

# GPP

GP PLANNING LTD



<b>PROOF OF EVIDENCE</b>		
<b>Appeal by Britaniacrest Recycling Ltd Land at former Wealden Brickworks PINS Ref – APP/P3800/W/18/3218965 LPA Ref – WSCC/015/18/NH</b>		
<b>1<sup>st</sup></b>	<b>NI4H</b>	<b>H008-01</b>

<b>Revision</b>	<b>Comments</b>	<b>Author</b>	<b>Date</b>
1	FINAL	MD	1 <sup>st</sup> October 2019

## Contents

<b>1</b>	<b>INTRODUCTION.....</b>	<b>4</b>
1.1	About Me .....	4
1.2	Purpose of Proof of Evidence .....	5
1.3	Rule 6 Status .....	6
1.4	NI4H Case.....	9
<b>2</b>	<b>DESCRIPTION OF THE APPEAL PROPOSALS, SITE AND AREA.....</b>	<b>11</b>
2.1	The Appeal Proposals .....	11
2.2	The Site .....	11
2.3	Description of the Area.....	13
2.4	Planning History.....	14
<b>3</b>	<b>THE DEVELOPMENT PLAN AND MATERIAL CONSIDERATIONS.....</b>	<b>16</b>
3.1	Introduction .....	16
3.2	Other Material Considerations .....	17
<b>4</b>	<b>EFFECT OF THE ALLOCATION.....</b>	<b>20</b>
4.1	Introduction .....	20
4.2	The Effect of the Allocation .....	24
4.3	Waste Local Plan.....	24
4.4	Horsham Site Specific Allocations of Land.....	32
4.5	Summary.....	36
<b>5</b>	<b>NEED FOR THE APPEAL PROPOSALS.....</b>	<b>38</b>
5.1	Introduction and Plan Provision .....	38
5.2	The Appellant’s Case.....	40
5.3	The Council’s Position on Need .....	40
5.4	Material Considerations .....	40
5.5	Monitoring .....	44
5.6	Need and Relevant Consideration .....	45
<b>6</b>	<b>THE WASTE HIERARCHY, INCLUDING WHETHER THE PROPOSAL CAN BE CATEGORISED AS RECOVERY .....</b>	<b>46</b>
6.1	Introduction .....	46
6.2	The Waste Hierarchy – Recovery.....	46
<b>7</b>	<b>PUBLIC PERCEPTION OF HARM .....</b>	<b>56</b>
7.1	Introduction .....	56
7.2	Materiality.....	57

7.3	Summary.....	60
<b>8</b>	<b>LANDSCAPE AND VISUAL IMPACT .....</b>	<b>62</b>
8.1	Introduction .....	62
8.2	NI4H Case.....	63
<b>9</b>	<b>GREENHOUSE GAS EMISSIONS.....</b>	<b>65</b>
9.1	Introduction .....	65
9.2	Only Solutions – Evaluation of Climate Change.....	66
9.3	CO <sub>2</sub> Emissions from the Proposed Plant.....	67
9.4	Carbon Intensity of Energy Generated .....	68
9.5	Relative Net GHG Emissions of the Proposed EfW when compared to Landfill .....	70
9.6	Conclusions .....	72
<b>10</b>	<b>CONCLUSIONS.....</b>	<b>74</b>

## Appendices (Separate Paginated Document)

### APPENDIX A: Evaluation of the Climate Change Impacts of the Energy from Waste Plant Proposed for Wealden Brickworks, Horsham – Only Solutions September 2019

- **A1:Excerpts from Valuation of Energy Use and Greenhouse Gas Background documentation (April 2019)**
- **A2:Energy recovery for residual waste - A carbon based modelling approach (February 2014)**
- **A3:Excerpts from Annex III - Technology-specific Cost and Performance Parameters**
- **A4:Excerpts from Government Review of Waste Policy in England 2011**
- **A5:Excerpts from Appeal Ref 2224529 – Former Ravenhead Glass Warehouse, Lock Street, St Helens (August 2015)**
- **A6:Excerpts from Environmental Permit Application SP3038DY (February 2017)**
- **A7:Excerpts from Valuation of Energy Use and Greenhouse Gas (April 2019)**
- **A8:Excerpts from Energy from waste A guide to the debate (February 2014)**
- **A9:Excerpts from 2006 IPCC Guidelines for National Greenhouse Gas Inventories**
- **A10:Excerpts from A Changing Climate for Energy from Waste (2006)**
- **A11:Excerpts from Assessment of the options to improve the management of bio-waste in the European Union (2010)**
- **A12:Excerpts from Biogenic Carbon and Temporary Storage Addressed with Dynamic Life Cycle Assessment (2012)**

### APPENDIX B: Extracts from West Sussex Waste Local Plan Sustainability Appraisal Report, March 2013

### APPENDIX C: AL 14, SASEA Assessment Table

### APPENDIX D: Analysis of Representations

**APPENDIX E: Extract from the Encyclopaedia of Planning Law, Public Concerns about Safety**

# 1 INTRODUCTION

## 1.1 About Me

- 1.1.1 I am Maureen Darrie. I have a BSc (Hons) Degree in Town and Regional Planning, attained in 1988. I am a chartered town planner and member of the Royal Town Planning Institute.
- 1.1.2 I am a Director and co-owner of GP Planning Ltd, a position I have held for over 3 years.
- 1.1.3 I have over 30 years' professional experience and specialise in waste planning and management, energy and minerals planning.
- 1.1.4 For the first 10 years of my career I held positions in a number of Minerals and Waste Planning Authorities; namely Hampshire County Council, Oxfordshire County Council, Northamptonshire County Council and North Yorkshire County Council. All of the roles involved minerals and waste planning and included enforcement, development management and minerals and waste policy development. These roles also involved dealing with complex planning cases and expert witness work related to policy development.
- 1.1.5 I then moved into the private sector, securing roles with Jacobs Babbie and Adams Hendry Consulting Ltd. These roles involved acting as consultant to minerals and waste planning authorities and private sector clients. This included working on large energy and waste schemes.
- 1.1.6 After 12 years I moved to a role as Director of Planning & Development with a waste management company seeking to roll out a programmed development of advanced thermal treatment facilities. This involved developing procedures to control site operations, as well as developing a business case and managing the planning and permitting processes.

- 1.1.7 After a period of three years I moved back into the private sector, initially for CgMS Consulting, that was subsequently sold to RPS Group. I maintained my minerals and waste specialism in my role as Director, a position I held for around 2 and a half years.
- 1.1.8 I am familiar with all aspects of the planning processes that relate to waste management developments and its legislative context.
- 1.1.9 As to the present appeal, I have visited the appeal site and its environs. I have reviewed the planning application, related correspondence and the Committee Report. I have also reviewed the appeal documentation.
- 1.1.10 I am also familiar with the geography of Horsham Borough and its context within West Sussex County.
- 1.1.11 My professional experience has included acting as an expert planning witness for West Sussex County Council in connection with a landfill proposal in the County.
- 1.1.12 The evidence I have prepared and provide for this appeal in this Proof of Evidence is true and has been prepared and is given in accordance with the guidance of my professional institution, The Royal Town Planning Institute, and I confirm that the opinions expressed are my true and professional opinions.
- 1.1.13 A Summary accompanies this Proof of Evidence.

## **1.2 Purpose of Proof of Evidence**

- 1.2.1 I am acting for NI4H. I was instructed by the Group in May 2019 to advise on planning and related matters.

- 1.2.2 NI4H No Incinerator for Horsham Community Group (NI4H) is a voluntary group formed in 2016 by local residents to raise awareness and campaign against the proposal for a large-scale incinerator in Horsham District to import waste from a wide area across the Southern Counties. The Group's current focus is on the planning appeal lodged by Britaniacrest Recycling Ltd against refusal of planning permission by West Sussex County Council.
- 1.2.3 NI4H took over from a previous campaign group called HALT in Horsham, which successfully fought a proposal for an incinerator in the early 2000s. As a result of that refusal of planning permission, West Sussex County Council (WSSCC) made a significant investment in alternative waste management solutions and built a Mechanical & Biological Treatment facility (MBT) at the Brookhurst Wood site, next to the existing landfill which was due to close. The new facility provided West Sussex with significant additional waste processing capacity of over 310,000 tonnes per annum.

### 1.3 Rule 6 Status

- 1.3.1 NI4H is a Rule 6 party and had that status imposed after the Pre-Inquiry Meeting on 6<sup>th</sup> June 2019. They are a main party, along with the Appellant and the Council.
- 1.3.2 As a main party, there is an opportunity to agree a Statement of Common Ground (SoCG) with the Appellant. At the time of writing this Proof of Evidence, the Appellant has not responded to NI4H's revision to the Draft Statement of Common Ground (SoCG), between them and the Rule 6 Party only.
- 1.3.3 A final SoCG between the Appellant and the Council was submitted to PINS on 13th September 2019, an extended date, agreed by PINS and all parties. **[CD 165]**
- 1.3.4 The Appellant furnished NI4H with a draft SoCG on 30th August 2019 leaving less than 2 working days for the Group to comply with the PINS deadline.

- 1.3.5 NI4H had requested a draft SoCG several times since the Pre-Inquiry Meeting on 6th June 2019, to enable time for its detailed consideration. NI4H wrote to PINS soon after receipt, on 2nd September 2019, confirming that the Group's Barrister was on leave and respectfully requested an extension in time to 13th September for the provision of SoCG for NI4H barrister to review upon return from leave on 9<sup>th</sup> and 10<sup>th</sup> September, for NI4H to send to the Appellant on 10<sup>th</sup> September 2019. All main parties agreed to the request.
- 1.3.6 The Revised Draft SoCG was sent to the Appellant and copied to both PINS and West Sussex County Council on 10th September 2019, albeit that this was sent 'out-of-hours'.
- 1.3.7 The Appellant responded on 13th September, confirming that the document was part edited but would take more time to resolve and that NI4H should respect a response during week of 16th September.
- 1.3.8 I wrote to PINS on behalf of NI4H on 26th September confirming that NI4H had not received comments from the Appellant on the draft SoCG.
- 1.3.9 The Appellant responded by return, confident that evidence could be prepared based on NI4H's case. While this may be the Appellant's view, NI4H's draft SoCG sought to agree matters that are key to the case, particularly viewpoints associated with the assessment of visual impact and comments on planning conditions, provided on a without prejudice basis. The Appellant states:

*As you know, I sent a detailed SoCG to you at the end of August and you returned it for the first time 11 days later with just over 2 days before an agreed version was due to be issued to the Inspectorate. Unfortunately, given the very substantial re-write you did in response, the time you took in doing so, and the very limited time we had to respond, as well as my other commitment during that window, it should come as no surprise that we were unable to reach agreement in time for the 13th September submission date.*

1.3.10 The Appellant has neglected to mention the facts set out above; namely late receipt of the first draft with less than 2 days to respond to the initial PINS deadline, a draft based on that sent to the Council (not detailed) and an extension of time by PINS (agreed by the Appellant).

1.3.11 For the above reasons, regrettably, I have prepared my evidence on the basis that is no agreed common ground between NI4H and the Appellant. The Group has had no feedback on whether the Appellant has concerns with the draft SoCG.

1.3.12 In the latest correspondence, the Appellant also states:

*In terms of our SoCG with WSCC that is largely a matter between us. Jane, I am sure with the very best intentions, had issued the SoCG to the parties but without my final sign off. I had issued it in final draft form to her, but to my mind it was to be issued in draft form knowing there were other matters still to be addressed e.g. planning conditions and matters around design. As it happens there is a reference in that version to policy W11 as being agreed to be 'relevant' by the appellant. This is not the case in the context of the inquiry, as only the policies referred to in the remaining and defended reason for refusal are disputed. 'Relevance' therefore needs clarification in our SoCG with WSCC and I am liaising with Jane accordingly. To the extent you were relying on that our SoCG with WSCC in preparing your evidence, I hope that assists in your understanding.*

1.3.13 Unfortunately, it does not assist my understanding.

1.3.14 NI4H is disappointed to find itself in this position. Nevertheless, the Group will endeavour to work with the Appellant in narrowing the issues before the Inquiry.

## 1.4 NI4H Case

1.4.1 NI4H, in its Statement of Case, **[CD 128, paragraph 4]**, refers to the six reasons for refusal of the application and the fact that the Council has opted to defend only one reason for refusal i.e. Reason for Refusal 2:

*The development would have an unacceptable impact on landscape and visual amenity of the area, contrary to policies W12 and W13 of the West Sussex Local Plan 2014.*

1.4.2 Following consideration of legal advice at a meeting of its Planning Committee on 5 February 2019, WSCC confirmed that it will not actively defend the other five reasons for refusal. Minutes of the meeting confirm this. [Underlining is my emphasis]

1.4.3 Notwithstanding the Council's position, the Decision Notice has not been rescinded and the reasons for refusal remain as written. As a consequence, the Inspector will need to consider the Appeal in that context.

1.4.4 NI4H object to the Appeal proposals on the following basis **[CD 128, paragraph 6]**:

- The facility will have a negative landscape and visual impact (Reason for Refusal 2).
- There is a public perception that the facility will harm public health (part of Reason for Refusal 5).
- The thermal treatment plant is expected to have an adverse climate change impact and is expected to hamper efforts to decarbonise the electricity supply, contrary to local and national policies and objectives.
- When all these things are considered in the planning balance, the Appeal should be dismissed.

1.4.5 In my evidence, I deal with matters pertaining to:

- i) The effect of the allocation, in the context of the Development Plan and other material planning considerations [**CD 128, paragraph 22**].
- ii) Landscape and Visual Amenity Impact, in respect of Reason for Refusal 2, as set out in the refusal of planning permission relating to planning application number WCSS/015/18/NH, dated 11th July 2019 [**CD 072**], in the context of the Development Plan.
- iii) Public Health – in so far as public perception is a material planning consideration.
- iv) Green House Gas Emissions, in respect of the Appellant’s evidence and commissioned evidence prepared by Only Solutions [**attached as Appendix A, to my Proof**] and in the context of the Development Plan.
- v) The Planning Balance, taking all of the above into account.

## 2 DESCRIPTION OF THE APPEAL PROPOSALS, SITE AND AREA

### 2.1 The Appeal Proposals

- 2.1.1 The Appeal Proposals comprise a recycling, recovery and renewable energy facility. The Planning Statement accompanying the application states, **[CD 032, paragraph 2.1.11]** that the facility would sort, separate and process up to 230,000 tonnes per annum of residual commercial and industrial waste and/or residual municipal solid waste.
- 2.1.2 The processing of the waste would generate approximately 21 megawatts of electricity per annum, of which 18 megawatts would be available for export to the national grid. The proposed development is described as being capable of supplying heat to suitable external users, subject to a heating network becoming available. The quantity of said heat would depend on the network configuration and demand.
- 2.1.3 The application is accompanied by an Environmental Statement covering the environmental impact assessment that was carried out **[CDs 028-031]**.
- 2.1.4 I note that both the Council and the Appellant were content to rely on the formal request for a Scoping Opinion by the Appellant **[CD 001]**, and the resultant Scoping Opinion from the Council in 2015 **[CD 002]**. I also note that this was prepared in connection with a previous application (WSCC/062/16/NH) that was withdrawn in July 2017, as referred to in the Report to Planning Committee **[CD 071, paragraph 3.7]**.

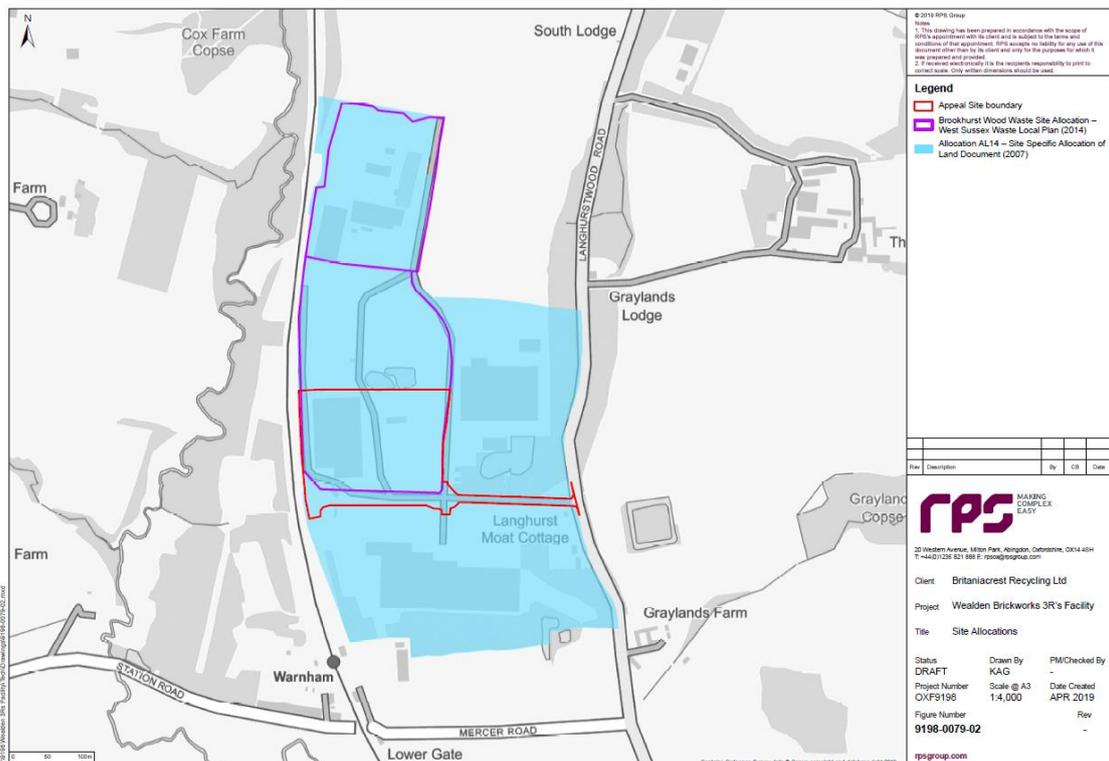
### 2.2 The Site

- 2.2.1 The Appeal Site is located within Brookhurst Wood. Brookhurst Wood is a site containing various uses, including: the Brookhurst Wood Landfill site to the north; a mechanical and biological treatment (MBT) facility (adjacent to the east and north of the Appeal Site);

Warnham Brickworks (adjacent to the south); and former brickworks buildings/land to the north/north-east. The Appeal Site is in the parish of North Horsham, in Horsham District.

2.2.2 The Appeal Site extends to approximately 3.8 hectares (comprised of 3.1 hectares for the main development area and 0.7 hectares forming the site access- over 18% of development area) and is currently used as a Waste Transfer Station handling inert and non-inert waste with associated open-air inert waste recycling operations. It is allocated as part of a 6.5-hectare strategic waste site (“Brookhurst Wood”) to meet identified shortfalls in transfer, recycling and recovery capacity under Policy W10 Part (a) of the adopted West Sussex Waste Local Plan (“WSWLP”) (2014) [CD 093, paragraph 7.32, page 60].

2.2.3 This strategic waste allocation is shown on the Policies Map of the adopted Horsham District Planning Framework. It also falls within a wider 24.4-hectare allocation (“Warnham and Wealden Brickworks”) for employment use including consideration of the provision of a new waste management facility under policy AL14 of the Site Specific Allocations of Land Document (2007) [CD 101, page 49].



2.2.4 The Appeal Site is relatively flat and falls from 51.30 m Above Ordnance Datum within the north-east corner to 47.50 m Above Ordnance Datum within the south-west corner.

## 2.3 Description of the Area

2.3.1 Beyond the Appeal Site lies the Wienerberger brickworks factory (also known as Warnham Brickworks). The London - Horsham railway line lies immediately to the west of the Appeal Site, beyond which there is both heavily wooded and open countryside.

2.3.2 Warnham Local Nature Reserve is located approximately 850m to the south of the Appeal Site. Grade II Listed, Warnham Court Registered Park and Garden is located some 1.14km to the south west of the Appeal Site.

2.3.3 The eastern boundary of the Appeal Site is defined by an internal access road, beyond which lies the Brookhurst Wood MBT facility. To the south of the MBT facility lies an Ecological Habitat Area which has been established in accordance with Condition 8 of the planning permission for the MBT facility (ref. WSCC/055/09/NH).

2.3.4 Two ponds are located within dense scrub including grey willow, hawthorn and blackthorn to the immediate north of the Appeal Site. The land to the immediate north and beyond the ponds is currently vacant and comprises several derelict former brickwork buildings. This land is allocated under Policy W10 Part (b) of the WSWLP [**CD 093, paragraph 7.3.2**] to meet an identified shortfall in non-inert landfill capacity as an extension to the existing Brookhurst Wood Landfill Site.

2.3.5 An Aggregate Treatment and Recycling Facility (ATRF) consented by Planning Permission WSCC/003/14 is approximately 315 m to the north of the Appeal Site boundary. Immediately to the north of the ATRF is the active Brookhurst Wood Landfill Site, which covers an area of approximately 34 hectares. The landfill had permission to receive waste until the end of 2018. The site stopped receiving non-inert waste in December 2018. Restoration of the landfill is

required by 2023. A leachate treatment plant and gas management compound, site office, store and car park are located between the ATRF and the landfill. Two planning applications were submitted on 2<sup>nd</sup> August 2019 by Biffa Waste Services Ltd: WSCC/050/19 Soil Heat Treatment Facility and WSCC/051/19 Soil Washing Facility. Biffa, in response to a question regarding incinerator ash, confirmed that the application for an Environmental Permit includes incinerator bottom ash in various forms.

2.3.6 Beyond the Brookhurst Wood Landfill Site are industrial, commercial and industrial developments. To the north east of the Appeal Site is an active clay pit.

2.3.7 Access to the Appeal Site is via a private shared estate road that connects to the public highway at Langhurstwood Road. Langhurstwood Road is a country lane, some sections of which are narrow. Langhurstwood Road links directly to the A264 some 750m to the south. The A264 links to the A23/M23 to the east and the A24 to the south west.

2.3.8 The closest residential receptors to the Appeal Site are located on Langhurstwood Road, Station Road and Mercer Road, less than 300m distant. The Appeal Site lies approximately 800m to the north-east of the village of Warnham. The Appeal Site lies approximately 900m to the north-west of the edge of the existing settlement boundary of Horsham. Horsham is the administrative and market centre of Horsham District.

## 2.4 Planning History

2.4.1 I agree with the planning history set out in the Committee Report and the draft SoCG [**CD 071, paragraphs 3.1-38, CD 165, paragraph 3.1, page 5** ] with the exception of references to the outcome from the Planning Committee Meeting on 5th February 2019. That should be recorded as follows:

*The Committee agreed that the County Council will defend the refusal of planning permission for the reason of impacts on Landscape and Visual Amenity. The Committee agreed that the County Council will not actively defend the remaining reasons.*

### 3 THE DEVELOPMENT PLAN AND MATERIAL CONSIDERATIONS

#### 3.1 Introduction

3.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that:

*If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.*

3.1.2 The Development Plan, as relied upon by the Council in refusing planning permission, is:

- West Sussex Waste Local Plan (April 2014) [CD 093]
- Horsham District Planning Framework (November 2015) [CD 092]

3.1.3 My Proof considers the applicable planning policies that relate to my evidence.

##### **West Sussex Waste Local Plan (April 2014)**

3.1.4 The West Sussex Waste Local Plan was adopted in 2014 [CD 093]. WSCCC states that it was reviewed in early 2019, and that the outcomes of that review *'have shown that the WLP is considered to be relevant and effective'* and that *'a formal review of the Plan will not be undertaken'* [CD 127 paragraph 2.4, page 3] The most relevant policies are considered to be:

- Policy W10: Strategy Waste Allocations [CD 093, paragraph 7.3.2, page 60]
- Policy W11: Character [CD 093, paragraph 8.2.1, page 69]
- Policy W12: High Quality Developments [CD 093, paragraph 8.3.1, page 71]
- Policy W13: Protected Landscapes [CD 093, paragraph 8.4.1, page 73]
- Policy W19: Public Health and Amenity [CD 093, paragraph 8.10.1, page 84]
- Policy W:21 Cumulative Impact [CD 093, paragraph 8.12.1, page 87]

### Horsham District Planning Framework (November 2015)

3.1.5 This plan is currently under review. I do not consider that there are any matters under review that impact on the outcome of the appeal. The most relevant policies are **[CD 092]**:

- Policy 1: Sustainable Development **[CD 092, paragraph 4.3, page 20]**
- Policy 24: Environmental Protection **[CD 092 paragraphs 9.9- 9.13, page 99]**
- Policy 25: District Character and the Natural Environment **[CD 092 paragraph 9.14-9.17, page 100]**
- Policy 30: Protected Landscapes **[CD 092 paragraphs 9.23-9.25, page 107]**
- Policy 35: Climate Change **[CD 092 paragraphs 10.4-10.5, page 117]**
- Policy 36: Appropriate Energy Use **[CD 092 paragraphs 10.6-10.16, page 120]**

## 3.2 Other Material Considerations

### National Planning Policy

3.2.1 In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990, as amended, determination of an application must be made in accordance with the Development Plan unless material considerations indicate otherwise.

3.2.2 The relevant paragraphs of the National Planning Policy Framework, as revised in February 2019 (“the NPPF”) are also a material consideration **[CD 086]**. These have not yet been agreed in the Statement of Common Ground.

### Planning Practice Guidance

3.2.3 Planning Practice Guidance (“the PPG”) was published in March 2014 to accompany the NPPF. The PPG is published and dated online and is effectively a ‘living document’ that provides supplementary guidance. Within the PPG, there is a specific section on waste **[CD 088]**. This is

subdivided by paragraphs, commencing at paragraph reference **001 Reference ID: 28-001-20141016** and finishing at paragraph reference **056 Reference ID: 28-056-20141016**.

3.2.4 The PPG for waste covers the following matters:

- Waste Overview
- The role of waste planning in meeting European obligations
- Implementing the Waste Hierarchy
- Preparing Local Plans
- Preparing sustainability appraisals for Local Plans
- Evidence needed to identify waste requirements in Local Plans
- Planning for London’s waste
- Determining planning applications
- Regulatory regimes
- Inspections and monitoring
- Annex 1 – Summary of articles of the Waste Framework Directive (2008/98EC) and actions on local planning authorities
- Annex 2 - Annual capacity of waste management facilities

3.2.5 Relevant sections of PPG are referred to in my evidence.

### **Waste Policy and Guidance**

3.2.6 Overarching national waste policy is set out in:

- Our Waste, Our Resources: A Strategy for England, December 2018 [**CD 166**]
- National Planning Policy for Waste, Department for Communities and Local Government, October 2014 (“the NPPW”) [**CD 087**] and
- Waste Management Plan for England, Department for Environment Food & Rural Affairs, December 2013 (“the WMP”) [**CD 082**].

3.2.7 These are material considerations in the determination of the appeal.

3.2.8 I also rely on:

- Overarching National Policy Statement for Energy (EN-1) [**CD 089**]
- National Policy Statement for Renewable Energy Infrastructure (EN-3) [**CD 090**]

3.2.9 I refer to other referenced documents, as relevant, in my evidence.

3.2.10 Otherwise my Proof of Evidence concentrates on the issues identified in Section 1, paragraph 1.4.6.

## 4 EFFECT OF THE ALLOCATION

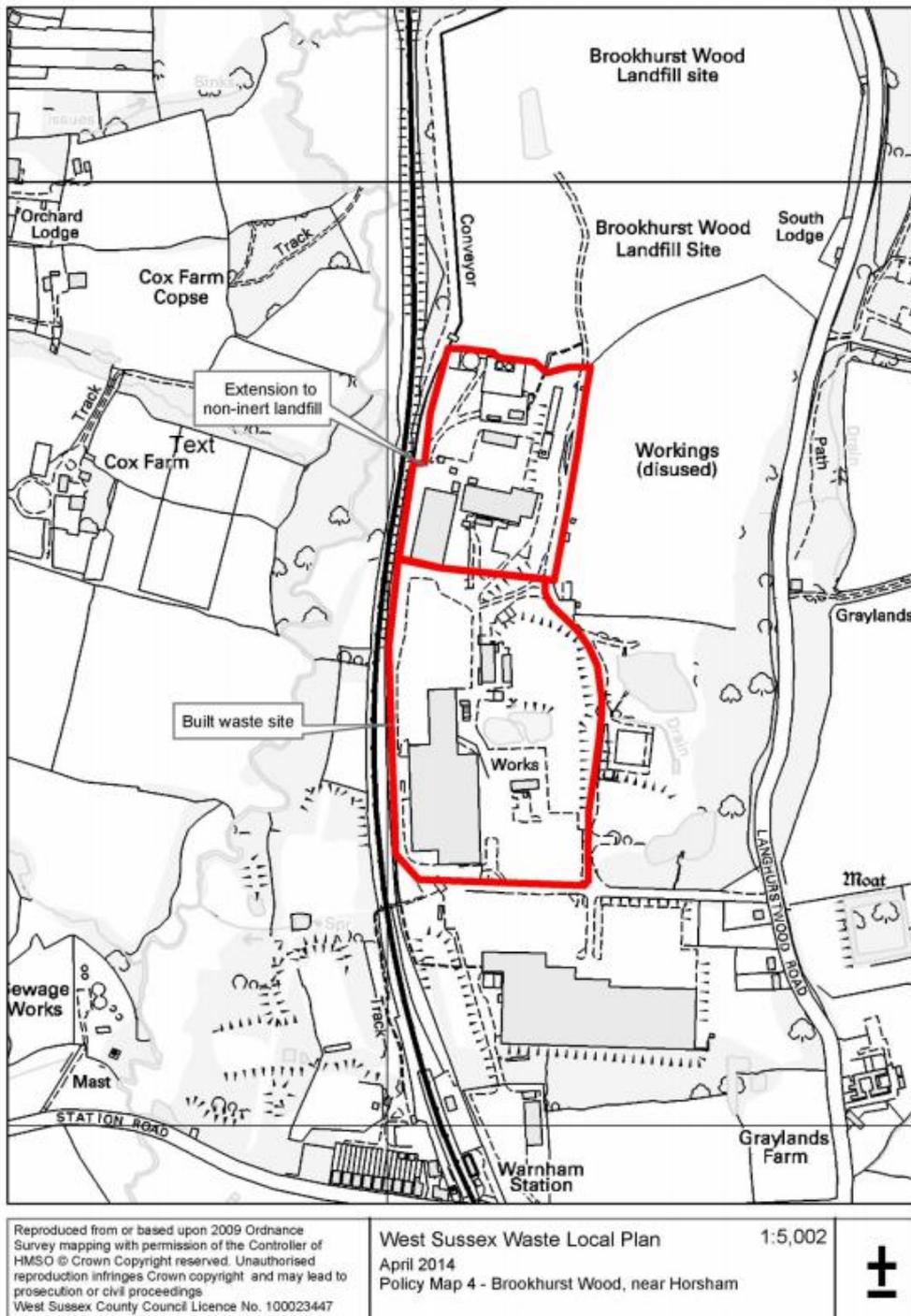
### 4.1 Introduction

4.1.1 The Appeal Site lies within an area allocated in Policy W10: Strategic Allocation (part a of the policy) of the WLP for a facility for the ‘transfer, recycling and/or recovery of waste, including the recycling of inert waste’ [CD 093, paragraph 7.3.2, page60]. The purpose of allocating sites under this Policy is to meet identified shortfalls in transfer, recycling and recovery capacity, as set out in the first part of the Policy.

4.1.2 Policy W10 is set out in full below:

<b>Policy W10: Strategic Waste Allocations</b>
<p><b>(a) The following sites are allocated to meet identified shortfalls in transfer, recycling and recovery capacity. Accordingly, they are acceptable, in principle, for the development of waste management facilities for the transfer, recycling, and/or recovery of waste (including the recycling of inert waste):</b></p> <ul style="list-style-type: none"> <li>• <b>Site north of Wastewater Treatment Works, Ford (Policy Map 1);</b></li> <li>• <b>Hobbs Barn, near Climping (Policy Map 2);</b></li> <li>• <b>Fuel Depot, Bognor Road, Chichester (Policy Map 3);</b></li> <li>• <b>Brookhurst Wood, near Horsham (Policy Map 4); and</b></li> <li>• <b>Land west of Wastewater Treatment Works, Goddards Green (Policy Map 5).</b></li> </ul> <p><b>(b) The following site is allocated to meet an identified shortfall in non-inert landfill capacity Accordingly, it is acceptable, in principle, for that purpose:</b></p> <ul style="list-style-type: none"> <li>• <b>Extension to Brookhurst Wood Landfill Site, near Horsham (Policy Map 4).</b></li> </ul> <p><b>(c) The development of a site allocated under (a)-(b) must take place in accordance with the policies of this Plan and satisfactorily address the ‘development principles’ for that site identified in the supporting text to this policy.</b></p> <p><b>(d) The sites allocated under (a)-(b) will be safeguarded from any development either on or adjoining the sites that would prevent or prejudice their development (in whole or in part) for the allocated waste management use or uses.</b></p>

4.1.3 The allocated site is referred to as Brookhurst Wood and the whole area, stated as approximately 6.5 hectares [CD 093, paragraph 7.3.14] is shown on Policy Map 4, [CD 093 - to be found at Appendix B of the WLP. The page is not numbered in the WLP but is sequentially page 96]. For ease of reference Policy Map 4 is included below:



- 4.1.4 The Policy Map divides the allocation into two distinct areas; the northern part is identified as an extension to non-inert landfill and the southern part is identified as a built waste site.
- 4.1.5 The allocated site is described at paragraph 7.3.14 of the WLP and the development principles are set out at paragraph 7.3.15 [CD 093, pages 63-64].
- 4.1.6 The strategic waste allocation does fall within a wider 24.4-hectare allocation for (Warnham and Wealden Brickworks) for a comprehensive redevelopment mixed use scheme, including consideration of a new waste management facility under Policy AL14 of the Site Specifics Allocation Document (2007) [CD 101, paragraphs 3.44-3.51, pages 47-49]. Policy AL14 Warnham and Wealden Brickworks is set out below, in full:

#### **POLICY AL 14**

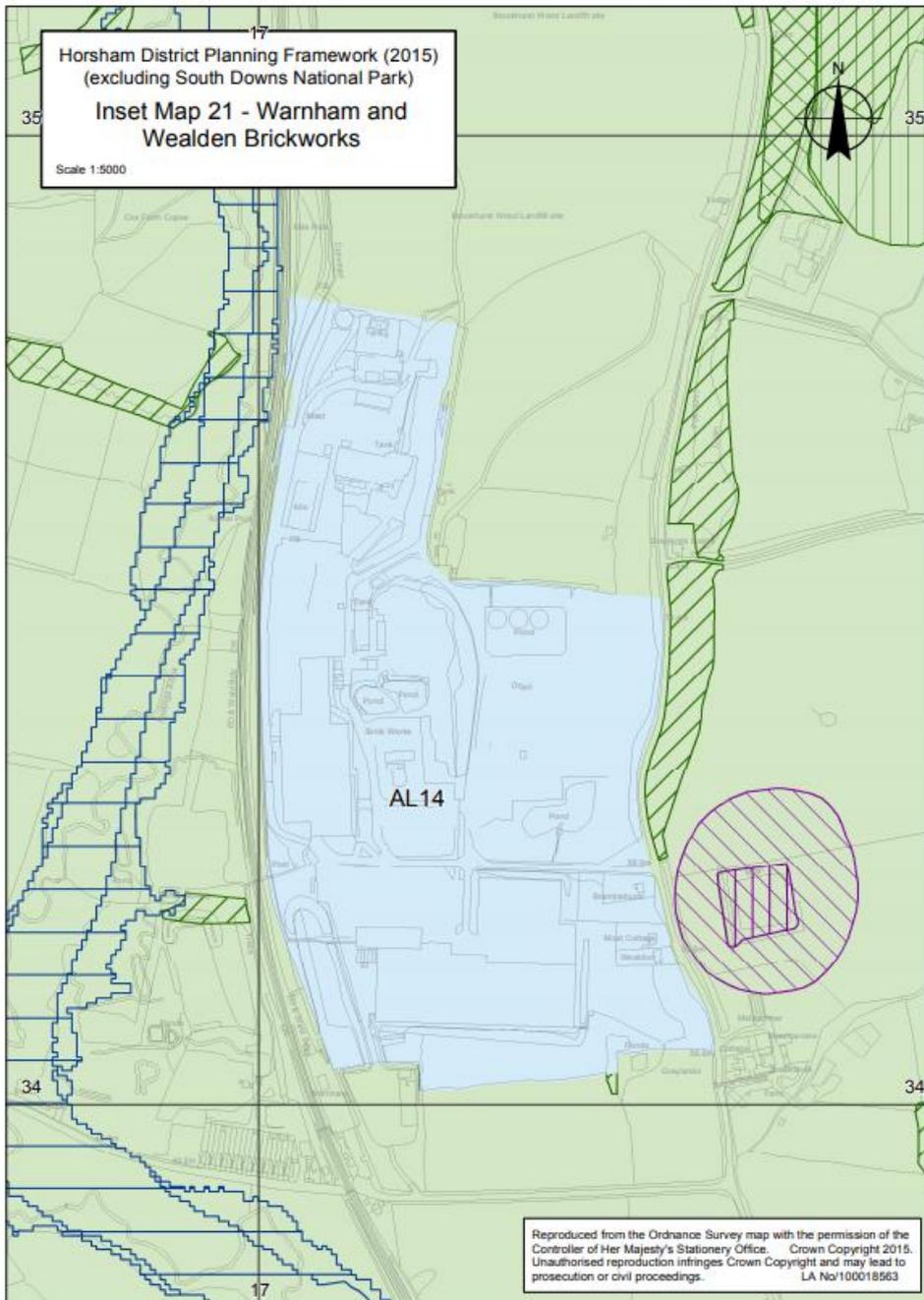
##### **Warnham and Wealden Brickworks, Horsham**

**Land amounting to around 24.4 hectares at Warnham and Wealden Brickworks is proposed for a comprehensive redevelopment mixed use scheme to include:**

- a. **the retention and rationalisation of the Warnham brick making factory;**
- b. **consider the provision of a new waste management facility;**
- c. **the provision of employment floorspace for B8 (Storage) and B2 (Industrial) uses;**
- d. **the retention of the existing power generation plant served by the adjacent landfill; and**
- e. **the preservation (either in situ, by conversion, or by comprehensive record) of structures of industrial archaeological interest on the site.**

**Development should provide any necessary transport and infrastructure improvements, including exploring the potential for sustainable transport opportunities. Development proposals to be set out in a development brief and any application for development, under the Town and Country Planning (Environmental Impact Assessment) Regulations 1999, should be accompanied by an Environmental Impact Assessment and should seek to maximise the potential for environmental (including landscape and biodiversity) enhancements in this area. Development proposals should also be accompanied by a comprehensive contamination risk assessment of possible contamination and identification of remediation works.**

4.1.7 Inset Map 21 – Warnham and Wealden Brickworks is included below [CD 092]. It shows the AL14 allocation, the area at risk of flooding to the west, the ancient woodland to the west and east, Site of Special Scientific Interest to the north east and Site of Importance for Nature Conservation to the north east. It also shows the proximity of a Schedule Ancient Monument and area of archaeological importance to the east.



## 4.2 The Effect of the Allocation

- 4.2.1 In order to determine the effect of the allocation, it is necessary to interrogate the wording of the policy and supporting text.
- 4.2.2 In this section, I examine the wording of the allocation policy and address the land use principle of the Appeal Proposals in the context of the Development Plan.

## 4.3 Waste Local Plan

- 4.3.1 The Appeal Proposal was considered to be contrary to Strategic Objective 3 **[CD 093, paragraph 5.34, page 35]** and Policies W10, W13, W18 and W19 of the WLP for the reasons set in the Decision Notice.

### The Allocation – W10

- 4.3.2 The WLP covers the period to 2031 and was adopted in April 2014, after independent examination.
- 4.3.3 It sets out the vision and strategic objectives and includes strategies for waste planning and use-specific policies to deliver those objectives, strategies together with generic development management policies against which proposals for waste management will be assessed **[CD 093 paragraph 1.3.1, page 7]**.
- 4.3.4 It allocates strategic waste sites for new commercial facilities and includes a monitoring and implementation framework **[CD 093 paragraph 1.3.1, page 7]**. The policies and site-specific allocations will mainly be implemented through the development management function of the Authorities. The implementation of the WLP will be set out in Annual Monitoring Reports and trends/ targets and intervention for each policy are set out in the supporting text of each policy. **[CD 093 paragraphs 1.6.1 and 1.6.2, pages 8 and 9]**.

4.3.5 Paragraph 5.2.1 of the WLP [CD 093, page 34] sets out the overarching strategic vision for the plan:

*West Sussex County Council and the South Downs National Park Authority want the waste that is generated in West Sussex to be dealt with in a sustainable way. To that end, the current network of waste management facilities will be safeguarded and the provision of suitable and well-located new facilities will be enabled to maximise opportunities to reuse, compost, recycle, and treat waste. This new provision will take place in ways that support social and economic progress, protect local communities, and protect and enhance the special character and environment of the County. Overall, there will be a continuing decline in the reliance on disposal to land and the aspiration is that there will be 'zero waste to landfill' by 2031.*

4.3.6 Strategic Objectives identify the way in which the vision is to be achieved. I consider the following strategic objectives particularly relevant to the evidence I am presenting [CD 093 Section 5, pages 34-37] :

- Strategic Objective 2: To enable the progressive movement of nonmunicipal waste up the waste hierarchy away from landfill.
- Strategic Objective 3: To maintain net self-sufficiency in managing the transfer, recycling, and treatment of waste generated within West Sussex.
- Strategic Objective 5: To make provision for new transfer, recycling and treatment facilities as close as possible to where the waste arises.
- Strategic Objective 7: To maximise the use of rail and water transport for the movement of waste and to minimise lorry movements and the use of local roads for the movement of waste.
- Strategic Objective 8: To protect and, where possible, enhance the special landscape and townscape character of West Sussex.
- Strategic Objective 13: To protect and, where possible, enhance the health and amenity of residents, businesses, and visitors.

- Strategic Objective 14: To minimise carbon emissions and to adapt to, and to mitigate the potential adverse impacts of, climate change.

4.3.7 In addressing strategies and use specific policies, section 6 of the WLP [CD 093, pages 38-57] covers the various strategies and under each heading identifies the relevant strategic objective (s), the strategy, the policy, the supporting text and implementation of monitoring information.

4.3.8 Paragraph 6.1.3 is particularly important [CD 093, page 38]. It sets out how the development plan will be taken into account in determining applications:

*Cross-referencing within the policies has been kept to a minimum and has only been used to avoid misunderstandings. The planning system requires applications to be determined in accordance with the statutory 'development plan'. This means assessing the applicability of all the policies within this Plan that may apply to specific development proposals, including the generic development management policies in Chapter 8. It also includes consideration of the supporting text to those policies and the policies and supporting text in other adopted plans. [Underlining is my emphasis]*

4.3.9 It is therefore clear all relevant policies, must be taken into account in reaching a decision on the merits of a proposal. In other words, the site allocation policy and supporting text is not the only policy that needs to be considered in the assessment of W10 as a suitable waste site.

4.3.10 Paragraph 6.2.8 states [CD 093, page 40]:

*There will be no requirement for applicants to demonstrate a quantitative or market need for a proposal on a site allocated in Policy W10; this is because they have been allocated to meet identified shortfalls in waste management capacity to deliver the objective of net self-sufficiency (see Section 2.10). As stated in paragraph 7.3.5, the Authorities will keep the allocated sites under review to ensure that they continue to be required to meet identified shortfalls; this will be reported in the AMR.*

4.3.11 Part 7 of the WLP addresses strategic waste site allocations that follow the key strategic objectives **[CD 093, pages 58-68]**:

- Strategic Objective 2: To enable the progressive movement of nonmunicipal waste up the waste hierarchy away from landfill.
- Strategic Objective 3: To maintain net self-sufficiency in managing the transfer, recycling, and treatment of waste generated within West Sussex.
- Strategic Objective 5: To make provision for new transfer, recycling and treatment facilities as close as possible to where the waste arises.
- Strategic Objective 7: To maximise the use of rail and water transport for the movement of waste and to minimise lorry movements and the use of local roads for the movement of waste.

4.3.12 While an allocation provides ‘in principle’ acceptability in land use terms it does not mean that a proposal on an allocated site will automatically be granted planning permission **[CD 093, paragraph 7.1.3, page 58]**. All planning applications for waste management development, on unallocated or allocated sites, must be determined on their individual merits. This includes the application of all relevant policies including the generic development management policies. This is in the same way that a proposal for a non-allocated site will not automatically be refused planning permission.

4.3.13 The supporting text to Policy W10, explains, at paragraph 7.3.1 **[CD 093, page 59]**, that a detailed technical assessment has been carried out for each of the allocated sites. The assessment work is found in the West Sussex Waste Local Plan Sustainability Appraisal Report (Regulation 22), March 2013 (SA).

4.3.14 Extracts from the SA are attached as my Appendix B.

4.3.15 The role of the SA is not to determine which sites are allocated. It is to identify the most sustainable sites. The SA considered the W10 ‘allocated sites’.

4.3.16 Brookhurst Wood is discussed at paragraph 6.56 of the SA and concludes that a number of mitigation measures are required. These are stated as:

- Assessment and possible mitigation of protected species;
- Archaeological assessment and possible mitigation;
- Assessment and possible mitigation of impact on the water environment;
- Assessment possible and mitigation of impact on residential amenity;
- Assessment and possible mitigation of cumulative impacts of traffic;
- Compliance with Aerodrome safeguarding.

4.3.17 It is clear from the SA, that the prospect of an energy from waste facility was considered (see assessment of SA objective P above). It is also clear that the mitigation/enhancement was to be considered in its wider sense and not just through the application of a set of design principles.

4.3.18 Turning to the wording of W10 [**CD 093, page 60**], the Policy falls into four parts. I discuss parts a, b and c below. Part d relates to safeguarding and I have no points to make on that.

#### **Part a**

4.3.19 Part a of W10 states that Brookhurst Wood is allocated to meet a shortfall in transfer, recycling and recovery capacity and acceptable in principle.

4.3.20 The types of waste management activity are addressed in Section 2.7 of the WLP [**CD 093, pages 13-15**]. ‘Other recovery’ is defined at paragraph 2.7.4 [**CD 093, page 14**]. The definition of Energy from Waste is expressed as:

- Energy from Waste (EfW) Plant - incineration (burning) of waste to produce energy, possibly as part of a combined heat and power (CHP) plant. The residue consists of bottom ash (which can be reused as secondary aggregate), metals that can be recycled, and other materials that, in most cases, currently need to be sent for disposal.

4.3.21 I address the waste hierarchy and whether the proposal can be considered ‘other recovery’ for the purposes of the policy under a separate heading at Section 6.

4.3.22 It is clear that energy from waste is not the only option that could be considered under the terms of the policy. There are a range of options that fall under the ‘recovery’ category that would be acceptable in policy terms to fill the capacity gap.

4.3.23 Linked to this is the fact that in order to be classed as a recovery facility, the proposal must achieve R1 status as certified by the Environment Agency. If it does not achieve this status, it will not be a recovery facility, but a disposal facility, and so will fall outside of the allocation in Policy W10, as well as contradicting the imperative to move waste up the waste hierarchy (discussed in the WLP, and a consideration contained in para. 7 of the National Planning Policy for Waste **[CD 087, page 6]**). I address the R1 point separately.

#### **Part b**

4.3.24 Part b of Policy W10 is not relevant as it refers to land to the north of the Appeal site.

#### **Part c**

4.3.25 Part c of Policy W10 is wholly relevant and makes it abundantly clear that the development of a site allocated under Part a (such as the Appeal proposal) must take place in accordance with the policies in the WLP and, or in my words, as well as, satisfactorily addressing the ‘development principles’ for that site identified in the supporting text to Policy 10.

4.3.26 The development principles for the site are identified at paragraph 7.3.15 of the WLP **[CD 093, page 64]**. They are:

- development of the site to be comprehensive;
- assessment of protected species and possible mitigation required;

- industrial archaeological impact assessment and possible mitigation required;
- assessment of impacts on the water environment and possible mitigation required;
- assessment of impact (e.g. traffic, noise, odour) on the amenity of nearby dwellings and businesses and possible mitigation required;
- the cumulative impacts of traffic, noise, and odour on the environment and local communities to be satisfactorily addressed and mitigated as required, taking into account all existing, permitted, allocated, or proposed development within the wider area;
- development to comply with Aerodrome Safeguarding requirements to ensure that the operational integrity and safety of the airport are not compromised. This may result in restrictions on height, on the detailed design of buildings or on development which might create a bird hazard. A bird hazard management plan may be required;
- assessment of the possible use of rail for the movement of waste; and
- assessment of impact of additional HGV movements on highway capacity and road safety, including at the Langhurstwood Road/A264 junction and on the A264, A24, A23/M23, and possible mitigation required.

4.3.27 The development principles are largely derived from the mitigation recorded in the SA.

4.3.28 It is the case that the development principles for each of the allocated sites differ and for some of the sites there is specific reference to landscape and visual impact but not for Brookhurst Wood. There is explicit reference to the consideration of EfW in the SA text referencing greenhouse gas emissions but it is not clear why the prospect of a large building and stack was not reflected.

4.3.29 Notwithstanding the development principles set out above, there is an explicit requirement for the development to be assessed against all relevant policies in the plan. If proposals for an allocated site are not in accordance with other policies in the Plan, then the proposals would fail to comply with Policy W10 by virtue of the wording in Part C.

- 4.3.30 There are six reasons for refusal in the Decision Notice **[CD 072]**. In my view, the Appeal Proposals fail at Policy W10 on a number of counts, including landscape and visual impact, the matter that the Council has chosen to actively defend.
- 4.3.31 The Appeal Proposals are considered to be Schedule 1 development for the purposes of the Town and County Planning (Environmental Impact Assessment) Regulations 2017.
- 4.3.32 Pre-application advice from West Sussex County Council, dated December 2015 (Appendix B of Planning Statement, dated March 2018 **[CD 032, not paginated]**), stated that, to avoid repetition the advice should be read alongside the specific advice on EIA Matters provided in the Scoping Opinion issued by the Council on 15th December 2015.
- 4.3.33 The planning advice then went on to state that the key issues to be considered in relation to the site are set out in the development principles for the site, as set out above. This is not qualified and clearly there is a need to consider the wider impacts of the development.
- 4.3.34 The Appellant relies on the Scoping Opinion, dated 15th December 2015 (to be found at Appendix 4.2 of the ES and **[CD 002]**). The Scoping Opinion responds to a formal Scoping request from the Appellant, set out in a Scoping Report, dated 9th November 2015 **[CD 001]**. The Scoping Report, forming that request, describes the development at paragraph 2.14 **[CD 001, page 4]**. It does not describe the building or stack heights. However, it does include provision for a landscape and visual impact assessment.
- 4.3.35 The production of photomontages was scoped out **[CD 001, page 29 (summary table)]**. Notwithstanding that, the Council's formal Scoping Opinion scoped those in, at paragraph 3.10 **[CD 02, page 4]**.

### Summary

- 4.3.36 W10 is the strategic allocation policy in the WCS. While it provides an 'in principle' land use acceptability, it does no more than that. It does not mean there should be a less rigorous
-

assessment of the proposals. The allocation covers a very wide range of potential land uses, all of which will have impacts to a varying degree, The proposal to site an Energy from Waste plant on the site is, by virtue of its scale and height, going to give rise to the greatest impact particularly in landscape and visual impact terms, irrespective of the design principles in the supporting text to the policy.

4.3.37 However, the Appeal Proposal is speculative and seeks to provide a waste management facility to deal with commercial and industrial waste and MSW that is not yet contracted.

4.3.38 The Appellant misinterprets the intention of this policy and, in particular the reliance on the development principles.

## 4.4 Horsham Site Specific Allocations of Land

4.4.1 The Appeal site falls within the wider AL14, as shown on Inset Map 21 of the Horsham District Planning Framework [CD 092]. Policy AL14 is found in the Horsham District Local Development Framework, Site Specific Allocations of Land (2007) (SSAL) [CD 101, page 49].

4.4.2 It falls under the section entitled 'Sites of Employment'. Supporting text, as paragraph 3.38 of the SSAL confirms that the Warnham and Wealden Brickworks is identified as an employment allocation. By virtue of its allocation it is deemed to contribute to requirement for 210,000 square metres of employment floorspace, albeit that was the requirement to 2018 (see paragraph 3.38) [CD 101, page 44].

4.4.3 The supporting text to the Policy is found at paragraphs 3.44-3.51 of the SSAL [CD 101, pages 47-48].

4.4.4 The text explains the history of the site, the extensive area of brownfield land and the requirement for comprehensive redevelopment. It confirms, at paragraph 3.47, that a range of employment uses might be acceptable in this location, particularly those which are difficult to

accommodate in more prominent locations, provided that the scale of the development is acceptable.

4.4.5 Paragraph 3.48 is important as it describes the site's identification in the West Sussex Local Plan: Revised Deposit Draft as being suitable for the potential location of built waste management facilities. The supporting text confirms that such provision would need to be carefully examined and that an integrated waste management facility as part of a wider, comprehensive proposals may, therefore be the most appropriate way forward.

4.4.6 Paragraph 3.50 states:

*It is important that any redevelopment of the Warnham Brickworks site should provide significant visual improvements in terms of the rationalisation of buildings but also in the overall design of any new development. This will ensure that it respects and enhances the overall environment of the site and the surrounding countryside and protects as far as possible the amenities of the local countryside.*

4.4.7 Turning to the actual wording of Policy AL 14, land amounting to around 24.4 hectares at Warnham and Wealden Brickworks is proposed for a comprehensive redevelopment mixed use scheme. I take no issue with the other main parties on the extent of the allocation, or the fact that the Appeal site sits within the allocation.

4.4.8 However, points a-e in the body of the Policy require closer scrutiny.

4.4.9 Provision is made for a comprehensive redevelopment mixed use scheme to include:

- a. the retention and rationalisation of the Warnham brick making factory;
- c. provision of employment floorspace for B8 (Storage) and B2 (Industrial) uses;
- d. the retention of the existing power generation plant served by the adjacent landfill; and

- e. the preservation (either in situ, by conversion, or by comprehensive record) of structures of industrial archaeological interest on the site.

4.4.10 These parts of the policy are categorical, a comprehensive mixed-use scheme should (my emphasis) include those elements.

4.4.11 However, the position in respect of the provision of a waste management use is not categorical. The wording of Part b of the policy is different to the other parts. It states: *Consideration is to be given to the provision of a new waste management facility*. The role, and place of a waste management facility is much less certain.

4.4.12 The Appellant in its Statement of Case, states at paragraph 2.4, that the site forms part of a larger allocation for mixed use development, including waste management.

4.4.13 The Appellant refers to paragraph 8.14 of the SSAL, at paragraph 2.6 of the Statement of Case. I note this is referenced in error and should be to The Sustainability Appraisal and Strategic Environmental Assessment (SASEA) [CD 102] referred to earlier in the paragraph.

*Assessment of whether or not to have a policy controlling the future of the Warnham brick works site found that redevelopment of the site (option a) could harm the landscape the environment, but could also potentially help clean up areas of contamination. The site would also have a waste recycling use which could be beneficial in management of waste in the County. Redevelopment of the site would help provide employment which would enhance the economy, although it is uncertain as to whether it would enhance the rural economy given that most workers on the site would come from an urban area such as Horsham rather than Warnham. It is considered that having a policy would have more positive benefits than not and is the more sustainable option selected for inclusion in the Site Specific Allocations of Land document.*

4.4.14 The phraseology in the SASEA, as set out in the Appellant’s Statement of Case, is not to be relied upon. There is no assertion in policy that a waste management use would be part of the mixed-use development.

4.4.15 Contextually it is important to view this summary alongside the assessment of significance of the site, as considered in the SASEA. The AL14 assessment table (found at page 100 of the SASEA), is attached as my **Appendix c**.

4.4.16 In SASEA terms, the redevelopment of the site is deemed to have a potential strong negative effect towards the SA/SEA objective of maintaining high quality environment in terms of air, soil and water quality, with the summary cited as:

- *Although development could help clean up existing contamination on site, but harm air quality / water quality through burning of landfill gas and waste uses*

#### Summary

4.4.17 The SASEA and the location of the Appeal proposals within the AL 14 allocation does not help the Appellant’s case. It is a ‘red herring’. AL14 provides for no more than consideration of the provision of a waste use.

4.4.18 In the event that a waste management use was considered and deemed to be acceptable as part of the mixed-use employment allocation in the SSAL, it would fall to be determined under Policy W10 in the WLP, or if it were outside the W10 allocation boundary and within the wider AL 14 boundary, it would fall to be determined under Policy W1 of the WLP, under the need for waste management on unallocated sites.

4.4.19 In the case of the Appeal proposals, it falls to be determined under Policy W10.

## 4.5 Summary

4.5.1 The proposals on the strategic allocation sites are only deemed policy compliant if there is accordance with other policies in the WLP, as well as the development principles, by virtue of Part c of the policy. This is reinforced by paragraph 6.1.3 of the WLP **[CD 093, page 38]** which requires the wider, generic policies of the Plan to be taken into account when considering the merits of specific development proposals.

4.5.2 The Council is defending Reason for Refusal 2:

*The development would have an unacceptable impact on landscape and the visual amenity of the area, contrary to policies W12 and W13 of the West Sussex Waste Local Plan 2014*

4.5.3 By virtue of that reason alone, the Appeal proposal would fail to comply with Policy W10.

4.5.4 The perceived effect of the Appeal proposals falling within Policy W10 allocation is not nearly as significant as the Appellant argues and certainly does not ‘trump all’. The meaning of the Policy needs to be taken into account and that includes compliance with the Development Plan as a whole.

4.5.5 In my view there are no material considerations that outweigh the fact that the Appeal proposals are not in accordance with the Development Plan.

4.5.6 At this point, the following points can be noted:

- The appeal site is allocated in Policy W10 of the WLP to meet identified shortfalls in transfer, recycling and recovery capacity. This affords an 'in-principle' acceptability only. The onus is on the Appellant to demonstrate compliance with the Policy in its entirety, which it has not done.
- The appeal site falls with a mixed-use allocation, AL 14, in the SSAL. The effect of this allocation, when considering the Appeal proposals, is limited by virtue of a requirement that consideration is given to waste management uses, a much lesser requirement than the other land uses cited.

4.5.7 In any event a waste management use would fall to be determined under Policy W10, and so the circular argument continues.

## 5 NEED FOR THE APPEAL PROPOSALS

### 5.1 Introduction and Plan Provision

5.1.1 Policy W10 of the WLP identifies 5 sites, including Brookhurst Wood, to meet the identified shortfalls in transfer, recycling and recovery capacity [CD 093, page 60].

5.1.2 In order to ensure that there is adequate provision for the management of waste across the plan period (i.e. to 2031) the Council has forecast the waste arisings using a range of growth rate assumptions as set out in Table 1 of the WLP [CD 093, paragraph 2.6.3, page 12].

**Table 1: Range of Forecasted Growth Rates (weight % per year)**

Waste Streams	Lower	Base Case	Higher
Municipal Solid Waste	-0.5%	0%	+0.5%
Commercial Waste	-1.0%	0.0%	1.0%
Industrial Waste	-2.0%	-1.0%	-1.0%
Construction, Demolition and Excavation Waste	0.0%	0.0%	0.5%

5.1.3 The forecasted growth rates apply lower, base case and higher rates to project forecasted arisings to 2031, using 2010/11 baseline figures.

5.1.4 Paragraph 2.6.6 confirms the WLP is flexible enough to allow for both the higher and lower growth rates to be achieved [CD 093, page 12]. Paragraph 2.6.7 confirms that the Council is committed to monitoring future arisings [CD 093, page 13].

5.1.5 In order to assess future waste management capacity requirements a number of scenarios were developed to allow a detailed consideration of the impact of recycling and treatment on waste arisings.

5.1.6 The implications for the Local Plan, in terms of built waste management requirements, are set out in Table 3 of the WLP [CD 093, paragraph 2.11.1, page 19].

**Table 3: Built Waste Management Requirements to 2031 and Implications for the Local Plan**

Types of Waste Management	Capacity required for base case waste growth <sup>(a)</sup>		Additional capacity required for higher waste growth		Total additional capacity required to 2031	
	mtpa	Area (ha)	mtpa	Area (ha)	mtpa	Area (ha)
Transfer	0.00	0.0	0.14	0.9	0.14	0.9
Recycling – MSW, C&I	0.17	6.0	0.10	3.0	0.27	9.0
Recycling – CDEW	0.00	0.0	0.00	0.0	0.00	0.0
Recovery – C&I	0.07	3.0	0.02	1.0	0.09	4.0
<b>Subtotal <sup>(b)</sup></b>	<b>0.24</b>	<b>9.0</b>	<b>0.26</b>	<b>4.9</b>	<b>0.50</b>	<b>13.9</b>
Additional recovery <sup>(c)</sup>	0.16	5.0	0.02	1.0	0.18	6.0
<b>Total <sup>(d)</sup></b>	<b>0.40</b>	<b>14.0</b>	<b>0.28</b>	<b>5.9</b>	<b>0.68</b>	<b>19.9</b>

<sup>(a)</sup> Scenario assumes no increase in recycling and excludes any 'headroom' available at the Ford MRF and Brookhurst Wood MBT facilities.

<sup>(b)</sup> There is still a theoretical need for additional non-inert landfill capacity to achieve net self-sufficiency.

<sup>(c)</sup> To achieve aspiration of 'zero waste to landfill' by 2031.

<sup>(d)</sup> To achieve net self-sufficiency and zero waste to landfill by 2031

5.1.7 Based on the information in Table 3, there is a need to plan for a total built waste management capacity of 0.68 mtpa to 2031, allowing for a degree of contingency, to enable the overarching objectives of net self-sufficiency and zero waste to landfill to be achieved. This excludes the headroom available at Ford MRF and Brookhurst Wood MBT facilities.

## 5.2 The Appellant's Case

- 5.2.1 The Appellant seeks to challenge the reasons for refusal on, *inter alia*, the ground that there is no requirement to prove need for the facility, the reason cited is that this is clearly established through the allocation of the Appeal Site in the up-to-date WLP [**paragraph 4.1 (1) Statement of Case, page 8**].
- 5.2.2 The Appellant's view is that there is no requirement to demonstrate need as the Appeal Site has been allocated as a Strategic Waste Site under WLP Policy 10. In fact, the Appeal site forms only part of the allocation. The Appeal proposals are for a type of recycling and recovery that is acceptable in principle and that the Appeal proposals are consistent with an up to date local plan.

## 5.3 The Council's Position on Need

- 5.3.1 The Council's position is set out in Section 9.2 of the Committee Report, final sentence:
- 5.3.2 Accordingly, the principle of the use of the site for waste management purpose has been established and there is no requirement for the applicant to demonstrate a quantitative or market need for their proposal.

## 5.4 Material Considerations

- 5.4.1 I comment on 'need' in the context of a number of matters I can consider to be material in the planning balance.
- 5.4.2 National Planning Policy for Waste states [**CD 087, paragraph 7, bullet 1**]:

*When determining waste planning applications, waste planning authorities should only expect applicants to demonstrate the quantitative or market need for new or enhanced waste*

---

*management facilities where proposals are not consistent with an up-to-date Local Plan. In such cases, waste planning authorities should consider the extent to which the capacity of existing operational facilities would satisfy that identified need.*

5.4.3 This is echoed in the PPG [CD 088, paragraph: 046 Reference ID: 28-046-2014106]. The second sentence of paragraph 046 makes it clear that, in relation to waste disposal facilities, if a proposal is consistent with an up to date Local Plan, there is no need to demonstrate 'need'.

5.4.4 The Council 'reviewed' the WLP in 2019 and confirmed that it is up-to-date.

5.4.5 Report of a 'review' of the WLP is set out in paragraphs 2.3.3 and 2.3.4 of the West Sussex Minerals and Waste Development Scheme 2019-2022 (page 3) [CD 127]:

*2.3.3 In accordance with Regulation 10A of the Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2017, the WLP required to be reviewed by April 2019 (that is, five years from adoption).*

*2.3.4 Accordingly, a review was undertaken in early 2019 to examine whether the Plan remains relevant and effective. The outcomes of the review have shown that the WLP is considered to be relevant and effective; therefore, a formal review of the Plan will not be undertaken. A further review, in line with the regulations will be undertaken in five years, or earlier if monitoring of the plan, or significant changes to national policy, trigger a review in advance of the five-year period.*

5.4.6 An extract from Appendix A, in relation to the WLP, states:

*Status: Adopted in April 2014.*

*Reviewed in early 2019, and considered to be relevant and effective. Part of the statutory 'development plan'.*

*Conformity/Consistency: Consistent with National Planning Policy Framework and other national policy and guidance.*

*Timetable Not applicable*

*Monitoring and Review Monitoring: The Annual Monitoring Report will assess the impact the policies are having on national and local targets; whether the adopted policies need adjusting or replacing; and, if policies need to be amended, suggested actions for achieving this.*

*Date of Review: A review has taken place in early 2019 to examine whether the Plan remains relevant and effective. It was determined that a formal review of the Plan is not required.*

*Arrangements for Review Organisational Lead: Team Manager (Planning Policy and Infrastructure).*

*Management Arrangements: Consultation with Head of Planning Services and Director of Highways, Transport and Planning.*

*Discussions with Minerals and Waste Lead and Director of Planning at the South Downs National Park Authority.*

*Political Management: Discussion with Cabinet Member. The South Downs National Park Authority has separate governance arrangements.*

*Internal Resources: Principal Planner x 1 (together with officer support from the SDNPA).*

*External Resources: Not applicable.*

*Stakeholders/Community Involvement: Not applicable*

- 5.4.7 NI4H has sought to establish if there is any formal ‘paperwork’ associated with the ‘review’. There does not appear to be. There has been no stakeholder or community involvement, as evidenced above.
- 5.4.8 I raise the matter of the ‘review’ process as it is highly relevant to the consideration of ‘need’.
- 5.4.9 The text in the MWDS states that a ‘review’ was undertaken, the outcomes of the ‘review’ have shown the Plan is relevant and effective and therefore a ‘formal review’ will not be undertaken.
- 5.4.10 There is no definition of ‘review’ in The Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2017, other than reference in Section 10a to the fact that a local planning authority must conduct a review every five years.
- 5.4.11 Since the WLP was adopted there have been reviews of residual infrastructure and the publication of Our Waste: Our Resources: A Strategy for England (‘the Waste Strategy’) on 18th December 2018 has important implications **[CD 166]**, which I would have expected to be reflected in the Council’s review of the WLP.
- 5.4.12 The ‘Waste Strategy’ is a material consideration in the determination of this Appeal. It provides a policy framework for decision making and action, and aims to act as a guide to future government policy. It states **[CD 166, paragraph 2, page 16]**:

*This Strategy is for the long term. It is our policy framework for decision making and action and establishes what we all need to do to achieve our goals. We will go further in areas where we are already doing well, including the move to a low carbon economy. The Strategy does not answer all the questions for implementation or cover historic waste policy. Instead, it aims to be a guide to future government policy, our commitment to safeguard the planet’s precious natural resources and environment. It encourages and invites you to play your part.*

5.4.13 The Strategy addresses key waste streams. It also addresses improvements in recycling rates and greater efficiency of Energy from Waste Plants. I address the latter under my section on R1 and recovery.

5.4.14 The Waste Strategy represents a sea change in waste policy and I would have expected that sufficient to trigger a formal review of the WLP.

## 5.5 Monitoring

5.5.1 Notwithstanding my viewpoint on the Council's review, the implementation of the WLP has been monitored and reported in Annual Monitoring Reports. Monitoring Reports are available for 5 years, from April 2013 **[CD 094-CD 097]**.

5.5.2 The most recent, available Report is Monitoring Report 2017/18 **[CD 097]**. Chapter 2 of the Report addresses the Local Plan progress and Chapter 5 addresses waste.

5.5.3 At paragraph 2.2.2 of the Report **[CD 097, page 9]**, it is confirmed that the WLP will be reviewed in early 2019.

5.5.4 Chapter 5 of the Report addresses waste arisings and capacity in the County **[CD 097, page 24]**. Table 10 in the Report sets out the estimated annual capacity of active and planned (permitted) waste management facilities in the County in 2017/18, using judgements and a variety of data sources **[CD 097, page 31]**.

5.5.5 For waste transfer, there was an increase in capacity of 49,294 tonnes per annum (over the previous year). For recycling and composting there was an increase in capacity of 82,225 tonnes per annum (over the previous year). For treatment and recovery there was an increase in capacity of 90,551 tonnes per annum (over the previous year). The trend from the assumed WLP baseline is upwards.

- 5.5.6 The Report confirms there is still a need to meet the shortfall set out in Policy W1 for recycling and composting, non-inert recovery and inert recovery i.e. in respect of non-allocated sites.
- 5.5.7 This should not be taken as a meaning there is a wider capacity shortfall that can somehow be applied to the Appeal proposals.

## **5.6 Need and Relevant Consideration**

- 5.6.1 I agree that there is no requirement to demonstrate need where the Appeal proposal is consistent with an up to date local plan. I do question the extent to which the plan has been reviewed, particularly in the context of updated national waste policy direction and the impact that would have on built waste management capacity requirement.
- 5.6.2 Need should be taken into account where weight is to be attached to it in the overall planning balance. The site was originally allocated to meet a shortfall in capacity.
- 5.6.3 It is implicit in Policy W10 that need is not overriding. The policy allows for a range of waste management facilities. The 'need' for a particular type of facility is not evidenced in policy. The need is to address transfer, recycling and recovery in its widest sense. In my view the weight afforded to the need for an EfW plant is diminished in the planning balance
- 5.6.4 The fact that there is no requirement to demonstrate need does not confer on the Appeal proposal an implicit acceptance in planning terms.
- .

## 6 THE WASTE HIERARCHY, INCLUDING WHETHER THE PROPOSAL CAN BE CATEGORISED AS RECOVERY

### 6.1 Introduction

- 6.1.1 The Appellant and the Council assume that the Appeal proposal falls for consideration under Policy W10. However, this is only the case if the proposed energy from waste plan achieved R1, recovery status. Otherwise, that part of the proposal would be deemed disposal for the purpose of the waste hierarchy.
- 6.1.2 This is an important consideration.
- 6.1.3 The Council, in the Committee Report, does not question the matter of R1 status and how that may or may not impact on the waste hierarchy or policies in the Plan.
- 6.1.4 To be classed as ‘recovery’, there is a necessity to prove that the EfW facility is R1 compliant. The Appellant has failed to demonstrate that.

### 6.2 The Waste Hierarchy – Recovery

#### National Policy Derivation

- 6.2.1 The National Planning Policy for Waste (NPPW) **[CD 087]** sets out detailed waste planning policies and is to be read in conjunction with the National Planning Policy Framework (NPPF) **[CD 086]**, the Waste Management Plan for England (WMP) **[CD 082]** and National Policy Statements for Waste Water and Hazardous Waste. All local planning authorities are required to have regard to its policies when discharging their waste management responsibilities, be it through identifying need for facilities, identifying suitable sites and areas and determining planning applications.

6.2.2 Its ambitions are derived from the WMP [CD 082], in particular, the delivery of sustainable development and driving waste management up the waste hierarchy.

6.2.3 The waste hierarchy is described in the WMP [CD 097, page 11]. The hierarchy has five stages; prevention (at the top), preparing for re-use, recycling, other recovery and disposal (at the bottom). Other recovery includes anaerobic digestion, incineration with energy recovery, gasification and pyrolysis which produce energy (fuels, heat and power) and materials from waste; some backfilling operations.

6.2.4 The waste hierarchy is appended to the NPPW [CD 087, Appendix A, page 8] and is expressed in the same nomenclature and priority as the WMP. ‘Other Recovery’ is defined as;

*Waste can serve a useful purpose by replacing other materials that would otherwise have been used – other recovery*

6.2.5 The full definition of each level of the waste hierarchy is set out in Article 3 of the revised Waste Framework Directive (2008/98/EC) [CD 073]. Article 3 makes the following definitions:

- *‘recovery’ means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Annex II sets out a non-exhaustive list of recovery operations; (Article 3 (15))*
- *‘disposal’ means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy. Annex I sets out a non-exhaustive list of disposal operations (Article 3 (19)).*

6.2.6 Despite the lists referred to above, the classification of recovery or disposal is uncertain when considering waste incineration. An MSW incinerator could be classified as either R1 or D10. Over time, and as waste policy has evolved, it has become more important to draw a distinction between R1 and D10 operations.

---

6.2.7 To be classed as an R1 operation the process must meet the following criteria:

- *The combustion of waste must generate more energy than the consumption of energy by the process itself;*
- *The greater part of the waste must be consumed during the operation;*
- *The greater amount of the energy generated must be recovered and used (either as heat or electricity);*
- *The waste must replace the use of a source of primary energy.*

6.2.8 This resulted in the derivation of the R1 Energy Efficiency Formula which requires installations permitted after 31st December 2008 to achieve an energy efficiency of 0.65.

6.2.9 Energy from waste A Guide to the debate, February 2014, published by Defra and DECC, further assists in determining whether a process is considered recovery or disposal (paragraphs 47-54). Where waste is burnt as a fuel to generate energy it can potentially be considered a recovery operation (R1). Paragraph 49 makes it clear that:

*all municipal waste incinerators were and are deemed as disposal activities (D10) unless and until they are shown to meet the requirements of R1.*

6.2.10 Furthermore, paragraph 50 states:

*A municipal waste incinerator can only be considered to be a recovery operation under R1 if it generates energy and the plant meets the efficiency thresholds calculated using the R1 formula.*

6.2.11 While R1 is not mandatory for energy from waste plants, and will not be part of an environmental permit (paragraph 53), the distinction between recovery and disposal is important for planning purposes and in the application of the waste hierarchy.

6.2.12 The Appellant has not provided evidence to demonstrate that the energy from waste element of the proposals will be able to meet the energy efficiency level required by the R1 formula and can therefore be classed as a recovery operation, which unlike disposal, does not sit at the bottom of the waste hierarchy.

6.2.13 Without that clarity, it is not possible to conclude, with any certainty, that the energy from waste element can be classed as a recovery operation.

### **Our Waste: Our Resources**

6.2.14 Our Waste, our Resources: A Strategy for England [CD 166] is driving greater efficiency in energy from waste plants, by encouraging use of the heat from the plants. The Waste Strategy states [CD 166, paragraph 3.2.1, page 77]:

*England has around 40 EfW plants. Eight operate in Combined Heat and Power (CHP) mode, delivering greater efficiency than solely generating electricity. We want to help the companies that run EfW plants to use the heat produced to improve their efficiency, and to help industry make the right decisions over infrastructure delivery.*

*Work is underway across Government to make the remaining plants more efficient, by assessing and removing barriers to making use of heat produced when incinerating waste. The Department for Business, energy and Industrial Strategy (BEIS) has a Heat Networks Investment Project with a £320m capital fund, and we are working to ensure that this project helps to utilise EfW plants as a source of heat for district heat networks where possible. As part of the review of the Waste Management Plan for England in 2019, Defra will work with the Ministry of Housing, Communities and Local Government (MHCLG) to ensure that the Waste Management Plan for England and the National Planning Policy for Waste and its supporting planning practice guidance reflects the policies set out in this Strategy. This will consider how to ensure, where appropriate, future plants are situated near potential heat customers.*

*In addition, we will work closely with industry to secure a substantial increase in the number of EfW plants that are formally recognised as achieving recovery status, and will ensure that all future EfW plants achieve recovery status.*

6.2.15 The two key issues for the Appeal proposals are heat offtake and the link to recovery status.

6.2.16 As to R1 status, the Waste Strategy states that “we will ensure that all future EfW plant achieve recovery status”.

6.2.17 In light of the clear direction from the Waste Strategy, I make the following comment. The importance of the Appellant providing clear evidence that recovery status can be achieved is paramount to the Appeal proposals falling under Policy W10.

### **Case Law**

6.2.18 There are recent cases where Inspectors have imposed R1 Conditions.

6.2.19 The approach taken to this matter in favourably determining an appeal against refusal of planning permission is well documented in the Bilsthorpe Appeal (APP/L3055/V/14/3001886) **[CD 167]**. This related to the development of Bilsthorpe Energy Centre at Bilsthorpe Business Park, off Eakring Road, Bilsthorpe.

6.2.20 In that case, the Appellant, worked with Environment Agency to secure an R1 Design Stage Certificate. The Appellant argued that:

*To deny the Energy Centre proposal, with an R1 Design Stage Certificate, recovery status, is to effectively deny any Energy from Waste proposal recovery status at the planning application stage.*

6.2.21 Specialist evidence was presented to the Inquiry on R1 Recovery Status. As a consequence, the Applicant proposed, and the waste planning authority accepted, that a planning condition could be imposed.

6.2.22 The Inspector, in the Bilsthorpe case at **[CD167, paragraph 14.16]**, states that:

*In the current case, it is also considered that, were permission to be granted, an appropriately worded planning condition could ensure that the plant could not operate other than as an R1 facility when assessed over a year. I note in this regard, that in relation to an appeal for the Javelin Park facility, the Inspector rejected a similar condition on the basis that it would duplicate the monitoring and reporting requirements set out by the EA in preliminarily certifying the proposed EfW facility as an R1 recovery operation. I in that case, however, an Environmental Permit had already been issued, which addressed those matters that would determine the R1 calculation. That is not the case here. On that basis, I consider the draft condition to be relevant.*

6.2.23 Neither the Bilsthorpe, nor the Javelin Park cases are directly comparable to this Appeal given that R1 had already been certified. However, the principle of an R1 condition is relevant.

6.2.24 The Inspector concludes on the matter at paragraph 14.20:

*To conclude on this issue, I have no good reason to suppose, based on the evidence before the Inquiry, that the proposed facility would not be other than R1 compliant in all reasonable operating conditions, notwithstanding the experimental nature of the technology. I am satisfied, therefore, contrary to the views UKWIN and others that it is appropriate to consider the scheme as a recovery facility, as opposed to a waste disposal operation. I find no conflict therefore, with the waste hierarchy, which places energy recovery above disposal, and the ambitions of the WCS in this regard.*

6.2.25 The Secretary of State considered the Inspector's Report and on the matter of waste disposal or recovery agreed that it was appropriate to consider the facility as recovery. In coming to that conclusion, the Secretary of State has taken into consideration that the EA, as competent authority for determining whether such a facility meets R1 status had issued formal confirmation in that regard.

6.2.26 As a consequence of all of these factors, a planning condition (condition 16) was imposed relating to the recovery status of the plant:

*Prior to the development hereby permitted being brought into use, the operator shall submit to the waste planning authority for approval in writing, verification that the facility has achieved Stage R1 Status through Design Stage Certification from the Environment Agency. The facility shall thereafter be configured in accordance with these approved details. Once operational, alterations to the processing plant may be undertaken to satisfy Best Available Technique or continued compliance with R1.*

6.2.27 More recently, the Inspector considered R1 status in his appeal decision in connection with the proposed renewable energy centre on land at Thornhill Road, Keypoint Industrial Estate, Swindon (APP/U3935/W/18/3197964) **[CD 118]**.

6.2.28 The Inspector confirms, at paragraph 101, that a footnote to Annex II of the revised EU Waste Framework Directive (2008/98/EC) confirms that recovery includes incineration facilities dedicated to the processing of waste where energy efficiency would be 0.65 or above, calculated using the R1 formula. Without this the proposal would be classed as disposal. This would sit alongside landfill.

6.2.29 The Inspector states at paragraph 102 **[CD 118]**, *'in the circumstances of this appeal a REC that generates electricity and provides heat to an extent that R1 status is achieved would be classified as recovery'*. He considered that necessary to comply with policy.

6.2.30 The same would be true of Appeal proposals, in so far as the applicability of Policy W10 is concerned i.e. that the Policy, *inter alia*, addresses a shortfall in recovery capacity.

6.2.31 Paragraphs 102 and 103 of the Inspector's Report [CD 118] are set out below and show his consideration of the waste hierarchy, relevant to the above point:

*102. Policy WCS5 says that in the interests of sustainable waste management, the Councils will seek to drive waste up the waste hierarchy by ensuring that developers demonstrate that the most sustainable option for waste management has been promoted. In the circumstances of this appeal a REC that generates electricity and provides heat to an extent that R1 status is achieved would be classified as recovery. I consider that the proposal needs to at least achieve this in order to meet the requirements of Policy WCS5.*

*103. The EA is the competent authority for determining whether a plant meets the definition of R1 Recovery. R1 is assessed at three stages: plant design; Appeal Decision APP/U3935/W/18/3197964 It is not necessary for a developer to obtain R1 status before applying for planning permission. However, the EA has assessed the R1 energy efficiency factor of EfW gasification proposals at the plant design stage before and found some of them to meet the criteria. I was referred to such a plant at Bilsthorpe in Nottinghamshire (CD 17.1)10.*

6.2.32 The Inspector, at paragraph 106, confirmed that a condition would ensure the Appellant sourced appropriate technology and feedstock to convince the EA that the proposal could achieve R1 status.

6.2.33 Given that the R1 status was still to be proven, he gave it no weight in the planning balance. The same would apply to the Appeal proposals. The Appellant has not provided any information or assurance that assists in concluding on R1 status.

6.2.34 He imposed an R1 condition, as follows:

### *R1 Categorisation*

*12. Prior to the commencement of the development of the Renewable Energy Centre development hereby permitted, the operator shall submit to the Local Planning Authority for approval in writing, verification that the facility has achieved Stage R1 Status through Design Stage Certification from the Environment Agency.*

*The facility shall thereafter be configured and operated in accordance with these approved details.*

### **Conclusions**

- 6.2.35 The R1 issue sits at the heart of the Appeal proposals in land use planning terms. The ability to achieve R1 status is the most appropriate means of ensuring the energy from waste part of the proposal is recovery and appropriately considered under Policy W10
- 6.2.36 Inability to achieve R1 status places the energy from waste component at the bottom of the waste hierarchy and outside the confines of Policy W10.
- 6.2.37 No evidence has been presented by the Appellant to provide necessary reassurance that R1 status can be achieved.
- 6.2.38 There is case law on the matter and there was no doubt in the Inspector's or Secretary of State's mind that a planning condition, as set out above, would meet the necessary tests.
- 6.2.39 In the Bilsthorpe case cited above the condition was imposed with the benefit of R1 status already having been confirmed. This was not the case with the Swindon proposal and an R1 categorisation condition was imposed.

6.2.40 The means of addressing R1 status is for such a condition to be imposed should the Appeal be upheld.

## 7 PUBLIC PERCEPTION OF HARM

### 7.1 Introduction

7.1.1 It is clear from review of the representations received in respect of the proposed development that public perception of harm is a real concern for the local community.

7.1.2 Reason for Refusal 5 set out in the Decision Notice states **[CD 072]**:

*The development would have an unacceptable impact on public health contrary to Policy W19 of the West Sussex Waste Local Plan 2014.*

7.1.3 Policy W19 relates to public health and amenity and part a of the policy is relevant **[CD 093, paragraph 8.10.1, page 84]**. Planning permission for waste development will be permitted provided that:

*Lighting, noise, dust, odours and other emissions, including those arising from traffic, are controlled to an extent that there will not be an unacceptable impact on public health and amenity.*

7.1.4 I address the requirements of policy in the context of the extent to which public perception of harm is a material consideration in the determination of this Appeal.

7.1.5 There is a real and tangible public perception of harm to human health in the community. These concerns are neither irrational nor unfounded.

7.1.6 An analysis of the representation is attached at Appendix D. Public perception of harm is real and tangible in the community. NI4H has engaged with the local community and has gained insight into the feelings the Appeal proposals have engendered. The Group is aware that the Inspector has all of the representations before him and will afford them appropriate weight.

7.1.7 NI4H has undertaken an analysis which is appended to my Proof that assists in showing the strength of feeling in the community.

## 7.2 Materiality

7.2.1 In considering the issue of perceived harm, *Newport BC v Secretary of State for Wales [1998] Env. L.R. 174* the Court of Appeal is relevant to the determination of the Appeal in its consideration of harm. An extract from the Planning Encyclopaedia at P 70.39 explains that:

*“Public concern, as opposed to actual evidence of threats to public safety, can be a material consideration with respect to planning decisions. In Newport BC v Secretary of State for Wales [1998] Env. L.R. 174 the Court of Appeal allowed the local planning authority’s appeal against a decision on the part of the Secretary of State awarding costs against it following an appeal on the basis that the authority had acted unreasonably in taking into account the public perception of danger emanating from a chemical waste treatment plant which was unsupported by evidence. The court held that it was a material error of law to conclude that a genuinely held public perception of danger which was unfounded could never amount to a valid ground for refusal.”*

*“That decision was applied in Trevett v Secretary of State for Transport, Local Government and the Regions [2002] EWHC 2696 (Admin), a challenge to a decision made on appeal under s.78 of the 1990 Act to grant planning permission for three telecommunications masts at three sites near Stroud in Gloucestershire. The claimant lived close to one of the masts and was concerned about the potential health effects of the development on children attending the local primary school and her own children when they visited her from America. The court (Sullivan J, as he then was) dismissed the appeal on the basis that the inspector had been entitled to place the weight that he did on the professional views of national and international organisations to the effect that TETRA stations (as were in issue in this case) did not pose a greater risk to health than mobile phone stations. In reaching this conclusion, however, he had properly followed the Newport approach and had recognised that the perceived adverse effects on health of the public could justify a refusal of planning permission.”*

7.2.2 I attach the full extract from the Encyclopaedia of Planning Law, at **Appendix E**.

7.2.3 It is clear that public concern can be a material consideration.

- 7.2.4 Public concern arises from existing communities living in the vicinity of the Appeal Site. Public concern can manifest itself in a number of different ways.
- 7.2.5 There is a genuine feeling in the community that there is a risk to human health. This concern would be increased by the visibility of the plant, the stack and the plume that have the potential to exacerbate those fears.
- 7.2.6 The WLP, at paragraph 8.10.2 **[CD 093, page 84]**, states that health can be a material consideration in making planning decisions, but planning permission should not be refused unless there are sound scientific reasons. This goes directly against the above referenced judgement, where the Court of Appeal held that it was a material error of law to conclude that a genuinely held public perception of danger which was unfounded could never amount to a valid ground for refusal.
- 7.2.7 It is helpful to refer to the Inspector's commentary in his decision on the Swindon Appeal **[CD 118]**. The Inspector reported the Health Protection Agency's position on potential health effects of well run and regulated incinerators (paragraphs 91 and 92), with the updated 2012 press release stating:

*"It is important to stress that our current position on the potential health effects of well run and regulated modern Municipal Waste Incinerators remains valid. This is that 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. This view is based on detailed assessments of the effects of air pollutants on health and on the fact that modern incinerators make only a very small contribution to local concentrations of air pollutants."*

- 7.2.8 The Inspector acknowledges the HPA position. Nevertheless, in the circumstances of the Swindon Appeal he did not consider the fears within the local community as either irrational or unfounded. In the Swindon case, and equally applied to the Appeal proposals, *whatever the*

*level of risk is perceived to be, it is an involuntary risk one for which no mitigation or avoidance measures short of moving away from the area are available to the individual.*

7.2.9 In paragraph 94, he acknowledges that breaches of emissions limits are very rare but have been known to occur along with other instances in Swindon where fire broke out at a permitted facility. He states:

*It is for these reasons that I consider the concern arising from a perception of harm to be rational even though there is no objective evidence that actual harm would occur. The weight that should be attributed to this perception of harm in a planning context, however, is influenced by the extent to which there would be a land use consequence. I refer to this later (paras. 163-174).*

7.2.10 The Committee Report for the Appeal Proposals describes the planning permission for a large development to the east of Langhurstwood Road (granted in outline by Horsham District Council in March 2018). This is a mixed-use development with up to 2,750 dwellings and a range of other facilities, including an all-through school and a primary school that would attract people to the locality **[CD 157]**.

7.2.11 There are parallels to the Swindon case, where strategic allocations existed for mixed use, incorporating residential. These allocations were much needed and were deemed by the Council to be attractive to new residents and would assist in addressing the poor image of the town.

7.2.12 At paragraph 162 of the Appeal decision, the Inspector accepts that the Council's fears on the ability to deliver the allocations are genuine and a material consideration. The same would be true of the North of Horsham Development, in this case.

7.2.13 While the Inspector reported other cases where there was no evidence of house prices or demand being compromised, he considered, at paragraph 172, there to be some merit to the Council's case. He stated:

*Despite the evidence or lack thereof, to demonstrate that there would be a definite knock-on effect on the NEV development, if the appeal scheme is built, I nevertheless consider there to be some merit to the Council's case. A number of existing residents are clearly concerned, however rational that may be and their perception is likely to be repeated among some potential new occupants of properties within the NEV. This could clearly be dissipated, in part, if an educational exercise was undertaken, in the wider area, setting out the correct facts and alerting the public to the additional measures that the Appellant proposes to undertake at this site to reduce further the emissions of concern. The decision to establish a PLC should also help in disseminating accurate information. Nevertheless, such an exercise would be unlikely to convince everyone and there could therefore be land use implications.*

7.2.14 The Inspector did not conclude that impact on the allocation or public perception of harm were so great as to warrant dismissal of the appeal, but he does add significant weight to the body of cases that consider perception of harm to be material in the judgement. I agree.

### **7.3 Summary**

7.3.1 NI4H is of the view that residents' amenity concerns can be resolved by the imposition of appropriate planning conditions. Therefore, that part of Policy W19 is not contended.

7.3.2 In the case of the Appeal proposals public perception of harm is both real and tangible, evidenced through the body of correspondence and additional analysis.

7.3.3 The degree to which the impact on public health is deemed to be unacceptable in terms of Policy 19 is a matter of judgement.

7.3.4 There is no judgement involved in concluding that perception of ham is a material consideration in the determination of this Appeal.

7.3.5 For those reasons, the facility fails to comply with that part of Policy W19 in the WLP that relates to public health given that extends, in my view, to public perception of health impacts.

## 8 LANDSCAPE AND VISUAL IMPACT

### 8.1 Introduction

8.1.1 Reason for refusal two relates to landscape and visual impact and states **[CD 072]**:

*The development would have an unacceptable impact on landscape and the visual amenity of the area, contrary to policies W12 and W13 of the West Sussex Waste Local Plan 2014.*

8.1.2 The Council is defending this reason for refusal through an expert planning witness.

8.1.3 The now 'draft' SoCG between the Council and the Appellant states that there is no conflict with Policy 13, Protected Landscapes **[CD 165]**.

8.1.4 This is at direct odds with the Council's Statement of Case, which at paragraph 6.3 states:

*6.3 The County Council will demonstrate that:*

*(i) The development would result in an unacceptable impact upon the landscape character, distinctiveness, and sense of place of the locality, including the High Weald and Surrey Hills Areas of Outstanding Natural Beauty;*

*(ii) The development would not be of high quality, particularly in terms of scale, and would not integrate with adjoining land uses or the local context.*

8.1.5 Notwithstanding the above, policies W12 and W13 are referenced in the reason for refusal.

8.1.6 Policy W12 is entitled High Quality Developments and states that planning permission will be permitted for waste development provided that they are of high quality and, where appropriate, the scale, form, and design (including landscaping) take into account the need to take into account a number of factors (a)- (e) in the Policy. This includes the need to integrate land uses, have regard to the local context, include measures to maximise water efficiency,

---

measures to minimise greenhouse gas emissions and measure to ensure resilience to and enable adaptation to a changing climate. I address the latter parts of the Policy in Section 9.

8.1.7 Policy W13 relates to protection of the South Downs National Park and the Chichester Harbour and High Weald Areas of Outstanding Natural Beauty. Part (b) of the Policy states that proposals outside of the protected landscapes will be permitted provided they do not undermine the objectives of the designation.

## 8.2 NI4H Case

8.2.1 NI4H set out its position in the Statement of Case and the intention to support the case of WSCC.

8.2.2 Paragraph 24 of the Statement of Case **[CD 128]** confirms that NI4H does not intend to call its own expert landscape witness, but instead offer local insight, bearing in mind it would be the local community who would live with the facility.

8.2.3 The Statement of Case sets out a number of points:

- Certain vantage points, not included in BRC's Landscape and Visual Impact Assessment, should be taken into consideration when determining the extent to which the Appeal Proposal gives rise to negative impacts.
- The photomontages included in BRC's Landscape and Visual Impact assessment should include photomontages showing the effect of the plume in different wind and weather conditions, supporting the WSCC Landscape Adviser's request for the plume to be assessed as a visible feature.
- NI4H intends to challenge the qualitative judgments made by the Appellant's Landscape expert.
- There are a number of issues surrounding the public consultation referred to in the Appellant's Environmental Statement. First, at the Wealden Works Community Liaison Group

meeting held on 15th January 2018, concern was expressed about both the dates and venue of the consultation – the Appellant said it would look into making adjustments to both but did not. Second, many of those in attendance were unaware they had an opportunity to suggest further views – they understood it to be an exhibition rather than consultation.

8.2.4 The various viewpoint referred to in the Statement of Case were supplied to the Appellant in a series of e-mails to enable photographic evidence to be obtained.

8.2.5 The Appellant's landscape adviser confirmed in an e-mail to the Council, dated 12th September 2019 that:

*With regard to the viewpoints requested by NI4H, I reserve my position on whether to use the photographs within my proof – they have yet to be stitched and templated at the correct size. I can confirm that they have been taken using a camera and tripod of the correct specification, located using GPS and will be produced to Landscape Institute guidance, as all of the photography on the project has been.*

8.2.6 NI4H has attempted to agree the points raised in its SoC. As stated above, additional viewpoint photographs have been taken and NI4H is content for the respective landscape advisers to present evidence on the visual impact matters.

8.2.7 NI4H will request, in due course, that the Inspector visits certain viewpoints during the course of his site visit (s).

8.2.8 As I write my evidence, I do not know if the Council is preparing its case on all or part of the reason for refusal.

8.2.9 Given that the 'agreed' Statement of Common Ground between the Council and the Appellant has been retracted, the position remains unclear, particularly with reference to the applicability of Policy W13. However, if that is not the case, I reserve the right to provide rebuttal evidence on that policy point.

---

## 9 GREENHOUSE GAS EMISSIONS

### 9.1 Introduction

9.1.1 NI4H sets out its position on greenhouse gas emissions in its Statement of Case.

*The proposed energy from waste plant (EfW) would emit significant quantities of fossil-based CO<sub>2</sub>, be high carbon (rather than falling into the definition of ‘low carbon’ in NPPF terms) and would result in the emission of more CO<sub>2</sub> per annum than sending the same waste composition to landfill.*

9.1.2 NI4H has commissioned Only Solutions LLP to prepare a report. Only Solutions is an environmental consultancy. Their report, Evaluation of the Climate Change Impacts of the Energy from Waste Plant Proposed for Wealden Brickworks, Horsham is appended to my Proof of Evidence at **Appendix A. Note, the references within the Report are attached as sub-annexes of A and referenced A1 etc.**

9.1.3 The Report uses Defra’s Energy from Waste Recovery for residual waste; a carbon-based modelling approach (February 2014) to reach its conclusions. The Report also highlights inconsistencies in the Appellant’s 2016 Carbon Assessment and shows errors in its methodology including, *inter alia*, its failure to take the carbon sequestration of landfill into account, an incorrect marginal emissions factor and conversion errors.

9.1.4 The negative climate change impact runs directly contrary to Policies 24 and 36 of the Horsham District Framework, Policy 12 (d) and (e) of the WLP, paragraph 1 of the National Planning Policy for Waste and the NPPF.

## 9.2 Only Solutions – Evaluation of Climate Change

- 9.2.1 Only Solutions LLP is an environmental consultancy whose clients include community-based groups, local authorities and national-level environmental, non-profit making organisations.
- 9.2.2 They have been commissioned by NI4H to assess the Appeal proposals, review the Appellant's carbon assessment (2016) and updates to calculations (2019).
- 9.2.3 For ease of understanding and cross referencing, the report adopts the same system boundary for calculating relative net greenhouse gas emissions as that adopted by the Appellant in terms of considering process emissions, transport emissions and avoided CO<sub>2</sub> emissions but no other elements outside of their boundary such as missed recycling opportunities.
- 9.2.4 The report addresses a number of deficiencies and inconsistencies observed in the Appellant's carbon assessment that impact upon the process emissions and/or the avoided CO<sub>2</sub> emissions, including:
- The Appellant's claimed waste feedstock composition being inconsistent with the Appellant's claimed level of energy export, which itself differs between the Appellant's two carbon assessments (21 MW) and the Appellant's Statement of Case (18 MW) (which impacts upon both the process emissions and the avoided CO<sub>2</sub> emissions);
  - The Appellant's claimed carbon savings from energy export being inconsistent with Government guidelines with respect to the correct counterfactual to use in these circumstances (which impacts upon the avoided CO<sub>2</sub> emissions figures); and
  - The Appellant's failure to adequately account for the relative net greenhouse gas (GHG) impacts of biogenic carbon sequestration<sup>1</sup> in landfill (which impacts upon the avoided CO<sub>2</sub> emissions on the landfill side of the equation).
-

9.2.5 The Appellant’s Statement of Case is taken as the most reliable basis for presentation of its evidence. It confirms **[paragraph 3.3]** that approximately 18MW of electricity would be available for export to the Grid. As a consequence, the Only Solutions’ assessment adopts a primary feedstock composition based on that 18MW figure. I note that the Appellant’s waste composition profile **[CD 032 Table 1 of the Appellant’s Carbon Assessment – to be found at Appendix D of the Planning Statement and Appendix 2.3 of the ES]** would result in a much reduced electrical output of 13.65 MW, and an even greater reduction than the professed 21 MW, as stated in paragraph 5.3.6 of the Carbon Assessment.

### 9.3 CO<sub>2</sub> Emissions from the Proposed Plant

9.3.1 Section 2 of the Report explains that the quantity of CO<sub>2</sub> released through the combustion of waste depends on the amount of carbon burned. This is known as the ‘feedstock’s carbon content.

9.3.2 Based on the ability to determine how much CO<sub>2</sub> one tonne of carbon produces it is possible to use Defra’s Carbon Based Approach to determine the CO<sub>2</sub> emissions from the 180,000 tonnes per annum plant.

9.3.3 The carbon associated with incinerating wood, paper, card, kitchen and garden waste can be classified as 'biogenic carbon', whereas carbon derived from incinerating petroleum and petroleum-derived products (including plastics), natural gas and coal is known as 'fossil carbon'.

9.3.4 For the purpose of the assessment, Only Solutions use two different feedstock profiles. These are set out in Annex C of the Report.

9.3.5 The primary feedstock profile has been formulated to reflect the Appellant’s anticipated 18MW electrical export. This is also described as a ‘Reduced Compostables’ profile as it halves the quantity of food, garden and soil waste (and proportionally increases other material) relative to

the default composition from Defra's Carbon Based Modelling Approach report, in order to align with the Appellant's claimed level of electricity generation.

- 9.3.6 Such a 'Reduced Compostables' variant of the default composition from Defra's Carbon Based Modelling Approach report also has the benefit of more closely reflecting current and anticipated increases in the separate collection of compostable waste, such as food waste, in line with the Government's December 2018 Resources and Waste Strategy.
- 9.3.7 The second feedstock profile, which is used for sensitivity analysis in this report, is the default composition from Defra's Carbon Based Modelling Approach report.
- 9.3.8 Based on BEIS' marginal emissions factor (MEF) for 2023, the earliest year that the proposed EfW plant is likely to be operational, one MWh of electricity from the Horsham incinerator would displace 0.233 tonnes of CO<sub>2</sub> that would be released from electricity generated by a mix of other means (see Table 7, BEIS Data Table 1 in the Report)
- 9.3.9 Under the Reduced Compostables feedstock profile, 0.8014 MWh of electricity is estimated to be exported to the grid (as set out in Column 4 of Table 13, in the Report), and this would displace 0.1867 tonnes of CO<sub>2</sub> ( $0.8014 \times 0.233 = 0.1867262$ ).
- 9.3.10 Similarly, using the Defra Default feedstock profile, the Horsham EfW facility is estimated to displace, i.e. export, 0.7028 MWh of electricity to the grid for each tonne of waste incinerated (as per Column 4 of Table 8, below). This means the Horsham EfW facility would displace 0.1637 tonnes of CO<sub>2</sub> per tonne of waste treated ( $0.7028 \times 0.233 = 0.1637524$ ).

## 9.4 Carbon Intensity of Energy Generated

- 9.4.1 The term 'carbon intensity' is used to describe the quantity of CO<sub>2</sub> released per unit of energy exported to the grid. The report focuses on fossil carbon intensity, i.e. the CO<sub>2</sub> released through the burning of fossil-based materials such as plastic.

- 9.4.2 To be consistent with the approach taken by the Appellant [**CD 032 e.g. as set out at Paragraph 3.6.3 of the Appellant's 2016 Carbon Assessment, included as Appendix 2.3 of the Appellant's Environmental Statement**], the report does not focus on the additional CO<sub>2</sub> released through the burning of biogenic materials, such as food waste.
- 9.4.3 Knowing the fossil carbon intensity of the energy that would be generated by the proposed EfW plant allows comparison with the fossil carbon intensity of other forms of energy generation, including energy generated through the conventional use of fossil fuel.
- 9.4.4 As set out in Section 2 of the Report, using the Reduced Compostables feedstock profile it can be estimated that for each tonne of waste burned 0.4511 tonnes of fossil CO<sub>2</sub> would be released and 0.8014 MWh of electricity would be exported to the grid.
- 9.4.5 From this, it can be determined that the energy exported from the Horsham EfW facility would have a fossil carbon intensity of 0.563 tonnes of CO<sub>2</sub> per MWh of electricity. This is equivalent to 563 gCO<sub>2</sub>e/kWh.
- 9.4.6 Similarly, using the Defra Default feedstock profile it can be estimated that for every tonne of waste burned 0.3475 tonnes of fossil CO<sub>2</sub> is released and 0.7028 MWh of electricity is exported to the grid.
- 9.4.7 From this, it can be determined that the energy exported from the Horsham EfW plant would have a fossil carbon intensity of 0.494 tonnes of CO<sub>2</sub> per MWh of electricity. This is equivalent to 494 gCO<sub>2</sub>e/kWh.
- 9.4.8 Based on the estimated year of commissioning, the BEIS marginal emissions factor used for comparison is the long-run marginal generation-based electricity emissions factor for 2023. This is explained in further detail in Annex D of the Report. The long-run marginal generation-based electricity emissions factor for 2023 is 0.233 kgCO<sub>2</sub>/kWh, which is equivalent to 233 gCO<sub>2</sub>e/kWh.

- 9.4.9 In summary, the energy that would be exported by the EfW plant proposed for Horsham is estimated to have a carbon intensity of 563 gCO<sub>2</sub>e/kWh, meaning that the energy would come with a significantly higher carbon intensity than the electricity it would be displacing, thus hampering efforts to decarbonise the electricity supply.
- 9.4.10 National Planning Policy Framework (NPPF) states at pages 70 and 71 that: "Low carbon technologies are those that can help reduce emissions (compared to conventional use of fossil fuels)". (emphasis added)
- 9.4.11 As a consequence of the fact that the carbon intensity associated with the proposed EfW plant is significantly higher than the conventional use of fossil fuel, the energy that would be generated by the proposed EfW plant would not be classified as 'low carbon' using the NPPF Glossary definition of 'low carbon energy'.

## **9.5 Relative Net GHG Emissions of the Proposed EfW when compared to Landfill**

- 9.5.1 Section 4 of the Report addresses the net GHG emission when compared to landfill.
- 9.5.2 The Government's 2011 Waste Review acknowledged that: "*...while energy from waste has the potential to deliver carbon and other environmental benefits over sending waste to landfill, energy recovery also produces some greenhouse gas emissions. It is important to consider the relative net carbon impact of these processes, and this will depend on the composition of feedstocks and technologies used*".
- 9.5.3 In August 2015, a proposal for a 150,000-tonnes per annum (tpa) EfW plant proposed for the Former Ravenhead Glass Warehouse at Lock Street, St. Helens, Merseyside was dismissed on Appeal.

- 9.5.4 One of the reasons given by the Inspector for refusing planning permission was the poor "carbon credentials" of the incinerator, noting that: "*...generating electrical energy from waste can contribute to carbon emissions to a greater extent than depositing the same material as landfill. It is therefore not a simple exercise to demonstrate that an EfW [Energy from Waste plant, i.e. incinerator] will have a positive effect on overall carbon emissions...*".
- 9.5.5 Only Solutions' climate change assessment takes account of direct emissions, emissions displaced through electricity generation, and biogenic carbon 'sequestered' (stored) in landfill. This analysis uses the same emissions source category headings as those used by the Appellant and the same system boundary as that used by the Appellant, e.g. in Table 3 of their December 2016 Appendix 2.3 Carbon Assessment and Table 3b of their August 2019 Updated Carbon Assessment.
- 9.5.6 Further detail regarding the rationale for the approach applied by Only Solutions is set out in the Annexes to the Report.
- 9.5.7 To be consistent with the Appellant's chosen scope of impacts, for the purpose of comparing incineration with landfill, the assessment includes the Appellant's figures for transport emissions (which do not include staff travel) and for Incinerator Bottom Ash (IBA) aggregate. The benefits of metal recovery (from the IBA) are calculated using figures taken from, and the approach set out in, Section 5.3 of the Appellant's 2016 Carbon Assessment (included in the Appellant's Environmental Statement, Volume 3, Appendix 2.3) and applying these to the relevant feedstock composition profiles.
- 9.5.8 The results of comparing the proposed incinerator with landfill are set out in Table 4 of the Report. Based on this analysis, even when account is taken of the release of methane from landfill (converted into CO<sub>2</sub>e) and of the Appellant's claimed benefits arising from increased material recovery and reduced transport emissions, sending waste to the proposed Horsham EfW facility is estimated to be 49,101 tonnes of CO<sub>2</sub>e a year worse than sending the same waste to landfill. Over 30 years' of operation this would equate to the EfW facility being more than 1.47 million tonnes of CO<sub>2</sub>e worse than landfill.
-

- 9.5.9 Sensitivity analysis of the impact is applied by using Defra's Default feedstock scenario. With this, the adverse impact is reduced to 31,454 tonnes of CO<sub>2</sub>e per year worse than landfill, but the conclusion remains the same, that the emissions from the EfW would be worse than landfill.
- 9.5.10 These estimates are based on the BEIS figure for displaced electricity (MEF or GHG Factor) of 0.233 kgCO<sub>2</sub>e/kWh, whereas the Appellant in Table 3b of their August 2019 Updated Carbon Calculations uses a slightly higher figure of 0.2556 kgCO<sub>2</sub>e/kWh which represents the "Greenhouse Gas Reporting – Conversion Factors 2019".

## 9.6 Conclusions

- 9.6.1 In summary, the assessment carried out by Only Solutions concludes that the EfW plant proposed for the former Wealden Brickworks would emit significant quantities of fossil CO<sub>2</sub>, the energy generated would be high carbon, and that, if the Appeal is upheld, the EfW plant would result in the release of more GHG emissions than sending the same waste directly to landfill.
- 9.6.2 The direct emissions from the proposed EfW plant relate to CO<sub>2</sub> which is released as part of the combustion process. The carbon (C) in the waste combines with the oxygen (O) in the air to make carbon dioxide (CO<sub>2</sub>). The CO<sub>2</sub> created by the combustion process is then released into the atmosphere, exacerbating climate change. The assessment converts the methane released from landfill into CO<sub>2</sub> equivalent (CO<sub>2</sub>e).
- 9.6.3 Based on a feedstock composition that is consistent with the Appellant's anticipated 18 MW electrical output, it is estimated that 0.4511 tonnes of CO<sub>2</sub> of fossil origin (e.g. plastics) would be emitted per tonne of waste treated at the proposed EfW plant. This equates to 81,198 tonnes of fossil CO<sub>2</sub> a year, and more than 2.4 million tonnes of direct fossil CO<sub>2</sub> emissions over 30 years of operation.

- 9.6.4 The assessment estimates that the fossil carbon intensity of the proposed EfW plant would be 563 gCO<sub>2</sub>e/kWh, which is significantly higher than the conventional use of fossil fuel, meaning the electricity that would be exported from the proposed EfW plant would not be classified as 'low carbon' using the NPPF Glossary definition of 'low carbon energy'.
- 9.6.5 As such, the electricity that would be generated by the proposed EfW plant would hamper efforts to decarbonise the electricity supply.
- 9.6.6 The assessment also concludes that, even when the benefits that arise from the recovery of metals and IBA are taken into account, the proposed EfW plant is estimated to be 49,101 tonnes of CO<sub>2</sub>e per year worse than sending the same waste to landfill, which equates to the proposed EfW plant being more than 1.47 million tonnes of CO<sub>2</sub>e worse than landfill over 30 years of operation.
- 9.6.7 Whilst the assessment has been made on the basis that the waste would otherwise go directly (untreated) to landfill, that is not to say that the discarded material might not otherwise be bio-stabilised prior to landfill or indeed that it might be reduced, re-used, recycled or composted. Therefore, the relative CO<sub>2</sub> impact of sending waste to the proposed EfW plant could be significantly worse than modelled.
- 9.6.8 For these reasons, the proposed facility is contrary to the Policies 24 and 36 of the Local Plan, and Policy W12 of the Waste Local Plan, para 1 of the National Planning Policy for Waste, and the NPPF.

## 10 CONCLUSIONS

10.1.1 Policy W10 is the strategic allocation policy in the WLP. While it provides an ‘in principle’ land use acceptability, it does no more than that.

10.1.2 It does not mean there should be a less rigorous assessment of proposals that fall within the Policy. In fact, there is an implicit requirement in the WLP and Part c of the Policy that development at the Brookhurst Wood site must take place in accordance with the policies of the Plan as a whole.

10.1.3 Furthermore, compliance with development principles, without compliance with the wider policies would not confer favourable status on the Appeal proposals.

10.1.4 The Council has refused planning permission for six reasons. While only one reason is being defended, notwithstanding my view that there are other relevant considerations, its non-compliance with Policy W12 and W13 would be sufficient grounds to warrant dismissal of the Appeal.

10.1.5 The Appeal site’s location with the AL 14 (SSAL) does not assist the Appellant’s case. It does no more than allow for consideration of the provision of a waste use.

10.1.6 It is implicit in Policy W10 that need is not overriding. The ‘need’ for a particular type of facility is not evidenced in the Policy. In my view the need for an EfW plant is diminished in the planning balance.

10.1.7 The waste hierarchy is enshrined in the National Planning Policy for Waste. The aim is to deal with waste as high up the hierarchy as possible and to remove that material that can be re-used and recycled before further processing. Landfill sits at the bottom of the hierarchy, with ‘other recovery’. While no evidence has been provided to demonstrate R1 status, (i.e. that the plant

can be considered as a recovery operation), it is possible that the plant will fall under R1 and that an R1 condition could be applied should the appeal succeed.

10.1.8 Public perception of harm, in this case is both real and tangible and such harm is a material consideration in the determination of the Appeal.

10.1.9 The assessment carried out by Only Solutions concludes that the EfW plant would emit significant quantities of fossil CO<sub>2</sub>, the energy generated would be 'high carbon', and that if the Appeal is upheld, the EfW would result in the release of more GHG than sending the same waste directly to landfill, contrary to both national and local planning policy.

10.1.10 In my view there are no material considerations that outweigh the fact that the Appeal proposals are not in accordance with the Development Plan.

10.1.11 In my view, therefore, the Appeal should be dismissed.

# GPP

GP PLANNING LTD

## GP PLANNING LTD

**Mr Christian Smith** DipTP MRTPI MCMi  
**Miss Maureen Darrie** BSc (Hons) MRTPI

Registered in England  
Number 6019666

Registered Office:  
iCon Innovation Centre, Eastern Way,  
Daventry, Northamptonshire, NN11 0QB

