

**PORTLAND ENERGY RECOVERY FACILITY
APPEAL BY POWERFUEL PORTLAND LIMITED**

PINS Ref: APP/D1265/W/23/3327692

WPA Ref: WP/20/00692/DCC

Inquiry commences: 5 December 2023

Opening Submissions on behalf of the Appellant (PPL)

Abbreviations

I. The following abbreviations are used in these Opening Submissions:

the Proposal, the facility	The ERF proposed in the application for permission under appeal for an energy recovery facility with ancillary buildings and works including administrative facilities, gatehouse and weighbridge, parking and circulation areas, cable routes to ship berths and existing off-site electrical sub-station, with site access through Portland Port from Castletown [CDI.20]. See proposed site plan [CDI.04]
The Site	The Appeal Site, Portland Port, Castletown, Dorset DT5 IPP. See site location plans [CDI.01, I.02]
The Port	Portland Port
Appellant, PPL	The Appellant, Powerfuel Portland Limited
NR, SO, JM, WFS, IA, SE, JP	<i>Appellant's witnesses:</i> Nick Roberts, Stephen Othen, Jon Mason, William Filmer-Sankey, Ian Awcock, Simon Elliott, Jeff Picksley (the last 3 may not be called)
DC	Dorset Council
FH, NW, HK, TN, AP	<i>DC's witnesses:</i> Felicity Hart, Neil Williamson, Helena Kelly, Tony Norton, Alan Potter
R6 (SPWI, PA)	The Rule 6 parties: Stop Portland Waste Incinerator and the Portland Association
PSoC, PSoC2	The Appellant's Statement of Case [CDI1.1] and Supplementary Statement of Case [CDI1.2]
SoC	Statement of Case
SoCG	Statement of Common Ground between PPL and DC [CDI1.5]
OR	Officers Report to DC [CD5.1, 5.2]
DP	The statutory development plan
BCPDWP	Bournemouth, Christchurch, Poole and Dorset Waste Plan 2019 [CD7.1]
LP	West Dorset, Weymouth and Portland Local Plan 2011-2031 [CD7.2]

PNP	Portland Neighbourhood Plan 2017-2031 [CD7.4]
NPPF	National Planning Policy Statement (2023) [CD9.1]
NPPW	National Planning Policy for Waste [C9.2]
NPS, EN-1, EN-3	National Policy Statements, energy and renewable energy infrastructure, Department for Energy Security & Net Zero (Nov. 2023)
ERF, EFW	Energy recovery facility, energy from waste
MBT	Mechanical and Biological Treatment
ATT	Advanced Thermal Treatment
RDF	Refuse derived fuel
SRF	Solid recovered fuel
C&I	Commercial and industrial (waste)
CHP	Combined Heat and Power
DHN	District heating network
CCS	Carbon Capture and Storage
GHG	Greenhouse gas
IBA	Incinerator bottom ash
TCPA	Town and Country Planning Act 1990
LBCA	Planning (Listed Buildings & Conservation Areas) Act 1990
PCPA	Planning and Compulsory Purchase Act 2004
WR 2011	The Waste (England and Wales) Regulations 2011 (SI 988 of 2011)
HR 2017	Conservation of Habitats and Species Regulations 2017
EPR 2016	Environmental Permitting (England and Wales) Regulations 2016
ES	Environmental Statement [CD1.36-1.37t], First Addendum [CD2.17a-2.24] and Second Addendum [CD2.29a-2.31]
DAS	Design and Access Statement [CD1.21-1.21e]
CCC	Climate Change Committee
EA	Environment Agency
EP	Environmental permit
WHS	World Heritage Site
OUV	“Outstanding universal value” (WHS)

Introduction and description of the Proposal

2. PPL appeals the refusal of its Application for an ERF plant at Portland Port by DC on 24 March 2023. Contrary to the assumptions made in some evidence, the Appellant is not either Portland Port Ltd or Portland Harbour Authority Ltd but PPL, an independent company.
3. The primary purpose of the facility is to manage residual waste and in doing so generate low carbon energy. The energy generated from the biogenic fraction of the waste fuel

is classed as renewable and is typically 50% of the energy generated. Recent Government policy in EN-1 and EN-3 affords considerable weight to such proposals.

4. The ERF if permitted will have a nominal waste throughput of 183,000 tonnes per annum though, since, actual ERF capacity is determined by the thermal capacity of the boiler, based on the lowest realistic net waste calorific value (NCV), the maximum tonnage throughput could be 202,000 tpa.
5. The Proposal is for a conventional, grate combustion ERF, which is that used in 66 of the 76 ERFs which are in operation or under construction in the UK (as of December 2022). It is also in use in over 95% of the c 450 operation EfW facilities across Europe and is a proven technology and does not suffer from the operational deficiencies associated with other waste thermal treatment technologies.
6. Whilst in the application documentation the maximum generating capacity is described as circa 18.1 MW of which 15.2 MW would be available for export after taking account of the power required to run the facility itself (its “parasitic load”) since then these power figures have been increased to 20.1 MW gross generation and 17.1 MW net export¹. The provision of shore power to vessels in the Port forms part of the application under appeal and will be delivered as part of the construction of the facility. A planning condition is proposed to require pre-commencement approval of the full details of the Shore Power scheme and its subsequent implementation, operation and retention for the life of the ERF, in accordance with an approved programme.
7. Further, the ERF will be able to export energy in the form of heat, as hot water (or steam) and the submitted Heat Plan Reports² describe a potential DHN centred on the supply of heat to HMP the Verne and the nearby Young Offenders Institute. In this respect, the Proposal is consistent with NPPW paragraph 4 which seeks -

“... the suitable siting of such facilities to enable the utilisation of the heat produced as an energy source in close proximity to suitable potential heat customers”.

Shore power

8. The Proposal includes the provision of shore power to visiting cruise liners, the Royal Navy RFA and other equipped vessels: this forms part of the planning application. Cruise and RFA vessels typically have electricity demands of 8 MW (with a maximum of 12 MW) and 2.75 MW respectively and, contrary to TN’s evidence, this power cannot be delivered practicably or viably through a local grid connection. If the Proposal is refused, shore power cannot be supplied at least for the medium term (even if viable), since grid upgrade works to deliver more power to the Isle of Portland cannot take place before 2037.

¹ PSOC2; NR para 2.3.4; SO para 2.2.3.

² **CD 1.7, 2.7.**

9. The main benefits of shore power are:
- (1) It will assist in reducing the use of fossil fuel and related carbon emissions and reduce unabated emissions to the air from ship exhausts, leading to an improvement in local air quality, net of any limited emissions from the Proposal. The air quality benefit, whilst modest, is (as NR explains) a unique locational benefit of developing the Proposal on the Site.
 - (2) Without the ability to provide shore power to its customers, there is a real risk that the Port will become uncompetitive with other ports that are increasingly able to offer this facility, leading to a significant decline in business and associated socio-economic impacts on the local and wider economies. Shore power is increasingly requested by the cruise operators: see the letter from Carnival, the world's largest cruise operator: CD11.1 Appx E to PPL's PSoC. Other leading cruise operators have expressed interest in taking up shore power, as has the Royal Navy and other bulk shippers that use the Port.

CHP

10. Whilst the provision of CHP/DHN is not part of the planning application, the ES Addendum (August 2021) [CD2.17c] has assessed such a proposal and concluded that installation of the pipe network along either proposed route would not result in any significant adverse environmental effects, on the basis that the infrastructure would be installed within existing roads.
11. A DHN would need to be approved under a separate planning application if the ERF is permitted. However, since that installation would be placed in existing hard surfaced roads, the advice from technical and environmental advisers and the significant benefits of DHN, together with the Government's support for sustainable and low carbon energy, it seems highly likely that planning permission would be granted.
12. PPL proposes a planning condition that the Proposal must be fully CHP ready and a planning obligation to connect to a DHN if technically and commercially viable to do so.

Environmental permit

13. The Environmental Permit application is under consideration by the EA. The EA has asked for, and been provided with, information on the impacts of the Proposal on the inhabitants of the Bibby Stockholm, and this information is being assessed, which has led to a delay in the determination. It is expected that the EP will be granted subject to conditions.

Location, site history and context

14. The Site comprises 6.29 ha made up of 2.14ha of the main triangular part of the site where the ERF would be located, and a further 4.15ha with the land associated with the cable routes to the sub-stations and berthing piers. The main triangular part of the site

has been previously developed but is now hardstanding with visible footprints and foundations of former structures. The entire site, excluding part of the cable route to the electricity grid point of connection, lies within with the operational Port. The Site is allocated in the DP for employment use, is previously developed land, and is subject to no national policy constraints (e.g. it is not within any landscape designation, nor is it within the Green Belt). The Site is already subject to an implemented planning permission for a large-scale industrial energy use of similar electrical output to the Proposal, fuelled by waste tyre crumb and vegetable oil³.

15. It is a critical aspect of the Proposal both with regard to the landscape and visual issues and heritage assets that:
 - (1) The designated heritage assets in the Port and beyond it⁴ were built as part of or in close connection with the Port as a functioning port (e.g. the defensive assets from various periods);
 - (2) The Port remains a functioning Port which is constantly changing and developing and remains the necessary context for any visual or landscape assessment and as the setting for the heritage assets;
 - (3) The assessment of significance of heritage assets and context for landscape and visual issues must, if it is to have any credibility, acknowledge and take fully into account the Port, its functions and its changing aspects.
16. The Port itself has an operational history spanning hundreds of years. The Portland Roads and their associated maritime and naval activity have been defended by fixed installations since at least 1539, with the establishment of Portland and Sandsfoot Castles. That defence history continued with the establishment of the various batteries and the Verne Citadel itself, and the utility of the natural harbour was enhanced by the establishment of the Inner and Outer Breakwaters in the mid-19th century and Bincleaves Groyne and the North-Eastern Breakwater in around 1900. Each of these developments significantly changed the nature of the locality, and each changed it for the same reason: to facilitate the operation of the Port as later developments have done.
17. There has been, and remains today, a wide range of port-related uses in the vicinity of the Site. The Port remains operational both for civilian and naval shipping, and is regularly visited by berthing vessels, some of which are of a scale comparable to that of the Proposal itself. The Port also has a history of operational development related to the powering of ships: a vast coaling shed, for instance, was located on one of the piers to serve steam ships coming to haven in the harbour (it is now off-limits and covered

³ SSOC para 2.7.

⁴ Note that the WHS is not inscribed on a cultural heritage basis but for geological and geomorphological reasons. See below.

by the listing of the breakwaters)⁵. As the needs of ships has changed, so too has the nature of the infrastructure at the Port changed: the coal sheds were replaced with a number of oil tanks on the Mere, as steam powered ships were replaced by oil-powered ones⁶. The Proposal is a natural continuation of this maritime heritage, meeting as it does the modern need for electrical shore power while contributing modestly to improvements in air quality as a result.

Reasons for refusal

18. The reasons given for refusing the application were:

“1. The proposed development, being located on a site that is not allocated in the Bournemouth, Christchurch, Poole and Dorset Waste Plan 2019, fails to demonstrate that it would provide sufficient advantages as a waste management facility over the allocated sites in the Plan. This is by reason of its distance from the main sources of Dorset’s residual waste generation and the site’s limited opportunity to offer co-location with other waste management or transfer facilities which, when considered alongside other adverse impacts of the proposal in relation to heritage and landscape, mean that it would be an unsustainable form of waste management. As a consequence, the proposed development would be contrary to Policies 1 and 4 of the Bournemouth, Christchurch, Poole and Dorset Waste Plan 2019 and paragraph 158 of the NPPF.

2. The proposed development, as a result of its scale, massing and height, in the proposed location, would have a significant adverse effect on the quality of the landscape and views of the iconic landform shape of the Isle of Portland within the setting of the Dorset and East Devon Coast World Heritage Site, particularly when viewed from the South West Coast Path and across Portland Harbour. As such, the proposal is contrary to Policy 14 of the Waste Plan, Policy ENVI of the West Dorset, Weymouth & Portland Local Plan, Policies Port/EN7 and Port/BE2 of the Portland Neighbourhood Plan, and paragraph 174 of the NPPF.

3. The proposed development would cause ‘less than substantial’ harm to a range of heritage assets. Public benefits of the scheme have been assessed, taking account of the mitigation proposed, but are not considered sufficient to outweigh the cumulative harm that would occur to the individual heritage assets and group of heritage assets, with associative value in the vicinity. As a result, the proposal is contrary to Policy 19 of the Waste Plan, Policy ENV4 of the West Dorset, Weymouth & Portland Local Plan, Policy Port/EN4 of the Portland Neighbourhood Plan and Paragraph 197 and Paragraph 202 of the NPPF.”

19. In its SoC, DC has added to these grounds, as have FH and AP in their evidence, and the case appears to have moved beyond what was agreed by members and notified in their reasons for refusal. These new matters comprise:

- (1) the need for the Proposal in waste terms; and
- (2) the important question of whether the DP is up-to-date given the need issue⁷.

⁵ WFS para 5.7.

⁶ WFS para 5.10.

⁷ There is a degree of confusion as to precisely how DC approaches it although the need case was accepted before Committee and although the implication may be otherwise FH now states in Rebuttal paras. 2.17, 2.26 that the DP is up-to-date – “Whilst I agree with the evidence presented by Mr Potter, that the need for residual waste management capacity appears to have diminished since the Waste Plan was adopted, I do not agree with Mr Roberts that this now makes the Waste Plan out of date.”. See also SoCG §7.55, pp. 29-30.

It is currently unclear whether this change of position has been endorsed by DC itself, or whether the expansion of DC's case is the work of its witnesses without authorisation from its elected members and which would be indicative of unreasonable behaviour.

Why the Proposal is consistent with waste policy

20. PPL submits that the proposals are in accordance with the DP (contrary to RfR 1 and the policies quoted in RfR 2 and 3) and national policy.
21. The Proposal will be certified at the design stage to meet RI criteria⁸ and therefore will be considered an energy recovery facility within the waste hierarchy. Insofar as it plays a role in diverting waste from landfill it will therefore meet the central goal of waste policy in driving waste management up the hierarchy (see NPPW para 1 and Appendix A⁹).
22. Paragraph 7 of the NPPW is clear that when determining planning applications, decision makers should:

“only expect applicants to demonstrate the quantitative or market need for new or enhanced waste management facilities where proposals are not consistent with an up-to-date Local Plan.”
23. PPL considers that the DP is substantively up to date so no demonstration of need is required.
24. Turning to the BCPDWP itself, the key policies for assessing the in-principle suitability of the Proposal are Policies 1, 4 and 6.
25. **Policy 1** focuses on the presumption in favour of sustainable development, and introduces the requirement for proposals to support the waste hierarchy, and the principles of self sufficiency and proximity. NR will show in evidence that the Proposal is consistent with, and does indeed support, all of those principles. Thus¹⁰:
 - (1) The Proposal would move waste away from landfill and up the waste hierarchy, freeing up ERF capacity in other areas which currently deal with the WA's exported residual waste;
 - (2) It would assist in the UK becoming self-sufficient and allow Dorset and BCP to manage its own residual waste in one of the nearest appropriate facilities, by introducing final treatment capacity in an area that currently has none;
 - (3) It would significantly reduce the distance that Dorset's residual waste has to travel in order to be treated;

⁸ SO PoE para 2.2.5.

⁹ **CD 9.2.**

¹⁰ NR para 4.4.2.

- (4) The provision of shore power to the Port is a sustainable use of the energy which the Proposal will generate, as will the opportunity to serve a DHN.
26. DC's contrary conclusions are based on significant misunderstandings and misapplications of the principles themselves, as revealed in the evidence of AP in particular.
27. There is no proper basis for any contention that the Proposal would somehow undermine the attempts of the waste authorities to meet the goal of self-sufficiency¹¹, or increased recycling, or that by drawing in waste from the sub-regional market area there would somehow be a breach of the proximity principle. All relevant policy documents identify that waste authorities should not look narrowly at their own waste needs to the exclusion of broader need, and it is inherent in the economies of scale required for larger facilities (which in turn bring higher efficiencies) that they will need to draw feedstock from a wider area.
28. **Policy 4** sets the criteria for permitting waste developments on unallocated sites making it clear that the DP does not regard the allocations as exclusive. Again, PPL submits that all of the policy tests are met¹²:
- (1) The Site has considerable advantages over the three relevant¹³ allocated sites in the BCPDWP¹⁴. It is notable that, despite (a) the plan being four years old, and (b) its allocations having been identified in draft at least two years before adoption, none of the allocated sites has been developed into an operational true residual waste treatment facility. Indeed, two of the three sites have been allocated for waste purposes for 17 years, yet have still failed to deliver. That itself speaks volumes about their non-suitability and/or commercial unattractiveness. It is particularly relevant that the two sites closest to the BCP conurbation (Parley and Canford Magna) are located in the Green Belt, with all the development constraints and challenges which such a status brings. There is no need to demonstrate very special circumstances here to justify inappropriate development in the Green Belt as is the case with those 2 allocated sites.
- (2) There are no issues around the sterilisation of any allocated site. DC does not allege otherwise¹⁵;
- (3) The Proposal supports the overarching waste strategy, as shown by its compliance with Policy I;

¹¹ Note para. 4 of Schedule 1 to the WR 2011 (dealing with mixed municipal waste) which makes it clear that self-sufficiency relates to the UK as a whole.

¹² See NR evidence

¹³ In the sense that they could in theory deliver a facility of comparable size to the Proposal: NR para 4.2.4.

¹⁴ NR section 4.2.

¹⁵ **CD5.I** para 14.16.

- (4) The Proposal complies with the remainder of the BCPDWP policies, as will be advanced in evidence; and
 - (5) The Proposal meets all three of the remaining tests, when meeting one alone would be sufficient for compliance. The Site is -
 - (a) on allocated employment land;
 - (b) adjacent to the complementary facilities at the Port (to which the provision of shore power is a significant and complementary advantage); and
 - (c) on PDL patently suitable for employment purposes.
29. Policy 6 is concerned specifically with waste recovery facilities. It does not feature in DC's RfR. Nevertheless, NR shows that it is also complied with¹⁶.
30. It should also be noted that the latest NPSs EN-1, EN-3 (22.11.23) show a significant shift in Government policy to supporting major infrastructure providing renewable energy which includes this type of facility.¹⁷ The NPS strongly support the principle of the Proposal subject to need be proven which PPL considers exists. However, the presumptions in EN-1 para 4.2.17 only apply directly to NSIPs although they are stated to be material to ordinary planning applications
31. It is therefore clear that the Proposal meets the requirements of waste policy.

Need

32. In any event, PPL has provided evidence of need through NR and also the work of independent consultants Tolvik. The approach of AP for DC is inconsistent, ill-informed and incorrect for a series of reasons which will be explored in evidence¹⁸.
33. As NR explains at section 3 of his main proof, there is a very significant level of residual need for waste management in the local area, and at present there is no operational residual true waste management capacity (as opposed to MBT facilities, which are intermediate treatment and still produce residual waste requiring management/disposal), or operational landfill site anywhere in the authorities' area. As such, all residual waste generated in the local authorities' area is exported and where using ERF capacity is resulting in residual waste from elsewhere being landfilled. Given that state of affairs, and the current and continuing capacity gap, it is clear that there is sufficient need in the market to show that the Proposal would have a substantial positive effect in waste management terms by diverting residual waste from distant 'out-of-county' and overseas ERFs (freeing up their capacity for wider landfill diversion) and

¹⁶ NR section 9.2.

¹⁷ **CD9.1**, para 1.2.1; **CD9.2**, para 1.2.1.

¹⁸ See e.g. NR Proof (PPF1) Sections 3.2 to 3.4 and NR Rebuttal (PPF22) Section 2.

driving recovery of waste in preference to landfill.

34. Thus, the evidence shows a significant need exists.

Heritage issues

35. One of the main issues in the inquiry relates to the heritage impacts of the Proposal.
36. The relevant DP policies on cultural and built heritage are contained in LP Policy ENV4, BCPDWP Policy 19, and PNP Policy EN4. The effect of these policies mirrors the requirements of Chapter 16 of the NPPF.
37. All of the heritage witnesses agree that, where harm arises here to a heritage asset, that such harm is *less than substantial* (though there is dispute about where on the LTS spectrum the harms fall). In such a case, the relevant policy test is that contained in NPPF para 202. The harms to the heritage assets must be weighed against the public benefits of the proposal, while giving great weight to the conservation of heritage assets. In deciding whether or not a proposal gives rise to any heritage harm in the first place, and thus whether or not the para 202 test needs to be undertaken at all, it is legitimate first to balance the heritage harms against the Proposal's heritage benefits: it is only if there is a "net" harm that para 202 is reached¹⁹.
38. In applying this balancing exercise, it should be borne in mind that the Government's new EN-I specifically provides that low-carbon NSIPs are to be treated as meeting the NPPF para 202 balance, at least as a starting point²⁰. While the Proposal is not an NSIP, and not therefore directly subject to EN-I, this is nevertheless a powerful indication of the weight which the SoS considers should be given to the benefits of low carbon ERFs such as the Proposal. It also supports very significant weight being attached to the benefits not recognised by DC either before the committee or in evidence.
39. In the case of non-designated assets, a simple, non-tilted balance of harms against benefits is required (NPPF para 203).
40. WFS's evidence for PPL shows that, for each of the identified designated heritage assets impacted by the Proposal, the level of harm arises solely from impact on setting, rather than from any impact on fabric. This does not appear to be disputed. WFS will show that all of the relevant assets are connected, at both individual and group level, to the changing nature and context of the working Port. Indeed, change over time is a key feature in assessing the context of all of the heritage settings. The assessments of the DC and R6 heritage witnesses fail to recognise this aspect of the heritage context, and they treat the Port as though it is something which is required in heritage terms to be preserved in aspic. That is not the case.

¹⁹ See the explanation at WFS para 8.2.

²⁰ NR Rebuttal para 3.1.19.

41. Indeed, to seek to preserve the state of the Port as it is at present (or at some indeterminate point in time) would undermine the very thing which gives the assets much of their significance: their association with a long-established, busy, working port.
42. Once that point is appreciated, it becomes clear, as WFS explains, that the impact on the assets is in all cases is at the lowest end of the LTS spectrum.
43. Set against that are the very significant heritage benefits arising from PPL's proposal to remove E Battery from Historic England's at-risk register together with the provision of a new permissive footpath and interpretation signs to allow the better appreciation of a number of the assets.
44. The result is that, for those assets which are directly affected by the mitigation scheme, PPL's case is that there is no net heritage harm at all. For the assets unaffected by the mitigation scheme, the NPPF para 202 balance resolves in favour of the Proposal on heritage grounds alone, even without adding in the wide range of non-heritage public benefits which the Proposal will deliver.

Visual and landscape issues (including WHS)

45. The second RfR focuses on the landscape and visual impact of the Proposal, and the impact of the Proposal on the WHS in particular. This is an important issue, since it is the potential WHS impact which led to the call-in of the decision by the SoS.
46. The Appellant's evidence on this issue will be given by JM. In short, he will show that the quality of the landscapes around the Site will not be significantly affected by the Proposal. The Proposal will be experienced as one more element in what is already an operationally busy port. Furthermore, the appreciation of the Isle of Portland's landform will not be diminished by the Proposal, which (unusually for a development of this scale) is located and designed in such a way as to be subservient to the existing landform.
47. Furthermore, while the Proposal will be visible in a number of views, including from the Royal Navy Cemetery²¹ and a number of residential receptors in Portland itself, the impact on those receptors is considered acceptable.
48. Much has been made of the plume which the ERF stack will produce. Those concerns are overstated. Given the meteorological conditions prevailing at the Site, the plume will be visible for only about 20 hours per annum, which on any view is not significant.
49. On the central issue of WHS impact, it is important to emphasise at the outset the nature of the WHS and the features which are preserved.
50. The WHS is not a cultural heritage designation. Nor is the WHS a landscape designation. Rather, the WHS is inscribed because of its natural heritage value, and its OUV rises

²¹ Where there will be some localised visual effects on parts of the cemetery.

from its geological and geomorphological features. As the WHS website summarises the inscription²²:

“The cliff exposures along the Dorset and East Devon coast provide an almost continuous sequence of rock formations spanning the Mesozoic Era, or some 185 million years of the earth's history. The area's important fossil sites and classic coastal geomorphologic features have contributed to the study of earth sciences for over 300 years.”

51. The fabric of those features is wholly unaffected by the Proposal. Indeed, DC accepts that the proposal has no impact on the OUV: NW summary para 4.11. Insofar as the setting of the WHS is relevant to its OUV, the inscription documents make clear that there is no buffer zone for the WHS: the relevant buffer functions are performed by other planning policies and designations, including AONB and SSSI, in and around the WHS.
52. The Site is not within the WHS: the Port was specifically excluded from the scope of the WHS inscription to reflect its operational and developed character²³. It is visible from only a few small parts of the WHS – and the nearest of those is still some 3km away²⁴. PPL's case is that there will be no significant impacts on any of the parts of the WHS which are intervisible with the Site: the distance is simply too great, and the relevant views are already those of an operational port, of which the Proposal will form an integral part. The fundamental nature of the views will not change, and thus any impact will not be significant. Indeed, development at and around the Port is not listed as one of the “main management issues”²⁵:

“The main management issues with respect to the property include: coastal protection schemes and inappropriate management of visitors to an area that has a long history of tourism; and the management of ongoing fossil collection research, acquisition and conservation. The key requirement for the management of this property lies in continued strong and adequately resourced coordination and partnership arrangements focused on the World Heritage property.”

53. It is highly relevant, in this respect, that neither DC nor the R6 has alleged any significant impact on the AONB, which is the principal protective feature for the landscape elements relevant to the WHS's OUV.
54. Drawing the threads together, PPL will demonstrate²⁶ that the Proposal will not affect

²² <https://whc.unesco.org/en/list/1029/>

²³ JM Proof 7.5.1. CD 12.9 (Jurassic Coast Partnership Plan) at p. 21 states “The boundaries of the Site were drawn and agreed at the time of nomination to ensure the “full expression of the outstanding universal value and the integrity and/or authenticity of the property” and remain unchanged. They are based on 66 Geological Conservation Review (GCR) sites and exclude the commercial port area at Portland and the man-made frontages of Sidmouth, Seaton, Lyme Regis, West Bay, Weymouth and Swanage.”

²⁴ See JM Proof para. 7.2.5 (and 7.7.3) “The closest areas are an approximately 3km linear strip of the WHS on the north of Portland Harbour located 3.5 to 4.5km from the Appeal Site, and the very eastern end of Chesil beach which is approximately 3km away.”

²⁵ <https://whc.unesco.org/en/list/1029/> under “Protection and management requirements”.

²⁶ See JM Conclusion on the WHS, Proof Section 7.11.

the OUV of the WHS and the ability of the general public to appreciate it.

Benefits of the proposal

55. PPL's evidence will show that the Proposal will deliver a broad and substantial suite of benefits to the local community, the Port, the wider area, and the country.
56. These benefits include:
- (1) Meeting an identified need for waste management in the DC area;
 - (2) Delivering low-carbon, renewable energy infrastructure, which in turn contributes towards the net zero commitments of both DC and the UK as a whole;
 - (3) Contributing towards national energy security by providing a source of baseline, dispatchable power;
 - (4) Providing shore power, which supports both the air quality and the long-term economic health of the Port;
 - (5) Mitigating and resolving grid issues for the delivery of electricity to the Island;
 - (6) The potential for a DHN serving, amongst other things, HMP the Verne;
 - (7) Delivering a wide range of socio-economic benefits in one of the most economically and socially deprived areas of the country. This includes the creation of 295 FTE jobs during the construction phase and 36 FTE jobs during the operational phase;
 - (8) The displacement of landfill, with all the greenhouse gas emissions benefits that flow from that displacement; and
 - (9) The provision of a heritage mitigation strategy which will remove a Scheduled Monument from the at-risk register.
57. There is also scope within the locality of the Proposal for the addition of a plant for CCS though this would require a further permission and EP.

Other objections

58. Other points have been raised by objectors, including the Rule 6 Parties. In addition to the points raised by DC they also raise issues including:
- (1) *Highways and traffic concerns* relating in particular to the HGV movements generated by the Proposal. This is addressed in the evidence of IA, who shows that these concerns are unfounded (a position which is agreed by the local highway authority and is not a reason for refusal).
 - (2) *Amenity impacts arising from noise*. NR's evidence appends a full updated noise

assessment from Arup²⁷, which demonstrates the absence of any significant or unacceptable noise impacts from the Proposal. The evidence of SO and JM will rule out unacceptable odour and visual amenity impacts, respectively.

- (3) *Acoustics, and in particular the effect of the Proposal on the tranquillity of the area.* NR and JM together demonstrate that the Proposal will not cause any unacceptable impact on tranquillity, in what is already an area heavily influenced by the industrial character of the busy Port.
- (4) *The socio-economic impact of the Proposal.* This is addressed by SE, whose evidence shows that the Proposal will cause no socio-economic harm to the area, but on the contrary will deliver a suite of tangible socio-economic benefits.
- (5) *Climate change and carbon impacts.* SO presents detailed technical evidence which establishes the climate credentials of the Proposal a form of renewable low-carbon energy.
- (6) *Shore power alternatives.* It is suggested that there are other ways to deliver shore power to ships in the Portland harbour. Those alternatives are simply not realistic. NR establishes that the soonest SSE can provide a source of suitable shore power is 2037. Other renewable sources are also considered and ruled out as either commercially non-viable or technically unfeasible²⁸.

Development plan compliance

59. NR has assessed the Proposal against the DP considered as a whole²⁹, as required³⁰ by planning legislation and the NPPF.
60. His evidence, and the evidence of PPL's other witnesses establishes that the Proposal fully accords with all relevant policies of the BCPDWP³¹ and will generate no impacts that are unduly harmful or which are not outweighed by the benefits of the Proposal. NR also assesses the Proposal against the relevant policies arising elsewhere in the DP, and finds compliance across the board with the LP³², the 2014 minerals strategy³³, and the PNP³⁴.
61. In the light of those findings, NR concludes that the Proposal accords with the DP, and so should be granted permission unless material considerations indicate otherwise. We submit that those conclusions are correct.

²⁷ NR App NR14.

²⁸ NR para 8.2.3.

²⁹ NR section 9.

³⁰ S. 38(6) PCPA.

³¹ NR table 9.1.

³² NR table 9.2.

³³ NR table 9.3.

³⁴ NR table 9.4.

62. There are no material considerations which indicate that the Proposal should be refused; on the contrary, important material considerations such as national waste and energy policy, the future of the Port, the reality of the need for waste recovery, and the range of planning benefits from the Proposal, all provide powerful support for the Proposal.

Conclusion

63. PPL requests that its appeal be allowed, and planning permission granted.

DAVID ELVIN KC

LUKE WILCOX

Landmark Chambers,
London EC4A 2HG
5 December 2023

List of appearances for the Appellant

Advocates (instructed by Tor & Co):

- David Elvin KC
- Luke Wilcox

Witnesses:

- Nick Roberts BA (Hons) Landscape Architecture, Dip LA, CMLI. Director of AXIS
- Jon Mason BSc (Hons), Dip LA, CMLI. Technical Director, Axis
- Stephen Othen MA MEng CEng MChemE. Technical Director, Fichtner Consulting Engineers Ltd
- William Patrick Filmer-Sankey MA, DPhil, FSA, MCIfA. Senior Director, Alan Baxter Ltd
- Simon Elliott BSc (Hons), MSc. Associate SocioEconomic Planner at Bidwells LLP
- Ian Awcock, BSc (Hons) CEng MICE, CIHT, CIWEM. Chairman of the Awcock Ward Partnership
- Jeff Picksley BSc (Hons), MCIEEM. Ecological consultant to TOR & Co and a Director of Artemis Ecological Consulting Limited