

Dear Michael,

For the avoidance of doubt, the update sheet available from <http://www2.westsussex.gov.uk/ds/cttee/plng/plng190618ageupdate.pdf> does not address the completeness of the environmental statement and fails to adequately grapple with the R1 issue. It fails to grapple with the reasons why the Secretary of State imposed an R1 condition at Bilsthorpe and why West Sussex County Council imposed an R1 condition for a previous application. Furthermore, it adopts a legally unsound definition of both R1 and the waste hierarchy itself. The update sheet does not provide an accurate summary of UKWIN's representations despite the fact that UKWIN's submissions cover issues of fundamental importance to the determination of this planning application.

The update sheet states "...in planning terms, there is no reference to waste recovery being limited to facilities meeting a given measure of efficiency". However, this approach is at odds with the National Planning Policy for Waste which make it clear that the waste hierarchy is to be the European waste hierarchy, and to be classed as a recovery operation (R1) as distinct from a disposal operation (D10) under that hierarchy requires the proposal to meet the criteria set by the relevant Competent Authority which is the Environment Agency.

For a proposal to qualify as R1 the EA requires an application providing the details necessary to undertake an R1 calculation. If the result of that R1 calculation is at or above the 0.65 threshold then the proposal is entitled to a Design Stage R1 Certificate. To maintain R1 status a plant must continue to demonstrate R1 compliance.

It is a fact that the Secretary of State determined that a Design Stage R1 Condition was necessary for the Bilsthorpe gasification plant and West Sussex County Council determined that a Design Stage R1 Condition was necessary for the Circular Technology Park. These facts are not reflected in the update sheet.

The update sheet cites the Waste Management Plan for England as defence for treating proposals as R1 irrespective of efficiency, but that document itself states that "Incineration may be classed as recovery or disposal depending on the circumstances. Our Energy from Waste guide provides further analysis of this issue". As per the Industrial Emissions Directive, gasification is a type of waste incineration plant.

As noted in the glossary to the Government's EfW Guide: "'R1' Recovery status – is the definition in the revised Waste Framework Directive for a 'recovery' operation. For municipal waste incinerators this is based on a calculation of a plant's efficiency in converting tonnages of municipal waste to energy. Plants operating at or above the stipulated thresholds can be classified as 'recovery operations' for the purposes of the waste hierarchy. Incinerators operating below the threshold are classed a 'disposal'. There is currently no requirement for municipal waste incinerators to achieve R1 status or have their performance assessed against the R1 formula in the Environmental Permitting Regulations 2010 (EPR). For Non-municipal waste incinerators designation as R1 depends on criteria set by the Competent Authority, this is the Environment Agency in England."

Whilst the EA is the competent authority to grant R1 status, it is the role of the planning authority to require that it actually apply for R1 status, i.e. it is necessary if the facility is to be treated as an 'other recovery' operation in the waste hierarchy. The EA uses the same criteria, i.e. the 0.65 threshold, for mixed waste or RDF/SRF gasification as they do for

municipal waste incineration. As such, the 0.65 threshold is relevant to planning decisions relating to the proposed development.

Furthermore, the National Planning Policy for Waste states that the Waste Hierarchy to be used for planning purpose is the European Waste Hierarchy, and this does not have any step between 'disposal' and 'other recovery'; if a proposal fails to operate as 'other recovery' due to failing to meet the 0.65 threshold then for planning purposes it is 'disposal' at the bottom of the Waste Hierarchy.

It remains necessary for the Planning Committee to be informed of the need for a Design Stage R1 Condition and for the proposal to be determined on the basis that the environmental statement, as it currently stands, is incomplete.

Yours sincerely,  
Shlomo Downen  
UKWIN

On Mon, 18 Jun 2018 at 10:31, Shlomo Downen wrote:

Dear Mr Elkington,

I write to convey UKWIN's serious concerns regarding the Planning Officer's Report and recommendations in relation to planning application reference WSCC/015/18/NH and the Council's handling of this application. Together, UKWIN believes that these concerns amount to potential grounds for a legal challenge to the Committee decision unless these matters are addressed in full, with a corrected report issued in advance of the Planning Committee meeting. Unless the recommendation is changed to be one for refusal then the issues raised would merit deferral of the consideration of this application by the Committee until such time as these matters have been resolved. As the planning application is due to be considered by the Planning Committee tomorrow, I hope that these concerns will be treated as a matter of urgency.

UKWIN notes the irrational nature of the Planning Officer's suggestion that the proposal does not require consideration as a disposal facility. Given the circumstance, i.e. that it has not been demonstrated that the proposed facility is anything other than a disposal facility at the bottom of the Waste Hierarchy, and in the absence of any planning condition requiring R1 ('recovery') status, it would be irrational to assume that the facility should be treated, for planning purposes, as if it were R1 compliant. The approach taken by the Planning Officer is irrational, and is not supported by a valid explanation; it is inconsistent with West Sussex County Council's November 2013 decision to impose Condition 24 on the permission granted to planning application reference WSCC/096/13/F for Grundon's Circular Technology Park proposal.

West Sussex County Council's R1 Certification Condition for application reference WSCC/096/13/F reads: "24. Prior to the gasification plant being brought into use, the applicant shall submit, to the County Planning Authority, verification that the gasification plant has achieved R1 status from the Environment Agency at Stage 1 (i.e. the design information stage) of the R1 application process" and the reason given for the need to impose such a condition: "To confirm the status of the gasification plant in order to ensure that the

proposal would move waste up the waste hierarchy in accordance with PPS10 and to ensure compliance with Policy W10 of the West Sussex Waste Local Plan".

As has been pointed out repeatedly by both UKWIN and the Environment Agency, the Planning Officer is making a factual error with regard to application reference WSCC/015/18/NH when he says, e.g. at Paragraph 4.25 of the Officer's Report, that: "The Environment Agency would control the efficiency of the facility to ensure that the process qualifies as 'recovery'..."

If left uncorrected then this factual error would result in the Planning Committee being misled.

Paragraph 53 of the Government's Energy from Waste (EfW) Guide explicitly states that: "R1 status...will not be part of an environmental permit." and Paragraph 54 of the Government's EfW Guide states that: "The distinction between having R1 status or having a plant being classified as a disposal facility is important for planning purposes...".

As such, the Government's position is that R1 status is a material planning consideration that cannot be assumed to be ensured by the permitting process, i.e. R1 status should either be required through the planning process or the planning application for the proposed facility should be determined on the basis that the facility would be a disposal operation at the bottom of the Waste Hierarchy. The approach adopted in the Report to the Planning Committee is therefore contrary to Government guidance, and offers no justification for going against Government policy and against the precedent set by West Sussex County Council in the determination of application reference WSCC/096/13/F.

For the avoidance of doubt, I have copied and pasted an e-mail message (below) containing confirmation from the Environment Agency that the Planning Officer is wrong to suggest that, in the absence of an R1 condition imposed by West Sussex County Council, R1 will be required to be addressed by the Environment Agency as part of their permitting process, as follows:

**From: Shlomo Downen**

Date: Fri, 15 Jun 2018 at 17:41

Subject: Re: West Sussex County Council Planning Application - WSCC/015/18/NH - Recycling, Recovery and Renewable Energy Facility and Ancillary Infrastructure

To: Tracey Guinea

Cc: Jane Moseley

Hello again Tracey,

I have yet to hear back for your colleagues.

In the mean time, I have been in touch with the Environment Agency (EA). As I hope you are aware, the Environment Agency e-mail of 15 June 2018 (below) confirms UKWIN's position, i.e. that Paragraph 4.25 of the Committee Report is incorrect as the EA will not secure R1 through the planning process.

As such, it has been officially and authoritatively confirmed that it would be unsound for the Waste Planning Authority to assume that the proposed facility would constitute an R1

Recovery process in the absence of an appropriate Design Stage R1 Planing Condition, e.g. along the lines imposed by the Secretary of State for the Bilsthorpe Energy Centre (and indeed along the lines previously required by West Sussex for a different EfW proposal).

In light of this, we hope that our previous objections will be re-read in light of the EA's letter, and that in the event of an approval a Design Stage R1 Condition will be imposed.

If the applicant is not willing to agree to such a condition then we expect that the application will be refused, in line with the Inspector's Lock Street refusal, on the basis that it is a D10 disposal facility at the bottom of the waste hierarchy and could be diverting waste from EfW facilities that would be operating as R1 (i.e. the proposed facility would go against the Waste Hierarchy and the planning application would therefore contravene relevant local and national planning policies).

Such clarification needs to be shared with the entire Planning Committee, for the avoidance of doubt and to head off any judicial review of the Committee's decision.

I look forward to confirmation from the Council that they will correct their error and adopt an appropriate and legally sound approach to the consideration and determination of this planning application.

Kind regards,

Shlomo

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**From:** Freeman, Ben

**Sent:** 15 June 2018 16:42

**To:** Jane Moseley

**Cc:** Maskell, Jon ; Hyland, Hannah; Thompson, Matthew; PlanningSSD ; Mears, Jill

**Subject:** Clarification of the Environment Agency's role in the R1 process for waste incinerators - Application No: WSCC/015/18/NH

Hi Jane

I am writing on behalf of the Environment Agency's Solent & South Downs Sustainable Places team (CCd) to clarify the Environment Agency's role in the R1 process for waste incinerators. This in response to the planning officer's report for the proposal for an incinerator at the Former Wealden Brickworks, Langhurstwood Road, Horsham, West Sussex, RH12 4QD, Application No: WSCC/015/18/NH – see [here](#).

The report states at Paragraph 4.25 that "*The Environment Agency would control the efficiency of the facility to ensure that the process qualifies as 'recovery' (in accordance with the R1 formula, referred to in representations) and to optimise the amount of electricity available for export outside of the facility.*"

Although we are the competent authority in England for determining R1 applications, we do not require incinerators to have R1 status in order for us to issue an environmental permit, and so the above statement in the planning officer's report will only be correct in the event

that the operator makes a successful application for R1 status (and then maintains R1 status) as described in the process [here](#).

It may of course be that the applicant is intending to make an R1 application and is confident of obtaining and subsequently maintaining R1 status. However, there will be no requirement under the Environmental Permit itself (if issued) for the facility to be R1.

I hope the above clarification is useful, but please do not hesitate to contact me if you have any queries.

Best regards

Ben

**Ben Freeman**

E&B Senior Advisor (Waste Incineration)  
Environment Agency  
Tel. 0203 025 8978

The R1 condition attached by West Sussex County Council to the planning permission granted to application reference WSCC/096/13/F for Grundon's Circular Technology Park proposal, along with several other similar conditions imposed by other Waste Planning Authorities and by the Secretary of State, were brought to the Planning Officer's attention at Paragraph 73 of UKWIN's April 2018 planning objection (attached) which was sent to both Sam Dumbrell and to PL Planning Applications, and for which we received assurance from the Council that, as a representation, "the email will be uploaded to the website within 5 working days, and a copy passed to the relevant planning officer".

I note that the representation does not appear to have been uploaded to the website as promised, and that no explicit reference is made to UKWIN or to our planning objection in the Officer's Report to the Committee. Critically, the Report does not appear to address the significant the issues raised by UKWIN in our April 2018 objection (attached), nor the further concerns raised by Neil Pitcairn in his recent e-mail messages to the Waste Planning Authority.

I have undertaken a close reading of the Committee Report and it appears not to address the errors and omissions in Appendix 2.3 of the Applicant's Climate Change statement identified in UKWIN's objection of April 2018.

As it is a legal requirement that EIA developments can only be approved if the Environmental Statement is complete this means that if planning permission is granted without these issues having been resolved then the decision will be open to judicial review on this basis. The decision would be especially vulnerable in this case as the concerns have not been addressed within the Committee Report.

If West Sussex County Council is unable to provide an adequate explanation for why the applicant has not been required to provide a complete Environmental Statement and why these important concerns have not been discussed within the Officer's Report as a matter of urgency then the most legally prudent approach would be to defer the consideration of this application until after these problems have been addressed.

At the very least, the Planning Committee should be made aware of the various errors and omissions identified by UKWIN and informed that these have yet to be resolved, and for the Planning Committee to be reminded that they have the right to either refuse planning permission on the basis of an incomplete environmental statement or defer consideration of the application pending the response to a request for the applicant to provide further environmental information to address UKWIN's concerns.

The Planning Committee should also be informed of the significance of the R1 issue to the determination of this application and of their ability to impose a suitably-worded R1 Certification Condition along the lines of Condition 24 imposed by West Sussex County Council's November 2013 decision in relation to application reference WSCC/096/13/F for Grundon's Circular Technology Park proposal (albeit updated to reflect the replacement of PPS10). If the applicant were to resist the inclusion of such a condition then the Committee should be informed that it has the right to follow the example of the Lock Street decision (PINS Ref 2224529) where the Planning Inspector refused the planning application due to the proposal's contravention of the waste hierarchy.

Whilst UKWIN's April 2018 objection (attached) and supplementary submissions should be read in full, I note in particular the following excerpts from our objection:

23. The analysis contained within Appendix 2.3 fails to adequately set out all of the assumptions and methodologies applied and all of the underlying data and associated justifications for using those assumptions and methodologies.

24. Furthermore, some of the statements made within Appendix 2.3 appear to be contradictory, confused, and/or simply out-of-date.

25. If some of the omissions in the assessment are corrected then it appears that the development would have a significant adverse GHG impact, and therefore either additional information should be sought from the applicant or the application should be determined on the basis that climate change benefits have not been demonstrated and significant adverse change impacts have not been ruled out.

26. In relation to errors, it appears that the applicant and their consultants made a simple 'unit of measurement error' that results in an overstatement of emissions avoided through reduced transport by a factor of one thousand, i.e. the applicant's figure of 110,315 kilograms per annum was erroneously treated as if it were 110,315 tonnes per annum...

30. As per DECC's source spreadsheet, the standard set conversion factor cited is 0.70kgCO<sub>2</sub>e/km (equating to only 0.0007tCO<sub>2</sub>e/km), but the applicant appears to be working on the basis that the factor is expressed in tonnes (0.70tCO<sub>2</sub>e/km), which is one thousand times higher than DEC's actual figure.

31. This means that the result of applicant's calculation of 157,140km x 0.70 is actually 110,315 kilograms of CO<sub>2</sub> avoided per annum, i.e. only 110 tonnes of CO<sub>2</sub> per annum. However, Table 3 of the 2016 Carbon Assessment uses the 110,315 kilogram figure as if it were 110,315 tonnes rather than 110 tonnes.

32. Over the expected lifetime of the plant this mistake with transport emissions adds up to overstating avoided emissions by **more than 2.75 million tonnes of CO<sub>2</sub>** ((110,135 - 110) x 25).

43. In addition to the errors set out above, and in addition to inconsistencies in relation to both efficiency and uncertainties regarding composition highlighted above, we would like to draw attention to two further significant problems with the applicant's 2016 carbon assessment, as follows:

- a. The incorrect marginal emissions factor (MEF) is used; and
- b. The biogenic carbon sequestration benefits of landfill are not accounted for.

61. Therefore, based on a partially corrected version of the applicant's own estimated emissions scenario, sending the waste to the proposed incineration facility would be **16,479 tCO<sub>2</sub>e per annum worse** than sending that same waste directly to landfill.

62. Other problems that we have observed in relation to the applicant's 2016 carbon assessment include:

- a. the transport assumptions (which appear to overstate the benefits of incineration, and which do not take account of diesel vehicles being replaced with electric vehicles during the lifetime of the proposed facility); and
- b. the landfill gas engine efficiency (which appear to overstate the benefits of incineration).

63. As should be clear from the issues raised above, the conclusions of the applicant's 2016 carbon assessment cannot be relied upon to provide an accurate description of the likely environmental impacts of the proposal.

64. Problems inevitably arise from the applicant's fundamental failure to correctly follow an accepted methodology applying a set of justified assumptions. We hope that these problems will be resolved as part of any revised climate change assessment required of the applicant by the WPA.

65. Alternatively, we would expect the WPA to determine the application on the basis that the proposal would contravene the strategic objective to minimise carbon emissions, and would therefore go against Waste Local Plan SO 14 as well as other local and national plans and policies in relation to carbon emissions and climate change.

75. UKWIN notes that Table 7.8: Mass Emissions from the applicant's Environmental Statement (ES) Volume 1, Chapter 7 on Air Quality and Odour appears to omit figures for total organic carbon (TOC) despite the fact that emissions are limited by the Industrial Emissions Directive (IED) and despite the fact that the applicant themselves include benzene as a main air pollutant (e.g. at Paragraph 7.2.18).

76. UKWIN urges the WPA to ask the applicant to provide TOC data, expressed as benzene (i.e. assuming all TOC is benzene), in accordance with standard practice and with IED requirements and with the relevant requirements of Environmental Impact Assessment legislation.

As can be seen for the extracts set out above, the Planning Officer's Report is seriously deficient, and falls well short of addressing the issues raised by UKWIN. The Officer's Report as it stands does not provide a sound basis for the lawful determination of this

application. Furthermore, the Environmental Statement as it stands is not complete and so the planning application could not lawfully be approved prior to further environmental information being provided.

Thank you for your considerations of the matters raised. I would appreciate being provided with an acknowledgement of receipt and an assurance that these matters will be appropriately remedied in advance of any determination of the planning application, whether that determination takes place this week or in the more distance future.

Yours sincerely,

Shlomo Downen

on behalf of the United Kingdom Without Incineration Network (UKWIN)