

Appeal by Britaniacrest Recycling Ltd
against

The decision of West Sussex County Council to refuse planning permission for a Recycling, recovery and renewable energy facility and ancillary infrastructure at the former Wealden Brickworks, Langhurst Wood Road, Horsham.

NOTES FOLLOWING THE PRE-INQUIRY MEETING

Held on 6 June 2019

At Parkside, West Sussex County Council, County Hall North, Horsham.

1. Introduction

- 1.1. At the start of the pre-Inquiry meeting, I introduced myself, **Ian Jenkins** (CEng MICE MCIWEM), as the Inspector appointed by the Secretary of State to both hold the forthcoming Inquiry and determine the appeal detailed below.

2. Scope of the Inquiry

- 2.1. The Inquiry will be into the Britaniacrest Recycling Ltd appeal¹ against the decision of West Sussex County Council to refuse planning permission for development described as:

'Recycling, recovery and renewable energy facility and ancillary infrastructure'.

3. Purpose of the pre-Inquiry meeting

- 3.1. The purpose of the meeting was to enable all concerned to discuss procedural matters relating to the Inquiry. It should help everyone to make the best use of their time between now and the Inquiry, and help the proceedings to run smoothly.
- 3.2. There was no discussion of the merits of any of the cases for or against the proposals, which will have to wait until the Inquiry formally opens.

4. Parties present and appearances at the Inquiry

- 4.1. Rule 11 of *The Town and Country Planning (Inquiries procedure) (England) Rules 2000 (as amended)* (the Inquiry Rules) identifies the persons entitled to appear at an Inquiry and that it is a matter for the Inspector to determine whether any other person may appear at the Inquiry. The absence of any party from the pre-Inquiry meeting will not of itself preclude their participation at the Inquiry.
- 4.2. Parties appearing at the Inquiry may do so in person and may be represented by counsel, a solicitor or some other representative. When making a case, prospective participants should bear in mind that if a

¹ APP/P3800/W/18/3218965.

point is a good one, and is supported by relevant evidence, it needs to be made only once in order to carry weight. Repeating the point will not add to that weight but will simply waste Inquiry time. With that in mind it may be that arguments for or against the proposal could be made more effectively and succinctly by one person/organisation than by many individuals making the same points in slightly different ways. I urged parties/individuals to get together wherever possible to present joint cases through a single spokesperson. In order to ensure that the Inquiry is completed as expeditiously as possible, I will intervene to prevent any unnecessary repetition.

- 4.3. Details of those who identified themselves at the meeting as representing parties who wish to appear at the Inquiry and their proposed representation at the Inquiry, where known, are appended at Appendix 1.
- 4.4. People who do not need or wish to speak at the Inquiry will, nonetheless, be welcome to attend as observers. In considering the appeal, I will take account of all of the evidence heard at the Inquiry as well as written representations received before it closes. However, greater weight can be attached to evidence given at the Inquiry which is open to testing through cross-examination.

5. Inquiry dates and times

- 5.1. The Inquiry is proposed to open at 10.00 hrs on Tuesday 29 October 2019. At present, arrangements have been made for it to sit for 12 days over 3 weeks (29/10-1/11, 5/11-8/11 and 12/11-15/11). A better idea of the length of the Inquiry will emerge once estimates of the time needed for the various stages in the Inquiry have been provided by the parties and a programme has been drafted. More on this in section 10 below.
- 5.2. After the first day, the Inquiry will generally sit at the following times:
 - Tues-Thurs: 10.00 hrs to about 17.00 hrs (with a break for lunch between around noon and 13.00 hrs, and a short break at a convenient point mid-afternoon);
 - Fridays: 09.30 hrs to early-afternoon (with a shorter lunch break).
- 5.3. Once the Inquiry is underway, I may decide to start and/or finish at other times. Any changes to sitting times will be announced at the Inquiry.

6. Inquiry venue

- 6.1. Prior to the Pre-Inquiry Meeting the Inquiry venue had been identified as Horsham Rugby Club. However, it appears that the club is not well served by public transport. Furthermore, as the Inquiry is to be held in the winter and so would be likely to routinely sit after dark, attendees travelling by foot would be faced with using an unlit footway when leaving the venue. I confirmed at the meeting that, under these circumstances, I consider the venue to be unsuitable.

- 6.2. The Council indicated that it would investigate alternatives as a matter of urgency. In light of the Council's concern that identification of a single venue for a 3-week period would be difficult, I confirmed that I would be amenable to using more than one venue during the course of the Inquiry. However, Chichester is unlikely to be suitable, due to the travel distances involved for interested parties.
- 6.3. At the time of publication of these notes, the Council had not completed its investigations. Venue details will be confirmed nearer to the date of the Inquiry.
- 6.4. In addition to the main Inquiry room, there will be a side room for my use during adjournments. Photocopying facilities will be available (a reasonable charge may be made for copying). If the parties who intend to appear at the Inquiry need particular facilities, they should take the matter up with the Council.

7. Inquiry procedure and site visits

Inquiry procedure

- 7.1. I confirmed that I would broadly follow the procedure set out in the Inquiry Rules. Briefly:
- Following my opening announcements, I will invite the appellant's advocate to make a brief opening statement, outlining its case, followed by representatives of the Council and any Rule 6 parties;
 - The general order of evidence will be to hear from the representatives of the Council, other objectors, the appellant and any supporters;
Following evidence in chief, the evidence of each witness will be open to cross-examination by opposing parties who are entitled to appear; there may then be re-examination to clarify answers given in cross-examination, and I may put questions at any time.
 - Following the evidence of the parties, and in line with Government guidance, we will have a session on any conditions or planning obligations that the parties consider should be attached to the proposed planning permission, in the event that it was to be granted. However, I would emphasise that that provision does not indicate any prejudging of the case on my part or that the case of anyone objecting to the proposal would be weakened in any way by taking part in that discussion; and,
 - Closing submissions will be heard from interested parties, the representative of the Council; and, finally closing submissions on behalf of the appellant.
- 7.2. Following the Inquiry, I will proceed to determine the appeal.
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Site visits

- 7.3. I indicated, so far as practical from public vantage points, I would familiarise myself with the appeal site and its surroundings prior to the Inquiry on an unaccompanied basis. The parties present did not consider that an accompanied site visit would be likely to be required before the Inquiry.
- 7.4. In addition to further unaccompanied site visits, it is also likely to be necessary to make accompanied visits to some places during or after the Inquiry. Arrangements for any such accompanied visits would be made and announced later.
- 7.5. I emphasised that all visits will be for the sole purpose of observing the sites in question. I will not hear any evidence from the parties to the Inquiry or receive submissions on site. It is important that all that has to be said in evidence is put at the Inquiry itself.

8. Nature, format and submission of evidence

- 8.1. The procedure is designed to secure maximum disclosure and exchange of information before the Inquiry takes place, so that the proceedings can be conducted efficiently and effectively. Everyone has a responsibility to meet the deadlines set for the submission of evidence.
- 8.2. I will seek to ensure that no one gains a tactical advantage by deliberately withholding evidence until a late stage. For example, if late evidence is accepted, it may be necessary to adjourn the Inquiry in order to give others the opportunity to consider and prepare to deal with it. Costs may be awarded where a party is found to have behaved unreasonably and thereby caused another party to incur unnecessary expense.
- 8.3. The Council confirmed that the documents submitted in support of the planning application and those associated with its determination by the Council are available on line at:

<https://westsussex.planning-register.co.uk/Planning/Display/WSCC/015/18/NH>
- 8.4. As far as possible, appeal documents submitted prior to the Inquiry in an electronic format will be added to that database by the Council. A hard copy of the appeal documents referred to below will be made available as part of the publicly accessible Inquiry library, which will be held at County Hall North, Horsham prior to the Inquiry. Thereafter, the Inquiry library will be available at the Inquiry venue(s) for reference.

Statements of Case

- 8.5. I have received a Statement of Case from: West Sussex County Council; and, the appellant.
- 8.6. The position in relation to the 'No Incinerator 4 Horsham Community Group' (NI4H) is set out below in section 12.

Statements of Common Ground

- 8.7. The Council and appellant confirmed that they have begun the process of agreeing a Statement of Common Ground.
- 8.8. In addition, the appellant and NI4H indicated that they would also endeavour to agree a Statement of Common Ground.
- 8.9. I emphasised that it will be in the interests of the parties to reach agreement on as many issues as possible, thereby enabling them to focus on matters of particular importance to them at the Inquiry.
- 8.10. In the event that either the Council or NI4H considers that vantage points other than those referred to in the Landscape and Visual Impact Assessment, submitted by the appellant, should be taken into consideration when assessing the effect on the character and appearance of the area, that should be made clear in the associated Statement of Common Ground.
- 8.11. Any statements of Common Ground are to be submitted to the Planning Inspectorate by 3 September 2019.

Core documents

- 8.12. It is likely that some documents will be referred to by many parties. Conventionally such documents are numbered as Core Documents (CDs). The Council agreed to compile a list of Core Documents in consultation with the other main parties and to assemble the sets referred to below (individual documents being provided by those in the best position to do so). It will save paper, time and expense if others wishing to refer to the same documents would simply refer to them (by document number, title and internal reference) in their evidence without the need to submit further copies.
- 8.13. I would encourage the parties to liaise with the Council concerning any documents that could usefully be included as Core Documents.
- 8.14. For my purposes 2 sets of Core Documents will be required: 1 set to be sent to the Planning Inspectorate by 1 October 2019, for my use; and, 1 set to be made available as part of the publicly accessible Inquiry library. I leave the parties to negotiate directly if they require additional copies of Core Documents.

Proofs of evidence

- 8.15. Irrespective of whether a witness appears at the Inquiry on their own behalf or representing others, where they propose to give evidence by reading from a document (this constitutes a 'proof of evidence'), it should be submitted in advance of the Inquiry. Proofs of evidence should be succinct and to the point. Voluminous documents do not add weight to a case (except in the literal sense) and may detract from it, by obscuring the key points. Additional evidence may be given orally, though as far as possible such material would be better included in proofs.
- 8.16. In accordance with the Inquiry Rules, if a proof is longer than 1500 words, a summary of the proof must be submitted at the same time as the proof itself. A summary should be no more than 1500 words. Only proofs/summaries less than 1500 words will be read at the Inquiry, but the full proofs will 'taken as read', will count as evidence and be open to cross-examination. If, in evidence, reference is made to any other document, which is not included in the list of core documents, a copy of that document (or the relevant extract plus the cover page), must be submitted as an appendix to the proof of evidence. It is not acceptable to provide hyperlinks in place of reference documents.
- 8.17. I urge parties to ensure that proofs of evidence and associated documents conform to the following guidelines:
- Document number on the top right corner of cover page and the spine;
 - Indicate on the cover page the name of the party on whose behalf the evidence is given, the name of the witness, relevant qualifications and the topic(s) covered;
 - Number all pages and paragraphs;
 - Include an index in each bundle;
 - Supporting material in appendices, bound separately from the proof;
 - Summary bound separately or as a self-contained section in the proof.

Rebuttal proofs of evidence

- 8.18. There is no reference in the Inquiry Rules to rebuttal proofs. However, they can sometimes be helpful to deal with complex evidence raised for the first time in the proofs of evidence, particularly if they deal with points that could reduce the need for cross-examination and so reduce the Inquiry time. However, they should not be seen as an opportunity to gain a tactical advantage by deliberately withholding evidence until a late stage. They should only respond directly to points raised for the first time in the proofs of others and should not introduce new arguments. The guidance set out above concerning the proofs of evidence also applies to rebuttals.

Copies of proofs of evidence

- 8.19. In relation to the appellant, the Council and NI4H, 4 hard copies of each proof of evidence (including summary, as necessary, and appendices) should be provided; 1 being the Inspector's copy; 1 copy for the Inquiry library; and, the remainder for the other identified main parties². In addition, 1 electronic copy should be provided for inclusion in the Council's on-line database.
- 8.20. At the meeting it was agreed that the main parties would exchange proofs directly with one another to save time. The Inspector's copy must be sent to the Planning Inspectorate together with confirmation that the other copies have been served on the main parties.
- 8.21. In the case of other parties who may wish to appear: 5 hard copies of their proofs should be submitted to the Planning Inspectorate (1 copy for the Inspector and the other 4 for the library/identified main parties); and, 1 electronic copy, for inclusion on the Council's on-line database.

Submission of proofs of evidence and rebuttal proofs of evidence

- 8.22. Proofs of evidence must be submitted to the Planning Inspectorate and circulated amongst the other identified main parties not later than 1 October 2019.
- 8.23. Rebuttal proofs of evidence, if any are necessary, must be submitted to the Planning Inspectorate and circulated amongst the other identified main parties not later than 15 October 2019

Written representations

- 8.24. If anyone intends to submit additional written representations rather than appearing at the Inquiry, they should make their submissions to the Planning Inspectorate not later than 1 October 2019.

Planning obligations

- 8.25. If planning obligations are to be relied upon, the final draft of the associated agreement/unilateral undertaking must be submitted to the Planning Inspectorate not later than 15 October 2019.

Opening, closing and legal submissions

- 8.26. Those making closing submissions should provide me with a hard copy in writing at the time of delivery. Closing submissions are expected to be a summing up of the main points of the party's case in light of the evidence given at the Inquiry. It is not an opportunity to introduce new evidence or arguments.

² The appellant, West Sussex County Council and NI4H.

- 8.27. I would also find it helpful if hard copies of the texts of opening submissions would be provided at the time of delivery. Hard copies will also be required of any legal submissions.

9. Document numbering and availability

- 9.1. As indicated above, every document should be numbered. The numbering system should be kept as simple as possible, but numbers should be prefixed with an abbreviation to indicate the party on whose behalf it is submitted, followed by a sequential number. For example, typical West Sussex County Council documents might be numbered as follows:

WSCC/W1/1 - Proof of evidence of witness 1
WSCC /W1/2 - Appendices to the proof of evidence
WSCC /W1/3 - Summary of the proof of evidence
WSCC /W2/1 - Proof of evidence of witness 2
WSCC /W2/2 - Appendices to the proof of evidence
WSCC /W2/3 - Summary of the proof of evidence etc

- 9.2. Each party should keep an up-to-date list of their documents, providing a copy of the list to me at the beginning of the Inquiry with an update, if necessary, at the end.

10. Inquiry Programme

- 10.1. At present arrangements have been made for the Inquiry to sit for 12 days. This is consistent with the numbers of potential witnesses identified at the Pre-Inquiry Meeting, including some allowance for local residents who did not attend the meeting to appear.
- 10.2. As previously confirmed by the Planning Inspectorate, the following information must be submitted to the Planning Inspectorate by 7 October 2019, by all those who intend to appear at the Inquiry to give evidence:
- The duration of any closing statements, if any are to be made;
 - The duration of evidence in chief for each of their own witnesses; and,
 - The duration of cross-examination of other parties' witnesses.

I will use that information to compile a programme for the Inquiry, which will be of benefit to all concerned and aid the smooth running of the proceedings and efficient use of time. I urge parties to be as co-operative as possible in this process.

- 10.3. The Programme will remain in draft and will be subject to change throughout the Inquiry, dependent on progress. It is important that people appearing are available when required, and the onus will be on them to keep in touch with the progress of the Inquiry through:

planning.applications@westsussex.gov.uk or telephone 0330 2225 777.

- 10.4. If witnesses are not in attendance when required, the Inquiry may proceed without them.
- 10.5. I confirmed that, as requested by NI4H, consideration would be given to the inclusion of an evening session in the programme to provide an opportunity for parties to appear who would be otherwise unable to attend.

11. Main Issues

- 11.1. In its notice of refusal of planning permission, dated 11 July 2018, the Council gave 6 reasons for refusal. However, in its email to the Planning Inspectorate, dated 6 February 2019, the Council confirmed that it would not defend reasons 1, 3, 4, 5 or 6, for reasons which were set out. Nonetheless, the concerns cited in the reasons for refusal are still echoed in appeal submissions made by other interested parties.
- 11.2. Whilst the position may change in light of evidence submitted, at this stage, based on the submissions already made in writing, I consider that the main issues in this case are:
- 1) Whether the proposal would be consistent with the aims of local and national waste management policy (including with reference to: whether the local Policy is up to date; need; the proximity principle; and, moving the management of waste up the waste hierarchy);
 - 2) The effect on the character and appearance of the area;
 - 3) The effect on the convenience of highway users (with particular reference to traffic generation, highway capacity and any cumulative impacts);
 - 4) The effect on the living conditions of occupants of the local area (with particular reference to air quality, odour, noise and any cumulative impacts); and,
 - 5) The effect on public health (with particular reference to air quality).
- 11.3. I ask all parties to have regard to these matters, and to address explicitly those identified that are relevant to them, including the scope for mitigating any harm, in the presentation of their evidence. However, the list is not exhaustive, and it does not preclude other matters from being raised if relevant.
- 11.4. I request that the appellant ensures that it responds explicitly to every objection, including those not the subject of oral representations at the Inquiry.

12. Other matters

***'No Incinerator 4 Horsham Community Group'* (NI4H)**

- 12.1. At the meeting NI4H confirmed its intention to appear at the Inquiry. It indicated that, subject to fund raising, it intends to apply for Rule 6
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status and provide a Statement of Case before the summer break, consistent with the indication from the Planning Inspectorate that such steps, if they are to be taken, should be completed by early August.

- 12.2. NI4H indicated that its current view is that it would be: likely to lead evidence on the waste policy issue identified above, including R1 status, as well as public perception of the health impacts; and, unlikely to lead evidence on highway capacity, living conditions or actual health impact.
- 12.3. The appellant expressed the concern that if clarity was not provided until early August, it would be unlikely to have sufficient time to be able to prepare to respond to NI4H's case, due to the holiday period and the need to submit proofs of evidence by 1 October 2019.
- 12.4. I indicated that NI4H's intention to appear at the Inquiry and the content of its submissions to date, together, suggest that Rule 6 status would be necessary in order to ensure that its input is appropriately managed. I confirmed that whilst I understand NI4H's position, it is necessary to strike a balance between accommodating its wishes and ensuring that a reasonable period of time remains available to the appellant to prepare to deal with NI4H case when the Inquiry opens. As I indicated, having regard to the circumstances, it is my intention to write to NI4H requiring a Statement of Case to be provided by 18 July 2019. It should set out the full particulars of its case, including so far as possible, any caselaw relied upon.

Bringing these notes to the attention of interested parties

- 12.5. The Council confirmed that, when provided by the Planning Inspectorate, it would contact those parties who have made written submissions at the appeal stage to draw the publication of these notes to their attention, including the dates for submissions to be made by those who wish to appear at the Inquiry.

Environmental Statement

- 12.6. The appellant confirmed that there are no corrections that should be made to the content of the ES, as far as it is aware. I confirmed that I would write to them separately on such matters that arise in the run up to the Inquiry (copied to the Council).

I Jenkins
INSPECTOR

14 June 2019

Appendix 1-Declared a wish to appear at the Inquiry***Parties who have duly submitted a Statement of Case***

Britaniacrest Recycling Ltd-appellant	
Rep at PIM	Christopher Boyle QC.
Rep at Inq	Christopher Boyle QC.
Witnesses	
1. Landscape and visual amenity	
2. Waste policy (TBC)	
3. Planning	

West Sussex County Council	
Rep at PIM	Anjoli Foster of Counsel.
Rep at Inq	Anjoli Foster of Counsel.
Witnesses	
1. Landscape and visual amenity	
2. Planning	

Other parties

NI4H	
Rep at PIM	Nick Grant of Counsel.
Rep at Inq	TBC
Witnesses	
1. Environmental matters	
2. Public health (engagement with the local community)	

County Councillor Peter Catchpole	
Rep at PIM	Peter Catchpole.
Rep at Inq	Peter Catchpole.

Warnham Parish Councillor Roger Purcell	
Rep at PIM	Roger Purcell
Rep at Inq	Roger Purcell