Mr Lee Gordon
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Our Ref: APP/R0660/A/10/2129865
APP/R0660/A/10/2142388

20 July 2012

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEALS BY COVANTA ENERGY LIMITED
APPLICATION REFS: 09/0738/W (Appeal A) & 10/2551/W (Appeal B).
LAND OFF POCHIN WAY, AND LAND TO THE SOUTH OF ERF WAY AND NORTH OF CLEDFORD LANE LAND, MIDDLEWICH, CHESHIRE.

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, R J Tamplin BA(Hons), MRTPI, Dip Cons Studies, who held a public local inquiry, which opened on 8 March 2011, into your client's appeals under Section 78 of the Town and Country Planning Act 1990, against:

> **Appeal A**: the decision of Cheshire East Council to refuse planning permission for the erection of an Energy from Waste facility with associated buildings, car parking and hard standing areas, in accordance with planning application ref:09/0738/W, dated 5 March 2009;
>
> **Appeal B**: the failure of the same Council to give notice within the prescribed period of a decision on an application for a Great Crested Newt receptor site to include the creation of three ponds, creation of four hibernaculars, wet grassland and areas of scrub, in accordance with planning application ref: 10/2551/W, dated 29 June 2010.

2. Appeal A was recovered for the Secretary of State's determination on 16 August 2010 in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves proposals of major significance for the delivery of the Government's climate change programme and energy policies. Appeal B was recovered on 13 December 2010 because it would be more efficiently and effectively decided alongside Appeal A.

Inspector's recommendation and summary of the decision

3. The Inspector, whose report is enclosed with this letter, recommended that both appeals be dismissed and planning permission refused. For the reasons given in this letter, the Secretary of State agrees with the Inspector's conclusions and recommendations except where otherwise stated. All paragraph references, unless otherwise stated, refer to the Inspector's report (IR).

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Procedural Matters

4. The Secretary of State notes the revised description of the proposal, and the reason for doing so, as detailed at IR438-440. Like the Inspector, he does not consider that this has resulted in prejudice to any party.

5. In reaching his decision, the Secretary of State has taken into account the Environmental Statement and addenda submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (IR2-12 and IR437). He considers that the environmental information as a whole meets the requirements of these regulations and that sufficient information has been provided for him to assess the environmental impact of the application. On the matter of the adequacy of publicity and the Aarhus Convention, the Secretary of State has taken account of the Inspector's assessment at IR443-465. He agrees with the Inspector's conclusion that, on the balance of probabilities, the public were not disengaged from the appeal and inquiry process in this case and were not denied their rights under the Aarhus Convention, the principles of which were not breached (IR465).

Matters arising following the close of the Inquiry

6. Following the close of the Inquiry, the Government published the National Planning Policy Framework (March 2012) (NPPF). This document replaces a raft of planning policy documents as set out in its Annex 3 and, following its publication, the Secretary of State wrote to interested parties on 19 April 2012 seeking their views on its implications, if any, for these appeals. On 15 May, the Secretary of State circulated the responses, inviting further comments, and stating that he would then proceed to a decision. A list of those responding is set out in **Annex A** below, and copies of these representations may be obtained on written request to the address at the foot of the first page of this letter.

7. The Secretary of State has carefully considered all of these representations in his determination of these appeals. He considers that, for the most part, the issues raised in relation to the NPPF cover those already rehearsed at the inquiry. In considering these further representations the Secretary of State also wishes to make it clear that he has not revisited issues which are carried forward in the NPPF or development plan documents, and which have therefore already been addressed in the IR, unless the approach adopted in the NPPF leads him to give different weight to any of them.

8. Following the close of the inquiry, and in addition to the correspondence listed at Annex A, the Secretary of State received written representations from Fiona Bruce MP, Dave Wright, Barry Davies, Colin Bailey and Sandra Hargreaves. He has carefully considered this correspondence, but he does not consider that it raises any new issues which would affect his decision or require him to refer back to parties prior to reaching his decision. Copies of this correspondence may be obtained on written request to the above address.

Policy considerations

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

North West of England Plan: Regional Spatial Strategy to 2021 (2008), the Cheshire Replacement Waste Local Plan (2007) (CRWLP), and the Congleton Borough Local Plan (2005). The Secretary of State considers that the development plan policies most relevant to the appeal are those set out under the Development Plan Policy section of IR37. Notwithstanding the guidance in paragraph 214 of the NPPF, the Secretary of State considers that, except where otherwise indicated in the IR, the development plan policies relevant to this case are broadly in line with the NPPF or PPS10, and so carry full weight.

10. The European policy documents referred to at IR37, along with the three PPS10 documents, remain extant and have been taken into account along with the NPPF as material considerations. Other material considerations which the Secretary of State has taken into account include: Directive 2009/28/EEC on the promotion of use of energy from renewable sources; Circular 11/1995: *Use of Conditions in Planning Permission;* and *the Community Infrastructure Levy (CIL) Regulations 2010 and 2011*.

11. The Secretary of State considers that the revocation of Regional Strategies has come a step closer following the enactment of the Localism Act on 15 November 2011. However, until such time as the North West of England Plan is formally revoked by Order, he has attributed limited weight to the proposed revocation in determining this appeal. As the RSS remains part of the development plan the Secretary of State does not consider it necessary to refer back to parties on this matter (a matter mooted by the Inspector at IR441-442).

Main Issues

12. For the reasons set out below, the Secretary of State agrees with the Inspector that the main issues in these appeals are those set out in IR466 although, as explained in paragraphs 24 and 25 below, he disagrees with the Inspector's reasoning and conclusions on issue 3.

Appeal A

Consideration 1: Compliance with waste planning policies

13. The Secretary of State has had regard to the fact that the facility is primarily to deal with C&I waste arising in Cheshire, although it can accept a mix of C&I and MSW (IR37, IR152, IR524). However, he also notes that there is currently no thermal treatment facility in Cheshire to deal with MSW arisings although there are a number in and outside Cheshire with planning permission (IR505). The Secretary of State therefore considers it important, as part of determining this particular case, to separate out the legal requirements for C&I waste and those for MSW. This is because he considers it possible, by condition, to restrict the type of waste accepted at this facility.

14. The Secretary of State agrees with the Inspector's reasoning and conclusions in IR468-IR479 about the interpretation and application of the Cheshire Local Waste Replacement Plan policies; and that these policies, together with the Regional Strategy, form part of the development plan for the area.

15. The Secretary of State agrees with the Inspector that, for the reasons in IR 480-484 and IR487-494, the proposals conflict with CRWLP Policy 5 (IR494). He notes

that, as a matter of fact, the appeal site is not allocated for waste related development in the CRWLP (IR480). However, as explained in paragraphs 16 and 17 below, he does not agree with the Inspector's conclusions at IR485 that the four sites near Ellesmere Port should be excluded because their use would infringe the proximity principle for managing waste.

16. Article 16 of the Waste Framework Directive seeks to ensure that Member States draw up an integrated and established network of waste disposal installations and of installations for the recovery of mixed municipal waste collected from private households, including where such collection also covers that from other producers. Article 16(3) reaffirms that creating this network should allow waste to be disposed of or, in the case of mixed municipal waste, recovered in one of the nearest appropriate installations. This does not mean that each waste planning authority must be totally self-sufficient in the management of MSW, nor that the waste must go to the nearest installation, as there may be sound environmental and economic reasons for accepting or sending waste from or to adjoining or other authorities. Nor does it mean that the facility must be centrally located within an individual waste planning authority area, given that there are many factors which may influence the preferred location of a facility. Additionally, under the terms of Regulation 18 of the Waste (England and Wales) Regulations 2011, this principle does not apply to C&I waste.

17. On the basis of the available evidence, and given that the proposed facility may serve the whole of Cheshire, the Secretary of State considers that, whilst RSS policy EM13 clearly states that sites should be located in such a way as to avoid the unnecessary carriage of waste over long distances, the presence of other proposals in and adjoining Cheshire (which, as the Inspector acknowledges at IR574, may conceivably be used to accept Cheshire's waste), combined with the forecast waste arisings (see IR475 and IR504) and the fact that the proposal is principally aimed to accept C&I waste, mean that these other sites should be considered as part of the test of preferred sites. Even if the proposal was for accepting a mix of C&I and MSW, the Secretary of State considers that these sites are still worthy of consideration as it may allow for more sustainable transport options for the movement of waste. Furthermore, even if this analysis concluded that there were other sites available, the Secretary of State considers it prudent in this particular case to have regard to paragraph 24 of PPS10, especially given the national policy objective in the NPPF to promote renewable energy.

18. For the reasons given in IR495-504, the Secretary of State agrees with the Inspector that the indicative treatment requirement for the purposes of CRLWP 3 of around 400,000 tonnes per annum appears both reasonable and robust (IR504). However, the Secretary of State agrees with the appellant's assessment (IR127) that, when referring to capacity, an assessment should normally be against operating capacity. In this particular case, though, the Secretary of State has taken account of the wording and interpretation of capacity in CRLWP3 and agrees with the Inspector that, for the reasons set out in IR504-507, the appellant has not demonstrated compliance with that policy (IR508) as there is likely to be an oversupply of such facilities compared to the amount of residual waste available for treatment within the county (IR509-515, IR521). In reaching this conclusion, the Secretary of State has had regard to the varying interpretations of paragraph 7.27 of the companion guide to PPS10 (IR515-520). He agrees with the Inspector that paragraph 7.27 applies in the context of plan-making since the purpose of the

approach is to make sure that there is significant opportunity for development of waste management facilities. He notes that this was the context in which the decision on the Severnside facility was made. The Secretary of State also agrees that it is important not to undermine the proximity principle.

19. In the case of MSW, and given the proximity of other facilities close to the appeal site, the Secretary of State considers that, with the other facilities with planning permission or under construction which will have the capacity to accept such wastes, this site would indeed be in competition with these other sites for Cheshire's MSW. As a result he accepts that, if all facilities are built out and the appeal facility applies to accept MSW, then there is a risk that such waste may not go to appropriate facilities in line with the expectations set out in PPS10. Regarding C&I waste, the Secretary of State recognises that there may be additional waste imported to the appeal site if there are insufficient arisings from Cheshire alone. Whether it would undermine the sustainable nature of waste management in the CRLWP would depend on factors including whether all sites are built out, the nature of transportation to and from the site, and the source of the waste arisings. He does not consider that it would necessarily undermine the sustainable approach to waste management in CRLWP.

20. Overall, on the basis of a strict interpretation of the wording of policy CRLWP3, the Secretary of State agrees with the Inspector that the proposal does conflict with the terms of that policy, although not for the reasons he specifies.

21. The Secretary of State has had regard to the Inspector's concerns with regard to the Appellant's WRATE assessment (IR525-533). He agrees with the Inspector that, insofar as it applies to MSW, should any of Cheshire's arisings be displaced and have to go to landfill as a result of waste imported from outside the county, then there would be a breach of Article 16(3) of the Directive (IR533). He also agrees with the Inspector that there would be a breach if the impact of the facility was to force Cheshire's C&I waste to be landfilled if it could have been suitably recovered at the site. However, he notes the Inspector's view in IR531 that this is unlikely to be the case. Therefore, although the Inspector considers the Appellant's WRATE assessment is seriously flawed, the Secretary of State notes that there was no challenge by any of the Parties to it. He therefore does not feel able to come to a conclusion on this point (IR536) and so gives no weight to this issue.

22. The Secretary of State agrees with the Inspector that, for the reasons set out in IR537-545, there is a conflict between the appeal proposals and the aims of CRWLP Policy 27 insofar as the technically feasible alternative of rail transport has not been assessed on a sustainability basis (IR544).

Consideration 2: Compliance with climate change and carbon reduction policies

23. The Secretary of State agrees with the Inspector's reasoning and conclusions on compliance with climate change and carbon reduction policies, as set out in IR549-571. He agrees that the proposal constitutes an energy recovery facility, and that it complies fully with the aims of CRWLP Policy 34A (IR559). He also agrees that it accords fully with RSS policies EM15 and EM17 (IR571).

Consideration 3: the sustainability of the appeal site in terms of its location and operations

24. The Secretary of State does not agree with the Inspector that Article 4(2) of the Waste Framework Directive applies to individual planning decisions (IR573). The Waste Framework Directive transposed in England and Wales through the Waste (England and Wales) Regulations 2011 and through an amendment to Planning Policy Statement 10 (PPS10). Both the first and second stage consultation (CD2/19 and CD2/20) make it clear that transposition of the hierarchy into planning would be through an update to PPS10, a point confirmed by the Chief Planner's letter of 30 March 2011. As a result, the Secretary of State believes that individual waste management proposals should be assessed against planning policy in PPS10 which has incorporated the revised waste hierarchy. Therefore the Secretary of State cannot accept the Inspector's conclusions in IR582 that the proposal would have an unacceptable conflict with this part of the Waste Framework Directive and that it is necessary for the appellant to demonstrate best overall environmental outcome.

25. The Secretary of State has also had regard to the Inspector's concerns and arguments in IR575- 586 that allowing the proposed scheme could, through the oversupply of waste management facilities, potentially prejudice renewable or low-carbon energy supplies. In coming to this conclusion, the Secretary of State notes that the Climate Change Supplement to PPS 1 has been cancelled. He has not therefore considered the extent of the conflict, if any, with the now cancelled PPS and does not consider that this issue represents a factor for consideration in determining this decision. The Secretary of State's considerations on overcapacity are set out in paragraphs 18-20 above.

Consideration 4: effects on protected species

26. The Secretary of State agrees with the Inspector's reasoning and conclusions on the effect on protected species, as set out in IR587-610. He agrees that, as the proposals fail to satisfy all three of the tests required in Article 16 of the Habitats Directive (IR591), there is a strong likelihood that Natural England (NE) may refuse to grant a licence (IR603). However, as that would be dealt with under a separate regime it is not directly relevant to his decisions on these appeals. He also agrees that in relation to other species no serious harm is likely to result (IR608).

27. The Secretary of State has noted the Inspector's comments on the potential air quality impacts on the European designated site (Bagmere SSSI), including that no submissions have been made on this matter (IR609-610). Had he been minded to grant planning permission for the proposals before him, then he may have taken up the Inspector's suggestion to ask parties to comment on this issue. However, given that he is refusing planning permission, and in so doing considers that those other factors he has identified which weigh against the proposal provide sufficient reasons in themselves, he does not consider it necessary to do so.

Consideration 5: effects on the health of surrounding communities

28. The Secretary of State recognises the concerns expressed about the health effects from incineration set out in IR616-IR618. He agrees with the Inspector that this is a matter for the Environment Agency who would be responsible for setting and enforcing emission limits (IR611). Given that the purpose of the permit (a requirement under European legislation) is to ensure that the operation of the facility

itself does not harm human health or the environment, and taking into account the advice in paragraphs 120 and 122 of the NPPF as well as paragraph 28 of PPS10, the Secretary of State considers that the operation of the proposal would pose little risk to human health. However, for the reasons given in IR619-628, the Secretary of State agrees with the Inspector at IR629 that the proposal would have an adverse effect on air quality caused by increased traffic.

Consideration 6: the effects on traffic in and around Middlewich

29. The Secretary of State agrees with the Inspector's reasoning and conclusions on the effects on traffic in and around Middlewich, as set out in IR630-650. In particular (IR648), he agrees that the traffic assessment is flawed in its assumptions on future generation, trip distribution and peak hour loads, and that it lacks important comparative information on the key A54/A533 road junction, thereby failing to demonstrate that the appeal proposals would not have a serious effect on present congestion in the town centre around that junction. Overall, the Secretary of State agrees with the Inspector that the impact on road safety and congestion should carry considerable weight against the proposal.

Consideration 7: effects on the landscape

30. For the reasons given in IR651-680, the Secretary of State agrees with the Inspector's conclusions at IR681-682 that, due to its scale, height and industrial character, the proposal would have a substantially significant landscape and visual impact within Midpoint 18 and on the countryside around up to 30km distant. He also agrees that, within Middlewich, the impact would vary, but from where it would be visible the impact would be of moderate to significant magnitude and of intermediate to substantial significance; that the scope for mitigation measures would be limited; and that there would also be harm to the character and appearance of the conservation area along the Trent and Mersey canal.

Other matters

31. The Secretary of State agrees with the Inspector's assessment of those other matters set out in IR683-702. In particular, he agrees (IR699) that the claim that only the appeal proposals can unlock the Bypass and Phase 3 of Midpoint 18 has not been made out so that less weight should be given to socio-economic benefits than the Appellant claims. The Secretary of State also agrees with the Inspector's conclusion (IR702) that there is no serious risk from flooding and/or subsidence/ground instability which could not be mitigated by the imposition of suitable conditions.

Appeal B

Consideration 1: the Great Crested Newt (GCN) receptor site

32. For the reasons given in IR703-706, the Secretary of State agrees with the Inspector that, notwithstanding NE's acceptance that the mitigation of Appeal site B would be in line with its guidelines, there is an unacceptable risk that the proposal would not offer long term security for the maintenance of the species at its natural range and that a breach of Article 12(1) of the Habitats Directive could thereby occur. He therefore also agrees with the Inspector that this is a factor which weighs heavily against the proposals (IR706).

Consideration 2: the need for the proposed development

33. The Secretary of State agrees with the Inspector (IR707) that the Appeal B development would only be required if Appeal A were allowed and that, as it has not been established that there are no satisfactory alternatives to constructing the Appeal A scheme on the proposed site, there would appear to be no imperative reason of overriding public importance to justify a derogation from Article 12(1) of the Habitats Directive to facilitate the Appeal B scheme (IR708).

Conditions and obligations

34. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions and obligations as set out in IR414-435 and IR709-726. Whilst he recognises that the appellant has offered to sign an Obligation not to accept any waste arising from the Merseyside municipal waste contract, he considers that, on its own, this would not comply with CIL regulation 122 since it would still leave open the possibility of accepting MSW from other counties (IR711-713). He does not consider that the proposed conditions and obligations overcome his reasons for dismissing the appeal.

Overall conclusions

35. Although he disagrees with the Inspector on a number of points as set out above, the Secretary of State agrees with him that, on the basis that a link to the national grid will be made, the proposals would constitute a renewable energy facility; that it constitutes "other recovery" for the purposes of the revised Waste Framework Directive and incorporated into PPS10; and that it conforms with RS Policies EM15 and EM17. Against that, given that the site is not allocated in the development plan, he has considered the proposal against paragraph 24 of PPS10. Taking account both of the provisions of the updated waste hierarchy as reflected in changes to PPS10 and the fact that the proximity principle now extends to mixed municipal waste for recovery (but not C&I waste), the Secretary of State considers that the proposal would conflict with CRLWP polices 3, 5 and 27 as well as with the aims of RS Policy EM1(B) on European protected species and RS Policy EM1(A) on landscape; and that it would have an adverse on air quality in terms of increased traffic. The Secretary of State also considers that the proposal would conflict with the policy aims of Annex E of PPS10 in terms of visual intrusion, nature conservation, traffic and access, and air emissions (as they apply to traffic); as well as concluding that the economic benefits of the appeal proposals have been overstated.

38. Overall, therefore, whilst the Secretary of State has carefully considered all the issues and whilst these proposals would provide renewable energy benefits and would not necessarily prejudice movement of waste up the waste hierarchy or conflict with the proximity principle, he has concluded that these benefits are outweighed by the negative impacts of the proposal and that there are no material considerations of sufficient weight to outweigh the extent to which it fails to accord with the development plan.

Formal decision

39. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations. He hereby:-

dismisses **Appeal A** and refuses planning permission for the erection and operation of facilities for the recovery of energy from waste, materials recovery (including incinerator bottom ash processing), electricity generation for export to the national grid and the capability to export heat and power to British Salt and other neighbouring users, together with ancillary development including offices, visitor facilities, switchyard, staff/administration building, gatehouses and weighbridges, lagoons, car parking, an extension to Pochin Way for the provision of access, drainage works, site fencing and associated landscaping and ecological works in accordance with planning application ref:09/0738/W, dated 5 March 2009 (as amended).

dismisses **Appeal B** and refuses planning permission for a Great Crested Newt receptor site to include the creation of three ponds, creation of four hibernaculars, wet grassland and areas of scrub, in accordance with planning application ref:10/2551/W, dated 29 June 2010.

Right to challenge the decision

40. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

41. A copy of this letter has been sent to Cheshire East Council. A notification letter has been sent to other parties who asked to be informed of the decision.

Yours faithfully

Jean Nowak
Authorised by the Secretary of State to sign in that behalf

ANNEX A

Post Inquiry correspondence following the publication of the National Planning Policy Framework

First comments

Name / Organisation	Date
Covanta Energy Limited	4/5/12
Cheshire East Council	4/5/12
CHAIN	4/5/12
Barry C Davies	10/5/12
Dave Wright	7/5/12
Eileen Gilbert	27/4/12
Liam Byrne	3/5/12

Second comments

Name / Organisation	Date
Covanta Energy Limited	22/5/12
CHAIN	21/5/12
Barry C Davies	21/5/12
Dave Wright	21/5/12
Liam Byrne	20/5/12
Neil Wilson	20/5/12

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by R J Tamplin BA(Hons) MRTPI Dip Cons Studies

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

Date: 24 February 2012

Town and Country Planning Act 1990

Appeals by Covanta Energy Limited

Cheshire East Council

Inquiry opened on 8 March 2011

Land off Pochin Way, Middlewich, Cheshire, and land to the south of ERF Way and north of Cledford Lane, Middlewich, Cheshire

File Refs: APP/R0660/A/10/2129865 & APP/R0660/A/10/2142388

Glossary

pp	paragraph
ARR	Additional Refusal Reason
AOD	Above Ordnance Datum
App	Appendix
AQMA	Air Quality Management Area
AQO	Air Quality Objectives
BAP	Biodiversity Action Plan
BAT	Best Available Technique
BM	Brunner Mond
C&I	Commercial & Industrial
CA	Conservation Area
CBLP	Congleton Borough Local Plan
CCS	Climate Change Supplement
CEC	Cheshire East Council
CHAIN	Cheshire Anti Incinerator Network
CHP	Combined Heat and Power
CO_2	Carbon Dioxide
CRWLP	Cheshire Replacement Waste Local Plan
CWAC	Cheshire West and Chester Council
DCLG	Department for Communities and Local Government
DECC	Department of Energy and Climate Change
DEFRA	Department for Environment, Food and Rural Affairs
DfT	Department for Transport
DMRD	Design Manual for Roads and Bridges
DP	Development Plan
DPD	Development Plan Document
DTI	Department of Trade and Industry
EA	Environment Agency
EfW	Energy from Waste
EHO	Environmental Health Officer
EIA	Environmental Impact Assessment
EiC	Examination in chief
EiP	Examination in Public
EP	Environmental Permit
EPS	European Protected Species
ES	Environmental Statement
FRA	Flood Risk Assessment
FSA	Food Standards Agency
GCN	Great Crested Newts
HA	Highways Agency
ha	Hectare
HGV	Heavy Goods Vehicle
HPA	Health Protection Agency
IBA	Incinerator Bottom Ash
IBAA	Incinerator Bottom Ash Aggregate
IPPC	Integrated Pollution and Prevention Control
IR	Inspector's Report
ktpa	Thousand tonnes per annum
LA	Local Authority
LATS	Landfill Allowance Trading Scheme
LD	Landfill Directive
LDD	Local Development Document
LDF	Local Development Framework
LDU	Landscape Description Unit

LPA	Local Planning Authority
MBT	Mechanical Biological Treatment
MJ	Megajoules
MP18 P3	Midpoint 18 Phase 3
MRB	Materials Recovery Bank
MRF	Materials Recycling Facility
MSW	Municipal Solid Waste
mt	Million tonnes
MW	Megawatt
NAI	Nearest Appropriate installation
NE	Natural England
NO_2	Nitrogen Dioxide
NO_x	Nitrogen Oxides
NPPF	National Planning Policy Framework
NPS	National Policy Statement
p	Page
PCT	Primary Care Trust
PCU	Passenger car unit
PDL	Previously developed land
PfG	Planning for Growth
PFI	Public Finance Initiative
PIM	Pre-Inquiry Meeting
POE	Proof of Evidence
POR	Planning Officers Report
PPD	Public Participation Directive
PPS	Planning Policy Statement
PRoW	Public Right of Way
RR	Refusal reason
RDF	Refuse Derived Fuel
RO	Renewables Obligation
ROC	Renewable Obligations Certificate
RSS	Regional Spatial Strategy
RX	Re-examination
SEA	Strategic Environmental Assessment
SIP	Supplementary Information Pack
SoCG	Statement of Common Ground
SRF	Solid Recovered Fuel
SSSI	Site of Special Scientific Interest
SWMP	Surface Water Management Plan
t	Tonnes
tpa	Tonnes per annum
TA	Transport Assessment
TT	Thermal Treatment
UK	United Kingdom
US	United States of America
WCA	Waste Collection Authority
WDA	Waste Disposal Authority
WFD	Waste Framework Directive
WID	Waste Incineration Directive
WPR	Waste Policy Review 2011
WPA	Waste Planning Authority
WRATE	Waste and Resource Assessment Tool for the Environment
WS 2007	Waste Strategy for England 2007
XX	Cross examination
ZTV	Zone of Theoretical Visibility

Appeal A. File Ref: APP/R0660/A/10/2129865
Land off Pochin Way, Middlewich, Cheshire

- The appeal was made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is by Covanta Energy Limited against the decision of Cheshire East Council.
- The application, Ref 09/0738/W, dated 5 March 2009, was refused by notice dated 29 April 2010.
- The development proposed is the erection of an Energy from Waste facility with associated buildings, car parking and hard standing areas.

Summary of Recommendation: The appeal be dismissed

Appeal B. File Ref: APP/R0660/A/10/2142388
Land to the south of ERF Way and north of Cledford Lane, Middlewich, Cheshire, CW10 0JQ

- The appeal was made under Section 78 of the Town and Country Planning Act 1990 against the failure of the local planning authority to give notice of their decision within the prescribed period on an application for planning permission.
- The appeal is by Covanta Energy Limited against the failure of Cheshire East Council.
- The application, Ref 10/2551/W, is dated 29 June 2010.
- The development proposed is a Great Crested Newt receptor site to include the creation of three ponds, creation of four hibernaculars, wet grassland and areas of scrub.

Summary of Recommendation: The appeal be dismissed and planning permission refused

Procedural Matters

1. The application subject of Appeal A was refused by the Council on 26 April 2010 for the five reasons set out in the decision notice, and the appeal was made against this decision on 3 June 2010. The appeal was accompanied by an ES[1] and a screening direction by PINS held that the proposals constituted development within Schedule 1 of the 1999 Regs. It was decided by PINS that the appeal should proceed by means of a Local Inquiry. On 16 August 2010 the Secretary of State recovered the appeal for his determination for the reason that it involves proposals of major significance for the delivery of the Government's climate change programme and energy policies.

2. On 20 September 2010 I held a PIM at the Civic Centre, Middlewich to make arrangements for the inquiry[2]. At the PIM the Council submitted that the document submitted as an ES did not constitute an ES as required by law, and asked me to rule accordingly[3]. It was agreed that a ruling would be given after the PIM and this was issued on 1 October 2010[4]. In summary the ruling directed the APP to provide further information under Regulation 19(1) of the 1999 Regs by consolidating into one document and bringing up to date all the material formerly comprised in the ES of March 2009[5], the supplementary material known

[1] CD6/4-6/6B
[2] Doc 12
[3] Doc 16
[4] Doc 20
[5] CD6/4-6/6B

as SIP 1 dated December 2009[6], SIP 2 of August 2010[7] and SIP 3 dated September 2010[8]. The document produced as a result of the Regulation 19 request, known as the CES, was submitted on 11 October 2010[9].

3. On 7 October 2010 the Council wrote to PINS contending that the material submitted so far by the Appellant, which purported to be an ES, did not constitute a lawful ES. They said the position could not be rectified by producing a new document as this would not be a consolidation but would include additional material. The Council requested the Secretary of State to rule that he would not entertain the appeal because it was not accompanied by a lawful ES. In the alternative, they asked him to rule that the scheduled Inquiry date of 30 November be vacated and a new date set no earlier than September 2011 to enable a new ES to be prepared by the Appellant on a systematic basis. Unless one or other action was agreed the Council said it would make an application for judicial review of the matter.

4. The Treasury Solicitor, acting for the Secretary of State, rejected the Council's view of the situation by letter of 19 October 2010. This was for the reasons that there was no power under the 1999 Regs or any other power to rule that the appeal would no longer be entertained, and that whether an ES, or any further information submitted following a Reg 19 request, is adequate was a matter for the Secretary of State, subject only to *Wednesbury* unreasonableness, as per the judgement in R oao Blewett v Derbyshire CC [2003] EWHC 2775 (Admin). In the light of representations from the Council, the Appellant and CHAIN, the letter proposed that the date fixed for the opening of the Inquiry be adjourned until early in 2011. The adjournment was subsequently agreed by all parties and a date for resumption fixed for 8 March 2011.

5. On 5 January 2011 the Council considered the content of the CES and resolved to raise further objections to Appeal A on five grounds[10]

6. The Appellant appealed against the failure of the Council to determine the application subject of Appeal B on 8 December 2010. This appeal was recovered by the Secretary of State for his determination on 13 December 2010 for the reason that it would be most efficiently and effectively decided with Appeal A over which the Inspector has no jurisdiction. The Council also considered the application subject of Appeal B at their meeting on 5 January 2011 and resolved that, had they retained jurisdiction, they would have refused to grant planning permission.[11] Because Appeal B was linked with Appeal A at the same time that it was recovered, this report is the subject of both appeals.

7. In the light of the material in the CES and the linked appeal, I held a second PIM on 7 February 2011, at the Civic Centre, Middlewich[12].

[6] CD6/7
[7] CD6/9A & CD6/9B
[8] CD6/10
[9] CD6/11- CD6/16
[10] CD5/21, Minute 90
[11] CD5/21, Minute 89
[12] Doc 13

8. The Inquiry opened on 8 March 2011 at the Municipal Buildings, Earle Street, Crewe and initially sat for 16 days, to 1 April. Towards the end of this period the Council made further submissions concerning the adequacy of the CES[13]. These were, in essence, that the appeal proposals necessarily included outputs of electricity to the grid and of CHP to the works of British Salt and indicative corridors for the means of supply have been assessed in the CES. However, although it was plainly proposed to supply CHP to other buildings on the existing and proposed parts of the Midpoint 18 Business Park and beyond, no assessment had been made of the effects of such supply, even though European Protected Species were known to be present in those areas. Accordingly a request for further information under Reg 19 should be made to make the CES an ES in law.

9. Because the Appellant had not completed its evidence and Counsel were not available, the Inquiry was adjourned until 17 May 2011 and it was agreed that I should seek a ruling from the Secretary of State on the Reg 19 request, to be given within a week of the adjournment. The ruling, in a letter of 8 April 2011, requested the APP to complete the CES by assessing the likely significant effects of CHP connections to all buildings (whether existing, permitted or indicative) on the Midpoint 18 Business Park in terms of effects on the habitats of protected species, and especially European protected species, together with appropriate mitigation measures[14].

10. Having resumed on 17 May 2011 the Inquiry sat for four days. The Appellant said that several weeks would be required to complete the surveys and subsequent assessment required by the Reg 19 request. Accordingly the revised CES would not be available until mid-July. It was agreed the Inquiry would be adjourned on 20 May until 3 October 2011.

11. On 9 June 2011 I carried out an inspection of the IBAA processing plant of Ballast Phoenix at Sheffield, accompanied by representatives of the parties.

12. The further information and revised CES were submitted by the Appellant on 22 July 2011[15].

13. Upon resumption on 3 October 2011 the Inquiry sat for three days and closed on 5 October 2011, having sat for a total of 23 days.

14. I carried out an inspection of the appeal site and its surroundings on 6 October, accompanied by representatives of the parties. I undertook an unaccompanied inspection of more distant viewpoints at the request of the parties on 7 October 2011.

15. The Council made a written application for costs against the appellants by letter dated 22 November 2010, but this was withdrawn on 1 April 2011.[16] The Appellant confirmed it would not be making an application for costs against the Council in a letter of 17 May 2011[17]. No other party applied for an award of costs and accordingly there is no costs report in relation to these appeals.

[13] Doc 15
[14] DOC14
[15] CD/14A-14C
[16] Doc19
[17] APP/0/48

The Appeal Sites and Their Surroundings

16. The appeal sites lie about 1.5km south-east of Middlewich town centre at what is currently the end of Pochin Way, the spine road of a large modern commercial and business development known as Midpoint 18 Business Park[18]. Appeal Site A lies between the southern end of this road and a single track, goods only, operational railway line linking the West Coast main line near Sandbach with the Manchester to Chester line near Northwich. This site occupies about 9.45ha of rough pasture land, in three fields currently grazed by horses, which slopes gently down towards the north. It measures roughly 950m from north to south and has a maximum width of around 110m. The land forming Appeal Site A is known as Plot 63 of the Business Park, though in fact it comprises Plots 61, 63 and a small area south of the latter plot[19].

17. Pochin Way presently ends about halfway along the eastern boundary of Appeal Site A. Some 50m north of the end of Pochin Way another cul-de-sac industrial estate road, ERF Way, crosses the shallow valley of the Sanderson's Brook and curves south-eastwards. It currently serves two large warehouse and distribution buildings known as the Wincanton building and the Kuehne & Nagel building. A third, smaller, building off this road is presently used as the offices of the local Primary Care Trust.

18. To the north, Pochin Way curves eastwards, crosses the valley of the Sanderson's Brook and then bends northwards to a roundabout junction with the A54, Holmes Chapel Road, and the B5309, Centurion Way. The A54 leads east for about 4km where it crosses the M6 Motorway at Junction 18 before passing through Holmes Chapel. Centurion Way skirts the north-eastern edge of the town to a junction with the A530 to Wincham. The northern end of Pochin Way serves many Class B1, B2 and B8 units ranging in size from 45m^2 to the largest, almost 35,000m^2, which is occupied as a distribution centre for Tesco.

19. Appeal Site B lies to the south of ERF Way between the convoluted course of Sanderson's Brook to west and car parks and other land attached to the Wincanton and the Primary Care Trust buildings to the east. Site B has an area of 2.90ha and forms the eastern side of the incised stream valley. To the south-east is a small area of land around Cledford Hall, a former farmstead, currently unoccupied and closed to all access. The southern tip of Appeal Site B meets Cledford Lane, a minor road between the A533 Sandbach Road to the west and countryside to the south and east. Appeal Site B lies to the east of the southern part of Appeal Site A but extends further south than the latter, measuring some 520m north to south and between 40m and 110m wide.

20. The landform between the Holmes Chapel Road and Cledford Lane consists of a plateau dipping very gradually north-westwards, the direction of flow of the Sanderson's Brook which has cut a valley about 5 to 8m deep into the plateau. The valley is marshy and fairly open alongside the stream but well-wooded on its higher slopes. This woodland has been reinforced around the Tesco, Wincanton and Kuehne & Nagel buildings and along Pochin and ERF Ways with substantial planting of trees and shrubs, most of which is still relatively immature. A 132KV overhead electricity line carried on metal towers passes to the east of the Tesco

[18] CD8/1a, App.2
[19] CD.6/16, App.1 & 5 to Main Appendix

and Wincanton buildings; it then divides between the Wincanton and Kuehne & Nagel Buildings to continue south-westwards and south-eastwards.

21. To the east and south-east of the Business Park lies open countryside which is gently undulating and contains many trees and hedgerows. It is mainly down to pasture and several farmsteads and houses can be glimpsed through and between the trees and hedges. South of Cledford Lane and east of the railway is an area of open, very uneven, land which is traversed by Sanderson's Brook. A pair of redbrick cottages stand on the southern side of the lane near the bridge over the Brook, and these and a former house to the west of the railway are the closest dwellings to Appeal Site A.

22. Beyond the rough ground, about 1km south of the appeal sites, and on the western side of the railway line, stand the factory buildings, salt stacks and tall single chimney of the British Salt works. These occupy the narrow gap between the railway and the Trent and Mersey Canal, which lies alongside the A533 Sandbach Road at this point. There is also a chemical works on the Sandbach Road about 2km south-east of the salt works and some ribbon development along the road. In this direction the land is mainly open, well-wooded countryside, cut by small valleys occupied by streams and the local feature of "flashes" or small lakes resulting from subsidence caused by historic salt working.

23. To the west of Appeal Site A and beyond the railway the land rises to the former Cledford Lime Beds, created by the dumping of waste material from salt working around this area. The Lime Beds are characterised by rough grass and scrub and have a very uneven form with ponds, steep slopes and industrial remains in many places. They stand perhaps 10 or 12m above the level of the Business Park to the east and the canal with its associated moorings and the adjacent A533 which together form its boundary to the west. A fenced public footpath passes through the Lime Beds, linking Cledford Lane to the south with buildings on an industrial estate along Brookes Lane to the north.

24. Brookes Lane forms an arc parallel to the canal and links the A533 with the Holmes Chapel Road just east of the town centre, but traffic is not permitted to exit onto the A533. Close to the Brookes Lane/A533 junction the Shropshire Union Canal (strictly, its extension, the tiny Wardle Canal) enters the Trent and Mersey Canal. The arc of the Trent and Mersey Canal contains several locks and is lined by substantial mature deciduous trees which screen most of the nearby industrial development. Within the arc is a small modern housing development, Maidenhills, off Lewin Street, the name for this part of the A533. Lewin Street forms the southern end of Middlewich town centre and contains the Civic Centre, post office and library, fire station, public car park and several pubs and commercial premises.

25. From the northern end of Lewin Street the A533 continues for about 200m along Leadsmithy Street to a light controlled junction with the A54 by St Michael's Church. The main commercial centre of the town lies to the west, along Wheelock Street, but an inner relief road, St Michael's Way, enables traffic on the A54 to bypass the centre. At the western end of Wheelock Street a one-way system accommodates the junction between the A54 and the A530 to Nantwich and Crewe. About 0.5km to the south-west of this junction the A530 passes beneath the Shropshire Union Canal at a light controlled section subject to a height limit. A short distance to the north-west, the A54 makes a junction with the A530 to

Wincham and about 1km further, beyond the built-up area it has another junction, with the A533 to Northwich.

26. The main residential areas of Middlewich stretch southwards for almost 2km from the town centre, to the west and south-west of the Sandbach Road. This area is generally flat, but to the north of the town centre the land rises somewhat and there are further residential areas, mostly of fairly recent development, around Webbs Lane/Croxton Lane, King Street and the B5309 towards Kinderton Hall. The countryside to the south-west, west and north-west of the town appears to be undulating with small woods and many mature trees in hedgerows surrounding pasture fields. To the north and north-east the aspect is more open with less tree cover on flatter agricultural land.

27. East of the town centre the land rises gently along the A54 Holmes Chapel Road to the hamlet of Sproston Green and the M6 Motorway. From the countryside in this direction there are longer views north-east towards the Peak District beyond Macclesfield, east to the hills south of that town, including Croker Hill and The Cloud, and south-east to Mow Cop, all between 20 and 25km from the appeal sites. There are also long views westwards towards Middlewich.

Planning History

28. The development of the Midpoint 18 Business Park has been planned so that its spine road, Pochin Way, eventually provides a bypass for Middlewich on its eastern side. When completed this would link the A54 Holmes Chapel Road at the present roundabout junction to the north with the A533 Sandbach Road at Tetton Bridge, a short distance south-east of the British Salt works[20]. The first phase of the Business Park comprises the buildings along the northern part of Pochin Way near its junction with the A54.

29. Phase 2 comprises the central part of the Business Park, including the northern half of Appeal Site A. This was granted outline planning permission in April 2002 for the development of land for employment purposes (Use Classes B1, B2 and B8) together with open space along Sanderson's Brook and the continuation of the Middlewich Eastern Bypass from its present termination to a point on Cledford Lane adjacent to the railway bridge[21]. An indicative layout for Plots 61 and 63, which form all of Appeal Site A apart from the most southerly 200m or so, shows buildings totalling 21,740m^2 and 452 car parking spaces on these two plots[22].

30. The 2002 permission was subject to several conditions including (8), that no development other than habitat enhancement, natural landscaping and the construction of the section of the Bypass to Cledford Lane should take place within the wildlife corridors shown on a plan attached to the permission. Similarly, condition 9 required that no development should take place until a GCN habitat strategy and wildlife corridor management plan were approved by the LPA. Condition 11 required that no part of the development permitted should be occupied prior to the opening of traffic on the entire section of the Bypass from

[20] CD8/1a, Tab 2 and CD.5/29
[21] CD.6/16, App.1-4
[22] CD.6/16, App.1-5

the A54 Holmes Chapel Road to the A533 on a line agreed by the highway authority.

31. Subsequently, planning permissions were granted in August 2004 and May 2006 which had the effect of modifying several of the conditions on the outline permission, most notably by extending the time limits for reserved matters applications and for commencing the development[23]. The Phase 2 permission has been partially implemented but has now expired.

32. Planning permission for the construction of the southern section of the Middlewich Eastern Bypass was granted in December 2006 under the Town and Country Planning General Regulations by the former Cheshire County Council as Local Planning Authority to the County Council as highway authority. This was a detailed permission subject to several conditions including a requirement to submit, prior to the commencement of the development, a detailed scheme of ecological mitigation measures and an ecological and landscape management plan for approval. The permission was to be read in conjunction with a Memorandum of Understanding which required a plan to be submitted within two months of completion of the Bypass for the management of mitigation sites for a period of twenty years and provided for annual monitoring reports. The conditions and the Memorandum were in recognition of the presence of protected species on the land[24]. The approved line of the Bypass in this permission met Cledford Lane further east than in the 2002 permission, between Sanderson's Brook and Cledford Hall.

33. Following the adoption of the Congleton Borough Local Plan in January 2005[25] and the permission for Phase 2 of the Bypass in 2006, the landowners, Pochin Developments Limited and the then Borough Council jointly prepared a Development Brief for the development of Phase 3 of Midpoint 18. This was adopted as a Supplementary Planning Document by the Borough Council in February 2007[26].

34. In June 2008 a composite outline and full planning permission was granted for the construction of Midpoint 18 Phase 3 to the landowners[27]. The application was accompanied by an ES and consisted of two phases of development, the first part being for the construction of a building of 55,741m^2, known as Unit 101, and the completion of the southern section of the bypass from its present end adjacent to Appeal Site A to the A533 junction. The Bypass line met Cledford Lane close to Cledford Hall, as in the 2006 permission. This phase was a fully detailed permission with only landscaping reserved for subsequent approval; this approval was given in February 2009[28].

35. The second phase of this composite permission, which was in outline with all matters reserved for subsequent consideration, was for B1, B2, and B8 development and appropriate leisure and tourism (including hotel) uses[29]. This

[23] CD8/1a, pp.2.18-2.20
[24] CD.6/16, App.1-8
[25] CD.3/5
[26] CD.3/1
[27] CD.6/16, App 1-7
[28] CD7/1, pp.2.5
[29] APP/7/b, Tab 4

second phase land included the southern part of Appeal Site A and all of Appeal Site B. An indicative layout plan for the second phase was submitted as part of the application, though this did not show any information in terms of that part of Appeal Site A which lay within the application area, or for Appeal Site B[30]. Both phases of this permission were subject to Condition 8, that no building thereby permitted could be occupied before completion of the Bypass.

36. An application to renew the 2008 permission, accompanied by an ES, was approved in July 2011[31].

Planning Policies

37. The following planning policy documents and guidance are considered by the Appellant and the Council to be relevant to these appeals:

European and National Planning Policy

Waste Framework Directive 2008/98/EC (CD 2/21)

The Habitats Directive 1992/43/EEC (CD 2/24)

Waste Strategy 2000 for England and Wales (CD 2/17)

Waste Strategy for England 2007 (CD 2/16)

The UK Low Carbon Transition Plan 2009 (CD 4/1)

Overarching National Policy Statement for Energy (EN-1) July 2011 (APP/6/e)

National Policy Statement for Renewable Energy (EN-3) July 2011 (APP/6/e)

The UK Renewable Energy Strategy 2009 (CD 4/3)

UK Renewable Energy Roadmap July 2011 (APP/6/e)

The Air Quality Strategy for England, Scotland, Wales and Northern Ireland 2007 (CD 4/33)

PPS1 Delivering Sustainable Development 2005 (CD 2/1)

PPS1 Planning and Climate Change Supplement 2007 (CD 2/2)

PPS4 Planning for Sustainable Economic Growth 2009 (CD 2/3)

PPS9 Biodiversity and Geological Conservation 2005 (CD 2/4)

PPS9 Guide to Good Practice 2005 (CD 2/4A)

PPS10 Planning for Sustainable Waste Management 2005 (CD 2/5)

Update to PPS10: 30 March 2011 (CD 2/5A)

PPS10 Companion Guide 2006 (CD 2/6)

[30] CD.6/16, App.1 & 2
[31] APP/7/e, App.3

PPG13 Transport 2001 (CD 2/7)

PPS22 Renewable Energy 2004 (CD 2/8)

PPS22 Companion Guide 2004 (CD 2/8A)

PPS23 Planning and Pollution Control 2004 (CD 2/9)

PPS23 Annex 1 Pollution Control, Air and Water Quality 2004 (CD 2/9A)

PPG24 Planning and Noise 1994 (CD 2/10)

PPS25 Development and Flood Risk 2010 (CD 2/11)

Draft National Planning Policy

Draft National Planning Policy Framework 2011

Government Review of Waste Policy in England 2011 (APP/6/e)

Meeting the Energy Challenge: A White Paper on Energy 2007 (CD 4/2)

Planning our electric future: a White Paper for secure, affordable and low-carbon electricity 2011 (APP/6/e)

PPS Consultation: Planning for a Low Carbon Future in a Changing Climate 2010 (CD 2/12)

Development Plan Policy

North West of England Plan: Regional Spatial Strategy to 2021, 2008 (CD 2/26)

(Policies DP1, DP4, DP5, DP7, EM10, EM11, EM12, EM13, EM15 and EM17)

Cheshire Replacement Waste Local Plan 2007 (CD3/2)

(Policies 1, 2, 3, 4, 5, 6, 12, 14, 17, 18, 23, 24, 25, 26, 27, 28, 29, 34A and 36)

Congleton Borough Local Plan 2005 (CD 3/5)

(Saved Policies E2, GR1, GR2, GR5, GR6, GR7, GR9 and GR10)

The Proposals

Appeal A The EfW Facility

38. The proposals and the processes are shown on drawing PO11M and are described in detail in the SoCG[32], the CES as amended[33] and the Planning Statement[34]. The following is an overview of the proposed development. It would comprise three main elements, a pre-treatment materials recovery facility for the recovery of recyclables, an energy from waste incinerator, and a plant to process the ash residue from the furnace. The plant would be capable of handling up to 344,000 tonnes per annum of C&I waste only or up to 370,000 tonnes pa of mixed MSW and C&I wastes. It would have an energy output of up to 35MWe which would be capable of being exported as either electricity to the grid or as CHP to suitable

[32] CD8/1a Section 4
[33] CD6/14c Vol 2, Section 4
[34] CD.6/16, Tab 5 Section 3

premises in the area, or as some combination of the two outputs. A diagram showing the process is at APP/1/b Appendices 4 and 5 and the layout of the buildings is at Drawing PO11 M[35].

39. Pochin Way would be extended south by about 100m to enable an access to formed for all vehicular and pedestrian traffic. The access road into the site would separate the EfW and materials recovery buildings to the north from the ash storage and processing plant to the south. A car park with 65 spaces plus landscaping would be sited alongside this first section of the access road with another of 10 spaces further north. Lorries carrying waste would turn north along the rear western side of the site via a weighbridge to a turning circle giving access to either the materials recovery building or the EfW plant. The materials recovery building has a capacity of up to 185,000tpa and would measure about 98m long by 60m wide and 16.5m high. It would separate recyclable materials, particularly ferrous and non-ferrous metals, to be collected by recovery merchants, and suitable inert material which would be delivered to the ash processing building. The residue from this process would be prepared for the EfW facility and delivered to it by an overhead enclosed conveyor.

40. The EfW building is the largest on the site, about 48m high by 177m long and 63m wide and comprises several buildings within an arched structure 246m long. Materials would arrive either by conveyor from the materials recovery facility or by direct lorry delivery into a tipping hall at its northern end. A refuse bunker with a capacity of three or four days supply would feed the two furnaces which use moving grate technology and air injection. Combustion gases would pass out of the furnaces to be cleaned before being emitted via an 80m high chimney at the southern end of the building. The heat generated in the furnaces would be passed over boilers to raise steam to drive a turbine and generator to supply electricity. The casing of the steam turbine would be provided with an extraction point to deliver surplus steam for use as CHP. Between about 86,000tpa and 92,000tpa of furnace residue or IBA would be produced depending on the nature of the input material. This would be taken by tipper to the ash processing plant occupying the southern end of the site.

41. The ash processing facility would have its own weighbridge and delivery area. Unprocessed ash would first be stored in a covered building about 51m by 20m by 12m high for two or three weeks to dewater the material. It would then be loaded into the processing building, some 30m square by 13m high, where it would be screened and graded and remaining metals removed for recycling. The resultant processed IBAA would be stored pending despatch in size graded stacks up to 8-10m high in the processed ash yard at the northern end of the facility. The yard, measuring a maximum of 110m by 80m, would comprise a concrete pad to collect all rain and other water and divert it to a lagoon outside the southern boundary of the processing compound. This would enable suspended material to settle and be recovered and the water to be recycled for dust suppression and similar uses. The whole ash processing facility would measure about 220m long, including the settling lagoon, by a maximum of some 90m wide and the boundary walls enclosing it on all sides would be 3m high.

[35] CD6/18

42. No electrical connection to the grid was included with the application but an indicative route for such a link was identified by the Appellant and has been the subject of the CES[36]. Similarly, no CHP link forms part of the application, although Heads of Terms for the supply of CHP to the nearby British Salt works have been agreed[37] and an indicative route is the subject of the CES[38]. The potential for the supply of CHP to occupiers of buildings on Phases 1, 2 and 3 of Midpoint 18 has been recognised and indicative routes for that supply have also been subject to the CES[39].

Appeal B The GCN Receptor Site

43. The proposals are shown in the CES[40] and SoCG[41] and envisage the formation of three ponds and four hibernaculas to accommodate GCNs translocated from Appeal Site A should that development be permitted. The ponds would be sited on the eastern valley slope of Sanderson's Brook, above the 31m contour line which is the 1 in 25 year flood level at this point and close to the existing tree belt which would be reinforced by new planting. Ponds B and C would be sited in the vicinity of Cledford Hall and Pond A would be near the Primary Care Trust building off ERF Way. The ponds would have surface areas of between 155m^2 and 240m^2 and be between 1.5m and 1.9m deep, the excavated material being used to form downhill bunds. The four hibernaculas, two near Pond A and one each near Ponds B and C, would consist of low mounds of rubble, cut vegetation and logs and would be covered by turf.

Other Agreed Facts

Landscape and Historic Heritage

44. There are no national landscape designations within 5km of the appeal sites, the closest being the Peak District National Park the boundary to which lies about 22km to the east at its closest point. Appeal Site B lies within a locally designated Protected Area of Open Space. This and other local landscape designations within about 2.5km of the appeal sites are shown in the CES[42] and in the Cheshire Landscape Character Assessment[43].

45. There are no SAMs or LBs on either appeal site. Cledford Hall and its outbuildings are listed at Grade II and adjoin the south-eastern boundary of Appeal Site B. The headgear of a former salt working at Brooks Lane is a SAM; it lies about 100m west of the northern end of Appeal Site A. There are several LBs in and around Middlewich town centre and others in the surrounding countryside. Middlewich town centre and the whole of the Trent and Mersey Canal and the Wardle Canal have been designated as conservation areas[44].

[36] CD6/12 section 4.9
[37] CD5/9
[38] CES CD6/12 section 3.5
[39] CES Sections 3.5A & 19A
[40] CD6/12 section 3.6
[41] CD8/1a
[42] CD.6/15, Fig 11.1
[43] CD.6/15, Fig 11.5i
[44] CD.6/15, Fig 11.1

46. Landscape matters agreed between the Council and the Appellant are set out at Section 7 of the SoCG and in the related appendices[45]. Public rights of way and navigable canals are shown in the CES[46] as are Long Distance Footpaths and Cycle Routes[47].

Ecology and Nature Conservation

47. Following the submission of an otter and water vole survey addendum and a badger survey addendum the Council do not suggest that the ecological survey and mitigation proposals relating to the indicative grid connection and British Salt CHP connection are inadequate[48]. In the light of the further surveys carried out following the Reg 19 request of 8 April 2011, a statement of common ground has been agreed between the Council and the Appellant concerning the effect of the potential CHP links between the EfW plant and Midpoint 18 (all Phases) on protected species and on appropriate mitigation measures[49]. This statement also covers the position of NE in relation to these matters.

Other Agreed Matters

48. The Council and the Appellant agree that in relation to Appeals A and B there is no dispute between them concerning the following matters:

    Archaeology

    Ecology

    Drainage and Flood Risk

    Health Impacts

    Noise, Vibration, Air Quality and Odour

    Socio-economic Matters

    Strategic and Local Highway Networks[50]

49. On Appeal B the Council have no objections to the proposals in land use terms and accept that if planning permission is granted for Appeal A then, subject to the imposition of suitable conditions, the proposed works would provide appropriate mitigation for the loss of habitat arising from implementation of the EfW facility[51].

The Case for Covanta Energy Limited

Introduction

50. The proposal accords fully with up to date Government policy on waste management, energy and climate change. It would enable Cheshire to manage

[45] CD8/1a
[46] CD.6/15, Fig 11.10
[47] CD.6/15 Fig 11.5i
[48] CD8/1a, pp.3.19 & App.6
[49] CD8/1a pp.3.21 & App.7
[50] CD8/1a pp.6.1
[51] CD8/1a pp.6.3

its waste higher in the waste hierarchy and divert substantial quantities of waste from landfill. It would enable valuable energy to be recovered from that waste and make a substantial contribution towards meeting targets for renewable energy and addressing climate change. It would represent a highly efficient recovery plant with exemplar CHP capability. It would provide a substantial number of new direct and indirect jobs and, through its critical assistance towards the construction of the bypass and MP18 P3, would facilitate the provision of several thousand new jobs. It could hardly accord better with Government policy in PfG. In short, it would represent a development that would achieve significant social, economic, energy, climate change and waste management benefits for Middlewich, Cheshire and the nation.

51. Article 31 of the Town and Country Planning (Development Management Procedure) Order places a statutory duty on the Council to "state clearly and precisely their full reasons for refusal". Particularly in circumstances where the appeal application was considered on two separate occasions and after taking Leading Counsel's advice, it must be assumed that the reasons set out in the Council's decision notice, as supplemented by the additional RR following the reconsideration on 5 January 2011, do indeed represent the Council's full case against the appeal proposal. There has been no further resolution passed by the Council on this matter. Thus, where, as it does, the Council's case at the inquiry has departed from the resolved RR, it should be accorded little weight since it formed no part in the Council's decision making process to refuse.

52. There have been notable departures from the RRs and a number of abrupt changes in the Council's case as the inquiry has progressed. Indeed, it has not always been easy for the Appellant to understand from one week to the next precisely what was the case they had to meet. As well as amending its own RRs as the Inquiry progressed, or even failing to support them in the case of RR5, the Council concluded its case by relying on six propositions. But these too have little or no basis of support, whether in themselves or in the RRs.

53. Hence proposition 1 was not a resolved RR; proposition 3, insofar as it asserts waste would be "pulled down the hierarchy" was not a RR; proposition 4 was not a RR; proposition 5 insofar as it relies on the treatment of alternatives under the Habitats Directive was not a RR; and proposition 6 is an attempt to convert a matter which did not attract an objection from the Council's Landscape Officer into a free standing RR when it was only ever intended to be an issue to be considered in an overall balancing exercise.

54. Looking at the RRs in the light of the evidence at the end of the inquiry, it can be seen that in respect of RR1 no evidence has been put forward that any of the other preferred TT sites would be suitable or available; that there has been no evidence to substantiate the concern in RR3 that importing waste to the plant from outside Cheshire would be unsustainable; that apart from landscape issues, the Appellant was informed at the outset of the inquiry that the only other matter to be relied on under RR4 was the unsustainable traffic movements that are the subject of RR3; and that RR5 has in effect been abandoned. So far as the additional RRs are concerned: ARR1 and ARR2 are directed towards the unsustainable traffic movements issue already raised in RR3 but with no

evidential substantiation; ARR3, although the Council have refused formally to withdraw it, has not been pursued given Mr Goodrum's assessment of the PROW; ARR4 was in large measure abandoned by Mr Gomulski and ARR5 was entirely withdrawn by Mr Baggaley

55. Given the parlous state of the national and local economy and given the strong exhortation by Government in PfG that every opportunity should be taken by LPAs to support enterprise, facilitate sustainable economic development and foster employment, it is disappointing in the extreme that the Council could reject the very considerable economic and employment gains this development would provide in such a cavalier and dismissive manner. The prospect of some several thousand new direct and indirect jobs that this development would secure is rejected out of hand variously as "minimal", "non-existent", "marginal" and "illusory" in the Council's closing. This is an example of folly and intransigence on the part of an LPA.

56. Equally disappointing has been the Council's repeated attempts to resist the relevance and clear thrust of national energy and climate-change policies; to adhere to an outmoded philosophy of requiring need to be demonstrated, exacerbated by an insistence that the baseline for a need assessment is permitted and not just operational recovery capacity; and to continue to rely on its CRWLP's approach of unsustainably landfilling very large quantities of waste. The attempts to thwart the application of up to date national policy across the three inter-related strands of energy, climate-change and waste management, so vital to the needs of the country, has been a most unfortunate feature of the Council's case.

57. Lastly, the Council has invited the Secretary of State to liaise with the DECC Secretary of State and indulge in some kind of joint decision making process. There is no justification for this. The decision making process in this case has already been much delayed and there is no merit in imposing yet further delay to allow simultaneous decisions on Middlewich and Brunner Mond. There is no similarity or competition between the two proposals. In his recent Avonmouth appeal decision the Secretary of State, acting on the Inspector's recommendation, refused to delay issuing that decision because another appeal was shortly to be heard for an EfW plant a very short distance away, despite the second Appellants' request for him to do so. In the event the Secretary of State allowed both appeals.

The Submissions on Public Participation

58. The Council rely on Article 31 of the WFD and the Aarhus Convention in wholly general terms as they do not identify any provision that is said to have been offended. Article 31 requires Member States to ensure relevant stakeholders and authorities and the general public have the opportunity to participate in the elaboration of waste management plans and waste prevention programmes and have access to them once elaborated in accordance with the Public Participation Directive ("PPD") (2003/35/EC) or, if relevant, the SEA Directive (2001/42/EC). Article 31 has no relevance to the determination of an individual planning application so that the Council's reliance upon it is misplaced.

59. In any event, what the PPD does is implement the Aarhus Convention. Article 1 provides:

> "*The objective of this Directive is to contribute to the implementation of the obligations arising under the Århus Convention, in particular by:*
>
> *(a) providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment;*
>
> *(b) improving the public participation and providing for provisions on access to justice within Council Directives 85/337/EEC [the EIA Directive] and 96/61/EC [the IPPC Directive].*"

60. Article 2 provides for public participation in relation to specific plans and programmes including waste management plans. Article 31 of the WFD reflects this requirement and the objective in Article 1(a) of the PPD.

61. The remainder of the PPD amends the EIA Directive and Integrated Pollution Prevention and Control Directive ("IPPC"). These amendments address the objective in Article 1(b) and provide for public participation in the context of individual applications. Through these amendments the EIA Directive was brought into line with the Aarhus Convention. It follows that the public participation principles of the Aarhus Convention are incorporated into the EIA Directive. The Council does not suggest any failure to transpose the EIA Directive properly. Where there is no challenge to the regulations transposing a Directive – one that has been specifically amended to accommodate the Aarhus Convention and which permits further information for the purposes of an inquiry to be submitted and relied upon without consultation – it cannot properly be open to the Council to suggest the Aarhus Convention has been offended.

62. Nor has there been any failure to comply with the EIA Directive. It should be noted that the EIA Regulations expressly envisage that further environmental information may be either required or voluntarily provided for the purposes of the inquiry.[52] In such circumstances the consultation requirements are disapplied, yet in these appeals the Appellant has gone beyond the regulation and has consulted on all the further environmental information required and supplied. Hence the Aarhus Convention has not been offended.

63. Moreover, Regulation 22(2) of the EIA Regulations clearly demonstrates that the Government regards the inquiry process as curative of any failure properly to consult and that is terminal to the Council's submissions. Whatever they now choose to say about the inquiry process, it is obvious that the inquiry would have cured any of the purported difficulties the public are said to have had with the application. In particular, this inquiry has benefitted from CHAIN as representatives of the people of Middlewich taking a full and active role. The

[52] Regulation 22(2) of the Town and County Planning (Environmental Impact Assessment) Regulations 2011 (S.I. 2011/1824) (formerly Regulation 19). [Inspector's Note: Because this appeal was submitted prior to August 2010, the appropriate Regulations are the 1999 Regulations]

suggestion that people may have stayed away because they believed the appeal scheme to be a Cheshire-only facility falls down in the face of CHAIN's assertion that almost everyone in Middlewich objects to it. It looks faintly ridiculous when one recalls the hundreds of people who attended the PIMs. What is more, this inquiry has been web-cast to the world. It would be no exaggeration to say that the inquiry has been an exemplar of effective public participation.

64. As to the suggestion that the public has been misled, the three statements relied on by the Council in its closings cannot possibly be construed (save in relation to Merseyside) as limitations or operating to exclude the treatment of waste produced outside Cheshire. The Council well knew that the Appellant was prepared to accept a restriction on the source of the waste: as Mr Molloy conceded in XX, there were discussions between the parties on this but agreement could not be reached since no information could be obtained on what percentage of imports the Council was prepared to accept. But more importantly, as is shown by the evidence, it is the Appellant's intention to treat primarily Cheshire waste.

65. With regard to Merseyside, the Appellant's intention is to treat it at Ince and it has put forward a legal obligation under which it undertakes not to process any Merseyside waste from the PFI contract. Mr Wright explained that it was to this that the Merseyside statement related, given that there was much local controversy that Covanta would win the Merseyside MSW contract. The factual basis to suggest the public has been misled, therefore, is simply not present. SIP3 was not a dramatic alteration to the application, nor did it seek to convert a primarily Cheshire facility into a regional facility. It was no more than a sensitivity test to assess the effects of transporting different amounts of waste from outside the County to the proposed plant.

66. Turning to the alleged chaotic and disjointed nature of the inquiry, it would be counter-intuitive if the Secretary of State, who saw fit to issue two separate Regulation 19 requests, were to conclude that as a result of his own actions the inquiry had been so disrupted and disjointed that planning permission should be refused. This is underlined by the fact that the EIA Regulations specifically envisage the provision of further information during the course of an inquiry. The Inspector has been at great pains to ensure that there was the widest possible publicity for, and public dissemination of, the further information, notwithstanding that it was not required by the EIA Regulations. The public were given very generous periods of time to scrutinise, assimilate and respond to this material. CHAIN's iron grip on the documents is a good demonstration of this fact. In the event no-one responded to the further information submitted in response to the second Regulation 19 request within the consultation period or in supplementary evidence.

67. Moreover, the Council itself contributed to the length of these proceedings. It took the Council over a year to determine the application. It then elected to reject its own Leading Counsel's advice and treated the application as a stand alone incinerator, only to change its position on appeal and consume much inquiry time seeking a Regulation 19 request a whole year after it could have made one itself in terms of its choosing. In doing so, it put forward an absurd scenario which was firmly rejected by the Inspector when there was always an obvious route for pipes. Significantly, after Mr Baggaley's acceptance of the conclusions of the further information, the Council has shown no interest at all in

the substantive results of the work. And nor has the public judging by the lack of consultation responses.

68. CHAIN's further questions of Mr Morrison are difficult to reconcile with their support for the bypass and the development on MP18 P3 which it would release. Indeed, it was not clear that CHAIN had understood that without the bypass there would be no buildings in the future on MP18 P3 to which heat could be supplied. With the pipes following roads, the conclusions were all too predictable, but the Council now seeks to make capital out of that delay. It displays an attitude to the inquiry process that is antithetical to Government exhortations not to impose unnecessary burdens in the way of economic development, for example in paragraph (iv) of PfG.

69. That major inquiries get adjourned for various reasons and lengthy periods elapse before they can resume and meanwhile circumstances and policies change is not unusual, however regrettable. This inquiry has provided full opportunity for the main parties, as well as interested parties, to make representations on changed circumstances and it is absurd to suggest otherwise.

National Policy: Waste, Energy and Climate Change

70. Energy from waste addresses three distinct but interrelated strands of Government policy, none of which should be ignored or considered in isolation. Thus WS2007 and WPR make it plain that waste management policy falls within the wider energy policy context.[53] Similarly, WS2007 emphasises that recovering energy from waste which cannot be sensibly reused or recycled is an essential component of a well-balanced energy policy and underlines the importance of maximising energy recovery from the portion of waste which cannot be recycled.[54] Notwithstanding the intertwined nature of waste, energy and climate change policies, Mr Molloy failed to deal properly or at all with the latter two in his written evidence. Given the fundamental importance of sustainable development, it is energy and climate change policies which, if anything, should take precedence over waste policy should there be any conflict arising between these different strands.[55] There is, however, no conflict at all.

71. The Government recognises that in order to achieve its key waste planning objectives a step change in the way waste is handled will be required as well as significant new investment in waste management facilities.[56] These key waste planning objectives (as recorded in WS2007) are to decouple waste growth from economic growth and put more emphasis on waste prevention and re-use; to meet and exceed the diversion targets in the Landfill Directive for biodegradable municipal waste in 2010, 2013 and 2020; to increase diversion from landfill of non-municipal waste and secure better integration of treatment for municipal and non-municipal waste; to secure the necessary investment in infrastructure needed to divert waste from landfill and for the management of hazardous waste; and to get the most environmental benefit from that investment, through increased recycling of resources and recovery of energy from residual waste

[53] CD.2/16, p.76, pp.18 & APP/6/e, App.D, pp.33
[54] CD.2/16, p.76
[55] CD.2/2, pp.3
[56] CD.2/5, pp.1

using a mix of technologies.[57] The Government will ensure that the market demands these new waste management facilities by, amongst other things, increasing Landfill Tax.

72. Most recently, the Government has published the WPR.[58] It forms alongside WS2007, PPS10 and waste local plans and development plan documents the Waste Management Plan for England as required by Article 28 of the WFD. The WPR announces the Government's target of a zero waste economy in which material resources are re-used, recycled or recovered wherever possible, and only disposed of as the option of very last resort. Zero waste does not mean that no waste is produced; rather that only the minimal amount of waste possible is sent to landfill such that it is truly a last resort. It is not altogether clear from the Council's submissions that it understands this.

73. PPS10 and WS2007 are clear that the planning system is pivotal to the adequate and timely provision of these new waste management facilities. The timely delivery of new waste management facilities is absolutely critical because, nationally, the UK already lags behind many other European countries on waste recovery and, consequently, a very large number of facilities will be required. EN-1 in the context of energy generating infrastructure states that there is a requirement for substantial and timely private sector investment.[59] The recovery targets set in WS2007 are challenging with the recovery of MSW rising to 67% by 2015 and 75% by 2020 and C&I waste going to landfill to fall by 20% by 2010 compared to 2004. At present there is no operational recovery capacity in Cheshire. In other words Cheshire has failed to meet its 2010 recovery target and in the meantime, Cheshire continues to landfill and at a rate higher than expected.

74. Whilst all three strands of Government policy are neutral on technology choice, there is explicit policy support for the provision of EfW facilities.[60] The WPR expressly recognizes the environmental and economic benefits of recovering energy from residual waste and makes it clear that there is considerable scope for additional EfW capacity to be provided.[61] Indeed, the scale of waste derived renewable energy from thermal combustion envisaged in the WPR is vast: it envisages a threefold increase by 2020.[62] If that is ever to be delivered, having regard to the lead time for these types of facilities, planning permissions need to be granted now. The UK Renewable Energy Roadmap sets outs a series of actions, timetables and targets for the renewable energy generation. It deals at length with EfW and explains that the explicit statement of the Government's commitment to EfW in the WPR is as a result of the difficulties that industry has experienced in gaining consents.[63]

75. The reasons why the Government is so supportive of EfW are clear.[64] There are also further and significant economic benefits such as cost savings on waste

[57] CD.2/16, pp.23
[58] APP/6/e, App.D. June 2011
[59] APP/6/e, App.A, pp.2.2.25
[60] CD.2/16, p.79, pp.27 & APP/6/e, App.A, pp.3.1.2 & 3.3.5
[61] APP/6/e, App D, pp.214
[62] APP/6/e, App.D, pp.215
[63] APP/6/e, App.C, pp.3.142-3.146
[64] APP/6/e, App.D, pp.208

management; reduced fuel costs; and the ability to supply all the advantages of CHP.[65] Particular economic benefits flow from the recovery of energy: energy recovery provides security of supply utilising home-grown, *dependable* residual waste thereby lessening dependence on insecure foreign imports of energy; EfW is *diversified* energy in accordance with Government policy to have a wide range of different energy generators and move away from the concentration on coal, gas and nuclear energy; EfW plants represent a dispersal of generating stations, known as *distributed* energy, and lessen the dependence on a small number of very large centralised plants; and the energy produced in EfW plants is not intermittent in nature and subject to the vagaries of the weather like most other renewable energy but is in modern parlance *dispatchable*.

76. All three distinct policy strands make it clear that there is no requirement to demonstrate need. Paragraph 22 of PPS10[66] explains that there is no requirement to demonstrate a quantitative or market need for the proposal where proposals are consistent with an up-to-date development plan. In this case the CRWLP is out of date and seriously in conflict with the WFD and current Government policy. In such circumstances, paragraph 23 of PPS10 applies which provides that, before the development plan is updated to reflect PPS10, planning authorities should ensure that proposals are consistent with PPS10. PPS1 CCS emphasises that applicants for energy development are not required to demonstrate overall need.[67] EN-1 says that applications for energy infrastructure should be assessed on the basis that the need for those types of infrastructure has been demonstrated by the Government and that the need for renewable electricity generation is urgent.[68] There is no limit on energy generation and the policy thrust is clear: it is as much as possible and as soon as possible.

77. Relevant appeal decisions reflect the fact that a demonstration of need is not a requirement of policy. The Inspector at the Eastcroft appeal concluded that the need argument raised before him was not relevant, as did the Inspector at Cornwall.[69] At Ince Marshes it was held that neither waste nor energy policies sought to place a rigid cap on waste management capacity and at Ineos the conclusions were similar.[70] The Secretary of State has only recently accepted the findings of his Inspector on the Severnside Inquiry that:

> "*…it is not the role of the planning system to stifle competition and, whilst the JWCS [Core Strategy] must demonstrate sufficient waste management capacity to meet the sub-region's needs, for a period of at least 10 years*, *it is not intended to place a rigid cap on such capacity, as is clear from paragraph 7.27 of the companion guide to PPS10*."[71]

78. Moreover in recommending an award of costs to the Appellant the Inspector took account of the fact that the Council had been advised that there is no rigid cap on

[65] APP/6/e, App.D, pp.236 and 237
[66] CD.2/5
[67] CD.2/2, pp.20
[68] APP/6/e, App.A, pp.3.1.3 and p.27, pp.3.4.5
[69] APP/7/e, App.6, IR, pp.1840 & CD.5/23, IR pp.344
[70] CD.6/16, IR pp.11.124-11.126 & CD.5/1, pp.3.5(d)
[71] APP/0/58, pp.234

capacity but did not take that advice in advancing its case.[72] This is a position which is entirely consistent with the Ince Marshes and Ineos decisions and Mr Aumonier's interpretation of the same paragraph. The Council however, say that this is a wilful misinterpretation, which reflects poorly on their understanding of waste policy and how it is applied by the Secretary of State. It is plain that it is the Council which has misinterpreted that paragraph and not Mr Aumonier.

79. There can be no doubt that the appeal scheme would make a significant contribution to the similarly pressing need for renewable and low carbon energy. The UK is committed to a target of producing 15 per cent of its total energy from renewable sources by 2020.[73] The unremitting message from the Government is one of urgency: the Energy White Paper seeks to provide a positive policy framework to facilitate and support investment in renewable energy;[74] the aim of UK Renewable Energy Strategy is radically to increase the use of renewable energy;[75] the UK Low Carbon Transition Plan records that the scale of change we need in our energy system is unparalleled;[76] further support is found in the new draft PPS on Planning for a Low Carbon Future in a Changing Climate.[77]

80. The draft NPPF also stresses the urgent need to restructure the economy to meet the twin challenges of global competition and a low carbon future, seeks to support the delivery of renewable and low carbon energy and directs Local Planning Authorities to apply the presumption in favour of sustainable development when determining planning applications as well as not to require applicants for energy development to demonstrate need.[78] In short, the exhortation to the industry is to provide as much renewable energy capacity as swiftly as possible. It is absolutely clear that Government policy requires that significant weight should be given to a proposal's provision of renewable energy.

81. Similarly, the Energy White Paper makes it clear that local authorities should look favourably upon planning applications for renewable energy developments.[79] WS2007 says that particular attention should be given to siting plant where it could maximise the opportunity for CHP.[80] PPS1 CCS provides that planning authorities should pay particular attention to opportunities to foster the development of new opportunities to supply proposed and existing development with renewable and low carbon energy.[81] These could include co-locating potential heat customers and heat suppliers which is precisely what the appeal scheme does. The appeal scheme's relationship with British Salt represents a very rare example – "an exemplar" – of a new EfW facility with a significant adjacent heat demand.

82. There is also the Government's further aim of cutting emissions of carbon dioxide by 60% by 2050 and making 'real progress' towards that target by 2020 as set

[72] APP/0/58, costs decision pp.68-69
[73] APP/6/e, App.A, pp.3.4.1
[74] CD.4/2, pp.5.3.67
[75] CD.4/3, Summary
[76] CD.4/1, p.36
[77] CD.2/12, pp.11 & CD.2/12, pp.16
[78] APP/7/e, App.1, pp.71, 152 & 153
[79] CD.4/2, pp.5.3.67
[80] CD.2/16, p.79, pp.28 & APP/6/d, App.A, pp.4.6.3 & 4.6.5
[81] CD.2/2, pp 20 & 27

out by PPS22.[82] In the context of this up to date national policy, the requirement to demonstrate need in policy 2 and 3 of the CRWLP, albeit in certain limited circumstances, is demonstrably out of step with both Government policy and the WFD and, accordingly, is deserving of little or no weight. Indeed, the Plan is almost utterly silent on renewable energy and wholly contrary to what the Council itself described as the Government's "the more the merrier" approach to renewable energy infrastructure.

83. The Council's approach to need is blinkered, one dimensional and contrary to policy. They seem only prepared to consider waste management need and ignore altogether energy and climate change needs. Of course, the Council faced a difficulty in maintaining that approach once it had accepted that the proposal would generate renewable energy. Their solution, to say that EN-1 and EN3 are energy policy documents which do not succeed or overrule waste policy, fails completely to deal with energy policy as a whole. Moreover, both EN-1 and EN-3 deal with energy policy and its role in dealing with the challenge of climate change. Climate change is the Government's key concern with respect to sustainability. It is the role of planning to deliver sustainable development.

84. In relation to whether the demonstration of need is a policy requirement, the Council relies on Article 28(2) and (3)(d) of the WFD. Article 28 deals with waste management plans and is found in Chapter V, entitled "Plans and Programmes." But plan making is totally distinct from development control. That waste management plans should address need does not in anyway suggest that every applicant for planning permission must prove need. The Council has conflated two quite different issues, as they do when referring to various paragraphs in PPS10[83] none of which relates to development control. Yet those paragraphs which do deal with development control are not relied upon.[84] Importantly, it is paragraph 22 dealing with development control which expressly states that there is no general requirement to prove need.

85. The Council's approach contrasts markedly with that adopted by Cheshire West and Chester Council which clearly recognised that a multi dimensional approach is required when approving the Ince Marshes Bio-Mass plant facility in September of this year.[85] In summary, the Council's approach relies on policies which relate to plan making and adopts a one dimensional approach to policy which focuses on waste management almost to the exclusion of everything else. Such an approach is wholly contrary to the genuinely three dimensional approach of waste, energy and climate change which national policy demands.

86. The appeal scheme can therefore address four global policy requirements and the need for infrastructure to achieve them: first, the provision of waste management capacity critical for efficiently and sustainably managing Cheshire's waste; secondly, helping to achieve the required diversion from landfill and thereby move towards zero waste and to meet the WS2007 recovery targets; thirdly, providing much needed renewable and low carbon energy with maximum potential exploitation of CHP thereby offsetting reliance on fossil fuels; and, fourthly, reducing carbon dioxide that would otherwise be emitted to generate

[82] CD.2/8, p.6
[83] CD 2/5, pp3, 4, 7 & 11
[84] Ibid pp 22-38
[85] CEC44, pp.7.3, 7.4 and 7.6

energy and displacing harmful methane emissions that would otherwise arise with landfilling.

National Policy: Other matters

87. The recently published draft NPPF is a controversial document.[86] Though as a draft it may change, it is none the less a material consideration and, as the PINS Advice Note[87] observes, it does give a clear indication of the Government's direction of travel. Moreover, it is entirely in accord with and builds on the earlier Ministerial Statement, PfG, a document which took immediate effect and is being afforded significant weight in recent appeal decisions, including the most recent EfW appeal decision.[88] The draft NPPF is clear that local planning authorities should approve development that accords with relevant policies of statutory plans without delay[89]. That is the case here. Planning applications should also be determined in accordance with the NPPF itself in the absence of up to date and consistent plans, which is also the case with these appeals.

88. In turn, PfG is overwhelmingly supportive of development: it could almost have been written with the appeal proposals in mind, given not just the direct and indirect jobs which would be generated, but also the wider catalytic effects on employment through the release of MP18 P3 and the environmental benefits of landfill diversion. Permission would result in all of these benefits accruing to a town which is widely recognised to be struggling during the economic downturn. No material harm would arise from implementation of the appeal scheme and, importantly, significant and substantial benefits would flow from a grant of planning permission.

89. These extant and emerging policies are in line with policy EC10 of PPS4 which provides that the local planning authorities should adopt a positive and constructive approach towards planning applications for economic development and that planning applications which secure sustainable economic growth should be treated favourably. The appeal proposals are deserving of that favourable treatment.

The Development Plan

90. The development plan comprises the RS for the Northwest, the CRWLP and the CBLP.

Regional Strategy

91. Unless and until it is abolished by primary legislation the RS will continue to form part of the development plan.[90] It is not, as the Council suggest, merely a material consideration. The intention to abolish may be a material consideration but recent decision letters continue to attach little weight to this intention. Mr

[86] APP/7/e, App.1
[87] APP/7/e, App.2
[88] APP/0/38 & APP/0/58 IR, pp.249
[89] APP/7/e, App.1, pp.14
[90] *Cala Homes (South) Limited v Secretary of State for Communities and Local Government* [2010] EWHC 2866 (Admin) and, in the Court of Appeal, [2011] EWCA Civ 639

Molloy agreed that, even if it is the Government's intention to abolish the RS, the policies contained in it are deserving of some weight. The Council plainly regard the RS as relevant: it has relied on a suite of policies from it in both the RRs and ARRs. Mr Molloy also confirmed that the Council do not suggest that the RS policies are not compliant with either national policy or the WFD.

92. Policy EM10 seeks to promote and require the provision of sustainable new waste management infrastructure that contributes to the development of the Northwest by reducing harm to the environment, improving the efficiency of resources, stimulating investment and maximising economic opportunities. Appeal A would further each of these broad objectives. The policy also seeks to ensure that the value is recovered from at least 70% of C&I waste by 2020 and says that the targets should be exceeded where practicable. Hence there is no ceiling or limitation on the desirable objective of securing value from waste. The supporting text highlights the particular need to reduce reliance on landfill by providing alternative facilities for reprocessing, treatment and disposal.[91]

93. Policy EM12 sets out general locational principles for waste management facilities, including that the concept of nearest appropriate installation is only applied to disposal. The RS also clearly distinguishes between the treatment of MSW which should be treated within the WPA area in which it arises and C&I waste where "*inter-regional movement of waste may be appropriate where assessed to be the more sustainable option*."[92] The RS contains no requirement to demonstrate need for proposed waste management facilities: indeed, policy EM10 urges that waste targets should be exceeded.

94. Mr Molloy accepted that the RS reflected recent central Government advice, in particular, with regards to renewable energy policy and that the RS contained a suite of relevant policies on the subject. This is a subject which is not properly addressed in the CRWLP. In particular, RS policy DP9 requires as an urgent regional priority that plans and proposals should contribute to reductions in CO2 and other GHG emissions.[93] Policy EM15 aims to double the region's installed CHP capacity by 2010, a target which was missed and to which the appeal scheme would make a significant contribution.[94] Policy EM17 identifies targets for renewable energy capacity within the region (rising from 10% in 2010 to at least 20% by 2020).[95] The policy emphasises promoting and encouraging, rather than restricting, the provision of renewable energy and says that meeting the targets is "not a reason to refuse otherwise acceptable development proposals." It stresses that significant weight should be given to the wider environmental, community and economic benefits of proposals for renewable energy schemes which contribute to the indicative capacities, mitigate the impacts of climate change and reduce the demand for fossil fuel.

95. The RS then properly addresses the three areas to which the appeal scheme will contribute: waste management, renewable energy generation and climate change. The appeal scheme is fully in accordance with the RS which is the most up to date part of the development plan against which this application must be

[91] CD.2/26, pp.9.22
[92] CD.2/26, pp.9.29 & 9.30
[93] CD.2/26, p.30
[94] CD.2/26, p.113
[95] CD.2/26, p.117

determined. As Mr Molloy agreed, generally the more up to date a plan, the more weight it should attract. Furthermore, the effect of Section 38(5) of the 2004 Act is that, if to any extent a policy contained in a development plan conflicts with another policy, the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published (as the case may be). Therefore, to the extent that there is any conflict between the RS and CRWLP, that conflict should be resolved in favour of the RS.

The CRWLP

96. The position adopted by the Council in closing was that the CRWLP is a consideration of the highest importance in the determination of this appeal since it constitutes the most important aspect of the development plan. In order to do this it is essential for the Council to establish both that the CRWLP is up to date and that it is compliant with the WFD given Mr Molloy's concession that if the plan were not to be found to comply with the WFD it should attract less weight.

97. Though the Council point to the adoption of the CRWLP relatively recently in 2007, its genesis was some years before: the first deposit draft was published in early 2004 (and that was itself a reworked version of an earlier consultation draft first published in 1997). There has been a number of significant policy documents published since the CRWLP was prepared and adopted which, plainly, could not have played a role in the development of the CRWLP: the WFD,[96] PPS1 CCS,[97] WS2007,[98] the Energy White Paper,[99] the NW RS,[100] the UK Low Carbon Transition Plan,[101] UK Renewable Energy Strategy,[102] EN-1,[103] EN-3,[104] the UK Renewable Energy Roadmap,[105] the WPR,[106] as well as various Secretary of State decisions on appeal and call-in inquiries into waste management infrastructure.

98. Therefore the CRWLP is in some material respects out of step with up to date national waste management and renewable energy policies as well as the Secretary of State's interpretation of those policies in recent decisions. To say that the CRWLP was adopted in 2007 and so could not be considered old is no analysis at all. Moreover, it is not to the point: the question is not its age but whether it reflects up to date national policy on waste, energy and climate change which it plainly does not.

99. As to the fact that the CRWLP was the subject of the saving direction[107], that expressly states that the extension of saved policies does not indicate that the Secretary of State would endorse those policies if presented as new policies. Nor does it mean, as Mr Molloy accepted, that the fact that the CRWLP was saved by the Secretary of State last year leads to the conclusion that the CRWLP accords

[96] CD.2/21
[97] CD.2/2
[98] CD.2/16
[99] CD.4/2
[100] CD.2/26
[101] CD.4/1
[102] CD.4/3
[103] APP/6/e, App.A
[104] APP/6/e, App.B
[105] APP/6/e, App.C
[106] APP/6/e, App.D
[107] Attached to APP/0/1

with the later policy documents. He also agreed that the Secretary of State should address his mind as to the extent to which the CRWLP accords with those policy documents; the saving letter said as much. Moreover, Mr Molloy volunteered that the CRWLP does not contain any specific renewable energy policies and "so in certain respects it is not in conformity" with those documents, though he concluded that the CRWLP was not necessarily in conflict with them.

100. On whether the CRWLP is WFD compliant, the Council seeks to rely upon the opinion of an officer at Cheshire West and Chester Council rather than forensically examining the document itself. This can only be because the latter course would lead to the inevitable conclusion that the CRWLP does not conform with the WFD in a number of material respects.[108] The principal point is that the CRWLP fails to maximise landfill diversion and force waste management higher up the hierarchy. Thus its methodology is first to establish the target for landfill of C&I waste, some 390,000tpa which is no small amount, and only then to move to the second stage of providing for other waste management routes using the landfill maximum as the starting point. Consequently the indicative capacity figures derived for recycling, composting, MBT and energy recovery are all constrained.

101. A similar approach is taken in the context of MSW where the CRWLP sets out the estimated total amount of MSW that can be landfilled in each year.[109] This quantity of landfill then permeates through the remainder of the need assessment to provide the indicative landfill capacity figure for both MSW and C&I and thereby the indicative energy recovery requirement. [110] As a result, the CRWLP explicitly provides for the maximum amount of MSW that can be landfilled whilst meeting LATS obligations and constrains the energy recovery contribution, a complete inversion of Government policy. Furthermore, these constrained figures for recycling, composting and MBT and energy recovery of both MSW and C&I are not treated as minima to be attained. The effect of policy 3, which requires a demonstration that the existing capacity is inadequate to meet the waste management needs, is the opposite: it limits capacity to those levels.

102. Article 4 of the WFD requires that the waste hierarchy should be applied as a priority seeking to divert as much waste as possible from landfill. This is reflected in up to date national policy which, again, requires waste management to be driven up the hierarchy and for landfill to be used only as a last resort with the objective of recovering value from as much of the waste produced as possible. The approach adopted in the CRWLP could hardly be more contrary to up to date national policy which itself properly reflects the WFD. To describe these conflicts as "petty fogging quibbles" reveals a failure to grasp the fundamental tenets of up to date waste policy. The conflict between the WFD and up to date national policy on the one hand and the CRWLP on the other is with policies deserving of very little weight given their failure to apply the waste hierarchy as a priority order and to maximise diversion from landfill.

The CBLP

[108] APP/0/1
[109] CD.3/2, p.69
[110] CD.3/2, p.75, Table A13, p.73 &Table A9, p69

103. The CBLP predates the CRWLP and does not specifically address waste planning.[111] There is no dispute that the CBLP adds nothing to the policy considerations covered by the other development plan documents. Indeed, the Council did not even refer to the CBLP in closing.

Conclusions

104. The statutory test, properly formulated, is whether the appeal scheme accords with the development plan as a whole.[112] The appeal scheme does so and hence the proposals must enjoy the presumption in favour of permission being granted for development which accords with the development plan at Section 38(6) of the 2004 Act. However, to the extent that there is found to be conflict with the CRWLP that conflict is deserving of little or no weight given the fundamental failure of the CRWLP to address continued landfilling. Moreover, the appeal proposals wholly accord with clear and up to date national policy which is an important material consideration plainly indicating that planning permission should be granted even if there is found to be a conflict with what is the outmoded CRWLP.

Appeal A: First Refusal Reason: CRWLP Policy 5

105. This RR shows that the Council's whole approach to this proposal has been misguided. Not only is Policy 5 contrary to up to date Government policy, but the Council's reliance upon it is contrary to its express agreement in pre-application discussions that the preferred site identified by the CRWLP, WM5, was no longer available for the development of waste management facilities. The Council had also agreed that the appeal site had similar characteristics to WM5 and that it could properly be considered as a direct replacement for WM5 without any conflict with Policy 5.

106. Policy 5 is a good example of how the CRWLP has fallen behind up to date Government policy guidance. There is a fundamental disjunction between the underlying approach of identifying preferred sites and resisting development on others, which is by its nature restrictive, and modern Government policy, such as PPS1 CCS, that seeks to provide a framework that promotes, encourages and does not resist development for the generation of renewable and low carbon energy.[113] To that end, the local planning authorities are expressly told not to question the energy justification for why a proposal for such development must be sited in a particular location and to avoid stifling innovation, including by rejecting proposals solely because they are outside areas identified for energy generation.[114]

107. Nor is the identification of sites through the plan-led system to be treated as a disavowal of planning applications or planning appeals and inquiry processes as a means for reaching decisions on individual proposals.[115] PPS10 explicitly envisages applications for waste management facilities on unallocated sites and

[111] CD.3/5. It was adopted in 2005
[112] In *R v Rochdale MBC ex parte Milne (No.2)* [2001] Env. L.R. 22 at 50
[113] CD.2/2, pp.1 & 19
[114] CD.4/2, p.156, pp.5.3.67 & CD.2.2, pp.20
[115] CD.6/16, Tab 1 of Tab 2, IR, pp11.106

says that they should be considered favourably when consistent with the policies in the PPS and the WPA's core strategy.[116] That has been recognised as a forceful statement of national policy on the provision of waste management facilities.[117] As to the policies in PPS10, Mr Molloy agreed that the appeal site met the site selection criteria set out in Appendix 2 of the CRWLP and that those criteria were based on PPS10. He also agreed that Government policy does not seek to dictate the choice of location for waste management facilities and the fact that the proposal has come forward on an unallocated site is no reason to withhold planning permission. On the other hand he could not identify any Government policy that required a renewable energy project to be confined to an identified site. That is because the modern approach of both the Secretary of State in decision making and in Government policy is that the choice of site is a commercial matter.[118]

108. In fact the CRWLP itself anticipates that it will not always be possible to locate all waste management proposals on the identified preferred sites and the CRWLP Inspector explicitly recognised that preferred sites can become unavailable.[119] That is supported by the recently published EN-1 which says that from a policy perspective there is no general requirement to consider alternatives or to establish whether the proposed project represents the best option.[120]

109. In pre-application discussions in February 2008 the Council confirmed that, not only was WM5 unavailable in its view, but that the appeal site would be looked upon as a Policy 5 exception such that it would not amount to a departure from the CRWLP.[121] This was the basis on which the application was submitted. In May 2009 Mr Molloy confirmed that the application had been submitted on the basis that the appeal site was a replacement for unavailable site WM5 and expressly acknowledged that that was the approach agreed in pre application meetings.

110. However, he asked for a brief comment on the availability and suitability of the other preferred sites so as to address Policy 5. In response, the Appellant decided to produce a report of the nine preferred sites identified in the CRWLP as suitable in principle for TT. Even before this report was submitted to the Council, Mr Molloy confirmed again that the Policy 5 test was met.[122] A draft report was submitted in July 2009 and it was confirmed that this more appropriately considered the requirements of Policy 5.[123] At a meeting in September 2009 Mr Molloy confirmed again that he was content that the Policy 5 test had been met.[124] As a result of the clear agreement on the approach to Policy 5 and the WPA's position on the acceptability of the appeal site as a substitution of WM5, the draft report was not formally submitted to the Council.[125] Therefore, as Mr Molloy conceded in XX, this was not due to the BM application.[126]

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[116] CD.2/5, pp.24
[117] CD.6/16, Tab 1 of Tab 2, IR, pp11.84
[118] CD.5/1, pp.3.5 e). See also EN-1, APP/6/e, p.12, pp.2.2.19
[119] CD.3/2, pp.5.48
[120] APP/6/e, App.A, pp.4.4.1
[121] APP/7/b, p.75. And a year and a half later, see APP/7/c, App.17, p.351
[122] On 11 June 2009. See APP/7/c, App.1, p.4 and APP/7/c, App.17, p.349
[123] APP/7/b, p.78
[124] APP/7/b, p.102, pp.2.9
[125] In XX
[126] CEC1, p.32, pp.87

111. Mr Molloy continued to hold the view that WM5 was unavailable as he wrote the POR because, as he conceded, the landowner has consistently emphasised that WM5 was unavailable for the development of a waste management facility in view of its intention to build out the consented Phase 3 the MP18 Business Park.[127] He also agreed that the landowner's intention is critical to any assessment of whether or not land is available for development. It was, therefore, disappointing to see his proof hinting that WM5 was perhaps, after all, not unavailable since it was only a commercial preference by the landowner not to release it for waste management purposes. [128]

112. The approved MP18 P3 plans plainly show why the landowner is emphatic that WM5 is unavailable.[129] The approved plans for the remainder of MP18, development which the Council profess to be keen to encourage, show that WM5 covers virtually the same land as Unit 101. This unit is a large scale strategic warehouse and distribution unit comprising some 55,700m2 of B8 floorspace, together with associated docking, manoeuvring and parking areas. Unit 101 is perhaps the key element (Bypass aside) of P3. Using that land for an EfW plant would deny the landowner the opportunity of developing Unit 101 or anything like it. There are no other plots of land available within MP18 which could accommodate anything approaching the same scale of development.

113. WM5 also includes a significant element of the land on which the bypass is to be built upon which the development of WM5 for any purpose is wholly dependent, as well as land to the east of the bypass where there is permission for further employment units. [130] It is self-evident that this eastern area could not, of itself, accommodate an EfW facility and in any event, it is subject to significant constraints including the ecological mitigation strategy that forms part of the MP18 P3 permission, high tension overhead power lines and a high pressure gas pipeline, both protected by easement corridors.[131] Accordingly, WM5 is unavailable not only due to the landowner's intention to develop the land for employment purposes but also because it has no current access.

114. As landowner, Pochin has made its position clear ever since its representations on the CRWLP in October 2006.[132] The WPA had initially objected to Pochin's MP18 P3 application due to the loss of WM5 to other development and the failure to identify alternative arrangements for the provision of a significant strategically important waste management allocation to replace it.[133] However, following discussions between Pochin and the WPA, that objection was withdrawn on the express basis that appeal site would be made available for development.[134] Mr Molloy conceded that this was the reason for the withdrawal of the objection and not, as he had suggested in his proof, that there were a significant number of preferred sites and objections could not be sustained in relation to all of them.[135] The POR on MP18 P3 formally records the withdrawal of the WPA's objection to

[127] CD.8/1, App.7, pp.100
[128] CEC1, pp.78-79
[129] CD.8/1, App.2
[130] APP/7/c, pp.1.10
[131] APP/7/c, App.3
[132] APP/7/b, App.3, p.22, pp.2.4
[133] APP/7/b, App.6, p.70
[134] APP/7/b, App.6, p.72
[135] CEC1, pp.83

the application and the basis for it, the provision of a suitable alternative site in immediate proximity. The selection of Appeal Site A as a replacement site was in no way controversial.

115. Mr Molloy agreed the methodology employed in the draft report on alternative site availability, agreed that criterion (ii) of Policy 5 is not relevant and agreed that the appeal scheme meets criterion (iii).[136] Hence the dispute between the parties relates only to the first criterion. The evidence shows that none of the preferred sites for TT is available or suitable and, accordingly, Policy 5(i) is met.[137]

116. Similar conclusions have been reached by other analyses of the situation. The POR in relation to an application for a waste treatment plant at Wincham, Northwich (in CWAC) notes that the application site is not a preferred site and quotes with approval the conclusions of the accompanying site assessment which concluded that none of the identified preferred TT sites in the CRWLP is available or suitable. The officer agreed, in the circumstances, that criterion (i) of policy 5 was met.[138] The Council was consulted on that application and did not raise any objection based upon lack of compliance with Policy 5.[139]

117. A similar conclusion was reached in the POR on the application at Lostock Gralam, Northwich, also in CWAC. It confirmed that this application was not on an allocated waste site and recommended approval.[140] The applicant had submitted a detailed site appraisal which concluded (supported by the planning officer) that the proposal met Policy 5 of the CRWLP.[141] Whilst permission was refused, that was not on grounds of conflict with Policy 5, and when the scheme was resubmitted it was approved. In the resubmitted application, Policy 5 was again considered and the related POR states that it was a major consideration in the determination. The POR concludes that the information submitted by the applicant demonstrated that the requirements of Policy 5 were satisfied.[142] That scheme was significantly smaller than Appeal A so that it would have been easier to accommodate on other sites than would the appeal proposal, indicating that the Appellant's work on alternative sites is robust.

118. It is correct on its face that the Appellant's report fails to consider the "do nothing" scenario in relation to alternatives. But the purpose of the report is to assess the availability and suitability of other sites, the very task which Policy 5 requires. The Council's case on do nothing is flawed for two fundamental reasons. First, it is wholly reliant on demonstrating that there is no need for the facilities because there is massive capacity for handling waste which is already built, consented or planned. But the Secretary of State has repeatedly made it clear that it is operational capacity to which regard should be had and the Council's arguments on need cannot even get off the ground without the inclusion of consented and planned capacity. Moreover, it is an argument that overlooks the fact that this appeal scheme performs a dual role as a waste management facility

[136] CEC2, p.64, pp.1.5
[137] APP/7/b, App.10, p.96-97
[138] APP/7/b, App.11, p. 271, pp.6.3
[139] APP/7/b, App.12
[140] APP/7/b, App.13, p.304, pp.6.2
[141] APP/7/b, App.13, p.304, pp.6.2 and 6.3
[142] APP/7/b, App.14, p.324-325

and a generator of renewable energy. National policy with regards to renewable energy is clear: that there is an urgent need for additional generation without limit or restriction.

119. Secondly, the Council's submissions on alternatives in the context of the Habitats Regulations and the protection afforded to protected species fail completely to deal with the fact that Appeal Site A is allocated for employment development and benefits from permission for employment uses which, when implemented, will necessitate the disturbance of the protected species in any event.[143] Moreover, in allocating WM5, the Council clearly felt there was a need for such a facility as that proposed and, of course, development on WM5 would disturb EPS. Nor is there any suggestion that the appeal site should remain undeveloped. It is common ground that in the event of this appeal failing the site will be developed for employment uses as part of the MP18 Business Park. In other words, the do nothing scenario will disturb the protected species to a similar extent as the appeal proposals and Mr Baggaley recognised as much. Hence "do nothing" cannot realistically be claimed to be a suitable alternative, especially so, where Appeal B is agreed to provide appropriate mitigation for Appeal A and also provides an ecological improvement to the Sanderson's Brook wildlife corridor.

120. By contrast, when CWAC applied the NSA/do nothing test in the application for the biomass renewable energy plant at Ince, the POR concluded that the test was satisfied since the principle of the site's development had already been accepted.[144] Appeal Site A is not only allocated for employment development and enjoys a permission for Class B development, but no one has suggested that such development would be inappropriate on this site. In short, it is committed to built development and to do nothing is not a tenable proposition.

121. Nor are the criticisms of Mr Halman's evidence of any substance. First, the limitation of the site area to 5ha or greater was a conservative assumption given the appeal site is over 9ha and the proposals are very compactly arranged on site. The reliance on the PPS22 Companion Guide's 2-3ha estimate for a typical combustion plant is misplaced because this is not a typical combustion plant as it includes a MRB and IBA processing plant, neither of which is accounted for in the PPS22 Companion Guide estimate. Second, the limitation of the report to preferred sites was agreed with the Council, and to criticise the Appellant for failing to consider other sites not identified in CRWLP is directly contrary both to the express agreement with the Council at the pre application stage, and to Mr Molloy's proof of evidence.[145] Significantly, no alternative site has been identified by the Council or any other party, contrary to the suggestion in the Council's closing.[146]

122. Much focus is placed on the report's rejection of the Brunner Mond site. Mr Molloy suggested that the rejection of that site as an alternative was flawed because it was based on the fact that the site was too small for the Appellant's proposal when, in fact, the Brunner Mond application was larger: for a 600ktpa

[143] APP/7/e, App. 3
[144] CEC44 and pp.7.141 of the above document
[145] CEC1, pp.84, 86 & 91
[146] Council's closing pp.88

facility. But that suggestion was made on the misunderstanding that the Brunner Mond application site was co-extensive with a preferred site (WM12B which is only 3.4ha in total). In fact the Brunner Mond application site extends well beyond the preferred site, to some 10.57ha.[147] Moreover, that site is now being promoted by Brunner Mond to meet a different need, as a dedicated facility to supply CHP to Brunner Mond's own chemical works on adjacent land and is designed to import up to two thirds of its feedstock by rail from outside Cheshire. It is, therefore, not available either to the Appellant or to meet the need the Appellant's proposals is designed to address.

123. It follows that there is no substance behind RR1. But even if this were not so, it is accepted by the Council that the appeal site has similar characteristics to WM5 and that it complies with the site selection criteria in CRWLP which are themselves based on PPS10. It is therefore for the Council to demonstrate the harm that the purported conflict with Policy 5 would bring about. Mere conflict with policy, even if it exists, which gives rise to no demonstrable harm is not a proper reason to refuse permission, but that has not been addressed by the Council. The nearest suggestion was that there might be some harm because the appeal site is closer to housing in the town centre than is WM5. But that has never been raised as a concern, still less is it a RR and no attempt has been made to compare and contrast the effects of an EfW plant sited on WM5 with those arising from the appeal proposal. In any event, Mr Goodrum showed that WM5 is closer to a group of dwellings at Briar Pool than is the appeal site and demonstrated that the visibility of Appeal A would be similar to an EfW plant on WM5.

Appeal A: Refusal Reasons 2 & 3: Need and Sustainability

124. RR2 alleges conflict with Policy 3 of the CRWLP because the Appellant has failed to demonstrate that existing capacity is inadequate to meet waste management needs. However, it is Policy 2 of the CRWLP which is the principal policy addressing need and there is no requirement to demonstrate need in circumstances where a proposal is consistent with the Development Plan and PPS10. Nor does the policy conform with up-to-date national policy and the Secretaries' of State recent application of it.[148]

125. The CRWLP Inspector considered objections to Policy 2 and the circumstances in which it might be appropriate to consider need. Two factors led him to recommend the retention of Policy 2: first, that the RS had yet to be approved and that document would set the framework for estimates of waste arising and the need for facilities, and secondly it would be desirable to consider need in circumstances where significant out of county waste is proposed for a TT plant.[149] The latter situation does not arise here and the RS has now been adopted. The RS does not call for any assessment of need, in line with recent Secretary of State decisions that there is no rigid cap on the provision of waste management facilities, and in line with renewable energy and climate change policies. Far from imposing any limitation on capacity, these policies encourage as much generation of energy from waste as possible to be delivered as soon as possible.

[147] APP/7/c, pp.1.20
[148] APP/7/b, App.14, p.328, pp.6.19
[149] APP/7/b, p.338, pp.5.23

126. In this light it can readily be seen how far out of touch with national policy Policy 2 has become so that it is not deserving of weight. In any event, Policy 2 provides that it is only where material planning objections outweigh the benefits that need will be considered. In those circumstances, unless the need is overriding, permission will be refused. We are not in those circumstances. The Appellant's case under RR4 demonstrates conclusively that the substantial benefits brought by this proposal clearly outweigh any harm. It follows that Policy 2 is not engaged and even in the outmoded context of the CRWLP an assessment of need is not required.

Policy 3

127. Though it too has a need dimension insofar as it asks applicants to demonstrate that existing capacity is inadequate to meet future needs, Policy 3 deals with phasing. It is difficult to see how this policy was intended to be applied as it cannot sensibly be interpreted as a requirement to prove need in every case since that would rob Policy 2 of any purpose. If capacity is to be regarded as operational capacity (as it should be, despite the fact that the supporting text states that the reference to capacity means the maximum throughput of TT plants with planning permission) then the phasing policy is plainly of no relevance in an area with no operational capacity. On the other hand, if capacity means the maximum throughput of extant planning permissions, then it is hard to see what relevance phasing has to the actual treatment of waste.[150]

128. The concerns underlying Policy 3 appear to be that a surplus of capacity could, first, act as a disincentive to recycling and, secondly, generate unsustainable movement of waste contrary to the management and disposal of waste "at the nearest appropriate facility".[151]

Competition with recycling

129. Waste producers are obliged by law to apply the waste hierarchy and that prevents a producer sending waste which could be recycled to an EfW facility.[152] Higher rates of recycling can and do co-exist with higher levels of recovery as in the case of the Appellant's own experience in the US where communities which have EfW facilities also have higher recycling rates than those which do not have an EfW.[153] In Europe it is the same. WS2007 records that the evidence from neighbouring countries is that very high rates of recycling and energy from waste coexist which demonstrates that a vigorous energy from waste policy is compatible with high recycling rates.[154] The Cornwall Inspector concluded "*energy recovery can go hand in hand with robust rates of recycling and composting*" and his colleagues have reached similar conclusions.[155]

130. This reflects the very latest in Government thinking in EN-3 (published in July 2011) while the WPR makes it clear that, even with the expected improvements in prevention, re-use and recycling, sufficient residual waste feedstock will be

[150] APP/6/c, p.5, footnote (1)
[151] CD.3/2, p.25
[152] Regulation 12 of the Waste (England and Wales) Regulations 2011
[153] APP/1, pp.1.4.4 and APP/1/b, App.1
[154] CD.2/16, p.78, pp.23
[155] APP/7/e, App.6, IR, pp.1887, CD.6/12, Tab 1 of Tab 2, pp.11.116 & CD.5/23 pp.343

available through diversion from landfill to support significant growth in EfW up to 2030 and 2050 without conflicting with the drive to move waste further up the hierarchy.[156] Though residual waste is described as *eventually* becoming a finite and diminishing resource, it is clear that this is not to apply in the foreseeable future. The WPR expressly envisages significant growth in EfW including C&I waste and anticipates a threefold growth in waste derived renewable energy by as early as 2020. [157]

131. This is because it makes no economic sense for businesses to forgo revenue from selling recyclables and, instead, to pay for the same material to be burnt so that there is a real incentive to recycle and sell waste into the market. In a situation where at present, by extracting recyclates, producers can benefit from financial returns of up to £40 per tonne, such financial incentives to pre-treat waste tend to mean that a significant proportion of the C&I waste market self regulates.[158] This has been recognised in recent reports by Inspectors to the Secretary of State.[159]

132. Moreover, the appeal proposals are particularly well suited to ensuring that waste will not be burnt that could practically be recycled because they benefit from both a 'front end' MRB and a 'back end' IBA processing plant. By no means do all EfWs have such facilities, indeed, it is rare that a plant has both as here. These facilities are an important part of the appeal scheme and the Appellant's holistic approach to waste management as encouraged by the Council officers.[160]

133. The MRB will extract and recycle ferrous and non ferrous metals as well as other recyclables such as glass and plastics. It has been sized to process about 50% of the scheme's throughput, recognising that many larger commercial enterprises and significant C&I waste producers pre-treat C&I waste prior to sending it to recovery for the reason referred to above, that businesses tend not to pass up the opportunity of reducing their waste management costs through recycling. Because there are also less sophisticated businesses which do not have either the economies of scale or the in-house systems necessary to pre-treat their waste, the MRB is provided. Consignment notes will indicate whether or not incoming waste is pre-sorted and that waste will not go through the MRB.

134. The IBA processing facility will produce IBAA, a secondary aggregate widely used in construction projects in Europe for over 20 years and within the UK for over 10 years. There are significant benefits brought about by this aspect of the proposal, namely: the provision of a sustainable source of competitively-priced aggregate; the diversion from landfill of the IBA; a reduction in the need to quarry primary aggregates; additional tonnages of both ferrous and non ferrous metals are recovered for recycling during the process; and there are significant carbon savings compared with primary aggregates. The Appellant's preferred subcontractor for the IBA processing facility, has sold over 3 million tonnes of IBAA into the UK construction market since 1998 and has confirmed its interest in developing the IBA processing facility and its confidence in finding a market for

[156] APP/6/e, App.A, pp.2.5.64 & App.D, pp.214
[157] APP/6/e, App.D, pp.214 & 234
[158] APP/1, pp.2.3.5
[159] APP/7/e, App.6, pp.1879 & APP/0/58, pp.221
[160] APP/1/b, App.3, p.3

this product.[161] In these circumstances it is not tenable that the IBA might be landfilled.

Unsustainable movement of waste

135. Though the WFD requires waste to be recovered in one of the nearest appropriate installations, this only applies to MSW or mixed waste collected by the Council.[162] This distinction between MSW/co-collected waste and C&I may be because it is recognised that cost principally determines where C&I waste is managed and this usually means close to where it arises. But even if the principle of NAI is applied to C&I, determining the appropriate facility in a particular case requires not only reference to transport distances but also consideration of environmental performance, deliverability and cost given that recycling markets are global.[163] In this context, distances associated with transport from outside but proximate to Cheshire are trivial.

136. Mr Aumonier's unchallenged WRATE analysis demonstrates that the carbon impact of transport is dwarfed by the benefits of energy recovery at the facility as a result of avoided generation of fossil fuel derived electricity and heat, by avoided emissions of greenhouse gases as a result of diverting waste from landfill, and by incinerator bottom ash and metals recycling.[164] In real terms, the transport impact of Appeal A would need to increase by a factor in excess of 35 times if it were to come close to matching or exceeding the benefit offered by the landfill diversion, the export of energy and the recycling of materials.[165] Not surprisingly, Mr Molloy conceded that the environmental impact of landfilling waste is a "quantum apart" from the impacts of transporting waste. Thus the assertion in RR3, that import of waste to the appeal scheme, if required, would be unsustainable, is wholly without foundation.

137. In short, there is no factual and evidential basis to support the Council's Proposition 3, that EfW adversely affects recycling rates or otherwise pulls waste down the hierarchy, and moreover, the environmental benefits of diversion from landfill obliterate any disbenefit from transporting waste. In any event, the quantity of any imports is likely to be small and from short, commercially viable distances which, as the WRATE analysis shows, would in no way be unsustainable. Further, in the light of the collapse of the Cheshire waste PFI contract, there is now a realistic prospect of the facility treating MSW such that there would be no import whatsoever.

138. Proposition 3 also fails for three other reasons. First, its reliance on Article 16(3) of the WFD is misplaced because Article 16(3) applies to "*the waste referred to in paragraph 1*." That paragraph applies to mixed waste collected from private households and has no application to C&I waste.[166] Secondly, the duty in Article 4(2) relates to the application of the waste hierarchy. It may be that other recovery in a particular situation produces a better environmental

[161] APP/1/b, App.6 and APP/0/22
[162] Article 16(1) and (3) of the WFD (CD.2/21) and schedule 1, pp.4(3) of the Waste (England and Wales) Regulations 2011 (S.I. 2011/988)
[163] CD.5/6, pp.21 and 22
[164] APP/6, figure 6, p.69
[165] APP/6, pp.163
[166] See also schedule 1, pp.4(3) of the Waste (England and Wales) Regulations 2011

outcome than recycling, but EN-1 is clear that there is no general requirement to establish whether a project represents the best option.[167] Finally, Proposition 3 is a very brave argument when the Council seeks to rely on the CRWLP, which is structured around continued landfilling to the maximum permitted levels: patently not the best overall environmental outcome. Be that as it may, the Council's arguments have no evidential basis and are premised on a misreading of the WFD. Therefore Proposition 3 is not made out and in turn, when the underlying premise of Policy 3 is examined, it is clear that it is no longer in line with either the most up to date national policy or the Secretaries' of State approach in recent appeal decisions.

Policy 6

139. The proposal is and always has been for the EfW plant primarily to serve Cheshire's waste management needs. However, this does not exclude the possibility that waste may be imported from other proximate sources. If, and to the extent that, the appeal proposals were to draw upon waste from beyond Cheshire, the facility may be regarded as sub-regional so that Policy 6 may be relevant. The appeal proposals broadly comply with Policy 6 because factor (iv) provides that the site should be accessible by a range of modes of transport and though that is not currently so, there exists potential for rail access in the future.[168] However, because Policy 6 requires the factors to be taken into account as distinct from criteria which must be complied with, it cannot be said that there is any material conflict with this policy.[169] The Council appear to agree because in the ARR, which respond to SIP3 as an amendment proposing to import significant amounts of waste from outside Cheshire, thereby bringing Policy 6 into play, no conflict is alleged with that policy.

Need – C&I arisings

140. There are three principal figures for C&I arisings in 2009 in Cheshire before the inquiry: the CRWLP figure of 1,107ktpa,[170] the RSS figure of 749ktpa[171] and the Urban Mines figure of 788ktpa.[172] The focus of the inquiry has been on the last. Mr Molloy described the Urban Mines survey as the most accurate source of data on waste arisings, but he later admitted that he did not understand the methodology by which the survey was conducted and reported.[173]

141. In fact the Urban Mines survey should be treated with considerable circumspection for several reasons. It was carried out in 2009, a year within the deepest recession since the 1930s.[174] DEFRA's statistical release on C&I arisings of December 2010 warned that survey estimates may reflect prevailing economic

[167] APP/6/e, App.A, p.48
[168] CD6/6 Part A, Tab 10, App D.3
[169] CD.2/26, p.106
[170] CD.3/2, p.73, Table A13
[171] CD.2/26, p.109, Table 9.3
[172] CD.4/24, p.31, Figures 28-30
[173] CEC1, pp.34
[174] APP/6/c, App.3

conditions so that users should bear in mind that survey estimates for these variables, whilst technically correct for 2009, could be misleading.[175]

142. Urban Mines was restricted to businesses employing more than four staff and Mr Aumonier estimated that the figure for C&I arisings including businesses with one to four employees would be about 850ktpa.[176],[177] Though Mr Molloy was at pains during evidence to emphasise that recorded data was preferable to estimates, he did not seem to realise that Urban Mines is itself an estimate, based on a sample of 1,017 companies throughout the North West extrapolated to reflect the 71,270 companies in the region. [178],[179]

143. Almost 60% of the companies surveyed were from Greater Manchester and Merseyside and very few of the companies surveyed are based in Cheshire.[180] The survey assumes that companies in tightly constrained, urban environments handle their waste in a like manner to ones based in rural areas, but that is a huge assumption, as Mr Molloy appeared to acknowledge. Moreover, there was no obligation or incentive to participate in the survey so that businesses with good waste management practices may self select and those with less enviable records may choose not to advertise that fact by participating in the survey.

144. Finally, as with any report, the survey is reliant on the accuracy of the data provided by the participating businesses and itself highlights examples of where participants had poor knowledge about the amount of waste they produced.[181] Urban Mines itself acknowledges that there are a number of potential sources of error and some actual serious errors.[182]

145. The critical question is not, however, the headline figure for C&I arisings in Cheshire but the amount of residual C&I available to the appeal scheme. That should include any waste destined to be disposed in landfill because the appeal scheme sits higher in the waste hierarchy and policies at all levels seek to divert waste from landfill. Unfortunately, the outdated approach of the CRWLP, which represents a complete inversion of Government policy, facilitates a certain level of C&I arisings to be landfilled each year.[183] The effect of this, as Mr Molloy conceded, is that the indicative recovery capacity contained in the CRWLP is derived from, and so constrained by, an assumption that the maximum permitted amount of waste will be landfilled and that only the waste which remains should be available for recovery.

146. To justify their approach, the Council seek to rely on Urban Mines, which provides a much smaller headline figure of 164kpta of C&I waste to be managed by landfill.[184] However, on closer analysis the Urban Mines report reveals significant further arisings which, although recorded under other waste

[175] APP/6/c, pp.25-26 and related appendices & App.4, p.7
[176] CD.4/24, p.ii & APP/6/c, p.9, pp.18.(i)
[177] APP/6/c, p.9, pp.18.(i)
[178] CD.4/24, p.i & CD.4/24, p.i and ii
[179] CD.4/24, p.i and ii.
[180] CD.4/24, p.14 and vii of the appendices
[181] CD.4/24, p.11
[182] CD.4/24, p.52-53
[183] CD.3/2, pp.A1.29
[184] CD.4/24, p.32

management methods, are likely to report indirectly to landfill. Mr Aumonier calculated that the figure of C&I available for landfill as indicated by Urban Mines is 254ktpa[185] (excluding any consideration of the land recovery method for which the appeal scheme may also provide a preferable management route). Adding that to the figures given in Urban Mines for both incineration methods of management (with and without recovery) a total of 283ktpa of C&I is recoverable.[186]

147. This demonstrates how conservative is Mr Aumonier's lower bound figure of 205ktpa, and that the assertion that the Appellant's need case is reliant on an ineluctable relationship between growth in the economy and growth in waste is wrong as a matter of fact.[187] The lower bound case is based on a zero growth scenario. In such circumstances, the appeal scheme would treat some MSW or attract a portion of C&I waste from outside Cheshire. As to the likelihood of a zero growth scenario Mr Aumonier explained there are no statistics available that demonstrate a complete decoupling of waste growth from the economy. However, he pointed to research in Sweden on the viability of decoupling waste growth from economic growth which found that if waste generation continues according to historical figures, there will be relative but not absolute decoupling by 2030 because absolute decoupling requires total waste quantities to stabilise or reduce.[188]

148. Mr Aumonier's lower bound case requires this stabilisation, and for this reason is highly optimistic. The Swedish research also indicates quite how extreme and un-nuanced is the Council's central thesis on need, that waste will continue to decline into the future. But the six points on which they rely to support this thesis are founded on little or no evidence. First, the comparison of an estimate for 2009 contained in the CRWLP and the Urban Mines figure is directly affected by the recession and says nothing of the future. Secondly, the fact that WS07 states that the growth in MSW is slowing is not evidence of zero growth in the future, let alone of a decline in waste arisings. Thirdly, the comparison between 2009 and 2006 in the Urban Mines report is affected by the recession and says nothing of the future.

149. Fourthly, reference to the zero growth rate employed in the Scott Wilson report is to a growth rate adopted in order to reflect the target in the RSS. Moreover it says that the recent rate of decline in waste arisings is unlikely to continue and any fall in industrial waste may be matched by an increase in commercial waste coupled with increased production associated with an improvement in the economy.[189] So the Scott Wilson report simply does not support the decoupling theory, let alone a decline in arisings. Fifthly, the target contained within the RSS is of zero, not diminishing, growth. Finally, the decrease in C&I waste between 2003 and 2009 is yet again affected by the recession and is purely historic.

150. In short, the Council have provided no proper evidence either of a decoupling of waste growth from the economy or of its central thesis that waste arisings will

[185] APP/6/c, pp.19-23
[186] CD.4/24, p.32
[187] APP/6, pp.119 & CD.4/27, p.81
[188] APP/6/b, App.U & V
[189] CD.4/27, p.23

continue to decline. The reality is that they are totally reliant on data from 2009, a year within the worst recession since the 1930s, to substantiate the size of the recent falls in waste and then extrapolating that into the future contrary to all DEFRA's warnings against such an approach.

151. The suggestion that the Appellant's case is reliant on growth in C&I waste could not be further from reality: the lower bound case demonstrates that it is not so. Moreover, this case expressly takes into account the Scott Wilson report which estimates that in a zero growth scenario the amount of recoverable C&I waste available may fall within the range of 174 to 227kpta.[190] Certainly the Appellant believes it likely that there will be some increase in C&I waste arisings as the economy recovers. To assume otherwise would be extremely risky and unrealistic given that the Government's zero waste policy does not mean no waste, it means no waste to landfill unless there is no other means of treatment.

152. Mr Aumonier's upper bound figure is 500ktpa of residual C&I waste that needs treatment in 2035 and his upper and lower bounds present a range within which the actual arisings are likely to fall.[191] The appeal scheme is sized to deliver a capacity in the middle of that range and it reflects the Appellant's commercial judgment as to the amount of residual C&I waste it is confident that it can attract.[192] However, should arisings fall at the lower end of the range there are other substantial streams of waste which will be available to be sustainably recovered in the appeal scheme: Cheshire MSW and waste arisings from outside of Cheshire.

MSW

153. Though the appeal scheme is predicated on a C&I feedstock, it is available to take MSW and the Appellant was originally a participant in the Cheshire procurement process and had the appeal scheme in mind to service the contract. The Appellant only enters such procurement processes where it is confident that there is sufficient C&I so that the proposed plant could operate as a merchant facility should its bid not be successful. During 2011 the prospects of there being available MSW have materially changed with the withdrawal of PFI credits from the procurement contract and the Council's failed challenge to that decision. The appeal scheme could provide a sustainable solution for the management of Cheshire's residual MSW. It would be perverse if the Council sent that waste to landfill rather than driving it up the waste hierarchy.

154. There is a significant amount of residual MSW waste in Cheshire. The outline business case for the county's procurement process estimated a need for a 300ktpa facility. The CRWLP estimated the residual MSW in 2009 to be 274ktpa and assumed that 54% would be recovered. But it took no account of the final disposal of the remaining 46% and Mr Molloy conceded that this remainder is likely to be landfilled. Significantly, it is clear that Cheshire has been landfilling considerably more than anticipated in the CRWLP. In 2009 the CRWLP predicted that there would be 274ktpa residual MSW and the balance to be landfilled after

[190] CD.4/27, p.81
[191] APP/6, pp.119 & CD.4/24, p.v, 2nd pie chart
[192] APP/1/b, App.7

recovery was 126ktpa.[193] However, the amount actually landfilled, as shown in the Council's Annual Monitoring Report in 2009. was 191kpta.[194]

155. The biodegradable fraction of that MSW landfilled was within the LATS allocation for 2009.[195] However, by 2014/15 the Council and Cheshire West and Chester Council will need to be landfilling no more than 102kt of biodegradable MSW. This amount only decreases: the allocation is 78kt by 2019/20. Even with increased recycling rates and waste minimisation measures a reduction of biodegradable municipal waste to landfill on this scale will require, as the PFI procurement process recognised, a substantial new waste management facility. Now that the PFI process appears doomed, the appeal scheme could provide that facility whether on a temporary or permanent basis. The combined MSW and C&I arisings significantly exceed the capacity of the appeal proposals, even on the lower bound C&I case. This now must be considered a realistic prospect.

156. Though the appeal scheme is designed to serve primarily Cheshire's C&I waste, it will not be restricted by design or by policy to take waste only from Cheshire. Mr Molloy conceded that the analysis of waste arisings should not be confined to Cheshire alone which must be right for there can be no proper objection to waste from outside Cheshire being treated at the proposed facility. Cheshire is not an island or a peninsula and there is no logistical or policy reason why waste could not be transported to the plant from any of the surrounding areas. The resolution at which the principle of self-sufficiency applies is at the national level and there is no requirement for consideration of self-sufficiency at a local level.[196] That is why the emphasis in the RS is on self-sufficiency at the regional level.[197]

157. Waste policy is wholly consistent in this regard: the WPR clearly envisages that waste may be transported from one authority to another and says that this should not be seen as a barrier.[198] Further, as Mr Molloy conceded, no policy in the RS seeks to deal with Cheshire waste alone. In fact the RS expressly recognises the arbitrary nature of local administrative boundaries in the context of planning for local waste management.[199] Significantly, the CRWLP Inspector recommended the deletion of the words "of Cheshire" from Policy 3, which is the policy which the Council claims supports the allegation of unsustainable importation of waste in RR3. But the Inspector appreciated that there was no justification to exclude areas adjoining the county which could fall within the natural and sustainable catchment area of a particular proposal.[200]

158. The application of policy results in no different outcome. The Secretary of State emphasised in the Ineos decision that the sources of waste to be treated was a commercial matter.[201] A similar approach was taken at Ince Marshes where it was also concluded that policy did not require an optimal arrangement

[193] CD.3/2, p.72, Table A12 & p.71, pp.A1.28, Column 3 less Column 4
[194] APP/6/c, App.1
[195] APP/6, pp.135
[196] See APP/6, pp.97-99
[197] CD.2/26, pp.9.30
[198] APP/6/e, App. D, pp.263
[199] CD.2/26, pp.9.30
[200] CD 3/3 pp5.33
[201] CD.5/1, p.8

of facilities as a key objective.[202] The position with C&I is self regulating in that cost will determine where the waste is treated and the cost of road haulage will discourage long hauls of such waste.

159. Furthermore, sources of waste outside Cheshire are broadly as proximate as sources inside Cheshire.[203] There are several local authority areas near to Cheshire, parts of which at least are within a reasonable and commercially viable travel time of Middlewich.[204] Hence the appeal scheme may be the nearest appropriate facility for some of the waste that arises in those areas. The Urban Mines report estimated that there was over 7,000kt of C&I waste produced in the Northwest in 2009 by businesses with five or more employees of which over 4,000kt was produced in the Mersey Belt which includes those local authorities proximate to Cheshire.[205] There is in short a significant amount of C&I arisings outside of Cheshire but in close proximity to the appeal site. The appeal scheme may form the nearest appropriate installation for the recovery of that waste so there is another significant source of residual C&I waste that could sustainably be treated at the appeal site.

160. Finally, there has been a lack of consistency in decision making in Cheshire. In a previous landfill case at Clayhanger Hall Farm, where there were no benefits of recovery to counterbalance the impact of transport, the former County Council were willing to see 25% of the waste received come from outside the County, provided that sources were still proximate to the site.[206] There are no restrictions on sources of wastes at Bedminster and while it professed concern about the appeal proposals' potential for importing waste from outside Cheshire, the Council was content to have its own MSW treated outside Cheshire by TT at Ineos.

Capacity

161. The Council's need case is reliant on planned or consented capacity.[207] Though nothing in a planning permission requires that development be built, the Council asserts the distinction between planned or consented capacity and operational capacity is "spurious".[208] Paragraph 11 of PPS10 does not support this assertion because it relates to the content of regional strategies, where there may be some sense in looking at consented capacity, but not in development control decisions on individual applications. In any event, paragraph 11 refers to "*the extent to which existing, and consented waste management capacity not yet operational would satisfy any identified need;*" it is not a requirement to have regard in every case to consented capacity. The latest policy documents also make it clear that it is operational capacity to which decision makers should have principal regard.[209]

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[202] CD.6/16, Tab 1 of Tab 2, IR, pp.11.124 and IR, pp.11.125
[203] APP/6, pp.174
[204] E.g. Staffordshire, Shropshire, Merseyside, Greater Manchester, Halton, Warrington, Flintshire, Wrexham, Stoke-on-Trent, Telford and Wrekin
[205] APP/6, p.42, Table 3
[206] CD.5/24 & APP/6/b, App.AB, pp.13.2
[207] CEC44 pp.58
[208] CEC 47 pp.10
[209] APP/6/d, App.B, pp.2.5.67-68

162. The Council's position runs directly counter to the views of the Secretary of State expressed both at Ince Marshes and Ineos Chlor.[210] It has been conclusively reiterated in the Secretary of State's most recent appeal decision on the proposed EfW facility at Severnside where he expressly agreed with the Inspector's conclusions that it is "*far from certain that operational capacity will necessarily flow from the grant of planning permission*" and that "*operational capacity does not necessarily equate to permitted capacity*". Further, the Secretary of State took the exceptional step of awarding costs to the Appellant in part because of that Council's reliance on planned capacity, despite the advice of its own consultants that it is for the market to bring forward proposals and that Ince Marshes and Ineos Chlor had confirmed the Secretary of State's view that, first, waste policy does not place a rigid cap on waste management capacity and, secondly, that each individual set of proposals should be considered on its own merits because granting permission for a facility does not necessarily mean that it will become operational.[211] South Gloucestershire argued precisely the same as the Council does here. Despite that argument being held by the Secretary of State to be unreasonable, this Council has repeated it here.

163. Accordingly, it is only operational capacity on which the Secretary of State should properly rely for treating waste in Cheshire. The fact is that there is no operational recovery capacity in Cheshire. Without such capacity it is not clear how the County's waste is to be managed, other than by a continued unsustainable reliance on landfill. It seems perverse to object to the appeal proposal on the grounds of lack of need, particularly when the two Councils' projected MSW procurement has failed. Nevertheless it is useful to consider the planned or consented facilities within Cheshire which have been debated during the inquiry.

164. Ince Marshes is owned by the Appellant who would simply not contemplate placing its two assets in competition with each other. Put simply, the business strategy behind ownership of these two facilities is aimed at different markets, both in terms of geographic coverage and in terms of waste stream.[212] The appeal scheme is focused primarily on Cheshire residual C&I arisings and is served by road. Ince Marshes, by contrast, will operate as a regional/national facility given its unrivalled multi-modal transport capability. The plant is limited to RDF and RDF type fuel which may be derived from either C&I or MSW. However, part of the rationale for the purchase of Ince Marshes was to support the Appellant's bid for the Merseyside MSW contract,[213] and the Appellant is one of two remaining bidders for that contract and has undertaken not to treat Merseyside waste at Middlewich.

165. There are significant economic advantages to the Appellant in treating MSW not least because MSW contracts tend to be long term with assured feedstock so that they may justify the required upfront infrastructure costs. Part of thesubstantial cost of purchasing the Ince site and its permission is due to the multimodal transport infrastructure which gives it a virtually nationwide reach. The Appellant has said it would not contemplate sacrificing capacity at such a

[210] CD.5/2, SS (DECC) DL, pp.6.4 & CD.5/1, SS DL, p.8
[211] APP/0/58, Costs DL, pp.68 and 69 & IR, pp.219 and 235
[212] APP/1/b, App.9, p.7 and 8
[213] The Appellant has undertaken not to treat any Merseyside MSW at Middlewich

valuable regional and national plant, with its ability to service the long term remunerative MSW contracts, to locally arising C&I waste. The Appellant is confident of sourcing MSW both from the Northwest and from the national catchment areas.[214] Whilst the Appellant will consider opportunities to take any rail served C&I from both the Northwest and nationally, it would not be in the Appellant's commercial interests to allocate any capacity at Ince Marshes to local, road transported, C&I waste from Cheshire.

166. The capacity of the Ince Marshes facility is defined in the consent by reference to power output as opposed to throughput. However, the current environmental permit refers to a nominal throughput of 600ktpa and a maximum of 670ktpa based on a calorific value of 15MJ per tonne. The Appellant believes that the calorific value of residual MSW will, in fact, be lower than 15MJ so that a higher throughput will be required to achieve the consented power output. The Appellant has applied to have the existing permit transferred to it from the current operator and is applying to vary the permit, inter alia, to increase the permitted throughput to a maximum 850ktpa. Whether or not that variation is permitted by the EA, the Appellant's strategy for the plant will not be affected in any way whatsoever.

167. Ineos Chlor is not in Cheshire and is a national/regional facility. Because the Council's approach is predicated on matching supply and demand in a geographic area and the area selected is Cheshire then, for consistency, if the geographic basis for capacity is to be extended, so should the geographic basis for arisings. But in any event, Ineos Chlor will not compete with the appeal proposal. Its feedstock is SRF and RDF derived from domestic waste. The Section 36 consent and the deemed planning permission itself limits the fuels to be derived from domestic waste.[215]

168. Works have commenced on stage 1 (between 375ktpa and 425ktpa) which is designed to serve principally the Greater Manchester PFI contract. Stage 1 is also proposed to take the residues from the Viridor plant under the Cheshire PFI contract if such wastes were to become available. Stage 2 is only to be built if the necessary contracts are secured. The Council accept that stage 1 is MSW only but say that Ineos will be seeking C&I inputs at stage 2 based on an email drafted by Mr Molloy and annotated by a Viridor employee.[216] The email and its annotations do not take any account of the terms of the section 36 consent and the deemed planning permission itself and are contrary to the corporate position of the company, that stage 2 of the development will be constructed when further contracts for SRF can be secured from other waste disposal authorities, that is to say SRF derived from MSW.

169. Moreover, Ineos Chlor is pre-eminently a national and regional facility because, of the approximately 800ktpa of waste to be treated at the plant, only 85ktpa is permitted to arrive by road and the rest is to arrive by rail which is only economic over longer distances. There is an application before Halton Borough Council to increase this amount substantially to 480ktpa. No decision has been issued by the Council and the application has been vigorously opposed by the

[214] APP/6/d, p.19, Table 2
[215] See Condition 2(a). CD.5/1. (See APP/0/39)
[216] CEC 36

Appellant.[217] It is a deeply flawed application, given that the plant is restricted to treating domestic waste, i.e. MSW, and because the attempt to use the 'tailpiece' of a condition to achieve a major change to the permission is unlawful. Further, any application to increase road imports into Ineos is required to be made to the IPC and not the LPA.

170. The Viridor proposal is a good example of why only operational capacity should be relied upon to treat waste. It is for a 200ktpa MBT facility intended to serve the Cheshire PFI contract for MSW and for which CWAC resolved to grant planning permission in November 2010, subject to the execution of a Section 106 agreement. That agreement would, inter alia, limit the waste streams predominantly to Cheshire MSW and the purpose of the restriction was to ensure that, if those waste streams were not available, the facility would not be built.[218] However, the PFI contract was thrown into turmoil when the Government withdrew its PFI credits, the Council and CWAC challenged that decision together in the High Court and lost. Mr Molloy confirmed that there will be no appeal.[219] As a result, it is extremely unlikely that the facility will ever come forward in the absence of a contract to deliver the MSW which the plant would be constrained to manage.

171. There is no information on how the two Councils propose to proceed with MSW management following the failure of their judicial review of DEFRA's decision to withdraw the PFI credits. But in any case, even if the plant ever were to come forward, it would produce some 154ktpa of residues which would require management elsewhere. In other words, the plant would only finally treat 46ktpa of residual waste and would consume treatment capacity at Ineos or elsewhere.

172. The Bedminster facility has been granted planning permission on more than one occasion. It appears that shortly before its latest permission was due to expire there was a technical start made to preserve that permission. Mr Halman confirmed that, despite the suggestion that works would commence in July of this year, there is no sign of any on-going activity on site.[220] Neither has there been an application for an Environmental Permit.[221] There must be some doubt as to whether this plant will come forward at all given that the technology chosen has not been proved on a commercial scale. In any event this plant will not compete with the appeal scheme because it is to treat MSW.[222]

173. As to the Brunner Mond proposal, the Council adopts a contradictory position, relying on it for its figure of planned and consented capacity in Cheshire but also describing it as a nonsense application which has very little chance of success. However, DEFRA's Waste Infrastructure Delivery Programme supports the Brunner Mond application and it may fairly be presumed that the support comes forward in full knowledge of the capacity position in Cheshire.[223] Whatever its prospects of receiving consent, it is not a competitor for the appeal scheme: if consented and constructed it will target national and regional catchment areas

[217] APP/1/d
[218] APP/7/b, App.14, p.332, pp.6.39
[219] CEC44, p.16, pp.57
[220] CH1/33 & APP/7/d, p.10, pp.1.39
[221] APP/7/d, p.10, pp.1.40
[222] APP/0/36, p.6
[223] APP/0/9

[224]

174. There are no other planned or permitted C&I or MSW facilities in Cheshire in the light of Mr Molloy's confirmation that the Council no longer rely on the RRS proposal at Wincham, Northwich, which was refused planning permission and which refusal was not appealed. It follows that there is no operational capacity in Cheshire. Much of the consented or planned capacity is designed to operate in the regional and national market. Of the consents, Ince is controlled by the Appellant who will not allow Ince and Appeal A to compete against each other for the same waste and Ineos cannot accept C&I waste. The PFI failure appears to have dealt a fatal blow to Viridor, Bedminster shows little sign of materialising and, in any event, is directed towards MSW, thus leaving only Brunner Mond, described by the Council as a nonsense application. There is in short no facility to deal with the identified need.

175. As a result, Cheshire businesses are currently incurring significant extra costs as a result of landfill tax which puts them at an economic disadvantage compared to businesses operating in a properly resourced county. It is a situation to be regretted and is totally contrary to Planning for Growth and the drive behind the draft NPPF which is all about removing barriers and making business more efficient and competitive.

Appeal A: Refusal Reason 4: Objections Outweigh Benefits

176. The Council has put little effort into substantiating RR4. Mr Gomulski does not mention it in his proof of evidence, although landscape is the only identified objection within RR4 while Mr Molloy gives it only two paragraphs in his proof.[225] In the Council's closing RR4 gets two paragraphs at the very end of their submissions and no mention whatsoever is made of landscape. Instead, the Council rely on suggestions concerning an oversupply of TT facilities, diversion of waste from recycling and higher levels of the waste hierarchy, an unsustainable movement of waste by road, and that the appeal scheme would prejudice other existing and planned sources of renewable energy. This last matter appears for the very first time in the Council's closing as part of the context for RR4. Yet at the first PIM the Council clarified that the only matter relied on to support RR4, apart from landscape impact, was unsustainable traffic movements.

177. The Council's landscape officer specifically did not object to the proposal on the basis of landscape or visual impact, and that decision was taken with great care.[226] Indeed, Mr Gomulski identified and set out a number of concerns with the proposal in his consultation response to the application.[227] He agreed that those concerns were fourfold. First, scale: whilst the scheme would not be out of character with the surrounding area, its scale would have a more significant impact than the existing developments (the key concern). Secondly, as a result of his key concern, there would be a greater impact on tranquillity, isolation and remoteness than from existing development. Thirdly, the proposed landscaping

[224] APP/0/15
[225] CEC1, pp.76 and 77
[226] CD.8/1, App.7, p.51, pp.53 and p.62, pp.94
[227] APP/2/b, App.3

could not achieve the degree of mitigation required. Lastly, Mr Gomulski expressed a measure of disagreement with some of the judgments contained in the landscape and visual impact assessment, although as he conceded, at no material time did he suggest the assessment was deficient in any way. But Mr Gomulski did not undertake his own assessment and, conceded that he failed to set out in a transparent manner what his concerns were or how he had reached his conclusions.

178. It is clear that the landscape issue is not a free-standing objection or determinative issue and was advanced as a contributory factor on the negative side of the balancing equation and not as an objection in its own right. Whilst the Case Officer and Members may have had a different view to Mr Gomulski, the wording of RR4 was carefully chosen so as not to contradict his professional advice. Indeed, it is implicit in the wording that landscape impact could be outweighed by the project's benefits and that conflict with policies arose only in the absence of overriding need. The POR expressly advised Members that a building of this scale could be acceptable if its function was necessary, no doubt reflecting Mr Gomulski's opinion that scale must be dictated by function.[228]

179. Mr Gomulski agreed that, between the drafting of his consultation response in which he recorded his concerns and the start of this inquiry, there had been no material changes that would justify a change of position. It was, therefore, unconvincing when he said he should have objected (or would have done if he knew what he did now). His evidence, perhaps inevitably given his carefully considered decision not to object, focussed not on the substance of the case but on procedure. It was in short another vehicle for an attack on the CES. The Council's approach to landscape (Proposition 6), is exemplified by its failure in closing to say more than "it looks awful", contrary to all comments on design which have been complimentary (as Mr Gomulski agreed) and that landscape is principally a matter for the Inspector to make his own judgment (on which we agree). Reliance is instead placed on the fact that Mr Goodrum revised the landscape methodology when he was engaged to suggest that the CES was deficient. Indeed, the Council had so little faith in the substance of the landscape objection that it did not even refer to it in closing.

180. Following the Council's reconsideration of the application on 5 January 2011, two further landscape related RRs were put forward as a result of the additional information on indicative routes for the grid connection and CHP link with British Salt. However, no evidence was adduced by Mr Gomulski on these links save for a passing reference to the effect of the grid link on the proposed landscaping.[229] ARR3 was effectively withdrawn following Mr Goodrum's assessment of the development's effects on PROW. ARR4, which sought to raise a cumulative landscape objection, was, given the negligible landscape effects of the indicative links, demonstrably misplaced so long as the Council adhered to its original stance on landscape impact. In the event this additional RR too was not substantiated in the Council's evidence.

181. Some of the contentious matters in Mr Gomulski's evidence have already been disposed of: he confirmed he no longer took a landscape point in relation to the

[228] CD.8/1, App.7, pp.94 & 133
[229] CEC3 pp.4.8

replacement pylon for the grid connection, and the Inspector's ruling[230] rejected decisively the Council's contention of an array of elevated, steaming and unattractive pipes fanning out across MP18 P3. Hence Mr Gomulski spent much time seeking to establish the differences between the ES and CES in order to support the Council's public participation argument as opposed to a landscape objection. But he agreed that both the ES and CES were correct in their approaches and that what Mr Goodrum had done in the revised methodology was to assess effects against complete landscape character areas instead of lesser areas, though he had not neglected to consider more localised effects. Mr Gomulski also agreed that, in essence, Mr Goodrum's work was additional to that already carried out. Mr Gomulski conceded that many of the changes he relied on had been identified by him in error and those that had been made were either updates or entirely sensible. Finally, he accepted it was entirely appropriate for Mr Goodrum to make any changes he felt necessary when he joined the Appellants' team.

182. The appeal site is well suited to accommodate the type of development proposed and Mr Gomulski agreed that the scheme would not be out of character with the surrounding area. The appeal site lies wholly within the defined settlement boundary of Middlewich, in an area which has already experienced and will continue to accommodate significant changes such as the Kinderton Lodge landfill site.[231] There are comparatively few residential properties close by, the appeal site is separated and buffered from Middlewich town centre by the adjacent railway line and the elevated lime beds, and Mr Gomulski agreed it is seen as part of an industrial corridor, including prominent vertical elements such as the British Salt works and the power lines.[232] Moreover, the appeal site is part of an expanding business park.

183. It is allocated for employment and enjoys planning permission for Use Class B development. It is already enclosed by built development to the north, east and west. Further development on MP18, especially on Phase 3, will substantially increase the influence of industry on the appeal site and surrounding area and it is recognised that this landscape has a high capacity to accept change.[233] Unlike the appeal scheme many of the buildings consented on MP18, which are acceptable to the Council, do not attempt to mitigate their impact through design, for example, the high, expansive and unarticulated shed which is Unit 101. The British Salt factory sets the industrial character of the area and Mr Gomulski agreed it is a prominent feature in the landscape forming a bulky, utilitarian complex of structures bereft of any design quality. It includes a stack and buildings which are agreed to be only 13m and 9m shorter respectively than those proposed on the appeal site. When the difference in ground levels between the two sites is taken into account the difference reduces respectively to 8.4m and 4.4m.[234] The visibility of the appeal proposal would be similar to that of British Salt.[235]

[230] Inspector's Ruling on Regulation 19 request dated 8 April 2011
[231] CD.3/4, Inset map 3 & CD.5/24
[232] CD.4/10, p.7, 8, 9
[233] CD5/21 p.92
[234] APP/0/28)
[235] APP2, pp.4.5.7

184. The allocation of WM5 as one of the preferred sites for waste management facilities (including TT) is the clearest evidence that the Council regard this broad location as suitable for the type of development proposed. Appeal site A is a mere 200m or so from WM5. Mr Gomulski confirmed that the Council's landscape architects helped identify WM5.[236] He further agreed that an EfW would be acceptable on WM5 in principle; that WM5 had similar landscape qualities to the appeal site; that an EfW on WM5 would have a greater impact on tranquillity, isolation and remoteness than the appeal proposal and that planting alone could not mitigate an EfW on WM5 due to the nature of such a facility. In short, he agreed that all his concerns in relation to the appeal site would apply to WM5. Mr Goodrum demonstrated that if the proposed EfW plant was sited on WM5 it would have a similar effect to its location on the appeal site.[237]

185. Mr Gomulski accepted that the building height is dictated by the plant it contains and the stack height is necessary to enable appropriate dispersion of emissions as would be the case for any TT facility on WM5.[238] Significantly, his concern in relation to the impact on tranquillity, isolation and remoteness would be greater if the proposal was on WM5. Furthermore, the proposed buildings and stack would be only marginally taller than those on the British Salt site when ground level differences are taken into account, and there are structures of a comparable scale already in the surrounding area.[239] The Borough Landscape Character Assessment in relation to the Middlewich Open Plain lying immediately beyond the defined settlement draws attention to the urban fringe nature of the area, its poor landscape character and the presence of large scale, modern buildings and structures including unsightly, prominent electricity pylons.[240]

186. Nonetheless, the Appellant has sought to reduce the impact of the building by using an arched design and encasing the chimney. This was one of two options on which the public were consulted and was the one which they favoured.[241] The POR reported favourably on design[242]and Mr Gomulski's references to design in his consultation response were commendatory;[243] indeed, all those who have commented on design have done so in a favourable way.[244] Mr Gomulski also agreed that mitigation could not be achieved through landscaping alone for a scheme of the scale proposed, and in the circumstances it was appropriate to seek to mitigate through design. His consultation response records that both the arrangement and design of the buildings and the proposed planting would achieve and provide a degree of mitigation.

187. He further agreed that the landscaping proposed accorded with the approach to landscaping in the development brief for MP18 P3, to distinguish between structural landscaping and that on individual plots.[245] The proposed perimeter planting of the appeal site is beneficial, will contribute to the character of the

[236] APP/7, pp.8.15
[237] APP2, pp 4.5.8
[238] CD.8/1, App.7, pp.89
[239] CD.8/1, App.7, pp.89
[240] APP2/b/6, pp.1.3.5-14
[241] CD.8/1, App.7, pp.88
[242] CD.8/1, App.7, pp.88, 89, 93, 94
[243] APP/2/b, App.3
[244] CD.6/14, App.I.7, App.B, letter dated 22 April 2009 from NE
[245] CD.3/1, p.9-10

business park and will soften the impact of the buildings on site, as well as screening operational activities in close distance views. The off-site planting along the brook/wildlife corridor will benefit both the appearance and ecology of the area.

188. This Council's concern about remoteness and tranquillity is difficult to understand. The appeal site is on allocated employment land, within an expanding business park, alongside a railway, not far from a large proposed landfill site and surrounded by built development. The reality is that the tranquillity, isolation and remoteness of the appeal site, if present at all, has already been consented away. Furthermore Mr Gomulski thought that the appeal site was better in this regard than WM5, in the selection of which as a site appropriate for this type of development he or his colleague had participated. And the effect of the Bypass, when built, on tranquillity, isolation and remoteness, will be enormous

189. There was some focus on view points J and K which are taken 19 and 22kms from the appeal site respectively, near the boundary of the Peak District National Park.[246] Natural England said that the EfW facility may be visible from the edge of the Peak District National Park in clear weather conditions but the significance of such views is likely to be low.[247] That must be right as the wireframes and viewpoints demonstrate. The National Park itself lies slightly farther from the appeal site than the viewpoints so the effects on locations within the Park from where the scheme would be visible would be of a similar or lesser magnitude. National policy says[248] that the fact that development is visible from a nationally designated area should not in itself result in permission being refused and there will be no material difference in these views whether the plant is sited on the appeal site or WM5. The same would apply to the Brunner Mond site, and though the Council has objected to that proposal it has not done so for any landscape or visual impact reason.

190. Mr Gomulski hardly touched upon policy in his evidence and Mr Goodrum concluded that there would be no policy conflict.[249] However, that evidence was written before the publication of EN-1 which identifies a clear hierarchy of protection with a markedly different approach to nationally designated areas from other areas. It recognises that large-scale infrastructure projects will have landscape and visual effects which cannot always be satisfactorily mitigated and, therefore, advocates that such projects should be severely limited in the most attractive landscapes and townscapes which are nationally designated. Outside such areas national policy seeks to avoid unduly restricting infrastructure development and requires decision makers to assess whether any adverse impact would be so damaging that it would not be offset by the benefits, including the need for the project. Similar policy applies to visual impact in non-nationally designated areas. The appeal site lies outside and well removed from any nationally designated landscape as well as any local landscape designation.[250]

[246] CD.6/15, figures. 11.7.JWF and 11.7.KWF
[247] CD.6/14, App.I.7, App.B, letter of 22 April 2009
[248] APP/6/e, pp.5.9.13
[249] APP/2/a, pp.1.4.14
[250] APP/6/d, App.A, pp.5.9.9-5.9.17

191. EN-1 says that landscape effects depend on the existing character of the local landscape, its current quality, how highly it is valued and its capacity to accommodate change.[251] Taking these in turn, the character of the local landscape is urban/industrial/urban fringe in which there are prominent and unsightly buildings and structures; its landscape quality is poor; whatever value is ascribed to it, the Council consider it is suitable for waste management facilities, including a TT plant which it recognises will necessarily be large scale and prominent; and Mr Gomulski acknowledges that it has a high capacity to accommodate change .[252] It is difficult to conceive of a more appropriate location for EfW and no other site has been suggested by the Council or others where a similarly scaled EfW would have less landscape or visual impact.

192. There is a single landscape and visual impact assessment before the inquiry which has not been seriously challenged, albeit Mr Gomulski disagreed with some of its judgements. This is the assessment of Mr Goodrum who concludes that any significant landscape and visual effects on receptors in Middlewich would be limited. There is a fundamental contradiction at the heart of the Council's case on landscape and visual impact: having allocated WM5 as a preferred site for such development, it is surely inconsistent for it to complain about the suitability of the appeal site, especially when its landscape witness considers that the effect on tranquillity, isolation and remoteness would be greater if the facility was sited on WM5. Mr Goodrum has convincingly demonstrated that any landscape or visual impact would be strictly limited. It would also be confined to those areas within the existing industrialised parts of town in close proximity to the appeal site where the scheme would be in keeping with the prevailing character with no material impact upon the landscape character of any Landscape Character Assessment.

193. EN-1 requires decision-makers to consider whether the project has been designed carefully to mitigate harm to the landscape, taking account of environmental effects on the landscape, siting and other relevant constraints and whether reasonable mitigation is proposed.[253] The scheme contains many mitigation measures so that any adverse effects will be suitably mitigated.[254] Mr Gomulski accepted that the constraints of the site have been properly managed and concluded that development of this nature would not be out of character in this area. In these circumstances there is no proper landscape or visual impact reason to reject the appeal proposal, even before considering the many compelling benefits the development would secure. Should the Secretary of State take a different view on landscape and visual issues, when those matters are put in the overall planning balance they are convincingly outweighed by the many benefits the proposed development would provide.

194. Before considering the benefits of the appeal proposals, RR4 refers to CBLP Policy GR6, "Amenity and Health", said to be designed to protect the amenities of residential properties. The Council has never raised impact on dwellings as a concern, still less as a RR and it has made no attempt to compare and contrast the effect of an EfW plant on WM5 with the appeal proposal. Allocated site WM5

[251] APP/6/d, App.A, pp.5.9.8
[252] CD.5/21, p.92
[253] APP/6/e, App.A, pp.5.9.17
[254] APP2, pp.4.1.7-8

is closer to a group of dwellings at Briar Pool than the appeal site and the visibility of the appeal proposal would be similar to that of an EfW plant on WM5. Insofar as GR6 relates to environmental disturbance to residential property (the effects of noise, vibration, smells, fumes, smoke, dust or grit), the Council has agreed that there is no such technical issues.[255]

Benefits

195. The benefits of the scheme have been accurately summarised by Pochin, the landowner and developer of MP18:

"*Pochin have no doubts that not only will the Covanta Energy from Waste (EfW) development provide a much needed impetus to local business development, it is also critical to the funding of the much needed Middlewich Eastern Bypass – the delivery of which remains a key priority for the company and indeed the town and broader community.*
Pochin also believe that an EfW at the proposed location would deliver a number of key economic and financial benefits that are particularly essential to the local economy as follows: The generation of a significant number of job opportunities for local people to work during the construction period as well as subsequently for Covanta;

- *The generation of further job opportunities in the supply chain that will undoubtedly arise from the construction and operation of the Covanta plant;*
- *The availability of on site combined heat and power for Midpoint 18 Business Park will be particularly attractive to potential future tenants of Midpoint 18 and thus will enhance the attractiveness of the Park for future inward investment;*
- *The availability of combined heat and power to British Salt will make their continued operations more secure, which is evidently important to the town and the local economy;*
- *A key financial contribution from Covanta for the construction of the Middlewich Eastern Bypass is essential for the timely development of Phase 3 Midpoint 18; and*
- *The development of the initial phases of Midpoint 18 has created hundreds of local jobs. The completion of Midpoint 18 and the implementation of the final phase will undoubtedly lead to the creation of many more jobs in the coming two decades.*"
- *A sustainable and preferred solution to Cheshire's residual waste management;*
- *Major inward investment amounting to some £200m capital costs, thus adding to the success of Midpoint 18 as a key business location;*

[255] CD.8/1, pp.6.1

- *High quality, well designed buildings which will make a strong statement and complement the existing and planned developments;*

- *The introduction to the UK of an internationally successful, socially responsible employer.*[256]

196. The Council failed to give proper consideration to these considerable benefits. Mr Molloy hardly addressed them in his proof and he agreed that the POR failed properly to advise Members on the significance of the benefits.[257] This was because he reported the application on the basis that it was a stand-alone incinerator, which meant that the Members were not able to take account of the proposal's contribution towards meeting key objectives in national energy and climate change policies which are of crucial significance to sustainable development. Nor was there any proper explanation of the bypass contribution, the employment gains it would secure and the wider catalytic effects it would bring, presumably because at that stage Mr Molloy's view was that the bypass was highly unlikely to come forward. By contrast, he now concedes it is likely.

197. Moreover, the suggestion that the benefits are illusory is half hearted and unsubstantiated and it flies in the face of the Council's recently stated corporate position on the importance of MP18 to the sub-region.[258] As to the suggestion of a purported diversion of investment and employment away from Ince and Ineos, and placing aside for a moment the fact that the Appellant is developing Ince, the Council has not supported this assertion with any evidence whatsoever. There is nothing to indicate that either Ince or Ineos is being or will be affected by the proposed Middlewich plant, which will have an entirely different function and serve an entirely different market. Secondly, the fact that the appeal site is allocated for employment is nothing to the point: the scheme will provide direct jobs itself and the site is in any event a replacement for WM5, which itself takes up land allocated for employment uses. More significantly it takes up the greater part of MP18 P3 which the Council has recently identified as important for the economic prospects of the area. If the Council is happy to see WM5 used for waste management purposes, it is irrational to object to the appeal site being so used.

198. In conclusion, the Energy White Paper says that new renewable projects may not always appear to convey any particular local benefit, but they provide crucial national benefits which are often not immediately visible to the locality but which are significant to society and the wider economy as a whole and should be given significant weight.[259] In this case there are, in addition to those national benefits, obvious and very significant local benefits. Hence there are numerous and significant benefits (both national and local) which this development would secure. When those benefits are placed alongside what is a half-hearted and

[256] APP/5/B, App.A & APP/1/B, App.11
[257] CEC1, pp.76-77
[258] CEC47 pp.105
[259] CD.4/2, p.157/158, Box 5.3.3

misplaced landscape objection, they comfortably outweigh, not just the only specified objection identified in the RR, but also the other objections relied on by the Council. The case on need thus serves only to reinforce the striking of the planning balance firmly in favour of allowing the appeal.

Refusal Reason 5: Lack of environmental information, and the Additional Refusal Reasons

199. The Council appears no longer to pursue RR5, even though it has refused formally to withdraw the objection. In January 2011 the Council considered the further environmental information in relation to the grid and CHP connections (SIP2) and a sensitivity analysis of the assumptions underlying the Transport Assessment with a carbon benefits analysis of the sourcing and treatment of waste in a range of different scenarios (SIP3) and resolved to add five additional reasons for refusal.[260] ARR1 and 2 allege a failure to demonstrate that sustainable transport has been adequately considered, resulting in the importation of significant quantities of waste by road from outside Cheshire which will be unsustainable and will undermine the principle of treating and disposing of wastes close to source respectively. These issues are in reality not distinct from those of RR3.

200. However, these ARRs were predicated on the Council's misunderstanding that the Appellant had somehow dramatically amended the application by adducing a sensitivity analysis of the transport assumptions underlying the TA.[261] Indeed, the appeal scheme was reported to Members in January 2011 as a regional facility and one no longer designed to treat primarily Cheshire waste. But there had been no amendment to the proposals and it is difficult to see how a sensitivity test designed to respond to an objection raised by the Council in RR3 could, even mistakenly, be interpreted as an amendment to the application. It always has been and remains the Appellant's intention to provide a Cheshire facility primarily for Cheshire's waste and it is not, nor has it ever been, the intention to provide a regional facility.

201. That does not mean to say that the facility will not be able to accept waste from outside the County. This simply reflects the fact that, as the CRWLP Local Plan Inspector acknowledged, a "Cheshire only" approach to waste management is not sensible or practical. The sensitivity tests showed that, contrary to the allegation by the Council in RR3, the importation of waste from outside Cheshire would not be unsustainable for all the reasons already set out in dealing with that RR.

202. The remaining three ARRs for refusal all related to the grid and CHP connections. However, ARR3 and RR4 are no longer pursued by the Council and ARR5 has been overcome by the regulation 19 request.

Appeal B: The GCN Receptor Site

203. The Council's pre-inquiry statement in relation to the GCN receptor site appeal confirmed that there is no objection to the nature of the works proposed. Furthermore, no ecological objection is made (indeed, Mr Baggaley agreed in XX

[260] CD.5/21
[261] CD.5/21, p.97

that the receptor site would provide an overall ecological enhancement to the Sanderson's Brook corridor). The only objection to Appeal B was that it was premature on the basis that the development was not required without the development the subject of Appeal A. Mr Molloy confirmed in XX that the conjoining of the appeals overcome that RR in its entirety and that Appeal B should be allowed in the event that the main appeal is allowed.

The Habitats Directive

204. There has never been a substantive ecological objection from either the Council or Mr Baggaley to these appeals.[262] Neither was there an ecological objection from Natural England or the Cheshire Wildlife Trust. The only ecological reason for refusal in relation to Appeal A was ARR5 which, Mr Baggaley agreed, was wholly addressed by the submission of further surveys of the indicative link corridors which the Council held to be acceptable. Nor was there an ecological reason in relation to Appeal B. Mr Baggaley confirmed that the reason for refusal in relation to Appeal B was entirely addressed by the conjoining of the appeals and that the policy conflict identified in the RR to Appeal B and described as "current" would not exist should Appeal A be granted. He conceded that, far from there being any substantive ecological objections, the GCN Receptor Site would provide an overall enhancement to the ecological resources in the area by enhancing a wildlife corridor.

205. Mr Baggaley adopted extreme positions to provide an evidential fig leaf for the Council's legal submissions, in particular, with regard to CHP provision to MP18 P3. Far from advocating the assessment of a realistic and likely[263] worst case scenario, he described his "hypothetical nightmare" of an unspecified number of above ground pipes radiating out from the appeal proposal in a network, fan or array, directed deliberately to cause maximum ecological damage, with a 10 metre easement either side of each pipe. Plainly he was uncomfortable with his evidence and accepted that his hypothetical nightmare would effectively sterilise the business park. He took the point when it was put to him that his worst case scenario bore no relationship with common sense, commercial reality and what Pochin's are likely to permit in the context of their aspiration for a high quality business park. Mr Baggaley accepted that Natural England would be extremely unlikely to sanction such an arrangement and grant the necessary licence and that his nightmare was very different from a realistic and likely assessment and was an unlikely worst case, albeit a worst case as he saw it.

206. This aspect of the Council's submissions on Regulation 19 was flatly rejected by the Secretary of State on the recommendation of the Inspector who saw there was always a practical and reasonable route for CHP pipes, if any were required in the future, along or alongside the roadways serving MP18 P3.[264] All the Council's arguments achieved was additional delay to the inquiry and considerable expense to the Appellant, while the Council pursued no further interest in the effects of potential CHP supply on EPS having accepted the conclusions of the further ecological investigations carried out as a result of the Regulation 19 request. It might be said that one of the main purposes of the

[262] CEC2, pp.1.3
[263] APP/8/D, App.2
[264] Regulation 19 ruling, 8 April 2011, pp.13

Council's submissions was to cause delay – perhaps to allow the Brunner Mond application to catch up with the Appellant's scheme - as well as to support their Proposition 1 contention.

207. Ecology features as an objection against the appeal scheme only in so far as the Council contend that the Appellant has failed to consider alternatives as required by the Habitats Directive.[265] Significantly, this was never raised in the RRs, whether the original ones or those added in January 2011, and so cannot be said to have influenced the decision making process. Article 12 of the Directive provides that Member States must establish a system of strict protection for EPS. Some derogation from that system of strict protection is permitted by Article 16. The Habitats Directive is transposed into domestic law by the Conservation of Habitats and Species Regulations 2010.[266] Article 12 is implemented by Regulation 41 and Article 16 is implemented by Regulation 53. Regulation 9(5) is important because it imposes a duty on a planning authority when determining an application for planning permission to have regard to the Habitats Directive.

208. The Secretary of State, as the competent authority for the purposes of the Habitats Regulations in these appeals, must have regard to the requirements of the Habitats Directive so far as they may be affected by the grant of planning permission. This role is to be distinguished from that of the licensing authority, Natural England.

209. The Supreme Court has only very recently considered precisely what the Regulation 9(5) duty entails for a planning authority when deciding whether or not to grant planning permission in *R (oao Morge) v Hampshire County Council* [2011] 1 W.L.R. 268. The Supreme Court overturned the decision of the Court of Appeal in *Morge* (as well as the judgment in *R (oao Woolley) v Cheshire East Borough Council* [2009] EWHC 1227 (Admin) which Lord Justice Ward had endorsed in *Morge* in the Court of Appeal). The Supreme Court decision was only handed down in January and great care is required because guidance on the subject has yet to catch up with the law. The PINS guidance to Inspectors on biodiversity purports to have been updated on 24 January 2011, five days after the judgment in *Morge* was handed down, but it appears to take no account of the Supreme Court's decision.[267] Plainly, Circular 06/2005[268] does not reflect the decision in *Morge* and must be read in that light.

210. Lord Brown said[269] in *Morge* that it is Natural England who bear the primary responsibility for policing the strict protection afforded to EPS by Article 12, both in the sense of prosecuting offences and issuing licenses which permit derogation from Regulation 12. He observed[270] that the implementation of a planning permission used to be a defence to an offence under the Habitats Regulations, but that was no longer so. Lord Brown regarded this change as an important consideration when determining the nature and extent of the duty on a planning authority under the Habitats Regulations when determining whether or not to

[265] Proposition 5 of the CEC47. Council Directive 92/43/EEC (CD.2/24)
[266] CD.1/4
[267] http://www.planningportal.gov.uk/uploads/pins/pg4.pdf
[268] CD.2/25
[269] At pp.26
[270] At pp.27

grant a planning permission. He rejected the Court of Appeal's articulation of that duty (thereby overturning the judgment in *Woolley*) saying:

211. "*29. In my judgment this goes too far and puts too great a responsibility on the planning committee whose only obligation under regulation 3(4)* [the predecessor to regulation 9(5)] *is, I repeat, to "have regard to the requirements of the Habitats Directive so far as [those requirements] may be affected by" their decision whether or not to grant a planning permission. Obviously, in the days when the implementation of such a permission provided a defence to the regulation 39 offence* [now regulation 41] *of acting contrary to article 12(1), the planning committee, before granting a permission, would have needed to be satisfied either that the development in question would not offend article 12(1) or that a derogation from that article would be permitted and a licence granted. Now, however, I cannot see why a planning permission (and, indeed, a full planning permission save only as to conditions necessary to secure any required mitigating measures) should not ordinarily be granted save only in cases where the planning committee conclude that the proposed development would both (a) be likely to offend article 12(1) and (b) be unlikely to be licensed pursuant to the derogation powers. After all, even if development permission is given, the criminal sanction against any offending (and unlicensed) activity remains available and it seems to me wrong in principle, when Natural England have the primary responsibility for ensuring compliance with the Directive, also to place a substantial burden on the planning authority in effect to police the fulfilment of Natural England's own duty.*"

212. Contrary to the Council's submissions, at no stage has it been suggested that *Morge* somehow absolves the Secretary of State from his duty to consider the derogation provisions. The opposite is true. *Morge* tells the Secretary of State precisely how to go about considering the provisions. Neither does *Morge* deal only with Article 12 of the Direction and not Article 16. As can be seen from the extract above, *Morge* requires the decision maker to consider whether the proposed development would be unlikely to be licensed under the derogation powers (if it offends Article 12(1)). Thirdly, the Council's suggested differences between the 1994 Habitats Regulations 1994 and 2010 are wrong as there is no material difference between the two sets of Regulations relevant to the issue under consideration.

213. Hence it is now clear that the planning authority should only refuse planning permission where it concludes that Natural England would be unlikely to grant a licence. Where a planning authority has any doubt on the matter, that doubt should be resolved in the applicant's favour and, all other things being equal, planning permission should be granted.

214. As Mr Baggaley agreed, there is no suggestion whatsoever that Natural England would be likely to refuse any licence in this case because:

i. Natural England has not objected to the scheme and the Council does not put forward any ecological objection whatsoever in relation to either appeal;

ii. Natural England has recognised, albeit without descending to detailed commentary, that the proposed mitigation appears to be in

line with its GCN Mitigation Guidelines.[271] Mr Baggaley also confirmed that the mitigation proposed was acceptable;

iii. Natural England will only consider a licence application in circumstances where these appeals have been granted;

iv. Miss Spedding considers the licensing requirements in detail in her proof of evidence.[272] She concludes that it is likely that NE will grant a licence on the assumption that the EfW and GCN Receptor Site receive consent as a result of this appeal; and

v. The examples of developments which would offend Article 12, but which would pass the derogation tests under Article 16 for the actual grant of a license by NE, put beyond any doubt whatsoever that a development of the significance of the appeal scheme would benefit from the grant of a licence. The NE examples include minor residential development, the benefits of which pale into insignificance when compared to what this appeal scheme would deliver to the local economy, to required infrastructure and renewable energy.[273]

215. As to the specific derogation tests, that of "No suitable alternative" has been considered under RR1. NE advocates a proportionate approach and recognises that there are always going to be alternatives to a proposal and, in terms of licensing decisions, it is for Natural England to determine that a reasonable level of effort has been expended in the search for alternative means of achieving the development whilst minimising the impact on EPS.[274] In light of this, the Council's suggested test, that the Appellant has to prove that Cheshire's C&I cannot be satisfactorily treated by any other means other than TT at the appeal site, is impossibly high.[275] In fact the Appellant has carried out a thorough site search. Appeal site A is allocated for Use Class B development and lies adjacent to, and is a direct replacement for, a site preferred for TT in the CRWLP. In the circumstances, to require any more would be disproportionate. In the NE Guidance examples, there is no suggestion that there was only one possible site on which affordable housing could be provided. Though that example would seem to fail the Council's test, in practice NE granted the licence.

216. On the "Favourable conservation status" test there is nothing between the parties because Mr Baggaley confirmed that this test would be met. Finally, on the "IROPI" test, there is again nothing between the parties because Mr Molloy said that, should planning permission be granted for the EfW facility, it would confirm that there are no satisfactory alternatives to the waste plant and that it is of overriding public interest.[276] Mr Baggaley confirmed he did not dissent from this approach. The NE Guidance on IROPI expressly states that consideration will be given to whether the proposed development contributes to meeting a specific need. The examples given include sustainable development, green energy,

[271] APP/8, pp.4.5.9
[272] APP/8, pp.4.5
[273] APP/0/52, p.9-11
[274] APP/0/52, pp.26
[275] CEC47 pp.83
[276] CD5/21, p.81

economic and social development, employment and regeneration.[277] This scheme contributes substantially to all those needs and the Energy White Paper describes the provision of renewable energy as providing a crucial national benefit even if not appreciated locally.[278]

217. In short, the highest court in the land has made it clear that the primary duty in considering the derogation tests rests upon Natural England and a decision maker is only obliged to give 'light touch' consideration to the derogation tests. Planning permission should only be refused where the decision maker concludes that Natural England would be unlikely to grant a licence. Here all of the evidence points precisely the other way: that Natural England would be likely to grant a licence so there is nothing to prevent the Secretary of State granting planning permission for this development.

PPS9

218. No party has suggested that the appeal scheme is in conflict with the principal test in PPS9 in relation to development control decisions which is set out in key principle (vi). The Inspector carefully took Miss Spedding through this key principle, but, whilst appreciating the reasons for doing so, the court has expressly ruled that PPS9 should not be construed like a statute. A failure to include a phrase by phrase analysis of PPS9 in the context of a planning decision where there were adverse ecological effects was not fatal so long as the overall tenor of the PPS was taken into account, as is clear from the judgement in *R(oao Buglife – The Invertebrate Conservation Trust) v Thurrock Thames Gateway Development Corporation [2009] EWCA Civ 29* at 49 and see paras 48-52.[279]

219. When taking into account mitigation which, as this case makes clear, may be done in the context of PPS9, there is no significant adverse effect. Indeed Mr Baggaley acknowledged that there would be an improvement to the Sanderson's Brook corridor. In any event, looking at the remainder of key principle (vi), the Appellant has done substantial work on alternatives. In addition, Miss Spedding said that a similar facility on the allocated site, WM5, would cause significant harm to EPS such that there would be no less impact with the same development on that preferred site. It follows that the development cannot be reasonably located on any alternative sites that would result in less harm. Miss Spedding explained that the appeal scheme would provide both mitigation and compensation through the increased habitat brought about by Appeal B. She and Mr Baggaley are agreed that adequate mitigation measures would be in place before the grant of planning permission. The compensation measures are appropriate but additional to those mitigation measures. Accordingly, the appeal scheme plainly meets the PPS9 test so that planning permission may be granted.

CHAIN and Third Party Issues

220. CHAIN have raised a number of additional issues beyond those advanced by the Council. CHAIN are wholly supportive of EfW so long as the technology is not incineration but their objections must be seen in the light that matters such as

[277] APP/0/52, pp.22
[278] CD.4/2, p.157
[279] R (oao Buglife – The Invertebrate Conservation Trust) v Thurrock Thames Gateway Development Corporation [2009] EWCA Civ 29

transport and flooding are almost completely agnostic as to the particular type of technology employed to deal with the waste. Furthermore, Mr Cartwright conceded that CHAIN made no objection in relation to WM5 which is only 250 metres south of the appeal site and a site preferred for TT. They also support the completion of the bypass and the development of MP18 P3, in the light of which it is difficult to see how CHAIN can possibly sustain any ecological objection to the provision of CHP within P3. CHAIN led no evidence on ecology and therefore are bound by the clear answers Mr Marshall gave to their questions.

Health

221. Whilst there is no reason for refusal in relation to health, there is concern amongst third parties about the effects of the proposal on health. However, there are no objections whatsoever from the Council, EA, the Health Protection Agency, the Food Standards Agency or the Primary Care Trust, which is confirmation that such concerns are ill-founded.

222. In any event health is principally an issue for the EA and the pollution control regime. Government guidance is clear on the proper delineation between the planning and pollution control regimes at paragraph 10 of PPS23.[280] That advice is reiterated in PPS10 which tells WPAs to avoid carrying out their own detailed health assessments and instead advises that, drawing from Government advice and research and consultation with the relevant health authorities and agencies, they have sufficient advice on the health implications, if any, of proposals.[281] Paragraph 30 of PPS10 further explains that modern, well-run and well-regulated waste management facilities operated in line with current pollution control techniques and standards should pose little risk to human health. The Council plainly received sufficient advice from the relevant health authorities to be properly informed on this matter and, despite being well aware of the considerable public concerns and objections on health grounds, properly decided that there was no sustainable health related objection.

223. The EA are actively scrutinising the application for the Environmental Permit and have sought further information about the Appellant's record in the USA. It is understood that good progress has been made in relation to the EP and the publication of the draft permit is expected imminently.[282] Thus the EA are proactively engaged in discharging their statutory duties. Importantly, the public in general and the third parties at this inquiry, in particular, will have the opportunity to make representations on the draft permit when it is issued. When drawing the line between planning and pollution control matters the Government were very well aware that the public have an opportunity to make representations in both forums. Therefore, health is not a matter for this appeal but is addressed by the pollution control regime. If the EA grant the permit, this will confirm that they are satisfied the Appellant will operate the plant in accordance with both BAT and the stringent requirements of WID, which are designed to avoid any impact on human health.

[280] CD.2/9
[281] CD.2/5, pp.5, 30 and 31
[282] APP/7/d, pp.1.43

224. In short, the inquiry is obliged by national policy to assume that the EA, the statutory body with control over pollution control matters, will properly apply and enforce the Environmental Permitting regime.[283] This point addresses completely CHAIN's concern about the Appellant's record in the USA which was brought forward only in the context of local concerns. Further, EN-3 at paragraph 2.5.43 requires decision makers to assume that there will be no adverse impacts on health where the plant would meet the requirements of WID and would not exceed local air quality standards, which this plant would not. The statement in WS2007 that there is no credible evidence of adverse health outcomes for those living near incinerators could not make the Government's position on the matter any clearer.[284] The Inspector at Ince Marshes regarded that statement as a full answer to those arguing against incineration of waste on the basis of the precautionary principle.[285] The HPA, the Government's statutory advisor on health matters, has said that, whilst it is not possible to rule out adverse health effects with complete certainty, any potential damage to health of those living close-by is likely to be very small, if detectable.

225. However, the public's concerns or perceptions in relation to health are themselves capable of being material considerations. Appendix A to PPS23 lists issues which may be relevant to the determination of a planning application, including the objective perception of unacceptable risk to the health and safety of the public arising from the development. Perceptions that are based on emotions, personal prejudices or information which is factually incorrect plainly cannot be objectively held. Here, there is no reliable evidence to suggest that perceptions of health risk are objectively justified. Though perceptions, even those unsupported by objective evidence, are capable of being material planning considerations, very little or no weight should be attributed to such unjustified perceptions of health risk. That position is supported by the judgement in *Gateshead MBC* v *Secretary of State for the Environment [1994] 1 PLR 85*, where it was held that if public concern could not be objectively justified then it could not be conclusive.[286] The Inspector in the Ince Marshes case followed that reasoning.[287]

226. CHAIN leaned heavily on the Sinfin appeal decision in the context of local residents' concerns, but that decision has now been quashed.[288] Even if it had not been quashed, the Inspector's conclusions on local residents' fears about harm to their health were not, as Mr Cartwright conceded, in any way determinative of the appeal.[289] Moreover, that appeal dealt with a wholly different factual scenario where the technology proposed was unproven in the UK and the promoter sought to rely on Norwegian comparators which the Inspector found to be unconvincing. There is no more tested and proven technology than that proposed by the Appellant in this appeal and so little parallel with the factual circumstances in the Sinfin appeal.

[283] CD. 2/5, pp.27 and Ince Marshes IR at CD.6/16, Tab 1 of Tab 2, pp.11.27
[284] CD.2/16, pp.22 of Chapter 5
[285] CD.6/16, Tab 1 of Tab 2, pp.11.24
[286] at pp 95
[287] CD.6/16, Tab 1 of Tab 2, IR, pp.11.28
[288] CH1/3 and APP/7/d, 1.36 and 1.37
[289] CH1/3, pp.46–56, 57 and 84

227. In this context CHAIN's success as a campaigning organisation cannot be put aside. Local residents' perception of these proposals has been markedly influenced by CHAIN. Unfortunately, their publications employ language which, whether deliberately or otherwise, has caused alarm and distress.[290] Mr Cartwright was candid enough to say that some of the language was designed to encourage local residents to sign the petition and in that CHAIN was successful. But where the public concern has been courted and stoked it should follow that less weight is given to that concern. And where the statements employed to stoke that concern are misleading it cannot properly be said that the concerns are objectively, even if sincerely, held. Accordingly, there is no need either to go behind the Government's position, which is based on detailed expert advice, or to intervene on a matter which is a regulatory issue within the competence of the Environment Agency.

Localism

228. The publication of the Localism Bill has not changed the position of either Section 38(6) of the 2004 Act or the advice in paragraph 27 of "The Planning System: General Principles"[291]. Mr Cartwright fairly accepted that, if local opinion were to be decisive in the determination of WMF, there would be little likelihood of any WMF gaining consent. What the Localism Bill does is give communities the opportunity to be integrally involved in local plan making. In any event, this case is quite different from an application for, say, a shop or some housing where it can fairly be said that the benefits and effects will be largely confined to the locality and, therefore, local opinion should be a significant factor. Here the EfW proposal has a direct relevance to key national planning policies and objectives and provides crucial benefits to the nation: in such a case, whilst the local community must have the fullest opportunity to engage in the inquiry process, the decision should properly have full regard to this national dimension.

Highways

229. None of the statutory bodies with responsibility for highways has any concerns with the appeal scheme. The local highway authority said the traffic generated by the proposed development would not have any material impact, and when compared to the permitted B class use the appeal scheme represents a substantial benefit in highways terms.[292] In these circumstances the highways objection is wholly unsustainable. CHAIN's own video presentation, the majority of which was recorded at peak times, showed traffic – albeit heavy at times – was flowing well. CHAIN's photographs bore no relation either to the video evidence or an ordinary day in Middlewich, but reflected a closure of the M6 for a double fatality and an extraordinary demand for salt in a period of extreme weather.[293] There is nothing in CHAIN's evidence to suggest that the highways authority's position is not wholly sound. Moreover, there will be an overall net benefit in both traffic and environmental conditions in the congested town centre and its approach from the M6, once the bypass is open.

[290] APP/0/27
[291] ODPM 2005
[292] APP/0/26
[293] CH1/25 (9 September 2010 & 6 January 2010)

Socio Economics

230. CHAIN's concerns in relation to socio-economic impact have been comprehensively rebutted.[294] There is no evidence whatsoever of any deterrent effect of incinerators. In fact, all the evidence points the other way. The evidence shows that the proposals are likely to have a catalytic effect on the development of MP18 and Pochin agree. The Council now accept that the bypass is likely to go ahead and enable the development of MP3. The only evidence relied on by CHAIN was a proof of evidence of an objector to the allocation of a site for a WMF, which objection was rejected by the Inspector. An EfW plant is under construction on the site and there is no evidence of any deterrence to other land uses in the area.

Flooding

231. These issues were raised before determination of the application subject of Appeal A by the SPB, whose members knew the history of brine extraction in the area. Those members were advised in the POR that the issue of flooding would not amount to a sustainable objection which advice they accepted. The appeal site is allocated for employment uses and planning permission has been granted for Use Class B purposes, for which full geotechnical surveys were conducted and submitted with the application. Finally, the matter has been fully considered by the EA, the Government's statutory advisor on these matters, which has not objected. In the circumstances, subject to the conditions put forward by the EA, there is no good reason to refuse planning permission in relation to flooding.

The Council's Proposition 4

232. Though the Appellant is rebuked for not having referred to paragraphs 43 and 44 in PPS1 CCS, this allegation of prejudicing other facilities is not founded on any evidence. The appeal scheme will not adversely affect the consented or proposed facilities in and around Cheshire as shown by the complete absence of objections from the other consented facilities. By contrast, Brunner Mond does not regard the appeal scheme as prejudicing its proposal and the same is true of Ince as the Appellant, who is its owner, has explained.[295] Ineos has not objected and Viridor is highly unlikely to proceed. Whilst there is a stream of letters and statements from Bedminster, none of them has established that that project would not proceed if the appeal scheme is permitted. Bedminster's motivation in making so many statements seems more directed at trying to give the project some credibility, but their communications only serve to underscore doubts that this project will proceed.

233. The interpretation the Council places on these paragraphs is contrary to the clear message in Government policy on energy and climate change. The Government is urging the energy industry to bring forward substantial new capacity expressly without any quantitative limit: the suggestion that each project should be scrutinised to see whether it might have any effect on another proposal's commercial justification is totally absent from Government policy. These paragraphs are aimed at situations where the construction of one project

[294] APP/5/d, p.7–13
[295] APP/0/15

would or could damage the ability of another to operate; for example, where the construction of a port would interfere with a tidal hydro-electric scheme.

234. It is true that waste is a finite resource, but it is abundantly clear from the WPR that massive investment is needed in EfW to deal with that waste. The Government sees EfW as playing a significant role up to 2050 and needs a tripling of generation through EfW by 2020.[296] There can in these circumstances be no justification for relying on the finite quantity of waste in an attempt to bring these paragraphs into play.

235. The construction of the argument appears to recognise that it has no substance as it changes to become a comparative exercise between the relative environmental performances of the various consented or planned facilities in Cheshire. That is a wholly different argument from asking whether one source will prejudice another. It is a resurrection of the Council's earlier "best overall environmental outcome" argument and the Council simply throw the argument into the ring and no more. There has been no evidence on the comparative performances of the facilities and as a consequence, there is no factual basis on which to conclude that the Council are right.

236. Reliance was placed on certain extracts from Mr Aumonier's evidence at the Ince inquiry, but he showed that the points taken by the Council were misplaced and that the Middlewich plant would in fact be highly efficient. The R1 figure is 0.892 which is exceptionally good and not usually seen in this type of development.[297] The appeal scheme also has a QI score of 106.21 which means it is classified as good quality CHP and will be eligible for ROCs[298]. In addition this plant will utilise a C&I feedstock which has a higher calorific value than the MSW which is planned or hoped to feed the consented or planned facilities on which the Council rely. Hence it can produce the same amount of energy from less feedstock.

237. Though Mr Molloy attempted to compare the efficiencies of the appeal scheme to Ince[299] all that did was to reveal his partial understanding of the matter. The Ince feedstock is RDF and Mr Molloy took no account of the energy that went into creating that RDF. Nor did his analysis take account of the rare benefits in this case of co-located demand for CHP, so that his comparison was fundamentally flawed. Properly considered, this would be a highly efficient plant and would deliver precisely what the WPR seeks – it would take as much energy out of genuinely residual waste as possible.

238. Finally, it is ironic that a Council that landfills so much waste as it does should seek to rely on these paragraphs in PPS1 CCS to support an objection to a highly efficient renewable energy generation project that also recovers waste. The suggestion that it is a diminutive and remote plant is extraordinary: with a throughput of 344ktpa of C&I waste it is certainly not small scale, although much smaller than the national scale facilities of Ineos and Ince. It is also bizarre that the Council, which is insistent that the plant should serve Cheshire's needs and not cater for imports, should object to this proposal located virtually dead centre

[296] APP/6/d, App.A, pp.214 and 215
[297] APP/6/d, pp.8
[298] APP/6/d, pp.24
[299] CEC1, pp.109

in the former County and with easy access to the strategic highway network to enable it conveniently to serve the waste management needs of Cheshire.

Conclusions

239. Appeal A manifestly deserves, to use the language of the most recent PPSs, sympathetic and favourable consideration by the Secretary of State. The scheme epitomises the aims of PfG and would generate substantial direct and indirect jobs. It would also help deliver the Middlewich bypass, which is vital for improving environmental conditions in the town centre and unlocking the employment potential in MP18 P3. It is development that would provide jobs and underwrite growth but with massive additional economic leverage, a development to which the default answer should be not merely "yes" but "of course", especially in Middlewich, a town so in need of stimulus and regeneration.

240. It would generate, in a highly efficient manner, renewable energy as well as low carbon energy and make an important contribution to needed energy generation and to combating climate change – the Government's principal concern in relation to sustainable development. It would serve as a rare example of co-location with a pre-existing major customer for heat and power with a steady year round requirement. The proposals would also help drive waste up the hierarchy and away from landfill and thereby contribute significantly to the climate change agenda. The Government sees an explicit role for EfW up to at least 2050 in achieving this and expects a trebling of EfW by 2020. If that is to be achieved planning permissions need to be granted now.

241. In short, the proposals would deliver all aspects of sustainable development, social, economic and environmental, on a site 250m from a preferred TT site with no discernible difference between the two. It would be hard to conceive of proposals which would be more consistent with Government policy on the economy, waste management, energy and climate change. They would directly assist in achieving the national policy objectives for which the Secretary of State recovered jurisdiction in this appeal. If they are rejected, Government policy objectives will, far from being advanced, actually be frustrated. As in every planning decision, a balance has to be struck between the benefits and disbenefits of the proposal, but that balance comes down very decisively in favour of the appeal proposals being permitted, subject to the suggested conditions and the Section 106 undertaking.

The Case for Cheshire East Council

Introduction

242. Planning permission should not be granted for this proposal because, firstly, the public have been misled and/or the Inquiry process has been so disjointed, confused and haphazard that the public have been denied any, or any proper, opportunity to participate in the decision making process. They have thus been denied access to environmental justice and as such a decision to grant planning permission would conflict with UK obligations under the Aarhus Convention. Alternatively, the proposals are in conflict with fundamental requirements of national policy concerning the need actively to facilitate public engagement in the consideration of major planning applications which affect them. These problems arise entirely out of the manner in which the Appellant has conducted its case throughout. They are unique to this application and do not suggest any structural

problem with the planning system. This is a proper and independent basis to reject this appeal regardless of any consideration of the merits. ("Proposition 1")

243. The Appellant's need case is based on the proposition that there is in the UK still an ineluctable relationship between growth in the economy and growth in waste and that the Government has failed to introduce measures to decouple the two. The Secretary of State should reject that case because, firstly, it is not true, and secondly, to agree to it would involve the Government making a public statement, the de facto effect of which is that the Government has failed to effectively transpose the requirements of the Waste Framework Directive. That may risk the UK incurring infraction proceedings and considerable fines as a result of unsatisfactory progress. ("Proposition 2")

244. In the particular circumstances here, planning permission for this proposal will lead to the unsustainable movement of waste and/or will pull waste down the hierarchy. As such permission will conflict with fundamental objectives of national and European waste policy. ("Proposition 3")

245. The grant of permission here will impede or frustrate the viable or successful development of other existing or planned facilities for the treatment of waste which are superior to the appeal proposals on every index of measurement. ("Proposition 4")

246. The Appellant has failed to consider or discount alternatives in the way required by the Habitats Directive and a grant of permission would therefore be unlawful. ("Proposition 5")

247. Lastly, the development looks awful.

248. Whereas the public in Middlewich have been extremely well represented by CHAIN, the defining characteristic of the Appellant's approach to this appeal is brutalism. Any opposition has been extravagantly crushed under foot. The Appellant says policy at every level supports renewable energy generation, this proposal generates renewable energy, ergo – policy supports this proposal – ergo - planning permission should be granted. Similarly, policy supports diverting waste from landfill, this proposal diverts waste from landfill, ergo – policy supports this proposal, ergo - permission ought to be granted. The problem with brutalism is that it makes no allowance for subtlety or nuance and the subtle interplay of competing policy objectives for a decision. The wider picture is lost because the Appellant has only one simple and entrenched position.

249. In a policy environment which requires a comparative assessment of the merits of other existing and planned EfW facilities it is necessary to consider those schemes because they provide the essential factual context. The Brunner Mond proposal is a nonsense application which has very little prospect of success but is nevertheless material. Mr Halman told the Inspector he should disregard this scheme because it is only at the planning stage and is neither consented nor built. This follows the Appellant's argument that no regard should be paid to any other facilities unless they are built, and that the only extent to which built facilities may be considered is with regard to the specific waste streams they are dealing with from time to time. If this were accepted it would involve making a serious legal error which would undermine the whole decision. National policy defines planned facilities, whether they are consented or built, as a material

consideration. Mr Halman's answer invites the disregard of a material consideration of the highest importance to this appeal.

250. BM has a proposed annual capacity of 600,000 tonnes of, amongst other things, C&I.[300] There is an agreed note which identifies four other proposals as Ince, Ineos, Viridor and Bedminster.[301] All of these are highly relevant to a consideration of whether there is any extant or likely future need for the appeal proposal and, even if so, whether these other facilities would be better placed to meet such a need. The global annual figure for existing, consented and planned thermal capacity in Cheshire or, in the case of Ineos, one mile outside Cheshire, is 2,400,000 tonnes per annum.[302] This is the headline figure against which the additional thermal treatment proposed by this appeal should be considered.

251. The Appellant disagrees and draws spurious distinctions between permitted, planned and built facilities, whether they deal with treated or untreated waste and the individual waste streams addressed by each.[303] However, it is clear that Ineos will be seeking C&I inputs at phase 2 and all are private commercial facilities which will position themselves in the most advantageous market from time to time prevailing.[304] The Secretary of State should therefore reject an approach which attaches undue weight to the temporary and transient self-imposed commercial or planning restrictions at each facility because these are apt to change from time to time. The better approach is to consider the headline figure of planned, permitted and built thermal capacity in Cheshire (plus Ineos) as this is the real as opposed to artificially constrained description of capacity. The figure of 2,400,000tpa is the correct one against which to compare waste arising within Cheshire in order to determine the central question of need.

Proposition 1: Exclusion of the Public from the Appeal Process

The Legal Context

252. It is recognised that the Secretary of State has a wide discretion to reach an appropriate decision in the light of all relevant considerations. Nevertheless, there is a legal framework in play. The UK Government is a signatory to the Aarhus Convention whose essential function is to provide effective access to environmental justice for individuals. The individuals affected by this application have been denied access to their rights guaranteed by this treaty. It is important not to overstate the legal importance of the Treaty. In *Morgan v. Hinton Organics (Wessex) Ltd [2009] EWCA Civ 107* the Court of Appeal held that there was no principle which would enable the Court to treat a pure treaty obligation, even one adopted by the European Community, as converted into a rule of law directly binding on the English court.

253. A failure to give effect to the treaty obligations under the Aarhus Convention is a material consideration to be taken into account against the proposals. The weight to be attached to it is a matter for the decision maker. In this appeal it should be treated with great weight to the extent that it becomes a freestanding

[300] CEC 42
[301] APP/C/47
[302] CEC/29
[303] APP 0/31
[304] CEC 36

reason for rejecting this appeal regardless of anything else. It is also a condition of compliance with the Waste Framework Directive that, under Article 31, the public are permitted to participate in the decision making process of certain plans and programmes.[305]

The Policy Context

254. Mr Halman agreed that the planning system attaches the highest importance to actively engaging the public in the consideration of proposals which affect them.[306] Moreover, if they have been misled by the manner in which the proposals have been brought forward, then the public have been denied any proper consultation. In these circumstances the proposals would be in conflict with important elements of national policy and that would constitute an important consideration against approval.

The Factual Context

255. There is a very significant mismatch between what the proposals are (i.e. the development for which planning permission is sought at this appeal) and what the public were told about the application. Mr Halman agreed that the appeal proposals will operate as a merchant facility open to receive all C&I waste regardless of origin, that no constraint is invited to prevent the receipt of MSW from anywhere, that the market decides what waste will be treated at the appeal site and that the planning system has no function to perform in that regard.[307] Mr Wright explained that there is no logistical, policy or environmental reason why waste cannot be transported from the proximate adjoining areas for treatment in Cheshire.[308]

256. Mr Halman went further and said a planning condition purporting to restrict waste imports to "Cheshire only" would fail the tests in Circular 11/95 and would thereby be unlawful. He also agreed that there would be no reason in theory why this proposal could not source 100% of its feed stock from outside the borders of Cheshire. This "open" permission must be contrasted with what the Appellant said in discussions with the Council and with what the public were told. Mr Molloy said that the Appellant proposed a planning condition restricting the source of waste to within Cheshire even though it knew such a condition was unlawful.[309] The cynicism of this approach was openly conceded by Mr Wright.[310]

257. The strategy here was to mollify public concern by inviting an unlawful condition on the basis that such a condition could later be challenged as failing to comply with C11/95. This approach reveals a disregard for the public verging on contempt. This impression is reinforced by what the Appellant said directly to the public in the NTS as part of the original ES, that the source of waste would be limited to Cheshire.[311] That was not an accidental mis-statement. In December 2009 a community newsletter was put through 4,500 doors in Middlewich, which

[305] CD.2/21, Article 31
[306] CD.4/1, p.58, pp.40-42, CD.2/14 p9 and CD.2/17A pp.2.13-2.15
[307] CH/1/44, Mr Halman Proof, pp.3.11
[308] APP/1 3.3.2
[309] CEC1 pp 135
[310] APP/1 3.3.3
[311] CEC1 124

gave the public the assurance that it remained Covanta's intention to treat Cheshire's waste at its Middlewich facility and that it was categorically not the intention to take waste from Merseyside.[312] It is clear from this that the Appellant does not have and never has had any such intention. Contrary to these assurances the intention is that it will operate as an open merchant facility.

258. The Appellant continued to make public statements about the intention to limit waste to Cheshire only in 2010.[313] As late as September 2010 the Appellant was still saying the development was intended as a thermal treatment facility capable of treating the residual wastes produced in Cheshire.[314] Conclusions do not have to be drawn about the morality of this conduct, because such a consideration is irrelevant to this proposition. The question is whether the public have been materially misled by the information they have been provided in the course of considering this application and appeal.

259. Unequivocally that is the case and the public have thereby been denied any effective participation at this Inquiry, their rights under the Aarhus Convention have thereby been denied, and the proposals are thereby not in conformity with fundamental requirements of planning and waste policy. These, cumulatively, amount to very significant material considerations against the grant of consent and, on balance, permission should be refused for this reason. The Appellant may re-submit an application – this time accompanied by accurate information. On the other hand, to grant consent in the face of this type of misinformation may appear to endorse the strategy and tactics which lie behind the Appellant's approach.

260. To say that any harm caused by the publication of incorrect information is rectified by this appeal process is no answer. It is impossible to know how many people were satisfied by the Appellant's assurances of a "Cheshire only" facility and chose therefore to take no further part in this application and appeal. This Government has firmly endorsed the importance attached to the provision of accurate information as the essential underpinning of this type of major application. The Review of Waste Policy in England 2011 uses the terms "clear evidence" and "effective engagement"; these are fundamental to the strategy of encouraging decision making at the local level. This case is an opportunity to demonstrate that opaque and misleading evidence denies the possibility of effective engagement and creates polarised debate, suspicion and conflict at the local level, thereby disrupting the fundamental aim of encouraging local positive decision making.

261. The second part of this proposition contends that the proceedings have been so disjointed and chaotic that the public cannot reasonably have been expected to follow the Inquiry process. To assess this it is necessary to aggregate both the "misinformation" and "chaotic inquiry" aspects of this submission when deciding whether the public have effectively been denied any realistic ability to participate in the decision making process. It is a fundamental requirement of law, through Article 31 of the Waste Management Framework Directive, and of policy in PPS1 and PPS22 Companion Guide, that the public should be allowed to

[312]CEC1, 126 and CEC 1/5
[313] CEC 1/6, CEC 1/7, CEC1, pp 128 and 129
[314] CD7/2 pp.5.2.9 and CEC1 pp 134

participate in the decision making process. This means they should be allowed to participate effectively. In turn they should be provided with accurate information and the decision making process should be reasonably accessible.

262. There must come a point when the Inquiry process is so dispersed and disjointed that it cannot be said to have been reasonably accessible to the public. Whether, or when, that point is crossed is a judgment on a matter of fact and degree which is very sensitive to the circumstances of each case. That point has been crossed in this case when the spread of time is taken into account coupled with the misinformation and mass of internally inconsistent documentation provided by the Appellant, taken together with the disjointed attempts to provide a legally acceptable ES. The Secretary of State is aware of the chaotic presentation of the Appellant's ES, having been twice forced to make rulings about its inadequacy.

263. The situation in summary is:

i) the application was submitted in 2009 and will be determined in 2012 with no delay attributable to either the public or the Council. That fact speaks for itself. The public cannot have received a fair opportunity to consider an application dispersed over that period of time;

ii) the Appellant submitted a very detailed and lengthy ES which was then suddenly supplemented with three major documents known as SIP1, SIP2 and SIP3;

iii) the Secretary of State rejected that combination of documents as failing the test in *Berkeley* and ordered the Appellants to provide a single consolidated compilation;

iv) in view of the unsatisfactory nature of and late submission of SIP1, SIP2 and SIP3 the Secretary of State was forced to adjourn the Inquiry from the autumn of 2010 to the spring of 2011; the public were assured by the Secretary of State that the consolidated compilation would not contain any new information;[315]

v) contrary to that assurance, the document supplied by the Appellant pursuant to the direction contained a raft of new information. Mr Goodrum, for example, agreed that the landscape methodology for assessing significance, value and valency had materially changed, that this arose from a professional disagreement with the previous landscape consultant rather than "updating" information and that his clients had not made him aware of the Secretary of State's restriction on the inclusion of new material;

vi) Thus, in Spring 2011, the Inquiry began with a CES which failed to adhere to the Secretary of State's requirements but even this was found to be inadequate as it failed to address the likely significant effects of the development;

vii) The Appellant disputed this but once again the Secretary of State ruled against it and required yet further environmental information to be submitted. This was supplied in the summer of 2011,

[315] CEC 1 p.55

but at the same time national planning policy of direct relevance to this appeal has gone through a radical re-assessment.

viii) The public have been required to prepare for a further hearing in the autumn of 2011.

264. The epitome of the incoherent and chaotic presentation of this appeal is to be found in the definition of the scheme. There is nothing more fundamental to an application for planning permission than to define the development for which permission is sought. In this case the Appellant was asked, in the course of the Inquiry on two occasions, to supply a definition of the scheme at appeal. It is remarkable that the Inspector should have had to ask twice for that most basic item of information during the course of a major public Inquiry and even more remarkable that the Appellant failed to respond. The Inspector wrote to the Appellant via PINS on 18th August, again asking for a definition of the scheme which was finally provided by Mr Halman in September 2011. Thus, in 2009 the public were consulted about an application for planning permission which was only defined in September 2011.

265. This confused situation is characteristic of so much of this appeal and it leads to the submission that the public have not had a fair crack of the whip. At the heart of the operation of the English planning system is a need to ensure the process is fair. This has long been a requirement of domestic law and policy and is now an explicit requirement of the Waste Framework Directive. The public have not had a fair crack of the whip at this Inquiry owing to a combination of false information about the nature of the application and the material has been so heavily dispersed through time and documents that it cannot be said that the decision making process has been reasonably accessible.

266. This problem could be easily resolved. The Secretary of State, in rejecting this appeal on this ground, could invite the Appellant to start again, think clearly about the scheme for which consent is sought, consult the public accurately and fairly about that scheme, and then submit an application, if it so chooses, which accurately defines that scheme from the start. This is the fair and inclusive way in which the planning system is intended to operate.

Proposition 2: The Appellant's Case on Need

267. The Appellant's case on need fails both as to policy and fact. Because this is known, the relevance of need as a requirement of policy is denied, and then, in the alternative, untenable assumptions about the growth of waste are made in order to suggest a future need where none is present now. In this the other facilities which may accommodate any such need are ignored even if that need should arise.

Need as a Requirement of Policy

268. The provisions of Article 28(2) and (3) of the Waste Framework Directive imply a structured approach in which all plans must understand the relationship between existing and future waste arisings and existing and future capacity to meet that waste demand. This necessarily engages a consideration of need. Where there is insufficient capacity when assessed against likely future arisings then there is a need for more permissions to be granted. An enquiry into need is

therefore an essential aspect of maintaining that balance and complying with the Directive.

269. Mr Molloy explained that this is the basis for plan making established by PPS10.[316] There is therefore a clear harmony between the prescriptive approach required by the Directive and the approach adopted by national waste policy. The harmony arises from the fact that both recognise that need provides the essential basis for deciding whether any further capacity should be consented. That unified policy approach is entirely in conflict with the main case advanced by the Appellant. This harmony of approach is further reflected in paragraph 3.2.3 of EN-1, and in EN-3 at paragraph 2.5.66.[317] EN-3 at paragraph 2.5.67 emphasises the importance of taking into account existing capacity in deciding whether there is any existing scope for further permissions, having regard to the published strategy in the development plan. Finally, paragraph 2.5.70 of EN-3 requires that a given proposal:

> "…is in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England…"

270. Whereas this contemporary national advice reflects exactly the case advanced by the Council, the Appellants have failed to demonstrate need taking into account existing capacity. As such, the proposal conflicts with the waste strategy in the adopted development plan. Consequently, a grant of consent here will prejudice the achievement of essential waste management objectives concerning the waste hierarchy and the sustainable movement of waste.

271. The most important statement of Government policy to emerge over the summer is the recognition of the fact that waste is a finite and diminishing resource. In the Energy Recovery section of the 2011 Waste Policy Review paragraph 207 says that residual waste will eventually become a finite and diminishing resource. But waste is now, has always been and will always be a finite resource. Furthermore, it has already become a diminishing resource as every piece of empirical data published over the last ten years conclusively demonstrates. Indeed the Waste Policy Review acknowledges that waste management in England has come a long way over the last 10 years:

> "Waste going to landfill has nearly halved since 2000; household recycling rates have climbed to 40%; waste generated by businesses declined by 29% in the six years to 2009 and business recycling rates are above 50%"[318].

272. Mr Molloy provides further up to date evidence of the statistically unquestionable proposition that waste has now become a diminishing resource.[319] Furthermore, the Waste Policy Review makes it clear that the Government's intention is to increase the downward pressure on the production of waste. Thus, when the Policy Review is understood as a matter of language and etymology, it is clear the Government is saying that residual waste is a finite resource, is diminishing and will continue to diminish further and faster as

[316] CEC 1, p.9/10 pp 23-25 and CD 8/5, pp.3,4, 7 and 11
[317] CEC44, pp 44
[318] APP/6/e tab D pp29
[319] CEC44, pp.9 and 10

Government policy continues to bite. This is important because it marks the beginning of the end of this type of application. It also emphasises the critical importance of acknowledging existing and planned capacity in considering whether there is any need for further facilities to address this ever diminishing resource, either now or in the future.

273. The Appellant continually repeated the mantra: "No rigid cap" and argued that this equated to the proposition that PPS10 did not impose any limit on the number of permissions which could be granted for thermal waste capacity. That argument is entirely without merit. Mr Halman conceded that the only place in national guidance where that phrase appears is paragraph 7.27 of PPS10 Companion Guide, this paragraph falls within a section of the document called "Demonstrating Sufficient Provision in Line with RSS", that the emphasis there is all focussed on "land allocations" as distinct from permissions and that the CRWLP makes sufficient land allocations to meet the sub-regional apportionment in RSS.[320]

274. The Appellant's "No rigid cap" argument runs directly counter to the balance between need and capacity required by the Waste Framework Directive and PPS10 and arises from a misreading and misunderstanding of the advice in PPS10 Companion Guide. The correct approach is that of Mr Molloy, which is that Government guidance seeks to ensure waste need is first identified and apportioned to sub-regions such as Cheshire, or local authority areas, that provision is accordingly made to meet the identified need of those local areas, and that the process is monitored and amended if necessary.[321]

Need as a question of fact

275. To achieve a meaningful understanding of need it is first necessary to define a geographical area within which the assessment is considered. Though waste crosses administrative boundaries, in order to understand the relationship between arisings and capacity it is essential to establish a workable area within which the comparison is made. The RSS does this by reference to the Cheshire sub-region and the Secretary of State should follow this in ascertaining need in this appeal. Mr Aumonier conceded that MSW is unlikely to be a relevant waste stream at the appeal site and all attention should therefore focus on C&I. Arisings of this form of non-hazardous solid waste have diminished over the last ten years as a result of the successful implementation of waste policy objectives and requirements and will decrease further in the future as these policies continue to bite. The contemporary evidence therefore represents the high point, not the low point, of waste which is available to the appeal site.

276. There is a raft of evidence before the Inquiry to support this general proposition which may be summarised as follows:

i) The CRWLP takes a baseline figure of 959,000 tonnes for the projection and then says it is predicted the rate of annual increase in waste arisings will gradually diminish as a result of legislative and financial measures

[320] CD.2/6, p.74 & pp.7.21, 7.22, 7.23 & 7.25 and CD.3/2, 32-A3 plan
[321] CEC1, p 10 pp 25

which encourage greater waste minimisation and recycling.[322] Applying this methodology of an increasingly restricted growth rate led the Plan to predict C&I waste arising by 2009 to be 1,107,000 tonnes.[323] In fact the Urban Mines Report[324] measures the total sum of C&I in 2009 as 788,000 tonnes.

ii) The comparison between the Waste Strategy 2005[325] and Waste Strategy for England 2007[326] which says "Since the waste strategy in 2000, England has made significant progress. Recycling and composting of waste has nearly quadrupled since 1996-97, achieving 27% in 2005-06. The recycling of packaging waste has increased from 27% to 56% since 1998. Less waste is being landfilled, with a 9% fall between 2000-01 and 2004-05. Waste growth is also being reduced with municipal waste growing much less quickly than the economy at 0.5% per year."

iii) The evidence in the Urban Mines Report indicates that that trend is continuing downwards given that total waste for the 2008-9 survey is 6% down on the 2006 survey. [327]

iv) The Scott Wilson Report which independently confirms all of the evidence gathered by the Government and Urban Mines; and

v) The RSS projection of zero growth for C&I which received the Secretary of State's endorsement of Policy EM10 requiring zero future growth in commercial and industrial wastes.[328]

vi) Mr Aumonier's evidence that: "Nationally, the 2010 DEFRA C&I waste survey reports a 29% decrease in C&I waste arisings since the previous national survey in 2002/3. Industrial wastes have declined 36% since 2002/3 and commercial waste has declined by 21% in the same period".[329]

277. The conclusions from this summary are that, first, the UK Government has been for some time under an obligation as a member of the EU to introduce fiscal and policy measures to decouple the growth in waste from growth in the economy. Secondly, the available evidence indicates that the measures taken have been astonishingly successful. Thirdly, a cultural shift has taken place, with the general population fully engaged in reducing and recycling waste. Fourthly, the fiscal and policy measures are still in place and will continue to suppress waste arising in future. Lastly, the UK Government has successfully decoupled waste from economic growth.

278. The cultural shift applies to domestic waste (MSW) just as much as it does to C&I. Mr Aumonier's evidence on the decline of MSW shows the dramatic reduction achieved in eight years as a result of waste policy.[330] MSW in Cheshire has fallen from 448,251 tonnes in 2002/3 to 390,486 tonnes in 2009/10. Waste

[322] CD3/2, p72, pp A1.20
[323] CD3/2, p73, pp A13
[324] CD4/24, p72
[325] CD2/17
[326] CD2/16
[327] CD4/24, p vi
[328] CD2/26, p104
[329] APP/6, pp111 pp42
[330] APP 0/31

policy is clearly tapping into a deep seated predilection in the UK population which abhors waste. Whatever the reason, it is clear the public have a very large appetite for reducing waste of all types and the Secretary of State may reasonably conclude that this well established pattern of waste reduction will continue into the future. These conclusions wholly undermine the Appellant's case.

The Appellant's Case

279. Mr Aumonier's evidence on C&I is that: "The lower bound of arisings suggest that, as a minimum, there will be approximately 205,000 tonnes per annum of residual C&I waste that needs treatment in Cheshire throughout the lifetime of this proposed facility".[331] However:

i) he assumes 100% of the 205,000tpa will be captured by the appeal site;

ii) even in that unlikely event, 150,000tpa will have to be imported by road from outside Cheshire to feed the appeal proposals;

iii) no allowance is made for the possibility that C&I waste will decrease with the passage of time, as fiscal and policy measures continue to take effect;

iv) the argument assumes that growth in C&I waste is inevitable, the only uncertainty is as to the extent of such growth.

280. Hence the Appellant's need case depends on a conclusion that there will be an inevitable increase in the production of waste as the economy recovers from recession and that this increase will be so substantial as to make up the difference between the 205,000tpa of waste now available to the appeal site (assuming 100% capture) and the 344,000tpa capacity of the proposal. It is clear from the objective, empirical data above that the Appellant's case bears no relationship to reality. C&I waste is a finite and diminishing resource within Cheshire as elsewhere, yet, contrary to the evidence, the Appellant invites the Secretary of State to conclude that the measures to decouple waste from economic growth have failed and that waste will grow as the economy recovers from recession. That is not true and should be rejected.

281. There is a further reason to reject that case, namely the January 2011 letter sent by the Chief Planner to Waste Planning Authorities which says that the UK risks incurring infraction proceedings and fines as a result of unsatisfactory progress on publishing and adopting Directive-compliant waste plans. The Appellant's case invites the Secretary of State to declare publicly that the steps taken by UK Government to decouple waste from economic growth have failed or been ineffective. It is highly undesirable that the UK Government should make any such declaration.

Proposition 3: Failure to Comply with the Best Environmental Outcome Test

282. Article 1 of the Waste Framework Directive lays down measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use.

[331] APP/6, p46, pp121, and p67

283. There are two aspects of relevance to this, firstly, the waste hierarchy, and secondly, the sustainable management of waste. The waste hierarchy, as defined by Article 4, accords with the refined description of the hierarchy provided by the Chief Planner on 30 March as an amendment to PPS10 paragraph 1.[332] Article 4(2) which applies to individual planning decisions provides that:

> "when applying the waste hierarchy….Member States shall take measures to encourage the options that deliver the best overall environmental outcome".

284. Thus, if the Secretary of State concludes that managing Cheshire's (or Merseyside's or Greater Manchester's) C&I (or MSW) at a different location than the appeal site would lead to a better "overall environmental outcome" then he is under a mandatory obligation to reject this proposal. To grant consent in the circumstances, would be to encourage the option which delivers a sub-optimal environmental outcome.

285. "Best" appears in Article 4(2) as a comparative adjective. It is essential that, in making a decision, the Secretary of State considers whether a different site (existing or planned) will or may provide a better overall environmental outcome. The Appellant has failed to understand this; it denies the relevance of other sites and considers only the (dubious) virtue of the appeal proposals. This is the wrong approach.

286. Article 16(3) of the Directive provides that:

> "The network shall enable waste to be disposed of or….recovered in one of the nearest appropriate installations…."

287. These provisions in the Directive are all cast in mandatory terms and they impose constraints on the Secretary of State's discretion in determining this appeal. If there is an appropriate installation which is more proximate to the sources of waste arising and/or which delivers a superior overall environmental outcome then the Secretary of State shall not grant consent for this proposal.

288. The Secretary of State should determine this appeal on the material in the Urban Mines Report as corroborated by the Scott Wilson Report because these are current, expertly informed and independent. The Urban Mines report provides a landfill figure of 164,646 tpa.[333] Not all of this is capable of diversion up the hierarchy, and that which is capable should be encouraged to move higher up than thermal treatment. In the light of this aim, even if 100,000 tonnes of this figure were available for thermal treatment, and if the appeal site managed to capture all of it, that would still leave the appeal site importing the balance from outside Cheshire by road and/or diverting waste from other beneficial uses further up the hierarchy for thermal treatment. Mr Wright was clear that the Appellant is well placed to compete aggressively in the market for waste and will do so. In the light of his statement it is reasonable to conclude that about 250,000 tonnes of C&I will be pulled down the waste hierarchy to supply the appeal proposals and make up the balance from landfill diversion. This is entirely at odds with Article 4 of the Directive, PPS10, the RSS and CRWLP.

[332] CD2/5A
[333] CD4/24, p32

289. Alternatively, the balance of C&I will be imported from outside Cheshire, most probably from the metropolitan conurbations of Merseyside and Greater Manchester. There are two aspects to the sustainable movement of waste; distance and mode. It is clear that Ince and Ineos are both closer to the main sources of waste and that they are both appropriate installations for the thermal treatment of C&I arisings from both conurbations[334]. To the extent that the appeal proposals succeed in competing against Ineos or Ince for waste from Merseyside or Greater Manchester, that waste will travel further by road than would otherwise have been the case. This is where the majority of the Appellant's unsatisfied capacity will be sourced. But the mode is an important consideration here as well as distance. The appeal site will only operate as a road based facility because the Appellant has repeatedly said that there is no reasonable expectation of the appeal proposals being rail served. All waste will travel by road with lorries then making an empty return trip to the conurbations.

290. Articles 4 and 16 of the Directive require this situation to be compared to other appropriate installations. All of the competing facilities, apart from Viridor, are rail fed and able to treat C&I. The Appellant has always been faced with a major problem; they control 600,000 tonnes of capacity at Ince right on the doorstep of Merseyside and Greater Manchester. Ince could therefore meet any unsatisfied need for capacity. The Appellant disassociates Ince from any involvement in the North West C&I market, suggesting instead that Ince would operate as an inter-regional/national MSW facility.

291. This is an untenable argument, because the Appellant has not even achieved "preferred bidder" status in any MSW contract, and, as a commercial operator, is unlikely to turn away major C&I inputs from Birkenhead, Wallasey, Kirby, Sefton, Wigan, Warrington and so on. However, the attempt to disengage Ince from the North West C&I market failed completely. Firstly, an authorised representative of Covanta advised a public meeting that Ince may now pursue C&I in the North West and this point was confirmed by Mr Wright.[335] Thus it is no longer open to the Appellant to say Ince will not compete with the appeal site for C&I in the North West. Secondly, the whole idea of a distinction between C&I and MSW now appears to be under review according to this year's Waste Policy Review.[336]

292. The appropriate test is that the appeal proposals should offer the best environmental outcome having regard to the waste hierarchy and proximity considerations. The Appellant has failed to realise this and therefore failed to provide any comparative assessment of environmental outcomes. However, some things are obvious. The appeal site is in the heart of rural Cheshire. It is remote from the large conurbations which will provide its feedstock and it is only accessible by road. Contrast that with the rail-fed facilities which are closer to the sources of waste, have massive unexploited capacity and are able to treat C&I. Accordingly, the appeal proposals are likely to operate in an unsustainable manner by drawing waste down the hierarchy (or by frustrating its movement up the hierarchy) and/or by carrying waste further and by road than it would move if permission were refused. In addition, or alternatively, the appeal proposals have not been shown to deliver the best overall environmental outcome. For either or

[334] APP 0/47
[335] CEC44, pp52 and APP1/d, App 1, pp2.5
[336] APP/6/e Tab D pp43,152 and 246

both of these reasons the grant of permission would conflict with the Waste Framework Directive.

Proposition 4: Conflict with Climate Change Policies

293. The central issue of this proposition is comparative merit and competing waste management facilities in Cheshire in the context of PPS1 Climate Change paragraphs 43 and 44.[337] This is national policy on the correct approach to determining applications for planning permission which may have implications for existing or proposed sources of renewable energy. The five competing facilities are all existing or proposed sources of renewable energy.[338] This policy advice is therefore of direct and immediate relevance to the determination of this appeal, yet it has been entirely overlooked by the Appellant. The Appellant has called expert witnesses to address energy, planning, economic and transport policy and they have between them submitted thousands of pages of evidence. None of them at any stage discusses – or event mentions – this central aspect of national policy which is simply disregarded because it is thought to be unhelpful.

294. This advice and the approach to decision making which it requires, should be afforded the greatest weight. PPS1 CC is the senior planning policy document on climate change and therefore takes precedence over any conflicting national advice. Government has now reviewed its policy on climate change and has published for consultation "Planning for a Low Carbon Future in a Changing Climate".[339] Policy LCF15 expressly carries forward paragraphs 43 and 44 of PPS1 CC which emphasises the importance which the Government attaches to that approach. It is therefore published guidance of the highest significance to the determination of this appeal. It is a matter of the utmost seriousness that the Appellant has failed to notice or consider this advice. It indicates that the appeal proposals have been brought forward out of conformity with national guidance. At the very least this should reduce the weight attached to their evidence.

295. Policy LCF15 is entitled "Safeguarding renewable and low carbon energy supplies" and Policy LCF15.1 says that in determining planning applications, planning authorities should consider the likely impacts of proposed development on, amongst other things, existing, or proposed, sources of renewable or low carbon energy supply and associated infrastructure. Policy LCF 15.2 then carries this specific injunction:

> "Where proposed development would prejudice renewable or low carbon energy supply, consideration should be given as to how the proposed development could be amended to make it acceptable. Where this is not achievable planning permission should be refused."

296. It is therefore necessary to consider whether the grant of consent for proposal X might prejudice Y – an existing source of renewable energy, or Z – a proposed source of renewable energy. Because the Appellant has conspicuously failed to address this important question anywhere in its evidence, the Secretary of State must do his best to form a judgment about it on the basis of the material before the Inquiry.

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[337] CD2/2
[338] APP/C/47 and CEC 142
[339] CD2/12

297. The Appellant might say that the appeal proposals are for a source of renewable energy so it does not matter if they prejudice another source, but not all installations are the same. The appeal site is remote from the main sources of supply of waste, is accessed by road only, and is only half the size of Ince, Ineos and Brunner Mond. Mr Aumonier emphasised to the Ince Inquiry that the substantial benefits gained from larger-scaled plant are lost if the same amount of waste is managed by five smaller plant. In such a case, he said, the management of waste would deliver a net environmental burden, rather than a benefit.[340]

298. It follows that the environmental benefit of treating waste increases with the size of the facility, its proximity to major sources of waste and the mode of transportation. The appeal proposal is a diminutive, remote, road based facility and all the other waste management facilities the subject of evidence are superior to the appeal proposals on every index of measurement. If, and to the extent that, the appeal proposals will or may prejudice the operation of any of those other facilities, then they are in serious conflict with PPS1 CC paragraphs 43 and 44 and the Consultation Draft.

299. The appeal proposals will also prejudice the operation of the existing or planned facilities. Waste is a finite resource. The appeal site and the other facilities are all chasing the same C&I arisings in Cheshire and elsewhere in the North West. A tonne captured by the appeal site is a tonne lost to Ince, Ineos, Brunner Mond, Bedminster or Viridor. The 344,000 tpa capacity of the appeal proposals lost to those existing or planned sources of waste treatment will undoubtedly prejudice the renewable energy supply which can thereby arise. Mr Wright was very clear that the Appellant has no doubt about its ability to compete in an open market for waste.[341] Policy LCF 15.2 requires that consideration should be given as to how a proposed development could be amended to make it acceptable. In operating as a merchant facility the appeal proposals are the cause of the prejudice. They cannot be modified to avoid this impact and national policy requires that planning permission be refused.

Proposition 5: The Effect on European Protected Species

The Legal Context

300. The primary source of law is Council Directive 92/43/EEC on the conservation of natural habitats and wild fauna and flora ("The Habitats Directive")[342]. These are then transposed into domestic law by the Conservation of Habitats and Species Regulations 2010 ("The Habitat Regulations"). It is clear by reference to its recitals that the Directive attaches the highest importance to the avoidance wherever possible of any harm to the habitat of an EPS. This strict protection is expressed in Article 12:

> "1. Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) in their natural range, prohibiting:

[340] CEC 11/2, pp 9.14 & 9.15
[341] APP/1 pp 3.3.6 p23
[342] CD2/24

a) all forms of deliberate capture or killing of specimens of these species in the wild;

b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;

c) deliberate destruction or taking of eggs from the wild;

d) deterioration or destruction of breeding sites or resting places."

301. Article 16 provides limited circumstances in which a derogation from this strict regime of protection is permissible:

"1. Provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, Member States may derogate from the provision of Articles 12, 13, 14 and 15(a) and (b);…

(c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment;"

302. The derogation refers to "no satisfactory alternative" and does not confine that to the identification of an alternative location. The "do nothing" scenario must be considered and that is confirmed by Regulation 62. Hence if the Secretary of State concludes that Cheshire's C&I may be satisfactorily dealt with at other installations then rejecting these proposals is a satisfactory alternative. This imposes an evidential burden on the Appellant to prove that Cheshire's C&I cannot be satisfactorily treated by any means other than thermal treatment at the appeal site. The Appellant has not appreciated this and has therefore not addressed the Habitats question in this way. In any event, it is clear that there are a number of other sites which can meet Cheshire's needs for C&I thermal treatment so the derogation under Article 16 is not engaged.

303. The Appellant has suggested that *Morge* absolves the Secretary of State from his duty to consider the derogation provisions when deciding whether to grant permission for these proposals.[343] This is not the effect of *Morge* which addresses Regulation 3(4) of the 1994 Habitat Regulations and therefore does not address the 2010 Habitat Regulations which are relevant here. Further, *Morge* affirms the principle that a planning decision maker must have regard to his obligations under the Directive. It goes on to say that the discharge of that duty might vary from case to case depending on the facts, that the role of Natural England as the primary enforcing authority must be recognised and that in some cases this might dilute the responsibility of the planning decision maker where an offence under Article 12 may have been committed.

304. None of that is to the point. What matters here is Article 16 and whether the Appellant has satisfied the Secretary of State that the circumstances permitting a derogation have been made out in this case. *Morge* does not release the Appellant from its duty to satisfy the Secretary of State that in this case there are no alternative solutions. This is especially so since Miss Spedding agreed that in

[343] R (oao Morge) v. Hampshire County Council [2011] 1 WLR 268

deciding whether to grant a licence Natural England would assume that the derogation tests had been fully considered at the Inquiry.

Alternative Solution: The Evidence

305. The Appellant has not considered the "do nothing" scenario in its evidence before the Inquiry. The appeal proposals are predicated on a need for further thermal treatment facilities to deal with the C&I waste arisings in Cheshire and beyond. As submitted above, there is a fixed and diminishing supply of waste by contrast to the massive capacity for handling it which is already built, consented or planned. The aggregate of these facilities is sufficient to accommodate all of the need upon which this appeal is predicated. The "do nothing" scenario will not leave Cheshire's C&I waste untreated or landfilled. Rather, it will allow it to go instead to more environmentally beneficial thermal treatment installations in or just outside Cheshire. The Appellants have failed to consider "do nothing" as an alternative solution and they cannot therefore benefit from the Article 16 derogation.

306. The "do nothing" scenario is recognised as a relevant and important consideration by the Appellant because it is discussed in the CES.[344] However, this is based on the premise that no further waste management solution will come forward, yet there are a plethora of other waste management solutions which have now come forward. That chapter of the CES also purports to discuss alternative sites but limits its consideration to only three; WM5, WM4 Brooks Lane and Plot 63. The evidence indicates that there are a large number of other sites which could and should have been considered here so that the CES provides a thoroughly inadequate consideration of alternative solutions.

307. Similarly, Mr Halman's assessment of alternative sites in Appendix 10 to his evidence fails because:

a) whereas PPS22 Companion Guide refers to the typical characteristics of combustion plants as being of 2-3Ha, Mr Halman limited his consideration to sites of 5ha or greater.[345] His exercise was artificially constrained from the outset and is of little value for that reason alone;

b) the exercise is limited to sites identified in the CRWLP and is artificially constrained for that reason as well. He has, for example, wrongly excluded any consideration of the alternative waste management facilities considered at the Inquiry. The whole exercise may be rejected as having little weight for that reason also;

c) he rejects the Brunner Mond site as unavailable to Covanta because it is in the control of a rival operator and therefore concludes this site is unsuitable and unavailable. This misunderstands the derogation in Article 16. An alternative solution is one which meets the public need upon which the derogation is predicated. Mr Halman wrongly approached the matter on the basis that he may reject an alternative if it does not meet the private interests of his clients.

[344] CD6/14c Vol 2 Main Report, pp5.2.16, p.49
[345] APP 7/8, pp 2.2, p88

308. It follows from this that the Appellant has failed to establish an evidential basis which would allow the Secretary of State to conclude that there are no alternative solutions to the harmful intrusion into the habitat of the EPS. In view of this, Article 12 of the Directive operates so as to restrict the grant of consent for these proposals. Nothing in *Morge* allows the Secretary of State to disregard his obligation to apply the prohibition in the Habitats Directive in the circumstances of this case.

Proposition 6: Effect on the Landscape

309. This submission is concerned with visual impacts as distinct from landscape character change. As such the Inspector has before him a wealth of material (all of which is undisputed) describing the location, appearance, dimensions and profile of the appeal proposals. There is controversy as to the number of locations within and around Middlewich from which the appeal building will be seen, the nature and severity of its visual impact and the overall acceptability of erecting a building of this size and scale in this location. The Inspector will not be assisted by a lengthy discourse about these issues. A better approach is to allow the Inspector to form his own judgment on the basis of the agreed material and thereafter advise the Secretary of State.

The Severnside Appeal Decision

310. This decision sets into relief many of the fundamental issues which separate the principal parties. The presentation of the Council's case at that Inquiry was thoroughly unsatisfactory and inadequate, and this has led to a decision which is unlawful because the Secretary of State has disregarded or misunderstood his own published policy. It is clear from the Inspector's Report that the main considerations overlap with some of the discussion at this Inquiry.[346] It is also clear that permission has been granted for three facilities to treat residual waste within the administrative area of concern, but none of them is yet operational.[347] However, despite the agreed definition of the third main consideration and the existence of three live planning permissions to treat residual waste, PPS1 CC and its successor receive only passing mention in the report of the Council's case.[348]

311. There appears to have been no attempt by the Council to explain the critical importance of paragraphs 43 and 44 of PPS1 CC or the repetition of that advice in the March 2010 Consultation Draft. In particular there appears to have been no attempt to explain to the Inspector or Secretary of State that the published policy eschews any distinction between proposals on the grounds that one is existing and another merely proposed. That is a distinction entirely of the Appellant's own making because it is a convenient way of persuading a decision maker to disregard the relevance and importance of existing planning permissions which have not yet been implemented. It is a wrong headed and misconceived approach to understanding policy at the highest level. It appears to have worked for the Appellants at Severnside even to the point of attracting an award of costs in their favour. It is noted that the period to issue a challenge to the Secretary of State's decision has not yet expired.

[346] IR5
[347] IR20
[348] IR170

312. Mr Aumonier invites a similar approach at this Inquiry.[349] Such an approach would involve on the part of the Secretary of State an unlawful failure to understand or apply his own policy. In any event, the factual context is fundamentally different. The Severnside decision was based on the undisputed factual proposition that there is no operational capacity in the sub-region, whereas here Ineos and Ince alone account for 1.4 million tonnes of existing operational capacity. When Covanta's application to increase Ince to 850,000tpa is granted that figure will rise. Mr Aumonier quotes the Inspector's costs report that waste policy does not place a rigid cap on waste management capacity.[350] That report carries forward the same misconceived understanding of PPS10 Companion Guide that one reads in the Secretary of State's decision at Ineos.

Planning Policy Issues

313. *Cala Homes (South) Ltd v. SSCLG [2011] EWHC 97(Admin)* provides the definitive status of the RSS pending abolition; it remains a material consideration which must be taken into account. The weight to be attached to it is a matter for the decision maker.

314. The CRWLP is a consideration of the highest importance in the determination of this appeal because it constitutes the most important aspect of the development plan and is the document of primary resort when applying S38(6) P&CP Act 2004. The Appellant is fully aware that its proposals conflict with a whole raft of relevant and up to date policies in the CRWLP. The Appellant's answer to this is to question the relevance of the plan itself. The CRWLP was adopted in 2007 and cannot therefore be considered old.[351] Further, the policies of the CRWLP were saved by the Secretary of State in March 2010 and, as PPS12 paragraph 7 points out, the criteria for saving policy is, amongst other things, whether the plan is in conformity with RSS and national policy. The plan is therefore up to date and reflects national and regional priorities for the scale and distribution of thermal treatment facilities.

315. In 2011 the CRWLP was subjected to further scrutiny as to whether the Plan conforms to the requirements of the Waste Framework Directive. This produced an e-mail of February 2011 which said:

> "It is our opinion and that of GONW that the plan is compliant with the Directive".[352]

This was then followed by a detailed thirteen page note which considered the plan against the requirements of the Directive. Though the Appellant submitted a note suggesting the CRWLP was in conflict with the Directive, at no stage did it seek to challenge in the High Court the view of both Cheshire authorities and GONW that the plan was in conformity. In view of this, great weight should be given to the views of the public authorities who, unlike the Appellant, are able to address this matter without any partisan motivation.

316. The first reason for refusal (RFR) engages Policy 5 and is subsumed within the discussion of alternatives in Proposition 5 above. The CRWLP proceeds by a

[349] App/6/f, pp13 and following
[350] Ibid, pp14
[351] CEC 5 Rebuttal to GH, pp19-22, p6
[352] CEC 4

structured approach in which first priority is given to sites which are allocated in the development plan. This is important because those sites will have been advertised, consulted upon and brought forward through the forward planning process. They are clearly preferable to ad hoc sites upon which the public have had no say. The BM application for 600,000 tpa of, amongst other things, C&I, is on a preferred site. This proposal therefore fails the essential requirement of Policy 5(1) and as such is in conflict with a material provision in an up to date development plan.

317. RFR 2 engages Policy 3 of the CRWLP and has been dealt with under Propositions 2 and 3. The Appellant has conspicuously failed the test in Policy 3 in that it has not demonstrated that existing capacity is inadequate to meet the needs of the waste management strategy. Permission here would lead to the harmful consequences of over supply explained in the supporting text:

> "An over supply of thermal treatment capacity may act as a disincentive to recycling and other forms of more sustainable waste management. A local surplus of capacity, which exceeds that required to meet local needs also has the potential to generate unsustainable movement of waste…"

The grant of consent for the appeal proposals would generate these and other highly undesirable consequences of over supplying capacity. The appeal proposals are in serious conflict with this important policy requirement, and RFR2 is made out.

318. RFR 3 engages Policy 1 of the CRWLP and is considered under Propositions 1 to 3. The appeal proposals' conflict with Policy 1 and RFR 3 is made out.

319. RFR4 engages Policies 2, 14 and 36 of the CRWLP and is also considered in the discussion of Propositions 2 to 6 above. On an overall balancing exercise the benefits are minimal or non-existent and have been overplayed by the Appellant. Mr Stoneman conceded that it was not necessary to complete the bypass in order to obtain access to the appeal site. The financial contribution offered for this purpose is therefore legally immaterial as it fails the test of necessity in CIL Regulation 122. Further, Mr Shenfield agreed that he had not carried out any comparative assessment of the economic and employment benefits of helping to develop Ince or Ineos with their proximity to some of the most deprived wards in the UK. Neither did he consider the economic disbenefits to those areas of diverting investment and employment away from them and into affluent Cheshire. The appeal site is a greenfield resource allocated for business uses which will come forward even if these proposals are rejected. It follows that the benefits of the appeal proposals are illusory, marginal or non-existent.

320. In contrast to that, the harm is very significant. Permission here would conflict with the waste management strategy in the RSS and CRWLP, lead to an over supply of thermal treatment facilities, with the undesirable consequences of diverting waste from recycling and other options higher up the hierarchy, and/or would lead to the unsustainable movement of waste by road. Furthermore, permission would prejudice other existing and planned sources of renewable energy and would thereby conflict with important national policy objectives. RFR 4 is made out.

321. Overall, the proposals are in serious conflict with the development plan and ought to be rejected.

The Case for CHAIN (Cheshire Against Incinerators)

The Need for a Waste Incinerator, the Proximity Principle and the CRWLP.

322. Nationally, an assessment of the number of waste treatment schemes in the UK shows that the country is close to waste treatment overcapacity.[353] The number of waste incinerators/waste treatment plants already sanctioned and planned for Cheshire is excessive and demonstrates the lack of need for a further incinerator in Middlewich. DEFRA's recent refusal of PFI funding for the Northwich MBT facility indicates that Cheshire, not just the UK, has enough waste treatment facilities.[354] The Appellant's claims of insufficient capacity are based on a refusal to accept that waste will decline in the medium to long term and a belief that permissions in themselves are meaningless as are the constant changes to those permissions, once they are in place.[355] However, the evidence of Mr Aumonier, the Appellant's expert witness on this topic, has had to be corrected and is still open to question in several respects.[356]

323. The Appellant has failed to appreciate that Government policy appears to be changing. The July 2011 Waste Policy Review accepts not only that waste has been declining over many years, but also predicts this will continue. It also says that the aim is to get the most energy out of truly residual waste, not to get the most waste into energy recovery.[357] This negates the Appellant's constantly repeated view that there is no cap on energy generation from waste processing. Similarly, the Draft NPPF of July 2011 also contains new directions of thought and is intended to provide a framework within which local people and their accountable councils can produce their own plans reflecting the needs and priorities of their communities. The CRWLP is exactly that; it is adopted, not out of date and a clear reflection of the needs of the people of Cheshire. Following the Local Plan Inquiry the Inspector concluded that only six sites in Cheshire were suitable for thermal treatment. The proposed site at Midpoint 18 is not one of the identified preferred sites.[358]

324. The National Policy Statements, also issued in July 2011, continue the theme of changing thinking. Though EN-1 and EN-3 are specifically concerned with major projects, they are material to this somewhat smaller proposal. Paragraph 4.2.5 of EN-1, the overarching policy guidance, advises that cumulative effects should be considered, especially where, as here, there are competing facilities. Paragraph 4.4.2 of the same document is clear that where EPS are affected, alternatives need to be considered; this must include alternative sites, technologies and the 'do nothing' option.

325. The proximity principle highlights the undesirability of importing waste from outside the area identified. The Appellant's original statement that this plant would process Cheshire waste is no longer sound. In fact, it has stated that most

[353] CH1/1, p1 & 2
[354] CH1/2, p1 pp1 & 4, APP/6/d, pp35-38
[355] CH1/47
[356] CH1/46 & 48 & APP/0/45 & 53
[357] APP/6/e Tab D pp22
[358] CD3/2, p.10,15,88,89

of the waste to be dealt with at Middlewich will be imported into Cheshire, which clearly demonstrates that the choice of site is not consistent with the proximity principle.

326. Incineration itself produces waste material in the form of toxic fly ash, that will have to be disposed of to a special landfill site, and incinerator bottom ash which is the bulk of this waste. The appeal proposals contain an IBA processing plant to be operated by an independent company. The site visit to their Sheffield plant appeared to show a very clean and well-run operation, but this was on a dry day with little wind. The visit did not allay concerns that fly dust could arise from stockpiles of material and should this occur at the appeal site it could have serious consequences for protected species on Appeal Site B. Furthermore, the unilateral undertaking only requires the Appellant to use 'reasonable endeavours' to secure the processing of IBA on site. Despite Mr Wright's assurances that he was 98% certain that all the IBA produced would be processed and reused, this undertaking is likely to be insufficient to prevent that material going to landfill should market demand for the processed product fall away.

Effects on Health from Emissions from the Incinerator and Resulting Traffic.

327. Any new industrial facility, such as a waste incinerator, should not have a negative effect on living conditions in the surrounding area, with particular reference to air quality. There are two main concerns regarding air quality factors which could affect living conditions in the surrounding area. On the one hand there are the fumes emitted from the many HGVs generated by the plant operation, and on the other hand there is the mix of poisonous gases emitted from the exhaust stack of the incinerator. Though these are in small amounts when the plant conditions are carefully controlled, nevertheless they are always present as emissions. It should also be borne in mind that vast quantities of carbon dioxide are produced in the waste incinerator process, yet no means of carbon sequestration/capture are included with this proposal.[359]

328. It is proven that waste incinerators do emit toxic substances via the exhaust stack and that it is impossible to remove all pollutants in the gas scrubbing equipment. [360] The only reason the appeal proposal requires an 80 metre high exhaust stack is in order to disperse the various pollutants in as wide an area as possible. Irrespective of all the computer dispersion studies that have been carried out, real life examples indicate that some of the toxic substances can get into the surrounding atmosphere and soil ingestion of these chemicals could take place. It is in this context that local residents are fearful about harm to their health and, more importantly, their children's health. There is thus a genuine and deep-seated fear about the health implications of the proposed incinerator.

329. There may be differences between the results of studies into emissions from 'old style' incinerators compared to those from 'new style' plant, but this is due largely to tighter emissions standards today, because the basic technology has remained much the same. However, insufficient time has elapsed for meaningful health results to be apparent for emissions from 'new style' incinerators. The time taken before asbestos, thalidomide and many carcinogenic chemicals were acknowledged to cause harm is evidence of this.

[359] CH1/8 & CH1/9
[360] CH1/4 & CH1/5

330. As well as the large quantities of CO_2 produced in the actual incineration process, Heavy Goods Vehicles serving the plant will also emit toxic gases (mainly CO_2 and sulphur products) and these HGV fumes are likely to have an effect on the local populace. It has been recognised by the Central and East Cheshire PCT that the possible adverse effects on health of the cumulative traffic from other developments need further consideration.[361]

331. Unfortunately, the Appellant appears not to take seriously these fears or the adverse health statements on which they are based, even when the latter are underpinned by internationally recognised authorities. However, there are too many such adverse commentaries on the health of people living around incinerators for these study results to be ignored. Given the lack of information on the health effects on populations of nano-particles in emissions and of clusters of incinerators, the Appellant's view that it could not recommend studies into the effects of modern, well-managed, MSW incinerators is reprehensible. As Dr Tuckett-Jones conceded, though European legislation controls particulates of $PM^{2.5}$ size and above, the minimum size measured and regulated in the UK is PM^{10}. There is increasing evidence of small particulates causing respiratory and cardiovascular disease, although incinerator emissions may be only one source of such particles.

332. Regarding the health effects of incinerator clusters, it must be recognised that a cluster will exist in Cheshire should planning permission be granted here. The views of Dr Tuckett-Jones and the local PCT, that permission here would have an insignificant cumulative impact on emissions in the area, should be contrasted with those of Health Protection Scotland, the Scottish Environment Protection Agency and NHS Scotland. One important conclusion of their recent report on this matter was that planning controls should prevent new incinerators being sited within the locality of existing facilities.[362] In any event, the PCT has said that the possible health effects of the cumulative traffic from other developments need further consideration.[363] A similar view was expressed by the PCT in relation to the Brunner Mond proposals, but no further work appears to have been carried out.

333. In terms of the effects both of incinerator clusters and of nano-particles on health, a precautionary approach should be adopted until appropriate studies have been carried out, and meanwhile alternative ways of dealing with waste should be sought.

Covanta's Poor Safety Record in Operating Incinerators

334. Although the operator's safety record may not in itself be a planning matter, what this leads to in terms of excess emissions releases and their effects on local populations is a material consideration. Mr Wright did not dispute that some Covanta plants in the USA had emitted toxic gases over the years. The fact is that Covanta has a questionable record of operating waste incinerators in the light of many reports from the USA recording a history of health and safety violations. Though Mr Wright and Dr Tuckett-Jones claimed these were rare and had now ceased, as recently as August 2010 Covanta was sued by the State

[361] CH1/8 Summary Points
[362] CD4/29
[363] CH1/8

Attorney General in Connecticut for excessive emissions of toxic dioxin from an incinerator in Wallingford, Connecticut, and in July 2011 they were fined $400,000 for this release.[364]

335. Mr Wright claimed that no comparison could be made with the appeal proposals because they would use a different, tried and tested technology to that employed in the US case. However, people's health concerns relate to the common operator of these plants, Covanta, and the effectiveness of its management controls, not to its technology. No amount of computer modelling can accurately predict the effect of plant emissions in normal operation. But under faulty conditions in the incinerator process or gas scrubbing operation, totally unacceptable emissions can and do take place from time to time, irrespective of stringent mandatory legislation.

336. There is a genuine and deep-seated fear about the health implications from local residents on this proposed plant. The lack of confidence in Covanta's safety record and predictions arises from confirmed reports of incidents in the USA where they have operated for many years. No information on Covanta's performance in the UK is available because they do not, as yet, operate waste incinerators in the UK.[365] The expressed fears of local people are not irrational but are soundly based and merit substantial weight.

Public Opinion and Government Policy on Localism

337. The Localism Bill, currently passing through Parliament, will give Councils more power over planning. 'Localism in Action' of November 2010 refers to an appeal decision where there was an unprecedented level of public support for a particular proposal on socio-economic grounds. The Inspector considered that: "Localism is an important new factor to be weighed in making planning decisions".[366]

338. EN-1, EN-3 and the Review of Waste Policy in England 2011 all appear to strengthen the Localism Bill concepts. The WPR points out that people care about waste and want to play a part in protecting the environment, and stresses that in planning, too often, decisions making a big difference to people's lives are made by those remote from the affected communities. Instead it seeks to ensure that those most affected should benefit the most, but that would not occur here if permission were to be granted.

339. There is little doubt that the majority of people from Middlewich and surrounding areas do not wish to have a waste incinerator built and operated in Middlewich. CHAIN has collected signatures from around 7000 people on a petition objecting to this proposal, which represents around 60% of the voting population of Middlewich. In addition, there are over 3000 letters objecting to the appeal proposals. People's elected representatives, including the current local MP, Fiona Bruce, are against it, as are Middlewich Town Council, Holmes Chapel Town Council, Sandbach Town Council, several parish councils and Cheshire East Council. The importance of public opinion in a scheme of this nature should not be underestimated.

[364] CH1/14 & CH1/50
[365] CH1/10, 11, 12 & 13
[366] CH1/18

340. The Appellant claims that one of the greatest benefits arising from permission for the appeal proposals would be the proposed Middlewich Eastern Bypass. CHAIN has never expressed a view on this project, notwithstanding Mr Morrison's claim that it was in favour. Its view is that the Bypass should not be considered within Appeal A because, should all the funding for the Bypass not be raised, as may happen in the present difficult financial climate, the incinerator could be built and operate for several years without completion of the Bypass. In that situation the town would be subject to all the disbenefits of the incinerator offset by only a few, limited, benefits. Though no survey has been conducted on this point, the groundswell of local opinion is believed to be that the town would rather have no Bypass than an incinerator with the Bypass.

341. Government has said that it is local authorities, rather than the Government, who have the responsibility for deciding how waste is managed in their respective areas. In the light of this statement, the fact that the majority of the local populace do not want this plant should mean that this proposal should not receive permission.[367] Despite the promises of cheap electricity, a minor contribution to the Bypass and other community 'goodies', local people are not convinced this proposal would be good for Middlewich. Substantial weight should be given to this view if the Localism agenda is to have any meaning.

Landscape and Visual Assessment

342. This waste incinerator plant would have a major adverse visual impact viewed from Middlewich and the surrounding area. Policy GR5 of the CBLP says that development will be permitted only where it respects or enhances the landscape character of the area.[368] But the CES concludes that: "The development would be a prominent feature in the surrounding landscape due to the large scale of the buildings in comparison to the adjacent industrial buildings. This would result in a permanent impact of Slight significance on landscape character areas Principal Settlement of Middlewich and Middlewich Open Plain. This would be Adverse locally but Neutral overall. Effects on all other character areas would be of Negligible significance."[369]

343. No mention is made in this conclusion of the exhaust stack, which in height would be approaching half that of Blackpool Tower or twice that of Nelson's Column, London. Whilst a subjective assessment, many of the photomontages presented by Covanta's consultants do not truly illustrate the scale of this development. Bearing in mind that the nearest housing is some 80 metres from the proposed development, the development itself is close to Middlewich Town Centre and it is a rural area, it is difficult to reconcile the statements made above that effects are Slight, Neutral and Negligible. Photomontages are in any case somewhat inaccurate and can only be a second best expression of reality. The locations of these photomontages appear to have been carefully chosen as they do not show the development at its worst.

344. The Landscape Character Assessment Guidance for England and Scotland contains several good practical pointers, including that it is particularly important to find ways of involving stakeholders in landscape matters if the judgements are

[367] CH1/16 & 17
[368] CD3/5
[369] CD6/12, p221, pp11.7.3

to command respect.[370] One of the most important stakeholders in this case is the people of Middlewich and its surroundings, yet the Appellant has not involved them to any significant degree. The LCAG also says that the aim of design guidance should be to ensure that essential change is sympathetic to the character of the landscape and where possible, enhances it.[371]

345. Mr Gomulski in his consultation response presented a very fair case regarding visual impact assessment which CHAIN fully supports.[372] The adverse visual impact of the proposed development far outweighs any potential benefits that this proposal could generate. One of the main issues in the Sinfin, Derby, incinerator decision was the visual effect of the proposed buildings on the character and appearance of the surrounding area.[373] In the present appeal the proposals would certainly not enhance the landscape, but instead would have a detrimental effect on the surroundings. The views from Middlewich and many miles around, with their rural outlook would be seriously and negatively affected.

Flooding and Land Stability

346. There is considerable evidence, from local knowledge and as demonstrated by numerous photographs, that the area on which the waste incinerator would be built has suffered from extensive flooding over the years.[374] There is no evidence within the consultant's surveys that local knowledge has been sought, either as regards the area's history of flooding or of subsidence caused by a long history of brine extraction. This is cause for concern because the knock-on effects of building such a plant, under flood or subsidence conditions, would give rise to serious problems to the surrounding road and field topography. The area is on a fault line caused by many years of brine extraction and extensive land subsidence is evident in much of the surroundings.[375] This site is geophysically not suitable for a major building project of this size and nature.[376]

Socio-economic Effects of the Development

347. The Appellant's view that Middlewich is an industrialised town is a reflection of its lack of knowledge of this part of Cheshire.[377] Middlewich has many more social/leisure events than most towns of its size, such as the various festivals which take place throughout the year, and the presence of the canal, all of which have given rise to a strong local tourist industry.[378] It is attractive to visitors/tourists for many reasons and this far outweighs its image as an industrial area. In this context, if tourist/visitor numbers decline, this would result in losses for local businesses in the area, most certainly in the boating and hospitality industries, the net result being a reduction in the quality of life for local residents.

[370] CD4/8, p58
[371] Ibid p69, pp8.24
[372] CH1/19
[373] CH1/3, pp13
[374] CH1/21
[375] CH1/22 & 23
[376] CH1/20, 21, 22 & 23
[377] CD6/12, p94, pp7.8
[378] CH1/32

348. 60% of the population of Middlewich live within one mile of the site of the proposed waste incinerator. In addition, all of the main shopping areas, GP and other health facilities, the majority of churches and schools are all located within a similar distance. The Appellant could not identify any other town of comparable size with similar characteristics. The incinerator plant, and particularly, the chimney stack, would be visible from most parts of the town. There would be a high volume of waste and ash-carrying HGVs on the local road network and the sight and sound of the incinerator plant in constant operation throughout year. It is therefore beyond argument that a waste incinerator embedded in the town would have a major and a destructive impact on the lives of local people.

349. No issue is made of the inevitable negative impact on the value of residential property an incinerator would have on the town because there are so many other strong grounds on which it can be opposed. However, this is a factor in the minds of many people and adds to the overall level of stress being experienced. Indeed, local solicitors and estate agents are already reporting potential purchasers backing out when they learn about the prospect of an incinerator.[379]

350. Middlewich can be characterised as a small market town with employment centred around the retail and distribution industries, commercial and public services and, very importantly, a growing tourism sector based on boating on the canal. The local population includes a significant number of residents where the main wage earner commutes to one of the nearby large urban centres, such as Liverpool or Manchester, and the family has made the lifestyle decision to commute to work in order to gain the benefits of living in a smaller community.

351. The delicate socio-economic balance that has been achieved in the town of Middlewich would be totally undermined by the introduction of a large waste incineration plant. This would have damaging consequences for most of the population in terms of quality of life, stress levels experienced, economic prospects and the attractiveness of the locality to people from other areas as a place to live. Natural justice demands that the people of Middlewich, and, indeed, of Cheshire, who did not contribute in any way to the generation of the waste in the first place, should not be forced into accepting this damage to their way of life.

352. The employment situation in Middlewich has deteriorated significantly since the announcement of the incinerator planning application. Most significantly, Tesco has announced the closure of its distribution centre in Midpoint 18 with the loss of 600 jobs. Nor has there been any evidence of major employers moving, or intending to move, into the town over the same period. With the pending reorganisation of the NHS, another worry is the future of the admin HQ of the Central and Eastern Cheshire Primary Care Trust (CECPCT) on Midpoint 18. This could put approximately 300 jobs at risk. The presence of a large waste incinerator, serviced by hundreds of HGVs every day, would deter employers, particularly from labour intensive industries, from locating to the vicinity.

353. The Appellant appears to have changed its evidence on the aspect of future business and job creation since the original Environmental Statement. These changes are not explained or highlighted in the new version which adds to confusion in the minds of the public. The report in the original ES, prepared by

[379] CH1/39

Pieda Consulting, said 'The key finding was that food processing and food manufacturing were considered sensitive industries which would avoid sites in proximity to an incinerator….' It added: 'Other studies have highlighted the service industry as a sensitive industry which is image conscious and thus may also avoid locations linked to a waste facility'.[380] This was reinforced in a report published by the Centre for Economics and Business Ltd in 2003 about Newhaven which concluded '…, the impact of an EfW incinerator on Newhaven would be detrimental to the development plans and attempts to regenerate Newhaven'.[381]

354. It is reasonable to assume that most of the future jobs prospects will be in sectors such as food manufacture and distribution, grocery and other consumer orientated distribution, government and commercial services, and tourism. These are precisely the areas which research shows are mostly affected by the presence of a large waste incinerator. One of the main considerations investigated during the Derby Incinerator Inquiry was the effect of the proposed WTF on living conditions in the surrounding area.[382] In the present appeal proposals, both construction and the subsequent operation of this incinerator would cause undue stress to the inhabitants of Middlewich. This effect is demonstrated clearly by the number of residents who have adversely commented on these proposals in writing.

355. The Appellant's claims of a spin-off benefit of job creation are grossly exaggerated. First, it is axiomatic that waste recycling creates and maintains more jobs than incineration. The Appellant's stated intention to source C&I waste across Cheshire would put in jeopardy existing jobs in that field across the County.[383] Secondly, the comparative job density of the appeal proposals compared to the industrial use across Midpoint 18 is about 37 to 1 against the former.[384] So, although the site's advantages, such as easy motorway access and its geographical location in the region, are acknowledged, the incinerator would result in a net loss of potential jobs compared to the situation where it is used for industrial purposes. Nor is the link between the incinerator and the claimed future 3,000 jobs locally made out. Mr Shenfield agreed that it would be at least a decade before this number would be achieved, a period so far forward that, by then, many other factors could easily be equally responsible for that number of jobs.

356. The Appellant also failed to make a convincing case that the only way of obtaining the money for the Bypass is by granting permission for the appeal proposals. That claim was always a distraction from the real issues of the merits of the incinerator itself. The Appellant has also failed to convince any group of stakeholders that an incinerator on this site would be in their best interests. The letters from the landowners, Messrs Pochin, and the company to be supplied with CHP, British Salt, are both from businesses with a close vested interest in a positive outcome for these proposals and should be given little weight. The Appellant's socio-economic case is therefore not credible.

[380] CD6/5 pp7.5.21
[381] CH1/24
[382] CH1/3
[383] CH1/41
[384] CH1/38

Traffic and Transport

357. The current flow of traffic through Middlewich and surrounding areas is heavy and, at peak times and/or in traffic breakdown conditions, at a complete standstill. Middlewich residents are well aware of the present state of affairs regarding traffic flow, but what is not clear is the effect of future planned developments on the currently unsatisfactory situation. A large proportion of future planned traffic does not appear to have been considered by the Appellant, and this would exacerbate the already unacceptable state of affairs for the residents of Middlewich.

358. The Appellant's consultants appear to be of the opinion that all the current ills will become manageable by tinkering with traffic lights, and virtually ignoring both existing real traffic peak flows and future planned traffic increases. This would neither deal with the current situation nor the future increase in traffic, especially of HGVs. The CES Traffic and Transport section says the incinerator operations are to commence in 2012, the assessment years used within the TA are appropriate, and the December 2007 surveys are robust.[385] These statements do not reflect a true and accurate assessment of traffic in today's environment.[386]

359. The CES acknowledges that sections of the A54 at AM peak are significantly over capacity, and at the AM peak the A54 eastern approach is at 147% of capacity.[387] It also refers to traffic passing through Middlewich on the way to or from the M6.[388] This can lead to severe congestion of extreme duration when the Motorway is affected by closure. In terms of safety there are now higher than average accidents on the A533 Sandbach Road and the A530 has an accident rate double the national average.[389]

360. In relation to future traffic, it is not accepted that increased levels generated during construction of the proposed development are insufficient to have a perceivable increase on this impact.[390] The Appellant refers to trips from Ellesmere Port and states that restrictions will be placed to prevent HGVs from there from entering Middlewich from the A54 west, to prevent them from travelling through the town.[391] But no explanation is offered as to how these restrictions are to be implemented or maintained, or what effect they will have on the rest of the A54 western approach. Similarly, in terms of HGVs going south on the A530, Crewe Road, no reference is made to the pinch point at the aqueduct, with its height restriction and traffic lights, situated less than a half mile from the junction of the A533 and A54 referred to above.[392] The failure of the surveys to take into account that HGVs either cannot use this road or will choose to avoid it, due to the restricted height and signal delays, casts doubt on the predictions.

[385] CD6/12, p100, pp8.2.10 & 11 and p102, pp8.4.6
[386] CH1/25
[387] CD6/12, p103, pp8.4.14 & 15
[388] Ibid p107, pp8.4.28
[389] Ibid p107, pp8.4.29 & 30 and p112, pp8.6.29 and CH1/26
[390] Ibid p112, pp8.6.28
[391] Ibid p115, pp8.7.13
[392] Ibid p119, pp8.7.24 & 25 and CH1/26

361. The projected traffic levels generated by the development during the construction phase of 526 vehicles per day, and during the operational phase of 364 vehicles per day, take no account of any new developments since the report was compiled.[393] Though the report recognises the severe congestion at the junction of the A54 and the A533, and recommends that the lights at the junction should be re-set, thereby allocating more green time to the A54, this is neither acceptable nor viable.[394] The CES shows that one effect of the changes to these lights will be to increase queuing on the A533 northbound at this junction from the present 20pcus to between 82 and 96pcus. This is likely to result in 'rat-running' through residential streets and past schools at peak hours, as commuters seek to avoid this additional congestion, with serious risks to children, the elderly and the infirm.

362. Road safety is already a serious concern on the A54 between the Pochin Way roundabout and the traffic lights at its junction with the A533. This section has an accident rate significantly higher than the national average; the A533 to the south of that junction has an accident rate no less than twice the national average.[395] The predictions show that traffic flows would increase substantially on both these roads, and in turn accident rates, already unacceptably high, would also be bound to increase.

363. There are numerous sanctioned projects which will create additional traffic (especially HGVs), but which have not been considered in the CES. The following are some of the known projects that will certainly add to a considerable degree to the heavy traffic that currently flows through Middlewich and, in particular, along the A54 to the M6 motorway. DTp figures for 2008 show a two way flow of 3000 HGVs per day for this section. The Kinderton Lodge landfill site has been granted planning permission and will add an estimated additional 344 HGV two way movements per day. The Kuehne & Nagel warehouse at Midpoint 18 in Middlewich is now operational and, though it is difficult to estimate generated traffic, this 36 dock warehouse will create substantial additional HGV movements.[396] Wincanton have also opened their logistics depot with a similar large HGV generation. All these developments, plus the predicted 292 two way daily additional HGV movements generated by the appeal proposals, would add to the intolerable load on the Pochin roundabout and the A54 to the west.

364. There are other additional factors which contribute to the heavy traffic conditions currently experienced in and around Middlewich. The cold weather conditions of November/December 2010 and early January 2011 resulted in an enormous increase in the need for salt/grit for road spreading. HGVs brought the traffic flows through Middlewich to a complete standstill because the town is on the direct route from the British Salt source to M6 Motorway Junction 18. The M6 itself is frequently affected by traffic accidents, with effects ranging from complete closure (about one per month on average) to very frequent lane closures. Because Middlewich is on the direct diversion route between Junctions 17 and 18, and between Junctions 18 and 19, this causes severe traffic

[393] Ibid p79, pp7.9.11
[394] Ibid p79, pp7.2.3 and CH1/25 & 26
[395] CD6/14c Section 8.4.30 & 8.4.37
[396] CH1/27

congestion through the town. With increasing traffic flows along the M6, the effects of these diversions are likely to increase.

365. In the light of all the above it is difficult to accept the view that traffic flow is not an insurmountable problem in Middlewich. Independent reports prepared over the last 12 months have all referred to unsatisfactory current conditions where traffic flow is concerned. The report examining the feasibility into re-opening Middlewich Rail Station draws attention to the fact that increasing road traffic congestion is prevalent and notes that "With the town centre only a couple of miles on the A54 from Junction 18 of the M6, traffic congestion is apparent throughout the day in Middlewich, even though it is a relatively small town". [397] The appeal proposals would, if approved, add to this unacceptable situation and the consequent dangers to the safety of all road users in the town and nearby.

366. Finally, many references are made to the Middlewich Eastern Bypass and all suggest that, once it is built, it would then overcome the problems relating to the recognised congestion problems of the town.[398] CHAIN is agnostic on the Bypass but would point out that its completion is likely to add to the traffic load on the roundabout at the junction at the northern end of Pochin Way. This would cause traffic to back up further and longer to the west of the roundabout, exacerbating the problems at the A54/A533 junction in the centre of town. The proposed Bypass is not within the scope of this appeal and should not be considered.

Appeal B and Nature Conservation

367. Appeal B is premature and unnecessary unless Appeal A receives planning permission. In isolation it is meaningless, but even if it is permitted it would affect a European Protected Species, the Great Crested Newt. The majority of the receptor site is less than 50 metres wide (from the GCN fence to the boundary of the Business Park) which represents a substantial reduction in area to that currently enjoyed by this species.[399] It is questionable therefore whether this species would enjoy sustainable conditions under these new arrangements. The proposals for Appeal A show a 100 metre extension to Pochin Way and line of the proposed Bypass.[400] During construction of the extension and/or the Bypass there would be considerable disruption near the receptor site from vibration, dust and emissions from construction equipment and vehicles. Following completion of the extension and/or the Bypass, vehicle exhaust emissions would increase pollution levels, which again could result in a non-sustainable situation for GCN in the receptor site.

368. The proposed ash storage and processing area would cover about one-third of the proposed EfW site and is located about 150 metres to the west of the GCN Receptor Site. The processed ash area would be a concrete pad measuring some 80m by 110m with a 3 metre high wall around part of it. Mounds of ash appear to be up to 8-10 metres high. The unprocessed ash storage building is partly open to allow ash drying. Ash will be moved around the site by motorised machinery. Around 100,000 tonnes of bottom ash will be produced per year from

[397] CH1/28 p2, ppE1; p4, pp1.7 & p32, pp7.1
[398] CD6/12 p62, pp6.3.4 & 6.3.5 and p79 Conclusions
[399] Appeal B, Application Plans, Fig 1
[400] Appeal A, Application Plan B3116, Drg PO11M

this plant. Although bottom ash is considered to be "inert", it does contain traces of heavy metals and other contaminants, the levels of which depend entirely on the type and nature of the materials being incinerated, the efficiency of the burn process and the starting up and shutting down of the incinerator process.

369. Winds in the area are predominantly from a west/south-westerly direction and will blow across the ash storage and processing areas. These winds could be channelled and accelerated due to the position of the large main incinerator building and the close proximity of the high embankment of the disused lime beds. It will be impossible to stop ash from being blown about around such a large storage and processing area. Therefore it is likely that ash and fine particles will be blown across the 150 metres of the Sanderson Brook valley and on to the GCN Receptor Site. Again, this could result in a non-sustainable situation regarding the lifecycle of the GCN species. This aspect has not been satisfactorily researched by the Appellant and its advisors and could be, in addition, a detrimental factor in the lifecycle of other protected species in the area.

370. The mitigation strategy whereby GCN would be captured and relocated to the new receptor site appears sound in principle. However, this operation is difficult and must result in a lowering of the GCN population due to the various factors involved in relocation. Natural England has said that it is unable to comment on the details of this application or the adequacy of the mitigation strategy. Estimates should be made available of the potential loss of species during relocation, because again this could seriously affect the level of the future sustainability of the GCN population in this area.

371. The surveys carried out in response to the second Regulation 19 request by the Secretary of State highlighted the presence of many more protected species and protected sites on, or in the vicinity of Midpoint 18 Phase 3. Amongst these are Lesser Silver Water Beetles, a species which is found only in four areas of England and Wales, is a 'near threatened' species, and on the Red List of endangered species. These and the locally and nationally designated sites of biological interest may all be threatened with degradation by the dust, fumes and vibration during construction of Appeal A and, should it result from that development, of the Bypass. Mitigation strategies only work to a degree, and the consequent degradation of habitats and reduction in species numbers should weigh heavily against the appeal proposals.

Conclusion

372. It is recognised that a balancing exercise of disadvantages and benefits has to be undertaken to determine the acceptability or otherwise of these proposals. In this case the people of Middlewich are clear that the disadvantages far outweigh the very few benefits that would accrue were permission to be granted. Therefore the appeals should be dismissed.

The Cases for Interested Persons

373. Fiona Bruce MP said that, since being elected to represent the people of Middlewich in Parliament, she has received more correspondence about the appeal proposals than on any other subject and not one letter has been in support. The Prime Minister had said it was right that decisions affecting local

communities should be made locally and in this case the Council had unanimously refused permission. Accordingly, their position should be upheld on appeal. This community does not want the incinerator. This is not a case of 'Nimbyism' but one of care for their community and their environment when faced with a proposal for an incinerator less than 150m from some dwellings.

374. Having lived in Warrington/Fiddlers Ferry, with a large waste site at one end of the town, the MP is aware of the poor air quality and lack of peace of mind suffered by communities with these facilities, despite national and EU environmental control standards. The Minister has acknowledged that, even in important national decisions, local views must be taken into account. No-one wants to be told what to do by Whitehall. There is no sense to these proposals which will lead to congestion, the destruction of habitats and the discouragement of recycling. The people of Middlewich unanimously do not want the incinerator and that should be the over-riding factor in this decision.

375. Cllr Keith Bagnall is Chairman of the Middlewich Town Council Planning Committee. In June 2009 he chaired the meeting, attended by over 200 people, which considered the application now the subject of Appeal A. The Committee's views were not insular but based on adopted planning policies, that planning policy should be upheld as the site was not identified for waste purposes in the CRWLP, and there was no need for the development given the permission at Ineos and the then proposal at Ince. He accepted that if the appeal proposal had been made on the identified site it would overcome the first of these reasons.

376. Cllr Les Gilbert represents Congleton Rural Ward, to the east of the M6 motorway, which has a population of about 6,000 people and whose main centre is Holmes Chapel. This lies to the east, and thus downwind, of these proposals. Since being elected three years ago, nothing he has dealt with has aroused such controversy as the appeal proposals. At one regular surgery over 60 people attended compared to the usual six or so, and all complained of the increase in HGV numbers which would be generated by this development and the consequent increase in fumes, noise, vibration and dust along the Holmes Chapel road to and from Middlewich. The situation is unacceptable now and will be far worse should permission be granted.

377. On the eastern side of Holmes Chapel, along the A54 Macclesfield Road, is a pinch point too narrow to allow two HGVs to pass, so they mount the footway. This is a heavily trafficked road and pedestrians are regularly struck by wing mirrors and have to jump out of the way of HGVs to avoid serious injury. The Traffic Impact Assessment in the CES assumes all generated traffic would turn north or south at the M6 junction.[401] This is an invalid assumption because the source of waste is unknown and some is bound to come from the east of the M6 as far as Macclesfield. No reference is made to the effects on Holmes Chapel and this is not a traffic numbers game but a quality of life issue.

378. Cllr Stuart Holland spoke for Sandbach Town Council, which represents about 1600 people, and Bradwall Parish Council, on behalf of some 150 people, to the south-east of Middlewich. They are concerned about the effects of the proposals on local people and on cattle grazing in the area. The potential effects of the proposals are reminiscent of the situation at Fukushima and the Appellant's

[401] CD6/12, p115, pp8.7.14 & 15

assurances that the techniques to be used to control pollutants do not inspire confidence. People want to hear that emissions will have no effect, but that is not what has been said. The weather will affect both emissions and pollution and, depending on weather conditions at the time, adjacent areas will experience effects. Though it is said to be unlikely and insignificant, there is a possibility of locally grown food being contaminated. That is contrary to the aims of the CBLP.

379. There is also concern over pollution from HGVs and cars associated with the development adding to existing levels. The effect of heavy rainfall on runoff from the sites has been minimised. Flooding may result and the backing up of watercourses into Bradwall and other areas. Nor is there a proven need for the facility because of the ability and willingness of people to recycle. The local plans will be compromised by the proposal as will the Regional Strategy so the appeals should be dismissed.

380. Cllr Mike Parsons, speaking for Middlewich Town Council, noted that the Secretary of State is on record as being concerned that all the latest technology and alternatives to incineration are considered to ensure the best way of achieving a green approach to waste management.[402] At Middlewich the Appellant's approach has been neither good practice nor in the public interest, but rather hostile and driven by corporate greed. Having been refused permission locally and unanimously, they are seeking to overturn this refusal on appeal; should this happen it would be a travesty and a betrayal of the idea of localism.

381. Middlewich has been demonstrating localism for the past five years by being non-partisan, engaging with its residents and implementing partnership projects. Through this approach it has gained funding and won numerous awards for helping to regenerate the town and develop a modern tourist and heritage-based future. Despite the long hard fight to achieve this, all now hangs in the balance die to the appeal proposals. Should the incinerator be approved it would sound the death knell for Middlewich. The development is unnecessary here because the town already achieves a recycling rate of more than 50% and the Kinderton Lodge Landfill Site has been permitted on its doorstep. The directors of the Appellant company have a duty to their shareholders to be responsive to the community and should abandon the project. Failing this permission should be refused.

382. Liam Byrne is a member of CHAIN. In February 2008 he had a conversation with the Managing Director of the Appellant company in which he was told that if it did not win the Cheshire PFI contract to manage the county's MSW it would build a merchant facility and take waste from wherever it was profitable to do so. Yet the company has misled people ever since by pretending it still intends to take Cheshire waste only and the company website was still saying this would be the case at March 2011. The company has also misled by describing Middlewich as heavily industrialised, perhaps hoping this would convince those who determine the appeal that an incinerator would not be out of place. It has also failed to publish an accurate picture of the scale of the proposals; nothing shows the proposals less than 150m from housing, the PCT offices opposite the end of their car park, the health facilities and schools close by, and no photomontage shows any human figure for scale.

[402] Reply to Parliamentary question from Nadine Dorries MP, 30 June 2011

383. If granted permission it is likely that the Appellant would seek to increase the capacity to 600,000tpa, because that is where the real profit lies. There is no need for another EfW plant in Cheshire and, if approved, this proposal will simply result in imports from anywhere in Britain or beyond so long as this is profitable. It would also result in a huge disfigurement of the town due to the gigantic scale of the plant. The Japanese government was naïve enough to accept the assurances of the developers that the Fukushima reactors could withstand earthquakes and flooding. Here the consequences could be no less serious in terms of emissions which develop insidiously; the difference is that at Middlewich the plant is right next to a town of several thousand people. The appeal should be dismissed if local democracy is to have any meaning.

384. Eileen Gilbert said the Managing Director of the Appellant company had laid great emphasis on the Landfill Tax to promote the appeal proposal but seemed unaware that the Kinderton Lodge Landfill Site was already approved. He also said nothing about the need to take fly ash to a special waste landfill site. The promises of cheap electricity and safeguarding jobs at British Salt are all very well but the amount of electricity to be generated is questionable and the ownership of British Salt has changed hands since the deal was made. It was emphasised that the incinerator would deal with Cheshire waste only and this would be available in abundant quantities for the lifetime of the development. It is clear that the waste will now come from beyond the county and recycling will seriously reduce residual waste available for incineration.

385. The impression was also given that waste would not come through the town from the west, but plans now show it will come that way. Similarly, the problem of the low bridge restriction on the Nantwich Road was glossed over. Health was not even discussed prior to the appeal and the Appellant relied on a claim that well-managed plants do not give rise to significant adverse health effects. But recent figures suggest this is not the case, and the onus of proof where health is concerned should be on the operator to prove its case, not on the future victims to disprove it. Nor does self-regulation inspire any confidence in the outcomes. The whole exercise in so-called consultation was skewed to give the answers required and this has been just a public relations exercise. There has been neither proper public consultation nor an active dialogue with stakeholders as the Appellant promised in June 2009. The appeals should be dismissed.

386. Dr Peter Hirst made four points in his personal capacity as a Middlewich Town Councillor. First, the life of the plant will be around 25 to 30 years but it is impossible to predict the situation by the end of that period. It is probable that by then waste will reduce and there will be many more different ways of waste treatment. Already there are better ways of dealing with waste and the incineration approach is obsolescent. Secondly, the effect on the local waste hierarchy must be considered. The Appellant will want to keep the plant working as close to capacity as possible to minimise costs and if insufficient waste is available locally will go further afield and accept transport costs. Thirdly, there are no proposals to put solar panels or wind turbines on the buildings which implies a lack of commitment to renewable energy. Lastly, there is no suggestion of using the adjacent railway, with its carbon benefits, to move waste or residue.

387. Tracy Manfredi is concerned, as are many parents and 60% of those objecting to the appeal proposals, about the health effects of incinerators. The assurances of Government, based on the advice of the HPA, do not inspire confidence and

leave people doubtful and fearful. Other specialists highlight worldwide correlations of incinerators with severe health outcomes and higher than normal rates of mortality, especially downwind of such sites.[403] The 2004 DEFRA guidance is suspect and has been superseded by USEPA guidance and WHO guidelines, which are more stringent. The EU has directed the UK to comply with USEPA guidance by 2015 to avoid heavy fines. The judgement in *Newport BC v Secretary of State for Wales [1998] Env LR 174* showed that fear of the waste transfer plant alone was capable of being a material consideration as stress-induced illness could be as harmful as potential dioxin releases from the plant. The fear in Middlewich is real because the leaks of toxins from ICI Weston, only 15 miles away, actually led to a recorded increase in depression and stress in that town.

388. The Environmental Audit Committee of the House of Commons said in March 2010 that the UK has one of the worst air quality rates in Europe, leading to lower life expectancy amongst those affected, and criticised Government for failing to protect the public. The Committee on Medical Effects of Air Pollutants says that HGV emissions and NO_2 and particulate emissions from stacks are significant contributors to respiratory disease, and this is echoed by WHO in calling for stricter limits and guidance to be applied. $PM_{2.5s}$ are especially dangerous according to WHO and nothing is done in the UK to screen out such particles or to regulate them. Heavy metal emissions can also be toxic at very minute levels.

389. CWAC already has several AQMAs, the closest being at Cranage, less than three miles from the appeal site, where both benzene and NO_2 levels exceed the National Air Quality Strategy Level 5. The recording site at the Fox and Hounds Sproston, on the A54, has elevated levels of NO_2, as does the kerbside in the centre of Middlewich. On a still day these and other locations will receive additional pollutants from the proposed stack, no matter what its height, probably breaching AQMA thresholds and threatening public health. In the Sinfin appeal decision the Inspector held that any exceedance of the AQMAs NO_2 air quality due to the proposed incinerator was a material consideration of significant weight. The Secretary of State has a duty of care to prevent exacerbation of existing illnesses.

390. The proximity of other incinerators adds to public concerns. SEPA say incinerators should not be allowed in 'clusters' because the health effects in that situation have not been assessed. USEPA look at a 30 mile radius over a 30 year exposure period when considering cumulative health effects. At present there is one existing incinerator within 18 miles of the appeal proposal at Stoke, and approved plants at Ince and Ineos within a similar distance, as well as a large gasification plant at Carrington on Merseyside and the proposed Brunner Mond facility at nearby Northwich. Cumulative health effects which should be considered consist not only of occasional incidences of high pollutant emissions, but also the slow build–up of low levels of pollutants over years. Though much is made of new technology for incinerators, the only comparator in the UK is that on the Isle of Wight which was shut down after a few weeks due to huge exceedances of permitted dioxin levels. This gives the public no confidence in such technology.

[403] TP5 pp5

391. The UK Government has recently signed the UN Persistent Organic Pollutants Treaty to reduce the creation of dioxins and the Prime Minister has referred to increasing numbers of children born with birth defects. Dioxins do not disappear, but have bio-cumulative effects and enter the food chain via contaminated crops and from meat, milk and eggs from animals grazing affected fields. In turn, this can be passed on to nursing infants in concentrated amounts through breast milk. National policy asks that people trust the regulator, but personal experience of the Brunner Mond plant close to her home in Lostock shows ammonia and nitrogen leaks are recorded above permitted levels year after year. The EA has done nothing about these and is ineffective as a regulator. Consequently Northwich is renowned for its asthma, chest problems, allergies, sinusitis and eczema, all of which arise from exposure to excesses of NO_2. There is no reason to expect the EA will regulate the proposed incinerator any more effectively.

392. Incinerators are continually proposed in poor air quality regions because these are also areas of low social status, multiple deprivation and which exhibit high levels of depression and chronic health issues. This situation tends to leave the public generally oppressed and apathetic to development. To propose an incinerator in such an area is arguably contrary to Article 1 of the European Convention on Human Rights and is certainly discriminatory by virtue of geographical and social status. The Appellant company has a record of breaching safety laws in the US where environmental protection is stricter than in the UK. It would therefore be irresponsible to allow it to operate the proposed incinerator, especially in this area with its cluster of such developments.

393. Keith Smith has been involved professionally with several incinerator inquiries but has no connection either with the Appellant or the Council, and appeared solely as an interested person who in principle supports the proposals.

394. The imperative underlying the National Waste Strategy is from the EU Waste Framework Directive requiring all member states to achieve diversion of waste from landfill. Failure to achieve the targets set results in infraction proceedings and can incur heavy fines. UK progress in achieving targets has been patchy and, although rates of recycling, recovery and re-use are steadily rising, there is a risk the UK will not meet its landfill diversion targets. There are two reasons for this, first, the link between economic growth and waste arisings has not been decoupled, and secondly, the requisite waste management and recycling/reprocessing capacity has not been forthcoming.

395. Cheshire, Merseyside and Greater Manchester adopted a landfill-based disposal strategy over the past several decades, but this now faces serious difficulties in securing appropriate facilities, despite the progress in recycling and re-use. Termination of local disposal implies longer haulage distances for waste with implications for transport and the environment. These issues should have been resolved through the CRWLP, but unfortunately the then WPA sought to achieve high rates of reduction, re-use and recycling while downplaying the scale of the problem of dealing with residual waste via appropriately sized EfW plants. The range of sites allocated and the criteria based policies led to a shortfall in provision and now this is exacerbated by the division of waste management responsibilities between this Council and CWAC. The recent decision on the Cheshire PFI contract adds to this difficulty.

396. The appeal proposal represents a properly balanced approach, consistent with the waste hierarchy, for dealing with both MSW and C&I waste in Cheshire East and perhaps in parts of CWAC. Its advantage is the synergy it would create between various forms of waste management, because residual waste would only have to be transported once. With its central location in Cheshire, the proposal becomes the nearest appropriate installation for the county and thereby meets the reformulated proximity principle in the National Waste Strategy. The argument that permission would result in a failure to drive waste up the hierarchy is at odds with experience in Germany, France, Belgium and Sweden, which achieve higher rates of recycling than the UK yet use large scale incineration which also delivers CHP benefits in many places. Moreover, the plant would deal only with residual waste, that is, the waste left after reduction, re-use and recycling.

397. The Mid-Mersey area extending into central Cheshire has been a nationally and regionally important industrial centre since the early 19th century. The proposed location of the EfW plant is thus appropriate in terms of continuity of land use and proximity to sources of waste arisings. With some exceptions, the site would be well-separated from residential areas and in a commercial/industrial setting. The access to the strategic road network has sufficient capacity and avoids residential areas, and though some traffic would pass through the town, the transport assessment seems to find no serious obstacles.

398. It is also rare for a site to have the opportunity of multi-modal access. The adjacent railway is said to offer a technically feasible alternative, though the economic analysis appears somewhat 'gold-plated' in its estimates. Unless waste is transported over longer distances than Cheshire and plant capacity increased to achieve scale economies rail use may not be feasible at present. However, costs are not forever fixed and with fuel price changes, traffic congestion and other externalities altering in future this mode may become economic. The assessment might also have considered using existing and disused rail terminals in Greater Manchester and north Cheshire to avoid double-handling and achieve load concentration.

399. Though concerns have been expressed over the risks of pollution, these will be addressed by the EA and the decision maker has to assume the pollution control regime will be rigorously applied to secure the application of the best available technique. Mass burn incineration is a well-established and tested technique and is well-regulated at European, national and local level, albeit it is an intermediate treatment and the residues still have to be disposed of in some way. The environmental and human health implications of incineration have been widely studied and no clear disadvantages identified to rule it out in principle. Not all the proposals in Cheshire merit support, for example, those at Brunner Mond in terms of scale and possible transport impact, and at Wincham due to inappropriate location and poor access. Nor is it certain that all the permitted facilities will go ahead, though this is most likely with Ince and Ineos.

400. The appeal proposals offer important benefits including, first, an improvement in landfill diversion and a step towards regional self-sufficiency in waste management, and secondly, the establishment of a source of electricity which is secure and not dependent on fossil fuels. Thirdly, the proposals would create an integrated waste management facility with some benefits of economies of scale, and fourthly there would be provision of CHP for local industrial users on existing

and future parts of Midpoint 18. Subject to the resolution of landscape, traffic and environmental/ecological issues, the appeals should be allowed.

401. Neil Wilson said the assumptions in the transport assessment should be questioned and the document fails to address important policy issues of the operational phase of the development. Contrary to Policies 1, 6 and 12 of the CRWLP, the assessment makes no reference to the approved Kinderton Lodge landfill site close to the appeal site, even though the same type of waste will be transported to both sites.[404] Kinderton Lodge is expected to generate an additional 344 HGV movements per day using the same roads. In conflict with CRWLP Policies 1 and 27, waste coming to the appeal site from Chester, Ellesmere Port, Neston, Liverpool and Sefton will pass the already approved incinerators at Ince and Ineos, the existing facility at Ellesmere Port and the proposed facilities at Deeside and Hooton Park. The proposal is therefore unsustainable, because it fails to take into account that use of those plants will offer lower costs to such traffic, which should divert away from the appeal site.

402. Contrary to what was said when the application was submitted, it is now known that at least 50% of the waste will be imported from outside the county, including 21 sources in the Mersey Belt covering places as far away as Oldham and Bolton. The assumption that only 10% of waste would be delivered during peak times comes from the TRICS database for other facilities, all landfill sites, and it is not known if those sites were served by the same number of waste sources. No waste delivery strategy has been submitted and there is nothing to suggest that the deliveries from the 29 waste sources will be co-ordinated in any way, let alone in conjunction with those to Kinderton Lodge. Hence the 10% peak time deliveries assumption has not been justified.

403. The proposal to relieve additional traffic congestion at the Pochin roundabout by re-sequencing the traffic lights at the A54/A533 junction in the town, is no resolution of this problem. Rather, it would simply move the congestion into the town centre, where new problems will arise from the effect of long queues predicted to build along Leadsmithy Street as a result of the re-sequencing. Nor is the assessment of this effect adequate, because it stops short of the pinch point in Leadsmithy Street close to the White Horse pub, which is where the most serious effects will be felt. Here two large vehicles cannot pass without one or both mounting the footway, yet no risk assessment has been undertaken. It is accepted that the proposed Bypass will relieve congestion here, but this will not open before the proposed incinerator comes on stream so that much of its construction traffic, and perhaps some of its operational traffic, will have to use the existing inadequate road system in the town.

404. David Wright is concerned that the Appellant has been submitting important material in separate releases, thus confusing the public. In particular SIP2 and SIP3 as part of the ES, were submitted after the Council had determined the application subject of Appeal A; this has frustrated the democratic process. Despite this material being consolidated in the subsequent CES, information is internally inconsistent, missing and complex, all of which continues to confuse the public. The proposal has changed from being a Cheshire facility for Cheshire waste to a merchant facility drawing material from wherever it can. Early

[404] CD3/2 and CD

presentations indicated a capacity larger than the 370,000tpa now proposed and the public are suspicious that, if permission is granted for Appeal A ,an amended proposal for the earlier, larger scheme will then be submitted.

405. The Government is committed to localism through a radical decentralisation of powers from the centre to local communities, as the Coalition Programme makes clear. The Secretary of State for Energy and Climate Change has said in Parliament that his policy is to support energy generation from waste only where local communities want it and to favour anaerobic digestion over incineration.[405] The people of Middlewich could not have made their position on the appeal proposals any clearer, given the number of letters of objection, thousands of signatures on the petition, large attendances wherever the issue has been discussed, the support of the local MP, unanimous support from Middlewich Town Council, objections from the surrounding Town and Parish Councils, and unanimous rejection by the Council Planning Committee.

406. The appeal proposals would produce 102,818tpa of IBA, all of which would either have to find a market or be disposed of to landfill.[406] A merchant facility in Middlewich drawing in waste from outside Cheshire would increase landfill in the county, not reduce it. The projected IBA output of the proposed incinerator is comparable to the present amount of landfill in Cheshire, without adding that to be produced by Ineos, Ince, Brunner Mond and any other facility which may be approved and built.

407. The Government Review of Waste Policy suggests that there may be some types of waste where disposal through landfill remains the most appropriate option and the examples then listed include IBA. EA information shows that IBA from 59 sites in England went to landfill in 2009. All of this leads to a conclusion that there is no assured market for the IBA from the proposed plant and that some or most may end up as landfill. Nor is IBA a consistent or safe material and this may be deterring its use. The HSE has reported a case from August 2009 where aluminium in the IBA used to make concrete blocks appears to have mixed with the cement to form hydrogen which has exploded. Accordingly the Executive have issued precautionary advice.

Written Representations

408. At appeal stage a total of 228 written representations were made and have been analysed in terms of the main issues with which they are concerned.[407] Two of these are from the local Member of Parliament, Fiona Bruce MP, who fully supports her constituents in their opposition to the proposals. Of these individual representations, all relate to Appeal A only. Two are in support and eight express no view; of the latter most requested an opportunity to speak during the inquiry. The remainder all object to the appeal proposals for one or more reasons; several individuals wrote more than one letter and several letters come from the same addresses, albeit written by different individuals. The analysis shows that, of those objecting, 121 were concerned with procedural issues, mainly relating to new material being submitted following the ES (SIP1, 2 and 3), and in response to the two Regulation 19 letters. There were 54 letters objecting for reasons

[405] Oral Answers to Questions in the House of Commons, 1 July 2010
[406] CD.6/12, pp13.6.7
[407] Doc 9

associated with waste and waste policy, while 42 objections concerned traffic, including congestion, road safety and the adequacy of the network to carry the additional generated movements.

409. Pollution, either from the proposed incinerator or from generated traffic, was an issue in 33 letters, and 31 letters raised health issues, both human and animal, arising from the incineration of waste. Many of the latter were concerned at the effects of dioxin release and temperature inversion in certain weather conditions. A total of 19 people objected on grounds related to landscape and visual issues, and nine were concerned about noise. The CHP and grid connections were issues for five people, mainly to do with the appearance of the towers for the latter and the adequacy of arrangements for the former. Five letters were concerned with effects on protected species, and three made representations on climate change issues, including policy. Two representations explicitly referred to sustainability as an issue and subsidence was an issue raised by two others.

410. A petition signed by 1133 people, residents of Middlewich or nearby settlements, was handed in at the close of the inquiry.[408] It drew attention to the inquiry venue being at Crewe and said this had made it difficult for the signatories to attend, due to work commitments, child care responsibilities, travel difficulties, parking and other restrictions.

411. At application stage a petition was submitted by CHAIN signed by approximately 6945 people objecting to the proposals subject of Appeal A on the grounds of risk to public health and safety, damage to the environment and an unsuitable location.[409] These signatures were numbered and cross-checked to avoid duplication. A further 158 signatures are un-numbered and may not have been cross-checked. Two standard letters of objection were also submitted at application stage between March 2009 and January 2010. The first, sent in by about 1730 people, objects on the grounds that the site is not identified in the CRWLP, on the traffic generated, on the grounds that the Appellant has no guaranteed waste stream, the proposals would lead to the importing of waste, no need exists for the facility, there would be excessive CO_2 emissions, and harmful emissions would be dispersed across the nearby settlements. The second standard letter objects on the grounds of the negative visual impact of the proposed building and its chimney, due to its proximity to the town, and was submitted by some 1000 people.

412. Six other forms of standard letter were also submitted at application stage.[410]These are concerned with planning and waste policy issues, effects on health from emissions, visual impact and traffic issues. The total number of the letters in these six bundles is 726. In December 2009 and January 2010 a further 420 standard letters were submitted in the light of additional information supplied by the Appellant.[411] These asked that the application be refused on the grounds of there being no need for an incinerator, that the application is for a stand-alone incinerator, and that the proposed site is not identified for such use in the CRWLP.

[408] Doc 10
[409] Doc 4
[410] Doc 6
[411] Doc 7

413. There were also some 215 representations, all of them objecting, made in individual letter or e-mail form at application stage.[412] These included a bundle of eleven letters forwarded by Lady Winterton MP, the Member of Parliament for this area at that time, a letter from the Central and Eastern Cheshire Primary Care Trust on behalf of its employees, and another by the Holmes Chapel Action Group. Several letters were sent from the same addresses by different members of the same family, and some objectors wrote more than one letter. The issues raised were generally similar to those at appeal stage.

Suggested Conditions

414. Before the Inquiry opened the Appellant submitted a list of suggested conditions relating to both appeals in the event of permission. This was the subject of discussion with the Council outside the Inquiry and updated versions of the suggested conditions with comments by the parties on their acceptability were produced for the conditions sessions held on 20 May and 4 October 2011. The final versions of these drafts are at Documents CD 6/21 (Appeal A) and CD 6/22 (Appeal B). All the suggested conditions for Appeal B are agreed by the parties and are not considered here.

Appeal A

415. A total of 55 conditions are suggested, of which six are not agreed, either wholly or partly. On Condition 3 the Council believe there will be a need for significant additional plant and equipment within the site, over and above that shown on the submitted plans, for example the provision of steam pipes for CHP. This would otherwise be permitted development and the condition is necessary to protect amenity. The Appellant says that no evidence has been provided to show additional plant would be required, and in particular Mr Wright said that steam pipes would be underground. Accordingly the suggested condition does not satisfy the tests of Circular 11/95. Condition 6 is suggested by the Appellant because it has regularly been used by Secretaries of State when granting permission for similar EfW facilities. The Council do not consider it to be necessary as it relates to internal plant which does not of itself require planning permission.

416. Condition 11 consists of alternatives, (a) being suggested by the Appellant as consistent with those imposed on approved development already on the Midpoint 18 Business Park. Due to the 24 hour nature of distribution activity and the variety of business and industrial uses on the Park, the ability to carry out internal work flexibly during the construction period is necessary and reasonable. The Appellant points out that the renewal of the Midpoint 18 Phase 3 permission includes Condition 17 allowing piling work to start at 0730hrs on Saturdays, so that 0900hrs here would be inconsistent with that condition.[413] The Council accept that many existing businesses on Midpoint 18 work around the clock, but say that the vehicular activity to which internal works give rise would still have harmful effects on amenity, hence their suggested condition (b). They also agree that, until now, their standard condition on construction start times for Saturdays was 0800hrs, but the recommendation of their Environmental Health Officer of 0900hrs is not unreasonable today.

[412] Doc 8
[413] APP/7/e Tab 3

417. Suggested Condition 16 is disputed only in respect of the suggestion by the Appellant of the requirement to obtain permission for minor variations to the times otherwise permitted for the transport of materials. The Council considers that there is no evidence of the need for such activity outside the permitted hours so that variations should not be permitted. Condition 25 is suggested by the Appellant as consistent with Mr Goodrum's evidence of IBAA stockpiles being appropriate at up to 8-10m high. The Council prefer the lower height of 5m maximum but the Appellant says this has not been justified.

418. Comments on several conditions which are otherwise agreed were made in respect of the following at the final session on conditions and are reported here for completeness. The parties agreed Condition 14 should be amended so that the penultimate line reads "…or within 3 metres of the nearest railway line if…". It was also agreed Condition 17 should refer to sealed vehicles and/or containers for the transportation of flue gas treatment residue, and the Council would prefer that no variations should be permitted to the condition. Condition 20 is suggested by the Council because their experience suggests that waste related traffic generates many complaints and the requirements of the conditions are not onerous as such records have to be kept for waste licensing purposes. The Appellant says that because of that purpose the condition is unnecessary, though they acknowledge the required information will have to be provided to the Environment Agency and do not object to the condition as such.

419. The Council consider Condition 21 is necessary to avoid a situation similar to that at the Ince EfW facility, where a proposed change to the electrical power output of the incinerator would result in an increase in the waste traffic input to the plant. The Appellant says this matter would be covered by the environmental permitting regime and though it does not object to its imposition, the condition should only be imposed if considered necessary in planning terms. The parties agreed that Condition 24 should be amended to clarify that there shall be no external storage or handling of waste other than of IBAA from the permitted facility. The parties agree that Condition 28 could be incorporated into Condition 8(d) to avoid duplication and clarify the latter.

420. Noise Conditions 32 to 34 were the subject of submissions and an agreed note following my request for comments in the light of Condition 16 imposed on the permission granted on appeal at Avonmouth.[414]On this last point, the Appellant considers that use of site boundary measurement in Condition 32 makes monitoring easier because, given the attenuation of sound with distance, it is difficult to measure the smaller differences in sound power levels above background noise levels at more distant receptors and then to be able to attribute any differences to specific plant. It is also more difficult to establish ambient noise levels at distant receptors than at the site boundary. The BS4142 approach, though in itself acceptable, uses a 1 hour measurement period and because experience suggests that operations at EfW plants are consistent, with no peaks or troughs, such measurement over time is unnecessary. The Council consider this condition to be satisfactory. On Condition 33 the Appellant would wish to ensure this is applied only to vehicles used exclusively on site; this would be consistent with the noise assessment in the ES, with PPG24 and current good practice and had been agreed with the Council. The Council had been advised this

[414] APP/0/50

was a standard condition recommended by the EA but they would not object to its removal. It was agreed the words in brackets in Condition 34 may be removed as unnecessary, though the Appellant would prefer there to be a reference clarifying that the condition applies only to fixed plant, even though tonal noise problems are unlikely due to the design of the plant.

421. The reference in Condition 37 to drawing 15.4A is to Document CD/13 The Council ask that this drawing should be added to the schedule of approved plans in Condition 2. Condition 44 is agreed if it is considered to satisfy the tests of Circular 11/95. Condition 50 is the subject of a separate note at Document APP/0/59 put in by the Appellant. The Council consider that to avoid the risk of pollution from overtopping, the total capacity of the bunded area should be not less than the capacity of all fuel tanks within it plus 10% and say this is a standard form of condition. The Appellant says its engineers advise the formula in the condition is derived from the Control of Pollution (Oil Storage)(England) Regulations 2001 and that a 110% capacity is unduly onerous; hence the condition is unreasonable. The Council agree the wording of Condition 53 though they do not consider it to be relevant to the development, nor do they understand what will happen after the 35 year period expires. Condition 55 (mis-numbered on Document CD6/21 as the second Condition 54) is suggested by the Council because it could be as long as six years before the development commences, and, because badgers are known in the locality, this is a precautionary measure. The Appellant accepts the condition.

Planning Obligation

422. A draft unilateral undertaking under Section 106 of the 1990 Act was prepared and submitted by the Appellant in March 2011. This was the subject of negotiations with the Council outside the Inquiry and a revised draft was submitted in September 2011.[415] The Council commented on the revised draft by letter dated 26 September 2011 and it is these comments and the Appellant's responses to them which are reported here.[416] The final document, completed, signed and sealed by the Appellant, and by Pochin Developments Limited as landowner, was made on 7 October 2011, two days after the Inquiry closed.[417]

The Council's Submissions

423. First, the offered Bypass contributions in Schedule 2 of the Undertaking are not necessary because they are not related to the development. Their highway engineer has said that the extension to Pochin Way, required to provide access to the site of Appeal A and forming part of those appeal proposals, will become part of the by-pass when the latter is built. This provision of specific infrastructure is regarded as the equivalent to a financial contribution to the Bypass. Schedule 3 is inappropriate for such a vehicle because it places unnecessarily onerous obligations on the Council in terms of administrative burdens, as for example in paragraph 2.4. The Bypass scheme and contributions to it are for the landowner to pursue through its leases.

[415] APP/0/6
[416] CEC46
[417] APP/0/6

424. Secondly, the contribution offered in Schedule 2 of the Undertaking for a 'hurry call' facility at the traffic lights at the junction of the A54 and A533 Leadsmithy Street is unsatisfactory. The Council's highway engineer noted the Appellant's Transport Assessment acknowledges that traffic generated by the appeal proposals would result in an increase in traffic through this junction and that the Appellant is considering ways to improve the junction. However, no negotiations have taken place so that there is no agreed solution to this issue or related costings. Whatever is agreed will have to be funded entirely by the Appellant as developer and the proposed contribution cannot be said to be sufficient to fund the unknown necessary works.

425. Thirdly, the proposed Community Trust Fund in Section 2 of Schedule 1 of the Undertaking is not required to overcome any harm or effects arising from the development proposed in Appeal A. Hence it is not material to the determination of the appeal. Fourthly, the Electricity Subsidy Registration Scheme in Section 4 of Schedule 1 is not required to overcome any difficulties or adverse effects of the appeal proposals and is thus not material to the determination of Appeal A. Moreover, though the period for the Council's agreement to the registration scheme has been extended, the fallback position of a deemed approval, should the Council fail to agree in the extended period, could result in an unsatisfactory scheme.

426. Fifthly, there are similar concerns about deemed approval in relation to the Local Employment and Materials Scheme in Section 3 of Schedule 1. In addition, the local employment provisions of this Scheme will not be in place in time to benefit those who it is intended should benefit, because it will not come into effect until the development is implemented (See clause 3.1.2 of the Undertaking). This Scheme should come into effect once planning permission has been granted.

427. Sixthly, the Deed of Adherence at Appendix 5 of the Undertaking should be executed as soon as possible after the grant of planning permission because there are several matters, such as the Local Employment and Materials Scheme, which need to be put into effect well before implementation of the development. Seventhly, there is only a promise at Section 6 of Schedule 1 for the Appellant to use reasonable endeavours to enter into arrangements for the supply of CHP to British Salt, yet there is no bar to this before such arrangements are in place. Moreover paragraph 6.1.2 allows the Appellant not to enter into these arrangements if they consider them not commercially acceptable. This is too wide a discretion. Finally, ecological matters should be dealt with by means of planning conditions as they provide appropriate and adequate controls and it is hence unnecessary to deal with ecological issues in a unilateral undertaking.

The Appellant's Response

428. Firstly, paragraph 2.4 of Schedule 3 does not impose a burden on the Council as they allege, but sets out the terms of the Escrow Account Agreement. This is defined to be an agreement to be entered into to include terms as set out in Schedule 3 or on any such terms as may be agreed with the Council (clause 1.1). Furthermore paragraph 2.4 simply calls for any overpayment to be reimbursed. It cannot be right to describe the return of money to its rightful owner, which would otherwise constitute unjust enrichment, as an onerous administrative burden.

429. As to the second allegation, Mr Stoneman agreed that the Bypass contribution is unnecessary in highway capacity terms. However, the Bypass will help to offset any perceived harm of the development and, in particular, will relieve the congestion in Middlewich, about which CHAIN and the people it represents are so concerned. There is no dispute that the Bypass contribution will be of significant benefit to the local economy and to Middlewich as a whole. The suggestion that the Bypass contribution is legally immaterial relies on a crude analysis of the law. CIL Regulation 122 provides that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is, inter alia, necessary. If it were to be held that the Bypass contribution was not necessary that would not make it legally immaterial. It would mean it could not constitute a reason to grant permission.

430. In the Hall Farm, Beverley, appeal decision the Inspector and the Secretary of State attached weight to a community fund which the Appellant had conceded was not necessary to justify the appeal proposal.[418] The Inspector concluded that the community fund provided welcome benefits which would help counterbalance the harm to landscape and amenity caused locally, and for this reason found it a necessary part of the provision in the event of planning permission being granted.[419] The Secretary of State particularly scrutinised this issue and called for the obligation to be compliant with Circular 05/05. This demonstrates that an Inspector and the Secretary of State can reach their own view on necessity.

431. In the light of the Hall Farm decision, given that the Bypass here would provide significant benefits to offset harm, it is certainly possible to conclude that the obligation is necessary and meets all the relevant tests in the Circular and the CIL Regulations. The Inspector in Cornwall relied on Hall Farm to conclude that he could attribute weight to a community fund which the Appellant had accepted was not necessary.[420] Accordingly, the benefits this obligation would bring to Middlewich should be accorded significant weight in times of great economic uncertainty, given that those benefits are principally economic.

432. With regard to whether the Traffic Signalling Contribution is sufficient to fund the required hurry call button, Mr Stoneman adduced evidence and explained that all that was required was either a wireless router or the installation of a hard wire and nothing more, and that the contribution was sufficient to provide either. No contrary evidence has been provided so that there is no basis on which to conclude that the contribution would not be sufficient.

433. Thirdly, the Electricity Subsidy Scheme is likely to assist the public in overcoming some of their concerns in relation to the development. It also gives residents in Middlewich and Sproston a direct interest in the economic benefits of the scheme, whether or not they are one of those who otherwise benefit from the creation of jobs and the catalytic effect of the development through the release of MP18 P3. As to the concerns about deemed approval, the undertaking has been amended at the Council's request to give them more time to consider the scheme, with further provisions under which any comments from the Council

[418] APP/E2001/A/07/2050015, pp.98
[419] APP/E2001/A/07/2050015, pp.107
[420] APP/7/e, App.6, pp.2134 and 2135

would be considered. The proposed eight weeks should be more than sufficient to consider such a scheme.

434. Fourthly, similar comments apply to the deemed approval mechanism for the Local Employment Scheme. As to the suggestion that the Local Employment Scheme should commence on the grant of planning permission, the scheme is defined to be for the promotion of the use of local labour and firms during construction and operation. Paragraph 3.1 of Schedule 1 provides that the Appellant shall not implement the development until the scheme has been submitted and approved. It follows that the purpose of the scheme would not be advanced by requiring it to come into effect on the grant of planning permission.

435. Fifthly, the Community Trust Fund is likely to assist the public in overcoming their actual or perceived concerns about the development and will directly contribute to the well being of the community; it is therefore material to the development. Finally, it would be disproportionate to suggest that there should be a block on the implementation of the development should agreement not be reached with British Salt for the provision of CHP. This would deny a renewable energy generating facility that will provide significant economic and environmental benefits simply because it would not, in those circumstances, have CHP. There is no basis for such an approach which would frustrate what would still be sustainable development.

Inspector's Conclusions

Preamble

436. In these conclusions the numbers in square brackets refer to the preceding paragraphs or to Inquiry documents where the relevant information can be found.

437. An Environmental Statement including a Non-Technical Summary [CD6/4, 6/5, 6/6A & 6/6B], a Design and Access Statement [CD6/2], a Planning Statement [CD6/3], a Transport Assessment [CD6/5, Section 8] and a Statement of Community Involvement [CD6/3] accompanied the application subject of Appeal A[CD6/1]. Subsequently two versions of an updated ES, both known as the CES, were submitted by the Appellant in October 2010 and July 2011.[CD6/11, 6/12, 6/13, 6/14, 6/15 & 6/16 and CD6/14A, B & C] Both versions of the CES included information relating to Appeal B[CD6/19]. I have taken into account the contents of the ES and both CESs in reaching my conclusions and recommendations as to how the appeals might be determined.

Preliminary Matters

Definition of the Proposed Development (Appeal A)

438. These proposals comprise more than simply an energy from waste facility, that is to say the plans show that, in addition to the EfW plant, there is a separate pre-incineration Materials Recovery Bank (MRB) with storage, and a post-incineration Incinerator Bottom Ash (IBA) processing plant and store. [SoCG App5 & CD6/1] The latter may be accessed separately from the EfW plant and the Appellant proposes to subcontract to an independent company the operation of the IBA processing plant. [APP/1, pp 2.3.18] Potentially therefore, a situation may arise where the planning unit could be subdivided and hence, whether or not subdivision would be acceptable, it is desirable to identify clearly at the outset all the component parts of the proposals.

439. At my request, the Appellant provided a revised description of the development as follows:

> "The erection and operation of facilities for the recovery of energy from waste, materials recovery (including incinerator bottom ash processing), electricity generation for export to the national grid and the capability to export heat and power to British Salt and other neighbouring users, together with ancillary development including offices, visitor facilities, switchyard, staff/administration building, gatehouses and weighbridges, lagoons, car parking, an extension to Pochin Way for the provision of access, drainage works, site fencing and associated landscaping and ecological works." [APP/7/d, pp1.4 & CD8/1a, pp3.1]

440. This is a more satisfactory and comprehensive description of what is proposed, and its substitution for the original description of the development would be no more than clarification and would prejudice no party.

The RSS and the Development Plan

441. Although it was agreed by the parties that the development plan for this area includes the RSS for the North-West [37], since the Inquiry closed Royal Assent has been given to the Bill which has become the Localism Act 2011. As I

understand it, the provisions of the Act are to be introduced by Order and this applies to Section 109 insofar as it contains the powers to abolish the RSS. There is a stated Government intention to abolish the Regional Strategies, but the Department for Communities and Local Government has decided that the effects of abolition should themselves be subject to environmental assessment before a final decision is made by Parliament and the Secretary of State.

442. Accordingly, it seems to me that, at the time of writing these conclusions, the RSS continues to form part of the development plan for the area, not simply a material consideration. However, I believe the weight to be attached to the provisions of the RSS has reduced from the position at the time of the Inquiry because Section 109 is closer to implementation than it was during the Inquiry. Therefore, the reported position of the parties on the status of the RSS may now differ from that which is recorded above.[91,313] Accordingly, the Secretary of State may wish to give the parties an opportunity to comment on this matter and the weight to be attached to the RSS if it remains extant at the point of decision.

Public Participation and the Aarhus Convention

443. On alleged misinformation, the ES, both as submitted and as finally amended and consolidated, states that the development would treat up to 370,000 tpa of MSW type wastes and envisages taking a mix of residual wastes from households, shops, offices and businesses across Cheshire. [CD6/1, Q23 & CD6/14A, pp2.1 and 8.1] This is explained in more detail as comprising an assumed maximum of 105,000 tpa of residual household MSW and 265,000 tpa of C&I waste to be drawn from the 1,207,000 tpa of C&I waste arising identified in the CRWLP 2007. [CD6/14C, pp4.2.1] The Supporting Planning Statement refers to the CRWLP and shows how the claimed need and rationale for the proposals is based on the information in that document. [CD6/1A, Section 5] Whilst none of these references expressly limits the sourcing of waste to Cheshire, a reasonable person reading those words would expect that all, or almost all, waste going to the plant would come from within Cheshire.

444. However, Mr Wright told the Inquiry that the application was submitted despite the Appellant having been de-selected from the Cheshire MSW procurement process a year earlier. [APP/1, pp2.1.2] Hence the Appellant knew at the time the application was made that the facility would either have to take the MSW fraction from beyond the county and/or it might also take C&I waste from beyond Cheshire. Indeed, Mr Wright said the Appellant relies on a business model which ensures that any EfW proposal can operate as a standalone merchant C&I facility. [APP/1, pp2.2.1] In this business model, unlike a contract situation where the sources of waste would be known at the outset and the consequences predicted with some confidence, only the market with its inevitable fluctuations would determine the type of waste, and from where it would be sourced, with consequent uncertainty for traffic and other implications.

445. That a planning proposal should operate in one way or another is in itself of no consequence, because it is for an applicant for planning permission to put forward whatever development proposal he chooses. But planning is subject to the democratic process and to public scrutiny, and for those reasons it is essential for its proper functioning and for continuing public confidence in the system that any planning proposal should be fully transparent.

446. The Appellant evidently sought to inform the public about its proposals as its Statement of Public Involvement demonstrates. [CD6/3] It is commendable that it carried out this exercise from November 2007 to February 2008, prior to submission of the planning application, because that should have enabled the public to have some influence on the final submitted scheme. The de-selection of the Appellant from the Cheshire MSW PFI procurement process then occurred about a month after the consultation exercise appears to have been concluded. [APP/1, pp 2.1.2] De-selection meant that the Appellant at that stage had no prospect of using Cheshire MSW as the principal fuel for the appeal proposal. The implications of this for the nature, sourcing and transport of waste were matters of public concern which had been clearly expressed in the consultation responses. Had this change been the subject of further consultation and inclusion in the ES, the public's concerns would probably not have arisen.

447. Unfortunately, the information subsequently put forward by the Appellant in its community newsletter of December 2009, referred to an intention to treat Cheshire's waste at Middlewich. Secondly, the need statement in the supplementary material to the ES, known as SIP1, was also submitted in December 2009.[CD6/7 & 6/8] This said that the planning application was directed solely at Cheshire's waste arisings.[CD6/8, App2, pp10] Thirdly, the Appellant's Grounds of Appeal of June 2010, in relation to the third refusal reason said the proposed development would not result in over-provision of waste facilities and lead to a requirement to import waste from outside Cheshire. [CEC 1/5, 1/6, 1/7 & GoA]

448. It appears to me that the public reading this information would continue to assume (and in the light of their representations did so assume) that the proposals would be directed at Cheshire's waste. Everything which had been available to the public since the end of 2007/early 2008 had, on a fair reading, pointed to the development being a facility to process only waste from within Cheshire. Accordingly, over this period of almost three years the public had become accustomed to that view. As lay people they were thus surprised and not a little disturbed in September 2010 to see the possibility arise of a substantial amount of waste being imported into the county.

449. At that date, with submission of the Rule 6 Statement and the supplementary information to the ES known as SIP3, the potential of importing waste from beyond the county first became clear in public documents. [CD6/10 & CD7/1] The Rule 6 Statement says the development is intended as a facility capable of treating both the residual MSW and C&I wastes produced in Cheshire and it is primarily at this market that it is aimed. [CD7/1, pp5.2.9] But it also deals with non-Cheshire waste arisings, and says the Appellant will demonstrate that additional waste treatment capacity is needed in the Mersey Belt and in local authority areas adjoining Cheshire (though it is not proposed to treat MSW waste arising in Merseyside). [CD 7/1, pp5.2.13]

450. SIP3 acknowledges that the Transport Assessment accompanying the application and ES was prepared on the assumption that the facility would be fuelled by Cheshire waste, that is, waste arising within the local authority boundaries of Cheshire East and CWAC. [CD6/10, pp1.1. 2(ii)]. The sensitivity tests in SIP3 are designed to assess the potential variations arising from the potential for a proportion of waste to be imported from outside the Cheshire authorities' boundaries. [ibid, pp1.1.4(ii)]

451. The reference in SIP3 to up to 140,000tpa of residual C&I waste being imported from beyond Cheshire led to strong concern expressed by the public that it had been misled. [CD6/10, pp1.1.6, and 325, 382, 385, 402, 405] Such sensitivity tests were carried out in order to assess the robustness of assumptions in the TA and to demonstrate a worst case scenario as part of the ES; they did not in themselves predict that such situations would occur or even that they were probable. The basis of these tests and their assumptions were explained in SIP3 and to a professional eye are clearly stated. [ibid, Section 1] That should have been clear to the Council at this time, especially in the light of the reference to the discussions which had taken place on this matter throughout the application process. [ibid, pp1.1.3]

452. However, it seems unlikely the public would have been aware this was the case, and many people appear to have assumed the references to testing options involving the importation of substantial amounts of waste into Cheshire were a change of direction by the Appellant. Their concern about this perceived change would have been amplified by confusion for, though SIP3 was submitted as a supplementary part of the ES, the statements in the ES itself and the accompanying TA were not amended and remained as they were.[CD6/5, Section 8] This confusion, together with the material submitted as SIP1 and SIP2, caused public misunderstanding and anger expressed at the first PIM.[Doc 12, pp4(ii) and 4(vi)] In turn it led to the subsequent Regulation 19 request by the Secretary of State that consolidation of SIP3 (as well as SIP1 and SIP2) with the ES should be undertaken. The resultant CES, incorporating SIP3, was produced and advertised in October 2010. [CD6/11, 6/12, 6/13, 6/14, 6/15 & 6/16, esp CD6/14, App J.1]

453. From that point therefore the CES included the transport sensitivity tests and was clear as to their purpose and how they related to the TA. Nevertheless the ES was a daunting document for the lay reader and the NTS, which is the most accessible part of it, still contained references to the development dealing with MSW type waste and taking a mixture of wastes from households, shops, offices and businesses across Cheshire.[CD6/11, pp2.1 & 8.1] Furthermore, the section on need was predicated on the CRWLP and dealt with the issue in a purely Cheshire context.[ibid, Section 3] Hence for the public, as opposed to professional officers, there remained the potential for continuing uncertainty and confusion. This situation did not change before the Inquiry opened in March 2011, and concern and confusion over the sourcing of waste and its implications were expressed in evidence by interested persons and by CHAIN. [325,384,402,404]

454. From this I conclude that there were deficiencies in the information before the public in terms of changes to the proposed nature, sourcing and transport implications of the waste to be processed at the proposed plant. Moreover, there was public confusion because of contradictory statements in the ES and CES. The Council allege that, as a result of this situation, the public were misled by the Appellant.[258,259] To my mind that is too serious an allegation because it implies a deceit that is willing or deliberate and there is no evidence that this was the case. Rather, the evidence suggests that this was a situation where the need to inform the public was overlooked, a matter of default, not deceit. There is no suggestion that the public involvement exercise of 2007/8 was not genuine; unfortunately the Appellant appears to have treated it, for whatever reason, as something to be carried out and then put aside until needed.

455. Changes of circumstances, such as the Appellant's de-selection from the Cheshire MSW procurement process, subsequently occurred. That is unsurprising over the two and a half years from February 2008 to September 2010, but the Appellant failed to explain to what it knew was a concerned public the implications of those changes for the appeal proposals. It is this failure which led to expectations and assumptions on the part of the public as to the nature, source and transport of waste to the appeal site and then to confusion and annoyance when later material appeared to contradict the earlier information.

456. The Council claim that this situation breached the provisions of the Aarhus Convention, but acknowledge that the Convention has no direct effect on national law, albeit the UK Government is a signatory.[252,253] It also appears to me that the Council's reference to Article 31 of the Waste Framework Directive is misplaced, because that refers not to "projects", which are to do with individual public or private development such as the appeal proposals, but to "plans and programmes", that is to say, wider conceptual forward planning schemes.

457. However, the Public Participation Directive of May 2003 [Directive 2003/35/EC], which implemented the Aarhus Convention and was brought into effect by Council Decision 2005/370/EC of February 2005, did amend the Environmental Impact Assessment Directive [85/337/EEC], thus applying the Aarhus principles to projects subject to environmental assessment. Because the appeal proposals are Schedule 1 EA development, it follows that the Aarhus principles are applicable here. The question therefore arises as to whether this situation was so serious that it led to the disengagement of the public from the planning process because there was not effective access to environmental justice in accordance with 'Aarhus' principles.

458. It does not seem to me correct to say, as does the Appellant, that because the Council do not allege any failure to comply with the EIA Directive, or any failure to transpose the EIA Regulations properly, the Aarhus Convention has not been offended.[61,62] Rather, I consider it is for the decision maker to determine that question on the evidence. Nor do I consider that Regulation 19 (of the 1999 EIA Regulations which apply to these appeals) demonstrates that the Government regards the inquiry process as curative of any failure properly to consult. What is material is whether, in this particular case, the public were so adversely affected by the inaccuracy and contradictory nature of the information before them that they were denied an adequate opportunity to participate in the consideration and determination of this project.

459. I agree with the Council that it is impossible to know how many people were satisfied this was to be a Cheshire only waste facility and therefore did not take any further part in the appeal process. To try to prove that any number of people did not become involved with the appeal process would be to attempt to prove a negative. But what was abundantly clear to me at the two PIMs in Middlewich, at the evening session of the Inquiry, also in the town, and in the hundreds of letters of representation which continued to arrive throughout the long period the Inquiry sat, was that, far from being disengaged from the process, very many people were extremely anxious to ensure their voices were heard and their concerns expressed. Accordingly the public appear to have been very much interested in, concerned about, and engaged with, this appeal.

460. This was reinforced by CHAIN's thorough and committed involvement throughout the Inquiry and the PIMs, and the evident knowledge, support and contact they had within the community in and around Middlewich. Even the relatively low attendances at the Inquiry itself need to be considered in the light of the context that the venue was several miles from the appeal site with indifferent public transport links.[410] Yet the webcast facility and the recorded 'hits' on that system, suggest many watched in that way. Therefore I conclude that, although the information made available to the public prior to the Inquiry was unsatisfactory in terms of its content, this does not appear to have alienated the public from the appeal process. On the contrary, it seems to have had the effect in this case of increasing public interest and their determination to be involved in this process. Hence the first part of the Council's contention is not made out.

461. The second limb of the Council's submission may be dealt with shortly. The extent of public involvement during the Inquiry, as a result of CHAIN's participation in particular, was a clear demonstration that, whatever the shortcomings of the long period over which the Inquiry took place, the public were fully involved. At no point did CHAIN's commitment or close involvement waver, and neither is there any reason to suppose that they are an unrepresentative body. This is shown in the numbers of signatures they collected on their petition, the numbers of letters expressing similar views and supporting them, and the breadth of experience of the several individuals they marshalled to help in questioning the Appellant's witnesses.

462. It is also significant that at no point did the Appellant suggest or imply that CHAIN were not representative of the community. Nor did I detect any sense of animosity towards them from established organisations such as the Town and Parish Councils, who might have been concerned about CHAIN appearing to compete with their own local representative role, or who might have resented another body acting as advocates for the community. Accordingly I am satisfied CHAIN may be described accurately as a grass roots organisation fully in touch with, and representative of, the local community.

463. It is true that the Inquiry took two substantial adjournments, but the reasons for them are clear; on the first occasion inadequate time had been allocated and participants were unable to continue due to other commitments. In my opinion the underestimate of inquiry time was related, at least in part, to the perhaps unexpectedly substantial involvement of CHAIN in questioning the Appellant's witnesses. That again demonstrates public engagement and involvement with the inquiry process given CHAIN's representative nature. The second occasion when a substantial adjournment became necessary was as a result of the circumstances leading to the issue of the second Regulation 19 request and in my view was unavoidable for the reasons given by the Secretary of State for issuing the request. [Doc 14]

464. That these adjournments occurred is certainly regrettable, but, as the Appellant suggests, is not uncommon in inquiries of this degree of contention and scale. [69] The only evidence suggesting the public found it difficult to participate in the Inquiry came at the very end with the handing in of the petition referring to the difficulty of access to the venue. [410] That issue had been raised at the first PIM and was considered by all parties; the Council in particular believed strongly that the Inquiry should be held at Crewe for reasons which I

accepted.[Doc 12] In any event, the presence of the webcast facility for all but the final week allowed access to the proceedings at home, for those with computers, and through the screen at Middlewich Library, for those without. Given this facility and CHAIN's highly competent and representative presence throughout the Inquiry, it seems to me that the public were not seriously disadvantaged by the location of the venue. I thus conclude the second limb of the Council's submission is also not made out.

465. In the light of all the above considerations, and taking the submission as a whole, I conclude that, notwithstanding the unsatisfactory nature of some of the information concerning the appeal proposals, the public were not, on the balance of probabilities, disengaged from the appeal and inquiry process in this case. Accordingly it appears to me that the public were not denied their rights under the Aarhus Convention, the principles of which were not breached.

Main Issues

466. It is for the Secretary of State to decide what are the main issues in these appeals, but it appears to me that the principal considerations are, for Appeal A:

i. The degree to which the proposals comply with national, regional and local planning policies on waste, including the need for the facility, the proximity principle and the aim of driving waste up the waste hierarchy;

ii. The degree to which the proposals comply with Government policies concerning climate change and carbon reduction;

iii. The sustainability of the site in terms of its location and operations;

iv. The effect of the proposed development on protected species on and around the site;

v. The effects of the development on the health of communities in the surrounding area;

vi. The effect of traffic generated by the development in and around Middlewich; and

vii. The effect of the development on the surrounding landscape.

467. The principal considerations in relation to Appeal B are, in my view:

i The suitability of the site for the development proposed; and

ii The need for the development in the light of the conclusions on Appeal A and the implications of the Habitats Directive.

Appeal A: The Energy from Waste Facility

Consideration 1: Compliance with Waste Planning Policies

468. The Regional Strategy of September 2008 remains part of the development plan at the time of writing these conclusions. Therefore, to refer to it as a material consideration of some weight seems to me a misunderstanding of the situation.[37,91,313] Instead, the RSS forms part of the statutory framework for the determination of these appeals, and it is only where conflict with other material considerations occurs, including the intention of the Secretary of State

to revoke the RSS, that the question of weight arises.[91] The RSS is also the most up to date part of the development plan and hence any conflict between the policies it contains and those in other parts of the development plan should be resolved in favour of the RSS.[95]

469. There is no dispute that the CBLP contains no policies of relevance to waste management, so that in terms of Consideration 1, the only other part of the development plan applicable to the appeal site is the CRWLP.[103] It is because of an alleged conflict with the policies of the RSS, with subsequent Government waste management policies, and with appeal and call-in decisions by the Secretaries of State for CLG and DECC, that the Appellant says that little weight should be given to the CRWLP policies.[102] However, the majority of the policy documents published subsequently to the adoption of the CRWLP, namely the WFD, the UK Low Carbon Transition Plan, the UK Renewable Energy Strategy, EN-1, EN-3, the UK Renewable Energy Roadmap and the WPR were also published after the RSS.[97] Hence they too could not have been taken into account in the Regional Strategy and reference to them says little about any conflict between the RSS and the CRWLP.

470. The Secretary of State's extension of the saved policies of the CRWLP was not an endorsement of those policies as a statement of up to date policy, but was to ensure continuity in the plan-led system of determining planning applications.[99] But neither does this mean that the policies of the CRWLP are necessarily out of date or non-compliant with the WFD. The Council carried out a professional analysis of compliance with the WFD in February 2011, in response to the Chief Planner's letter of 10 January 2011.[CEC4] Accordingly their argument relies not only on an assessment by an officer of CWAC, the other waste planning authority for the County.[100] Moreover, the e-mails of 3 and 4 February 2011, from the Council and from CWAC to the Chief Planner, both refer to the view of the Government Office for the North West, that the CRWLP is in compliance with the WFD. [CEC4] This very recent endorsement by the Government Office reinforces my conclusion that the CRWLP is WFD compliant.

471. Nor is it the case that the policies of the CRWLP conflict with the aim of driving waste up the waste hierarchy, and that they constrain the whole approach of managing waste by identifying landfill requirements first and only then apportioning other means of waste management.[100] In the first place, the Aims and Objectives of the CRWLP expressly refer to the waste hierarchy and the need to reduce waste going to landfill.[CD3/2, pp1.15] This is carried through into the supporting text of Policy 2, which explains that the Plan reflects regional, national and European guidance and seeks a reduction in landfilling and the provision of a network of integrated facilities for the recycling and recovery of waste.[CD3/2, p24] The Plan's overall aims and reference to the need to reduce the amount of waste generated still accords with the revised WFD, as well as with the RSS.[ibid, pp1.2 & 1.15]

472. Secondly, and perhaps because Policy 2 deals with the need for waste management facilities, the Appellant appears to have conflated this development control policy with the purpose of Appendix 1 which deals with Need Assessment. But by contrast to Policy 2, this Assessment is concerned with the forward planning basis for the future waste management requirements in Cheshire over the Plan period and beyond. The Need Assessment says only that it is intended to provide a robust statistical basis for the Plan, and nowhere does any policy refer

to the content of the Assessment or attempt to apply its content to development proposals.[CD3/2, ppA1.2] Furthermore the future annual capacity requirements in Appendix 1 for both MSW and C&I wastes are expressly headed as indicative.[CD3/2, ppA1.33 & Table A15]

473. This indicative approach to forward planning for waste management is explained in Chapter 3 of the CRWLP, on the need for waste management facilities in Cheshire.[CD3/2, p17] This reiterates the advice of paragraph 17 of PPS10 on the allocation of sites in development plan documents to support the pattern of waste management facilities, and sites and areas suitable for new facilities, set out in the RSS.[ibid, pp3.2] However, because the RSS was not approved at the time the CRWLP was adopted, such an approach was not possible; instead the Plan's policies and allocations are designed to provide the range of facilities to meet the need the Plan identified.[ibid, pp3.3] That seems a pragmatic and realistic approach in the circumstances at that time, and the indicative annual capacity requirements for Cheshire in Table 3 do not appear to constrain applicants proposing waste management facilities other than landfill sites.[ibid, p18] In fact Mr Wright said the appeal proposals were designed with Table 3's indicative capacity for energy recovery in mind, and there is no evidence that the Appellant would have preferred a larger facility.[APP/1, pp3.2.2 & 3.2.5]

474. Finally, whilst the RSS post-dates the CRWLP, it also fulfils a different function in the development plan system because of its links to national policy, and its strategic role in waste management planning, compared to the sub-regional and local, site specific, function of the latter. But in any event, the policies of the CRWLP are not inconsistent in any significant respect with the waste policies of the approved RSS. The waste management principles of RSS Policy EM11 are reflected in CRWLP Policy 1, Sustainable Waste Management, as are the locational principles of Policy EM12. In terms of the provision of nationally, regionally and sub-regionally significant waste facilities, the subject of RSS Policy EM13, the CRWLP deals with these by identifying a network of preferred sites (Policy 4), whilst incorporating flexibility to permit windfall sites (Policy 5), and establishing criteria for national/regional scale facilities (Policy 6).

475. It is only with the apportionments in RSS Policy EM13 that a divergence between the two documents appears. Thus in terms of C&I waste the RSS identifies a landfill requirement of 346,000tpa whilst the CRWLP provides for 390,000tpa of such waste to be landfilled.[CD2/26, p107 & 109, and CD3/2 p73] The indicative total waste treatment capacity required for C&I waste in Cheshire according to the RSS is 403,000tpa whereas in the CRWLP it lies between 656,000 and 817,000tpa.[ibid] For MSW, the RSS predicts arisings of 490,000tpa at 2005-2010, growing to 515,000tpa by 2015-2020, whilst the CRWLP prediction is 430,952t at 2005 rising to 488,000t by 2015.[CD2/26, p111 and CD3/2, p71] On residual MSW landfill capacity requirements, the RSS forecasts a total of 2,318,000 cu m for 2005-2010, reducing to 807,000 cu m in 2015-2020.

476. By contrast, the CRWLP does not forecast a residual landfill capacity in Table A12, but it can be calculated that this would be 138,666t in 2005, reducing to 121,219t in 2015.[CD3/2, p72] The reason that Table A12 does not explicitly refer to landfill is because it seeks to demonstrate the need to move waste up the waste hierarchy, reduce landfill and avoid undue precision.[ibid, ppA1.28] Such forecasts are subject to uncertainties, are indicative only, the data used in

the two plans were collected in different years, apply to slightly different periods, were probably from different sources, and are presented in slightly different ways. But nonetheless I conclude that the differences in forecast waste management outcomes between the CRWLP and the RSS are not significant. What is important is that the CRWLP shows a clearly stated intent to reduce landfilling and to implement the waste hierarchy, which is the same direction and thrust of the RSS policy.

477. The only other policy in the RSS dealing with waste is EM10, concerning the regional approach to waste management. CRWLP Policies 1 and 2 echo the RSS policy requirement to support sustainable waste management infrastructure, facilities and systems, and several policies from Policy 12 onwards aim to reduce harm to the environment. What the CRWLP does not do is explicitly to stimulate investment and maximise economic opportunities, nor does it reflect the principles in WSE2007, though it does reflect, and in many places refers to, those of PPS10. Similarly, the regional waste targets in the latter part of Policy EM10 differ somewhat from those in the CRWLP because of their slightly later origins.[CD2/26, p104 and CD3/2, p25, p26 & p33 onwards]

478. However, nothing in the CRWLP policies conflicts with the economic criteria of RSS Policy EM10, and because this policy exhorts waste plans and strategies to exceed regional waste targets where practicable, this does not make the CRWLP inconsistent and deserving of little weight. Though there is some conflict between the regional waste targets of the two plans, the sustainable waste management philosophy behind the CRWLP means that those in the RSS should be preferred because they satisfy that approach. Therefore, whilst reducing waste growth to zero, driving up targets for diversion from landfill and increasing the recovered value from residual waste are necessary policy aims, those are not the same as encouraging more and more facilities to be granted permission and relying on the market to manage the outcome. The latter approach is the antithesis of sustainable waste planning, as CRWLP Policies 2 and 3 recognise.

479. In conclusion, the waste management policies of the CRWLP are not in conflict with those of the RSS to any substantial degree. The policies of the CRWLP may not always accord with subsequent published Government policy, but in that respect too, there appears to be little difference between the situation as it applies to the CRWLP and that applying to the RSS, which was issued only some 14 months later. In the light of these considerations, I conclude firstly, that the CRWLP broadly accords with the advice of PPS10 paragraph 16, on the relationship between local development documents and the RSS, given that it acknowledges the latter was in draft at the time of preparation. Secondly, bearing in mind that the CRWLP was prepared after the issue of PPS10 to which it refers, I conclude that this plan generally accords with the advice of paragraphs 17 to 21 of the PPS.

Application of the Development Plan to the Appeal Proposals

CRWLP Policy 5: Preferred Sites

480. As a matter of fact, the appeal site is not allocated for waste related development in the CRWLP Proposals Map.[CD3/2, p81, APP/7, pp5.28, 5.29 & 6.2 and CEC1, pp78] Hence on their face the appeal proposals conflict with CRWLP Policy 5, although the policy permits exceptions, including where a preferred site is no longer available or is less suitable. The Council's nearest

preferred thermal treatment site to the appeal site is identified by the CRWLP as WM5, located about 1km away to the south of Cledford Lane and on the east side of the railway line opposite the British Salt works.[CD3/2, p89] But by the time the CRWLP was adopted in July 2007 the land including WM5 (then referred to as WM4b) had already been allocated by the CBLP, adopted in January 2005, for use for business development (Use Classes B1, B2 and B8) under Policy DP1 as Site M1.[CD3/5, p10-10 and Inset 3]

481. The CBLP allocation was the first step in what has become a clear planning strategy for the development of Phase 3 of Midpoint 18. This commenced with the grant of planning permission for the construction of the southern part of the Middlewich Bypass in December 2006, followed by adoption of a development brief for Phase 3, jointly prepared by the previous Council and the landowner, in February 2007.[32,33] The CBLP allocation was also acknowledged by the CRWLP Local Plan Inspector, who recognised that the purpose of over-allocating sites in the Plan was to provide flexibility, because some sites might not be available, some might not obtain planning permission and some might be delayed.[CD3/3, pp7.50 & 7.52]

482. In the case of CRWLP Site WM5, land including that site has planning permission, granted initially in 2008 and renewed in 2011, for the development of Midpoint Phase 3. [34,36 & APP/7/e, App 3] Within that permission, Condition 8 prevents the occupation of any building until the whole of the Bypass has been opened to traffic. Furthermore, the permission contains several prior approval conditions, the effect of which is to ensure the development does not commence before certain particulars have been approved. Therefore, although the landowner and the Appellant are seeking to progress the development of the Bypass by supporting an application for RDF, as of the date of this report, the funding for the Bypass is incomplete and construction cannot be commenced.[APP/5/b, App A and APP/5/c, pp2.8]

483. Hence today the site is not available because it lacks any access as the Bypass, which has to provide that access, has been delayed. The Appellant claims that the former County Council agreed that the appeal site could be substituted for WM5. [APP/7/b, Tab7, pp5] But the views of one officer in a meeting held to discuss the draft proposals for Appeal A cannot bind the Council, and this is borne out by the subsequent change of mind by officers.[ibid, Tabs 8, 9 &10(1)] But irrespective of that point, the lack of access to WM5 is determinative and whether or not the landowner is willing to release that land for the construction of a thermal treatment waste facility is of academic interest only at this point in time. I thus conclude that this allocated site is not available.

484. However, subsection (i) of Policy 5 refers to preferred sites in the plural, and in my view both the Council and its predecessor LPA were correct to draw the then applicant's attention to the need for an assessment of all the identified thermal treatment sites in the county.[APP/7/b, p75, 77, 78,102, & 351] Given the factual position, that the appeal site is not allocated as a preferred site under CRWLP Policy 5 so that an assessment of alternatives is required by the Policy, that remains the position today.

485. Of the nine sites, other than WM5, which are allocated for thermal treatment in the CRWLP, the four close to Ellesmere Port are not as well placed as the appeal site to meet the waste needs of Cheshire, lying as they do near the north-

western extremity of the county and closer to Merseyside than to most of Cheshire.[APP/7/b, Vol. 2, App 10, pp3.3] These sites are thus unsuitable as alternatives for the appeal proposals because their use would infringe the proximity principle for managing waste sustainably by requiring much of Cheshire's waste to be transported for long distances across the county. There would also be a significant risk that they would tend to draw in waste arisings from Merseyside, thus conflicting with the aims of CRWLP Policy 1 and RSS Policies EM12 and EM13 on the sustainable management of waste and the locational principles of waste development for the sub-region.

486. The Council's argument, that to site the appeal proposals on the Ellesmere Port sites would be more sustainable than locating them on the appeal site, seems to me wrong for three reasons.[CEC5, pp28] First, it is based on a misunderstanding of the purpose of the sensitivity tests of SIP3, which seek to measure the transport effects of theoretical alternative sources of waste, not to propose that such alternatives are implemented. Secondly, the argument ignores the way in which the RSS apportions waste capacity by sub-region in order to deliver the sustainability principles of the WFD and of PPS10, that communities take responsibility for managing their own waste at the nearest appropriate installation. Thirdly, any alternative to a proposed site which is not a preferred site should be credible and realistic, which the Ellesmere Port sites are not, because of their location, as well as for the above reasons.

487. Turning to the remaining five preferred sites, the Council did not challenge the Appellant's conclusion on Site 19B, the Winsford Eastern Industrial Estate.[CD3/2, p103] This is located only about 5km north-west of Site WM5 and hence is central to the county. The Appellant says that 19B is unavailable and/or unsuitable because it comprises mainly existing industrial buildings, which are either occupied or unsuited to conversion to thermal treatment facilities. Alternatively, they maintain that any open land is too small to accommodate the appeal proposals.[APP/7/b, Vol 2, App 10, pp3.27] In the absence of any evidence to the contrary there appears to be no reason to disagree with that assessment.

488. Sites 16A and 16B lie on the north-western edge of Crewe, about 10km south-west of WM5 and close to the Bentley car works.[ibid, p100] They are not well-sited within the county, being towards the south-eastern edge of Cheshire, but are within, or adjacent to, the settlement boundary of one of its major towns. The arguments that Site 16A should not be considered because it had permission for industrial use, was in any event seen as an extension to the Bentley works land, and that a strategic planning objection to industrial use because of its allocation in the CRWLP was rejected, were all considered by the CRWLP Inspector.[APP/7/b, pp3.14-16, App10(9) & 10(10) and CD3/3, p152-154] He did not accept those arguments and there is no evidence that this situation has since materially changed.

489. Site 16B lies a short distance to the east of 16A and is said to comprise in part an active Council and Housing Association depot on which permission was granted in 2007 for an MRF, weighbridge and waste storage building.[APP/7/b, pp3.17-19 and App10(11)] The western part of the site is occupied by an active steel component manufacturer and may therefore be considered unavailable. Even if that land was available, Site 16B would be substantially smaller than that taken for the appeal proposals, at 6.9ha compared to 9.45ha. [16 and CD3/2,

p100] However Site 16A and the Council owned part of 16B would together provide at least as much land as now taken by the appeal proposals. Though they would be on land separated by several hundred metres of public road, the appeal proposals contain the downstream IBA processing facility which is envisaged to be operated by a separate company.[40,41 and APP/1, pp2.3.18] My visit to the Sheffield IBA facility showed that it was not integral with an incinerator so that an arrangement sharing Sites 16A and 16B would not seem impractical. Hence I conclude that these sites appear to be available and suitable alternatives to Site WM5.

490. Sites 12A and 12B are located at Lostock, to the east of Northwich and about 9km north-west of the appeal site. Though substantially closer to the Mersey Belt than alternatives other than the group at Ellesmere Port, these are centrally located in Cheshire in terms of population and employment concentrations and accessibility. [CD8/1a, App 8] The Appellant argues firstly, that the western part of 12A is unavailable because it is the subject of a permission, now commenced, for the construction of a bio-energy plant (the Bedminster facility).[CEC 35 & 40] They add that a part of the central area of 12A and the whole of 12B are the subject of an application for consent for a 600,000tpa facility to DECC (the proposed Brunner Mond facility) and so are also not available. They say the remaining part of 12A comprises three fragmented areas of land which are too small and unsuitable for the appeal proposals.[APP/7/b, pp3.7-13]

491. The situation on these two sites forms the nub of the arguments on Policy 5 compliance for the very reason that they contain a permitted and a proposed thermal treatment facility. The Appellant considers that unavailable, as used in the context of the policy to describe the position on other preferred sites in subsection (i), means that such sites are not on the market and thus are unavailable to Covanta. The Council take the view that unavailable means that a site is not available for use as a thermal treatment facility, irrespective of ownership. Though this first criterion of the policy was dealt with by the CRWLP Inspector, he did not conclude on what was meant by the term "no longer available".[CD3/3, pp5.46-48] Nor is there a definition of it within the Plan itself, and the search and selection criteria for preferred sites do not include any reference to availability.[CD3/2, App 2, p79] Nevertheless, the criteria were based on PPG10 guidance.[op cit, p20, pp4.5]

492. Against this background it seems to me that the interpretation of 'available' in Policy 5(i) should be based on the usual or normal meaning of the word, so that here it would mean that a preferred site is capable of being used for the purpose stated in the Plan. Given that the word is qualified by the term "no longer", this should mean that the assessment of site availability is to be carried out on the situation at the time of the decision, and not as it might be at some future time. This seems to me a cogent planning view, consistent with the aim of Policy 5, which is to provide a filter so that sites other than the preferred sites can come forward, but only if the preferred sites have first been considered. That is consistent with what the CRWLP Inspector understood to be the policy purpose.[CD3/3, pp5.46-48] Furthermore, the words of the policy would also seem to be capable of bearing such an interpretation.

493. In this light I conclude that, at this point in time, Sites 12A and 12B are available within the terms of Policy 5(i) because they are either under development, or the subject of an application, for the thermal treatment of

waste. Plainly, the Bedminster facility may not proceed beyond its commencement and permission for the Brunner Mond proposals may be refused, or even if granted, may never be implemented. But even so, and as the Appellant's purchase of the Ince Marshes site from Peel Environmental shows, one or both sites may come forward to the market.[APP/1, pp3.4.1] Alternatively they may lie fallow, but not sterilised by other development and hence available within the meaning of the policy. Thus at this point in time both sites have a reasonable prospect of being developed for the purposes and within the timescale of the CRWLP and are thus available for that purpose, albeit not at present to the Appellant. What matters to planning, and in this case to the waste planning of Cheshire, is what will be delivered and on which sites, not who carries out the delivery.

494. This leads to my final conclusions on the application of Policy 5 to the appeal proposals, that the Appellant has failed to show that at least three other preferred sites, the combination of Sites16A and 16B, Site 12A and Site 12B, are no longer available or less suitable for the proposed development. The acceptance by CWAC that there were no other available or suitable preferred sites when considering the applications for thermal treatment facilities at Lostock by Viridor and at Wincham, Northwich by RRS does not alter this conclusion.[116,117] The reports for those applications were prepared for a committee meeting in June 2010, whereas my conclusions relate to the evidence up to the closing of this inquiry in October 2011 and were thus considering the situation at a different time. No evidence was presented showing whether circumstances had remained the same since that time. In that light I conclude that the proposals conflict with CRWLP Policy 5.

CRWLP Policy 3

495. The purpose behind this policy is to ensure that excess capacity is not allowed to develop within the county, in order to avoid drawing in waste from neighbouring areas in an unsustainable manner and act as a disincentive to recycling. These were recognised as legitimate aims by the CRWLP Inspector and are consistent with the purpose of the RSS sub-regional apportionments and RSS Policy EM13.[CD3/2, pp5.29 and CD2/26, p107] The policy deals with both landfill capacity and thermal treatment capacity, which are at different levels in the waste hierarchy. That the policy is concerned with two separate forms of waste management is explicit in the supporting text to the policy, which defines existing phased void space on the one hand and separately says that capacity means the maximum throughput of thermal treatment plants with planning permission.[CD3/2, p25]

496. The Appellant's arguments on this point appear somewhat tangential to the policy purpose, but nonetheless bear examination.[137] On their recycling argument, a considerable body of evidence from Europe and the USA suggests that higher recycling rates and recovering energy from waste occur together.[129, 396 and APP/1, pp1.4.4 & 1.4.10] On the other hand, the Audit Commission suggest that this is not necessarily the case in England.[CH1/51] As to the relatively small carbon costs of waste transport and treatment higher up the waste hierarchy compared to landfill, this issue should no longer need argument given that the WFD, the Waste Regulations and Government policy all require the application of the waste hierarchy to disposal or seek zero growth in

residual waste and diversion from landfill.[129,135,136] The Appellant's arguments on the latter point are cogent and made out.

497. However, these arguments do not show what the policy requires to be demonstrated, that there is an inadequate thermal treatment capacity in the Cheshire sub-region to meet the waste management needs of the RSS. The RSS shows those needs to be, for C&I waste, a treatment capacity of 403,000tpa to 2020 and for MSW, a capacity to manage annual waste arisings of 515,000tpa for the period 2010 - 2020.[CD2/26, Tables 9.3 & 9.5] However, the RSS forecast was based on 2005 information from the North West RTAB.[CD2/26, pp9.41] The calculations of the parties and in the Scott Wilson report all use information from three years later, mainly the Urban Mines survey, but also the DEFRA report for 2009.[CD4/24 and APP/6, pp108] Considerable time was spent debating the merits of these figures, those in the CRWLP and those of other surveys and forecasts of waste arisings, especially those for C&I waste.[CD4/24 - 4/27, APP/6, pp104-129 and CEC1, pp28-41]

498. It seems to me that, at a time when the national economy is in a period of ongoing uncertainty for all sorts of reasons following a severe downturn, the variables involved are such that to rely on any particular forecast could result in what paragraph 10 of PPS10 calls spurious precision. Accordingly, whilst the Council correctly point out that, since 2000, England has made significant progress in driving waste up the waste hierarchy, the Appellant is right to put forward a range of future arisings for Cheshire, rather than apply any particular figure.[CD2/26, p10, pp v, CEC1, pp31 and APP/6, pp115,120 & 124 and Fig 2] Nevertheless, because they attempt to update the RSS guidance, the outcomes of these different approaches should be considered.

499. The Appellant predicted that by 2035 there could be between 205,000t and almost 500,000t of C&I waste arising in Cheshire.[ibid, pp121,122] But predicting over 20 years ahead is likely to result in misleading accuracy and, given that the timescales used in the RSS are to 2020, this would be a more appropriate and helpful predictive date. On the other hand, the Council's estimated 158,000t of C&I waste in Cheshire at 2015, derived from the Urban Mines survey, is too precise.[CEC1,pp35] The most recent of the sources referred to by the parties, the Scott Wilson report, was prepared in 2010 and appears authoritative and cogent because it is specifically on the topic of energy from waste in the North West Region and employs forecasts to 2020, thus coinciding with the RSS.[CD4/27] Their estimates of C&I waste available for thermal treatment in Cheshire by 2020, using four different waste management scenarios, range from about 173,700t to 227,500t.[ibid, p23-25 & App 5]

500. Though the Appellant considers the Scott Wilson assumption of zero waste growth in this sector to be unlikely after the recession, their view is based on optimism over the economy growing to 2030 and pessimism over the aim of decoupling economic and waste growth.[APP/6, pp122-127] The Scott Wilson zero growth assumption (broadly supported by the Council) is based on an acceptance that recent falls in regional C&I waste arisings will continue and that any falls in the industrial sector will be counteracted by growth in waste in the commercial area as the economy recovers.[op cit, p23] This in my view is a reasonable assumption which, because it is concerned with the short to medium term, is also robust. Moreover the Appellant's view, that future waste decoupling from economic growth is unlikely, seems to be based on research which was

predicated on the historic situation.[APP/6, pp126] WSE2007 sets a clear Government agenda to emphasise waste prevention and re-use, and the WFD and Waste Regulations provide a strong framework which point to a high probability of this being achieved. [CD2/16, p9, pp i – iv] On that basis, the lower bound of the Appellant's case on C&I waste available for thermal treatment, which coincides with the Scott Wilson conclusions, appears the more likely, that by 2020 there will probably be around 200,000tpa of such waste available in Cheshire, plus or minus 10%.

501. On MSW, the Appellant estimates future residual arisings of 300,000tpa, based on the amounts it considers the two Cheshire local authorities need to divert from landfill following their unsuccessful bid for PFI credits.[APP/6, pp134] But the recorded amount of residual MSW for 2009/10 was only about 191,500t because, according to the Council, recycling and composting rates for MSW in the county have reached almost 50%.[CEC1, pp40] This figure suggests that the Appellant's predictions are too generous, firstly because it would seem counter-intuitive to expect residual MSW to increase by about 50% when it was not disputed that it has dropped significantly in the recent past. Moreover, the Appellant acknowledges that recycling rates should increase in future and that waste minimisation measures will take effect.[op cit, pp136] Secondly, the underlying aim of Government policy referred to above, to emphasise waste prevention and re-use, can be very effectively implemented in the area of municipal waste collection and disposal through the financial and other relationships between Government and the local authorities responsible. Hence the Council's figure, in broad terms, appears more probable.

502. As to the fraction of residual MSW available for thermal treatment, the Council estimate that in 2009/10 some 99,400t of that waste was available for this purpose but do not predict that forward.[40] The Appellant does not break down its figure of 300,000t for future residual arisings of MSW because it relates the Cheshire waste contract to the appeal proposals and assumes all such waste arisings may be available to the proposed EfW facility.[APP/6, Section 6, p49-51] The Scott Wilson report forecasts a range of waste available for thermal treatment in 2020 of between 180,000t and 220,000t depending on recycling rates.[op cit, p13-17 & App3] To my mind this report sensibly uses a range of estimates to an appropriate date, employs robust background assumptions, and acknowledges Government policy aims.

503. Combining the two waste streams would thus suggest a total of residual waste in Cheshire available for thermal treatment at 2020 of about 400,000tpa, plus or minus 10%. This figure is substantially less than the combined RSS forecasts of 403,000t for C&I waste and 515,000t of MSW arisings. Even if only 180,000t of the latter, at the bottom band of the Scott Wilson forecasts, were available for thermal treatment, the RSS guidance would still suggest provision should be made for over 580,000t of residual waste from the county. Only the upper part of the Appellant's range would equal or exceed that for 2020.[op cit, p68, Fig 4] This suggests that the earlier forecasts of the RSS were too generous and, for whatever reasons, residual waste growth has flatlined or increased more slowly since that guidance. The total of about 400,000tpa is close to the CRWLP estimate for 2015 of 387,400t of indicative energy recovery capacity, projected to 2020 on the basis of the previous rate of growth.[CD3/2, p75, Table A15, col. 6]

504. The Appellant makes the important point that the aim of driving waste up the waste hierarchy should mean that the indicative landfill requirements of the RSS are to be taken into account and regarded as a maximum figure, to be reduced if possible. Mr Aumonier accepted that not all C&I waste is capable of being thermally treated and suggested that a figure of between 75% and 95% might be appropriate.[APP/6, pp119] But the Scott Wilson report did consider this issue in dealing with both the C&I and the MSW waste streams and developed modelling scenarios to incorporate those assumptions.[CD4/27, p13 & 23] Furthermore, waste avoidance and reuse, which are higher in the waste hierarchy and where Government waste policy now aims, would not simply divert arisings from landfill but would reduce arisings altogether. In that light an indicative thermal treatment requirement of around 400,000tpa appears both reasonable and robust.

505. On the supply of thermal treatment facilities in the county, there is at present no operating facility of this kind in Cheshire, apart from a hazardous waste unit of 100,000t capacity at Ellesmere Port.[163, CD4/27, Ch 3 & App 1] Though apparently permitted to accept non-hazardous waste this site was not referred to further by the parties.[CD4/27, p69, line 7] The essential issue is therefore whether the permissions which have been granted for several facilities in, or immediately adjacent to, the county, and which were referred to at the Inquiry, should be taken into account. These are, with the dates of approval, Bedminster (May 2008), Ineos Chlor (September 2008) and Ince Marshes (August 2009). Though resolutions to grant permission have been passed in two other cases, Viridor (November 2010) and the Ince Biomass Plant (September 2011), both are subject to Section 106 agreements which have yet to be completed.[APP/0/47(3) and CEC44, pp53 & App B] Because these permissions have not been issued at this point in time, they do not fall within the terms of Policy 3.

506. One of the three issued permissions, Ineos Chlor at Runcorn, is under construction and it appears that Phase 1, with a capacity of up to 425,000tpa, is expected to be operational by 2013.[APP/0/47(5), CEC1, p47 and CD4/27, p71, line 1] However, it lies within Halton Borough, which is outside Cheshire and defined as a separate sub-region in Policy EM13 of the RSS.[CD2/26, p107] Because the Council and the Appellant accept that the county is the appropriate sub-region against which to test need in this case, it follows that Ineos should be disregarded for the purposes of Policy 3 analysis.[167, 275]

507. Ince Marshes was, at the date the inquiry closed, expected to commence construction in late 2011 and to start operations in 2013 with a nominal capacity of 600,000tpa. [CEC1/3, CEC44 App A (27 July 2011 p2), APP/0/47(2) and CD4/27, p70, line 3] It has a permit to operate at up to 670,000tpa and the owner, the Appellant, has applied to increase throughput to the equivalent of 850,000tpa.[166, CD4/27, p70, line 4 and CEC44, pp51 & App A] The third facility with planning permission, Bedminster at Northwich, has a capacity of 200,000tpa, including 50,000t of biomass, and has been commenced.[CEC40, CEC42 and APP/0/47(4)] Though little information on Bedminster is available and the Appellant said it uses technology unproven in the UK with little realistic prospect of becoming operational, this is disputed by its owner.[172, APP/6, pp146 and CHI/31 & 33] Whatever the position on the technology, it is an implemented permission which may be progressed at any time. In view of the Appellant's willingness to accept a proportion of MSW at Middlewich, its dismissal of Bedminster as a competitor is unjustified.[172, APP/1, pp3.1.14]

508. Of these two supply side permissions in the Cheshire sub-region, on the balance of probabilities Ince should come on stream by 2015, the anticipated date of commencement for the appeal proposals were permission to be granted. The permitted Ince capacity and the addition to this of the Bedminster capacity, net of biomass, results in the capacity of thermal treatment facilities presently granted planning permission in the sub-region increasing to around 820,000tpa, roughly double what appears to me to be the indicative supply at that time of residual waste suitable for thermal treatment. Taking these figures as they stand, the Appellant has not demonstrated that existing capacity, as defined by CRWLP Policy 3, is inadequate to meet the waste management needs of Cheshire as described by the waste strategy of the RSS.

509. But other material considerations may affect this conclusion. Mr Wright insisted that Ince is directed at an entirely different market to the appeal proposals, being a regional/national facility due to its multi-modal transport links and having the aim of treating MSW from the Merseyside waste contract.[APP/1, pp1.4.21.1, 3.4.3 – 3.4.5 & APP/1/b, App 9] But he also said that, without exception, the Appellant's UK projects are capable of using entirely C&I waste feedstock because of the inherent uncertainties of the MSW procurement programme.[APP/1, pp 1.4.13, 1.4.16(3) and APP/1/b, App 9, p5] Perhaps more significantly, Mr Wright was clear that the sourcing of feedstock is a commercial decision for the Appellant, with gate fees and transport costs being the main determinants of the attractiveness of each facility.[APP/1, pp3.3.2]

510. In the light of these considerations there would seem to be no reason why the Ince plant should not be able to operate effectively and efficiently as a merchant facility taking C&I waste from the nearest sources, Cheshire and the Mersey Belt. The fact that Ince was granted permission on the basis that it would use RDF and not raw waste does not challenge that conclusion. The Appellant is said to be in discussion with the LPA on the definition of RDF in the permission, and the adjacent Resource Recovery Park (RRP), granted permission at the same time as the EfW facility, would appear to offer the opportunity to produce such fuel.[164, 291, CEC1, pp48-50 & CD5/2] Indeed, Mr Aumonier, when appearing at the local inquiry into the Ince proposals, emphasised the waste management benefits of co-locating a RRP alongside an RDF-fuelled generating station and described this a key opportunity to deliver the required sustainable waste management infrastructure within and beyond the borders of Cheshire.[CEC11/1, p6, pp19]

511. Therefore, although the Appellant maintains that it would not be in its commercial interests to allocate any capacity at Ince to local, road-transported Cheshire waste, this is a current view which is capable of change according to the effects of fiscal, financial, economic and other circumstances.[164,165] Moreover Mr Wright said that the Appellant has never undertaken not to receive any C&I waste at Ince, be it from the North West or wider. [APP/1/d, pp2.7] Nor do the existing S36 consent, deemed planning permission and environmental permit prevent the use of fuel derived from C&I waste at this facility.[CD5/1 & 5/2] All this supports the Council's contention that it is not possible to say Ince will not compete with the appeal site in the North West Region for C&I waste.[291]

512. Given that transport costs are one main determinant of which facility will attract waste, a substantial proportion of the 600,000tpa capacity at Ince may thus be derived from Cheshire. The contract about to be signed between South Lanarkshire Council and Viridor to send residual waste by road from South

Lanarkshire to Runcorn for processing into RDF to fuel the Ineos Chlor facility, and the related application by Ineos Chlor to increase its road deliveries of such fuel by 400,000tpa demonstrates two things. Firstly, a facility similar to Ince may readily apply to change its planning conditions according to commercial opportunities and circumstances.[APP/1/d, App 2] Secondly, if a long distance road haulage waste contract can be profitable, shorter distances would probably be commercially attractive to a similar facility. The Planning Statement accompanying the application for permission for Ince said that facility would use 600,000t of RDF gathered via multi-modal transport from Greater Manchester, Merseyside and Cheshire.[CEC25, pp5.6]

513. The Appellant has not yet secured the Merseyside Waste procurement contract and has not produced evidence of any other secure contracts, whether for MSW or C&I waste, to be processed at Ince.[164] At a meeting of the Ince Park Forum, a representative of the Appellant said that if it was not successful in bidding for the Merseyside waste contract there were several other contracts in the North West and a substantial volume of C&I waste.[CEC44, App A (27 July 2011 p2)] The claim that the capacity at Ince will not be used to manage Cheshire waste has not been made out and little weight should attach to it.

514. The Bedminster permission has been commenced and will remain live for the foreseeable future. Whilst this is no guarantee that the facility will be built, it does mean that no repeat planning application is required, irrespective of changes in policy. That is a very different situation to one where permission has been granted, no works of commencement have occurred, and any future application is subject to whatever planning policy framework exists at the time, offering no guarantee of approval. Hence the situations at Ineos in 2008, at Ince in 2009, and at Severnside in 2011, where the Secretary of State has expressed the view that granting permission does not mean a facility will become operational, can all be distinguished from the current position in relation to Bedminster.[161,162, CD5/1, CD5/2 and APP/0/58]

515. In my view the combination of the above factors leads to the conclusion that the Appellant has not demonstrated that approval of the appeal proposals would not lead to an overcapacity of thermal treatment facilities in the Cheshire sub-region. Indeed, on the balance of probabilities, I consider that by 2020 there is likely to be an oversupply of such facilities compared to the amount of residual waste available for such treatment from within the county.

516. This conclusion is important because the Appellant says there is no cap on waste management capacity, in the light of the advice in paragraph 7.27 of the Companion Guide to PPS10.[APP/7, pp6.47 and APP/6, pp77 & 81] This paragraph was referred to by the Inspector who conducted the Inquiry into the Ince proposals in his report to the Secretaries of State.[CD6/8, App1, pp11.101-11.105] But the interpretation placed on the extracts quoted by the witnesses was in my view erroneous and a misunderstanding of what is said.

517. In the first place, though the Inspector agreed the fact that paragraph 7.27 referred to the broad test as not being a "rigid cap on the development of waste management capacity" was pertinent to that case, he was there dealing with competing proposals in the context of CRWLP Policy 6. This policy concerns waste facilities of a national/regional scale and does not form any part of the refusal reasons in these appeals. Secondly, the Inspector felt unable to draw any

conclusions on the matter of competing proposals because he did not have the information to undertake a full comparison of Ince and the other RDF incinerators referred to at the inquiry.

518. In the joint decisions, the SSCLG agreed with the Inspector that the broad test was pertinent to that appeal, but left the implications of competing proposals to the SSECC.[CD5/2, pp30 (CLG Decision)] The SSECC noted that neither waste nor energy policy places a rigid cap on the development of waste management capacity.[ibid, pp 6.4 (DECC Decision)] As a restatement of paragraph 7.27 that is manifestly correct, but it is necessary to consider the context of the term in order to understand the purpose behind the policy guidance. This purpose is that the 'demonstration' sought by the PPS is a broad test intended to ensure sufficient opportunities for waste management. The 'demonstration' referred to is contained in the preceding paragraph 7.26, that in order to show the stock of allocated land does provide sufficient opportunities in line with the core strategy, consideration should be given to site deliverability, including marketability to the waste management industry and 'lead in' times arising from any need for new infrastructure to service sites.

519. From this it is apparent that the guidance applies to plan making and the allocation of sites for waste management facilities, ensuring that sufficient numbers are available. This is confirmed by the heading to Chapter 7 of the Companion Guide, "Local Development Documents". By contrast, it is Chapter 8 which deals with guidance on "Determining Planning Applications", including advice on paragraphs 22 -25 of the PPS itself, which offer advice to waste planning authorities on the approach to such matters. I am aware that the Inspector in the Severnside planning appeal decision quoted part of paragraph 7.27 of the Companion Guide, including the term 'rigid cap', in his report to the Secretary of State.[APP/0/58, pp234 (Appeal Report)] He also referred to the term in his costs report in the context of the Ince and Ineos Chlor decisions.[ibid, pp68 (Costs Report)] But notwithstanding those references and the Secretary of State's conclusions on the reports, I remain of the view that the advice in paragraph 7.27 of the Companion Guide is not applicable to the determination of this appeal.

520. Should the Secretary of State disagree with my view, I would reiterate that the purpose behind paragraph 7.27 is to ensure sufficient waste management capacity within a plan area, that is, in order to avoid a shortfall which could lead to an increase in disposal to landfill. But the qualifying word 'rigid' suggests that the indicative capacity of facilities, though a cap or limitation, should not be applied inflexibly. That would seem to be no more than an acknowledgement that predictions of waste capacity requirements inevitably contain uncertainty so that a margin for error, or flexibility, should be applied to such calculations and allocations. What the advice does not say is that estimates of required waste management capacity for plan areas should be regarded as minima and that exceedance to any level is acceptable. That would be likely to result in the unsustainable importation of waste over long distances, contrary to the principle of managing waste at the nearest appropriate installation and to the PPS10 key planning objective of providing a framework in which communities take more responsibility for their own waste.

521. The above material considerations do not therefore affect my conclusion that the Appellant has not shown that existing waste management capacity in

Cheshire is inadequate to meet the waste management needs of the sub-region. The harm which would arise, were additional capacity to be permitted, is that this would draw in waste from beyond the sub-region, undermining the sustainable approach to waste management in the CRWLP.[CD3/2, p25] To the extent that the Appellant is prepared to accept MSW at Middlewich and/or Ince and bearing in mind the proposed recovery of MSW at Ineos, it would also conflict with the principles of self-sufficiency and proximity in Article 16(3) of the WFD. That is because it would compromise the aim of establishing a network of facilities enabling mixed municipal waste to be recovered in one of the nearest appropriate installations.[514, CD2/21] This in turn would be contrary to the requirements of Regulation 18(c) of the WRs 2011.[CD2/33]

522. In reaching this conclusion I am aware that an application to the SSECC for consent under S36 of the Electricity Act 1989 for construction of an EfW facility at Northwich (the Brunner Mond application) is the subject of an inquiry which opened on 11 October 2011.[CEC42] The input capacity of this proposal is said to be 600,000tpa of waste derived fuel, including pre-treated MSW and C&I waste, and though two-thirds of its capacity is proposed to be rail fed, that leaves one–third to be brought by road.[APP/0/9] Perhaps significantly, in considering the application, CWAC believed that all that capacity might be road hauled.[CD5/30, pp5.40] The Appellant and Brunner Mond say that the S36 application and the present appeal are different and distinguishable. [APP/0/15, pp3.1-3.5] However, in the light of my conclusions as above, a prior decision on the Brunner Mond application by the SSECC would appear material to the Secretary of State's consideration of this appeal.

CRWLP Policy 1

523. This policy seeks to ensure that the principles of the waste hierarchy are applied to waste management proposals in Cheshire, and requires an application to demonstrate this and its compliance with five other criteria, in order to ensure sustainable waste management.[CD3/2, p24] It is referred to in RR2 on the basis that importing waste from outside the county would undermine the objective of enabling waste to be disposed of in one of the nearest appropriate installations. [CD5/8, p32] I have already concluded in relation to Policy 3 that, were permission to be granted, such an outcome would be likely to result and that accordingly there would also be conflict with the WFD.

524. This requirement applies only to MSW or mixed waste collected by a local authority.[135] But though Mr Wright was clear that the appeal proposals were designed to be able to manage C&I waste alone, as are all the Appellant's proposals, he also said that in the wake of the collapse of the Cheshire PFI procurement bid, the proposed facility would have the potential to manage Cheshire MSW on an interim or long term basis pending a new contract.[APP/1, pp1.4.20, 3.3.10 & 3.3.13-14 and APP/1/d, pp4.4] In these circumstances it appears reasonable to apply the nearest appropriate installation principle to the appeal proposals.

525. Mr Aumonier undertook a WRATE assessment using the transport sensitivity tests from the SIP 3 information. [APP/6, pp155-167 and CD6/10, Part B] His unchallenged conclusions were that the transport impact of bringing waste whether from within or outside Cheshire is dwarfed by the carbon benefits of

energy and materials recovery and avoidance of landfill.[136] But though that is undoubtedly the case, the point here is to be able to make a comparison of the costs in carbon emission terms between the scenario of transporting waste to the appeal site from within Cheshire and that where a proportion of the same total waste is brought to the appeal site from outside the county.

526. Instead, the results produced in Assessment 2, on which Mr Aumonier relies, assess the total carbon benefit of recycling, treatment and recovery of the material to be transported, irrespective of its source, against the carbon balance of the transport according to the three different scenarios.[CD6/10, Part A, p17, pp4.3 & Table 4.2] Because all three scenarios avoid landfill there is a huge carbon benefit in all cases, but that is only material if the assessment is comparing transport carbon costs to those of landfilling. My conclusions on Policy 3 suggest that would not be the case and hence an assessment only of comparative transport carbon costs is required, and this is not delivered by the WRATE assessment.

527. Furthermore, the assumptions on which the transport scenarios are based assume, firstly, that only C&I waste will be collected from areas outside Cheshire. But the Cheshire only option is comprised of a split between MSW and C&I waste based on a higher total tonnage.[CD6/20, Part B, pp1.2.1, 1.2.2, 1.2.5 & 1.2.8] Secondly, though the WRATE assessment is said to be based on a "Gate to Grave" approach, the sources of waste identified in Assessment 2 relate to the assumptions in the transport sensitivity tests report. These show that all waste from outside Cheshire would be sourced from waste transfer stations, whereas within Cheshire half would come from waste transfer stations and half from direct delivery.[CD6/10, Part B, p11, Table 3.3 and Part A, p12, Table 2.1] However, waste transfer stations (WTS) are not primary sources of waste, so that the journeys from primary waste producers to the WTS are apparently not included in the assessment. Accordingly the comparison does not compare like with like in considering waste only from within Cheshire and that from outside the county.

528. Thirdly, the assessments do not consider the carbon cost of transporting residues but only those of transporting waste, though residues total about 107,500tpa, including some 86,000 to 102,800tpa of IBA.[CD6/7, Tab 3, p45, Table 4-8 and APP/1/c, pp6.1] This omission maybe because it is assumed that the only transport of IBA waste would be from the EfW plant itself to the IBA processing facility about 300m to the south on the appeal site. By contrast, the quantity of metals and the APC residues fraction, both of which are transported off-site, is small, so that total residue transport mileage would be negligible.[CD6/10, Part B, p9, pp3.1.4] The reasons for the omission are not clear but the cumulative transport assessment does not include tonnages attributable to any residues but only to waste imports.[ibid, Part B, p11, Table 3.3]

529. Because such residues are an inherent outcome of the waste treatment process, then whether or not they are small in quantity or in terms of distance transported, the carbon cost of their transport to final disposal to an end user should be taken into account as per the WRATE process.[CD6/10, Part B, p2, Fig 1.1] The Council challenged whether all the IBA produced on site would avoid landfill, but the Appellant is confident this would not be the case and has provided an undertaking to use its best endeavours to ensure IBA avoids landfill.[134, APP/0/6, CEC8, pp5 and APP/1/c, pp6.2–6.6] Nonetheless, no

contract was produced to confirm the proposed IBA ash processing facility would be established on site and the market will determine whether all the IBAA would be disposed of to end users.

530. Should this not be the case, so that either the raw IBA has to be transported elsewhere for processing, or should any of the IBAA product remain unsold, resulting in either unprocessed or processed IBA having to go to landfill, this landfilled material, as with the APC residue, would remain waste. In those circumstances, the transport and landfilling carbon costs of the landfilled material ought to be taken into account on the negative side of the WRATE assessment. I consider that, on the balance of probabilities, were permission granted for the development, the IBA processing plant would be established on the appeal site and at least the majority, if not all, of the IBAA product would be sold each year. Nonetheless, this does not negate the point that the WRATE assessment does not appear to include the carbon transport costs for transporting any amount or type of residues from the development.

531. Lastly, and perhaps most importantly, the assumptions in the WRATE assessment that some material would be imported from either the Mersey Belt or adjoining authorities would have implications for waste generated in Cheshire.[CD6/10, Part B, p11, Table 3.3] In either of the alternative scenarios 140,000tpa of Cheshire waste would not go to the proposed facility, its place being taken by waste imported from beyond the county. This displaced Cheshire waste would have to find either alternative means of recycling and recovery, or it would have to be disposed of to landfill. There is currently no operational thermal treatment capacity to process any residual MSW or C&I waste arisings in Cheshire.[APP/1, p21, pp3.2.2] Though I do not consider that would be the case at the proposed operational date for the appeal proposals after 2015, the Appellant also says that no harm would be caused should waste be imported from beyond Cheshire.[ibid, p22, pp3.3.2]

532. Therefore, on the basis that up to 140,000tpa of waste could be imported to a sub-region with no thermal treatment capacity, the Cheshire generated waste displaced by these imports would either have to be exported to processing facilities elsewhere or landfilled. The main factor influencing sources of waste is cost, this comprises gate fees which are confidential and cannot be assumed, and transport costs which relate principally to journey time and which are calculable.[CD6/10, Part A, p5-7, Section 1.3] On that basis the displaced 140,000tpa of Cheshire waste, in travelling either to a processing facility outside the county or to a landfill site within it, would result in carbon emissions, and on the balance of probabilities it seems to me that a substantial proportion of this material would be landfilled, thus generating an even greater carbon burden. These carbon loads for the displaced Cheshire waste do not appear to have been included in the WRATE assessment.

533. The assumptions in the WRATE report, including Assessment 2, are based on the material being all C&I waste.[CD6/10, Part B, p8, pp3.1.1] Should any of the displaced Cheshire waste be disposed of to landfill therefore, such disposal would constitute a breach of Article 16(3) of the WFD. Should any displaced residual waste in practice comprise MSW there would similarly be a breach of these Directive provisions.

534. In the light of the above I conclude that the WRATE assessment as applied here, comparing the carbon impact of transport of waste sourced wholly within Cheshire with a mix of some waste from Cheshire and some from adjoining areas, appears to be seriously flawed. It should therefore be afforded little weight. For that reason the results of the assessment do not undermine the Council's argument that waste imports from outside the county would cause harm by leading to the unsustainable transport of waste and by conflicting with the principle of disposing of residual waste to the nearest appropriate installation. I conclude there would be a failure to maximise opportunities for waste to be managed in accordance with the principles of the waste hierarchy, contrary to the aims of CRWLP Policy 1, RSS Policies EM11 and EM12 and the WFD.

535. In arriving at this conclusion I acknowledge and agree with the observations of the Inspector who conducted the inquiry into the CRWLP, that it is neither reasonable nor realistic to preclude waste from outside Cheshire from being managed or disposed of within the county.[CD3/3, p2, pp1.8] But whereas that conclusion related to a policy suggested by objectors to the Plan, this appeal concerns a specific proposal put forward in particular circumstances. Moreover not only does CRWLP Policy 1 espouse the principle of disposal at the nearest appropriate installation, but in addition RSS Policy EM12 says that local authorities should ensure that waste management facilities are sited in such a way as to avoid the unnecessary carriage of waste over long distances. I take this to mean that, whilst some 'overflow' of waste between sub-regions may be acceptable where it is logistically and financially sensible, that will be the minor proportion of such material and not a significant component.

536. On the evidence put to the Inquiry, and bearing in mind the central geographical location of the appeal site in Cheshire, I hold to my conclusion on the unsustainability of the proposals. Should the Secretary of State disagree with this conclusion and consider that significant waste imports from beyond Cheshire would be acceptable in the present circumstances, I would draw attention to the provisions of Regulation 18 of the WRs 2011. Because Mr Aumonier's evidence using the WRATE assessment was not challenged by any party, the Secretary of State may wish to consult the parties on this matter before drawing his conclusions on this part of the evidence.

CRWLP Policy 27

537. Though Policy 1 contains the criterion that an application must demonstrate how the development would maximise opportunities for transporting waste by rail or water, this is more appropriately considered under Policy 27. This policy considers the matter in greater detail and was, with Policy 1, the subject of ARR1 and 2.[SoCG, p11, pp3.12 & 13] Policy 27 was also the policy under which the Appellant submitted a Rail Feasibility Study with the application now subject of Appeal A.[CD6/6, Part A, Tab 10, App D.3] The Study recognised that, because the appeal site immediately adjoins the goods-only railway line between Sandbach and Northwich, it is potentially suitable to provide rail based facilities for the import of waste.[ibid, pp1.2 & Fig 2.1]

538. The Study also identified two potential rail based waste transfer locations where material could be loaded onto trains for the journey to Middlewich, at Ellesmere Port and at Knutsford.[ibid, pp2.3.11] But its conclusions were that, although technically feasible, the transfer of waste by rail to the appeal site from

Ellesmere Port and Knutsford is not economically feasible. This is due to the capital costs of around £3mn for the provision of facilities at all three sites, and of £1.14mn to purchase the necessary waste transport containers, compared to the zero costs of capital provision for road haulage.[ibid, pp2.8.1]

539. The Council accept that, for relatively short distances, the movement of waste by rail is probably not economically feasible. Their objection is based on the transport assumptions in SIP3, that a significant proportion of waste would be imported from beyond Cheshire. They say that in those circumstances a study of the economics of providing rail based waste transfer facilities should have been undertaken, as required by Policy 27.[CEC1, p48, pp142] That objection was supported by Mr Smith, and the feasibility study itself acknowledges that Greater Manchester WDA uses a rail based system to transport waste.[398 and CD6/6, App D.3, pp2.2.1] Furthermore Greater Manchester is one of the Mersey Belt authorities and the separate group of neighbouring authorities from which waste is assumed to be sourced according to the transport sensitivity tests in SIP3.[CD6/10, pp1.2.2 & 1.2.5]

540. Because the option of the appeal site accepting rail-borne waste from Greater Manchester was not investigated, it is not possible to draw firm conclusions on the economic feasibility of such a scheme. Such imports would appear to conflict with the policy principle of seeking to ensure that waste is disposed of in the nearest appropriate installation. However, the carbon benefits of such sourcing were also not investigated so that those environmental considerations also cannot be taken properly into account in assessing the balance. That is surprising given that Mr Aumonier considered that, amongst others, Greater Manchester is proximate to the appeal site such that the proposals might be considered the nearest appropriate facility for wastes arising therein.[APP/6, p52, pp141] From this I conclude that the rail feasibility study does not fully assess the potential situation in these appeals and that accordingly it should attract only limited weight.

541. This conclusion is reinforced because the Study considers adding a rail facility to the appeal proposals as they stand, which is designed to accept 100% road delivery, rather than considering whether the capital costs might have been different had the proposals been designed in the first place to accept a proportion of waste arriving by rail. In particular, the Study does not demonstrate whether the space it says is required for a rail import facility could be accommodated on the appeal site as it is proposed to be laid out, nor whether the facility would have to be provided nearby but outside the site and the effect this might have on costs.[CD6/6, Part A, Tab 10, App D.3, Section 2.4] Given the proposed layout of the appeal site, especially the area occupied by buildings and service roads, and the relatively limited width of the site, the space required to provide a rail facility on site would seem to be an important consideration.

542. Two alternatives to using the appeal site for the imports were considered, the first by using the existing rail sidings at British Salt, and the second by providing the import facility on allocated waste site WM5.[ibid, Section 3, p11] The Council did not challenge the conclusion that, although technically feasible, neither alternative would be economic in current circumstances. In the light of the route constraints between British Salt and the appeal site, and the inevitable costs of transhipment on to, and then off, road transport in both cases, I see no reason to question that conclusion.

543. Nonetheless, the test in Policy 27 requires an applicant to show that alternative forms of transport to road haulage have been investigated but would not be practicable, economically feasible or more sustainable than sole use of the highway network. The Study recognises that the environmental benefits of using rail transport mean that additional lorry journeys would not be required through Cheshire's towns and villages, but goes into no further detail and there is no carbon benefit assessment of rail versus road transport, nor of matters such as air quality effects, noise impacts, congestion or other environmental considerations when using rail as opposed to road transport. Essentially the assessment is technically and financially based, rather than sustainability based, and hence does not satisfy the terms and aims of the policy, to ensure waste is transported in the most sustainable manner.

544. The Appellant proposes to develop the appeal site in preference to allocated site WM5 because the two are considered to be identical in most, if not all, material respects.[APP/1, p26, pp3.5.3 & 3.5.5.2] But that assessment fails to recognise the sustainability potential of the railway line adjacent to the appeal site, to design the plant with that in mind and to consider the environmental benefits of avoiding road haulage of waste and residues to and from the facility. This failure is exacerbated by the Appellant's approach to the import of waste from beyond the boundaries of Cheshire, that this would be acceptable, while failing to demonstrate how the environmental impact of such imports would be sustainable and accord with important policy aims. I conclude that there is a conflict between the appeal proposals and the aims of Policy 27 insofar as the technically feasible alternative of rail transport has not been assessed on a sustainability basis. There is also a conflict with the similar aim of CRWLP Policy 1(c).

545. In addition, the proposals would also conflict with the aims of RSS Policy EM12, which support the sustainable movement of waste, seeking when practicable to use rail or water transport, with RSS Policies DP5, seeking a shift to more sustainable modes of transport for both people and freight, and DP9, which aims to reduce emissions and adapt to climate change. One of the key planning objectives at paragraph 9 of the Climate Change Supplement to PPS1 is to deliver patterns of urban growth and sustainable rural development that help secure the fullest possible use of sustainable transport for moving freight. PPS10 paragraph 21(i), as applied by paragraph 24(i) to determining planning applications on unallocated sites, advises that they should be assessed for their suitability for development against several criteria. These include the capacity of existing and potential infrastructure to support the sustainable movement of waste and products arising from resource recovery, seeking when practicable and beneficial to use modes other than road transport. The Appellant has failed to show that such other modes of transport would not be beneficial and sustainable in this case and this failure should weigh heavily against the proposals.

Policy 6

546. This policy does not appear in any refusal reason, but the Appellant says that, if the proposals are considered of a strategic nature, this policy may be relevant.[139] Given that the sub-region in this case is only Cheshire, and the capacity of the proposed facility in relation to waste arisings in the county, this could be considered to constitute a waste management facility of a sub-regional strategic nature. But the policy simply lists factors to be taken into account when

considering such applications, rather than setting out criteria, compliance with which is sought.[ibid] Taking each of these factors in turn, I have already concluded in relation to the first, the contribution the facility would make to meeting the treatment and recovery requirements set out in the RSS.[521] I have also concluded in the immediately preceding paragraphs on factor (iv), the accessibility of the site to a range of transport modes.

547. With regard to factor (ii), the scale of the proposal having regard to the benefits of co-location, it seems to me that, by contrast to the scale of what are considered to be regional/national facilities at Ineos and Ince, it would be unrealistic to expect the appeal proposals to include a full resource recovery park or similar facility as appears to be the case at those two sites.[164,167] However, the inclusion in the proposals of the MRB, which would recover a proportion of metals, glass and plastics within the waste, and the IBA processing plant, which is intended to recover the ash for use as secondary aggregate, suggests that the proposals provide a positive benefit in terms of this factor.[39,41] The sequential approach to land use, factor (iv), I take to be a reference to RSS Policy DP4. On that basis I consider that, although the appeal site is on currently undeveloped land, the fact that this land is part of a developing business park, allocated for industrial/commercial uses and with permission for B1, B2 and B8 development, shows the site is consistent with this sequential approach.[16,29] Given this context, the appeal site is plainly capable of being provided with the necessary infrastructure and is thus also consistent with factor (v) of the policy.

548. Because the policy requires only that the five factors be taken into account, should the Secretary of State consider it material to his determination of the appeal proposals, my conclusion is that the proposals are consistent with the factors in three cases and inconsistent in two others. The weight which might be attached to the factors is however limited given that this policy was not an issue between the parties.

Consideration 2: Compliance with Climate Change and Carbon Reduction Policies

RSS Policies EM15 & EM17 and CRWLP Policy 34A

549. These policies establish a clear development plan framework for promoting sustainable energy, and especially renewable energy, both in the North West and within Cheshire. In particular RSS Policy EM15 seeks to double the installed CHP capacity in the Region by 2010, if technically feasible, while Policy EM17 aims to provide, by 2015 at least 15%, and by 2020 at least 20%, of the electricity supplied within the region from renewable energy sources. EM17 also encourages the integration of CHP into new development and advises that significant weight should be given to the wider environmental, community and economic benefits of proposals for renewable energy schemes to contribute to the capacities identified in Tables 9.6 and 9.7a-c. The indicative capacities in those tables show that, in the Cheshire sub-region, there should be at least one thermal treatment plant dealing with MSW/C&I waste, with an output of 25MW.[CD2/26, p113-122]

550. CRWLP Policy 34A extends the thrust of the RSS policies by saying that an application for a thermal treatment facility for waste management purposes will not be permitted unless it makes provision for energy recovery and uses a waste stream which has already been subject to source separation of recyclate and/or

treatment and recovery of recyclables prior to thermal treatment. This encapsulates what the Appellant refers to as the intertwined nature of waste, energy and climate change policies.[70] The supporting text to the policy explains that a key objective of the CRWLP is to facilitate maximum recovery of waste materials and reduce the quantity of waste subsequently sent to landfill. It also says that favourable consideration will be given to proposals which capture both heat and power.[CD3/2, p51]

551. Considerable support is given by Government policy to development which addresses the need for reduction of carbon emissions and meeting climate change objectives, including the development of renewable energy facilities and the urgency of provision.[79-83] That must be so, given that climate change is the greatest challenge facing the world today, as is made clear in all recent Government policy and guidance on energy and climate change.[CD4/1, p23-27, CD4/2, p7, CD4/3, p10, pp1.1, PPS1-CCS, p8, pp3, CD2/12, p14, The Government's Objectives, CD2/16, p19, pp2] This support reflects two legislative requirements, firstly, the Climate Change Act 2008, which introduced a statutory target of reducing carbon emissions by 80% below 1990 levels by 2050, with an interim target of a 34% reduction by 2020. Secondly, EU Directive 2009/28/EC requires the United Kingdom to source 15% of its energy from renewables by 2020, a rise from about 2.25% in 2008. [CD2/12, p7, pp3] Finally, Government has committed to ensuring that, by 2020, renewable electricity will increase to around 30% of total electricity generated. [CD4/1, p9]

552. The Revised Draft Overarching National Policy Statement for Energy (EN-1) and the Revised Draft National Policy Statement for Renewable Energy Infrastructure (EN-3) were published in October 2010.[CD2/14 & CD2/15] Though these provide the primary basis for decisions by the Infrastructure Planning Commission on applications for renewable energy development under the Planning Act 2008, they are likely to be material considerations in decision making on applications (and by extension in determining appeals against decisions) by LPAs on applications under the Town and Country Planning Act 1990 (as amended). [CD2/14, p1, pp1.1.1 & 1.2.1] However, these documents are in draft and whether, and to what extent, they are material considerations is to be judged on a case by case basis.[ibid, pp1.2.2] Nevertheless, the greatest weight should be given to energy development which would avoid or reduce carbon emissions and which would counter, and certainly not exacerbate, climate change.

Refusal Reason 5 and CRWLP Policy 34A

553. RR5 alleges that the Appellant has not satisfactorily demonstrated that the application made adequate provision for the recovery and export of energy from the facility. However, this was not pursued at the Inquiry, although the Council did not formally withdraw the reason.[199] Whether this was due to the contents of SIP2, submitted in August 2010, remains uncertain.[2, CD5/21 and CD6/9A & 6/9B] SIP2 included, firstly, an indicative route for a grid connection between the appeal site and an existing 132kV overhead power line, including a replacement metal tower, and secondly, an indicative route for steam and return pipes between the appeal site and the British Salt works.[CD5/21, p91 and CD6/9A, Tabs 1-3 & Tab 6, Figs 1.1, 2.1-2.4 & 3.1-3.2] Nonetheless, in submitting SIP2, the Appellant did not seek to amend or modify the application, which was by that

time the subject of Appeal A, and the Council considered it as providing amendments only to the ES.[CD5/21, p93 and CD6/9A, pp1.2.1, 1.2.5 & 1.2.6]

554. By the time of the Council's consideration, in January 2011, SIP2 had been consolidated into the CES.[2, 5 and CD6/11-17] They resolved to notify the Inspector that the grid connection and CHP link should be formally submitted in detail for inclusion in a comprehensive planning application and supporting environmental statement, and objected to the indicative routes for both the grid and CHP connections.[CD5/21, Minute 90, Resolutions 3 and 5(i) & (ii)] However, the Council did not resolve to object to either connection as if they had retained jurisdiction of the application subject of Appeal A, by contrast to Resolution 4(a) and (b) on sustainable transport and importation of waste by road. Because no application was subsequently submitted seeking planning permission for the grid and CHP connection, and given that the Council did not withdraw the reason at the Inquiry, it seems to me that RR5 stands and the matters it raises fall to be considered by the Secretary of State.

555. Mr Aumonier explained that the appeal proposals are for a facility to recover energy from waste, in accordance with the WFD definition of the term 'recovery'.[APP/6, pp53-56 & App E] His evidence shows that, once the facility is linked to the grid, this would be the case, because the way in which the facility will treat waste will fall within the definition of recovery operations in Article 3(15) and Annex II of the Directive.[CD2/21] But the application as submitted did not include any plans or details of, nor refer to, the grid link, including the new tower, and the proposals have not been amended. Thus it would appear, as RR5 alleged, that they make no provision for the recovery and export of energy.

556. However, Counsel for Cheshire East, in an Advice to that authority on whether a grid connection and CHP formed part of the application, advised that CHP did form a part because the matter was referred to in the accompanying ES which must be considered as part of the application as a whole.[APP/7/b, Tab1, pp3] His advice on the matter of the grid connection was that it did not form part of the application, but was based on what he understood to be agreed between the parties, that the application was silent on this matter. However, the grid connection is referred to in the Non-Technical Summary to the ES as submitted, which says that the electricity, enough power for 50,000 homes, will be exported to the local or national electricity grid.[CD6/1A, Tab5, p1, pp2.4]

557. No other specific reference to a connection to the grid is given in the ES, and particularly in the Planning Statement, which does refer to CHP over several paragraphs and was the source for Counsel's Advice.[ibid, Tab3, p44/45, pp7.3-7.7] Whether or not what appears to have been the sole reference to a grid connection in the NTS was sufficient to make it a part of the application, this matter was acknowledged by the Appellant, who submitted SIP2 partly in order to rectify the apparent absence of information. That submission contains an indicative route and details of the metal tower which may form the grid link to the appeal proposals.[CD6/9A, Tab2] The subsequent consolidation of SIP2, together with SIP1 and SIP3, into the CES in October 2010 brought this information unequivocally within the ES.[CD6/12, p22, Section 3.4, p32, pp4.5.20 & p36-39, pp4.9.1-4.9.22] The evidence of Mr Wright was that the electricity generated by the facility will be transmitted to the grid, and the SoCG refers to the amended description of the development which includes the words "…electricity generation for export to the national grid,…"[439, APP/1, pp2.3.13]

558. The Companion Guide to PPS22, "Planning for Renewable Energy", advises that a planning application for a thermal EfW plant could usefully include, amongst other matters, information on grid connection works, including transformer and transmission lines.[CD2/8A, p122, pp33] EN-1, the Overarching Energy NPS, and the Renewable Energy Infrastructure NPS, EN-3, both include advice on the provision of information on a grid connection, and the latter says that any application [to the IPC] must contain some information on how the generating station is to be connected and whether there are any particular environmental issues likely to arise from that connection.[CD2/14, p60, Section 4.9 & CD2/15, p13, pp2.5.21]

559. In these circumstances it seems to me that the grid connection, though not part of the planning application itself, is nonetheless before the Secretary of State as part of the whole application now at appeal. This information also appears sufficient to enable an assessment to be made of any likely effects on the environment. Given that the Appellant has shown that the proposed EfW facility would satisfy the R1 formula of the WFD, and the proposals include sufficient information on the connection between the facility and the national grid to enable a planning judgement to be made, the proposals constitute an energy recovery facility, as required by CRWLP Policy 34A(1). The proposed mechanical treatment plant, which would extract and recycle ferrous and non-ferrous metals, some glass and plastics, satisfies Policy 34A(2).[APP/1, pp2.3.4] I conclude that the appeal proposals comply fully with the aims of CRWLP Policy 34A.

CHP and RSS Policies EM15 and EM17

560. The CRWLP pre-dates recent energy policy, especially that on renewable energy, and refers to the RSS policies in the context of the CHP component of the proposals.[APP/6, pp64] Whereas Policy EM15 seeks to double the capacity of CHP provision within the North West Region by 2010, the aim of Policy EM17 is to deliver the indicative capacity targets of Table 9.6 and 9.7a-c. The latter policy also encourages the integration of CHP into development, and the supporting text says that the indicative capacity targets are flexible and will change and that renewable energy capacity should be developed with the aim of meeting or exceeding these targets.[CD2/26, pp9.55] This policy gives the clearest steer that renewable energy development should be encouraged, taking into account the criteria in the latter part of the policy.

561. Most recently, NPS EN-1 sets out guidance on CHP in its advice to the IPC on assessment principles when examining and determining applications for energy development. [CD2/14, p51, Section 4.6] This is also included in NPS EN-3.[CD2/15, p14, pp2.5.24 & 25] This guidance says that (in line with BIS guidance on Section 36 of the Electricity Act proposals) an application to develop a thermal generating station must either include CHP or contain evidence that the possibilities for CHP have been fully explored.[op cit, pp4.6.6] Given that the Appellant has included CHP within the ES, so that it is to be considered as part of the whole application, this guidance is highly material to the appeal proposals.

562. Mr Wright explained that the CHP aspect of the appeal proposals is based on the company's relationship with British Salt, who he described as a known, established and long term customer for CHP.[APP/1/e, p6, pp4.1] The relationship between the Appellant and British Salt is further explained in a note he put to the Inquiry.[APP/0/16, pp2-5] The Supporting Planning Statement

forming part of the ES as submitted refers to the interest of British Salt in taking CHP from the proposed facility, and the Heads of Terms Agreement between the two parties, at that time being negotiated, was subsequently completed.[CD5/9, CD6/4, p44, pp7.3-7 & App 13 and APP/0/15] It is also apparent that the Appellant is prepared to consider supplying additional CHP to the Midpoint 18 Phase 3 development and even beyond, and has sized the facility with this potential in mind.[APP/0/16, pp6-9]

563. This provides evidence of both the CHP component of the appeal proposals, taken as a whole, and of the audit trail of dialogue between the applicant and prospective customers, referred to in paragraph 4.6.8 of NPS EN-1. Though only one such customer, British Salt, is identified, it is apparent that this firm's operations use an energy intensive process and they are seeking an energy efficient alternative with a long term guaranteed supply.[CD6/4, App13] Furthermore, it would be unrealistic to expect the Appellant to identify the energy requirements of future occupiers of Midpoint 18 Phase 3 when that development has not been commenced, no unit can be occupied before completion of the Middlewich Bypass, and it consists only of an outline planning permission.[34-36 and APP/1/e, Section 4.0]

564. But on the other hand, it would not be unreasonable to have expected the Appellant to have provided evidence of a dialogue with occupiers of the commercial and industrial buildings now on Phases 1 and 2 of Midpoint 18, and perhaps with occupiers of those on the nearby Brooks Lane industrial estate.[16-18, 23] I recognise that CHP is most likely to be effective where it is included as part of the initial design, rather than being retro-fitted, and that heavy, constant load, heat/electricity users offer the most attractive options. Nevertheless, some evidence of investigation beyond the single option of British Salt would have added weight to the Appellant's arguments here, even if the results were not encouraging. The Appellant's response to the Council's request for a Heat Use Assessment Study is less than helpful in the light of the guidance in Section 4.6 of NPS EN-1.[APP/0/16]

565. It is also perhaps something of an exaggeration to describe the relationship between the appeal proposals and British Salt as a very rare example and an exemplar, given that both the Ineos and Ince facilities, and the Brunner Mond proposals, are CHP enabled, closely related to heat and electricity users, with Ince under the control of the Appellant.[81, CD5/1 (Title), CD5/2, (DECC Decision, pp8.2) and APP/0/9] This proximate situation, which would appear to be not uncommon in north Cheshire, somewhat reduces the weight to be given to the British Salt plant being near, though not adjacent, to the appeal site.

566. Similar considerations apply to the statement by British Salt that their existing plant has an on-site CHP facility, designed to supply high pressure steam and electricity and low pressure steam.[CD6/4, App 13] According to the note of a meeting between Brunner Mond (owners of British Salt since January 2011) and the Appellant, there are benefits to both parties from the supply of CHP from the appeal site.[APP/0/15, pp2.5] However, though these are said to include a reduction in the carbon footprint of British Salt, the note also says that a significant reduction in carbon emissions will depend on the make-up of the waste burned at the EfW facility.[ibid, pp2.3] Therefore, although full weight should be afforded to the significant cost benefits and the security of energy supply which would result from this arrangement, with consequent assistance in

securing the long term future of the British Salt plant, the weight to be given to the consequent carbon benefits should be somewhat less.

567. CHAIN challenged Mr Aumonier's data seeking to show that the CHP element of the appeal proposals would be Good Quality CHP, and thus eligible under the CHPQA programme for Renewables Obligation Certificates (ROCs).[CH1/46 & 48 and APP/0/45 & 53] They suggested that he had incorrectly applied the recognised formula used to calculate the Q1 value (which measures the eligibility of a scheme for ROCs) to the appeal proposals so that it overstated the correct position, and they set out what they believed was the correct calculation.[CH1/46, pp12 & 13] In their view this might mean the proposals would not be eligible for ROCs. Mr Aumonier said his application of the formula was correct and that both electricity and heat supplied by the facility would exceed the Q1 thresholds so the scheme would be eligible for ROCs.[APP/0/53]

568. This dispute was not resolved before the Inquiry closed with neither side conceding its overall position. It was unfortunate that this technical point could not be resolved, because the purpose of the Q1 test is to measure plant efficiency and establish whether proposals with CHP are Good Quality CHP and hence eligible for the fiscal incentives of ROCs. Should a plant fail the test it would only be eligible for reduced ROCs, whereas exceeding the threshold would increase the ROC benefits. Mr Aumonier said that the revenue stream provided by ROCs is an important consideration for the Appellant in designing the facility as CHP enabled and configured to export heat.[APP/0/53, pp9]

569. That being so, the issue of whether the proposals would meet the Q1 thresholds would appear to be a commercial matter for the company, rather than a planning consideration. Moreover, as Mr Wright pointed out, it would appear inconceivable that the Appellant would not pursue delivery of the proposed CHP link and thus forgo viable and important revenue streams from both the sale of CHP to British Salt and the related income from ROCs.[APP/1/c, pp4.5] Nevertheless, it is also clear that only the renewable content of the waste is eligible to receive ROCs, and that large EfW facilities, defined as above 25MWe and thus including the appeal proposals, cannot meet the overall efficiency of the EC Cogeneration Directive. Hence separate criteria have had to be developed for such schemes to enable them to receive ROCs.[APP/6/b, Tab G, pp44.9-12]

570. My understanding is that ROCs have been developed to encourage investment in new technologies and overcome market difficulties in the area of renewable energy.[CD4/1, p59, Box 4] They are thus a subsidy, albeit one in support of a highly desirable purpose. But none of the outcomes of either the Appellant's or CHAIN's Q1 calculations suggests high efficiency, even within the context of how that calculation has been determined, irrespective of the Appellant's claim to the contrary.[APP/6/d, pp25] CHAIN also appear to have identified several unanswered questions arising from Mr Aumonier's evidence.[CH1/48] Therefore, whilst it is Government policy to provide the ROC incentive, the weight to be given to the CHP element of the appeal proposals may be reduced in the light of limited efficiency compared to conventional plant generating CHP.

571. I conclude that, because the appeal proposals incorporate CHP within the CES, would contribute towards the capacities in Tables 9.6 and 9.7a-c of the RSS, and would mitigate the causes of climate change and the need to consume finite natural resources, they accord fully with the aims of RSS Policies EM15 and

EM17. The weight to be attached to this compliance should be very great, but there are some considerations which the Secretary of State may consider would reduce this weight.

Consideration 3: The Sustainability of the Appeal Site in Terms of its Location and Operations

572. I have already concluded on the unsustainability of the appeal proposals in relation to the first main consideration in the light of CRWLP Policies 1, 3 and 27.[521, 534, 545] Therefore it is unnecessary to repeat the reasons which led to those conclusions, but two other aspects of sustainability should be addressed. These are, firstly, whether the development offers the best overall environmental outcome, in accordance with application of Article 4(2) of the WFD, and secondly, whether the appeal proposals would compromise other renewable or low carbon energy supplies in the light of Policy LCF15 of "Planning for a Low Carbon Future".[283, 295, CD2/21 and CD2/12, p26]

573. On the first point, it appears that Article 4(2) of the WFD applies to individual planning decisions; that accords with the advice of the Chief Planner to LPAs in England, that the waste hierarchy contained in Article 4(1) is capable of being a material consideration in determining individual planning applications. [CD2/5A] But it does not seem to me to follow, as the Council suggest, that if the Secretary of State concludes that managing Cheshire's waste at a different site would or might lead to a better overall environmental outcome, he is under a duty to reject the appeal proposals.[284] To do that would require him to make a decision, not only on the appeal proposals, but on the best way of managing Cheshire waste. Not only would the logistical requirements of doing so be disproportionate, but such a course of action would seem to be beyond the powers of Section 79 of the 1990 Act.

574. Nevertheless, I have concluded that the Appellant has failed to show that there is inadequate waste management capacity in the county, and that permission for this facility would be likely to cause harm by leading to the import of unsustainable waste from beyond Cheshire. In turn, and to the extent that the appeal proposals may accept MSW, this would conflict with the principles of self-sufficiency and proximity in Article 16(3) of the WFD.[536] That conclusion was in the context of CRWLP Policy 1, but the applicability of Article 16(3) means that the matter of sustainability is no longer constrained by the specific sub-regional context of Cheshire. Thus consideration of waste management capacity in this context can include the Ineos Chlor facility at Runcorn, now under construction and only a few kilometres beyond the Cheshire boundary.[506]

575. The Appellant says that the first phase of the Ineos Chlor facility is restricted to treating MSW and is intended to serve the Greater Manchester waste contract.[168] But Ineos Chlor have applied to the LPA to vary Condition 57 of the deemed planning permission of 2008 in order to be able to increase the amount of refuse derived fuel imported by road to the facility. In assessing the carbon benefits of varying the condition, they consider the definition of domestic waste in condition 2(a) should include C&I waste drawn from the North West region.[CEC44, pp54, CD5/1 and APP/1/d, App1] Whether or not the Appellant's objections to this application are warranted, it expresses a clear intention for that facility to use road-based imports and to import C&I waste from an area which includes Cheshire.

576. Though Mr Wright considered that, even if the Ineos variation of conditions is permitted, this would only result in the import of MSW from South Lanarkshire, this does not explain the Appellant's strong objections to Ineos Chlor's interpretation of the term domestic waste in their 2008 permission.[APP/1/d, pp3.1-5 & Apps 1&2] On this point I note that the Government is proposing to revise the definition of MSW which would result in it including much more commercial waste currently classified as C&I waste.[APP/6, pp74 & Apps O&P] Given that this proposal is to bring the UK into line with most Member States of the EU in interpreting the requirements of the Landfill Directive, it seems to me that the proposed revision is likely to be implemented.

577. On that basis it would appear that Ineos Chlor could, on the balance of probabilities, import waste presently considered to be C&I waste. Hence if Ineos Chlor were to obtain permission to import up to 480,000tpa of waste by road, this would in turn probably result in direct competition with the appeal proposals for C&I waste in Cheshire. This view is reinforced by the fact that, in addition to handling Greater Manchester waste, Phase 1 of Ineos Chlor was also to have managed waste from the Cheshire PFI contract via treatment at the proposed Viridor plant.[168, CEC34] With the collapse of the Cheshire contract its waste will have to be managed somewhere and it would seem probable that Ineos Chlor Phase I would have spare capacity. Such a situation could bring that facility into competition with the appeal proposals by way of the MSW route, given the Appellant's willingness to make the appeal proposals available for Cheshire MSW.[APP/6/e, App M, APP/1, pp3.3.13-15 and APP/1/d, pp4.4]

578. Whilst these conclusions are based on a balance of probabilities assessment of an unknown commercial situation, and hence contain great uncertainties, there is a clear potential for such a situation to arise. Mr Wright was clear that the appeal proposals are for a merchant facility and that they will compete in the open market for any waste that is available.[APP/1, pp3.3.10 and APP/1/d, pp4.4] There is no reason to suppose that Ineos Chlor/Viridor would not adopt the same commercial approach in the market for waste arisings. Ineos Chlor's development manager says that Viridor, who control the Phase 2 capacity of Ineos, will be marketing it on a C&I basis, and that there will be some capacity left in Phase 1, also controlled by Viridor, which will be marketed to C&I tonnage.[CEC36] Because it is more recent, I prefer this information to that saying that both Phase 1 and 2 of Ineos would be aimed at contracts with waste disposal authorities.[APP/0/39]

579. The planning permission for the erection of the related Viridor plant had not been issued by the close of the Inquiry, because the related Section 106 agreement had not been signed.[170] But it would appear highly unlikely that the absence of this permission would mean that Phase 1 of Ineos Chlor would remain under capacity, treating only Greater Manchester waste. The commercial imperative of that situation would in my view lead to other options being rapidly explored and implemented. The Ineos Chlor proposed variation of conditions may well be one such avenue. Hence I conclude that the Council's prediction that the appeal proposals, if permitted, would be in competition with other facilities in or close to Cheshire is by no means fanciful or improbable.

580. This conclusion is supported by the findings of the Scott Wilson report which considered EfW feedstock supply and demand in the North West.[CD4/27, p48, pp6.4] Their conclusion is based on different circumstances, that Ince, Ineos and

Brunner Mond are being developed by large chemical manufacturers and will supply heat and power to the adjacent industrial facility. Because the industrial facilities will provide a constant and reliable user of heat and power then, in the absence of sufficient waste feedstock supply they may need to source or utilise secondary fuels. The report concludes that it is likely that once these facilities become operational they would be able to compete aggressively for feedstock.[ibid] This is a very different scenario to that on which I have concluded, and was not explored at the Inquiry. However, it does support my conclusion that the risk of overcapacity in the southern Mersey Belt/north Cheshire area, where these facilities are located, is real and not imaginary.

581. Competition between companies operating separate waste management operations might appear a purely commercial consideration which should benefit the public interest and is not a matter for planning. But the point here is the effect this would have on sustainability and the environment. Mr Aumonier showed, in his evidence to the Ince inquiry, that there are clear environmental benefits of scale realised by a facility of that size.[CEC11/2, pp9.12-15 & Fig 9.2 and CEC11/3, App B, ppB45 &46 and Table B27] By comparison with Ince, Ineos and Brunner Mond, the appeal proposals, though not insignificant, are substantially smaller in terms of waste inputs. [APP/0/47 and CEC42] Even on the basis that, of those three large plants, only Ineos was to compete for feedstock with the appeal proposals, and accepting that Mr Wright's confidence in his ability to attract residual C&I waste to the appeal site is justified, then Mr Aumonier's Ince evidence indicates that significant environmental disbenefits would arise from every tonne of waste treated at the appeal site.[APP/1, pp6.1.4 and CEC11/2, Ch 9]

582. There is also some evidence that this competitive situation in Cheshire would not necessarily result in waste being forced up the waste hierarchy.[CH1/41] Only limited weight can be placed on such an isolated example, where the author did not give evidence in person. However, in the light of the Scott Wilson conclusions on the effects of potential overcapacity of treatment facilities in this area, it nevertheless suggests that such an adverse effect on the waste hierarchy is more than conjectural. Against this background I conclude that the Appellant has not demonstrated that, as a moderately sized merchant facility prepared to accept both C&I waste and MSW, the appeal proposals offer the best overall environmental outcome. In these circumstances there would be an unacceptable risk of a conflict with Article 4(2) of the WFD were the proposals to be granted permission.

583. The Council's argument on the effect of the proposals on other renewable or low carbon energy supplies, in the light of Policy LCF15 of Planning for a Low Carbon Future, is an extension of that considered above. But Policy LCF15 is contained in a draft PPS, so that the weight it attracts is less than adopted Government policy guidance. However, paragraphs 43 and 44 of PPS1-CCS suggest that draft Policy LCF15 derives from those two paragraphs in the Supplement. Accordingly, in the area of sustainability and emissions reduction, it is the policy guidance of PPS1-CCS which should be applied. As the Council point out, where there is any difference of emphasis on climate change with the guidance in another PPS, that is intentional and PPS1-CCS takes precedence. Moreover, because the Supplement was published in 2007, the same year as the adoption of the CRWLP, the latter could not have reflected the PPS. Hence the

advice of PPS1-CCS is a material consideration which may supersede the policies in the CRWLP.

584. Applying the advice of paragraphs 43 and 44 to the appeal proposals, consideration should first be given to the likely impact of the development on existing or proposed sources of renewable or low-carbon energy supply. Those would appear to be Ineos, Ince, Bedminster and Brunner Mond; at present Viridor appears unlikely to proceed.[232, APP/0/47 and CEC42] I have already concluded that the Appellant has not demonstrated that the appeal proposals offer the best environmental outcome in the context of Ineos alone. But equally the only cogent evidence that the proposals would be likely to have an effect on that or any other waste management facility is that of Mr Aumonier at the Ince inquiry.[CEC11/2, Ch 9]

585. The Council argues that such an effect would occur because every tonne of waste consumed at the appeal site would be a tonne less at one of the other facilities. However, that assumes that there is only a fixed amount of waste available to the competing facilities; in practice it seems to me that operational facilities would continue to source supplies, if necessary from further afield. In that situation the effects of competition between facilities would be on transport emissions and sustainability and on the communities affected by the wider transport of waste, rather than on the facilities themselves. But with competition between existing waste management facilities, new facilities, whether or not permitted, might not be brought forward. It was recognised in the Scott Wilson report that potential operators, especially those reliant on private sector funding would be unlikely to proceed with new capacity once more facilities are operational and the market is nearing saturation.[op cit, p45, pp6.4]

586. It thus appears to me that in the waste management situation which could easily develop over the next few years in and immediately around Cheshire, where the potential for oversupply of waste management facilities is real, the effect of granting permission for the appeal proposals could well be to prevent some future capacity coming forward. In waste management terms that may not be a problem, because it would simply be the market balancing treatment capacity to the availability of waste. But in its effect on renewable energy capacity, which the Appellant recognises Government policy is promoting in the strongest terms, it would have a seriously adverse effect by delaying the arrival of new renewable energy capacity.[79-82] By potentially prejudicing renewable and/or low carbon energy supplies in this way, the appeal proposals conflict with the advice of paragraph 44 of PPS1-CCS.

Consideration 4: Effects on Protected Species

587. Surveys carried out in relation to the proposed Phase 3 of the Midpoint 18 development, surveys for the ES scoping report in 2007, and further surveys as part of the preparation of the ES itself, showed that a small population of Great Crested Newts (GCNs) was present in Pond 3 at the southern end of the appeal site and that some terrestrial habitat suitable for this species occurs in the vicinity.[CD6/5, Section 15, pp15.4.67-74] It was also noted that, although none was found, habitat close to the appeal site was suitable for, and had been used by, otters. Further species surveys were undertaken in respect of GCN, otters, water vole and badgers in April and August 2010 in relation to the indicative routes for the CHP link to British Salt and the grid connection. These were

included as an addendum to the ES known as SIP2 in August 2010.[APP/8, pp2.1.11 & CD6/9] In turn they were incorporated into the CES in October 2010.[CD6/12, p281, pp15.1.2]

588. Two further surveys were undertaken in October 2010 and January 2011, for otter and water vole, and for badgers.[APP/8, pp2.1.12-14 & APP/8/b, Tab 1] Following the Regulation 19 request of April 2011, the Appellant carried out additional surveys to assess the likely significant effects on EPS and other protected species of potential CHP connections to buildings on all phases of Midpoint 18.[9,10,12] The details, results and assessments arising from these surveys were incorporated into the revised CES of July 2011.[CD6/14A, Section 15 and 6/14B] Arising from these surveys, the Appellant accepts that, if permission is granted for Appeal A, habitat loss, obstruction to dispersal and significant disturbance would occur to the GCN population on and around the appeal sites in the absence of mitigation measures.[CD6/14, AppI.7, pp4.2.10]

589. GCNs and otters are European Protected Species (EPS) under Article 12(1) and Annex IV of the Habitats Directive which establishes a system of strict protection for EPS.[CD2/24] The Conservation of Habitats and Species Regulations 2010 transpose the provisions of the Directive and Regulation 41 prohibits, amongst other matters, the disturbance of EPS and damage to or destruction of their breeding sites or resting places. Regulation 9(5) says that a competent authority must have regard to the requirements of the Directive so far as they may be affected by the exercise of those functions. By reason of Regulation 7(1)(a) the Secretary of State is a competent authority for the purposes of the Regulations.[CD1/4]

590. Article 16 of the Directive provides for derogation from the prohibitions of Article 12 for specified reasons and on the basis that certain conditions are satisfied. Regulation 53 transposes this derogation by establishing a licensing regime which is operated by Natural England as the relevant licensing body. A licence granted under Regulation 53(1) has the effect of disapplying Regulation 41, subject to the conditions of the licence. The Guidance Note issued by Natural England on EPS and the Planning Process helpfully explains their role and relates it to that of a decision taker considering a planning application or appeal.[APP/0/52] Importantly, it was issued after the Supreme Court decision in *R(Vivienne Morge) v Hampshire CC [2011] UKSC2,* so that it takes into account that judgement which is of direct relevance in this case.

591. From the judgement it appears that (subject to any other issues in the case and to any necessary mitigation measures) planning permission ought to be granted unless it is concluded that the proposed development would be likely to offend Article 12(1) and be unlikely to be licensed under the derogation powers.[211] In the light of the judgement the Guidance Note says that there will be circumstances in which a planning authority will be required to form a view on the likelihood of a licence being granted by Natural England.[APP/0/53, pp4] But it advises that it is still for a planning authority to determine the application in the light of the "three tests" of Article 16, and this is not altered by *Morge*.[212] The three tests are: that there are imperative reasons of overriding public importance why the operations for the purpose of the development should be carried out (the IROPI test); that there is no satisfactory alternative; and that the licensed action will not be detrimental to the maintenance of the populations of the species at favourable conservation status in its natural range.

592. In terms of the test of no satisfactory alternative, I have already concluded that, in the terms of CRWLP Policy 5, alternative sites for a thermal treatment facility are available in Cheshire.[494] I have also concluded that in the context of committed EfW facilities in Cheshire the Appellant has not shown that those alternatives do not present a more sustainable alternative to the appeal proposals.[545, 586] In its response to the proposals in April 2009 Natural England raised concerns that, in terms of the 'do nothing' alternative, only sites immediately adjacent to the appeal site have been considered by the Appellant, rather than others dispersed through the county.[CD6/14B, AppI.7, Appendix B, p6]

593. Of the sites identified in the CRWLP, that at Ineos raised Habitats Directive issues concerning EPS.[CD5/1, pp3.5(b)] But several other CRWLP allocated sites have not been subject to any assessment by the Appellant, so that Natural England's comments may still be valid on this point. These conclusions together show that, not only that there are alternatives to the appeal proposals in the form of other identified sites for thermal treatment facilities, but that these have not been considered. It therefore cannot be said that they do not offer a more satisfactory alternative to the appeal site in terms of effects on EPS. Although Natural England say they adopt a proportionate approach in considering the feasibility of alternative solutions relative to the degree of likely impact, it is also clear that it is for the developer to show that alternatives have been considered.[APP/0/52, pp27] Because alternative sites are identified in the CRWLP but have not been investigated by the Appellant in terms of effects on EPS, I conclude the 'no satisfactory alternative test' has not been met.

594. That the appeal site is allocated for employment development in the CBLP and outline planning permission has been granted for its development for B1, B2 and B8 uses is nothing to the point. [29] My understanding is that the provisions of the Directive apply to any application that may be made, including of reserved matters, so that its provisions would apply if the site is not used for the appeal proposals. Nor does the fact of a previous permission for a different development affect the need to apply the no suitable alternative test in the present case, because the circumstances of the development which has been permitted will be different to those of the appeal proposals. Given those differences and the time which has elapsed since the outline permission was granted in 2002, it cannot be said that protected species will be affected in a similar way and to a similar extent as they may have been when that permission was granted.[119] Therefore the test would have to be applied again.

595. In order to apply the favourable conservation status test, it is necessary to consider the proposed mitigation measures. The revised CES says that for the GCN population of Pond 3 at the southern end of the appeal site an off-site mitigation strategy is proposed.[CD6/14C, Section 15, pp15.6.18] That differs from the recommendations of the original survey report which suggested enhancement measures for terrestrial habitat adjacent to Pond 3 to support the GCN population, and long term maintenance and management of the pond to ensure the population will persist.[CD6/14, AppI.5, Section 5, pp5.3.3] The proposed mitigation strategy appears to have arisen from the responses from the statutory consultees to the initial proposals and further discussion which concluded that in situ mitigation was not possible due to the limited terrestrial habitat available for the species.[ibid, AppI.7, pp1.2.1 & 5.1.2]

596. It is plain from the reconsideration by the ecology assessors in the revised CES that both the limited space available on the appeal site, and the fact that land to the south-east of the site is required for mitigation needed for species, including GCN, affected by the proposed Bypass and Phase 3 of Midpoint 18 prevent the long term survival of GCN on the appeal site.[ibid, pp5.1.3] The recommended measures in the proposed mitigation strategy are thus for the translocation of the GCN population of Pond 3 to the proposed receptor site subject of Appeal B.[43] This strategy constitutes compensation rather than mitigation, as explained in English Nature's GCN Mitigation Guidelines[CD4/36, pp1.4] Though this document says that it uses the term 'mitigation' to cover both concepts, it clearly shows that they are different. It also advises that a programme of both mitigation and compensation should allow the conservation status of GCN to be maintained or enhanced following development, thus meeting one of the licensing criteria.[ibid]

597. This is not a matter of semantics in the context of the Appeal B proposals, because the CES says that there will be a permanent loss of about 1.97ha of GCN terrestrial habitat within 250m of Pond 3, and of 0.01ha within 100m. Though this is proposed to be offset by the 2.9ha receptor site, that site already provides terrestrial habitat for a GCN population and is proposed to be used as part of the mitigation strategy for Phase 3 of Midpoint 18.[CD6/14, AppI.7, pp5.1.5-8] It may be that the GCN from the two separate developments could share the land for ecological benefit, and the mitigation proposals could successfully be implemented in parallel.[ibid, 5.1.5] Nonetheless, there are several indications that the proposed compensatory measures may be less than satisfactory. In the first place the net gain of little more than 0.9ha of terrestrial habitat compared to the 1.98ha loss, already carrying a population of GCN, appears less than generous compared to the '2 for1' principle Mr Baggaley said was the usual rule of thumb used by ecologists for compensation and which Natural England uses as an example of good practice in mitigation.[CD4/36, p36, pp7.2]

598. Secondly, CHAIN pointed out that most of the receptor site is less than 50m wide, which plainly represents a substantial reduction compared to the present situation around Pond 3.[CHAIN R6, Rec 1] Though Ms Spedding said this would be satisfactory, the CES has not assessed the effects on the receptor site of the proximity of the extension to Pochin Way, which forms an essential part of the appeal proposals and which therefore will be built if permission is granted, nor those of the Bypass, should it be built. Neither does the assessment appear to have considered effects which may arise from the proximity and nature of the development a few metres from the eastern boundary of the receptor site, the car parks of the Wincanton and Primary Health Care Trust buildings.[CD6/14, AppI.7, Figs 1-3] These have the potential for causing disturbance through pollution via exhaust fumes, oil seepage, car washing, litter, and perhaps access by pet animals and/or their owners if the boundary fence is damaged.

599. Thirdly, as CHAIN pointed out, the receptor site lies only about 100m east of the proposed IBA processing facility where materials would be handled by bucket conveyors and vehicles and the proposed storage of material would be in an open yard with stockpiles up to10m high.[368] Dust blowing onto the receptor site could therefore be a problem.[326] Though my visit to the Sheffield works showed that water suppression can be effective in such an operation, in the absence of an assessment of that process and how it could affect the proposed receptor site in the particular circumstances of the two appeals, I consider that

CHAIN's representations are reasonable and have merit. Ms Spedding's answers to CHAIN's points do not give sufficient reasons to place more weight on her views.[APP/8, pp5.1.8-11] I conclude that the appeal proposals would further fragment the habitat of GCNs in this area and the compensation measures offer a cramped and vulnerable alternative to the present situation of Pond 3.

600. I appreciate that the GCN in and around Pond 3 comprise a small population of the species which appears to be part of a wider meta-population of medium size.[APP/8/b, Tab4, p3] Furthermore, Natural England noted the separate planning application, now the subject of Appeal B, and said that the mitigation measures in the ES seemed to be in line with its Guidelines.[ibid] The proposed grid connection and CHP links to Phase 3 of Midpoint 18 also look to be satisfactory in terms of mitigation measures required for the minor impacts agreed by the main parties and by Natural England.[CD8/1a, App7]

601. However, the evidence does not suggest that the proposed new habitat goes as far as possible to ensure that this new area will be of high value for GCN, which is what Natural England advise.[CD4/36, p36, pp7.2] Furthermore NE advise that newly created habitats, even where they are larger in size than the original, are not always qualitatively as good as old ones and there is an intrinsic value in established habitats that should not be under-rated.[ibid, p37, pp7.2] In this case the receptor site does not appear to offer the long term security of the future population for the reasons already given above. Accordingly I conclude that, notwithstanding Mr Baggaley's concession that the 'favourable conservation test' would be met, it has not been demonstrated that the proposed mitigation measures would maintain the populations of the GCN species at a favourable conservation status in their natural range.[216] Thus in this case I conclude there is an unacceptable risk that derogation would have a detrimental impact on this GCN population, contrary to the provisions of Article 16(1) of the Habitats Directive.

602. As to the IROPI test, the NE Guidance Note says that the European Court of Justice has not given a clear indication for the interpretation of this specific concept in relation to EPS.[APP/0/52, pp21] The Guidance sets out NE's approach to licence determination and offers examples of decisions, including sustainable development, green energy, economic and social development and employment and regeneration.[216] But the test is based on the threshold of being 'imperative', which is to my mind a very high test, but one which comes from the wording of Article 16(1)(c). Moreover NE expect evidence that a specific need is being addressed, and emphasise that each case is different. [ibid, pp24 & Annex, Introduction] In this appeal the specific need claimed by the Appellant seems to be the sustainable management of Cheshire's waste and the inherent benefit of renewable energy. But I have already concluded that the first part of that need has not been demonstrated to result from these proposals and there are questions over the weight to be attached to the latter.[536,586]

603. The combination of the very high threshold set by the IROPI test and doubt that a specific need has been shown to exist in this case lead me to conclude that these proposals do not satisfy this test. Mr Baggaley conceded that, if permission were to be granted for the proposals, then it could be assumed there were no satisfactory alternatives to the development and it would be of overriding public interest.[216] But that appears to be an illogical and self-justifying conclusion because it depends on applying the decision itself to the factors leading to the

decision. In this light I conclude that the proposals fail to satisfy all three of the tests in the Directive and there is a likelihood that NE may refuse to grant a licence.

604. The surveys also showed that there are other EPS present in the area to a greater or lesser degree, so that it is necessary to consider the effects of the proposals and the mitigation proposed in relation to those species. In terms of otters, measures are proposed to minimise pollution from the site that include a Construction Environment Management Plan to avoid/minimise the potential for fuel and chemical spills and to ban the storage of potentially contaminating materials in areas of hydrological sensitivity.[CD6/14B, Section 15, pp15.6.5] There would also be a Pollution Incident Response Plan to minimise the effects of accidental spillage. Construction and operational lighting would, wherever possible, use high or low pressure sodium lamps and the lighting would be directional and designed to avoid spillage. Landscape planting in the scheme would be designed to screen parts of the application area, thus reducing the impact of light and noise.[ibid, pp15.6.6&7]

605. These are all welcome measures, but they do not apply to Pochin Way, whether or not it becomes part of the Bypass, nor to the Wincanton/PCT car parks, as noted above. Those locations are both closer to the Sanderson's Brook corridor than the appeal proposals, and runoff and other pollution risks from these sources would not be mitigated. Similarly, the appeal site contains very little space around its perimeter for landscape planting, so that the effectiveness of those measures appears limited. The mitigation proposals suggest that the development adjacent to Sanderson's Brook would contain a 10m buffer zone where possible, but again this applies to the development and not to Pochin Way or the car parks.[CD6/14B, Section 15, pp15.6.9] The proximity of these two locations to the Brook is evident and both are at higher level and parallel to it.[CD6/13, Fig 15.4] Accordingly I conclude that the mitigation measures would not adequately ensure the long term protection of otters in the vicinity of the development.

606. Three other species should be considered: water vole, which is an EPS; badgers, which are protected under separate legislation; and the Lesser Silver Water Beetle (LSWB), which is specially protected and nationally rare, though is not an EPS.[CD6/14B, Section 15, pp15.4.42, 53 & 74] In terms of water vole, the surveys show that they do not appear to use watercourses in the vicinity of the site, whilst there are no badger setts within 30m of its boundaries. However, though the LSWB does not appear to occupy any of the ponds on the appeal site, Pond 3 appears well suited to its survival and several ponds to the south have been identified as containing this species. For this reason enhancement is proposed to Pond 3. In the light of these survey results and the enhancement measures proposed to the Sanderson's Brook corridor and Pond 3, I conclude that, on present evidence, the appeal proposals would have no significant adverse impact on these species.

607. But because this would not be the case in terms of GCN and otters, I disagree with the summary in the CES of residual effects post-mitigation on those species, particularly that there would be a positive long term impact at local level on otters.[CD6/14B, Section 15, p328, Table15.16] The Appellant says that it is appropriate for a decision taker to apply a 'light touch' test in relation to the derogation tests arising from the Habitats Directive, and the Secretary of State

will form his own view of this matter. However, it seems to me that this is not what the words of Article 16 say or imply and that, taken together, the appeal proposals do not satisfy the "three tests". If I am wrong on this, I consider that, in terms of its effects on these two EPS, the proposed development would conflict with the aims of RSS Policy EM17, CRWLP Policy 17(i) and CBLP Policy NR2. This should weigh heavily against the proposals.

608. In relation to other protected species I conclude that no serious harm is likely to result in the light of the available survey information, which appears up to date and adequate for the purpose.

609. A nature conservation matter not considered at the Inquiry, but which is the subject of evidence, is the potential air quality impacts on a European designated site.[CD6/12, Section 15, pp15.5.36-69 and CD6/14, AppI.9] The site concerned is the Bagmere SSSI, a component of the Midlands Meres and Mosses Phase 1 Ramsar Site.[ibid, pp15.6.68] The survey concludes that the emissions from the proposed facility would increase levels at the site, of $SO_{2,}$ by 0.1%, and of $NO_{2,}$ by 0.2% of the critical level.[CD6/12, Section 15, Tables 15.10 & 15.11] The commentary describes this incremental addition as insignificant, but the reason for this appears to be because the deposition of these acidifying pollutants at Bagmere already exceeds the relevant critical loads.[ibid, pp15.5.68]

610. It seems to me that, where there is already an exceedence of pollutants which, by definition, are harmful to the designation of the site, the aim should be to reduce, and at worst to maintain, those levels. Every small or insignificant addition to the critical load can be argued to be harmless on its own, yet such incremental addition is likely to result eventually in serious and unacceptable harm and perhaps destruction of the qualities which led to the site being designated. In the light of the aims of the Air Quality Directive, to improve air quality, then the fact that at Bagmere the appeal proposals would not bring about such exceedence is beside the point, when there is presently a massive exceedence of the NO_2 and SO_2 critical loads. In these circumstances any additional load of these pollutants is unacceptable. Because no submissions have been made on this matter, the Secretary of State may wish to ask the parties to comment.

Consideration 5: Effects on the Health of Surrounding Communities

611. This consideration does not form a reason for refusal because the Council accepted the advice of their officers that the facility would need a permit to operate from the EA, who would be responsible for setting and enforcing emissions limits, and so they should not duplicate those controls.[CD5/8, pp63] This accords with guidance in paragraph 26 of PPS10, that waste planning authorities should concern themselves with implementing the planning strategy in the development plan and not with the control of processes which are a matter for the pollution control authorities. The EA were scrutinising the permit application at the time of the Inquiry and had requested additional information from the Appellant. [CD6/17] This demonstrates that the pollution control regime is being applied to this proposal. The public have access to the permitting process and hence will be able to make representations on matters of concern, which might include the Appellant's operating record in the USA.[223, 334-6 and CH1, p4] Accordingly, there is no reason why pollution control matters should be considered in this planning appeal.[223]

612. However, PPS10 also acknowledges that planning operates in the public interest to ensure that the location of proposed development is acceptable and health can be material to such decisions. Regulation 18 of the Waste Regulations 2011 requires a planning authority to have regard to the provisions of, amongst other matters, Article 13 of the WFD when exercising their planning functions to the extent that they relate to waste management. Article 13 obliges Member States to take necessary measures to ensure that waste management is carried out without endangering human health, without harming the environment and, in particular, (a) without risk to water, air, soil, plants or animals. Therefore, while the pollution control regime is separate and discrete, planning has a clear obligation to consider the effects on human health arising from the proposed siting of this facility, including the consequences of generated traffic.

613. The effect of the appeal proposals on health is one of the greatest concerns of interested persons, whether they wrote letters or gave evidence in person. That is entirely understandable in Cheshire, where the north/central part of the county has long been industrialised, and several similar EfW plants have been granted permission or are proposed.[390, 397, APP/0/47, CEC42] Objectors are concerned that evidence shows that air quality is a significant local and national problem, that pollution from multiple sources is not recognised as a problem, and that Government does not take their concerns sufficiently seriously.[374, 387-389, 391] They are also worried that the traffic generated by the facility would add to existing exhaust pollution.[330, 379, 385]

614. Notwithstanding the cogent arguments of Dr Tuckett-Jones, it seems to me that these public fears are not without foundation. The recent SEPA study of waste incineration and reported human health effects concluded that, for the incineration of industrial waste, the evidence for an association with non-occupational adverse health effects is inconclusive, and for MSW incineration it is both inconsistent and inconclusive.[CD4/29, p67] This study also says that most evidence is of historical relevance so that, with newer incinerators and current controls, levels of airborne emissions should be lower than in the past.[ibid, p68] But, as CHAIN pointed out, and as WSE2007 acknowledges, the relevant health effects have long incubation times and it may be that the health effects of new incinerators will only emerge many years hence.[329, CD2/16, p77, pp22]

615. Of particular relevance to this appeal is the report's conclusion, that in future the number and/or total throughput of incinerators may increase and the total mass of airborne emissions could consequently rise.[op cit, p68] This appears to be addressed in Scotland by the devolved administration committing to limit the total amount of waste destined for recovery via thermal treatment, and by an expectation that planning controls should prevent new incinerators being located in the vicinity of existing facilities.[ibid] However, in England, Government policy is, apart from its encouragement of anaerobic digestion, agnostic on technology choice for waste treatment, and does not seek to limit amounts of waste thermally treated or seek to control numbers of incinerators.[CD2/16, p79, pp27]

616. In Cheshire, CRWLP Policy 3 seeks to control the supply of thermal treatment facilities.[498-522] But this is not because of any health effects, rather it is to avoid a disincentive to recycling and other forms of sustainable waste management and the generation of unsustainable waste movements.[CD3/2, p25] Nevertheless, the effects of unsustainable management of waste and of the unsustainable waste movements the policy seeks to prevent, are those which

would arise from an overprovision of facilities.[ibid] I have already concluded that there is a probability that overprovision could occur given the present capacity of thermal treatment plants with planning permission.[521]

617. One objective of WFD Article 13 is to ensure that waste management is carried out without endangering human health. The Oxford Dictionary defines 'ensure' as 'to make safe from, or make certain', but the findings of the SEPA study are that the association between health effects and incinerators is inconclusive. Paragraph 6 of PPS23 says that the Interdepartmental Liaison Group on Risk Assessment considered the application of the precautionary principle and made a number of important points.[CD2/9] These include, that this principle should be invoked when there is good reason to believe that harmful effects may occur to human, animal or plant health, or to the environment, and the level of scientific uncertainty about the consequences or likelihoods of the risk is such that the best available scientific evidence cannot assess the risk with sufficient confidence to inform decision-making.

618. In the light of the inconclusive findings of the SEPA report on evidence of a link between health and incinerator emissions, and the potential concentration of facilities in central/north Cheshire, it seems to me that it would be appropriate to apply the precautionary principle in dealing with this main consideration of the appeal proposals. Whilst I note that the Inspectors in the Cornwall appeal referred to clear, unequivocal statements in PPS10 and WSE2007 on the absence of evidence of harm to health from incineration, the SEPA study post-dates that advice.[APP/7/e, Tab 6, IR pp2103] Neither am I aware of the circumstances of that appeal and whether the SEPA study was brought to their attention. In the circumstances of the present appeal the application of the precautionary principle appears appropriate.

619. Nevertheless, PPS10 advises planning authorities that, as well as drawing on Government advice and research, they should ensure they have advice on the implications for health through consultation with the relevant health authorities and agencies, and consider the local implications of such advice. In this case the HPA and the local PCT both expressed views on the appeal proposals when consulted by the Council at application stage.[Appeal Questionnaire,221] Both voiced concern that the ES showed a predicted overall growth in traffic around Middlewich of about 10% in terms of daily vehicle movements and said that any additional traffic from the EfW facility and other nearby developments should be considered carefully, especially in terms of the impact on health of increased emissions and road traffic accidents.

620. In terms of traffic, the health authorities questioned the baseline survey traffic data times in the ES which were further explained in the CES.[CD6/5 & CD6/12, Section 9, pp9.4.7] It seems to me that data from a single Friday in mid-December is not sufficient to establish a baseline (as the ES/CES accept), nor was it later validated by that from a single Thursday in April. That the data coincide does not show it is robust for the very reason which the health authorities give, that a Friday is unusual because some people leave work early or take the day off. That day may also have been significantly different to 'normal' for reasons such as the nature and working patterns of local employment and school holidays.

621. Accident data show that several sites around Middlewich have higher than the national average rates. [ibid, Table 9.4(CD6/5) & Table 9.3(CD6/12)] The ES/CES says the junctions most likely to be impacted by the scheme currently have low accident rates. But this is not a reasonable conclusion in the light of the Appellant's intention to operate the proposal as a merchant facility. In those circumstances waste will be accepted from any source and hence may approach Middlewich from any direction. This would also make it unreasonable to impose a condition limiting HGV traffic to the A54 between its junctions with Pochin Way and the M6, as suggested by the health authorities. Thus the addition of the traffic generated by the development would add to that now using the junctions around Middlewich, including those with a higher than average accident rate.

622. But this additional traffic would only be a tiny proportion of total traffic on the key road links.[CD6/12, Section 8, Table 8.13] Furthermore, planning permission was granted for the development of the appeal site in 2002.[29] Though this was an outline permission, an indicative layout showed buildings totalling some 21,700m^2 with 452 parking spaces. Were permission not to be granted for the appeal proposals, the development of the appeal site in furtherance of the Midpoint Phase 2 allocation in the CBLP for commercial development and following the adoption of the Phase 3 Development Brief would represent a realistic fallback position, even though the 2002 permission has expired. [29,31,33,34] The ES/CES says that in those circumstances the appeal proposals would generate fewer vehicle movements than development similar to the 2002 outline scheme, although it would contain a higher proportion of HGVs.[op cit, pp8.4.3-4] In that light the effects of the appeal proposals on the road safety aspect of health would probably be neutral.

623. On air quality, NO_2 levels at the White Horse pub, Lewin Street, on the A533 in the centre of Middlewich are approaching Air Quality Standards objective levels, and European AQFD limits.[CD6/12, Section 9, pp9.4.8 & Table 9.2, and CD4/3, p20, Table 2] Regrettably, this site is not used as one of the selected receptors to assess the predicted NO_2 levels in 2015 so that a precise comparison is not possible.[ibid, Table 9.14] However, a reasonable comparison can be made by taking the predicted concentrations in general, and in particular by using similar measured baseline levels at Sproston Green on the A54 east of the town on a 'by analogy' basis.[ibid]

624. Such a comparison suggests that the contribution of the appeal proposals to the annual mean Objective threshold of NO_2 would comprise about 1%, but that the predicted levels would fall.[ibid] This fall would appear to be due to increasingly tight vehicle emissions standards and the replacement of older vehicles with modern equivalents.[CD4/33, pp47] It is borne out by the forecast baseline conditions without the EfW facility.[CD6/12, pp9.4.17 & Table 9.6] The present situation at the White Horse, Lewin Street may therefore be the worst case. However, in the absence of predictive information, it is not possible so to conclude with confidence.

625. In terms of emissions from the facility itself, ground level concentrations of NO_2 would increase by up to almost 5% of the UK objective guidelines at around 4.km to the north-east, of SO_2 would increase by 19% for the 36th highest 15 minute mean, and by 13% of the 25th highest hourly average at 0.4km to the south-east. For particulates there would be a 2.4% increase in the 8th highest daily average, also at 0.4km to the south-east.[ibid, pp9.7.50-55 & Table 9.12

and CD6/13, Figs 9.4-12] There is no reason to question these calculations, nor the accuracy of the plotting in the figures. But the table does not state or describe the locations of these worst cases, and, at the scale presented, the figures make it difficult to draw any conclusions that may be useful in planning terms. Similar considerations apply to the other pollutants considered in the ES/CES.

626. The geographical plots of forecast incremental loads from the proposed EfW facility show firstly that, due to the prevailing wind directions, the maximum annual average depositions occur to the north-east of the appeal site and thus mainly over the northern part of Midpoint 18 and the countryside beyond in that direction.[CD6/13, Figs 9.5 & 9.12] Secondly, however, short term increments to ground level concentrations are generally even in their distribution, affecting much of Middlewich as well as countryside areas in the arc from the south-east to the north-east.[ibid, Figs 9.4 & 9.6-11]

627. Though these increments do not exceed Air Quality Objectives or European obligations, they do demonstrate that the location of the appeal site does have an adverse impact on the air quality of the town. That is not to underestimate the significance of deposition on agricultural land because this can have the effect of transmission into the human as well as animal food chain via plant take-up.[328, 378, 391] For dioxins this is important because it is the way in which they affect health, though the ES/CES predicts that concentrations of this pollutant will not be significant.[CD6/12, Section 16, pp16.3.26-31 & Table 16.2]

628. As to incremental loads within the town, the proposals may not have a significant effect on health outcomes in Middlewich. However, many people would be affected by an additional pollution load, notwithstanding that the forecasts are worst case scenarios and the assumption that the EA would enforce against breaches of licence conditions.[374, 391] The aim of the Air Quality Strategy is to deliver cleaner air to ensure a less polluted environment now and in future.[APP/4, pp4.1.2 & CD4/33, pp1] The evidence shows that an increased pollution load would arise from the proposed EfW facility. Though this would be within present Air Quality Objective threshold limits and, as presently assessed, of negligible significance in almost all cases, the effects on the health of the residents of Middlewich and surrounding communities are a material consideration in this case.

629. In the context of the Strategy, European obligations and my conclusions on sustainability, alternatives and the applicability of the precautionary principle to this appeal, I conclude that some weight should be given to the diminution of air quality which would result from the appeal proposals, limited though it may be. The potential for this to affect health outcomes in this area is uncertain, partly because of unsatisfactory data and present knowledge on this matter. In those circumstances this should attract some, but limited weight.

Consideration 6: The Effects on Traffic in and around Middlewich

630. The Council's consultations with the highway authority and the Highways Agency, including on a further transport assessment, resulted in neither making any objection to the appeal proposals.[229] Traffic issues were not the subject of any RR when the application subject of Appeal A was determined.[APP/3, pp1.2.3, APP/0/26] Subsequent information resulted in the transport assessment sensitivity tests in SIP3, which were incorporated into the CES in October

2010.[CD6/10 & CD6/14, App J.1] The Council considered this information and resolved that, had they retained jurisdiction, they would have refused the application for two additional reasons, both broadly alleging the unsustainable transport of waste.[CD5/21] These are referred to as ARR1 and 2 and concern matters subject of RR3, already dealt with in Consideration 3 above.[199]

631. However, traffic was an issue which attracted large numbers of written representations, several statements at the evening session, and also formed a major plank of CHAIN's case.[376, 384, 401, 404, 408, 411-413, CH1/1, pp10-14] These concerns centre on the amount of traffic, especially HGVs, already using the main road network of Middlewich, and the harmful effect this has in terms of pollution and intimidation of pedestrians, as well as the congestion at peak hours. In the view of objectors, the addition of traffic generated by the appeal proposals would make a bad situation intolerable, bearing in mind the effect of development already permitted and the general background growth in traffic.

632. The outline planning permission granted in 2002, for the development of the land subject of the appeal proposals for commercial use in the form of B1, B2 and B8 uses, represents a credible fallback position should the proposals not proceed, given that it is on committed employment land, and Policy E2 of the CBLP. [622, 29, APP/3, pp5.1.1, CD6/13, AppB.5 and CD3/5, p6-6 & Inset 3] The highway authority say that the total trips generated in the morning peak hour by the development permitted in 2002 would be about 126 vehicles, of which 22 would be HGVs. This compares to a predicted 38 trips, of which 30 would be HGVs, generated by the appeal proposals when fully operational.[APP/0/26, p3] Accordingly, though total trips generated by the appeal proposals would be only about 30% of those generated by the fallback business use, there would be a predicted 8 more HGVs in the morning peak going to and from the appeal proposals.

633. But, as with so much of the transport assessment and related evidence, the highway authority's predictions depend on the accuracy and completeness of the information and assumptions on which they are based, and CHAIN and interested persons suggest that the latter are flawed.[357-361, 401,402] I have already commented on what appears to be limited survey data in the TA, and nothing in Mr Stoneman's evidence alters my conclusion that it cannot be said to be robust.[620]

634. He also concluded that, in terms of accidents, there do not appear to be any recurring road safety issues, but this contradicts the concerns of the HPA/PCT regarding several junctions around Middlewich.[APP/3, pp3.8.1, 621] If Mr Stoneman based his conclusion only on the A54/A533 and A54/Pochin Way junctions, that may be a reasonable view. However, given the merchant facility basis of the proposals and my conclusion that a routeing condition is likely to be unenforceable, the safety record of all junctions on the main road network around the town should have been considered.[ibid] In the absence of appropriate baseline information I cannot conclude further. On the other hand, Mr Stoneman's observations, that the average queue length in the morning peak at the A54/A533 junction in the town centre is 0.9km long, support CHAIN's claim that long traffic queues and delays are a daily morning peak occurrence in the centre of Middlewich.[APP/3, pp3.6.3 and CH1/25 & 26]

635. The predictions of both construction and EfW generated traffic, and their distribution, also appear questionable for several reasons. For construction traffic, average trips are based on the total 30 month period, but the baseline information shows this to be in two entirely different phases, with the first having about five times the intensity of traffic compared to the second phase.[APP/3, pp 4.2.5 & Table 4.2] The stated average therefore understates the maximum average HGV generation by about 60%, at 7 deliveries per day compared to almost 12 per day, which a calculation using information only from Table 4-2 shows would occur in the first phase.[ibid]

636. Mr Stoneman acknowledges that around Month 6 of the construction there would be a peak of some 13 deliveries per day; he then assumes that most deliveries would occur outside peak hours, with a maximum of about 4 deliveries per hour.[ibid, pp4.2.6] But the nature of the material generating many of the movements suggests that 'bunching' of deliveries, in terms of particular short periods of high activity and especially early in the morning, is probable. Thus cartaway operations and materials deliveries often display these features around large construction sites, leading to parking problems in the vicinity. Concern on this matter is expressed by the PCT on behalf of their employees.[Appeal Questionnaire] Furthermore, the data in Table 4-2 uses one way trips, so that care is needed in making comparisons with the highway authority's analysis, which uses two way trip information.[ibid, APP/0/26]

637. Nor do the assumptions about the distribution of the workforce appear soundly based, for the origins of permanent employees of businesses on Midpoint 18 who use the A54/Pochin Way roundabout may be very different to those of construction contractors and sub-contractors who tend to be transient and who may lodge locally or travel great distances. Thus the assumption that 30% of construction workers would approach and leave via Middlewich town centre is not explained.[ibid, pp4.3.1-3] Similar considerations apply to the distribution of HGV trips during the construction phase, which is even more skewed towards the M6. Given the large Tesco, Wincanton and Kuehne & Nagel distribution warehouses on Midpoint 18, their trip distribution is no doubt mainly to and from the motorway, but sources of concrete, building materials and tipping facilities for cartaway do not seem to me necessarily, or even probably, to suggest a similar pattern of movement and no evidence supports the assumptions.[ibid, pp4.3.4]

638. Turning to the operational phase assumptions, whilst the route assignments in the TA appear reasonable, those for Scenario 1 in the sensitivity test assessments look surprising, by assuming that 100% of vehicles from the Mersey Belt would approach via the M6/A54 east and hence avoid the town.[CD6/12, AppD.1, pp2.2.8 & Table 2.2 and APP/3, pp4.5.4 & Table 4-8 and pp4.5.5 & Table 4-9] Those for Scenario 2 are similarly high, with 87% of HGVs predicted to use that route. A substantial part of the Mersey Belt consists of the area from Ellesmere Port into the Wirral and Birkenhead and, whilst the M56/M6 route to Middlewich may be attractive in time terms, it is substantially longer in mileage and hence probably more expensive in terms of fuel consumption. To expect 100% or even 87% of vehicles to enter from the east in these circumstances is unsupported assertion, so that in turn the effects on the town centre of the HGV traffic under Scenario 1, and perhaps under Scenario 2, appear underestimated.

639. The effect of these assumptions in the TA and sensitivity tests results in a situation where the forecast impact of all traffic in the morning peak probably

significantly underestimates total numbers of vehicles and of HGVs generated by the appeal site, both in its construction and operational phases. Thus in the former phase it is forecast that, at the 2010 morning peak, the A54/Pochin Way roundabout, from which leads the only vehicular access to the appeal site, would see, at the time of peak construction, only 51 additional light vehicle movements and no additional HGV movements generated by the development.[APP/3, pp6.2.3 & Table 6-2] That in my view is an unrealistic prediction and results from flawed assumptions.

640. Because the A54/Pochin Way roundabout is operating well within capacity, then, even if forecast generated traffic is substantially greater, that traffic would have no serious consequences on the operation of this junction.[ibid, pp6.2.6 & Table 6.3] But on the town centre junction of the A54/A533 there would be very considerable consequences if reasonable assumptions on trip distribution were employed. This junction currently operates well beyond capacity at peak times, with a Practical Reserve Capacity at 2007 of -63.6.[ibid, pp6.4.5 & Table 6-6] Mr Stoneman's calculation, that traffic generated by the construction phase of the development would not have a significant impact on the operation of this junction as it would be within the daily variation of flow, maybe technically correct. But it arises from assumptions on trip distribution which appear flawed. [ibid, pp6.2.7]

641. Precisely the same considerations apply to the forecasts for the operational phase of the appeal proposals. The modern A54/Pochin Way roundabout has considerable reserve capacity and in my view would continue to have this reserve, even if traffic generated by the appeal proposals and from recent developments such as the Wincanton and Kuehne & Nagel warehouses is added to the assumptions in the transport assessment.[ibid, pp6.4.2 & Table 6-4] However, for the A54/A533 junction, the CES traffic assessment shows that at 2015 the background situation, with no traffic generated by the appeal proposals, would be that the junction would be at around 112% saturation at peak hours on all arms except the A54 eastbound, and delays on the other three arms would be about 5 minutes.[CD6/12, App J.1, Table 2.1]

642. Unfortunately, the CES predictions for the traffic generated by the appeal proposals at 2015 are based on the trip distribution and peak hour assumptions which I have already concluded are flawed. Hence the CES concludes there would only be a marginal increase in traffic at this junction due to the traffic generated by the appeal proposals.[ibid, pp2.3.2] Mr Stoneman's evidence does not help because it forecasts only a situation incorporating changes to the operation of the traffic lights at the junction.[APP/3, pp6.4.5 and Tables 6-5 & 6-6] Thus it is not possible to assess what would happen at this junction in the morning peak if no such changes were made to the traffic signals.

643. Mr Stoneman's conclusion is that, with the assumed adjustment to the traffic lights in 2015, the situation there would improve.[ibid] But that argument is contradicted by his evidence, which shows that, of the four arms of the junction, only that of the A54 westbound traffic would improve, while A54 eastbound-ahead traffic would experience no change and the degree of saturation for A54 eastbound right turning traffic and for the A533 Leadsmithy Street traffic would worsen significantly.[ibid] I consider Mr Stoneman's conclusion to be unsound therefore, and my concern is that it is further undermined by the flaws in the trip distribution forecasts and assumptions about morning peak traffic, as well as the absence of any direct comparison with the baseline conditions.

644. But even if his calculations are accepted as being correct, they show traffic conditions in the centre of Middlewich worsening considerably, which is precisely the concern of CHAIN and many local people. The additional traffic queueing on Leadsmithy Street would result in maximum predicted queues of about 90pcus.[ibid] My site visit showed that a queue of this length would extend southwards into Lewin Street, probably past the White Horse pub, which is a pinch point for traffic and where air quality thresholds are currently close to being breached.[403,623] Hence stationary traffic would add to air pollution and congestion at the pinch point would be exacerbated.

645. In this situation there would be an increasing likelihood of 'rat-running' by traffic which now uses Lewin Street, instead seeking alternative routes to avoid the long queues back from the A54/A533 junction. For light vehicles going north-west this would result in traffic passing through residential areas and by schools just as pupils are arriving, while for north-east bound traffic there would be a temptation to use Brooks Lane and conflict with industrial traffic, despite the no entry at the A533 junction.[361] There are already significant exceedences of average accident rates on both the A533 Lewin Street and the A54 between its junctions with the A533 and Pochin Way.[362] Any increased traffic along these roads arising from the appeal proposals and the application of more realistic assumptions and forecasts would be likely to aggravate this already harmful situation.

646. The suggested retiming of the A54/A533 lights would result in the benefit of reduced traffic delays on the A54 westbound and a consequent reduction in queue length, thereby limiting the tailback affecting the Pochin Way roundabout. But this very localised benefit at a fringe location, which would affect relatively few drivers, would be greatly outweighed by the much more widespread harm to users of the A533. This would arise from the creation of additional congestion adjacent to the town centre, harm to air quality objectives from increased emissions from queuing traffic, and from 'rat-running' through residential and industrial areas. The fact that harm would also be caused to the operation of the fire station is acknowledged by the Appellant's offer to fund mitigation measures in the form of a 'hurry-call' facility on the A54/A533 traffic lights in order to ensure fire appliances could negotiate the junction without delay.[APP/3, Section 9.1]

647. The Appellant also offers a Travel Plan as a mitigation measure to reduce the number of cars travelling to and from the site.[APP/3, Section 9.2] Though welcome, it seems to me unlikely to have any substantial benefit because there is no railway station in Middlewich and the site is acknowledged to be some 1200m from the nearest bus routes, well beyond any reasonable walking distance. [CD6/12, pp8.3.1] Cycle provision may have some success, but, given the accident record of the A54 east of the town centre, which almost all cyclists would have to use at some point in their journey, and the absence of cycle tracks on that and almost all other roads, any benefits would again look to be limited. Mr Stoneman acknowledged that the appeal proposals are not reliant on the proposed Bypass as a mitigation measure and I agree with his view.[APP/3, pp7.2.1]

648. I thus conclude that, not only is the traffic assessment flawed in its assumptions on future generation, trip distribution and peak hour loads, it also lacks important comparative information on the key road junction in the centre of

the town. Accordingly, the assessment has failed to demonstrate that the appeal proposals would not have a serious effect on present congestion in the town centre around the A54/A533 junction. The implied proposals of re-timing the lights at this junction would, if implemented, cause unacceptable consequences over a wide area to the detriment of living conditions, road safety and general amenity. In addition air quality would also be diminished. These considerations would conflict with the aims of RSS Policy DP2, CRWLP Policies 12, 27 and 28 and CBLP Policies GR1, GR6 and GR18 and should carry considerable weight.

649. In the absence of the A54/A533 traffic lights being retimed, the flaws and contradictions in the Appellant's assessment are such that its conclusion, that there would only be a very small impact on this junction arising from traffic generated by the appeal proposals, is unsound and should be afforded little weight. The accompanied site visit walked partly along the A54, from the A533 junction to the pedestrian crossing near Pochin Way which serves the housing development on the north side of the A54. During this walk I experienced an unpleasant sense of intimidation and being in a highly unsafe situation, very close to large vehicles and with no route of escape. In that light, and recognising that general traffic volumes are likely to grow in future, the unnecessary addition to that growth generated by the appeal proposals should be avoided.

650. This conclusion applies equally to any increase in congestion along the A54 west of Pochin Way and additions to overcapacity at the A54/A533 junction as a result of development generated traffic, whether that is minimal, as the Appellant maintains, or is significant, as CHAIN and residents claim, and to which I attach greater weight. In the light of the above analysis, I disagree with the view of the highway authority that there is no sustainable reason to resist the appeal proposals on highway grounds.

Consideration 7: Effects on the Landscape

651. It is agreed that landscape effects require an assessment over a wide area, approximately of a 30km radius from the appeal site.[SoCG, pp7.1] Within this area the only nationally important landscape designation is that of the Peak District National Park, the boundary to which is about 22km from the site at its closest point.[ibid,7.1] Local designations are defined by the CBLP and include the Protected Area of Open Space formed by Sanderson's Brook immediately east of Appeal Site A, the conservation areas of the Trent and Mersey Canal and the town centre, SAMs, including the brine pump near the north-western corner of the appeal site, and several listed buildings, amongst them Cledford Hall near the site's south-eastern corner.[CD6/15, Fig 11.1] The CBLP also defines the settlement zone line around Middlewich, beyond which lies open countryside. [CD3/5, Inset No.3]

652. The baseline assessment information, including published landscape character assessments and guidance, the identity of visual receptors, the choice of photo locations, and diagrams showing zones of theoretical visibility (ZTVs) and visualisations are all agreed by the main parties.[CD8/1a, pp7.2–7.15] In the light of my accompanied site visit around Middlewich CHAIN's concerns, that the photo locations do not show the potential visual situation after development on a 'worst case' basis, are warranted.[343] In particular, Viewpoints B and E appear to be sited so precisely that a tree and house respectively hide the position of the

appeal proposals, whereas a move a short distance to one side would produce an entirely different result.[CD6/15, Figs 11.6, 11.7B & 11.7E]

653. Furthermore, whilst the photomontages are no doubt technically accurate, were prepared with painstaking attention to detail, and have been designed to conform to the rigour of a public inquiry, they do not (and cannot) offer a fully representative picture of how the development would be experienced in the round, as an observer walks, rides or travels through the landscape.[CD4/7, App 9, pp5] Caution is therefore needed in drawing conclusions solely or mainly from the photomontages.

654. Of the landscape character assessments, I found that of Cheshire the most helpful because it analyses the landscape at a relevant, local, scale and its character areas relate well to what I saw on the ground.[CD4/9] The Congleton Borough assessment, though at a finer grain, is hampered because it ends at the administrative boundary of that former authority, barely 1km from the appeal site to the north-east, east and south-east, and all the land beyond is excluded.[CD4/10, p6, Fig3] The larger scale Countryside Agency/English Nature assessment, though helpful in drawing conclusions in longer distance landscape analysis, is too coarse grained when applied to the local scale.[CD4/11]

655. From these assessments and my site visits I consider the appeal site lies in what is now an urban fringe context. The recent development of Midpoint 18 has breached what had been the clear boundary between urban development to the west and countryside to the east, long established by the railway line adjoining the site. Today, the large warehouse buildings of Tesco, Wincanton and Kuehne & Nagel have created a new context, confirming the urban effect of the nearby overhead high voltage electricity lines. Appeal Site A lies within the settlement zone line for Middlewich, is the subject of the lapsed B1, B2 and B8 permission of 2002 and, in planning terms, is land committed to employment development. [182,185,188,191]

656. The adjacent valley of the Sanderson's Brook, though intended to remain undeveloped (and the Appeal B proposals would ensure this), is what is defined by its Local Plan designation, a corridor of open space through large scale business development.[CD3/5, Inset No.3] The proposed Bypass would, when built, intensify the urban nature of the immediate surroundings and extend the hard surfaces and tall lighting columns of Pochin Way to the south-east, as well as introducing flows of through traffic. Similarly, the proposed Phase 3 of Midpoint 18 would add further large scale buildings to the south-east.[183] Because the effect of these designations and proposals on the use of the appeal site and other allocated land in this area are being experienced now, it is right to describe the site and its immediate surroundings as having poor landscape character which will continue to experience considerable change.[182,191]

657. But the ZTV diagrams show that the appeal proposals would be visible over a far wider area than Midpoint 18, whether in the near distance up to 5km, or in an area up to 30km.[CD6/15, Figs 11.8 & 11.9] This is due to the location of the site in what can reasonably be described as the centre of the Cheshire Plain.[CD4/11] These show only from where the top of the chimney and main building would be seen, and in practice single trees and buildings would obscure views from specific points. But on the other hand Mr Goodrum included settlements and woodlands

as visual barriers, when in reality the situation is more subtle and settlements would be far more visually permeable than the ZTV suggests.[APP/2, pp4.5.1]

658. Within Middlewich, my accompanied site visit showed that the proposed chimney, at 80m high, would be seen from many of the residential areas to the west, north-west and north, due to the grain of the development and the flat nature of the landform. This does not mean that it would appear above all or even most dwellings and other buildings in those areas, but for residents who presently have open views in the direction of the appeal site, and for people moving about the town, there would in future be views or glimpses of at least some of the chimney and, in certain weather conditions, its plume. In some cases there would also be views or glimpses of the top of the main building, at 45m high. The visual permeability of the urban fabric of Middlewich is recognised by Mr Goodrum in his analysis of the views from the entrance to Cledford Infants School.[APP/2/b, App 7, No.E]

659. The effects on such views would vary, from minimal to very significant according to distance and extent. Taking the agreed viewpoints, views south from the lock on the Trent and Mersey Canal by Brooks Lane would be severely impacted, the height and bulk of the main building and chimney negating the screening effect of the surrounding vegetation.[CD6/15, Figs 11.7CEX and 11.7CPM1-10] I disagree with Mr Goodrum's conclusions on the effects and significance of the impact because of the high recreational value of the canal at this point and the fact that it is a conservation area. In my judgement the development would fail to preserve or enhance the small scale, historic, character and appearance of the canal, and its impact would be of medium magnitude and of substantial adverse significance.[APP/2/b, App 7, No.C] By contrast, the effects on the view from the A533 by Wardle Mews would at worst be slight, due to the visual barrier formed by the existing industrial development.[ibid, Figs 11.7DEX and 11.7DPM1-10]

660. Again, from the A533 near the southern end of the residential areas, the nearby trees alongside the canal and the tall banks of the Cledford Lime Beds would screen the proposed main building and chimney.[APP/2/b, App 1, Photos 3-5 and Dwg 2961P/14] The impact there would be of slight magnitude and of limited significance. Similarly, I agree with Mr Goodrum's conclusions on the view from the A533 further north, where industrial buildings would offer screening. [APP/2/b, App 7, No. D] But from Hayhurst Avenue, Long Lane South and the playing field off Sutton Lane, I believe that at this point the top of the chimney and main building would be seen due to the subtle rise in the land and grain of development.[ibid, Photos 12-14] The effects here would be of intermediate magnitude and of moderate significance. I also disagree with Mr Goodrum on the effect of the development from the residential area north of the A54 Holmes Chapel Road.[APP/2/b, App 7, No. B] He acknowledges that in the winter there would be views of the main building as well as of the chimney. [ibid] Having seen the site when the trees in the view are in leaf, I consider that over much of the open space and from the gardens and windows of nearby dwellings there would be a view of these features throughout the year.[CD6/15, Fig 11.7B] These effects would be of intermediate magnitude and of moderate significance.

661. Within Midpoint 18, both existing and proposed phases, and from open land immediately around, the visual effects would be dramatic due to the size and proximity of the proposed structures.[CD6/15, Figs 11.6 and 11.7(Viewpoints A,

F, G & H)] The main building, even by comparison to the large existing buildings, would be of a height and scale far exceeding anything now on Midpoint 18.[APP2,pp5.2.3] In relation to the permitted Building 101 on Phase 3, the main building on Appeal Site A would have a floor area of only about 20% of the former, but it would be slightly more than double its height.[APP/0/18] The chimney at 80m high would be somewhat less than four times the height of Building 101.[ibid] These differences result in a structure substantially taller and far more intrusive than the present warehouses with their exclusively horizontal emphasis. No-one walking these local footpaths, which appear to be popular despite the degraded landscape through which they pass, could fail to notice this changed, substantial and adverse impact.

662. The impact on traffic using the proposed Bypass would be even greater, because vehicles would pass only a few metres from the main building.[CD6/2, Dwg PO11 M] At this point, and for a short distance to north and south, the scale of the building would be incomprehensible because it would disappear above the driver's vision. That is not the case with the existing large buildings on Midpoint 18, which are lower than the appeal proposal and are set well back from the estate roads which serve them. Accordingly, because of its height and proximity to Pochin Way, in my opinion the main building would appear cramped and over-dominant by comparison to the existing development.

663. In addition to the main building, the site would contain the mechanical treatment plant in a building 16.5m high and of 5850m^2, two smaller buildings in the ash processing area each about 12m high, and stockpiles of processed ash in the storage yard up to 10m high surrounded by a wall 3m high.[41, CD6/2, p18] The Appellant acknowledges the photomontages do not show the storage of IBAA in the ash processing area.[APP/2, pp5.3.4] Though smaller than the main building and further from Pochin Way, these ancillary structures would be substantial in close views and, especially in terms of the ash processing site, would appear fragmented and poorly related in scale, form and location to the main building. The ash stockpiles would appear unpleasant and out of character with the well laid out and landscaped surroundings of the business park.

664. Two footpaths pass through, or close to, Midpoint 18, FP19 and FP21, and, to judge from my site visits before and during the Inquiry, both appear to be regularly used.[CD6/15, Fig 11.10] Due to the proximity of both to the appeal site, and the elevated situation of FP21 in particular, I agree with Mr Goodrum's analysis that the proposed development would have a significant and immediately apparent effect on the scene which would change its overall character.[APP/2/b, App7, Nos. A and F] However, I disagree that, if the field adjacent to FP19 is developed, it would block views of the appeal proposals which would then have no impact.[ibid, No. A] It is unlikely that development on this plot would occupy its entire width, and in any case most of the footpath would retain views of the appeal site across the PCT car park, along ERF Way, and along Pochin Way. The effects on all these views would be significantly adverse due to the height, scale, mass and appearance of the whole development.

665. The effects from agreed Viewpoint G, and from Mr Goodrum's viewpoint 15 on Footpath 20, are appropriately considered here, although both lie outside the developed Phase 2 of Midpoint 18.[CD6/15, Figs 11.7GEX, GPM1 & GPM10 and APP/2/b, Panel H] In terms of Viewpoint G on Cledford Lane, whilst I agree with Mr Goodrum that the development would be prominent in middle distance views

north from this location, the photomontages show that the character of Midpoint 18, insofar as it is visible from what is now a country lane, consists of low structures with a marked horizontal emphasis. The appeal proposals to the contrary would introduce a massive upstand of vertical form, marred by the utilitarian bulk of the ash processing storage building. But this location is likely to undergo very great change at some point in the future when the Bypass is built and Phase 3 of Midpoint 18 is developed.[APP/2/b, App 1, Panel I] Nonetheless, Mr Goodrum acknowledges that, when the Bypass is constructed, the impact of the appeal proposals would still be of substantial significance, and I agree with that view and his conclusion of adverse valency.

666. Mr Goodrum's viewpoint 15 is on the rough ground south of Cledford Lane and is visually dominated by its proximity to the British Salt complex.[APP/2/b, Panel H] The long low buildings on Midpoint 18 occupied by Wincanton and Kuehne & Nagel are visible and the latter (labelled Unit 75 in the photographs) is especially prominent. The overhead high voltage electricity line and its towers in this area are also prominent. However, in the direction of the appeal site there is at present little to see beyond fields, trees and the railway embankment. As Mr Goodrum says, the effects of the appeal proposals on views from here and from other locations on this footpath would be significant.[APP/2, pp5.5.3] At this distance, about 1km from the appeal site, I consider the proposals would be of intermediate to major magnitude and of substantial adverse significance.

667. Though Viewpoint 15 lies within the site area of the permitted Midpoint 18 Phase 3 development, it forms part of a wide corridor of land allocated for ecological mitigation purposes.[APP/0/37] When the proposed Bypass and Phase 3 are built, the former will create a serious intrusion into views from Footpath 20, though this would be of a narrow, horizontal, foreground nature. The buildings of Phase 3 would certainly have a great visual impact, especially Unit 101 at 23m high, but they would be to the south of the footpath, visually related to British Salt, and well separated from the appeal site.[APP/0/18] In those circumstances I conclude the appeal proposals would have an effect of intermediate magnitude and of moderate significance.

668. The photomontages of Viewpoint G show that a softening effect and a screening of the lower part of the buildings would in due course take place as a result of the proposed mitigatory planting at the southern end of the appeal site.[CD6/15, Figs 11.7GPM1 & GPM10] But only here and at the northern end would the site provide more than a minimal strip for such on-site landscaping. Elsewhere, due to the limited width of the appeal site in relation to the size of structures and extent of circulation areas, the mitigation planting proposals would have very little effect.[CD6/2, Dwg PO15 C & App/2, pp4.1.7] It is also acknowledged that the single line of trees would not provide an effective screen until about 15 years after planting.[APP/2, pp5.3.5] Off-site enhancement is limited to the valley of the Sanderson's Brook, which is at a lower level than the appeal site and hence is unlikely to provide effective mitigation. For all these reasons, I conclude the proposed development would fail to conserve or enhance the character of the site and its immediately surrounding area, contrary to the aims of CBLP Policies GR1 and GR2.

669. Viewpoints H and I relate to landscape effects beyond Midpoint 18 and Middlewich and up to 5km from the site.[CD6/15, Figs 11.7HEX, PM1 & PM10, and 11.7IEX & IPM1-10] Viewpoint H lies on Sproston FP4, a little over 1km from

the appeal site.[ibid, Fig 11.10] I agree with Mr Goodrum's conclusions that, from here the proposals would form a significant and immediately apparent part of the scene and would change its overall character.[APP/2/b, App 7, No.H] But, as he points out, a hedge screens westwards views from this path.[APP/2, pp5.5.6] Nevertheless the hedge contains gaps such as gateways through which the appeal proposals would be visible, and they would have an immediate and harmful impact because of their scale, vertical emphasis and height. Though the existing Kuehne & Nagel building is very prominent in this view, its horizontal form reflects the nature of the countryside hereabouts and causes little harm when seen through gaps. I conclude that at this point the development would be of major magnitude and of substantial adverse significance.

670. Agreed Viewpoint I lies on the A54 close to Sproston Green, about 2km from the appeal site. The existing view from here encapsulates the landscape and landform of the countryside surrounding Middlewich as described in the Cheshire Landscape Character Assessment.[CD4/9, p171] Thus the long, low buildings currently on Midpoint 18 are glimpsed above and through trees and copses, but what is seen are principally the level rooflines which reflect the wide, horizontal spaces of this part of the Cheshire Plain and the open skies. By contrast, the chimney and upper part of the main building would stand well above the tree line and create a substantial industrial intrusion into what is today an essentially rural landscape with only hints of industry.

671. Therefore, whilst I agree with Mr Goodrum that the development would be a prominent feature in this view, I disagree fundamentally that this is an industrial context and that the proposal would be in keeping with that character.[APP/2/b, App7, No.I] Moreover, I conclude that from Viewpoint I, its impact would be of major magnitude and substantial adverse significance. Similar conclusions apply to the effects when seen from other parts of the countryside around Middlewich, all within the Wimboldsley Character Area of the Cheshire Assessment or just beyond, in the Stublach and Lower Dane Character Areas.[CD4/9, pp168,171 & 34 and APP/2/b, Dwg 2961/P & Photos 6-11]

672. The Appellant points out that the proposed chimney and main building would be of a similar height to those of the nearby British Salt factory, especially when account is taken of differences in ground levels.[APP/2, pp4.5.9 & APP/0/28] This implies that the British Salt complex, and especially the chimney, already have an adverse effect on the landscape around Middlewich. However, the British Salt development has a very different character and appearance to the appeal proposals, with a thin, pencil-like, chimney, and buildings which are of a functional and spartan appearance.[APP/2/b, Photo 2]

673. The proposed EfW facility would have a somewhat over-designed chimney, resulting in unnecessary bulk adding to its impact and intrusion in the landscape due to its height. The main building uses a curved arch design to enclose the operating areas, a feature which would help to reduce its apparent height. But this beneficial feature is offset by the protrusion of the square box structure above the boilers, so that the overall appearance of the main building is confused and uncertain.[CD6/2, pp5.4.1.1 & Dwg PO32 G]

674. Within 5km of the appeal site, the British Salt complex is visible over an area of about 68% of that over which the EfW plant would be seen.[APP/2, pp4.5.7] But British Salt is presently the only structure of such a size in that area, and the

slim, solitary presence of its chimney emphasises this isolation and does no more than act as a reference point within the landscape. As my analysis above shows, not only would the appeal proposals be intrusive due to their height and bulk in the landscape, thus drawing the eye, but they would also bring a sense of industrial character intruding into what is presently a largely undisturbed rural landscape, barely affected by the British Salt chimney.

675. The permission for the Kinderton Lodge site for mineral extraction, recovery of waste and restoration by waste disposal, lies about 1.5km north-east of the appeal site in open country.[CD5/22] The Inspector in that appeal concluded, in respect of landscape character and visual impact, that the proposal as a whole would not have a harmful effect on the character and appearance of the surrounding area, and would not conflict with the aims of (the then emerging) Policy 13, now Policy 14, of the CRWLP or those of the Vale Royal Local Plan. [ibid, pp19.52] But that is a permission for a temporary development lasting about 13 years, whereas Appeal A is for permanent development and of a vertical scale far greater than that of the Kinderton Lodge scheme.[ibid, pp19.49]

676. The Cheshire Landscape Assessment describes the Wimboldsley Character Area, which surrounds Middlewich to the west, south and east, as having a great difference between the perceived tranquillity of the more remote rural areas, and those influenced by large scale industrial sites such as Winsford and Middlewich. [CD4/9, pp171&174] It adds that in the latter, the absence of high vegetation and the open nature of the surrounding landscape allow large structures to intrude over a very extensive area. Much of this Character Area would be affected by views of the appeal proposals, which would seriously compromise this contrasting character by extending the urban influence of Midpoint 18 into a much wider area.[CD6/15, Fig 11.8] This rural area, traversed by country lanes and footpaths with scattered settlement, contains many important visual receptors. Because this local landscape is highly sensitive and very vulnerable to the visual impact of large scale development, I conclude that the appeal proposals would seriously conflict with the aims of CBLP Policies GR1, GR2 and GR5, Policy 14 of the CRWLP, and of RSS Policy EM1(A).

677. I turn to the effects of the appeal proposals when seen from beyond the 5km radius considered above. Having viewed the site from agreed Viewpoint J, The Cloud, on a day with what seemed to me average visibility, I was able to identify the British Salt chimney without great difficulty despite its slim profile.[CD6/15, Fig 11.7JWF] Accordingly, I disagree with Mr Goodrum that the proposals would only be visible from here on very clear days.[APP/2/b, App7, No. J] They would, however, form only a minor element in the vast view from that summit. But, as with the Jodrell Bank radio telescope, the bulk of the main building and the height and mass of the chimney, would attract attention, thus creating a greater visual impression than their size relative to the landscape might appear to warrant. The roofs of the warehouses on Midpoint 18 are also visible, but they echo the flat character of the Cheshire plain, whereas the appeal proposals would be an upright and distinct feature.

678. In the light of these considerations, and given that The Cloud appears to be a very popular viewpoint and place for recreational activity, even on an indifferent day in the autumn, I conclude that the impact of the appeal proposals in this panoramic view would be of slight magnitude but of intermediate significance. Though I did not visit Croker Hill, which is a few kilometres farther from the

appeal site, Mr Goodrum's analysis suggests that it would be unlikely that I would have reached different conclusions on views and effects there compared to those from The Cloud.[ibid, App 7, No. K] These conclusions reinforce those relating to the effects of the appeal proposals from a distance of less than 5km.

679. The only other necessary consideration is the effect of the development on the character and setting of the Grade II listed building, Cledford Hall.[APP/2, pp5.7.4] This stands about 500m from the location of the main building and chimney of the proposed EfW facility.[CD6/15, Fig 11.1] The guidance in Policy HE.10 and paragraphs 118-122 of PPS5, Planning for the Historic Environment, says that a proper assessment will take into account, and be proportionate to, the significance of the asset and the degree to which proposed changes enhance or detract from that significance and the ability to appreciate it. At present the building is inaccessible and surrounded by trees; immediately to the rear and at a higher level stands the Wincanton building.[19, CD6/2, Dwg. P002 E] Contrary to Mr Goodrum, I consider that the setting of the listed building extends beyond the farmyard and gardens to include the valley of the Sanderson's Brook at this point and, though compromised by the Wincanton building, this setting is worthy of preservation, as recognised (albeit for ecological reasons) by the CBLP designation of Protected Area of Open Space.[CD3/5, Inset No. 3]

680. Bearing in mind this conclusion, I consider the appeal proposals would harm the setting of the listed building by introducing a very tall, large scale industrial feature at relatively close quarters. In landscape terms, the effect would be of major magnitude and have a significant adverse impact on the setting of this important receptor. However, the proximity of the proposed Bypass to the front of the listed building is likely to have a severely detrimental effect on its setting, effectively slicing through it and introducing noise, movement and fumes. In these circumstances, and though the Bypass is not programmed or committed financially at present, the effects of the appeal proposals in this probable context would scarcely add to any adverse effect from the new road. Hence a neutral impact on the setting of Cledford Hall would seem a proportionate conclusion in terms of the appeal proposals.

681. In summary, I conclude that the proposed EfW facility would have a substantially significant landscape and visual impact within Midpoint 18 and on the countryside around up to 30km distant, due to its scale, height and industrial character. Within Middlewich, the impact would vary according to the specific location of the receptor, but from where it would be visible the impact would be of moderate to significant magnitude and of intermediate to substantial significance. Though mitigation measures are proposed, their effect would be very limited, even after many years, other than at the northern and southern ends of the appeal site, because of the scale of the main buildings and yards and the limited space available for mitigation. Even within Midpoint 18, the effect of the mature mitigation would be limited for the same reason. There would also be harm to the character and appearance of the conservation area along the Trent and Mersey canal.

682. In this context I conclude the appeal proposals fail to meet the aims of Policies GR1, GR2, GR5, BH9 of the CBLP, Policies 14, 16 and 36 of the CRWLP and Policy DP7 of the RSS. In that light, I further conclude that, insofar as landscape considerations form part of RR4, serious harm would be caused by the appeal proposals.

Other Matters

Socio-economic Effects

683. This was not a RR and was raised principally by CHAIN, who maintained that the proposed EfW facility would create a negative view of Middlewich to prospective employers considering setting up in the town. It would also adversely affect the established industries of tourism and the hospitality sector due to the poor image of incinerators and the additional HGV traffic which would be generated. Mr Molloy did refer to socio-economic matters in his evidence and Mr Shenfield's evidence dealt with that of both CHAIN and Mr Molloy. [APP/5 a-d and CEC1, p26-27]

684. CHAIN and Mr Shenfield agreed that over the previous two years the employment situation in Middlewich had deteriorated.[APP/5/c, pp3.5] That is unsurprising given the situation nationally and internationally during that period. Yet CHAIN said that Kuehne & Nagel had taken a lease on Unit 75 of Midpoint 18, and the Appellant confirmed that Tesco re-occupied their building in June 2011, having previously vacated it in March 2010.[CH1/27, APP/5/d, App 2 and APP/7/d, pp1.35] In addition, APS Salads, who supply Tesco and occupy another building on Midpoint 18, expanded its operations in May 2011.[ibid] All this suggests that the appeal proposals have not deterred significant other businesses, including the food preparation and distribution industry, from establishing on the same business park during difficult economic times.

685. Nor is there cogent evidence of any adverse effect on tourism in the town. CHAIN's arguments regarding the Newhaven incinerator attempted to make a link between alleged effects there and in Middlewich. Though there seem to be superficial similarities between the towns, circumstances always vary from place to place so that to draw conclusions from a single comparison is in my view unsound.[CH1/24] The Newhaven study also appeared to have concentrated more on the effects on house prices than on any other factor, and whilst that was a concern of CHAIN, the same point regarding the dangers of one to one comparisons applies.[CH1/39] In any event, it appears that the Inspector who dealt with the Newhaven appeal appears to have placed little weight on the tourism argument. [APP/5/c, pp3.2] Nor did he conclude there would be adverse effects on social deprivation or regeneration prospects in that town.[ibid, pp3.16, 4.4, 4.5 & 4.11]

686. The situations at the Belvedere RRF, south-east London, and at Eastcroft, Nottingham, were also considered in the study, but in both cases there was no evidence that the presence of an incinerator deterred inward investment.[ibid, pp4.2-3 & 4.7-9] The one example where this may have been a factor was at Edmonton, north London, where firms in the food processing sector were mentioned as a possible exception.[ibid, pp4.5-6] But I have already referred to the expansion of APS Salads on Midpoint 18, which occurred at the time when the appeal proposals were before the Inquiry and thus when representations by, and questions from, such a firm might have been anticipated had they been concerned at the prospect of the development.

687. The position of Messrs Pochin is fully supportive of the appeal proposals and as landowners it is entirely logical that they would not want to see a development taking place which might harm their prospects of attracting others.[APP/5, pp4.5.1-6] Though they have a clear interest in a successful outcome for this

appeal, it would seem irrational that this would be at the expense of driving away existing and future investors and prospective tenants. Accordingly, I place little weight on CHAIN's argument on this point. Similar conclusions apply to CHAIN's characterisation of the representations in support by British Salt. In the light of all these considerations my conclusion is that no firm evidence has been produced suggesting that the proposed EfW facility has had, or is likely to have, any adverse effect on investment decisions by businesses, whether already on Midpoint 18 or proposing to set up there.

688. CHAIN also questioned the numbers of jobs to be created by the appeal proposals, especially ongoing effects, and by comparison to the permitted use of the appeal site.[355] They did not query the number or nature of direct construction jobs or of direct permanent jobs which the Appellant says would be created, so it appears to be agreed these will be about 220-330 over the anticipated three years of construction, and 65 once the development is fully operational.[APP/5, pp7.2.1 & Table 7.1] In addition, some 20-30 indirect and induced jobs would be created in the construction period and about 15 in the operational phase.[ibid] Construction jobs would grow to a maximum around 19 to 24 months and then decline.[CD6/12, pp7.5.7-8]

689. CHAIN's disagreement centres on what Mr Shenfield described as catalytic effects. These he said would arise due to the potential to secure a number of existing jobs as a result of CHP provision to local companies as well as acting as a generator for additional manufacturing jobs from new firms seeking to benefit from CHP. Mr Shenfield estimated that, at a minimum over the next ten years, the numbers could measure at least in the low hundreds, taking account of what he described as land availability on Midpoint 18 and discussions with Pochin.[APP/5, pp7.2.2] He did not specify where and how this growth would arise, but his evidence shows that, to date, Midpoint 18 has generated some 2,000-2,500 jobs. However, currently several plots remain vacant and Pochin are waiting for suitable occupiers before developing this land.[ibid, pp5.1.3-4]

690. There is no evidence that the appeal proposals would deter potential occupiers, but neither is there evidence to suggest that they would positively attract such investment. Hence the catalytic effect on jobs of the EfW facility alone would seem to be questionable. On the other hand, the indicative CHP link to British Salt would appear likely to assist that company to control its energy costs and would thus contribute to the extent that this would maintain its presence in Middlewich.[APP/5/b, AppB] Hence the job safeguarding argument of Mr Shenfield should attract some weight, and, assuming they refer to British Salt as the only known firm interested in CHP provision, his estimates of that effect appear reasonable at about 140-195.[APP/5, Table 7.1]

691. But in terms of new job creation beyond those of the operational phase and the CHP effect, Mr Shenfield's arguments are predicated on the completion of the Bypass and the development of Phase 3 of Midpoint 18.[ibid, Sections 5.2 and 6] I deal with this matter separately below, but here I note that neither development forms part of these appeals, nor do the appeal proposals depend on the construction of either. In these circumstances, and bearing in mind that factors such as the health of the national and regional economies and other funding issues affecting construction of the Bypass are all factors affecting the situation, I conclude that the catalytic effects of the appeal proposals on job

creation in Phase 3 of Midpoint 18 are tenuously linked, conjectural and of little weight.

692. CHAIN's comparison between the permanent jobs created by the appeal proposals and those which would arise in the fallback position is also material. Unfortunately their comparison of job density using the whole of Midpoint 18 is inaccurate, given that the area of the business park is plainly well in excess of the 31.66 acres used as the basis for the calculation. [CH1/38] But using the Appellant's fallback argument, a notional comparison of job density between the appeal proposals and the 2002 permission would give an indication of the position and would be appropriate. Whereas the permitted scheme showed some 452 parking spaces for some 21,740m^2 of floorspace, the appeal proposals show 75 parking spaces for around 9,460m^2 of floorspace in the main building. [39, CD6/1, Tab5 and APP/0/18]

693. Bearing in mind that parking provision and floor area are indicators of job density, this comparison suggests the appeal proposals would generate a significantly lower density of jobs than if the appeal site were to be developed for B1, B2 and B8 units. This is confirmed by using Mr Shenfield's calculation for generation of B1, B2 and B8 jobs on Phase 3 to compare with a similar mix on the appeal site; this would suggest the fallback use would generate about 460 jobs [APP/5, pp6.3.1 & Table 6.1] However, precise numbers could only emerge from a further application and subsequent occupation, and whether the quality of those jobs in such an alternative scenario would be equal to those arising from the appeal proposals is also conjectural. Nevertheless, the comparison suggests that the proposed development of the site could result in a loss of many permanent jobs compared to its potential fallback position.

The Bypass and Midpoint 18 Phase 3

694. Mr Shenfield argued that the proposed £2.5mn contribution by the Appellant is the key to unlocking funding for the construction of the Bypass, because without it Pochin would not be prepared to contribute £10.4mn for the same purpose.[APP/5, pp6.1.1] In turn the Bypass is unlikely to be built and this would mean that Phase 3 of Midpoint 18 could not be developed, thus losing its estimated potential of some 2,500–3,000 jobs.[ibid, pp5.2.1, 5.3.2 & 6.1.2] With indirect and induced job creation he believed this figure could rise to over 4,100 jobs. This would retain current employment levels on the existing Midpoint 18 and successfully address a number of severe economic development problems that are likely to result in serious local labour market imbalances which would otherwise lead to increasing unemployment.[ibid, pp6.4.2] In addition, Mr Shenfield said the Bypass would generate many hundreds of other jobs in the town centre and around other local developments.[ibid]

695. This is a very bold and ambitious claim. The development of Phase 3 cannot be realised until the Bypass is completed, because Condition 8 attached to the renewed planning permission of July 2011 prevents the occupation of any building before that time.[APP/7/d, pp1.25-27] Equally, funding for the Bypass at this time is not sufficient to meet the estimated total cost of £22mn, with the combined contributions of £12.9mn from Pochin and Covanta, plus £5mn from Bovale, leaving a gap of £4.1mn. [APP/5/c, pp2.6 and CD4/12, pp1.6.2] However, Pochin are said to be actively pursuing options to close this gap, and they submitted an application to the Regional Growth Fund (RGF) at the end of

June 2011.[APP/7d, pp1.30-34 & App4 and APP/0/8] Mr Shenfield said that in the event of failing to secure RGF funding, Pochin will address other funding options.[APP/5/c, pp2.9]

696. But the Appraisal and Strategy Report undertaken for the Council into the development of the Bypass and Phase 3 says that the Bovale contribution is conditional on planning permission being granted for the development of 500 dwellings on land not currently allocated for development.[CD4/12, pp1.6.2] It is not for me to comment on the merits of such development, but such permission would not seem to be a foregone conclusion. In addition, it appears that another landowner owns two plots of land required for the Bypass and, at the date of the report, May 2010, had yet to agree terms of sale with Pochin.[ibid, pp1.6.1] Therefore, even in the event of a contribution by the Appellant, there appear to be identified substantial land ownership, financial and perhaps planning obstacles to the Bypass proceeding.

697. Be that as it may, the Appellant appears to have conflated implementation of the appeal proposals with the economic future of the town's economy as a result of the completion of the Bypass and the development of Phase 3 of Midpoint 18, to suggest that the latter depends on the former. But in the first place, any contribution made by the Appellant to the Bypass would be but one of several sources of funding. The statement that, if RGF funding does not materialise, Pochin will pursue other funding options, suggests that a similar course could be followed if the Appellant's contribution is not forthcoming. Alternative funding options are examined at some length in the Appraisal and Strategy Report, from which it is apparent that several potential alternatives remain, despite the current financial climate.[CD4/12, Chapter 9]

698. Secondly, the building and bringing into operation of the appeal proposals do not depend on the completion of the Bypass, because the appeal site is readily accessible as it stands, allowing for the 100m extension to Pochin Way to form the site access.[39] Nor is the traffic it would generate likely to cause problems at the A54/Pochin Way roundabout.[640] Mr Stoneman said in terms that the development is not reliant on the Bypass as a means to mitigate its traffic impact.[APP/3, pp7.2.1] I therefore conclude that the appeal proposals are not necessary to ensure that the Bypass goes ahead, and, whilst it is desirable that they provide some financial support to that project, they are but one of several potential sources.

699. There is little doubt about the importance of developing Phase 3 of Midpoint 18 to assist in maintaining and enhancing the economy of Middlewich.[APP/5, Section 7.2] But the claim that only the appeal proposals can unlock the Bypass and Phase 3 and tackle the local labour market problems has not been made out. It does not appear to follow in the light of my conclusions on identified funding problems, a lack of functional linkage between the proposals and the Bypass/Phase 3, and potential alternative sources of Bypass funding. I conclude that less weight should thus be given to the Appellant's claimed socio-economic benefits.

Flooding and Land Stability

700. CHAIN's concerns on these points are understandable in the light of their recent photographs of flooding in the valley of the Sanderson's Brook, and their demonstrable local knowledge of the history, nature and extent of salt working in

and around Middlewich.[CH1/21-23] But the photographs show evidence of flooding at a lower level than, and away from, the appeal site. The consultation replies on the subject and investigations in the preparation of the Flood Risk Assessment in the ES/CES indicate that the site itself is within Flood Zone 1.[CD6/14, AppH.1]

701. Because of the restricted culvert north of the site, conditions suggested by the EA would ensure minimum finished floor levels to buildings, parking areas and roadways above the 1 in 100 Year flood level for Sanderson's Brook at this point. New drainage is to be designed to accommodate a 1 in 100 year storm.[ibid, pp3.1.2] CHAIN have not expressly challenged either the conditions or the drainage proposals as inadequate, and I have no reason to doubt that they would be effective and hence that the risk of the site flooding is low.

702. As to the risk of brine subsidence and general land stability, Section 14 and Appendices H.2 and H.3 of the ES/CES address these matters. They include a geo-environmental study and preliminary risk assessment and geotechnical ground investigations of the appeal site in 2008. The recommendations identify a claim for brine subsidence in 1977 and precautions are recommended which could be made the subject of suitable planning conditions. [CD6/12, App H.2 & H.3] Again, CHAIN did not allege that the investigations were unsatisfactory or that the suggested precautions would be inadequate. I conclude that there is no evidence of a serious risk from flooding and/or from subsidence/ground instability which could not be mitigated by the imposition of suitable conditions.

Appeal B: The Great Crested Newt Receptor Site

Consideration 1: The Suitability of the Site for the Proposed Development

703. In considering Appeal A I have already dealt with the issue of the receptor site in considerable detail, and to avoid repetition only the appropriate conclusions from that part of this report are referred to here, with additional conclusions as necessary.

704. The Council only considered the suitability of the site of Appeal B in terms of its effect on flooding, bearing in mind that it lies within the valley of Sanderson's Brook and would be just above the 1 in 25 year flood level.[CD5/21, p79-85] There is no evidence that flooding would be exacerbated by the proposals, which are small scale and few in number.[43] Nor would the natural materials of which they would be formed be likely to cause any visual harm or be out of character with the present natural surroundings; additional planting would enhance the appearance of the valley at this point.[ibid]

705. My conclusions on the mitigation measures subject of Appeal B were that firstly, the site already appears to be the habitat of GCN so that it is unclear if the space provided is adequate, especially given that it would provide only an additional 0.97ha over the 1.98ha of habitat lost at Pond 3 on Appeal Site A.[597] Secondly, Appeal Site B is generally less than 50m wide between the car parks of the Wincanton/PCT developments and Pochin Way, from both of which pollution and trespass may harm GCNs on the site and these risks have not been assessed.[598] Thirdly, the proposed IBAA open storage facility for Appeal A would lie a short distance upwind and there would be a risk of dust being blown onto the site from that and from the intervening Pochin Way.[599]

706. In the light of these conclusions, the proposed receptor site appears cramped and vulnerable. Though NE say that the mitigation of Appeal Site B would be in line with its guidelines, the above considerations would appear likely to compromise the high value which NE recommend for GCN receptor sites.[601] Therefore despite Mr Baggaley's concession that it would satisfy the favourable conservation test, it seems to me that the proposals would not offer long term security for the maintenance of the species at its natural range and accordingly there is an unacceptable risk that a breach of Article 12(1) of the Habitats Directive could occur. This conclusion weighs heavily against the proposals.

Consideration 2: The Need for the Proposed Development

707. The development is required only if Appeal A is allowed and planning permission is granted for the proposed EfW facility. In terms of the 'no satisfactory alternative' test of Article 16 of the Habitats Directive my conclusion in Appeal A was that the Appellant had not demonstrated that alternative sites identified in the CRWLP for thermal treatment facilities had been investigated and considered. In the absence of it having been established that there are no satisfactory alternatives to the development subject of Appeal A being built on the proposed site, there is no demonstrable need for disturbance to the GCN on Appeal site A which necessitates provision of the mitigation measures of Appeal B.

708. In this light there would appear to be no imperative reason of overriding public importance to justify derogation from Article 12(1) of the Directive in order to carry out the development of Appeal Site B. In turn I conclude that, in these circumstances, NE would be unlikely to grant a licence under Section 53(1). Should the Secretary of State conclude that Appeal A should be allowed, different considerations would apply in the light of the reasons for so concluding.

Conditions

709. The list of suggested conditions for each appeal, in their form at the end of the Inquiry, including the comments of the parties, are at CD6/21 and 6/22. CD6/21 refers in Condition 1 to further consideration by the Council of that Document, and their response is included in my comments as follows:

Appeal A: [CD6/21and 415-421]

Agreed Conditions

1) Definitions: though not a condition, this preamble would serve the purposes of clarity and precision by defining matters which would otherwise be repeated throughout the conditions, or omitted, leading to uncertainty and potential disputes over interpretation.

2) Condition 1 allows five years for commencement and, in addition to the reasons on the schedule, would allow time to deal with any related matters under the environmental permitting system

3) Condition 2 lists the approved plans, was agreed by the Council, and is necessary to confirm which plans are approved by the permission

4) Condition 4 is necessary to maintain public confidence in the regulatory role of the planning system

5) Condition 5 is necessary to ensure that the precise nature of the development is defined and that it operates as an 'other recovery' operation within the waste hierarchy

6) Condition 7 would protect the appearance of the countryside and is necessary for that reason as well as the reason stated in the schedule

7) Conditions 8, 9 and 10 are necessary to protect residential amenity

8) Conditions 12 and 13 are both required to protect residential amenity

9) Condition 14 is agreed should read in the last two lines "…or within 3 metres of the nearest railway line if the boundary is closer than 3 metres." It is necessary for the safety of rail traffic

10) Condition 15 seeks to control the routeing of construction traffic in the interests of amenity and road safety. Despite being desirable for those reasons and agreed by the parties, it does not appear to me to be enforceable by the Council, or reasonable and proportionate if it is enforceable

11) Condition 17, though agreed by the parties, should be more precise in terms of flue gas treatment residue by requiring the material to be transported in sealed containers and not allowing any variations because of the need to avoid pollution and risks to human health.

12) Conditions 18 and 19 are necessary, in the case of the former to maximise sustainable travel opportunities, and, for the latter, to protect residential amenity and minimise the adverse impacts of additional HGV traffic

13) Condition 20 is necessary to ensure the enforceability of Condition 19 and the keeping of records would not be unreasonable because the parties agree that they are required in any event for environmental permitting purposes. There would not be duplication however, because this condition relates to the keeping of records for a specific planning purpose

14) Condition 21 is not agreed by the Council and is considered below

15) Conditions 22 and 23 are necessary to protect air quality in the surroundings and public amenity in the vicinity of the site.

16) Condition 24 is necessary for similar reasons to Conditions 22 and 23 but the parties agreed that a simpler form could be substituted stating: *"There shall be no external storage, unloading or handling of any waste other than of bottom ash generated within the facility."*

17) Conditions 26 to 31 are agreed and are necessary for the stated reasons, apart from Condition 30 which is necessary to safeguard highway safety and the amenity of the area. The parties agreed that Condition 27, concerning lighting during the construction phase, could be incorporated into Condition 8 as requirement (f), for the purpose of clarity. However I have kept it as a separate condition in the Annex.

18) Condition 32, though agreed by the parties, raises questions as to its purpose, said to be for the protection of residential amenity. Monitoring at the site boundary is undoubtedly more practicable for the main parties, but the effects on those living around the site may vary considerably beyond that point

depending on factors such as the lie of the land, microclimatic conditions and weather. This suggests monitoring at noise sensitive properties. On the other hand, there is merit in the parties' argument that monitoring at noise sensitive properties would make it difficult to attribute noise from the EfW facility against the background noise and particular non-development events and would fail to be effective.[CD6/21, Agreed Note] In the light of the advice in paragraphs 10 and 11 of PPG24, paragraphs 19 and 20 of Annex 3, Annex 4, especially the Note, and section 1 of Annex 5 to the PPG, I conclude that a condition on the lines of that imposed by the Secretary of State in the Avonmouth decision would be appropriate. This would provide long term control and allow the Appellant to achieve the noise levels by whatever means considered appropriate.[APP/0/50]

19) Condition 33 is agreed and is necessary for the stated reason, but to apply it only to vehicles used exclusively on site may result in it being of little effect if site vehicles are used elsewhere at any time. Though the Appellant said that problems would arise if the word 'exclusively' was to be removed from the condition, these problems were not specified. The separate condition limiting hours of access by waste vehicles would result in them not causing noise problems at unsocial hours, but equally, enforcement of this condition is a discretionary matter. Enforcement of Condition 33 would have to be carried out in a reasonable manner if it is to be effective and that should overcome the Appellant's concerns. I conclude that the balance of considerations suggests that, to safeguard the purpose of the condition, if the condition is imposed, then the word 'exclusively' should be omitted.

20) Condition 34, which is agreed, is to the same point as Condition 32 but would control tonal noise. If my conclusion on Condition 32 is accepted, this condition would be unnecessary. Otherwise the Appellant's argument that EfW development is designed not to produce tonal noise may be true, but that has not been demonstrated and in these circumstances, if such effects should occur, there would be no method of controlling such noise unless this condition is imposed. It is therefore necessary in this alternative.

21) Conditions 35 and 36 are necessary to protect residential amenity

22) Condition 37 has been deleted and is now incorporated in the Section 106 undertaking

23) Condition 38 is now agreed by the Council, and this and Condition 39 are necessary in order to protect biodiversity, breeding birds and the landscape

24) Conditions 39 to 41 are necessary to mitigate the visual impact of the proposed development on the landscape of Midpoint 18 and its surroundings

25) Condition 42 is agreed, but raises issues of similarity with the circumstances in *R v Cornwall CC, ex parte Jill Hardy [2001] JPL 786*, referred to in the Guide to Good Practice accompanying PPS9 at paragraphs 5.10-16. [CD2/4A] The conclusions of the latest surveys in the CES, carried out in June 2011, were that although no water vole were found, the conditions on and around the site were favourable to this EPS.[CD6/14C, AppR.4, Section 4.2] This condition implements the recommendations of the CES, but in the light of *ex parte Jill Hardy*, the Secretary of State may wish to seek advice on the

wording of this condition to ensure that it satisfactorily protects this EPS. For clarity, this is now Condition 37 in the Annex.

26) Condition 43 is necessary to protect heritage assets in the form of archaeological remains and evidence which may be revealed during implementation of the development

27) Condition 44 is agreed and its purpose of recording the heritage assets of the area is appropriate, but the setting cannot be preserved by carrying out a photographic survey. The word 'preserved' is thus inaccurate and should be replaced by the word 'recorded'.

28) Conditions 45 to 47 are necessary to prevent pollution of the surroundings from site runoff

29) Condition 48 is agreed and is required in order to compensate for the loss of natural habitat, encourage biodiversity and protect the water environment. As noted, the equivalent provisions have been removed from the S106 undertaking

30) Condition 49 is necessary to prevent flooding of the site and its surroundings

31) Condition 50 is necessary to prevent pollution of watercourses. Though its use of total capacity of 110% of the largest tank, rather than of all tanks, appears insufficient, the Appellant and Council agree this accords with the appropriate regulations and is a standard EA requirement. [APP/0/59]

32) Condition 51 is necessary to ensure the local community are able to be involved in continuing dialogue with the operators of the facility

33) Condition 52 has had the equivalent provision removed from the S106 undertaking. It appears of questionable necessity and relevance to planning and hence would not satisfy the tests of conditions. Even if it was omitted, the Appellant would remain free to create the facility.

34) Condition 53 is agreed by the parties, although the Council see no need for it to be imposed. The CES says the estimated life of the development is about 35 years.[CD6/14C, pp4.2.1] Decommissioning would be the subject of the environmental permit, but planning controls to ensure the demolition and removal of all structures are for a different purpose to permitting considerations. For this reason, and given the size and extent of the facility as a whole, this condition is necessary and would be in the long term interests of visual amenity and of the appearance of Midpoint 18.

35) Condition 54 is required to avoid pollution and stability risks

36) Condition 55 (referred to in the schedule as the second condition 54) is necessary to protect badgers.

Disputed Conditions

1) Condition 3: The considerations applicable here centre on development falling within Class B of Part 8 of the Second Schedule to the GPDO as amended. The development not permitted under Class B.1 would appear to cover the Council's concerns, which are reasonable but misplaced in this

instance. I conclude that Condition 3 is unnecessary and should not be imposed

2) Condition 6: In the light of my conclusions on the revised description of the proposed development, Condition 6 appears necessary and relevant to the development by requiring the provision of facilities confirming its ability to export CHP.[439]

3) Condition 11: The Appellant's condition would result in no controls over access by tradespeople working inside the buildings at all hours, which may give rise to serious disturbance to residential receptors. But the Council's condition would prevent even work of a quiet nature taking place, which would be unreasonable. The 0730hrs limitation proposed by the Appellant is reasonable during the week, but not on Saturdays, irrespective of what was imposed on the Midpoint 18 Phase 3 renewal and hours worked by other units on the existing business park. The following would appear reasonable and satisfy the other tests of Circular 11/95:

   "Construction work, which for the purposes of this condition shall not include activities conducted within buildings giving rise to no external manifestation, and deliveries to the site, except in emergencies or involving outsize loads, shall not take place other than between 0730hrs and 1800hrs on weekdays and between 0800hrs and 1300hrs on Saturdays and not at all on Sundays or bank holidays. An application for approval of any change in working arrangements outside the permitted hours shall be made at least two weeks in advance in writing to the Local Planning Authority."

4) Condition 16: Similar conclusions apply to the disagreement between the parties on this condition which should limit waste traffic to and from the site to no earlier than 0800hrs on Saturdays to avoid vehicles queuing even earlier while waiting for the site to open. To allow minor variations would lead to unnecessary disputes over definitions and make enforcement difficult, so the words in brackets are unnecessary and should not be included.

5) Condition 21: The limit on the maximum waste throughput is necessary in the interests of ensuring sustainable waste management. However, the requirement to keep records duplicates the requirement of Condition 20 and is unnecessary.

6) Condition 25: My conclusions on the appearance of the ash stockpiles point to the lower limit of 5m high, as suggested by the Council, being necessary to protect visual amenity and the character of Midpoint 18.[663]

Appeal B: Conditions (All agreed) [CD6/22]

1) Definitions: As with Appeal A, this preamble would assist with clarity and certainty and is necessary for those reasons

2) Condition 1 is necessary to confirm the plans approved by the permission

3) Conditions 2 and 3 are required to ensure the development proceeds during the same timeframe as Appeal A and does not commence after that

permission expires, because these proposals are only necessary in conjunction with that appeal

4) Conditions 4 and 5 are necessary to safeguard protected species and other wildlife on and around the site

5) Conditions 6 and 7 are required to protect biodiversity and the landscape of the appeal site and its surroundings

6) Condition 8 is necessary to protect nesting birds in the interests of maintaining biodiversity

7) Condition 9, as proposed to be substituted, is appropriate in the light of the consultation response of the Council's archaeologist and is necessary to ensure protection of heritage assets which may be revealed during implementation of the development

Planning Obligation [APP/0/6 and 423-435]

710. CIL Regulation 122 provides that, as of 6 April 2010, it would be unlawful for a planning obligation to be taken into account in a planning decision on development that is capable of being charged CIL if the obligation does not meet all of the following tests:

i. necessary to make the development acceptable in planning terms;

ii. directly related to the development; and,

iii. fairly and reasonably related in scale and kind to the development.

711. It appears to me that the deed has been properly prepared and executed because both the Appellant, as the leaseholder of Appeal Site A, and the landowner, Pochin Developments Limited, have signed the deed. I therefore turn to examine the terms of the obligation as contained in the Schedules in the light of the above three tests.

712. In Schedule 1 the first item is the covenant not to process MSW arising from the Merseyside Municipal Contract. As objectors pointed out, the processing of such waste at the appeal site would involve transporting it past the Ince facility, about to be developed by the Appellant, which would conflict with the proximity principle. But on the other hand, as a municipal contract at a distance, it could well be suited technically and financially to rail haulage, and thereby make viable use of the railway line adjacent to the appeal site, thus overcoming that part of the sustainable transport objection.

713. However, the Appellant stressed that the appeal proposal is a merchant facility designed to accept C&I waste and, even if successful in being awarded the Merseyside MSW contract, it would use Ince to process that waste. In this context the covenant would be immaterial to the appeal proposals and I conclude it is neither necessary to make the development acceptable, nor is it relevant to the appeal proposals, beyond its technical ability to process that, or any other, MSW or waste in general.

714. The Community Trust Fund covenant (Schedule 1, Item 2) may provide welcome benefits to the community, but that is not the applicable test of the CIL Regulations. The planning obligation submitted in the Hall Farm case was

scrutinised in the light of the tests in Circular 05/05 and not the CIL Regulations.[430] It is not necessary for me to refer to the obligation for a community trust in the Cornwall appeal, because I understand it has been quashed by the Courts. No evidence was put to the Inquiry in the present appeals that community facilities would be harmed by implementation of the proposals, so that any harm caused by the development is not related to such provision.

715. The precise purposes of the Community Trust Fund are in any case unclear, and its scale and nature are such that its implementation could lead to the unfortunate impression that it is an attempt to buy off or mollify the determined opposition of the local community. I conclude it is not fairly and reasonably related in scale and kind to the development, directly related to the development or necessary to make the development acceptable.

716. With regard to the Local Employment and Materials covenant (Schedule 1, Item 3), the Council's concerns over the timing of commencement of the scheme, the period for their agreement to the registration scheme and the effect of the fallback position are understandable, but the undertaking has to be taken as it stands. This covenant does relate directly to the development and is fairly and reasonably related in kind. Mr Shenfield said there are serious structural unemployment problems in Middlewich, but it is unclear if the covenant would address those specific difficulties. In any event, the materials sourcing element, though welcome, cannot be said to be necessary to make the development acceptable.

717. As to the Electricity Subsidy Registration Scheme covenant (Schedule 1, Item 4), because there is no suggestion that the appeal proposals would affect electricity supplies in the area it is not required to overcome any harm arising from the development. To suggest that the payment of an annual subsidy to their household electricity bills may help the public to overcome some concerns in relation to the development, would be likely to have a similar unfortunate impression as that of the proposed Community Trust Fund.

718. The IBAA covenant (Schedule 1, Item 5) satisfies all three criteria in Section 122 of the CIL Regulations because it would give practical effect to the implementation of the waste hierarchy and would go as far as reasonably practicable in ensuring that material necessarily produced by the EfW process is recovered for processing for re-use. The CHP covenant (Schedule 1, Item 6) would also satisfy the tests because, without the export of heat and power, the development would not constitute an 'other recovery' operation under the waste hierarchy and would satisfy neither renewable energy nor waste policies. This covenant is also reasonably related in scale and kind to the development.

719. The Bypass Contribution (Schedule 2, Item 1) is the largest item in the undertaking. Mr Stoneman acknowledged that the appeal proposals are not reliant on the proposed By-Pass as a mitigation measure, and the provision of access to the appeal site involves the construction of no more than 100m of that road.[39, 647] Mr Halman also said that completion of the Bypass is not essential for the appeal proposals.[APP/7, pp11.7] The argument that the Bypass would enhance the accessibility of the site is only sustainable if the traffic evidence shows that HGVs generated by the appeal site which would otherwise travel to and from the A533 south via the town centre would instead be diverted along the

new southern section of the Bypass. But I have concluded that, for several reasons, the Appellant's traffic evidence is flawed and such conclusions are simply not possible on the available evidence.[635, 642]

720. The unlocking of Phase 3 of Midpoint 18 as a result of the building of the Bypass, thus enabling development there to be available for CHP, must be a possibility, as the additional information supplied in response to the April 2011 Regulation 19 request suggests.[CD6/14B, Fig 19A.0.1] But the key CHP customer, British Salt, is able to be supplied with CHP without the Bypass being built or Midpoint 18 being developed, and no suggestion to the contrary has been made.[CD6/13, Fig 19.1 and CD6/14C, Section 4.10] Similarly, the Regulation 19 additional information shows that CHP could equally be supplied to existing and proposed buildings on Midpoint 18, for which the Bypass would be unnecessary.

721. Mr Halman refers to the SPD development brief for Midpoint 18 Phase 3, adopted in February 2007.[APP/7, pp11.11 -14 and CD3/1] Paragraph 8.3 requires all developments covered by the Brief to contribute to the cost of constructing the Bypass through Section 106 payments relating to planning applications. The area covered by the Brief is identified in the CBLP under Policy DP1(M1) and DP1(M2) and DP3(M2), shown on the Middlewich Inset to the Proposals Map.[CD3/5, p10-10 & 10-13 and Inset No.3] Midpoint 18 Phase 3 is the land at DP1(M1). Mr Halman argues that because this land includes CRWLP Allocated Site WM5, and the Appellant has proposed the appeal site because WM5 is not available, this provides a planning justification for the contribution to the Bypass from the appeal site.

722. But the land allocated as WM5 in the CRWLP would remain available for development under the CBLP policies for employment use if it was not used for a thermal treatment of waste facility. The fact that it is currently not available for development is because it lacks any access as the Bypass, which has to provide that access, has been delayed.[483] The Appellant's offer to contribute towards the cost of constructing the Bypass, though generous, is unrelated to the development of Site WM5 and Phase 3 of Midpoint 18. If the Appellant's argument is accepted, any subsequent development of the land forming Site WM5 would either escape the Bypass contribution or would have to raise a second contribution, neither of which would be fair and equitable as paragraph 8.3 of the Development Brief requires. That would not be a sound basis for accepting the proposed contribution, nor does the comment on WM5 by the CRWLP Inspector contradict this conclusion.[APP/7, pp11.16]

723. The Appellant says the Council have accepted that the appeal site is a direct substitution for Site WM5 and the proposed contribution would therefore be appropriate and related in scale and kind to the development.[APP/7, pp6.22] I have already rejected that argument because no formal decision of the council has been made and the views expressed were by officers during the course of a meeting.[483] In addition, the highway authority regard the building of the 100m extension to Pochin Way to enable access to the appeal site as appropriate in lieu of a financial contribution.[423] That would appear the necessary, proportionate and reasonable contribution. Hence I conclude that the Bypass Contribution is not directly related to the appeal proposals, neither is it necessary to make the appeal proposals acceptable.

724. The Appellant does not deny that the Traffic Signalling Contribution (Schedule 2, Item 2) has not been the subject of any negotiations, but the Council did not challenge the evidence that what is offered would fund the installation of either of the two suggested options.[424,432] Thus the contribution would appear fair and reasonably related in scale and kind to the development. It would also be directly related to the development given that the parties agree there would be an increase in traffic at the A54/A533 junction as a result of the appeal proposals. [424]

725. But my conclusions on the traffic considerations were that the TA itself appeared flawed, and that, even if this was not the case, then the evidence showed the traffic signalling changes would lead to seriously adverse consequences over a wide area in terms of living conditions, road safety and general amenity and air quality on the A533 south of the signals.[648] That being so, the traffic signalling contribution, far from being necessary to make the development acceptable in planning terms, would have precisely the opposite effect. Accordingly this covenant fails to meet this test in CIL Regulation 122.

726. In the light of these conclusions on the individual covenants within the deed, I further conclude that, in relation to the following covenants in the s106 document, those obligations do not meet the tests set out in Regulation 122 and therefore should not be taken into account in determining this appeal:

Schedule 1, Items 1, 2, 3, 4

Schedule 2, Items 1 and 2

Summary and Final Conclusions

727. The development plan for the area comprises the North West of England Plan, Regional Spatial Strategy to 2021 (2008), the Cheshire Replacement Waste Local Plan 2007 and the Congleton Borough Local Plan 2005. Though the Appellant considers the CRWLP is out of date and should be afforded less weight, its policies have been saved pending the preparation of LDFs by the restructured Local Planning Authorities. It is thus part of the statutory development plan framework to which Section 38(6) of the 2004 Act applies, subject to the provisions of Section 38(5). No party suggested that any LDD in the course of preparation should be taken into account in the determination of the appeals.

728. The changes to PPS10 deriving from the new waste hierarchy in the revised Waste Framework Directive are an important material consideration, as are the provisions of the Directive itself. The appeal proposals do not include a link to the National Grid or to a user of CHP, although indicative routes for each have been subject to assessment in the CES. That being so then, providing permission was granted with appropriate conditions and the IBA and CHP covenants in the Section 106 undertaking, the appeal proposals would constitute an 'other recovery' operation within the new waste hierarchy, and recovery within the meaning of the Directive. In those circumstances this would mean the proposals would also constitute renewable energy and hence fall additionally within that policy area.

729. RSS Policy EM11 applies the waste hierarchy, prior to its revision, to the regional strategy for waste. Because the revised Directive and waste hierarchy are more recent than the RSS and seek to increase the use of waste as a

resource, such as for fuel, and to place greater emphasis on the prevention and recycling of waste, these are material considerations of great weight. To the extent that the revised waste hierarchy seeks to increase waste use for fuel, it provides very strong support for the appeal proposals. However, this has to be seen in the context of the whole of the waste hierarchy, its greater emphasis on prevention and recycling which are higher in the hierarchy than other recovery, and the aim of driving waste up the hierarchy. Policy EM11, in saying that residual waste should be managed at the highest practicable level in the waste hierarchy, plainly continues to accord with Government policy.

730. The aim of RSS Policy EM12 is to ensure that waste management facilities are sited in such a way as to avoid the unnecessary carriage of waste over long distances. The appeal site is centrally located in Cheshire so that, for waste generated within the county, the appeal proposals would accord with the policy purpose of sustainability. But the Cheshire municipal waste PFI contract collapsed in early 2011, and it is unclear what arrangements are likely to arise in future to deal with such waste. Due to the long construction period following planning permission and the grant of an environmental permit, the appeal proposals would not come on stream before 2015. Whatever arrangements are made to manage Cheshire MSW by that date, the appeal proposals are designed to accept C&I waste, and the Appellant says they would operate as a merchant facility taking waste from wherever it is offered.

731. The Appellant is also confident of setting a gate fee which would be competitive with other similar facilities. In this situation, and bearing in mind the proximity of the site to the motorway network, the number and location of those other facilities is a matter of importance given the aim of Policy EM12. In that context it is unfortunate that the availability of transport infrastructure which would support the sustainable movement of waste, in the form of the feasibility of rail haulage using the line adjacent to the appeal site, has not been adequately investigated.

732. The ability of existing established sites to meet the waste management needs of the sub-region is also a material consideration because of the merchant facility nature of the proposals. RSS Policy EM13 requires this to be fully explored. At the date the Inquiry closed there was no operational or established waste management site employing recovery within Cheshire. But by the time the appeal proposals, if approved, would come on stream, certainly that at Ince and perhaps those at Bedminster and Brunner Mond would also be available.

733. The fact that Ince operates using RDF and not raw waste and is owned by the Appellant does not necessarily lead to a conclusion that it would not compete with the appeal proposals. Its huge capacity, location towards the north-west of the county near Merseyside and the fact that commercial considerations change for reasons not within the control of planning, all suggest this is not a fixed position. Neither do the majority rail haulage proposals for the very large Brunner Mond facility, nor the multi-modal nature of Ince affect that consideration because, as merchant facilities, they will source waste from wherever they can. Bedminster is in any event not limited to source or nature of input waste.

734. All these considerations are in the context of the supply of waste and the Appellant suggests this will continue to grow, albeit at a slower rate than before. But the available evidence is based on the situation before the introduction of the

revised waste hierarchy and the requirements of the revised Directive. The mandatory nature of the latter, implemented through the Waste Regulations 2011 suggests that the new emphasis of prevention and recycling is likely to be effective so that supply will reduce, notwithstanding success since around 2000 in promoting the latter. Given that prevention affects the overall generation of waste, probable success in that policy aim is likely to reduce further both MSW and C&I waste streams. Therefore to predicate the development of a facility on the non-achievement of waste management policy aims appears negative and counter-intuitive.

735. Nevertheless, the appeal proposals would fully comply with the aim of promoting sustainable energy production in RSS Policy EM15 and of providing at least 20% of the region's energy from renewable energy sources by 2020 in Policy EM17. The nearby presence of British Salt as a base load CHP user, keen to reduce energy costs, adds weight to the proposals. But the criteria of Policy EM17, to be taken into account in identifying proposals and schemes for renewable energy, include many of the main considerations in these appeals and mirror those in waste policies. The qualification that they should not be used as constraints or to rule out renewable energy development relates not to individual proposals, but to situations where the criteria would prevent the development of all, or specific types of renewable energy technologies.

736. Therefore, although both waste and renewable energy policies apply to these appeals, the factors affecting consideration of them and the weight to be attached are similar for both policy areas. In relation to the main considerations, the appeal proposals would conflict to a very substantial degree with factors which should be taken into account in terms of: effects on EPS and hence the aims of RSS Policy EM1(B); on the landscape and the aims of Policy EM1(A); and on air quality in terms of road traffic. The evidence of adverse health effects in terms of stack emissions is not present and in relation to road safety appears to be neutral. Most significantly however, the potential prejudice to other renewable energy sources arising from overprovision weighs against the proposals.

737. Renewable energy and waste policy considerations are inextricably linked in the appeal proposals, but the primary purpose of the development is to manage waste, thereby generating energy. The development could operate as a waste incinerator without recovery (apart from IBA) and in the absence of conditions and the CHP covenant in the Section 106 undertaking, would be able to do so. But it could not operate as a renewable energy facility without the supply of a suitable feedstock and is designed to take waste for that purpose. In these circumstances the primary policy framework is that relating to waste management.

738. But in any event, the waste management situation in the Mersey Belt/north Cheshire cannot be divorced from renewable energy policy objectives because of permitted thermal treatment facilities, two of which are under construction or about to commence, Ineos and Ince. Together with Bedminster, the proposal by Brunner Mond, and the appeal proposals, this creates a situation where, if renewable energy policy is to take precedence, permission for all such facilities should be granted and hopefully all would come into operation.

739. But if that were the case, the inevitable corollary is that there would be a massive overprovision of facilities for the thermal treatment of waste. That would

mean that some waste would be diverted from recycling and reuse, both higher in the waste hierarchy, or there would be very substantial imports to keep the CHP demands of adjacent users satisfied, or some facilities would not be built because the market would determine some would be unprofitable in this situation. It might also occur that some facilities would be built but would operate inefficiently and might close prematurely leaving an unfortunate visual legacy. The sustainability, transport, air quality and visual issues arising from this situation would be contrary to most policies in the development plan. In this situation, leaving the issues to the market to determine what would occur would be the antithesis of planning.

740. The appeal site is not allocated for waste management purposes in the development plan so that the advice of PPS10, whether in paragraph 23 or 24 is material to the determination of Appeal A. In either case the policies in the PPS will be material, including the criteria in paragraph 21. Paragraph 29 requires that consideration be given to local environmental impacts in Annex E. These include visual intrusion, nature conservation, traffic and access, and air emissions, on all of which there are substantial conflicts between the appeal proposals and policy aims and harm to those interests. Nor would the proposed mitigation measures overcome those objections.

741. The overall objective of Government policy on waste, set out in the PPS, is to protect human health and the environment by producing less waste and using it as a resource wherever possible, resulting in sustainable waste management. This is now brought up to date by Article 13 of the revised Waste Framework Directive, that Member States take the necessary measures to ensure that waste management is carried out without endangering human health, without harming the environment, and in particular, (a) without risk to water, air, soil or animals, and (c) without adversely affecting the countryside or places of special interest.

742. In this case the proposals subject of Appeal A would put at risk air quality and animals in the form of GCN. They would also seriously and adversely affect the countryside around Middlewich by reason of their scale and location. The first of these considerations is reinforced because the proposals do not satisfy the three tests applied by Natural England, from whom a licence will be required to allow the development to go ahead. Those tests in turn arise from the provisions of the Habitats Directive. These considerations should be afforded very great weight in considering the appeal proposals.

743. Climate change is the greatest threat facing the world, as PPS1-CCS states. The development of renewable energy thus attracts the greatest weight insofar as the appeal proposals which would advance that objective. But in this case, the evidence shows that the inextricable relationship between waste and renewable energy in the proposed development and the situation in respect of similar developments in the Mersey Belt/north Cheshire would undermine this objective. This is because permission for the appeal proposals would be likely to prejudice other renewable energy supplies and/or lead to increased vulnerability of proposed development in the form of other recovery developments, contrary to the advice of paragraph 44 of the PPS Supplement. This substantially reduces the weight they attract.

744. The Government's statement 'Planning for Growth' says that its top priority is to promote sustainable economic growth and that its expectation is that the

answer to development and growth should wherever possible be 'yes'. This is however qualified by the exception of where this would compromise the key sustainable principles set out in national planning policy. The conflict of Appeal A with the sustainable waste management strategy of PPS10 and with other renewable energy supplies in the form of competing facilities for a finite amount of waste falls within that policy exception.

745. The economic benefits of the appeal proposals have in any case been over-stated by conflating the proposals with the proposed Bypass and the completion of Phase 3 of Midpoint 18. The renewable energy benefits of the development are compromised by the over-capacity of waste management facilities in north Cheshire and nearby, which would also lead to unsustainable transport. The environmental effects would be seriously harmful to the appearance of the countryside, to ecology and to the amenity of residents of Middlewich in terms of traffic effects on air quality and congestion.

746. The Government's policy of localism and the scale of local opposition was stressed by those who represented local residents and by the residents themselves. But weight of numbers does not necessarily create good arguments. In this case however, the local evidence on traffic, nature conservation and effects on the visual and general amenity of residents was sound and cogent. It merits weight and that adds to my conclusion that the harm caused by the proposals subject of Appeal A outweighs the benefits which would flow from it. Accordingly the appeal should be dismissed.

747. In these circumstances, there is no need for the development subject of Appeal B, reinforcing my conclusion that Natural England would be unlikely to grant a licence for the disturbance to EPS which that development would cause.

748. Should the Secretary of State not accept my conclusions on Appeal A, then the appeal should be allowed subject to the conditions as reviewed above. In those circumstances, Appeal B should also be allowed, again subject to the conditions and my conclusions on them. The conditions are set out in the Annex to this report.

Recommendations

Appeal A: (Ref APP/R0660/A/10/2129865)

749. I recommend the appeal be dismissed.

Appeal B: (Ref APP/R0660/A/10/2142388)

750. I recommend the appeal be dismissed and planning permission refused.

Richard Tamplin

Inspector

APPEARANCES

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FOR CHAIN

Brian Cartwright, BSc F.Inst.Chem.Engs, C.Eng, ALCM, AMCST who acted as advocate and gave evidence	Chairman CHAIN
The following did not give evidence but questioned the Appellant's witnesses	
Barry Davies	
Mark Wynne	
Liam Byrne	
Dave Wright	

INTERESTED PERSONS:

Fiona Bruce MP	Fiona Bruce MP
Dave Wright	Resident, Member of CHAIN
Eileen Gilbert	Resident
Cllr Mike Parsons	Mayor of Middlewich, Middlewich Town Council
Neil Wilson CEng MiMechE	Resident
Tracy Manfredi	Northwich Resident
Liam Byrne	Resident, Member of CHAIN
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Cllr Les Gilbert	Congleton East Ward, Cheshire East Council
Cllr Keith Bagnall	Chair, Planning Committee, Middlewich Town Council
Cllr Stuart Holland	Sandbach Town Council
Dr Peter Hirst	Resident, Middlewich

DOCUMENTS

CORE DOCUMENTS

Legislation

CD1/1	Air Quality (England) Regulations 2000
CD1/2	Air Quality (England) (Amendment) Regulations 2002
CD1/3	Air Quality Standards Regulations 2010
CD1/4	Conservation of Habitats and Species Regulations 2010

Planning policy guidance, statements, circulars and directives

CD2/1	PPS1: Delivering Sustainable Development 2006
CD2/2	Planning and Climate Change 2007 (Supplement to PPS1)
CD2/3	PPS4: Planning for Sustainable Economic Growth 2009
CD2/4	PPS9:Biodeiversity and Geological Conservation 2005
CD2/4A	PPS9 Good Practice Guide
CD2/5	PPS10 Planning for Sustainable Waste Management
CD2/5A	Update to PPS10: 30 March 2011
CD2/6	Companion Guide to PPS10 2006
CD2/7	PPG13:Transport 2011
CD2/8	PPS22: Renewable Energy 2004
CD2/8A	PPS22: Companion Guide 2004
CD2/9	PPS23:Planning and Pollution Control 2004
CD2/9A	Annex 1 to PPS23 2004
CD2/10	PPG24: Planning and Noise 1994
CD2/11	PPS25: Development and Flood Risk 2010
CD2/12	Consultation Draft PPS: Planning for a Low Carbon Future in a Changing Climate 2010
CD2/13	Guidance on Transport Assessment, Department for Transport 2007
CD2/14	Overarching National Policy Statement for Energy (NPS EN-1) 2011
CD2/15	National Policy Statement for Renewable Energy Infrastructure (rNPS EN-3) July 2011
CD2/16	Waste Strategy for England (Main Report) 2007
CD2/16A	Waste Strategy for England 2007 (Annexes)
CD2/16B	Waste Strategy for England 2007 (Annex I)
CD2/17	Waste Strategy for England and Wales 2000 Part 1
CD2/18	Stage One Consultation on the transposition of the Revised Waste Framework Directive 2009
CD2/19	Stage Two Consultation on the transposition of the Revised Waste Framework Directive 2010
CD2/20	Waste Framework Directive 2006/12/EC
CD2/21	Revised Waste Framework Directive 2008/98/EC 2008
CD2/22	Directive 2000/76/EC of the European Parliament on the incineration of waste 2000
CD2/23	Directive 2004/107/EC of the European Parliament (Air Quality Directive) 2004
CD2/24	EC Habitats directive (Council Directive 92/43/EEC) 1992

CD2/25	Circular 06/05: Biodiversity and Geological Conservation –Statutory Obligations and their Impact within the Planning System 2005
CD2/26	North West Regional Spatial Strategy 2008
CD2/27	European Protected Species: Mitigations Licensing- How to get a licence. The Conservation of Habitats and Species regulations 2010
CD2/28	PPS3: Housing 2010
CD2/29	PPS6: Practice Guide 2009
CD2/30	EIA Directive 85/337/EEC (as amended) on the assessment of effects of certain public and private projects on the environment 1985
CD2/31	Town and Country Planning (Environmental Impact Assessment) (England & Wales) 1999 (as amended) 1999
CD2/32	Circular 2/99: Environmental Impact Assessment 1999
CD2/33	The Waste (England& Wales) Regulations 2011 92011 No. 988

Development plans and emerging plan documents

CD3/1	Congleton Borough Council Midpoint 18 Phase Three Development Brief SPD 2007
CD3/2	Cheshire Replacement Waste Local Plan 2007
CD3/3	Cheshire Replacement Waste Local Plan – Report of the Public Inquiry into objections (Cheshire Replacement Waste Local Plan: Inspector's Report 2007)
CD3/4	Cheshire Local Transportation Plan 2006
CD3/5	Congleton Borough Plan 2005

Strategies, guidance and studies

CD4/1	UK Low Carbon Transition Plan, National Strategy for Climate and Energy 2009
CD4/2	Meeting the Energy Challenge – Energy White Paper 2007
CD4/3	The UK Renewable Energy Strategy 2009
CD4/4	Regional Waste Strategy for The North West 2004
CD4/5	Cheshire Consolidated Joint Municipal Waste Management Strategy 2007
CD4/6	A draft Economic Development Strategy for Cheshire East, Cheshire East Council 2010
CD4/7	Guidelines for the Assessment of Landscape and Visual Impacts, Second edition, Landscape Institute with the Institute of Environmental Management and Assessment 2002
CD4/8	Landscape Character Assessment Guidance for England and Scotland, Scottish Natural Heritage and The Countryside Agency 2002
CD4/9	The Cheshire Landscape Character Assessment 2008
CD4/10	Landscape Assessment of Congleton Borough (Extracts) 1999
CD4/11	Countryside Character Map of England, Countryside Agency (extract): Character Area 61/62 1999
CD4/12	Middlewich Eastern Bypass and Midpoint 18 Development Appraisal and Delivery Strategy, AECOM Transportation 2010
CD4/13	Weaver Valley Economic Background Report: Cheshire County Council 2006
CD4/14	The Waver Towns – Middlewich, Northwich and Winsford, An Economic Assessment , Cheshire Economic Alliance 2009
CD4/15	Cheshire and Warrington Sub-Regional Employment land and Sites Study, GVA Grimley 2009
CD4/16	Cheshire and Warrington Medium-sized Towns prospects, Pion

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CD4/17	Air Quality Guidelines for Europe 2nd Edition 2000: WHO (Extracts)
CD4/18	Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, Final (EP A 530-R-05-006): EPA 2005
CD4/19	Risk assessment of dioxin release from municipal waste incineration processes, HM Inspectoral of Pollution 1996
CD4/20	Air Quality Updating and Screening Assessment for Congleton BC: 2009
CD4/21	Air Quality Updating and Screening Assessment for Crewe and Nantwich BC: 2009
CD4/22	Air Quality detailed assessment of Nitrogen Dioxide for Vale Royal BC: 2009
CD4/23	Air Quality Updating and Screening Assessment for Vale Royal BC: 2009
CD4/24	EA – North West of England Commercial and Industrial Waste Survey 2009. Urban Mines report to the EA 2010
CD4/25	Cheshire CC – Study to fill evidence gaps for Commercial and Industrial Waste Streams in the North West Region of England, Urban Mines Final Report for the North West Regional Technical Advisory Board 2007
CD4/26	Briefing Report: Residual Waste in England & Wales: Tolvic Consulting Ltd 2010
CD4/27	Energy from Waste; Feedstock Supply and Demand in the North West; Envirolink North West: Scott Wilson 2010
CD4/28	Health Protection Agency- The Impact on Health of Emissions to Air from Municipal Waste Incinerators 2010
CD4/29	Health Protection Scotland – Incineration of Waste and reported Human Health Effects 2009
CD4/30	Committee on the Carcinogenicity of Chemicals in Goods, Consumer Products and Environment - Cancer incidence near municipal solid waste incinerators in Great Britain COC statement COC/00/S1: 2000
CD4/31	Design Manual for Roads and Bridges Volume 11, Section 3, HA207/07 Air Quality, Highways Agency2007
CD4/32	Development Control Planning fro Air Quality (2010 update) Environmental Protection UK
CD4/33	The Air Quality Strategy for England , Scotland, Wales, and Northern Ireland, DEFRA and others 2007
CD4/34	Commercial and Industrial Waste in England, Statement of Aims and Actions 2009, DEFRA
CD4/35	Digest of United Kingdom Energy Statistics 2010, DECC
CD4/36	Great Crested Newt Mitigation Guidelines, English Nature: 2001
CD4/37	CLG Strategic Land Availability Assessments – Practice Guidance: 2007
CD4/38	CLG Land Supply Assessment Checks 2009
CD4/39	The consenting process for onshore Generating Stations above 50MW in England and Wales – A guidance note on Section 36 Electricity Act 1989, DECC: 2007
CD4/40	CBI Brief: Making Ends Meet – Maximising the Value of Waste 2011

Other Documents

CD5/1	Secretary of State's decision letter on INEOS Chlor, Runcorn, Cheshire 2008

CD5/2	Secretary of State's decision letter on Ince Marshes 07/2059609: 2008
CD5/3	LinSig, User Guide and Reference, JCT Consulting 2009
CD5/4	Arcade 6 user Guide, TRL 2006
CD5/5	OBR Pre-budget forecast for 2010 - 2015: 2010
CD5/6	Appeal decisions 09/2101443 & 09/2101444 Blaise Farm Quarry (extracts) 2009
CD5/7	Tempro user Guide, DfT
CD5/8	Cheshire East BC Strategic Planning Board Committee Report and Decision Notice for planning application 09/0738W: 2010
CD5/9	Heads of Terms agreed subject to contract between Covanta and British Salt for the supply of CHP/Steam: 2009
CD5/10	Covanta's appeal 10/2129865/NFW: 2010
CD5/11	EA – Contaminants in soil: updated collation of toxicological data and intake values for humans, Dioxins, furans and dioxin-like PCBs. Science Report SC050021/SR TOX12: 2009
CD5/12	Local Air Quality Management Technical Guidance LAQM. TG (09), DEFRA: 2009
CD5/13	EA: Horizontal Guidance Note H1 – Environmental risk assessment for permits, (extracts)2010
CD5/14	EA: Interim Guidance to applicants on Metals Impact Assessment for Waste Incineration Plant : 2010
CD5/15	Parson Brinckerhoff Scoping request: 2007
CD5/16	CCC Scoping Opinion 2007
CD5/17	PINS letter to DLA regarding the Environmental Statement, 1st Oct 2010
CD5/18	Not used
CD5/19	Not used
CD5/20	Secretary of State's letter recovering the appeal : 2010
CD5/21	Cheshire East Council Strategic Planning Board Committee Report and Minutes: 5th Jan 2011
CD5/22	Appeal Decisions 04/0631 & 8/371371: 2007
CD5/23	Secretary of State's decision and Inspectors report in respect of the Eastcroft Energy from Waste facility, Nottingham: 2009
CD5/24	Secretary of State's decision and Inspectors report in respect of the land adjacent Clayhanger Hall Farm, crew, and Kinderton lodge Farm, Middlewich: 2007
CD5/25	Secretary of State's decision and Inspectors report in respect of the Green Rigg Wind Farm 07/2039188 (extracts) 2009/2010
CD5/26	Green Rigg Wind Farm: Outline Legal submissions and closing submissions on behalf of Tynedale DC: Anthony Crean QC : 2008
CD5/27	Green Rigg Wind Farm: Inspector's ruling and Regulation 19 Request Letter.2008
CD5/28	Green Rigg Wind Farm: Extracts from Supplementary Environmental Information relating to Grid Connection in response to Regulation 19 Request: 2008
CD5/29	Secretary of State's decision and Inspectors report in respect of the Land at Wadlow Farm 07/2059471
CD5/30	Cheshire East Council Strategic Planning Board Committee Report of 20th Feb 2011 relating to Brunner Mond application 10/00691/DECC
CD5/31	Environmental Statement relating to Brunner Mond grid connection: 2010 (extracts)
CD5/32	Secretary of State's decision and Inspectors report in respect of King

	Street 08/2093471 & 08/2093465 : 2009
CD5/33	King Street – Environmental Statement (extracts)
CD5/34	Secretary of State's decision and Inspectors report in respect of Belvedere GDBC/C/003/001 : 2006
CD5/35	Draft Local Transport Plan Strategy Document : Cheshire East Council: 2011
CD5/36	Committee Report and decision notices for waste development at Bedminster: 2006 & 2008.

Environmental Information and Planning Statements

CD6/1	Planning application forms in relation to Planning application 09/0738W: (EfW site) March 2009
CD6/2	Design and Access Statement : Feb 2009
CD6/3	Statement of Community Involvement: Feb 2009
CD6/4	Vol One Environmental Statement (Non Technical summary) Feb 2009:(superseded by CD/14A)
CD6/5	Vol Two Environmental Statement (Main Report): Feb 2009 (superseded by CDs CD6/11-15 inclusive)
CD6/6A	Vol Three Environmental Statement (including all appendices) Part A Feb 2009 (superseded by CDs CD6/11-15 inclusive)
CD6/6B	Vol Three Environmental Statement (including all appendices) Part B Feb 2009 (superseded by CDs CD6/11-15 inclusive)
CD6/7	Supplementary Information to Environmental Statement (Part A) (SIP1) December 2009 (superseded by CDs CD6/11-15 inclusive)
CD6/8	Supplementary Planning Statements (Part B) December 2009 (superseded by CDs CD6/11-15 inclusive)
CD6/9A	Supplementary Information to Environmental Statement Vol 1 (SIP2) August 2010 (superseded by CDs CD6/11-15 inclusive)
CD6/9B	Supplementary Information to Environmental Statement Vol 2 (SIP2) August 2010 (superseded by CDs CD6/11-15 inclusive)
CD6/10	Supplementary Information to Environmental Statement (SIP3) Sept 2010 (superseded by CDs CD6/11-15 inclusive)
CD6/11	Consolidated Environmental Statement Vol One ; Non Technical Summary Oct 2010 (Supplemented, and in part superseded, by Regulation 19 letter and appendices)
CD6/12	Consolidated Environmental Statement Vol Two: Main Report Oct 2010 (supplemented, and in part superseded, by further information submitted in response to Regulation 19 request of Feb 2011)
CD6/13	Consolidated Environmental Statement Vol Three: Figures and Appendices A-F: Oct 2010
CD6/14	Consolidated Environmental Statement Volume Four: Appendices G-Q: Oct 2010
CD6/14A	Non Technical Summary of Consolidated Environmental Statement updated in response to Regulation 19 request of February 2011:July 2011
CD6/14B	Consolidated Environmental Statement Vol 4A Figures and Appendix R submitted in in response to Regulation 19 request of February 2011:July 2011
CD6/14C	Consolidated Environmental Statement Vol 2 Main Report July 2011
CD6/15	Consolidated Environmental Statement Vol 5 Landscape and Visual Figures: Oct 2010
CD6/16	Consolidated Planning Statements: Oct 2010

CD6/17	Environmental Permit Documents: March 2010
CD6/18	Planning Application plans for 09/0738W (EfW Site):March 2009
CD6/19	GCN Receptor Site application and plans: June 2010
CD6/20	GCN Receptor Site Appeal: Dec 2010
CD6/21	Suggested conditions for Covanta's proposed Middlewich EfW facility; Agreed note on proposed conditions 33 relating to noise – Covanta and CEC; figure 15.4A referred to in proposed condition 37 relating to ecology: Sept 2011
CD6/22	Suggested conditions for Covanta's proposed great crested newt receptor site at land of ERF Way/ Cledford Lane, Middlewich. Sept 2011

Statements of Case

CD7/1	Covanta Energy Limited: Sept 2010
CD7/2	Cheshire East Borough Council: Sept 2010
CD7/3	CHAIN: Sept 2010
CD7/4	Covanta Energy Limited: GCN Site Jan: 2011
CD7/5	Cheshire East Borough Council: GCN Site : Jan 2011
CD7/6	CHAIN: GCN Site :Jan 2011

Statement of Common Ground

CD8/1	Covanta and Cheshire East Council: Oct 2011

Documents submitted by Covanta Energy Ltd

APP/1	Peter Wright: Proof of Evidence: Feb 2011
APP/1/a	Peter Wright: Summary Proof: Feb 2011
APP/1/b	Peter Wright: Appendices: Feb 2011
APP/1/c	Peter Wright: Rebuttal Proof of Evidence: March 2011
APP/1/d	Peter Wright: Supplementary Rebuttal Statement and Appendices: Sept 2011
APP/1/e	Peter Wright: Rebuttal Proof of Evidence : 2011
APP/2	Colin Goodrum: Proof of Evidence: Feb 2011
APP/2/a	Colin Goodrum: Summary Proof: Feb 2011
APP/2/b	Colin Goodrum: Appendices: Part I (App One) & Part Two (App 2-8) Feb 2011
APP/2/c	Colin Goodrum: Rebuttal Proof: March 2011
APP/3	Andrew Stoneman: Proof of Evidence: Feb 2011
APP/3/a	Andrew Stoneman: Summary Proof: Feb 2011
APP/3/b	Andrew Stoneman: Appendices: Feb 2011 (bound in APP/3)
APP/3/c	Andrew Stoneman: Rebuttal Proof: March 2011
APP/4	Bethan Tuckett-Jones: Proof of Evidence: Feb 2011
APP/4/a	Bethan Tuckett-Jones: Summary Proof: Feb 2011
APP/4/b	Bethan Tuckett-Jones: Appendices: Feb 2011
APP/4/c	Bethan Tuckett-Jones: Rebuttal Proof: March 2011
APP/5	Martin Shenfield: Proof of Evidence: Feb 2011
APP/5/a	Martin Shenfield: Summary Proof: Feb 2011
APP/5/b	Martin Shenfield: Appendices: Feb 2011
APP/5/c	Martin Shenfield: Rebuttal Proof: March 2011
APP/5/d	Martin Shenfield: Rebuttal Appendix: March 2011
APP/6	Simon Aumonier: Proof of Evidence: Feb 2011
APP/6/a	Simon Aumonier: Summary Proof: Feb 2011
APP/6/b	Simon Aumonier: Appendices: Feb 2011

APP/6/c Part 1	Simon Aumonier: Rebuttal Proof: March 2011
APP/6/c Part 2	Simon Aumonier: Rebuttal Appendices: March 2011
APP/6/d	Simon Aumonier: Supplementary Proof: Sept 2011
APP/6/e	Simon Aumonier: Supplementary Proof: Sept 2011
APP/6/f	Simon Aumonier: Supplementary Rebuttal Proof: Sept 2011
APP/7	Gary Halman: Proof of Evidence: Feb 2011
APP/7/a	Gary Halman: Summary Proof: Feb 2011
APP/7/b	Gary Halman: Appendices: Vols 1-3 Feb 2011
APP/7/c	Gary Halman: Rebuttal Proof: March 2011
APP/7/d	Gary Halman: Supplementary Proof: Sept 2011
APP/7/e	Gary Halman: Appendices to Supplementary Proof: Sept 2011
APP/8	Elizabeth Spedding: Proof of Evidence: Feb 2011
APP/8/a	Elizabeth Spedding: Summary Proof: Feb 2011
APP/8/b	Elizabeth Spedding: Appendices: Feb 2011
APP/8/c	Elizabeth Spedding: Rebuttal Proof: March 2011
APP/8/d	Elizabeth Spedding: Appendices to Rebuttal Proof: March 2011
APP/0/1	Cheshire Replacement Waste local plan: Compliance with EU Directive 2008/98/EC – Note for inspector by Covanta in response to CEC4: March 2011
APP/0/2	Opening Statement on behalf of the Appellant: March 2011
APP/0/3	Suggested Draft conditions for Covanta's proposed Middlewich EfW Facility (superseded by CD/6/21): Jan 2011
APP/0/4	Suggested Draft conditions for Covanta's proposed Great Crested Newt Receptor Site at land off ERF Way/ Cledford land, Middlewich: Feb 2011 (Superseded by CD6/22)
APP/0/5	Appellant's Outline Reply to the Council's Legal Submissions: march 2011
APP/0/6	Section 106 Agreement: October 2011
APP/0/7	Letters from Treasury Solicitor Department 19th and 29th October 2010
APP/0/8	Insider article relating to Regional Growth Funding: March 2011
APP/0/9	Letter from DEFRA to John Swift of DECC: 28th April 2011
APP/0/10	Letter from Rod Brookfield to GPP Ltd: 24th July 2009
APP/0/11	CEC Internal Consultation Responses on Consolidated Environmental Statement: Various
APP/0/12	Landscape Supplemental Statement of Common Ground: March 2011
APP/0/13	Judicial Review Claim Form submitted by Cheshire Council's against DEFRA decision to withdraw PFI Credits : Jan 2011
APP/0/14	Updated Schedule of EfW projects and Approach to Connections: March 2011
APP/0/15	Note of Meeting between Covanta and Brunner Mond: March 2011
APP/0/16	Covanta note on CHP: March 2011
APP/0/17	Appellant's Outline Replay to Council's Procedural Submission: March 2011
APP/0/18	Building Design Comparison Table: March 2011
APP/0/19	Extract from Jan Gomulski's Note provided to Colin Goodrum on 9th March 2011 on Viewpoints.
APP/0/20	Viewpoint Assessment Comparison: March 2011
APP/0/21	Note relating to Bedminster and letter from Cheshire West and Chester Council : 17th March 2011

APP/0/22	Letter from Ballast Phoenix: 17th March 2011
APP/0/23	Letter from Pochin relating to Ecology and Landscape: 4th Feb 2011
APP/0/24	Letter from Ince Park LLP :16th March 2011
APP/0/25	List of appearances for Covanta: March 2011
APP/0/26	Consultation Response from Strategic Highways and Transport Manager: March 2011
APP/0/27	Documents relating to CHAIN petition and letters of objection: 2009
APP/0/28	Note relating to height of British Salt Site (Agreed by Colin Goodrum and Jan Gomulski): March 2011
APP/0/29	Visual representation of Wind Farm – Good Practice Guide: Feb 2009
APP/0/30	Proposed Itinerary for Inspector's site visit (revised version): May 2011
APP/0/31	Timelines of Waste Arisings and Permitted Capacity: March 2011
APP/0/32	Appellant's Response to CEC 32 on Ince and Ineos and the Habitats Directive: March 2011
APP/0/33	DEFRA article from Letsrecycle.com- "DEFRA Waste Chief defends C&I Survey Findings: March 2011
APP/0/34	Compilation of Documents relating to Bedminster: March 2011
APP/0/35	Annual changes in GDP: Constant (real) v Current Prices: March 2011
APP/0/36	Ince EfW site and Grid Connection: March 2011
APP/0/37	Midpoint 18 Middlewich: Planning Status note: 28th March 2011
APP/0/38	Statement by Greg Clark- "Planning for Growth" :March 2011
APP/0/39	Ineos News Release: 28th March 2011
APP/0/40	GDP v GDP (real) 2000-2010: March 2011
APP/0/41	Extracts from SPEN offer letter: Jan 2011
APP/0/42	Note of CLP member visit to Covanta USA EfW facility: March 2011
APP/0/43	UK Real GDP Growth Figures 2002-2005, 2002-2009 and 2007-2010 : March 2011
APP/0/44	Covanta Newsletter: December 2009
APP/0/45	Note of Simon Aumonier in relation to the R1 Calculations and good quality CHP: 21st April 2011
APP/0/46	Appellant's Legal Submissions: Regulation 19 : 31st March 2011
APP/0/47	Note on Waste Treatment Facilities: 18th May 2011
APP/0/48	Appellant's letter regarding costs: 17th May 2011
APP/0/49	Cala Homes (No.2) Judgment: Feb 2011
APP/0/50	Avonmouth Appeal Decision: April 2011
APP/0/51	4NW Consultation letter: 30th April 2009
APP/0/52	NE 292 – natural England Guidance note: EPS and the Planning Process: Undated.
APP/0/53	Note by Simon Aumonier in response to CH1/46: May 2011
APP/0/54	Committee reports relating to application by Albion Inorganic Chemicals: Undated
APP/0/55	Planning permissions relating to Midpoint 18: Oct 2004
APP/0/56	Bedminster officer report : April 2008
APP/0/57	Further environmental information submitted by Covanta in response to the Regulation 19 request of 8th April 2011:July 2011 (also included as CD/14A and CD 6/14B)
APP/0/58	Appeal decision by Secretary of State relating to a proposed EfW facility by SITA at Severnside, including Inspector's Report and costs decision submitted 20th September 2010: Sept 2011
APP/0/59	Note on application of Control of Pollution (Oil Storage)(England)Regulations 2001: 5th October 2011.

List of Documents submitted by Cheshire East Council

CEC1	Stephen Molloy: Proof of Evidence: Feb 2011
CEC1/1	Stephen Molloy: Appendix 1 PINS email : Feb 2011
CEC1/2	Stephen Molloy: Appendix 2 Plan of Cheshire Waste Facilities: Feb 2011
CEC1/3	Stephen Molloy: Appendix 3 Public Service Journal Advert: Feb 2011
CEC1/4	Stephen Molloy: Appendix 4 Sequential Site Assessment : Feb 2011
CEC1/5	Stephen Molloy: Appendix 5 Covanta Community Newsletter : Feb 2011
CEC1/6	Stephen Molloy: Appendix 6 HOW Planning letter: Feb 2011
CEC1/7	Stephen Molloy: Appendix 7 Aumonier Note : Feb 2011
CEC1/8	Stephen Molloy: Summary Proof
CEC2	James Baggaley: Proof of Evidence : Feb 2011
CEC2/1	James Baggaley: Summary Proof: Feb 2011
CEC3	Jan Gomulski: Proof of Evidence: Feb 2011
CEC3/1	Jan Gomulski: Summary Proof: Feb 2011
CEC3/2	Jan Gomulski: Speaking Note: March 2011
CEC4	Bundle of correspondence relating to EU Waste Directive: Feb 2011
CEC5	Rebuttal Molloy: Halman : Feb 2011
CEC6	Rebuttal Molloy: Aumonier : Feb 2011
CEC7	Rebuttal Molloy: Stoneman : Feb 2011
CEC8	Rebuttal Molloy: Wright : Feb 2011
CEC9	Rebuttal Baggaley: Spedding & Halman : Feb 2011
CEC9/1	James Baggaley: Additional ecological implications note : March 2011
CEC10	Rebuttal Gomulski: Goodrum : Feb 2011
CEC11/1	Ince Inquiry: S Aumonier Summary Proof: March 2008
CEC11/2	Ince Inquiry: S Aumonier Proof of Evidence: March 2008
CEC11/3	Ince Inquiry :S Aumonier Appendices :March 2008
CEC12	PPS12: 2008
CEC13	PINS letter to Cheshire East Council: 21st Feb 2011
CEC14	DLA piper letter to Cheshire East Council : 21st Feb 2011
CEC15	Email from Ian Dale: 2nd March 2011
CEC16	Opening Submissions
CEC17	Charlotte Palmer email 7th March 2011
CEC18	Anne Mosquera email 9th March 2011
CEC19A	Stephen Molloy: Note of thermal comparisons: : March 2011
CEC19B	Stephen Molloy: Note of arisings Cheshire : March 2011
CEC20	Extracts from CEC annual Monitoriing Report – Chapter 9 and Appendix A 2009/10
CEC21	Procedural Submission: March 2011
CEC22	Response : March 2011
CEC23	Bedminster Note : undated
CEC24	GDP Graph ; undated
CEC25	Ince - Summary of Need; undated
CEC26	Ince - NTS
CEC27	Diane Wheatley's email (GONW): undated
CEC28	PINS letter 21st Jan 2011
CEC29	Stephen Molloy: Note of consented thermal capacity : March 2011
CEC30	Stephen Molloy: Time line : March 2011
CEC31	Rod Brookfield email : 23rd March 2011

CEC32 Note concerning documents CD5/1 and 5/2 : March 2011
CEC33 GDP graph without inflation 1996-2010
CEC34 Eileen Wilson Mckenzie email 28th March 2011
CEC35 Bedminster note 29th March 2011
CEC36 Simon Grasby email re Ineos 29th March 2011
CEC37 Further procedural submission on Regulation 19: 29th March 2011
CEC38 David Walker email : 29th March 2011
CEC39 Stephen Molloy: Note on update to PPS10: 1st April 2011
CEC40 CWAC letter re land at Lostock/Bedminster 16th May 2011
CEC41 AC QC Note about vehicle/waste movements: 17th May 2011
CEC42 Stephen Molloy: Response to APP/0/47 : 19th May 2011
CEC43 Challenge to SoS decision at Avonmouth
CEC44 Stephen Molloy: Supplementary Proof: Sept 2011
CEC45 AC QC draft Closing submissions: August 2011 (superseded)
CEC46 Cheshire East Council letter commenting on draft unilateral undertaking: 26th Sept 2011
CEC47 AC QC Final closing submissions: Oct 2011

List of Documents submitted by CHAIN

CH1/1 UK close to waste treatment overcapacity – ENDS Report July 2010
CH1/2 Statement by DEFRA – Changes to PFI programmer: Oct 2010
CH1/3 PINS Appeal Decision: The Derby Incinerator: Oct 2010
CH1/4 The Health Effects of Waste Incinerators – 4th Report of the British Society for Ecological Medicine: June 2008
CH1/5 British Society for Ecological Medicine – Reply to Health protection Agency
CH1/6 Cheshire East Council: Statement on the "Nottingham Declaration on Climate Change" : June 2006
CH1/7 Review of Environmental & Health Effect of Waste Management : Enviros/Uni of Birmingham/DEFRA : May 2004
CH1/8 Central & Eastern Cheshire NHS letter: July 2009
CH1/9 Background information on Environmental and Health issues: Enviros Consulting Ltd on behalf of the Cheshire Waste partnership: Table 2
CH1/10 UWUA letter 3rd June 2009, UWUA leaflet on Covanta Violations in USA
CH1/11 UWUA letter to Cheshire East Council: 3rd August 2009
CH1/12 CHAIN Information sheet: 25th Aug 2010
CH1/13 UWUA flysheet on Covanta operating practices 8th June 2009
CH1/14 New Haven Register Article: State suing Covanta: 19th Aug 2010
CH1/15 Covanta violations of Environmental & Labour Standards in US
CH1/16 Lord Henley, Parliamentary under Secretary, DEFRA letter to G Evans MP: July 2010
CH1/17 Localism Bill to shift Waste Planning Powers: 13th Dec 2010
CH1/18 Localism in Action: Nov 2010
CH1/19 Jan Gomulski letter to Cheshire East Council: May 2009
CH1/20 Summary of Report 09/0738W, Cheshire East Planning Board
CH1/21 Numerous local photographs of site flooding in area
CH1/22 Various Papers on salt mining and Brine Extraction
CH1/23 History of Brine Extraction in Middlewich
CH1/24 Centre for Economics & Business Research Ltd: The Economic impact of EfW incinerator in Newhaven
CH1/25 Photographs of traffic in Middlewich

CH1/26 DVD of traffic in Middlewich
CH1/27 Kuehne & Nagel
CH1/28 Feasibility Study into Re-opening the Sandbach/Northwich Railway Line to Passenger Traffic: July 2009
CH1/29 Letter to Inspector: Complaint on ES
CH1/30 CWAC Strategic Planning Committee 10th Feb 2011
CH1/31 Bedminster: Joint Statement
CH1/32 Middlewich Events Calendar
CH1/33 Bedminster: Construction Schedule
CH1/34 Height Comparison diagram
CH1/35 Middlewich Guardian Article 26th March 2011
CH1/36 Withdrawn
CH1/37 Council Press Release: April 2009
CH1/38 Midpoint 18: Job Density Comparison
CH1/39 Guardian article: House Price Fall
CH1/40 Midpoint 18: Occupiers
CH1/41 Nick Brookes letter: 29th March 2011
CH1/42 Bedminster letter: 30th March 2011
CH1/43 Pochin Master Planning: Extract website
CH1/44 Hansard Report: F.Bruce MP Question to Parliament 30th March 2011
CH1/45 Middlewich: 2 maps
CH1/46 CHAIN response to Aumonier note APP/0/45
CH1/47 Biomass objection
CH1/48 CHAIN response to Aumonier notes APP/0/45 & 53
CH1/49 Withdrawn
CH1/50 Poolbeg firm to pay $400,000 in compensation
CH1/51 Waste Management Quick Guide
CH1/52 Opening Speech
CH1/53 CHAIN letter to PINS 2nd September 2011: Comments following Inspectors request re 3 appeals
CH1/54 CHAIN Response to Draft Conditions: Sept 2011
CH1/55 CHAIN Closing Statement

List of Documents submitted by 3rd Parties

TP1 Dave Wright: Objection and Evidence
TP2 Eileen Gilbert: Objection: Comments on consultation by Covanta
TP3 Middlewich Town Council: Objection: Letter and enclosures to Prime Minister: 25th October 2010
TP4 Neil Wilson: Objection: Statement on Traffic Assessment submission
TP5 Tracy Manfredi: Objection: Statement on Health Effects
TP6 Liam Byrne: Objection to Waste Incinerator
TP7 Keith Smith: Support in principle

OTHER INQUIRY DOCUMENTS

DOC 1 List of person present at the Inquiry
DOC 2 Letter of verification of the Inquiry and lists of persons notified

Letters of representation and petitions

DOC 3 Petitions at application stage signed by 6945 person and 158 persons
DOC 4 Standard letters of representation at application stage (1720): Policy issues, need, traffic, emissions, pollutions effects.

DOC 5 Standard letters of representation at application stage (1000) : Visual Impact
DOC 6 Standard letters of representation at application stage (726 in 6 bundles): Various issues
DOC 7 Standard letters of representation at application stage (417): New material
DOC 8 Bundle of 215 individual letters of representation at application stage
DOC 9 Bundle of letters of representation at appeal stage, and schedule of analysis
DOC 10 Petition handed in at close of inquiry signed by 1133 persons
DOC 11 Fiona Bruce MP: 2 letters of representation

Procedural documents

DOC 12 Minutes of Pre-Inquiry Meeting held on 20th September 2010
DOC 13 Minutes of Second Pre-Inquiry Meeting held on 7th February 2011
DOC 14 Request for further information under Regulation 19 of the EIA Regulations 1999, 8th April 2011 and Annex
DOC 15 Three rulings by the Inspector, 15th & 25th March 2011 (X1, X2 and X3)

Other Documents

DOC 16 Outline legal submissions by Anthony Crean QC: 15th February 2011
DOC 17 Letter from Chief Planner DCLG to CEO's of all Waste Planning Authorities in England: 10th Jan 2011: "The EU Waste Framework Directive"
DOC 18 Judgment re Cheshire East & CWAC v SSEFRA and others [2011] EWHC 1975 (Admin)
DOC 19 Letter from Council withdrawing application for costs;1st April 2011
DOC 20 Ruling on adequacy of ES:1 October 2010

ANNEX

Recommended Conditions in the event that the appeals are allowed

Inspector's Note – a number of the conditions at CD6/21 and CD6/22 contain words to the effect *that "…unless minor variations are otherwise agreed in writing by the Local Planning Authority…"*. Other than for minor matters such as tree or shrub species necessary for replacement under a landscaping scheme, discretion such as this is not appropriate as it can lead to uncertainty. I have therefore reworded the conditions accordingly to omit such reference.

Appeal A

Definitions

In this decision, unless the context otherwise requires:

"BS 4142" means the British Standard 4142: 1997 method for rating industrial noise affecting mixed residential and industrial areas or any nationally recognised successor document;

"bank holiday" means a day that is or is to be observed as a Bank Holiday or a holiday under the Banking and Financial Dealings Act 1971;

"the commencement of development" has the meaning ascribed to it by section 56 of the Town and Country Planning Act 1990. For the avoidance of doubt the carrying out of demolition of existing buildings and structures, termination or diversion of existing services or temporary diversion of highways, temporary construction, site preparation, investigation works, archaeological investigations, ecological mitigation, environmental site investigations, decontamination works, or works and operation to enable any of the foregoing to take place shall not constitute a material operation and consequently shall not individually or together constitute the commencement of development.

"emergency" means circumstances in which there is a reasonable cause for apprehending imminent injury to persons, serious damage to property or a danger of serious pollution to the environment of the locality;

"operation of" begins from the date on which the Energy from Waste facility commences to process waste, excluding any period of commissioning and trials. Operational and operated shall be construed accordingly; and

"the Site" means the area of land outlined in red on reference P011M.

1. The development hereby approved shall begin no later than the expiration of five years beginning with the date of this permission.

2. The development hereby approved shall be carried out in accordance with the following plans/drawings except where these may be modified by the conditions below:

P001E	Location Plan
P011M	Proposed Site Plan
P012C	Proposed Stream Diversions Plan
ESA 1	Strategic Ecological and Landscape Plan
P028H	Main Building Roof Plan
P031G	Main Building North East Elevation (Facing Pochin Way)
P032G	Main Building South West Elevation (Facing Railway)
P033H	Main Building South East and North West Elevations
P042C	Materials Recovery Building Roof Plan
P043D	Materials Recovery Building West and East Elevations
P044C	Materials Recovery Building South and North Elevations
P052D	Ash Processing Building Roof Plan
P053E	Ash Processing Building West and East Elevations
P054D	Ash Processing Building South and North Elevations
P062D	Unprocessed Ash Building Roof Plan
P063D	Unprocessed Ash Building Elevations
P081D	Ash Staff & Admin Building Plans, Elevations and Sections

3. From the commencement of development, a copy of this permission, including all documents hereby approved and any other documents subsequently approved in accordance with the permission, shall always be available at the site office for inspection during normal working hours.

4. The operation of the development shall not commence until the EfW facility hereby approved has been connected to the national grid and such connection shall be constructed substantially in accordance with the scheme described and assessed in the Consolidated Environmental Statement July 2011 and as shown on Figure 1.4 therein.

5. A facility shall be provided and maintained within the EfW facility building envelope to enable steam pass-outs and/or hot water pass-outs and reserve space for the provision of water pressurisation, heating and pumping systems for off-site users of process or space heating.

6. No heat in the form of CHP shall be exported from the EfW facility to the British Salt site at Cledford Lane except via an underground CHP pipe or main that has been constructed substantially in accordance with the scheme described and assessed in the Consolidated Environmental Statement July 2011 and as shown on Figure 1.4 therein.

7. Prior to the commencement of development, a Construction and Environmental Management Plan (CEMP) shall be submitted to, and approved in writing by the Local Planning Authority. The CEMP shall include details of how noise, dust and waste from construction work will be controlled and mitigated and in particular will provide:

a. dust prevention and suppression measures (including provision of wheel wash facilities, road sweeping vehicles and damping down of ash stockpiles) together with a dust monitoring programme;
b. noise and vibration prevention and suppression measures (including

use of effective silencers on plant and exhausts, a scheme for liaising with local residents and adherence to the code of practice for construction working and piling given in BS 5228:1997);
c. measures to protect vegetation and protected species and habitats;
d. the design and layout of the site construction areas, including the location and type of temporary security fencing and lighting;
e. a Soil Management Plan addressing matters to include quantities to be excavated, storage approach and testing and reuse of soils; and
f. details of the proposed construction access point(s) and vehicle access routes as part of a construction traffic management plan.

8. The construction of the development shall be carried out in accordance with the approved Construction Environmental Management Plan (CEMP).

9. Prior to the commencement of development a Site Waste Management Plan (SWMP) relating to the construction of the development shall be submitted to and approved in writing by the Local Planning Authority. The SWMP shall include measures proposed to identify the volume and type of material likely to arise from site clearance operations, opportunities for reuse and recovery of materials and demonstrate how volumes of waste will be minimised and managed. The development shall be operated in accordance with the approved SWMP.

10. Construction work, which for the purposes of this condition shall not include activities conducted within buildings giving rise to no external manifestation, and deliveries to the site, except in emergencies or involving outsize loads, shall not take place other than between 0730hrs and 1800hrs on weekdays and between 0800hrs and 1300hrs on Saturdays and not at all on Sundays or bank holidays. An application for approval of any change in working arrangements outside the permitted hours shall be made at least two weeks in advance in writing to the Local Planning Authority.

11. No pile driving or use of percussion equipment shall take place outside the hours of 0900 and 1800 during Monday to Friday and 0900 and 12:00 on Saturday.

12. Details of the method and duration of any pile driving operations connected with the construction of the development hereby approved shall be approved in writing by the Local Planning Authority prior to such works taking place and shall be implemented in accordance with the approved details.

13. Cranes and jibbed machines used in connection with the works must be so positioned that the jib or any suspended load does not swing over railway property or within 3 metres of the nearest railway if the boundary is closer than 3 metres.

14. The transportation of waste and other materials, including Incinerator Bottom Ash (IBA) into and out of the Site shall only take place within the following hours and no transportation shall take place on bank holidays:

Monday to Friday	07.30 – 18.00
Saturday	07.30 – 13.00

15. Incinerator Bottom Ash Aggregate (IBAA) recovered at the IBA Processing Facility, waste and recycled materials shall be transported to and from the site in

sheeted vehicles and Flue Gas Treatment residue shall be transported in vehicles equipped with sealed containers.

16. The development shall not commence until a Travel Plan broadly in accordance with that set out in Appendix D.2 of the Consolidated Environmental Statement July 2011 has been submitted to and agreed in writing by the Local Planning Authority that:

a. explains how single occupancy car travel to the site will be minimised and use of sustainable modes maximised in the form of corporate and site specific initiatives;
b. identifies physical infrastructure at the development that has been provided to promote sustainable travel modes;
c. provides examples of information provided to staff of public transport services available to provide access and egress for the site; and
d. confirms the means to monitor travel associated with journeys to work at the development and the frequency of such monitoring

17. The total number of heavy goods vehicles importing or exporting waste, ash or materials to and from the site shall not exceed 292 movements (146 in and 146 out) per day Mondays to Fridays and 146 movements (73 in 73 out) on Saturdays.

18. Records of heavy goods vehicle movements into and out of the site shall be kept by the operator and provided to the Local Planning Authority every 6 months. The records should specify the following:

i) number of heavy goods vehicles both entering and leaving the site;
ii) time and registration details of heavy goods vehicles both entering and leaving the site; and
iii) weight of waste delivered for each vehicle Daily records shall be provided to the local planning authority on request for reasonable monitoring purposes.

19. Prior to commencement of development there shall be submitted to and approved in writing by the Local Planning Authority, a scheme for employing practicable measures for the suppression of dust and odours during the period of operation of the development, including the use of water sprays and road sweeping on hard surfaces as necessary, maintenance of negative pressure within the tipping hall of the Energy from Waste facility, the material recovery building and enclosure of vehicles. The measures approved in the scheme shall be employed throughout the period of operation of the development.

20. The waste storage bunker in the EfW facility shall contain an odour suppressant system which shall be used during periods of plant shut down.

21. There shall be no external storage, unloading or handling of any waste other than of bottom ash generated within the facility.

22. Stockpiles of incinerator bottom ash aggregate shall not exceed 5m in height.

23. Prior to the commencement of development a written scheme of details shall be submitted to and approved in writing by the Local Planning Authority of the external treatment of the buildings, structures, plant and machinery including detail

on colours and materials. The development shall be implemented in accordance with the approved scheme of details.

24. Development shall not commence until there has been submitted to and approved in writing by the Local Planning Authority, a scheme of lighting of the development hereby permitted for the construction phase of the EfW facility (including a plot of estimated lux levels) taking into account the effects on ecology, local residents and safety requirements. The development shall be illuminated in accordance with the approved scheme.

25. Within the period of 1 year from the commencement of development, a scheme of lighting for the operational phase of the EfW facility (including a plot of estimated lux levels) taking into account the effects on ecology, local residents and safety requirements shall be submitted to and approved in writing by the Local Planning Authority. The development shall be illuminated in accordance with the approved scheme.

26. Prior to the commencement of development a detailed suite of construction/design plans for the extension of Pochin Way as shown on plan P011M shall be submitted to and approved in writing by the Local Planning Authority. Prior to operation of the development the extension to Pochin Way shall have been implemented in accordance with the approved scheme of details.

27. Prior to the commencement of development, details of on-site road construction, including details of proposed footpaths, shall be submitted to and approved in writing by the Local Planning Authority. Such roads shall thereafter be constructed in accordance with the approved details.

28. The operation of the development shall not commence until a written scheme of details has been submitted to and approved in writing by the Local Planning Authority for the monitoring of noise generated by the operation of the development hereby permitted. Thereafter the noise monitoring scheme shall be implemented as approved.

29. The Rating Level of any noise from any fixed plant shall not exceed the pre existing background noise level by more than 0dBA at any time at residential properties and 6dBA at any sensitive industrial use as determined by BS 4142: 1997 Method of Rating Industrial Noise Affecting Mixed Residential and Industrial Areas.

30. No vehicles and/or mobile plant used on site shall be operated unless they have been fitted with white noise alarms to ensure that, when reversing, they do not emit a warning noise that would have an adverse impact on residential or rural amenity.

31. Except in an emergency, at least two day's written notice shall be given to the Local Planning Authority and any consultative body established as a result of the development permitted of any proposed operation of emergency pressure valves or similar equipment. Notification of the incidence, the reasons therefore and its expected duration shall also be posted on the operator's internet web site.

32. Prior to the commencement of construction of the building envelope to contain the Energy from Waste facility an acoustic design report shall be submitted to and

agreed in writing by the Local Planning Authority. The report shall detail the noise control measures that are proposed to be included. Such agreed measures shall be installed in accordance with the approved scheme prior to commencement of operation of the development and thereafter retained and maintained in accordance with the manufacturer's specifications.

33. No tree, hedge, shrub, scrub or vegetation shall be cleared from the site during the bird breeding season of 1 March to 31 August inclusive, except where a suitably qualified ecological consultant has confirmed that such clearance works will not affect nesting birds.

34. No development shall commence until details of both on-site hard and soft landscape works as illustrated on drawing ESA 1 have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. The details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, refuse or other storage units, signs etc); proposed and existing functional services above and below ground. The details shall also include reference to the proposed planting (species, root condition, height, spacing and timing thereof).

35. No development shall commence until a schedule of landscape maintenance for a minimum period of 5 years has been has been submitted to and approved in writing by the Local Planning Authority. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule.

36. Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the Local Planning Authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the Local Planning Authority agrees in writing to any variation.

37. Prior to commencement of development, additional water vole surveys shall be undertaken along all watercourses within the Site affected by the Development. Surveys must be carried out at the appropriate time of year and with recognised techniques and submitted to the Local Planning Authority. If water voles are found to inhabit ditches or watercourses impacted by this proposal, no development shall commence until a scheme (including a timescale for implementation) for the conservation of this species in accordance with the Habitat Creation and Management Plan submitted in support of the Consolidated Environmental Statement July 2011 has been carried out.

38. No development shall commence on the site until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been approved in writing by the Local Planning Authority. The scheme shall include details in line with the Archaeological Evaluation Project Design prepared and submitted in December 2009 outlining a programme of archaeological investigation around the identified potential Romano-British ditch (Site 37 in the Consolidated Environmental Statement July 2011). The scheme shall also include a

topographic survey of the visible extent of the sand pit (Site 27 in the Consolidated Environmental Statement July 2011).

39. Prior to the commencement of development the landscape setting of Cledford Hall (Site 02 in the Consolidated Environmental Statement July 2011) and range (Site 08 in the Consolidated Environmental Statement July 2011) shall be recorded by way of a photographic survey. The survey shall be carried out in accordance with an approach and detail agreed in writing with the Local Planning Authority.

40. Development shall not commence until a scheme of drainage works has been submitted to and approved in writing by the Local Planning Authority, including surface water and pollution control measures within the development hereby permitted and a timetable for implementation of the scheme in accordance with the approved details. The Development shall be carried out in accordance with the approved scheme of details.

41. Development shall not commence until a Surface Water Management Plan, including a programme for maintaining and monitoring watercourses and surface water regulation within the site, has been submitted to and agreed in writing by the Local Planning Authority. The Surface Water Management Plan shall thereafter be implemented and operated as approved.

42. Development hereby permitted shall not commence until a written scheme of details has been submitted to and approved in writing by the Local Planning Authority for the realigned open channel ditch along the south of the site (as per Appendix H2 of the Consolidated Environmental Statement July 2011) together with details of temporary arrangements for surface water runoff and a scheme of remedial works required to be undertaken to the ditch. The scheme shall be implemented before the operation of the Development commences.

43. No development shall commence until a scheme for the provision and management of compensatory habitat creation for the watercourse that is to be diverted has been submitted to and agreed in writing by the Local Planning Authority and implemented as approved. Thereafter the Development shall be implemented in accordance with the approved scheme.

44. The Development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (ref. FSE96920C) and the following mitigation measures detailed within the Flood Risk Assessment:

a. limiting the surface water run-off generated by the proposed development to 28.4 litres/second;
b. a scheme for the provision and implementation of a surface water regulation system is to be submitted to and approved in writing by the Local Planning Authority;
c. finished floor levels are set no lower than 32.6 m AOD; and
d. access roads, parking and pedestrian areas are set no lower than 32.3m AOD.

45. Any facilities for the storage of oil, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound should be at least 110% of the total tank capacity. If there is multiple tankage, the compound should be at least equivalent to the capacity of the largest tank or the combined capacity of interconnected tanks, plus 10%. All filled

points, vents, gauges and sight glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework should be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets should be detailed to discharge downwards into the bund.

46. Prior to commencement of development a scheme to facilitate a community liaison panel shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a list of potential members, suggested venue for the meetings, possible frequency and a mechanism for review. The community liaison panel shall be implemented as per the approved scheme.

47. On the 35th anniversary of the commencement of operation of the development or upon the cessation of the operation of the development for a period exceeding a year, whichever is the earlier, details of a scheme of restoration and aftercare of the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include any proposed future uses for the site; details of structures and buildings to be demolished or retained; details of the means of removal of materials of demolition; phasing of demolition and removal; details of restoration works and phasing thereof. The scheme shall be implemented in accordance with the approved details but for the avoidance of doubt there shall be no requirement to implement the scheme unless the operation of the development ceases for a period exceeding a year.

48. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing by the Local Planning Authority) shall be carried out until the developer has submitted and obtained written approval from the Local Planning Authority for a remediation strategy detailing how this unsuspected contamination will be dealt with.

49. Prior to commencement of development, additional badger surveys shall be undertaken within the site affected by the development and all land within 30 metres thereof. Surveys shall be carried out at the appropriate time of year and with recognised techniques and submitted to the Local Planning Authority. If badgers are found to inhabit the site and are impacted by this proposal, no development shall commence until a scheme (including a timescale for implementation) for the conservation of this species in accordance with the Habitat Creation and Management Plan submitted in support of the Consolidated Environmental Statement July 2011 has been carried out.

Appeal B

Definitions

In this decision notice, unless the context otherwise requires:

"the commencement of development" has the meaning ascribed to it by section 56 of the Town and Country Planning Act 1990. For the avoidance of doubt the carrying out of demolition of existing buildings and structures, termination or diversion of existing services or temporary diversion of highways, temporary construction, site reparation, investigation works, archaeological investigations, ecological mitigation,

environmental site investigations, decontamination works, or works and operation to enable any of the foregoing to take place shall not constitute a material operation and consequently shall not individually or together constitute the commencement of development.

"the Site" means the area of land outlined in red on reference FIGURE 1.

1. Unless otherwise controlled by conditions attached to this permission, the development hereby approved shall be carried out in accordance with the following approved plans:

FIGURE 1 Red Line Boundary Map (location plan)
FIGURE 2 GCN Measures Off-Site Existing Habitats (existing site layout plan)
FIGURE 3 GCN Measures Off-Site Proposed Habitats (proposed site layout plan)
FIGURE 4 Indicative Hibernacular Design
FIGURE FSE96920C/P01 Pond A General Arrangement Drawing
FIGURE FSE96920C/P02 Pond B General Arrangement Drawing
FIGURE FSE96920C/P03 Pond C General Arrangement Drawing

2. The commencement of the Development shall not be later than five years from the date of this permission.

3. No development shall commence until an implementation scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a programme for works that ensures that the Development does not proceed in isolation from the Middlewich Energy from Waste permission under planning permission APP/R0660/A/10/2129865 and shall be implemented as approved.

4. Prior to the commencement of the Development, a Construction and Environmental Management Plan (CEMP) shall be submitted to, and approved in writing by the Local Planning Authority. The CEMP shall include details of how noise, dust and waste from construction work will be controlled and mitigated. The CEMP shall also include details of:

a. General measures to avoid impacts to protected and / or notable species where practicable, as set out below:
   i) ensure that work compounds and access tracks have a dust management procedure in place therefore reducing disturbance to adjacent areas;
   ii) establish site fencing to prevent access to areas outside working zone, particularly in areas adjacent to features of interest/value such as ponds and Sanderson's Brook;
   iii) implement procedures to cover site safety issues, including storage of potentially dangerous materials;
   iv) provide briefings and instruction to contractors regarding the biodiversity issues present on the site; and
   v) follow pollution prevention guidelines provided by the Environment Agency (e.g. PPG01, PPG02, PPG03, PPG05 and PPG06) to prevent pollution of water courses from silt or chemicals.
b. A soil management plan addressing matters to include quantities to be excavated, storage approach and testing and reuse of soils.

5. The construction of the development shall be carried out in accordance with the approved Construction Environmental Management Plan

6. Prior to the commencement of the Development, a full planting list shall be submitted to and agreed in writing by the Local Authority. All planting shall be carried out in accordance with the approved details unless the Local Planning Authority agrees in writing to any variation.

7. No development shall take place until a schedule of landscape maintenance/management for a period of 5 years has been submitted to and approved in writing by the Local Planning Authority. The schedule shall include details of the arrangements for its implementation. The Development shall be carried out in accordance with the approved schedule.

8. Prior to any commencement of works between 01 March and 31 August in any year, a detailed survey is to be carried out to identify the presence on site of any nesting birds. Where nests are found in any hedgerow, tree or scrub to be removed, a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a report submitted to the Local Planning Authority.

9. No development shall occur within the area in which pond excavations are to take place unless a scheme has been submitted to and approved in writing by the Local Planning Authority for the implementation of an archaeological watching brief by a suitably qualified and experienced archaeologist during excavation works. The scheme shall be implemented as approved.

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.