The Planning Inspectorate

Appeal Decision

Inquiry Held on 22–24 November 2022 and 5-8 December 2022
Site visit made on 5 December 2022

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 21st February 2023

Appeal Ref: APP/Y3940/W/22/3302008
Northacre Energy from Waste Facility, Stephenson Road, Northacre Trading Estate, Westbury, Wiltshire BA13 4WD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Northacre Renewable Energy Limited against Wiltshire Council.
- The application Ref 20/06775/WCM, is dated 7 August 2020.
- The development proposed is an amended energy from waste facility to that consented under planning permission 18/09473/WCM.

Decision

1. The appeal is allowed and planning permission is granted for an amended energy from waste facility to that consented under planning permission 18/09473/WCM at Northacre Energy from Waste Facility, Stephenson Road, Northacre Trading Estate, Westbury, Wiltshire BA13 4WD in accordance with the terms of application Ref 20/06775/WCM, dated 7 August 2020, subject to the conditions set out in the attached schedule in Annex E.

Application for costs

2. At the Inquiry an application for costs was made by Northacre Renewable Energy Limited against Wiltshire Council. This application is the subject of a separate Decision.

Preliminary and procedural matters

3. A case management conference was held on 4 October 2022 to discuss administrative and procedural matters. The Inquiry opened on 22 November 2022 and sat for a total of 8 days (22-24 November and 5-8 December 2022). I undertook a site visit on an accompanied basis on 5 December 2022, following an extensive and comprehensive itinerary prepared by the parties and Westbury Town Council. I closed the Inquiry in writing on 28 December 2022 following receipt of an updated schedule of suggested planning conditions and the Appellant's response to the Council's Rebuttal in respect of the application for an award of costs.

4. The Inquiry was in respect of an appeal against the failure of the Council to give notice within the prescribed period of a decision on the application described in the banner heading above. On 27 July 2022, the Strategic Planning Committee (SPC) of the Council resolved that, had it been in a

position to determine the application, it would have refused planning permission[1].

5. The reason that the Council would have refused planning permission was identified as: "The proposed development would generate substantial net carbon dioxide into the atmosphere over its lifetime and thereby fails to assist in the reduction of carbon dioxide emissions. In addition, by using residual waste as its feedstock, the proposed development does not assist in the reduction of residual waste arisings. The projected waste volume per year would be greater than the residual waste generated from within Wiltshire Council's administrative area, and as a result, the proposal fails to accord with the proximity principle for the transport and management of waste. These impacts significantly and demonstrably outweigh the benefits such that the development does not comprise sustainable development within the meaning of the National Planning Policy Framework."

6. Prior to the opening of the Inquiry, two Statements of Common Ground (SoCG) were submitted and signed by both the Appellant and the Council. These comprise a SoCG (Main)[2] and a SoCG (Climate Change)[3] both dated October 2022.

7. The planning application was accompanied by an Environmental Statement (ES)[4]. Overall, I am satisfied that the ES meets the requirements of Schedule 4 of the EIA Regulations.

8. Prior to the opening of the Inquiry an Environmental Permit (EP)[5], pursuant to the Environmental Permitting (England & Wales) Regulations 2016, was granted by the Environment Agency for the operation of the proposed Energy from Waste (EfW) facility (permit number EPR/CP3803LV) following the determination of an application for such permit[6].

9. On 31 January 2023, after the close of the Inquiry, the Government published the 'Environmental Improvement Plan' which sets out a number of targets relevant to waste management. This, amongst other things, provides for reductions in residual waste arisings. Both parties were aware of some of the proposed draft targets contained therein during the Inquiry and these were reflected in relevant aspects of evidence. Consequently, I do not consider the need to re-open the Inquiry in light of the publication of the Environmental Improvement Plan and I have taken this into account, where relevant, in my reasoning below.

Main Issues

10. Having taken into account the evidence before me and from what I heard at the Inquiry, the main issues are:

- The need for the proposed facility.
- The relevance of the 'fallback position'.

[1] CD3.10
[2] CD3.8
[3] CD3.11
[4] CD1.6
[5] CD6.2
[6] CD6.1

- Whether the proposed development would not assist in the reduction residual waste arisings.
- The extent to which the proposed development is consistent with Government policies for meeting the challenge of climate change.
- The effect of the proposed development on the character and appearance of the surrounding area.
- The effect on the operation of adjacent businesses.
- Any benefits of the proposed development to be weighed in the planning balance and any implications of not proceeding with the scheme.
- Whether the proposed development would provide for sustainable waste management in the context of local and national policy objectives.

Reasons

Planning History and Background

6. Prior to the appeal proposal, there have been three previous planning applications on land forming parts of the appeal site for the thermal treatment of waste. A full planning application for an Advanced Thermal Treatment Facility managing up to 160,000 tonnes per annum was granted planning permission on 23rd September 2015 (ref: 14/12003/WCM).

7. On 17th June 2019, the Council granted permission (ref: 18/09473/WCM) for revision of the layout and design of the Advanced Thermal Treatment Facility permitted under consent 14/12003/WCM. The SoCG (Main) identifies that this permission has been lawfully implemented and remains extant. This permission was identified in the Inquiry as being the 'fallback' position and its relevance is considered later in this Decision.

8. In parallel with the process resulting in the above 2019 permission, consent was also secured on 24th January 2019 (ref: 18/09550/FUL) to form a landscaped bund on part of the land to the west of the appeal site for the purposes of utilising soil and subsoil material extracted through the planned lowering and levelling of ground levels and for providing a degree of visual screening. This permission lapsed unimplemented. However, on 15 December 2022 a further planning permission (ref: PL/2022/07517) was granted for the construction of the screening bund previously permitted under planning permission 18/09550/FUL.

9. Also, two planning permissions were granted by Wiltshire Council and Mendip District Council on 1st July 2019 (ref: 19/02481/FUL) and 3rd July 2019 (ref: 2019/0519/FUL) respectively for an electrical grid connection from the appeal site to the Rodden Road sub-station in Frome. This connection would provide the means for the appeal proposal to export its power to the grid. The SoCG (Main) also identifies that these two permissions have been lawfully implemented.

The appeal site and proposed development

10. The appeal site comprises approximately 2.88 hectares of land located on the north-west side of Westbury and within the Northacre Trading Estate which itself is part of a larger industrial area including the West Wilts Trading Estate

(to the north) and the Brook Lane Trading Estate (to the south-east). It comprises a vacant plot largely consisting of vegetated spoil mounds and a small area of hardstanding. To the immediate south/southeast of the appeal site is the Northacre Resource Recovery Centre (RRC) originally granted planning permission in 2009 (ref: W/07/09004/WCM). The Mechanical Biological Treatment facility (MBT), which forms part of the RRC, manages up to 90,000 tonnes per annum of residual waste and creates the solid recovered fuel (SRF) that would form part of the input to the appeal proposal.

11. In addition, on land southeast of the appeal site (and immediately north east of the MBT), planning permission was granted in August 2018 for a waste transfer station, enlarged vehicle depot, and associated offices, workshop and welfare facilities (ref: 18/03366/WCM). The SoCG (Main) also identifies that this permission has been lawfully implemented but has not been fully built out as yet.

12. The appeal site has frontage with, and is accessed off, Stephenson Road, which serves the Northacre Trading Estate. To the north / northwest of the site is Westbury Dairy, a milk processing factory, operated by Arla.

13. To the west is open farmland, with two residential properties comprising Brook Farmhouse, a Grade II listed building, and Orchard House that are located approximately 175m from the appeal site. There are also two residential properties fronting Brook Lane to the northeast, Crosslands and Brookfields, approximately 60m from the site boundary to the east.

14. The appeal site is located within Flood Zone 1 with Biss Brook flowing south to north and is approximately 150m to the west of the site. A public footpath (DMAR 10) runs west of Brook Farm. The appeal site is not subject to any statutory or other adopted landscape, ecology or heritage designations.

15. The proposed development would involve the construction of a single line, moving grate EfW facility. It would generate electricity from the combustion of circa 243,000 tonnes of residual waste per year. The principal plant would be located within the main building that would contain a number of elements including a waste reception hall, bunker, combustion chamber/grate, boiler hall, turbine hall, and incinerator bottom ash (IBA) storage. The main building would be approximately 40m high. In addition, offices, workshop, stores and staff welfare facilities would also be located on the site together with other ancillary infrastructure including transformer and substation buildings, odour control plant and stack and a conveyor link to the adjacent existing MBT facility.

16. A Flue Gas Treatment (FGT) facility would sit separate from the main building and adjacent to the proposed freestanding stack (chimney), which would be 75m high. The stack would be circa 2.55m in diameter.

17. The proposal would generate energy from the combustion of residual waste. It is designed to have the capability of exporting approximately 25.6 MW (net) of electricity to the local electricity grid. The facility would also be capable of exporting heat, in the form of steam or hot water, to local heat users. However, at the time of the Inquiry, no contractual arrangements had been entered into or any preliminary discussions disclosed with any potential local heat users.

18. The facility would operate 24 hours per day. However, it is proposed that the delivery of waste and other HGV movements associated with the operation of the plant would be limited to the hours of 07.00 – 22.00 Monday to Friday and 07.00 – 17.00 on Saturdays but delivery and removal involving HGV's would be restricted to 07.00 – 22.00 on weekdays and 07.00 – 17.00 on Saturdays, with no HGV movements on Sundays or Bank Holidays. The operation of the proposed development is predicted to give rise to a daily average of approximately 78 HGV movements (39 in + 39 out).

Planning Policy Context

19. The SoCG (Main) identifies that the Development Plan for the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004 is:

- Wiltshire and Swindon Waste Core Strategy Development Plan Document 2006-2026 (adopted July 2009) (WCS)[7];
- Wiltshire Core Strategy Development Plan Document (adopted January 2015) (CSDPD)[8].
- Wiltshire and Swindon Waste Development Control Policies Development Plan (adopted September 2009) (WDCPDP)[9]; and
- Waste Site Allocations Local Plan (adopted February 2013) (WSALP)[10].

20. Inset map W3 of the WSALP identifies the whole of the appeal site as being suitable for Materials Recovery Facility/Waste Transfer Station, Local Recycling and Waste Treatment. Westbury Town Council are in the early stages of producing a Neighbourhood Plan and no evidence was provided as to when this may be adopted. Furthermore, no parties referred to this emerging plan, or any policies contained therein, that may be relevant to the consideration of the appeal proposal. Consequently, I have attached no weight to the emerging Neighbourhood Plan.

21. The SoCG (Main) identifies that the Northacre Trading Estate, which the appeal site forms part, is also designated as a Principal Employment Area and/or an Employment Allocation, with reference to saved Policy E1D (New Employment Land Allocation Northacre/Brook Lane Trading Estate, Westbury) of the West Wiltshire District Plan (2004). This policy is identified as being saved in the CSDPD.

22. Although the Council's putative reason for the refusal of planning permission does not identify conflict with any specific policies in the Development Plan, I consider the following policies are relevant to the consideration of this appeal:

Wiltshire and Swindon Waste Core Strategy Development Plan Document 2006-2026 (WCS)

- Policy WCS1 (The Need for Additional Waste Management Capacity and Self Sufficiency) states, amongst other things, that over the period to 2026, Wiltshire and Swindon will address the issue of delivering sufficient sites to meet the needs of the municipal waste management strategies

[7] CD4.1
[8] CD4.4
[9] CD4.2
[10] CD4.3

and sub-regional apportionments by providing and safeguarding a network of Site Allocations. The framework of sites will manage the forecast increase in waste arisings associated with the planned growth in the Strategically Significant Cities and Towns (SSCTs) of Swindon, Chippenham, Trowbridge and Salisbury. Need will be met locally whilst balancing the importation and exportation of waste within the principles of sustainable development and in accordance with the principles of sustainable transport.

- Policy WCS2 (Future Waste Site Locations) states, amongst other things, that strategic waste site allocations will be located as close as practicable (within 16km) to the SSCTs of Swindon, Chippenham, Trowbridge and Salisbury. The supporting text to this policy identifies that strategic waste management facilities are large and/or more specialist facilities that will operate in a wider strategic manner by virtue of spatial scale, high tonnage of waste managed, specialist nature of the waste managed and/ or a wider catchment area served. It further states that they are considered to include energy from waste facilities and that it will be expected that strategic facilities would serve either large areas within, or the entire Plan area. Additionally, they may also serve areas of Wiltshire and Swindon and surrounding local authorities in a more sub-regional context.

- Policy WCS3 (Preferred Locations of Waste Management Facilities by Type and the Provision of Flexibility) sets out preferred locations for different waste facility types and identifies that EfW facilities should preferably be located on industrial land/employment allocations.

- Policy WCS5 (The Wiltshire and Swindon Waste Hierarchy and Sustainable Waste Management) identifies that the Councils will seek to drive waste up the hierarchy by ensuring that developers demonstrate that the most sustainable option for waste management in Wiltshire and Swindon has been promoted.

Wiltshire Core Strategy Development Plan Document (CSDPD)

- Core Policy 32 (Spatial Strategy for the Westbury Area) allocates 3.8ha of new employment land at Northacre Industrial Estate on land immediately to the west of the appeal site.

- Core Policy 51 (Landscape) states that development should protect, conserve and where possible enhance landscape character and must not have a harmful impact upon landscape character, while any negative impacts must be mitigated as far as possible through sensitive design and landscape measures. Proposals should be informed by, and sympathetic to, the distinctive character areas identified in the relevant Landscape Character Assessment(s) and any other relevant assessments and studies. In particular, proposals will need to demonstrate that landscape character has been conserved and where possible enhanced through sensitive design, landscape mitigation and enhancement measures.

- Core Policy 55 (Air quality) states, amongst other things, that development proposals which are likely to exacerbate existing areas of poor air quality will need to demonstrate that measures can be taken to effectively mitigate emission levels in order to protect public health,

environmental quality and amenity. Mitigation measures should demonstrate how they will make a positive contribution to the aims of the Air Quality Strategy for Wiltshire and, where relevant, the Wiltshire Air Quality Action Plan.

- Core Policy 58 (Ensuring the conservation of the historic environment) states that development should protect, conserve and where possible enhance the historic environment. Designated heritage assets and their settings will be conserved, and where appropriate enhanced in a manner appropriate to their significance.

- Core Policy 61 (Transport and new development) states, amongst other things, that new development should be located and designed to reduce the need to travel particularly by private car, and to encourage the use of sustainable transport alternatives. In addition, the policy requires that the proposal is capable of being served by safe access to the highway network.

- Core Policy 62 (Development impacts on the transport network) states that developments should provide appropriate mitigating measures to offset any adverse impacts on the transport network at both the construction and operational stages. Proposals for new development should not be accessed directly from the national primary route network outside built-up areas, unless an over-riding need can be demonstrated

Wiltshire and Swindon Waste Development Control Policies Development Plan (WDCPDP)

- Policy WDC1 (Key Criteria for ensuring sustainable waste management development) identifies that proposals for waste management development must contribute to the delivery of sustainable development in Wiltshire and Swindon by ensuring that the social, economic and environmental benefits of waste management development are maximised and adverse impacts, including cross-boundary and cumulative impacts, are kept to an acceptable minimum. It further states that all proposals for waste management development will be assessed using a number of key criteria, where appropriate, including the extent to which adverse environmental impacts and cumulative impacts associated with other local development are avoided; the impact of transporting waste to and from the site; and, the extent to which the impact of any structures and buildings is minimised in terms of the appropriate use of scale and form, informed by the Wiltshire Landscape Character Assessment.

- Policy WDC2 (Managing the impact of waste management) provides a criteria-based approach that identifies that proposals for waste management development in Wiltshire and Swindon will be permitted where it can be demonstrated that the proposal firstly avoids, adequately mitigates against, or compensates for significant adverse impacts relating to amenity, visual aspects, noise and light emissions, vibration, transportation of waste, air emissions and climate change.

- Policy WDC7 (Conserving Landscape Character) states that proposals for waste management development should include an assessment of the adverse impacts upon Wiltshire and Swindon's landscape character and

the landscape character of adjacent areas, as deemed appropriate to the scale and nature of the development.

- Policy WDC9 (Cultural Heritage) identifies that proposals for waste management development will be permitted where it can be demonstrated that the areas of cultural heritage importance and their settings can be protected, enhanced and/or preserved.

- Policy WDC11 (Sustainable Transportation of Waste) states that waste management development will be permitted where it is demonstrated that the proposals facilitate sustainable transport by, amongst other things, minimising transportation distances and minimising the production of carbon emissions. In addition, development proposals should have direct access or suitable links with the Wiltshire HGV Route Network or Primary Route Network. Where appropriate, applications for waste management development will need to be accompanied by a Transport Assessment which will need to consider the impact of the development upon the highway network in the local area and consider the potential cross-boundary impacts and cumulative impacts of the development with other local developments.

- Policy WDC12 (Renewable Energy) states, amongst other things, that planning applications for waste management proposals must demonstrate that they have had regard to a number of criteria, including the need to maximise the opportunities for renewable energy production both for electricity and heat.

23. The Council suggested in the Inquiry that the Development Plan was not up to date. However, this matter was not explicitly reflected in the Council's putative reason for the refusal of planning permission, the Council's Statement of Case[11] or any of the relevant Officer's Reports (OR) presented to SPC[12]. Indeed, page 12 of the OR on 22 June 2021[13] states the "Notwithstanding the age of these DPDs, their policies remain in line with more recent national planning policy and guidance".

24. The Council's view presented in the Inquiry was that WCS1 of the 2009 WCS is predicated, in a large part, on the long-ago abandoned Regional Spatial Strategy (RSS) and its sub-regional waste apportionments which feeds through directly to the requirements imposed on any subsequent site allocations plan by WCS policy WCS3. The Council contend that, by the time the WSALP was produced, it was no longer obligatory to follow the RSS but its sub-regional apportionments continued to be used. Thus, the allocations in the WSALP, including the current site, W3, derive from a sub-regional 'need' and apportionment contained in the former RSS.

25. As the RSS was revoked, the Council consider that the sub-regional apportionment forms no part of current waste policy. The need to accommodate, in Wiltshire, a capacity to take a sub-regional share of waste arisings, therefore, no longer applies. The waste arising figures, or the sub-regional apportionment, upon which WCS1 (and hence WCS3) is founded arise from the figures in the RSS. Hence, the Council considers that it follows that

[11] CD3.07
[12] CD2.01, CD2.2, CD 2.3
[13] CD2.1

the strategic policies (WCS1 and WCS3) which are predicated upon them are out of date, and that allocation policies, in particular Policy W3 of the WSALP, are similarly out of date.

26. Furthermore, the Council considers that the last sentence of the putative reason for the refusal of planning permission expressly invokes the 'tilted balance' from paragraph 11(d)(ii) of the National Planning Policy Framework (the Framework) which is only engaged when the 'most important policies (for determining the application) are out of date'. In addition, the Council considers that national policy has moved on significantly since the formulation of the Development Plan documents. In particular, the National Planning Policy for Waste (NPPW) post-dates the WDCPDP, WCS and the WSALP.

27. I have identified above what I consider the basket of policies most important for determining the appeal. It is necessary to consider whether that basket, when viewed overall, is in accordance with national policy.

28. The plan period for the WCS expires in 2026. In considering the relevant policies contained therein, Policy WCS1 identifies that over the period to 2026, the Council's will deliver sufficient sites to meet the relevant waste management need by providing a network of site allocations with a focus around arisings from the main cities and towns. I consider that this appears consistent with paragraph 4 of NPPW that: "Waste planning authorities should identify, in their Local Plans, sites and/or areas for new or enhanced waste management facilities in appropriate locations".

29. Policy WCS2 requires sites to be within 16km of the main cities and towns, seeks to prevent strategic sites in the National Park or 3 AONBs and promotes appropriate transportation. This appears entirely consistent with NPPW paragraph 4, 2nd bullet point, and paragraph 5, 2nd and 3rd bullet points.

30. Policy WCS3 is defined in its title: 'Preferred Locations of Waste Management Facilities by Type and the Provision of Flexibility'. The policy effectively commits to making allocations in line with Policies WCS1 and WCS2. In doing so, it seeks to make allocations for different types of waste management facilities, managing different waste 'types', with the 'estimated capacities' that will need to be delivered. In short, the sites to be allocated need to be able to deliver the estimated capacities identified. It also identifies the preferred location for different types of facilities including that EfWs are preferred on industrial land/employment allocations and current waste sites.

31. The Council then delivered Policy WCS3 through the Waste Sites Allocations Local Plan (adopted in February 2013), post the publication of the original iteration of the Framework. The Allocations Local Plan described how the estimated capacities for the various facility and waste types had evolved and then goes on at paragraph 1.28 to state "In order to be flexible and responsive to a constantly changing market, the Waste Site Allocations Local Plan will still need to provide room for a range of existing waste management uses and sites to grow, as markets change. Making provision for a higher number of strategic recovery, recycling or treatment sites than is nominally required will provide opportunity to divert more waste from landfill, thus driving more waste up the management hierarchy. A range of suitable sites and areas of search for each waste management type should therefore be provided".

32. I do not consider that the tonnage figures in Policy WCS3, as updated in the Allocations Plan, are a prescriptive maximum as to the capacity that can be delivered on the identified allocations. The allocations needed to be able to deliver that level of capacity, but also be flexible and capable of being responsive to changing markets and a greater diversion of waste from landfill, plus the delivery of facilities serving a wider sub-regional context. In this regard, I do not consider the fact that the RSS figures may be referred to in the policy necessarily means that the policy itself, and those derived from it, become automatically out of date on revocation of the RSS.

33. The allocations made in the WASLP identify the broad types of waste facilities that could be appropriately located on the allocation (as per NPPW paragraph 4, 1st bullet point). These include sites which could accommodate waste management facilities that may require a larger catchment area (as per NPPW paragraph 4, 2nd bullet point), are reflective of the locational principles and environmental constraints, as set out in Annex B of NPPW, and consider a broad range of locations including industrial sites, existing waste sites and allocated employment land (as per NPPW paragraph 4, 4th and 5th bullet points). Policy WCS5 seeks to drive waste management up the waste hierarchy, which is entirely consistent with NPPW paragraph 1.

34. Overall, I consider that the allocations provided in the Development Plan, and specifically that within which the appeal site is located, accord with current national policy.

35. With regard to the CSDPD, this was adopted in January 2015 and postdates the publication on the NPPW (in October 2014) and the first iteration of the Framework (March 2012). In overall terms, I do not find that any of the relevant policies contained therein are out-of-date by virtue of being materially inconsistent with national policy.

36. The WDCPDP policies were adopted in September 2009 and their topic areas are effectively covered by subsequent policies within the CSDPD, which take precedence. Nonetheless, I am of the view that Policies WDC1, WDC2, WDC3, WDC7, WDC8, WDC9 and WDC11 are not materially inconsistent with national policy.

37. Based on the foregoing, I do not consider that the policies which are most important for determining the appeal are out-of-date. Hence, neither of the triggers in paragraph 11d of the Framework are activated, and thus the tilted balance weighing exercise is not engaged. The SoCG (Main) confirms that there are no other emerging Development Plan policies of any material weight related to this appeal.

The need for the proposed facility

38. Paragraph 158 of the Framework, amongst other things, advises that it is not necessary for applicants to demonstrate the overall need for renewable energy schemes such as that proposed and recognises that even small-scale projects provide a valuable contribution to cutting greenhouse gas (GHG) emissions. Paragraph 7 of the NPPW, amongst other things, identifies that when determining waste planning applications applicants should only be expected 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.

39. I have found above that the policies which are most important for determining the appeal are not out-of-date. However, a considerable part of the Appellant's case in support of the proposed development at the Inquiry was that there is a demonstrable need in Wiltshire for additional waste management capacity that can assist driving the management of waste up the waste hierarchy and which otherwise would be disposed to landfill or transported considerable distances for treatment. In addition, the Council contend that the need identified in the Development Plan documents has been largely met and any need that might remain should not be provided for by a plant of the size proposed, in the location it is proposed and in the term it would operate over.

40. The evidence presented by Mr Roberts on behalf of the Appellant, provided an update on the needs assessment provided in the Planning Statement[14], the content of which was reflected in the Officer Reports to SPC[15]. This identifies that Wiltshire has no known existing, operational residual waste treatment capacity and that the only true form of residual waste treatment is EfW, noting that MBT facilities such as those at the Northacre RRC offer intermediate treatment with the waste output needing to either go to EfW facilities or be disposed of at landfill.

41. The feedstock for the proposed development would comprise non-hazardous residual wastes[16] that are currently either being consigned to landfill or subject to thermal treatment elsewhere, typically in EfW facilities located in and outside of the UK in mainland Europe.

42. Recent Government guidance sets out that new EfWs should be operated on the basis of a recovery operation. The publication 'Our Waste, our Resources: A Strategy for England'[17] (WRS) identifies at paragraph 3.2.1 that the Government will seek greater efficiency from EfW plants and will ensure that all future EfW plants achieve recovery status. In addition, the DEFRA publication 'Energy from waste - A guide to the debate'[18] sets out that "The Government sees a long-term role for energy from waste both as a waste management tool and as a source of energy. To be consistent with the first principle, this long-term role needs to be based on energy from waste that at least constitutes recovery not disposal". It further states that "To be classed as recovery, energy from waste facilities must meet the requirements set out in the waste framework directive, for example through attainment of R1 status".

43. Incineration of waste alone is a disposal activity. In this case, there would be electricity and the potential for heat offtake to be produced. As such the proposed development can arguably be deemed to constitute a recovery operation. However, obtaining R1 status formally confirms that the incineration of waste can be classed as a recovery operation.

[14] CD1.2
[15] CD2.1, CD2.2 and CD2.3
[16] Residual waste is more fully defined in Defra's 'Energy from Waste: A guide to the debate' This states (at paragraph 18): "Residual waste is mixed waste that cannot be usefully reused or recycled. It may contain materials that could theoretically be recycled, if they were perfectly separated and clean, but these materials are currently too contaminated for recycling to be economically or practically feasible. It may also be that there is currently no market for the material or it is uneconomic to take to market. An alternative way of describing residual waste is 'mixed waste which at that point in time would otherwise go to landfill'"
[17] CD5.4
[18] CD5.3

44. The EA is the competent authority for determining whether a plant meets the definition of R1 Recovery. R1 status is assessed at three stages: plant design before commissioning; when the plant is commissioned; then during operation after commissioning. In order to obtain R1 Status a facility must demonstrate an energy efficiency factor equal to or above 0.65, calculated using a specific formula where inputs include plant efficiency, energy input by fuels, annual imported energy, annual energy circulated and annual exported energy. The R1 efficiency of the proposed development has been calculated at 0.90.[19]

45. The Appellant has received a design stage R1 certification[20] dated 11 October 2022 from the EA. As such, I consider that the proposed development would be classed as a waste recovery operation in accordance with the waste hierarchy and Policy WCS5 of the WCS.

46. The Waste Management Plan for England[21] identifies that the WRS "promotes efficient energy recovery from residual waste, but the government does not express a preference for one technology over another, since local circumstances differ. Efficient energy recovery from residual waste which can deliver environmental benefits, reduce carbon impacts and provide economic opportunities, and innovative technologies which improve the environmental outcome for the treatment of residual waste are welcomed".

47. It further states that the WRS "recognises that energy from waste is generally the best management option for waste that cannot be reused or recycled in terms of environmental impact and getting value from the waste as a resource. It promotes the greater efficiency of energy from waste plants through utilisation of the heat generated in district heating networks or by industry, and by seeking an increase in the number of plants obtaining R1 recovery status. Any given technology is more beneficial if both heat and electricity can be recovered. Particular attention should therefore be given to the location of the plant to maximise opportunities for heat use". It also identifies that the WRS welcomes "further continued investment in energy from waste facilities that raises efficiency standards and minimises impacts on the environment".

48. The Council's Household Waste Management Strategy[22] (the Strategy) confirms that "Recovering energy from waste which cannot be reused or recycled remains strategically important for the Council. This Strategy sets out that the Council will manage non-recycled household waste as a resource by delivering this to energy from waste facilities, rather than sending this waste to landfill". The Strategy was reviewed by the Council's Environment Select Committee (ESC) on 13 July 2022[23] at which the strategic importance of EfW.

49. Although the proposed development would have the capability of exporting approximately 25.6 MW (net) of electricity to the local electricity grid, at the time of the Inquiry, no contractual arrangements had been entered into or any preliminary discussions disclosed with any potential local heat users. However, I do not find it unusual for there to be no such contractual arrangements to be in place at the planning application stage. The evidence

[19] NRE4 – PoE Stephen Othen para 2.3.18
[20] CD6.16
[21] CD5.5 page 45
[22] CD4.5
[23] CD4.6

presented in the Inquiry leaves no doubt that the facility would be capable of exporting heat, in the form of steam or hot water to local heat users, and would be 'Combined Heat and Power' (CHP) ready. The proposal would be sited adjacent to the largest heat user in the area (Arla). Taking the above into account, in my view the proposal would represent a R1 facility capable of CHP use that would be consistent with the objectives identified above in the WRS and would also be reflective of the Council's Household Waste Management Strategy and recent views of the ESC.

50. Turning now to the waste generated in the county, in 2021/2022, Wiltshire produced approximately 230,000 tonnes per annum (tpa) of Local Authority Collected Waste (LACW) and achieved a household recycling rate of 42.5% suggesting that 132,250 tpa of waste requires further treatment. The operator of the Northacre RCC, 'Hills', has a contract until 2033 to manage 110,000 tpa of Wiltshire's residual LACW. Of this approximately 70,000 tpa goes into the Northacre MBT with part of the remainder going to the Lakeside EfW facility in Slough. The resultant residual waste output from the MBT, known as Refuse Derived Fuel (RDF)[24] is either exported for recovery at Lakeside or to Oberhausen in Germany with fines going to landfill.

51. The appeal proposal has the capacity to treat Wlitshire's residual LACW. The Appellant identifies that the remaining capacity in the proposed development would be merchant capacity (i.e. not tied into a long term local authority contract) that would be used to treat Commercial and Industrial (C&I) waste from within Wiltshire and the wider sub-region. In this regard, the Appellant commissioned Tolvik Consulting (Tolvik) to provide an updated Sub Regional Need Analysis Report[25]. The report considers a market area broadly based on a 2 hour drive time from the appeal site, but adjusted to reflect the effects of EfW competition, particularly towards the periphery of the market area.

52. This considers the potential impact of a number of recent Government policy developments that may impact on the amount of future residual C&I waste generated in the sub region, the effect of recycling rates and the impact of 'Certain' EfW capacity in the sub region. It then provides a forecast of the residual C&I waste arisings within the sub regional market area up to 2035 based on three modelling scenarios (Incremental Change, Median and Policy Intervention).

53. The Report identifies that in the Incremental Change and Median scenarios, the C&I Waste Capacity Gap (projected residual C&I waste in the market area less merchant capacity) remains above 365,000 tpa. In the Policy Intervention scenario, the capacity gap falls to 184,000 tpa by 2035.

54. The Appellant contends that when the residual C&I waste (as identified in the Tolvik report) is added to Wiltshire's residual LACW, there is a clear and demonstrable need for the appeal proposal. In addition, it is contended that, over the lifetime of the development, the Appellant will have the opportunity to bid for LACW contracts in the sub regional market area which could amount to over 1,300,000 tpa[26]. This may create a greater demand for the appeal proposal as a facility to treat LACW from within the sub region market area.

[24] The Waste Management Plan for England defines RDF as being "mixed solid waste that has been pre-treated so it consists largely of combustible components such as unrecyclable plastic and biodegradable waste – as much as possible, any recyclable material is removed and sent to be recycled as part of pre-treatment".
[25] NRE2 – Appendix to Nicholas Roberts PoE
[26] NRE1 - Table 1 Nicholas Robert PoE

55. Although the ORs to SPC[27] did not dispute the evidence provided in the Planning Statement, submitted with the planning application, regarding the need for the proposed facility, the Council's Statement of Case and the evidence of Mr Potter on behalf of the Council contends that the Appellant's need case has substantially overestimated the available waste that might be drawn into the plant. In addition, it is contended that by using residual waste as a feedstock, the prosed development does not assist in reducing residual waste arisings and that the recent Government Consultation on Environmental Targets (DEFRA)[28] should be given considerable weight. Finally, that the proposal would fail to accord with the proximity principle. These matters generally accord with those set out in the Council's putative reason for the refusal of planning permission.

56. In considering the alleged over-estimation of residual C&I Waste identified in the Tolvik Report, paragraphs 4.16 to 4.28 of Mr Potter's Proof sets out the basis for this. Tolvik's response to the contentions made are set out in Appendix NRE3 of Mr Roberts Rebuttal.

57. A large part of the dispute between Mr Potter and Tolvik relates to European Waste Code 19 12 12 and the extent to which this waste from the residues of mechanical processing of waste may be combustible. The evidence suggests, amongst other things, that Mr Potter had assumed that all waste landfilled under EWC 19 12 12 is combustible but in effect, Tolvik assumed only 70% was. Other areas of disagreement relate to the calculation of the total tonnage of residual C&I waste and how the figures were extrapolated from the Waste Data Interrogator and how recently commissioned EfW plant capacity was taken into account.

58. The rebuttal response provided by Tolvik was not disputed in the Inquiry. On this basis, I have no further reason to question the methodology and findings of the Tolvik report.

59. 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. There is currently a clear signal from the Government, as set out in the Waste Management Plan for England and the WRS, that recovering energy from residual waste has a valuable role to play.

60. Furthermore, the Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs made it clear in Parliament on 1 December 2022[29] that "DEFRA has no plans to introduce a moratorium on new EfW capacity in England, because we expect the market itself to assess the risks and determine the economic viability and deliverability of developing new infrastructure". It further stated that "the market will determine the life of incinerators and whether we need future incinerators". It went on to say that "there will always be some residual waste and some energy-from-waste capacity will always be required".

[27] CD21, CD2.2 and CD2.3
[28] DEFRA consulted on a future resource efficiency and waste reduction target of reducing waste per capita by 50% by 2042 from 2019 levels, pursuant to the Environment Act 2021.
[29] ID33 Hansard 414WH-417WH

61. It is accepted that recycling technologies and targets may develop over time to remove more of the combustible element of residual waste in pre-treatment. Waste Authorities may need to introduce arrangements to meet any future recycling targets which are separate to the commercial operation of the proposed development.

62. It should be reasonably expected that the combustible content of residual waste streams would decrease over time. However, there is no persuasive evidence before me to suggest when, or if, such processes may be developed to the extent that there would be a material impact on the combustible content of RDF. Therefore, based on the current evidence before me, I am not persuaded that the proposed development would lead to a demonstrable reduction in the recycling of waste.

63. The DEFRA Consultation on Environmental Targets was in draft form at the time of the Inquiry. This signified an opportunity to intensify recycling and in doing so decrease the total amount of residual waste requiring management. Nonetheless, the Tolvik modelling has factored in increased recycling rates and the Median scenario forecasts a better our come from known policy interventions. It predicts, for 2035, a recycling rate of 52.6% for household waste and 67% for C&I waste (compared to the 52% and 59% respectively by DEFRA). Even if the quantities of residual waste were to dramatically decrease in the period leading up to 2042, the capacity gap that the Tolvik analysis provides suggests that the appeal facility would still fulfil a need.

64. Turning to the concerns regarding the proximity principle, which is the third limb of the putative reason for refusal, the Council suggest, in simplistic terms, that as residual waste diminishes, waste would need to be drawn from even further afield with transport implications that may compromise the proximity principle. I interpret the implication of this to be that this would cause harm through conflict with the waste management principles of self-sufficiency and proximity.

65. In addition to the definition provided in The Waste (England and Wales) Regulations 2011[30], paragraph 152 of the DEFRA publication 'Energy from waste A guide to the debate'[31] provides guidance on the definition of the proximity principle which arises from Article 16, "Principles of self-sufficiency and proximity", of the revised Waste Framework Directive (2008/98/EC). This advises that the "principle is often over-interpreted to mean that all waste has to be managed as close to its source as possible to the exclusion of other considerations, and that local authorities individually need the infrastructure required to do so. This is not the case. Indeed, the final part of the Article itself states: "The principles of proximity and self-sufficiency shall not mean that each Member State has to possess the full range of final recovery facilities within that Member State". Clearly if not even the entire country needs to have the full range of facilities, a specific local authority does not have to. While there is an underlying principle of waste being managed close to its source, there is no implication of local authorities needing to be self-sufficient in handling waste from their own area."

66. Paragraph 154 goes on to say: "…There is nothing in the legislation or the proximity principle that says accepting waste from another council, city,

[30] NRE12 – Rebuttal PoE Nicholas Roberts Section 1.6
[31] CD5.3

region or country is a bad thing and indeed in many cases it may be the best economic and environmental solution and/or be the outcome most consistent with the proximity principle…" Paragraph 155 continues: "…in some circumstances a larger plant may be the appropriate solution and there can be benefits from these also. For example: greater efficiencies; economies of scale … an overemphasis on restricting facilities to 'local waste', particularly defining it by administrative ownership of waste and the boundaries and quantities this implies, can lead to sub-optimal solutions in terms of cost, efficiency and environmental impact; and a significant loss of long-term flexibility.

67. Paragraph 156 states that "The ability to source waste from a range of locations/organisations helps ensure existing capacity is used effectively and efficiently and importantly helps maintain local flexibility to increase recycling without resulting in local overcapacity for residual waste. For an existing plant, taking waste from a range of locations should be seen as a positive by keeping the plant running at maximum efficiency. In many places waste from a number of authorities is processed at the same site very successfully."

68. Therefore, I concur with the views of the Appellant in this regard that, as a matter of fact, simply by virtue of managing residual waste which is likely to include waste from sources outside of Wiltshire's administrative area, the appeal proposal does not fall foul of the 'proximity principle'. In my view, the Council are mindful of a flexible application of the proximity principle as residual waste is currently transported to the Lakeside EfW in Slough and arisings from the MBT are sent to mainland Europe.

69. Finally, the appeal site is allocated in the WSALP as an area suitable for strategic scale 'waste treatment' type uses. Paragraph 1.18 of the same Plan then specifically states: "It is expected that strategic facilities will serve either large areas of the county and borough, the whole plan area, or areas of Wiltshire and Swindon and surrounding local authorities". I therefore consider this explicitly countenances that a waste facility on the appeal site should be expected to receive waste from outside of the administrative boundaries of Wiltshire.

70. I have carefully considered the arguments presented by Mr Potter in paragraphs 5.27 to 5.30 of his proof of evidence. However, in light of the above, I do not find these persuasive. In my view, the proposed development would not compromise the proximity principle.

71. Overall, I have found above that there is currently a clear need for new treatment capacity in the region to divert Wiltshire's residual LACW waste and sub-regional C&I residual waste away from landfill or to avoid this being exported considerable distance outside of the sub-region. Whilst the possibility of waste being imported into the facility from outside the sub-region cannot be ruled out, I do not consider that this would be demonstrably contrary to the overall objectives of the proximity principle.

72. I have also taken into account the targets set out in the Government's Environmental Improvement Plan[32] (Improvement Plan) which was published on 31 January 2023 and after the close of the Inquiry. Goal 5 "maximise our resources, minimise our waste" sets out a number of targets and

[32] Environmental Improvement Plan 2023 - First revision of the 25 Year Environment Plan. Published by the Department for Environment, Food and Rural Affairs

commitments. Amongst others, these include the elimination of avoidable waste by 2050 and double resource productivity by 2050; explore options for the near elimination of biodegradable municipal waste to landfill from 2028; eliminate avoidable plastic waste by 2042; and halve 'residual' waste (excluding major mineral waste) produced per person by 2042.

73. For the purposes of the target, the Improvement Plan defines 'residual' waste as waste that is sent to landfill, put through incineration or used in energy recovery in the UK, or that is sent overseas to be used in energy recovery. The residual waste target is underpinned by interim targets. Amongst others, these set out that by 31 January 2028 the Government will seek to reduce residual waste (excluding major mineral waste) produced per person by 24%; reduce residual waste (excluding major mineral waste) in total tonnes by 21%; reduce municipal residual waste produced per person by 29%; reduce residual municipal food waste produced per person by 50%; reduce residual municipal plastic waste produced per person by 45%; and reduce residual municipal paper and card waste produced per person by 26%.

74. Interim Target 1 of the Improvement Plan identifies that the Government has set a stretching long-term target to halve 'residual' waste (waste that is sent to landfill, put through incineration or used in energy recovery in the UK or overseas) by 2042. This is an intentionally broad target, which will include the most environmentally harmful materials like plastics, rather than banning a single type of material and risk producers moving to a different, more harmful material. This interim target reflects the trajectory that will be required for the long-term target. Achieving the interim target will mean a 24% reduction of residual waste from 2019 levels to set a track towards achieving the long-term target, which is equivalent to a 50% reduction from 2019 levels.

75. Interim target 2 sets out that by 31 January 2028, the total mass of residual waste, excluding major mineral waste, in the most recent full calendar year does not exceed 25.5 million tonnes. Achieving this target will reduce the total mass of residual waste by 21% from 2019 levels. Interim target 3 sets out that by 31 January 2028, the total mass of municipal residual waste in a year should not exceed 333 kg per capita. Achieving this target will require a reduction in the total mass of municipal residual waste by 29% compared to 2019 levels.

76. The achievement of these targets will likely require a number of new policies and legislation. Whilst the Improvement Plan is a material consideration, I am required to determine this appeal on the basis of existing national and local planning policy. In this regard I am mindful of paragraph 158 of the Framework and paragraph 7 of the NPPW which, amongst other things, advises that it is not necessary for applicants to demonstrate the overall need for renewable energy schemes and that applicants are only expected to demonstrate the quantitative or market need for new waste management facilities where proposals are not consistent with an up-to-date Local Plan. For the reasons explained above, I have found that the Local Plan is up to date.

77. Notwithstanding the fact that there is no requirement for the overall need for the proposed facility to be demonstrated, the Appellant's evidence[33], to some

[33] NRE1 Mr Roberts PoE

extent, took into account the Government Consultation on Environmental Targets, which included the reduction in residual waste per capita by 50% by 2042. In response to this, the Tolvik Report factored in higher recycling rates.

78. It is not clear at this stage whether the likely requirement for new policy and legislative interventions will have the desired result of the targets being achieved by the dates set in the Improvement Plan. However, the evidence suggests that even if the quantities of residual waste were to dramatically decrease in the period leading up to 2042, the capacity gap that the Tolvik analysis provides suggests that the appeal facility would still fulfil a need. In particular, over the lifetime of the development, the Appellant will have the opportunity to bid for LACW contracts in the sub-regional market area which currently amount to over 1,300,000 tpa. Furthermore, by 2042 existing EfW capacity in the market area will likely be well beyond its design life and likely to close.

79. I have also considered the evidence presented by the Appellant regarding the Council's 'Household Waste Management Strategy 2017-2027' (the Strategy) which was considered in a meeting of the Council's ESC on 13 July 2022, approximately two weeks before the last consideration of the planning application for the proposed development by the SPC.

80. Priority 4 of the Strategy, titled 'Energy from Waste', sets out that "Recovering energy from waste which cannot be reused or recycled remains strategically important to the Council. The Council will manage non-recycled household waste as a resource by delivering this into energy from waste facilities, rather than sending this waste to landfill. The Council will continue to review the feasibility of constructing small scale energy from waste plants within Wiltshire".

81. The Strategy appears to be regularly reviewed by the Council. The Officer Report relating to the last review was reported to the ESC on 13 July 2022[34]. This provided an update on actions necessary to deliver the Strategy and set out proposals for actions in 2022-2023. In particular, proposed 'Action B' sets out a need to work with the Council's waste contractors to review waste which is currently sent to landfill and their suitability for diversion and a need to consider introducing the shredding of non-recyclable bulky waste, which is currently being sent to landfill, so that the shredded waste can be sent to Energy from Waste.

82. There is no suggestion in the Officer Report to ESC that there should be any change to the objectives of Priority 4 of the Strategy. Although the recent consideration of the Strategy was not referred to by the Council at the meeting of the SPC, some 2 weeks after the endorsement of Priority 4 by the ESC, it seems to me that the Council's Household Waste Management Strategy remains supportive of constructing small scale EfW plants within Wiltshire.

83. To conclude on the issue of need, I am satisfied that the evidence presented in the Inquiry demonstrates a local and sub-regional need for more recovery capacity to divert the management of residual LACW and C&I waste up the hierarchy. I consider the Tolvik analysis of the residual waste treatment

[34] CD4.06

capacity gap represents a well-considered and reasonable forecast of the position in the market area and reflects future Government policy interventions.

84. Even if I were to be persuaded that the Development Plan is out-of-date, there is a compelling case for new recovery facilities which extends beyond the capacity of the appeal proposal, taking account of existing operational facilities in the market area. Notwithstanding the fact that, in the light of relevant national planning policy, it is a matter for the market to determine whether there is a need for the proposed facility in the longer term, even taking into account the targets set out in the Improvement Plan, it appears to me that the proposal would still be able to satisfy a sub-regional market area need. The proposal itself would not resolve the current capacity gap predicted under any of the Tolvik scenarios in any of the assessed years.

The 'Fallback' position

85. Both main parties agree that the 2019 permission (ref 18/09473/WCM)[35] for an Advanced Thermal Treatment (ATT) Facility utilising gasification technology for the treatment of 160,00 tonnes per annum of mixed municipal waste has been lawfully implemented and therefore remains extant. However, there is dispute between the main parties whether the approved development would be constructed and operated.

86. The Council considers that the approved ATT facility may be highly inefficient and unviable[36]. Furthermore, of the AAT developments that have been granted planning permission in the country, there is no evidence of an ATT plant working as originally envisaged and examples in the Isle of Wight and a proposal in West Sussex have been subject to planning applications to convert these to conventional EfW Plants.

87. The Appellant has referred to the construction of a plant using similar gasification technology at the Hooton Bio Facility located on the Wirral in Cheshire. This plant is in the final stages of commissioning and will treat up to 270,000 tonnes per annum of mixed residual waste. The Appellant considers that, in light of the Hooton Project, there is a high degree of confidence that the 2019 scheme would be financially viable and there are no commercial or technical reasons why it could not be delivered.

88. In addition, evidence suggests that the Levensheat gasification plant, in South Lanarkshire, is now also fully operational and thermally treating Refuse Derived Fuel (RDF) from mixed municipal waste. The Appellant's interest in ATT was reported independently in an 'ENDS Waste and Bioenergy article' on 23 September 2022[37]. As such, in the event that this appeal is dismissed, the Appellant's intention was stated to revert to delivering the 2019 scheme.

89. In considering the weight to be attached to the 'fallback' position, the question arises whether the Appellant genuinely intends to construct the ATT plant permitted under the 2019 permission and, if so, whether there is a "real prospect" that they would be successful in doing so. In the consideration of this question, I have had regard to the judgement of the Court of Appeal in the case of *Samuel Smith Old Brewery (Tadcaster) v Secretary of State*

[35] CD6.3
[36] Mr Potter PoE pages 3-5
[37] Nicholas Roberts Rebuttal Appendix NR2

[2009] J.P.L. 1326 at [20]-[21] which was brought to my attention by the Appellant. This confirmed that "20. … It is important to note that in this context a real prospect is used as the antithesis of a merely theoretical prospect …." It was further stated that "21. In order for a prospect to be a real prospect, it does not have to be probable or likely: a possibility will suffice…."

90. Therefore, taking into account the above judgement and on the basis of the evidence provided in the Inquiry, I am of the view that there is a real possibility that the Appellant would seek to construct the approved ATT facility in the event that this appeal was to be dismissed. I have attached significant weight to this matter in the determination of this appeal.

91. I note the Council's view that if the fallback is to be considered realistic then the 'counterfactual' to the appeal scheme is not 243,000 tpa diverted to landfill, but is 160,000 tpa sent to the 2019 EfW and 83,000 tpa diverted form landfill. However, I do not consider this argument to be correct as it assumes that the 2019 EfW is constructed and operational when considering the appeal proposal on the same site. Such scenario is not plausible.

92. Table 4.1[38] of the ES and the comparison visualisation montages[39] provide a comparative analysis between the appeal scheme and the scheme approved under the 2019 permission. A comparison of the key external features between the two schemes identifies that the appeal scheme main building would have a slightly smaller footprint (6.477m^2 compared to 6,535m^2), a slightly higher building height (40.0m compared with 36.8m) and main stack height of 75m for both schemes, although the width of the stack in the appeal scheme would be less (2.55m wide compared with 4m wide).

93. Overall, I consider that the external scale, mass and height elements of the fallback scheme, in casual views, would be broadly comparable to the appeal proposal. Consequently, the comparative impact of the two schemes has been taken into account in my assessment of some of the main issues that I have identified as being material considerations in the determination of this appeal and are considered below.

Effect on residual waste arisings

94. The second element of the Council's putative reason for the refusal of planning permission suggests that the proposal would deter a reduction in residual waste arisings. However, no compelling evidence was provided in the Inquiry to substantiate this aspect of the putative reason for refusal.

95. In my view, the proposal would displace the landfill and export for management of the relevant residual waste streams and there is no evidence to suggest that in doing so this would disincentivise waste authorities from promoting recycling or introducing other initiatives to reduce the generation of residual waste. Residual waste quantities are primarily affected by recycling rates with recycling occurring through the separation/segregation of waste material primarily at source or the point of collection. Furthermore, I consider that the likely future residual waste arisings in the market area have been robustly considered in relation to future anticipated recycling rates.

[38] CD1.06 – VO1
[39] CD1.06 Vol 2 Figs 5.6a-5.6d

96. In addition, condition 2.3.6 of the EP[40] specifically restricts the use of separately collected fractions of waste unless they are unsuitable for recovery by recycling. Furthermore, in order to meet the targets set out in the Environmental improvement Plan, it is likely that recycling technologies may develop over time to remove more of the combustible element of residual waste in pre-treatment. Such initiatives, in my view, are entirely separate and uninfluenced by the existence of a locally accessible EfW plant.

97. In conclusion, I have no substantive evidence before me that demonstrates how the proposal would deter a reduction in residual waste arisings. Therefore, based on the current evidence before me, I am not persuaded that the proposed development would lead to a demonstrable reduction in the recycling of residual waste.

Climate change

98. 'Energy from Waste: A Guide to the Debate'[41] (GtD) remains extant and forms part of the Government's policy regarding the role that energy from waste might have in future waste management and is mostly concerned with energy from residual waste. Typically, such wastes contain a significant proportion of materials like food and wood (the 'biogenic' materials) and energy produced from this material is considered to be renewable. However, residual waste also contains wastes, such as plastics, manufactured from 'fossil' fuels. Energy from this fraction of the waste stream is not renewable and, for a mixed waste stream such as that in the appeal proposal, the energy recovered is considered to be only a partially renewable energy source.

99. The GtD and the Environmental Improvement Plan set out that the Government is aiming to prevent, reuse and recycle more waste, so the amount of residual waste should go down. However, energy from waste will remain important. The GtD advises that when considering the relative environmental benefits of landfill and energy from waste, the most important factor is their potential contribution to climate change. Different amounts of greenhouse gases (GHG) would be released if the same waste was burned or buried.

100. The GtD compares EfW with landfill. Managing untreated mixed waste by either combustion in an EfW plant or deposit in a landfill will release gases that contribute to global warming. However, whereas landfill will release both carbon dioxide (CO_2) and methane, an EfW process generally emits only CO_2. Methane is currently assessed as being 25 times more damaging to the atmosphere than CO_2 .

101. Whether EfW produces a lower volume of GHG than landfill is a complex assessment that needs to be undertaken on a case-by-case basis. Nevertheless, there are two general rules identified in the GtD that apply. These are:

    - The more efficient the plant is at turning waste into usable energy the better.

[40] CD6.2
[41] CD5.03

- The proportion of the waste that is considered renewable is key – higher renewable (biodegradable) content makes energy from waste inherently better than landfill.

102. The GtD confirms that energy from waste is therefore better than landfill, providing the residual waste being used has the right biogenic content and is matched with a plant that is efficient enough at turning the waste to energy. The GtD recognises that over the typical life of an EfW Plant (25-30 years) the biogenic content of the waste will change in that period. It is also possible to treat waste to increase biogenic content e.g. by removing plastics. The contribution, if any, that the appeal proposal would make towards cutting GHG emissions and the weight that should be attributed to this in the planning balance needs to be assessed.

103. The GtD confirms that generating heat and electricity together through Combined Heat and Power (CHP) typically produces much greater efficiencies and the more efficient the plant is, the greater the carbon offset. No contracts exist between the Appellant and potential users of any heat. However, that is not unusual at this stage of the planning process. This position has been accepted in other appeal decisions and by the Secretary of State.

104. The first element of the Council's putative reason for refusal is that "The proposed development would generate net carbon dioxide into the atmosphere over its lifetime and thereby fails to assist in the reduction of carbon dioxide emissions".

105. There is currently no policy or legal requirement that EfW should reduce overall GHG emissions. Paragraph 152 of the Framework provides that the planning system "should support the transition to a low carbon future in a changing climate…..shape places in ways that contribute to radical reductions in GHG emissions… and support renewable and low carbon energy and associated infrastructure". In addition, paragraph 154 advises that new development can help to reduce GHG emissions, such as through location, orientation and design. Whilst Section 14 of the Framework provides support for renewable and low carbon energy, the Framework does not require that any kind of development, including EfW, should itself be net negative in GHG terms.

106. Policy WDC2 of the WDCPDP provides for consideration of the impact of development on climate change but it does not provide any policy framework that would prevent the grant of planning permission for development that would add to GHG emissions overall, provided that consideration has been given to whether GHG emissions can be adequately mitigated. Paragraph 4.8 of the WDCPDP states that "new waste management development must make provisions to reduce GHG emissions and impacts upon climate change".

107. Therefore, neither national planning policy nor local policy provide a basis for refusing planning permission for development that would emit GHG emissions. The key consideration in the context of the Council's putative reason for refusal is the extent to which it contributes to an overall reduction GHG emissions. In order to do this it is necessary to consider the likely GHG emissions from the proposed development compared to the current method for the management of residual waste at the moment.

108. A Carbon Assessment[42] was submitted with the planning application which predicted that the proposal would lead to a net reduction in GHG emissions of approximately 58,684 tonnes of CO_2-equivalent per annum compared to the landfill counterfactual. As part of the appeal evidence, the Appellant updated the Carbon Assessment[43] to take into account, amongst other things assumptions in the latest GHG reporting factors from the Department for Business, Energy and Industrial Strategy (BEIS), wider changes to waste composition and changes in the type of power station displaced in the proposed EfW plant. The updated assessment compares carbon releases from the proposed development to a counter-factual case of what is actually happening to the residual waste at the moment which predominantly includes waste being deposited in landfill.

109. The updated assessment also considers potential changes that are likely to occur over the operational lifetime of the facility which include, amongst other things, Government policy to decarbonised grid electricity, increases in landfill gas capture rates and reductions in the amount of plastic and food waste in residual waste. It concludes that "in the base case, the facility is predicted to lead to a net reduction in GHG emissions of between 57,700 and 61,300 tonnes of CO_2e per annum compared to the landfill counterfactual, depending on the waste composition used.

110. The sensitivity of the calculation to different grid displacement factors, such as displacement of other renewable sources of electricity, and different landfill gas recovery rates is also considered. The primary assumption is that electricity generated by the appeal proposal would displace electricity generated by the marginal generation type, which is Combined Cycle Gas Turbines (CCGT). The results of the sensitivities provide a net reduction of GHG emissions within a range of 12,464 to 116,825 tonnes of CO_2e emissions per annum.

111. Furthermore, the updated assessment concludes that (taking into account a lifespan of 25 years, conservative changes in grid displacement factors and assumed reductions in food and plastic waste) the cumulative benefit of the facility over 25 years operation compared to landfill is estimated to be approximately 115,000 tonnes CO_2e. Although the assessment suggests that net disbenefits in CO_2 emissions would eventually occur over the counterfactual landfill equivalent (from around 2042), the cumulative carbon benefit of the facility remains positive.

112. The SoCG (Climate Change) and the evidence of Mr Norton sets out matters in the updated carbon assessment which the Council disagrees with. Amongst other things, these primarily relate to waste composition, use of CCGT as a counter factual power generation source, energy efficiency, the effect of the start-up date and the lack of certainty regarding the export of heat from the proposed development. I have carefully considered these areas of disagreement in the Rebuttal Proofs of Evidence provided by Mr Othen and Mr Norton and the note[44] provided by Mr Norton on additional carbon modelling incorporating new information provided in Mr Othen's Rebuttal Proof. Most of this evidence was considered in some detail during the Inquiry. The Council's position is that the proposal would have higher CO_2 emissions

[42] CD1.06 Appendix 4
[43] Appendix NRE5-A to Mr Othen PoE
[44] ID1

than either theoretical landfill or Combined Heat and Power (CHP) and hence would result in net carbon emissions that ought to be avoided.

113. The projections provided by Mr Norton were subject to a relatively high degree of scrutiny in the Inquiry and were based on two alternative counterfactuals of the waste that would be treated in the appeal proposal either going to landfill or being treated in a high efficiency CHP in Germany.

114. I accept the evidence of Mr Norton regarding the relevance of the start date that the proposal becomes operational. Were the start date to be 2027, this would lower the lifetime benefit by approximately 40,234 tCO_2e, giving an annual figure of around 3,000 tCo_2e. In addition, the point where carbon disbenefits of the scheme were to occur would likely be evident from around 2030. However, the Appellant was quite clear in the Inquiry that the start date is intended to be 2026 and I have no other substantive evidence that would lead me to dispute that date. However, the potential uncertainty of the actual start also provides a degree of uncertainty regarding the carbon lifetime assessment.

115. I am of the view that the suggested export of 243,000 tpa of waste to the Hamburg EfW, or an equivalent high efficiency CHP, is a theoretical assumption and does not represent a realistic alternative scenario which could arise if the appeal were to be dismissed. The RDF from the MBT plant that is currently exported is sent to a different German EfW at Oberhausen which currently has a lower efficiency than the appeal proposal when transport is taken into account.

116. Furthermore, Mr Othen's rebuttal evidence suggests that it does not appear plausible that Hamburg would have the capacity for the 243,000 tpa of waste from the Wiltshire catchment area as the plant is solely supplied with municipal waste from Hamburg and Lower Saxony. No evidence was provided to suggest that there was a contractual possibility of any of the waste being managed in any German facility other than the current arrangements at Oberhausen. Other uncertainties such as the extent to which Germany may decarbonise the electricity grid were also evident.

117. Consequently, I consider that the Hamburg comparator is theoretical and does not represent a realistic alternative. In my view, the landfill comparator is the only one that has a realistic prospect of occurring and in this context the most important sensitivities are those relating to grid displacement factors and the composition of the waste input feed.

118. The evidence suggests that the Appellant's updated lifetime assessment is conservative in assuming no change to future operation of the appeal proposal, whilst assuming that very substantial improvements arise in the grid mix. On waste composition, it is clear that there are significant uncertainties as to the future profile and the degree to which policy targets for the reduction of certain kinds of waste would be successful. However, these sensitivities were factored into the updated Carbon Assessment which tested reductions in both food and plastic waste as part of the lifetime assessment.

119. Taking the carbon evidence as a whole, I consider that the concerns of Mr Norton were addressed in the Inquiry but I recognise the difficulty in seeking to understand the effect of the proposal on carbon emissions over the next 25 years. Nonetheless, I remain of the view that the updated Carbon

Assessment remains reasonable and, on the basis of the conservative assumptions made therein, shows an overall benefit over the lifetime of the plant, although I accept that the quantum of such benefit would decrease if the start date was 2027.

120. 'United Kingdom Without Incineration' (UKWIN) also raised a number of concerns in written evidence regarding uncertainties within the GHG assessment and whether there would be carbon benefits associated with the proposed development. In particular, four issues were primarily raised relating to the use of CCGT as a counter factual, biogenic carbon sequestration in landfill, the fossil carbon intensity of electricity exported and cumulative benefits. I am satisfied that the Written Statement of Rebuttal to UKWIN Submission[45] by Mr Othen adequately considers these matters and confirms to me that the updated Carbon Assessment remains robust.

121. Sequestration of waste in landfill is not current Government policy. Rather, Government policy is to move towards zero landfill, and EfW treatment of residual waste remains part of the measures to achieve this objective. The proposal is not 'carbon zero' or 'carbon neutral'. However, EfW is, for planning purposes, a 'low carbon' energy source, even if it is not a 'no carbon' energy source. The proposal would fulfil two important purposes of energy generation and the management of residual waste for which the other option currently available is landfill or management some considerable distance away from the source of waste generation.

122. It is recognised that climate change policy may itself be subject to change in the future as the Government seeks to attain the net zero target by 2050. However, current planning policy does not preclude EfW development and it remains a recovery process in the context of the waste hierarchy. It is not possible to speculate when or whether evolving climate change policy may be less supportive of carbon generating EfW developments and how this may manifest into planning policy. Consequently, I cannot attach any material weight to the evolving climate change position in the determination of this appeal.

123. Whilst uncertainties exist, and having carefully considered the evidence of Mr Norton and UKWIN, I am of the view that the updated Carbon Assessment, as supplemented by further evidence in Mr Othen's Rebuttal Proof, provides a relatively realistic and conservative analysis of the impact of the proposed development on climate change. I consider that a reasonable assessment of the evidence submitted in the Inquiry when considered against the counterfactual position, including the variables associated with the sensitivity testing, demonstrates that the proposed development would not result in a net increase in CO_2e emissions over its life. Moreover, the evidence suggests that it would give rise to a net decrease when compared to the counterfactuals.

124. Furthermore, the CO_2 savings would increase substantially if Carbon Capture and Storage (CCS) becomes available to be employed at the facility in the future. In this regard, the Appellant suggests that the proposed development would have the capability to connect to a future CCS network should this be economically and technically feasible.

[45] NRE 16

125. Taking the above matters into account, I consider that the proposal would be consistent with paragraphs 154 and 155 of the Framework and Policy WDC2 of the WDCPDP. However, whilst I recognise that the updated Carbon Assessment represents a reasonable analysis at the current moment in time, the evidence of Mr Norton demonstrates to me that there are some inherent uncertainties in projecting this forward over the lifetime of the development, particularly regarding the biogenic carbon content of the waste in light of the targets set out in the Environmental Improvement Plan and hence the extent of emissions savings. These uncertainties lead me to conclude that the climate change benefits should only be afforded limited weight in the overall planning balance.

Character and appearance

Landscape background and baseline

126. The Council's putative reason for refusal does not reference landscape or visual effects. However, these matters were raised by Westbury Town Council, both in written submissions and in respect of evidence provided by Councillor Bailey[46], and by interested parties. It was clear in the Inquiry that the landscape and visual effects of the proposed development were of considerable concern to the local community.

127. The ES included a Landscape and Visual Impact Assessment (LVIA)[47] which considers the impact of the proposed development on the existing landscape and visual baseline. Whilst the primary assessment uses the existing landscape and visual characteristics of the area as the baseline, evidence presented by the Appellant in the Inquiry also considered the differences in landscape and visual impacts between the future baseline scenario of the consented 2019 Permission (Ref: 18/09473/WCM) and the appeal proposal[48].

128. The LVIA considered a Study Area comprising a 5km radius around the proposed development which was the same as that used for the 2019 LVIA. I agree that this extent is considered sufficient to capture the key topographical and screening features for a project of this type and scale, in this landscape setting. Beyond the 5km study area significant landscape and visual effects are considered unlikely. There are no statutory landscape designations located within the Study Area. The nearest such designation is the Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty (AONB), located approximately 6.5km to the south of the site at its closest point.

129. The appeal site is located in the Avon Vales National Character Area (NCA) 117. The Wiltshire Landscape Character Assessment further refines the NCA and identifies a series of different landscape types and landscape character areas within Wiltshire. The appeal site is located within landscape type 11: Rolling Clay Lowland, and within landscape character area 11C: Trowbridge Rolling Clay Lowland. The West Wiltshire District Landscape Assessment provides a finer grain characterisation of the landscape. This document identifies that the appeal site is located within landscape type E: Rolling Clay Lowland, and within landscape character area E8: Heywood Rolling Clay Lowland. Key characteristics of landscape character area E8 include:

[46] ID6
[47] CD1.6 VO1 Chapter 5
[48] PoE Phillip Roden

- Gently rolling topography of the area which slopes gradually downwards, moving southwards towards Westbury;
- Human influence strongly visible in the form of West Wiltshire Trading Estate and junction of two main railway corridors;
- Rural character disturbed by noise and visual intrusion associated with the railway corridors, roads and West Wiltshire Trading Estate;
- Combination of small, medium and large, farmed fields surround the trading estate, the boundaries of which are delineated by hedgerows in varying condition;
- A series of interconnecting minor roads cross the area;
- Generally, a low level of tranquillity throughout the area due to the main roads, the railway corridor and Trading Estate.

130. The LVIA identifies that since the West Wiltshire District Landscape Assessment was published in 2007, there has been further infilling/development at the West Wiltshire Trading Estate, and further similar development has taken place at the Hawke Ridge Business Park. The western extent of landscape character area E8 is now largely developed and forms an extensive urban/industrial extension to Westbury.

131. The open countryside immediately to the west of the site is located in landscape character area E3, North Bradley Rolling Clay Lowland, the key characteristics of which include:

- Gently rolling farmland based on clay, with extensive views, including views of the chalk downland in the east and south;
- Distinct pattern of small to medium sized fields enclosed by mainly intact hedgerows with mature trees;
- Predominantly pasture with a few scattered ancient woodland blocks;
- Settlements consist of several villages and farmsteads linked by a dense network of mainly secondary roads and footpaths;
- Pylons as a dominant vertical element.

132. Views towards the West Wilts Trading Estate are identified in the descriptive text for landscape character E3 as a slight detractor from rural character, and further development at the edges of Trowbridge and Westbury is highlighted as being potentially visually intrusive.

133. The LVIA includes a Zone of Theoretical Visibility (ZTV) mapping that has been used to identify the extent of the possible visibility of the proposed development and the 2019 Permission. Representative viewpoints have been agreed between the main parties and used to assess the impacts and resultant effects of the proposed development on a range of views towards the site. The LVIA includes a detailed assessment of visual effects from fifteen viewpoints.

134. The viewpoints are broadly the same as those included in the 2019 LVIA, so that a comparison between the effects of the proposed development and the

2019 Permission can be made. The location of one viewpoint (Viewpoint E) has been amended slightly to reflect a clearer view towards the site.

135. I concur with the views of the main parties that the Study Area encompassed by the viewpoints is appropriate for consideration of the likely important effects of the proposed development on landscape character and views and that the Assessment Methodology in the LVIA has been undertaken broadly in line with best practice guidance as set out in the Guidelines for Landscape and Visual Impact Assessment (Third Edition) 2013 (GLVIA3)[49].

136. Taking into account my findings above regarding the 'fallback' position, I have no reason to doubt the LVIA's consideration of the future baseline that, should the appeal be dismissed, the most likely scenario is that the 2019 permission, or a variation, would be constructed. It is highly unlikely that the appeal site would remain vacant given the extant 2019 permission and the site's allocation for strategic waste facility development. As such, it is highly likely that some form of large scale industrial/waste facility would be constructed on the site at some point in the future. In addition, the LVIA recognises that the land immediately to the west of the site is allocated for employment uses. This land is likely to be developed at some point in the future and this would potentially screen much of the proposed development from the footpath (Viewpoint 1) and more rural landscape to the west.

137. In response to the consultation on the planning application[50], the Council's Landscape Officer indicated that the landscape effects remain similar to the previous application (18/09473/WCM). In considering the landscape effects, the Officer advised that "There will be minimal effects on landscape elements and local landscape character. The site is currently a vacant plot within an industrial estate surrounded by similar buildings and structures that already has an urban influence upon the neighbouring landscape. There will be a slight perceived increase in development due to the size of the proposed buildings and stack, this will be mitigated through landscape proposals, the composition and use of colour to break up the visual mass of the building. There will not be any significant or far-reaching landscape effects as a result of the proposals".

138. In considering the visual effects, the Officer advised that "only Viewpoint 1 (from the PROW to the west of the site) will experience any significant adverse visual effects largely due to proximity to the development. This is consistent with the conclusions of the previous LVIA. From many of the viewpoints the building, although 3.2m taller, appears smaller than the original layout due to the alternative arrangement and use of colour. The stack is still proposed to be 75m in height but slimmer in appearance. The difference in views is best illustrated by the photomontage viewpoints 1-4 where there is a direct comparison between the former and current schemes. The current proposal appears more compact and the stack obviously slighter in appearance. In viewpoint 2 you can see that the building is marginally taller than the previous design where it is viewed against the backdrop of Salisbury Plain scarp. In viewpoint 4 views from the White Horse appear similar to the approved scheme, with the milk factory drawing the eye but still only a small part of a very wide panorama".

[49] CD8.1
[50] CD2.24

Significance of the Plume

139. The combustion process at the proposed development would occasionally produce an emissions plume, composed primarily of water vapour, which would be emitted via the exhaust flues contained in the stack. The degree to which this plume is visible would be determined by the flowrate of the exhaust gases in combination with their temperature and humidity relative to that of the surrounding air environment.

140. The visibility of the emissions plume would likely vary greatly, as the visual characteristics depend on the weather conditions. Plumes often have characteristics in common with the surrounding air environment (i.e., on a cloudy or overcast day they will tend to blend in with the background, and on a windy day they disperse quicker, as they comprise primarily of water vapour).

141. Plume visibility has been modelled as part of the Air Quality Assessment Section of the ES (Chapter 8.0)[51]. The modelling was based on weather data recorded over the five-year period 2015-2019. The modelling indicates that a visible plume would be apparent for between 26.2% and 32.5% of daylight hours (the extent of variation is based upon the variability of weather conditions during the 5-year period included in the model). The average visible plume length is predicted to be short, with plume length being less than 50m for between approximately 82.6% and 84.8% of daylight hours (including those periods when no plumes are visible). The visible plume would be of a length that exceeds 100m for between approximately 17.7% and 26.2% of daylight hours.

142. Where the emissions plume is visible, this would have potential to draw attention to the presence of the proposed development from the surrounding area, thereby increasing the influence of the new structures upon the views available. Atmospheric conditions that lead to plume formation (low temperature and low humidity) occur more frequently in winter, and consequently both plume length and visibility reduce in the summer months.

143. Cloud cover is a significant factor in determining the extent to which visible plumes are discernible. In clear or blue-sky conditions a plume will contrast strongly with its background. However, in skies with more than one or two oktas[52] of cloud, this contrast becomes progressively less marked. The periods when cloud cover is likely to be at its greatest are across the autumn, winter and early spring seasons, which coincide with when the plumes are most likely to occur, and when hours of daylight are less.

144. The modelling indicates that a visible plume would not be present for the majority of daylight hours (not visible more than 67.5% of the time), and when visible, the plume would tend to be fairly short. There would be occasional transient adverse visual effects locally but I do not consider that the presence of the emissions plume would lead to significant adverse visual effects. I have taken into account the fact that a plume may occasionally be present in my assessment of the landscape and visual impacts below.

[51] CD1.06
[52] An okta is a unit of measurement describing levels of cloud cover estimated in terms of how many eighths of the sky are covered in cloud. 0 oktas equates to a clear sky, whilst 8 oktas equates to complete cloud cover

Night-time lighting

145. A detailed lighting scheme for the proposed development has not yet been designed. This would be the subject of a planning condition (No. 13) in the event that the appeal were to be allowed. The LVIA considers night-time lighting and recognises that lighting is a well-established presence in the Study Area due to the presence of existing developments in the adjacent industrial estates. In particular, the adjacent Arla Dairy facility is operational on a 24-hour basis.

146. However, a number of parameters and an existing night-time baseline review have been used to inform the LVIA and identifies that lighting would be designed and specified to accord with current industry standards and best practice guidance. The aim would be to minimise the generation of obtrusive light beyond the site. Internal lighting within the proposed new buildings would be designed with the same concerns in mind and would be designed to reduce the spillage of light outside the buildings themselves.

147. The LVIA identifies that the generation of light would increase locally as a result of the proposed development. However, this increase would be minimised by the implementation of a sensitively designed lighting scheme, and would occur in the context of an already relatively well-lit industrial area. Change in lighting levels outside of the site would be incremental. As such, the LVIA concludes that the presence of the proposed development would not materially alter the night-time environment, and night-time effects would not be significant.

148. I have no contrary evidence to question the findings of the LVIA regarding night-time lighting. I have therefore also taken these matters into account in my consideration of the landscape and visual impacts of the proposed development below

Landscape impacts

149. When contrasted with the consented 2019 Permission, the proposed development would be broadly similar in form and scale. I agree with the findings in the LVIA that the landscape character of the Trading Estates in the vicinity of the site has a low susceptibility to change given the well-established industrial use and existing large-scale buildings in the vicinity. I also concur that its value is deemed to be low because of the lack of landscape quality and absence of any recreational value, heritage interest or positive perceptual associations and the planned extension of industrial uses to the west. Therefore, I accept that the Trading Estates are considered to be of Low Landscape Sensitivity and are tolerant to significant change of an industrial nature.

150. Although the proposed development would be a large-scale permanent addition, the magnitude of change to the character of the Trading Estates and LCA 8 would likely be small as a consequence of the proposal being located between two existing large-scale visually prominent industrial buildings immediately to the north-west and south-east of the site. In addition, the mass of the existing industrial buildings elsewhere on the Trading Estates strongly influences the local character. Consequently, the further presence of the proposed development would only result in limited change (largely due to the presence of the stack and the scale of the proposed building). The

proposed landscape treatment would partially screen views of the lower levels of the proposed development from other areas of the trading estate and nearby footpaths.

151. Taking the above factors into account, I find that the significance of landscape effects, on LCA E8 would be Slight Adverse. In addition, I find that the impacts would be comparable to those of the 2019 Permission.

152. With regard to the land to the west (within LCA E3), the LVIA confirms that this is more rural in character, but with evidence of alteration and degradation where it meets the urban/industrial fringe. In view of this, I consider that the landscape has a medium susceptibility to change at its boundary with the urban area. Accordingly, it is tolerant to some change at its interface with the urban edge of Westbury.

153. The proposed development would be adding to an existing assemblage of industrial structures on the Trading Estates, thus increasing the overall amount of built development present in views eastwards from the rural area. The magnitude of change to the land to the west would also be medium due to a partial alteration of the area's visual context in close proximity to the site and from more elevated locations in the wider landscape (viewpoints 2 and A). However, there would be no fundamental changes to the underlying key characteristics associated with topography, vegetation, enclosure or pattern and changes to the visual context of the character area would only occur relatively close to the site.

154. Visibility from the majority of LCA E3 would likely be limited and fragmented due to a number of factors including the natural screening afforded by a combination of topography, woodlands and hedgerows; the presence of existing and sizeable built development; the proposed landscaping (including the bund); and the existing and evolving context of the site within an industrial setting. Accordingly, I agree with the findings of the LVIA that the landscape effects on LCA E3 would be Moderate Adverse, but that these effects would be localised only and not widespread across the LCA.

Visual impacts

155. I have considered the views of both main parties in relation to the visual impact of the proposed development relative to the agreed viewpoints. I have set out my assessment of the visual effect on some of the viewpoints that have influenced my overall assessment of the visual effect of the proposed development. I have also taken into account the A1 size images provided by Councillor Bailey on behalf of Westbury Town Council[53] in coming to my conclusions.

156. The ZTVs presented on ES Figures 5.5a-d (CD1.6) demonstrate that theoretical visibility of the proposed development would be very similar to that of the 2019 Permission, with only very localised areas where additional visibility is predicted due to the increased building height or relocation of the stack. In comparison to the 2019 Permission, I consider that the increase in maximum building height would barely be perceptible from many locations due to the revised position of the boiler house and the reduced height/location of other built elements. The most significant improvement would be the

[53] ID24

reduction in the diameter of the proposed stack from 4.0m to 2.55m. This would reduce the prominence of the stack in all of views and reduces the visual impact of the appeal proposal incrementally compared to the 2019 Permission.

157. Viewpoint 1 is located on a public footpath (DMAR10) approximately 200m to the south-west of the site. Some of the Arla Dairies structures, including two stacks, are visible from this location but views of the Dairy are more prominent when not screened by foreground vegetation elsewhere along this route. I concur with the findings of the LVIA that the proposed development would be broadly compatible in terms of mass and scale with the adjacent dairy buildings and structures. However, it would result in a very clear change to the character and composition of this particular view, mainly due to the fact that the associated buildings would occupy a large proportion of the overall view, substantially altering the existing views available. Consequently, there would be a deterioration in the quality of the view at this particular location and the magnitude of change would be large. I consider that users of the footpath have a high sensitivity to change. Consequently, there would likely be a Substantial Adverse visual effect.

158. Although the LVIA suggests that the proposed development may appear less intrusive than the 2019 Permission, mainly due to the arrangement of different elements of the building complex and the composition and colour of the new building elements, I do not find this to be the case. In my view, there would be little discernible difference between the proposed scheme and the consented scheme in terms of the visual effect on viewpoint 1.

159. Viewpoint 2 is located approximately 1.4 kilometre to the west of the nearest proposed building, along a public footpath (NBRA32) that skirts the eastern edge of Round Wood. Views towards the site would be fragmented by intervening vegetation. The chalk upland scarp slope is a prominent horizontal component of the view that is punctuated by mature trees in the foreground and stacks associated with the Dairy. A large-scale industrial shed (Welton Bibby & Baron building) is also clearly visible above the intervening topography and vegetation. The Dairy obscures the view of a portion of the scarp slope on which the Westbury White Horse is situated. The upper parts of the proposed stack would breach the horizon. The visual effect on these views would be Moderate Adverse and the significance of the visual effect would be comparable with the 2019 Permission.

160. Viewpoint 3 is located on a public footpath approximately 3km from the nearest proposed building, a short distance south-east of Scotland Lane on the ridge above Lower Rudge. Given the intervening distance to the appeal site, the proposed buildings would be broadly compatible in terms of size and scale with the adjacent Dairy buildings. The top of the proposed stack would extend slightly above the skyline. There would be a noticeable deterioration in the quality of a small part of the existing view, associated with the introduction of the stack, and the increased massing of industrial development. I consider that the visual effects would be Moderate Adverse.

161. Viewpoint 4 is located more than 4km from the nearest proposed building, on the chalk downland scarp slope adjacent to the Westbury White Horse and Bratton Iron Age Camp. This location affords panoramic views of the landscape below. This is due to the complete absence of vegetation on this

particular section of the scarp slope. The settlement of Westbury and the existing Arla Dairy and the trading estates buildings are clearly visible. In particular, the Arla Dairy is very prominent in the wider panorama.

162. Visitors to this viewpoint would have a high sensitivity to change. Although the proposed buildings and associated stack would be clearly visible, they would only occupy a small proportion of the overall panoramic views available. The small part of the view affected is already influenced by existing industrial development at the Dairy, MBT and adjacent industrial sites. In the context of the expansive panoramic view available, the proposed development would represent a minor, albeit noticeable, addition. There would be a minor deterioration in the quality of the part of the view that looks towards Westbury and I consider that the visual effect would be Moderate and Adverse. At distances in excess of 4km the increased maximum building height of the proposal when compared with the 2019 Permission would be barely perceptible. Although the narrower nature of the stack may be noticeable, overall, I consider that the significance of the visual effect would be comparable with the 2019 Permission.

163. Viewpoint A is located on Brokerswood Lane, approximately 1.8km from the nearest proposed structure. Whilst the intervening vegetation is a significant component of this view, the existing trading estate buildings, in particular the Dairy, are prominent and partially obscure the view of the chalk downland beyond. From this location it is likely that much of the proposed development would be screened from view by the adjacent Dairy. The proposed stack would be visible and would break the skyline along with other existing features. There would only be a minor change in the composition of the existing view, albeit one which is permanent. Views toward the proposed development would be oblique to the direction of travel and this, combined with the prominence of the Dairy, would mean that the magnitude of the change for receptors at this viewpoint would likely be small at most. Consequently, the resulting degree of visual effect would be Slight Adverse due to the intensification of existing industrial uses and the proposed stack breaking the skyline. It is unlikely that there would be any appreciable difference in the influence of the buildings that form part of the proposed development and the consented 2019 Permission.

164. Viewpoint B is located on the footpath adjacent to West Wiltshire Trading Estate, approximately 980m to the northwest of the nearest proposed structure and is representative of views looking south-east along the public footpath (DMAR10). A small portion of the proposed development is likely to be visible either side of, and above, the Dairy from this location. This would result in a slightly increased portion of the downland scarp slope of Salisbury Plain being obscured from view. I consider that the existing views from this location are dominated by the Dairy buildings and the proposal would introduce additional, but not particularly discordant elements, into a fragmented and relatively poor-quality view. Consequently, I consider the visual effect to be Moderate Adverse, primarily due to visibility of the proposed stack. It is unlikely that there would be any appreciable difference in the influence of the proposed development and the consented 2019 Permission upon this view.

165. Viewpoint C is located on Stephenson Road, approximately 280m from the nearest proposed structure and looks south-east down the length of

Stephenson Road. The line of semi-mature trees in front of the Arla Dairy makes a positive contribution to the overall quality of the street scene, and screens the Dairy and much of the proposed site from view. The upper portion of the stack and potentially parts of the roof of the proposed building would be visible from this viewpoint, although during the summer months the existing trees along the Arla boundary would provide a significant degree of screening. The proposed development would only occupy a relatively modest proportion of the overall view and the consequent visual effect would be Slight Adverse to Negligible.

166. Viewpoint D is located in the centre of Warminster Road Car Park, (approximately 1.7km from the nearest proposed building. Due to the higher elevation of this part of the town, the Arla Dairy, the MBT and other nearby industrial buildings are visible towards the rear of the view and framed by tree cover close to the viewpoint. The main Dairy building and associated stacks break the skyline, as do other foreground features. The proposed development would be introduced in front of the Dairy and would therefore largely obscure this existing facility. The proposed stack would also be clearly visible. Although the proposed development would occupy a small proportion of the view, it would be seen as an incremental increase in built development compared to the existing Dairy (that it would replace in the view). The proposed colour scheme, which would break up the mass of the proposed development, would also be more sympathetic than the existing bright white of the Dairy. However, I recognise that the incremental increase in built development would be noticeable in views from the adjacent school playing fields that were observed on the site visit.

167. Overall, I consider that the location of viewpoint D provides a low-medium sensitivity to change and that there would be a Slight to Moderate Adverse visual effect, primarily due to the introduction of the stack. There would be little appreciable difference in the influence of the proposed buildings, and those in the consented 2019 Permission, upon the view.

168. Viewpoint E is located on a public footpath (WEST32) looking north-west and is located approximately 2.5km from the nearest proposed building. There are sweeping views of the town and wider countryside from this location, including the extensive industrial development to the north of the town. The Arla Dairy and MBT are clearly visible in the middle ground below the horizon. Users of this footpath would be of high susceptibility as enjoyment of the long-range views would likely be one of the prime motivators behind their excursion, albeit the visual amenity is already influence by extensive urban/industrial development in the middle distance of the views.

169. The proposed development would be visible as an addition to the existing assemblage of industrial development on the north western edge of Westbury. The new building would partially screen the Arla Dairy from view and, although it occupy a small proportion of the overall views available from this location, it would be seen as an incremental increase in built development compared to the existing Dairy, MBT and other large scale development in the wider industrial estate. However, the nature of the existing view, namely an expansive panorama including the localised presence of industry, would not appreciably change. There would be little appreciable difference in the influence of the proposed buildings and those proposed in the consented 2019 Permission upon the view. Overall, I consider that there would be a Slight to

Moderate Adverse visual effect as a consequence of the proposed development.

170. Viewpoint F is located on Leigh Close, an elevated residential road approximately 2km from the nearest proposed building. The viewpoint represents views experienced by drivers of vehicles on roads which run perpendicular to the steep slope, pedestrians and occupiers of residential properties. Views from properties are generally oblique or screened by intervening properties or vegetation. Roads in this area which run parallel to the slope generally have views curtailed by foreground properties. Views from the more elevated sections of roads are long distance with most of the urban area of Westbury town screened by the intervening vegetation during the summer months.

171. From this particular vantage point, the Arla Dairy is conspicuous above the tree cover. Receptors at this viewpoint primarily comprise local residential properties and road users. Direct views of the appeal site are likely to be obscured by other buildings and/or vegetation and would be fragmented. However, the proposed development would be clearly visible, approximately 2km to the north-west, and would largely obscure the existing Arla Dairy structures from view. The prominence of the proposed stack and greater mass of the proposed buildings when compared to the Dairy would result in a minor deterioration in the quality of the view. This would be partly mitigated by the proposed colour scheme that would break up the mass of the proposed development into similar scale blocks to the Dairy using contrasting, but complimentary, colours. The proposed colour scheme would also likely be more sympathetic to the wider landscape setting than the bright white of the dairy. Taking these factors into consideration, and the intervening distance from the viewpoint to the appeal site, I consider that this would result in Slight Adverse visual effects primarily associated with the proposed stack breaking the skyline. There would be little appreciable difference in the influence of the proposed buildings and the consented 2019 Permission upon the view.

172. Viewpoint G is located on Biss Close, Upton Scudamore, over 4km from the nearest proposed building. Views in the direction of the site are available from a small number of properties on the northern side of the village of Upton Scudamore. There is an extensive foreground component to the view over agricultural land interrupted by vegetation occupying a valley in the middle distance. I concur with the findings of the LVIA that the Arla Dairy and other development on the industrial estates are a minor feature in the view, although the Dairy is clearly visible due to its colour. There would likely be a minor deterioration in the view primarily associated with the introduction of the stack and incremental increase in the scale of development visible. This would result in a Moderate to Slight Adverse effect, primarily due to the visibility of the proposed stack. There would be little appreciable difference in the influence of the proposed buildings and the consented 2019 Permission upon the view. At this distance, the increased maximum building height would be barely perceptible.

173. Viewpoint H is located approximately 2.3km from the closest proposed building and is located on a public footpath (DMAR23) above Dilton Marsh. Views towards the appeal site are very well screened by vegetation in the summer months and only the tops of the Dairy building and stacks are visible.

There would be filtered views available in winter towards the existing industrial development at the western edge of Westbury, including the Dairy and MBT. I concur with the LVIA that the value of this view is deemed to be low to medium due to the glimpsed nature of potential views of the appeal site and its edge of urban setting. The proposed development would be relatively well screened by vegetation cover in summer, and its presence would have little influence upon the view. In winter, it would form an addition to the existing assemblage of industrial development towards the rear of the view, but its presence would not result in any significant change in the intrinsic character of the views available. The main impact would be associated with the introduction of the stack, as the buildings would occupy a similar area of the view to the Dairy. I consider that this would result in a Slight Adverse visual effect, primarily associated with the introduction of the stack. There would be little appreciable difference in the influence of the proposed buildings and the consented 2019 Permission upon the view and the increased maximum building height would likely be barely perceptible.

174. Viewpoint I is located approximately 1km south of the appeal site on Penleigh Road, an unadopted track designated as a bridleway (WEST20). To the north, the Arla Dairy is clearly visible through a gap in the vegetation associated with the railway embankment. The close proximity of the appeal site means that the proposed development would be clearly visible above the trees. The influence of development upon the skyline in the background of the view would increase. However, the proposal would partially screen the Dairy from view. Consequently, the nature of the view would remain similar to baseline, albeit with a slightly greater extent of industry visible. There is likely to be no more than a minor deterioration in the overall quality of the view. Receptors using the bridleway are likely to be potentially exposed to this changed view for a distance of several hundred metres, but it will not be their main focus. Taking all the above factors into consideration, the overall magnitude of change is deemed to be small and would result in Slight Adverse visual effect associated with the increased height and density of built development and introduction of the stack. There would be little appreciable difference in the influence of the proposed buildings and the consented 2019 Permission upon the view.

175. Viewpoint J is located approximately 2km from the nearest building at the end of the section of St Mary's Lane that is accessible to vehicles, on the northern edge of the village of Dilton Marsh looking north-east towards the Site. The Arla Dairy and MBT buildings are visible above the trees in the background. The susceptibility of the receptors, which includes both occupiers of the nearby cottages as well as recreational walkers, would be medium to high due to the largely rural character of views being moderated by elements of industrial development in the distance. The proposed development would be visible in the background of the view, filling the gap between the Dairy and the MBT. Whilst appearing taller than the Dairy, the proposal would likely occupy a similar angle of the view and the mass of the building would be reduced by the proposed colour scheme. Nonetheless, whilst the proposal would be compatible in character and scale with the existing industrial features in the view, it would result in a minor deterioration in the overall quality of this view, mainly due to the stack. Overall, I consider that the visual effects would be Moderate Adverse due to the intensification of industrial uses and stack visibility. There would be little appreciable difference

in the influence of the proposed buildings and the consented 2019 Permission upon the view.

176. Viewpoint K is located approximately 3.7km from the nearest building at the end of Scotland Lane which runs along a low ridge located to the west of the hamlets of Rudge and Lower Rudge. Long distance views east are available, with existing industry partially screened by intervening vegetation. The Arla Dairy and the existing MBT are both visible, but are minor features. The White Horse on the scarp above Westbury is visible and the top of the scarp forms the skyline. The users of this public right of way would likely have a medium - high susceptibility to visual change. The proposed development would be visible between the Dairy and MBT. The proposed buildings would be located below the skyline, but the stack would break the horizon. There would be a noticeable deterioration in the quality of a small part of the existing view associated with the introduction of the stack and the increased massing of industrial development. However, the primary attention is likely to be focused on the White Horse and the undeveloped skyline to the south, rather than the infrastructure on the Trading Estate. Consequently, the visual effects would be Slight to Moderate Adverse primarily due to the stack breaking the skyline. I consider that there would be little appreciable difference in the influence of the proposed buildings and the consented 2019 Permission upon the view.

177. In concluding my assessment of the visual effect of the proposed development I have found that there would be little appreciable difference in the influence of the proposed buildings and the consented 2019 Permission upon the agreed viewpoints. This is primarily due to the revised position of the boiler house and the reduced height/location of other elements. As such, the increased maximum building height would likely be barely perceptible. The most significant improvement would be the reduction in the diameter of the proposed stack from 4.5m to 2.5m. This would reduce the prominence of the stack in a number of views.

178. Of the fifteen viewpoints considered, I agree with the conclusions of the LVIA that there is only one location (Viewpoint 1) that would experience a significant visual effect. With regard to the other viewpoints, I have found that the resulting visual effect as a consequence of the proposed development would be Moderate to Slight Adverse.

Character and appearance - Conclusion

179. I have found that the proposed development would have a Slight Adverse effect on the surrounding landscape within LCA E8, increasing to Moderate Adverse effect in respect of the impact on LCA E3, albeit that this impact would likely be localised. In addition, there would be significant adverse visual effects in respect of Viewpoint 1, with Moderate to Slight Adverse effects on the other agreed viewpoints.

180. As a consequence of the above, the proposed development would cause a degree of harm to the character and appearance of the local landscape and, in principle, would be contrary to the provisions of Core Policy 51 of the CSDPD and Policies WDC2 and WDC7 of the WDCPDP which together seek to protect the character of the existing landscape.

181. However, I am mindful of the views of the Council's Landscape Officer and the assessment of the landscape and visual impact of the proposed development as set out in the Officer Reports to SPC[54]. I also recognise that the appeal site comprises part of land specifically allocated for waste management facilities in the development plan and is located in close proximity to existing significant industrial development. In addition, I have found that the appeal proposal would have no material greater impact on the character and appearance of the surrounding area than that of the fallback 2019 Permission.

182. There is some degree of conflict with the policies identified above. However, the extent to which the harm to the character and appearance of the surrounding area would form a sustainable reason for the dismissal of this appeal is a matter that needs to be considered in the overall planning balance and is set out later in this decision.

Effect on adjacent businesses

183. Although not reflected in the Council's putative reason for the refusal of planning permission, substantial evidence was submitted in the Inquiry regarding the effect of the proposed development on the adjacent Arla Dairy. This was with particular regard to emissions of odour or bioaerosol emissions that could possibly by-pass the air intake filters of the Dairy resulting in product contamination or taint. In such circumstances, it was suggested production may have to cease until any pollutant levels reduced to an acceptable level. It was contended this may cause reputational damage to the company and seriously affect the business.

184. Similar concerns were also raised with the Environment Agency during the consideration of the permit application. The Appellant submitted an Odour, Bioaerosol and Taint Assessment Report[55] to the Environment Agency which was subject to further requests for information by the EA. This assessment was also considered by consultants (Ricardo AEA) on behalf of Arla. The EA, in the determination of the permit application, concluded in section 5.6 of their decision document[56] that "the risk of odour or taste impacts (from the main incinerator stack) is negligible due to odour compounds being destroyed in the combustion process". It further identified that there would not be any significant emissions from the odour abatement stack or from the receptor hall doors. Arla's concerns expressed in the Inquiry related to, amongst other things, the potential for failures and breaches of the permit conditions and potential for the proposed development to operate other than as anticipated by the Environmental Permit.

185. In considering this matter, I am mindful of paragraph 188 of the Framework which advises, amongst other things, that "the focus of planning policies and decisions should be on whether proposed development is an acceptable use of land rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively".

186. The Appellant provided a refreshed 'Odour, Bioaerosol and Taint Assessment Report'[57] in the Inquiry. This identified that the quantitative odour

[54] CD2.1, CD2.2 and CD2.3
[55] CD7.9
[56] CD6.1
[57] Appendix NRE5-B to Stephen Othen PoE

assessment shows that there would be no reasonable cause for annoyance as a result of odour emissions; that the impact of bioaerosols would be insignificant and that emissions from either the odour abatement stack or the main stack would not lead to contamination of Arla's product.

187. No further evidence was presented in the Inquiry to suggest that the findings of the refreshed assessment may be incorrect. However, during the RTS on planning conditions, concerns were raised by Dr Michael Bull on behalf of Arla regarding a requirement for 100% redundancy in the backup odour abatement system; the requirement for a system to monitor continuous air flow through the odour abatement system to ensure the unit is operating when required; and demonstration that negative pressure will be maintained throughout the reception hall. These matters are addressed in suggested planning condition No. 23.

188. I recognise the concerns of Arla and the local community regarding this matter. It was clear that the local community value the contribution that Arla makes to the local economy and the promotion of Westbury in some of its product branding. However, in conclusion on this matter, and in particular taking into account the content of paragraph 188 of the Framework, I have no reason to assume that the emission/pollution control regime would not operate effectively.

189. In addition, I have no contrary evidence to suggest that the findings of the refreshed assessment may be incorrect. Furthermore, it appears to me that the concerns expressed at the RTS on planning conditions have been adequately reflected in the revised agreed schedule of planning conditions[58] which are considered later in this decision. Taking all of these matters into account, I have no compelling evidence to suggest that the proposed development would have a demonstrable prejudicial effect on the operation of the Arla Dairy.

190. I have also taken into account the concerns that were raised regarding the effect of the proposed development on tourism in the area, in particularly the occupancy levels at nearby caravan sites. In my view, such impact would be as a consequence of the visual effect of the proposed development that I have considered above.

191. There was no conclusive evidence provided in the Inquiry to make any reasonable judgement of the effect of the proposed development on the local tourist economy. Consequently, I consider that the impacts of the proposal upon the local tourism industry would not be of an extent to justify the dismissal of this appeal on those grounds alone. In the overall planning balance, I consider that the impact on tourism should be afforded little weight.

Other Matters

Effect on the special interest of nearby heritage assets

192. Although the Council's putative reason for the refusal of planning permission does not identify any concerns regarding the impact of the proposed development on designated heritage assets, I am nevertheless required to have regard to the statutory duty to consider the effect of the proposal on

[58] ID40

such assets within the context of Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. I have had regard to the desirability of preserving or enhancing the designated heritage assets.

193. Chapter 12 of the ES includes a Cultural Heritage Assessment[59], informed by a Heritage Assessment Update[60]. These assessments consider the effect of the proposed development on heritage assets within 2km of the appeal site. Although there are assets located further afield, some of these are identified as being sufficiently distant from the appeal site or are affected by intervening development and/or have intimate settings such that they would not be affected by the proposed development.

194. The impact on five 'within 2km' assets have been assessed. These comprise Brook Farmhouse (Grade II listed building), Storridge Farmhouse (Grade II), Brook Hall (Early Wing (Grade I), the Hall (Grade II) and the Barn (Grade II)), the 'Medieval Settlement and associated field systems of Brook Farm' (Scheduled Monument), and 'the Moated Site 400m east of Penleigh House (Scheduled Monument).

195. Beyond 2km other sites with inter-visibility have also been assessed. These include 'Bratton Camp Iron Age hillfort, the Westbury White Horse, barrows and trackways on Bratton Down' (Scheduled Monument), 'The Devil's Bed and Bolster long barrow' (Scheduled Monument), Park Court in Upton Scudamore (Grade II* listed building), and 'Bowl Barrow north of White Horse Farm' (Scheduled Monument).

196. The Council's Conservation Officer agrees with the findings of the assessments[61] that, other than the impact on Brook Farm, the proposed development would have a negligible and not significant impact on other assets. Consequently, the proposal would not affect the contribution made by setting to the significance of these assets.

197. In respect of Brook Farm, the presence of the proposed development would cause a change in the current setting. Although the development would be seen as part of the larger industrial estate, in views to the north-east, the proposal would bring development closer to the asset, albeit the extent of the allocation shown on Inset map W3 of the WSALP proposes an opportunity for development to occur even closer to the heritage asset.

198. The proposed development would serve to erode the part played by the agricultural surroundings which comprises the setting of this asset, and which in part allows its significance to be appreciated. I agree with the findings of the assessments and the views of the Council's Conservation Officer that there would be a degree of harm to the setting of Brook Farm, which should be considered as 'less than substantial'. In such situations, paragraph 202 of the Framework requires a balanced approach, with any 'harm' caused to the significance of the heritage asset being weighed against the public benefits of the proposal.

199. Whilst having special regard to the preservation of the setting of Brook Farm, I conclude that the benefits identified above and considered elsewhere in this decision outweigh the less than substantial harm that would be caused to the

[59] CD01.06-V01 12
[60] CD1.06 Vo3 Appendix 12.1
[61] CD2.19

setting of this heritage asset. Consequently, the proposed development would not be in conflict with the relevant provisions of Core Policy 58 of the CSDPD, Policy WDC9 of the WDCPD, nor with the relevant provisions of Part 16 of the Framework.

Effect on the efficient operation of the local highway network

200. Interested parties raised concerns regarding the effect of the proposed development on congestion. The transport related environmental impacts of the proposed development were considered in Chapter 10.0 of the ES[62]. In addition, a standalone Transport Assessment (TA)[63] accompanied the planning application. A further 'Technical Note 2' report was also submitted, accompanied by a revised TA report[64].

201. The concerns raised by interested parties included the validity of the traffic surveys which underpin the TA work. The TA and additional information were considered by the Council, in its capacity as highway authority, and no objections were raised to the proposed development, subject to the imposition of a number of planning conditions which form part of those agreed between the Council and the Appellant.

202. Notwithstanding the above, the traffic impact of the appeal proposal has been reassessed by the Appellant against an updated 2022 baseline survey data[65]. This concluded that there are no adverse or severe impacts arising from the updated assessments, and that the results reaffirm the conclusions reached in the TA, and which the Council, in its capacity as local highway authority, concurred with.

203. The appeal site is part of a much wider area which is allocated in the WCS for employment uses. It would not therefore be unreasonable to assume that if an alternative proposal for a class B2 general industrial or class B8 storage and distribution facility were to be proposed on the site then this would also implicitly bring with it significant traffic-generating potential. Furthermore, comparing the extant EfW permission against the appeal proposal suggests the appeal scheme would generate a net uplift of only 12 two-way vehicle trips per day, with negligible changes in the peak hours.

204. Whilst concerns were raised regarding the use of the A350 for HGV's associated with the proposed development, this route is designated by the Council as a 'Strategic Lorry Route'. The evidence suggests that the proposed development would result in in an increase of less than 1% on daily traffic flows which would not result in a severe residual cumulative impact on the road network.

205. Some of the comments made by interested parties allude to the perception that the B3097 Hawkeridge Road, and in particular the signalised junction in Hawkeridge, are not able to satisfactorily accommodate the proposed increase in HGV traffic from the appeal proposal. The Appellant's highways evidence suggests that the two-way HGV movement on this road would be 54 trips per day. When this increase is considered volumetrically across the planned HGV operational hours of 07:00 – 22:00 each weekday in Hawkeridge, this level of

[62] CD1.6(i)
[63] CD1.5
[64] CD1.12
[65] PoE Lee Kendal

uplift equates to an additional lorry movement every 16.5 minutes, on average. I consider that this would be imperceptible to a casual observer, let alone in terms of any measurable impact on capacity or safety. Notwithstanding this, the Appellant's highways evidence includes a detailed capacity investigation of the B3097 Hawkeridge Road/Hawkeridge/farm access signalised junction in more detail. This concluded that no improvements to the junction are necessary.

206. No other contrary technical evidence was presented in the Inquiry to suggest that the findings of the TA and additional information, or its assessment by the Council, may be incorrect. In my view, the land use allocation of the site and its location within the Trading Estate suggests that it can be reasonably expected that any development in this location is likely to give rise to a number of HGV movements. Moreover, I have no evidence of any restriction on the type, frequency, time period or number of vehicular movements that could use the Trading Estate roads.

207. On the basis of the evidence provided in the Inquiry, I consider that the highway impact of the proposed development would be acceptable and would not amount to a severe residual cumulative impact. Consequently, there would be no conflict with Core Policies 61 and 62 of the CSDPD, Policies WDC2 and WDC11 of the WDCPDP or Part 9 of the Framework.

Air Quality and health Implications

208. Section 8 of the ES includes an air quality and human health assessment[66] which concludes that the proposed development is not predicted to give rise to significant environmental effects on air quality or human health either in the construction or operational phases. Additional information was provided by the Appellant which included data on daily mean particulate matter (PM10 and PM2.5), as well as nitrogen dioxide and further analysis of potential cumulative effects of the proposed development with other committed developments. Section 8 of the ES was reviewed by independent consultants (AECOM)[67] on behalf of the Council who considered that the air quality assessment undertaken for the proposed development follows an appropriate methodology and is considered sufficient for purpose. Although detailed comments were provided, the review confirmed that the "comments are of medium significance that are likely to alter the reported information, but unlikely to materially alter the conclusions of the impact assessment".

209. The Council's Public Protection Officer and Public Health England raised no objections to the assessment methodology, the analysis and the conclusions. This also considered the effect on the Air Quality Management Area (AQMA) which has been declared in respect of exceedances of the annual mean nitrogen dioxide and daily mean particulate matter (PM10) air assessment levels (AQALs) on the A350 through Westbury town centre. Although not raised as a concern by the Council in the putative reasons for the refusal of planning permission, a number of interested parties and Westbury Town Council raised concerns regarding the effect of the proposed development on air quality and human health.

[66] CD1.06 V01 08
[67] CD2.14

210. Further modelling was described in the evidence of Mr Othen. With regard to the AQMA, dispersion modelling (using ADMS-Roads 5.0) was used to model the impact of emissions from traffic associated with the operation of the proposed development[68]. This was based on four scenarios, including traffic predictions from committed, but not yet built out developments, and two emission factors, a worst case where there is no change in vehicle fleet composition on the local network and a best case where it is assumed that emissions reduce as newer and cleaner vehicles are used.

211. For the worst-case emission factors, the modelling demonstrates that the annual mean nitrogen dioxide levels associated with the appeal proposal and other committed development would be 3.6% of the AQAL and moves a number of receptors from below AQAL to exceeding AQAL. This would be described as a moderate adverse impact.

212. For the best-case emission factors, the modelling demonstrates that the highest predicted total concentration of annual mean nitrogen dioxide concentration is below 70% of the AQAL, which is described as negligible impact.

213. The assessment demonstrated that the main contributor to the cumulative impact is the Hawke Ridge Business Park, which was predicted to add 116 HGV movements in the AQMA, compared to 16 HGV movements from the appeal proposal. The worst-case modelling assumes that there is no increase in electric vehicles and that no companies operating HGVs in the area replace any of their vehicles. I consider this to be unlikely and I concur with the evidence of Mr Othen that the impact is likely to be closer to the best-case scenario than the worst case. Consequently, the evidence suggests that the cumulative emissions associated with the appeal proposals and other committed development would have a negligible impact on concentrations in the AQMA.

214. During the Inquiry Dr Marner, on behalf of Westbury Town Council, provided a review of the air quality assessments and raised a number of issues, four of which were characterised as being 'Major', by which he identifies that each one of these would be sufficient, in itself, to invalidate the reported conclusions.

215. The first major issue is suggested to be the lack of appropriate consideration of the Westbury AQMA. This particularly focusses on the exclusion of diffuser tube (DT29) from the verification exercise. There was some dispute regarding the location of this diffuser tube which was changed on a number of occasions by the Council. Dr Marner considers that the modelling may have under predicted the impact of traffic emissions. In response to this matter, Mr Othen considered whether an alternative approach would have led to a different conclusion by applying different verification factors. The evidence[69] suggests that the conclusions of the assessment would not change.

216. All of the other major issues raised by Dr Marner relate to the potential effects on biodiversity. The second major issue relates to an alleged failure to consider effects in combination with other developments on European sites and SSSIs. The Appellant outlined that this was not done for the Salisbury

[68] CD1.15
[69] NRE13 - Stephen Othen Rebuttal Proof of Evidence pages 19-22

Plain SAC and SPA, approximately 3.5km from the appeal site, or for the impact on oxides of nitrogen emissions on the Pickett and Clanger Woods SSSI because the impacts were screened out as being less than 1% of the relevant Critical Load. In their response to the consultation on the planning application, Natural England raised no objections to the proposed development and advised[70] that, in relation to European Sites and SSSIs, the proposed development will not have likely significant effects on statutorily protected sites.

217. In response to the concerns raised by Dr Marner, further modelling of additional in-combination impacts was undertaken which found these to be sufficiently small that, even if they were included, they would not change the conclusions.

218. Dr Marner's third major issue relates to the 'trends in air quality over time' and, in particular, that ammonia concentrations and nitrogen deposition rates increased in 2018 and 2019 and that this undermines the trend seen from 2009 to 2017. However, the Appellant's evidence suggests that the 2018 and 2019 figures are based on a new transport model for ammonia and are not comparable to the earlier figures. For ammonia, Dr Marner asserts that the scheme is expected to exacerbate a worsening trend and that there may be no assessment of the effect that this will have on epiphytic lichen diversity.

219. Whilst I have taken Dr Marner's views into account regarding the potential effect on epiphytic lichen, I am mindful that Natural England have raised no objections to the proposed development. The Appellant has addressed the concerns expressed by Dr Marner regarding this matter in Mr Othen's Rebuttal which I interpret as having an insignificant effect.

220. The fourth major issue raised by Dr Marner relates to the alleged use of incorrect background maps for determining the baseline concentration of nitrous oxide (NOx) on the Pickett and Clanger Woods SSSI. Whilst there remains some dispute regarding the extent to which in-combination schemes were considered, Dr Marner's rebuttal proof evidence[71] accepts that the additional modelling provided in Mr Othen's Rebuttal demonstrates that the annual mean NOx concentrations in the SSSI could be 29 μg/m3 and thus below the 30 μg/m3 critical level.

221. Whilst I have considered the three moderate and seven minor issues raised by Dr Marner, I do not consider that any of these materially affect the conclusions of the Appellant's Air Quality and Human Health Assessment. The major concerns have been considered in detail by the Appellant. I am also mindful that no technical consultee, including the Council's own consultants, has raised any concerns regarding the methodology used or the conclusions reached in the Assessments. I therefore conclude that the proposal would be unlikely to have a significant adverse effect on public health with reference to air quality. Consequently, I find no conflict with the provisions of Core Policy 55 of the CSDPD.

222. I now turn to consider whether, in the absence of objective justification for the public health concerns raised with respect to air quality, land use consequences would flow from the perception of harm. A number of

[70] CD2.08
[71] ID2

interested parties have suggested that people may well feel compelled to either move from the area around the appeal site or to not move into the area due to the existence of the proposed facility.

223. It is clear from the submissions made that a significant number of existing residents in the area are concerned at the potential air quality impacts. Understandably, relatively few who cite this concern have engaged on an evidential basis.

224. Furthermore, it is clear, with reference to other appeal decisions brought to my attention, that significant public opposition based on a perception of harm to health is often associated with EfW proposals. Nonetheless, there is no evidence before me to demonstrate that other energy from waste developments within or adjacent to a developing urban area have adversely affected either house prices or the demand for housing in the area.

225. It is conceivable, notwithstanding the absence of any objective justification with respect to air quality, that some people may choose to move away or may choose not to move into the area as a result of the proposed scheme. However, based on the evidence before me, in my view, it is unlikely that many would do so and it is unlikely that the impact would be significant in land use terms. Furthermore, there is no compelling evidence before me to support the contention that businesses considering relocation to the area would be likely to be deterred by the scheme or by the cluster of waste management activities at the Trading Estate.

226. Under these circumstances, I consider that only limited weight is attributable to the perception of harm to public health and the scheme would not give rise to a significant conflict between land uses in the area. Accordingly, I find no conflict with paragraph 185 of the Framework or paragraph 7 of the NPPW in respect of the health implications of the proposed development.

Other matters

227. I have considered the concerns raised regarding the fire protection plan and the size of the proposed water tank. The evidence suggests that these matters were taken into account by the EA in their consideration of the Environmental Permit application and found to be adequate. I have no other evidence from technical consultees to suggest that any perceived inadequacies in the fire protection measures may be of relevance to the land use planning considerations in this case.

228. Concerns regarding the transportation arrangements for incinerator bottom ash and flue gas residues were also raised. These materials would be removed from site by road in sealed transport vehicles in accordance with relevant regulation. Whilst I understand the basis of such concerns, there is no substantive evidence before me to suggest that there would be unacceptable risks associated with the transportation of such materials that would be relevant to the land use planning considerations in this case.

229. I have also taken into account the concerns raised by a number of local Town and Parish Councils in response to the Council's consultation on the planning application. In addition, many other matters were raised by interested parties in the Inquiry. Although these matters have been carefully considered, they do not alter the main issues which have been identified as the basis for the

determination of this appeal, particularly in circumstances where the Council's putative reason for refusal does not identify any objection to the appeal scheme for these other reasons.

Benefits of the development

230. The Socio-Economic section of the ES[72], as updated in the evidence of Mr Roberts, sets out the Appellant's assessment of the public benefits of the proposed development.

231. I have found above that there is a clear need for new treatment capacity in the region to divert Wiltshire's residual LACW waste and sub-regional C&I residual waste away from landfill or to avoid this being exported considerable distance outside of the sub-region. I am therefore satisfied that the evidence presented in the Inquiry demonstrates a local and sub-regional need for more recovery capacity to divert the management of residual LACW and C&I waste up the hierarchy. The identified waste management benefits should be given substantial weight in the overall planning balance.

232. In being located on land allocated for such purpose and adjacent to the Northacre RCC, it would focus the co-location of waste facilities in one geographical area and potentially provide opportunity to create further value in the waste processing chain.

233. The evidence suggests that the development would represent approximately £200 million in capital investment associated with the construction of the facility. It would provide up to 450 full time equivalent (FTE) jobs during the construction period, with a number of others likely in the supply chain. During operation, the development is also expected to provide a minimum of 40 permanent FTE jobs, as well as further indirect and induced jobs, thereby generating an increase in wages and Gross Value Added (GVA) in the local economy.

234. In addition, the evidence suggests that when leakage and displacement, and indirect and induced effects are taken into account, the proposed development would likely support approximately 89 jobs within the Study Area (the administrative boundary of Wiltshire). The net GVA to the economy of the Study Area by the proposed development would be in the region of £2.77 million annually. In my view, these economic benefits should be afforded significant weight in the planning balance.

235. It would provide for a source of low carbon and partially renewable electrical energy of 25.6 MW which would make a contribution to base load electricity and would have the potential to export heat to nearby users. I have found that, when reasonably judged against the counterfactual over the anticipated lifetime of the development (25 years), it would likely result in a net decrease in GHG emissions associated with the management of residual LACW and C&I waste in Wilshire and the sub-region.

236. Although there would be an opportunity to re-use bottom ash with potential use for block making, no market for this has yet been identified nor has any demonstrable evidence been provided to demonstrate that the bottom ash would be suitable for this purpose. Consequently, I have attached no weight to this matter.

[72] CD1.6 Chapter 11

237. The consequences of not proceeding with the proposed development would mean that none of the environmental and socio-economic benefits identified above would be achieved. The corollary to this would be that something else would happen to the waste which would otherwise have been managed at the proposed facility. In all likelihood, given the existing situation set out above in terms of need, in the short and medium term most of this waste would continue to be sent to landfill, with associated GHG and consequent impacts for climate change or be transported considerable distance for treatment. The objectives expressed in the WCS and NPPW of driving the management of residual LACW and C&I waste up the waste hierarchy would not be achieved.

Whether the proposed development would provide for sustainable waste management in the context of national and local policy

238. The Council has not identified that the proposed development would be in conflict with any specific policies contained within the Development Plan or the Framework. However, policy considerations were raised by interested parties and, in the determination of this appeal, I consider it necessary to briefly assess whether there would be any material conflict with the provisions of the Development Plan to the extent that the proposal would not constitute sustainable waste management.

239. In terms of land use, the proposed development would be located on a site specifically allocated in the WSALP as being suitable for waste management facilities of a strategic scale. Paragraph 1.17 of the WSALP identifies that strategic-scale sites are generally considered to include large-scale treatment facilities such as EfW. Strategic scale waste management facilities are more fully explained in paragraphs 5.6 and 5.6 of the WCS as including EfW that would serve large areas within, or the entire Plan area and may serve surrounding local authorities in a sub-regional context. On this basis, I conclude that the principle of the location of the appeal proposal on this site is entirely consistent with the land use allocation identified in the Development Plan.

240. I have found that there is a need for the facility which would drive waste management in Wiltshire up the waste hierarchy. In this regard, I do not consider that there is any material conflict with the provisions of Policy WCS1 (The Need for Additional Waste Management Capacity and Self Sufficiency), WCS2 (Future Waste Site Locations), Policy WCS3 (Preferred Locations of Waste Management Facilities by Type and the Provision of Flexibility) or Policy WCS5 (The Wiltshire and Swindon Waste Hierarchy and Sustainable Waste Management) of the WCS.

241. With regard to the CSDPD, taking the above matters into account, I consider that the proposed development would be consistent with Core Policy 32 (Spatial Strategy for the Westbury Area), Core Policy 55 (Air quality), Core Policy 61 (Transport and new development) and Core Policy 62 (Development impacts on the transport network). However, I have found that there would be some degree of conflict with Core Policy 51 (Landscape) and Core Policy 58 (Ensuring the conservation of the historic environment) which are considered in the planning balance below.

242. Other than in respect of matters relating to the effect on landscape and heritage assets, I find that the proposal would be consistent with Policies WDC1 (Key Criteria for ensuring sustainable waste management

development), WDC2 (Managing the impact of waste management) and Policy WDC11 (Sustainable Transportation of Waste) of the WDCPDP. In addition, the proposal would generally conform to the provisions of Policy WDC12 (Renewable Energy) which include the need to maximise the opportunities for renewable energy production both for electricity and heat. Whilst I recognise that no user has yet been identified for the export of heat, nonetheless the proposal has the ability to provide a local source of heat and to my mind is therefore consistent with the aspirations of Policy WDC12.

243. There would be a degree of conflict with Policies WDC7 (Conserving Landscape Character) and WDC9 (Cultural Heritage) of the WDCPDP which are considered below. Overall, subject to further consideration of the landscape and heritage matters in the planning balance below, I find that the proposed development would be in general conformity with the provisions of the Development Plan when taken as a whole.

244. I have referred to several Government publications above regarding the role that EfW should play in waste management. The Waste Management Plan for England (2021)[73] clearly states that the Government supports efficient energy recovery from residual waste and that energy from waste is generally the best management option for waste that cannot be reused or recycled in terms of environmental impact and getting value from the waste as a resource. It plays an important role in diverting waste from landfill. It further states that the Government is seeking an increase in the number of plants obtaining R1 recovery status.

245. The extract from Hansard[74] made it clear that "DEFRA has no plans to introduce a moratorium on new EfW capacity in England…" and "there will always be some residual waste and some energy-from-waste capacity will always be required". However, I accept that future waste management policies are likely to reduce the dependence on EfW but the pace of change leading to this cannot be predicted with any degree of certainty.

246. Consideration of the matters set out earlier in this decision lead me to conclude that the proposed development would not be materially contrary to Section 14 of the Framework and would be generally consistent with the provisions of the NPPW.

247. Subject to further consideration of the landscape and heritage matters below, I find that, in policy terms, the proposal would constitute a sustainable waste management development that would generally accord with the provisions of relevant national and local policy when taken as a whole.

Planning Balance

248. As set out above, I do not consider that the policies which are most important for determining the appeal are out-of-date. Hence, neither of the triggers in paragraph 11d of the Framework are activated, and thus the tilted balance weighing exercise is not engaged.

249. The proposed development is consistent with the land use allocation of the site. In this regard, I agree with the views expressed in the Officer Reports to SPC that it is logical to site the proposed development next to the MBT which

[73] CD5.05
[74] ID33

would produce some of the fuel component for the recovery process. Accordingly, there are environmental and economic benefits of siting the proposed development in this location.

250. I have found that there is a reasonable prospect that the extant 2019 permission (ref 18/09473/WCM)[75] for an ATT Facility would be implemented in the event that this appeal was to be dismissed. I consider that the external scale, mass and height elements of this fallback scheme, in casual views, would be broadly comparable to the appeal proposal. Therefore, I attach significant weight to the fallback position and find that many of the associated impacts of that approved scheme would be broadly comparable to the appeal proposal.

251. I am satisfied that the evidence presented in the Inquiry demonstrates a local and sub-regional need for more recovery capacity to divert the management of residual LACW and C&I waste up the hierarchy. I have afforded significant weight to the identified waste management benefits. The proposal would represent a waste recovery facility and would provide for a source of low carbon and partially renewable electrical energy of 25.6 MW which would make a contribution to base load electricity. In addition, the proposal would have the potential to export heat to nearby users.

252. I have attached significant positive weight to the jobs that would be created during both construction and operational phases of the scheme, and to the financial benefits to the local economy that would accrue.

253. Undertaking a reasonable assessment of the climate change evidence submitted in the Inquiry, leads me to find that the proposed development would likely result in lower GHG emissions compared to landfill over the lifetime of the facility. However, there are inherent uncertainties in the GHG emission savings calculations that are outlined earlier in this Decision. I conclude that the proposal would likely deliver some carbon savings when a wider view is taken over the lifetime of the development and would thus be in keeping with the aims of the Development Plan taken as a whole and the Framework. However, there are uncertainties involved regarding a number of variables that I have identified above. These have an impact on the scale of any such savings and lead me to conclude that the climate change benefits should only be afforded limited weight.

254. Subject to the imposition of appropriate planning conditions, and taking into account the effective pollution controls imposed in the EP, the appeal scheme would not have an unacceptable impact, either individually or cumulatively, on air quality, health or living conditions. With appropriate planning and pollution controls, I see no unacceptable impediment to the effective integration of the proposed development with existing businesses.

255. I have found that the proposed development would have a Moderate Adverse effect to landscape character, albeit that this impact would likely be localised. In addition, there would be significant adverse visual effects in respect of Viewpoint 1, with Moderate to Slight Adverse effects on the other agreed viewpoints. As a consequence, the proposed development would give rise to a degree of conflict with the provisions of Core Policy 51 of the CSDPD and Policies WDC2 and WDC7 of the WDCPDP.

[75] CD6.3

256. However, I am mindful of the views of the Council's Landscape Officer and the assessment of the landscape and visual impact of the proposed development as set out in the Officer Reports to SPC[76]. I also recognise that the appeal site comprises part of land specifically allocated for waste management facilities in the Development Plan and is located in close proximity to existing significant industrial development. In addition, I have found that the appeal proposal would have no material greater impact on the character and appearance of the surrounding area than that of the fallback 2019 Permission. Consequently, I do not consider that the localised landscape and visual harm would constitute a sustainable reason to dismiss this appeal. I have therefore afforded moderate weight to the identified landscape and visual harm.

257. I have found that there would be less than substantial harm to the setting of Brook Farm. I have had special regard to the preservation of the setting of this heritage asset. I conclude that the benefits identified above outweigh the less than substantial harm that would be caused to the setting of this heritage asset. Consequently, the proposed development would not be in conflict with the relevant provisions of Core Policy 58 of the CSDPD, Policy WDC9 of the WDCPD, nor with the relevant provisions of Part 16 of the Framework.

258. I have found that the proposal would be unlikely to have a significant adverse effect on air quality and public health. It would not result in a severe residual cumulative impact on the highway network. It is understandable that the community have reservations regarding the proposed development. The perception of harm is a material consideration. However, for the reasons given earlier in this decision, this should be afforded limited weight in the overall planning balance.

259. In considering the limbs of the Council's putative reason for the refusal of planning permission, it is clear that the proposal would not be 'carbon zero'. However, current planning policy does not require development proposals to be so. The putative reason does not define any policy basis, or other technical evidence, that clearly defines the point where carbon emissions are to be considered as being 'substantial'.

260. There would be some carbon emissions as a result of the proposed development but this needs to be considered in the context of what is currently happening to residual waste in the county and sub-region. In this context, I have found above that the proposed development would not likely generate substantial net carbon dioxide into the atmosphere over its lifetime when compared to the counterfactual, particularly for dealing with residual waste that would otherwise be landfilled or exported considerable distances to Germany or Lakeside. In addition, it would not likely deter a reduction in residual waste arisings and would not materially compromise the proximity principle for the transport and management of waste.

261. I conclude on balance, having regard to the main issues and the other matters raised, that the benefits of the scheme would outweigh any adverse impacts likely to be associated with it. Furthermore, the appeal scheme would accord with the Development Plan taken as a whole and material considerations do not indicate that the appeal should be determined other than in accordance with the Development Plan.

[76] CD2.1, CD2.2 and CD2.3

262. Even if I were to be persuaded that the fallback scheme should be afforded no weight in the planning balance, the benefits of the scheme would still outweigh any adverse impacts. Therefore, having had regard to the economic, social and environmental implications of the scheme, it would amount to sustainable development under the terms of the Framework taken as a whole.

Conditions

263. I have considered the planning conditions, including a number of pre-commencement conditions, that were provided and discussed in draft at the RTS between the Council, the Appellant and interested parties on a without prejudice basis[77]. These were subsequently amended and, other than condition No. 6 which is discussed below, were agreed between the parties and submitted prior to the formal close of the Inquiry[78].

264. I have considered the conditions against the relevant advice given in paragraph 56 of the Framework and the guidance contained in the section on 'Use of Planning Conditions' in the Planning Practice Guidance. Where necessary I have amended them in the interests of clarity, precision, conciseness or enforceability.

265. In addition to the standard time limit (No. 1), a condition (No. 2) relating to the approved plans is necessary in the interests of certainty. In order to minimise the visual effects of the development and in the interests of protecting the character and appearance of the area, conditions are necessary requiring the submission and implementation of details of external materials, hard and soft landscaping schemes and the provision of a screen bund (conditions Nos. 3, 10 and 19). Also, in the interests of visual amenity and to mitigate the effect of light spillage, a condition is necessary requiring the submission and approval of external lighting details (No. 12).

266. In order to protect the environment and minimise the effect of the proposed development on air quality and the operation of nearby businesses, conditions are necessary requiring the unloading, storage and loading of waste materials to occur in the Reception Hall and 'Bottom Ash Storage and Loading Areas', and the submission and approval of an 'Air Emissions Management Plan' and a 'HGV Routing Plan' (conditions Nos. 4, 16 and 22).

267. A condition is necessary requiring the compilation and provision of records of the quantity of waste delivered to the facility and residues despatched in order to ensure that the development accords with the provisions of the planning application and the ES (No. 7). In order to ensure that the development is used as a waste recovery process, a condition is necessary requiring demonstration that the development meets the R1 Status as prescribed by the Environment Agency (No. 9).

268. In order to clearly distinguish between the 'commissioning' and 'operational' aspects of the proposed development and clearly define the commencement of operations for the purposes of the subsequent monitoring and implementation of other relevant conditions, a condition is necessary requiring the notification of the operational date (No. 6). In this regard, I have considered the views of the parties regarding the wording of such condition.

[77] ID25
[78] ID40

Whilst I recognise the Appellant's view that the specified performance needs to be achieved in commissioning trials, I am mindful that this could take considerable time, during which a significant amount of thermal treatment of waste could occur. I therefore consider that the Council's suggested wording provides a degree of greater precision in this regard which I have accordingly prescribed.

269. A condition is necessary requiring that no surface water discharge connection is made to the foul sewer network in order to protect the foul sewer network and ensure that the proposed development does not cause either increased flood risk on site or to adjacent land (No. 13).

270. The submission of a Construction Environmental Management Plan is necessary in order to minimise the impacts of construction operations on local residents and to protect the environment (No. 14). For the same reasons, the submission and approval of a Construction Traffic Management Plan is also necessary (No. 15).

271. Conditions are necessary to safeguard the living conditions of nearby local residents by prescribing external operational noise limits; the operational hours for deliveries to, and removals from, the site of waste materials; and provide measures for pest management (conditions Nos. 8, 18 and 20).

272. In the interests of highway safety and the free flow of traffic, and to ensure that the proposed development operates in accordance with the submitted Transport Assessment, conditions are necessary requiring the provision of the vehicular accesses, internal roads and parking areas and the provision of limits on the amount of waste to be delivered to the site by road (conditions Nos. 5 and 11). The submission and approval of a Green Travel Plan is necessary in order to encourage the use of sustainable transport and reduce vehicular emissions (No. 17).

273. A condition is necessary to ensure the implementation of biodiversity mitigation measures with particular regard to the safeguarding of the habitats of protected species and nesting birds (No. 21). A condition is also necessary requiring the submission of a Stakeholder Management Plan in order to ensure that adequate provision is made for communication with the local community and adjacent businesses with particular regard to any emergency procedures that may have an impact on the operation of such adjacent businesses (No. 23).

274. In order to ensure the restoration of the site following the cessation of operations, a condition is necessary requiring the submission and implementation of a restoration scheme (No. 24).

Conclusion

275. There are no other considerations of such weight as to warrant a decision other than in accordance with the aforementioned development plan policies, the NPPW and the Framework. Consequently, for the above reasons, based on the evidence before me and all other matters raised, I conclude that the appeal should be allowed.

Stephen Normington

INSPECTOR

ANNEX A

APPEARANCES

FOR THE APPELLANT:

David Elvin KC	Instructed by Nicholas Roberts of Axis on behalf of the Appellant
Assisted by Matthew Dale-Harris of Counsel	
They called	
Stephen Othen MA, MEng, CEng, MIChemE	Technical Director, Fichtner Consulting Engineers Ltd
Nicholas Roberts BA (Hons), Dip LA, MLI	Director, Axis
Written evidence only	
Phillip Roden BA (Hons), Dip LA, MLI	Director, Axis
Lee Kendall BA (Hons), MCIHT, MTPS	Director, Axis

FOR WILTSHIRE COUNCIL

Christopher Boyle KC	Instructed by Wiltshire Council
He called	
Tony Norton BSc (Hons), MBA, CEng MIChemE	Head of Centre for Energy and the Environment, University of Exeter
Alan Potter BSc (Hons), FCIWM, CEnv, UKELA	Partner, BPP Consulting LLP

INTERSTED PERSONS

Andrew Murrison MP	Member of Parliament for South West Wiltshire
Joel Semakula of Counsel	Legal Submissions on behalf of Westbury Town Council
Ben Marner	Air Quality Submissions on behalf of Westbury Town Council
Councillor Michael Sutton	Democracy Submissions on behalf of Westbury Town Council
Councillor Mark Bailey	Landscape and Visual Submissions on behalf of Westbury Town Council
Councillor Suzanne Wickham	Wiltshire Council
Councillor Sheila Kimmins	Mayor Westbury Town Council
Councillor Carole King	Wiltshire Council and Westbury Town Council
Cllr Gordon King	Wiltshire Council and Westbury Town Council
Peter Aston	Local resident
Robert Knight	Local resident
David Davis	Local resident
Councillor Jane Russ	Westbury Town Council
Deanna de Roche	Local resident
Mr Lynn Roberts	Senior Site Director Arla Foods
Bill Jarvis	Wilshire Climate Alliance
Stephen Eades	North Wiltshire Friends of the Earth
Valerie Jarvis	Local resident
David Jenkins	Local resident
Cllr Matthew Dean	Wiltshire Council and Westbury Town Council
Cllr Brian Matthew	Wiltshire Council
Dr Michael Bull (RTS only)	Michael Bull Associates on behalf of Arla
George Nicholls (RTS only)	Arla

ANNEX B

LIST OF DOCUMENTS SUBMITTED DURING THE INQUIRY

Inquiry Document (ID)	Description of Document	Date Submitted
ID1	Note provided by Tony Norton on additional carbon modelling incorporating new information provided in the Appellant's Rebuttal Proof	22.11.2022
ID2	Response to Mr Stephen Othen's rebuttal on Air Quality provided by Dr Ben Marner	22.11.2022
ID3	Appellant's opening statement	22.11.2022
ID4	Council's opening statement	22.11.2022
ID5	Transcript of Statement read by Councillor Michael Sutton	22.11.2022
ID6	Transcript of Statement read by Councillor Mark Bailey	22.11.2022
ID7	Transcript of Statement read by Andrew Murrison MP	22.11.2022
ID8	Legal Submissions provided by Joel Semakula	22.11.2022
ID9	Emails between Council and Dr Marner regarding Air Quality Diffusion Tube locations	22.11.2022
ID10	Transcript of Statement read by Councillor Shiela Kimmins	22.11.2022
ID11	Transcript of Statement read by Councillor George King	22.11.2022
ID12	Transcript of Statement read by Peter Aston	22.11.2022
ID13	Transcript of Statement read by Robert Knight	22.11.2022
ID14	Transcript of Statement read by David Davis	22.11.2022
ID15	Transcript of Statement read by Councillor Jane Russ	22.11.2022
ID16	Transcript of Statement read by Deanna de Roche	22.11.2022
ID17	Transcript of Statement read by Councillor Suzanne Wickham	23.11.2022
ID18	Proof of evidence read by Dr Ben Marner	23.11.2022
ID19	Transcript of Statement read by Councillor Carole King	23.11.2022
ID20	Statement of Mr Stephen Pyne relating to Bottom Ash	6.12.2022
ID21	Statement of Mr Stephen Pyne relating to Auxiliary Fuel Tank capacity.	6.12.2022
ID22	Note provided by Mr Stephen Othen regarding Carbon Assessment Starting Data	6.12.2022

ID23	Site Layout Plan provided by Arla showing location of Air Intakes	6.12.2022
ID24	Large scale photoset of viewpoints provided by Councillor Mark Bailey	6.12.2022
ID25	Draft Schedule of Planning Conditions version 1.5	6.12.2022
ID26	Sunday Times article regarding the doubling of UK coal imports	6.12.2022
ID27	Set of visual montages used on site visit by Appellant	7.12.2022
ID28	Transcript of Statement read by Mr Bill Jarvis	7.12.2022
ID29	Transcript of Statement read by Mr Stephen Eades	7.12.2022
ID30	Transcript of Statement read by Mrs Valerie Jarvis	7.12.2022
ID31	Map showing distance radii from Appeal Site provided by Mr David Jenkins	7.12.2022
ID32	Transcript of Statement read by Mr Lynn Roberts	8.12.2022
ID33	Extract from Hansard regarding Parliamentary Debate in respect of Waste Incineration 1.12.2022 Column 413W	8.12.2022
ID34	Transcript of Statement read by Councillor Brian Matthew	8.12.2022
ID35	Council's closing submissions	8.12.2022
ID36	Appellant's closing submissions	8.12.2022
ID37	Appellant's application for award of costs	8.12.2022

ANNEX C

LIST OF DOCUMENTS REQUESTED BY THE INSPECTOR AND SUBMITTED AFTER THE CLOSE OF THE ORAL SESSIONS OF THE INQUIRY

Inquiry Document (ID)	Description of Document	Date Submitted
ID38	Council's Rebuttal to Appellant's Costs Application	19.12.2022
ID39	Appellant's response to Council's Costs Rebuttal	22.122022
ID40	Final agreed Schedule of Planning Conditions	19.12.2022
ID41	Plan showing position proposed earth bund location (planning application PL/2022/07517)	15.12.2022
ID42	Copy of Planning Decision Notice PL/2022/07517	16.12.2022

ANNEX D

CORE DOCUMENTS (CD)

CD1 –Application Plans and Drawings including post submission responses	
1.1	Planning Application Forms and Certification
1.2	Planning Statement
1.3	Planning Application Drawings, comprising
	(i) 1409_PL100 Site Location Plan
	(ii) 1409_PL101 Existing Site Layout
	(iii) 1409_PL110 Proposed Site Plan Wider Scale
	(iv) 1409_PL111 Proposed Site Layout
	(v) 1409_PL120 Proposed Main Facility Ground Floor Plan
	(vi) 1409_PL130 Proposed Main Facility Roof Plan
	(vii) 1409_PL 140_Office & Admin Floor Plans 00, 01 02dgn
	(viii) 1409_PL141_Office & Admin Floor Plans 03, 04 05dgn
	(ix) 1409_PL150 Fencing Plan
	(x) 1409_PL200_Existing Site Section
	(xi) 1409_PL201 Proposed Site Sections
	(xii) 1409_PL202 Proposed Site sections South Eastern Boundary
	(xiii) 1409 _PL310 Proposed Main Facility North East Elevation
	(xiv) 1409_PL311 Proposed Main Facility South East Elevation
	(xv) 1409_PL312 Proposed Main Facility South West Elevation
	(xvi) 1409_PL313 Proposed Main Facility North West Elevation
	(xvii) 1409_PL314 Proposed Main Facility North West Elevation (ACCs removed)
	(xviii) 1409_PL400 ACC Elevations
	(xix) 1409_PL401 Weighbridge Gatehouse Plans & Elevations
	(xx) 1409_PL402 Fire Water Tank Plan & Elevations

	(xxi) 1409_PL403 Pump House
	(xxii) 1409_PL404 Emergency Diesel Generator Elevations
	(xxiii) 1409_PL405 Fuel Oil Tank & Ammonia Hydroxide Tank Elevations
	(xxiv) 1409_PL406 Transformer & Substation Plans
	(xxv) 1409_PL407 Transformer & Substation Elevations
	(xxvi) 1409_PL408 Dirty Water Pit Plan & Elevations
	(xxvii) 1409_PL409 Bicycle Shelter Plan & Elevations
	(xxviii) 1409_PL410 Fencing Elevations
	(xxix) 1409_PL411 Conveyor Plan & Elevations
	(xxx) 1409_PL412 Ramp Elevations
	(xxxi) 1409_PL413 Odour Abatement System Elevations
	(xxxii) 1409_PL414 Gate Elevations
	(xxxiii) 2778-01-01 Landscape Plan
1.4	Statement of Community Involvement
1.5	Transport Assessment August 2020
1.6	Environmental Statement (4 Volumes), comprising:
	(i) Volume 1 – Main Report
	(ii) Volume 2 – Illustrative Figures
	(iii) Volume 3 – Technical Appendices
	(iv) Volume 4 – Non-Technical Summary
	Information submitted post planning submission
1.7	Surface Water Flood Risk Planning Consultation response - 19 10 2020
1.8	Surface Water Flood Risk Planning Further Consultation response 24 11 20
1.9	Addendum to Drainage Strategy v1.1 19 01 2021
1.10	Confirmation of the agreed drainage design data 27 01 2021
1.11	Noise response to EHO 20 10 2020

1.12	Transport Assessment with Sensitivity Tests v7-4 Dec 2020
1.13	Response to Highway Consultation Technical Note 2 v2-1 Dec 2020
1.14	Response to AQ consultation S2862-0010-0300RSF _r1 16 10 2020
1.15	AQ Analysis for LPA S2862-0030-0008RSF R1 18 12 2020
1.16	Air Quality Response to AECOM Technical Review Note 12 02 2021
1.17	Response to odour review S2862-0030-0007HKL r02 03 12 2020
1.18	Response to odour review S2862-0030-0007HKL r04 29 01 2021
1.19	Response to Exeter Review Carbon Assessment S2862-0030-0006HKL r3 02 11 2020

CD2 – Strategic Planning Committee Reports, consultee responses & representations to PINS	
2.1	SPC Report 22 06 2021
2.1a	Minutes of SPC 22 06 2021
2.2	SPC Report 20 04 2022
2.2a	Minutes of SPC 20 04 2022
2.3	SPC Report 27 07 2022
2.3a	Minutes of SPC 27 07 2022
2.4	SPC Report 23 01 2019
	Consultation Responses
2.5	Environment Agency 17 09 2020
2.6	Historic England 18 08 2020
2.7	MoD 15 08 2020
2.8	Natural England 18 09 2020
2.9	Public Health England 22 09 2020
2.10	WC Air Quality Response 08 10 2020
2.11	WC AQ AECOM Review 08 10 2020
2.12	WC Air Quality Response 30 10 2020

2.13	WC Air Quality Final response 17 02 2021
2.14	WC AQ AECOM Review AQ Odour and Health Impacts of Traffic 04 02 2021
2.15	WC Climate Change Team 22 10 2020
2.16	WC Climate Team - University of Exeter first review 19 10 2020
2.17	WC Climate Change Team - Second Response 17 12 2020
2.18	WC Climate Change Team - University of Exeter second review 15 12 2020
2.19	WC Conservation 27 08 2020
2.20	WC Drainage Engineer 11 08 2020
2.21	WC Ecology 01 03 2021
2.22	WC Highways - initial response 26 11 2020
2.23	WC Highways - final response 01 03 2021
2.24	WC Landscape 20 10 2020
2.25	WC LLFA Wessex Water 20 08 2020
2.26	WC LLFA Wessex Water 09 11 2020
2.27	WC LLFA Wessex Water 10 12 2020
2.28	WC LLFA Wessex Water 28 01 2021
2.29	WC Noise 16 10 2020
2.30	WC Noise 11 11 2020
2.31	Arla Correspondence
	(i) Redmore Environmental Ltd on behalf of Arla Foods 23 10 2020
	(ii) Redmore Environmental 21 12 2020
	(iii) Correspondence EHS Projects for Arla to LPA up to 12 02 2021
	(iv) Correspondence Arla to LPA up to 01 03 2021
	(v) Walker Morris for Arla letter to LPA 16 03 2021
	(vi) Arla Technical Addendum v1.6 16 03 2021
	(vii) Walker Morris for Arla Letter 27 08 2021

	(viii) Ricardo for Arla Risk of Taint Prelim Report 27 08 2021
	(ix) Ricardo for Arla tainting risk assessment v3 07 10 2021
	(x) Walker Morris for Arla 11 04 2022
	Representations
2.32	Westbury Town Council 17 08 2022
2.33	Wiltshire Climate Alliance undated
2.34	North Wiltshire FoE 20 08 2022
2.35	WGAG 23 08 2022
2.36	Cllr M Dean 23-08-2022
2.37	Walker Morris for Arla 18 08 2022
2.38	Harriet James 27 07 2022
2.39	Phillip Harcourt 23 08 2022

CD3 – Appeal Documentation	
3.1	Notification of Intention to Submit an Appeal
3.2	Start letter from the Planning Inspectorate
3.3	Choice of Procedure
3.4	Appellant Appeal Form
3.5	LPA Questionnaire
3.6	Statement of Case on Behalf of the Appellant
3.7	Statement of Case on Behalf of Wiltshire Council
3.8	Statement of Common Ground June 2022
3.8a	Statement of Common Ground v4.3 31 10 2022 (electronic only)
3.9	Inspector’s Case Management Conference Note (04 10 2022)
3.10	Putative Decision report and 'reason' 20-06775-WCM
3.11	Statement of Common Ground on Climate Change V2.2 24-10-2022

3.11a	Statement of Common Ground on Climate Change V2.3 Final 25 10 2022 (electronic only)

CD4 – Local Planning Policy, Strategy and Guidance	
4.1	Wiltshire & Swindon Waste Core Strategy
4.2	Wiltshire Waste Development Control Policies
4.3	Wiltshire & Swindon Waste Site Allocations Local Plan
4.4	Wiltshire Core Strategy
4.5	Household Waste Management Strategy 2017-2027
4.6	Household Waste Management Strategy Update 2022 23
4.7	Wiltshire Council Climate Strategy (Wiltshire Council February 2022)
4.8	Wiltshire Carbon Emissions Baselines and Reduction Pathways (Anthesis March 2022)
4.9	Wiltshire Waste Capacity Gap Report (October 2011)

CD5 – National Planning Policy, Strategy and Guidance	
5.1	National Planning Policy for Waste
5.2	Government Review of Waste Policy in England 2011
5.3	Energy from Waste: A Guide to the Debate 2014
5.4	Our Waste, Our Resources: A Strategy for England 2018
5.5	Waste Management Plan for England 2021
5.6	Consultation on Environmental Targets May 2022
5.6a	Env Act Resource Efficiency and Waste Reduction Targets - Detailed evidence reports (WC CD5.6)
5.6b	Env Act Resource Efficiency and Waste Reduction Targets Impacts assessment
5.7	National Policy Statement for Renewable Energy Infrastructure July 2011
5.8	Net Zero Strategy: Build Back Greener, October 2021
5.8a	Net Zero Strategy - emissions taxonomy
5.8b	Net Zero Strategy - charts and tables (April 2022)

5.8c	Net Zero Strategy Indicative annual range for each year (14 December 2021)
5.9	Resource Efficiency Impact Assessment
5.10	PPS10 Annex E
5.11	Waste And Recycling: Making Recycling Collections Consistent in England (DEFRA 2019)
5.11a	Defra Recycling Consistency Final Consultation - May 2021
5.12	CCC 2022 Progress Report to Parliament & Waste Sector
5.13	Second Annual Monitoring Report for The Resource & Waste Strategy, DEFRA
5.14	National Policy Statement on Energy (DECC July 2011)
5.15	Food And Drink Waste Hierarchy Statutory Guidance
5.16	Biomass Policy Statement BEIS 2021
5.17	Net Greenhouse Gas Emissions Strategy for The UK Recycling and Waste Sector Environmental Services Association (2021)
5.18	National Policy Statement on Renewable Energy Infrastructure (NPS-EN3) Consultation Draft (BEIS September 2021)
5.19	Letter dated 6 July 2010 from CLG to Chief Planning Officers

CD6 – Other Permissions, Decisions, Reports, Permit	
6.1	Environment Agency's Decision Document EPR/CP3803LV
6.2	Environmental Permit EPR/CP3803LV
6.3	18-09473-WCM Decision Notice "2019 Permission"
6.4	14-12003-WCM Decision Notice "2015 Permission"
6.5	2019/0519/FUL Decision Notice Grid Connection Mendip
6.6	19-02481-FUL Decision Notice Grid Connection Wiltshire
6.7	Screen Bund LVA NOR-LP02 Rev A
6.8	Paul Newman New Homes Ltd v Secretary of State EWHC 2367 06 09 2019
6.9	Paul Newman-v-Secretary-of-State Court of Appeal 12 01 2021
6.10	Tolvik - UK Energy from Waste Statistics 2021
6.11	Tolvik - EfW Merchant Waste DD V2.2 July 2019 Redacted

6.12	18-09550-FUL - Decision Notice Screen Bund
6.13	16 08074 WCM Decision Notice RRC inc MBT
6.14	18 03366 WCM Decision Notice WTS
6.15	(i) 18-09473-WCM Approved Site Plan 040_A05 REV D
	(ii) 18-09473-WCM Approved Elevation 040_A07 REV E 1
	(iii) 18-09473-WCM Approved Elevation 040_A07 REV E 2
	(iv) 18-09473-WCM Approved Elevation 040_A07 REV E 3
	(v) 18-09473-WCM Approved Elevation 040_A07 REV E 4
6.16	Classification as a recovery operation using the R1 Energy Efficiency Formula 11 Oct 2022
6.17	Examining Authority' report on application for an additional EfW Plant at Kemsley
6.18	Secretary of State Decision Letter Refusing A DCO For an Additional EfW Plant At Kemsley (BEIS February 2021)
6.19	Carbon Assessment Supporting the Kemsley WKN DCO Application (DHA September 2019)
6.20	Environmental Statement - Ford - Chapter 4 Alternatives
6.21	Wiltshire Annual Monitoring Report 2010/11
6.22	Sustainability Appraisal/ Strategic Environmental Assessment of the Wiltshire and Swindon Waste Site Allocations Development Plan Document April 2011 extracts where alternatives are considered
6.23	ES for "ATT"..extracts where alternatives are considered
6.24	MVV 2021 Sustainability Report
6.25	Northacre ATT Environmental Statement 2014
6.26	Northacre ATT NTS 2014

CD7 – Climate Change and Air Quality	
7.1	Energy recovery for residual waste – a carbon-based modelling approach
7.2	The Impact on Health of Emissions to Air from Municipal Waste Incinerators
7.3	Ghosh RE, Freni Sterrantino A, Douglas P, Parkes B, Fecht D, de Hoogh K, Fuller G, Gulliver J, Font A, Smith RB, Blangiardo M, Elliott P, Toledano MB, Hansell AL. Fetal growth, stillbirth, infant mortality and other birth outcomes near UK municipal waste incinerators; retrospective population based cohort and case-control study. Environment International. 2018

7.4	Douglas, P., Freni-Sterrantino, A., Leal Sanchez, M., Ashworth, D.C., Ghosh, R.E., Fecht, D., Font, A., Blangiardo, M., Gulliver, J., Toledano, M.B., Elliott, P., De Hoogh, K., Fuller, G.W., Hansell, A.L. Estimating Particulate Exposure from Modern Municipal Waste Incinerators in Great Britain, Environ. Sci. Technol.201751137511-7519, 2017
7.5	Freni-Sterrantino, A; Ghosh, RE; Fecht, D; Toledano, MB; Elliott, P; Hansell, AL; Blangiardo, M. Bayesian spatial modelling for quasi-experimental designs: An interrupted time series study of the opening of Municipal Waste Incinerators in relation to infant mortality and sex ratio. Environment International. 128 (2019) 106-115 (Freni-Sterrantino et al, 2019)
7.6	Parkes B, Hansell A.L., Ghosh R.E, Douglas P., Fecht D., Wellesley D., Kurinczuk J.J., Rankin J., de Hoogh K., Fuller G.W, Elliot P., and Toledano M.B. "Risk of congenital anomalies near municipal waste incinerators in England and Scotland: Retrospective population-based cohort study". Environment International (Parkes et al)
~~7.7~~	~~Guidance on the Assessment of Odour for Planning' (IAQM 2018)~~
7.8	Air Emissions Management Plan, S2862-0030-0012
7.9	Odour, Bioaerosol and Taint Assessment, S2862-0030-0013 R3
7.10	Permit application second Schedule 5 response 06 12 2021
7.11	Fine Particle Emissions Of Waste Incineration
7.12	Ultrafine particle emission from incinerators: The role of the fabric filter
7.13	Review of Landfill Emissions Modelling
7.14	GHG Emission Factor Review, Ricardo on behalf of the Environmental Services Association (ESA), 2020
7.15	Climate Change Impacts of Burning Municipal Waste in Scotland, Technical Report, Zero Waste Scotland, 2021
7.16	Quantification of Greenhouse Gas Emissions from Recycling and Waste Management Activities in the UK, Ricardo on behalf of the Environmental Services Association (ESA), 2021
7.17	Valuation of Energy Use and Greenhouse Gas, BEIS, 2021
7.18	Valuation of Energy Use and Greenhouse Gas -Background Documentation, BEIS, 2021
7.19	Sixth Carbon Budget, CCC, 2020
7.20	Case Study Fact Sheet Northern Region Germany, MVR Rugenberger Damm Hamburg, CODE, 2010
7.21	Point Sources 2002, NAEI, 2020 Energy from Waste and the Circular Economy, University of Birmingham, 2020 (not printed)
7.22	Energy from Waste and the Circular Economy, University of Birmingham, 2020

7.23	South West Exeter DH Network and Energy Centre Design", Parsons Brinkerhoff, 2014

CD8 – Landscape and Transport	
8.1	Guideline for Landscape and Visual Impact Assessment – Third Edition (GLVIA 3) - paragraph 5.33 (page 86) extract
8.2	Guidelines for the Environmental Assessment of Road Traffic (Institute of Environmental Assessment (IEA – now IEMA, 1993)

ANNEX E

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the approved plans:

- H 1409_PL110 (Proposed Site Plan) dated 30/07/2020
- 1409_PL111 (Site Layout) dated 30/07/2020
- 1409_PL120 (Proposed Main Facility Ground Floor Plan) dated 30/07/2020
- 1409_PL130 (Proposed Main Facility Roof Plan) dated 30/07/2020
- 1409_PL140 (Office & Admin Plans 00,01,02) dated 30/07/2020
- 1409_PL141 (Office & Admin Plans 03,04,05) dated 30/07/2020
- 1409_PL150 (Fencing Plan) dated 30/07/2020
- 1409_PL201 (Proposed Site Sections) dated 30/07/2020
- 1409_PL202 (Proposed Site Section South East Boundary) dated 30/07/2020
- 1409_PL310 (Proposed Main Facility North East Elevation) dated 30/07/2020
- 1409_PL311 (Proposed Main Facility South East Elevation) dated 30/07/2020
- 1409_PL312 (Proposed Main Facility South West Elevation) dated 30/07/2020
- 1409_PL313 (Proposed Main Facility North West Elevation) dated 30/07/2020
- 1409_PL314 (Proposed Main Facility North West Elevation (ACCs removed)) dated 30/07/2020
- 1409_PL400 (ACC Elevations) dated 30/07/2020
- 1409_PL401 (Weighbridge Gatehouse Plans & Elevations) dated 30/07/2020
- 1409_PL402 (Fire Water Tank Plan & Elevations) dated 30/07/2020
- 1409_PL403 (Pump house) dated 30/07/2020
- 1409_PL404 (Emergency Diesel Generator Elevations) dated 30/07/2020
- 1409_PL405 (Fuel Oil Tank & Ammonia Hydroxide Tank Elevations) dated 30/07/2020
- 1409_PL406 (Transformer & Substation Plans) dated 30/07/2020
- 1409_PL407 (Transformer & Substation Elevations) dated 30/07/2020
- 1409_PL408 (Dirty Water Pit Plan & Elevations) dated 30/07/2020
- 1409_PL409 (Bicycle Shelter Plan & Elevations) dated 30/07/2020
- 1409_PL410 (Fencing Elevations) dated 30/07/2020

- 1409_PL411 (Conveyor Plan & Elevations) dated 30/07/2020
- 1409_PL412 (Ramp Elevations) dated 30/07/2020
- 1409_PL413 (Odour Abatement System Elevations) dated 30/07/2020
- 1409_PL414 (Gate Elevations) dated 30/07/2020
- 2778-01-01 (Landscape Plan) dated 08/2020
- IMA-19-208B Plan 3 Rev B (Proposed Site Access Arrangement & Visibility) dated 05/2020

3) Notwithstanding the details set out in the application particulars, no development shall commence on site until details of all external cladding and finishes of structures and buildings have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details or any subsequent amendments agreed in writing by the local planning authority, and the development shall then be retained as such thereafter.

4) With the exception of waste material delivered to the site via conveyor and the extraction of waste from the Air Pollution Control Residue Silo, the unloading, storage and re-loading of waste materials (both in-coming and out-going) shall take place inside the 'Reception Hall' and the 'Bottom Ash Storage & Loading' areas shown on drawing no. 1409_PL111 (Site Layout) only, and shall not take place at, on or over any other parts of the site.

5) The total tonnage of waste received at the development hereby approved shall not exceed 243,000 tonnes in any twelve-month period. No more than 191,000 tonnes in any twelve-month period shall be delivered by road. The remainder shall be residual waste delivered directly from the adjacent Northacre Resource Recovery Centre.

6) Within 28 days of the date the development will become first operational, the operator of the development shall notify the local planning authority in writing of the date the development will become first operational. For the purposes of this condition 'operational' is defined as the point in time when thermal treatment of waste commences other than if this thermal treatment is for the purpose of initial testing of any plant or machinery.

7) Records of the quantity (in tonnes) of waste materials delivered to the site and all the residues despatched from the site shall be maintained by the operator of the development. The records shall be presented to the local planning authority on each and every annual anniversary of the date the development becomes first operational (as defined in Condition 6) and at other times, within 5 working days if requested by the local planning authority. All records shall be kept for at least 36 months.

8) Heavy Goods Vehicle (HGV) deliveries to and removals from the site of waste materials shall be limited to the following times:

   Monday to Friday: 07:00 to 22:00

   Saturdays: 07:00 to 17:00

   There shall be no deliveries or removals on Sundays or Bank Holidays.

9) Once the development hereby approved is operational (as defined in condition 6), it shall not combust waste material for a period greater than 24 hours without generating and exporting electricity to the electricity distribution grid. Within 18 months of becoming operational, and thereafter on each annual anniversary of this date for the duration of the life of the development, the operator shall submit to the local planning authority verification that the facility has achieved R1 Status for the previous year through certification from the Environment Agency.

10) All soft landscaping comprised in the approved details of landscaping shown on drawing no. 2778-01-01 (Landscape Plan) dated 08/2020 shall be carried out in the first planting and seeding season following commencement of operation of the development or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with a programme to be agreed in writing with the local planning authority prior to receipt of first waste for testing and commissioning.

11) Prior to delivery of any waste to the development, including for testing of any plant or machinery, the vehicular accesses, internal roads, turning areas and parking spaces shown on drawing no. 1409_PL111 (Site Layout) dated 30/07/20 shall have been completed in accordance with the details shown on the approved plans. The areas shall then be retained for these purposes at all times thereafter.

12) No permanent external lighting shall be installed on the development until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Engineers in their publication "Guidance Notes for the Reduction of Obtrusive Light (ILE, 2005)", have been submitted to and approved in writing by the local planning authority. The approved lighting shall be installed and shall be maintained in accordance with the approved details and no additional external lighting shall be installed.

13) There shall be no surface water discharge connection to the foul water network.

14) No development hereby approved shall commence until a site-specific Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP should include, but not be limited to:

- A construction phase Communications Strategy setting out how the construction team and the development operator will give information to the community during the construction phase. It will include the construction team's and development operator's contact details, the programme for the construction phase, and the development operator's procedures for maintaining good public relations including complaint management during the construction phase.

- Confirmation that in accordance with BS 5228:2009+A1:2014 'Code of Practice for Noise and Vibration Control on Construction and Open Sites', construction noise between 07:30 - 18:00 weekdays and 08:00 - 13:00 Saturdays will not exceed the levels set out below for each named sensitive receptor at the closest points of their curtilages to the development site (measured at a height of 1.2m to 1.5m above local ground height, in free-field conditions, e.g. at least 3.5m away from the nearest reflecting surface other than the ground):-

  1. Orchard House 65dB LAeq,T
  2. Crosslands/Brookfield 65dB LAeq,T
  3. Storridge Road 70dB LAeq,T
  4. Oldfield House 70dB LAeq,T
  5. Brook Lane 70dB LAeq,T
  6. Brook Cottage 65dB LAeq,T

  ["T" refers to the relative operating hours]

- Confirmation that in accordance with BS5228-1:2009+A1:2014, construction noise outside the hours of 07:30 – 18:00 weekdays and 08:00 – 13:00 Saturdays, and at any time on Sundays and Bank Holidays, will not exceed the levels set out below at any sensitive receptor listed above (measured at the closest accessible point to their curtilage at a height of 1.2m to 1.5m above local ground height, in free-field conditions, e.g. at least 3.5m away from the nearest reflecting surface other than the ground):-

  - During weekday evenings between the hours 18:00 – 23:00; Saturdays between 13:00 – 23:00 and Sundays between 08:00 – 23:00: 55 dB LAeq,T.
  - During the night-time/daytime on weekdays between the hours 23:00 – 07:30 and Saturdays/Sundays between 23:00 - 08:00: 45 dB LAeq,T.

- Procedures for approval by the local planning authority for exceptional or necessary activities which may result in exceedances of the above noise limits or deviations from the above working arrangements.
- A scheme for the recycling of waste materials.
- Control measures for dust and other air-borne pollutants in accordance with Section 8 of IAQM Guidance on Construction Dust 2014.
- Measures for controlling the use of site lighting whether required for safe working or for security purposes.
- A programme for the construction of the acoustic screen at the north-eastern boundary of the development site, to be at an early stage of the construction programme to provide screening benefit to the noise sensitive receptors.

All construction activities shall be carried out in accordance with the approved CEMP.

15) No development hereby approved shall commence until a site-specific Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP should include, but not be limited to:

- A plan showing areas for the parking of vehicles of construction staff and visitors;
- A plan showing areas for the loading and unloading of plant and materials;
- A plan showing areas for the storage of plant and materials used in constructing the development;
- Measures to control the emission of dust and dirt from construction traffic;
- Construction traffic routes and a scheme setting out how these will be managed.

All construction traffic management shall be carried out in accordance with the approved CTMP.

16) Prior to the delivery of any waste, a Routing Plan for all HGVs delivering or collecting waste shall be submitted to and approved in writing by the local planning authority. The Routing Plan shall include maps showing the routes and a statement explaining how the Routing Plan will be managed, monitored and enforced by the operator of the development. Records of monitoring and enforcement shall be kept by the operator of the development for no less than 36 months, and made available to the local planning authority on request. The development shall be operated strictly in accordance with the approved Routing Plan for the life of the development.

17) Prior to the development hereby approved becoming operational (as defined in Condition 6) a Green Travel Plan shall be submitted to and approved in writing by the local planning authority. The Green Travel Plan shall include, but not be limited to, the following:–

- Details of how many staff will be travelling to the site and when;
- Measures to encourage the use of transport other than cars;
- Specific targets for reducing dependence on single occupancy travel by car;
- An 'action plan' for achieving the above, such as staff incentives to encourage travel by alternative means and on-site facilities to make alternatives more attractive; schemes for car sharing and the provision of EV charging facilities; and the appointment of a Green Travel coordinator;
- Details of how the Green Travel Plan will be monitored and acted on.

The Green Travel Plan shall be implemented in accordance with the approved details for the duration of the development. The results of the monitoring shall be made available to the local planning authority on request, together with any changes to the plan arising from those results.

18) At all times when operational (as defined in condition 6) the rating level (LArTr) of noise emitted from the development shall not exceed the established representative background sound level (LA90T) during daytime [07:00 to 23:00] and night-time [23:00 to 07:00] periods, with the exception of R6 Brook Cottage (as defined in Chapter 7 [Noise and Vibration] of the Environmental Statement) where the rating level of noise shall not exceed the representative background noise level during the daytime [07:00 to 23:00] and only exceed the representative background sound level by a maximum of 3dB during the night time [23:00 to 07:00]. The rating level shall be determined by measurement and/or calculation at the boundary of noise sensitive residential receptors (receptors R1 to R6) as defined in Chapter 7 [Noise and Vibration] of the Environmental Statement. Measurements shall be made in accordance with BS4142:2019. The site-specific noise level shall be expressed as an LAeq 1 hour during the daytime [07:00-23:00] and shall be expressed as a LAeq 15 minutes during the night [23:00-07:00]. For the purposes of this condition 'operation' is defined as any point in time when thermal treatment of waste is occurring other than if this thermal treatment is for the purposes of initial testing of any plant or machinery

19) Prior to the development hereby approved becoming operational (as defined in Condition 6), a screen bund shall be constructed and completed in accordance with the approved drawing, NOR-LP02 Rev A as approved in PL/2022/07517 and shall thereafter be permanently retained for the lifetime of the development.

20) Prior to receipt of first waste for testing and commissioning a pest management plan (for the management of flies, vermin, etc., should they arise) shall be submitted to and approved in writing by the local planning authority. Thereafter, the provisions of the approved plan shall be implemented for the lifetime of the development.

21) The development hereby permitted shall be carried out strictly in accordance with the Mitigation Measures set out in section 6.6. of the 'Biodiversity' chapter (chapter 6) of the Environmental Statement dated August 2020 accompanying the planning application in respect of the protection of badgers and nesting birds immediately prior to and during the construction phase of the development.

22) Prior to the receipt of the first waste for testing and commissioning, an Air Emissions Management Plan shall be submitted to and approved in writing by the local planning authority. The Plan shall include, but not be limited to:

    a) The requirement for 100% redundancy in the backup odour abatement system by virtue of an additional extraction fan and an additional carbon filter unit.

    b) The requirement for a system to monitor continuous air flow through the odour abatement system to ensure the unit is operating when required.

    c) That during commissioning, the development's operator shall carry out tests to demonstrate that negative pressure will be maintained throughout the reception hall both during normal operation and during periods of shutdown when the alternative (odour abatement) extraction system is in use. Prior to completion of commissioning,

the development's operator shall submit a report to the local planning authority and obtain the local planning authority's written approval to that report. The report shall include:

- Details of testing carried out to show how negative pressure during normal operation and shutdown is being achieved;
- Testing to show that appropriate negative pressure is maintained when reception hall doors are open;
- Testing of the building management system to ensure that is operates as described in the application;
- If required, any proposed improvements with timescales for implementation.

d) Requirements prohibiting the use of odour masking sprays/aerosols.

e) The requirement to install a second, back-up, set of doors to the reception hall and bottom ash storage and loading hall.

f) The requirement to provide an interlock which will prevent any reception hall doors opening if neither the plant nor odour abatement system are operating.

g) The requirement for the development operator to provide a report setting out levels of pollutant emissions from the plant and key control data relating to the operation of the reception hall to the local planning authority within 24hrs of a request for such information from the local planning authority.

h) A maintenance plan for the odour control equipment.

i) The requirement to prepare and submit to the local planning authority a bi-annual monitoring plan to demonstrate the ongoing effectiveness of, and compliance with, the Air Emissions Management Plan. This shall include measurements of the concentrations of Volatile Organic Compounds (VOC) before and after the odour abatement system.

j) The requirement for and timing of a one-off test to determine the concentration of specific volatile organic compounds (VOCs) in the outlet from the odour abatement system and the reception hall, and for the taint assessment to be repeated taking account of these measurements. Details of the assessment shall be submitted to the local planning authority for approval prior to being carried out.

The development hereby approved shall be implemented/operated in accordance with the approved Air Emissions Management Plan for the lifetime of the development.

23) Prior to the development becoming operational (as defined in Condition 6) a Stakeholder Management Plan (SMP) shall be submitted to, and approved in writing by, the local planning authority. The SMP shall include, but not be limited to:

a) the aims and purposes of the SMP;

b) The establishment of a Stakeholder Management Group (SMG) which shall include a representative from the adjacent milk processing factory;

c) The management and terms of reference for the SMG;

d) actions specific to the adjacent milk processing factory, to include but not limited to, situations which would trigger emergency notifications within suitable timeframes and details of staff responsibilities for the notifications;

Once approved the SMP shall be implemented in accordance with the approved details throughout the lifetime of the development.

24) Within 30 days of final cessation of the operation of the development hereby permitted, the operator of the development shall inform the local planning authority in writing that all operations have ceased. Within 6 months of the final cessation of the operation of the development hereby permitted a scheme of restoration for the site shall be submitted for the written approval of the local planning authority. The scheme shall include the removal of all buildings, chimney stacks, associated plant, machinery, waste and processed materials from the site. The site shall thereafter be restored in accordance with the scheme of restoration within a period of 24 months of the details being approved by the local planning authority.