

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

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

WPA Ref: WP/20/00692/DCC

Inquiry opened: 5 December 2023

Inquiry closed: 21 December 2023

Closing Submissions on behalf of the Appellant (PPL)

Introduction and abbreviations¹

The Proposal	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
EinC, XX, RX	Examination in chief, cross-examination and re-examination.
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 provided written proofs and were not called)
DC	Dorset Council
BCP	Bournemouth, Christchurch and Poole Council, the other waste planning authority and joint producer of the waste plan.
FH, NW, HK, TN, AP, SBKC	<i>DC's witnesses:</i> Felicity Hart, Neil Williamson, Helena Kelly, Tony Norton, Alan Potter and leading counsel, Simon Bird KC
R6 (SPWI, PA), BM	The Rule 6 parties: Stop Portland Waste Incinerator and the Portland Association, Barney McCay (counsel)
PSoC, PSoC2	The Appellant's Statement of Case [CD11.1] and Supplementary Statement of Case [CD11.2]
SoC	Statement of Case
SoCG	Statement of Common Ground between PPL and DC [CD11.5]
OR	Officers Report to DC [CD5.1, 5.2]
DP	The statutory development plan

¹ The list of abbreviations has been modified.

WP	Bournemouth, Christchurch, Poole & 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 (December 2023)
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
DH, DHN	District heating, district heating network
CCS	Carbon Capture and Storage
GB, VSC	Green belt, very special circumstances
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)
EPR 2016, EP	Environmental Permitting (England and Wales) Regulations 2016, environmental permit
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)

- I. These closing submissions should be read alongside the Opening Statement of the Appellant. Much of what is set out there is not repeated here.

Is DC's position on the treatment of its residual waste sustainable?

2. DC's position on the management of residual waste in the DC and BCP area is not sustainable and does not meet the BPCDWP objectives of managing waste at the highest feasible level (Objective 1) since significant quantities of waste are going to landfill and self-sufficiency is not optimised (Objective 2) – indeed, given that in the plan area there is only one residual waste management facility (the Canford MBT) and this is only for the intermediate treatment of LACW, the remainder of the plan area waste is exported, neither self-sufficiency nor proximity are observed.
3. DC and BCP have long relied on distant ERF capacity, outside of the South West region, including overseas, and similarly distant landfill. Even with Bridgewater becoming available to take Canford MBT output (just one part of the residual waste stream), this still is located outside the plan area and requires transportation for about double the distance that would be required if it were sent to the Proposal. Further, such an arrangement is only subject to contracts expiring in 2027, and the current incumbent of those contracts has expressly stated their preference to take the MBT output to the Portland Proposal (which it is at liberty to do so)².
4. The baseline data for 2022 shows that for the plan area, 85,611 tonnes of residual waste was sent to distant ERFs elsewhere within England³, over 70,000 tonnes consigned to 'out of county' landfill and a further quantity over 70,000 tonnes was exported from the UK as RDF for treatment in overseas ERFs. This is unsustainable and a result, in part, of allocations ill-suited to deliver the required residual waste treatment capacity.
5. The allocated sites in the plan are largely carried over from the earlier waste plan for Bournemouth, Dorset and Poole (June 2006) (FH XX) and the current situation shows, not an encouraging response to the allocations as DC's witnesses suggested, but instead raises serious questions why there has been so little progress with establishing facilities since 2006. It is notable that Canford which has had some waste facilities for over 17 years only submitted a planning application to BCP after the application by PPL was submitted to DC.

To what extent is a capacity gap/need required to be demonstrated

6. The requirement to demonstrate need is circumscribed by policy.
7. Importantly, England does not impose either a moratorium or a capacity limit on the provision of ERF/EFWs as can be seen from the following:
 - (1) EN-1 [CD9.03] e.g. §§3.3.37-3.3.42 and EN-3 [CD9.04] at e.g. §2.7 (esp. §§2.7.27-2.7.29);

² See the Beauparc letter in CD2.9.

³ NR Proof Table 3.2

- (2) Defra Ministerial Statement (1 December 2022) in NR Proof §3.1.6 p. 17 –

“DEFRA has no plans to introduce a moratorium on new energy-from-waste capacity in England, because we expect the market itself to assess the risks and determine the economic viability and deliverability of developing the new infrastructure. There is no financial advantage for the public sector or the market in delivering overcapacity in the energy-from-waste provision in England. Through the resources and waste strategy, we have committed to monitoring residual waste treatment capacity and we intend to publish a fresh analysis of that in due course”.

NR confirmed in chief that there is no sign of any change in DEFRA’s approach since that statement was made a year ago and notwithstanding the CCC’s recommendation in July 2023 [CD9.23]⁴. Indeed, the Defra approach in December 2022 continues to be reflected in:

(a) EN-1 and EN-3; and

(b) The continued endorsement of NPPW by §4 of the December 2023 NPPF.

- (3) NPPW at §3 recognises -

“the need for a mix of types and scale of facilities, and that adequate provision must be made for waste disposal.”

- (4) AP’s suggestion that there were moratoria in place in Wales and Scotland were shown by NR to be incorrect: the Welsh position is that a moratorium is place only for sites which generate more than 10mw and the latest Scottish position is contained in NFP4, which supersedes the Church report from which AP cites. NFP4 contains no moratorium on EfW. Indeed it contains specific policy tests concerning them⁵.

8. Further, NPPW⁶ states that need is not required to be demonstrated if there is an up-to-date local plan:

“7. When determining waste planning applications, waste planning authorities should:

- only expect applicants to demonstrate the quantitative or market need for new or enhanced waste management facilities where proposals are not consistent with an up-to-date Local Plan. In such cases, waste planning authorities should consider the extent to which the capacity of existing operational facilities would satisfy any identified need....”

9. Where need is considered, account is to be taken of “existing *operational* facilities” (stated in both §7, above, and §3, final bullet) not of proposals or unimplemented permissions. Regardless of the contrary views of AP, NPPW is clear and its relevance is

⁴ As NR pointed out in XX by R6 though the ERF capacity was derived from Tolvik, the emissions consequences in the CCC Report were not so derived and were not ones that could be supported (or ones which Government accepted).

⁵ Policy 12g.

⁶ Para 4 of the December 2023 NPPF reiterates the materiality of the NPPW.

reemphasised by continued reference to it as current national policy in the new NPPF §4. Since there are many examples of unimplemented EFW/ERF permissions (NR identified around 20 of which he personally was aware), it makes no sense to count facilities when they are not in existence.

10. NR has explained why the permission for Parley (which is only a 50,000 tpa recovery facility, notably much less than the allocated 160,000 tpa) which has not even sought an EP or advanced its development. It is not an endorsement of the apparent enthusiasm of FH for the fact that a permission has been granted for an allocated site following the adoption of the plan (ignoring the long standing waste facilities at Parley or the non-construction of the permitted AD plant). See further below.
11. Policy 4 does not require need to be demonstrated. AP (and SBKC in XX of NR) relied on §6.14 of the supporting text to WP Policy 4, but (a) that paragraph is limited to the provision of information on potential shortfall capacities, rather than purporting to establish a need requirement, and (b) even if it did purport to impose a need requirement, it would not do so as the policy itself contains no such requirement and supporting text cannot add one. In **R (Cherkley Campaign Ltd) v Mole Valley Valley DC** [2014] EWCA Civ 567 [AD.20] Richards LJ held at [21]:

“The policy is what is contained in the box. The supporting text is an aid to the interpretation of the policy but is not itself policy. To treat as part of the policy what is said in the supporting text about a requirement to demonstrate need is to read too much into the policy...”
12. The text at §6.14 of the plan therefore cannot make it policy to require a demonstration of need where it does not appear in the policy and is no more than information expected on submission of an application pursuant to Policy 4. Nor does Policy 6 impose a requirement to demonstrate need. The main instance where the plan explicitly requires need to be considered is in the limited context of Policy 7 and §7.6 where waste is proposed only to be disposed of not recovered or dealt with higher up the hierarchy (e.g. by landfill). This does not apply to the Proposal. Its inclusion in Policy 7 demonstrates that the plan stipulates it in policy where it is a requirement, in contrast with Policies 4 and 6.
13. Need cannot logically turn on the bizarre approach of AP (endorsed by FH) to so-called “net self-sufficiency” which appeared to attempt a sleight of hand that if the waste exported matched the waste imported into the plan area even if, e.g. inert or otherwise different from that arising in the plan area, that was sufficient. It fails since:
 - (1) It cannot rationally be seen as achieving net self-sufficiency as required by Policy 1;
 - (2) It is not what is intended in Policy 1 or Objective 2 of the plan or §3.15 the latter of which refers to “sufficient capacity within the Plan area to deal with its waste arisings”;
 - (3) It runs contrary to the proximity principle which AP accepted in XX.

14. AP's own "net" approach was rejected by the Inspector in allowing the Northacre EFV appeal [CD10.1] at DL para. 70: see also NR Rebuttal §§2.2.12-2.2.13.
15. The approach of the plan can be seen in Section 7 which runs through the various aspects of different types of waste management required in the plan area. Table 7 p. 55 sets out the residual waste requirement for the plan period which needs to be adjusted due to the error of assuming Canford MBT is waste recovery. For 2023 once the Canford MBT output of 95,000 tpa is added back in (rather than deducting 125,000 tpa), instead of a capacity gap of 214,000 for 2028 in the plan it should be 309,000 tpa⁷.
16. Unlike Canford which will have to demonstrate not only that there are no non-GB alternatives (which the Proposal plainly is) to comply with Policies 3 and 21, and VSC to justify inappropriate development (which is very significantly larger than existing facilities with a correspondingly greater impact on openness⁸), the Proposal does not require to overcome those very high hurdles or provide evidence that the circumstances sufficient to justify the overriding of such strong national policy protection.
17. SBKC sought to suggest in XX of NR that the question of WHS setting impact in the case of the proposal was more significant than the GB hurdle to be overcome at Canford. This is not a good point:
 - (1) GB policy presumes against inappropriate development from the outset;
 - (2) WHS setting issues fall to be considered (see Part 16 of the new NPPF) in terms of whether there is an impact of the setting and thereby the OUV of the WHS. While the WHS may be of the highest significance, there is no starting presumption. Moreover, on the facts here the Proposal lies at some distance outside the WHS and the issue is of impact on setting only of a geological site whereas the Canford proposal (the red line of which extends as AD.07 shows well beyond the allocated site in Inset 9 of WVP) stands well within the GB, is necessarily inappropriate development that must demonstrate VSC as development which is far greater in extent and impact on openness than the facilities it will replace.

SBKC's pursuit of the comparison in XX underlined the fact that Canford faces greater policy hurdles to overcome than the Proposal here.

Policies regarding residual waste

18. In this context the relative frailty of the plan allocations in **Policy 3** is clear given it is not disputed that there were few sites coming forward during the plan process (FH XX) and that any proposals on the allocated sites are still all required to comply fully with

⁷ NR EinC and NR Proof §3.3.4.

⁸ See NR Proof §4.2.21 pp. 47-49, NR13 and Section 8.5.

the policies of the plan (even where the scale of the facility is consistent with the allocation) and 2 of the sites are GB sites (Canford and Parley) and require to comply with Policy 21. The existence of a specific policy for unallocated sites (Policy 4) underlines that analysis. Canford, indeed, is proposed at a scale over 10 times that of the 25,000 tpa allocation as well as being adjacent to an SPA, SSSI and SNCI and it is proposed to extend far wider than the allocation boundary and to include significantly more land in the GB.

19. **Policy 4 (facilities not allocated in the Waste Plan)** is plainly met:
- (1) The Proposal provides important advantages not available to the allocated sites, notably shore power, location on a brownfield employment site, adjacent to port facilities and the ability to take out IBA by ship [NR section 3.5; NR4; first column in the table produced in FH Rebuttal Table 1 pp 8-14⁹], further it can accommodate an ERF whilst giving rise to significantly less harm than siting such a facility on the Canford or Parley allocations;
 - (2) There would be no prejudice to allocated sites by reason of cumulative or other adverse impacts;
 - (3) The Proposal supports the delivery of the BPCDWLP Spatial Strategy at pp. 26-28 (which does not restrict waste facilities to SE Dorset¹⁰);
 - (4) The Proposal complies with the relevant policies of the plan;
 - (5) The appeal site fulfils all of (e) to (g).
20. The issue of priority of allocated sites in Policy 3 referred to by SBKC in XX of NR needs to be considered carefully since in fact the application of Policy 4(a) significantly weakens any priority which might be thought to attach to an allocation, together with the weak nature of the allocations (see above). It would be nonsense as DC suggest to simply compare sites since it is proposals that must be assessed under Policy 3 and under Policy 4. In any event, if this is done it shows that Canford extends beyond the red line allocation (and may indeed not strictly be allocated as proposed) and is over 10 times its allocated figure. The ability under Policy 4 to promote non-allocated sites which have advantages over allocated sites demonstrates the limited nature of any priority which can be ascribed to the allocation.
21. The plan itself (which must be considered as a whole) dictates this and may well be a result of the lack of confidence in the limited sites advanced for allocation and the number located in the GB. It also provides context in which the spatial strategy (pp. 26-

⁹ Reproduced with added 4th column from the Update Sheet CD5.02 provided by officers to members. WIDELY

¹⁰ "The need for strategic residual waste treatment facilities will *primarily* be addressed through new capacity in south east Dorset. However, additional capacity may also be appropriate elsewhere to ensure the capacity gap is adequately addressed and when it will result in a good spatial distribution of facilities providing benefits such as a reduction in waste miles..." (emphasis added).

28) should be approached.

22. **Policy 6 (recovery facilities).** The requirements of this policy are met (see NR Proof §§9.2.4 to 9.2.16, pp. 93-99) and for reasons set out elsewhere the benefits of the proposal outweigh any displacement but in fact the proposals will manage waste higher up the hierarchy with important elements not available at any allocated site, in particular shore power to Port users and the proximity of the Port to enable transport of IBA by ship. No other allocated site can offer this. Note that the plan refers to IBA at §10.16 -

“Currently only limited facilities exist to treat bottom ash in the UK. Proposals to treat this material should be considered against Policy 6 and other relevant policies in this Plan”

23. The last paragraph of Policy 6 clearly is intended to deal with proposals for IBA processing facilities otherwise it would simply be an inconsistent repetition of the penultimate paragraph (NR XX by SBKC). This is made clear by the text at §9.20:

“The Waste Planning Authority would support proposals for facilities that manage the ash at or close to the source of production. Proposals must also meet other relevant criteria of Policy 6 and other relevant policies in this Plan.”

24. Although the Spatial Strategy at pp. 26-29 may have a *focus* on SE Dorset (“*primarily*”) it is not exclusive, and the Proposal will lead to a reduction in waste miles e.g. by comparison with the sending of residual LACW from the MBT to Bridgwater and C&I waste out of the county and country, as well as meeting the requirements of Policy 4 which is an important part of the mechanism by which the Spatial Strategy is given effect by the plan policies and which does not require location within the SE part of Dorset but, more significantly, requires advantages to be shown and that it will move waste up the hierarchy and adhere to the proximity principle. It is notable that AP did not in undertaking his theoretical waste mile per tonne exercise (comprehensively criticised by SO) trouble to compare the Proposal with the current waste miles for the plan area waste, as NR also pointed out in XX.
25. Indeed, as NR explained in EiC DC’s approach, typified in FH’s evidence, appears to seek to ignore key objectives in Vision 4.1, Objectives 1 and 2 because the Proposal does not fall within the SE Dorset focus and FH’s final comment about refusing the Proposal regardless of the issue of impacts typifies a blinkered approach to the plan’s own objectives and to undermine its own spatial strategy which DC has failed to fulfil to date in terms of the management of residual waste.
26. For reasons set out in NR’s evidence, it is submitted that the Proposal promotes the plan Objectives, the spatial strategy and accords with Policies 4 and 6. There is therefore no requirement to show need.

General reliability of DC’s stance on need

27. On the assumption that need should be shown for these proposals, though Policy 4 does not require it, we submit that neither the ONS nor AP’s several assessments

provides a sound basis for establishing that there is no capacity gap.

28. In this context, it should be noted that Dorset and BCP have no current ERF facility and export or landfill all of their residual waste (currently in part to Bridgwater in Somerset). This is not a sustainable position nor with the sustainability objectives of the WVP. Moreover, despite the unimplemented permission for Parley and the application for Canford Magna, both sites have been allocated waste sites for at least 17 years (as FH agreed in XX) and in all that time have not come forward with viable proposals for residual waste treatment notwithstanding the obvious capacity gap in the Plan area.
29. In OR CD 5.01 *Key Planning Issue* “waste” the capacity gap is accepted and the ability of the Proposal to meet the need and acknowledged also in §3 of the table in the Update CD 5.02. However, the need assessment in the ONS produced following the CMC and foreshadowed in DC’s Statement of Case was (as AP and FH confirmed in XX) the work of AP alone.
30. It was also clear that this has been an exercise constructed for the purposes of opposing this appeal and not a genuine waste plan exercise:
 - (1) It has not been produced in consultation with BCP the other waste plan authority nor has their agreement been sought or obtained (FH XX);
 - (2) It was not produced by the DC Waste Team nor based on annual monitoring (which does not seem to have been done by DC, FH XX);
 - (3) It was not produced as a waste plan update exercise but an ad hoc response to the appeal;
 - (4) Moreover, the ONS itself has effectively been abandoned by DC and AP in particular due to what appears to have been an obvious error in assuming that Canford MBT was a final, not intermediate, treatment facility when it self-evidently was not and AP claims to have relied on Table 7 (WVP p. 55) and does not appear to have troubled to read 2 pages previously (p. 53) which explains the position and that –

“Recovery

7.62 There is currently only one facility in the plan area that treats non-hazardous residual waste. This is a mechanical biological treatment (MBT) plant at Canford Magna. This facility is co-located with other facilities including a MRF and inert recycling facility. Dorset Waste Partnership and the former Bournemouth Borough Council have contracts for waste treatment at the MBT facility and the former Borough of Poole has recently started using this facility for its residual waste.

7.63 Residual waste arising in the Plan area is also exported for treatment in other counties. Dorset Waste Partnership has a contract to send a small proportion of waste to the Marchwood energy from waste facility near Southampton in Hampshire. In terms of assessing existing capacity, it has been assumed that this movement of waste will continue to the end of the contractual period.

7.64 A proportion of residual waste arising from Poole is sent to energy from waste facilities outside the Plan area. It has been assumed that this movement of waste could

continue to the end of the contractual period.”

- (5) From these paragraphs it is clear that the only facility in the plan area is the Canford MBT and that is not a recovery or final treatment of residual waste, It should never have been assumed to be so had basic due diligence been applied by AP.
- (6) AP appeared to accept that had he known this at the time he produced the ONS he would not have deduced 125,000 tpa from his capacity calculations. However, the fact that it is obvious that the reference to “*recovery ... all facilities 2033 125,000*” was not in fact to recovery and it was a question he claimed he was pursuing –
 - (a) It is wholly unclear why it was not answered in the 2-3 months between his instructions and the production of the ONS on 7.11.23 since it is easily answered;
 - (b) It is equally unclear why FH or another member of the DC waste team did not draw his attention to §7.62 and AP only became aware of the point on reading NR’s main proof following exchange;
 - (c) It is not credible that AP did not see §7.62 when reading the chapter of the plan on “Residual Waste”. He appeared to have no difficulty understanding it when it was put to him in XX.

It is submitted that this demonstrates a serious lack of due diligence and credibility in the exercise undertaken to produce the ONS and equally a failure by DC as WPA to either audit AP’s assumptions and work or to draw his attention to his error in understanding DC’s own plan.

31. The ONS in any event is a dead letter for the reasons set out above and given the terms of AP’s Rebuttal and acceptance of his error. There is much irony in AP’s confident assertion in his main proof (so obviously wrong) at A1.22 that:

“Table 5 shows that the estimated residual waste management requirement has reduced to 25,000 tpa by the end of the Plan period. I consider this value to be a more up to date and reliable value on which to base decisions on provision of additional capacity”

32. In XX FH declined to reveal how DC would respond in consultation on the Canford application despite being head of the Waste Planning Team and having seen a draft. This was surprising given that the size of the proposed ERF is vastly in excess of the allocation - over 10 times the 25,000 tonnes referred to in the allocation on the WVP and extending well beyond the allocation boundary further into GB (Policy 3 and Inset 8 pp. 175-177). It would also conflict with Policy 3 requiring compliance with other policies of the plan and Policy 21 which does not permit facilities in the Green Belt (which includes Canford) where non-GB alternatives exist. It is notable that there is no reference to this or discussion of Policy 21 in FH’s evidence to the Inquiry or in the OR. At a late stage, the letter has been received (I am this morning) dated 21.12.23 [AD.22] and will be dealt

with further in oral submissions though noting it does not in substance support the proposals since it states (pp. 7 and 8):

“The benefits of a waste management proposal at this location (i.e. co-location with other waste management facilities and location in south-east Dorset/BCP Council, managing waste in an appropriate manner) can be expected to weigh against the potential impacts on Green Belt purposes and openness and other harms. However, as set out above, the evidence presented by Dorset Council for the Powerfuel appeal on Portland indicates that there is no need for a facility of this scale to meet the waste capacity needs of the Plan area. This point is an important consideration in the very special circumstance balance, and Dorset Council is not satisfied that a facility of this scale can be justified by need for future capacity. This is a matter to which you will need to give careful consideration.”

“However, as noted Dorset Council are concerned that, in light of updated forecasts of need, a plant of the size proposed with an operating lifetime of 40 years from the date of its being fully operational i.e. up to c2065, would compromise the movement of waste up the waste hierarchy. BCP Council are recommended to review the updated forecast information, and to discuss options for reducing the size of the plant with the applicant.”

33. The letter does not grapple with the lack of consultation as to the implications of any revised need assessment on the WP or the fact it has only been produced to address a specific appeal. It is noted also that on p. 2 the letter perpetuates the error that 125,000 of waste amounts to treatment capacity contrary to DC’s own evidence at the inquiry although it points to AR’s Rebuttal at p. 3, without acknowledging the complete lack of consultation with the public or other authorities as to the contentions in the Rebuttal especially since they are not consistent with the initial ONS.
34. Unlike the OR and Update Report for the Proposal [CDs 5.1, 5.2], and FH’s evidence, the letter now seeks to engage with Policy 21 and alternatives. It highlights FH’s failure to do so to date and a certain lack of objectivity to the Proposal. However, the letter does not address GB impacts and the effect on openness nor does it acknowledge at pp. 6-7 that the proposal is not in accordance with Inset 8 either in terms of the drastic change in the scale of the facility nor in terms of its extending far beyond the red line of the allocation into additional parts of the GB not examined or approved in the WP. This may be a result of the illogical approach of FH only to consider a site rather than the proposals advanced but, in any event, it cannot reasonably be contended either that *“the proposed development site is an allocated site”* or the later suggestion that the development site *“was carefully considered at the Examination into the Waste Plan 2019”*. These statements is misleading: only part of the development site was so considered and the acceptance of the modification, qualified as it is, did not include the greater extent of the red line now proposed [AD.07] or the throughput of more than 10 times the amount allocated.
35. There are several respects in which the rushed and erroneous exercise in the OSN (and subsequently in AP’s evidence), carried out only since mid-August, demonstrate a lack of reliability on the figures advanced by SC which are significantly different from those in Table 7 of the plan.

36. These are:

- (1) AP's exercise failed to understand the effect of the treatment of waste at the MBT;
- (2) AP's exercise relied solely on his use of WDI rather than the widely accepted Tolvik approach which uses multiple sources¹¹;
- (3) Tolvik data has not only been endorsed by the Competition and Markets Authority but is relied on by the CCC [CD9.23] and even UKWIN. Its data is prepared, and a summary published annually with more detailed reports on a less regular basis (see CD12.01). The figures used by NR here derive from the published May 2023 figures based on the last complete year of data. Its business is the preparation and publication of accurate data for the UK, has no specific case to argue, and its reputation depends on its reliability.
- (4) As set out below, there are robust reasons for the adjustments made (see below) and discussed between NR and Tolvik, which apply a very conservative approach, and can fairly be understood from NR10. The suggestion of a lack of transparency is perhaps more a lack of understanding by AP rather than a genuine lack of transparency. As NR9 and 11 show, Tolvik took from its comprehensive national data the figures for the relevant plan area (for LACW) and market area (for C&I). For example, the figure of 11.65mt (NR proof §3.4.17(v)) was queried, yet it is derived arithmetically directly from CD12.01 p. 4 by applying the 44% remaining following the 56% residual waste going to ERF of 14.86mt¹². Contrast the exchange between SBKC and NR in XX concerning Table I of AP Rebuttal which as NR said does not adjust for exports (54,826 tpa for Canford¹³), whatever may have been done in his main proof Appx 3 and describes itself as "*Component Wastes counted in Residual Waste Arising from Dorset & BCP in 2022 with commentary on inclusion in WDI residual waste value (tonnes)*" with an explanation in §2.4 which includes –

"Table I below sets out the waste by description and tonnages that appear in the WDI for 2022 and includes my commentary on what wastes were included and why."
- (5) As NR noted in XX, whilst AP provided screenshots of WDI tables in his evidence, without understanding the parameters, filters or inputs applied to generate them, there is no way of understanding the efficacy of what they show. In any event, the Inspector (and SoS) can compare the approaches and the clarity of NR's exposition of the capacity figures compared with the approach of AP with his errors and misstatements, even following ONS, proof and rebuttal e.g. the errors described by NR in his rebuttal and in oral evidence, including the failure to reflect in table I

¹¹ NR Proof §§ 3.4.23, 4.3.24.

¹² "According to data provided, in 2021 a total of 14.85Mt of Residual Waste was processed in UK EfWs.... It is estimated that in 2021 EfW inputs represented 56% (2020:52%) of the UK Residual Waste market."

¹³ See the Canford MBT WDI Sheet

the WDI output for Canford including exports.

Residual waste capacity/need

37. See NR Proof Sections 3.2-3.4 pp 19-37 and Rebuttal Section 2 pp 2-16.
38. The residual waste baseline on which NR relied is set out in his PoE at page 32, and in his table 3.2¹⁴. That table is based on Tolvik's provision to NR of data for the most recent complete year (2022). That data comes from more than one source and not simply WDI. Tolvik's wider data and modeling work (NR Appendix NR9 and NR I I) is based on multiple data sources : see NR Proof §§3.4.23-3.4.26. Tolvik's data generally has been endorsed by the Competition and Markets Authority, accepted by the Northacre Appeal Inspector [CD10.1], used by the CCC [CD9.23] and even UKWIN in its presentation to the Inquiry.
39. NR's Table 3.2 has four rows. The first sets out the amount of Dorset and BCP's residual waste treated in England by landfill and by incineration¹⁵. The next row estimates the (much smaller) amount of uncoded waste from the SW which is attributable to BCPD. The third row identifies the amount of BCPD's waste which is expected for incineration overseas. As NR explained, the WDI figure is adjusted by 29% to reflect the under-reporting in 2022 which Tolvik identifies in the WDI figures as compares with shipping notes on a national level. The fourth and final row adds back in the mass loss from the Canford MBT facility: it is necessary to add the lost mass back into the calculation, because Table 3.2 is concerned with identifying the total quantum of residual waste arisings and its method of management and the MBT facility operations incorporate some of this waste.
40. The result is an identification of an estimated 261,055 tpa of residual waste being generated within the BCPD area in 2022.
41. As NR made clear, however, that figure may in fact be an underestimate, because the Tolvik data would treat (for instance) any of BCPD's waste which is exported from a transfer station outside of the waste area as originating from the location of the waste station, thus depressing the figures in the first row of the table.
42. From its database of national data, which is more complete than the WDI as NR explained, Tolvik has extracted the subset of data for the WP area in the case of LACW and for the market area for C&I: this is shown on both NR9 and NR I I¹⁶.
43. The key difference between PPL and DC on the residual waste baseline arises from the

¹⁴ NR8, page 46. NR8 generally provides a response to the ONS which has in any event been superseded due to AP's error with the MBT waste.

¹⁵ Based on the statistical data at UK level contained in CD12.2.

¹⁶ In terms of the C&I waste market area, only 50% of Hampshire waste is included since NR explained the view was taken that the east of the county was too distant.

differences between NR's Table 3.2, based on Tolvik data, and AP's table 3¹⁷. The difference between the tables amounts to some 77,000 tpa of residual waste.

44. NR identified six points of difference between Tolvik's and AP's analyses, which taken together account for the discrepancy between the baseline figures:
- (1) AP assumes that 50% of waste coded I9-I2-I2 (mechanically treated waste) which currently goes to landfill, as being suitable for incineration¹⁸. Tolvik's equivalent figure is 70% based on its published data¹⁹. This amounts to a difference of **7,735 tpa**;
 - (2) For bulky waste, while accepting that given it substantially included POPs which are now banned from landfill (since Jan 2023), and combustion provides the only treatment solution, AP assigns none of it to incineration, apparently on the basis that it needs pre-treatment i.e. shredding. Further bulky waste includes biodegradable material (wood, wool, cotton, card, etc) which again needs to be diverted from landfill once the imminent near ban on biodegradable waste to landfill is in place. Accordingly, there are no alternatives to the recipients of such waste other than shredding it and sending to an ERF. That accounts for a difference of **18,200 tpa**;
 - (3) Table 3.2 includes uncoded waste which adds an additional **6,222 tpa** ;
 - (4) NR adds back mass loss (the basis of which is already explained as part of the waste arisings), which accounts for **34,444 tpa**;
 - (5) AP's rebuttal Table I considers only three waste codes in the WDI. Tolvik, by contrast, accounts for all 17 of the combustible codes which are contained in the WDI data and applicable to the Dorset area. That accounts for an additional **4,669 tpa**; and
 - (6) AP's identification of the quantity of waste under code 20-03-01 (mixed municipal waste) is erroneous: when that error is corrected²⁰, it accounts for **11,832 tpa**.
45. The sum of those differences is **83,102 tpa** of waste. When that is added to AP's 184,100 tonnes²¹, the result is **267,202 tpa** of waste arisings as the baseline: a figure close to the NR assessment based on the Tolvik data/assessment.
46. There is a further unexplained error in AP's table I. The third row of that table identifies

¹⁷ AP Proof page 22.

¹⁸ AP rebuttal Table I.

¹⁹ NR8 §6d p 49 and as NR explained took a position mid-point between the 65% and 80% considered by Tolvik as combustible in its study for ESA in 2017 *UK Residual Waste: 2030 Market Review* [AD.21] see pp. 14-15 especially the last 3 paras on p. 15.

²⁰ The correct figures should be 36,507 in AP's Table I first column for the code, and 21,715 for the second column.

²¹ See the total in AP's Table 3.

only 20,932 tonnes of RDF as arising from the BCPD area. That however cannot be correct, since it is inconsistent with the WDI data for Canford, which identifies 68,456 tonnes of RDF as arising from that site alone including 54,826 sent outside the UK. On any view AP's RDF figure in Table I is an underestimation and it is not sufficient for SBKC to suggest that exports are accounted for in AP's earlier proof Appx 3 when Table I purports to be a complete picture: it describes itself as "*Component Wastes counted in Residual Waste Arising from Dorset & BCP in 2022 with commentary on inclusion in WDI residual waste value (tonnes)*" with an explanation in the preceding §2.4 which includes –

"Table I below sets out the waste by description and tonnages that appear in the WDI for 2022 and includes my commentary on what wastes were included and why."

Waste management analysis

47. NR noted that the LACW component of BCPD's residual waste goes to Canford for treatment at the MBT plant. That waste arrives at Canford by way of three discrete contracts, from the different component authorities within BCPD (all of which in any case expire in 2027). As of late, significant amounts of the output from the MBT are currently sent to Bridgwater. The operator of the MBT, however, has made clear that its preference would be to send its own arisings to the ERF at Portland, rather than to Bridgwater²².
48. At the sub-regional level, the role of the Proposal in the future market is explained by NR in his evidence²³. That analysis is undertaken on what NR described as a very conservative basis: it proceeds on the basis of the Government's "stretching" targets for the halving of residual waste by 2042 (from 2019 levels); and it adopts a 75% recycling rate. This can be contrasted with DEFRA's latest modelling of the effects of its known future recycling initiatives which are forecast to deliver recycling rates of 52% for household waste and 59% for C&I²⁴. Even on that conservative basis, the "Scenario A" sub-regional analysis shows that the sub-regional capacity gap never falls below 263,000 tpa.
49. That result is tested by NR's "Scenario B", which alters Scenario A by assuming the opening of the Northacre EFW and the closure of the Marchwood ERF. As NR9 shows, those sensitivities make virtually no change to the capacity gap.
50. The considerable conservatism of the 75% recycling rate assumption is shown by the DEFRA modeling, which reveals a flatlining in recycling rates for household waste for the last 11 years²⁵. That reveals the difficulty of approaching a 75% rate in reality. Of

²² CD2.1.

²³ NR Proof 3.4.37-38; NR9.

²⁴ NR Proof para 3.4.18.

²⁵ CD12.80.

course, all parties should strive to meet the Government's targets; but it would be naïve to plan on the basis that stretching targets will be met. If we did so, and if the targets were missed, the result would be the channeling of even more waste into landfill, and down the waste hierarchy rather than up it. The recent Public Accounts Committee Fifth Report (23.11.23), *Government's programme of waste reforms* [CD12.80] the Committee made clear that the effect of Government policies were not proceeding as intended and there was significant uncertainty about achievement of the objective.

51. Another of the ambitious aspects of the Government's approach which has a bearing here is the Government's stated objective of the near elimination of biodegradable waste from landfill by 2028. The achievement of that objective will significantly increase ERF demand on a national level: in 2021, around 10 million tpa of residual waste were sent to landfill²⁶, and if that is to be avoided in the next 5 years, the delivery of further ERF capacity in the UK is needed.
52. Thus, the evidence shows that there is a clear need and role for the Proposal in meeting BCPD's long-term waste needs.
53. UKWIN's suggestion that Marchwood is the only ERF likely to close in the future is not correct. Its view seems to have been based purely on consideration of the age of two existing ERFs. As NR explained, that is far too narrow a basis for consideration: the main likely driver for future ERF closures will, in NR's opinion, be changes in the legislative and regulatory landscape. In particular, the legislative trend is towards requiring lower emissions from ERFs (potentially leading to a wider introduction of selective catalytic reduction technology) and most significantly in requiring CCS to be provided. Given the significant capital outlays required for adding such technologies to older ERFs, as well as locational considerations (as a matter of fact many existing ERFs do not have the required suitably proximate space to accommodate CCS facilities), NR considered that there would undoubtedly be more ERF closures in future. The suggestion in XX by SBKC that the closure of Marchwood would be flagged up in the Hampshire Waste Plan was rejected by NR: indeed that plan (2013) runs only to 2030.
54. The Scenario B assumption that only Marchwood will close in the future is thus another layer of conservatism in NR's assessment.
55. UKWIN also contends²⁷ that NR had missed out 1 mt of ERF capacity through his adoption of a 3 hour drive time in his NRI sensitivities. UKWIN's approach is wrong for 2 reasons: first, as NR explained, NR9 does not use a 3 hour drive time, but instead uses the 3 hours as a broad means of describing the relevant local authority areas, which is different; secondly, and more importantly, UKWIN seeks to add in 1 mt of capacity but without adding in the corresponding waste arising from those same areas. In other

²⁶ NR Proof para 3.4.17(v).

²⁷ IP submission pdf page 24.

words, UKWIN's approach is misconceived.

The effect of ERFs on recycling

56. AP contended (as he did at Northacre) that the development of new ERFs has the effect of prejudicing the achievement of recycling rates, by creating a market incentive to dispose of recyclable waste into the residual waste stream rather than recycling it. SBKC pointed to provisions in EN-1 and EN-3 which he suggested were based on concerns of such. Those NPSs are for considerably larger plants which generate at least 50 MW of power and would therefore have a capacity in excess of 500,000 tpa.
57. That suggestion was rebutted by NR, who pointed out that in 2021, some 11.65 mtpa of residual waste went either to landfill or to overseas recovery facilities. That is the true waste stream that will be in competition with ERFs and the effect of ERFs on that waste stream is to drive it up the waste hierarchy.
58. In addition, NR observed that, in practice, the place at which most recycling is separated from the residual waste stream is at the front end of the process: in other words, through people and businesses putting recyclables into their recycling bins and not into their "black bag" non-recycling bins. That is significant, because it shows the practical and commercial absurdity of AP's approach: no householder with a plastic bottle to dispose of will decide not to recycle it because they wish to ensure that their local ERF has adequate feedstock.
59. Put another way, given the front-loaded nature of the separation of recyclables, what is the mechanism by which the ERF operator could seek to influence recycling rates? No such mechanism exists.
60. At the waste authority level, the inspector in the Northacre appeal reached the same conclusion in this regard²⁸:

"With regard to the impact on residual waste arisings, the proposal will likely displace landfill and export to Germany and Lakeside. There was no tangible evidence presented in the Inquiry to conclusively demonstrate that the appeal proposal would disincentivise waste authorities from promoting recycling initiatives."
61. The R6 has suggested that the shift in the permitted waste codes for the ERF's permit, to allow residual waste codes other than RDF, would also prejudice recycling, on the basis that the process of producing RDF secures a higher rate of removal of recyclables from the RDF waste stream than is the case for non-RDF residual waste.
62. That is not the case.
63. The point can be shown by reference to Canford. Canford's latest permit²⁹ confirms

²⁸ CD10.1, para 59.

²⁹ Submitted on 19.12.23 and dealt with by NR in evidence.

that the only recyclables removed at that location in the production of its RDF is ferrous metals and ferrous compounds³⁰. The WDI datasheet for Canford³¹ enables the amount of metals recycled to be determined – namely only 367 tpa of metal are recovered at Canford, which is only 0.29% of the total MBT output. Conversely, the ERF ‘process’ will recover 1-2% of its input waste stream in the form of metals through the processing of IBA. Further, the recovered metal is in a better condition for recycling since the incineration process burns away materials that would otherwise contaminate the recycled metals.

64. In other words, the ERF is preferable to the MBT in recycling terms, whether the waste that enters it is RDF or non-RDF residual waste.
65. Finally, it is not correct that ERF gate fees are cheaper than those of recycling facilities (MRFs): see the WRAP report [CDI2.82]. AP’s attempt to use the extremes of the figures is hopeless statistically since the extremes may only represent a small tonnage of waste (e.g. police destruction of a small quantity of illegal material may command much higher ERF gate fees). That is why WRAP produces a mean and a median (which are generally close) to provide a proper means of comparison. AP’s insistence on considering extremes lacking in statistical reliability further undermines the reliability of his evidence.

ERFs and MBTs

66. AP suggested in evidence that intermediate waste treatment in a MBT resulted in fewer waste miles than sending waste directly to an ERF. Once again, however, AP’s understanding was flawed. It is true that a MBT reduces the volume of waste, but what AP did not account for was that the MBT output has to be transported from the MBT to the final treatment facility, resulting in the need to transport that portion of the waste twice – from the point of arising to the MBT, and then from the MBT to the final treatment venue. Across the lifetime of the waste, therefore, the insertion of a MBT stage significantly increases the waste miles.
67. Further, the vast majority of the volumetric reduction which occurs in a MBT is the result of the loss of water, not carbon³². Since ERFs are sized on thermal capacity, the result is that a ERF can take a lower tonnage of higher CV waste than it can of lower CV waste. The worse the quality of the fuel, the more can be put in before the thermal capacity is reached.
68. On a commercial level, NR stated that ERFs can outcompete MBT in the marketplace³³:

³⁰ Page 16, AR3.

³¹ Also submitted on 19.12.23 and dealt with by NR in evidence.

³² NR Proof para 3.3.3.

³³ NR8, para 6g.

- (1) The MBT market is supported by local authority contracts for LACW, entered into originally in the erroneous belief that the CLO output of MBTs could be spread on land avoiding the need for ERF. The Environment Agency never permitted that practice. Now that authorities are aware that MBTs are not a substitute for ERFs, the incentive which underpins those contracts is reduced;
- (2) The result is that as more ERFs come online, and as MBT LACW contracts expire and are not replaced, ERFs will become the dominant of the two treatment forms in the market. There have been significant closures of MBTs and there are only a handful in operation. Nr explained that the majority of contracted UK MBT capacity has failed;
- (3) Even if MBTs are used, the output still needs final treatment, and for local authorities, ERFs are plainly preferable to landfill or export for that final treatment. Sending residual waste direct to ERF will avoid double handling and transportation.

Canford and Parley

69. Of the allocated EfW sites in the WVP, the two on which the inquiry has focused are Canford and Parley, both GB sites of long-standing waste use.
70. The *allocated* Canford site amounts to a small-scale intensification of the existing waste use at the site and is for 25,000 tpa, and the red line of the allocation boundary is fairly tightly drawn³⁴ and lies in the GB.
71. The extant application at Canford significantly exceeds the allocation both in terms of quantity and site boundaries as noted above. The Applicant proposes an ERF for 260,000 tpa throughput and the red line boundary extends far beyond the allocation boundary (see AD.07 and contrast with the plan for WVP Inset 9 p. 177) and includes some development elements at a significant scale. The DNC compound for instance includes built form that is around 20m high, and the grid connection compound includes significant infrastructure elements as well.
72. There is thus no meaningful sense in which the Canford application delivers the Canford allocation in accordance with the WVP. If that is the scale required to deliver ERF at Canford it strongly suggests that the allocation is wholly inappropriate and inadequate for that purpose.
73. There are other serious concerns with the Canford proposal, aside from the obvious challenges of it being inappropriate development in the GB and in close proximity to a SSSI, SNCI and a SPA/SAC. The layout of the proposed EfW at Canford includes an area – ID23 on the plan³⁵ – which appears to have been earmarked both for laydown and maintenance use, and as the location for a future CCS facility. The land in question,

³⁴ CD7.1., pages 175-177.

³⁵ ID7.

however, appears to be around 900sqm, a fraction of the size required for a CCS facility which is capable of serving an ERF of the proposed scale³⁶. Even if it were technically feasible to locate a CCS facility on the ID23 land – which NR made clear it was not – that would still leave the problem of the absence of any land for servicing laydowns (which occur once a year for around 4 weeks at a time). Self-evidently, the same plot cannot fulfil both functions.

74. There Appellant submits that Canford cannot deliver a deployable CCS technology in the only location that has been identified for such a facility.
75. Indeed, it appears difficult for the Canford proposal to meet the WP policy tests at all including Policy 3 and Policy 21:
 - (1) The site is in the GB and includes a large built form which will have a very substantial impact on the openness of the GB (including a 110m stack) in one of the most sensitive areas of GB in the County. NR confirmed that the proposal would involve increasing the built form on the site by 42 times³⁷. This is unquestionably inappropriate development, and given the scale of GB harm, the vsc that will be needed to justify it will have to be very special indeed. NR considered that the level of GB impact from the scheme would be unprecedented for a facility of this nature. See the summary of the problems with the Canford site at NR Proof §§4.2.19 to 4.2.22 set out at greater length in NR13.
 - (2) Waste plan Policy 21 (not addressed by DC/FH in considering the allocations as against the Proposal) requires Canford to demonstrate that it are no non-GB sites that can meet the same need. Portland is of course not in the GB and is a facility of a similar size and without the feasibility challenges for delivering CCS³⁸ (not to mention Portland's unique shore power benefits).
 - (3) DC's (perhaps more accurately AP's) case at this inquiry has been that there is insufficient waste need for the Proposal. If AP is right about that, then there is no need for Canford either, which is an even larger proposal.
 - (4) By contrast, if AP is wrong about the need levels in the area, which we submit he clearly is, then there is enough need for Canford – but also sufficient need for the Portland ERF, which is not in the GB and has nothing like the level of environmental harms, as well as other advantages which Canford cannot deliver (shore power, DH, CCP etc). The proposal has advantages over Canford within Policy 4(a).
76. There is little doubt that the Portland proposal is a preferable site for an ERF than Canford.

³⁶ SO's estimate is that the CCS facility for a unit of this size requires 3,000-4,000 sqm.

³⁷ NR Proof para 4.2.19-22.

³⁸ See SO's Rebuttal.

77. The position at Parley is just as stark, but for different reasons. The main challenges at Parley are technological. The proposal there is for an ERF with building which is 13.5m height to the eaves/16m to ridge height. By way of comparison, the Portland proposal is for 47m and Canford is 50m. As NR explained, it is not possible to run an effective ERF in a building that low: the building height is necessary to enable waste to be dropped on to the moving grate, and the residency time of flue gases which is required to render them permit-compatible for dispersal in the plume cannot be achieved at the heights proposed.
78. The position is even worse, though, because the Parley proposal includes selective catalytic reduction technology, which increases the capital costs of delivery while reducing the efficiency of the scheme overall. NR confirmed that achieving R1 status for a 50,000 tonne ERF is very challenging even without the added difficulties which the catalytic reduction presents.
79. In short, Parley is not a feasible scheme and it will not be delivered. It has not sought an environmental permit. This is not unusual and there are several examples of ERF permissions being granted but not implemented.

Reason for Refusal 1

80. PPL submits that RfR1 is unsustainable. The Proposal complies in particular with all of policies 4 and 6 of the WP, and PPL's evidence shows that even if there were a requirement to demonstrate need (which there is not), that requirement is amply met in this case given the capacity figures given by NR in his evidence and supported by Tolvik.
81. The first RfR should therefore be rejected as should DC's case on the capacity gap and need applicable.

Heritage issues

82. The heritage evidence at the inquiry was presented by WFS, HK and NB. All agreed that the harms arising were at the LTS level, so that the applicable test is that contained in NPPF para 208 (December 2023 NPPF numbering). We do not repeat the substantial historic and cultural value of the heritage assets, which is undisputed, since it is thoroughly explained and explored in WFS's Appendix WFSI (not disputed by HK) and evidence.
83. WFS explained that he has taken a precautionary approach to assessing the potential for impact of the Proposal on the various heritage assets: he assigned at least some harm to assets which were either intervisible with the ERF on the ZTV, where the ERF was part of the asset's wider visual context, or which were in any way affected by ERF-

related traffic, as a starting point³⁹.

84. Arid submissions by DC on methodology overlook the very obvious fact that what is important is the articulation of judgments. WFS easily explained his judgments and it is important that Advice Note 12 [CD9.31] states:

“14 Cases involving more significant assets, multiple assets, or changes considered likely to have a major effect on significance will require a more detailed approach to analysis. **Analysis may involve detailed assessment techniques and more complex forms of analysis such as sensitivity matrices and scoring systems. Whilst these may assist analysis to some degree, as significance and impact are matters of qualitative and expert judgement, they cannot provide a systematic answer.** Historic England recommends that technical analyses of this type should be seen primarily as material supporting a **clearly expressed and non-technical narrative argument that sets out ‘what matters and why’ in terms of the heritage significance of the assets affected**, together with the impact of the proposal upon them...”

85. Non-technical narrative and judgment is what is important not an obsession with technical matrices and the like. The question is whether the evidence convinces the Inspector and SoS that the heritage assets, their significant and impacts have been properly considered and provides assistance to the final decision.
86. A very important insight by WFS concerned the context and nature of the Port itself. The Port is a setting for the Proposal that is characterised by constant, and often very significant, change over time, from Henry VIII’s establishment of the defences for the Portland Roads though the extensive naval history of the Port, through to its current primarily commercial use⁴⁰ together with naval facilities. That evolving nature is a key part of any busy working port, and Portland Port is no exception. It is a central, and critical, part of the setting of the heritage assets in question: they were not designed to be and have never been appreciated or viewed in a context which was other than a constantly evolving port (see WFSI especially Section 2). The location of the Proposal has been developed and has included facilities such as Creosote Pressure Chamber, Hospital for Infectious Diseases and Mortuary and torpedo store.
87. Indeed, the settings of all of the heritage assets in issue should take account of the fact that the purpose of the assets was to ensure a safe and prosperous Port. The facilitation of the continued success of the Port is not contrary to their settings, but a part of it.
88. That approach is consistent with Historic England’s guidance note GPA3 which approaches change overtime as a relevant setting factor in this way⁴¹:

“Settings of heritage assets change over time. Understanding this history of change will help to determine how further development within the asset’s setting is likely to affect the contribution

³⁹ See WFS Proof §§3.1 and 7.12. Whilst SBKC in XX suggested that there was no difference between the two, this is not correct; the example WFS gave was the entrance to the Verne Citadel, which is not intervisible with the ERF but where the ERF can be seen in long views of it from the south.

⁴⁰ WFS para 6.19.

⁴¹ CD9.30, page 4.

made by setting to the significance of the heritage asset. Settings of heritage assets which closely resemble the setting at the time the asset was constructed or formed are likely to contribute particularly strongly to significance but settings which have changed may also themselves enhance significance, for instance where townscape character has been shaped by cycles of change over the long term. Settings may also have suffered negative impact from inappropriate past developments and may be enhanced by the removal of the inappropriate structure(s).”

89. That GPA3 factor support WFS’ analysis and approach. Indeed, all GPA3 elements were taken into account by WFS, either as components of his judgments or explicitly through the detailed analysis in his heritage statement⁴².
90. In this regard, the Proposal is itself a form of port-related activity, and stands in the long tradition of providing contemporaneous forms of shore power at the Port for ships in the harbour. When ships needed coal, the Port contained coal sheds; when ships needed oil, the Port had oil tankers. Now ships need electricity, and the Proposal will provide it to them. It must be remembered that, contrary to NB’s understanding, the provision of shore power is a part of the Proposal itself⁴³. It almost goes without saying that the only feasible place to locate an ERF for shore power is at a port.
91. NB sought to argue that the ERF was not port-related, since it could be provided anywhere. She also made comments about the lack of need for shore power for the Port. Those comments simply highlighted that her evidence was neither objective nor impartial: the technicalities and economics of providing shore power are far removed from her field of expertise, and the fact she felt able to comment on these points anyway showed that in reality, she was more concerned to resist the application than to assist the inquiry with expert evidence.
92. HK focused heavily in her evidence on the issue of intervisibility. She did accept that while intervisibility was affected it was not lost in any instance. The evidence of WFS, and JM’s visualisations, show that the intervisibility impact is not as serious as HK contended and the DC case was overstated. But in any case, intervisibility is not something that arises in a contextual vacuum. Rather, the assets are intervisible in the context of a busy, working and changing port. That has all the implications that WFS identified.
93. Turning to the key asset groups, much of the heritage evidence was focused, understandably, on the East Weare group of assets. In respect of that group, there is no meaningful harm from the Proposal to the intervisibility of the assets. The view to and from the Verne to the Batteries is unaffected: the Proposal does not lie between those assets. The same is true of the view from the Verne to the Dockyard Office, and

⁴² Which his proof expressly adopts: para 1.11.

⁴³ CDI.20 Section 5 “Proposed development of 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.”

vice versa. The views from the Verne to the breakwaters is at worst slightly truncated.

94. As to the view from the Dockyard office to the breakwaters, the presence of the Proposal's switchgear may have some minor impact, but nothing close to the existing harm arising from the non-listed redbrick extension to that building. Although criticism is made on WFS in closing by DC that he did not sufficiently consider the switchgear proposal the more serious criticism can be levelled at HK concerning her lack of understanding of the ugly brick extension to the Dockyard office and its effect (apparent from her own photos) in compromising the setting of the office and the intervisibility of the breakwaters from it. Indeed, she had to be reminded in XX that the extension was specifically excluded from the listing. The considerable negative impact of that extension (excluded from listing for understandable reasons) it is suggested occupies most of the view of the breakwaters as appears from HK's photographs in Appx 6 pp. 26-27. This can be checked further on site. The minor harm is not sufficient to amount to an adverse effect on the view sufficient to warrant concern.
95. As to the individual assets within the group, it is fanciful to suggest, as HK did, that there will be any competition between the Proposal and the Verne. The visual dominance of the Verne will not be harmed by the Proposal, as is obvious from the visualisations and from experience of approaching the Isle of Portland. It is true, as WFS explained, that the Proposal will be larger than existing built forms at the Port, but it is not remotely of the scale of the Verne, which was built precisely to dominate its surroundings. In any case, the Proposal stands in the long tradition of port-related development with chimneys in this area of the Port, including the silo about to be constructed at the northern side of the Port.
96. As for the batteries, it must be recalled that they were designed not to be visible from the harbour: they would not have fulfilled their defensive function if that were the case, as HK agreed in XX.
97. The group value of the East Weare assets, and the value of the individual assets within the group, are not therefore impacted other than in a very minor way.
98. As for the more remote assets:
 - (1) Sandsfoot Castle exists in a context which is already one of massive change. Even the shape of the Island itself has changed since the castle was built. There are no intervisibility issues, and no meaningful harm to its setting. As WFS put it, the ERF is simply a new chapter in the long story of change which defines this asset's setting.
 - (2) The same is true of Nothe Fort. That is again a part of the story of fundamental change of the Port over time. It is also notable that the view of the ER from Nothe Fort is a distant one indeed.
 - (3) The suggestion by NB that the setting of Rufus Castle may be affected was plainly nonsensical given its location.

99. As to the Castletown CA and heritage assets, the key point is that these assets, and indeed Castletown as a whole, owes its very existence to the presence of a working Port at Portland harbour. A working port is part of the setting of these assets, and the ERF will be an integral part of the working Port. There is very limited intervisibility between Castletown and the ERF (limited to the extreme western end of the settlement), and the impact of vehicular movements on the CA is very limited indeed.
100. Finally, Portland Castle is affected to no more than a minimal extent by the Proposal. As WFS explained, the current physical context/setting of the castle is entirely changed from when it was built. What has not changed is its relationship with a working and constantly changing port. And the ERF will form a part of that context.
101. When those points are taken together, even on WFS' precautionary approach, the harms to the identified designated heritage assets are in all cases at a very low level on the LTS spectrum.
102. It was suggested to WFS that the methodology in the ES was robust, with an implicit criticism of him for following a different approach. It is true that WFS' approach differed from that in the ES. There is nothing unusual in such a difference. There is no prescribed approach to assessing heritage impact, and each expert will have his or her own approach. As WFS explained, his professional view is that, while the matrix-based approach in the ES is reasonable, he considers his own approach, which focuses on a heritage statement and applying judgments to individual assets rather than matrices, is preferable in the circumstances.
103. Turning to PPL's proposed mitigation scheme, this is an aspect of the Appellant's proposal which will yield significant heritage benefits for Portland. E Battery is an important asset, and is currently in such an overgrown and deteriorated condition that it is on Historic England's at-risk register. The removal of an important asset from the at-risk register is an obvious and significant benefit. Further, as WFS explained, the clearance of E Battery will reveal it in the view from the Verne, which will vastly increase the mutual understand of those assts, as well as better revealing the group value of the East Weare assets as a whole.
104. PPL was criticised for not yet having produced a conservation management plan for the mitigation scheme, and it was suggested by NB that, absent such a plan, there could be little confidence in the scheme's ability to deliver benefits.
105. There is nothing in that criticism. WFS was right to note that, of the assets in the vicinity of the Proposal, E Battery is the obvious choice for the focus of the Appellant's mitigation efforts and will be conditioned. Further, the Appellant is the obvious, and only realistic, candidate to undertake such works. The suggestion that volunteer groups could do the work (made *en passant* by Historic England) is entirely nebulous – the volunteer groups are not even identified, let alone have they produced any detailed

plans, and it is not clear that volunteer groups would have the expertise, the funding, or the security clearance to undertake such sensitive works in the secure environs of the Port.

- I06. The point advanced that E Battery was also a SAM and at risk as such goes nowhere since, as WFS explained in evidence, at risk elements of both designations would be dealt with and provide a benefit.
- I07. Various suggestions by the Rule 6 in closing seeking to diminish the benefits of the heritage mitigation should be rejected for the reasons given by WFS. The sweeping statements that measures could be undertaken in any event simply ignore the fact that they have not been done and there are no realistic proposals to do so absent the Proposals.
- I08. Before turning to the overall balance, it is necessary to mention NB's evidence. In short, her evidence lacked credibility. Aside from her clear lack of objectivity (she confirmed that she is a local resident), she had not actually visited the Port location where most of the heritage assets in question are located and confirmed in XX that she had not asked for an opportunity to make a visit. Moreover, she was not even aware in writing her proof of the location of the Proposal, and mislocated it in her evidence. That is not the approach of a reliable, independent expert witness, and NB should not be treated as such.
- I09. NB was the only heritage witness to identify Rufus Castle as an asset which the Proposal might influence. Her case on the alleged impact on this asset lacked any sound basis and her reliance on it undermined her assessment: there is no intervisibility between the Site and the asset (confirmed in XX by reference to the ZTVs). She suggested that they could be seen in the same view from the sea, but was unable to confirm from where, or even from how far out to sea such a view would arise. Her claim of an impact on Rufus Castle was wholly implausible and should be given no credence. The reality is that no impact arises for that asset which is 3km from the Site as the crow flies, and not at all intervisible with it.
- I10. NB was also the only heritage witness to contend that there was a cultural heritage component to the setting of the WHS. HK and DC do not support this view. Her evidence, and the R6's case generally in this regard, is based on taking individual sentences or phrases in the Partnership Plan out of context, and reading them with no regard to their context or the nature of the OUV itself, which is concerned wholly with geological and geomorphological matters.
- I11. See also PPL's Opening paras. 52-53 and the fact that development at and around the Port is not listed as one of the "main management issues"⁴⁴ by UNESCO.

⁴⁴ <https://whc.unesco.org/en/list/1029/> under "Protection and management requirements".

112. Even if there were a built cultural heritage component to the WHS' setting, that would be an issue if, and only if, there were some identified pathway by which the Proposal could generate built cultural heritage harm to the OUV. No credible pathway was identified. The limited cultural heritage references in the Jurassic Coast Partnership Plan [CD12.09] should be considered in their context and their lack of linkage with the built form of the Port noted. See e.g. the discussion following R4 on p 45. The discussion of cultural links on p. 40 demonstrate that they are not concerned with development at the Port i.e. built heritage but to cultural links in a more general sense e.g. –

“There are deep connections between the globally important geodiversity of the Jurassic Coast and the cultural stories of Dorset and East Devon. The intimate relationship between people and geodiversity has developed over thousands of years, as geology has influenced the origins, historic fabric, traditional industries and heritage collections of distinctive local communities. For example, high quality flint from Beer in East Devon was used throughout the South West in the Stone Age and then actively quarried during the English civil war for use in muskets. In a sense, the World Heritage designation itself is a part of a continuing story of human interaction with the coast, reflecting a modern appreciation for this special landscape and a desire to protect it for future generations. Crucially, this pattern of interconnectivity helps to develop the ‘String of Pearls’ concept by providing further impetus for telling truly rich and distinctive local stories.

One key area of interaction between the World Heritage Site and culture has come through the arts. There is a long history of artists drawing inspiration from the Dorset and East Devon coast and targeted projects, such as the Jurassic Coast arts programme, have highlighted how collaborations with the arts sector can contribute to Site management and help to develop professional practice for all involved. A recent report by the Heritage Alliance reveals how often heritage and arts depend on each other, and calls for more work to be done to strengthen this connection.”

113. In NPPF terms, the WHS is treated as a heritage asset (see e.g. NPPF §§194, 212, 213) and although appearing as such, footnote 70 recognises that

“Some World Heritage Sites are inscribed by UNESCO to be of natural significance rather than cultural significance; and in some cases they are inscribed for both their natural and cultural significance.”

Here there is no such dual significance and the application of the historic environment policies of Section 16 of the NPPF must be approached in the light that it is for their natural not cultural significance. See also PPG Historic Environment paras. 028-038. The reference in para. 033 to -

“The UNESCO Operational Guidelines seek protection of “the immediate setting” of each World Heritage Site, of “important views and other areas or attributes that are functionally important as a support to the Property” -

must be read in the context of the specific designation and in this case its geological nature. The fact that they may be assets of the “highest significance” (NPPF and PPG) does not mean that it has such cultural, as opposed to natural, heritage significance.

114. Attempts to apply policies in the PNP by BM in XX of WFS, and in evidence with NB were misconceived as were the inflated contentions that harm would be caused to the

non-designated piers: Policy Port/EN4 and Port/EN5 concerned only “*Development proposals that maintain or enhance the character and setting of any designated or non-designated heritage asset and which enable the asset to be used in a manner commensurate with its heritage significance will be supported*” (EN4) and “*Development proposals to protect, conserve and/or enhance the historic piers of Portland will be supported*” (EN5).

115. Finally, considering the heritage balance, WFS adopts two approaches to this:
- (1) For those assets directly affected by the heritage mitigation scheme, an internal heritage balance was carried out. Given the very minor nature of the harms to those assets, and the very significant benefit of the mitigation scheme, the result is a net heritage benefit, so that in terms of para 208 no LSH remains;
 - (2) For those assets not directly affected, it is necessary to carry out the para 208 balance. The heritage benefit of the mitigation scheme is a “public benefit” of the scheme capable of forming a benefit for the para 208 balance, and WFS confirmed that that benefit alone is capable of outweighing the heritage harms even under the para 208 test, which gives great weight to the heritage harm. When the other public benefits (identified by NR) are taken into consideration as well, the heritage balance is surpassed by an even greater margin.
116. For those reasons, there is no heritage basis on which to resist the Proposal and no breach of heritage policy, either in the NPPF or Development Plan. RfR3 should therefore be rejected.

Visual and landscape issues (including WHS)

117. The second RfR, and the second of the two topic-based inquiry sessions, concerned the L&V impacts of the Proposal. This session included consideration of the alleged impact of the proposal on the WHS, which is the reason given for recovery by the SoS.
118. We begin by considering the nature of the WHS and its protection.

The WHS

119. All witnesses agreed that the OUV of the WHS was, in summary, its geological and geomorphological value⁴⁵. The OUV is explicitly not concerned with the landscape or natural beauty of the area: the attempt to have the area inscribed for landscape reasons was rejected by the World Heritage Committee⁴⁶, as NW accepted in XX, and the detailed description of the OUV in the Partnership Plan makes no mention of the WHS’ appearance. Nor does the statement of OUV make any reference at all to built heritage matters.
120. This is significant, because as JM emphasised, “*all Site protection and management efforts*

⁴⁵ CD12.9, page 16.

⁴⁶ CD12.6, page 50.

*should be seen through the lens of [OUV]*⁴⁷. It is common ground between the main parties that there is no direct impact on the OUV itself; the alleged impacts instead arise through the setting of the WHS. The setting of the WHS, and in particular the consideration of the possible impact of the Proposal on the setting of the WHS, must be considered through the “lens” of the OUV.

121. Indeed, the PPG treats the OUV as having a role similar to that of “significance” in the context of built heritage assets⁴⁸: just as heritage policy is aimed at protecting the significance of heritage assets, so WHS policy is aimed at protecting OUV.
122. Put another way, the relevant issue is whether the Proposal will harm the OUV via the setting of the WHS.
123. As to what that setting is, the documents indicate that the landscape setting of the WHS is, wholly if not entirely, provided by the designations of the AONB and the Heritage Coast:
 - (1) The Partnership Plan indicates that – as is common ground – there is no defined buffer zone for the WHS. The reason for the absence of a buffer zone, however, is because “*the wider setting of the property is well protected through the existing designations and national and local planning policies*⁴⁹.” The Partnership Plan lists the relevant designations⁵⁰; the only ones relevant to landscape are the AONB and the Heritage Coast. No national or local policies relevant to setting protection are identified.
 - (2) The Partnership Plan explicitly addresses the setting of the WHS. It identifies two elements, of which the first – the experiential setting – is the relevant one for our purposes⁵¹. The definition notes that the surrounding landscape and seascape should be regarded as the setting of the WHS and includes specific reference to the AONB in particular as important for helping to determine how the setting is enjoyed.
 - (3) In passing, we note that the functional setting definition is concerned with preventing later direct impacts on the fabric of the WHS through the need for further coastal defences, for example. No party has suggested that any impact on the functional setting of the WHS arises from this Proposal.
 - (4) The LP itself notes that the WHS “*and its setting are protected through a wide range of international, national and local designations made either for geological, wildlife or*

⁴⁷ CD12.9, page 20, para 2.2.

⁴⁸ CD9.21a.

⁴⁹ CD12.9, page 17.

⁵⁰ Table 1, page 29.

⁵¹ Page 22.

*landscape value*⁵². The only relevant landscape designations are the AONB and the Heritage Coast, as JM confirmed in RX.

- I24. In that context, it is highly significant that both JM and NW agreed that the Proposal gives rise to no significant adverse effects on the AONB.
- I25. Thus there is no relevant adverse impact on the primary mechanism by which the setting of the WHS is preserved. The other potential pathways for adverse impacts on the WHS will be considered in the next section.

The L&V assessments

- I26. PPL's evidence on L&V issues was presented by JM.
- I27. He explained that, as for heritage, the nature of the Port as the receiving context of the Proposal is of central importance. That receiving context is characterised by the thriving, dynamic, utilitarian working port with many existing large buildings, large ships, and industrial and marine artefacts⁵³. Furthermore, as JM explained, the Site is unusual, indeed unique in his experience, in that the proposed ERF would not be the most dominant landscape feature.
- I28. In that context, JM explained the methodology which he adopted. That methodology is set out in detail in his appendices⁵⁴. As he explained, the methodology follows the GLVIA approach, including – importantly – ensuring that the determination of the significance of impacts is assessed using professional judgment, rather than simply relying on the mechanistic application of a matrix. JM's approach is thus able to take factors such as the nature of the receiving context into account in a more nuanced and site-specific way than a matrix-based approach does. As JM said in XX, his approach is less fuzzy than a matrix-based one, for those reasons.
- I29. It is submitted that JM was right to regard his approach as preferable to that of the LVIA and indeed of NW, who adopted the LVIA matrix approach.

Landscape character

- I30. Applying his approach, JM assessed two new LCAs, as had NW: they are Chesil Beach, the Fleet and Causeway; and Portland Peninsular⁵⁵. JM's approach is set out in his Appendix JMI. As is evident from that appendix, JM's analysis of those important character areas is detailed, systematic, and GLVIA-compliant, and includes in each case detailed narrative explanations to support the judgments which he reached. In each case, JM concluded that there were no significant adverse impacts on these character areas: the addition of the ERF in the views from the LCAs will represent simply another

⁵² CD7.2, page 23, para 2.2.9.

⁵³ JM PoE 5.4.

⁵⁴ App JM3.

⁵⁵ App JMI.

element of operational development in what are already views heavily influenced and informed by the existing operational development (as well as consented development such as the Dragon cement silo, highly evident in views from these LCAs).

131. By contrast to JM’s systematic, judgment-based approach, NW’s approach to these LCAs consisted of a single short paragraph on each⁵⁶. Those short paragraphs make no real attempt to link the assessments back to the baseline studies. That omission matters, because (for instance) NW’s approach to the Portland Peninsular LCA approaches the magnitude of change on the basis of a breach of the skyline, without recognising or engaging with the baseline study’s observation that the skyline of that LCA is already “*dominated by manmade structures and features.*”⁵⁷ Additionally, NW provided very limited, if any, narrative explanations to support his judgments on these LCAs.
132. In the circumstances, JM’s approach to these two LCAs is the more convincing and should be preferred.

Seascape

133. JM and NW agreed that the Proposal raises no concerns about seascape impacts from the Proposal. The LVIA too concluded that no significant adverse seascape effects would arise⁵⁸.
134. Despite the broad agreement from these independent experts, the R6 has advanced a case that there is an unacceptable seascape impact arising from the Proposal.
135. Its case in this regard is based on the evidence of JdB.
136. JdB, however, is not an impartial or objective witness on this subject. As his own proof makes clear⁵⁹, and as he confirmed in XX, he is a member of the local community, and his proof includes the view that the Proposal would devalue the local area as a place to live⁶⁰. An expert witness cannot be impartial or objective in such a case. JdB’s assertions as to the objectivity of his views do not alter that fact: the very reason why independent experts avoid giving evidence on matters which personally affect them is because their views can be unconsciously skewed away from an objective view and towards one which supports their personal interests (in this case, his perception of the value of his home). That conflict of interest is fatal to the credibility of JdB’s evidence, and his views should not be accorded weight as those of an expert.
137. In any case, as JdB agreed in XX, the approach he adopted in his proof was not GLVIA compliant. It is in fact nowhere close to being an LVIA – no attempt is made, for instance,

⁵⁶ NW paras 4.41; 4.42.

⁵⁷ CD12.30, para 7.5.

⁵⁸ CD1.36j1, para 9.122 in respect of the man-made harbour SCA.

⁵⁹ JdB, foreword para 2.

⁶⁰ JdB para 5,15.

to assign magnitudes to sensitivities or impacts, and no attempt is made to identify which of his purported impacts may be significant. The value of his evidence is therefore very limited: the reason the LVIA approach exists to enable robust, replicable and explicable solutions which can inform decision makers. JdB's views do not have those characteristics, and are therefore of limited if any use.

- I38. The R6's case on seascape impact turned, to a significant degree, on allegations of a failure to assess seascapes, which in turn were based on the absence of what the R6 regards as relevant seascape views. As JM emphasised, however, the absence of a viewpoint is not the same thing as an absence of assessment. No LVIA can ever include every possible viewpoint, and a degree of professionally-informed inference is always required of the decision-maker. As JM confirmed, there is plenty of evidence before the inquiry to enable an informed view on seascape impact to be made, and JM's informed view was that there was no significant adverse impact on any seascape character area⁶¹.
- I39. It is important to note that the JCT itself, insofar as it identified clear opinions⁶², considered the Slumped Cliffs SCA to be unaffected in any meaningful way by the Proposal⁶³. To the extent that the R6 asserted otherwise, it is the only party to have made such a claim, and its claim is not based on objective expert evidence. On the JCT's position, the R6 suggested in closing [AD.18] that deference and great weight should be given to JCT's concerns. That submission ignores that the JCT explicitly acknowledged that its concerns would need to be investigated by a landscape expert. As JM explained in evidence, he has carried out that assessment, and has found no cause for concern. The JCT's concerns have thus been addressed, and there is nothing to which BM's supposed "great weight" can attach.
- I40. For those reasons, the SoS can be satisfied that the Proposal will not adversely affect any of the seascape character areas in any significant way.

Visual impacts

- I41. As to the visual impact of the Proposal, JM's opinion was based on the LVIA viewpoints, supplemented by a number of additional viewpoints of his own⁶⁴.
- I42. His summary findings on those supplementary viewpoints are set out in his proof⁶⁵, and confirm that there is a significant visual impact from only a single receptor⁶⁶.
- I43. Critically, JM's evidence shows that there are no significant adverse effects on any view

⁶¹ Confirmed in re-X.

⁶² As opposed to simply identifying concerns for later assessment by an expert: compare the language in CD4.51 table 2 as between the slumped cliffs and the active coastal waters for instance.

⁶³ CD4.51, page 5.

⁶⁴ JM4.

⁶⁵ Table 6.1.

⁶⁶ The east end of the Naval Cemetery.

relevant to the Heritage Coast, or on any other receptor which affects the WHS.

144. The Heritage Coast is an important designation in this context, since it is that (alongside the AONB) which provides the landscape protection for the setting of the WHS.
145. Is there any significant impact on the WHS' OUV via an impact on the Heritage Coast? The evidence of JM shows that there is not. JM's visualisations show that the current views of the Site from the various Heritage Coast receptors⁶⁷ are characterised by:
- (1) The extensive amount of existing port-related development, some of it of poor design and aesthetic quality (no witness was prepared to defend the presence of "Beirut Towers" in the foreground of the views for instance);
 - (2) The regular breaking of the skyline by a range of maritime paraphernalia such as cranes, platforms and ships (not just cruise ships, but RFA vessels as well: as JM confirmed, there is one or more ships in the harbour almost all the time). JM confirmed that such paraphernalia is highly relevant to the assessment of the Proposal's visual impact;
 - (3) The intrusion of the consented Dragon cement silo in the views from a number of important angles; not only does the silo appear as tall as the ERF from these distances, but in a number of views it appears directly in front of the ERF, significantly reducing the ERF's visual impact;
 - (4) The complete retention of the distinctive "wedge" landform of the island itself. It is fanciful to suggest that that landform's appearance and visual dominance is undermined by the presence of the ERF: the visualisations speak for themselves. That retention is important, because it is the allegation of a significant adverse visual effect on the landform of the island which forms the central logic of DC's second RfR.
 - (5) Both the R6 and DC have relied on the Navitus Bay decision [CD12.08]. That decision is of limited assistance in this inquiry, for the simple reason that it concerned a very different form of development with a very different kind of impact: that appeal was about a proposal for almost 200 wind turbines, spread over an area of 153 square km, and which gave rise to adverse impacts on the AONBs which form the WHS's setting. In this case, of course, it is common ground between NW and JM that the ERF will not adversely affect the AONB.
146. The views of the ERF across the bay from the receptors adjacent to the WHS to the east of the Site⁶⁸ do not suffer any significant impacts either. The view of the Site from that location is, once again, characterised by the existing Port development, so that the

⁶⁷ See JM4 figures JM19-JM28.

⁶⁸ JM2 reassessment of viewpoints 9 and 10.

underlying nature and composition of the view will not be materially altered by the addition of the ERF.

147. As for the residential receptors, JM identifies that there are a considerable number of properties that would experience a change in view as a result of the introduction of the ERF. The effects on them, however, would not be significant due to the fact that the fundamental nature of the views will not change. There are currently clear, long-distance views across a harbour to a working port at the foot of Portland, and this will continue to be the case when the Proposal is developed.
148. There is only one view that will be significantly impacted: the view from the eastern end of the Naval Cemetery⁶⁹. That is because the top of the stack will appear in the view, where at present none of the port can be seen. That is the extent of the adverse impact. For a scheme of this nature to be so limited in its significant impacts on visual receptors is a sign of the design quality and the suitability of its location.
149. Put simply, the ERF will appear as another part of the existing maritime and industrialised view which is already present. Many of the arguments to the contrary have in truth been driven by emotional hostility to the Proposal, rather than having anything to do with an objective assessment of its merits. The reality is that, once constructed, it will be no more visually detracting than any of the existing built development which is already there, and its presence will be entirely subservient to the landmass of the island, so that the experience of approaching Portland will be broadly unchanged.

Aviation lighting

150. A great deal of attention from local objectors centred on the aviation lighting to be installed on the top of the stack.
151. Those concerns are misplaced. JM confirmed that there are two options available for the provision of lighting:
- (1) The first, and preferred, option is an infrared light which is invisible to the naked eye, and which will thus have no visual impact at all. The MoD has confirmed that it is content with this option⁷⁰.
 - (2) The alternative is a red light. That light, however, would be no brighter than a single car brake light⁷¹, and would thus be of negligible impact in visual terms.

The plume

152. The plume from the stack, too, attracted much comment.

⁶⁹ JM viewpoint 17.

⁷⁰ Email dated 19.9.23.

⁷¹ Confirmed by JM in evidence.

153. Again, concerns about the plume are significantly overstated. The evidence before the inquiry shows that, given the prevailing meteorological and topographical conditions, the plume will be visible for approximately 22 hours per year during the daytime⁷². At night, during the last 5 years there have only been 29 hours in total during which the plume would have been visible, and 26 of those occurred during the abnormally cold conditions in 2018⁷³.

154. In other words, the plume will be so infrequent as to be negligible as a consideration.

Tranquillity

155. A large part of the R6's case under this heading was concerned with the impact of the Proposal on tranquillity.

156. It is important to set this issue in its policy context:

(1) LP Policy ENVI⁷⁴, and in particular its first limb, was relied on by CB for the R6 as the main DP policy through which tranquillity became relevant. As he accepted in XX, however, that policy is explicitly concerned with the AONB and the Heritage Coast, and not with tranquillity impacts per se. The Site however is not in either of those designations, and nor, critically, were any of CB's receptors. Indeed, CB did not even know where the AONB was. CB's reference to the supporting text of the policy does not assist him, since it is well-established that the supporting text to a policy cannot add to its content⁷⁵, and ENVI does not contain any tranquillity-based protection for any area beyond the designations.

(2) The same is true of CB's reliance on the WP. CB cited a passage from the supporting text to Policy 14⁷⁶, yet even the supporting text is clear that it is concerned with the AONB and Heritage Coast alone.

157. As to the evidence itself, CB fairly accepted that, of the receptors he was asked to consider, the Naval Cemetery was affected to only a negligible degree by the Proposal. That acceptance further undermined JdB's evidence on tranquillity, since it was that very receptor which he suggested would be the most significantly impacted.

158. What the R6's tranquillity case amounts to, therefore, is the suggestion of some reduction in the tranquillity of receptors on either side of the proposed permissive path. Those receptors are not protected by any policy designation at all. To the extent that the area in question is tranquil, the creation of the permissive path, and the introduction of a reasonably tranquil walking option where at present there is no public access at all,

⁷² JM PoE para 6.5.21.

⁷³ SO rebuttal para 3.2.4.

⁷⁴ CD7.2, page 24.

⁷⁵ Cherkley.

⁷⁶ CD7.1, page 110.

is hardly a loss.

159. And the tranquillity of those receptors is not made out in any case. CB explained in XX that his analysis of the amount of time that the receptors were affected by port noise was about 50%, and that that was based on his client's instructions. CB was not in a meaningful position to test the reliability of those instructions, having been present at his receptors for less than 24 hours in total across a single weekend. His client's instructions seem not to have extended to the impact on the area of things like the artillery range to the North, despite that being a source of significant noise impact for a significant amount of time⁷⁷.
160. The reference in BM XX of NR to LP ENV 16 (amenity) also did not assist the R6 parties given that in reference to impact of noise on amenity the policy is engaged if it "*will detract significantly from the character and amenity of the area or the quiet enjoyment of residential properties*" which is not the case here and must apply in the existing context.
161. The R6 suggested in closing [AD.18] that PPL had not presented any noise evidence to challenge that of CB. That is incorrect: NR appended an assessment from Arup to his rebuttal (NR19), which explains the analytical shortcomings of CB's approach.
162. The R6 in closing also sought to make a link between the alleged loss of tranquillity at and around the proposed permissive footpath, and the setting of the WHS. That is a very tenuous argument indeed: the introduction of some level of additional noise on a path which is not even in the AONB or Heritage Coast, let alone in the WHS itself, will obviously not affect the WHS's geological and geomorphological OUV.
163. Overall, therefore, the R6 has not come close to making out its case on tranquillity, and even at its highest, its tranquillity case is a minor consideration of limited weight anyway.

Policy

164. The second RfR identifies four DP policies which bear on landscape issues. As JM explained, none of them is contravened by the Proposal:
- (1) WP Policy 14⁷⁸ is complied with in landscape terms. The AONB and the WHS OUV are conserved by the Proposal, and thus no unacceptable impacts arise.
 - (2) LP Policy ENVI⁷⁹ too is complied with. It requires the protection of the character, special qualities and natural beauty of the AONB and Heritage Coast, taking into account the WHS and AONB Management Plans. None of those designations is significantly affected by the Proposal, so the policy is not breached.

⁷⁷ NR rebuttal, App NR18, page 18.

⁷⁸ CD7.1, page 112.

⁷⁹ CD7.2, page 24.

- (3) NP Policy Port/EN7⁸⁰, third bullet, relates to the need to reflect and reinforce the existing character of the locality. The Proposal does that, as JM confirmed; and
- (4) NP Policy BE2⁸¹ requires the absence of significant impacts on the character of the area (bullet i), and that it reflects the maritime and industrial character of the area (bullet iii). Again, that is complied with by this Proposal.

165. As for national policy, the RfR identifies NPPF para 180 (the successor to what was previously para 174) as the appropriate test. It is unclear, however, how that policy (which is principally concerned with controlling the character of things like valued landscapes and the undeveloped coast) is said to be engaged. However it is said to be engaged, given the very low and very localised impacts of the ERF, that policy is not breached.
166. Finally, a word on the national policy approach to the WHS. The R6 has suggested that, since a WHS is a designated heritage asset, it falls to be assessed against the cultural heritage policies of the NPPF, in the same way as a Listed Building would be. That is an arid debate, however: what is clear is that the OUV of a WHS is the thing that is protected, and there is no harm to the WHS's OUV arising from the Proposal. In the language of the NPPF's heritage chapter, there is no harm to the asset's significance. And even if some harm is identified, that harm would be equivalent to LTS harm at the lowest end of the scale, and as such clearly capable of being, and in fact, outweighed by the Proposal's substantial public benefits.
167. RfR2 does not therefore withstand scrutiny.

Design and delivery considerations

168. The technical case for the Proposal is set out in the technical evidence of SO.

Shore power

169. SO explained that all of the RFA ships that berth in Portland harbour are already equipped to receive shore power. Additionally, about 60% of the cruise ships that come to the harbour are so equipped, and that number is expected to rise in future.
170. The Port's representations at NR2 (6.11.23)⁸² explains in more detail why shore power is important to the commercial interests of the Port to attract cruise custom, given that cruise companies are taking account of the availability of shore power when planning itineraries, and that the maritime sector is also under requirements to decarbonise. The same is true of the RFA fleet, which already accepts shore power.

⁸⁰ CD7.4, page 35.

⁸¹ Ibid., page 42.

⁸² See also the letters from Carnival in CD 11.1 Appendix E.

171. As a private line provided by a commercial operator, the ERF will be well placed to provide commercially attractive power to visiting ships. Since the ERF generates its own power, rather than being dependent on the grid (as is the case in Southampton⁸³), the price of shore power provision is not linked to the commodity prices of gas. That level of commercial certainty and consistency is highly attractive in the power market, as in many markets.
172. Shore power is also a key means by which cruise liners can meet their commitments to carbon reductions in future – an important part of the corporate strategies of most companies in the present climate.
173. TN raised several alternatives to the ERFs, which he said were viable means of providing shore power at the Port. Those included an enhanced connection to the Grid, and the use of batteries. A number of IPs raised further suggestions such as solar or wind energy.
174. TN's alternatives are all hypothetical in the short to medium term. No-one is considering providing power in those ways. There are no developed plans that could meet any of the need for shore power. By contrast, the ERF is a real option, not a hypothetical one.
175. In any case, the alternatives are either technically unfeasible or commercially unviable:
- (1) SO was XXd on, amongst other things, an upgraded grid connection as an alternative. Such an upgrade however is not possible until 2037 at the earliest⁸⁴, a full decade after the ERF would become operational and begin delivering its benefits. Further, it is clear that there is no current spare capacity at the Port at present: if there were, then the Bibby Stockholm would not require the diesel generators which it uses for its own power⁸⁵. The ERF is obviously preferable in air quality and climate terms to the need to run diesel generators at the Port. Indeed, as SO has assessed, the use of shore power will improve AQ at the Port and in the surrounding area.
 - (2) As for batteries, the electricity to charge them needs to be brought in and there is no realistic proposal as to how the batteries would be charged. Even if there were a source of electricity from the grid, the number of batteries required would cost tens of millions of pounds, as SO explained. It is not a commercially viable option, and DC has not presented any evidence to the contrary.
 - (3) Wind and solar were raised by several IPs. They are not workable in this location, both because of their intermittent nature and, in the case of solar in particular, because of the lack of suitable space for the size of array which would be

⁸³ SO in EiC.

⁸⁴ NR PoE para 8.2.2.

⁸⁵ SO Note 19.12.23.

required⁸⁶.

(4) A range of other alternatives raised by IPs in correspondence are also considered, and ruled out in SO's main proof as even less feasible⁸⁷.

176. It was suggested to SO in XX by SBKC that the Port is not in a position to require the adoption of shore power by visiting ships. That takes DC nowhere since the commercial reality is that both the Port and the cruise companies also need to decarbonise and shore power is a key means by which that can be achieved. It is highly unlikely that a suitable commercial deal for shore power would not be done.

177. The Rule 6 submissions were wide ranging in their attempts simply to dismiss the characteristics of shore power, making generalised statements about its provision and attractiveness of shore power to the Port and cruise ships (evidenced by correspondence from both and supported by SO). They should be rejected in the light of PPL's evidence and the absence of any expert evidence on the topics from the Rule 6 parties.

178. Thus, the Proposal is the only viable, feasible and available means of delivering the many air quality and climate benefits of shore power.

District heating

179. The Proposal does not include a DH system. It is, however, designed so as to DH ready in future. That is entirely standard practice for a ERF proposal; indeed, as SO said, the DH plans for the ERF are more developed than the market norm given the stage the ERF has reached in the planning process: compare the position at Northacre [CD10.1]. Moreover, a memorandum of understanding has been reached with the MoJ.

180. SO explained that, given the nature of the anticipated DHN (which would primarily but not exclusively heat HMP the Verne and the YOI), no additional pump house plant is required. Further, while a backup boiler is included in SO's costings, such a backup is unnecessary as the prisons already have their own⁸⁸.

181. SO identified three potential routes by which a DHN could be established with the prisons on the top of the island. All three are viable. The first two of the routes are set out in the DH Paper⁸⁹. A new, third, route was presented by SO to the inquiry, and involves passing from the Port along public roads, and into the Verne via an existing bridge at its southern end. While the details of the various routes will be considered at the planning stage for the DH proposal, it is sufficient for present purposes to note that all of the routes are technically feasible. Indeed, as SO confirmed, the DH paper is based

⁸⁶ NR PoE para 8.2.3.

⁸⁷ NR section 8.2.

⁸⁸ SO in EiC.

⁸⁹ CD2.07.

on the specific heat load identified by the MoJ as being required by the prison estates on the top of the island and the proposals have been developed in consultation with the MoJ's own retained engineers.

182. TN attacked the viability of the DH scheme, by seeking to derive its capital cost by reference to the South West Exeter DH scheme⁹⁰. As SO explained in chief, however, that is a flawed exercise, since the DHS which PPL is proposing is not comparable with that at SW Exeter. In particular, the Exeter scheme serves around 4,000 dwellings, rather than two large prisons, and as such has a far higher requirement for pipelines (and a resultant far higher capital cost). The result is considerable over-estimation of cost by TN. BM's submissions for the Rule 6 parties ignored the evidence from SO and was based on no expert evidence advanced by the Rule 6 parties.
183. For those reasons, the DH is feasible, viable, and desired by its anticipated users. It carries at least some positive weight as a future benefit which the ERF will facilitate.

Carbon capture and storage

184. Between the submission of the ERF application in 2020 and today, the regulatory regime around carbon emissions has changed⁹¹, so that there is now a significant economic incentive for the provision of CC at the ERF, as well as the environmental benefits which flow from it.
185. As with the DH system, the Proposal does not include a CCS, but is capable of accommodating one in future⁹². SO demonstrated the area within the Port which is available for, and which could accommodate, a CCS in future⁹³. BM in closing ignored SO's evidence that CCS is now viable and also appeared to ignore much of SO's evidence. SO confirmed that the CCS facility would take up about half of the red line area he identified.
186. As to the fate of captured carbon, SO explained that the Port location of the ERF enables the CCS to be removed by liquefying the captured carbon, and removing it to the appropriate storage facility by ship. Such a mode of transport is far more practical than transportation by road, which is the only CCS option available at Canford (which is landlocked).
187. Thus, as SO explained in his proof, the Proposal meets the relevant tests for CC readiness which the Government has set out⁹⁴, and is therefore entitled to the positive benefit which that status brings in the planning balance.

⁹⁰ SO rebuttal 2.1.24.

⁹¹ SO PoE section 2.5.

⁹² Canford does not seek permission for a CCS either and has (see above) identified an inadequate location for one.

⁹³ SO rebuttal, page 20, red line.

⁹⁴ SO para 2.5.7.

Climate change

188. SO prepared and presented a series of carbon reports for the Proposal⁹⁵. The most up to date carbon assessment is at SO3, subject to the updates which SO explained in chief. That SO3 assessment reflects the improved efficiency of the ERF, the fullness of the shore power potential of the Port location, and the Government's most recent statistical updates.
189. SO analysed the carbon implications of treating waste at the ERF, including the carbon generated by the HGVs bringing waste to the Site, the emissions of the ERF itself, and the emissions from the transport off-site of the residue of the ERF process (principally IBA), set against the displacement of emissions which would otherwise be generated by ships taking advantage of shore power, and power stations where the ERF's energy is instead exported back to the grid.
190. SO compared the carbon implications of the Proposal with a series of counterfactuals, the principal one of which is what actually happens to Dorset's waste at present⁹⁶.
191. The results of that assessment are striking. Even without the carbon benefits of shore power delivery, the ERF will produce around 30,000 tpa of CO₂ less than the current landfill approach which DC uses⁹⁷. In a maximum capacity case, that benefit increases to 40,000 tpa. Those benefits increase further once shore power is factored in, and even further if the ERF's DH potential is realised.
192. As SO explained in EinC, when the shore power provision is factored in, the ERF is preferable to landfill even if improvements in landfill gas capture are taken into account, and even if Grid decarbonisation measures are assumed to take place as planned.
193. SO also examined other proposed waste disposal options for DC's waste, including a range of UK options as well as European ones at Rotterdam and Gothenburg⁹⁸. His conclusion is that, when shore power and DH benefits are factored in (as they should be), the Proposal has the lowest emissions of *any* available disposal option.
194. The final counterfactual scenario which SO examined is to compare Dorset's current residual waste management strategies with the ERF⁹⁹. The results show that even without shore power or DH, the ERF generates 10,000 tpa less CO₂ than those existing approaches. That benefit increases even further when shore power and DH are factored in.
195. It follows that the Proposal is far better for the climate than what is happening at

⁹⁵ Summarised at SO section 3.1.

⁹⁶ SO para 3.2.3.

⁹⁷ SO3 para 3.4.1.

⁹⁸ SO3, table 19.

⁹⁹ SO3, table 20.

present. It is better than any of the proposed alternative fates for the management of Dorset's waste. It should be welcomed by those who wish to see the climate emergency addressed.

Air quality

196. SO's evidence confirms that the ERF will be beneficial particularly in terms of nitrogen oxides and particulates and will not have a significant negative impact for other pollutants.
197. This conclusion follows from the assessment that the emissions from the ERF are less than the ship emissions (from both cruise ships and RFA vessels) which currently occur and which will cease to occur once the ER is providing shore power¹⁰⁰. That is true even on a worst-case analysis which assumes that the ERF is operating at its maximum permitted emissions rate all year round¹⁰¹.
198. TN suggested that the ERF would create more emissions than it would offset¹⁰². As SO explained, however, TN was wrong: he had used total GHG emissions from the ERF and compared them to a far more limited range of emissions (just NOX and particulates) from the berthed ships. TN was not comparing like with like. When a proper basis of comparison is made, the ERF can be seen to be the environmentally preferable option.
199. SO also explained that the backup diesel generator at the ERF is of no material concern: it produces 500 times lower emissions than the ERF itself¹⁰³. The only possible concern arising from it is in respect of the ecological site next to the ERF, and both the EA and NE are content that that site will suffer no adverse impacts.
200. The same is true for HGV emissions. Even when the Boot Hill area is assessed as though it were an AQMA (which it is not), the results of the assessment still demonstrate a negligible effect on air quality in that location¹⁰⁴.
201. The R6 suggested¹⁰⁵ that the way in which SO had modelled the benefits of the ERV across the lifetime of the Proposal was inappropriate, because the benefits declined with time and the ERF may operate beyond its 25 year design life. The approach of the R6 in this respect is flawed: as SO confirmed in Re-X, it is not appropriate to assume that the modelling assumptions for the ERF will remain applicable beyond the design life, and the uncertainties of impact at such a remote distance are simply too uncertain to model with any accuracy. SO was right not to extend his analysis as far into the future as the

¹⁰⁰ SO5.

¹⁰¹ SO5 para 4.2.10.

¹⁰² TN para 3.24.

¹⁰³ SO para 4.2.19.

¹⁰⁴ SO PoE para 4.3.1 et seq.

¹⁰⁵ In XX of SO

R6 suggested to him.

202. The shore power potential of the ERF is a unique opportunity to secure a net improvement in air quality for the residents of Portland and Weymouth, as well as for the occupants of the Bibby Stockholm. It will benefit the sailors and other recreational users of the harbour and surrounding waters, for the same reason.

Human health and process emissions

203. A number of allegations as to the human health implications of the Proposal were made by the IPs.
204. There is nothing in these concerns, which are frequently raised at inquiries into ERFs, and are based on misconceptions and assumptions rather than scientific analysis. They are also primarily a matter for the Environment Agency and the permitting process.
205. SO has carried out a detailed study of the most up-to-date scientific literature on the possible health implications of persistent pollutant emissions from ERFs. The results of those studies are consistent: there is no evidence of any association between ERF operations and any of the identified potential human health outcomes¹⁰⁶.
206. At the IP day, one of the IPs indicated that he had found papers which suggested that ERFs may have a health impact. SO has now been able to consider these papers. He explains, in his supplementary technical note, that those papers are both dated and not specific to the UK regulatory context. By contrast, SO's work draws on recent, UK-focussed analysis. SO's work in this regard is thus to be preferred, especially when it is borne in mind that neither DC nor any statutory consultee has raised human health concerns.
207. SO's supplementary note also addresses a number of other miscellaneous concerns raised at the IP session. The upshot is that none of the IP concerns is well-founded. This includes the matters raised by Dr Webb and by UKWIN.
208. Having received SO's supplementary note, UKWIN submitted yet further evidence in response to it. UKWIN's behaviour in this respect is stretching the limits of acceptability: if it wished to play a full role in the inquiry, it should have sought R6 status, which it did not, and be bound by the procedure rules. Nevertheless, the latest UKWIN submission does not take things any further. It maintains the suggestion that the biocarbon content in the ERF feedstock could be reduced further but provides no evidence at all in support of that allegation; SO's evidence on the point, by contrast, is fully evidenced and based on published sources. On sequestration, UKWIN's latest correspondence simply repeats points which SO has already addressed in his PoE, rebuttal and subsequent technical notes.

¹⁰⁶ SO PoE para 4.5.18.

Other matters

209. In addition to the matters raised by DC and supported by expert evidence, there are a number of other matters raised specifically by the R6 and by the IPs.
210. As a preliminary point, it is clear that a number of local objectors' concerns are less to do with the evidence of impact on matters like air quality and transport, than they are to do with the perception of adverse impacts. The weight which can be attached to such perceptions, however, is severely curtailed if the perceptions are not grounded in objective evidence. The position was explained by Glidewell LJ in *Gateshead MBC v SSE*¹⁰⁷ as follows:
- "Public concern is, of course, and must be recognised by the Secretary of State to be, a material consideration for him to take into account. But if in the end that public concern is not justified, it cannot be conclusive. If it were, no industrial development—indeed very little development of any kind—would ever be permitted."
211. Those words are apt to cover most if not all of the points to be addressed in this section, where all the expert evidence, both from independent experts and from statutory consultees, points in one direction.

Socio-economics

212. The R6 evidence on the socio-economic impact of the Proposal was given by DT.
213. It goes without saying that DT is not an independent witness and is a member and leader of the R6 itself. Nor is she an expert in the matters which she raised and is not able to speak independently on such matters including impacts on tourism. The concerns seemed to be based on an assumption of damage and ignores the existence of a busy working port.
214. Nevertheless, SE has produced a detailed independent analysis of the position. His is the only expert evidence and failure to call him should not diminish the weight to attach to his evidence especially since it was not a reason for refusal and not a matter of concern to the WPA, DC. It is not necessary to call experts in person to meet the demands of Rule 6 parties especially since they cover a very wide range of issues unsupported by independent experts and it would unduly and disproportionately extend the inquiry to do so. There is ample evidence to rebut the Rule 6 case on this issue.
215. SE's evidence makes clear that the Proposal will give rise to no meaningful socio-economic harms and, conversely, it will generate a significant suite of benefits¹⁰⁸:
- (1) That with Shore Power, a forecast that by 2034, the combined cruise ship visitor and crew expenditure will have increased to £10.07m, which would be sufficient to support 119 net direct and indirect jobs, an increase of nine jobs from 2025. By

¹⁰⁷ [1994] 1 PLR 85, page 95.

¹⁰⁸ Summarised at NR para 7.2.16.

2050, the combined visitor and crew expenditure will have increased to £10.79m, which would be sufficient to support 127 net direct and indirect jobs, an increase of 17 jobs from 2025;

- (2) Creating permanent operational employment with a net additional effect for the local study area of 36 employees, equating to £1.4m in gross annual earnings and £7.6m in annual output (GVA); and
 - (3) Creating construction phase employment with a net additional effect for the local study area of 84.9 FTEs.
216. The R6 suggested that no evidence had been provided by PPL on the impact of the Proposal on the tourism industry. That is of course not the case. Alongside SE's evidence, the ES includes analysis and consideration of the proposal's impact on the tourism sector¹⁰⁹, which the R6 has apparently overlooked. That evidence supports SE's conclusions on the overarching socio-economic benefits which flow from the Proposal.
217. Much of DT's evidence against these benefits was predicated on allegations of one or more of heritage, L&V, air or water quality impacts, or on the perception of such impacts. Concerns about tourism
218. Substantively, these concerns are not established, for reasons set out elsewhere in this statement. As for perception, the weight which can be attached to it is closely linked to how well-founded the perception is; and in this case, the adverse perceptions are in all cases manifestly ill-founded.
219. DT also relies on alleged adverse impacts arising from the construction stage of the Proposal. It must be remembered, however, that the Site is allocated for employment uses; some construction impact is thus inherent in the local policy status of the Site. The construction impact is overstated in DT's evidence in any event; the correct position is that set out in SE's proof.¹¹⁰
220. Finally, the R6 suggested in XX of NR that no cruise liner would alter its itineraries in circumstances where only 3% of ports will provide shore power by 2025. In response, we point to the correspondence of the Port itself, which makes clear that both cruise liners and the Port itself want shore power to be made available. Indeed, it may be positively advantageous for Portland to be in the vanguard of cruise liner destinations which makes this important service available.

Transport and highways impacts

221. The R6 raises, again through DT, allegations of adverse impacts on both highway capacity and safety.

¹⁰⁹ CDI.36g; CDI.37h; CDI.37i.

¹¹⁰ SE PoE section 7.

222. It is a critical part of the context that neither National Highways nor DC's highways department has raised any concern about the Proposal in this regard. Further, there is only a single highways expert who has given evidence to the inquiry. That is the evidence of IA.
223. IA explains the background to the comprehensive traffic impact assessment work which took place through the various iterations of the ES. That evidence establishes that:
- (1) All links in the wider TA study area, would experience negligible change in traffic flows with this lower level of committed development with a maximum 4.7% increase in HGV flow and maximum 1% increase in total traffic flow in the AM/PM peak hours¹¹¹. This change would be well within the natural day-to-day variation in traffic flow experienced on the local road network.
 - (2) The volumes of traffic generated by the development (even under a worst-case assessment) thus remain insignificant and will not lead to any significant effects on severance, driver and pedestrian delay, pedestrian amenity, or accidents and safety on Castletown. Furthermore, the peak hour traffic flows generated by the development are insignificant and within the normal daily variation of traffic flows experienced on any highway network¹¹².
224. The R6 repeatedly emphasised that the Proposal would result in an extra HGV movement every nine minutes, as though this were a significant adverse impact. It is nothing of the sort: one additional movement every nine minutes is aptly described as negligible.
225. DT also suggested in evidence that the Proposal gives rise to risks to emergency service provision, by reference to the position of DC's emergency management and resilience committee's response¹¹³. DT has however quoted selectively from that committee's response: when the whole of the response is read, the committee in fact saw -
- “no major reason for not accommodating this application into the Portland Port off site reactor emergency Plan arrangements, similarly to all other businesses located and operating within this location (including PBUK – another COMAH site that EP also write an off-site plan for). We are prepared to work with the business to ensure that they are fully integrated into all our emergency plans.”
226. In other words, while there were issues to be addressed later, the committee did not object to the Proposal.

Amenity

227. DT's proof contains a section on amenity impact on local residents from the ERF. This

¹¹¹ CD2.291, para 7.26.

¹¹² Ibid, para 7.27.

¹¹³ DT PoE para 2.15.

was also a recurring theme during the IP day.

228. DT's amenity evidence focused on visual and noise issues, though IPs also raised matters concerning odour control.
229. As to the visual impact of the Proposal, this has already been dealt with. Save for a single receptor (which was not in any event a residential receptor, and thus of limited relevance here), the ERF will have no significant adverse visual impact on any dwelling. It will be visible from a number of properties; but it will appear as simply another items of port development in what is already a busy, heavily developed, and ever-changing view.
230. As for noise impacts, the ES includes detailed work on the noise impact of the Proposal¹¹⁴, and has concluded that there is no cause for concern. The same is true in respect of odour¹¹⁵ – as NR explained during the conditions session, the ERF itself will be maintained at a negative pressure, and the HGVs carrying fuelstock for the ERF will be covered or sealed. No statutory consultee has raised amenity issues in these regards.

Water quality

231. Several of the IPs raised concerns last Thursday about alleged impacts of the Proposal on water quality and marine life.
232. The ES contains a chapter dedicated to this subject¹¹⁶. That assessment concludes that there will be no significant residual effects on either groundwater or on water quality in the harbour and surrounding areas¹¹⁷.
233. The conclusions of the ES in this regard are supported by the work of JP, which noted, that the DC appropriate assessment considered impacts on the Studland marine SAC and the EA appropriate assessment screened out any likely significant effects. The conclusion of JP's work, taken with the assessments by DC and the EA, and which is unchallenged before this inquiry, is that there will be no impact on the integrity of the SAC.
234. The only attempt at making a detailed case on water quality came from Dr Webb at the IP session. Aside from his obvious lack of independence (he is a director of UKWIN, and not an objective on the effects of ERFs), his evidence on the water impact of the Proposal was based on fundamental misunderstandings of the data, as SO has shown in his written response.
235. There was also a suggestion at the IP session that water quality could be impacted by stack emissions, and that the dispersal of the plume had not been assessed by reference

¹¹⁴ CDI.28.; CD2.14.

¹¹⁵ CDI.36g, especially from para 6.74.

¹¹⁶ CDI.36i.

¹¹⁷ Para 8.78.

to the topography around the Site. That is not the case, the ES contains detailed consideration of topography to ensure that the dispersal of the plume was properly modelled¹¹⁸.

236. It is also highly relevant, as the IPs themselves recognised, that none of DC, the Environment Agency, Natural England, or the Marine Management Organisation have raised any concerns about the marine or water impact of the Proposal.

Water supply

237. In a very late representation, received only yesterday, an IP raised yet another fresh issue – the adequacy of the water supply available to the ERF. SO has prepared a further supplementary note¹¹⁹ which confirms that there will be no significant pressure on the water network arising from the ERF. In summary terms, while the water demand of the ERF (56 million litres per year) may sound large, it needs to be put in context: Wessex Water currently supplies 282 million litres of water *per day* to households in its catchment. The ERF's daily water demand is therefore equivalent to 1,158 households, and there are 1.4 million households in the catchment as well as multiple business users.
238. Considered in context, therefore, the water needs of the ERF are insignificant.

Development plan compliance and the planning balance

239. NR has assessed the Proposal against the DP considered as a whole¹²⁰, as required¹²¹ by planning legislation and the NPPF. The key policies are those referred to in the context of the issues arising above. It is common ground with DC that the WWP is up to date, though AP's need assessment departs further from Table 7 than the NR/Tolvik assessment.
240. NR's evidence, and that of PPL's other witnesses establishes that the Proposal fully accords with the relevant policies of the WWP¹²² 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 elsewhere in the DP, and finds compliance as a whole with the LP¹²³, the 2014 minerals strategy¹²⁴, and the PNP¹²⁵.
241. In the light of those findings, NR concludes that the Proposal accords with the DP, and should be granted permission unless material considerations indicate otherwise. We submit that those conclusions are correct.

¹¹⁸ CD2.29d.

¹¹⁹ AD.19

¹²⁰ NR section 9.

¹²¹ S. 38(6) PCPA.

¹²² NR table 9.1.

¹²³ NR table 9.2.

¹²⁴ NR table 9.3.

¹²⁵ NR table 9.4.

242. There are no material considerations which indicate that the Proposal should be refused, in particular the NPPF and other guidance relating to the WHS. On the contrary, important material considerations such as national waste and sustainable 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.
243. FH's view that even if the impacts of the Proposal were found to be acceptable that permission should be refused shows a lack of balance or understanding of the need case¹²⁶ and a failure to grapple with WP policy such as 4, 6 and 21 as well as the implications for the Canford and Parley allocations. Addressing Policy 21 to some extent in today's letter to BCP [AD.22] is no substitute for the continuing failure to engage with it by FH in her evidence or in her OR for the March 2023 meeting. The terms of the letter may simply be a late recognition of something which ought to have been considered earlier but has not mean. It does mean that members in refusing permission were not reminded of it when considering the respective positions and benefits of Canford against the Proposal which is surprising given
244. It is worth ending the inquiry by reiterating the significant suite of benefits which the Proposal will deliver, and which must be factored into the planning balance:
- (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 viably 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

¹²⁶ See e.g. above concerning her uncritical adoption of the ONS and AP's initial and erroneous view of the effect of the MBT.

Monument from the at-risk register.

245. The combination of those benefits and the overall DP compliance results in a strongly compelling case in favour of the Proposal.

Conclusion

246. PPL requests that the Inspector recommend that the appeal be allowed, and planning permission granted for the Proposal.

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21 December 2023