



# STROUD DISTRICT COUNCIL

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Our Ref: GAW/AST/PickelsMP

The Right Honourable Eric Pickles MP  
Secretary of State for Communities and Local  
Government  
Department for Communities & Local Government  
Eland House  
Bressenden Place  
London SW1E5DU

19<sup>th</sup> December 2012

Dear Sir,

## **Request for 'Call-In'**

**Energy from Waste Facility bottom ash processing facility and associated infrastructure on land at Javelin Park, Haresfield, Gloucestershire.**

We request that the Secretary of State direct that application 12.0008/STMAJW be referred to the Secretary of State to be decided by him. The proposed Residual Waste Treatment Facility is an incinerator and lies within Javelin Park at Haresfield, Stonehouse, Gloucestershire and is within the area for which we, Stroud District Council, are responsible. The application was to be determined by Gloucestershire County Council on the 17<sup>th</sup> January but we now believe it has been postponed to a date yet to be announced.

On both the 24 April and 20 November 2012 Stroud District Council's Development Control Committee resolved to object to the proposal. Copies of the Committee reports are enclosed. Objections 2 and 3 from the first report and objections 1-6 in the second (landscape impact and capacity) are most relevant to this request. A link to the planning application in question is <http://www.stroud.gov.uk/PLO/Default.aspx?AppRef=S.12/0572/CM#s=sectioncontent17>

## **Call- In Powers and Practice**

Under section 76A of the Town and Country Planning Act 1990 the Secretary of State may direct that a planning application must be referred to him if he thinks that it is of national or regional importance. By section 77 of the 1990 Act he has a general power to 'call in' applications for his decision. The main criterion applied by the Secretary of State for calling in a planning application is that it raises issues of more than local importance. Examples given in ministerial statements of when this criterion is satisfied include the following relevant to this case:

- (1) developments which could have significant effects beyond their locality;
- (2) developments which conflict with national policy on important matters;
- (3) when significant architectural issues are raised.
- (4) developments which give rise to substantial regional controversy<sup>1</sup>

<sup>1</sup> The various ministerial statements from which these criteria are gleaned are all set out in the commentary to section 77 of the TCPA in the *Encyclopaedia of Planning*



We have written to the County Council in tandem with this letter making a request that it refer the application to the Secretary of State in the event it proposes to approve the scheme. While the statutory provisions (relating to this type of development) for informing the Secretary of State of a decision which is not in accordance with the development plan were removed by virtue of the Town and Country Planning (Consultation) (England) Direction 2009 we believe that this is the only way in which the public can have confidence in the decision making process. There is concern locally that in September the County Council signed a £190m contract with the developer (Urbaser Balfour Beatty) under which the County Council stands to benefit to the tune of £15m in the event of a grant of planning permission. The implication is that it is minded to grant permission. We are therefore concerned to ensure that the Secretary of State is apprised at an early stage of the controversial nature of the application and that he should have an adequate opportunity of properly considering calling in this matter.

We address the call-in criteria set out above in turn:

**(1) Significant Effects Beyond the Locality**

In his decision letter of 17 August 2012 (copy enclosed) concerning the soundness of the waste core strategy, the Inspector found (at para 36) that the figures put forward by Gloucestershire CC as to quantum of residual waste were unsound. He considered that a lower estimate figure should be 108,000 tonnes per annum by 2028 with an upper figure of 145,000 tonnes. The actual figure per annum will depend upon whether GCC achieves a high or a medium recycling rate.

Policy WCS6 of the Draft Waste Core Strategy (full copy enclosed) as modified in the manner proposed by the Inspector reads:

*"In order to divert waste from landfill in the period to 2027, the WPA will make provision for the following residual waste recovery capacity:*

*MSW [Municipal Solid Waste]: up to 145,000 tonnes per year  
C & I [Commercial and Industrial]: Up to 73,000 tonnes per year"*

*Planning permission will be granted for strategic residual recovery facilities >50,000 tonnes/year within the outline boundaries of the site allocations shown in Appendix 5 at*

1. *Wingmoor Farm East*
2. *The Park*
3. *Wingmoor Farm West*
4. *Javelin Park*
5. *Land at Moreton Valence*

*Subject to the following:*

- (a) *That the requirements of the General and Key Development Criteria for the respective sites in Appendix 5 are met;*
- (b) *Proposals are supported by sufficient information for the purposes of an appropriate assessment of the implications of the proposal, alone or in combination with other plans and projects, for any Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site. The conclusions of the assessment, in accordance with Council Directive 92/42/EEC and the Conservation of Habitats and Species Regulations 2010*



*must show that the proposal can be delivered without adverse effect on the integrity of any SAC, SPA or Ramsar site.*

- (c) *That any proposals for waste recovery are for Gloucestershire's waste needs unless it can be demonstrated through a supporting statement, to be the most sustainable option to manage waste arising from outside the county at that facility. (continues....)*

The proposed Incinerator has a capacity for 190,000 tonnes per annum equivalent to the forecast capacity for all of the likely MSW and C & I residual waste in the County. Its scale is therefore inconsistent with adopted policy WCS6 which envisages 5 smaller facilities being constructed.

Furthermore its scale raises considerable concern as to the need and sustainability of the proposal as there is a likelihood that at this scale further waste from outside the County will be required for its operation (in conflict with criterion (c) of WCS 6). In the event any other facilities are built at any of the other four allocated sites it would appear inevitable that waste from outside the County will be imported. In this context we would ask the Secretary of State to take into account that planning permission has been granted for a gasification plant with a capacity up to 30,000tpa on the site at Moreton Valence. Whilst it is unimplemented, it remains an extant permission.

One would also want to take into account that Gloucestershire's residual waste could easily be catered for by existing and already permitted facilities in the wider region (see attached list). There will therefore be a significant issue of over-supply of waste incineration facilities at County and Regional level in the event this facility is permitted. The Secretary of State's officials will no doubt be aware of the Eunomia *Residual Waste Infrastructure Review* of May 2012 which warned that overcapacity for Energy from Waste Facilities nationally would be reached by 2016.

We would respectfully remind the Secretary of State of his decision letter of 20 July 2012 relating to the EfW facility at Middlewich in Cheshire in which he agreed (at paragraph 13) with the Inspector's comment (at paragraph 478 of his recommendation) that granting too many permissions and relying on the market to manage the outcome of an over-supply of residual waste facilities was "the antithesis of sustainable waste planning". Copies of the relevant pages are enclosed. These regional planning issues cannot be dealt with sensibly at County level and we consider they constitute a significant reason why this matter should be called in.

## **(2) Conflicts with National Policy on Important Matters**

This section covers three aspects: how the proposed incinerator conflicts with national policies regarding landscape, the potential over capacity of residual waste facilities, and the protection of habitats.

**Landscape policies:** The issue here is not merely one of over-capacity, it is whether, *per* NPPF paras 17, 109 and 115 the proposal protects and enhances the highly sensitive landscape of the Severn Vale and conserves and enhances the scenic beauty of the adjacent AONB (the proposal is 1.3km from the boundary of the AONB).

A core principle of the NPPF at para 17 states that planning should:  
*"take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising*



*the intrinsic character and beauty of the countryside and supporting thriving rural communities within it;*"

Paragraphs 109 and 115 of the NPPF, which are broadly mirrored by policy EN-1 of the still extant RPG10 provide, so far as is relevant:

*"109. The planning system should contribute to and enhance the natural and local environment by:*

- *protecting and enhancing valued landscapes"...*

*"115. Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty"....*

In order to understand the visual harm this proposal will cause, it is necessary to appreciate that this is not merely based on the subjective assertion of the District Council, but is robustly supported by previous appeal decisions relating to the site. On the same site as the proposed scheme a scheme for B8 storage use has been permitted. The planning Inspector granting approval of that scheme limited (by condition) the height of the development to 15.7m in order to mitigate the impact of the proposal on the landscape (the Core strategy Inspector refers to this and kindred decisions at paragraph 121 of his decision letter). The proposed height of this Incinerator is 14.65m at its lowest point while at its highest the main body of the building slopes from 40.5m to 48m with a stack rising to 70m. Furthermore, it has a very bulky appearance. It should therefore be immediately apparent that the proposal far exceeds what previous Inspectors have considered acceptable and would on any reasonable view be harmful in terms of its impact on the surrounding landscape and on the adjacent AONB.

Accordingly, the only basis on which this scheme could be allowed would be if the need for it was considered to outweigh the harm. To balance these factors requires an assessment of the significance of the proposal in terms of meeting regional demand or in terms of contribution to meeting national energy targets. The balancing exercise required involves weighing benefits on a regional and national level against harms to a landscape designated to be of significant value nationally. That is a balance which should be struck by the Secretary of State rather than by the County Council.

Furthermore, as the Inspector reporting on the core strategy noted at paragraph 125 of his decision letter, the permitting of either a scheme at Javelin Park or at the site at Moreton Valence (another site allocated by WCS 6 of the Draft Waste Core Strategy) would not only present a challenge in terms of the distinctive landscape context, but would "present an even greater challenge for the development of the other when the cumulative impact came to be assessed against policy WCS 14". WCS14 is the Core Strategy's landscape policy, and a copy is enclosed. As mentioned above, permission has been granted for a gasification plant with a capacity of up to 30,000tpa on the site at Moreton Valence. In addition, policy WCS10 (copy enclosed) of the adopted Waste Core Strategy specifically relates to this cumulative issue and visual impacts. We submit that the issue of harm to the Severn Vale landscape and the AONB from the cumulative impact of a number of developments is an issue which the Secretary of State will be best placed to consider and resolve.

We enclose in connection with this issue the landscape impact report prepared by Nicholas Pearson Associates which sets out considerable concerns as to the



adequacy of the methodology and conclusions in the Landscape and Visual Impact Assessment which was submitted by the applicants as part of the Environmental Impact Assessment. These are matters which could be properly tested were the application called-in.

On the 28<sup>th</sup> November 2012 Inspector Richard Thomas dismissed an appeal against the refusal of permission by the District Council for the development of four wind turbines Appeal Ref: APP/C1625/11/2155923. The decision, while relating to a different form of development is significant in terms of the similarities of the landscape setting of both proposals, being similar distances from the M5 motorway, the AONB and within the Severn Vale. The inspector was emphatic in his judgement, focusing on the harmful impact on the setting of the adjacent AONB and the rural Character of the area. His criticism extended to the impact on remote heritage assets in a way that has, in our view, post NPPF, set the bar at a new level in terms of the importance given to the impact of developments in non designated landscape areas, on both designated landscapes and historic assets.

Stroud District Council submits that, given the existing and proposed capacity at county and regional levels there is no overriding need for the development which is capable of justifying the harm it will cause to the AONB and the Severn Vale landscape.

**Capacity policies:** As set out in section (1) above granting permission to this incinerator will give rise to an over capacity of waste incineration facilities in the region. Whilst there are no formal policies on the desired capacity of waste incineration facilities the Secretary of State has provided guidance on this aspect in his decision letter of 20 July 2012 relating to the EfW facility at Middlewich in Cheshire (referred to above). In essence the Secretary of State has accepted that there is a need for him to oversee the granting of planning permissions to prevent an over-supply of such facilities. Given the existing and proposed capacity at county and regional levels there is no need for this incinerator, particularly given the harm it will cause.

The District Council would also suggest that, notwithstanding the availability of alternative incineration capacity, other primary and residual treatment technologies would be more appropriate and be more consistent with the Waste Core Strategy, PPS10, the European Union Waste Framework Directive and national policies on the protection of valuable landscapes, and guidance on avoiding over capacity of incineration facilities. The use of such primary and residual treatment technologies would also reduce the harmful impact to the valued local landscape.

**Protection of Habitats and Species Issues:** Balfour Beatty's *Habitats Regulations Screening Report* of January 2012 advises the County Council at paragraph 7.7:

"It can be concluded that the development of the proposed EfW at Javelin Park would not result in any adverse effects on the integrity of any European sites and on the basis of this HRA Screening Report it should therefore be possible to screen out the need for an Appropriate Assessment of the proposed EfW facility."

However in the Inspector's report of 17 August 2012 regarding the Gloucestershire Waste Core Strategy he stated at paragraph 71 that while most of the sites proposed in the Core Strategy could be regarded as not likely to give rise to a significant effect, alone or in-combination, on any of the sites of European sites "the exception is Javelin Park where that conclusion can only be drawn for a facility with up to 100,000 tpa annual capacity, there being no modelling at any intermediate annual tonnage"



There is as yet no recognition to our knowledge of the need, pursuant to the Habitats Directive, for appropriate assessment of this project by Gloucestershire County Council and there has been no consultation in that regard. This potentially raises an issue as to the compatibility of the process with criterion (b) of policy WCS 4 of the Waste Core Strategy set out above, with NPPF policy in paragraph 109, and with the law (since a competent authority is not entitled to grant consent for a project likely to have a significant effect on a European site without an appropriate assessment).

Further, the impact of the proposal on protected species and habitats is bound to the issue of the design of the proposal: a higher stack can reduce the impact of emissions on ecological interests (See the core strategy Decision Letter para 121), but correspondingly increases the adverse visual impact.

### **(3) Significant Architectural Issues**

We reiterate what is said above regarding concerns that the proposal by reason of its height and bulk will adversely impact on the Severn Vale landscape and the AONB.

### **(4) Substantial Regional Controversy**

The proposal is the most controversial in the Region. The Gloucestershire County Council website states that the County Council has received over 1,400 comments on the application, the vast majority of which are objections. More than 5,000 people signed a petition in 2010 opposing the plant. The proposal has generated widespread coverage in the media. Public meetings are being held almost weekly by objectors to the proposal. Corporate objectors (in addition to this District Council) include, the Liberal Democrats and the Green Party which are well represented in the area, Natural England, English Heritage, the Campaign for the Protection of Rural England, the Cotswold Conservation Board, Friends of the Earth and the previous Conservative administration of the District Council. Some of the scale of opposition is to be gauged by reference to a number of websites set up to oppose the proposal including <http://www.glosvain.info/> and <http://www.gloucestershire-against-incinerators.org.uk/index.html>

We would reiterate that the County Council has an unusually strong financial interest in the decision in that it is both landowner (see Core Strategy Inspector's report at paragraph 122) and as mentioned above has very recently (in September 2012) agreed a contract with the developer in relation to the facility under which it is understood that the difference to the County Council between granting and refusing planning permission for the incinerator is likely to be around £15m. In that context, and given the already highly controversial nature of the decision, it will be extremely difficult for the County Council to find an approach to this decision which maintains independence and an appearance of independence to the satisfaction of the public. The perception of the process has been harmed further by the reassignment of the planning officer who was dealing with the application, and using consultants specifically commissioned to assist with this application.

Given these circumstances we suggest that the Secretary of State would be regarded as an independent arbiter and we respectfully suggest that this is a matter which should lean in favour of calling the matter in for determination.

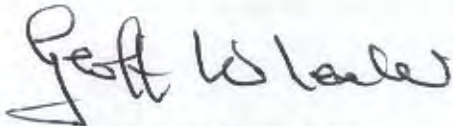


## Timescales

We would be grateful for an indication as to the timescale for any decision on this request.

As set out above, the application was to be determined on the 17<sup>th</sup> January 2013 however this date is now unlikely. We will inform the Secretary of State as soon as this is confirmed. In the event that the Secretary of State has insufficient time to consider this matter prior to any meeting arranged by the County Council to determine the application, we invite him to issue a holding direction pursuant to article 25 of the Town and Country Planning (Development Management Procedure) Order 1995.

Yours sincerely,



**Councillor Geoff Wheeler**  
Leader of Council

## Operational and permitted schemes within the region

Location	Type	Capacity	Status	On stream Date
Avonmouth	Incinerator	350ktpa	PP granted	2015
Sevenside	Incinerator	400ktpa	PP granted	2016
Avonmouth	MBT, + Gasifier	200ktpa	Operational	2011+2013
Kidderminster	Incinerator	200ktpa	PP granted	2016
Newport Dock	Gasifier	120ktpa	PP granted	2015
Dudley	Incinerator	105ktpa	Operational	1995
Tyesley, Birmingham	Incinerator	400ktpa	Operational	1998
Ardley, Oxon	Incinerator	300ktpa	PP granted	2015
Cardiff Bay	Incinerator	350ktpa	PP granted	2016
Finmere, Oxon	Gasifier	100ktpa	PP granted	2016
Greatmoor, Bucks	Incinerator	300ktpa	PP granted	2016