



Ministry of Housing,  
Communities &  
Local Government

Our ref: APP/M1900/V/18/3195373

Mr David Bridgwood  
National Planning Manager  
Veolia ES (UK) Ltd  
8<sup>th</sup> Floor, 210 Pentonville Road  
London N1 9JY

19 July 2019

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
APPLICATION MADE BY VEOLIA ES (HERTFORDSHIRE) LIMITED  
LAND AT 2 RATTY’S LANE, HODDESDON, HERTFORDSHIRE EN11 0RF  
APPLICATION REF: 7/0067-17**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Mrs J A Vyse DipTP DipPBM MRTPI, who held a public local inquiry between 19 June and 25 September 2018 into your client’s application to Hertfordshire County Council for planning permission for demolition of existing buildings and structures associated with existing rail aggregates use and construction and operation of an Energy Recovery Facility for the treatment of municipal, commercial and industrial wastes; importation, storage and transfer of local authority collected healthcare waste, together with ancillary infrastructure including an administration/visitor centre; incinerator bottom ash storage shed; grid connection compound; car, HGV, bus and visitor parking areas; rail sidings improvements; weighbridges and weighbridge office; two portacabin offices; sprinkler tank and pump room; drainage connection to the River Lee; security fencing; landscaping and highways improvements to Ratty’s Lane, in accordance with application ref: 7/0067-17, dated 20 December 2016.
2. On 1 February 2018, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client’s application be referred to him instead of being dealt with by the local planning authority.

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

3. The Inspector recommended that the application should be approved, and planning permission be granted subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector’s conclusions, except where stated, but disagrees with the Inspector’s recommendation. He has determined that planning permission should be refused. A copy of the Inspector’s report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Ministry of Housing, Communities & Local Government  
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Planning Casework Unit  
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2 Marsham Street  
London SW1P 4DF

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## **Environmental Statement**

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended). Having taken account of the Inspector's comments at IR1.5, the Secretary of State is satisfied that the Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

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

6. On 1 April 2019 the Secretary of State was provided with an addendum report (AR) by the same Inspector to assist him in his consideration of the environmental issues in this case. The AR is attached, and references to paragraphs of that report are marked 'AR'.
7. A list of representations which have been received since the inquiry is at Annex A. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

## **Policy and statutory considerations**

8. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case the adopted development plan consists of the Hertfordshire Waste Core Strategy and Development Management Policies Development Plan 2011-2026 (adopted November 2012); the Hertfordshire Waste Site Allocations Development Plan Document 2011–2026 (adopted July 2014), the Hertfordshire Minerals Local Plan Review 2002-2016 (adopted March 2007) and the Broxbourne Local Plan Second Review 2001-2011 Saved Policies (adopted December 2005). The Secretary of State considers that the development plan policies of most relevance to this case include those set out at IR5.3-5.30.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), and those matters set out in IR5.31-5.47. The revised National Planning Policy Framework was published on 24 July 2018, and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.
11. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.
12. In accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

### *Emerging plan*

13. The emerging Broxbourne Local Plan is undergoing examination. The Secretary of State considers that the emerging policies of most relevance include those set out in IR5.37-5.39.
14. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. As the emerging Local Plan has not yet completed its examination, objections are not yet fully resolved and the policies may be subject to change, the Secretary of State considers that the emerging Local Plan carries limited weight.

### **Main issues**

#### *Location outside any defined area of search*

15. For the reasons given in IR17.5-17.12 and IR18.2, the Secretary of State agrees with the Inspector that an Energy Recovery Facility (ERF) for the treatment of residual local authority collected waste (LACW) would not be in conflict with Policy 1 or policy WSA2 providing there is an overriding reason for locating it outwith an allocated site and subject to compliance with the policy 7 criteria (IR17.12). For the reasons set out in paragraphs 16 and 18 below, he considers that these conditions are met.

#### *Need*

16. For the reasons given in IR17.13-17.28 and IR18.3, the Secretary of State agrees with the Inspector that an urgent and pressing need for the proposed facility has been demonstrated (IR17.27). He further agrees that there is no conflict with the objectives of the Waste Management Plan for England, the National Planning Policy for Waste, core policies 12, 13 and 14 of the JMWMS or the principles of the LACW Spatial Strategy. He further agrees that there would be no conflict with policies 1, 3 and 7 of the WCS (IR17.28).

#### *Technology choice*

17. For the reasons given in IR17.29-17.32, the Secretary of State agrees with the Inspector that the proposed technology platform represents a flexible and efficient technology choice for dealing with the volume and variety of waste contained in the residual LACW stream, that it represents a rational choice and that there is no conflict with policy 3 of the WCS in this regard (IR17.31, IR17.32).

#### *Alternative sites assessment (ASA)*

18. For the reasons given in IR17.33-17.53, the Secretary of State agrees with the Inspector that the ASA, as updated, represents a proportionate response, providing a sufficient level of detail to allow a conclusion to be reached on the suitability and availability of potential alternatives and is thus adequate for its intended purpose. He further agrees that there is no obvious alternative site identified within the WSA or in areas of search C, D or E that would perform significantly better in environmental terms, that is suitable for the use proposed and is available for a development of the scale proposed. Given the compelling need for the proposed development, he agrees that that represents an

overriding reason for locating the development outside those clearly preferred areas, and like the Inspector finds no policy conflict in this regard (IR17.53).

#### *Carbon balance and climate change*

19. For the reasons given in IR17.54-17.64 and IR18.3-18.4, the Secretary of State agrees with the Inspector that there would be a saving in greenhouse gas emissions compared to the status quo. He further agrees that there would be no conflict with policy 10 of the WCS, with the National Planning Policy for Waste, section 14 of the Framework, or the principles of NPSs EN-1 and EN-3 (IR17.64).

#### *Air/Water Quality and Health*

20. For the reasons given in IR17.65-17.81 and IR18.5 and IR19.2, the Secretary of State agrees with the Inspector that the proposed ERF would not be a significant contributor to the overall nitrogen loading of aquatic habitats in the Lee Valley (IR17.74) and that while it would result in small but quantifiable increases in ambient concentrations of some airborne pollutants, any potential damage to health of those living close by is likely to be very small, if detectable at all (IR17.81 and IR18.5). He notes that there is nothing in the evidence before the Inquiry to indicate that such matters could not properly be controlled through the permitting process, and therefore agrees with the Inspector that there would be no conflict with the National Planning Policy for Waste in this regard (IR18.5). He further notes that the Inspector sets out that it is well established that it is for the permitting process (and not the planning regime) to regulate the incineration process and emissions arising from that process in the interests of preventing pollution and protecting public health. He therefore agrees that limited weight attaches to the perception of harm, particularly in relation to health matters, given the fears expressed by local people (IR19.2).

#### *Heritage assets*

21. For the reasons given in IR17.82-17.108 and IR18.6, the Secretary of State agrees with the Inspector that there would be no direct physical impact on any heritage asset, and that whilst the development proposed would be seen from numerous heritage assets in the locality to varying degrees, there would be no harm to the heritage significance of any asset. He further agrees that there is no conflict with policies 11, 13, 17, 18 or 19 of the WCS, policy HA6 of the emerging Broxbourne Local Plan or section 16 of the Framework (IR17.108). As the Secretary of State has found no harm, the provisions of paragraph 196 of the Framework do not come into play (IR17.109).

#### *Ecology and wildlife*

22. In reaching his conclusions on this matter, the Secretary of State has taken into account the Inspector's analysis and conclusions on likely significant effects in IR17.110-17.148 and IR18.7, as well as her further analysis and conclusions in AR1.1-8.2. For the reasons set out in these paragraphs, the Inspector has found that overall the development proposed would not result in a likely significant effect alone, or in combination with other plans and projects, on either Wormley-Hoddesdon Park Woods SAC or Epping Forest SAC (AR8.1). However, during the construction phase, dust is an emission of relevance to both the Lee Valley SPA and Ramsar and could potentially result in a likely significant effect. The integrity of the SPA and the Ramsar could also be affected by lighting during the construction phase, and noise and lighting once operational. She notes that in these circumstances an Appropriate Assessment would be required (AR7.1-7.2). The Secretary

of State agrees with the Inspector's conclusions on this matter. If permission were being granted, it would be for him as competent authority to carry out an Appropriate Assessment. However, as permission is not being granted, this is not necessary.

23. In order to inform an Appropriate Assessment (were it to be undertaken), the Inspector has helpfully gone on to provide limited consideration of the likely adverse effects identified and potential mitigation measures, and has concluded at AR7.3 that the mitigation measures set out in that paragraph would be likely to be secured and would, in her view, be sufficient such that there would be no adverse effect on the integrity of the designated sites. In the event that permission were being granted, these conclusions would be considered alongside all other relevant matters by the Secretary of State in the context of an Appropriate Assessment.

#### *Highways and traffic*

24. For the reasons given in IR17.149-17.178 and IR17.197, the Secretary of State agrees with the Inspector that only with controls in place to ensure that the HGV traffic is contained to the Permitted Route (other than local collection vehicles which of necessity travel local streets), to preclude HGV traffic at the site during the AM and PM peaks, and only if the New River bridge is in place prior to commissioning of the ERF, the residual impact on the highway network would not be severe (IR17.174 and IR17.197).

25. The Secretary of State has very carefully considered the Inspector's analysis of the effect of the proposal on the safety and free flow of users on Ratty's Lane itself, and her overall conclusions on highways and traffic (IR17.179-17.196, IR17.198 and IR18.8). He has taken into account that some measures have been proposed to mitigate the problems arising from the narrowness of the road, e.g. improvements to the site access, resurfacing, a signal-controlled shuttle system and briefing of HGV drivers (IR17.182-184).

26. However, the Secretary of State notes that there are remaining concerns. He agrees with the Inspector at IR17.185 that some encroachment by HGV drivers onto third party land is likely to occur at times, and that in some circumstances an HGV may be unable to pass even if the driver chose to drive over the kerbs and verges. He further notes that neither the Iron Mountain access nor the AD/ATT facility access points would be linked to the proposed signal controls, and agrees with the Inspector at IR17.186 that while the briefing could be shared with the operator of the AD/ATT facility, since the drivers of those vehicles are not under the control of the applicant, they are not bound into the arrangement and would be under no obligation to sign up to it. He agrees that in theory, using the adjacent land to facilitate passing could be prevented by the land owner, and notes Mr Crabb's acknowledgement (for the applicant) that were such a situation to arise on a public highway, it would be considered unacceptable (IR17.187).

27. The Secretary of State has taken into account that most (but not all) of Ratty's Lane is a private road (IR17.180). He has also taken into account that the Inspector refers to the use of the Lane as including 'a small car park at the end of the Lane ... currently used by anglers and walkers' (IR17.179), which is referred to in further submissions by other interested parties as 'public parking' required to be provided 'pursuant to the grant of planning permission for the ATT Plant and AD on Ratty's Lane' (IR13.38). He has further taken into account that there is currently an outstanding application for the Lane to be recognised as a byway open to all traffic (IR13.38 and IR17.195). Overall the Secretary of State has taken into consideration that although much of Ratty's Lane is a private road, it is accessible to and is used by the public.

28. The Secretary of State further notes the Inspector's view that other users of the private part of the lane might be more tolerant in relation to providing 'passing access' than might otherwise be the case, that no evidence was put before the inquiry to demonstrate that there is currently any significant problem in terms of free flow or safety, and that visibility is excellent in both directions. However, he agrees with the Inspector that HGV numbers would clearly increase by a material amount as a consequence of the development proposed (IR17.190).
29. The Secretary of State further notes that there was uncontested evidence that for part of its length, Ratty's Lane is narrower than the width required to allow a HGV to safely pass a pedestrian or cyclist (IR17.191-17.192). He has taken into account that there have been no recorded instances of collisions involving pedestrians or cyclists, that the actual frequency of interaction on the very narrowest section of the Lane would still be relatively low, and that the extant planning permission allows for a maximum of 200 daily traffic movements. None the less he agrees with the Inspector at IR17.194 that the potential for encounters between HGVs and pedestrians/cyclists would be materially greater, on all parts of Ratty's Lane, than is currently the case.
30. Overall the Secretary of State considers that the concerns set out in paragraphs 26 and 29 above have not been satisfactorily addressed. He considers that in terms of both the free flow of traffic and the safety of users, the arrangement proposed is not just 'not ideal' as the Inspector recognises at IR17.198, but unacceptable. In this case he does not consider the fact that the narrowest part of the Lane is not a public highway justifies a reduction in appropriate standards of traffic flow or safety, whether on the private part of Ratty's Lane or on Ratty's Lane as a whole.
31. In the light of the Secretary of State's conclusions above, he further concludes that the proposal is in conflict with paragraph 108(b) of the Framework, and he is not sufficiently satisfied that, just because part of Ratty's Lane is private, conflict with paragraph 109 of the Framework does not also arise. Like the Inspector he finds no conflict with policies 7, 9 or 15 of the WCS (IR17.199), but given his conclusions on highway safety, does find conflict with policy 13 of the WCS. He gives these matters substantial weight in the planning balance.

#### *Landscape and visual effects*

32. For the reasons given in IR17.200-17.232, IR18.9 and IR19.5, the Secretary of State agrees with the Inspector that from most vantage points, the development would, for the most part, not have significant adverse landscape or visual impact, given its context (IR17.230). However, he agrees that at close range there would be a significant adverse landscape impact in relation to the nearest part of the Lee Valley Regional Park, and a significant adverse visual impact from within the nearest part of the Lee Valley Park, but also from the elevated Stort Valley Way (IR17.231). This could not be mitigated by landscaping or other screening (IR18.9). He further agrees that there would be conflict, in this regard, with policies 11, 12, 18 and 19 of the WCS, and saved policy HD14 of the Broxbourne Local Plan. He further agrees that there would be conflict with policy DSC1 of the emerging Broxbourne Local Plan, objective WC2 and policies L1.1, LS1.2, LS2.1, LS1.5 and LS1.6 of the Lee Valley Park Plan, and policies DBE9, LL3, RST24 and GB7A of the Epping Forest Plan, as well as conflict with paragraphs 124 and 127 of the Framework (IR17.230-17.232 and IR18.9). The Secretary of State agrees with the Inspector that the significant adverse effect on the character and appearance of the surrounding area in terms of both landscape and visual impact attracts considerable weight against the scheme (IR19.5).

### *Noise and vibration*

33. For the reasons given in IR17.233-17.239 and IR18.10, the Secretary of State agrees with the Inspector that with appropriate mitigation secured by conditions, the significance of effect in terms of noise and ground-borne vibration once the facility was operational would be negligible at all identified receptors, and there would be no conflict with policies 11, 12 and 13 of the WCS, policy SUS8 of the Broxbourne Local Plan or section 16 of the Framework (IR18.10).

### *Tourism and socio-economic effects*

34. For the reasons given in IR17.240-17.243, the Secretary of State agrees with the Inspector that there is no evidence which conclusively demonstrates that the proposed development would have an adverse effect on local property markets or the vitality and viability of Hoddesdon town centre, and like the Inspector he finds no harm in this respect. He further agrees that there would be no conflict with the provisions of section 6 of the Framework (IR17.243).

### *Benefits of the scheme/implications of not proceeding*

35. For the reasons given in IR17.244, the Secretary of State considers that meeting the urgent and pressing need for a long-term solution for dealing with Hertfordshire's waste attracts substantial weight in favour of the proposal. For the reasons set out in IR17.245 and IR17.246, the Secretary of State considers that the climate change benefits of the scheme in terms of saving greenhouse gas emissions and the provision of low carbon energy to the grid attracts substantial weight. He agrees with the Inspector that the hypothetical CHP prospects attract limited weight (IR17.247) and that the employment benefits attract little weight (IR17.248-17.249). He considers that the creation of further value in the waste processing chain through the recovery of metals and the use of IBA as a secondary aggregate attracts moderate weight (IR17.250), while highways improvements and additional planting and habitat creation each attract limited weight (IR17.251-17.252).

### *Other matters*

36. For the reasons given in IR17.255-17.258 and IR18.9, the Secretary of State agrees with the Inspector that whilst the development proposed would have a presence and would clearly be seen from the Green Belt, there would be no impact on its actual openness, and thus there would be no conflict with national or local planning policy in this regard (IR17.257). He further agrees that there would be conflict with policy GB7A of the Epping Forest Plan, a material consideration in this case, but only in relation to the visual amenities of the Green Belt (IR17.258, IR18.9).

37. For the reasons given in IR17.259, the Secretary of State agrees with the Inspector that the Sequential Test is passed (IR17.260). He further agrees that the facility could be made safe and resilient from predicted flood risk effects, including an allowance for climate change, without increasing the risk of flooding elsewhere or necessitating provision of replacement flood plain storage, and that there is no conflict in this regard with policy 16 of the WCS, paragraph 163 of the Framework or policy W5 of the emerging Broxbourne Local Plan (IR17.261). He further agrees that the risk of contamination of groundwaters can be protected, and that there would be no conflict with policies 14 and 16 of the WCS in this regard, or with sections 14 and 15 of the Framework (IR17.263-17.264).

38. For the reasons given in IR17.265-17.269, the Secretary of State agrees with the Inspector that whilst there would, technically, be conflict with the wording of Minerals policy 10, given the combination of circumstances relating to the use of the railhead for the removal of IBA, there would be no actual harm by reason of non-compliance (IR17.269).
39. For the reasons given in IR17.270-17.278, the Secretary of State agrees with the Inspector that in terms of accessibility there would be no conflict with policy 15 of the WCS or with paragraphs 102 and 104 of the Framework.

### **Planning conditions**

40. The Secretary of State has given consideration to the Inspector's analysis at IR15.1-15.8, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for refusing planning permission.

### **Planning obligations**

41. Having had regard to the Inspector's analysis at IR16.1 and IR17.279-17.290 and IR17.295-17.311, the planning obligation dated 4 October 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion that in the respects set out in IR17.279-17.290 and IR17.295-17.309, the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. He agrees with the Inspector's assessment of the travel plan contribution at IR17.291-17.294 and the diversion order at IR17.310-17.311, and has not taken these elements of the obligation into account in determining whether or not planning permission should be granted. Overall the Secretary of State does not consider that the obligation overcomes his reasons for refusing planning permission.

### **Planning balance and overall conclusion**

42. For the reasons given above, the Secretary of State considers that the application is not in accordance with Policies 11, 12, 13, 18 and 19 of the WCS and saved policy HD14 of the Broxbourne Local Plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
43. Given the urgent and pressing need, the Secretary of State considers that the provision of an ERF with sufficient capacity to accommodate the waste demands of the county carries substantial weight in favour of the proposal, and the climate change benefits of the proposal also carry substantial weight. He further considers that the additional value created in the waste processing chain carries moderate weight, the highways improvements, habitat creation and potential for CHP each carry limited weight, and the employment and economic benefits carry little weight.
44. The Secretary of State considers that the significant adverse landscape and visual impacts, which as well as being in conflict with the development plan are also in conflict with emerging plan policies, policies of the Epping Forest Local Plan, policies of the Lee



Valley Park Plan, and the Framework, carry considerable weight against the proposal. He further considers that highways matters, including those on safety, carry substantial weight against the proposal. Taken together, the Secretary of State considers these matters justify refusal in this case. He considers that the perception of harm to health carries limited weight. In the light of his conclusions on highways matters, which are specific to this case, he does not consider that the scheme constitutes sustainable development.

45. The Secretary of State considers that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan. He therefore concludes that permission should be refused.

### **Formal decision**

46. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby refuses planning permission for demolition of existing buildings and structures associated with existing rail aggregates use and construction and operation of an Energy Recovery Facility for the treatment of municipal, commercial and industrial wastes; importation, storage and transfer of local authority collected healthcare waste, together with ancillary infrastructure including an administration/visitor centre; incinerator bottom ash storage shed; grid connection compound; car, HGV, bus and visitor parking areas; rail sidings improvements; weighbridges and weighbridge office; two portacabin offices; sprinkler tank and pump room; drainage connection to the River Lee; security fencing; landscaping and highways improvements to Ratty's Lane, in accordance with application ref: 7/0067-17, dated 20 December 2016.

### **Right to challenge the decision**

47. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
48. A copy of this letter has been sent to Hertfordshire County Council and Rule 6 parties, and notification has been sent to others who asked to be informed of the decision.

Yours sincerely

*Maria Stasiak*

Authorised by the Secretary of State to sign in that behalf

## Annex A Post-inquiry correspondence

<b>Party</b>	<b>Date</b>
Peter Madsen	1 September 2018
Mr and Mrs French	9 September 2018
The Hoddesdon Society (Jan Metcalfe)	2 October 2018
Broxbourne Borough Council (Cllr Mills-Bishop)	24 October 2018
Veolia UK Limited	29 November 2018
The Hoddesdon Society (Jan Metcalfe)	1 December 2018
The Hoddesdon Society (Jan Metcalfe)	1 April 2019
Broxbourne Borough Council (Douglas Cooper)	26 April 2019
Broxbourne Borough Council (Cllr Lewis Cocking)	22 May 2019
Veolia UK Limited	4 June 2019



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

by Mrs J A Vyse DipTP DipPBM MRTPI  
an Inspector appointed by the Secretary of State

Date: 4 February 2019

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**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)**

**APPLICATION MADE BY**

**VEOLIA ES (HERTFORDSHIRE) LIMITED**

**TO**

**HERTFORDSHIRE COUNTY COUNCIL**

Inquiry opened on 19 June 2018

2 Ratty's Lane, Hoddesdon, Hertfordshire EN11 0RF

File Ref: APP/M1900/V/18/3195373

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## ABBREVIATIONS

AD	Anaerobic Digester
AM/PM	morning/evening
APIS	Air Pollution Information System
ARCADY	Computer modelling programme used to predict capacities, queues, deltas and accident risk at roundabouts.
ASA	Alternative Sites Assessment
ATC	Automated Traffic Count
ATT	Advanced Thermal Treatment
BEIS	Department for Business, Energy and Industrial Strategy
BREEAM	Building Research Establishment Environmental Assessment Method
BxB	Broxbourne Borough Council
CCGT	Combined Cycle Gas Turbine
CD	Core Document
C&I	Commercial and Industrial
CIL	Community Infrastructure Levy
CHP	Combined Heat and Power
Cllr	Councillor
CO <sub>2</sub>	carbon dioxide
DCO	Development Consent Order
DEFRA	Department for Environment, Food and Rural Affairs
DPZ	Development Proximity Zone
EA	Environment Agency
EIA	Environmental Impact Assessment
EfW	Energy from Waste
ELAS	Employment Land Areas of Search
EN-1	Overarching National Policy Statement for Energy (revised)
EN-3	National Policy Statement on Renewable Energy Infrastructure
ERF	Energy Recovery Facility
ES	Environmental Statement
EU	European Union
GCN	Great Crested Newt
GIG	Green Investment Group
HIA	Health Impact Assessment
HGV	Heavy Goods Vehicle
HRA	Habitats Regulations Assessment
HSE	Health and Safety Executive
IBA	Incinerator Bottom Ash
JWMWS	Joint Municipal Waste Management Strategy
Kg	kilogramme
LACW	Local Authority Collected Waste
LACWSS	Local Authority Collected Waste Spatial Strategy
LinSig	A software tool for modelling traffic signals and their effect on traffic capacities and queuing
LVIA	Landscape and Visual Impact Assessment
LVRP	Lee Valley Regional Park
MCC	Manual Classified Count
MEF	marginal emissions factor
MW	Megawatts
MWe	Megawatts equivalent
N/ha/yr	Nitrogen/hectare/year

NO <sub>2</sub>	nitrogen dioxide
NPPF	National Planning Policy Framework
NPPW	National Planning Policy for Waste
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
OS	Only Solutions
Paramics	A software tool for the simulation of traffic conditions at individual vehicle level
PC	process contribution
PCB	polychlorinated biphenyl
PDL	previously developed land
PEC	predicted environmental concentration
PLBCAA	Planning (Listed Buildings and Conservation Areas) Act 1990
PM <sub>2.5</sub>	atmospheric particulate matter that has a diameter of less than 2.5 micrometres
PM <sub>10</sub>	particulate matter 10 micrometres or less in diameter
RAG	Red/Amber/Green
RFC	ratio to flow capacity
S106	Section 106 of the Town and Country Planning Act 1990
SAC	Special Area of Conservation
SoCG	Statement of Common Ground
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
TA	Transport Assessment
tCO <sub>2</sub>	tonnes of carbon dioxide
Tempro	Trip End Model Presentation Programme
tpa	tonnes per annum
Transyt	A software package for designing, evaluating and modelling road junctions and traffic networks
WCS	Hertfordshire Waste Development Framework - Waste Core Strategy and Development Plan Policies Development Plan Document 2011-2026
WDA	Waste Disposal Authority
WPA	Waste Planning Authority
WSA	Hertfordshire Waste Development Framework - Waste Site Allocations Development Plan Document
ZTV	zone of theoretical visibility

**File Ref: APP/M1900/V/18/3195373**

**2 Ratty's Lane, Hoddesdon, Hertfordshire EN11 0RF**

- The application was called in for decision by the Secretary of State by a direction made under section 77 of the Town and Country Planning Act 1990 on 1 February 2018.
- The application is made by Veolia ES (Hertfordshire) Limited to Hertfordshire County Council.
- The application No 7/0067-17 is dated 20 December 2016.
- The development proposed is described as demolition of existing buildings and structures associated with existing rail aggregates use and construction and operation of an Energy Recovery Facility for the treatment of municipal, commercial and industrial wastes; importation, storage and transfer of local authority collected healthcare waste, together with ancillary infrastructure including an administration/visitor centre; incinerator bottom ash storage shed; grid connection compound; car, HGV, bus and visitor parking areas; rail sidings improvements; weighbridges and weighbridge office; two portacabin offices; sprinkler tank and pump room; drainage connection to the River Lee; security fencing; landscaping and highway improvements to Ratty's Lane.
- On the information available at the time of making the Direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application: the extent to which the proposal is consistent with the development plan for the area, in particular the Hertfordshire Waste Development Framework (Waste Core Strategy and Development Plan Policies Development Plan Document 2011-2026) and the extent to which the proposed scheme is consistent with the National Planning Policy for Waste, the Waste Management Plan for England and the National Planning Policy Framework, together with any other matters the Inspector considers relevant.

**Summary of Recommendation: That the application be approved and that planning permission be granted subject to the conditions set out in Appendix D.**

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**1. PROCEDURAL MATTERS**

*Throughout this Report, core documents (listed at Appendix B at the end) are referred to with the prefix 'CD' followed by the relevant number. Documents handed up during the Inquiry (listed at Appendix C) are prefaced with 'Doc' followed by the relevant number.*

- 1.1 In light of the expected duration and the number of parties involved, I held a pre-Inquiry meeting on 23 April 2018. The purpose of the meeting was to set out administrative and procedural arrangements to ensure that the Inquiry could be carried out in an efficient and effective manner.
- 1.2 The Inquiry itself sat for a total of 20 days between 19 June and 3 August 2018, including a well-attended evening session on 27 June 2018. The Inquiry was closed in writing on 25 September 2018.<sup>1</sup>
- 1.3 I undertook several unaccompanied visits to the site and its surroundings prior to and during the Inquiry. I also undertook a total of three accompanied visits during the Inquiry. The first, on 27 June 2018, looked at the operation of the local highway network during the morning and evening peak hours and over the anticipated 'busiest operational hour' in the middle of the day. The visit also included various vantage points around the local area, a walk around

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<sup>1</sup> Doc 96

Hoddesdon town centre, a walk along the River Lee within the Lee Valley Regional Park and a tour of the application site itself, including the rail sidings. The second visit, on 9 July 2018, took in various agreed locations within the wider area, including Clayton Hill, Perry Hill, Harolds Park Farm, All Saints church, Broxbourne sailing club, Glen Faba Lake, Roydon Marina, Rye Meads RSPB and Stanstead Bury.<sup>2</sup> The third visit, on 12 July 2018, was to the applicant's energy from waste facility at Four Ashes, near Wolverhampton.

- 1.4 In light of its resolution to grant planning permission for the development scheme, Hertfordshire County Council appeared at the Inquiry in support of the applicant. Opposition to the proposal was led by Broxbourne Borough Council, a group of four local Parish Councils headed by Nazeing Parish Council,<sup>3</sup> Herts Without Waste and The Hoddesdon Society, all of whom were granted Rule 6(6) status for the Inquiry at their request.
- 1.5 The application is accompanied by an Environmental Statement,<sup>4</sup> which was added to with further environmental information during the course of the application under the provisions of Regulation 22(1) of The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended).<sup>5</sup> On 16 May 2017, the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations 2017) came into force. Regulation 76 includes transitional arrangements for qualifying applications and appeals. Since the application meets the requirements of the transitional arrangements, the EIA Regulations 2011 continue to apply in this instance.
- 1.6 A draft planning obligation<sup>6</sup> was the subject of discussion at the Inquiry, with a final, completed version, incorporating minor revisions as discussed, submitted later.<sup>7</sup> The provisions of the planning obligation are a material consideration and are addressed in more detail later in this Report.
- 1.7 Operation of the proposed facility, and all emissions, would be regulated by an Environmental Permit which would be issued by the Environment Agency. At the time of the Inquiry, a draft permit had been issued.<sup>8</sup>
- 1.8 The new National Planning Policy Framework was published whilst the Inquiry was sitting and, insofar as it is relevant to the matters raised by the development proposed, it was dealt with by the participating parties during the event and in closings and is taken in to consideration in my conclusions.
- 1.9 As to the Report itself, the opening sections below are primarily factual in describing the planning background, the site and surrounding area, the planning policy context and the proposal. A summary of the three statements of common ground on flood risk, highways and surface water is then followed by the main points of the cases presented on behalf of the applicant, the Council, the four Rule 6(6) parties and others appearing at the Inquiry. A summary of the written representations precedes section 15, which covers

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<sup>2</sup> Doc 56

<sup>3</sup> The group represented the Parish Councils of Nazeing, Roydon, Stanstead Abbots and Stanstead St Margarets and is referred to in this Report as the Joint Parish Councils.

<sup>4</sup> CDs A13, A14, A15 and A16

<sup>5</sup> CD A17

<sup>6</sup> Doc 91a

<sup>7</sup> Doc 97

<sup>8</sup> Doc 68



planning conditions, and section 16 which sets out the planning obligations secured. My conclusions and recommendation follow in section 17. Inquiry appearances, documents lists and a schedule of recommended planning conditions form Appendices A to D. Footnotes throughout provide references to documents and points of information and clarification.

- 1.10 There was a suggestion about potential conflict of interest, given that the County Council is the waste planning authority as well as the authority awarding the waste contract to Veolia. However, that arrangement is no different from most other county councils across the country. No substantiated evidence was before me to demonstrate any impropriety in this regard and I have no reason to suppose other than that the respective 'arms' of the Council exercised their respective duties and functions with proper regard to due process.
- 1.11 The parties use the terms Energy from Waste (EfW) and Energy Recovery Facility (ERF) to describe the development proposed and other similar facilities. For the purposes of this Report, I have treated the terms as interchangeable.
- 1.12 Last, but certainly by no means least, my sincere thanks go to Joanna Vincent and Graham Groom who acted as programme officers for the Inquiry, for their invaluable help in dealing with a variety of programming and related matters and their liaison with the main parties and members of the public. Their assistance was very much appreciated by all those involved in the proceedings and helped to ensure the smooth running of the event. My thanks also go to the staff at High Leigh, the venue for the Inquiry, for making us so welcome and their unfailing helpfulness and courtesy throughout.

## **2. PLANNING BACKGROUND**

- 2.1 The planning application the subject of this Inquiry was submitted by Veolia ES (Hertfordshire) Limited, a company set up with the specific intention of delivering Hertfordshire County Council's waste disposal contract. In April 2011, Veolia was appointed by the County Council in its capacity as Waste Disposal Authority (WDA) as the contractor to manage the municipal residual waste arisings within the County. The contract was for a period of 30 years. This culminated in a planning application being submitted in November 2011 for a recycling and energy recovery facility (RERF) at New Barnfield in Hatfield for the treatment of Hertfordshire's residual municipal, commercial and industrial waste.
- 2.2 Although the County Council resolved to grant planning permission for that facility in October 2012, permission was ultimately refused in July 2015 following the application being called-in by the Secretary of State.<sup>9</sup>
- 2.3 In August 2012, Veolia submitted a Development Consent Order (DCO) application for the construction of a Power Station at the Ratty's Lane site, which facility was to have been powered by Solid Recovered Fuel and natural gas. That application was in connection with the company's bid for the North London Waste contract. In the event, however, Veolia withdrew both its bid and the DCO application.

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<sup>9</sup> APP/M1900/V/13/2192405 dated 16 July 2015 (Appendix 14 to the proof of Mr Cooper)

- 2.4 Subsequent to the New Barnfield decision, a Revised Project Plan was formulated by Veolia which re-examined the Alternative Sites Assessment that had been carried out for New Barnfield. The outcome of that was the identification and adoption of the current proposal for an energy recovery facility (ERF) at Ratty's Lane.
- 2.5 The associated planning application was reported to the County Council's Development Control Committee on 20 December 2017 and secured a resolution for approval subject to a suite of conditions and a planning obligation.<sup>10</sup> That application was subsequently called in for determination by the Secretary of State. It is that application that was the subject of the Inquiry and this Report.

### **3. THE SITE AND ITS SURROUNDINGS<sup>11</sup>**

- 3.1 The application site is located approximately 1.5 kilometres to the east of Hoddesdon town centre (within the Borough of Broxbourne) on the eastern edge of an established light commercial and industrial area which forms part of Hoddesdon Business Park.<sup>12</sup>
- 3.2 The irregular roughly Π-shaped site, which has north-east/south-west alignment, extends to some 5 hectares in total. The north-western 'leg' comprises a length of railway sidings, with the opposite south-eastern 'leg' comprising Ratty's Lane itself, from which vehicular access to the site is gained. The site, which benefits from a planning permission granted in December 1983,<sup>13</sup> is industrial in nature, comprising an aggregates railhead. Existing operations<sup>14</sup> consist of the importation of aggregates to the site by rail via the rail sidings. The aggregates are then stockpiled within the site by means of conveyors before being exported from the site by road. The conveyors run from the rail head along the length of the sidings before feeding the storage bays located within the main part of the site. A site office and weighbridge are located within the site close to the entrance at the end of Ratty's Lane. An above-ground oil tank is located adjacent to the main plant, and an electricity sub-station is in the north-eastern part of the site. The current occupiers of the site, Tarmac, operate under the terms of the planning permission.
- 3.3 For most of its length, Ratty's Lane is a private no-through road, some 625 metres in length terminating in a small car park adjacent to the site entrance. Ratty's Lane comprises one arm of a five-arm roundabout at the junction with Stephenson Close, Essex Road (south), Essex Way and Essex Road (north). Heading north, Essex Road leads to the A1170 Dinant Link Road some 850 metres away, which links in turn to the A10, approximately 1.7 kilometres further on to the west, and the A414. Heading south from the roundabout, Essex Road leads ultimately to villages within Essex on the opposite side of the

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<sup>10</sup> CD B1 (report) CD B3 (Appendix to the report) and B2 (minute of the committee meeting)

<sup>11</sup> See plan No 60493630-PA01 Rev 02 (CD A12), CD A1 Section3, CD A1a Section 5, Section 3 of the officer's report (CD B1) CD A13 Section3 and CD A14 Section 2

<sup>12</sup> Doc 38

<sup>13</sup> Application No 7/464/1983 (included within the bundle that comprises Doc 25). Permission was granted for a rail-served aggregates depot on the site, with processing plants for the manufacture of coated roadstone and ready mixed concrete. Although implemented and thus extant, the permission has not been implemented in its entirety, as the ready mixed concrete plant has never been built.

<sup>14</sup> Existing Features Plan Appendix DWB 3.1 to the proof of Mr Bridgwood. Also plan No 60493630-PA03 in CD A12

Lee Valley, such as Nazeing and Roydon. Stephenson Close and Essex Way are industrial estate roads.

- 3.4 Adjoining the southwestern boundary of the application site is Rye House Power Station, a 715-megawatt combined cycle gas turbine facility accessed off Ratty's Lane. Opposite to that, on the other side of Ratty's Lane, is the recently completed Trent Development site, a sustainable energy centre comprising an advanced thermal treatment facility and anaerobic digestion plant for the treatment of commercial and industrial wastes, planning permission for which was granted by the County Council in March 2012.<sup>15</sup>
- 3.5 The West Anglia main railway line, which is on a low embankment here and which serves the sidings referred to above, borders the north-western site boundary, separating the site from a large Sainsbury's distribution warehouse building and industrial estate beyond.
- 3.6 Immediately to the north/north-east of the application site is the River Lee/River Lee Navigation and associated towpath (also the route of public footpath No 63<sup>16</sup>) which are within the Lee Valley Regional Park. The Park, which stretches for some 26 miles along the banks of the river and includes a wide variety of public amenity spaces, including heritage sites, country parks, farms, golf courses, lakes, riverside trails, campsites, marinas, angling and boating locations, is managed by the Lee Valley Regional Park Authority. The river here is also the county boundary between Hertfordshire and Essex, the adjacent authorities at this point being East Hertfordshire District and Epping Forest.
- 3.7 Separating the site from the river, is a wooded margin within which is a large electricity pylon. High voltage overhead power lines run south from there, crossing the south-eastern portion of the application site.
- 3.8 Approximately 100 metres to the north of the site boundary, beyond the railway line and across the River Lee, is Rye House Kart Club track. Rye House Speedway Stadium lies further to the north, approximately 300 metres from the site, near to Rye Meads railway station. Beyond this again to the north, is a large sewage treatment works, Rye Meads.
- 3.9 To the east of the application site, on the opposite side of the River Lee, the land is generally rural in character comprising a mixture of lakes within the valley bottom and, beyond these, woodland and agricultural fields as the land rises out of the flood plain. Beyond the River and associated lakes to the south east, the area is characterised by the presence of substantial greenhouses associated with market gardening.
- 3.10 The nearest residential property to the application site is Lock Keeper's Cottage, some 20 metres to the east of the eastern boundary of the planning application site, located on an island between the River Lee navigation and the River Lee itself. A further residential property, Glen Faba, is located approximately 50 metres beyond Lock Keeper's Cottage at the confluence of the Lee and Stort rivers. A number of long-term leased moorings are located on the river above Feildes Lock, directly to the east of the application site. The

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<sup>15</sup> Doc 25

<sup>16</sup> Appendix DWB 3.2 to the evidence of Mr Bridgwood

nearest accumulation of dwellings is to the north-west, where a small residential estate is situated adjacent to the River Lee off Normandy Way in Hoddesdon. The closest of these properties are approximately 370 metres from the proposed development. Further residential properties are located on the Rye Park estate in Hoddesdon, again to the north-west, the closest of which is some 450 metres from the site. Residential properties at Dobbs Weir to the south of the application site are located approximately one kilometre away.

- 3.11 The communities of Stanstead Abbots and Stanstead St Margarets lie approximately 2.5 kilometres to the north of the site, within East Hertfordshire District. The village of Roydon lies some 1.5 to 2 kilometres to the east, with Nazeing roughly 3.5 kilometres to the south-east, both of which settlements lie within Epping Forest District.
- 3.12 A Local Wildlife Site is located approximately 20 metres south of the application site, within the Trent Developments site on the opposite side of Ratty's Lane.<sup>17</sup> Approximately 230 metres to the north, beyond the Rye House Stadium, are Rye Meads Site of Special Scientific Interest, a Special Protection Area, and a Ramsar site. These consist of a mixture of marsh land and lagoons, designated for their range of birds and wetland mammals.<sup>18</sup>

#### **4. THE PROPOSAL**<sup>19</sup>

- 4.1 The proposed ERF<sup>20</sup> would have a nominal capacity of 320,000 tonnes per annum (tpa) with a maximum capacity to accept around 350,000 tpa of residual waste and local authority collected healthcare waste, to produce energy from incineration. Residual local authority collected waste is the waste that has been collected by the local authorities within Hertfordshire and which is left after re-use, recycling and composting initiatives have taken place.
- 4.2 Whilst the primary purpose of the ERF is to process residual municipal waste from Hertfordshire, if not all the total capacity is taken up with such waste the remaining capacity would be made up of commercial and industrial waste of a similar nature.
- 4.3 The proposed facility would predominantly consist of a new freestanding building comprising the following elements:
- a tipping hall for the reception of residual waste (delivered by road) including an array of air-cooled condenser units which would condense the exhaust steam from the steam turbine before being fed back into the system;
  - the tipping hall would be accessed via an external elevated ramp leading from the weighbridge area;
  - a turbine hall housing a turbine to generate electricity from the steam;

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<sup>17</sup> Ecology Desk Study Report October 2016 (Fig 2 Rev01 in section 10.2 of CD A15)

<sup>18</sup> Ibid (Fig 1 Rev01)

<sup>19</sup> Details of the development proposed can be found in the committee report (CD B1), CD A1 (Section 4), CD A1a (Section 8.6), CD A12 (plans) as amended by Doc 20, CD A13 (section 4 and CD A14 (Section 3).

<sup>20</sup> References in this Report to the terms ERF (Energy Recovery Facility) and EfW (Energy from Waste) are interchangeable.

- a waste bunker, where waste would be stored, mixed and fed into the combustion plant;
- a boiler hall, housing plant associated with the combustion process and energy recovery including the boiler system generating superheated steam;
- workshops/stores/electrical areas;
- a flue gas treatment hall and associated silos for the treatment, neutralising and filtering of the gases produced by the combustion process;
- twin exhaust stacks;
- fuel storage bunds;
- sustainable drainage systems, including underground attenuation tanks;
- a flood barrier, attenuation basins and landscaped area;
- an administration/visitor block.

4.4 Other ancillary structures within the site would include:

- entrance, gatehouse, weighbridges in weighbridges out to allow for deliveries and traffic to and from the site to be monitored;
- a weighbridge office and driver welfare facilities;
- an electrical grid connection compound, with underground cabling connecting it to the UK Power Networks Rye House primary sub-station located to the south-west of the site, beyond the roundabout at the end of Ratty's Lane;
- incinerator bottom ash (IBA) storage shed;
- car, HGV, visitor and bus parking areas;
- cycle racks and motorcycle spaces;
- a healthcare waste transfer area;
- two portacabin offices for use by contractors;
- fuel tank for on-site refuelling of vehicles;
- surface water outfall to the river;
- site access and internal roads and landscaping.

4.5 The main ERF building would have a roughly rectangular footprint, with a maximum length of 149.6 metres and a maximum width of 54.5 metres. The building would have an overall height of 48 metres above ground level, plus twin stacks which would extend to some 86.75 metres above ground level.<sup>21</sup> The stacks would each have a diameter of some 2.4 metres, increasing to around 3 metres for the top 6 metres.<sup>22</sup>

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<sup>21</sup> CD B1 paragraph 3.18

<sup>22</sup> CD A13 (Section 4.3.16) and as confirmed on the amended plans at Doc 20 e.g. plan No P3-003 Rev 7

- 4.6 An administration and visitor centre is included against the north-eastern side of the main ERF building. The centre would have a width of some 27.8 metres with a depth of 9.5 metres. It would comprise seven storeys with a total height of 33.3 metres above ground level. On level 4 of the centre, a 4 metres deep viewing gallery would project along the north-eastern elevation of the main building for approximately 19 metres.
- 4.7 The weighbridge office close to the site access would have a rectangular footprint, some 10.43 metres by 4.5 metres and a flat roof with a height of 4.12 metres.
- 4.8 The tipping hall ramp would rise within the site around the north-eastern perimeter, allowing waste vehicles to tip directly into the tipping hall within the ERF building at third storey level, some 10.91 metres above ground level.
- 4.9 A covered conveyor would lead from the ERF building to the IBA shed located alongside the railway sidings. The open fronted shed comprises a long narrow structure with a rectangular footprint, measuring some 120.37 metres in length with a width of 10 metres. It would have a ridged roof, with a maximum height of 10.23 metres.
- 4.10 All waste imported to the site would arrive by road. It is proposed that the existing rail sidings, which can accommodate a 22-wagon train, would be used for the exportation of IBA from the site. Other vehicles, either removing flue gas treatment residues, or delivering consumables to the site, would use the internal circulation roads to access doors on the ground level of the main ERF building.
- 4.11 Other land outwith the application site boundary is required for utilities connection routes, an electricity grid connection route, construction compounds/laydown areas and habitat creation/management areas. As set out in the Design and Access Statement,<sup>23</sup> these elements do not form part of the development for which planning permission is sought. Rather, if permission was forthcoming, they would be provided under other legislation and land agreements.

## **5. PLANNING POLICY AND OTHER RELEVANT GUIDANCE**

- 5.1 At the time of the Inquiry, the development plan for the area included the following:

***Hertfordshire Waste Development Framework - Waste Core Strategy and Development Plan Policies Development Plan Document 2011-2026 (adopted November 2012)***<sup>24</sup>

- 5.2 The Waste Core Strategy (WCS) sets out the spatial vision and strategic objectives for waste planning in the county, together with policies to implement those objectives and detailed generic development management policies. It complements the Council's Joint Municipal Waste Management Strategy to 2026.<sup>25</sup>

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<sup>23</sup> CD A1

<sup>24</sup> CD C1

<sup>25</sup> CD K1



5.3 The WCS sets out seven strategic objectives:

SO1. To promote the provision of well-designed and efficient facilities that drive waste management practices up the waste hierarchy and are located to ensure no harm to human health and the environment, and which will reduce waste volumes to be disposed to landfill.

SO2. To locate waste recycling, handling and reduction facilities as close as practicable to the origin of waste.

SO3. To facilitate the increased and efficient use of recycled waste materials in Hertfordshire (for example as aggregate).

SO4. To facilitate a shift away from road transport to water and rail transport as the principal means of transporting waste.

SO5. To prevent and minimise waste, but where waste cannot be avoided, maximise the recovery value (including energy and heat) from waste.

SO6. To work with all partners in the County to encourage integrated spatial planning, aligning with other local waste strategies and local authority objectives which take account of waste issues, recognising that waste management generates employment and is part of the infrastructure which supports businesses and communities.

SO7. To work with all neighbouring waste authorities to manage the equivalent of the county's own waste arisings.

5.4 Subsequent policies in the document are intended to help meet those objectives. Policy 1 provides for a network of waste management sites to drive waste management practices up the waste hierarchy sufficient to provide adequate capacity for existing and future waste arisings within the county and for any agreed apportionment for waste arisings from outside the county. The policy sets out that in relation to local authority collected waste (LACW) management facilities will be located within broad specified areas as shown on the Key Diagram. The broad areas are listed as Areas A, B, C, D and E, with the Key Diagram confirming that only Areas C, D and E relate to the management of LACW. To ensure flexibility for the waste management industry and for the use of newer technologies, there will be provision for a mixture of small, medium and large waste management sites as appropriate. New and emerging waste management technologies will be encouraged.

5.5 Policy 1A confirms a presumption in favour of sustainable development, committing the Council to taking a positive approach to new development.

5.6 Policy 3 states that proposals for the treatment of waste which maximise recovery and, where appropriate, generate and recover heat and/or power will be acceptable in principle provided that the proposal is for the recovery of energy from waste that cannot reasonably be dealt with at a higher level in the waste hierarchy. Proposals for the recovery of energy from waste that help to deliver identified energy opportunities in Hertfordshire will be encouraged. In considering such proposals, the Waste Planning Authority (WPA) will have regard to the benefits of maximising energy recovery and the protection of the environment and human health.

- 5.7 Policy 7 sets out general criteria for assessing planning applications outside of identified locations. Waste management proposals for LACW within the broad areas of search but not on identified sites in the Waste Site Allocations document, or any locations outside the Areas of Search, need to demonstrate how the proposal contributes to the Joint Municipal Waste Management Strategy for Hertfordshire. Waste management facilities for waste that is not LACW being brought forward outside of existing strategic sites, Employment Land Areas of Search (ELAS) and Allocated Sites, needs to demonstrate how the proposal contributes to the overall spatial strategy for waste management within the county.
- 5.8 Policy 7 also requires that proposals should have regard to all other relevant policies in the document, with account to be taken of:
- i) Meeting a specific waste management capacity shortfall;
  - ii) Scale and timeliness of providing facilities contributing to short-term capacity gap in waste management;
  - iii) Proximity to and service provision for major urban areas and main population areas and other localised sources of waste;
  - iv) Location within or adjacent to established or proposed Employment Land, Previously Developed Land, Industrial Land or compatible land use; and,
  - v) Minimising transport distances to the existing network of waste management facilities and the strategic road network.
- 5.9 Policy 9 sets out that waste management facilities should be well located in relation to the strategic road network as defined in the Local Transport Plan, unless it can be demonstrated that it can meet an identified local need. Support will be given to proposals which utilise forms of transport other than by road, including water or rail.
- 5.10 Policy 10 requires that proposals for waste management facilities must have regard to measures that minimise greenhouse gas emissions and to climate change risks that will affect the development over its lifetime. Proposals must demonstrate how these challenges will be effectively addressed and/or managed.
- 5.11 Policy 11 is permissive of waste planning applications provided that:
- i) the siting, scale and design of the development is appropriate to the location and character of the surrounding natural and built environment;
  - ii) the landscaping and screening of the site is designed to effectively mitigate the impact of the proposal;
  - iii) the proposed operation of the site would not adversely impact upon amenity and human health;
  - iv) the proposed development would not adversely impact upon wildlife habitats, the natural, built or historic environments;
  - v) the proposed operation of the site would not adversely impact upon wildlife habitats, the natural, built or historic environment;



- vi) adequate provision is made for the restoration, aftercare and management of the site to an agreed after-use;
  - vii) applications for hazardous waste facilities should satisfactorily address issues of safety and risks to human health, wildlife habitats, and the natural, built and historic environment;
  - viii) proposals on Greenfield sites can demonstrate that no better suitable previously developed land (PDL) is available;
  - ix) there would not be an unacceptable adverse cumulative impact on the area; and it is not in conflict with other policies in the WCS; and,
  - x) it is not in conflict with other policies in the document.
- 5.12 Policy 12 relates to sustainable design and construction. Among other things, proposals are required to incorporate good and innovative design, to demonstrate that no significant noise or light intrusion will arise from the development, and to include measures to minimise adverse impact on human health, amenity and wildlife habitats and the natural and built environment. In particular, waste management facilities should be enclosed within a building wherever possible which, along with plant and machinery, should be in keeping with the surrounding setting and landscape/townscape.
- 5.13 Policy 13 requires that traffic likely to be generated would not have an adverse impact on highway safety, the effective operation of the highway network, amenity, human health, or the natural and historic environment.
- 5.14 Policy 14 requires the incorporation of buffer zones in order to safeguard sensitive land uses and to ensure the ecology and integrity of nearby watercourses and river corridors are protected.
- 5.15 Policy 15 states that proposals should ensure that public rights of way are not adversely affected or, where this is not possible, safe and convenient alternative provision is made or a suitable replacement right of way is secured. The use of rights of way to obtain vehicle access to a site will not be permitted unless it can be clearly demonstrated that the safety of rights of way users can be adequately protected. Proposals should enhance the public rights of way network through the creation of new rights of way and/or open space, or the improvement of existing access.
- 5.16 Policy 16 lists criteria to be met in order to protect the soil, water and air environment.
- 5.17 Policy 17 is concerned with the protection of sites of international and national importance, including Sites of Special Scientific Interest, Special Protection Areas, scheduled ancient monuments and listed buildings and their settings. Proposals will be permitted where it can be demonstrated that they would not have an irreversible impact on such designated sites. They should be conserved and where possible opportunities sought to enhance them.
- 5.18 Policy 18 sets out a similar approach to assets of regional and local significance, including the Lee Valley Regional Park, wildlife sites and local nature reserves, species of flora and fauna protected by law or identified in the UK Biodiversity Action Plan as needing particular conservation action,

woodland and trees of landscape, amenity ecological or historical importance, and conservation areas and their setting. Assets such as these are to be conserved and, where possible, enhanced. Where there are unavoidable negative impacts, adequate mitigation measures should be proposed and/or compensation provided for their replacement.

- 5.19 Policy 19 sets out requirements for protection and mitigation to protect and safeguard the County's diversity of natural and historic environmental assets and minimise impacts of development, including measures to minimise visual intrusion and any adverse impact on the local landscape and countryside.

***Hertfordshire Waste Development Framework - Waste Site Allocations Development Plan Document 2011-2026 (adopted July 2014)***<sup>26</sup>

- 5.20 The Waste Site Allocations Plan (WSA) identifies sites for waste management facilities in conformity with the Waste Core Strategy and Development Management Policies Document - the two documents are to be read in conjunction. It includes maps and planning briefs for sites identified as existing strategic sites, Employment Land Areas of Search (ELAS) and Allocated Sites.
- 5.21 It identifies eight site allocations for a range of waste related uses, wherein submitted applications will be assessed on an individual and cumulative basis as and when they are brought forward. Further opportunities for development are identified within ELAS. A sequential approach is adopted in relation to development outwith the site allocations. The application site is not an allocated site and is not located within any of the ELAS.
- 5.22 Table 2.1 of the WSA sets out site planning requirements for waste management facilities. Section 8 of the Table confirms that thermal treatment facilities, identified as combined heat and power plants/energy from waste facilities, may be suitable (depending on size) in a range of urban or urban fringe sites. Preference is expressed for co-location with mixed waste processing operations and to areas allocated for business use or in traditional commercial/industrial urban areas. Among other things, larger scale facilities should, where possible, be located at least 250 metres from sensitive properties. In terms of typical site areas, the Table indicates that up to 1-2 hectares is required for small scale plant dealing with up to 50,000 tpa, with 2-5 hectares required typically for large scale plant dealing with up to 250,000 tpa. Table 3 of the WSA indicates that large thermal treatment facilities require sites of 2.5 hectares or more.
- 5.23 Policy WSA1 sets out a presumption in favour of sustainable development and confirms that the Council will work proactively with applicants jointly to find solutions with a view to approving proposals wherever possible.
- 5.24 Policy WSA2 is permissive of proposals for waste management facilities on allocated sites or within an ELAS subject to specific criteria. Among other things, the policy states that Local Authority Collected Waste (LACW) management facilities should be located on Allocated Sites and ELAS within the broad areas of search (Areas A, B, C, D and E – set out at policy 1 of the WCS)

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<sup>26</sup> CD C2

unless there are overriding reasons to locate it outside those areas. The policy also confirms that permission will be granted for waste management uses outside of identified locations where they accord with policy 7 of the Waste Core Strategy and Development Management Policies Document.

***The Hertfordshire Minerals Local Plan Review 2002-2016 (adopted March 2007)***<sup>27</sup>

- 5.25 To promote more sustainable modes of transporting minerals, Minerals Policy 10 safeguards existing (and disused) railheads and wharves where they have the potential for the exportation and importation of minerals and secondary/ recycled aggregates. Retention is expected unless the facility can be satisfactorily relocated within the development scheme in terms of operational requirements and environmental criteria; it can be demonstrated that the site is no longer viable for use as a rail aggregates depot or wharf; or the facility has been or will be replaced in an appropriate alternative location.

***Saved policies of the Broxbourne Local Plan Second Review 2001-2011 (adopted December 2005)***<sup>28</sup>

- 5.26 The Local Plan identifies the application site as existing industrial land covered by Policy EMP1. Within such areas, the policy requires that development for non-Class B purposes will only be permitted where specified criteria are met. In particular, proposals for waste management and recycling are to be determined against the adopted Hertfordshire Waste Local Plan.
- 5.27 Policy GBC16 expects that all development proposals affecting land within the Green Belt will incorporate landscape enhancement measures appropriate to the local context, and resists development that would seriously detract from the character or appearance of the countryside.
- 5.28 Policy HD14 expects that developers will demonstrate how a proposal reflects and relates to local characteristics and the context of the surrounding area. As a minimum, development proposals should maintain and, where possible, enhance or improve the existing character of the area. In a similar vein, policy HD17 expects development proposals to respect existing natural or built features which contribute positively to the character or appearance of the area, with policy HD18 seeking to protect trees, hedgerows and woodlands.
- 5.29 Policy SUS8 directs potentially noisy development away from existing noise sensitive uses. Policy SUS11 sets out criteria for considering applications for floodlighting aimed at reducing problems associated with light pollution, including impact on areas of countryside and wildlife.
- 5.30 Policy CLT4 is supportive of the Lee Valley Regional Park Authority in the continuing development of the Park, particularly for recreational purposes.

***National Guidance***

- 5.31 At the heart of the National Planning Policy Framework (2018) (the Framework) is a presumption in favour of sustainable development. The section on decision making (Section 4) confirms that decisions on proposed

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<sup>27</sup> CD C5 pages 30-31

<sup>28</sup> CD C3

development should be approached in a positive and creative way and that applications for sustainable development should be approved where possible. Pursuant to that, Section 6 aims to secure economic growth; Section 9 promotes sustainable transport; Section 12 promotes good design as a key aspect of sustainable development; Section 14 includes policies to meet the challenge of climate change, including increasing the use and supply of renewable and low carbon energy and heat and, where development is necessary in areas at risk of flooding, ensuring that it is made safe for its lifetime without increasing flood risk elsewhere; Section 15 seeks to conserve and enhance the natural environment, including landscape and biodiversity, and to ensure that account is taken of the likely effects of pollution; Section 16 is aimed at conserving and enhancing the historic environment, including the setting of heritage assets.

- 5.32 The Waste Management Plan for England (2013) provides an overview of waste management in England, including an analysis of the current waste management situation. It includes information about the type, quantity and source of waste generated and existing treatment and assesses the need for additional waste infrastructure, setting out general locational criteria for major schemes and general waste management policies.
- 5.33 The National Planning Policy for Waste (2014) sets out the Government's ambition to work towards more sustainable and efficient resource use and management. It confirms that positive planning plays a pivotal role in delivering the country's waste ambitions, including provision of modern infrastructure and wider climate change benefits by driving waste management up the waste hierarchy; providing a framework for communities to take more responsibility for their own waste, including by enabling waste to be disposed of or, in the case of mixed municipal household waste, recovered, in line with the proximity principle, and helping to secure the re-use, recovery or disposal of waste without endangering human health or harming the environment.
- 5.34 DEFRA's Energy From Waste: A Guide to the Debate (revised February 2014) is mostly concerned with recovering energy from residual waste, that is the waste that is left when all the recycling possible has been done, which generally means the environmental or economic costs of further separation and cleaning of the waste are greater than any potential benefit of so doing. It confirms that residual waste will, in part, include things made from oil, like plastics, and in part things that were recently growing and are biodegradable e.g. food, paper, wood etc. - only the energy generated from the recently grown materials in the mixture is considered renewable. It confirms that energy from residual waste is therefore a partially renewable energy source, sometimes referred to as a low carbon energy source.
- 5.35 The current legal framework for waste is contained in the Waste (England and Wales) Regulations 2011 which implement the revised EU Waste Framework Directive 2008/98. Documents reflecting current national energy policy include the Overarching National Policy Statement for Energy (revised) (EN-1) and the National Policy Statement on Renewable Energy Infrastructure (EN-3).

***Other local policy considerations and guidance***

- 5.36 There is also a raft of other material considerations in terms of policy and guidance. These include but are not confined to the following.

- 5.37 The emerging Broxbourne Local Plan<sup>29</sup> was the subject of Examination at the time of the Inquiry. The site is identified in the emerging Plan as lying within an Employment Area, namely the Hoddesdon Business Park. Policy HOD3 confirms the Council's endorsement of the Hoddesdon Business Park Improvement Plan (September 2013).<sup>30</sup> Within the Improvement Plan, the application site lies within what is defined as the Ratty's Lane Campus, which area includes the adjacent power station and the Trent/Tamar Development site. The document indicates that a sustainable energy facility on the application site may support the re-branding of this area as an Energy Campus.
- 5.38 Policy DSC1 reiterates that a high standard of design for new development is expected, including a requirement that development should enhance local character and distinctiveness. Policy NEB4 is protective of existing landscaping, which should be enhanced. It also requires that new development should make connections to biodiversity features and habitat networks outside a development site.
- 5.39 Policy HA6 seeks to safeguard the relevant features and setting of heritage assets, with policy LV1 reiterating support for the continuing improvement of the Lee Valley Regional Park.
- 5.40 The Hertfordshire Joint Municipal Waste Management Strategy 2007 Core Strategy (revised 2009)(JMWMS)<sup>31</sup> sets out the long term requirements of the WDA. It sets out how it intends to manage municipal waste for the Waste Partnership authorities to 2020 and beyond, identifying the location of existing waste management facilities used by the WDA and areas of search for potential new household waste recycling sites, waste transfer stations, in-vessel composting, waste bulking/depot facilities and residual waste facilities.
- 5.41 Core Policy 12 seeks to reduce the amount of waste sent to landfill. Core Policy 13 seeks to ensure that residual waste treatment facilities compliment the waste hierarchy and help secure self-sufficiency in landfill allowance. Core Policy 14 seeks residual waste treatment solutions that contribute to sustainability targets and bring benefits such as energy generation.
- 5.42 The Local Authority Collected Waste Spatial Strategy (November 2016)(LACWSS)<sup>32</sup> confirms the principles and direction of the JMWMS with updated data and sets out an assessment of desirable new and improved waste management facilities for the period to 2031 and beyond. Table 4 in the document sets out the predicted growth in residual LACW.
- 5.43 The application site lies outside but adjacent to the Lee Valley Regional Park. The Lee Valley Park Plan was adopted in 2000.<sup>33</sup> The Waterway Corridor within the Park is an asset in visual terms. Proposal WC2 identifies the Feildes Weir Locks as an attractive focal point to be protected. Among other things, policy L1.1 seeks to protect the boundaries of the Park and distinguish the built-up area from the open space of the Lee Valley. Policy L2.1 requires that

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<sup>29</sup> CD C4

<sup>30</sup> Doc 38

<sup>31</sup> CD K1

<sup>32</sup> CD K3

<sup>33</sup> Extracts appended to the Lee Valley Regional Park Authority written submission

development adjacent to the Park should not harm the amenity, environmental quality and visitor enjoyment of the Park. Policy L4.4 requires that any proposed lighting or floodlighting should be designed and located so as to avoid any adverse effect on the local environment or wildlife.

- 5.44 Policy LS1.2 requires that development on the Park boundary should not be detrimental to its landscape and amenity value, should be sensitive to its landscape setting in terms of location, scale, design and materials, and should respect and contribute to positive landscape character. Policy LS1.5 seeks to protect and enhance views throughout the Park, with policy LS1.6 seeking to protect visually attractive edges and improve those of less value.
- 5.45 Policies NC1.1 and NC2.1 promote the maintenance, enhancement and creation of habitats that are characteristic of the Lee Valley, including a continuous habitat corridor along the valley.
- 5.46 The application site is adjacent to the boundary of Epping Forest District Council,<sup>34</sup> whose area includes the Regional Park and Green Belt, the development plan for which includes the Epping Forest District Local Plan (1998) and Alterations (2006).<sup>35</sup> Policy DBE9 is protective of the amenity of existing properties including matters such as visual impact, noise, smell and other disturbance. Policy LL3 requires that proposals on the edge of settlements show a sensitive appreciation of their effect upon the landscape. Policy RST24 sets out that development within and adjacent to the Regional Park should have regard to its importance for leisure, recreation and nature conservation and should make provision for improved public access and landscaping; should safeguard its amenity; and should conserve and where possible enhance its landscape or its setting. Policy GB7A resists proposals that would be conspicuous from within or beyond the Green Belt which would have an excessive adverse impact on the openness, rural character or visual amenities of the Green Belt.
- 5.47 The application site is also adjacent to the boundary of East Hertfordshire District Council,<sup>36</sup> the development plan for which includes the East Herts Local Plan Second Review (adopted 2007).<sup>37</sup> Policy GBC14 requires the submission of a Landscape Character Assessment in order to assess development proposals which should improve and conserve local landscape character.

## **6. AGREED MATTERS**

- 6.1 Three separate Statements of Common Ground (SoCG) were submitted during the Inquiry. The first (SoCG1)<sup>38</sup> is between Veolia, AECOM (for the applicant) and the Environment Agency. It confirms, subject to conditions, that the Environment Agency has no objection to the proposal on flood risk grounds or in terms of risk to groundwater resources.
- 6.2 SoCG2<sup>39</sup> is between Veolia, Mott MacDonald (for the applicant) Hertfordshire County Council as Highway Authority and WSP (for the County Council as

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<sup>34</sup> See Figure RH-1 in Volume 1 Appendix I to the proof of Mr Hammond

<sup>35</sup> CD N11

<sup>36</sup> See Figure RH-1 in Volume 1 Appendix I to the proof of Mr Hammond

<sup>37</sup> See section 3.9 of the proof of Mr Flatman for policies

<sup>38</sup> Doc 32a

<sup>39</sup> Doc 32b



Highway Authority). It sets out agreement that, subject to specified conditions and Section 106 requirements, there would not be a severe adverse impact on the highway network having regard to paragraph 109 of the revised National Planning Policy Framework.

- 6.3 SoCG3<sup>40</sup> is between Veolia, AECOM (for the applicant) and Hertfordshire County Council as Local Lead Flood Authority. It confirms that, subject to conditions, there would be no significant increase in surface water flood risk to the site or elsewhere as a consequence of the development proposed.

## **7. THE CASE FOR VEOLIA (ES) HERTFORDSHIRE LIMITED (the applicant)**

*(The case for the applicant is reported substantially in the form of the closing submissions)*<sup>41</sup>

### INTRODUCTION

- 7.1 The proposed ERF will provide a high efficiency modern incineration plant with a nominal capacity of 320,000 tpa of residual waste and a maximum capacity of around 350,000 tpa.<sup>42</sup> The waste to be incinerated will be residual municipal waste, provided as part of a contract with Hertfordshire County Council as Waste Disposal Authority (WDA) making this facility the centrepiece of the county's municipal waste strategy. If not all the total capacity is taken up by residual municipal waste, the remaining capacity would be taken up with commercial and industrial (C&I) waste of a similar nature. Waste deliveries would arrive by road. Incinerator bottom ash (IBA) would be exported by rail.
- 7.2 The application site covers an area of some 5 hectares. The site is industrial in nature, consisting of an aggregates railhead, with aggregates imported via the rail siding located within the site and exported from the site by road. It is adjacent to a gas-fired power station (Rye House Power Station) and an advanced thermal treatment (ATT)/anaerobic digestion (AD) plant, close to a large Sainsbury's distribution warehouse and similar industrial buildings. The application site is identified in the Broxbourne Local Plan 2005 as existing industrial land (policy EMP1) and as being within Hoddesdon Business Park (policy HOD3) in the emerging Broxbourne Local Plan.<sup>43</sup>
- 7.3 The proposals would move waste up the waste hierarchy. As set out in the DEFRA document *Energy from Waste: a Guide to the Debate*,<sup>44</sup> provided the efficiency of an ERF exceeds the relevant R1 criteria, it is to be regarded as a recovery operation. As such, it is higher up the waste hierarchy than landfilling or other means of disposal.
- 7.4 In this case, not only would the proposed ERF comfortably exceed the R1 criteria, but it would also use one of the most efficient boilers available on the

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<sup>40</sup> Doc 32c

<sup>41</sup> Doc 92 See also the proofs, rebuttals and appendices thereto of Messrs. McGurk, Kirkman, Aumônier, Hammond, Crabb, Barrowcliffe, Maneylaws, Pelling, Honour, Smith and Bridgwood and Ms Kelly, as supplemented by Docs 7, 58, 63, 70, 71, 75, m76, 77, 80, 88, 89, 94 and 95.

<sup>42</sup> The maximum capacity refers to the theoretical maximum amount of waste which the incinerator could burn per annum on the assumption that it burned continuously and there was no downtime for, for example, maintenance or other reasons for stoppages. The nominal capacity refers to the greatest amount that facility could actually be expected to burn in a year allowing for such inevitably occurring stoppages.

<sup>43</sup> CD C3 and C4 respectively

<sup>44</sup> CD D5 and Appendix 21 to the proof of Mr Cooper (paragraph 50).

market, resulting in an R1 rating of 0.82 which, as confirmed by Mr Kirkman, approaches the limits of thermodynamic efficiency. It also represents the most appropriate and flexible technology choice for a facility of this nature. Mr Kirkman set out detailed technical evidence as to the inherent flexibility of incinerator technologies and their comparative advantages for dealing with local authority residual waste compared to technologies such as anaerobic digestion or gasification processes. He was not challenged on any of this evidence and no practical alternative processes for dealing with Hertfordshire's waste were ever canvassed at the Inquiry. Under cross-examination, Dr Webb (for Herts Without Waste) accepted that the schematic diagram he had produced for dealing with around 500,000 tonnes of waste<sup>45</sup> was an entirely theoretical illustration, rather than a practical proposition.

#### ASSESSING THIS SCHEME: TWO WORLDS AND A DECISION

- 7.5 Before making detailed submissions, it is appropriate to comment in general terms upon this case, because the Inspector and Secretary of State are here confronted with two different visions in relation both to the scheme proposed and its assessment.
- 7.6 The proposal is brought forward to support and give effect to the overarching strategy of the WDA which is charged with the statutory responsibility of making suitable arrangements for the disposal of Hertfordshire's waste. It promotes a site for a facility which is not necessarily easy to locate, in circumstances where a similar proposal, directed at a site actually allocated for the purpose, was rejected (New Barnfield).<sup>46</sup> Following a re-evaluation of the options, necessarily including consideration of the economic constraints affecting the County Council, this scheme was brought forward. The difficulty in finding a site for an ERF facility was reflected in a robust and proportionate search for alternative sites, which descended to a level of site size which would also encompass much smaller facilities. The difficulty in finding sites was also reflected by the fact that no other alternatives came forward even after the rejection of the New Barnfield scheme.
- 7.7 The application was promoted after a sensible, robust, proportionate assessment. Worst case assessments of all environmental effects were considered, and the real-world likelihoods of particular effects were also weighed in the balance. It was recognised that the proposal would introduce a small amount of additional traffic onto a road network which was busy, like many others across the country, and even occasionally seriously congested, but not permanently and severely congested. It was understood that the immediate access along Ratty's Lane had some deficiencies, but it expected drivers, cyclists and pedestrians to be able to use their normal discretion and common sense.
- 7.8 Broxbourne Borough Council (BxB) argues for an entirely different vision. It sees a world where there is a network of small facilities all located immediately next to the areas generating waste. It sees those sites being built out having been identified after an alternative site search which seeks to assess sites to a degree of detail which would not be unworthy of a full planning application and

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<sup>45</sup> Appendix 2.3 to the proof of Dr Webb (as corrected on 19 June 2018)

<sup>46</sup> Appeal Ref: APP/M1900/V/13/2192045 at Appendix 14 to the proof of Mr Cooper for Broxbourne Borough Council



to undertake assessments, even where they would plainly be of no purpose because a site is manifestly unsuitable or clearly unavailable. It sees assessments where the expert team leader does every assessment personally and places no reliance on his team. It sees the addition of even a few additional vehicles onto the local road network as causing severe cumulative residual effects, no matter how small that number of vehicles may be. It expects drivers, cyclists and pedestrians using a private road to be unable to cope with even small deviations from the standards applicable on public highways.

- 7.9 But BxB's vision, and its approach to assessments, is a fantasy. There is no network of alternative sites waiting in the wings. All that would result from a refusal of permission for this scheme would be the continuation of *ad hoc*, profoundly unsustainable, temporary arrangements for the disposal of waste, whilst another fruitless search was begun for a disaggregated network of sites which simply do not exist.
- 7.10 Furthermore, it must be remembered that the Secretary of State has already decided once on almost all the issues raised in this case. Whilst the New Barnfield scheme may have been rejected on the grounds of its Green Belt location and its effect on the particularly sensitive grade I listed Hatfield House, virtually all the arguments as to policy, alternative sites assessment, waste management need and energy need that have been rehearsed at this Inquiry, were decided in the applicant's favour. The Inspector set out the detailed reasoning, but the Secretary of State endorsed it all.
- 7.11 We make no apology, therefore, for making extensive reliance upon the decision that the Secretary of State has already made, in virtually unchanged circumstances from those in this case, on most of the matters before the Inspector and Secretary of State now.

## NEED FOR THE DEVELOPMENT

### **A waste treatment facility**

- 7.12 It is entirely clear that there is a very considerable need for this facility. Both the recently adopted Waste Core Strategy (WCS)<sup>47</sup> and more recent projections make clear that there would be an increasing quantity of local authority residual waste from Hertfordshire for the lifetime of the facility. Indeed, the facility has been specifically sized to deal with that particular waste stream in its entirety. This is in line with the objective of the WDA, ironically most clearly stated in this Inquiry by Mr Cooper for BxB, when he said<sup>48</sup> that '*Hertfordshire should deal with its own waste*'. We agree.
- 7.13 However, for those periods of time when there is insufficient local authority municipal waste available to be burnt, there is an ample available stream of commercial and industrial (C&I) waste. Such waste also needs to be dealt with in a way which moves it up the waste hierarchy and all the benefits of the scheme which are created by the burning of local authority residual waste also apply if the feedstock is C&I waste.

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<sup>47</sup> CD C1

<sup>48</sup> During cross-examination by Mr Fraser-Urquhart QC

- 7.14 These twin imperatives are reflected in the contractual arrangements between the applicant and Hertfordshire County Council as the WDA. These were definitively explained by Mr Bridgwood (in his evidence in chief) as follows:
- a) the WDA is obliged to provide to the applicant a minimum tonnage of 135,000 tpa of local authority residual waste. Any failure to provide that minimum tonnage would incur financial penalties. That tonnage has been calculated on the basis of the most optimistic conceivable recycling rates (81% being the most optimistic).
  - b) the applicant is required to receive and process as much local authority residual waste as the WDA may provide to it up to a maximum of 350,000 tpa.
  - c) should the WDA provide a tonnage greater than the minimum tonnage but less than the maximum tonnage, the applicant is at liberty to receive C&I waste in order to run the facility at its desired level - for obvious financial reasons, the applicant would wish it to run at, or near, its nominal capacity.
- 7.15 It is clear from all published estimates of likely waste arisings that there would be more than adequate tonnages of waste to allow this ERF to operate at or near maximum capacity throughout its planned lifetime. The relevant projections are conveniently gathered together at section 5.4 of Mr Bridgwood's proof of evidence.
- 7.16 It is inevitably the case that projections of this nature involve a number of variables which make a certain amount of imprecision inevitable, particularly over the lifetime of such a scheme. However, the basic tonnages of household waste can be clearly related to projected household growth; the real variable is the likely extent of recycling. It is of course a local and national aspiration to increase recycling rates to, and beyond, 60%, with 65% being regarded in the projections as the limit of what is likely to be achieved, absent some unexpected and unknown technological breakthrough.
- 7.17 It is in the context of these uncertainties that BxB's only significant challenge to the need for the waste treatment facilities offered by the scheme must be seen. It was established in the cross-examination of Mr Bridgwood by Mr Reed QC, that the only projection out to 2050 (the likely end time of the scheme)<sup>49</sup> was assessed on the basis of the current 50% recycling rate. That figure was 320,000 tonnes, which was the basis for the applicant's consideration (and of the WDA) that, in the latter years of the scheme's operation, the facility would be devoted almost entirely to the treatment of local authority municipal waste.
- 7.18 An arithmetical manipulation of that figure to factor in a 65% recycling rate, would leave somewhere in the order of 242,000 tonnes of residual local authority waste to be treated. That calculation was then pounced upon by BxB's advocate as purportedly demonstrating that the whole basis of the need for the facility had been overstated.
- 7.19 Of course, such a simplistic analysis wholly ignores the fact that the 65% recycling rate is purely an aspiration which may or may not be achieved. It is

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<sup>49</sup> Table 3 of the County Council's Community Safety and Waste Management Cabinet Panel meeting's consideration of the waste arrangements following the rejection of the New Barnfield scheme (CD K4 page 22 of 33)

pertinent to note Mr Bridgwood's evidence that the 'low hanging fruit' of recycling has already been achieved in the county, those measures of kerbside recycling which are readily understood by the public, and easily provided for, being already in place. No doubt this explains the plateauing of recycling rates at just over 50%, as noted in the LACWSS (November 2016).<sup>50</sup> Accordingly, whilst it would be unduly pessimistic simply to assume that there would be no improvement in the recycling rate, it is equally the case that it cannot at all be guaranteed that the 65% rate would be achieved.

- 7.20 Even if such a rate were achieved, there would be no difficulty in sourcing C&I waste so as to enable the plant to run at, or near maximum capacity. Indeed, it was the unchallenged evidence before the Inquiry that the applicant has, under its own control at its nearby St Albans waste transfer station, a readily available tonnage of approximately 80,000 tpa of C&I waste. Even discounting the very large volumes of other such waste set out in the policy documents referred to by Mr Bridgwood, this tonnage alone would enable the operation of the ERF at maximum capacity even if the highest foreseeable levels of recycling were to be achieved.
- 7.21 More generally, it is suggested by Herts Without Waste that there is an overprovision of ERF facilities in the south-east. However, this suggestion does not find support in policy documents and flies in the face of the following facts and matters:
- a) the recently-adopted WCS 2007<sup>51</sup> and the projections of waste treatment need which underlie it, all of which were considered at the local plan examination.
  - b) the fact that the WDA currently has to make provision for its own waste disposal by a combination of landfill and out-of-county ERF provision, which provision cannot be guaranteed into the long-term in the light of competing demands upon those facilities (as confirmed by Mr McGurk in chief) from other disposal authorities.
  - c) the fact that some 4 million tpa of waste are exported to the near-continent for incineration. This stream, which can hardly be said to sit well with the proximity principle, suggests that there is very far from an over-provision of domestic ERF facilities.
- 7.22 Finally, the urgent need for this facility is demonstrated by the absence of any apparent alternative and the considerable environmental advantages of this scheme over existing arrangements. These are both matters about which we make detailed submissions later.
- 7.23 The sum total of these considerations makes plain that there is an urgent and compelling need for the plant as a waste treatment facility.

### **A power station**

- 7.24 However, it would be a fundamental error simply to regard this plant as a waste treatment facility. Rather, as Mr Aumônier put it in his evidence in

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<sup>50</sup> CD K3 page 6

<sup>51</sup> CD C1

chief, it is better considered as a 'power station' and the policy context within which it should be considered is as such.

- 7.25 As a power station, the plant responds to the urgent national need for electricity generating infrastructure. The most appropriate starting point for the consideration of that need is National Policy Statement EN-1.<sup>52</sup>
- 7.26 It is accepted that the plant is not a Nationally Significant Infrastructure Project (NSIP) and thus policy set out in the National Policy Statements (NPSs) is not directly applicable to this application. It is further accepted that the National Planning Policy Framework 2018 (the Framework) advises that decision-makers *may* have regard to the NPSs, whereas the 2012 version of the Framework compelled them to do so. However, the application scheme is precisely the kind of facility not only to which regard should be paid to the NPSs, but considerable weight should be afforded to the guidance offered within them.
- 7.27 This is because, as Mr Bridgwood put it in his evidence in chief, the plant is 'two thirds of an NSIP', with a deliverable energy output to the National Grid of some 33 MW, as against the NSIP threshold of 50 MW. Furthermore, the design, functioning and likely environmental effects of the plant are entirely akin to those of a power station which would fall within the NSIP threshold. All the considerations of policy which are relevant to an NSIP are relevant here, just on a slightly smaller scale. If the NSIP principles are not applicable here, where would they be?
- 7.28 Accordingly, as the New Barnfield Inspector expressed it, regard should be had to the 'underlying principles' of EN-1 and EN-3.<sup>53</sup> The most important principles, with respect to need for the electricity generating infrastructure were identified in the evidence in chief of Mr Bridgwood, echoing the re-examination of Mr Aumônier as follows:<sup>54</sup>
- a) the UK needs all the types of energy infrastructure covered by EN-1 to achieve energy security and dramatically reduce greenhouse gas emissions.
  - b) it is for the market to propose new energy infrastructure projects and it is not appropriate set targets or limits on different technologies.
  - c) decision-makers should assess all applications on the basis of the government having accepted that there is a need for those types of infrastructure. Paragraph 3.3.15 of EN-1 makes plain in particular that there is an urgent need for new electricity generation capacity, particularly of a low carbon variety.
  - d) paragraph 3.4.3 of EN-1 makes plain that energy from waste is to be regarded as a form of renewable electricity generation, in respect of which paragraph 3.4.5 concludes that '*The need for new renewable electricity generation projects is therefore urgent.*'

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<sup>52</sup> CD D6

<sup>53</sup> Paragraph 1043 of the Inspector's Report (Appendix 14 to the evidence of Mr Cooper)

<sup>54</sup> see CD J1, section 3.1

- e) paragraph 3.4.4 of EN-1 also emphasises the importance of EfW as a base load form of electricity, which is of particular importance given the intermittent nature of other forms of renewable energy generation, such as wind energy.
- 7.29 Accordingly, EN-1 concludes (paragraph 3.1.4) that decision-makers *'should give **substantial weight** to the contribution which projects would make towards satisfying'* the need for electricity generating infrastructure. (*emphasis added*).
- 7.30 However, BxB argues that, because the pipeline for renewable energy out to 2020 is healthy, and because the contribution made by the application scheme to the overall need for electricity generating infrastructure is of itself relatively small, this clear indication of the thrust of national policy should somehow be downgraded or given less weight.
- 7.31 Both arguments are old chestnuts of the arguments against renewable energy schemes and both have been aired, and rejected, many times. It is entirely clear that the ambition for the generation of 15% of energy from renewable sources by 2020 has always been regarded as a minimum, rather than an upper limit. There is no less weight to be attached to schemes which take the UK potentially above that figure, rather than merely achieving it.
- 7.32 Equally, the fact that the scheme makes only a small contribution to total energy needs does not detract from the substantial weight that should be given to the benefit of a contribution being made. It is necessarily the case that satisfying national needs for electricity generation infrastructure would be made up of a series of schemes, each one of which individually could only ever satisfy a small proportion of the overall national need. To attempt to suggest that this should give each of them lesser weight would fatally hold back the achievement of the overriding objectives of national energy planning policy.
- 7.33 It is clear that all these considerations were before the Secretary of State in the New Barnfield decision, when he endorsed his Inspector's finding that *'A further clear benefit, to which substantial weight attaches, would be the delivery of some 26 MW of 'dispatchable' electricity to the grid. While this would be small in national terms, the achievement of government renewable energy targets is dependent on the rapid delivery of many different schemes, from small to large, and using a range of technologies. This aspect of the proposal derives strong support from relevant national and local policy.'*<sup>55</sup> Given that the Ratty's Lane scheme delivers some 30MW of dispatchable electricity to the grid, exactly the same considerations apply.
- 7.34 It was suggested by Herts Without Waste that there had been some sort of move away from EfW facilities in recent government thinking or policy. However:
- a) no specific provisions of policy showing this purported change of attitude could be identified; instead objectors confused the ongoing desire of government to increase recycling and reuse of waste so as to make the best practical moves towards a circular economy, on the one hand, with a move away from EfW use, on the other;

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<sup>55</sup> Inspector's Report paragraph 1068

- b) in fact, the policy documents show no such thing. As Dr Webb accepted under cross-examination, the Guide to the Debate still represents the most up-to-date statement of government policy on EfW. In wider terms, the most recent statement of overall government thinking on environmental matters, *A Green Future: Our 25 Year Plan to Improve the Environment*, upon which objectors sought to rely, refers to the desire to improve the management of residual waste, without making any negative reference at all to the ongoing development of EfW facilities;<sup>56</sup>
- c) it is also worth noting that Professor Boyd, upon whose words before the Select Committee both Mr Cooper and Dr Webb sought to rely, explicitly decried any attempt to use his words as harbingers of policy and indeed, on several occasions before the committee, he resisted attempts by members to translate his words into a statement of likely future policy.<sup>57</sup>

7.35 As noted above, it is made plain in both the Guide to the Debate and EN-1 that that portion of energy from waste which comes from the biomass fraction of the feedstock is to be regarded as renewable energy. As such, this scheme falls to be considered under paragraph 154 of the revised Framework, which requires in part b) that decision-makers '*approve the application if its impacts are (or can be made) acceptable*'. This is a clear indication of national policy, of the greatest weight in the overall consideration of the scheme.

7.36 We deal in detail below with the acceptability of the scheme in environmental terms. However, it is appropriate to comment in general terms on the concept of '*acceptable*'.

7.37 The concept of '*acceptable*' is of prime importance in both national and local policy. First, it is important to note that a scheme can be environmentally '*acceptable*' while still having some residual adverse effects. The dictionary definition of '*acceptable*' encompasses words such as tolerable, adequate and satisfactory. Such language patently assumes that there may still be some adverse effects – it is simply that they are of such a relatively limited scale/ are '*tolerable*' etc. in all the circumstances.

7.38 If recognised standards or policies are met, then the scheme in those regards must be regarded as acceptable. Other effects are a matter of balance and judgement, but that judgement must have regard to the severity of the impact and the number of people actually affected.

## LOCATION

7.39 It is the applicant's case that the location for the facility is appropriate both in fact and in policy terms. The main policy governing appropriate locations for waste sites is Policy WSA2 of the Waste Site Allocations Local Development Document (WSA).<sup>58</sup> This sets out a hierarchy for the selection of appropriate sites. The starting point is to consider options in the following sequence:

- 1) sites identified within the WSA;

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<sup>56</sup> CD J17 page 94

<sup>57</sup> Mr Cooper's Appendix 18

<sup>58</sup> CD C2



- 2) sites within areas of search C, D or E having regard to the five criteria set out in Policy 7;
  - 3) other locations that comply with policies in the Plan, having regard to the five criteria set out in Policy 7, provided there are overriding reasons for selecting a location other than 1 or 2 above.
- 7.40 BxB drew attention repeatedly to Policy 1 of the WCS which suggests that *'Provision will be made for a network of waste management facilities that drive waste management practices up the waste hierarchy and are sufficient to provide adequate capacity for existing and future waste arisings within the county'*. Policy 1 then goes on to say that *'Provision for new appropriate and adequate Local Authority Collected Waste management facilities will be provided... [within areas of search]'*.
- 7.41 BxB has sought to suggest that a location other than in the areas of search is somehow in conflict with the policy. With respect, that cannot possibly be right. Policy WSA2 explicitly indicates circumstances in which planning permission will be granted outside those areas of search. There are only two logical alternatives. Either Policy 1 must be read in the context of policy WSA2, such that a scheme which is compliant with WSA2 is also compliant with Policy 1. The only other alternative is that the two policies conflict with one another. If that is the case, then the normal principles of law and policy would ensure that the policy which was adopted latest was the policy to be followed. In either formulation, compliance with policy WSA2 would be in compliance with the central locational policy of the development plan.
- 7.42 It also appears to be part of BxB's case that the reference to 'a network' of sites meant that a single large facility was not compliant with policy. That is wrong. The reference to 'a network' refers to waste management facilities generally. The specific reference to LACW in the second paragraph of policy 1 refers to 'facilities'. Whilst the language is plural, the context of the paragraph clearly includes a singular facility.
- 7.43 This is hardly surprising, given the context in which the development plan emerged. At the time the WCS was adopted, the proposals for New Barnfield and, therefore, the County strategy whereby provision for incineration was made on a single large site which would deal with all of the county's local authority collected waste, was already in progress and the Core Strategy Inspector was fully aware of those proposals when approving Policy 1. Again, therefore, it is hardly surprising to note that the New Barnfield Inspector accepted in policy terms that a single large incinerator would be acceptable.
- 7.44 Accordingly, we turn to compliance with policy WSA2. It is accepted that there are two independent requirements within policy WSA2. First, location outside of an area of search requires 'overriding reasons' for doing so. Second, the development must comply with Policy 7 of the WCS.
- 7.45 It is convenient to deal with matters relating to Policy 7 first. There is a requirement that the proposal must demonstrate how it contributes to the Joint Municipal Waste Management Strategy for Hertfordshire (JMWMS).<sup>59</sup>

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<sup>59</sup> CD K1

Second, with respect to that part of the facility which would burn C&I waste, there must be a demonstration of how the proposal contributes to the overall spatial strategy for waste management within the county. Thereafter, certain specified matters must be given regard, including whether the location is within or adjacent to established or proposed employment land, previously developed land, industrial land or a compatible land use.

- 7.46 Although the terminology has proven somewhat confusing during this Inquiry, it is entirely plain from Core Policies 12, 13 and 14 of the JMWMS that the application proposals comply with it. This is a scheme which helps reduce the amount of unstabilised waste which is sent to landfill. The proposed residual waste treatment complements the waste hierarchy and helps ensure self-sufficiency in landfill. Finally, the residual waste treatment solution represented by the scheme would bring benefits such as energy generation.
- 7.47 With respect to the overall spatial strategy for the county, referred to in the second part of Policy 7, it is instructive to examine the County Council's LACW Spatial Strategy.<sup>60</sup> Whilst this is not explicitly a planning document, it is made entirely plain that it is intended to *'provide context and direction for relevant decision-makers when considering the activities and functions of the WDA'* whilst setting out *'an informed and up-to-date vision of the infrastructure considered by the WDA to be required in Hertfordshire to provide a deliverable, effective and efficient waste network'*.<sup>61</sup>
- 7.48 BxB seeks to suggest that this is a document which should simply be ignored in a planning context. Nothing could be further from the truth. This is the WDA's statement of its vision as to how the network of waste management facilities envisaged by policy 1 of the WCS is to be provided. It is entirely clear that the entire spatial strategy of the WDA is based around the grant of permission for the application site.<sup>62</sup> It is also clear that the provision of a northern transfer station is a central part of the strategy.<sup>63</sup>
- 7.49 The other requirement of policy WSA2 is that there should be an overriding reason as to why the facility is located outside the area of search. In this case, that overriding reason is simply provided by the fact that there are no suitable and available sites anywhere else in the county for the location of this facility.
- 7.50 That proposition is demonstrated by the Alternative Sites Assessment provided by the applicant both at the application stage<sup>64</sup> and thereafter as an updated study through the evidence of Mr Smith. Whilst it has been a central part of BxB's case to seek to undermine that study, the criticisms advanced by the Council must be seen in the appropriate context.
- 7.51 The appropriate context is that this is a study to inform questions as a matter of compliance with planning policy with respect to a single, albeit important, development. It is not the same process as undertaking the compilation of an evidence base for, for example a local plan process. In these circumstances, it

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<sup>60</sup> CD K3

<sup>61</sup> Ibid paragraph 2.7

<sup>62</sup> Ibid paragraph 3.9 and following

<sup>63</sup> Ibid paragraphs 3.56 and 3.57

<sup>64</sup> CD A14(i) section 5.1



is perhaps unsurprising that EN-1 gives specific guidance that alternative assessments must be undertaken on a proportionate basis. That guidance was explicitly endorsed, in the same context, by the Secretary of State and Inspector in the New Barnfield decision.<sup>65</sup>

- 7.52 It is also right to note that there is no specific methodology identified for the performance of such an ASA, and there are no requirements for 'peer group review' or anything of the sort, despite these points having been laboured in the cross-examination of Mr Smith and in BxB's Closing Submissions.<sup>66</sup>
- 7.53 All that is required is a sensible, careful, proportionate review by experienced professionals. That is exactly what the ASA has provided. When the multitude of criticisms advanced by BxB are considered in detail, it is important not to lose sight of those basic fundamentals of what the exercise is, and what it is required to do.
- 7.54 We turn now to deal with the detailed criticisms made by BxB. We do so in the context of the fact that this is, as ever with the evidence in this case, the only analysis of the availability of alternatives before the Inquiry and we note that the objectors collectively do not promote a single other site as an alternative for this Inspector to consider in order to make good their contention that there are other sites available.
- 7.55 The first ground of criticism was that the study confined itself to selecting sites which were allocated employment sites within local plans, adopted and emerging within various Districts. It was suggested that this potentially missed all other areas of land which were not allocated for such a purpose and which might be available. However, such a criticism flies in the face of the situation in this county where there are large areas of Green Belt and where developable land, particularly of the size and regular shape required by an ERF facility, is at a premium. It would be highly unlikely if there were areas of land of such a nature simply lying vacant without anyone having taken the trouble to bring them forward for development.
- 7.56 BxB's faith in the powers of land agents to identify sites cuts very much both ways. It is to be presumed that such land agents would have been active not just when the requirement for an ERF emerged, but at all stages in the preparation of local plans and that they would have been actively seeking out land in order for it to be promoted through the local plans process.
- 7.57 Particular attention was placed in the cross-examination of Mr Smith, on the fact that his site selection process may have missed sites specifically allocated for waste management purposes. However, the incentive upon landowners to bring forward their sites for consideration for an ERF would have been all the stronger, given that those sites had been specifically identified for such purposes. Had they genuinely been available, it is inconceivable that they would not have been brought to the attention of the WDA (and, indeed, perhaps Veolia itself) particularly when the New Barnfield proposal was turned down. It can safely be assumed that that decision will not have failed to reach the ears of land agents and landowners throughout the county.

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<sup>65</sup> Inspector's Report paragraph 962

<sup>66</sup> Doc 87 paragraphs 14-51

- 7.58 It was suggested that, by looking for evidence of vacancy or dereliction which was observable on the ground (through aerial photographs or other ground-based digital resources) that the ASA somehow missed the opportunity to pursue sites where redevelopment of existing land might have been viable. However, that approach would place an intolerable burden on the compilers of the ASA, involving them in a wholly disproportionate exercise of seeking to visit all sorts of different sites which were in active use but might, just might have been suitable for redevelopment. Clearly, this would not be a sensible or proportionate approach and no criticism can attach to the ASA for not having embarked on such a course.
- 7.59 It was also suggested that, by failing to approach individual landowners to seek out sites, the compilers of the ASA had somehow erred. Once again this would appear to cast an extraordinary burden upon the compilers and to be entirely disproportionate. However, a more fundamental response to this criticism is that by referring to the local plans, all of which had no doubt been informed by an earlier call for sites, the ASA was merely building upon the exercises in identifying sites which can be assumed to have been thoroughly gone through during the local plan compilation processes. It is to be remembered that with respect to both housing and employment land, local planning authorities in heavily constrained areas such as this are under ongoing and enduring pressure to identify sites possible for redevelopment. The ASA was entitled to rely upon the fruits of their labours.
- 7.60 Once the sites had been identified, the ASA was then criticised for embarking upon a desk-based exercise in assessing the long-listed sites. It was also suggested that the use of the Red/Amber/Green (RAG) system led to a confusing outcome, where it was not possible to see the ultimate basis upon which a site had been excluded from the shortlist. Once again, this criticism ignores common sense and the ability of trained professionals to undertake an appropriate assessment even on a desk-based basis. It is fundamental in this context to remember the nature of the exercise. At this long list stage, the identification merely of a single component as a 'red' would not suffice of itself to eliminate a site. It is a combination of matters which led to the elimination of individual sites from the shortlist. That combination of matters was clearly identified in the summary notes which accompanied each RAG exercise, and which set out the actual final reasoning which led to the decision on each site. BxB's criticism that it is impossible to see the overall rationale simply ignored the very important summary notes which set out the ASA's reasoning.
- 7.61 Two particular aspects of the stage 2 assessment attracted criticism from BxB. First, it was said that the attitude taken to Green Belt sites was too restrictive. Whilst it is certainly true that location in the Green Belt was regarded as almost certainly fatal to progressing an application, this is hardly surprising. It will be recalled that the New Barnfield proposal was on an allocated site and it was held to meet an urgent need for waste disposal facilities and an urgent need for electricity generating infrastructure. However, despite all these advantages, it was turned down, primarily on Green Belt grounds. Whilst it is true that there was a particular issue with the impact on Hatfield House, the Inspector explicitly drew attention to the fact that other sites in the Green Belt

would suffer from similar difficulties faced by the New Barnfield proposal.<sup>67</sup> Although to be absolutely fair, the Inspector did note that the extent of heritage issues may have been marginally less on other sites, it is quite plain that he gave no encouragement to the general notion of locating a waste facility in the Green Belt. The compilers of the ASA were fully entitled to have regard to that reasoning from the Inspector and to conclude that any location in the Green Belt would be extremely difficult.

- 7.62 The second matter of particular criticism was the fact that no assessment was made of vehicle mileage savings achievable by each site. Whilst it is accepted that this would not be an unduly onerous task, the simple point is that if a site was going to be unsuitable or unavailable for another reason, there was simply no point in undertaking such an exercise. It is frankly inconceivable that a single argument as to the suitability of location – namely that vehicle mileage would be significantly reduced – would be sufficient to overcome real difficulties in locational matters such as were considered through the ASA process. The criticism advanced by BxB is therefore, entirely theoretical and does not represent a sensible approach to the ASA process.
- 7.63 The ASA was also criticised for not embarking on a parallel exercise of instructing a land agent. It is to be noted that an internet-based exercise, which is the normal method by which such searches are initiated in the contemporary property world, was undertaken and nothing remotely suitable was identified. Furthermore, we have already made our submissions to the effect that a land agent would likely have been employed in identifying those sites which had found their way into the local plan process and that exercise would have been a thorough one. Moreover, having spent money on what it felt to be very important, why did BxB not also seek to employ a land agent to provide compelling evidence to support its position in this regard? That it did not is telling.
- 7.64 The final criticism, before we turn to the outcome of the ASA, is that no consideration had been given to the possibility of disaggregation. We will deal with that submission in more general submissions on disaggregation below.
- 7.65 Lastly, with respect to the ASA, it should be noted that 'the proof of the pudding is in the eating'. For all the criticism of the exercise, it is notable that actual challenges to the judgements made were but a handful, and each easily rebuffed by comparison of the actual sites. By way of just one example, criticism was advanced as to the comparative assessment of site 12 and the application site. However, a simple consideration of the plan illustrated that site 12 was located in a heavily rural area, not surrounded by industrial development as is the appeal site. Equally, criticism of the landscape assessment of the application site was wholly dependent upon a view which suggested that an impact on the Lee Valley Park in landscape terms undermined the designation of the Park. That position is readily contradicted when Mr Hammond's assessment that the Park is not designated for landscape purposes is considered.
- 7.66 Moreover, and of the utmost importance, not a single suitable alternative site was suggested to have been missed and identified to the Inquiry. The closest

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<sup>67</sup> Inspector's Report paragraph 977 on page 214

BxB came was to point to the Waterdale site. This, however, had not been mentioned prior to cross-examination and appeared to be yet another example of the advocate-made case for BxB. In fact, it was wholly inappropriate, being already extensively in use as a waste transfer station. The notion of its redevelopment was frankly fanciful, given the need to provide alternative facilities and the inability to redevelop the site in part. As Mr Bridgwood put it, one could not redevelop *'half a building'*.

- 7.67 The totally theoretical nature of the criticism of the ASA, and the failure to identify any alternative sites as a matter of reality, fundamentally undermines BxB's case against the ASA and profoundly adds robustness to the conclusion that there is no suitable alternative site. It is appropriate perhaps to finish with the words of the New Barnfield Inspector who, despite having had at least some sites suggested to him, nevertheless concluded that *'No comprehensive alternative assessment was put before the Inquiry however. While there is no onus on objectors to propose a workable network of alternative sites, without systematic relevant information the extent to which a challenge to Veolia's ASA can be meaningfully reviewed is limited.... It is true that the ASA looks only at sites which might be suitable to accommodate a single large facility of the scale of the proposed RERF. It does not rule out the existence of smaller sites which may be suitable to accommodate small or medium-size facilities, or other technologies. Nevertheless, I consider that the principle set out in EN-3, that the assessment of alternative should be proportionate, is applicable in this instance...'*<sup>68</sup> Given the total absence of any alternative sites, these words apply with yet greater force in this case.
- 7.68 In terms of Policy WSA2, our evidence has demonstrated that there is no suitable and available site identified within the Waste Site Allocations Document,<sup>69</sup> or within Areas of Search C, D or E. Given the clear need for the proposed development, this represents an overriding reason for locating the development outside those clearly preferred areas.
- 7.69 Finally, we consider briefly BxB's case that there might somehow be a possibility to establish a network of smaller sites. We have already made our submission that this can properly be described as *'fantasy'*, a word which is used advisedly in the light of the following facts and matters:
- a) there is no evidence at all of any sites available, promoted or coming forward for smaller ERF facilities. Indeed, it is notable that the qualifying size for sites to be considered as part of the ASA was some 2 hectares. This is the site size limit which is recognised by the WSA (Table 2.1, page 10) as being the upper limit of size to accommodate a facility of 50,000 tpa. In effect, the WSA is suggesting that the ASA has considered the existence of all sites for a plant which is any bigger than 50,000 tpa per annum. Accordingly, it has already gone a very long way towards establishing that there are no available sites even for one of the networks of much smaller sites which BxB's disaggregated world envisages;

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<sup>68</sup> Paragraph 962 of the Inspector's report

<sup>69</sup> CD C2

- b) the existence of an ERF facility in Portsmouth which burns a much larger tonnage than this on a smaller site, does not alter this position at all. As Mr Bridgwood explained in chief, that site is there for historic reasons and is part of a wider complex operated by Veolia. As such, it shares several facilities such as car and HGV parking which would all ordinarily have to be provided on site. It also lacks other features which would require land in a new development, such as a sustainable drainage system. It is in no way a valid comparator;
- c) it is also clear that, following the refusal of the New Barnfield proposal, there was a thorough review by the WDA of its options as reflected in the Cabinet report and the consultative exercise.<sup>70</sup> It was suggested by BxB that this exercise was based solely on financial considerations and directed only at a single large facility. Examination of the questionnaire and, crucially, the responses received from the market, indicate that this is in no way the case. A range of proposals from the treatment of some 40,000 tpa all the way up to very large facilities were put forward by the market and considered as part of the consultation activity. There is absolutely no evidence from this exercise that anything approaching a network of small sites was even remotely practical.

7.70 Accordingly, there would appear to be no reality at all to BxB's suggestion that a network of smaller sites could come forward. This has two major consequences. First, any consideration of the proximity principle must now be confined to a comparison of the existing arrangements with the development now proposed. For the reasons set out below with respect to the vehicle mileage comparison, it is entirely apparent that the proximity principle is far better served by the application scheme than by the existing arrangements.

7.71 Second, it is clear as even Mr Cooper accepted, that refusal of this proposal would leave waste planning in Hertfordshire in 'something of a vacuum'. This is an example of masterly understatement. Refusal of this scheme would simply lead to a further period where unsustainable arrangements, which pay no regard whatever to the proximity principle and which are financially extremely inefficient as well, would go on into the foreseeable future and leave the County with no realistic waste solution at all.

### **Minerals Policy 10**

7.72 It is also to be noted that the site is currently in use as a railhead for the import of aggregates for processing on the existing site. Paragraph 204 of the National Planning Policy Framework 2018 seeks, among other things, to safeguard existing sites for the bulk transport, handling and processing of minerals and the handling, processing and distribution of substitute, recycled and secondary aggregate material. Minerals Policy 10 of the Hertfordshire Mineral Local Plan<sup>71</sup> requires railheads for the import of primary and secondary aggregate to be safeguarded. The proposal would involve a change in the purpose of the railhead, from the import of primary aggregate to export of IBA for secondary aggregate. There is thus no conflict with the policy.

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<sup>70</sup> CD K4 and K4a

<sup>71</sup> CD 5

- 7.73 It was accepted by Mr Cooper, under cross-examination by Mr Fraser-Urquhart QC, that since the proposal involves only a change of the type of material being exported by rail and imported by road, the policy was complied with. This position is also accepted by BxB in closing submissions<sup>72</sup> and thus can be taken as common ground.
- 7.74 However, BxB suggests that the evidence that IBA would actually be exported by rail is insufficiently strong to indicate that there would be compliance with this policy. This is a misplaced suggestion. It is of course to be remembered that the scheme has not been granted planning permission yet. It is therefore entirely unreasonable to expect that detailed contractual arrangements for the provision of rail slots would have been entered into at this stage.
- 7.75 However, the existence of rail slots into and out of the site, and their suitability for the trains which would carry the IBA, is amply demonstrated by the letters provided by the existing owners of the slots, DB Cargo.<sup>73</sup> Furthermore, Mr McGurk indicated that his rail advisers had verified the existence of paths through to all the likely destinations for the IBA. The Inquiry is fully entitled, we say, to rely on that evidence from Mr McGurk.
- 7.76 Furthermore, the existing depot is under-used, in part because there are other railheads close by operated by the same company. This was the unchallenged evidence of Mr Bridgwood. The proposals would, therefore, make better overall use of the available rail infrastructure. Once the ERF closes and is decommissioned, the railhead would be returned to Tarmac and could, at that stage, be brought back into use to handle primary aggregates.
- 7.77 Minerals policy 10 is thus fully complied with in both letter and spirit.

#### ENVIRONMENTAL IMPACT OF THE PROPOSALS

- 7.78 Before turning in detail to the individual environmental effects, we make two preliminary observations.

#### **The nature of the evidence**

- 7.79 First, on considering the environmental effects, it is necessary to determine matters by reference to evidence, rather than supposition or apprehension. In that context we note the way in which the case against the development has been put.
- 7.80 In relation to BxB's case, we note the very limited extent of the technical evidence advanced. The general experience of a single planning officer, no matter how well-versed in his area, cannot be a proper substitute for appropriate technical evidence upon which to found a challenge.
- 7.81 Nor, we respectfully observe, can BxB properly rely upon a case made by their advocate but not supported by any underlying technical evidence. There is of course a fine line between proper testing of the applicant's evidence in line with a case supported by a proper statement of case and appropriate evidence, and a case constructed solely by the skill of an advocate. Given the answers from Mr Cooper at the outset of his cross-examination by Mr Fraser-

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<sup>72</sup> Doc 87 paragraph 175

<sup>73</sup> Doc 50a and 50b



Urquhart QC as to those areas in which BxB neither made a case nor brought technical evidence, it is apparent that that line has been crossed in a number of areas in this case (often in a superficially plausible way) and the Secretary of State should give appropriately limited weight to challenges to the applicant's case generated in that manner.

- 7.82 With respect to the other Rule 6(6) parties and public objectors more generally we note, without criticism, that they invariably rely upon their own perceptions of the likely effects of the development. Whilst such an approach is entirely understandable, it does not supplant the careful consideration of the actual effect of the development which comprised the core of the applicant's case.
- 7.83 When an approach based solely upon evidence is adopted, this Inquiry has clearly demonstrated that this proposal (with appropriate planning conditions and obligations) is environmentally acceptable.

### **Public Objections**

- 7.84 Second, the volume of public objection, and the passion with which those objections were expressed during the various inquiry sessions, is of itself irrelevant to the determination of this application. These reactions are hardly surprising, since most ERF schemes initially generate a large volume of public opposition. As the New Barnfield inspector observed, *'Experience with large and medium scale waste projects suggest they are likely to be hard fought and unwelcome to local communities.'*<sup>74</sup>
- 7.85 Of course, the evidence which third parties bring is entirely relevant where it relates to material planning matters which are properly before the Inspector. If that evidence, however, is to have value, it must be based on a realistic and accurate understanding of the scheme proposed. In this case, objections were often based on an erroneous understanding of the scheme and its likely effects. Whilst we make no criticism of members of the public for this, it does indicate the need for caution in attributing any weight to the volume and vehemence of public opposition.
- 7.86 Furthermore, it was suggested that the scheme would produce unacceptable amounts of odour, dust and litter. The evidence on any view indicates that this would not be the case, with most of the material handling being done indoors in a facility with negative air pressure (thus making the escape of dust and smell almost impossible). Equally, the repeated concerns expressed about health effects and effects on ecology were plainly ignorant of the detailed and highly precautionary assessments of air quality which have been done and the clear compliance with national air quality standards.

### **Landscape and Visual Impact**

#### *Approach of these submissions*

- 7.87 It is a truism that landscape and visual impacts are best assessed by the Inspector on site and that expert evidence can only ever be an aid to that process. Accordingly, these closing submissions will not focus upon extensive recitation of the expert evidence, but merely deal with matters of policy and points of principle in the assessment process.

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<sup>74</sup> Inspector's Report paragraph 982

- 7.88 Accordingly, we do not respond to the barrage of suggested error on the part of Mr Hammond to individual viewpoints and landscape assessments. The Inspector will have her own opportunities to consider the photographs, viewpoints and assessments and to judge the accuracy of Mr Hammond. The un-wisdom of seeking to draw points about the impact on landscape character by reference to a single photograph should also be borne in mind, an approach which still seems to find favour with BxB in many cases.

### *Policy*

- 7.89 The first point of policy arises from the fact that the scheme, as already submitted, should not be judged solely as a waste facility. Instead, just as importantly, it is an energy production facility. In that context, for the reasons we have already dealt with, the underlying principles of the NPSs should be taken to apply to the scheme. With respect to landscape and visual impacts, it is important to have regard to the policy guidance of EN-1.
- 7.90 At section 5.9, this deals with landscape and visual impacts. Whilst it is accepted that this is part of the NPS which relates to NSIPs, paragraph 5.9.2 identifies certain features which are common to many energy schemes, including exhaust stacks and plumes. Mr Hammond confirmed in evidence in chief that these features were present in the application scheme and had been considered. Mr Bridgwood, in his evidence in chief, also confirmed that whilst the scheme was at the smaller end of the scale considered in that paragraph, he nevertheless concluded that the guidance in this section was applicable.
- 7.91 This is of considerable importance because, as Mr Cooper accepted for BxB under cross-examination, these words of guidance make plain that a certain degree of adverse landscape and visual impact is to be expected whenever any large-scale energy production facility is provided. Thus, paragraph 5.9.14 of the NPS, in dealing with development outside nationally designated areas, provides that *'Outside nationally designated areas, there are local landscapes that may be highly valued locally and protected by local designation. Where a local development document in England... has policies based on landscape character assessment, these should be paid particular attention. However, local landscape designations should not be used in themselves to refuse consent, as this may unduly restrict acceptable development.'*
- 7.92 Thereafter, paragraph 5.9.15 provides, with respect to landscape impacts, that *'The scale of such projects means that they will often be visible within many miles of the site of the proposed infrastructure. The [decision-maker] should judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project.'*
- 7.93 Similarly, with respect to visual impact the NPS states at paragraph 5.9.18 that *'All proposed energy infrastructure is likely to have visual effects for many receptors around proposed sites. The [decision-maker] will have to judge whether the visual effect on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the project...'*
- 7.94 Finally, with respect to the possibility of mitigation, paragraph 5.9.21 provides that *'Reducing the scale of the project can help to mitigate the visual and landscape effects of a proposed project. However, reducing the scale or*



*otherwise amending the design of a proposed energy infrastructure project may result in a significant operational constraint and reduction in function – for example, the electricity generation output...’.*

- 7.95 These are important words of policy. Neither Mr Flatman for the Joint Parish Councils, nor Mr Hammond for the applicant, could identify any other part of landscape policy in which there is made such a clear statement of the likelihood of adverse effects having to be tolerated in order to bring forward a wider benefit. As a matter of policy, as Mr Cooper accepted under cross-examination, the underlying rationale of these words of guidance is that there are circumstances in which greater than usual adverse landscape and visual effects would have to be tolerated because of the urgent need for energy infrastructure projects to come forward. These words of policy should weigh heavily with the Secretary of State when considering the acceptability of the scheme in landscape and visual terms.
- 7.96 The second matter of policy also arises out of the fact that this scheme is to be seen as an energy infrastructure project as well as a waste management project. As we have noted above, paragraph 154 (b) of the revised Framework indicates that such schemes should be approved if their impacts are ‘acceptable’. We have already made submissions as to the fact that the concept of ‘acceptable’ necessarily contemplates that some harm would be caused; the issue to be judged is whether that harm is sufficiently small to be tolerable. This is important, because it provides an appropriate guide as to the application of local plan policy.
- 7.97 Policy 11 of the WCS provides, so far as material, that ‘*Planning applications for proposals for waste management facilities will be granted provided that:*
- (iv) the proposed development would not adversely impact upon wildlife habitats, the natural, built or historic environment;*
  - (v) the proposed operation of the site would not adversely impact upon wildlife habitats, the natural, built or historic environments;’*
- 7.98 A literal reading of this policy would mean that no harm at all could be caused to any of the interests set out in the extract quoted above. If this were to be the case, then the policy would be at variance with the provisions of the Framework. It is not the applicant’s case that the policy does not comply with the Framework. Rather, it must be read not in the literal sense that no harm at all is permissible, but instead that any harm caused must be acceptable. This is an important consideration in the proper application of development plan policy, both with respect to the landscape and visual effects, but also with respect to the other interests dealt with in that policy. Furthermore, the reading of Policy 11 must also be conditioned by the words of EN-1 and the particular provision they make for energy infrastructure projects and their impact on landscape and visual interests.

### *Design*

- 7.99 The starting point in considering the impact of any building is its design. It is clear that objectors seek to characterise the proposed ERF as simply a ‘bland box’ with tall chimneys. In fact, as Mr Hammond explained in chief, within the necessary constraints of accommodating the necessary equipment for treating

waste<sup>75</sup> and responding to the urgent national need for generating electricity, the building has been carefully designed to bring about an improvement in its immediate surroundings and reduce its wider impact. Thus:

- a) the building steps down at the south-east corner. This softens the overall mass of the building and it is to be noted that the softening of the mass is orientated towards the River Lee and the Lee Valley Regional Park, thereby reducing its immediate impact on those features;
- b) the main building has bands of colour panels which become progressively lighter with height. At ground level, the colour tones are greens, reflecting the greens of existing vegetation, with the lighter colours being blue and opals, reflecting sky colours. This design reduces and softens the mass of the main building. Under cross-examination by Mr Reed QC, it was suggested to Mr Hammond that the visual materials appeared to show that the effect was very limited. In fact, however, the principal image in respect of which this criticism was made (photomontage at Figure RH-31 from footpath at Nazeing Mead<sup>76</sup>) is a photograph taken on a grey day where the exposure is such as to remove all the features of any colour with both vegetation and buildings recording in a bland grey/green. It is therefore hardly surprising that the banding is not perceptible. By contrast, in longer distance views with good colour values (see for example photomontage Figure RH-30 from Stort Valley Way<sup>77</sup>) the effect of the banding is clear as the lower section of the building merges with the vegetation and the upper sections respond to the colours of the sky;
- c) the upper sections of the building are made of a translucent material which again responds to the sky light and helps soften part of the building. Again, criticism of the photomontage images which have difficulty in conveying the effect is misplaced, and appropriate allowance must be made in contemplating the building for the translucent effects;
- d) the flat roofs of the lower levels of the Flue Gas Treatment Hall would be given over to green roofs. Whilst it is accepted that the contribution made by these features in landscape and visual terms is limited, they must be considered within an overall effect of the building;
- e) the retention of the existing vegetation, supplemented by additional planting within the applications, would provide visual softening of the lower part of the main building, as well as retaining a soft boundary to the Lee Valley Regional Park. The landscaping would be positively managed pursuant to a landscape maintenance and management plan, thereby ensuring the long-term success of the existing vegetation and proposed planting.<sup>78</sup>

7.100 It is important to appreciate the immediate context within which this design sits. The application site lies within the Hoddesdon Industrial Estate,

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<sup>75</sup> CD A1(a) Design and Access Statement paragraph 8.3.2, which makes plain, unsurprisingly, that a principal consideration in the design is the need to accommodate the process equipment.

<sup>76</sup> Volume 2 of Appendix 1 to the proof of Mr Hammond

<sup>77</sup> *ibid*

<sup>78</sup> See CD A13 paragraph 9.5. 16 for details of the management plan

immediately adjacent to an existing power station, supermarket distribution centre and an ATT/AD plant. The building is entirely reflective of the flat roof form and shape of existing buildings within the estate and, because of the stepping, colour banding and the soft landscaping, it is of a considerably higher quality than these buildings. As such it represents an improvement on that context, quite apart from its relationship with the River Lee and the Regional Park.

- 7.101 The nature of this existing context is important when the suggestion made by Mr Cooper, namely that the previous Feildes Lock power station proposal was a superior design response to the site, is considered. In fact, as considered in detail by Mr Hammond in chief, the illustrative materials<sup>79</sup> for Feildes Lock show the scheme based upon a container concept with additional massing on the roof and which also placed emphasis on such structural elements as the brackets over the railway sidings. These features were not reflective of the character of the other buildings in the industrial estate, instead offering a significantly different approach. Ultimately, however, both schemes involved a single large building with two stacks and there is nothing to be gained from a submission which suggests that one is preferable to the other. It is sufficient simply to observe that the quality of the application scheme is such as to bring about an overall improvement in the appearance of the industrial area.
- 7.102 Having considered the design aspects of the building, we now consider its effect in landscape and visual terms. As noted above it is not intended to make detailed submissions on the individual assessments. It is, however, pertinent to note that, in common with all the other environmental aspects of this case, it is only the applicant who has presented any comprehensive analysis of the position. All the objectors have done is to seek to advance criticisms of that work, without ever advancing a positive case of their own. It is fair to observe that the Joint Parish Councils retained their own landscape witness. However, that witness (Mr Flatman) confined himself to making some methodological criticisms, to providing some alternative appraisals of the representative views selected by the applicant (but without providing any rationale for his alternative appraisals) and to identifying some further viewpoints (but without going on to assess what the effect would be from those viewpoints). This of course falls a very long way short of providing a comprehensive alternative assessment.
- 7.103 In closing, BxB sought to promote the credentials of Mr Cooper as capable of giving specialist landscape evidence. In truth he has none. The attempt to equate Mr Cooper's ability to give specialist landscape evidence with the Inspector's ability to judge such evidence is commendably ambitious,<sup>80</sup> but wholly wrong. There is a world of difference between assessing technical evidence and being able credibly to give it.
- 7.104 Before comment is made on the LVIA's, it is necessary to consider the landscape context in which the site sits. We have already made submissions concerning the immediate environment of the Hoddesdon Industrial Estate. Mr Hammond, in evidence in chief, drew the Inquiry's attention to the published Landscape Character Assessments dealing with the immediate vicinity of the

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<sup>79</sup> See Appendix 7 to the evidence of Mr Cooper

<sup>80</sup> Paragraph 169 of BxB closing submissions

site. Each of these draws specific attention to the interaction between the Lee Valley and surroundings to the west, and particularly the effect of existing industrial and other urban development. Hence:

Lee Valley (C3)<sup>81</sup>

- covers the area east of the application site, Roydon, Nazeing, Clay Hill and Galley Hill
- refers to *'a variety of fragmented agricultural, recreational and small-scale industrial land uses'*
- refers to *'Wide views across the area are obtained from high ground, and pylons and glasshouses interrupt these in parts'*
- the condition of the valley floor landscape is mixed. It is good where woodland has developed around the wet gravel pits, but poor in the north of the area (which is in proximity to the application site)

A1: Rye Meads<sup>82</sup>

- choice of photo as representative of the area is pylons and the Rye House power station stacks
- *'Within views westwards, the power stations and large industrial warehouse buildings on the western valley side (within Broxbourne) are dominant features, which contribute to a recognisable sense of place.'*

Area 80 – Rye Meads<sup>83</sup>

- *'The strongest impression here is the contrast between industrial and nature conservation land uses. Despite the A414 road bridge overhead it is a surprisingly tranquil area and the ongoing restoration projects provide a dynamism that contrasts with the static nature of the sewage works. It is not unified, being a jumble of contrasting land uses, but is fascinating.'*
- *The impact of urban and industrial development, the transport corridor and utilities is especially apparent.'*
  - kart track and stadium with their hardstanding, lighting and audible land uses in contrast to the public rights of way and areas of woodland,
  - the character of the Lee Valley Regional Park to the north and east of the application site is varied, but its already influenced by large buildings within Hoddesdon Industrial Estate and tall vertical features, including pylons and Rye House Power Station stacks,

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<sup>81</sup> Page 80 of the Essex Landscape Character Assessment Final Report 2003 (paginated page 99 within Appendix C to the proof of Mr Hammond)

<sup>82</sup> Page 40 of the Epping Forest Landscape Studies Landscape Character Assessment (paginated page 133 within Appendix C to the proof of Mr Hammond)

<sup>83</sup> Page 144 of the East Herts District Landscape Character Assessment (paginated page 185 within Appendix C to the proof of Mr Hammond)

- the transition between Hoddesdon Industrial Estate and the Regional Park is abrupt and instant. They directly border one another.

7.105 It was suggested to Mr Hammond in cross-examination by Mr Reed QC, that there were references in the Landscape Character Assessment for A1 Rye Meads<sup>84</sup> and A2 Nazeing Mead<sup>85</sup> to these character areas in the immediate vicinity of the site being 'vulnerable' to the introduction of further tall vertical elements or large industrial buildings/structures. It was then suggested that this somehow suggested a restrictive policy that was considered necessary in respect of such structures.

7.106 In fact, the Character Assessments suggest nothing of the sort. The respective Suggested Landscape Planning Guidelines merely require, unsurprisingly, that the visual impact of new industrial development on the openness within views across this area be considered. It is immediately to be noted, with respect to other characteristics, that the language in other guidelines is to 'maintain' and 'conserve', both of which terms suggest that stronger protection is sought in respect of other possible effects.

7.107 Furthermore, when the necessary 'consideration' is given to the effect on openness of views, it is of fundamental importance that, as Mr Hammond expressed it, the ERF would represent a consolidation of the development within the Hoddesdon Industrial Estate. As such the effect on 'openness' of views is, necessarily, very limited.

7.108 We now turn to the LVIA. As noted above, it is only the applicant who has provided a comprehensive and reasoned assessment. Indeed, Mr Hammond undertook an entirely fresh assessment as part of his proof of evidence. That assessment is commended to the Inquiry and the Secretary of State. In summary, it concludes:

*Landscape*

- a) in operation, the ERF building would be within a part of Landscape Character Area (LCA) 26: Hoddesdon and Cheshunt Major Urban Area (LCA 26). In land use terms, the ERF building would reflect and complement existing large buildings and industrial style land uses in LCA 26. The ERF main building design reflects the horizontal roof lines of other large-scale buildings in LCA 26, whilst aiming to soften its overall mass by tonal banding and translucent upper elevations;
- b) the impact on LCA 26 from the proposed development at years one and 15 of operation is assessed as low, as the proposed development would sit within the context and perception of Hoddesdon Industrial Estate, and existing large-scale buildings including the Sainsbury Distribution Centre and Rye House Power Station. BxB's criticism of the year 15 montage in the evidence of Mr Hammond, is misplaced. The criticism of Mr Hammond for not using a winter view at year 15 misses the point. Year

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<sup>84</sup> Page 42 of the Epping Forest Landscape Studies Landscape Character Assessment (paginated page 135 within Appendix C to the proof of Mr Hammond)

<sup>85</sup> Page 46 of the Epping Forest Landscape Studies Landscape Character Assessment (paginated page 139 within Appendix C to the proof of Mr Hammond)

15 illustrates the effect during summer months when the mitigation planting has matured: the year one montage<sup>86</sup> represents the very worst-case scenario;

- c) during operation, the key characteristics of Rye Meads (to the north and east of the application site) would remain, being an area where the rivers are bordered by vegetation and there is the perception of large-scale buildings within the Hoddesdon Industrial Estate;
- d) whilst giving rise to additional massing, the proposed development would reinforce the sense of place, i.e. that Rye Meads borders an urban area consisting of large-scale buildings and industrial features. Whilst Hoddesdon does not have many tall buildings, the ERF building would be located adjacent to Rye House Power Station, thereby consolidating the taller massing within the townscape to one principal location;
- e) the proposed development would not, therefore, have a significant effect on the setting of the Lee Valley Regional Park; nor would it have a significant effect on other local landscape character areas within this part of the valley.

#### *Visual Effects*

- a) for the majority of visual receptors, the proposed development would not result in significant adverse effects in operation, as it would be seen in the context of the existing large-scale buildings within Hoddesdon Industrial Estate.
- b) significant adverse effects have been identified to six visual receptors at year one of operation, reducing to three visual receptors at year 15. That effect is due to the proximity of the receptors to the application site and the scale of the ERF main building at very close range. However, during summer months, with these trees in leaf, the lower parts of the ERF building would be softened and screened, including the administration building. Furthermore, the step in the building and the translucent upper elevation of the building aid in breaking up the mass. The overall effect also serves to replace the view of Rye House Power Station and its much broader, wider stacks;
- c) a consideration of a representative sample of the photomontages well illustrates the true position. Mr Hammond's Figure RH-25 makes it plain that it is important not to overstate the effect, even close to the scheme. As an example, Mrs Whybrow's suggestion in examination in chief that the scheme would 'block out the sky', is profoundly overstated as, clearly, the sky remains above the building and around the building.
- d) Figure RH-28 is representative of a view from the west side of the valley, such that the residential context and urban setting is clear.<sup>87</sup> This view was assessed by the LVIA submitted with the planning application, and by Messrs Flatman and Hammond as not suffering from a significant adverse effect. It clearly demonstrates the fact that, further from the site, the

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<sup>86</sup> Figure RH-25 in Volume 2 Appendix 1 to the proof of Mr Hammond

<sup>87</sup> Volume 2 of Appendix 1 to the proof of Mr Hammond



effects diminish, as noted by the County Council's landscape officer. This is the view which BxB suggested included views of substantial woodland. That clearly overstates the effect. The woodland is not a major component of the view. Rather, it is a view across a valley that is surrounded by built form which would continue to be the case, albeit that slightly less woodland would be seen.

- e) Figure RH-30<sup>88</sup> is representative of the east side of the valley, such that the agricultural context is clear in the foreground of the view. It demonstrates again the step in the facades, colour banding and the upper translucent panelling as softening the overall mass and that the ERF building sits below the horizon line. The mass of the building is simply read as part of the mass in Hoddesdon Industrial Estate and its stepping up in scale to Rye House Power station, such that the ERF building is located in the higher part of this overall arrangement.

7.109 Various criticisms were made of the methodology by Mr Flatman. All can be seen to be highly technical, for example his comments about the extent of the study area and the ZTVs, and have no effect on the overall assessment. They are dealt with comprehensively by Mr Hammond in his rebuttal proof.

7.110 With respect to the additional viewpoints identified by Mr Flatman, they may be considered in four groups, as referred to by Mr Hammond in evidence in chief:

- First - those beyond the 5-kilometre study area (five in total). These include elevated areas around Eastwick to the north-east, elevated land around Brayford to the west and Harold Park Farm. None would experience a significant effect. Mr Flatman's evidence in cross-examination also concluded that the effect would not be significant to these receptors, except for No 86 which 'could be significant' and illustrate that the 5 km study area was well chosen.
- Second - those which have focused on the Pinnacle Industrial estate at Harlow, rather than the site. These include some views beyond the 5 kilometres around Eastwick and to the south-east of the scheme at Nazeing Wood Common (No 89).
- Third - those which are in very close proximity to locations identified in the LVIA (i.e. the green dots), such that the numbers are overlapping or in very close proximity to one another. These include locations to the north of Hoddesdon (Nos 70, 71), in close proximity to the east and south-east (Nos 50, 51, 52, 87, 53, 54 and 55) as well as Nos 72, 76 and 78. There are also two locations near All Saints Church to the south-east (Nos 82 and 83) and at Clay Hill (No 80). Mr Flatman did not assess these, but they reflect the assessment findings from the LVIA and Mr Hammond's evidence.
- Fourth - locations where there is no equivalent image to those locations agreed in the LVIA. The scheme would be visible to very varying degrees from some of these locations. Overall in terms of assessment, given the

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<sup>88</sup> Ibid



distance, the fact that the ERF stacks would be consolidated adjacent to the views of Rye House Power Station and other features within the view, the effect would not be significant.

### **Lee Valley Regional Park**

- 7.111 The proposed ERF therefore would not seriously detract from the character or appearance of the countryside surrounding Hoddesdon, specifically the Regional Park. This is in part because the proposed development would retain and enhance existing vegetation within the application site and has sought to soften the mass of the ERF building through its tonal bands and stepped façade, as well as provide a more interesting facade than compared to the blank facades across Hoddesdon Industrial Estate.<sup>89</sup>
- 7.112 The ERF building would not seriously detract from the character or appearance of the countryside, as the countryside character is already influenced and defined by its proximity to Hoddesdon. The proposed development reflects the existing character of large-scale buildings within Hoddesdon Industrial Estate and the varied landscape character of contrasts, which includes large scale buildings adjacent to the Regional Park in this part of the valley.<sup>90</sup> It is clear that there would be no serious harm in either landscape or visual impact terms across the assessment, particularly given the special provision for ERFs.

### **Noise**

- 7.113 The only technical evidence on noise before the Inquiry was the detailed noise survey and modelling undertaken by, and presented in evidence by Mr Maneylaws. It was not the subject of any substantive challenge by anyone, either during the processing of the application or at this Inquiry. No statutory consultee objects to these proposals on noise grounds, and it was recently confirmed to the Inquiry that BxB's Environmental Health Officer had no further comment after receipt of updated noise survey information.<sup>91</sup> Subject to that final confirmation, Mr Cooper confirmed under cross-examination that BxB raised no objection on noise grounds.
- 7.114 Accordingly, the applicant's assessment is unchallenged and is commended to the Inquiry and Secretary of State. In outline, it reveals the following:
- a) the design of the ERF is such that the majority of noise producing operations would be fully enclosed within the building. Furthermore, the design has been evolved in consultation with the Environment Agency to further improve its noise attenuation features with, for example, amended cladding to reduce noise emissions still further;
  - b) the noise effects of the scheme have been subject to robust modelling with a series of worst-case assumptions being applied. The modelling has been considered in detail by the Environment Agency and subjected to a series of amendments based upon its suggestions. In each case the amendments to the modelling have been to increase the amount of noise energy attributed to various site activities;<sup>92</sup>

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<sup>89</sup> Mr Hammond proof of evidence paragraph 11.5.3

<sup>90</sup> *ibid* paragraph 11.5.4

<sup>91</sup> Doc 78

<sup>92</sup> Paragraph 6.20.2 of Mr Maneylaws' proof of evidence

- c) nevertheless, the final modelling shows that no receptor at all, either during the construction or operational phase, would be subjected to increases in noise level above the representative worst-case baseline which would be likely to generate complaints. Accordingly, in each case, no significant adverse impacts are predicted. Indeed, at all receptor locations bar one (Lock Keeper's Cottage) the rating level of the both the construction and operational activities would be less than the background level, necessarily indicating a low level of impact;
- d) at Lock Keepers' Cottage, there is predicted to be an adverse effect of major significance during three phases of construction activity. However, as explained by Mr Maneylaws in evidence in chief, these were predicted based on worst-case predictions (for example when the machinery is located at the closest point of the boundary to the residential receptor) and in any event would only last for a relatively short duration. For example, the site clearance of this particular site is unlikely to take very long given that there are large areas of open land on the existing site. The effects would be acceptable;
- e) the assessment took appropriate account of the houseboats and again suggested a negligible and/or minor adverse impact. In each case, the effects are acceptable;
- f) the assessment also demonstrated that the effects of vibration at both the construction and operation stages would be negligible.

7.115 The noise and vibration effects of this proposal are entirely acceptable and provide no basis for a refusal of planning permission.

### **Air Quality**

7.116 The only technical evidence on matters of air quality before the Inquiry was the detailed dispersion modelling and air quality assessments undertaken by the applicant's consultants for the Environmental Statement,<sup>93</sup> as reviewed in the evidence of Mr Barrowcliffe. The technical basis of these assessments was not challenged by any statutory consultee and the contents of the draft Environmental Permit indicate the acceptance of the modelling by the Environment Agency. The Council initially raised one objection on matters of air quality (relating to the impact of development traffic on one particular receptor) but withdrew that objection before the Inquiry opened. Mr Cooper confirmed under cross-examination that he did not bring any technical evidence or advance any case on matters of air quality.

7.117 The assessment by AECOM is therefore commended to the Inquiry and the Secretary of State. In outline:

- a) the assessment was undertaken on a robust worst-case basis with, for example, the emissions of cadmium being assumed to be released throughout the whole year at the maximum concentration which would ever be produced by the combustion process. This was properly described by Mr Barrowcliffe under cross examination by Mr Reed QC as '*an extreme worst case*';

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<sup>93</sup> CD A13 Section 7, CD A14 Section 7.1

- b) the output of the modelling<sup>94</sup> indicates that at the point of maximum impact for a range of pollutants, the contribution made by the scheme would be a small percentage of the established assessment criterion or limit. In all but one case, the total concentration, even allowing for existing baseline levels, would be below those limits. The one example where an exceedance is identified (chromium) sees the scheme adding just 0.07% of the assessment criterion. This exceedance is accordingly almost wholly due to the existing baseline;
- c) summary information was also provided in respect of NO<sub>2</sub> concentrations at an extensive series of receptor locations. This again demonstrated that the contribution of the scheme was a tiny fraction of the assessment criterion and, in this case, that all receptors would experience concentrations well below the assessment criterion;
- d) the assessment also considered pollutants from the additional road traffic created by the proposal. Again, at all receptors,<sup>95</sup> it indicated the very low contribution made by the development traffic and, additionally, that the total concentrations for all receptors would remain below the assessment criterion;
- e) whilst it is accepted, of course, that dispersion modelling has elements of uncertainty within it, in addition to the Industrial Risk Assessment Programme (IRAP) modelling referred to by BxB,<sup>96</sup> the extent of 'headroom' below the assessment criteria for almost all pollutants and the very limited contribution made by the scheme to these concentrations of pollutants, means that the inherent minor uncertainties in the modelling process do not in any way detract from the overall conclusion that the scheme would have a negligible effect on air quality.

7.118 Two particular concerns were advanced as part of BxB's case, on behalf of the local glasshouse growers. It was first suggested that the deposition of particles on the glasshouse surfaces would, by virtue of the fact that those windows are cleaned, and the resulting water used for irrigation, could create a pathway by which pollutants could enter the food chain, causing potential loss to the growers. This matter was dealt with in detail by Mr Barrowcliffe in evidence in chief. Whilst he accepted that this did represent a theoretical pathway, the reality is that the concentrations of pollutants produced by the scheme, particularly in comparison to those already existing in the atmosphere, were so low that it was inconceivable that there would be the effect suggested by the growers. The amounts of pollutants generated would, as Mr Barrowcliffe put it, be simply too low by an order of magnitude.

7.119 Furthermore, the prevailing wind is likely to blow those pollutants away from the general concentration of glasshouses for much of the year. These things are as true of hydroponically grown plants as they are of plants grown in soil; no separate appraisal is required and the fact of such a suggestion indicates how desperate BxB's case on these matters became.

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<sup>94</sup> See Mr Barrowcliffe Appendix D for a summary

<sup>95</sup> Mr Barrowcliffe Table D3

<sup>96</sup> Doc 87 paragraphs 195-200

- 7.120 It was also suggested that the intermittent existence of the plume from the chimney stacks would cause a loss of light to the glasshouses of sufficient magnitude to affect agricultural production. This is a preposterous suggestion, for several reasons. The plume is not present for much of the time and is more likely to appear either at night or on cloudy days. In any event, the plume would not have any significant effect in preventing light passing through it, even when it is present on sunny days. Even at its longest possible predicted length, the plume would simply be too small to have any shadowing effect on the glasshouses. This is particularly the case when the interaction of the direction of the plume (which follows the prevailing wind) with the direction from which the sun shines is considered. There is a virtually negligible potential for them to interact in a way which affects any glasshouse.
- 7.121 The only evidence advanced in support of this suggestion, the story of the British Sugar plant at Wissington, Norfolk and its switch from tomato growing to cannabis growing, appears to have taken place purely for economic reasons rather than from any absence of light for tomato growing.<sup>97</sup>
- 7.122 Finally, some criticism was advanced in Mr Barrowcliffe's cross-examination by Mr Reed QC about the use of meteorological data from Stansted. This criticism, which had not been made by any professional contributor, had all the hallmarks of an 'advocate made' case and is entirely misplaced. As Mr Barrowcliffe explained in evidence in chief, there are only about 40 locations in the UK where appropriate sets of weather data exist. Stansted is not only the closest to the application site, but also in comparative terms provides a better fit than is possible in many air quality assessments. Most importantly, the differences in terrain and other local conditions are taken account of by the detailed modelling, which is site specific – a 3D model of the site was built to inform the modelling. The meteorological information is only necessary for such factors as prevailing wind direction. As Mr Barrowcliffe put it, it would be 'remarkable' if those factors were materially different at the application site than at Stansted airport.
- 7.123 It should also be noted that the effects on human health arising from the predicted changes in local air quality were comprehensively assessed in the Health Impact Assessment.<sup>98</sup> No substantive challenge to that Assessment was made and no evidence has been produced on this matter by any party. No objection has been received from Public Health England.
- 7.124 Whilst the Assessment does show a theoretical risk for hypothetical individuals in the case of a lifetime exposure to some of the emitted substances, those effects are so small, particularly in comparison to the amount of pollutants which would simply be received by individuals in the course of a normal everyday life, that the effects can reasonably be described as inconsequential. There is no cause for concern, no matter how virulently the opposite view may be expressed by members of the public.
- 7.125 The effects of the scheme on air quality and public health are inconsequential and provide no grounds for a refusal of planning permission.

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<sup>97</sup> Doc 74

<sup>98</sup> CD A9

## Ecology

7.126 The only technical evidence on ecological matters before the Inquiry comprised the detailed ecological surveys undertaken by the applicant's consultants for the Environmental Statement<sup>99</sup> and the evidence of Mr Honour.<sup>100</sup> It was not the subject of any substantive challenge by anyone, either during the processing of the application or at this Inquiry. As confirmed by Mr Honour in his evidence in chief, after having been extensively involved in the process, Natural England does not object to these proposals and nor does the County's ecological officer. Mr Cooper also confirmed under cross-examination that BxB raised no objection on ecological grounds.

7.127 Accordingly, the applicant's assessment is unchallenged and is commended to the Inquiry and Secretary of State. In outline, it reveals the following:

- a) the application site is of very limited ecological value, being a working aggregates depot with mostly bare ground;
- b) the ecological interest, such as it is, is confined to small areas of habitat for invertebrates and reptiles in the area of the railway sidings, a pond which shows some evidence of use (albeit not for breeding) by Great Crested Newts (GCNs) and limited foraging possibilities for bats;
- c) the direct effects of the scheme would be of extremely limited significance and are capable of effective mitigation, in particular by the translocation of GCNs to the newly created ponds in the adjoining woodland area;
- d) the possible indirect effects were the subject of detailed consideration. All the relevant effects, at both the construction and operational phases, were considered. Thus, fuel spillage/accidental pollution, disturbance from noise, disturbance from lighting and overshadowing of adjoining habitats were all considered;
- e) in each case, the effects were found to be either non-existent or negligible. Effects on all the nearby designated ecological sites were insignificant;
- f) particular attention was focused on the effects of emissions from the ERF. Mr Honour's evidence contained a detailed analysis of the effects, undertaken on a highly precautionary basis. This demonstrated that, with respect to every potential pollutant, the Process Contribution (PC) is a small fraction of the Predicted Environmental Concentration (PEC), and thus of negligible significance.<sup>101</sup> The only exception is in respect of NOx short-term, where the PC is 36.7% of the PEC. Nevertheless, the

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<sup>99</sup> CD A13 Section 10, CD A15 Appendices 10.1- 10.8

<sup>100</sup> **Inspector's Note** - This was supplemented shortly before the applicant's closing submissions (but after closings for the Hoddesdon Society) with a note from Mr Honour on cumulative air quality effect on sensitive ecological receptors, as had been requested earlier in the proceedings (Doc 89). Given the lateness of the submission, I allowed the Hoddesdon Society to make further submissions in writing on the matter (Doc 94) with final comments then submitted by Mr Honour for the applicant, again in writing (Doc 95). Docs 94 and 95 were submitted following closing submissions. As a consequence, the content of these later documents is not reflected in the closing submissions of the respective parties. It is, however, reflected in my reasoning below.

<sup>101</sup> See in particular Table 7.1 within the proof of Mr Honour

PEC would not exceed the threshold limit, and so no significant effect is predicted;

- g) Mr Honour's supplementary note on cumulative effects,<sup>102</sup> drawing on the data already provided in the Environmental Statement as to cumulative emissions, also made clear that even if assessed on a cumulative basis, there would be no significant adverse effects;
- h) none of these assessments was challenged in any way. Whilst it is to be noted that in some cases the existing background levels mean that the PEC exceeds the threshold limit, this is wholly due to existing conditions (which may be expected gradually to improve) and the PC causes no appreciable further adverse effects. Accordingly, the evidence conclusively demonstrates that there would be no adverse effects on ecology from emissions from the ERF.

7.128 The only substantive issue raised in respect of ecology was an alleged effect on bats, caused by light spillage. This case was advanced by the Hoddesdon Society and by the Lee Valley Regional Park Authority, the latter described by Ms Day for the Hoddesdon Society in her evidence in chief as 'half-hearted'. However, neither party brought any technical evidence to the Inquiry.

7.129 By contrast, Mr Honour produced a detailed analysis. His starting point was to assume that each and every light sensitive species of bat which had ever been observed in the Lee Valley (from the records kept for observations throughout the whole Park) was transiting past the site. This assumption dealt in its entirety with the suggestion that inadequacies in the survey had somehow led to an underestimation of the impacts – the presence of the bats was simply assumed – so it does not matter if they were detected by surveys.

7.130 Thereafter, Mr Honour referred to the latest research which demonstrated that, on a highly precautionary basis, a figure of 1 Lux was required before disturbance, even to the most light-sensitive bats, could even potentially occur. He also produced a light spillage diagram,<sup>103</sup> which shows the very limited areas where 1 Lux will be exceeded.

7.131 No part of this evidence was challenged in any way, and it clearly demonstrates that the effect on bats using the Lee Valley corridor would be negligible, as the amount of light spillage is so limited.

7.132 It was fairly accepted by Mr Honour during his cross-examination by Mr Reed QC, that the light spillage diagram did not include light from the main turbine hall. However, that would not be routinely lit after 19.00 hours and Mr Honour noted that the periods when 19.00 hours would intrude into periods of darkness would be limited to the autumn and winter months, outside the main bat activity season. In the summer, when bats are active, illumination of the main turbine hall during times of bat activity would be infrequent. Mr Honour explained that the likely number of occasions when there would be illumination would not be enough to change bat behaviour.

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<sup>102</sup> Doc 89

<sup>103</sup> Doc 59



- 7.133 There was, accordingly, no evidence that there would be any disturbance to bats, or indeed any adverse effect on ecology.
- 7.134 Furthermore, insofar as the proposals provide for the sowing of the flood water attenuation ponds with a wildflower and grass seed mix, provide for the under-planting of the existing woodland with additional trees and shrubs and provide for the creation of two purpose-built newt ponds, the proposals would bring about an increase in biodiversity and represent a net benefit to ecology.

### **Cultural Heritage**

- 7.135 The technical evidence before the Inquiry with respect to matters of cultural heritage was that prepared by AECOM for the applicant and is contained within the Environmental Statement,<sup>104</sup> together with the extensive supplementing evidence of Miss Kelly. There was no other technical evidence. Mr Flatman, for the Joint Parishes, purported to identify certain cultural heritage assets which were worthy of assessment, but he was, by his own admission during cross-examination by Mr Fraser-Urquhart QC, not a specialist in cultural heritage matters and, in any event, did not even seek to assess the impact upon the assets he identified. BxB did not advance any technical evidence and, indeed, Mr Cooper in re-examination appeared to somewhat downplay the whole concept of a separate skill set and expertise in matters of cultural heritage. That latter approach is somewhat surprising and ought not to find favour with the Secretary of State.
- 7.136 Accordingly, the applicant's assessment stands unchallenged as a matter of evidence and is commended to the Inquiry and the Secretary of State. In outline, it concludes:
- a) Based on the individual assessments set out at Section 4 of Ms Kelly's proof, there would be no harm of any sort to the significance of any heritage asset caused by the ERF. This is primarily due to the relative lack of intervisibility between the heritage assets and the ERF, the distance of the assets from the ERF and the limited contribution made by the existing settings to the significance in heritage terms of the relevant heritage assets.
  - b) The review undertaken by Miss Kelly of those heritage assets listed (but not assessed by Mr Flatman) also concluded that there would be no harm at all to the significance of any of the heritage assets. Once again, the limited intervisibility, distance and lack of importance of the setting (relative to other considerations within the meaning of significance) informed these judgements.
- 7.137 Matters of cultural heritage formed an important part of the case advanced by The Hoddesdon Society. Their particular focus was upon locations within the Hoddesdon Conservation Area. However, their case betrayed a fundamental misunderstanding of the approach to assessing the impact upon heritage assets, in particular the role of setting and intervisibility. The approach of the Society appeared to be, that if it was possible to see the ERF from a location within the Conservation Area, that equated to harm to the Conservation Area.

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<sup>104</sup> CD A14 Section 2.1 section 13 and Appendix 2.3



- 7.138 That is, of course, a fundamentally flawed approach. The proper approach is to assess whether the development of the ERF would reduce in any way the significance in heritage terms of the asset represented by the Conservation Area. When each of the viewpoints advanced by the Society was assessed, it was entirely plain that it was impossible to conclude that any such harm would be done. Each of the locations chosen for comment (and for such a large Conservation Area there were precious few) represented, as Mr Metcalf said in cross-examination by Mr Fraser-Urquhart QC, those which represented the best possible view for his case. Yet each one provided a view of the ERF outward from the Conservation Area in a context which included very considerable elements of wholly unsympathetic modern development. In each case it was impossible to conclude that any significant positive contribution was made by those views out, or that any harm in heritage terms could be done by the introduction of the ERF.
- 7.139 The Society also appeared to suggest that the introduction of the ERF in views approaching the Conservation Area would do harm to the Conservation Area's significance in heritage terms. A comparison was drawn to the situation at Kedleston Hall.<sup>105</sup> However, the almost complete absence of features in the approaches to the Hoddesdon Conservation Area which might contribute to its heritage significance, as confirmed by Ms Kelly in re-examination, made that comparison somewhat bizarre and ensures that the introduction of the ERF would do no harm to that aspect either.
- 7.140 Beside their reliance upon Mr Flatman's suggested heritage assets, the Joint Parish Councils in the cross-examination of Miss Kelly sought to introduce effects upon the Nazeing and Roydon Conservation Area as additional sources of harm to heritage assets. In particular, attention was focused upon the All Saints Parish Church at Nazeing.
- 7.141 However, the Conservation Area Appraisal<sup>106</sup> does not identify (on a plan) any important views. The commentary on page 2 of the Appraisal specifically identifies that '*the footpath between Roydon Hamlet and Nazeing provides an idyllic approach to the church*'. In such a view, which is necessarily a journey in a southerly direction, the church and the application site lie in completely different orientations such that, as confirmed by Ms Kelly in re-examination, it would be an unusual observer who would find their appreciation of the heritage asset to be compromised.
- 7.142 Finally, the Joint Parish Councils sought to advance a case which greatly exaggerates the impact on heritage assets. In much the same way as The Hoddesdon Society, they appear to confuse mere intervisibility with a genuine impact on those aspects of the setting which make any contribution at all to the heritage significance of the Conservation Area.
- 7.143 Furthermore, it was notable that much of the Joint Parish Councils' case appeared to have been fully formulated for the first time through the cross-examination of Miss Kelly. In particular, the emphasis on the views from the New River greatly exaggerates the importance of those views as a contribution

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<sup>105</sup> Steer v SSCLG and others [2017] EWHC 1456 (Admin) and Catesby Estates Ltd v Steer [2018] EWCA Civ 1697 (Appendix 4 to the proof of Miss Kelly)

<sup>106</sup> Doc 55

to the Conservation Area, particularly as any passage along the river experiences a mix of openness and vegetation obscuring views across to the application site.

7.144 It is in this context that the reliance by the Joint Parish Councils on the principles in the Irving<sup>107</sup> judgement must be seen. It is notable that while the issue of whether the harm that might be identified was *de minimis* was not directly put to Miss Kelly, it is entirely clear that her view was that any such harm would be negligible. Accordingly, even were it arguable that there could be some harm by virtue of those principles to the Conservation Area as a whole, the overall effect would at worst be negligible and thus, even bearing in mind the particular duties with respect to the protection of heritage assets, the weight to be attributed to it in the planning balance is very small indeed.

### **Water Quality and Flood Risk**

7.145 The technical evidence before the Inquiry on this was presented by Mr Pelling. It was not the subject of any substantive challenge by anyone, either during the processing of the application or at this Inquiry. No statutory consultee objects on the grounds of water quality or flood risk. The Inquiry is referred to the Statements of Common Ground signed with both the EA and the Lead Local Flood Authority.<sup>108</sup>

7.146 Accordingly, the applicant's assessment is unchallenged and is commended to the Inquiry and Secretary of State. In outline, it reveals the following:

- a) The scheme has been designed to incorporate a variety of control measures, to ensure that both the nearby aquifer and the River Lee are entirely protected from untreated polluting discharges of water. These measures were set out in detail in Mr Pelling's proof<sup>109</sup> and would be policed by the EA. In respect of that control by the EA, paragraph 183 of the Framework makes plain that the planning decision-maker should assume that such measures would be effective. These measures make it clear that the concerns expressed, amongst others, by the anglers as to the effect of the development on the water quality and thus the ecology of the River Lee are entirely unfounded.
- b) By virtue of the planned improvements<sup>110</sup> to the pre-existing bund,<sup>111</sup> the scheme is designed to withstand the 1 in 100-year flood event. Modelling demonstrates that it will succeed in doing so with only minor inundation of areas of hardstanding and car parking outside the main building. This modelling has been verified and approved by the Environment Agency. Indeed, the modelling appears to show that there would be a slightly reduced diversion of water onto other properties in the event of a serious flood. However, as Mr Pelling candidly accepted, the effect is not really of sufficient size to claim a material planning benefit.

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<sup>107</sup> Irving v Mid-Sussex District Council [2017] EWHC 1818 (Admin)

<sup>108</sup> Docs 32a and 32c

<sup>109</sup> Paragraph 3.1.2 and Figures 1 and 2

<sup>110</sup> Paragraphs 6.3.25 and 6.3.28 of the proof of Mr Pelling

<sup>111</sup> Whilst the bund performs both landscape and flood prevention functions, it appears that its initial purpose was for landscaping purposes, as confirmed by Mr Pelling in re-examination by reference to condition 7 of the 1983 planning permission for the site (Appendix 9 to the proof of MR Cooper and Doc 25).

- c) The development satisfies the sequential test set out at paragraph 158 of the Framework by virtue of the fact that there are no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. We have already made our submissions on the Alternative Sites Assessment which supports that position.

## **Transport**

- 7.147 It is fair to observe, by way of introduction, that traffic and transport have perhaps played a role out of all proportion to their real place in the issues properly before this Inquiry and that far more heat than light has been generated by the more technical evidence placed before this Inquiry. This is because, whilst it is obvious that the road network in this area can be congested at peak times, the proposals add only a very limited amount of additional traffic which would have no discernible effect on the functioning of the network. This is particularly so when it is borne in mind that the pattern of deliveries to the facility would not be concentrated in the peak hours, but instead during the middle of the day when the network is generally not congested.
- 7.148 In considering matters of transport, it is appropriate to begin with policy. Paragraph 108 of the revised Framework suggests that it should be ensured that development takes up appropriate opportunities to promote sustainable transport modes given the type of development and its location. This is exactly what the site has done. For all the reasons set out above, this is the only site which is available for a vitally necessary facility. All sensible opportunities to improve access by non-car modes of transport have been taken up. A contribution is made for the improvement of the tow path which would improve access from Rye House railway station. Provision is made for cycle parking on site. A travel plan will be drawn up which will attempt to reduce the reliance upon car transport, particularly as all the assessments of the impact of the scheme have assumed that one car equals one worker.
- 7.149 Accordingly, to suggest that the scheme should be criticised or even refused on the basis of being not a sustainable site would clearly be to allow the tail to wag the dog on this occasion.
- 7.150 The second matter of policy is with respect to the effect and meaning of severe residual cumulative impact. It is imperative that the policy context is properly understood. Framework paragraph 109 suggests that in order for it to be even permissible to refuse permission on highway grounds there must be either an unacceptable impact on highway safety, or a severe residual cumulative impact on the road network. However, even if one of those two matters is established (which the applicant clearly says is not) paragraph 109 does not mandate a refusal. It simply says that refusal would be permitted. If either of those effects is established, then the Secretary of State would simply have to weigh into the balance the overall merits of the scheme (which as set out above are exceedingly strong) against the harm in highway terms which is identified. As a matter of evidence, however, the transport effects come nowhere near those 'trigger' thresholds.
- 7.151 There is no definition in either legislation or case law as to the meaning of severe residual cumulative impact. There is no definition of the meaning of 'severe' with respect to the existing congestion on a highway. However, it

must be taken to mean something more than the normal morning and evening congestion which is experienced on road networks up and down the country on a daily basis. Accordingly, Mr Crabb's suggested definition of '*substantial periods of congestion throughout the day*' was perhaps the most pertinent description offered. It is certainly preferable to the absolutist position offered by Mr Russell, namely that where any junction in a network shows a ratio to flow capacity (RFC) of 1.0 and over, the addition of one single additional vehicle creates a residual cumulative impact which is severe. The attempt repeatedly made in the submissions for BxB to soften that position by reference to '*without adequate mitigation*' does nothing to reduce the inherently unreasonable nature of such a position, which even Mr Cooper could not agree with. Even BxB's actions in continuing to grant planning permission for other development schemes on the Hoddesdon Industrial Estate would seem to contradict the position.

- 7.152 All the evidence suggests that, at present, the network comes nowhere near being regarded as suffering from 'severe' congestion. Outside of peak hours, to begin with, there is no credible evidence of anything that could remotely be described as sustained congestion. In the peak hours, it is true that there are occasions when congestion develops, but as Mr Crabb explained (and he was not challenged on the point) the queues can be described as 'peaky'. They develop and then they clear in a brief period of a few minutes. They may then reappear, only to dissipate again. However, there is no sustained ongoing congestion. This is made clear by the variability in the journey times recorded by Mr Crabb. It is to be noted that Mr Crabb has set out for the Inquiry each and every journey time he recorded during his survey work.<sup>112</sup> By contrast Mr Russell has simply presented an average figure.
- 7.153 However, perhaps the most telling indicators of the true situation on this network are the real-world responses of Mr Merhemitch (called by BxB) a local businessman with premises on the industrial estate. He explained that he had moved his working hours forward by a full 15 minutes because of perceived congestion at the peak hours.<sup>113</sup> Such a small alteration in the working times is hardly suggestive of a severe prolonged period of congestion. It is also notable that Mr Merhemitch has made two substantial investments between 2010 and the current day, investments which total over £3 million. These investments have been made in full knowledge of the situation on the highway network. Indeed, the most recent was only in 2016 when, by his account, the congestion had become far worse (although we query whether that is actually the case). It is submitted that this is perhaps the most reliable indicator of the true position on this network.
- 7.154 Into this situation, the applicant now proposes to introduce a handful of HGVs at both morning and evening peaks. It does not matter whether those HGVs arrive evenly spaced or bunched together, since they represent a very small contribution indeed to increased traffic on the network. The applicant is criticised for considering its contribution to traffic in this manner, but it is difficult indeed to see how such a small addition to the traffic flows in this area could possibly be regarded as creating a severe residual cumulative impact.

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<sup>112</sup> Doc 63

<sup>113</sup> Mr Merhemitch proof of evidence (last paragraph on page 2)

- 7.155 It is perhaps because of this obvious factor that BxB has put so much attention upon the modelling exercises which have been carried out as a necessary and mandatory part of the Transport Assessment. As Mr Crabb made plain for Veolia, the proper approach to modelling, and therefore the proper approach to each and every one of BxB's criticisms, is that they are part of an overall framework tool for understanding the situation on the highway network and the effect of the introduction of the development traffic. They supplement, but cannot replace, observations of the existing network and a sensible appreciation of the level of development traffic being introduced.
- 7.156 In any event, many of the criticisms are misplaced. The overriding concern of BxB in seeking a sophisticated corridor model and seeking to analyse the interaction of all the junctions on the HGV route is patently disproportionate given the small number of vehicles being introduced and their predictable routing. Furthermore, it flies in the face of BxB's own position in funding, as part of the Broxbourne Traffic Study, an analysis of the corridor which tests only two junctions and uses individual junction modelling tools to consider those two junctions. It is an extraordinary position for BxB to adopt, criticising the applicant for not embarking on a sophisticated corridor model when introducing a handful of vehicles but at the same time relying upon data from a much more limited study and using the same junction modelling techniques which it criticises in this Inquiry, to inform its own transport study.
- 7.157 Furthermore, many of the detailed criticisms of the modelling were misplaced. The concern about the manual count versus the automatic count appears to fly in the face of the very clear evidence from Mr Crabb that he and his team personally analysed the manual count videotapes in order to verify the accuracy of that count. The concern about Temprow simply represents the product of two different, equally legitimate, approaches to a modelling problem. In any event, the reality is that neither approach suggests that there would be a fundamental, sustained difficulty at the relevant junctions.
- 7.158 Finally, and most significantly with respect to the modelling, the inherent robustness and conservatism of the initial modelling assumptions means that the minor discrepancies suggested by BxB would in fact, in the real world, be of little relevance compared to the much reduced effect, compared to the worst-case assumptions, which would actually be produced by the scheme in operation.
- 7.159 In his rebuttal,<sup>114</sup> Mr Crabb set out various sources of robustness. Hence, existing traffic flows have been modelled not on a neutral month basis, but instead based on additional traffic to represent the busiest month. IBA would be removed by rail, not road as assumed, the rounding up of loads does not represent, as suggested by BxB, the likelihood of HGVs arriving half empty. Instead it produces a genuine overestimation of the number of HGVs which would actually be needed to deliver the required amount of waste to the facility. It is assumed that workers would all arrive as single occupancy cars when in reality some would cycle, some may come by train and walk, and some will take advantage of the travel plan inducements for car sharing.

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<sup>114</sup> Paragraph 2.9



- 7.160 Accordingly, both the applicant and the County Council as Highways Authority are correct to conclude that there would be no severe residual cumulative impact. The circumstances permitting a refusal on highway grounds simply do not arise.
- 7.161 The second aspect of BxB's case on highway impact was with respect to the detailed movements on Ratty's Lane itself. It is accepted that, in places, Ratty's Lane is narrow and that the interaction of HGVs would require some care. However, none of the matters relied upon by BxB comes anywhere close to suggesting that the situation would be such that safe and suitable access could not be provided, and that pedestrians and cyclists using the lane (such as they are) would not be suitably safe. As a general point, road users of all sorts can be expected to behave with a modicum of common sense and decency. No doubt that is the reason why Ratty's Lane has been used by HGVs on a wholly uncontrolled basis without any apparent problems to date.
- 7.162 With respect to the possible difficulty of interaction of vehicles and pedestrians and cyclists, it is accepted that the road is narrower than would be ideally desired on the public highway. However, given that the road is straight and visibility clear, that there are areas where pedestrians can move to the side of the road and that the flow of traffic along the road would be controlled by signal and therefore be relatively predictable, there is nothing to suggest that there is an inherent safety risk which is unacceptable.
- 7.163 Equally, whilst the width of Ratty's Lane would preclude the free flow of HGVs in both directions simultaneously, the proposed signalling system would enable vehicles to negotiate the Lane without undue difficulty. The relatively low numbers of HGVs approaching the site must be always borne in mind, as must be the fact that the signal system would only operate for users of the side entrances when there are users waiting to come out of those accesses. Furthermore, the system would be subject to manual monitoring and override as part of the scheme of operation to be agreed and operated pursuant to conditions. Once again, the Inspector and Secretary of State are entitled to assume that drivers will behave with normal levels of responsibility and awareness and would not, for example, routinely run lights where they are made to wait a few seconds longer than the desired maximum. They would not routinely place their vehicles in the most difficult position imaginable in order to prevent manoeuvring, and third parties would not unreasonably be concerned as to the most minor of incursions onto their land, incursions that have been going on for many years already.
- 7.164 Finally, the position with respect to emergencies must be appreciated. As Mr Kirkman made plain, the fire protection systems within the building are such that the attendance of the fire service itself would be desirable, but not essential, in the event of a fire at the building. However, any concern about the access to the building of the fire service is based upon such a series of implausible assumptions that they should really be afforded very little weight indeed.
- 7.165 Accordingly, there is no basis for the Inspector or the Secretary of State to conclude that there is a problem with safe and suitable access. The minor difficulties which may exist on this private road by way of non-compliance with standards designed for public highways, and the need for an amount of

discretion and common sense by users of the lane, are matters which can properly be taken into the planning balance, but should weigh very lightly in that balance and certainly provide no basis for substantial reasons against the scheme.

### **Carbon Impact**

7.166 The generation of energy pursuant to the scheme would result in overall carbon savings compared to the existing situation. The savings will come from three identifiable sources. First, the inherent carbon efficiency of the ERF facility when compared to existing arrangements for dealing with the waste, irrespective of the transport implications. Second are the potential savings in the event that a Combined Heat and Power (CHP) facility is taken up from the plant, and the third are the savings in vehicle mileage which would accrue over the existing arrangements, whereby waste is exported to three out-of-county ERFs and a landfill site.

#### *Carbon savings*

7.167 The first group of savings is set out at Table 2 in the proof of evidence of Mr Aumônier.<sup>115</sup> This indicated, when compared with the GIG<sup>116</sup> margin (whereby the energy generated by the scheme would be compared in respect of the displacement of another technology based on a counterfactual of provision of a CCGT gas power station) that the annual saving would be some 8,235 tonnes of carbon per annum. When compared with the BEIS<sup>117</sup> margin (where the counterfactual for the displacement is the entire spread of components in the existing energy mix, including less carbon intensive sources) the saving is necessarily less, some 2,969 tonnes per annum.

7.168 In fact, whilst both bases of comparison show a considerable carbon saving, even in an electricity only (non-CHP) scenario, it is preferable to assess matters based on the GIG margin. Put simply, the correct counterfactual is the one which would be most likely to be displaced. In a circumstance where the energy market is transitioning towards a low carbon provision of electricity, it is difficult to see any real justification for suggesting that the scheme would displace a lower carbon scheme. Instead, it would displace a scheme at the higher end. It is to be noted that this was the approach preferred by the New Barnfield Inspector.<sup>118</sup> In any event, even without any contribution to carbon savings from CHP, the scheme brings a real benefit in carbon savings.

7.169 This analysis, however, was challenged by Herts Without Waste (or at least through their appointed consultants Only Solutions (OS), who did not appear at the Inquiry). Before we deal with the details of that challenge, it is important to note that OS cannot in any sense be regarded as a proper independent witness giving evidence which can be regarded as credible. First, as it emerged under cross-examination of Dr Webb by Mr Fraser-Urquhart QC, both they and Herts Without Waste share an in-principle objection to

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<sup>115</sup> Page 59 of his main proof

<sup>116</sup> Green Investment Group

<sup>117</sup> Department for Business, Energy and Industrial Strategy

<sup>118</sup> Inspector's Report paragraph 989



incineration. Furthermore, there are considerable overlaps in personnel between the two organisations.<sup>119</sup>

- 7.170 Of more fundamental importance, however, was the inability of OS's contentions to be tested under cross-examination. The rather extraordinary procedure suggested by Dr Webb – namely that written questions be directed to OS – is wholly unsatisfactory and it is unsurprising that the applicant declined such invitation. In the circumstances, no weight at all can be given to their evidence.
- 7.171 However, it is clear from Mr Aumônier's rebuttal that the OS analysis is fundamentally flawed. In general terms, OS sought to use modelling assumptions set out in the DEFRA discussion document<sup>120</sup> as if they were actual predicted values of variables within the model. This was in direct contradiction to the stated purpose of the DEFRA modelling where '*scenarios have been developed to understand likely trends and should not be considered predictions*'.<sup>121</sup> Furthermore, the OS predictions made assumptions which grossly distorted the final result. For example, as set out by Mr Aumônier during his evidence in chief, OS gave no credit at all for the recovery of metals from the incinerated materials. In fact, as a significantly lucrative part of the process, such recovery will invariably occur, and this has very considerable effect on the overall carbon balance, mostly because the recovery of metals from their ore is such a carbon intensive process. Equally, OS neglected to use the detailed composition of waste in their calculations, relying instead on the generic group descriptions. This simplistic position again had a distorting effect on the eventual carbon calculations.
- 7.172 Finally, by way of example, OS relied (in their counterfactual comparison calculation) on an unrealistic level of recovery of landfill gas. In line with the general criticism set out above, they used a figure set out in the DEFRA modelling without appreciating that empirical work commissioned after the DEFRA modelling (and indeed in explicit response to it) indicated that a much lower figure 55 to 65%, (as compared to the OS figure of 75%) was the actual real-world experience.
- 7.173 These matters, which were set out in detail in Mr Aumônier's rebuttal proof and accompanying table, make plain that the OS critique of the carbon savings which should be brought about by the scheme should carry no weight.

#### *Combined Heat and Power*

- 7.174 The second consideration with respect to carbon savings is in respect of CHP. It must be emphasised that, although the Council's cross-examination of Mr Aumônier spent a good deal of time establishing that the carbon balance would be much more favourable if CHP could be established, the applicant's case in respect of carbon savings is in no way dependent upon the establishment of CHP. It is also to be expected that at this stage, in advance of a grant of planning permission, no firm arrangements in respect of CHP could possibly be

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<sup>119</sup> See paragraph 6 of Mr Aumônier's rebuttal proof, the detail of which was accepted by Dr Webb during cross-examination by Mr Fraser-Urquhart QC

<sup>120</sup> CD J20

<sup>121</sup> Ibid page 58, paragraph 202 and discussed further in Mr Aumônier's rebuttal paragraph 8

anticipated. Instead, sensible weight must be given to the possibility of CHP coming forward in due course.

- 7.175 In reality, those possibilities are of sufficient strength to enable considerable weight to be given to them. This is a plant (unlike some in the Veolia portfolio) which is located close to residential and commercial operations, both of which offer a real possibility of providing customers with CHP. Indeed, in this area there is the obvious potential from the glasshouses, a potential which the third-party Mr Hibberd (for the Lea Valley Growers) under cross-examination by Mr Lowe QC recognised would be a real benefit of the scheme.
- 7.176 Furthermore, it should not be imagined that there is any reluctance on the applicant's part to provide CHP. Quite the contrary in fact, as CHP is financially advantageous for the applicant. Indeed, its possibilities are such that the applicant has recently acquired a specialist firm which deals with the installation and maintenance of CHP facilities.<sup>122</sup> Accordingly, the CHP possibilities are real and should be given significant weight in the overall planning balance

#### *Vehicle Mileage*

- 7.177 The final element of the carbon savings matrix is the vehicle mileage savings which would arise when the overall re-organisation of the WDA's operation, of which this scheme is the centrepiece, comes to fruition. These translate directly into carbon savings.
- 7.178 An attempt was made by Mr Crabb in his evidence to give a numerical value to those savings. Given the nature of the criticism directed against that exercise, it is important to emphasise (as he did in his evidence in chief) that it is never claimed that this is an exact science producing a completely accurate numerical value. Instead, it is a reasonable and sensible attempt to show the scale of CO<sub>2</sub> savings which would be broadly achieved by this scheme. Again, given the criticism advanced of this exercise, it is important to note that it makes up a relatively small proportion of the overall carbon savings brought about by the scheme – some 222 tonnes of CO<sub>2</sub> per annum against total savings in the GIG electricity only model of over 8,000 tonnes.
- 7.179 In those terms, despite the criticisms made against it, it has real value and some considerable weight should be placed upon the general fact of the significant savings, even if their precise nature cannot be established at this stage.
- 7.180 The first set of criticisms advanced relates to the fact that it assumes the existence of a northern waste transfer station, when such does not yet exist. It is pointed out that a considerable part of the savings achieved come from the gathering together of waste collected from the northern parts of the county at a transfer station, for bulk shipment on to Ratty's Lane.
- 7.181 Whilst this is quite correct, it is a short-sighted criticism which ought not to be afforded much weight. Whilst no specific site has been identified by way of allocation or planning application, it is clear from the evidence of both Mr Bridgwood and Mr Egan that the process of bringing forward the site is very

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<sup>122</sup> Paragraph 2.28 of the proof of Mr McGurk

much underway and there is no reason at all to suppose that it would not be achieved in relatively short time.

- 7.182 Second, it was suggested by way of criticism that the location of C&I waste being brought to the site could not be accurately ascertained and that no calculation of any related vehicle mileage savings had been attempted. Once again this is quite true, but it misses the fundamental point of the calculation exercise, which is not to provide an unimpeachable exact figure, but instead to give an idea of the scale of savings which would occur. In fact, the Inquiry heard evidence that much of the C&I waste (up to 80,000 tonnes) would be likely to come in bulked loads from the Veolia facility in St Albans, which is of course relatively proximate to the appeal site. Furthermore, there was unchallenged evidence – buttressed by the real-world experience with the Southern Freight Forum of Mr Crabb – as to the fact that transport costs make up a considerable component of the costs of disposing of such waste. For those reasons it is quite clear that commercial imperatives will dictate that C&I waste is sourced as close as possible to the application site. Whilst this assumption does not enable a detailed calculation of vehicle mileage savings to be undertaken, it gives reasonable and sensible comfort that there would be an improvement over the existing situation where even C&I waste must be shipped considerable distances to out of county facilities for disposal. This consideration will be enhanced yet further if such waste is shipped from nearby locations in Essex, even allowing for the fact that it would all have to access the site via the permitted vehicle route via the A10.
- 7.183 Accordingly, the vehicle mileage savings are real and considerable weight should be given to the appraisal – inaccurate to some degree though it inevitably must be – which gives some understanding of what those savings would amount to in carbon terms.

### **Socio-Economic Impacts**

- 7.184 The Inspector and Secretary of State will be very familiar with the fact that proposed developments the subject of extensive concern and protest on environmental grounds are often confronted with arguments from objectors that the mere presence of the facility would have an adverse socio-economic effect on the area. This case is no different.
- 7.185 The Inspector and Secretary of State will also be well familiar with the fact that such arguments are almost invariably advanced without any supporting evidence at all. Indeed, that phenomenon is so prevalent that NPS EN-1 includes an unusually explicit warning at paragraph 5.12.7, namely that decision-makers *'may conclude that limited weight is to be given to assertions of socio-economic impacts that are not supported by evidence (particularly in view of the need for energy infrastructure as set out in this NPS).'*
- 7.186 Once again, this case is no different from many others. The Inquiry was confronted by repeated assertions that the mere erection of the facility would cause irreparable harm to the socio-economic interests of the town by somehow causing Hoddesdon to be viewed as a town associated with an ERF. However, no evidence was advanced in support of this proposition. Mr Metcalf accepted in cross-examination that the evidence that he could rely on was *'pretty circumstantial'* and he explained that he relied upon the evidence of the

gradual improvement in the fortunes of Hoddesdon High Street. He also made a wholly unsupported assertion that people enjoy shopping within a conservation area. Equally, others made such sweeping statements without any evidential basis at all.

7.187 By contrast, the only evidence before the Inquiry as to this matter was that presented by the applicant, in particular through the Cluttons report.<sup>123</sup> This set out an analysis of the impact of a group of five ERFs in Hampshire on residential and commercial property prices, variables which act as a reasonable proxy for overall socio-economic impact. The study concluded that there were in fact no adverse socio-economic impacts. An attempt was made by the Council to discredit the Cluttons report on the basis that it had not studied all the relevant ERFs in the Veolia portfolio. In fact, as Mr Bridgwood explained in chief, many of the other ERFs were either not yet constructed or were unsuitable for study because they had been in existence for so long that no meaningful data as to their effect could be gathered.

7.188 In summary, there is no evidence at all as to a harmful socio-economic effect, no matter how often the concerns are repeated. The evidence which does exist points in quite the opposite direction.

### **Summary of environmental effects**

7.189 Accordingly, the applicant's evidence convincingly demonstrates that whilst there are some impacts resulting from the proposal, in all cases it meets the relevant international and/or national standards and complies with the relevant Development Plan policies. In no instance is there a significant impact.

### **BENEFITS OF THE PROPOSAL**

7.190 Against these limited environmental impacts there are also to be considered, a series of clear benefits arising from the proposals, the majority of which we have already made submissions about, but which it is convenient to gather together here:

- a) management of residual LACW waste and C&I waste;
- b) reduction in transport distances;
- c) diversion from landfill;
- d) contribution to the national need for electrical supply;
- e) supply of low carbon energy;
- f) employment: the proposal would create some 40 permanent jobs and inject money into the local economy. This is a significant benefit, which BxB was wrong to dismiss so lightly. The Socio-Economic assessment appended to Mr Bridgwood's rebuttal proof sets out the full extent of the derived benefits which would occur in the local economy. That assessment was not challenged in any meaningful way and is commended to the Inquiry and the Secretary of State;
- g) habitat enhancements.

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<sup>123</sup> Appendix 8.1 to the proof of Mr Bridgwood

7.191 It is the applicant's case that, taken together, these benefits are substantial and in line with national and Development Plan policy.

#### OVERALL PLANNING BALANCE

7.192 In this instance, there is a very clear need identified for waste management capacity. The proposal would deliver low carbon energy for which there is a clearly established and urgent need. Overall, the proposals would result in significant savings in CO<sub>2</sub> emissions. The proposal satisfies both the development plan and national guidance in that regard. It is an inevitable consequence of any large-scale development, particularly energy development, that there would be some adverse impacts. The question, as paragraph 154b) of the Framework makes plain, is whether those effects are acceptable.

7.193 In this case, there would inevitably be some increase in traffic on the local highway network, though all the assessment work indicates the consequences of this would be minor. There would also be some noise impacts, although these would be within acceptable levels. The proposed ERF is also necessarily a large building, and consequently the building will be visible, although the visual impact will not be significant.

7.194 The proposals have been demonstrated to be in compliance with the development plan taken as a whole and national guidance. They bring significant benefits. The applicant has shown that none of the very limited harms that would arise are sufficient to outweigh the presumption in favour of the development plan. There are no other material considerations indicating the application should be determined other than in accordance with the development plan.

7.195 No doubt, all the above explains why Hertfordshire County Council, as the relevant planning authority, supports these proposals. Moreover, the support of the County as Waste Disposal Authority which has the direct, actual and day-to-day responsibility for managing this area's waste is no small matter and we say should weigh heavily with the Secretary of State.

7.196 It is respectfully suggested therefore, that the Inspector recommend to the Secretary of State that planning permission should be granted.

### **8. THE CASE FOR HERTFORDSHIRE COUNTY COUNCIL**

*(The case for the County Council is reported substantially in the form of the closing submissions)<sup>124</sup>*

#### INTRODUCTION

8.1 Proposals for developments for the treatment of waste are rarely uncontroversial. It is unfortunate that although incineration technology is mature and tested, there remains a perception among the general public that it will lead inevitably to severe environmental and other consequences.

8.2 However, the concerns of objectors must be put in a proper context and properly examined to understand whether they are of substance before coming

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<sup>124</sup> Doc 90

to any view as to whether they justify refusing this important application. At the end of this Inquiry no one, whether a participant or an observer, could fairly conclude that it has done other than squarely face that task. Every objector and local resident who has desired to put their point of view has done so. No part of this application has escaped scrutiny. That said, the position on the principal controversial issues remains at the end of the Inquiry in much the same state as we stated in opening.

- 8.3 This is an important application. We refer not just to the scale of the proposal and its cost, but to the significance of the project in resolving the long running conundrum of how to treat the large volume of residual Local Authority Collected Waste (LACW) created in Hertfordshire higher up the hierarchy and sustainably within its county of origin. It remains an important priority for Hertfordshire County Council, both as waste disposal authority (WDA) and waste planning authority (WPA), to remedy the long running saga of reliance on landfill and out of county treatment facilities. Over the decade, whilst the search has continued, a new Waste Core Strategy has been adopted together with a Waste Site Allocations Local Plan, all of which highlight the need to resolve this issue of in county treatment as soon as reasonably possible.
- 8.4 Whilst the loss of the New Barnfield application due to Green Belt policy considerations is understandable, there are no such national policy considerations at play in this application.
- 8.5 There will inevitably be some impacts from a development such as this, but there is a pressing need for a long-term solution to be found to the problem of dealing with Hertfordshire's waste. Ultimately, the benefits of the proposed ERF in providing that solution far outweigh the limited impacts of the proposal in this location.
- 8.6 That said, we now set out our submissions on the issues identified for the inquiry on behalf of the County Council as WPA in the order identified by the Inspector and the Secretary of State.

#### CONSISTENCY WITH THE DEVELOPMENT PLAN

- 8.7 The development plan includes the Waste Core Strategy and Development Management Policies Development Plan Document 2011-2026, November 2012 (WCS),<sup>125</sup> The Hertfordshire Waste Site Allocations Local Plan, July 2014 (WSA),<sup>126</sup> the Hertfordshire Minerals Local Plan, March 2007<sup>127</sup> and the Broxbourne Local Plan, Second Review, December 2005.<sup>128</sup>
- 8.8 The WCS sets out a number of strategic objectives which its policies are intended to implement. In particular, Objective SO1 promotes well-designed and efficient facilities that drive waste management practices up the waste hierarchy and reduce waste volumes to be disposed in landfill. Objective SO3 seeks the increased and efficient use of recycled waste materials (including secondary aggregate) while Objective SO7 is that the County can manage its own waste arisings.

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<sup>125</sup> CD C1

<sup>126</sup> CD C2

<sup>127</sup> CD C5

<sup>128</sup> CD C3



8.9 As set out at paragraph 7.3 of the Committee Report,<sup>129</sup> the proposed ERF will constitute an energy recovery facility rather than a waste disposal facility within the meaning of the European Waste Framework Directive (Directive 2008/98/EC). The treatment of residual LACW by the ERF would move waste currently being disposed of by landfill up the waste hierarchy from 'disposal' (the bottom rung of the hierarchy) to 'other recovery.'

8.10 While there is debate between the main parties about the extent to which the policies of the WCS are fulfilled, there can be no question that the proposals would deliver on these fundamental strategic objectives which underpin the policies.

#### Need

8.11 The most recent figures set out in the Authority's Monitoring Report (1 April 2016 – 31 March 2017)<sup>130</sup> show that each household in the County produced on average 1.1 tonnes of LACW in the year, to a total of 528,256.85 tonnes. In 2016–2017, 52% of that waste was recycled or composted, leaving 253,106.95 tonnes of residual waste. Of that residual waste, over 20% (59,992.13 tonnes) was landfilled, with the remainder (193,114.82 tonnes) being exported out of the county for processing by way of energy recovery.<sup>131</sup>

8.12 Notwithstanding a multitude of arguments to the contrary, the Inspector at New Barnfield found that the proposed ERF would meet a clearly identified and urgent need for waste disposal capacity, allowing Hertfordshire to achieve 100% diversion of municipal residual waste from landfill in circumstances where there appeared little realistic alternative in the short term other than to continue disposal of high levels of waste to landfill and export of waste to areas outside Hertfordshire.<sup>132</sup> Since that time, there has been a slight improvement in recycling rates (which in 2010 stood at 47.3%)<sup>133</sup> and a significant reduction in landfill (which in 2010 amounted to 241,847 tonnes).<sup>134</sup> However, those improvements do not, in any way, undermine the urgent need for a facility such as was identified by the New Barnfield Inspector. The amount of waste being sent for landfill is still significant and unacceptably high and the reduction in landfill has largely been achieved through an increase in the export of residual waste out of county, which is contrary to the objectives of the quite recently approved and up to date development plan.

8.13 Looking to the future, the forecasts demonstrate that, by reason of household growth, there will be an increase in residual LACW to 294,156 tonnes by 2030/31.<sup>135</sup> Even if recycling levels are increased to 60% or even 65%, a significant amount of residual waste - in the order of 209,525 tonnes - will remain to be processed at that time.<sup>136</sup> Residual LACW is forecast to increase to 266,000 tonnes in 2015/16, 291,000 tonnes in 2030/31 and 340,000 in

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<sup>129</sup> CD B1 page 34

<sup>130</sup> CD P4 paragraph 3.7, p. 16

<sup>131</sup> *ibid* page 32, Table 25

<sup>132</sup> Inspector's Report paragraph 945

<sup>133</sup> *ibid* page 201, paragraph 913

<sup>134</sup> *ibid*

<sup>135</sup> CD K3 page 15, Table 4

<sup>136</sup> *Supra*, Table 4

2050/51.<sup>137</sup> That increase is entirely consistent with the national and regional picture.<sup>138</sup>

- 8.14 While the latter 2050/51 forecast is based on future housing growth and does not account for an improvement to recycling rates over and above the current rates, making provision for such capacity is nothing other than prudent in the circumstances. As the Inspector in the Ardley appeal said, *'it would seem prudent to provide for excess capacity rather than a possible shortfall.'*<sup>139</sup> While the County Council aspires to improve recycling rates over and above their current rates and considers that aspiration to be feasible, achieving it will not be straightforward<sup>140</sup> and it may not be realised. It is prudent to ensure that there is sufficient capacity by reference to the forecasts even if that may result in a slight overcapacity for residual LACW, rather than running the risk of a capacity shortfall. If recycling rates do improve beyond their current rates, even to 65%, then the vast majority of the capacity of the plant would still be required for residual LACW. Even in the utopia where recycling rates increase to 80%, dismissed as being unrealistic by the Examining Inspector of the WCS,<sup>141</sup> there would still be a need to process 135,000 tonnes of residual waste in 2050.<sup>142</sup> There would, even then, continue to be sufficient in-county commercial and industrial (C&I) waste to meet the shortfall (as set out below). Such utopian aspirations, however, are not a sound basis for the development of strategic infrastructure.
- 8.15 The best evidence, proceeding prudently and providing for a possible overcapacity of small proportions, is that residual LACW will gradually increase over time to 340,000 tpa by 2050. None of the other parties to this Inquiry has put forward any evidence to cast doubt on those forecasts. This ERF has been designed to meet that identified need.
- 8.16 So far as C&I waste is concerned, the WCS identifies that over 1 million tonnes of such waste is generated within the county each year. As matters stand, and even taking into account the ATT/AD plant at Ratty's Lane operated by Trent Developments, which will treat 100,000 tonnes of C&I waste per annum, there is, on the most recent 2016-2017 figures, a predicted shortfall in residual C&I treatment capacity of 370,000 tonnes in 2026.<sup>143</sup> That volume of current and predicted C&I waste *'underlines the need for Hertfordshire to develop its own long term energy recovery solution to not only address the current need but also with one eye on dealing with the substantial levels of residual waste already existing with respect to Hertfordshire's commercial and industrial sector as well as the thousands of new households due to be built across the county in years to come.'*<sup>144</sup>
- 8.17 The Applicant is contracted to accept all residual LACW from Hertfordshire to the ERF capacity and the forecast amounts of residual LACW are such that, just as with the New Barnfield proposal and as set out above, the primary

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<sup>137</sup> CD K4 page 22, paragraph 11.5 and Table 3

<sup>138</sup> Ibid paragraph 10.6 and Table 2, pages 20-21

<sup>139</sup> New Barnfield Inspector's Report paragraph 92

<sup>140</sup> Mr McGurk in chief and XX by Mr Reed QC

<sup>141</sup> Eg paragraph 57 of the Report on the Examination of the WCS (attached as a reference document in connection with Hoddesdon Society Objection 1)

<sup>142</sup> CD K4 page 24, Table 5

<sup>143</sup> CD P4 page 31, Table 24 (and CD C1 page 28, Table 9)

<sup>144</sup> CD K2, paragraph 6.3

purpose of the facility would be the treatment of LACW. In the short term, when the capacity of the ERF exceeds the amount of residual LACW waste, there will be more than a sufficient amount of C&I waste to meet the shortfall until such time as the residual LACW increases to meet the capacity. Whatever the position, and even if there remains a small amount of capacity available for C&I waste in 2050, the use of any additional capacity to recover energy from such waste would accord with the waste hierarchy. The contract requires that the County Council deliver a minimum of 135,000 tonnes per annum which would allow for recycling rates to exceed 80% without the WDA incurring a penalty. The predicted volumes of C&I waste are consistent with the Applicant's own C&I treatment facilities which led the County Council to be satisfied, in deciding to continue with the Revised Project Plan (RPP) that '*VES (Veolia) have more than sufficient commercial waste under their control to meet any shortfall that may arise.*'<sup>145</sup> As such and as noted above, even in the utopia of an 80% recycling rate, there would be sufficient C&I waste to meet any unexpected shortfall in the delivery of residual LACW.

- 8.18 The Secretary of State endorsed the benefit of the use of the New Barnfield facility to treat this element of the residual waste stream noting that it '*would provide capacity for a significant element of the substantial quantities of residual commercial and industrial waste produced in the County.*'<sup>146</sup> That is the case with respect to this proposal.
- 8.19 A further aspect of the contract minimum being set at a level which would permit an aspirational recycling target of 80% to be met without penalty, is that there can be no argument that the ERF would discourage the movement of potentially recyclable waste further up the hierarchy. As the New Barnfield Inspector found, given the statutory duty to move waste up the waste hierarchy and the fact that waste is a valuable resource, there will continue to be both commercial and political pressure to move waste out of the residual waste stream, irrespective of the existence of the ERF.<sup>147</sup> That view accords entirely with the view of the Government, which in its 2011 policy review, noted that significant provision could be made for energy from waste facilities '*without conflicting with the drive to move waste further up the hierarchy.*'<sup>148</sup>
- 8.20 All parties agree that the WCS is '*technology neutral.*'<sup>149</sup> Policy 3 of the WCS provides that proposals for the treatment of waste which maximise recovery and where they generate heat and/or power are acceptable in principle. As the proposed ERF would recover power, it would clearly comply with Policy 3.
- 8.21 The additional delivery of heat through Combined Heat and Power (CHP), although not necessary to ensure policy compliance, would deliver additional benefits. In that regard, the proposed development would be '*CHP-ready*', that is to say that while it would not, at the outset, provide heat, it would be ready to operate as a CHP facility in the future.
- 8.22 While there is no dispute between the parties that the delivery of CHP would give rise to substantial carbon savings,<sup>150</sup> a weighty benefit in the planning

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<sup>145</sup> CD K4, paragraph 11.11

<sup>146</sup> New Barnfield DL, paragraph 29

<sup>147</sup> New Barnfield Inspector's Report paragraphs 938 - 940

<sup>148</sup> CD J10, paragraph 214

<sup>149</sup> CD B1, paragraphs 2.2 and 4.13

<sup>150</sup> As set out in Mr Aumônier's Proof, Table 2

- balance, the only question is whether the potential benefit would be realised.
- 8.23 The New Barnfield Inspector accorded limited weight to the benefit of CHP in view of uncertainties over the extent of the market, the costings of the supply network and the timing of provision.<sup>151</sup> However, other Inspectors have recognised that firm arrangements for the delivery of CHP are unlikely to be made until such time as planning permission has been granted and accorded significant weight to proposals on the basis of their potential to deliver CHP,<sup>152</sup> a point conceded by Mr Cooper.<sup>153</sup> Given the presence of nearby industrial and glasshouse development, the opportunities for CHP at this site, as set out in the unchallenged District Heating Assessment<sup>154</sup> *'are about as good as they get.'*<sup>155</sup> It is notable in that regard that Mr Hibberd, a director of a glasshouse business, acknowledged that, so far as he was concerned, the heat that would be available from the proposed development could be an *'advantage.'*<sup>156</sup>
- 8.24 If CHP is to be delivered anywhere, it is to be delivered here. Given the clear commercial benefits of CHP to the Applicant, one would expect it to make every effort to deliver CHP if at all possible. It is notable that the Applicant has now obtained in-house expertise to promote this area of its operations.<sup>157</sup>
- 8.25 For all these reasons, the County Council contends that significant weight should be given to the potential for the delivery of combined heat and power in these circumstances.
- 8.26 Despite having a persistent poor image, which is both unjustified and outdated, incineration is recognised by the Government to be designed to meet new strict emissions standards and provide valuable low carbon energy.<sup>158</sup> It is flexible, and the technology is proven and reliable. The argument that the construction of a single ERF plant with the capacity to treat all residual LACW waste for the next 30 years would stifle other, more innovative forms of residual waste treatment, is not founded in reality. Of the principal available technologies, there are none which can treat the variety of waste contained in the residual LACW stream with the same efficiency as the ERF.<sup>159</sup> While further technological innovation is always possible, developing commercially viable solutions from any emerging technologies will take time. Hertfordshire urgently needs a reliable and long-term solution for its residual LACW now. Failing to provide sufficient capacity in the hope (as that is all it is at this stage) that something better comes along is not prudent.
- 8.27 At present, waste sent for landfill is either sent to Westmill Quarry (which is due to cease operations in 2023) or to locations in Buckinghamshire and Cambridgeshire. That type of processing is, in principle, unacceptable. Waste exported for energy recovery is sent to Edmonton, North London, Ardley in Oxfordshire and Greatmoor in Buckinghamshire.<sup>160</sup> Irrespective of the fact that

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<sup>151</sup> New Barnfield Inspector's Report paragraph 996

<sup>152</sup> Mr Aumônier's Proof, paragraph 98

<sup>153</sup> Mr Cooper XX by Mr Fraser-Urquhart QC

<sup>154</sup> CD A8

<sup>155</sup> Mr Aumônier in chief

<sup>156</sup> Mr Hibberd XX by Mr Lowe QC

<sup>157</sup> McGurk's Proof, paragraph 2.28

<sup>158</sup> CD D5, page 2

<sup>159</sup> Mr Kirkman in chief and XX by Mr Reed QC

<sup>160</sup> CD B1, paragraph 7.22 and Table 4.1 and Map 1 at page 32 of the Appendices to the 2009 Cabinet Report at CD K4(a)

these latter export streams are based on short-term contracts and do not therefore guarantee the capacity required by Hertfordshire in a world of growing demand for shrinking treatment capacity,<sup>161</sup> the facilities are all self-evidently outside the county and their use is therefore in direct conflict with the policy imperative that Hertfordshire process its own waste.

8.28 It is notable that while it objects to the location and scale of the proposed ERF, Broxbourne Borough Council (BxB) does not dispute<sup>162</sup> and has led no evidence at all to dispute the County's case in relation to its waste treatment capacity needs. What is more, Mr Cooper on behalf of BxB made clear that '*it was very much [his] evidence that Hertfordshire should deal with its own waste.*' In that regard, BxB is supportive of two key objectives of the WCS that would be delivered by these proposals:

- a) The need to provide sufficient processing capacity to deal with the forecast amount of residual LACW produced in the County;
- b) The need for Hertfordshire to provide that processing capacity in the County, as opposed to exporting its waste elsewhere.

8.29 While there were murmurings of dissent on the issue of need from the other Rule 6(6) parties, there was little if anything in the way of evidence to support the points being made.

8.30 Dr Webb on behalf of Herts Without Waste confirmed that, while he advocated moving towards a circular economy, including through a reduction in waste incineration and an increase in re-use and recycling rates, that was '*a long-term aspiration, rather than a practical plan to be implemented forthwith.*'<sup>163</sup> Dr Webb accepted that his aspirations were not Government policy<sup>164</sup> which, he accepted, was most recently set out in the DEFRA Guidance Energy from waste: A guide to the debate.<sup>165</sup> Insofar as Dr Webb relied on the concerns expressed about incineration by Professor Boyd, Chief Scientific Advisor at DEFRA,<sup>166</sup> Professor Boyd himself made clear that those were personal views, that his role was not the formation of policy and that his views did not represent Government policy.<sup>167</sup> While it is uncontroversial to point out, as Professor Boyd does, that it would be better to recycle or re-use all our waste rather than incinerate it, that is not the practical reality. Insofar as Professor Boyd would advocate a return to the landfill of waste with a view to digging it up decades from now,<sup>168</sup> such a view is devoid of any reality and would be directly contrary to Government policy. It would require a paradigm shift amounting to a revolution in both European and national policy to bring about this most improbable state of affairs.

8.31 While the Hoddesdon Society pointed out that the Guide to the Debate suggested that the proximity principle did not require local authorities to be

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<sup>161</sup> Mr McGurk in chief

<sup>162</sup> See paragraph 5 of BxB Opening Statement (Doc 5)

<sup>163</sup> Dr Webb XX by Mr Fraser-Urquhart QC

<sup>164</sup> Dr Webb XX by Mr Fraser-Urquhart QC

<sup>165</sup> CD D5

<sup>166</sup> Mr Cooper Appendix 18, Q31

<sup>167</sup> Mr Cooper Appendix 18, Q11

<sup>168</sup> Mr Cooper Appendix 18, Q31



'self-sufficient' in waste processing terms<sup>169</sup> and referred to other facilities as being capable of accepting the County's waste arisings, several of the facilities referred to did not even have planning permission.<sup>170</sup> In any event, it is a specific objective of the development plan that the County treat its own waste arisings, a view shared by other Rule 6(6) Party objectors, including BxB. Further, the Guide to the Debate makes clear that the proximity principle requires waste to be treated in 'one of the nearest' facilities. The guidance makes clear that *'it doesn't have to be the absolute closest facility to the exclusion of all other considerations, including cost.'*<sup>171</sup> The existence of other facilities located closer to the source of waste arisings (about which there was in any event no evidence before the Inquiry) would not, therefore, undermine the compliance of this proposal with the proximity principle.

- 8.32 Ultimately, the WCS and the WSA are the guiding development plan documents for this application. Just as was the case before the New Barnfield Inspector, there is nothing to suggest that development plan policies are not sound or that the statistical underpinnings of the policies are undermined by more recent evidence.<sup>172</sup>
- 8.33 Finally, as to the fact that the proposed development would not include pre-sorting of residual waste, the County Council relies on the evidence given by Messrs McGurk, Kirkman, Aumônier and Bridgwood on behalf of the Applicant that such pre-sorting is not an efficient or sustainable method for treating residual waste.<sup>173</sup> There is no policy requirement or preference for pre-sorting to take place and no other evidence before this inquiry as regards its lack of benefit. The removal of all metals is undertaken in any event at a later stage of the process. It would be unsustainable to expend the energy required to seek to recycle materials from the residual waste if the exercise is likely to have no beneficial purpose.
- 8.34 As such, and irrespective of whether pre-sorting was part of the New Barnfield proposals, its absence does not materially undermine the real sustainability benefits that the proposal would bring, not least the efficient recycling of metals from the waste stream.

### The Spatial Strategy

- 8.35 There is an 'in-principle' dispute between the County Council and the Applicant on the one hand, and BxB on the other, as to whether the proposals are in conformity with the spatial strategy of the WCS as set out in Policy 1 and Policy 7 of the WCS and Policy WSA2 of the WSA.

### *A single ERF vs. a network of residual waste treatment facilities*

- 8.36 Starting with Policy 1, there is no question that the ERF would *'drive waste management practices up the waste hierarchy'* and provide *'adequate capacity for existing and future waste arisings within the county'* so as to comply with those elements of the Policy.

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<sup>169</sup> CD D5, para 152, p. 43

<sup>170</sup> For example, Rivenhall in Braintree, or a proposed facility near Luton Hoo

<sup>171</sup> CD D5, paragraph 152-3, page 43

<sup>172</sup> New Barnfield Inspector's Report paragraph 932

<sup>173</sup> See, in particular, Mr McGurk Proof at paragraph 3.29



- 8.37 However, a dispute arises as to whether the proposed ERF conflicts with the strategy because, by providing a single facility to process all the County's residual LACW it would, Mr Cooper suggested, negate the need for a 'network' of waste management facilities referred to in Policy 1.
- 8.38 The County Council submits that there is nothing in Policy 1, or otherwise in the strategy, which would prohibit a single facility to deal with all the County's residual LACW. While Policy 1 refers to a 'network' of waste management 'facilities', it does not merely address the facilities necessary for the final treatment of residual LACW. Policy 1 is addressed to organic waste recovery facilities and waste transfer stations, as well as residual waste treatment facilities.<sup>174</sup> It is quite possible for there to be, and there will be, a network of those facilities, even if the residual LACW is treated in a single ERF.
- 8.39 Secondly, even if the reference to a 'network of facilities' in Policy 1 is a reference to a network of residual LACW facilities, the policy sets out that provision 'will' be made for such a network. There is nothing in the policy which precludes a single facility. Similar points of interpretation arise as are examined below in relation to the use of the word 'will' in relation to the areas of search. If the policy had intended to preclude the development of a single large facility, that would have been made explicitly clear in the policy.
- 8.40 Thirdly, such a restrictive provision would have been a controversial issue for the preparation of the Plan since it would preclude the market from bringing forward a single facility solution in the context where, as the Guidance makes plain, it is for the industry to identify both the technology and the scale of facility required to meet needs.<sup>175</sup> It would be contrary to that policy to direct a 'top down' solution.
- 8.41 It is also worth noting that, despite explicit consideration of the issue, the Inspector examining the WCS<sup>176</sup> did not identify that a single ERF would conflict with the WCS. Indeed, had there been any concern on the part of the Inspector conducting the examination into the WSA<sup>177</sup> that a single large ERF would conflict with Policy 1, the New Barnfield site (at a time when the New Barnfield proposals involving a similarly scaled facility were fully fledged) would not have been allocated for development of that scale.
- 8.42 Neither the Secretary of State nor the New Barnfield Inspector interpreted Policy 1 as requiring a network of facilities for processing residual LACW. The most the Inspector said was that the WCS 'allows for' a more dispersed pattern of provision, but not that such a more dispersed pattern was required to ensure policy compliance.<sup>178</sup>
- 8.43 A single ERF for the treatment of residual LACW would not conflict with Policy 1 or any other aspect of the spatial strategy on this basis. Any conclusion to the contrary would be flawed as a matter of law.

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<sup>174</sup> CD C1, Key Diagram, p. 91.

<sup>175</sup> CD D4, paragraph 7

<sup>176</sup> Paragraph 66 of the WCS Examination Report by Inspector Holland included as an Appendix to The Hoddesdon Society evidence.

<sup>177</sup> New Barnfield Inspector's Report paragraph 93 onwards

<sup>178</sup> New Barnfield Inspector's Report paragraph 980

*The location of the ERF*

- 8.44 The second purported 'conflict' with the strategy identified by Mr Cooper on behalf of BxB, is that the proposal is not located within one of the areas of search identified in Policy 1.
- 8.45 Mr Cooper asserted that the locational strategy of the WCS is exclusively identified in Policy 1, so that the fact that the site is not within one of the 'broad areas' A to E as shown on the Key Diagram must lead inexorably to the finding of conflict with the development plan. By contrast, Mr Egan for the County Council identifies the locational policies of the WCS, including Policy 1 and Policy 7 of the WCS and Policy WSA2 of the WSA, as providing a sequential approach cascading down from the WSA allocations, the broad areas of search in Policy 1 and then to sites that comply with Policy 7 and policy WSA2. By this means, both arms of the waste development plan provide a single coherent framework that, through the adoption of a sequential approach, is itself entirely consistent with the approach of planning policy generally to locational issues.
- 8.46 It is important to bear in mind a trite but fundamental principle in the interpretation of planning policy: planning policies are not to be read and understood in isolation from each other, they are to be read and understood in context.<sup>179</sup>
- 8.47 BxB's approach to the WCS fails to pay sufficient heed to that principle insofar as it focuses solely on Policy 1 to the exclusion of Policy 7 and WSA2. While Policy 1 is the starting point for whether the proposals accord with the 'strategy' of the WCS, it is clearly not the end point.
- 8.48 Read together, Policies 1 and 7 of the WCS and Policy WSA2 of the Allocation LP clearly provide a 'sequential approach' to the locational acceptability of waste management facilities.<sup>180</sup> Policy 1 prioritises sites within the areas of search and Policy WSA2 and Policy 7 provide for development outside them where there are overriding reasons for the location in question and so long as the proposal complies with various identified policy criteria.
- 8.49 While Policy 1 sets out that provision for waste management facilities 'will' be made within the broad areas of search, it is not a policy of constraint or exclusivity and there is nothing in the policy which precludes applications being made for development outside those areas. The use of the word 'will' on each occasion is indicative of a sequential preference for a location within an area of search. If the policy had intended to preclude the development of an ERF outside the areas of search, the policy would have used preclusive language such as 'must' or 'only.' There is a real and significant difference in the meaning of these terms as a matter of the ordinary use of language.<sup>181</sup>
- 8.50 Another indicator that Policy 1 does nothing more than express a sequential preference, aside from its clear language, is the fact that explicit provision is made for applications outside the areas of search by Policy 7 of the WCS. If

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<sup>179</sup> See, for example, the statements in Tesco Stores Limited v Dundee CC [2012] UKSC 13 at paragraphs 18, 20, 21 and 35

<sup>180</sup> Mr Egan XX by Mr Reed QC

<sup>181</sup> Mr Egan Re-Ex

Policy 1 was intended to prohibit development outside the areas of search, the WCS would not have made explicit provision for such development through its other policies. Further, the WSA makes it explicit that policy WSA2 'builds upon' Policy 1.<sup>182</sup> Given that Policy WSA2 is a policy giving specific guidance in relation to the location of development which is designed to build upon and thus 'complement and implement' Policy 1,<sup>183</sup> compliance with policy WSA2 must lead to compliance with Policy 1, otherwise the policies would be conflicting. No-one, including Mr Cooper for BxB, is suggesting that there is any such conflict between the wording of the two policies.

- 8.51 As such and so long as, in accordance with Policy WSA2 of the Allocation LP, there are 'overriding reasons' for the particular location in question and so long as, in accordance with Policy 7 of the WCS, the proposal contributes to the Joint Municipal Waste Management Strategy for Hertfordshire (JMWMS)<sup>184</sup> and complies with criteria (i) – (v) in Policy 7, the development would accord with the WCS spatial strategy.
- 8.52 There is another context for Policy 1 which must be kept firmly in mind. While the County Council accepts that the site is (just) outside an area of search for the purpose of Policy 1, it is clear from the Key Diagram<sup>185</sup> that the areas of search are intended to be indicative rather than determinative insofar as it would be impossible to identify the exact boundary on the ground. It is clear from the diagram that Area E is centred on the A10 corridor. Given that Ratty's Lane is located in that A10 corridor, with easy access onto the A10, it is difficult to identify any marked difference in sequential terms between the Ratty's Lane site and other locations in Area E, or any obvious reason why Ratty's Lane was excluded from Area E. The distance of the site from Area E is insignificant (about 2 miles) when considered in the context of the county as a whole, and it is close to several of the major centres of population within the county. Any 'conflict' with this part of the policy can thus only attract very limited weight in the planning balance in any event.

#### *Overriding Reasons*

- 8.53 In the case of this application, there is a clear overriding reason for locating the proposed development on this site, namely that there are no other suitable sites available.
- 8.54 Stepping back for a moment from the intricate methodological criticisms made by BxB in relation to the assessment of alternative solutions and alternative sites, the reality of the County Council's position as a waste authority unable to process any of its residual LACW otherwise than by landfill or export is such that, had there been some other, better solution, it would have come forward in the ten years that the County Council has been looking for it. To suggest somehow that, had it only looked a little harder for a little longer, it could have enabled financially viable development to come forward on three sites perfectly suited to waste management facilities, one in each of the areas of search identified in Policy 1, is a submission which is wholly artificial and fails to recognise the real efforts made to secure an enduring solution to this urgent

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<sup>182</sup> CD C2, Para 4.16

<sup>183</sup> Mr Cooper XX by Mr Fraser-Urquhart QC

<sup>184</sup> CD K1

<sup>185</sup> CD C1, Key diagram, p. 91

problem and its ultimate reliance on the industry to come forward with appropriate development proposals. Indeed, it is made explicit in national policy<sup>186</sup> that it is for the industry to propose the types of development that they consider to be viable.<sup>187</sup>

- 8.55 It is furthermore important to note that, as part of the preparatory work for the WSA, *'the county council made several requests (to industry, landowners and district/borough councils) for sites to be put forward for consideration for the location of waste management facilities in the production of this document.'*<sup>188</sup> It must therefore be the case that any landowner within an Area of Search who wished to put forward his/her land for consideration for a proposal such as this would have done so at that time. Mr Reed QC's criticism of the exclusion by the Alternative Sites Assessment (ASA) of land within the Areas of Search is thus without substance for this reason.
- 8.56 So far as Mr Reed QC's suggestion (which was not one made by Mr Cooper in his evidence) that the flaws in the ASA were exemplified by the exclusion of Waterdale as a potential site for the development, that suggestion ignores the rather obvious point that the siting of this proposal in that location would require the relocation of the existing waste transfer station which is central to the strategy adopted for waste management for the county in any event. As set out in the WSA, *'Waterdale Waste Transfer Station is central to the delivery of the Joint Municipal Waste Management Strategy and there is a need for new waste facilities to complement this and ensure all parts of the county are serviced.'*<sup>189</sup>
- 8.57 It also rests upon the uncertain foundation that a 2.5-hectare site would be adequate for the purpose, when it is central to BxB's case that the application site is already too small for the purpose. Incidentally, the same point arises with respect to the Gunnelswood Road site referred to by Mr Reed QC in closing, since that is 2.2 hectares in area in addition to being under offer to a third-party purchaser as recorded in the ASA.
- 8.58 BxB's criticism that, following the New Barnfield decision, it was for the County Council to re-examine possible alternatives to a single large ERF is to miss the point. The county is reliant on the industry to come forward with what it considers to be viable options and it was always open to the industry to come forward with such alternatives. As already explained, no-one did.
- 8.59 Furthermore, in 2015, the County Council went back to the industry to see what options they would propose for the treatment of its residual waste. As set out in the Cabinet Report dated March 2016,<sup>190</sup> informal discussions were held with representatives from a number of existing and potential service providers to understand the alternative options available and a formal market engagement exercise was carried out.<sup>191</sup> A Prior Information Notice (PIN) was placed in the Official Journal of the European Union, inviting suitably experienced and interested suppliers to complete a questionnaire.<sup>192</sup> None of

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<sup>186</sup> As accepted by Mr Cooper in cross-examination by Mr Lowe QC

<sup>187</sup> CD J1 paragraphs 3.1.2 and 3.3.6

<sup>188</sup> CD C2 page 132

<sup>189</sup> CD C2 paragraph 3.15

<sup>190</sup> CD K4

<sup>191</sup> Ibid paragraph 16.1

<sup>192</sup> Ibid paragraph 16.2. The PIN itself is at CD K4c

the alternatives proposed, as summarised at paragraph 16.5 of the Report and in the Market Consultation Response - High Level Summary,<sup>193</sup> would have sufficient in-county facilities to meet Hertfordshire's needs.

- 8.60 While Mr Reed QC on behalf of BxB suggested to Mr Egan that the market exercise only invited respondents to consider a technology option of a similar size to the application proposals, that is plainly not correct. Question 18 of the Market Consultation - Appendix A Questionnaire, asks whether a contract approach to lots (of 50,000 tonnes pa each) would provide value to the Council, while Question 38 asks whether larger facilities would be appropriate.<sup>194</sup> Further, there was nothing in the notice or otherwise to prevent other alternative solutions being proposed if the industry thought that such alternative solutions were viable. Indeed, the High Level Summary of the responses received indicates that respondents did not consider themselves constrained to make proposals for facilities of an equivalent scale and nature to the proposed ERF.<sup>195</sup>
- 8.61 The point made by the New Barnfield Inspector was that since the application was being actively pursued at that time, there was little incentive for other proposals to come forward.<sup>196</sup> However, following the New Barnfield refusal, and in 2015 when the market exercise was conducted, no application or other proposal was being actively pursued. As the PIN made clear, the authority was *'genuinely interested in engaging with the market with a view to understanding possible alternative options for the long-term disposal of LACW with a view to preparing for a potential future procurement.'*<sup>197</sup> Anyone with an interest in pursuing some viable alternative option would have come forward at that time.
- 8.62 The fact that no other viable alternative solutions did come forward in 2016 (or at any other time) is not surprising. As was recognised by the New Barnfield Inspector, who rejected the theory that the county's waste needs would be better served by several smaller plants dispersed throughout the county rather than a single ERF, a plant capable of handling lesser tonnages would not necessarily be proportionately smaller or visually less intrusive.<sup>198</sup> There is not a single location in Hertfordshire where such a plant would not encounter significant local opposition.
- 8.63 The County Council considers that the ASA submitted with the planning application was robust, a view shared by its consultant Arup,<sup>199</sup> as is the further work carried out by Mr Smith on the part of the Applicant in preparation for this Inquiry. Whatever BxB's criticisms of that work may be, the notion that there is an alternative, suitable site which has been overlooked is devoid of any reality. Even further from reality was Mr Reed QC's submission in Closing to the effect that, given a new ASA, there can be *'the delivery of an alternative site or sites within short order'*.<sup>200</sup> We note that he

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<sup>193</sup> CD K4a

<sup>194</sup> CD K4b

<sup>195</sup> CD K4a

<sup>196</sup> New Barnfield Inspector's Report paragraph 980

<sup>197</sup> CD K4c page 2

<sup>198</sup> New Barnfield Inspector's report paragraph 981

<sup>199</sup> CD A17, ES Review by Arup, Appendix A - ES Review Checklist, Reference Number 2.3

<sup>200</sup> Doc 87 paragraph 65



did not put any such suggestion to Mr Egan in cross-examination. Any common sense reader of the history of the past ten years would regard this suggestion as lying within the furthest reaches of wishful thinking.

- 8.64 No attempt was made by any of the objectors to the scheme to promote in their evidence any alternative sites or alternative strategies. It is telling that the only such attempt was made latterly by Mr Reed QC in his cross-examination of Mr Bridgwood. Realising that his client's case on the identification of alternative sites was what might politely be termed 'in difficulty', Mr Reed QC sought to construct some pattern for an alternative, dispersed solution from the High Level Summary. He lighted upon sites G, H and J. All were well below the 320,000 tonnes per annum desired capacity but, together, would provide sufficient, if not more, capacity than is sought in this application. However, that is just about where their utility came to an end, as was well demonstrated in the re-examination of this witness.
- 8.65 Site 'G' was for gasification, which would not be suitable for LACW without significant pre-treatment and therefore would require a large site although no site was identified within the expression of interest. Site 'H' was for RDF facilities in the medium term, requiring export of the fuel so produced to Europe for consumption. No site was identified, as the proposal was to be built, and the process was, in any event, in conflict with the proximity principle. Site 'J' was small capacity at existing EfW contracts and so is immediately in conflict with the proximity objectives of the development plan. The verdict must be that it was a brave but futile attempt to fashion only the beginnings of a strategy of mere academic interest. It cannot rationally be said that the conclusions of the ASA were undermined by the attempt.
- 8.66 The lack of an alternative site, and the absence otherwise of any alternative proposal for dealing with Hertfordshire's waste, is clearly an overriding reason for locating this development outside an area of search, bearing in mind that the site is only just outside Area E (where the proposal would receive full policy support) and bearing in mind that there is no obvious difference between Ratty's Lane and other locations in Area E.

*The criteria in Policy 7*

- 8.67 Having established that there are overriding reasons for locating the proposal outside an area of search, it is necessary to demonstrate that the proposal contributes to the JMWMS and complies with criteria (i) – (v) in WCS policy 7.
- 8.68 Mr Reed QC in his cross-examination of Mr Bridgwood, and in his Closing Statement, suggested that Mr Egan had relied erroneously on the LACW Spatial Strategy in relation to Policy 7.<sup>201</sup> However, the point (Mr Egan having been led accidentally astray by Mr Lowe QC in his evidence in chief) was cleared up at the time by Mr Egan and it is not clear what purpose it served for Mr Reed QC to continue to refer to it.
- 8.69 In any event, the contribution to the JMWMS for the purpose of Policy 7 can be set out rather more shortly. There can be little debate that the proposed ERF would contribute to core objectives of the JMWMS.<sup>202</sup> In particular, it would

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<sup>201</sup> Doc 87 paragraph 72

<sup>202</sup> K1, page 11



drive waste up the hierarchy (Objective 1), manage resources and waste in a way that meets the current needs of Hertfordshire's residents (2), deliver quality services which are affordable and which offer value for money (3) and manage a growing proportion of Hertfordshire's residual waste within the county (6).

- 8.70 So far as the criteria (i) – (v) in Policy 7 are concerned, the proposed ERF would comply as follows:
- i) Meet a specific capacity shortfall in LACW;
  - ii) contribute to meeting a short-term capacity gap that will ultimately evolve into a long-term gap;
  - iii) be proximate to major urban areas and main population areas, including being within 20 minutes' drive time of Broxbourne, Hoddesdon, Ware, Cheshunt, Waltham Cross, Hertford, in accordance with one of the underlying objectives of the areas of search;<sup>203</sup>
  - iv) be located on previously developed land;
  - v) be located proximate to the strategic road network.
- 8.71 In short, the proposal would quite clearly contribute to the Joint Municipal Waste Management Strategy for Hertfordshire and comply with the criteria in Policy 7.
- 8.72 In light of all the above, it is clear that the ERF would comply with the spatial strategy set out in policies 1 and 7 of the WCS and Policy WSA 2 of the WSA.

*Other points in respect of the locational strategy*

- 8.73 As to the site not being allocated in the WSA, little if anything turns on the point. The WSA was adopted when New Barnfield was the preferred location and before the flooding, local highway and loss of protected rail head issues had received the degree of consideration that has taken place in the course of the preparation of this application. Indeed, the Examination did not identify any insurmountable obstacles to development on the site. Rather, the constraints noted above were such that, without further evidence, it was not appropriate to allocate the site at that time. Indeed, the Inspector identified that the site 'may', subject to the resolution of the constraints identified above, be suitable for waste development.<sup>204</sup> The evidence to this Inquiry demonstrates how those identified issues have been overcome.
- 8.74 Mr Reed QC referred in his cross examination of Mr Egan to what is now subparagraph (b) of paragraph 154 of the new Framework, which provides '*Once suitable areas for renewable and low carbon energy have been identified in plans, local planning authorities should also expect subsequent applications for commercial scale projects outside these areas to demonstrate that the proposed location meets the criteria used in identifying suitable areas.*'
- 8.75 Of course, the Areas of Search identified in Policy 1 are not areas for renewable energy within the meaning of paragraph 154(b). As is clear from

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<sup>203</sup> CD B1, page 36, paragraph 4.18

<sup>204</sup> Mr Cooper Appendix 15, paragraphs 76-77, page 17.

the criteria used to identify the Areas of Search, they were identified with waste disposal needs in mind, not renewable energy needs. Even proceeding on the assumption that the guidance in paragraph 154(b) of the Framework is applicable to this project, assessment of the proposal against the criteria used to identify the areas of search in the WCS further demonstrates the inherent suitability of the Ratty's Lane site. Paragraph 4.17 of the WCS<sup>205</sup> sets out seven criteria which are for the most part complied with: it would be proximate to areas of population; proximate to major roads in the county, and in particular, junctions between major roads; limit the overall distance that waste vehicles have to travel, and provide facilities which would be used for all of a district's residual waste, rather than being split between more than one facility. Contrary to the suggestion otherwise in BxB's Closing Statement,<sup>206</sup> Mr Egan confirmed under cross-examination by Mr Reed QC that the location of waste depots such as Waterdale, were considered in the selection of this site to demonstrate cognisance of the sixth criterion in paragraph 4.17 of the WCS. As to the criterion relating to the knowledge of senior officers in the WDA of each district, and their individual refuse collection arrangements, BxB does not suggest that *any actual* harm would flow from non-compliance with it. It is an entirely arid point of objection.

#### Other relevant policies from the WCS

- 8.76 Policy 9 provides support for proposals that utilise forms of transport other than road. As set out below, the application proposals will ensure that incinerator bottom ash is exported from the site by rail. The proposal would also lead to an estimated saving in vehicle miles of 171,000 as compared to the existing situation.
- 8.77 Policy 10 specifies that waste management facilities must have regard to measures that minimise greenhouse gas emissions and to climate change risks that would affect the development over its lifetime.
- 8.78 Paragraphs 21.6 to 21.13 of the Committee Report<sup>207</sup> set out the benefits of the proposed development in terms of reducing greenhouse gas emissions when compared to the landfill of waste. Vehicle mile savings also contribute to the reduction in greenhouse gas emissions.
- 8.79 Compliance with Policies 11, 12, 14, 15, 16 and 17, insofar as they are relevant to the application, is set out in the Proof of Mr Egan.<sup>208</sup>

#### *The Hertfordshire Minerals Local Plan Review 2002 - 2016*<sup>209</sup>

- 8.80 As set out in the proof of Mr Egan,<sup>210</sup> Minerals Policy 10 provides for the safeguarding of existing railheads with the potential for the importation and exportation of minerals and secondary aggregates.
- 8.81 Mr Cooper conceded in cross-examination that, if the arrangements for the export of IBA by rail are followed, there would be no breach of this policy, as

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<sup>205</sup> CD C1, page 36

<sup>206</sup> Doc 87 paragraph 5

<sup>207</sup> CD B1

<sup>208</sup> Paragraphs 3.22 – 3.34 of Mr Egan Proof, pages 10 – 13,

<sup>209</sup> CD C5

<sup>210</sup> paragraphs 3.37 – 3.41

confirmed by Mr Reed QC in closing.<sup>211</sup> Mr Egan took a rather more strict view. He acknowledged that there would be a 'technical' breach of this policy, insofar as the IBA which would be exported from the site would not, at the time that it is exported, be classified as a secondary aggregate. It is nonetheless the case that the railhead would be retained, continue in active use and provide for the exportation of materials which would be processed as secondary aggregate. As Mr Bridgwood pointed out, the process of classifying the material as secondary aggregate does not involve any alteration to the material itself, it is merely a question of sorting and certification.<sup>212</sup>

- 8.82 The County Council is satisfied that the Section 106 Agreement<sup>213</sup> would ensure that IBA will be exported by rail and further evidence to that effect has been adduced to the inquiry by the Applicant.
- 8.83 Bearing in mind the underlying objective of the policy, which is 'to help maximise the opportunities for the use of rail or water where it is appropriate'<sup>214</sup> and thus reduce the transportation of minerals and aggregates by road, the proposals would meet that objective by avoiding the transport of IBA by road and otherwise reducing the need for the production and vehicular transport of primary aggregate. Adopting the approach in Tesco v Dundee (*supra*) and using a purposive interpretation of policy, it may be questioned whether this 'technical' breach is in fact a conflict with the policy at all.
- 8.84 In any event, the Committee Report demonstrates that there is adequate capacity for minerals and aggregate transportation in Hertfordshire and a number of alternative railheads in proximity to the site which could accommodate the likely capacity requirements of the County.<sup>215</sup> The Ratty's Lane railhead is in no sense 'required' for the transportation of minerals or aggregate, and its temporary repurposing for the transportation of IBA to be converted to secondary aggregate would therefore not lead to any material harm on the ground. Finally, while the lifetime of the project is significant, the railhead would again be available for 'conventional' mineral and aggregate use at the end of that lifetime, such that its loss would be only temporary in any event. As such, no weight should attach to any alleged 'breach' of Policy 10 in these circumstances.

#### *Green Belt Policy*

- 8.85 In this case, other than a surface water drainage outfall and below ground surface water connection, none of the development would be located within the Metropolitan Green Belt.<sup>216</sup> No point is taken by any of the objectors with respect to those elements of the proposal located within the designated Green Belt.
- 8.86 As accepted by Mr Cooper on behalf of BxB, there is nothing in national policy or in development plan policy to suggest that a development located outside the Green Belt is capable of having an impact on the openness of the Green

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<sup>211</sup> Doc 87 paragraph 175

<sup>212</sup> Mr Bridgwood in chief

<sup>213</sup> Doc 97a

<sup>214</sup> CD C5, paragraph 3.10.2

<sup>215</sup> CD B1, paragraphs 20.5 – 20.9, pages 143-44

<sup>216</sup> CD B1, para 19.9

Belt.<sup>217</sup> It is notable that even Mr Reed QC's ingenuity was stumped to include any analysis in his closing to support his witness' case.<sup>218</sup>

- 8.87 While BxB has asserted that the proposed development would impact on the openness of the Green Belt so as to conflict with Policy GB7A of the Epping Forest Local Plan Combined Policies,<sup>219</sup> there is no explanation to support that assertion and it is notable that Epping Forest DC, the district whose policies are said to have been breached, makes no such assertion, focussing solely on the visual impacts of the development.<sup>220</sup>
- 8.88 Further, whilst the County Council disputes that the proposed development would have 'an excessive adverse impact' on openness within the terms of Policy GB7A, particularly given the location of the proposal within an existing designated industrial area, Policy GB7A is not, in any event, part of the development plan. In the absence of anything in relevant national policy or development plan policy to suggest that development outside the Green Belt might have an impact on openness within it, any conflict with Policy GB7A should be minimal, if any, weight in the planning balance.

#### *Emerging Development Plan Policy*

- 8.89 The emerging Broxbourne Local Plan has been submitted for examination and hearing sessions are due to begin in early September 2018.<sup>221</sup> Through policy HOD3 of the Plan, BxB 'endorses the strategy of the Hoddesdon Business Park Improvement Plan.' The Plan identifies the Business Park as including the application site and as being the largest employment area in Broxbourne. Just over half the buildings in the Business Park are occupied by storage and distribution uses.<sup>222</sup> The Business Park is identified as 'an attractive location for new investment,'<sup>223</sup> which accords with the evidence given to the Inquiry by Mr Merhemitch on behalf of BxB, who explained that he had made two significant investments into his retail business in the Park in 2010 and 2016.<sup>224</sup>
- 8.90 The Plan also refers to the former electricity generating station as being a predominant building when the Business Park was established<sup>225</sup> and it is noted that the '*proposals for a sustainable energy facility at Ratty's Lane may support the re-branding of this area as an Energy campus.*'<sup>226</sup>
- 8.91 By reference both to its past and to its future therefore, not only is the Business Park identified by BxB to be suitable for energy development but, more than that, energy development is identified as being one of the Business Park's key selling points.
- 8.92 Given its location within a major employment area in an area formerly occupied by an electricity generating station and in a Business Park that may be rebranded as an energy campus, the site must surely be seen as an ideal

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<sup>217</sup> Mr Cooper's Proof, paragraph 74

<sup>218</sup> Doc 87 paragraph 192

<sup>219</sup> Mr Cooper Proof, paragraph 74 and CD N11

<sup>220</sup> CD B1, Appendix A page 46

<sup>221</sup> CD N11

<sup>222</sup> Doc 38 page 4

<sup>223</sup> Ibid page 11

<sup>224</sup> Mr Merhemitch in chief and XX by Mr Fraser-Urquhart

<sup>225</sup> Doc 38, page 4

<sup>226</sup> Doc 38, page 7

location for an energy from waste plant from the perspective of the Improvement Plan. Such development would plainly accord with and support the aims of the Improvement Plan and thus comply with Policy HOD3 of Broxbourne's emerging Local Plan.

#### CONSISTENCY WITH NATIONAL POLICY

##### The National Planning Policy for Waste<sup>227</sup>

- 8.93 The National Planning Policy for Waste (NPPW) (October 2014) provides that, in determining planning applications, planning authorities should only expect applicants to demonstrate the quantitative or market need for new or enhanced waste management facilities where proposals are not consistent with an up-to-date Local Plan.<sup>228</sup>
- 8.94 As set out above, the proposals are consistent with an up to date Local Plan but, in any event, there is a clear quantitative need for the development on the scale proposed to meet short and long term needs for residual LACW which is a separate weighty consideration in favour of the grant of planning permission for these proposals.
- 8.95 The NPPW sets out various criteria against which the impact of the development in amenity and environmental terms should be judged, which reflect the issues of concern at this Inquiry.<sup>229</sup>
- 8.96 In accordance with paragraph 3 of the NPPW, the Council has identified the need for waste management facilities within Hertfordshire with the aim of driving waste up the waste hierarchy. With this in mind, it has identified within Policy 3 of the WCS (addressed above) that heat recovery is an appropriate form of waste management development to deal with identified shortfalls within the county for dealing with LACW and C&I waste.
- 8.97 In respect of plan-making functions, paragraph 4 of the NPPW instructs that WPAs identify preferred areas within their Local Plans for certain categories of waste management facilities. Policy 1 and Policy 7 of the WCS flow from this. As set out in detail above, although the application site is not within an area of search, it meets the aims and objectives of Policy 7 and complies with the criteria set out within that policy.
- 8.98 It is of further note that the NPPW states that waste planning authorities should *'consider a broad range of locations including industrial sites, looking for opportunities to co-locate waste management facilities together and with complementary activities. Where a low carbon energy recovery facility is considered as an appropriate type of development, waste planning authorities should consider the suitable siting of such facilities to enable the utilisation of the heat produced as an energy source in close proximity to suitable potential heat customers.'*<sup>230</sup> Such is the case here.
- 8.99 The NPPW also provides that priority should be given to *'the re-use of previously developed land, sites identified for employment uses, and*

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<sup>227</sup> CD D4

<sup>228</sup> Ibid paragraph 7

<sup>229</sup> Ibid and Appendix B

<sup>230</sup> Ibid paragraph 4

*redundant agricultural and forestry buildings and their curtilages.*<sup>231</sup> Again, this development would clearly comply with that preference.

The Waste Management Plan for England<sup>232</sup>

- 8.100 The Waste Management Plan for England sets out the Government's policies for delivering the objectives of the revised Waste Framework Directive.<sup>233</sup> It sets out the requirement, as a matter of policy, to drive waste up the waste hierarchy which is reflective of the statutory duty contained in the Waste (England and Wales) Regulations 2011 in respect of the management of household waste.
- 8.101 For the reasons set out elsewhere in this closing statement, the proposed development would clearly comply with the requirement to drive waste up the waste hierarchy without compromising the ability of the county to make further improvements (such as in relation to recycling rates) or meet the other objectives of the Plan.
- 8.102 In addition, the Plan places an emphasis on the proximity principle. As set out above, large volumes of the residual LACW generated within Hertfordshire are exported outside the county to facilities that are not in close proximity to where the waste is produced. The proposed ERF would enable HCC to process waste closer to its source.

Overarching National Policy Statement for Energy (EN-1)<sup>234</sup>

- 8.103 The Overarching National Policy Statement for Energy (EN-1) makes clear that *'the UK needs all the types of energy infrastructure covered by this NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions'* and that *'substantial weight'* should be given to the contribution which projects would make towards satisfying this need.<sup>235</sup>
- 8.104 EN-1 also identifies the need for an increased supply of renewable energy, which may include plants powered by the combustion of waste<sup>236</sup> and it notes that such alternative technologies are essential in reducing the UK's dependence on imported fossil fuels, decrease greenhouse gas emissions and provide economic opportunities.<sup>237</sup> Renewable energy generation is identified as being likely to come from a range of technologies which include energy from waste through combustion.<sup>238</sup>
- 8.105 It is agreed by all the parties<sup>239</sup> that this guidance is a material consideration in the determination of this application.<sup>240</sup>
- 8.106 As was identified by the Inspector in the New Barnfield Inquiry, the delivery of dispatchable energy to the grid is a scheme benefit to which substantial weight

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<sup>231</sup> Ibid

<sup>232</sup> CD D3

<sup>233</sup> Ibid page 5

<sup>234</sup> CD D6

<sup>235</sup> Ibid paragraph 3.1

<sup>236</sup> Ibid paragraph 3.3.10

<sup>237</sup> Ibid paragraph 3.3.11

<sup>238</sup> Ibid paragraph 3.4.3

<sup>239</sup> Including Mr Cooper XX by Mr Lowe QC

<sup>240</sup> In accordance with CD D6, paragraph 1.2.1 and paragraph 5 of the Framework



should be attached.<sup>241</sup> This proposal would have a greater output of electricity (30MW) than was the case in respect of the New Barnfield proposal (26MW) in circumstances where the applicable policies remain the same.

- 8.107 The County Council considers that this benefit is a matter which of itself should attract significant weight in the planning balance.

#### The National Planning Policy Framework

- 8.108 While the previous Framework did not contain specific waste policies,<sup>242</sup> it made clear that one of the contributions to the economic role of sustainable development that planning can make is to *'minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.'*<sup>243</sup> Paragraph 148 provided further that *'The planning system [...] should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimising vulnerability and improving resilience [...] and supporting the delivery of renewable and low carbon energy and associated infrastructure.'*

- 8.109 The revised Framework (paragraph 154) further requires that there is no need for applicants to demonstrate a need for renewable or low carbon development energy, and requires decision makers *'to recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions.'*

#### LANDSCAPE AND VISUAL EFFECTS

- 8.110 The County Council's evidence to the Inquiry in respect of the landscape and visual effects of the proposed development is set out in the proof of Mr Egan<sup>244</sup> and the Committee Report.<sup>245</sup>

- 8.111 The suggestion by the Joint Parish Councils<sup>246</sup> that the fact that evidence on landscape issues given by local residents was not subject to challenge by way of cross examination should not be taken as an admission by the County Council. We have made it plain that we rely on our evidence and the cross examination of third-party expert witnesses, but do not see the necessity to challenge subjective opinions or to duplicate cross examination. The mere level of local objection does not justify giving substantial weight to the content of that objection. Weight should depend upon the merits of the objection when objectively examined.

- 8.112 The Council acknowledges that the proposed development would have adverse landscape and visual effects despite the work done through the quality of the design of the building to mitigate this harm and the opportunities for softening through existing and proposed vegetation including trees. Of course, those impacts which are, in reality, a likely if not inevitable consequence of a development of this nature, must be understood in context and balanced against the very significant benefits of the scheme.

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<sup>241</sup> New Barnfield Inspector's Report paragraph 1068.

<sup>242</sup> CD D1, paragraph 5

<sup>243</sup> Ibid paragraph 7

<sup>244</sup> Mr Egan's Proof, paragraph 5.6

<sup>245</sup> CD B1 page 84 paragraphs 12.1-12.65

<sup>246</sup> Doc 84

- 8.113 The governing development plan policies of particular relevance in relation to landscape and visual impact in this case, are Policies 11, 18 and 19 of the WCS and Policies GBC16, HD14, HD17, SUS11 of the Broxbourne Local Plan.<sup>247</sup> Those policies seek to ensure that the siting, scale and design of development is appropriate to the location and character of the surrounding built and natural environment.<sup>248</sup> As to be expected, relevant policies seek to protect the character and appearance of the countryside<sup>249</sup> and the Lee Valley Regional Park in particular.<sup>250</sup> Policies seek to avoid light spillage.<sup>251</sup> Existing natural features making a positive contribution should be retained<sup>252</sup> and the impact of development should be effectively mitigated through landscaping and screening of the site.<sup>253</sup> In any event, proposals should include measures to minimise visual intrusion and any adverse impact on the local landscape and countryside.<sup>254</sup>
- 8.114 Policies from adjacent districts also contain policies pertinent to this development.<sup>255</sup> The Lee Valley Regional Park Plan seeks to protect and maintain the open character of the park in particular through protecting its boundaries and distinguishing the built up area from the open space,<sup>256</sup> protect its landscape and amenity value<sup>257</sup> and to protect important views throughout the Park.<sup>258</sup> It is important to bear in mind that while the Park Plan contains protective policies in relation to landscape, the Park is not the subject of any particular landscape designation.
- 8.115 The guidance in EN-1 identifies some degree of landscape and visual harm as a likely consequence of NSIP proposals because of their scale. All parties to this Inquiry agree (including Mr Cooper on behalf of BxB)<sup>259</sup> that the guidance set out in EN-1 is applicable to this development.<sup>260</sup> The NPS notes in particular that *'the impacts on landscape/visual amenity in particular will sometimes be hard to mitigate;*<sup>261</sup> that *'the development of new energy infrastructure, at the scale and speed required to meet the current and future need, is likely to have some negative effects on biodiversity, landscape/visual amenity and cultural heritage[...]*<sup>262</sup> and that *'the principal area in which consenting new energy infrastructure in accordance with the energy NPSs is likely to lead to adverse effects which cannot always be satisfactorily mitigated is in respect of landscape and visual effects.'*<sup>263</sup>
- 8.116 These themes of national policy clearly resonate with energy from waste proposals given the close analogy between their subject matter, despite the

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<sup>247</sup> CD C3

<sup>248</sup> CD B1, WCS Policy 11, criterion (i) and Saved Policy HD14 of the BxB Local Plan

<sup>249</sup> Saved Policy GBC16 of the BxB Local Plan

<sup>250</sup> CD B1, Policy 18

<sup>251</sup> Saved Policy SUS11 of the BxB Local Plan

<sup>252</sup> Saved Policy HD17 of the BxB Local Plan

<sup>253</sup> CD B1, WCS Policy 11, criterion (ii)

<sup>254</sup> CD B1, WCS Policy 19 and Saved Policy HD17 of the BxB Local Plan

<sup>255</sup> Policies DBE9 and RST24 of the Epping Forest Local Plan (CD N11), Policy GBC14 of the East Herts Local Plan and the Lee Valley Park Plan policies L1.1, LS1.2, LS1.5, LS1.6 and L4 (CD N10)

<sup>256</sup> CD N10 policy L1.1

<sup>257</sup> Ibid LS1.2

<sup>258</sup> Ibid N10, LS1.5

<sup>259</sup> Mr Cooper XX by Mr Lowe QC

<sup>260</sup> See also paragraph 1.2.1 of EN-1 (CD D6) which suggests that it may be applicable on a case by case basis

<sup>261</sup> CD D6, paragraph 5.9.8

<sup>262</sup> Ibid paragraph 1.7.2

<sup>263</sup> Ibid para 1.7.11

reduction in scale in terms of power outputs. There is an inevitable scale of the facility, there is an inevitable industrial character and the need for large areas for the reception of HGVs, the accumulation and storage of waste as feedstock, and tall discharge flues.

- 8.117 BxB makes much of the scale of the building. However, it is located where large scale industrial buildings are already commonplace – we refer to the existing power station, the Sainsbury’s warehouse and the overall size of the Hoddesdon Business Park (110 hectares).<sup>264</sup> It is located on a site formerly occupied by a large brick built electricity station.<sup>265</sup> In short, it is an ideal location in so far as the site is previously developed land lying on a valley floor within an area already associated with large scale employment and industrial infrastructure and designated as such in the development plan.
- 8.118 The design of the building is constrained, to a degree, by the size of the site and the relationship to the railway line. However, the designer has used good design practice to harmonise the building with its surroundings. The most sensitive south east corner is stepped down to respect the relationship with the Lee Valley Regional Park, and all the key vegetation both within and on the boundary of the site is retained.<sup>266</sup> The colouring and translucent qualities of the upper panels, together with the proposed green roofs, would assist in reducing the overall visual effect of the building. In the view of both Mr Hammond and Mr Egan, the building would be a well-designed asset to the Business Park and an improvement to its overall quality. The adopted Local Character Area studies support this conclusion.
- 8.119 The Epping Forest Landscape Character Area A1:Rye Meads – refers expressly to the sense of place being informed by *‘views to glass houses on the eastern bank of the valley and the power station’*, the fact that *‘within views westwards, the power stations and large industrial warehouse buildings on the western valley side are dominant features’* and also to the lines of pylons which *‘march across the landscape and are dominant vertical elements’* and the *‘disturbed character’* to parts of the valley floor.<sup>267</sup>
- 8.120 The Hertfordshire Landscape Character Assessment – Rye Meads LCA 80 also refers to *‘the impact of urban industrial development, the transport corridor and utilities is especially apparent.’*<sup>268</sup>
- 8.121 The Essex Landscape Character Assessment describes the condition of the valley floor as *‘poor’* and to its *‘disturbed character’* attributed to residential expansion, the development of glass house industry and the use of valley floor landscape for a variety of other industrial and recreational uses.<sup>269</sup>
- 8.122 The relationship with the Lee Valley Regional Park is of natural concern and is identified as such by policy.<sup>270</sup> In opening, we referred to the close relationship between the Park and the urban area which closely defines its boundaries as it runs through the urban areas of East London and Essex and Hertfordshire:

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<sup>264</sup> Doc 38, page 3

<sup>265</sup> Ibid page 4

<sup>266</sup> Mr Hammond in chief

<sup>267</sup> Mr Hammond Appendix page 41

<sup>268</sup> Supra page 142

<sup>269</sup> Supra pages 80 to 84.

<sup>270</sup> WCS policies 18(i) and 19(iv)

*'The Park Authority recognises that the open spaces of the park are strongly defined by enclosing urban development for the entire length of the western side.'*<sup>271</sup> Mr Hammond, in oral evidence in chief, drew attention to the character of the transition between the Regional Park and the industrial estate at this point, which he described as being *'abrupt and instant.'*

- 8.123 It might be said, therefore, that part of the intrinsic quality of the Lee Valley Regional Park is the contrast between the river valley and the densely built up areas which lie so close to it. That is certainly the case in this location. At this point, the Park lies close to the modern urban area of Hoddesdon with a major urban industrial park as its nearest neighbour. The site is located within that part of the industrial area that has been referred to as an Energy Campus<sup>272</sup> and includes, or will include, two waste treatment plants and a power station among its closest neighbours. The skyline is already influenced by large structures and tall stacks. This is acknowledged in the LCA description cited above. It is difficult to imagine a viewpoint within the Park from which the current power station or its stacks are not already visible. This contrast is one which would inevitably be known and appreciated by any user of the Park at the moment and this would not change with the application proposal. Mr Hammond was confident in cross examination by Mr Reed QC that the proposed design would not impact upon the appreciation of the Park by its users for all the reasons that have been rehearsed.
- 8.124 There has been an attempt by objectors to the scheme, in the context of effects on the Regional Park, to invoke the *'valued landscape'* provisions of the revised Framework (paragraph 170). However, it is common ground that the designation as a regional park is not related to landscape features.<sup>273</sup>
- 8.125 The Section 106 Agreement<sup>274</sup> makes provision for substantial improvements to the Regional Park, including improved public access to an area of the Park (including a new car park on Dobbs Weir Road and footpath) and the restoration and enhancement of habitats in the vicinity of Glen Faba. These works would help to strengthen the resilience of the landscape within the vicinity of the development and compensate for the adverse impact on visual amenity for those visiting the Park.
- 8.126 We do not intend to make submissions with respect to other individual views. We are content that all representative views have been addressed in the evidence and, most importantly, assessed on the Inspector's thorough site visit, so that thereafter this matter becomes one of planning judgment for the decision maker.

## TRANSPORT AND MOVEMENT

- 8.127 The impact of the proposals in transport terms is of significant concern to the Rule 6(6) parties and local residents and the Inquiry heard much by way of anecdotal evidence that the local roads cannot sustain the level of traffic proposed.

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<sup>271</sup> Lee Valley Park Plan Part 1 page 40 (CD N10)

<sup>272</sup> Hoddesdon Business Park Improvement Plan Doc 38, page 7

<sup>273</sup> See e.g. oral evidence in chief of Mr Hammond

<sup>274</sup> Doc 97a

- 8.128 As set out in opening, the transport impacts of the proposal have been the subject of detailed and careful assessment through the planning application process. All the available evidence demonstrates that the level of traffic arising from the proposed development would have an insignificant impact on the local road network, that safe and suitable access to the development can be achieved and that the development would have very significant sustainability benefits which deliver on the aims of both local and national policy.
- 8.129 Dealing first with the policy context for these issues, the WCS identifies as an objective that waste facilities be located as close as practicable to the origin of waste<sup>275</sup> and that they facilitate a shift away from road transport to water and rail. Facilities should be *'well located in relation to the strategic road network'*<sup>276</sup> and demands that development should not have an adverse impact on *'highway safety; or on the effective operation of the highway network [...]*<sup>277</sup>
- 8.130 Paragraph 108 of the revised Framework seeks to 'ensure' that appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location; that safe and suitable access to the site can be achieved for all users; and that any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree. Paragraph 109 confirms that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 8.131 Starting with the issue of greatest concern to the Rule 6 parties, namely the impact from traffic on the Essex Road corridor, we rely on the following salient points.
- 8.132 First, the site is PDL located within an important, mature, industrial area in which over half the buildings are occupied by storage and distribution uses.<sup>278</sup> Any user of the site is likely to generate HGV and other traffic just as those other users do.
- 8.133 Secondly, the existing user of the site already generates a significant amount of traffic, assessed to be in the order of 176 two-way vehicle movements per day of which 79 are HGVs.<sup>279</sup>
- 8.134 Thirdly, the site is clearly conveniently located near to the strategic road network with good access onto the A10 and wider network.
- 8.135 Fourth, even when Mr Russell's evidence (for BxB) is taken at its highest, his concerns about traffic flow relate solely to the AM and PM peak hours (as reiterated by Mr Cooper during the session on conditions/section 106 Agreement). Mr Russell does not have any concern with the traffic generated

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<sup>275</sup> CD C1, page 9, SO2 and SO4

<sup>276</sup> CD C1, Policy 9, page 60

<sup>277</sup> Ibid Policy 13, page 71

<sup>278</sup> Doc 38 page 4

<sup>279</sup> CD A14, Transport Assessment, Appendix 6-1 to the ES, Table 6-1, page 31

outside those two peak hours. That means that for the vast majority of the day (including during the development's busiest operational hour) even BxB accepts that the development would have no material impact at all on the local highway network. It is notable, in that regard, that the Hoddesdon Business Park Improvement Plan, endorsed by BxB in its emerging Local Plan,<sup>280</sup> envisages '*maintaining job numbers and employment uses and opportunities for new businesses and development sites*' within the Business Park<sup>281</sup> and that '*off -peak flows around the Business Park are generally good and access to the A10 and M25 and makes it an attractive location for new investment.*'<sup>282</sup>

- 8.136 While Mr Russell was sceptical of the daily distribution of traffic forecast by the Applicant, such forecasts were based on a considerable amount of practical experience on the part of the Applicant and plainly provide a robust assessment basis. Mr Russell's attempts to gainsay those forecasts were entirely without foundation. Indeed, the Applicant's predicted dispersion of vehicles accords with common sense. It is unlikely that HGVs coming from waste transfer stations, or arriving following collection rounds, would arrive first thing in the morning during the morning peak, not merely because it would take some time to reach the site, but also because that is the busiest period of the network that would of itself deter such movements during that period.
- 8.137 Fifthly, even within the peak hours, the traffic generated by the development is low and quite plainly immaterial when looked at in the context of existing traffic flows. For example, in respect of Junction 3<sup>283</sup> during the AM peak, the development would result in an additional 25 vehicles of which seven are HGVs turning left from the A1170 Dinant Link Road onto Essex Road<sup>284</sup> against a background flow of 687 vehicles making the same manoeuvre in that time period.<sup>285</sup> The Do-Minimum figures for 2021 show 719 vehicles making the manoeuvre<sup>286</sup> whereas the Do Something figures (i.e. with the development) show 738 vehicles, an increase of just 19 vehicles. Those increases are plainly imperceptible and immaterial in the context of existing and forecast baseline flows. That is reflected in the anticipated queue length increases. There would be an increase in queue length for traffic entering Junction 3 from the west along the A1170 of five passenger car units (PCUs) against an existing queue length of 25 PCUs.<sup>287</sup> Assuming the worst distribution of traffic across the three lanes (i.e. that all five additional PCUs queue in the left-hand lane) there would be just five additional cars added to the back of that queue.
- 8.138 Mr Russell was of the view that a development which contributed just a single additional vehicle to an already severe situation would mean that the residual cumulative impact of development would be severe so as to necessitate refusal within the meaning of paragraph 109 of the Framework. He further considered that where the ratio to flow capacity (RFC) for any one single junction was above 1, that would indicate a severe traffic situation within the meaning of

<sup>280</sup> Policy HOD3

<sup>281</sup> Doc 38 page 9

<sup>282</sup> Ibid page 11

<sup>283</sup> Roundabout junction of Essex Road/Dinant Link Road/Charlton Way

<sup>284</sup> Figure 7-2, CD A14, Appendix 6-1 TA, after page 40

<sup>285</sup> Figure 4-2 TA

<sup>286</sup> Figure 8-1 TA

<sup>287</sup> Comparing Table 9-3 and Table 9-9 of the TA



paragraph 109. For Mr Russell's part, therefore (and irrespective of his concerns about the assessment itself) the junction capacity assessments<sup>288</sup> in the TA as presented by the Applicant, demonstrated that existing conditions were 'severe' in Framework terms.

- 8.139 Mr Russell's view on these two points of policy was extreme and manifestly unrealistic. Unsurprisingly, it was a view that was not shared by either Mr Corrance (for the County Council) or Mr Crabb (for the applicant). Even more pertinently, they were not views that were shared by Mr Russell's client planning officer, Mr Cooper.<sup>289</sup>
- 8.140 Mr Reed QC attempted to rescue his witness' evidence on the first point of interpretation identified above, by suggesting and emphasising that it was based on the premise that it was only '*in the absence of mitigation*' that no further development should come forward.<sup>290</sup> However, that caveat does nothing to alter the absurdity of Mr Russell's interpretation which ignores entirely the nature and level of the contribution of development traffic, which must plainly be material to the judgment.
- 8.141 Mr Russell's suggestion that a conclusion on severity may be driven solely by an RFC figure of 1 or above is equally as artificial and equally as wrong.
- 8.142 While the model outputs are a factor to consider, to focus solely on those outputs ignores a considerable number of other factors to which a decision-maker must rationally have regard when reaching a conclusion on severity. Those factors include the extent of existing traffic flows (which here are significant) and the contribution of development traffic to those flows (which here is insignificant); the length of time during which any junctions have been assessed to be over capacity (in this case limited to at most two hours in the day) in light of the contribution of development traffic during those periods (which is again low) and in the context of the operational period of the development. Observations on site must also be considered. Here, there was no dispute from BxB that observations of queuing revealed that any queueing arose and dissipated quickly.
- 8.143 Thus, while there is undoubtedly some congestion on the corridor in the peak hours, such congestion is far from unusual and certainly not of a degree which might be said to be 'severe' in Framework terms. Even when the import of Mr Russell's evidence is accepted at face value (i.e. that there would be a greater impact on the corridor during the AM and PM peak than the Transport Assessment would suggest) that does not in any way undermine the conclusions set out above.
- 8.144 Dealing nonetheless with some of Mr Russell's detailed statistical criticisms, while there was some discrepancy between the manual classified count (MCC) undertaken on 29 June 2016, and an automated traffic count (ATC) undertaken between 29 June - 5 July 2016, that discrepancy has since been explained by Mr Corrance and Mr Crabb.
- 8.145 So far as the total number of vehicles is concerned, the MCC recorded 176 two-way movements into the site on 29 June 2016 between 07.00–19.00. The

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<sup>288</sup> See Table 9-13 of the TA for the summary

<sup>289</sup> Mr Cooper XX by Mr Fraser-Urquhart QC

<sup>290</sup> Closing Statement (Doc 87) paragraph 80

ATC recorded 219 movements over the same period. When questioned by HCC about the discrepancy as part of the Regulation 22 request, the Applicant explained that the 219 movements recorded by the ATC included vehicles entering the site and the car-park (whereas the MCC recorded only those entering the site). Once the vehicles entering the car-park were removed from the ATC totals, the figures were both 176.<sup>291</sup> Insofar as Mr Crabb's more recent chart showed both surveys to have 219 two-way movements on 29 June 2016,<sup>292</sup> that was clearly a clerical error. So far as the total vehicle numbers is concerned therefore, there is no discrepancy between the surveys. Both demonstrate that the total two-way movements in and out of the site are in the order of 176 for the 12-hour period 0700-1900.

- 8.146 So far as the number of HGVs is concerned, Mr Russell pointed out a further discrepancy between the MCC and ATC in his proof of evidence,<sup>293</sup> namely that on 29 June 2016 the ATC recorded 52 two-way HGV movements between 0700 - 1900<sup>294</sup> (all of which must be assumed to be entering the site) whereas the MCC recorded 79 two-way HGV movements. Mr Russell suggested that an average of the HGV movements recorded by the ATC should be taken. However, as clarified by Mr Crabb in his rebuttal,<sup>295</sup> a review of the MCC demonstrates that for 29 June 2016, the figure of 79 two-way HGV movements is correct and the figure recorded by the ATC was incorrect. So far as the classification of vehicles is concerned, a manual review of MCC data is plainly more reliable than the equivalent ATC data for the same period given the difficulties faced by the ATC in properly classifying vehicles.<sup>296</sup> The figure of 79 two-way HGV movements is plainly a robust figure on which to base the assessment.
- 8.147 While Mr Reed QC suggested on behalf of BxB that a further survey should have been carried out, that was unnecessary for the reasons above and disproportionate given that the difference between the two figures (27 two-way movements over a 12-hour day) is insignificant in highway terms.
- 8.148 Moving onto the assessment, Mr Russell was concerned that the assessment had failed properly to account for additional growth on the network through the application of Tempro. However, even adopting Mr Russell's figures, the additional traffic he forecasts (as summarised in Table 3.1 of his Tempro Note<sup>297</sup> and as shown on the latterly submitted 'Comparison of Traffic Flow forecasts')<sup>298</sup> is limited. The biggest change Mr Russell identifies during the AM peak would be at Junction 4,<sup>299</sup> where he calculates that there would be 4,231 vehicles entering the junction rather than 4,122, an increase of 109 vehicles. Again, such increases are minimal and immaterial considered in the context of the volume of traffic that has already been accounted for. What is more, any increases in background levels only serve to lessen the relative impact of the proposed ERF.

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<sup>291</sup> See letter of 19 May 2017 from AECOM to HCC as contained in Appendix 11.3 of the Regulation 22 Submission (CD A17) at page 139 of 152

<sup>292</sup> Doc 63

<sup>293</sup> Paragraph 4.4

<sup>294</sup> Mr Russell Proof, Table 4.1, p. 25

<sup>295</sup> Paragraph 2.8.6

<sup>296</sup> Mr Corrance in chief

<sup>297</sup> Doc 71

<sup>298</sup> Doc 88

<sup>299</sup> Roundabout junction of Dinant Link Road/Amwell Street/A10 spur

- 8.149 Mr Russell's final criticisms of the assessment were that standalone junction models were insufficient, given the existing levels of congestion on the network, and that calibration of the standalone models had not been properly carried out. Of course, there are a variety of assessment tools available and there is inevitably some discretion to be employed as to how and when they are used. Notwithstanding Mr Russell's criticisms, both Mr Crabb and Mr Corrance maintained their view that standalone junction modelling was proportionate in the circumstances. Again, and in any event, any possible improvements that might conceivably have been made to the assessment process, must be seen in the context of the points set out above as to the nature of the existing and proposed traffic, and the question asked as to whether any such improvements to the assessment would be proportionate and/or necessary for the assessment to be robust. Given that modelling is only ever a starting point for the ultimate assessment, and given the limit of the concern to the peak hours (at which point development traffic is low and baseline flows are high) such improvements were plainly not necessary or proportionate. The assessment is robust and reliable.
- 8.150 So far as the provision of safe and suitable access is concerned, Mr Russell's concerns about Ratty's Lane again need to be placed in their proper context. As set out above, a significant level of HGV traffic currently uses Ratty's Lane without incident. These proposals enable improvements to the operation of Ratty's Lane to be made to further lower the risk of any incident occurring.
- 8.151 The County Council is satisfied that the revised access proposals set out in the letter of 13 June 2018<sup>300</sup> would provide safe and suitable access along this private road which would not result in queuing of vehicles back onto the public highway by reason of any restriction at this part of the access to the site.
- 8.152 So far as the improvements to Ratty's Lane are concerned, the signalisation of Ratty's Lane would ensure that two vehicles did not pass each other on the narrowest part of the road. That is a significant safety benefit over and above the existing situation.
- 8.153 So far as pedestrian and cyclist safety is concerned, the risk of conflicts is low and there is good visibility up and down the entirety of the Lane so that any conflicts which do occur can be managed safely. Vehicles are likely to be travelling at relatively low speeds and would have sufficient time to slow down and/or stop.
- 8.154 So far as the possibility of two HGVs meeting at the proposed stop line on Ratty's Lane is concerned, Mr Russell's concern is that if an HGV was stationary at this point, the vehicle travelling the other way would need to ingress slightly into the Iron Mountain site. However, Mr Russell's concern does no more than reflect the existing situation at the site which does not suggest any issue with those arrangements. Further, the likelihood of any conflict in that regard is reduced by reason of the fact that the northbound signal on Ratty's Lane would default to green. The issues raised by Mr Russell clearly do not provide a basis for a finding that access to the site is unsafe.
- 8.155 Mr Russell's final concern in safety terms was that should Ratty's Lane become blocked, emergency vehicles would not be able to access the site. This

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<sup>300</sup> Doc 28

concern was without any policy or evidential foundation. The relevant consultee to the planning application, Hertfordshire Fire and Rescue Service, had no objection to the proposals.<sup>301</sup> The draft Environmental Permit<sup>302</sup> includes extensive management of emergency processes. Mr Kirkman set out in great detail in his oral evidence<sup>303</sup> the internal fire safety systems, which ensured that any fire could be extinguished without reliance on the fire brigade. These included water cannons, fire walls, sprinklers and fire hydrants. The fire walls were such that the boiler had two hours' worth of protection. As it was put by Mr Kirkman, the ERF 'is a very expensive asset and we want to protect it for the life of the development.'<sup>304</sup>

- 8.156 Mr Reed QC, at paragraph 109 of his Closing,<sup>305</sup> relied upon the suggestion by the County Council in its consultation response on the Development Consent Order (DCO) application, that the development in that case should be linked to the provision of the Essex Road Bridge.<sup>306</sup> He failed to acknowledge, in that regard, that this application has now been subject to a full Transport Assessment (TA) that concludes that such improvements are not necessary. The results of that TA have been thoroughly tested at this Inquiry.
- 8.157 Dealing with the Joint Parish Councils' concern that development traffic would travel east along Essex Road and Dobbs Weir Road so as to have detrimental impact on their locality, such movements would be prevented by the routing agreement. All HGVs entering and exiting the site would be required to travel from the west, along the Dinant Link Road, and would be prohibited from using Dobbs Weir Road, whatever their origin.
- 8.158 Contrary to the suggestion in the Joint Parish Council's closing statement,<sup>307</sup> the County Council does not challenge, as part of this Inquiry, their evidence to the effect that there may be a significant amount of traffic within the villages. What we suggest as anecdotal and assertion is the submission by the Joint Parish Councils that HGV traffic generated by the ERF would travel through the four villages. This assertion ignores the clear evidence with respect to the routing agreement. The County Council notes the concern over the enforcement of the routing agreement by analogy with the breaches of the traffic restrictions on Dobbs Weir Bridge. However, there is a crucial distinction which should be acknowledged. The routing agreement is to be policed by the operator of the ERF in the first place, with the highway authority having a back-up role via the provisions of the S106 agreement.<sup>308</sup> The operator will be well placed to police it since it would be the direct employer of a portion of a number of the HGV drivers and in direct contractual relationship with the employers of the balance of drivers. These agreements are acknowledged to work effectively elsewhere and there is nothing about this proposal which suggests to the contrary.

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<sup>301</sup> CD B1, paragraph 4.31, page 25

<sup>302</sup> Doc 68

<sup>303</sup> Mr Kirkman in chief

<sup>304</sup> Mr Kirkman in chief

<sup>305</sup> Doc 87

<sup>306</sup> See memorandums at Appendix B to Doc 26

<sup>307</sup> Doc 84, paragraph 26

<sup>308</sup> Doc 97a

- 8.159 As to the issue of displaced traffic, this was not an issue put to Mr Corrance. Nonetheless, given the low volume of additional vehicles generated by the proposal in the peaks hours it is difficult to see how it is likely to have any real or substantial effect on altering traffic patterns and encourage lengthy diversions along rural roads to avoid the short Essex Road Corridor.
- 8.160 Moving onto the benefits of the proposals in transport terms, Mr Crabb has estimated a reduction in residual LACW vehicle miles of 171,841 as compared to the existing situation, a 25% reduction.<sup>309</sup> That reduction is a very substantial one to which significant weight should be attached. While various parties sought to criticise the assumptions on which the assessment was arrived at (in particular about the inclusion of a northern waste transfer station) there was no evidence put forward to counter that relied on by the Applicant. Reliance on a northern transfer station was entirely appropriate given that the intention of the assessment was to provide a reasonable estimate of reductions, rather than an accurate calculation. So far as the criticism (principally by the Joint Parish Councils) that the figures did not include C&I waste or gas flue residue is concerned, there were no comparative figures available to enable such a comparison to be drawn and the calculations produced by Nazeing Parish Council ignored entirely the vehicle miles associated with the existing arrangements.<sup>310</sup>

#### OTHER ISSUES

- 8.161 In respect of those issues about which the County Council has not led evidence in this Inquiry, it relies on its position as set out in the committee report as follows.
- 8.162 In relation to heritage assets and the historic environment, the Council's position is as set out at paragraphs 18.1–18.24 and 23.14 of the Committee Report.<sup>311</sup> Whilst it is accepted that there would be substantial harm to the Hoddesdon Conservation Area during the construction phase, such harm is temporary in nature and is necessary to achieve the public benefits of the proposal that far outweigh the harm in accordance with paragraph 195 of the Revised NPPF. We say nothing here about the alleged long-term impact on the Conservation Area, relying on references in the report.
- 8.163 In respect of ecology and nature conservation, the Council's position is set out at paragraphs 13.1–13.96 of the Committee Report.<sup>312</sup> While there is likely to be some impact on great crested newts, reptiles and breeding birds, those impacts can be satisfactorily mitigated.
- 8.164 In respect of air quality, noise and vibration, these issues are addressed at paragraphs 10.1–10.55 and 11.1–11.45 of the Committee Report.<sup>313</sup> So far as air quality is concerned, the Council is satisfied that the proposed ERF, when operated in accordance with its permitting restrictions, is not likely to have any significant effects. So far as noise and vibration are concerned, the Council is

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<sup>309</sup> Paragraph 4.6.14 of Mr Crabb's Proof and Appendix JC06 and Mr McGurk's Proof at paragraph 3.6

<sup>310</sup> Doc 72

<sup>311</sup> CD B1, page 135 – 139 and page 160

<sup>312</sup> Ibid page 96 - 114

<sup>313</sup> Ibid page. 62 - 84

satisfied that the development would not have an adverse impact on any sensitive receptors within the vicinity of the site. While there is the potential for adverse impacts as a result of the construction phase on the residential property at Lock Keeper's Cottage and upon house boats within the vicinity of the site, any such construction noise will ultimately be temporary in nature.

- 8.165 Land stability and contamination are addressed at paragraphs 14.1–14.43 of the Committee Report.<sup>314</sup> Any potential impacts can be satisfactorily controlled by way of appropriate conditions.
- 8.166 As to hydrogeology and groundwater, paragraphs 15.1–15.27<sup>315</sup> make clear that the development would not have a detrimental impact on the water environment, subject to appropriate measures being imposed to mitigate any harmful effects.
- 8.167 Hydrology and flood risk are dealt with at paragraphs 16.1–16.28<sup>316</sup> of the report. The development would not have a significant adverse impact upon flooding in the area, neither would it be significantly affected by the risks of flooding, subject to the imposition of conditions.
- 8.168 The Health Impact Assessment is addressed at paragraphs 17.1 – 17.18 of the Committee Report.<sup>317</sup> The Assessment concluded that, apart from the potential noise and vibration impacts on Lock Keeper's Cottage and the moorings on the River Lee, the development would not result in significant health impacts upon other receptors. Appropriate mitigation for those receptors affected could be secured by way of condition.
- 8.169 As for the socio-economic effects, they are considered at paragraph 21.23<sup>318</sup> of the report. The County Council is satisfied that the ERF is unlikely to have any impact on the vitality and the viability of Hoddesdon Town Centre.
- 8.170 As to the concerns of the Lee Valley growing industry, Mr Reed QC exaggerates the case. As anyone can see on a site view, this is agro-industry on any meaning of the term. The exercise from sowing the seed to harvest is undertaken within enclosed buildings and there is no scientific or other evidence to suggest that there would be any detrimental impact on the process.

#### BENEFITS TO BE WEIGHED IN THE PLANNING BALANCE, INCLUDING ANY IMPLICATIONS OF NOT PROCEEDING WITH THE SCHEME

- 8.171 The benefits of the scheme have been comprehensively set out above. The implications of not proceeding with the scheme are clear and are of profound concern to the County Council. As explained by Mr Cooper, it would leave waste planning in Hertfordshire in '*something of a vacuum*'.<sup>319</sup> That is an understatement. Hertfordshire has been seeking a solution to the problem of how to deal with its waste for a decade. To refuse this application would mean

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<sup>314</sup> Ibid page 115 - 121

<sup>315</sup> Ibid page 121 - 126

<sup>316</sup> CD B1, page 126 - 131

<sup>317</sup> Ibid pages 131 - 135

<sup>318</sup> Ibid page 149

<sup>319</sup> Mr Cooper Proof, paragraph 46



any such solution would be delayed at best by several years. More likely it risks the authority deciding to waste no more resources on the project. In the meantime, waste would continue to be disposed of by landfill and/or exported out of the county for others to deal with, vehicle miles would continue to be racked up at levels far above those than would otherwise be the case with the knock-on effect on carbon dioxide and other greenhouse gas emissions. That is unacceptable.

## CONCLUSIONS

- 8.172 The proposed ERF is a long overdue piece of infrastructure, essential to enable Hertfordshire's residents to deal with the waste that they produce. Finding a way to deal with that waste to the satisfaction of all those with an interest in the solution, from the operator of any waste facility to local residents, has been far from straightforward. However, whilst waste development is inevitably controversial, the fact that the County Council has had to work towards a solution for such a long period of time is as surprising as it is unacceptable. This is a development which is urgently required. Any suggestion to the contrary should be given short shrift.
- 8.173 Objections to the location of the ERF are many and have been expressed with considerable force. That does not mean, however, that they are objectively justified by reference to the evidence examined through this inquiry.
- 8.174 The location is in principle acceptable by reference to the WCS and Allocations Local Plan in the absence of any alternative site and bearing in mind its proximity to the indicatively defined Area of Search E. While the County Council is entirely satisfied that the ASA is sufficiently robust, the reality of the situation, whatever BxB's methodological criticisms of the ASA, is that there is no golden ticket. The reality is there are no other sites in the county which might be available or suitable for this development which, for want of looking, have been missed. Even if such a site were to exist, which it does not, it would involve landscape and other impacts similarly unacceptable to local residents. If, as Mr Cooper suggested was necessary to achieve policy compliance, a number of residual waste treatment facilities have to be pursued, those inevitable objections would be compounded.
- 8.175 On a fair analysis, the impacts of this proposal are relatively limited. Despite the concerns of local residents and the view of BxB that traffic conditions are 'severe' during peak periods, development traffic during these periods is so low as to be immaterial and there is agreement that the development can operate without detrimental effect outside those peak hours. Such limited levels of congestion as there are cannot justify refusal of this proposal. There would be inevitable landscape and visual impacts, but the development is not one which would appear out of place in its context. Set against the obvious need for the development, such landscape harm as there is must, we respectfully suggest, be found to be far outweighed by the benefits. Other impacts have been adequately addressed or mitigated as set out above.
- 8.176 We would respectfully urge that the Inspector recommends approval of this application and that the Secretary of State grant planning permission.

## **9. THE CASE FOR BROXBOURNE BOROUGH COUNCIL (RULE 6(6) PARTY)**

*(The case for the local planning authority is reported substantially in the form of the closing submissions)<sup>320</sup>*

9.1 This application should be refused. The proposal is ill-conceived, unplanned and inadequately justified; the evidence has established that this is the case.

9.2 These submissions are structured as follows:

- consideration of the proposals against policy 1 of the Hertfordshire Waste Development Framework - Waste Core Strategy and Development Plan Policies Development Plan Document 2011-2026 (WCS)<sup>321</sup> and policy WSA2 of the Waste Site Allocations Plan (WSA)<sup>322</sup> including assessment of the factors relied on by the Applicant in support of whether an 'overriding' case in favour of the development exists.
- consideration of other harms caused by the development.
- the decision-making process to be undertaken in this case.
- conclusions.

### **A. Assessment against the development plan's principal strategic policies**

#### (i) The Waste Core Strategy (WCS)

9.3 The parties agree that the overarching strategy of the development plan is set out in policy 1. This requires, specifically, that LACW proposals should be located in the identified areas of search. As Mr Bridgwood agreed in cross-examination, these areas were identified through a comprehensive local plan process and were not lightly determined; they were the subject of an on-going and updated evidence base which set out the strategy for the development of facilities for dealing with municipal waste.

9.4 Paragraph 154 of the new Framework provides clear endorsement of the local plan approach and the importance of proposing sites within areas of search. It states (irrespective of the remaining aspects of the development plan which we deal with further below) that where it is proposed that development is to be brought forward outside these areas, it should be assessed against the criteria for the identification of such sites.

9.5 However, neither the County Council nor the applicant has engaged with these criteria, which are set out in clear terms in the WCS.<sup>323</sup> Following a properly strategic approach, these criteria took into account not only policy factors (for example, compliance with the waste strategy) but the knowledge of senior officers in the Borough and District Councils as to their individual refuse collection arrangements and the location of refuse collected depots and where refuse collection vehicles are parked overnight. There has been no suggestion

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<sup>320</sup> Doc 87

<sup>321</sup> CD C1

<sup>322</sup> CD C2

<sup>323</sup> Paragraph 4.17

by the Applicant or the County Council that these latter factors are now irrelevant, or that they failed to accurately reflect the County Council's criteria for identifying the broad areas of search.<sup>324</sup> The up to date nature of the WCS was specifically confirmed by Mr Bridgwood and Mr Egan during cross-examination. However, as was confirmed by Mr Egan, there has been no assessment of this paragraph in the evidence and, particularly, no evidence at all of the two particular criteria specified above to establish compliance with each of the paragraph's factors; Mr Bridgwood did not suggest otherwise.

- 9.6 By virtue of the terms of the Framework therefore, and irrespective of the application of WSA2, the identification of a proposal outside of these areas of search without any comprehensive justification under the criteria for the broad areas of search is, as a matter of principle, contrary to policy 1 of the WCS.

*(ii) The Waste Site Allocations Development Plan Document 2011-2026 (WSA)*

- 9.7 Policy WSA2 reflects the significance of the overarching strategy set by policy 1 of the WCS, by allowing municipal residual waste facilities outside of these broad areas of search or, not on allocated sites only if there is an overriding reason for taking such an approach and it complies with certain specific criteria set out in policy 7 of the WCS. Both Mr Bridgwood and Mr Egan accepted in cross-examination that, in the absence of compliance with this policy, the development would be contrary to the development plan.
- 9.8 There is, as referred to above, a clear reason for taking such a straightforward and robust approach to sites which are unallocated or outside the areas of search. It derives from the detailed consideration undertaken through both the WCS and WSA to create a network of facilities which will be as close to waste arisings as possible and which has found its expression through the site allocations in the WSA. Mr Bridgwood agreed with this.
- 9.9 The case relied upon by the County Council and the Applicant to seek to establish overriding reasons is the same. Mr Bridgwood stated, in terms, that the overriding justification for the delivery of the facilities outside the broad areas of search or not on allocated sites comprised: (a) the need for facilities to treat waste in a way which avoids landfill and the provision of renewable electricity; and (b) the unavailability of any better sites within the broad areas of search. Mr Bridgwood accepted that if the Alternative Sites Assessment was defective such as to lead to the conclusion that allocated sites, sites in the broad areas of search or other appropriate sites had not been considered, then overriding reasons could not be established. In spite of Mr Bridgwood's agreement as to what the applicant relies upon, these submissions nevertheless deal with the additional matters relied upon in evidence and in the statements of case, as positively supporting the application.
- 9.10 We address these various factors further below, but before doing so, they must be put in their proper context. The general need for facilities/renewable energy and any other factors in support of the case for the proposal can be of only limited significance unless the alternative site assessment (ASA) is adequate. If it is inadequate, it will not have been established that there are no alternative locations and it cannot be established that the general need

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<sup>324</sup> Indeed, it is no part of either the County Council's or the applicant's case that the development plan is out of date.

should come forward on this site rather than on some other policy compliant site.

- 9.11 Further, arguments about the urgency of any need should be given little weight if the alternatives assessment is defective since the urgency will have arisen through an inadequately justified application.
- 9.12 These points both apply here, given the evidence presented at this Inquiry.
- 9.13 Turning to the factors relied upon, for the reasons set out below, the protestations of urgency are over-played, the alternatives assessment is patently inadequate and not fit for purpose, and no other factors establish an overriding case in support of the scheme.

(iii) The Alternative Sites Assessment (ASA)<sup>325</sup>

- 9.14 Before addressing the detail of the ASA, we deal with the relevance of case law on alternative sites. The decision in *Trusthouse Forte Hotels Ltd v Secretary of State for the Environment* [1987] 53 P & CR 293, which was referred to in the New Barnfield decision,<sup>326</sup> related to a case in which there was no obligation on the applicant to assess alternatives. That is different from the present case: here, the Applicant accepts that there is a need to consider alternatives in order to render the development compliant with the development plan. As a result, *Trusthouse* has no application.
- 9.15 We turn to the substance of the ASA; it is profoundly flawed and not fit for purpose. It is to be noted that the ASA was produced by Mr Smith and his team for the applicant, but he had no experience of producing any other ASA than this. This lack of experience perhaps explains the errors of approach it contains. It was stated to have been produced having regard to other ASAs but no Inspector's decision endorsing the ASA methodology has been produced and the ASA is (as will become clear) very different from that submitted in the New Barnfield call-in.
- 9.16 The three stages of the ASA process were each defective.
- 9.17 **The stage 1 process.** This stage was inherently inadequate to achieve what it needed to achieve. As Mr Smith accepted, the ASA had to consider the availability of alternative locations which were consistent with the local plan strategy. That was the whole point of the ASA after all. Yet the second of the inclusionary (or exclusionary, depending upon your point of view) criteria necessarily excluded sites which were within the area of search identified under policy 1 of the WCS but which were not allocated. This omitted a whole tranche of land that was specifically designed to be (as the WCS specifically called it) within the 'area of search'; yet there was no search of these substantial parts of the broad areas of search at all beyond the allocated sites. This was an assessment of alternatives sites which did not consider the land which it was supposed to consider. As Mr Smith accepted, the engagement of a development land agent or land search agent whose jobs are to search for un-marketed land could have addressed this very obvious omission.

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<sup>325</sup> Proof of Mr Smith for the applicant

<sup>326</sup> Inspector's Report paragraph 974

- 9.18 It is absurd to suggest that, in some way, it would have been disproportionate to take this step and no such point was taken by Mr Smith himself. But even if that contention is made, the simple answer is that the engagement of a land agent for a multi-million pound contract lasting 30 years and which was six years in gestation, cannot be regarded as disproportionate. At best, the agent would have arrived at a nil response with no additional work for the Applicant; alternatively, options would have been identified, which Mr Smith and his team would then have been able to consider.
- 9.19 Such a defect cannot be dealt with on the basis that this land may be in the Green Belt; the fact that the New Barnfield decision was refused due in part to its location in the Green Belt cannot be a reason for not looking at other sites in the Green Belt, if only because the WSA itself *endorses* Green Belt sites and areas within the Green Belt for the delivery of sites (which approach was not, again, said to be out of date by any witness at this Inquiry). And the problems with New Barnfield, which we deal with further below will not, as a matter of course, apply to other sites. In short, the harm caused by the New Barnfield scheme was specific to that site.
- 9.20 The application of the third criterion was equally unjustifiable. The assessment of available land was based upon aerial and street view photographs. When questioned, Mr Smith could not say whether they were actually up to date, but it is a matter of public record that the different companies update their aerial photographs at different intervals.
- 9.21 However, the most important defect is in the criterion itself, namely that only vacant, under-utilised or under-developed sites were to be regarded as capable of coming forward. Of course, this criterion was patently self-limiting – again, the engagement of a land agent would have enabled Mr Smith to identify available sites which nevertheless had buildings on them. A judgment on viability reached without a site visit was patently not reasonable either since, as Mr Smith accepted during cross-examination, it was practicable and proportionate to have visited such sites even though he could not say how many were actually identified at stage 1.
- 9.22 The effect of the error in this approach was the exclusion of Waterdale as a potential site, even though it was specifically allocated for large scale thermal treatment facilities in the WSA. As Mr Smith confirmed (although it was obvious he was not even aware of Waterdale) policy 5 of the WCS enabled the redevelopment of this safeguarded site for a 350,000-tonne capacity.
- 9.23 The New Barnfield Inspector had noted that the existing waste transfer station at Waterdale was in use,<sup>327</sup> but this did not prevent its consideration through the ASA and which, if it was found to be a better site, would require the Applicant to investigate with the County Council opportunities for redevelopment. However, at no stage was it even compared with the Ratty's Lane site, let alone assessed for its deliverability. As Mr Smith confirmed, the acceptability of Waterdale against the Ratty's Lane site cannot be presumed.
- 9.24 Merely to say, as seemed to have been put to the New Barnfield Inspector, that the Waterdale site was to continue in use as a waste transfer station,<sup>328</sup> is

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<sup>327</sup> Inspector's Report paragraph 972

<sup>328</sup> Ibid

patently contrary to the WSA itself. In any event, the New Barnfield Inspector was not considering Waterdale on the basis of a finalised or adopted WSA, which was in draft at that time.

- 9.25 Further, there is no reason in principle why a phased construction of Waterdale, by which the transfer station could be gradually removed from the site could not occur. The fact that it is owned by the County Council is not a reason for rejecting Waterdale from the assessment; entirely the opposite, given its promotion of a plan which itself acknowledged the site's re-development potential.
- 9.26 Consequently, whether the errors apparent in each criterion at stage 1 are looked at in isolation, or together, each is sufficient to render the ASA inherently unfit for purpose.
- 9.27 **Stage 2.** The stage 2 process compounds these errors. It purported to be an appraisal of sites which had been compiled from the earlier list of identified sites. However, in order to appraise those sites, the scheme of this stage was to consider the Red/Amber/Green (RAG) indicators - Mr Smith stated that the subject headings of the assessment were the factors which were to be taken into account.
- 9.28 The assessment was obviously inadequate for the following reasons:
- a) There were no site visits of all the sites. The assessment was entirely based upon desk top analysis, except to the extent that some five or six sites which were considered by Mr Smith as part of the preparation of his proof. Of itself that suggests a need to undertake visits at the original stage. Undertaking site visits could not be said to be a disproportionate step in the light of this visit. The failure to take this step is important because issues like the landscape and *visual* impact of development of a site will clearly be affected by a *visual* assessment; Mr Smith agreed that this was so during cross-examination and indeed, as is dealt with below (paragraph 9.29b), the quality of the landscape and visual assessment is particularly poor.
  - b) The assessment does not weight any particular issue. It is simply not possible to understand the weight that has been placed on any particular point by the ASA assessors. More importantly, the failure to provide for weighting means that issues like proximity will not be given any greater weight than, for example, connection to the electricity grid.
  - c) In spite of this last point, Mr Smith made clear that the Green Belt in fact was used as a heavily weighted criterion, effectively to exclude all development options which were in the Green Belt. The justification for this was purportedly the New Barnfield decision since, Mr Smith said,<sup>329</sup> it showed that waste development in the Green Belt was 'inappropriate development.' Mr Smith agreed in cross-examination however, that this was the wrong approach and that the question was whether very special circumstances clearly outweighed the harm caused by reason of inappropriateness and any other harm. Moreover, the harm in the New

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<sup>329</sup> In chief



Barnfield case related to a significant heritage objection (from the then English Heritage) amongst other issues.<sup>330</sup> The mere existence of a refusal at New Barnfield could not properly lead to an effective Green Belt 'showstopper' as happened in that case. If nothing else, the WSA establishes why that is so, since it identifies a number of Green Belt sites (including for thermal treatment) in addition to New Barnfield. Consequently, sites which were located in the Green Belt were improperly excluded. The exclusion of unallocated sites at this first stage is important – a site identified within a broad area of search in Green Belt would not, and could not, go through to stage 3 for assessment.

- d) The assessment was entirely subjective. The apparent moderation by professionals needs to be understood. There was no re-appraisal by different individuals following the initial assessment; it was actually Mr Smith's own team looking back at their earlier decision (and Mr Smith's revised ASA was not accurate in indicating otherwise).
- e) Important factors were entirely ignored. Mr Smith accepted in cross-examination that the policy support for a particular site was not a factor taken into account as part of the analysis process. The most glaring effect of this omission is that sites which had been promoted and allocated through the local plan process, were omitted from short listing. As Mr Smith accepted, the WSA (in the usual way) had led to site allocations on the basis of a call for sites, discussions with site promoters, appraisal by a series of weighted criteria, site visits, deliverability assessments, examination by an Inspector and re-evaluation through main modifications; this occurred over a substantially longer period than the ASA; it was obviously a more detailed and thorough process than the ASA. Particularly, these allocations were, under policy WSA2, sites which the County Council 'will' grant permission for, subject to detailed assessment. Yet, in spite of this, the stage 2 process rejected sites which were identified specifically for thermal/large scale treatment facilities (particularly, Birchall Lane, Cole Green,<sup>331</sup> Westmill<sup>332</sup> and Roehyde)<sup>333</sup> importantly, it did so based on unsuitability not unavailability; its conclusions specifically contradicted the development plan. An ASA which produces results contrary to the overarching plan strategy must be called into question.
- f) Lorry mileage or proximity to waste were not considered as relevant factors at all. This was in spite of the fact: a) as Mr Smith agreed, the WCS made proximity to waste arisings a central tenet of its strategy; b) as Mr Bridgwood agreed, the New Barnfield ASA did deal with proximity to waste, contrary to what was suggested in evidence;<sup>334</sup> and c) *the Guide to the Debate*<sup>335</sup> states, as Mr Bridgwood accepted in cross-

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<sup>330</sup> Concluding paragraphs of Mr Cooper's Appendix 15

<sup>331</sup> Site allocations plan (CD C2) page 104 and site 10 of the ASA

<sup>332</sup> Ibid page 48, and site 15 of the ASA

<sup>333</sup> Ibid page 109 and site 2 of the ASA

<sup>334</sup> By Mr Fraser-Urquhart QC in re-examination

<sup>335</sup> CD D5 and Appendix 21 to the proof of Mr Cooper paragraph 153

examination, that choosing a less proximate option can be justified if it provides a method which overall leads to a higher level of environmental protection. As Mr Bridgwood also accepted, under that guidance the ASA did not consider the central way of judging this environmental acceptability. A fundamental part of the case in support of the Ratty's Lane proposal relates to lorry mileage savings – all the more striking, therefore, that it has been omitted from the consideration of alternative sites.

- g) There was, of course, no difficulty with making a lorry mileage assessment of the stage 2 sites. Mr Crabb confirmed this was readily possible, and Mr Smith agreed such a step was not disproportionate. Nor could it be said that there was no point in undertaking this assessment (as was suggested in re-examination of Mr Smith). Mr Smith accepted that a significant number of the stage 2 sites were discounted on the basis of suitability rather than availability and that the relative merits of a site in suitability terms, when proximity to waste was actually taken into account, could not be second-guessed. It follows, therefore, that a fundamental issue which was reasonably capable of being taken into account, was not.

9.29 The problems with the purely subjective approach adopted in the stage 2 assessment can be seen in the following obvious examples of errors of judgment. These are errors which have continued through the apparent in-depth moderation undertaken by Mr Smith's team:

- a) The analysis of amenity impacts in respect of Hare St<sup>336</sup> led to it having a red identification but Ratty's Lane,<sup>337</sup> which had a similar set of facts, scored amber. Mr Smith acknowledged the inconsistency; his re-examination patently did not overcome that problem – indeed what the site may look like on a plan is entirely different from how it may appear on a site visit.
- b) With regard to landscape and visual impacts, there was a patent error of approach on Ratty's Lane, which Mr Smith accepted. The only reason for ascribing Ratty's Lane as amber was because the Lee Valley Regional Park was not identified as a local landscape designation. Yet the Applicant's own analysis in respect of New Barnfield was that it was such a designation.<sup>338</sup> On this basis, as Mr Smith accepted (consistent with the approach taken in respect of site 13: Burrowfields) Ratty's Lane should have been scored red.
- c) With regard to traffic impacts, Ratty's Lane was considered on the basis of no local road congestion which, even on the Applicant's case, is wrong – and was scored with a green RAG assessment. Gunnelswood<sup>339</sup> was, by contrast, scored as an amber RAG on the basis of congestion. There was a clear inconsistency of approach.

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<sup>336</sup> ASA site 12

<sup>337</sup> Ibid site 21

<sup>338</sup> Mr Cooper's Rebuttal proof, Appendix 2, page 2

<sup>339</sup> Site 18, ASA

- d) While it was suggested that the RAG analysis was not determinative, it was nevertheless a clear indicator of what approach had been taken in respect of any particular site – it shows how, overall, each site was judged in respect of the identified issue. It cannot, as was suggested in re-examination of Mr Smith, be put to one side as a mere talisman of potential impact.
- e) In any event, the analyses in the concluding paragraphs of each long-list site took no different position from the factors outlined under the RAG indicators; they were nothing but a summary of what had been set out already.
- 9.30 **Stage 3.** Just as the oddity in removing sites specifically endorsed by the County Council was not engaged with, so is it disturbing that the ASA should remove sites which had previously been assessed at the final assessment stage in the Environmental Statement ASA.<sup>340</sup>
- 9.31 This was the case with Buncefield,<sup>341</sup> which was ruled out of the current ASA at Stage 2 because of perceived issues with HSE, but which was not ruled out on that basis in the earlier ES ASA.<sup>342</sup> Those perceived issues had not changed at all since the time of the ES ASA. As Mr Smith confirmed in cross-examination, the actual basis for rejecting the site was not based on any contact having been made with HSE but simply on the basis of his assumption that there would be an objection. Given that Buncefield had got through to the final assessment stage, if there was to be some objection on the basis of deliverability, some contact with HSE or the site owner should have been undertaken. However, as addressed further below, the applicant did not contact any potential site owner for their views, save for the agent for Gunnelswood showing that Mr Smith accepted both the appropriateness and, in potential circumstances, the need to contact site owners.
- 9.32 As for Gunnelswood, the only request for information as to availability was made by a Veolia employee on the status of the site. Yet it was stated to have been under offer since 2016 (i.e. the time of the ES draft)<sup>343</sup> and no indication had been given to the owner that the site may be considered for an ERF. With regard to the policy issues on that site, Mr Smith acknowledged that these did not rule out the site and that in other environmental respects there were no particular issues.
- 9.33 As to the criticism of this site on the basis of its size, the analysis is very poor. The Applicant's facility at Portsmouth, as Mr Bridgwood confirmed in evidence in chief, is a facility for 165,000 tonnes and has an R1 rating. This indicates that the site is of sufficient size to accommodate a substantial facility. There should have been some actual analysis of the site in respect of this matter, but none has been presented.
- 9.34 **The Market Search.** Finally, perhaps as a marker of the inadequacy in the process, Mr Smith and his team undertook a 'market' search of online property databases. But this failed, as Mr Smith accepted in cross-examination, to pick

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<sup>340</sup> CD A14

<sup>341</sup> Site 17

<sup>342</sup> CD A14, page 61, paragraph 3.3.16

<sup>343</sup> CD 14 Appx 5.1, paragraph 3.3.23

up any sites that were not for sale and which a land agent would have been able to search for and assess. This on-line search was entirely insufficient to overcome the site-finding errors we have indicated above. Nor does it, of course, overcome the inherent defects in the analysis of sites which were identified in the ASA, namely if nothing else, the allocated sites.

- 9.35 The problems with the ASA are, therefore, profound and irremediable. There can be no doubt that the ASA is not fit for purpose; when the simple question is asked '*can one be satisfied that the ASA process has, on a proportionate basis, adequately identified and assessed alternative sites for the facility*', the answer is, it is submitted, patently, 'no'.
- 9.36 However, even aside from this, there is another attribute which further undermines the ASA process. This is an alternative point, not a cumulative point. In the light of the fact that the WCS set down and envisaged a range of facilities, it was patently open to the Applicant and certainly the County Council to look for options which would deliver the requisite facilities around the county at a smaller scale. Whether they should have done so depends upon the circumstances.
- 9.37 In the present circumstances, it is submitted that there was such a duty:
- a) as Mr Crabb accepted for the applicant, a network of facilities closer to urban conurbations would better fit the proximity principle.
  - b) the most up to date<sup>344</sup> policy on ERFs which specifically considered the proximity principle (*the Guide to the Debate*) allows less proximate locations if they have been compared with other options.<sup>345</sup>
  - c) the New Barnfield Inspector had specifically acknowledged that the core strategy envisages a network of facilities and appeared to discount the appropriateness of considering such an option only on the basis of the potential for delay through reconsideration.<sup>346</sup> However, as is dealt with further below, given the refusal of the New Barnfield case, this delay was inherent anyway in the process and the Council had plenty of time to undertake a re-evaluation; the Council had (Mr Bridgwood agreed in cross-examination) at least two years after New Barnfield to take that step but did not do so.
  - d) the potential for such smaller sites to have fewer impacts than larger facilities was material in the light of the conclusions in *the Guide to the Debate*.<sup>347</sup> Following refusal of the New Barnfield case this, if nothing else, provided the opportunity to the Council to take that step. And even though the New Barnfield Inspector pointed out that smaller facilities may not have fewer impacts, as was accepted by Mr Hammond and Mr Smith as a matter of principle i.e. all other things being equal, smaller facilities would be likely to have that effect (this was not the evidence before New Barnfield).

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<sup>344</sup> Mr Fraser-Urquhart QC in XX of Mr Cooper

<sup>345</sup> CD D5 and Mr Cooper Appendix 21, paragraph 153

<sup>346</sup> New Barnfield Inspector's Report paragraphs 980-981

<sup>347</sup> CD D5 and Mr Cooper Appendix 21, paragraphs 153 and 155

- e) the conclusions of Inspector Holland on the WCS<sup>348</sup> did not prevent the evaluation of a dispersed, small-site network, nor suggest that such a network of facilities was inconsistent with the WCS.
- 9.38 In spite of this duty to consider a broader range of options, at no stage after the New Barnfield decision has the County Council as the WPA, considered the opportunities available for disaggregation of the waste processing provision.
- 9.39 The procurement process of the County Council did not revisit that question. It is obvious<sup>349</sup> that no such analysis was undertaken. The assessment related to only the financial merits of the alternative schemes which had come forward and did not involve any wider planning consideration.<sup>350</sup> This is dealt with further below.
- 9.40 The County Council and the Applicant miss the point when they argue that the WCS does not *require* a network. It does not, but, if alternatives are required to be considered, a disaggregated option should have been assessed.
- 9.41 Before leaving the alternative sites issue, we address two particular points which the Applicant and the County Council have sought to argue to bolster the case on alternatives, namely that no other site has come forward, and that the Rule 6 parties have presented no alternative sites during this case.
- 9.42 The first of these arguments suffers fundamentally from Mr Smith's acceptance in cross-examination that, if the ASA is inadequate, the fact that sites have not come forward would not justify a conclusion that no sites are available. That makes obvious sense: how can it be said that no sites will be available if the assessment which seeks to prove that position is flawed?
- 9.43 The inadequacy in the ASA also distinguishes the present case from the observations of the New Barnfield Inspector that no other sites had then come forward. The New Barnfield Inspector's observations were made in the context of an ASA which was regarded as fit for purpose. The sorts of criticisms which were levelled at the sites assessment in the New Barnfield appeal do not come close to the errors in the present case.
- 9.44 In New Barnfield, once it had been decided that the ASA was adequate and fit for purpose then, of course, the lack of any other alternative site coming forward would have a particular resonance since the applicant had tried but legitimately failed to find another site. If an ASA is adequate, there would then be an onus on those suggesting otherwise to present some alternative in spite of the assessment's findings. There is no such onus when the ASA has not done the job it should have. Moreover, where the local plan itself identifies sites, the Rule 6 parties need do no more than point to the sites which have been identified in that process. These were either (like Waterdale) excluded from the ASA as a matter of principle or (like those identified at stage 2) wrongly omitted from the short list.
- 9.45 The inappropriateness of placing a burden on objectors to come up with an alternative in the present case is compounded, because it transpired that Mr Smith and his team had not at any stage contacted any of the owners of the

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<sup>348</sup> Hoddesdon Society Appendices paragraph 72

<sup>349</sup> CD K4

<sup>350</sup> Ibid Appendix 5

sites identified as potential candidates - including any of those identified in the WSA - except for Gunnelswood.<sup>351</sup> Had these site owners been made aware that one of the largest multinational waste companies in the world was considering promoting a scheme on their land, this may have led to very different results. In that connection, Mr McGurk's evidence in chief, that the company had looked at every option alongside the Council, does not coincide with any of the evidence presented in this Inquiry. There is no evidence at all that there was a re-appraisal of options by the Applicant after New Barnfield, beyond the information provided in the ASA and by the County Council.

9.46 The County Council relied on a different argument to seek to establish that no alternatives existed, namely, that it had undertaken a procurement process which had not delivered any alternatives. There are several answers to such a suggestion:

- a) the procurement process was for operators to offer up sites. They had four weeks within which to provide their options.<sup>352</sup> The idea that they would contact the owners of sites which had been allocated through the development process in order to present an alternative scenario on an allocated or on a broad area of search site, is patently outlandish;
- b) the procurement process looked only for new facilities providing for large scale facilities of more than 300,000 tonnes, not small facilities;
- c) nevertheless, a series of options were put forward by operators which would have been capable of being considered as a potential network of facilities.<sup>353</sup> This was not considered by the planning authority, only the disposal authority, and only, as we have indicated above, on the basis of financial considerations;<sup>354</sup>
- d) in any event, the absence of operators to provide for the identified scale of facilities clearly cannot justify the conclusion that no other sites to facilitate the present operator's ambitions are unavailable; the procurement process patently would be unlikely to lead to expressions of interest from the owners of the sites.

9.47 As a result of the above, the ASA is inadequate and the absence of any sites coming forward cannot override its defective state.

*(iv) Factors in support*

*Urgency of Need*

9.48 The need which has been relied upon by the Applicant and the County Council is two-fold: to provide for the County's waste provision by means other than landfill, and the need to provide for renewable electricity.

9.49 As for the need to provide for renewable energy, the Applicant's case has centred on the policy contained in NPS-EN1.<sup>355</sup> The NPS is not to be regarded as binding or necessarily material; its materiality must be considered on a case

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<sup>351</sup> Site 18

<sup>352</sup> CD K4c and the questionnaire deadline at CD K4b

<sup>353</sup> CD K4 Sites G, H and J on the high level list

<sup>354</sup> CD K4 Appendix 5

<sup>355</sup> CD J1



by case basis.<sup>356</sup> Moreover, the Framework has changed in its approach towards the applicability of the NPS generally. The policy now (unlike the position on which the applicant originally promoted its case at the beginning of this Inquiry) is that an NPS *may* be a material consideration.<sup>357</sup> This policy position has changed since the New Barnfield decision.

- 9.50 The NPS indicates that there is an urgent need for new and particularly low carbon energy nationally significant infrastructure projects (NSIPs) to be brought forward as soon as possible 'to meet our obligations for 2050.'<sup>358</sup> Mr Aumônier acknowledged that the guidance relates to NSIPs because of their much longer implementation periods. Given that the current scheme will take some 36 months<sup>359</sup> to complete, the indications of urgency do not apply with nearly the strength that apply to NSIP proposals. The NSIP guidance is applicable to the entire range of NSIPs including nuclear facilities which obviously have a much longer gestation, and which would still need to be promoted now to meet the 2050 targets.<sup>360</sup>
- 9.51 As for the particular advice relating to renewable electricity generation,<sup>361</sup> this applies only partly to the ERF: only the energy produced from the biomass fraction is renewable. The extent of that fraction is not provided by the Applicant. Although Mr Aumônier indicated that it was expected to be the majority of feedstock, this included 'inert and fossil-derived material' which is not within the definition of biomass for the purposes of EN-1.<sup>362</sup>
- 9.52 Further, the weight to be attached to EN-1 is to be set, as Mr Aumônier agreed, against the extent of the contribution in this case, and the exportable 30 MWs is (even on the assumption that all of it is renewable, which it is not) very small against the total renewable provision in the country. Obviously, the greater the contribution, the greater the weight to be placed on the provision; so too the converse. It would be illogical for each scheme to be given an equivalent level of weight irrespective of its size or the degree to which it is renewable. Further, Mr Aumônier accepted that the pipeline for renewable projects (at 30 GW) is healthy.<sup>363</sup> This is important context when considering the degree to which this relatively small electricity project is justified by a need case.
- 9.53 Turning to the urgency of further waste provision which is higher up the waste hierarchy than landfill, the Applicant's and the County Council's contentions focus on the importance of diverting material from landfill and the need to reduce lorry miles. The alleged lorry mileage savings are addressed further below.
- 9.54 With regard to the diversion from landfill, Broxbourne Council accepts that this is a positive feature of the scheme. The weight of this point, however, depends upon the extent to which the need case has been properly characterised by the Applicant. It has not been.

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<sup>356</sup> Ibid, paragraph 1.2.1

<sup>357</sup> Framework paragraph 5

<sup>358</sup> CD J1 paragraph 3.3.15

<sup>359</sup> Mr Bridgwood XX

<sup>360</sup> Page 27

<sup>361</sup> Paragraph 3.4.5

<sup>362</sup> Paragraph 3.4.3, bullets 3 and 4

<sup>363</sup> Mr Aumônier's proof, paragraph 61

- 9.55 It is clear that the applicant has over-estimated the level of residual municipal waste which will need to be treated in the future. The applicant has relied upon the estimate in the 2015 report relating to the contract with the applicant.<sup>364</sup> However, the figure relied on (340,000 tonnes) derived from an estimate assuming no increase in recycling rates,<sup>365</sup> whereas the disposal authority considered such to be feasible<sup>366</sup> and the draft core strategy seeks neutrality in waste arisings.<sup>367</sup> Rather, (following Mr Fraser-Urquhart's maths), the figure would be some 240,000 tonnes.
- 9.56 In spite of the obvious error in the applicant's need calculation, it sought - in re-examination of Mr Bridgwood - to rely upon C & I waste to justify the scheme. However, this entire scheme - and particularly its scale at 350,000 tonnes - has been overtly justified on the basis of the municipal waste need.<sup>368</sup> Moreover, the importance of this issue must be considered against the alternatives case.
- 9.57 In circumstances where the lack of an alternative site is not properly justified, this will be the second time that the Applicant and the County Council have promoted the wrong scheme in the wrong location. It is simply unjustifiable, in circumstances when a proper analysis could have been made of alternatives, to rely upon protestations of urgency.
- 9.58 The New Barnfield Inspector acknowledged the urgency of the need when discounting alternatives. However, having refused permission, whilst there was clearly time for the County Council to have considered alternative solutions, it failed to do so. Moreover, two factors which were noted by the New Barnfield Inspector in 2014 as contributing to the urgency - the existing Edmonton contracts for landfill and disposal expiring in 2017, and the Westmill planning permission expiring in 2017<sup>369</sup> - were not factors which ultimately prevented the disposal authorities from dealing with waste.
- 9.59 Further, and in any event, the present project has come back for a planning application within just under one year of the New Barnfield decision. There can - if an adequate ASA is undertaken and acted upon - be the delivery of an alternative site or sites within short order.
- 9.60 As a result, the need to divert waste from landfill should be given only some weight.

#### *Lorry Mileage Savings*

- 9.61 The specific lorry mileage savings which are relied upon by the Applicant should be given no real weight. First, the assessment relies upon a notional northern waste transfer station to calculate the lorry mile savings. The evidence that this site will come forward is patently inadequate. There is no planning application, no contract for its delivery and a specific site has not yet

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<sup>364</sup> CD K4, page 22

<sup>365</sup> CD K3 Table 4, page 15

<sup>366</sup> CD K3, paragraph 3.36

<sup>367</sup> Agreed, Mr Bridgwood, XX

<sup>368</sup> See Mr Bridgwood's evidence, pages 45-49

<sup>369</sup> New Barnfield Inspector's Report paragraph 983

been identified (only a preferred site against other options). This has been the situation since at least November 2016.<sup>370</sup>

- 9.62 As a result, the delivery of this facility is speculative and should not have been used to form the basis of the lorry mileage appraisal. At best, there should have been a comparative assessment which omitted this aspect of the scheme. In cross-examination, Mr Crabb acknowledged the relevance of the Waste Transfer Station in the calculation in respect of North Hertfordshire District and Stevenage Borough, which would otherwise deliver direct to Ratty's Lane and which, given their location in the north of the County, were identified as experiencing quite significant lorry mileage savings.
- 9.63 Second, commercial and industrial (C & I) waste has not been accounted for. The County Council's understanding earlier in the process was that C & I waste may come from well outside the County: *'It should be noted that some of the commercial/industrial top-up waste to be brought to the site is sourced from outside the county (Basildon, Cambridge, Northampton).'*<sup>371</sup> While Mr Bridgwood relied in re-examination upon the 80,000 tonnes per annum of deliveries to St Albans as meeting the shortfall in municipal waste, there is no evidence that this will divert to the application site. Given the scale of the facility, its draw is likely to be, and should be regarded as, significant.
- 9.64 Third, as to the extent of this C & I draw which may be outside the county, given the over-estimation of the residual municipal waste need set out above, it was incumbent on the Applicant to undertake a proper assessment of lorry mileage associated with C & I waste. This was not done.

#### *The Collected Waste Strategy*

- 9.65 The Applicant has placed significant reliance upon the waste collection authority's collected waste spatial strategy (the WDA Strategy).<sup>372</sup> No weight should be placed on this document from a planning perspective for the following reasons:
- a) first, in spite of the misunderstanding of both Mr Egan and Mr Bridgwood that the WCA Strategy was referred to in policy 7 (it was in fact the joint municipal waste management strategy (WMS))<sup>373</sup>, the WCA Strategy has no endorsement in any county planning document.
  - b) second there is a difference between the county planning functions of the County Council and its functions as waste disposal authority, something Mr Bridgwood did not fully appreciate in cross-examination. The county planning authority had no involvement in the document.
  - c) third, the document simply repeats the position taken under the contract already agreed between the Applicant and the County Council;<sup>374</sup> reliance on the document to justify the scheme is simply pulling the proposal up by its own bootstraps.

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<sup>370</sup> CD K3, paragraph 3.56, page 21

<sup>371</sup> CD B3, County Council response

<sup>372</sup> CD K3

<sup>373</sup> CD K1

<sup>374</sup> CD K3 pages 10-11

(v) Employment

9.66 While the delivery of the development will lead to employment, this cannot be given any significant weight in this case.

(vi) Habitat Enhancements

9.67 The same conclusion must be reached in respect of the purported habitat enhancements.

Summary

9.68 In the light of the above, it is submitted that no overriding case has been established to justify this development – consequently, it stands contrary to development plan policy WSA2 and Policy 1 of the WCS.

**B. Harm caused by the Scheme**

9.69 In the light of this conclusion, we turn to consider the additional harm caused by this scheme.

(a) Severe Residual Cumulative Effect in Transport Terms

9.70 It is clear that the scheme will lead to a severe residual cumulative effect in highway terms, contrary to paragraph 109 of the revised Framework, policy 13 of the WCS and policy 5 of the Local Transport Plan.<sup>375</sup>

9.71 In order to test the scheme against this requirement, paragraph 109 must be properly interpreted, which process is one of law.

9.72 The fundamental purpose of the provision was, as Mr Russell stated in evidence in chief, to adopt a change of approach away from arguments about the extent of the increase in traffic beyond a base flow to an assessment of the overall condition of the network taking into account the development. There was, through the old Framework, an alteration in the focus of impact towards assessing whether the area was suffering from, or would suffer from, a severe residual traffic condition.

9.73 This meant, as Mr Russell pointed out, that there can be a situation where no more traffic should be allowed without adequate mitigation to alleviate conditions. In his view, that position had been reached in this case. But it is to be remembered, and it is worth repeating, that Mr Russell's point on this issue was not that no more traffic should come forward at all, but that nothing more should come forward in the absence of mitigation. This was accepted by Mr Corrance (for the County Council) and Mr Crabb (for the applicant) as a correct reading of the policy. Mr Cooper's position in cross-examination was also essentially the same when he indicated that, before refusing a proposal, the scheme would need to be considered in the round, including any mitigation which was proposed.

9.74 In addition to this, there was a change in the approach between the old and new versions of the Framework which, as Mr Crabb accepted, was an acknowledgement that a severe residual cumulative impact does not need to

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<sup>375</sup> CD P5

involve any safety effects (given the identification of safety as a separate issue to the residual cumulative impact).

- 9.75 Whether the situation has arisen that the cumulative residual impact on the network is severe, is a matter of judgment to be reached on the facts of the case. However, it was agreed by both Mr Corrance and Mr Crabb that a number of factors would indicate whether the residual effects are severe:
- a) whether the capacity of junctions is substantially over a ratio to flow capacity (RFC) or Degree of Saturation (DoS) of 0.85 or 85% respectively; an RFC of 1.0 is, as Mr Crabb accepted, where the junction has greater flows than can be accommodated; and 0.85 is the point over which the junction queues start to exponentially increase and is not an 'ideal' junction factor.<sup>376</sup>
  - b) where there are complaints from those using the road network.
  - c) where there are junctions interacting with each other.
  - d) where there are significant queues in the existing situation.
  - e) where there is consensus amongst planning authorities that something needs to be done.
- 9.76 In spite of the apparent agreement by the Applicant's and County Council's witnesses as to what amounted to a severe residual cumulative effect and how it is to be judged, it was a recurring theme in the presentation of the Applicant's case that the focus had to be on the level of increase on the network by virtue of the development (it was assessed by reference to figure 7-2 of TA).<sup>377</sup>
- 9.77 This is a fundamentally wrong approach against the proper policy position. Two points bear this out. First, by focussing on the extent of the increase, the point could be made (and was)<sup>378</sup> that, if base traffic flows increase, the proportionate contribution of the development traffic decreases, even though the total flows on the network are greater. Second, such an argument fails to engage with *what happens* to the traffic which, in severely congested networks like the present, simply joins the back of a queue. For these reasons, the Applicant's focus on the extent of the increase in traffic should be rejected.
- 9.78 I turn therefore to the modelling analysis undertaken by the Applicant and endorsed by Mr Crabb. This modelling is not fit for purpose and has fundamentally underestimated the traffic impact in this case. That is so for the following reasons.

#### Site traffic generation

- 9.79 First, the existing traffic generation from the site has been over-estimated. There is a debate on this issue between Mr Russell and Mr Crabb. Mr Russell has shown that there are only 43 two-way HGV movements per day and 87 two-way light vehicle movements (total 130) associated with the current use

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<sup>376</sup> Mr Russell's proof, paragraph 4.58

<sup>377</sup> CD A14 Appendix 7.1

<sup>378</sup> By Mr Fraser-Urquhart QC several times in questioning

of the application site,<sup>379</sup> as opposed to the TA calculation of 79 HGV and 97 light (total 176) vehicle movements. Whether the TA or Mr Russell is correct comes down to whether the automatic traffic count (ATC) or the manual classified count (MCC) is accurate; the results of the automatic count should be adopted, for the following reasons:

- a) First, the ATC is consistent in its results. It shows, as Mr Crabb confirmed in cross-examination, a series of results during the week which would be expected (dropping at the weekend and peaking in the middle of the week).
- b) Second, it was undertaken over a week, not one day like the MCC.
- c) There was no result which indicated that the ATC was not working.
- d) Mr Corrance indicated, in evidence in chief, that there was an 'unusual' disparity between the MCC and ATC; this could have been overcome by a third count but that was not undertaken by the Applicant. Indeed, Mr Crabb accepted that the applicant could have used the information in its possession (the survey data from the Monday and Tuesday 21-22 May 2018)<sup>380</sup> to establish that the MCC or ATC was correct, but it chose not to do so.
- e) The so-called 'verification' of the MCC results by Mr Crabb and his team should be entirely rejected. The purported verification was that, following the review of the MCC video footage, its results were accurate (it should be noted that Mr Crabb only witnessed about two hours of this). This means that the 'verification' endorsed the conclusion that 24 cycles were included in the numbers of 'vehicles' visiting the site. This meant, according to the MCC, that all of the cycle traffic along Ratty's Lane was going to the site – and the reviewers endorsed that obvious mistake. It also 'endorsed' the total vehicle movements along Ratty's Lane by identifying 219 vehicles<sup>381</sup> when the MCC results themselves identified 179 vehicles (the figure actually presented and relied upon by the TA). The location of the video camera did not show all of the car park area and it could not be ascertained how many vehicles were going into that part of the car park and turning around.
- f) There was no additional verification of the MCC results since, while Mr Crabb referred to the results of the manual count being consistent with the TA, particularly Table 6-1, this was meaningless because the TA relied on the MCC results.

9.80 In the light of the fact that any assessment of the traffic implications should be reached upon a robust basis which assesses (and which the environmental statement requires to be)<sup>382</sup> a worst case, there are no grounds for adopting the more favourable (to the Applicant) MCC results. Moreover, the 'overriding' reasons for locating within this area required under policy WSA2 apply also to the highways issue. For this reason alone, the burden is on the Applicant to

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<sup>379</sup> Mr Russell's Proof paragraph 4.9

<sup>380</sup> Mr Crabb's Rebuttal proof paragraph 2.2.4

<sup>381</sup> Doc 63 (part)

<sup>382</sup> CD A13 paragraph 2.9.1



show why it should be in this location – if there is an ambiguity in the evidence it should not be decided in the Applicant’s favour.

Tempro

- 9.81 Next is the question of forecasting the future network to 2021. This issue revolves around the appropriateness of the Tempro calculation undertaken by the Applicant and the degree to which growth on the network has been properly taken into account.
- 9.82 The starting point is that the Applicant and the County Council accept that the initial calculation to take into account committed development was wrong and that Tempro will add residual growth on the network even if specific committed development is accounted for. Mr Crabb purported to account for this in his technical note<sup>383</sup> and, while he did so inaccurately and on an under-assessed basis, this showed that a further arm of J3 moved into an RFC of greater than 1.0 in the worst affected peak hour and other arms of the same and other junctions moved further beyond 1.0.<sup>384</sup>
- 9.83 But even Mr Crabb’s reappraisal was in error. His approach to the factoring of further growth<sup>385</sup> failed to follow Government guidance contained in the Department for Transport’s TAG policy.<sup>386</sup> This sets out in terms that the committed development should be removed from the Tempro model and the whole of the adjusted Tempro factor should then be applied to the baseline traffic flows. The reason for this, as Mr Russell has set out,<sup>387</sup> is because all of the baseline flows will grow in recognition of numerous factors including household growth, wealth, changes in neighbouring zones and demographic and age changes. Mr Russell applied this methodology to arrive at his growth factor and the resultant changes in traffic flows.
- 9.84 By contrast, Mr Crabb had no policy or guidance at all for his approach to this calculation, save that it had been agreed by the highway authority (in fact, it had been agreed by Mr Corrance). But the fact that two consultants have gone wrong does not make it right. This is not simply a matter of disagreement between two options. Mr Crabb’s approach is wrong, since it underestimates the baseline traffic growth; he has applied only a part of the Tempro growth to the baseline (compare the growth rates in the comparative table).<sup>388</sup> Mr Russell’s calculation represents the actual Tempro adjusted growth produced by Tempro having omitted specific committed growth whereas Mr Crabb’s growth applies only a part of the unadjusted Tempro growth rate to the base which has had the committed development growth stripped out. Mr Crabb’s (unendorsed) approach manually restricts the level of growth which Tempro has itself calculated should be modelled. This will necessarily underestimate the growth in the area.
- 9.85 Mr Crabb sought to bolster this erroneous approach by relying on baseline traffic flow<sup>389</sup> data from the TAs for other developments, which purported to show a decline in growth on three of the relevant junctions between 2010 and

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<sup>383</sup> Doc 70

<sup>384</sup> Ibid Tables 7 and 8

<sup>385</sup> Ibid Table 4

<sup>386</sup> Doc 71 Unit 4, Appendix D

<sup>387</sup> Ibid paragraph 3.17

<sup>388</sup> Doc 88

<sup>389</sup> Doc 63 (part)

2016. That evidence should not be accepted as showing a decline in traffic. The period over which the survey data took place for the Development Consent Order (DCO) TA is not known, but the Trent TA was undertaken on only one day; there is no information in those other assessments as to whether growth was factored into the assessments during that period. Most importantly, it is not possible to use data establishing what happened previously to indicate the future growth position in the present case and they cannot, properly, be used to discount the application of Temprow (which is the effect of Mr Crabb's argument) in circumstances where the TA itself uses that factor (albeit wrongly).

- 9.86 Consequently, in addition to the errors in the assessment of the baseline traffic from the site (with some 46 extra movements being missed from the assessment) the forecasted traffic flows have been under-estimated at 2021 by 348 movements or 3%.<sup>390</sup>
- 9.87 The significance of this low percentage in a congested network is shown in Mr Crabb's recalculations<sup>391</sup> on even his faulty basis – additional flows over the same junctions of only 75 vehicles<sup>392</sup> (a fifth of the true Temprow growth) caused a further junction arm to tip into an RFC of 1.0, and other arms to become still more overloaded. In these circumstances, the additional growth will simply join the back of the queue. It is against this background that the additional traffic flows which Mr Russell assessed must be considered; it is notable that Mr Crabb did not re-run the junction modelling on the basis of Mr Russell's larger Temprow outputs – what the result of doing so would be is obvious.

### Calibration

- 9.88 Turning now to the modelling outputs. The results of the TA<sup>393</sup> simply do not calibrate against the real position. Mr Corrance agreed with this in respect of a number of links in the Essex Road Corridor.
- 9.89 This can be seen in respect of a number of junctions which obviously did not tally with the observed position.<sup>394</sup> Mr Crabb sought to contend that the observations on the site visit could not be relied upon, because of the junction works on the A10 roundabout but this, of course, would have reduced flows, not increased them. Moreover, it is not something that Mr Corrance thought was a difficulty.
- 9.90 The TA modellers made no attempt to set out whether the observed flows identified above mirrored the modelled position. However, it is notable that the TA did directly alter the model to '*reflect the observed situation*'<sup>395</sup> – it obviously did so wrongly but the information requested by Mr Russell to confirm this was never provided.
- 9.91 The failure of the model to properly account for the actual queuing taking

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<sup>390</sup> As against the total flows shown in the final joint technical note Doc 88

<sup>391</sup> Doc 70 Tables 7 and 8

<sup>392</sup> i.e. Mr Crabb's 'growth' figures contained in the final joint technical note Doc 88

<sup>393</sup> CD A14 Appendix 6.1 as amended by Mr Crabb's technical note Doc 70

<sup>394</sup> In particular, TA, Table 4-4, J2, Essex Road East; table 4-5, J3; and table 4-3, J1.

<sup>395</sup> Mr Russell's Proof paragraph 4.64

place derives from a number of aspects of the model which were not factually in dispute:

- a) the model calculated a generic peak hour from the traffic survey data rather than using actual traffic flows – this approach produces a gentle curve in the flows passing through the junctions which will not occur in a congested network.
- b) the model assumes that the traffic that can pass the stop/give way line does so and does not take into account all queuing traffic *trying* to get through the junctions.
- c) the model did not allow for unequal lane distribution on the approaches to roundabouts (particularly, Junction 3).<sup>396</sup>

9.92 These problems with modelling the Essex Road corridor could have been overcome if a network model had been used. In spite of the suggestion that the use of a network model would have been too expensive, a straightforward model like Transyt could readily have been used, as Mr Russell stated in evidence in chief. Mr Crabb accepted that a network model is used in circumstances where queues are backing up into other junctions, which happens along Essex Road. The fact that it is not being proposed in the County Council's Essex Road Corridor modelling plan<sup>397</sup> is irrelevant when it is understood that Broxbourne Council's expectation is that the results of those assessments will be fed into the Broxbourne network model.

#### Sensitivity Testing

9.93 Given the above, if nothing else, there should have been some sensitivity analysis to test the proposals. Given Mr McGurk's evidence that only some 5% of vehicles delivering to the site would be under the direct control of the Applicant, and his acknowledgement that it would be 'very difficult' to control when other vehicles arrive, it is patently unsatisfactory to rely upon the suggestion that the Applicant has experience of HGV timings during the day. The experience referred to in evidence in chief by Mr Crabb at the Four Ashes site involved an uncongested access onto the dualled A449, not the admittedly congested network here.

9.94 Mr Crabb's suggestion that robustness has been built into the model to prevent the need for a sensitivity test is unconvincing.<sup>398</sup> As for the factors he has relied upon:

- a) there is, for the reasons given in these submissions, no adequate basis (as Mr Crabb assumed) for the conclusion that 'IBA will be removed from the site by rail.'<sup>399</sup>
- b) It was accepted that the backloading would have no real effect on lorry numbers.

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<sup>396</sup> CD A14 Figure 4-2, TA, Appendix 5.1

<sup>397</sup> Mr Cooper Appendix 25

<sup>398</sup> See Mr Crabb's Rebuttal, paragraph 2.10.2

<sup>399</sup> Ibid

- c) the rounding up of loads is not a robust calculation – it is the effect of having an HGV with less than a full load. There is nothing robust in that assumption.

#### Further Purported Justifications

- 9.95 Because of the obvious inadequacies in the Applicant's modelling, both Mr Corrance and Mr Crabb sought to suggest other ways to justify their conclusions that there was not a residual cumulative impact. Mr Corrance considered that modelling should be replaced by a 'forensic' analysis of the junctions undertaken on a detailed basis by the observer. Even if such an approach were permissible, Mr Corrance confirmed in cross-examination that he had not undertaken such an assessment. But there is in fact no justification for that approach – if there were, it is surprising that the County Council did not itself require it but was content to rely upon the TA which was entirely based on the modelling results. Indeed, Mr Crabb thought Mr Corrance's 'forensic' approach was wrong.
- 9.96 For his part, Mr Crabb sought to establish that there was no severe residual effect by comparing the Essex Road situation with other developments he had been involved with. Yet Mr Crabb acknowledged that he provided no written evidence in any form relating to these sites, which were presented for the first time in evidence in chief; nor was any such site put to Mr Russell in cross-examination. It is not as though Mr Russell, or indeed Broxbourne Council, had made a secret of their views on traffic issues. The Applicant's failure to present written evidence relating to these sites at the appropriate time should lead, necessarily, to Mr Crabb's evidence being ascribed very limited weight on this issue.

#### A Severe Residual Cumulative Effect?

- 9.97 As a result, therefore, the modelling process undertaken by the Applicant – and which formed the basis of the TA conclusions - is fundamentally inaccurate and underestimates both the state of the existing network and the effect of further traffic on it. Mr Russell is right about the traffic position in this case based upon even the TA's (faulty) modelling and his observations. His assessment of significant delays and considerable journey times in the peak hours shows the area to be under stress; it is not a 'peaky' congestion but an endemic and sustained one.
- 9.98 The journey times which Mr Russell recorded were correct – he was quite rightly looking at the time it took to get through the affected corridor, which must properly include queuing time on Essex Road south; quite illogically, Mr Crabb and Mr Corrance took timings from Ratty's Lane which looked only at the site traffic delays rather than the *added* delays which would be experienced by those already on the network.
- 9.98 The operation of the junctions exceeding RFCs of 1.0 highlights a network in which further traffic will simply be joining the back of the relevant queues. That is what will happen with the addition of the HGVs. There is, quite clearly, a severe cumulative residual effect.
- 9.99 The Applicant is proposing no mitigation measures to alleviate these severe cumulative residual effects and the County Council is requiring none. The replacement bridge over the New River will not affect congestion within the

vicinity of the affected junctions, but these works are necessary to allow the ERF to come forward since two HGVs cannot cross the current bridge at the same time. A condition requiring these works is therefore necessary although not sufficient.

- 9.100 The necessity for the provision of the bridge before an ERF could come forward was the County Council's position under the DCO application.<sup>400</sup> Further, it was Mr Crabb's understanding, as indicated in his proof, that the contribution being offered in respect of this application included an amount for the construction of that bridge.<sup>401</sup> Now, however, there is no such requirement being put forward – the unjustified change of position is stark.
- 9.101 Nevertheless, since no mitigation measures for the congestion are presented, the terms of paragraph 109 of the Framework are engaged and this development should be prevented. The suggestion made by Mr Bridgwood in evidence in chief that paragraph 109 does not actually prevent development from being permitted is bizarre; it is patently indicating that, if its terms are engaged, then the development should be refused (subject, of course, to any other factors indicating otherwise in the remaining parts of the Framework or in other material considerations).
- 9.102 Finally, the County Council has sought to contend that Broxbourne Council's approach at this Inquiry sits poorly with permissions granted at the Impresa Park and Spurling Works sites.<sup>402</sup> The details of these sites need to be appreciated. Impresa Park was part of an existing development (it involved the introduction of a training facility within an establish factory site) and Spurling involved a development which had been the subject of an earlier outline consent. In any event, these consents do not stand inconsistently with the concern that the level of traffic generation from this site will be unacceptable. If anything, further committed development simply adds to the problem.

*(b) Highway and Road Safety*

- 9.103 The proposals for Ratty's Lane are inappropriate and unsafe, particularly for pedestrians and cyclists. The policy position as set out in Framework paragraph 108 is that it should be ensured that 'safe and suitable access to the site can be achieved for all users.' Policy 5 of the Local Transport Plan indicates that the access should accord with the Council's design standards.<sup>403</sup> The scheme will not provide such access, for the following reasons.
- 9.104 First, Mr Corrance was clear that, if this proposal was put forward in respect of the public highway, it would be unacceptable (and is therefore contrary to policy 5 of the Local Transport Plan). There is simply no logical basis, given the policy contained in the NPPF on access requirements, to take a different approach according to the location in this case. Ratty's Lane is being used for industrial purposes and has free access by pedestrians who use it as though they may do so as of right. The factors which led to Mr Corrance's conclusion on this issue apply equally to Ratty's Lane as they do to a formal highway.

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<sup>400</sup> Doc 26, last page, 'it is also important to note that the timing of the development should be linked to the construction of the bridge works.'

<sup>401</sup> Paragraphs 2.4.7 – 2.4.8

<sup>402</sup> Docs 40(a) and (b)

<sup>403</sup> CD P5 Policy 5 NB The current version of the Local Transport Plan is LTP4 – see Doc 81

- 9.105 The scheme is an inherently unsafe one. It is proposed to increase the number of lorry movements on Ratty's Lane from the application site by either 239% or 523%.<sup>404</sup> There will be no provision for pedestrians or cyclists along Ratty's Lane; it is 400 metres in length with no footway.
- 9.106 It is no answer to this inherent unsuitability to say that the access is currently being used by pedestrians and lorries without incident. If the approach is inherently unsafe it should not be encouraged, and Mr Crabb's approach of simply saying that the frequency of likely conflict is low<sup>405</sup> (which is wrong) looks at the issue in the wrong way: it is not about whether, given the number of vehicles, there is unlikely to be limited conflicts – the point is that presenting pedestrians and cyclists at risk is of itself unacceptable.
- 9.107 In any event, the suggestion as put to Mr Russell in cross-examination that the road is straight and so pedestrians and cyclists can see clearly in front and behind them is not an adequate summary; it is not the situation at night, or in adverse weather conditions.
- 9.108 The risks will be increased with the increased number of pedestrians which may use Ratty's Lane should the modification order to the definitive map be successful<sup>406</sup> and, on Mr Russell's evidence (who is the only person to have looked at the point), the likelihood is that it will be successful.
- 9.109 There is objectively inadequate space for cyclists according to the relevant policies for on-street cycling provision<sup>407</sup> which guidance was specifically not objected to by either Mr Crabb or Mr Corrance in cross-examination. Mr Corrance agreed that Ratty's Lane is not a good road for cyclists.
- 9.110 These problems are exacerbated by the fundamentally inappropriate junction proposals for Ratty's Lane. Mr Crabb agreed that the reason for incorporating the traffic light system was because of the inappropriateness of vehicles meeting along Ratty's Lane which, on BxB's case, would have to undertake manoeuvres which are capable of being unsafe to vehicle drivers and, importantly, cyclists and pedestrians on the road.
- 9.111 Yet the junction proposals will not avoid the problem of vehicles meeting along Ratty's Lane. Neither Mr Crabb nor Mr Corrance disputed the guidance provided by Mr Russell on the inappropriateness of having long inter-greens in the traffic light phasing or having inter-greens which are too short for driver requirements,<sup>408</sup> since this leads potentially either to a dangerous situation or driver disobedience. His evidence on the inappropriateness of having a maximum cycle time greater than 120 seconds was also not questioned.<sup>409</sup>
- 9.112 Mr Russell has indicated the clear position that, if vehicle speeds on Ratty's Lane are at 15 mph then either - should the inter-green not be changed in the cycle - there will be insufficient time for traffic to clear the junction or - should

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<sup>404</sup> Depending upon whether the TA figures or the Mr Russell's figures are used – see paragraphs 4-14-16 of Mr Russell's proof.

<sup>405</sup> Mr Crabb's Rebuttal, paragraph 2.2.9 The LTP is at CD P5 NB The current version of the Local Transport Plan is LTP4 – see Doc 81

<sup>406</sup> Mr Cooper Appendix 26

<sup>407</sup> Mr Russell's proof, paragraph 5.14

<sup>408</sup> Mr Russell's proof, paragraph 3.24

<sup>409</sup> Mr Russell's proof, paragraph 3.18



the inter-green be extended to cater for slower speeds - the maximum cycle time would be exceeded.<sup>410</sup>

- 9.113 Neither Mr Crabb nor Mr Corrance grappled with the consequences of this, nor with two salient facts: a) the Tamar site entrance has a gated entrance which is slow to open, increasing the time vehicles would take to clear the junction – Mr Crabb’s suggestion that this would work itself out is unconvincing, entirely speculative and imbued with unjustified optimism given that the point was noticed by the consultants on the site visit weeks ago without any attempt having been made by the Applicant to resolve the position with that site’s operator; and b) the recorded travel speeds on Ratty's Lane between 29 June 2016 – 5 July 2016 are at or below 15 mph<sup>411</sup>; this will mean that Mr Russell’s concerns will be realised and Mr Crabb’s own evidence recognises that the full cycle time will be used during the day.<sup>412</sup>
- 9.114 These problems are exacerbated if more than one HGV tries to access the application site from the south during a cycle; should these not clear the junction, there will be at least three HGVs in Ratty's Lane which will have to manoeuvre out of the blockage.
- 9.115 This sort of issue cannot be overcome by a traffic management plan (and as Mr Russell has stated it is surprising that one was not initially suggested/ required by the proponents of the scheme). This is so for three reasons: first, as Mr McGurk stated, the company will have direct control only over 5% of the municipal waste HGVs arriving at the site and no direct control over commercial waste deliveries; second (again, as stated by Mr McGurk) it is not possible to organise the arrival time of vehicles with more accuracy than half hour time slots; and third, the management plan does not bind third party sites along Ratty’s Lane.
- 9.116 These problems are exacerbated by the arrangements at the southern end of the junction. Mr Crabb accepted that it was undesirable for more than one HGV to queue at the southern junction and suggested arrangements to deal with that.<sup>413</sup> As an initial observation, you may think it surprising that Mr Russell’s quite obvious issue was not identified by the County Council or the Applicant in their dealings with highway issues.<sup>414</sup>
- 9.117 The Applicant’s amendments to the scheme at the southern end of Ratty's Lane<sup>415</sup> have not, however, overcome the problem. If an articulated HGV passes the advance stop sign on a changing signal, there will be a blocking of that junction.
- 9.118 Moreover, the revisions to the waiting arrangements do not overcome the obvious problem that there is insufficient space for an HGV to pass a waiting HGV (whether articulated or not) at the southern traffic light without going on to private land. Mr Crabb accepted the accuracy of Mr Russell’s drawings

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<sup>410</sup> Ibid paragraph 3.22

<sup>411</sup> CD A17 Reg. 22 survey information

<sup>412</sup> Mr Crabb’s Rebuttal, paragraph 2.6.2

<sup>413</sup> Doc 28

<sup>414</sup> Which is to be allied with the fact that the County Council had not appreciated the north/south change in priority within the junction in the various application plans, nor that two HGVs were unable to pass each other without going on to private land at the southern access junction.

<sup>415</sup> Doc 79

showing this situation.<sup>416</sup> The Applicant simply had (and has) no adequate answer to that issue. The suggestion that this was the situation at present is wrong, because there is not a traffic-controlled access junction at the south of Ratty's Lane. Incidentally, these amendments to the scheme introduced another problem – the difficulties in two HGVs passing each other if an HGV articulated lorry is waiting at the advance stop sign. The photographic evidence relied upon by Mr Crabb is unconvincing.

9.119 The alternative justification for the problems at the southern traffic light, which Mr Crabb promoted in his rebuttal evidence – that the Trent site was required to widen Ratty's Lane<sup>417</sup> - was also wrong as a matter of fact. There is no condition or obligation to that effect, even though the TA for that site indicated the intention to widen the road.<sup>418</sup>

9.120 This means that at any point the (present or future) owners of the site may prevent access by the operators of the application site (or anyone else). Reliance on unconstrained third-party rights is patently unacceptable and (again) justified Mr Corrance's observation that, had this been a highway, the proposal would have been unacceptable. Plainly, such an observation sits uncomfortably with Mr Crabb's final point on this issue (and a recurring theme) that the arrangement is acceptable because it has been agreed with the highway authority;<sup>419</sup> it may be, but such endorsement is hollow where the rationale for the agreement is itself faulty.

9.121 Finally on this issue, we deal with potential safety issues arising from the needs of statutory undertakers and the emergency services. It is of course right that the fire service has not objected to the proposal but that does not render the access objectively safe – it would be surprising for the fire service to scrutinise the junction arrangements in detail; they would reasonably (though wrongly in this case) expect the County Council to do an adequate job in assessing its safety credentials.

9.122 Moreover, policy T3 of the Broxbourne Local Plan requires the planning decision maker to specifically assess the sufficiency of the access by emergency vehicles.<sup>420</sup> In this case, if the fire alarm sounds, the fire engines would be called and no doubt lorries would be evacuated (as would pedestrians and cyclists); the traffic controlled junction will patently fail to accommodate those issues (which would be made worse at night or in adverse weather conditions) and they will be exacerbated by fisherman/LVRP users leaving the area. The inherent unacceptability of accessing a power station from a single-file, shared, footway-less road is palpable.

### (c) Lack of Transport sustainability

9.123 Next, the location is patently unsustainable to non-car modes. As for cyclists, the County Council accepts that the scheme would not be attractive to them. For the reasons given above, the lack of a secure route on Ratty's Lane and the Essex Road corridor mean that this is obviously the case. Mr Crabb's

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<sup>416</sup> Mr Russell Appendices G-I

<sup>417</sup> Mr Crabb Rebuttal paragraph 2.5.4

<sup>418</sup> Mr Russell evidence in chief – not challenged

<sup>419</sup> Mr Crabb's Rebuttal paragraph 2.5.2

<sup>420</sup> CD C3

suggestion that he could achieve 60% non-car usage at the site through the travel plan is, it is submitted, hopelessly optimistic.

- 9.124 Access by bus is no better. The nearest bus stop is around 1.2 kilometres away, as against the Institute of Highways and Transportation's recommended maximum walking distance of 400 metres. Mr Crabb's suggestion in cross-examination that this is only guidance sits poorly with the fact that the London Plan's approach to accessibility endorses that range of distance.<sup>421</sup>
- 9.125 Railway access is equally poor. Walking distance to the station is beyond the IHT guideline 800 metres, at around 1 kilometre along the tow path and twice that length by the lit street network. In such circumstances, it is difficult to see how Mr Crabb could consider this accessibility to be acceptable.
- 9.126 Plainly conscious of these difficulties, the Applicant sought to rely upon the guidance at paragraph 108 of the Framework, that it should be shown that '*appropriate opportunities to promote sustainable transport modes can be—or have been—taken up, given the type of development and its location.*' In essence, the accessibility is as good as the location permits.
- 9.127 Such an argument, if right, would negate entirely the aim of seeking to achieve transport sustainability. Even if right, no real steps have been taken to enhance accessibility in this case – there has been no evidence of the feasibility of diverting buses into Ratty's Lane, or of providing for shuttle buses to run from the site, and no steps are made to enhance accessibility along Ratty's Lane. The proposals for the tow path simply are insufficient. Given the isolated and unattractive nature of the access routes, it is obvious that enough has not been done to seek to enhance accessibility.
- 9.128 For these reasons, it should be concluded that the site is not sustainable by non-car modes.

(d) Design, Landscape and Visual Issues

- 9.129 The ERF will cause significant harm to landscape character and visual amenity. It is not just BxB which considers this to be the case. The County Council has maintained its position at this Inquiry that the scheme will have such effects and that relevant development plan policies will be contravened as a result.
- 9.130 The Applicant's analysis, by contrast, is wrong. Before dealing with why that is so, it is necessary to take a step back in this case. It is difficult to see how one of the largest and bulkiest buildings ever proposed in Hertfordshire would have anything other than a substantial and significant effect on the local environment.
- 9.131 The Applicant's argument is, essentially, that the development will be seen as part of an existing industrial area, a position repeated by Mr Hammond in evidence. The visualisations of the scheme give the lie to that assertion – this is a development which has a profound effect on numerous locations, including the Lee Valley Regional Park.

Policy

- 9.132 The landscape and visual effects of the development are required to be

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<sup>421</sup> Mr Russell's Proof paragraph 5.20

properly taken into account under policy. Turning first to the national policy position, the National Planning Policy for Waste (NPPW) indicates that schemes should be made acceptable in landscape and visual terms.<sup>422</sup> It does not indicate that there is some presumption in favour of waste development which means that local communities should accept the harm to their areas.

- 9.133 The National energy policy EN-1 does suggest that, to meet the relevant needs, the inevitable harm caused by NSIPs should be acknowledged. However, the imperative associated with national scale facilities plainly does not apply equally to more localised schemes; a point accepted by Mr Egan.<sup>423</sup> That is plainly right: there is nothing in national policy which requires the equal application of this guidance and it would be wrong to impose the imperatives behind a DCO application to those applicable to county-wide schemes. If such had been the intention, the guidance in the NPPW would not be such as it is. The New Barnfield Inspector's recitation of EN-1 notably did not refer to this part of the NPS.<sup>424</sup>
- 9.134 Moreover, if the guidance in EN-1 applied, there would be an obvious inconsistency with the development plan policies and, since the development plan is regarded as up to date by the witnesses to this Inquiry, and both the WCS and the WSA post-date the NPS (by one and three years respectively) such inconsistency, if it exists, should be resolved in favour of the development plan. Mr Hammond recognised this point and confirmed that he had judged the scheme on the basis of the development plan policies.
- 9.135 The Framework is strongly protective of the Lee Valley Regional Park. This is clearly a 'valued landscape' for the purposes of Framework paragraph 170 and so it should be both protected and enhanced. The test for deciding whether land is valued is whether it has physical attributes which take it out of the ordinary.<sup>425</sup> The Park clearly has such attributes; it is recognised statutorily for its landscape significance in providing a 'green lung' for London and outlying areas. Mr Hammond's rejection of this point was not, with respect, easy to understand. The Park is set apart from the surrounding landscape areas by virtue of its designation. The broad aim of Regional Park policy L1.1 is to distinguish it from built up areas, with policy 2.1 making clear that adjacent developments should not harm the amenity of the Park.<sup>426</sup>
- 9.136 Local plan policy is also protective of the Regional Park. Policy 18 of the WCS seeks to avoid an irreversible impact on it; plainly a 30-year proposal (which will be relied on at the end of its life to justify an equal scale of development) will be an irreversible impact. The Epping Forest Local Plan<sup>427</sup> is also protective, as is the Broxbourne Local Plan,<sup>428</sup> in respect of landscape character areas, seeking to prevent serious harm to them.

### Design

- 9.137 The design of the main building cannot be regarded as high quality, which

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<sup>422</sup> CD D4 Appendix B, paragraph 98

<sup>423</sup> Cross-examination

<sup>424</sup> New Barnfield Inspector's Report paragraph 1043

<sup>425</sup> *Forest of Dean DC v SoSCLG* [2016] EWHC 2429, paragraph 31

<sup>426</sup> CD N10 and as appended to the LVRP written submission

<sup>427</sup> CD D11

<sup>428</sup> CD C3 Policy GBC16

objective is a central tenet of paragraph 124 of the Framework: it is unrelieved and utilitarian with no proper regard to its context or to those locations from which it would be seen. The poor design is the result of seeking to put a 350,000 tpa facility on a 2.5-hectare (effective use) site with the consequence that the building has had to be built upwards.

9.138 The Applicant has called no one to speak to the design merits of the development, or to explain why a more sophisticated design like that proposed under the DCO application or at New Barnfield should not have been proposed. The design is, in the words of Mr Cooper in evidence in chief, box-like. Moving away from the 'big sheds and tall chimney approach' is specifically noted in the *Guide to the Debate*.<sup>429</sup> Mr Hammond agreed that, but for the stepping down in the south-east corner of the building, this was 'a large shed and tall chimney' scheme. It bears no relationship to more architectural designs, or to that originally proposed in respect of this site.<sup>430</sup>

9.139 Thus, without any apparent justification, the Applicant has sought to make this development the archetype of such a design. Other purported attributes will do nothing to depart from that box-like form. The introduction of colour panels will not alter the mass or grain of the building, particularly from a distance (see for example Mr Hammond's viewpoint 4). The green roof will not have any ameliorating effect, and nor will the opaque panelling. In truth, this is a highly industrialised design and one that, on its face, appears to have been driven by costs and site constraints. A further example of this is the way that the access ramp (with a 4-metre screen) rises up into the tipping hall which, from the detailed drawings, will be clearly seen from the LVRP.

#### *Landscape and Visual Impact*

9.140 There is agreement between the County Council and BxB that there will be significant landscape and visual effects arising from this scheme. This was the view taken by the Council's senior planning officer, its landscape officer and Mr Egan giving evidence on behalf of the Council. It is also the view of Mr Cooper and it is the view of Mr Flatman.

9.141 By contrast (and he stands alone in this in relation to evidence given at this Inquiry which was capable of being the subject of cross-examination) Mr Hammond considered that the development would cause no significant effects on landscape character and only very limited significant effects in visual amenity terms.

9.142 Mr Hammond's analysis is to be rejected on numerous grounds. His assessment methodology contains errors. He has assessed the effects of the development at year 15 in summer conditions. This is not a worse case, the GLVIA indicates that it should be considered;<sup>431</sup> the significance of this point can be seen in viewpoint 2b and this assessment has made a difference from high to medium. He has also identified footpath users as having medium sensitivity. The justification for this is because they are moving through the

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<sup>429</sup> CD D5, paragraph 138.

<sup>430</sup> Mr Cooper Appendix 27

<sup>431</sup> CD N1, paragraph 4.3.

scene (see for example, the analysis of viewpoint 2b).<sup>432</sup> The GLVIA allows for no such justification.<sup>433</sup> Indeed, if the guidance in this document is applied, it would appear to be high sensitivity, as Mr Cooper considered to be the case in evidence in chief.

- 9.143 Hoddesdon Conservation Area has been markedly under-assessed. The importance of the Conservation Area in increasing the sensitivity of the receptor is acknowledged in GLVIA.<sup>434</sup> There is no reference to the Conservation Area in the methodology or the assessment tables and only very limited reference in Mr Hammond's proof.
- 9.144 The assessment of the Zone of Theoretical Visibility (ZTV) has been limited to 5 kilometres, when it is clear that the site is likely to be visible well beyond that distance.
- 9.145 The plume was stated by Mr Hammond to have been taken into account. However, there is no reference to this within any of the tables and the montages do not include it.

*(i) Visual Effects*

- 9.146 Mr Hammond's judgments on the extent of visual effects are plainly wrong. This can be seen in the following examples.
- 9.147 Viewpoints 2 and 38 within the LVRP: There is little distance between these two locations but while Mr Hammond considered that viewpoint 2 has a high magnitude of effect when not in leaf, viewpoint 38 will have low effects or, in his words, 'limited loss of characteristic features' or 'long distance, glimpsed' views – this is patently wrong. A simple comparison with viewpoint 44 shows how the effect at viewpoint 38 has been under-assessed.
- 9.148 Viewpoint 19: Mr Hammond assesses that there will be low effects because of the existing scale of Rye House Power Station. This again fails to engage with the real effects in this case. When seen from more representative viewpoints 70 and 71 in Mr Flatman's evidence, the factual position is that the scheme will be situated alongside the existing buildings and it will consolidate and elongate the extent of industrial development in the view.
- 9.149 Viewpoint 8: Again, Mr Hammond considers the development to have a low magnitude of effect on the basis that the banding softens the mass of the development and the existing power station already has an effect. In real terms however, there will be a 40-50% loss of view of the trees behind the housing from this aspect, which also change in form from tree cover to industrial; it would lie above the horizon.
- 9.150 Viewpoint 4: Mr Hammond's judgment is based on views from the street only; he failed to recognise that this is a representative viewpoint, not a specific point. If the viewpoint from within the terrace of properties was considered, the impact would be much greater. An additional error is that Mr Hammond

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<sup>432</sup> Mr Hammond, Appendix F

<sup>433</sup> CD N1 paragraph 6.33

<sup>434</sup> Ibid



considers that the scale of the building mirrors the scale of the houses, whereas their different scales will be patently appreciated.

- 9.151 Mr Hammond failed to take into account the impact on locations along national cycle route 1 and associated views (which can be appreciated from viewpoints 18 and 23). Mr Hammond's judgment on sensitivity is wrong. In respect of viewpoint 23, Mr Hammond concluded that the sensitivity is low because the boat users will be focussed on their activities. This judgment is the result of a misapplication of the GLVIA, which places views while outdoor recreation is pursued at a higher level.
- 9.152 Mr Hammond's conclusion that the effect of the development at view 18 is 'barely perceptible' is also wrong. It is inconsistent with the assessment of the effect at viewpoint 44.
- 9.153 Viewpoint 42 (the New River views): Mr Hammond again considers the effect to be low, but he has failed to take into account the fact that along the New River footpath there will be views of the development without views of other industrial development. Mr Flatman has provided such examples (see Mr Flatman's viewpoint 78 for example). There is also little difference in distance terms between viewpoints 8 and 9 and the views in this location, which further displays the error in his analysis.
- 9.154 It is clear, therefore, that Mr Hammond has failed to properly assess the visual impact of the development and his conclusions that there is, in large part, only a very limited significant effect is wrong and should be rejected. There will be a substantial visual effect over a wide area.
- (ii) Landscape Character Impacts*
- 9.155 Again, Mr Cooper's view on the effects of the development in landscape character terms should be accepted and Mr Hammond's rejected. I deal with the following examples of Mr Hammond's assessment of particular character areas which indicate why his judgment is wrong.
- 9.156 In respect of Area 6 (the Rye Meads area) Mr Hammond justified his position, in effect, by suggesting that the provision of more industrial buildings add to the sense of place.<sup>435</sup> However, the guidance contained in the Epping Forest Landscape Character Assessment (LCA)<sup>436</sup> indicates that further such development should be avoided.<sup>437</sup> The LCA also recognises that this area has a strong sense of tranquillity.<sup>438</sup>
- 9.157 In spite of this, Mr Hammond's view of effects is that the development would have a 'very low' impact: i.e. 'virtually imperceptible change.' His view is that the area is defined by industrial buildings and 'the key characteristics remain,' i.e. of 'rivers bordered by vegetation.'<sup>439</sup> What Mr Hammond has concluded, is that further industrial development in this area is a good thing and a positive

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<sup>435</sup> Mr Hammond's proof paragraph 11.2.17 and repeated in his cross-examination

<sup>436</sup> CD D6

<sup>437</sup> Ibid paragraph 3.2.13

<sup>438</sup> Ibid paragraph 3.2.10.

<sup>439</sup> Mr Hammond's proof paragraph 11.2.25 See also the analysis at his Appendix E

feature which the ERF will simply contribute towards; this was made clearer still in his evidence during cross-examination. This judgment effectively skewed his conclusions in favour of the development – it is difficult to see how, having taken such a view, there would ever be a negative effect.

- 9.158 A similar underestimation occurred in respect of area 7 (Roydon Farmland Plateau). Mr Hammond's view is that there is no change in respect of this area, in spite of it being regarded as sensitive to further industrial development.<sup>440</sup>
- 9.159 In respect of area 10 (Roydon Hamlet Plateau), again, Mr Hammond's view was that there was no change. However, this is a judgment again based upon his view that there is a positive result arising from the complementing of existing industrial elements.<sup>441</sup> However, the Epping Forest LCA is clear that industrial development is not part of this area's character.<sup>442</sup> Even a cursory glance at viewpoint 15<sup>443</sup> makes clear how significant the development will be (five times the size of anything existing, breaking the skyline etc.).
- 9.160 In respect of area 18 (Rye Meads No 2) Mr Hammond indicated that the sensitivity of the area is low. This stands contrary to the Harlow LCA, which indicates that the development has high sensitivity to very large-scale development.<sup>444</sup>
- 9.161 With regard to the impact of the development on this area, the assessment of harm is that it is low. This is a surprising conclusion in the light of the conclusion reached in respect of area 6, that it experiences a very low effect (by way of viewpoint 38). As to the analysis of impact, this is unclear and unconvincing. It is said that the development would be perceived in the context of the industrial estate, but there are views along the canal path that do not have such views (see viewpoint 12).
- 9.162 Mr Hammond's view on area 4 (the Mid Lee Valley) is equally problematic. His position is that there will be no change on the character of this area. This analysis failed to take into account the fact that part of the area is within the Hoddesdon Conservation Area and that the ERF will be seen without existing buildings in the view (see Mr Flatman's viewpoint 78) and, even when seen with this, will appear significantly more imposing in views from this area.
- 9.163 Finally, in respect of area 26 (the Broxbourne Urban Area), Mr Hammond has again concluded that the sensitivity of this area is low, while the Harlow LCA has considered that it will have a medium sensitivity.
- 9.164 As to the magnitude of the impact on this area, Mr Hammond's view is that this will be low. However, he has formed this view on the improvement of the site, but recognising that scale and addition of the built form will be harmful,<sup>445</sup>

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<sup>440</sup> CD D6, page 46

<sup>441</sup> Mr Hammond Appendix E

<sup>442</sup> CD N6 page 101

<sup>443</sup> And also Mr Flatman's viewpoint 53

<sup>444</sup> CD N8, page 50 and Figures 2.9 and 3.4

<sup>445</sup> Mr Hammond's proof of evidence paragraph 11.2.20

and has been reached without taking proper account of the Broxbourne LCA assessment that the introduction of further industrial development must be sensitively located away from open areas.<sup>446</sup>

9.165 As a result, the Applicant's assessment of the impact on the character of the area is clearly wrong.

9.166 The Applicant will say that Broxbourne Council has not put forward any expert evidence on the issue of landscape and visual impact. That is wrong. Mr Cooper is able to indicate his professional view as to the effect on the character of the area and the visual impact on the locality. Importantly his view accords with Mr Flatman's (and the views of other experts). Mr Hammond's evidence is inadequate, and it is wrong.

(e) Heritage Issues

9.167 There will be a damaging effect on the Hoddesdon Conservation Area, which would amount to less than substantial harm for the purposes of paragraph 196 of the Framework. Paragraph 193 of the Framework requires that great weight should be given to this harm.

9.168 Mr Cooper indicated the effect of the proposal. It would, in his opinion, introduce views of the scheme which will industrialise the perception of the town centre. It was clear that there were a significant number of views from within the Conservation Area from which the development would be perceived, including Amwell Street,<sup>447</sup> Charlton Way,<sup>448</sup> the New River,<sup>449</sup> and Conduit Lane. The New River views towards the application site are identified within the Conservation Area Appraisal as important.<sup>450</sup>

9.169 Ms. Kelly accepted in cross-examination that views towards the appeal site make a contribution to the Conservation Area. She also accepted that the introduction into the view would be a negative one. However, she considered that there was no harm to the special character of the Conservation Area because there was only a small effect on one part of it.

9.170 This approach was wrong as a matter of law. In *Irving v. Mid Sussex District Council* [2016] EWHC 1529, the same analysis<sup>451</sup> was rejected by the Judge who stated: *If there is harm to the character and appearance of one part of the conservation area, the fact that the whole will still have a special character does not overcome the fact of that harm. It follows that the character and appearance will be harmed. While I accept that the question of the extent of the harm is relevant to consideration of its effects, it cannot be right that harm to one part of a conservation area does not amount to harm for the purposes of considering the duty under section 72 of the [Planning (Listed Buildings and Conservation Areas) Act [PLBCAA] 1990. [emphasis added]*

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<sup>446</sup> CD N9, page 59

<sup>447</sup> Mr Hammond viewpoint 40

<sup>448</sup> Mr Flatman viewpoint 77

<sup>449</sup> Mr Hammond viewpoint 42 and Mr Flatman viewpoint 78

<sup>450</sup> Doc 57

<sup>451</sup> See para. 57 of the judgment

9.171 Having agreed that there will be harm (which was not *de minimis*) the conclusion must follow that there will be less than substantial harm which should (by policy and under S72 of the PLBCAA 1990) be given great weight in the planning balance and will displace the presumption in favour of sustainable development if (which it does) the harm amounts to a clear reason for refusing permission.<sup>452</sup>

*(f) Consideration against the Minerals Local Plan*

9.172 If it is right that incinerator bottom ash (IBA) will be transported by rail, then there will be no breach of policy 10 of the Minerals Local Plan<sup>453</sup> since, as Mr Cooper accepted, IBA should be regarded as secondary aggregate. However, if IBA is not delivered from the site by rail, then there would not be a 'safeguarding' of the railhead – it would be effectively sterilised by virtue of the aggregate being delivered by road.

9.173 In spite of the Council's criticism of the likelihood of rail access being raised at an early stage in the process,<sup>454</sup> there was no attempt, until the oral evidence of Mr McGurk, to bolster the rail accessibility evidence. This evidence is inadequate. The letter of DB Cargo (UK) Limited<sup>455</sup> confirms only the availability of the current paths but does not confirm the route of the IBA through the network to the proposed destinations. The availability of paths is, of course, critical to achieving a rail connection, yet there was no evidence beyond the apparent verbal indication by DB Cargo that a route could be obtained<sup>456</sup>; there was no indication that this was Network Rail's position or any analysis of the likelihood of such a path being approved by the regulator through the various GRIP stages which have to be undertaken.

9.174 The provisions of the S106 obligation in respect of IBA give the lie to any assertion that IBA will be transported by road since it lays down no such requirement—if no rail access is possible, the obligations do not prevent the development from going ahead. In these circumstances, the Applicant may simply submit a note indicating that the rail connection is not possible.<sup>457</sup>

9.175 Given the lack of any compelling evidence to demonstrate that the rail head would be operational for the life of the development, the conclusion should be reached that, contrary to policy 10, the railhead will not be safeguarded.

*(g) Lack of Sustainability – not an efficient system of energy recovery*

9.176 The scheme does not achieve a combined heat and power (CHP) network. The applicant is specifically not saying that CHP will be viable. The viability study provided by the applicant<sup>458</sup> has not considered the business case for the scheme: there has been no financial modelling or detailed feasibility work.<sup>459</sup>

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<sup>452</sup> Framework paragraph 11

<sup>453</sup> CD C5

<sup>454</sup> Mr Cooper Appendix A, page 42.b

<sup>455</sup> Doc 50

<sup>456</sup> Mr McGurk in cross-examination

<sup>457</sup> Doc 97a paragraph 3.1 of Schedule 1 (page 22)

<sup>458</sup> Mr Aumônier Appendix H

<sup>459</sup> Ibid, paragraph 6

In spite of this, Mr Aumônier gave his view in evidence in chief that significant weight should be given to the *potential* for CHP.

- 9.177 However, this amounted to him disagreeing with the Inspector in New Barnfield, who ascribed such a possibility it limited weight.<sup>460</sup> This was in spite of the fact that the New Barnfield Inspector had received evidence from Mr Aumônier himself on this very point and that the factors relied upon by the Inspector (like the uncertainty over the market, the costs of the supply network and the timing of provision)<sup>461</sup> remain the same now.
- 9.178 Mr Aumônier agreed in cross-examination that the only basis for his disagreement with the New Barnfield Inspector's conclusion on the weight to give this issue, arose from a purported change in policy and, particularly, that contained in the *Guide to the Debate*<sup>462</sup> and the decisions of other Inspectors giving significant weight to CHP, as in the Hartlebury decision.<sup>463</sup>
- 9.179 However, *the Guide to the Debate* was live and considered at the New Barnfield inquiry<sup>464</sup> and provided no different advice in respect of CHP to that contained in the NPPW.<sup>465</sup> The Hartlebury decision was also taken into account then.<sup>466</sup> Given this context, in reality there was no basis for Mr Aumônier's assessment of significant weight being placed on this issue.
- 9.180 Consistent with New Barnfield, limited weight should be placed on the potential carbon savings associated with CHP delivery. The lack of such a counter-balancing factor against other unsustainable features means that the case in favour of the proposal is very limited indeed.
- 9.181 There would be no on-site pre-sorting of recyclables and there is considerable uncertainty about the degree of pre-sorting off-site. A recycling facility was proposed at New Barnfield and its omission in this scheme further undermines the potential to maximise the carbon savings associated with an ERF.
- 9.182 There are two primary reasons why it is said that front-end recycling cannot occur. The first is that there is a lack of a market for much of the residual recyclates. However, as is made clear in the LACWSS<sup>467</sup>, the waste disposal authority or the waste collection authority will pay for recycling to be carried out in the absence of a market. The lack of foreign markets is not, therefore, a reason for rejecting the process.
- 9.183 The second reason is that it is difficult to get plastic out of black bag waste. However, whilst Mr Bridgwood accepted that such recycling could occur, he pointed out in re-examination that the system is inefficient if black bag waste is being sorted for contaminated plastic and referred to the observations in the *Guide to the Debate*<sup>468</sup> that the overall energy usage of a facility should be considered. However, there must be some evidence that the system will lead

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<sup>460</sup> New Barnfield Inspector's Report paragraph 996

<sup>461</sup> Ibid paragraphs 995-996

<sup>462</sup> Mr Cooper Appendix 21

<sup>463</sup> Mr Aumônier's proof paragraph 98

<sup>464</sup> New Barnfield Inspector's report paragraph 99

<sup>465</sup> CD D4, paragraph 4

<sup>466</sup> Cf. para. 470

<sup>467</sup> CD K3

<sup>468</sup> Mr Cooper Appendix 21, paragraph 97

to inefficiencies such that the recovered recyclable material will not offset any energy usage. That calculation has not been undertaken by the Applicant.

(h) Preventing further more sustainable facilities

- 9.184 As has been dealt with above, the approach adopted in the WCS is to provide a network of facilities which can include smaller scale facilities which may have a lower impact than a single large facility. The network approach is, as Mr Crabb confirmed, an approach which seeks to accord with the proximity principle. Indeed, the benefits of a network of facilities which are closer to urban areas within a particular area has the benefit of potentially dealing with waste more appropriately: as the *Guide to the Debate* states, *A network of smaller facilities provides potential benefits such as shorter transport distances, proximity to heat users, reduced visual impact and a sense of a community dealing with its own waste.*<sup>469</sup>
- 9.185 The present scheme cannot be divorced from the contractual provisions underlying it. As confirmed by Mr McGurk in cross-examination, the contractual position is that all of the residual municipal waste up to a maximum of 352,000 tonnes must be delivered to this site until 20 December 2050. Undoubtedly, the real effect of this is to prevent any further residual waste facilities being developed anywhere in the county for the next 30 years.
- 9.186 If nothing else, such a commitment, which amounts to an effective embargo on any facilities which may be closer to waste arisings, must have been the subject of proper evaluation against the potential alternatives, principally by considering the appropriateness of a network of smaller facilities. However, as has been dealt with above, this has not been undertaken at any stage by the county planning authority on wider planning grounds. There has been no consideration of this effect. With regard to the disposal authorities' consideration of alternative options (which were considered, for the record, to be deliverable)<sup>470</sup> this did not look at the wider planning effects of any option at all. Only financial considerations were assessed.<sup>471</sup>
- 9.187 In re-examination, Mr Bridgwood suggested that matters of 'cost' are relevant in the light of guidance in EN-1. However, that guidance is looking at questions of viability. The decision to prefer a particular proposal on costs grounds rather than viability grounds is of limited weight and, in any event, cannot justify a proposal which has not been the subject of a comparative analysis on environmental grounds. If that were so, then cost savings alone could justify a development, which is patently wrong in a town and country planning context.

(i) Green Belt effects

- 9.188 The site is directly adjacent to the Green Belt. For the reasons given, the scale of the development and its visual impact would have an unacceptable effect on the perception of the openness of the Green Belt.

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<sup>469</sup> Ibid paragraph 155

<sup>470</sup> CD K4, main report, paragraph 9.18

<sup>471</sup> Ibid Appendix 5



*(j) Economic impacts*

- 9.190 We referred in opening to the problems of the perception of the proposals on local growers' business. The existence of an extremely large, be-chimneyed power station only exacerbates the perception that the Lee Valley is no longer able to grow its crops in a countryside location, but under the aegis of an overbearing industrial complex.
- 9.191 The Lee Valley Growers Association's<sup>472</sup> concerns about the extent to which the scheme would actually affect its members' growing conditions, is a real and reasonable one given the evidence deployed by the applicant in this case. Its concerns have not been adequately addressed
- 9.192 Mr Barrowcliffe's evidence indicated the issues arising from the scheme and the inherent uncertainties surrounding air quality modelling. He agreed that the stack will emit '*substances of potential concern*'<sup>473</sup> which '*have the potential to induce long term, chronic effect on human health at environmental concentrations.*'<sup>474</sup> The assessment of the effect of the scheme on such potentiality is first, through the use of a dispersion model, and second, a risk assessment modelling process (the Industrial Risk Assessment Program, IRAP).<sup>475</sup>
- 9.193 The results of the dispersion modelling indicate that the site contributes significantly (45%) to nickel concentrations bringing the total concentrations to 62% of the assessment criterion.<sup>476</sup> There are also significant contributions to cadmium levels<sup>477</sup> and levels of chromium already exceed the relevant standards and are contributed to.<sup>478</sup>
- 9.194 The dispersion model relies upon wind information gathered from Stansted Airport monitoring equipment. Mr Barrowcliffe accepted that localised wind information particular to the site was capable of being obtained. The observations of local residents relating to the static air situation within the Lee Valley patently gives cause for concern that the Stansted monitoring results are not sufficiently representative of local conditions. This is the first clear indication of uncertainty.
- 9.195 That uncertainty becomes more pronounced when the IRAP modelling results are considered. These show, in respect of furans and PCBs,<sup>479</sup> that the proposal will make a 24.7% contribution to the reference limit (the tolerable daily limit)<sup>480</sup> and make up 75% of the average daily intake. On any basis that is a significant contribution. The fact that the reference point is a worse case (the farmer and family eating only local produce) is nothing to the point: this is the assessment parameter which the Applicant has chosen to use and, given the risks being considered, the assessment should properly be calculated on such a worse case in order to be appropriately precautionary.

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<sup>472</sup> Evidence of Mr Stiles for BxB

<sup>473</sup> CD O1, paragraph 2.2.1

<sup>474</sup> Ibid.

<sup>475</sup> CD O1, para. 2.1.7.

<sup>476</sup> Mr Barrowcliffe Appendix D page D4; assessment criterion at Appendix A, page A11

<sup>477</sup> Ibid.

<sup>478</sup> Ibid.

<sup>479</sup> Polychlorinated biphenyl

<sup>480</sup> CD O, Annex 2, page 40, figure 3-3.

- 9.196 The uncertainty surrounding these figures is, however, in the fact that the calculations contained in the IRAP model are not, as Mr Barrowcliffe confirmed, cumulative; they do not purport to indicate what the extent of the contribution of any other existing facilities will be. Furans and PCBs will be produced from the ATT plant on Ratty's Lane which will be in concentrations equal to the ERF and lead to an exposure above background. This suggests that there will be a significant contribution to the tolerable daily intake by these two facilities alone. In the light of this, the lack of cumulative modelling under IRAP raises considerable doubt as to the effect of the scheme when added to the (unknown) background concentrations.
- 9.197 For the purposes of BxB's case, these uncertainties are compounded because there has been no IRAP assessment of the effect of using a hydroponic horticultural system rather than growing in soil. In these circumstances, it simply cannot be concluded that there will be no potentially damaging effect from the ERF on growers. Any other conclusion is simply speculative.
- 9.198 Reliance is placed upon the Environment Agency's permitting process. Generally, it is right to rely upon that process. However, if there is an uncertainty in the assessment process, which is demonstrably not corrected or addressed through the environmental permitting process, such uncertainty is capable of being relied upon in deciding whether this is a further contributory factor militating against the grant of permission. For the reasons given above, there is such uncertainty and this has not been dealt with by the Agency.
- 9.199 Growers are also concerned by the potential effect of the stack plumes on growing conditions. Mr Stiles gave unchallenged evidence that, in general, a 1% reduction in sunlight will have a 1% effect on yield. While the prevailing wind conditions may not mean that there is any constant effect, this aspect of the proposal is plainly damaging and should have been considered in detail. It has not been.
- 9.200 The Cluttons and Wardell Armstrong reports<sup>481</sup> do not address these problems. They do not consider the effects which the scheme will have on the growing business of such great importance in this case nor, for the reasons given by Mr Merhemitch, do they satisfactorily answer the concerns of local businesses. The examples contained in the Cluttons report relate to sites which are very different to the current proposal. In his evidence in chief, Mr Merhemitch went through each of these sites indicating that the developments were of a lower scale and were generally accessed by straightforward road networks. As a result, they do not provide a comparable basis for judging the effects of this scheme.
- 9.201 As for Mr Merhemitch's investment in his business, that is nothing to the point. He explained how he has already had to take steps to avoid congestion and these decisions were not made when congestion was of the scale it now is, nor with a detailed knowledge of the proposals for Ratty's Lane. The points made on the relevance of the 2010-2016 flow information<sup>482</sup> are also of relevance.

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<sup>481</sup> Appendix 8.1 to the proof of Mr Bridgwood

<sup>482</sup> Doc 63

### Policy 7 of the WCS

- 9.201 This policy requires evidence of how the proposal complies with the JMWMS.<sup>483</sup> The JMWMS sets out that its aim is to comply with the proximity principle.<sup>484</sup> In the absence of an adequate alternatives assessment it cannot be shown that the site is compliant with that principle. Similarly, there is a requirement to take account of how the development minimises transport distances.<sup>485</sup> Again, without undertaking an adequate alternative sites assessment which establishes that there is no better site to minimise transport distances, it cannot be established that there is a 'minimisation' of such distances. Finally, the policy requires that account be taken of other policies, including the environmental protection policy, policy 18, which is contravened by virtue of landscape and visual and heritage impacts.
- 9.203 Even if there is compliance with policy 7, as Mr Bridgwood accepted, this does not overcome any non-compliance with the municipal waste part of policy WSA2 given that the policy requires compliance with WCS policy 7 and its own 'overriding' factors test.

### **C. The Decision-Making Process in this Case**

- 9.204 In the light of the above matters, the decision-making process should be as follows.
- 9.205 First, the application should be determined in accordance with S38(6) of the Planning and Compulsory Purchase Act 2004. At no stage has it been suggested that any material parts of the local plan are out of date.
- 9.206 Given the contravention of the strategic policies of the WCS (policies 1 and 7) and the WSA (WSA2), the relevant protection policies (13 and 18 of the WCS) and GBC16 of the Broxbourne Local Plan, it should be determined that the development is contrary to the development plan.
- 9.207 Second, under S38(6), material considerations do not indicate that a different decision should be reached. The presumption in favour of sustainable development at paragraph 11 of the Framework does not arise, because relevant development plan policies are neither silent nor out of date. Just as the factors relied upon in this case cannot amount to an 'overriding' case under policy WSA2, so such arguments are not sufficient to outweigh the effect of the development plan contraventions.

### Conclusion

- 9.208 Properly, a scheme of such strategic significance should have been brought forward through, or in accordance with, the plan-making process, like the other sites which were developed. It should be tested against appropriate alternative scenarios, not by way of this *ad hoc* planning application which is supported on such a shaky evidential foundation.

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<sup>483</sup> CD K1

<sup>484</sup> Ibid. paragraph 4.4

<sup>485</sup> Requirement (v) of policy 7

9.209 The scheme is fundamentally unacceptable and unsustainable. It will exacerbate a severe traffic situation on the Essex Road corridor. It will cause substantial and significant effects on landscape character and visual amenity. It will cause harm to a designated heritage asset. It will undermine confidence in the Lee Valley growing community and presents uncertain risks for the growers. It will not safeguard a mineral based railhead. The design is poor. It will place pedestrians, cyclists and others at risk when using Ratty's Lane. The scheme fails to take the opportunities to provide combined heat and power. It will prevent the introduction of facilities closer to the waste arisings. Against this, the alternatives case is wholly deficient and the need case unsatisfactory and inadequately justified. For these reasons, the Inspector is urged to recommend refusal and the Secretary of State to accept such recommendation.

## **10. THE CASE FOR THE JOINT PARISH COUNCILS (RULE 6(6) PARTY)**

*(The case for the Joint Parish Councils is reported substantially in the form of their closing submissions)<sup>486</sup>*

### INTRODUCTION

- 10.1 Four local Parish Councils (Nazeing, Roydon, Stanstead Abbots and Stanstead St. Margarets) joined together to present evidence to the Inquiry and called witnesses in order to inform the Secretary of State of their views on the effect of the development proposed on the inhabitants of their local areas.
- 10.2 The evidence adduced is restricted to the adverse effects of the proposed ERF on the four villages which the Joint Parish Councils respectively represent, in terms of landscape and visual impact, heritage assets, increase in traffic movements, wellbeing and pollution. They adopt the submissions made by the other Rule 6(6) parties in relation to the grounds of objection respectively raised by them.

### LANDSCAPE AND VISUAL EFFECTS

- 10.3 The proposed ERF is described in the evidence of Mr Hammond.<sup>487</sup> It was agreed that the stacks would be 28.75 metres higher than those of the existing Power Station, that for 12% to 25% of the operational time of the ERF there would be a visible plume, the height of which would vary between 32 -42 metres in length, and that for between 1% and 2% of the time the plume would be longer than 87 metres.
- 10.4 The plume would draw attention to the ERF and would have an additional adverse impact which must be considered cumulatively with the impact of the ERF building itself and the stacks.
- 10.5 When visible, the appearance of the plume would vary according to weather conditions. Whilst in windy conditions it would be likely to trail horizontally from the top of the stack, in cold clear conditions which are common in this area, it may well rise vertically. When seen against a clear blue sky it would be likely to appear more prominent than in cloudy conditions.

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<sup>486</sup> Doc 84 See also the proofs of evidence of Cllr Joslin, Cllr Mrs Clarke, Mr Pracy, Cllr Mrs Whybrow, Mr Berendt, Mr Collins Cllr Mrs Davies, Cllr Cox and Mr Flatman together with Docs 4, 23, 24, 55, 57, 66, 67, 72 and 81.

<sup>487</sup> Mr Hammond's proof paragraph 3

10.6 Mr Flatman (for the Joint Parish Councils) states that:<sup>488</sup>

*The LVIA makes reference to the intermittent visible white plumes at para.9.3.10 and 9.6.38 but there is no reference to the effects of them within the Visual Impact Assessment for individual receptors outlined in ES Appendix 9.4. The additional height of the plume would provide an additional adverse effect above those stated by AECOM.*

Landscape Effects

10.7 Mr Hammond (for the applicant) sets out what he considered to be the effects of the proposed development on the Landscape Character Areas (LCAs).<sup>489</sup> However, detailed consideration was given by AECOM to only three LCAs, namely LCA 26, LCA 6 and LCA 18. The only comments on those of particular interest to the Joint Parish Councils are contained in Appendix E to the evidence of Mr Hammond.

10.8 For the Joint Parish Councils, Mr Flatman stated that:<sup>490</sup>

*The landscape effects of the proposed ERF identified by AECOM appear to have been understated and I consider that they have not taken full account of the effect the adverse visual impacts will have on the quality of the existing landscape character or setting. In particular the effects on the landscape character areas to the north, east and south where the landscape rises to be more elevated and the visual character of the landscape becomes more one of expansive, panoramic views across the Lee Valley.*

10.9 In the light of Mr Flatman's observations, the Inspector and the Secretary of State are requested to prefer his evidence over that of Mr Hammond, as to the likely effects on the landscape itself of the proposed development.

Visual Effects

10.10 The comments of AECOM in relation to the visual effects of the proposed development are contained in the proof of Mr Hammond and his Appendix F. Whilst in oral evidence Mr Hammond confirmed that, in the case of some receptors, for example Harolds Park Farm (Nazeing) the visual effects of the development would be significant and could not be mitigated, it was his opinion that this must be accepted as the situation, although in most cases the effects would reduce over a period of 15 years.

10.11 Mr Flatman for the Joint Parish Councils disagreed with that opinion and, at the following paragraphs of his own proof stated that:

*9.2.1 From many receptors I consider that the residual effects after 15 years, the landscape scheme proposed would not provide the degree of screening claimed by AECOM. Consequently, there would be no change in magnitude or reduction in the residual significance of effect from year 1 (completion). The proposed building and stacks are of such overbearing scale that it would not be possible to screen much other than the lowest parts of the building or structures. The notion that the landscape scheme*

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<sup>488</sup> Mr Flatman's proof, paragraph 4.6.5

<sup>489</sup> Mr Hammond Appendix E

<sup>490</sup> Mr Flatman's proof paragraph 9.1.1

*and the inherent mitigation in the building design would reduce the visual effects over time would not be achieved for many receptors as there is no additional screening proposed.*

*9.2.2 I have highlighted instances where I consider that the assessment should have resulted in a 'significant adverse' effect on a receptor where it was not identified by AECOM. I have highlighted these in Appendix C – MF Visual Effects Table.*

*9.2.3 In relation to several receptors I have concluded that there would be significant adverse effects from a number of receptors that were not identified as such by AECOM. Refer to Appendix C – MF Visual Effects Table.*

- 10.12 It is considered that the visual impact of the development, including the visible lighting from the upper parts of the ERF, on the surrounding areas would be significantly damaging and that this factor should be accorded substantial weight. Mr Flatman's analysis and evidence should be preferred to that of Mr Hammond.
- 10.13 In addition to the evidence of Mr Flatman, the Inquiry received evidence in relation to the visual effects of the proposed development from a number of local residents called on behalf of the Joint Parish Councils. The Secretary of State's attention is drawn to the individual proofs from Susan Clarke, Janet Whybrow, Tim Collins, Julia Davies, David Pracy and Michael Berendt, which evidence was largely unchallenged.
- 10.14 Evidence was also received from other local residents and the level of local objection was such that it should not be ignored. Rather it should be given substantial weight. Attention is drawn in this regard, to the original consultation response of Essex County Council.<sup>491</sup>
- 10.15 The Nazeing and South Roydon Conservation Area is of special interest to the residents of Nazeing and Roydon. Within the Conservation Area, which is in the Green Belt, are a number of listed buildings, the most important being All Saints Church, Nazeing. This is a Grade I listed building which dates from the 12th century.<sup>492</sup>
- 10.16 Paragraph 184 of the National Planning Policy Framework identifies that heritage assets should be conserved in a manner appropriate to their significance. Great weight should be given to the asset's conservation. Any harm to the significance of the asset, which includes development in the setting, requires clear and convincing justification. It is submitted that the church is worthy of enhancement not harm.
- 10.17 Mr Flatman identified a number of other heritage assets in the areas of the Joint Parish Councils. In the following paragraphs of his proof he stated:

*'8.2.5 The NPPF defines the setting of a heritage asset as;*

*'The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to*

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<sup>491</sup> CD B3 page 49

<sup>492</sup> Docs 55 and 67



*the significance of an asset, may affect the ability to appreciate that significance or may be neutral.'*

*8.2.6 The proposed ERF will introduce 'elements' which are capable of affecting appreciation. If the setting adds to the appreciation (experience) or the significance of the heritage asset, then the development may harm its significance.*

*8.2.8 Therefore, if there is any harm to any asset from development in its setting, it is abundantly clear that this needs to be identified and the degree of harm needs to be properly and thoroughly assessed.'*

10.18 Helena Kelly gave evidence on behalf of the Applicant in respect of the Historic Environment. In her proof of evidence,<sup>493</sup> she stated that she considered those heritage assets within the vicinity of the ERF site which could be affected by the proposed development and, in Section 2, she helpfully summarised the relevant legislation policy and guidance.

10.19 In Paragraph 1.10 of her speaking note,<sup>494</sup> Miss Kelly stated that she had considered the assets which had been referred to by Mr Flatman and she commented on them. Surprisingly, however, she made no reference at all to All Saints Church, Nazeing, notwithstanding that this headed the list of assets. Further it appeared that her inspection of the others appears to have been somewhat cursory. It is submitted that, in the circumstances, the evidence of Mr Flatman should be preferred over that of Miss Kelly, which should be disregarded in many respects, but especially in relation to All Saints church, Nazeing.

#### HIGHWAYS, TRAFFIC AND RELATED ISSUES

10.20 The Joint Parish Councils presented evidence to the Inquiry demonstrating the close proximity of the settlements to the proposed development site. This, together with the shared local road network, causes Nazeing and Roydon to be particularly vulnerable to incursion by traffic, whether generated by the facility, or displaced by it. Nazeing and Roydon are situated just inside the Essex County border: Dobbs Weir (which is part of Roydon) is 0.5km from Ratty's Lane, Roydon village 1.5km and Nazeing village 2km distance. All three settlements are within Epping Forest District Council as the local planning authority.

10.21 The villages of Stanstead Abbots and Stanstead St Margarets are 2.5 km to the north of the development site and lie within East Hertfordshire District Council, as the local planning authority. They also would be vulnerable to incinerator HGV traffic using the A414, at the B181, and A10 /A1170 junctions.

10.22 In terms of the potential traffic and highways impacts arising from the proposed development, Hertfordshire County Council contends that the concerns raised are 'based on little more than anecdotal evidence and assertion.'<sup>495</sup>

10.23 The Joint Parish councils contend that this is not the case and that:-

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<sup>493</sup> Miss Kelly's Proof paragraph 1.6

<sup>494</sup> Doc 58

<sup>495</sup> Doc 6 page 7 paragraph 25

- a) tangible, documented, independent evidence from the Traffic Commissioner's Office, illustrating the Four PCs' contention of ongoing inappropriate traffic use of the village roads has been presented to the Inquiry.<sup>496</sup>
- b) a traffic survey commissioned by Nazeing and Roydon Parish Councils was presented in evidence to the Inquiry.<sup>497</sup> This study, carried out by QTS during May 2018, shows that the number of HGVs accessing the Dobbs Weir Bridge and linked village roads is high. A significant proportion can be assumed to be in breach of the 7.5 tonnes weight restriction in place on Dobbs Weir Road. This is despite Hertfordshire County Council claiming that HGVs are not likely to take this route due to the roads being unsuitable.<sup>498</sup>

10.24 Numerous witnesses have given evidence to the Inquiry about their experience of HGV traffic on the local roads, despite Road Traffic restrictions implemented by Essex County Council in 2010.<sup>499</sup> These witnesses are local residents who experience and endure this environmental blight on their lives daily. They are expressing concerns about a lack of control over what is perceived, quite rationally, the potential detrimental impacts on their community together with the resulting anxiety. The accounts related by these residents are based upon their collective, everyday experience and local knowledge, as demonstrated by the evidence of the Joint Parish Councils.

10.25 The number of witnesses, from varying backgrounds and areas within the villages who submitted evidence, is indicative of the level and concern about the proposed development. Whilst traffic issues may be common amongst the witnesses, most people do not choose lightly to appear at a formal setting such as a public Inquiry and to speak. It requires confidence, a willingness to re-arrange personal commitments, including child care, which is seldom easy, and time and skill to find the words to express their views. It is notable that so many residents have made the effort to be heard at this Inquiry.

10.26 Agreement has been reached between the applicant and the County Council for a routing agreement to be entered into, with the purpose of preventing incinerator HGVs accessing the Dobbs Weir Bridge and the village roads beyond. If adhered to and effectively monitored by the applicant and the County Council as waste disposal authority, it is acknowledged that this could deal with the issue of traffic 'breaches' on the Essex roads that could arise from the development. However, the Joint Parish Councils' confidence in this happening is not high, given that the means and processes of effective communication between Essex County Council Highways, Hertfordshire County Council Highways, Hertfordshire Waste Disposal Authority and the Applicant, is far from straightforward.

10.27 Additionally, the issue of displaced traffic has not been addressed by any witness on behalf of either the applicant or the County Council. It is the reality that traffic not connected with the proposed facility will seek alternative routes to avoid congestion on the Essex road corridor which must result from the

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<sup>496</sup> Sue Clarke's Proof Appendix 2.0

<sup>497</sup> Supplementary proof to the evidence of Mr Collins

<sup>498</sup> Appendix 1.8 to the evidence of Mrs Clarke

<sup>499</sup> Ibid Appendix 1.91

number of vehicles generated by the development. There is of course no restriction upon any traffic of less than 7.5 tonnes.

- 10.28 We are particularly concerned about the Applicant's stated proposal to supplement the facility's waste needs with waste sourced from various locations in Essex and beyond,<sup>500</sup> as this would have the potential to attract heavy goods traffic through the villages, by use of the A414, or M11.
- 10.29 The planning application documents clearly state that C&I waste will be sourced from various Veolia locations, all but one of which (St Albans) being out of Hertfordshire.<sup>501</sup> It is noteworthy that this aspect of the proposed transport arrangements was highlighted in Hertfordshire's Highways consultation response to the planning application.<sup>502</sup> This aspect of the proposed development has also been raised by witnesses in their letters of objection and was also described by Cllr Sue Clarke.<sup>503</sup>
- 10.30 Despite these issues being identified by various sources early on in the planning application process, the Applicant has not sought to clarify this information, or to reassure the Joint Parish Council communities about this , until near to the end of the Inquiry itself. At this point, in relation to questions about apparent mileage savings,<sup>504</sup> the Inquiry was advised by Mr Bridgwood (for Veolia) that C&I waste was likely to be sourced 'mostly' from St Albans, although Veolia does source this category of waste from out of county locations also.
- 10.31 The apparent mileage savings described by Mr Crabb, and endorsed by Mr Bridgwood, are based upon a methodology that omits to account for both C&I and the transportation of gas flue residue to an appropriate facility, currently a facility in Cheshire. Whilst it was argued by Mr Bridgwood that the issue of gas flue residue transport is likely to be 'balanced out' of the mileage considerations, it is questioned as to how the accounting for the transportation of commercial and industrial waste has been achieved. It appears that this would be an additional mileage burden on the current Hertfordshire waste management arrangements. It follows, that even when allowing for mileage associated with the one location of St Albans, the mileage would accrue to many hundreds of thousands of miles over the course of a year. This would more than offset the savings claimed for the transport of Local Authority Collected Waste.<sup>505</sup>
- 10.32 A major theme running through the application is that the proposed waste management arrangements would be more sustainable than those in place currently. This, in part, is due to the claim that Hertfordshire would manage its waste 'in county'.<sup>506</sup> This is questionable given the necessity for transport journeys out of county e.g. Winsford, Cheshire, or the accruing of very significant miles in county e.g. journeys to and from St Albans.

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<sup>500</sup> CD A14 Appendix 6.1 Table 6.5

<sup>501</sup> Ibid

<sup>502</sup> CD B3 Page 80 para 4.1 Trip Generation

<sup>503</sup> Both in her proof at paragraph 7.9 and in evidence in chief

<sup>504</sup> Mr Bridgwood's Proof paragraph 6.11.11 and Mr Crabb's proof paragraph 4.6.14 and his Appendix JC06

<sup>505</sup> Mr Crabb's proof of evidence paragraph 4.6.14 and Mr Bridgwood paragraph 6.11.11

<sup>506</sup> CD VES1 paragraph 4.4

10.33 Similarly, it does not appear that the proposals can be either 'sustainable' or compliant with policies within the Hertfordshire Waste Core Strategy (WCS). For example:-

**Policy 13 Road Transport and Traffic:-**

*Applicants must demonstrate by a detailed transport appraisal that the safest and least environmentally damaging methods of transporting waste are both practically achievable and will be used to minimise road miles, and where appropriate utilise more sustainable modes of transport such as rail and water i.e. limiting the use of roads already heavily congested. Take into account proximity of waste arisings when allocating sites, to reduce journeys.*

**Local Transport Plan TP3 (2011 -2031)<sup>507</sup>**

The overall vision is to provide a 'safe, efficient and resilient transport system across Hertfordshire and minimise its impact on the environment.' Five goals are set out in order to achieve this vision. Of particular note is the need to reduce the contribution of transport to greenhouse emissions and to improve transport resilience.

**National Planning Policy for Waste (2014)<sup>508</sup>**

This requires that waste planning authorities should assess the suitability of sites for new or enhanced waste management facilities based on particular criteria. For example:

- The physical and environmental constraints of development, including existing and neighbouring land uses;
- The capacity of existing and potential transport infrastructure to support the sustainable movement of waste, and products arising from resource recovery, seeking when practicable and beneficial to use transport modes other than road.

WELLBEING

10.34 During the course of this Inquiry, evidence has been given by witnesses from both Essex and Hertfordshire who are worried that the environment they value will be spoiled by the proposed ERF. Some have chosen to live in the area to take advantage of the healthy environment and good quality air, which Mr Barrowcliffe confirms is the case.<sup>509</sup> It now appears that it is expected that there will be a diminution in that air quality to accommodate the ERF. It is claimed that the pollutants emerging from the stacks, and the emissions from HGVs attending the site, will be well within legal limits and that strict controls will be in place and that consequently, the deterioration in air quality will be small in percentage terms. Nevertheless, it seems it will occur.

10.35 The fact is that for many, the concerns they have for their well-being are all too real. They consider that the ERF will have a serious impact on their lives.

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<sup>507</sup> CD P5 NB The current version of the Local Transport Plan is LTP4 – see Doc 81

<sup>508</sup> CD D4

<sup>509</sup> Mr Barrowcliffe's proof paragraph 6.20

The Health Impact Assessment sets this out clearly:<sup>510</sup>

*The construction and operation of the Proposed Development is likely to affect the following underpinnings of social capital:*

- *views about the area; and*
- *reciprocity and trust.*

*The construction and operation of the Proposed Development is likely to reduce people's positive associations of living in the area as a result of perceived negative health effects and decreased environmental quality, e.g. changes to the visual environment, increased road congestion and perceived harmful emissions to air.*

*Those people whose view of the area as being a good place to live diminishes, may experience negative impacts to their mental health and overall sense of wellbeing.*

10.36 Also relevant is paragraph 6.6 of the Health Impact Assessment in connection with the visual environment:

*People attach considerable importance to the quality of their surroundings and the prosperity of an area can be influenced to a considerable degree by its image. The visual presence of an industry is also linked to the level of risk that people perceive, and such disturbances can become a focus for concern and anxiety.*

*The built environment can impact on public health and the way that people use their environment, influencing physical activity and the health impacts associated with this. The natural environment is known to have a restorative function in that it reduces stress and anxiety levels. There is a strong link between the visual environment and people's mental and physical health.*

10.37 Accordingly, it is clear that issues relevant to this Inquiry, namely concerns about impact on air quality, traffic congestion and detrimental changes to the visual environment will affect people's wellbeing. This is borne out by the various personal testimonies which have been given from Rule 6(6) parties and others. This is important, because wellbeing is a relevant feature in planning decision-making. Attention is drawn to the following in this regard:

**NPPF 2018 Paragraph 127**

*Provides that planning policies and decisions should ensure that developments*

*.....*

*(f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users....*

**The Hertfordshire County Council Local Transport Plan 3 (2011 – 2031)** as cited by Mr Crabb.<sup>511</sup>

This sets out the transport strategy for the next 20 years in Hertfordshire, and

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<sup>510</sup> CD A9 paragraph 7.8.2

<sup>511</sup> Mr Crabb's Proof paragraph 3.6.1 The LTP is at CD P5 NB The current version of the Local Transport Plan is LTP4 – see Doc 81

the vision, goals and challenges that the County Council wishes to achieve over this time. The plan covers all modes of transport and takes into consideration the further effects of transport on a wider scale, including the impact on economics, environment, climate change and social inclusion.

Mr Crabb goes on to say that *'The overall vision set out by the plan is to provide a safe, efficient and resilient transport system that serves the needs of businesses and residents across Hertfordshire and minimises its impact on the environment.'*<sup>512</sup> The goals set out in order to help achieve the vision include the need to *'Enhance the quality of life, health and the natural, built and historic environment of all Hertfordshire residents.'* No reference is made by Mr Crabb to Essex, notwithstanding the close proximity of many to the site and who arguably would be more affected than those residing in Hertfordshire.

## CONCLUSION

10.38 Very many local residents have the impression that a prior decision was made at an early stage that it would be convenient to site an ERF at Ratty's Lane and that subsequent efforts by both the Applicant and Hertfordshire County Council have been focussed on securing this at any cost. It is considered that the many negative impacts of the proposal have been underplayed whilst well-reasoned and evidence-based arguments against it from all sides have been ignored. In particular and most importantly no cognisance has been taken of the provisions of national and local policy including, in the case of Hertfordshire, their own which cast serious doubt on the proposed development.

10.39 The Joint Parish Councils do not purport to argue the point of whether or not an ERF is required to serve the needs of Hertfordshire. It is, however, strongly contended that the site chosen for this ERF, on the very edge of Essex, is not suitable. Indeed, it would appear from the evidence that no other Veolia-run ERF is so close to a county boundary.

10.40 The Inspector is respectfully invited to recommend to the Secretary of State that the application should be refused.

## **11. THE CASE FOR THE HODDESDON SOCIETY (RULE 6(6) PARTY)**

*(The case for the Hoddesdon Society is reported substantially in the form of the closing submissions)*<sup>513</sup>

11.1 The proposed ERF at Ratty's Lane Hoddesdon is contrary to Hertfordshire's Waste Core Strategy (WCS) as well as national planning policy. This will be a thread running throughout the whole of this submission. We feel strongly that the siting of an ERF for Hertfordshire should follow a plan led process.

11.2 Hertfordshire's WCS,<sup>514</sup> the Waste Site Allocations Document<sup>515</sup> and the Hertfordshire Waste and Minerals Policy,<sup>516</sup> as approved by the Planning

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<sup>512</sup> Ibid paragraph 3.6.2

<sup>513</sup> Doc 85 See also the proofs of evidence of Mr and Mrs Metcalf, Mrs Thorne, Ms Day, Mr Brooks and Docs 3, 21, 62, 65, 89, 94 and 95

<sup>514</sup> CD C1

<sup>515</sup> CD C2

<sup>516</sup> CD C5



Inspectorate, should be given great weight.

- 11.3 High regard should also be paid to the principal national planning policies that stress the need for a plan led process. That is to say the National Planning Policy Framework (NPPF) and the National Planning Policy for Waste (NPPW).<sup>517</sup>
- 11.4 Any proposal should be consistent with district local plans, in this instance, Broxbourne,<sup>518</sup> Epping,<sup>519</sup> and East Herts Local Plans. This is clearly not the case and should be given considerable weight. This is supported by the requirement set out at paragraph 15 of the new NPPF that the planning system should be genuinely plan-led. A key deciding factor in the approval of a proposal is whether or not it is consistent with local plans.<sup>520</sup>
- 11.5 A development of the size proposed will, to an extent, be counter to some planning policies. In this instance, however, most policies are breached, which attests to the unsuitability of the location and site.

## SITE ISSUES

### **Proximity Principle**

- 11.6 When site selection is being considered, the proximity to all the collection authorities should be a major consideration to enable vehicle mileage to be reduced, road congestion and pollution lessened. The WCS is quite clear on this in Policy 9 Sustainable Transport<sup>521</sup> and Policy 7 General Criteria for assessing planning applications. Two of the criteria are proximity to main waste arisings, together with minimising transport distances. No data which bears scrutiny has been presented at this Inquiry to demonstrate that Ratty's Lane meets these criteria.
- 11.7 Objective 6 of the Joint Municipal Waste Strategy (JMWMS) states that the Herts Waste Partnership will consider working with neighbouring authorities to achieve the most sustainable solutions for dealing with residual waste. This is endorsed by DEFRA who state there is nothing in the legislation or the proximity principle that says accepting waste from another council or region may not be the best economic and environmental solution.<sup>522</sup> It could be the outcome most consistent with the proximity principle.
- 11.8 Also, DEFRA says that *While there is an underlying principle of waste being managed close to its source, there is no implication of local authorities needing to be self-sufficient in handling waste from their own area.*<sup>523</sup>

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<sup>517</sup> CD D4 Section 3: Waste planning authorities should prepare Local Plans which identify sufficient opportunities to meet the identified needs of their area for the management of waste streams.

<sup>518</sup> CDs C3 and C4

<sup>519</sup> CD N11

<sup>520</sup> CD D5 DEFRA Energy from Waste: A Guide to the Debate – Chapter 4, paragraph 2, page 6

<sup>521</sup> CD C1 Policy 9 Sustainable Transport (paragraph 4.80 Minimising the need to travel is a key national policy objective. As a measure of sustainability, dealing with waste as close as practicable to its origin, is an important consideration in the waste guidance. The principle is applied in Hertfordshire and given that the county's current transport system is complex and congested with a heavy reliance on road transport, there is a need for a strategic transport policy as part of this Plan's strategy to actively promote alternatives to road transport.

<sup>522</sup> CD D5 paragraph 4, page 6

<sup>523</sup> Ibid paragraph 150, page 43

11.9 Ratty's Lane is on the eastern edge of the County and for this reason provides an inappropriate site, yet the Applicant claims a specific mileage saving. However, this is predicated on a theoretical northern waste transfer station whose specific location is not yet agreed. The designated route to Ratty's Lane, and therefore the mileage, is thus undermined.<sup>524</sup> This claim cannot be given any weight.

### **Inadequate site assessment**

11.10 The process of site selection is basically flawed. In Schedule 2 of the County's contract with Veolia headed 'Authorities Requirements', one of the key objectives is for Veolia to *Identify, select and secure a site [or sites]*.

11.11 Once the Secretary of State had rejected New Barnfield, Veolia began the process of alternative site assessment. As Veolia is a public limited company it is bound, and rightly so, to have the interests of its shareholders in mind.

11.12 The Ratty's Lane site has clear advantages for Veolia, as a considerable amount of work was done when it was put forward as a site for a power station at New Barnfield in bidding for a contract to deal with North London's Waste.

11.13 What should have happened, right from the start, was that Hertfordshire County Council should have selected a site or sites in keeping with their policies and with the interests of all its residents in mind, together with consideration of efficient operation. What has happened is the selection of a site by a private company that has clear advantages for it, and then there has been an attempt to justify the selection to suit Hertfordshire's needs.

### **WCS Policy 1**

11.14 The policy clearly states that provision for new appropriate and adequate LACW management facilities will be provided within the broad areas A, B, C, D and E as shown in the Key Diagram.<sup>525</sup> The Ratty's Lane site lies outside all areas of search and has been discounted during alternative site assessments in 2011, 2012 and 2013 made during consideration of the proposed New Barnfield RERF.

### **Site Access**

11.15 Access is down the single track Ratty's Lane where a complicated traffic light system comprising four sets of lights is proposed. However, we doubt this is adequate given that the existing ATT/AD plant on Ratty's Lane will also be part of this regulation. Entry to Bidvest, a large food distributor with 40 loading bays, a short distance from the first traffic light, and the sliding gates at the entrance to the ATT plant as seen during the Inspector's site visit, remain unresolved issues.

### **Minerals Policy 10**

11.16 The site is a safeguarded rail head protected under Minerals Policy 10 and

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<sup>524</sup> Mr Crabb's Proof Appendix JCO6. The data shows a large mileage savings is made as a result of the addition of a Northern Waste Transfer Station. The location of or the route from a NWTS to Ratty's Lane could not be given and so mileages cannot therefore be calculated or verified. The mileage from Royston and all other northern locations are given as 8 miles which can't be correct if Stevenage is the location Mr Crabb that was tentatively suggesting.

<sup>525</sup> CD C1 page 39

continues to be protected under policy 9 of the Draft Minerals Plan.<sup>526</sup>

Paragraph 204 of the revised National Planning Policy Framework seeks, among other things, to safeguard existing sites for the bulk transport, handling and processing of minerals and the handling, processing and distribution of substitute, recycled and secondary aggregate material. The County Council has identified the existing Orphanage Road Depot as being at risk from other development.<sup>527</sup> The loss of two sites in Hertfordshire would reduce rail heads in the County by 50%. The site would not remain an aggregate depot if re-tasked to export IBA.

11.17 The County Council and Veolia have suggested that there is an alternative site at Harlow that could substitute for the existing Tarmac site in Hoddesdon. There is no evidence of an assessment put forward by the applicant demonstrating that it could cope with the demands of the A10/M11 corridor that the Hertfordshire Local Economic Partnership has identified as a major growth area. Currently Hertfordshire imports 500,000 tonnes of crushed rock as it has no resource of its own and is a major exporter of sand and gravel.<sup>528</sup>

11.18 National Policy (NPPF and NPPW) emphasises the need for a genuinely plan-led system. This is important. Minerals Policy 10 is the extant policy. The only way changes to this policy can be made, is through the plan-making process. To set aside a policy without a thorough analysis of need and going through due process is unacceptable and in itself is a basis for refusal. This point was made by Veolia's brief in closing submissions at the New Barnfield Inquiry.<sup>529</sup>

*71. It is a site safeguarded as an aggregates railhead in the statutorily adopted Hertfordshire Mineral Local Plan Review of 2007. The landowners may well wish to remove that designation, but it is there in the statutory development plan and the Veolia Development Consent Order (DCO) application was objected to by HCC for that and highway reasons. Veolia may well have been hopeful that these objections could be resolved but the fact is that the application was withdrawn and they remain as acknowledged constraints.*

### **Incinerator Bottom Ash**

11.19 Incinerator Bottom Ash (IBA) forms approximately 20% of waste burnt. There are community concerns regarding odour and dust. Rye Park, the nearest large residential area is only 800 metres away.

11.20 The IBA will be housed in open storage bays and loaded on to railway trucks using a shovel loader. The ES says that *The ash will be moved along the storage bays, as each train load is removed to ensure that the oldest ash is removed from site first.*<sup>530</sup> However this was denied by Mr Bridgwood in cross-examination. In Veolia's New Barnfield proposal, the main building included an ash handling and storage facility, so the IBA was dealt with internally.<sup>531</sup> In

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<sup>526</sup> CD C5 and CD C6 Policy 9 page 40 respectively

<sup>527</sup> Hoddesdon Society's Appendices: Herts CC Aggregates Assessment 2017 paragraph 5.20, page 19

<sup>528</sup> CD C6 Hertfordshire Minerals Local Plan Consultation draft 2017 paragraph 5.18, page 14

<sup>529</sup> Appended to the evidence of the Hoddesdon Society in the folder headed 'Sources for Objection 2'.

<sup>530</sup> AECOM Environmental Statement Part 3 paragraphs 4.4.40 - 4.4.46

<sup>531</sup> VES Proposed RERF at New Barnfield Centre - EIA Scoping Report July 2011 paragraph 3.2.1, page 6 'The dome will accommodate .....ash handling and storage.'

addition, as seen during the Inspector's site visit, at Veolia's facility at Four Ashes, Staffordshire, the IBA is dealt with in a large shed.

- 11.21 The lack of suitable ways of handling IBA at Ratty's Lane is no doubt down to site constraints. The current arrangements are unsatisfactory in view of potential odour<sup>532</sup> and not what should be expected of a modern plant in a sensitive location.

#### **Criteria for the selection of a sustainable site**

- 11.22 These are set out in policy 11 of the WCS.<sup>533</sup> Planning applications will be granted provided that the criteria can be met. In this case however, it appears that none of the criteria relevant to this site are met.

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

- 11.23 Siting: It is set on a sensitive urban rural/metropolitan Green Belt edge and does nothing to assist stepping down from one to the other. In addition, this valley floor site is of concern as winds do not have such an effective scouring action and pollutants can collect in the valley.<sup>534</sup>
- 11.24 Scale: In the case of New Barnfield, the applicant said that *The existing landform will be remodelled to set the building into the ground and there will be a change in level within the dome of 5 metres.* This is not possible here. To the contrary, the ground levels would be raised by 2 metres and the building would be twice the height of the local storage and distribution centres and over three times the height of the ATT plant.
- 11.25 The size of the proposed ERF would mean that not only would it impact on the town of Hoddesdon where buildings in the Conservation Area with an easterly view will be adversely affected, but it will also affect residential areas. In particular, Rye Park will be affected, as well as residents whose properties back onto the New River, both of which were observed during the Inspector's site visit. The adverse impact on the Lee Valley Regional Park will be dealt with in our consideration of impacts on the park.
- 11.26 Design: The design of the facility has been dictated by the constraints of the site. The developable area is about 2.5 hectares, but this has to include overhead power line.<sup>535</sup>
- 11.27 The site is on a flood plain. To accommodate this, the building had to be raised 2 metres. Mitigation measures, as at Veolia's Newhaven plant where the ERF has been sunk 20 metres below ground level leaving 26 metres of the building visible, are not possible. Ground water levels are high and the primary chalk aquifer from which London draws its drinking water is just below the surface.
- 11.28 With these constraints the architect had no option but to increase the height of the building to 48 metres and to produce a design that is slab like in structure, adjacent to the Lee Valley Regional Park and the Metropolitan Green Belt.

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<sup>532</sup> Doc 62 EA permitting IBA

<sup>533</sup> CD C1

<sup>534</sup> Doc 45 Mrs Hindmarch on behalf of Dr Lowe

<sup>535</sup> Hoddesdon Society Proof Objection 5

11.29 Location: A valued landscape will be compromised. What would be Hertfordshire's largest most prominent building would not be a credit to Broxbourne's, Hertfordshire's, Epping's or Essex's sky line. It would set an undesirable precedent for further industrialisation of the local landscape. We are at a crossroads in this regard and the outcome of this appeal could determine whether we continue with rolling countryside, valued landscapes and generally low-rise buildings as residents would choose, or pave the way to exacerbate views which are already partially compromised by the existing power station. A discordant and much larger even more visible addition would create an unpleasant synergy, harming our sense of place.

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

11.30 In this case, even the tallest trees will not shield this building. Attempts to mitigate visual intrusion such as using graded coloured panels as the building rises in height, with translucent polycarbonate panels at the top, will partially work, but translucent panels are of concern as the building will be visible at night.

*iii) Amenity and human health*

11.31 Operation of the site would have an adverse impact on both amenity and human health. The Health Impact Assessment (HIA)<sup>536</sup> does not have the appropriate evidence base to make an assessment. Anxiety and effect on wellbeing was attested to in numerous witness statements, including those of Mrs Thorne, Mrs Wright, Mrs Batra and Mrs Chivers, together with over 1000 people who marched through Hoddesdon in protest against this incinerator.<sup>537</sup> There is obvious anxiety.

11.32 The applicant talks of an engagement programme which sought to *capture a 'snapshot' of stakeholder opinion with which to inform the evidence base for the HIA.*<sup>538</sup> We were told that the primary mechanism for this interaction was a series of workshops. No such workshops were held for this proposed ERF and this is confirmed by the applicant stating that *The findings from the 2012 Fields Lock Power Station EIA and HIA engagement are still deemed valid for the ERF HIA, given there has been no change in the location and many other aspects of the Proposed Development.*<sup>539</sup> Although the officer's committee report talks of *HIA engagement activities*, that presumably means the engagement in 2012 for a rail based project.<sup>540</sup>

*iv) and v) the development or operation of the site would not adversely impact upon wildlife habitats, the natural, built or historic environments.*

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<sup>536</sup> CD A9

<sup>537</sup> Hoddesdon Society Proof (evidence of Mrs Thorne) Docs 13, 16 and 60, as well as memory stick film of the march (part of the evidence of the Society).

<sup>538</sup> HIA p 33/4 5.2.1 *The information that the engagement programme provides derives from stakeholders potentially affected by the Proposed Development. Stakeholders were asked to consider and to comment upon the potential health effects of the Proposed Development. In so doing, the engagement programme sought to capture a 'snapshot' of stakeholder opinion with which to inform the evidence base for the HIA.*

<sup>539</sup> Paragraph 5.2.1 pages 33/34

<sup>540</sup> CD B1 paragraph 17.9, page 133

- 11.33 The ERF would be visible from the Grade 1 Listed Rye House Gate House, especially from the top of the building which is open periodically to the public.<sup>541</sup>
- 11.34 The adverse impact with regard to Hoddesdon and the Regional Park are dealt with elsewhere.
- ix) There should be no adverse cumulative impact on the local area*<sup>542</sup>
- 11.35 The cumulative impacts have not been adequately assessed. They are required to be assessed as a matter of policy. The NPPW requires that waste planning authorities should assess the suitability of sites and /or areas for new or enhanced waste management facilities against specified criteria. One of the criteria refers to the cumulative impact of existing and proposed waste disposal facilities on the well-being of the local community, including any significant adverse impacts on environmental quality, social cohesion and inclusion or economic potential. In the absence of assessment, there is no assurance that significant impacts will not be visited on our area and its communities.<sup>543</sup>
- 11.36 The ES<sup>544</sup> recognises that synergistic effects, that is the combined effects of different types of impacts, for example, noise dust and visual will be assessed for different receptors. Also, the cumulative impacts from several developments are to be considered.
- 11.37 The assessment of air quality and the effect of sensitive receptors does not take into account the combined effects of the ATT/AD Plant emitting similar materials to the atmosphere less than 100 metres from the ERF together with the Rye House Power Station, as was acknowledged by Mr Barrowcliffe in cross-examination, and can be seen in the ES.<sup>545</sup> In response to the Feildes Lock Power Station planning application, the County Council suggested that the pharmaceutical stacks were also modelled.<sup>546</sup> There is no evidence that the emissions from the existing MSD stack in Hoddesdon, to the North of the A10 slip road, has been modelled in this application.
- 11.38 Neither the applicant nor Mr Honour assessed the impact of the combined emissions from the proposed ERF and the existing ATT/AD Plant on the Lee Valley Special Protection Area and Ramsar site, Wormley-Hoddesdon Park

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<sup>541</sup> Gatehouse open 10 June, 16 July, 12 and 26 August 11am – 4pm

<sup>542</sup> **Inspector's Note** – as I requested earlier in the proceedings, a note from Mr Honour (for the applicant) relating to cumulative air quality effect on sensitive ecological receptors was handed up to the Inquiry but not until after the Society had made its closing submissions (although before closings for the applicant) (Doc 89). Given the lateness of the submission, I allowed the Hoddesdon Society to make further representation on the matter in writing (Doc 94) with final comments then submitted by Mr Honour for the applicant (Doc 95). Docs 94 and 95 were submitted after closing submissions. Whilst not reflected in the closings for the Society, I have taken the matters raised into account in my reasoning below.

<sup>543</sup> CD D4 NPPW bullet 4 on page 5

<sup>544</sup> CD A14 Appendix 2.1 Scoping Report April 2016 – Chapter 15, paragraph 15.1.1

<sup>545</sup> Ibid Section 7.1 Air Quality Dispersion Modelling (combined modelling data can be found at Annex E at the back of the Appendix but this data has not been carried through and used in air quality assessments as was acknowledged by Mr Barrowcliffe during XX).

<sup>546</sup> IPC Scoping Opinion Proposed Feildes Lock Power Station Dec 2011 Appendix 2. HCC's response para 10 Air quality will be an issue of considerable interest to local people and steps across a number of local authority boundaries. Any modelling and consideration of this subject would need to take account of the views of these different bodies. Again, the modelling should take account of the Trent Development proposal. The scoping report also says that it will check other sources. There are a number of pharmaceutical companies which have facilities which may need to be included in any modelling which we are aware of from our position as waste planning authority.



SAC, or Totwellhill Bushes (ancient woodland) or any other assessed sites.<sup>547</sup> These are serious omissions which should not be over looked.

11.39 Birds that over-winter on SPAs/Ramsar sites utilise areas of supporting habitat, which could include Glen Faba lake, much closer to the proposed site than Rye Meads.<sup>548</sup> We contend that in this case, the precautionary principle should apply.

*x) The proposal should not be in conflict with WCS Policies.*

11.40 Firstly, as demonstrated above, most criteria in WCS policy 11 are not met. Secondly there is non-compliance with WCS policies 1, 1A, 3, 7, 9, 13, 14 17 18 and 19.

### **Sustainable Development**

11.41 Paragraph 38 of NPPF 2018 is supportive of applications for sustainable development, defined as meeting the needs of the present without compromising the ability of future generations to meet their own needs. Paragraph 8 of the new NPPF says that achieving sustainable development means that the planning system has three overarching objectives: economic, social and environmental. This proposal is contrary to all three objectives in many different ways.

11.42 WCS Policy 7 says that planning applications outside of identified locations should be able to demonstrate how the proposal contributes to the JMWMS.<sup>549</sup> The JMWMS promotes sustainability but this proposal, which is outside any area of search, does not maximize the potential to push waste up the hierarchy.

11.43 The overall vision of the JMWMS is to minimise waste and maximise recycling.<sup>550</sup> Front end recycling could further enhance productivity from waste. Mr Egan suggested that this would be commercially unviable, but this misses the point. The absence of any front-end recycling function means that there would be an environmental cost from increased pollution and carbon dioxide emissions and it would detract from prudent resource management.

11.44 The technology is readily available, and Veolia were going to use it in the RERF at New Barnfield.<sup>551</sup> Front end recycling could extract a further 8% from residual waste under current circumstances. This could increase if packaging is produced with recycling in mind, as is the government's intention. This is especially significant for denser areas of population where space is at a premium, as was agreed by Mr Bridgwood in cross-examination.

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<sup>547</sup> CD A15 ES Appendix 10.1 Report to inform Habitat Regulation Assessments and Mr Kevin Honour 's proof p35 Table 7.1 takes his data from Appendix 7.1 page 63 Table 5-16 /Dispersion Modelling for Sensitive Ecological Receptors NOx and p69 5-6 Dispersion Modelling Results of Sensitive Ecological Receptors Nutrient Nitrogen Deposition which do not reflect cumulative impacts.

<sup>548</sup> CD A15 ES Appendix 10.1 paragraph 5.2.2 acknowledges that birds over wintering at Rye Meads Ramsar site utilise areas of supporting habitat outside the SPA, including Gadwall and Shoveler.

<sup>549</sup> CD K1

<sup>550</sup> Ibid Section 1

<sup>551</sup> Proposed RERF at New Barnfield EIA Scoping Report URS July 2011 paragraph 3.1.1 Processes: Veolia is proposing a MPT that will combine a number of screening and sorting techniques dividing waste into a marketable recyclable material stream and a residual stream to be processed at the RERF section of the facility. And Bullet point 2 Mechanical sorting of recyclables from the residual waste stream (paper, plastics and metals).

- 11.45 Objective 4 of the JMWMS requires that regard be had to the views of the local community in determining and implementing initiatives for the management of waste. The local community is solidly against this proposal. The WCS itself was subject to public consultation and its policies endorsed by the Inspectorate, but these policies are now being disregarded. Were this facility to be approved, it would be imposed, not agreed, and would establish a dangerous precedent for Local Authorities to ignore their planning frameworks.
- 11.46 JMWMS Objective 5 seeks to ensure that the movement of waste up the Waste Hierarchy is not compromised. This 30/40-year contract, during a time of rapid change in waste minimisation, backed by government policy, could mean that there is insufficient waste to serve a facility of this size.<sup>552</sup> We certainly question the approval of another facility for predominantly commercial and industrial waste in Ratty's Lane.
- 11.47 JMWMS Core Policy 1 requires that current and future policy development should also take account of national, regional and local guidance and other plans and strategies of all of the Hertfordshire authorities. This application is defective in this regard.
- 11.48 Policy 3 of the WCS relates to sustainable energy electricity. The importance of the need to produce more electricity from renewable resources is well recognised. Whilst the contribution from the proposed ERF is to be welcomed, the contribution of just 30MW to national grid for electricity generation is minimal. Part of this contribution is based on the burning of plastics, which is emphatically not renewable. Greater energy savings are made by recycling these. This is endorsed by the Government's intention to improve the management of residual waste, by investigating ways to cut carbon dioxide emission from EfW facilities by managing the amount of plastics in the residual waste stream. This is to be linked with opportunities to recycle more plastic and reduce the amount used.<sup>553</sup>
- 11.49 The thermal efficiency of an ERF producing just electricity is quite low, which significantly reduces carbon savings. In order to realise significant greenhouse gas savings, a CHP scheme is necessary.<sup>554</sup> Currently, only three of Veolia's ten ERFs and RERFs have these systems.<sup>555</sup>
- 11.50 A heat network is not part of this planning application. Currently this scheme cannot be justified on that optimistic basis. Maximising waste as a resource would need to ensure the maximum amount is recycled. The omission of Mechanical Pre-Treatment is a retrograde step and it is out of step with Hertfordshire's stated view that there is the need to extract as much value from waste as possible.<sup>556</sup>

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<sup>552</sup> CD J17 Green Future Our 25 Year Plan to Improve the Environment (page 84) Maximising resource efficiency and minimising environmental impacts at end of life. We are committed to working towards our goal of zero avoidable waste by 2050 and doubling resource productivity over the lifetime of this Plan. In order to do this, and to maximise the value we get from our resources during their lifetime, we need to look at their whole life-cycle – from production, to usage and what we do with them at the end of their lives. We have committed to develop a new national Resources and Waste strategy to achieve this.

<sup>553</sup> Ibid Chapter 4 page 83 bullet 1

<sup>554</sup> CD C1 WCS page 41

<sup>555</sup> Proof of Mr McGurk paragraph 2.7 page 14 and Mr Bridgwood in XX.

<sup>556</sup> CD C1 WCS paragraph 4.42, page 45

## **Adverse impact on Hoddesdon Town Centre**

- 11.51 Paragraph 192(b) of the revised NPPF says that in determining planning applications, local planning authorities should take account of *the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality*.
- 11.52 Section 7 of the new NPPF, headed *Ensuring the vitality of town centres*, also suggests, at paragraph 89, albeit within the context of out of town shopping centre proposals, that the impact of any proposal on town centre vitality, including local consumer choice and trade in the town centre should be taken into account when considering planning applications. In saying this, the revised NPPF builds on paragraph 131 of the previous version where it stated that *In determining planning applications, local planning authorities should take account of: the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality*.
- 11.53 Hoddesdon High Street is a designated Conservation Area and is a much valued destination within the Borough. We contend that if the setting is damaged, the Conservation Area is adversely affected. A large number of listed buildings are working assets. That is to say pubs, restaurants, shops and services, so it is not just visual impact, but economic impact that has to be considered. The setting would be altered significantly by placing a highly visible building, some 48 metres high with stacks of some 87 metres, emitting a plume for up to 25% of the time within 1 kilometre of the Conservation Area.
- 11.54 A building of this dominance and visibility, that many would simply refer to as an incinerator, would affect the perception of Hoddesdon to the extent that it would not be such a pleasant place to visit. In the generally fragile state of high streets, even a small decline in trade would lead to some businesses closing shutters going up and a downward spiral begins. The High Street becomes degraded and the vitality and attractiveness of the Conservation Area is diminished.
- 11.55 Mr Kevin Brooks, Chair of the Hoddesdon Business Improvement District, representing over 200 businesses, was quite clear in his evidence and concluded that there would be irreparable damage to the High Street should this proposal go ahead.<sup>557</sup>
- 11.56 Hoddesdon has turned itself round and now has a thriving High Street, but in the present retail climate its position is fragile. Perception of places is very important and whether visitors chose Hoddesdon to shop, eat or whatever, as opposed to one of many nearby centres, is critical.
- 11.57 It should be noted that WCS Policy 1A confirms the presumption in favour of sustainable development in line with the NPPF and the intention to secure development that improves the economic, social and environmental conditions in the area. The WCS also suggests such development should contribute to building strong, responsive and competitive vibrant and healthy communities.<sup>558</sup>

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<sup>557</sup> Hoddesdon Society's Appendices witness statement of Mr Brookes chair of Hoddesdon BID

<sup>558</sup> Paragraph 4.27, page 39

- 11.58 This proposal would undermine all the achievements to date and would damage sustainability as defined in the NPPF.
- 11.59 The case of *Steer v Secretary of State*, heard by Mrs Justice Lang, is relevant.<sup>559</sup> Mrs Justice Lang considered that the setting of a heritage asset should be taken into consideration as it informs the visitor of the nature of the asset. Clear views of the ERF are unavoidable on approaches from Hertford, Ware and Waltham Abbey, as well as at the two railways stations serving Hoddesdon. Mrs Justice Lang was clear on cumulative impact when she quoted the guidance given by Historic England:
- Where the significance of a heritage asset has been compromised in the past by unsympathetic development affecting its setting to accord with NPPF policies, consideration still needs to be given to whether additional change will further detract from or enhance, the significance of the asset.*
- 11.60 Miss Kelly, for the Applicant, states that there would only be 'glimpsed views' of the proposed ERF from inside the Conservation Area. As such, she says there is little harm to the Conservation Area. Site visits with the Inspector, as well as photographic evidence in the Hoddesdon Society's Proofs (Objection 3) show that this is simply not the case. It will be visible from a Grade II\* building, St. Catherine and St. Paul Parish Church, as well as other places.
- 11.61 When considering the ERF in relation to Hoddesdon town centre, Broxbourne's Local Plan should carry significant weight. In particular, policy HD12 sets out that *development adjoining, or visually related to, Conservation Areas, or would have an impact on a Conservation Area, will only be permitted if it places. would not adversely affect the setting of that conservation area.*
- 11.62 In addition, policy HD13 states that *new development cannot be viewed in isolation from its surroundings. An understanding of the context (that is, the character and setting of the area in which the development will be located) is crucial and should be the starting point for the creation of distinctive and attractive places. Good design should reinforce the positive features of a locality (such as its townscape quality, its history, landscape, building traditions and materials, open spaces, bodies of water etc.) whilst seeking to ameliorate negative influences. In this regard, the Borough's heritage of old and important buildings is particularly important in contributing to a sense of local distinctiveness.*
- 11.63 Policy HD14 relating to Design statements on local character states that *The council expects applicants for planning permission to demonstrate how their development proposal reflects and relates to local characteristics and the context of the surrounding area. Development proposals should as a minimum maintain, and, where possible, enhance or improve the existing character of the area.*
- 11.64 Issues raised by these policies should have been addressed.

### **Lack of a Socio-Economic Impact Assessment**

- 11.65 The Hoddesdon Society contends that a full socio-economic impact assessment

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<sup>559</sup> Appendix 4 to the proof of Miss Kelly

should have been done at the start of the planning process. An inadequate submission was made on 9 June 2018<sup>560</sup> and even then, no attention was paid at all to the economic impact of the ERF on Hoddesdon town centre businesses or those in the area.

- 11.69 Socio economic impact is important in the context of the revised NPPF. Paragraph 80 states that *Significant weight should be placed on the need to support economic growth, taking into account local business needs and wider opportunities for development*. The business community within Hoddesdon Business Park and the town centre contend that this development will hinder economic growth rather than support it.
- 11.70 Wardell Armstrong say *that employment is a key focus of the socio-economic Assessment*.<sup>561</sup> The document claims that 40 jobs will be provided on a permanent basis and that of these, 20 will be taken by local people. This should be put in the context of Hoddesdon Business Park where up to 5000 jobs are provided.
- 11.71 Broxbourne is a prosperous area with full employment. As the report says: *Between 1999 and 2014 Broxbourne's GVA compound annual growth rate was 3%. This was a faster rate than both Hertfordshire and the UK*. There is no evidence that this trend will not continue and the focus, particularly during the construction phase, could well be on labour shortage.
- 11.72 Hoddesdon Business Park is successful. The Memorandum<sup>562</sup> from Hertfordshire Highways to the Spatial and Land Planning Unit 21/9/2017 Herts Highways said:
- The business park is an important income generator in Hertfordshire and plays a significant economic role in the wider region. The Essex Road Gateway Study (Arup for HCC & Broxbourne) places the economic value (GVA) of the business park at £0.8 to £1.5 million per day.*
- 11.73 However, the proposed ERF puts its viability at risk. Employers on the other side of the railway bridge even now talk of difficulties in terms of access and resulting problems of recruiting staff and receiving potential customers.<sup>563</sup> Any proposal to build an ERF next to the Lee Valley horticultural area should have been examined in detail. The horticultural industry in the Lee Valley is of great importance both locally and nationally. It employs over 2,500 people and generates a retail value in excess of £1billion to the British economy.
- 11.74 There is no real impact assessment on the Lee Valley Regional Park. Visual impact is mentioned, but this is an extremely subjective area as is evidenced by the opposite views taken by Veolia's consultant Mr Hammond , and the County Council's Landscape officer.
- 11.75 Total visitor numbers are quoted, but no attempt is made to assess the effect of a changed landscape or other sources of revenue to the area such as the Fish and Eels public house at Dobbs Weir, The Rye House (public house by the Lee near the Grade1 listed Gate House) the caravan and camping site at

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<sup>560</sup> Wardell Armstrong Report appended to the rebuttal proof of Mr Bridgwood.

<sup>561</sup> Ibid page 8 paragraph 3.1.1

<sup>562</sup> CD B3

<sup>563</sup> Mr Merhemitch (BxB Proofs)



Dobbs Weir, Roydon Marina, Broxbourne Boating Centre, ESSA Water Activities Centre, and local fisheries. In the current era of austerity, all public bodies are under pressure to earn revenue and the Lee Valley Regional Park is no exception

- 11.76 A large part of the Wardell Armstrong Report is given over to evidence from an out of date Cluttons Report that looks at property prices and investment. It concludes that *there is no evidence that the location of the ERF plants resulted in harm to the local economy*. However, the Cluttons report,<sup>564</sup> last updated in 2011, is based on a 210,000 tonnes per annum ERF, considerably smaller and with less potential impact in all respects. The study is supported with reference to three other ERFs of 90,000tpa, 190,000 tpa and 195,000tpa. No comparable exemplars are used – Ratty’s Lane ERF has 350,000tpa capacity and the road access to all three exemplars is significantly better, with several approach roads.
- 11.77 Wardell Armstrong goes on to say that *This narrow evidence base should be used to draw conclusions only with caution*.<sup>565</sup> This Report is dated 2011. As such, its relevance is diminished considerably. Moreover, it is to be doubted that data from an area very different from Broxbourne can lead to valid conclusions.
- 11.78 Hoddesdon town centre is doing well in comparison with other town centres. This is in part down to the fact that it is a Conservation Area. The Wardell Armstrong report does not address in any depth how building a massive dominating structure will affect the image of the town. The Report also lacks rigour and depth and does not drill down into the major issues, some of which could have significantly adverse effects on the economy of the area.<sup>566</sup> The only real evidence before the Inquiry is from local experts.

### **Road Transport & Traffic**

- 11.79 Clearly the impact of any proposal on traffic is important. The relevant development plan policy in relation to this is WCS Policy 13 which states that:

*New waste related development and the expansion of existing waste management facilities will be permitted where it is clearly demonstrated that the provision for vehicle movement within the site, the access to the site, or the conditions of the local highways network are such that the traffic impacts likely to be generated would not have a significant adverse impact on: i) highway safety; ii) the effective operation of the highway network; iii) amenity; iv) human health; and v) the historic and natural environment.*

- 11.80 Some of these conditions have not been met. The site is 3 kilometres from the primary road network and the route has many points where vehicles would have to potentially stop and start adding to air pollution. The A10 slip road, which marks the descent into the Lee Valley, will have a dumb-bell roundabout and toucan crossing built across it, followed by the Sun Pub roundabout, then traffic lights and a pedestrian crossing by a primary and nursery school on the

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<sup>564</sup> Appendices 8.1 and 8.2 of the proof of Mr Bridgwood

<sup>565</sup> Appendix 8.1 to the proof of MR Bridgwood paragraph 6.1.21

<sup>566</sup> Rebuttal of Wardell Armstrong Report by The Hoddesdon Society – Hoddesdon Society Appendices



A1170. This crossing is the main pedestrian link between the town centre and North Hoddesdon. The New River Bridge (subject to improvements), the three-way traffic lights at Pindar Road, the Ratty's Lane roundabout, one-way signals to access the narrow single-track part of Ratty's Lane also hinder efficient vehicular movement. There are many business entrances on Essex Road - Mr Russell mentioned 14 potential turning points. Large HGVs negotiating these entrances restrict traffic flow, as confirmed in Mr Russell's Proof.

- 11.81 The proposed highway improvement to the New River Bridge will take traffic to the next problem, namely the three traffic lights and pedestrian crossing at the complex junction before the Gerald Game Bridge.
- 11.82 To overcome traffic impact, the applicant has proposed traffic management plans to mitigate against the adverse effects on our roads and the deterioration in our air quality. We are doubtful that they could be effective. Only a small number of vehicles would be in radio contact and a number of the vehicles delivering C&I might deviate from prescribed routes.
- 11.83 Public expectation is that there will be environmental improvements and a reduction in health damaging pollutants.
- 11.84 Projects such as Ambition Broxbourne Business Centre and the Woollensbrook Cemetery and Crematorium were not included in the traffic modelling.

### **Lee Valley Regional Park**

- 11.85 Although not a National Park, this is the Regional Park for London. As such, considerable weight should be given to the irreversible adverse impact that this proposal would have on the Park. The ERF proposal will harm landscape, visual amenity and biodiversity.
- 11.86 It is sited in the wrong location, in very close proximity to the River Lea, on the boundary of the Regional Park and adjacent to Metropolitan Green Belt.
- 11.87 Crucial amendments made by Inspector Holland to the WCS in order to offer protection to wildlife sites (WCS policy 18 parts ii) and iv) and to conserve areas of recreational value (WCS policy 18 part xii),<sup>567</sup> should be upheld.
- 11.88 With regard to WCS Policy 14: Buffer Zones, we doubt that an appropriate buffer zone is in place to protect the Regional Park water corridor from the effects of light spillage,<sup>568</sup> nor park users and adjacent residents in houses or boats from noise, visual impact, potential odour and diesel fumes.
- 11.89 With regard to part iv) of WCS policy 19: Protection and mitigation, the County Council admits that measures to minimise adverse visual impact by planting would be of little effect and acknowledges that the introduction of the large building proposed would have a significant impact upon the water corridor.<sup>569</sup>

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<sup>567</sup> Report on the Examination into the WCS which forms part of the reference documents submitted in support of the case for the Hoddesdon Society in relation to their Objection 1.

<sup>568</sup> Mr Honour in XX by Ms Day for the Hoddesdon Society

<sup>569</sup> CD B1 paragraph 12.40 page 91

The County's Landscape Officer also talks of adverse impacts on the landscape of the Regional Park.<sup>570</sup>

- 11.90 The Lee Valley Regional Park Authority was consulted by the County Council as a statutory duty (Section 14 (4-7) of the 1966 Park Act<sup>571</sup> in relation to the proposed ERF and it made a written objection to the proposal. An officer spoke at the County Council's planning meeting on 22 December 2017 and also addressed this Inquiry. The views of the Authority, as a statutory consultee, relating to a very large development proposed for the boundary of the Park, should be weighted accordingly.
- 11.91 The Authority has objected to the proposal on the grounds that it would have an irreversible adverse impact on landscape and wildlife. The plans do not accord with paragraph 124 of the revised NPPF, which states that good design creates better places in which to live and work. The development proposed is not good design and will undermine the work that the Park Authority is doing in the area to improve the recreational and biodiversity value of local sites.
- 11.92 The decision to build the ERF materially conflicts with the proposals of the Authority for the development of the Park. It considerably compromises the ability of the Park Authority to achieve its adopted Vision for the Park<sup>572</sup> of aiming to create the Park as a world class leisure destination. There is a high emphasis on visitor experience and landscape: the adopted vision places a stronger emphasis on the importance of the visitor and the importance of landscape throughout the Regional Park.
- 11.93 The Park Authority objects to the ERF on the basis of the 'likely impact of this very large proposal given its location on a site adjacent to the boundary of the Park.' It defines the detrimental impact of the proposal as undermining the landscape context of the Park, detracting from the visitor experience.<sup>573</sup>

### **Landscape and Visual Amenity**

- 11.94 The openness of the Green Belt would be adversely affected. The County Council has itself described the development as involving undeniable 'harmful landscape impacts' in its opening statement<sup>574</sup> and planning documentation. In the Committee Report to Herts County Council the primary impacts were identified as being upon visibility and landscape with very limited potential for mitigation.
- 11.95 Industrial buildings occupy land to the west of the site, but that does not invalidate objection to the creation of additional adverse impacts on the landscape from the construction of an undeniably large scale and bulky building. The existing industrial buildings are significantly lower and generally well screened with the exception of the power station stacks.
- 11.96 The Regional Park Authority has its own Landscape Character Assessment which confirms that area A2: Rye Meads is identified as an area that comprises a rich assemblage of wetland habitats, including remnant ancient flood

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<sup>570</sup> Ibid paragraph 12.37

<sup>571</sup> Extracts from the Act are attached to the written submissions of the Park Authority

<sup>572</sup> Lee Valley Regional Park Statement of Case – paragraph 9 page 3

<sup>573</sup> Ibid paragraph 13 page 4

<sup>574</sup> Doc 6

meadows supporting locally rare tall fen vegetation, from which the ERF would be clearly identified.<sup>575</sup> The Authority also says that *Looking south* [from Rye Meads] *it is acknowledged that the character is more fragmented with detracting features to the south and the intended strategy is to seek opportunities to prevent incongruous and or visually intrusive development where these affect the setting of Rye House.*<sup>576</sup>

11.97 The clear intention of the Park Authority is to improve the area, and not to add incongruous features and we contend that this should be respected. Whilst the Feildes Weir Corridor is comprised of a variety of different landscape types, people experience the value of landscape at this location. The ERF will detract from this and will have a significant enclosing effect.

11.98 The landscape strategy for the area called Roydon Park is to conserve the rural undeveloped skyline, ensuring that development is below the tree canopy and avoiding the development of tall/vertical structures in this location.<sup>577</sup> At this location, the Park has higher landscape value, particularly the rolling hills of the Roydon area. Given the scale and size of the facility, it will dominate the Regional Park in this area.

11.99 The New Barnfield Inquiry identified the importance of the Regional Park and therefore dismissed Ratty's Lane as a potential site, due to the harmful impact on biodiversity and landscape. The Regional Park Authority objects to the ERF on the basis of likely impact of this very large proposal, given its location on a site adjacent to the boundary of the Park. As set out above, it defines the detrimental impact of the proposal as undermining the landscape context of the Park, detracting from the visitor experience.

11.100 Significantly, there will also be adverse impacts on priority species and biodiversity.<sup>578</sup> This goes against paragraph 170 of the NPF 2018, which stipulates that developments should minimise impacts on biodiversity.

*Lee Valley Regional Park Plan* (adopted 2000)<sup>579</sup>

11.101 The development proposals are contrary to key policies set out in Part 1 of the LVRP Plan. Policy L1.1 requires that the openness of the Regional Park should be protected and enhanced by:

- i) ensuring that no development in or adjacent to the Regional Park adversely affects its open character;
- ii) protecting the boundaries and distinguishing the built-up area from the open space of the Lee Valley; and,
- v) avoiding built development which compromises the purpose of areas of Green Belt and Metropolitan Open Land.

11.102 Policy L2.1 seeks to ensure that proposed developments within or adjacent to the Regional Park should not:

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<sup>575</sup> CD N10 Page 50

<sup>576</sup> Ibid page 51 bullet 4

<sup>577</sup> Page 170 bullet 8

<sup>578</sup> Lee Valley Regional Park Statement of Case – paragraph 14, page 9

<sup>579</sup> CD N10 Extracts also appended to the Park Authority's written submissions.

i) prejudice the implementation or provision of leisure, recreation, nature conservation, environmental and landscape improvement: or,

ii) harm the amenity, environmental quality and visitor enjoyment of the Regional Park.

11.103 The supporting text to this policy confirms that *Protecting the Park from inappropriate uses and activities is essential to ensure the ability of the Park to meet future leisure and recreation needs, and that the visitor experience and the resources of the Park are not compromised. New development in or adjacent to the Park also should not detract from the environment or harm visitor enjoyment of the Park.*

11.104 Policy L4.3 requires that proposals which, due to their nature, size or location, would have a significant impact on the Regional Park should be accompanied by a detailed environmental assessment.

11.105 The harmful impact of the development proposed on landscape and visual amenity contravenes the following Local Plan policies of neighbouring borough and district councils.

*Broxbourne Local Plan*<sup>580</sup>

11.106 Policy HD 14 i) expects applicants for planning permission to demonstrate how their development proposal reflects and relates to local characteristics and the context of the surrounding area.

11.107 Policy HD 17 i) expects all development proposals to respect existing natural or built features which contribute positively to the character or appearance of the area.

11.108 Policy GBC 16 ii) is strongly worded and unequivocal, stating that development likely to seriously detract from the character or appearance of the countryside will be seriously resisted.

11.109 Policy CLT 4 relates to the Lee Valley Regional Park. Broxbourne Council supports the LVRPA in predominantly recreational uses appropriate to a regional park. The application is for waste management through incineration, which is in no way compatible with recreational uses, on the boundary of the LVRP.

*Epping Forest District Local Plan*<sup>581</sup>

11.110 Policy RST24 requires that all developments within or adjacent to the Lee Valley Regional Park should conserve, and, where possible enhance the landscape of the Park and its setting.

*East Herts District Emerging Local Plan 2016*

11.111 Paragraph 19.6.1 of this emerging plan describes the LVRP as an important component of the District's green infrastructure defined by its openness,

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<sup>580</sup> CD C3

<sup>581</sup> CD N11

attractive and heritage rich landscapes, sites of nationally significant biodiversity and varied visitor attractions.

- 11.112 The size of the proposed ERF, with the main building 48 metres high, means that it is impossible to mitigate visual impact. Most of the broadleaf woodland on the edges of the site reaches 15m high. Species of tree that reach a height of 30- 35 metres, such as Scots Pine, would take approximately 15 years to reach maturity and, even then, would only provide sparse screening. Therefore, the building would only be very partially screened after a period of 15 years and at no time in the future will it be fully screened.
- 11.113 The use of coloured cladding with different shades does not mitigate the visual impact on the LVRP. This is particularly the case from higher up the Valley where you are looking down on the ERF.

### **Lighting and flood lighting**

- 11.114 The use of translucent polycarbonate cladding means that light will be emitted, resulting in a 'glow' effect. Mr Honour acknowledged that this would not be his first choice of material to minimise light output from a building to protect sensitive ecological receptors.
- 11.115 The extent of the glow effect at night is uncertain and at the very least should be tightly conditioned because of its effect on the ecology of the surrounding area.
- 11.116 The applicant states that lighting will be controlled to suit and reflect the operational requirements of the facility,<sup>582</sup> as opposed to for the benefit of the environment. Lighting can be particularly harmful if it illuminates important habitats such as river corridors. This development will be just metres away from the River Lea. As such, security lighting and vehicles using the ramp during hours of darkness would cause significant disturbance. Moreover, no information has been provided on lighting during the three-year construction phase.
- 11.117 The issue of lighting is extremely important for the conservation of bats. Particularly light-sensitive species of bat have been recorded frequenting the area, including Daubenton's bats. Several references are made by the applicant to the adverse impact that security lighting from the existing Power Station has had on the adjacent area, degrading the quality of the surrounding habitat for bats.<sup>583</sup> This larger facility will require continuous security lighting on site. In this regard, Mr Honour was unable to explain how design descriptions from the Environmental Statement were compatible with his contention that there will be 'very little effect from light spillage.'<sup>584</sup>
- 11.118 For interior lighting to produce an 'animation' effect on the facades of the building, light would need to penetrate through the material, so it's reasonable to assume that a 'glow' effect was viewed as desirable by the designers of the building, even though this choice is incompatible with protecting species such as insects, moths and bats from the adverse effects of artificial lighting.

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<sup>582</sup> AECOM ES paragraph 9.5.20

<sup>583</sup> AECOM Further Information Provided see paragraphs 7.4.1 and 7.15 KH Proof of Evidence

<sup>584</sup> The EIA 3.3.5 states 'The use of opaque polycarbonate will also bring an element of animation to the large flat facades, particularly when backlit by interior lighting.'

- 11.119 Another protected species that will be affected by this proposal is the Great Crested Newt. The success of the future Greater Crested Newt pond is far from proven since existing evidence assessing the efficacy of the practice of translocating this species calls into question how beneficial an undertaking it is.
- 11.120 It is anticipated that the newts will be translocated to two new ponds on what is currently land owned by the Canal and River Trust as described by Mr Honour during cross-examination and the applicant.
- 11.121 Paragraph 180 of the revised NPPF confirms that planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. This includes noise and light.
- 11.122 Construction and operation of the facility will generate noise which common sense dictates should not be described as negligible/minor.<sup>585</sup> There would be a serious loss of amenity for all Park users and residents in the vicinity, both for the three-year period of construction and during operations. Heavily laden HGVs would have to accelerate up the steep ramp on the Park side of the building to access the tipping hall, and lorries would turn to descend.
- 11.123 WCS Policy 17 is about the protection of important sites. We cannot say that this proposal combined with others will not have irreversible impact on Wormley-Hoddesdon Park SAC or the Lee Valley SPA. The site is designated for water birds and water plants and invertebrates. The Lee Valley Ramsar site (which shares a geographic boundary with the Lee Valley SPA) qualifies as an international site on two specific selection criteria – Criterion 2: the whorled water milfoil (*Myriophyllum verticillatum*) and a water boatman (*Micronecta minutissima*) and Criterion 6 – internationally important populations of northern shoveler and gadwall. The SPA is designated for shoveler, gadwall and bittern.
- 11.135 **The Lee Valley SPA** The current Nitrogen deposition rate exceeds the lower threshold at the Lee Valley SPA, just 0.3 kilometres away. Data from the Government's Air Pollution Information System (APIS) regarding Rye Meads reed beds, the habitat of a designated species [bittern] tells us that the average nitrogen deposition rate is 17.1Kg/N/ha/yr, exceeding the lower critical load. Critical loads: 15 - 20Kg/N/ha/yr. The unassessed cumulative impacts of further emissions from existing ATT and proposed ERF facilities will add to threshold exceedance which should be of considerable concern.
- 11.136 **Wormley –Hoddesdon Park Wood SAC** Professor Ramsell has spoken about the importance of the woods at the inquiry on behalf of the Broxbourne and Wormley Woods Area Conservation Society.<sup>586</sup>
- 11.137 Information from APIS gives critical loads for Nitrogen deposition as 15-20 Kg of nitrogen per hectare per year at this location. The average deposition is

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<sup>585</sup> Mr Maneylaw's Proof paragraph 9.1.1

<sup>586</sup> Doc 8



25.7KgN/ha/yr, thus deposition rates exceed the critical load and we contend that further large-scale development in the area should be refused.

11.138 **Totwellhill Bushes Ancient Woodland** The nitrogen deposition here according to the applicant, is 28.14KgN/ha/yr,<sup>587</sup> and the upper limit value is 15 KgN/ha /yr. Veolia says its additional contribution will be insignificant in that context. However, if every additional contributor to nitrogen pollution can claim this, then important habitats would be at risk from death by a thousand cuts. In any case, Veolia should have been assessing the additional cumulative impact which they have neglected to do as discussed elsewhere.

11.139 The plans for this ERF entail further contribution to already significant pollution in the atmosphere. This could well impose additional critical environmental harms to local ecologically sensitive areas and the species which depend upon these places.

### **Need and the capacity gap**

11.140 Need is important in the planning balance, but Hertfordshire's need should be placed in the context of reducing trends in household waste from 548.39 Kg per household in 2010, to 489.68Kg per household in 2017.<sup>588</sup> Recycling is increasing,<sup>589</sup> landfill has reduced to about 11% and the diversion rate has declined year on year since 2012.<sup>590</sup>

11.141 It is generally acknowledged that forecasting future waste need is difficult. There will be an increase in the number of households in Hertfordshire upon which the forecasts are largely based, but whether the number of houses built will follow the numbers in the ten local authorities' Local Plans is open to question. The change in public perception to waste and recycling has been dramatic within the past year. It is a change reflected in Government thinking in tandem with the attitude of industry, particularly the packaging industry. Government Policy is set out in CD J17 (Green Future) and signals a serious intention to minimize waste which could call into question the figures for residual waste on which this proposal is predicated.<sup>591</sup>

11.142 Linked to need is the perceived capacity gap. Here, the capacity gap is being used to provide 'exceptional circumstances' to override all agreed policies and valid arguments against the siting of an ERF in Ratty's Lane. The case was fervently made at the New Barnfield Inquiry that the capacity gap urgently necessitated an incinerator. Since then waste has been adequately dealt with using facilities out of County. No evidence has been brought forward that this could not continue either in the short or long term. Government initiatives could reduce this capacity gap as already discussed.

11.143 We contend that the capacity gap has been significantly over estimated. Figures for LACW used by the applicant were published in Table 6 of the WCS adopted in 2012. However, Herts Waste Partnership Report of 2016/17 gives

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<sup>587</sup> CD A 14 Appendix 7.1 Table 3-7 page 19

<sup>588</sup> CD K2 Herts Waste Partnership Report 2016/17 Table 4 page 6

<sup>589</sup> Ibid page 8

<sup>590</sup> Ibid paragraph 2.1 page 2

<sup>591</sup> CD J17 Green Future Our 35 year Plan to Improve the Environment. Chapter 4 page 83 Increasing resource efficiency and reduce pollution and waste, make sure that resources are used more efficiently and kept in use for longer to minimize waste and reduce environmental impacts by promoting reuse, remanufacturing and recycling. Chapter 7B page 29 Minimizing waste Working to a target of eliminating avoidable plastic waste by the end of 2042.

actual data which shows an over estimate of 12% for 2016.<sup>592</sup> Residual waste has already fallen to around 232.493 tonnes in 2017, which was the tonnage estimated for 2026 in the WCS.<sup>593</sup> Current data alongside the Government's intention to reduce waste suggests a smaller facility would be adequate and more acceptable.

11.144 Diversion from landfill has fallen year on year since 2012 and was 11% of waste in 2017.<sup>594</sup> Whilst there will always be a proportion of waste which needs to be landfilled, the Hoddesdon Society acknowledges that it is important to divert household waste from landfill and that it is a desirable aim 'to manage a growing proportion of Hertfordshire's residual waste within the County.'<sup>595</sup> However, given the high percentage of land in the Green Belt and lack of suitable sites, this is not easy. There is a pressing need for a new site assessment site that is uninfluenced by a procurement contract and a consideration of smaller facilities in line with current waste data.

11.145 There is no capacity gap at the moment. Currently, Hertfordshire is working with adjoining counties in keeping with Government policies as encouraged by the NPPF. Paragraph 26 of the new NPPF indicates that joint working should help to determine whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.

11.146 Additionally, DEFRA's guidance in a Guide to the Debate is:

*There is nothing in the legislation or the proximity principle that says accepting waste from another council, city, region or country is a bad thing and indeed in many cases it may be the best economic and environmental solution and/or be the outcome most consistent with the proximity principle. There is an expectation on local authorities to work together, re-enforced by the need to demonstrate that they have done so through the Duty to Co-operate provisions of the Localism Act 2011) to ensure that waste needs across their respective areas are handled properly and appropriately.*

11.147 The views of Welwyn and Hatfield Borough Council at the New Barnfield Inquiry are just as applicable to Ratty's Lane.<sup>596</sup>

*No positive case [with any detail] is alleged with by either the applicant or HCC that alternative provision cannot be made for waste in the meantime. The WDA has not appeared and no detail in relation to existing contractual and proposed future arrangements with other providers of waste facilities has been provided. It would be absurd to assume that the WDA has no Plan B in the event that permission is refused and there is no good evidence to that effect.*

*Accordingly, whilst there is a need there is nothing to say it is presently urgent in the sense that it cannot be met. The WCS does not support such an analysis and does not describe the need as urgent or pressing [nor in any other similar way]. Nor did either HCC or the inspector apparently consider*

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<sup>592</sup> CD K2 HWP figures show 241.093 tonnes in 2016 that is 34,907 tonnes less than predicted in paragraph 3.11 Table 6 of WCS

<sup>593</sup> Mr Bridgwood's Proof page 44 top Table 6, taken from HCC WCS

<sup>594</sup> CD K2 HWP Report 2016/17 page 9 graph

<sup>595</sup> CD K1 JMWMS Objective 6

<sup>596</sup> New Barnfield Inspector's report paragraphs 440 and 441

*that it was necessary to insert a policy into the WCS dealing with urgent need.*

11.148 It has been argued that the capacity gap and need to address it provide the exceptional circumstances to override planning policy and allow the application. The application of special circumstances, however, is not there until all possibilities for dealing with Hertfordshire's waste have been examined. This is currently not the case. Both the County Council and Veolia have pursued this option at Ratty's Lane because it is available and offers financial gains for both parties.

### **Conclusion**

11.149 When Ratty's Lane was being considered at the New Barnfield Inquiry, Veolia and Hertfordshire County Council were quite clear that the site was inappropriate for an ERF. It is difficult to understand how Ratty's Lane could be inappropriate three years ago but is appropriate now. The site is the same size, in a flood plain and ground water protection zone next to the Lee Valley Regional Park, adjacent to a SPA and not far from an SAC. It is situated in the south east corner of Hertfordshire, away from the major centres of population and has poor access.

11.150 It should be acknowledged that if this proposal goes ahead a burden would fall disproportionately on Hoddesdon and surrounding communities. The irony of the fact that Broxbourne sends all of its waste to Edmonton, 9 miles away, and has raised no objection to the siting of an ATT plant and an AD catering for 160,000 tpa of C& I waste will not be lost on the many residents who oppose this scheme.

11.151 This proposed ERF is wrong on planning grounds and the harm which would be done by it cannot be outweighed by other factors. We strongly urge that this proposal is rejected.

## **12. THE CASE FOR HERTS WITHOUT WASTE (RULE 6(6) PARTY)**

*(The case for Herts Without Waste is reported substantially in the form of the closing submissions)<sup>597</sup>*

12.1 We thank the Inspector and the Secretary of State for providing us with the opportunity to fully participate in the planning Inquiry. As set out in our opening statement, our focus at this Inquiry has been on wider than local issues, rather than site-specific ones. Our evidence and questioning of witnesses has, therefore, centred around matters such as climate change, the circular economy and resource productivity, as well as incineration overcapacity and the associated lack of need for the proposed facility, which all support the case for refusal.

12.2 In our closing statement we address the extent to which the proposed development is consistent with the development plan for the area, especially in terms of energy and heat recovery and of impacts on climate change. We also address the extent to which the proposed development is consistent with

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<sup>597</sup> Doc 86 See also the proof of Dr Webb and supporting documents (HW2-HW6.1) and Doc 2

national policies for waste and for energy, including compliance with the European Union's Circular Economy Package. In these local and national policy contexts we address the weight to be afforded to various matters in the planning balance and conclude with the implications of not proceeding with the scheme.

### **Climate Change**

- 12.3 One of the matters identified as being of likely interest to the Secretary of State is the extent to which the proposed development is consistent with national planning policies, including those within the National Planning Policy Framework (the Framework) that relate to the delivery of the Government's climate change programme.
- 12.4 The Framework's Glossary definition of 'low carbon energy' includes the following clarification: '*Low carbon technologies are those that can help reduce emissions (compared to conventional use of fossil fuels)*'.<sup>598</sup>
- 12.5 Our evidence demonstrates that, due to its high carbon intensity relative to the conventional use of fossil fuel, energy generated by the proposed incinerator would not meet the NPPF definition of 'low carbon'. The proposal therefore goes against Government ambitions to tackle climate change and to decarbonise the electricity supply.<sup>599</sup>
- 12.6 The Secretary of State saw fit to call this planning Inquiry to test the extent to which the development proposed is consistent with the development plan for the area, in particular the Hertfordshire Waste Development Framework, adopted in November 2012.<sup>600</sup>
- 12.7 The fact that the applicant is proposing to burn reusable, recyclable, compostable and/or avoidable material means that their proposal goes against Policy 10 of the Hertfordshire Waste Core Strategy (WCS) which requires that: '*Proposals for waste management facilities must have regard to measures that minimise greenhouse gas emissions...*'.<sup>601</sup> (emphasis added) Similarly, the proposal runs contrary to the '*need to reduce greenhouse gas emissions associated with waste management,*' identified at Paragraph 2.46 in the Hertfordshire Waste Core Strategy.<sup>602</sup>
- 12.8 Both these principles contained within the WCS are consistent with the latest Government thinking, as set out in the Government's 25 Year Environment Plan<sup>603</sup> and elsewhere in relation to resources and waste management and should be given full weight.<sup>604</sup>
- 12.9 The importance of carrying out a proposal-specific comparative analysis of climate change impacts is underlined in the Government Review of Waste Policy in England which states: '*...while energy from waste has the potential to deliver carbon ... benefits over sending waste to landfill, energy recovery also*

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<sup>598</sup> Annex HW4 (section 10) to the proof of evidence of Herts Without Waste; CD D1 Page 55; NPPF July 2018 (pages 70-71)

<sup>599</sup> Herts Without Waste proof of evidence HW2 (paragraphs 15 and 16)

<sup>600</sup> CD C1 WCS

<sup>601</sup> HW2 (paragraph 30); CD C1 (page 62)

<sup>602</sup> HW2 (paragraph 31)

<sup>603</sup> CD J17

<sup>604</sup> HW2 (paragraph 32)

*produces some greenhouse gas emissions. It is important to consider the relative net carbon impact of these processes, and this will depend on the composition of feedstocks and technologies used ...*.<sup>605</sup>

- 12.10 The need to carry out proposal-specific analysis is also acknowledged by Planning Inspector Middleton in his dismissal of an appeal for an Energy from Waste plant at Lock Street, St Helens, where he stated that: *'In certain circumstances generating electrical energy from waste can contribute to carbon emissions to a greater extent than depositing the same material as landfill. It is therefore not a simple exercise to demonstrate that an EfW will have a positive effect on overall carbon emissions'*.<sup>606</sup>
- 12.11 The Government's Resource Minister has made it clear that: *'A comparison of the CO<sub>2</sub> impact of waste going to energy from waste and landfill is included in the analysis of the 2014 report 'Energy recovery for residual waste: A carbon-based modelling approach'. No formal analysis has been undertaken since this report was published'*.<sup>607</sup>
- 12.12 The evidence of Herts Without Waste demonstrates that when one applies the DEFRA modelling methodology<sup>608</sup> cited by the Resource Minister, in conjunction with data supplied by the applicant regarding the technology and composition<sup>609</sup> relevant to this proposal, then it becomes clear that the facility proposed for the Ratty's Lane site would be around 67,616 tonnes of CO<sub>2</sub>e per year worse than sending the same waste directly to landfill, which equates to the ERF being more than 2 million tonnes of CO<sub>2</sub>e worse than landfill over 30 years.<sup>610</sup>
- 12.13 Our evidence also demonstrates that the fossil carbon intensity of the proposed incinerator would be around 0.561kg CO<sub>2</sub>e/kWh, which is significantly higher than the conventional use of fossil fuel is associated with the performance of a Combined Cycle Gas Turbine (CCGT) which is around 0.340kg CO<sub>2</sub>e/kWh.<sup>611</sup>
- 12.14 During re-examination, the applicant's climate change witness refused to say that the proposal would have a lower carbon intensity than the current marginal energy mix. The question put to Mr Aumônier by the applicant's advocate was whether, if permission were granted for the Ratty's Lane ERF scheme now, this would be a less carbon intensive scheme or a more carbon intensive scheme in terms of the broad scan of the electricity grid now. Mr Aumônier restated this question as asking whether the Ratty's Lane proposal would be more or less carbon intensive than the current grid mix. When Counsel confirmed this, asking *'Where does it [the proposal] sit in that spectrum of cleaner or dirtier?'*, Mr Aumônier replied that *'It's part of the mix'*, i.e. the applicant's climate change witness was not willing to state that the applicant's proposed facility was cleaner than the current grid mix, let alone the future decarbonised grid mix.<sup>612</sup> Herts Without Waste's evidence shows

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<sup>605</sup> Annex HW4 Section 7; CD D10 (paragraph 209)

<sup>606</sup> HW4 Section 8, citing CD F8 Paragraph 30 from the Lock Street, St Helens decision (PINS Ref: 2224529)

<sup>607</sup> HW4 Section 6; CD D9

<sup>608</sup> CD J20

<sup>609</sup> Included in CD J24

<sup>610</sup> HW2 (paragraphs 13 and 17); HW4 Table O

<sup>611</sup> HW2 (paragraphs 14 and 17); HW4 Table O; HW4 Paragraphs 18-27; HW6

<sup>612</sup> Mr Aumônier in re-examination (4 July 2018)



how the fossil carbon intensity of the proposed facility is more than twice the BEIS marginal emissions factor (MEF) for 2020 (which is 0.270kg CO<sub>2</sub>e/kWh).<sup>613</sup>

- 12.15 The use of the MEF as the counterfactual, instead of CCGT, is the correct approach according to DEFRA's February 2014 'Energy recovery for residual waste: A carbon based modelling approach'<sup>614</sup>, which states that: *'It is assumed that the source of energy being replaced would have been generated using a plant with the carbon intensity (emissions factor) of the marginal energy mix in line with HMT Green Book guidance on appraisal and evaluation...'*<sup>615</sup>
- 12.16 The associated footnotes (footnotes 20 and 21) make it clear that whilst CCGT was an appropriate counterfactual to use in 2014, it would not remain appropriate. This is because of the progress being made to decarbonise the UK's electricity supply. One of the footnotes states that: *The marginal energy factor relates to the generation of an additional unit of grid electricity. There will be a range of different plants generating so the carbon intensity will be a mix of these. As this mixture will change with time so will the emissions factor ... Currently [i.e. in February 2014] this is approximately the same as CCGT hence its use as the baseline value, however, this factor should only be used as a guide - use of the marginal factor is the correct approach for detailed analysis.*<sup>616</sup>
- 12.17 Further confirmation of the appropriateness of using the MEF rather than CCGT for more detailed analysis when comparing landfill and incineration, is provided in the following statement of the DEFRA document: *'...Up to now we have used the comparator of CCGT to estimate the CO<sub>2</sub> offset from energy generation. More correctly we should use the marginal energy mix which represents the carbon intensity of generating an additional kW of electricity. Currently [i.e. in February 2014] this is comparable to CCGT as this is the marginal technology, however, as renewable energy and nuclear make a greater contribution to the marginal energy mix this will change and the result will be a significant drop in the carbon intensity of the marginal energy mix.'*<sup>617</sup>
- 12.18 This is consistent with the advice contained in the Government's Energy from Waste (EfW) Guide, which states: *'... When conducting more detailed assessments the energy offset should be calculated in line with DECC guidance using the appropriate marginal energy factor ...'*<sup>618</sup>
- 12.19 The current BEIS Guidance on Valuation of Energy Use and Greenhouse Gas Emissions<sup>619</sup> makes clear that the approach adopted by Herts Without Waste and its consultants, Only Solutions LLP (OS), is correct and that the approach proposed by the applicant's climate change witness is inconsistent with Government guidance.<sup>620</sup>

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<sup>613</sup> HW2 (paragraph 14); HW4 Paragraph 18-27; HW6

<sup>614</sup> CD J20

<sup>615</sup> HW4 Sections 60-64; CD J20 (paragraph 68)

<sup>616</sup> HW4 Sections 60-62; CD J20 (paragraph 68 and associated footnotes 20 and 21)

<sup>617</sup> HW4 Section 63, J20 Paragraph 119

<sup>618</sup> HW4 Section 64; CD D5 (paragraph 41 Footnote 29 on page 21)

<sup>619</sup> CD J25

<sup>620</sup> Annex HW6 (Section 12) to HW2



- 12.20 BEIS states that: *For estimating changes in emissions from changes in grid electricity use, analysts should use the (long run) marginal grid electricity emissions factors in data table 1.*<sup>621</sup>
- 12.21 As explained in the next paragraph of the BEIS guidance, a change in grid electricity use includes the displacement caused by new energy generation capacity and the long-run marginal was designed to model precisely the circumstance modelled by Herts Without Waste, i.e. a long-term but minor change in electricity generation capacity.<sup>622</sup>
- 12.22 Our evidence in relation to both climate change and to the lack of need for the proposed incineration capacity was supported by reports carried out by an environmental consultancy, OS, with many years of experience of the resources and waste sector.<sup>623</sup> The applicant was invited to direct any questions arising from these reports to their authors, but in the event the applicant declined this opportunity.<sup>624</sup> However, where relevant comments were made by the applicant's climate change witness with respect to the approach adopted,<sup>625</sup> these were comprehensively addressed to confirm that the conclusions reached by Herts Without Waste were sound.<sup>626</sup>
- 12.23 Our climate change analysis uses the long run marginal grid electricity emissions factor (MEF) from BEIS data table 1, and therefore follows BEIS guidelines. The CCGT figure proposed by the applicant's climate change witness is not recommended in data table 1 and is not in fact used by the applicant. The main scenario of the applicant's climate change assessment is based on displaced electricity with a carbon intensity of 0.417kg CO<sub>2</sub>e/kWh, which is even higher than the Government's CCGT figure of 0.340kg CO<sub>2</sub>e/kWh. The applicant's climate change witness conceded under cross-examination that his 0.417kg CO<sub>2</sub>e/kWh figure was not based on Government policy.<sup>627</sup>
- 12.24 The notion put forward by the applicant's climate change witness that the BEIS marginal emissions factor should be ignored because the proposal would literally prevent the creation of a CCGT plant, is without merit given the difference in scale between the proposal and a CCGT plant and the current trends in energy generation provision. The proposed facility at Ratty's Lane would have a net capacity of only around 30MWe, whereas a typical CCGT plant would have a net capacity that is orders of magnitude greater than this.<sup>628</sup> For example, the gross output capacities of the three CCGT plants cited by the applicant's climate change witness range from up to around 1,700MWe to up to 2,500MWe.<sup>629</sup>
- 12.25 In re-examination, the applicant's climate change witness stated that in his view the rationale for using CCGT instead of the BEIS MEF as the

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<sup>621</sup> HW6 Section 12; CD J25 (paragraph 3.31)

<sup>622</sup> HW6 (Section 12); J25 Paragraph 3.32

<sup>623</sup> HW6 (Section 2)

<sup>624</sup> HW2 (paragraph 8); Confirmed during cross-examination of Mr Aumônier by Dr Webb (4 July 2018)

<sup>625</sup> For example, in VES/SA/4

<sup>626</sup> For example, in HW6

<sup>627</sup> HW2 (paragraphs 13-17); HW6 Section 12; VES/SA/4; Confirmed by Mr Aumônier during cross-examination by Dr Webb (4 July 2018)

<sup>628</sup> HW6 Section 14; VES/SA/4 Paragraph 21; VES/SA/1 Paragraph 102

<sup>629</sup> VES/SA/4 Page 18, Footnote 1 to Paragraph 22 (which refers to Eggborough CCGT, Sembcorp Utilities' Tees Combined Cycle Power Project, and Keadby Generation Ltd.'s Ferrybridge D CCGT)

counterfactual, was because the proposal constituted 'displacement' rather than 'a change in grid energy use' and he cited Paragraph 3.31 of the BEIS guidance.<sup>630</sup> However, the very next paragraph of the BEIS guidance cited by the applicant's climate change witness explains how displacement is itself a form of change in use, as follows: *There are complex mechanisms that determine the effects of sustained but marginal changes to the grid electricity supply (from either displacement with other generation or a demand reduction) ....*<sup>631</sup> (emphasis added)

- 12.26 Much undue credit is given by the applicant's climate change witness to metal recycling at the incinerator. Metals do not need to pass through an incinerator to be recycled. If one were to take account of the net impact of the proposal on recycling, i.e. also taking account of the harm to recycling arising from the proposed facility, then the adverse impact would significantly outweigh any benefit from recycling of materials fetched out of the bottom ash. Indeed, even if one were comparing the Ratty's Lane proposal with sending the same waste to another incineration plant, there could be a significant adverse impact on recycling due to the lack of potential for front-end sorting capability at Ratty's Lane and the presence of, or potential for, front-end sorting at the displaced facility.<sup>632</sup>
- 12.27 The applicant's climate change witness accepted during cross-examination that, if the Secretary of State were to scope out the benefits and disbenefits of the proposal relative to recycling (e.g. because the recycling of metal could occur irrespective of whether or not the waste was incinerated) and focus solely on the relative net impacts when the proposed scheme is compared to landfill, then his BEIS energy scenario for the proposed development would be more than 15,000 tonnes of CO<sub>2</sub>e per year worse than sending the same waste to landfill.<sup>633</sup>
- 12.28 The 'more than 15,000 tonnes' figure, which was accepted by the applicant's climate change witness as mathematically correct, is based on adding back in the 33,300 (assumed for recycling benefits noted in cross examination<sup>634</sup>) to the figure of 10,647 tCO<sub>2</sub> per year in proof of evidence,<sup>635</sup> to determine the total annual emissions from the Ratty's Lane facility of 43,947 tCO<sub>2</sub> per year and comparing this with the total emissions from landfill of 28,233 tCO<sub>2</sub>e per year. 43,837 - 28,233 = 15,714. Therefore, the proposed development would be some 15,714 tCO<sub>2</sub> worse than landfill based on the applicant's evidence.<sup>636</sup>
- 12.29 The poor carbon performance of the facility should reduce the weight given to any claims made regarding the generation of renewable energy. This is because where a proposal would only generate renewable energy at a significant carbon cost, then the relative net carbon impact of that proposal should significantly reduce the weight afforded to the claimed benefit. At the

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<sup>630</sup> Re-examination of Mr Aumônier; CD J25 (paragraph 3.31)

<sup>631</sup> CD J25 (paragraph 3.32); HW6 (Section 12)

<sup>632</sup> HW6 (Section 16); VES/SA/4; VES/SA/6

<sup>633</sup> Mr Aumônier during cross-examination by Dr Webb (4 July 2018)

<sup>634</sup> Page 9 of VES/SA/4

<sup>635</sup> Scenario 2b of Table 1 in VES/SA/2 Appendix I

<sup>636</sup> VES/SA/4 Page 9; VES/SA/2 Appendix I Table 1; Mr Aumônier during cross-examination by Dr Webb (4 July 2018)

same time, the carbon disbenefit would be a material planning consideration that should weigh against the proposal.<sup>637</sup>

12.30 Furthermore, in cross-examination, the applicant's climate change witness confirmed that only the biomass fraction of the waste was capable of generating renewable energy and that treating the biomass fraction through other means, such as anaerobic digestion, composting and landfill gas capture, could similarly contribute to meeting renewable energy targets.<sup>638</sup> The proposed facility is therefore not the only waste management approach for the biomass fraction to be used as a supply of renewable energy, thus little weight should be given to claims that it would be a source of renewable energy.

12.31 In these respects, the proposal goes against Government ambitions to tackle climate change and to decarbonise the electricity supply, and against the development plan for the area. The adverse climate change impacts of the proposal should therefore weigh heavily against the proposal and should be considered grounds for refusal.<sup>639</sup>

### **The Circular Economy**

12.32 Policy 3 of the WCS adopts the position that energy recovery is not acceptable in principle, in circumstances where it would be used to treat material that could '*reasonably be dealt with at a higher level in the waste hierarchy.*' This position was adopted in the final version of the plan but did not appear in the draft version relied upon in the Proof of Evidence of the applicant's policy witness.<sup>640</sup> The applicant's policy witness confirmed in cross-examination that he had incorrectly used a draft form of Policy 3 in his policy appraisal, rather than the version of the policy that was subsequently adopted.<sup>641</sup>

12.33 The version of the text that the applicant's witness relied upon and quoted from within his evidence was explicitly rejected in the Inspector's Report into the WCS. The Inspector stated that: 'FPC [*Further Proposed Change*] 187 moves Policy 6 'Energy and Heat Recovery' to become Policy 3. Here, the significance of the change lies both in the repositioning of the policy behind 'Waste Prevention', and in the deletion of the submission phrase *preference will be given (to technologies which maximise recovery and where appropriate generate and recover heat and power).* Together with the superior prominence in the submission document of energy and heat recovery over waste prevention, including re-use and recycling, the use of the phrase *preference will be given* implied that the WCS was strongly to favour energy and heat recovery above all other forms of waste management. This would have been in conflict with PPS10 and with the legal duty to apply the Waste Hierarchy.' (*emphasis in 2012 original*)<sup>642</sup>

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<sup>637</sup> HW6 (Section 17)

<sup>638</sup> Confirmed by Mr Aumônier during cross-examination by Dr Webb (4 July 2018); VES/SA/1 (paragraphs 41 and 44); CD D10 (page 61 and paragraph 251)

<sup>639</sup> HW2 (paragraph 33)

<sup>640</sup> HW2 (paragraph 46); CD C1 Page 46; VES/DWB/1 Page 24; Appendix 3 to the proof of The Hoddesdon Society (page 59 - Change Number 187 (shown in the Appendix - Further Proposed changes Including the Main Modifications); Mr Bridgwood during cross-examination by Dr Webb (31 July 2018)

<sup>641</sup> Mr Bridgwood during cross-examination by Dr Webb (31 July 2018); VES/DWB/1 (page 24)

<sup>642</sup> Appendix 3 to the proof of The Hoddesdon Society (page 11 Paragraph 42)

- 12.34 This means that the applicant's policy appraisal was tainted by assuming the inclusion in the Local Plan of a preference which did not exist and for failing to take into account the requirement subsequently added to the policy to guard against incineration proposals (such as now arises with the Ratty's Lane proposal) that would rely for feedstock on material that could reasonably be treated at a higher level of the waste hierarchy.
- 12.35 During re-examination, the applicant's policy witness confirmed that the composition of Hertfordshire's residual waste is known from local authority commissioned studies that show what people put in their bins.<sup>643</sup> In cross-examination, the witness also confirmed that the waste hierarchy principle cited from PPS10 by the Waste Plan Inspector as the basis of her critique of the draft wording of the policy, and as the basis for amending the policy, was carried over into the National Planning Policy for Waste. He confirmed that the NPPW similarly prioritises reduction, reuse and recycling, including composting that meets relevant quality protocols, in preference to energy recovery because they are, in the witness's words: 'further up the Waste Management Hierarchy.'<sup>644</sup>
- 12.36 The applicant's policy witness also confirmed, under cross examination by Mr Reed for BxB, that the Government's EfW Guide is supportive of pre-treatment, i.e. an on-site mechanical pre-sorting process prior to incineration of the type that had been part of the New Barnfield proposal, but which is absent from the current proposal, and which by virtue of the site's constraints would not be possible to add to the proposed facility.<sup>645</sup>
- 12.37 In evidence, we referred to Section 4.3 of the Hertfordshire Waste Composition Analysis, carried out for Hertfordshire County Council.<sup>646</sup> This document states that: '*Across Hertfordshire it is expected that 51.2% of all residual waste being disposed of is recyclable at the kerbside*'.<sup>647</sup> It is perfectly reasonable to expect this readily recyclable waste to be treated at a higher level of the waste hierarchy.
- 12.38 In cross-examination the applicant's climate change witness confirmed that the feedstock profile that he had adopted for his climate change assessment was based on the same analysis, which found that the majority of material that he assumed to be incinerator feedstock could have been recycled at the kerbside. The applicant's climate change witness also confirmed under cross-examination that despite the assumed feedstock containing material that could have been recycled, his climate change assessment did not include any assessment of the opportunity cost of the incinerator, i.e. his climate change assessment did not account for any of the adverse climate change impacts of forfeiting the climate change benefits that would have arisen were this material recycled instead of incinerated.<sup>648</sup>
- 12.39 This means that the majority of Hertfordshire's residual kerbside stream was recyclable, based on the services available at the time of the study, and that

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<sup>643</sup> Mr Bridgwood during re-examination

<sup>644</sup> CD D7; CD D4; Mr Bridgwood during cross-examination by Dr Webb (31 July 2018)

<sup>645</sup> CD D5 (page 33); Mr Bridgwood during cross-examination by Broxbourne Borough Council (4 July 2018)

<sup>646</sup> HW2 (paragraph 49)

<sup>647</sup> CD J24 (Section 4.3 on Page 31)

<sup>648</sup> Mr Aumônier during cross-examination by Dr Webb (4 July 2018)

an even higher proportion could have been considered recyclable if the Councils had offered a more comprehensive recycling service.<sup>649</sup>

- 12.40 Furthermore, it is anticipated that if the proposed facility is refused planning consent then the non-recyclable elements of the waste stream would be the primary focuses of waste reduction and redesign efforts, meaning there could be significant reductions in the residual waste stream for Hertfordshire as part of the transition to a more circular economy. We ask for this application to be refused in the interests of promoting this transition to a more circular economy.<sup>650</sup>
- 12.41 As the applicant's proposal would entail burning avoidable and recyclable materials, it would run contrary to the National Planning Policy Framework, the National Waste Management Plan for England, the National Planning Policy for Waste, the Circular Economy recycling targets, the Hertfordshire Waste Core Strategy, and the emerging Hertfordshire Waste Local Plan.<sup>651</sup>
- 12.42 Taking proper account of the EU Circular Economy Package is important in assessing this application for a facility that is designed for 30-40 years of operation and, in this context, it is relevant that the European Environment Agency has recognised waste incineration as a leakage from the Circular Economy to be minimised.<sup>652</sup>
- 12.43 EU legislation on waste, including recently adopted proposals for higher recycling targets for municipal and packaging waste, aims to shift waste management to prevention, reuse and recycling.<sup>653</sup>
- 12.44 Claims made by the applicant regarding potential economic benefits of the proposal for Ratty's Lane need to be set against the significant potential of the Circular Economy to create far more jobs in diverting waste from incineration than would be created through incineration.<sup>654</sup>
- 12.45 It also needs to be borne in mind that, when questioned about the basis of the financial benefits of the proposal, the Applicant's company witness conceded that he was unable to comment on the basis of the claimed savings figures which he used at Paragraph 3.16 of his Proof of Evidence, but that he suspected it included savings from Landfill Tax avoidance. As such, he could not rule out that a significant proportion of the benefits he cited related to 'transfer payments' between two parts of the public purse of the type dismissed by the Inspector for the Battlefield incinerator as an inappropriate form of 'double counting' and therefore unworthy of being considered as a legitimate benefit of an Energy from Waste scheme.<sup>655</sup>

### **Resource Productivity**

- 12.46 Herts Without Waste's evidence sets out some of the economic, environmental and social imperatives for increased resource productivity and how incineration acts as a barrier to improving resource productivity.<sup>656</sup> Year after year we see

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<sup>649</sup> HW2 (paragraph 50)

<sup>650</sup> HW2 (paragraphs 51 and 52)

<sup>651</sup> HW2 (paragraphs 34-53)

<sup>652</sup> HW2 (paragraphs 35 and 40)

<sup>653</sup> HW2 (paragraph 45); CD E9 (page 2)

<sup>654</sup> HW2 (paragraphs 41, 43 and 44)

<sup>655</sup> Mr McGurk during cross-examination by Dr Webb (3 July 2018); CD F1 (paragraph 130)

<sup>656</sup> HW2 (paragraphs 54-72)



a clear 'direction of travel' toward processes at the top of the Waste Hierarchy. This is evident in governmental decision making, technological advances and public opinion (e.g. the passionate response to the recent 'Blue Planet II' television series and the rising concerns about single-use plastic packaging).<sup>657</sup>

- 12.47 Indeed, Hertfordshire County Council's principal planning witness confirmed during cross-examination that the emerging replacement Waste Local Plan sets out an ambition of achieving a circular economy of materials within Hertfordshire.<sup>658</sup>
- 12.48 DEFRA's Chief Scientific Advisor, Professor Ian Boyd, warned Parliament's EFRA committee on 31 January 2018 that the construction of new incinerators creates a *'market pull on waste, so it encourages the production of waste, it encourages people to think that we can throw what could be potentially valuable materials, if we were to think about them innovatively, into a furnace and burn them.'* The committee discussed measures such as an incineration tax and a moratorium on new incinerators as options to guard against this risk, which Prof Boyd said were options 'worth considering.'<sup>659</sup>
- 12.49 The contract for the proposed plant would run to the end of 2050. Its requirement for waste feedstock would go against that vision and ultimately render it virtually impossible to achieve. In view of the profound paradigmatic shifts associated with the circular economy and with resource productivity, and in anticipation of the forthcoming Resources and Waste Strategy and Local Waste Plan For Hertfordshire, it is clear that there are serious strategic decisions to be made regarding the location, scale and type of future resources and waste management provision in the county that could not have been foreseen at the time that the applicant's waste incineration project was initially conceived.<sup>660</sup>
- 12.50 These important decisions, with long-lasting consequences, should be made as part of the democratic Waste Local Plan process, rather than pre-empted by a premature planning application which has its origins in an era where landfill diversion 'at any cost' failed to take account of the harm that increased incineration capacity caused to long-term resource productivity.<sup>661</sup>
- 12.51 The determination of this planning application must not pre-empt the democratic decision-making process regarding how resources arising in Hertfordshire should best be managed in the future as part of the Waste Local Plan process, by allowing a single very large facility to go ahead on a constrained site that lacks flexibility and that renders such discussions moot.<sup>662</sup>
- 12.52 Within the context of the move towards increased resource productivity the proposal is clearly unsustainable and so should not benefit from the NPPF's presumption in favour of sustainable development. The proposal should be refused for its adverse impacts on resource productivity which results in adverse economic, environmental and social impacts.<sup>663</sup>

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<sup>657</sup> HW2 (paragraph 62)

<sup>658</sup> Mr Egan during cross-examination by Dr Webb (28 June 2018); Doc 49 (paragraphs 1.4, 3.27 and 3.28)

<sup>659</sup> HW2 (Annex 2.1)

<sup>660</sup> HW2 (paragraph 63)

<sup>661</sup> HW2 (paragraph 64)

<sup>662</sup> HW2 (paragraph 67)

<sup>663</sup> Herts Without Waste proof of evidence (paragraph 72)



## Overcapacity / Lack of Need

- 12.53 The WCS<sup>664</sup> has not identified any compelling or urgent need for new incineration capacity, nor does it require the approval of all planning applications for waste incineration plant.<sup>665</sup> Our evidence has demonstrated that there is no genuine need to consent any new incinerator capacity for waste treatment in the East of England region because, by 2035, there will be insufficient feedstock to supply the total capacity of the incinerators that are already in operation or under construction.<sup>666</sup>
- 12.54 The reason for this is that, while residual waste arisings in the East Region currently exceed treatment capacity, as Herts Without Waste has noted, in the future there will be less residual waste, and such reductions will free-up capacity in existing incinerators in the UK and on the continent, and this in turn will further remove the need for any new domestic residual waste treatment capacity. Better management of our resources will result not just in increased resource productivity but in less waste in general, thereby lowering demand for residual waste treatment capacity.<sup>667</sup>
- 12.55 There are numerous examples of commitments currently being undertaken at European, UK and English levels that can be expected to reduce residual waste arisings in the future.<sup>668</sup> This includes a specific commitment within the Government's 25 Year Environment Plan to work to reduce the quantity of plastics being incinerated.<sup>669</sup>
- 12.56 According to the applicant's climate change witness, a significant proportion of the fossil-based plastics currently in the waste feedstock in Hertfordshire can be anticipated to be removed from the residual waste stream as a result of, amongst other things, *'the implementation of Circular Economy principles and [the] Government's commitments to address plastics waste, e.g. through deposit return schemes for bottles.'*<sup>670</sup>
- 12.57 Veolia's Regional Director and company matters witness also confirmed during cross-examination that the proposal would be treating 'mixed waste' of the sort referred to by the European Commission in their statement that: *'mixed waste as a feedstock for waste-to-energy processes is expected to fall as a result of separate collection obligations and more ambitious EU recycling targets.'*<sup>671</sup>
- 12.58 The recently agreed Circular Economy Package includes requirements to supplement existing separate collection for paper, metal, plastic and glass with the additional separate collection schemes that will come into force early in the potential operational lifetime of the proposed Ratty's Lane facility, for example separate collection of bio-waste (including *biodegradable garden and park waste, food and kitchen waste from households, offices, restaurants, wholesale, canteens, caterers and retail premises and comparable waste from*

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<sup>664</sup> CD C1

<sup>665</sup> HW2 (paragraph 100)

<sup>666</sup> HW2 (paragraphs 73-102); HW5

<sup>667</sup> HW2 (paragraphs 74 and 75)

<sup>668</sup> HW2 (paragraphs 76-78)

<sup>669</sup> HW2 (paragraph 82); CD J17 (pages 6 and 94)

<sup>670</sup> HW6 Section 7; VES/SA/4 Pages 12 and 13

<sup>671</sup> CD E9 (page 5); Mr McGurk during cross-examination by Dr Webb (3 July 2018)

*food processing plants*) by the end of 2023 and separate collection of textiles by the beginning of 2025.<sup>672</sup> If the applicant's climate change witness is correct that the significant proportion of biogenic waste removed through separate collection will be surpassed by fossil-based material such as plastics being removed from the residual waste stream,<sup>673</sup> then this further undermines the applicant's need case which is reliant on this volume of high calorific value material as feedstock.

- 12.59 European recycling targets, which have been adopted by the UK, include 65% recycling of municipal waste by 2035 and 70% minimum recycling of packaging waste by 2030, including 85% recycling of paper and cardboard packaging.<sup>674</sup> Furthermore, the Government's 25 Year Plan notes, that in addition to any other measures, the adoption of resource efficient business models can be expected to divert around 3 million tonnes of waste from incineration and landfill.<sup>675</sup> The same document also states that: '*...We must bear in mind that any infrastructure must be able to adapt to future changes in the volume and make-up of residual waste generated and developments in technology. That way, waste is not locked into residual waste treatment processes when it could be reused or recycled.*'<sup>676</sup>
- 12.60 The forerunner to this application in respect of New Barnfield, Hatfield, included a front-end sorting capability that would have extracted around 28,000 tonnes of recyclable materials, including plastics from the incoming waste stream. The development proposed in the current application lacks that feature and the constrained nature of the site means that the proposed development would lack the flexibility to add front-end sorting capabilities in the future thus locking waste into residual waste processes when it could be reused, composted or recycled.<sup>677</sup>
- 12.61 Furthermore, the proposed development does not provide the flexibility that could be provided by a network of smaller sites, whereby the localised arrangements and the wider network of more specialised processing plants would all evolve with changing economic, social, legislative and technological opportunities and constraints.<sup>678</sup> Hertfordshire County Council's Principal Planning Officer confirmed, during cross-examination, that Policy 1 of the WCS, which covers the strategy for the provision of waste management facilities, is '*certainly technology neutral*' and that Policy 7, which is the general criteria of assessing planning applications outside of identified areas of search, is also technology neutral, i.e. does not favour incineration over alternative options.<sup>679</sup> The witness also confirmed that Hertfordshire Waste Site Allocations Policy WSA2 is technology neutral.<sup>680</sup>
- 12.62 The witness also confirmed during cross-examination that his understanding accords with the Inspector's Report on the Examination of the WCS which states that: '*the Core Strategy itself does not include either a policy specifically*

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<sup>672</sup> Herts Without Waste proof of evidence (paragraphs 76-78)

<sup>673</sup> VES/SA/4

<sup>674</sup> HW2 (paragraph 79)

<sup>675</sup> HW2 (paragraph 85); CD J17 (Annex 1, page 78)

<sup>676</sup> HW2 (page 84); CD J17 (page 94)

<sup>677</sup> HW2 (paragraphs 71 and 95(a)); Annex HW5 (paragraph 6) to HW2

<sup>678</sup> HW2 (paragraph 66)

<sup>679</sup> Mr Egan during cross-examination by Dr Webb (28 June 2018); CD C1 Page 39

<sup>680</sup> Mr Egan during cross-examination by Dr Webb (28 June 2018); CD C2 Pages 19 and 20

*preferring/favouring incineration (with or without energy recovery) or a policy proposal for a strategic waste treatment facility to include energy from waste.*<sup>681</sup>

- 12.63 In July 2014, following an inquiry,<sup>682</sup> Veolia's proposal for a RERF plant at New Barnfield was refused planning permission. Later that year, DEFRA withdrew the PFI funding for residual waste treatment infrastructure in Hertfordshire. During cross-examination Veolia's Regional Director and company matters witness confirmed that the UK Government has not reinstated PFI Waste Infrastructure Credits for the Revised Project Plan.<sup>683</sup>
- 12.64 DEFRA arrived at their decision to withdraw the funding after carrying out an in-depth analysis. Explaining their decision to withdraw funding from the Hertfordshire residual waste infrastructure project, a DEFRA spokesperson stated at the time that: *'DEFRA's responsibility is to ensure public money is used appropriately and as we expect to meet EU landfill diversion targets with the existing infrastructure we now have in place in England, we cannot justify continuing to fund this project.'* DEFRA thus acknowledged that changes in circumstances had arisen and that these changes removed the justification for the proposed incineration capacity in Hertfordshire.<sup>684</sup>
- 12.65 In the case of the facility now proposed, the applicant is applying for permanent planning permission for a residual waste treatment facility that is unlikely to enter commissioning before 2020 and that could still be operating in 2060 and beyond. A consideration regarding whether or not the capacity is needed should take proper account of the risk that new capacity would exacerbate long-term residual waste treatment overcapacity.<sup>685</sup>
- 12.66 There is currently nearly 850,000 tonnes of effective operational capacity available in the East of England region, with nearly a further 450,000 tonnes of capacity under construction. Additionally, a total capacity of more than 2 million tonnes already has planning consent. Based on the East of England waste arisings projected for 2035, there is already more residual waste treatment capacity in the region that is either operational or under construction than there are projected to be residual waste arisings requiring treatment.<sup>686</sup> Were the region's already-consented capacity to move forward towards construction, the circa 3.5m tonnes of capacity to treat residual waste in the East of England would significantly exceed the quantity of waste requiring residual treatment.<sup>687</sup>
- 12.67 According to DEFRA, England landfilled just 15.7% of municipal waste in 2016/17, while it incinerated 38.6%. Even if landfill were reduced to zero, the share of local authority collected waste (LACW) that is incinerated in England would need to reduce over the period to 2035 in order to allow the 65% recycling target to be met.<sup>688</sup> With the direction of travel on waste management now clearer than it has been for some time, the data suggests

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<sup>681</sup> Appendix 3 to the proof of evidence for The Hoddesdon Society (paragraph 70)

<sup>682</sup> PINS Reference: APP/M1900/V/13/2192045

<sup>683</sup> HW5 Paragraphs 7-11; Mr McGurk during cross-examination by Dr Webb (3 July 2018)

<sup>684</sup> HW5 Paragraphs 8-11

<sup>685</sup> HW5 Paragraphs 12-19

<sup>686</sup> HW5 (paragraphs 20-30)

<sup>687</sup> HW5 (paragraph 31)

<sup>688</sup> HW5 (paragraph 70)

that the construction of additional incineration capacity in the UK would exacerbate incineration overcapacity, thereby impeding the efforts that the UK will need to make to reach the recycling levels that it now appears to be Government policy to achieve.<sup>689</sup>

- 12.68 Based on anticipated increases in recycling and waste arisings, the modelling shows that during the first half of the 30-40 year lifetime of the proposed Hertfordshire ERF, the available residual waste requiring treatment will fall below the current level of treatment capacity that is operational or under construction within the East of England region.<sup>690</sup> If one takes account of currently consented capacity becoming operational and/or of post-2035 reductions in residual waste arisings, then the 320,000+ tonnes of capacity proposed by Veolia could, during the facility's operational lifetime, contribute to a significant level of residual waste treatment overcapacity within the East of England region.<sup>691</sup>
- 12.69 The applicant has stated that were there to be a shortfall in the availability of residual LACW in Hertfordshire, that shortfall would be made up by other waste streams, particularly Commercial and Industrial (C&I) waste.<sup>692</sup> However, our assessment of need includes household, industrial and commercial waste. This counters the applicant's case that the proposed facility is needed in the East of England region for both LACW and C&I residual waste streams.<sup>693</sup> In conclusion, the analysis provided by Herts Without Waste finds that there is no quantitative or market need for the proposed Rye House ERF.<sup>694</sup>
- 12.70 The evidence of the applicant's policy witness cited forecasts of LACW residual waste at intervals from 2016/17 to 2030/31, for recycling rates of 60% and 65%.<sup>695</sup> The witness confirmed that his evidence did not provide a specific assessment of how much of that municipal waste he anticipated to be available as feedstock would be unsuitable for incineration; nor how much would not be combustible; nor how much could have been recovered for recycling.<sup>696</sup> Thus, unspecified proportions of the residual LACW purported to be available as feedstock waste would, in fact, not be a benefit from EfW by incineration. As such, it would be unsafe to rely upon the applicant's flawed need analysis in the determination of this planning application.
- 12.71 The applicant's failure to demonstrate a need for the proposal, combined with the diminishing role of incineration set out in the Government's 25 Year Plan, the requirement to meet future recycling targets, and the anticipated increased availability of existing incineration capacity as biowaste and plastics are diverted from the residual waste stream, is made all the more significant by the fact that there is a policy requirement for need to be demonstrated for this proposal.<sup>697</sup> The applicant's requirement to demonstrate need arises because the Ratty's Lane proposal is not consistent with an up-to-date Local

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<sup>689</sup> HW5 (paragraph 72)

<sup>690</sup> HW5 (paragraph 73)

<sup>691</sup> HW5 (paragraph 74)

<sup>692</sup> Mr McGurk proof of evidence (paragraph 2.10 on Page 8)

<sup>693</sup> HW5, throughout

<sup>694</sup> HW5 (paragraph 75)

<sup>695</sup> Mr Bridgwood's proof of evidence (paragraph 5.3.6 on Page 44)

<sup>696</sup> Mr Bridgwood in cross-examination by Dr Webb (31 July 2018)

<sup>697</sup> HW2 (paragraphs 88-94)

Plan, and is therefore required by national planning policy to demonstrate a quantitative or market need.<sup>698</sup>

- 12.72 The National Planning Policy for Waste states: *'When determining waste planning applications, waste planning authorities should: only expect applicants to demonstrate the quantitative or market need for new or enhanced waste management facilities where proposals are not consistent with an up-to-date Local Plan...'*. This implies that quantitative or market need should be demonstrated in circumstances where either the local plan is out-of-date, or where the plan is up-to-date but a proposal is not consistent with that Local Plan.<sup>699</sup>
- 12.73 The circumstances pertaining to the current proposal are, therefore, comparable to the circumstances in Merseyside, where a Planning Inspector dismissed an appeal for an Energy from Waste plant stating: *...the Appellant has not clearly demonstrated that existing operational and consented capacity cannot be accessed to meet the identified need ... the National Planning Policy for Waste (NPPW) expects applicants to demonstrate the quantitative or market need for new waste management facilities where proposals are not consistent with an up to date LP [Local Plan]. I conclude that the overall need for the proposal has not been clearly demonstrated.*<sup>700</sup>
- 12.74 As this proposal runs contrary to Policies 3 and 10 of the WCS, it is not consistent with the Local Plan. This means that quantitative or market need must be demonstrated by the applicant. The applicant's failure to demonstrate such a need provides further grounds for refusal.<sup>701</sup>

## Conclusion

- 12.75 In our evidence and questioning of witnesses, we have considered wider than local matters, such as climate change, the circular economy, resource productivity and incineration overcapacity with the associated lack of need for the proposed facility.
- 12.76 The Hoddesdon proposal is not, as the Applicant would like us to believe, such that the environmental impacts of the scheme are entirely acceptable.<sup>702</sup> Rather, as demonstrated by our Inquiry evidence, this is a case where adverse environmental impacts and other relevant planning considerations indicate that this proposal should be refused.<sup>703</sup>
- 12.77 Our written submissions amount to a compelling case that the Applicant's proposed facility is not needed, that it would be harmful to efforts to minimise climate change, and that the proposal should be treated as one which goes against the waste hierarchy and the principles, objectives and legal requirements for a circular economy of materials.<sup>704</sup>

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<sup>698</sup> HW2 (paragraph 88)

<sup>699</sup> HW2 (paragraphs 89-91); CD D4 (paragraph 7)

<sup>700</sup> HW2 (paragraphs 92 and 93); CD F8 (paragraph 26)

<sup>701</sup> HW2 (paragraph 94); CD D4 (paragraph 7)

<sup>702</sup> Doc 2 (paragraph 23, referring to Mr Bridgwood's proof of evidence (paragraph 9.2.4)

<sup>703</sup> Doc 2 (paragraph 24)

<sup>704</sup> Doc 2 (paragraph 25)



12.78 Refusal of planning permission for the development proposed at Ratty's Lane would avoid the harm that would be caused, including the significant adverse climate change impact.<sup>705</sup> Refusal of this unnecessary facility would also help pave the way towards Hertfordshire enjoying the many benefits that can be gained from a more circular economy and from greater resource productivity.<sup>706</sup> We respectfully ask, therefore, that the reasons we have given be accorded full weight in the planning balance and that planning permission be refused for this application.

### **13. THE CASE FOR OTHER PERSONS APPEARING AT THE INQUIRY**

13.1 A number of other oral and written representations were made during the Inquiry.<sup>707</sup> The names of those who spoke at the Inquiry are listed at the end of this report. The main points of the speakers are summarised below.

13.2 **Effects on wildlife and habitats:** The adjacent river and waterways provide an important habitat for wildlife as well as a beautiful environment for people from a wide area. There are more than 4,700 recorded species within the Lee Valley Regional Park, including over 300 bird species, more than 900 species of flowering plant and 2,400 species of invertebrates and 33 species of mammal, including nine bat species. The ecology and eco-systems of the Park and nearby National Nature Reserves, Local Wildlife Sites, Sites of Special Scientific Interest, Special Areas of Conservation, RSPB sites, veteran trees and areas of Ancient Woodland, fisheries etc. would be adversely affected by the stack emissions, exhaust fumes, noise and disturbance. In addition, the design of the main building includes a large upper section of translucent material which is likely to allow for lightspill which would impact upon bat foraging and commuting routes in this part of the Lee Valley corridor and other nocturnal wildlife.

13.3 Impact on biodiversity was part of the reason given by the Inspector in rejecting this site as a possible alternative location for the New Barnfield facility.

13.4 Little account has been taken of the impact of the development proposed on the wildlife and habitats on the site itself which would be cleared to facilitate the development proposed. Given the extensive areas of hardstanding, discharges to the river would adversely affect fish stock and river biomass.

13.5 **Visual Impact:** Although the application site itself is located on an industrial estate, the physical constraints of the site necessitate a building some 48 metres in height and stacks almost 87 metres high, much taller than Nelson's Column, which development fails on every aspect to protect the visual amenities of the area. It will be a clear eyesore from wider areas of Hoddesdon (in addition to the town itself, there are significant residential areas within 400 metres of the application site) nearby villages, parts of the adjacent Lee Valley Regional Park and beyond. A lot of money, planning and effort has gone into rejuvenating the town and we want to attract visitors not put them off coming. The scale of opposition to this proposal, including petitions and

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<sup>705</sup> HW5 (paragraph 103)

<sup>706</sup> HW2 (paragraph 104)

<sup>707</sup> Docs 8-17, 29-31, 35, 43-48, 52, 53, 60, 61, 64, 73 and 82 together with the written submissions for the Regional Park Authority which were spoken to at the Inquiry.



local demonstrations and rallies, confirms just how inappropriate a location this is for the development proposed.

- 13.6 The Lee Valley Regional Park was set up as a green lung for London. That part of the Park adjacent to the application site contains a series of footpaths where the towpaths along the Rivers Lee and Stort converge. The most significant impact of the development proposed would be in terms of its visual and landscape impacts which, despite their importance, are left to be dealt with by means of conditions and the planning obligation. Landscape is the defining feature of the Regional Park, providing not only context, but also definition to its character which contrasts markedly with the surrounding urban form. Whilst the facility itself would be outwith the Park boundary the proposal would influence its sensitive landscape by reason of its proximity and excessive size and would materially detract from the visitor experience. No-one will want to visit this part of the Regional Park once this huge facility and the chimneys have been constructed right next to it. The building mass, bulk, height and design, together with the tall stacks would materially detract from and enclose the landscape character of the Park and at night, the illuminated upper section would have an adverse impact on the natural dark environment of the Lee Valley.
- 13.7 Whilst there is industrial development adjacent to the Park in this locality, it is no more than 15 metres in height. The development proposed would be substantially larger, dominating views across the Park and the wider area. The impact of the development would undermine the landscape context of the Park. Those living on the house boats or holidaying at the Dobbs Weir caravan site would not only be close to the facility but would be encased by its glow at night. That is not a negligible impact.
- 13.8 **Historic Heritage:** The development proposed would have an adverse impact on the setting and historic integrity of the historic market town of Hoddesdon and its Conservation Area which contains many listed buildings. There would also be an adverse impact on the heritage significance of the numerous conservation areas, listed buildings and Registered Parks and Gardens in the locality.
- 13.9 **Effect on health and well-being:** The development proposed would have a dramatic adverse impact, causing long term environmental and pollution issues, major traffic congestion and road safety issues, risk of the possibility of explosion/fire/smoke, all of which will have a major impact on the health and well-being of local residents including babies and children, Hoddesdon town itself, and local businesses etc. This is a suburban family area with many schools and young children. It is prime commuter belt, just outside London and is a residential growth area, none of which sits well with the development proposed which will burn mixed municipal, medicinal and medical waste producing a large volume of waste gases and particulates that would spread out over the surrounding area. Filters etc. will not remove all pollutants, which is a real concern
- 13.10 Other concerns relate to odours from the facility itself and from loaded lorries travelling to the site, with attention drawn to odours experienced from waste en route by road and rail to the Edmonton facility. Ware residents also have to keep their windows closed at times because of odours from refuse storage. Odours are already experienced from the recently opened ATT and AD plants

on Ratty's Lane. Location of the proposed ERF in the bottom of a valley means that odours will not readily disperse.

- 13.11 In terms of emissions both from traffic movements during construction and operational phases, and from the stacks, particular reference made to dioxins, TCDD, furans, acid gases, heavy metals and particulates, plus toxic bottom ash and fly ash all of which are hazardous to health due to toxicity and carcinogenic effects. Concerns are exacerbated by the necessary height of the chimneys.
- 13.12 The applicant's Health Impact Assessment<sup>708</sup> is some 15 months old now, relying on data that is six years out of date, with the sample sizes used being too small to be meaningful. There is also concern at the location of the facility in a river valley. The Hoddesdon area in the valley bottom already suffers from pollution from other significant sources, including the crematorium and the power station, together with the new ATT/AD Plant on Ratty's Lane and a chimney at MSD, and there is already a high instance of coughs and chest complaints in the area. Adding to those existing emissions, will adversely impact the health of local residents, particularly since the valley location has implications in terms of the ability for emissions to properly disperse, especially in still weather. Regular occurrences of mist and fog settle in the valley bottom which would trap pollutants and particulates which would be deposited on plants, water and wildlife.
- 13.13 It is not appropriate to rely on the Environment Agency to revise the operational permit on a regular basis to take account of constant reviews of what is an acceptable level of pollution. The classifications for some of the pollution effects set out in the Environmental Statement are artificially low, as is the magnitude of change set out there. There were similar concerns in relation to sound pressure levels.
- 13.14 The incineration process produces toxic bottom ash and fly ash, the storage and disposal of which is of concern in terms of pollution and health impacts. The storage of bottom ash in open fronted bunkers is also a cause of concern in relation to odour.
- 13.15 Other concerns related to the increased health risks from eating locally produced food, including fish from local fisheries, or drinking local water (the New River is an open waterway which provides drinking water to London) all of which would be subject to fallout pollutants.
- 13.16 The very visual presence of the ERF and emissions from the stacks would affect the mental health of those resident in and working in the area, acting as a constant reminder to local residents of its presence.
- 13.17 None of the photomontages show the plume. Operation of the large plant 24 hours a day, seven days a week means that it is likely to be lit up during the night, contributing to local light pollution, disturbing sleep and impacting on wildlife.

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<sup>708</sup> CD A9

- 13.18 Operation of the proposed ERF would undermine the drive to reduce carbon emissions at both county and national level.
- 13.19 Other facilities such as those at Greatmoor in Aylesbury and Ardley in Oxfordshire are remote from urban areas and do not impose themselves upon residential areas. Even the Edmonton facility in north London is nowhere near residential properties.
- 13.20 **Noise:** Noise during construction will not be minimal and will be heard not just by residents of Lock Keepers Cottage, but also the residents of the Rye Park area including Normandy Way, Fisherman's Road, and Essex Road. Similarly, noise during the operational phase from the facility itself and associated traffic movements will increase noise in the locality considerably. Concerns are exacerbated in this regard by the proposed ramp up which lorries would travel to access the tipping hall.
- 13.21 Noise from the development proposed would have a material adverse impact on the quiet enjoyment of the adjacent fishery as most anglers are on the fishery all day.
- 13.22 **Socio-economic and tourism impacts:** Hoddesdon High Street was pedestrianised in the early 1990s which had an adverse impact on the vibrancy of the town. It has now been re-opened to vehicular traffic following which, in conjunction with some town centre redevelopment and public realm improvements, the town has gone from strength to strength with few vacant shops and a thriving economy. Just recently the traders voted for it to become a Business Improvement District and are now paying additional Business Rates for that purpose. Hoddesdon is now regarded by many towns throughout Hertfordshire, and the country as a whole, as an exemplar of what can be achieved and is proud of its reputation. It attracts many thousands of visitors to the events that it puts on (16,000 people visited its last one-day Christmas event alone). Should the proposed development go ahead, it would have an adverse effect on that reputation and many of those who previously visited will no longer come to the town because of the traffic congestion. The same holds true for businesses off Essex Road, which will also take longer to access and will face issues with recruitment and retention of staff.
- 13.23 A key element of the spatial approach set out in the Council's economic development strategy, is to ensure the generation of quality places which will support business growth and improve residents' wellbeing. The proposal is contrary to that strategy.
- 13.24 The development will cause congestion and costs to local business when things go wrong. The development will impact on the staff of local businesses in an already challenging employment market. There is already concern about the impact of the proposal on the continuing attractiveness of the area to businesses in the long-term prospects for job development.
- 13.25 There are over 100 acres of glasshouses in the Lee Valley, the majority of which are located within a 10 minute drive from the application site. Concerns raised in this regard relate to increased pollution increasing the deposition of dust on the glasshouses which in turn will inhibit light to the growing crops

beneath resulting in a reduced yield. A 1% loss of light would equate to a loss of around £10 million retail value.

- 13.26 Increased traffic congestion around the glasshouses would also have implications for the already tight delivery schedules for growers. There is also potential for negative consumer reaction to the proximity of the proposed facility so close to food production sites in terms of food safety issues.
- 13.27 Vauxhall Angling Club has angling rights for half a mile downstream from Feildes Lock. The development proposed would destroy the quiet enjoyment of anglers on this part of the river.
- 13.28 Kings Weir Fishery, a family business growing barbel, is located on the river at Wormley, to the south of Broxbourne. There is concern that air and water pollution from the facility would adversely affect the survival rate of the fish, harming the business.
- 13.29 Roydon Marina Village with its hotel, holiday chalets and berths for some 350 leisure boats is very much a significant tourist destination. In addition, Stanboroughs, a historic building within the Hoddesdon Conservation Area, is a popular function and wedding venue. The attractiveness and viability of these and other tourist reliant businesses both would be adversely affected by the presence of the proposed facility.
- 13.30 **Access and Highways:** Access to the site would largely be from the A10 and surrounding roads, which roads are already adversely affected by the level of traffic going through to the businesses accessed via the Dinant Link and Essex Roads. Traffic currently often causes problems in the streets off of the Sun and Fourways roundabouts and static or slow moving vehicles emit increased levels of pollution in the area. These traffic issues already exist, and an additional 268 HGV traffic movements can only exacerbate an already existing problem. Not long ago, County Officers informed Broxbourne Members that Essex Road is the third most congested road in the County.
- 13.31 There are proposals to alleviate existing problems with the construction of a new bridge over the New River. Whilst welcomed locally, it would simply hasten the congestion at the Gerald Game Bridge at the traffic light junction of Pindar Road with Essex Road. Congestion problems would be further exacerbated if the incinerator bottom ash is not able to be moved by rail.
- 13.32 The impact of traffic associated with the 13 schools in Broxbourne is not taken account of. No account is taken either of the new two-form entry school to be built on the High Leigh Garden Village development, adjacent to the Dinant Link Road, which will have two dumbbell roundabouts and two Toucan crossings to cross the two dual carriageways, which roads will be used by Veolia lorries. There is no mention either of the many accidents on the A10 or near the Dinant Link Road.
- 13.33 No information is provided about controlled traffic management routes to avoid Veolia traffic using residential areas as rat runs, or displaced car traffic seeking to avoid the congestion seeking rat-runs through residential areas, or about additional congestion that would be caused on the Link Road as a consequence of the construction traffic associated with the High Leigh development and, once the Garden Village is built out, the impact of that traffic added to the

additional traffic from the proposed ERF during both construction and operational phases. It is not clear whether planned development in adjoining counties has been taken into account. HGV traffic already ignores the weight restriction in force on Dobbs Weir Road.

- 13.34 The reliability of the traffic impact assessments is questioned, particularly since two smaller facilities on Ratty's Lane have been restricted to a combined movement of 36 movements in and out, compared to the 260+ movements associated with the facility now proposed, plus other non-HGV traffic. Reported travel times relied on between the facility in Waterdale and Ratty's Lane are also incorrect
- 13.35 The development proposed would cause significant congestion, which will have an adverse impact on local businesses, especially those within the Essex Road industrial estate. Problems would be exacerbated at times when there are problems on the A10, the M11 and/or the M25, a not infrequent occurrence, or when the Ware viaduct is closed. To be effective, Essex Road will need completely resurfacing and dualling to accommodate the additional traffic proposed.
- 13.36 The current road network is not fit for purpose. The local roads are constrained in width in many places and are heavily congested. Oncoming lorries are unable to easily pass in many places, having to mount the pavement at times. Cycling on local roads is increasingly dangerous and the narrow width of the carriageway in places, together with increasing lorry movements means that cyclists have to compete for road space as it is. Introducing more traffic in the volume anticipated, would exacerbate existing problems. Increased traffic congestion in the area will also mean that it will take longer to get to existing businesses situated off of Essex Road.
- 13.37 There are issues with the width of Ratty's Lane itself. Not only would oncoming lorries be unable to pass, resulting in queuing vehicles backing up onto the roundabout, but there are significant implications for access for emergency vehicles in the event of an emergency or fire.
- 13.38 West Ham Angling Club owns the angling rights on the river, adjacent to the application site. Members of the Club, and their predecessors, have used Ratty's Lane to access the fishery for many years, parking adjacent to the canal towpath at the end of the Lane. The access and parking is also used by Ware Angling Club, boat owners, cyclists and pedestrians. The owners of the car park (Trent Developments and Trent2) are obliged, pursuant to the grant of planning permission for the ATT Plant and AD on Ratty's Lane, to provide public parking here. However, in advising the planning committee in relation to the current ERF application that Ratty's Lane was a private road, neither the County Council nor Veolia made mention of the use of the Lane by members of the public, or of the current outstanding Modification Order Application made by the Angling Club for recognition of Ratty's Lane as a byway open to all traffic. It is important that private vehicular, cycle and pedestrian traffic can use Ratty's Lane safely if the development is approved.
- 13.39 **Energy and Waste cycle:** the incineration of mixed waste is not well suited to the co-generation of energy, as heat exchangers operate at temperatures which maximise toxic dioxin production. If the gases are quenched, this comprises energy recovery.

- 13.40 Large scale waste incineration facilities such as this distort the waste management cycle. They rely on minimum guaranteed waste flows thereby indirectly promoting continued waste generation, rather than preventing waste and promoting re-use, composting, recycling and recycling-based activity. The focus should be on minimising waste and where it is unavoidable, focus on recycling. For combustion to be maintained, waste needs an average energy density of around 2,000-3,000 calories/kilogram. Mixed waste cannot guarantee this. Consequently, auxiliary fuel will need to be added making the process more uneconomic.
- 13.41 Incineration costs more and provides fewer jobs than comprehensive recycling and composting, whilst inhibiting the development of local recycling –based businesses.
- 13.42 It is essential to explore the potential of environmentally friendly technologies for waste disposal and reap the benefits of a circular economy.
- 13.43 **Claimed benefits:** Veolia claim that local people will benefit from job opportunities at the site and that businesses will benefit from increased trade, claims that will be hard to substantiate. If local people are employed at the site they are not likely to be from the unemployed, but people wishing to work closer to home, which does not mean additional money into the local economy. It is also unlikely that local businesses would benefit from the facility being situated in Rye Park – visiting lorries are unlikely to source their fuel from local outlets and no doubt Veolia itself will supply the facility with its needs from centrally negotiated contracts. Also, there are no garages or retail outlets situated on the access routes from the A10 to the site.
- 13.44 When asked what benefits it would bring for the people of Rye Park, Veolia could only come up with an answer along the lines that they would get satisfaction by knowing that they will be doing their bit for the economy by reducing the amount of rubbish that has been going to landfill.
- 13.45 There is no need for the proposed facility. At the anticipated commissioning date there would be an over-supply of such plants. Reference was also made in this regard to existing incineration facilities at Edmonton in north London (to be replaced by a major new facility) the Riverside Resource ERF (Belvedere) and the south-east London Combined Heat and Power Plant.
- 13.46 This is not the best location in terms of access to the rest of the county. It would make more sense to build any facility, if required, to the north or west of the Borough, so waste disposal is distributed more evenly, rather than making Hoddesdon the dumping ground for the county. We already have the power station, a sewage treatment plant, the recent ATT/AD Plant on Ratty's Lane and MSD.
- 13.47 **New Barnfield Decision:** Only three years ago, both the applicant and the County Council confirmed to the New Barnfield Inspector that Ratty's Lane was not an appropriate or suitable site for development such as this for reasons including flood risk, effect on wildlife and poor transport connections. The proposal then being promoted complied with the waste hierarchy in that it included a front-end recycling facility. Unlike the New Barnfield proposal, the current application site is not located centrally in the county. Rather it is at the edge and there is no front-end recycling facility. Following refusal of New



Barnfield, from being a non-starter, the applicant and the county council are now promoting the Ratty's Lane site as being suitable for an ERF even though nothing has changed.

- 13.48 **Other Matters:** Local residents are worried about the effect the development may have on property values, which will also leave residents unable to sell feeling trapped and depressed.
- 13.49 The Official Journal of the European Regulations (OJEU) Pre-Qualification Questionnaire (PQQ) process<sup>709</sup> did not consider or discuss the well recorded and documented poor health and safety record in relation to environmental incidents at Veolia facilities. None of the Cabinet Members visited the site prior to Cabinet approval and the Council did not check health and safety prosecutions against Veolia or the company's health and safety record, which is a serious error. The serious risks identified have been ignored. There is also a potential conflict of interest: the Council has a waste contract with Veolia and is also the waste planning authority determining the application.
- 13.50 There is a concern that so many matters that should be resolved at this stage are being left to conditions or the permit.

#### **14. WRITTEN REPRESENTATIONS**

- 14.1 The planning application generated a significant number of written representations, with some 4,085 letters of objection being received. Four representations were submitted in support of the proposal. I do not recite the comments made here - they are summarised in the officer's report to the planning committee<sup>710</sup> and do not raise any issues that are materially different from the matters raised at the Inquiry as reported above.
- 14.2 Written representations were also submitted in response to the calling-in of the application. Again, material comments made are reflected in the views set out above and it is not necessary to repeat them here.

#### **15. CONDITIONS**

- 15.1 Should planning permission be granted, recommended conditions and the reasons for them are attached as Appendix D. They are based on the suggested conditions agreed between the County Council and the applicant, with input from Broxbourne Borough Council.<sup>711</sup> They were discussed at the Inquiry on a without prejudice basis and were considered in the light of the tests set out at paragraph 55 of the National Planning Policy Framework and the advice in the Planning Practice Guidance. During the discussion, it was agreed that a number of the suggested conditions could be combined, needed re-wording, duplicated others, were otiose or were unnecessary for various reasons. The recommended conditions reflect that discussion.
- 15.2 The plans listed in recommended condition 4 are found in CD A12, as amended in part by the Regulation 22 submission (CD A14c) and by further amended plans submitted during the Inquiry (Docs 20, 59 and 79).

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<sup>709</sup> CD K4, K4a, K4b, K4c and K4d

<sup>710</sup> CD B1 section 4.38

<sup>711</sup> Doc 69, 80, 83 and 93

- 15.3 Two of the suggested conditions were contested by the applicant essentially as being unnecessary. Suggested condition 48 would prevent commissioning of the facility until such time as the Essex Road Bridge improvements were completed, namely provision of a separate pedestrian/cycle bridge over the New River. The existing road bridge is an acknowledged pinch point on the local highway network. Given the anticipated increase in HGV movements on the local highway network as a consequence of the development proposed, in addition to increases in traffic movements along Essex Road due to planned developments and the overall background increase in traffic movements generally, I consider for the reasons set out later in this Report that, notwithstanding that most HGV movements would take place outside the AM and PM peak hours, it is necessary to ensure that the new bridge is in place before commissioning in order to ensure the free and safe flow of all traffic on the local highway network, including pedestrians and cyclists.
- 15.4 The second of the disputed conditions, number 50 (there is no suggested condition 49) sought to preclude the entering and leaving of waste delivery vehicles between 07.30-09.00 and 16.30-18.00. During the related discussion, it was drawn to my attention that the New Barnfield Inspector had recommended an hours of operation condition in his Report (condition 5) restricting the importation of waste to between 07.00-21.00 hours daily, seven days a week. However, the stated reason for that condition was to protect the amenity of residents of the area. The reason for the hours condition suggested at Ratty's Lane is different, relating to highways issues, in particular local congestion during the AM and PM peak hours on the Permitted Route for waste delivery vehicles.
- 15.5 For the reasons set out later in this Report, I consider an hours condition to be necessary. In essence, the impact of the development proposed on the highway network as assessed in the Transport Assessment and the Environmental Statement is predicated on the vast majority of HGV movements taking place outside the identified AM and PM peak hours, identified in the TA as 08.00-09.00 and 17.00-18.00. It is important, therefore, to ensure that HGV movements do not add to traffic movements on the highway during those peak times, times when the highway network is already prone to congestion, albeit 'peaky'. The hours set out in the condition as suggested go beyond the peak hours identified by the TA. I have therefore revised the hours in the recommended condition accordingly.
- 15.6 The suggested condition relating to the removal of permitted development rights was also challenged by the applicant. However, given the size of the building proposed and its proximity to the Regional Park, I consider that implementation of related permitted development rights could have a material adverse impact on visual amenity and the amenity generally of the Regional Park. In my view, were permission to be granted, it is necessary to remove permitted development rights relating to the erection of any building, fixed plant, fixed machinery or fixed structures.
- 15.7 The list set out at Appendix D includes a number of pre-commencement conditions. The need for them to be complied with prior to the commencement of development is either because the matters to be approved may affect design and/or layout, or are necessary to mitigate impact during the construction phase. In accordance with the provisions of The Town and

Country Planning (Pre-commencement Conditions) Regulations 2018, the applicant has provided written acceptance of those conditions.<sup>712</sup>

15.8 Having regard to the advice in relation to the imposition of planning conditions as set out in the Planning Practice Guidance and the National Planning Policy Framework, I am satisfied that the matters left to be resolved by the recommended conditions are appropriate and they meet the relevant tests for conditions.

## **16. PLANNING OBLIGATION**

16.1 A planning obligation in the form of a deed of agreement was submitted in support of the application.<sup>713</sup> It secures the following obligations (as set out in Schedule 1 thereto) which obligations are conditional upon the grant of planning permission and commencement of development and are a material planning consideration:

- an Access Improvement Contribution of £750,000
- a Nature Improvement Area contribution of £268,000
- a Highways Works Contribution of £10,000
- adherence to a series of measures to ensure that drivers of HGVs travelling to or from the site use only the permitted route
- submission of a written plan setting out arrangements for removal of incinerator bottom ash by rail
- the carrying out of a feasibility study to assess the potential for the site to provide Combined Heat and Power opportunities
- the carrying out of towpath improvement works between Ratty's Lane and Rye House railway station
- development not to commence until a Diversion Order Application has been submitted to the County Council for the diversion of Footpath 59
- a Travel Plan Contribution of £6,000.

16.2 I appraise in my conclusions below the merits of the various obligations and the extent to which the provisions satisfy the relevant tests.

## **17. INSPECTOR'S CONCLUSIONS**

17.1 The following conclusions are based on my report of the oral and written representations to the Inquiry set out above, the written evidence submitted and on my inspections of the site and its surroundings. The numbers in square brackets thus [1], refer to preceding sections of this Report.

17.2 Following the resolution of Hertfordshire County Council (in its role as waste planning authority) to grant planning permission for the development proposed,<sup>714</sup> the application was called in by the Secretary of State for his determination. Given the resolution to approve, the County Council does not

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<sup>712</sup> Doc 98

<sup>713</sup> Doc 97a

<sup>714</sup> CD B2

oppose the granting of permission. There is, however, considerable local opposition, including the local planning authority (Broxbourne Borough Council). I am also mindful of the reasons given for the calling-in of the application.

17.3 Given that context, and having regard to the evidence before the Inquiry, I consider that the main considerations in this case relate to:

- principle of location outwith any defined area of search
- need
- technology choice
- alternative sites assessment
- carbon balance and climate change
- effect on air quality, water quality and health
- heritage assets
- ecology and wildlife
- highways and traffic
- landscape and visual effects
- noise and vibration
- socio-economic and tourism interests
- any benefits to be weighed in the planning balance, including any implications of not proceeding with the scheme

17.4 Relevant development plan policies and other relevant policies and guidance, which together provide the framework for consideration of the development proposed, are set out in Section 5 above. I assess the proposal against those policies in the sections below.

**Location outwith any defined area of search** [7.39-7.50, 7.68-7.71, 8.35-8.52, 8.97, 9.3-9.13, 9.36-9.40, 12.61]

17.5 The overarching strategy of the development plan is set out in policy 1 of the Waste Core Strategy (WCS) which, among other things, sets out that provision for new Local Authority Collected Waste (LACW) management facilities will be provided within broad areas A, B, C, D, and E as shown on the Key Diagram. The Key Diagram<sup>715</sup> further narrows down the areas of search for LACW to areas C, D and E. Although close to Area E (which is centred on Ware to the north-west of Hoddesdon) the application site is not within any of the broad areas of search.

17.6 The Waste Site Allocations Development Plan Document (WSA) is to be read in the context of the spatial vision and strategic objectives for waste planning set out in the WCS. Policy WSA2 sets out that LACW management facilities should be located on allocated sites<sup>716</sup> and Employment Land Areas of Search (ELAS)

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<sup>715</sup> CD C4 page 91

<sup>716</sup> Pursuant to the WCS, the WSA identifies eight allocated sites for the management of the county's existing and future waste arisings.

within the defined broad areas of search unless there are overriding reasons to locate such development on sites outside those areas of search. It goes on to confirm that permission will be granted for waste management uses on sites outside the identified locations where they accord with policy 7 of the WCS. The Ratty's Lane site is not an allocated site and, whilst ELAS 161 Pindar Road/Essex Road (Inset Map 002 in the WSA) lies close to the application site on the far side of the railway, the site itself is not within any of the ELAS.

- 17.7 It was suggested that, in allowing for development outside the defined areas of search, there may be a tension between policy WSA2 and WCS policy 1 (which indicates that development will be provided within the broad areas of search) and/or that a location other than within an area of search necessarily results in conflict with WCS policy 1.
- 17.8 WCS policy 1 and policy WSA2 need to be read together: policy 1 of the WCS does not require that new facilities should *only* be provided within the broad areas of search, and neither does it expressly resist waste management development outwith those areas. Paragraph 4.16 of the WSA expressly confirms that policy WSA2 builds upon WCS policy 1. In essence, WSA2 provides detailed assessment criteria by reference to policy 7 of the WCS, building on strategic policy 1 of the WCS.
- 17.9 I am also mindful that paragraph 4.69 of the WCS acknowledges that the allocation of sites does not guarantee that they will be developed in accordance with the Plan and that sites may be put forward for development outwith existing strategic sites, ELAS and allocated sites identified in the WSA. It confirms that as a consequence, there is a need to set out general location criteria for assessing such proposals. Paragraphs 4.74- 4.75 of the WCS confirm that policy 7: *General criteria for assessing planning applications outside of identified locations* (which policy is specifically cross-referenced in policy WSA2) refers, among other things, to applications for LACW management facilities in areas outside of the broad areas in policy 1, as identified in the Key Diagram. On that basis, I am satisfied that the WCS does allow for the possibility for locating LACW facilities outwith the areas of search. Even if there is a tension between the two policies, section 38(5) of the Planning and Compulsory Purchase Act 2004 confirms that any such conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published – the WSA in this instance. Either way, I am content that compliance with policy WSA2 would mean compliance with the central locational policy of the development plan.
- 17.10 BxB and others also draw attention to the reference in WCS policy 1 to provision being made for a *network* of waste management facilities. It was argued, in this regard, that the provision of a single large facility is not policy compliant. However, when read in context, the reference in the policy is to a network of waste management facilities generally, not specifically to a network of facilities dealing with LACW - any LACW facility, whatever its size, would form part of a wider network of a range of waste management facilities.
- 17.11 Whilst the specific reference to LACW in the second paragraph of the policy does refer to 'facilities', I agree with the applicant and the County Council that, in the context of that paragraph, a singular facility is not necessarily excluded. I am supported in that view not least because the WCS was adopted at a time

when the single large LACW facility at New Barnfield was being pursued, a facility that had the support of the County Council. Moreover, in response to similar arguments in relation to the New Barnfield scheme, the Inspector found that, in policy terms, the proposal would not necessarily prevent other large, medium or small waste management sites coming forward elsewhere in the county.<sup>717</sup> He also considered that a scheme involving two or three smaller EfW facilities was a purely speculative alternative strategy and that plant capable of handling lesser tonnages (the New Barnfield scheme was designed to handle up to 380,000tpa) would not necessarily be proportionately smaller, or less visually intrusive.<sup>718</sup> No evidence was before me to indicate that that does not remain the case today.

17.12 In coming to a view on this, I am also mindful that following the refusal of the New Barnfield scheme, there was a thorough review by the Waste Disposal Authority of its options, with the Council going back to the industry to see what possibilities there might be for the treatment of the residual waste.<sup>719</sup> A range of proposals, from the treatment of some 40,000 tonnes per annum all the way up to very large facilities, was put forward from the market and was considered by the County. As noted by the applicant, there is no evidence in this regard that anything approaching a network of small sites was even remotely practical. I am satisfied, therefore, that an ERF for the treatment of residual LACW would not be in conflict with Policy 1 or policy WSA2 providing there is an overriding reason for locating it outwith an allocated site and subject to compliance with the policy 7 criteria.

**Need** [7.10, 7.12- 7.38, 7.192, 8.5, 8.11-8.29, 8.93-8.96, 8.103-8.104, 8.109, 9.10-9.12, 9.48-9.60, 11.48, 11.140-11.148, 12.1, 12.22, 12.53-12.75, 12.77, 13.44, 13.45]

17.13 Paragraph 3.4.3 of Overarching National Policy Statement for Energy (EN-1)<sup>720</sup> sets out that *the principal purpose of the combustion of waste (or similar processes) is to reduce the amount of waste going to landfill and to recover energy from that waste as electricity or heat. Only waste that cannot be re-used or recycled with less environmental impact and would otherwise go to landfill should be used for energy recovery.* It was suggested by some that EN-1 should not be used when considering this case, since the facility proposed is not large enough to be considered as a Nationally Significant Infrastructure Project under the 2008 Planning Act and would not contribute 'significantly' to electricity generation. However, both EN-1 itself and the National Planning Policy Framework (2018) (the Framework) make it clear that such Statements may be a material consideration in the determination of planning applications although whether, and to what extent, is to be judged on a case by case basis. I am mindful in this regard that the New Barnfield Inspector found that the underlying principles of EN-1 were applicable to that scheme.<sup>721</sup> Absent any particular local circumstances in the evidence before me that demonstrates that it would not be appropriate to regard the guidance as a material consideration in this instance, I have no reason to take a different view.

<sup>717</sup> Inspector's Report paragraph 1003

<sup>718</sup> Ibid paragraphs 956 and 981

<sup>719</sup> CD K4 and K4a

<sup>720</sup> CD D6

<sup>721</sup> Inspector's Report paragraph 1043



- 17.14 Dealing first with the recovery of energy, both the DEFRA document *Energy from Waste: a Guide to the Debate*<sup>722</sup> and EN-1 confirm that that portion of energy from waste which comes from the biomass fraction of the feedstock is to be regarded as renewable energy. The proposed facility is intended to treat Hertfordshire's residual LACW by incineration, which waste is currently sent either for disposal to landfill at Westmill Quarry (which is due to cease operations in 2023) or is exported out of the county for incineration at alternative facilities with no long-term contracts secured.
- 17.15 I recognise that some of the waste that would be incinerated would not fall within the biomass fraction of the feedstock and thus, the energy derived from it could not be classed as low carbon or renewable. However, whilst there was no detailed information before the Inquiry as to what that proportion might be, Mr Aumônier indicated that the majority of feedstock was expected to be biomass. In the absence of any substantiated evidence to the contrary, I consider that a sizeable proportion of the energy that would be recovered at the Ratty's Lane facility could be classed not only as renewable but also, with regard to the *Guide to the Debate*, as low carbon.
- 17.16 Paragraph 154 of the Framework confirms that applicants proposing renewable and low carbon development are not required to demonstrate an overall need for renewable or low carbon energy, recognising that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. EN-1 also makes plain that there is an urgent need for new electricity generation capacity, with substantial weight to be given to the contribution which projects would make to capacity. Whilst only some 30 MWe would be exported to the grid, the facility proposed would still help meet an identified urgent need. I note, in this regard, that the New Barnfield Inspector found that *A further clear benefit, to which substantial weight attaches, would be the delivery of some 26 MW of 'dispatchable' electricity to the grid. While this would be small in national terms, the achievement of Government renewable energy targets are dependent on the rapid delivery of many different schemes, from small to large, and using a range of technologies. This aspect of the proposal derives strong support from relevant national and local policy.*<sup>723</sup> I have no reason to come to any different view.
- 17.17 Moving on then to the waste treatment aspect of the proposed facility, Veolia's contract with the County Council is to deal with Hertfordshire's residual Local Authority Collected Waste (LACW) arisings, i.e. that fraction of non-hazardous LACW that is left *after* re-use, recycling, composting and other waste minimisation initiatives (source segregation) have taken place.
- 17.18 The county generated almost 528,257 tonnes of LACW in 2016/17.<sup>724</sup> Approximately 52% of that was recycled or composted, leaving around 253,107 tonnes of residual waste: some 60,000 tonnes went to landfill, with the remainder exported out of the county largely for processing by way of energy recovery.<sup>725</sup> Based on current recycling rates, the latest forecasts indicate that residual LACW will increase to around 294,000tpa by 2030/31,<sup>726</sup>

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<sup>722</sup> CD D5

<sup>723</sup> New Barnfield Inspector's Report paragraph 1068

<sup>724</sup> CD P4 paragraph 3.7

<sup>725</sup> CD P4 Table 25 on page 32

<sup>726</sup> CD K3 Table 4 on page 15

rising to some 340,000tpa by 2050/51.<sup>727</sup> Even if recycling, re-use and composting rates were to increase to 65%, a significant amount of residual waste (roughly 242,000tpa)<sup>[7.18]</sup> would still remain to be dealt with.

- 17.19 With a nominal capacity of 320,000tpa (and a maximum capacity of 350,000tpa) the facility is specifically designed to accommodate the entirety of the waste stream based on current recycling rates. Should recycling rates improve to 65%, then the vast majority of the capacity of the plant would still be required for residual LACW. In the unlikely event that recycling was to increase to 80%, there would still be a need to process some 135,000 tpa of residual waste in 2050.<sup>728</sup> In that scenario, there would still be sufficient in-county commercial and industrial (C&I) waste to meet the shortfall (see below). In light of that most optimistic conceivable recycling rate, the contract requires that the County Council deliver a minimum of 135,000 tpa LACW.
- 17.20 As was argued before the New Barnfield Inspector, there was concern that the capacity of the proposed facility is such that its demand for feedstock would discourage the movement of potentially recyclable waste further up the waste hierarchy. However, as acknowledged by Dr Webb for Herts Without Waste during cross-examination, whilst he advocated moving towards a circular economy, including through a reduction in waste incineration and an increase in re-use and recycling rates, that is '*a long-term aspiration, rather than a practical plan to be implemented forthwith.*'
- 17.21 As noted by my colleague in New Barnfield, the statutory duty on the County Council as WPA, and the 2011 Regulations, requiring everyone involved in waste management and waste producers to take all reasonable measures to apply the waste hierarchy, will continue to exert pressure on the industry to ensure that waste which can be prevented, reused or recycled, will be. Given the statutory duty to move waste up the waste hierarchy and the fact that waste is a valuable resource, there will also continue to be both commercial and political pressure to move waste out of the residual waste stream, irrespective of the existence of the ERF.<sup>729</sup> That is entirely consistent with the view of Government as set out in its 2011 policy review, which noted that significant provision could be made for EfW facilities '*without conflicting with the drive to move waste further up the hierarchy.*'<sup>730</sup> I consider, therefore, that with the contract minimum set at a level which would permit an aspirational recycling target of up to 80% (and I am mindful in this regard that the 'low hanging fruit' in terms of recycling has already been exploited in the county) the ERF clearly would not discourage the movement of potentially recyclable waste further up the hierarchy as feared by some.
- 17.22 Whilst the primary purpose of the proposed facility is to deal with the county's residual LACW, in the early days, when the capacity of the facility would exceed the amount of residual LACW, it is proposed that C&I waste from within the county would make up the shortfall until such time as the residual LACW increased to meet the capacity. Even taking account of the recently commissioned Anaerobic Digester (AD) and Advanced Thermal Treatment (ATT) Plant on Ratty's Lane, there is still a predicted shortfall in residual C&I

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<sup>727</sup> CD K4 Table 3 on page 22 of 33

<sup>728</sup> CD K4 Table 5 on page 24 of 33

<sup>729</sup> New Barnfield Inspector's Report paragraphs 938-940

<sup>730</sup> CD J10, paragraph 214

treatment capacity of 370,000tpa in 2026.<sup>731</sup> I am advised, in this regard, that the applicant-controlled in-county waste transfer station in St Albans alone could provide around 80,000tpa of C&I waste. Thus, even should recycling rates increase to 80%, there would still be sufficient C&I waste to make up any shortfall. Even if a small amount of capacity remained in later years, the use of that capacity to recover energy from C&I waste would accord with the waste hierarchy.

- 17.23 As pointed out by the Hoddesdon Society, the *Guide to the Debate* suggests that the proximity principle does not require local authorities necessarily to be self-sufficient in waste processing terms. The Society referred, in this regard, to other facilities as being capable of accepting the County's waste arisings. However, not only do several of those referred to not even have planning permission, but it is a specific objective of the development plan that the County *should* treat its own waste arisings, as opposed to exporting it elsewhere. Moreover, the *Guide to the Debate* makes clear that the proximity principle requires waste to be treated in 'one of the nearest' facilities, confirming that '*it doesn't have to be the absolute closest facility to the exclusion of all other considerations, including cost.*'<sup>732</sup> Accordingly, the existence of other facilities located potentially closer to the source of waste arisings (about which there was, in any event, no evidence before the Inquiry) does not undermine the compliance of this proposal with the proximity principle.
- 17.24 Whilst Herts Without Waste suggested that there is an overprovision of ERF facilities in the south-east, that is not supported by the recently-adopted WCS or the projections of waste treatment need which underlie it, all of which were considered at the Local Plan examination. Moreover, as noted above, the County Council currently has to make provision for disposal of its own waste through a combination of landfill and out-of-county ERF provision, which arrangements cannot be guaranteed in the long-term. I was also advised that some 4 million tpa of waste are exported to the near-continent for incineration, which arrangement does not sit well with the proximity principle. I am not persuaded, therefore, on the basis of the evidence before me, that there is any over-provision of domestic ERF facilities in the south-east.
- 17.25 Of concern to many was the fact that, unlike the New Barnfield scheme, the proposed ERF does not include a front-end mechanical pre-treatment stage. However, the evidence to this Inquiry was that such pre-sorting is not an efficient or sustainable method for treating residual waste. Moreover, there is no policy requirement or preference for pre-sorting to take place on site, the waste having already been source segregated at the kerbside. I recognise that the waste would inevitably include some recyclable metals, but they would be recovered in any event at a later stage of the ERF process. On the evidence before the Inquiry, it would be unsustainable to expend the energy required to seek to recycle materials from the residual waste if the exercise is likely to have no beneficial purpose. As such, and irrespective of whether pre-sorting was part of the New Barnfield proposals, the absence of any such arrangement for Ratty's Lane does not materially undermine the benefits of the proposal.

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<sup>731</sup> CD P4 page 31, Table 24 (and CD C1 page 28, Table 9)

<sup>732</sup> CD D5, paragraph 152-3, page 43

- 17.26 In his Decision in relation to New Barnfield, the Secretary of State agreed with the reporting Inspector that, notwithstanding arguments to the contrary, the proposed facility would meet a clearly identified and urgent need for waste disposal capacity, allowing Hertfordshire to achieve 100% diversion of LACW residual waste from landfill in circumstances where there was little realistic alternative in the short term other than to continue disposal of high levels of waste to landfill and export waste to areas outside Hertfordshire.<sup>733</sup> I find no material change in circumstances in relation to the current proposal. Indeed, if anything, the need will have become more pressing over the passage of time and there would be more than adequate tonnages of waste arisings sufficient to allow the proposed facility to operate at or near maximum capacity throughout its planned lifetime.
- 17.27 As was the case at New Barnfield, there appears to be little realistic alternative in the short term other than to continue disposal of high levels of waste to landfill and export to areas outside Hertfordshire absent a facility such as that proposed. Even were it possible in the medium to longer term that other treatment facilities might be delivered to meet this deficit, and none were drawn to my attention, there would be a significant delay in any such facilities coming on stream. All in all, I consider that an urgent and pressing need for the proposed facility has been demonstrated.
- 17.28 I find no conflict therefore, with the objectives of the Waste Management Plan for England, the National Planning Policy for Waste, core policies 12, 13 and 14 of the JMWMS or the principles of the LACW Spatial Strategy (LACWSS) which together and among other things seek to improve recycling rates and to ensure that waste is pushed up the waste hierarchy as far as possible, recovery being higher than disposal, diverting waste from landfill and generating renewable energy. For similar reasons, there would be no conflict with policies 1, 3 and 7 of the WCS, which seek to ensure that the county has sufficient capacity for its existing and future waste arisings, encouraging the recovery of heat and/or power.

**Technology Choice**<sup>[7.4, 8.20, 8.26, 8.27, 8.40, 8.60, 12.60, 12.61]</sup>

- 17.29 It was suggested by some that the facility proposed perpetuates a technology that is lower down the waste hierarchy than other technologies, rather than maximising the potential for recycling and thus reducing the flexibility to take advantage of new/future waste management technologies.
- 17.30 As set out above, the development proposed would *not* suppress moves to increase recycling rates in the county. There was no dispute either that both the WCS and WSA are technology neutral, with policy 3 of the WCS setting out that proposals for the treatment of waste and which maximise recovery and generate and recover heat and/or power, are acceptable in principle. Furthermore, as DEFRA's *Guide to the Debate* notes, the poor historical image of energy from waste in the UK is outdated, with the new generation plants being designed to meet new strict emissions standards and provide valuable low carbon energy.<sup>734</sup>

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<sup>733</sup> Paragraph 945 of the Inspector's Report

<sup>734</sup> CD D5 page 2

- 17.31 In relation to the facility proposed at New Barnfield, which was also for energy recovery based on the incineration of residual waste, the Secretary of State agreed that the technology platform adopted represented a rational choice in the light of the nature of the waste to be treated, the current state of technological development and the need for a robust and reliable process.<sup>735</sup> On the basis of the evidence before this Inquiry, I am satisfied that the similar process now proposed for the Ratty's Lane site (albeit absent any front-end pre-treatment element) represents a flexible and efficient technology choice for dealing with the volume and variety of waste contained in the residual LACW stream. Whilst Dr Webb for Herts Without Waste sought to argue otherwise, he accepted in cross-examination that the schematic diagram he had produced for alternatives for dealing with around 500,000 tonnes of waste was an entirely theoretical illustration, rather than a practical proposition.
- 17.32 Whilst a concern was raised about the health and safety record in relation to environmental incidents at Veolia facilities, that is not a matter that has any material bearing on the decision as to whether planning permission should be granted in this case. In any event, each application has to be considered on its own merits. The technology proposed at Ratty's Lane is commercially proven and reliable and, of the principal technologies currently available, none was drawn to my attention which would be able to treat the volume and variety of waste contained in the residual LACW stream with the same efficiency as the proposed facility. In light of the forgoing, I am satisfied that the proposed technology platform represents a rational choice and I find no conflict with policy 3 of the WCS in this regard.

**Alternative Sites Assessment**<sup>[7.6-7.11, 7.39-7.71, 8.35-8.66, 8.174, 9.14-9.47, 11.10-11.14]</sup>

- 17.33 Having regard to policy WSA2, the overriding reason for locating the development proposed outwith any of the preferred locations relates to the absence of any suitable and available alternative site on either a site identified in the WSA, or within the relevant broad areas of search in the context of an established need for the facility.<sup>736</sup> In support of that position, an Alternative Sites Assessment (ASA) was submitted with the planning application.<sup>737</sup> Given the time that had elapsed between the data that informed that ASA and the Inquiry, the applicant commissioned an update, the findings of which are set out in Appendix A to the evidence of Mr Smith.
- 17.34 There is no specific methodology or prescribed process for undertaking an ASA, although EN-1 contains some useful principles in this regard: in essence, it should provide a consideration of alternatives in order to comply with policy requirements, and it should be carried out in a proportionate manner with the consideration of alternatives being guided by whether there is a realistic prospect of the alternative delivering the same infrastructure capacity (including energy security and climate change benefits) in the same timescale as the proposed development.
- 17.35 The updated ASA before the Inquiry takes account of how a range of alternative sites perform against a range of planning, environmental and

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<sup>735</sup> Secretary of State Decision Letter paragraph 32 (Mr Cooper Appendix 14)

<sup>736</sup> Proof of Mr Bridgwood paragraph 6.2.9

<sup>737</sup> CD A15 Appendix 5.1



operational factors. The availability of sites was also taken into consideration as part of this exercise, with particular reference to the timescale for the provision of the proposed energy recovery facility. It also focussed on sites that were allocated either for waste management purposes, or for B2 or B8 employment use in either relevant adopted plans or emerging development plans that were at submission stage within the county, and were of at least 2 hectares in area given the size and functional requirements of the proposed facility. EN-1 confirms that sites unlikely to be available in the same timescale as the proposed development should not be considered realistic and that alternative proposals for a site which mean that the necessary development could not proceed due to commercial viability, or because the site is physically unsuitable, can also be excluded from consideration. In light of the foregoing, fully developed and operational sites were excluded from the initial desk-top analysis and only sites that were vacant, under-developed or under-utilised with a minimum area of 2 hectares in a regular shape were considered for inclusion.

- 17.36 That process identified a long list of 27 sites. A second stage assessment, comprising a qualitative analysis of those sites, using more detailed criteria, the planning history of the sites and bringing professional judgment to bear, left only two sites, Ratty's Lane (site 21 in the ASA) and Gunnelswood Road, Stevenage (site 18).
- 17.37 The Gunnelswood Road site is located in an industrial area, within an ELAS. It is allocated for waste management in the WSA and for B1/B2/B8 uses in the adopted Stevenage District Local Plan Second Review and the emerging local plan. It is also located adjacent to the strategic road network, although there are potential constraints associated with the approach route from the south. However, on further more detailed investigation, including a site visit, at just 2.2 hectares the site was rejected on the grounds that it was not large enough to accommodate the proposed facility – the main development area of the Ratty's Lane site extends to some 2.84 hectares. That not only excludes the access road, but importantly, it also excludes the rail sidings.<sup>738</sup> As proposed, the extensive IBA storage sheds are located along the length of the railway sidings. If the sheds had to be accommodated within the main building or elsewhere on the main part of the site, a correspondingly larger developable area would be required. I am also mindful that Table 3 of the WSA identifies that large thermal treatment facilities (the development proposed is such a scheme) are likely to require a site of at least 2.5 hectares. In any event, the applicant had been advised that the site was under offer and thus was unlikely to be available. That left Ratty's Lane.
- 17.38 No detailed analysis of the availability of any alternative site was before the Inquiry other than that presented by the applicant. Nevertheless, as was the case at New Barnfield, extensive criticism was made of the applicant's ASA by those opposing the scheme.
- 17.39 The Hoddesdon Society considered that following rejection of the New Barnfield Scheme, the County Council should have selected a site or sites, as opposed to the applicant selecting a site. However, as set out in EN-1, it

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<sup>738</sup> Page 66 of Appendix A to the proof of Mr Smith and the corresponding Map for site 21



remains a matter for the market to decide where and how to build new energy infrastructure, as market mechanisms will deliver the required infrastructure most efficiently. I recognise that the guidance is aimed primarily at national infrastructure projects, but I see no reason why the same consideration should not apply to the energy recovery facility currently proposed.

- 17.40 BxB criticised each of the three stages of the ASA. Notwithstanding the criticisms levelled, and acknowledging that it may not be perfect, no robust evidence was presented to demonstrate that the ASA had missed either a developable allocated site, a site within the broad areas of search, or indeed anywhere else in the county that might represent an available, suitable, realistic alternative. It seems to me, for instance, that had potentially suitable sites been available, land agents would have put them forward either in the call for sites at the Local Plan stage, in response to rejection of the New Barnfield scheme, in response to the County Council's formal market exercise carried out in 2015,<sup>739</sup> or in response to the Ratty's Lane proposal. All in all, I consider that that anyone with a realistic interest in pursuing some viable alternative option would, in all likelihood, have come forward over this period.
- 17.41 In relation to stage 1 of the ASA, it was put that the alleged shortcomings of the process led to a site at Waterdale being excluded from the long list at stage 1. I note, in this regard, that Waterdale is identified in the WCS and WSA as an existing strategic site in the Green Belt with the potential for enhancement. The site, which is currently in use as a waste transfer station/household waste recycling centre, was also brought to the attention of the New Barnfield Inspector. He found that whilst it was well located in relation to the strategic road network, it was not large enough to accommodate both the transfer station and the facility proposed.
- 17.42 I recognise that the current proposal is smaller than the New Barnfield scheme. However, notwithstanding the reference in the WSA to Waterdale as a potential location for large scale thermal treatment, the existing facility there is integral to the adopted strategy for waste management for the County, with the WSA confirming that it is *'central to the delivery of the Joint Municipal Waste Management Strategy and there is a need for new waste facilities to complement this and ensure all parts of the county are serviced.'*<sup>740</sup> I have no reason to suppose in this regard, that the site would not retain that function in any future strategy. In any event, there was no evidence before me to demonstrate that it would be practical, or even feasible to gradually remove the transfer station from the site as part of the phased construction of an ERF, as suggested by BxB, never mind the additional time that it would take to find a suitable alternative site for the transfer station. As Mr Bridgwood commented for the applicant, it would not be possible to redevelop the site in part and *'one could not redevelop half a building'*. Accordingly, whether or not the Waterdale site should have been included on the initial ASA long list, I am content that it does not, in the event, represent a feasible alternative.
- 17.43 Reference was also made to the exclusion of a site adjacent to Buncefield oil depot (site 17 in the ASA) which had been discounted on the grounds of perceived issues with HSE even though it had not been ruled out on those

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<sup>739</sup> CD K4 and associated documentation attached thereto

<sup>740</sup> CD C2 paragraph 3.15

grounds in the original ASA.<sup>741</sup> Mr Smith confirmed, in this regard, that no contact had been made with HSE. Rather he had assumed that there would be an objection.

- 17.44 Following the Buncefield explosion and fire in December 2005, which caused significant damage to property offsite and particularly to industrial premises close to the site boundary, the Health and Safety Executive introduced a Development Proximity Zone (DPZ) around the depot to provide greater control over development within that area. Site 17 falls within the wider Buncefield Oil Depot site, within the DPZ (within 150m of the storage tank bund). I am mindful in this regard that the ERF, which would not be under the control of the depot, would be occupied at all times by staff operating the facility. Waste deliveries etc. would also mean that there would be others on the site during the day, together with other visitors etc. In the absence of any substantiated evidence to the contrary, I see no reason as to why, with the precautionary principle in mind, the HSE would be likely to advise other than against an ERF development at the site on the grounds of its proximity to the depot, increasing the number of people at risk within the DPZ. In any event, as confirmed in Stage 2 of the assessment, it is unlikely that the site would be made available by Buncefield Oil Depot for an ERF as it could compromise their operational requirements. I am content, therefore, that this site is not realistically available for the development proposed.
- 17.45 It was also argued that alleged shortcomings in relation to stage 2 of the ASA process meant, for instance: that sites with a similar set of facts were scored differently; that the Lee Valley Regional Park was not identified as a local landscape designation in the ASA; that Green Belt sites were excluded; and that Ratty's Lane was considered on the basis of no local road congestion.
- 17.46 Taking this last point first, as set out later in this Report, whilst there is congestion in the vicinity of Ratty's Lane, that is generally confined to the AM and PM peak hours - the vast majority of HGV movements associated with the proposed facility would take place outside those hours. That is a matter that can be controlled by condition and the proposed planning obligation. For the reasons set out later, I find the highway impact of the development proposed to be generally acceptable.
- 17.47 Each of the sites in the long list was scored Red/Amber/Green (RAG) against ten criteria.<sup>742</sup> Although subjective, the scoring used in the ASA was informed by trained professionals using information from the desk top analysis and common sense. It is pertinent to note that there is no requirement for each site to have been the subject of an investigation akin to that of a detailed Environmental Statement or Environmental Impact Assessment. That would be disproportionate. Mr Smith's Appendix A sets out the RAG scores for each of the ten criteria for each of the long list sites, together with a summary of the rationale for the scores, followed by an overall assessment for each site summarising the final reasoning which led to the decision on each site. As confirmed by Mr Smith in his oral evidence, the identification of a single component as a 'red' was not sufficient of itself to eliminate a site. Rather it

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<sup>741</sup> CD A14, page 61, paragraph 3.3.16

<sup>742</sup> Air Quality and emissions; ecological, biological and geological conservation; amenity; flood risk; historic environment; landscape and visual; Green Belt; noise and vibration; traffic and access; electricity connection.

was a combination of matters which led to the elimination of individual sites from the eventual shortlist. Although the RAG scores were not weighted in any way, I am content that the relatively broad-brush assessments undertaken for each of the sites represents a proportionate response, providing sufficient information to come to an informed view about each site.

- 17.48 With regard to location within the Green Belt leading to exclusion from the list, I note the findings of the New Barnfield Inspector that, even though the proposal related to an allocated site and was held to meet an urgent need for waste disposal facilities and electricity generating infrastructure, it was turned down primarily on Green Belt grounds. Whilst there was also an issue in that case with the impact on the grade I listed Hatfield House, the Inspector explicitly drew attention to the fact that other sites in the Green Belt would suffer from similar difficulties faced by the New Barnfield proposal.<sup>743</sup> Although precisely the same heritage issues would clearly not arise at other sites, siting a development of the scale proposed in the Green Belt (even though it is smaller than the New Barnfield scheme) would be extremely difficult and it was not unreasonable therefore, to exclude such sites. In any event, no suitable realistic alternative site in the Green Belt was promoted at this Inquiry by those opposing the scheme.
- 17.49 Moving on to mileage savings, the approach taken was that if a site was going to be unsuitable or unavailable for other reasons, there was no point in undertaking an assessment of potential mileage savings for each site. I note, however, that to be included on the long list, sites needed to be located within Hertfordshire, allowing sites to deal with waste as close to its origin as possible and minimising transport distances. That accords with Objective 2 of the WCS,<sup>744</sup> and policies 7 and 9 of the WCS. There was no evidence before me in this regard to demonstrate that some other realistic alternative site is available that would result in materially greater lorry mileage savings than would be achieved at the Ratty's Lane site.
- 17.50 As to the Lee Valley Regional Park (LVRP) its purpose, as set out in the Lee Valley Park Plan, was to provide new leisure, open space, arts and other recreational facilities for the region.<sup>745</sup> Indeed, the LVRP Act 1966 sets out that the duty of the Park Authority is to develop, improve, preserve and manage the Park for the occupation of leisure, recreation, sport, games or amusements or any similar activity, for the provision of nature reserves and for the provision and enjoyment of entertainments.<sup>746</sup> I recognise that the character and appearance of the Park is of interest, which is assessed elsewhere in this Report but it was not, it would seem, designated for landscape reasons. Notwithstanding that the updated ASA for New Barnfield appears to have treated the Park as a landscape designation, that the ASA for Ratty's Lane did not regard the Park as a landscape designation is not, therefore, a material flaw as asserted by some.
- 17.51 There was understandable concern that the current application site is being promoted now, with the support of the County Council, when it had been

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<sup>743</sup> Inspector's Report paragraph 977 on page 214

<sup>744</sup> See also paragraphs 4.80 and 4.81 of the WCS

<sup>745</sup> Extracts appended to the written submissions of the Park Authority

<sup>746</sup> Ibid

rejected previously as representing a suitable alternative site when the New Barnfield scheme was being promoted. Veolia's case then, as recorded by the Inspector,<sup>747</sup> was that:

*It [the Ratty's Lane site] is not in an Area of Search in the WCS and is in the south-east of the county, not well located to waste arisings and collections. It was promoted by Veolia for a SRF power station with additional natural gas fired generation to serve North London and with the SRF to arrive by rail. It needed the rail feed because it is a compact site which could not accommodate the road-based collections needs of this county and so could not accommodate the kind of EfW plant proposed, let alone the front-end recycling facility too. It is a site safeguarded as an aggregates railhead in the statutorily adopted Hertfordshire Mineral Local Plan Review of 2007. The landowners may well wish to remove that designation, but it is there in the statutory development plan and the Veolia DCO<sup>748</sup> application was objected to by HCC for that and highway reasons. Veolia may well have been hopeful that these objections could be resolved but the fact is that the application was withdrawn and they remain as acknowledged constraints. The site has never, either separately or in combination with Site 12, been put forward by the Waste Planning Authority as an allocation in the whole WSA process.*

17.52 As noted previously, the facility now proposed is smaller than the New Barnfield scheme and can physically be accommodated on the site. Moreover, arrangements are now in place to retain and utilise the existing rail head: as confirmed later in this Report, I find no material conflict with the safeguarding policy in this regard. Furthermore, whilst the earlier DCO application for development on the site was subject to objections from the highway authority, no such objections are raised in relation to the current proposal.

17.53 All in all, I am content that the ASA, as updated, represents a proportionate response, providing a sufficient level of detail to allow a conclusion to be reached on the suitability and availability of potential alternatives and is thus adequate for its intended purpose. As was the case at New Barnfield, *'while some of the professional judgements and rankings made in the ASA may be open to question, the assessment of site availability appears to be based on a sound and candid appraisal of the large number of sites considered.'*<sup>749</sup> Having regard to the provisions of policy WSA2, I am satisfied that there is no obvious alternative site identified within the WSA or in areas of search C, D or E that would perform significantly better in environmental terms that is suitable for the use proposed and is available for a development of the scale proposed. Given the compelling need for the proposed development, that represents an overriding reason for locating the development outside those clearly preferred areas. I find no policy conflict in this regard.

**Carbon balance and climate change** [7.166-7.183, 7.190, 7.192, 8.22, 8.26, 8.171, 9.50, 9.181, 9.182, 10.37, 11.43, 11.48, 11.49, 12.3-12.31, 12.38, 12.75-12.78, 13.18]

17.54 In terms of carbon savings, with the facility operating in electricity only mode,

<sup>747</sup> Inspector's Report paragraph 132

<sup>748</sup> Development Consent Order

<sup>749</sup> Paragraph 962 of the Inspector's report

using an assumption regarding the electricity offset by the proposed ERF in its first year of operation (taken as 2021) and taking account of the 'build margin' or counterfactual referred to by the Green Investment Group (GIG), the savings are predicted by the applicant to be more than 8,000 tonnes CO<sub>2</sub> eq per annum. Dr Webb on the other hand, for Herts Without Waste, considers the predicted savings to be an over-estimate, suggesting that the facility would generate some 64,256 tonnes CO<sub>2</sub> eq per annum more than sending the same waste directly to landfill.<sup>750</sup> A Table set out in Mr Aumônier's Rebuttal proof<sup>751</sup> summarises the key differences between the two approaches.

- 17.55 Planning policy does not set targets or limits on different technologies, the policies being technology neutral, and there is no need for emissions to be assessed against carbon budgets in order to satisfy energy policy. However, as acknowledged by DEFRA in the introduction to its discussion document *Energy recovery for residual waste - A carbon-based modelling approach*,<sup>752</sup> while there is a wide range of factors that ultimately determine if energy from waste is the best solution for a given situation, its potential carbon benefits are a key consideration. In essence, the carbon case for energy from waste being preferred to landfill is based on the premise that the climate change impact of producing energy from the waste in terms of CO<sub>2</sub> equivalent, is less than the potential impact from the methane that would be emitted if the waste were to go to landfill.<sup>753</sup>
- 17.56 The stated aim of DEFRA's modelling approach was *'to develop a simple model that allows variation of the critical factors and assumptions which impact on the carbon based environmental case for using energy from waste, relative to the alternative of landfill, for residual waste.'*<sup>754</sup> Through the model, it also sought to *'Identify the balance point for this choice and understand how it is reliant on underlying assumptions.'*<sup>755</sup> It makes it very clear that *'As with all modelling, the results should be used with a suitable degree of caution. The scenarios have been developed to understand likely trends and should not be considered predictions. There are uncertainties in many of the assumptions and while the model's sensitivity to these has been examined, one should avoid placing too much weight on exact figures but rather focus on the general trends they exemplify'*<sup>756</sup> Notwithstanding these caveats, it seems that the Herts Without Waste report which informed Dr Webb's evidence<sup>757</sup> used the modelling assumptions set out in the DEFRA discussion document as if they were actual predicted values of variables within the model. That has the potential to introduce elements of bias into the assessment.
- 17.57 As set out above, the figure referred to by the applicant takes account of the 'build margin' or counterfactual referred to by the GIG, namely a Combined Cycle Gas Turbine (CCGT). Herts Without Waste challenged the use of that as an appropriate comparator for electricity generated by the proposed ERF. However, since electricity generated by the ERF would be exported to the grid,

<sup>750</sup> HWW Document HW6 paragraph 6 on page 2

<sup>751</sup> Pages 8-13 of his Rebuttal proof

<sup>752</sup> CD J20 page 5 paragraph 29

<sup>753</sup> Ibid paragraph 30

<sup>754</sup> Ibid paragraph 25

<sup>755</sup> Ibid paragraph 26

<sup>756</sup> Ibid paragraph 202

<sup>757</sup> HWW document HW4 Report on Climate Change impacts of the Rye House Energy Recovery Facility



I see no reason why, consistent with DEFRA's *Guide to the Debate*, that energy should not be assumed to substitute electricity that would otherwise have been generated by a CCGT. The same argument was also put to the New Barnfield Inspector who noted that the *Guide to the Debate* provides specific support for the use of CCGT in making such an assessment.<sup>758</sup> That Guide is still current, with footnote 29 on page 18 confirming that '*A gas fired power station (Combined Cycle Gas Turbine – CCGT) is the current standard comparator as this is the 'marginal' technology if you wanted to build a new power station*'. As noted by the New Barnfield Inspector, *it is not disputed that the absolute level of climate change benefit will vary over time, as the energy mix changes and decarbonises. However, it is reasonable to make the assessment of benefits using the marginal technology at the present time as the appropriate comparator*. In light of the current guidance, I have no reason to take a different view and consider that the appropriate counterfactual has been used by the applicant.

- 17.58 As confirmed in Table 1 of the DEFRA modelling document, its assumptions exclude related carbon savings both from metals recovery and recycling following the incineration process, and from the recycling of incinerator bottom ash (IBA) on the basis that levels vary from plant to plant and that handling methods vary. They are similarly excluded from the Herts Without Waste assessment. However, metals recovery and IBA recycling as a secondary aggregate are a clearly stated and integral part of the process planned for Ratty's Lane. As noted in Table 1, the impact of excluding those elements underestimates the related carbon benefits. Taking account of these impacts would have the effect of moving the 'balance point' in favour of EfW.
- 17.59 I recognise that metals do not *have* to be passed through incineration to be recycled. I also recognise that there would be no front-end pre-treatment of the waste as part of the development for which permission is currently sought. However, whilst the residual waste that would comprise the feedstock is source segregated where possible, that fraction sent to landfill would clearly include metals that would not otherwise be recycled. The DEFRA guidance specifically acknowledges that metal recycling from bottom ash and ash recycling would benefit EfW over landfill, shifting the balance point.<sup>759</sup> In light of that, I consider that Herts Without Waste may have overestimated the net carbon emissions of the proposed facility potentially by as much as 33,487 tonnes CO<sub>2</sub> eq per annum based on the evidence of the applicant.<sup>760</sup>
- 17.60 Landfill gas capture can provide a valuable source of renewable energy. Herts Without Waste relies on a landfill gas engine electricity generating efficiency of 41%. However, that does not reflect the net electrical efficiency of landfill engines at 36% once parasitic losses etc. are accounted for. On the evidence of the applicant, once that is factored in, it would appear that the Herts Without Waste assumption results in up to a 14% over-estimate of CO<sub>2</sub> from energy generated.
- 17.61 Not all methane is captured from landfill sites. Whilst the Herts Without Waste

<sup>758</sup> Inspector's Report paragraph 989

<sup>759</sup> J20 paragraph 167

<sup>760</sup> Table 2 in the rebuttal proof of Mr Aumonier (187 tonnes CO<sub>2</sub> eq per annum in relation to IBA recycling, plus 33,300 tonnes CO<sub>2</sub> eq per annum in relation to metals recovery)



report relies on a 75% capture figure, Table 10 of the DEFRA model confirms this as being towards the likely maximum. In evidence in chief, Mr Aumônier referred to ongoing research,<sup>761</sup> which suggests that a more realistic figure would be 55-65% over the managed gas extraction phase, decreasing over the lifetime of the landfill site, all of which indicates further overestimations in the Herts Without Waste report.

- 17.62 Other differences related to compositional analysis of the waste stream. In response to Mr Aumônier's rebuttal, Herts Without Waste submitted a further document (HW6) which, among other things, assessed the proposal based on the applicant's composition profile. As a consequence, Herts Without Waste acknowledged a related improvement in the performance of the ERF compared to landfill in the region of some 3,360 tonnes CO<sub>2</sub> eq per annum.<sup>762</sup>
- 17.63 The applicant criticised the Herts Without Waste report for not taking account of the potential for the plant to operate in Combined Heat and Power (CHP) mode. Clearly, higher savings would be achieved when operating in CHP mode. However, whilst the plant would be constructed to be CHP ready, with a readily accessible local market including nearby industrial and glasshouse development, the scheme before the Inquiry does not include heat generation at this time. That was also the case with the New Barnfield scheme. In that instance the Inspector concluded that little reliance could be placed on the contribution of CHP to energy recovery.<sup>763</sup> I have no reason to take any different view and am satisfied that for the purposes of this section of my Report, any benefits accruing from CHP should not be counted towards potential carbon savings at this time.
- 17.64 All the modelling that has been carried out is underlain by assumptions and there are uncertainties with all such matters. Nevertheless, the approach endorsed by the Herts Without Waste report appears to largely ignore the purpose of the DERA model and the related guidance. On the evidence before me, I am of the view that it under-estimates the carbon savings that would be achieved by the development proposed. Even based on the BEIS MEF as the counterfactual as preferred by Dr Webb, the evidence of the applicant<sup>764</sup> is that there could still be a saving in electricity only mode over landfill of some 2,969 tonnes CO<sub>2</sub> eq per annum. All in all, I am satisfied that there would be a saving in greenhouse gas emissions compared to the status quo, where a sizeable fraction of the residual waste is sent to landfill. In light of the forgoing, I find no conflict with policy 10 of the WCS, with the National Planning Policy for Waste, or section 14 of the National Planning Policy Framework. There would be no conflict either with the principles of NPSs EN-1 and EN-3 which together and among other things commit to renewable energy, a low carbon economy and achieving energy security, all of which are key objectives of Government policy.

**Air/Water Quality and Health** [6.1, 7.86, 7.116-7.125, 7.145, 7.146, 8.164, 8.166-8.168, 9.192-9.200, 10.34-10.37, 11.37-11.39, 11.82, 11.83, 11.121, 13.9-13.15, 13.50]

17.65 The Hoddesdon Society, the Joint Parish Councils and Herts Without Waste,

<sup>761</sup> See footnote 3 on page 12 of his Rebuttal proof

<sup>762</sup> HW6 paragraph 6 Original figure for HWW was 67,616 tonnes CO<sub>2</sub> eq per annum, reducing to 64,256 tonnes CO<sub>2</sub> eq per annum on the basis of the updated composition.

<sup>763</sup> Inspector's Report paragraphs 996 and 1008

<sup>764</sup> Table 2 in the proof of Mr Aumônier

together with many local residents were very concerned about air quality and health impacts, including the implications of emissions on local agriculture, fishing and food production. ( I deal with concerns about air quality and impact on ecology and wildlife in a later section of this Report).

- 17.66 Ultimately, it is for the Environment Agency, through the separate permitting regime and associated compliance assessment, monitoring and enforcement, to control and regulate the incineration process proposed, including emissions arising from that process, in the interests of preventing pollution and protecting human health. To that end, the Permit would be the primary control mechanism and would set specific limits in terms of emissions to air, soil and water in line with national and international guidelines - at the time of the Inquiry, a draft permit had been issued which includes stringent conditions for emissions and the constant monitoring thereof.<sup>765</sup>
- 17.67 It is also made clear in the National Planning Policy for Waste (NPPW) that, when determining waste planning applications, decision makers should concern themselves with implementing the planning strategy in the Local Plan, not with the control of processes which are a matter for the pollution control authorities. They should also work on the assumption that the relevant pollution control regime will be properly applied and enforced.<sup>766</sup> Accordingly, whilst I fully appreciate the concerns raised, most would be addressed through the permitting process, such matters falling outwith the planning regime. That said, the NPPW also advises that consideration is to be given to the likely impact of a development on the local environment and amenity, and the locational implications of any advice on health from the relevant health bodies.<sup>767</sup>
- 17.68 The existing air quality in most of the surrounding area is good in comparison to many parts of the UK, or indeed Hertfordshire itself, with concentrations of nitrogen dioxide (NO<sub>2</sub>) and other pollutants not exceeding relevant air quality standards where people are likely to be exposed over the relevant averaging period.
- 17.69 The operational phase of the development, including related traffic movements would, among other things, give rise to emissions to air, including NO<sub>2</sub>, particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub> size fractions) dioxins and furans. The Environmental Statement includes a section on air quality, human health and sensitive ecosystems based on the findings of a detailed Air Quality Dispersion Modelling Report.<sup>768</sup> That report also informed the Health Impact Assessment.<sup>769</sup> An update was also provided as part of the Regulation 22 submissions.<sup>770</sup>
- 17.70 Looking firstly at the facility itself, the incineration of waste at very high temperatures is a highly destructive process for chemical compounds that might be considered as hazardous. Nevertheless, I recognise that even having passed through a multi-stage air pollution control system that would remove

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<sup>765</sup> Doc 68

<sup>766</sup> CD D4 paragraph 7 bullet 5

<sup>767</sup> Ibid bullet 2

<sup>768</sup> CD A13 Section 7 and CD A14 Section 7.1 updated as part of the regulation 22 submission (CD A 17)

<sup>769</sup> CD A9

<sup>770</sup> CD A17a (Section 4)

most pollutants before discharge to the atmosphere through the two emissions stacks, the facility would still emit some pollutants to air.

- 17.71 The potential environmental effects of those emissions were assessed using detailed dispersion modelling based on a worst-case scenario, both as part of the Environmental Assessment and the permit application. The modelling, which also took account of the cumulative impact from the ATT/AD Plant on Ratty's Lane which was not operational at the time, shows that the proposed stacks, even though located in a valley, would provide appropriate levels of dispersion to the atmosphere. At no location are the emissions from the facility, either by itself or in combination with other facilities, predicted to be large enough for there to be a significant effect on local air quality, particularly in terms of meeting the air quality objective for NO<sub>2</sub> including locations near the Dinant Link Road.
- 17.72 In terms of human health, the results of the dispersion modelling were used in the Environmental Impact Assessment to quantify health effects both in respect of the additional food chain modelling carried out for dioxins and metals, and also to quantify the effects of the exposure of the local population to the additional concentrations of PM<sub>10</sub>, PM<sub>2.5</sub>, sulphur dioxide and NO<sub>2</sub>. I fully appreciate that there is no threshold at which exposure to these pollutants does not appear to be associated with adverse health outcomes. As a consequence, any increase would have a quantifiable effect. That said, the modelling confirms that, when compared to baseline rates, the predicted effects on human health in this case are extremely small and far below those that could be considered as being consequential in public health terms. The same goes for any potential effects on health through complex pathways of exposure that include ingestion of foodstuffs grown or reared locally over a lifetime.
- 17.73 Concern was also raised in relation to emissions on water quality, particularly in light of nearby fisheries on the River Lee, with reference to nutrient limitation and nitrogen status. The evidence of Mr Honour deals with this in more detail, in particular his second supplementary Note to the Inquiry.<sup>771</sup>
- 17.74 Nitrogen as well as phosphorous are important pollutants of aquatic habitats. I am mindful, in this regard, that the Lee Valley is a Nitrate Vulnerable Zone for surface waters. The Note confirms that whilst atmospheric deposition from the proposed ERF would contribute to sources of pollution, it would be of much lower magnitude than other consented and diffuse discharges to the Lee catchment and would not be a significant contributor to the overall nitrogen loading of aquatic habitats in the Lee Valley.
- 17.75 Emissions from transport movements associated with the proposed facility, in particular HGVs, have also been assessed. Air quality impacts in this regard are confined to the roadside, along the Permitted Route,<sup>772</sup> in particular along the A1170 Dinant Link Road and Essex Road. The predicted impacts are categorised as either negligible or slight with one exception, Burford Mews, where the impact is categorised as moderately adverse. I am not persuaded, however, that by itself that one result leads to a conclusion that the effects of

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<sup>771</sup> Doc 95

<sup>772</sup> As defined in the planning obligation

the development should be considered as significant in this regard. In coming to that view, I am aware that concentrations of NO<sub>2</sub> are exhibiting a downward trend, especially at roadside sites, as a consequence of the entry of 'cleaner' vehicles into the national fleet. Indeed, pursuant to that, one of the recommended conditions<sup>773</sup> requires that all HGVs accessing the site that are under the direct control of the operator of the facility shall, as a minimum, meet Euro 5 emissions standards as a minimum. The practical consequence of that continuing decline is that future concentrations along the Dinant Link Road and Essex Road would be lower than has been measured to date, both at the roadside and at receptor locations. Since the modelling cautiously assumed no decrease, I am content that the results can be taken as representing a very worst-case scenario.

- 17.76 In relation to dust and odour, all waste would be transported to the site in covered or sealed lorries and all handling operations removing waste from the lorries would take place inside the building envelope, which would be maintained under negative air pressure thus minimising fugitive dust and odour emissions. Fast acting doors would minimise periods when the facility doors are open, with the doors being kept closed at all other times. A combustion air fan would draw air from above the transfer bunker and tipping hall into the combustion plant, ensuring destruction of potentially odorous compounds before being emitted to the atmosphere. Flue Gas treatment (FGT) residue would be treated as hazardous material. It would be handled and stored within a contained system, to be tankered off site for disposal or treatment.
- 17.77 The Hoddesdon Society expressed concerns about odour emissions from the IBA. Initially, the IBA would be stored in the main building, beneath the tipping hall, before being transported by an enclosed conveyor to a storage shed located along the north-western boundary of the site. The storage shed would be open-fronted in order to allow for loading onto railway wagons. It would front onto the railway sidings, facing away from the nearest residential receptors, separated from those receptors either by existing buildings on the industrial estate and the railway embankment and/or the proposed ERF building itself. The IBA would not be stored for longer than three weeks<sup>774</sup> and, as confirmed at the Inquiry, the matured IBA within each of the filled bunkers in the shed would be loaded onto the rail wagons sequentially, oldest first, by wheeled loading shovel - there would be no movement of IBA from bay to bay. In addition, the IBA would be dampened by quenching and water sprayed to prevent dust. Moreover, if permission were to be granted, I have recommended a condition requiring the submission of and adherence to an odour management plan as an integral part of the development scheme, which would include the IBA shed.<sup>775</sup>
- 17.78 There is an extensive area of glasshouses on the eastern side of the River and local growers were very concerned as to the potential effects of air pollution on their activities, with reference also made to the stack plume. The nearest glasshouses are located approximately 900 metres from the application site at its closest point. I have set out above my findings in relation to locally grown

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<sup>773</sup> Condition 20 in Appendix D hereto

<sup>774</sup> CD A13 Paragraph 4.3.23

<sup>775</sup> Condition 33 in Appendix D thereto

produce and subsequent human consumption. That is based on an assessment of how soil concentrations would be affected and how common crops might take up a range of metals and carcinogenic compounds from the ERF through deposition on leaf surfaces and uptake through soil. It seems to me that if local residents and farmers would not experience any meaningful increase in exposure to pollutants, then neither would consumers.

- 17.79 Rainfall is collected from the surfaces of the glasshouses for irrigation, the crops beneath the glass being grown hydroponically. The uncontested evidence of Mr Barrowcliffe is that this is an extremely weak pathway for any pollutants emitted by the ERF. The plume would only be over the glasshouses, which lie to the south-east of the applicant site, for a small fraction of the year, and a smaller fraction of the year when precipitation was occurring at the same time. More importantly though, it was confirmed that the 'washout' of pollutants through the plume during rainfall is not an effective mechanism for removing pollutants from the plume to the ground. Any transfer by that pathway would be even smaller than the deposition mechanism considered as part of the food chain modelling.
- 17.80 Reference was also made to sunlight being obscured by the plume with a consequent adverse effect on glasshouse crops. However, as already noted, the glasshouses lie almost 1 kilometre away to the south-east of the application site at their nearest. Given the prevailing wind direction, and noting that the average length of the plume, which would only be visible occasionally, is predicted to be no longer than 42 metres on average, I am not persuaded that there would be any adverse impact in this regard.
- 17.81 To conclude on this issue, the proposed ERF would result in small but quantifiable increases in ambient concentrations of some airborne pollutants. Whilst it is not possible to rule out adverse health effects from modern, well-regulated municipal waste incinerators with complete certainty, any potential damage to the health of those living close by is likely to be very small, if detectable at all. I find nothing in the evidence before the Inquiry, or any particular local considerations which might apply here, that would justify taking a different view from national policy about the likely health effects of the facility proposed. On that basis, there would be no conflict with policies 11, 12 and 16 of the WCS, section 16 of the National Planning Policy Framework of the National Planning Policy for Waste

**Heritage Assets**<sup>[7.137-7.144, 7.186, 8.162, 9.143, 9.163, 9.168-9.172, 10.15-10.19, 11.33, 11.51-11.54, 11.59-11.64, 11.78, 13.8]</sup>

- 17.82 The development proposed would not be located either within or immediately adjacent to any Conservation Area and would not have any direct physical effect on any designated heritage asset. However, Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard be given to the desirability of preserving the *setting* of listed buildings. Moreover, whilst no statutory protection is afforded to the setting of other heritage assets, including conservation areas, paragraphs 189 and 190 of the Framework require an assessment of the significance of all heritage assets that might be affected by a development proposal, including any contribution to their significance made by the setting of those assets. Paragraph 194 of the



Framework confirms that the significance of a heritage asset can be harmed or lost through development within its setting.

17.83 The Glossary to the Framework defines the setting of a heritage asset as *The surroundings in which it is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance, or may be neutral.* Setting embraces all of the surroundings from which an asset can be experienced, or that can be experienced from or within the asset. In essence, if the proposed ERF could be seen from, or in conjunction with, any of the heritage assets that surround the site, then there would be an impact on their setting. An assessment would then be required as to whether that impact would harm the heritage significance of the asset - the fact that there may be intervisibility does not, of itself, necessarily equate to harm to heritage significance. There may also be aspects other than intervisibility that might mean an application site makes a contribution to the heritage significance of a heritage asset, although other than the Hoddesdon Society's reference to court judgements relating to Kedleston Hall, those opposing the scheme did not refer to any other connection in terms of the significance of the various heritage assets that may be affected.

17.84 The assets set out next lie within approximately 1-1.5 kilometres of the application site.<sup>776</sup>

17.85 **Rye House moated enclosure and gatehouse** is a scheduled ancient monument comprising the remains of a medieval moated enclosure and gatehouse; grade I listed 16th Century gatehouse; grade II\* gateposts south of the gatehouse; and grade II listed remains of two sections of windows and wall near the inner edge of the moat. The assets have a group value that derives from above-ground built heritage and below-ground archaeology. Their setting includes their relationship with each other and their immediate surroundings, which is relatively intimate due to planting around the perimeter of the scheduled monument and car park. Whilst that immediate setting makes a positive contribution to the archaeological and aesthetic value of the assets, the wider area has been significantly altered over the last 50 years or so. As a consequence, the assets no longer lie within their original rural setting, the setting now being predominantly urban, comprising residential and industrial development including a sewage works, Rye House Kart Club track and a Speedway Stadium.

17.86 The moated enclosure occupies a relatively low-lying position in the valley of the River Lee. As a consequence, no long-range views are associated with the group. There are, however, partial mid-range views over the surrounding landscape. As noted in the ES Landscape and Views Assessment,<sup>777</sup> the stacks of the existing power station adjacent to the application site are partially visible from the moated enclosure. That said, the views do not make any positive contribution to any understanding or appreciation of the heritage interest or value of the designated assets. Whilst the proposed development

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<sup>776</sup> Doc 58 With the exception of Hoddesdon Conservation Area, the assets referred to in the paragraphs below are numbered 1, 2, 3 and 4 respectively on the plan at Appendix 1 to the proof of Miss Kelly. The boundary of the Conservation Area is shown on plans at Appendix 2 of the same proof.

<sup>777</sup> CD A13 Chapter 9 and CD A14 Appendix 9.4



would introduce two additional stacks into those partial views, the heritage significance of the assets rests mainly in their archaeological value and intimate setting as a group. The wider setting and long-range views do not make a positive contribution to the heritage significance of the assets. As a consequence, the development proposed would not result in any harm to, or loss of the heritage value of the moated enclosure and gatehouse.

- 17.87 With its very large bow fronted two-storey cast iron Gothic windows, the grade II listed **Rye House public house**, which dates from the early 19<sup>th</sup> Century, has both architectural and historic value. The proximate Rye House moated enclosure and gatehouse, and the crossing of the River Lee, are part of the asset's setting that make a positive contribution to understanding its historic heritage value. That relationship would not be affected by the development proposed.
- 17.88 Because of its location close to the river, the building is not particularly prominent in the surroundings in which it is experienced and there are no mid- or long-range views from, or including the asset that contribute to its heritage value. Moreover, as with the moated enclosure and gatehouse, the original rural setting has been significantly altered by 20<sup>th</sup> Century development. The wider setting of the asset, including views towards the application site, does not make any positive contribution to the heritage significance of the listed building and the development proposed would not result in any harm to or loss of its heritage value.
- 17.89 **Burford House**, an early 19<sup>th</sup> Century dwelling, and **The Lynch**, a dwellinghouse dating from the early to mid-19<sup>th</sup> Century, both of which are grade II listed buildings, each have architectural and historic value. However, as a consequence of the expansion of Hoddesdon during the 20<sup>th</sup> Century, their respective settings now comprise modern residential developments that make no contribution to their architectural or historic heritage value. The proposed ERF would not, therefore, result in any harm to, or the loss of the heritage value of these listed buildings.
- 17.90 **Hoddesdon Conservation Area** encompasses the well-defined historic core of the market town. Its eastern boundary lies approximately 1.5 kilometres from the main part of the application site. The core of the town, which follows the north-south alignment of High Street/Amwell Street, part of an 18<sup>th</sup> Century coaching route between Cambridge and London that is fronted by many historic buildings, sits on a low ridge, the land falling gently to the east towards the Lee Valley and its associated flood plains.
- 17.91 The Conservation Area Appraisal (October 2011)<sup>778</sup> divides the town into a number of different character areas. In the section relating to Area CA01: Market Place/High Street North, it states that *The enclosing townscape formed by an almost continuous building line restricts long views or open views out of the town.* The Appraisal also includes a section headed Important Views and Vistas, which confirms that *Views and vistas in the Conservation Area are generally 'contained' or relatively intimate, with few offering wide or extensive panoramas or particularly long vistas to landscapes or skylines beyond the Area,* although the section relating to Area CA04: Yewlands (lying on the

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<sup>778</sup> Doc 57 plus extracts at Appendix 2 to the proof of Miss Kelly

south-eastern edge of the Conservation Area) states that *Somewhat more extensive views can be gained when looking along the New River from one of the footbridges.*

- 17.92 A map on page 46 of the Appraisal shows the direction of identified Important Views and Vistas. Only from one location within the Conservation Area (the bridge over the canalised New River at the end of Upper Marsh Lane – the footbridge referred to above) are views in the direction of the application site identified, and even then, they are described as glimpsed. I saw that views from this location towards the application site are largely obscured by existing trees and vegetation. Even if the proposed development could be seen, it would be some 2 kilometres distant, beyond the existing power station and its associated stacks.
- 17.93 There clearly are views across the lower land to the east when walking alongside this popular section of New River, which forms a tranquil edge to the Conservation Area, and from other vantage points along the eastern edge of the Conservation Area closer to the town centre. As I saw during the accompanied site visits, those views would encompass the proposed ERF. However, those views are not identified in the Appraisal as making a positive contribution to the heritage value of the Conservation Area. Whilst the Appraisal map does show a vista looking east, the location of the viewpoint is located outwith the Conservation Area. In any event, long range views to the east from that point on Riversmead are screened by existing buildings and vegetation.
- 17.94 In support of its case in this regard, the Hoddesdon Society drew attention to the court judgements relating to Kedleston Hall, in particular the references therein to the visitor experience of approaching Kedleston Hall contributing to its setting and heritage significance. In this case, however, I found the Conservation Area to be generally inward looking, its boundaries running to the rear of the buildings that front onto the main street through the town for the most part. As such, views make only a very limited positive contribution to its heritage value, which derives mainly from its historic buildings and street pattern. I am mindful, in this regard, that whilst the town, historically, was set within enclosed agricultural land in the valley of the River Lee, it developed rapidly through the later 20<sup>th</sup> Century. As a consequence, the setting of the Conservation Area now comprises modern residential, commercial and industrial development, including the large industrial site at the far eastern edge of which lies the application site.
- 17.95 Whilst the proposed facility would be seen from some locations along the eastern edge of the Conservation Area, they are not designed views and are views that already contain a significant amount of built development, including the existing power station and its stacks. Moreover, as noted by Miss Kelly, the Conservation Area itself is not readily apparent in views towards it, being surrounded by modern development. Whilst the development proposed would result in a change to the setting of the Conservation Area, the principal contributors to its heritage value would not be altered or affected. There would be no harm, therefore, to its heritage significance.
- 17.96 The Society also raised concerns about the potential effect of the development proposed on the economic viability of the Conservation Area. Historic

England's Good Practice Advice in Planning Note 3 The Setting of Heritage Assets (GPA3) notes that *the economic viability of a heritage asset can be reduced if the contribution made by its setting is diminished by badly designed or insensitively located development.*<sup>779</sup> However, the section in the Government's Planning Practice Guidance on conserving and enhancing the historic environment<sup>780</sup> confirms that *it is the degree of harm to the asset's significance, rather than the scale of the development that is to be assessed.* I have found no harm in this regard. In any event, as set out later in this Report, there is no substantiated evidence before me to demonstrate that there would be any material harm in terms of tourism or socio-economic effects on the town.

- 17.97 A number of additional heritage assets lie within 2-3.5 kilometres of the application site, referred to by those opposing the scheme, particularly the Joint Parish Councils.
- 17.98 The grade I listed **church of All Saints**, which dates in part from the late 12<sup>th</sup> Century with later additions, lies at the northern end of the settlement of Nazeing, some 3.5 kilometres to the south-east of the application site. Its special interest derives not only from its age, history, form, architecture and appearance, but also its communal value as a place of worship and focal point for the rural community over the years. It also derives heritage significance from its immediate, rather than extended setting, in particular its relationship with the churchyard and the settlement of Nazeing itself.
- 17.99 I recognise that there are views from the edge of the churchyard across the fields to the north-west towards the application site and that the development proposed would be seen in those views. However, such views as there are would be distant and would be in the context of other distant development, including the existing power station and its stacks. In that context, as is clear from photo location 83 in the evidence of Mr Flatman, whilst the development proposed would be visible, it would comprise a very limited small-scale change in those views. Any effect on the setting of the listed church would therefore, be very minor, relating entirely to that change in view. Overall, given the existing visual context, I am satisfied that there would be no harm to the heritage significance of the church and neither would the development adversely affect the ability of the public to interpret that significance.
- 17.100 The small community of Stanstead Abbots lies approximately 2.5 kilometres to the north of the application site. The grade II\* listed **church of St Andrew**, which dates from 1881, is located towards the northern edge of that settlement. It is a large building with a square tower that occupies an elevated position. Its special interest derives from its age, history, form, architecture and appearance and from its communal value as a place of worship and focal point for the community over the years. It also derives heritage significance from its immediate, rather than extended setting, in particular its relationship with the street and the settlement itself.
- 17.101 Its elevated position means that it has some visual prominence on approaches to the settlement from the north and from within the village itself.

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<sup>779</sup> Miss Kelly proof paragraph 2.18 onward and Doc 58 para 1.18

<sup>780</sup> Paragraph: 013 Reference ID: 18a-013-20140306

However, it is not a readily visible or prominent feature in the wider landscape, or in views of the village from the south. As recorded by Miss Kelly,<sup>781</sup> whilst there are some open views to the west, they are not in the direction of the application site. As demonstrated by photo location 65 in the evidence of Mr Flatman, even if the proposed ERF could be seen from the church, it would be at some distance, in the context of built development in the foreground and would comprise a very limited small-scale change in those views. Any effect on the setting of the listed church would, therefore, be very minor, relating entirely to that change in view. Given that visual context, I am satisfied that there would be no harm to the heritage significance of the church and neither would the development adversely affect the ability of the public to interpret that significance.

17.102 The old **church of St James** lies approximately 1 kilometre to the south-east of Stanstead Abbots, adjacent to Stanstead Bury (see below) some 2 kilometres to the north-east of the application site. It is grade I listed, the earliest parts dating from the 12<sup>th</sup> Century, with later additions including a tower and spire. As with the other churches referred to, its special interest derives from its age, history, form, architecture and appearance, as well as its communal value as an historic place of worship and focal point for the rural community in the past. It also derives heritage significance from its immediate, rather than extended setting, including the old churchyard and its relationship with the adjacent Registered Park and Garden and listed manor house. All these elements make a positive contribution to the heritage value of the old church. That relationship would not be affected by the development proposed. Whilst the church does have views over open countryside to the south, they do not encompass the application site. In the absence of any material intervisibility between the proposed facility and the church, and given the separation distance, there would be no harm either to its heritage value or in terms of the ability of the public to interpret that interest.

17.103 **Stanstead Bury**, a grade II Registered Park and Garden, includes a 15<sup>th</sup> Century manor house and garden (grade II\* listed) with a late 16<sup>th</sup> Century park. Its setting is largely rural, although the dualled A414 passes immediately to the north. Briggens Registered Park and Garden (see below) lies almost adjacent to the east. Whilst the ZVT<sup>782</sup> suggests that there might be some limited intervisibility between the application site and Stanstead Bury, that is over a distance of around 2 kilometres. There is nothing before me to indicate that those limited views are a deliberate part of the Park layout, or are part of a designed view or vista. Since the application site does not form an integral part of the heritage significance of Stanstead Bury, there would be no impact upon the heritage significance of the asset as a consequence of the development proposed. Neither would it impact on the ability of the public to interpret its significance as a designated landscape associated with a manor house set within a rural landscape.

17.104 **Briggens**, a grade II Registered Park and Garden, is recorded as an 18<sup>th</sup> Century and later house surrounded by parkland which retains original features. It is situated on a prominent slope overlooking the valley of the River Stort to the south and east, and Juicy Brook to the west and north.

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<sup>781</sup> Doc 53 paragraph 1.11

<sup>782</sup> Zone of Theoretical Visibility – Figure RH-9 in Appendix 1 Volume 2 to the proof of Mr Hammond

Whilst the ZTV indicates some intervisibility with the application site, that is over a distance of more than 2 kilometres. As with Stanstead Bury, no evidence is before me that suggests those limited long-range views form a deliberate part of the Park and Garden layout, or are part of a designed view or vista. Since the application site does not form an integral part of the heritage significance of Briggens, the development proposed would have no impact upon its heritage significance. Neither would the development impact on the ability of the public to interpret that heritage value.

17.105 The **Nazeing and South Roydon Conservation Area**<sup>783</sup> covers a wide expanse of historic and attractive countryside between Harlow and Lower Nazeing. Its character, appearance and heritage value derive from its well-preserved small medieval settlements, including the 'long green' settlements of Middle Street and Hall Green, Bumble's Green, a medieval closed field system to the north, a large concentration of listed buildings in a rural setting and the use of local vernacular building materials. The area retains its quiet, intimate, small-scale rural qualities characterised by small grassed fields that are bisected by narrow, winding lanes and footpaths and are bounded by tall hedgerows and mature trees.

17.106 Although the ZTV indicates some intervisibility between the Conservation Area and the application site,<sup>784</sup> that is over distances of around 2-3.5 kilometres. Nothing in the evidence before me identifies any views or vistas, looking either out from or towards the Conservation Area, as contributing to its heritage value and, since the application site plays no part in informing the heritage significance of the Conservation Area, there would be no impact upon its heritage significance as a designated asset. Neither would the proposal impact on the ability of the public to experience or interpret that heritage value.

17.107 **Stanstead Abbots Conservation Area**, which covers both Stanstead Abbots and Stanstead St Margaret's, lies roughly 2 kilometres north of the application site. The ZTV indicates little if any intervisibility with the application site due largely to intervening buildings and infrastructure. Nothing in the evidence before me identifies any views or vistas, looking either out from or towards the Conservation Area that might encompass the development proposed which contribute to its heritage value. Since the application site plays no part in informing the heritage significance of the Conservation Area, the development proposed would have no impact upon its heritage significance. Neither would the proposal impact on the ability of the public to experience or interpret its heritage value.

17.108 To conclude on this issue, there would be no direct physical impact on any heritage asset. Whilst the development proposed would be seen from numerous heritage assets in the locality to varying degrees, there would be no harm to the heritage significance of any asset. I find no conflict therefore, with policies 11, 13, 17, 18 and 19 of the WCS, policy HA6 of the emerging Broxbourne Local Plan or section 16 of the National Planning Policy Framework.

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<sup>783</sup> Doc 55

<sup>784</sup> See also views 16 and 30 in in Appendix 2 Volume 1 to the proof of Mr Hammond and viewpoint locations 82 and 83 in Appendix A to the proof of Mr Flatman.



17.109 For the Joint Parish Councils, Mr Flatman sought to rely on an appeal decision<sup>785</sup> in which the Secretary of State found that a number of less than substantial harms to heritage assets could cumulatively result in harm that was greater than the sum of its parts. I recognise, in this regard, that less than substantial harm does not equate to a less than substantial planning objection and is to be given considerable weight, with paragraph 196 of the Framework requiring that less than substantial harm be weighed against the public benefits of a proposal. I set out the benefits of the development proposed later on.

**Ecology and wildlife** [7.86, 7.126-7.134, 7.146, 8.163, 11.85-11.91, 11.114-11.139, 13.2-13.4, 13.17, 13.46]

17.110 The County's ecological officer does not object to the proposal and, as confirmed by Mr Cooper for BxB, the local planning authority raised no objection on ecological grounds. Natural England considers that the proposal would not have a significant adverse effect on designated sites and raises no objection to the proposal either, with its response noting that it had previously given advice on the proposed development. In relation to the Regulation 22 submissions, Natural England confirms that its original advice still applies. However, local residents continued to have concerns in this regard.

17.111 The only technical evidence on ecological matters before the Inquiry comprised the detailed ecological surveys undertaken by the applicant's consultants to inform the Environmental Statement and the applicant's Habitats Regulations Assessment,<sup>786</sup> and the evidence of Mr Honour as supported by his additional Notes to the Inquiry,<sup>787</sup> taking account of the comments of The Hoddesdon Society thereon.<sup>788</sup>

17.112 Whilst there are no designated nature conservation sites within the application site, a number of statutory and locally designated sites lie nearby, including two Local Wildlife Sites (Rye House Power Station LWS and Lee Valley North LWS) - the recent AD/ATT Plant on Ratty's Lane was constructed within the Rye House Power Station LWS, with the remainder of that site being subject to habitat enhancement and management measures as mitigation in relation to the permitted scheme.

17.113 The Lee Valley Special Protection Area (SPA), also designated as a Ramsar, and Rye Meads Site of Special Scientific Interest (SSSI) are located some 0.3 kilometres to the north of the application site. Totwellhill Bushes, an Ancient Woodland, lies some 2 kilometres to the south-east.<sup>789</sup> A number of other locally designated wildlife sites lie within 1.2-2 kilometres of the application site.<sup>790</sup>

17.114 Wormley-Hoddesdon Park Woods Special Area of Conservation (SAC) is located 3 kilometres to the south-west of the site, with Epping Forest SAC and

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<sup>785</sup> APP/Y2430/A/13/2191290 Windfarm development at Asfordby Old Mine. Dismissed by the Secretary of State March 2014

<sup>786</sup> CD A13 Section 10 and CD A15 Sections 10.1-10.8

<sup>787</sup> Docs 89 and 95

<sup>788</sup> Doc 94

<sup>789</sup> All these areas are shown on the plan at Appendix A to the proof of Mr Honour

<sup>790</sup> CD A15 Appendix 10.2 Table 3



SSSI approximately 10 kilometres to the south-east, the latter comprising multiple individual sites.

17.115 Under the precautionary terms of the Habitats Directive, as implemented by the Conservation of Habitats and Species Regulations 2017, where a plan or project is likely to result in a significant effect, a competent authority is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of the European site in view of the site's conservation objectives. In particular, an assessment is required as to whether a development proposed is likely to have a significant effect upon a European site, either individually or in combination with other plans and projects.<sup>791</sup>

Consideration of Likely Significant Effects

17.116 Lee Valley SPA: The Lee Valley comprises a series of embanked water supply reservoirs, sewage treatment lagoons and former gravel pits. The site also contains a range of wetland and valley bottom habitats, both man-made and semi-natural, which support a diverse range of wetland fauna and flora. It is designated as an SPA due to its overwintering populations of wildfowl including bittern, gadwall and shoveler, which occur in numbers of European importance.<sup>792</sup>

17.117 The conservation objectives for the SPA are to maintain in a favourable condition the habitats supporting, and the populations and distribution of, bittern, gadwall and shoveler. I understand, in this regard, that most of the off-site supporting habitat for gadwall and shoveler relates to nearby water bodies lying within some 2 kilometres of the SPA. Water bodies outside of the SPA do exist within 1 kilometre of the application site. Bittern do not significantly utilise habitat outside the boundaries of the SPA.

17.118 Two pathways of potential impact from the proposed development to the SPA require consideration – impacts to air quality and impacts resulting in disturbance of the passage for overwintering birds.

17.119 Dealing with the latter issue first, the evidence before me demonstrates that, in the context of the local noise environment (including a nearby karting track, railway and speedway circuit) and having regard to the existing operational aggregates railhead use of the site and its location within, albeit at the edge of, an industrial estate, disturbance during both the construction and operational phases from noise/vibration, visual stimuli and lighting is unlikely to result in Significant Effects. Whilst, understandably, there are no detailed plans on which to base any assessment of the potential impacts of decommissioning with any accuracy, it is reasonable to assume that they would be no worse than during construction.

17.120 In relation to air quality, dust may be emitted during the construction phase. Whilst noting the distance of the site from the SPA and the presence of physical barriers between the two, including the railway and the bunds surrounding the lagoons within the Lee Valley, there is potential for Likely

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<sup>791</sup> CD E4

<sup>792</sup> Gadwall and shoveler are only present in internationally important numbers at the SPA during passage, and bittern are only present in such numbers during winter.

Significant Effects in the absence of measures to control the dust emissions. In such circumstances, an Appropriate Assessment is required. To inform such an Appropriate Assessment, and having regard to the site conservation objectives of the SPA, I consider that the use of standard control measures can be secured by condition in the event that permission for the development was to be granted, which would be sufficient to avoid or reduce effects on the integrity of the site. As such, it is my view that there would be no adverse effect on the integrity of this European site from impacts during construction.

17.121 Moving on to the operational phase, since concentrations of nitrogen, oxides of nitrogen and ammonia would remain below the Critical Level or Critical Load<sup>793</sup>, I am content that no effects would result. I am mindful in this regard that Environment Agency guidance used by Natural England<sup>794</sup> indicates that where the background concentration at a European site is already above the Critical Level or Load, but specified guidance thresholds are not exceeded, then impacts on European sites can be scoped out of further consideration as effectively inconsequential, even when in combination with other plans and projects.

17.122 The evidence before me demonstrates that, in relation to the SPA, there would be no additional exceedences of air quality standards, or large increases in effect of magnitude concentrations either from the development itself, or as a result of considering in-combination effects. Whilst the in-combination process contribution (PC) of 0.51kg Nitrogen/ha/yr to fen habitats would be more than double the PC for the development proposed, Mr Honour's view was that it could still be considered a low magnitude of effect since it would be less than 5% of the relevant environmental quality standard.<sup>795</sup>

17.123 Nitrogen deposition already exceeds the Critical Load within the Lee Valley SPA site for the relevant habitats (fen, marsh and swamp) by 3.5kg/N/ha/yr, or 23%. In light of that, the Hoddesdon Society questioned what would be considered as a significant effect. In the absence of a defined significance threshold in such circumstances, this must be a matter for professional judgement. In coming to the view that he does, namely that a worst-case 1% further increase in average annual nitrogen deposition would not lead to an adverse ecological effect on the integrity of the SPA compared with the current situation, Mr Honour had regard to matters such as effect magnitude relative to Critical Load and to baseline; other inputs of nitrogen; and whether site management exacerbates or mitigates potential effects. In addition, with respect to an SPA, it is important to determine whether effects on habitats would translate to a likely significant effect on qualifying species. In essence, there would have to be a conceptual effect pathway to bittern, shoveler or gadwall.

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<sup>793</sup> Critical Levels are concentrations of pollutants in the atmosphere above which have a direct adverse effect on a receptor. Critical Loads are a quantitative assessment of exposure to one or more pollutants below which significant harmful effects on specified sensitive elements of the environment do not occur according to present knowledge. (Proof of Mr Honour, paras 7.52/7.53)

<sup>794</sup> CD A15 Section 10.1 para 5.6.7

<sup>795</sup> Doc 95 para 32

- 17.124 As Mr Honour records in his additional Note to the Inquiry,<sup>796</sup> *in the case of Lee Valley, fluvial inputs will be very significant when the habitat is flooded, as illustrated by the Nitrate Vulnerable Zone data. Site management by the RSPB is likely to offset the effects of nitrogen inputs by low-intensity grazing or mowing, resulting in the current assessment of fen habitats by Natural England on the reserve as being in favourable condition. And none of the qualifying species of the SPA are dependent on fen habitats for the maintenance of favourable conservation status. Bittern are confined to reedbeds, where management of open water channels and sufficient fish stocks are important; gadwall feed on submerged aquatic vegetation; and shoveler are specialist feeders on aquatic zooplankton, requiring relatively eutrophic conditions for maximum productivity of prey species.*
- 17.125 The Rye Meads system is already nitrogen-rich, primarily due to regular inundation from the River Lee which has high nitrogen concentrations due to effluent discharge from a number of sewage treatment works (STW). Whilst there are plans to reduce phosphorous discharges in the future, there are no plans to impose a nitrate limit on the relevant STW consents. As recorded in the Habitats Regulations Assessment,<sup>797</sup> the worst-case 1% increase in nitrogen (which would be considerably smaller when fluvial sources are taken in to consideration) is unlikely to result in any detectable change in the vegetation of the SPA/Ramsar. Moreover, the birds for which the SPA is designated would only be affected by relatively large shifts in vegetation structure/composition and would, therefore, be relatively invulnerable to small changes, even in situations where phosphorous was no longer limiting.
- 17.126 All in all, there is nothing in the evidence before the Inquiry to demonstrate that, once operational, even when considered in combination with other projects, including the Rye House Power Station and the AD/ATT plant on Ratty's Lane,<sup>798</sup> the development proposed would impact adversely on the relevant conservation objectives for the Lee Valley SPA, or that it would result in any Likely Significant Effects in this regard.
- 17.127 Lee Valley Ramsar: The Lee Valley also qualifies as a Ramsar, as a wetland that supports the nationally scarce whorled water-milfoil (*Myriophyllum verticillatum*) the rare or vulnerable invertebrate water-boatman (*Micronecta minutissima*) and on the basis that it regularly supports 1% of the individuals of populations of waterbird, namely shoveler and gadwall.
- 17.128 As with the SPA, two pathways of potential impact from the proposed development require consideration – air quality and disturbance of the passage for overwintering birds. Given that the SPA and Ramsar are generally contiguous, the same considerations set out above in relation to the SPA apply in considering the impact of the development proposed on the Ramsar.
- 17.129 Accordingly, for the reasons set out above in relation to the SPA, I find that whilst there would be no Likely Significant Effects once operational, there is potential for Significant Effects during the construction phase in the absence of any measures to control the emission of dust. That necessitates an

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<sup>796</sup> Doc 95 para 34

<sup>797</sup> CD A14 Section 10.1 para 9.1.8

<sup>798</sup> Docs 89 and 95

Appropriate Assessment. To inform such Assessment, I consider that the use of standard control measures, which can be secured by condition in the event that permission for the development was to be granted, would be sufficient to avoid or reduce effects on the integrity of the site. As such, it is my view that there would be no adverse effect on the integrity of this European site from impacts during construction.

- 17.130 Wormley-Hoddesdon Park Woods SAC: The SAC is comprised of two SSSIs, Wormley-Hoddesdon Park Woods North and Wormley-Hoddesdon Park Woods South. This semi-natural woodland is of national importance as an example of lowland south-east sessile oak/hornbeam type with the pendunculate oak/hornbeam variant also present. Additionally, small ponds and streams are important habitats for bryophytes. The conservation objectives for the SAC are to maintain the broadleaved, mixed and yew woodland – Lowland (oak-hornbeam forests) habitat in a favourable condition.
- 17.131 The main pathway of potential impact from the development proposed in relation to the SAC, relates to air quality.
- 17.132 The evidence before me demonstrates that, even when considered in combination with other projects, concentrations of all relevant pollutants and deposition rates would fall below the relevant thresholds when regard is had to the Environment Agency guidance used by Natural England referred to earlier. On that basis, I am content that there would be no conflict with the stated conservation objectives for the SAC, with no Likely Significant Effects.
- 17.133 Epping Forest SAC: The SAC extends to some 1,600 hectares, 70% of which consists of broadleaved deciduous woodland. It is one of only a few remaining large-scale examples of ancient wood-pasture in lowland Britain and has retained habitats of high nature conservation value, including ancient semi-natural woodland, old grassland plains and scattered wetland. This European site is so designated for its beech forests on acid soils, stag beetle (*Lucanus cervus*) dry heaths and wet heathland with cross-leaved heath. The conservation objectives for the SAC are to maintain in a favourable condition the Atlantic acidophilous beech forests with *Ilex* and sometimes also *Taxus* in the shrub layer, European dry heaths and North Atlantic wet heaths with *Erica tetralix*, and to maintain in a favourable condition the habitats for the population of stag beetle.
- 17.134 The main pathway of potential impact from the development proposed in relation to the SAC relates to air quality. I am mindful, in this regard, that whilst deteriorating air quality is one of the key pressures affecting this site, some 84% of the constituent SSSI that underlies the SAC designation is in either favourable or recovering condition, with just 2% in a declining condition. The primary reason for the declining condition is believed to be air pollution, in particular the effects of excessive levels of oxides of nitrogen and other pollutants, and the related deposition of acidity and nitrogen. However, that part of the SAC so affected lies more than 10 kilometres away from Hoddesdon.
- 17.135 Whilst there would be a small magnitude increase in nitrogen oxide levels and nitrogen deposition, taking the in-combination PC above the 1% screening threshold at Epping Forest SAC, there would be no likely significant effect, as it

remains a small magnitude effect on a site where the Critical Load is already greatly exceeded largely due to existing vehicle traffic.

17.136 The evidence before me demonstrates that, even when considered in combination with other projects, concentrations of all relevant pollutants and deposition rates would fall below the relevant thresholds when regard is had to the Environment Agency guidance used by Natural England referred to earlier. On that basis, I am content that there would be no conflict with the relevant conservation objectives for this SAC, and there would be no Likely Significant Effects.

*Conclusion on Likely Significant Effects*

17.137 With the exception of the construction phases, I have found that there would be no Likely Significant Effects. During construction, however, I have found that there could be Likely Significant Effects as a consequence of dust emissions. An Appropriate Assessment may therefore be required. To inform such an Appropriate Assessment, having regard to the reasons for designation of the potentially affected sites, and the relevant conservation objectives, I consider that the use of standard control measures during construction to minimise dust emissions would be sufficient in this instance to avoid or reduce the potential effects. I am content, in this regard, that there would be no effect on the integrity of the sites.

*Other Ecological Considerations*

17.138 As confirmed by the Phase 1 Habitat Survey Plan,<sup>799</sup> the proposed development site itself, an aggregates depot comprising mainly hardstanding, railway sidings and aggregates storage, is largely devoid of vegetation, although the eastern and northern margins of the site support broadleaved plantation woodland that form part of a range of wetland and terrestrial habitats associated with the Lee Valley. There is a small balancing pond near the site entrance off Ratty's Lane and the rail sidings support a wider range of habitats. Two linear ponds are located just outwith the site boundary, occupying a shaded hollow between the sidings and the main rail line to the north-west.

17.139 Ecological interest on the site is confined to small areas of habitat for invertebrates and reptiles in the area of the railway sidings, a pond which shows some evidence of use (albeit not for breeding) by Great Crested Newts (GCNs) and limited foraging possibilities for bats. As such, the direct effects of the scheme would be of extremely limited significance and are capable of effective mitigation, including provision of two hand-dug ponds within the adjacent perimeter woodland, to be planted with appropriate aquatic and marginal species, which would function as receptor sites for any translocated GCNs.

17.140 In relation to possible indirect effects during both construction and operational stages, matters including fuel spillage/accidental pollution, disturbance from noise, lighting and overshadowing of adjoining habitats were all considered. In each case, the effects were found to be either non-existent

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<sup>799</sup> CD A15 Section 10.3 Figure 1: Phase 1 Habitat Survey Plan

or negligible. Effects on all the nearby designated ecological sites were also found to be insignificant. No substantiated evidence was submitted to undermine those conclusions.

17.141 Whilst an alleged effect on bats within the River Lee corridor adjacent to the site by light spillage was raised, no technical evidence was before the Inquiry other than that provided by the applicant. I note that even though only three species of bat had been recorded in the vicinity of the application site, the starting point for Mr Honour's analysis assumed that every light sensitive species of bat ever observed in the Lee Valley (from the records kept for observations throughout the whole Park) was transiting past the site, notwithstanding that they had not actually been recorded during the surveys undertaken in association with this proposal. The proposal was assessed on that basis. The unchallenged evidence of Mr Honour was that a figure of 1 Lux would be required before disturbance even to the most light-sensitive bats could even potentially occur.

17.142 A light spillage diagram shows the very limited areas where 1 Lux would be exceeded.<sup>800</sup> Whilst the diagram does not include light from the main turbine hall, the hall would not be lit routinely after 19.00 hours. In any event, the periods when 19.00 hours would intrude into periods of darkness would be limited largely to the autumn and winter months, outside the main bat activity season. In the summer, when bats are active, illumination of the main turbine hall during times of bat activity would at worst be infrequent and thus would not be of a scale that would adversely impact bat behaviour. Whilst I understand the concerns raised, the evidence before the Inquiry demonstrates that there would be no disturbance to bats as a consequence of light spillage.

Overall conclusion on ecology and wildlife

17.143 The Hoddesdon Society suggests that the applicant's Habitats Regulations Assessment (HRA)<sup>801</sup> is flawed due to a lack of consideration of in-combination air quality effects and that, as a consequence it may, among other things, have under-assessed the impacts on the Lee Valley SPA/Ramsar and Wormley-Hoddesdon Park Woods SAC. In response, supplementing his evidence regarding air quality effects, in particular the figures set out at Figure 7.1 of his main proof, Mr Honour produced a supplementary Note to the Inquiry on this, followed by a further Note in response to the Society's comments.<sup>802</sup>

17.144 The combination of the evidence before me confirms that the figures in Mr Honour's Figure 7.1 did take account of the emissions from the AD/ATT Plant and from the adjacent Rye House Power station (which has been operational since 1992, with its emissions being subject to monitoring through an environmental permit). In order to take account of any potential future utilisation of the power station, I also note that the modelling was based on the facility's highest emissions over the past ten years of operation.

17.145 A table in Mr Honour's first supplementary Note, which draws on data in the Environmental Statement, summarises the in-combination impacts of

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<sup>800</sup> Doc 59

<sup>801</sup> CD A13 Section 10 and CD A14 Sections 10.1-10.8

<sup>802</sup> Docs 89, 94 and 95



emissions on sensitive ecological receptors (including nearby European sites) above the relevant screening thresholds. Whilst it is to be noted that, in some cases, the existing background levels mean that the PEC exceeds the threshold limit that is wholly due to existing conditions which may be expected to improve. Although overall nitrogen deposition is an important ecological issue in terms of habitat protection, the downward trend in nitrogen oxide levels, and the policies underpinning that, provide confidence that any PECs close to the Critical Level are unlikely to be exceeded during the life time of the proposed development. As such the PC causes no appreciable further adverse effects.

17.146 In light of the forgoing, even were the Critical Level taken as a likely effect threshold for plant communities occurring on a European site, I am content that the predicted worst case in-combination PEC for nitrogen oxide levels can still be considered as not having a Likely Significant Effect. No additional exceedances of air quality standards or large increases in effect magnitude as a result of considering in-combination effects have been identified.

17.147 In relation to a further concern of the Hoddesdon Society, I am also content that the HRA had a clear understanding of the precautionary principle as applied to the assessment of effects on European sites, as do I. As recorded by Mr Honour<sup>803</sup>

*'the selection of European sites [in the HRA] and consideration of potential effect pathways was comprehensive and logical. Their understanding of 'likely significant effect' as a 'possible effect' accords with Waddenzee principles, as evidenced by their use of Environment Agency 1% screening thresholds to identify likely significant effects requiring Appropriate Assessment as part of a Stage 2 HRA. The effects of nitrogen deposition on the Lee Valley SPA were therefore subject to Appropriate Assessment, as an effect alone or in combination in excess of 1% of screening threshold, where the PEC exceeded the relevant Critical Load.*

*The air quality dispersion modelling method used to assess likely effects incorporates a number of elements which can be considered precautionary. These include the use of maximum operating hours; use of five years of meteorological data; and use of modelling points at the nearest / worst affected locations at designated sites, with the assumption that the most sensitive habitats occur there. The inclusion of Rye House Power Station in the cumulative effects assessment can also be regarded as highly precautionary, given its likely inclusion in the background emissions model.'*

17.148 All in all, I am satisfied, based on the technical evidence submitted, together with the oral evidence of Mr Honour, as supported by his additional Notes to the Inquiry, and taking account of the comments of The Hoddesdon Society thereon, that there is sufficient information before the Inquiry to be able to come to an informed view as to any Likely Significant Effects of the proposal when considered both alone and in combination with other plans and projects. On the basis of that evidence, I consider that the development proposed, when

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<sup>803</sup> Doc 95 paragraphs 36 and 37

considered either by itself or in combination with other plans and projects, would not result in any Likely Significant Effects on European sites other than, potentially, during the construction phase. Whilst those effects would need to be the subject of an Appropriate Assessment, I consider that standard measures of control, secured through the use of planning conditions, would be sufficient to avoid or sufficiently reduce the Effects to the extent that there would be no effect on the integrity of the sites. I have also found that there would be no adverse impact on ecology and wildlife generally as a consequence of the development proposed. There would be no conflict therefore, with policies 11, 12, 13, 14, 16, 17, 18 and 19 of the WCS, saved policies HD18 and SUS11 of the Broxbourne Local Plan, policy NEB4 of the emerging Broxbourne Local Plan, policies NC1.1, NC2.1 and L4.4 of the Lee Valley Park Plan, section 15 of the National Planning Policy Framework and the National Planning Policy for Waste.

**Highways and Traffic** [7.147-7.165, 7.193, 8.127-8.160 8.175, 9.70-9.123, 9.209, 10.2, 10.20-10.33, 10.37, 11.15, 11.79-11.84, 13.9, 13.22, 13.26, 13.29-13.37]

17.149 There are two main aspects to this issue: the effect in terms of the operation of the wider highway network, and the effect on the safety and free flow of users of Ratty's Lane itself.

17.150 At present, Hertfordshire's LACW is transported by road to a number of locations either for landfill or energy recovery, all but one of which is located outwith the County. The majority of the waste movement takes place via the County Council's Waterdale Transfer Station (referred to earlier). The development proposed seeks to process all of Hertfordshire's residual LACW and, in the early years of operation, would also receive commercial and industrial (C&I) waste.

17.151 Vehicular access to the application site is taken from the northern end of Ratty's Lane, a 600-metre-long cul-de-sac, most of which is a private road, that connects at its southern end to the wider highway network at a roundabout junction with Essex Road. Essex Road links through to the strategic road network (A10) which provides access to Hertford to the north and London to the south.

17.152 The existing site access off Ratty's Lane would be retained in its current location. On-site parking would include some 42 car parking spaces, motorcycle parking, cycle parking and coach parking. Space within the site would facilitate HGV access and egress, including a ramp from ground level up to the tipping hall, and parking for refuse collection vehicles. There was no dispute, in this regard, that the on-site parking and manoeuvring space would not be sufficient, and I have no reason to disagree.

17.153 As for Ratty's Lane itself, it is restricted in width for at least half its length and arrangements, including signalisation, are proposed in connection with the ERF. I return to the proposed arrangements in more detail later. First though, I look at the operation of the wider highway network.

Operation of the wider highway network

17.154 Notwithstanding the absence of any objection from the Highway Authority, there is considerable local concern in relation to the potential effect of ERF

related HGV traffic on the local highway network, in particular the pinch-point created by the New River Bridge at the western end of Essex Road, close to J3 referred to below, and the operation of the five junctions on the Permitted Route. The Permitted Route is the main route for HGVs that would be travelling to and from the proposed facility as secured by the submitted planning obligation, as shown on Plan 5 appended thereto,<sup>804</sup> namely:

- J1 – roundabout junction: Ratty’s Lane/Stephenson Close/Essex Road/Essex Close
- J2 – signal-controlled junction: Pindar Road/Essex Road/Maple Park/Bingley Road
- J3 – roundabout junction: Essex Road/Charlton Way/Dinant Link Road
- J4 – roundabout junction: Dinant Link Road/Amwell Street/A10 spur
- J5 – roundabout junction: Ware Road/Duke Street/Amwell Street/Hertford Road<sup>805</sup>

The study area, and in particular these five junctions, were agreed in advance following discussion with the Highway Authority as being an appropriate basis for the related Transport Assessment (TA).<sup>806</sup>

17.155 Saved policy T3 of the Broxbourne Local Plan seeks to resist development where there would be a significant detrimental impact on road congestion and movements, especially at peak travel times. Other than for reasons of highway safety, paragraph 109 of the Framework suggests that development should only be prevented or refused on highways grounds if the residual cumulative impacts on the road network would be severe. However, there is no definition of ‘severe’ in this context either in the Framework, in legislation or in case law. Policy TM2 of the emerging Broxbourne Local Plan resists development where there would be a severe impact on the transport network. Again, however, there is no definition of what is meant by the term ‘severe’ in this context.

17.156 Looking firstly at existing highway conditions, the 2016 Baseline scenario used in the TA was derived from data acquired by traffic surveys (a manual classified count (MCC) on Wednesday 29 June 2016 supplemented by an automated traffic count (ATC) between 29 June – 5 July 2016) and seasonal volume count data. It was established from this that the AM peak on the network occurs between 08.00-09.00 with a PM peak between 17.00-18.00. In addition, the TA looks at the Busiest Operating Hour (BOH) of the ERF. The nature of the facility means that HGV traffic would only start to increase after 09.00 following completion of the first collection rounds, or as traffic begins to arrive from the Waterdale transfer station, peaking over the middle of the day between 10.00-15.00. The BOH is predicted as being 12.00-13.00, outside the conventional network peaks. I refer hereafter to the AM and PM peaks and the BOH as the assessment hours.

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<sup>804</sup> Doc 97a

<sup>805</sup> Figure 4-1 of the TA

<sup>806</sup> CD A13 Section 6 and associated appendices in CD A14, Section 5 of the scoping report (CD A14) and the Regulation 22 submission Section 3 and Appendix 11.3 (CD A 17a)

- 17.157 There is no doubt that most of the junctions in the study area suffer from some congestion during the AM and PM peak hours.<sup>807</sup> Indeed, in the 2016 Baseline scenario used in the TA, both J1 and J2 operate within capacity in all assessment hours. J3, J4 and J5 operate within capacity during the BOH. In the AM peak, these junctions operate beyond ideal capacity but within theoretical capacity. In the PM peak, J3 operates beyond its ideal capacity but within its theoretical capacity, whilst J4 and J5 both operate over capacity.<sup>808</sup>
- 17.158 However, as I observed during the numerous accompanied and unaccompanied site visits I undertook throughout the Inquiry, queuing at the junctions during peak hours can, as described by others, be 'peaky', with queues often occurring but then clearing relatively quickly. I am also mindful that the journey times between J1-J4 (a distance of some 1.3 kilometres) are recorded as somewhere around 2-4 minutes eastbound (i.e. towards Ratty's Lane) in the AM peak and between 7-15 minutes westbound (i.e. away from Ratty's Lane) during the PM peak (albeit from slightly different starting points).<sup>809</sup> To my mind, the differing times for the respective journeys, especially during the PM peak, affirm the 'peaky' nature of the congestion.
- 17.159 In the 2016 Baseline scenario used in the TA, both J1 and J2 operate within capacity in all assessment hours. J3, J4 and J5 operate within capacity during the BOH. In the AM peak, these junctions operate beyond ideal capacity but within theoretical capacity. In the PM peak, J3 operates beyond its ideal capacity but within its theoretical capacity, whilst J4 and J5 both operate over capacity.<sup>810</sup> The worst capacity analysis for the three assessment hours at each of the junctions was then carried forward for comparison in the 2021 Do Minimum scenario (which assumes that the ERF is not present but that other committed developments are in place and takes account of background traffic growth) and the 2021 Do Something scenario (which assumes the ERF is developed and is in its first full year of operation, adding the net development trip generation figures to the 2021 Do Minimum scenario).
- 17.160 As set out in Table 8 of Inquiry Doc 70 (which updates table 9-13 of the TA, repeated at Table 4.6 of the proof of Mr Crabb) the future assessment scenarios for the worst peak hour for each junction indicate that J1 reaches its ideal RFC<sup>811</sup> threshold in the 2021 Do Minimum scenario (0.86) which increases marginally to 0.88 in the Do Something scenario. J2 continues to operate effectively in all scenarios. Junction 3 exceeds the theoretical capacity threshold in the 2021 Do Minimum scenario (1.01) increasing marginally to 1.02 in the Do Something scenario. J4 exceeds the theoretical capacity threshold in all scenarios, increasing marginally from 1.19 in the 2021 Do Minimum scenario to 1.20 in the Do Something scenario. Junction 5 exceeds the theoretical capacity threshold in all scenarios, increasing marginally from

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<sup>807</sup> Eg photographs appended to the proof of Mr Merhemitch

<sup>808</sup> Table 4-8 of the TA (CD A14(i) Section 6.1)

<sup>809</sup> AM peak movements taken from Doc 63 (attachments 3a and 3b thereto) PM peak movements from the same documents and from Mr Russell's proof of evidence paragraphs 2.20- 2.22

<sup>810</sup> Table 4-8 of the TA (CD A14(i) Section 6.1)

<sup>811</sup> Ratio of Flow to Capacity-An RFC of 0.85 or less indicates that the approach to the junction is predicted to operate within its ideal capacity; an RFC of 1.0-0.85 is a predictor that the approach would operate beyond its ideal capacity, but within its theoretical capacity; an RFC over 1.00 is a predictor that the approach would operate over capacity.

1.34 in the 2021 Do Minimum scenario, to 1.35 in the Do Something scenario.<sup>812</sup>

- 17.161 On the basis of the forgoing, the modelled effect on the highway network between the two future scenarios at the worst affected junctions would be very small, with the development proposed having a minor or negligible effect on the public highway network at the identified receptors during operation. That reflects the fact that the vast majority of ERF related HGV movements would take place outside worst hours for congestion.
- 17.162 Those objecting to the proposal, in particular BxB, took issue with some of the data that fed into these results. It was suggested, for instance, that the figures used for the volume of traffic generated by the existing aggregates use of the site (which were then deducted from anticipated trip generation related to the proposed facility to generate additional traffic figures that would use the highway network) were too high. Issue was also taken with the type of junction modelling utilised and with the Temprow growth assumptions used in the junction capacity assessments (as updated by Table 8 of Doc 70).
- 17.163 I recognise that there are some discrepancies/anomalies in the survey figures for 29 June 2016, the only day when there was both an MCC and an ATC - the MCC recorded a total of 176 daily vehicle movements on Ratty's Lane, some 79 of which were attributed to HGVs, whilst the ATC recorded 219 vehicle movements, some 46 of which were attributed to HGVs. Whilst I have no reason to suppose that the ATC was faulty or under-recording movements, it simply 'interprets' the number of axles crossing the recording line. To my mind, the manual count is likely to be more accurate in this regard. I am also content, given that Ratty's Lane is a cul-de-sac, with only a small area of parking at the end in addition to the site access, that the vast majority, if not all the recorded HGV movements related to the application site (the ATT/AD facility having not been commissioned at that time). In any event, taken over a whole day, the difference in the numbers between the surveys is not so great in my view, that it calls into question the overall modelling results.
- 17.164 The TA uses ARCADY and LinSig to analyse the performance of the modelled junctions, whereas Mr Russell for BxB maintained that the Paramics highways model developed for the proposed High Leigh development should have been used. There was concern also, given the strategic nature of the proposed ERF, that use was not made of either the Broxbourne Transport Model or the County's transport model to assess future impacts.
- 17.165 Following pre-application discussions, the Highway Authority agreed that the TA should set out in detail the proposed vehicular trip generation for the ERF and that this should be broken down by vehicle type and by hour. It was also agreed that the method of presenting the detailed trip generation and distribution forecasts, including junction capacity appraisals for the study area locations, represented the most appropriate method for appraising the impacts for this type of development and that neither strategic and/or micro-simulation modelling would be appropriate or necessary to test the proposal.
- 17.166 The Highway Authority has a duty to maintain the public highway to ensure that it is safe and can handle the amount of traffic that uses or can be

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<sup>812</sup> Table 8 in Doc 70



expected to make use of it. It will also be fully aware of how the highway network operates in its area. Given its agreement to the modelling used in the knowledge of other possible options, I see no reason to impugn the evidence of the appellant in this regard.

- 17.167 In terms of the Temprow growth assumptions, the evidence of Mr Russell<sup>813</sup> is that had government guidance on forecasting been followed correctly,<sup>814</sup> then there would be more traffic on the network than is predicted in the TA. He suggests, for instance, that 109 more vehicles are predicted to enter J4 during the AM peak than is allowed for in Table 4 of Doc 70 (4,231 vehicles as opposed to 4,122).<sup>815</sup>
- 17.168 The net trip generation set out in the TA<sup>816</sup> results in only 22 additional vehicle arrivals at the application site and six additional departures during the AM peak over and above the existing traffic movements at this time associated with the current use of the site. During the PM peak, there would be four fewer vehicles arriving than is currently the case and 16 additional vehicle departures. However, the vast majority of additional vehicle movements at these times would relate to staff cars/light vehicles which would not, necessarily, pass through J4 on the way to the site. In any event, as noted above, the BOH would be outside the AM and PM peaks.
- 17.169 In any event, I consider the applicant's case in relation to ERF traffic to be extremely cautious, based on a very worst-case scenario. For instance, it assumes that staff cars are only occupied by a single staff member, when there is clearly potential for staff to car share, or arrive by cycle or, albeit to a lesser extent, by public transport. Even though it is planned that IBA would be removed by rail, the TA assumes that it would all be removed by road and includes a related HGV daily movement figure. As a consequence of rounding up vehicle loading data in each instance, if the number of daily loads is applied to the vehicle capacity information, the total waste delivery tonnage would be more than 20% above the capacity of the proposed facility - in reality, since the facility could not process more than 350,000 tonnes, and given that HGVs would generally be expected to deliver full loads, the total number of HGV deliveries would be less than has been assessed. Moreover, the TA considers the maximum throughput of 350,000 tpa right from the first year of operation. All in all therefore, I consider the assumptions employed in terms of trip generation to be very robust.
- 17.170 Returning then to the matter of whether residual traffic/highways impacts might be severe, it seems to me that a number of factors might indicate whether that would be the case. I am not persuaded, in this regard, by the case presented by BxB's highways witness that, where a junction is modelled as having a RFC of 1.0 or over the addition of even one single vehicle necessarily equates to a residual cumulative impact that is severe in the context of the highway network here. Not only was that position not endorsed by BxB's planning witness, but I note that, as the local planning authority, it has continued to grant planning permission for other developments on the

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<sup>813</sup> e.g. Doc 71 Response to the Technical Note presented by Mr Crabb (Doc 70)

<sup>814</sup> Mr Russell refers at Appendix D to Doc 71 to May 2018 guidance for the modelling practitioner produced by the Department for Transport *TAG Unit M4 Forecasting and Uncertainty*.

<sup>815</sup> Doc 71 paragraphs 3.19-3.21

<sup>816</sup> i.e. predicted vehicle movements minus observed traffic movements, as set out at Table 6-9 of the TA



Hoddesdon Industrial Estate notwithstanding the current traffic conditions. I am more inclined therefore, to the view that in this instance, a severe residual cumulative impact might reasonably comprise a situation where there are, or are predicted to be, substantial periods of congestion throughout the day. That is clearly not the case for the modelled 2021 Do Something scenario set out above.

- 17.171 On balance therefore, I am content that subject, among other things, to a condition precluding HGV traffic associated with the facility entering or leaving the site in the AM and PM peaks, that the development proposed would not necessarily have a severe residual cumulative impact on the local highway network.
- 17.172 Other concerns related to the pinch point created by the New River Bridge on Essex Road, and to the potential for HGV traffic to use Dobbs Weir Road. The Essex Road river bridge (between J3 and J4) is acknowledged by the Highway Authority as creating long-standing highway capacity and resilience issues for the area. Design and investigation work is currently underway to address the issue, but any solution is dependent on funding. As set out in the Hoddesdon and Broxbourne Urban Transport Plan (March 2012)<sup>817</sup> the preferred scheme involves widening the existing road over the New River and construction of a separate bridge for pedestrians and cyclists to the south of the road.
- 17.173 Although the submitted planning obligation includes a contribution towards the pedestrian and cycle improvements over the proposed new bridge, the County Council does not consider the new bridge to be necessary to make the development acceptable in highway safety or sustainability terms.<sup>818</sup> As set out in the CIL compliance document, if the proposed bridge is not constructed, the contribution would be used for 'other improvements of a similar nature within the overall package.' Local residents and BxB were firmly of the view that the new bridge is necessary and should be in place prior to the proposed ERF being brought into use, a matter that could be secured by condition.
- 17.174 Notwithstanding the evidence of Mr Russell to the effect that two HGVs cannot currently pass on the existing bridge, as I observed during the accompanied site visit and at other times, HGVs and larger vehicles do pass, albeit slowly and with great care, whilst at other times drivers waited just shy of the bridge for oncoming larger vehicles to pass. It is clear, however, that when oncoming larger vehicles do meet at the bridge, whether they give way or pass with care, it necessarily causes delays on the highway network. The development proposed would, as a matter of fact, increase the number of HGV movements over the bridge throughout the day (some additional 203 traffic movements) increasing the likelihood of instances when oncoming vehicles might meet there. I recognise that the vast majority of those instances would be outside the AM and PM peaks and the increase would only be a minor percentage of total traffic movements. Nevertheless, given the number of HGV movements anticipated, I am in no doubt that there would be a material adverse impact on the performance of this part of the highway network, with the pinch point already causing problems in relation to highway capacity and resilience. On that basis, I consider the bridge improvement works to be not

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<sup>817</sup> Doc 97a paragraphs 10.7-10.11

<sup>818</sup> Eg paragraph 9.51 of the officer's report CD B1 and paragraph 10.11 of CD 91b

only necessary, but also that the ERF should not be commissioned until the new bridge is in operation.

- 17.175 Other concerns raised by the Joint Parish Councils and local residents related to the possibility of HGVs using Dobbs Weir Road. Dobbs Weir Road is the continuation of Essex Road when heading south from the roundabout junction with Ratty's Lane. It links through to the villages of Nazeing, Roydon and other settlements. There is an existing weight restriction of 7.5 tonnes on Dobbs Weir Road, which local residents maintain is frequently ignored. They fear that HGV drivers related to the proposed ERF would ignore the restriction and use Dobbs Weir Road.
- 17.176 It would not make sense for the ERF HGVs to use Dobbs Weir Road, given the origins of the waste being delivered. More importantly however, and whether or not the restriction is ignored by others (and I am mindful in this regard that the existing restriction does allow some HGVs to use Dobbs Weir Road in particular circumstances) the submitted planning obligation includes measures to ensure that all HGV drivers contracted to deliver waste to or departing from the ERF would be obliged to keep to what is described as the Permitted Route.
- 17.177 The Permitted Route is defined in the S106 as Ratty's Lane, Essex Road and A1170 Dinant Link Road, passing through the five junctions referred to above. The Dinant Link Road links directly onto the A10 to the west of Hoddesdon via the unnamed A10 spur, which in turn links to the A414 to the north. The route does not include Dobbs Weir Road. The only exceptions to use of the Permitted Route would be a small number of direct deliveries from within Broxbourne District and HWRC waste deliveries from the Pindar Road recycling site.<sup>819</sup> Even then, that traffic would have no reason to use Dobbs Weir Road. Given the provisions secured by the planning obligation, I am satisfied that there would be no harm in terms of any increased use by HGVs of Dobbs Weir Road.
- 17.178 There was much discussion about the proposed removal of incinerator bottom ash (IBA) by rail and the implications for the highway network if that was not secured. The planning obligation precludes occupation of the facility until a written plan setting out arrangements for removal of IBA from the site by rail has been submitted to and approved by the County Council. If the approved plan is not implemented, or operations are not carried out in accordance with the plan, then energy recovery operations, including the receipt and/or incineration of waste at the site are required to cease and would not be permitted to recommence until evidence is provided that IBA operations would be carried out in accordance with the approved written plan, or such plan as may be varied following submission of further evidence, with the agreement of the County Council and the acceptance of such evidence by the Council. I am satisfied, in this regard, that as much has been done as is reasonably possible to ensure removal of the IBA by rail as opposed to road.

#### Ratty's Lane

- 17.179 In addition to the aggregates depot on the application site, the following are also accessed off Ratty's Lane at the present time:

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<sup>819</sup> As shown on Figure 7-1 in the TA (at Appendix 6.1 to the Environmental Statement (CD A 14))

- a small car park at the end of the Lane, adjacent to the River Lee currently used by anglers and walkers
- an Advanced Thermal Treatment (ATT) and Anaerobic Digester (AD) facility (referred to by the parties in places as the Trent and Tamar sites respectively)
- a Recall data storage facility (Iron Mountain)
- Rye House Power Station
- a logistics operation (Bidvest)<sup>820</sup>

17.180 For a short distance from the Essex Road roundabout, Ratty's Lane comprises a single carriageway road with one lane in each direction. This stretch has footways on both sides and street lighting. For the rest of its length, the Lane is privately owned and is of varying width. On the western side, the footway continues only as far as the main entrance to the Bidvest site, whilst the footway on the eastern side is curtailed just past the point where the lane becomes private. No cycle paths are included along any part of the Lane.<sup>821</sup>

17.181 To the south on the approach to the site access at the northern end of the road, Ratty's Lane has a width of between 4.8-5.4 metres. At that point, and for some 230 metres on the approach to the site, the Lane is bound on both sides by steel palisade security fencing along the boundary with land in the ownership of others. The presence of that fencing means that no part of any passing vehicle (for example wing mirrors) is able to protrude beyond the width of the carriageway. In essence, oncoming HGVs are unable to pass on this section of the road.

17.182 Improvements are proposed to the site access itself and that Ratty's Lane would be re-surfaced with private parking restrictions extended along the entire length of the Lane (Plan No 60493630-PA09 Rev F). In addition, in recognition of its width restrictions, a signal-controlled shuttle system is proposed on that section between the Iron Mountain site entrance (approximately half way along the Lane) and the application site at the northern end.

17.183 Notwithstanding that the Highway Authority raised no objection to the proposed signalling arrangement, the evidence of Mr Russell for BxB highlighted a number of problems with it. In response, the applicant submitted an amended plan to the Inquiry.<sup>822</sup>

17.184 As shown on the amended plan, a sign at the southern end of the proposed yellow box marking on the road in front of the Power Station entrance/exit would advise drivers of articulated HGVs heading north to the application site not to pass that point when a red signal was showing at the proposed traffic signal beyond the box marking, to avoid blocking the existing access/egress

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<sup>820</sup> Locations shown on Figure Brhodd/1804024/001 at the end of the proof of Mr Russell

<sup>821</sup> See Appendix A to the proof of Mr Corrance

<sup>822</sup> Docs 28 and 79 (Alternative Access Sketch)

points at the adjacent Iron Mountain and AD/ATT sites.<sup>823</sup> Smaller vehicles could still pass through the yellow box and wait at the stop line, leaving sufficient room for a southbound HGV leaving the ERF to pass. HGV drivers headed for the ERF would be briefed of this arrangement through the Site User Rules as secured via the planning obligation. In addition, one of the suggested conditions would ensure that the signalisation scheme is completed and operational prior to commissioning of the facility and is retained thereafter.<sup>824</sup> However, there are some remaining concerns.

17.185 *Third party land and third party traffic movements*: The combination of the restricted width of Ratty's Lane and the location of the proposed northbound signals means that some encroachment by HGV drivers onto third party land is likely to occur at times. For instance, as agreed by Mr Crabb in cross-examination, if a non-articulated HGV on approach to the proposed ERF was legitimately waiting at a red signal, between the signal and the northern edge of the yellow box, the width of the available carriageway is not sufficient to allow for a departing southbound HGV to pass without encroaching on to the adjacent Iron Mountain site. Moreover, given the swept path of the departing HGV when there is a waiting HGV at a red light, even if the driver chose to drive over the kerbs and verges, it would be unable to pass if a car was also waiting to exit the Iron Mountain site and was not prepared to give way.<sup>825</sup>

17.186 Neither the Iron Mountain access nor the AD/ATT facility access points would be linked to the proposed signal controls. However, as secured by the planning obligation (see below) measures are secured to ensure that the applicant has control over deliveries to and departures from the ERF, with all drivers receiving a briefing, part of which would relate to the signalling system, with drivers being made aware of the requirement not to proceed on a red light, even if the access appears clear. Whilst Mr Crabb suggests that the briefing would be shared with the operator of the AD/ATT facility, since the drivers of those vehicles are not under the control of the applicant, they are not bound into the arrangement and would be under no obligation to sign up to it.

17.187 In theory, using the adjacent land to facilitate passing could be prevented by the land owners. I am also mindful of Mr Crabb's acknowledgement that, were such a situation likely to arise on a public highway, it would be considered unacceptable. However, this is a private road. I see no reason in this regard as to why the other users might not therefore be more tolerant of the occasional situation outlined above than might otherwise be the case. Indeed, HGVs travelling to and from the application site currently pass and repass along the Lane, together with HGVs and other traffic associated with Iron Mountain and the ATT/AD facility with no evidence being brought to the Inquiry to demonstrate that that creates any significant problems in terms of free flow or safety. Whilst the development proposed would clearly increase the number of HGV movements on the Lane, visibility is excellent in both

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<sup>823</sup> Figure 1 in Appendix JC03 to the proof of Mr Crabb shows the location of the different access points. A gated access shown on the western side of the lane, near to the northern end is not in general use and, for the purposes of traffic on the Lane, all parties assume a nil use.

<sup>824</sup> Condition 15 in Annex D hereto

<sup>825</sup> See Appendices F and G to the proof of Mr Russell. I recognise that the plans there do not show the amended yellow box arrangement, but the width of a waiting non-articulated HGV would be much the same as an articulated HGV and the position of the front of the waiting vehicle would be as shown.

directions at the point of the proposed traffic signals and existing access points and I have no reason to suppose that associated traffic would not be able to enter and leave those sites without conflicting unduly with ERF related traffic. The same consideration applies to my comments in relation to the situation outlined at the end of the preceding paragraph.

17.188 *Length of the signal cycle*: There was criticism of the length of the signal timing cycle required, given the length of the signal-controlled junction (almost 300 metres between the signals at the site access at the northern end of the Lane and the northbound signals proposed adjacent to the Iron Mountain site).

17.189 The total signal time would be 117 seconds with traffic speeds of 20 mph (increasing to some 144 seconds if speeds are considerably lower than 20 mph). That means a vehicle arriving at the northbound approach just as the signal turned to red, would need to wait almost two minutes (110 seconds)<sup>826</sup> before receiving a green light again.<sup>827</sup> There is the possibility of more than one HGV arriving during the 110 second arrival rate, which vehicle would, as a consequence, have to wait on Ratty's Lane before receiving a green signal.

17.190 However, as confirmed at the Inquiry, in order to prevent the possibility of vehicles backing up on arrival at the northbound lights, the northbound signal would default to green. Moreover, queuing HGVs within the wider southern section of the Lane, south of the proposed signals, would not necessarily cause a problem for exiting (southbound) HGVs. Whilst it is tight, photographs provided by the applicant<sup>828</sup> show that HGVs can pass with care on this section of the Lane. Indeed, that is what happens at the moment, with HGVs entering and leaving both the aggregates depot on the application site and the AD/ATT facility combining with HGV traffic associated with the power station and the Bidvest site, although I recognise that HGV numbers would clearly increase by a material amount as a consequence of the development proposed.

17.191 *Pedestrians and cyclists*: pedestrians and cyclists currently use Ratty's Lane. In the absence of any footways for most of its length, or any dedicated cycle lanes, they have to share the carriageway with motorised vehicular traffic for the most part.

17.192 On the uncontested evidence of Mr Russell, a carriageway width of at least 5.05 metres is required to allow for a HGV to safely pass a pedestrian, and 5.1 metres for a cyclist.<sup>829</sup> As noted above, for almost half its length, the Lane is restricted in width to between 4.8-5.4 metres. There will be occasions, therefore, when a HGV on its way to or from the proposed ERF would not be able to safely pass a pedestrian or cyclist.

17.193 A survey carried out for the applicant along Ratty's Lane over Saturday 19 May to Tuesday 22 May 2018 showed a maximum of 7 observed pedestrian movements during what is anticipated to be the BOH of the proposed ERF (between 12.00-13.00 hours): the maximum number of cycle movements for the same period was 2-3.<sup>830</sup>

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<sup>826</sup> The 117 second cycle time less the 7 second minimum green time allocated by Mr Crabb.

<sup>827</sup> Paragraph 3.29 of the proof of Mr Russell as amended orally at the Inquiry

<sup>828</sup> Rebuttal proof of Mr Crabb

<sup>829</sup> Paragraphs 5.1-5.17 of the proof of Mr Russell.

<sup>830</sup> Tables 2.2 and 2.3 of Mr Crabb's rebuttal proof



17.194 The evidence of the applicant is that during the BOH, an average of 18 HGVs would arrive at the application site, generating a total of 36 two-way movements over the hour.<sup>831</sup> HGVs currently pass and re-pass along Ratty's Lane and there have been no recorded instances of collisions involving pedestrians or cyclists. That is due no doubt, to a combination of low vehicle speeds, careful driving and good forward visibility - the road is straight for most of its length - and in part due to the relatively low number of HGV movements that occur. Observed HGV movements are an average of 43 two-way HGV movements over a whole day (based on 2016 data).<sup>832</sup> Once operational, therefore, with some 36 two-way ERF related HGV movements just over the BOH, the potential for encounters between HGVs and pedestrians/cyclists would be materially greater than is currently the case. That said, the actual frequency of interaction on the very narrowest sections of the Lane would still be relatively low. I am also mindful of the maximum 200 daily traffic movements allowed for by the extant planning permission.

17.195 Ratty's Lane is not identified on the Definitive Map as a public footpath. However, subsequent to the submission of the ERF application a claim has been made to register the Lane as a Byway Open to All Traffic. That application is as yet undetermined. It was suggested by Mr Reed QC for BxB that if the application was successful, that would make the Lane more attractive to users, particularly cyclists and pedestrians, leading to the potential for increased encounters with HGVs. However, there is nothing currently preventing physical access to the River at the northern end of Ratty's Lane by pedestrians or cyclists. The application process simply relates to the rights of users, as opposed to any physical alterations that might make the route more attractive. Were the Lane confirmed as a public right of way, I am not persuaded therefore that it would necessarily be used to any greater degree than is currently the case by pedestrians or cyclists. In any event, notwithstanding the outcome of the process, the applicant has treated Ratty's Lane as a public right of way, relying on it as providing pedestrian/cycle access to the site.<sup>833</sup>

17.196 *Emergency access*: those opposing the scheme raised concerns about the restricted width of Ratty's Lane and the proposed signalling arrangement posing a potential problem in terms of access for emergency vehicles. However, as confirmed during cross-examination, the signalling system could be manually overridden if necessary to prioritise either emergency vehicles entering the site, or vehicles needing to evacuate the site. I also understand that the proposed ERF would have its own bespoke fire detection and firefighting arrangements in place, the intention being that the facility would not be reliant on the emergency services in this regard. In any event, no objection to the proposed arrangement is raised by the emergency services.

*Overall conclusion on highways and traffic*

17.197 The local highway network clearly suffers from some congestion in the morning and evening peak hours. However, that congestion is generally peaky

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<sup>831</sup> Taken from the Table on page 2/5 of Appendix JC04 to the proof of Mr Crabb, which is based on Figure 6-1 on page 37 of the Transport Assessment at Appendix 6.1 of the Environmental Statement (CD A14)

<sup>832</sup> Table 4.1 in the proof of Mr Russell

<sup>833</sup> Paragraph 5.3.2 of the TA ( CD A14)



and soon clears. In any event, the vast majority of ERF HGV traffic movements would be over the lunchtime period, between around 11.00-14.00 hours, outside the congested AM and PM peaks. With controls in place to ensure that the HGV traffic is contained to the Permitted Route (other than local collection vehicles which of necessity travel local streets) to preclude HGV traffic at the site during the AM and PM peaks, and providing the new New River bridge is in place prior to commissioning of the ERF, I am satisfied that any residual impact on the highway network would not be severe.

17.198 Paragraph 109 of the Framework advises that development should only be prevented or refused on highway grounds if any impact on highway safety would be unacceptable. In terms of the operation of Ratty's Lane itself, I recognise that the arrangement proposed is not ideal. That said, the narrowest part of the Lane, including that which would be subject to the proposed signalisation arrangement, is not public highway. In that context, whilst not wishing to condone potentially unsafe practices I consider, on balance, that the highway impact of the development proposed would not necessarily be unacceptable.

17.199 In light of the forgoing, I find no conflict with policies 7, 9, 13 and 15 of the WCS, or section 9 of the National Planning Policy Framework, in particular paragraphs 108 and 109.

**Landscape and Visual Effects** [7.65, 7.87-7.112, 7.193, 8.110-8.126, 8.175, 9.29, 9.130-9.167, 9.189, 9.209, 10.2 -10.14, 11.29-11.30, 11.74 -11.75, 11.85-11.113, 13.5-13.7]

17.200 In response to a variety of concerns raised by the County Council's landscape officer in relation to the Landscape and Visual Impact Assessment (LVIA) that accompanied the planning application,<sup>834</sup> a revised visual impact assessment (VIA) was provided as part of the Regulation 22 submissions.<sup>835</sup>

17.201 It is important not to conflate the landscape and visual impacts of a proposal. The former relates to impacts occurring to landscape features or fabric, such as local topography, water bodies, hedgerows, trees etc. Landscape character includes the features or fabric of the landscape as well as its aesthetic qualities, such as scale, sense of enclosure, diversity, pattern, colour etc., and perceptual and experiential qualities (such as tranquillity) which go to make up its overall character. Visual impact relates to how people would be affected by changes in views and visual amenity at different places, including publicly accessible locations and views from residential properties. Visual receptors are always people (although usually visual receptors are defined according to use e.g. residential, business, road, footpath etc.) rather than landscape features.

*Methodology*

17.202 As at the New Barnfield Inquiry, Mr Flatman (for the Joint Parish Councils) was critical of the methodology employed in the LVIA and the VIA. In particular, he had concerns about the 5 kilometre extent of the study area and thus the extent of the zones of theoretical visibility (one relating to the

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<sup>834</sup> CD A13 Chapter 9 and CD A14 sections 9.1 (amended by Appendix 6.1 of the Reg 22 submission referred to below), 9.2, 9.3, 9.4 (amended by Appendix 6.1 of the Reg 22 submission referred to below) and 9.5

<sup>835</sup> CD A17a Section 6 within Part One of the Reg 22 Further information & post-submission changes document (August 2017) and Appendix 6.1 thereto. Also at Appendix B to the proof of Mr Hammond.

proposed stack heights of 86.75 metres and the other relating to the proposed building height at 48 metres) which stop abruptly at the edge of the study area notwithstanding that theoretical visibility would be likely to extend further.<sup>836</sup> He suggested, as he did at New Barnfield, that when regard is had to Scottish National Heritage guidance on visual representation of windfarms, an initial ZTV distance of some 30 kilometres was an appropriate starting point in this instance, given the height of the proposed stacks.

17.203 Although Mr Flatman's evidence identified additional viewpoints that were not picked up in the LVIA/VIA, the purpose of those assessments is not to identify every single location from which the development proposed might be seen. Rather, they are intended to identify and assess the significance of and effects of change resulting from a proposed development, the emphasis being on the identification of likely *significant* environmental effects.

17.204 Whilst Figure 4 in Appendix A to the proof of Mr Flatman includes numerous additional visual receptor locations within the study area, only five are identified beyond the 5-kilometre study area, four of which lie just outwith the defined study area. Only one is further afield, almost 8 kilometres to the west of the site. As is clear from the photograph provided for that (photo location 88 in his evidence) even were the proposed ERF discernible in that view, the combination of the distance and intervening vegetation mean that it would not be seen as a significant visual detractor. I am content from what I saw during my site visits that there would be very limited visibility of the development proposed from beyond 5 kilometres, with such views as there might be not resulting in any greater impact than has been assessed.

17.205 Given the input by various parties at the Inquiry on the topic of viewpoints and visual impact, and the many locations in the surrounding area from which I viewed the application site during the site visits (the itineraries for which were agreed between the parties) I am content that I have a full picture of the surroundings in which the development proposed would sit, and the various locations within the surrounding area from which it would be seen. I am also content that the assessments identify representative views, including winter views, from sensitive locations and that the rendered visualisations do not seek to minimise impacts.

#### *Landscape Impact*<sup>837</sup>

17.206 Different landscape types are dispersed throughout the surrounding area, with the wooded landscapes of Broxbourne Woods to the west, the valley landscape of the River Lee in the centre and the undulating high plateaus of Nazeing, Roydon and Hunsdonbury rising to the east. Whilst the relevant national, regional, county and district landscape character assessments confirm that landscape features often remain intact within these areas, with a strong rural influence, they place the application site itself within an urban landscape. Inasmuch as the site is already in industrial use as an aggregates railhead on an industrial estate, its 'landscape' character would not change as

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<sup>836</sup> Figure RH-9 in Appendix 1 Volume 2 to the proof of Mr Hammond

<sup>837</sup> Designated landscapes such as Registered Parks and Gardens are dealt with in the Heritage section of this Report.

a consequence of the development proposed. However, the site is located at the edge of the industrial estate/urban area, on the boundary with the adjacent Lee Valley and its related landscape character areas.

- 17.207 It was argued by some that the regional Park should be treated as a 'valued landscape' in the terms of paragraph 170 of the Framework. However, as discussed earlier, the LVRP is not a landscape designation of itself, having been designated for reasons relating largely to its use for recreational purposes that are unrelated to its landscape quality *per se*. I consider, in this regard, that it is not appropriate to deal with it as 'valued landscape' in terms of the Framework provisions. The Park is, nevertheless, a part and parcel of the landscape character of the area. The application site and this part of the LVRP lie within National Character Area 111: Northern Thames Basin. In relation to landscape attributes, the NCA refers to remoteness still being achievable in parks, woods and fields. At regional, county and local levels, the adjacent landscape character areas/types generally align with the boundary of the LVRP and reflect its flat, low-lying valley floor supporting a pastoral land use associated with notable watercourses/ rivers, including occasional gravel extraction lakes.
- 17.208 I am also mindful that the site is located adjacent to a 'Landscape Investment' area as identified in the Lee Valley Park Plan, defined as areas with negative, visually or physically fragmented and degraded character to be redressed through higher standards of development outside the Park boundary.
- 17.209 Whilst the various descriptions acknowledge that, in places, the landscape character of this part of the Lee Valley is influenced to some extent by neighbouring urban settlements, particularly along its western edge, Landscape Character Type A1: Rye Meads (Epping Forest) records, among other things, that *'despite proximity to a large industrial estate on the western side of the valley (within Broxbourne) there is a relatively strong sense of tranquillity within much of this area.'* A sense of remoteness and relative tranquillity is also referred to as a key characteristic of Landscape Character Areas A2: Rye Meads and A3: Glen Faba and Nazeing Meads, as set out in the Regional Park Authority's draft landscape character assessment and landscape strategy.<sup>838</sup>
- 17.210 Mr Hammond, for the applicant, refers to tranquillity as comprising a sense of remoteness and isolation.<sup>839</sup> I agree to an extent but to my mind tranquillity is more than that, also encompassing visual as well as aural calmness and stillness. The industrial setting to the valley floor north of Dobbs Weir and around Glen Faba is not intrusive due to the strong framework of trees along the Park boundary which largely contains it. As a consequence, the influence of adjacent development to the west is limited to a small number of tall structures, such as the stacks of Rye House power station, which do not impose themselves unduly upon the adjacent landscape character of the

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<sup>838</sup> Produced to support of the emerging Park Development Framework, drawing upon the various assessments referred to above (Appendix E to the written statement of the LVRP Authority)

<sup>839</sup> Paragraph 6.8.1 of his proof

Park, even in winter months when foliage on boundary planting is sparse.<sup>840</sup> As such, notwithstanding the presence of overhead powerlines and background traffic noise etc., I consider, contrary to the view of the applicant, that the landscape of this part of the Park does retain a sense of remoteness and tranquillity, and thus is of medium sensitivity in terms of susceptibility to change.

17.211 The LVIA concludes that the significance of effect on landscape character as a consequence of the development proposed after 15 years would range from neutral (not significant) to negligible adverse (not significant). To my mind, however, that seriously underestimates the effect, particularly given the sensitivity I ascribe to the Park landscape.

17.212 I recognise that there would be no physical change on the landscape of the Park as a consequence of the development proposed, the application site generally lying adjacent to but not within, the landscape character areas/types. However, as noted in the LVRP Authority's written statement, the shed style buildings in the adjacent employment areas are generally no greater than 12-14 metres in height, although I recognise that Rye House power station is taller, with stacks some 65 metres in height. Whilst the landscaping proposed would increase the density of tree and shrub planting along the boundary of the Park here it would not, even after 15 years, screen anything other than the lower part of the building proposed, which would be close to the Park boundary. As a consequence, far from reinforcing the sense of place as asserted by the applicant, with a height of some 48 metres, plus its twin stacks which would extend to almost 87 metres, the sheer scale and mass of the proposed facility, which would dwarf even the adjacent power station, combined with its much closer proximity to the Park, would loudly herald the presence of the proposed facility right on the edge of the LVRP, undermining the green nature of the Park boundary and materially detracting from its current fragile sense of remoteness and tranquillity. To my mind, that equates to a high magnitude adverse impact, albeit localised having regard to the extent of the Lee Valley as a whole.

17.213 As acknowledged by Mr Egan for the County Council, whilst the principle of industrial development on this brownfield site within an established industrial area is acceptable in principle, this is a development of a size and scale that is not replicated elsewhere in the locality, notwithstanding the adjacent Rye House power station, with significant adverse effects on a number of receptors in terms of landscape character, which landscaping and screening could not entirely mitigate.<sup>841</sup>

17.214 There are longer range views across the Lee Valley from landscape character areas on the rising land to the east of the valley, which views encompass the urban area of Hoddesdon, including the industrial areas along the western side of the valley. The stacks associated with the adjacent Rye House power station are clearly identifiable features in most of the longer distance views across the LVRP, with the existing large warehouse buildings on the industrial

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<sup>840</sup> Eg photo locations 13, 17, 22 and 27 and Figures RH-25 and RH-32 in volume 2 of Appendix 1 to the proof of Mr Hammond

<sup>841</sup> Eg section 12 of the report to committee and paragraph 5.6 of his proof of evidence

estate also standing out in some views.<sup>842</sup> However, any impact in terms of landscape character would be less than the effect I have identified above in relation to the closer landscape areas/types. I consider that the effect of the development proposed in those views relates more to visual impact, a matter I address next.

### *Visual Impact*

- 17.215 The development proposed includes a substantial building with a footprint of some 149.6 x 54.5 metres and an overall height of 48 metres above ground level, plus twin stacks extending to a height of some 86.75 metres, each with a diameter of some 2.4 metres, increasing to around 3 metres for the top 6 metres. A seven-storey administration and visitor centre is also shown against the north-eastern side of the main building, with a width of some 27.8 metres, a depth of 9.5 metres and a total height of just over 33 metres.
- 17.216 As set out in EN-1,<sup>843</sup> whilst the visual appearance of a building is sometimes considered to be the most important factor in good design, high quality and inclusive design goes far beyond aesthetic considerations. Functionality, including fitness for purpose and sustainability, is equally important. It goes on to note that applying 'good design' to energy projects should produce sustainable infrastructure sensitive to place, efficient in the use of natural resources and energy used in their construction and operation, matched by an appearance that demonstrates good aesthetic as far as possible. It is acknowledged, however that the nature of much energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area. The NPS also advises that '*All proposed energy infrastructure is likely to have visual effects for many receptors around proposed sites. The [decision-maker] will have to judge whether the visual effect on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the project...*'.<sup>844</sup>
- 17.217 The constraints of the site include its size and shape, the presence of high voltage overhead power lines, aquifer and flood risk protection measures, sensitive river and landscapes, the need to accommodate a large-scale industrial process and the need for operational and visitor separation. Whilst objectors seemed to prefer the design of the earlier DCO scheme, this application falls to be considered on its own merits in light of the current contract arrangements.
- 17.218 As confirmed in the Design and Access Statement,<sup>845</sup> the building is designed to achieve a BREEAM rating of Excellent and includes a range of sustainable design features including grass roofs. As noted earlier, it would also house one of the most efficient boilers available on the market, resulting in an R1 rating of 0.82, approaching the limits of thermodynamic efficiency. The design of the building seeks to make a break from the relatively generic design of the surrounding facilities. The simple palette of building materials

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<sup>842</sup> For example viewpoints 14, 15, 30, 44 in the evidence of Mr Hammond

<sup>843</sup> CD J1 paragraph 4.5.1

<sup>844</sup> Ibid paragraph 5.9.18

<sup>845</sup> CD A1a



has been chosen in an effort to help minimise its visual impact, including the use of horizontal bands of coloured panels which progressively become lighter with height: at ground level, the colour tones would range from greens at the lower level reflecting existing vegetation, with lighter blue and opal higher up reflecting sky colours.<sup>846</sup> In addition, a translucent polycarbonate system is proposed for the top 11 metres or so of the building in an effort to mitigate the overall building mass by allowing light and views through the elevation. It also allows natural daylight into the building. Some elements of the translucent cladding would be carried down to ground level to add interest to the south-eastern corner (closest to the site entrance and car park at the end of Ratty's Lane which provides access to the river towpath and the Regional Park). The south eastern corner also has a step down in the façade again in an effort to help mitigate the building mass.<sup>847</sup> The administration/visitor centre element would comprise darker cladding than the main building with a random pattern of windows to break up the elevation.<sup>848</sup> All in all, of itself, the development comprises what I consider to be a well-designed building providing a high efficiency modern energy from waste facility. There would be no conflict in this particular regard with policy 12 of the WCS or policy DSC1 of the emerging Broxbourne Plan.

- 17.219 It would be located in an industrial area on the floor of the Lee Valley. Currently however, the tallest built elements in the locality of the site relate to the Rye House power station (some 28 metres above ground level) and its stacks (some 58 metres in height). Whilst I recognise the effort that has gone in to the design of the building, the sheer size and scale of the facility would dwarf the adjacent power station building and its stacks as demonstrated, for instance, in Figures RH-25, RH-28, RH-29 and RH-32 of Volume 2 to Appendix I of the proof of Mr Hammond and its visual impact would extend beyond the boundaries of the industrial estate. I am particularly mindful, in this regard, of the adjacent Lee Valley Regional Park to the east and Hoddesdon town centre which is on rising land to the west/southwest.
- 17.220 Most of the tree and shrub vegetation along the eastern site boundary would be retained and enhanced and an area of soft landscaping to the east of the main building is proposed. As such, most of the lower part of the building would largely be screened due either to existing vegetation, or by intervening built form. The exception would be in relation to close range visual receptors, specifically those to the south-east of the site including houseboat residents, residents of Lock Cottage and Glen Faba, users of the river and its associated towpath/bridges, and users of local footpaths around Feildes Weir, all of whom I consider to be high sensitivity receptors.
- 17.221 The character and appearance of the LVRP (through which the River runs and in which the Local Keepers Cottage, Glen Faba, the house boats, the weir and bridges etc. are located) contrasts markedly with the adjacent urban form. As noted in the supporting text to policy LS1.6 of the Park Plan, harsh unattractive edges occur where built development abuts the greener nature of the Park without a buffer, with the consequence that the visual impact of

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<sup>846</sup> See elevations at Doc 20.

<sup>847</sup> See elevations at Doc 20 and Figure RH-25 in the proof of Mr Hammond.

<sup>848</sup> Doc 20 Plan No 15-036 P3-001 Rev B



urban development detracts from the green nature of the Regional Park which can degrade its landscape, confusing boundaries and undermining otherwise positive aspects. That is the case here where the urban edge of Hoddesdon, comprising the industrial estate, is hard up against the boundary with the Regional Park, with no area of transition to speak of. That makes the boundary between the two particularly sensitive at this point.

17.222 However, notwithstanding the mitigation measures outlined, the looming presence of the substantial building proposed, virtually on the boundary with the Regional Park would materially degrade its character and appearance, blurring the boundaries here and undermining otherwise positive visual aspects. I consider that the sheer scale of the development would be perceived as having a significant adverse effect at year one of operation, particularly in relation to Lock Cottage and Glen Faba, the houseboats and users of the river and towpath and the access bridge over the River Stort (see Mr Hammond view 1 on Figure RH-12 and Figure RH-25). Additional planting is proposed as part of the landscaping arrangements for the site. As that matures, it would enhance the screening effect of the vegetation to some extent. Even so, the bulk of the building would still be clearly seen from those close receptors at year 15 of operation, with a consequent major visual effect which, in my view, would be experienced as a high magnitude of impact. As such, given the sensitivity of the receptors, there would still be a significant adverse effect. That impact is recognised by Mr Egan for the County Council in his evidence.

17.223 Mid and longer-range views across the Lee Valley from the rising land to the east of the valley encompass the urban area of Hoddesdon, including the industrial areas along the western side of the valley. The stacks associated with the adjacent Rye House power station are clearly identifiable features in most of the longer distance views across the LVRP, with the existing large warehouse buildings on the industrial estate also standing out in some views.<sup>849</sup> Whilst the facility proposed would be seen from some vantage points within Hoddesdon and from the wider surrounding area, its visual impact would, in the main, decrease with distance very quickly as evidenced by the longer range photo locations in the evidence of Mr Flatman, although I do not agree that the design of the building would provide a general enhancement to the wider employment area as suggested in the officer's report (given the very low key, low rise nature of the existing development on the site). Notable exceptions include the view from the Stort Valley Way on Stowhill Road looking west towards the site (Mr Hammond views 14 and 15 on RH-15 and Figure RH-30). Far from comprising an 'interesting' new feature as described in the LVIA, the development would form a bulky and significantly intrusive element in those elevated views, the effect of which would not be mitigated by the planting proposed.

#### *The plume*

17.224 EN-1 recognises that visual impact may not just be the physical structures, but also visible steam plumes. As recorded earlier, a number of objectors had concerns about the visual impact of the plume which, it was felt, would

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<sup>849</sup> For example viewpoints 14, 15, 30, 44 in the evidence of Mr Hammond

draw attention to the facility, acting as an unwelcome reminder of its purposes for residents and others with strong objections to the development. Whilst it is not readily apparent from the LVIA/VIA that the cumulative impact of the plume with the building and stacks proposed had been considered (attention was drawn by objectors in this regard to the absence of any plume of the submitted photo montages) it was confirmed by Mr Hammond in cross-examination that it had been taken into account as part and parcel of the visual impact. Whether or not that is the case, I have had regard to it in coming to a view on the potential visual impact of the proposed facility.

17.225 The evidence of Mr Barrowcliffe<sup>850</sup> was that the water vapour content of the plume would, on occasion, condense into visible water droplets before evaporating again a short distance downwind, with an average length of 32-42 metres. Whilst a visible plume is predicted as being present for up to 25% of all hours, the combination of low air temperature and relatively high humidity necessary for plume visibility is most common at night and in winter. As such, the plume emerging from the stacks would be visible for a small amount of the time. Moreover, the model on which the predictions are based describes the length of the plume from the stack tip to the point at which it dissipates in the atmosphere, when in reality, plumes tend to fragment before this point with the consequence that the ERF plume would, on many occasions, consist of discrete 'ragged' elements rather than one continuous plume.

17.226 Other than rare periods of very still weather, the shape and height of the plume would change frequently. In the absence of any substantiated evidence to the contrary, I have no reason to come to any different view on this matter from that of the New Barnfield Inspector (and I am mindful in this regard, that the plume in that instance was predicted to have an average length of 64 metres, extending to some 253 metres in some conditions, being visible for some 33% of the time during daylight hours) that whilst the plume would be clearly visible at times, it would not add significantly to the degree of visual harm resulting from the proposal, or harm that might be considered to arise from a perception of the presence of the facility.<sup>851</sup>

#### *Lighting*

17.227 The height of the proposed building, together with the use of translucent panels in the upper sections, led to concerns from some about the impact of lighting during the hours of darkness. I have already dealt with potential impact in terms of effect on wildlife.

17.228 The LVIA acknowledges that the development will result in increased levels of illumination compared to the existing situation, the main source of lighting being from the turbine hall, which would permeate the translucent panels on the upper section. However, during the evening, light from the facility would be seen in longer range views in the context of the existing light glow from other development within the industrial area and the nearby Kart track and speedway stadium, albeit at a higher level. Given that context, I am not persuaded that there would be any material change in this regard,

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<sup>850</sup> Paragraphs 6.60-6.64 of his proof

<sup>851</sup> Inspector's Report paragraphs 771-774

particularly since the translucent nature of the panels would help reduce glare, diffusing and softening light transmission.

17.229 In close range views however, particularly from the adjacent Regional Park the impact of the facility would, as demonstrated by the night time photomontage,<sup>852</sup> be much more noticeable. As a consequence, one of the recommended conditions requires the submission of a lighting strategy, the detail of which would need to be approved by the waste planning authority, which would ensure that the impact of night-time lighting is minimised so far as possible. I find no conflict with policy L4.4 of the Regional Park Plan in this regard.

*Overall conclusion on landscape and visual effects*

17.230 From most vantage points, whilst the development proposed may well be seen it would, for the most part, not have what could be classed as a significant adverse landscape or visual impact given its context. However, notwithstanding the mitigation measures proposed which would help moderate the visual impact of the building to some extent, it would remain a very large building for which there are no comparable existing references in the locality: the size, height and bulk of the adjacent power station, Bidvest and Iron Mountain complexes and the nearby Sainsbury distribution centre mean that they are less prominent in the surrounding area than the proposed ERF would be, particularly in terms of their relationship with the Regional Park.

17.231 At close range however, there would be a significant adverse landscape impact in relation to the nearest part of the Lee Valley Regional Park, and a significant adverse visual impact again largely from within the nearest part of the Lee Valley Park, but also from the elevated Stort Valley Way to the east. There would be conflict, in this regard, with policies 11, 12, 18 and 19 of the WCS, saved policy HD14 of the Broxbourne Local Plan, policy DSC1 of the emerging Broxbourne Local Plan, and objective WC2 and policies L1.1, LS1.2, LS2.1, LS1.5 and LS1.6 of the Regional Park Plan. There would be conflict too with policies DBE9, LL3, RST24 and GB7A of the Epping Forest Plan.

17.232 There would also be conflict with the National Planning Policy Framework, which sets out that the creation of high quality places is fundamental to what the planning and development process should achieve, with good design being a key aspect of sustainable development helping create better places in which to live and work and helping make development acceptable to communities. Paragraph 127 of the Framework requires that developments should add to the overall quality of the area over their lifetime, be visually attractive as a result of good architecture, layout and appropriate and effective landscaping, and be sympathetic to local character, including the surrounding built environment and landscape setting.

**Noise and Vibration** [7.113-7.115, 7.127, 7.193, 8.164, 8.168, 11.36, 11.88, 11.121, 11.122, 13.2, 13.20, 13.21] <sup>853</sup>

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<sup>852</sup> Figure RH-35 in the Appendices of Mr Hammond

<sup>853</sup> Environmental Statement, the later Regulation 22 submissions and the evidence of Mr Maneylaws.

- 17.233 The nearest residential property is Lock Keeper's Cottage, some 20 metres to the east of the site boundary beyond the river lock (Feildes Lock) occupying an island between the River Lee Navigation and the River Lee. Another residential property, Glen Faba, is located approximately 50 metres beyond that, at the confluence of the rivers Lee and Stort. In addition, there is an approximately 200 metres length of 14-day visitor moorings (April-October) along the southern bank of the River Lee here - the Design and Access Statement indicates that during November-March, the 14-day limit is lifted. A small number of 'live-aboard' moorings are also located here, some apparently without formal consent. There is space for approximately 12 narrow-boats in this section of mooring.
- 17.234 The nearest accumulation of residential properties is to the north-west of the site, where a relatively small residential estate is situated adjacent to the River Lee, off Normandy Way in Hoddesdon. The closest of these properties are approximately 370 metres from the proposed development. Further residential properties are located on the Rye Park estate in Hoddesdon, again to the north-west of the site, with the closest of these being 450 metres from the site. Residential properties at Dobb's Weir, to the south of the application site, are located approximately one kilometre away.
- 17.235 Subsequent to the original Environmental Statement, work was undertaken to revise and refine the noise assessment, taking on board information that emerged as the detailed design evolved together with discussions with the Environment Agency. Mr Maneylaws' evidence includes the results of the noise assessment reported in the Environmental Statement and from the subsequent work undertaken which informed the related Regulation 22 submission. That includes an assessment of the potential impact in terms of noise and vibration on the Lee Valley Caravan Park which had not previously been assessed.
- 17.236 The noise monitoring locations and monitoring methodology used to establish baseline noise levels in 2011/2012 were agreed with BxB, Epping Forest District Council and East Hertfordshire Council. As there has been industrial development in the locality since then, and traffic will have increased on the local road network, that baseline provides a conservative picture - in essence, the predicted noise associated with the proposed ERF has been assessed against a quieter background noise level than is actually the case, presenting a worst-case scenario.
- 17.237 The development proposed would increase traffic flows on the local highway network during both construction and operational phases. The impact of that at existing residential properties along surrounding affected roads was taken into account in the assessments. Mr Maneylaws' conclusions also take into account the height above ground level of HGV noise emissions as they use the ramp up to the tipping hall.<sup>854</sup>
- 17.238 The proposed facility would not introduce an incongruous noise in comparison to the existing noise environment within the exiting industrial estate. With appropriate mitigation in place, which can be secured either by condition or

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<sup>854</sup> Paragraphs 6.5.5-6.5.8 and paragraph 6.20.2 of the proof of Mr Maneylaws

through the planning obligation, the evidence before me demonstrates that the overall significance of noise and ground-borne vibration effects during the construction phase would be negligible at all but one receptor location (Lock Keepers Cottage and adjacent houseboats) where the overall effect is classed as minor. Once operational, again with appropriate mitigation in place, the significance of effect would reduce to negligible at all receptors.<sup>855</sup>

17.239 I find no conflict therefore, with policies 11, 12 and 13 of the WCS, policy SUS8 of the Broxbourne Local Plan, or section 16 of the National Planning Policy Framework, which together and among other things seek to protect existing interests from adverse effects of noise and vibration.

**Tourism and Socio-Economic Effects**<sup>[7.184-7.190, 8.169, 8.170, 11.65-11.78, 13.22-13.28]</sup>

17.240 Those opposing the proposed facility voiced considerable concern in relation to perceived adverse social-economic effects of the physical presence of the proposed facility, in particular the effects on inward investment and property values, and thus the long-term vitality and viability of the town centre and the Conservation Area and Hoddesdon generally. However, whilst clearly heartfelt, those concerns were anecdotal. They were based on assertion and were not supported by any substantiated evidence. The only evidence on this before the Inquiry comprised two reports commissioned by the applicant – the Cluttons Study (2011) and a report by Wardell Armstrong (June 2018).<sup>856</sup>

17.241 The Cluttons Study examined ERF plants in a number of separate locations to establish whether there were measurable effects on the local residential and commercial property markets over a period of ten years. In all instances, there was no evidence in a pattern that suggested an adverse market reaction to the respective ERFs in terms of negative effects on residential property prices, of national house builders losing interest, or of reduced commercial investment or return. Whilst objectors suggested that only limited weight could be given to the findings on the basis that the Study did not look at all the ERFs in the Veolia portfolio, many had either not been constructed at the time of the Study, or were unsuitable for study because they had been in existence for so long that no meaningful data as to their effect could be gathered.

17.242 Following the guidance in the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, the Wardell Armstrong Report looked at potential impacts of the development proposed at Ratty's Lane, measuring impacts affecting social conditions, including employment impact on the labour market and property prices, a review of other relevant socio-economic impacts such as those on population, deprivation, recreation and tourism, and potential cumulative effects with other similar development nearby. It concluded that there would be an overall net beneficial effect on the economy of Broxbourne and Hertfordshire through new employment both in the construction and operational phases, supply chain benefits and increased local income. I look at these in more detail later in this Report.

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<sup>855</sup> Proof of Mr Maneylaws paragraphs 6.29.7-6.29.10

<sup>856</sup> Appendix 8.1 to the proof of Mr Bridgwood and the appendix to his rebuttal proof respectively

17.243 In relation to the objections raised in this regard, EN-1 advises that decision-makers *'may conclude that limited weight is to be given to assertions of socio-economic impacts that are not supported by evidence (particularly in view of the need for energy infrastructure as set out in this NPS)*.<sup>857</sup> To that end, whilst I understand the concerns raised, there is no evidence which conclusively demonstrates that the proposed development would have an adverse effect on local property markets or the vitality and viability of Hoddesdon town centre and I find no harm in this respect. There would be no conflict therefore, with the provisions of Section 6 of the National Planning Policy Framework.

**Benefits of the scheme/implications of not proceeding**<sup>858</sup> [7.13, 7.32, 7.33, 7.134, 7.168, 7.175, 7.190, 7.194, 8.5, 8.18, 8.21-8.25, 8.34, 8.106, 8.107, 8.128, 8.152, 8.160, 8.171, 8.175, 12.9, 12.26, 12.29, 12.44-12.45, 12.70, 13.42, 13.43]

17.244 I have identified an urgent and pressing need for a long-term solution for dealing with Hertfordshire's waste. In that context, the proposal offers clear advantages in waste management terms compared to the current situation, accommodating the treatment of up to 350,000 tpa of residual LACW (and C&I) waste within the county. Since the facility would be R1 compliant, the process can be classed as a recovery, as opposed to a disposal operation, moving waste up the hierarchy. It would facilitate the County's ability to treat its own residual waste without reliance on substantially exporting to neighbouring areas for landfill or incineration for the next 30 years or so. Moreover, no suitable alternative site for a facility of this scale has been identified within the county and no other scheme, including some combination or network of smaller sites that might make a comparable contribution to the extent of treatment capacity deficit identified in the WCS has come forward over the past years, either in the call for sites in connection with the waste local plan process, or following refusal of the New Barnfield scheme and the subsequent formal market engagement exercise carried out by the County Council. It would allow the Hertfordshire Waste Partnership to plan ahead, avoiding the uncertainty and greater expense of short-term temporary contracts.

17.245 The evidence before me demonstrates that there would be climate change benefits associated with the development proposed, mainly from the diversion of waste from landfill and from energy recovery. There would also be a benefit in terms of a reduction in waste miles travelled compared to the existing situation. The evidence of Mr Crabb for the applicant refers to a saving equivalent to some 171,841 HGV miles per annum, compared to current HGV miles related to transporting the residual waste to a number of locations, all but one of which are outside the county. Whilst the figure was queried by some, particularly given that the savings were calculated on the use of a theoretical transfer station within the northern part of the county, no substantiated evidence was before me to materially undermine the principle of significant savings. The figure used is only a best estimate, as opposed to a detailed calculation and I have treated it as such.

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<sup>857</sup> CD D6 paragraph 5.12.7

<sup>858</sup> See also for example, Section 14 of the Scoping Report (CD A14) and section 7 of the proof of Mr Bridgwood.



- 17.246 A further clear benefit to which substantial weight attaches is the delivery of some 30 MW of low carbon dispatchable electricity to the grid. Although small in national terms, achievement of the Government's renewable energy targets is dependent on the rapid delivery of many different schemes, from small to large, and using a range of technologies. As at New Barnfield, this aspect of the proposal derives strong support from relevant national and local policy.
- 17.247 As noted earlier, the location of the application site within an existing industrial area, close to acres of glasshouses clearly offers the potential for further efficiency through combined heat and power (CHP). However, notwithstanding that there may well be a readily accessible local market there are, as yet, no firm proposals for this provision. I recognise, in this regard, that Inspectors in other cases have placed some positive weight on a proposed facility being CHP ready. I am also mindful that the planning obligation secures measures to ensure that opportunities for CHP are pursued and, where feasible, implemented. Nevertheless, on the evidence that is before me in relation to the specific scheme proposed, I concur with the conclusion of the New Barnfield Inspector who was faced with similar arguments, that hypothetical CHP prospects cannot be relied upon and thus carry only limited positive weight in the planning balance.
- 17.248 The development is expected to support up to 300 jobs during the two-three-year construction phase and approximately 40 once the facility is operational. As recorded by the New Barnfield Inspector, while this weighs in favour of the application, the construction phase benefits would be relatively short term and the processing of the tonnages of waste identified in the WCS would in any event generate employment of a commensurate scale wherever located. On that basis, he attached little positive weight to this aspect of the scheme. I have no reason to take a different view.
- 17.249 There would potentially be some spin-off employment in the local community associated with providing services to the facility and additional employment opportunities during regular, pre-planned periods of maintenance. However, these benefits are not quantified anywhere which limits the weight they can be afforded.
- 17.250 Further value would be created in the waste processing chain through the recovery of metals from the process, some of which, based on the current arrangements, would have gone to landfill, and the creation of by-products such as use of the IBA as a secondary aggregate in the construction sector.
- 17.251 Highways improvements secured in connection with the proposed scheme would also benefit other highway users in the locality, including pedestrians and cyclists.
- 17.252 The additional planting and habitat creation proposed would be a further benefit that would otherwise not be realised.
- 17.253 Should the development not proceed, none of the environmental and socio-economic benefits identified above would be achieved. The corollary to that would be that something else would happen to the waste which would otherwise have been managed at the proposed facility. In all likelihood, given the existing situation set out above in terms of need most would, at least for the short to medium term, continue to be sent out of county to landfill or

incineration, with associated greenhouse gas emissions. There would be no early delivery of new renewable energy generation from waste, with consequent impacts for climate change. In addition, it would be more likely that the waste management targets set out in the WCS would not be met. These are considerations that attract substantial weight in the overall planning balance.

### **Other Matters**

17.254 Whilst the matters above represent the main issues in dispute amongst the main parties, other matters were also raised.

*Green Belt*<sup>[8.85-8.88, 9.189, 11.28, 11.86, 11.94, 11.101]</sup>

17.255 The vast majority of the application site lies adjacent to but outwith the Metropolitan Green Belt, the boundary to which generally aligns with the eastern site boundary at this point. The LVRP lies within the Green Belt, as does the adjacent towpath. The only part of the development scheme within the Green Belt would be minor engineering operations comprising the construction of a surface water drainage outfall and a below ground surface water connection. Since these elements of the scheme would not impact on openness, they would not be inappropriate in the Green Belt. There would be no conflict therefore with the provisions of paragraph 146 of the Framework or local Green Belt policies which seek to resist inappropriate development. However, a number of local planning authorities and others expressed concern about the visual impact of the proposed ERF on the perception of Green Belt openness and the setting of the Green Belt.

17.256 Paragraph 133 of the Framework makes it clear that the fundamental aim of Green Belt policy is to keep land permanently open, with the essential characteristics of Green Belts being their openness and permanence. In terms of local policies, policy 6 of the WCS, policy GBC2 of the Broxbourne Local Plan and policy GB1 of the emerging Broxbourne Plan relate specifically to development *within* the Green Belt. Whilst Planning Policy Guidance Note 2: Green Belts did refer to the visual amenities of the Green Belt being injured by development conspicuous from the Green Belt, that guidance Note has long since been cancelled and that provision does not prevail in the Framework which replaced it. There is no reference either, to the need to protect the setting of Green Belts.

17.257 Whilst openness is an essential characteristic of Green Belts, I have no reason to suppose that it relates other than to land within the Green Belt. Moreover, I find no reference in national or indeed local policy to any 'perception' of openness (as opposed to physical openness). Whilst the development proposed would have a presence and would clearly be seen from the Green Belt, there would be no impact on its actual openness as a consequence of development outside it and thus there would be no conflict with national or local planning policy in this regard. More general considerations of visual impact in terms of character and appearance are addressed above.

17.258 Policy GB7A of the Epping Forest Plan relates to development that would be conspicuous from the Green Belt within its area. Given the visual impact I have identified, there would be conflict with this policy inasmuch as there

would be harm to the visual amenities of the Green Belt in Epping Forest, although the policy is not part of the development plan for the application site.

*Flood risk and risk to groundwater*<sup>859</sup> [6.1, 6.3, 7.145, 7.146, 8.167, 11.27, 11.149, 13.46]

- 17.259 The Environment Agency's Flood Mapping shows the application site to be located in Flood Zones 2 and 3, associated with fluvial flooding from the River Lee and its tributaries. Although the Broxbourne Strategic Flood Risk Assessment places the site in Zone 3b (functional flood plain) subsequent detailed hydraulic modelling confirms that not to be the case.
- 17.260 As a waste treatment facility, the ERF is classified as development that is 'less vulnerable' to the effects of flooding. Such development is appropriate in Flood Zone 3 without the need to apply the Exception Test. First however, the Sequential Test must be passed to demonstrate that there are no sequentially preferable sites for the proposed facility in flood risk terms. In this regard, the appellant relies on the ASA. I concluded earlier that the ASA can be considered as being reasonably 'fit for purpose'. Given its conclusions, it is my view that the Sequential Test is passed.
- 17.261 The Environment Agency and the Local Lead Flood Authority consider, based on the information submitted, that the mitigation measures proposed are sufficient to ensure that the facility could be made safe and resilient from predicted flood risk effects, including an allowance for climate change, without increasing the risk of flooding elsewhere or necessitating provision of replacement flood plain storage. The measures, which can be secured by condition were planning permission to be granted, include the provision of a flood wall along the eastern site boundary based on alterations to the pre-existing earth bund there, together with sustainable drainage interventions (including rainwater harvesting, underground geocellular storage crates below the proposed car parks, and two attenuation basins) which will temporarily store rainfall on-site and limit the rate at which surface water is discharged to the River Lee. I find no conflict in this regard, with policy 16 of the WCS, paragraph 163 of the Framework, or policy W5 of the emerging Broxbourne Local Plan,<sup>860</sup> all of which relate to such matters.
- 17.262 Were the Secretary of State to come to a different view in terms of the ASA then, in the absence of any other information, the Sequential Test would not be passed.
- 17.263 With regard to groundwater, the application site is underlain by two types of permeable geological strata, a sand and gravel aquifer and a deeper chalk aquifer, the depths of which necessitate measures to minimise the risk of pollution and to ensure adequate protection to groundwater and associated abstractions from the aquifer during both construction and operational phases of the development. Both the Environment Agency and the Lead Local Flood Authority are satisfied, on the basis of the submitted information and subject to appropriate conditions, that the risk of contamination of groundwaters can be protected. I have no reason to take a different view.

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<sup>859</sup> Officers report (CD B1), LLFA/EA comments (CD B3), FRA August 2017 (part of the Reg 22 submissions at CD A17 a) Proof of Mr Pelling and SoCG1 and SoCG3

<sup>860</sup> CD C4 pages 144/145

17.264 There would be no conflict with policies 14 and 16 of the WCS in this regard, or with Sections 14 and 15 of the National Planning Policy Framework.

*Aggregates Railhead*<sup>861</sup> [ 7.71-7.76, 8.80-8.84, 9.173-9.176, 11.16-11.18]

17.265 Policy 10 of the 2007 Minerals Local Plan Review seeks to safeguard existing railheads where they have the potential for the exportation and importation of minerals and secondary/ recycled aggregates. The application site is currently used as an aggregates railhead. Clearly that use would cease were the site to be redeveloped as proposed.

17.266 However, the currently under-used railhead itself would not be lost. Not only would the infrastructure remain, the intention is that IBA from the ERF process would be removed from the site by rail. That arrangement is secured, so far as is possible, by the planning obligation. Whilst not classed as secondary aggregate on leaving the site, once the IBA has been tested off-site for any hazardous content and confirmed as 'clean' by the receiving facility, it is then categorised as secondary aggregate with no further treatment required. It is exactly the same product that would have been exported from the site, the only difference being confirmation of a clean bill of health. On that basis, I consider that the IBA would be analogous to a secondary aggregate and thus would not materially undermine the provisions of the policy.

17.267 In coming to that view, I am aware that the planning obligation secures the submission of a plan setting out the arrangements for the IBA to be removed by rail, precluding use of the facility until the plan is approved by the County Council. Once approved, the arrangements secured shall be implemented once the facility is commissioned. If the written plan as approved is not implemented, or operations are not carried out in accordance with the approved plan, then the terms of the planning obligation ensure that energy recovery operations at the site, including the receipt of and/or incineration of waste shall cease and shall not resume until evidence is provided demonstrating that the IBA operations will be carried out in accordance with the approved plan, or any approved variation following the submission of further evidence, with the agreement of the County Council.

17.268 It is also worth noting that Tarmac, the current owner of the site and the railhead, is only releasing the site for the development proposed on a temporary basis: the site and the railhead are to be returned to Tarmac at the end of the lease, with the site made fit for continued aggregate usage. Moreover, it seems to me that since rail served aggregates are a key part of the Tarmac business, the company would not release the site albeit on a temporary basis, unless it was confident that it would be able to serve current markets from existing resources.

17.269 To conclude on this issue, whilst there would, technically, be conflict with the wording of Minerals policy 10, given the combination of circumstances set out above I find no actual harm by reason of non-compliance.

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<sup>861</sup> Proof of Mr Bridgwood paragraphs 6.2.17 – 6.2.28, CD B1 Section 20 and paragraph 23.16, Proof of Mr Egan paragraphs 3.37-3.41, and proof of Mr Cooper for BxB paragraphs 27-29 and 89

*Accessibility*<sup>862</sup>

17.270 Objective SO4 of the WCS seeks to facilitate a shift away from road transport to water and rail transport as the principal means of transporting waste. Unlike the New Barnfield scheme, which was wholly dependent on road transport, the current proposal does include provision for the removal of IBA from the site by rail, as secured through the planning obligation. That said, in terms of sustainable transport, the nature of the proposed development precludes such options for most trips, with the location of the application site within an appropriate area also creating restrictions. I am mindful, in this regard of the conclusion of the New Barnfield Inspector on this:

*1017. ....while the desirability of making use of rail and water transport where available is self-evident, practicality and economic considerations cannot be disregarded. Given the overwhelming reliance on road transport for the collection of waste, the lack of identified opportunities for road/rail or road/water transfer stations, and the predominantly north/south pattern of the railway routes in the County which emphasise movement to and from London, it is difficult to see this [SO4] objective being achieved in the lifetime of the current Core Strategy. The dispersed strategy favoured by WHBC would be similarly reliant on road transport, and while the haulage distances would be lower than the one site strategy, other factors need to be taken into account. The evidence indicates the carbon savings that might be achieved by a dispersed strategy would be heavily outweighed by the continuing emissions of landfill gas consequent upon any further delay in the provision of additional capacity.*

17.271 No substantiated evidence is before me that leads me to any different conclusion in relation to this current proposal.

17.272 However, there are two principal pedestrian and cycle routes to the site. Access can be gained from the towpath along the River Lee. Figure 5.1 in the Transport Assessment<sup>863</sup> shows the footpath and cycle route along the river. Rye House rail station is situated approximately 1 kilometre from the site via the tow path – equivalent to a 13 minute walk or 4 minute cycle. Whilst the tow path is unlit and unsurfaced in places, given the potential for its increased use, a contribution for improvements is secured through the planning obligation. The station is also accessible by road (2.1 kilometres).

17.273 The site can also be accessed by pedestrians and cyclists via Ratty's Lane. Whilst the lane itself has minimal facilities for use by cyclists and pedestrians (with a footway only as far as the entrance to the power station site) on accessing Essex Road, there is a network of interconnected footways facilitating access to Hoddesdon town centre where local amenities are located.<sup>864</sup> The site is situated approximately 1.5 kilometres from the town centre – equivalent to a 19 minute walk or 6 minute cycle ride, although the nearest supermarket is some 1.8 kilometres away. The planning obligation secures monies towards the installation of pedestrian dropped kerbs and

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<sup>862</sup> Proofs of Mr Crabb, Mr Russell, Mr Corrance and the Transport Assessment at CD A 14 Section 6.1

<sup>863</sup> CD A 14 Section 6.1

<sup>864</sup> Ibid

tactile paving at one of the Pindar Road junctions with Essex Road on that route to improve pedestrian safety. The safety of pedestrians and cyclists en route to the town centre would also be greatly improved with construction of the new New River bridge (see below).

- 17.274 In addition, the planning obligation secures monies for the construction of a cycle route along Charlton Way and improvements to the New River path to improve access from Essex Road to Broxbourne Station, all of which measures are aimed at promoting accessibility of the site by means other than the private car as far as possible.
- 17.275 As acknowledged by the County Council,<sup>865</sup> the site has limited accessibility by public transport. Bus services are available, including connections to Broxbourne rail station which is served by a greater frequency of trains than Rye House. The nearest bus stops are some 1.2 kilometres to the south on Dobbs Weir Road, linking to Hoddesdon town centre. Bus stops serving the wider area are some 1.6 kilometres from the site.<sup>866</sup>
- 17.276 Coach and car parking on the site would be provided for visitor/school trips.
- 17.277 The submission of a Travel Plan,<sup>867</sup> which would further maximise sustainable transport options as far as possible, is secured by one of the recommended conditions.
- 17.278 In light of the forgoing, I find no conflict with policy 15 of the WCS or with paragraphs 102 and 104 of the Framework, which together and among other things seek to enhance and provide high quality walking and cycling networks in order to promote opportunities for walking, cycling and public transport use.

### **The Planning Obligation<sup>868</sup>**

- 17.279 Consideration of the obligations provided for is to be undertaken in the light of the advice at paragraph 56 of the National Planning Policy Framework and the statutory requirements of Regulations 122 and 123 of the Community Infrastructure Levy Regulations. These require that planning obligations should only be accepted where they are necessary to make the development acceptable in planning terms; are directly related to the development; are fairly and reasonably related in scale and kind to it; and, since April 2015, must not be a pooled contribution where more than five such pooled contributions have already been collected.
- 17.280 **Access Improvement Contribution:** this contribution is sought to improve sustainable access to the site in respect of future employees and other visitors and draws some support from the County's Local Transport Plan 4 (2018-2031) (May 2018)<sup>869</sup> WCS policies 9 and 13 and the Hoddesdon and Broxbourne Urban Transport Plan (March 2012)

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<sup>865</sup> Section 7 of the proof of Mr Corrance

<sup>866</sup> Proof of Mr Russell paragraphs 2.27-2.31

<sup>867</sup> Recommended condition 31 in Appendix D

<sup>868</sup> Doc 97a

<sup>869</sup> Extracts at Doc 81



- 17.281 Although the traffic control measures proposed along Ratty's Lane would go some way towards mitigating the impact of the development in terms of sustainable access, further mitigation in relation to improvements to the existing and proposed pedestrian and cyclist routes in the vicinity of the site are also necessary, since the development would encourage additional footfall along the footways and New River path from the town centre and Broxbourne Railway Station.
- 17.282 The money is secured towards what the CIL compliance statement refers to as a 'basket' of improvements comprising some or all of the works listed at paragraph 10.2 therein. The CIL compliance statement then sets out that the contribution is 'indicatively' referable to the following works: pedestrian and cyclist improvements associated with the existing and proposed New River bridges on Essex Road, designed to remove the existing pinch point (£100,000), online improvements to Essex Road to smooth traffic flows and improve pedestrian and cycle access along the route (£300,000), construction of a cycle route along the A1170 Charlton Way (£150,000), and improvements to the New River Path to improve access from Essex Road to Broxbourne Station and residential areas (£200,000).
- 17.283 As referred to earlier, the County Council does not consider the new Essex Road Bridge to be necessary to make the development acceptable in highway safety or sustainability terms. However, if the new bridge is constructed, then I am advised that the improvements sought would be necessary to bring about other sustainability improvements. If the bridge was not constructed, then the contribution would be used for other improvements of a similar nature within the overall package. That seems to me to misunderstand the purpose of Section 106 contributions.
- 17.284 I recognise that it is a longstanding ambition of the Highway Authority to improve the local highway network in this locality and to improve pedestrian and cycle connectivity with the town centre. However, the purpose of Section 106 monies is not to resolve existing problems and issues *per se*. Rather, contributions can only legitimately be taken into account where they are necessary to make a development acceptable in terms of addressing an unacceptable planning impact that is a consequence of a development scheme itself. Either the new bridge is necessary to mitigate the impact of traffic related to the development proposed, or it is not.
- 17.285 As discussed earlier in this Report, notwithstanding that the majority of HGV traffic movements (i.e. the type of traffic that causes much of the congestion at the current bridge pinch point) would take place outside the AM and PM peak hours, I consider that the volume of HGV traffic that would be generated is such that it would have material adverse consequences for the safety and free flow of traffic on the existing bridge. As a consequence, I concluded that provision of the new bridge is not only necessary but should also be in place prior to commissioning of the proposed ERF.
- 17.286 The local highway and footpath network is not conducive to an attractive or safe cycling or walking environment in terms of access to the application site. Whilst there are cycle routes within the vicinity of the site, there are no direct links to them. I am content, therefore, that the other specified improvements, are also necessary in order to ensure the provision of suitable

safe, high quality access routes for pedestrians and cyclists linking the residential area to the north along much of Essex Road and the New River Path in accordance with the relevant policies and guidance.

- 17.287 The CIL compliance statement confirms that only two contributions are currently held which provide for funding for the access improvements or provide funding for the same type of infrastructure to which the Access Improvement Contribution relates. There would be no conflict therefore with the pooling restrictions. I am satisfied that, in all other regards, the secured contribution meets the relevant tests.
- 17.288 **Nature Improvement Contribution:** Policy 18 of the WCS is permissive of waste management proposals where, among other things, it can be demonstrated that they would not have an irreversible adverse impact on the character, appearance, ecological, geological and amenity value of the Lee Valley Regional Park. It goes on to state that assets including the Park, should be conserved and where possible enhanced. Pursuant to that, this contribution, requested by the Regional Park Authority, is for the improvement of visitor infrastructure within the nature improvement area at Glen Faba Lake as shown on plan 6 attached to the Planning Obligation. The CIL compliance statement<sup>870</sup> details and costs the various works secured by the contribution, including improved public access and the restoration and enhancement of habitats in the vicinity of Glen Faba Lake.
- 17.289 The works would help strengthen the resilience of the landscape within the vicinity of the development and would help mitigate the adverse impact of the development proposed on the visual amenity of those visiting this part of the Park. No other contributions have been secured towards the works identified and I am content that the contribution secured complies with policy and meets the relevant tests.
- 17.290 **Highways Works Contribution:** at present, there is no dropped kerb to aid pedestrians crossing the western Pindar Road junction with Essex Road, which is detrimental to the safety of pedestrian traffic. The development proposed clearly has the potential to increase the number of pedestrians walking along this part of Essex Road who would need to cross this junction. The contribution secured is for the installation of pedestrian dropped kerbs and tactile paving at this point to improve pedestrian safety. No other contributions have been secured towards the works identified and I am content that the contribution meets the relevant tests.
- 17.291 **Travel Plan Contribution:** as confirmed in the CIL compliance statement, this contribution is requested for the cost of evaluating, administering and monitoring the objectives of the Travel Plan to be submitted,<sup>871</sup> and engaging in any necessary Travel Plan review over the 30 years or so of the lifetime of the development to ensure that its objectives are being met.
- 17.292 The sum secured is derived from Appendix E of Hertfordshire's 'Travel Plan Guidance for Business and Residential Developments', with the principle being supported by the Council's 'Planning Obligation Guidance Toolkit for

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<sup>870</sup> Doc 91b

<sup>871</sup> Recommended condition 31 in Appendix D

Hertfordshire' (January 2008). However, at least one of those documents was adopted prior to the Oxfordshire County Council High Court judgement,<sup>872</sup> which confirmed that there is nothing in statute, regulation or guidance, which suggests that authorities could or should claim administration and monitoring fees as part of planning obligations.

- 17.293 I recognise that there will be circumstances where such contributions may well be appropriate. Indeed, the CIL compliance statement draws attention to two such appeals. However, they were complex schemes of a significant scale either in terms of the number of dwellings they intended to deliver, or the number of dwellings combined with office accommodation, with the consequential extent of the contributions required, combined with arrangements for some contributions to be paid at different stages of development.
- 17.294 Unlike those cases, there is nothing before me to suggest that the Travel Plan for Ratty's Lane would be especially complex, or that it would give rise, for example, to any unusual or special circumstances requiring a bespoke means of monitoring that might place a particularly onerous burden on the resources of the Council over and above its normal functions. In these circumstances, I consider that the Travel Plan monitoring contribution has not been justified either in terms of its necessity as a means of making the development acceptable in planning terms, or in terms of it being fair and reasonable. As such, it is incompatible with the relevant tests and this part of the obligation should not play any part in determining whether or not planning permission should be granted for the development proposed.
- 17.295 **Towpath Contribution:** the development proposed is expected to increase pedestrian movement along that part of the Lee Navigation towpath between Rye House rail station and the application site, with a consequent adverse impact on its condition. To that end, upgrade works as detailed in the CIL compliance statement are requested by the Canal and River Trust, to assist in increasing its use for sustainable travel. The planning obligation secures that either by the applicant procuring the carrying out of the works in accordance with a detailed specification to be submitted to and agreed with the County Council or, in the alternative, making the agreed contribution, as costed in the CIL compliance statement.
- 17.296 Whichever route is taken the necessary works are supported by planning policy and meet the relevant tests. In the event that the works are carried out following payment of the contribution, I understand that no other contributions have been secured towards the works identified.
- 17.297 In addition to the above financial contributions, the planning obligation also secures a number of other measures.
- 17.298 **HGV Routing:** the routing of HGVs in and out of the site was a matter of considerable concern to many. Given the number of anticipated HGV movements not only during construction, but also once the facility is operational, it is imperative in the interest of the safety and free flow of

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<sup>872</sup> *Oxfordshire County Council v Secretary of State for Communities and Local Government and others* [2015] EWHC 186 (Admin)

traffic on the local highway network that, other than for local collections, all HGV traffic delivering waste to and departing from the proposed facility is constrained to the Permitted Route (defined as that part of the highway known as Ratty's Lane, Essex Road and A1170 Dinant Link Road shown on Plan 5 attached thereto, avoiding other roads in the locality) and to avoid the Prohibited Route (other than in specific circumstances including verifiable road closures/diversions on the Permitted Route).

- 17.299 The planning obligation ensures the preparation and submission for approval of Site User Rules which must include reference to adherence by all users to the HGV Routing. To this end, the applicant also covenants that every contract entered into with any contractor shall include provisions that are binding on the contractor, the contractor's HGVs and any sub-contractor, to ensure that they adhere to the Site User Rules, including the need to adhere to the Permitted Route. This is secured by the planning obligation, as routing provisions cannot be secured by planning condition.
- 17.300 Combined with that, the applicant is obligated to install agreed signage at the site entrance and exit points prior to commencement of development, warning HGV drivers to travel only along the Permitted Route (defined as that part of the highway known as Ratty's Lane, Essex Road and A1170 Dinant Link Road shown on Plan 5 attached thereto, avoiding other roads in the locality) and to avoid the Prohibited Route (other than in specific circumstances including verifiable road closures/diversions on the Permitted Route).
- 17.301 The obligation sets out how any identified breaches of the Site User Rules are to be dealt with and ensures that the applicant shall not permit entry to the site of any HGV whose driver is not part of any said contract.
- 17.302 The arrangements secured are necessary to mitigate the traffic impacts of the development and meet the relevant tests.
- 17.303 **Incinerator Bottom Ash (IBA)**: in part, the applicant's case was predicated on removing all IBA from the site by rail to a dedicated facility to enable it to become secondary aggregate. The ability for this material to be utilised as a secondary aggregate as a road base material provides significant justification for the temporary loss of the rail aggregates depot for the importation of primary aggregate, as it offers significant benefits in reducing the regional need for primary aggregates, in line with Minerals Policy 7 of the Minerals Local Plan.
- 17.304 Pursuant to that, the applicant is obligated to submit a written plan setting out arrangements for removal of incinerator bottom ash (IBA) by rail to an appropriate facility. Energy recovery operations on the site (including receipt and incineration of waste) are to cease if the approved written plan is not implemented or operations are not carried out in accordance with the plan, until such time as evidence is submitted that the IBA operations will be carried out in accordance with the approved plan, or as may be agreed otherwise with the County Council following the submission of further evidence.

- 17.305 The requirement, which relates directly to the development proposed, aligns with the requirements of policies 7 and 10 of the Minerals Local Plan, is necessary, fair and reasonable in the circumstances that prevail.
- 17.306 **Future Combined Heat and Power (CHP) Opportunities:** the sustainable benefits of the technology to be utilised at Ratty's Lane have been examined above. Although the technology allows for heat to be generated at some point in the future, this is dependent on a number of factors. Whilst, the production of energy, in itself, is considered to offer significant benefits in the treatment of this waste stream further up the waste hierarchy, the sustainability of the facility would be increased if the material was also being used to supply heat locally, further reducing reliance on non-renewable energy in the area.
- 17.307 At the time of the Inquiry, whilst the applicant was unable to provide guarantees about the future provision of CHP, the company has committed, through the planning obligation, to reviewing such future opportunities and the potential viability of a connection to end users once the plant is operational.
- 17.308 The development proposed provides for potentially significant benefits with regard to generating heat as well as power. In order to harness that potential and ensure that the facility operates in as sustainable a manner as possible, the applicant is obligated to carry out a feasibility study within one year of occupation to assess the potential for the site to provide CHP opportunities within the vicinity of the site and the viability of supplying heat from the facility to end users. The study would be reviewed every four years. If it shows that CHP opportunities are feasible, a CHP scheme is to be submitted and implemented.
- 17.309 The requirement, which relates directly to the development proposed, accords with Policy 3 of the WCS, which supports the generation of heat and/or power, and is necessary, fair and reasonable in the circumstances.
- 17.310 **Diversion Order:** whilst not readily apparent on the ground, the route of footpath 59 (as shown on Plan 3 appended to the planning obligation) crosses the application site. The planning obligation prevents the commencement of development until a Diversion Order Application has been submitted to the County Council for the diversion of the footpath and cycleway to formally follow the canal towpath (as shown on Plan 3 attached thereto) – that is the route that is used by the public currently.
- 17.311 However, the current route of the footpath as shown on the plans is located within an area proposed to be landscaped, outside any of the proposed operational areas of the scheme. Accordingly, as recorded in the CIL compliance statement, diversion of the route is not necessary for the development to be constructed or operated. I am not persuaded therefore, that this element of the obligation meets the relevant tests and it should not play any part in determining whether or not planning permission should be granted for the development proposed.

## **18. COMPLIANCE WITH THE DEVELOPMENT PLAN AND NATIONAL POLICY**

- 18.1 In calling in this application, the Secretary of State asked to be informed as to

the extent to which the proposal is consistent with the development plan for the area and with the national planning policy. The following section draws on the conclusions from each of the forgoing sections.

- 18.2 The application site comprises previously developed land within an existing industrial estate. As such, there would be no conflict with saved policy EMP1 of the Broxbourne Local Plan, criteria iii) and iv) of WCS policy 7 or policy HOD3 of the emerging Broxbourne Plan. I have also found no conflict with policy 1 of the WCS or policy WSA2 of the WSA in terms of the principle of the location.<sup>[17.5-17.12]</sup>
- 18.3 I have found that there is a pressing need for the development proposed which would provide in-county capacity for processing all of the county's residual LACW (and a significant amount of C&I waste). That presents significant savings in terms of waste haulage compared with the existing situation, where the LACW is sent either to landfill or is exported out of the county for processing. In addition, the facility would recover metals for recycling that would otherwise go to landfill and would recycle the IBA as a secondary aggregate. The evidence before me is that this is the only site available for a development of this scale that is deliverable in the short to medium term. Moreover, as an energy recovery facility, the development would drive waste up the waste hierarchy and would not suppress measures to increase recycling rates. The technology proposed is proven and reliable and would be able to treat the volume and variety of waste contained in the residual LACW stream. There is compliance in these regards with policies 1, 3 and 7 of the WCS, policy WSA2 of the WSA, core policies 12, 13 and 14 of the JMWMS and the thrust of the LACWSS. The development would also accord with the objectives of the Waste Management Plan for England, the National Planning Policy for Waste and the principles of NPSs EN-1 and EN-3 which together and among other things commit to renewable energy, a low carbon economy and achieving energy security, all of which are key objectives of Government policy.<sup>[17.13-17.53]</sup>
- 18.4 There would be a saving in greenhouse gas emissions compared with the current situation where a sizeable fraction of the residual LACW is sent to landfill. There is no conflict therefore with policy 10 of the WCS or section 14 of the National Planning Policy Framework.<sup>[17.54-17.64]</sup>
- 18.5 Whilst the ERF would result in small but quantifiable increases in ambient concentrations of some airborne pollutants, any potential damage to the health of those living close by is likely to be very small, if detectable at all. There is nothing in the evidence before the Inquiry that such matters could not properly be controlled through the permitting process. There is thus no conflict with National Planning Policy for Waste in this regard, which makes clear that the control of processes are a matter for the pollution control authorities.<sup>[17.65-17.81]</sup>
- 18.6 There would be no direct physical impact on any heritage asset. Whilst the development proposed would be seen from numerous heritage assets in the locality to varying degrees, I have found that there would be no harm to the heritage significance of any asset. Even if there were, any harm would be at the lower end of less than substantial and would be outweighed by the public benefits associated with meeting a pressing need for a facility to deal with the



county's residual LACW. I find no conflict in this regard with policies 11, 13, 17, 18 and 19 of the WCS, policy HA6 of the emerging Broxbourne Local Plan or section 16 of the National Planning Policy Framework.<sup>[17.82-17.109]</sup>

- 18.7 Other than during the construction phase, the development proposed would not by itself, or in combination with any other plans and projects, result in any Likely Significant Effects on European sites. During the construction phase, dust is an emission of relevance to the Lee Valley SPA and Ramsar and could potentially result in a Likely Significant Effect. Those effects would need to be the subject of an Appropriate Assessment by the Secretary of State. However, to inform that Assessment, I consider that standard measures of control, secured through the use of planning conditions, would be sufficient to avoid or sufficiently reduce the Effects to the extent that there would be no effect on the integrity of the European sites. It necessitates other than, potentially, during the construction phase. I have also found that there would be no adverse impact on ecology and wildlife generally as a consequence of the development proposed. On that basis, I find no conflict with policies 11, 12, 13, 14, 16, 17, 18 and 19 of the WCS, saved policies HD18 and SUS11 of the Broxbourne Local Plan, policy NEB4 of the emerging Broxbourne Local Plan, policies NC1.1, NC2.1 and L4.4 of the Lee Valley Park Plan and section 15 of the National Planning Policy Framework.<sup>[17.110-17.127]</sup>
- 18.8 The application site is located close to the strategic road network, proximate to major urban areas and main population areas, including being within 20 minutes' drive time of Broxbourne, Hoddesdon, Ware, Cheshunt, Waltham Cross and Hertford, in accordance with one of the underlying objectives of the areas of search.<sup>873</sup> Whilst not ideal, I have found, on balance, that the traffic/highways implications of the development proposed would, subject to conditions and the provisions of the planning obligation, be acceptable with no material harm arising in terms of the safety and freeflow of traffic. There would be no conflict in this regard with policies 7, 9, 13 and 15 of the WCS, or section 9 of the National Planning Policy Framework, in particular paragraphs 108 and 109.<sup>[17.128-17.178]</sup>
- 18.9 Although of itself the building would be well designed, it is very large. As a consequence, there would be significant harm in terms of the landscape and visual impacts which could not be mitigated by landscaping or other screening. That harm brings the development into conflict with policies 11, 12, 18 and 19 of the WCS, saved policy HD14 of the Broxbourne Local Plan, policy DSC1 of the emerging Broxbourne Local Plan, and objective WC2 and policies L1.1, LS1.2, LS2.1, LS1.5 and LS1.6 of the Lee Valley Park Plan. There would be conflict too with policies DBE9, LL3, RST24 and GB7A of the Epping Forest Plan (but only in relation to the visual amenities of the Green Belt in relation to the last of these policies). There would also be conflict with paragraphs 124 and 127 of the National Planning Policy Framework.<sup>[17.179-17.210, 17.236]</sup>
- 18.10 The evidence before me demonstrates that with appropriate mitigation secured by conditions, the significance of effect in terms of noise and ground-borne vibration once the facility was operational would be negligible at all identified receptors. There would be no conflict in this regard, with policies 11, 12 and

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<sup>873</sup> CD B1, page 36, paragraph 4.18

13 of the WCS, policy SUS8 of the Broxbourne Local Plan, or section 16 of the National Planning Policy Framework.<sup>[17.211- 17.217]</sup>

18.11 Although there would be a technical conflict with the wording of Minerals policy 10, in the circumstances of this case I find no actual harm by reason of non-compliance.<sup>[17.242- 17.246]</sup>

18.12 With the exception of Epping Forest policy GB7A referred to above, I find no conflict with Green Belt policies,<sup>[17.233-17.236]</sup> or with policies relating to flooding<sup>[17.236-17.239]</sup> and accessibility.<sup>[17.248-17.256]</sup>

## **19. PLANNING BALANCE AND OVERALL CONCLUSION**

19.1 I have identified a compelling case in terms of an urgent and pressing need for infrastructure to sustainably manage Hertfordshire's residual LACW, with the evidence before me demonstrating that there is no other suitable alternative site that could meet that need at least in the short to medium term, if not the longer term, particularly bearing in mind the length of time over which a site has been sought. With an R1 rating, the development proposed comprises a recovery facility thus moving waste up the hierarchy, diverting a significant proportion of waste both from landfill and from being transported out of county for treatment. The facility would also help meet the aspirations of the WCS in terms of the need for renewable low carbon energy and would bring about climate change benefits. These considerations carry substantial weight.

19.2 Although the proposed facility does not, currently, have an Environmental Permit, such is not required as a pre-requisite to approving an application for a scheme such as this. Whilst I understand the concerns raised by objectors in terms of source emissions, it is well established that it is for the Environment Agency to regulate the incineration process and emissions arising from that process in the interests of preventing pollution and protecting public health. In determining waste planning applications, decision makers are required to work on the assumption that the relevant pollution control regime will be properly applied and enforced.<sup>874</sup> Accordingly, whilst I fully appreciate the concerns of raised in this regard, those concerns would need to be addressed at the permitting stage, such matters falling outwith the planning regime. That said, I give some, albeit limited weight to the perception of harm, particularly in relation to health matters, given the fears expressed by local people.

19.3 Some positive weight should be attached to the jobs that would be created, during both the construction and operational phases of the scheme, and the financial benefits to the local, and wider, economy that would accrue. Other benefits to which some weight can be afforded include the value created in the waste processing chain through the recovery of metals from the process and the use of the IBA as a secondary aggregate in the construction sector, highways improvements, and additional planting and habitat creation.

19.4 Whilst I am mindful of the potential to export heat without impacting on the electrical output, such an arrangement does not form part of the development scheme the subject of this application. As such, that potential benefit can attract only limited weight in the planning balance.

19.5 In terms of location however, although the development would be sited on

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<sup>874</sup> CD D4 Paragraph 7 bullet 5

previously developed land within an existing industrial park next to a power station, it is also adjacent to the Lee Valley Regional Park. I have found that there would be a significant adverse effect on the character and appearance of the surrounding area in terms of both landscape and visual impact. That is a consideration to which I afford considerable weight.

- 19.6 All other issues are neutral in the planning balance, since the absence of harm does not attract positive weight.
- 19.7 In coming to a view on the final balance, I note that the WCS clearly allows for development outwith the defined areas of search in the circumstances that prevail here. I am also mindful that EN-1, a material consideration in this case, specifically acknowledges that *the principal area in which new energy infrastructure is likely to lead to adverse effects which cannot always be satisfactorily mitigated is in respect of landscape and visual effects. EN-1 already contains policies which severely limit the prospects for development of large-scale energy infrastructure in the most attractive landscapes and townscapes. Tightening the development consent policies in EN-1 to make it harder for energy infrastructure to be consented which would have adverse landscape or townscape effects would be likely to make it significantly more difficult to gain consent for a range of large-scale energy infrastructure projects.*<sup>875</sup>
- 19.8 In final conclusion then, I consider on balance that the need is such that it is not outweighed by the adverse local impacts. The scheme would, therefore, constitute sustainable development, having regard to all three aspects set out at paragraph 8 of the Framework. On that basis, the presumption in favour of sustainable development set out at paragraph 10 of the Framework, which is reflected in policy 1A of the WCS, should be applied and planning permission should be granted.
- 19.9 I recognise that this finding will be disappointing for those who oppose the development scheme and am mindful, in this regard, of the Government's 'localism' agenda. However, even under 'localism', the views of local people, very important though they are, must be balanced against other considerations, including national and local planning policy. In coming to my conclusions on the various issues that have been raised, I have taken full and careful account of all the representations that have been made, which I have balanced against the provisions of the development plan, the National Planning Policy Framework, National Planning Policy for Waste and other material considerations. On balance though, the evidence in this case leads me to the view that the application should succeed.

## **20. RECOMMENDATION**

- 20.1 For the reasons set out above, I recommend that the application should succeed, and that planning permission be granted subject to the conditions set out in Appendix D below.

*Jennifer A Vyse*  
INSPECTOR

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<sup>875</sup> CD J1 paragraph 1.7.11

## **APPENDIX A APPEARANCES**

### **FOR THE APPLICANT:**

Andrew Fraser-Urquhart QC	Instructed by Veolia in-house solicitor
He called:	
Keith McGurk	Regional Director Veolia Environmental Services UK
Richard Kirkman	Chief Technology and Innovation Officer for Veolia UK and Ireland
Simon Aumônier	Principal Partner at Environmental Resources Management Limited
Richard Hammond	Associate Landscape Architect at AECOM
Jonathan Crabb	Projects Director with Mott MacDonald Limited
Roger Barrowcliffe	Director of Clear Air Thinking Limited
Alfred Maneylaws	Associate with AECOM Infrastructure and Environment UK Limited
Ms Helena Kelly	Self-employed historic environment consultant
Carl Pelling	Associate Director at AECOM
Kevin Honour	Director of Argus Ecology Limited
Tom Smith	Technical Director at AECOM
David Bridgwood	National Planning Manager for Veolia ES (UK) Ltd

### **FOR HERTFORDSHIRE COUNTY COUNCIL:**

Mark Lowe QC	Instructed by the Council's Chief legal officer
Assisted by Jack Parker	
He called:	
Rob Egan	Principal Planning Officer within the Spatial Planning and Economy Unit of the Council
Gerry Corrance	Technical Director with WSP

### **FOR BROXBOURNE BOROUGH COUNCIL:**

Matthew Reed QC	Instructed by the solicitor to the Council
He called:	
Douglas Cooper	Head of Planning and Development with the Council
John Russell	Technical Director of Motion Limited
Lee Stiles	Secretary of Lea Valley Growers Association
Leo Merhemitch	Managing Director Shades Technics Limited (representing the RD Management Company)

### **FOR THE JOINT PARISH COUNCILS:**

Cllr David R Joslin (solicitor)	Chair of Nazeing Parish Council
He called:	
Cllr Ms Susan M Clarke	Nazeing Parish Council
David Pracy	Nazeing resident
Cllr Ms Janet Whybrow	Roydon Parish Council
Michael Berendt	Roydon resident
Tim Collins	Roydon resident
Cllr Ms Julia Davies	Stanstead Abbots Parish Council
Cllr Nicholas Cox	Stanstead St Margarets Parish Council
Mark Flatman	Director of Liz Lake Associates

**FOR HERTS WITHOUT WASTE:**

Dr John Webb

**FOR THE HODDESDON SOCIETY:**

James Metcalf	Director of the Hoddesdon Society
Mrs Jan Metcalf	Secretary of the Hoddesdon Society
Mrs Ginny Thorne	Local resident
Ms Caroline Day	Local resident
Kevin Brooks	Chairman of Love Hoddesdon BID Limited

**INTERESTED PERSONS (in order of appearance):**

Professor Keith Ramsell	Acting Chairman Broxbourne and Wormley Woods Area Conservation Society
Mrs Maureen Batra	Nazeing resident
Cllr Ken Ayling	Ward Councillor (Hoddesdon Town and Rye Park Ward)
Tom Carroll MBE	Hoddesdon resident
Mrs Lea Brock	Nazeing resident
Cllr Tim Hutchings	Hertfordshire County Councillor
Ms Carol Wright	Hoddesdon resident
Alan Searing	Local resident
Mrs Cranfield	Local resident
Stephen Wilkinson	Lee Valley Regional Park Authority
Luke Hibberd	Commercial Director Abbey View Produce Limited
Lord Bryan Davies	Hoddesdon resident
Tim Bees	Local resident
Tom Culley	Youth Mayor of Broxbourne
Cllr Paul Mason	Hertfordshire County Councillor
Peter Worth	Chairman of the Hoddesdon Society
Mrs Bette Hindmarch	Broxbourne resident
Councillor Cocking	Broxbourne Borough Councillor (Wormley Turnford)
Richard Casselle	Hoddesdon resident
Andrew Tredgett	Kings Weir Fishery
Mrs Kathy Condon	Local resident
Mr Julio Domingo-Gil	Broxbourne resident
Fred Hyland	Local resident
Ian Livingstone	Hoddesdon resident
David Wye	Hoddesdon resident
John Coram	Local resident
Mrs Aaliaya Domingo-Gil	Broxbourne resident
Cllr Mrs Mary Sartin	Epping Forest District Councillor (Roydon ward)
Miss Tarah Manchester	Hoddesdon Resident
Mrs Clair Chivers	Nazeing resident
Cllr Anthony J Jackson	Essex County Councillor (North Weald and Nazeing)
Robert Ayers	Interested person
Peter Donno	Cheshunt resident
Martyn Sansom	Trustees of Vauxhall Angling Club

## **APPENDIX B CORE DOCUMENTS**

### **Statements of Case**

- VES1 Statement of Case Veolia
- H1 Statement of Case on behalf of Hertfordshire County Council
- BB1 Statement of Case of Broxbourne Borough Council
- HS1 Statement of Case Hoddesdon Society
- NZ1 Statement of Case of Nazeing Parish Council
- HW1 Statement of Case of Herts Without Waste

### **A - Application Documents**

- A1 Planning Application Supporting Statement
- A1a Design and Access Statement
- A2 Statement of Community Involvement
- A3 Sustainability Statement
- A4 BREEAM Pre -assessment
- A5 Utilities Statement
- A6 Need Assessment
- A7 Aggregates Depot Safeguarding Statement
- A8 District Heating Assessment
- A9 Health Impact Assessment
- A10 Outline Travel Plan
- A11 Daylight/Sunlight and Shadow Assessment
- A12 Plans
  - Site Location Plan 60493630-PA01 Rev 02
  - Planning Application Boundary Plan 60493630-PA02 Rev 05
  - Existing Site Layout 60493630-PA03
  - Existing Site Topography Sheet 1 60493630-PA04.1
  - Existing Site Topography Sheet 2 60493630-PA04.2
  - Existing Site Topography Sheet 3 60493630-PA04.3
  - Existing Site Topography Sheet 4 60493630-PA04.4
  - Proposed Layout General Arrangement 152030\_DC\_RY\_SW\_GA\_C\_101Rev A
  - Proposed Site Levels Sheet 1 152030\_DC\_RY\_SW\_GA\_C\_105 Rev A
  - Proposed Site Levels Sheet 2 152030\_DC\_RY\_SW\_GA\_C\_106 Rev A
  - Energy Recovery Facility Building Ground Floor Plan P2-000 Rev 6
  - Energy Recovery Facility Building Tipping Hall Level P2-030 Rev 6
  - Energy Recovery Facility Roof Plan P4-001 Rev 5
  - Administration/Visitor Centre - Level 000 Floor Plan P2-003 Rev 3
  - Administration/Visitor Centre - Level 001 Floor Plan P2-004 Rev 3
  - Administration/Visitor Centre - Level 002 Floor Plan P2-005 Rev 3
  - Administration/Visitor Centre - Level 003 Floor Plan P2-006 Rev 3
  - Administration/Visitor Centre - Level 004 Floor Plan P2-007 Rev 3
  - Administration/Visitor Centre - Level 005 Floor Plan P2-008 Rev 3
  - Administration/Visitor Centre - Level 006 Floor Plan P2-009 Rev 3
  - Administration/Visitor Centre - Proposed Section P5-001 Rev 4 A1
  - Proposed Site Section Sheet 1 152030\_DC\_RY\_SW\_GA\_C\_116A
  - Proposed Site Section Sheet 2 152030\_DC\_RY\_SW\_GA\_C\_117B
  - Proposed Elevations - north eastern façade P3-001 Rev 7
  - Proposed Elevations - south western façade P3-002 Rev 7
  - Proposed Elevations - north western façade P3-003 Rev 6
  - Proposed Elevations -south eastern façade P3-004 Rev 6
  - Weighbridge Office Building Floor Plan and Elevations P2-1000 Rev 5
  - Incinerator Bottom Ash Building Floor Plan and Elevation P2-2000 Rev 2



- Outline Landscaping Scheme 60493630 PA05
- Proposed Site Drainage 152030\_DC\_RY\_SW\_GA\_C\_102 Rev B
- Preliminary External Lighting Layout 9233-SES-XX-XX-DR-X-TDSK2 Rev P2
- Ratty's Lane – General Arrangement Sheet 1 60493630 PA06
- Ratty's Lane – General Arrangement Sheet 2 60493630 PA07
- Vehicle Tracking –Sheet 1 152030\_DC\_RY\_SW\_GA\_C\_113 Rev A
- Vehicle Tracking –Sheet 2 152030\_DC\_RY\_SW\_GA\_C\_114 Rev A

- A13 Environmental Statement (Volume 1 – Main Text)
- A14 Environmental Statement (Volume 2 – Technical Appendices)
- A15 Environmental Statement (Volume 3 – Technical Appendices)
- A16 Environmental Statement (Non-Technical Summary)
- A17 Regulation 22 Responses & other information

#### **B - Committee Report, Minutes & Statutory Consultation**

- B1 Hertfordshire County Council Development Control Committee Report
- B2 Hertfordshire County Council Development Control Committee Minutes
- B3 Statutory Consultees and Interested Parties Responses and Representations

#### **C - Development Plan Policy Documents**

- C1 Hertfordshire Waste Core Strategy & Development Management Policies Development Plan Document 2011-2026
- C2 Hertfordshire Waste Site Allocations Local Development Document
- C3 Saved policies of Broxbourne Local Plan
- C4 Draft Broxbourne Local Plan (Pre Submission consultation draft)
- C5 Hertfordshire Mineral Plan Review 2007
- C6 Hertfordshire Mineral Local Plan Consultation Draft December 2017

#### **D - National Planning Policy and Guidance**

- D1 National Planning Policy Framework 2012 (now cancelled)
- D2 National Planning Policy Framework (Consultation Draft March 2018)
- D3 National Waste Management Plan for England (2013)
- D4 National Planning Policy for Waste (2014)
- D5 DEFRA: Energy from Waste – A Guide to the Debate (February 2013)
- D6 Overarching National Policy Statement for Energy (EN-1).
- D7 Planning Policy Statement 10: Planning for Sustainable Waste Management (March 2012) now cancelled
- D8 DCLG Updated National Waste Planning Policy: Planning for Sustainable Waste Management Consultation Document. July 2013
- D9 'Waste Disposal: Written question - Parliamentary Question 124194' (DEFRA, 29 January 2018).
- D10 Government Review of Waste Policy in England (DEFRA, 2011).

#### **E - European Directives and Waste Strategy Documents**

- E1 The Waste Framework Directive 2008/98/EC
- E2 Industrial Emissions Directive 2010/75/EC
- E3 The EU Landfill Directive 1999
- E4 Habitats Directive 1992/43/EEC
- E5 Directive on the Assessment of the Effects of Certain Public and Private projects on the Environment 2011/92/EU (EIA Directive);
- E6 EU Directive on Environmental Impact Assessment 2014/52/EU
- E7 Part 1 - EU Circular Economy Strategy
- E7 Part 2 - EU Circular Economy Strategy
- E8 European Sustainable Development Strategy; and Thematic Strategy on Waste Prevention and Recycling

- E9 'The role of waste-to-energy in the circular economy', EC Communication, 26th January 2017
- E10 'Closing the loop — An EU action plan for the circular economy', COM (2015) 614 final, EC Communication, 2015
- E11 The EU's '2018 Circular Economy Package', adopted in January 2018 so as to implement the Circular Economy Action Plan

#### **F - Relevant Appeal Decisions**

- F1 Energy from Waste facility and household recycling centre at Battlefield Enterprise Park, Vanguard Way, Shrewsbury, Shropshire (APP/L3245/A/11/2146219)
- F2 Energy from waste plant, Rookery South Pit, Bedfordshire (IPC Panel decision - EN0100011)
- F3 Energy from waste facility, Oak Drive, Hartlebury, Worcestershire (APP/E1855/V/ 11/2153273)
- F4 Generating Station, Lostock, Northwich Cheshire. (DPI/A0665/11/10/LIA0665)
- F5 Green Lane Salford (APP/U4230/A/11/2162115)
- F6 Resource Recovery Park, Ince Marshes, Cheshire. (APP/Z0645/A/07/2059609)
- F7 Ineos Chlor decision. Application for consent to construct and operate an energy from waste combined heat and power generating station at Runcorn, Cheshire. BERR decision letter, 2008
- F8 Lock Street, St Helens (APP/H4315/A/14/2224529)

#### **G - Noise and Vibration**

- G1 British Standard BS 5228-1: 2009+A1:2014 Code of Practice for Noise and Vibration Control on Construction and Open Sites. Part 1: Noise, BSI, 2014
- G2 British Standard BS 5228-2: 2009+A1:2014 Code of Practice for Noise and Vibration Control on Construction and Open Sites. Part 2: Vibration, BSI, 2014
- G3 British Standard BS 7385-2: 1993 Evaluation and Measurement for Vibration in Buildings – Part 2: Guide to Damage Levels from Ground-borne Vibration, BSI, 1993
- G4 International Standard ISO 9613-2: 1996 Acoustics – Attenuation of Sound During Propagation Outdoors – Part 2: General Method of Calculation, ISO, 1996
- G5 British Standard BS 4142: 2014 Methods for Rating and Assessing Industrial and Commercial Sound, BSI, 2014
- G6 Calculation of Road Traffic Noise, DoT and the Welsh Office, 1988
- G7 Design Manual for Roads and Bridges, Volume 11, Section 3, Part 7 (HD 213/ 11 – Revision 1) Noise and Vibration, Highways England, 2011
- G8 Noise Policy Statement for England (NPSE), DEFRA, March 2010

#### **H - Heritage**

- H1 The Planning (Listed Buildings and Conservation Areas) Act, 1990 Sections 66 and 72
- H2 The Ancient Monuments and Archaeological Areas Act, 1979
- H3 Historic Environment Good Practice Advice in Planning 3, 2nd Edition (GPA3): The Setting of Heritage Assets, Historic England, 2017
- H4 Conservation Principles; Policy for the Sustainable Management of the Historic Environment, Historic England Consultation Draft, 2017

#### **J - Climate Change/Sustainability**

- J1 Overarching national policy statement for energy (NPS EN-1) DECC, July 2011
- J2 National policy statement for renewable energy infrastructure (NPS EN-3). DECC, July 2011

- J3 Planning our electric future: a white paper for secure, affordable and low-carbon electricity. DECC July 2011
- J4 Waste Management Plan for England 2013. DEFRA December 2013
- J5 UK Energy in Brief 2017. BEIS July 2017
- J6 The Clean Growth Strategy. HM Government, October 2017
- J7 UK Renewable Energy Roadmap. DECC. July 2011
- J8 UK Renewable Energy Roadmap Update 2013. DECC. November 2013
- J9 Renewable Energy Directive EU Directive 2009/28/EC
- J10 Government Review of Waste Policy in England 2011. DEFRA, 2011
- J11 Meeting the Energy Challenge - Energy White Paper, DTI, May 2007
- J12 Annual Energy Statement. DECC, July 2010
- J13 2050 Pathways Analysis. HM Government, July 2010
- J14 2011 Annual Energy Statement.
- J15 2012 Annual Energy Statement. DECC, November 2012.
- J16 HM Government, The UK Renewable Energy Strategy. TSO, July 2009.
- J17 A green future: our 25 year plan to improve the environment. HM Government 2018.
- J18 Congestion, capacity, carbon: priorities for national infrastructure. National infrastructure commission. October 2017
- J19 Electricity Market Reform: Contract For Difference. Allocation Methodology For Renewable Energy Generation. DECC. August 2013
- J20 'Energy recovery for residual waste: A carbon based modelling approach' (DEFRA, February 2014)
- J21 Table 1 of 'The Government's Green Book supplementary guidance: valuation of energy use and greenhouse gas emissions for appraisal, Table 1 of Tables 1-20: supporting the toolkit and the guidance' (BEIS, December 2017).
- J22 The Environment Agency's consultation submission to planning application S/16/1055 in Swindon (dated 7 July 2017).
- J23 'Valuation of Energy Use and Greenhouse Gas (GHG) Emissions: Background Documentation' (BEIS, 2018)
- J24 Hertfordshire Waste Composition Analysis report produced in May 2015 for Hertfordshire County Council by MEL Research
- J25 'Guidance on Valuation of Energy Use and Greenhouse Gas (GHG) Emissions' (BEIS, January 2018)
- J26 Intergovernmental Panel on Climate Change (IPCC) Chapter 3 of Volume 5 of the 2006 IPCC Guidelines for National Greenhouse Gas Inventories
- J27 Eunomia's 2015 report entitled 'The Potential Contribution of Waste Management to a Low Carbon Economy'.
- J28 Hertfordshire Waste Partnership Annual Report for 2016-17, published in 2018
- J29 'Growth within: a circular economy vision for a competitive Europe' (Ellen MacArthur Foundation, the McKinsey Centre for Business and Environment and the Stiftungsfonds für Umweltökonomie und Nachhaltigkeit) June 2015.
- J30 'The benefits for climate action policy of resource efficiency actions', Key Points from a COP 23 discussion, Bonn, 13th November 2017

## **K - Waste Management Strategy**

- K1 Joint Municipal Waste Management Strategy 2007
- K2 Hertfordshire Waste Partnership Annual Report 2016/2017
- K3 Local Authority Collected Waste Spatial Strategy (LACWSS) November 2016
- K4 Community Safety & Waste Management Cabinet Panel Report March 2016
- K4a Market Consultation Response – High Level Summary
- K4b Market Consultation – Appendix A Questionnaire
- K4c United Kingdom-Hertford: Refuse and waste related services - Prior Information Notice

K4d Market Consultation Project Brief

**L - Air Quality**

- L1 Land Use Planning & Development Control: Planning for Air Quality Jan 2017

**M - Water Resources & Flood Risk**

- M1 Broxbourne Level 1 Strategic Flood Risk Assessment May 2016
- M2 SuDS Design Guidance for Hertfordshire, March 2015
- M3 Local Flood Risk Management Strategy for Hertfordshire 2013 - 2016
- M4 Environment Agency - Flood Risk Assessments: Climate Change Allowances, February 2017

**N - Landscape & Visual Impact**

- N1 Guidelines for Landscape and Visual Impact Assessment, Third Edition, 2013
- N2 Natural England National Character Area 111: Northern Thames Basin
- N3 Natural England National Character Area 86: South Suffolk and North Essex Clayland
- N4 Not Allocated
- N5 Essex Landscape Character Assessment
- N6 Epping Forest Landscape Character Assessment,
- N7 East Herts Landscape Character Assessment,
- N8 Harlow Area Landscape and Environment Study,
- N9 Broxbourne Landscape Character Assessment
- N10 Lee Valley Regional Park Plan
- N11 Epping Forest District Local Plan 1998 and Alterations (2006), (2008)

**O - Environmental Permit**

- O1 Environment Agency Permit Application (Ref Number EPR/SP3038D/A001)
- O1A Vol 4 Impact Assessment Appendix C HHRA

**P - Miscellaneous**

- P1 Roads in Hertfordshire: Highway Design Guide 3rd Edition
- P2 East Herts District Plan Pre-submission consultation 2016 ( Chapter 11 Gilston Area)
- P3 IPC Scoping Opinion - Proposed Feildes Lock Power Station
- P4 Hertfordshire Authority's Monitoring Report (1st April 2016 – 31 March 2017)

## **APPENDIX C**

### **DOCUMENTS HANDED UP DURING THE INQUIRY**

- Doc 1 Inquiry Notification letter
- Doc 2 Opening Statement for Herts Without Waste (Rule 6(6) party)
- Doc 3 Opening Statement for The Hoddesdon Society (Rule 6(6) party)
- Doc 4 Opening Statement for the Joint Parish Councils of Nazeing, Roydon, Stanstead St Margarets and Stanstead Abbots (Rule 6(6) party)
- Doc 5 Opening Statement for Broxbourne Borough Council
- Doc 6 Opening Statement for Hertfordshire County Council
- Doc 7 Opening Statement for Veolia ES Hertfordshire Limited
- Doc 8 Statement submitted by Professor Ramsell (Broxbourne and Wormley Woods Area Conservation Society)
- Doc 9 Statement submitted by Ken Ayling
- Doc 10 Statement submitted by Tom Carroll
- Doc 11 Statement submitted by Lea Brock
- Doc 12 Statement submitted by Cllr Tim Hutchings
- Doc 13 Statement submitted by Carol White
- Doc 14 Pictures Submitted by Jane Cranfield
- Doc 15 Statement submitted by Alan Searing
- Doc 16 Statement submitted by Mrs Maureen Batra
- Doc 17 Statement submitted by Mr Hibberd
- Doc 18 Copy of Hertfordshire County Council representation re Feildes Lock DCO Application (October 2012)
- Doc 19 Letter from Veolia to local residents dated 9 March 2017
- Doc 20 Amended Plans – Nos P3-001 (rev 8); P3-002 (rev 8); P3-003 (rev 7); P3-004 (rev 7)
- Doc 21 Extract from Bat Conservation Trust document 'Bat Surveys: good practice guidelines
- Doc 22a Draft S106 Agreement (superseded by Doc 91a)
- Doc 22b CIL Compliance Statement (superseded by Doc 91b)
- Doc 23 Viewpoint 2 montage submitted by Janet Whybrow
- Doc 24 Addendum to evidence of Cllr Cox
- Doc 25 Planning Applications for Bidvest; Iron Mountain (now Recall); Tamar/Trent Site and the Application Site (Tarmac 1983)
- Doc 26 HCC Note and Appendices on HCC response as Highway Authority to the Feildes Lock DCO Application (Report dated 3 January 2013)
- Doc 27 Map of horticultural nursery locations (submitted by Mr Stiles)
- Doc 28 Mott MacDonald letter revising proposed yellow box arrangement on Ratty Lane (13 June 2018)
- Doc 29 Statement submitted by Mr Bees
- Doc 30 Letter from Angela Locke (18 June 2018)
- Doc 31 Statement submitted by Lord Davies
- Doc 32a Statement of Common Ground (Applicant and Environment Agency)
- Doc 32b Statement of Common Ground (Applicant and Hertfordshire County Council)
- Doc 32c Statement of Common Ground (Applicant and Lead Local Flood Authority)
- Doc 33 Hertfordshire County Council Waste collection service details
- Doc 34 Map showing the location of viewpoints referred to in the evidence of Mr Cooper
- Doc 35 Statement submitted by Mr Culley

- Doc 36 Photograph of Great Blakenham ERF, Suffolk (referred to in evidence in chief of Mr Cooper)
- Doc 37 Broxbourne Local Plan Employment Land Study Final Report July 2016
- Doc 38 Hoddesdon Business Park Improvement Plan (September 2013)
- Doc 39 AECOM letter re photomontage modelling of the proposed stacks (25 June 2018)
- Doc 40a Planning permission for Impresa Park (07/18/10211/F)
- Doc 40b Planning permission for Broxbourne Enterprise Centre (07/115/0732/F)
- Doc 41 Planning permission for High Leigh residential development (07/13/0899/O)
- Doc 42 Information re Edmonton ERF (submitted by The Hoddesdon Society)
- Doc 43 Statement submitted by Cllr Mason
- Doc 44 Statement submitted by Peter Worth
- Doc 45 Statement submitted by Bette Hindmarch
- Doc 46 Statement submitted by Cllr Lewis Cocking
- Doc 47 Statement Submitted by Richard Casselle
- Doc 48 Letter from Miss T Cox (21 June 2018)
- Doc 49 Extracts from Hertfordshire Waste Local Plan - Initial Consultation Document (February 2018)
- Doc 50a Letter from David Fletcher, DB Cargo (UK) Limited (29 June 2018)
- Doc 50b Confirmation of how the DB Cargo information was sought
- Doc 51 Press release on letsrecycle.com website 'Veolia's Herts EfW in PFI withdrawal blow'
- Doc 52 Statement submitted by Tarah Manchester
- Doc 53 Statement submitted by Cllr Mary Sartin
- Doc 54 MEL Hertfordshire Kerbside Waste Composition Analysis March-May 2015 Final Report
- Doc 55 Note on Nazeing Conservation Areas and Cycle Route No 1
- Doc 56 Site visit itinerary for 9 July 2018
- Doc 57 Hoddesdon Conservation Area Appraisal extracts
- Doc 58 Helena Kelly speaking note
- Doc 59 Amended Plan - Preliminary External Lighting Layout 9233-SES-XX-XX-DR-X-E-TDSK2 Rev P4
- Doc 60 Statement submitted by Mrs C Chivers
- Doc 61 Statement submitted by Councillor Jackson
- Doc 62 Extract from Environment Agency Permitting Decision relating to Avonmouth IBA Recycling Facility
- Doc 63 Additional information on behalf of Mr Crabb in response to evidence given by Messrs Russell and Corrance
- Doc 64 Statement of Evidence given by Kathy Condon
- Doc 65 Extracts from SUEZ, Suffolk energy-from-waste facility, Annual Report 2015 and The Commercial Greenhouse Grower June 2018 submitted by Hoddesdon Society
- Doc 66 Query raised by the Joint Parish Councils regarding Receptor 15 and Roydon Marina Village with response from Veolia
- Doc 67 Large scale map of Roydon and Nazeing showing Conservation Area and road names
- Doc 68 Draft Environmental Permit for Ratty's Lane ERF
- Doc 69 Draft Conditions (24 July 2018)
- Doc 70 Technical Note regarding TEMPRO Growth (Mr Crabb: Mott MacDonald)
- Doc 71 Technical Note regarding TEMPRO Growth (John Russell: Motion)
- Doc 72 Transport calculations submitted by Nazeing Parish Council



- Doc 73 Statement submitted by Martyn Sansom
- Doc 74 Daily Telegraph article dated 25 October 2016 regarding GW Pharmaceuticals adjacent to the British Sugar plant at Wissington, Norfolk
- Doc 75 Photograph of Energy from Waste Hanford Facility in Stoke on Trent (submitted by Mr Bridgwood)
- Doc 76 AECOM confirmation of ground levels used for photomontages
- Doc 77 AECOM confirmation of stack arrangement for air dispersion modelling
- Doc 78 Broxbourne Borough Council confirmation of agreement re background noise levels
- Doc 79 Amended Plan Alternative Access Sketch No 397262-MMD-BA02-00-DR-C-0001 Rev P1
- Doc 80 Response to Inspectors initial comments on the draft S106 Agreement
- Doc 81 Clarification re correct version of the Local Transport Plan
- Doc 82 Letter from Cllr Bren Perryman
- Doc 83 Revised wording for suggested condition No 44
- Doc 84 Closing submissions for the Joint Parish Councils of Nazeing, Roydon, Stanstead Abbots and Stanstead St Margarets
- Doc 85 Closing submissions for The Hoddesdon Society
- Doc 86 Closing submissions for Herts Without Waste
- Doc 87 Closing submissions for Broxbourne Borough Council
- Doc 88 Comparison of traffic flow forecasts – Composite table with figures deriving from the evidence of Messrs Russell and Crabb (30/7/2018)
- Doc 89 Kevin Honour (Argus Ecology) Note on cumulative air quality effects on sensitive ecological receptors (see also Docs 94 and 95)
- Doc 90 Closing submissions for Hertfordshire County Council
- Doc 91a Revised draft S106 Agreement (see Doc 97a)
- Doc 91b Revised CIL compliance statement
- Doc 92 Closing submissions for Veolia ES Hertfordshire Limited
- Doc 93 Revised wording for suggested condition No 9
- Doc 94 Response of The Hoddesdon Society to Doc 89 (see Doc 95)
- Doc 95 Kevin Honour (Argus Ecology) Response on behalf of the applicant to Hoddesdon Society representation 31/8 2018 (see Doc 94)
- Doc 96 Letter closing the Inquiry in writing
- Doc 97a Completed planning obligation (see also Doc 91b)
- Doc 97b Associated correspondence
- Doc 98 Written confirmation from the applicant of the company's agreement to the suggested pre-commencement conditions

## **APPENDIX D RECOMMENDED CONDITIONS IN THE EVENT THAT PLANNING PERMISSION IS GRANTED**

### **Timing**

- 1)** The development hereby permitted shall begin no later than three years from the date of this decision.

*Reason:* Pursuant to the requirements of Section 91 of the Town and Country Planning Act 1990.

- 2)** Not less than fourteen days prior notice in writing shall be given to the waste planning authority of the intended date for the commencement of any development under the terms of this permission, including site preparation and construction works (but excluding the installation of boundary fencing and any construction compound) for the development of the development hereby permitted. Within seven days of the commencement of the development, the developer shall notify the waste planning authority of that date in writing (hereinafter referred to as the **Commencement Date**).

*Reason:* To facilitate effective monitoring of construction operations.

- 3)** Not less than seven days prior notice shall be given by the operator to the waste planning authority in writing of the intended date for the commencement of first importation of waste to the ERF (hereinafter referred to as the **Commissioning Date**).

*Reason:* To facilitate effective monitoring of construction operations.

### **Approved Plans**

- 4)** Except as required by any other condition attached to this planning permission, the development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan: 60493630-PA01 Rev 02  
Planning Application Boundary Plan: 60493630-PA02 Rev 05  
Existing Layout Plan: 60493630-PA03  
Existing Site Topography Sheet 1 of 4: 60493630-PA04.1 Rev 0  
Existing Site Topography Sheet 2 of 4: 60493630-PA04.2 Rev 0  
Existing Site Topography Sheet 3 of 4: 60493630-PA04.3 Rev 0.1  
Existing Site Topography Sheet 4 of 4: 60493630-PA04.4 Rev 0.1  
Proposed Layout General Arrangement: 152030/DC/RYSW/GA/C101 Rev D  
Proposed Levels Sheet 1 of 2: 152030/DC/RYSW/GA/C/105 Rev A  
Proposed Levels Sheet 2 of 2: 152030/DC/RYSW/GA/C/106 Rev B  
Energy Recovery Facility Ground Floor Plan: P2-000 Rev 7  
Energy Recovery Facility Tipping Hall Level: P2-030 Rev 6  
Energy Recovery Facility Roof Plan: P4-001 Rev 5  
Administration/Visitor Centre Level 000 Floor Plan: P2-003 Rev 3  
Administration/Visitor Centre Level 001 Floor Plan: P2-004 Rev 3  
Administration/Visitor Centre Level 002 Floor Plan: P2-005 Rev 3  
Administration/Visitor Centre Level 003 Floor Plan: P2-006 Rev 3  
Administration/Visitor Centre Level 004 Floor Plan: P2-007 Rev 3  
Administration/Visitor Centre Level 005 Floor Plan: P2-008 Rev 3

Administration/Visitor Centre Level 006 Floor Plan: P2-009 Rev 3  
Administration/Visitor Centre proposed section Plan: P5-001 Rev 4  
Proposed Site Sections Sheet 1:152030/DC/RYSW/GA/C/116 Rev B  
Proposed Site Sections Sheet 2:152030/DC/RYSW/GA/C/117 Rev C  
Proposed Elevations North Eastern Façade: P3-001 Rev 8  
Proposed Elevations South Western Façade: P3-002 Rev 8  
Proposed Elevations North Western Façade: P3-003 Rev 7  
Proposed Elevations South Eastern Façade: P3-004 Rev 7  
Weighbridge Office Building Floor Plan and Elevations: P2-1000 Rev 5  
Proposed IBA Building Floor Plan and Elevations: P2-2000 Rev 2  
Outline Landscape Scheme: 60493630-PA05 Rev B  
Proposed Drainage Layout :152030/DC/RYSW/GA/C/102 Rev D  
Preliminary External Lighting Layout: 9233/SES/XX/XX/DR/X/E/TDSK2 Rev P4  
Ratty's Lane General Arrangement Sheet 1: 60493630-PA06 Rev C, as amended in part by 397262-MMD-BA02-00-DR-C-0001 Rev P1 (Alternative Access Sketch) and in part by Ratty's Lane Traffic Signal General Arrangement 60493630-PA09 Rev F (itself also amended by the Alternative Access sketch)  
Vehicle Tracking Sheet 1 of 2: 152030/DC/RYSW/GA/C/113 Rev D  
Vehicle Tracking Sheet 2 of 2: 152030/DC/RYSW/GA/C/114 Rev B

*Reason: To provide certainty.*

### **Pre-Commencement Conditions**

- 5) Prior to the Commencement Date, a Construction Environmental Management Plan (CEMP) shall have been submitted to and approved in writing by the waste planning authority. The CEMP shall implement the recommendations of the Environmental Statement (Appendix 4.1 Draft Construction Management Plan Revision 2.0 dated 1 August 2017). Development shall be carried out for the duration of the construction works in accordance with approved CEMP which shall include, but is not limited to, the following details:
- i) a construction phasing plan;
  - ii) a management plan for construction traffic using Ratty's Lane;
  - iii) erection of construction warning signage;
  - iv) the hours during which construction work, including works of site clearance, and deliveries to/from the site can take place;
  - v) site management arrangements including on-site storage of materials, plant and machinery; temporary offices, contractors compounds and other facilities; on-site parking and turning provision for site operatives, visitors and construction vehicles; and provision for the loading/unloading of plant and materials within the site;
  - vi) a construction waste management plan that identifies the main waste materials expected to be generated by the development during demolition and construction, including vegetation, together with measures for dealing with such materials so as to minimise waste and to maximise re-use, recycling;
  - vii) identification of construction noise limits and a construction noise monitoring scheme;
  - viii) wheel washing facilities to ensure that vehicles do not leave the site in a condition whereby mud, slurry or other deleterious materials are carried onto the public highway;
  - ix) measures to ensure that dust emissions are minimised, including the use of best practical means to ensure that non-road mobile machinery (NRMM) used on site complies with the air quality requirements for

outer London (detailed at paragraphs 7.6 and 7.7 of the Greater London Authority 's supplementary planning guidance 'The control of dust and emissions during construction and demolition (2014)).

Details of any non-compliant NRMM should be provided in writing to the waste planning authority prior to it arriving on site;

- x) arrangements for dewatering of the site;
- xi) arrangements for any piling required, including measures to protect groundwater resources;
- xii) measures for the protection of water resources including the Lee Navigation, the River Lee and underground aquifers, and for monitoring ground water quality. The details shall ensure that no surface water (either via drains or surface water run-off) or extracted perched water or groundwater is allowed to be discharged to the waterways and that any existing surface water drains connecting the site with the river are capped off at both ends for the duration of the demolition and construction works;
- xiii) the erection and maintenance of security hoardings, including decorative displays and facilities for public viewing where appropriate;
- xiv) measures for the protection of retained trees, hedges and habitat areas;
- xv) arrangements for any temporary lighting, including security lighting, and hours of operation; and,
- xvi) a method statement for the removal or long-term management/control of Japanese Knotweed and Himalayan Balsam on the site.

*Reason:* In order to minimise disruption during the construction process for local residents, local businesses, those travelling through the area and using the Regional Park, and to protect the environment.

- 6)** The parking restrictions along Ratty's Lane, as shown on drawing No 60493630-PA09 Rev F (Ratty's Lane Traffic Signal General Arrangement Sheet 1) as amended in part by 397262-MMD-BA02-00-DR-C-0001 Rev P1 (Alternative Access Sketch) shall be implemented prior to the Commencement Date. The arrangements secured shall be retained thereafter.

*Reason:* In order to ensure the free and safe flow of all traffic along Ratty's Lane during both the construction period and once the facility is operational.

- 7)** Prior to the Commencement Date, details for surfacing improvement works to Ratty's Lane, including a phasing schedule, shall be submitted to and approved in writing by the waste planning authority. Development shall be carried out in accordance with the approved details and phasing schedule.

*Reason:* In order to ensure the free and safe flow of all traffic along Ratty's Lane during both the construction period and once the facility is operational.

- 8)** Prior to the Commencement Date, full details of a surface water drainage scheme shall have been submitted to and approved in writing by the waste planning authority. Before any details are submitted to the waste planning authority, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, including an options appraisal in accordance with the latest edition of CIRIA's SuDS Manual and the results of that assessment provided in writing to the waste planning authority. The surface water drainage scheme shall be implemented and thereafter

managed in accordance with the approved details and timetable. The details to be submitted shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii) include provisions for the prevention of pollution risk to controlled waters;
- iii) provide, a scheme management and maintenance plan for the lifetime of the development which shall include arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime; and,
- iv) shall include a timetable for implementation of all elements of the scheme.

*Reason: To avoid pollution and to prevent increased risk from flooding.*

**9)** Prior to the Commencement Date, no development other than that required to be carried out as part of an approved scheme of remediation shall take place until parts i)-iv) below have been complied with. If unexpected contamination is found after development has begun, development must be halted on the affected part of the site until part iv) below has been complied with in relation to that contamination.

- i) A site investigation scheme based on the preliminary risk assessment submitted as part of the Environmental Statement (Section 11) to provide information for a detailed assessment of the risk to all receptors that may be affected by site contamination, including off-site receptors, shall be completed in accordance with details that have previously been submitted to and approved in writing by the waste planning authority.
- ii) The results of the site investigation and the detailed risk assessment referred to in i) above and, based on these, an appraisal of remediation options and a remediation strategy giving full details of the remediation measures required, how they are to be undertaken and a timetable for implementation, shall be submitted to and approved in writing by the waste planning authority. The approved remediation scheme shall be carried out in accordance with its terms.
- iii) Following completion of the measures identified in the approved remediation scheme the subject of ii) above, a verification report that demonstrates the effectiveness of the remediation carried out and identifies any requirement for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, shall be submitted to and approved in writing by the waste planning authority.
- iv) In the event that contamination is found at any time when carrying out the approved scheme of remediation that was not previously identified, it must be reported in writing immediately to the waste planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of i) above and, where remediation is necessary, a remediation scheme must be prepared in accordance with the requirements of ii) above, which is subject to the approval in writing of the waste planning authority.

Following completion of measures identified in the approved remediation scheme, a verification report must be prepared, which is subject to the approval in writing of the waste planning authority in accordance with iii) above.

*Reason: To safeguard human health and the built and natural environment.*

- 10)** No development shall take place on any part of the site, including works of site clearance, unless and until a Great Crested Newt Protection Plan has been submitted to and approved in writing by the waste planning authority. Development shall be carried out in accordance with the approved Plan which shall include, but is not confined to:

- i) details of Great Crested Newt trapping methodology;
- ii) method statement for removal of pond 1 and site clearance;
- iii) measures for the protection of the existing Great Crested Newt population within the linear waterbody referred to as NWR1 in the Great Crested Newt Survey Report (dated October 2016 submitted as part of the Environmental Statement (Appendix 10.4) located to the west/southwest of the site on Network Rail land);
- iv) design and construction details of the Great Crested Newt mitigation ponds shown on drawing No 60493630-PA05 Rev B (Outline Landscape Scheme) including provision of minimum 5 metre wide buffer zones around the ponds and related planting scheme;
- v) details of other mitigation including hibernacula and migration corridors to ensure habitat connectivity;
- vi) ongoing habitat management measures; and
- vii) a timetable for implementation.

*Reason: In the interest of biodiversity and the protection of wildlife.*

- 11)** No development shall take place on any part of the site, including works of site clearance, unless and until a method statement for reptile mitigation has been submitted to and approved in writing by the waste planning authority. Development shall be carried out in accordance with the approved Plan which shall include, but is not confined to:

- i) purpose and objectives for the proposed works;
- ii) detailed design and or working methods necessary to achieve the stated objectives;
- iii) scaled plans showing the extent and location of proposed works;
- iv) timetable for implementation;
- v) initial aftercare and long-term maintenance arrangements; and,
- vi) disposal of any wastes arising from the works.

*Reason: In the interest of biodiversity and the protection of wildlife.*

- 12)** Prior to the Commencement Date, a scheme for community engagement throughout the construction period and for the duration of the operation of the facility hereby permitted shall have been submitted to and approved in writing by the waste planning authority. Development shall be carried out in accordance with the approved scheme.

*Reason: To ensure that there is a continual relationship with the local community ensuring that any well-being concerns can be relayed to the operators.*



- 13)** Other than the demolition or removal of above ground structures to ground level, no development shall take place unless and until a programme of archaeological work, including a written scheme of investigation and associated timetable for carrying out the work, has been submitted to and approved in writing by the waste planning authority. Development shall be carried out in accordance with the approved details.

*Reason: To ensure that any heritage assets are properly recorded.*

### **Highways/Access/Parking/Travel Plan**

- 14)** Prior to the Commissioning Date, all access and junction arrangements serving the development hereby permitted, as shown on drawing Nos 152030/DC/RV/SW/GA/C101 Rev D (Proposed Layout General Arrangement) and 152030/DC/RV/SW/GA/C/106 Rev B (Proposed Levels Sheet 2 of 2) shall be completed in accordance with the approved details.

*Reason: In the interest of vehicular and pedestrian safety.*

- 15)** Prior to the Commissioning Date, the signalisation scheme for Ratty's Lane, as shown on drawing No 60493630-PA09 Rev F (Ratty's Lane Traffic Signal General Arrangement Sheet 1) as amended in part by 397262-MMD-BA02-00-DR-C-0001 Rev P1 (Alternative Access Sketch) shall be completed and be fully operational. The approved scheme shall be retained thereafter and shall be operational for the duration of the development.

*Reason: In order to ensure the free and safe flow of all traffic along Ratty's Lane.*

- 16)** Within twelve months of the Commissioning Date, the on-site vehicular access, manoeuvring, turning and parking areas shown on drawing Nos 152030/DC/RV/SW/GA/C101 Rev D (Proposed Layout General Arrangement) and 152030/DC/RV/SW/GA/C/102 Rev D (Proposed Drainage Layout) shall be drained, surfaced and marked out in accordance with the approved details and shall be retained thereafter for their intended purpose.

*Reason: In order to ensure the free and safe flow of all traffic along Ratty's Lane.*

- 17)** There shall be no more than 268 Heavy Goods Vehicle (HGV) movements (134 in/134 out) at the site over any one day. For the purposes of this condition, a HGV is defined as any vehicle that is over 7.5 tonnes gross weight or any waste collection vehicle.

*Reason: In the interest of vehicular and pedestrian safety and to ensure that environmental impacts are no greater than those assessed in the Environmental Statement.*

- 18)** The facility hereby permitted shall not be Commissioned until such time as the new Essex Road bridge over the New River has been completed and is operational.

*Reason: In the interest of safety and free flow of traffic on the public highway.*

- 19)** There shall be no importation of waste on any weekday (excluding bank and public holidays) by HGV (as defined by condition 17 above) between the hours

of 08.00-09.00 and 17.00-18.00 and no HGV as defined by condition 17 above shall exit the site during those hours.

*Reason: In the interest of the safety and free flow of traffic on the public highway.*

- 20)** Once the facility hereby permitted is commissioned, all HGVs accessing the site that are under the direct control of the operator of the facility shall, as a minimum, meet Euro 5 emissions standards.

*Reason: In the interest of protecting local air quality.*

- 21)** Prior to the Commissioning Date, a Travel Plan shall be submitted to and approved in writing by the waste planning authority. The Travel Plan, to be based on the recommendations of the Outline Travel Plan submitted with the planning application, shall reflect the sustainable development aims and objectives of the National Planning Policy Framework and shall include, but is not confined to, arrangements for the appointment of a Travel Plan coordinator for a period to be agreed, objectives, targets, mechanisms and measures to achieve the targets, and timescales for implementation, together with monitoring and review provisions. The Travel Plan shall be implemented as approved.

*Reason: In order to promote more sustainable travel choices in accordance with national and local planning policy and guidance.*

### **Flooding and Drainage**

- 22)** Prior to the Commissioning Date, the flood wall along the eastern boundary of the site, as shown on plan Nos 152030\_DC\_RY\_SW\_GA\_C\_116 Rev B, 152030\_DC\_RY\_SW\_GA\_C\_101 Rev D and P2-000 Rev 7 shall have been installed in accordance with details that have previously submitted to and approved in writing by the waste planning authority. Once in place, the flood wall shall thereafter be retained as constructed for the lifetime of the development.

*Reason: In order to protect the development and its occupiers from risk of flooding.*

- 23)** Prior to the Commissioning Date, a detailed foul drainage strategy shall be submitted to and approved in writing by the waste planning authority. Development shall be carried out in accordance with the approved strategy.

*Reason: In order to protect the water environment and prevent pollution.*

- 24)** The finished floor levels of the development hereby permitted shall be no lower than 29.04 metres AOD.

*Reason: In order to protect the development and its occupiers in the event of flooding.*

- 25)** Prior to the Commissioning Date, a flood warning and evacuation plan based on the use of the Environment Agency's flood warning system shall have been submitted to and agreed in writing by the waste planning authority. The plan shall provide details of the procedures for flood warning and evacuation, including responsibilities and shall specify arrangements for making all occupiers of the facility aware of its contents in perpetuity.

*Reason: In order to protect the development and its occupiers in the event of flooding.*

## Materials and Boundary Treatment

- 26)** Prior to their utilisation, full details of all materials for the external elevations of the buildings and structures hereby permitted, and for all hardsurfaced areas shall have been submitted to and approved in writing by the waste planning authority.

*Reason: In the interest of visual amenity.*

- 27)** No boundary fencing, walling or gates shall be erected on the site other than in accordance with details that have previously been submitted to and approved in writing by the waste planning authority.

*Reason: In the interest of visual amenity.*

## Lighting

- 28)** No internal lighting that would be visible beyond the site boundaries or external lighting, including security lighting, shall be used at the site at any time other than in accordance with a lighting scheme that has previously been submitted to and approved in writing by the waste planning authority. The scheme to be submitted shall include the following:

- i) hours of use of all external lighting and internal lighting that would be visible beyond the site boundaries and measures for control;
- ii) the exact location and specification, including height, of any external fixed or mobile lighting structures;
- iii) the identification of all internal and external areas to be illuminated, lux levels and any measures to prevent light spilling on to areas outside the site;
- iv) measures, such as shrouding, to minimise disturbance through glare;
- v) measures to minimise disturbance to bats from lighting;
- vi) details about translucent parts of the building's external fabric or cladding, including the degree of transparency of materials, and measures to minimise light spillage.

*Reason: In the interest of visual amenity and in order to protect the amenity and wildlife interests of the Regional Park.*

## Landscaping/Trees/Biodiversity

- 29)** No trees, shrubs or hedges within the site which are shown on drawing No 60493630-PA05 Rev B (Outline Landscape Scheme) as being retained shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed without the prior written consent of the waste planning authority. Any trees, shrubs or hedges removed without such consent, or which die or become severely damaged or seriously diseased shall be replaced with trees, shrubs or hedge plants of similar size and species in accordance with details that shall previously have been submitted to and approved in writing by the waste planning authority.

*Reason: In the interest of visual amenity and to protect the amenity of the Regional Park.*

- 30)** Within 12 months of the Commencement date, details of a landscape scheme for the site (including the green roofs) based on drawing No 60493630-PA05 Rev B (Outline Landscape Scheme) shall have been submitted to the waste planning authority for approval. Once approved in writing by the waste planning authority, the completed scheme shall be implemented, managed and

maintained in accordance with the approved details. The details to be submitted shall include, but are not confined to:

- i) planting plans written specifications (including cultivation and other operations associated with plant and grass establishment) and schedules of plants noting species, plant supply sizes and proposed numbers/ densities;
- ii) biodiversity enhancement;
- iii) a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, including the areas of retained vegetation shown on drawing No 60493630-PA05 Rev B (Outline Landscape Scheme); and
- iv) an implementation programme, including any phasing of work where relevant.

*Reason: In the interest of visual amenity and to protect the amenity of the Regional Park.*

- 31)** Any trees or other planting comprised in the approved landscaping scheme which, within a period of five years following planting die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species which, together with details of their location, have previously been agreed in writing with the waste planning authority.

*Reason: In the interest of visual amenity and to protect the amenity of the Regional Park.*

- 32)** Any vegetation and tree clearance shall only take place outside of the peak bird-breeding season (1 March to 31 August inclusive) unless a pre-clearance survey undertaken by a suitably qualified person has confirmed that no breeding birds are present, nesting or commencing nesting within the vegetation to be affected and a report to that effect has been submitted to and approved in writing by the waste planning authority.

*Reason: In the interests of biodiversity and the protection of wildlife.*

### **Odour Management Plan**

- 33)** Prior to the Commissioning Date, an Odour Management Plan shall be submitted to and approved in writing by the waste planning authority. The scheme to be submitted shall include provisions for regular updating in order to reflect best practice. Development shall be carried out in accordance with the approved Odour Management Plan and all measures integrated shall be operational as long as the development is operational.

*Reason: In order to protect the living and working conditions of those in the locality and the amenity of the Regional Park, in terms of odours.*

### **Noise**

- 34)** During operation of the facility hereby permitted, excluding periods of maintenance or emergency, the noise rating levels  $L_{Aeq,1hour}$  (as defined in BS4142:2014 *Methods for rating and assessing industrial and commercial sound*) of the permitted activities shall not exceed the baseline background noise levels ( $L_{A90}$ ) as set out within the 2018 background noise survey submitted in support of the Environmental Permit by more than 3 dB at the nearest noise sensitive façade.

*Reason: In order to protect the living and working conditions of those in the locality the amenity of the Regional Park, in terms of noise.*

### **External Storage of Waste**

- 35)** During the operational phase of the development hereby permitted, there shall be no external storage of uncontained waste material on the site at any time.

*Reason: In the interest of visual amenity.*

### **Permitted Development Rights**

- 36)** Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extension to the building hereby permitted, or the erection of any building, fixed plant, fixed machinery or fixed structures on the land shall be erected other than that expressly authorised by this permission.

*Reason: In the interest of visual amenity and the amenity of the Regional Park.*

### **Grid Connection**

- 37)** Other than during commissioning of the development hereby permitted, no combustion of waste shall take place until a grid connection to a substation has been installed and is capable of transmitting electricity generated by the facility. Thereafter, no waste shall be combusted at the site unless electricity is also being generated by the facility, which is being transmitted to the national grid, except during periods of maintenance, inspection or repair, or at the direction of the holder of a licence under section 6(1) (b) or (c) of the Electricity Act 1989, who is entitled to give such a direction in relation to the transmission of electricity from the facility to the national grid.

*Reason: To ensure that the facility produces renewable energy, moving waste up the waste hierarchy in accordance with national and local planning policy and guidance.*

### **Decommissioning**

- 38)** Not less than six months prior to any planned date for the permanent decommissioning of the development hereby permitted, the operator shall submit a scheme to the waste planning authority setting out a scheme for the proposed decommissioning of any elements of the development which are not required in connection with the subsequent after use of the site, together with a timetable for those works. The scheme shall include provision for leaving the site in a condition that is suitable for future development or full site restoration. No works of decommissioning shall take place until the scheme has been approved in writing by the waste planning authority. Decommissioning shall be carried out in accordance with the approved scheme.

*Reason: In the interest of visual amenity and to protect the amenity of the Regional Park.*

-----END OF CONDITIONS SCHEDULE-----



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# **Addendum Report to the Secretary of State for Housing, Communities and Local Government**

**by Mrs J A Vyse DipTP DipPBM MRTPI**

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

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**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)**

**APPLICATION MADE BY**

**VEOLIA ES (HERTFORDSHIRE) LIMITED**

**TO**

**HERTFORDSHIRE COUNTY COUNCIL**

Inquiry opened on 19 June 2018

2 Ratty's Lane, Hoddesdon, Hertfordshire EN11 0RF

File Ref: APP/M1900/V/18/3195373



**File Ref: APP/M1900/V/18/3195373**  
**2 Ratty's Lane, Hoddesdon, Hertfordshire EN11 0RF**

- The application was called in for decision by the Secretary of State by a direction made under section 77 of the Town and Country Planning Act 1990 on 1 February 2018.
  - The application is made by Veolia ES (Hertfordshire) Limited to Hertfordshire County Council.
  - The application No 7/0067-17 is dated 20 December 2016.
  - The development proposed is described as demolition of existing buildings and structures associated with existing rail aggregates use and construction and operation of an Energy Recovery Facility for the treatment of municipal, commercial and industrial wastes; importation, storage and transfer of local authority collected healthcare waste, together with ancillary infrastructure including an administration/visitor centre; incinerator bottom ash storage shed; grid connection compound; car, HGV, bus and visitor parking areas; rail sidings improvements; weighbridges and weighbridge office; two portacabin offices; sprinkler tank and pump room; drainage connection to the River Lee; security fencing; landscaping and highway improvements to Ratty's Lane.
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**1. PREAMBLE**

- 1.1 One of the main considerations identified at paragraph 17.3 of the related Report into this application (IR) refers to ecology and wildlife. Chapters 7 (Air Quality) 8 (Noise and Vibration) and Appendices 10.1-10.8 of the Environmental Statement,<sup>1</sup> together with the proofs and appendices particularly of Mr Maneylaws and Mr Honour and a number of documents handed up during the Inquiry,<sup>2</sup> deal with these matters.
- 1.2 The application site lies in close proximity to a number of European designated sites. As a consequence, the Conservation of Habitats and Species Regulations 2017 are engaged. Pursuant to that, the Secretary of State has requested an addendum report setting out a 'shadow' Appropriate Assessment dealing with likely significant effects during the construction phase of development. However, it is for the Secretary of State as the competent authority in this case to carry out the required Appropriate Assessment. This Addendum Report simply sets out matters he may wish to consider in carrying out that duty.

**2. CONTEXT**

- 2.1 The development proposed is set out at Section 4 of the IR (IR 4.1-4.11). In summary, it is proposed to demolish the existing buildings and structures on the site, which are associated with existing rail aggregates use, and to construct and operate an Energy Recovery Facility for the treatment of municipal, commercial and industrial wastes and the importation, storage and transfer of local authority collected healthcare waste, on a site at the northern end of Ratty's Lane, a long cul-de-sac terminating at the application site.
- 2.2 Article 6 of the Habitats Directive,<sup>3</sup> which has been transposed into UK law through the Conservation of Habitats and Species Regulations 2017, requires that where a plan or project is likely to result in a significant effect on a European site, and where the plan or project is not directly connected with or

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<sup>1</sup> CDs A13 and A15

<sup>2</sup> Eg Docs 89, 94 and 95

<sup>3</sup> Habitats Directive 1992/43/EEC (CD E4)

necessary to the management of the European site, a competent authority (the Secretary of State in this instance) is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of the European site in view of the site's conservation objectives.<sup>4</sup> In particular, an assessment is required as to whether a development proposed is likely to have a significant effect upon a European site, either individually or in combination with other plans and projects.

### **3. PROJECT LOCATION**

- 3.1 The application site, which extends to around 5 hectares in total, and its surroundings are described at Section 3 of the IR (IR 3.1-3.12). It is located approximately 1.5 kilometres to the east of Hoddesdon town centre, on the eastern edge of an established light commercial and industrial area which forms part of Hoddesdon Business Park.
- 3.2 Along its north-western edge, the site includes a length of railway sidings, with Ratty's Lane running along its south-eastern boundary. Adjoining the southwestern boundary is Rye House Power Station, a 715-megawatt combined cycle gas turbine facility, opposite which, on the other side of Ratty's Lane, is the recently completed Trent Development site, a sustainable energy centre comprising an advanced thermal treatment facility and anaerobic digestion plant for the treatment of commercial and industrial wastes.
- 3.3 The West Anglia main railway line, which is situated on a low embankment at this point, borders the north-western site boundary, separating the site from a large Sainsbury's distribution warehouse building and industrial estate beyond. Immediately to the north/north-east is the River Lee/River Lee Navigation and associated towpath, which are within the Lee Valley Regional Park. Separating the site from the river, is a wooded margin within which is a large electricity pylon. High voltage overhead power lines run south from there, crossing the south-eastern portion of the application site. Approximately 100 metres to the north of the site boundary, beyond the railway line and across the River Lee, is Rye House Kart Club track. Rye House Speedway Stadium lies further to the north, approximately 300 metres from the site, near to Rye Meads railway station. Beyond this again to the north, is the Rye Meads sewage treatment works.
- 3.4 To the east, on the opposite side of the River Lee, the land is generally rural in character comprising a mixture of lakes within the valley bottom and, beyond these, woodland and agricultural fields as the land rises out of the flood plain. Beyond the River and associated lakes to the south east, the area is characterised by the presence of substantial greenhouses associated with market gardening.
- 3.5 As set out at IR 17.112-17.114, the application site lies within 10 kilometres of three internationally designated wildlife sites: the Lee Valley Special Protection Area (SPA), also designated as a Ramsar; the Wormley-Hoddesdon Park Woods Special Area of Conservation (SAC); and the Epping Forest SAC.<sup>5</sup>

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<sup>4</sup> Article 6 (3) of the Habitats Directive states that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon shall be subject to an appropriate assessment.

<sup>5</sup> For locations, see Figure 1 in Appendix 10.2 of the Environmental Statement (CD A15)

#### **4. HRA IMPLICATIONS OF THE PROJECT**

- 4.1 The Lee Valley SPA, the nearest part of which is located approximately 200 metres to the north of the application site boundary, comprises a series of embanked water supply reservoirs, sewage treatment lagoons and former gravel pits which support wintering wildfowl, in particular gadwall and shoveler which occur in numbers of European importance. Areas of reedbed within the site also support significant numbers of wintering bittern and the site contains a range of wetland and valley bottom habitats, both man-made and semi-natural, which support a diverse range of wetland fauna and flora. Rye Meads SSSI lies within this part of the SPA. It contains a mosaic of swamp, reedbed and wet woodland with substantial remnants of ancient flood meadows. The SSSI also supports a large area of tall fen vegetation which provides habitat for locally uncommon plants and birds. Among others, overwintering gadwall, shoveler and bittern, all of which species inform the designation of the SPA, are associated with these habitats.
- 4.2 There are two pathways of potential impact from the proposed development to the SPA that could result in a likely significant effect: changes in air quality affecting its habitats from dust releases during construction; changes in air quality from stack emissions during operation affecting its habitats; and impacts relating to noise and visual stimuli such as lighting during construction, operation and decommissioning resulting in disturbance of passage for overwintering birds.
- 4.3 The Lee Valley also qualifies as a Ramsar, as a wetland supporting the nationally scarce plant species whorled water-milfoil and the rare or vulnerable invertebrate water-boatman, and for regularly supporting water bird species with peak counts in spring/autumn (shoveler) and peak counts in winter (gadwall). Rye Meads SSSI lies within this part of the SPA, so designated for its mosaic of swamp, reedbed and wet woodland with substantial remnants of ancient flood meadows. It also supports a large area of tall fen vegetation which provides habitat for locally uncommon plants and birds. These habitats support overwintering gadwall, shoveler and bittern, all of which species inform the designation of the Ramsar, are associated with these habitats.
- 4.4 There are two pathways of potential impact from the proposed development to the Ramsar that could result in a likely significant effect: changes in air quality affecting its habitats from dust releases during construction; changes in air quality from stack emissions during operation affecting its habitats; and impacts relating to noise and visual stimuli such as lighting during construction, operation and decommissioning resulting in disturbance of passage for overwintering birds.
- 4.5 Wormley-Hoddesdon Park Woods SAC, located approximately 3 kilometres to the west/south-west of the application site, is comprised of two SSSIs: Wormley-Hoddesdon Park Woods North and Wormley-Hoddesdon Park Woods South. This semi-natural woodland is of national importance as an example of lowland south-east sessile oak/hornbeam type with the pendunculate oak/hornbeam variant also present. Additionally, small ponds and streams are important habitats for bryophytes. Wormley-Hoddesdon Park Woods qualifies as a SAC through its habitats, in particular its oak-hornbeam forests. The main pathway of potential impact from the development proposed in relation

to the SAC relates to changes in air quality from stack emissions during operation of the proposed facility affecting its habitats.

- 4.6 Epping Forest SAC, approximately 9 kilometres to the south-east of the application site at its closest point, extends to some 1,600 hectares, 70% of which consists of broadleaved deciduous woodland. It is one of only a few remaining large-scale examples of ancient wood-pasture in lowland Britain and has retained habitats of high nature conservation value, including ancient semi-natural woodland, old grassland plains and scattered wetland. The semi-natural woodland is particularly extensive, forming one of the largest coherent blocks in the country. Most is characterised by groves of over-mature pollards which exemplify all three of the main wood-pasture types found in Britain: Beech-Oak, Hornbeam-Oak and mixed Oak. The Forest plains are also a major feature and contain a variety of unimproved acid grasslands which have become uncommon elsewhere in Essex and the London area. In addition, the Forest supports a nationally outstanding assemblage of invertebrates, a major amphibian interest and an exceptional breeding bird community.
- 4.7 The area is designated as a SAC for its beech forests on acid soils which contain a notable selection of bryophytes, fungi and dead-wood invertebrates, stag beetle, dry heaths and wet heathland with cross-leaved heath. The main pathway of potential impact from the development proposed in relation to the SAC relates to changes in air quality from stack emissions during operation of the proposed facility affecting its habitats.

## **5. CONSERVATION OBJECTIVES**

- 5.1 The conservation objectives for the Lee Valley SPA (IR 17.117) are to maintain in a favourable condition the habitats supporting, and the populations and distribution of, bittern, gadwall and shoveler. Most of the off-site supporting habitat for gadwall and shoveler relates to nearby water bodies lying within some 2 kilometres of the SPA. Whilst water bodies outside of the SPA do exist within 1 kilometre of the application site, bittern do not significantly utilise habitat outside the boundaries of the SPA.
- 5.2 The conservation objectives for Wormley-Hoddesdon Park Woods SAC (IR 17.130) are to maintain the broadleaved, mixed and yew woodland – Lowland (oak-hornbeam forests) habitat in a favourable condition.
- 5.3 The conservation objectives for Epping Forest SAC (IR 17.133) are to maintain in a favourable condition the Atlantic acidophilous beech forests with *Ilex* and sometimes also *Taxus* in the shrub layer, European dry heaths and North Atlantic wet heaths with *Erica tetralix*, and to maintain in a favourable condition the habitats for the population of stag beetle.

## **6. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS**

### Lee Valley SPA

Noise/Lighting

- 6.1 Birds are particularly vulnerable in winter months due to food shortages, such that disturbance which results in the abandonment of suitable feeding areas through disturbance can have severe consequences. However, there is already significant noise associated with the current use of the application site, which

is located within, albeit at the edge of an industrial estate. The Environmental Statement refers to research which confirms that at noise levels in excess of 84 dB(A) there is a flight response in waterfowl, while at levels below 55 dB(A) there is no effect. It also confirms that birds will habituate to regular construction noise levels below 70 dB(A).

- 6.2 The Environmental Statement confirms that, in relation to the Lee Valley North Local Wildlife Site (LWS) located just to the east of and on the same side of the railway line as the application site, maximum daytime ambient noise levels were some 46-51 LA<sub>eq</sub>dB, with construction noise levels modelled to be a maximum of 43 dB. On that basis, the Environmental Statement concludes that the noise environment during construction would not be materially different from existing noise levels and impacts on Glen Faba lake and disturbance of its populations of water birds would be negligible. As such, there was no need for specific mitigation measures.
- 6.3 Given the distance of the application site from the SPA (approximately 200 metres to the north of the application site, some 350 metres from the centre of the application site) and the presence of the intervening busy railway line and the nearby karting track immediately adjacent to the closest part of the SPA, the Environmental Statement concludes that it is unlikely that construction would result in perceptible additional noise within the SPA above the existing noise environment. In light of the findings in relation to the LWS, I have no reason to disagree and consider that noise during the construction phase is unlikely to result in significant effects.
- 6.4 In terms of operation of the proposed facility, I understand that the Waterbird Disturbance and Mitigation Toolkit (2016) states that for auditory disturbance to qualify as a high level, it must constitute a sudden noise event of over 60dB (at the bird not at source) or a more prolonged noise of over 72dB. At a distance of 85 metres from source, an acceptable level of regular noise that would not cause disturbance is 68dB. Whilst the results of the operational noise predictions indicate that operational noise levels would be 50-55dB maximum, below the levels referenced in the Toolkit, that is following the incorporation of various noise mitigation measures. In the absence of such measures, a likely significant effect cannot be discounted and an Appropriate Assessment is required.
- 6.5 Whilst, understandably, there are no detailed plans on which to base any assessment of the potential impacts of decommissioning in terms of noise with any accuracy, it is reasonable to assume that they would be no worse than during construction.
- 6.6 With regard to lighting, the existing built development on the application site is illuminated, with security lighting associated with buildings and structures. Buildings adjacent to the site are also highly illuminated, in particular the Rye House Power Station. During construction, the site would be illuminated. Whilst the applicant proposes specific measures to control construction lighting (including minimising lighting, directing it downward and away from trees, and targetting tower crane lighting) relying upon those measures to inform the assessment, in the absence of such measures, a likely significant effect cannot be discounted and an Appropriate Assessment is required.

- 6.7 Once operational, the applicant relies on measures to minimise illuminance at the application site boundary, in particular, measure to prevent light spill which may affect the SPA. The Environmental Statement concludes that mitigation beyond the lighting strategy and design measures are not required. In the absence of such measures however, a likely significant effect cannot be discounted and an Appropriate Assessment is required.
- 6.8 Whilst, understandably, there are no detailed plans on which to base any assessment of the potential impacts of decommissioning in relation to lighting with any accuracy, it is reasonable to assume that they would be no worse than during construction.

Air Quality

- 6.9 In relation to changes in air quality, dust generating activities during the construction phase could result in the temporary coating of vegetation up to 200 metres away. The proposed facility would be located approximately 200 metres from the nearest part of the SPA. However, there are physical barriers between the two, including the embanked railway and the bunds surrounding the lagoons within the Lee Valley. Whilst the applicant proposes specific measures to control dust emissions, including the use of best practical means to ensure that non-road mobile machinery (NRMM) used on site complies with the air quality requirements for outer London, relying on those measures to inform the assessment, in the absence of such measures, a likely significant effect cannot be discounted and an Appropriate Assessment is required.
- 6.10 The relevant pollutants for habitats supporting features in the SPA include nitrogen, oxides of nitrogen (NO<sub>x</sub>) and ammonia. In accordance with Environment Agency permitting guidance, screening thresholds for statutory designated sites are set at a process contribution of 1% of long-term Critical Levels/Loads (CL),<sup>6</sup> and 10% of short-term CL, provided the Predicted Environmental Concentration (PEC) exceeds 70% of the relevant assessment limit.
- 6.11 The screening threshold is not exceeded after consideration of cumulative impacts for ammonia, hydrogen fluoride, sulphur dioxide or acid deposition.
- 6.12 In the case of NO<sub>x</sub> levels, whilst the PEC is predicted to be above the 70% screening threshold, it would remain within the CL. Moreover, in the context of a general trend of declining NO<sub>x</sub> levels due to reduced vehicle emissions, there is a good degree of confidence that the CL would not be exceeded during operation of the proposed facility.
- 6.13 In relation to nitrogen deposition, whilst the in-combination Process Contribution (PC) of 0.51kg Nitrogen/ha/yr to fen habitats would be more than double the PC for the development proposed, Mr Honour considered that it could still be considered a low magnitude of effect since it would be less than 5% of the relevant environmental quality standard.<sup>7</sup>

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<sup>6</sup> Critical Levels are concentrations of pollutants in the atmosphere above which have a direct adverse effect on a receptor. Critical Loads are a quantitative assessment of exposure to one or more pollutants below which significant harmful effects on specified sensitive elements of the environment do not occur according to present knowledge. (Proof of Mr Honour, paras 7.52/7.53)

<sup>7</sup> Doc 95 para 32



- 6.14 Nitrogen deposition already exceeds the CL within the Lee Valley SPA site for the relevant habitats (fen, marsh and swamp) by 3.5kg/N/ha/yr, or 23%. In coming to the view that he does, namely that a worst-case 1% further increase in average annual nitrogen deposition would not be expected to result in a likely significant effect compared with the current situation, Mr Honour had regard to matters such as effect magnitude relative to CL and to baseline; other inputs of nitrogen; and whether site management exacerbates or mitigates potential effects. In addition, with respect to an SPA, it is important to determine whether effects on habitats would translate to a likely significant effect on qualifying species. In essence, there would have to be a conceptual effect pathway to bittern, shoveler or gadwall.
- 6.15 As Mr Honour records in his additional Note to the Inquiry,<sup>8</sup> *in the case of Lee Valley, fluvial inputs will be very significant when the habitat is flooded, as illustrated by the Nitrate Vulnerable Zone data. Site management by the RSPB is likely to offset the effects of nitrogen inputs by low-intensity grazing or mowing, resulting in the current assessment of fen habitats by Natural England on the reserve as being in favourable condition. And none of the qualifying species of the SPA are dependent on fen habitats for the maintenance of favourable conservation status. Bittern are confined to reedbeds, where management of open water channels and sufficient fish stocks are important; gadwall feed on submerged aquatic vegetation; and shoveler are specialist feeders on aquatic zooplankton, requiring relatively eutrophic conditions for maximum productivity of prey species.*
- 6.16 The Rye Meads water system is already nitrogen-rich, primarily due to regular inundation from the River Lee which has high nitrogen concentrations as a consequence of effluent discharge from a number of sewage treatment works (STW). Whilst there are plans to reduce phosphorous discharges in the future, there are no plans to impose a nitrate limit on the relevant STW consents. As recorded in the Habitats Regulations Assessment,<sup>9</sup> the worst-case 1% increase in nitrogen (which would be considerably smaller when fluvial sources are taken in to consideration) is unlikely to result in any detectable change in the vegetation of the SPA. Moreover, the birds for which the SPA is designated would only be affected by relatively large shifts in vegetation structure/composition and would, therefore, be relatively invulnerable to small changes, even in situations where phosphorous was no longer limiting.
- 6.17 All in all, there is nothing in the evidence before the Inquiry to demonstrate that, once operational, even when considered in combination with other projects, including the Rye House Power Station and the AD/ATT plant on Ratty's Lane,<sup>10</sup> the development proposed would impact adversely on the relevant conservation objectives for the SPA in terms of impact on air quality, or that it would result in any likely significant effects in this regard.

Lee Valley Ramsar:

- 6.18 The boundaries of the SPA and Ramsar are generally contiguous. In as much as the Ramsar is designated for the same habitats as the SPA and the same

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<sup>8</sup> Doc 95 para 34

<sup>9</sup> CD A14 Section 10.1 para 9.1.8

<sup>10</sup> Docs 89 and 95

overwintering wildfowl, the same considerations set out above in relation to the SPA apply equally to the Ramsar.

- 6.19 In addition, the Ramsar is designated because its wetland habitat supports the whorled water-milfoil and the water-boatman. That wetland habitat is the same as that supporting the wildfowl referred to above and thus the same considerations apply.
- 6.20 Accordingly, for the reasons set out above in relation to the SPA, I find that there would be no likely significant effects in terms of noise during construction, or in terms of air quality once the facility is operational. However, in the absence of specific measures, a likely significant effect cannot be discounted during the construction phase in relation to the effect of lighting and deposition of dust, and during operation in relation to noise and lighting. An Appropriate Assessment is therefore required.

Wormley-Hoddesdon Park Woods SAC:

- 6.21 In terms of air quality, the relevant pollutants for the habitats of the SAC include NO<sub>x</sub>.
- 6.22 Whilst the cumulative PC for NO<sub>x</sub> levels exceeds the 1% screening threshold at four receptor points (two are below 1% PC, one is 1.1%) the PEC is safely below Critical Level. Given the broader context of reducing atmospheric NO<sub>x</sub> levels (principally due to measures to reduce vehicle emissions) this is likely to remain so throughout the lifetime of the proposed facility. Moreover, the levels do not exceed the relevant Environmental Quality Standard.
- 6.23 There is nothing in the evidence before the Inquiry to demonstrate that, once operational, even when considered in combination with other plans and projects, the development proposed would impact adversely on the relevant conservation objectives for the SAC in terms of impact on air quality, or that it would result in any likely significant effects in this regard.

Epping Forest SAC:

- 6.24 Whilst deteriorating air quality is one of the key pressures affecting this site, some 84% of the constituent SSSI that underlies the SAC designation is in either favourable or recovering condition, with just 2% in a declining condition. The primary reason for the declining condition is believed to be air pollution, in particular the effects of excessive NO<sub>x</sub> levels and other pollutants, and the related deposition of acidity and nitrogen. However, that part of the SAC so affected lies more than 10 kilometres away from the application site and so is unlikely to be affected by the development proposed based on the notable and likely dispersion of pollutants.
- 6.25 Whilst there would be a small magnitude increase in nitrogen oxide levels and nitrogen deposition, taking the in-combination PC above the 1% screening threshold at Epping Forest SAC,<sup>11</sup> that is set in the context of a PEC with a significant exceedance of the Environmental Quality Standard.

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<sup>11</sup> In relation to NO<sub>x</sub> levels, this was the highest value at four of the receptor points. Two were below 1% PC and one was 1%. With regard to nitrogen deposition, this was the highest value at four of the receptors; two were below 1% PC and one was 1.1%.

- 6.26 As set out above, Epping Forest has acknowledged issues with air quality, partly due to the proximity of parts of the site to heavily trafficked roads. In that context, the predicted very small magnitude contributions are very unlikely to have a measurable ecological effect. It is worth noting, in this regard, that these very high values mask a considerable degree of variation within the Forest – higher values are associated with areas in close proximity to roads, with generally lower values of NO<sub>x</sub> in the more rural parts of the SAC, including that part to the north of the application site.
- 6.27 The evidence before me demonstrates that, even when considered in combination with other plans and projects, the predicted small magnitude effect of the relevant pollutants would be such that there would be no likely significant effects in relation to air quality within the SAC.

## **7. FINDINGS IN RELATION TO ADVERSE EFFECTS ON INTEGRITY**

- 7.1 I have found that, if not addressed, the temporary coating of vegetation due to the emission of dust during construction could affect the integrity of the Lee Valley SPA resulting in the deterioration or loss of the habitats that support the populations of bittern, gadwall and shoveler for which the area is designated. In addition, its integrity, in terms of the passage of overwintering birds could be affected by lighting during the construction phase and noise and lighting once operational. In these circumstances, an Appropriate Assessment is required.
- 7.2 In relation to the Ramsar I have found that, if not addressed, the temporary coating of vegetation due to the emission of dust during construction could affect its integrity resulting in the deterioration or loss of the habitats that support the populations of bittern, gadwall and shoveler, whorled water-milfoil and the water-boatman, all being species for which the area is designated. In addition, its integrity could be affected by lighting during the construction phase, and noise and lighting once operational, in terms of potential disturbance to overwintering birds. In these circumstances, an Appropriate Assessment is required.
- 7.3 To inform those Appropriate Assessments, and having regard to the conservation objectives of the SPA, in particular the need to maintain the habitats supporting the populations of bittern, gadwall and shoveler, as well as, in term of the Ramsar, the need to protect habitats on which the whorled water-milfoil and water-boatman are dependent, I consider that, in combination with the minimum 200 metres separation between the application site and the SPA and Ramsar, together with intervening physical barriers including the embanked railway and the bunds surrounding each lagoon within the SPA and Ramsar, the use of standard control measures would be sufficient to avoid or materially reduce the identified effects. During the construction phases, measures relating to dust emissions and the effects of site lighting would be secured through the submission and approval of a detailed Construction Environmental Management Plan (recommended condition 5). Once operational, recommended conditions 28 (lighting) and 34 (noise) secure measures provide the necessary mitigation. On that basis, it is my view that there would be no adverse effect on the integrity of these designated sites.

## **8. HRA CONCLUSIONS**

- 8.1 I have taken into account all the available evidence and have adopted the precautionary principle in carrying out my consideration of the matters raised. I am content that the development proposed would not result in a likely significant effect alone, or in combination with other plans and projects, on either Wormley-Hoddesdon Park Woods SAC or Epping Forest SAC. In my view, it is also demonstrated beyond reasonable scientific doubt that the development proposed would not adversely affect the integrity of the Lee Valley SPA and the Lee Valley Ramsar. That conclusion is predicated on the circumstances of this particular case, based on the site's unique context and situation and on the basis of securing the identified mitigation measures that I have identified.
- 8.2 For the purposes of clarity, since I am not the competent authority in this case, the conclusion set out above does not constitute an Appropriate Assessment for the purposes of the Habitats Regulations.

*Jennifer A Vyse*

INSPECTOR



# Ministry of Housing, Communities & Local Government

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## 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 for permission 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

With the permission of the High Court 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. 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 for leave under this section must be made within six weeks from the day after the date of the decision.

### SECTION 2: ENFORCEMENT APPEALS

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

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

### SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after 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.