Department for Levelling Up,
Housing & Communities

paul.beswick@enzygo.com

Our ref: APP/X1355/W/22/3294182
Your ref: DM/20/03267/WAS

By email only

26 June 2023

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY MR MARK SHORT, PROJECT GENESIS LIMITED
HOWNSGILL INDUSTRIAL ESTATE, CONSETT, DURHAM DE8 7EQ
APPLICATION REF: DM/20/03267/WAS

This decision was made by the Parliamentary Under-Secretary of State for Local Government and Building Safety, Lee Rowley, on behalf of the Secretary of State

1. I am directed by the Secretary of State to say that consideration has been given to the report of Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE, who held a public local inquiry on 9-12 and 16-19 August 2022 into your client's appeal against the decision of Durham County Council to refuse your client's application for planning permission for an Energy from Waste Facility, in accordance with application Ref. DM/20/03267/WAS, dated 5 November 2020.

2. On 26 May 2022, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission be granted subject to conditions.

4. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation. He has decided to dismiss the appeal and refuse permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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 2017. Having taken account of the Inspector's comments at IR1.8, the Secretary of State is satisfied that the Environmental Statement

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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. 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 request to the email address at the foot of the first page of this letter.

Policy and statutory considerations

7. 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.

8. In this case the development plan consists of the County Durham Waste Local Plan (April 2005) Saved Policies (CDWLP) and the County Durham Plan (Adopted 2020) (CDP). The Secretary of State considers that relevant development plan policies include those set out at IR4.4.

9. 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'), as well as those documents set out in IR4.5.

10. 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.

Main issues

Principle of development on the Hownsgill Industrial Park

11. For the reasons given at IR12.2-12.7, the Secretary of State agrees that proposed development would not be inconsistent with the land use aspirations of Policy 2 of the CDP, particularly as Policy 61 supports the use of employment sites for such waste management uses (IR12.7). He further agrees that the location of the proposed development would, in principle, conform with the siting guidance provided in the National Planning Policy for Waste (IR12.5).

Waste disposal or recovery?

12. For the reasons given at IR12.8-12.11, the Secretary of State agrees with the Inspector that the proposal needs to achieve R1 status in order to conclusively demonstrate that it comprises a recovery operation that would move the management of waste up the hierarchy and demonstrably meet the requirements of Policy 47 of the CDP (IR12.11). For the reasons given at IR12.12-12.15, he further agrees that Planning Condition 20 provides an appropriate mechanism to ensure that the proposed facility can only commence operations when R1 status has been achieved, and that it is appropriate to consider the proposed development as a recovery facility rather than a waste disposal

facility (IR12.15). Like the Inspector at IR12.16 he finds no conflict with the waste hierarchy, which places energy recovery above disposal.

Need for the proposed facility

13. For the reasons given at IR12.17-12.35, IR12.151-152 and IR13.1, the Secretary of State agrees with the Inspector's conclusion at IR12.32 that the evidence presented in the inquiry demonstrates a local and regional need for more recovery capacity to divert the management of C&I waste up the hierarchy and away from landfill, and that the proposal would make a significant contribution to meeting this need. He further agrees that the proposal would be in accordance with the guidance in the Waste Management Plan for England, which recognises that 'energy from waste is generally the best management option for waste that cannot be reused or recycled in terms of environmental impact and getting value from waste as a resource' (IR12.34), and would also be in accordance with the development plan policies set out in IR12.35. In reaching his conclusions he has taken into account the Consett Committee's concerns at IR12.27 that the appeal scheme may prejudice recycling initiatives as a consequence of a need to maintain sufficient combustible products in the feedstock, but for the reasons given at IR12.27-12.29 he, like the Inspector, is not persuaded that the proposed development would lead to a demonstrable reduction in the recycling of C&I waste. Overall he agrees that the need for the facility, moving waste up the waste hierarchy, and the sustainable waste benefits it offers carries significant weight (IR12.32 and IR13.1).

Character and appearance

14. The Secretary of State has noted the landscape background and baseline set out in IR12.36-12.43. For the reasons set out in IR12.44-12.54, he agrees with the Inspector's conclusions on the significance of the plume (IR12.51) and further agrees that the proposed development would not create unacceptable light pollution and would be in accordance with local and national policy in this respect (IR12.54).

15. The Secretary of State agrees with the Inspector at IR12.55 that views of the proposed development would potentially be more widespread to the south and west, and further agrees at IR12.56 that the 'significance of the impact' of the proposed development on landscape receptors is a function of the 'sensitivity of the receptor' to the particular type of development, and the 'magnitude of change' resulting from the proposed development.

16. For the reasons given at IR12.55-12.60, the Secretary of State agrees with the Inspector that while over time the industrial park may become more developed, the height of the proposal would be significantly greater than any existing buildings (IR12.57), and that in the current context it would retain a degree of prominence in the context of the industrial park (IR12.60).

17. For the reasons given at IR12.61-12.63, he agrees with the Inspector at IR12.61 that the non-designated landscape has a medium sensitivity to change, and at IR12.62 that the magnitude of landscape effect would be medium, and at IR12.63 that there would be a moderate adverse landscape effect. For the reasons given at IR12.64-65, the Secretary of State agrees that the particular characteristics of the AHLV give it a high sensitivity to change (IR12.64). Taking into account the medium nature of the magnitude of landscape effect, he agrees that the residual landscape effect on the AHLV would be in the range of moderate to significant and adverse (IR12.65).

18. For the reasons given at IR12.66-12.76, the Secretary of State agrees that there would be some moderate to major adverse visual impacts, particularly in views closer to the site, but that the effect on longer distance views would be neutral or, at worst, minor adverse (IR12.76). He agrees that the most adverse impact would be from the public footpath to the south of the site, looking across part of the AHLV, where there would be a noticeable deterioration in the existing view, and the visual effect would likely be in the range of moderate to major and adverse (IR12.70).

19. Overall the Secretary of State agrees with the Inspector that the proposed development would have a moderate adverse effect on the surrounding landscape, increasing to moderate to major in respect of the impact on the AHLV (IR12.90), primarily as a consequence of the stack and the impact of the upper parts of the main building in some wider landscape views (IR13.8). For the reasons given at IR12.66-12.76 he further agrees that there would be moderate to major significant visual effects primarily associated with views from the footpaths and residential properties in closer proximity to the site (IR12.90, IR13.8).

20. He therefore agrees at IR12.91 and IR13.8 that the proposed development would cause harm to the character and quality of the landscape and would not conserve the special qualities of the AHLV. Taking into account the sensitivity of the AHLV, the wide area affected, and the magnitude of the landscape and visual effects identified, in the Secretary of State's judgement this matter carries very significant weight against the proposal.

21. The Secretary of State has gone on to consider whether there is accordance with the relevant development plan policies. Taking into account the Inspector's conclusions at IR12.91, he considers that the proposal would be contrary to the provisions of Policy 29 of the CDP, which states that all development proposals will be required to contribute positively to an area's character, identity, heritage significance, townscape and landscape features, helping to create and reinforce locally distinctive and sustainable communities. He further agrees that it would be contrary to the provisions of Policy 61(a) of the CDP, which states that proposals for new waste management facilities will be permitted where they are located outside and do not adversely impact upon the setting or integrity of internationally, nationally and locally designated sites and areas.

22. Policy 39 provides that development affecting AHLV 'will only be permitted where it conserves, and where appropriate enhances, the special qualities of the landscape, unless the benefits of the development in that location clearly outweigh the harm'. The Secretary of State agrees with the Inspector at IR12.91 that the proposed development would not conserve the special qualities of the AHLV. He has gone on to consider whether the test set out in Policy 39 is met. He agrees with the Inspector that the proposed development would be contrary to Policy 39. He has taken into account the benefits of the scheme, as set out in this decision letter and summarised in paragraph 39 below. He has found at paragraph 11 above that the principle of this development on this site is acceptable. However, he finds conflict with Policy 39, and further finds that under the terms of the policy, the development should not be permitted.

23. The Secretary of State has carefully considered the effect of the proposal on the North Pennines AONB. For the reasons given at IR12.77-12.89, IR12.90-12.1 and IR13.6, he agrees with the Inspector at IR12.85 that the proposal would not appear as being overly dominant or overbearing within the setting, although it will be seen; and that it would not comprise a visually intrusive feature or a distraction within the landscape in views from the AONB. He has taken into account that Natural England raised no objection to the

planning application (IR12.86). Like the Inspector he is satisfied that there would not be any adverse effect on the setting on the AONB, and the proposal would not, individually or cumulatively, be harmful to the special qualities or statutory purposes of the AONB (IR12.90). He therefore agrees at IR12.89 and IR13.6 that there would be no conflict with the provisions of paragraphs 174 and 176 of the Framework, or Policies 38, 39 or 61(a) of the CDP in this respect.

Effect on heritage assets

24. For the reasons given at IR12.92-12.106 and IR13.6, the Secretary of State agrees with the Inspector that there would be no harm to or loss of the heritage value of the Grade II listed High Knitsley Farmhouse and Grade II listed Barn (IR12.106). The Secretary of State has further considered the other assets raised by the Consett Committee. For the reasons given at IR12.107-12.119 he agrees that the proposed development would not cause any harm to the contribution made by the setting to the heritage value or significance of any heritage asset (IR12.119 and IR13.6). He further agrees that there is no conflict with advice in Part 16 of the Framework or Policy 44 of the CDP or Appendix B to the NPPW in this respect (IR12.119).

Climate change

25. For the reasons given at IR12.120-12.135 and IR13.5, the Secretary of State agrees with the Inspector that a reasonable assessment of the evidence submitted in the inquiry suggests that the proposed development would likely result in lower GHG emissions compared to landfill over a 25-30 year lifetime, during which period it would also facilitate the availability of localised decarbonised power and heat (IR12.134). He further agrees that there are inherent uncertainties, particularly regarding the biogenic carbon content of the waste and hence the extent of emissions savings, the extent to which the available heat and power would be taken up by existing and new businesses/residential developments and whether CCS may be installed; therefore while there would be some savings on CO_2 emissions over landfill, the extent of this cannot be determined with any degree of precision (IR12.135). Therefore, while he agrees that in this respect the proposal would be consistent with Policy 61 of the CDP and paragraphs 154 and 155 of the Framework, he further agrees that the climate change benefits should only be afforded limited weight in the overall planning balance (IR12.135).

Effect on economic development

26. For the reasons given at IR12.136-12.142, the Secretary of State agrees with the Inspector that in the absence of substantive evidence to the contrary, there would be no material harm to the future economic development of the site, and that the proposed development is more likely to be a catalyst for the attraction of further development (IR2.142).

Alternative sites and technology

27. The Secretary of State has taken into account the Inspector's assessment of matters set out at IR12.143-12.149. He notes the conclusion in the Environmental Statement that the proposed development fulfils an established need and that there are not more suitable locations, technologies or layouts of the proposed buildings and plant. He further notes and agrees with the Inspector's conclusion that in the absence of any substantive evidence to the contrary, the ES has appropriately considered reasonable alternatives which are relevant to the proposed development (IR12.149).

Benefits of proposed development

28. The Secretary of State has considered the Inspector's analysis at IR12.150-12.162 of the benefits of the proposed development and the implications of not proceeding. He agrees with the Inspector for the reasons given at IR12.142, IR12.153 and IR13.2 that the proposal would provide energy benefits associated with the availability of discounted heat and electricity, and that the proposal provides the potential to act as a catalyst to attract new employment development within the industrial park, particularly those businesses with high energy and heat requirements. He further agrees that this carries significant weight (IR13.2). He agrees with the Inspector's assessment of the economic benefits of the proposal as set out at IR12.157-12.158 and IR13.4, and further agrees that these should carry limited weight (IR13.4). He agrees with the Inspector at IR12.156 and IR13.3 that the safeguarding of land for use as an Electric Vehicle Charging Facility carries limited weight, and further agrees for the reasons given at IR12.159-12.161 and IR13.4 that moderate weight should attach to the biodiversity net gain. The Secretary of State further considers, for the reasons given at IR11.19-11.20 and 12.156 (but not IR13.3, as set out in paragraph 36 below), that the benefits of completion of Hownsgill Solar Farm carry moderate weight.

Other matters

29. For the reasons set out in IR12.163-12.167, the Secretary of State agrees with the Inspector at IR12.167 that the highway impact of the proposed development would be acceptable and would not amount to a severe residual cumulative impact. For the reasons set out at IR12.168-12.173 he further agrees at IR12.173 that there is no reason to suggest that the proposed development would have an adverse impact on health. For the reasons set out at IR12.174-12.177, he agrees that limited weight is attributable to the perception of harm to public health and the effect on housing demand. The Secretary of State further agrees with the Inspector's conclusions on the other matters raised at IR12.178-12.180.

Planning conditions

30. The Secretary of State has given consideration to the Inspector's analysis at IR10.1-10.10, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 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 56 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

31. The Secretary of State has had regard to the Inspector's analysis at IR2.9-11, IR11.1-11.25, IR12.153, IR12.155-157, and IR13.2-13.3, the unilateral undertaking (UU) dated 9 September 2022, paragraph 57 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended.

32. For the reasons given at IR11.7, the Secretary of State agrees with the Inspector that the provision of district heating and electricity connections to the Category 1 and 2 Land (land on the Project Genesis site owned by, or capable of being acquired by, the Appellant) under Schedules 3 and 4 of the UU meets the relevant tests.

33. The Secretary of State has carefully considered the provisions in Schedules 3 and 4 requiring the Appellant to construct heat and power infrastructure as close as is reasonably practicable to the boundary of Category 3 Land (land on the industrial park not in the ownership or control of the Appellant), and to make binding offers to the occupiers of Category 3 Land to supply heat and power at a discounted rate and provide district heating and electricity connections at the Appellant's expense (IR11.8). He considers that delivering the full connection, which would require access to land which the Appellant does not control or own, would only be required if the binding offer to the occupier of the Category 3 Land was taken up, and therefore disagrees with the Council's views summarised at IR11.9. For the reasons given at IR11.10, the Secretary of State considers that the provision of the necessary infrastructure to the boundary of the Category 3 Land has a direct and proportionate relationship to the proposed development in much the same way as it does in respect of Category 1 and 2 Land.

34. He has further considered the provisions in part 3 of Schedules 3 and 4, requiring a 10% discount to the heat and power supplied through district heating and electricity connections (connections which, as noted above, the UU requires to be provided to future buildings, units and plots on the Category 1 and 2 Land, and requires binding offers to be made and reasonable endeavours used to provide to existing and future buildings and units on the Category 3 Land). In assessing these obligations he has taken into account that the reduced tariff would be secured in perpetuity via the UU, and would provide constant and stable energy to future homes and businesses which may come forward on the Category 1, 2 and 3 Land (as well as existing businesses on the Category 3 Land) which are connected to the proposal via district heating and electricity connections. He has taken into account that the appeal site and other plots on the industrial park have remained vacant for some time, with only 30% of the park being built out (IR12.140 and IR12.137), and that the proposal would provide the potential as a catalyst to attract new employment development within the industrial park particularly those businesses with high energy and heat requirements (IR12.153 and IR13.2). For these reasons the Secretary of State considers that these obligations have a direct link to the proposal and also meet the other relevant tests.

35. For the reasons given at IR11.11-11.14, the Secretary of State agrees that the obligations contained in Schedule 5, relating to the land to be safeguarded for use as an Electric Vehicle Charging Facility, meets the relevant tests. He further agrees for the reasons given at IR11.15-18 that the obligations contained in Schedule 6, relating to potential future connection to a Carbon Capture and Storage facility, also meet the relevant tests.

36. The Secretary of State has carefully considered the provisions in Schedule 7 of the UU which prohibits the occupation of the development until the partially implemented scheme for the Hownsgill Solar Farm has been completed and is operational. In addition to the Inspector's reasoning at IR11.19-20, he has taken into account the appellant's case at IR5.58 that the Solar Farm is directly related to the appeal scheme because it is intended to form part of an integrated power network (with Solar Farm energy stored in batteries and used when the appeal scheme is not operational / under maintenance, and when demand exceeds EfW supply). It is also a scheme on adjacent land, in the same effective control, which is enabled by the appeal scheme (IR5.58). He has also taken into account Durham County Council's view at IR6.162 that the relevant tests are met. Overall he agrees with these representations, and agrees with Inspector's conclusion at IR11.20 that the necessary tests, namely that the obligation is necessary to make the development acceptable in planning terms; that it is directly related to the development; and that it is fairly and reasonably related in scale and kind to the development, are met in respect of

the obligations contained within Schedule 7. Given these conclusions, the Secretary of State does not agree with the Inspector's characterisation at IR13.3 that this is an opportunistic and consequential benefit which is not directly part of the purpose of the development proposed.

37. For the reasons given at IR11.21-11.22, the Secretary of State agrees that the obligations set out in Schedule 8 are not CIL compliant. Under the 'blue pencil clause' at paragraphs 6.11-6.12 of the UU, this obligation falls away. Overall the Secretary of State agrees that with the exception of the obligation at Schedule 8, the obligations comply with Regulation 122 of the CIL Regulations and the tests at paragraph 57 of the Framework (IR11.23-11.24). However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

38. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with the provisions of Policies 29, 39 and 61(a) of the CDP which together seek to protect the character of the existing landscape. Taking into account the centrality of this issue to the case as a whole and the specific terms of Policy 39, along with his findings on it (paragraph 22 above), he considers that the proposal 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 line with the development plan.

39. The need for the facility, moving waste up the waste hierarchy and the sustainable waste benefits it offers together carry significant weight in favour of the proposal, while the energy benefits of the scheme and its potential to act as a catalyst for further development together carry significant weight. Moderate weight attaches to each of the biodiversity net gain and the completion of Hownsgill Solar Farm, while the climate change benefits, the safeguarding of land for use as an Electric Vehicle Charging Facility, and the economic benefits of the proposal each carry limited weight.

40. Harm to the character and appearance of the landscape carries very significant weight against the proposal, while the perception of harm to public health and the effect on housing demand carries limited weight.

41. Overall, the Secretary of State considers that there is conflict with the development plan and the material considerations in this case do not indicate that permission should be determined other than in accordance with the development plan.

42. The Secretary of State therefore concludes that the appeal should be dismissed and planning permission should be refused.

Formal decision

43. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for an Energy from Waste Facility, in accordance with application Ref. DM/20/03267/WAS, dated 5 November 2020.

Right to challenge the decision

44. 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.

45. A copy of this letter has been sent to Durham County Council and the Consett Committee, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Maria Stasiak

Decision officer

This decision was made by the Parliamentary Under-Secretary of State for Local Government and Building Safety, Lee Rowley, on behalf of the Secretary of State, and signed on his behalf

ANNEX A – SCHEDULE OF REPRESENTATIONS

General representations

Party	Date
Mr B Graham	16/08/2022
Mr D Sewell	20/08/2022
Mr S Newcombe	09/09/2022
Ms C Thomas	14/09/2022
Mr P Oliver	01/10/2023
Mr J Carvell	04/02/2023
Ms A Grant	22/02/2023
Richard Holden MP	08/03/2023
Ms J Mathews	28/04/2023
Mr J Million	25/04/2023

The Planning Inspectorate

Report to the Secretary of State for Levelling Up, Housing and Communities

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Date 14 December 2022

TOWN & COUNTRY PLANNING ACT 1990

DURHAM COUNTY COUNCIL

APPEAL BY

MR MARK SHORT, PROJECT GENESIS LIMITED

Inquiry Held on 9-12 and 16-19 August 2022
Site visit held on 15 August 2022

Hownsgill Industrial Estate, Consett, Durham DE8 7EQ

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ANNEXES

Documents handed up to the Inquiry (Inquiry Documents) and Core Documents can be accessed via the electronic library at

https://publicaccess.durham.gov.uk/online-applications/appealDetails.do?activeTab=documents&keyVal=R8SAAYGD0A400

ABBREVIATIONS USED IN THIS REPORT

AHLV	Area of High Landscape Value
AONB	Area of Outstanding Natural Beauty
BEIS	Department for Business, Energy & Industrial Strategy
BAT	Best Available Technique
CCGT	Combined Cycle Gas Turbine
CCS	Carbon Capture and Storage
CD	Core Document
CDP	County Durham Plan
CDWLP	County Durham Waste Local Plan Saved Policies
CHP	Combined Heat and Power
CIL	Community Infrastructure Levy
C2C	Coast to Coast Footpath
C&I	Commercial and Industrial Waste
DHN	District Heat Network
EA	Environment Agency
EfW	Energy from Waste
EiC	Evidence in Chief
EP	Environmental Permit
ESG	Electricity Smart Grid
FTE	Full Time Equivalent
GHG	Greenhouse Gases
GtD	Energy from Waste: A Guide to the Debate
ID	Inquiry Document
KW	Kilowatt
LCAs	Landscape Character Areas
LVIA	Landscape and Visual Impact Assessment
LTSH	Less than substantial harm
MW	Megawatts
MWI	Municipal Waste Incinerator
Mt	Million tonnes
NCA	National Character Area
NPPF	National Planning Policy Framework
NPPW	National Planning Policy for Waste
NVC	Net Calorific Value
OR	Officer Report to the Council's Planning Committee
PCB	Polychlorinated biphenyls
PHE	Public Health England
POPs	Persistent organic pollutants
RDF	Refuse Derived Fuel
tpa	Tonnes per annum
TS	Transport Statement
UKWIN	United Kingdom Without Incineration
UU	Unilateral Undertaking
VP	View point
WTS	Waste Transfer Station
XX	Cross examination
ZTV	Zone of theoretical visibility

File Ref: APP/X1355/W/22/3294182
Hownsgill Industrial Estate, Consett, Durham DE8 7EQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Mark Short, Project Genesis Ltd against the decision of Durham County Council.
- The application Ref DM/20/03267/WAS, dated 5 November 2020, was refused by notice dated 8 September 2021.
- The development proposed is an Energy from Waste Facility.

Summary of Recommendation: The appeal be allowed and planning permission be granted subject to the conditions outlined in Annex E.

1. PROCEDURAL AND BACKGROUND MATTERS

1.1 The Inquiry was in respect of an appeal against the refusal of planning permission for an Energy from Waste (EfW) Facility which has been recovered for determination by the Secretary of State by letter dated 26 May 2022. The reason given for the recovery was that the appeal involves proposals giving rise to substantial regional or national controversy.

1.2 A case management conference was held on 20 June 2022 to discuss administrative and procedural matters. The Inquiry opened on 9 August 2022 and sat for a total of 8 days (9-12 and 16-19 August 2022). I undertook a site visit on an accompanied basis on 15 August 2022, following an extensive and comprehensive itinerary prepared by the parties. I closed the Inquiry in writing on 14 September 2022 following receipt of a signed Section 106 Unilateral Undertaking, updated Community Infrastructure Levy (CIL) Compliance Statement and updated schedule of suggested planning conditions.

1.3 The application form identifies the appeal site as being located on the Hownsgill Industrial Estate. The Council's Decision Notice refers to the site as being located on the Hownsgill Industrial Park. The banner heading above provides the location of the site as provided on the application form. References to 'Estate' and 'Park' were used interchangeably by all parties throughout the Inquiry and in the evidence provided. My attention was not drawn to any planning policy that may provide any descriptive text as to the difference between an 'industrial estate' and an 'industrial park'. Consequently, I have placed no distinction between these two terms in this Report.

1.4 The 'Say No to the Consett Incinerator Group' (Consett Committee) were accorded Rule 6(6) party status pursuant to The Town and Country Planning (Inquiries Procedure) (England) Rules 2000.

1.5 The Inquiry was conducted on the basis of topic based round table sessions (RTS) involving discussions in relation to the effect on nearby heritage assets and discussions on proposed planning conditions and a unilateral undertaking. All other matters were considered by the formal presentation of evidence.

1.6 Prior to the opening of the Inquiry, a number of Statements of Common Ground (SoCG) were submitted and signed by both the Appellant and the

Council. These comprise a SoCG (Planning) dated 1 July 2022[1], a SoCG (Landscape) dated July 2022[2] and a SoCG (Heritage) dated 1 July 2022[3].

1.7 A Unilateral Undertaking (UU) pursuant to Section 106 of the Town and Country Planning Act 1990 was submitted during the appeal. The obligations provided therein and the relevance of the CIL Compliance Statement are material considerations and are addressed in Section 11 of this Report.

1.8 The planning application was accompanied by an Environmental Statement (ES)[4]. An Addendum to the ES[5] was also submitted in April 2021 following a request by the Council[6] for additional information pursuant to Regulation 25 of the Town and County Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations). Overall, I am satisfied that the ES, together with the further Addendum, meets the requirements of Schedule 4 of the EIA Regulations.

1.9 Operation of the proposed facility, and all emissions, would be regulated by an Environmental Permit (EP) which would be issued by the Environment Agency (EA). No application for an EP has been made in advance of the planning application or the Inquiry.

2. THE SITE, ITS SURROUNDINGS AND CONTEXT

2.1 The site and its surroundings are described in detail in various documents including the Planning Statement that accompanied the application[7], Chapter 3 of the Environmental Statement[8], the SoCG (Planning)[9] and the Council's Officer Report (OR) to Planning Committee[10].

2.2 The site is located on a vacant plot within the Hownsgill Industrial Park. The industrial park is approximately 10.8 hectares in overall size and contains a number of industrial units which are approximately 7.3m high at their highest point. The appeal site is located on vacant land within the centre of the industrial park and measures approximately 1.64 hectares in area.

2.3 The land within which the Hownsgill Industrial Park is situated forms part of the former Consett Steel Works. The steel works occupied a significant area of south Consett with the land being subject to extensive reclamation works following closure of the steel works in 1980. Whilst the site was formerly occupied by an industrial use it has subsequently been restored and blended back into the landscape to a point where it no longer constitutes previously developed land, as defined by the National Planning Policy Framework (the Framework) and agreed in the Planning SoCG. The site has remained vacant since the reclamation works were completed.

[1] CD 12.1
[2] CD 12.2
[3] CD 12.3
[4] CD 3.1-3.16
[5] CD 3.17
[6] CD 3.18
[7] CD 2.2
[8] CD 3.3
[9] CD 12.1
[10] CD 6.2

2.4 The industrial park is characterised by a straight central access road with a mixture of small and medium businesses at the north eastern end and a bus depot and large food production factory at the south western end. The site is located to the central western side of the industrial park, surrounded by remaining vacant development plots to the north, east and south. The site is relatively level, falling in a south-easterly direction and currently comprises mown grassland with a corridor of scrub vegetation to the north west.

2.5 The nearest residential properties are approximately 448m to the north east at 'The Chequers', properties at Berry Edge approximately 620m to the northwest, properties on Knitsley Lane, approximately 650m to the south east and Howns Farm, approximately 675m to the southwest[11]. Central Consett is located approximately 1.2km to the north.

2.6 There are no public rights of way within the site, the closest being Footpath No. 43 (Consett), approximately 470m to the north east and Footpath No. 23 (Healeyfield Parish) approximately 530m to the south west. The Sustrans Coast to Coast (C2C) long-distance path/cycleway, also known as the Consett and Sunderland Railway Path, runs parallel to the north western boundary of the site and is located approximately 50m to the north west.

2.7 The site does not lie within any designated landscape. The North Pennines Area of Outstanding Natural Beauty (AONB) is approximately 2.3km to the southeast of the site. An Area of Higher Landscape Value (AHLV) lies approximately 500m to the south. Land uses within the wider setting comprise a mix of urban and rural features. Land to the south and west is predominantly agricultural, becoming upland moorland towards the North Pennines AONB. Land north and north west of the site is urban, located within the settlement boundary of Consett.

2.8 The site forms part of the holding of the Project Genesis Trust which was formed in 1994 as a registered charity to regenerate the former Consett Steelworks and reinvest funds from the development in the provision of environmental, recreational and social benefits to the local community. In order to guide development, a number of concept masterplans were produced to determine developable zones and uses with the latest iteration[12] prepared in 2018. Although having no planning status, the latest version of the masterplan does show key developments that have taken place on the former steelworks site since the 1990's and aspirations for future development.

2.9 The masterplan identifies an area of land to the south of the Hownsgill Industrial Park to be used as a Solar Park. Planning permission was granted in 2016 (Ref DM/15/02364/FPA) for the Solar Park which at the time of the application was envisaged to have an output of 5 Megawatts (MW). This permission has been partially implemented and 28 Kilowatt (KW) of solar arrays have been installed which are linked to the existing bus depot. This represents 0.5% of the full extent of the permission.

[11] CD 12.1
[12] CD 4.3

2.10 The remaining part of the solar array has not been implemented. The evidence of Mr Short[13] includes a viability analysis which demonstrates, amongst other things, that without a substantial enabling contribution towards connection costs to the local power grid, the remainder of the solar array is not financially viable.

2.11 The proposed development will also require a national grid connection which could be also used by the solar array. Consequently, the Appellant argued that the proposed development would enable the delivery of the remainder of the Solar Farm and has proposed an obligation in the UU to facilitate this. This matter is considered later in this Report.

3. THE PROPOSED DEVELOPMENT

3.1 The proposed EfW development would comprise of a fuel store, energy plant and combined heat and power (CHP) equipment and infrastructure. The energy plant main building would measure approximately 35.5m by 32.7m with a height of 22m. The fuel store would measure 25.8m by 43.5m with a height of 22m. The proposed chimney stack would have a height of 50m and external diameter of 1.4m. In addition, there would be a 25m high water tank, external silo, dry coolers, ash bins and a weigh bridge.

3.2 The main buildings would be provided with external composite cladding in a graduated colour pattern. The external colours would be agreed with the local planning authority and secured by an appropriate planning condition were the appeal to be allowed. This matter is discussed later in this Report. The proposed chimney stack would have a light grey matt finish.

3.3 There would be associated external hard standing areas around the buildings and ancillary development such as storage tanks, coolers, weighbridge and vehicle parking bays. The site would be enclosed by security fencing and gates. Screen planting comprising of native wood land species and earth mounding would be provided to the south east, south and south western boundary.

3.4 The energy plant would process up to 60,000 tonnes per annum (tpa) of Refuse Derived Fuel (RDF). The Waste Management Plan for England[14] defines RDF as being "mixed solid waste that has been pre-treated so it consists largely of combustible components such as unrecyclable plastic and biodegradable waste – as much as possible, any recyclable material is removed and sent to be recycled as part of pre-treatment". The application indicates that RDF would be produced from locally sourced, mainly commercial and industrial (C&I) waste. C&I waste is any type of waste that is produced by commercial and industrial businesses, which then has recyclable fractions removed to create the residual RDF.

3.5 The proposed development would incorporate CHP, allowing both electricity and heat from the facility to be exported for use in the surrounding area. The proposed development would generate up to 3.48 MW of electricity. The facility would also produce heat for supply via a district heating scheme which would be developed to provide heat to existing and proposed adjacent

[13] CD 12.12 Section 4
[14] CD 10.2 page 24

development. The infrastructure for this has been included to the proposed site boundary. Any connections to nearby development thereafter would be achieved as permitted development or would be the subject of further planning applications.

3.6 The RDF would be delivered to the facility in 23 tonne capacity articulated trucks with walking floors resulting in 5,218 vehicle movements per year (2,609 in and 2,609 out) equating to approximately 18 vehicle movements per weekday (9 in and 9 out). Additional HGV traffic associated with the facility would include deliveries of process chemicals and collection of ash and spent chemicals. Annually, this would comprise approximately 2000 tonnes of process chemicals delivered to the site and approximately 7200 tonnes of fly ash, 1200 tonnes of bottom ash and 1000 tonnes of spent chemicals removed from the site. These additional HGV traffic movements would amount to approximately 4 vehicle movements per day (2 in and 2 out). The total number of HGV movements (including deliveries and exports) per weekday associated with the facility would be 22 HGV movements[15].

3.7 Upon reception at the site, each delivery vehicle would be weighed and the waste screened to ensure compliance with the acceptance criteria. Delivery vehicles would then be routed within the site to the fuel store. The fuel store would operate at negative pressure and roller shutter doors would be used to ensure odours would not be released as HGVs empty their loads into the building.

3.8 The RDF would be removed from the fuel store by an internal crane which would load it onto a push floor. The material would then be pushed by ladders (steel structures) onto a belt conveyor which would move it into the Energy Plant. The material would then be transported into a hydraulic infeeding unit which would feed the material into the furnace. The material would then be transported through the furnace by a hydraulically driven moving grate and subsequently dried, gasified and combusted.

3.9 The development would operate 24 hours per day. However, it is proposed that the delivery of RDF and other HGV movements associated with the operation of the plant would be limited to the hours of 0700 – 1900 Monday to Friday and 0700 – 1300 on Saturdays.

3.10 The development would create 9 full time equivalent (FTE) jobs. The facility would operate with an 8-hour shift pattern and there would be 3 members of staff on site per shift. However, the SoCG (Planning)[16] indicates that there is also likely to be employment for two managers, an administrator, accounts clerk, weighbridge/security operator and two cleaning staff as well as maintenance staff on a visiting basis.

4. PLANNING POLICY

4.1 The appeal site lies entirely within the administrative boundary of Durham County Council. In addition to the Framework, the National Planning Policy for Waste (NPPW) and the Government's Planning Practice Guidance, reference was made to policies in the development plan.

[15] CD2.2
[16] CD12.1 paragraph 4.8

4.2 The development plan for the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004 is:

- County Durham Waste Local Plan (April 2005) Saved Policies[17] (CDWLP); and
- County Durham Plan (Adopted 2020) (CDP)[18].

4.3 Policy 2 of the CDP and the Policies Map designates the Hownsgill Industrial Park as employment land which is identified as being suitable for the uses B1 (Business), B2 (General Industrial) and B8 (Storage and Distribution). There are no adopted Neighbourhood Plans of relevance to the appeal site.

4.4 The most relevant policies within the development plan are:

County Durham Waste Local Plan (April 2005) Saved Policies

- Policy W6 (Design) sets out that new buildings for waste management uses should be carefully sited and designed to complement the location and existing topography. The policy further explains that landscape proposals should be incorporated as an integral part of the overall development of the site. Also, where appropriate, the opportunity should be taken to illustrate best practice by incorporating sustainable design principles in new building, using recycled materials wherever possible.

County Durham Plan

- Policy 2 (Employment Land) sets out employment allocations throughout the County. Amongst other things, it states that, in order to continue to progress the regeneration of Consett, the Council will support mixed use development on the Project Genesis site, including a site of 10.8 hectares at Hownsgill Industrial Estate for general employment land, provided the development accords with relevant development plan policies.
- Policy 21 (Delivering Sustainable Transport) requires that the transport implications of development must be addressed as part of any planning application, where relevant through Transport Assessments/Statements. All development is required to deliver sustainable transport and is also required to satisfy a number of criteria identified in the policy. Amongst other things, criterion (c) requires that any vehicular traffic generated by new development, following the implementation of sustainable transport measures, can be safely accommodated on the local and strategic highway network.
- Policy 29 (Sustainable Design) requires all development proposals to achieve well designed buildings and places and sets out criteria for development to be considered acceptable. These include making a positive contribution to an area's character, identity, heritage significance and landscape features; helping to create and reinforce locally distinctive and sustainable communities; minimising greenhouse gas emissions, by seeking to achieve zero carbon buildings and providing renewable and low carbon energy generation; and, including connections to an existing or

[17] CD7.2
[18] CD7.1

approved district energy scheme where viable opportunities exist. Where connection to the gas network is not viable, development should utilise renewable and low-carbon technologies as the main heating source; minimise the impact of development upon the occupants of existing adjacent and nearby properties; consider the health impacts of development and the needs of existing and future users; respond creatively to topography and to existing features of landscape or heritage interest; and, provide for an appropriate level of structural landscaping to screen or assimilate the development into its surroundings.

- Policy 31 (Amenity and Pollution) identifies that development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions or the natural environment and that it can be integrated effectively with any existing business and community facilities. Proposals which will have an unacceptable impact, such as through visual intrusion or visual dominance, will not be permitted, unless satisfactory mitigation measures can be provided. In addition, the policy sets out that development will not be permitted where unacceptable levels of air quality, inappropriate odours, noise, vibration and light pollution, either individually or cumulatively, cannot be suitably mitigated.

- Policy 38 (North Pennines AONB) sets out, amongst other things, that development in or affecting the AONB will only be permitted where it is not, individually or cumulatively, harmful to the special qualities or statutory purposes of the AONB. Any development should have regard to the conservation priorities and desired outcomes of the North Pennines AONB Management Plan and to the guidance given in the North Pennines AONB Planning Guidelines.

- Policy 39 (Landscape) states that proposals for new development will be permitted where they would not cause unacceptable harm to the character, quality or distinctiveness of the landscape, or to important features or views. Proposals will be expected to incorporate appropriate measures to mitigate adverse landscape and visual effects. Development affecting Areas of Higher Landscape Value (AHLV) will only be permitted where it conserves, and where appropriate enhances, the special qualities of the landscape, unless the benefits of development in that location clearly outweigh the harm.

- Policy 44 (Historic Environment) sets out that development will be expected to sustain the significance of designated and non-designated heritage assets, including any contribution made by their setting. The policy further sets out that development which leads to less than substantial harm to a designated heritage asset will be weighed against the public benefits of the proposal.

- Policy 47 (Sustainable Minerals and Waste Resource Management) identifies that the development of a sustainable resource economy in County Durham will be facilitated by ensuring that waste is managed in line with the waste hierarchy in sequential order. It further states that proposals for the disposal of residual waste via the incineration of waste without energy recovery will be resisted unless a need can be demonstrated which cannot be met by existing facilities and by treatment

solutions higher in the waste hierarchy. The policy also encourages the co-location of waste developments with industrial uses so that waste can be used as a raw material.

- Policy 60 (Waste Management Provision) identifies that proposals for the provision of new or enhanced waste management capacity will be permitted where they can demonstrate that they contribute to driving the management of waste up the waste hierarchy; assist in moving the management of waste in County Durham towards net self-sufficiency and/or make an appropriate contribution to regional net self-sufficiency by managing waste streams as near as possible to their production; and assist in meeting the identified need for new waste management capacity to manage specific waste streams over the Plan period or can demonstrate an additional need which cannot be met by existing operational facilities within County Durham or the North East.
- Policy 61 (Location of New Waste Facilities) states that proposals for new or enhanced waste management facilities will be permitted where they will assist the efficient collection, recycling and recovery of waste materials. In addition, the policy sets out a number of criteria that proposals for waste development will need to satisfy. These include: a requirement that proposals are located outside and do not adversely impact upon the setting or integrity of internationally, nationally and locally designated sites and areas; are located outside the Green Belt or are in locations which do not impact upon its openness; minimise the effects of transporting waste including locating development as close to arisings as practical; can be satisfactorily co-located with complimentary activities and potential users of recovered materials, recyclates and soils, energy and heat where this represents a sustainable option; and, can be satisfactorily located on suitable land identified for employment use. The policy further sets out that all proposals must demonstrate that there will be no unacceptable adverse impact on the environment, human health or the amenity of local communities.

National Planning and Other Policy and Guidance

4.5 The Core Documents include many such publications, most of which are listed in the main and Rule 6 Party's statements of case. Those considered to be of particular relevance to the determination of this appeal are listed in the SoCG (Planning)[19]. The following featured prominently in the evidence heard in the Inquiry:

- National Planning Policy Framework, particularly Parts 9, 14, 15 and 16;
- National Planning Policy for Waste, particularly paragraph 4;
- Government Review of Waste Policy in England (2011)[20];
- Waste Management Plan for England 2021, particularly pages 12, 17 and 45[21];

[19] CD 12.1 pages 11 to 13
[20] CD 10.1
[21] CD 10.2

- EN-1: Overarching National Policy Statement for Energy (DECC, 2011)[22];
- EN-3: National Policy Statement for Renewable Energy Infrastructure (DECC 2011)[23];
- The Department for Business, Energy & Industrial Strategy (BEIS) Clean Growth – Transforming Heating – Overview (Dec 2018)[24];

5. THE CASE FOR THE APPELLANT

5.1 The Appellant called four witnesses: Mr Beswick (landscape and visual impact)[25], Ms Kelly (heritage)[26], Mr Caird (air quality and greenhouse gas issues)[27] and Mr Emms (planning policy and related planning matters)[28]. The evidence of Mr Emms also referred to written proofs from Mr Muter (Project Genesis background)[29] and Mr Short (Project Genesis background and proposed benefits)[30]. The authors of those proofs did not appear at the Inquiry and their evidence was taken as read. The material points of the Appellant's case are covered in closing submissions, as set out below[31]:

Introduction and Summary

5.2 This is a scheme that should be welcomed with open arms given the substantial array of weighty planning benefits that will be delivered, which far outweigh the limited impacts of the scheme. The scheme is compliant with the Development Plan assessed as a whole, and both the Framework and section 38(6) of the 2004 Act provide that planning permission should be granted.

5.3 It is not in dispute that the Appellant has brought fundamental regeneration and renaissance to Consett over the last quarter of a century. Appendix 2 to Mr Short's proof evidences the Appellant's (undisputed) achievements to date. Over 350,000 ft^2 of commercial space, over 1350 new homes, 36 acres of public open space, well over 1500 direct and indirect new jobs, £220m of construction costs, presently generating economic output of £65m per annum. These are staggeringly impressive accomplishments given the devastated and contaminated land with which the Appellant started. In what must be virtually a unique acknowledgement in a development plan document, the Appellant's achievements are (consistent with the recommendations of the Examining Inspector) explicitly recognised in the Development Plan[32] recording:

"The important role of Project Genesis in continuing to bring forward further development in the future is recognised, as are the benefits it has (brought) to

[22] CD 11.4
[23] CD 11.5
[24] CD 11.9
[25] CD 12.8
[26] CD 12.7
[27] CD 12.9
[28] CD 12.10
[29] CD 12.11
[30] CD 12.12
[31] ID34
[32] CD 7.1 page 34

the community of Consett both socially and economically and in terms of regenerating the built and natural environment".

5.4 The Appeal Scheme will allow the continuation of Consett's regeneration and bring numerous other significant public benefits. The case for granting planning permission is overwhelming.

Landscape/Visual Impacts (Reasons for Refusal 1-3)

5.5 The Appeal Site lies within an industrial park which is allocated (Local Plan, Policy 2) for substantial new employment development. The universal hope and expectation (certainly shared by the Appellant and Council) is that significant employment-generating E-class development will come to Hownsgill Industrial Park. The Council's evidence[33] specifically acknowledges "that the appeal site is allocated for industrial use and it could be anticipated that a development of the scale proposed in this appeal could be considered in principle acceptable". Consistent with this, Mr Shields contemplates office development that could readily be as high and wide as the EfW building, or a substantial warehouse (Mr Shields uses employment densities derived from National Distribution Centres, but the operative point is not different if a substantial industrial/manufacturing warehouse building is envisioned), the scale, height and form of which could (again) readily match that of the EfW building. Mr Gray allied himself in cross examination (XX) with these acknowledgements of Mr Shields, agreeing that a well-designed office block or warehouse of the same scale as the EfW building would be supported by the Council.

5.6 The Appellant does not dispute that the undeveloped plots adjacent to the appeal site are entirely suitable for this scale of development. It is the Appellant's case that the appeal scheme will make it significantly more likely that such schemes will come forward in the future (a point accepted by Mr Shields in XX). But, in terms of landscape/visual assessment, the decision-maker must not be constrained by the fact that buildings currently on the Industrial Park (which is only 30% built out) do not exceed 12m in height. As is common ground with the Council, this is not the ceiling of reasonable ambitions here.

5.7 The above considerations are relevant not just to the congruity of the appeal scheme with such reasonable ambitions for the industrial park, but also to a balanced appraisal of what future development is likely to come forward on the 3 undeveloped plots surrounding the appeal scheme, which will further contribute to filtering / part-screening views towards it. Mr Beswick explained succinctly in Evidence in Chief (EiC) that "landscapes are ever changing", and that reality (specifically reflecting here the 3 undeveloped plots adjacent to the appeal site) is a material consideration (as Mr Gray agreed in XX) that must be factored into the assessment.

5.8 It is really only the stack which distinguishes the Appeal Scheme from some other forms of E-class development that could come forward here. It is unfortunate that certain landscape appraisals of the stack proceeded on the basis it proclaims "danger – poison present" – which, apart from anything else,

[33] CD 12.34 paragraph 3.17

ignores Government policy, and the careful work of Mr Caird (which was extensively reviewed by the Council's independent consultants, Aecom). This subjective approach reflects the Rule 6 Party's approach but was criticised by both Mr Beswick and Mr Gray in XX as not evidencing the need for objective analysis.

5.9 Moreover, the stack is slender (1.4m external diameter) and the Appellant's design team have thoughtfully proposed that it will have a matt finish and recessive, light grey colour which will enable it to blend into background clouds much of the time. The stack (at 50m) is not especially large in the context of other EfWs. It is broadly the same height as Wind Turbines in the local area - Middle Heads Farm (74m), Hown's Farm (45.7m), High Knitsley Farm (46m); and it is dwarfed by Pontop Pike (a 149m telecoms mast located at 312mAOD, significantly above the 246m AOD proposed Finished Floor Level), which is seen in many views of the appeal scheme.

5.10 Much reference has been made at the Inquiry to an associated water vapour plume, but the evidence is that this will be visible extremely infrequently, principally on account of (i) the extremely windy local conditions, and (ii) the significant likelihood of cloud cover at times when temperature/humidity conditions might otherwise make a plume visible. Mr Beswick explained during EiC that relevant weather conditions come together in very rare circumstances, such as winter mornings when the sky over the EfW is clear of cloud and the wind is relatively still. There was no challenge to Mr Beswick's relevant analysis of the infrequency at which a plume would be visible, and no competing analysis put forward by any other party at the Inquiry.

5.11 The Inspector will further recall Mr Caird's and Mr Beswick's evidence that they drive past Javelin Park (of whose plume the Rule 6 has a photo) frequently, and they have seen a plume very rarely indeed. In any event, and responding to the Council's concern that the "movement" of a plume would attract attention to itself, it must be pointed out that, on the very rare occasions when a plume would be visible, there would likely be other movements discernible to the viewer, including that of the rotor blades of the numerous wind turbines in the local area, and the movement of clouds in and across the skyscape.

5.12 Account must always be taken of the context in which views of or including the appeal scheme will be seen. Reading the Council's evidence, one might think the appeal scheme is proposed for some pristine area of gorgeous countryside where virtually no built form is otherwise apparent. The reality is markedly different, which is no doubt why the Hownsgill Industrial Park has been allocated for substantial employment development. It is common ground with the Council that the appeal site is not a valued landscape. The context of all views considered at the Inquiry is substantial built form on and around the edge of Consett. Extensive housing and commercial developments are seen, across wide panoramas. None of this is surprising for an Urban Fringe site (as the appeal site was agreed by Mr Gray in XX to be). This characteristic of the area is also reflected in local landscape assessments. Notably:

(a) The Landscape Value Assessment 2019[34], comments on the "scenic quality" of the Coalfield Upland Fringe: "A visually open landscape with panoramic views across adjoining valleys and sequential ridges. The LCT is of very variable scenic quality being heavily influenced in places by urban and industrial development or by surface mining". Templetown itself scores Low-Moderate for scenic quality – see table 3.7B on p52;

(b) The supporting assessment for the Coalfield Upland Fringe states: "Densely settled ridges between the northern coalfield valleys. Large mining industrial towns and villages sprawl along the ridgelines connected by busy roads"[35];

(c) County Character Area West Durham Coalfield. A key characteristic is "A landscape heavily influenced by development with a semi-rural or urban fringe character in places"[36].

5.13 It is also a fundamental consideration that the local area is characterised by numerous tall structures. Thus, the Landscape SoCG[37] agrees that a "key characteristic" of the Coalfield Upland Fringe in which the appeal site lies is "telecommunications masts and wind turbines prominent on some ridges". That is plainly the case for the area around the appeal site. Pontop Pike (which rises 150m above the top of the proposed stack – as agreed by Mr Gray in XX) is prominent, and windfarms and individual turbines (and numerous pylons) proliferate in the local area. One further slender vertical structure can readily be accommodated without causing any material impact.

5.14 Realistic account must also be taken as to the thoughtful design of the proposed development. The Appellant's design team have worked imaginatively to propose a form of building which comprises a bold, cuboid form, with clean lines and 90-degree angles juxtaposed with a slender flue, and have suggested materials and a graduated colour arrangement (precisely what another Council had requested in another case – see the Swindon Decision Letter[38]) which will further contribute to the successful reception of the building within its surroundings. Proposals such as the appeal scheme require large buildings, and this reality is recognized in National Policy[39].

5.15 As recognised by the Secretary of State in the Javelin Park decision[40] some visual effect is inevitable for energy from waste schemes, and this cannot of itself suffice to defeat a scheme. The focus must be on whether an appropriate design has been achieved (see the Secretary of State's approach in Javelin Park), and on whether any "significant adverse impacts" are caused[41]. In this latter regard, it can be noted that the Council does not allege

[34] CD 9.4, page 51
[35] CD 3.7, p23 para 7.5.20.
[36] ES para 7.5.17 (CD3.7, p22) (from the 2008 LCA at CD 9.1)
[37] CD 12.2 para 9
[38] CD 13.8
[39] See EN-1 at para 4.5 (CD 11.4), and EN-3 at para 2.5.50 (CD 11.5).
[40] CD 13.9 – IR1133-35 and DL29
[41] NPPW para 5, b/p 4 – CD 7.5

any "significant adverse impacts" – its case is that the interests it says are most affected (the AONB and AHLV) suffer no more than "moderate" harm[42].

5.16 It is submitted that the Council's assessments have not paid due regard to the considerations set out above.

5.17 Turning to alleged "moderate" harm to the AONB's scenic beauty[43], it is a highly material consideration that the AONB Authority has not objected. Mr Gray did not contest this proposition in XX, nor can it be contested. The AONB Authority's non-objection is a clear indication that the Council's appraisals are exaggerated.

5.18 No weight can be accorded to Mr Gray's scoring matrix or the outputs of it. As he confessed in XX, the various "major/moderate" impacts which have come out of his sausage machine are, on their face, inconsistent with the Council's pleaded case in its Statement of Case that no more than "moderate" harm would be occasioned. Mr Gray confirmed in XX that he was not seeking to go beyond or to undermine the Council's Statement of Case. His scorings are therefore anomalous, and (as he expressly agreed in XX) "they have to be taken with a pinch of salt" as "something has gone wrong" (given the avowed lack of intention to under-cut the Council's pleaded case).

5.19 It is not necessary to repeat in closing the detailed consideration of the various AONB viewpoints during the evidence, not least because the Inspector has now visited the locations in question. The matter can, for present purposes, be taken in the round. In reality, all the Council's evidence amounts to is that there are some distant or very distant views from the eastern part of the AONB where the top of the building and/or the stack will be visible, sometimes above the horizon. But again, merely because built form is visible is not to be equated with harm[44]. Mr Gray fails entirely to take account of the full context of relevant views, which already encompass significant built development on the edge of Consett, Castleside and numerous other high and much more noticeable structures (wind farms, wind turbines and Pontop Pike).

5.20 The appeal scheme will be a "miniscule" element in such views, an adjective which Mr Gray repeatedly agreed in XX was appropriate as the various photomontages were discussed with him. With the addition of the appeal scheme, there will be no discernible deterioration in the overall aspect of the views, and there can be no credible suggestion that the AONB's scenic beauty would be diminished. There is an unjustified "leap of logic" in Mr Gray's contention that the fact the appeal scheme will sometimes be "noticeable" equates to a "noticeable deterioration" in the quality of the view or scenic beauty of the AONB. Mr Gray is mistaken in apparently seeking to equate such well-developed ridgelines, of which the stack would be a "miniscule" feature, with "proper" views contributing to the scenic beauty of the AONB (as shown in numerous photos in the AONB Management Plan, CD9.8). The AONB Authority, by contrast, knows the difference, which is why they have presented no objection to the appeal scheme.

[42] see Council Statement of Case section 41, 63 CD 12.5
[43] R/R1 and Council's Statement of Case (para 41 CD 12.5)
[44] EN-1 CD 11.4 para5.9.3

5.21 There would be no effect on the dark sky areas of the AONB[45]. This was expressly agreed by Mr Gray in XX.

5.22 There is accordingly no conflict with paragraph 176 of the Framework or Local Plan Policy 38. The appeal scheme conserves the landscape and scenic beauty of the AONB, and it has been both sensitively located (within an urban fringe industrial park, co-located adjacent to existing and future potential users of the heat/power that would be generated) and intelligently designed to minimize impacts.

5.23 In terms of the alleged "moderate" harm to the AHLV the Council once again pays only lip service to the facts that the Appeal Site sits within an allocated industrial park where significant development is everyone's hope and aspiration. Again, Mr Gray's "scorings" are anomalous and, but for his acceptance in XX that they are to be "taken with a pinch of salt", would be inconsistent with the Council's pleaded case in its Statement of Case.

5.24 Similarly, the Council fails to take due account of the fact that the relevant parts of the AHLV are in close proximity to the Urban Edge of Consett, and that views towards the appeal scheme already encompass views towards the rest of the industrial park (see VP4, VP5, VP6, VP9 and VP11). Some relevant views also encompass existing features such as Wind Turbines, and the land covered by the extant Solar Farm permission (VP5) which Mr Short's evidence explains could come forward in the future without the appeal scheme if a sufficient enabling premium to make the necessary grid connection is funded by a new occupier of the Industrial Estate. It is true it is that the appeal scheme would be seen above the wooded areas comprising the AHLV, but (a) as above, that is already the case for the industrial park and other extensive built development on the edge of Consett, and (b) can it seriously be suggested there would be any material difference if a large office building or large warehouse came forward instead?

5.25 The principal elements of the nearby AHLV, which is "centred on the well wooded, steep sided river valleys associated with Knitsley and Beggarside Burns", would not be affected by the appeal scheme. This was eventually agreed by Mr Gray in XX.

5.26 The limited impacts to which Mr Beswick's evidence refers are outweighed by the benefits of the appeal scheme (considered below), in accordance with the terms of Local Plan Policy 39.

5.27 Turning to the Council's more general "character and appearance" reason (R1/R2), similar considerations to those canvassed above apply. Generally, views from the C2C would not be materially different, no matter the form of future development on the appeal site. Most such current views are through vegetation, and a landscape condition would materially reinforce the screening impact of woodland along the C2C. Many parts of the C2C already look towards features such as Wind Turbines and a caravan park. North of the appeal site, the C2C would have open views over the consented Derwent View

[45] see Beswick PoE para .6.5 (p26) and Appendix H at para3.1.4 (p69-70)

development (where there are currently open views towards Tesco), and thereafter one enters and passes through the middle of the urban area.

5.28 Views from residential areas within built up parts of Consett (VP2, VP12, Knitsley Land/Millfield Lane adjacent to the Project Genesis Limited masterplan development area K) are towards/over an industrial park where significant new development is encouraged by the Council to promote further regeneration. This ambition, as reflected in adopted policy, must be taken into account when assessing future "built in" expectations in respect of such views.

5.29 Fairly appraised, there would be limited impact on landscape and visual interests, taking account of all relevant material considerations, including the full composition of views towards the appeal scheme and the universal ambitions for substantial development of the appeal site and surrounding undeveloped land within the industrial park, there is limited impact on landscape/visual interests. Such limited impacts as there would be are inevitable with energy schemes such as is proposed. They would come nowhere close to comprising "significant adverse impacts" in terms of the NPPW, even on the Council's case, and would in any event be clearly outweighed by the manifest benefits that would be brought forward.

Heritage (Reason for Refusal 4)

5.30 There would be "no less than substantial harm" (LTSH) to the setting of the Knitsley Farm assets, but if there were any low/lowest level LTSH, it would clearly be outweighed by the benefits of the appeal scheme (addressed below). That is even according considerable weight to any LTSH, no matter how limited, as the Inspector must, per paragraph 199 of the Framework and relevant case-law.

5.31 The miniscule change in some views of/associated with the Knitsley Farm assets by the introduction of a reasonably distant (1km) view towards the top part of the slender stack does not diminish the heritage significance of those assets. A realistic assessment must be made, taking account of the extent to which development has already encroached into the setting of the Knitsley Farm assets, both towards the north-west and the north/north-east where extensive residential and employment development on the outskirts of Consett is seen in the broader setting. As for views north-west (as to which, see the wireline at p63 of Beswick Appendix B, and the helpful photo from Mr Newcombe's location 2), the top part of the stack would be seen in the context of:

(a) a working agricultural unit to the immediate west of the Knitsley Farm assets, including a large utilitarian barn, and often surrounded by substantial farming equipment;

(b) the Howns Farm wind turbine (45m), virtually the entirety of which, including the blades, is seen in the same views, and which the Council consented on the basis of advice from its conservation team that it would not cause heritage harm (CD3.20, page 6); and,

(c) a restored plateau landscape which does not reflect a historic field pattern, but, as Ms Kelly explained at the RTS, is land formerly used for a large slag heap in association with the steelworks and on much of which

the Solar Farm is consented. This last point is important. The agricultural fields in the immediate vicinity of the Knitsley assets may assist in communicating a message as to their historic uses, but the same cannot be said of the former slag heap which, although now covered in grass and scrub, is patently not agricultural land, and which therefore "says nothing" about the history of the Knitsley assets.

5.32 In addition, the stack would be both slender (1.4m) and in light grey matt material, which is likely to blend into the clouds behind it on most days. The ability to appreciate Knitsley Farm's former agricultural history, in consequence of the surrounding fields in their more immediate setting, would in no way be reduced. There would therefore be no heritage harm. Even if that is wrong, the harm would be at the lowest end of the LTSH scale and is clearly outweighed by the benefits of the appeal scheme (addressed below). With due respect to Mr Shields, his evidence was at its most unrealistic when he refused to concede that the Council's heritage concerns are not outweighed by the benefits of the appeal scheme, many of which he had accepted were substantial in nature.

5.33 In respect of the Rule 6 Party's reference to other designated and non-designated heritage assets, and to some features or elements which are neither, the Appellant relies on the analysis in section 7 of Ms Kelly's proof, and notes that the Council and its expert heritage witness (Mr Croft) agrees there is no relevant harm arising.

Benefits of the Appeal Scheme

[1] Provision of new, much-needed waste management resources

5.34 The appeal scheme would provide new, much-needed waste management resources which will contribute to driving waste up the waste hierarchy and which accord with the proximity principle.

5.35 Waste will be driven up the waste hierarchy because the appeal scheme would prevent up to 60,000tpa of relevant waste going to landfill and would facilitate the beneficial re-use of around 1,000tpa of recycleable bottom ash, and metals found therein. The appeal scheme would be a "Recovery" (not a "Disposal") operation, as R1 status will be achieved and maintained. The Appellant has suggested a pre-commencement condition to give confidence as to the achievement of "Recovery" status. Such a condition reflects Swindon condition 12, as further explained by Inspector Middleton at DL105-108. Mr Caird's evidence at paragraph 5.30 of his main proof explains why there is no reason the 1,000tpa of bottom ash generated by the appeal scheme would not be available for beneficial re-use such as in making aggregates. Mr Caird's evidence on these issues was not disputed by any party during his XX.

5.36 It cannot sensibly be disputed that there is a massive capacity gap in the North East region whereby substantial quantities of relevant residual waste are presently sent to Landfill, or exported far and wide. Mr Emms' Appendix 1 is a comprehensive and up to date Needs Assessment, of which none of the main conclusions were disputed in any serious way by Mr Shields in XX or during Mr Emms' evidence. These are:

a) In terms of the national picture, the Tolvik report[46] demonstrates that, of the 27.5Mt of relevant residual waste, around 9.3Mt (35%) is sent to Landfill, with somewhere between 11.5 – 12.8Mt being incinerated (at an R1 facility), and between 2.1 – 3.4Mt incinerated at one of the 19 (out of around 53 operational EfWs) which is a non-R1 facility. Thus, around 45% of relevant residual waste is currently dealt with as "Disposal", the very bottom of the waste hierarchy. On top of this, at least 3.5Mt of relevant residual waste is exported to EfWs abroad. This is a sobering picture. It is just not good enough.

b) At the local/regional position, it can be noted that Durham currently has a 49% landfill rate for all waste[47]. The regional figure is 29%.

c) The regional landfill rate is worse when considering relevant residual waste streams. Here, the analysis at p10-12 of the Needs Assessment indicates that, of the relevant waste stream (around 1.913Mt), over 609,000 tonnes (32%) goes to Landfill. Another 365,000 tonnes is exported out of the region, the vast bulk of it to EfWs abroad.

d) On this basis, the present regional capacity gap is just under 1,000,000 tpa.

5.37 It is wholly unsatisfactory that the region remains dependent on Landfill for disposing of 32% of its relevant residual waste. Quite apart from the unsustainability of residing at the bottom of the waste hierarchy to such an extent, landfill availability in the region is fast being exhausted, with latest figures, provided by Mr Shields, indicating that only around 6 years of available capacity remains. The region's current trajectory will increase pressure to permit new landfill capacity or, alternatively, result in waste travelling to landfill sites far outside the region.

5.38 This situation is a consequence of the fact there is only one existing EfW facilityserving the region (namely the ageing Suez facility at Billingham, which will reach its 25th operational anniversary next year), in circumstances where:

(a) Wilton 11 is devoted entirely to Merseyside waste. For that reason it was excluded from the Council's 2018 Addendum, and presently operates a 30-year contract (which commenced in 2016) with the Merseyside waste authorities, to receive all their waste (there being no evidence of any proposal for a nearer alternative) and,

(b) possible new capacity for 848,000t of EfW provision which was taken into account at the time of the Council's 2018 Addendum (and subsequent Local Plan) has not come forward, nor is there any reasonable prospect that any of it will do so in the foreseeable future (for the reasons explained at pages 14-15 of the Needs Assessment). In addition, "line 6" at the Suez facility at Billingham is time-expired, no attempt ever having been made to discharge the 7 pre-commencement conditions. It was an unreasonable and desperate manoeuvre for the Council to reference "line

[46] CD 13.27
[47] CD 14.2 Mr Emms Rebuttal revised table 2 at page 7

6" during Mr Shields' EIC, without any prior warning that so erroneous a point was to be deployed.

5.39 Self-evidently in these circumstances, the appeal scheme would make a valuable contribution to diverting waste currently among the 609,000tpa going to landfill in this region. This is confirmed by Mr Short's evidence about likely local suppliers. Mr Short, in paragraph 2.18 of his proof of evidence, identified three local suppliers who between them have expressed interest in supplying 85,000tpa to the appeal scheme and who presently send their relevant waste to Landfill at Ellington or Aycliffe. This tiny snapshot perfectly illustrates the grim present situation in this region. Indeed, the Inspector is invited to note paragraph 2.16 of Mr Short's unchallenged evidence that discussions with one such possible supplier indicate that:

"… there is little in the way of options for safe disposal of C&I waste in County Durham (or adjacent authorities), the principal options being transportation of waste to landfill or its export to Europe".

5.40 The Council's attempts to reference two schemes consented in Redcar (one in July 2020, the other in January 2021) does not change the force of the clear position set out above. Although consented before the Officer's Report (OR) in this case (September 2021), neither was deemed worthy of mention in the OR, and nothing material has changed since. Neither of the Redcar schemes is an existing operational EfW, and both appear to be many steps (and many years) away from operations commencing, if they ever do (see the Needs Assessment at paragraph 1.51 onwards). National and Development Plan policy is absolutely clear that the focus must be on the capacity of existing operational sites. This is clearly stated in the NPPW.

5.41 Similarly, Local Plan Policy 60(c) focuses on assessing need against "existing operational facilities". To like effect, the approach which the Appellant commends was expressly endorsed by the Bilsthorpe Inspector (CD13.11 at IR14.27), and agreed by the Secretary of State (DL14). Mr Shields was bold enough to say in XX that he disagreed with the Secretary of State's approach and conclusions in the Bilsthorpe, but this sort of approach will not do, and it flies in the face of important considerations of consistency in planning decision-making. Ultimately, therefore, the Redcar schemes attract no more than limited weight at this time.

5.42 Even assuming they both came forward, there are still numerous uncertainties as to how much new capacity would be provided, and noting in any event the likely decommissioning of at least some significant part of the Billingham EfW in the near future, a regional capacity gap would remain. The only question is how large that gap would be (see the Needs Assessment at paragraph 1.51 onwards which assess it would likely be in the order of at least 260,000 tonnes – 360,000 tonnes a year).

5.43 In truth, nothing material has changed since the September 2021 OR which concluded that the substantial capacity gaps stated in the Local Plan "provide

the basis for considering need when determining planning applications which provide new treatment or disposal capacity"[48]. In addition:

"… there is a requirement for further non-hazardous treatment/disposal capacity and monitoring of the delivery of schemes elsewhere in the North East. This currently raises a concern over the delivery of additional capacity elsewhere in the North East to manage residual commercial and industrial waste".[49]

5.44 There were suggestions at the Inquiry by the Rule 6 party that the appeal scheme may somehow prejudice recycling. This complaint has no merit. In particular:

(a) A comparable argument was rejected by Inspector Middleton at Swindon[50] where he stated that "The chance of recyclable waste being diverted from recycling to EfW in a commercial market seems to me to be remote". Afterall, the commercial imperative for WTSs is to secure the re-sale value of recycleable products, so reducing the quantum of material they must themselves pay an EfW (or landfill) operator to accept.

(b) Further, the Waste Management Plan for England (Jan 2021) defines RDF as follows: "RDF is mixed solid waste that has been pre-treated so it consists of combustible components such as unrecyclable plastic and biodegradable waste – as much as possible, any recyclable material is removed and sent to be recycled as part of pre-treatment". A condition is proposed stipulating that the appeal scheme can only accept RDF – a product which, by definition, has been "pre-treated such that it only contains unrecyclable material". Further, in the Planning SoCG, the Council expressly accepts that the Scheme would process residual C&I waste, "which cannot be recycled".

(c) The Rule 6 party (per Mr Parkes paragraph 3.50) makes reference to the target for 65% of household waste to be recycled by 2035. Self-evidently, the appeal scheme will not prejudice that target as it is not intended to receive and process residual household waste, but residual commercial and industrial waste where there is no equivalent target, no doubt because there are no organised collection arrangements by a local authority with the consequence that commercial and industrial organisations are left to make their own arrangements. In any event, household waste (about 40% of the relevant regional waste stream) is already supposed to be achieving a 50% recycling rate (as confirmed by Mr Shields in XX), and the net difference between 50% and 65% of 40% of the waste stream is likely to be off-set by growth in arisings in the event of regional business growth. These considerations do not, therefore, materially bear on any issues regarding either possible prejudice to recycling objectives, or the massive regional capacity gaps identified above.

[48] CD 6.2 Officer Report paras 141 and 142
[49] Ibid paragraph 142
[50] see the Swindon DL [CD 13.8] at DL44, DL194-5

(d) As far as plastic content is concerned, the Government has recently announced (2021/22) numerous measures further to reduce plastic waste (see Caird 1st rebuttal paragraph 2.29). There is no good reason why these will not achieve the desired goal, and Mr Caird's various assessments proceed on this basis. In any event, high plastics content is undesirable for the appeal scheme, as it may result in average calorific value exceeding the design range (see Caird paragraph 6.38). Most relevantly, there is no good reason why the appeal scheme should prejudice these measures in achieving their intended goal of reducing the amount of plastic waste created or not recycled. For these reasons, little weight should be placed on the WRAP Wales report cited by the Council, as (leaving aside differences with the lower plastics content found by WRAP England) this is based on sample data from 2019, several years before the 2021/22 initiatives, which can be expected (per Caird's unchallenged oral evidence) to reduce plastic content in residual waste by around 20%.

(e) To like effect, the Government recently noted that permit conditions for EfW plants further ensure that waste accepted at such facilities is not otherwise recyclable: see the Hansard extract[51].

5.45 In terms of the proximity principle, it is agreed with the Council that the "Development would make a contribution towards local and regional self-sufficiency for the management of (C&I) waste" and that the scheme would "minimize the effects of transporting waste including by locating as close to arisings as practical"[52]. Further, Mr Short's evidence references expressions of interest from a number of local suppliers in quantities far exceeding the capacity of the appeal scheme. The Inspector will have noted that one business which has expressed an interest in supplying over 40% of the Development's feedstock is based in Consett. It is unrealistic for the Council to complain (if it still does) that the Appellant cannot (and does not propose to) police from where the relevant local WTSs source their own waste supplies from. Anyway, there is every expectation that these WTSs will provide a resource for those with C&I waste in the region. There is no credible evidence, and certainly none was presented to the Inquiry, to the effect that such WTSs will be looking to Kent or Cornwall for their raw materials. As is evident from the Needs Assessment above, there is abundant C&I waste in this region which requires processing, far too much of which presently ends up in Landfill.

5.46 In Local Plan policy terms, the Appeal scheme accords with the key waste management policies. Specifically:

(a) There is accordance with Policy 47 (Sustainable Waste Resource Management), as agreed in the Planning SoCG[53]. Principally, this is because the appeal scheme "would enhance the capability and capacity of the County's network of waste management facilities to recover value from

[51] CD 13.7 columns 301-302
[52] CD 12.1 Planning SoCG, paras 7.21-23
[53] CD 12.1 paras 7.7 – 7.9

waste materials" and "The Development would be consistent with the waste hierarchy and, rather than disposal to landfill, there is a need for facilities to recover value from waste"[54].

(b) There is accordance with Policy 60 (Waste Management Provision), as agreed in the Planning SoCG[55]. Paragraph 7.10 records that the "proposed management of residual (C&I) waste relates to waste which cannot otherwise be recycled and would otherwise need to be disposed to landfill and the Development would also provide for the generation of electricity and heat. The Development would assist in helping to drive the management of this waste stream up the waste hierarchy". Most strikingly, Policy 60(c) specifically requires a demonstration that the appeal scheme is needed, and it is confirmed in the Planning SoCG (and was further confirmed by Mr Shields in XX) that the appeal scheme accords with this part of policy 60 (as well as the other limbs).

(c) In terms of the proximity principle, it is agreed in the Planning SoCG that there is accordance with Policy 61(c), which encapsulates this principle. The Planning SoCG also agrees that the "Development would make a contribution towards local and regional self-sufficiency for the management of (C&I) waste" and that the scheme would "minimize the effects of transporting waste including by locating as close to arisings as possible"[56].

[2] Generation of heat and electricity, in particular to local users

5.47 The appeal scheme would generate electricity (3MW net) and heat (maximum output is 11.8MW) (see Caird paragraph 5.14). The scheme would be connected to the Grid (per Mr Caird in EiC – and not challenged thereafter), so all electricity generated would be used. However, the Appellant is much more ambitious than to stop there, and the scheme is intended to come forward on a basis which supplies both power and heat to a directly connected local network. The provision of substantial heat and power to a local network is not just a key and very weighty benefit of the appeal scheme, as is strongly supported by relevant national policy, although this is clearly the case. It is also the very rationale behind the appeal scheme being proposed at this particular location (by very experienced businessmen, with "proven" track records as per Mr Holden MP), in order to act as a catalyst to attract new businesses and thereby facilitate substantial new job creation. This is why, as Mr Caird explained to the Inquiry in EiC, the technology provider has intentionally maximized the amount of heat output (11.8MW) and not the amount of electricity output (which in any event will be supplemented by electricity generated by the 5+MW Solar Farm). Whichever way it is looked at, this is a "joined up" appeal scheme, which is promoted on an entirely rational and intelligent basis, with the absolute best of motives. It has not deserved the toxic reception it has received from some quarters.

5.48 The details as to how the use of the appeal scheme would be controlled/restricted by obligations to ensure that the Development operates

[54] CD 12.1 paras 7.7 - 7.8
[55] CD 12.1 paras 7.10 – 7.21
[56] CD 12.1 paras 7.21-23

as a true "Combined Heat and Power" facility are set out in the s106 obligation. These include:

(a) construction of an extensive heat/power distribution network as a pre-condition for operation of the scheme (on this, Mr Shields accepted in XX that there should be no real difficulty securing planning permission for this network, as it is almost entirely underground, apart from limited structures that would be sited in the Industrial Park, and certainly no party has identified any credible reason or concern as to why such consent would be withheld, in assumed circumstances where the appeal scheme has been consented in the public interest),

(b) restrictions on Category 1 land (already owned by the Appellant) and Category 2 land (capable of being called down by the Appellant when it wishes, pursuant to the Trust arrangements, to the extent it has not already been drawn down) ensuring that all development coming forward on the same would be connected to and supplied by the CHP network (subject to capacity),

(c) obligations in respect of Category 3 land (which the Appellant does not control) which significantly increase the prospects of take-up by those who do control that land (eg, Greencore, a substantial heat/power user), and

(d) minimum 10% discounts for local users, which would undoubtedly be a welcome and attractive incentive for all, particularly businesses with high heat/power requirements.

5.49 At the present time, there are only 12 EfWs in the UK (out of 53) which operate in CHP mode[57]. The Appellant proposes to offer undertakings which would ensure that the scheme exports heat by the end of year 1 and at all times thereafter in amounts which put the Development well above national production averages. The UK average is a Heat/Electricity export ratio of 0.21/1(Caird paragraph 5.17). The minimum requirement to be imposed on the Development set at the level reflecting the likely heat requirements of the Derwent View consent, although not tied specifically to that scheme, would substantially exceed this ratio at 0.36/1 by year 1 (see Caird paragraph 5.18). None of Mr Caird's evidence on these matters was disputed during his XX.

5.50 The potential for exemplar-setting heat export is obvious. Notably:

(a) One occupier of the Industrial Park (Greencore) has heat requirements equating by itself to 1.9MW. Greencore has remained neutral in the planning process. Indeed, not a single occupier of the Industrial Park has objected to the appeal scheme. The Inspector can, further, note paragraph 2.24 of Mr Short's evidence referring to the "manner in which some of this objection has been articulated has had an impact upon the preparedness of some local businesses to engage with the Appellant and/or declare any form of support for the Development". Furthermore,

[57] CD 13.27 Tolvik report at page 7

paragraph 2.28 identifies that "From my own discussions with third parties, I am convinced there is considerable (silent) local support for the Development, particularly amongst local businesses that would directly benefit from it".

(b) The 5+ hectares of undeveloped plots surrounding the appeal site on 3 sides are obvious locations for businesses with high heat/power requirements.

(c) These factors, coupled with the 10% minimum discount, the extensive s106 obligations/restrictions in respect of other extensive land controlled by the Appellant within Category 2 and the incentives available for Category 3 land, make it highly probable that the appeal scheme will achieve substantial heat export, likely at levels without precedent elsewhere in the UK.

(d) The lack of committed customers is not unusual at this stage of a project[58], but it is particularly understandable here. The Inspector and Secretary of State will no doubt wish to focus on the real potential of the appeal scheme given the factors above.

5.51 Exporting heat to local users also materially contributes to reducing the appeal scheme's carbon footprint, as it displaces the need to create the same heat by burning natural gas. This is reflected in Mr Caird's Greenhouse Gas (GHG) assessment (appendix 1 to his main proof), and is evident too in the recent Zero Waste Scotland report (see Caird 1st rebuttal, figure 3, showing that HOP1, the sole Scottish EfW to export heat, has a carbon footprint equivalent to less than one sixth that of landfill). It also reflects the Housing Minister's comments in the March 2022 Hansard exchanges referenced below[59].

5.52 At Shields paragraphs 4.36-4.38, the Council (for the first time) queries the energy efficiency of the appeal scheme. The crude assessment put forward is misleading, as it takes no account of heat export. At minimum levels secured in the s106 obligation (0.992 MW) the appeal scheme outperforms Mr Shields' comparators (insofar as this can be assessed), and with one or two more confirmed heat customers, the scheme would be at the top of the UK range (see Caird's Rebuttal paragraphs 2.12-2.14). None of this was seriously challenged during Mr Caird's XX.

5.53 "Substantial additional positive weight" is to be attached to schemes incorporating CHP (per EN-1, §4.6.8, CD11.4). EN-1 is a material consideration for present purposes. That weight must be significantly enhanced where above average heat export is to be delivered in year 1. This has been emphasised in numerous subsequent Government policy documents. Notably:

a) Guide to the Debate[60]:

[58] CD 13.8 Swindon DL100, DL127 and CD13.9 Javelin Park DL120
[59] CD 13.7
[60] CD 13.26 page 10

"Maximising the efficiency of existing electricity only plants will delay reaching the balance point. However, the sustainable lifetime of an electricity only plant may still be limited, and extending it beyond that originally envisaged may not be beneficial. This could be addressed by removing more fossil material from the waste stream thus avoiding the use of waste with insufficient biogenic content to deliver environmental benefits. In addition, delivery of heat from energy from waste can be done at much higher efficiencies than electricity only. Plants that operate in CHP mode will therefore be able to continue to be superior to landfill, with longer plant lifetimes and using waste streams with a much wider range of biogenic content into the foreseeable future. A key consideration therefore is a need to focus on development of energy outputs beyond electricity, both for new plants and ensuring existing plants that are CHP ready become "CHP in use"."

b) NPPW[61]: "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".

c) BEIS's Clean Growth – Transforming Heating – Overview (Dec 2018) (CD11.9). At page 15, it states that 44% of UK energy goes on "heat", and primarily that comes from Natural Gas (fig 2.3 on page 15). UK performance against international comparisons is very poor (see fig 2.5 at page 19). The need to de-carbonise "heat" is a fundamental aspect of getting to NetZero.

d) Waste Management Plan for England (Jan 2021)[62]:

"To deliver net zero, virtually all heat will need to be decarbonised and heat networks will form a vital component of this. Energy from waste has a role to play in supplying this heat, but currently only around a quarter of energy from waste plants operate in combined heat and power mode, despite most being enabled to do so. We want to see this number increase. We are targeting energy from waste incinerators to produce heat for heat networks as this substantially reduces their emissions by making use of the otherwise wasted heat to displace gas boiler heating. This will support a shift from using high carbon gas generation to lower carbon generation in heat networks." (page 12)

"The Government supports efficient energy recovery from residual waste – energy from waste is generally the best management option for waste that cannot be reused or recycled, in terms of environmental impact and getting value from the waste as a resource. It plays an important role in diverting waste from landfill". (page 17)

"The Resources and Waste Strategy recognises that energy from waste is generally the best management option for waste that cannot be reused or recycled in terms of environmental impact and getting value from the

[61] CD 7.5 para 4, b/p 4
[62] CD 10.2

waste as a resource. It promotes the greater efficiency of energy from waste plants through utilisation of the heat generated in district heating networks or by industry, and by seeking an increase in the number of plants obtaining R1 recovery status. Any given technology is more beneficial if both heat and electricity can be recovered. Particular attention should therefore be given to the location of the plant to maximise opportunities for heat use". (page 45)

e) The most recent articulation of relevant Government policy on these matters was set out by the Housing Minister in response to Mr Holden MP's observations at the March 2022 debate in the House of Commons[63]:

"I can say that energy from waste is a proven technology and is established as the most common thermal treatment for residual waste – the kind that cannot otherwise be prevented, reused or recycled. … The Government also wants to drive greater efficiency of energy from waste plants by encouraging better use of the heat that they produce in local developments. That brings the additional benefit of helping to reduce the carbon emissions that arise from heating our homes. As Hon Members will know, heat networks form a strategically important part of the Government's plans to reduce carbon emissions and cut heating bills for customers, both domestic and commercial."

5.54 The appeal scheme is fully responsive to the Housing Minister's expression of long-standing Government policy on these issues.

5.55 Finally, generation of heat and electricity makes a valuable contribution to energy security and resilience, and contributes to weaning the country off fossil fuels. Such factors are repeatedly emphasised by Government (eg, EN-1 at paragraph 2.2.6), and recent events clearly explain why.

[3] Operating as a catalyst for further regenerative, economic and sustainability benefits, both within the Hownsgill Industrial Park itself and the wider local area

5.56 Related to the points above, the appeal scheme would, in all probability, be a catalyst for further employment development at the Hownsgill Industrial Park. This is the view of the experienced businessmen with "proven track records" directing Project Genesis (Mr Muter and Mr Short), and it should be accorded substantial weight. Neither the Council nor the Rule 6 party wished to challenge the proofs of Mr Muter or Mr Short in cross-examination. Their evidence was undisputed throughout the Inquiry.

5.57 Substantial undeveloped plots are available, and the appeal scheme, by upgrading the local power infrastructure and providing discounted electricity and heat, would contribute to their beneficial development, creating significant numbers of new local jobs. In these respects, it can additionally be noted that:

a) After 28 years, only 30% of the industrial park has been built out. This is not explained by the Appellant's recent ambitions for the appeal site (which

[63] CD 13.7 columns 301-302

is just a small part of what remains undeveloped). Nor is there the remotest evidence of incompetence. The proper explanation is that clean-up costs, power grid at capacity, Consett's location on the strategic road network, and industrial land values have conspired against further development to date. It is agreed that speculative development would not be prudent, and noteworthy that the only recent addition to the Industrial Park (Bessemer Court) required European and LEP funding to come forward.

b) By contrast, the incentives of discounted heat and power are likely to attract potential occupiers, especially those with heavy energy requirements. That is not just the Appellant's view, it is the view of experienced agents Youngs RPS (see their recent letter at Muter Appendix 9) that the opportunity for substantial savings on energy costs "is likely to attract more businesses to the Industrial Park who would have previously discounted properties in the area due to its location". There is no serious evidence to the contrary, and it was realistically conceded by Mr Shields in XX that this was at the very least a "credible probability".

5.58 Further, and as part of an integrated power network, the appeal scheme would enable the full implementation of the Solar Farm permission which is currently unviable due to the costs of upgrading the existing grid connection (as fully explained in Mr Short's unchallenged proof of evidence). The s106 obligation contains a promise not to operate the appeal scheme unless the Solar Farm has been built out. The Solar Farm is directly related to the appeal scheme because it is intended to form part of an integrated power network (with Solar Farm energy stored in batteries and used when the scheme is not operational / under maintenance, and when demand exceeds EfW supply (see Caird Rebuttal paragraph 2.5 – not challenged in XX). It is also a scheme on adjacent land, in the same effective control, which is enabled by the appeal scheme. In consequence, facilitating full build out of the Solar Farm is another clear benefit of the appeal scheme which it is permissible to take into account (indeed, which it would be unlawful to disregard). Self-evidently, the Solar Farm is a renewable scheme, fully in accordance with paragraphs 154-158 of the Framework, which has already been consented by the Council in the public interest.

5.59 The Solar Farm issue resulted in one of the Council's more extraordinary assertions. Mr Shields claimed "if there was a need for electricity within the vicinity of the site", the Solar Farm would have been completed. This conclusion is absurd in any event, but paid no regard to the viability gap which constrains the Solar Farm consent being further implemented at this time. Unfortunately, sweeping conclusions made on the basis of incomplete information have characterised the Council's response to this application, and paragraph 4.44 of Mr Shields' evidence is a prime example.

5.60 Overall, the appeal scheme will result in around a £45+ million construction investment in the local area, taking account of the appeal scheme itself, the heat/power distribution network, and the Solar Farm. Such contribution to economic development should be accorded "significant weight", in accordance with paragraph 81 of the Framework, as Mr Shields accepted in XX.

5.61 A figure cannot precisely be put on the value of the catalyst effect in attracting new businesses to the industrial park, but if occupiers are attracted to the 3 undeveloped plots adjacent to the appeal scheme, self-evidently, the economic benefits which will flow in terms of construction investment, job creation and subsequent GVA contribution in the local area will be colossal.

5.62 An additional sustainability benefit proposed (via the s106 obligation) is to take steps to bring forward an EV rapid-charging facility on adjacent land (within the control of the Appellant), so that electricity from the appeal scheme can encourage Consett residents and Industrial Park occupiers to switch from petrol/diesel fuelled vehicles. This is entirely in accordance with Government policy to decarbonise the transport network as part of the road-map towards Net Zero.

[4] Alleviation of fuel poverty

5.63 As explained in the evidence of Mr Muter[64], the Appellant proposes (secured in the s106 obligation) that a fund be created from receipts of the appeal scheme (estimated to be around £120,000pa) to alleviate local fuel poverty.

5.64 Unfortunately, substantial numbers of people, both nationally and regionally, are in fuel poverty. The former local MP (Ms. Glass) confirmed to the Inquiry that there is fuel poverty in the local area. This is confirmed by the table at Parkes paragraph 2.34 (page 8) setting out the proportions of Consett residents living in areas within the top 10% and top 30% of most deprived areas nationally. During his XX, Mr Parkes described the current situation in the Consett area as reflecting "endemic" fuel poverty. The likely upward trajectory of fuel bills for all is a matter of public record, and it is plain which members of the population will be most affected by such price increases.

5.65 The matter of the compliance of the s106 obligations with the CIL Regulations is addressed below. For present purposes, it suffices to record that Mr Shields accepted in XX that substantial weight should be accorded to this benefit, if CIL compliant.

[5] Delivering substantial reductions of CO_2 emissions, as against the landfill baseline

5.66 The Appellant's "likely central" case (per Mr Caird) envisages lifetime emission savings of over 532,000 tonnes of CO_2. The Council has not made its own greenhouse gas (GHG) assessment, nor did it seek to mount any serious challenge to Mr Caird's GHG assessment. During his XX, Mr Shields confirmed that the Council accepts the validity of Mr Caird's "likely central" case, the reasonableness of determining this appeal on the basis of it, and that significant positive weight falls to be accorded to the substantial quantum of CO_2 savings.

5.67 The Rule 6 party also failed to put forward its own GHG assessment, preferring instead to deploy UKWIN personnel to question minor technical issues relating to peripheral aspects of Mr Caird's assessment. UKWIN's critique ignored inconvenient matters such as the recent confirmations of Government policy repeating the preference for EfW over landfill (especially when exporting heat),

[64] CD 12.11 PoE Mr Muter para 4.15 and onwards

and indeed ignored the effect of heat export and Solar Farm enabling on the GHG calculations. It can also be noted that, while UKWIN was content to cross-examine Mr Caird, no-one from UKWIN put themselves forward to be cross-examined by the Appellant, either generally or in respect of a GHG assessment for the appeal scheme. In all these circumstances, M. Caird's "likely central" case is a robust assessment, and there is no good reason not to accept its conclusions.

5.68 In any event, Mr Caird's analysis accords entirely with the Government's recent confirmation that, even in electricity-only mode, energy from waste remains a better option than landfill, and all the more so where heat is exported. Thus, in response to Mr Holden MP, the Minister for Housing stated[65]:

"In 2019, the incineration of municipal solid waste in energy from waste facilities accounted for more than 6 megatonnes of CO_2 equivalent greenhouse gas emissions, but, according to our best estimates, energy from waste – even in electricity only mode – is still a better option for processing municipal waste than landfill in terms of greenhouse gas emissions. The Government also wants to drive greater efficiency of energy from waste plants by encouraging better use of the heat that they produce in local developments. That brings the additional benefit of helping to reduce the carbon emissions that arise from heating our homes. As Hon Members will know, heat networks form a strategically important part of the Government's plans to reduce carbon and cut heating bills for customers, both domestic and commercial."

5.69 Further confirmation can be found in the Zero Waste Scotland report discussed at Caird Rebuttal paragraph 2.21. The only Scottish EfW exporting heat has a carbon footprint around 1/6th that of landfill.

5.70 It can further be noted that with heat export of 3.37MW (ie, also to cover Greencore as well as proposed/consented development at Project Genesis Limited masterplan areas G and K), lifetime emission savings rise to over 634,000 tonnes of CO_2. This, of course, takes no account of the 3 substantial undeveloped plots adjacent to the appeal site which the Appellant fully expects to be acquired and developed by occupiers with substantial heat/power requirements, for reasons explained above. Noting the 11.8MW heat export capacity of the appeal scheme, even if existing industrial park occupiers (and Derwent View / the Knitsley housing proposal) all connected into the EfW's heat network, there would still (as Mr Caird explained during EiC – evidence which, again, was not challenged during XX) be substantial "headroom" for future occupiers of the 3 undeveloped plots adjacent to the appeal site.

5.71 CO_2 savings also increase substantially if carbon capture and storage (into which the Government is investing eye-watering sums, including £1 billion to facilitate availability of a Carbon Capture and Storage (CCS) network serving the North East, via a pipeline from Teesside to a suitable location in the North Sea, during this decade becomes reasonably available. Adding the effects of CCS to the "likely central" case, lifetime emission savings rise to over 1,117,000 tonnes of CO_2. In this regard, it can further be noted that the appeal scheme is CCS-compatible (see Caird main proof, and agreed by

[65] CD 13.7 columns 301-302

Mr Shields in XX) and the Appellant is committed, via the s106 obligation, to bringing it forward once reasonably available and commercially viable. As Mr Caird explained, CCS is not practical in respect of landfills.

5.74 The appeal scheme is therefore in full accordance with the "Climate Change" chapter of the Framework. Specifically:

a) Paragraph 152 provides that the planning system should "shape places in ways that contribute to radical reductions in greenhouse gas emissions" and "support renewable and low carbon energy and associated infrastructure".

b) Paragraph 154(b) provides that "New development should be planned for in ways that … can help to reduce greenhouse gas emissions, such as through its location, orientation and design". These objectives are met here, because the appeal scheme will reduce GHG emissions compared to the relevant baseline, and the "location" of the Scheme contributes to both (i) bringing forward the Solar Farm, and (ii) development of a District Heat Network, in particular for further occupiers of immediately adjacent land.

c) Paragraph 155(a) encourages "the use and supply of renewable and low carbon energy and heat" while "ensuring that adverse impacts are addressed satisfactorily". Landscape/visual matters are addressed elsewhere. The appeal scheme's heat/power is low carbon and part renewable. This is agreed by UKWIN (see DL115 of the Swindon DL)[66]. Mr Caird's GHG assessment demonstrates how the appeal scheme is low carbon by reference to a landfill baseline. Further, the EfW is part renewable, in respect of the biomass element (see Framework Glossary page 71), as is confirmed in EN-1 (CD 11.4, at paragraph 3.4.3 on page 27): "Energy from Waste (EFW) … The energy produced from the biomass fraction of waste is renewable …". The Solar Farm which will be enabled is itself fully renewable.

d) Paragraph 155(c) advises that we should "identify opportunities for development to draw its energy supply from decentralised, renewable or low carbon energy supply systems and for co-locating potential heat customers and suppliers". As exhaustively explained above, that is exactly what the appeal scheme proposes.

e) Paragraph 158 advises that decision-makers should "recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions", and should "approve the application if its impacts are, or can be made, acceptable".

f) The above paragraphs are in effect the "further and better particulars" of paragraph 8c of the Framework which incorporates as part of the "environmental objective", a "move to a low carbon economy".

[66] CD 13.8

5.75 Taken together, this section sets out what, on any fair view, are significant planning benefits of the appeal scheme.

[6] Delivering biodiversity net gain substantially in excess of any present or likely future requirements

5.76 Mr Beswick's Appendix G explains how there will be an increase in habitat units of 16% and in hedgerow units of 100%, principally arising from the planting of around 86 new trees and over 4,700 new shrubs, in accordance with the most recent landscape mitigation plans. The figures only relate to the landscape mitigation proposed around the appeal site (see the plans in Beswick Appendix C). There will be substantial additional Biodiversity Net Gain (BNG) related to the new woodland planting on land adjacent to the C2C proposed to be covered by the additional condition discussed and agreed with Mr Gray in XX. The foregoing accords with the Framework's expectations for securing "measurable net gains for biodiversity" (paragraph 79(b)), and will be substantially in excess of the 10% gain soon coming into force pursuant to the Environment Act 2021. The provision of BNG extending beyond current and likely future requirements is a matter to which significant weight has been attached in other planning decisions (see for example the Chichester decision[67], which itself referenced an earlier Decision Letter to like effect). There is no reason why a similar approach should not be taken here.

Summary

5.77 Cumulatively, the appeal scheme offers very substantial and weighty benefits. The Council is not correct to claim that the public benefits of the scheme are "lacking substance"[68].

Amenity and other Development Management Issues

5.78 In relation to amenity (and other issues, such as flood risk and highways impact), the Appellant and Council have agreed the position, as set out in the Planning SoCG (paragraphs 7.24 onwards). The relevant matters are agreed to have been satisfactorily addressed in the application material, and to be capable of control through suitable conditions and other regimes (ie, the environmental permitting regime which will be supervised by the EA).

5.79 The Inspector will have noted that none of Mr Caird's relevant assessments or conclusions regarding air quality matters, which are the basis for some of the foregoing agreements with the Council, were the subject of a single question in XX from the Rule 6 party.

Section 106 Obligation

5.80 The Council has sought to suggest that some of the provisions of the s106 obligation are not CIL compliant. This is not agreed. The Council has misapplied the various provisions of CIL Regulation 122, in particular

[67] CD 13.13, DL115
[68] CD 3.4 Mr Shields PoE para 4.15

regulation 122(2)(a) (the necessity test). This has wrongly led the Council to seek to have some of the benefits of the appeal scheme discounted.

5.81 CIL Regulation 122 imposes 3 conditions for a planning obligation to be capable of constituting a reason for granting permission which are that the obligation in question be: (i) "directly related to the development", (ii) "fairly and reasonably related in scale and kind to the development", and (iii) "necessary to make the development acceptable in planning terms". All three tests import matters of planning judgment for the decision-maker. The above is not the order in which the 3 conditions are stated in CIL Reregulation 122, but it is the most convenient order in which to consider the questions arising. This is because the "direct relationship" and fairly/reasonably related in scale and kind test ("the proportionality test") are the principal grounds on which attempts to "buy" or "sell" planning permission through unconnected proposals being offered or demanded will be filtered out.

5.82 The necessity test is best considered at the end of addressing each disputed item because the issue it raises is whether, as a matter of planning judgment, the proposed benefit(s) of the scheme outweigh any harm/impacts to the point where this makes the development acceptable. Of course, in some cases, a planning decision-maker will be able to conclude that a proposal is acceptable without a particular benefit (for example because the relevant benefit adds nothing material to the considerations weighing in favour of the scheme), and in other cases the planning decision-maker will be able to conclude that, even with the benefit in question weighed in the balance, the proposal remains unacceptable.

5.83 But in many more complex cases, the sensible approach as a matter of planning judgment is to assess whether the proposed benefits of the scheme (discounting, of course, any proposed benefits which have fallen at the "direct relationship" or "proportionality" hurdles), taken together, present a basis for concluding that benefits outweigh harm/impact. If the basket of relevant benefits outweigh harm/impact and thereby indicate that permission should be granted, that is the moment when it can be judged that they are necessary to make the development acceptable.

5.84 Thus, in *Working Title Films v Westminster City Council* [2017] JPL 173, Gilbart J stated at paragraph 25, in relation to a necessity argument directed at whether provision of a community hall was needed to make a residential proposal acceptable:

> "Turning to (a), the question of whether it is necessary, the terms of the officer's report show that he was approaching it on the basis that the community benefit realised by provision of the Community Hall compensated for the fact that there would be an underprovision of affordable housing. In my judgement that was a planning judgement which the Council was entitled to make. Mr Booth QC sought to argue that relying on the fact of those benefits to compensate for the failure to achieve the higher percentage of affordable housing was a breach of Regulation 122. I disagree. Matters of weight and of planning judgement are for the decision maker, and the officer and his Council were perfectly entitled to think that the gain in one area made

up for the loss in another. The exercise of judgement such as this is what has to happen when local planning authorities have to deal with planning applications in the real world. In the sense used in Regulation 122 , this s106 obligation was necessary, because it provided a countervailing benefit to set against the disadvantage of the under provision of affordable housing."

5.85 The "necessity" test is thus passed by a planning judgment that "a gain in one area made up for the loss in another". Material contribution to a favourable overall planning judgment that benefits outweigh harm is all that the "necessity" test, properly understood, requires in respect of planning obligations that have passed the direct relationship and proportionality tests.

5.86 The foregoing approach was acknowledged in the Council's 17 August 2022 email to the Appellant[69], which confirmed:

"We recognise that this is a matter for the Inspector/SoS to take a view on and is essentially a matter of planning judgement such that the issue of necessity will reflect the outcome of that judgement."

Agreed matters

5.87 For the reasons set out in the Council's CIL schedule, the parties agree that the heat/power network obligations relating to the Category 1 and Category 2 land, and the enabling of the Solar Farm, are CIL-compliant, and so fall to be taken into account in the planning balance.

5.88 The paragraphs that follow address the areas where the Council seeks to dispute CIL-compliance, and do so for the Inspector's convenience in the order of the CIL schedule produced by the Council.

Heat/Power network – Category 3 land

5.89 It is accepted that the Appellant does not control access to the Category 3 land so as to be able to insist that, for example Greencore should receive heat/power from the appeal scheme. The Appellant has never sought to suggest otherwise, but has crafted obligations which go as far as they reasonably can at this stage with a view to maximising the prospects that heat/power will be distributed to the Category 3 land. These include the making of binding offers to supply heat/power at a minimum 10% discount, and to facilitate a physical connection into the Category 3 land/buildings (both existing and future) at the Appellant's cost. The following points can be made in respect of the CIL compliance of the Appellant's proposed undertakings in relation to the Category 3 land:

a) The obligations in question plainly pass the "direct relationship" and "proportionality" tests. The Council does not seek to suggest the contrary. It is therefore common ground that they have a sufficient connection with the appeal scheme and are proportionate. The obligations in question serve the clear planning purpose of seeking to maximise the prospects and quantum of heat/power exports from the appeal scheme.

[69] ID31

b) The Council's objection mis-understands and mis-applies the "necessity" test. For reasons explained above, while the planning decision-maker could determine that the appeal scheme is acceptable without the relevant promises, or unacceptable with them, it would be an entirely proper exercise of planning judgment to strike the ultimate planning balance taking account of this and other relevant/directly connected benefits as outweighing any impact/harm found.

c) The Council's claimed "necessity" argument is, on analysis, nothing more than an argument that less weight should be attached to obligations which, by their nature, cannot guarantee that the Category 3 land will take up the relevant offers. But that is not a necessity objection. Nor is it an argument that the obligations in question are of no benefit at all so as not to be capable of weighing to any material extent in the planning balance. No doubt the fact that there is no absolute guarantee of Category 3 uptake – just a high probability, which the obligations in question make all the more likely – can be appropriately reflected in the manner in which these obligations are weighed in the planning balance.

d) Moreover, the Council's stance can hardly be one that the present occupiers of the Category 3 land would appreciate. The s106 obligation ensures they receive a binding offer with a minimum 10% discount and connection charges paid by the Appellant. If the obligations in question are found by the Inspector/Secretary of State not to be CIL compliant, they fall away pursuant to clause 6.11. And if, therefore, permission were granted, the Appellant would be entitled to negotiate for terms materially less favourable to the Category 3 land-owners/occupiers.

e) In any event, the Appellant would no doubt have been criticised by the Council had it refrained from offering the relevant Category 3 land obligations. No doubt it would have been said that the Appellant, even if it could not insist on the making of connections into the Category 3 land, should provide assurance that it will go as far as it reasonably can in order to maximise the prospects of uptake of heat/power on the Category 3 land. On this basis, the obligations in question are necessary, even on the narrow approach adopted by the Council.

f) Finally, even if the relevant promises are found not to be CIL compliant, while the consequence would be that the proposed binding offers etc. will not be capable of being taken into account, this will not change the fact that there are users on the Category 3 land (especially, Greencore) which are high users of heat/power and who may therefore be extremely interested in bargaining with the Appellant for supply and some kind of discount. The wholly credible probability that such mutually beneficial deals will be struck is itself a manifestly relevant consideration, and plainly falls to be taken into account with or without the s106 obligation.

EV charging

5.90 Schedule 5 safeguards land between the appeal site and the access road for an EV charging facility powered by the appeal scheme and compels a planning

permission for the facility in question to be applied for and (once granted) implemented. The Council's "necessity" objection is again misconceived.

5.91 Again, it is common ground that the obligations in question are directly related to the appeal scheme (given the source of electricity) and proportionate. They are also plainly directed at a desirable planning outcome, supported by National and Development Plan policy, namely encouraging the up-take of electric vehicles.

5.92 As above, while the planning decision-maker could determine that the appeal scheme is acceptable without the relevant promises, or unacceptable with them, it would be an entirely proper exercise of planning judgment to strike the ultimate planning balance taking account of this and the full basket of other relevant/directly connected benefits as outweighing any impact/harm found.

5.93 The Council's objection really goes to the weight to be afforded to this particular directly connected benefit. Unless it were plain that no weight at all could be attached to the benefit in question (in which case, it would be correct that it could not meaningfully contribute to benefits outweighing harm), the Council's point could not constitute an in principle objection on lawfulness grounds. The Council does not in fact go this far.

5.94 And more to the point, the Council overstates the alleged "considerable uncertainties" associated with whether the EV charging facility would secure planning permission. The Council has not articulated at the Inquiry (nor in its CIL statement) a single coherent reason as to why there might be any credible doubt, or some difficult development management issue, relating to the prospects of securing the consent in question. It is not enough for the Council to advert to nothing beyond a need not to fetter future decision-making. The real question for the Inspector and Secretary of State is the degree of weight to attach to the EV charging obligations in the planning balance, and while it would not be inappropriate to note that no planning permission has yet been sought, it is hard to see why the weight to attach to the benefit in question should be materially reduced in the absence of any coherent concern from the Council as to some basis on which the obviously highly desirable EV facility might not secure planning consent.

Carbon Capture

5.95 It is agreed with the Council (per the evidence of Mr .Caird, with which Mr Shields agreed in XX) that the appeal scheme is CCS-compatible. Schedule 6 seeks to introduce obligations on the Appellant to take all reasonable steps to introduce CCS to the appeal scheme once it is reasonably available (as defined in the s106 obligation). As to the Council's purported "necessity" objection:

a) Again, the starting-point is that these matters are agreed to pass the "direct relationship" and "proportionality" tests. The obligations in question serve the obvious planning purpose of potentially contributing to the reduction of carbon emissions into the atmosphere.

b) As above, while the planning decision-maker could determine that the appeal scheme is acceptable without the relevant promises, or unacceptable with them, it would be an entirely proper exercise of planning judgment to strike the ultimate planning balance taking account of this and other relevant/directly connected benefits as outweighing any impact/harm found.

c) But even judged through the narrow lens of the Council's approach, these provisions need to be included. The Government is presently committing colossal sums to making CCS a reality, including via a pipeline from Teesside. It would be extremely surprising for the appeal scheme to be consented, to commence operating just as or just before CCS became a reality nearby, but for the operators of the appeal scheme to be able to say "too bad, we don't have to do anything about it, as the Council successfully objected on CIL compliance grounds to a promise to introduce it". Such a chain of events is an entirely credible possibility should the appeal scheme find favour, and it is submitted that this result would bring the planning system into disrepute. The public would surely expect that reasonable obligations to introduce CCS at the appeal scheme were put forward. The Council's position in the CIL statement is also at odds with the Low Carbon Economy Team's initial consultation response (CD5.22), pursuant to which it was their expectation that the appeal scheme should do what it reasonably could in relation to CCS. As set out in the Appellant's evidence, it is not presently possible to operate CCS at the appeal scheme (or anywhere else in the UK) because there is nowhere to store the captured CO_2. The Appellant has therefore proposed the next best alternative in present circumstances.

d) Moreover, on analysis, the Council's point is again not a necessity one, but one seeking to reduce the weight to be attributed to this benefit. It is accepted that it is not certain whether CCS will become a reality, but with the Government committed (as a matter of policy) to promoting such a scheme off Teesside, this is not a matter which is so speculative that it can be wholly discounted. Further, while the Council's CIL statement comments on the possible need to secure planning consent to install some or all of the equipment in question, in fact nothing in Mr Emms Appendix 3 has been disputed by the Council, whether generally at the Inquiry or specifically during Mr Emms' XX. It follows that there is undisputed evidence before the Inquiry that (a) CCS technology is likely capable of installation via permitted development rights, but that (b) if planning consent is required, there is no apparent reason why it would not be forthcoming.

e) This is a further example of the Council objecting on spurious CIL-grounds to a manifest directly related benefit of the appeal scheme, which the Council would prefer to keep out of the planning balance.

Local Feedstock (schedule 7)

5.96 There is again no objection from the Council on "direct relationship" or "proportionality" grounds. The obligation in question provides further

confidence that the proximity principle will be adhered to, as far as reasonably possible.

5.97 Not for the first time, the Council's point is really that it thinks reduced weight should be accorded the benefit in question because the Appellant cannot guarantee where the local WTSs that will supply to it will have sourced their RDF from. While it is theoretically correct that this cannot be guaranteed, there is no good reason, and certainly no evidence, why local WTSs would be likely to source their own materials from far and wide. Indeed, in XX, Mr Shields accepted that he did not consider it likely that local WTSs would source their waste "from Cornwall or Kent". For these reasons, this is not a matter to which no weight could be afforded in the balance, and accordingly the Appellant commends the approach advocated above that this directly related benefit (and all others) should be weighed in the ultimate planning balance against any impacts, unless the Inspector/Secretary of State are able to say that the appeal scheme is demonstrated to be acceptable without this benefit.

Alleviation of Local Fuel Poverty

5.98 Mr Shields agreed in XX that this would be a "significant" benefit, if CIL compliant, and it is unfortunately plain that there is "endemic" fuel poverty in the local area. The Council's objection to Schedule 9 of the s106 obligation is entirely inconsistent with the approach taken in paragraph 5.348 of the Local Plan[70] where the Council confirms it will "consider the community benefits attached to developments, such as the provision of … community funds and cheaper local electricity rates to alleviate fuel poverty where the community fund or other benefits are directly related to the development." This text supports policy 33 on renewable and low carbon energy, which is plainly relevant given the appeal scheme is part renewable and low carbon (and the enabled Solar Farm is fully renewable). The approach in paragraph 5.348 is supportive of alleviating fuel poverty as an adjunct to an energy scheme, notwithstanding that the development in question will not have "created or exacerbated" it (per Council's CIL statement), and notwithstanding that the alleviation is achieved via (inter alia) "community funds" which, necessarily, will not involve a direct physical connection between the scheme in question and the home of the beneficiary.

5.99 On the CIL issues:

a) Direct Relationship. The Schedule 9 scheme has a direct relationship/"sufficient connection" (in the language of relevant case-law) with the appeal scheme because it seeks to provide benefits in the form of discounts to heat/power costs to a certain category of local persons (those in fuel poverty) in respect of whose homes a direct physical connection is not achievable. Qualifying persons are, in terms of enjoying the benefits of discounted heat/power, treated "as if" they have a direct physical connection with the appeal scheme. As a matter of planning judgment,

[70] CD 7.1 page 168

there is no good reason why this "virtual" equivalence is not a sufficient connection for purposes of the "direct relationship" test.

b) Proportionality. Contrary to the Council's desire for a sum certain, the fund will reflect actual electricity generated at the appeal scheme (hence the charge per kW), further establishing the "sufficient connection" test. The sum to be generated (estimated by the Appellant at around £120k pa) cannot remotely be suggested to be disproportionate so as to amount to some illicit attempt to "buy" a planning permission. The obligation is based on 0.5p per kW of electricity exported, which is around 2% of the current price of electricity in the North East (and takes no account of heat export from the appeal scheme). No further science is required to justify the basis on which the 0.5p per kW is calculated. It would have been equally compliant with the proportionality test for the Appellant to have identified a slightly higher or lower amount. A total estimated fund of £120k pa gets nowhere near the sort of territory where the fund is disproportionate given the size of the problem or the scale of the likely turnover of the appeal scheme when operational.

c) Necessity. As above, while it is accepted that if the appeal scheme were deemed acceptable without Schedule 9, it would be open to the planning decision-maker to grant consent without taking these benefits into account, it does not follow that the planning decision-maker is constrained to adopt that approach. It would be an entirely lawful approach to consider the basket of relevant and directly related benefits set out in these Submissions when assessing (as part of the overall planning balance) whether advantages outweigh harm/impact, separating out only any claimed benefits which are found to carry no weight at all.

Development Plan Compliance, Planning Balance and Conclusion

5.100 For the reasons set out above, the appeal scheme accords with the Local Plan (assessed as a whole, pursuant to the approach set out by Sullivan J in R v Rochdale MBC ex p Milne, paragraphs 48-50) and is thus fully in line with section 38(6) of the 2004 Act. It is also consistent with relevant National policy, which supports the according of substantial weight to the various benefits of the appeal scheme enumerated above. Pursuant to s38(6) of the 2004 Act, and paragraph 11(c) of the Framework, it should be approved "without delay". Balancing all the matters above, this is a clear case for granting planning permission. The very weighty public benefits of the appeal scheme demonstrably outweigh any impacts.

5.101 The Inspector has invited the parties to address the counterfactual of planning permission being refused. In this scenario:

a) The opportunity to divert up to 60,000 tpa of relevant residual waste from Landfill will be lost.

b) The opportunity to utilize the electricity and heat which the appeal scheme will generate, and to re-use the 1,000tpa of bottom ash/metals, will be lost.

c) The opportunity to bring forward an exemplar scheme in terms of the quantum of heat exported to an immediately adjacent district heat network will be lost.

d) The opportunity to save very substantial CO_2 emissions will be lost, all the more if CCS becomes reasonably available.

e) Derwent View and (if consented) the Knitsley Lane housing scheme (areas G and K of the Project Genesis Limited masterplan) will come forward, without establishment of a connection with a local energy plant, and the opportunity ever to do so will be lost.

f) The confident expectation of the Appellant (endorsed by Youngs RPS) that the appeal scheme, in particular the discounted heat and power which it makes available, will act as a catalyst bringing substantial new employment schemes to the undeveloped plots at the Hownsgill Industrial Park will not be realized. The uncertain future of the undeveloped plots will continue.

g) This opportunity to enable full implementation of the Solar Farm will be lost.

h) The Solar Farm and these undeveloped plots may come forward if new occupier(s) with substantial requirements are found – as the Appellant would continue working towards – but for now the uncertainty will continue.

i) The opportunity to invest around £45+ million in construction costs in the local area will be lost.

j) The opportunity to bring an extensive EV rapid-charging facility to Consett, encouraging residents/occupiers away from petrol/diesel-fuelled vehicles will be lost.

k) The opportunity to make a meaningful contribution to the alleviation of fuel poverty in the local area will be lost.

l) The opportunity to bring forward significant BNG will be lost.

5.102 Accordingly, the Inspector is respectfully invited to recommend that the appeal be allowed, and the Secretary of State is respectfully invited to grant planning permission.

6. THE CASE FOR DURHAM COUNTY COUNCIL

6.1 The Council called three witnesses: Mr Gray (landscape and visual impact)[71], Mr Croft (heritage)[72] and Mr Shields (planning policy and related planning

[71] CD 12.24
[72] CD 12.21

matters)[73]. The material points of the Council's case are covered in closing submissions, as set out below[74].

Introduction

6.2 There is not a dispute over the fact that the application is to be determined in accordance with Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004. The effect of these statutory provisions is to require the determination of the appeal application to be in accordance with the Development Plan unless material considerations indicate otherwise.

6.3 The Statutory Development Plan consists of:

a) the County Durham Waste Local Plan (April 2005) Saved Policies; and

b) the County Durham Plan (adopted 2020).

6.4 The policies of the Statutory Development Plan are up-to-date.

6.5 The appeal application must be determined on a "flat" balance. There would be no justification for considering that the "tilted balance" in Paragraph 11(d) of the Framework is engaged.

6.6 Consistent with the main issues identified by the Inspector at the CMC this Closing addresses:

a) Landscape case;

b) Heritage case;

c) Application of planning policies and the planning balance; including the extent to which the obligations proposed by the Appellant are CIL Regulations compliant.

(a) Landscape Case

Introduction

6.7 It must be clear that it is no part of the Appellant's analysis to put forward a case that an EfW facility has any peculiar locational requirements. In this sense, it is distinguishable from the locational and operational requirements of other vertical features in the landscape such as wind turbines or transmission towers. In truth, the locational requirements for an EfW plant such as they appear are indistinguishable from employment uses such as B2 and B8[75].

Extent of the Proposal

6.8 The dimensions of the components of the EfW facility have been explored in evidence. The energy plant has a proposed height of 22m, the water tower at 25m and the chimneystack would have a height of 50m. The plant is anticipated to process up to 60,000 tonnes per annum of Refuse Derived Fuel ("RDF") which is produced from commercial and industrial waste.

[73] CD 12.34
[74] ID32
[75] PB Xx.

6.9 The planning application was accompanied by an Environmental Statement[76]. The requirements for ES development are summarised in Table 2.1 of CD 3.2 of "indirect effects". There is also a requirement for an applicant to consider reasonable alternatives studied by the developer[77]. It is clear from the evidence of Mr Beswick that he was not called upon to consider any alternative applications by the developer. It formed no part of the analysis anywhere in the ES to address reasonable alternatives considered by the developer.

6.10 In addition, the Landscape and Visual Impact Assessment (LVIA)[78] did not refer to an emissions plume emanating from the stack. The issue was raised by the LPA in terms of landscape impact in the SoC[79]. The extent to which it is addressed is provided in the evidence of Mr Beswick[80]. Conspicuous by its absence is any assessment of the extent of the plume.

6.11 The failure to consider emissions plumes is inconsistent with the Overarching National Policy Statement for Energy (EN-1)[81]. This provides:

"Amongst the features of energy infrastructure which are common to a number of different technologies, cooling towers and exhaust stacks and their plumes have the most obvious impacts on landscape and visual amenity for thermal combustion generating stations. Visual impacts may be not just the physical structures but also visible steam plumes from cooling towers."

6.12 It states:

"The IPC should ensure applicants have taken into account the landscape and visual impacts of visible plumes from chimneystacks and/or the cooling assembly."[82]

6.13 It is clear that the landscape and visual impacts of visible plumes from the stack in this particular case have not been considered in the assessment of the Appellant. The explanation that this would be infrequent carries little weight in circumstances where there is a clear exhortation that an assessment is provided and this will necessarily involve an assessment of the degree to which it will be expected to occur.

6.14 Insofar as there is no assessment of the impact on landscape and visual impact in this particular case associated with a plume from the chimney stacks, the analysis contained in the LVIA and the evidence of Mr Beswick understates the true position.

6.15 There is a further matter that requires to be taken into account that also demonstrates that the impact of the proposal, when considered in its totality, has not been addressed by the Appellant.

6.16 This matter relates to the solar farm. The Council acknowledge that permission has been granted for a solar farm and, more particularly, the permission has

[76] CD 3.2 (and following by subject chapters)
[77] CD 3.6, para.6.1.1.
[78] CD 3.7.
[79] CD 12.5 (paragraph 4.1)
[80] CD 12.8, p.36 et seq.
[81] CD 11.4.
[82] CD 11.4, para.5.9.20.

been implemented and therefore remains extant - as a matter of law. However, the benefits that the Appellant puts forward in this particular case are that the EfW will facilitate the provision of the solar farm.

6.17 At the time of the application, it was not stated that the solar farm was not viable and would be unlikely to be brought into use without subsidy[83].

6.18 In short, the Appellant cannot put into the planning balance the benefits of the delivery of the solar farm without acknowledging any disbenefits. It is clear from the evidence of Mr Short[84] that the solar farm permission would not be implemented further without subsidy. As a consequence, some of the evidence has to be seen in the context that, but for the development proposal subsidising the delivery of the solar farm, any landscape impact would be in the context of the total proposal[85]. The Appellant cannot have the benefit of delivering the solar farm development without the burden.

Landscape Policy Framework

6.19 The County Durham Plan[86] was adopted in 2020. A number of policies address the consideration of landscape and visual impact.

6.20 Policy 29 "Sustainable Design"[87] was criticised on the basis that it is inconsistent with the Framework[88]. Policy 29(a) requires all development to contribute positively to an area's character, identity, heritage significance, townscape and landscape features, helping to create and reinforce locally distinctive and sustainable communities. Policy 29(g) requires landscape proposals to respond creatively to topography and to existing features of landscape and heritage interest and wildlife habitats. These are consistent with the Framework.

6.21 The policy that is relevant to the North Pennines AONB is Policy 38[89]. That policy provides:

"Major developments will only be permitted in the AONB in exceptional circumstances and where it can be demonstrated to be in the public interest in accordance with national policy. Any other development in or affecting the AONB will only be permitted where it is not, individually or cumulatively, harmful to the special qualities or statutory purposes."

6.22 The key point from the AONB policy here is the determination of whether the proposal would harm the special qualities of the AONB and the extent of such harm.

6.23 Policy 39[90] deals specifically with landscape. The policy provides that proposals for new development will be permitted where they would not cause unacceptable harm to the character, quality or distinctiveness of the landscape

[83] HE Xx
[84] CD 12.12.2, paras.4.2-4.12 at p.16.
[85] See for example VP7, PB's evidence CD 12.8.2, p.25.
[86] CD 7.1.
[87] CD 7.1, p.152.
[88] PB Xx.
[89] CD 7.1, p.188.
[90] CD 7.1, p.190.

or to important features or views. The policy also designates and identifies Areas of Higher Landscape Value ("AHLV"). The policy provides that development affecting AHLV:

"… will only be permitted where it conserves, and where appropriate enhances, the special qualities of the landscape, unless the benefits of the development in that location clearly outweigh the harm."

6.24 The approach to the designation of AHLVs is consistent with the recognition that all landscapes matter and their sensitivity to development depends upon their character[91]. The Written Justification associated with Policy 39 provides:

"This is reflected in Framework which advises that policy should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes and recognising the intrinsic character and beauty of the countryside."

6.25 The Council emphasise that the designated AHLVs in the CDP are up-to-date and consistent with the Framework. The relevant policies were considered in the report of the Examining Inspector of the CDP. His report[92] considered the AHLV policy[93] at paragraphs 300 and 301 of that report. Paragraph 300 recognises that the aim of the policy was to give particular protection to AHLVs identified in the Policies Map and outside the AONB which were:

"… of particular value in terms of their condition, scenic quality, rarity, representativeness, conservation interests, recreational value, perceptual qualities and/or historical associations."

6.26 The Inspector recognised that the definition of such areas was based on a systematic study carried out in accordance with relevant national guidance. He added:

"… the policy provides an appropriate and proportionate level of protection to the areas of the County with the highest landscape value outside the AONB and provides clarity on how development proposals in such areas should be assessed."

6.27 The policy as it appears in the adopted version of the CDP follows the wording of a Main Modification discussed at the Examination in Public.

6.28 The formulation of the policies and the application of those policies to the facts of this particular case should accord with the exhortation contained at Paragraph 174 of the Framework. This requires that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes and recognising the intrinsic character and beauty of the countryside. In this context, the AONB is unquestionably a valued landscape[94]. The AHLV should also be accorded weight on the basis that the review conducted had found:

[91] PB Xx and CD 7.1, para.5.411.
[92] CD 7.4.
[93] Then numbered Policy 40.
[94] PB Xx.

"… particularly valued attributes which would benefit from additional protection."[95]

Landscape Baseline[96]

6.29 Mr Gray broadly agrees with the assessment in the LVIA[97] in terms of the baseline. There are other matters that fold into his assessment including:

- The presence and importance of the Public Rights of Way to the north-west of the site that follows the Consett and Sunderland Railway Path that is part of the Sustrans Coast to Coast long distance path/cycleway;
- The AONB that lies 2.3 km to the south-west of the proposal;
- The National Character Areas.

6.30 Mr Gray considers it is also useful to address the applicable descriptions in the more local Durham Landscape Character Assessment (2008)[98] in the context of the National Character Areas (NCAs).

Baseline

6.31 As part of the baseline, it is appropriate to note that the restoration of land is now complete and has been effective and successful. Mr Gray points out (and was not challenged on the point) that the reclaimed site forms an attractive and mature landscape to the west of the site giving a wooded backdrop in views towards the settlement. In the NCA[99] the site lies within the Durham Coalfield Pennine Fringe where the statement of Environmental Opportunity 5 seeks to ensure that, where there is new development, it retains tranquil areas, is appropriate in a changing climate, provides high quality green infrastructure and improves quality of life for local residents with the associated additional opportunity of encouraging greater engagement with and access to the natural and historic environment by local communities.

6.32 One of the notable differences between the approach adopted by the Appellant and the Council relates to the association of the key characteristics relating to the LCAs in the LVIA. The Appellant's perspective emphasises the urban character of the site and the presence of man-made elements. However, the County Durham LCA (2008)[100] identifies the key characteristics in the Coalfield Upland Fringe that Mr Gray considers relevant to the area. Specifically, they are those evidencing[101] the gently rounded topography; occasional steep bluffs and incised denes; pockets of peaty soils supporting heathland vegetation and pastoral land use of improved or semi-improved pasture.

6.33 The key point to note in the approach of Mr Gray is that it is useful to gain an understanding of the varied local landscape character baseline in the wider context rather than the more limited focus contained within the LVIA. It is

[95] CD 7.1, p.191, para.5.413.
[96] DG PoE p.16 et seq.
[97] CD 3.7.
[98] CD 9.1.
[99] CD 9.12.
[100] CD 9.1.
[101] CD 12.24, p.19, paras.3.1.12 and 3.1.4.

important because it is not just confined to urban industrial character. If Mr Gray is correct in observing that the local landscape types are closely related to each other, then these would comprise the fully restored land forms, semi-mature and mature landscape features that assimilate with the older less disturbed areas of pasture and the rural landscape to the edge of the proposed development site[102].

Landscape Value

6.34 The appeal site is not within the AHLV. The approach adopted by the Appellant is that areas designated as AHLV are to be regarded as of "medium sensitivity"[103]. As a starting point, Mr Gray considers the AHLV (and any impact upon it) should be regarded as of higher sensitivity because it is valued for its scenic quality. This approach is consistent with the observations referred to above following the Examination in Public of the CDP.

6.35 Mr Gray specifically makes the point[104] that the viaduct is part of the Coast to Coast route for pedestrians and cycle users and attracts local visitors and those from outside the region. The visitors (and others to the south, east and west) would experience the upright built form of the proposal. This would detract from the use of the Listed viaduct and be harmful to the highly valued landscape setting that is protected in the policies of the CDP.

Evaluation of Key Impacts

6.36 The point developed in the LVIA[105] considers the site to be within an urban fringe landscape. Specifically, it regards the urban fringe character of the area in existing built development makes the landscape generally less susceptible to changes and limits the extent to which the development affects the landscape and views.

6.37 This is one of the major differences between the main parties. Mr Gray's assessment is more nuanced[106] that includes:

a) The appeal site currently forms the urban edge of a settlement with the urban centre to the north, with the rural wider landscape to the south-west, south and south-east.

b) Within the industrial estate, the landscape is less susceptible to changes relating to the development of similar scale and style to that existing.

c) However, the edge of the industrial estate is open to views from the wider rural landscape and is intervisible with the same.

d) Beyond the boundary of the industrial estate, the wider countryside has a high susceptibility to the proposal that introduces structures of a different scale and appearance to those presently located on the industrial estate.

6.38 Hence the considerations of Mr Gray[107] can be summarised as follows:

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[102] PoE of DG, CD 12.24, p.23, para.3.1.21.
[103] See CD 3.7, p.4.
[104] PoE of DG, CD 12.28, para.3.2.10.
[105] CD 3.7, para.7.79 on p.27.
[106] CD 12.24, para. 3.2.14 et seq.

- The landscape value of the appeal site itself is low together with the rest of the Hownsgill Industrial Park;
- The restored woodland to the west has medium value because they are established, attractive, and have biodiversity potential and accommodate informal and formal recreational paths;
- The AHLV to the south is a landscape of high value.

Landscape and Visual Effects

6.39 Before addressing the agreed View Point document and Mr Beswick's evidence[108], again the broad approach is markedly different. At the operational stage, the LVIA says the changes will be minor at site level, the rationale for which is that in the future more development could be expected in the vicinity. Whereas Mr Gray regards the appeal proposal as "transformative"[109]. This is owing to the size, scale and massing of the proposal. The magnitude of the change would be between medium and high. The site is within the Coalfield Upland Fringe Broad Character type and as the appeal proposal would increase the provision of the industrial component of the key characteristics being in close proximity to the urban area would suggest a medium magnitude of change within the wider broad landscape type.

Impact on AHLV

6.40 The LVIA[110] considers that beyond the site itself all the landscapes are of low sensitivity. Mr Gray considers that the approach is flawed because:

- The AHLV and the appeal site are intervisible;
- The sensitivity criteria of the LVIA, as previously noted, places Local Plan designations into a medium sensitivity category;
- The presence of the appeal development at such a scale and appearance would be seen as an element of character and the magnitude of change would be medium.

Impact on AONB

6.41 The LVIA assessed the magnitude of impact on the AONB as "negligible" with a "neutral" significance of impact[111].

6.42 The approach of Mr Gray recognises that the AONB is a protected and valued landscape. The introduction of the proposal that breaks the skyline or tree line of adjacent landscape would have a moderate and adverse landscape effect[112].

National Character Area

[107] CD 12.24, para.3.2.17.
[108] CD 12.8.2, Appendix B.
[109] DG PoE, CD 12.24, p.38, para.4.2.9.
[110] CD 3.7, para.7.8.11.
[111] CD 7.1, Table 7.3.
[112] DG PoE, para.4.2.20.

6.43 The Durham Coalfield Upland Fringe NCA and the more local West Durham Coalfield County Character Area are of medium sensitivity to development as part of the settled rural landscapes around urban settlements. The effect of the proposal would be assessed as low (minor significance) owing to the localised nature of the changes[113].

6.44 Thus the overall conclusion made by Mr Gray may be summarised as follows:

- The landscape effects on the site at construction "would be moderate adverse";
- The immediate local urban and semi-rural areas, where the Appellant considers that the landscape effects would not exceed "moderate and adverse", would be considered significant;
- The landscape effects on the Coalfield Upland Fringe would be considered as moderate/major and adverse and therefore significant owing to the heavy industrial character of the development;
- The landscape effects on the Coalfield Valley would be considered as "minor to moderate and adverse" and therefore "significant";
- The effects on landscape character of the designated AHLV within the local landscape would be moderate and adverse;
- The landscape effects on the AONB during operation would be moderate and adverse;
- The landscape effects on NCAs and LCAs would be minor and adverse.

Visual Effects

6.45 It will be recalled that little information was provided when the plume would be visible and the extent of such visibility. From the Heritage Evidence[114] there is a reference to "infrequent visibility of the plume" being insignificant in that context. The issue was addressed in the evidence of Mr Beswick[115], albeit the frequency of the visibility of the plume was not addressed. The Rule 6 rebuttal[116] provided an indication, but this is unsupported by any documentary evidence or clear recollection of the source of that information.

6.46 The upshot is that notwithstanding the requirements in EN1[117], there is no clear evidence as to the frequency and/or extent of the occasions when a plume will be visible and no indication of the anticipated height of the plume above the 50m stack.

6.47 The appeal proposal represents a development comprising of three unusually high structures that would be difficult to screen or filter with tree planting. This much is recognised by the Appellant. The structures are permanent and

[113] DG PoE, CD 12.24 para. 4.2.22.
[114] CD 12.7, para.55.
[115] CD 12.8, p.36.
[116] CD 14.11, p.6.
[117] CD 11.4

would be visually dominant irrespective of seasonal variations[118]. In the analysis on behalf of the Council, it is evident:

- Views from the Consett to Sunderland Path to the north, north-east and south-west of the site are available to recreational receptors who would therefore have a high susceptibility to the proposed change within the valued views along this route;
- VP3 is the recreational footpath. Receptors to the west of the site on this route would experience the building, stack and emissions plume when looking towards the east. Available views through the gaps and seasonable permeability would result in a magnitude of change that would be high as perceived at a highly sensitive receptor with the consequence of "major and adverse" visual effects which would be considered "significant";
- In respect of VP2, the LVIA does not appear to recognise that the Ovington Court development has living areas on the first and second floors, with the consequence that the residential occupiers will be subject to a noticeable deterioration in the view with the consequence of a moderate-major and adverse impact.

Views from the AONB

6.48 A key point throughout the Appellant's evidence is that the context of the stack and wider proposal would be associated with the "clutter" that currently exists in the wider landscape. As already noted, the "clutter" largely consists of development that has specific locational requirements that inevitably require facilities to be located in what would be a prominent location. That is the distinction between the proposed development and that existing "clutter". In any event, the judgment of Mr Gray takes into account the existence of other facilities in what is, and clearly appears to be, a predominantly rural and attractive landscape.

6.49 From VP10 that the stack, water tower and main building would be visible. Whilst at some distance, the development would be noticeable as it breaks the skyline. It is accepted that mere visibility is not sufficient to be equated with harm. Here there is harm attributable to the development itself that would be exacerbated by the existence of a moving plume that would draw attention to the presence of the development and its identification as industrial infrastructure.

6.50 From VP16, for example, where the main building and stack with emissions plume would break the skyline. The stack would be a noticeable detracting element, considering the wooded backdrop in which it would sit, resulting in a deterioration within the overall view from the AONB.

6.51 VP13 lies at the end of the AONB where the main building and stack and any emissions plume would protrude above the well wooded skyline. In recognition of the noticeable detractors in the view, the impact of the development would be regarded as of medium magnitude in terms of visual effect. As the receptors' susceptibility would be "high", it follows that VP10, 16 and 13 would

[118] DG PoE, CD 12.24, para. 4.3.4.

produce a moderate-major visual effect on receptors, causing appreciable harm to the visual amenity in views from the AONB.

6.52 There would therefore be harm to the special quality of the AONB in terms of "scenic beauty" as a consequence of the impact on its setting.

Views from AHLV

6.53 The site is situated on a promontory with unimpeded views from vantage points within the AHLV. It is also possible to see the site in combination with the Hownsgill Viaduct.

6.54 VP4 is from a location where the development would be noticeable and seen in combination with an existing wind turbine. In the view of Mr Gray[119], the impact would be moderate to major from the AHLV. Because of the relatively close distance of the site, the impact would be significant.

6.55 VP11 is a view from within the AHLV where the stack and emissions plume would be visible and break the skyline. It would be noticeable from the PROW in combination with views of the listed Hownsgill Viaduct. Any plume would draw attention to the development and exacerbate the impact causing harm to visual amenity.

6.56 VP19 lies to the north-east of the site on the edge of the A691. Users of nearby public rights of way within the AHLV also share this view. From this location the stack and any plume would be visible and would break the skyline and treeline. Although distant, there would be a noticeable deterioration in the view and therefore medium magnitude of change with a minor adverse effect considering the sensitivity of road users.

6.57 In contrast, for all representative viewpoints, the assessment of Mr Beswick on behalf of the Appellant is that the magnitude of change would only ever be represented as "low" or "negligible".

Landscape Mitigation

6.58 The Landscape Mitigation Plan[120] shows a 10 m wide mound to the south-east of the proposed development and a 20 m wide mound to the south-west. It does not appear to be challenged that Mr Gray considers that an appropriate maximum gradient would be 1:3 which, with the height of the bund at 10 m, the width would be 1.6 m and at 20 m, 3.2 m.

6.59 Although initially it was suggested that inert construction waste would be used to create the waste mounds (such that Mr Gray was doubtful of the ability to establish planting on such medium), the Appellant has clarified that the soils that would be used to create the mound would meet a satisfactory specification.

6.60 There remains a concern about the ability and the growth rate of the proposed trees in an upland location such as the appeal site. The site lies 245 m AOD which would materially impact upon the ability of trees to establish and develop. For an effective screen of the buildings, the heights of any trees

[119] DG PoE CD 12.24 para. 4.4.24.
[120] CD 1.2.

would have to be approximately 25 m. Mr Gray assesses the growth rate[121] at 7.7 m in 10 years and 9.4 m in 15 years. It follows with the two bunds the maximum height that could be achieved after a period of 15 years would be about 12.6 m, with approximately 9 - 10 m of building incapable of being screened by that time. As a consequence, in the real world after 15 years only the lower half of the building would be screened.

6.61 Mr Gray provides something of an understatement when he considers that the establishment of an effective landscape mitigation scheme is and would remain a challenge over years or even decades[122].

Conclusion on Landscape

6.62 The proposals is for three unusually tall structures of industrial character on the proposed site.

6.63 An LVIA[123] was provided with the planning application by the Appellant which considered the landscape and visual effects of the development. The LVIA was considered by Mr Gray to be generally useful in the context of baseline landscape and visual information. During the determination of the planning application, the following areas of disagreement between the Council and the Appellant became evident:

- The LVIA and the Appellant's Landscape Proof of Evidence (CD12.8) did not provide information on the nature, height and frequency of the emissions plume. Both the Appellant and Mr Gray were therefore unable to define or consider the true extent of impacts especially those associated with the plume. But it will occur and have a material impact on landscape character and visual amenity.

- The LVIA describes effects of the proposed development on landscape receptors within the study area as having generally a low sensitivity. The Appellant's PoE[124] maintains this assessment and conclusion. Mr Gray has considered the sensitivity of landscape character receptors, making informed judgements, including impacts upon the nearby AHLV and the AONB further to the west of the site. It is apparent that Mr Gray has assigned higher sensitivity and value judgements than those made by the Appellant. These assessments are based on evidence derived from the County Durham Landscape Character Assessment 2008[125] and the County Durham Landscape Value Assessment 2019[126].

- The landscape mitigation proposals that have now been submitted to the appeal show that the mitigation would not successfully provide a screen or filter to the higher facades of the three proposed structures. These would remain permanently visible.

6.64 Mr Gray's assessment of landscape effects confirms that owing to the size, scale and appearance of the development, there would be harm to the

[121] DG PoE, CD 12.24, para.4.5.12.
[122] DG PoE, CD 12.24, para.4.5.15.
[123] CD 2.3
[124] CD 12.8
[125] CD 9.1
[126] CD 9.4

character of the landscape generally and to the landscape within the designated and valued AHLV and AONB. This harm engages Policy 29 (Sustainable Design), Policy 38 (The North Pennines AONB) and Policy 39 (Landscape) of the CDP[127] providing the clear evidential basis for refusal reasons 1, 2 and 3.

6.65 Mr Gray has considered the content of the Appellant's LVIA and Mr Beswick's Appendix B – Representative and Supplementary Viewpoints[128] and he recognises that the visual effects of the development stated in his evidence would be higher than those stated by the Appellant. From most of the VPs assessed there would be a noticeable deterioration in views from the non-designated surrounding landscape and from the areas of landscape within the AHLV and AONB. Mr Gray concludes that the presence of the proposed EfW development would result in harm to visual amenity in relation to the representative viewpoints and adjacent receptor locations within the study area.

(b) Heritage Case

6.66 The Appellant's case on heritage has shifted markedly. In the Historic Environment Assessment[129] submitted with the application, the Grade II Listed High Knitsley Farmhouse and Barn were considered. The conclusion following the assessment was, in the terms as set out in the Framework, that there would be less than substantial harm to the significance of the asset[130].

6.67 The rationale behind the analysis is informative. The assets are within a discernible form of a farmstead. The surrounding fields provide a context for the agricultural site, closely associated with the land it worked, such that the setting makes a positive contribution to the historic heritage value of the assets. The proposal would introduce "further" industrial elements to the views which remain predominantly rural in character with the farmstead remaining readily discernible as a farm set in fields. It was considered that it would be at the lowest end of the scale of effects.

6.68 In the evidence provided to the Inquiry, the author of the Heritage Assessment rehearses the analysis concluding that there would not be "less than substantial harm" as a result of the development proposal[131]. At Paragraph 5.6[132] she refers to the "more detailed analysis" demonstrating that the visibility would be limited to no more than the top 15 m of the stack. It is said that on the basis that her initial analysis had considered that all of the 28 m stack would be visible above the EfW buildings, this led her to resile from the earlier conclusion.

6.69 It will have been noted that the initial analysis contained in CD 2.5 did not reference or expressly state that it was made on the basis that all of the 28 m of the stack above the EfW building had led to that conclusion.

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[127] CD 7.1
[128] CD 12.8.2
[129] CD 2.5.
[130] CD 2.5, para.5.6.
[131] HK PoE, CD 12.21.
[132] CD 12.21.

6.70 Be that as it may, the current rationale is deeply unconvincing. The change from less than substantial harm - with all the implications that has in terms of the legal duty imposed upon the decision-makers - to a conclusion that there would in fact be no harm on the basis that less of the stack will be seen strikes one as a proposition that is flawed. Apparently, the case for the Appellant that a stack height of 28 m gives rise to a conclusion of harm in the context of the legislation and the Framework policy, whereas an ability to observe a 15 m stack does not.

6.71 One wonders where the 'tipping point' lies where sight of a stack of 28m is harm whereas sight of 15m is not. The consequence, of course, of a finding of no harm rather than less than substantial harm has significant legal consequences. A finding of less than substantial harm would engage Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990.

6.72 On a similar basis, the effects of the plume were also dismissed. In her evidence[133] the plume is dismissed on the basis that the plume does not increase the effect of the EfW on the heritage value of the Listed Buildings. It goes on:

"Infrequent visibility of the plume would be insignificant in the views that include the EfW stack and buildings at High Knitsley."

6.73 Here the evidence on the issue from Mr Croft on behalf of the Council ought to be preferred. In the evidence of Mr Croft[134] the evidence is that

"Any such plume will be very visible and will accentuate the industrialising effect of the development in views."

6.74 The plume is an essential component of the incinerator and its use. It is logically inconsistent to disassociate the plume with the stack in terms of impact on heritage value on the industrialising effect of the EfW proposal.

6.75 In the alternative, in the event that there is a conclusion that there is "less than substantial harm", the view expressed by Ms Kelly is that it would be at the very bottom end of the spectrum of "less than substantial".

6.76 The analysis of Mr Croft in this context - his view and the analysis that should be preferred is that:

"The level of harm is limited and at the lower end of the Less than Substantial Harm spectrum, but it is not at the lowest end of Less than Substantial Harm."[135]

Planning (Listed Buildings and Conservation Areas) Act 1990

6.77 Section 66 of the 1990 Act states that:

"In considering whether to grant planning permission for development which affects a Listed Building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the

[133] HK PoE, CD 12.21 at para.5.5.
[134] AC PoE, CD 12.21, para.6.1.4.
[135] AC PoE, CD 12.21, para.6.1.9.

desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

6.78 The importance of the statutory duty was considered by the Court of Appeal in the *Barnwell Manor* case[136]. At Paragraph 22 of the judgment, Sullivan LJ stated:

"… in the present case the Inspector had expressly carried out the balancing exercise, and decided that the advantages of the proposed windfarm outweighed the less than substantial harm to the setting of the heritage assets … I accept that (…) the Inspector's assessment of the degree of harm to the setting of the listed building was a matter for his planning judgment, but I do not accept that he was then free to give that harm such weight as he chose when carrying out the balancing exercise. In my view, Glidewell LJ's judgment is authority for the proposition that a finding of harm to the setting of a listed building is a consideration to which the decision-make must give 'considerable importance and weight'."

6.79 Finally, at Paragraph 29 Sullivan LJ concluded:

"For these reasons, I agree with Lang J's conclusion that Parliament's intention in enacting Section 66(1) was that decision-makers should give 'considerable importance and weight' to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise. I also agree with her conclusion that the Inspector did not give considerable importance and weight to this factor when carrying out the balancing exercise in this decision. He appears to have treated the less than substantial harm to the setting of the listed buildings, … , as less than substantial objection to the grant of planning permission."

6.80 The correct approach for decision-makers was considered in the *Forge Field* case[137] where Lindblom J (as he then was) at Paragraph 45 said:

"Mr Strachan submitted that in determining the second application the Council failed - as it had in determining the first - to comply with its duties under Sections 66 and 72 of the Listed Buildings Act. There is a statutory presumption, and a strong one, against granting planning permission for any development which would fail to preserve the setting of a Listed Building or the character and appearance of a Conservation Area. The officer acknowledged in his report, and the members clearly accepted, that the proposed development would harm both the setting of Forge Garage as a Listed Building and the Penhurst Conservation Area. Even if this was only "limited" or "less than substantial" harm of the kind referred to in Paragraph 134 of NPPF, the Council should have given it considerable importance and weight. It did not do that. It applied the presumption in favour of granting planning permission in Policy SP4(c) of the Core Strategy, balancing the harm to the heritage assets against the benefit of providing affordable housing and concluding that the harm was not "overriding". This was a false approach. Its effect was to reverse that statutory presumption against approval".

6.81 He added at paragraph 46:

[136] CD 13.55.
[137] CD 13.54.

6.82 *"As the Court of Appeal has made absolutely clear in its recent decision in Barnwell, the duties in Sections 66 and 72 of the Listed Buildings Act do not allow a local planning authority to treat the desirability of preserving the settings of listed buildings and the character and appearance of conservation areas as mere material considerations to which it can simply attach such weight as it sees fit … When an authority finds that a proposed development would harm the setting of a listed building or the character or appearance of a conservation area, it must give that harm considerable importance and weight."*

6.83 At Paragraph 47 it is then stated:

"… as the Court of Appeal emphasised in Barnwell, that a finding of harm to the setting of a listed building or to a conservation area gives rise to a strong presumption against planning permission being granted. The presumption is a statutory one. It is not irrebuttable. It can be outweighed by material considerations powerful enough to do so. But an authority can only properly strike the balance between harm to a heritage asset on the one hand and planning benefits on the other if it is conscious of the statutory presumption in favour of preservation and if it demonstrably applies that presumption to the proposal it is considering."

6.84 There is a further matter required to be addressed in Closing concerning Heritage. During the RTS it was agreed that the ridge between the listed buildings and the development was reshaped during the development and operation of the Consett Steelworks. Ms Kelly saw this as a basis reduce the contribution that this ridge makes to the rural setting of the listed buildings. This is clearly an erroneous view.

6.85 As established by Mr Croft, the ridge forms a rural backdrop to views of and from the listed buildings. A rural backdrop that is historically appropriate for the buildings and reflects their historic rural context. The removal of the steelworks has benefited the setting of the listed buildings and the fact that there once was a steelworks in the setting of these rural listed buildings, does not justify the return of industrial uses into that setting.

6.86 The Framework requires any harm to or loss of the significance of a designated heritage asset should require "clear and convincing justification"[138]. More specifically paragraph 202 states:

"*Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use."*

Public Benefit

6.87 The benefits of the proposal are addressed in the evidence of Mr Shields and addressed later in these submissions.

(c) Application of Planning Policies and the Planning Balance

6.88 The nature of the application has to be understood. The Appellant agrees[139]:

[138] NPPF Paragraph 200

- The Appellant is not seeking a personal permission;
- The proposal would be required to be operated by technically competent persons by the EA – Project Genesis does not have such expertise in-house. No operator has been identified.

6.89 The identity of the applicant (or the identity of its officers) is not a material consideration in the determination of an application that seeks permission for a specific land use.

Background Documentation

6.90 Whilst it has not been prominent in the case advanced by the Appellant the Project Genesis Masterplan[140] has extremely limited weight and status in policy terms. This is because:

- it has been through no public consultation;
- it has never been subject to any independent review;
- it is declared to be illustrative;
- it can change;
- it is not specific as to what constitutes an "Energy Plant". It is certainly does not expressly identify the use is for the treatment of waste such as an EfW facility.

Policy and the Planning Balance

6.91 The evidence of Mr Shields[141] addresses the policy context of the proposal. As part of the background to the consideration of the policies that are engaged in the particular case, he records that the AONB was designated in 1988 and captures one of the most remote and unspoilt places in England. Amongst its special qualities that identify it as an AONB is its scenic beauty, sense of wildness, remoteness and tranquillity.

6.92 As addressed earlier, CDP[142] Policy 38 is engaged. CDP Policy 39 is also engaged concerning landscape character and AHLV. These policies were addressed in the Examining Inspector's report[143]. It is clear that there is nothing inconsistent with these policies and the Framework. They therefore must attract full statutory weight in the determination of the appeal[144].

6.93 In the context of Policy 38, if a development, albeit outside the AONB, had a visual impact that was harmful to the scenic beauty of the designated landscape and/or would diminish the sense of remoteness, there would be a clear conflict with the policy. There would also be a clear conflict with Paragraph 176 of the Framework that acknowledges that development outside of the AONB but within its setting should be designed to avoid or minimise adverse impacts on the designated area.

[139] HE Xx
[140] CD 4.3.
[141] CD 12.34.
[142] CD 7.1.
[143] CD 7.4, paras.299-301.
[144] HE Xx

6.94 It is acknowledged that mere visibility from an AONB is not necessarily harmful. However, in this particular case:

- The scale and location of the development is such that the water tower, main building and stack protrude above the skyline;
- The protrusion above the skyline increases its visual prominence and any plume would draw attention to the existence of the development;
- It is an unmistakable utilitarian industrial development (with the occasional movement of the plume announcing its presence) that would detract from the scenic beauty of the AONB.

6.95 Specifically, the development would be clearly noticeable within views from locations within the AONB and in particular views towards the town of Consett composed of wooded skyline surrounding the town. The industrial character of the proposal (and again the occasional movement of the plume) would create a distraction from the landscape experience of recreational users within the AONB.

6.96 Reason for Refusal 2, associated with the Landscape Character and the application of Policy 39, addresses the "scale, form and massing" of the proposal. There is a range of heights of the existing buildings on the estate. It would appear that the food factory is the largest and has a maximum height of approximately 12 m. There is a clear and obvious quality associated with the existing development located on the industrial estate. Indeed, the fact that the estate is referred to as a "park" might imply a form of gentrification and quality that is intended to be conveyed.

6.97 In contrast, the proposed development would have a functional, utilitarian form. It has no design merit and none is claimed for it[145]. The existing development, as an industrial estate with maximum heights of 12 m, can be filtered and ameliorated by tree planting. This is in contrast to the development proposal. The proposal, as discussed in the landscape case, is to provide mitigation in the form of a combination of mounding and tree planting. However, in doing so there is an implicit acknowledgement that these works are necessary for the mitigation and an equal acknowledgement that the works proposed will not be wholly effective.

6.98 In considering the relevant Policy 39, Mr Shields acknowledges[146] that the site is not within in the AHLV but occupies a prominent location that is clearly visible from locations within the designated and protected areas. As Mr Shields notes[147], the appeal site forms a backdrop to important views across the AHLV.

Heritage

6.99 The Examining Inspector in his report considered the heritage policies contained in the CDP[148]. At Paragraph 307 he stated:

[145] HE Xx
[146] CS PoE, CD 12.34, para.3.31.
[147] para.3.32.
[148] CD 7.4.

"Subject to these modifications, and those relating to site specific proposals, the Plan sets out a positive strategy for the conservation and enhancement of the historic environment."

6.100 In respect of Policy 45 (presently Policy 44 of the adopted plan) at Paragraph 308 the Inspector expressed the following:

"Modifications are required to Policy 45 to ensure that great weight is given to conservation, and to the parts of the policy relating to revealing the significance of heritage assets; the weighing up of harm and benefits; and non-designated heritage assets of archaeological interest. These will ensure consistency with national policy."

6.101 Policy 44 of the CDP[149] is regarded as being up-to-date and attracting full weight in the determination of the appeal. The policy states:

"Development will be expected to sustain the significance of designated and non-designated heritage assets, including any contribution made by their setting. Development proposals should contribute positively to the built and historic environment and should seek opportunities to enhance and, where appropriate, better reveal the significance and understanding of heritage assets whilst improving access where appropriate."

6.102 The policy further reflects national policy in referencing that development that leads to less than substantial harm to a designated heritage asset will be weighed against the public benefits of the proposal.

6.103 As noted in the submissions in respect of heritage, the Appellant's case has changed. In the evidence submitted to this Inquiry the Appellant seeks to argue that whereas "less than substantial harm" that had previously been acknowledged, that is no longer the case.

6.104 It is clear from Decision Letters and judicial authority that impact on landscape character, even if it is not defined as "valued" in terms of Paragraph 170 of the Framework, can justify the refusal of planning permission[150].

6.105 The impact on landscape character being a material ground for refusing planning permission, albeit not designated or considered to be a "valued" landscape, was addressed in the case of *Cawrey*[151]. Counsel for the developer submitted that the Inspector's decision had contended that the case of *Stroud* was to the effect that "ordinary" countryside was outside the scope of Framework (109), now paragraph 174 of the 2021 version of the Framework. Counsel for the Secretary of State submitted that there was nothing in the case of *Stroud* that supported the idea that land which was not designated is not worthy of protection[152].

6.106 Gilbart J at Paragraph 49 addressed the issue:

"The argument of the Claimant that the matters to which the Inspector referred are not relevant in terms of landscape assessment is misconceived.

[149] CD 7.1, p.205.
[150] CD 13.51, para.85 and CD 13.50, paras.30 and 52.
[151] CD 13.56.
[152] See para.33.

He had given reasons which identified why harm would flow from the existence of the built up area at this point. NPPF undoubtedly recognises the intrinsic character of the countryside as a core principle. The fact that Paragraph (109) may recognise that some has a value worthy of designation for the quality of its landscape dos not thereby imply that the loss of undesignated countryside is not of itself capable of being harmful in the planning balance, and there is nothing in Stroud or Cheshire East which suggests otherwise."

6.107 He continued at Paragraph 50:

"Whether that loss of countryside is important in any particular case is a matter of planning judgment for the decision-maker. In any event, extant policies in a development plan which are protective of countryside must be had regard to, and in a case such as this a conflict with them could properly determine the Section 38(6) PCPA 2004 issue."

6.108 Thus, the terms of Policy 39 of the CDP[153] must be addressed in the Section 38(6) analysis. The policy in the context of the AHLV requires that development affecting it:

"… will only be permitted where it conserves, and where appropriate enhances, the special qualities of the landscape, unless the benefits of the development in that location clearly outweigh the harm."

6.109 The correct policy interpretation requires an assessment of whether the development conserves or enhances the special qualities of the AHLV. This matter has been addressed in the evidence of Mr Gray. It would also follow that conflict with Policy 39 would axiomatically also involve conflict with Policy 61 with the location of new waste facilities[154].

6.110 Sub-paragraph (a) of Policy 61 requires such development to be located outside and:

"… to not adversely impact upon the setting or integrity of internationally, nationally and/or locally designated sites and areas."

6.111 Insofar as there was harm to the setting of the Listed Building (even less than substantial harm) and harm to the setting of the AONB (national designation) or the AHLV (local designation) would render the policy to be engaged and conflict with the same.

6.112 The Council would further submit that if there is harm to the setting of the heritage asset, harm to the special qualities of the AONB and harm to the AHLV, then the harm is cumulative requiring any benefits to address the totality of the harm rather than individual components of it. Mr Emms agreed the point in XX.

6.113 The Heritage Assessment[155] relies on the fact that the two Grade II buildings are Listed is of itself a recognition of their national importance. It necessarily

[153] CD 7.1.
[154] CD 7.1, p.256.
[155] CD 2.5.

follows that the asset value is "high". The response in the Planning Statement[156] is terse. At Paragraph 6.13.5[157] it states:

"The significance of effect in relation to Grade II listed High Knitsley Farmhouse and Barn as a result of development within the setting of these assets is negligible and at the lowest end of the 'less than substantial' harm scale of effects. Therefore no further mitigation is proposed in relation to these assets and the proposed development is deemed acceptable in heritage terms."

6.114 It is quite clear, therefore, that no public benefits case was being expressed. It should also be absolutely clear from the evidence of both Ms Kelly and Mr Emms that nowhere do they grapple with the duty on decision makers to give "considerable importance and weight" to heritage harm and crucially they have simply not recognised that there is a strong presumption against the grant of planning permission where harm, even less than substantial harm, is found.

6.115 The matter is addressed in the OR[158]. At Paragraph 2.2 the Planning Committee was informed:

"The most effective way for heritage harm to be avoided in this case would be for the development not to be located on the proposed site. The Applicant has stated that there are no more suitable locations for the development in the region. However, there is no consideration or assessment of alternative sites. The location of the site has been justified on the basis that the development would accept residual waste from local suppliers and then produce and supply low cost energy for the area with the hope of attracting new development. However, whilst the Applicant claims that the waste would be provided from local sources, none have been identified and, as the facility would not produce RDF fuel on site, it is likely that any waste originating from Consett or the local area would have to first to elsewhere for pre-processing. This would negate the potential benefit of locating close to the source of the waste."

Public Benefits

(*i*) *Waste Management*

6.116 The proposal would only be able to manage RDF - of itself RDF is the product of pre-treatment off-site. The proposal has a storage capacity of 200 tonnes that represents about a day's supply. The RDF is a product of the removal of recyclable and non-combustible material from the waste stream. Of itself it is not a sophisticated programme or regime. Mr Shields is correct in stating that the process removes less recyclable material than Solid Recovered Fuel that is required to meet a British Standard[159].

6.117 In terms of the need for the proposal, the SoCG Planning[160] states at Paragraph 7.13 that the 2020/21 AMR demonstrated 474,582 tonnes of household, commercial and industrial waste being imported into County

[156] CD 2.2.
[157] CD 2.2, p.91.
[158] CD 6.2.
[159] CS PoE, CD 12.34, para.4.22.
[160] CD 12.1.

Durham and 411,788 tonnes exported, indicating a degree of net self-sufficiency[161].

6.118 In overall terms, County Durham imports more waste than it exports and can demonstrate net self-sufficiency in the management of its waste[162]. It is also the case that County Durham makes a significant contribution to the management of waste within the North East region, especially for industrial and commercial waste.

6.119 Mr Shields points out[163] that, since the planning application was submitted, planning permission has been granted for an EfW in Teesside[164]. This would represent a waste processing/treatment facility that includes EfW infrastructure capable of processing 450,000 tonnes of municipal solid waste per year. In addition, the Redcar Energy Centre was granted planning permission[165]. This is a material recovery facility, energy recovery and incinerator and bottom ash recycling facility. This could also process 450,000 tonnes per annum comprised of a mix of commercial and industrial, municipal solid waste and RDF.

6.120 The two approved facilities in conjunction with the existing SUEZ EfW facility at Haverton Hill Treatment have a combined capacity for residual waste of nearly 1.3M tonnes per annum. Neither of these approved facilities are "operational" but, as Mr Emms acknowledged, the existence of such permissions is a material consideration in the determination of the appeal.

6.121 Mr Shields also points out[166] that information derived from the Waste Data Interrogator[167] demonstrates that in 2020 the North East region had a total capacity for incineration of MSW and Commercial and Industrial Waste Streams of 1,256,000 tonnes. The throughput was 1,152,000 tonnes. Consequently, the facilities were not operating at full capacity.

6.122 Overall, the Council in respect of this issue recognise that the proposal should be regarded as a benefit but seen in the appropriate context. The proposal would make a contribution towards diverting waste away from landfill. It is not required to meet a capacity gap. The case of a need for the facility is overstated.

(ii) Energy

6.123 Mr Shields points out[168] that the Energy White Paper (2020)[169] identifies that a potential fourfold increase in clean energy is required. However, the development is not "clean energy" as the energy is produced by burning a non-renewable fuel.

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[161] Xx HE
[162] CD 12.34, para.4.26.
[163] CS PoE, CD 12.34 at para.4.27.
[164] CD 13.15.
[165] CD 13.17.
[166] CD 12.34 at para.4.28.
[167] CD 13.32.
[168] CD 12.34, para.4.30.
[169] CD 11.2.

6.124 Furthermore, there are limitations on the technology. This is not a facility capable of balancing "peaks and troughs" associated with other forms of renewable energy production. It is essentially a steam turbine generator.

6.125 The District Heat Network is not part of the proposed development and there is no infrastructure to support it as part of the scheme. In terms of deliverability within the decision-making process of this appeal it should not be regarded as anything more than providing the future potential of delivery and the weight to be given to that calibrated accordingly. There was some discussion about the efficiency per tonne of waste burned at the facility in the generation of electricity. The application refers to 3.4 MW produced from 60,000 tonnes of waste per annum. This is the equivalent of 17,241 tonnes per MW. Other facilities referred to in the evidence of Mr Shields[170] identify "gross" efficiency of other plants as being better than that proposed. Mr Caird in XX acknowledged that this gives an "idea" of the efficiency of the proposal.

(iii) Carbon Balance

6.126 The appeal proposal places some reliance on the presence of WTSs within Durham. However, WTSs identified[171] have an unknown source of waste. The latter two identified are in close proximity to Newcastle, Gateshead and Sunderland and it is therefore not unreasonable to assume that the primary source of waste would be outside of County Durham. Therefore, the assertion that the development would manage locally sourced waste is difficult to maintain and impossible to control by condition or planning obligation.

6.127 In truth, the Appellant is confusing two things - the primary source of the waste and the waste derived from the WTSs as RDF for use at the EfW plant.

6.128 The rebuttal of Mr Caird[172] is an acknowledgement that, at a point where the content of the waste incinerated has a proportion of plastic in excess of circa 20%, the proposed facility, compared with landfill, would be more harmful in terms of emissions. He quotes:

"Landfill emissions fall as plastic content rises, as all fossil carbon is stored in landfill. EfW and landfill impacts are equal when the proportion of plastic in residual municipal waste is increased from the main model assumptions by 4.6% from 15% to 19.6%."[173]

6.129 This was a matter that was of express concern to the Council's Low Carbon Economy Team who commented on the application that the development may have a higher carbon factor than grid-supplied electricity. This was attributable to the RDF containing plastics that are not removed and reference the Welsh study which found that the composition of commercial and industrial waste in Wales had a plastic content of 22.7%[174]. The analysis in the WRAP analysis of Wales found that the EfW at Cardiff had a plastic content included within the waste at 25%[175].

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[170] CS PoE, CD 12.34 at para.4.36 et seq.
[171] CD 12.34, para.4.41 et seq.
[172] CD 14.3.
[173] CD 14.3, p.8/11, fig.2.
[174] CD 13.47.
[175] CD 13.47, p.20/38.

6.130 As such, the Low Carbon Economy Team point out that if the proportion of plastic in residual municipal waste is increased the EfW emissions could rise to the same as landfill. On this basis, there is not a compelling case of carbon reduction to be put into the planning balance as a benefit of the proposal. The EA will control the emissions to air in accordance with the permit – provided it can be operated within the Industrial Emissions Directive (and there is no reason to think otherwise) then it can be granted a permit to operate. The EA do not need to concern themselves with the feedstock – they are concerned with what comes out of the stack and not what is brought into the plant. Control over the feedstock is capable of being a planning matter when the contents of the feedstock engage issues of compliance with the policies concerning the waste hierarchy. The efficacy of any control over the content of RDF is the issue.

6.131 It should also be noted that this issue is associated with the drive to waste minimisation, the nature of which should significantly reduce the source material for disposal at any EfW. It is also not without relevance to consider Government policy concerning emissions to atmosphere and the drive to Net Zero in the White Paper[176] of December 2020. The Prime Minister's 10 point plan[177] is an ambitious goal based on achieving net zero carbon emissions. This can include carbon capture but the expectation is that energy generation will be predominantly wind and solar[178].

6.132 The White Paper has been followed by a Government Policy statement: Net Zero Strategy[179] October 2021. The Prime Minister's Foreword states that it is a strategy to make a

"*historic transitions to remove carbon from our power, retire the internal combustion engine from our vehicles and start to phase out gas boilers from our homes"*

6.133 The Government's approach in respect of EfW is still under consideration[180].

(iv) Investment

6.134 The Appellant maintains that the proposed EfW facility would produce direct investment of over £30M into Consett. It is asserted that it would facilitate further investment of up to £10M in a Direct Heat Network and an Electricity Smart Grid. They also maintain that the proposal would enable the 5 MW solar farm scheme to be completed.

6.135 There is no application before the Secretary of State for a DHN or Electricity Smart Grid.

6.136 Put into an appropriate context, there is a potential for some future development proposal to incorporate these aspects. However, they are incapable of being given significant weight in the proposal as a delivery

[176] CD 11.2 Powering our Net Zero Future
[177] CD 11.2 page 16 of 170
[178] CD 11.2 page 47 of 170
[179] CD 11.3
[180] CD 11.3 page 105 of 368

mechanism cannot be identified without predetermining decisions that will have to be made in the future.

(v) Employment

6.137 The initial application submission maintained that the total jobs identified were 9 in total. Now, through the SoCG, there would in addition be two managers, administrative staff, an accounts clerk, weighbridge operators and cleaners etc that would add to the job total.

6.138 Whilst any degree of employment is a positive in the planning balance, this is undoubtedly, a profoundly low employment density. Mr Shields in his evidence[181] shows that for B1 employment of the scale proposed here one would expect 1,600 FTE employees whereas at a development for B8 there would be 170 FTE employees. Consequently, the Council recognise the employment additions as a benefit, but consider that they are limited compared with other uses for which the site is allocated.

6.139 Importantly, it is no part of the Appellant's case to suggest that the site is incapable of being developed for B1, B2 or B8 uses for which the site is allocated in Policy 2.

6.140 On the contrary, the Employment Land Review[182], ironically prepared by Mr Emms' firm Lichfields and dated June 2018, noted that the site appeared to be "well used with few vacancies"[183]. The Lichfields' Review "recognising that Hownsgill has been successful in attracting recent development[184]" recommends its retention as an allocation. The Council agrees with Lichfields'. Consequently, it is appropriate to conclude that, if the appeal site were made available to the market, one would not expect it to remain vacant and unused.

(vi) Community Energy Company

6.141 The idea of the Community Energy Company did not figure in the application as submitted and determined by the Council in this case.

6.142 The Appellant's Statement of Case[185] commits to a Community Energy Company. It is not clear whether it is part of the appeal application or how this would be delivered and controlled. The Council is concerned that if this is a proposal, it does not meet the tests in the CIL Regulations as it is not "necessary". This matter is further addressed below.

(vii) Education, Training and Awareness

6.143 It was unclear whether space within the development is provided for this facility. It was further unclear how it would be developed and maintained and controlled. In the re-examination of Mr Emms it was clarified that this was no longer part of the appeal proposals.

[181] CS PoE, CD 12.34 at para.4.54.
[182] CD 7.12.
[183] CD 7.12 page 368
[184] CD 7.12 page 128 para.10.53
[185] CD 12.4

(viii) Biodiversity Net gain

6.144 The landscape proposals will deliver BNG well in excess of 10%.

CIL Compliance

6.145 Regulation 122 of the CIL Regulations provides:

"Limitation on Use of Planning Obligations

(1) This regulation applies where a relevant determination is made which results in planning permission being granted for development.

(2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is –

(a) necessary to make the development acceptable in planning terms;

(b) directly related to the development; and

(c) fairly and reasonably related in scale and kind to the development."

6.146 Paragraph 57 of the Framework recites the provisions.

6.147 The word "necessary" is common to both the test for conditions and planning obligations. It is a useful touchstone in the practical application of the test of necessity in both cases to consider whether planning permission would have to be refused if that condition were not to be imposed[186]. By parity of reasoning the same test can guide the approach as to whether a planning obligation meets the "necessary" test.

Heat & Power Network infrastructure & connections – Categories 1 & 2 Land

6.148 The Appellant owns the Category 1 Land and has the ability to acquire the Category 2. In respect of the Category 1 Land, the obligation prevents occupation of the development until the heat and power network has been constructed and connections are in place for the lifetime of the development.

6.149 In respect of the Category 2 Land the obligation requires the Appellant to acquire the Category 2 Land and then enter into a Deed of Confirmation (a draft of which is appended to the UU) to bind that land with these obligations.

6.150 The agreed position is that this meets the "necessity" test as recovery of the heat and power is required to ensure that waste is driven up the hierarchy in accordance with national and local planning policy. The heat and power is a product of the operation of the development and therefore satisfies the direct relationship test. It is further considered that the distribution of recovered heat and power to local residential and business occupiers in proximity to the site is reasonable and proportionate.

Heat and Power Network infrastructure and connections – Category 3 Land

6.151 The UU requires the Appellant to construct the heat and power infrastructure as close as reasonably practicable to the boundary of the Category 3 Land and thereafter to make an offer for connection and supply to the owner/occupier of

[186] This was specific advice in paragraph 15 of the Annex Circular 11/95 "Conditions"

the unit and then to use reasonable endeavours to conclude a connection/supply contract

6.152 The Council considers that this is not CIL compliant. The Appellant does not own or control the Category 3 land. It is not in a position to deliver the heat and power infrastructure and connections on the Category 3 Land. The delivery of this component of the UU will be entirely dependent upon consent and co-operation of third-party land owners. It is for this reason that the obligation is couched in terms of reasonable practicability, offers and reasonable endeavours and is no more than aspirational.

6.153 The Council considers that this fails the necessity test. It would be inappropriate and unreasonable for a local planning authority to refuse the application on the basis that heat and power must be made available to the owner of third party land at a discounted rate.

Electric Vehicle Charging

6.154 The UU requires that site for the EV charging facility be safeguarded within the site for a period of 10 years and a planning application to be submitted prior to occupation of the development. Thereafter the planning permission is to be implemented within 1 year and completed within 5 years. The EV facility is to supply recovered electricity at a discounted rate.

6.155 The Council considers that this fails the necessity test. The EV charging scheme would require future planning permission and it is not appropriate to fetter or prejudice future decision making. This would amount to the pre-determination of an application that did not exist and upon which consultation responses were unknown.

Carbon Capture and Storage

6.156 The UU requires that measures for the capture, storage and export of carbon emissions ("the required measures") which would otherwise be emitted by the EfW Development are to be put in place if demonstrated to be reasonably available, subject to first having obtained planning permission if required.

6.157 The Council's considers that this is not CIL compliant. Firstly, the obligation is dependent upon "required measures" being reasonably available and, in this context, "reasonably available" has a financial viability component. It is completely inchoate and uncertain. The enforcement of this would require litigation if there was any issue over availability of the measures and/or viability concern over what would be required. Secondly, as a further planning permission might be required the same point arises about pre-determination.

6.158 One sees the benefit of "future proofing" the scheme where the direction of travel of future Government policy is referencing carbon capture technology but, in reality, it is again inconceivable that a responsible local planning authority would be justified in refusing planning permission for an EfW facility unless it was proposed to provide the carbon capture obligation.

Local Feedstock

6.159 This obligation requires a minimum of 80% of the RDF feedstock to be locally sourced (defined as within 32 Km of the site) throughout the lifetime of the development.

6.160 This obligation only secures that the RDF feedstock is locally sourced and does not control the origin of the waste processed to produce the RDF feedstock. The waste material that is processed to produce RDF could come from anywhere.

6.161 This obligation fails the necessity test. This is not an application of the proximity principle as the waste arisings could be from anywhere. The percentage is arbitrary. Whilst the UU makes provision for the Appellant or operator to have provided to them an Annual Feedstock Report the effective control over this issue would ultimately be for the Council to monitor.

Solar Farm

6.162 The UU prohibits occupation of the development until the Solar Farm has been completed and is operational. The parties agree that this obligation is CIL compliant. The case established at the appeal is that the EfW proposal would enable the solar farm to be delivered whereas it is currently unable to be delivered because of lack of viability. The Council takes no issue with the Appellant's viability evidence. It is accepted that the Solar Farm will only come forward if funding is generated from another scheme. The necessity test is met because the electricity generated from the Solar Farm is to be provided with that generated by the proposed development such that both would feed into the electricity network. The direct relationship test is met and, as this is part of the electricity network for the Category 1 and 2 land, it also meets the reasonableness and proportionality tests.

Alleviation of Local Energy Poverty

6.163 The UU prohibits occupation of the development until a trust agreement has been entered into between the owner and Project Genesis Trust for receipt and distribution of the trust contribution (0.5p per KW of electricity generated by the development). The trust contribution is to be distributed to those who satisfy an eligibility criteria ("qualifying households") within defined electoral divisions.

6.164 The Council regards this obligation as not CIL compliant. It fails the necessity test because fuel poverty is an existing situation which the appeal proposal neither creates or exacerbates. Fuel poverty is unrelated to and has no association with the EfW proposal. It does not therefore fall to this proposal to address this issue. In addition, it offends the principle that planning permissions should not be bought or sold.

6.165 It would be manifestly unreasonable for the Council to require an applicant for an EfW proposal to set up a trust fund to provide for the fuel costs of persons in need without there being some causal link between the two. It would be tantamount to a tax on the development.

6.166 It also fails the direct relationship test because any link to the development is a result of the contrived way in which this obligation is drafted (by way of a figure per KW of energy recovered).

6.167 The Council also considers that this obligation fails the reasonableness and proportionality tests. The Appellant has not put forward an evidence base for the figure of 0.5p per KW of energy, or £120k per annum, because they represent a commercial decision made by the Appellant. Nor is the Trust

Contribution obligation an equivalence measure which puts residential occupiers in the same position as those who will benefit from the discounted heat and electricity network because:

- the contribution is to be calculated by reference to KW of electricity generated only;
- it does not provide any energy from the development at a discounted rate to residential occupiers – it provides a trust fund from which the Trust can allocate grant funding to those in need; and
- there are eligibility criteria set around those in fuel poverty. Fuel poverty is not an impact of the appeal proposal.

Conclusion

6.168 The 'tilted balance' is not engaged in this case. The policies that are most important for the determination of the appeal are up to date and attract full statutory weight in the application of section 38(6) of the 2004 Act. A determination in accordance with the development plan requires the appeal application to be dismissed 'unless material considerations indicate otherwise'.

6.169 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is also engaged and the strong presumption against the grant of permission arises in this case.

6.170 At the heart of this case is a planning balance because of the terms of the policies and paragraph 202 of the Framework.

6.171 The Council acknowledges there are benefits that attract weight. But in the overall planning balance there are powerful and weighty considerations in respect of landscape and heritage harm that outweigh – by a considerable margin – the benefits that can properly regarded as material.

7. THE CASE FOR THE CONSETT COMMITTEE (RULE 6 PARTY)

7.1 The Rule 6 Party called two witnesses: Mr Newcombe (landscape and visual impact)[187] and Mr Parkes (planning policy and related planning matters)[188]. The material points of the Rule 6 Party's case are covered in closing submissions, as set out below[189].

Introduction

7.2 We have listened over the past 8 days in detail to the Appellant who has tried to tell us the alleged benefits of this incinerator and how it won't adversely impact the people of Consett. The Appellant has failed to convince us that there are any significant benefits to this scheme. They have also failed to convince us that there will be no impact on the heritage or the landscape of our beautiful town.

7.3 The main issue here is about planning balance. What are the benefits that this incinerator will bring to Consett when weighed against the harm that it would

[187] CD 12.36
[188] CD 12.35
[189] ID33

cause if it goes ahead. Our case is ultimately that, if this incinerator is built, then the harm here will be significant and the alleged benefits - many of which seem to have been thrown in at the last moment in a desperate attempt to compensate for the well-evidenced harms - are simply unlikely promises, that may or, as is more likely, may not be realised.

7.4 In this Inquiry the Appellant has, at best, underestimated the harm that this incinerator will bring to the area and, at worst, failed to properly address the likely harm that it would cause. The Appellant has not dealt with the basics. For example, the Appellant appears to be ignoring the fact there will be a plume; they have not fully addressed how a significant Heritage Asset (the Hownsgill viaduct) will be impacted by viewing a 50m chimney and a plume; and the Appellant has failed to explain to us why 9 jobs are enough on a site that could provide so much more in an area of both high deprivation and unemployment.

7.5 The Consett Committee maintains that the Council's reasons for refusal did not go far enough to fully take account of some of the wider considerations of the proposal. Also, subsequent to the decision, new material considerations have come forward.

7.6 Hownsgill Park is not a great site for an incinerator. The Appellants have chosen this land for an incinerator simply because they can and did not consider any further sites for such a development. In 1993, a commercial arrangement and Trust was set up. This arrangement enabled the Appellants to draw down the land from the Trust, for development to access grants to enable them to regenerate Consett with an overarching charitable aim to bring the town forward. This site is in the middle of housing. Some housing estates are a few hundred metres from the incinerator. Many of these houses were built by the Appellant. The housing developments have provided a 'key regeneration driver' for the area[190], and the Appellants have also profited in the meantime. This site is not the place for an incinerator.

7.7 Additionally, the Appellant has not provided any convincing evidence of the specific need for this facility at this specific location, nor has the Appellant demonstrated that they have the expertise required to build and operate such a controversial operation.

7.8 The waste hierarchy has not been sufficiently considered by the Appellant. The Appellant has not stated where the waste will come from and the evidence makes a lot of assumptions that were not based on the proposed RDF feedstock[191].

7.9 There has been no need identified for this incinerator to be located at the proposed development site in Consett, and no evidence that the RDF would otherwise be sent to landfill. Indeed, many of the claims relating to the impacts of the proposal appear to be predicated on assumptions which might make sense for unprocessed municipal solid waste but that are not relevant to processed RDF despite RDF and not MSW being the proposed feedstock[192].

[190] CD 12.12 paragraph 2.6
[191] CD 14.5, page 1, paragraph 1.4
[192] CD 14.5, page 3, paragraph 5.2

7.10 The proposed development would not represent an acceptable use of the land given the adverse impact of that use and does not accord with the Adopted CDP 2020 as a result[193].

7.11 As the development would have adverse impacts, for example, due to its visual imposition, then, in the planning balance, the lack of demonstration of there being no alternative sites for the incinerator could undermine the case that there is any overriding need for the development to be on this inappropriate site[194].

7.12 Furthermore, it should be noted that, under the EIA Regulations, there must be a description of the reasonable alternatives studied by the developer, including locations, i.e. alternative sites. Even without a duty, the Appellant's failure to adequately make their case could be derived from their failure to adequately define their proposed feedstock and identify whether or not there are sites which are more suitable than the proposed site (e.g. due to better highways or rail access, better proximity to the waste arisings, or lower adverse heritage and landscape impacts)[195].

7.13 With respect to the references to a Masterplan, as acknowledged by the evidence of the Appellant, the Project Genesis Masterplan does not form part of the Adopted County Durham Plan[196].

7.14 For the purpose of summing up our position, certain matters need to be put into context:

7.15 During this Appeal, we have heard on numerous occasions that Consett is an industrial town[197]. It is not. As acknowledged in the evidence of Mark Short, rather than an industrial town, Consett has developed into a commuter base[198]. The steelworks closed over 40 years ago. Consett is now a semi-rural town that rates highly on only one area of the deprivation index. That is Living Environment[199].

7.16 The people of Consett are not opposed to all development. As set out in the various interested party statements of local residents, and 4 local Councillors, Richard Holden MP and former MP Pat Glass[200], never before has the town faced such opposition to a development proposal. This opposition comes from a place of wanting to develop our town with a look to the future and not to our past. The views of 50m chimney stack with a plume are in our past, and have no place in our future.

7.17 In addition, we have heard numerous comparisons between the chimney and wind turbines. Consett is known locally as 'the windy city', we see wind turbines as a forward move of truly renewable energy (in accordance with the

[193] CD 14.5, pages 3-4, paragraphs 9.1-9.3
[194] CD 14.5, page 4, paragraph 11.4
[195] CD 14.5, page 4, paragraph 11.5
[196] CD 12.11, page 10, paragraph 3.8
[197] CD 12.8 and CD 12.7 and in provision of Evidence in Chief of Mr Beswick 11 August 2022.
[198] CD 12.12, page 5, paragraph 2.6
[199] ID 5, pages 17-18
[200] ID6, ID7, ID8, ID9, ID14

definition in the CDP 2020[201]) and accept them on our landscape. Wind turbines are not the same as waste incinerators.

7.18 A need for this development has not been established in Consett. Consett needs more jobs - this is fact[202]. The designation of this land is B1, B2 and B8 employment land - this is fact[203]. This development would bring a mere 9 jobs - this too is fact[204].

7.19 The benefits offered by the Appellant appear to have been considered only when this appeal commenced. Few of the benefits addressed in this appeal were mentioned in the original planning application, and many appear to have only been considered or pulled out of a hat during the Inquiry itself. It appears to us that the Appellant did not adequately consider the need to provide benefits to offset the harm that would be caused by the incinerator until the original application was refused and they then realised that they had to consider some. Are we to assume that the people of Consett are an afterthought?

7.20 Turning now to the specific issues addressed in the case for consideration that are largely based on landscape, heritage and planning, including waste hierarchy, need, climate change, and claimed benefits.

7.21 We take each of these in turn.

Landscape

7.22 There would most certainly be an adverse impact on the landscape of our town if this incinerator were built.

7.23 The building itself would be grossly incongruent with its' setting, at twice the size of the other buildings in the Hownsgill Business Park with a 50m chimney which would be seen from miles around. These are the facts.

7.24 The adverse impact comes from placing something on our landscape that would be impactful in both reality and perception.

7.25 The chimney would be seen from miles around, and the impact of a 50m chimney cannot be fully mitigated. The test in this area of planning is 'no unacceptable harm'[205]. The location of new waste developments also states that there is to be no adverse impact[206]. With this proposal there is an adverse impact that cannot be fully mitigated.

7.26 The reality is that the existence of a plume has been dismissed by the Appellant and has not been adequately taken into account when considering the adverse impact.

7.27 In cross examination Mr Beswick[207] acknowledged that there is a way to model a plume and yet this has not been done. We find it astounding that a

[201] CD 7.1, page 287
[202] ID 5
[203] CD 7.1, Policy 2, Table 3, pages 30-33.
[204] CD 12.1, page 9, paragraph 4.7
[205] Planning Policy 39 - Landscape
[206] CD 7.1 pg. 255 Policy 61 Location of New Waste Facilities
[207] In cross examination of the Rule 6 Party on 11th August 2022

development that has been referred to the Secretary of State due to national and local interest has not been modelled in a way that it will truly be seen. Why would the Appellant not want to present the reality regarding a landscape consideration?

7.28 The reality is also that the only partial mitigation offered for the building that is twice the size of other buildings on the estate is trees which could partially screen the building at a site level within Hownsgill Park[208]. The fact is, trees will never fully screen the proposed development and the 'verticality', its stack, in the wider landscape and setting of our town, the protected Area of Outstanding Natural Beauty (Paragraph 176 of the Framework), or the Area of High Landscape Value[209].

7.29 The National Policy Statement for Renewable Energy Infrastructure states 'it recognises that whilst some visual impacts are inevitable, the focus should be on the mitigation measures that should be employed'. The fact here is that there is no adequate mitigation for the chimney and none which can ever be implemented[210].

7.30 The reality is that an industrial chimney will be viewed from an AONB, homes and houses and schools and visitors to Consett will wake up one day to looking at a 50m chimney (and plume) that is not here today. This is especially upsetting in the knowledge that some of those houses were built and sold by the Appellant as 3-storey houses with their pleasing semi-rural views, amenity and proximity to the C2C and our town.

7.31 There have been numerous references to wind turbines and existing points on the landscape[211]. The fact is there is very little resistance to the development of wind turbines in Consett. People accept these as a clean form of renewable energy that provides something for the future.

7.32 Whilst the Elddis Caravan site can be seen from viewpoints around Consett, this brings over 500 jobs to the area and does not have a 50m chimney or a plume.

7.33 On the site visit the Appellant suggested comparing this 50m stack with a lampost. A lamppost brings essential light to the area and is not a 50m stack and plume associated with pollution.

7.34 The perception of this chimney and what it brings is important. The common perception of a chimney is of a dirty, dangerous, pollutant. The chimney would bring only negative connotation as to what Consett is all about. As a community, we want an eye on the future not an eye on the past, chimneys are our past.

7.35 Mr Newcombe provided evidence on behalf of the Rule 6 Party. He is a company director and photographer working with internal and external still photography, panoramic photography and 360 degree spherical virtual tours. Mr Newcombe is "more of a technical than artistic photographer".

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[208] Cross Examination - Evidence of Paul Beswick
[209] As stated during the cross examination of Mr Newcombe
[210] CD 12.8, page 19, paragraph 5.2.1
[211] In cross examination of Mr Beswick on 11 August 2022.

Mr Newcombe has been a photographer for over 50 years and has extensive relevant experience and expertise in relation to photography and the use of drones. Plus, he is familiar with the use of 3D Modelling and CAD software[212].

7.36 Mr Newcombe's evidence relates to the landscape and visual amenity impact of the proposed building of an incinerator on the Hownsgill Business Park. This evidence primarily deals with the matters pertaining to Landscape and Visual Amenity Impact in respect of the second ground of the refusal of the planning application[213].

7.37 Through his evidence, Mr Newcombe set out concerns that the Appellant's approach to providing visuals failed to provide a realistic impression of the visual impacts of the proposal and that the deficiencies resulted in the adverse impacts were underestimated. As a result of these concerns, Mr Newcombe provided his own evidence which allows the Inspector and Secretary of State to truly understand the adverse impact the proposed development would have on the heritage site and the landscape[214].

7.38 The serious concerns raised by Mr Newcombe have not been overcome by the Appellant during the inquiry. While the Appellant has subsequently claimed that some of their photography was taken with the appropriate equipment, the supplied visuals either do not mention the equipment used or state a Canon compact camera with a small sensor and a wide-angle lens. This means that the photographs/visualisations provided by the Appellant are not in line with good practice[215].

7.39 Mr Newcombe's photography was taken with the correct equipment and was taken as close to the grid coordinates given by the Appellant in their submissions as possible[216].

7.40 Mr Newcombe highlighted a number of fundamental differences other than scale between his visual submissions and those of the Appellant such as the degree of leaf cover and the extent of any plume, which would draw attention to the chimney stack, further impairing the image of the landscape[217].

7.41 Mr Newcombe also noted how the cycle route that would run past within approximately 50 metres of the development site boundary includes "a very popular stopping point for walkers and cyclists alike at the Terris Novalis Sculptures, a raised area only some 450 metres from the site" and which would have its view adversely impacted by the stack[218].

7.42 The stack and the development would be visible from within the AONB and will be visible from all of the major routes into Consett. The negative effects of

[212] CD 12.36 paragraphs 1.1-1.5
[213] CD 12.36 paragraph 2.1
[214] CD 12.36, including Appendix 1, CD 14.11, and MrMr. Newcombe's oral testimony at the inquiry
[215] CD 12.36 paragraph 3.2
[216] CD 12.36 paragraph 2.3
[217] CD 12.36 paragraphs 3.6.1 – 3.6.8
[218] CD 12.36 paragraph 3.6.5

this development would be extremely detrimental to the town, it's residents and the businesses that it serves[219].

7.43 The overall appearance of the development with the chimney and the plume would make the area look very industrial and "dirty", something that Consett has been trying hard to change from the days of the Steelworks. Visual amenity and Landscape are important to the people of Consett who have spent over 30 years trying to move away from being known as an industrial, dirty steelworks town. Consett falls into a lower scale on the National Deprivation Index in everything other than Environment. To aim to actively reduce the one thing that Consett has in its favour would be catastrophic to a town that is trying to regenerate itself against a history of very hard economic and social times[220].

7.44 By way of assisting the Inquiry, Mr Newcombe arranged for photographs to be taken with balloons showing the height of the chimney stack. This showed that the stack was visible from a number of locations. Some of these photographs were reproduced as A3 hard copy and circulated at the inquiry so that viewers could hold them at arm's length and experience an accurate representation of what a person would see when looking at the Consett incinerator if it were built[221].

7.45 When Mr Newcombe suggested that it would be good if the balloons were there on the day of the site visit (15/08/22) the Inspector agreed and suggested that this take place with grey balloons. The appellant asked to arrange this as it was their land. On the day of the site visit, the appellants team arrived on site without the required equipment or helium to get the balloons to the correct size and height. We found this both disappointing and unprofessional.

7.46 Given the appellant did not manage to raise the balloons to verify or dispute the pictures provided by Mr Newcombe, we would suggest that Mr Newcombe's photographs with the red balloons are indicative of the location and height of the incinerator stack which in turn casts doubt on the appellants verified views, especially in relation to Viewpoint 3 and all other locations along the Derwent Walk from the site to the west end of the Hownsgill Viaduct.

7.47 The photographs presented in Mr Beswick's Proof of Evidence on Landscape and Visual Impact[222] do not give a clear enough picture of the impact that this development would have on the town of Consett. There are a number of inaccuracies in the photographs provided that The Consett Committee want the Secretary of State to note (in particular the viewpoints in paragraph 4.7.5 of CD 14.11). The viewpoints provided by the Appellant have been shown in small-scale low-resolution panoramic format and although they may show placement in the landscape, they are not representative of the view a person would see or perceive[223].

[219] CD 12.36 paragraph 3.6.6
[220] ID 5 and CD 12.35, pages 8-10, paragraphs 2.33-2.48
[221] CD 12.36 section 4, including accompanying photographs
[222] CD 12.8, CD 12.8.1 and CD 12.8.2
[223] CD 14.11

7.48 From a visual and landscape perspective, there is no adequate mitigation for the harm that this development would cause. Other than the pale grey colour of the stack, all of the mitigation set out by Mr Beswick in his Proof related to the building and not to the stack (or the plume). The impact of the stack (and the plume) on the landscape cannot be mitigated and as such it will impact adversely[224].

7.49 The building and the stack are in stark contrast to the other buildings on the Hownsgill Industrial Park and in the rest of Consett. Most of the landscape's industrial past has been erased. Hownsgill Business Park, Morrisons, Tesco, etc. are not even close to the scale of the proposed incinerator, so the influence Consett has on the views from the AONB to the southern/western edge of the Consett site would be changed to a very large extent in terms of actual visuals and perceived views[225].

7.50 The measure of CDP Policy 61 on Location of New Waste Facilities is that there should be no unacceptable adverse impact[226]. The adverse impact on the Landscape and Visual Amenity would be significant and the stack would be highly visible throughout the Consett area and beyond[227].

7.51 While the Appellant has tried to emphasise the area's industrial past[228], the primary character that most people experience is one of post-industrial regeneration, including through retail sites, supermarkets, and housing developments. The Consett of today is a world away from the steel, mining, and heavy industries that filled the air with plumes and red dust and filled the skies with chimneys[229].

7.52 Even in places from where the main building could not or would not be seen from, the stack and the plume would be a significant visual change both in and at Consett[230]. It is clear from the large number of objections and from what has been said by members of the public during the inquiry that they would see the incinerator as an unwelcome blot on the landscape, out of character with the local area.

7.53 CDP Policy 29[231] places an onus for development to 'contribute positively to an area's character'. Mr Beswick's Proof on Evidence[232] does not provide any evidence of a positive contribution to the area's character that would be made by the incinerator, but instead seeks to rely on the disputed notion that nothing would be lost.

7.54 Mr Beswick is incorrect to claim that the chimney is anything other than uncharacteristic of the current location for the Development[233]. There are no longer historic chimneys in Consett, not least because the focus of

[224] CD 14.11
[225] CD 14.11
[226] CD 7.1, pages 254-257
[227] CD 14.11
[228] For example in CD 12.8, paragraph 6.3.4
[229] CD 14.11, response to paragraph 6.3.4 of CD 12.8
[230] CD 14.11, response to paragraph 6.4.12 of CD 12.8
[231] CD 7.1, pages 150-152
[232] CD 12.8, CD 12.8.1 and CD 12.8.2
[233] CD 12.8, paragraph 7.2.16

regeneration in this area was to remove those chimneys from the landscape to ensure they no longer had a visual effect on the town[234].

Heritage

7.55 On Heritage, we do not intend to repeat the arguments raised by the Council We support their arguments in relation to impact on the Grade II listed buildings that they will be impacted by this incinerator.

7.56 These are the Grade II listed High Knitsley Farmhouse and Grade II listed Barn West of High Knitsley Farmhouse, which are approximately 1km south-east of the site (CD 12.3 para.2.3 pg. 2).

7.57 We do believe that other assets are of significant importance. Additional assets to be considered that we identified to the Inspector were as follows: Grade II listed Hownsgill Viaduct; Blackhill Park as a Conservation Area; and the Grade II listed Accommodation Arch Under Former Railway for Road to Knitsley, which is approximately 650m south-west of the site.

7.58 These assets currently lie within a setting of the beautiful natural countryside. They should remain that way and not be subject to the view of a potential industrial future in any views of them.

7.59 Heritage is important to Consett. When the Steelworks went, what was left? A vast landscape on which housing now exists. Consett had to build itself back up and, in doing so, assets such as Blackhill Park have been kept safe. This park is in a Conservation Area.

7.60 The Railway Arch and the Hownsgill Viaduct go back to a time when trains were part of the daily routine of Consett and also a time when the town was covered in red dust. These assets are important to give a nod to our heritage and are thankfully now on the famously used coast to coast route that takes cyclists through the beautiful countryside. In addition to the assets identified by the Council these assets should be protected from the imposition of a large chimney stack and plume.

7.61 In its Conservation Principles 2008, Historic England defines Historical Value as "the way in which a heritage asset can illustrate past people, events and aspects of life; this includes the associative and illustrative historic value of an asset, as well as its communal value which relates to the meaning of a place and can be commemorative or symbolic"[235].

7.62 As an ex-steeltown we do not have what many people would recognise as historical assets. What we do have is a Heritage Trail that was designed to commemorate and combine the beauty of the countryside, to highlight and facilitate access to our industrial past. An RDPE Growth Programme grant of £350,000[236] was used to develop this by Project Genesis. For the purpose of this application, Project Genesis now claim that the trail is Heritage in name only. We disagree, we believe that this trail is an asset that 'illustrates our past' and should be recognised as such. Placing an incinerator so close to this

[234] CD 14.11, response to paragraphs 7.2.13-7.2.17 on Sustainable Design in CD 12.8
[235] CD 8.4
[236] CD 12.37; CD 12.37.1; CD 12.37.2

development is an insult to our past and it severely restricts our future and potential for further economic growth via tourism with Consett a place to visit.

Planning

7.63 In his evidence Mr Parkes made the following salient points.

7.64 The site is the wrong place and could be better used as employment land.

7.65 The CDP is the statutory development plan for the area[237]. We ask the Inspector and Secretary of State to disregard the illustrative Project Genesis Master Plan as this is a plan promoted by the developer for the developer and has had no approval by the Council[238] or substantive community consultation[239].

7.66 The ambition in the CDP is as follows: "The ambition for County Durham is to build a successful and sustainable future in which all of our residents have the opportunity to access good housing and employment in an environment which delivers a healthy and fulfilled lifestyle"[240].

7.67 We believe we have demonstrated that the proposal falls at the first hurdle as it fundamentally contradicts the intention and aim of the CDP. It is a waste incinerator in a location that will negatively impact the environment, community and landscape. It is not in keeping with the sustainable plan for the long term and it conflicts with ongoing aspirations for regeneration of the area. Mr Parkes provided evidence from his own personal experience and evidence from Cranfield University that incinerators are likely to adversely impact on the regeneration of the area[241].

7.68 The Appellant sought to use inappropriate examples to discredit this evidence and also to question good quality academic research by a reputable University.

7.69 The Consett development would use valuable employment land for extremely low-density employment development, as has been demonstrated with evidence from elsewhere and it should be used for manufacturing or service sector development as is intended. This is in conflict with CDP Policy 2 (Employment land)[242].

7.70 In the Council's cross examination of Mr Emms, he acknowledged that the application site might otherwise be redeveloped for other purposes but cited a letter from Youngs RPS as the Appellant's best evidence that the Appellant had tried and failed to market the site for industrial purposes[243].

7.71 However, Mr Emms notably did not explain how that one-page letter which is lacking in detail demonstrated compliance with CDP Policy 2.

7.72 CDP Policy 2's section on 'Development of Employment Sites for Other Uses' expects that "...there is documented evidence of unsuccessful active marketing

[237] CD 7.1
[238] CD 12.11, pg. 10, para 3.8
[239] CD 14.5, page 2, paragraphs 2.1-2.5
[240] CD 12.35, page 3, paragraph 2.3 and to CD 7.1, page 11, paragraph 2.1
[241] CD 12.35.7
[242] CD 12.35, pages 3-10
[243] Council cross examination of Mr Emms (17th August 2022) and CD 12.11.1 page 31

for employment use with at least one recognised commercial agent at local market levels, over a continuous period of at least...2 years for...an allocated site below 10ha and 5 years for the development of a plot of land on an allocated site of greater than 10ha;..."[244].

7.73 While the Appellant has belatedly tried to argue that the site should be treated as for a B2 uses, Mr Emm's open admission can be taken as an acceptance of the Council's position that "it is accepted that the proposed development does not fall within the B1, B2 or B8 use classes"[245].

7.74 As Mr Parkes explained: "The development would count as a 'sui generis' use which does not fall within B1, B2 or B8 use classes for which the site is safeguarded"[246].

7.75 As such, it is clear that, under the terms of the CDP, the proposal falls outside of what is considered the expected use of the land and the Appellant has failed to demonstrate an appropriate exception as required by CDP Policy 2.

7.76 Given the applicant has been looking at an energy centre for the site since 2013 we believe that it should have been promoted through the CDP which reached pre-submission stage in 2019. The best way to determine any need for a new incinerator is in accordance with the waste hierarchy and its location would also be determined through the Development Plan process[247].

7.77 As a consequence, the proposal would have negligible impact on GVA/economy compared to other land uses or if the waste were to be recycled or reused[248].

7.78 Mr. Parkes, with his extensive regional experience of business development[249], demonstrated that an incinerator on this site could have an adverse impact on existing and future jobs in the area[250].

7.79 We have also highlighted that there is a propensity to locate incinerators in deprived communities and we have highlighted through the Consett Committee's various witnesses that to allow this scheme would deal a severe blow to the confidence of the community and therefore its future[251].

7.80 Mr Parkes' evidence demonstrated that we should refer back to the Framework, paragraph 8 of which makes clear that one of the three overarching objectives of the planning system is "to support strong, vibrant and healthy communities…" Mr Parkes also demonstrated that the Appellant's attempt to describe this proposal as a low carbon scheme were discredited[252].

7.81 Mr Parkes also highlighted the Green Lane appeal decision in Salford, as a good comparator, in terms of the type of economic profile and land values precedent where the Inspector stated that: "In terms of the character of the

[244] CD 7.1, pages 30-33
[245] CD 12.10 Paragraphs 5.6-5.7
[246] CD12.35 paragraph 2.52
[247] CD 12.35, page 10, paragraphs 2.45-2.46
[248] CD 12.35, pages 5-8, paragraphs 2.19-2.32
[249] CD 12.35, page 2, paragraphs 1.1-1.7
[250] CD 12.35, pages 5-8, paragraphs 2.19-2.32
[251] CD 12.35, page 8, paragraph 8 which refers to CD 12.35.5 and CD 12.35.6
[252] CD 12.35, page 8, paragraphs 2.47 – 2.48

area, I do not consider that local residents would perceive the proposed stack for a waste facility to be comparable to that which might apply to a stack associated with a hospital, as was suggested by the appellant. This activity and land use would be out of keeping with the mixed industrial/residential character of the area. It would create an awkward juxtaposition of waste processing with nearby residential development and the tourism/leisure use of the Canal. This would result in a high magnitude of change to the townscape. I consider that the proposed EfW facility and activity associated with it would have a substantial adverse impact on the character of the area…"[253].

7.82 Examples from Gloucestershire, Wiltshire and Kent that were suggested by the Appellant's team bear little comparison with the circumstances in Salford and Consett.

7.83 The passage cited from the Green Lane decision provides a clear distinction between chimney stacks associated with a hospital and those associated with a dedicated waste processing facility. This supports the case made by Mr Newcombe, that the introduction of the incinerator stack at Consent would introduce a 'dirty' industrial element into the landscape[254]. In line with the Green Lane decision, the 'dirty' nature of the Consett incinerator stack distinguishes the vertical element from other vertical elements such as wind turbines.

7.84 We are also concerned that the proposal would create heavy traffic through residential areas causing adverse impact to the amenity of residents. We consider this to be a material consideration[255].

7.85 The Consett Committee is concerned that inadequate consideration was given at the planning application stage to the waste hierarchy and also the subsequent changes that have been occurring and the direction of travel of Government Strategy.

7.86 Mr Parkes highlighted that the development is unlikely to be operational until 2027. However, Government policy is to ensure that 65% of 'municipal' waste is to be recycled by that date[256]. The current County Durham performance on recycling is about 41%[257]. To achieve this there is going to be a significant reduction in the amount of waste needing to go to incineration and landfill. In County Durham landfill represents less than 10% of waste disposal[258]. Therefore, there is a need for a major reduction in waste going for incineration locally.

7.87 However, we have demonstrated in Mr Parkes' evidence with reference to Mr Shield's evidence that there is either existing incineration capacity in the region already available or planning approvals for a major addition to incineration capacity that is capable of dealing with all the incineration requirements in the region in the future.

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[253] CD 12.35, page 11, paragraphs 2.56 – 2.60
[254] CD 12.36 Paragraph 3.6.7
[255] CD 12.35, page 6, paragraph 2.29 and page 8, paragraph 2.30
[256] CD 12.35, page 16, paragraph 3.36 and page 17, paragraph 3.50 which refers to CD 10.2 and CD 10.3
[257] CD 12.35, page 18, paragraph 3.54
[258] CD 12.35, page 18, paragraph 3.55

7.88 As CDP Paragraph 5.482 makes clear: *"Applicants seeking planning permission for new waste development will always need to address the waste hierarchy and demonstrate that there are no other sequentially preferable management routes"*. The applicant has clearly failed to address this test[259].

7.89 Our evidence has also highlighted that the Consett incinerator would be working on commercial principles and we support Mr Shield's evidence that the waste used in RDF could be sourced from anywhere. Thus, not addressing a local need.

7.90 We have already highlighted that if there is a need for more incineration in County Durham, this should be determined by the statutory body, the County Council, including the location.

7.91 Mr Parkes also highlighted the recommendation of the Committee on Climate Change which clearly warns against incineration overcapacity[260].

7.92 Such sentiments are in line with what has been said by the UK Government. As noted by Mr Parkes, the direction of Government policy builds further on the need to protect against incineration overcapacity and against the harm that incineration can cause to recycling[261].

7.93 This needs to be put in the context of the Government objective to dramatically increase recycling in areas such as County Durham. For example, the 'Planning for New Energy Infrastructure - Draft National Policy Statements for energy infrastructure' [EN-3][262] includes the following passage, which was explicitly endorsed by the CCC: "2*.10.4 As the primary function of EfW plants is to treat waste, applicants must demonstrate that proposed EfW plants are in line with Defra's policy position on the role of energy from waste in treating municipal waste. 2.10.5 The proposed plant must not result in over-capacity of EfW waste treatment at a national or local level*"[263].

7.94 This sentiment was explicitly confirmed as current Government policy on the 11th of July 2022 when Victoria Prentis, the Minister of State, Department for Environment, Food and Rural Affairs, answered a Parliamentary question on behalf of Defra as follows: "*The Government's view is that Energy from Waste (EfW) should not compete with greater waste prevention, re-use, or recycling. Proposed new plants must not result in an over-capacity of EfW waste treatment provision at a local or national level. Officials are currently assessing planned incinerator capacity against expected future residual waste arisings. This further assessment of residual waste treatment capacity needs will be published in due course"*[264].

[259] CD 7.1, page 215. Referred to by Parkes in CD 12.35, page 13, paragraph 3.11
[260] CD 13.43 and CD 13.44 referred to by Parkes in CD 12.35, page 14, paragraphs 3.19 and 3.20 respectively
[261] CD 12.35, pages 14-16
[262] CD11.5
[263] CD 12.35, page 14, paragraph 3.22 which cites CD 11.5
[264] CD 12.35, page 15, paragraph 3.23 which cites CD 12.35.8. Written answer from Defra on 'Incinerators: Recycling' (published 11th July 2022)

7.95 Mr Parkes evidences the fact that the facility is intended to accept RDF, which does not allay concerns about the adverse impact of the facility on recycling. The use of RDF as feedstock raises additional concerns.

7.96 Parkes cited the Government's Energy from Waste Guide as follows: *"There is currently no minimum specification for RDF, it is a catch-all term for waste that has been processed in some way to make it a suitable fuel. There is therefore some blurring in the boundary between what is mixed municipal waste and what is truly RDF. The specification for the fuel is usually dictated by the end user using a range of parameters"*[265].

7.97 In other words, RDF is likely to be competing commercially with recycling. Indeed, there is the possibility that the RDF feedstock specification for the Consett plant could skew the RDF towards being comprised of a significant quantity of potentially recyclable material with a higher calorific value[266].

7.98 Mr Parkes provided evidence from Defra's Resources and Waste Strategy Monitoring Report (2020): "*Of total residual waste from household sources in England in 2017, an estimated 53% could be categorised as readily recyclable, 27% as potentially recyclable, 12% as potentially substitutable and 8% as difficult to either recycle or substitute".* And*, "The message from this assessment is that a substantial quantity of material appears to be going into the residual waste stream, where it could have at least been recycled or dealt with higher up the waste hierarchy"*[267].

7.99 The waste hierarchy implications of the proposal mean that it goes against a number of CDP policies that promote reduction, re-use and recycling and that provide protections against developments which would serve to lock the management of waste into the bottom tiers of the waste hierarchy. Notably CDP policies 47, 60 and 61[268].

7.100 The Appellant has not demonstrated that the Consett incinerator would be diverting all of its waste from landfill. Indeed, it has not been demonstrated that there is a surplus of local waste that is not recyclable; particularly taking into account the Government's targets on recycling and the current performance of County Durham in this area[269].

7.101 As such, the proposal does not accord with the following policies:

a) CDP Policy 47(a) as it would not ensure that waste is managed in line with the waste hierarchy in sequential order due to the uncertainty about the origin, composition, and alternative fate of the feedstock[270].

b) CDP Policy 60(a) because the facility could be expected to process material that might otherwise have been recycled or treated at a different incinerator, and so the proposal goes against the requirement to

[265] CD 13.46 referred to by Parkes in CD 12.35, page 15, paragraphs 3.25 – 3.27
[266] CD 12.35, pages 15, paragraphs 3.28
[267] CD 13.36 as discussed by Parkes in CD 12.35, pages 15-16, paragraphs 3.29 – 3.20
[268] See for example CD 12.35, pages 16-17, paragraphs 3.31 – 3.45
[269] CD 12.35, page 16, paragraph 3.33
[270] CD 7.1, pages 214-215 discussed by Parkes at CD 12.35, page 16, paragraph 3.34

"*contribute to driving the management of waste up the waste hierarchy and do not prejudice the movement of waste up the waste hierarchy*"[271].

c) CDP Policy 60(c) due to the Appellant's failure to provide adequate analysis to demonstrate compliance throughout the lifetime of the proposal. By the time the facility could be up and running it can be expected that the amount of residual waste in County Durham requiring treatment will be significantly lower[272].

d) CDP Policy 61. The Appellant has not demonstrated that the proposal would "assist the efficient collection, recycling and recovery of waste materials" as it could undermine recycling and it could be inefficient due to its poor location in relation to arisings and lack of sufficient heat demand.

e) We will leave it to the Council to argue in relation to CDP Policy 61(a)[273].

f) Policy 61(c) as the Appellant has not demonstrated that the development would "*minimise the effects of transporting waste including by locating as close to arisings as practical*"[274].

g) Policy 61(e) because its location is not satisfactory due to the adverse impacts of the proposed use of employment land[275]. Additionally, the proposed development would also inhibit the Government's objective of achieving 65% of recycled waste[276]. In this respect it should be noted that RDF is not sent to landfill and that the proposal is therefore at best diverting waste from a different incinerator, and as such not driving waste management up the waste hierarchy.

7.102 The RDF may also contain material that could otherwise have been recycled and could result in incineration overcapacity, and as such could prejudice the movement of waste up the waste hierarchy[277].

Climate Change Impact

7.103 With plans for more recycling and less waste there is no need for more incineration capacity. Therefore, the production of CO_2 from the proposed Consett incinerator is unnecessary[278].

7.104 Mr Parkes highlighted in his evidence that the content of RDF cannot be identified and could contain plastics which are high CO_2 emitters[279].

7.105 We therefore support the Council's Low Carbon Economy Team concerns about the adverse climate impacts of the facility[280]: "*The applicant cannot confirm*

[271] CD 7.1, page 248 discussed by Parkes at CD 12.35, page 16, paragraphs 3.35-3.38 and CD14.5, page 3, paragraphs 7.1-7.2
[272] CD 7.1, pages 214-215 discussed by Parkes in CD 12.35, page 16, paragraph 3.39
[273] CD 7.1, page 248 noted by Parkes in CD 12.35, page 17, paragraph 3.42
[274] CD 7.1, page 248 discussed by Parkes at CD 12.35, page 17, paragraph 3.43
[275] CD 7.1, page 248 discussed by Parkes at CD 12.35, page 17, paragraph 3.45
[276] CD 12.35, pages 17-18, paragraphs 3.49–3.56
[277] CD 12.35, page 16, paragraph 3.38
[278] CD 12.35, page 19, paragraph 4.1
[279] For example: CD 2.35, page 15, paragraph 3.28
[280] CD 12.35, page 19, paragraphs 4.5-4.7 cite the comments from the Council's Low Carbon Economy Team in CD 5.1, CD 5.8, CD 5.22 and CD 5.36. Quoted paragraphs are from CD 5.1

the percentage of plastics and other materials in the feedstock … it leaves a significant unknown … in terms of emissions. Burning Plastic will ultimately have a negative impact upon emissions and this has been confirmed by Government…the incineration of plastic waste could result in over 1000g CO_2 for every kWh exported to the grid. Indeed, Zero Waste Scotland claim that EfW could no longer be considered a low carbon technology…In conclusion, I continue to have concerns relating to the proposal, in terms of: The amount of plastic that will be in the RDF; The carbon intensity of the energy provided by the facility". The development could be adding CO_2 to the atmosphere in breach of national and local objectives[281].

Claimed Benefits

7.106 We would like to address the proposed benefits stated by the Appellant.

7.107 Mr Parkes highlighted that much of the claimed benefits were speculation, lacking detail[282].

7.108 The Appellant has claimed the incinerator will provide a much-needed waste management resource contributing to driving waste up the hierarchy[283].

7.109 While Mr Caird's GHG Assessment[284] is premised on comparing refuse derived fuel (RDF) going to either the Consett incinerator or to landfill, Mr Caird confirmed in cross examination that it is unlikely that RDF, which is the proposed feedstock and which is prepared to be a fuel, would subsequently be sent to landfill in the event in the event that it did not go to the Consett incinerator[285].

7.110 Mr Caird's concession has serious implications regarding the validity and relevance of the landfill comparator that he chose and to the potential alternative fate of the RDF feedstock in the event that the appeal is dismissed.

7.111 If, as Mr Caird confirmed in cross examination, the RDF feedstock material would not be likely otherwise to go to landfill, then no benefit should be claimed for diverting this material from landfill, nor for driving the management of waste up the waste hierarchy.

7.112 Mr Caird's cross examination confirmation, that RDF would be unlikely to be sent to landfill, therefore supports the position set out by Mr Parkes[286] that the Appellant has not made a convincing case that their proposed new capacity would drive the management of waste up the waste hierarchy.

7.113 Mr Caird's statement also supports Mr Parke's case that RDF is not sent to landfill[287] , and instead RDF is used as feedstock for either incinerators or cement kilns and that therefore, in the best-case scenario, the proposed Consett facility would be managing waste that would otherwise be used as

[281] CD 12.35, page 19, paragraph 4.1
[282] See for example CD 14.5 page 1 paragraph 1.7 and page 8 paragraph 15.19
[283] ID 3, Appellant's opening statement, page 2
[284] CD 12.9.1 Appendix 1
[285] Rule 6 Party XE of Caird (12th August 2022). Caird's response began: "Yes".
[286] CD 12.35, page 12, paragraphs 3.1 - 3.9
[287] CD 12.35, page 12, paragraph 3.9

feedstock for a different incinerator (or at a cement kiln) and not material that would otherwise be sent to landfill.

7.114 This means that, at best, the proposal would result in the 'sideways' management of waste (i.e. depriving a different incinerator of this feedstock) because the Appellant is proposing to treat RDF which doesn't go to landfill in any case[288].

7.115 If RDF is being diverted from other incinerators to the Consett plant, not only might those incinerators have been closer to the origin of the waste than the Consett incinerator, but it may then force those other incinerator operators to go further afield for waste feedstock, and this could result in a net increase in travel distances. In short, the Appellant has failed to demonstrate that waste would be managed higher up the hierarchy if this incinerator is built.

7.116 In relation to the Appellant's claimed benefit of moving approximately 1,000 tonnes of bottom ash and metals up the waste hierarchy, Mr Parkes noted that, while metal removal counts as recycling, the generation of Incinerator Bottom Ash Aggregate (IBAA) is neither recycling nor reuse. Most of the metal in the waste would be removed when the RDF was being produced. After all, the Appellant claims that their facility would only be burning non-recyclable/post-recycling waste[289].

7.117 The Appellant has alleged that the appeal scheme will generate electricity and heat and also proposes to commit to minimum 10% discounts for local users and suggests that there can be real confidence the ambitions for a local heat and power network will be delivered[290].

7.118 During the round table discussion it was evident that the way that this 10% would be calculated had not been thought through and is no more than a throw away comment in an eleventh-hour attempt to gain weight in the planning balance. Neither the Inspector nor the Secretary of State should rely on such woolly proposals.

7.119 The Appellant suggests that his incinerator would operate as a catalyst for further regenerative economic and sustainability benefits, both within the Hownsgill Industrial Park itself and the wider local area[291].

7.120 In cross examination Mr Beswick described future development of a sea of chimneys[292]. Thus, the Appellant's vision appears to constitute not one but numerous inappropriate developments in the area. It has been recounted many times during this hearing that there will be 9 jobs created here. This is not a catalyst for future employment and it is misleading to describe it as such.

7.121 In Mr Parkes' extensive experience in marketing business parks and business floorspace is that, as a consequence of an incinerator being sited in the centre of a business park, inevitable concerns arise from many businesses with respect to the detrimental impact on the image, presentation and perception of

[288] CD 12.35, page 12, paragraph 3.8; see also CD 14.5 pages 6 and 7 paragraphs 15.1 – 15.4
[289] CD 14.5, page 7, paragraphs 15.5-15.8
[290] ID 3, Appellant's opening statement, page 2
[291] ID 3, Appellants opening statement
[292] In Mr Beswick's cross examination by Durham County Council.

the business park, with potential future investors and occupiers and possibly existing occupiers (when their leases come up for renewal). As a consequence, the proposed incinerator would have a negative impact on values of the existing units and vacant development sites, making future growth more challenging[293].

7.122 In evidence, Mr Parkes expressed his concerns that an incinerator would create a detrimental image of the location and therefore result in a reduction in potential investment and indeed may result in some businesses reconsidering their future of remaining in Consett (particularly on the Hownsgill estate)[294].

7.123 Under the same heading of benefits, the Appellant goes on to state that this scheme would enable the full implementation of the Solar Farm permission[295]. As set out below, Mr Parkes has provided evidence that disputes the relevance of this proposal, unrelated to the Consett incinerator.

7.124 The Appellant states that they propose to secure a fund to be created from receipts of the appeal scheme (likely to amount to around £120,000pa) to alleviate local fuel poverty[296]. We do not know what the impact of £120,000 will be on the people of Consett. Again, this benefit was never mentioned at the time the original planning permission was sought and an assessment of the true impact is not available, as the Appellant has not clarified who they would support and under what terms.

7.125 Our view is that this offer is a reactionary tactic by the Appellant. It is our belief that in reality, this incinerator would not provide any substantial local economic benefit to an area that is already in the top 30% of the National Deprivation Index and faces significant fuel poverty.

7.126 During the round table discussion it was evident that the way that this fund would be calculated, who it would benefit, what the benefit would be and how it would be administered were still very vague at best and ill-considered, and as far as we are concerned should not be given any weight.

7.127 The final benefit of this incinerator as suggested by the Appellant is delivering substantial reductions of CO_2 emissions, as against the landfill baseline[297].

7.128 As set out in further detail below, the overall reliability of the Appellant's climate evidence is poor and does not provide a suitable platform to support the appellant's claimed carbon benefits. In stark contrast, UKWIN and the Council's Low Carbon Economy Team have both provided robust evidence demonstrating the climate harms that would be likely to arise were the proposed Consett incinerator development to go ahead[298].

Weight to be given to claimed GHG benefits and potential adverse impacts

[293] CD 12.35, page 6, paragraph 2.25
[294] CD 12.35, page 8, paragraph 2.31
[295] ID 3, Appellant's opening statement, page 3
[296] ID 3, Appellant's opening statement, page 3
[297] ID 3, Appellant's opening statement, page
[298] CD 14.5, pages 5-6, paragraph 13.8 which draws on CD 14.6

7.129 As acknowledged by Mr Emms, in their Environmental Statement the Appellant only claimed a 'minor beneficial' climate change effect for the proposal[299]. However, as set out in Mr Parkes' evidence[300] even crediting the proposal with a 'minor beneficial effect' appears unjustified given the uncertainty of key parameters underpinning the carbon credentials of the proposal set out within the Appellant's Environmental Statement.

7.130 As noted by Mr Parkes[301], the Appellant makes a variety of assumptions about the benefit of the facility, the majority of which are provided without any real evidence that they can be delivered. Very little weight can therefore be placed on this speculation.

7.131 The Secretary of State refused planning permission for the proposed Wheelabrator Kemsley North (WKN) incinerator in February 2021. According to the Secretary of State's Decision Letter[302]: "*In its conclusions [ER 4.14.58 et seq], the ExA [Examining authority] sets out that, given the uncertainties in the Applicant's assessment of carbon benefits, the matter should carry little weight in the assessment of WK3 and WKN…The Secretary of State sees no reason to take different view to the ExA in this matter."*

7.132 The associated Recommendation Report from the Examining Authority[303] stated that: "*The netting off of a proportion of GHG is not an unreasonable approach where there is a clear baseline alternative from which like can be compared with like with a high degree of confidence. However, the levels of carbon benefit impact relating to the Proposed Development, as the Applicant accepts, is subject to several key uncertainties and limitations, such as the estimate of GHG emissions from landfill, the carbon intensity of marginal electricity generation and the proportions of waste types to be managed. All the available evidence casts considerable doubt on whether the 'net benefit' can be ascertained with any great certainty, given it is highly sensitive to the assumptions applied*".

7.133 The evidence from the Council's Low Carbon Economy Team[304], the Rule 6 Party[305], and indeed from the Appellant themselves[306] supports the conclusion[307] that the Consett proposal should be treated similarly to Wheelabrator Kemsley North. As for Consett, there is also considerable doubt on whether the 'net benefit' can be ascertained with any certainty given that it is highly sensitive to the assumptions applied.

7.134 As such, the Appellant's claimed climate benefits should be given little if any weight in the planning balance.

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[299] CD 12.10, page 27, paragraph 5.64 where Emms states: "The applicant has considered climate change within the ES. The conclusion of this assessment is that, overall, the proposed development would offer a minor beneficial effect over the baseline scenario".
[300] CD 14.5, pages 1 and 5, paragraphs 1.6 and 13.6
[301] For example, at CD 14.5, page 1, paragraph 1.7, and elsewhere in Parkes's Proof and Rebuttal Proof.
[302] CD 13.41, pages 11 and 12, paragraph 4.41; and CD 12.35, page 17, paragraph 3.47
[303] CD 13.42, page 107, paragraph 4.14.64; and CD 12.35, page 17, paragraph 3.48
[304] Including CD 5.1, CD 5.8, CD 5.22, and CD 5.36
[305] In particular CD 12.35, CD 14.5 and 14.6
[306] Caird XE by Council and Rule 6 Party (12th August 2022)
[307] As per CD 12.35, page 21, paragraph 4.17

7.135 On the other side of the planning balance, Mr Parkes sets out genuine concerns that the proposal would adversely impact climate change objectives, noting that the uncertainties raise the realistic prospect of net adverse impacts of the proposal compared to sending the waste to landfill[308].

7.136 As set out by Mr Parkes, the potential adverse climate impacts of a development can be given "significant, or even decisive" weight in the planning balance and are even capable of being "treated as a freestanding reason for refusal"[309].

7.137 Mr Parkes also sets out why the matter cannot satisfactorily be addressed through a planning condition and the significant differences in circumstances between the Consett proposal and the Keypoint (Swindon) proposal[310]. It was the Appellant's responsibility to clearly demonstrate carbon benefits of the scheme and to rule out adverse climate impacts, and their failure to do so should result in adverse weight in the planning balance, rather than a planning condition of questionable effectiveness.

7.138 Concerns about the Consett proposal's climate credentials have been reinforced by submissions from Mr Caird[311] and by the statements made by Mr Caird under cross-examination - set out below - which highlight both the high level of uncertainty in the assumptions used and the potential for the Consett facility to perform worse than landfill.

Mr Caird's comparison of incineration with landfill

7.139 Even if the RDF would otherwise go to landfill without further pre-treatment to reduce its impact, Mr Caird acknowledged in his written evidence that there were circumstances where the proposed Consett proposal could result in an even worse climate outcome than sending the same material to landfill[312].

7.140 The Rule 6 Party's evidence noted that the central carbon and net calorific values (NCVs) adopted by Mr Caird for the Consett proposal were more favourable to the scheme than similar central values recently adopted by Mr Caird in his GHG Assessment for an RDF incinerator proposal in Reading[313].

7.141 In response to this matter having been raised by the Rule 6 Party, Caird wrote an acknowledgement that the central parameters for Consett's Net Calorific Value and carbon content represented "*average data from the tests in terms of NCV and carbon content" and so were more favourable for the proposal than the central values used in the assessment he carried out for the Reading RDF incinerator which he claims represented a "worst-case assessment*"[314].

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[308] CD 12.35, page 9, paragraph 4.3 and CD 12.35 pages 19 - 22
[309] CD 14.5, pages 9-12, paragraphs 20.3-20.14; CD 14.9; CD 14.10
[310] CD 14.5, Pages 9-12, Paragraphs 20.3-20.15 which includes references to CD 13.8, CD 14.9, and CD 14.10
[311] CD 14.4, especially page 4 response to CD 14.6 paragraphs 33/34 that did not dispute calculations showing high level of uncertainty in RDF feedstock assumptions and page 5 response to CD 14.6 paragraphs 46/47/48/49 where Caird acknowledges a "balance point at which emissions from the Appeal Scheme are greater than landfill"
[312] CD 14.4, page 3, cell responding to CD 14.6 paragraphs 46/47/48/49
[313] CD 14.6, pages 3-6
[314] CD 14.4, page 3, cell responding to CD 14.6 paragraphs 16/17/18/19

Mr Caird has not provided an equivalent worst-case assessment for the Consett proposal.

7.142 Mr Caird explicitly stated that he did not contest the Rule 6 Party's calculations which showed that assuming the composition of the RDF feedstock for Consett would be similar to Mr Caird's central assumptions for RDF feedstock composition in Reading (i.e. in terms of biogenic/fossil content and carbon content) the assumed level of CO_2 released per tonne of waste incinerated at Consett would increase by more than 48% relative to Mr Caird's central assumption for Consett[315].

7.143 While Mr Caird stated that an additional suggested sensitivity was unrealistic, he notably did not state that the Reading sensitivity (with its 48% higher fossil CO_2 output) was unrealistic[316].

7.144 Mr Caird also acknowledged that the fossil carbon intensity of the energy generated by the Consett facility could be "*in line with*" those set out in a submission from the Rule 6 Party[317], which featured an operator claim of 617 grammes of CO^2 per kWh but which also includes a range of real world operations with carbon intensities of between 828 and 873 grammes of CO2 per kWh based on information reported by the operators[318].

7.145 This level of carbon intensity is considerably higher than both the carbon intensity of Combined Cycle Gas Turbine (CCGT) and of the BEIS marginal electricity mix for 2021 and for 2025 and supports the conclusion that the Consett incinerator would be a high-carbon development[319].

7.146 This level of carbon intensity is significantly higher than the carbon intensity of CCGT at around 340 grammes of CO_2 per kWh[320] which represents the conventional use of fossil fuel, and therefore supports the position set out by Mr Parkes that the energy generated from the incineration of that feedstock would not qualify as 'low carbon' in the terms of the Framework's glossary definition or with respect to CDP Policy Objective 17, calling into question the sustainability of the development and its overall accordance with the CDP when read as a whole[321].

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[315] CD 14.4, page 4, cell responding to CD 14.6 paragraph 33/34. The increase is set out in CD 14.6 paragraph 34 on page 6, which shows an increase from 433 kg of fossil CO2 per tonne incinerated to 642 kg of fossil CO2 per tonne incinerated if Caird's central RDF composition figures for Reading were applied to the Consett proposal.
[316] CD 14.4, page 4, cell responding to CD 14.6 paragraph 33/34
[317] CD 14.4, page 4, responding to CD 14.6 paragraphs 37 and 39
[318] CD 14.6, page 7, chart on paragraph 39
[319] CD 14.5, page 5, paragraph 13.8; CD 14.6; CD 13.45
[320] Based on figures from BEIS as per CD 14.6, page 7, paragraph 39 and CD 13.45, pages 53 and 81
[321] CD 14.5, page 12, paragraph 20.15. 'Low carbon' is defined on page on page 71 of the NPPF (July 2021) as follows: "Low carbon technologies are those that can help reduce emissions (compared to conventional use of fossil fuels)". CDP Policy Objective 17 ('Low Carbon') and sustainability are discussed in CD 12.35, page 22, paragraph 4.19 – 4.23. Objective 17 is found in CD 7.1 page 16 and states: "Reduce the causes of climate change and support the transition to a low carbon economy by encouraging and enabling the use of low and zero carbon technologies, supporting the development of appropriate renewable energy sources and sustainable and active transport."

7.147 In cross examination, Mr Caird broadly agreed with the interpretation put to him that in the Government Review of Waste Policy England 2011[322] the Government was making the point that there are circumstances in which incineration could result in a worse climate outcome than landfill, and that it cannot simply be assumed that a specific incineration scheme would be better than landfill[323].

7.148 Under cross examination, Mr Caird confirmed that it was a fair characterisation to say that sequestered biogenic carbon is the portion of carbon in the feedstock that is associated with the portion of paper, card, food waste, and wood that does not rot in landfill, and therefore does not release greenhouse gas emissions[324].

7.149 Caird further confirmed that it was "certainly true" that a reason biogenic carbon sequestration is relevant to comparative assessments of the climate impacts of incineration and landfill is that while landfill acts as a partial biogenic carbon sink, unabated incineration does not[325].

7.150 When asked whether he agreed that incinerators effectively convert the feedstock's carbon into CO_2, and so by comparison the permanent storage of biogenic carbon in landfill could be seen as a benefit for landfill over incineration, Mr Caird accepted that, saying: "*it certainly favours landfill in the carbon balance, yes*"[326].

7.151 Mr Caird also accepted that even if the biogenic CO_2 emitted by incinerators was treated as carbon neutral, the sequestration of that biogenic carbon in landfill could be considered carbon negative (i.e. because the landfill would be acting as a carbon sink within the context of carbon accounting)[327].

7.152 In response to Mr Caird's suggestion that providing an additional credit for biogenic carbon sequestration could result in "double counting" due to uncertainty with landfill gas capture[328], he was taken to a worked example following Defra's carbon based modelling approach's first suggested method of accounting for the additional benefit of biogenic carbon sequestration in landfill. Mr Caird accepted that, for this example, "taking account of biogenic

[322] CD 10.1, page 63, paragraph 209
[323] Rule 6 Party XE of Caird (12 th August 2022). Caird's response: "Yes, I broadly agree with that analysis. It is certainly saying that there is a need to consider the carbon or other environmental benefits of the two options or whatever the options are". See also CD 12.35, page 21.
[324] Rule 6 Party XE of Caird (12th August 2022). Caird's response: "Yes. That sounds like a description of the biogenic carbon".
[325] Rule 6 Party XE of Caird (12th August 2022). Caird's response began: "That's certainly true…"
[326] Rule 6 Party XE of Caird (12th August 2022)
[327] Rule 6 Party XE of Caird (12 th August 2022). Caird's response began: "Oh yes, I agree with that, and I've made that point that policy makers have done that...". The implications of this are covered in more detail in CD 13.45 pages 19-42.
[328] Mentioned in XE, but also covered in CD 14.4, page 6, column responding to CD 14.6 paragraphs 60-70, where Caird stated: "By assuming a high landfill gas capture rate (75%) it effectively accounts in broad-brush terms for sequestered carbon".

sequestration has a much greater impact on the results than the difference between 60%, 68% and 75% landfill gas capture rates"[329].

7.153 When asked if he accepted that he had not provided a similar sensitivity analysis for the Consett proposal, showing the impact of applying the approach to accounting for the benefit of biogenic carbon sequestration set out in paragraphs 173 and 174 of Defra's Carbon Based Modelling Approach[330], Mr Caird accepted that he had not[331]. This in effect means that for Consett Mr Caird failed to follow the advice that he himself gave with respect to the Alton proposal.

7.154 When Mr Caird was reviewing the Alton incinerator, he stated that "The)Alton applicant's GHG) assessment has also scoped out the potential benefit from sequestering biogenic carbon that is likely to be associated with waste treatment by landfill. Independent research by Defra (ie Defra's Carbon Based Modelling Approach report) indicates that this 'benefit' is not insignificant and would warrant further consideration", and he went on to recommend that "Landfill CO_2 assessment to consider impact of sequestering biogenic carbon"[332].

7.155 Notably, in his Alton review Mr Caird did not raise any concerns within that Review that this could result in 'double counting'.

7.156 Indeed, Hampshire County Council commissioned Atkins to carry out a review of the Alton proposal which assessed Mr Caird's then recommendation to consider the impact of sequestering carbon. Atkins explicitly agreed with the recommendation, observing that following Mr Caird's Alton recommendation: "…*would provide a more complete picture of the baseline scenario against which the development is being compared. Currently, this element is missing, which potentially misrepresents the impact of landfill as being higher than would be the case were this mechanism addressed*"[333].

7.157 What was found to be an appropriate recommendation for Alton also represents an appropriate recommendation for Consett. As such, we see merit in following Defra's approach to assessing the additional benefit of biogenic carbon sequestration previously espoused by Mr Caird[334], and recommended (applied) by Defra[335] and by other industry professionals[336].

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[329] Rule 6 Party XE of Caird (12 th August 2022). Caird was taken to CD 13.45 pages 29-31. When asked if that was what the second table indicates, Caird confirmed "Yes…and it accords with the sensitivity test that was within the Defra modelling…"
[330] CD 11.13, page 51
[331] Rule 6 Party XE of Caird (12 th August 2022). Caird's response: "I have not, no".
[332] CD 14.7, page 3, paragraph 2.5 and associated Recommendation 3; CD 14.6, pages 10 and 11, paragraph 64
[333] CD 14.6, page 11, paragraph 65; CD 13.45 page 34
[334] CD 14.6, page 11, paragraph 66
[335] CD 11.13, pages 51 onward
[336] CD 13.45, pages 19-42 which refer to the application of the Defra methods by Solar 21 (for their proposed North Lincolnshire Green Energy Park incinerator), ClientEarth (for their Greenhouse Gas and Air Quality Impacts of Incineration and Landfill), the United States Environmental Protection Agency (for their Waste Reduction Model), Uniper (for their proposed East Midlands Energy Re-Generation incinerator), the (Greater London Authority (for their EPS Ready Reckoner Guidance), Veolia Environmental Services (for their proposed

Applying Defra's Carbon Based Modelling Approach to the Consett proposal

7.158 When given the opportunity, Mr Caird did not dispute the calculations in the Rule 6 Party's evidence which showed that accounting for the additional benefit of biogenic carbon sequestration in landfill, in line with the first approach suggested in Defra's Carbon Based Modelling Approach[337] and using Mr Caird's central scenario assumptions, would result in landfill having an additional benefit of 508,283 tonnes of CO_2 over the 25-year estimated lifetime of the proposed Consett incinerator[338].

7.159 Mr Caird accepted that, if the additional benefit of 508,283 tonnes of CO_2 for landfill, from accounting for biogenic carbon sequestration in line with Defra's methodology, was applied to his Consett assessment then for both his 'Decarbonising Energy Offset Sensitivity' and his 'Low Energy Export Sensitivity' the incinerator proposed for Consett would be assessed as being between around 70 thousand and 80 thousand tonnes of CO_2e worse than landfill over the 25-year estimated lifetime of the Consett incinerator[339].

7.160 Mr Caird was asked in re-examination to comment on the "validity of the exercise" he was taken through by the Rule 6 Party for adjusting his figures to account for biogenic carbon sequestration which showed a net adverse impact of the proposed Consett development. While Mr Caird highlighted uncertainties in determining GHG impacts of landfill, and while he also admitted adopting the approach suggested by the Rule 6 Party was not favourable to his case, it is notable that Mr Caird did not state that the approach which the Rule 6 Party took him through or the net adverse results it produced were invalid - despite being invited to do so by the Appellant's Advocate[340].

Relevance of Mr Caird's Decarbonising Energy Offset and Low Energy Export Sensitivities

7.161 In re-examination Mr Caird was encouraged to cast doubt on the relevance of these two sensitivity scenarios, but this suggestion fails to appreciate the reasons why Mr Caird had chosen to include these sensitivities in his evidence in the first instance.

7.162 In Mr Caird's written evidence he in fact states that he had provided "sensitivity tests covering a reasonable number of variables" and "appropriate sensitivity testing"[341]. That is a far cry from claiming that his own sensitivity scenarios were unreasonable.

Hoddesdon incinerator), the European Union (for their Assessment of the options to improve the management of biowaste in the European Union), and the Intergovernmental Panel on Climate Change (for their IPCC Guidelines for National Greenhouse Gas Inventories).

[337] CD 11.13, pages 51-2, paragraphs 173-174

[338] Rule 6 Party XE of Caird (12 th August 2022). Carid's response: "I can see the numbers you presented there and I won't contest your mathematics". Reference to the 'AQC Consett Main' column in the table in CD 14.6 page 11, paragraph 69.

[339] Rule 6 Party XE of Caird (12th August 2022). Referring to Tables 13 and 14 on CD 12.9.1 Appendix 1, page 20

[340] Appellant RX of Caird (12th August 2022)

[341] CD 14.4, page 3, cell responding to CD 14.6 paragraphs 9/10.11 and CD 14.4, page 3, cell responding to CD 14.6 Paragraph 35

7.163 Firstly, in relation to the Decarbonising Energy Offset, this arguably should have been the main (central) scenario rather than a sensitivity, in line with Government guidance, UKWIN's Good Practice Guidance, and Mr Caird's previous advice on the matter.

7.164 As highlighted in UKWIN's Review of Mr Caird's GHG Assessment, in a review of the Alton incinerator proposal carried out by Mr Caird, he noted that "*Independent analysis by Defra (2014) [i.e. CD 11.13 in the Consett inquiry] examining the relative carbon impacts of energy from waste relative to landfill recommends the use of long run marginal generation grid factors over the lifetime of the facility to adequately reflect future decarbonisation of the grid." And recommended the applicant in that case to "Calculate CO_2e emissions using government published long run marginal generation grid factors for 2023 and each year to 2048 (end of life)*"[342].

7.165 The document Mr Caird referred to within his Alton Review as supporting the consideration of decarbonised electricity supply was Defra's Carbon Based Modelling Approach report. Paragraph 68 of that report states: "*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…*[343]"

7.166 The footnotes to Paragraph 68 of Defra's 'Carbon based modelling approach' make it clear that whilst CCGT may have been considered an appropriate counterfactual for use in 2013 it does not remain appropriate for future years because of the progress being made to decarbonise the UK's electricity supply. The Defra report explicitly confirmed that the "use of the [BEIS] marginal factor is the correct approach for detailed analysis"[344].

7.167 In response to the argument advanced in UKWIN's review that for Mr Caird's assessment that "taking account of decarbonisation should be considered the likely central case"[345], Mr Caird himself acknowledged that "Over the lifetime of the Appeal Scheme, comparison with decarbonised marginal energy supply factors is appropriate. For this purpose, the results of the sensitivity test in Table 13 of my GHG Assessment are relevant"[346].

7.168 Unfortunately, in re-examination this matter became somewhat confused. Mr Caird was taken to paragraph 41 of the Government's Energy from Waste Guide which stated: "This energy (from incineration) substitutes for energy that would (in 2014) otherwise need to be generated by a conventional gas-fired power station, thereby saving the fossil carbon dioxide that would have been released by that power station"[347].

7.169 However, the Appellant's Advocate failed to bring Mr Caird's attention to the Footnote to that paragraph which importantly notes that: "…*When conducting more detailed assessments the energy offset should be calculated in line with*

[342] CD 14.6 page 8, paragraph 46. Reference to CD 14.7, page 5.
[343] CD 11.13, page 14, paragraph 68
[344] CD 11.13, page 14, paragraph 68, Footnote 20
[345] CD 14.6, page 8, Paragraph 49
[346] CD 14.4, page 5, Cell responding to CD 14.6 paragraphs 46/47/48/49
[347] CD 13.26, page 21

DECC guidance using the appropriate marginal energy factor"[348]. That is to say, the paragraph cited by the Appellant's Advocate actually endorses the approach of accounting for decarbonisation of the energy grid, favouring the use of Mr Caird's Table 13 ('Decarbonising Energy Offset Sensitivity') over his 'Likely Central Case' (Table 11)[349].

7.170 The DECC guidelines referred to in the aforementioned footnote from the Government's Energy from Waste Guide are now the BEIS guidelines (as set out in UKWIN's Good Practice Guidance)[350], and these DECC/BEIS HMT Green Book Guidelines actually bring us back to the very same guidance cited by Caird with respect to the Alton proposal where he argued that incineration should be compared against a decarbonised electricity supply[351].

7.171 This topic is covered in greater detail in UKWIN's Good Practice Guidance for Assessing the GHG Impacts of Waste Incineration which includes confirmation from Defra that the decarbonised electricity mix - rather than CCGT - should now be used for detailed assessments[352].

7.172 In light of the above, we invite the Inspector and the Secretary of State to give special attention to the adverse impacts of the proposal using the decarbonisation sensitivity and applying Defra's approach to accounting for biogenic carbon sequestration, which would indicate how the scheme proposed for Consett would have an adverse carbon impact when compared to landfill.

7.173 Secondly, in re-examination the Appellant's Advocate tried to draw inference from the fact that none of the parties during cross-examination had explicitly criticised Mr Caird for having taken into account the benefit of the solar farm as a benefit of the scheme in his central calculations. Mr Caird confirmed that he did take this as a benefit in all of his calculations with the exception of his Low Energy Export sensitivity.

7.174 What the subsequent exchange with Mr Caird failed to note was that Mr Caird's approach had in fact been criticised, with Mr Parkes's Rebuttal Proof making it clear that Mr Parkes had in fact challenged the Appellant's approach of crediting the scheme with the delivery of the solar farm[353]. This critique was not directly challenged within any of the written or oral evidence provided by Mr Caird.

7.175 As set out by Mr Mr Parkes: "The potential for possibly making a solar farm more economically viable should not be given any weight for planning consideration, especially in the absence of any legally enforceable commitment by the Appellant to deliver the solar farm if the appeal is successful. This previous planning permission should have been stand alone and should not seek to rely on this current incinerator. Charging hubs are frequently located on sites without access to an incinerator or a solar farm"[354]. As such, the Low

[348] CD 13.26, page 21, paragraph 41, Footnote 29
[349] CD 12.9.1 Appendix 1, pages 17 and 20
[350] CD 13.45 pages 53-64
[351] CD 11.13, page 14, paragraph 68
[352] CD 13.45 pages 53-64
[353] CD 14.5, page 9, paragraphs 19.1-19.4
[354] CD 14.5, page 9, paragraph 19.4

Energy Export scenario is the only sensitivity provided by Mr Caird that shows the impact of not taking into account the benefit of the proposed solar farm.

7.176 In light of the above, we invite the Inspector and the Secretary of State to give special attention to the adverse impacts of the proposal using Mr Caird's Low Energy Export sensitivity and applying Defra's approach to accounting for biogenic carbon sequestration, which would indicate the Consett scheme would have an adverse carbon impact compared to landfill.

Implications of Scheme Not Going Ahead

7.177 Mr Parkes set out the implications of the scheme not going ahead.

7.178 Firstly, dismissing this appeal would allow the County Council to revisit their April 2005 Waste Plan to properly plan for the management of waste in accordance with the waste hierarchy to determine what methods of disposal of waste are best adopted and whether there is an actual need for further incineration capacity, and if so where is this best located[355].

7.179 Additionally, dismissal would ensure that the Hownsgill Business Park would continue to grow and develop incrementally, providing a significant number of long-term, sustainable jobs[356].

7.180 Dismissal of this appeal would provide greater certainty to the existing businesses of the long-term approach to retain the business park as a quality site for businesses to grow and prosper without the challenges of non-conforming land uses being introduced.

7.181 Dismissal would mean that the Hownsgill Business Park will be used for its intended purpose, safeguarding land for meaningful employment opportunities whilst reducing the need for the Council to allocate more land for employment development in the area[357].

7.182 Furthermore, dismissal would support the pragmatic and successful regeneration of Consett to continue, with enhanced confidence, based on the provision of good quality housing, environmental improvements and the provision of sustainable employment opportunities. Consett would be free to continue to redefine itself as a quality place to live with a great quality of life[358].

7.183 On top of these benefits of dismissing the appeal, there would be expected to be an increased and intensified focus on improving recycling rates in County Durham to meet Government targets and achieve a more sustainable use of waste in accordance with the waste hierarchy as County Durham would progress towards meeting the target of 65% of waste to be recycled[359].

7.184 Such levels of recycling would generate significantly more employment and therefore create a better gross value added (GVA)[360].

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[355] CD 12.35, paragraph 5.1
[356] CD 12.35, paragraph 5.2
[357] CD 12.35, paragraph 5.3
[358] CD 12.35, paragraph 5
[359] CD 12.35, paragraph 5.6
[360] CD 12.35, paragraph 5.7

7.185 Thus, County Durham would become a more sustainable area by increasing its recycling rates. This, in turn, would encourage the local authority to promote and develop approaches to recycling in a more proactive way (and for the record I applaud the County Council's support in resisting this proposal)[361].

7.186 Whilst I appreciate the challenges faced by the public sector, I also recognise the way that events can trigger policy responses[362].

7.187 Another consequence of dismissing this appeal would be for the Government's commitments to a reduction in CO_2 levels to be more easily achievable[363].

7.188 Finally, democracy, planning and community engagement would be seen as effective partners in the town, and the momentum developed by the Consett Committee can be anticipated to give rise to long-term sustainable approaches to community participation and volunteering in the area[364].

Conclusion

7.189 In conclusion if this incinerator were permitted it would offer very little benefit to this site and to the people of Consett. In a town filled with a history of deprivation that is still struggling to this day, this town needs and deserves more opportunities. Those opportunities will arrive with development that has real benefits that are clear and transparent. Those benefits will come with development that brings employment to the area and does not take anything away.

7.190 Who could have envisioned 40 years ago, when the infamous red dust of the steelworks was consigned to the dustbin of industrial heritage, that the beauty of the Derwent Valley would bathe the town of Consett? Who would have believed that such a town would become a secret gem? A beautiful place to live, enveloped by fabulous panoramic views, with an abundance of flora and fauna amongst heritage assets that give a nod to an industrial past that is well and truly behind it.

7.191 Unfortunately, this fabulous return to Consett's natural beauty is now under threat. Not by the industrialists of the old steel works. There is no return to the sense of pride that the people of Consett had when the steel they produced was used to build beautiful and significant structures across the globe. Nor will the incinerator provide the mass employment of the steelworks. No, the new concept of Project Genesis for the re-industrialisation for Consett is to burn industrial waste from a 50m chimney, metres from the centre of town and generate only 9 jobs.

7.192 Why would anyone want the remnants and particles of industrial waste soiling the air and contaminating the town? Who would have such a dream for their town? Who would want a 50m chimney as a blight on this fabulous landscape? Project Genesis's vision for the town of Consett was supposed to be a land filled with a new sense of hope to compensate for the closure of the Steelworks.

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[361] CD 12.35, paragraph 5.8
[362] CD 12.35, paragraph 5.9
[363] CD 12.35, paragraph 5.10
[364] CD 12.35, paragraph 5.1

7.193 The people of Consett were gifted 750 acres of land that Project Genesis was entrusted to develop on the people's behalf. A fair assumption would be that the people involved in such a project would want the very best for the town, including taking advantage of the fact we are on the edge of an Area of Outstanding Natural beauty, the North Pennines, that is also classified as a UNESCO Global GeoPark. Nevertheless, their recent pursuit to develop an incinerator against the will of the people of Consett shows they are not listening.

7.194 Throughout this Appeal, we have heard evidence from a whole host of experts. But what we feel is most significant is the fact that our political representatives and the full demographic of residents from the town have stepped forward to tell their own personal stories about why they do not want an incinerator in Consett. It is still a very firm no from us all. We do not want an incinerator in Consett. The paltry crumbs of a fuel poverty fund offered through the Project Genesis Trust goes nowhere near to compensating for the suffering of the whole town if this incinerator goes ahead. We do not need an incinerator in Consett and we do not want an incinerator in Consett.

7.195 We would urge the Inspector to recommend dismissal, and the Secretary of State to dismiss this Appeal.

8. THE CASE FOR OTHER PERSONS APPEARING AT THE INQUIRY OPPOSING THE PROPOSAL

This section provides a summary of representations made at the Inquiry.

Richard Holden MP[365]

8.1 Many thousands of my constituents have organically and voluntarily organised themselves in opposition to the proposal when it was initially mooted. This opposition has been consistently maintained ever since and has resulted in their presence at today's hearing.

8.2 I received a very significant amount of correspondence regarding the issue. Hundreds of individual pieces of correspondence. Dozens of surgery appointments and over 1,000 have now directly completed my own surveys outlining their concerns and I am confident from these (as verifiable address details had to be provided) that these people represent the broad spectrum of local opinion. This resulted in a six-to-one clear result in opposition to the proposal.

8.3 While MPs have no legal role in the planning process, I have always passed on planning correspondence to Durham County Council on behalf of my constituents. Throughout the process I have sought to support newly elected Councillors, Angela Sterling and Michelle Walton in the Delves Lane Ward who live near the site and who are implacably opposed to the development.

8.4 I have only recently secured the inclusion of the new hospital to replace Shotley Bridge Community Hospital with extra funding for an enhanced and upgraded facility on a site near to that of the proposed incinerator. The incinerator proposal has had a negative effect on that proposal amongst some in the local community.

[365] ID14

8.5 Local employment is welcome, however, the handful of jobs that will be created by this development on this prime site near the centre of the town are outweighed by huge outpouring of local opposition to the proposal. There is broad concern locally that new businesses would stop forming and other businesses would leave the area if the incinerator goes ahead. Having held several recent jobs fairs for employees and employers, this is definitely a matter of concern given Consett's historic unemployment issues which have only really been dealt with in recent years. In terms of the local area, there are far better and more sustainable ways to see energy production provided, including ensuring renewable are part of the housing developments that almost encircle the proposed incinerator site.

8.6 Consett and the surrounding area, especially around Weardale and the Derwent Valley, is emerging in tourism and hospitality with the Coast-to-Coast cycle route and many walks, etc. It is a beautiful area. An incinerator would set back this progress at best and stop it at worst.

8.7 Due to the above factors, I raised the issue in Parliament in a debate in March 2021[366] and following the Council's rejection of the proposal secured a debate about the specific proposal for Consett on the floor of the House of Commons in March 2022[367].

8.8 There is no doubt in Government about the direction of travel from the Government when it comes to environmental policy. Reduce-Reuse-Recycle. This has broad parliamentary support and aligns with the Government's ambition to reduce the quantity of residual waste sent for incineration and landfill so that by 2042 half the amounts will be going to landfill and incineration than do so today[368].

8.9 In such an environment, increasing incinerator capacity when demand is expected to, at a minimum, halve over the next two decades seems strange. Especially when all political parties and Government backbenchers have pressed to go further, not to delay more action. Furthermore, the Government's Resources and Waste Strategy for England and the Environment Act highlight the Government's desire to go further still.

8.10 Finally, in the most recent ministerial response on 11th of July 2022 to the Member for Hornsey and Wood Green, the Environment Minister was very clear. The Government's view is that Energy from Waste (EfW) should not compete with greater waste prevention, re-use, or recycling. Proposed new plants must not result in an over-capacity of EfW waste treatment provision at a local or national level. Officials are currently assessing planned incinerator capacity against expected future residual waste arisings. This further

[366] https://hansard.parliament.uk/Commons/2021-03- 24/debates/F4243C74-4547-4741-AF70- B51958A0D0F1/WasteIncinerators
[367] https://hansard.parliament.uk/Commons/2022-03- 08/debates/4476E7B2-6D00-4311-A632- CDFA3FFFE88A/ConsettEnergyFromWastePlant?highlight=incinerator#contribution-B6706E1A-55D6-4872-B896-EB4724878E91
[368] https://consult.defra.gov.uk/natural-environment-policy/consultation-on-environmental-targets/

assessment of residual waste treatment capacity needs will be published in due course"[369].

8.11 In conclusion it is clear to me that the local factors and national policy factors weigh heavily in support of the initial decision of the Council and I call upon the Inspector to advise the Secretary of State to follow the Council's initial decision.

Councillor Michelle Walton[370]

8.12 Consett people are proud of our history. There have been many improvements and investments made in Consett since the steelworks shut, yet we still rank poorly on the deprivation index. As a community we are working hard to change that but if this incinerator goes ahead we are guaranteed to slide down that index.

8.13 The Appellant acknowledges that residential development is the key regeneration driver for Consett. Major housing developments in Delves Ward and the wider Consett area are inviting new families to settle here but an incinerator will put this at risk. How atrocious is it that we are at risk of losing families from our area to this extent when we all agree that residential development and attracting families to our area is key to our regeneration efforts?

8.14 During our 15 months as Councillors, we have supported residents in quite a few planning applications some of which have been highly controversial. However, it's fair to say that generally there is support for, and objections against, every planning application we have been involved in. With one exception. This incinerator application. We've not found anyone in our ward who fully supports this incinerator.

8.15 In 2021 the Appellant advised that he had been investigating this proposal since 2014. I am surprised at the reference that there is 'considerable silent support' for this proposal. How can he be sure if the same submission also states that he was "restricted in the level of engagement that was able to be carried out with the people of Consett" during the Covid restrictions.

8.16 Our local school children, who studied curriculum around waste management, contributed hugely to the Say No campaign activities. They also undertook their own research and have made it very clear that they do not want this incinerator and they don't want to be blighted by a chimney stack which is as tall as the Leaning Tower of Pisa. They are concerned for the future of Consett if this goes ahead. Businesses won't come so they will struggle to find jobs when they are older; they worry about their health but most importantly they are worried that we, the adults and organisations who are supposed to listen to them, will not take heed of their concerns.

8.17 There is a lot of discussion around Consett's Heritage. We have a beautiful viaduct which once hosted the trains carrying goods to and from Consett. This viaduct is magnificent and can been see from miles away. It is used in promotional materials and the Visit Consett website even makes reference to it

[369] https://questions-statements.parliament.uk/written-questions/detail/2022-06-30/28465
[370] ID6

to entice visitors to the area? How can it be that this majestic structure which sits around 800m from the proposed incinerator site is not being recognised as a heritage asset?

8.18 I would challenge the accuracy of a few of the alleged benefits of this plan but in particular I'm suspicious of their claim that they will distribute discounted heat and electricity costs to local residents and businesses. I think this is highly unlikely and that actually, now that the application is in appeal, this is being touted as a benefit in an attempt to lure support in particular in the current cost of living crisis. I'm also dubious of their statement that this discount offer will act as a catalyst attracting new employment development within the industrial estate.

8.19 Project Genesis Limited state that they find it hard to entice business to Hownsgill but, as they are in control of that, it could be suspected that they themselves have willingly sabotaged efforts. In contrast to their claim, new businesses are already coming to Consett. Established local employers are also investing in our area; Elddis has plans for 200+ jobs on their site in Delves; a new care home will have over 100 employees to name but a few.

8.20 Project Genesis promote the fact they are for the benefit of the people of Consett. We do acknowledge the great work they have done with, for example, The Heritage Way and Fawcett Park and in recognising the need for a hotel in the area. However, once these incinerator plans came to light, the local community objected and there can be no doubt that it is not wanted. For the first time that I know of the Secretary of State has recovered the decision. Why would the Secretary of State do that if the appellant was actually acting in the best interests and benefit of the people of Consett with this plan?

8.21 Young people living in the area are concerned that the proposal will affect their future. They are extremely concerned about the emissions from the incinerator and the effect on the health of the community. While the site is an industrial park, there are a large number of family homes on the doorstep. Concerns are also expressed about increased traffic, road safety, odour and noise. However, the biggest issue raised is that of the location.

8.22 Incinerators tend to be built in areas of deprivation and Consett has poor wellbeing scores. Would such an incinerator be built in Durham City Centre? The most shocking part of the plan is the huge 50m stack. The stack would dominate and become a blot on Consett's landscape. It's two and half times the height of the Angel of the North and visible from the North Pennines.

8.23 It is with the utmost respect that I implore the Inspector to listen to the local community firmly dismiss this appeal.

Councillor Kathryn Rooney[371]

8.24 As representative of the ward of Consett North I have found that my constituents, in line with the rest of Consett, are appalled at the prospect of this development and consider that it is taking the town backwards. Feedback suggest that it is too close to many homes, will be detrimental to health, will

[371] ID7

be an unsightly eyesore, create even more traffic and pollution and have a detrimental impact on the local environment and nature.

8.25 It is clear that the whole of Consett and the surrounding areas are united against the proposal. My Ward colleague is the only Councillor to champion the incinerator. All other Councillors in the town have done everything possible to raise awareness and I have not encountered any alleged support for the development.

8.26 The countryside surrounding Consett is its biggest selling point and an incinerator creating only nine jobs would be a travesty and not improve the town in any way. We need to attract businesses to the area and the proposal will likely drive people away. The town has grown and we do not wany t to regress. I implore the Inspector and the Secretary of State to reject the proposal.

Councillor Dominic Haney[372]

8.27 Hundreds of people have raised with me material objections as to why this proposal should not go ahead. Thousands of people across the town and further afield have submitted objections. Never has there been such phenomenal and united effort of the people of Consett to campaign for something that they passionately believe in. It would be a grotesque injustice if the appeal was upheld.

8.28 We are proud of Consett's steelworks heritage but no one wants to see the town go back to polluting industry. Notwithstanding the obvious concern for health from burning 60,000 tonnes of waste I will focus on the development's impact on the landscape and heritage assets.

8.29 It is beyond doubt that Consett has a beautiful skyline that is the envy of many towns across the County and beyond. The size and scale of this development would cause unacceptable harm to the landscape and detract from Consett's picturesque setting. It would have a devastating effect on the North Pennines AONB. It is extremely brave for anyone to assert that the waste burner's chimney would have a trivial effect on the town's glorious vistas and not detract from an appreciation of its rural beauty. It is undisputable that the loss of visual amenity cannot be mitigated.

8.30 The heritage argument that the local planning authority compiled is sound in its assessment of the impact on the High Knitsley listed buildings. However, it is worth noting that views of the Grade II listed Hownsgill Viaduct would also be damaged by having the waste burner stack and its beacon in the background.

8.31 The scenic backdrop and heritage assets of the town would be sacrificed in exchange for a handful of jobs and vague uncertain notions about supposedly 'green' energy and heat. The supposed environmental benefits are contentious and disputed. The appellant admitted in the environmental statement that their facility will have only "minor beneficial effect over the baseline scenario". It is no wonder that the Council's Low Carbon Economy Team have been so scathing in their assessment of the proposed development particularly with

[372] ID8

regard to the appellant's inability to guarantee what amount of plastic will be in the waste proposed to be incinerated.

8.32 It is accepted by Government that burning plastic has a net negative effect on carbon emissions. Given that the appellant cannot be sure of the amount of plastic, the figures they provided in the statement regarding carbon benefits of the facility are spurious.

8.33 The other exaggerated low carbon benefit is the 'aim' that the facility will provide electricity and heat to the new hospital and new housing development. 'Aim' is the operative word as the hospital and housing do not currently exist and may never exist. Moreover, the NHS has stated categorically that if they do intend to build an incinerator near the site, they do not require an incinerator or other energy facility in order to proceed.

8.34 Overall, it is dubious whether incineration is a green technology. Zero Waste Scotland has already concluded that that incineration cannot be classed as green and much of Europe has moved away from, and actively discouraged, this technology. Even if it is carbon neutral it is definitely not renewable. Once burnt you can only replenish supply by creating more waste which is the wrong approach to dealing with our waste problem.

Pat Glass[373]

8.35 Former MP for North West Durham from 2010 to 2017 and now the Chair of North West Durham Labour Party. The vast majority of the people of Consett have said firmly and clearly that they are opposed to this proposed development. Nothing has brought our community together in this way since the closure of the steelworks in the 1980's.

8.36 The Consett area has experienced profound changes over the past 50 years. Fundamental to this has been the de-industrialisation which has had systemic impacts on the economic, social, cultural and environmental profile of the area. One positive impact of this change has been the significant improvement in the natural environment. Following many years of declines we are now experiencing growth. Central to this has been the continuing improvement of the natural environment. The people of Consett have said no this proposal and also fear what emissions may do to the health of our children.

8.37 We welcome industry and employment but that must be sympathetic to, and be part of, our living environment. Our concerns about the damage to the environment and health say that this proposed development is contrary to the principles of sustainable development as defined in the Framework and in the County Durham Plan 2020.

8.38 We believe that the Appellant has failed to adequately justify the principle of this proposed development. The proposal is a 'bad neighbour' development. There will likely be no connection to 'district heating' and no details regarding the connection of energy supply to the grid have been provided.

8.39 We fear that the proposal will jeopardise the future regeneration of Consett as a residential and business location. This is at a time when many northern towns face particular challenges in relation to connectivity, town centre

[373] ID9

change, technology and demographic change. This facility has the potential to 'set back' and 'level down' Consett.

8.40 We have particular concerns regarding the visual and landscape impact of the proposed 50m chimney stack. Consett is located at a high elevation within the Derwent Valley. This means that the proposed chimney stack will be particularly evident from both within the town and from the surrounding countryside. This is coupled with the fact that Consett is a settlement exhibiting limited built development exceeding traditional 'low-rise' structures, very few being higher that 2 or 3 stories. This means that the proposed chimney stack will be particularly visible. In this regard the landscape impact of the proposal is unacceptable.

8.41 We support the Council's first reason for the refusal of planning permission. We are particularly concerned about the landscape impact in the context of Consett and that the facility will have an overwhelming impact on the townscape. We also agree with the second and third reason for refusal. The setting of Consett with areas of designated 'high landscape value' and 'outstanding natural beauty' are fundamental to the future sustainable development of the town.

8.42 The proposed development will have limited positive economic benefits. Employment will be limited to 9 permanent employees and the proposal has the potential to deter future investment which would deliver more jobs for the community. A developer would not wish to develop new green technology next to an incinerator. There are no other significant definable economic benefits associated with the proposal but there is potential for significant dis-benefits associated with perception of the area and impacts associated with issues such as traffic movements.

8.43 The facility should not be provided at this location. We support the local planning authority's conclusion on visual and landscape impact. It is contrary to the principle of sustainable development.

Michael Twiss[374]

8.44 I am a local resident and live less than half a mile from the proposed incinerator site. When a proposal as controversial as an incinerator is planned you would expect integrity from the developer with open discussion with Consett residents. Sadly, given the Appellant's actions, its secrecy and its track record after 28 years in the town leaves us unconvinced. The Appellant has been investigating the prospect of an 'energy from waste' plant since 2013 and has had at least two pre-planning meetings with the Council and yet never has there been any meaningful public consultation.

8.45 The Appellant promises that the waste is pre-processed, not hazardous and arrives in 'fully sealed bales'. As yet, there are no contracts to supply the waste, so how can we be assured that the bales are non-hazardous? It is claimed that the non-hazardous waste to be used includes fabrics, redundant furniture (likely to have been sprayed with fire retardant chemicals), carpet, underlay and non-recyclable plastic. How do we know that this waste in non-

[374] ID10

hazardous and, as it is pre-processed, how do we know that it does not contain hazardous materials?

8.46 The fact that the Appellant cannot guarantee what will be incinerated, it also follows that it cannot be guaranteed that there will be no hazardous emissions. The Appellant has made various statements regarding emissions. These include that there will be emissions in small quantities, no emissions at all, the lowest possible emissions, minor compounds being emitted, toxins destroyed prior to entering the stack, compounds emitted in very small quantities high above ground so to rapidly disperse into the atmosphere and that the facility will not contribute to any health effects.

8.47 In the evidence in this appeal the Appellant refuses to concede that the proposal is an incinerator. The information states that "Hownsgill Energy Centre is an energy from waste facility …… it will generate heat and power via the incineration process". This is an incinerator.

8.48 The Appellant has made several broken promises regarding the regeneration of Consett. The land at Hownsgill is there for the benefit of the Consett people and we do not want an incinerator. Climate change suggests that incinerators are not the answer and the appeal should be dismissed.

Janet Matthews[375]

8.49 After working for 17 years in medical research laboratories and then retraining and working as a Teacher of Maths and Science, my husband and I bought a small farm in Weardale in 2004. So I am speaking today as an interested party, as a resident and as a farmer with a scientific background, who is horrified by the thought of an incinerator being built in Consett. With the prospect of this development contaminating our land and entering our food chain and our water supply, I am going to share my research into why this development should not be allowed to go ahead.

8.50 The design of the incinerator has a 50 m high chimney. The online Consett Plume Plotter[376] models the possible distance and direction that the plume for the proposed incinerator might travel, dependent on the prevailing weather conditions. I noticed that the plume crosses agricultural land and the North Pennines Area of Outstanding Natural Beauty (AONB) and in windy conditions, which are not unusual in this area, reaches the towns and villages of Weardale as well as villages and other towns around Consett depending on the wind direction.

8.51 The North Pennines AONB is also a UNESCO Global Geopark, and is described as having 'a stunning landscape of open heather moors, dramatic dales, tumbling upland rivers, wonderful woods, close knit communities, glorious waterfalls, fantastic birds, colourful hay meadows, stone-built villages, intriguing imprints of a mining and industrial past and distinctive plants. The area has many distinctive geological and landscape features, significant archaeology and supports important biodiversity in a range of key habitats.

[375] ID11
[376] https://plumeplotter.com/consett

8.52 The North Pennines has 40% of the UK's upland hay meadows, contains 30% of England's upland heathland and 27% of its blanket bog, is home to 80% of England's black grouse, is a place to see short-eared owl, ring ouzel, snipe and redshank, has important habitats - 36% of the AONB is designated as Sites as Special Scientific Interest, has red squirrels, otters and rare arctic alpine plants, and is the upland England's hotspot for breeding wading birds[377].

8.53 How could anyone be considering putting such a nationally and globally recognised area at risk of unnecessary pollution? The appellants claim that there is no pollution and the emissions are safe. However the Stockholm Convention has identified waste incineration as a sector "for comparatively high formation and release of persistent organic pollutants (POPs) such as dioxins, furans, polychlorinated biphenyls (PCBs), hexachlorobenzene, and pentachlorobenzene[378].

8.54 The United States Environmental Protection Agency website[379] states that 'Persistent organic pollutants (POPs) are toxic chemicals that adversely affect human health and the environment around the world. Because they can be transported by wind and water, most POPs generated in one country can and do affect people and wildlife far from where they are used and released. They persist for long periods of time in the environment and can accumulate and pass from one species to the next through the food chain. POPs work their way through the food chain by accumulating in the body fat of living organisms and becoming more concentrated as they move from one creature to another. This process is known as “biomagnification.” This means that even small releases of POPs can have significant impacts.

8.55 In a Science Direct 2022 paper by Petrlik et al[380] they identified that chicken eggs are ideal "active samplers" and indicators for POP contaminated soils due to the high soil intake ratio of free-range chickens and transfer of POP pollutants into eggs. The chickens can also take in POPs from contaminated bedding, feed and water. They continued that while the average exposure to POPs via eggs is considered moderate, for example, 6% in Europe, this can be much higher for people consuming eggs from their own chicken flocks in contaminated areas, with waste incineration being one of the main contaminators. They also stressed that POP background levels in soil in rural areas, without a contamination source, are safe for food producing animals housed outdoors resulting in healthy food such as meat, eggs and milk.

8.56 An extremely high level of dioxins and dibenzofurans was revealed in free range chicken egg samples taken close to waste incinerators in Hanyang city, Wuhan, accompanied with high levels of BFRs (Brominated flame retardants) and HCB (hexachlorobenzene) in the same pool sample. Both samples from the vicinity of Wuhan waste incinerators exceeded EU standards for dioxin

[377] https://www.northpennines.org.uk/whats-special/
[378] Stockholm Convention on POPs (2008). Guidelines on Best Available Techniques and Provisional Guidance on Best Environmental Practices Relevant to Article 5 and Annex C of the Stockholm Convention on Persistent Organic Pollutants. Geneva, Secretariat of the Stockholm Convention on POPs.
[379] https://www.epa.gov/international-cooperation/persistent- organic-pollutants-global-issue-global-response
[380] https://www.sciencedirect.com/science/article/pii/52405665022000166

content in chicken eggs by almost three and five times, respectively. Also, total levels of other POPs in these samples were three times higher than the EU standard[381].

8.57 In a study carried out in the Czech Republic, Lithuania and Spain, the analysis of chicken eggs around incinerators shows that the majority of eggs exceed the EU action limits for food safety as regulated in the EU Regulation 2017/644. Moreover, a high percentage of eggs exceeded the safe level for consumption. The results of the analysis of the vegetation, pine needles and mosses also show high elevation of dioxin levels in the vicinity of the waste incinerators. Most alarmingly this study concluded that people living in the vicinity of incinerators could be under threat if they grow vegetables for consumption[382].

8.58 During lockdown more people that ever started growing their own food. The idea that the gardens and allotments of Consett plus the surrounding agricultural areas and therefore the people living here could possibly be adversely affected by contamination is unthinkable. Knowing the true impact of airborne pollution on the food chain and the water supply, we should be using this knowledge to prevent continued pollution, not ignore it and suggest that burning commercial and industrial is a viable solution when clearly it is not.

8.59 In a 2019 paper titled 'The health impacts of waste incineration: a systematic review' in the Australian and New Zealand Journal of Public Health Tait et al[383] (8) reviewed 93 English language papers about health and waste incineration and found that 'a range of adverse health effects were identified' and concluded that 'dietary ingestion was consistently the largest route for toxic emission exposure. Six papers concluded this explicitly while other studies attributed the majority of exposure burden to food ingestion, based on pre-existing research'.

8.60 Although I am a semi-retired farmer and no longer breed sheep, I breed chickens and sell free range eggs and I also keep goats for milk for our own consumption. The contamination of crops and animals and animal products such as milk and eggs from my farm, together with all the other farms, smallholdings and free-range egg producers in the area by POPs could detrimentally affect all the people that eat them. Even the smallest contamination could have major adverse effects.

8.61 The Hownsgill Energy Centre website[384] states 'Emissions will be very tightly controlled to comply with strict regulations/criteria under an Environmental Permit. This will ensure local air quality is not adversely affected. The most advanced, up-to-date, proven technologies will form part of the processing systems so that the facility meets stringent emission limits. Furthermore, the latest safety controls designed to immediately shut down the plant if emissions

[381] chinese-eggs_v3.pdf (ipen.org)

[382] https://zerowasteeurope.eu/library/the-true-toxic-toll-biomonitoring-of-incineration-emissions/
[383] https:// onlinelibrary.wiley.com/doi/full/10.1111/1753-6405.12939
[384] https:/ /www.hownsgillenergycentre.eo.uk/

exceed the permitted levels will also be used.' The question must be asked what types and levels of emissions could be released before shut-down would be initiated?

8.62 The website also states 'The residual emissions from the facility's main chimney stack will be predominantly water vapour and carbon dioxide, which are harmless, and other compounds emitted in very small quantities high above ground level so to rapidly disperse into the atmosphere - as such, very little emissions reach the ground.' Unfortunately, what goes up must come down, which is illustrated by a quote from an article on acid rain: "The use of tall smokestacks to reduce local pollution has contributed to the spread of acid rain by releasing gases into regional atmospheric circulation. Often deposition occurs a considerable distance from its formation, with mountainous regions tending to receive the most (simply because of their higher rainfall)"[385]. The assumption that moving the pollution away from the local area is an acceptable practice should not be an excuse for its production!

8.63 The Hownsgill Energy Centre website also states 'Furthermore, many of the minor compounds emitted are common to other forms of (natural and man-made) activities including, for example, wood stoves, barbecues, bonfires and traffic, already existing in the atmosphere day-to-day. The facility will therefore not result in the inhalation of anything not already present in the air we breathe, and its contribution to the air for local residents will be exceedingly small such that it will not significantly contribute to any health effects.' This is such a disingenuous statement - just because these pollutants are present already does not mean that it is acceptable to add more. Decreases in pollution from wood stoves due to recent legislation and in pollution from traffic due to the increase in the use of electric cars would make the contribution from the incinerator more significant.

8.64 Tait et al state 'Incineration for waste management, including waste-to-energy options, is likely to remain an alternative that governments will consider. However, the financial and ecological costs of waste to energy are comparably high. Building reliance on a waste stream for energy counters the need to reduce waste overall. This review suggests that incineration is not without problems and so it is an option that needs to be pursued carefully with close monitoring.

8.65 Local community groups have a basis for legitimate concern and so siting of incineration facilities needs to take these concerns into account.' They concluded that 'newer waste incinerator technologies are claimed to run more cleanly and with less environmental impact. Nevertheless, pollutants are still produced, with upgraded facilities requiring regular service to maintain emission levels.' If there is a chance of any contamination from this proposed plant, then this development should not go ahead.

8.66 I ask that the genuine concerns of the community together with the information I have provided should be taken into consideration and Durham County Council's refusal of this application should be upheld and I call upon the Inspector to advise the Secretary of State to dismiss this appeal.

[385]http://www.Iibrary.snls.org.sz/archive/doc/wikipedia/ wikipedia-terodump-0.1/tero-dump/wikipedia/ac/Acid_rain.html

Sam Kenny (Persimmon Homes)[386]

8.67 I am a Senior Development Planner for Persimmon Homes, I have some brief points which are intended to emphasise the points made in our representations already submitted to this appeal.

8.68 It is our opinion that the local planning authority were correct in their decision to refuse the application for the waste management facility. The scale and form of this development significantly changes the character of the existing commercial operations on this sensitive edge of Consett. The introduction of a chimney stack creates a far greater industrial setting which is significantly more visible on the horizon and harms the views from several areas of the North Pennines AONB and surrounding areas of High Value Landscape. When viewed from these areas it is set against a backdrop of chimney pots and not chimney stacks.

8.69 It would therefore cause harm to its special quality and statutory purpose in direct contradiction with Policy 38 of the County Durham Plan. It is also our opinion that the landscaping proposed cannot sufficiently mitigate for the impact of the structure due to the scale and height of the building and associated chimney, in direct contradiction with policy 39 of the County Durham Plan.

8.70 This waste management facility is not essential for the overall waste management strategy for Durham, and when operational, the development will only support 9 jobs. In our view this is not sufficient to clearly outweigh the harm caused on this sensitive edge of the settlement. The local planning authority also correctly identified that the proposal does not accord with policy 61 of the County Durham Plan, in that it:

- adversely impacts on a national designation site (AONB) through its increased industrial nature of the area; and
- Is not located as part of an existing waste management facility, and there is no substantial evidence to support that other similar beneficiary operations are coming forward in parallel with this.

8.71 It is also our view that the LPA were correct in refusing the scheme against paragraph 7 of the National Planning Policy for Waste (NPPW) and paragraph 174 of the Framework in that the scheme is not well designed so as to positively contribute to the character and quality of the area it is located and does not protect or enhance the valued landscape, as required by each paragraph respectively.

8.72 Ultimately, it is our view that the proposal runs contrary to the fundamental goal of Project Genesis and undermines the positive regenerative work undertaken to date. The regeneration initiative has been all about improving Consett and the quality of life of current and future residents. This proposal runs counter to these principles and could actually deter people from moving into the town, highlighted by the significant local objection. We would therefore ask that the Secretary of State, advised by the Inspector, to uphold the decision of the Local Planning Authority.

[386] ID12

Anne-Louise Grant[387]

8.73 I grew up in a nearby village and went to school locally. After graduating from Durham I had to leave the North-East to start my career in the NHS as opportunities were sadly lacking closer to home. In 2004 the Consett I returned to was dramatically different to the one I left, which had been heavily scarred by its past. The new one was a much more green and pleasant land, more akin to the original vision of the Genesis Project.

8.74 We researched very carefully before buying our house in Templetown, knowing that there was a business park close by (Hownsgill) but were assured that its planning 'use class' would not allow heavier polluting industries so went ahead. Many of my neighbours, both in Millfield and surrounding estates did the same and some who bought property more recently (directly overlooking the Hownsgiil site) were sold their properties based on marketing material of open countryside views and Morris Muter was quoted in an article featured in the Evening Chronicle in September 2008 during the time that The Chequers estate was being built, saying, "*We designed the properties using the hillside to make the most of the view, by building them three storey on one side and two storey on the other, with balconies facing the open countryside where possible. The Chequers is also right next to the coast to coast cycle path, so cycling enthusiasts can cycle to their heart's content, but it's still just a short walk to the town centre shopping*".

8.75 Even more recently the houses on Regents Park were referred to in an article, again in the Evening Chronicle on 24 August 2017 which stated "*Their Regent's Park development has wonderful views across the Dement Valley, how carefully Amethyst take all environmental aspects into consideration*".

8.76 Despite having directors in common with Project Genesis Ltd, and Mark Short's claims that he had been researching this incinerator project for eight years prior to the original application, Amethyst Homes did not declare the potential development of an incinerator less than a few hundred metres away to house buyers. If I was to try and sell my home now, I would be legally bound to declare it to potential purchasers. I understand that the appellants are now claiming that an incinerator may actually increase house prices. If this was the case then surely they would have included that in the marketing materials for the Regents Park Estate, built by Amethyst Homes?

8.77 After a period of more than 10 years of stagnant growth in house prices, in the run up to the application being submitted in November 2020, they had started to increase which was a much-needed boost for the confidence we had put in Consett's future by moving here nearly 18 years before. It was a positive sign of economic growth in the area, one that we were starting to see have an effect on the wider community. Had I known 18 years ago that there was any risk of an incinerator being built I would not have chosen to move my family here and the same goes for people I have spoken to on Chequers and other nearby estates.

8.78 If this incinerator is approved, I consider it a real risk that the immediate areas of Templetown and Berry Edge in particular could suffer a fall in house prices

[387] ID22

and resultant economic decline as people choose to move out or not move into the area. This is even more of a risk in the current economic climate and not one that the people of Consett should have to bear. In my view, this development constitutes a significant loss of amenity, particularly visual amenity which is vitally important when you live on the edge of a town. Regarding the Appellant's evidence submitted to the appeal on Heritage, I feel that this fails to take full account of context and local residents' views on what constitutes Heritage.

8.79 When I first learned of the planning application for the incinerator, with a 50m stack less than 600 metres from our house, I was shocked. As a near neighbour, I would have expected to have been consulted beforehand as part of a public consultation exercise. When later questioned about why this consultation hadn't happened the appellant gave the excuse of the COVID-19 pandemic. A claim was made that leaflets had been delivered to local estates, I did find one friend on a nearby estate (Holwick Close) who had received one of these, but I have been unable to find one household on Millfield or The Chequers, two of the three estates that were specifically named in the original planning documentation as 'Receptors', mentioned as we were identified as potentially most affected by emissions due to proximity.

8.80 When I submitted my own comments to the local planning authority against the application, I commented on the tables on Air Quality which outlined that levels of Arsenic, Lead, Chromium IV, Manganese and Nickel are all expected to be at levels that warrant further assessment but I could not find further information on this in Appendix 10.2, which seemed to have concentrated on other emitted pollutants, namely dioxins and furans. As residents in 'Receptor C' I was concerned that there should have been more information on this. The annual level of Chromium IV is stated as 1829.4% of EAL but there is no information given on its significance or its expected impact on health. For this reason, I feel that the risks to health have not been fully assessed or considered.

8.81 I fail to see how this project aligns with that or indeed any of the Trust's other charitable objects. I was keen to speak today to demonstrate the lack of consultation towards 'near neighbours' of the project and the potentially misleading information given to the public at several points in this process. Despite all of this the strength of opposition to this project remains high amongst our local community. Many people share my feelings that this is part of a long history of Project Genesis Trust and Project Genesis Ltd doing the same. Dysart, Amethyst, Project Genesis Trust and Project Genesis Limited are all linked either directly or indirectly, having either directors, shareholders, trustees or former directors in common. As a community, we are still waiting to see the benefits of the huge claims made by Project Genesis about their level of investment in the town, a town with a woeful centre and severe lack of amenities; especially for the young people of the town.

8.82 For these reasons, the Council's refusal of this application should be upheld, and I call upon the Inspector to advise the Secretary of State to dismiss this appeal.

Peter Oliver[388]

8.83 I am a resident of Consett, and I have been involved in business in Consett for 36 years . My extended family also live in Consett. In that time, I have employed around 24 local people and also trained 6 heating engineers. I am still involved in business in Consett supplying property for 5 different businesses. I was also a Durham County Councillor for 8 years from 2013 till 2021. I have always taken a keen interest in the development and advancement of my community and I am proud to stand up on behalf of local Consett businesses to Say No to the plans of Project Genesis to burden our community with this incinerator.

8.84 I firmly believe that such a development will set us back for many years to come. We live in a beautiful area with clean air and fantastic countryside. It is the return to the amazing countryside that makes the biggest impact on residents, businesses and tourists, and we do not want an incinerator to destroy this for our town. This incinerator will damage everything the community has worked so hard for since the closure of Consett steelworks in 1980, it is so long ago, the majority of the people of the town have no recollection of the dirt, grime and pollution that we had to endure when the steelworks was operational.

8.85 I firmly believe that if this incinerator goes ahead this will be the death of Consett. I know of many businesses who will be leaving the town if this goes ahead, because they do not want the risk of having to operate so closely to an industrial plant. There are a few questions, that this appeal needs to receive clear answers to, relating to financial matters and business interest. These are set out in the statement and were sent to the Appellant.

8.86 Instead of speaking with me, as he claims he has been trying to do with the business community, the Appellant blocked me and removed me form his contact list. He declared an interest in Lister's Waste, confirming what we all suspected, that his interest in the development of an incinerator in the town was more about his personal gain than it is about his claims of a system of more effective waste management. He would also potentially gain as his company ACE engineering would most likely be doing the groundworks for the plant.

8.87 The lack of consultation with the community and local businesses, leads me to believe that Project Genesis claims of working on behalf of the community of Consett to be hollow. How can anyone build a heritage trail and then claim that an incinerator a matter of metres away will be an asset? Why would anyone in their right mind want to 'Visit Consett' when the most prominent feature will be a 50m stack with a plume? If companies want to set up a business, who would choose to locate next to an incinerator? If you are a current business, who would want to stay?

8.88 Wales has a moratorium, Scotland has a moratorium on incineration, England is not far behind, and yet Mr Short is still saying that it is only the people of Consett who do not want an incinerator? He claims to have done years of

[388] ID19

research, but it appears that his research has concentrated on how he would benefit, not on the progression of the town.

8.89 Based on my own research and my extensive knowledge of the local people and the business community of Consett, I am asking the Inspector to support Durham County Council and refuse the incinerator plans, and I ask the Secretary of State to do the same.

John Hinds[389]

8.90 The majority of the old steelworks site has now been regenerated, mainly with new housing. Consett is now a better, cleaner and safer place to live. We do not want to revert to the Consett of the past. This proposal is the most controversial project that I have encountered in my role as Secretary of the Grove Community Trust and Residents Association. The Grove will probably be the worst affected from emissions and plumes being emitted from the 50m stack due to its location and the nature of the surrounding topography.

8.91 The proposal will create only 9 jobs so I consider that the land could be better used to create many more jobs. The proposed new Consett Hospital will be in close vicinity of the incinerator. In addition, there will be more heavy goods vehicles transporting waste from unknown locations. I consider that the proposal will be detrimental to the local ecology, fauna, flora and wildlife. As well as the welfare, health and safety of the wider community. There is an overwhelming community feeling that this proposal should not go ahead.

Niamh McDonald[390]

8.92 The Steel Works has defined Consett since its genesis; it is the reason for many of our heritage assets - the Hownsgill Viaduct, the Derwent Reservoir, the Derwent Walk, Project Genesis' Heritage Trail, which is a trail immersed in nature, and largely dedicated to our industrial history. History that we respect, but don't wish to return to.

8.93 Both my grandfathers worked in the Steel Works, in the hope that their children and grandchildren could grow up with opportunities that stretch beyond the confines of industry. I truly believe that Consett is a better place now than it was when the Steel Works loomed over the town, physically as well as figuratively. I have seen the town develop in my lifetime, with successful business owners and individuals emerging. However, I know many business owners are worried that if the incinerator goes ahead, it will loom over their businesses just as large as the Steel Works once did and they are worried that the town will revert back to how it was seen in the 1980s. We really do not want to return to that.

8.94 As well as our fantastic heritage assets, we are so incredibly lucky to have the beauty of the North Pennines on our doorstep, an Area of Outstanding Natural Beauty and a UNESCO GeoPark. I am here today to make sure that my generation and subsequent generations continue to have this wealth of enriching nature.

[389] ID20
[390] ID23

8.95 Incineration is not a radical enough method to fix our landfill and over consumption problem. In fact, incineration encourages people to consume. If we achieve the aim of a circular economy, an incinerator won't be able to operate as there will be too little waste to burn. As stated on their website, Project Genesis was founded to "benefit the devastated local community" after the closure of the Steel works. However, many involved in our campaign believe their incinerator will devastate the local community.

8.96 As part of our campaign, we have made a huge effort to promote green issues. The children and young people of Consett take their environment seriously. Having fought so hard to save the town, losing now would be devastating for them, they have made it very clear that they do not want an incinerator in Consett. We do not want this to be part of their future.

8.97 Placing an incinerator adjacent to our green spaces and recreational areas, creating a blot on our landscape, is not the solution. Project Genesis are claiming to be thorough in their assessment of what Consett needs, but they have not thought about the youth and what they need. What we need are better facilities and amenities, none of their 'Masterplans' appear to consider us.

8.98 The nearby town of Bishop Auckland is well known for its recent regeneration, at the hands of a wealthy benefactor, focussing on it's heritage. Why shouldn't Consett have the same level of investment? It could still be possible for Consett to have the focus on, and drive to, protect our natural beauty and heritage capital. However, I don't believe we will see this investment in regeneration if an incinerator is put in our town centre. The only investment we will see will be in rubbish, in waste, in pollution, and in climate breakdown.

8.99 We deserve better than that for our future; what I, and many other young people need to see is an investment in our history, our community, our infrastructure, our natural beauty, and an investment in a safe, clean, and happy future for the young people of Consett. A future where maybe one day, my own children will proudly call themselves fifth generation Consett. Therefore, I call upon the Inspector and the Secretary of State to reject the incinerator planned for Consett.

Susan Mellor[391]

8.100 My home is situated in an elevated position off Parliament Street so I fortunately some of my windows face in a south westerly direction with views of the Pennine hills with their graceful wind turbines on the top. In the past my husband described Consett as a terrible place to live. What a contrast it is now.

8.101 The proposed development would spoil the wonderful views by the addition of a large incinerator building and stack in circumstances where we are trying to encourage tourism. If this appeal is allowed it would have a dramatic effect upon all aspects of our community and would have a detrimental effect on house prices. I also consider that the mental health of all of those residents having a sight of the proposal and harming view would be affected.

[391] ID21

Claire Fullerton[392]

8.102 My Husband would say that Consett was consistently rated as one of the 3 worst eyesores in the UK in the 1980s, the concept seemed to stick in his mind so I wasn't expecting much when I first visited 12 years ago. How wrong I was. What I saw was the enormous dirty structures of the steel works removed, the red dust gone and the industrial era gone. Instead, nature was blooming and taking back the land with new housing replacing the condemned housing.

8.103 The sense of community was overwhelming, people with pride in the new landscape, moving forward to a better life for their families, a cleaner town with so much to look forward to. A community arguably once starved of fresh air, and greenspaces for so long.

8.104 There's no room for an incinerator here, within walking distance of the shops, front and back gardens parks where children play. It will be an eyesore on the Landscape.

8.105 The access route is highly dangerous coming off the A692 (Morrison roundabout) as transport turning into Ovington Close has extremely poor vision for bikers and children due lack of sight lines as at the Coast to coast crossing. All houses on the nearby estates would be affected by the proposal and the access arrangements risk cutting off this section of the community from the roundabout.

8.106 The incinerator tower would be a blot on the landscape. Users of the footpath network would experience a slur on the landscape due to the incinerator, as the current views are not unpleasant from Hownsgill Park. This location is totally unsuitable suitable for the incinerator and would be too close to homes and shops.

8.107 The Incinerator would not encourage facilities to undertake recreation or other leisure time occupations. Neither would it encourage the study or appreciation of art, local history or scientific interest and certainly would not assist in conservation and protection and improvement of amenity land and its flora and fauna.

8.108 Who would set up a business in Howngill next an incinerator regardless of tax breaks? Who would want to put their staff at risk or be responsible for serious illness of their employees? Our countryside here in the north east is the future, not an incinerator in the heart of Consett, affecting the countryside with pollution.

Cllr Kevin Earley[393]

8.109 As one of the local councillors in the Consett area I fully support the campaign to stop the building of an incinerator in the town. I have received overwhelmingly negative feedback in relation to this application, with very few people saying they are supportive of the scheme. My own position has been clear from the outset; I oppose this application in its entirety and fully support the decision of the planning committee.

[392] ID24
[393] ID25

8.110 For the record, this has not been an 'anti Project Genesis' stand on my part. Having been one of the two senior politicians who signed the original agreement between the former District Council and the original Dysart development team, some twenty-seven or twenty-eight years ago when we recognised that Consett was in desperate need of inward investment.

8.111 The local environment and the Consett of today is a different place, being much greener and a pleasanter, and this proposal feels as if we are taking a step back in time rather than a step forward. I feel very strongly that people's wishes should be represented, and I am very clear that this is the wrong project for Consett; especially when the appellant has a truly green project sitting on the shelf, which could be delivered without further controversy and distress.

8.112 The Shotley Bridge Hospital Support Group, a community group I have been involved with over the last 12 years, first suggested that the Project Genesis site be considered for the new hospital. And up until this application emerged, I was grateful that the appellants, at their own risk, had established a realistic site option with planning in place. After a lengthy site selection process it quickly established itself as the best and indeed the only realistic option available.

8.113 This decision to build a hospital near the site was a positive step forward for the town and the proposed 'oven ready' additional development of 60 supported living units' on the same site further enhanced the development as something which would readily benefit the local community.

8.114 However, the spectre of this application being given the go-ahead by the Secretary of State is hanging over what I strongly believe could be an exemplar 'health village' development. Instead, it would become an object of derision and disappointment as the community will ask "' who would build a hospital and homes next to an incinerator"?

8.115 It would, in my view, endanger further health investment which this adjoining site could host a much needed extra General Practice provision and related services. The existing solar farm proposal could be improved with the use of modern solar panel technology which could raise its output to 7Mw and with appropriate battery storage and some degree of 'green' gas back-up generation could produce a workable solution. This would be capable of also serving other businesses on the Hownsgill site.

8.116 The solar farm would be marginally more expensive than the 'incinerator plus solar farm option' but it would be the lowest carbon intensity and would be secure. This would be a positive step for Consett and still profitable for the developers.

Lucy Reed[394]

8.117 As a local Consett resident and member of the Say No Committee, I have invested what I can in Consett, having chosen to return here after my university studies. I have a deep personal connection with the town given I've

[394] ID26

lived here for 41 years, and like Project Genesis and Mr Short, I want to see it thrive and prosper.

8.118 I firmly believe that if the incinerator goes ahead it will undermine our further potential for growth. I became involved at the outset of the campaign because of concerns I had over a lack of consultation. The fact that people simply were not aware of this proposal and the negative impact it could have on our community was of serious concern to me. I have experienced the adverse impact of 'energy from waste' from the nearby anaerobic digester already in Consett, where nearby residents (myself included) had little time to object. I believe people should have an awareness and understanding of such significant developments, and a say in the process. This is especially so where there could be detriment to the residential or local amenity of nearby homes and places of heritage.

8.119 The cumulative impact upon issues such as pollution, potential odours or noise, increased transport and traffic emissions are also of concern to me. This cumulative impact and its effect on nearby and significant development (vet, care home, pub, hotel, gym, microbrewery and hospital) does not appear to have been considered by the Appellant in their various assessments. As part of the application for the digester, we were told the development would bring no adverse consequences. Sadly, I am aware from personal experience that what is said in order to obtain planning permission often is not the reality of what happens once permission is granted. If permission is granted, the proposed development could see us with a digester at one end of the town and an incinerator at the other.

8.120 Whilst Mr Short suggests it is inconceivable that he would do something that could harm or prejudice the area or people. This has led to concerns regarding the proposals themselves and purported benefits which have been met with scepticism. The Appellants continue to sell homes near to this development despite knowing they were planning an incinerator. Existing homes sold by the Appellant citing the benefit of countryside facing views, amenity and location will face a 50 m high stack and plume.

8.121 The promotional leaflet for the proposed development shows images of solar panels rather than a 50 metre high stack and plume and says that it is akin to a biomass plant. Despite being told as a community that we had to take responsibility for 'our' waste, the distance which the waste will travel has increased from a not exceeding a 10 mile radius of the plant to 15 mile radius and then to 20 mile radius with only 80% being local waste for the next ten years. I question whether the distances involved in transport demonstrates that already that this isn't a sustainable plan, and ultimately waste from anywhere could end up here in Consett?

8.122 The initial public benefits promoted, such as up to 25% off our energy bills are already whittling down to now a 10% reduction for businesses with a poverty fund, which will barely scratch the surface of deprivation or energy poverty in our area especially given the impending energy crisis which will affect everyone. The claims to power for 8000 homes and the community energy company appears to have fallen silent.

8.123 Most recently, Project Genesis were a key stakeholder in the destination plan and also used the plan to obtain grant funding for the Heritage Trail. A trail we

are now told by the Appellant is heritage in name only. In my opinion, it defies belief that they would simultaneously progress the promotion of Consett as a tourist destination alongside the long term detrimental impact upon the same area with their planned incinerator.

8.124 We have waited 30 years for a hotel in Consett, and the one they are proposing will overlook an incinerator. Do they really think this will encourage tourism in Consett? Despite the appellant claiming the plume had not been mentioned, this was a matter mentioned by Enzygo on their promotional leaflet. I contacted plumeplotter after we heard claims relating to the plume identified this as 'only steam'. Plumeplotter prepared a visual for Consett using the Appellant's own documentation as to levels of emissions, after the Appellant claimed the emissions would dissipate within 20 metres of the site

8.125 The visual impact of this upon our area and the landscape and heritage cannot have been fully assessed. The Appellant has not modelled the potential frequency/visibility of the plume, as seen in other cases of EfW. If visual amenity is being considered, a key to this is the impact of a plume which, due to the weather conditions in Consett, could be visible for a significant period of time across the year.

8.126 The destination plan, of which Project Genesis were key stakeholders, states there is a lack of pride in our area among local people. Consett is indeed a proud town. A town which values its heritage and the former industrial past, but one which is also pleased to have moved away from such industry given the beautiful landscape which has evolved and which surrounds us. This is a positive feature of our area and one which has seen Consett become a desirable place to live. Would Consett remain a desirable place to live, visit and enjoy should an incinerator be built in our community, particularly for those nearby on the Chequers and Ovington court who will overlook this?

8.127 Mr Short admitted in an online meeting that the proposal would affect those in the Chequers visually. Mr Beswick states that there will be a 'negligible' change in view and visual amenity for these homes. As a consequence of the appearance of a 50 metre high stack and plume, residents would disagree. It could be argued that there comes a point when, by virtue of the proximity, size and scale of a development encroaching onto their visual amenity that residential property would be rendered so unattractive a place to live that planning permission should be refused. We firmly believe that this is the case in respect of this proposal.

8.128 Being convinced that your plan has '(silent) local support' support isn't the same as having vocal local support and evidence of this. The excitement that the Appellant has for the project is not shared by myself, the committee or campaign group members. Despite the Appellant suggesting the contrary, the proposed development would be incongruent in nature with those already living there. The stack and plume would be visible in many directions, providing a new vertical, predominant view in the skyline, with a plume drawing further attention to the development and presenting a clearly industrialised image for the area.

8.129 The CDP (Policy 61) states that "All proposals must demonstrate that there will be no unacceptable adverse impact". I do not believe the applicant has demonstrated this to be the case. I do not believe the appellant has evidenced

sufficient public or other benefits to the proposed development when weighted against the wide-ranging detriment it could cause. For these reasons, I would ask the Inspector and the Secretary of State to refuse permission.

Matthew Clarke[395]

8.130 I know the role that heavy industry played in making Consett what it is today. We had plumes of red dust covering Consett for decades, so what I ask is 'why would we want to go back to things being pumped into the air above where we live, work and go to school, now that we have rid of it?'

8.131 As a young person I am wholeheartedly against the incinerator, it has no appeal to my generation, it's not bringing enough jobs, it'll ruin the natural beauty of the local area, which we have grown up with, and who knows what the long-term health impacts will be, health impacts that will affect my generation, and generations to come, in the future.

8.132 How can you guarantee it will not force businesses to leave Consett? Businesses that employ far more people than this project intends to. The proposed site is in between two food factories, how can food for human consumption be manufactured right next door to that. My first job since leaving school was in a food factory, hygiene is the most important thing other than getting a high-quality product out of the door. How can you have a clean preparation area next to an incinerator?

Helen Grugan

8.133 I have lived in Consett or the surrounding area all my life. Two years ago I decided it would be better for me if I downsized from my home in Shotley Bridge. I bought a new build bungalow in Consett built by Amethyst Homes. I moved in in October 2020 and found out in November 2020 that an Incinerator was proposed to be built on Hownsgill Park, Consett. I later found that Mark Short, a Director of Amethyst Homes, had been planning this Incinerator for several years previous but there was no mention in any of the paperwork I received when buying my property.

8.134 My main concern is for my children and grandchildren's health. I am very concerned about the emissions from the Incinerator and the effects on health. In the recent past no-one knew about the effects of toxins and carcinogens but we do now. Whilst the emissions from the proposed Incinerator Stack are described as "negligible", their potential blight on the lives of our families and communities remains unexplored and unknown. "Negligible" does not mean harm does not exist. "Negligible" means there is still risk. "Negligible" can equate to harmful.

8.135 The Incinerator will prove detrimental to the town of Consett. The only value it will bring will be to the large waste companies and small core of invested business people who consider profit before communities, landscape and heritage. Consett people have worked hard to regenerate our beautiful town and it is our town. We live here and we want better for the town and its future generations.

[395] ID27

9. WRITTEN REPRESENTATIONS

9.1 As set out in the OR[396], the application attracted 2,938 letters of objection and 9 letters of support. The representations in objection made at the time of the planning application are summarised in the OR and primarily relate to the effect of the future regeneration of Consett, impact on visual amenity and landscape, impact on the capacity of the local highway network, impact on ecology, air and light pollution, a potential lack of waste source, unacceptable location, noise and the high carbon footprint of the proposal.

9.2 Those in support of the proposal at planning application stage cited the following themes: benefits to local employment and the local economy; generation of new energy opportunity; preference of energy from waste over landfill; and a potential to reduce energy costs for the new hospital and local businesses.

9.3 Following the call-in of the application a further 32 written representations in objection to the proposed development were submitted by interested parties. All of these responses are generally reflective of the themes identified above. These themes are also reflective of the oral representations made by interested parties during the Inquiry as also set out above.

10. CONDITIONS

10.1 I have considered the planning conditions, including a number of pre-commencement conditions, that were provided and discussed in draft at the RTS between the Council, the Appellant and the Rule 6 Party on a without prejudice basis[397]. These were subsequently amended and, other than condition No. 13 which is discussed below, were agreed between the parties and submitted prior to the formal close of the Inquiry[398].

10.2 I have considered the conditions against the relevant advice given in paragraph 56 of the Framework and the guidance contained in the section on 'Use of Planning Conditions' in the Planning Practice Guidance. Where necessary I have amended them in the interests of clarity, precision, conciseness or enforceability. I also consider that an additional condition is necessary to ensure that aviation safety lighting on the chimney stack is of an infra-red format and thereby consistent with the Appellant's evidence relating to visual and landscape harm and to meet the requirements of the Ministry of Defence (Defence Infrastructure Organisation)[399]. Should the Secretary of State be minded to allow the appeal, I recommend that the conditions set out in Annex E of this Report be imposed.

10.3 In addition to the standard time limit (No. 1), I recommend a condition (No. 2) relating to the approved plans in the interests of certainty. The submission of a Construction and Environment Management Plan is necessary in order to minimise the impacts of construction and operations on local residents and to protect the environment (No. 3). For the same reasons, an

[396] CD6.2
[397] ID28
[398] ID35
[399] CD 5.13

Operational Management Plan is also required to be submitted and implemented (No. 21).

10.4 Conditions are necessary requiring site contamination investigation, remediation and measures to ensure that any unexpected ground contamination encountered is adequately and safely dealt with (conditions Nos. 4 and 5). These are necessary in order to ensure that any contamination on the site is satisfactorily remediated and to protect the future users and occupiers of the site and the environment from risks associated with contamination.

10.5 In order to ensure that the development is not at risk of instability due to former coal workings, conditions are necessary requiring ground investigation and remediation measures (conditions Nos. 6 and 7). In order to minimise the visual effects of the development and in the interests of protecting the character and appearance of the area and ecology, conditions are necessary requiring the submission and implementation of details of hard and soft landscaping schemes, external materials, bat boxes, bird boxes, hibernacula and finished floor levels (conditions Nos. 8, 9, 10, 17 and 19). Also, in the interests of visual amenity and to mitigate the effect of lighting on biodiversity and air safety interests, a condition is necessary requiring the submission and approval of external lighting details (No. 12).

10.6 In the interests of highway safety and the free flow of traffic, a condition is necessary requiring the submission of engineering details of the proposed site access and its subsequent implementation (No. 11). In order to safeguard the living conditions of nearby local residents, a condition is necessary that prescribes external noise limits and the provision of noise attenuation measures (condition No. 13).

10.7 I have carefully considered the Rule 6 Party's view that a lower noise limit should be imposed between the hours of 19.00 and 07.00. However, I note that the Rule 6 Party acknowledge that a lower limit may be unenforceable. The suggested noise condition (No. 13) has been the subject of considerable technical discussion between consultants acting on behalf of the Council and the Appellant[400]. I have no other contrary technical evidence to suggest that the agreed condition may not provide for an appropriate degree of protection to the living conditions of nearby residents. Whilst I note the Rule 6 Party's concerns, there is no justifiable basis to warrant lower noise levels being imposed between the hours of 19.00 and 07.00.

10.8 A condition is necessary requiring the submission and implementation of a drainage strategy to ensure that the proposed development is not at risk from flooding and does not cause either increased flood risk on site or to adjacent land (No. 14).

10.9 In the interests of aviation safety, a condition is necessary requiring that notification of the construction of the chimney stack is provided on the UK Digital Vertical Obstruction File (DVOF) and Powerlines at the Defence Geographic Centre (No. 15). Conditions are also necessary restricting the height of the chimney stack to 50m above finished floor level (No. 18) and to

[400] CDs 5.4, 5.6, 5.21, 5.41

ensure that aviation warning lighting to be fitted to the chimney comprises of infra-red lighting (No. 16). These are also necessary in the interests of aviation safety and to protect the character and appearance of the surrounding area.

10.10 In order to ensure that the development is used as a waste recovery process, a condition is necessary requiring demonstration that the development meets the R1 Status as prescribed by the Environment Agency (No. 20). This matter is discussed later in this Report. In order to ensure the restoration of the site following the cessation of operations and to enable the future redevelopment of the site, a condition is necessary requiring the submission and implementation of a restoration scheme (No. 22).

11. PLANNING OBLIGATION

11.1 The Community Infrastructure Levy (CIL) Regulations 2010 and paragraph 57 of the Framework set a number of tests for planning obligations: they must be necessary to make the development acceptable in planning terms, be directly related to the development, and be fairly and reasonably related in scale and kind to the development.

11.2 A draft Unilateral Undertaking (UU) under the provisions of Section 106 of the Town and Country Planning Act 1990 (as amended) was submitted by the Appellant at the outset of the Inquiry[401]. It was supported by a CIL Compliance Statement prepared by the Council which sets out its reasons for concluding that the various obligations would, and would not, accord with Regulation 122 of the CIL Regulations[402].

11.3 Both documents were the subject of discussion in the Inquiry and further refined. I allowed a period after the close of the oral sessions for the submission of the signed UU (dated 9 September 2022)[403] and a revised CIL Compliance Statement (dated 8 September 2022)[404].

11.4 The UU provides obligations in respect of three categories of land holdings as follows:

- Category 1 – Land in the ownership of the Appellant.
- Category 2 – Land which the Appellant has the ability to acquire.
- Category 3 – Land which is not in the ownership or control of the Appellant.

11.5 In respect of the Category 2 Land, the UU requires the Appellant to acquire this land and then enter into a Deed of Confirmation (a draft of which is appended to the UU) to bind that land with the obligations contained within the UU. In this regard, the UU also prevents occupation of the development until the freehold interest in the Category 2 land has been vested with the Appellant and that the Deed of Confirmation has been completed. There is no dispute between the parties that the Appellant has the ability to acquire the Category

[401] ID18
[402] ID29
[403] ID36
[404] ID37

2 Land. Such land forms part of a wider holding held by the Project Genesis Trust and can be called down by the Appellant pursuant to the Trust arrangements.

11.6 Schedules 3 and 4 of the UU prevent occupation of the development until the District Heat and Power Network connections have been provided that are sufficient to serve all existing and likely future buildings or plots on the Category 1 and 2 Land. The schedules also provide, throughout the lifetime of the development, for the terms of any lease or other disposal of any buildings/units on Category 1 and 2 Land to require the occupiers of those buildings to satisfy their heat and electrical demand using heating and electrical energy supplied by the District Heat and Power Network.

11.7 There is no dispute between the main parties that the provision of heat and power connections to the Category 1 and 2 Land meet the relevant tests. In particular, the tests of 'direct relationship' and 'necessity' are met as recovery of heat and power is a product of the operation and is required to ensure that the development provides for the management of residual C&I waste that is driven up the waste hierarchy. The distribution of recovered heat and energy to residential and business occupiers in proximity of the site is reasonable and proportionate. I have no reason to disagree with the views of the main parties in that, with regard to Category 1 and 2 Land, the obligations provided in Schedules 3 and 4 of the UU meet the relevant tests.

11.8 Schedules 3 and 4 also require the Appellant to construct heat and power infrastructure as close as is reasonably practicable to the boundary of Category 3 Land. Thereafter, the schedules require the Appellant to make binding offers to the occupiers of Category 3 Land to supply heat and power at a discounted rate of at least 10% of the prevailing market rate and provide connections at the Appellant's expense.

11.9 The Council does not consider that the above obligations relating to Category 3 Land meet the necessary tests. It explains that this is due to the fact that the Appellant does not control or own such land and is not therefore in a position to deliver the infrastructure connections which are dependent upon the consent and co-operation of third parties. Furthermore, the Council considers that, as the relevant obligations are couched in terms of 'reasonable endeavours' they are consequentially aspirational.

11.10 I disagree with the Council's view. In my view, the provision of the necessary heat and power infrastructure to the boundary of Category 3 Land has a direct and proportionate relationship to the proposed development in much the same way as they do in respect of Category 1 and 2 land. The Category 3 Land obligations serve the clear planning purpose of seeking to utilise the prospects and quantum of heat and power that could be exported from the appeal scheme. I consider that these obligations would meet the tests set out within paragraph 57 of the Framework and CIL Regulation 122.

11.11 Schedule 5 of the UU requires that land within the site (identified on drawing No AL(0)027 Rev A and appended to Schedule 1 of the UU) is set aside and safeguarded for use as an Electric Vehicle Charging Facility and that a planning application for such facility is submitted prior to the occupation of the development. Thereafter, any planning permission so granted is required to be implemented within 1 year and completed within 5 years and shall supply

electricity at a discount rate of at least 10% of the prevailing market rate. The obligation would require the Appellant to not seek to redevelop the charging facility for a period of 10 years from the date of completion.

11.12 The Council considers that the obligations contained within Schedule 5 would fail to meet the necessity test as they require a future planning application and that it is not possible to fetter or prejudice the Council's future decision on such application. As such, the Council considers that there are considerable uncertainties over the delivery of the charging facility but it accepts that it satisfies the direct relationship test as the electrical power is recovered from the proposed development.

11.13 In my view, the obligations contained within Schedule 5 are directly related to the appeal scheme (given the source of electricity) and are proportionate. They are also plainly directed at a desirable planning outcome of encouraging the uptake of electric vehicles which is supported by National Policy. No evidence was presented in the Inquiry to demonstrate that there is any reasonable doubt that planning permission for the facility would not be obtainable.

11.14 In my view the charging facility would serve a clear planning purpose associated with the utilisation of surplus power from the development and the obligations provide a route to deliver this. Whilst I recognise that the delivery of the charging facility would require the benefit of planning permission, I do not consider that the inclusion of a requirement to submit a planning application in any way fetters the Council's future discretion to consider such application. The relevant obligations provide no directive or influence on the manner which the Council would consider such application or what the outcome might be. Overall, I consider that the obligations contained within Schedule 5 would meet the relevant tests.

11.15 There is no dispute between the main parties that the proposed development has the ability to be connected to a Carbon Capture and Storage (CCS) facility, should such facility be available in the future. Schedule 6 of the UU requires that measures for the capture, storage and export of carbon emissions (the required measures) are put in place if they are demonstrated to be reasonably available by means of 3 yearly reviews to be submitted to the Council. The relevant obligations also require the Appellant to submit a planning application for such required measures should it be necessary.

11.16 The Council considers that the obligations contained within Schedule 6 would fail to meet the necessity test as they may require a future planning application and that it is not possible to fetter or prejudice the Council's future decision on such application. As such, it is uncertain whether any carbon capture, storage and export can be achieved and the obligation fails to meet the test of necessity.

11.17 In my view, the obligations contained within Schedule 6 serve a planning purpose of potentially contributing to the reduction in carbon emissions. At present it is not possible to operate CCS at the appeal site (or anywhere else in the UK) as there is no provision to store the captured CO_2. It is accepted that it is not certain whether CCS will become a reality but the Government has committed to promoting future schemes, including one off Teeside.

Furthermore, I accept the Appellant's view that it is likely that the necessary infrastructure could be predominantly provided as permitted development.

11.18 The proposed obligations would provide a necessary mechanism to reduce carbon emissions in the future should CCS be available. In that regard they provide a best alternative mechanism at the present time to manage carbon emissions. In addition, the fact that a planning application may be required for such infrastructure does not fetter the Council's ability to determine any such planning application on its own planning merits. Overall, I find that the proposed obligations in Schedule 6 would provide an appropriate mechanism to utilise future CCS, thereby further reducing carbon emissions, and would also meet all other relevant tests.

11.19 Schedule 7 of the UU prohibits the occupation of the development until the partially implemented scheme for the Hownsgill Solar Farm has been completed and is operational. As set out earlier in this Report, the proposed development would enable the current prohibitive costs of connection to the national grid infrastructure that are currently experienced by the Solar Farm to be overcome and thereby facilitating its completion.

11.20 Both main parties agree that the completion of the Solar Farm is currently not viable due to the prohibitive power grid connection costs. There is no dispute that the proposed development would provide the necessary grid connection infrastructure that could be used by the Solar Farm and that the direct relationship test is met. In addition, the obligation would enable the benefits of the Solar Farm to be delivered and, in my view, is reasonably related and proportionate to the proposed development. In this regard, I agree with the main parties that the necessary tests are met in respect of the obligations contained within Schedule 7.

11.21 Schedule 8 of the UU prohibits the occupation of the development until a trust agreement has been entered into between the Appellant and Project Genesis Trust for the receipt and distribution of a financial contribution (0.5p per KW of electricity generated at the appeal scheme). The sum, estimated by the Appellant to be approximately £120,000 per annum, would be distributed to qualifying households that satisfy eligibility criteria for the purposes of subsidising their energy costs or implementing measures that are designed to reduce future energy costs. It would essentially be distributed to those households that can demonstrate that they are experiencing fuel poverty.

11.22 I share the Council's view that this obligation is not CIL compliant. The existence of fuel poverty is an existing situation unrelated to, and having no association with, the proposed development. There is no causal link between the two. Furthermore, the amount of the financial contribution proposed represents an arbitrary financial decision by the Appellant that has no calculation basis in planning policy, notwithstanding the fact that there is also no planning policy basis for the establishment of such scheme. In addition, a financial payment could be made to households some distance away from the appeal site. Furthermore, its implementation may be disproportionate as funds would be allocated only to those households who make a successful application to the scheme whilst others, equally experiencing fuel poverty, may choose not to make such application. Therefore, I have attached no weight to the provisions of Schedule 8 of the UU in my consideration of the planning issues in this appeal.

11.23 I have considered the judgement in the 'Working Title Films v Westminster City Council'[405] case that was brought to my attention be the appellant. Having regard to the above, and based on the evidence before me, I am satisfied that all of the provisions set out in the UU, except for Schedule 8, as explained above, are necessary to make the development acceptable in planning terms, are directly related to the development and fairly and reasonably related in scale.

11.24 Therefore, other than Schedule 8, the remaining obligations all meet the tests as set out within paragraph 57 of the Framework and CIL Regulation 122. Other than my views regarding Schedule 8, I am satisfied with the form, drafting and content of the UU. I have attached weight to the obligations contained therein which is considered in the relevant sections of my conclusions below.

11.25 Notwithstanding my views regarding Schedule 8, should the Secretary of State conclude that any of the obligations are incompatible with any of the relevant tests, the UU provides that the particular obligation would cease to have effect.

12. INSPECTOR'S CONCLUSIONS

12.1 The following considerations and conclusions are based on the oral and written evidence provided to the Inquiry and on my inspection of the site and its surroundings. In determining this appeal, the Secretary of State will need to come to a view whether the proposal comprises sustainable development within the context of the Framework as a whole. To that end, the main considerations that I consider relevant in this case are:

- The principle of the development on the Hownsgill Industrial Park.
- Whether the proposal would comprise a waste disposal or recovery operation.
- The need for the proposed facility.
- The effect of the proposed development on the character and appearance of the surrounding area with particular regard to the North Pennines Area of Outstanding Natural Beauty and the adjacent Area of Higher Landscape Value.
- The effect of the proposed development on the special interest of nearby heritage assets with particular regard to the setting of the Grade II Listed High Knitsley Farmhouse and Barn to the west of High Knitsley Farmhouse.
- The extent to which the proposed development is consistent with Government policies for meeting the challenge of climate change in the Framework (Part 14).
- The effect of the proposed development on economic development.
- Whether alternative sites and technology were appropriately considered.
- Any benefits of the proposed development to be weighed in the planning balance and any implications of not proceeding with the scheme.

[405] [2017} JPL 173

Principle of Development on the Hownsgill Industrial Park

12.2 During the Inquiry the Rule 6 Party and other interested parties argued that the proposed development of an EfW on the industrial park would be contrary to the land use allocation of the site in the CDP. The CDP does not specifically allocate any sites for waste management facilities but sets out a criterion-based approach for the consideration of locations for such development.

12.3 Although Policy 2 of the CDP provides a list of sites that are allocated for B1 (Business), B2 (General Industrial) and B8 (Storage and Distribution) uses, the Hownsgill Industrial Park is not included on that list. I accept the Council's view that an EfW is a 'sui generis' use that does not comfortably fit within any specific use class.

12.4 Policy 2 contains a paragraph which sets out that 'general employment' uses would be supported on the Hownsgill Industrial Estate. However, no further comment is provided as to whether this may be restrictive to any particular use class. Criterion (e) of Policy 61 identifies, amongst other things, that proposals for new or enhanced waste management facilities will be permitted where they will assist the efficient collection, recycling and recovery of waste materials where they can be satisfactorily located on suitable land identified for employment use.

12.5 The SoCG (Planning) and the OR to the Council's Planning Committee[406] identify that the main parties agree that the proposed development would not conflict with Policy 2 of the CDP. The OR further sets out in paragraph 132 that the proposed development would not be materially distinct from similar sized industrial development and would still provide employment. The paragraph further identifies that the development would not have any sensitivities or peripheral impacts that would compromise the main use of the Hownsgill Industrial Park for B class uses, matters that I refer to later in this Report, and concludes that the proposal would not conflict with CDP Policy 2. Furthermore, the NPPW identifies that "waste planning authorities should consider the suitable siting of such facilities (low carbon energy recovery) to enable the utilisation of the heat produced as an energy source in close proximity to suitable potential heat customers". I consider that the location of the proposed development would, in principle, conform with this siting guidance provided in the NPPW.

12.6 It was argued that the Hownsgill Industrial Park is a 'prestige' site and that the proposed location would not be appropriate for the proposed development. However, there is no policy within the development plan that suggests that the Hownsgill Industrial Park may have 'prestige' status that may place any restriction on the type of uses that may be considered appropriate on the site. Furthermore, subject to the consideration of other policies in the development plan, Policy 61 specifically directs proposals for new waste management to suitable land identified for employment uses.

12.7 Whilst the material impacts of the proposal are considered later in this Report, I have no contrary evidence to suggest that the proposed development would be inconsistent, as a matter of principle, with the land use aspirations of Policy

[406] CD 10.3

2 of the CDP, particularly as Policy 61 supports the use of employment sites for such waste management uses.

Waste Disposal or Recovery?

12.8 In the SoCG (Planning) the main parties agree that the proposed development will process residual C&I waste "which cannot be recycled". This waste would otherwise be disposed to landfill. The SoCG (Planning) and OR confirm that the main parties agree that the proposal constitutes a waste recovery operation that would drive the management of waste up the waste hierarchy. The main parties also agree that it would generate electrical energy and heat for distribution to the national grid and provide heat which has the potential to be used at nearby sites. In that context, both main parties agree that the proposal complies with Policy 47 of the CDP.

12.9 However, the Rule 6 Party argued that the facility would comprise a disposal operation, as opposed to recovery. This was also referenced to the fact that the facility did not have R1 status (i.e. a recovery operation as defined by Annex II of the revised EU Waste Framework Directive (2008/98/EC)).

12.10 Recent Government guidance sets out that new EfWs should be operated on the basis of a recovery operation. The publication ' Our Waste, our Resources: A Strategy for England'[407] identifies at paragraph 3.2.1 that the Government will seek greater efficiency from EfW plants and will ensure that all future EfW plants achieve recovery status. In addition, the DEFRA publication 'Energy from waste A guide to the debate'[408] sets out that "The Government sees a long-term role for energy from waste both as a waste management tool and as a source of energy. To be consistent with the first principle, this long-term role needs to be based on energy from waste that at least constitutes recovery not disposal". It further states that "To be classed as recovery, energy from waste facilities must meet the requirements set out in the waste framework directive, for example through attainment of R1 status".

12.11 Incineration of waste alone is a disposal activity. Although in this case there would be electricity and heat produced which is agreed to constitute recovery operation, obtaining R1 status formally confirms that the incineration of waste can be classed as a recovery operation. In the circumstances of this appeal, an EfW facility that generates electricity and provides heat to an extent that R1 status is achieved would be classed as recovery. I consider that the proposal needs to achieve R1 status in order to conclusively demonstrate that it comprises a recovery operation that would move the management of waste up the hierarchy and demonstrably meet the requirements of Policy 47 of the CDP.

12.12 The EA is the competent authority for determining whether a plant meets the definition of R1 Recovery. R1 status is assessed at three stages: plant design before commissioning; when the plant is commissioned; then during operation after commissioning. In order to obtain R1 Status a facility must demonstrate an energy efficiency factor equal to or above 0.65 calculated using a specific

[407] CD 10.3
[408] CD 13.26 page 9

formula where inputs include plant efficiency, energy input by fuels, annual imported energy, annual energy circulated and annual exported energy[409].

12.13 It is not necessary for a developer to obtain R1 status before applying for planning permission. In this case, the precise nature and composition of the feedstock was uncertain at the time of the Inquiry and no end user has been formally identified for either the electrical or heat energy that would be generated. Nevertheless, I concur with the views of the Inspector in the Swindon appeal[410] that it is not unusual at this stage in an EfW proposal's development for there to be no committed consumers.

12.14 Throughout the Inquiry the Appellant maintained that it was the intention to obtain R1 Status through Design Stage Certification prior to the commencement of the development. In this regard a planning condition (condition No. 20) was agreed between the main parties requiring demonstration that R1 status has been achieved before the commencement of development. Such condition is similarly worded to condition No. 12 in the Swindon case. This also follows the approach taken by the Inspector in the Bilsthorpe case[411], where the Inspector recommended to the Secretary of State (SoS) that, were permission to be granted, an appropriately worded planning condition could ensure that the plant could not operate other than as an R1 facility. The SoS accepted that recommendation and imposed the condition when granting planning permission.

12.15 To conclude on this issue, I consider that suggested planning condition provides an appropriate mechanism to ensure that the proposed facility can only commence operations when R1 Status has been achieved. As such, based on the evidence before the Inquiry, I have no good reason to suppose that the proposed facility would be other than R1 compliant. I am satisfied, therefore, contrary to the views of the Rule 6 Party and others, that it is appropriate to consider the proposed development as a recovery facility, as opposed to a waste disposal operation.

12.16 I therefore find no conflict with the waste hierarchy, which places energy recovery above disposal. I conclude that the proposal accords with Policy 47 of the CDP in this respect.

The need for the proposed facility

12.17 Paragraph 158 of the Framework advises that it is not necessary for applicants to demonstrate the overall need for renewable energy schemes such as that proposed and recognises that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. However, Policy 60 of the CDP requires that proposals for the provision of new waste management capacity should demonstrate that they contribute to driving the management of waste up the waste hierarchy. It also sets out that proposals should assist in moving the management of waste in County Durham towards net self-sufficiency and/or make an appropriate contribution to regional net self-sufficiency by managing waste streams as near as possible to their production, and, assist in meeting the identified need for new waste management capacity

[409] ID30
[410] CD 13.8 para 100
[411] CD 13.11

to manage specific waste streams over the Plan period or can demonstrate an additional need which cannot be met by existing operational facilities within County Durham or the North East.

12.18 A considerable part of the Appellant's case in support of the proposed development at the Inquiry was that there is a demonstrable need in County Durham for additional waste management capacity that can assist driving the management of residual C&I waste up the waste hierarchy and which otherwise would be disposed to landfill.

12.19 The baseline statistical evidence provided by the Appellant[412] in the needs assessment to the Inquiry regarding the need for facilities to divert the management of C&I waste up the waste hierarchy and away from landfill were not substantially disputed. At a national level the 'UK Energy from Waste Statistics – 2021'[413] produced by Tolvik Consulting demonstrates that of the 27.5 million tonne (Mt) of residual waste produced, around 9.3Mt (35%) was sent to landfill with somewhere between 11.5 – 12.8Mt being incinerated (at a R1 facility) and between 2.1 – 3.4Mt being incinerated at one of the 19 (out of approximately 53 operational EfWs) which are non R1 facilities. In addition, approximately 3.5Mt of residual waste is exported to EfWs abroad.

12.20 A review of the waste data from the Environment Agency's Waste Data Interrogator for 2020[414], as compiled in the evidence provided by Mr Emms[415], demonstrates that in County Durham 49% of total waste processed in the county is sent to landfill which is the highest rate in the North East Region where the regional average is 29%. Approximately 36% of all the County's waste is subject to recovery, which is the second lowest level in the region, and compares with a regional recovery average of 49%.

12.21 In quantity terms, the evidence demonstrates that, at regional level, approximately 609,100 tonnes of residual waste went to landfill in 2020 with approximately 365,000 tonnes exported out of the region. This situation is partly reflective of the fact that there is only one existing EfW facility serving the region at Billingham. The OR identifies that the CDP forecasts a deficit of capacity for non-hazardous residual waste treatment and disposal of between 67,000 to 145,000 tonnes by 2035 (with an existing deficit in 2020 of 98,000 tonnes to 132,000 tonnes). The CDP also identifies a landfill capacity gap of 3,682,800m^3 for inert and non-hazardous landfill by 2035[416].

12.22 The evidence base that informed the waste planning policies of the CDP included an 'Addendum to 2012 study: Waste Arisings and Waste Management Capacity Model (2018)'[417]. This envisaged that 848,000 tonnes per annum of residual waste would be managed at five new energy from waste developments forecast to be constructed[418] and to be operational from 2020. However, none of these schemes have come forward to the construction

[412] CD 12.10.1 Appendix 1
[413] CD 13.27
[414] CD 13.30
[415] CD 14.2 Table 2
[416] CD 6.2
[417] CD 7.3
[418] CD 7.3 Table 16

phase. The current position of each is summarised in Table 5, Appendix 1 of Mr Emms evidence which demonstrates that there is no realistic prospect of any of these materialising to become operational facilities in the foreseeable future.

12.23 The Council referred to two further planning permissions for energy recovery facilities in Redcar that were granted consent since the submission of the planning application for the appeal scheme[419]. However, there is no indication as to if, or when, either of these schemes may become operational. The unchallenged waste needs assessment provided by Mr Emms suggests that even if 900,000 tonnes of additional EfW capacity were assumed to be available to address regional needs, there would still be a capacity gap for the management of residual waste of around 260,000 – 360,000 tonnes in the North East Region[420].

12.24 It is clear that the Council's aspirations for the management of residual waste over the plan period of the CDP were partly based on the commissioning of a number of recovery facilities for which there appears to be no foreseeable prospect of any of these coming forward. In any event, paragraph 7 of the NPPW advises that only existing operational facilities should be considered when determining waste planning applications.

12.25 Taking the above into consideration, I am of the view that there has been no material change regarding the need for additional facilities for the management of residual waste since the OR was produced. The OR confirmed that the scheme could make a contribution to both County Durham and regional self-sufficiency[421] and that the evidence base explains the importance of the delivery of new treatment capacity as otherwise landfill closures over the plan period will not be matched by new energy recovery capacity[422].

12.26 Therefore, the present and future management of the County's residual waste appears to be based on a significant quantity being disposed to landfill or exported from the area. Without alternative facilities, including EfW, to recover a proportion of this waste in the local area, this comparatively unsustainable treatment method for residual waste, including C&I waste, would continue with little prospect in the foreseeable future of any alternative option that may move the management of this waste up the waste hierarchy.

12.27 The Rule 6 Party argue that the appeal scheme may prejudice recycling initiatives as a consequence of a need to maintain sufficient combustible products in the feedstock, with particular emphasis on plastic content. However, the RDF would be derived from residual C&I waste that the Council accepts cannot currently be recycled[423]. The pre-treatment of the waste prior to being converted to RDF would likely remove the recyclable element. It seems to me that currently the quantity of residual waste, including C&I waste, now going to landfill in the region is largely that which needs to go there because it cannot readily be recycled. The amount of non-recyclable

[419] CD 12.34 para 4.27
[420] CD 14.2 para 1.70
[421] CD 10.3 para 139
[422] CD 10.3 para 142
[423] CD 12.1 paras 7.8, 7.10 and 7.20

waste that the facility may intercept would be a commercial decision for the Appellant.

12.28 It is accepted that recycling technologies may develop over time to remove more of the combustible element in pre-treatment. However, there is no persuasive evidence before me to suggest when, or if, such processes may be developed to the extent that there would be a material impact on the combustible content of RDF.

12.29 As part of the circular economy package, the Government, in October 2020, legislated to include a permit condition on incineration operators which meant that those operators cannot accept separately collected paper, metal, glass or plastic for landfill or incineration unless such items have gone through some form of treatment process first and unless there is no better environmental outcome[424]. Furthermore, the Government has recently announced measures to further reduce waste[425] and therefore it should be reasonably expected that the plastic content of residual waste streams would decrease over time. Therefore, based on the current evidence before me, I am not persuaded that the proposed development would lead to a demonstrable reduction in the recycling of C&I waste.

12.30 In terms of the proximity principle, it would not be expected at planning application stage for contractual arrangements to have already been entered into with prospective suppliers of RDF. However, the Appellant has provided evidence, in the form of expressions of interest, from three local suppliers currently operating waste transfer stations (WTS), one of which is based in Consett, which suggests an indicative supply of 85,000 tonnes per annum of RDF[426]. This quantity would far exceed the capacity of the appeal scheme.

12.31 I have found above that there is a clear need for new treatment capacity in the region to divert residual waste away from landfill and the potential for locally sourced RDF to be supplied to the proposed facility. Furthermore, both main parties agree that the proposal is compliant with criterion (c) of CDP Policy 61 which requires proposals to "minimise the effects of transporting waste including by locating as close to arisings as practicable"[427]. Whilst the possibility of RDF being imported into the facility from outside the region cannot be ruled out, no substantive evidence was provided in the Inquiry to suggest that the proposal would be demonstrably contrary to the overall objectives of the proximity principle.

12.32 To conclude on the issue of need, I am satisfied that the evidence presented in the Inquiry demonstrates a local and regional need for more recovery capacity to divert the management of C&I waste up the hierarchy and away from landfill. The proposal would provide for the recovery of 60,000 tonnes of residual C&I waste per annum in the form of RDF which would make a significant contribution to meeting this need. No alternative robust evidence was presented that would alter my conclusion on this matter. Consequently,

[424] CD 13.7 Hansard extract cols 301-302
[425] CD 14.3 para 2.21
[426] CD 12.12.1 Appendix 1 Mr Short PoE
[427] CD 12.1 para 7.23

the need for the facility is a material consideration that should be afforded significant weight in terms of sustainable waste benefits.

12.33 Furthermore, the Waste Management Plan for England (Jan 2021)[428] sets out that "To deliver net zero virtually all heat will need to be decarbonised and heat networks will form a vital component of this. Energy from waste has a role to play in supplying this heat, but currently only around a quarter of energy from waste plants operate in combined heat and power mode, despite most being enabled to do so. We want to see this number increase". In addition, it also states that "The Government supports efficient energy recovery from residual waste – energy from waste is generally the best management option for waste that cannot be reused or recycled in terms of environmental impact and getting value from the waste as a resource. It plays an important role in diverting waste from landfill".

12.34 I consider that the proposed development is entirely reflective of the guidance provided in the Waste Management Plan for England which recognises "that energy from waste is generally the best management option for waste that cannot be reused or recycled in terms of environmental impact and getting value from the waste as a resource".

12.35 The SoCG (Planning) confirms that the main parties agree that the proposed development would comply with CDP Polices 47 and 60 provided that it achieves the generation of electricity and heat to be exported from the facility. Furthermore, the SoCG agrees that the development accords with criteria (c), (d) and (e) of Policy 61 of the CDP. Criterion (b) is not applicable is this case as the site is not located within the Green Belt. The Council does not consider that compliance with criterion (a) is achieved as this relates to the impact upon the setting or integrity of nationally and locally designated sites and areas, a matter which is considered later in this Report. On the basis of my findings above, I have no reason to disagree with the main parties that the proposal accords with the aforementioned policies and the relevant provisions of the Waste Management Plan for England.

Character and appearance

Landscape background and baseline

12.36 The SoCG (Landscape) identifies that the appeal site is not subject to any local or national designations, lies outside of any Area of High Landscape Value (AHLV) and is not a 'valued landscape' for the purposes of paragraph 174 of the Framework. The North Pennines AONB at its nearest boundary is approximately 2.5km to the southeast of the site.

12.37 The appeal site is located in the Durham Coalfield Pennine Fringe National Character Area (NCA) 16, in which it is described as "a transitional landscape between the North Pennines NCA to the west and the Tyne and Wear Lowlands NCA to the east. It is formed by a series of broad ridges, separated by river valleys, with a strong west–east grain". The characteristics of NCA 16 further explain that "The area's industrial history has left a strong mark on the landscape: historic coal mining and steel processing have a strong influence on settlement patterns, culture and infrastructure such as wagonways and

[428] CD 10.2 pages 12 and 17

railways. The area has a high proportion of 'reclaimed sites' restored after mining activity, and in some areas this has given the landscape a rather featureless, 'manmade' feel".

12.38 County Durham Council has published a detailed landscape character assessment for the area. Amongst other things, key characteristics for the County Character Area of West Durham Coalfield are described in terms of "a landscape heavily influenced by development with a semi-rural or urban fringe character in places".

12.39 The character assessment goes on to subdivide the County character into broad character types and places the appeal site in the Coalfield Upland Fringe, which has its own set of key characteristics, including, amongst other characteristics, "Telecommunications masts and wind turbines prominent on some ridges". The SoCG (Landscape) identifies that these include:

- Pontop Pike Transmitting station (149m high mast) at Pontop Pike (312m AOD) between Stanley and Consett;
- Windfarms such as the 12MW Kiln Pit Hill Wind farm, the 6MW Boundary Lane windfarm, the 4.0MW Greencroft Estate Turbines, the 2.8MW Holmside Hall windfarm and the 8MW Langley Moor windfarm; and
- Individual wind turbines at 74m high Middle Heads Farm Turbine, 45m high Hown's Farm Turbine and the 45.7m high, High Knitsley Farm Turbine.

12.40 There are a number of rural footpaths in the area to the south beyond the town of Consett. These include Footpath (FP) 23 which extends south through Hownsgill Farm; FP 49, which extends northwest from Hownsgill Viaduct to the A692; and FP 21, which meanders east from Hownsgill Viaduct through Hown's Wood and Knitsley Wood. The Consett and Sunderland Railway Path is approximately 50m north of the site and is a promoted route also forming part of the Sustrans Coast to Coast (C2C) long-distance path/cycleway which follows the route of a former railway line. This connects with the Lanchester Valley Railway Path approximately 600m to the southwest of the site.

12.41 Representative viewpoints have been agreed between the main parties and used to assess the impacts and resultant effects of the proposed development on a range of views towards the site. The 19 Representative and Supplementary Viewpoints are outlined in Appendix 7.2 (Summary of Visual Effects) of the Landscape and Visual Impact Assessment (LVIA)[429]. An additional supplementary viewpoint (No.20) was produced to assist in considering the effect of the proposed development on heritage assets and not for the purposes of landscape impact.

12.42 I concur with the views of the main parties that the Study Area encompassed by the viewpoints is appropriate for consideration of the likely important effects of the proposed development on landscape character and views and that the Assessment Methodology in the LVIA has been undertaken broadly in line with best practice guidance as set out in the Guidelines for Landscape and Visual Impact Assessment (Third Edition) 2013 (GLVIA3)[430]. Whilst there is

[429] CD 3.7.2
[430] CD 9.9

general agreement on the approach adopted in the LVIA there is disagreement regarding the magnitude of the landscape and visual effects.

12.43 The Appellant considers that the residual landscape and visual impacts of the development would be neutral/minor adverse and should not therefore constitute a reason for withholding planning permission. The Council considers that due to the scale, form and massing of the development, it would cause harm to the character and quality of the landscape and would cause unacceptable harm to the special qualities of the AONB. In addition, the Council also considers that the appearance of the development does not conserve or enhance the special qualities of the landscape within the nearby AHLV.

Significance of the Plume

12.44 The combustion process undertaken by the proposed development would occasionally produce an emissions plume, composed primarily of water vapour, which would be emitted via the exhaust flues contained in the stack. The degree to which this plume is visible would be determined by the flowrate of the exhaust gases in combination with their temperature and humidity relative to that of the surrounding air environment, and wind conditions. No party suggested any recognised methodology for predicting the frequency at which a plume would be visible. However, the evidence of Mr Beswick does attempt to provide some assessment of the frequency of the plume that may be emitted from the stack which was not disputed by any other compelling evidence during the Inquiry.

12.45 The visibility of the emissions plume would likely vary greatly, as the visual characteristics depend on the weather conditions. Plumes often have characteristics in common with the surrounding air environment (i.e., on a cloudy or overcast day they will tend to blend in with the background, and on a windy day they disperse quicker, as they comprise primarily of water vapour).

12.46 Atmospheric conditions that lead to plume formation (low temperature and low humidity) occur more frequently in winter, and consequently both plume length and visibility reduce in the summer months. However, wind speed also tends to be stronger the higher the elevation, the further north and during the winter months resulting in plumes being dispersed far quicker.

12.47 The evidence suggests that wind speeds in the Consett area are relatively high and are identified in the wind roses for each year of meteorological data in Diagram 2 of Mr Beswick's proof of evidence. Cloud cover is also a significant factor in determining the extent to which visible plumes are discernible. In clear or blue-sky conditions, a plume will contrast with its background. However, in skies with more than one or two oktas[431] of cloud (i.e., 12.5-25% cover), this contrast becomes progressively less marked.

12.48 The periods when cloud cover is likely to be at its greatest are across the autumn, winter and early spring seasons, which coincide with when the plumes are most likely to occur, and when hours of daylight are less. Meteorological

[431] An okta is a unit of measurement describing levels of cloud cover estimated in terms of how many eighths of the sky are covered in cloud. 0 oktas equates to a clear sky, whilst 8 oktas equates to complete cloud cover

data also suggests that in the north east region the annual average cloud cover would be more than 2 Okta's for 70% of the time (night and day)

12.49 The Appellant does not suggest that a plume would not be visible. However, the evidence suggests that any visibility would be less likely during most of the year. The same is also true during those periods when cloud cover is 2 or less Okta's, as even small amounts of cloud or wind could restrict visibility.

12.50 When an emissions plume were visible, this would likely draw attention to the presence of the proposed development in views from the surrounding area. As a result, there would be occasional transient adverse visual effects locally, particularly where the plume formed in clear skies during a temperature inversion.

12.51 I consider that the evidence is persuasive in that a plume discharge would be infrequent and its visibility and dispersal affected by cloud cover and wind speed. Whilst there is no accurate prediction methodology that conclusively assesses the plume effect in relation to the proposed development, I have taken into account the fact that a plume may occasionally be present in my assessment of the landscape and visual impacts below.

Night-time Lighting

12.52 Although the consideration of night-time effects was not specifically identified by the Council as part of the ES Scoping Opinion[432], the evidence of Mr Beswick includes a Night-Time Assessment[433]. A detailed lighting scheme for the proposed development has not yet been designed. This would be the subject of a planning condition (No. 12) in the event that the appeal were to be allowed. However, a number of parameters and an existing night-time baseline review have been used to inform the assessment. These include the potential for new site lighting of the vehicular and pedestrian access and manoeuvring areas and infrared lighting at the top of the stack.

12.53 The Assessment recognises that the location of the proposed development is within an existing industrial park and on the edge of Consett's urban area, which includes a number of light sources that have a medium to high level of brightness. It concludes that the effects of lighting from the proposed development on the receiving environment would be minimal with no anticipated impact at all on the dark sky areas within the AONB.

12.54 Paragraph 7.32 of the SoCG (Planning) identifies that the main parties agree that the proposed development would not create unacceptable light pollution and, in this regard, would accord with Policy 31 of the CDP, Part 15 of the Framework and Part 7 of the NPPW. In the absence of any other technical evidence to the contrary, I have no reason to question the findings of the Assessment or the views of the main parties as set out in the SoCG (Planning). I have therefore taken these matters into account in my consideration of the landscape and visual impacts of the proposed development below.

[432] CD 6.3
[433] CD 12.8.1 Appendix H

Landscape impacts

12.55 The Zone of Theoretical Visibility (ZTV) appended to the LVIA and included in Appendix C of the evidence Mr Beswick[434] suggests that views of the proposed development would potentially be more widespread to the south and west. The existing built form of Consett restricts views from the north of the town.

12.56 The 'significance of the impact' of the proposed development on landscape receptors is a function of the 'sensitivity of the receptor' to the particular type of development and the 'magnitude of change' resulting from the proposed development.

12.57 Given the allocation of the appeal site it is accepted that additional development of significant scale could occur on the undeveloped plots. Whilst the CDP places no restriction on the scale, mass or height of any proposed development on the Hownsgill Industrial Park, the existing buildings do not exceed approximately 12m in height. Although the proposed development may resemble the size and scale of existing surrounding buildings when viewed in plan, the height would be significantly greater than any existing buildings.

12.58 In considering the landscape effects of the proposed development I have taken into account the landscape mitigation[435] that is proposed on the periphery of the site. This includes introducing planted bunds to provide additional height to the mitigation and planting to site perimeters to soften and filter views of the proposed development using indigenous species found in the locality. The detailed landscape design would be subject to a suitably worded condition (condition No. 9)

12.59 Table 7.3 of the LVIA considers the landscape effects of the development both in the construction phase and operational phase (year 15) at site level, townscape and landscape character types and impacts to protected landscapes/setting. In considering the landscape impact of the proposal I have carefully considered the content of the LVIA and the Council's views of the landscape effect as contained in Mr Gray's evidence in relation to these areas. I have considered the effect on the North Pennines AONB separately below.

12.60 I accept that over time the industrial park may become more developed. However, in the current context, the height of the main EfW building would be markedly different from existing buildings and consequently it would retain a degree of prominence in the context of the industrial park.

12.61 Turning to the effect on the wider landscape character, one of the key characteristics of the Coalfield Upland Fringe Landscape Character Type[436] is that occasional industrial land borders larger settlements. This is clearly a characteristic displayed by the appeal site. In terms of landscape sensitivity, in my view, the surrounding, non-designated, landscape has a medium sensitivity to change as it exhibits some distinctive characteristics of the character assessment but has been slightly degraded in parts by its former

[434] CD 12.8.1
[435] CD 1.2
[436] CD 12.28 Appendix 4

industrial past and newer development but is nonetheless one that is moderately valued despite its alteration.

12.62 In terms of the magnitude of landscape effect, I consider that the proposed development would introduce a significant feature into the landscape that would be different in appearance and scale to other nearby buildings. However, given the allocation of the site and its urban edge location, it is anticipated that industrial development can be accommodated on the appeal site without major detriment to the existing character. Consequently, I consider that the magnitude of landscape effect would be medium.

12.63 Given the former steel works use of the site, the land use allocation and consented nearby developments which include the solar farm, housing sites and a mixed-use development, I accept the Appellant's view that the local landscape is not sensitive to change. In addition, the rolling character of the surrounding landscape would frequently interrupt full views of the proposed development. Although the maturity of the proposed landscaping would offer some mitigation to the lower levels of the buildings, I consider that there would be a moderate adverse landscape effect as a consequence of the proposed development.

12.64 The AHLV lies approximately 500m to the south of the site. The site is set on a plateau which is partially open to the longer distance views from and across the AHLV. There is a degree of intervisibility between the AHLV and the appeal site. I consider the AHLV to be one that is particularly distinctive and its characteristics are maintained in a good condition and it is valued for its scenic quality. Consequently, I consider it to have a high sensitivity to change.

12.65 In my view, the proposed development would be a detracting character component of the backdrop on the edge of the settlement. There would be some mitigation as a consequence of the proposed landscaping, the screening provided by existing and proposed buildings and the fact that the backdrop also includes existing and substantial urban elements of Consett. Nonetheless, taking into account the above medium nature of the magnitude of landscape effect, I consider that the residual landscape effect on the AHLV would be in the range of moderate to significant and adverse.

Visual impacts

12.66 I have considered the views of both parties in relation to the visual impact of the proposed development in relation to the agreed viewpoints. I have considered some of these in relation to the impact on the AONB (Vp 10, 13, 14, 16, 17 and 18) below and are therefore not repeated in this section here. I have set out my assessment of the visual effect on some of the viewpoints that have influenced my overall assessment of the visual effect of the proposed development. I have also taken into account the photographs provided by Mr Newcombe[437] in coming to my conclusions.

12.67 Viewpoint 1 is taken from the Consett and Sunderland Railway Path (C2C) looking north-east of the site. I consider that users of the C2C would have a high susceptibility to visual change. There is currently a tree covered mound between the appeal site and the C2C with gaps in the planting which are

[437] ID15

proposed to be planted as part of the landscaping proposals. Whilst the proposed high building, emissions stack and cooling tower would be visible over the existing semi-mature trees and earth mound, the proximity of the trees to the viewers eyeline would limit the extent to which these can be seen from the path. Consequently, the magnitude of change would be low. Taking into account the sensitivity of the users, I consider that the visual effect on this viewpoint would be moderate adverse.

12.68 Viewpoint 2 is taken from the vicinity of the houses at Ovington Court. The main building and stack would be partially visible above matured planting. The development would be visible to residential receptors from first and second floors which have a high sensitivity to change. There would be a moderate magnitude of change in views from these properties. Overall, this would result in a moderate adverse impact.

12.69 I consider that the proposed development would not be seen from viewpoint 3 and would therefore have no effect there. Viewpoint 4 from Knitsley Lane would have views of the main building predominantly screened by existing vegetation and topography. Whilst the upper part of the stack would be visible, this would also be seen in the context of an existing wind turbine. I consider that there would be a minor adverse impact on viewpoint 4.

12.70 Viewpoint 5 is taken from the public footpath to the south of the site and looks across part of the AHLV. The upper parts of the building and stack would remain visible, albeit at a distance of 1.7km, but would occupy views across the landscape and town. There would be a noticeable deterioration in the existing view which would cause a medium magnitude of effect. Therefore, with the high sensitivity of the footpath users, the visual effect would likely be in the range of moderate to major and adverse.

12.71 Viewpoints 6 and 7 are taken from public rights of way to the south east of the site, each approximately 1.3km away. The upper parts of the stack, and the main building in the case of viewpoint 6, would breach the horizon. The visual effect on these views would be moderate adverse.

12.72 Viewpoint 8 is at an elevated position from the footpath on Humber Hill, a distance of 5km to the south east. Viewpoint 9 is taken from Millershill Lane approximately 2.8km from the site. Whilst the stack would be visible in both views this would be seen in the context of other tall structures including the Kiln Pit Hill Windfarm and the individual wind turbines that lie to the south of the appeal site. Given the intervening distance, I do not consider that the slender stack would be readily discernible. Consequently, I consider that the visual effect would be neutral.

12.73 Viewpoint 11 is taken from the footpath between Castleside and Moorside, some 2.3km to the west of the site. Visibility would be limited to glimpsed views of the upper part of the slender stack above a wooded horizon and within the context of the intervening urban form of Castleside. The magnitude of landscape change would be low and the overall significance of visual effect would be minor adverse.

12.74 Viewpoint 12 is taken from the footway adjacent to the roundabout on Rotary Way (A692) some 642m from the site. The site is located at a lower level and screened by existing intervening mounding and vegetation. The upper parts of the stack would be visible and possibly the upper parts of the main building

during the winter months. The stack would be seen in the urban context of the highway infrastructure associated with the A692 Consett Road roundabout comprising signage and lighting. Views are, in part, foreshortened and enclosed by the existing tree and woodland cover between the viewer and the site. Overall, there would be a minor adverse impact on views.

12.75 Viewpoint 15 is on a minor road near Shotleyfield and close to the Kiln Pit Wind Farm some 6.2km from the site. Viewpoint 19 is from the grassed verge on the A691 south of Iveston and located approximately 3.25km from the site. In both views the upper part of the stack would be visible on the horizon but given the intervening distance, this would not form a detractive element in such views. Consequently, the visual effect would be neutral.

12.76 In concluding my assessment of the visual effect of the proposed development I have found that, contrary to the Appellant's view, there would be some moderate to major adverse visual impacts, particularly in views closer to the site. I have also found that, contrary to the views of the Council, the effect on longer distance views would be neutral or, at worse, minor adverse.

Effect on the AONB

12.77 The ZTV demonstrates that there would be locations within the North Pennines AONB from where the appeal site would be visible. The LVIA includes the assessment of six viewpoints (Vp 10, 13, 14, 16, 17 and 18) that were agreed with the Council and are located within or in close proximity to the AONB.

12.78 I spent some time assessing the visual effects in respect of each of these viewpoints at the site inspection taking into account the visual representations in the LVIA and those provided those by Mr Newcombe. There is a difference of opinion between the main parties expert witnesses regarding the magnitude of change and significance of effect in respect of the six AONB viewpoints.

12.79 In respect of viewpoint 10, the existing topography and vegetation already provide significant screening of the site and proposed mitigation mounding and planting would further soften the appearance of the proposed buildings. Although the stack would be seen in distant views on the horizon, the site itself would be difficult to perceive in the wider panorama.

12.80 From viewpoints 13, 14 and 16 there would be glimpsed views of the upper part of the building and stack. However, given the intervening distance, the maturing of the proposed planting and slender nature of the stack, I consider that the proposal would not be incongruous in such views.

12.81 In my judgement, the magnitude of change in the above views would be negligible and the significance of the effect would be both neutral in year one of development and in year 15 when the proposed landscaping would have reached a degree of maturity. Overall, the residual effect would be neutral.

12.82 From viewpoint 17, the proposed development, including the stack, would likely be completely screened by intervening topography and vegetation. Consequently, the proposed development would cause no anticipated change to this view.

12.83 Finally, viewpoint 18 is located closer to the site and on the highway verge of the A68. The magnitude of landscape change would be low but viewer sensitivity would be low to medium (i.e. low for transient views from cars and

medium for pedestrians). Overall, the effect on the setting of the AONB would be of less than minor adverse significance in year 1 and neutral at year 15.

12.84 I recognise that views from the AONB towards Consett are valued by the community and visitors to the AONB. However, these views already contain tall structures and are significantly influenced by the edge of settlement and urban form of the town within which the proposed development would be seen. The proposal would introduce a new element into this landscape, particularly in the context of the chimney's height, but there are already a number of tall structures in such views. I have taken into account views of the Rule 6 Party that wind turbines are perceived as "clean" structures whilst the proposed stack would be perceived as "dirty". Nonetheless, in considering the effect on the AONB, I have considered the extent to which tall structures, irrespective of their use, impact on views and the appearance of the landscape.

12.85 Although the proposal constitutes a large rectangular structure with tall elements, in the wide panorama of views from the AONB and taking into account also the intervening distance, I do not consider that it would appear as being overly dominant or overbearing within the setting, although it will be seen. Though visible, the development would not comprise a visually intrusive feature or a distraction within the landscape in views from AONB.

12.86 Natural England raised no objections to the planning application and stated that "Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on statutorily protected nature conservation sites or landscapes"[438]. I recognise that views from the AONB towards Consett are valued but these views already contain tall structures and the responsible body does not object to the appeal scheme.

12.87 Taking the above factors into account, I am satisfied that the proposed development would not be individually or cumulatively harmful to the special qualities of the AONB, its setting or its statutory purpose. Where there are potential views of the proposed development from the AONB these would be distant views, predominantly of the slender stack, and would contain a number of other relatively tall structures. In my view, the appeal site would take up such a small percentage of the panoramic views to be virtually imperceptible within its setting.

12.88 In coming to the above view, I have also taken into account the advice provided in the Government's 'Overarching National Policy Statement for Energy (EN-1)'[439] which advises in paragraph 5.9.13 that "the fact that a proposed project will be visible from within a designated area should not in itself be a reason for refusing consent".

12.89 As a consequence of the above, I do not consider that there would be any adverse effect on the setting of the AONB and the proposal would not, individually or cumulatively, be harmful to the special qualities or statutory purposes of the AONB. Consequently, there would be no conflict with the provisions of paragraphs 174 and 176 of the Framework or Policies 38, 39 or 61(a) of the CDP.

[438] CD 5.10
[439] CD 11.4

Character and appearance - Conclusion

12.90 I have found that the proposed development would have a moderate adverse effect on the surrounding landscape, increasing to moderate to major in respect of the impact on the AHLV. In addition, there would be moderate to major significant visual effects primarily associated with views from footpaths and residential properties in closer proximity of the site. I have also found that there would not be any adverse effect on the setting of the AONB and the proposal would not, individually or cumulatively, be harmful to the special qualities or statutory purposes of the AONB.

12.91 Therefore, I consider that the proposed development would cause harm to the character and quality of the landscape and would not conserve the special qualities of the AHLV. Consequently, the proposed development would be contrary to the provisions of Policies 29, 39 and 61(a) of the CDP which together seek to protect the character of the existing landscape. However, there would be no conflict with Policy 38 which relates to development affecting the AONB.

Effect on heritage assets

12.92 The SoCG (Heritage) identifies that there are no scheduled monuments on or near the appeal site and that the site is not in, nor within the setting of a conservation area, registered battlefield, registered park and garden or World Heritage site. There are no listed buildings on the site.

12.93 The nearest listed buildings are the Grade II* Hownes Gill Viaduct, located approximately 1km south-west of the site; the Grade II listed Accommodation Arch under the former railway, located approximately 650m south-west of the site; and the Grade II listed High Knitsley Farmhouse and Grade II listed Barn to the west of High Knitsley Farmhouse, located approximately 1km to the south-east of the site.

12.94 The SoCG (Heritage) confirms that the main parties agree that only the Grade II listed High Knitsley Farmhouse (List Entry Number 1185975) and Grade II listed Barn (List Entry Number 1320069) (together "the High Knitsley Assets") have the potential to be affected by the proposed development and that no other heritage assets would be affected. The Rule 6 Party disputes this view and considers that all of the heritage assets identified above, and others, would be affected by the proposed development. I address these views later in this Report.

12.95 The High Knitsley Assets have historic and architectural interest as an 18th century farmstead group. The assets have been altered since their listing in 1985 with listed building consent being granted for the conversion of the barn to two dwellings (Ref: 1/1998/0733/8891) and the erection of two stable and garage blocks (Ref: 1/1999/0364/10069). The SoCG (Heritage) also sets out that the setting of the High Knitsley Assets has been affected by modern features. These include three single wind turbine developments (High Knitsley turbine, Hown's Farm turbine and Middle Heads Farm Rowley turbine with the latter having a height of 74m to blade tip), residential development at Templetown and wider views of industrial and commercial buildings. The Delves Lane industrial area is particularly evident in views looking north east from Knitsley Lane.

12.96 The Council's ES Scoping Opinion[440], provided prior to the submission of the application, identified that the historic environment could be 'scoped out' of the ES and therefore be provided as a standalone assessment. The submitted Historic Environment Assessment [441] concludes that, given the local topography, there are unlikely to be any available views of the proposed development from the High Knitsley Assets. However, it further identifies that there are points along the lane to the north of the farm where the proposed development would be visible in views of the listed buildings but that such views would remain predominantly rural in character and the farmstead would remain readily discernible as a farm set in fields. Although the Assessment identifies that the additional industrialising effect of the development in views at the periphery of the setting of the assets this would have a negligible impact on their historic value. The magnitude of impact would be negligible and would therefore result in an effect of negligible significance. It finally concludes that this is not a significant effect in EIA terminology and is at the lowest end of the scale of effects set out in the Framework as less than substantial harm.

12.97 During the Inquiry the evidence of Mr Croft[442] maintained the Council's view provided in the consideration of the planning application that the proposed development would give rise to less than substantial harm to the significance of the High Knitsley Assets owing to changes to their setting. However, the evidence confirmed that the level of harm is limited and at the lower end of the Less than Substantial Ham spectrum.

12.98 The evidence of Ms Kelly[443] presented in the Inquiry on behalf of the Appellant identifies that, since the compilation of the submitted Historic Environment Assessment, additional analysis of the likely intervisibility of the proposed development with the High Knitsley Assets has been undertaken by reference to a set of fine grain zones of theoretical visibility (ZTV). This included the preparation of an additional supplementary viewpoint (No. 20) taken from the western corner of the barn. The evidence concludes that the proposed development would cause no harm to the contribution made by the setting to the heritage value or significance of the listed buildings at High Knitsley.

12.99 The proposed development would not have any direct physical effect on any heritage asset. However, I am required to consider the effect of the proposal on the setting of heritage assets. 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. Paragraphs 194 and 195 of the Framework require an assessment of the significance of heritage assets that might be affected by a development proposal, including any contribution made to their significance by the setting of those assets. Paragraph 200 of the Framework confirms that the significance of a heritage asset can be harmed or lost due to development within its setting.

12.100 The High Knitsley Assets have a shared setting which is primarily their intervisibility and association with the surrounding agricultural land. In my

[440] CD 3.2.2
[441] CD 2.5
[442] CD 12.21
[443] CD 12.7

view, that setting comprises the fields to the north of the former farmstead to the east and west of Knitsley Lane. The surrounding fields provide context to this as an agricultural site closely associated with the land it worked, and this setting makes a positive contribution to the historic heritage value of these assets. This rural context makes a positive contribution to the heritage value of the assets.

12.101 The intervening landform and a restored plateau associated with the former steel works, located to the south of the Hownsgill Industrial Park, eliminates any direct views of the industrial park from the High Knitsley Assets. Consequently, the EfW building (excluding the stack) would not be visible and the appeal site itself does not make any material contribution to the setting of the High Knitsley Assets

12.102 The Appellant's further analysis of the ZTV models[444]demonstrates that visibility of the proposed development from the High Knitsley Assets would be limited to the top 15m of the stack. The evidence of Mr Croft on behalf of the Council accepts that visibility would comprise the upper part of the stack[445].

12.103 I consider that the High Knitsley Assets derive their significance from their rural surroundings provided by the fields immediately surrounding them rather than an extended setting. In this context, given the limited visibility of the stack, its slender width and the intervening distance, I consider that the proposed development would not be a detracting or competing feature. The contribution currently made by the rural surroundings to the setting of the High Knitsley Assets would be unchanged.

12.104 Whilst part of the exhaust stack may be seen, this would be in the context of other modern features including wind turbines. The proposed stack would cause very limited and minor changes to views from the High Knitsley Assets with no material effect on their immediate rural setting. The farmstead would remain readily discernible as a farm set in fields. I am satisfied that there would be no consequential harm to the setting or heritage significance of the High Knitsley Assets. Neither would the development adversely affect the ability of the public to interpret the heritage significance of these listed buildings.

12.105 In coming to this view, I have also considered the impact of any intermittent plume being emitted from the stack. In my view, the infrequent intervisibility of a plume does not increase the effect of the development on the heritage values of the High Knitsley Assets and would be insignificant, particularly as views towards the proposed development are not entirely rural in character as they include modern development described above.

12.106 Overall, I consider that there would be no harm to or loss of the heritage values of the High Knitsley Assets. Paragraph 202 of the Framework is not engaged, nor the duty under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, as the special interest of the buildings and their settings is preserved. In respect of these assets also, the proposal complies

[444] CD 12.7.1
[445] CD 12.21 para 6.1.1

with Policy 44 of the CDP as it respects the historic form and setting of the listed buildings that contributes to their heritage interest.

12.107 Turning now to other heritage assets and other features raised by the Rule 6 Party[446], the SoCG (Heritage) confirms that the Appellant and the Council concur that other than the High Knitsley Assets no other heritage assets would be affected by the proposed development. It also confirms that the reason for the refusal of planning permission relates solely to the two listed buildings at High Knitsley. However, I consider each of the assets referred to by the Rule 6 Party in turn below.

12.108 The Coast to Coast / Derwent Walk Railway Path and Heritage Trail are not heritage assets. They form part of a routeway along the former railway that facilitates an appreciation of the industrial heritage of the area. These were industrial features and the heritage value is derived from the historic association with the industrial development of Consett. Their setting does not contribute to these heritage values, as it has been significantly altered following the clearance of the former Steel Works.

12.109 The Lanchester Valley Branch Railway (now the Lanchester Railway Valley Walk) to the south of the appeal site is largely within cutting which does not readily allow for visibility of the proposed development. The Annfield Plain Branch of the North Eastern Railway (now the Consett to Sunderland Cycle Path and Heritage Trail) runs to the north of the appeal site and has tall hedgerows on either side which limit views of the adjacent extant industrial park. The urban and industrial character of the area through which the disused railways pass at this point would be unchanged. The modern buildings on the Hownsgill Industrial Park do not detract from understanding the network of disused railways as part of the industrial history of this area, and future industrial development (including the EfW) would not impact on or contradict the appreciation of these as features of a former or currently industrial landscape.

12.110 The proposed development would not alter the way in which the heritage value of the former railway lines is understood. The track bed of the Heritage Trail is within cutting as it runs to the south of the proposed development site, with mature vegetation on the slopes of the cutting. The cutting and mature trees would limit any visibility of the proposed development and there would be no impact on the asset's historic or evident heritage value. The proposed development would have a neutral effect on this asset.

12.111 The Grade II listed Accommodation Arch under the former railway is not a prominent feature in views and is only experienced within close proximity to the asset. Its setting is the immediately surrounding road and railway routes with which it is associated, and this makes a positive contribution to its heritage value. This does not include the proposed development site and it is not anticipated that there would be intervisibility with the proposed development from within the setting of this asset. The proposed development would not affect the contribution made by its setting to the heritage value of the asset. Consequently, there would be no harm to its heritage value and the proposed development would have a neutral effect on this asset.

[446] CD 12.37

12.112 The Grade II* listed Hownes Gill Viaduct, located approximately 1km south-west of the site, is a prominent feature in the landscape when viewed looking along Hownes Gill valley. The setting of the asset is its relationship with the railway and the terrain it crosses, most obviously conveyed by views from the viaduct of the valley below and from the Hownes Gill valley to the viaduct. Views along the now disused railway also provide context to the asset and make a positive contribution to its heritage value. The proposed development would not be readily visible in any of the views that make a positive contribution to the heritage values of the asset. In wider views that include the viaduct and potentially the EfW development, the viaduct would remain to be seen in the context of a wooded valley. The proposed development would be viewed in the context of the urban, commercial and industrial developments on the southern side of Consett.

12.113 The proposed development would not compete visually with the viaduct or alter the appreciation of the viaduct's relationship with the railway or terrain it crosses. Whilst the upper part of the stack may be visible, the very limited change in those views would have no tangible influence on the setting or heritage significance of the viaduct or on any interpretation of the significance of the asset. Consequently, the EfW would not alter or harm the contribution made by the setting to the heritage value of the viaduct. Therefore, the heritage values of the asset would remain unaltered. The proposed development would have a neutral effect on this asset.

12.114 The 'Terris Novalis' sculpture was installed in 1996 and positioned close to the northern boundary of the Hownsgill Industrial Park and on the C2C cycle route. It is included in the Historic Environment Assessment as a non-designated heritage asset (Durham Historic Environment Record reference D63653). It commemorates the heritage of the former steel works at Consett but also recognises the regeneration and future potential of the area. The sculpture is close to the modern A692 and is experienced in the context of a modern urban area with housing, commercial and industrial developments within its setting. Its setting, also comprising the elevated location on which it is sited and surrounding amenity grassland and recently planted trees, does not include the appeal site with which it lacks intervisibility. Consequently, the proposed development would have a neutral effect on this non-designated asset.

12.115 Blackhill and Consett Park lie within the Blackhill Conservation Area which is located to the north of Consett town centre. The proposed development is not within the setting of the Conservation Area and does not make any positive contribution to the heritage values of this asset. Furthermore, the proposal would not interrupt views from the Conservation Area towards the surrounding historic parts of Consett that provide context to the Conservation Area's development. Consequently, the proposal would not affect the contribution made by setting to the significance of this asset.

12.116 The Grove Ponds Local Wildlife Area is a relatively modern feature, created as part of the regeneration of the area following the closure of the steel works. It is not identified by the Council as either a designated or non-designated heritage asset. Moreover, I do not consider that this feature falls within the definition of a heritage asset as set out in the Framework.

12.117 The River Derwent is a natural feature and although it has heritage assets along its route, the river itself cannot be considered to be a heritage asset within the context of the Framework.

12.118 The Derwent Reservoir is a relatively modern feature that was opened in 1967 and located in excess of 7km from the appeal site. Given the intervening distance, the proposed development would not harm any heritage value held by the reservoir.

12.119 To conclude on this issue, I am satisfied that the proposed development would not cause any harm to the contribution made by the setting to the heritage value or significance of any heritage asset. Consequently, there would be no conflict with the advice contained within Part 16 of the Framework or Policy 44 of the CDP. There would be no conflict either with Appendix B to the NPPW which identifies protection of the historic environment as one of the criteria for testing the suitability of sites for new waste development.

Climate change

12.120 'Energy from Waste: A Guide to the Debate'[447] (GtD) forms part of the Government's policy regarding the role energy from waste might have in managing waste and is mostly concerned with energy from residual waste. Typically, such wastes contain a significant proportion of materials like food and wood (the 'biogenic' materials) and energy produced from this material is considered to be renewable. However, residual waste also contains wastes, such as plastics, manufactured from 'fossil' fuels. Energy from this fraction of the waste stream is not renewable and, for a mixed waste stream such as that in the appeal proposal, the energy recovered is considered to be only a partially renewable energy source.

12.121 Biogenic carbon is also termed short cycle carbon because it was only recently absorbed in growing matter. On the other hand, fossil carbon was absorbed millions of years ago and would be newly released to the atmosphere if combusted. Such waste if landfilled releases carbon at a much slower rate than if it is disposed of by incineration.

12.122 The GtD sets out that the Government is aiming to prevent, reuse and recycle more waste, so the amount of residual waste should go down. However, energy from waste will remain important. It advises that when considering the relative environmental benefits of landfill and energy from waste, the most important factor is their potential contribution to climate change. Different amounts of greenhouse gases would be released if the same waste was burned or buried.

12.123 The GtD compares EfW with landfill. Managing untreated mixed waste by either combustion in an EfW plant or deposit in a landfill will release gases that contribute to global warming. However, whereas landfill will release both carbon dioxide (CO_2) and methane, an EfW process generally emits only CO_2. Methane is currently assessed as being 25 times more damaging to the atmosphere than CO_2 .

[447] CD 13.26

12.124 Whether EfW produces a lower volume of greenhouse gases than landfill is a complex assessment that needs to be undertaken on a case-by-case basis. Nevertheless, there are two general rules identified in the GtD that apply. These are:

- The more efficient the plant is at turning waste into usable energy the better.
- The proportion of the waste that is considered renewable is key – higher renewable (biodegradable) content makes energy from waste inherently better than landfill.

12.125 The GtD confirms that energy from waste is therefore better than landfill, providing the residual waste being used has the right biogenic content and is matched with a plant that is efficient enough at turning the waste to energy. The GtD recognises that over the typical life of an EfW Plant (25-30 years) the biogenic content of the waste will change in that period. It is also possible to treat waste to increase biogenic content e.g. by removing plastics. The contribution, if any, the appeal proposal would make towards cutting greenhouse gas emissions and the weight that should be attributed to this in the planning balance needs to be assessed.

12.126 The evidence of Mr Caird, on behalf of the Appellant, includes a Greenhouse Gas (GHG) Assessment[448]. This assesses the impact on climate change associated with emissions of GHGs from the operation of the appeal scheme. The assessment is based on a baseline scenario which considers the disposal of waste that would be treated by the appeal scheme in a landfill site. The assessment follows a methodology consistent with that adopted by Defra in the Government's modelling of GHG emissions from energy from waste as described in Defra's 'Energy recovery for residual waste: A carbon based modelling approach'[449].

12.127 The assessment demonstrates that the appeal scheme would result in lower GHG emissions compared to landfill with lifetime emission savings of over 532,000 tonnes of CO_2. The amount of GHGs saved will depend on a number of variables such as the precise composition of the waste and the level of heat offtake achieved by the proposal. It includes a series of sensitivity analyses and key variables. The sensitivities demonstrate some variability in the net GHG emissions between the facility and the landfill baseline, but in all sensitivities the net GHG emissions show a benefit to the facility compared to landfill.

12.128 The assessment also demonstrates that CO_2 savings would increase substantially if CCS becomes available. In this connection, the Government's 'Net Zero Strategy: Build Back Greener (October 2021)'[450] identifies the delivery of four carbon capture usage and storage (CCUS) clusters, including one in the North East at Teesside, that would be delivered by 2030 using the £1 billion CCS Infrastructure Fund and revenue support mechanisms. Adding the effects of CCS to the 'likely central' case in the assessment suggest lifetime emission savings of over 1,117,000 tonnes of CO_2. The opportunity to connect

[448] CD 12.9 and CD 12.1
[449] CD 11.13
[450] CD11.3 page 21

to a CCS system forms part of the obligations contained within the UU and were considered earlier in this Report. By contrast, CCS is not practical at landfill sites.

12.129 The assessment references two recent reports which examine the GHG impacts of energy from waste and landfill. The first is a report produced by Zero Waste Scotland[451] which analysed the carbon intensity of energy from waste versus landfill and included tests for waste pre-treatment options, principally related to a ban on biogenic waste going to landfill that the Scottish Government are implementing in 2025. The report concludes that, on average, energy from waste has 27% lower GHG emissions than landfill, but identifies the importance of the waste composition in the calculation. It also acknowledges that only one operational energy from waste facility in Scotland currently exports heat, which has considerably lower GHG impacts due to a higher level of energy efficiency from the heat export. The second report, produced by Eunomia[452], also identifies that currently, energy from waste is superior to landfill in terms of GHG emissions.

12.130 Climate change matters are not identified by the Council as reasons for the refusal of planning permission. However, the Council's Low Carbon Economy Team[453] expressed concerns that, "whilst understandable at this stage, the percentage of plastics and other materials in the feedstock cannot be confirmed and consequently it leaves a significant unknown in terms of the relative benefits or disbenefits of the proposal in terms of emissions". In addition, 'United Kingdom Without Incineration' (UKWIN) raised a number of concerns regarding uncertainties within the GHG assessment and whether there would be carbon benefits associated with the proposed development. They challenged the assumptions that the Appellant made in its original GHG Assessment and concluded that the alleged carbon output benefits of the proposal may have been overstated. However, no alternative GHG Assessment was provided at the Inquiry.

12.131 There was considerable technical debate in the Inquiry regard the Appellant's GHG Assessment. UKWIN asserted that the proposal may have a more adverse impact, in terms of greenhouse gas emissions, than sending the same waste to landfill.

12.132 Whether the appeal proposal would be inherently better than landfill with regard to greenhouse gas emissions would largely depend on the biogenic composition of the waste. The GHG Assessment uses a base assumption of 61% biogenic carbon, which is the default used by Defra in its modelling. There is uncertainty as to whether the biogenic carbon will be at or below this level. However, with the considerable pressure to reduce plastic use and increase recycling rates compatible with decarbonising the UK economy, the Appellant considers that, as a lifetime average (over 25 years), 61% biogenic carbon represents a more than reasonable assumption. However, other

[451] Zero Waste Scotland (2021) The climate change impacts of burning municipal waste in Scotland
[452] Eunomia (2020) Greenhouse Gas and Air Quality Impacts of Incineration and Landfill
[453] CD 5.1

sensitivities for biogenic carbon (55% in the main GHG Assessment and down to 51.9% in the rebuttal evidence of Mr Caird[454]) were also considered.

12.133 The answers to questions during the presentation of evidence in the Inquiry confirmed to me that the GHG Assessment has a degree of inherent subjectivity. However, the carbon offset that would be achieved, the extent to which the appeal proposal can be considered low carbon and the contribution to reducing greenhouse gas emissions would also be influenced by the potential for the heat and power from the proposal to be realised. Although no contracts exist between the Appellant and potential users of any heat and electricity, the UU provides a clear mechanism for making such opportunity available. In particular, one occupier of the Industrial Park (Greencore) has heat requirements equating by itself to 1.9MW for which accessibility to the heat network would be facilitated by the obligations contained within the UU.

12.134 Whilst uncertainties exist, and having carefully considered the views of UKWIN, I am of the view that the GHG Assessment, as supplemented by further evidence in Mr Caird's rebuttal proofs, provides a relatively robust analysis of the impact of the proposed development on climate change and is based partly on modelling advocated by Defra. Notwithstanding the uncertainties highlighted above, I consider that a reasonable assessment of the evidence submitted in the Inquiry suggests that the proposed development would likely result in lower GHG emissions compared to landfill over a 25 - 30 year lifetime during which period it would also facilitate the availability of localised decarbonised power and heat.

12.135 In this regard, I consider that the proposal would be consistent with Policy 61 of the CDP and paragraphs 154 and 155 of the Framework. However, there are inherent uncertainties particularly regarding the biogenic carbon content of the waste and hence the extent of emissions savings, the extent to which the available heat and power would be taken up by existing and new businesses/residential developments and whether CCS may be installed. Whilst I accept that there would be some savings on CO_2 emissions over landfill, the extent of this cannot be determined with any degree of precision. These uncertainties lead me to conclude that the climate change benefits should only be afforded limited weight in the overall planning balance.

Effect on Economic Development

12.136 Concerns were expressed by a number of interested parties that the proposed development would have a detrimental effect on the attraction of new businesses to the Hownsgill Industrial Park. The evidence of Mr Parkes[455] sets out that the proposal would make poor use of the appeal site due to the low job density and would discourage future development on nearby land as a consequence of the potential proximity to a 'non-conforming' neighbour, particularly for high quality uses such as offices and advance manufacturing. It was also stated that the proposal would be detrimental to the overall image of Consett thereby having a negative effect on the attraction of new economic investment to the town.

[454] CD 14.4 Table 1
[455] CD 12.35

12.137 The evidence of Mr Short identifies a number of factors that are considered to constitute obstacles to the attraction of new employment uses to the industrial park. Notwithstanding limitations to access to good road and rail links, the cost of development versus the rate of return is considered to hinder the opportunity for any speculative building. This is exacerbated by high remediation and infrastructure costs, particularly in relation to energy connectivity. The culmination of this is that, after 28 years, only approximately 30% of the Hownsgill Industrial Park has been built out, with recent development at Bessemer Court being reliant on substantial grant funding.

12.138 The evidence of Young RPS, who have represented the commercial interests of Project Genesis Ltd for a number of years, confirms the concerns of Mr Short regarding development costs[456]. It also identifies that the availability of significantly lower cost heat and electricity may act as a catalyst to the attraction of new businesses.

12.139 There was no conclusive evidence provided in the Inquiry to make any reasonable judgement of the effect of the proposal on future economic development in Consett. Whilst I accept that the proposed development would not provide many jobs, my attention was not drawn to any policy in the CDP that may set out a minimum level of jobs to be created in a development proposal. Indeed, neither CDP Policy 2 or its supporting text require a certain level of jobs from development.

12.140 I have also taken into account the views of the Rule 6 Party that the appeal site should be used for manufacturing or service sector development. Notwithstanding the principle of the proposed development on the Hownsgill Industrial Park that I have considered above, the fact remains that the appeal site, and other plots on the industrial park, have remained vacant for some time. More recent development that has occurred (Bessemer Court) has relied on grant funding to come forward. No evidence was provided to suggest that there may be an identified demand in the short or medium term for plots on the industrial park to cater for and potential manufacturing or service development. Furthermore, Policy 2 of the CDP identities the Hownsgill Industrial Park as being suitable for general employment but does not specify any particular uses or industrial sectors.

12.141 I recognise the concerns that the proposal may be a detractor to further inward investment as a consequence of the nature of the use of the proposed development and the effect this may have on the image of the town. Although no objections were received from existing adjacent businesses on the Industrial Park, reservations from local businesses in the wider Consett area were received. However, I am not convinced that these concerns would be likely to translate into material land use considerations if planning permission were to be granted for the appeal scheme and the facility was regulated in accordance with an EP issued by the EA.

12.142 It seems to me that the local concerns derive from a perception of harm. Whilst this can be a material planning consideration, taking into account the evidence presented in the Inquiry, I am of the view that the proposed

[456] CD 12.11.1 Appendix 9

development is more likely to be a catalyst for the attraction of further development as a consequence of the opportunity for lower cost heat and electricity and the fact that it will likely assist in resolving some of the high cost of power grid connections. I am satisfied that, in the absence of any substantive evidence to the contrary, there would be no material harm to future economic development in the area.

Alternative sites and technology

12.143 Chapter 6 of the ES provides a description of alternatives considered by the Appellant. The OR does not identify any shortcomings in the content of the ES in respect of the consideration of alternative sites and technologies. However, concerns were expressed in the Inquiry that the ES may not have appropriately considered these matters.

12.144 Part 18 (3d) of the EIA regulations requires 'a description of the reasonable alternatives studied by the developer, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment' to be included within the ES.

12.145 Schedule 4 of the EIA regulations provide further detail on what should be provided within the ES, and this includes 'A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.'

12.146 Chapter 6 of the ES identifies that Policy 61 of the CDP provides the locational requirements for the consideration of new waste management facilities. It summarises these criterion-based requirements under a number of headings. The most relevant are: proposals shall not be located within environmental/landscape designated areas; should minimise transportation of waste and protect the local highway network; and, should be located on employment land, previously developed land but not on strategic or specific user employment sites.

12.147 The ES sets out that the proposed development site can be regarded as fulfilling all of the above criteria thereby conforming to the locational policies of the development plan. As such it identifies that no alternative sites would be considered as preferable to that which is proposed.

12.148 Chapter 6 of the ES further sets out the consideration of alternative scales, alternative locations within the industrial park and alternative layouts. It also identifies that further consideration of alternative technologies would be undertaken as part of the EP application which would be subject to a Best Available Technique (BAT) Assessment.

12.149 The ES concludes that the proposed development fulfils an established need and that there are no more suitable locations, technologies or layouts of the proposed buildings and plant. In the absence of any substantive evidence to the contrary, I am satisfied that the ES has appropriately considered reasonable alternatives which are relevant to the proposed development and identifies the main reasons for the option chosen.

Benefits of proposed development/implications of not proceeding

12.150 The Socio-Economic section of the ES[457], as updated in the evidence of Mr Emms, sets out the Appellant's assessment of the public benefits of the proposed development.

12.151 The development would provide a residual waste recovery facility withing the County Durham, for which a need has been identified, enabling a likely 60,000 tonnes per annum of residual waste to be likely diverted from landfill (or alternatively, from being transported over long distances out of County Durham and/or the North East to other landfill or alternative Energy Recovery Facilities). This would be consistent with the waste hierarchy and, rather than disposal to landfill, value would be recovered from material which cannot be reused or recycled. It would also provide the potential to re-use/recycle approximately 1,000 tonnes of bottom ash and metals.

12.152 It would assist in moving the management of waste in County Durham towards net self-sufficiency and/or make an appropriate contribution to regional self-sufficiency by managing waste streams as near as possible to their production. A number of Waste Transfer Stations have already indicated their agreement 'in principle' that the RDF generated by their local facilities (which in aggregate is considerably in excess of 60,000 tonnes) could be processed at the proposed Hownsgill EfW facility. It would address a capacity gap for the management of residual C&I waste in the region to achieve local and regional self-sufficiency for the management of this waste stream. The above waste management benefits should be given substantial weight in the overall planning balance.

12.153 The proposed development would enable the redevelopment of a long-term vacant site allocated for employment uses within an established industrial park. It would provide an ability to offer discounted heat and power to existing and prospective occupiers, both on the industrial park and in proximity to it. In this regard, it provides the potential to act as a catalyst attracting new employment development, particularly those businesses with high energy and heat requirements. These energy benefits include the availability of discounted heat and electricity produced by the facility to local homes and businesses through a District Heat Network (DHN) and electricity smart grid (ESG), providing constant and stable energy and long-term price stability. I consider that these benefits should be afforded substantial weight.

12.154 Although there would be an opportunity to re-use approximately 1,000 tonnes per annum of bottom ash with potential use for block making, no market for this has yet been identified nor has any demonstrable evidence been provided to demonstrate that the bottom ash would be suitable for this purpose. Consequently, I have attached no weight to this matter.

12.155 The development would provide a local carbon solution to the management of the residual waste that is being generated in the area supporting the ambitions of the Climate Change Act (2008) and would have the ability to introduce Carbon Capture technology to the plant when it may be available.

12.156 It would facilitate the completion of the extant 5MW Solar Farm adjacent to the development by addressing the current prohibitive connection and

[457] CD 3.13

infrastructure costs to the national grid. This, in turn, would deliver additional renewable energy for the benefit of the locality. In addition, it would safeguard land adjacent to the site for a future electric vehicle charging facility.

12.157 The evidence suggests that the development would represent £45 million in capital investment associated with the construction of the facility and the construction of the Electricity Smart-Grid and District Heat Network. The development would provide an important waste management service to local employers and businesses, reducing the costs associated with transporting and managing the material further afield.

12.158 It would provide up to 60 full time equivalent (FTE) jobs during the construction period, with a large number of others likely in the supply chain. During operation, the development is also expected to provide a minimum of 9 permanent FTE jobs, as well as further indirect and induced jobs across the wider region, thereby generating an increase in wages and Gross Value Added (GVA) in the local economy.

12.159 The evidence identifies that the proposal would deliver an increase in biodiversity net gain substantially in excess of any present or future requirements. This is on the basis that there would be an increase in habitat units of 16% and a 100% increase in hedgerow units. There would be additional biodiversity net gain associated with the proposed planting adjacent to the C2C. Collectively, this would exceed the expectations set out in paragraph 179(b) of the Framework and would be in excess of the 10% gain for biodiversity that may come into force pursuant to the Environment Act 2021.

12.160 The appellant suggests that the provision of biodiversity net gain extending beyond current and likely future requirements should be afforded substantial weight and cites the approach taken by an Inspector in an appeal at Chichester (APP/L3815/W/21/3270721)[458] where significant weight was afforded to the biodiversity net gain in that case that went significantly beyond policy requirements. However, I do not have the full details of the circumstances in that case which led the Inspector to conclude that significant weight should be afford to the delivery of such biodiversity net gain.

12.161 In relation to the appeal before me, I consider that some of the biodiversity net gain that would be achieved is required to meet national policy and future legislative requirements in order to mitigate the environmental impact of the development. Consequently, I consider that such enhancements should be afforded only moderate weight.

12.162 The consequences of not proceeding with the proposed development would mean that none of the environmental and socio-economic benefits identified above would be achieved. The corollary to this 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, in the short and medium term most of this waste would continue to be sent to landfill, with associated greenhouse gas emissions and

[458] CD 13.12 paragraph 115

consequent impacts for climate change. The objectives expressed in the CDP of driving the management of C&I waste up the waste hierarchy would not be achieved.

Other matters raised by Rule 6 and Interested Parties

Effect on highways safety and the free flow of traffic

12.163 Interested parties raised concerns regarding the effect of the proposed development on highway safety and congestion. The traffic impacts of the proposed development were considered in a Transport Statement (TS)[459] that accompanied the planning application. This identified that the proposal would generate an average of approximately 22 HGV movements per weekday which would access the site off the A692 and via the relatively wide and straight Hownsgill Industrial Park access road.

12.164 The OR notes that the A692 is identified on the Council's Freight Map as a road suitable for freight traffic and which is expected to be used by HGV drivers[460]. The TS concluded that the proposal would contribute a negligible increase in vehicular movements on the highway network and that the site is in a sustainable location with good access to public transport and cycle routes.

12.165 The TS was considered by the Council, in its capacity as highway authority, and no objections were raised to the proposed development, subject to the imposition of a number of planning conditions which form part of those agreed between the Council and the Appellant.

12.166 No other contrary technical evidence was presented in the Inquiry to suggest that the findings of the TS, or its assessment by the Council, may be incorrect. In my view, the land use allocation of the site and its location within the Hownsgill Industrial Park suggests that it can be reasonably expected that any development in this location is likely to give rise to a number of HGV movements. These would be from a local highway network that is specifically identified by the highway authority as being suitable for such movements. Moreover, I have no evidence of any restriction on the type, frequency, time period or number of vehicular movements that could use the Hownsgill Industrial Park access road.

12.167 On the basis of the evidence provided in the Inquiry, I consider that the highway impact of the proposed development would be acceptable and would not amount to a severe residual cumulative impact. Consequently, there would be no conflict with Policy 21 of the CDP or Part 9 of Framework.

Health Implications

12.168 Interested parties also raised concern regarding the effect of the proposed development on human health. The planning application was accompanied by a Human Health Risk Assessment as part of the Air Quality Chapter of the ES[461]. This considered any potential health risks associated with emissions from the proposed development and included dispersion modelling.

[459] CD 2.9
[460] CD 6.2 paragraph 185
[461] CD 3.10 and CD 10.2

12.169 The assessment was considered by the Council's Environmental Health Officers supported by specialist consultants. The OR confirms that the assessment of the application has shown that there would be no significant impacts to human health. The Councils Public Health Officer also considered the assessment and referred to Guidance provided by Public Health England (PHE) in October 2019 contained within the 'PHE Statement on modern municipal waste incinerators (MWIs) study'[462]. This identified that a causal association between the increased risk of congenital anomalies for children born close to MWIs has not been established and that PHE's risk assessment remains that modern, well run and regulated municipal waste incinerators are not a significant risk to public health. While it is not possible to rule out adverse health effects from these incinerators completely, any potential effect for people living close by is likely to be very small. This view is based on detailed assessments of the effects of air pollutants on health and on the fact that these incinerators make only a very small contribution to local concentrations of air pollutants.

12.170 The Council's Public Health Officer also acknowledged the comments of the EA[463] in response to the consultation on the planning application. The EA raised no objections to the planning application but referred to the requirement for a permit under the Environmental Permitting (England and Wales) Regulations 2016 for the facility to operate. The Council's Public Health Officer advised that PHE is a statutory consultee for such a permit. Should planning permission be granted, PHE will undertake a risk assessment (report) of the proposed facility, and the Director of Public Health and the Council will have an opportunity to respond to the PHE report should this be necessary.

12.171 The NPPW makes it clear that, when determining planning applications, decision makers should concern themselves with implementing the planning strategy in the Local Plan and not with the control of processes which are a matter for pollution control authorities. They should work on the assumption that the relevant pollution control regime will be properly applied and enforced.[464]

12.172 The objective position is that the EA will have to issue an Environmental Permit (EP) for the facility and that it will operate in compliance with the emission limits specified therein. The EP would be monitored in accordance with the conditions set out within. If the EA considers that the proposal could not operate within the emission limits, then it would not issue a permit and the facility would be unable to operate. If the EA granted an EP and subsequently found out through its monitoring process that the facility was operating with emissions above the prescribed limit, then it would revoke the EP and the use of the facility would cease until the matter had been resolved.

12.173 Whilst I recognise the concerns raised by interested parties, no other compelling technical evidence was presented in the Inquiry to suggest that the views of the Council's Environmental Health and Public Health Protection Officers may be incorrect. In light of the above, I have no reason to suggest that the proposed development would have an adverse impact on health.

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[462] https://www.gov.uk/government/publications/municipal-waste-incinerators-emissions-impact-onhealth/phe-statement-on-modern-municipal-waste-incinerators-mwi-study
[463] CD 5.29
[464] CD 7.4 Paragraph 7 bullet 5

Accordingly, I find no conflict with Policy 31 of the CDP, paragraph 185 of the Framework or paragraph 7 of the NPPW in respect of the health implications of the proposed development.

Perception of Harm and Impact on Housing Demand

12.174 It is clear, from the submissions made, that a significant number of existing residents in the area are concerned that the proposed development may have a detrimental effect on new housing development and house prices linked to a perception that it would be detrimental to public health. A number of interested parties have suggested that people may well feel compelled to either move from the area or not to move into the area due to the existence of the proposed facility.

12.175 It is clear, with reference to other appeal decisions brought to my attention, that significant public opposition based on a perception of harm to health is often associated with energy from waste proposals. Nonetheless, in common with my colleague, who dealt with a recent appeal related to a proposed energy from waste facility in Swindon[465], there is no evidence before me to demonstrate that other energy from waste developments within or adjacent to a developing urban area have adversely affected either house prices or the demand for housing in an area.

12.176 To my mind, it is unlikely that many, if any, of those who have made submissions in objection to the proposed development would choose to move on the basis of the unsupported assertion of a detrimental impact on health, which I have concluded is unfounded. Although I recognise why such concerns were raised, I have found above that there is no evidence to suggest that the proposed development would have an adverse impact on health and none to suggest that it would adversely affect house prices or the demand for housing in an area.

12.177 Under these circumstances, I consider that only limited weight is attributable to the perception of harm to public health and the effect on housing demand. In my view, the scheme would not give rise to a significant conflict between land uses in the area.

Other matters

12.178 I have carefully considered the concerns of interested parties regarding the impacts on air quality, and due to dust, noise, and flooding arising from the proposed development. There was very little discussion of these impacts during the Inquiry. However, based on the evidence before me, and subject to the imposition of the relevant planning conditions set out in Annex E to this Report, I am satisfied that these impacts can be adequately controlled and mitigated so as not to cause any unacceptable harm. In addition, paragraph 7.37 of the SoCG (Planning) identifies that the Council agrees that the proposed development would operate without causing unacceptable harm to amenity. Consequently, I do not consider that these impacts would be of an extent to warrant the dismissal of this appeal.

[465] CD 13.9

12.179 Many other matters were raised by interested parties in the Inquiry. Although these matters have been carefully considered, they do not alter the main issues which have been identified as the basis for the determination of this appeal, particularly in circumstances where the Council has not objected to the appeal scheme for these other reasons.

12.180 During the Inquiry the parties referred to many appeal decisions which have been provided to support their respective case. It is rarely the case that appeal decisions on other sites will bring to light parallel situations and material considerations which are so similar as to provide justification for a decision one way or another. Where I consider it relevant, I have referred to some of the appeal decisions above. However, my decision in this appeal is based squarely on the evidence before me. For that reason, I do not consider that the appeal decisions brought to my attention have a substantive and determinative influence on my consideration of the appeal case, which essentially is for determination on its own individual merits.

13. PLANNING BALANCE AND OVERALL CONCLUSIONS

13.1 For the reasons set out earlier in this Report, the proposed development would accord with CDP Policy 2. In addition, I have found that there is a demonstrable need for the proposed development. In my view, the proposal would constitute a recovery facility and this would be reinforced by the suggested planning condition which requires the scheme to demonstrate that it will achieve R1 status, thereby ensuring that it can be considered as a recovery facility. It would therefore move waste up the hierarchy and divert a significant amount of residual C&I waste from landfill. It would meet a pressing need for facilities to sustainably manage C&I waste in County Durham and would be reflective of the aspirations set out in the Addendum to 2012 Study: Waste Arisings and Waste Management Capacity Model (2018) which envisaged that 848,000 tonnes per annum of residual waste would be managed at new energy from waste developments. In this regard, I find no conflict with CDP Policies 47 and 60. Therefore, I have attached significant weight to these considerations.

13.2 The proposed development would be located close to potential users of electricity and heat. Energy benefits include the availability of discounted heat and electricity produced by the facility to local homes and businesses through a DHN and ESG thereby providing constant and stable energy and the ability to offer of discounted heat and power to existing and prospective occupiers. The obligations contained within the UU would ensure the delivery of the necessary heat and power connections. In this regard, the proposal provides the potential to act as a catalyst to attract new employment development within the industrial park, particularly those businesses with high energy and heat requirements. I have attached significant weight to these considerations.

13.3 As a consequence of providing national grid connectivity and associated infrastructure, the proposal would address the current prohibitive costs to facilitate the completion of the extant 5MW Solar Farm. This, in turn, would deliver additional renewable energy for the benefit of the locality. However, I consider this to be an opportunistic and consequential benefit which is not directly part of the purpose of the development proposed. Consequently, I have attributed limited weight to this matter. I have also attached limited

weight to the provision of the proposed safeguarded land adjacent to the site for use as a future electric vehicle charging facility.

13.4 Limited positive weight should be attached to the jobs that would be created during both construction and operational phases of the scheme, and the financial benefits to the local economy that would accrue. I have also attributed moderate weight to the proposal's positive impact on biodiversity.

13.5 In undertaking a reasonable assessment of the climate change evidence submitted in the Inquiry, this leads me to find that the proposed development would likely result in lower GHG emissions compared to landfill over a 25 - 30 year lifetime and facilitate the availability of localised decarbonised power and heat generation. However, there are inherent uncertainties in the GHG emission savings calculations that are outlined earlier in this Report. These uncertainties lead me to conclude that the climate change benefits should only be afforded limited weight in the overall planning balance.

13.6 I have found that the proposed development would not cause any harm to the contribution made by the setting to the heritage value or significance of any heritage asset. In addition, I do not consider that there would be any adverse effect on the setting of the AONB and the proposal would not, individually or cumulatively, be harmful to the special qualities or statutory purposes of the AONB.

13.7 Subject to the imposition of appropriate planning conditions, and assuming effective pollution controls that would be imposed in the EP, the appeal scheme would not have an unacceptable impact, either individually or cumulatively on health or living conditions. With appropriate planning and pollution controls, I see no impediment to the effective integration of the proposed development with existing businesses. With regard to these matters, I find no conflict with CDP Policy 31.

13.8 However, I have found that the proposed development would have a moderate adverse effect on the surrounding landscape increasing to moderate to major in respect of the impact on the AHLV, primarily as a consequence of the stack and the impact of the upper parts of the main building in some wider landscape views. In addition, there would be moderate to major significant visual effects primarily associated with views from footpaths and residential properties in closer proximity to the site. Therefore, I consider that the proposed development would cause harm to the character and quality of the landscape and would be contrary to the provisions of Policies 29, 39 and 61(a) of the CDP. These are considerations to which I have afforded significant weight.

13.9 I also recognise the community reservations regarding the proposed development, which are understandable. The perception of harm is a material consideration. However, for the reasons given earlier in this report, this should be afforded limited weight in the overall planning balance.

13.10 In final conclusion, balancing all of the matters above, I consider that the adverse impacts of the proposed development would be significantly and demonstrably outweighed by the very weighty benefits related to the waste disposal hierarchy and discounted energy provision. The proposal would accord with the development plan, NPPW and Framework when read as a whole. It would therefore constitute sustainable development, taking into

account all three aspects set out in paragraph 8 of the Framework. As such, the presumption in favour of such development, as set out in paragraph 11 of the Framework, should be applied and the appeal allowed.

13.11 In coming to the above view, I have taken full and careful account of all of the representations made and the evidence provided by interested parties and the Rule 6 Party in the Inquiry. Such evidence was presented in a professional manner with clarity and relevance throughout the Inquiry. However, the views expressed and the evidence provided must be balanced against the development plan, the Framework, NPPW and other material considerations. In this case the evidence leads me to the conclusion that, on balance, the appeal should succeed.

14. RECOMMENDATION

14.1 For the reasons set out above and having had regard to all other matters raised, I recommend that the appeal should be allowed and that planning permission should be granted subject to the imposition of the conditions set out in Annex E attached hereto.

Stephen Normington

INSPECTOR

ANNEX A

APPEARANCES

FOR THE APPELLANT:

Andrew Tabachnik KC He called	Instructed by Clyde & Co LLP
Paul Beswick BA(Hons), Dip LA	Director of Enzygo Limited
Helena Kelly BSc, MCIFA	Director of Heritage Archaeology
Laurence Caird MEARTHSCI, MIENVSC,MIAQM, CSCI	Technical Director Air Quality Consultants
Harvey Emms BA(Hons), MRTPI	Nathaniel Lichfield & Partners Ltd
Ian Gibney (Conditions and S106 RTS only)	Partner Clyde & Co LLP

FOR DURHAM COUNTY COUNCIL:

John Barrett of Counsel	Instructed by Neil Carter, Solicitor with Durham County Council
Assisted by Shemuel Sheikh of Counsel They called	
David Gray BA(Hons), DipSM, CMLI	Senior Landscape Officer Durham County Council
Andrew Croft BA, MA, MCIFA	Director CBA
Chris Shields BA(Hons), DipTP	Senior Planning Officer Durham County Council
Neil Carter (Conditions and S106 RTS only)	Solicitor Durham County Council

FOR CONSETT COMMITTEE - RULE 6 PARTY

Christine Thomas FRSA	
Kelli Turner	
Josh Dowen (Advocate for the Cross Examination of Laurence Caird)	UKWIN Associate Coordinator
Neil Collar LLB (Hons), Dip LP, LARTPI	Solicitor Partner/ Head of Planning Law, Brodies LLP
They called	
Steve Newcombe	
Kevin Parkes BA(Hons), DipTP	
Barry Tupper (Conditions and S106 RTS only)	
Lucy Reed (Conditions and S106 RTS only)	

INTERESTED PERSONS

Richard Holden MP	Member of Parliament for North West Durham
Councillor Michelle Walton	Durham County Council
Councillor Kathryn Rooney	Durham County Council
Councillor Dominic Haney	Durham County Council
Pat Glass	North West Durham Labour Party
Michael Twiss	Local resident
Janet Matthews	Local resident
Sam Kenny	Persimmon Homes
Anne-Louise Grant	Local resident
Peter Oliver (submission read by Christine Thomas)	Local resident
John Hinds (submission read by Christine Thomas)	Local resident
Niamh McDonald	Local resident
Susan Mellor (submission read by Christine Thomas)	Local resident
Claire Fullerton	Local resident
Lucy Reed	Local resident
Councillor Kevin Earley	Durham County Council
Matthew Clarke	Local resident
Helen Grugan	Local resident

ANNEX B

CORE DOCUMENTS (CD)

CD1 –Application Plans and Drawings	
1.1	Site Location Plan - CRM.0138.001.PL.D.001
1.2	Landscape Mitigation Plan - 0138-001-ENZ-XX-01-DR-L-00-123 Rev P02
1.3	Proposed North East Elevation - SBA-XX-XX-GF-A-AL(0)021
1.4	Proposed North West Elevation - SBA-XX-XX-GF-A-AL(0)020
1.5	Proposed South East Elevation - SBA-XX-XX-GF-A-AL(0)022
1.6	Proposed South West Elevation - SBA-XX-XX-GF-A-AL(0)023
1.7	Proposed Site Boundary Plan - AL(0)010
1.8	Existing Site Plan - AL(0)011
1.9	Proposed Site Plan - AL(0)012
1.10	Proposed Roof Plan - AL(0)013
1.11	Boundary Treatment Plan SW & NW - AL(0)014
1.12	Boundary Treatment Plan NE & SE - AL(0)015
1.13	Proposed Security Lodge - AL(0)016
1.14	Energy Network Plan - AL(0)030

CD2 – Planning Application Reports	
2.1	Planning Application Form
2.2	Planning Statement
2.3	Landscape and Visual Impact Assessment
2.4	Heritage Statement for Templetown
2.5	Historic Environment Assessment
2.6	Need and Alternatives Assessment
2.7	Pre-Application Consultation Report

2.8	Preliminary Ecological Appraisal
2.9	Transport Statement

CD3 - Environmental Statement and Addendum	
3.1	Chapter 1: Introduction
3.2	Chapter 2: Scope of ES
3.2.1	Appendix 2.1: Scoping Opinion Request
3.2.2	Appendix 2.2: Scoping Opinion
See 2.7	Appendix 2.3: Pre-Application Consultation Report
3.3	Chapter 3: Site and Setting
3.4	Chapter 4: Planning Policy
3.5	Chapter 5: Development Description
3.6	Chapter 6: Need and Alternative
3.6.1	Appendix 6.1: Design Evolution
3.7	Chapter 7: Landscape and Visual Impact
3.7.1	Appendix 7.1: Method Statement
3.7.2	Appendix 7.2: Landscape Assessment Tables
3.7.3	Appendix 7.3: Consultation
3.7.4	Appendix 7.4: Figures
3.8	Chapter 8: Geo Environmental
3.8.1	Appendix 8.1: Phase I Preliminary Assessment
3.8.2	Appendix 8.2: Phase I Preliminary Risk Assessment
3.9	Chapter 9: Noise & Vibration
3.9.1	Appendix 9.1: Glossary of Terms
3.9.2	Appendix 9.2: Baseline Noise Data
3.9.3	Appendix 9.3: Noise Contours

3.9.4	Appendix 9.4: Operational Noise Assessment
3.9.5	Appendix 9.5: Construction Noise Assessment
3.10	Chapter 10: Air Quality & Human Health
3.10.1	Appendix 10.1: Air Quality Assessment (Including Stack Height)
3.10.2	Appendix 10.2: HHRA
3.10.3	Appendix 10.3: Odour Risk Assessment
3.11	Chapter 11: Water Environment
3.11.1	Appendix 11.1: FRA & Drainage Strategy
3.12	Chapter 12: Climate Change
3.13	Chapter 13: Socio Economic
3.14	Chapter 14: Amenity
3.15	Chapter 15: Summary & Conclusions
3.16	Non-Technical Summary
3.17	Addendum to Environmental Statement
3.18	Appendix 1 Regulation 25 Request
3.19	Appendix 2 Landscape Response
3.20	Appendix 3 Noise Response
3.21	Appendix 4 Air Quality Response
3.22	Appendix 5 Response to Low Carbon Economy
3.23	Appendix 6 Landscape Mitigation Plan
3.24	Appendix 7 Response to Public Comments

CD4 – Background Documents	
4.1	Guidelines for Environmental Impact Assessment
4.2	Planning History (Drawing number LF64932.001)
4.3	Project Genesis Illustrative Masterplan

CD5 – Statutory Consultee Responses and Further Related Appellant Submissions	
Consultee Comments	
5.1	Low Carbon Team Comments
5.2	Public Health Comments
5.3	Landscape Advice
5.4	Environmental Health Comments - Noise
5.5	Environmental Health Comments
5.6	Environmental Health (Noise) Comments
5.7	NATS Comments
5.8	Low Carbon Team Comments
5.9	NHS Comments
5.10	Natural England Comments
5.11	Spatial Policy
5.12	Air Quality Comments
5.13	MOD Comments
5.14	Northumbrian Water Comments
5.15	Environment Agency Comments
5.16	The Coal Authority Comments
5.17	NHS Comments
5.18	MOD Comments
5.19	Landscape Advice
5.20	Air Quality Comments
5.21	Noise Comments
5.22	Low Carbon Economy Team
5.23	Spatial Policy

5.24	Northumbrian Water
5.25	NHS Comments
5.26	Archaeology
5.27	The Coal Authority Comments
5.28	The Coal Authority Comments
5.29	Environment Agency Comments
5.30	AQC_AQ Responses to Aecom Review
5.31	AQC Reg 25 Response on AQ and Odour
5.32	Aecom_Comments on Reg 25 Response
5.33	AQC_HHRA Response to Aecom Comments
5.34	AQC_AQ and Odour Clarifications
5.35	Aecom_Final Comments on AQ, Odour and HHRA
5.36	DCC Low Carbon Economy Team Comments Aug 21.pdf
Further related appellant submissions	
5.37	Response from Agent to Landscape Comments
5.38	Response to Low Carbon Team and UK WIN
5.39	Air Quality Additional Information
5.40	HHRA Additional Information
5.41	Noise Additional Information
5.42	Response to Low Carbon Economy Comments
5.43	Enzygo Response to UKWIN Objection
5.44	Wireframe Photomontage reference (MAN-0138-002-ENZ-XX-00-DR-L-00-002 - Photomontages.pdf) supplied by appellant on 24th March 2022; with accompanying email
5.45	Zone of Theoretical Visibility Drawings Supplied by Appellant on 21 June 2022
	(see also Addendum to the Environmental Statement in Section 3)

CD6 – Council's determination	
6.1	Decision Notice 08.09.21
6.2	Committee Report September 2021 (including Officer Report)
6.3	Scoping Opinion September 2020
6.4	Minutes of County Planning Committee September 2021

CD7 – Planning Policies / Related Documents	
7.1	County Durham Plan 2020
7.2	County Durham Waste Local Plan (April 2005) Saved policies
7.3	2018 Addendum to 2012 Study: Waste Arisings and Waste Management Capacity Model
7.4	Inspector's Examination Report of the CDP (September 2020)
7.5	National Planning Policy for Waste (2014)
7.6	Planning Practice Guidance for Waste (2015)
7.7	Planning Practice Guidance for Renewable and Low Carbon Energy (2015)
7.8	National Planning Practice Guidance for Air Quality (2019)
7.9	Durham County Council Annual Monitoring Report 2018-2019
7.10	Durham County Council Annual Monitoring Report 2019-2020
7.11	Durham County Council Annual Monitoring Report 2020-2021
7.12	Employment Land Review (June 2018)

CD8 – Strategies and Guidance: Heritage	
8.1	The Planning (Listed Buildings and Conservation Areas) Act, 1990
8.2	Planning Practice Guidance, Paragraph: 018 Reference ID: 18a-018-20190723: How can the possibility of harm to a heritage asset be assessed?
8.3	Historic Environment Good Practice Advice in Planning 3, 2nd Edition (GPA3): The Setting of Heritage Assets, Historic England (2017)

8.4	Conservation Principles; Policy for the Sustainable Management of the Historic Environment, Historic England (2008)
8.5	Durham County Council, Conservation Area Appraisal Blackhill (2009)
8.6.1	English Heritage, Historic Farmsteads Preliminary Character Statement North East Region (2006) Part 1
8.6.2	English Heritage, Historic Farmsteads Preliminary Character Statement North East Region (2006) Part 2
8.6.3	English Heritage, Historic Farmsteads Preliminary Character Statement North East Region (2006) Part
8.7	English Heritage, Agricultural Buildings Listing Selection Guide (2011)
8.8	Planning Practice Guidance, Paragraph: 013 Reference ID: 18a-013-20190723: What is the setting of a heritage asset and how can it be taken into account?
8.9	Historic England, Managing Significance in Decision-Taking in the Historic Environment, Historic Environment Good Practice Advice in Planning Note 2 (March 2015)
8.10	Listed building descriptions for the Grade II listed High Knitsley Farmhouse and Grade II listed Barn west of High Knitsley Farmhouse

CD9 – Strategies and Guidance: Landscape	
9.1	County Durham Landscape Character Assessment 2008
9.2	County Durham Landscape Strategy 2008
9.3	County Durham Landscape Guidelines
9.4	County Durham Landscape Value Assessment 2019
9.5	County Durham Plan Local Landscape Designations Review 2019
9.6	North Pennines AONB Planning Guidelines
9.7	North Pennines AONB Building Design Guide
9.8	North Pennines AONB Management Plan 2019-24
9.9	Guidelines for Landscape and Visual Impact Assessment, 3rd Edition (2013) (end sections missing, complete version now included)
9.10	Landscape Character Assessment Guidance Note
9.11	Landscape Institute Technical Guidance Note – Visual Representation
9.12	Durham Coalfield Pennine Fringe National Character Area

CD10 – Strategies and Guidance: Waste	
10.1	The Government Review of Waste Policy in England (2011)
10.2	Waste Management Plan for England (2021)
10.3	Our Waste, Our Resource, A Strategy for England (2018)
10.4	Circular Economy Package Policy Statement (2020)

CD11 – Strategies and Guidance: Air Quality and Energy	
11.1	A Green Future: Our 25 Year Plan to improve the Environment (2018)
11.2	Energy White Paper Powering our Net Zero Future (December 2020)
11.3	Net Zero Strategy: Building back greener (October 2021)
11.4	Overarching National Policy Statement for Energy (EN-1) (DECC, 2011)
11.5	National Policy Statement for Renewable Energy Infrastructure (EN-3) (DECC, 2011)
11.6	Leading on Clean Growth – The Government's response to the Committee on Climate Changes 2019 Progress Report to Parliament – Reducing the UK emissions (October 2019)
11.7	Net Zero The UKs contribution to stopping global warming (May 2019)
11.8	Reducing UK Emissions 2019 Progress Report to Parliament (July 2019)
11.9	Department for Business, Energy and Industrial Strategy (BEIS), Clean Growth – Transforming Heating – Overview of current evidence (December 2018)
11.10	BEIS, 2020 UK Greenhouse Gas Emissions, Final Figures, Statistical Release: National Statistics (February 2022)
11.11	BEIS, Heat networks, ensuring sustained investment and protecting consumers (December 2018)
11.12	Department of Energy and Climate Change (DECC), Smart Grid Vision and Route map (February 2014)
11.13	Defra 2014 Energy recovery for residual waste carbon modelling approach WR1910
11.14	Environment Agency – Air Emissions Risk Assessment Guidance
11.15	IAQM Planning for Air Quality Guidance 2017

CD12 – Proofs of Evidence and Statements of Case	
12.1	Statement of Common Ground - Planning
12.2	Statement of Common Ground - Landscape
12.3	Statement of Common Ground - Heritage
Statements of Case	
12.4	Appellant Statement of Case (March 2022)
12.5	Durham County Council Statement of Case (April 2022)
12.6	Rule 6 Statement of Case (April 2022)
Appellant Witnesses	
12.7	Proof of Evidence (including summary) of Helena Kelly, BSc MCIFA, Historic Environment
12.7.1	Appendix to Proof of Evidence of Helena Kelly, BSc MCIFA, Historic Environment
12.8	Proof of Evidence (including summary) of Paul W Beswick, BA (Hons) Dip LA, Landscape and Visual Impact
12.8.1	Appendix A and C-H to Proof of Evidence of Paul W Beswick, BA (Hons) Dip LA, Landscape and Visual Impact
12.8.2	Appendix B to Proof of Evidence of Paul W Beswick, BA (Hons) Dip LA, Landscape and Visual Impact
12.9	Proof of Evidence (including summary) of Laurence Caird, MSc IES IAQM, on Air Quality and Greenhouse Gas issues
12.9.1	Appendix to Proof of Evidence of Laurence Caird, MSc IES IAQM, on Air Quality and Greenhouse Gas issues
12.10	Proof of Evidence (including summary) of Harvey Emms, BA (Hons) MRTPI, Planning Case
12.10.1	Appendix to Proof of Evidence of Harvey Emms, BA (Hons) MRTPI, Planning Case
12.11	Proof of Evidence (including summary) of Morris Muter on behalf of the Appellant, Company Evidence
12.11.1	Appendix to Proof of Evidence of Morris Muter, Company Evidence
12.12	Proof of Evidence (including summary) of Roland Mark Short on Behalf of the Appellant, Company Evidence
12.12.1	Appendix to Proof of Evidence of Roland Mark Short, Company Evidence
12.13	Draft Conditions

12.14	Draft S106 Agreement
Council Witnesses	
12.20	DCC – Summary Proof of Evidence of Andrew Croft - Heritage
12.21	DCC – Proof of Evidence of Andrew Croft - Heritage
12.22	DCC – Proof of Evidence of Andrew Croft – Heritage – Appendix 1
12.23	DCC - Summary Proof of Evidence of David Gray - Landscape
12.24	DCC - Proof of Evidence of David Gray - Landscape
12.25	DCC - Proof of Evidence of David Gray – Landscape – Appendix 1 GLVIA extracts
12.25.1	DCC - Proof of Evidence of David Gray – Landscape – Appendix 1 GLVIA extracts
12.25.2	DCC - Proof of Evidence of David Gray – Landscape – Appendix 1 GLVIA extracts
12.26	DCC - Proof of Evidence of David Gray – Landscape – Appendix 2 Plans
12.26.1	DCC - Figure 1 Bare land ZTV of Main building (22m in height)
12.26.2	DCC - Figure 2 Bare Land ZTV of Water Tower (25m in height)
12.26.3	DCC - Figure 3 Bare Land ZTV of Stack (50m in height)
12.26.4	DCC - Figure 4 Combined Buildings Bare Land ZTV
12.26.5	DCC - Figure 5 ZTV with barriers of Main Building (22m in height)
12.26.6	DCC - Figure 6 ZTV with barriers of Water Tower (25m in height)
12.26.7	DCC - Figure 7 ZTV with barriers of Stack (50m in height)
12.26.8	DCC - Figure 8 Combined Buildings with barriers ZTV with viewpoint locations
12.26.9	DCC - Figure 9 Combined Buildings with barriers ZTV with landscape designations
12.26.10	DCC - Figure 10 Local Landscape Character Types
12.26.11	DCC - Figure 11 Landscape Value Assessment Sub-types
12.27	DCC– Proof of Evidence of David Gray – Landscape – Appendix 3 DCC Landscape and Visual Assessment Methodology
12.28	DCC- Proof of Evidence of David Gray – Landscape – Appendix 4 Character Types Information

12.29	DCC– Proof of Evidence of David Gray – Landscape – Appendix 5 Local Landscape character types
12.30	DCC – Proof of Evidence of David Gray – Landscape – Appendix 6 Landscape Value Assessment Sub-Areas
12.31	DCC - Proof of Evidence of David Gray – Landscape – Appendix 7 Tree Growth Rates
12.32	DCC – Proof of Evidence of David Gray – Landscape – Appendix 8 Photo sheets 1 and 2
12.33	DCC – Summary Proof of Evidence of Chris Shields - Planning
12.34	DCC – Proof of Evidence of Chris Shields - Planning
Consett Committee Rule 6 Party Witnesses	
12.35	Rule 6 Party - Proof of Evidence of Kevin Parkes - Planning
12.35.1	Cover pages for Parkes Consett Committee Planning Proof Appendices
12.35.2	Parkes Appendix A 2011 Census Travel to Work Pattern Data
12.35.3	Parkes Appendix B Scottish Government Infrastructure Investment Plan
12.35.4	Parkes Appendix C Five vital steps to set up a successful manufacturing business
12.35.5	Parkes Appendix D UK waste incinerators three times more likely to be in poorer areas
12.35.6	Parkes Appendix E UK waste incinerators three times more likely to be in deprived areas
12.35.7	Parkes Appendix F Monetising the impacts of waste incinerators
12.35.8	Parkes Appendix G Written answer from Defra on Incinerators-Recycling
12.36	Rule 6 Party - Proof of Evidence of Steven Newcombe - Landscape
12.37	Rule 6 Party - Note on Heritage - Consett Committee
12.37.1	Appendix 3 of Note on Heritage - Application 3 - Grant application for the heritage trail from PG
12.37.2	Appendix 4 of Note on Heritage - Consett Destination Development Plan 2017
12.38	Rule 6 Party - Comments on Statement of Common Ground

CD13 – Other Documents	
13.1	Ghosh et al - ICL 2018 Health Study on MWIs
13.2	Parkes et al - ICL 2019 Health Study on MWIs
13.3	Tait et al Aus NZ J of PH_2019_health impacts of waste incineration review
13.4	Say No to Consett Incinerator Committee Objection Document
13.5	United Kingdom Without Incineration Network Objection Document June 2021
13.6	United Kingdom Without Incineration Network Objection Document July 2021
13.7	Hansard exchanges with the local MP
13.8	Thornhill Road, Swindon Appeal Decision 06.06.19
13.9	Land at Javelin Park Appeal Decision
13.10	Stansted Airport Appeal Decision
13.11	Bilsthorpe Nottinghamshire Appeal Decision
13.12	Land within the Westhampnett / North East Chichester Strategic Development Location Appeal Decision
13.13	Spatial Policy Response to the Proposed Development of 131 Dwellings on Land South of Wyncrest
13.14	Design and Conservation Advice with Respect to Land South of Wyncrest
13.15	Planning, Design and Access Statement for R/2019/0767/OOM
13.16	Officer report for H.2014.0582
13.17	Planning permission granted for Redcar Energy Centre
13.18	Committee Report for Middle Heads Farm Rowley Wind Turbine CMA-1-76
13.19	Delegated Report for High Knitsley Farm Wind Turbine CMA-1-89
13.20	Delegated Report for Howns Farm Wind Turbine CMA-1-81
13.21	Committee Report for Solar Farm DM_15_02364_FPA
13.22	Committee Report for Derwent View DM_19_01987_OUT
13.23	Design and Access Statement for Derwent View DM_19_01987_OUT

13.24	North Yorkshire sub-region - waste arisings and capacity requirements update report (Sep_2016)
13.25	Developing the UK Emissions Trading Scheme Consultation Document (2022)
13.26	Energy from Waste: A guide to the debate (DEFFRA) (February 2014)
13.27	Tolvik-UK-EfW-Statistics-2021_Published-May-2022
13.28	Defra Digest of Waste and Resource Statistics 2018
13.29	Defra, UK Statistics on Waste, 11 May 2022
13.30	EA, 2020 Waste Received Data Interrogator Waste Received, 12 May 2022, v4 *This is an excel workbook so available on the Council's web portal only as not usable via printed version. Key datasheets are included as a PDF for reference including summary tables
13.31	EA, 2020 Waste Received Data Interrogator Waste Removed, 12 May 2022, v4 *This is an excel workbook so available on the Council's web portal only as not usable via printed version. Key datasheets are included as a PDF for reference
13.32	EA, 2019 Waste Received Data Interrogator, 12 May 2022, v4 *This is an excel workbook so available on the Council's web portal only as not usable via printed version. Key data sheets are included as a PDF for reference
13.33	EA, Waste returns extract 2018: Wastes received, 12 May 2022, 2018 WDI Extract *This is an excel workbook so available on the Council's web portal only as not usable via printed version
13.34	EA, Waste returns extract 2017: Wastes received, 12 May 2022, 2017 WDI extract *This is an excel workbook so available on the Council's web portal only as not usable via printed version
13.35	Solar Farm Decision Notice, DM/15/02364/FPA
13.36	Derwent View Decision Notice, DM/19/01987/OUT
13.37	East Northamptonshire DC & Barnwell Manor Wind Energy Ltd v Secretary of State [2015] 1 W.L.R. 45
13.38	Decision Notice for R/2019/0767/OOM
13.39	Decision Notice for R/2020/0411/FFM
13.40	Green Lane Appeal Decision APP/U4230/A/11/2162103

13.41	Wheelabrator Kemsley North (WKN) Secretary of State Decision Letter EN010083
13.42	Wheelabrator Kemsley North (WKN) Appeal Decision Final Recommendation Report EN010083
13.43	Committee on Climate Change (CCC) June 2021 report, Progress in reducing emissions
13.44	Committee on Climate Change (CCC) June 2022 report, Progress in reducing emissions
13.45	UKWIN's July 2021 Good Practice Guidance for Assessing the Greenhouse Gas Impacts for Waste Incineration
13.46	Defra's August 2020 Resources and Waste Strategy Monitoring Report
13.47	Composition analysis of Commercial and Industrial waste in Wales by WRAP Cymru January 2020
13.48	HCA Employment Densities Guide, 3rd Edition (2015)
13.49	Appeal Decision APP/U3935/W/21/3269667
13.50	Appeal Decision APP/W0340/W/17/3179551
13.51	Appeal Decision APP/X2410/W/17/3190236
13.52	Planning Permission for Factory building with associated car parking and two pole mounted cctv cameras – 1/1996/01277
13.53	Planning Permission for Erection of new bus depot, comprising 2 storey workshop, storage and office facilities, and external parking area for 62 buses, with refuse, fuel storage and a wash down areas, and staff parking areas - DM/17/02855/FPA
13.54	The Forge Field Society & ORS, v Sevenoaks District Council
13.55	Barnwell Manor Wind Energy Limited v East Northamptonshire District Council, English Heritage, National Trust and State for Communities and Local Government
13.56	Cawrey LTD V Secretary of State for Communities and Local Government & Hinckley and Bosworth Borough Council

CD14 – Rebuttals	
Rebuttal Proofs of Evidence – Council Witnesses	
14.1	Landscape Rebuttal Proof of Evidence – D Gray on behalf of Durham County Council
Rebuttal Proofs of Evidence – Appellant Witnesses	
14.2	Rebuttal Proof of Evidence of Harvey Emms – Planning (26 July 2022)

14.3	Rebuttal Proof of Evidence of Laurence Caird - Climate Change (July 2022)
14.4	Rebuttal Proof of Evidence of Laurence Caird - Climate Change (August 2022)
Rebuttal Proofs of Evidence – Rule 6 Witnesses	
14.5	Kevin Parkes Rebuttal Proof Regarding Harvey Emms Planning Case from the Consett Committee
14.6	Parkes Consett Committee Rebuttal Proof – Appendix A – UKWIN July 2022 Review of AQC Consett GHG Assessment
14.7	Parkes Consett Committee Rebuttal Proof – Appendix B – AQC Carbon Assessment Review of Alton (August 2020)
14.8	Parkes Consett Committee Rebuttal Proof – Appendix C – Extracts from AQC Reading Quarry GHG Assessment (December 2021)
14.9	Parkes Consett Committee Rebuttal Proof – Appendix D - Court of Appeal in ClientEarth, R (on the application of) v Secretary of State for BEIS & Anor [2021] EWCA Civ 43 (21 January 2021)
14.10	Parkes Consett Committee Rebuttal Proof - Appendix E - Case Summary prepared by Victoria McKeegan for Town Legal
14.11	Steve Newcombe's Rebuttal Proof of Evidence of Paul Beswick's Evidence on Landscape and Visual Impact
14.12	Rebuttal on Proof of Evidence of Helena Kelly on Historic Environment from the Consett Committee

ANNEX C

DOCUMENTS SUBMITTED DURING THE INQUIRY

Inquiry Document (ID)	Description of Document	Date Submitted
ID1	Appearances list on behalf of Appellant	09.08.20222
ID2	Appearances list on behalf of Council	09.08.2022
ID3	Appellant Opening Statement	09.08.2022
ID4	Council Opening Statement	09.08.2022
ID5	Consett Committee – Rule 6 Party Opening Statement	09.08.2022
ID6	Transcript of Statement read by Councillor Walton	09.08.2022
ID7	Transcript of Statement read by Councillor Rooney	09.08.2022
ID8	Transcript of Statement read by Councillor Haney	09.08.2022
ID9	Transcript of Statement read by Pat Glass	09.08.2022
ID10	Transcript of Statement read by Michael Twiss	09.08.2022
ID11	Transcript of Statement read by Janet Matthews	09.08.2022
ID12	Transcript of Statement read by Sam Kenny	09.08.2022
ID13	Schedule of agreed viewpoints with comments of Council and Appellant regarding significance of effect	09.08.2022
ID14	Transcript of Statement read by Richard Holden MP	10.08.2022
ID15	A3 Viewpoint Images provided by Rule6 Party	10.08.2022
ID16	List of Core Documents to be referred to in the cross-examination of Mr Beswick	11.08.2022
ID17	Agreed Agenda for Heritage RTS	11.08.2022
ID18	Updated draft version of S106 Undertaking	17.08.2022
ID19	Transcript of Statement of Peter Oliver read by Christine Thomas	17.08.2022
ID20	Transcript of Statement of John Hinds read by Christine Thomas	17.08.2022

ID21	Transcript of Statement of Susan Mellor read by Christine Thomas	17.08.2022
ID22	Transcript of Statement read by Anne-Louise Grant	17.08.2022
ID23	Transcript of Statement read by Niamh McDonald	17.08.2022
ID24	Transcript of Statement read by Claire Fullerton	17.08.2022
ID25	Transcript of Statement read by Councillor Earley	17.08.2022
ID26	Transcript of Statement read by Lucy Reed	17.08.2022
ID27	Transcript of Statement read by Matthew Clarke	17.08.2022
ID28	Updated Schedule of Proposed Planning Conditions	17.08.2022
ID29	Updated draft CIL Compliance Statement	17.08.2022
ID30	EA Guidance: Waste incinerator plant: apply for R1 status	18.02.2022
ID31	Email exchange between Council and Appellant regarding CIL compliance	18.02.2022
ID32	Council closing submissions	19.08.2022
ID33	Rule 6 Party closing submissions	19.08.2022
ID34	Appellant closing submissions	19.08.2022

ANNEX D: LIST OF DOCUMENTS REQUESTED BY THE INSPECTOR AND SUBMITTED AFTER THE CLOSE OF THE ORAL SESSIONS OF THE INQUIRY

Inquiry Document (ID)	Description of Document	Date Submitted
ID35	Final agreed Schedule of Planning Conditions	09.09.2022
ID36	Final S106 Unilateral Undertaking dated 09.09.2022	09.09.2022
ID37	Final CIL compliance Statement	08.09.2022
ID38	Comments of Rule 6 Party on planning conditions, S106 and CIL Compliance Statement	05.09.2022

ANNEX E: SCHEDULE OF RECOMMENDED CONDITIONS IN THE EVENT THAT THE APPEAL IS ALLOWED AND PLANNING PERMISSION IS GRANTED

Commencement

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

Approved Plans

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

Drawing Number	Title
CRM.0138.001.PL.D.001	Site Location Plan
AL(0)010	Proposed Site Boundary Plan
AL(0)011	Existing site plan
AL(0)001 Rev D	Proposed site plan
AL(0)013	Proposed roof plan
AL(0)014	Boundary treatment plan SW & NW
AL(0)015	Boundary treatment plan NE & SE
AL(0)016	Proposed security lodge
AL(0)020	Proposed NW elevation
AL(0)021	Proposed NE Elevation
AL(0)022	Proposed SE elevation
AL(0)023	Proposed SW elevation
0138-002-ENZ-XX-00-DR-L-45-101	Soft Landscaping Plan
0138-001-ENZ-XX-01-DR-L-00-201	Landscape Sections A-AA & B-BB
0138-001-ENZ-XX-01-DR-L-00-401	Soft Landscape Schedule
2543-500	Topographical Survey-A0 Landscape

Construction Management Plan

3) No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall include the following:

a) Hours of construction including deliveries.

b) A delivery management plan outlining directional signage and how construction and servicing vehicles will be managed on the public highway to avoid queuing

c) A Dust Action Plan including measures to control the emission of dust and dirt during construction in accordance with the Institute of Air Quality Management "Guidance on the assessment of dust from demolition and construction" February 2014.

d) Details of methods and means of construction noise reduction/suppression.

e) Details of construction lighting.

f) Where construction involves penetrative piling, details of methods for piling of foundations including measures to suppress any associated noise and vibration.

g) Details of measures to prevent mud and other such material migrating onto the highway from all construction vehicles entering and leaving the site.

h) Designation, layout and design of construction access and egress points.

i) Details of contractors' compounds, materials storage and other storage arrangements, including cranes and plant, equipment and related temporary infrastructure.

j) Details of provision for all site operatives for the loading and unloading of construction plant, machinery and materials.

k) Details of provision for all site operatives, including visitors and construction vehicles for parking and turning within the site during the construction period.

l) Routing proposals for construction traffic.

m) Details of the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.

n) Waste audit and scheme for waste minimisation and recycling/disposing of waste resulting from demolition and construction works.

o) Management measures for the control of pest species as a result of construction works.

p) Detail of measures for liaison with the local community and procedures to deal with any complaints received during the construction of the development.

The approved Construction Management Plan shall be adhered to throughout the construction period and the approved measures shall be retained for the duration of the construction works.

Contaminated Land

4) No development shall commence until a land contamination scheme has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall be prepared by a suitably competent person and include an updated Phase 2 site investigation and ground gas risk assessment. If the Phase 2 site investigation identifies any unacceptable risks, a Phase 3 remediation strategy shall be prepared by a suitably competent person (including a programme of implementation and where necessary gas protection measures and method of verification) and submitted for approval by the Local Planning Authority.

If during development, contamination not previously identified by the land contamination scheme is found to be present at the site, then no further development shall be carried out until a remediation strategy prepared by a suitably competent person has been submitted to and approved in writing by the Local Planning Authority detailing how this contamination shall be dealt with.

5) All remediation works shall be carried out in accordance with the approved remediation strategy prepared by a suitably competent person. The development shall not be brought into use until a Phase 4 verification report has been submitted to and approved in writing by the Local Planning Authority.

Ground Investigations – Coal Mining

6) No development shall commence until a scheme of intrusive investigations prepared by a competent person has been submitted to and approved in writing by the Local Planning Authority to establish any risks posed to the development by past shallow coalmine workings. The scheme shall include an implementation programme for the intrusive investigations and programme for the results of the intrusive investigations and details of any remediation works and/or mitigation measures to address land instability arising from shallow workings, as may be necessary, to be submitted for the written approval of the Local Planning Authority. Thereafter, the development shall be undertaken in accordance with the approved scheme of intrusive investigation and remediation/mitigation works in order to ensure that the site is safe and stable for the development proposed.

7) Prior to the commencement of the use of the development a verification report prepared by a suitably qualified and experienced competent person shall be submitted to and approved in writing by the Local Planning Authority. Such report shall confirm that any remediation works and/or mitigation measures to address land instability arising from shallow workings, as required by condition No. 6, have been undertaken and that the site is, or has been made, safe and stable for the approved development.

Hard Landscaping

8) No development above damp course shall be commenced until hard landscaping details have been submitted to and approved in writing by the Local Planning Authority. The details shall include a plan indicating the positions, design, materials and type of boundary treatment to be provided as well as the materials and layout of the proposed car park, external yard area (including any cycle parking), footpaths and a programme of maintenance. The development shall not be brought into use until the approved hard landscaping has been completed. The hard landscaping shall thereafter be retained in perpetuity and maintained in accordance with the approved details.

Soft Landscaping and Ecology

9) No development shall commence until a detailed soft landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. This scheme shall accord with the principles of the approved soft landscaping plans listed in Condition 2 and include (but not be limited to):

a) A detailed plan of the soft landscaping measures proposed;

b) Details of the species, size and number of trees and/or plants to be planted;

c) A specification for soils to provide a suitable growth medium for trees;

d) Location of (and number of) bat boxes, bird boxes and hibernacula; and

e) A phasing plan for implementation and completion of the scheme.

The scheme shall be implemented in accordance with the approved scheme. Any trees or plants that, within a period of five 5 years after planting, are removed, die or become, seriously damaged or defective, shall be replaced in the first planting season after this occurs with others of species, size and number as originally approved.

10) Prior to the operation of the development, a scheme for the future maintenance for all soft and hard landscaping and hibernacula (including a programme for its implementation covering a period of 25 years, updated on a 10-year cycle) shall be submitted to and approved in writing by the local planning authority. Thereafter, works carried out pursuant to conditions 8 and 9 shall be retained in perpetuity and maintained in accordance with the approved scheme.

Site Access

11) No development shall commence until plans showing full engineering details of the proposed access shown on 'Proposed Site Plan' (drawing number SBAKA-00-GF-DR-A AL(0)001 Rev D) and timetable for construction have been submitted to and approved in writing by the Local Planning Authority. The site access shall be provided in accordance with the approved details and shall be constructed to at least base course level for a distance of 10m into the site from the junction with the existing adopted highway on Hownsgill Industrial Park prior to the commencement of the construction of the approved buildings.

Prior to the operation of the development, the approved details shall be implemented in full.

External Lighting

12) Prior to the operation of the development, a scheme for the provision of lighting for the external areas including details of the number, type, position, design, dimensions and lighting levels of the lighting shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the lighting scheme shall be implemented, retained in perpetuity and maintained in accordance with the approved details.

Noise

13) Prior to the operation of any external mechanical plant and equipment associated with the development, a noise assessment prepared by a suitably competent person shall be submitted to and approved in writing by the Local Planning Authority. This shall include:

(i) an assessment of the existing background sound levels at the site boundaries and nearby receptors and demonstrate that the proposed activities on-site would be no more than 5 dB LAeq (1 hour) during day time hours (0700 to 2300) and no more than 0 dB LAeq (15 minutes) during night time hours (2300 to 0700) above these existing sound levels (LA90); and

(ii) details of any sound attenuation measures required to achieve these levels.

All approved mitigation measures shall be implemented prior to the operation of any external mechanical plant or equipment. Thereafter, all external mechanical plant and equipment shall be operated and maintained in accordance with the approved measures.

Drainage

14) Prior to the operation of the development, a drainage strategy shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall be in accordance with the Hownsgill Energy Facility Flood Risk Assessment (October 2020). The approved drainage strategy shall be implemented in full before the development is brought into use. Thereafter, the development shall be managed and maintained in accordance with the approved strategy.

Notifying the UK Digital Vertical Obstruction File (DVOF) & Powerlines

15) Construction of the stack shall not commence until the Local Planning Authority has been provided with written confirmation that:

a) the UK Digital Vertical Obstruction File (DVOF) & Powerlines at the Defence Geographic Centre has been provided with written details about the structure to enable aeronautical charts and mapping records to be amended; and

b) the UK Digital Vertical Obstruction File (DVOF) & Powerlines at the Defence Geographic Centre has acknowledged receipt in writing of the information submitted pursuant to (a) above.

Aviation Safety Lighting

16) Prior to the operation of the development a scheme providing the design details of aviation warning lighting to be fitted to the chimney stack shall be submitted to and approved in writing by the Local Planning Authority. Such scheme shall provide for the warning lighting to be installed on the highest part of the structure and shall comprise of infra-red lighting having an equivalent minimum intensity of 25 candela. The warning lighting shall be installed in accordance with the approved scheme and shall thereafter be retained and maintained for the duration of the development.

Finished Floor Levels

17) No development above damp course shall be commenced until a verification survey confirming that the finished floor levels are not higher than the existing floor levels which are +246.050 AOD as shown on plan reference 2543-500 (Topographical Survey-A0 Landscape) has been submitted to and approved in writing by the Local Planning Authority.

Chimney Stack Height

18) The chimney stack shall be constructed to, and retained at, a height of no more than 50 metres above the finished floor level datum.

External Facing Materials

19) No development above damp course shall be commenced until details of the materials and colour of all external facing materials and the chimney stack have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed and retained in accordance with the approved details.

R1 Categorisation

20) The operation of the development hereby permitted shall not be begun until a report verifying that the facility has achieved R1 Status through Design Stage

Certification from the Environment Agency has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be configured and operated in accordance with these approved details.

Operational Management Plan

21) Prior to the operation of the development, an Operational Management Plan shall be submitted to and approved in writing by the Local Planning Authority. This Plan will include the following details:

a) Proposed measures to ensure that mud, dirt, and waste from the development is not transferred onto the public highway.

b) Proposed measures to monitor the content of refuse derived fuel used at the development;

c) Proposed measures to monitor how the performance of the site is more carbon efficient than landfill;

d) Proposed measures to monitor the quantum of refuse derived fuel delivered to the site per annum; and

e) A carbon capture availability report (CCAR), which shall include an assessment as to whether all equipment and infrastructure that are required to facilitate the maximum capture, storage and export of carbon emissions which would otherwise be emitted by the development is reasonably available and commercially viable to purchase, install and operate at the development.

A monitoring report covering the above points a-d shall be submitted to the Local Planning Authority on a quarterly basis following the date when the development is first brought into use.

The approved CCAR will be updated once every three years following the development being brought into use. Once reasonable availability is demonstrated no further CCAR will be required to be submitted to the Local Planning Authority.

Decommissioning

22) The operator shall inform the Local Planning Authority in writing within 30 days of final cessation of the operation of the facility hereby permitted that all operations have ceased. Within 6 months of the final cessation of the operation of the development hereby permitted a scheme of restoration for the site shall be submitted for the written approval of the Local Planning Authority. The scheme shall include the removal of all buildings, chimney stack, associated plant, machinery, waste and processed materials from the site. The site shall thereafter be restored within a period of 24 months of the details being approved by the Local Planning Authority.

Department for Levelling Up, Housing & Communities

www.gov.uk/dluhc

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.