



## Appeal Decision

Inquiry sat on: 29-31 October; 1, 5-7 and 12-13 November 2019

Accompanied site visit made on 8 November 2019

**by I Jenkins BSc CEng MICE MCIWEM**

an Inspector appointed by the Secretary of State

Decision date: 27<sup>th</sup> February 2020

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**Appeal Ref: APP/P3800/W/18/3218965**

**Former Wealden Brickworks, Langhurstwood Road, Horsham, West Sussex, RH12 4QD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Britaniacrest Recycling Ltd against the decision of West Sussex County Council.
  - The application Ref WSCC/015/18/NH, dated 9 March 2018, was refused by notice dated 11 July 2018.
  - The development proposed is a recycling, recovery and renewable energy facility and ancillary infrastructure.
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### Decision

1. The appeal is allowed and planning permission is granted for a recycling, recovery and renewable energy facility and ancillary infrastructure at the Former Wealden Brickworks, Langhurstwood Road, Horsham, West Sussex, RH12 4QD in accordance with the terms of application Ref. WSCC/015/18/NH, dated 9 March 2018, subject to the conditions set out in the Schedule of Conditions at the end of this decision.

### Procedural matters

2. In this case an Environmental Statement, March 2018<sup>1</sup> (ES), which includes consideration of cumulative impact, was submitted in support of the application. Other information, such as proofs of evidence, was submitted for the purposes of the Inquiry. In reaching my conclusions, I have taken account of the environmental information which I consider to be sufficient to assess the likely environmental impact of the proposal.
3. In addition to an accompanied site visit, which is referred to in the summary information above, I undertook unaccompanied visits around the area within which the appeal site is located before, during and after the Inquiry.

### Main Issues

4. Whilst the Council's refusal notice cited 6 reasons for refusal, prior to the start of the Inquiry the Council confirmed that, following consideration of legal

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<sup>1</sup> CD29.

advice, it had decided to defend only one of those reasons for refusal, no. 2<sup>2</sup>. However, a number of the concerns cited in the other reasons for refusal were echoed by the appeal submissions made by a significant number of interested parties, such as the 'No Incinerator 4 Horsham Community Group' (NI4H), a participant at the Inquiry under Rule 6(6) of *The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure)(England) Rules, 2000* (as amended).

5. Against this background, I consider that the main issues in this case are: whether the proposal would be consistent with the aims of local and national waste management policy; the effect of the scheme on the character and appearance of the area; the effect of the scheme on the living conditions of the local community, with particular reference to public perception of harm to health in relation to air quality; as well as, the effect on the significance of heritage assets, and, if there is harm, whether it would be outweighed by the public benefits of the scheme.

## **Reasons**

6. The appeal site is located within an area known as 'Brookhurst Wood'. This area is situated to the north of Horsham on the northern side of the A264, with the London to Horsham railway line along its western side and to the east Langhurstwood Road, from which Brookhurst Wood can be accessed. Brookhurst Wood contains various waste and industrial/commercial uses, including, a landfill site to the north of the appeal site, a mechanical and biological treatment (MBT) facility to the east and Warnham Brickworks to the south. The appeal site, which extends to around 3.8 hectares, is currently used as a waste transfer station (WTS) handling inert and non-inert waste, with associated open air inert waste recycling operations. It is situated in the parish of North Horsham, in Horsham District.<sup>3</sup> To the east of the appeal site, on the other side of Langhurstwood Road, outline planning permission was granted in March 2018 for the development of a strategic mixed use site allocated in the Horsham District Planning Framework, 2015 (HDPF), which is known as 'Land North of Horsham'. That development would include up to 2,750 new homes, a business park of some 46,450 m<sup>2</sup> as well as new schools, a local centre and recreation/open space.

### ***Waste management policy***

7. The appeal site WTS has a permitted capacity of up to 230,000 tonnes per annum (tpa) of inert and non-inert waste.<sup>4</sup> Currently, having separated what it is able to separate with the limited infrastructure on site, the appellant transfers any active waste to another site at Hookwood, where it is shredded and converted into refuse derived fuel (RDF) for export to continental Europe. The proposed development involves the replacement of the existing WTS with a recycling, recovery and renewable energy facility to sort, separate and process up to 230,000 tpa of waste comprising commercial and industrial (C & I) waste and/or municipal solid waste (MSW).<sup>5</sup> Of this waste, it is estimated that around 50,000 tpa would be recycled, with the remaining 180,000 tpa of residual

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<sup>2</sup> The development would have an unacceptable impact on the landscape and visual amenity of the area, contrary to Policies W12 and W13 of the West Sussex Waste Local Plan 2014.

<sup>3</sup> CD165 page 3.

<sup>4</sup> CD165 para 5.10 planning permission Ref. WSCC/006/18/NH.

<sup>5</sup> ES Vol 1 para 2.3.1

waste being combusted in the proposed energy from waste plant to generate electricity and potentially heat.<sup>6</sup>

*Whether local policy is up to date*

8. I share the view of the Council that, as the proposal comprises waste development, the most relevant Development Plan policies to the determination of the appeal are those in the *West Sussex Waste Local Plan (WLP)*.<sup>7</sup> The WLP was prepared to be consistent with the *National Planning Policy Framework (the Framework)*, it was adopted in 2014 and covers the period to 2031. In accordance with the *Town and Country Planning (Local Planning)(England) (Amendment) Regulations 2017*, the WLP was reviewed in early 2019, on the basis of which the Council concluded that the Plan remains relevant and effective.<sup>8</sup>
9. The Framework seeks to ensure that strategic policies make sufficient provision for waste management and indicates that it should be read in conjunction with the Government's planning policy for waste. The *National Planning Policy for Waste (NPPW)* indicates that local plans should identify sufficient opportunities to meet the identified needs of their area for the management of waste streams. Furthermore, plans should identify the broad type or types of waste management facility that would be appropriately located on allocated sites in line with the Waste Hierarchy as well as plan for the disposal of waste and the recovery of mixed municipal waste in line with the proximity principle.
10. Consistent with the aims of the Framework and the NPPW, the strategic objectives of the WLP include working towards zero net waste to landfill by 2031 and maintaining net self-sufficiency in managing the transfer, recycling, and treatment of waste generated within West Sussex. The WLP indicates that in order to ensure that there is adequate provision for the management of waste in the period to 2031, forecasts have been prepared that cover the following waste streams: MSW; C & I; and, Construction, Demolition and Excavation waste (CDEW). With reference to those waste streams, which do not include agricultural waste<sup>9</sup>, the Plan identifies a combined shortfall in capacity for 'Recovery C & I' and 'additional recovery' of 270,000 tonnes per annum (tpa).<sup>10</sup> In order to meet the shortfalls in capacity the WLP, amongst other things, allocates strategic sites for new facilities in Policy W10. They include 5 sites to meet identified shortfalls in transfer, recycling and recovery capacity.
11. The Council's Monitoring Report 2017/18 (AMR17/18) confirms that, although capacity has increased, there is still a shortfall in non-inert recovery capacity relative to the 270,000 tpa identified by the WLP. With reference to that forecast requirement, the AMR17/18 identifies a shortfall in capacity of 5,000 tpa.<sup>11</sup> The Council has confirmed that the derivation of this shortfall figure has taken account of the following capacity: a 140,000 tpa energy from waste facility at Ford; the 75,000 tpa anaerobic digestion (AD) facility at Sefter Farm; the 50,000 tpa AD facility at Wicks Farm; and, the 327,000 tpa mechanical and

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<sup>6</sup> ES Vol 1 para 2.7.7

<sup>7</sup> James Neave proof of evidence para 4.2

<sup>8</sup> CD127-West Sussex Minerals and Waste Development Scheme 2019-2022 section 2.3, ID10 para 6.3.

<sup>9</sup> CD093 para 2.3.1.

<sup>10</sup> CD093 table 3:  $0.09+0.18=0.27$  million tonnes per annum.

<sup>11</sup> ID14 table 13 page 36.

biological treatment (MBT) facility adjacent to the appeal site at Brookhurst Wood.<sup>12</sup>

12. Firstly, it follows that the grant of planning permission for the Ford facility does not negate the need for further recovery capacity; a shortfall still exists, as identified by the AMR17/18. Secondly, the appellant has identified that the AD capacity referred to, 125,000 tpa total, is used to treat on-site farm waste and so it does not provide capacity to deal with the MSW and C & I waste streams included in the 270,000 tpa shortfall figure, a matter not disputed by the Council. Taking account of this would increase the shortfall from the 5,000 tpa identified by the AMR17/18 to 130,000 tpa. Thirdly, the appellant identified that whilst the MBT facility produces refuse derived fuel (RDF)<sup>13</sup>, which needs to be managed, this waste has not been accounted for by the AMR17/18 when calculating the shortfall. The RDF is currently managed, by a partnership that includes the appellant, by being exported to continental Europe for energy recovery. At the Inquiry the appellant indicated the current contract is for the management of up to 155,000 tpa of RDF from the MBT. Whilst the Council was unable to confirm that figure at the Inquiry, it acknowledged that if it is correct, the actual shortfall in recovery capacity would rise further from 130,000 tpa to around 285,000 tpa.<sup>14</sup> In the absence of any evidence to support the RDF figure, I give it limited weight. Nonetheless, it appears likely that, if the WLP strategy of 'net self-sufficiency' and 'zero net waste to landfill' is to be achieved, there remains a significant shortfall in recovery capacity.
13. There is no evidence before me to show that as a result of monitoring of the Plan or significant changes to national policy, a further review of the WLP should be triggered. I consider therefore, that the WLP can be considered as being up to date.

*The Waste Hierarchy (including R1 status)*

14. Defra's *Energy from waste: A guide to the debate, February 2014 (revised edition) (EFEG)*<sup>15</sup> indicates that the Waste Framework Directive's R1 recovery status is associated with the use of waste *principally as a fuel or other means to generate electricity*. However, it does not automatically follow that a waste incinerator would qualify for R1 recovery status. For a municipal waste incinerator to do so it must meet or exceed the relevant efficiency threshold calculated using the R1 energy efficiency formula. A municipal waste incinerator which fails to meet the threshold would be classed as disposal rather than recovery.
15. The appellant has indicated that the origin of the feedstock for the proposed facility would be C & I waste and/or MSW. However, it acknowledges that the precise mix of feedstock is not known at this stage, as the supply contracts have yet to be secured.<sup>16</sup> To my mind, therefore, it is uncertain as to whether it would be a municipal waste incinerator to which the R1 energy efficiency formula applies. Under the circumstances, I consider that in order to be sure that the installation would be classed as recovery, as opposed to disposal, it would be necessary to ensure that it would meet the requirements of the R1

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<sup>12</sup> ID63.

<sup>13</sup> CD175 para 5.1.5 page

<sup>14</sup>  $5,000+125,000+155,000=285,000$  tpa.

<sup>15</sup> Appendix A8 to Maureen Darrie's proof of evidence.

<sup>16</sup> ID99 para 27.

energy efficiency index. The appellant has indicated that it would be designed to do so irrespective of whether the feedstock comprises MSW, C & I waste or RDF.<sup>17</sup> Furthermore, the Council, appellant and NI4H are agreed that it would be possible to ensure that this would be the case through the imposition of a condition.<sup>18</sup> I agree. I consider that, subject to the imposition of such a condition, it would be more likely than not that the proposal would comprise a recovery operation with R1 status.<sup>19</sup>

16. I give little weight to the concern raised that the provision of energy from waste capacity may result in waste being managed further down the Waste Hierarchy than would otherwise be the case. The Government's *Our Waste, Our Resources: A strategy for England, 2018* (OWOR) indicates that '*should wider policies not deliver the Government's waste ambitions in the long-term, we will consider the introduction of a tax on the incineration of waste.*' However, it confirms that '*Incineration currently plays a significant role in waste management in the UK, and the Government expects this to continue.*'<sup>20</sup> It is clear that support remains for energy from waste and the Government would take action as necessary to address any imbalance. Whilst the anticipated capacity shortfall identified by the OWOR may have reduced at a national level since the publication of that strategy, as already identified, locally there remains a significant shortfall in recovery capacity.

#### *Need*

17. Consistent with the approach set out in the NPPW<sup>21</sup>, the WLP states that '*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. 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.*'<sup>22</sup> The sites identified by WLP Policy W10 as being allocated to meet identified shortfalls in transfer, recycling and recovery capacity include Brookhurst Wood, near Horsham; of which the appeal site forms part.<sup>23</sup> Furthermore, as I have identified, there remains a significant shortfall in recovery capacity, which reinforces the finding that the WLP remains up to date. Therefore, there is no requirement for the appellant to demonstrate a quantitative or market need for a recycling and/or recovery scheme.<sup>24</sup>
18. I consider that, insofar as it would help to satisfy the need for waste management facilities, with particular reference to recycling and recovery, the proposal would qualify for support from WLP Policy W10, subject to meeting its other criteria. The weight attributable to this additional capacity is reduced to a degree, as it would replace an existing facility, albeit with limited recycling

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<sup>17</sup> ID72.

<sup>18</sup> ID65. An approach followed in a number of other appeal cases, as set out in section 6 of Maureen Darrie's proof of evidence.

<sup>19</sup> These circumstances are materially different from those related to appeal decision Ref. APP/H4315/A/14/2224529 (Appendix A5 to Maureen Darrie's proof of evidence).

<sup>20</sup> CD178 (ID22) pages 77-79.

<sup>21</sup> Para 7 bullet 1.

<sup>22</sup> CD093 para 6.2.8.

<sup>23</sup> ID10 page 3.

<sup>24</sup> CD093 page 60.

capabilities.<sup>25</sup> Nonetheless, I share the view of the Council that the benefit of the proposal in meeting an identified need attracts substantial weight.<sup>26</sup>

*The proximity principle*

19. The NPPW gives encouragement to the recovery of mixed municipal waste in line with the proximity principle.<sup>27</sup> It is expected that the proposed facility would treat commercial, industrial, household and solid waste and selected combustible waste.<sup>28</sup> Insofar as the proposed facility would recover energy from mixed municipal waste, which would otherwise be exported for recovery, it would be consistent with the proximity principle and would gain some support from the NPPW.
20. The appellant has indicated that residual active waste arising from the process stream of which the existing appeal site operation forms part, is converted to RDF and exported to continental Europe for recovery, as is much of the residual waste arising within the catchment for the proposed facility.<sup>29</sup> I acknowledge that there is no guarantee that RDF comprising mixed municipal waste would be imported from the neighbouring MBT facility, whose RDF is currently contracted for export.<sup>30</sup> Nonetheless, overall it appears likely that the proposal would provide an opportunity for advancing the proximity principle.

*Conclusions*

21. I conclude overall that: subject to the imposition of a suitable condition, it would be more likely than not that the proposal would comprise a recovery operation with R1 status. Furthermore, the proposal would make a significant contribution towards meeting an identified need for recovery facilities on a site allocated for such facilities in an up to date WLP, the aims of which include working towards zero net waste to landfill by 2031 and maintaining net self-sufficiency within West Sussex. With reference to these matters, which together weigh substantially in favour of the scheme, the appeal proposal would be consistent with the aims of local and national waste management policy.
22. However, whilst WLP Policy W10 indicates that sites allocated to meet identified shortfalls in transfer, recycling and recovery capacity are acceptable in principle for such uses, that is not the end of the matter. The Policy, W10(c), indicates that the development of an allocated site must take place in accordance with the policies of the WLP and satisfactorily address the 'development principles' for that site identified in the supporting text. Having considered those other matters, I return to WLP Policy W10(c) below, before concluding finally on this main issue.

***Character and appearance***

*Policy and guidance*

23. WLP Policy W11 indicates that proposals for waste development will be permitted provided that they would not have an unacceptable impact on the

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<sup>25</sup> ES Volume 1 para 3.2.6.

<sup>26</sup> James Neave proof of evidence para 5.46.

<sup>27</sup> CD87 para 4.

<sup>28</sup> ES Vol 1 section 2.7.

<sup>29</sup> CD29 Volume 1 para 3.26, para A1.6 of Appendix 1 to Christopher LeCointe's rebuttal proof of evidence.

<sup>30</sup> ID99 paras 29-30.



character, distinctiveness, and sense of place of the different character areas of the County and that they reflect and, where possible, reinforce the character of the main natural character areas. WLP Policy W12 seeks to ensure that proposals for waste development are of a high quality and, where appropriate, the scale, form and design (including landscaping) take into account a number of identified matters. They include the need to integrate with adjoining land-uses and have regard to local context including: the character of different parts of West Sussex; the topography, landscape and skyline of the surrounding area; views into and out of the site; and, the use of materials and building styles. These Policies are consistent with the Framework, which seeks to ensure that development is high quality and sympathetic to the surrounding built environment and landscape setting, while not preventing appropriate change.

24. Whilst recognising the intrinsic character and beauty of the countryside, the Framework places particular emphasis on the protection and enhancement of valued landscapes (in a manner commensurate with their statutory status or identified quality in the Development Plan). It seeks to give the greatest level of protection to the landscape and scenic beauty of designated areas, such as National Parks and Areas of Outstanding National Beauty (AONB).
25. I consider that insofar as the *West Sussex High Quality Waste Facilities Supplementary Planning Document, 2006* (SPD)<sup>31</sup> requires that development 'does not detract from the character of the County's rural areas', thereby placing a high level of protection on landscape irrespective of its value, it is not consistent with the Framework, unduly restrictive and I give it little weight.
26. The appeal site does not fall within nor is it adjacent to any designated landscapes with statutory or Development Plan status. It lies around: 15 Km from the South Downs National Park; 6 Km from the Surrey Hills AONB; 3 Km from The High Weald AONB; and, 0.9 Km from the Warnham Court Registered Park and Garden. Nonetheless, the national *Planning Practice Guidance* (PPG) identifies that land within the setting of National Parks and AONBs often makes an important contribution to maintaining their natural beauty, and where poorly located or designed development can do significant harm. It indicates that development within the settings of these areas will therefore need sensitive handling that takes the potential impacts into account.
27. Consistent with the PPG, WLP Policy W13 indicates that proposals for waste development located outside protected landscapes will be permitted provided that they do not undermine the objectives of the designation. The purposes of the SDNP are: to conserve and enhance the natural beauty, wildlife and cultural heritage of the area; and, to promote opportunities for the understanding and enjoyment of the special qualities of the park by the public. AONBs are designated to ensure the conservation and enhancement of their natural beauty, distinctive character, and remote and tranquil nature. *The High Weald AONB Management Plan 2019-2024*<sup>32</sup> identifies that key characteristics of the AONB include scenic beauty, glimpsed long views and an unspoilt rural landscape with a sense of naturalness unusual in the South East of England.
28. Furthermore, *Guidelines for Landscape and Visual Impact Assessment, Third Edition* (GLVIA) by the Landscape Institute and Institute of Environmental

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<sup>31</sup> CD136 para 5.70

<sup>32</sup> ID13 page 59

Management & Assessment indicates that the absence of a designation does not mean that an area of landscape is without any value and points to landscape character assessments as a means of identifying which aspects of a landscape are particularly valued.

29. I have had regard to the provisions of the *Overarching National Policy Statement for Energy (EN-1)* and the *National Policy Statement for Renewable Energy Infrastructure (EN-3)*. However, they echo much of what is set out above, which I consider to be of most relevance, not least as the proposed development would fall below the threshold for a Nationally Significant Infrastructure Project. My attention has also been drawn to appeal decisions Ref. APP/D0840/A/09/2103026 and APP/X2220/A/08/2071880.<sup>33</sup> However, they relate to wind turbine developments and, in common with the Council, I consider that as the judgements relied upon by the appellant appear to relate to the assessment of the effects on the living conditions of residents, they are of little assistance in determining the issue here, concerning the effect on character and appearance.<sup>34</sup>

*The appeal scheme and its surroundings*

30. Built development currently neighbouring the appeal site includes the existing MBT facility to the east, which has a building height of approximately 21 metres and a stack height of some 23.9 metres. The brickworks building to the south of the site is around 10 metres high with a stack height of some 27.5 metres.<sup>35</sup>
31. The proposed main building would have a footprint of around 170 metres by 107 metres and at the highest point its roof would be approximately 36 metres above ground level within the site. Whilst the SPD<sup>36</sup> indicates that energy from waste flue stacks generally range from 30-70 metres, it acknowledges that stack height will be determined by air dispersion modelling. In this particular case the proposed stack, which would be situated to the east of the main building, would be up to 95 metres tall based on the results of dispersion modelling. From time to time it is likely that emissions from the stack would give rise to a visible plume.
32. The design of the proposed development has evolved over a number of years in consultation with the Council. Notable changes have included lowering the plant within the main building into the ground to reduce its overall height and the introduction of a curvilinear roof design helping to create a less imposing structure than a more conventional roof form. The colours of the materials to be used in the external surfaces of the main building have been chosen to reflect the autumnal High Weald colour palette, with reference to *Guidance on the selection and use of colour in development*<sup>37</sup>, an approach welcomed by the High Weald AONB Unit.<sup>38</sup> The aim of these aspects of the design is to help the building integrate with the surrounding landscape. Furthermore, the stack would have an external diameter of 2.5 metres and would be free-standing above the level of the adjacent section of roof, giving it a slimline appearance. It is proposed to colour the stack in a muted grey to limit its visual impact

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<sup>33</sup> ID64.

<sup>34</sup> ID96 para 42.6.

<sup>35</sup> CD71 para 9.24.

<sup>36</sup> CD136 para 4.68

<sup>37</sup> CD103

<sup>38</sup> CD47.



when seen against the sky. The structures would be substantially larger than other existing individual buildings or stacks within the Brookhurst Wood complex. However, I consider that in the context of the significant area of commercial/industrial built development there, they can be said to integrate with adjoining land-uses and would not be out of place, in keeping with the aims of the SPD that the layout and detailed design of new waste facilities is appropriate to its context and reflects the character of the area within which it is located. Given its immediate surroundings, in my judgement it would be reasonable to regard the form and appearance of the proposed development as high quality. I turn then to consider potential wider impacts.

### *Landscape*

33. The landscape and visual impact assessment (LVIA) that forms part of the ES was produced by RPS. It refers to GLVIA and the analysis approach taken was agreed with the landscape architects of both the County and District Councils. Additional analysis, based on the same approach, was provided by RPS in support of the appeal. At the Inquiry, EDCO provided LVIA evidence on behalf of the Council, which also made reference to GLVIA.
34. GLVIA indicates that landscape and visual impact assessments must clearly distinguish between the assessment of landscape effects and the assessment of visual effects.<sup>39</sup> The assessment of landscape effects involves assessing the effects on the landscape as a resource in its own right. This is not just about physical elements and features that make up the landscape, it also embraces the aesthetic<sup>40</sup>, perceptual and experiential aspects of the landscape that make different places distinctive/valued. In contrast, the assessment of visual effects involves assessing the effects on specific views and on the general visual amenity experienced by people. GLVIA emphasises that the distinction between the 2 is important and should be clearly reported.
35. It appears to me that EDCO's assessment confuses the 2, basing its findings with respect to landscape effects on the impact on views, at least in part.<sup>41</sup> Furthermore, EDCO's approach to the assessment of the magnitude of landscape impact appears not to follow the GLVIA method. Its means of establishing the magnitude of impact is based on whether the effect would be significant, moderate, minor or negligible<sup>42</sup>, rather than with reference to factors such as the size/scale of effect recommended by GLVIA. I consider that, as a result of these methodological departures from GLVIA, EDCO's assessment of landscape effects is flawed and greater weight is attributable to the RPS approach and findings, although in relation to some effects my judgement differs.
36. The appeal site lies within: National Character Area (NCA) 121-Low Weald<sup>43</sup>; West Sussex Landscape Character Area (LCA) LW8-Northern Vales<sup>44</sup>; Horsham District LCAs P1-Upper Arun Valleys and K2-Faygate and Warnham Vale<sup>45</sup>; and,

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<sup>39</sup> CD138 paras 2.21

<sup>40</sup> CD138 page 84 Box 5.1 'scenic quality...landscapes that appeal primarily to the visual senses', perceptual aspects...perceptual qualities, notably wilderness and/or tranquillity', 'experiential 'evidence that the landscape is valued for recreational activity where experience of the landscape is important'.

<sup>41</sup> Proof of evidence of Mr Coombes.

<sup>42</sup> Proof of evidence of Mr Coombes page 7 Table B.

<sup>43</sup> CD110-National Character Area profile published by Natural England.

<sup>44</sup> CD167-The Landscape Character Assessment of West Sussex.

<sup>45</sup> CD108-The Horsham District Landscape Character Assessment.

Local Landscape Character Area (LLCA) 15-Warnham Brickworks<sup>46</sup>. It also lies close to West Sussex LCA LW4-Low Weald Hills and Horsham District LCA I2-Warnham and Rusper Wooded Ridge.

37. *The Horsham District Landscape Capacity Assessment, April 2014* describes LLCA 15, within which the site is located, as :a very large quarry and brickworks and existing employment development, which adjoins Brookhurst Wood Landfill; hidden by surrounding ancient woodland and tree belts; and, the development in this area has contributed to a poor landscape condition. It finds that the sensitivity of this LLCA to change is low. This is not a matter in dispute. Whilst the Capacity Assessment also indicates that the landscape capacity of LLCA 15 to accommodate large scale employment development is high, this was in the context of development up to 12 metres in height and so is of limited assistance in this case, which involves development of a greater scale.
38. The proposal would not affect neighbouring woodland. To my mind, it would be in keeping with the industrial character of the area and in that context it would not appear out of place. However, the scale of the main building and stack would be greater than existing elements, such that the magnitude of impact would be medium. I consider that the scheme would result in a minor adverse effect on LLCA 15, in common with RPS and EDCO.
39. With reference to *The Horsham District Landscape Character Assessment (HDLCA)*, the proposed building would straddle the boundary between LCA P1 to the west and to the east LCA K2, which would also include the proposed stack.
40. The HDLCA indicates that LCA K2 has a moderate sensitivity to change. Whilst the assessment does make some reference to the impact of industry in the area, no specific mention is made of existing development within LLCA 15. However, to my mind this is unsurprising, as a relatively small part of it falls within the much larger LCA K2. Furthermore, the high level of enclosure afforded by surrounding woodland and landform to the east of that part of LLCA 15, greatly limits the influence of existing structures. However, just as the large scale urban development around Broadbridge Heath is said to have eroded the character of LCA K2, the recently approved Land North of Horsham development, which would be located to the east of the appeal site on the other side of Langhurstwood Road, would be likely to have a similar impact. It would include up to 2,750 new homes, a business park of some 46,450 m<sup>2</sup> as well as new schools and a local centre. Under these circumstances, I consider that it would now be reasonable to regard the sensitivity to change of LCA K2 as low.
41. The proposed building, due to its large scale, would not benefit to the same extent as existing structures from the enclosure of the site and the impact of the stack would be even greater. The scale of the development would be out of character with existing elements and it would result in a marked intensification of the industrial character of the section of the LCA K2 to the north of Horsham. I consider that the magnitude of impact would be high, resulting in a moderate adverse effect on LCA K2.

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<sup>46</sup> CD104-The Horsham Landscape Capacity Assessment.

42. The HDLCA indicates that LCA P1 has a high sensitivity to change. However, in comparison with LCA K2, LLCA 15 takes up a greater proportion of LCA P1 and yet no reference is made to industrial development in the assessment of that area. With this in mind, I consider the HDLCA finding that LCA P1 is '*mostly unspoilt rural character, except for urban edge influence around Horsham and some road and aircraft noise in places*' to be flawed. I acknowledge that the level of enclosure afforded by surrounding woodland limits to some degree the influence of existing structures within the section of LLCA 15 that forms part of LCA P1. Nonetheless, I consider overall, that it would be reasonable to regard the sensitivity to change of LCA P1 as medium.
43. The scale of the development would be out of character with existing elements and it would result in a marked intensification of the industrial character of this part of LCA P1. The proposed building, due to its large scale, would not benefit to the same extent as existing structures from the enclosure of the site and so it would influence a wider area. Whilst the stack would be located outside LCA P1, due to its scale, it would introduce a new skyline feature which is industrial in character and have an adverse impact on the scenic quality of some areas of otherwise unspoilt rural character. Where they occur the magnitude of these impacts would be high. However, they would not be extensive, due to the level of enclosure provided by wooded areas to other parts of the LCA and so, in my judgement, would result overall in a moderate adverse effect on LCA P1.
44. The HDLCA identifies that key characteristics of LCA I2 include, amongst other things, a distinct escarpment to the north of Horsham, which takes the form of rising ground to the northwest and northeast of the appeal site, and it has a high sensitivity to change. However, whilst the appeal site is located close to LCA I2, it is outside the boundary of that area and so would not have a direct impact on its key characteristics. Nonetheless, although there is a high degree of enclosure in many parts of the area, due to woodland, some parts, such as to the east of the appeal site as well as to the north and west on higher ground, are more open. I consider that as a result, in common with LCA P1, the proposed stack would harm the scenic quality of the area resulting in a medium magnitude of impact and a moderate adverse effect on LCA I2.
45. Whilst the northern section of LLCA 15-Warnham Brickworks falls within LCA LW4, the southern section, which includes the appeal site, lies within LCA LW8. Although it contains part of LCA P1, LCA LW8 comprises for the most part LCA K2, and consistent with the HDLCA, *The West Sussex Landscape-Land Management Guidelines* (WSLMG)<sup>47</sup> indicate that it is moderately sensitive to change. However, in common with LCA K2, I consider that: the recently approved Land North of Horsham development would extend the suburban influence of Horsham into LCA LW8 and its sensitivity to change should now be regarded as low; the magnitude of impact, with particular reference to the stack, would be high; and, the result would be a moderate adverse effect on LCA LW8.
46. In the vicinity of Horsham, LCA LW4 runs in an east-west direction to the north of LCA LW8 and includes LCA I2 and parts of LCA P1. The WSLMG identifies that the overall sensitivity of the area to change is high and the key sensitivities of LCA LW4 include the cumulative impact of vertical structures on ridge slopes and ridgetops. It seeks to avoid skyline development. The appeal

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<sup>47</sup> CD167.

site is situated outside of the boundary of that area and so would not have a direct impact on its key characteristics, nor does it involve development on ridge slopes or tops, being located on a relatively low lying site. However, as I have indicated, it would introduce new skyline development to the detriment of the scenic quality of the area, resulting in a medium magnitude of impact and a moderate adverse effect on LCA LW4.

47. The National Character Area profile for NCA 121 indicates that only a small proportion of the land falls within nationally designated landscapes, which are situated towards the edges of the area. It identifies that whilst NCA 121 is generally a pastoral landscape, with land use which is predominantly agricultural, there are urban influences. Gatwick Airport as well as parts of Crawley and Horsham fall within the bounds of NCA 121.<sup>48</sup> Furthermore, to my mind, the Land North of Horsham development would extend that urban influence. Given the limited extent of included designated landscape, the predominant agricultural land use and the presence of detractors in the form of urban/commercial areas linked by road and rail, I consider that it would be reasonable to regard the sensitivity to change of NCA 121 as medium.<sup>49</sup>
48. The LCA's referred to above represent a relatively small part of NCA 121. In the context of the wide area that NCA 121 represents and having regard to its key characteristics, the proposed development located on an existing industrial site close to the expanding urban area of Horsham would not amount to a substantial change to the character of the landscape. Although the scale of development, with particular reference to the height of the stack, would be out of character and would detract from the scenic quality of parts of the area, I consider that the impact would be slight in the context of the overall area. Under these circumstances, the magnitude of impact would be low, resulting in a minor adverse effect on NCA 121.
49. There is no dispute that the sensitivity to change of the SDNP, High Weald AONB and Surrey Hills AONB, and Warnham Court Registered Park and Garden would be high. However, the proposal would not be sited within or close to any of those landscapes. Insofar as it would fall within the setting of those landscapes, in my judgement, they would be sufficiently distant so that the magnitude of impact and significance of effect on the setting would be no greater than negligible and minor adverse respectively, and there would be no material effect on the scenic beauty of the landscapes nor would other objectives of the designations be undermined. The scheme would not conflict with WLP Policy W13 or the aims of the Framework with respect to safeguarding protected landscapes.
50. There is no dispute that the proposed development would have some adverse landscape impact. However, it would not have a material effect on any protected landscapes and otherwise I consider that the significance of effect on the landscape would be no greater than minor-moderate adverse. In my judgement, this would not amount to an unacceptable impact on the landscape.

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<sup>48</sup> CD110

<sup>49</sup> ES chapter 5 Table 5.1.

*Views and visual amenity*

51. Whilst the approach taken by RPS and EDCO to the assessment of magnitude of visual impact are comparable, they are not with respect to the sensitivity of receptors. In my judgement, the less detailed, 'broader' criteria favoured by EDCO are less transparent. Furthermore, based on what I have read, heard and seen; I consider that the findings of EDCO with respect to the visual effects of the proposed development often amount to exaggeration. For example, in relation to viewpoints 29 (VP29), VP28 and VP4.
52. From VP29, which is located immediately to the south of Kingsfold on the A24, a view to the south of the proposed stack would be available over a short section of the highway, due to the elevated level of the carriageway and relatively low roadside planting there. EDCO assesses the sensitivity of passing vehicle drivers as medium and cyclists as high. However, the vantage point is on a short curved section of a relatively busy 2-way carriageway with a speed limit of 40 mph. Under the circumstances, I consider it highly likely that passing travellers, most especially drivers and cyclists, would be focussed on the road and relatively disinterested in the views; low sensitivity receptors. As to the magnitude of impact, it is rated by EDCO as high. From VP29, a section of the stack breaking the skyline would be visible. However, the slender structure would form part of a wide view that also includes trees in the foreground that break the skyline and which would reduce the visibility of the stack from parts of this short section of highway. I consider that the magnitude of impact would be low. The significance of effect would be minor adverse, as identified by RPS, rather than ranging between moderate/major/substantial according to EDCO's assessment.
53. VP28 is located part way along public footpath 1489-2, which runs in an easterly direction from Kingsfold. The footpath runs along the northern side of a field hedgerow, such that a view southwards towards the appeal site is only available through a short gap in the hedgerow between fields. There is no dispute that the sensitivity of a user of the footpath would be high. However, EDCO assesses the magnitude of impact as also high. I acknowledge that through the gap in the hedgerow it would be possible to see the stack extending above the skyline and that the main building, although below the skyline, may be visible in part. Nonetheless, that view would be to the south and not in the direction of travel of the footpath users, which is east-west. Furthermore, the gap in the hedgerow is limited and the distance to the site would be over 2 Km. In addition, when seen from that vantage point the proposal would form part of a much wider view, which includes trees in parts of the foreground that also break the skyline. I consider that the magnitude of impact would be low. The significance of effect would be minor adverse, as identified by RPS, rather than ranging between major/substantial according to EDCO's assessment.
54. VP4 is located part way along a public footpath which runs in a north-south direction within the High Weald AONB. EDCO assesses the magnitude of impact as medium. However, the length of footpath over which views towards the site, to the northwest, would be available would be limited due to woodland in the foreground. Furthermore, in those limited views to the northwest, the stack would be likely to be a barely discernible aspect of the wider view, due to its slender form and the viewing distance of almost 4 Km. I consider that the magnitude of impact would be negligible. The significance of effect would be



minor adverse, as identified by RPS, rather than ranging between moderate/major according to EDCO's assessment.

55. Under the circumstances, I consider that in comparison with EDCO's visual impact assessment (VIA) approach and findings, those of RPS<sup>50</sup> are to be preferred and, having observed the surroundings myself<sup>51</sup>, I consider its findings to be reasonably reliable. This includes its analysis leading to the findings that the significance of effect on sensitive receptors in the following locations would be no greater than minor adverse: the churchyard of the Grade I Listed Church of St Margaret (VP7); on a public footpath at Warnham Court Registered Park and Garden (VP6); within Surrey Hills AONB (VP11); and, the SDNP.
56. The RPS VIA indicates, with reference to the 29 representative viewpoints assessed in the ES, that the significance of effect of the proposal would be minor adverse at 24 VPs, minor/moderate adverse at 1 VP (VP17) and moderate/major adverse at 1 VP (VP14). The effects at VP14 and 17 relate to pedestrians and relatively short sections of Station Road and Mercer Road (public rights of way 1574-1/1574-2) leading to/from Warnham Station. These highways do not have footways and are not lit. I consider therefore that the identified effect would be unlikely to be experienced by significant numbers of pedestrians.
57. Of the other viewpoints put forward by interested parties, the RPS VIAs indicate that the significance of effect of the proposal would be minor or moderate adverse at 4 VPs (EDCO<sup>52</sup> 3, 8, 13<sup>53</sup> and Ni4H VP2-at Old Manor, which represent a small number of dwellings), and moderate/major adverse at 1 VP (EDCO 12-at Andrews Farm, which represents a small group of dwellings). In my judgement, the magnitude of impact on passengers using the Dorking to Horsham railway line would be likely to be less than the medium impact assessed by RPS, as views from trains passing alongside the western boundary of the site are already likely to be dominated by the existing building on site, and the significance of effect would be likely to be less than moderate. Otherwise, I consider that the effects on other identified receptors associated with viewpoints put forward by interested parties would be likely to be less than moderate.
58. It is clear from the commentary contained within the ES<sup>54</sup> that the assessments at VPs 21-24 took account of the proposed Land North of Horsham development. However, it is not self-evident that that development was taken into account when assessing the effects at VPs 3, 19 or 25-26.<sup>55</sup> To my mind, the effect of the Land North of Horsham development would be to increase the extent of developed land visible from those vantage points, such that the significance of the effect of the appeal scheme, if altered at all, would be most likely to reduce. I consider that, due to the topography of the intervening land,

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<sup>50</sup> Amongst other things, the definitions of visual sensitivity take some account of the 'number of viewers', ref. CD29 ES Volume 1 table 5.1.

<sup>51</sup> Reliance has not been placed on the documentary evidence alone, not least as not all of the viewpoint analysis, such as that related to the additional viewpoints put forward by interested parties, is supported by photomontage.

<sup>52</sup> See Appendix 12 of David Coomes proof of evidence-residential receptor groupings.

<sup>53</sup> Includes properties on School Hill, including NI4H VP 12 (private property)/ID29.

<sup>54</sup> ES chapter 5 paras 5.8.74-5.8.77.

<sup>55</sup> Appendix 6 (Land North of Horsham Masterplan Design) of the proof of evidence of Mr Coomes.

views from VP 20 would be unlikely to be affected by the Land North of Horsham development.

59. The proposed development would include some night-time lighting, including red aviation warning lights at the top and halfway up the stack, the extent of which could be controlled through the imposition of a suitable condition. However, it is clear from the evidence submitted regarding existing light pollution,<sup>56</sup> as well as my own observations, that the night-time landscape within which the proposed development would generally be seen is not entirely dark at present. Views from most, if not all, of the identified viewpoints would be affected by some light pollution from sources such as the urban area of Horsham, highways, existing development at Brookhurst Wood or domestic properties. In my judgement, the significance of effect on sensitive receptors would be unlikely to exceed minor adverse.
60. There is no dispute that the proposed development would have an adverse visual impact. However, I consider overall, that the numbers of people affected by a greater than minor adverse significance of effect on views and visual amenity would be relatively small. In my judgement, this would not amount to an unacceptable effect on views or visual amenity.

### *Conclusions*

61. I consider that the form and appearance of the scheme can be regarded as high quality. Whilst there is no dispute that the proposed development would have an adverse landscape and visual impact, to my mind, some impact could reasonably be anticipated to be associated with the current allocation of the site for a large waste management facility. However, the significance of effect on the landscape would be no greater than minor-moderate adverse. Furthermore, the numbers of people affected by a greater than minor adverse significance of effect on views and visual amenity would be relatively small. In my judgement, it would integrate with its surroundings to a satisfactory degree. I conclude overall, having regard to the likely cumulative effect on landscape, views and visual amenity, that the effect of the appeal scheme on the character and appearance of the area would be acceptable and in this regard it would not conflict with the aims of WLP Policies W11, W12 or W13, or the Framework. In my judgement, it would also be consistent with the aims of HDPF Policies 25, 26 and 30, insofar as they seek to protect areas of landscape importance.
62. The Council's landscape architect considered that the scheme would not cause an unacceptable adverse effect.<sup>57</sup> Furthermore, Horsham District Council indicated that it could not substantiate a landscape planning reason to object to the scheme.<sup>58</sup> In addition, there were no objections from the Surrey Hills AONB Unit or the South Downs National Park Authority.<sup>59</sup> These matters add further weight to my conclusion.

### ***Living conditions***

63. It is clear from the written submissions made and the views expressed by a large number of local people, including some elected officials and objectors who

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<sup>56</sup> CD174-The High Weald AONB Management Plan, 2019-2024 page 60, ID50, ID2.

<sup>57</sup> CD51.

<sup>58</sup> CD43.

<sup>59</sup> CD48 and CD65.

appeared at the Inquiry, that there is a significant level of public opposition to the appeal scheme. With reference to the submissions made, opposition is based in no small part on the perception that the effect of the scheme on air quality would harm public health. Whilst there is no dispute that public perception of harm is a material consideration in this case, the factors informing the weight to be attributed to it and whether it would amount to a reason to refuse planning permission include the existence or otherwise of objective justification for the concern and the degree to which land use consequences would flow from the perception of harm.

64. I deal first with objective justification. Changes to local air quality have the potential to affect public health and both local and national policy seeks to put safeguards in place. WLP Policy W12 seeks to ensure that proposals for waste development minimise potential conflicts between land-uses and activities. The reasoned justification for the Policy indicates that new development should be compatible with neighbouring land uses, for example, in terms of pollution. WLP Policies W16 and W19 aim, between them, to avoid unacceptable impacts on air quality as well as on public health and amenity. HDPF Policy 24 seeks to ensure that developments minimise air pollution to protect human health and the environment. These Policies are consistent with the aims of the Framework, which aims to ensure, amongst other things, that new development is appropriate to its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.
65. The ES submitted in support of the planning application subject of this appeal includes an assessment of the likely impact of the scheme on air quality (ESA) and an associated assessment of the potential for the appeal scheme to influence health within the local population.
66. The ESA indicates that ADMS 5, a version of the Atmospheric Dispersion Modelling System developed by Cambridge Environmental Research Consultants, has been used to predict ground level concentrations from emissions to atmosphere from the proposed stack, both at identified sensitive receptor locations<sup>60</sup> and more generally across the modelled domain. The ES confirms that, with reference to long-term emissions limits, *'the predicted environmental concentrations all remain well within the air quality environmental objective thresholds set to be protective of the environment and health, and are not considered significant within the air quality assessment'*.<sup>61</sup> The same can be said with respect to the results associated with short-term emissions limits.<sup>62</sup>
67. As regards the limitations of the ESA, the ES indicates that the ADMS 5 model has been formally validated and is widely used for regulatory purposes. There is no dispute that some uncertainty is likely to be associated with the software model used, its predictive ability being dependent on how well the turbulent nature of the atmosphere in the subject location can be represented. However, the ES indicates that inputs to the model have been chosen to ensure that it reflects conditions in the vicinity of the site and the results of the

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<sup>60</sup> ES Volume 3 Appendix 7.5, ES Chapter 7 para 7.7.1, Tables 7.18-7.25.

<sup>61</sup> CD29 chapter 13 para 13.9.3.

<sup>62</sup> CD29 ES chapter 7 table 7.18.

modelling can be considered conservative overall. The inputs include meteorological data, local topographical information and emissions rates.

68. Meteorological data has been used from Charlwood Meteorological Station, which is 8 Km away from the site. I consider this to be reasonably close and so likely to be representative of conditions in the vicinity of the site. Local building and topographical information has also been input into the model to better reflect the actual situation. In keeping with the Department for Environment, Food and Rural Affairs' *Local Air Quality Management Technical Guidance, 2016*<sup>63</sup>, 5 years of meteorological data has been modelled to ensure that the potential effects of fluctuating wind directions in different years are taken into account and the highest predicted concentrations across the model grid (and at sensitive receptor locations) are reported in the ES. As regards emissions rates, the modelling has been undertaken assuming that the stack emissions would be at the maximum concentrations allowed by the current *Industrial Emissions Directive (2010/75/EU) (IED)*. However, an Environmental Permit, issued by the Environment Agency (EA), would be required in order to operate the proposed energy from waste plant. The EA has confirmed that an EP issued after October 2019 for the type of facility proposed in this case would be required to meet more stringent EU Best Available Technique air emissions limits.<sup>64</sup> I consider therefore that, in practice, emissions concentrations are likely to be lower than the IED maximum concentrations assumed for the purposes of the modelling.
69. Under these circumstances, in my judgement, it is likely that the results set out in the ES are conservative, such that the actual environmental concentrations resulting from the proposal would be likely to be lower. I consider that the assessment is robust and the conclusion that *'the predicted environmental concentrations all remain well within the air quality environmental objective thresholds set to be protective of the environment and health, and are not considered significant within the air quality assessment'* can be given significant weight.
70. The ES assessment of the potential for the appeal scheme to influence health within the local population concludes *'given operational emissions are not of a concentration or exposure to quantify any measurable impact to health, and remain within air quality objectives set to be protective of health, it is considered that the impact on health from changes in operational emissions would be low, leading to a minor adverse effect.'*<sup>65</sup>
71. Furthermore, as I have indicated, control of the thermal treatment process and emissions from it would be regulated under the terms of an EP. Those terms would be set by the EA to ensure compliance with standards set to protect health and the environment, and having had regard to, amongst other things, a Human Health Risk Assessment<sup>66</sup> and accident management<sup>67</sup>. As an aside, whilst the Environment Agency's response to the appellant's 'R1 status' application may have been slower than the appellant would have liked or

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<sup>63</sup> CD141 para 6.11.

<sup>64</sup> ID80.

<sup>65</sup> CD29 ES chapter 13 para 13.9.8.

<sup>66</sup> ES para 13.3.6-in which further consideration would be given to Dioxins and Furans, amongst other things. Dr Andrew Buroni confirmed in oral evidence that with reference to the air quality assessment, the Dioxin/Furan contribution would be insignificant (Ref. ES Chapter 7 and ID56).

<sup>67</sup> ID 77, ID95 para 29(2).

- anticipated, in my view, this cannot reasonably be taken as an indicator that the Environment Agency may be too busy to regulate operational facilities effectively.<sup>68</sup> The Framework indicates that planning decisions should assume that separate pollution control regimes will operate effectively.
72. My attention has been drawn to a number of papers reporting research into potential associations between the operation of incinerators and health effects, and concerns expressed by some Members of Parliament regarding emissions from incinerators, on the basis of which a number of interested parties argue that the scheme should be rejected, pending certainty, with reference to the 'precautionary principle'.<sup>69</sup> However, having taken account of recent research, Public Health England (PHE) updated its *PHE statement on modern municipal waste incinerators (MWIs) study* on 15 October 2019. It confirms that '*PHE's risk assessment remains that modern, well run and regulated municipal waste incinerators are not a significant risk to public health. While it is not possible to rule out adverse health effects from these incinerators completely, any potential effect for people living close by is likely to be very small.*' This adds further weight to the conclusion of the ES on the subject, with which the Council's Director of Public Health has not taken issue.<sup>70</sup> I consider that, against this background, invocation of the 'precautionary principle' would not be justified.
73. I have not been provided with any substantial evidence to justify setting aside the findings of the ES on this matter.<sup>71</sup> I conclude that the proposal would be unlikely to have a significant adverse effect on public health, with reference to air quality.
74. I turn then to consider whether, in the absence of objective justification for the public health concern raised with respect to air quality, land use consequences would flow from the perception of harm. A number of interested parties have suggested that people may well feel compelled to either move from the area or not to move into the area due to the existence of the proposed facility. Liberty Property Trust, who at the time of the application, were taking forward the Land North of Horsham allocation, suggested that the appeal scheme would result in significant adverse effects on the allocation, which includes new housing, a business park, schools, recreation and open space and a local centre.<sup>72</sup> I acknowledge that if that were the case, it would constitute a land use consequence.
75. As I have indicated, it is clear, from the submissions made, that a significant number of existing residents in the area are concerned. However, relatively few of those who cite this concern have engaged on an evidential basis. For example, the only substantiation provided by many of those who have written at the appeal stage is a reference to the Council's fifth reason for refusal to the effect that the development would have an unacceptable impact on public health. However, upon reflection, the Council has chosen not to substantiate that reason for refusal itself stating instead '*The County Council accepts that there is no evidence to indicate that there would be an unacceptable impact on public health resulting from the development...*'. I have

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<sup>68</sup> For example, ID93, ID82.

<sup>69</sup> For example, IDs 23, 46, 49, 59, 69, 90.

<sup>70</sup> CD60.

<sup>71</sup> For example, NI4H acknowledges at para 26 of ID 95 that it '*has not introduced evidence of objective justification for health concerns, and does not contest the application on the ground that there are such*'.

<sup>72</sup> CD161 and James Neave's proof of evidence para 4.38.



also determined that such a reason for refusal cannot be sustained. To my mind, it is unlikely that many, if any, of those objectors would choose to move on the basis of the Council's unsupported assertion, which both the Council and, independently, I have concluded is unfounded.

76. Furthermore, it is clear, with reference to other appeal decisions brought to my attention, that significant public opposition based on a perception of harm to health is often associated with energy from waste proposals. Nonetheless, in common with my colleague, who dealt with a recent appeal related to a proposed energy from waste facility in Swindon<sup>73</sup>, there is no evidence before me to demonstrate that other energy from waste developments within or adjacent to a developing urban area have adversely affected either house prices or the demand for housing in an area.
77. It is conceivable, notwithstanding the absence of any objective justification with respect to air quality, that some people may choose to move away (a limited number have indicated that they would do so) or may choose not to move into the area as a result of the proposed scheme. However, based on the evidence before me, in my view, it is unlikely that many would do so and it is unlikely that the impact would be significant in land use terms. Furthermore, there is no compelling evidence before me to support the contention that businesses considering relocation to the area would be likely to be deterred by the scheme or by the cluster of waste management activities at Brookhurst Wood, which in any event, already exists in large part.<sup>74</sup>
78. Under these circumstances, I consider that only limited weight is attributable to the perception of harm to public health and the scheme would not give rise to a significant conflict between land uses in the area.
79. I conclude that the effect of the proposal on the living conditions of the local community, with reference to air quality and public perception, would be acceptable and in relation to this matter there would be no conflict with WLP Policies W12, W16 or W19, HDPF Policy 24 or the Framework.
80. It has been suggested, with reference to air quality, that allowing the appeal would result in a breach of Human Rights, in particular Schedule 1, Part I Article 2 of the *Human Rights Act 1998*; the right to life. I do not consider this argument to be well founded, as I have found that the scheme would be unlikely to have a significant adverse effect on public health. In my judgement, with reference to air quality, allowing the appeal would not result in interference with or violation of any Human Rights, with reference to the *Human Rights Act 1998*.

### ***Heritage assets***

81. The ES confirms that whilst there are no designated heritage assets within the appeal site, there are a number in the wider area. They include, amongst others: Graylands Copse Moat scheduled monument; a Grade II Registered Park and Garden at Warnham Court; Warnham Conservation Area; and, a number of listed buildings in the area, including the Grade I Listed Parish Church of St Margret.

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<sup>73</sup> CD118 para 167.

<sup>74</sup> ID83.

82. Section 66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990, (as amended)* requires that in considering whether to grant planning permission for development which affects the setting of a Listed Building, special regard shall be had to the desirability of preserving its setting. The Framework identifies that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be), irrespective of the degree of harm. The Framework also indicates that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
83. The ES, having identified the significance of the designated heritage assets in the area, including any contribution made by their setting, indicates that whilst there would be some adverse impact on the settings of designated heritage assets, it would be no greater than slight/low in any case. Furthermore, it concludes that the resulting effect on the significance of each designated heritage asset would be no greater than minor adverse.<sup>75</sup> I have not been provided with another similarly detailed assessment which would justify a contrary conclusion. Based on what I have read, heard and seen, I consider that the ES assessment, which is consistent with my findings concerning the likely effect on views from vantage points such as VP6<sup>76</sup> and VP7<sup>77</sup>, is robust. Furthermore, in my judgement, the harm to the significance of designated heritage assets in the area, whether considered individually or cumulatively, would be far less than substantial.
84. Insofar as there would be some harm, albeit less than substantial, I consider that the scheme would conflict with the requirement of HDPF Policy 34 that development retains and improves the setting of heritage assets. However, to my mind, this requirement is not consistent with the Framework, which makes provision for a balanced judgement to be made in such circumstances, weighing the harm against the public benefits of a scheme. Under the circumstances, I consider that little weight is attributable to the conflict with HDPF Policy 34.
85. WLP Policy W15 indicates proposals for waste development will be permitted provided that known features of historic or archaeological importance are conserved and, where possible, enhanced unless there are no alternative solutions and there are overriding reasons which outweigh the need to safeguard the value of the sites or features.
86. I attribute considerable importance and weight to each instance of harm to the significance of a designated heritage asset in this case, greater weight being given to those of the highest significance, such as scheduled monuments and Grade I Listed buildings. Nonetheless, the proposal would make a substantial contribution towards meeting the identified need for waste recovery facilities and would be located on a site at Brookhurst Wood allocated for such purposes in an up to date Development Plan. The ES<sup>78</sup> confirms the absence of an alternative means of achieving that outcome and I have not been provided with any compelling evidence to the contrary. In my judgement, the public benefits

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<sup>75</sup> CD29 ES chapter 9.

<sup>76</sup> Footpath at Warnham Court Registered Park and Garden.

<sup>77</sup> Churchyard of the Parish Church of St Margret, Warnham.

<sup>78</sup> Chapter 3.

of the appeal scheme would significantly outweigh the associated harm to the significance of designated heritage assets.

87. I conclude that the effect of the proposal on the significance of designated heritage assets would be acceptable, and it would not conflict with the aims of WLP Policy W15. This is a view shared by the Council.<sup>79</sup> Furthermore, Historic England has confirmed that it does not object to the scheme.<sup>80</sup> These matters add further weight to my conclusion.

### **Other matters**

#### *Renewable and low carbon energy*

88. The Framework indicates that renewable energy covers those energy flows that occur naturally and repeatedly in the environment, including from biomass. Whilst the proportion of the electricity generated by the proposal that would comprise renewable energy is a matter of debate, it appears likely, given the anticipated sources of feedstock, that the energy generated would be likely to be partially from renewable sources and in this respect the scheme would gain some support from the Framework as well as WLP Policy W10(d) and HDPF Policy 35. Furthermore, the ES indicates that the proposed facility would be configured to be able to export heat and the appellant's *Local Area Potential Heat Users Search* report identifies a potential opportunity to provide heat to the brickworks adjacent to the site, which it indicates is likely to be a large industrial heat user.<sup>81</sup> It indicates that should planning permission be granted the opportunity would be pursued further. I consider that it would be possible to ensure that the scheme would have the capability to export heat through the imposition of a suitable condition, which has been suggested by the Council. I conclude that the scheme would be consistent with the aims of WLP Policy W10(d), HDPF Policies 35 and 36 as well as the Framework, insofar as they seek to ensure, where appropriate, that development includes measures to promote the use of renewable energy and heat recovery.
89. I have had regard to the views expressed by a number of interested parties that the proposal would not represent a low carbon solution.<sup>82</sup> The Framework simply defines low carbon technologies as those that can help reduce emissions (compared to the conventional use of fossil fuels). There is no dispute that the carbon intensity of the electricity generated by the proposal would be likely to be lower than that associated with coal fuel and in that context could be considered to be low carbon in my view.<sup>83</sup> However, the appellant acknowledges that is not the case in relation to all fossil fuels, for example, electricity generated by a Combined Cycle Gas Turbine in baseload mode would represent a lower carbon source of electricity than the proposal. Viewed solely in that context, the low carbon credentials of the proposal would appear to be relatively poor.<sup>84</sup> However, in my view that is not the end of the matter.
90. The appellant has indicated that at present, residual active waste arising from the process stream of which the existing appeal site operation forms part, is

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<sup>79</sup> CD71, ID41 and ID62.

<sup>80</sup> CD50.

<sup>81</sup> CD29 ES Volume 1 para 2.4.3, CD32 Appendix F..

<sup>82</sup> For example, ID52/94.

<sup>83</sup> Appendix A Only Solutions Climate Change Report figure 1 to Maureen Darrie's proof of evidence, para 2.14 of Christopher LeCointe's rebuttal proof of evidence.

<sup>84</sup> ID95para 13, ID99 para 27, ID52/94.

converted to RDF and exported to continental Europe for recovery. Furthermore, it identifies that much of the residual waste arising within the catchment for the proposed facility is now exported to energy from waste facilities in Holland and Germany.<sup>85</sup> It appears to me that dealing with the residual waste in an energy from waste facility onsite rather than exporting the RDF to a similar facility in continental Europe would be likely to provide transport related carbon savings, which would help to mitigate climate change in keeping with the aims of the Framework and local policies such as HDPF Policy 24, 35 and 36.

91. NI4H and others<sup>86</sup> have also expressed the concern, supported by an 'Only Solutions LLP report', that, in comparison with sending the residual waste to landfill, the proposal may generate more greenhouse gas emissions (GHG). The EFWG indicates that *'in carbon terms, currently energy from waste is generally a better management route than landfill for residual waste. However, while it is important to remember this will always be case specific and may change over time, two rules apply: the more efficient the energy from waste plant is at turning waste into energy...the lower the net emissions from energy from waste; and, the proportion and type of biogenic content of the waste is key.'* As I have indicated, whilst it would be possible to ensure that the facility meets the requirements of the R1 energy efficiency formula, the precise mix of feedstock is not known and so the merits of landfilling versus energy from waste in GHG terms cannot be determined with certainty at this stage. Nonetheless, to my mind, this particular comparison between landfilling and the proposed process is anyway of limited relevance in this case. Diversion of the residual waste, which would otherwise be subject to the proposed energy recovery from waste route, to landfill would be contrary to the aims of the up to date WLP and national policy, which seeks to drive the management of waste up the Waste Hierarchy; a position acknowledged by NI4H.<sup>87</sup> Furthermore, if not handled at the proposed facility it appears more likely that residual waste would be exported for recovery, rather than being sent to landfill.
92. I conclude overall, as the precise mix of feedstock it would handle cannot be known at this stage, there is significant uncertainty around the credentials of the facility in terms of a low carbon technology. However, in the particular circumstances of this case, it would be likely to deliver carbon savings when a wider view is taken. I conclude that the proposal would be likely to help to mitigate the impact of climate change, in keeping with the aims of the Development Plan and the Framework. However, given the uncertainties involved regarding the scale of any such benefits, I give this matter little weight. Whilst National Policy Statements EN-1 and EN-3 give support to technologies of the type proposed, notwithstanding the associated CO<sub>2</sub> emissions, I give those provisions little weight, not least as the appeal scheme falls below the threshold for Nationally Significant Infrastructure Projects to which the Policies are directly relevant.<sup>88</sup>

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<sup>85</sup> CD29 Volume 1 para 3.26, para A1.6 of Appendix 1 to Christopher LeCointe's rebuttal proof of evidence.

<sup>86</sup> For example, ID52/94.

<sup>87</sup> ID99 para 26.

<sup>88</sup> Rebuttal proof of evidence of Christopher LeCointe, ID95 para 19.

*Climate change resilience*

93. The ES indicates that the proposed facility would be at low risk of flooding. I consider that, subject to the implementation of a drainage strategy to manage surface water run-off, which could be secured by condition, the scheme would be resilient with respect to the potential effects of climate change. I conclude that in this respect the scheme would be consistent with the aims of WLP Policy W10(e) as regards the promotion of climate change resilience.

*Traffic and transport*

94. Under the terms of the operative planning permission for the site, Ref. WSCC/006/18/NH,<sup>89</sup> the appellant is able to handle up to 230,000 tpa of waste and there is an associated limit on the number of heavy goods vehicles (HGVs) entering/leaving the site each day.<sup>90</sup> Whilst the current throughput of the site is not at the permitted level, the Council accepts that there is a reasonable prospect of the site being used to capacity in the future.<sup>91</sup> I have not been provided with any compelling evidence to the contrary and I consider that this represents a legitimate fallback position, to which significant weight is attributable.
95. The overall input capacity of the appeal scheme would also amount to 230,000 tpa of waste and the appellant has indicated that total HGV movements would be managed so as not to exceed the number permitted by the extant planning permission.<sup>92</sup> In my view, this could be ensured through the imposition of a suitable condition, in the event of planning permission being granted for the appeal scheme. Therefore, the operation of the proposed facility would be unlikely to result in an increase in traffic flows above the level that could be reasonably anticipated to be associated with the fallback position and, subject to the imposition of conditions, it would not have any greater impact on highway safety or capacity. I conclude, with reference to these matters, that it would not conflict with WLP Policy W18.<sup>93</sup>

*Warnham Neighbourhood Development Plan*

96. My attention has been drawn to the *Warnham Neighbourhood Development Plan, 2017-2031* (June 2019) (W NDP). However, as its purpose is to structure and guide development within the W NDP designated area, which the appeal site lies outside, the W NDP appears to me to be of little relevance in this case; a view echoed by the Council at the Inquiry.

*Economic effects*

97. I give little weight to the unsupported view of a local resident that the proposed waste management facility would not fit the profile of businesses that

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<sup>89</sup> CD165 para 5.10.

<sup>90</sup> CD041 condition no. 6- No more than 142 HGVs entering and no more than 142 exiting the site Monday-Friday, with a reduced number on Saturdays. Condition no. 11- no more than 230,000 tonnes of waste shall be managed at the site in any one year.

<sup>91</sup> CD71 para 9.50.

<sup>92</sup> ES Vol 1 para 6.7.3.

<sup>93</sup> CD71 paras 9.48-9.54, CD165 Para 5.12.



need to be attracted to Horsham, not least as the appeal site has been allocated for such uses in the Development Plan for the area.<sup>94</sup>

98. I note that the closure of a significant business in Horsham in recent times resulted in a significant loss of jobs. The proposed facility is expected to give rise to a modest increase in the number of full-time employees associated with the appeal site, rising from 12 to 50. Whilst the proposal would also result in additional employment and associated benefits to the local economy during the construction phase, it would be relatively short lived.<sup>95</sup> I give these benefits limited weight.

#### *Public Consultation*

99. I have had regard to the concern raised by a number of interested parties that the appellant could have done more to consult the public on its proposals prior to the submission of its planning application the subject of this appeal. I have no doubt that the public is well aware of the scheme, given the number of objections that have been submitted. Furthermore, it may be that had the appellant availed itself of more opportunities to explain its approach, some would have been dissuaded from their objections. However, this matter does not alter the planning merits of the appeal proposal, upon which my decision must be based.

#### *Miscellaneous*

100. The ES indicates that there is the potential for effects of up to minor adverse significance to occur due to noise arising from the scheme during the construction and operational phases of the proposed development. I have not been provided with any compelling evidence to the contrary. I consider that, subject to the imposition of conditions to minimise noise disturbance, the effects would be acceptable.
101. As I have indicated, there is no evidence before me to demonstrate that other energy from waste developments within or adjacent to a developing urban area have adversely affected house prices. In any event, the PPG indicates that *'in general they (the courts) have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of development on the value of a neighbouring property... could not be material considerations.'*<sup>96</sup> Under the circumstances in this case, I give no weight to the concern that the proposal may adversely affect private property values.
102. As set out in the national *Planning Practice Guidance*, the planning system allows people to apply for planning permission regardless of whether they own or control the land in question and any resulting planning permission usually runs with the land, as would be the situation in the case before me. Furthermore, the focus of the planning system is on whether the development itself would be an acceptable use of the land and the impacts of that use. Against this background, I consider that views as to whether the appellant would be a suitable operator of the proposed facility are not relevant to the determination of this appeal.<sup>97</sup>

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<sup>94</sup> ID83.

<sup>95</sup> James Neave's proof of evidence paras 5.57-58.

<sup>96</sup> Planning Practice Guidance para 21b-008-20140306.

<sup>97</sup> ID83.

### **Conditions**

103. The Council has provided a list of suggested conditions, which it considers should be imposed in the event of the appeal being allowed and planning permission granted. The list was discussed at the Inquiry, together with other conditions suggested by interested parties. I have had regard to those views, when compiling the list of conditions set out in Appendix 3 to this decision, which departs from the Council's list where I consider it necessary in order to accord with the tests of conditions set out in the Framework. Whilst a number of conditions drawn from other appeal decisions have been referred to, I do not know the full circumstances of those cases and have determined the merits of suggested conditions on the basis of the circumstances in the case before me and the specific submissions made. The numbers in brackets ( ) refer to the conditions in Appendix 3.
104. In addition to the normal commencement condition (1), conditions would be necessary to ensure that the works would be carried out in accordance with the approved plans (2) and that the scale and nature of the development would be as applied for (11, 20, 24, 25, 27). This would be necessary in the interests of certainty as well as to ensure that the development is generally in accordance with the scheme which was the subject of the ES.
105. In this context, the ES is based on the provision of a flue stack with a height of 95 metres and a maximum diameter of 2.5 metres, free-standing above the roof of the proposed main building. The height of the stack was chosen to allow dispersion and dilution of residual combustion emissions, ensuring that pollutant concentrations are acceptable by the time they reach ground level.<sup>98</sup> This height was a key input to the air quality assessment. The appellant has suggested that the Environmental Permitting regime may not require the stack to be 95 metres high and a condition could be worded to the effect that it would be 'no higher than required under the Environmental Permit regime and, in any event, no higher than 95 metres'.<sup>99</sup> To my mind, it is conceivable that this approach could result in a lower stack height and higher pollution concentrations at ground level than were identified in the ES. I consider that such a modification would potentially amount to a substantial change to the scheme for which planning permission was sought and upon which interested parties, not just the Council, could reasonably expect to be given an opportunity to comment. In short, such a condition would not be appropriate and a separate application would be required to secure such a change.
106. The height, diameter and free-standing nature of the proposed stack were also key inputs to the landscape and visual impact assessment. These are details that it would be necessary to secure by condition (25). That is: a height of 95 metres (142.65 metres above ordnance datum (AOD))<sup>100</sup>; and, the free-standing section that extends above the roof of the main building (73.27 metres AOD)<sup>101</sup> would have an external diameter no greater than 2.5 metres.<sup>102</sup>

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<sup>98</sup> ES Volume 1 para 7.3.21.

<sup>99</sup> ID84

<sup>100</sup> Ground level 47.65 metres (drawing no. 0701 rev P04).

<sup>101</sup> Roof level adjacent to the stack 25.62 metres (drawing no. 0105 rev P04), ground level 47.65 metres (drawing no. 0701 rev P04).

<sup>102</sup> ID84 NI4H condition no. 6.

107. Furthermore, given that the purpose of the facility is, in large part, to generate electricity for export to the national grid, a condition would be necessary to ensure that a grid connection is available for the export of electricity generated by the facility (27).<sup>103</sup>
108. In the interests of visual amenity, conditions would be required to control the materials used in the external surfaces of the proposed structures and external lighting (4, 9). In the interests of safeguarding living conditions in the local area, conditions would be necessary to: restrict operating hours (15-17); limit noise pollution (12, 21); control the potential for odours and litter (18-19, 23); and, control the environmental impact of piling/foundation works (8) and other construction activities through a Construction and Environmental Management Plan (CEMP) (7). In addition to other matters, the CEMP would include measures to manage waste and litter arising from the construction activities, in the interests of promoting sustainable development and minimising pollution, as well as to prevent debris being carried on to the highway by vehicles, in the interests of highway safety.<sup>104</sup> The latter requirement would not be necessary during the operational phase of the development as vehicles would be travelling on hardstanding within the site.<sup>105</sup> Whilst the hours during which external activities may take place on the site would be slightly longer than permitted under the existing planning permission, they have been taken into account in the ES on the basis of which I am content that they are unlikely to be problematic. I consider that the establishment of a Community Liaison Group would be likely to help mitigate the concerns expressed by local residents with respect to the proposed use of the site (10)<sup>106</sup>. In light of the significant level of public interest expressed in the appeal proposal, a condition requiring the establishment of such a group would be reasonable and necessary, in the interests of safeguarding living conditions in the local area.
109. Conditions would be necessary in the interests of promoting biodiversity, to ensure measures are in place: to protect Great Crested Newts on the adjacent site from the proposed works; to control landscaping/habitat creation within the appeal site (3, 5); and, to drain the site in an appropriate manner<sup>107</sup> (28). A condition would also be necessary to ensure that measures are in place to deter birds from gathering on the roofs of the proposed development, in the interests of aircraft safety (6).
110. To limit the impact of the scheme on the highway network, conditions would be necessary to ensure that the proposed on-site parking facilities remain available for that purpose and to encourage staff to adopt sustainable modes of transport (22, 26). In the interests of recording and disseminating information regarding the heritage of the site, conditions would be necessary to secure limited archaeological investigation within the site, as identified by the ES, and to provide an information board on site (13-14).
111. The proposed facility would be subject to a separate pollution control regime concerned with the control of processes and emissions from the flue stack, necessitating an Environmental Permit. The Framework indicates that planning

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<sup>103</sup> ID84 NI4H condition no. 21.

<sup>104</sup> ID84 NI4H condition no. 15.

<sup>105</sup> ID84 Council's suggested condition no. 11.

<sup>106</sup> Membership to include representatives of the site operator and the local planning authority as well as representatives of local residents, should they wish to be represented.

<sup>107</sup> Ref. ID32.

decisions should assume that these regimes will operate effectively. Under these circumstances and in light of my findings with respect to the likely impact on air quality, I consider that it would not be necessary to impose a planning condition seeking to control or require monitoring of emissions from the proposed stack. A condition would not be necessary to specify the provision of selective catalytic reduction in the stack emissions filtration system, as the control of emissions in the interests of safeguarding health and the environment is a matter for the Environment Agency to regulate through the Environmental Permit.<sup>108</sup> For the same reason a condition would not be necessary requiring air quality monitoring in the vicinity of the site.<sup>109</sup>

112. A condition requiring that the proposed facility is operated in accordance with the Waste Hierarchy is not necessary, given the related duty set out in the *Waste (England and Wales) Regulations 2011*.<sup>110</sup> The same can be said with respect to a condition requiring that only residual waste, which cannot be managed higher up the Waste Hierarchy should be thermally treated.<sup>111</sup>
113. The Council and appellant agree that there is no need for a condition which seeks to safeguard the interests of Red Kites, as no nests have been recorded within the site. Furthermore, they have indicated that a condition would not be necessary to secure fire suppression measures, as safeguards are provided by the Environmental Permitting and Building Regulations regimes. In addition, a condition requiring ongoing consideration to be given to the use of rail for the delivery of waste to the site would not be reasonable. As set out in the *Planning Supporting Statement*<sup>112</sup>, whilst the appellant gave consideration to the use of rail for the delivery of waste to the site, it concluded that it was unlikely to be economically viable, not least as the proposed facility is expected to serve a local need. I have not been provided with any compelling evidence to the contrary with respect to these 3 matters.<sup>113</sup>
114. I agree with the Council that conditions seeking to limit emissions from HGVs associated with the proposed facility or restrict the routes they follow on the highway network would not be reasonable, given that it would not increase HGV traffic beyond the levels already approved.<sup>114</sup> For the same reason, it would not be reasonable to require that a new footway is provided along Langhurstwood Road.<sup>115</sup> A condition requiring that all plant, machinery, equipment and vehicles used on site be fitted with silencing measures that meet the 'up to date manufacturer's UK standard specification', would require an intolerable level of supervision and so would be unenforceable.<sup>116</sup> It would be unreasonable to require the site to be cleared in the event that the proposed use ceased, not least as it may be possible to sustainably re-use the

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<sup>108</sup> ID84 NI4H condition no. 4- The circumstances in the case of appeal Ref. APP/U3935/W/18/3197964, which prompted the specification of such a system, related to the protection of the assets of the Bodleian Library and do not apply in the case before me.

<sup>109</sup> ID84 NI4H condition no. 7-I understand that the requirement for air quality monitoring in relation to the Lostock Energy from Waste Station was prompted by the potential impact on an Air Quality Monitoring Area, circumstances that do not apply in the case before me.

<sup>110</sup> ID91, ID84 NI4H condition no. 3.

<sup>111</sup> ID 86.

<sup>112</sup> CD32 para 6.24.

<sup>113</sup> ID84 NI4H condition nos. 5, 9 and 13.

<sup>114</sup> ID84 NI4H condition no. 18 and notes at the end of the document.

<sup>115</sup> Suggested by an interested party.

<sup>116</sup> ID84 NI4H condition no. 20

facility or parts of it.<sup>117</sup> I agree with the Council that the management of accidents arising on site would be a matter for the Environment Agency who would be responsible for regulating the process, not for planning control through a condition.<sup>118</sup>

115. I give little weight to the concern raised by a number of interested parties that planning conditions may not be complied with. In my judgement, the conditions set out in Appendix 3 to this document meet the tests of conditions, including that they would be practical to enforce. The allocation of resources to such activities is a matter for the Council and not for me.

### **Conclusions**

116. I have found it would be more likely than not that the proposal would comprise a recovery operation with R1 status, it would make a significant contribution towards meeting the identified need for waste recovery facilities and would be located on a site at Brookhurst Wood allocated for such purposes in an up to date WLP. These matters attract substantial weight.
117. Whilst the scheme would cause less than substantial harm to the significance of designated heritage assets, to which great weight is attributable, I consider that it would be clearly outweighed by the public benefits of the scheme in meeting an identified need for recovery capacity. I have found that the effect of the proposal on the significance of designated heritage assets would be acceptable. Furthermore, the effect on the character and appearance of the area would be acceptable. In relation to these matters the scheme would not conflict with the policies of either the WLP or the HDPF for the most part<sup>119</sup>.
118. It is clear from the submissions made that there is a perception amongst a significant number of people that the proposal would have a harmful effect on public health. Those concerns are appreciated. However, I have found that the results of the air quality assessment set out in the ES are likely to be conservative and, having had regard to the air quality environmental objective thresholds set to be protective of the environment and health, the predicted environmental concentrations resulting from emissions from the facility would not be significant. I have concluded that the proposal would be unlikely to have a significant adverse effect on public health and there is no objective justification for the perception of harm to public health. Under the circumstances, and in the absence of any compelling evidence to the contrary, I have found that the perception of harm would be unlikely to give rise to any significant land use implications. I have concluded overall, that the effect of the proposal on the living conditions of the local community would be acceptable and in relation to this matter the scheme would not conflict with the policies of the WLP or the HDPF.
119. Returning to WLP Policy W10(c), having regard to the above matters, I am content that the development of the allocated site as proposed would be in accordance with the other policies of the WLP, in particular Policies W11, W12, W13, W15, W16, W18 and W19. Furthermore, having had regard to the documents submitted in support of the planning application, including the ES

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<sup>117</sup> ID84 NI4H condition no. 22.

<sup>118</sup> ID84 NI4H suggested condition.

<sup>119</sup> See para 84-except HDPF Policy 34, a conflict to which I attribute little weight.



and *Planning Supporting Statement*, I consider that, subject to the imposition of conditions, the proposal would satisfactorily address the 'development principles' set out in the supporting text to WLP Policy W10. This is a view shared by the Council.<sup>120</sup> I conclude overall therefore, that the appeal scheme would accord with the requirements of: WLP Policy 21, which seeks to guard against unacceptable cumulative impacts; and, WLP Policy W10 and it would be consistent with the aims of local and national waste management policy.

120. It is clear from the submissions made that there is a significant level of public opposition to the appeal scheme. However, although the views of local people are important, they must be balanced against other considerations, including local and national policy.

121. I conclude on balance, having regard to the main issues and the other matters raised, that the benefits of the scheme would outweigh any adverse impacts likely to be associated with it. Furthermore, the appeal scheme would accord with the Development Plan taken as a whole and material considerations do not indicate that the appeal should be determined other than in accordance with the Development Plan. Having had regard to the economic, social and environmental implications of the scheme, it would amount to sustainable development under the terms of the Framework taken as a whole.

122. For the reasons given above, I conclude that the appeal should be allowed.

*I Jenkins*

INSPECTOR

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<sup>120</sup> CD165 para 5.12.

## APPENDIX 1-APPEARANCES

### FOR THE COUNTY PLANNING AUTHORITY:

Anjoli Foster

Of Counsel

She called

David Coomes

BA(Hons) Dip LA CMLI

James Neave

BSc(Hons) MSc

EDCO Design

Principal Planner, West Sussex County Council

### FOR THE APPELLANT:

Christopher Boyle

QC

He called

Corrina Demmar

BA(Hons) Dip LA(Hons) CMLI

Daniel Smyth

BSc MSc DIC

Andrew Buroni

BSc MSc PhD FRSM FRSPH

Chris LeCointe

BA MRTPI

Senior Director (Landscape), RPS Group

Senior Director (Environmental Technology), RPS Group

Technical Director of Health, RPS Group

Operational Director, RPS Group

### FOR THE NO INCINERATOR 4 HORSHAM COMMUNITY GROUP:

Nick Grant

Of Counsel

He called

Maureen Darrie

BSc(Hons) MRTPI

Director, GP Planning Ltd

### INTERESTED PERSONS:

#### Objectors

Peter Catchpole<sup>121</sup>

Paul Bickford

Sheila White

Morag Warrack

Jan Evans

Tony Jupp

Rob O'Brien

Sally Pavey

M Pavey

Rosemary Couchman

Alison Farrell

I McLaren

Neil Henry

Tim Peters

Liz Kitchen

Kevin Slatter

Nicky Newton

Karen Park

Councillor

Councillor

Local resident

Local resident

Local resident

Local resident

Local resident

Local resident

Local resident

Local resident

Local resident

Local resident

Local resident

Local resident

Councillor

Local resident

Local resident

Local resident

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<sup>121</sup> Appeared on his own behalf and also read out statements on behalf of a number of other interested parties.

Johnathan Essex	Councillor
Barry Cullum	Local resident
Simon Richardson	Local resident
John Evans	Local resident
<u>Supporter</u>	
Kim Platfoot	Local resident

**APPENDIX 2-INQUIRY DOCUMENTS**

Document no.	Title
A	Letters from the Council notifying interested parties of the appeal and Inquiry arrangements
B	Correspondence from interested parties in response to the appeal notification letters
1	Paul Bickford-proof of evidence
2	Sally Pavey-proof of evidence
3	Sheila White-proof of evidence
4	Figures 29A/29B and Appendices 4/5 to Rebuttal proof of Corinna Demmar
5	Statement on behalf of Derek Castle
6	Statement on behalf of North Horsham Parish Council
7	Statement on behalf of the Headteacher of Bohunt Horsham
8	Council's opening submissions
9	Ni4H opening submissions
10	Statement of Common Ground between the appellant and Ni4H
11	List of interested party proposed appearances
12	Updated Core Documents list
13	The High Weald AONB Management Plan 2019-2024 (CD174)
14	Monitoring Report 2017/18 (CD175)
15	West Sussex Landscape Sensitivity and Capacity Study for Potential Mineral and Waste Sites (CD176)
16	Location of visual assessment photographs-Appendix 11.5 (CD179)
17	Location of visual assessment photographs plan- Appendix 11.6 (CD180)
18	Appellant's Response to Queries note
19	R1 supporting statement 27 October 2019
20	Updated Appendix 10 to proof of David Coomes
21	APP/L3055/V/14/3001886 (CD177)
22	Our Waste, Our Resources: A Strategy for England (CD178)
23	Peter Catchpole-proof of evidence
24	Technical note on Carbon
25	Note on Landscape Institute Guidance on Photography and Visualisations
26	Answer to Inspector's question on consistency of air quality and visual impact assessment
27	Note on access status of viewpoints
28	Jan Evans-proof of evidence
29	Alice Bradley-proof of evidence
30	Morag Warrack-proof of evidence
31	Supplementary notes of Peter Catchpole
32	Neil Henry-proof of evidence
33	I McLaren-proof of evidence
34	Tim Peters-proof of evidence
35	Rosemary Couchman-proof of evidence
36	Landscape Institute Visual Representation of Development Proposals
37	OS Map-Horsham

38	Alison Farrell-proof of evidence
39	Kim Platfoot-proof of evidence
40	Appendices to proof of Sheila White
41	Heritage Statement of Common Ground between the Council, the appellant and Ni4H
42	Email from Gatwick Airport to the Planning Inspectorate, dated 1 November 2019
43	Inspector's air quality queries, dated 4 November 2019
44	Draft suggested conditions
45	Karen Park-proof of evidence
46	Nicky Newton-proof of evidence
47	Kevin Slatter-proof of evidence
48	Barry Cullum-proof of evidence
49	Appendices to proof of Peter Catchpole
50	RPS tranquillity, light pollution and intrusion plans
51	West Sussex Statement of Community Involvement
52	Jonathan Essex-proof of evidence
53	Letter from Gatwick Airport to Vismudi Ltd, dated 7 October 2016
54	Appellant's 'Response to Queries' note
55	Part copy of Ni4H petition
56	Press release-Imperial College London-Major study finds no conclusive links to health effects from waste incinerators and RPS Dioxin comparative risk briefing note
57	Environment International paper-Fetal growth, stillbirth, infant mortality and other birth outcomes near UK municipal waste incinerators; retrospective population based cohort and case-control study
58	Updated suggested draft conditions
59	Press release-David Drew
60	Environment International paper-Risk of congenital anomalies near municipal waste incinerators in England and Scotland: Retrospective population-based cohort study
61	Qualifications-Daniel Smyth
62	Further agreed heritage statement
63	Agreed note on West Sussex Waste Local Plan-Policies W1, W3, W10 and the AMR
64	Residential Visual Amenity Assessment (RVAA) and appeal decision Refs. APP/D0840/A/09/2103026 and APP/X2220/A/08/2071880
65	Draft note on R1-Matters agreed between RPS, Ni4H and WSCC
66	Update to Note on access status of viewpoints
67	PHE statement on modern municipal waste incinerators (MWIs) study
68	Ni4H petition
69	Appendices to proof of Nicky Newton
70	Appendices to proof of Rosemary Couchman
71	Press release Viridor and Grundon Waste Management
72	Email from the appellant to the Planning Inspectorate, dated 11 November 2019, 'R1' condition.
73	Johnathan Essex-reference documents
74	Plan showing land owned by the Council in the vicinity of the appeal site



75	Aerial photo showing the appeal site boundary and other land controlled by the appellant
76	Appellant's note on 'unacceptability/acceptability'-landscape and visual matters (email from C Demmar to D Smyth, dated 11 November 2019)
77	Environment Agency's 'How to comply with your environmental permit, Additional guidance for: The Incineration of Waste (EPR 5.01)
78	Roger Purcell-proof of evidence
79	R. (on the application of James Hall and Co Ltd) v City of Bradford MDC [2019] EWHC 2899 (Admin)- Heritage
80	Email from the Environment Agency to the Council, dated 11 November 2019, requirement to meet BAT AELs after October 2019
81	Warnham Neighbourhood Development Plan 2017-2031, June 2019 (part copy)
82	Sheila White-proof of evidence
83	Simon Richardson-proof of evidence
84	Suggested conditions, including comments from the Council, appellant and NI4H
85	European Commission's 'Best Available Techniques (BAT) Reference Document for Waste Incineration, Final draft (December 2018)'
86	Suggested condition relating to feedstock, suggested by the Council, not supported by the appellant
87	Kevin Slater-closing statement
88	Rosemary Couchman-closing statement
89	Karen Park-closing statement
90	Nicky Newton-closing statement
91	Appellant's 'Waste note: Duty in relation to the Waste Hierarchy
92	Warnham Neighbourhood Development Plan 2017-2031, June 2019
93	Alison Farrell-closing statement
94	Johnathan Essex-closing statement
95	NI4H-closing statement
96	Council-closing statement
97	Viewpoints location plan
98	Location plan-Leith Hill Tower
99	Appellant-closing statement

### **APPENDIX 3-SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall not take place other than in accordance with the following approved plans save as varied by the conditions hereafter:
  - Proposed Site Plan (Fig. No. 2.1, March 2018)<sup>122</sup>;
  - Ground Floor Plan (Ref. NK018074-RPS-MB-GF-A-DR-0104, Rev P02; March 2018);
  - Roof Plan (ref. NK018074-RPS-MB-RF-A-DR-0106, Rev P02; March 2018);
  - Proposed Sections A-A & B-B (ref. NK018074-RPS-MB-ZZ-A-DR-0105, Rev P04; March 2018);
  - Site Long Sections & Perimeter Sections (ref. NK018074-RPS-EFW-XX-DR-C-0705, Rev P03; March 2018);
  - Finished Levels (ref. NK018074-RPS-EFW-XX-DR-C-0701, Rev P04; March 2018)
  - Proposed Elevations (ref. NK018074-RPS-MB-ZZ-A-DR-0111, Rev P02; March 2018);
  - Storage and Recycling Area Plan and Elevations (ref. NK018074-RPS-XX-ZZ-A-DR-0112, Rev P02; March 2018);
  - Air Cooling Condenser Plan and Elevations (ref. NK018074-RPS-XX-ZZ-A-DR-0113, Rev P02; March 2018);
  - Cycle Shelter, Sprinkler Tanks and Pump House Layout and Elevations (ref. NK018074-RPS-XX-ZZ-A-DR-0114, Rev P02; March 2018);
  - Gatehouse (ref. NK018074-RPS-XX-ZZ-A-DR-0116, Rev P02; March 2018);
  - Transformer Building (ref. NK018074-RPS-U01-ZZ-A-DR-0117, Rev P02; March 2018); and,
  - Site layout-External lighting levels (ref. RPS-ST-XX-A-DR-6302, Rev. D5, March 2018).
- 3) Prior to the commencement of the development hereby permitted, a Great Crested Newt Protection Scheme shall be submitted to and approved in writing by the County Planning Authority. The Scheme shall detail measures to protect and/or mitigate damage to populations of Great Crested Newt and their associated habitat during construction works and the operation of the facility, and shall include a timetable for implementation. The approved Great Crested Newt Protection Scheme shall be implemented in full throughout the construction works and operation of the approved facility.
- 4) No development shall be carried out until a schedule of materials and finishes (including samples where requested by the County Planning

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<sup>122</sup> CD7.

Authority) to be used for external walls, roofs, flue stack, air cooled condenser structure of the proposed building(s) has been submitted to and approved in writing by the County Planning Authority. The development shall be constructed in accordance with the approved schedule of materials, and maintained as approved.

- 5) Prior to the commencement of the development hereby permitted, a Landscaping and Ecological Scheme detailing landscaping and ecological proposals, in accordance with the Illustrative Landscape Proposals (Figure 5.38<sup>123</sup>), shall be submitted to and approved in writing by the County Planning Authority. The Scheme shall include:
- Details of all species (including grass species), planting sizes and nursery stock types, densities, planting method and soil amelioration;
  - Details of proposed footpaths and fencing;
  - Details of the provision of bird boxes;
  - Details of a buffer zone alongside the ponds (abutting the northern extent of the site and no less than 5 metres in width) and details of how the buffer zone will be protected during the development; and,
  - A programme for implementation.

Thereafter, the Scheme shall be implemented in full as approved. The approved landscaping works shall be fully implemented in the first growing season following waste first being accepted at the development hereby permitted unless otherwise agreed by prior arrangement in writing by the County Planning Authority. Any planting that fails to establish, is damaged, becomes diseased or dies within 5 years of planting shall be replaced in the next growing season in accordance with the original scheme or as otherwise agreed by prior arrangement in writing with the County Planning Authority.

- 6) Prior to the commencement of the development hereby permitted, a Bird Hazard Management Plan shall be submitted to and approved in writing by the County Planning Authority. The submitted Plan shall include details of the management of any flat/shallow pitched roofs on buildings within the site which may be attractive to nesting, roosting or 'loafing' birds. The Bird Hazard Management Plan shall be implemented as approved upon completion of each of the roofs and shall remain in force for the life of the buildings.
- 7) Prior to the commencement of the development hereby permitted, including construction and preparatory works, a Construction and Environmental Management Plan shall be submitted to and approved in writing by the County Planning Authority. The Plan shall provide details on the following matters:
- The method of construction;
  - The method of demolition of existing structures and surfacing;
  - The measures to prevent the mobilisation of existing contamination by airborne and waterborne routes;

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<sup>123</sup> CD22.

- The parking of vehicles by construction site operatives;
- Staff accommodation;
- Details of public engagement both prior to and during construction works;
- Dust suppression measures, particularly during demolition;
- Litter control measures;
- The storage, loading and unloading of plant, materials and waste;
- The measures to minimise and manage waste resulting from construction activities;
- The use of temporary lighting;
- The erection and maintenance of construction screening/hoardings;
- The provision during the construction phase of wheel washing and/or other works required to mitigate the potential impact of mud/dirt on the public highway;
- Traffic management, including the anticipated number, frequency and types of vehicles used during construction (including a framework for managing abnormal loads), and the installation of any signage within the site and the highway;
- The measures to minimise noise arising from construction activities; and,
- The measures to prevent spills on site.

Thereafter, the scheme shall be implemented and adhered to as approved throughout the entire construction period of the development hereby permitted, unless otherwise agreed by prior arrangement in writing by the County Planning Authority.

- 8) Prior to the commencement of any penetrative method, piling or foundation works associated with the development hereby permitted details of those works shall be submitted to and approved in writing by the County Planning Authority. Thereafter the piling and foundation works shall be carried out as approved.
- 9) Prior to the commencement of the erection of the flue stack hereby permitted details of the permanent obstacle lighting scheme for the development shall be submitted to and approved in writing by the County Planning Authority. The scheme shall include the position type and intensity of obstacle lights and an implementation programme. The scheme shall thereafter be installed as approved and maintained as approved in full throughout the operation of the development.
- 10) Prior to the commencement of the development hereby permitted a scheme shall be submitted to and approved in writing by the County Planning Authority detailing the establishment of a Community Liaison Group to include representation from the site operator, West Sussex County Council and local residents. The scheme shall include provision for:
  - The appointment of a chairperson from the County Planning Authority;

- The appointment of a liaison representative from the facility operator and contact number;
- A community complaints procedure;
- The production, approval and publication of minutes of community Liaison Group meetings;
- Details of how the group will operate, including its terms of reference; and,
- An implementation programme.

Thereafter, the scheme shall be implemented and adhered to in accordance with the approved details throughout the lifetime of the development.

- 11) The development hereby approved shall be designed from the outset such as to allow for the potential future beneficial use of combined heat and power, the specific measures and specifications for which shall be submitted to and approved in writing by the County Planning Authority prior to the installation of the energy-from-waste plant. Thereafter, the plant shall be installed in accordance with the approved specifications.
- 12) Prior to the first operation of the recycling, recovery and renewable energy facility and ancillary infrastructure (the facility) hereby permitted a scheme for the monitoring of noise emissions from the facility in accordance with BS4142:2014+A1:2019 'Method for rating and assessing industrial and commercial sound' (or successor) shall be submitted to and approved in writing by the County Planning Authority. The scheme shall include the identification of sensitive receptor monitoring locations and monitoring periods. Noise emissions from the operation of the facility hereby approved measured in accordance with the approved scheme shall not exceed representative background sound levels LA90,T by more than 3 dB at approved monitoring locations.

Within two months of the facility hereby approved becoming operational, an Operational Noise Survey undertaken in accordance with the approved scheme shall be submitted to the County Planning Authority to demonstrate whether the required noise limit is being adhered to.

- 13) No demolition/development hereby permitted shall take place until a Written Scheme of Investigation has been submitted to and approved in writing by the County Planning Authority. The scheme shall include an assessment of significance and research questions - and:
  - i) The programme and methodology of site investigation and recording;
  - ii) The programme for post investigation assessment;
  - iii) The provision to be made for analysis of the site investigation and recording;
  - iv) The provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - v) The provision to be made for archive deposition of the analysis and records of the site investigation; and,



- vi) The nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.

Thereafter the Written Scheme of Investigation shall be implemented as approved .

- 14) Within six months of waste first being accepted at the facility hereby permitted, an information board shall be erected at the site providing details of its industrial history, in accordance with a scheme submitted to and approved in writing by the County Planning Authority. The board shall thereafter be maintained as approved throughout the operation of the facility.
- 15) Construction (including any demolition and site clearance) of the development hereby permitted, involving the use of plant/machinery/equipment/vehicles and the deliveries of construction materials/plant/machinery/equipment being received by or despatched shall only take place between the following hours unless otherwise agreed by prior arrangement in writing by the County Planning Authority:
- 07.00 and 19.00 on Monday to Friday inclusive;
  - 08.00 and 16.00 on Saturdays; and not at any time on Sundays, Bank Holidays or Public Holidays.
- 16) On Mondays to Fridays inclusive no more than 142 Heavy Goods Vehicles (HGVs) shall enter the site between the hours of 07.00-16.30 and no more than 142 HGVs shall exit the site between the hours of 07.00-18.00.
- On Saturdays no more than 70 HGVs shall enter the site between the hours 07.00-12.00 and no more than 70 HGVs shall exit the site between the hours of 07.00-18.00 (of which no more than 9 HGVs shall exit the site between 16:30-18:00).
- No HGVs shall enter or exit the site on Sundays, Bank Holidays or Public Holidays.
- 17) With the exception of the processing and combustion of waste within the Energy-from-Waste building hereby permitted, which shall be allowed to operate continuously, there shall be no external operations involving plant and machinery associated with the development hereby permitted, including the movement of HGVs to/from the site, outside the hours of:
- 07.00-18.00 on Monday to Friday inclusive; and
  - 07.00-18.00 on Saturdays.
- No external operations shall take place on Sundays, Bank Holidays or Public Holidays.
- 18) Prior to the first operation of the facility hereby permitted details of a scheme to control odours arising from the site shall be submitted to and approved in writing by the County Planning Authority. The scheme shall include that the Waste Processing Hall and Tipping Hall (as shown on the Proposed Site Plan (Figure 2.1, March 2018)) shall incorporate and operate negative pressure extraction/ventilation systems, and all vehicular doors shall remain closed other than when vehicles, plant or equipment are passing through. Thereafter the scheme shall be

implemented as approved and the associated measures retained as approved.

- 19) All vehicles associated with delivery of wastes to the site and the removal of waste/treated waste materials/products from the site shall have their loads enclosed so as to prevent spillage or loss of materials on the public highway and the release of emissions to air.
- 20) No more than 230,000 tonnes of waste (including refuse derived fuel) shall be received at the facility hereby permitted in any regulatory year (1 April-31 March). A running total record of the quantities (in tonnes) of wastes delivered to the facility and the number of all goods vehicle movements entering and exiting the site shall be maintained for each regulatory year by the operator at all times and made available to the County Planning Authority upon request.
- 21) Vehicles within the control of the operator of the facility hereby permitted, including those required to visit the site under contract, that are required to emit reversing warning noise shall use only white noise/broadband alarms rather than single tone alarms.
- 22) The car and HGV parking shown on the Proposed Site Plan (Figure 2.1 dated March 2018) shall be retained for this use throughout the operation of the development hereby permitted.
- 23) No putrescible (or mixed putrescible and non-putrescible) materials shall be managed or stored in the Storage/Recycling Building shown on the Proposed Site Plan (Figure 2.1, March 2018).
- 24) Prior to the commencement of the development of the facility hereby permitted, details verifying that the facility has achieved R1 status (energy efficiency equal to or above 0.65) from the Environment Agency at Stage 1 (i.e. the design information stage) of the R1 status application process shall be submitted to and approved in writing by the County Planning Authority.

Within 24 months of the first operation of the facility hereby permitted details verifying that the operating facility has achieved R1 status through certification from the Environment Agency shall be submitted to the County Planning Authority.

The facility shall be configured and operated such that R1 status is maintained throughout its operation.

- 25) Prior to the erection of the flue stack hereby permitted details of the design of the flue stack shall be submitted to and approved in writing by the County Planning Authority. The top of the flue stack shall be at 142.65 metres above ordnance datum (AOD). Above 73.27 metres AOD the flue stack shall be free-standing and the cross section of the flue stack shall not exceed 2.5 metres in diameter. The flue stack shall thereafter be constructed and retained in accordance with the approved details.
- 26) Prior to the commencement of the development hereby permitted a Travel Plan Statement (TPS) shall be submitted to and approved in writing by the County Planning Authority. The TPS shall include continuing long-term measures to promote and encourage alternative modes of transport to the single-occupancy car. The approved TPS shall be

implemented in accordance with the approved details prior to the first operation of the facility hereby approved.

- 27) No combustion of waste shall take place at the facility hereby permitted, with the exception of that required for hot commissioning, until a connection to the National Grid for the export of electricity from the facility has been installed and is available for use. The connection shall be maintained as installed throughout the lifetime of the development.
- 28) Prior to the commencement of the development hereby permitted, details of foul and surface water drainage for the facility shall be submitted to and approved in writing by the County Planning Authority. The details shall be consistent with the principles set out in the submitted Drainage Strategy ref. NK018074-RPS-EFW-XX-DR-D-0300, Rev P04 (March 2018) and the maintenance provisions in section 6 of document ref. NK018074-RPS-EFW-XX-RP-D-DS001, Rev P05. The development shall be carried out and maintained thereafter in accordance with the approved details.