridges. Residents have to put up with smells that are often so bad in summer they they cannot sit in the garden or indoors with windows open. Smells linger for days. They suffer plagues of flies in spring and summer, which crawl on surfaces and any food left unattended for mere seconds and buzz around people when they are eating.

8.57 Dust and grit deposited on the road by lorries coats driveways and gets onto houses, coating furniture and carpets. In wet weather the dirt falls as mud and spray drifts over cars, driveways and windows. Noise from lorries passing throughout the day, including at weekends and on bank holidays, disturbs quiet time in gardens. Vibrations cause cracking in ceilings, move picture, make light fittings sway and drinks on tables shudder in adjacent houses, and cause breaking up of the road surface.

²⁶¹ STE/1 and oral submissions

²⁶² PIR/1

- 8.58 Local residents have had enough. Warrington does not use the site, and it is not a dump for the north-west's rubbish. Extension of the landfilling should be refused.

Joanne Manfredi (resident of Sankey Bridges)²⁶³

- 8.59 Extension of landfilling has been refused on several occasions, and should not be allowed. Residents have had enough, and the waste should go elsewhere now.

- 8.60 The roads are in poor condition and are not suitable for heavy lorries. If an extension is agreed then access should be via a new road from the south.

Councillor Steve Parish (Member of WBC for Bewsey & Whitecross Ward)²⁶⁴

- 8.61 There is a 'Catch 22' situation here in that the EA puts Arpley in Category 3 (suggesting a low level of complaints), so it does not prioritise investigation of complaints. Therefore these are not 'substantiated' and the site does not move into category 2. As a result people do not bother making complaints because the EA will not investigate or by the time it does the odour has stopped or the wind has changed direction. The thought of another 12 years might prompt people to complain, so complaints at the time of the application should not be assumed to be not legitimate.

- 8.62 There is significant harm and the number of complaints, while substantial, represents only a small fraction of those whose residential amenity is spoiled.

- 8.63 Smell from wagons is not exclusively a particular problem after weekends. The smell from passing lorries can be awful and lingers for several minutes affecting residents all along the route.

- 8.64 It is implied that the local authority is at fault for granting permission for residential development at Saxon Park, and residents for living there. But, even if the threshold of statutory nuisance is not reached, a causer of nuisance cannot use the defence that the complainer came to the nuisance.

Peter Warburton (local resident)²⁶⁵

- 8.65 The quality of life in the area is poor. Liverpool Road was formerly part of the A57 but is now bypassed and reclassified as a C-class road. In wet weather dirty spray from lorries covers pedestrians, gardens and cars. When road are dry, dust has similar effects. Residents also suffer flies, smell and noise.

- 8.66 Warrington does not use the Arpley site. Why should waste from other areas come here?

²⁶³ Oral submissions

²⁶⁴ PAR/1 and oral submissions

²⁶⁵ Oral submissions

Albert Lister (resident of Sankey)²⁶⁶

- 8.67 Lost a son in a traffic accident (elsewhere). Do not want that to happen to anyone else.

Written Representations

- 8.68 *Inspector's note: Many of the written representations make points similar to each other and to those made at the Inquiry by interested persons and reported above. To avoid repetition, in most instances I do not report them individually²⁶⁷. I set out below a summary of the material points²⁶⁸.*

Need

- 8.69 There is no regional need for extension of the life of Arpley. Warrington's waste now goes to an incinerator, and Merseyside waste will shortly be going to an incinerator/biomass generator in the North East. The Arpley proposal is aimed at maximising income from power generation from the landfill gas on the site, for which the operator will seek to bring in waste from further afield and to extend further the life of the site.

Environmental effects

- 8.70 The site causes environmental impact, including water pollution and the release of potentially toxic gases. The site is an eyesore and the visible gas discharge from the GUP is a blight on the landscape. There are fires on the tip.

Effects of the site on local residents

- 8.71 The site is harmful to the living conditions of local residents, particularly those in Saxon Park who came here in the expectation that it would close in 2013. It causes unpleasant odours (including potentially toxic gases), dirt, dust, flies, gulls, rats and other vermin and loud bangs. Homes and gardens are made unhygienic, unpleasant for residents and unwelcoming to visitors. Smells from the Wastewater Treatment Works are less frequent and easily distinguished from landfill odours.
- 8.72 HGVs travelling to and from the site cause noise, vibration, odour, dirty spray (the wheel wash on the site is ineffective), dust and damage to the roads and nearby buildings. Many of them are badly maintained. They drop items from their loads along the streets. They travel at excessive speeds on local roads, causing danger and intimidation, and congestion when they park in Liverpool Road or arrive before the site opens. Road junctions along the access routes are unsuitable for such traffic.
- 8.73 The site is too close to residential properties. It causes misery and stress to the community.

²⁶⁶ Oral submissions

²⁶⁷ The full representations are in docs REP/1, ALH/1. COA/1, CRO(S)/1, LEA/1, MOO/1, & PAT/1

²⁶⁸ I omit representations regarding matters subject to regulation under the Environmental Permits and regarding effects on property values. While the concerns expressed are understandable, they are not planning considerations.

Consultation and liaison

- 8.74 The operator treats the surrounding residents with contempt and a lack of consideration. Complaints are dismissed as 'unsubstantiated'. Community and traffic liaison is poor, with little if any engagement with local residents, even when they volunteer, meetings cancelled and the website not kept up to date. Complaints to the Environment Agency are rarely investigated.

9. Conditions and Obligation

Conditions

- 9.1 It was confirmed that the submitted suggested conditions²⁶⁹ are essentially agreed between the appellant and the Council, without prejudice to their views on the principle of the proposed development itself.

Planning obligation

- 9.2 The Council confirmed that the submitted obligation²⁷⁰ meets legal requirements. However, questions of utility and relevance are addressed in submissions (paras 7.5 & 7.6 above).
- 9.3 The appellant indicated that the local planning authority had assisted in many ways with the s.106 obligation. In particular, the provision for review/early closure was instigated by the Council.

The report continues on the next page

²⁶⁹ CD10.1.1

²⁷⁰ CD4.11.2

10. Conclusions²⁷¹

The Environmental Information

- 10.1 The environmental information in this case comprises the Environmental Statement (ES)²⁷² submitted with the planning application, together with the relevant evidence to the Inquiry. I have taken this into account in my conclusions and recommendation.

Main issues

- 10.2 At the Pre-Inquiry Meeting, and in anticipation of the Council withdrawing its second reason for refusal, I indicated what I considered at that stage to be main issues in this appeal²⁷³. Having seen and heard all the evidence at the Inquiry, and in the light of the actual withdrawal of second reason for refusal^[1.4] and the absence of any other suggestion of harm to protected species, I remain largely of the same view. However, I now consider that the main issues are more appropriately framed slightly differently, without changing their substantive scope.
- 10.3 Originally I implicitly included the question of the need for landfill here as one of the 'other considerations' to be weighed in the balance when assessing whether there are very special circumstances to justify inappropriate development in the Green Belt. In view of the extent of the evidence and submissions on need I now consider that this ought to be identified explicitly as a main issue, albeit still one to be weighed in that balance. I recognise also that air quality has environmental significance as well as for living conditions and that 'residents' may be assumed to encompass 'pedestrians'.
- 10.4 Accordingly, while recognising that these are not the only issues to be taken into account, I now consider that the main issues in this appeal are as follows:
- (i) Whether the harm by reason of inappropriateness in the Green Belt, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development;
 - (ii) The need for an extension of landfilling at this site to 2025; and
 - (iii) The effects of the landfill site and/or traffic generated by it on the environment and the living conditions of residents, particularly in terms of odour, air quality and dust.

The fall-back position

- 10.5 Before addressing the substantive issues, it is necessary to consider the fall-back position – that is, what would happen if the appeal were dismissed. Clearly the existing landfill would remain in some form even if closed as there is no practicable mechanism to secure its removal (leaving

²⁷¹ In these conclusions references thus: ^[1.23] are to previous paragraphs in this Report.

²⁷² CD1.2

²⁷³ INQ/1 para 9.4

aside the question of whether it would be in the wider public interest to do so). The site would still require aftercare, and for some years the waste would continue to produce landfill gas and leachate, which would need appropriate treatment.

- 10.6 It must have been clear to the operator for a considerable time that the volumes tipped by late 2013 would fall short of the volume assumed in the 1986 planning permission and subsequent permissions [3.1-3.4]. It is highly regrettable that action was not taken by the owner and/or operator to address this in good time by seeking permission to modify the scheme in the light of the lower expected inputs so either as to achieve a different but acceptable final restored landform in accordance with the timescales set by the permission or to secure an early and smooth transition to a longer-term scheme. However, it appears that the Council is not pursuing enforcement action in this respect [6.24] and the appeal falls to be considered in the light of the situation as it is.
- 10.7 It seems to be accepted that the landform as it currently exists is, at least in parts, neither desirable nor stable [6.23, 6.35(ii), 8.37]. The appellant's indication that substantial additional soils and non-hazardous waste (some 580,000 m³ or 1 million tonnes) would need to be imported to achieve restoration of the current landform to an acceptable profile seems to be supported by the Environment Agency and the Council [6.9-6.10, 6.23-6.27, 6.35(ii)]. The appellant describes this as a 'vast quantity' [6.10], but it represents only some 9% of the 6.5 million m³ to which the appeal scheme relates. Nevertheless, I accept that it cannot be assumed that if the appeal were dismissed there would be an immediate cessation of tipping and associated traffic [6.11].
- 10.8 In the absence of planning permission for the separate 5-year extension proposal, it does not represent a fall-back in this instance. However, the operator has the right to appeal against refusal of that application, and appears likely to exercise this [7.10]. Without prejudice to a decision on any such appeal, it may be noted for comparative purposes that that scheme is stated to involve importation of some 1.6 million m³ of material [3.7]. The Council indicates that this would include about a year's worth of the (maximum) arisings from Merseyside and Halton [7.10].
- 10.9 Alternatively, or in addition, the operator could make a further planning application for continued landfilling and/or restoration of the site. This might, for example, take a different form or involve a different timescale or quantum of waste to either of the above. Any such proposal would fall to be considered through the appropriate planning procedures and does not fall within the ambit of the current appeal.

Issue (i) : Green Belt

- 10.10 Notwithstanding some apparent uncertainty about the Green Belt status of the Arpley site at the time of the 1986 permission, there is no doubt that it is within the Green Belt now [1.1, 6.22, 6.30-6.34, 7.1 and preceding sub-heading, 7.23, 8.13]. The current proposal therefore falls to be considered on that basis.
- 10.11 It is undisputed that the appeal proposal represents inappropriate development in the Green Belt in terms of policy GRN1 of the Warrington

Unitary Development Plan (UDP) and of the National Planning Policy Framework (NPPF) [6.30, heading above 7.1, 8.13, 8.36]. I consider that policy GRN1 is consistent in this respect with the NPPF and so may be given full weight. As the NPPF makes clear (para 87), inappropriate development is by definition harmful to the Green Belt and should not be permitted except in very special circumstances (VSCs). It goes on to indicate (para 88) that VSCs will not exist unless the potential harm to the Green Belt through inappropriateness and any other harm is clearly outweighed by other considerations [6.30-6.31].

- 10.12 Accordingly, after addressing other Green Belt considerations I shall deal with 'other harm' and 'other considerations' weighing in favour of the proposal, in terms of the other main issues and matters raised, before assessing whether VSCs exist in this instance.
- 10.13 The NPPF (para 79) states that the essential characteristic of Green Belts is their openness and permanence. The operational phase of the landfill does have some impact on the openness of the area through the activity there, particularly the presence and movement of vehicles and plant, and the buildings and other structures on the site [7.1]. However, these are all temporary, and when completed and restored the site would revert in visual terms to open countryside, albeit with a different landform to the pre-landfill state. The harm to openness would accordingly be temporary and I share the view of the appellant that there would be no effect on the permanence of the Green Belt [6.37]. The Council raises no concern in respect of landscape and visual effects [1.1], and while the footprint of the site would be increased from its present extent, it would be less than previously approved [7.1].
- 10.14 The NPPF also sets out the five purposes served by Green Belts (para 80). For the above reasons, because the proposal is to extend the life of an existing landfill facility rather than to create or physically extend one, and because it seems generally to be accepted that landfill sites are best located outside built-up areas [6.5], I do not consider that the appeal scheme would conflict with the first 3 of these. They are: to check the unrestricted sprawl of large built-up areas; to prevent neighbouring towns merging into one another; and to assist in safeguarding the countryside from encroachment.
- 10.15 I have seen or heard no suggestion that extending the operational life of the landfill site would have any significant effect on the setting and special character of historic towns, so there would be no conflict with the requirement of the 4th reason to preserve these attributes. Nor would it run counter to the 5th reason - to assist in urban regeneration by encouraging the recycling of derelict land.
- 10.16 Contrary to the suggestion by an interested person, the Green Belt purposes do not require the land to be returned to agriculture, woodland or public open space [8.36]. However, the NPPF (para 81) does encourage beneficial use of the Green Belt, such as through providing access and opportunities for sport and recreation and by improving damaged or derelict land. The re-use of the existing deposits of canal dredgings on the site would accord with this, especially if they are contaminated as he

suggests. I have seen no evidence to support his claim that the land will be too unstable to allow public access for many years. Even if it did, that would still be temporary and in any event it would represent a potential benefit foregone rather than being harmful to the Green Belt [4.2, 6.35(iii), 6.92, 8.36].*

- 10.17 I now consider the other issues and material considerations before returning to this issue in the overall balancing exercise.

Issue (ii) : Need

- 10.18 Leaving aside for the moment questions of quantity and location, it is undisputed that there is and will for the foreseeable future remain a need for landfill capacity to serve this sub-region. This is despite the success of regulatory, policy and financial measures to move waste up the waste hierarchy, which seem to have been a factor in the shortfall in the volume of waste received at Arpley to date against that expected at the time of the 1986 permission.
- 10.19 I have seen no evidence to support the suggestion that the availability of landfill capacity is a disincentive to moving waste up the hierarchy. International comparisons, and indeed comparisons between the North-West and other regions, might as suggested indicate that there is more to be done to drive waste up the hierarchy, but that is largely a policy issue and goes to the question of quantity rather than the principle. The recent (December 2013) *Waste Management Plan for England*²⁷⁴ states that the UK has now reached a level of performance in this respect comparable to many countries in the EU, and refers to further measures to be taken in the future and to ongoing development in the technologies for managing residual wastes. Nevertheless it recognises that there are some wastes for which landfill is and will remain the best or 'least worst' option. [3.6, 5.5, 6.1-6.4, 6.34, 6.60-6.61, 7.3-7.17, 8.1-8.11, 8.12-8.15, 8.37, 8.69]
- 10.20 The need in quantitative terms for landfill capacity in this sub-region is explored in much detail in the appellant's evidence, as is the supply side of the equation. The Council has not put forward its own assessment, but submits that it is for the appellant to demonstrate the benefits of the proposal, and challenges the appellant's assessment [6.38-6.41, 7.3-7.6].*
- 10.21 The quantum of need for a particular site depends on the extent and nature of the area it serves. Some local residents take the view that Arpley should serve only Warrington, with other local authorities taking responsibility for the disposal of their own waste. However, on that logic Warrington's waste should be accommodated within the Borough rather than being exported as it now is²⁷⁵ and there would be an ongoing need for a site for the disposal of, at least, residual waste. [8.2, 8.58, 8.66, 8.69]
- 10.22 Prior to the abolition of regional strategies, national policies and guidance stressed the role of such strategies in planning for waste. The consultation on an updated national waste policy refers to the importance of councils'

²⁷⁴ CD7.5 pp4, 10-11, 14 & 32

²⁷⁵ Evidence for the appellant acknowledges that, apart from a small quantity of street cleansing residues, no Warrington waste is now sent to landfill (FCC/1B part II para 3.6)

waste plans and stresses the importance of close co-operation between waste planning authorities. While this consultation document is not yet policy, it reflects in this respect the requirements of section 110 of the Localism Act 2011²⁷⁶. Accordingly waste management facilities may, and in my experience generally do, serve a wider area than a single authority. I consider that the need for Arpley should be considered in a sub-regional context. This is not disputed by the main parties in this appeal, but how wide that area should be drawn is a matter of contention.

- 10.23 As the Council points out, at the time of the application the catchment area was indicated in the ES as comprising a belt running from Wirral and Sefton Districts in the west to Bolton, Salford and Trafford Districts on the western side of the Greater Manchester conurbation in the east. In the appellant's evidence at the Inquiry the area had been extended to include Rochdale, Oldham, Temeside, the City of Manchester and Stockport. The appellant indicates that this done in order to include the whole of the area covered by the adopted Greater Manchester Joint Waste 'Local Plan'²⁷⁷ (GMWLP) as well as that of the adopted Joint Waste Local Plan for the Merseyside and Halton authorities²⁷⁸ (MJWLP). Regardless of the logic of so doing I share the Council's view that this is not a modest increase in the catchment area from that originally considered. [5.5, 6.39, 7.4]
- 10.24 The additional area mainly comprises major urban areas and, on the appellant's assessment, their inclusion significantly increases the quantities of waste arising within the Arpley catchment area [6.38, 6.39, 6.41]. The Council submits that exporting waste from Greater Manchester to Arpley would be contrary to the GMWLP as this looks to meet needs arising there within its area [7.6]. However, while Objective 2 of the Plan does indeed seek to allocate landfill capacity to meet the demand arising there, the Plan also acknowledges that it might be necessary to transport some residual wastes to facilities outside Greater Manchester at additional financial and environmental cost if no new sites can be allocated²⁷⁹.
- 10.25 As the appellant indicates, the GMWLP makes allocations for extensions of sites at Whitehead and Pilsworth North for residual disposal to 2027, albeit that the former was expected to be available to receive waste by now and the latter is not expected to become available until 2023. It is undisputed that these sites are in the Green Belt and that applications there would be subject to other policies. These factors also apply to Arpley but I do not accept the appellant's contention that the policy contexts for the two allocated sites are the same as that for Arpley, as they are allocated in a fairly recently examined and adopted Waste Plan whereas Arpley is not. Similarly I share the Council's view that the prospects of these sites, which were not included in the appellant's assessment, coming forward to meet needs as they arise (including the possibility of the Pilsworth North extension doing so earlier than currently assumed if necessary) are better than the appellant suggests. [6.42(v), 6.46-6.56, 7.19-7.23]

²⁷⁶ CD7.4 paras 20 & 21

²⁷⁷ Actually titled as a Development Plan Document

²⁷⁸ Halton, Knowsley, Liverpool City, Sefton, St Helens and Wirral

²⁷⁹ CD5.6 p3 (3rd para in section on 'Landfill Capacity in Greater Manchester')

- 10.26 Even if, as the appellant suggests (but on which I have insufficient information to come to a view) the current application at Whitehead does not accord with the GMWLP, that does not to my mind negate the above conclusion [6.47-6.49]. The application might not succeed. Even if it did, a permission as sought would not preclude the bringing forward of further of amended proposals to meet an identified need for landfill. The effect of permitting an extension of the operational life of the Arpley site on the prospects of extensions to Whitehead and Pilsworth North coming forward is a matter of speculation, but in my view it would detract from them. [7.20]
- 10.27 It is notable also that Greater Manchester Local Authority collected waste (LACW) is contracted to a refuse-derived fuel (RDF) facility in Runcorn, which potentially has capacity to take some commercial and industrial (C&I) waste too [7.11].
- 10.28 For all these reasons I do not share the appellant's contention that Greater Manchester is not able to accept waste from Merseyside, Halton and Warrington without detriment to its ability to manage its own [6.55].
- 10.29 Turning to Merseyside and Halton, the Merseyside Waste Disposal Authority (MWDA) has recently procured a 30-year resource recovery contract (RRC) involving LACW being taken to an energy from waste (EfW) facility in Teeside, commencing in 2016 or 2017 [6.42(i), 7.9]. I note that this was foreseen in the MJWLP and factored into its assessment of need for waste disposal facilities²⁸⁰.
- 10.30 It is undisputed that there is only one operational landfill site in Merseyside (at Lyme and Woods Pits) and this is due to close in 2 years' time [6.42(i)]. The adopted Joint Waste Local Plan for that area does not identify any sites for residual waste landfill [6.42(ii)]. I note however that it does indicate that there are consents at two currently operational mineral sites for restoration, though this would involve use of inert waste only and the timing of their availability to take this depends on the rate of extraction of the remaining mineral resources²⁸¹.
- 10.31 Accordingly, the MJWLP recognises that it will be necessary to export non-inert, non-municipal waste throughout the Plan period (to 2027) at least [6.42(ii), 7.9]. The forecast quantity is indicated in the Plan as in the range of 80,000 (optimistic) to 300,000 (pessimistic) tonnes per annum. The appellant's reference to up to 300,000 m³ [sic] needs to be considered in the context of that range [1.15].
- 10.32 The appellant suggests that the MJWLP is predicated on exports going 'most probably to Arpley' [6.42(ii)], but my reading of the Plan does not entirely support this. It makes a number of references to the current, interim, landfill contract at Arpley until the treatment facilities needed to deliver the RRC strategy²⁸², but it does not indicate that exports to landfill outside the Plan area after 2015 would be any more likely to go to Arpley than elsewhere.

²⁸⁰ CD5.5 para 2.32

²⁸¹ CD5.5 paras 2.112-3

²⁸² CD5.5 paras 2.32, 2.50, 2.111, 4.27 & 4.33

- 10.33 Nor does the 'strong letter of support' by the Merseyside Environmental Service (MEAS) that is cited by the appellant endorse that point [6.56, 6.161]. That letter was actually in response to consultation on the 5-year application rather than relating to the appeal scheme, but I accept that some of the points are generic rather than scheme-specific. It states that the Arpley landfill remains strategically important to the Merseyside Recycling and Waste Authority (MRWA) '*until the residual waste treatment facility becomes fully operational*' (my emphasis). This is in connection with the RRC to which I have referred above, and which the letter indicates as being expected to start handling waste in 2016 (the appellant suggests that it will not be fully operational until at least the latter part of 2017 [6.60-6.61]). It will, it is stated, then 'assist Warrington in achieving its strategic vision of reducing the amount of waste imported into the Borough'.
- 10.34 The letter recognises that there will be an ongoing requirement until 2027 for landfill void space outside the Merseyside and Halton area for its non-LACW waste streams, as I have also noted above. It concludes that the (5-year) time extension of Arpley 'would be consistent with meeting some of those needs up to this date' and hence that MEAS was supportive of that proposal. Nevertheless, I find nothing in that letter to support either the contention that most of the waste would in the longer term 'probably go to Arpley', nor that there is nowhere else in the sub-region to which it could realistically go.
- 10.35 Similarly, while the 'supportive' letter from Halton Borough Council also cited by the appellant confirms that that authority would wish to continue to use Arpley to meet its statutory obligations, it goes on to say that if it is not so designated the authority 'would be required to look for an alternative site' [6.56, 6.161]. It is not suggested that there is no such alternative.
- 10.36 I digress slightly at this point to address questions of accessibility. Undoubtedly Arpley is located centrally to the area assessed in the appellant's evidence, namely the Merseyside and Greater Manchester areas and those between them. Warrington itself is highly accessible, being surrounded on 3 sides by the M56, M6 and M62 motorways. Notably the last of these provides good access on a strategic route between Merseyside and Greater Manchester, where it links with the M60 and M66. However, as the appellant acknowledges, to reach Arpley from any of the motorways involves travelling on local roads through the urban area. The prospects of better road access seem poor, and while access by rail or water might remain a possibility I have seen no evidence that such provision would be financially viable to serve a site with a relatively short-term temporary permission. [6.144- 6.150, 7.19, 8.35, 8.60]
- 10.37 The Council submits that the provision in the s.106 obligation for an interim review and the embodiment therein of the wider 'locally sourced waste area', from which 95% of the waste would have to be drawn, casts doubt on the appellant's need case [7.5, 7.7]. The area extends into Lancashire to the north and much of Cheshire to the south. As the authority points out, the remaining 5% which could come from outside

that area is still a significant quantity, equivalent to the (maximum) in the range of forecast exports from Merseyside and Halton.

- 10.38 The appellant counters that the defined area does not constitute a need case but responds to the Council's assertion that waste could be drawn from a wider area than had been assessed in its evidence to the Inquiry by including area adjacent to those where a need had been identified [6.40]. I accept that is not presented as a need case but it does seem that, had the appellant been confident of the need within the area assessed in its evidence for extension of landfilling at Arpley to 2025, then the 'locally sourced waste area' could have been limited to that area.
- 10.39 The wider area includes existing landfill sites such as Gowy and Whinney Hill. It is undisputed that the former has almost 2 million m³ of unused void. While the current permission for landfilling there expires in 2016, the submitted Plan for Cheshire West and Chester states that the consented void is safeguarded and extensions of time will be considered favourably where this will ensure restoration.
- 10.40 As the appellant points out, sites such as Gowy cannot be added to the void capacity without also considering the demands on them from their own catchments [6.42(iv)]. That is borne out by letters from Chester West and Chester Council, to which the appellant refers [6.56, 6.161], in which concern is expressed about the detrimental effect of closure of Arpley on neighbouring authorities. The Council does indeed support extension of landfilling at Arpley (again referring to the 5-year extension rather than the appeal scheme, though the same points presumably apply). But again it is not claimed that there are no alternatives.
- 10.41 Moreover, Chester West and Chester Council acknowledges that planning permissions have been granted for a number of new alternative residual waste treatment facilities (apparently in the sub-region) but few have come on stream. It attributes this to the fact that implementation is market-driven and depends on financial viability. Demand in the form of the availability of waste streams requiring treatment at such facilities is a factor in their financial viability, and that demand would be affected by the availability of alternatives such as landfill. To that extent, the appeal proposal at Arpley would run counter to the policy to drive waste up the hierarchy.
- 10.42 In conclusion on this issue, without prejudice to decisions that may be made on any other applications or appeals and on the evidence available to me, it does appear that there might remain a need for continued landfilling at Arpley in the short term to secure acceptable restoration of the site and to meet the needs of Merseyside and Halton until the RRC becomes fully operational, probably in 2016 or 2017. However, for the above reasons I do not consider the need for Arpley beyond about 2017 to be compelling.

Issue (iii) : Effects on the environment and living conditions

- 10.43 In addressing the effects on the environment and living conditions I have had regard to the controls to which the site is subject through the Environmental Permit [3.5, 7.27]. I note the conflicting views expressed about

the performance of the Environment Agency (EA) in its role as regulator [6.65, 6.79-6.81, 6.94, 6.99, 6.110-6.112, 7.27, 7.36(ii) & (iv), 7.40-7.41, 8.7, 8.26, 8.43, 8.45, 8.51, 8.61], but in any event it is a well-established principle in planning that statutory bodies exercising powers under other legislation are assumed to be doing so reasonably [6.94]. My conclusions are on that basis.

Environment

- 10.44 The main potential environmental impacts relate to air quality, specifically concentrations of the nitrogen oxides (NO_x) and particulates (PM_{2.5} and PM₁₀) that are recognised as having health implications.
- 10.45 Regarding NO_x, as the appellant pointed out the Council did not adduce evidence of its own to support its reason for refusal in this respect, but sought only to criticise the appellant's evidence. Overall, having regard to the matters conceded by the Council's witness and the appellant's responses to some other criticisms, I consider that there would be some short/medium term deterioration in air quality (affecting areas including designates Air Quality Management Areas (AQMAs)). However, the effects of the appeal proposal would be very limited and possibly less than those of existing sources and other developments that have been permitted by the Council. [3.11, 6.116-6.126, 6.140-6.142, 7.42-7.47, 8.4, 8.8]
- 10.46 I deal with the amenity impacts of dust below, but here address the fine PM_{2.5} and PM₁₀ particulates. The Council acknowledged that this could not be a reason for refusal in itself, and again its case was confined to criticism of the appellant's evidence on the matter. In essence, the appellant's evidence that the change in the levels of these particulates would be imperceptible and the significance of the effect would be negligible is substantially unchallenged. [6.127-6.130, 7.48-7.49, 8.8, 8.32]

Living conditions

- 10.47 The strength of feeling about the effects of the landfill site, operations thereon and associated with it, especially lorry traffic to and from it, is very apparent from the many written representations and submissions at the Inquiry by local residents and their representatives as well as by the Council. I am in no doubt that many people experience adverse effects, particularly in terms of odour, and dust and the various effects of traffic, but also including flies, birds and litter [Chapter 8].
- 10.48 Some of these matters do not easily lend themselves to objective, quantified assessment [6.63, 7.30-7.34], and the perceived impacts are inevitably personal and subjective. That does not make them any less real, but it does make the degree of impact difficult to evaluate. Other factors add to the difficulty.
- 10.49 In particular, for a number of reasons I question the extent to which the record of complaints, of which much was made at the Inquiry, is a reliable indicator (either way) of the extent and severity of adverse effects [6.93-6.115, 7.36-7.41, 8.42, 8.45, 8.51, 8.61, 8.62, 8.74]. These include:
- Allegations that at some stages complaints have been orchestrated. I accept that in some instances these suggestions seem to have been

unfounded, but there is clear evidence that this was the case on at least two occasions [6.106-6.108];

- That in my experience people have different propensities to complain, with some having low thresholds while others, whether through stoicism or because they perceive complaints as having no effect, suffer greater harm without articulating their concerns;
- The attributing by complainants and/or those to whom they were made of some adverse effects to the landfill that were either of uncertain origin or apparently not caused by it. This applies particularly to odours where there are other potential sources, notably the nearby wastewater treatment works (WwTW) but also industrial/chemical plants in the area. Similarly most people complaining about flies cite the landfill as the source when other possibilities such as the WwTW and the nearby farmland exist. Dust seems to be attributed solely to the landfill and material deposited on the roads and then thrown up by vehicles. No Saxon Park residents even mentioned the concrete batching plant and building supplies merchant with extensive outside storage, both also potential sources of dust, that lie between their homes and Forrest Way;
- The fact that complaints are made variously to the site operator, the Council and the EA, and are handled differently by each; and
- The lack of verification of many complaints. I stress that this does not necessarily mean that they are unfounded, but it arises largely from the transitory nature of many odour events, the practicalities of attending to assess problems immediately and the apparently perfunctory nature of some such assessments when they do occur.

10.50 For the avoidance of doubt, none of the above is intended to suggest that the impacts amply articulated are not experienced by residents. I understand their concerns and recognise the sincerity of the representations they have made. I also accept that many of them moved to Saxon Park in the expectation that the landfill operations would cease permanently in 2013. However, this was misguided as the prospects of this were always at best uncertain. There was not, and as I understand it could not have been, any bar to a further planning application for landfilling – or indeed any other form of development – on or adjacent to the site. Any such application would of course be subject to the normal planning processes, as is the one that is the subject of this appeal.

10.51 A few further points on impacts on living conditions are material. As the appellant points out, the EA (rightly or wrongly) classes this Arpley as a category 3 site (described as 'transitory causing few complaints but no change in operations needed'), in the highest of 6 bands for operator performance and in the second highest band for compliance [6.65]. It has never instigated proceedings under the statutory regime in respect of odour nuisance [6.67-6.68].

10.52 Traffic effects due to lorries carrying waste to the site and returning are felt particularly in and around Forrest Way, Barnard Street and Liverpool Road/Old Liverpool Road. In the latter two roads vehicles pass close to residential properties and those living there complain particularly of noise,

vibration, dust/dirty spray, exhaust fumes, odours, flies and litter. Saxon Park residents complain especially about odours, slurry and dust on the roads (the latter being carried into homes). Many from throughout these routes report congestion, danger on the roads, poor driver behaviour and lorries arriving in the mornings well before the opening time of the site [Chapter 8]. Some also attribute the physical state of the roads to damage by landfill trucks, and this was also suggested by the Council, but the evidence suggests that other factors are at least largely responsible for this [6.158].

- 10.53 Having observed the situation along the routes on many occasions and at different times of day [1.8], I am in no doubt that all these effects are real, though to differing degrees. However, they relate to the past, whereas this Report concerns the possible future. Nevertheless they are relevant to the extent that they may be a guide to the future.
- 10.54 In that regard it is material that a number of measures are proposed to mitigate some of these effects. These would be secured through conditions and/or the s.106 obligation (of which more below), giving the Council stronger powers than hitherto to ensure that they are provided and operated effectively. They include a new wheel wash with a jet washing facility, an odour management plan to increase the control of the Council over this matter and to streamline the complaints regime, the introduction of a 24-hours manned hotline [6.36, 6.1316.133] and a new framework for the Arpley Community Liaison Group. As the appellant acknowledges in respect of the wheel wash, it is regrettable that these measures were not introduced voluntarily earlier, but they would go some way to reduce the harm experienced by residents.
- 10.55 The S.106 obligation²⁸³ would provide for a 'vehicle management scheme', subject to approval by the Council, whereby in essence vehicles travelling to and from the site would travel only in an easterly direction in Liverpool Road and Old Liverpool Road. While this would not affect the overall number of movements (though a condition would impose daily caps), it would 'spread the load' and might also help to smooth the flow of traffic, with consequential albeit limited benefits to nearby residents and other road users.
- 10.56 It is also necessary to have regard to the planning permission granted in 2007 for a business park on the west side of Forrest Way [3.11, 6.140-6.142]. This has the potential to generate significant volumes of HGV traffic, which the Council must have found acceptable (even with the Arpley landfill permission site still with 6 years to run at that time). Thus there is no certainty that the routes would simply be relieved of the Arpley traffic in the event of this appeal being dismissed. Moreover, this general area has many other industrial and commercial premises that generate lorry traffic, so these are not just residential streets.
- 10.57 Finally, the appellant points out that the landfill as now proposed would be further away from the Saxon Park properties than the previous permitted scheme would have come had it been completed as planned, and cites this

²⁸³ Part II of the Second Schedule and Plan 2b

as a factor weighing in favour of the proposal ^[6.35(iv)]. However, since there is now no extant permission under which the full extent of the landfill as permitted in 1986 could be realised there is no actual benefit in this respect.

- 10.58 I conclude on this issue that extension of landfill operations here to 2025 would result in continuing harm to the living conditions of residents in the area around the site and the routes leading to it, particularly in respect of odours and the effects of HGV traffic, and that the proposed mitigation would only partially ameliorate this. The development would thus be contrary to criterion 9 of policy GRN2 (environmental protection and enhancement) in the Warrington UDP, which seeks to protect residential amenity and policy REP11 (odours). These are consistent the NPPF and so full weight may be given to them.
- 10.59 It would similarly conflict with criterion 11 (safeguarding residential amenity) of policy CS1 of the emerging policy Warrington Local Plan Core Strategy and, to the extent indicated above, policy QE6 criterion 8 (formerly 7) on odours, fumes, dust and litter though not criterion 5 (formerly 4) on air quality. Also, again to the extent that the appeal scheme would not assist in moving of waste up the waste hierarchy, it would not support that aim of policy MP8. However, this Plan is not yet adopted and so does not carry full weight.
- 10.60 However, the Council's 3rd and 4th reasons for refusal also cite criterion 3 of UDP policy MWA5, which seeks to prevent the sterilisation of mineral deposits within the site. I have seen no evidence that this proposal would have that effect.

Conditions

- 10.61 I have considered what conditions would need to be attached in the event of the Secretary of State granting planning permission. In doing so I have had regard to the conditions suggested jointly by the appellant and the Council ^[9.1] and to the six tests in the NPPF. The conditions I suggest are set out in Annex C to this Report, incorporating minor amendments for the avoidance of doubt and to accord with the guidance on the use of planning conditions in *Planning Policy Guidance*. To avoid confusion I retain the original numbering.
- 10.62 While a condition setting a date on which conditions would come into effect is normally unnecessary, I consider that such a condition would be required in this instance as the transition to the proposed development would largely be seamless with no obvious start point (condition 1).
- 10.63 As the permission sought is a temporary one, would be necessary to specify an end date (2).
- 10.64 It would be necessary for the avoidance of doubt and in the interests of proper planning to require by condition that the development shall be carried out in accordance with the approved plans and documents otherwise than as set out in the decision and conditions (3), and to ensure that copies of these would be kept available on site (4).

- 10.65 In the interests of the living conditions of residents in the vicinity of the site and along the roads leading to and from it, it would be necessary to secure measures for the following:
- suppression of dust (5);
 - reduction of odour nuisance (6);
 - prevention of the depositing of deleterious material on the highway (also in the interests of road safety) (7);
 - hours of receiving waste and site engineering and restoration works (9-11) – subject to next paragraph;
 - maximum daily numbers of HGVs entering the site (13) – see below; and
 - monitoring and control of noise (15).
- 10.66 Conditions 9-11 differ in the specification of the days on which receipt of waste, vehicle entry and exit and site engineering and restoration works would not be permitted. No justification for the differences has been put forward, and I have modified them to bring them into conformity.
- 10.67 Mr Mulhall submitted that condition (13) specifying daily figures for HGV visits to the site (condition 13) represent a harmful increase on the 155 per day that he estimates visited in 2012 ^[8.4]. However, that is a misunderstanding of the purpose of the condition. The annual average input of waste over the period of the permission would be less than in 2012, and hence the average daily number of HGV visits should also be less if anything. The figures in the suggested condition are daily maxima, which would reduce year on year until 2021, not set or even average numbers. They would limit the extent of peaks of movements that could occur without such a control, and hence the impacts on residents.
- 10.68 Annual topographical surveys of the site would be necessary to enable the local planning authority to monitor the development and enforce requirements as to the landform as the development progresses (8).
- 10.69 Retention of topsoil and similar on the site for use in restoration, would be necessary to avoid unnecessary vehicle movements (12).
- 10.70 In the interests of the natural environment it would be necessary to secure appropriate measures for dealing with protected species and provision of bird hides and barn owl boxes on the site (14 & 16).
- 10.71 To ensure operation and restoration of the site in accordance with the application, while also providing for the possibility of early closure pursuant to the provisions of the planning obligation, a condition to secure a scheme for phased engineering and waste disposal operations and restoration of the site would be necessary (17).
- 10.72 A condition to secure a landscaping and aftercare scheme would be necessary in the interests of the character and appearance of the area, the natural environment and the proper ongoing management of the site (18).

The planning obligation

- 10.73 I have addressed most of the key provisions of the unilateral undertaking above, but add here that the provision for interim reviews and cessation of development²⁸⁴ would avoid a repeat of the unfortunate situation that has occurred with the previous permission whereby the permission reached its end date without the planned quantity of waste being landfilled. In effect, in the event of the interim reviews indicating that the quantum of filling had fallen below pre-determined thresholds this would trigger early cessation of landfilling, and restoration of the site.
- 10.74 It is undisputed that the undertaking would meet the tests set out in para 204 of the Framework and in Regulation 122 of the Community Infrastructure Levy Regulations 2010 [1.12]. I agree, and have therefore given full weight to it as a planning obligation under s.106 of the Act.

The overall balance and conclusion on Green Belt

- 10.75 To reiterate, I have found that the proposed development would be inappropriate development in the Green Belt. That is by definition harmful and I attach much weight to this. It would cause temporary harm to the openness of the Green Belt but would not affect its permanence and would not harm the purposes for including land within it. It would support the beneficial use of the Green Belt through provision of access and opportunities for sport and recreation and through improving damaged or derelict land.
- 10.76 I have concluded on the third issue that, while there would be no significant harm in respect of air quality, there would be harm to the living conditions of nearby residents in a number of respects. This harm would be mitigated to some extent, but not negated.
- 10.77 On the second issue I have concluded that, while there might remain a need for continued landfilling at Arpley in the short term, the need beyond about 2017 is not compelling.
- 10.78 In the circumstances I conclude on the first issue that the harm by reason of inappropriateness in the Green Belt, and other harm, is not clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development. The proposed development would therefore be contrary to UDP policy GRN1 (Green Belt), which in this respect is consistent with the NPPF and therefore carries full weight, and to the Framework itself.
- 10.79 It would similarly conflict with criterion 3 (protection of the Green Belt safeguarding residential amenity) of policy CS1 of the emerging policy Warrington Local Plan Core Strategy and with policy CS5 (formerly CS4) (overall spatial strategy – Green Belt) which simply refers to national policies in respect of development proposals there. These policies are also consistent with the NPPF, but again this Plan is not yet adopted and so does not carry full weight.

²⁸⁴ Part VIII of the Second Schedule.

Overall conclusion

- 10.80 I conclude that the appeal should be dismissed, and shall recommend accordingly.
- 10.81 In the event that the Secretary of State does not accept my recommendation I suggest that in allowing the appeal he attaches the conditions listed in annex C to this Report to the planning permission.

11. Recommendation

- 11.1 I recommend that the appeal be dismissed.

Alan Boyland

Inspector

Annex A : APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

David Manley	Queen's Counsel, instructed by the Solicitor to Warrington Borough Council
<i>He called:</i>	
Gary Rowland BEng(Hons) MCILT	Principal Transport Consultant with Atkins Transport Planning
Dr Nigel Gibson BA PhD	Principal Technical Consultant with Ricardo-AEA Ltd
Andrew Talbot BSc(Hons) MSc CSci MIEnvSc MIAQM AIEMA	Associate Environmental Consultant with Atkins
Lesley Goodall BSc(Hons) MIOA	Environmental Consultant and Director of Miller Goodall Environmental Services Ltd
Steven Smith BSc(Hons)	Environmental Health Officer with the Council
John Martin MA MRTPI	Principal Planner in the Minerals and Waste Planning Unit/Urban Vision Partnership Ltd

FOR THE APPELLANT:

Paul G Tucker Martin Carter	Queen's Counsel Of Counsel - instructed by Alistair Hoyle MRTPI, of Axis
<i>They called:</i>	
Nicholas Roberts BA(Hons) DipLA CMLI	Director of Axis
Michael Hughes BEng(Hons) MCIHT	Associate at Axis
Nicholas Blake BSc(Hons)	Regional Operations Manager, FCC Recycling (UK) Ltd
Katrina Hawkins BSc(Hons) MSc CEnv MIAQM MIES MIEMA	Partner in Smith Grant LLP

RULE 6(6) PARTY:

John Mulhall	Local resident
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OTHER INTERESTED PERSONS (*in order of appearance*):

Andrew Harper	Local resident
David Mowat MP	Member of Parliament for Warrington South
Phoebe Barton	Local resident

Cllr Pat Wright	Member of Warrington Borough Council (Bewsey & Whitecross Ward)
Robert Hardie	Member of Walton Parish Council
Norman Crompton	Local resident
Steven Norris	Local resident
Gavin Stead	Local resident
Gordon Pirie	Local resident
Joanne Manfredi	Local resident
Cllr Steve Parish	Member of Warrington Borough Council (Bewsey & Whitecross Ward)
Peter Warburton	Local resident
Albert Lister	Local resident

Annex B : LIST OF INQUIRY DOCUMENTS**SUBMITTED BY 3C WASTE LIMITED (FCC)*****Nicholas Roberts Planning Policy & Need***

FCC/1A	Summary Proof of Evidence
FCC/1B Part I	Proof of Evidence on Planning Policy
FCC/1B Part II	Proof of Evidence on Need
FCC/1C	Appendices to Proof of Evidence
FCC/1D	Rebuttal Proof of Evidence
FCC/1E	Extract from Warrington New Town Masterplan

Michael Hughes – Highways and Transportation

FCC/2A	<i>Summary Proof of Evidence (superseded by FCC/2F)</i>
FCC/2B	Proof of Evidence (superseded by FCC/2G)
FCC/2C	Appendices to Proof of Evidence
FCC/2D	<i>Rebuttal Proof of Evidence (superseded by FCC/2H)</i>
FCC/2E	Errata sheet
FCC/2F	Revised Summary Proof of Evidence
FCC/2G	Revised Proof of Evidence
FCC/2H	Revised Rebuttal Proof of Evidence
FCC/2I	Errata II

Katrina Hawkins – Air Quality, Dust and Odour

FCC/3A	Summary Proof of Evidence
FCC/3B	<i>Proof of Evidence (superseded by FCC/3G)</i>
FCC/3C	Appendices to Proof of Evidence
FCC/3D	<i>Rebuttal Proof of Evidence (superseded by FCC/3H)</i>
FCC/3E	Further Rebuttal Proof of Evidence
FCC/3F	Errata Note to Evidence
FCC/3G	Revised Proof of Evidence
FCC/3H	Revised Rebuttal Proof of Evidence
FCC/3I	Addendum to Revised Vehicle Emissions Assessment (FCC/3C appendix KEH1)

Nicholas Blake – Site Operations

FCC/4A	Summary Proof of Evidence
FCC/4B	Proof of Evidence
FCC/4C Vol 1	Appendices (1) to Proof of Evidence
FCC/4C Vol 2	Appendices (2) to Proof of Evidence
FCC/4C Vol 3	Appendices (3) to Proof of Evidence
FCC/4C Vol 4	Appendices (4) to Proof of Evidence

Submissions at Inquiry

FCC/INQ1	Opening submission by 3C Waste Limited (<i>subject to delivery</i>)
FCC/INQ2	Closing submission by 3C Waste Limited (<i>subject to delivery</i>)

Submissions after Inquiry

FCC/X1	Comments on implications of publication of the national Planning Practice guidance and cancellation of various previous guidance documents (8 April 2014)
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SUBMITTED BY WARRINGTON BOROUGH COUNCIL (WBC)**WBC1 – John Martin – Planning Policy & Need**

WBC/1A	Executive Summary of Proof of Evidence of John Martin
WBC/1B	Proof of Evidence of John Martin
WBC/1C	Appendices to Evidence of John Martin

WBC2 – Gary Rowland - Highways

WBC/2A	Executive Summary of Proof of Evidence of Gary Rowland
WBC/2B	Proof of Evidence of Gary Rowland
WBC/2C	Appendices to Evidence of Gary Rowland

WBC3 – Andrew Talbot – Air Quality

WBC/3A	Executive Summary of Proof of Evidence of Andrew Talbot
WBC/3B	Proof of Evidence of Andrew Talbot
WBC/3C	Appendices to Evidence of Andrew Talbot

WBC4 – Lesley Goodall - Dust and Particulates

WBC/4A	Executive Summary of Proof of Evidence of Lesley Goodall
WBC/4B	Proof of Evidence of Lesley Goodall
WBC/4C	Appendices to Evidence of Lesley Goodall

WBC5 – Nigel Gibson - Odour

WBC/5A	Executive Summary of Proof of Evidence of Nigel Gibson
WBC/5B	Proof of Evidence of Nigel Gibson
WBC/5C	Appendices to Evidence of Nigel Gibson
WBC/5D	Rebuttal Proof of Evidence by Nigel Gibson

WBC6- Steven Smith – Environmental Protection Complaints

WBC/6A	Executive Summary of Proof of Evidence of Steven Smith
WBC/6B	Proof of Evidence of Steven Smith
WBC/6C	Appendices to Evidence of Steven Smith

Miscellaneous from WBC

WBC/7	Arpley Landfill Context Plan with Access Routes
WBC/8	Summary List of Documentation

Consultation: Application & Appeal

WBC/9	Application Consultation Letters, January 2012
WBC/10	Application and Appeal Consultation Address List
WBC/11	Application Site Notice Locations, January 2012
WBC/12	(Not used)
WBC/13	Copy of Press Notice (Application) 12th January 2012
WBC/14	Application Committee Notification Letter, January 2013
WBC/15	Appeal Consultation Letter 2nd August 2013

WBC/16	(Not used)
WBC/17	Warrington Guardian Press Notice, Regulation 22 17th October 2013
WBC/18	Copy of Site Notice, Regulation 22, 17th October 2013
WBC/19	Locations & Photographs of Regulation 22 Notices, 17th October 2013
WBC/20	Appeal Consultation Letter 8th January 2014
WBC/21	(Not used)

Appeal Submissions to PINS

WBC/22	LPA Appeal Questionnaire
WBC/23	Email 1 to PINS with questionnaire submissions
WBC/24	Email 2 to PINS with questionnaire submissions
WBC/25	Email 3 to PINS with questionnaire submissions
WBC/26	Email to PINS with LPA Statement of Case, 9th October 2013
WBC/27	Email Correspondence with PINS Case Officer & National Planning Casework Unit on Regulation 22

Submissions

WBC/INQ1	Closing submission by WBC
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SUBMITTED BY MR MULHALL (Rule 6 Party)

MUL/1	Letter to Programme Officer (a letter from WBC annotated with comments)
MUL/2	Letter to the Programme Officer
MUL/3	Bundle of letters submitted between the Pre-Inquiry Meeting and start of the Inquiry
MUL/INQ1	Opening statement by Mr Mulhall
MUL/INQ2	Inquiry Statement from Mr Mulhall
MUL/INQ3	Extracts from www.parliament.uk website (re. air quality)
MUL/INQ4	Letter from the EA to Mr Mulhall dated 9 April 2013
MUL/INQ5	Letter from the EA to Mr Mulhall dated 4 February 2014
MUL/INQ6	Email & attachments dated 7 March 2011 to Mr Moody
MUL/INQ7	Letter from EA to Mr Mulhall dated 8 October 2013
MUL/INQ8	Letter from EA to Mr Mulhall dated 2 March 2012
MUL/INQ9	Planning Permission 30 May 1986 (application No 85/17988)
MUL/INQ10	Closing statement by Mr Mulhall

SUBMITTED BY OTHER INTERESTED PERSONS

REP/1	Bundle of letters and online representations submitted prior to the Inquiry
ALH/1	Email From Bill Alhadad
COA/1	Email from Monica Coates
CRO(N)/1	Statement from Norman Crompton
CRO(S)/1	Statement from Shelley Crompton
HARD/1	<i>Statement by Mr Hardie (superseded by HARD/2)</i>
HARD/2	Further Statement by Mr Hardie (for Inquiry)
HARP/1	Statement by Mr Harper
HARP/2	Further email and photographs from Mr Harper

LEA/1	Email from Mr Leadbetter 1 March 2014
MOO/1	Statement from Mr Moody
MOW/1	Letter from Mr Mowat dated 24/10/2013
NOR/1	Statement from Steven Norris
PAR/1	Statement from Cllr Steve Parish
PAT/1	Email from Sharmilee Patel
PIR/1	Statement from Mr Pirie
STE/1	Email submission by Mr Stead – 26 February 2014
WAR/1	Photos from Mr Warburton
WRI/1	Statement from Cllr Pat Wright

CORE DOCUMENTS

CD 1 – Arpley Landfill Planning Application and Decision Documents

CD1.1	Planning Application Document (1 volume) comprising: <ul style="list-style-type: none"> • Planning Application Form and Certification; • (Planning Statement (with appendices); and • Planning Application Drawings.
CD1.2	Environmental Statement (3 volumes) comprising: Volume 1 – Main Report (including illustrative figures); Volume 2 – Technical Appendices; and Volume 3 – Non-Technical Summary.
CD1.3	Transport Assessment
CD1.4	Restoration Specification for Proposed Habitat Types (29 January 2013)
CD1.5	Amended Restoration Drawing Ref: 105R382 (28 January 2013)
CD1.6	WBC Development Management Committee Report (30 January 2013)
CD1.7	WBC Decision Notice (1 st February 2013)
CD1.8	WBC Development Management Committee Minutes (30 January 2013)

CD 2 – Arpley Landfill Environmental Permit Documents

CD2.1	Permit Number EPR/BS7668IH, April 2011
CD2.2	Permit Variation Number EPR/BS7668IH/V007, December 2013

CD 3 – Arpley Landfill Consultation Responses and Correspondence from the Planning Application Process

CD3.1	Environment Agency Consultation Response (January 2012)
CD3.2	WBC Environment & Public Protection comments on application (21 December 2012)
CD3.3	Atkins Highways & Environmental Impact Review (July 2012)
CD3.4	Air Quality Review by Miller Goodall (30 November 2012)
CD3.5	Atkins Pavement Report (July 2012)
CD3.6	WBC Transportation Planning comments on application (24 December 2012)
CD3.7	Urban Vision/4 Resources : Appraisal of current landfill capacity and need for future landfill capacity across the North West Region. Initial Assessment Review Report (28 November 2012)
CD3.8	Merseyside Environmental Advisory Service (MEAS) (March 2012)

CD3.9	Cheshire West & Chester Council (September 2012)
CD3.10	978-01-TN01 Technical Note 1 : Response to highways consultation comments (25 January 2013)
CD3.11	978-01-TN03 Technical Note 3 : Response to memorandum drafted by Warrington Borough Council, dated 14 December 2012; Ref: EP/155886(1) and accompanying information (16 January 2013)
CD3.12	978-01-TN04 Technical Note 4 : Response to the memorandum drafted by Warrington Borough Council, dated 14 December 2012; Ref: EP155886(1) and accompanying information (21 January 2013)
CD3.13	Urban Vision/4 Resources : Appraisal of current landfill capacity and need for future landfill capacity across the North West Region. Updated Assessment Review Report (2 December 2013)
CD3.14	AEA Appraisal of Odour Impact Assessment : Proposed Re-Profiling of Arpley Landfill (May, 2012)
CD3.15	Response of WBC Public Realm Manager (December 2012)

CD 4 – Arpley Landfill Appeal Documentation

CD4.1	Grounds of Appeal on behalf of the Appellant (July 2013)
CD4.2	Recovery letter from the Secretary of State (26 July 2013)
CD4.3	Statement of Case on behalf of the Appellant (October 2013)
CD4.4	Statement of Case on behalf of Warrington Borough Council (October 2013)
CD4.5	Statement of Case by Mr Mulhall (Rule 6 Party) (October 2013)
CD4.6	Statement of Common Ground between Warrington Borough Council and the Appellant (14 November 2013)
CD4.7	Pre-Inquiry Meeting Note (November 2013)
CD4.8	To Scale Gas Utilisation Plant Elevation Drawing 978-01-20 (November 2013)
CD4.9	Addendum to Statement of Common Ground between Warrington Borough Council and the Appellant (dated 29 January 2014)
CD4.10	Letter from Warrington Borough Council withdrawing reason for refusal 2
CD4.11	Draft Section 106 obligation between WBC, Peel Environmental Ltd, BIFFA (Land) Ltd., 3C Waste Ltd., Lloyds Bank PLC, Royal Bank of Scotland PLC (submitted 18 February 2014)
CD4.11.1	Further update of the draft Section 106 obligation between WBC, Peel Environmental Ltd, BIFFA (Land) Ltd., 3C Waste Ltd., Lloyds Bank PLC, Royal Bank of Scotland PLC (submitted 28 February 2014)
CD4.11.2	Completed Section 106 obligation between WBC, Peel Environmental Ltd, BIFFA (Land) Ltd., 3C Waste Ltd., Lloyds Bank PLC, Royal Bank of Scotland PLC (submitted 4 March 2014)

CD 5 – Development Plan Documents – Extant and Emerging

CD5.1	Warrington Unitary Development Plan (2006)
CD5.1.1	Secretary of State's Saving Direction re. policies in the Warrington UDP, dated 11 December 2008
CD5.2	Warrington Local Plan Core Strategy Submission Document (September 2012)
CD5.3	Warrington Revised Post Submission Local Plan Core Strategy 2013

CD5.4	Warrington Local Plan Waste and Minerals Background Paper (May 2012)
CD5.5	Halton Council, Knowsley Council, Liverpool City Council, Sefton Council, St.Helens Council and Wirral Council. Joint Waste Local Plan (2013).
CD5.6	Greater Manchester Joint Waste Development Plan Document (April 2012)
CD5.7	Warrington UDP Proposals Map
CD5.8	The Joint Waste Development Plan Document for Greater Manchester – Needs Assessment Update Report 2010
CD5.9	Joint Waste Development Plan Document : Halton Council, Knowsley Council, Liverpool City Council, Sefton Council, St Helens Council and Wirral Council Needs Assessment (Publication Stage) (July 2011)
CD5.10	Extract from Cheshire West & Chester Local Plan – September 2013

CD 6 – Planning Policy Documents

CD6.1	National Planning Policy Framework (March 2012)
CD6.2	Planning Policy Statement 10 (PPS10): Planning for Sustainable Waste Management (DCLG, March 2011)
CD6.3	Technical Guidance to the National Planning Policy Framework (March 2012)
CD6.4	Planning for Sustainable Waste Management: Companion Guide to Planning Policy Statement 10 (DCLG, 2006)

CD 7 – Waste Management Strategy, Guidance and Legislation

CD7.1	Government Review of Waste Policy in England 2011 (Defra, June 2011)
CD7.2	DEFRA Forecasting 2020 waste arisings and treatment capacity (Defra, February 2013)
CD7.3	(Not used)
CD7.4	DCLG Updated National Waste Planning Policy: Planning for Sustainable Waste Management Consultation Document (July 2013).
CD7.5	Waste Management Plan for England (December 2013)
CD7.6	Ricardo-AEA Commercial and Industrial Waste in the UK and Republic of Ireland (October, 2013)
CD7.7	Forecasting 2020 waste arisings and treatment capacity. Revised February 2013 Report (October 2013)
CD7.8	Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives
CD7.9	Environmental Protection, England and Wales, The Waste Regulations 2011, March 2011
CD7.10	DCLG Guidance for local planning authorities on implementing planning requirements of the EU Waste Framework Directive (2008/98/EC), December 2012

CD 8 – Other Applications, Permission and Decisions

CD8.1	Planning Permission Reference 1/17988 (1986)
CD8.2	Appeal Ref: APP/M0655/A/07/2052946 - Risley Landfill, Warrington. Inspector's Report. August 2008
CD8.3	Email from John Martin – dated 18 February regarding void space for asbestos at Pilsworth South

CD8.4	Committee Officer Report – 23 December 2002 – Full Application for development of 339 dwelling houses with associated garages and works (submitted 18 February 2014)
CD8.5	Extracted Pages from the Whitehead Landfill Planning Application Supporting Statement
CD8.6	Whitehead Landfill Restoration Masterplan
CD8.7	Whitehead Landfill Lower Level Restoration Masterplan
CD8.8	Extracted Pages from Appendix 12 of the Whitehead Landfill Planning Application Documentation

CD 9 – Other Miscellaneous Documents

CD9.1	Warrington Borough Council, 2013 Air Quality Progress Report, April 2013 (and earlier reports)
CD9.2	Defra: Local Air Quality Management, Technical Guidance, LAQM.TG09 (2009)
CD9.3	Environment Agency: Guidance for Developments requiring planning permission and environmental permits (October 2012)
CD9.4	Sniffer: Odour Monitoring and Control on Landfill Sites, ER31, January 2013 (and associated documents)
CD9.5	Health Protection Agency: Impact on Health of Emissions from Landfill Sites (July 2011)
CD9.6	Defra: Odour Guidance for Local Authorities (March 2010)
CD9.7	Environment Agency, Technical Guidance: H4 Odour Management March 2011)
CD9.8	Environmental Protection UK: Development Control: Planning for Air Quality (2010 Update)
CD9.9	Air Quality Expert Group, Fine Particulate Matter (PM2.5) in the United Kingdom (2012)
CD9.10	Air Quality Expert Group, Particulate Matter in the United Kingdom (2005)
CD9.11	Air Quality (Standards) Regulations (2010)
CD9.12	The Air Quality Strategy for England, Scotland, Wales and Northern Ireland (2007)
CD9.13	Institute of Environmental Assessment Guidance Notes No.1 – Guidelines for the Environmental Assessment of Road Traffic (1993)
CD9.14	Defra: Local Air Quality Management, Policy Guidance, LAQM.PG09 (2009)
CD9.15	Institute of Air Quality Management, Position on the Description of Air Quality Impacts and the Assessment of their Significance (2009)
CD9.16	Application for an Environmental Permit Variation (June 2012)
CD9.17	Satnam Millennium Ltd, R (on the application of) v Warrington Borough Council [2007] EWHC 2648 (Admin) (26 October 2007).
CD9.18	Composite Complaint Data Set and Summary Index
CD9.19	Response from the Merseyside Environment Advisory Service (MEAS) on planning application 2013/22598 (January 2014)
CD9.20	Response from Halton Council on planning application 2013/22598 (January 2014)
CD9.21	WBC Complaint Data Sheet

CD9.22i	Letter to Cheshire West and Chester Council dated 27 January 2014 from David Mowat MP
CD9.22ii	Letter to Liverpool Council dated 27 January 2014 from David Mowat MP
CD9.22iii	Letter to Wirral Borough Council dated 27 January 2014 from David Mowat MP
CD9.22iv	Letter to Southport Town Hall dated 27 January 2014 from David Mowat MP
CD9.22v	Letter to St Helens Council dated 27 January 2014 from David Mowat MP
CD9.22vi	Letter to Knowsley Town Council dated 27 January 2014 from David Mowat MP
CD9.22.1	Letter from Halton Borough Council dated 3 Feb 2014
CD9.22.2	Letter from Cheshire West and Chester dated 7 Feb 2014
CD9.23	Meeting Minutes dated 16 January 2014 & 10 February 2014 regarding the Restoration o Arpley Landfill Site
CD9.23.1	Meeting Minutes (signed) dated 10 February 2014 regarding the restoration of Arpley Landfill Site and appended 'Defining Waste Recovery' Note.
CD9.23.2	Arpley Landfill Closure Options Report January 2014
CD9.24	Committee Officer Report – 28 May 1986 & 18 March 1986 – Arpley Landfill Site Application Ref: 1/17988 (submitted 20/2/2014)
CD9.25	Planning Sub-Committee Report 28 May 1986
CD9.26	Memo from the Environment Agency dated 19 February to WBC
CD9.27	Arpley Volumes
CD9.28	Note to set out Green Belt Policy Context
CD9.29	Technical Note: Whitehead Landfill
CD9.30	Note on Pilsworth South Landfill

CD 10 – Conditions

CD10.1	Conditions under discussion between the Appellant and the LPA
CD10.1.1	Final suggested conditions, largely agreed between the Appellant and the LPA

INQUIRY PRECEDURAL DOCUMENT

INQ/1	Note of Pre-Inquiry Meeting held on 18 November 2013
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Annex C : PLANNING CONDITIONS

If the Secretary of State decides to allow the appeal, I suggest that the following conditions be attached to the planning permission thus granted:

- 1) Unless otherwise indicated in the conditions listed below, these shall take effect on the date of this planning permission.
- 2) Unless the early closure under the provisions of Condition 17 have come into effect, the importation and disposal of waste on site (other than in strict accordance with an approved site restoration scheme) shall cease no later than 13 October 2025 and restoration shall be completed by 12 October 2026.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
 - A. Application Form dated 6 December 2011
 - B. 978-01-01 Statutory Plan
 - C. 978-01-02 General Arrangement Plan
 - D. 978-01-03a-p Phasing of Operations
 - E. 978-01-04a Pre-Settlement Waste Contours
 - F. 978-01-04b Pre-Settlement Restoration Contours
 - G. 978-01-05 Post Settlement Restoration Contours
 - H. 978-01-06a Site Cross Sections
 - I. 978-01-06b Site Cross Sections
 - J. 978-01-07 Site Containment Engineering
 - K. 978-01-08 Cell Leachate Management System
 - L. 978-01-09 Surface Water Management Scheme
 - M. 978-01-11 Leachate Treatment Facility General Arrangement
 - N. 978-01-12 Leachate Treatment Facility Cross Sections
 - O. 978-01-13 Landfill Gas Utilisation Plant General Arrangement
 - P. 978-01-15 Warrington Transfer Pad
 - Q. 978-01-16 Site Compound (Arrangement and Elevations)
 - R. 978-01-17 Site Office and Car Park General Arrangement
 - S. 978-01-18 Site Office Elevations
 - T. 978-01-19 Weighbridge and Office Elevations
 - U. 978-01-20 Landfill Gas Utilisation Plant Elevations
 - V. Restoration specification for proposed habitat types, 29 January 2013.
 - W. Restoration drawing Ref: 105R382, 28 January 2013.
 - X. Great Crested Newt Risk Assessment and Non-Licensable Avoidance Measures, Argus Ecology, 25 September 2013
 - Y. Badger Survey and Mitigation Proposal, 24 January 2013
- 4) A copy of this permission and the approved documents as set out in condition no. 3 shall be present at the site office at all times throughout the life of the site. Any subsequent approved amendments shall also be present.
- 5) Within 3 months of the date of this permission, a scheme and programme of measures for the suppression of dust arising from the landfill and site restoration works shall be submitted to the local planning authority for approval. The scheme shall include:

- i) Measures to suppress dust caused by the movement; storage of materials and the deposit of waste materials within the site;
- ii) Dust suppression measures relating to the movement of vehicles to/from the site whilst travelling on public highways;
- iii) Provision for monitoring and review of the scheme.

The approved scheme shall be implemented in full and the measures complied with at all times throughout the lifetime of the development.

- 6) Within 3 months of the date of this permission the operator shall submit a scheme indicating suitable mitigation measures to reduce odour nuisance from the delivery of waste and from the landfill. The scheme shall include a provision for revision and shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved scheme which shall thereafter be retained and implemented for the duration of the development hereby permitted.
- 7) Within 3 months of the date of this permission, the operator shall submit for the approval of the Local Planning Authority a scheme detailing the facilities and/or methods to prevent deleterious material (including litter, dust and mud) being carried onto the public highway. The scheme shall include provision for revision and any remedial measures to be put in place to clear the public highway of such material. The approved scheme, including any subsequent approved amendments, shall be implemented throughout the lifetime of the development.
- 8) The site operator shall at their own cost, carry out a detailed topographical survey of the site each year. Copies of the surveys and electronic survey data shall be made available to the Local Planning Authority within 28 days of a request in writing being made to the site operator.
- 9) Waste shall only be received at the site between the hours of:
0800 to 1730, Mondays to Fridays; and
0800 to 1300 on Saturdays
and not at all on Sundays and public holidays.
- 10) No vehicles or Heavy Goods Vehicles used to carry waste are permitted to enter the site (defined as crossing the weighbridge) before 0800 hours or at any time on Sundays and public holidays. No vehicles or Heavy Goods Vehicles used to carry waste are permitted to exit the site after 1800 hours on weekdays and 1330 on Saturdays or at any time on Sundays and public holidays.
- 11) Site engineering and restoration works shall not be carried out other than between the hours of:
07.00 to 18.00 hours, Mondays to Fridays and
07.00 to 13.00 on Saturdays
and not at all on Sundays and public holidays.
No HGVs associated with engineering and restoration works shall be permitted to access the site before 08.00 on any day or at any time on Sundays and public holidays.
- 12) Any topsoil, subsoil, earth, and soil making materials shall be retained on site.

- 13) The site operator shall keep a record of all Heavy Goods Vehicles (HGVs) entering the site and make this available to the Local Planning Authority on request. The total number of HGVs entering the site shall not exceed the following maxima:
- During the 2014 calendar year, 250 on any one day Monday to Friday and 131 per day on Saturdays.
 - During the 2015 calendar year, 237 on any one day Monday to Friday and 125 per day on Saturdays.
 - During the 2016 calendar year, 226 on any one day Monday to Friday and 119 per day on Saturdays.
 - During the 2017 calendar year, 214 on any one day Monday to Friday and 113 per day on Saturdays.
 - During the 2018 calendar year, 203 on any one day Monday to Friday and 107 per day on Saturdays.
 - During the 2019 calendar year, 192 on any one day Monday to Friday and 102 per day on Saturdays.
 - During the 2020 calendar year, 184 on any one day Monday to Friday and 97 per day on Saturdays.
 - From calendar years 2021 until 2025, 184 on any one day Monday to Friday and 97 per day on Saturdays.
- 14) Within 3 months of the date of this permission, a Method Statement outlining methodologies, mitigation and non-licence avoidance measures as detailed in the '*Argus ecology Great Crested Newt Risk Assessment and non-licensable avoidance measures*' dated 25h September 2013 shall be submitted to the Local Planning Authority for approval. The development shall be carried out in accordance with the approved details.
- 15) Within 3 months of the date of this permission, a noise monitoring scheme shall be submitted to the local planning authority for approval. The noise monitoring scheme shall include the following components:
- i) A schedule detailing how, when and where 3 monthly measurements and recordings will be taken;
 - ii) Details of measuring equipment used or to be used;
 - iii) Details of methodologies that will be used to analyse the measurements and recordings and how the records will be kept as to ensure their fitness for future use;
 - iv) A strategy to prevent, reduce or abate any noise resulting from site operations (excluding those associated with short term restoration) which exceeds 51 dB(A)_{Leq (1hr)} when measured or calculated at the nearest residential boundary at Saxon Park; and
 - v) For a maximum of 8 weeks in any one year the noise level from restoration or engineering activities shall not exceed 65 dB(A)_{Leq (1hr)} when measured or calculated at the nearest residential boundary at Saxon Park.

Thereafter, the development shall be carried out in accordance with the approved noise monitoring scheme and implemented throughout the lifetime of the development and shall include provision for revision. The measurements and recordings shall be made available to the Local Planning Authority within 28 days of being taken.

- 16) Within 12 months of the date of this permission, the operator shall submit for the approval of the Local Planning Authority a scheme detailing the bird hide and barn owl boxes as shown on Restoration drawing Ref: 105R382, 28 January 2013. The scheme shall include a specification of the bird hides and barn owl boxes (including materials and colour) and provision for revision in the event of the approved specification being unable to be implemented for later phases of the site. The approved scheme and any subsequent revision shall be implemented in full within 3 months of the land on which they are to be sited being restored.
- 17) (i) Within 3 months of the date of this permission a scheme for phased engineering and waste disposal operations and restoration of the site based on the provisions of Drawings 978-01-03a to 978-01-03p as detailed in planning application 2011/19244 shall be submitted to the local planning authority for approval by the local planning authority. The site shall be developed in accordance with the approved scheme unless and until a revised scheme is approved pursuant to paragraph (ii) of this condition.
- (ii) In the circumstances referred to in paragraph (iii) below a revised scheme for phased engineering and waste disposal operations and early restoration of the site based (in relation to those parts of the site where landfill has taken place) on the provisions of Drawings 978-01-03a to 978-01-03p as detailed in planning application 2011/19244 shall be submitted to the Local Planning Authority for approval. From the date of approval of the revised scheme the site shall be developed in accordance with the approved revised scheme.
- (iii) The circumstances referred to in paragraph (ii) of this condition are that the submission of an Early Closure Plan is required to be submitted under Paragraph 7 of Part VII of the Second Schedule of the Undertaking by (1) Peel Environmental Limited (2) Biffa (Land) Limited (3) Biffa Waste Management Limited (4) 3C Waste Limited (5) Lloyds Bank Plc (6) and Glas Nominees Limited dated 4 March 2014.
- 18) (i) Within 3 months of the grant of permission, details of a scheme of landscaping and aftercare for a minimum period of 5 years from final restoration of an individual Phase as illustrated in the approved drawings or as varied by the scheme submitted under Condition 17, shall be submitted and approved. Where, prior to the date of this Planning Permission, a Phase has been restored the period of aftercare shall be deemed to have commenced immediately upon the approval of the scheme and run for 5 years.
- (ii) The scheme of landscaping and aftercare shall include long term design and habitat objectives, method statements for site preparation and establishment of target features, management responsibilities and maintenance schedules and shall be submitted to the Local Planning Authority for approval, such details shall include provision for:-
- (a) Soil preparation;
 - (b) Application of fertiliser;
 - (c) Sowing and establishment of green cover;
 - (d) Tree hedgerow and scrub planting, inclusive of sources, species, sizes, planting density mix and number;

- (e) Grassland planting, inclusive of sources, species, sizes, planting density mix and number;
 - (f) Wetland margin and aquatic planting, inclusive of sources, species, sizes, planting density mix and number; and
 - (g) Maintenance/aftercare provisions which shall include a scheme which ensures that if within a period of 5 years from the date of the planting of any tree or shrub, that tree or shrub or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies (or becomes, in the opinion of the local planning authority, seriously damaged or defective), another tree or shrub of the same species, size and maturity as that originally planted shall be planted at the same place, unless the local planning authority gives its written consent to any variation.
- (iii) The approved landscaping and aftercare scheme shall thereafter be carried out in full.
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Annex D : Abbreviations and Glossary of Terms

(used in this report and submitted documents)

%ile	Percentile
AADT	Annual average daily traffic
ADMS-Roads	Atmospheric dispersal modelling system for roads
AOD	Above Ordnance Datum
AQMA	Air Quality Management Area
AQS	Air Quality Strategy (for England, Scotland, Wales & N Ireland)
C&G	Construction and demolition (waste)
C&I	Commercial and industrial (waste)
CD	Core document
CWaC	Cheshire West and Chester (Council)
DEFRA	Department for Environment, Food and Rural Affairs
EFT	Emission factor toolkit (<i>DEFRA database of vehicle emission factors for air quality assessments</i>)
EfW	Energy from Waste
EHO	Environmental Health Officer
EIA	Environmental Impact Assessment
EPA	Environmental Protection Act 1990
ES	Environmental Statement
EU	European Union
FCC	Fomento de Construcciones y Contratas SA
FIDOL (factors)	Frequency, intensity, duration, offensiveness & location
GB	Green Belt
GM	Greater Manchester
GMWLP	Greater Manchester Joint Waste 'Local Plan' (<i>formally titled as a Development Plan Document</i>)
GUP	(Landfill) gas utilisation plant
HDV	Heavy duty vehicle (<i>inc HGVs, buses and coaches</i>)
HGV	Heavy goods vehicle (<i>over 3.5 tonnes gross vehicle weight</i>)
km	Kilometre(s)
LACW	Local Authority collected waste
LAQM	Local Air Quality Management
LAQM.TG(09)	LAQM technical guidance
LDV	Light duty vehicle
LFG	Landfill gas
LP	Local Plan
LPA	Local planning authority
LPCS	Local Plan Core Strategy
LTP	Leachate treatment plant
LV	Limit value (as defined in EU Directive on air quality)

m	Metre(s)
m/s	Metres per second
MEAS	Merseyside Environmental Advisory Service
MJWP or MJWLP	Merseyside Joint Waste (Local) Plan (<i>actually entitled the Halton, Knowsley, Liverpool City, Sefton, St Helens and Wirral Councils Joint Waste Local Plan</i>)
Mm ³	Million cubic metres
M-O	Monin Obukhov (length) (<i>describes the effects of buoyancy on turbulent flows in the lower atmosphere</i>)
MRWA	Merseyside Recycling and Waste Authority
MSW	Municipal solid waste
MW	Megawatt(s)
MWDA	Municipal Waste Disposal Authority
NAEI	National Atmospheric Emissions Inventory
NO	Nitrogen monoxide
NO ₂	Nitrogen dioxide
NO _x	Oxides of nitrogen (including NO & NO ₂)
NPPF	National Planning Policy Framework
NW	North West
NWP	Numerical weather prediction (Meteorological Office data)
OER	Odour emission rate
OGV	Other goods vehicle
OGV1, OGV2	Subsets of HGV
OMP	Odour Management Plan
ou _E /m ³	European odour units per cubic metre
OWLP	Outer Warrington Local Plan
PM	Particulate matter
PM ₁₀	Particles smaller than 10 micrometres in diameter
PM _{2.5}	Particles smaller than 2.5 micrometres in diameter
PPG	(National) Planning Practice Guidance
PPS	Planning Policy Statement
Primary NO ₂	The NO ₂ emitted directly from combustion engines
PSV	Public service vehicle (<i>a subset of HDV incl. buses and coaches but not HGVs</i>)
RCI	Road condition indictator
RDF	Refuse derived fuel
RRC	Resource Recovery Contract
RX	Re-examination
SCI	Statement of Community Involvement
SMP	Site Management Plan
SNRHW	Stable non-reactive hazardous waste
SoC	Statement of Case
SoCG	Statement of Common Ground

SoS	Secretary of State
SP	Structure Plan
SRF	Solid recovered fuel
SWOT	Strengths, weaknesses, opportunities, threats
TA	Transport Assessment
TCPA	Town & Country Planning Act 1990
tpa	Tonnes per annum
TRICS	<i>A national system of data and analysis of the likely transport generated by developments</i>
UDP	Unitary Development Plan (<i>unless otherwise indicated, the adopted Warrington Unitary Development Plan 2006</i>)
VSCs	Very special circumstances
WBC	Warrington Borough Council
WDI	Waste data interrogator
WLP	Waste Local Plan
WwTW	Wastewater treatment works
WMPE	Waste Management Plan for England 2013 (Defra)
XC	Examination in chief
XX	Cross-examination
µg/m ³	Microgrammes per cubic metre



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.