15 December 2010

Dr Kathryn Lawrence
Bevan Brittan LLP
Kings Orchard
1 Queen Street, St Philips
BRISTOL
BS2 0HQ

Our Ref: APP/U3100/A/09/2119454
Your Ref: 08/02472/CM

Dear Dr Lawrence,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78

APPEAL BY VIRIDOR WASTE MANAGEMENT LTD:
ARDLEY LANDFILL SITE, ARDLEY FIELDS FARM, ARDLEY, OXFORDSHIRE

APPLICATION REF: 08/02472/CM

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mr A Mead, BSc (Hons) MRTPI MIQ, who held a public local inquiry on dates between 6 and 28 July 2010 into your client's appeal against a decision of Oxfordshire County Council ('the Council') to refuse planning permission for: *the construction and operation of an energy from waste (EfW) facility together with associated office, visitor centre and bottom ash recycling facilities, new access road and weighbridge facilities and the continuation on non hazardous landfill operations and landfill gas utilisation with consequent amendments to the phasing and final restoration landform of the landfill surface water attenuation features and improvements to the existing household waste recycling facility*, in accordance with application number 08/02472/CM dated 16 October 2008.

2. On 22 January 2010, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 of, the Town and Country Planning Act 1990. The appeal was recovered because it involves proposals for development of major importance having more than local significance.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted, subject to conditions. For the reasons given below, the Secretary of

Department for Communities and Local Government
Julian Pitt, Decision Officer
Planning Central Casework Division,
1/H1, Eland House
Bressenden Place
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State agrees with the Inspector's conclusions and is minded to agree with his recommendation, subject to his consideration of the need for any additional planning conditions as set out at paragraph 27 in this letter. For the main parties, a copy of the Inspector's report (IR) is enclosed with this letter. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural Matters

4. In reaching this position, the Secretary of State has taken into account the Environmental Statement (ES), as amended by the documents listed by the Inspector at IR4.7 & 4.8, which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The Secretary of State agrees with the Inspector's assessment of the ES as set out at IR16.4-16.12 and is content that the ES complies with the above regulations, and that sufficient information has been provided for him to assess the environmental impact of the application. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

5. Since the original application for planning permission was submitted, it was amended by the documents set out by the Inspector at IR4.7. The Secretary of State considers that no prejudice has been caused to any party by this course of action and has determined the appeal on the basis of the amended application.

Matters arising after the close of the inquiry

6. Following the close of the Inquiry, the Secretary of State received the written representations listed at Annex A to this letter. Mr John's letter of 19 November (enclosed) raised matters in regard to conditions which are addressed at paragraph 27 of this letter and on which interested parties' views are sought. The Secretary of State has taken account of the other representations in his determination of this appeal but, as they did not raise any new matters that would effect his decision, he has not considered it necessary to circulate them to all parties. Copies of the correspondence can be made available upon written request to the address at the foot of the first page of this letter.

Policy considerations

7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

8. The Inspector noted that the Regional Strategy, the South East Plan (SEP) was revoked on the first day of the Inquiry (IR5.1 and 16.16) and therefore did not form part of the development plan. However, following the decision in the Courts on 10 November 2010 on *The Queen on the application of Cala Homes (South) Limited v Secretary of State for Communities and Local Government* (C/8474/2010), the SEP has been reinstated and is therefore part of the development plan. Not withstanding this, the Secretary of State has clearly stated his intention to revoke all the Regional Strategies, including the SEP, and has stated that the revocation will be enacted by way of the Localism Bill. The

Inspector did not give consideration in his report to the relevant SEP policies. However the parties' written submissions to the Inquiry were made at a time when they understood the SEP to be part of the development plan and the Secretary of State observes that the Council's sole reason to refuse the application related to countryside impacts addressed in the Cherwell Local Plan (IR1.4). As regards the issue of need, he notes that the Council and appellant were in agreement on this matter after applying the regional targets and recycling rate in the SEP (IR16.76). The Secretary of State has considered the statements on SEP policies in the Inquiry parties' written evidence. He does not consider that SEP policies raise any relevant matters not addressed in their written evidence that would require him to refer back to them for further representations prior to reaching his decision. However, his 'minded' decision pending resolution of all appropriate conditions affords the opportunity for parties to draw to the attention of the Secretary of State any SEP policy matters considered relevant to the appeal proposal and not addressed in the Inspector's report or written inquiry evidence.

9. The Secretary of State considers that the policies of the development plan most relevant to this case are those of the Oxfordshire Minerals and Waste Local Plan (OMWLP) 1996 listed at IR5.2 and those of the Cherwell Local Plan (CLP) 1996 listed at IR5.3.

10. Other material considerations which the Secretary of State has taken into account include the Waste Framework Directive referred to at IR5.6, Planning Policy Statement (PPS) 1: *Delivering Sustainable Development,* PPS5: *Planning for the Historic Environment;* PPS7: *Sustainable Development in Rural Areas;* PPS9: *Biodiversity and Geological Conservation;* PPS10: *Planning for Sustainable Waste Management;* Planning Policy Guidance note (PPG) 13: *Transport;* PPS22: *Renewable Energy;* PPS23: *Planning and Pollution Control;* PPS25: *Development and Flood Risk;* Circular 05/05: *Planning Obligations;* Circular 11/95: *The Use of Conditions in Planning Permission;* and the *Community Infrastructure Levy (CIL) Regulations,* which came into force on 6 April 2010.

11. The Secretary of State has also taken into account the draft document entitled *New Policy Document for Planning Obligations,* issued for consultation on 25 March 2010. However, as this document is still at consultation stage and may be subject to change, he affords it little weight.

12. Like the Inspector, the Secretary of State has taken into account the Non Statutory Cherwell Local Plan 2004 (IR5.4 – 5.5) as a material consideration, but for the reasons given at IR16.19 he has accorded its policies very little weight.

13. In determining the application, the Secretary of State has had regard to the impact of the proposed development on the settings of the listed buildings referred to by the Inspector at IR16.59 – 16.72. In accordance with section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, he has paid special regard to the desirability of preserving the listed buildings or their settings or any features of special architectural or historic interest which they may possess. He has also taken account of the potential impact of the proposed scheme on the Fewcott and RAF Upper Heywood Conservation Areas.

Main issues

14. The Secretary of State considers that the main issues in this case are those set out by the Inspector at IR16.12.

Prematurity

15. The Secretary of State agrees with the Inspector's reasoning and conclusions with regard to whether the proposal should be considered premature, as set out at IR16.13 – 16.15. He has taken account of the fact that the Minerals and Waste Development Framework has not yet reached a stage where it has any tangible policies or proposals (IR16.14) and that the Cherwell Local Development Framework is not yet at an advanced stage of preparation (IR16.15). Like the Inspector, he does not support any claim for prematurity in this case (IR16.15).

The Effects on Local Residents

Traffic

16. For the reasons given at IR16.20 – 16.22, the Secretary of State agrees with the Inspector that the appellant's assessment is robust and that the traffic impact resulting from the proposal would be insignificant and acceptable (IR16.22).

Air Quality

17. The Secretary of State agrees with the Inspector's reasoning and conclusions with respect to the impact of the appeal scheme on air quality, as set out at IR16.23 – 16.25. He has had regard to the fact that there are no objections on air quality, pollution or related health grounds from the Council, Cherwell District Council, Natural England, the Food Standards Agency, the Health Protection Agency or the Environment Agency (IR16.25). He agrees that the proposal's impacts on air quality and health would be insignificant and acceptable (IR16.25).

Hydrology

18. For the reasons given by the Inspector at IR16.26 – 16.27, the Secretary of State agrees that the management of runoff, controlled through an appropriate condition, would overcome this issue so as to reduce the risk of any direct significant effects to an acceptable level (IR16.27).

Other Effects

19. For the reasons given by the Inspector at IR16.28, the Secretary of State agrees that there would be no significant noise effects from the proposed development. He agrees with the Inspector that the objections referred to at IR16.29, including odour problems, vibration and impact on the site's dinosaur tracks, are unfounded.

The Impact on the Countryside

Ecology

20. The Secretary of State has had regard to the fact that Natural England has not objected to the scheme on ecological grounds. He agrees with the Inspector that there are no reasons on nature conservation grounds to dismiss the appeal and

that the proposal would not be contrary to Policies C1 and C2 of the CLP and Policy PE14 of the OMWLP (IR16.32).

Landscape character and appearance

21. The Secretary of State agrees with the Inspector's assessment at IR16.33 – 16.48. He considers that whilst the proposal would represent a large scale industrial feature in the open countryside, it would only significantly impact upon a limited area to the south and east, within about a 1.5-2km radius of the plant (IR16.42). Whilst the proposed facility would cause some harm to the character and appearance of the area overall, he agrees that the mitigating factors would help to integrate it into the landscape, rendering it acceptable (IR16.43). However, the Secretary of State agrees that the benchmark against which the impact has to be measured is a former mineral working being restored to countryside by landfill and that, consequently, the development would be sporadic in the countryside and therefore contrary to CLP Policy C8 (IR16.45). Nevertheless for the reasons the Inspector gives the Secretary of State agrees that the proposal would not conflict with CLP Policy 9 and would be compliant with PPS7 (IR16.47 – 16.47. He also agrees that other material considerations include the old age of the CLP, its predating of PPS1, PPS7 and PPS10, its lack of coverage of waste management developments and the apparent inconsistency of application by reference to the Agrivert building and the windfarm (IR16.48).

Visual impact

22. For the reasons given at IR 16.49 – 16.57, the Secretary of State agrees that there are several private and public vantage points within about 2km of the EfW building, which would be significantly affected but that the impact on views beyond this 2km distance would be insignificant. Overall therefore, he agrees that the resultant harm would not be significant (IR16.58). However, he considers that the proposal would be more acceptable in terms of visual impact if a condition on a timeframe for cessation of use of the EfW facility is imposed with the effect described in paragraph 27 of this letter.

Cultural heritage

23. The Secretary of State has had regard to the Inspector's assessment at IR16.59 – 16.72. For the reasons given he agrees that the development would meet the requirements of Policy C10 of the CLP by not having a detrimental effect on the character and appearance of the historic landscape. He further agrees that the development would also satisfy the locational criteria in Annex E of PPS10 by not creating an unduly adverse effect on the historic environment or the built heritage and that it would be in compliance with the policies within PPS5. Overall, he agrees with the Inspector that cultural heritage considerations should not be a constraint on this proposal (IR16.72).

<u>The Need for the Facility</u>

24. The Secretary of State agrees with the Inspector's reasoning and conclusions on the need for the facility, as set out at IR16.73 – 16.81. He has taken account of the fact that the Council recognised that there is an overall need for treatment capacity for Oxfordshire's municipal solid waste (MSW) and commercial and industrial (C&I) waste which exceeds the 300,000tpa capacity of the proposed EfW facility (IR16.77). He agrees with the Inspector's conclusion that the scheme would meet a significant need for a waste management facility which would

provide for dealing with all the residual MSW from Oxfordshire and a substantial proportion of the C&I waste from the county (IR16.81). He places significant weight on this consideration.

Other Benefits

25. The Secretary of State agrees with the Inspector's reasoning and conclusions on the other benefits of the appeal scheme, as set out at IR16.82 – 16.88. He has had regard to the fact that the proposed development would divert both MSW and C&I waste from their current disposal routes of landfill that have no energy recovery (IR16.82) and agrees that it would represent a positive step towards managing waste in Oxfordshire, especially as there are no other significant facilities available (IR16.83). He further agrees that the potential to have Combined Heat and Power (CHP) from the scheme does constitute a benefit albeit of limited weight, subject to the commercial considerations of supply (IR16.87). The Secretary of State considers that the electricity generated by the scheme, equivalent of about 24% of the demand from Cherwell District, is a further benefit of the scheme (IR16.88) on which he places some weight.

Conditions

26. The Secretary of State has considered the proposed conditions at Annex A of the IR, the Inspector's assessment of these at IR15.1 – 15.25 and the policy tests set out in Circular 11/95. He considers that the recommended conditions as set out in Annex B to this letter are reasonable and necessary and comply with the provisions of Circular 11/95.

27. The Secretary of State is aware of the decision of Oxfordshire County Council on 25 October 2010 to resolve to grant planning permission for a separate application for an EfW facility on the same site as the appeal scheme in accordance with application Ref MW0078/10, dated 31 March 2010 ('the application scheme'). He has also had regard to the views expressed in Mr John's letter of 19 November on behalf of the appellant about the conditions that the Council has been considering in relation to the application scheme. The Secretary of State considers that it may be reasonable and necessary to impose some further conditions on the appeal scheme in addition to those in Annex B to this letter. One of the matters on which he seeks representations is the necessity of an additional condition requiring cessation of the use of the proposed EfW facility within a fixed period of the date that the plant becomes operational, in order to ensure that the site is returned to open countryside and does not become derelict after the operational life of the plant. He also invites the parties to make representations on what other additional conditions may be appropriate were he to grant permission for the appeal scheme, and how any such additional conditions should be worded.

28. In making their representations, parties should give careful consideration to the Inspector's assessment of matters at IR15.12 – 15.16, with which the Secretary of State agrees. Representations should not reopen these matters. A statement of any proposed additional conditions jointly agreed by the Council and appellant would be welcome, together with separate representations on any matters on which they disagree.

Obligation

29. The Secretary of State has had regard to the planning obligation as executed by the applicant and made by Agreement under s106 of the Town and Country Planning Act 1990, the Community Infrastructure Levy (CIL) Regulations 2010, and Circular 05/2005. He agrees with the Inspector's assessment of the Agreement as set out at IR15.27 and is satisfied that the obligations within the Agreement comply with Circular 05/2005 and the tests set out in Regulation 122 of the CIL regulations.

Overall Conclusions

30. The Secretary of State agrees with the Inspector's assessment of the planning balance at IR16.89 – 16.93. He has identified sporadic development in the countryside and significant adverse effects to some near views from the south and east as harms that would be caused by the proposal (IR16.91) and considers that the proposal would be in conflict with CLP Policy 8 (IR16.92). Like the Inspector, he concludes that the pressing need for the waste management facility, together with the additional benefits outlined in paragraph 25 above, are material considerations of sufficient weight to overcome the conflict with CLP Policy 8 (IR16.94), subject to his further consideration of the necessity of any additional conditions.

31. Accordingly, for the reasons given above the Secretary of State is minded to agree with the Inspector's recommendation and grant planning permission for: *the construction and operation of an energy from waste (EfW) facility together with associated office, visitor centre and bottom ash recycling facilities, new access road and weighbridge facilities and the continuation on non hazardous landfill operations and landfill gas utilisation with consequent amendments to the phasing and final restoration landform of the landfill surface water attenuation features and improvements to the existing household waste recycling facility*, in accordance with application number 08/02472/CM dated 16 October 2008, subject to the conditions set out in Annex B to this letter.

32. However, the Secretary of State is unable to make a final decision until he has considered representations from the parties in regard to the matters at paragraph 27 above and also any further representations in regard to the South East Plan, as referred to at paragraph 8 above. He proposes to allow 18 working days from the date of this letter, i.e. until **14 January 2011**, for the submission of representations. He will then circulate these for any further comments before proceeding to a final decision, including whether any additional conditions would be reasonable and necessary. The Secretary of State does not regard this invitation as an opportunity to address any other issues raised during the Inquiry. Accordingly, interested parties are asked to restrict any representations to the matters set out above.

Variation of timetable

33. The Secretary of State will not now be in a position to reach a decision by the previously advised date of 14 January 2011 because of the need to allow parties time to provide this additional information. Therefore, in the exercise of the power conferred on him by paragraph 6(2) of Schedule 2 to the Planning and Compulsory Purchase Act 2004, he hereby gives notice that he has varied the

timetable previously set and he will now issue his decision on or before **17 February 2011.**

34. Copies of this letter have been sent to the Council and all parties who appeared at the Inquiry.

Yours sincerely

Julian Pitt
Authorised by Secretary of State to sign in that behalf

ANNEX A

Representations received after the close of the Inquiry

Name	Date
A Day	8 September (copy of letter sent to Environment Agency regarding the separate Environmental Consent
B Wilson	24 September
T Baldry MP	20 October
A Hickman	27 October
K Newman	27 October
B Wilson	27October
A Ashe	30 October
F Maksinski	30 October
M Lowe	1 November
A Day	5 November
Mr Woodrow	12 November
D Barnes	13 November
C McGarry	15 November
J Leport	November
C Macklin	November
J Dixon	18 November
Ian John for Viridor Waste Management Ltd	19 November (letter regarding conditions on separate planning application currently before OCC)
K Moss & S Pettit	20 November
R Powles	23 November
K Brown	24 November
J Beech	25 November
A Barkas	30 November
A Day	30 November
J Dixon	3 December
R Ansari	December
A Day	13 December

ANNEX B

APPLICATION 08/02472/CM:
Secretary of State's Proposed Planning Conditions

Note: See also paragraph 27 of this letter regarding additional conditions not listed in this Annex.

All the Site

1. The development shall be carried out strictly in accordance with the particulars of the development, plans and specifications contained in the application except as modified by conditions of this permission. The approved plans and particulars comprise: application form (undated), planning support statement, letter dated 13th November 2008 covering amendment to the application form, gas management plan, tree survey plans TS/1 and TS/2, site survey plan 2/3, section through split level CA site plan 3/17 and office elevations plan 3/18, letter dated 4th March 2009 including item 4A sewage treatment plant, item 5A HRWC plan 3/14, item 6A existing access plan 4-1 and item 7A planning support statement comments, and plans 2/1, 2/2, 3/1, 3/2, 3/3, 3/4 rev A, 3/5 rev C, 3/6 rev D, 3/7 rev D, 3/8 rev D, 3/10, 3/11, 3/12, 3/13, 3/15, 3/16, EFW-PO-09, EFW-PO-10, EFW-PO-11, EFW-PO-12, EFW-PO-13, EFW-PO-14, EFW-PO-15, EFW-PO-16, EFW-PO-17, EFW-PO-18, EFW-PO-19, EFW-PO-20 and EFW-PO-21.

2. The development hereby permitted shall be begun not later than the expiration of three years beginning with the date of this permission.

3. No more than 500 000t of waste per annum shall be imported to the site until the completion of landfilling at the site in accordance with condition 34 of this permission.

4. No more than 2 000t of waste a day shall be imported to the site until the landfilling of waste ends in accordance with condition 34 of this permission.

5. Records of the daily tonnages of waste, including separately that transferred from HWRCs in Oxfordshire, shall be taken and shall be made available for the officers of the Waste Disposal Authority to see on request.

6.No heavy goods vehicles, including those associated with construction works, shall enter or leave the site except between the following times:

0700 to 1900 on Mondays to Fridays and
0700 to 1600 on Saturdays;

No movements shall take place on Sundays or on public holidays.

7. Notwithstanding condition 6, waste may be brought to the site from Household Waste Recycling sites operated on behalf of Oxfordshire County Council during the following additional hours:

1000 to 1600 on Sundays.

8. Within one year of the date of this permission a restoration plan shall be submitted to the waste planning authority showing pre-settlement levels which shall not exceed those shown on the draft pre-settlement plan 3/19 and land restored to a combination of agricultural land and woodland together with geological exposures, facilities for protected species and ponds and wetlands associated with the energy from waste plant. Details of a scheme of landscaping shall be part of the plan and such details shall incorporate the general principles indicated in the application and shall include:

(a) the position, species and sizes of all existing trees, shrubs and hedgerows to be retained, and the proposals for their protection throughout the operations;

(b) the positions, species, density/planting distances and initial sizes of all new trees and shrubs;

(c) any hard landscaping proposed, and

(d) the design, location and elevations of the leachate treatment plant required to treat the IBA leachate following the removal of the existing plant required by Condition 39.

Any plan that is approved shall be implemented progressively in accordance with a timetable to be submitted with the plan but shall be completed by December 31 2020 with the exception of the areas where the gas flare and buildings and plant are located. Those areas shall be restored in accordance with the timetable shown on the restoration plan approved under this condition.

9. With the exception of trees to be removed to form the new access the existing trees along the boundaries of the site (as shown on approved plan 3/10) shall be retained. For a period of 20 years from the completion of restoration of the landfill any trees removed without consent, dying, being severely damaged or becoming seriously diseased as a result of operations permitted by this permission shall be replaced with trees and bushes of such size and species as may be approved by the Waste Planning Authority, in the planting season immediately following any such occurences.

10. No removal of trees or hedgerows to create the new access shall take place between 1 March and 31 July inclusive in any year.

11. All haul and access roads and storage heaps shall be sprayed with water sufficient to prevent dust or windblown material being carried onto adjoining properties during dry weather conditions.

12. With the exception of the HWRC, as shown on approved plan 3/14, no waste materials, other than those associated with the treatment process at the Energy from Waste Plant, shall be sorted or stored on site for disposal at some other location.

14. Any gate or fence destroyed or damaged during operations permitted or required by this permission shall be replaced or repaired within one month of the waste planning authority informing the operator, in writing, that any replacement or repair should take place.

15. No mud shall be deposited on the public highway.

16. No reversing bleepers or other means of audible warning of reversing vehicles shall be fixed to, or used on, any site vehicles, other than those which use white noise.

17. All vehicles, plant and machinery operated within the site shall use equipment that minimises noise output.

The EfW plant

18. Number not used – see IR15.12 - 15.15

19. No waste shall be processed at the EfW plant until construction of the new access road, shown as 'access road' on approved plan 3/6 rev C, has been completed. Thereafter no access to the EfW plant shall take place except via the new access road.

20. Prior to commissioning of the EfW plant, a Combined Heat and Power (CHP) Feasibility Review, assessing potential commercial opportunities for the use of heat from the plant, shall be submitted to and approved by the Waste Planning Authority. The Review shall provide for the ongoing monitoring and full exploration of potential commercial opportunities to use heat from the plant as part of a good quality CHP scheme (as defined in the CHPQA Standard issue 3 January 2009 which sets out the definitions,criteria and methodologies for the operation of the UKs CHP Quality Assurance (CHPQA) programme), or any superseding or amending standard, and for the provision of subsequent reviews of such commercial opportunities as necessary.

21 Prior to the first commercial use of the EfW plant shall take place until the works on the B430, including provision of signage, as shown on approved plan 3/15, have been implemented.

22. No waste shall be burnt in the EfW plant until the electric cable link from the Plant to the National Electricity Grid has been constructed and is capable of transmitting all the electrical power produced by the Plant. Thereafter, except during periods of maintenance and repair and unless required to do so by the National Grid no waste shall be processed by the plant unless power is being generated.

23. Number not used – see IR15.16 – 15.17.

24. No waste shall be burnt in the EfW plant until a plan showing the layout and operation of the Incinerator Bottom Ash Operations has been submitted and approved in writing by the waste planning authority. No incinerator ash operations shall take place except in accordance with the approved plan.

25. Development and operation of the EfW plant shall not take place except in accordance with the flood risk assessment and mitigating measures in item 13B and the site drainage plan in item 4A both as set out in the additional information in

support of the planning application and environmental statement reference 409.0036.00349 dated March and July 2009.

27. The EfW plant may operate continuously but no activities shall take place outside the building except during the hours authorised in condition 6, other than for essential maintenance and staff shift changes.

28. A scheme showing how bridleway 27 shall be accomodated back on its original definitive line in a safe manner including how it would cross the access road and bridge the attenuation pond shall be submitted to the waste planning authority not later than 31 December 2016. Any scheme that is approved shall be implemented once the approved temporary diversion ends unless bridleway 27 has been otherwise permanently diverted in accordance with any other confirmed diversion order.

29. No construction works for the new access road or for the EfW plant shall take place until a scheme for the recording of the dinosaur footprints in phases 1a,1b, 3, 3a, 3b and 5, as shown on approved plan 3/4 rev A, has been submitted to and approved by the waste planning authority. The construction works shall not then take place except in accordance with that approved scheme.

30. No fencing or other means of enclosure of the energy from waste plant shall take place except in acordance with a scheme that shall have been agreed in writing by the Waste Planning Authority.

31. Details of the location, height, design, sensors, hours of operation and luminance of external lighting for the energy from waste plant (which shall be designed to minimise the potential nuisance of light spillage on adjoining properties and highways), shall be submitted to and approved in writing by the waste planning authority before any external lighting is used on site. Any scheme that is approved shall be implemented for the life of the site.

33. Prior to commencement of building works to the EfW plant samples of all external materials shall be submitted to and agreed, in writing, by the waste planning authority. Only the agreed external materials shall be used in the building works.

The Landfill

34. By 31 December 2019 landfilling at the site shall finish and except for the infrastructure required for the management of landfill gas all associated buildings, plant and machinery shall be removed from the site.

35. Notwithstanding the previous condition, the HWRC shall be removed and the site of the facility shall be prepared for landfilling by 31 December 2018.

36. In the event of a cessation of landfill operations, for a period exceeding twelve months, at any time before the landfilling is completed, a reinstatement and restoration scheme shall be submitted in writing to the waste planning authority for approval within six months of the expiry of the twelve month period. The scheme shall provide revised details of final levels, restoration, capping, landscaping and a timescale for the implementation of the scheme and each element within it. The

approved scheme shall be implemented within twelve months of approval of the scheme.

37. Plans showing the design, elevations and location of the Leachate Treatment Plant located immediately north of the household waste recycling plant shall be submitted to the waste planning authority for approval within 6 months of the date of this permission. Any plan that is approved shall be implemented within a year of that approval.

38. The leachate treatment facility shall be used for the processing and treatment of landfill leachate which has been generated by the Ardley Fields Farm Landfill Site and for the leachate generated by the IBA facility. At no time shall any other leachate, effluent or liquor be imported to the facility for processing or treatment.

39. Following the cessation of leachate generation of the Ardley Fields Farm Landfill Site, the surrender of the Waste Management licence (or any superseding or amending licensing regime) or within six months of the leachate treatment facility failing to be operated for any twelve month period the facility shall be decommissioned and demolished and the site restored in accordance with approved plan within the following twelve months.

41. No landfill operations authorised by this permission, including vehicles entering or leaving the landfill, shall take place except between the following times:

0700 to 1800 hours on Mondays to Fridays;
0700 to 1300 hours on Saturdays;
and on 12 nominated Saturdays 13.00 hours to 16.00 hours.

No landfill operations shall take place on Sundays and Bank or Public Holidays.

42. After 31st December 2019 no access shall take place to the site except via the access road, as shown on approved plan 3/8 rev D.

43. No import of waste shall take place along the access road to the landfill, as shown on approved plan 3/8 rev D until the location and details of wheel washing equipment have been submitted to and approved by the waste planning authority. Any plans that are approved shall be implemented before any waste is transported to the landfill along the access road.

44. Landfill gas well heads and collection mains shall be located such that they do not impede drainage and cultivation of agricultural soils. The crown of pipes of these well heads shall not be within the top metre of the agricultural soils.

45. The phasing of landfilling and restoration shall take place in accordance with approved plans 3/4 rev A, 3/5 rev C and 3/6 rev D to 3/8 rev D.

46. Details of surface water drainage works for the restored site shall be submitted to the waste planning authority for approval within one year of the date of this permission. Any details that are approved shall be implemented as part of the restoration works on each phase of restoration.

47. No lighting shall be used on the landfill except that required to satisfy health and safety regulations in accordance with a scheme submitted to and approved by the waste planning authority.

48. All soil storage bunds intended to remain in situ for more than six months or over the winter period shall be grassed over with a seed mixture, and weed control and other necessary maintenance shall be carried out, in accordance with a scheme to be approved by the waste planning authority. Such scheme shall be submitted within six months of the date of this permission and any scheme that is approved shall be implemented within one month.

49. Topsoil shall be retained on site. The better quality topsoil shall be used only for the areas restored to agricultural use.

50. The depth of soils above the capping layer shall not be less than 1 metre and a soil layer of at least 1.5 metres shall be provided beneath areas where trees are to be planted.

51. Soil handling, cultivation and trafficking over the top and subsoil materials shall not take place other than in dry weather conditions and when the soils are dry and friable.

52. No imported soils or soil making materials shall be brought to the site for the purpose of restoration unless:

(a) they are stored in an area agreed in writing by the waste planning authority;
(b) they are identified by the waste planning authority in writing as suitable for use in restoration; and
(c) they are free of large solid objects greater than 15cms in diameter.

53. No materials other than inert soils and subsoils free of materials in excess of 150mm in any dimension (as they are likely to hinder the future cultivation of the site) shall be deposited on the site within the top metre of the site.

54. Imported soils, or overburden and subsoils stripped from the site shall be placed in the naturally occurring sequence and spread evenly in layers to a settled uniform depth of at least 80 cms. There shall be no stone, clinker, rubble or other waste materials over 150mm in size in any dimension within the subsoil horizon. Each layer shall be ripped to its full depth and any waste appearing on the surface shall be removed.

55. Topsoil previously stripped from the site or imported shall be spread evenly to a minimum depth of 20 cms over the reinstated subsoil so as to form the final approved contours.

56. Land for agricultural use shall then be prepared to a state suitable for seeding by grading and cultivation.

57. Notwithstanding condition 6 the Household Waste Recycling Facility shall not operate except between:

0830 to 1730 on Mondays to Fridays;
0830 to 1600 on Saturdays; and
08.30 to 1600 on Sundays.

58. An aftercare scheme outline strategy shall be submitted for the written approval of the waste planning authority within six months of the date of this permission. It shall cover the areas restored to woodland and to agriculture. With respect to agriculture the strategy shall provide for:

(a) the physical characteristics of the land to be restored, as far as it is practical to do so, to what they were when the land was last used for agriculture as would satisfy the requirements of paragraph 3(1) of Schedule 5 of the 1990 Act;

(b) aftercare phasing of land to be demarcated, identifying the start date of aftercare following restoration of each phase;

(c) a five year period of aftercare in accordance with Annex A of MPG7, specifying the steps to be taken and the period during which they are to be taken, and who will be responsible for taking those steps. The scheme shall include provision of a field drainage system and provide for an annual meeting with the waste planning authority; and

(d) a detailed annual programme, in accordance with Annex A of MPG7 to be submitted to the waste planning authority.

With respect to woodland the strategy shall provide for

(e) an annual assessment of tree losses, during the establishment period and arrangements for replacements to be provided;

(f) continuing and effective weed control, throughout the establishment period, management and removal of tree shelters, stakes, tree ties and fencing, all in accordance with current best practice;

(g) ongoing protection measures from deer, rabbits, hares, grey squirrel populations, insects and other pest species; and

(h) a programme for thinning the woodland, as may be necessary to ensure that it develops in a way that the objectives of planting will be realised.

Any scheme that is agreed shall be implemented within the period agreed in the scheme.

59. Before the end of one year from the date of this permission, and every subsequent year during the aftercare period, the landfill operator shall provide the waste planning authority with a detailed annual programme for the written approval of the waste planning authority including:

(a) proposals for managing the land in accordance with the rules of good

husbandry including planting, cultivating, seeding, fertilising, draining, watering or otherwise treating the land for the forthcoming 12 months; and

(b) a record of aftercare operations carried out on the land during the previous 12 months.

60. The storage of any skips on the land shall only be incidental to the use of the HWRC and shall be confined to an area as shown on approved plan 3/14.

61. No development shall take place until a local liaison panel has been established in accordance with details to be submitted to and approved in writing by the waste planning authority. The details shall include terms of reference and frequency of meetings of the panel. The panel shall meet in accordance with the approved details.

62. If for any reason other than for extended maintenance or repair, the EfW facility ceases to be used for a period of more than 36 months, a scheme for the demolition and removal of the building and the related infrastructure (which shall include all buildings, structures, plant, equipment, areas of hardstanding and access roads) shall be submitted for approval in writing to the Council. Such a scheme shall include:

(i) details of all structures and buildings which are to be demolished;

(ii) details of the means of removal of materials resulting from the demolition and methods for the control of dust and noise ;

(iii) timing and phasing of the demolition and removal;

(iv) details of the restoration works; and

(v) the phasing of restoration works.

The demolition and removal of the building and the related infrastructure and subsequent restoration of the site shall thereafter be implemented in accordance with the approved scheme.

Viridor

Viridor Waste Management Limited

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Tel: 01823 728800 Fax: 01823 728839

Government Office for the South East
Sustainable Communities, Hampshire & Isle of Wight Directorate
Planning Casework (Oxfordshire)
Bridge House
1 Walnut Tree Close
Guildford
GU1 4GA

19 November 2010

Dear Ms Susan Barnes,

Your ref: GOSE/103/OXON/66386

Town and Country Planning (Development Management Procedure) Order 2010.

Proposed Energy from Waste Facility at Ardley Landfill Site, Ardley, Oxfordshire, Application No: MW0078/10 10/00849/CM

I refer to your letter dated 5th November 2010 to Mr Tugwell of Oxfordshire County Council directing the same Council not to grant planning permission for the development detailed above. I write on behalf of the applicant, Viridor Waste Management Ltd.

Whilst I was naturally disappointed with the content of your letter given the time and effort to get to this point in the application process, I accept that the matter is not straight forward given the fact that the decision on the Company's recent appeal on a similar proposal remains outstanding. I hope that a decision on whether or not to call in the current application and a decision on the appeal is forthcoming by the 15th December.

I understand that you have been in contact with Oxfordshire County Council (Oxfordshire CC) and that you have been provided with all the relevant documentation relating to the planning application including the recent Committee decision. As you will be aware from the Committee report and resulting decision, the detailed wording of the planning conditions is delegated to the relevant Planning Officers. As with all development proposals the wording of the conditions and their requirements can have a significant impact both on the way a facility can be operated and also on the viability of a project as a whole. The Company's proposals at Ardley are no exception to this.

I have now received the latest draft of the intended planning conditions from Oxfordshire CC and with one exception they generally appear to balance the

Council's need to protect the amenities of the local population against the Company's operational requirements. Although the Company consider that the conditions in respect of operating hours are overly restrictive the flexibility that has been built into them is welcomed. The one exception referred to above concerns the condition that places a restriction on the geographical area from where the energy from waste plant can source its fuel (the waste material). During consideration of both of the Company's planning applications and at the Inquiry into the recent appeal Oxfordshire CC have proposed different geographical restrictions and have failed to provide a consistent reasoned planning argument to justify the restrictions that they have looked to apply.

As a point of principle the Company is opposed to any geographical restriction as is tends to distort the waste market whilst also acting as a restriction of trade. In respect of the restriction that Oxfordshire CC were promoting at the recent inquiry into the appeal the Company's objections were supported by recent Secretary of State decisions in respect of similar energy from waste facilities proposed at Ince Marshes in Cheshire and Eastcroft in Nottingham.

In respect of the most recent planning application subject to the Article 25 notice, when taking account of the proximity of certain areas to the site, the geographical restriction that Oxfordshire CC is promoting appears perverse. For example, there seems to be little logic in prohibiting the acceptance of waste from Luton and Central Bedfordshire when parts of these areas are as close to the site (or as in some cases closer to the site) than parts of Oxfordshire. The likely effect will be that those excluded areas that could have benefitted from the plant will also have to continue relying on landfill as their primary method of waste management, contrary to the waste hierarchy. Furthermore the opportunity to recover value from these materials in the form of electricity will have been lost.

I should be grateful if you would take into account the concerns outlined above in any decision that you make. Should you require any clarification on any of the matters covered above or in relation to the Company's proposals for Ardley, please do not hesitate in contacting me.

Given that any further developments are likely to have significant implications for Viridor, I should be grateful if you would copy me in on any future correspondence with Oxfordshire County Council.

Yours Sincerely

Ian John BSc (Hons) MA, MRTPI
Planning Manager

Report to the Secretary of State for Communities and Local Government

by A Mead BSc (Hons) MRTPI MIQ

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

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ GTN 1371 8000

Date

Ardley Landfill Site, Ardley Fields Farm, Ardley

Oxfordshire County Council

Town and Country Planning Act 1990

Appeal by Viridor Waste Management Ltd

Proposed construction and operation of an Energy from Waste (EfW) facility

Inquiry held between 6 - 28 July 2010

Ardley Landfill Site, Ardley Fields Farm, Ardley, Oxfordshire

File Ref: APP/U3100/A/09/2119454

CONTENTS

ABBREVIATIONS

§	paragraph
AAIG	Ardley Against Incinerator Group
AHLV	Area of High Landscape Value
AOD	Above Ordnance Datum
AONB	Area of Outstanding Natural Beauty
APC	Air Pollution Control
APCR	Air Pollution Control Residues
App	Appendix
AQMA	Air Quality Management Area
AQMAU	Air Quality Monitoring and Assessment Unit
AQO	Air Quality Objectives
ASA	Alternative Site Assessment
ATA	Alternative Technology Assessment
ATT	Advanced Thermal Treatment
AwFPC	Ardley-with-Fewcott Parish Council
BAP	Biodiversity Action Plan
BAT	Best Available Techniques
BPC	Bucknell Parish Council
C&I	Commercial & Industrial
CA	Conservation Area
CCGT	Combined Cycle Gas Turbine
CDC	Cherwell District Council
CEMS	Continuous Emission Monitoring
CHP	Combined Heat and Power
CLP	Cherwell Local Plan
CO_2	Carbon Dioxide
COPD	Chronic obstructive primary disorder
CWS	County Wildlife Site
DCLG	Department for Communities and Local Government
DD	The EA's draft decision document issued to support its provisional decision to grant an EP
DEFRA	Department for Environment, Food and Rural Affairs
DfT	Department of Transport
DMRD	Design Manual for Roads and Bridges
DP	Development Plan
DPD	Development Plan Document
DTI	Department of Trade and Industry
DTM	Digital Terrain Model
EA	Environment Agency
EfW	Energy from Waste
EH	English Heritage
EHO	Environmental Health Officer
EIA	Environmental Impact Assessment
EiC	Examination in chief
EiP	Examination in Public
EP	Environmental Permit
EPR	Environmental Permitting Regulations
ES	Environmental Statement
FC	Forestry Commission
FRA	Flood Risk Assessment
FSA	Food Standards Agency
GB	Green Belt
HA	Highways Agency
ha	hectare
HIA	Health Impact Assessment
HPA	Health Protection Agency

HSE	Health & Safety Executive
HWRC	Household Waste Recycling Centre
IBA	Incinerator Bottom Ash
LA	Local Authority
LATS	Landfill Allowance Trading Scheme
LB	Listed Building
LD	Landfill Directive
LDD	Local Development Document
LDF	Local Development Framework
LDU	Landscape Description Unit
LNR	Local Nature Reserve
MBT	Mechanical Biological Treatment
MoD	Ministry of Defence
MRF	Materials Recycling Facility
MSPC	Middleton Stoney Parish Council
MSW	Municipal Solid Waste
mt	million tonnes
MW	Megawatt
NCV	Net Calorific Value
NE	Natural England
NLUD	National Land Use Database
NO_2	Nitrogen Dioxide
NO_x	Nitrogen Oxides
NPS	National Policy Statement
NSCLP	Non statutory Cherwell Local Plan
OCC	Oxfordshire County Council
OJMWMS	Oxfordshire Joint Municipal Waste Strategy
OMWLP	Oxfordshire Minerals and Waste Local Plan
OWLS	Oxfordshire Wildlife and Landscape Study
p	Page
PCB	Polychlorinated biphenyls
PCU	Passenger car unit
PDL	previously developed land
PEC	Predicted Environmental Concentration
POE	Proof of Evidence
PPS	Planning Policy Guidance
PRoW	Public Right of Way
RCV	Refuse Collection Vehicle
RO	Renewables Obligation
ROC	Renewable Obligations Certificate
RSS	Regional Spatial Strategy
RX	Re-examination
SAC	Special Area of Conservation
SEP	South East Plan
SLA	Special Landscape Area
SM	Scheduled Ancient Monument
SoCG	Statement of Common Ground
SRF	Solid Recovered Fuel
SSSI	Site of Special Scientific Interest
SWMP	Surface Water Management Plan
t	tonnes
TA	Transport Assessment
tpa	tonnes per annum
TPE	Tusmore Park Estate
VOC	Volatile Organic Compounds
WCA	Waste Collection Authority
WDA	Waste Disposal Authority
WFD	Waste Framework Directive

WID	Waste Incineration Directive
WRATE	Waste and Resource Assessment Tool for Environment
WS	Waste Strategy for England
WTA	Water Treatment Area
XX	Cross examination
ZEP	Zero emissions waste process
ZTV	Zone of Theoretical Visibility

File Ref: APP/U3100/A/09/2119454
Ardley Landfill Site, Ardley Fields Farm, Ardley, Oxfordshire

- 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 Viridor Waste Management Ltd against the decision of Oxfordshire County Council.
- The application Ref 08/02472/CM, dated 16 October 2008, was refused by notice dated 26 October 2009.
- The development proposed is the construction and operation of an energy from waste (EfW) facility together with associated office, visitor centre and bottom ash recycling facilities, new access road and weighbridge facilities and the continuation of non hazardous landfill operations and landfill gas utilisation with consequent amendments to the phasing and final restoration landform of the landfill surface water attenuation features and improvements to the existing household waste recycling facility.

Summary of Recommendation: Allow subject to conditions in Annex A.

1.0 Procedural Matters

1.1 The inquiry opened on 6 July 2010 and sat for 13 days before closing on 28 July. I was assisted during the inquiry and in the completion of the report by a colleague Inspector, Miss E Ord LLB(Hons) LLM MA DipTUS who supports my conclusions and recommendation.

1.2 The immediate surroundings of the appeal site, viewpoints of the site from the nearby countryside and villages in the area were visited unaccompanied before and during the inquiry. Accompanied site inspections of the appeal site and various viewpoints took place on 27 July. An accompanied site visit was also made to the Lakeside Energy from Waste (EfW) plant at Colnbrook near Slough on 26 July. The accompanied site visits were in the company of representatives of the appellant and one or more of Oxfordshire County Council (OCC), Cherwell District Council (CDC) and other Rule 6 parties.

1.3 The appeal was recovered by means of a Direction dated 22 January 2010. The reason given for the Direction was that the appeal involves proposals for development of major importance having more than local significance.

1.4 OCC refused the application for one reason:

"The development proposed would represent a large permanent building in the countryside which is contrary to Policies C7, C8 and C9 of the Cherwell Local Plan and policies EN80, EN31, EN34 and D10a of the Non Statutory Cherwell Local Plan. The Council as Planning Authority is not persuaded that the need for a facility on this scale to divert waste from landfill is sufficient to outweigh the effects of the proposal on the countryside in this locality."

1.5 Proofs of evidence are listed as documents of the inquiry; these may not represent the final position of the parties due to cross examination (XX). The opening and closing submissions of the main parties are also listed as documents.

1.6 A Statement of Common Ground (SoCG) between the OCC and the appellant was submitted at the inquiry[1].

1.7 The report contains a description of the appeal site and its surroundings, the gist of the evidence submitted at the inquiry and the written representations, my conclusions and recommendation.

2.0 The Site and Surroundings

2.1 The 95ha appeal site is located south west of the village of Ardley with access being gained from the B430, which leads north to Junction 10 of the M40 and south to the A34 towards Oxford. It includes the entire existing Ardley Waste Management site, which has planning permission to be developed as a landfill. It is a former mineral working where limestone was extracted.

2.2 The site is located in the countryside, west of the M40. The Banbury to High Wycombe railway line and Gagle Brook form the northern and eastern boundaries of the wider landfill site respectively. The western site boundary is the B430.

2.3 The nearest settlement is Ardley village, approximately 1.0km north of the site boundary. The village of Middleton Stoney is located 1.7km to the south of the site boundary and Bucknell, 1.5km to the east of the site boundary. The settlement of Upper Heyford is located 2.3km to the west of the site boundary, adjacent to the former airfield. All these distances are straight line measurements to the centre of the respective settlement. The locations of the nearby villages, the site of the recently permitted wind turbines and the Agrivert composting building in relation to the appeal site are shown on plan MJ/11 “Existing Context” within MJ/3 Drawings.

2.4 The southern boundary of the site is a public bridleway which has been temporarily diverted for the life of the landfill permission from its permanent route across the appeal site. The appellant proposes to seek the permanent diversion of this southern bridleway. To the south of the bridleway is an active mineral extraction site where operations commenced in 2009. A bridleway also runs along the eastern boundary of the site and is not affected by the proposed development.

2.5 The site is not covered by any statutory landscape or heritage designations. A small part of the Ardley Cutting and Quarry Site of Special Scientific Interest (SSSI) extends into the site as does the Ardley Trackways SSSI designated in January 2010.

3.0 Planning History

3.1 The planning history of the appeal site is set out in the SoCG [2]. There is an old mineral permission which was reviewed in June 2000. The other details of the planning history refer to the landfill operation. The current proposal would replace the existing planning permission for landfill granted in 2003, all the remaining planning permissions would be unaffected.

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[1] CD1/16
[2] CD1/16: Table 4.1

4.0 The Proposed Development

4.1 The proposed EfW plant would be located in the south eastern corner of the appeal site, which is within the approved landfill area. The existing landfill site would be re-phased around the EfW site whilst the existing civic amenity site in the north of the appeal site would be slightly extended to incorporate improvements. The existing gas utilisation plant would be retained unchanged.

4.2 In the event of the proposed development not proceeding the appeal site would continue to be developed as a landfill in accordance with its existing planning permission.

4.3 The planning application was submitted to OCC on 16 October 2008, and comprised:- Vol 1 - Planning Supporting Statement; Vol 2 - Associated Drawings.

4.4 The application was supported by the following volumes:- Vol 3 - Environmental Statement (ES) and Non Technical Summary; Volume 4 - Appendices to the ES. The drawings submitted with the original application were contained in Vol 2: Associated Drawings.

4.5 The plans comprising the application drawings (dated October 2008) were:

DWG 2/1	Site Location Plan
DWG 2/2	Planning Application Boundary
DWG 2/3	Site Survey
DWG 3/1	Existing Phasing Plan
DWG 3/2	Existing Restoration Plan
DWG 3/3	Existing Household Waste Recycling Centre (HWRC) Plan
DWG 3/4*	Proposed Phasing Plan
DWG 3/5*	Proposed Phasing Plan - Phase 1 2009
DWG 3/6*	Proposed Phasing Plan - Phase 2 2012
DWG 3/7*	Proposed Phasing Plan - Phase 3 2014
DWG 3/8*	Proposed Phasing Plan - Phase 4 2016
DWG 3/9*	Proposed Phasing Plan - Phase 5 2018
DWG 3/10	Landscape Proposals
DWG 3/11	Detailed Landscape Proposals
DWG 3/12	Planting Plan
DWG 3/13	Landscape sections
DWG 3/14	Proposed HWRC Plan
DWG 3/15	Proposed New Access Plan
DWG 3/16	Gas Utilisation Plant

EfW Drawings:

DWG EFW-PO-09	Site Plan - General Arrangement Plan
DWG EFW-PO-10	Site Plan - Roof Plan
DWG EFW-PO-11	Ground Floor Plan
DWG EFW-PO-12	Upper Floor Plan
DWG EFW-PO-13	Roof Plan
DWG EFW-PO-14	Offices and Visitor Centre Floor Plans

DWG EFW-PO-15	Longitudinal Section
DWG EFW-PO-16	Cross Section
DWG EFW-PO-17	West Elevation
DWG EFW-PO-18	East Elevation
DWG EFW-PO-19	South Elevation
DWG EFW-PO-20	North Elevation
DWG EFW-PO-21	Gatehouse Detail
* superseded by revised phasing plans (dated February 2010) as follows:	
DWG 3/4	Proposed Phasing Plan
DWG 3/5	Existing Situation Stage 1
DWG 3/6	Proposed Phasing Stage 2
DWG 3/7	Proposed Phasing Stage 3
DWG 3/8	Proposed Phasing Stage 4

4.6 The following documents were submitted with a letter dated 13 November 2008: Foul sewage assessment; Utilities statement; Tree/hedgerow survey; Pre-settlement restoration plan; Gas management plan; Confirmation of agricultural holdings certificate; Confirmation of features of geological importance; Additional plans for the HWRC, 3/17 and 3/18.

4.7 The following documents were submitted with a letter dated 4 March 2009:

Amendments to the planning application:-

Item 1A	rights of way improvements
Item 2A	additional highways information
Item 3A	amended hours of operation
Item 4A	proposed sewage treatment package plant
Item 5A	additional information on landfill and HWRC operations
Item 6A	plan confirming retention of existing site access to serve gas and leachate plant
Item 7A	clarification of relevant planning policies

Amendments to the ES:-

Item 8B	confirmation on planning history
Item 9B	additional air quality information
Item 10B	additional alternative site assessment information
Item 11B	reptile mitigation strategy
Item 12B	additional ecology information
Item 13B	additional flood risk information
Item 14B	additional information on air quality, odour and litter impacts from landfill
Item 15B	additional explanation of alternative technology review
Item 16B	clarification of cumulative noise impacts
Item 17B	clarification on planning policy

4.8 The following documents were submitted as an amendment to the ES in an email dated 22 July 2009: Post Application response: Hydrology and Hydrogeology, July 2009; Costs of Transportation of Wastes; Consultation Responses to the Environment Agency (EA) and to AwFPC.

The Proposal

4.9 The proposed development comprises a comprehensive scheme to provide an EfW facility capable of dealing with 300,000 tonnes (t) of residual municipal, commercial and industrial waste per annum. For the purposes of description and subsequent environmental assessment the proposed development can be considered under the following four main headings:

- EfW facility and incinerator bottom ash facility;
- Revisions to final landfill and restoration landform;
- Improvements to the HWRC;
- Ancillary proposals.

EfW facility

4.10 The floor level of the proposed EfW would be located close to the base of the mineral workings in the south eastern corner of the application site at 100m above Ordnance Datum (AOD) to maximise the benefits of screening provided by the existing mineral void and landfill. The base level of the waste bunker would be set at -12.5m below base at 87.5m AOD.

4.11 The overall size of the facility would be 229m long, varying from 70m to 38m wide and from 70m to 29m in height to the apex of the main roof and 36m to the apex of the fin and a base platform level set at 100m above Ordnance Datum (AOD). The chimney stack would be 82m above base level at 182m AOD.

4.12 The main features of the EfW facility would include:

- A Waste Reception Hall with bunker, shredder and a waste feed system;
- Boiler hall with grate, combustion chamber and a heat recovery boiler;
- Turbine hall with steam turbine for generating electricity;
- Flue gas treatment hall with equipment to clean combustion gases;
- Facility for discharging and loading Air Pollution Control (APC) residue silos and other ancillary equipment;
- Twin chimney stack to discharge the treated flue gases into the atmosphere;
- An air cooled condenser for cooling and recycling steam from the generating process.

Incinerator Bottom Ash Facility (IBA)

4.13 The IBA facility would allow for the pre-treatment storage, treatment, long term storage and sealed loading of the anticipated 75,000 tonnes per annum (tpa) of IBA produced by the EfW facility. The recycled IBA would be exported for use as secondary aggregate in the construction industry.

Revisions to final landfill and restoration landform

4.14 The existing landfill at Ardley currently accepts in the region of 300,000tpa of MSW and C&I waste (50,000t of MSW and 250,000t of C&I waste).

4.15 Permitted voidspace at Ardley is estimated at 2.65 million tonnes (mt) and with existing levels of infill it is anticipated that the currently approved landform would be completed by 2016.

4.16 As part of the proposed development, the approved landfill contours would be re-modelled to recover voidspace lost to the EfW facility, and to provide additional screening from the north. The revised phasing plan for the landfill identifies that there would be a loss of approximately 600,000t of void space as a result of the EfW facility.

4.17 The main aim of the restoration scheme is to produce final and interim landforms/land uses which maintain and enhance the landscape character and ecological value of the site, while mitigating the proposed EfW development.

4.18 The purpose of the landscape proposals is to ensure that the EfW is successfully integrated into the surrounding landfill restoration and landscape character of the area, while providing a setting and complimentary design form to the built development.

Improvements to the HWRC

4.19 The existing HWRC operates a split level site with five skip bays at the lower operational area of the site and nine parking spaces on the upper public area. As a result of the space to be created by re-locating the landfill offices and weighbridge to the proposed new southern access, it is proposed to extend the HWRC to provide a further four skip bays and six additional parking spaces.

4.20 The extended, more efficient layout of the HWRC would provide a better service to the public and enable higher rates of waste recycling and recovery to be achieved.

Ancillary buildings and facilities

4.21 A range of buildings and offices would be required on site to accommodate staff, visitors and host ancillary facilities such as storage, control rooms and workshops.

4.22 The visitor centre would enable community participation and the encouragement of recycling and waste reduction in the county.

4.23 A new double weighbridge with gatehouse would be provided at the new entrance to the EfW facility. New offices and weighbridge for the landfill operations would also be provided.

4.24 A new access road located off the B430 is proposed to ensure the increase in traffic movements is appropriately facilitated. The access would incorporate a ghost right turn lane and would be used to service the EfW facility and landfill only. The proposed access would be located in the south west corner of the site. The access road would follow the southern boundary of the site all the way down to the south eastern corner where the EfW facility would be located. The proposed access has been designed to comply with guidelines pertaining to visibility at the junction. The existing site access to the north will be retained to provide access to the HWRC.

Hours of Operation (Also see later discussion of planning conditions)

4.25 The proposed EfW facility would operate over 24 hours.

4.26 The hours of operation of the landfill will remain as permitted, as follows:

- 0700 to 1800 Monday to Friday
- 0700 to 1300 Saturdays
- Specific exceptions for receiving waste from the HWRC site

4.27 The hours of operation of the HWRC will also remain as currently permitted, which are:

- 0830 to 1730 Monday to Friday
- 0830 to 1600 Saturdays
- 1000 to 1600 Sundays

5.0 Planning Policies

The Development Plan

5.1 OCC and the appellant agree that the Development Plan (DP) for the area so far as is material to the appeal consists of the saved policies of the Oxfordshire Minerals and Waste Local Plan (OMWLP) 1996 [3] and the Cherwell Local Plan (CLP) 1996 [4]. Reference was made to the policies below. The South East Plan (SEP) 2009 was revoked during the inquiry[5].

5.2 The OMWLP includes Policies W2, W5, W7, PE11, PE12, PE13, PE14 and PE18. Policy W2 states that provision will be made to accept waste from London and other parts of the South East for treatment and/or disposal within Oxfordshire,

[3] CD3/1
[4] CD3/2
[5] The SEP 2009 was also part of the development plan when the inquiry opened on 6 July 2010. However, later that same day, the Secretary of State announced the revocation of Regional Strategies with immediate effect.

provided that the treatment or disposal is consistent with regional, structure and local plan policies. Policy W5 seeks proper screening of plant, etc from the surrounding countryside. Policy W7 sets out development control criteria for landfill development. Policies PE11 and PE12 consider diversions of public rights of way (PRoWs). Policy PE13 deals with restoration. Policy PE14 aims to safeguard sites of nature conservation interest. Policy PE18 provides for a Code of Practice, regulation by planning conditions and the seeking of planning obligations were appropriate.

5.3 The CLP includes Policies C1, C2, C7, C8, C9, CIO, ENV1, ENV7, ENV12 and TR7. Policy C1 aims to promote and protect nature conservation interests. Policy C2 seeks to avoid harm to protected species. Policy C7 gives protection to the topography and character of the landscape. Policy C8 aims to resist sporadic development in the open countryside and Policy C9 seeks to resist development of a type, size or scale which would be incompatible with a rural location. Policy C10 aims to protect the character, appearance and settings of historic landscapes, parks and gardens. Policy ENV1 seeks to avoid harm that new development would cause due to noise, vibration, smell, smoke, fumes or other types of environmental pollution. ENV7 seeks to protect waste quality. Policy ENV12 considers development on contaminated land and Policy TR7 seeks to protect minor roads from large commercial vehicles or large numbers of cars.

Other Planning Policies

5.4 In addition, the Non Statutory Cherwell Local Plan (NSCLP) 2004 is a material consideration and Policies R4, TR1, TR3, TR4, TR5, TR8, TR11, TR16, EN1, EN2, EN3, EN5, EN6, EN11, EN12, EN13, EN14, EN15, EN16, EN17, EN20, EN21, EN22, EN24, EN25, EN27, EN30, EN31, EN34, EN35, EN36, EN39, D4 and D10a were listed in the SoCG.[6]

5.5 The policies aim to safeguard the interests of PRoWs, transport and safety on highways, the impact of development on the environment, the protection of various elements of the environment from unacceptable adverse effects from development, including renewable energy schemes, nature conservation, the landscape, listed buildings and conservation areas (CAs). High quality architecture is sought and tall buildings only approved in certain circumstances.

European and National Guidance

5.6 The following advice guidance was also brought to the attention of the inquiry. Waste Framework Directive (WFD) 2006/12/EC; WFD 2008/98/EC; PPS1 *Delivering Sustainable Development;* PPS1 *Supplement on Climate Change;* PPS1 *Supplement on Eco Towns;* PPS5 *Planning and the Historic Environment;* PPS7 *Sustainable Development in Rural Areas;* PPS9 *Biodiversity and Geological Conservation;* PPS10 *Planning for Sustainable Waste Management;* PPG13 *Transport;* PPS22 *Renewable Energy;* PPS23 *Planning and Pollution Control;* PPG24 *Noise,* and PPS25 *Development and Flood Risk.*

[6] CD3/3

6.0 SoCG and Other Agreed Facts

6.1 A SoCG was agreed prior to the inquiry between the appellant and OCC. Amendments were made during the inquiry[7].

6.2 OCC has reviewed and had no objections in relation to various issues as described below.

The Transport Assessment (TA) (insofar as it does not relate to hours of operation of HGVs).

6.3 The new access has been designed to accord with all relevant guidelines and has been independently assessed. The pattern of accidents on the highway was assessed and it was concluded that the proposed development was acceptable from a highway safety perspective. The impact of development traffic on the operation of the highway network was modelled and the proposed development would not have a bearing on the capacity of the B430, particularly at peak times. Traffic levels during construction would not exceed those for the operational phase subject to mitigation measures including a travel plan.

The Air Quality Assessment

6.4 Assessments of pollutants from vehicles, pollutants from the chimney, dust and litter emissions during construction and operational phases and odours and bio aerosols all related to the Appeal Scheme were found to be negligible.

The Human Health Assessment

6.5 Modelling of the predicted impacts on air quality of emissions from the stack has shown that short and long term ground level 'process contributions' are small or very small (<5% of the applied standard) of all pollutants. The short and long term impacts of 'predicted environmental concentrations' are classed as negligible for all pollutants, and existing background dominates total deposition of these pollutants.

The Noise Assessment

6.6 An assessment was carried out on existing noise and the construction and operational phases for the proposed EfW. Noise levels during the construction phase for the four nearest houses were the same or only just above the ambient noise levels of those properties. Predicted noise levels during the operational phases are well below background noise levels. No noise increase from traffic and from the cumulative effect with other developments was established. Assessments of noise from the landfill operations showed no or minor impact over background levels from the four properties.

The Hydrology, Hydrogeology and Flood Risk Assessment (FRA)

6.7 The EA was concerned about the risks to the water environment from the development and objected initially. Following discussions with the appellant and further work on the ES, the EA's objections were removed subject to conditions related to storage and disposal of surface water in order to reduce

[7] CD1/16

flooding impact and a groundwater and surface water drainage scheme. The conditions are aimed at protecting the landfill cells, preventing flooding of the EfW Plant site and controlling water flow to ensure there would be no pollution of or flooding of the adjacent Gagle Brook.

The Ecology Assessment

6.8 Air pollution modelling was carried out in relation to the stack emissions. The modelling indicates that levels of pollutants from the stack would be very low and are unlikely to significantly affect the integrity of any SSSI in the vicinity of the appeal site.

6.9 Natural England's (NE) consultation response was as follows: A long term plan for amphibians at the appeal site has been made and approved by NE. A visit to the appeal site with the appellant's ecologist confirmed that the reptile receptor areas have previously had no population of reptiles but had had habitat enhancement works done to make them suitable for reptiles. New areas are being created for reptiles as the current areas are anticipated to reach carrying capacity. A good population of reptiles is now living in the 'habitat enhanced' receptor areas. Receptor areas are close to the Gagle Brook to create linkage to a future wildlife corridor down the eastern side of the site. The part of the site for the location of the EfW Plant has already been cleared of amphibians and reptiles under the existing landfill permission requirements. NE is satisfied with the mitigation measures for reptiles. There are no objections.

The Cultural Heritage Assessment (save in so far as it comments on Landscape impact issues).

6.10 The County Archaeological Services' consultation response in relation to archaeology was as follows: Current proposals will not affect any archaeological sites as these have already been recorded and excavated and will not affect the setting of other sites.

The Alternative Technology Assessment (ATA)

6.11 The applicant utilised the EA's life cycle assessment scheme 'Waste and Resource Assessment Tool for Environment (WRATE)' to show how different methods of processing 300,000t of municipal solid waste compared. The comparison was of six indicators relating to mineral and fossil fuel depletion, global warming potential, human toxicity, toxicity towards eco systems, acidification and eutrophication (excessive growth of algae reducing oxygen in water). Each method was scored against the indicator and indicators valued against each other to give a total performance score. The applicant states that EfW scores best on resource depletion, global warming and toxicity towards eco systems whereas Advanced Thermal Treatment (ATT) scores highest on eutrophication and close to highest on resource depletion and human toxicity. The assessment concludes that ATT is not a financially viable solution for treatment of MSW waste and there are no operational plants in the UK.

6.12 It was agreed that there are no objections from those statutory consultees with relevant responsibilities on matters such as flooding, health, pollution and transport grounds as long as appropriate measures are included by conditions and agreement. Ecological, geological and PRoW matters can also be satisfactorily dealt with by conditions and agreement.

6.13 It was agreed that the ERM report on Site Selection for Strategic Waste Management Facilities commissioned by OCC concluded that there were 8 sites (including the appeal site) which offered potential for the development of a strategic waste management facility, but that OCC had not endorsed the conclusions of the ERM report.

Need

6.14 During the inquiry and following the cases presented by the appellant and OCC on need, including XX, I invited the preparation of a note by the main parties setting out an agreed position[8].

6.15 The following points were agreed between the appellant and OCC:

(i) that there is no operational or permitted MSW/C&I waste recovery capacity in Oxfordshire (other than for anaerobic digestion); and

(ii) that the figures set out in the Need Statement in Appendix (App) 2 of the SoCG represent the latest estimates of MSW/C&I waste arisings in Oxfordshire (Table 1A), the amount of residual waste that will have to be treated if the SEP recycling/composting target is to be met and the maximum landfill allowed by the SEP diversion targets takes place (Table A.3), and the maximum quantities of MSW/C&I waste available for recovery in Oxfordshire (Table A.2).

6.16 Table A1: Oxfordshire MSW and C&I waste to be managed to 2010 to 2025 (tpa)

	2010	2015	2020	2025
MSW	318,600	335,600	348,400	362,500
C&I	625,000	644,900	665,500	686,700
Total	943,600	980,500	1,013,900	1,049,200

6.17 Table A2: Oxfordshire residual waste available for treatment (tpa)

	2010	2015	2020	2025
MSW	144,000	133,200	135,800	142,200
C&I	296,900	275,700	252,900	228,300
Total	440,900	408,900	388,700	370,500

[8] APP/08.

6.18 Table A3: Oxfordshire minimum waste to be treated to meet former South East Plan recycling/composting and landfill diversion targets (tpa)

	2010	2015	2020	2025
MSW	38,200	80,500	97,600	87,000
C&I	93,800	129,000	139,800	130,500
Total	132,000	209,000	237,400	217,500

Issues in Dispute

6.19 The issues in dispute between the appellant and OCC included the following:

(i) the comparative weight that should be attached to general landscape and countryside policies in the CLP and the NSCLP and the waste management policies in PPS10;

(ii) the degree of harm the scheme may cause to the interests identified in CLP Policies C7, C8 and C9 and NSCLP Policies EN30, EN31, EN34 and D10a and whether the identified need for residual waste treatment capacity and/or the national need for new energy capacity outweighs the harm;

(iii) whether the source of waste to the proposed EfW facility should be restricted so as to limit the importation of waste from outside Oxfordshire;

(iv) whether the waste to be treated in the proposed EfW facility should be restricted to residual waste; and

(v) the proposed hours of waste deliveries to the EfW facility.

7.0 The Case for Viridor Waste Management Ltd

Technical issues

7.1 The proposal would comprise two independent combustion streams, comprising the following technical elements:

(i) A reciprocating grate to combust the waste[9];

(ii) A secondary combustion chamber, in which the gases from the combustion of waste on the grate would be fully combusted and raised to a temperature of at least 850°C for at least two seconds;

(iii) A heat recovery boiler, integrated with the combustion chamber, in which the heat from the combustion of waste is used to generate superheated steam[10]; and

[9] SO/1 §§3.8 - 3.18.
[10] SO/1 §§3.20 - 3.34.

(iv) A flue gas treatment system, including the addition of lime to remove acidic gases, the addition of activated carbon to remove dioxins, furans and heavy metals, and a baghouse filter to provide a reaction surface for the lime and to remove dust[11].

7.2 The steam generated from the two streams would be combined and supplied to a single steam turbine and generator, to convert the energy in the steam into electricity. The low pressure steam from the end of the turbine would be condensed in an air-cooled condenser and the condensed water would be returned to the boilers[12].

7.3 The plant would be equipped with an advanced Continuous Emission Monitoring System (CEMS) for each stream which would continuously display and record the concentration of the parameters which are required to be continuously monitored in the Environmental Permit (EP)[13].

7.4 The CEMS would be controlled by a computer system which would analyse and store the emission data and would enable the data to be reproduced and analysed in accordance with the reporting requirements contained in the EP. The EA, as the regulator, would have access to this data at any time.

7.5 The residue from the baghouse filter (APC Residues) would be taken by road-tanker to landfill sites equipped and authorised to accept the residue[14]. The IBA and boiler ash would be collected and combined within the EfW building and conveyed to the treatment facility which would include storage and treatment of the ash to produce a secondary aggregate for the construction industry as well as facilities for the recovery of ferrous and non-ferrous metals[15].

Waste Characteristics

7.6 The proposal is intended to process a mixture of residual MSW and C&I waste.

7.7 The characteristics of MSW and C&I waste are slightly different. However, the components of the different types of waste are similar and both types of waste are relatively heterogeneous. The main effect of including C&I waste as well as MSW is that the average Net Calorific Value (NCV) of the waste which is processed at the scheme would be higher than if only MSW were processed.

7.8 Although the NCV can vary greatly within the waste, the thermal characteristics of MSW and C&I waste are fairly consistent and predictable, taken as a whole, and so a consistent fuel can be provided to the grate by mixing the wastes together in the waste bunker.

7.9 The combustion unit itself would hold a large amount of waste, such that each additional load of waste would be merely a small disturbance to the combustion system. The automatic control system would respond to variations in NCV to maintain a constant heat release from combustion and hence a constant steam

[11] SO/1 §§ 3.35 - 3.52.
[12] SO/1 §§3.54 - 3.61.
[13] §§3.62 - 3.66.
[14] §§3.71 to 3.76.
[15] §§3.77 - 3.84.

flow rate. The plant would continue to operate at full thermal capacity over a wide range of NCV, as illustrated by the firing diagram for the plant[16].

Building Sizing

7.10 There is not a linear relationship between plant capacity and building height, nor between plant capacity and land requirements. The main driver for building height is the size of the main combustion chamber and boiler. The capacity of the facility is proportional to the cube of the height of the secondary combustion chamber, due to the requirements of the Waste Incineration Directive (WID). This means that a halving of the capacity of a boiler, for example, would only reduce the building height by around 20%[17].

7.11 The proposal has been compared with a number of other EfW plants which are already operating in the UK or are under construction[18]. This confirmed that the proposed building would be at the low end of the building height range. If the scheme were reduced in capacity to, say, 200,000 tpa, then a single stream plant would become the most economic choice, which would have an increased building height compared to what is now proposed.

7.12 The land required for an EfW plant is not directly proportional to the plant capacity, because the EfW equipment only takes up a small part of the site. Other infrastructure, such as roads, offices and workshops, along with landscaping works, would make up a larger part of the site and the land required for these would be only slightly related to the plant capacity.

Abnormal Operating Conditions

7.13 Today's combustion technology is the result of over thirty years of continuous development and improvement, so that every major component of a modern EfW plant is proven in the application. The plant would be designed so that it can shut down safely under any foreseeable circumstances, normally without a significant increase in emissions.

7.14 Hazard and operability studies would be carried out during the detailed design of the facility to ensure that the plant would operate safely under all foreseeable circumstances[19]. When the plant is operating, it would be controlled by a computerised control system and supervised by trained operators[20].

7.15 As part of the EP determination process, the EA asked for further information of the impact of emissions to air during times of abnormal operation. This impact was assessed by SLR Consulting Ltd, who concluded that there would be no long term impact and only a minor short term impact, even with extremely conservative assumptions[21].

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[16] Fig 9 §§4.4 - 4.8.
[17] Fig 9.
[18] Table 3.
[19] §6.9 - 6.12.
[20] §6.13 - 6.14; §6.15 - 6.44.
[21] App SMO/2.

Energy Efficiency

7.16 The WFD[22] states that incineration facilities for municipal waste can be regarded as "Recovery" operations (R1) if the energy efficiency of the plant, using the definition in the WFD, is greater than 0.65. The R1 energy efficiency of the scheme has been calculated as 0.675, which is greater than 0.65. This confirms that the scheme would be a Recovery Operation[23].

7.17 While the proposal is designed to operate initially as an electricity-only plant, it would be configured so that it could also be operated as a combined heat and power plant, extracting heat from the turbine as steam.

7.18 It would be difficult to enter into contractual arrangements with potential heat users before the proposed scheme was granted planning permission and, indeed, before construction started. This is because any heat users would require security of supply and it could not be offered at this stage of the development.

7.19 Nevertheless, there are a number of opportunities for heat use in the vicinity, of which the most significant is the planned north west Bicester eco-town, and it is expected that opportunities for heat supply with potential heat users would be discussed if the appeal were allowed[24].

Alternative technologies

7.20 The EfW plant proposed by the application is established and accepted technology, and has the support of the Waste Strategy for England (WS) 2007[25]. It is consistent with the WFD 2006 and WFD 2008 and will, as OCC agrees, move waste management up the waste hierarchy with benefits in terms of the reduction of greenhouse gases and in generating energy. Contrary to the views of some at the inquiry, waste management through combustion is still in use in Europe and is still being permitted as explained in evidence. Reference was made to new EfW plants in Paris (460,000tpa), Amsterdam (530,000tpa) and Malmö (400,000tpa) and it was said that another 15 had been developed by one operator alone (CNIM)[26]. The latest EU statistics[27] show that even the EU states diverting the most MSW from landfill still incinerate 27%-54% of their waste arisings.

7.21 Indeed, EfW by direct combustion is recognised also in the latest DEFRA consultation draft guidance on implementing the WFD 2008[28]. See, e.g., Section 2.4 of the draft *Guidance on Applying the Waste Hierarchy*.

7.22 Although, following the request by OCC, alternatives were considered in Section 13 of the ES, Mr Day put forward a case that the appeal should be refused because the appellant ought to be using another method of waste

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[22] Directive 2008/98/EC on waste and repealing certain Directive, 19 November 2008
[23] App SMO/3.
[24] §7.15 - 7.25.
[25] CD4/13 pp. 76-77, quoted in Opening Submissions at §39.
[26] This was a result of his enquiries only of CNIM and does not represent the total number of plants developed in the EU in the last four years.
[27] APP/04.
[28] CD5/55. This comprises a number of guidance documents and draft regulations.

management: slagging co-gasification. However, this is not currently in use in the UK or Europe and has not been commercially proven for usage for MSW and C&I with the throughput proposed here.

Policy

7.23 Developing the proposal would be key to meeting the targets in national waste management strategies for diverting waste from landfill and providing new low carbon energy generation capacity. The scheme complies with PPS10 guidance on the location of waste management facilities and it is appropriate to make maximum use of existing waste management facilities when they are well located and do not have any significant adverse effects on the environment or local communities.

7.24 No element of the DP is up to date. The SEP has been abolished, the OMWLP and CLP are more than 14 years old, and the NSCLP cannot be considered as part of the DP. Nonetheless, it is submitted that there are no issues in this appeal that cannot be answered by reference to national and/or European policy.

Revocation of the SEP

7.25 On 6th July 2010, the opening day of the inquiry, the Secretary of State revoked the Regional Spatial Strategies (RSS) for England. This was accompanied by a letter from the Department of Communities and Local Government (DCLG) to Chief Planning Officers[29] setting out guidance on how to deal with issues arising out of the revocation which was "important for local planning authorities to carry on delivering local development frameworks and making decisions on applications". It confirms that the PPSs remain in force for the time being[30] and that[31]:

"Local planning authorities should also have regard to other material considerations, including national policy. Evidence that informed the preparation of the revoked Regional Strategies may also be a material consideration, depending on the facts of the case..."

7.26 Accordingly, the SEP no longer has a role as part of the DP or as a material consideration in this appeal. The evidence base regarding waste quantities has now been updated by evidence and agreement. The targets in the SEP are not part of the evidence base that informed the preparation of the Plan, but are instead policies that emerged from it, and are therefore not material to this appeal.

OMWLP 1996 and CL 1996

7.27 Both the OMWLP and the CLP were adopted 14 years ago, in 1996. OCC accepted at the inquiry that the data on which the plans were based is close to 20 years old[32]. The DP does not take account of important current national policy and EU law in terms not only of the development of waste policy and law

[29] CD5/39.
[30] At §2.
[31] At §4.
[32] Day 1, XX DE.

but of climate change, renewable/low carbon energy and countryside issues: post-1996 developments include PPS1, Climate Change Supplement, PPS7 (as now amended by PSS4), PPS10, PPS22, PPS23, WS2007, WFDs 2006 and 2008 and WFD. To the extent that the DP policies remain relevant, they should be read critically in light of more recent national policy[33].

7.28 The OMWLP provides no guidance on locating waste management facilities or on protecting the countryside when locating such facilities. The only waste-specific guidance is found in PPS10.

7.29 The CLP cannot have been intended to be applied to an application for waste development because the scope of the plan does not extend to waste development, as accepted by OCC in cross examination[34]. Nonetheless, in its reasons for refusal, OCC relied on CLP Policies C7, C8 and C9. In relation to those policies in general, OCC accepted[35] that they amounted to no more than a statement of the obvious: the point is to look at the proposals in the context of the landscape in which they are found and see if the harm caused is outweighed by the benefit achieved[36].

7.30 Policy C7 requires no more than the character based judgement required under PPS7. Policy C8 was considered by the Inspector in the Fewcott windfarm appeal. The Inspector found that Policy C8 was out of date when considered in light of more recent policy on renewable energy and he therefore accorded it little weight[37]. The same can be said of Policy C8 when considered in light of more recent waste policy[38]; notably, there is nothing in the locational criteria set out in Annex E of PPS10 to support Policy C8, and accordingly it should be given little weight. In any case, the scheme is not contrary to Policy C8 as it does not amount to sporadic development, given that it is located on an existing waste management site[39].

7.31 In respect of Policy C9, the question of whether development was "incompatible with a rural location" needs to be determined in light of the locational criteria set out in Annex E of PPS10. There is nothing in those criteria which suggests that waste management facilities are incompatible with rural locations.

7.32 Furthermore, the background and framework of the CLP policies has changed as indeed it has in terms of the significant differences which have occurred since 1996 as noted above. Indeed, recent changes made to PPS7 by PPS4 emphasise the importance of protecting sites of national significance whilst seeking a balance between sustainable development and countryside protection in a manner which provides greater support for sustainable development and which is not fully recognised by the surviving policies of the DP.

7.33 Accordingly, it is submitted that:

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[33] Day 11, CH XX MB.
[34] Day 1, MW XX DE.
[35] Day 1 MW XX DE.
[36] Day 1, MW XX DE.
[37] At § 48.
[38] Day 11, CH XX MB.
[39] Day 11, CH XX, MB.

(i) The relevant local waste plan, OMWLP, contains no useful guidance for siting waste management facilities and is long out of date in terms of modern waste policy;

(ii) The CLP was never intended to be applied to an application for waste development;

(iii) Policies C7 to C9 of the CLP add nothing to the policy contained in up to date national policy documents, most notably PPS7 and PPS10;

(iv) The policies do not take account of recent developments in terms of waste policy and law, climate change, renewable/low carbon energy and in the more recent approach to countryside issues. They might be regarded as unduly favouring protectionism without properly weighing sustainable waste management on a site without significant designations;

(v) As such, although CLP and OMWLP may form part of the DP, they should be afforded little weight.

NSCLP 2004

7.34 In its reasons for refusal the Planning Authority referred to policies in the NSCLP. This plan does not form part of the DP for the area. OCC accepts that little weight should be given to the Plan on the basis that it was never tested at a public inquiry[40]. The appellant submits that no weight at all should be given to the policies given that the policies are also out of date and superseded by more recent national policy.

Conclusion on the DP

7.35 In the absence of any element of the DP that is up to date, it is submitted that the appeal should be determined not on the basis of DP policies but on the basis of the most material considerations i.e. up to date national and EU policy such as PPS7, PPS10, WFD2008, WS2007[41] etc.

PPS1 and PPS7

7.36 It is common ground that PPS1 and PPS7 set the general policy framework in which an application for development in the countryside is to be assessed. However, many of the policies in PPS7 relied on by OCC in XX were cancelled in December 2009 by PPS4. Although PPS7 preserves a general policy objective of sensitive development in rural areas, and accords a greater priority to the protection of statutorily designated landscapes, it no longer requires the protection of the countryside for the sake of its intrinsic character and beauty[42]. OCC's closing submission at §60 is plainly incorrect and overstates the position

[40] Day 1, XX DE.
[41] NB WS2007 is more than simply guidance although it appears to have been treated as no more than that by OCC. As it notes on p. 6 "*This waste strategy and its Annexes, together with PPS 10 is part of the implementation for England of the requirements within the Framework Directive on Waste, and associated Directives, to produce waste management plans. These are the national level documents of a tiered system of waste planning in England, which together satisfies the requirements of the various Directives...*".
[42] Key principle 1(iv) cancelled by Annex A of PPS4.

given the revocation of key principle 1(iv) ("protect the countryside for the sake of its intrinsic character").

7.37 The relevant policy context now laid down by PPS7 is encapsulated in:

key principle 1(vi):

"All development in rural areas should be well designed and inclusive, in keeping and scale with its location, and sensitive to the character of the countryside and local distinctiveness."

Paragraph 15:

"Planning authorities should continue to ensure that the quality and character of the wider countryside is protected and, where possible, enhanced. They should have particular regard to any areas that have been statutorily designated for their landscape, wildlife or historic qualities where greater priority should be given to restraint of potentially damaging development."

7.38 This context is reflected in PPS1 §5, which states the objective that planning should facilitate and promote sustainable and inclusive patterns of development by, inter alia, protecting and enhancing the quality and character of the countryside.

7.39 Although PPS1 and PPS7 set the general framework in which an application for development in the countryside is to be assessed, in terms of the specifics of waste development in the countryside, they must be read in light of the locational criteria set out in the more recent PPS10.

PPS10

7.40 PPS10 §24 states that planning applications for sites that have not been identified, or are not located in an area identified, in a DPD as suitable for new or enhanced waste management facilities should be considered favourably when consistent with the policies in PPS10, including the §21 criteria.

7.41 It is submitted that the scheme is consistent with the policies set out in the PPS in that:

(i) It will help deliver sustainable development through driving waste management up the waste hierarchy, using waste as a resource by generating electricity and IBA aggregate.

(ii) It will provide a framework in which Oxfordshire will take more responsibility for its own waste, and enable sufficient and timely provision of waste management facilities to meet the pressing need for recovery capacity within Oxfordshire;

(iii) It will help implement the WS and secure compliance with the WFDs 2006 and 2008;

(iv) It will provide a competitive facility in Oxfordshire for the treatment of C&I waste at least some of which currently leaves the county[43] - assuming it is not compromised by the inequalities OCC would seek to create by the imposition of a hinterland condition (see below).

7.42 PPS10 §20 recommends that a "broad range of locations" may be appropriate for waste management facilities, and there is clearly no objection in principle to a countryside location. Indeed, as the sixth bullet point of PPS10 §3 makes clear, even Green Belt (GB) sites *may* be considered appropriate if the locational needs of the facility so require. It is not disputed that GB sites benefit from a higher level of protection than a non-designated site in the countryside. Moreover, by locating the facility on an existing waste management site and adjacent to an existing landfill, the scheme satisfies the further objective in §20 of co-locating facilities with complementary uses[44].

7.43 In respect of the specific locational criteria set out in Annex E of PPS10, both OCC and CDC agree that there are no adverse environmental or planning consequences of the appeal proposals other than their concerns regarding visual impact (OCC and CDC) and impact on heritage assets (CDC alone). It is submitted that for the reasons given in evidence (and summarised below) those concerns are unjustified.

7.44 In relation to the other considerations relevant to PPS10 §21, no evidence has been presented to support the conclusion that the proposal is unacceptable in terms of its cumulative effect when considered alongside the existing waste disposal facilities. The scheme would, to a large extent, replace the existing facility and any cumulative effect would be negligible.

7.45 The highways evidence demonstrates that the existing transport infrastructure has sufficient capacity to accommodate the scheme.

7.46 Although the appeal site is not "previously developed land"[45](PDL), it is an existing landfill site, so is not, in any real sense, greenfield land although it is correct to note that the site would be restored to a landform different from its previous certainly by 2019. In any case PPS10 does not limit waste facilities to PDL, but merely prioritises its use. As the alternative sites assessment (ASA) has demonstrated, there are no better performing sites on PDL. Moreover, in close proximity to the site are the recently commenced Dewar's Farm mineral site and the Agrivert composting facilities.

7.47 Accordingly, it is submitted that the fundamental issue in relation to compliance with the locational criteria in PPS10 is whether the "visual intrusion" of the scheme, and its impact on cultural heritage, is acceptable.

7.48 National waste management policy recognises that waste management is facing a period of rapid and radical change and that there is an immediate and acute shortfall in capacity to meet ambitious waste management targets.

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[43] See CH/4 (Rebuttal) App and XX MW by the appellant.
[44] Although it is accepted that the site falls outside the current definition of "previously developed land".
[45] Annex B of PPS3.

7.49 The application site is located within an existing quarry void, within a wider waste management complex which includes a landfill site, gas utilisation plant and a HWRC. The site has excellent connections to the M40 and is close to the main potential sources of waste i.e. Bicester, Banbury and Oxford. The site is not covered by or close to any statutory landscape or wildlife designations e.g. Area of Outstanding Natural Beauty (AONB) or Special Area of Conservation (SAC) and the long standing landfill and mineral extraction in this location demonstrates that local environmental and amenity criteria for waste development are capable of being met.

7.50 Existing and emerging Government policy on energy clearly establishes the urgent and overriding need to deliver new energy infrastructure in order for Government commitments on green house gas emissions to be achieved and the most recent draft National Policy Statement (NPS) on energy clearly states that the national need for new energy generating capacity has been demonstrated and that decisions on technology is a matter for the industry. Within that it is clear that as a form of low carbon energy, EfW has a key role to play in delivering the Government's policy on energy and climate change and as such these policies should be taken into account when determining this application.

7.51 National waste management policy confirms the need to move the management of waste up the waste hierarchy and that there is a need for the sufficient and timely provision of new waste management infrastructure in order to achieve this. The loss of landfill capacity is not considered significant and the provision of recovery facilities is in accordance with the waste hierarchy once recycling has taken place as far as possible.

7.52 Existing and emerging national energy policy clearly establishes that there is an urgent national need for new low carbon energy generation to be delivered by the planning system in order to combat climate change and provide secure, clean and affordable energy. As such the Government does not expect applicants to demonstrate the overall need for low carbon energy and that the planning system should be supportive and encouraging of proposals to deliver this capacity.

7.53 Evidence from Europe, confirmed within WS2007, does not support the view that EfW facilities adversely affect the achievement of high recycling rates.

Need

7.54 The Oxfordshire Joint Municipal Waste Management Strategy (OJMWMS) has been agreed by OCC and all the District Councils. This strategy has the waste hierarchy at its core and sets stretching targets for increasing recycling and composting.

7.55 Oxfordshire is amongst the best performing counties in the country for minimising the amount of waste produced by each person and is also very good at recycling and composting the waste that is produced. Last year (2009/10) a county wide recycling and composting rate of 48.75% was achieved.

7.56 OCC is committed to working with the District Councils to further reduce waste and to increase recycling performance. This work involves a large number of waste initiatives including community action groups; the separate collection

of food waste; the delivery of key infrastructure eg In Vessel Composting and Anaerobic Digestion facilities to process the food and green waste collected; and new and improved household waste recycling centres. The initiatives above mean OCC is performing well and can actively demonstrate progress towards the Government's zero waste agenda.

7.57 European and national legislation means OCC has to dramatically reduce the amount of waste that is landfilled. Government has introduced strong financial drivers through landfill tax and the Landfill Allowance Trading Scheme (LATS) to incentivise local authorities to achieve this. Even with high recycling and composting, residual waste treatment will be needed to further reduce the amount of waste sent to landfill. The proposal would complete the implementation of the OJMWMS and deliver zero waste.

7.58 Diverting waste from landfill will deliver real and substantial environmental benefits by stopping the production of methane gas which is a powerful greenhouse gas over 20 times more damaging than carbon dioxide (CO_2). The proposal would also produce enough electricity for over 23,000 homes.

7.59 There are also very strong financial drivers that incentivise OCC to divert waste from landfill. Increases in landfill tax means that OCC's costs will increase by over £1 million every year until at least 2014. The Government's LATS also places a large financial risk on OCC.

7.60 In 2009/10 Oxfordshire produced over 310,000t of MSW and over 165,000t of this waste was landfilled. The OJMWMS sets a challenging target to stop waste growth per person by 2012. However, over 55,000 homes are planned to be built in Oxfordshire between 2006 and 2026 and allowance needs to be made to manage this new waste.

7.61 It is anticipated that between 130,000t and 160,000t of residual MSW would be sent for processing at the proposed scheme by way of energy recovery every year through a 25 year contract with the appellant.

7.62 OCC has invested a considerable amount of time and money in the current procurement to deliver a local residual waste treatment facility and there are currently no realistic alternatives available. If this procurement does not lead to the delivery of a facility there would be no certainty in how the county would treat residual waste. Environmental benefits would not be realised and the increasing costs of landfill disposal would need to be borne. The Department for Environment, Food and Rural Affairs (DEFRA) has confirmed that OCC's procurement project is consistent with the Government's waste policy objectives.

7.63 Oxfordshire produces large amounts of C&I waste. The environmental reasons to divert waste away from landfill apply equally to this waste as they do to the county's municipal waste. Sharply increasing landfill tax costs also apply to C&I waste and would therefore have a consequential cost impact on businesses if their waste continued to be landfilled.

7.64 Landfilling biodegradable waste produces methane gas which is a powerful greenhouse gas. The LATS is increasing the costs of landfill with the objective of diverting waste away from landfill in line with the national waste strategy.

7.65 Residual waste treatment is required to recover value from the waste left after reduction, reuse, recycling and composting. Residual waste treatment will deliver real environmental benefits by reducing the amount of methane gas that the landfill sites produce. Recovering energy in the form of electricity, and if possible heat, will bring even more environmental benefits.

7.66 Oxfordshire currently does not have any residual waste treatment capacity. Nor are there any valid planning permissions for residual waste facilities. Also there are no residual waste treatment facilities outside Oxfordshire to which it would be practicable to transport waste.

7.67 In response to the above environmental and financial drivers OCC has been procuring a residual waste treatment facility to implement the OJMWMS. If planning permission for the current proposal is not secured, the procurement process would have failed and a new procurement would need to be started. This would have a severe impact on Oxfordshire's ability to divert waste away from landfill and specifically on OCC's ability to treat residual waste in line with the OJMWMS. Any delay in the delivery of residual waste treatment would have a significant and negative impact on the environment and also leave the OCC exposed to the full financial impact of landfill tax increases and the future costs of landfill allowances. Also the outcome of any new procurement process would be uncertain.

7.68 Oxfordshire produces large amounts of C&I waste. The environmental reasons to divert waste away from landfill apply equally to this waste as they do to the county's municipal waste. Whilst the LATS regime does not apply to C&I waste, sharply increasing landfill tax costs will apply to it.

7.69 Waste arisings have recently been reducing and waste reduction initiatives will have had some impact, but the economic recession has also had a major influence. As the economy recovers it is anticipated that waste arisings will increase. It is essential for OCC to take this into consideration as well as the impact on waste arising as a result of the significant housing growth planned in Oxfordshire up to 2026.

7.70 The need is now agreed between the appellant and OCC[46]. The Waste Disposal Authority (WDA) figures produced by the appellant are accepted by OCC[47]. The C&I data are also accepted[48]. OCC accepted at the inquiry that the need was measured by reference to the data in App 3 of APP/01. That a lesser need should exist beyond the target figures is not supported by EU law. Meeting and exceeding the need are both key objectives and no distinction is drawn between them, especially since the WFD 2006 and 2008 obligation is to drive waste up the hierarchy not simply to take it to a certain point. When Article 5 of the Landfill Directive (LD) is considered[49], which is the source for the targets, these are directed at biodegradable municipal waste and are clearly minimums not ceilings since the provisions provide for the upward revision of

[46] APP/08.
[47] App 3 of APP1.
[48] APP/08.
[49] APP/11.

the targets unless a member state has achieved at least 80% landfill diversion of biodegradable municipal waste[50].

7.71 It is important to husband the landfill capacity as there will be a continuing need to landfill a small proportion of the waste produced. This is in line with Policy 10 of the OJMWMS which states 'The Oxfordshire Waste Partnership will ensure optimum use of landfill void.'

7.72 The proposal is needed in order to divert waste away from landfill and reduce emissions of methane gas. The proposal would also produce enough electricity for over 23,000 homes. The capacity to treat 300,000tpa of residual waste would be sufficient capacity to treat all of Oxfordshire's residual MSW and would also provide capacity for some of Oxfordshire's C&I waste. The proposal is consistent with national and local waste policy and would bring real environmental and financial benefits.

7.73 The proposal has taken about four years (including procurement and planning) and, even ignoring the delay caused by the need to appeal the planning decision, would take until about September 2010 to reach contract with OCC. If the appeal is dismissed the process would inevitably have to begin again and on the basis of a four year period (assuming it would then take three years from contract to commissioning) would mean that the minimum delay (ignoring any additional planning delays) would result in about 1.2mt of MSW going to landfill, with the adverse environmental consequences, and would cost OCC more and would result in less low carbon energy being produced within Oxfordshire.

Highways

7.74 Neither OCC, nor CDC, nor the HA has raised any objection to the proposed scheme. OCC as highway authority has no objection to the Transport Assessment (TA) which accompanied the planning application, other than in relation to hours of operation of the HGVs[51].

7.75 Updated accident data[52] and updated baseline traffic data[53] that has been collected on the B430 Ardley Road shows that there has not been a significant material change to the existing situation from the time of the original surveys. Therefore the original capacity and impact calculations that were reported in the TA are robust.

7.76 Since its preparation, other nearby developments have either come on stream or have been granted planning permission. Notably, the proposed mixed use development at Heyford Park has been granted planning permission but not yet commenced.

7.77 The Heyford Park development will result in additional traffic volumes on the B430 and at associated junctions: to take account of this improvements are proposed to the layouts of the B430/B4030 junction in Middleton Stoney and

[50] APP/11, Article 5(2), following subpara (c).
[51] CD1/16 § 7.1
[52] TG/1 Section 2.2
[53] TG/1 Section 2.3

the southern roundabout to the M40 junction north of Ardley[54]. It has been demonstrated that, when taking account of this additional traffic and the associated road improvements, traffic generated by the proposal would not create a material adverse impact on the future operation of the road network[55].

7.78 A new quarry access has been constructed onto the B430 to the south of the access to the appeal site. This does not affect the design or location of the proposed access, which has been verified through an updated design and Road Safety Audit[56].

Predicted Impact of Development

7.79 Taking into account the calculation of the predicted impact on the B430, having regard to the updated existing traffic levels and, where appropriate, future committed developments, the original and updated assessment work is robust and the predicted impact of the proposal may be considered as insignificant[57], as concluded in paragraph 7.157 of the ES.

7.80 The B430 has sufficient capacity to accommodate traffic growth. The proposal would cause a 3.2% increase in HGVs, and a 0.6% overall increase in traffic through Middleton Stoney and on the B430 south of the access to the site[58].

7.81 The proposal would cause a 12.9% increase in HGVs, and a 2.2% overall increase in traffic through Ardley village. This would represent an additional 9 HGVs per hour, on a baseline of 73 per hour.

7.82 In response to representations from Middleton Stoney Parish Council (MSPC), the assumptions within the ES with regard to existing and future trip generation are considered to be robust[59].

7.83 The ES also took into account all movements into and out of the facility, including movements of diesel fuel, urea, activated carbon, hydrated lime, and APC residue.

Consideration of Alternative Sites

7.84 TG/1, Section 7 considers the accessibility and proximity of seven alternative sites to the proposal, and the results of this have been carried forward to the overall assessment.

7.85 The proposal has very good accessibility to the road network, having a dedicated access onto the B430 which provides a direct link north to the M40 and south towards Oxford and the A34.

7.86 The accessibility to other transport modes, such as rail, is a material consideration of the assessment of alternatives: by its nature, the proposal is designed to receive wastes arising from dispersed origins, making the

[54] TG/2 App 7
[55] TG/1 Section 5
[56] TG/1 Section 6
[57] TG/1 Section 4
[58] TG/1 §4.4.3 Fig 4
[59] APP/03

requirement for associated infrastructure unviable in terms of cost and carbon emissions.

7.87 In terms of proximity, a detailed Proximity Assessment has been undertaken[60]. The appeal site scores 5th of the eight sites in terms of journey distance and journey time. In considering journey time alone, it is shown that the appeal site is only 1.5% less proximate than the Sutton Courtenay site[61].

7.88 It is also demonstrated that carbon emissions associated with transport are only a small fraction of the overall savings in carbon emissions achieved by diverting waste to EfW from landfill: carbon emissions relating to transport for the proposal would be only 2% of the overall savings in carbon emissions that would be achieved by the scheme[62].

Ecology

7.89 As set out in the ES and in evidence, the appeal site and its surroundings contain a diverse range of ecology, none of which would be adversely affected by the proposal.[63] The site is dominated by habitats typical of post-mineral abstraction that form a mosaic of bare substrates, ephemeral and tall ruderal vegetation, rank grassland, scrub development and areas of open standing water. Most of the survey area has been ear-marked for landfill with some areas already in the process of being readied for this purpose. A small part of the adjoining Ardley Cutting and Quarry SSSI extends into the site, but it is not a part which would be developed and would be affected no more than has already been permitted for the landfill operations. The EfW platform would be about 800m away.

7.90 The area in which the appeal site is located contains a range of protected species, most notably, great crested newt. As this area is already subject to planning consent for the extension of ongoing landfilling activities, appropriate mitigation schemes with the necessary agreed methodologies and licences in place are being implemented.

7.91 In the absence of the proposal, most of the appeal site would continue to be cleared, under an existing and agreed great crested newt mitigation strategy, as part of the planned extension of the landfill and which is anticipated to run until 2015. These areas would then be developed for landfill operations until such time as they would come to the end of their life and be restored to agricultural land.

7.92 Following the adoption of design measures to reduce impacts, the residual impacts of the proposal were assessed using standard methods and it was concluded that there would be no significant adverse impact arising from the proposal.

7.93 The creation of new surface water management systems and additional ponds designed for great crested newts are considered to be a positive impact.

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[60] TG/3 and TG/1, Section 7.5
[61] TG/1 § 7.5.9.
[62] TG/1 § 7.5.13.
[63] CD2/3 ES Chapter 10.

7.94 Provided that all appropriate mitigation measures to prevent, reduce or offset an impact were to be implemented, the proposal would comply with the requirements of current national, regional and local planning policies. The scheme would also comply with the Consultation Paper (as it currently stands) on a New PPS*: Planning for a Natural and Healthy Environment*.

7.95 OCC, NE and the Berks, Bucks and Oxon Wildlife Trust have all confirmed they have no objections to the scheme on the grounds of potential ecological impacts.

7.96 Other consultees have however raised some concerns on a small range of ecological matters which tend to fall into the categories of the status of the Ardley Trackways SSSI, potential impacts upon protected species (most notably great crested newt) and impacts upon Ecological and Biological diversity.

7.97 The area in which the appeal site is located does contain a range of protected species, most notably, great crested newt. As this area is already subject to planning consent for the extension of ongoing landfilling activities, appropriate mitigation schemes with the necessary agreed methodologies and licences in place are being implemented.

7.98 With respect to the proposed scheme, both NE and OCC have stated they are satisfied that an appropriate level of baseline survey and details on mitigation have been provided with respect to protected species. NE goes on to conclude that "*Mitigation measures for bats, badgers and great crested newts are satisfactory*".

7.99 The proposal is located within the Ardley Quarry complex that already has consent for development and as a result it will be subject to clearance. The scheme would not lead to any further adverse impacts above those already consented and ongoing. The assessment of impacts does however conclude that some positive gains for biodiversity would occur as a result of new surface water management features and additional ponds for great crested newts.

7.100 A full and thorough assessment of ecological impacts has been undertaken of the proposal following best practice guidelines. Following the adoption of mitigation, the residual impacts of the scheme were assessed using standard methods and it was concluded that there would be no significant adverse impact arising from the proposal. The assessment concluded that provided that all appropriate mitigation measures to prevent, reduce or offset an impact are implemented, the proposal would comply with the requirements of current national, regional and local planning policies.

Alternative Sites

7.101 Consultants ERM appointed by OCC in 2007 undertook a comprehensive review of sites within Oxfordshire which identified that there were eight sites that they considered had potential for a strategic waste management facility. Further market enquiries by the appellant in 2009 and 2010 have not identified any further sites.

7.102 Of the eight sites, three (Culham, Banbury Cross and Gosford) are considered to be too small to accommodate a strategic waste management facility based on providing an EfW and a bottom ash recycling facility. It has

also been established that three sites (Culham, Gosford and Shipton) are not available to the market. In addition it is considered that Sutton Courtenay and Banbury West fall into this lack of availability category because Sutton Courtenay is under the control of WRG who are not pursuing an appeal of the EfW scheme refused permission at this site and enquiries have established that waste development at Banbury West is seen as the option of last resort for the landowners.

7.103 Two sites remain: Palmer Avenue and the appeal site. However the Palmer Avenue site, considered by ERM and in this assessment, is different from the site that is currently being marketed by the Ministry of Defence (MOD). The sites currently being marketed fall below the 4ha threshold and one of the sites is actually bisected by Palmer Avenue and is therefore in reality two sites. There are therefore significant size constraints to developing a strategic waste management facility on the MOD land currently available to the market.

7.104 It was submitted in opening[64] that there was no legal requirement for alternative sites to be considered since the appeal site does not impact on any designations of national or local significance. Moreover, the extent of harm identified only relates to visual and not to any of the other PPS10 Annex E criteria which are agreed by OCC and CDC to be met. As the EA draft DD and EP show (not disputed by OCC or CDC) there are no concerns with regard to other environmental issues. All of these matters do not support the need for an ASA.

7.105 The force in this point is underlined by the fact that neither OCC nor CDC has considered it necessary or appropriate to suggest that there is a site which performs better against all relevant criteria (especially PPS10 Annex E) than the Ardley Site. Even the CDC witness, who criticises the assessment, does not suggest that either the judgements were incorrect or that a site exists which would perform better across the whole range of relevant criteria.

7.106 There has been confusion over the EIA requirement to consider alternatives since, whatever the practice may be, there is no legal requirement to carry out an alternatives assessment in the ES. Although Ardley-with-Fewcott PC (AwFPC) claimed there was a requirement to do so under the EIA Regulations, which is plainly wrong since the requirement is only to deal with *what has been studied* rather than impose an obligation *to study*[65] (a similar error was made by Mr Day).

7.107 However, the alternatives assessment was carried out and was revised for the inquiry and even CDC accepts that it is a considerable improvement over what it considers to be a less satisfactory earlier exercise. Although CDC criticised the ASA, it turned out that there was little of substance to this.

7.108 It was accepted that the iteration of the assessment set out in the appellant's evidence (supported by other experts) was "considerably improved" and a "major step forward". Despite criticisms of the absence of numerical weighting, it was accepted that the key consideration was that in carrying out an

[64] §§53-63.
[65] The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, Schedule 4 Part I §2.

assessment the judgements/reasons should be clear. It was agreed[66] that the judgements and the reasons for the process were set out both in the ES Chapter 13, ES Technical App.[67] and in evidence. The ERM site sieving exercise[68] or the reduction of the candidate sites to the eight identified by ERM and then used by the appellant was not criticised. It was agreed that the factors considered by the appellant in assessing the alternatives[69] and found in CH Table 4.1 met the requirements of PPS10 Annex E and were the correct factors to apply.

7.109 CDC accepted that GB issues had not caused sites to be ruled out completely but such sites should not be preferred unless there were no reasonable alternatives. CDC also accepted that their GB status should weigh heavily against them. GB sites had been included and assessed in any event. CDC's submissions did not fully respect the concessions at the inquiry. The use of numerical weighting would in any event have been likely to have generated disagreement. The CDC witness did not suggest that the result of the ASA was incorrect or that any of the other seven sites should be preferred to Ardley.

7.110 AwFPC's submissions ignore the fact that the proximity assessment was a level playing field assessment and the assumptions were applied to all potential sites equally. Although it is true that the site did not perform best in proximity terms, it was very similar to the runner-up in the procurement process (Sutton Courtenay) and it is the overall assessment which is relevant, not one of the individual elements. It does underline the fact that the assessments have not been produced merely to show the site performs best on any criterion but are appropriately objective.

7.111 Late suggestions in XX of the appellant that the site appraisal was ex post facto the decision to pursue the site were rejected because, as pointed out, the site had emerged from the ERM site sieving process for OCC which had only recently completed by the time of the application. Moreover, the request to assess came from OCC as part of the EIA process and OCC has not disagreed in evidence with the assessment of alternatives.

7.112 The legal position was set out in opening[70] and the submission that this was not a case where there was a legal duty to consider alternatives. The legal submissions made by CDC in opening go nowhere since, as accepted by the CDC witness, CDC does not suggest there is another site with lesser impacts than the appeal site. The authorities, such as *R (Langley Park School for Girls) v Bromley LBC* [2009] EWCA Civ 734[71], show that alternatives are only relevant to the extent that there may be another site with a lesser impact. As Sullivan L.J. stated in that case[72]

> *"47. Where there are clear planning objections to a proposed development... the more likely it is that it will be relevant, and may in some cases be*

[66] RD XX DE Days 2 and 3.
[67] CD 2/4 Tab 2.
[68] See CD 5/6, 5/7 and 5/8.
[69] CH/1 Table 4.
[70] Opening Submissions §§53-63.
[71] GL opening submissions, §§7 and 8.
[72] As quoted by GL in opening.

necessary, to consider whether the objection could be overcome by an alternative proposal."

7.113 It is surprising, given the significance attached in CDC's closing submissions to this issue that no attempt was made in any way to suggest that the outcome of the ASA was incorrect or that there was a single alternative preferable site. Although several points were made by CDC none were related in fact to any aspect of the comparative assessment between the sites or the overall conclusion. The judgements underlying the assessments were clearly set out and CDC can have nothing of significance to say about the outcome of the ASA or the availability of another more acceptable site despite its pressing of its case on countryside issues through evidence which did not even attempt to address the existence of a preferable alternative.

7.114 The appellant's witnesses have assessed the alternatives and there is no evidence at all from other parties to support the view that the ASA was incorrect by reference to the balance of all the relevant factors.

7.115 Only the appeal site is large enough and is available. In addition, the appeal site does not have any significant impacts on international, national or other designations, has good access, has good Combined Heat and Power (CHP) potential and a grid connection, is not in the GB, but is reasonably proximate to waste arisings within Oxfordshire, is well separated from local residents and is an existing suitable waste management facility which is considered to comply with PPS10. In addition, preparation of the planning application for the scheme commenced early in 2008 and will not now reach a conclusion until the end of 2010, a three year period. Dismissing the appeal would impose a three year delay on having to start the process again which would ensure that 2015 landfill diversion targets would be missed. The appeal site is the best performing of the eight sites and the only one which would ensure the delivery of waste recovery capacity in time to meet the 2015 landfill diversion targets.

Landscape Effects

Landscape and Visual Baseline

7.116 The baseline against which landscape and visual change should be measured is that of the existing landscape, and its likely or potential development. This includes the permitted landfill development and mineral extraction at and adjacent to the appeal site, other nearby developments, and future developments[73].

7.117 However, it was accepted in XX that the change to the landform alone forms no part of the OCC's objections to the scheme[74]. Similarly, CDC's witness was unwilling in XX to say that the changes in landform gradient alone were unacceptable[75]. Both Councils' objections are instead focused on the introduction of built development in the countryside.

[73] MJ/3, drwgs. MJ/10, MJ/11, MJ/12 & MJ/13; MJ/1, p.23, table 1.
[74] Day 2, XX of JS by DE.
[75] Day 3, XX of SR by TF.

Landscape Elements

7.118 There is an absence of original, natural or rural landscape elements within the landfill and proposed EfW platform area[76]. Therefore, with the exception of the loss of a small amount of tree planting to accommodate the access, no direct harm would be caused to the existing landscape elements of the site.

7.119 Tree loss would be compensated for by proposed new planting. A benefit of the appeal scheme would be the retention of limestone faces left from prior mineral development where dinosaur tracks were found. The permitted landfill restoration, which is due to be completed by 2016, would result in these faces being below ground as a result of waste infilling[77]. The changes to the permitted landfill restoration[78] would be generally positive in landscape and ecological terms.

Landscape Characteristics

7.120 The site is within the "Cotswolds" National Character Area[79] and the local "Ploughley Limestone Plateau" area[80], which is split into "Farmland Plateau" and "Wooded Estatelands" character types[81], the majority of the site lying within the latter. The rolling landform of the permitted and restored landfill is in character with the undulations of the Ploughley Limestone Plateau.

7.121 The appeal scheme landfill design steepens some of the slope gradients, but retains the undulating character, leaving a bowl shaped valley to the southeast corner of the landfill. The EfW building would be located here on a platform at 100m AOD within the enclosing landform of the landfill.

7.122 The proposed EfW building is designed to have a curved, undulating roofline to echo the undulating characteristics of the existing landform and restored landfill[82]. The woodland screening would restrict its visibility whilst supplementing the extensive woodland within the Ploughly Limestone Plateau[83]. Although an area of agricultural land would be lost, the scale and pattern of the restored grassland fields would be characteristic of the local area. The appeal scheme would have no notable direct effects on the landscape characteristics of the area.

Landscape Character

7.123 The potential visual changes caused by the EfW complex and the two 2m wide chimneys would be perceived as the introduction of new built elements in the landscape. This would include the plume with an average length of 34m and average visibility for 31% of the year, extending beyond the site boundary for 1% of the year.

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[76] Ibid. drwgs. MJ/1 (existing site) & MJ/10 (site photos.).
[77] Ibid, drwgs. MJ/2 (final permitted landform) & MJ/3 (final appeal scheme).
[78] MJ/1 p.27, §6.5.6.
[79] CD5/42 *The Character of England Landscape:* Natural England and English Heritage.
[80] CD5/23 *Countryside Design Summary*: CDC Development and Property Services, June 1998; MJ/3, drwg. MJ/14.
[81] CD5/9 *The Oxfordshire Wildlife and Landscape Study* (OWLS) – 2004; MJ/3, drwg. MJ/15.
[82] MJ/3, drwgs. MJ/4 & MJ/5.
[83] Ibid. drwgs. MJ/8 & MJ/9.

7.124 Visual changes to the north and west, including the addition of the stack and potentially the very top of the EfW building, would be restricted by existing vegetation, the amended landfill landform and eventually the proposed woodland planting[84]. In the short to medium term these additions would be seen within the context of the landfill operations, current mineral extraction, Agrivert scheme, and in some areas the Dewars mineral extraction area to the south of the site. The longer term context would include maturing screen planting, the Agrivert scheme, development at the Upper Heyford airbase and Fewcott wind farm[85]. There would be minimal harm and no significant effect to landscape character[86].

7.125 Views to the south in the short to medium term would be across the Dewars mineral development, and visual changes would be affected by screen mounds, advance planting and the mineral operations. In the long term the EfW building would be likely to have a significant, permanent visual effect due to its size, scale and proximity. However, this effect must be considered against the changing nature of the existing landscape character, which would limit the harm and render it acceptable[87].

7.126 Visual changes further south would be limited by distance and intervening vegetation to the north of Middleton Stoney, along the B430, and along Gagle Brook[88]. The advance planting along the B430 would mature during the period of mineral extraction and eventually reinforce existing hedgerows[89]. Other southern views would be across adjacent roadside hedgerows[90].

7.127 Views from the east along PRoWs are generally screened by intervening vegetation and/or pass through woodland type habitat. The proposed boundary woodland planting would add to this screening and character. Currently, these views consist of seeded mounds, restored grassland, or the quarry floor and landfill activities. At this location the original landscape character is changing entirely due to mineral extraction and current landfill activities. Therefore, although the EfW building might cause large changes, the potential for harm to this landscape is very limited. In the long term, when considered against the baseline of the restored landfill, the building would have a significant effect where visible[91].

7.128 More distant views from the M40 are likely to occur between the two motorway bridges. However, there would be partial screening by intervening hedgerows, mature vegetation along Gagle Brook, and embankments. The perception would be of a large scale building which, in the short to medium

[84] CD2/2, drwgs. 6/34 (viewpoints visual effects summary), 6/21 & AM12 (viewpoint L), & 6/23 & AM14 (viewpoint N); MJ/3, drwg. MJ/16 (viewpoint A).
[85] CD5/53.
[86] CD2/3, ch.6, pp. 63-65, tables 6.13 & 6.15.
[87] CD2/2, drwgs. 6/34, 6/16 & AM07 (viewpoint G); MJ/3, drwg. MJ/19 (viewpoint J); CD2/3, ch.6, p.65, table 6.15.
[88] CD2/2, drwgs. 6/18 & AM09 (viewpoint I).
[89] MJ/3, drwg. MJ/9 (views 1 & 4).
[90] CD2/2, drwgs. 6/20 & AM11 (viewpoint K).
[91] CD2/2, drwgs. 6/14 & AM05 (viewpoint E) reflect the most open type of view.

term, would be within a disturbed landscape and, in the long term, would be within wooded landscape[92].

7.129 Views from the Bucknell area would be concentrated to the west and would broadly reduce to the north, east and south of the village with a corresponding reduction in the effects on landscape character. Visibility would generally be restricted by woodlands and hedgerows[93]. Only 1.7% of the Wooded Estatelands is likely to be significantly affected and, therefore, the degree of harm to this character type would be minimal.

7.130 There would be significant views from Bridleway 27[94]. However, to address the visual impact from PRoWs, the appellant has proposed to fund a series of improvements to the local network[95].

Significance of Effect

7.131 The significant effect identified on the Wooded Estatelands[96] is not inherently unacceptable. The EfW building would be recessive in nature and would blend into the surrounding landscape, being seen as a backdrop to the moving distraction caused by the M40. The appeal scheme could be absorbed into the Wooded Estatelands without fundamentally altering the nature of this character type.

7.132 The Inspector in the Fewcott Windfarm appeal[97] considered the impact of the four, 125m turbines (the highest being 251m AOD), on the "Farmland Plateau" and "Wooded Estatelands" character types. He concluded that it is a large-scale landscape, not particularly sensitive to the introduction of large-scale features. This does not suggest that the Inspector considered the landscape to be limited in its capacity to accommodate further development. His findings are of relevance, bearing in mind the need for consistency when dealing with sites in the same area.

Landscape quality/condition

7.133 The landscape of the site and the mineral extraction to the north and at Dewar's Farm to the south is not physically intact and, although restoration will repair the landscape to some degree, the physical state will remain permanently altered. The intactness of the adjacent landscape has been affected by the M40 motorway and its associated Junction 10 and motorway service station, which have introduced a source of near constant movement and noise into the rural landscape. Whilst it may not have been policy to treat the M40 as a development corridor, nonetheless, development has occurred and is planned.

7.134 The landscape has also been influenced by the Bicester to Banbury railway line, the Agrivert scheme and the urban appearance of the Upper Heyford airbase. Future developments would also have an affect. These include the

[92] CD2/2, drwgs. 6/11 & AM02 (viewpoint B); MJ/3, drwg. MJ/18 (viewpoint D).
[93] MJ/3, drwg. MJ/17 (viewpoint C) reflects the most open view.
[94] CD2/6, drwg. 4-5.
[95] CD2/6(6A).
[96] CD2/3, ch.6, p.63, table 6.13.
[97] CD5/53, §§§s 53 & 54.

potential Bicester Eco town, involving the loss of 345ha of agricultural land, the Fewcott windfarm and development on the Upper Heyford airbase. The condition of the landscape has already been eroded.

7.135 The Cobham Resource Consultants landscape assessment identified part of the appeal site as being within 'Reconstruction Landscape' with the remainder of the site and adjacent areas being within 'Repair Landscape'[98]. The reconstruction landscape description[99] states that these landscapes no longer bear any resemblance to their former character and have a high capacity to accommodate change.

7.136 The "Repair" classification does not reflect the nature of the landscape present in those areas today (i.e. restoration landfill and mineral void), and if the assessment were carried out today, it would extend the "Reconstruction Landscape" to the entire site. Upper Heyford airbase is also designated as "Reconstruction Landscape".

7.137 Therefore, quite an extensive area of landscape is low quality with a low sensitivity to potential development[100]. The capacity of the site landscape to accept development is high, and the surrounding landscape has an ability to absorb the indirect effects of the proposal on visual amenity.

National and Local Landscape Designations

7.138 No nationally designated landscape areas are present within the landscape study area. The nearest such area is the Cotswolds AONB, which lies 14km southwest of the appeal site. No significant effects would occur on this designated landscape, with the worst case magnitude of change anticipated as negligible.

7.139 The nearest designated landscape is the Area of High Landscape Value (AHLV) nearly 3km north west of the site. Such designations are out of step with PPS7 and the Inspector in the Fewcott windfarm appeal[101] gave them limited weight.

Settlements

7.140 Whilst it is not possible to completely screen the EfW building, Government guidance confirms that it would not be appropriate to attempt to do so[102]. However, the Planning Committee Report[103] states that *"the plant would be……sufficiently far and screened from the closest villages of Middleton Stoney, Bucknell and Ardley not to harm them".* Although the Zone of Theoretical Visibility (ZTV) drawings[104] illustrate a wide area of theoretical visual impact, this represents a bare earth model of the landscape without vegetation or

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[98] MJ/4 (MJ/B15); CD5/24 *Cherwell District Landscape Assessment* (Nov. 1995), Fig. 15 *Enhancement Strategy* (after p.41).
[99] Ibid. pp. 40-41, §s 4.17-18.
[100] CD2/3, ch.6, p.64, table 6.14.
[101] CD5/53.
[102] CD5/52 *Designing Waste Facilities, a guide to modern design in waste.*
[103] CD1/3, Planning and Regulation Committee 19/10/09.
[104] CD2/2, drwgs. 6/7 & 6/8.

buildings. It is considered that beyond 1.5-2km the effect of the stack would be minimal.

7.141 Views of existing structures, such as the mast at RAF Croughton, the Buckley transmitter, the Upper Heyford airbase, and the many existing telecoms transmitters, are intermittent and glimpsed. CDC's witness accepted that views of the building/stack represented by her cross-sections might be glimpsed rather than consistent across an area, and that she had not adopted a standard height for vegetation, but had estimated it[105].

7.142 Views of the EfW building from the edge of Ardley are likely to be severely restricted, if any views are present at all. The most likely view would be from Jersey Cottages, from where the stack, at 1.8km, might be seen between Upland Cottage and adjacent vegetation on Station Road. The sensitivity of dwellings is generally rated as high and, for this view the magnitude of change would be negligible, resulting in a moderate/minor impact. Views from Upland Cottage would be screened at ground level, although the development might be seen from limited windows, from where the visual impact would be significant[106].

7.143 Views from Bucknell would be restricted to filtered views from Homelands Farm, limited oblique views from a small number of properties to the northwest edge of the village, and potentially direct views from two modern developments at respective distances of 1.66km and 1.75km from the EfW stack[107]. Views from one upstairs window at Swallowfield Farm (southwest of Bucknell) would be across the M40 to the site visible on the skyline. The EfW stack would be about 1.1km away with some intervening vegetation. A similar view across the motorway would be possible from Woodlands Farm (northwest of Bucknell), with the stack 1.55km distant.

7.144 Therefore, the potential exists for significant visual effects to a limited number of receptors looking across the open farmland between the appeal scheme and Bucknell. However, the high level of traffic on the M40 is an existing distraction and would mitigate the visual change.

7.145 No views would exist from Middleton Stoney, although restricted views would be likely from a small group of residential properties to the north of the village, beyond intervening hedgerows. Views would exist from the PRoW running north from Dewars Farm towards Trow Pool, which would be significant. Similar views, although more distant, would be possible from one upstairs window at Dewars Farm, 1.3km away. Views from Manor Farm Cottages would potentially be screened by woodland vegetation along the B430[108].

7.146 From Aynho Park, the flues would be seen as a small element on the horizon[109], smaller than the Ploughley Hill mast, which CDC's witness described

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[105] Day 10 discussion, & RX of MJ by DE on SR's cross-section F where MJ indicated that if the trees were properly taken into account then the top of the stack would not be visible.
[106] MJ/3, drwgs. MJ/16 (viewpoint A shows the most open view), MJ/20, MJ/21.
[107] MJ/3, drwgs. MJ/17 (viewpoint C shows the most open view), MJ/22, MJ/23.
[108] MJ/3, drwgs. MJ/19 (viewpoint J), MJ/24, MJ/25; CD2/2, drwgs. 6/18 & AM09 (viewpoint I).
[109] MJ/7, wire drwg. MJ/A1.

as "difficult to see"[110]. From Juniper Hill they would be a small element on the horizon[111], substantially less significant than the RAF Croughton mast in the foreground and the Fewcott windfarm. Any views from the Tusmore park area would be very limited due to the distance, topography and intervening vegetation[112].

The effects of proposed lighting

7.147 The main EfW building would be illuminated internally at night. However, light transmission would be limited by translucent facades, which would result in a soft glow[113]. The stack would require red aircraft warning lights, which would be positioned half way up the stack and at the top. The nature of the stack would be unclear at night time, with the red glow of the aviation lights only indicative of its structure.

7.148 The lighting from the EfW building would be mainly visible from the east looking across the M40 motorway, which would reduce its perceived night time effects. It would also be visible from the south towards Middleton Stoney and from the B430. However, in the short to medium term the Dewars mineral site would have a level of lighting during winter working hours. Therefore, the main effect of the building lighting would be in the long term from the south and outside working hours. This would lead to a slight magnitude of change and a moderate visual effect on visual amenity[114].

Overall landscape and Visual Effects of the Appeal Scheme

7.149 A long term significant effect would occur to the landscape of the site due to the proposed appeal scheme. This significance is a reflection of the difference between the appeal scheme and the permitted landfill restoration. There would also be a significant effect on the adjacent landscape to the southeast. There would be a limited direct effect on landscape elements and characteristics. The main effect would be visual change and the resultant effect this would have on landscape character in terms of aesthetics and perception. However, the landscape has the capacity to absorb the effects of the appeal scheme without unacceptable levels of harm to the landscape character of the area.

7.150 With respect to visual effects, the assessment of the appellant's witness has not been affected by the errors in the photomontages referred to by OCC, due to the lack of impact on the virtual model relied upon. With regards to the screening effect of the existing poplars, whilst they would die in time, the line also contains ash trees and shorter poplars that will grow to replace the older ones. With respect to viewpoint C, the 15m poplars would screen the 17m EfW building because of the angle of view and the poplars being a fair degree in front of the building.

7.151 The visual effects caused by the main EfW building would be generally limited and/or glimpsed, due to the existing landfill landform and proposed screen

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[110] Day 3, XX of SR.
[111] MJ/7, wire drwg. MJ/A4.
[112] MJ/7, wire drwg. MJ/A9.
[113] CDC2/1, tab 3 (Design and Access Statement) p.xiv, §s 177-180.
[114] MJ/6 drawings.

planting. Although the stack would be visible above the landfill, the levels of vegetation present within the adjacent landscape would help to screen it completely from many areas, such as Ardley and Middleton Stoney. Overall, the likely visual effects would be sufficiently mitigated and contained to avoid unacceptable harm.

Cultural heritage

7.152 There is evidence within the area of an historic landscape of woods and heathland, interspersed with medieval settlements. Historic parish boundaries, which are mainly hedged, are also visible in the landscape, and the roads linking Ardley to Bucknell to Middleton Stoney, and from The Heath to Middleton Stoney, have a meandering character suggestive of medieval origin or earlier.

7.153 Some 19th century industrial changes, such as the Banbury-Bicester railway, have altered the historic rural environment, and more recent intrusions have further altered the completeness of the historic landscape. These include the M40 motorway, the extensive footprint of the RAF Upper Heyford Airbase, quarrying activities and the Agrivert composting facility. These new feature, over time, have become part of the historic landscape, as reflected in the fact that RAF Upper Heyford is now a CA. They also demonstrate the capacity for the historic landscape to integrate fresh developments within it.

7.154 There are three scheduled monuments (SMs), 32 listed buildings (LBs), one Registered Park and Garden, and two CAs that have been assessed within a study area of 2km from the appeal site boundary. There are no World Heritage Sites within this area. Deddington, Aynho Park House, and Fritwell are, in reality, too distant to experience any significant visual impact from the proposed EfW building.

7.155 With regard to the Tusmore Park Estate (TPE), the setting for the earthworks SM and the granary and dovecote LB is the unregistered parkland. The site is merely located in the distance and there are no impacts likely to occur that would adversely affect appreciation of the designated heritage assets[115].

7.156 The heritage assets assessed in the EIA have been divided into nine groups[116] consisting of A) Ardley Village CA, LBs and moated ringwork SM; B) Swifts House Farm LBs; C) Bucknell LBs; D) Trow Pool water tower LB; E) Bucknell Lodge LB; F) Middleton Stoney village LBs; G) Middleton Stoney Castle SM and Middleton Park registered park; H) Lime kiln at The Gorse; I) RAF Upper Heyford Airbase CA and Cold War structures SM; J) Barn at Ashgrove Farm LB.

7.157 The EIA[117] followed a transparent methodology to define the sensitivity of the asset, the magnitude of potential impact, and the significance of effect[118]. As part of that assessment, representative viewpoints were agreed with the Conservation Officer, and some of these have also been used as the basis for

[115] MJ/7, MJ/A9.
[116] App TM/3, fig.TM/1.
[117] CD2/3 Ch. 12.
[118] The assessment of magnitude considered five of the six aspects of settings set out in the - English Heritage publication *Wind energy and the Historic Environment* (CD5/54).

assessment of potential impact on the settings of heritage assets[119]. Photomontages were produced from seven of these agreed locations, some of which provide valuable visualizations of how the EfW building stack might be seen from the principal asset groups[120]. Two additional view points were taken at the request of English Heritage (EH)[121]. The overall assessment of the nine groups concludes that a negligible to moderate significance of visual impact would be likely to LBs and CAs within the study area[122]. The results are as follows:

7.158 For Ardley village LBs and SM (A) there is no particular outward looking aspect to be inferred from the original residential function of the buildings, including the church[123] and the moated ringwork. Their primary setting is the contemporary village itself and its community. There is some woodland between the SM and the site, which would provide some screening. The magnitude of indirect visual impact on the setting would be low, with a resultant visual impact of moderate significance.

7.159 For the Swifts House Farm LBs (B) there is no particular intended outlook. There is some woodland between the LBs and the site which, together with the proposed landfill profile and planting would provide some screening. At a distance of 1.6km from the site, the magnitude of indirect visual impact would be low, with a resulting visual impact of moderate significance.

7.160 For Bucknell village LBs (C) the majority are well within the core of the village and probably screened from the EfW building by non-listed buildings, although there is a house, public house and rectory, which might have views of part of the scheme. There would be no screening from intervening woodland, although the motorway would lie between the assets and the site. There is no particular outward-looking aspect to be inferred from the original residential function of these buildings, including the church, their primary setting being the contemporary village itself and its community. The magnitude of indirect visual impact would therefore be low, with a resulting visual impact of moderate significance.

7.161 The primary setting for the Trow Pool water tower LB (D), the closest asset to the site, is Bucknell village and the Manor, which it served. This relationship is already impacted upon by the M40 motorway. There is no indication in the listing that the external platform on the tower was to provide a prospect of the landscape. The visual impact from the EfW building, taking into account its location, scale and proximity would be low, with a resulting visual impact of moderate significance.

7.162 Bucknell Lodge LB (E) is separated from the site by intervening woodland. The magnitude of indirect visual impact would be low, with a resulting visual impact of moderate significance.

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[119] App TM/3, fig. TM/1.
[120] MJ/3, drwgs. MJ/16–18 (viewpoints A, C & D); CD2/2, drwgs. 6/34, 6/21 & AM12 (viewpoint L), 6/23 & AM14 (viewpoint N).
[121] App TM/3, figs. TM/2 & TM/3 (viewpoints Q & R).
[122] TM/1, p.29, table 1.
[123] MJ/7, wire line drwgs. MJ/A6 & MJ/A7 show the stack as substantially smaller than the church and new build houses on Church Road.

7.163 For the LBs of Middleton Stoney village (F) there is no particular outward-looking aspect to be inferred from their original residential function, their primary setting being the contemporary village itself. All of them would be partly screened from the EfW building by other non-listed buildings. Woodland and a copse would also provide screening for some buildings. At 1.6–1.8km distance, the magnitude of indirect visual impact would be low, with a resulting visual impact of moderate significance.

7.164 The Middleton Park LBs and Middleton Stoney castle SM (G) are well screened from the site by trees and the buildings of Middleton Stoney village. There are no clear intended vistas out of the park apparent from the layout. At a distance of 1.7–2km, the magnitude of indirect visual impact would be low, with a resulting visual impact of moderate significance[124].

7.165 The Lime kiln LB (H) is fully screened by woodland from the site and there could be no visual impact. The magnitude of indirect visual impact would be of negligible significance.

7.166 For RAF Upper Heyford CA (I) there are views out from the east end of the flying field and from the residential zone[125]. There are no views from public places into the site that give the observer an understanding of the layout, beyond the high concentration of hardened aircraft shelters[126]. A key aspect of the setting of the airbase is the view from the air. The EfW building would be clearly visible from any height while approaching or leaving the airbase, but this would not impinge on any view of the airbase or the ability to appreciate its form and relationship with the surviving historic landscape. The overall magnitude of visual impact would be low, and the resulting visual impact generally would be of moderate significance.

7.167 Most of the LB barn north of Ashgrove Farm (J) is hidden by the lie of the land, and as a functional agricultural building, the primary setting is the farm itself. The combination of these factors would result in a low magnitude of impact from the EfW building, and therefore an effect of negligible significance.

7.168 Since the EIA was undertaken, a third CA, Fewcott, was designated in October 2008, which lies beyond the 2km study area. The ability to appreciate Fewcott is not reliant on long views to or from the surrounding flat terrain and the appeal scheme is not considered to adversely affect what is of significance for the setting of this CA. As Fewcott lies beyond Ardley at a greater distance from the site, there would be incrementally less of an impact on this CA.

7.169 The effects of the proposed development would be mitigated by the landfill restoration scheme, the character of which would match that of the surrounding historic landscape and also the proposed planting scheme, which would decrease its visual impact. The placing of the EfW facility close to the quarry floor and the shaping of the landfill landform would substantially reduce its impact.

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[124] MJ/7, wire drwg. MJ/8.
[125] CD5/25, *RAF Upper Heyford Conservation Area Appraisal* pp. 25&27, figs. 9 & 11.
[126] Ibid. § 6.4.

7.170 The Planning Committee Report identifies no constraint to development from heritage[127] and no effect on archaeological sites or features[128]. EH did not object, although it required some further assessment of Upper Heyford CA[129]. The refusal decision in regard to heritage directly contradicts the advice of CDC's own professional advisors without clarification as to the reasons for this divergence.

Conclusion

7.171 Although some visual impact may be apparent from locations of historic importance, the impact on the settings of designated sites is not of significance for an appreciation of their heritage value. Inter-visibility alone between the appeal scheme and heritage assets is not a reason in itself for refusal of permission. Therefore, it is concluded that cultural heritage is not a constraint to development, and that the EfW facility would not be in conflict with the policies cited in OCC's refusal notice.

Air Quality

7.172 Policy and legislation for the regulation and improvement of air quality is formulated at both the European and National level. The policy and legislation is then enforced by the appropriate body (for example the EA, NE or the Local Authority (LA). The relationship between planning and pollution control is set out in PPS23[130] which explains the respective roles of the two systems.

7.173 The issue of air quality impacts associated with the *operation* of an EfW facility is regulated by the EA in accordance with the requirements of a site EP. However the appropriateness of design of the EfW facility (i.e. whether it is designed optimally) may be a material planning consideration.

Permitting

7.174 The position of the EA may be summarised as follows: *'We will not issue an environmental permit for any industrial site, including energy from waste plants, if we consider they will cause significant pollution to the environment or harm human health'*[131]. The issuing of a permit marks the first stage of EA regulation of an EfW facility. The EA then starts a continued assessment of the plant operations and its environmental performance. This will include the continuous and periodic monitoring of emissions by the operator, check monitoring by the EA and frequent plant inspections.

7.175 The EP was duly made on 18th March 2009[132]. The Air Quality Modelling and Assessment Unit (AQMAU) of the EA completed its review of the air quality technical appendix and further information provided for the EP application on 20th April 2010. AQMAU agreed with the findings of the air quality assessment.

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[127] CD1/3, Planning and Regulation Committee 19/10/09, p.49, §28.
[128] Ibid. p.66 §23, p.86 §53, p.91 §66.
[129] Ibid. p.84 §49; App. TM/6.
[130] CD4/11 p.4.
[131] CD5/29. Bullet 1, p1.
[132] CD1/23.

7.176 It is for the EA under the Environmental Permitting Regulations (EPR) 2010 to decide on abatement and mitigation measures to be adopted, the emissions limits to be set and to specify the means of ensuring acceptable operation and reduction of risks over the lifetime of the operation of the facility[133]. The EA's issue of the draft EP shows that air quality issues can be satisfactorily controlled and monitored[134].

Methods for Assessing Air Quality

7.177 The approach taken is to quantify the additional concentrations of the key pollutants resulting from operation of the proposed scheme and to evaluate the significance of these additional concentrations in the context of existing concentrations, air quality standards and their potential for impacts on human health (via inhalation) and ecosystems.

7.178 For the dispersion modelling carried out in the EA and EP application, two available data sets were used in "model ready form" from RAF Brize Norton and Bedford Airfield. Wind speed and wind direction data were collected by the appellant at the appeal site, but these were not used for the principal modelling outputs due to the lack of observations of cloud cover and solar radiation[135].

7.179 The dispersion modelling carried out for the assessment has been subjected to review and audit by the EA AQMAU and other consultees (such as NE). These organisations have confirmed that conventional and accepted best-practice was followed.

Existing Air Quality

7.180 Existing air quality has been determined though desktop review of existing monitoring data and further data collected at 12 locations for up to five pollutants/pollutant mixtures (volatile organic compounds) over a period of six months. The data indicates that existing air quality in the area is generally good, as would be expected for a semi-rural site. However, the M40 motorway passes to the east of the site and pollution from the motorway is an important contributor to air pollution in Ardley village and at the appeal site. In particular, baseline monitoring indicated high (i.e. close to the annual average objective) levels of NO_2 immediately south of the roundabout where the B430 joins the A43 (directly west of the M40 junction).

7.181 CDC has carried out regular Reviews and Assessment and it has been concluded that Air Quality Strategy targets would be met for all pollutants and no further assessment was required as part of this review. Furthermore, in March 2009 CDC representatives installed an NO_2 diffusion tube on the façade of No. 1 The Crossways. This is the location which they had identified as being most likely to represent a worst case location for relevant exposure. Bias adjusted data collected from March 2009 until March 2010 (12 months) indicates a baseline concentration (i.e. background and roads contribution) of 32.5µg/m^3. This is 81.25% of the annual average objective for this pollutant and would correlate with the findings of the Review and Assessment.

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[133] PPS23 §10.
[134] CD1/26.
[135] MS/1 § 5.7 - 5.10.

Effects on Local Air Quality

7.182 The dispersion modelling completed in support of the proposal predicts short-term process contributions below 5% of the applied standard for all pollutants at all modelled locations. Since process contributions can be considered insignificant if the short term process contribution is below 10% of the short term environmental standard according to EPR H1 assessment criteria, all short term process contributions can be considered insignificant.

7.183 The predicted long-term process contribution is below 3% of the applied standard for all pollutants at all modelled locations. The predicted environmental concentration (PEC) is the process contribution added to the existing background concentration at any location. The significance of impacts of predicted long-term PEC for all pollutants have been classified as 'negligible' for all pollutants[136]. The results therefore indicate that all predicted environmental concentrations are below the relevant Standards, Objectives and Environmental Assessment Levels for each pollutant.

Effects on Ecosytems

7.184 For all European sites and SSSIs within 10km of the stack, process contributions have been calculated for comparison against Critical Level thresholds. In addition, predicted contributions to acid deposition and nitrogen deposition (eutrophication) have been calculated and compared with the relevant Critical Load range for the habitat types associated with each designated site. In May 2009, NE confirmed that they were satisfied that the proposal would have no significant effects on relevant sites of conservation interest.

Odour, Dust and Traffic

7.185 The closest of the residential receptors is approximately 700m from the stack of the proposed facility and more than 500m from the IBA storage areas.

7.186 The scheme has been designed to minimise fugitive releases of odour. Furthermore, the facility would be operated in a manner which minimises fugitive releases of odour and this will be stipulated within any EP for the site. Based on the 'designed in' and operational mitigation, in addition to the distance of the facility to residential receptors, odour impacts associated with operation of the EfW facility would be highly unlikely.

7.187 The construction of the facility will be undertaken with due regard to minimisation of dust impacts. Operation of the facility has also been designed to minimise fugitive releases of such dust and this will be stipulated within the EP for the site. Based on the 'designed in' and operational mitigation, in addition to the distance of the facility to residential receptors, nuisance dust impacts resulting from construction or operation of the EfW facility would be highly unlikely.

7.188 An assessment of traffic emissions on the levels of traffic pollution on the affected road links has been completed. The Design Manual for Roads and

[136] MS/1 §7.5.

Bridges (DMRB) assessment found that impacts were within acceptable limits in that all PEC values are predicted to be within limits at residential receptor locations[137]. Since the original assessment, Local Air Quality Management Guidance has since been updated, as has the DMRB assessment method. Given these changes, this assessment has been updated. The conclusions remain materially unaffected.

7.189 There is no objection from OCC, CDC, NE, Food Standards Agency (FSA), Health Protection Agency (HPA), or the EA on air quality, pollution or related health grounds. The majority of objections made by third parties in respect of air quality are not objections that fall to be considered by the Secretary of State in a planning inquiry, but are more appropriately directed to the EA under the permitting regime. The EA has confirmed that the technology used to minimise and control emissions is BAT[138]. The development would result in small increases in ambient concentrations of some airborne pollutants, but these increases would not be significant in the context of existing air quality and ability to meet air quality objectives. No evidence was produced to undermine these conclusions and therefore air quality does not form an arguable basis on which to refuse the appeal.

Hydrology

7.190 The EA removed their objections on the grounds of hydrology and flood risk and were satisfied with the FRA and the Surface Water Management Plan (SWMP) at the appeal site. They are considered to be the competent authority with regards the consideration of flood risk and surface water management.

7.191 A pragmatic, sequential and reasoned approach to assessment of flood risk, using engineering judgement along with appropriate analytical techniques, was followed to assess flood risk at this location in line with the tiered approach to FRA set out within industry best practice. The evidence submitted by Bucknell Parish Council BPC is considered to advocate a more theoretical academic approach that does not appear to be entirely supported by best practice techniques.

7.192 Clear agreement has been reached with the competent regulatory authority (EA), on what constitutes an appropriate scope of works commensurate with the significance of potential flood risk and hydrological impacts identified at the screening and scoping stages of the project.

7.193 The suggested two-dimensional modelling study for the analysis of the flood risk to the site is considered unnecessary, given the results of the scoping/screening exercises undertaken with regards to flood risk. Work undertaken is in accordance with the requirements of industry codes of practice and EA methods of good practice as regards flood estimation in smaller catchments and assessment of flood risk, with due consideration to PPS25.

7.194 The assessment of flood risk, and proposals for the management and control of surface water runoff detailed in the ES, proposed planning conditions and environmental permitting process, satisfy the aims and objectives of national

[137] CD5/35 p5-3 Box 5.1.
[138] See the definition of BAT in the IPPC Directive App/2, article 2(11).

and local planning policy and can be used specifically to prevent or manage pollution and promote good environmental practice.

7.195 Furthermore, these controls would specifically safeguard the downstream catchment areas below the appeal site from direct significant effects as a consequence of runoff generated as a result of the development proposals.

Prematurity

7.196 Neither the Oxfordshire Minerals and Waste Development Framework, nor the Cherwell Local Development Framework is at an advanced stage of preparation. As such, neither planning authority considered the appeal proposal to be premature. There is no reasonable basis for regarding the proposals as premature given the early stages in plan preparation by both OCC and CDC.

7.197 AwFPC made generalised statements which largely failed to take account of the current and long established policy on prematurity. Any delay to await a Core Strategy would not be simply a year since if it were premature now at this early stage in the plan process it could scarcely be less so once the policies were published and gone to Examination in Public (EIP). If prematurity applied now it would continue to do so and must apply to any other site for the treatment of residual waste to meet Oxfordshire's current need.

7.198 Reliance on the localism objectives of the new Government[139] does not, nor does the Secretary of State suggest as such, justify placing on hold current planning applications or appeals absent any new approach to prematurity. It has always been the case that changes in policy do not of themselves prevent the determination of planning applications[140]. The approach is not supported by current policy on prematurity or by emerging policy from DCLG.

Environmental Assessment

7.199 Mr Day claimed that the ES was inadequate. Apart from the many errors and misconceptions in his submissions, often contrary to the appellant's expert evidence, policy, EU law and the EA's assessment in the DD, it is important to note that no authority has taken issue with the adequacy or appropriateness of the ES. The Courts have been clear that merely because someone takes issue with the form or content of the assessment is no basis for rejecting an ES, that an ES is not required to be perfect and, indeed, the purpose of the EIA process (which includes consultation) in which Mr Day did not participate, is to allow other views to be expressed. In *R. (Edwards) v. Environment Agency* [2008] UKHL 22 and [2008] Env. L.R. 34 the then House of Lords approved the statements of principle by Sullivan J. In *R. (Blewett) v Derbyshire CC* [2004] Env. L.R. 29[141] (§§38-42).

7.200 It is not accepted that the ES was defective, although there were corrections which needed to be made, primarily with regard to errors with some of the

[139] See e.g. Draft Structural Reform Plan July 2009, DCLG. See e.g. p. 8 Section 3.
[140] See e.g. *R. v City of London Corp Ex p. Allan* [1981] J.P.L. 685.
[141] Referred to by approval by Lord Hoffman at §§38 and 61.

viewpoints/montages which had already been noted in written evidence[142] in advance of the inquiry. It was explained that those matters had not in any event informed or affected the visual/landscape assessment in the ES. The minor error with regard to the SSSI boundary, as already noted, makes no difference.

7.201 Even if there had been significant defects in the ES then, as Sullivan J. held in *R. (Davies) v. SoS CLG* [2008] EWHC 2223 (Admin), it could be supplemented by evidence given at public inquiry without going through the publicity requirements of the EIA Regulations.

Overall benefits

Waste Management

7.202 There are many significant benefits to the appeal scheme which strongly militate in favour of the grant of permission. The benefits in terms of waste management include:

(i) providing a facility to assist in meeting OCC's urgent and unmet need to treat residual MSW. This would be its first and (for the foreseeable future) only such facility;

(ii) the general lack of capacity for treatment of C&I in Oxfordshire other than landfill;

(iii) allowing the WDA to procure its facility of choice (confirmed by Cabinet's decision to enter the contract on 27.7.10) following a lengthy public procurement exercise which, if repeated, would take three to four years during which time waste would have to continue to go to landfill without energy recovery;

(iv) diverting waste (both MSW and C&I) from landfill;

(v) greenhouse gas savings in terms of the diversion of waste from landfill.

7.203 The consequences of not granting permission are also significant:

(i) the urgent need for residual recovery capacity in Oxfordshire would remain unmet;

(ii) the WDA would need to restart its procurement process, and would be unlikely to conclude that process for three to four years;

(iii) during that time, up to 1.2mt of MSW and C&I waste would be landfilled;

(iv) that landfilled waste would release substantial volumes of greenhouse gases that would otherwise not have been released if the facility were permitted.

7.204 Although some have suggested that the proposals will act as a disincentive to other forms of waste reduction and management higher up the waste hierarchy,

[142] See the amended montages and viewpoints in his MJ/3 and also the note on p. i of the rebuttal proof MJ/TM 1 under "iii Additional issues".

the criticisms are misplaced. The Minister, Caroline Spelman, said on 15 June 2010: *"We need a new approach to waste – one which works for the new economy. We cannot keep putting recyclable and biodegradable material into landfill. It threatens the environment and wastes what are incredibly valuable natural resources."*

7.205 Even a high reuse/recycling area (as EU experience shows[143]) requires the incineration of a significant proportion of residual municipal waste. The objectives outlined in the recent speech by the Minister are not undermined by this since there will inevitably remain residual waste to be treated. Indeed, EfW represents one other means of avoiding material going to landfill. The latest EU waste statistics (March 2010) found in APP/04[144] demonstrates that those EU countries with 5% or less landfilling of waste and high recycling and composting still incinerate 27-54% of municipal waste, generally one third to a half. Germany, for example, has a 1% landfill rate, 65% combined recycling and composting, but still 35% incineration. The Netherlands, which also only landfills 1%, incinerates 39% of its municipal waste. A residual waste facility would not act as a deterrent to other strategies which would move waste up the hierarchy. Indeed, the WDA does not guarantee a minimum amount of MSW under the proposed contract with Viridor but only exclusivity with regard to such MSW as OCC makes available as residual waste.

7.206 Further, as explained in evidence[145], just as LATS allowances and the landfill tax provide financial incentives to divert waste from landfill, so too do the higher gate fees at EfW plants encourage recycling and composting.

7.207 The proposals also represent one of the means by which OCC as WDA will meet its need for the management of residual waste without prejudicing the other increasingly successful initiatives in Oxfordshire for waste minimisation, reuse and recycling[146]. The residual waste figures take account of the effect of other management techniques which will reduce the amount of waste requiring treatment.

Energy

7.208 A significant additional benefit of the scheme is that it would create a substantial amount of low carbon and (in part) renewable energy, with the potential of CHP. The facility would provide capacity for c.24% of Cherwell District's domestic electricity needs[147].

7.209 OCC has persisted in arguing that the proposals do not include renewable energy provision, relying primarily on the absence of energy from waste in PPS22. OCC therefore fails to take account of the importance of the contribution of energy from waste as a low carbon resource acknowledged by more recent Government policy in WS2007[148] and the Climate Change PPS e.g. §§19, 20, 24, 27 - which support both low carbon and renewable resources. It is also

[143] See APP/04.
[144] Eurostat News Release 43/2010 19.3.10.
[145] Day 11, XX MB and RX.
[146] Day 7, AP EIC.
[147] APP/01.
[148] pp. 76-77.

clear[149] that Government treats the biodegradable element of waste treated for energy recovery as a renewable resource. On OCC's estimate as WDA, at least 12.1% of the energy consumed in CDC would properly be considered renewable energy generated by the facility[150]. In any event, all the energy generated by the facility would be low carbon energy, as accepted in XX[151].

7.210 It is worth comparing the energy which would be produced with that from the Fewcott windfarm. The windfarm would produce only 14%[152] of the energy generated by the EfW facility. In that case, the Inspector found that the reduction in CO_2 emissions attributable to that scheme would be substantial[153], and found that this benefit outweighed the identified harm of the development. The Secretary of State is invited to adopt a similar approach here and to give significant weight to the low carbon energy benefits of the appeal scheme.

8.0 The Case for Oxfordshire County Council

Need

MSW treatment capacity

8.1 Directive 1999/31/EC sets out national level requirements. WS2007 then sets out as one of its key objectives to *"meet and exceed the landfill directive diversion targets for biodegradable municipal waste in 2010, 2013, and 2020."* [154] As accepted in XX, there are two elements to this objective: meeting the targets and exceeding the targets. It was also accepted that where a target was met (but would not be exceeded) *"the need would be less urgent, the need would be [given] less weight"*, albeit that *"the need would still be there."*

8.2 This fairly reflects the distinction between the two elements. It is not a question of saying that there is not a continuing need to move the treatment of waste up the waste management hierarchy. That need would remain even when the MSW target is met. However, in that event, the weight to be given to that need would be less. There is less imperative to exceed the targets than there is to meet them.

8.3 This distinction is significant in looking at the weight to be given to meeting need when that need is being set against planning harm. The need is not an indivisible and unified entity. The two elements of it are clearly different in terms of their importance and in terms of the priority they should be given. It was wrong to suggest in XX that exceeding the targets was more important than meeting them. Such a view defies logic. In simple terms, a proposal which would enable the targets to be met would carry more weight than a proposal that would enable the targets to be exceeded.

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[149] See e.g. the Defra letter in AP App. 2 and CD 5/13 Rivenhall DL §13.
[150] APP/05 §3.4.
[151] Day 2, XX DE.
[152] Day 2, XX and APP/05 (revised figures).
[153] §19.
[154] CD4/13, §23.

8.4 The appellant is critical of OCC's distinction identifying these two elements of need on the basis that it is said to have no clear policy support. It is correct that the distinction is not articulated in PPS10, which makes no mention of the landfill diversion targets. However, it is a distinction that can be seen in the way that WS2007 expresses the key objective (*"to meet and exceed"* rather than simply to *"exceed"*). It is also reflected in the approach of the OJMWMS[155].

8.5 Thus it is not accepted that the distinction drawn between meeting the landfill diversion targets and exceeding them is an improper or unjustified distinction. OCC could be criticised were it to claim that there is no need to do more than meet the minimum diversion targets, but that is not its case. More weight should be attached to meeting the targets than to exceeding them. That has significance in this case when looking at the balance between need and harm.

8.6 As at 2020 it is agreed that Oxfordshire's total MSW arisings will be of the order of 348,400t[156]. If the appellant's expected recycling rate of 62% was achieved, the residual available for treatment would be 135,800t[157]. To identify the minimum amount which must be treated in order to avoid a breach of the landfill diversion targets, OCC has applied the landfill diversion rate of 83%[158] (leaving 17% as the maximum going to landfill) and a lower recycling rate of 55% in line with the minimum recycling target of the OJMWMS and the regional waste model[159]. This produces a minimum amount of MSW to be treated of 97,600t[160]. If a higher recycling target was used in line with the appellant's projections, this would reduce the minimum which must be treated below that level. OCC's minimum figure is therefore more cautious (i.e. it implies more treatment capacity is needed to meet the minimum position) than the appellant's projections would suggest.

8.7 OCC does not suggest that the only need for treatment capacity is to address this minimum requirement for MSW. However, that is the element of need which should carry the greatest weight since it relates directly to the minimum requirements of the LD, as applied to Oxfordshire. It is obvious that a plant with a throughput of 300,000tpa would provide capacity to meet more than this minimum level of need.

8.8 OCC accepts that treating more MSW than the minimum would move the treatment of waste further up the hierarchy and the EfW facility is large enough to enable all of the residual MSW as at 2020 (135,800t) to be treated. However, OCC suggests that the need to do this should carry less weight and, of course, that it has to be balanced against the environmental impacts of the EfW facility. This is not to ignore the waste hierarchy but is to put it into its proper context, as indicated by Articles 2 and 13 of Directive 2008/98/EC[161].

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[155] CD3/5.
[156] APP/08, Table A1.
[157] APP/08, Table A2.
[158] The derivation of the 83% is explained at §85 above.
[159] CD3/5, p18 and CD5/51, Table 5.
[160] APP/08, Table A2; Walton Rebuttal, Tables 1.1, 2.1, 5.1, and 5.3.
[161] CD4/1. See also the balancing of the hierarchy with the objective of environmental protection in §(6) and §(31) of the Directive.

8.9 OCC accepts that its approach to planning for the treatment of MSW departs from the position espoused by the WDA, which is clearly seeking to deliver via the procurement exercise a treatment facility large enough to deal with all of Oxfordshire's residual MSW. However, it is important to understand the role of the WDA at this Inquiry and how this differs from the role of OCC. The WDA has a specific set of responsibilities in relation to the management of MSW but those responsibilities do not include waste planning or the discharge of any planning functions.

8.10 It is not the function of the WDA to balance its waste management responsibilities against the environmental impacts of particular facilities or solutions so as to reach an overall planning judgement. That responsibility is vested in OCC as waste planning authority, and then (in the event of an appeal) in the Secretary of State. In addition, the WDA does not come to this inquiry as a disinterested or dispassionate observer. The WDA has identified that a failure to meet its LATS targets will have serious financial implications for the WDA (and so potentially for OCC taxpayers)[162]. Those financial implications have clearly influenced the stance taken by the WDA and its decision to support this proposal. The procurement report describes the growing landfill tax consequences if waste cannot be diverted from landfill as placing *"a significant financial burden on the council"*[163]. However, those financial implications are not a material planning consideration.

The need for C&I waste treatment capacity

8.11 In relation to C&I waste, this is not a responsibility of the WDA. For this reason it is not addressed by the OJMWMS. Nor is it subject to the LD. The proposed waste management contract which is the subject of the WDA's procurement exercise will not require the treatment of C&I waste but nor will it preclude it[164]. WS2007 does set out a national target to reduce the amount of C&I waste which is landfilled by 2010 to 80% of 2004 levels[165], but this target has no local expression. Nonetheless, OCC accepts that the waste hierarchy of the WFDs requires as much C&I waste as is practicable to be treated where it cannot be recycled, provided this is compatible with the environmental objectives of the Directives.

8.12 The regional waste management capacity study sets targets for recycling and landfill diversion for C&I waste at 2020 of 60%[166] and 81%[167] respectively. Whilst these targets derive from the now defunct SEP, they have been accepted by OCC for waste planning purposes[168]. Applying these targets produces a minimum treatment requirement for 139,800t of capacity by 2020[169], although it is agreed that after allowing for recycling at the SEP rate of 60% and a

[162] Pau POE, §§ 2.2.4, 3.2.1, 3.2.2, and 3.4.6.
[163] Pau App 1, p.2, §4.
[164] Pau App 1, p.8, §23.
[165] CD4/13, p.103.
[166] CD5/51, Table 5.
[167] CD5/51, Table 4.
[168] Walton Rebuttal App. A, Tables 2.1 and 5.1.
[169] APP/08, Table A3.

further deduction of 5% for non-processible waste, the residual Oxfordshire C&I waste available for treatment is 252,900t at 2020[170].

8.13 For similar reasons as apply in relation to MSW more weight should be given to the element of need for the treatment of C&I waste that is required to achieve the minimum landfill diversion target that has been accepted by OCC for waste planning[171] than to the element of need which exceeds that target and enables more waste to be moved up the hierarchy. Again, the distinction between the two components of need is important in this case when the need is being balanced against the adverse planning impacts of the proposal.

Overall treatment capacity needed

8.14 OCC has accepted that there is a minimum need as at 2020 for treatment capacity of 237,400tpa[172]. OCC has accepted that there is no policy to say it *"should only aim to move the minimum up the hierarchy"* and has accepted that it *"should send as much as [it] can, consistent with environmental protection, to treatment. Not only the minimum".* OCC therefore recognises that there is an overall need for treatment capacity for Oxfordshire's MSW and C&I which exceeds the capacity of the EfW facility. Nonetheless, not all of that need carries the same degree of weight. The portion of the need which is required to meet the identified landfill diversion targets (of the LD in the case of MSW and of the waste planning authority in the case of C&I waste) should carry the greatest weight.

8.15 There are three considerations in then relating these elements of need to the appeal proposal:

(i) is the scale of the EfW facility disproportionate having regard to the need and the planning impacts;

(ii) will the proposal meet the need for residual treatment capacity; and,

(iii) will the proposal meet Oxfordshire's needs for treatment capacity.

Scale

8.16 In relation to scale, there is a relationship between the size of the facility and its landscape and visual impact. This primarily relates to the height of the main EfW building. The height is related to the capacity in a fairly direct proportional relationship[173]. The appellant's evidence shows that if a facility was to cater for a throughput of 240,000tpa (slightly above the residual minimum need) then the height of the boiler house could be reduced by up to 6m (depending on whether there were two or three streams)[174]. The appellant did not think a three stream operation was likely to be viable but agreed that the two stream operations at both Portsmouth and Marchwood were modern plants catering for

[170] APP/08, Table A2.
[171] Albeit that since this target does not derive from the LD it should carry less weight as a need in any event.
[172] APP/08, Table A3.
[173] Oathen POE, §5.3.
[174] Oathen POE, Fig.10; Oathen in XX.

substantially less than 240,000tpa[175]. Whilst the appellant sought to pro rata the heights of those plants to suggest an equivalent height with a 300,000tpa capacity[176], this exercise was artificial given the fact that different boiler suppliers have different configurations[177] and in any event the issue is not the height of a 300,000tpa capacity facility but a smaller facility of only 240,000tpa. The cube root relationship described by the appellant is a better guide in this respect.

8.17 The appellant also accepted that if the IBA processing facility was located offsite, the length of the building would reduce. Given the efforts by the appellant in trying to screen this element of the EfW facility by the depiction of poplars in the photomontages, it may be reasonably thought that this is an element that can be considered to compound the visual impact of the proposal by emphasising its 229m length and there would be merit in its omission. Obviously, there would be other planning consequences, particularly in terms of transportation, but if the scale of the proposal does result in harm then it is reasonable to question whether all of that development is necessary on this site.

8.18 In relation to the stack height, OCC accepts that, in this location, a smaller building would not lead to a reduction in stack height because of the height needed to achieve the necessary level of dispersion. The stack height here is locationally specific, rather than being a function of the building height. It can be noted that the Marchwood plant has a similar building height of 36m[178] but a stack height of only 65m.

8.19 OCC's essential case is that the scale and size of the EfW facility is not acceptable in this location by reason of its landscape and visual impact. That is so even given the accepted need for treatment capacity. However, to the extent that the facility is larger than is necessary to meet the minimum treatment capacity, and the extra 60,000tpa of capacity beyond that minimum has an impact specifically on the resulting height of the main building, OCC considers that even less weight should be given to the need case for this particular proposal, when weighing it against the harm.

Residual Waste

8.20 The waste hierarchy is satisfied by the treatment of waste in preference to that waste being landfilled. The hierarchy is not satisfied by the treatment of waste by incineration if that waste could realistically be recycled or composted. The appellant has promoted the EfW facility on the basis that it will provide treatment capacity for residual MSW and C&I waste[179]. OCC accepts that the proposed waste management contract should provide a mechanism for ensuring that the MSW is subject to appropriate sorting or separation to remove recyclable or compostible material so that the MSW feedstock will be residual waste. It can be noted that, nonetheless, the appellant recognised that a

[175] Oathen in XX.
[176] Oathen POE, Table 2.
[177] Oathen POE, para 5.5
[178] Oathen POE, Table 2.
[179] Herbert POE, §2.2.8, item 1, and §2.3.15; CD1/3, §12.

planning condition to require that the EfW facility only treats residual MSW would not be inconsistent with the proposed contract.

8.21 However, for the C&I waste, it is to be noted that the site includes no Materials Recycling Facility (MRF) or other separation facility. The appellant does not control any MRF facilities in Oxfordshire. The appellant opposes a condition to require a scheme to be submitted showing the efforts to be taken to ensure that so far as practicable only residual C&I is incinerated. Such a condition was put forward by officers at the planning application stage[180].

8.22 OCC's primary case is that the need for C&I treatment capacity does not outweigh the harm caused. However, if a contrary view is taken OCC considers that such a condition is necessary to secure that the proposal does at least meet the C&I need that is relied on to outweigh that harm. If a condition is not imposed, then this aspect of the appellant's case on need should carry no weight because it is not assured of delivery.

8.23 The appellant argues that such a condition is unnecessary because the matter would be resolved by the operation of the market. This is not something that can be assured. Whilst the tonnage rates for waste treatment may provide some commercial incentive to recycle, there are many other factors for businesses to consider as to whether they would recycle their C&I waste to the full extent that could be practicable. Less than a third of Oxfordshire's C&I waste is currently recycled, albeit it is unclear what is happening to the 21% being *"treated"* given the absence of treatment facilities in the County[181].

8.24 The appellant also argues that a condition on residual waste would be imprecise and unreasonable. OCC's proposed Condition 23 addresses these concerns. The submission of a scheme would allow the definition of the steps to be taken to show how efforts will be made to achieve prior recycling where reasonably practicable.

Meeting Oxfordshire's waste needs

8.25 The appellant argues that there is no requirement for the EfW facility to give priority to the treatment of Oxfordshire's waste, and it is sufficient for the capacity to be related to the scale of Oxfordshire's needs, without any mechanism to ensure that it then meets those needs. The appellant therefore adopts the unattractive position of relying on a need case to justify the proposal in terms of outweighing harm but being unwilling to see that need case then reflected in the terms of any planning permission.

8.26 It is clear from PPS10 that the needs that OCC should be addressing as waste planning authority are the needs arising from its own administrative area and from the communities within it[182]. OCC has no obligation under the advice in PPS10 to provide waste management facilities for the waste from adjoining counties[183]. Whilst the development control advice in PPS10 does not cover this

[180] CD1/3, §50.
[181] CD5/2, §4.7.3.
[182] CD4/9, §§8, 9, and 17.
[183] There are special arrangements for landfill and London's waste but they do not detract from the point made.

issue, it is important to appreciate that OCC is not seeking to suggest as a general proposition that a waste origins condition is appropriate in all cases. OCC's case is specific to the particular circumstances here.

8.27 It is said that there is a need for the EfW facility. That need has been calculated exclusively by reference to the quantified waste arisings within Oxfordshire (both for MSW and for C&I)[184]. The need that results is then said to outweigh the harm caused. Whilst OCC disagrees with this conclusion, it must be the case that if the need would not in fact be met by the proposal then the need argument must fall away. The proposed waste management contract may address the position for MSW but in relation to C&I waste there is no mechanism for requiring the operator to treat all or any of the C&I waste from within Oxfordshire.

8.28 The appellant argues that such a mechanism is not justified by reference to the proximity principle and that self-sufficiency is only to be applied at the national level. This misses the point that OCC's concern stems from the particular reliance on need as put forward by the appellant. The appellant also argues in any event transport costs would ensure that waste would not travel unnecessary distances. This again misses the point of OCC's rationale for its position. In addition, given the location of the site, close to the M40 and A43 and with ready access to larger urban areas in Northamptonshire and Warwickshire, there is every reason to expect waste from outside of Oxfordshire to be attracted to the site. As to the actual source of waste arisings, this would be a matter for the market, and would be influenced by the operator's pricing structure.

8.29 Conditions to limit sources of waste are discussed below in the conditions section.

Need for Renewable Energy/Low Carbon Energy

8.30 Dealing first with renewable energy, the relevant advice is contained in PPS22 and the Climate Change Supplement of PPS1. The former is explicit that renewable energy does not include energy from *"mass incineration of domestic waste"*[185]. Domestic waste is 96% of the MSW waste stream[186]. It was accepted in XX that there was no reason for treating C&I waste any differently from MSW for the purposes of this advice (albeit he suggested it had been superseded by the Climate Change Supplement).

8.31 The Climate Change Supplement[187] has not sought to cancel this very clear and explicit statement in PPS22. Its opening page does state that it takes precedence where there is *"any difference of emphasis on climate change"* but the statement as to what does and what does not constitute renewable energy is not a question of emphasis, it is a question of definition. The Climate Change Supplement provides its own definition of both renewable energy and low carbon energy but, even looking at that definition, electricity from EfW is not an

[184] Herbert main POE, §6.1.3; Herbert Rebuttal, §§2.4, 2.5, and Table CH.1; APP/08, Tables A1 and A2.
[185] CD4/10, unnumbered first page, §3.
[186] CD3/5, JMWMS, p.5 Fig.2.
[187] CD4/5.

energy flow which occurs *"naturally and repeatedly in the environment"* which is the hallmark of renewable energy as there defined. Electricity from EfW can be a form of low-carbon energy (where there is an end-user) but that is a different matter.

8.32 It is to be noted that in the Rivenhall decision[188], the Inspector (report dated 22 December 2009) expressly referred to the advice in PPS22 that the mass burn of domestic waste was not renewable energy[189]. That paragraph of the Inspector's Report was expressly considered by the Secretary of State in March 2010[190] when commenting on renewable energy matters, without any indication that the Inspector was wrong because this part of PPS22 had been superseded. In Rivenhall, the proposal qualified as renewable energy because it was not the mass burn of domestic waste and because CHP was being provided. At Rivenhall there was a Mechanical Biological Treatment (MBT) to treat the residual MSW and C&I waste to produce Solid Recovered Fuel (SRF) and it was that SRF which was then burnt in the CHP plant to produce electricity, heat, and steam[191].

8.33 The appellant also argued that the Energy White Paper has recognised that the biodegradable fraction of waste is a renewable resource[192]. This reference needs to be seen in context. It specifically concerns the banding regime for the Renewables Obligation (RO) and is plainly limited to EfW where there is CHP in a qualifying scheme[193].

8.34 It may be that, in due course, the consolidation of PPS22 and the Climate Change Supplement in the National Planning Framework will clarify the status of EfW. However, in terms of current guidance, EfW in the form proposed here does not constitute renewable energy.

8.35 Even if a contrary view was taken, it would only be the biomass fraction that could be said to be renewable. The appellant has put this at 50%[194]. OCC is doubtful that biomass fraction would remain this high if there was appropriate prior removal of recyclables. The Department of Trade and Industry (DTI) study[195] suggests that for both MSW and C&I it should be possible to reduce the biomass fraction to an average of 35%. The appellant is critical of this study, preferring to rely instead on the WDA's own data, but that does no more than record what the WDA has achieved to date rather than identify the limits of what is realistically achievable.

8.36 Thus in terms of renewable energy, at best only about a third of the electricity generated could be said to provide a renewable contribution. This is not insignificant in the context of Cherwell District's energy needs, but disproportionate if this benefit was found to justify a proposal that could not comply with waste policy as set out in PPS10. It is clear from PPS22 that even

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[188] CD5/12 and CD5/13.
[189] CD5/12 §13.19.
[190] CD5/13 §13
[191] CD5/12, §5.3.
[192] CD5/1, §5.3.44.
[193] CD5/1 Table 5.3.1 and §5.3.44.
[194] APP/05, §3.4.
[195] OCC/1, §6.25.

where renewable energy is concerned, waste decisions are expected to be made in accordance with the principles in PPS10 and WS2007[196].

8.37 On low-carbon energy, OCC accepts that the electricity produced would provide a benefit and this would assist in the need to move away from fossil fuels to lower carbon energy sources. However, the weight that this can carry is limited. First, it remains the case that this is primarily a waste development not an energy development. Even the draft Energy NPS makes the point that with EfW *"The principal purpose of burning waste is to reduce the amount of waste going to landfill in accordance with the Waste Hierarchy"*[197]. Second, low-carbon proposals are expected to reflect the advice on landscape protection in PPS22, which (as noted above) recognises that some locations will not be suitable for some types of development[198]. Third, despite the generation of substantial heat as a result of the waste treatment process, there are no assured arrangements in place to deliver CHP so as to maximise the low-carbon energy benefit.

8.38 CHP is no more than a potential benefit in this case and it is by no means clear that that benefit would be realised. Despite the proposal having been in preparation for some two or so years, and despite the north west Bicester eco-town being an obvious beneficiary of CHP, it is remarkable that not a single piece of paper has been produced to show that the eco-town promoters share in any way the enthusiasm of the appellant for utilising the potential of the EfW to deliver a CHP scheme. The appellant's response, that the absence of planning permission is inhibiting the development of more tangible proposals, is inadequate. A commitment in the form of a contract could not be expected at this stage but there are no notes of meetings, viability study, letters of intent or comfort, offers subject to contract, or heads of terms. There is no evidence to show that the delivery of CHP is anything more than a theoretical possibility. It can carry no real weight.

8.39 If consideration is then given to the hurdles to be overcome, leaving aside altogether any planning requirements, there are serious commercial constraints. CHP involves a reduction in the revenue from electricity generation (which in itself may be compensated by the Renewables Obligation Certificate (ROC) regime) and a substantial infrastructure cost, of the order of at least £2m for the pipeline connection. The appellant's claim that this may be better value for money for the eco-town promoters than on-site provision sits ill with the complete absence of any expressed support from those promoters.

8.40 The appellant has criticised OCC for failing to include the benefits of renewable/low carbon energy in the balance in its decision making. This is no more than a forensic point, given that the benefit has been assessed by OCC and in objective terms it does not provide a decisive factor in favour of the proposals. Obviously, it is unfortunate that OCC initially under-estimated the scale of the electricity being generated by treating the 24MW as an annual output rather than an hourly output. However, the same error was made in the

[196] CD4/10, unnumbered first page, §3.
[197] CD5/20, §3.4.3.
[198] CD4/5, §20, second indent,; CD4/10, §§1(i) and 19.

appellant's opening statement[199]. The original source of the error is not clear but it was also recorded in the officer's report to the Planning & Regulation Committee[200], without any apparent correction being offered by the appellant.

8.41 Whilst the amount of electricity to be generated is substantially more than OCC first assessed, the benefit is still not a compelling factor in favour of the proposal. The suggestion by the appellant that it is *"over-riding"* falls a long way short of the mark[201]. If the balance of advantage as a waste proposal is insufficient to outweigh the harm caused, then the delivery of low-carbon energy is unlikely to provide the necessary rationale.

Landscape

Description of landscape character

8.42 The relevant policies of the CLP[202] require an assessment of whether there is *"demonstrable harm", "sporadic development"* or development which is *"incompatible with a rural location".* In order to do this, baseline conditions need to be established, and then the changes brought about by the development have to be assessed.

8.43 OCC largely supports the appellant's description of landscape character and its photographic evidence, the latter of which it has supplemented to demonstrate seasonal changes[203]. However, whilst the natural landform is gently rolling, many of the larger arable fields surrounding the site appear quite flat.

8.44 The local landscape has been assessed twice in character studies. The first, being the *Cobham*[204] study, has identified it as *"Reconstruction Landscape"*[205], for which potential new development is considered for its future management along with restoration to agricultural land[206]. However, existing landfill and mineral operations are temporary land uses and the site is being restored under an existing planning permission. A new landscape is being created of undulating landform with grassland cover, woodland and other planting.

8.45 The anticipated completion date for the permitted restoration is 2016[207], by which time the land would have gone through the reconstruction process. Also, the quarrying activities to the north will be restored by 2012[208] and those to the south from 2012 to 2021[209]. Therefore, it would be misleading to apply the *"reconstruction"* advice on sensitivity to change (which applies to pre-restoration) to this new landscape that is in the process of being created. There

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[199] Appellant's opening submissions, §3.
[200] CD1/3, §12.
[201] Herbert main POE, §2.6.1, item 5.
[202] CD3/2, ch.9, Policies C7, C8 & C9.
[203] OCC/JS2.
[204] CD5/24 *Cherwell District Landscape Assessment* Nov.1995.
[205] Ibid. fig. 15 (after p.41).
[206] Ibid. §4.18, 1st & 2nd indents.
[207] CD2/3, ch. 13, Landfill §13.9.
[208] CD2/10(2), drwg. 3/6.
[209] CD2/3, ch.6, §§ 6.77 & 6.78; albeit drwg. 3/8 rev.D (C2/10(4) indicates 2029.

is no justification for treating the site as one which requires or would benefit from further *"reconstruction".*

8.46 The second, more recent study is the Oxfordshire Wildlife and Landscape Study (OWLS)[210], which has a higher level of detail. This places the bulk of the site (and the EfW platform) within the considerable area of "Wooded Estatelands"[211], one of the characteristics of which is a *"Rolling topography with localised steep slopes".* These features are a consequence of the underlying geology rather than from the creation of domes and slopes associated with landfill operations[212], the latter of which would be steeper than the gentle undulations of the adjacent landform[213]. This has been misunderstood with regards to the design of the building[214].

8.47 Whilst OWLS refers to *"Large blocks of ancient woodland and mixed planting of variable sizes"* this is more associated with the various estates and parklands than with the *"ordinary"* countryside. Also the characteristic of *"A regularly-shaped field pattern dominated by arable fields"*, referred to in OWLS, would be diminished by the EfW facility, which would be on a different axis to the hedgelines, sitting within a curved bowl of new and formal planting.

8.48 The Heyford Park, former Upper Heyford Airbase, which has planning permission for residential development, is an exception to the rural character of the area. However, the majority of the base is on a higher plateau and, although certain buildings can be seen on the sky line from aspects to the west and northwest of the site, it does not feature strongly from other aspects.

8.49 CDC has made considerable efforts in recent years to secure the removal of the most prominent buildings on Heyford Park with the objective of reducing visual impact and enhancing the rural landscape. An exception is the Agrivert green waste recycling building to the west of the site[215]. Although the building is only 15m high it is clearly seen, and shows how vulnerable the local landscape is to visual intrusion.

8.50 Whilst the M40 has some landscape and visual impact, efforts have been made to restrict this as illustrated by the largely concealed Cherwell Valley Motorway Services, and the general use of cuttings and false cuttings to screen the motorway itself. The M40 was conceived as a corridor of movement rather than of growth[216] and, in the 20 or so years since its construction, Junction 10 has not become a focus for development.

8.51 The railway line is another transport corridor near the site but it is mostly in cutting and has limited visual influence on the local landscape. Whilst the landfill and quarrying operations are visible from certain aspects, the associated land forms and tree planting mitigate their intrusion.

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[210] CD5/9, Oxfordshire Wildlife and Landscape Study 2004.
[211] CD2/2, drwg. 6/3.
[212] OCC/JS2 App. 3, drwg. AQ109 (permitted scheme), & MJ/3, drwg. MJ/3 (proposed scheme).
[213] CD2/2, drwg. 6/6 (permitted) & 6/24 (proposed).
[214] CH/2, §§ 2.2.9, 2.2.10 & 2.3.9.
[215] OCC/JS2, photos. 19 & 20.
[216] CD3/2, p.2.

8.52 The north west Bicester eco-town proposal, about 2km to the south east of the site, may or may not come forward[217]. There would be no visual relationship with the appeal proposal, and its only significance is that it would be built on open farmland, further eroding the open countryside.

8.53 The Fewcott windfarm permission[218], if implemented, would introduce four 125m high wind turbines into the local landscape. Although the turbines would be taller than the EfW building, they would have much less mass. However, their motion would draw the eye, as would the plume of the EfW stack.

8.54 This relatively flat landscape, with its wide views across open fields, is sensitive to the intrusion of tall, discordant structures and unnaturally raised landforms. Whilst all rural landscapes have a limited capacity for change, there comes a point when they lose their distinctive character.

Visual impact

8.55 The appellant has admitted errors in its photomontage material and this puts into question its reliability[219] and effects on consultees. For viewpoint C[220] (the main view from the east) the photomontage seeks to shield the extent of visibility of the EfW building by a wholly artificial depiction of the screen planting. The poplars that conceal the IBA treatment hall are shown at a 15m height, although this would not occur until 2023. In any event, given the levels and building height, they would need to be 17m to achieve the screening shown.

8.56 Furthermore, the poplars are depicted in summer foliage, despite the image using a May base photograph and other real poplars not being in leaf at that time[221]. In reality, more of the building would be visible for much of the year, and for many years to come. Also the "washed out" building surfaces are open to question[222]. Viewpoints D and J give rise to similar problems as they rely on the screening effect of the poplars[223] and in J the treatment of the facades is in question[224].

8.57 The photomontages also fail to show the effect of the plume, despite this being visible for about 31% of the year and despite it having an average length of 34m[225]. This is a significant factor because the plume draws the eye and emphasises the height of the stack by focusing the eye on its tip.

8.58 The visual impact on the surrounding landscape would be much higher than suggested in the ES[226] and for almost a third of the year it would be heightened by the visible presence of the plume. The views from viewpoints B, C, D, E, F,

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[217] OCC/JS2, photo. 16 was taken on the western edge of the proposed eco- town.
[218] CD5/53.
[219] Cf. CD2/2, AM04 with MJ/3, drwg. MJ/18 (viewpoint D); & AM10 with drwg. MJ/19 (viewpoint J).
[220] MJ/3, drwg. MJ/17.
[221] Cf. MJ/17 with MJ/18.
[222] Cf. MJ/17 with CH/2, fig. 39.
[223] MJ/18 & MJ/19.
[224] See CD2/2, AM10.
[225] MJ/TM1, §§ 3.3.3 & 3.3.5.
[226] CD2/2, drwg. 6/34.

G, J and K would be particularly significant as they would give the clearest views of the proposed building and landscaped setting. The tall chimneys would be clearly seen from the more distant viewpoints A, N, O and P.

8.59 The effects would be apparent from local PRoWs, which are valued for passive recreation and the opportunity they provide to experience the scenery[227]. Also, a high number of motorists use the M40 motorway for recreational journeys and their perception of the countryside is important.

8.60 The building's translucent polycarbonate walls and roof panels would allow an evident glow of light from the building at night. Therefore, local residents passing by would see a visible reminder of the EfW facility. The navigation lights on the chimney stack would add to this visual intrusion.

8.61 The degree of change brought about by the proposal would be very apparent, and from many aspects the scale and industrial character of the building would be visually intrusive. This would result in a significant negative impact. Although the completion of the final landform and planting would help to mitigate the visual effect from the north and west, there would still be open views of the development from the south and south east. The impact upon the closer views would remain high[228].

Landscape impact

8.62 By comparing the size of the proposed building with other structures in the landscape it would be several times larger and higher. The bulk of the main building would stand 31m above the adjacent, relatively flat landscape to the south and east of the site. The design of the building is industrial in character and the colour of cladding materials would be light and reflective. The building would be totally out of character with the rural vernacular. The two steel industrial tubes of the chimney stack, at 82m tall, would be very significantly higher than any other feature in the landscape, and would be seen from a wide area as a very prominent landmark.

8.63 The revised landform that is relied upon to screen the building from the west and north of the site would do little to screen the 82m tall twin chimney stack, and the main body of the building would still be clearly seen from viewpoints to the south and east. The finished landform would not be completed for a number of years after the construction of the main building. It would then be raised above the level of the surrounding landscape and appear out of character with the natural topography.

8.64 The geometric tree circles on the steep slopes of the bowl shaped landform in the south east of the site would be out of character with the rural landscape. This tree planting would take some years to be established and to provide screening.

8.65 Whilst the appellant relies upon the screening benefits of the woodland trees and hedgerows in the surrounding countryside, no mention is made of their permanence and the mature age of many of these features. The belt of Poplar

[227] OCC/JS2, Viewpoint selection plans and photos. 5, 6, 7, 10, 11, 13, 16, 17, 18, & 20.
[228] See Briefing Note on Visual Impact (OCC/JS3, App.1a).

trees at Trow Pool Spinney along Gagle Brook appears to be an important part of the strategic screening of the EfW building. However, this screening benefit would be limited to 10 or 15 years as the trees are already mature and will have to be felled. On wet soils mature Poplar trees have a tendency to blow over and suffer wind damage.

8.66 The publicly accessible Trow Pool Water Tower (Grade 11 LB) is a prominent landmark feature and reference point when travelling along the M40 motorway. It is part of the local landscape heritage, having been built to supply the former Bucknell Manor Estate. The EfW building would be less than 800m from the water tower and only 500m from the main pool in the pocket park. It would be physically dwarfed by the EfW building that would dominate views from the south and south east and from the motorway.

8.67 The cumulative effects of landscape change in this area make the character of this rural landscape even more vulnerable to the visual intrusion of a very large, isolated, industrial building. The EfW building would have a high visual impact from a distance of up to 2km from the site and particularly from vantage points to the south and south east, including the PRoWs and the village of Bucknell. The scale of the building is far too large and its character is clearly wrong for this rural setting.

8.68 Bringing these judgements to bear on the policy position, the following conclusions are clear. First, there would undoubtedly be demonstrable and permanent harm caused to the topography and the character of the open countryside. Second, bearing in mind the temporary nature of the landfill and minerals activities, the EfW facility must be taken to be *"sporadic"* development in the open countryside. Third, taking account of the approved restoration schemes, the EfW facility is undoubtedly of a type (industrial), size and scale, which is incompatible with a rural location. Therefore, the proposed development is contrary to policies within the CLP[229].

Prematurity

8.69 OCC does not have a prematurity objection. This is for the simple reason that the emerging Minerals & Waste Development Framework has not yet reached a stage where it has any tangible policies or proposals that could be pre-empted by a decision in this case.[230] The timetable does not envisage a submission document until December 2010[231] and the implications of the recent revocation of the SEP will also need to be assessed by OCC.

9.0 The Case for Cherwell District Council

9.1 In reviewing the policy framework there is no directly relevant policy in the saved elements of the OMWLP and therefore regard has to be given to the national guidance contained in PPS10 and the strategic regional guidance of the SEP. The only criteria based site selection guidance was contained in Policy W17

[229] CD3/2, Ch.9, Policies C7, C8 & C9; OCC/JS1, App. 2.
[230] See CD4/14, General Principles, §18.
[231] CD5/2, Minerals & Waste AMR, p.32, App. 1.

of the SEP (now revoked); although not explicit it is assumed that the "locally based environmental and amenity criteria" include key issues such as impact on visual amenity; emissions and health , access and traffic impact and other matters such as biodiversity. The degree of impact upon the visual amenity and the heritage assets of the locality results in this proposal having to be considered as contrary to current policy.

9.2 Work on site selection in an Oxfordshire Waste Development Document has been delayed. Whilst it is understandable that EfW applications have been made in advance of the Development Plan Document (DPD), development can only now be considered acceptable in advance of an appropriate Local Development Framework (LDF) policy if the applicants own comparative site assessment is of a high quality and proves beyond doubt that a particular site or sites are acceptable.

9.3 In this case, where there are clear planning objections to the proposed development and it is contrary to DP policy, it is relevant and indeed necessary to consider whether an alternative scheme (on an alternative site) may be a more appropriate method of meeting the need for the development.

9.4 Twenty eight sites across Oxfordshire were assessed in the ERM stage 2 report on behalf of OCC. Of these, ERM recommended that seven were potentially suitable for accommodating a strategic waste management facility. The ERM Interim Report provides a critique of each of the sites assessed against a range of criteria which are set out at and discussed in Annex B of that report. No criticism is raised of the criteria used. The criteria include nearly all of the topics contained in the locational criteria set at in Annex E to PPS10. It will also be seen in Annex C of the ERM report that a simple traffic light system was used to facilitate the reduction in the number of sites to be assessed.

9.5 ERM do not attempt to weigh the relative importance of the criteria, or to score the sites against those criteria. They only provide a commentary. They probably felt they did not need to do the weighing and scoring exercise as they describe the objective of the report as identifying sites and which will inform further work and consultation that is expected to be undertaken by OCC on the core strategy and waste sites document. It also says that the revised Core Strategy Preferred Options paper will need to appraise alternative spatial options.

9.6 The Planning Supporting Statement[232] accompanying the planning application acknowledges that Policy W4 of the OMWLP states that proposals for re-use/recycling and ancillary processes will not normally be permitted in open countryside unless:

a) there is an established and overriding need and there is no other suitable site available; and/or,

b) the development is to form part of a mineral extraction/landfill site and will be removed on completion of the extraction/landfill.

9.7 The appellant says that eight alternative sites were considered but that Ardley was considered to be the most suitable in terms of access, proximity to

[232] CD2/1 (2).

highways and having the least adverse impact upon the local environment and communities.

9.8 In the Supporting Statement[233], mention is also made of the eight alternative sites. Further criteria are mentioned, namely GB, access and highway network, proximity to centres of population, proximity to international nature conservation sites and deliverability. Two sites are said to be the most deliverable (one of which is the appeal site) and it is stated that the appeal site out performed the others on the basis of the surrounding road network, the proximity to conservation sites and traffic impacts.

9.9 Section 4.2 of the Sustainability Appraisal[234] accompanying the application deals with site selection and again refers to the eight sites emerging from the ERM report. It says that SLR Consulting Ltd narrowed these eight sites to the two most sustainable using the additional criteria set out; planning designation, site size, proximity to waste arisings, proximity to transportation networks, and proximity to potential heat users (for CHP). It is ambiguous whether the selection from eight to two was based on these latter points only or based on wider criteria.

9.10 The Alternative Site Selection Report (ASSR) is confusingly divided into two main sections, the first consisting of a series of brief comments against the criteria. This seems to be a simple repeating of the same commentary to be found in the ERM report. There is no evidence of additional research or analysis. There is no attempt to weigh the importance of the criteria. Nor is there any scoring or meaningful comment upon the degree of compliance/impact. It is simply a repeating of a previous checklist approach.

9.11 The second main section of the ASSR (section 3) merely consists of a series of brief bullet points set down under the headings of advantages and disadvantages and are said to relate to deliverability, GB status, site access, proximity to nature conservation sites, and proximity to main centres of population. These are described as the “key issues”. Again no weight, scoring or even consistent reference to these points is made in a very brief study.

9.12 The conclusion of the ASSR provides a brief explanation for a sieving of the sites. It is firstly said that three sites are eliminated because they are in the GB, and other alternative sites are available outside. In my view this reduction in possible sites is unnecessary and unreasonable and undermines the validity of the whole exercise.

9.13 The conclusion to the ASSR finishes with four paragraphs which indicate that in the appellant’s opinion the Ardley site is superior on the grounds of access, nature conservation and proximity to centres of population. There appears to have been little or no comparative assessment against the other criteria, or about such matters as the capability of the landscape to absorb development involving a very large building and chimneys.

9.14 A report that seriously intended to demonstrate which of these sites was superior should have adopted a matrix approach with the weighting of criteria

[233] CD2/1 (2) §§ 1.110 & 1.111.
[234] CD 2/1 (4).

and the scoring of each site against those criteria. The scoring could be done either comparatively for each criterion (i.e. a ranking order), or by a fully explained scoring system. Such comparative assessment would have produced measurable results which could then have been used with confidence.

9.15 The final reference to alternative sites in the application the subject of this appeal is Chapter 13 of the ES[235]. It offers nothing new to the appellant's presentation on these matters of alternative sites.

9.16 In response to CDC's objections, the appellant submitted further information on alternative sites to OCC in March 2009. The brief two page document notes that the ERM site search was comprehensive, and that at the scoping stage OCC did not challenge the intention to base the SLR work on those site recommendations. SLR say that they sought to identify key locational issues of relevance to this type of development. These were the criteria to which they attach the most weight, but it is not stated whether the other criteria referred to in the ERM assessment and Part 2 of the ASSR carry any weight in their on-going assessment or whether they have now discarded them from their comparative analysis.

9.17 Table 1 in that document is the sole tool of comparative analysis. This tests their five principal (or only?) constraints against each of the eight sites.

9.18 The absence of a rigorous comparative analysis of the strengths and weaknesses of identified potential sites is considered to be significant weakness in the submission which accompanied the application.

9.19 The failure to establish a weighting system for the various criteria is unfortunate and results in a difficulty in undertaking any form of in-depth analysis. The adoption of a simple check-box approach to a rudimentary and apparently selective list of criteria also seriously hinders rigorous analysis. A scoring system against weighted criteria should have been undertaken.

9.20 In depth analysis of certain of the selected criteria should have been undertaken. The failure to undertake further research/analysis of the impact of thermal treatment upon nature conservation sites may have led to some sites being dismissed when they were otherwise satisfactory. There appears to have been no analysis of the ability of the various landscape settings to absorb the scale and type of building proposed. GB sites have been dismissed too lightly. This should have been the last consideration when all other matters had been assessed and concluded upon, so that the strength of a very special circumstances case could be properly assessed.

9.21 In the absence of advanced work that would be carried out on behalf of OCC as waste planning authority as part of the evidence base for the Minerals and Waste Framework document, it is important that the comparative assessment of all feasible site options be robust and as transparent as possible to ensure confidence in the site selection process. The Secretary of State can have no confidence that this important element of the EIA or of the planning permission have been undertaken to the quality and depth required, and that therefore any decision taken based upon this consideration may be flawed.

[235] CD 2/3 (13).

Landscape and visual impact

Existing Landscape and Visual Setting

9.22 The area around the appeal site has been the subject of a considerable number of studies which set out its landscape and visual context. These include the National Countryside Character Area 107 for the Cotswolds[236], the Oxfordshire Landscape Character Assessment[237], for which the appeal site lies within the "Farmland Plateau" and "Wooded Estatelands", and the District level Landscape Assessment[238]. The visual setting is partly identified within the Countryside and Landscape Character Areas and in the CA descriptions, with further considerations which relate to the topography[239].

Existing Historic Environment Setting

9.23 The CAs at Fewcott, Ardley, Fritwell and RAF Upper Heyford have detailed descriptions prepared[240]. Nine parklands lie within 10km of the site. Of these, Aynho Park, Middleton Park and Rousham are within the EH Register of Parks and Gardens[241].

Assessment of the Impact of the Development and Landscape Proposals on the Landscape and Visual Setting

9.24 A 10km study area has been taken to review the landscape and visual impacts of the proposed development. The impacts relate to five aspects of the development, namely dual flues at a height of 82m (182m AOD), EfW building at a height of 36m (136.3m AOD), reworking and completion of northern landfill operations (upper level 128m AOD), landfill to the west and central area to increased levels of 126m and 128m AOD, and the restoration scheme. The highest landform within a 10km radius of the site is 155m AOD[242], 27m less than the height of the flues.

9.25 The landscape and visual setting is strongly determined by the topography. From ridgelines to the north and west there would be views towards the proposed development. From the elevated plateau and lower dip slope there would be views from the parklands and farmland with intervening vegetation and large open skies[243].

9.26 From the northern ridgeline the flues, at a distance between 7.7 and 9.2km, would be prominent on the skylines and would detract significantly from the views within the Special Landscape Area (SLA) and AHLV. This would include

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[236] CD5/42; CDC/SMR/3, App.1, drwg. B10010/3.
[237] CD5/9; CDC/SMR/3, App.1, drwg. B10010/3.
[238] CD 5/24; CDC/SMR/3, App.1, drwg. B10010/3.
[239] Northern ridgelines, western Cherwell Valley slopes, western ridgeline and plateau, eastern lower Dip slope, and southern lower Dip slope.
[240] CD5/26; CD5/27; CD5/44; CD5/25.
[241] CDC/SMR/3; App.1, drwg. B10010/4.
[242] CDC/SMR/3; App.1, drwg. B10010/11 & CDC/03 (btw. Duns Tew, Middle Aston & North Aston).
[243] CDC/SMR/3; App.1, drwgs B10010/6, & B10010/7; CD2/2 (drwg. 6/5).

the principal elevation and focal view at Aynho Park[244], the SM Castle motte at Deddington[245], and Juniper Hill CA[246]. For the eastern areas, the EfW upper building would also be viewed above the Tusmore parkland.

9.27 From the western Cherwell Valley Slopes the flues, at a distance between 6.8 and 7.3km, would be viewed on the skyline from the villages, the CAs of Steeple Aston, North Aston and Middle Aston, and the A4260 within the AHLV. This would detract significantly from the rich landscape of the Cherwell Valley.

9.28 From the western ridgeline and plateau there would be sequential views of the flues on the lane from Somerton to Cross Roads Farm, Troy Farmhouse (Grade II) and RAF Upper Heyford CA. Progressively, on proceeding to the east, there would be views of the EfW building. The flues would be prominent and significant above the skyline from RAF Upper Heyford, and the landfill and restoration works would additionally be visible, producing a combined significant impact[247].

9.29 Within the AHLV from the B4100, the Portway ancient track, and around Fritwell, the flues viewed sequentially, at between 5.7 and 3.6km, would have a significant impact, and would be prominent due to their scale in the landscape[248].

9.30 From the eastern Lower Dip Slope the flues and, for most viewpoints, the upper EfW building would be viewed from 3.7 to 6.7km within the AHLV. This would include Pimlico Farm (Grade II), the A43, Tusmore parkland and former medieval village (SM), villages of Hardwick, Stoke Lyne and Stratton Audley with associated LBs, and the parklands at Snelswell and Stratton Audley. The structures would be noticeable and prominent and would have a significant impact[249].

9.31 For all areas from the Southern Lower Dip Slope the flues would be viewed extensively, and for most areas the EfW building would be viewed. This area includes the villages of Ardley, Fewcott, Middleton Stoney and Bucknell, as well as farmsteads and cottages on the western edge of Bicester, the Trow Pool Water Tower and PRoWs.

9.32 Within the local area the revised northern and western landfill and restoration proposals would be viewed more extensively than for the existing approved scheme due to the reworking of the northern area and the increased height of 6-7m to the west. The combined effect of the development would create a

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[244] Grade II parkland with Grade I Listed Building. See CDC/SMR/4, Apps. 2.2, 3.2, & 4.2; CDC/SMR/3, drwgs. B10010/1, photo. Ff, & B10010.09 & 11 (cross-section A).
[245] CDC/SMR/4, App. 5.1; CDC/SMR/3, photo. Gg & drwgs. B10010.09 & 11 (cross-section C).
[246] CDC/SMR/3, photo. Ll.
[247] CD2/2, drwg. 6/23 (viewpoint N); CDC/SMR/3, drwgs. B10010.09 & 11 (cross-sections B & D).
[248] CDC/SMR/3, drwg. B10010.01, photos. Bb, Cc, & Hh.
[249] CDC/SMR/3, drwgs. B10010.01 & 2, photos. Jj & Mm.

major change and significant impacts and the structures would be of a scale disproportionate to the properties in the villages and farmsteads[250].

9.33 The proposal would have a direct and harmful impact on the landscape character for the Cotswolds and the local areas, affecting the key characteristics and landscape elements of topography, skyline, parkland, pattern of settlements, woodlands and tree belts. The regularity and scale of the vertical flues would be alien and would appear above the sensitive skyline. The mass and form of the EfW building would be disproportional to the scale and character of the rural villages.

9.34 The EfW building's undulating roofline would be discordant in nature with the level or gently rolling open ridges of the Farmland Plateau character type. It would conflict with the land strategy for the Farmland Plateau, which notes that this area is particularly sensitive to visually intrusive development and large buildings[251]. As for the Wooded Estatelands character type, in which the majority of the site falls, the landscape strategy seeks to minimise the visual impact of intrusive land uses such as large scale developments[252].

Cumulative effect

9.35 When the appeal scheme and the four approved wind turbines (overall height 125m)[253] are considered together, one or other of the developments would be visible from most areas within a 15km radius, and from many areas there would be views of both[254]. Within the immediate area there are a number of small vertical masts and lighting columns at the motorway junction although the landscape is principally a horizontal field of view. A further tall structure, in addition to the turbines, would exacerbate this sense of imbalance.

9.36 The area contains the M40, which is mostly in cutting or false cutting, other than the stretch close to the site. On the plateau to the west there are the water towers, large metal-clad buildings and hardened shelters of Upper Heyford, although only the structures on the edge of the plateau and base contribute to the skyline and many of these are intended to be removed. At Ardley, there are stone quarries and landfill site. Between these elements lies the richly textured and high quality rural landscape. Another large scale development within this landscape would make an additional demand on its capacity to accommodate change, which it could not support without substantial compromise to its integrity.

Assessment of the Impact of the Development and Landscape Proposals on the Historic Environment

9.37 Ardley CA is within 450m of the appeal site and 1.8km of the proposed flues. It is described in the CA appraisal as a dispersed collection of dwellings grouped

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[250] CDC/SMR/3, drwgs. B10010.01 & B10010.02, photos. D-L, P-Z, Aa and Kk, & drwgs. B10010.09, 10 & 11 (cross-sections D-E & F); CD2/2, viewpoints A (drwg. 6/10), J (drwg. 6/19), K (drwg. 6/20) & L (drwg. 6/21).
[251] CD5/9 *Oxfordshire Wildlife and Landscape Study,* 2004.
[252] Ibid.
[253] CD5/53 Appeal Decision 6 July 2010.
[254] CDC03, 05, 06, & 07.

around the Church of St Mary (Grade II*) with medieval fishponds and open fields separating Ardley from Fewcott. The castle and motte are a SM. There are three LBs and several buildings of local importance. The open land and paddocks allow views into and out of the CA and form an integral part of the settlement.

9.38 The church has a distinctive tower with a saddleback roof and diagonal buttresses. The entire arrangement is simple and rural in character. The flues would be viewed close to the church tower from the lanes and open fields. They would have a direct effect on the setting of the church, competing detrimentally in status, scale and supremacy with the church and the historic core of the village.

9.39 From the SM and adjacent footpath the flues and upper EfW building would be dominant structures, incongruous in scale and nature within the rural setting of the SM and CA. The development would be of major impact and significance to the historic setting of Ardley[255].

9.40 Fewcott CA is within 1.05km of the site with the flues at 2.49km. It is described as a linear medieval village separated from Ardley by burgage plots with two farmsteads, two LBs and several other buildings of local merit[256]. There is open land around the village that is essential to its character, and the fields between Fewcott and Ardley provide valuable views. The flues would be dominant when viewed from the northern footpaths across Manor Farm (Grade II), the western footpath, southern fields, and the garden of the White Lion Public House. They would dominate the skyline and significantly detract from the rural setting of the village and the historic built elements, open spaces and trees within the CA[257].

9.41 Fritwell CA is within 3.58km of the site and 3.70km from the flues. It is described as comprising two former memorial estates with village fields, the Church of St. Olave (Grade II*), 17 LBs, and a large number of buildings of local importance[258]. There are views southwards from the five character areas, which are of importance to the rural setting. From the eastern edge of the CA and the northern edge of the village fields the flues would be viewed as dominant and alien structures on the skyline. From the west of the village they would conflict with the rural elements and historic core of the CA, and would indirectly affect the settings of the church and adjacent Heath Farm (Grade II)[259].

9.42 RAF Upper Heyford CA, a former Cold War airbase, is approximately 505ha, and is within 80m of the appeal site and 1.58km of the flues. It is described as having three character areas, namely the flying field, the technical site and the

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[255] CDC/SMR/4, Apps. 4.6 & 5.2; CDC/SMR/3, drwgs. B10010.02 & 5, photos. F-J, drwgs. B10010.10 & 11 (cross-sections G & H); CD5/27.
[256] CD5/26.
[257] CDC/SMR/3, drwgs. B10010.02 & 5, photos. D & E, drwgs, B10010.10 & 11 (cross-sections G & H).
[258] CD5/44.
[259] CDC/SMR/3, drwg. B10010.01, photos. Bb-Dd, drwgs, B10010.09 & 11 (cross-sections A & B).

residential area, with views from all three to the south and east[260]. It contains 39 LBs or SMs. The flues, EfW building, landfill and restoration development would be viewed unacceptably and significantly from the CA, as the new structures would compete with the importance and setting of the Cold War complex in the rural setting[261].

9.43 Middleton Park is a Grade I LB in a Grade II Registered parkland, within 1.65km of the site and 2km of the flues. It is a significant Lutyens designed interwar house with three floors. The parkland is 330ha and contains a church (Grade II*) and a motte and bailey (SM).

9.44 The flues and upper EfW building are most likely to be viewed from the upper floors of the house. The structures would be significant and entirely inappropriate and damaging to the setting of the house. The flues, viewed on the skyline from the cricket ground, estate roads to the farm, and Middleton Stoney, would be significant, alien, vertical structures affecting the enclosed and secluded setting of the parkland. In views over Middleton Stoney they would overwhelm the scale and form of the village properties and their rural setting[262].

9.45 Bucknell Lodge is a Grade II LB 1km from the site and 1.36km from the flues. It is separated visually by a tree belt along the Gagle Brook. Winter views are through the trees. The EfW building, landfill and restoration would be viewed in the winter. The flues would be viewed all year above the trees. The development would result in a significant impact on the rural setting of this LB[263].

Assessment of the Proposed Development and Impacts in the context of Landscape and Cultural Heritage Planning Policy

9.46 Each of the above impacts would be individually significant. However, when considered together, the cumulative impact on the local landscape and historic environment would be severe and entirely unacceptable. This would not accord with the 'locational criteria' in Annex E to PPS10[264], which require design-led solutions to produce an acceptable development in relation to visual intrusion, the historic environment and the built heritage.

9.47 The Oxfordshire Landscape Character Assessment[265] identified the Farmland Plateau as particularly sensitive to visually intrusive development and this reflects the designation of much of this area in the CLP as an AHLV. The strategy of the Wooded Estatelands is to safeguard and enhance the characteristic landscape of parklands, estates, woodlands and unspoilt villages.

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[260] CD5/25.
[261] CD2/2, viewpoint N (drwg. 6/23); CDC/SMR/3, drwgs. B10010.09 & 11 (cross-sections B-D.
[262] CDC/SMR/4, Apps. 2.1, 3.1, 4.1, 5.3, & 6; CDC/SMR/3, drwg. B10010.02, photos. V-X, drwgs, B10010.10 & 11 (cross-section F).
[263] CDC/SMR/4, App. 4.4; CDC/SMR/3, drwg. B10010.02, photo. T, & drwgs. B10010.10 & 11 (cross-section H).
[264] CD4/9.
[265] CD5/9.

9.48 If the sensitivity of the landscape and its capacity to accommodate change is properly considered, the magnitude of change and the resultant impacts would be greater than is indicated in the ES. Considering the proximity of the CAs and the LBs, and the direct impact on the setting of Aynho Park and Middleton Park, the ES conclusions on landscape, visual and heritage impact cannot be agreed.

9.49 The ridgelines and plateaus are important for the topography within the District and adjacent areas. The application of CLP Policy C7[266] is therefore an important and material consideration. The parklands which surround the appeal site create a significant historic framework and setting. CLP Policy C10[267] seeks to protect the local distinctiveness and resist development which would have a detrimental effect.

9.50 The proposed flues and upper EfW building would cause significant harm up to 10km. The reworking of the existing restored northern landfill and the increased scale of the proposed landfill to the west and south-west would create a significantly increased impact on Ardley, Fewcott and Bucknell, the local PRoWs and the motorway. The impact of the multiple individual, significant effects on the landscape, visual setting, and historic environment, when considered cumulatively, would be severe and unacceptable.

10.0 The Case for Ardley-with-Fewcott Parish Council

10.1 The site assessment work undertaken for the Oxfordshire Waste LDF, by ERM, has only been partially completed and cannot be relied upon to identify a preferred site for an EfW facility.

10.2 The proposed development is so significant (with respect to the waste strategy of the County) that granting planning permission would prejudice the waste DPDs of the County, by predetermining decisions about the scale, location and phasing of major new waste management facilities. In this respect the proposal is premature. In the absence of up to date adopted local policies and proposals for the siting of waste management facilities and the findings from a site assessment exercise that has been subject to consultation, it is for the appellant to demonstrate that the site is preferred for an EfW facility.

10.3 There is the potential to demonstrate a site is preferred for this type of waste management facility through undertaking a robust and transparent site assessment study, based around a wide range of environmental and sustainability criteria, that responds to waste policies from national through to local level.

10.4 The appellant has failed to undertake a proper and robust site assessment, in terms of substance and in transparency, to support the proposition that the Ardley site is preferred for an EfW facility to serve the County. If this appeal is allowed, the development could take place at a site which is not appropriate in terms of achieving the Government and OCC's sustainability and environmental objectives for development of these types of waste facilities. It follows that

[266] CD3/2, Ch.9.
[267] Ibid.

there are likely to be other sites which are much better suited with respect to these objectives. Not only has the appellant failed to undertake an in-depth and comprehensive assessment of sites, through application of a robust and transparent method, but there is little evidence of involvement of stakeholders in the process of developing the methodology for the assessment or as part of the assessment itself. Failure to involve stakeholders, including local communities, in the selection of a site for this type of facility, presents a clear and fundamental prejudice to all those stakeholders who have an interest in ensuring that the most sustainable and effective waste strategy is brought forward for the County.

10.5 App.1 provides an assessment of the Ardley site and the Sutton Courtnay site using a larger number of criteria than has been relied upon by the appellant. The criteria used in this worked example have been developed from policies relating to site selection and assessment as set out within PPS10 (paragraph 21 and Annex E) and policies of the SEP (Policy W17). The example demonstrates that by using a more sophisticated and robust approach to the assessment of sites, different conclusions would have been reached on a preferred site. From an assessment of just two sites (Ardley and Sutton Courtney) using pair-wise comparison techniques and a wider range of more suitable criteria (informed by policy) the example shows that the Sutton Courtenay site is clearly preferred to the appellant's site.

10.6 The proposal conflicts with policies at national, regional and local level. In particular the proposal does not accord with the proximity principle objectives, associated with the transportation of waste. The proposal also conflicts with local policies which resist unsuitable development in the countryside. There are significant flaws, gaps and uncertainties associated with the proposal and in the ES relating to: (a) insufficient consideration of the effects to connect the facility to the National Grid and the cumulative and in combination effects of a connection; (b) a failure to demonstrate how combined generation and distribution of heat and power can be achieved and; (c) a failure to assess the proposal's traffic impacts as part of the site assessment and to compare these traffic impacts with traffic impacts associated with sites in more sustainable locations. When compared with other sites, the EfW scheme is only rated 5th out of eight sites in terms of travel distance.

10.7 In the absence of a robust site assessment study, up to date waste policies and proposals and a comprehensive evaluation of the environmental and amenity impacts of the proposal there is a need to adopt a precautionary approach to determining this application for a major waste management facility. The precautionary principle is particularly relevant in changing and uncertain circumstances associated with waste planning and land use planning at the regional and local level. The proposal is for a major (strategic scale) waste facility with the potential for significant impacts. In these circumstances good practices in plan preparation and best practice in waste management require a local planning authority to identify the best site for this type of facility (with regard to a range of environmental and sustainability criteria).

10.8 Clearly OCC agreed that this was necessary through embarking on the preparation of their waste DPDs and by commissioning the site assessment work that was undertaken by ERM three years ago. The process of identifying a preferred site for an EfW facility as part of a waste spatial strategy has been

delayed. Given that the waste DPDs and associated site selection are at such an early stage of preparation the appellant's application is premature, with reference to the advice set out in the General Principles for the Planning System (2004).

10.9 Without the policy support for the EfW facility and for reasons associated with sensible and logical planning for waste management facilities within the county, it is for the appellant to prove that the site is the best environmental and most sustainable option for this type of facility. Flaws in the appellant's site assessment work show that the appellant has not demonstrated that the proposed site is preferred for this type of facility. A site at Sutton Courtenay is clearly preferred to the appellant's site.

10.10 The ES is deficient in its reference to SSSIs at the site and there are many aspects of the proposal that conflict with established policy and, in particular, that associated with development in the countryside.

10.11 These deficiencies in combination with the absence of an up to date supporting policy framework or robust site assessment work (undertaken by the local authority or the appellant) that could provide support to the development of an EfW plant at the appellant's site presents major planning risks and uncertainties. Allowing the appeal would: (a) seriously undermine the preparation of a waste strategy for the county (as part of their Waste LDF) that would allow for the most sustainable and desirable approach to be taken to the location, scale and phasing of waste management facilities in the county; (b) significantly prejudice the opportunity for stakeholders, including local communities, who should be involved in the waste planning process, to help inform and shape the spatial strategy for waste management facilities within the county and; (c) prevent the best solution (in terms of a wide range of sustainability and environmental criteria) for the disposal of waste in the county to be delivered which would result in the local communities having to pay the price (in terms of the environmental and amenity impacts of a sub optimal solution) for many years.

10.12 Ardley-with-Fewcott is a small village made up of some 260 dwellings, many of which lie in the two designated CAs. In many ways the village is defined by what it does not have. There are no street lights, few pavements, no shop, school or doctors. This makes the village less resilient, less able to absorb change, although it does, of course, help define its unique character. Physically, it is a village that looks outwards, with very many properties having long views over the predominantly farmland plateau that characterises the area. The following points are made in letters from parishioners.

Inadequate Road Infrastructure

10.13 The B430 is not a bypass. It runs through the village, ultimately linking Junction 10 of the M40 to the A34. It is already problematic, acting as it does, as a rat run when either the M40 or A34 are at a standstill, or when the volume of traffic overwhelms the already swamped M40 junctions at 10 and 9 (the terminus of the A34). It is already recognised as a dangerous route, an assertion that is supported by OCC's Local Transport Plan 2006-2011: "Cherwell faces some of the biggest congestion problems in the county. This is largely due

to the high demand placed on the network with residents accessing areas within Cherwell, Oxfordshire and main centres such as London and Birmingham".

10.14 Over 65,000 vehicles per day use this two-lane dual carriageway section of the A34 to the M40. Queues of over five kilometres can build up south of Junction 9 of the M40 causing severe delays to all road users. The predominant cause of the congestion on the northbound carriageway is insufficient capacity at Junction 9, where the A34 and M40 meet. For southbound traffic the major source of congestion is the difficulty for traffic to leave the trunk road onto congested parts of the Oxford local road network. The Transport Networks Review suggests that the road itself may "*… be running at close to capacity through the day and possibly at capacity during peak periods."*

10.15 Supporting as it does the everyday experience of residents, it is even more important when the location of the incinerator in relation to the sources of waste is considered. Far from being centrally located, its position in the far north east of the county means that the dysfunctional road network referred to above will be extensively used to transport waste to and from the site.

10.16 The position is no better once the transporters have left the major road networks and joined the B430. OCC's Local Transport Plan 2006-20011 states under its "Safer Roads" section: *"There are a range of locations and routes in Cherwell where accidents occur with a higher than average frequency: B430 Ardley to M40 Rural route; 7 Accidents (3 fatal or serious and 4 slight): Monitoring/Further investigation"*.

10.17 The B430 is one of only three sites for the entire county listed as a *"…location with a particularly high frequency and severity of accident…".* This route bisects the village, is without safe crossing points, traffic calming, street lights or, in places, pavements. The road infrastructure needed to reach such a poorly located facility is sub standard and dangerous.

10.18 Attention is also drawn to the bridge over the railway on the B430, which has been extensively damaged by collisions. It dangerously funnels traffic travelling at speeds of up to 60mph into a space that leaves no margin for error, and is not wide enough to take two HGVs simultaneously.

10.19 Many residents adjacent to the B430 are concerned that they would be unable to enjoy their outdoor living areas. The PRoW to Trow Pool (itself a site that would be dominated by the development) lies across the B430, and increasing traffic would render this too unsafe to attempt with small children. The narrow footpath to the village hall and playing fields (site of the children's play area) is also treacherous, with users often complaining of being "pulled along" in the wake of HGVs. The reality of substantially increasing the number of HGV movements would be to render those outdoor areas used for fun and recreation, out of bounds. The significantly increased traffic movements on the B430 created by the site would make it unsafe for equestrian pursuits.

10.20 There are many people who work from home in Ardley. The projected increase in HGVs to the site would render offices adjoining or near to the B430 unusable, and could necessitate a business move, probably to London, with the loss of much needed local jobs. It is also difficult to contend that there would be no loss of residential amenity to people who live close to the B430 where the

extra vehicle movements would create an intolerable level of noise, vibration and pollution.

10.21 There are also a number of school busses that pick up children from the B430. The appellant has offered to make a contribution towards a crossing. However, this has been explored in the past, and the road is not wide enough to install a central refuge, so crossing would still remain hazardous for children. The limited pavement space means that they remain endangered once there. In the winter, the lack of street lighting compounds this problem. The increased levels of HGVs associated with the application, would significantly add to the risk on a road that OCC already recognises as a *"..location with a particularly high frequency and severity of accident.."*

Impact on Places of Association and Recreation

10.22 The Grade II* listed St Mary's Church has been a place of worship since the 11th century and it plays an important part in the lives of many residents. In addition to the Sunday Service there is a shorter service every Friday; an occasional mid-week Service on a Wednesday morning or evening especially during Lent, Advent or the lead up to Christmas/Harvest/Easter and a meeting at the church every Saturday. During the six Saturdays of Lent leading up to Easter, there is a social gathering, which also occurs during the autumn around harvest time. During the summer, a team turn out at least once and sometimes two or three times a week doing the churchyard grass cutting. Funerals, baptisms and weddings occur from time to time. The Annual Church Council Meeting and Parochial Church Meetings are held in the church.

10.23 The church is open for the public to visit during the week from Mondays to Fridays during the summer months, and more visitors are expected this year to view the recently installed and dedicated millennium window. The well tended graves, and flowers on them, give testament to the importance of the graveyard as a place of quiet contemplation for those whose loved ones are interred there. The increased HGV vibration could seriously damage this important listed building that lies at the heart of Ardley's CA.

10.24 The village hall, with its playing fields and children's play area, back onto the B430. Only recently rebuilt, the village hall is widely used, hosting play groups, lunch clubs, the gardening club, dance classes, a youth club and wedding receptions to name but a few. The football pavilion is home to Ardley United FC in the premier division of the Hellenic League. Both the village hall and the pavilion draw in substantial numbers of people from both the village and surrounding areas. The playing fields are extensive, and offer a safe place for local children to have fun and exercise, as does the associated play park.

10.25 The noise, vibration and elevated levels of NO_2 (which, according to the ES, would exceed safe European limits if the incinerator is built, due in part to the additional traffic) would blight this important common area.

10.26 The restored old quarry that lies behind Castlefields is leased by the village for the recreation of all. It has an elevated position and is extensively used by joggers, dog walkers, bird watchers, children and those just wishing to stretch their legs. Both the stack and associated plume would be clearly visible from this area, as it would be over much of the village, an ugly industrial intrusion

into a rural landscape and a constant reminder of the menace that lies so close to the village.

10.27 With no "village centre" these areas represent the places where parishioners most often meet and associate. This application impacts heavily on all of them, and would deprive residents of the opportunity to experience life prior to the development and, in many cases, the peaceful enjoyment of their homes, gardens and areas of recreation.

10.28 The village prides itself on being a working rural community, and the population runs across several generations. There are high numbers of elderly residents within the village, plus a nursing home. At one mile distance from the home, any diminution of air quality would be particularly serious for those of their 35 elderly and frail residents who suffer from chronic obstructive pulmonary disease (COPD), as well as other breathing/lung disorders. The HPA in its position statement on solid waste incineration states: *"..there is no doubt that air pollution (from all sources) can have an adverse effect on the health of susceptible people (i.e. young children, the elderly, and particularly those with pre existing respiratory diseases)"*

10.29 Having endured many years of inconvenience as a result of quarrying and landfill, residents have a right to look forward to the time when once again they can enjoy the peace and tranquillity of their village. This application would rob them of that end point for very many years to come, indeed, beyond the lifetime of many residents.

10.30 The technology of the proposal is questioned, especially given the early noises from the recently installed coalition Government. Dressed up as 'EfW' the reality of this application is that it is a most inefficient way of generating electricity with no environmental assessment of the plan to get the electricity off the site, and being in the middle of open countryside, no way of using the residual heat. This is nothing more than a good, old fashioned incinerator. The incineration process is very inefficient in terms of the amount of electrical power that is produced for every kg of CO_2 that is released into the atmosphere. This is significantly less efficient than for example a modern coal fired power station. The bad taste in the design, as demonstrated in the aerial view of the facility, neatly sums up this application[268].

10.31 There should be a plan to deal with local waste locally, like the nearby Agrivert composting facility, sharing the burden and reducing the distances involved. Rather than hauling waste from areas as far flung as the borders with Gloucestershire, Wiltshire and Berkshire to the far northeast of Oxfordshire, a series of local waste treatment centres could be developed. These smaller centres would be more adaptable to changing needs and emerging technologies, offering an innovative way of dealing with the county's waste. Indeed, a smaller more technologically acceptable solution will be proposed by WRG for the Sutton Courtenay site for the treatment of London's residual waste, which is to arrive by rail.

[268] AWF/IC/01 p11.

10.32 In addition to great crested newts, there is a Schedule 1 bird species at the site and red and amber list species[269]. There are also large populations of common lizard, grass snake, smooth newts, common toads and common frogs. Some of these are UK Biodiversity Action Plan (BAP) species that require a recognised conservation effort. The exceptional population of the various species on the site would qualify it for designation as a SSSI.

11.0 The Case for Bucknell Parish Council

Hydrology

11.1 Further hydrological investigations are required in order to provide a full picture of the potential flood risk associated with the proposed development. A considerable amount of detail is missing from the FRA and from the subsequent additional reports which have been written at the request of the EA. There is no information on historical flooding at the site or within the Gaggle Brook either from published sources, scientific observations or anecdotal evidence from locals or workers on the site. Associated with the above there is no assessment of the flood hydrology of the Gaggle Brook such as an estimate of flood flows or the frequency of flooding.

11.2 There is also no assessment of the accuracy of the flood risk maps which have been provided by the EA, as such maps are the result of a general methodology which was applied for the whole country rather than the results of a detailed site specific study. Detail is lacking from the methods which have been used in the FRA and some may not be the appropriate method for the characteristics of the site. The information outlined above would assist in a better understanding of the flood risk at the site and on the Gaggle Brook; it would also assist in explaining why flooding was experienced in 2010[270].

The Bicester Eco Development

11.3 In 2009 north west Bicester was selected as a site for eco development. The proposed Ardley Incinerator would be sited 0.9 miles from the north west edge of the Bicester eco development. In addition,a second Incinerator proposed for Calvert in North Buckinghamshire would be eight miles from the southern edge of Bicester itself. Bucknell and Bicester would be sandwiched between two incinerators. This opposes the thinking of persons who wish to develop and pursue an eco lifestyle in the north west Bicester eco development. In essence, there is an environmental conflict.

11.4 Halcrow Group Limited prepared a Concept Study for north west Bicester and in App. 3 placed considerable emphasis on renewable energy. On-site renewable resources suggested included Solar systems, Wind turbines, Ground Source Heat Pumps, Electric Air Source Heat Pumps and Biomass. There was considerable emphasis on the reduction of CO_2 emissions.

[269] Little ringed plover.
[270] BPC/HR/1 Figs 1 – 4.

11.5 CDC has made it clear that the eco development of north west Bicester is included in its LDF. It is intended to make the north west Bicester development a national exemplar, achieving the highest possible environmental standards and quality of life for residents in a mixed tenure sustainable community.

11.6 The proposal does nothing to support the objectives in the Draft Core Strategy:

> a) We will protect our natural resources, embracing environmental technologies and adapting our behaviour to meet the global challenge of climate change. We will promote the use of alternative energy sources and reduce the impact of development on the natural environment.
>
> b) Development in the open countryside will be strictly controlled.
>
> c) The Environmental Strategy for a changing climate highlights the common need to improve energy efficiency, reduce carbon emissions, encourage the take-up of low carbon and renewable energy technologies. It notes the need to minimise flood risk and to be resilient to the impacts of climate change.

CO_2 Emissions and Global Warming

11.7 It would be difficult to accurately quantify the amount of CO_2 produced from the proposed EfW plant and the associated road haulage over its lifetime, but it can be calculated that it would be many millions of tonnes. EfW plants produce between 0.7-1.2t of CO^2 for each tonne of waste incinerated. The climate relevant emissions are approximately half this figure which would result in the production of approximately 4.5mt of fossil-derived CO_2 over the lifetime of the plant. Waste companies claim that incinerators produce 'Green Electricity'. This statement is suspect as it is stated in an independent study by Eunomia Consulting Ltd. that "electricity-only incinerators" produce 33% more fossil fuel derived CO_2 per unit energy generated than a gas fired power station. By 2020, with increases in recycling and improved technology, the incinerators will be almost as polluting in terms of CO_2 emissions as new or refitted coal fired power stations, and 78% worse than new gas power stations"[271].

11.8 The areas that generate the majority of waste are in the heaviest populated and main industrial areas, around Oxford City and the south of the county. The proposed incinerator's location sited at the northern end of Oxfordshire would result in it being remote from the majority of the waste arisings.

11.9 This means that this proposal is in contravention of Government policy on the principle of proximity. In the UK, transport alone produces approximately 13% of total CO_2 emissions which means that transporting waste to this facility would be a major contributing factor in further increasing its CO_2 burden.

11.10 Given the proposed 300,000tpa capacity, the incinerator would produce approximately 75,000t of IBA every year. This by-product can be utilised as an aggregate in road construction, but prior to this use it has to be processed involving yet more CO_2 production, with any rejected or surplus material having to be landfilled involving future monitoring & management.

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[271] Report commissioned by FoE prepared by Dr D Hogg.

11.11 RWE Npower plc's landfill submission states in its 2008 Corporate Responsibility Report that Didcot A power station recycled 192,000t of ash and landfilled 86,000t. This shows that there are already existing ash surpluses of a relatively consistent chemical analysis that are being landfilled in Oxfordshire. This questions if IBA can be recycled commercially in the large quantities that would be generated.

11.12 The eco toxicity of IBA is currently under revue and future legislation may limit a high percentage of its use in the construction industry. Furthermore, where toxicity levels are exceeded it would have to be landfilled in special licensed sites, many of which are considerable distances from Ardley. Considering the existing landfill limitations on the current site and taking into account future legislation, it is possible that within a relatively short time all the IBA produced from the proposed plant would have to be transported considerable distances off site, producing additional CO_2 together with other pollutants and traffic congestion.

11.13 In addition to IBA the incinerator would also produce 15,000tpa of highly toxic air pollution control residues (APCR) or fly ash. This ash, with similar physical properties to talcum powder, would have to be transported to Wingmoor Farm, a hazardous landfill site at Bishops Cleeve in Gloucestershire, a round trip in excess of 120 miles. This treatment and storage facility's planning permission at Wingmoor Farm expired in May 2009 and the site is currently operating with no valid planning permission. A planning application to extend the site and its operational time frame has yet to be determined[272].

11.14 The application states that the APCR would be disposed of at this particular site and is therefore both assumptive and premature. This operation of transporting the flue ash residues would again increase CO_2 production as a result, again adding to traffic congestion and the threat of possible contamination risks by accidental spillages.

11.15 PPS1 (Climate Change Supplement) states that planning should contribute to reducing emissions and stabilising climate change. CO_2 production from the proposal would be far higher than the CO_2 generated from a small number of alternative modern waste treatment plants strategically located throughout Oxfordshire. The construction of this incinerator would increase CO_2 emissions rather than reducing them, further compounding the threat of global warming.

Incineration and recycling targets

11.16 CDC is currently listed at 49.66% making it one of the top performing councils for recycling in the country[273]. With the recent introduction of the composting facility at Ardley for food waste together with additional incentives and facilities to dispose of waste electrical equipment, this should increase their recycling percentage to over 55% by the end of 2010.

11.17 The incinerator, if built, would provide an easy option for the disposal of both domestic and industrial waste resulting in a reduction of current recycling targets. The proposed incinerator would have twice the capacity required to

[272] Letter to inquiry: 17 May 2010: Safety in Waste and Rubbish Company Ltd. (SWARD)
[273] Waste Data Flow 5/08/09 DEFRA Table 3 line 198.

deal with Oxfordshire's waste and would have to be constantly fed, with at least 50% of the waste being transported in from neighbouring counties. It would also remove the need to develop and produce more efficient and environmentally safe methods of waste treatment for future generations. In answer to Prime Minister's Questions on 30 June 2010, the Prime Minister stated that *"…decisions should be made locally. We want to make sure that all the latest technology for alternatives to incineration is considered, so that we can make sure that we are using the best ways to achieve a green approach*[274]*"*.

11.18 Ten years ago, an All Party Environment Committee concluded that *"Large incinerators are inimical to the prospects for recycling and composting"*[275]. Furthermore, according to figures published by the Government at that time *"Incineration without CHP recovery is bad for the environment, having an estimated environmental cost of £10 per tonne. Recycling, on the other hand, provides an overall environmental benefit of £161 per tonne"*[276]. The Audit Commission recently linked incineration to low rates of recycling[277].

11.19 Many countries in Europe already achieve over 60% recycling and CDC is well on the way to achieving this. If this level of recycling was replicated throughout Oxfordshire an incinerator would not be required. The reduced volume of residual waste could then be easily processed using modern, environmentally friendly and proven techniques close to where the waste is generated to the benefit of all. Utilising these methods would result in the production of inert material, some of which could be composted, with the remainder safely land filled without leaving the next generation with the problem of managing hazardous landfill sites. The aforementioned facts show that the proposed incinerator would suppress recycling resulting in commercial gain for Viridor and the Pennon group at the expense of local residents and future generations.

11.20 In the USA no new municipal incinerators have been built since 1996. In California, recycling jumped from 30% in 1997 to 60% in 2007 doubling the amount of waste recycled in ten years. San Francisco has already reached 75% and aims at getting close to 100% in 2020.

Amenities

11.21 The loss of a local recreational amenity is a major human concern and, if this application is passed, an existing, significant local amenity would lose its full potential.

11.22 Trow Pool and the surrounding bridleways and footpaths are an important recreational area for the residents of Bucknell, Middleton Stoney, Ardley and Bicester. The bridleway and footpaths enable many people to walk, exercise, ride and cycle in the open countryside whilst Trow Pool is an attraction for local

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[274] Hansard PMQ Oral answers p 853 30 June 2010.
[275] Environment, Transport and Regional Affairs Committee, Delivering Sustainable Waste Management, December 2000.
[276] Waste Strategy 2000: England and Wales (part 2): Dept of Environment, Transport and Regional Affairs.
[277] Lets recycle.com Friday 25 June 2010.

fishing enthusiasts. Trow Pool was not listed either as a recreational receptor or a noise monitoring point. The proposal could cause pollution to Trow Pool and impact on the health of fish and other aquatic wildlife reducing the quality of fishing.

11.23 The current diversion on bridleway 27 expires during 2017. It is unrealistic to suggest that if it cannot be permanently diverted as indicated on drawing 4.5[278], it would pass by the side of the plant. No responsible horse rider would go near to the plant as the noise from tipping, shunting and reversing lorries would frighten horses and create a high risk to any rider. Some of these are explained further by the British Horse Society submission to OCC. During the construction period there would be inconvenience to all users of the area.

11.24 The site contains an array of fossilised trackways formed 165 million years ago by Jurassic dinosaurs moving along part of an ancient shoreline. This dinosaur herd record is unknown in England and is rare internationally. As a consequence the site has long-term potential for international tourism and education[279]. The construction of an incinerator on the edge of this unique recreational area would devastate its recreational value.

Landscape

11.25 An industrial building of this magnitude with an 82m stack in a rural Cotswold landscape would be totally out of character with the surrounding area and would dominate the skyline for Bucknell residents. This is demonstrated by the assessment summary on Viewpoint C[280], where the sensitivity to the proposal is high, the magnitude of change to view high to medium, and the residual impact substantial to moderate. The first residence in Bucknell is on the opposite side of the railway bridge to Viewpoint C and the impacts would not be dissimilar. Viewpoint C is at 104.686m AOD and the top of the stack would be 182m AOD with 1.3km between the two. This clearly demonstrates the dominance this industrial building would have on Bucknell.

11.26 Drawing 6/12 states *"vegetation along the line of the railway partly screens views further east"*. This does partly screen Bucknell from the site except the application fails to inform us that this area is in the Ardley Cuttings SSSI and NE's aim is to encourage the natural calcareous vegetation. In so doing, there is no guarantee that the current screenings would remain. This would compound the visual impact and, regardless of how much screening there is around the site, the proposed plant would be an overpowering visual intrusion for Bucknell.

11.27 Non existent wind turbines have been used as a height comparator. However, the nearby Trow Pool Water Tower has a top height of 121.9m AOD, with the proposed building being 14m taller and the stack 60m taller.

11.28 In addition to the above it is likely that the residents of Bucknell would see pollution in the form of a chimney emission plume, especially during certain

[278] Ref: 409.0036.00349 Feb 2009.
[279] SSSI Consultation NE.
[280] Drawing 6/12. See also ES: AM03 and Doc MJ/3 photomontage MJ/17.

weather conditions. This would add to the stress and anxiety already created by the planning application.

Incinerator Ash

11.29 Degradation of the IBA by movement and the loading shovels' wheels would result in IBA dust being blown into the local environment with the associated risk of polluting land, air and water. If the IBA handling and storage area were to be covered, it would contain all the dust and thus eliminate the problem. When there is a breakdown with IBA containment, serious problems result e.g. Gerrards Cross Railway tunnel collapse in June 2005[281].

11.30 ES Chapter 5.79 concerning a dust mitigation measure restates *"The bottom ash from the incineration process would be quenched and transported to the storage area (2-3 days) before being transported from site"*. If larger tonnages had to be stored it would render the mitigation measure ineffective.

11.31 In Folder 1, planning application, Design and Access Statement it states *"The bottom ash facility is 176m long and 60m wide and the total area available within the encompassing walls is 12,600m^2*. This indicates that there would be capacity to store a large tonnage. It would dry out over time in the stockpile, but there is no evidence of a sprinkler system to dampen the stockpiles to minimise IBA dust when loaded. There would not be a specific allocated bunker for hazardous waste should any tested ash exceed the accepted safety levels.

11.32 HM Customs and Excise had a consultation on Modernising Landfill Tax Legislation which started in April 2009. A number of wastes in the UK that are currently lower rated may now not be considered inert in terms of European legislation. The appellant's submission states *"IBA as a material is recognised as being of little harm to the environment as it has been vitrified at temperatures of between 1800F and 2000F thus reducing the leachability and toxicity of the residue"*. If ash has been vitrified it is inert, but 1800F equates to 850C, the operating temperature of the proposed plant, so bottom ash would occur as a residue rather than a glass residue that would occur after vitrification.

11.33 In addition, the Health and Safety Executive (HSE) has identified problems involving foamed concrete containing IBA15, including a serious accident on 21st August 2009. As a precaution the Highways Agency (HA) has banned foamed concrete containing IBA being used on contracts. Barhale, one of the UK leading civil engineering contractors, has banned foam concrete containing IBA and will only use foam that contains inert products. There is inadequate information supplied with this application to judge whether the whole ash handling, processing and storage would be carried out in a satisfactory way to protect the environment.

Site Selection and Heat Usage

11.34 The proposed EfW plant would recover 30% of the calorific value of the fuel source by generating electricity when 75% could be recovered if CHP were deployed. CHP would enable maximum energy recovery with minimum

[281] Letter from BPC to OCC 29.9.09.

emissions and would be an essential part of new developments over the next 25 years.

11.35 A plant burning waste for 365 days of the year would require a commercial or industrial user with a constant demand for heat compared to residential demand only likely for half of the year. Should this proposal be approved, it could be followed by an application for industrial development surrounding the plant to utilise CHP. The latter would compound the industrialisation of a rural landscape and the associated traffic problems. This is supported by the application stating *"the location is considered to offer good potential for the potential integration of a CHP system with either a horticultural user as part of an agricultural diversification scheme or the proposed new settlement at Upper Heyford"*. There should be a full workable power utilisation plan with the application. It is environmentally conflicting to have an EfW facility that achieves such a poor energy recovery.

Need

11.36 The appellant has not demonstrated an overriding need for the appeal scheme, which grossly overestimates the county's waste treatment capacity requirements. The fact that there may be insufficient waste treatment facilities within the county does not justify approval of this scheme, which is deficient for the many reasons raised elsewhere in this inquiry.

11.37 Chapter 13.3 (p13-1) of the appellant's ES says: *"The draft SEP identifies a capacity gap of 250,000tpa by 2015 in Oxfordshire for MSW and C&I recovery facilities and the more recent work carried out by ERM on behalf of the planning section of OCC – Waste Arisings, Capacity and Future Requirements Study – Final Report, January 2008 confirms this predicted capacity shortfall.*"

11.38 There are concerns about the accuracy of the data in these sources. The projections in the SEP show Oxfordshire's MSW growing at 2.4% p.a. in 2007-10[282]. This data directly contradicts OCC's actual MSW arisings over a similar period, as presented in the DEFRA waste data-flow, which shows an annual decline of 4.3% p.a.[283] Furthermore, OCC's WCA tonnage returns also show a decline in volumes of 8.6% p.a. over the same period[284].

11.39 These volumes will continue to decline due to waste reduction initiatives currently being implemented by Oxfordshire's district councils. In 2010/11, volumes will fall further as a result of CDC's food waste collection service. West Oxon and Vale of White Horse will launch their new services in October 2010, while Oxford City is also improving its services during 2010/11.

11.40 As a result of the above observations, the appellant overestimates the volume of waste that will require treatment, leading to the proposal of a plant with excessive capacity for the county's needs. The scheme has a capacity of 300,000tpa, 20% more than is required to meet the SEP projections even when the declines in actual volumes are excluded from consideration.

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[282] BPC/PW/2 §4.
[283] BPC/PW/2 §5.
[284] BPC/PW/2 §6.

11.41 The impact of these declines on the county's capacity requirements has not been modelled. (The initial 20% overcapacity is sufficiently high to make further analysis redundant). A declining waste stream will add to the plant's overcapacity, leading to more waste being imported, increasing HGV movements and jeopardising management of waste up the hierarchy.

11.42 The Waste Arisings, Capacity and Future Requirements Study – Final Report, January 2008 only indicates a capacity shortfall of 245,000t in Scenario 3: an extreme, worst-case scenario, which assumes the highest growth in waste and the lowest available treatment capacity. ERM's alternative scenarios (Maximum Capacity and Operational Capacity) both indicate a maximum deficit of only 170,000t, occurring in 2020. The appellant's scheme therefore offers 22% more capacity than is required under ERM's worst-case scenario, and 76% more than is required under its two more likely scenarios.

11.43 As a result of these analyses, it is clear that the appellant intends to operate the development as a 'merchant' facility, treating waste from outside the county as well as that generated within Oxfordshire. To argue that the county needs a facility of this scale deliberately masks the commercial interests in building as large a plant as possible.

11.44 In paragraph 13.6 (p13-1) of the ES, a new data source is introduced to justify the proposal: *"...based on the most recent figures for the C&I waste stream set out in the Minerals and Waste Annual Monitoring Report 2007, prepared by OCC, Oxfordshire has annual C&I arisings of 901,000t of which 422,000t still goes to landfill. This represents a diversion figure of approximately 53% and the report also identifies that no C&I waste is currently recovered."* The appellant has not explained why these data are preferred to those in the SEP or ERM study. There is no indication that these data are more recent or more authoritative than those cited earlier.

11.45 A more recent draft of the same document (Minerals and Waste Annual Monitoring Report, 2009) identifies Oxfordshire's C&I Waste Volumes as being 630,000tpa. Para 4.7.5 on p.24 of this document states: "*The total amount of C&I waste arising is taken from the SEP (2009). This figure is significantly lower than that previously reported by the EA (901,000t) but it is thought that a significant improvement in understanding of waste arisings has been made during the preparation of the SEP (2009) and that this figure provides a better reflection of the actual position.*"

11.46 This correction suggests that the appellant's case for 'need' is predicated on a single, unqualified, erroneous datum, which overestimates the county's C&I waste arisings by 43%.

11.47 On p.8 of the report to Cabinet on 7th September 2009 (Item CA4E), OCC's Director for Environment & Economy, stated that the treatment of C&I waste was not considered a requirement of the contract [for the proposed incinerator]. The facility would have additional capacity to treat some C&I waste. This was not a requirement of the contract but would have environmental benefits by diverting more waste from landfill and provide economies of scale that would benefit the council in terms of cost. It is impossible to reconcile OCC's view of the treatment of C&I waste as 'not a

requirement of the contract' with the appellant's argument for an 'overriding need' for the scheme.

11.48 According to DEFRA's waste data-flow (BV84a and BVPI84a), Oxford City Council had the eighth lowest household waste arising per head of any local authority in the country in 2006/07. By 2008/09, it had improved its position to third by reducing its waste.

11.49 Despite the evidence having been published for some time, the appellant has not made any concession to reduce the capacity of the plant or to alert the local community to the error in the assumptions.

11.50 A rival bid to that of the appellant (by WRG at Sutton Courtenay) initially proposed an incinerator with a capacity of 300,000t. However, WRG subsequently reduced the proposed capacity of its incinerator to 220,000t, which was deemed sufficient to treat Oxfordshire's waste. A precedent has been set at Ridham Dock, Kent, where an appeal was dismissed for an incinerator that would provide excess capacity[285].

Health and Human concerns

11.51 Health risks dominate local human concerns because of the close proximity to the proposed incinerator. As this concern is widespread throughout the community, it should be considered a material objection by the planning authority. Although most health studies have been concerned with the effects of the older incinerators and it is maintained that modern incinerators have been improved to the extent that there are no significant adverse effects, there is no proof of the latter. A comprehensive study of the health impacts has the following statement in its introduction[286] *"The fact that 'proof' of cause and effect' are hard to come by is the main defence used by those who prefer the status quo. However the weight of evidence, collected within this report, is sufficient in the author's opinion to call for the phasing out of incineration as a way of dealing with our waste"*.

11.52 The HPA has not conducted a single study around any of Britain's incinerators comparing health outcomes of upwind populations with those downwind. It remains an opinion that because technology has moved on, modern incinerators are safe. In 2009 the HPA reviewed research[287] undertaken to examine the suggested links between emissions from municipal waste incinerators and effects on health and stated *"While it is not possible to rule out adverse health effects from modern, well regulated municipal waste incinerators with complete certainty, any potential damage to the health of those living close-by is likely to be very small, if detectable"*.

11.53 In general, scientific knowledge on the health consequences of exposure to pollutants is acquired slowly. The consequent regulations usually follow one or more decades after the first concerns are raised: eg; cigarette smoking; lead in

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[285] APP/W2275/A/01/1061392.
[286] The Health Effects of Waste Incinerators, 4th Report of the British Society for Ecological Medicine, June 2008.
[287] Health Protection Agency, 2009, The Impact on Health of Emissions to Air from Municipal Waste Incinerators, Sept 2009.

water pipes and on electronic circuit boards; cadmium and mercury in products, and the manufacture and use of Polychlorinated biphenyls (PCBs). The health arguments for incineration should be so robust that it is impossible to challenge them. The HPA has failed to allay public concern.

11.54 Incinerator filters are incapable of capturing the smallest 'ultrafine' particles and inevitably this matter escapes from the chimney and is dispersed into the local environment. These emissions contain dioxins and furans. The measurement and monitoring of these toxins is inadequate. There should be continuous monitoring of all emissions for all pollutant concentrations in water, soil and the food chain. Research into incinerator emissions is still being conducted and this demonstrates that the scientific knowledge is far from complete, and that uncertainties remain over safety. There has been no adequate investigation of local meteorological conditions, no detailed studies of the areas affected by the dominant south westerly winds, no investigation of pollution dispersion, no investigation or consideration given to conditions when there is no wind or when there is temperature inversion.

11.55 Dr A Bostock[288] made the following recommendations in 2008 and which are essential:

a) Mandatory requirement for continuous automated monitoring data, for all pollutants with specified Waste Incineration Directive (WID) emission limits (including dioxins and metals).

b) Mandatory requirement for the above data to be reported in real-time online (automated web page, and email alerts triggered by every breach of emission limits) as soon as the monitoring device has a valid reading.

c) EA to produce and publish instructions on what to do in the event of a significant incident in order to prevent or minimise, harm to public health.

d) Periodic monitoring (at least annually) of pollutant build up in the environment (land, water, food chain (and perhaps human volunteers).

11.56 A detailed ongoing continuous monitoring study over several years has the potential to reduce all reasonable doubt.

11.57 Agriculture is very important in this area with 4.27% employed in land occupations in the study area compared to 1.34% for England as a whole. A large number of local families depend on agriculture for an income. One of the main objections to the proposal is the adverse effect it would have on farming and food production. Incinerator emissions that contain dioxins, furans, heavy metals and various types of PCBs would undoubtedly settle on to good quality farmland and would be absorbed by growing crops and animals and, as a result, contaminate the food chain.

11.58 Pork, beef, milk, milling and feed wheat and vegetable oils are produced in Bucknell for human consumption. Currently contamination from any source is being more vigorously monitored (e.g. mycotoxins in milling wheat) as new EU

[288] Rufford Energy Recovery Facility and Waste Incineration in the UK: Consultation, A Bostock BSc PhD 2008.

rulings come into place. In addition, as technology progresses, it is highly likely that an ever smaller quantity of contaminates will be detected and standards will tighten. The current EU permitted level for dioxins in pig meat is 0.6 parts per trillion.

11.59 For farms directly on the windward side of the prevailing south westerlies, this would create major concerns about the consequences of all emissions. The latter has to be considered in relation to the continually increasing standards which have to be maintained in food monitoring. Incineration and the resultant pollution to air and water are in direct conflict with the EU Commission recommendation on the reduction of the presence of dioxins, furans, PCBs in feedstuffs and foodstuffs.

11.60 It is irresponsible that there are no plans in the application to test soils to establish base levels of heavy metals, dioxins etc. Without this initial base level data, future monitoring would be pointless. Regular monitoring is essential to ensure local people remain confident that their produce is not being contaminated.

11.61 It is claimed that new incinerators give out fewer emissions than older ones, but it must also be noted that the newer ones tend to be very much larger in capacity and therefore dioxins will be more readily built up. When dioxins get into the food chain they bioaccumulate and biomagnify so that food, especially fish and animal products, become the primary route of human exposure.

11.62 UK's self-sufficiency in indigenous food has fallen from 82% in 1998 to 73% in 2008. The UK needs to reverse this trend and produce more food than at present. The result of the incineration of vast quantities of residual waste could blight this forever. Environmental methods for processing waste should be employed in order that natural resources that cannot be replaced are not depleted and our soil and water are conserved.

11.63 Many local families consume a high percentage of locally sourced vegetables and game and it is important for them to know that it is not being contaminated by incinerator emissions or occasional breaches that are bound to occur with this process. The combustion process is subject to a vast mix of different products and is bound to produce temperature variation which results in varied emissions.

11.64 4.6 million m^3 per day equating to one thousand six hundred and ninety eight million m^3 of contaminated air per year would be emitted from the stack, as the APC filtration systems only filter some of the particle emissions. Many of the complex and extremely hazardous chemical pollutants are smaller than $PM_{2.5}$ and it is these very chemicals that are most easily absorbed into the bloodstream of both humans and animals alike.

11.65 Referring to directive 2008/50/EC Article 15 "National $PM_{2.5}$ exposure reduction target for the protection of human health", the proposed plant would emit the equivalent of 215,000tpa of gas and particulate matter. This would result in a reduction in air quality.

Traffic

11.66 Congestion on any of the roads feeding the incinerator would have a negative knock-on effect for Bucknell where there is already increased and dangerous traffic as a consequence of accidents on the A34, the B430 and at Junction 9 and Junction 10 of the M40. Most of the village is without pavements and most diverted traffic tends to show little consideration for residents, children and animals. The village roads are only adequate for rural and local traffic. The roads entering Bucknell do not receive any serious repairs apart from occasional re-chipping. Any further traffic increases would compound the negative road quality and the cost of road repair would fall on local Council taxpayers. An incinerator at Ardley would compound the traffic-generated problems by way of emissions and safety on what are essentially country roads.

11.67 Health risks associated with a major accident or a disaster scenario at the incinerator site would be of greater severity than those of day-to-day operations. Roundabouts at Junction 10 have cambers that regularly result in overturned lorries. If a lorry carrying ash were to overturn the environmental consequences could be disastrous.

Other Adverse Consequences

11.68 People are reluctant to purchase a home in the potential toxic fall-out zone around an incinerator. Bucknell has a broad spectrum of housing with 16% of its buildings listed. There is concern about the effect of further pollution and traffic vibration on all buildings, especially in view of the adverse effects to paintwork and windows experienced since the construction of the M40. Noise from the M40 is already a problem in many parts of the village depending on wind conditions. Some buildings on the outskirts of the village are likely to be affected by incineration noise e.g. Upper Farm (already with planning permission for three more homes) and Rose Lodge neither of which were used as noise monitoring points. Their location would undoubtedly involve them having to contend initially with building and subsequently with operational noise.

12.0 The Case for Mr Day

12.1 The achievement of zero emissions to air, soil and water is the primary objective of EU energy and waste policies. The combination of: slagging co-gasification; chemical process APC plant; plasma APC residue processing; Syngas storage; fast start dual fuel Combined Cycle Gas Turbine (CCGT); heat recovery and storage; 2 stage Organic Rankine cycle turbine, and Combined Heat and Power would achieve:

(a) Higher Rate of Return on Capital Employed;

(b) Lower costs to rate payers for the disposal of municipal waste;

(c) Lower whole life cost;

(d) Higher efficiency, and more useful form of electricity generation;

(e) Higher proportional, and total diversion of wastes from landfill in Oxfordshire;

(f) Better facilities for disposal of hazardous and 'difficult' wastes;

(g) Lower emissions of pollutants and carbon dioxide;

(h) Better Public Health outcomes;

(i) Better Sustainable Development outcomes;

(j) Lower visual, environmental and transport impacts;

than the appellant's proposed EfW waste incinerator at Ardley.[289]

12.2 Engineering, economic, emissions, volume, transportation and planning comparisons between incineration and gasification should have been provided by the appellant in compliance with the requirements of OCC's Scoping Opinion.

12.3 A waste incinerator destroys the value of the waste materials and produces negligible economic output.

12.4 The scheme is defective due to the scale of the development. No reasoned justification for the scale of the proposed development has been provided, nor any comparative analysis of the scale of incineration compared with other technologies.

12.5 ATT achieved the highest score in relation to cumulative environmental impacts using WRATE methodology from DEFRA. OCC's own analysis also indicated that ATT was a cost effective form of waste processing. However, both parties then discounted ATT on the grounds that such technology was either not available, not financially viable, or unable to process 300,000tpa of waste. Each of the above statements is untrue.

12.6 The appellant has not quantified the cumulative whole life emissions from the EfW nor the cumulative impacts of those emissions. It is not possible to directly calculate the total quantity of emissions from the proposed EfW plant during its lifetime. The 1999 EIA Regulations require the assessment of the cumulative impact of emissions over time. The precautionary principle should lead to the appeal being dismissed.

12.7 Zero emissions waste process (ZEP) technology can process all classes of waste with zero residues to landfill, all Oxfordshire's waste needs should be taken into account, leading to a greater total need than if only certain classes of needs are considered.

12.8 If the appeal is allowed, a planning condition should be imposed limiting the combined total tonnage of materials to be imported to and exported from the site in order to reduce the total number of HGVs on local roads.

12.9 The EfW would provide no energy storage other than the steam boiler circuit. It would not respond to fluctuations in demand, heat or electricity. Were the process energy flow to exceed demand, the EfW throughput would

[289] See papers from Mr Day dated 14 June 2010: ARD1/1, ARD/2, CD1/21 and subsequent Apps, together with his Final Submission. In addition, papers were submitted prior to the inquiry with a letter to The Planning Inspectorate dated 4th March 2010.

have to be either slowed or excess energy dumped to the atmosphere. CHP would not be provided as efficiently as it would have been under a ZEP scheme.

12.10 It is not disputed that the height of the flues, and the associated illuminated warning lights would be necessary in order to disperse pollutants. But with ZEP technology, no flues would be necessary. The proposal is not BAT for EfWs.

12.11 The combined sites of Sutton Courtenay landfill and Didcot Power Station would be a better location than Ardley for a major EfW scheme in Oxfordshire. The appellant has not considered the use of rail transportation of waste to the appeal site, notwithstanding the existence of a rail line along one boundary. The appellant has brought forward little evidence to justify the harm caused by the development. Adoption of BAT would both satisfy a greater need and could cause less harm.

13.0 The Case for Interested Parties

Middleton Stoney Parish Council

T*raffic*

13.1 The appellant's main traffic volume data is out of date. Normal traffic growth assumptions cannot be relied upon due to the unique position of the B430 as an unofficial relief road for the M40, compounded by the growing congestion at both Junctions 9 and 10. Traffic to the site would increase threefold over the current level which, in turn, would increase the level of HGV traffic passing along the B430 by 60%[290].

13.2 The appellant's assessment assumes that all vehicles would be fully loaded, but this would never be the case. Also, the appellant refers to Passenger Car Units (PCUs) in relation to vehicle volumes but, in terms of road space and congestion caused by HGVs, PCUs are not accepted by the Department for Transport (DfT) as an appropriate measurement. Furthermore, calculations of the daily movements appear to be flawed[291].

13.3 Increased traffic volumes, allied with breaches of the speed limit, would result in a deterioration of road safety. The appellant identifies the narrow railway bridge as a major safety hazard, but claims that the danger is mitigated by the raised seating position in HGVs. However, this is a false claim with regard to Refuse Collection Vehicles (RCVs) as they are built for their low floor access[292]. The potential for driver error due to increased traffic, coupled with the inability of two HGVs to pass simultaneously over the bridge, would result in an unacceptable increase in the risk of accidents.

13.4 The original application confirms that Middleton Stoney traffic lights already operate at capacity and are estimated to have to cope with an overcapacity, even without the development. The suggestion that local traffic would find an alternative route shows a lack of research of local route access. For the main

[290] MS1, App.I; MSPC/01.
[291] MS1, §§1.8 & 1.9; MSPC/01.
[292] MS1, App.IIs & III; MSPC/01.

north/south route there is no alternative. For those travelling east/west, the alternatives would involve crossing more dangerous junctions.

13.5 It would appear from the appellant's data that either HGVs are consistently exceeding the speed limit for their type on the B430, or car traffic is significantly exceeding the 60mph limit. This propensity to speed, and its inherent dangers, are reflected by the appellant identifying a need for the run off road to cope with underlying traffic speeds of 75mph[293].

The proximity principle

13.6 Much of the OCC burnable waste (150,000-180,000t) would needlessly be transported to the far north of the county from South Oxfordshire, West Oxfordshire, Oxford City and the Vale of the White Horse. This makes no economic or environmental sense. The appellant underestimates the distances involved[294]. The needless costs would be met by Council tax payers and needless CO_2 would be emitted every year[295].

13.7 When operating at capacity, the site would take a minimum 120,000-150,000t of waste from sources other than OCC. This is not compliant with EU strictures for dealing locally with waste.

Air quality

13.8 In the period October 2009 to February 2010, NO_2 concentrations exceeded the maximum recommended level in four of the five measurement periods, with the average also being over the maximum. Applying the appellant's traffic growth estimates would result in NO_2 in the local air being well in excess of acceptable limits.

Need

13.9 OCC currently has approximately 150,000-180,000t of burnable waste to process but, due to recycling and other factors, this may reduce, despite housing growth. The facility, however, would have a capacity of 300,000tpa with the inevitable consequence that other burnable waste would be moved to the site from wherever it could be found. It is clear that the overwhelming need described by the appellant is to serve its own commercial aims.

Wendlebury Parish Council

13.10 The residents of Wendlebury suffer from continuous "rat running" through the village as vehicles avoid congestion on the A41 and A34 crossing the M40 at Junction 9. 75,000t of bottom ash residues would be transported off site leading to a huge amount of additional traffic movements on local roads. This would result in increased congestion with consequential safety issues. There would also be resultant air, noise and light pollution.

13.11 The area between Oxford and Bicester is primarily rural and this industrial development seems totally out of keeping. It is in contravention of the

[293] MS1, §§ 2.10-2.13; MSPC/01.
[294] MS1 (cf. App. IV to App. V).
[295] MS1 App. Va.

Oxfordshire Structure Plan. It appears to take no notice of local opinion at a time when the Government is promising more local control of such matters. The Parish Council cannot understand, other than for economic reasons, why a 25 year contract would be sensible, given continuous improvements in technology.

CPRE (Oxfordshire)

13.12 The proposed building would bring an alien, industrial feel to what is essentially a very rural landscape. It would be very visible and would cause demonstrable harm to the character and appearance of the countryside.

13.13 A scheme of this scale would have significant impacts on the existing transport network. Besides raw waste being brought in, about 75,000tpa of bottom ash would need to be sent out, and a further 12,000tpa of toxic fly ash removed for specialised disposal elsewhere. The traffic generation and impacts on air quality would cause demonstrable harm to the character and amenity of the countryside.

13.14 The technology proposed is not "state of the art" and later developments, such as MBT, together with plasma gasification should be researched more deeply before any firm decisions to proceed are made. If an EfW facility were to be approved, it should be limited and appropriate in scale to minimise the visual impact, HGV movements and additional CO_2 emissions.

13.15 Incineration is not necessary. Surrey County Council has announced that it is withdrawing all plans to build EfW incinerators and, due to reduced waste production and recycling, alternative methods of dealing with waste are being considered. An eco-park is proposed with an innovation centre to investigate and develop the latest technologies. The cost would be less than the previous incinerator schemes in that county. CPRE Oxfordshire advocates this approach.

Bucknell Farms Ltd.

13.16 There is concern about what is believed to be a very significant risk from airborne contamination from the incinerator, which could put the health of the farm's employees and pig herd, and the safety of its food production, in jeopardy. In order to retain the contract for slaughter pigs high levels of bio-security and high health standards have to be maintained.

13.17 Cereal crops grown on the farm form the basis of the main diet for the pig herd. The potential levels of dioxins and furans are of particular concern as studies have shown that 95% of human exposure occurs through consumption of food of animal origin. Soil is a sink for dioxins and is absorbed through dust deposits on growing crops.

13.18 Incinerators do not run at optimal conditions all of the time and there is the potential for incomplete combustion and insufficient mixing of materials giving rise to gases exceeding safety levels. There are reported instances of dioxins and PCBs entering the food chain in other European countries. The principle

cause of the presence of these toxic chemicals in the environment is accepted to be incineration, yet most of them are not monitored[296].

13.19 The potential impact of particulates is also alarming, particularly $PM_{2.5}$ particles[297]. These do not appear to be monitored in the UK either. Therefore, it is unknown what their potential effects might be. Surely CEM should be a requirement of any incineration operation. It is understood that levels of certain pollutants are already close to the maximum permissible limits in the vicinity of Junction 10 of the M40 and any additions could mean that the total levels would exceed safe limits.

The Tusmore Park Estate Ltd

Landscape character and visual amenity

13.20 The closest part of TPE is within 3km of the site with other areas being within 5km[298]. Within the estate boundary there is a SM covering the area of the deserted medieval village of Tusmore, and a Grade II* listed Dovecote/Granary[299].

13.21 The ZTV drawings[300] show that there would be visibility of both the building and the stack from most of the TPE and significant areas further to the north east, up to a distance well over 10km. There is, however, no information about the distances over which the plume would be seen. Whilst the ZTV does not take account of trees, minor landform details or built structures, the building, at a height of 36m, and the stack, at 82m, would inevitably be seen over a wide range and from a distance, even over hedgerows and certain woodland.

13.22 From viewpoints in closer proximity to the site, both the building and stacks would be prominent above the skyline[301]. However, the montages are mostly shown against a grey/white sky with the images blending with the cloudy sky[302]. Furthermore, with some views the camera lens perspective appears to be very wide[303] producing a misleading effect. Also the age and scale of tree planting is not apparent[304], nor the growth rates assumed. Growth rates on made or restored ground are often significantly less than on natural, undisturbed soil.

13.23 The "Farmland Plateau" character type touches the site's northern boundary and includes landscape immediately to the north and west of the site. The associated landscape strategy is *"To conserve the open and remote character of the landscape and maintain the large scale field pattern."* It goes on to say that the plateau is particularly sensitive to visually intrusive development and large buildings. With regard to the "Wooded Estatelands" character type, within

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[296] CA1, App. 2.
[297] Ibid.
[298] ML1.
[299] ML1.
[300] CD2/2, drwgs. 6/7 & 6/8.
[301] CH/2, figs. 25, 27 & 34.
[302] Ibid. figs. 24, 25, 26, 27, 32, 34 etc.
[303] Ibid. figs. 39 & 41.
[304] MJ/3, drwgs. MJ/16-18.

which both the site and the TPE lie, the landscape strategy is to minimise the visual impact of intrusive land uses, using planting to screen development.

13.24 The effectiveness of screen planting is dependent on a number of factors, including viewpoints, and the location, overall scale and height of the development. Notwithstanding the appellant's screen vegetation plan[305], there is no information to judge how effective such screening would be when seen from further afield.

13.25 The AHLV to the north and north east of the site provides a clear indication of this area's heightened landscape quality, and views from within it would be all the more significant. Although the relevance of such designations is now less than formerly, the AHLV designation nevertheless indicates a higher quality landscape and/or sensitivity to change.

13.26 The appellant does not appear to have taken account of local PRoWs including the promoted "Jubilee Ride" route that runs through the southern parts of TPE[306]. The *Guidelines for Landscape and Visual Impact*[307] state that the most sensitive receptors include users of PRoWs.

Other matters

13.27 There has been an inadequate assessment of other potential sites and this inquiry is not the appropriate forum to undertake a comparison. There is no one here to represent the alternative sites and the appellant has a particular interest in promoting the merits of the Ardley site. However, in terms of overall travel distances, the Ardley site comes only fifth out of the eight considered. Associated with this are the additional carbon emissions and the fact that the site is only promoted as being "adequately proximate" to its waste sources. The comparison does not include sufficient landscape details of the other sites.

13.28 There is concern about particulate matter escaping through the chimneys' filters and being dispersed on the wind, presumably landing on crops, woodland and countryside with potential harmful effects. The high volume of traffic that would be generated is unsuitable for the minor B road it would use for accessing the site. Junction 10 of the M40 is already under significant strain, as is the access to the Cherwell Valley Services. Light pollution is an issue and has not been addressed by the appellant in sufficient detail.

Cllr. Mrs Fulljames (Councillor for OCC and CDC)

13.29 It is totally against planning policy to put a huge industrial building, operating every day, 24 hours a day, in a rural situation. It would be out of keeping and harmful to the character and appearance of the countryside. The landfill at Ardley quarry is due to finish in 2028 at the latest and tranquillity would then return.

13.30 In trying to find an operator to dispose of Oxfordshire's residual waste, no regard has been given to sustainability. Due to the site's location, domestic waste would have to be transported from far away places and this is not

[305] MJ/3, drwg. MJ/8.
[306] ML1.
[307] CD5/3, §§ 7.31 & 7.35.

sustainable. A sustainable position would be near Oxford where a large proportion of the Oxfordshire population resides and commercial interests operate.

13.31 Cherwell residents are amongst the top recyclers in the country and there is no need for a 300,000tpa incinerator. The Government is encouraging anaerobic digestion and there is already a nearby site processing green and food waste. Others are planned.

13.32 There would be a great increase in traffic and, whilst improvements are planned for Junction 9 of the M40, this will not solve the problem. Likewise, there are daily traffic jams through Junction 10 making vehicles, including HGVs, take alternative routes through the countryside.

Cllr. John Tanner (Councillor for OCC and Oxford City Council)

13.33 The incinerator would be a permanent industrial plant in open countryside and would be unsuitable because of its visual impact on the surrounding area and the large number of lorry movements it would generate. There are other possible sites and other means of avoiding landfill, such as MBT. The incinerator would not supply heat or electricity to nearby homes, but only to the National Grid. 300,000tpa is far more waste than is likely to arise from Oxfordshire alone. There is no overriding need for this facility.

Dr I Groves (Ardley resident)

13.34 The proposed facility is twice the capacity needed to process Oxfordshire's annual and declining MSW and there is no legal obligation for OCC to process C&I waste. In time, the capacity would only be sustained by increasing the C&I waste and/or processing waste from neighbouring counties. EfW is old technology and it may well become obsolete within its 25 year lifespan. Ardley is a rural area and masking the facility by trees would take as long as its lifespan and would only be effective for six months of the year.

13.35 Although the waste vehicles would be covered, they would still generate dust, which would be a health and safety hazard. There would also be odour and increased levels of NO_x. Additional traffic on the B430 would cause congestion and add to what is already considered to be a danger.

13.36 The site is close to a CA and the proposed industrial complex is totally out of keeping with it. The significant negative visual impact would dominate for miles around. The traffic would adversely affect the enjoyment of residents' gardens and the use of PRoWs. The footpath along the B430 towards the community centre/park/school bus stop/church and pub is narrow and unlit. An increase in heavy traffic would make it impossible to use this link to key areas of the village. The site is designated a SSSI due to the existence of dinosaur footprints. Placing a massive incinerator in such close proximity would do nothing to "protect" this unique find.

Mr B Wilson (Weston on the Green resident)

13.37 The incinerator would be an industrial building that is inappropriate in a rural environment close to CAs. Incineration is an old process that has been surpassed by newer, more sustainable technologies, some of which have been installed in other parts of England. Recycling is increasing significantly and is

being driven forward by the business community, whilst CDC has reported real progress in reducing landfill tonnages and OCC has increased its recycling of household waste. Incineration is an inefficient way to generate electricity and there are other ways to do so not involving waste.

13.38 Apart from the off-site transport of 75,000t of IBA, there would be the export of 11,000t of fly ash involving HGV movements outside the county to a special hazardous waste site. This traffic would use roads that are already functioning over capacity, exacerbating congestion. Both the fuel costs and the CO_2 costs have been underestimated and have been ignored in respect to waste from the hinterlands.

Mr. B. Whyatt (Ardley resident)

13.39 The appellant has a track record of breaching its promises in the area and it is an anti-social neighbour. The EfW plant would not convert the waste efficiently into heat or electricity and would produce toxic waste to be trucked to Gloucestershire for landfill. The facility would result in the loss of 600,000t of non-inert void space (5% of Oxfordshire's total), meaning that rubbish would have to be trucked to another part of Oxfordshire to fill another landfill site.

13.40 300,000t of waste from all over the south east of England would be moved by road through Ardley and other villages. There would be an increase in noise pollution, an increased risk of accidents and speed limits being broken, and an increase in exhaust pollution and dirt from lorry tires. My garden would be rendered unusable for recreation or growing produce and the value of my property would be reduced immeasurably.

13.41 The B430 is a B road and there is a proposal to declassify it altogether. Children cross the road to catch the school bus, and increasing its use by HGVs would increase the danger to them. The road is only fit for light usage. There would be no monitoring of traffic movements from the site, and most of the trucks would speed through this conservation village, affecting its tranquillity.

13.42 The air would be filled with a toxic cocktail of dioxins and furans from the 83m chimney, polluting Mr Whyatt's garden and the surrounding countryside. There is no mention of real time monitoring of the pollution. The technology is deficient and not the best available. As the amount of waste recycled increases, then the need for the proposal diminishes. The building would be visually unacceptable and the chimney would be utterly incongruous. No amount of landscaping would conceal the adverse consequences.

Cllr. J. Macnamara (Councillor for CDC)

13.43 The proposed building, with a roof 30m high, on a relatively prominent piece of high ground, would be visible across a huge swathe of open countryside. Industrial building tends to set a precedent and attracts further development in addition to damaging the rural character of the landscape.

13.44 Heat is not transportable over long distances and would be lost if the EfW plant was not closely located to potential users. Electricity needs infrastructure to travel over distances, of which pylons are the most visible. It would be more sustainable if generation could take place near to users or, at least, close to existing infrastructure, which Ardley lacks.

13.45 Ardley is not close enough to Oxfordshire's major population centres to be the focus for the whole county's residual waste. Smaller, local EfW plants would minimise costly road movements and enable efficient use of the heat component and of electricity without lines of new pylons.

13.46 There is concern that HGV drivers would take their vehicles through villages, which are completely unsuitable for such traffic, to the detriment of residents' amenity. Furthermore, recycling is increasing and it is questionable whether a facility with a 300,000tpa capacity is needed. Drawing waste from outside would exacerbate the transport and sustainability issues. The proposed eco town north west of Bicester would have its own EfW system, reducing the justification for the Ardley plant.

13.47 There are concerns about emissions from the incinerator in combination with existing traffic pollution and from the additional lorry movements that would be generated. Residents would prefer modern technologies on smaller scale sites in existing industrial areas close to where waste is produced. The Government's policy is to promote EfW through anaerobic digestion and this proposal should be considered in the light of current policy.

Mr. Dixon on behalf of Mr T. Ashe (Bucknell resident)

13.48 Incinerators are based on old technology and produce approximately the same volume of CO_2 as the waste they process. Therefore, the Ardley plant would produce about 300,000tpa. Toxic gases would escape, especially when temperatures were not exactly maintained. Very fine particulates (smaller than 2.5µ) would be discharged to atmosphere as filtration technology is not capable of removing them. The waste would contain heavy metals and plastics with the potential for health and environmental problems. The highly toxic fly ash would have to be transported by truck to a site in Gloucestershire for disposal.

13.49 There are alternatives available such as pyrolysis, gasification, plasma gasification and mechanical and biological treatment. The best solution would be a combination of more than one alternative technology close to where the waste is generated.

Mr. J. O'Neill (Chair of Ardley Against Incinerator Group)

13.50 The waste framework refers to local solutions for local waste. How is a solo development in the north east of Oxfordshire a local solution? This also goes for trucking waste from all corners of the county and beyond, and situating the incinerator within one of the country's highest recycling districts. Recycling rates either stall or drop when incineration is introduced.

13.51 When the Prime Minister responded on the 30 June 2010 to a question from the MP for Bedfordshire regarding incineration he said *"We want to make sure that all the latest technology for alternatives to incineration is considered so that we can make sure that we are using the best ways to achieve a green approach."* The Government is now moving towards anaerobic digestion as a preferred method of dealing with waste. The promoter of the proposed eco town has plans for anaerobic digestion.

Mr. C. MacKenzie (Sutton Courtenay resident)

13.52 The incinerator is an out-dated and inefficient means of waste treatment. With regard to climate change and emissions it would not perform any better than a fossil fuel powered generator. South Oxfordshire has a recycling rate of 65% and other areas in the county are improving as there are incentives to reduce residual municipal waste. Some waste is already being used to fuel anaerobic digestion plants.

13.53 The efforts of Oxfordshire's communities, its District and City Councils, in tackling climate change and waste reduction, are forward looking and innovative. They function higher up the waste hierarchy than EfW. The proposal would keep Oxfordshire's municipal waste treatment at the minimum acceptable level of the waste hierarchy.

Cllr. J. Sanders (Councillor for OCC)

13.54 The size of the proposal is shocking. It would be seen a great distance away and would completely ruin the rural nature of the area. It would not be in keeping with the Ardley environment.

14.0 Written Representations

14.1 A petition with over 170 signatories was submitted by Bucknell residents at the inquiry. It expressed objections to the proposal on the grounds of the effect on the landscape, impact of traffic, the discouragement of recycling, health effects, pollution and the attraction of more industry to a rural area to use the power produced.

14.2 Many other letters were received from people and bodies who objected on similar grounds to the issues raised in the petition[308]. In addition, the principle of incineration was questioned and the process by which OCC as WDA chose the applicant as the preferred bidder for their management contract. Several spoke in support of their objections at the inquiry. Mr Shepherd-Cross submitted a written statement of objection that he was to read out at the inquiry. AwFPC also submitted evidence summarising letters of objections from Ardley residents[309].

14.3 The matters of significance raised in the written objections were the subject of evidence at the inquiry by the various Councils and other interested parties and have been discussed in the report.

14.4 One letter of support for the scheme was received from a local resident.

[308] Doc 3.
[309] AWF/IC/01.

15.0 Conditions, Obligation and Agreement

15.1 Submissions were made by OCC and the appellant about a circulated list of draft conditions to be imposed should the appeal be allowed, culminating in a final agreed list[310] dated 22 July 2010 which was discussed within the inquiry, together with a note of OCC proposed conditions not agreed with the appellant[311] and a brief list of suggested conditions from the Ardley Against Incinerator Group (AAIG) [312]. A subsequent note was submitted on the last day of the inquiry specifying further revisions/additions agreed by OCC and the appellant[313]. There were no disputes about any of the 60 Conditions on the list other than those discussed below.

15.2 **Condition 2**: it was agreed at the inquiry that the first phrase should be: "The development hereby permitted shall be begun …" in substitute for "The amendments to the Household Waste Recycling facility and the construction of the Energy from Waste (EfW) plant ...".

15.3 **Condition 15**: AAIG was concerned about the cleaning of the highway. However, as pointed out by the appellant this is covered by other legislation. AAIG also raised a number of concerns about highways matters which could be incorporated into conditions, such as traffic calming and street lighting[314]. However, as OCC stated and the appellant concurred, the HA were content with the proposal as submitted and there is no justification for further controls or provisions for traffic safety. I agree with those latter views.

15.4 **Condition 21**: CDC queried "No occupation of the …". "Prior to the first commercial use of the …" was suggested as an alternative phrase, which I consider is more precise and I shall recommend it.

15.5 **Condition 22**: Mr Day suggested introducing the R1 operating formula. However, I agree with the appellant that this is not a planning matter.

15.6 **Conditions 37, 38, 39 and 8**: The details of the Leachate Treatment Plan were queried by BPC and Mr Day. The appellant explained that Condition 8 dealt with the permanent facility after the closure of the landfill and I see no conflict with the other conditions and shall not recommend any alterations.

15.7 **Condition 41**: The hours of operation of the landfill operation were queried by CDC, AAIG and interested pesons but both OCC and the appellant saw no reason to depart from the existing hours and I have no reason, reinforced by evidence, to disagree with them.

15.8 **Condition 42**: This was agreed between OCC and the appellant.

15.9 **Condition 50**: Mr Day queried the tonnages of soils coming into the site for restoration purposes, but this approximate amount would come in any event in order to restore the site should the appeal be dismissed. Therefore, I have no reason to object to the terms of the condition.

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[310] Doc 7a.
[311] Doc 7c
[312] Doc 7d
[313] Doc 7b.
[314] Doc 7d.

15.10 **Condition 57**: AAIG queried the proposed operating hours of the HWRC compared to those proposed for the EfW plant. OCC suggested that a balance had to be struck between encouraging the use of the HWRC and avoiding unacceptable impacts of traffic on villages nearby. In my experience of similar facilities, an opening time of 1000 for a HWRC on Sunday is late and queuing would probably occur on the adjoining B430 which would cause a danger to traffic. Therefore, I support the suggested amendment to opening at 0830 on Sundays.

15.11 The most significant differences between OCC and the appellant were on conditions 5, 6, 18 and 23.

15.12 **Condition 18** was referred to as the "hinterland" condition and seeks a restriction on the origin of the waste. OCC's reason for the condition is in the interest of sustainable development by minimising the number of HGV journeys and ensuring that the facility is available to take as much of Oxfordshire's waste as possible.

"18 (i) Subject to (ii) and (iii), waste to be processed at the Energy from Waste (EfW) plant shall be sourced from within the administrative County of Oxfordshire;

(ii) if the waste planning authority is satisfied that the operator has used its reasonable endeavours to source waste from within the County of Oxfordshire, and there remains residual capacity within the EfW plant after sourcing such waste as may be available from within Oxfordshire, then waste arising from adjoining counties may be used up to the residual capacity;

(iii) no development shall commence until a scheme giving effect to the requirements of clauses (i) and (ii) of this condition is submitted to and approved, in writing, by the waste planning authority, such scheme to include provision for periodic review of the residual capacity of the EfW plant to accept waste sourced from adjoining counties. The approved scheme shall be implemented as approved."

15.13 The appellant claimed that the imposition of limits based on county boundaries would be arbitrary in the circumstances given the location of the site. Moreover, it would be contrary to the proximity principle, and sustainability and fails to acknowledge that the site is located not only near the county boundary but is also very close to the M40. There is a legal obligation to secure compliance with the proximity principle in the current Article 5(2) WFD 2006 by means of the "network of waste disposal installations" which the UK must establish. OCC accepts[315] that the proposed condition is not a means to secure compliance with the proximity principle, nor could it rationally do so given the site's position in the north of the county close to the M40 and A43. It asserts that it simply seeks priority for Oxfordshire's waste. Furthermore, the only waste over which it has control is MSW which will be regulated through the contract being procured from the appellant. In addition, there is no ability of OCC to control C&I waste or direct its flow from the county to the appeal site.

15.14 OCC supported its case by reference to the Rivenhall decision in which the real issue was the sourcing of paper waste and not the general condition[316], in

[315] And restated this through OCC in XX on 22.7.10.
[316] CD 5/12 and 5/13. Condition 28 in that case. The paper sourcing condition was Condition 30.

respect of which the only real issue was the period allowed for taking waste from beyond the administrative boundaries of Essex and Southend which the Secretary of State allowed for a period of 3 years after demonstrating it had attempted to comply. OCC failed to understand that this was not a contentious condition[317] and therefore its imposition was not subject to the debate and the evidence which has been provided to this inquiry. The appellant claimed that other decisions[318], show a general reluctance on the part of Inspectors and the Secretary of State to impose hinterland conditions on facilities which are not tied to a specific location and which have at least an element of merchant facility for C&I. This is the case here so far as the C&I waste is concerned.

15.15 Notwithstanding the condition within the Rivenhall decision, I do not accept that condition 18 suggested by OCC would be enforceable or reasonable. The source of C&I waste could not be ascertained with any degree of certainty given the likely variability of the origins of waste from transfer stations. In any event, it would be more sustainable and consistent with the proximity principle to accept waste from close to the Oxfordshire boundary, albeit outside the county, if the facility would be the one which was the nearest. One could expect a similar situation to occur in reverse where C&I waste which originated within Oxfordshire, but close to the boundary of an adjoining WDA, could be transported to be managed within that authority. In my opinion, that would be reasonable and would reflect the evolution of a mosaic of facilities able to manage MSW and C&I waste in a sustainable fashion by minimising transport costs. Therefore, I do not support the condition suggested by OCC.

15.16 **Condition 23** seeks a restriction on the type of waste to be processed at the plant. The reason for the condition would be in order to ensure that materials suitable for recycling would not be landfilled and that waste would be moved up the hierarchy.

"23 (i) No waste shall be treated at the EfW facility other than residual in accordance with a scheme approved from time to time under part (ii) of this condition;

(ii) the EfW facility shall not be brought into use until a scheme has been submitted to and approved by the local planning authority in writing showing:

(a) the sources and types of waste to be treated;

(b) the steps to be taken to ensure that (so far as practicable) there will have been prior recycling/composting to remove recyclable/compostable material from that waste, and

(c) arrangements for the review of the scheme at not more than 3 yearly intervals.

(iii) Any scheme approved under part (ii) above shall be implemented in full during the period in which the EfW facility is operational until replaced by a subsequently approved scheme."

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[317] This can be seen from the summary of the applicant's case in IR Section 6 and the MPA's case in IR Section 7. Indeed, the MPA generally supported the applicant in its case, which was a called-in inquiry.
[318] App/07, App/09 and CD 5/38.

15.17 The appellant submitted that the condition would be unnecessary, disproportionate and unreasonable. MSW (and the C&I waste within it) is within the control of OCC as WDA and its contract will be to process such waste as it delivers as residual MSW. I agree with the appellant that, even in the OCC residual MSW, there is still bound to be material which could in principle be recycled or composted but which could practically not be removed. Moreover, OCC has no control over C&I waste, but there are market controls such as economic incentives to recycling and material (especially metal) recovery. There are also disincentives such as the price to be charged per tonne of C&I waste delivered to the site if the operators do not recycle as much as they can. Therefore, I do not support the imposition of this condition suggested by OCC.

15.18 **Condition 5** deals with the details of monitoring the waste to be processed.

"5. Records of the daily amounts of tonnages of imports of waste [origins of waste] (including, separately, that transferred from Household Waste Recycling Facilities in Oxfordshire) shall be made available for the officers of the Waste Planning Authority (WPA) to see on request. [If any of the limitations set out in conditions 3, 4, [18 or 23]* are exceeded then there shall be no further imports of waste until the operator has agreed with the WPA measures to ensure the limitation in those conditions are met]*"*

**Words within square brackets disputed by appellant.*

15.19 The differences of view between OCC and the appellant about the condition were based on whether Conditions 18 and 23 would be acceptable. The appellant also submitted that the final sentence providing for ceasing imports until measures to remedy any breach of Conditions 18, 23, 3 or 4 would be disproportionate and unreasonable.

15.20 I agree with OCC that monitoring the type of waste entering the site is desirable so that the proportion of MSW and C&I waste is known, in order to understand the degree to which the facility is satisfying the need for management of the different types of waste. However, I have no evidence to suggest that the precise origin of the C&I waste can be monitored with any accuracy and I also consider that the final sentence of the suggested condition is wholly unreasonable especially having regard to my conclusions about Conditions 18 and 23. Therefore I recommend that the condition be worded as follows:

"5. Records of the daily amounts of tonnages of imports of waste, including, separately, that transferred from Household Waste Recycling Facilities in Oxfordshire, shall be made available for the officers of the Waste Planning Authority (WPA) to see on request."

15.21 **Condition 6** concerns hours of HGV movements. OCC suggested the hours below.

"6. No heavy goods vehicles, including those associated with construction works, shall enter or leave the site except between the following times:
0700 hours to 1900 hours, Mondays to Fridays;
0700 hours to 1300 hours, Saturdays;
and on 12 nominated Saturdays 1300 hours to 1600 hours.
No movements shall take place on Sundays or public holidays."

15.22 The appellant submitted a preference for 0700 – 2000 Mondays to Fridays, 0700 – 1600 Saturdays and 1000 – 1600 on Sundays. The appellant noted

that, in Condition 7, OCC proposed additional hours for Saturdays and Sundays between which waste could be brought from HWRCs in order to ensure that capacity at those facilities was not overloaded. These would be 1300 – 1600 and 1000 – 1600. Third parties did not wish to see any HGV movements into the site at all on Saturdays and Sundays and pointed out that Sundays were the busiest for private vehicles taking domestic waste to the HWRC facility.

15.23 So far as weekdays are concerned, there was no dispute between OCC and the appellant about the starting time of 0700, but I consider that there would be a significantly greater impact on the amenity of local residents from HGVs arriving at and departing from the site at 1900 hours compared to 2000 hours and therefore, I do not support the later time. Preventing any Saturday HGV movements would be unreasonable taking into account the other activity at the site on that day and there is no evidence to show that one Saturday per month is different to any others. Therefore, I recommend that the hours should be 0700 hours to 1600 hours on Saturdays. Finally, I agree with OCC that there should be no movements on Sundays other than as provided for in Condition 7 which I would not expect to be a very frequent occurrence and so would not render either of the conditions unenforceable.

15.24 Finally, at the inquiry, I raised the possibility of a time limited condition for the development in order to take account of obsolescence should waste management technology develop over the design life of the facility. Periods of 25 or 35 years were suggested. Both OCC and the appellant were resistant to this suggestion which would be contrary to advice in paragraph 109 of Circular 11/95 and I agree. However, both parties agreed to a more flexible condition with no expiry date which would provide for the removal of the EfW plant should obsolescence cause the facility to become disused.

15.25 Therefore, for the above reasons, should the Secretary of State be minded to allow the appeal, I recommend the conditions as worded in Annex A, but with the condition numbers adjusted to take into account those which have been deleted from the list. The reasons for the conditions are included in the Annex.

15.26 A completed **Routeing Agreement** made between OCC and the appellant provides for the movement of Heavy Commercial Vehicles to and from the site along an Approved Route as shown on Plan 1 of the Agreement[319].

15.27 A completed **Planning Obligation** provides for an Aftercare Management Plan, a Travel Plan, public access to the Geological Face, the diversion of Bridleway 27, the repair or reconstruction of Bridleway 26 and the construction of a short new section of bridleway[320]. I consider that the obligation is necessary to make the development acceptable in planning terms, is directly related to the development, and fairly and reasonably relates in scale and type to the development. Therefore, the obligation meets the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010.

[319] Doc 8.
[320] Doc 9.

16.0 Conclusions

[The numbers in square brackets refer to the source paragraph in the report]

16.1 The proposed development comprises an Energy from Waste (EfW) facility capable of dealing with 300,000tpa of residual Municipal Solid Waste (MSW) and Commercial and Industrial (C&I) waste. The 95ha appeal site is a former limestone quarry which is currently being restored by landfill. There is also a household waste and recycling centre on the site. The scheme would include revisions to the previously approved restoration landform, improvements to the household waste and recycling centre, ancillary facilities and a new access. [4.9, 2.1, 3.1]

16.2 The overall size of the EfW plant would be 229m long, varying from 70m to 38m wide, from 70m to 29m in height to the apex of the main roof and 36m to the apex of the fin. The base platform level would be set at 100m Above Ordnance Datum (AOD). The chimney stack would be 82m above base level at 182m AOD. [4.10]

16.3 The appeal site is located in open countryside, but without any statutory landscape or heritage designations, between the villages of Ardley, Bucknell and Middleton Stoney, west of the M40. Access would continue to be gained from the B430 which leads north to Junction 10 of the M40 and south to the A34 towards Oxford. [2.1, 2.2, 2.3, 2.5]

The Environmental Statement

16.4 An Environmental Statement (ES) was submitted in accordance with the 1999 Regulations, as amended. Submissions were made by Ardley-with-Fewcott Parish Council (AwFPC) and Mr Day concerning the adequacy of the ES. In addition, Cherwell District Council (CDC) included evidence suggesting that the treatment of alternative sites was defective.

16.5 AwFPC submitted that the ES was inadequate and misleading due to the inaccurate representation of the Sites of Special Scientific Interest (SSSIs) at the site. Mr Day submitted that the appellant had failed to consider the cumulative impact of emissions over time or to make comparative assessments of alternative technologies available.

16.6 The appellant did not accept that the ES was defective, although some corrections had to be made, notably to some of the viewpoints and montages, already considered in evidence submitted prior to the inquiry and with regard to the boundary of the SSSI at the site. However, the conclusions of the appellant were not altered. Nor, indeed, were any judgements of objecting parties changed consequent on the corrections to the evidence base. [7.200]

16.7 So far as the SSSI is concerned, the area referred to is already subject to planning permission for restoration by the landfilling operations and appropriate mitigation schemes with the necessary agreed methodologies and licences being implemented. Natural England (NE) and Oxfordshire County Council (OCC) have stated that they are satisfied that an appropriate level of baseline survey and details of mitigation have been provided with respect to protected species. [7.97, 7.98]

16.8 The claims of inadequacy of the ES submitted by Mr Day and CDC are answered by reference to *R. (Edwards) v. Environment Agency* [2008] UKHL 22 and [2008] Env. L.R. 34 where the then House of Lords approved the statements of principle by Sullivan J. In *R. (Blewett) v Derbyshire CC* [2004] Env. L.R. 29[321] (§§38-42). This is the authority for the proposition that there is no basis for rejecting an ES merely because someone takes issue with the form or content of it. Furthermore, an ES is not required to be perfect and, indeed, the purpose of the Environmental Impact Assessment (EIA) process, which includes consultation, is to allow other views to be expressed. [7.199]

16.9 Moreover, in the case of *R on the application of Linda Davies v SSLG and Lancashire County Council [2008] EWHC 2223*, the judge concluded that, due to the publicity procedures at an inquiry, he did not accept that additional ES information either should not be considered by the decision taker, or should not be considered by the decision taker unless it has been subject to the same degree of publicity and consultation as the information in the original ES. [7.200]

16.10 Therefore, I do not accept that the ES is deficient to the extent that it should be considered inadequate and this view is reinforced by the stance of OCC, as the waste planning authority, which did not claim that the ES was defective in any way.

16.11 In my opinion, the ES meets the requirements of the 1999 Regulations, and I have taken its contents into account in arriving at the recommendation in the report, together with all the other environmental information considered at the inquiry and submitted in connection with the appeal.

Considerations

16.12 After hearing the evidence at the inquiry, reading the written representations and inspecting the site and surroundings, the main considerations in this case, having regard to the aims of the adopted planning policies for the area, are:

(i) the effects of the proposal on local residents, and

(ii) the impact of the scheme on the countryside, weighed against

(iii) the need for the proposed waste management facility and other benefits.

Prematurity

16.13 AwFPC suggested that the proposal should be considered premature because granting planning permission would prejudice the preparation of the Waste Development Plan Document (DPD) by OCC by predetermining a decision about the scale, location and phasing of a major new waste management facility. [10.2, 10.3, 10.4]

16.14 However OCC does not have a prematurity objection because the emerging Minerals & Waste Development Framework has not yet reached a stage where it has any tangible policies or proposals that could be pre-empted by a decision in

[321] Referred to by approval by Lord Hoffman at §§38 and 61.

this case. The timetable does not envisage a submission document until December 2010 and the implications of the recent revocation of the SEP will also need to be assessed by OCC. [8.69]

16.15 Furthermore, as the appellant indicated, the Cherwell Local Development Framework (LDF) is not yet at an advanced stage of preparation. Government policy, whether or not under emerging localism, does not justify placing on hold current planning applications or appeals in the absence of any new approach to prematurity. It has always been the case that changes in policy do not of themselves prevent the determination of planning applications. The approach is not supported by current policy on prematurity or by emerging policy from the Department of Communities and Local Government (DCLG). Therefore, I do not support any claim of prematurity in this case and see no reason why the appeal cannot proceed to a decision. [7.196, 7.197, 7.198]

Planning Policies

The Development Plan (DP)

16.16 The DP, so far as it relates to the proposal under consideration, comprises the saved policies of the Oxfordshire Minerals and Waste Local Plan (OMWLP) (1996) and the Cherwell Local Plan (CLP) (1996). The South East Plan (SEP) was revoked during the inquiry. [5.1]

16.17 Amongst the Policies in the OMWLP are W2 which provides for the acceptance of waste in Oxfordshire from London and other parts of the south east for treatment and/or disposal subject to other planning policies; W5 which seeks the proper screening of plant etc from the surrounding countryside and PE14 which seeks to safeguard sites of nature conservation interest. [5.2]

16.18 The CLP includes Policies C7, C8 and C9 which seek to protect the topography and character of the landscape, to restrict sporadic development in the countryside and to resist development which would be incompatible in a rural landscape. Policies C1 and C2 aim to protect nature conservation interests. [5.3]

Other Planning Policies

16.19 The non statutory Cherwell Local Plan (NSCLP) (2011) was not tested by independent examination and the appellant submitted that it should carry no weight given that it is out of date and superseded by more recent national policy. OCC accepted that the NSCLP can carry very limited weight but indicated that Polices EN30, EN31 and EN34 maintain the objectives of C7, C8 and C9 of the statutory adopted CLP. In my opinion, the NSCLP is a material consideration, but the weight it carries in this case is minimal. In any event, the aims of the key policies of the NSCLP which would be brought to bear on the decision are consistent with those of the adopted statutory CLP. Therefore, the outcome of the appeal should not be significantly influenced by the minor amount of weight afforded to it.

The Effects on Local Residents

Traffic

16.20 Taking account of updated traffic data, the appellant's traffic assessment shows that the proposal would cause a 3.2% increase in HGVs and a 0.6% overall increase in traffic through Middleton Stoney and on the B430 south of the access to the site. Corresponding increases for Ardley would be a 12.9% increase in HGVs and a 2.2% overall increase in traffic. The new access to the site incorporates a ghost right turn lane on the B430 and is designed to facilitate increased traffic movements into the site. The predicted overall traffic impact is demonstrated by the assessment to be insignificant. Whilst other developments are planned for the area, which would result in additional traffic, improvements are proposed to the layouts of nearby junctions to accommodate this. The assessment concludes that there would be no resulting material impact on the future operation of the road network. [7.80, 7.81, 7.76, 7.77, 7.79, 6.3, 4.24]

16.21 The Parish Councils and others have referred to existing congestion, accident hot spots, and speeding along the proposed HGV routes, including the B430 through Ardley and Middleton Stoney villages, the bridge over the railway, the A34, and Junctions 9 and 10 of the M40. Mention has also been made of increased numbers of HGVs adversely affecting equestrian pursuits, the recreational use of public rights of way (PRoWs) and gardens, home office working, church and village hall activities. Consequently, local people are concerned about the proposal's effect on road capacity, highway safety, amenity, employment and the community in general. The appellant's assessment of traffic volumes is also disputed, and there is an objection to the appellant's data being out of date. Criticism is made of the EfW site only scoring 5th out of eight in terms of distance travelled. [10.6, 10.13 – 10.24, 11.66, 11.67, 13.1 – 13.5, 13.10. 13.13, 13.32, 13.38, 13.41, 13.46]

16.22 Very limited alternative technical evidence has been submitted to substantiate these challenges to the appellant's assessment, which has recently been updated with no resultant material change to the original survey. Furthermore, neither OCC, nor CDC, nor the HA has raised any objection on transport grounds and, from my site visit observations of the road network, there was nothing to cause me to differ from this stance. In terms of proximity, this is only one element out of many that needs to be considered in the round when assessing alternatives. Therefore, I am satisfied that the appellant's assessment is robust and that the traffic impact resulting from the proposal would be insignificant and acceptable. [7.74, 7.75, 7.82, 7.87]

Air Quality

16.23 Concerns have been raised by the Parish Councils and others about the potential adverse effects of emissions from the stacks on air quality. Objections have been made to the possible breach of air quality standards for various substances, and elevated levels of CO_2 from both the EfW plant and associated road haulage, hence contributing to global warming. Dust from stockpiles of IBA and from HGVs is also an issue, as is the possibility of pollution impacting on recreational activities. [10.25, 11.7, 11.15, 11.21, 11.29 – 11.31, 13.8. 13.48]

16.24 Furthermore, local residents have expressed a fear that emissions to air could affect human health and that of animals and fish. They are concerned that there is a dearth of information comparing the health of upwind populations with those downwind of incinerators, and that scientific knowledge is incomplete. They are worried that the smallest emitted particles would not be captured or adequately monitored and measured, and that furans and dioxins would escape to atmosphere. As local land is used for the production of food for human consumption and for animal feed, there is a fear that contaminants would settle on crops and would be ingested. As well as bioaccumulation, it is believed by some that this could affect local farmers' businesses. [11.22, 11.51 – 11.65, 13.16 – 13.19]

16.25 The appellant's assessment demonstrates that there would only be a small increase in ambient concentrations of airborne pollutants, which would be insignificant, and that traffic emissions would be within acceptable limits. There is little technical data before me to challenge this evidence or to support any of the other above mentioned objections. OCC agrees that pollutants and dust from the EfW plant and associated vehicles would be negligible, and NE is satisfied that there would be no significant effects on relevant sites of conservation interest. There are no objections on air quality, pollution or related health grounds from OCC, CDC, NE, the Food Standards Agency (FSA), the Health Protection Agency (HPA) or the Environment Agency (EA). In fact most of these third party concerns are not planning matters and, therefore, should be directed to the pollution control authorities, as indicated in the Companion Guide to PPS10 (para. 8.5). In this case, the relevant authority, being the EA, appears satisfied that the technology used to control emissions is Best Available Techniques (BAT). A Continuous Emission Monitoring System (CEMS) would record these emissions in accordance with an Environmental Permit (EP), a draft of which has already been issued. For these reasons I take the view that, in relation to land use planning, the proposal's impacts on air quality and health would be insignificant and acceptable. [6.4, 6.5, 7.3, 7.4, 7.174 – 7.176, 7.182 – 7.184, 7.188, 7.189]

Hydrology

16.26 Concerns have been raised that the appellant's original Flood Risk Assessment (FRA) and subsequent additions are inadequate and lacking in detail. It is suggested that the inadequacies include providing no information on historical flooding, failing to assess the flood hydrology of the Gaggle Brook, and not assessing the accuracy of the EA's flood risk maps. [11.1, 11.2]

16.27 However, the appellant agreed the scope of work with the EA and used industry codes of practice and EA methods of good practice to carry out its FRA. The results demonstrate that management and control of surface water runoff would safeguard downstream catchment areas from direct significant effects of runoff. Whilst the EA was initially concerned about hydrology and flood risk, following the production of additional information, it removed its objections. Nor are there any hydrology objections from OCC and CDC. I have no good reason to differ from the regulator and these parties. Consequently, I take the view that the management of runoff, controlled through an appropriate condition, would overcome this issue so as to reduce the risk of any direct significant effects to an acceptable level. [6.7, 7.190 – 7.195]

Other Effects

16.28 Concerns have been raised about noise. However, the appellant's assessment demonstrates that, for the four nearest houses, noise during the construction phase would, at worst, be only just above ambient levels for those properties, and predicted operational noise would be well below background noise levels. It also shows that there would be no noise increases from traffic and from any cumulative effects with other developments. Consequently, the impact would be minor. This is agreed in the Statement of Common Ground (SoCG). I have no other technical evidence before me to justify a departure from this position and, therefore, I accept that there would be no significant noise effects. [10.25, 11.68, 6.6]

16.29 Objections have been made about possible odour problems. However, there is little evidence to challenge the appellant's position that the scheme is designed to minimise the risk of fugitive releases of odour. In any event, this is a matter for the EA. Vibration has been raised as an issue, but has not been substantiated with evidence. Consequently, I give it limited weight. Whilst there is a suggestion that the proposal would not sit well with the environmental aims of the north west Bicester eco development, there is no evidence before me of future residents being significantly affected by it. Although there is concern that the site's dinosaur tracks would be harmed, to the detriment of education and tourism, the proposed retention of the relevant limestone faces would be a benefit over the permitted restoration, which would result in them being underground. Therefore, I take the view that all of these objections are unfounded. [10.25, 7.186, 11.24, 11.68, 7.119]

The Impact on the Countryside

Ecology

16.30 There was no substantive evidence submitted to the inquiry that the appeal should be dismissed on the grounds of harm to nature conservation interests, although submissions were made by AwFPC about the inaccuracies of the boundaries of the Ardley Cutting and Quarry SSSI a small part of which, it was discovered at the inquiry, extends into the appeal site. [2.5, 7.89, 10.10]

16.31 Whereas certain relatively scarce species may be present at or near to the appeal site, it is already subject to planning permission for the extension of the continuing landfill operations and so the appropriate mitigation schemes and licences are already in place in order to safeguard nature conservation interests. [10.32, 7.90, 7.91]

16.32 So far as the Ardley Cutting and Quarry SSSI and the Ardley Trackways SSSI are concerned, the proposal involves no change to the approved landfill restoration scheme for those parts of the site. Therefore, there would be no change to the impact already permitted. Accordingly, I consider that there are no reasons on nature conservation grounds to dismiss the appeal and that the proposal would not be contrary to Policies C1 and C2 of the CLP and Policy PE14 of the OMWLP. My conclusion is consistent with those of OCC, NE and the Berks, Bucks and Oxon Wildlife Trust, none of whom object to the scheme on ecological grounds. [5.2, 5.3, 7.95, 7.97]

Landscape character and appearance

16.33 There are no nationally designated landscape areas within the study area, the nearest being the Cotswolds Area of Outstanding Natural Beauty (AONB), 14km away. Although there is an Area of High Landscape Value (AHLV) about 3km to the north west, and a Special Landscape Area (SLA) beyond that, such local designations are not in line with current policy as set out in PPS7. [2.5, 7.138, 7.139,]

16.34 Whilst the site is within the countryside, its character is influenced by surrounding development. The nearby M40 motorway, although partially in a cutting, is clearly visible with its heavy traffic flows. Despite there being policy not to treat it as a development corridor, development has occurred and more is planned. The Bicester to Banbury railway line, the Agrivert scheme and the Upper Heyford airbase have all eroded the rural character. Future developments such as the Bicester Eco town, Fewcott windfarm and development on the airbase, if they come forward, would add to the urbanising effect. [2.2, 2.3, 8.48, 8.49, 8.50, 8.51, 8.52, 8.53, 7.133, 7.134]

16.35 The appeal site itself was formerly a mineral working and has planning permission for landfill development. Consequently, there are currently few original, natural or rural landscape elements within the site, which could be directly harmed by the proposal. With existing levels of infill, it is estimated that the permitted restoration would be completed by 2016. Whilst the proposed scheme involves changes to the site restoration, mainly relating to gradients, OCC does not object to the landform changes alone and CDC's witness was unwilling in XX to say that they were unacceptable. I have no reasons to disagree with this position. Both Councils' objections are, instead, focused on the introduction of built development into the countryside. [2.1, 3.1, 7.118, 7.119, 4.15, 7.117, 7.121, 8.43 – 8.45, 8.62, 9.33]

16.36 As well as the site's landscape not being physically intact, that to the immediate north and south is in a similar condition due to mineral extraction, and although restoration will result in some repair, there will be permanent alterations. Part of this area has been identified in the *Cobham* study as *"Reconstruction Landscape",* which has a high capacity to accommodate change, with the remainder being *"Repair Landscape".* The Upper Heyford airbase is also designated as "Reconstruction Landscape". However, this study is about 15 years old and was written before some of the excavations took place and before the permitted restoration was started. Therefore, in relation to these areas, it is of limited weight. Nonetheless, a reasonably extensive area of landscape is quite low quality and has a fairly low sensitivity to potential development. [7.133, 7.135, 7.136, 7.137, 8.44, 8.45]

16.37 The site lies within the "Ploughly Limestone Plateau" character area, mainly within the "Wooded Estatelands" character type, although its small north westerly tip extends into "Farmland Plateau". One of the characteristics of the Wooded Estatelands is its *"Rolling topography with localised steep slopes",* although some of the larger arable fields surrounding the site appear quite flat. The EfW building would have a curved, undulating roofline to reflect the undulating characteristics of the "Wooded Estatelands", which would, in my opinion, mitigate its impact. Although it would be less in keeping with the level or gently rolling open ridges of the "Farmland Plateau", these are further away

and need not be reflected to the same extent. Nonetheless, it would be a large scale, industrial feature within a rural setting, which would displace an area of arable grassland. [7.120, 8.43, 8.46, 8.62, 9.22, 9.33, 9.34, 7.122, 13.12]

16.38 However, the restoration scheme would mitigate the effects of the building and, its location in a bowl shaped valley close to the quarry floor, would maximise the screening provided by the existing mineral void and the proposed landfill landform. This setting would help integrate the building into the existing landscape. [4.10, 4.16, 4.17, 4.18, 7.121]

16.39 From the north and west the stacks of the building would be visible from some areas, as would the plume for, on average, about one third of the year. However, the building would be partly screened within the enclosed landform of the landfill. Visibility would be further restricted by existing vegetation and planting, although this would be subject to seasonal change and the latter would take time to establish. The general effect would be of moderate significance. From the near south and east, in addition to the stacks and plume, the main body of the building would be clearly visible from several areas, resulting in a significant impact on the landscape. However, from other near vantage points it would be partially screened by woodlands and hedgerows, mitigating its effect. [7.121, 7.123, 7.124, 7.125, 7.126, 7.129, 8.63, 8.64]

16.40 Views from further afield would be limited by distance, topography and intervening vegetation, and many would only be glimpsed and intermittent. Beyond about 1.5-2km, the building and stacks would blend into the horizon and its appearance would seem insignificant with minimal effect. Consequently, there would be a negligible impact on the AHLV, SLA, the Cherwell Valley Slopes, and the many other identified distant areas. [7.140, 7.141, 9.25, 9.26, 9.27, 9.28, 9.29, 9.30, 9.31, 13.25]

16.41 Despite the landscape strategy of the “Wooded Estatelands” seeking to minimise the visual impact of intrusive land uses, only about 1.7% of this character type would be significantly affected. Therefore, the degree of change would be contained and fairly low. In the context of the M40 and its fast moving traffic, it would not fundamentally alter the nature of this character type. Whilst the landscape strategy for the “Farmland Plateau” notes the area’s sensitivity to visually intrusive development and large buildings, the effect on this character type would be even less due to its distance from the building, and its general location to the north and west, where there would be more screening. Moreover, this is a large-scale landscape, which is not particularly sensitive to the introduction of large-scale features, as indicated by the Inspector in the Fewcott Windfarm appeal. It has already absorbed large scale developments, and more are planned. Cumulatively, rather than making the landscape more vulnerable, and irrespective of their visual relationships, balance, surrounding topography and screening, these developments have resulted in a decreased sensitivity to change. Therefore, overall, there would be no significant effect on the “Wooded Estatelands” or “Farmland Plateau” typologies. [7.129, 7.131, 7.132, 8.48, 8.49, 8.50, 8.51, 8.52, 8.53, 8.67, 9.34, 9.35, 9.36, 13.23]

16.42 In conclusion, there are no significant issues relating to the proposed landform changes and the main focus of impact would be the EfW building.

Whilst this would represent a large scale, industrial feature in the open countryside, it would only significantly impact upon a limited area to the south and east, within about a 1.5-2km radius of the plant. Other areas would be substantially less affected by it. Further afield, the building and stacks would be too distant to have any significant effect. Therefore, on the whole, given that the harm would be restricted, the impact on the rural character would not be significant. Only a very small part of the "Wooded Estatelands" would be affected and, overall, the impact on this character type would be insignificant. [7.149, 8.62, 9.33]

16.43 Moreover, the building's impact would be mitigated by its undulating design, its location close to the quarry floor, its partial screening by existing vegetation, the topography of the land, and proposed planting. Furthermore, this is a large scale landscape that has already been eroded by development, rendering it less sensitive to change. Consequently, whilst the introduction of the EfW facility would cause some harm to the character and appearance of the area, overall, the mitigating factors would help to integrate it into the landscape, rendering it acceptable. [4.10, 4.16, 4.17, 4.18, 7.121, 7.131, 7.132]

16.44 Assessing the proposal against the DP, the main provisions are to be found within the CLP and the OMWLP. Although the CLP is not intended to be specific to waste development, its general coverage does not exclude such facilities and, therefore, it is still a relevant part of the DP. However, the OMWP and the CLP were adopted 14 years ago and the data upon which the policies are based are close to 20 years old. Consequently, they do not take account of current national policy and should be read in the light of the more recent PPS7 (as amended by PPS4) and PPS10. References made to NSLP Policies carry minimal weight, as the NSCLP was not tested through examination in public (EiP). [7.27, 7.29, 7.34, 7.35]

16.45 The proposed, carefully designed landscaping would provide adequate screening. Therefore, it would meet the test of Policy W5 of the OMWLP, which requires waste treatment buildings, amongst other things, to be properly screened from the surrounding landscape in all cases. Due to the development's overall insignificant effect on the rural character, it would comply with CLP Policy C7, which seeks to avoid demonstrable harm to topography and landscape character. The proposed location is on an existing waste management site and, therefore, it would represent a continuation of waste management facilities. However, the benchmark against which the impact has to be measured is a former mineral working being restored to countryside by landfill. Consequently, the development would be sporadic in the countryside and, therefore, contrary to CLP Policy C8, although I note the nearby presence of the substantial newly built Agrivert building and also the recently permitted windfarm to which the same policy would have applied. [2.3, 5.2, 5.3, 5.4, 8.42, 8.68, 9.49, 7.30, 7.31]

16.46 Furthermore, the locational criteria in Annex E of PPS10 include *visual intrusion* (criterion c) the advice for which is that *"Considerations will include (i) the setting of the proposed location and the potential for design-led solutions to produce acceptable development;…."* The rural setting of the development has been seriously eroded by nearby development, particularly the M40, and it may be further damaged by proposed future development. The scheme is design led, as demonstrated by the undulating style of the EfW building reflecting the

surrounding landscape, and the screening effect of the remediated land form and planting. These factors combine to avoid any significant conflict with criterion c. Consequently, reading CLP Policy 9 in the context of PPS10, I am of the opinion that the facility would not be in conflict with it. [7.43]

16.47 With respect to PPS7, it no longer requires protection of the countryside for the sake of its own intrinsic character, although it still seeks to ensure that all development in rural areas is sensitive to the character of the countryside. Due to the proposal's eroded countryside location, its design, and other above mentioned mitigation, I take the view that it is compliant with PPS7. [7.36, 7.37, 7.43, 7.47]

16.48 Consequently, for the reasons given and taking account of all landscape matters raised, I conclude that the EfW facility would be contrary to CLP Policy C8. However, other material considerations include the old age of the CLP, its predating of PPS1, PPS7 and PPS10, its lack of coverage of waste management developments and the apparent inconsistency of application by reference to the Agrivert building and the windfarm.

Visual Impact

16.49 Although the Zone of Theoretical Visibility (ZTV) drawings show a wide area of theoretical visual impact, they represent a bare earth model of the landscape. If vegetation and buildings were added, screening would reduce the impact. From my site visits it was apparent that the EfW building, even with its stacks and plume, would appear as a small element on the horizon from views further than about 2km away. These include views from Aynho Park, Juniper Hill, SM Castle Motte at Deddington and Tusmore Park, which would all be too distant, glimpsed and/or intermittent to be of any significance. [7.140, 7.146, 9.26, 13.21]

16.50 Nonetheless, there would be some views of the EfW building from private residences within more proximate settlements. Whilst most views from Ardley village would be restricted, the stack might be visible from Jersey Cottages about 1.8km away. This would be through gaps between Upland Cottage and the adjacent vegetation and, given the distance and glimpsed views, the effect would only be moderate/minor. However, the building would be clearly visible from some upper windows at Upland Cottage, which is nearer to the site. This would result in a significant impact. [7.142, 9.31,10.12]

16.51 From Bucknell village, visibility would be restricted generally to views from the west. There would be filtered views from Homelands Farm, limited oblique views from a small number of properties to the northwest edge of the village, and potentially direct views from two modern developments at respective distances of 1.66km and 1.75km from the EfW stack. Visibility would extend to an upstairs window at Swallowfields Farm, southwest of Bucknell, about 1.1km away, although it would be across the motorway and some intervening vegetation. A similar view across the motorway would be possible from Woodlands Farm, northwest of Bucknell, about 1.55km from the stack. Although these views would be significant, the distracting movement of traffic on the M40 would mitigate the visual change. [7.129, 7.143, 7.144, 11.26]

16.52 Whilst it is unlikely that there would be views from the village of Middleton Stoney, there would be restricted views from a small group of residential

properties to the north, beyond intervening hedgerows, although, due to distance and screening, these views would not be significant. Clear visibility from an upstairs window at Dewars Farm, about 1.3km away, would be significant, although views from Manor Farm Cottages would be largely screened by woodland vegetation, rendering them insignificant. [7.145]

16.53 There would be views from RAF Upper Heyford from the east end of the flying field and from the residential zone. However, in the context of the surrounding structures and, given the separation distances, I am of the opinion that the visual impact would be low and of moderate significance. [7.166, 9.28]

16.54 In terms of the public domain, views from the PRoWs which cross the site would be greatly affected whether or not the diversion remains. There would also be clear and significant views of the EfW building from the south on the PRoW, which runs north from Dewars Farm towards Trow Pool, with similar views from the Trow Pool Water Tower, about 800m from the building. Intermittent visibility would occur from eastern PRoWs, which partly pass through woodland type habitats. Although the building would be clearly seen with significant effect from some vantage points along these eastern routes, the impact would be lessened by trains on the nearby railway line and the traffic along the M40. From Ardley there might be views from the restored old quarry which, I understand is used for public recreation. However, the appellant would fund improvements to the local PRoWs to mitigate the impacts on recreational areas. With regard to views from the more distant "Jubilee Ride" PRoW, which runs through the southern part of the Tusmore Park Estate (TPE), the building would be too remote to have more than a negligible visual impact of little significance. [2.4, 7.127, 7.130, 7.145, 8.58, 8.59, 8.66, 10.22, 10.25, 10.27, 13.26]

16.55 There would be reasonably clear views of the upper part of the building from the nearest two bridges over the M40, to the northeast and southeast of the site. Whilst these would be moderately significant, their impact on drivers would be tempered by their transience, seasonally variable screening, and the movement of heavy traffic flows. Views from lower down on the intervening section of the M40 would be less significant, as would the more distant views from the third M40 bridge further south. Visibility of the stacks from more distant vantage points on roads to the west, northwest and southwest of the site would generally be insignificant due to distance, topography, and intervening vegetation. However, a nearer viewpoint, close to the reservoir, would be affected to a moderate degree. [7.128, 8.58]

16.56 The main EfW building would be internally illuminated at night resulting in a glow from the translucent panels. Red aircraft warning lights would also be apparent on the upper half of the stacks. This lighting would be visible to receptors from the east looking across the glow of the M40, which would render its effects insignificant. However, there would also be visibility to receptors from the south and on the B430, and for those that would experience a significant impact during the day, the effect would probably also be significant at night. [7.147, 7.148, 8.60]

16.57 I have noted some suggested discrepancies in the appellant's evidence. These include errors within some of the photomontages, the absence of a depicted plume, incorrect seasonal appearance of foliage, "washed out" building

facades, and criticisms of camera lens widths. Nonetheless, I accept that none of these matters have impacted on the virtual model relied upon, and I think it unlikely that they would have unduly misled consultees. They have not affected my assessment, which was heavily influenced by what I saw on my site visits. Furthermore, although I acknowledge that many of the existing, mature poplars, which would provide screening, are likely to die in time, I am also of the view that younger existing poplars would grow to replace them. With respect to viewpoint C, despite the Council's concerns that it gives a wholly artificial depiction of the screen planting, I believe that the 15m high poplars would largely screen the 17m high EfW building, because of the angle of view and their position some way in front of the building. [7.150, 8.55, 8.56, 8.57, 8.65, 13.22]

16.58 In conclusion, there are several private and public vantage points within about 2km of the EfW building, which would be significantly affected. However, some of these views would be seen in the context of the M40 and/or other development, which would restrict the impact. For at least part of the year, vegetation would provide partial screening, further reducing the effect. The impact on views beyond about this 2km distance would be insignificant. Therefore, overall, the resultant harm would not be significant and the proposal would be acceptable in terms of visual impact. [7.151, 8.61, 9.32]

Cultural heritage

16.59 Cultural heritage is not included within OCC's case and it was not found to be a constraint by the Planning Committee. English Heritage (EH) has not objected, although CDC has raised concerns. The SoCG indicates that the County Archaeological Services are content that the proposal would not affect any archaeological sites. [6.10, 7.170]

16.60 Whilst there is evidence of an historic landscape in the area, it no longer remains intact due to surrounding development, albeit some more recent features are sufficiently important themselves to warrant conservation status. There are no World Heritage Sites within the 2km study area, although there are a number of historic features within it that require assessment. For those further away, for the reasons given above, I take the view that they are too distant to experience any significant effect. This includes the TPE, and Fritwell Conservation Area (CA). [2.5, 7.152, 7.153, 7.154, 7.155, 7.168, 9.40, 9.41, 13.20]

16.61 The appellant has assessed the historic assets in ten groups, which I believe to be an appropriate approach. Consequently, I have carried out my considerations in a similar manner. The first, Ardley village CA about 1.8km from the EfW building, is set around the Grade II* Listed Building (LB) of St. Mary's Church and the Castle and Motte Scheduled Monument (SM). It is not particularly outward looking and, whilst there would be intermittent views of the stack from the church grounds, they would be distant and partly screened by intervening vegetation. They would not compete with the church or SM and the magnitude of visual impact on the setting would be low, resulting in an effect of moderate significance. The adjoining Fewcott CA lies beyond Ardley, at a greater distance from the site, resulting in less impact. [7.156, 7.158, 9.37, 9.38, 9.39, 10.22]

16.62 The second heritage asset is Swifts House Farm LB about 1.6km from the site. This appears to have no intended outlook and the building would be partly screened by intervening woodland, the proposed landfill profile, and planting. The magnitude of visual impact would be low and of moderate significance. [7.159]

16.63 The third group, being the Bucknell village LBs, are mostly screened by non-listed buildings, although there is a house, public house and rectory, which could have views of part of the development, albeit segregated by the M40. However, these buildings have no particular outlook and their setting is the contemporary village itself. Therefore, the magnitude of visual impact would be low and of moderate significance. [7.160]

16.64 The setting of the fourth asset, Trow Pool Water Tower LB, is Bucknell village and the Bucknell Manor Estate, which it served. This is a prominent landmark feature and reference point when travelling along the M40. However, the motorway separates it from its setting, with substantial adverse effect. In this context, the visual impact from the EfW building would be low, with a resulting impact of moderate significance. [7.161, 8.66]

16.65 The fifth asset, Bucknell Lodge LB, would be separated from the EfW building by a tree belt, although there would be winter views through the trees. The magnitude of visual impact would be low and the resultant effect would be of moderate significance. [7.162, 9.45]

16.66 There is no particular outward looking aspect for the sixth group, being LBs within Middleton Stoney village, and their primary setting is the contemporary village itself. They would all be partly screened from the EfW building by other non-listed buildings and some would be additionally screened by woodland and a copse. This, combined with their distance, being about 1.6-1.8km away, would result in a low magnitude of visual impact of moderate significance. [7.163, 9.44]

16.67 The seventh group consists of the Grade I LB, Middleton Park, set within Grade II registered parkland, which contains a Grade II* church and a motte and bailey SM. There do not appear to be any clear vistas out of the park and, whilst there might be glimpsed views from the upper floor of the house and from the cricket ground, at a distance of about 1.7-2km the magnitude of visual impact would be low, resulting in moderate significance. [7.164, 9.43, 9.44]

16.68 The eighth asset, being the Lime Kiln LB, would be screened by woodland and there would be little, if any, visual impact. Therefore, the magnitude of visual impact would be of negligible significance. [7.165]

16.69 The ninth group, RAF Upper Heyford CA contains an array of LBs and SMs associated with the former Cold War. There would be views from the east end of the site of the EfW building about 1.58km away. However, there are no apparent views into the site from the public domain, which would give the observer an understanding of its layout. Therefore, topography and distance would combine to reduce the overall visual impact, which would be low and of moderate significance. [7.166, 9.42]

16.70 The final asset, Ashgrove Farm barn LB, is largely hidden by the lie of the land and, as a functional agricultural building, its primary setting is the farm

itself. Together, these factors would reduce the visual impact to low with a negligibly significant effect. [7.167]

16.71 Overall, there would be some visual impact from important heritage assets, although the effects would be mitigated by the proposed restoration scheme, which would integrate reasonably well with the surrounding historic landscape. However, inter-visibility is not the only consideration and the existing settings of the assets must be taken into account. The settings of many of the above assets do not appear to have particularly outward looking aspects, and those that do seem to have already been affected by existing development. Therefore, in conclusion, the magnitude of visual impact would be low, and of negligible to moderate significance. [7.169, 7.171, 9.48]

16.72 Consequently, the development would meet the requirements of Policy C10 of the CLP by not having a detrimental effect on the character and appearance of the historic landscape. It would also satisfy the locational criteria in Annex E of PPS10 by not creating an unduly adverse effect on the historic environment or the built heritage. Furthermore, it would be in compliance with the policies within PPS5. Therefore, in my opinion, cultural heritage considerations should not be a constraint on this proposal. [9.46, 9.49]

The Need for the Facility

16.73 The EfW facility is aimed at accepting MSW and C&I waste. It is proposed that all of Oxfordshire's residual MSW be treated at the plant, other than about 5% that is unsuitable for treatment at an EfW facility. It was agreed between the appellant and OCC that the amount of residual MSW available for treatment would be about 144,000t in 2010, 133,200t in 2015, 135,800t in 2020 and 142,200t in 2025. [6.17, 7.70, 8.6]

16.74 The residual MSW figures were derived by deducting from the overall waste to be managed in Oxfordshire a figure for recycling/composting derived from projections provided by each of the District Councils and OCC and compiled on behalf of the Oxfordshire Waste Partnership. An amount for non-processible waste was also deducted. However, if the assumptions in the former SEP are used in order to project the minimum amount of MSW that should be treated if recycling/composting and landfill diversion targets are to be met, it was agreed between the appellant and OCC that the figures would reduce to 38,200t in 2010, 80,500t in 2015, 97,600t in 2020 and 87,000t in 2025. [6.14,]

16.75 As highlighted in the cross examination of Bucknell PC (BPC), C&I waste is not the responsibility of the Waste Disposal Authority (WDA), nor is it the subject of the Landfill Directive (LD). Whereas Waste Strategy (WS) 2007 sets out a national target to reduce the amount of C&I waste which is landfilled by 2010 to 80% of 2004 levels, this has no local expression. Nevertheless, OCC accepted that the waste hierarchy of the Waste Framework Directives+ (WFDs) requires as much C&I waste as is practicable to be treated where it cannot be recycled, provided that this would be compatible with the environmental objectives of the WFDs. [8.11]

16.76 Applying the regional targets derived from the defunct SEP of recycling and landfill diversion for C&I waste produces a minimum treatment requirement for 139,000t of capacity by 2020. However, OCC accepted that after allowing for recycling at the SEP rate of 60% and a further deduction of 5% for non-

processible waste, the residual Oxfordshire C&I waste available for treatment would be 252,900t in 2020. [8.12]

16.77 OCC accepted that, overall, there would be a minimum need at 2020 for treatment capacity of 237,400tpa. This is broadly consistent with the claim by BPC that the appeal scheme has a capacity 20%-25% greater than what is required. However, OCC also accepted that it should send as much waste as it could, consistent with environmental protection, to treatment, not only the minimum. Therefore, OCC recognised that there is an overall need for treatment capacity for Oxfordshire's MSW and C&I waste which exceeds the 300,000tpa capacity of the EfW facility and bearing in mind its overall expertise in dealing with waste planning I support OCC's view. [8.14, 11.40]

16.78 BPC suggested that the plant would operate as a "merchant" facility, treating waste from outside the county as well as that from within Oxfordshire. That may well be the case for C&I waste, over which OCC has no control, and which would be treated through the open commercial market. This is common to most private sector C&I waste and I have no issue with that route for managing that particular type of waste. The operators of the EfW facility would prioritise capacity for MSW arising from within Oxfordshire and I shall deal with whether waste from outside the county would be treated at the site under the section of the conclusions below on planning conditions. [11.43, 11.47]

16.79 Although OCC has not suggested that the only need for treatment capacity is to treat the minimum requirement for MSW, it claims that this is the element which should carry the greatest weight based on the expression in Waste Strategy for England (WS2007) that the key objective states *"… to **meet and exceed** the landfill directive diversion targets …"* rather than simply to *"**exceed**"*[322]. Additionally, for similar reasons to those adduced for MSW, more weight should be given to the element of need for the treatment of C&I waste required to achieve the minimum landfill diversion target which has been accepted by OCC for waste planning purposes than to the element of need which would exceed the target and would enable more waste to be moved up the hierarchy. [8.1, 8.4, 8.8. 8.13]

16.80 However, as the appellant points out, there is no provision in EU law for a lesser need to exist should targets not only be met, but then exceeded. Meeting and exceeding the targets are both key objectives and no distinction is drawn between them. The obligation under the WFDs 2006 and 2008 is to drive waste up the hierarchy not simply to take it to a certain point. The appellant submitted that Article 5 of the LD is the source for the targets and they are directed at the biodegradable municipal waste. The appellant further submitted that they are clearly minima and not ceilings because there is provision for an upward revision of the targets unless a member state has achieved at least 80% landfill diversion of biodegradable municipal waste. I have no reason to disagree. [7.70]

16.81 In my opinion, the whole thrust of the LD and subsequent advice is to drive waste up the hierarchy away from landfill, particularly as the LD explicitly encourages the prevention, recycling and recovery of waste and use of

[322] Inspector's emphasis.

recovered materials and energy so as to safeguard natural resources and obviate the wasteful use of land. Therefore, I do not accept that the need for the proposed facility is in any way reduced merely because the minimum treatment capacity would be exceeded by the margin suggested in this case. I conclude that the scheme would meet a significant need for a waste management facility which would provide for dealing with all the residual MSW from Oxfordshire and a substantial proportion of the C&I waste from the county.

Other Benefits

16.82 The benefits which would accrue from the scheme come in the form of waste management and energy production. The proposal would provide a facility to meet the need to treat residual MSW from Oxfordshire. It would be the only such facility in Oxfordshire. There is also a general lack of capacity for treating C&I waste in Oxfordshire other than by landfill. Both MSW and C&I waste would be diverted from their current disposal routes of landfill with no energy recovery. Rejection of the scheme would result in the WDA having to repeat a procurement exercise which could take 3 to 4 years, during which time about 1.2mt of waste would have to be landfilled, with the consequent release of greenhouse gases. [7.202, 7.203]

16.83 Opponents of the scheme claimed that incineration would be incompatible with recycling and composting, with the former being unnecessary should the latter be pursued. However, in my opinion, this perception is too simplistic. EU waste data shows that those countries with 5% or less landfilling of waste and high recycling and composting still incinerate 27–54% of the municipal waste. Other waste management techniques are not prevented from coming forward in order to drive waste up the hierarchy. Therefore, I accept that the proposed facility would represent a positive step forwards in managing MSW and C&I waste in Oxfordshire, especially as there are no other significant facilities available. [7.205, 7.207]

16.84 A further benefit of the scheme claimed by the appellant is that it would create a substantial amount of low carbon and (in part) renewable energy. The facility would provide capacity for about 24% of Cherwell District's domestic electricity needs. OCC referred to the advice in PPS22 that renewable energy does not include energy from the mass incineration of domestic waste. This has not been cancelled in the Climate Change Supplement to PPS1 and I agree with the statement that electricity from EfW is not an energy flow which occurs naturally and repeatedly in the environment. This is consistent with the decision of the Secretary of State in the Rivenhall case. [7.208, 7.209, 7.210, 8.30, 8.31, 8.32]

16.85 Even if it was judged that the EfW facility as proposed would constitute renewable energy, it would only be the biomass fraction which could be said to be renewable. The appellant puts this at 50%, although studies by the Department of Trade and Industry (DTI) suggest that this proportion could reduce to 35%. In any event, OCC claims that, at best, only about a third of the electricity generated could be said to provide a renewable contribution and this does not justify a proposal which is contrary to the principles of PPS10. [8.35, 8.36]

16.86 OCC accepts that the electricity produced would be low-carbon energy and that this would assist in the need to move away from fossil fuels to low energy sources. However, the proposal is primarily a waste development and not an energy development. As explained in the draft Energy National Policy Statement (NPS), the principal purpose of burning waste is to reduce the amount of waste going to landfill in accordance with the waste hierarchy. [8.37]

16.87 There is the potential to have Combined Heat and Power (CHP) from the scheme but, as indicated by OCC, there is no provision made as yet, even with the imminent development of the north west Bicester eco-town. The potential offered by the scheme does constitute a benefit albeit of limited weight, subject to the commercial considerations of supply.

16.88 Nevertheless, the electricity generated by the scheme would be the equivalent of about 24% of the demand from Cherwell District. Accordingly, whatever the shortcomings of the lack of a commitment of the use of CHP and the minority of energy created being defined as renewable, it cannot be dismissed as lightly as OCC imply, particularly as the recently permitted windfarm would only generate the equivalent of 14% of that of the EfW plant. [8.38, 8.39]

The Planning Balance

16.89 Therefore, overall, OCC accepts that there is a need for waste management capacity to deal with at least 237,400tpa of MSW and C&I waste of which, it agreed with the appellant, 135,800t of residual MSW from Oxfordshire would be available for treatment in 2020. Given the broad assumptions on which future needs are estimated, although this would be less than the 300,000tpa design capacity of the proposed facility, I do not perceive the difference to be very significant. It would seem prudent to provide for excess capacity rather than a possible shortfall, especially as the Companion Guide to PPS10 (para 4.14) advises that suggestions of undue precision should be avoided.

16.90 So far as alternative locations for a waste management facility within Oxfordshire are concerned, no suggestions were made by OCC or CDC that another site would perform better against the criteria in PPS10. CDC and AwFPC criticised the Alternatives Assessment exercise prepared on behalf of OCC. However, even if the Assessment had been more sophisticated, such as with a numerical scoring system, it is unlikely there would have been a greater selection of sites, or a more favoured location. I agree that the Assessment methodology was right to exclude sites in the Green Belt (GB). Very special circumstances would be very difficult to justify in the face of alternatives not in the GB. Therefore I accept that the judgements made by the appellant and the reasoning behind them are sound.

16.91 There would be no significant harm to local residents due to traffic, air quality, hydrology, or any other effects. In relation to the rural character of the landscape and the visual impact, significant adverse effects are limited to some near views from the south and east. However, taking account of the existing landscape condition and mitigating factors, the harm to the area as a whole would be insignificant. There would be no significant impact on cultural heritage or nature conservation interests.

16.92 The development would be contrary to CLP Policy 8. The CLP is part of the DP, but it was adopted in 1996 and so now significantly predates PPS1, PPS7 and PPS10. The aims for the protection of the countryside from unnecessary development remain extant, but the proposal would satisfy the locational criteria and key planning objectives outlined in PPS10.

16.93 The scheme would assist in driving waste management up the waste hierarchy away from disposal by landfill. It would help to implement the national waste strategy. It would help to secure the management of waste without endangering human health and without harming the environment. It would enable Oxfordshire to take more responsibility for its own waste and enable timely provision of a facility to cater for a need which becomes more pressing by the year. It would also create a significant amount of energy, equivalent to about 24% of Cherwell District's electricity needs.

Overall Conclusion

16.94 In summary, I conclude that the pressing need for the waste management facility, together with the additional benefits outlined above, are material considerations of sufficient weight to overcome the conflict with CLP Policy 8. Therefore, I shall recommend that the appeal should be allowed subject to conditions discussed in Section 15.

17.0 Recommendation

17.1 I recommend that the appeal be allowed subject to the conditions listed in Annex A.

A Mead

Inspector

APPEARANCES

FOR OXFORDSHIRE COUNTY COUNCIL:

Mr M Bedford	of Counsel; instructed by the Head of Legal Services, Oxfordshire County Council
He called:	
Mr M Walton BSc (Hons) DipTP MRTPI	Alliance Planning
Mr J Sacha DipLA MLI	Sacha Barnes Ltd

FOR VIRIDOR WASTE MANAGEMENT LTD:

Mr D Elvin QC	of Queen's Counsel;
Mr T Fisher	of Counsel
	instructed by Bevan Brittan LLP
They called:	
Mr S Othen MEng MA CEng MIChemE	Fichtner Consulting Engineers
Mr T Green BEng CEng MICE	SLR Consulting Ltd
Mr A Pau BEng (Hons)	Head of Waste Management, Oxfordshire CC
Mr M Jones BA DipLA MLI	SLR Consulting Ltd
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Mr D Armitage BEng (Hons)	SLR Consulting Ltd
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RULE 6 PARTIES

FOR CHERWELL DISTRCT COUNCIL:

Mr G Lewis	of Counsel; instructed by the Head of Legal Services, Cherwell District Council
He called:	
Mr R Duxbury BA (Hons) MRTPI	Cherwell DC

Ms S Reynolds BSc (Hons) DipLD MA CMLI	The Landscape Partnership

FOR ARDLEY-with- FEWCOTT PARISH COUNCIL

Mr P Williams	of Counsel; instructed by Ardly-with-Fewcot PC

He called:

Mr M Smith MRTPI	Ove Arup and Partners
Mr I Corkin	Local resident
Mr B Steventon	Chairman Ardley-with-Fewcott PC
Mr M Hall	Local resident

FOR BUCKNELL PARISH COUNCIL

Ms H Watt	Local resident

Who gave evidence and also called:

Dr H Rodda BSc PhD	Hydro-GIS Ltd
Mr J Kightley	Local resident
Mr M Gammond	Local resident
Mr D Hedges	Local resident
Mr M Woodrow	Local resident

Mr A Day BSc (Hons) Phys ARCS	Alton, Hampshire GU34 2PQ

INTERESTED PERSONS:

Mr CRJ Anstey MA FRICS FAAV	on behalf of Bucknell Farms Ltd
Mr M Leay	on behalf of Tusmore Park Estate
Mr J Beech	Council for the Protection of Rural England
Cllr J Sanders	Oxfordshire County Council
Cllr Mrs C Fulljames	Oxfordshire County Council
Cllr J Tanner	Oxfordshire County Council
Cllr J Macnamara	Cherwell District Council
Mr Cordey	Wendlebury Parish Council

Cllr A Fulljames	Middleton Stoney Parish Council
Mr B Whyatt	Local resident
Dr I Groves	Local resident
Mr B Wilson	Local resident
Mr J Dixon	Local resident and on behalf of Mr A Ashe
Mr J O'Neill	Ardley Against the Incinerator
Mr C MacKenzie	Sutton Courtenay resident

DOCUMENTS

Doc 1	Bundle of lists of attendances at the inquiry
Doc 2	Letter of notification of the inquiry
Doc 3	File of letters and petition from interested persons
Doc 4	Opening submissions: Viridor Waste Management Ltd
Doc 5	Opening submissions: Oxfordshire County Council
Doc 6	Opening submissions: Cherwell District Council
Doc 7a	List of suggested conditions 22 July
Doc 7b	Note of revisions/additions to Conditions after session of 23 July
Doc 7c	OCC proposed conditions not agreed with the appellant
Doc 7d	List of conditions submitted by Ardley Against Incinerator
Doc 8	HGV Routeing agreement
Doc 9	S106 Planning Obligation
Doc 10	Closing submissions: Viridor Waste Management Ltd
Doc 11	Closing submissions: Oxfordshire County Council
Doc 12	Closing submissions: Cherwell District Council
Doc 13	Closing submissions: Ardley-with-Fewcott Parish Council
Doc 14	Closing submissions: Bucknell Parish Council
Doc 15	Closing submissions: Mr Day
CD1/1	Notice of meetings with Planning and Regulation Committee, 19 October 2009
CD1/2	Planning and Regulation Committee Addenda, 19 October 2009
CD1/3	Planning Committee Report recommending approval of the Planning Application dated 19 October 2009 and Report by Head of Sustainable Development to the Planning Committee
CD1/4	Minutes of Planning and Regulation Committee Meeting, 19 October 2009
CD1/4A	Decision notice, 26 October 2009
CD1/5	Appeal Form, 22 December 2009
CD1/6	Grounds of Appeal
CD1/7	County Council Appeal Questionnaire
CD1/8	Bespoke Programme
CD1/9	Outline Statement of Case of the Appellant
CD1/10	Outline Statement of Case of Oxfordshire County Council
CD1/11	Outline Statement of Case of Cherwell District Council

CD1/12	Outline submission of Anthony Day and accompanying documents
CD1/13	Outline Statement of Case of Ardley with Fewcott Parish Council
CD1/13A	Outline Statement of Case of Bucknell Parish Council
CD1/14	Letter from Environment Agency to Planning Inspectorate re Environmental Permit, 8 April 2010
CD1/15	Updated Pre Inquiry Meeting Note
CD1/16	Statement of Common Ground
CD1/17	Statement of Case of the Appellant
CD1/18	Statement of Case of Oxfordshire County Council
CD1/19	Statement of Case of Cherwell District Council
CD1/20	Statement of Case of Ardley with Fewcott Parish Council
CD1/2OA	Statement of Case of Bucknell Parish Council
CD1/21	Submission and accompanying documents of Anthony Day
CD1/22	Environmental Permit Application (Extract)
CD1/23	Letter from the Environment Agency to Stephen Othen re Application for Environmental Permit – 18 March 2009
CD1/24	Letter from Natural England. Section 1.1 re proposal to build the Energy from Waste Facility – 16 January 2009
CD1/25	Email Correspondence with the Cherwell Environmental Services Organisation – 16 April 2009 – 23 April 2009
CD1/26	Draft Environmental Permit, issued by the EA for public consultation on 30 June 2010
CD2/1	Folder 1 entitled “Planning Application”
CD2/2	Folder 2 entitled “Associated Drawings”
CD2/3	Folder 3 entitled “Environmental Statement”
CD2/4	Folder 4 entitled “Environmental Statement Technical Summary”
CD2/5 – 2/9	Folders 5 – 9 “Additional Information”
CD3/1	The Oxfordshire Minerals and Waste Local Plan, 1996
CD3/2	The Cherwell Local Plan, 1996
CD3/3	The Non Statutory Cherwell Local Plan, 2004
CD3/4	Oxfordshire Minerals and Waste Development Framework, Waste Sites Proposals and Policies Document, Issues and Options Consultation, February 2007
CD3/5	Oxfordshire Joint Municipal Waste Management Strategy, 2006
CD3/6	Cherwell District Council Draft Core Strategy Consultation document – Feb 2010
CD4/1A	Waste Framework Directive 2006/12/EC
CD4/1	Waste Framework Directive 2008/98/EC
CD4/2	The South East Plan, May 2009
CD4/3	PPS 1 Delivering Sustainable Development, 2005
CD4/4	PPS Eco-towns a Supplement to PPS 1
CD4/5	PPS Planning and Climate Change a Supplement to PPS 1
CD4/6	PPS 5 Planning for the Historic Environment
CD4/7	PPS 7 Sustainable Development in Rural Areas, 2004
CD4/8	PPS 9 Biodiversity and Geological Conservation, 2005
CD4/9	PPS 10 Planning for Sustainable Waste Management, 2005
CD4/9A	PPS 12 Local Spatial Planning, 2008
CD4/9B	PPS 13 Transport, 2001
CD4/10	PPS 22 Renewable Energy, 2004
CD4/10A	PPS 22 A Companion Guide

CD4/11	PPS 23 Planning and Pollution Control, 2004
CD4/12	PPS 25 Development and Flood Risk, 2006
CD4/12A	PPS 25 Development and Flood Risk Practice Guide: 2008
CD4/13	Waste Strategy for England, 2007
CD4/14	The Planning System: General Principles
CD4/15	Pages 6 & 7 of the COUNCIL DIRECTIVE 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control
CD5/1	Meeting the Energy Challenge, Government White Paper, May 2007
CD5/2	Oxfordshire Minerals and Waste Annual Monitoring Report, December 2009
CD5/3	Institute of Ecology and Environmental Management, 2006 Guidelines for Ecological Impact Assessment in the UK
CD5/4	Landscape Institute, Institute of Environmental Assessment Guidelines for Landscape and Visual Impact 2nd Edition[323]
CD5/5	Waste Arisings Capacity and Future Requirements Study, Final ERM Report, January 2008
CD5/6	Site Selection for Strategic Waste Management Facilities: Additional Sites, ERM Report, December 2007
CD5/7	Interim Report on Site Selection for Strategic Waste Management Facilities, Stage 2 Report Detailed Assessment, ERM, September 2007
CD5/8	Interim Report on Site Selection for Strategic Waste Management Facilities, Stage 1 Report Shortlist of Sites, ERM, July 2007
CD5/9	The Oxfordshire Wildlife and Landscape Study, 2004
CD5/10	Targets for installed energy capacity generated from renewables (Extract from Draft Replacement London Plan)
CD5/11	BREWEB Report – Environmental and Health Risks Associated with the Use of Processed Incinerator Bottom Ash in Road Construction October 2003
CD5/12	Inspectors Report to Secretary of State re Rivenhall Airfield, Essex C5 9DF, 22 December 2009
CD5/13	Appeal Decision by Secretary of State re Rivenhall Airfield, Essex C5 9DF, 2 March 2010
CD5/14	Inspectors Report to Secretary of State re land at Wisley Airfield near Ockham, Surrey, 15 January 2010
CD5/15	Appeal Decision by Secretary of State re land at Wisley Airfield near Ockham, Surrey, 8 March 2010
CD5/16	Consultation on a new PPS Planning for a Natural and Healthy Environment, March 2010
CD5/17	Consultation on a new PPS Planning for a Low Carbon Future in a Changing Climate, March 2010
CD5/18	Consultation on draft NPS for Energy Infrastructure
CD5/19	Draft NPS for Renewable Energy Infrastructure (EN-3)
CD5/20	Draft Overarching NPS for Energy (EN-1)
CD5/21	Biodiversity the UK Action Plan, 1994
CD5/22	Oxfordshire Conservation Target Areas Mapping Project Report, July 2006
CD5/23	Countryside Design Summary – Cherwell District Council, Development and Property Services, June 1998
CD5/24	Cherwell District Council Landscape Assessment for Cherwell District

[323] This is a hardback book that is protected by copyright and although one copy will be made available at the inquiry we are not able to provide copies.

	Council – Cobham Resource Consultants, November 1995
CD5/25	RAF Upper Heyford Conservation Area Appraisal, April 2006
CD5/26	Fewcott Conservation Area Appraisal, October 2008
CD5/27	Ardley Conservation Area Appraisal, August 2005
CD5/28	Town and Country Planning (Environmental Impact Assessment) (England & Wales) Regulations 1999 (as amended)
CD5/29	Environment Agency – Position Statement
CD5/30	Environment Agency – How to comply with your environmental permit – Additional guidance – Horizontal Guidance Note H1 – Annex (f)
CD5/31	Institute of Air Quality Management. Position on the Description of Air Quality Impacts and the Assessment of their Significance, 2009.
CD5/32	Determination of the Application for a PPC Permit. Applicant: Veolia. Site: Rufford Energy Recovery Facility
CD5/33	Environment Agency – How to comply with your environmental permit – Additional Guidance – The Incineration of Waste (EPR 5.01)
CD5/34	Lakeside February 2010 IBA analysis report
CD5/35	DEFRA. Local Air Quality Management. Technical Guidance LAQM.TG(09)
CD5/36	Environmental Protection UK. Development Control: Planning for Air Quality – 2010 Update
CD5/37	Planning Committee Report – In-Vessel Composting Plant at Ashgrove Farm, Ardley
CD5/38	Appeal Decision by Secretary of State re Ince Marshes RDF Plant dated 11 August 2009
CD5/39	Letters from Eric Pickles MP dated 27 May 2010 and 25 June 2010; PINS guidance regarding the abolition of the RSS and letter of Steve Quartermain re Revocation of Regional Strategies dated 6 July 2010
CD5/40	Extract from Coalition Government Programme – May 2010
CD5/41	Landscape Character Assessment – The Countryside Agency and Scottish Natural Heritage (2002)
CD5/42	Natural England national character assessment Area 107 Cotswolds
CD5/43	DETR Circular 01/01 – Arrangements for Handling Heritage Applications – Notification and Directions by the Secretary of State
CD5/44	Fritwell Conservation Area Appraisal, January 2008
CD5/45	MPG 7 Reclamation of mineral workings 1996
CD5/46	South Oxfordshire Landscape Assessment, April 1998
CD5/47	Lighting in the Countryside Towards Good Practice, Department of the Environment, Transport and the Regions - May 2006
CD5/48	North West Bicester Eco Town Final bid for start-up growth funding, November 2009
CD5/49	Cherwell & West Oxfordshire Strategic Flood Risk Assessment
CD5/50	Institute of Hydrology Report No. 124 : Flood Estimation for Small Catchments
CD5/51	Regional Waste Management Capacity: Survey, methodology and Monitoring (November 2009 Update) – Summary of modeling results
CD5/52	Designing Waste Facilities – A Guide to Modern Design in Waste, 2008
CD5/53	Appeal Decision relating to site at Willowbank Farm, Fritwell Road, Fewcott dated 6 July 2010
CD5/54	English Heritage publication: Wind Energy and the Historic Environment
CD5/55	DEFRA's Second Stage Consultation on the Transposition of revised Waste Framework Directive (2008/98/EC) issued 8 July 2010

CD5/56	DECC press release on proposed consultation on National Policy Statements issued 15 July 2010
	Evidence submitted at the inquiry
SO/1	S Othen: proof of evidence and Appendices APP1 – 2
SO/2	S Othen: rebuttal proof and Appendices APP R1 – R3
SO/3	S Othen: Summary
TG/1	T Green: Proof of evidence (highways)
TG/2	Drawings and Appendices TWG/1 – TWG/4; APP/1 – 11
TG/3	Proximity Assessment + Appendices
TG/4	T Green: Summary
TG/5	T Green: rebuttal proof + Appendices
APP/1	A Pau: Proof of evidence + Appendices APP 1 - 3
MJ/1	M Jones: proof of evidence
MJ/2	M Jones: summary
MJ/3	Drawings: MJ/1 – MJ/25 incl. viewpoints
MJ/4	Appendices: MJ/B1 – MJ/B19
MJ/6	Drawings: MJ/R1 – MJ/R4
MJ/TM1	M Jones: rebuttal proof
MJ/7	Bundle of wireframe diagrams
TM1	T Malim: proof of evidence
TM2	T Malim: Summary
TM3 - 6	Appendices
MW/1	M Webb: proof of evidence and Drawings MW/1 – 2
MS1	M Stoaling: proof of evidence
MS/2	M Stoaling: Air Quality Summary
MS/3	Appendices A - C; Drawing AQ C1
DA/1	D Armitage: rebuttal proof and Appendices A – D
CH/1	C Herbert: proof of evidence; Apps 1 – 3; Drwgs CH1.1, 2.1, 4.1
CH/2	Architectural Support Document
CH/3	C Herbert: Summary
CH/4	C Herbert; rebuttal proof and App 1
OCC/MW1	M Walton: proof of evidence
OCC/MW2	Appendices A – C
OCC/MW3	M Walton: Summary
OCC/MW4	M Walton: rebuttal and Appendix A
OCC/JS1	J Sacha: proof of evidence; Appendices 1 and 3 (drwg AQ190)
OCC/JS2	Bundle of photographs
OCC/JS3	J Sacha: rebuttal proof
CDC/RD1	R Duxbury: proof of evidence
CDC/RD2	R Duxbury: Summary
CDC/RD3	Appendices: 1-10
CD/SMR/1	S Reynolds: Summary
CDC/SMR/2	S Reynolds: proof of evidence
CDC/SMR/3	Appendix 1 (maps, cross sections and viewpoints)
CDC/SMR/4	Appendices 2- 6
CDC/SMR/5	Addendum 1
AWF/MS/1	M Smith: proof of evidence and Appendices 1 – 3)
AWF/MS/2	M Smith: rebuttal proof

AWF/IC/01	I Corkin: rebuttal proof
AWF/IC/02	Cumulative Impact
BPC/HR/1	H Rodda: Proof of evidence and hydrology report
BPC/PW/1	P Woodrow: Needs
BPC/PW/2	P Woodrow: proof of evidence
BPC/MG/3, 6	M Gammond: proofs of evidence
BPC/DH/4	D Hedges: proof of evidence
BPC/HMW/5, 7	H Watt: proofs of evidence and Environment Conflicts
BPC/JK/8	J Kightley: proof of evidence
ARD/2	A Day: proof of evidence and Appendices 1- 2
ML1	Statement and Appendices submitted by Mr M Leay on behalf of Tusmore Estate Ltd
CA1	Statement and Appendices submitted by Mr Anstey on behalf of Bucknell Farms Ltd
CPRE1	Statement by Mr Beech on behalf of CPRE
JS1	Statement by Cllr J Sanders
JM1	Statement by Cllr J Macnamara
CF1	Statement and Appendices submitted by Cllr Mrs C Fulljames
JT1	Statement by Cllr J Tanner
BWt 1	Statement by Mr B Whyatt
WPC1	Statetment by Mr Cordey
MS1	Statement by Cllr A Fulljames on behalf of Middleton Stoney PC
IG1	Statement by Dr I Groves
BWn 1	Statement and other papers submitted by Mr B Wilson
JD1	Statement by Mr J Dixon also on behalf of Mr A Ashe and tabled questions
CM1	Statement by Mr C MacKenzie
J'ON1	Statement by Mr J O'Neill (Ardley against the Incinerator)
RSC1	Written statement submitted by Mr R Shepherd Cross
APP/01	Note on Electricity Generation and Consumption by Mr Othen 6/07/10
APP/02	Extract from Directive 96/61/EC pages 1,6 and 7
APP/03 – TG6	Supplementary Report on Evidence of Middleton Stoney Parish Council & Residents B430 by Mr Green 14 July 2010
APP/03A	Figures by Mr Stoaling in relation to AD/INQ/04 16/07/10
APP/04	Municipal waste figures from Eurostat news release - 19 March 2010
APP/05	Further Note on Electricity Generation and Consumption by Mr Othen 21/07/10
APP/06	Extract from Companion guide to PPS10, pages 5 and 56
APP/07	Decision Notice of Planning Appeal: APP/V2004/A/10/2122205 at King George Dock, Hull
APP/08	Note on Need 21/07/10
APP/09	Secretary of State letter dated 12 Feb 2009 & Extract from Report APP/Q3060/A/08/2063129, pages 59 & 60
APP/10	Note on Challenging a Hinderland restriction relating to the size of the waste catchment 19/07/10
APP/11	Extracts from Directive 1999/31/EC 1-9 and 15
APP/12	Note on phasing – 12 July 2010 with plans 3/4 Rev A and 5 plans (1) – (5) below:
CD2/10 (1)	Drawing: 3/4 Proposed Phasing Plan – Revision to phasing sequence and Phase 5 boundary

CD2/10 (2)	Drawing: 3/5 Existing Situation Stage 1 - 2009/2010 - Revision to Phasing sequence
CD2/10 (3)	Drawing: 3/6 Proposed Phasing stage 2 - 2012 - Revision to Planting Design
CD2/10 (4)	Drawing 3/7 Proposed Phasing Stage 3 - 2019 - Revision to Planting Design
CD2/10 (5)	Drawing 3/8 Proposed Phasing Stage 4 -2029 - Revision to Planting Design
OCC/01	Extracts from Reform of the Renewables Obligation 2007 by Dti, pages ii, 41, 42 and Annex E.
CDC/SMR/5	Addendum 1 of Proof of Evidence of S Reynolds 7/7/10
CDC/01	ERRATUM of S Reynold's Proof of Evidence
CDC/02	Criteria for assessment of Magnitude of an impact on an asset's setting by The Landscape Partnership
CDC/03	Drawing B10010.13: Topography & Photograph Locations Cumulative assessment of Approved Fewcott turbines and appeal proposals
CDC/04	Addendum 2 of Proof of Evidence of Sarah Reynolds and Appendices to include: -Planning for Renewal Energy - A companion Guide to PPS22 (paragraphs 5.21 - 5.24) -Scottish Natural Heritage Guidance: Cumulative Effect of Windfarms (paragraphs 35 - 44) -Scottish Natural Heritage - Siting and Designing Windfarms in the Landscape (Section 5)
CDC/05	Drawing B10010.14: ZTV of Approved Fewcott Windfarm
CDC/06	Drawing B10010.15: Cumulative ZTV of Proposed Energy from Waste Building & Approved Fewcott Windfarm
CDC/07	Drawing B10010.16: Cumulative ZTV of Proposed Flues & Approved Fewcott Windfarm
CDC/08	Glossary of Terms for Landscape and Visual Matters by S Reynolds
AWFPC/IC/02	Cumulative Development document by I Corkin
AWFPC/01	Natural England map showing Ardley SSSi
AWFPC/02	Guidelines for Selection of biological SSSis - Appx 1
BP/01	Additional Statement made by John Kightley 9/7/10
BP/02	Dr Rodda's email submission of papers by Armstrong & Garwood 1991 and Krueger 2009
BP/03	Articles from Letsrecycle.com
BP/04	'Sterecycle Celebrates Double Success' article from
BP/05	'Effects of Flooding on the Proposed Ardley Landfill Energy From Waste Development' report by Dr Rodda
BP/06	Extract from 'The summer 2007 floods in England & Wales - a hydrological appraisal' page 10
AD/INQ/01	'Comparative analysis of Ardley EFW and Sutton Courtenay Zero emissions Multi-Fuel IGCC scheme' document by Mr Day
AD/IN1/02	'Comparative Cumulative Environmental impact analysis' by Mr Day
AD/INQ/03	Article from Dti 2003 – Waste/Biomass Co-Gasification with Coal
AD/INQ/04	Ardley Incinerator: Emissions to air and land - Total over 25 year period figures' document by Mr Day Hand written and word processed.
AD/INQ/05	SYNCOM-Plus – An Optimized Residue Treatment Process
AD/INQ/06	Email with attachments: Atomic Energy Authority – 19/07/10
MSPC/01	Middleton Stoney Parish Council's response to APP/03 - TG/6

Annex A: Recommended Planning Conditions

All the Site

1. The development shall be carried out strictly in accordance with the particulars of the development, plans and specifications contained in the application except as modified by conditions of this permission. The approved plans and particulars comprise: application form (undated), planning support statement, letter dated 13th November 2008 covering amendment to the application form, gas management plan, tree survey plans TS/1 and TS/2, site survey plan 2/3, section through split level CA site plan 3/17 and office elevations plan 3/18, letter dated 4th March 2009 including item 4A sewage treatment plant, item 5A HRWC plan 3/14, item 6A existing access plan 4-1 and item 7A planning support statement comments, and plans 2/1, 2/2, 3/1, 3/2, 3/3, 3/4 rev A, 3/5 rev C, 3/6 rev D, 3/7 rev D, 3/8 rev D, 3/10, 3/11, 3/12, 3/13, 3/15, 3/16, EFW-PO-09, EFW-PO-10, EFW-PO-11, EFW-PO-12, EFW-PO-13, EFW-PO-14, EFW-PO-15, EFW-PO-16, EFW-PO-17, EFW-PO-18, EFW-PO-19, EFW-PO-20 and EFW-PO-21.

Reason: For avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and details.

2. The amendments to the Household Waste Recycling Centre (HWRC) and the construction of the Energy from Waste (EfW) plant to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

Reason: To comply with section 91 to 95 of the TCP Act 1990 as amended by section 51 of the PCP Act 2004.

3. No more than 500 000t of waste per annum shall be imported to the site until the completion of landfilling at the site in accordance with condition 34 of this permission.

Reason: To ensure that the development is carried out as approved and to protect the amenities of Ardley and Middleton Stoney.

4. No more than 2 000t of waste a day shall be imported to the site until the landfilling of waste ends in accordance with condition 34 of this permission.

Reason: To protect the amenities of Ardley and Middleton Stoney.

5. Records of the daily tonnages of waste, including separately that transferred from HWRCs in Oxfordshire shall be taken and shall be made available for the officers of the WDA to see on request.

Reason:To ensure the facility is fulfilling its prime purpose in managing MSW waste from Oxfordshire

6.No heavy goods vehicles, including those associated with construction works, shall enter or leave the site except between the following times:

0700 to 1900 on Mondays to Fridays and
0700 to 1600 on Saturdays;

No movements shall take place on Sundays or on public holidays.

Reason: To minimise disturbance to local residents from HGV traffic.

7. Notwithstanding condition 6, waste may be brought to the site from Household Waste Recycling sites operated on behalf of Oxfordshire County Council during the following additional hours:

1000 to 1600 on Sundays.

Reason: To ensure that a facility is available to take waste from HWRSs during busy times to prevent congestion at those sites.

8. Within one year of the date of this permission a restoration plan shall be submitted to the waste planning authority showing pre-settlement levels which shall not exceed those shown on the draft pre-settlement plan 3/19 and land restored to a combination of agricultural land and woodland together with geological exposures, facilities for protected species and ponds and wetlands associated with the energy from waste plant. Details of a scheme of landscaping shall be part of the plan and such details shall incorporate the general principles indicated in the application and shall include:

(a) the position, species and sizes of all existing trees, shrubs and hedgerows to be retained, and the proposals for their protection throughout the operations;

(b) the positions, species, density/planting distances and initial sizes of all new trees and shrubs;

(c) any hard landscaping proposed, and

(d) the design, location and elevations of the leachate treatment plant required to treat the IBA leachate following the removal of the existing plant required by Condition 39.

Any plan that is approved shall be implemented progressively in accordance with a timetable to be submitted with the plan but shall be completed by December 31 2020 with the exception of the areas where the gas flare and buildings and plant are located. Those areas shall be restored in accordance with the timetable shown on the restoration plan approved under this condition.

Reason: To ensure that the landfill area is properly restored to acceptable agricultural, woodland and biodiversity standards in a reasonable timescale and that the EfW Plant is adequately landscaped.

9. With the exception of trees to be removed to form the new access the existing trees along the boundaries of the site (as shown on approved plan 3/10) shall be retained. For a period of 20 years from the completion of restoration of the landfill any trees removed without consent, dying, being severely damaged or becoming seriously diseased as a result of operations permitted by this permission shall be replaced with trees and bushes of such size and species as may be approved by the Waste Planning Authority, in the planting season immediately following any such occurences.

Reason: To ensure the protection of existing trees, to screen the operations and in the interests of visual amenity and wildlife conservation.

10. No removal of trees or hedgerows to create the new access shall take place between 1 March and 31 July inclusive in any year.

Reason: To protect nesting birds.

11. All haul and access roads and storage heaps shall be sprayed with water sufficient to prevent dust or windblown material being carried onto adjoining properties during dry weather conditions.

Reason: To protect adjoining properties from the impact of dust.

12. With the exception of the HWRC, as shown on approved plan 3/14, no waste materials, other than those associated with the treatment process at the Energy from Waste Plant, shall be sorted or stored on site for disposal at some other location.

Reason: To ensure that all materials imported go into the landfill to ensure as far as possible that the landfill operation is not inhibited and ends when planned in 2019.

14. Any gate or fence destroyed or damaged during operations permitted or required by this permission shall be replaced or repaired within one month of the waste planning authority informing the operator, in writing, that any replacement or repair should take place.

Reason: In the interests of the amenity of the rural area.

15. No mud shall be deposited on the public highway.

Reason: In the interests of highway safety.

16. No reversing bleepers or other means of audible warning of reversing vehicles shall be fixed to, or used on, any site vehicles, other than those which use white noise.

17. All vehicles, plant and machinery operated within the site shall use equipment that minimises noise output.

Reasons for above conditions: In the interests of the amenity of residents in the locality including those in Middleton Stoney.

The EfW plant

19. No waste shall be processed at the EfW plant until construction of the new access road, shown as 'access road' on approved plan 3/6 rev C, has been completed. Thereafter no access to the EfW plant shall take place except via the new access road.

Reason: To ensure that the development is carried out as proposed and that adequate access provision has been made.

20. Prior to commissioning of the EfW plant, a Combined Heat and Power (CHP) Feasibility Review, assessing potential commercial opportunities for the use of heat from the plant, shall be submitted to and approved by the Waste Planning Authority. The Review shall provide for the ongoing monitoring and full exploration of potential commercial opportunities to use heat from the plant as part of a good quality CHP scheme (as defined in the CHPQA Standard issue 3 January 2009 which sets out the definitions,criteria and methodologies for the operation of the UKs CHP Quality Assurance (CHPQA) programme), or any superseding or amending standard, and for the provision of subsequent reviews of such commercial opportunities as necessary.

Reason: To ensure that waste heat is available for use to the benefit of the local, domestic, commercial and industrial users when demand arises.

21 No occupation of the EfW plant shall take place until the works on the B430, including provision of signage, as shown on approved plan 3/15, have been implemented.

Reason: in the interests of highway safety.

22. No waste shall be burnt in the EfW plant until the electric cable link from the Plant to the National Electricity Grid has been constructed and is capable of transmitting all the electrical power produced by the Plant. Thereafter, except during periods of maintenance and repair and unless required to do so by the National Grid no waste shall be processed by the plant unless power is being generated.

Reason: To ensure that the development is carried out as approved without visual intrusion from the cable link and that the maximum economic benefit is gained from the burning of waste.

24. No waste shall be burnt in the EfW plant until a plan showing the layout and operation of the Incinerator Bottom Ash Operations has been submitted and approved in writing by the waste planning authority. No incinerator ash operations shall take place except in accordance with the approved plan.

Reason: To ensure that, from its inception, the IBA plant operates in an environmental acceptable manner.

25. Development and operation of the EfW plant shall not take place except in accordance with the flood risk assessment and mitigating measures in item 13B and the site drainage plan in item 4A both as set out in the additional information in support of the planning application and environmental statement reference 409.0036.00349 dated March and July 2009.

Reason: To ensure that flood risk is minimised and that site drainage is controlled adequately.

27. The EfW plant may operate continuously but no activities shall take place outside the building except during the hours authorised in condition 6, other than for essential maintenance and staff shift changes.

Reason: To minimise the impact of lighting in the interests of the visual amenities of the residents in the locality.

28. A scheme showing how bridleway 27 shall be accomodated back on its original definitive line in a safe manner including how it would cross the access road and bridge the attenuation pond shall be submitted to the waste planning authority not later than 31 December 2016. Any scheme that is approved shall be implemented once the approved temporary diversion ends unless bridleway 27 has been otherwise permanently diverted in accordance with any other confirmed diversion order.

Reason: In the interests of the safety of the users of the bridleway.

29. No construction works for the new access road or for the EfW plant shall take place until a scheme for the recording of the dinosaur footprints in phases 1a,1b, 3, 3a, 3b and 5, as shown on approved plan 3/4 rev A, has been submitted to and approved by the waste planning authority. The construction works shall not then take place except in accordance with that approved scheme.

Reason: To ensure that important fossil remains are properly recorded.

30. No fencing or other means of enclosure of the energy from waste plant shall take place except in acordance with a scheme that shall have been agreed in writing by the Waste Planning Authority.

Reason: To ensure that any enclosure of the EfW Plant is in keeping with the landscape of the area.

31. Details of the location, height, design, sensors, hours of operation and luminance of external lighting for the energy from waste plant (which shall be designed to minimise the potential nuisance of light spillage on adjoining properties and highways), shall be submitted to and approved in writing by the waste planning authority before any external lighting is used on site. Any scheme that is approved shall be implemented for the life of the site.

Reason: To ensure that light spillage beyond the boundary of the site is minimised in the interests of the residents in the locality.

33. Prior to commencement of building works to the EfW plant samples of all external materials shall be submitted to and agreed, in writing, by the waste planning authority. Only the agreed external materials shall be used in the building works.

Reason: To ensure that the materials are in keeping with the landscape setting of the EfW plant.

The Landfill

34. By 31 December 2019 landfilling at the site shall finish and except for the infrastructure required for the management of landfill gas all associated buildings, plant and machinery shall be removed from the site.

Reason: To ensure that the development is carried out as proposed, to minimise the disturbance from the landfill operation and to ensure that the landscape setting for the EfW plant is in place as soon as possible.

35. Notwithstanding the previous condition, the HWRC shall be removed and the site of the facility shall be prepared for landfilling by 31 December 2018.

Reason: To ensure that there is sufficient time to landfill the HWRC area so that the site can be restored by 31 December 2020 in accordance with condition 8.

36. In the event of a cessation of landfill operations, for a period exceeding twelve months, at any time before the landfilling is completed, a reinstatement and restoration scheme shall be submitted in writing to the waste planning authority for approval within six months of the expiry of the twelve month period. The scheme shall provide revised details of final levels, restoration, capping, landscaping and a timescale for the implementation of the scheme and each element within it. The approved scheme shall be implemented within twelve months of approval of the scheme.

Reason: To ensure that the site can be properly restored if the landfill operation fails.

37. Plans showing the design, elevations and location of the Leachate Treatment Plant located immediately north of the household waste recycling plant shall be submitted to the waste planning authority for approval within 6 months of the date of this permission. Any plan that is approved shall be implemented within a year of that approval.

Reason: To protect the visual amenities of the area.

38. The leachate treatment facility shall be used for the processing and treatment of landfill leachate which has been generated by the Ardley Fields Farm Landfill Site and for the leachate generated by the IBA facility. At no time shall any other leachate, effluent or liquor be imported to the facility for processing or treatment.

Reason: To minimise road traffic in the interests of sustainable development and to ensure that the area of the plant can be restored in accordance with the timescales agreed under condition 8.

39. Following the cessation of leachate generation of the Ardley Fields Farm Landfill Site, the surrender of the Waste Management licence (or any superseding or amending licensing regime) or within six months of the leachate treatment facility failing to be operated for any twelve month period the facility shall be decommissioned and demolished and the site restored in accordance with approved plan within the following twelve months.

Reason: To protect the amenities of the area.

41. No landfill operations authorised by this permission, including vehicles entering or leaving the landfill, shall take place except between the following times:
0700 to 1800 hours on Mondays to Fridays;
0700 to 1300 hours on Saturdays;
and on 12 nominated Saturdays 13.00 hours to 16.00 hours.
No landfill operations shall take place on Sundays and Bank or Public Holidays.

Reason: To protect the amenities of adjoining properties, Ardley and Middleton Stoney.

42. After 31st December 2019 no access shall take place to the site except via the access road, as shown on approved plan 3/8 rev D.

Reason: To ensure the development is carried out as proposed and to reduce the number of Highway accesses used by HGVs on the section of the B430 adjacent and near the site in the interests of highway safety.

43. No import of waste shall take place along the access road to the landfill, as shown on approved plan 3/8 rev D until the location and details of wheel washing equipment have been submitted to and approved by the waste planning authority. Any plans that are approved shall be implemented before any waste is transported to the landfill along the access road.

Reason: To ensure that there is adequate equipment in place to prevent mud being deposited on the highway.

44. Landfill gas well heads and collection mains shall be located such that they do not impede drainage and cultivation of agricultural soils. The crown of pipes of these well heads shall not be within the top metre of the agricultural soils.

Reason: To ensure that well heads and mains do not impede the proper restoration and aftercare of the restored site.

45. The phasing of landfilling and restoration shall take place in accordance with approved plans 3/4 rev A, 3/5 rev C and 3/6 rev D to 3/8 rev D.

Reason: To ensure that the development is carried out as proposed and the restoration is completed as soon as possible.

46. Details of surface water drainage works for the restored site shall be submitted to the waste planning authority for approval within one year of the date of this permission. Any details that are approved shall be implemented as part of the restoration works on each phase of restoration.

Reason: To ensure that the restored site is drained as well as possible to maximise the chances of good restoration.

47. No lighting shall be used on the landfill except that required to satisfy health and safety regulations in accordance with a scheme submitted to and approved by the waste planning authority.

Reason: To prevent light spillage from the site in order to protect the visual amenities of the area including Middleton Stoney.

48. All soil storage bunds intended to remain in situ for more than six months or over the winter period shall be grassed over with a seed mixture, and weed control and other necessary maintenance shall be carried out, in accordance with a scheme to be approved by the waste planning authority. Such scheme shall be submitted within six months of the date of this permission and any scheme that is approved shall be implemented within one month.

Reason: To preserve the existing soil resource and prevent weed spread.

49. Topsoil shall be retained on site. The better quality topsoil shall be used only for the areas restored to agricultural use.

Reason: In the interests of better restoration.

50. The depth of soils above the capping layer shall not be less than 1 metre and a soil layer of at least 1.5 metres shall be provided beneath areas where trees are to be planted.

Reason: To protect the cap from damage and to ensure that there is adequate depth of soil to promote good agriculture and tree growth.

51. Soil handling, cultivation and trafficking over the top and subsoil materials shall not take place other than in dry weather conditions and when the soils are dry and friable.

Reason: To minimise damage by compaction to existing and restored soil reserves.

52. No imported soils or soil making materials shall be brought to the site for the purpose of restoration unless:
(a) they are stored in an area agreed in writing by the waste planning authority;
(b) they are identified by the waste planning authority in writing as suitable for use in restoration; and
(c) they are free of large solid objects greater than 15cms in diameter.

Reason: To ensure that materials brought onto the site for the purposes of restoration are suitable and their storage does not affect the visual amenities or environment of the site.

53. No materials other than inert soils and subsoils free of materials in excess of 150mm in any dimension (as they are likely to hinder the future cultivation of the site) shall be deposited on the site within the top metre of the site.

Reason: To ensure that the agricultural worth of the restored site is maximised and to ensure that the growth of trees is not inhibited.

54. Imported soils, or overburden and subsoils stripped from the site shall be placed in the naturally occurring sequence and spread evenly in layers to a settled uniform depth of at least 80 cms. There shall be no stone, clinker, rubble or other waste materials over 150mm in size in any dimension within the subsoil horizon. Each layer shall be ripped to its full depth and any waste appearing on the surface shall be removed.

Reason: To facilitate the restoration of the site to maximise the agricultural potential and tree growth potential.

55. Topsoil previously stripped from the site or imported shall be spread evenly to a minimum depth of 20 cms over the reinstated subsoil so as to form the final approved contours.

Reason: To maximise the agricultural potential of the site and ensure that the final contours are achieved.

56. Land for agricultural use shall then be prepared to a state suitable for seeding by grading and cultivation.

Reason: To maximise the agricultural potential of the restored site.

57. Notwithstanding condition 6 the Household Waste Recycling Facility shall not operate except between:

0830 to 1730 on Mondays to Fridays;
0830 to 1600 on Saturdays; and
1000 to 1600 on Sundays.

Reason: To enable the HWRF to be used at times suitable for the public.

58. An aftercare scheme outline strategy shall be submitted for the written approval of the waste planning authority within six months of the date of this permission. It shall cover the areas restored to woodland and to agriculture. With respect to agriculture the strategy shall provide for:

(a) the physical characteristics of the land to be restored, as far as it is practical to do so, to what they were when the land was last used for agriculture as would satisfy the requirements of paragraph 3(1) of Schedule 5 of the 1990 Act;

(b) aftercare phasing of land to be demarcated, identifying the start date of aftercare following restoration of each phase;

(c) a five year period of aftercare in accordance with Annex A of MPG7, specifying the steps to be taken and the period during which they are to be taken, and who will be responsible for taking those steps. The scheme shall include provision of a field drainage system and provide for an annual meeting with the waste planning authority; and

(d) a detailed annual programme, in accordance with Annex A of MPG7 to be submitted to the waste planning authority.

With respect to woodland the strategy shall provide for

(e) an annual assessment of tree losses, during the establishment period and arrangements for replacements to be provided;

(f) continuing and effective weed control, throughout the establishment period, management and removal of tree shelters, stakes, tree ties and fencing, all in accordance with current best practice;

(g) ongoing protection measures from deer, rabbits, hares, grey squirrel populations, insects and other pest species; and

(h) a programme for thinning the woodland, as may be necessary to ensure that it develops in a way that the objectives of planting will be realised.

Any scheme that is agreed shall be implemented within the period agreed in the scheme.

Reason: To facilitate the subsequent improvement of the restored agricultural land and woodland.

59. Before the end of one year from the date of this permission, and every subsequent year during the aftercare period, the landfill operator shall provide the waste planning authority with a detailed annual programme for the written approval of the waste planning authority including:

(a) proposals for managing the land in accordance with the rules of good husbandry including planting, cultivating, seeding, fertilising, draining, watering or otherwise treating the land for the forthcoming 12 months; and

(b) a record of aftercare operations carried out on the land during the previous 12 months.

Reason: To facilitate the subsequent improvement of the restored agricultural land and woodland.

60. The storage of any skips on the land shall only be incidental to the use of the HWRC and shall be confined to an area as shown on approved plan 3/14.

Reason: To protect the visual amenities of the area.

61. [324]No development shall take place until a local liaison panel has been established in accordance with details to be submitted to and approved in writing by the waste planning authority. The details shall include terms of reference and frequency of meetings of the panel. The panel shall meet in accordance with the approved details.

Reason:In the interests of promoting a good working relationship between the operator and the local community.

62. [325]If for any reason other than for extended maintenance or repair, the EfW facility ceases to be used for a period of more than 36 months, a scheme for the demolition and removal of the building and the related infrastructure (which shall include all buildings, structures, plant, equipment, areas of hardstanding and access roads) shall be submitted for approval in writing to the Council. Such a scheme shall include:

(i) details of all structures and buildings which are to be demolished;

(ii) details of the means of removal of materials resulting from the demolition and methods for the control of dust and noise ;

(iii) timing and phasing of the demolition and removal;

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[324] There is already an existing site liaison group and it is Viridor's intention to extend the remit of this group to cover matters relating to the EFW.

[325] At the Inspector's request, discussions have taken place over a condition covering the issue of obsolescence and this condition has been agreed to in principle.

(iv) details of the restoration works; and

(v) the phasing of restoration works.

The demolition and removal of the building and the related infrastructure and subsequent restoration of the site shall thereafter be implemented in accordance with the approved scheme.

Reason: to safeguard the visual amenities of the area.