APP/U3935/W/18/3197964
LAND AT KEYPOINT, THORNHILL ROAD, SOUTH MARSTON, SWINDON

CLOSING SPEECH ON BEHALF OF THE COUNCIL

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1. The question raised by this appeal is as follows: should planning permission be granted for a strategic energy from waste ("EfW") facility ("the Proposal") on an unallocated site in circumstances where:
    a. the statutory development plan makes clear that meeting need for such waste facilities is to be done through the Wiltshire and Swindon Waste Site Allocations Local Plan ("the SALP");
    b. there is widespread objection from the local community on the basis of a perceived harm, which feeds into and informs the negative landscape and visual impact of the Proposal on the large number of residential properties affected;
    c. the Proposal puts at risk the deliverability of a nearby, major proposed urban extension that (i) already faces significant obstacles (ii) on which the Council relies for a quarter of its housing delivery over the plan period;
    d. the need for such a facility has not been demonstrated; and
    e. in the absence of need having been demonstrated, there is real risk of: (i) breach of the proximity principle; and (ii) the resulting excess waste capacity limiting the treatment of waste higher up the waste hierarchy namely via recycling and reuse?

2. The answer to this question, in the Council's submission, is 'no'; the appeal should be dismissed.

3. It is helpful to clarify at the outset what this appeal is not about, namely, the merits or demerits of EfW facilities generally. Consistently with national policy, Swindon's Waste Core Strategy ("the WCS") identifies (at Policy WCS5) a waste management hierarchy, in which recovery plays a role.[1] The Government's recently published national strategy for waste, *Our Waste, Our Resources: A Strategy for England* ("the Waste Strategy"), notwithstanding its strong focus on recycling, recognises the continued role of waste management options lower down in the waste hierarchy, such as EfW facilities (and indeed also landfill), in the economy.[2] The potential and extent of the contribution that EfW can make in the context of the waste hierarchy is not in dispute. The question in this Inquiry is whether *this* proposed EfW plant, in *this* location, should be granted permission against the backdrop of Swindon's statutory development plan.

[1] CD 7.8, Appendix 1 at p.8; Policy WCS5, WCS, CD 7.1, p.25
[2] CD 11.17, p.79

4. Three points of context bear emphasis at the outset.

5. **First**, there is no real dispute between the parties that the principal way in which Swindon's development plan seeks to address the need for waste facilities is by the allocation of sites through the plan-making process. This is clear from the WCS. One of the strategic objectives for Wiltshire and Swindon identified in the WCS is addressing *"need for waste management facilities"*.[3] WCS1 provides that Wiltshire and Swindon *"will address the issue of delivering sufficient sites to meet (…) needs (…) by providing and safeguarding a network of Site Allocations"*.[4] The broad principles guiding the identification of future sites of waste management facilities are then set out at WCS2. Continuing logically from this, the WCS notes *"the importance of identifying where each type of waste management facility should be located"* and thus *"…WCS3 sets out preferred locations for each type of waste management facility…it also identifies the estimated capacities that will need to be delivered."*[5]

6. **Second**, the successful and timeous delivery of the New Eastern Villages ("NEV") development, provided for in Policy NC3 of the Swindon Local Plan, is critical for Swindon. The NEV/Rowborough and South Marston expansion will provide 8,000 new homes, representing the single largest contribution to Swindon's ambitious strategy for housing growth of 22,000 additional new homes over the plan period. Educational, community and commercial facilities are part of the development. Mr Barefoot for the Appellant accepted that the NEV was a development of significant regional importance and that its delivery was of critical importance.[6] It is an ambitious project which faces a number of funding, logistical and other hurdles.

7. **Third,** a striking amount of key evidence in relation to central issues in this appeal has been provided, to put it mildly, somewhat late in the day. Requests from the Council have either been ignored or inadequately responded to. There are many examples of this:
    a. On the key issue of need, on which Mr Brown was the Appellant's witness, no need case which the Appellant itself contends was "*robust*" was put forward until shortly before the exchange of proofs. On any view, however, this was still incomplete, with requests for further information continuing throughout January 2019. Indeed much of the detail essential to understanding Mr Brown's evidence and the basis for his analysis emerged either: (i) in cross-examination of Ms Darrie in week 1 of the inquiry; or (ii) in the course of his evidence before the inquiry in week 2.
    b. Moreover, the need case advanced remains incomplete with much of the detail that lies behind the evidence not provided to this inquiry even now (see below); indeed, at the time of writing this Closing Statement, the Appellant was still

[3] That is, to *"[e]nsure that there is a sufficient and flexible network of safeguarded waste management facilities that make adequate provision for waste requiring management in Wiltshire and Swindon in accordance with the apportionments set out in the South West Regional Spatial Strategy":* CD 7.1, p.16
[4] Described by Miss Darrie in evidence as *"an overarching, scene-setting policy for the* [WCS]*"*.
[5] WCS, CD 7.1, p.22, para. 5.15
[6] In response to cross-examination by Mr Maurici QC, Day 5 of the Inquiry, 29 January 2019

sending through further information in the form an 11-page appendix setting out a range of data and analysis relating to Mr Brown's evidence;

c. The Appellant's alternative sites assessment ("ASA") was only provided with the Statement of Case and one of its key defects was only sought to be overcome by the provision of further, new, information on the stage 2 process when Mr Burrell gave his evidence at the end of week 2 of the inquiry;
d. The proposal for rail use, something specifically disavowed at the application stage, emerged late, with the evidence and studies supporting such a notion only being provided with Mr Burrell's proof despite promises it would be provided earlier;
e. The feedstock for the REC facility was described in the planning application and in the Appellant's Statement of Case as *"predominantly … in the form of …RDF"*. Consistently with this, the Appellant's transport evidence assessed transport impacts on the basis that the feedstock would be RDF from specialist facilities.[7] However, it became clear in the course of Mr Brown's evidence that this was an erroneous assumption - the feedstock was to be *residual waste* more generally, which *could* include RDF. Both Mr Brown and Mr Crummack's evidence proceed on the footing that the REC facility will process a wide range of waste from a wide range of sources.[8]
f. The Appellant's key arguments on the policies on need and alternatives, including on the proper interpretation of Policy WCS3 in the WCS, emerged for the very first time in the Appellant's opening;
g. The original description of the gasification technology in the application documents appears to have been based on the REC facility utilising a *"three line process based on the Energos gasification system"*;[9] in Mr Crummack's Proof, the Inquiry was told that a different Japanese gasification technology had been *"selected"* and *"chosen"* for *"good reasons"*; the Inquiry was then told by Mr Crummack in cross-examination that *"we haven't decided which technology to use"*.[10]

8. The Appellant's approach has been troubling in this respect, not least because it has resulted in an inadequate opportunity for both the Council and this Inquiry to interrogate (or sometimes even understand) the Appellant's case, often on issues central to the resolution of the appeal. In such circumstances, it is respectfully submitted that you, Sir, should approach this appeal and the Appellant's evidence with something akin to what the courts refer to as *"anxious scrutiny"* – that is, with particular care and fastidiousness in order, in particular, to ensure that the Appellant's arguments truly rest on solid foundations.

9. The truth of the matter is that the Appellant's proposal has been very much a moving target. Mr Katkowski QC labelled the case of the Council and others against the

[7] Mr Eves' Proof, para. 6.37
[8] Crummack Proof at para. 3.81. No condition is proposed in relation to the type of waste to be received or the proportion of which should be RDF.
[9] CD 1.7, Dr Ford's original air quality impact assessment in the Environmental Statement
[10] Evidence of Mr Crummack in chief, Day 4 of the Inquiry, 25 January 2019

Proposal as "Project Fear". But it is the Appellant's case that deserves a label: "Project Unclear". The Proposal and the evidence in support of it has changed utterly from what was before the Council. The PINS Procedural Guide says (at M.2.1) "*[i]f an appeal is made the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought*". That is not what has happened here; there are really two schemes: the one that was before the Council and the one that is now advanced on appeal. Moreover, despite all the new evidence – the flow of which continued apace throughout the inquiry – much of this new evidence has raised more questions than it answered. The lack of clarity about what exactly is proposed also dissipates the weight to be attached to many of the benefits that the Appellant claims in relation to the Proposal, such as the claimed reduction in greenhouse gas ("GHG") emissions.

10. Finally, in this regard, the Council's reason for refusal ("RFR") 2 focussed on the Appellant having failed to demonstrate key matters. A refusal on that basis remains very much open to you, Sir, on this appeal.

RFR 1 Issues

Issue 1 – Landscape and visual impact of the proposed Renewable Energy Centre
Issue 7 – Impact on Swindon's development strategy

Issue 7 - Impact on Swindon's development strategy

11. Issues 1 and 7 are interconnected, albeit that the focus under Issue 7 is on the effect of the Proposal on those households that do not yet live in Swindon, but that the Council is trying to attract to the NEV.

12. Swindon's housing requirement is set out at para. 3.23 of the Local Plan: 22,000 additional homes are required for 2011 – 2026, with "*[a]pproximately one-third of the additional housing requirement is needed to meet local needs through forecast changes in household and demographic structures in the Borough*".

13. Despite the fact that Swindon is one of the most affordable places in southern England,[11] the Council's strategy is to increase its housing stock by some 24% over the plan period. This ambitious development strategy is based on delivering large-scale, comprehensive developments: see Policy SD2 of the Local Plan.[12]

14. Policy NC3 of the Local Plan provides for the NEV/Rowborough and South Marston Village expansion, the largest such single development in Swindon, and the largest development planned in the south-west of England.[13] It will deliver c.6,000 dwellings

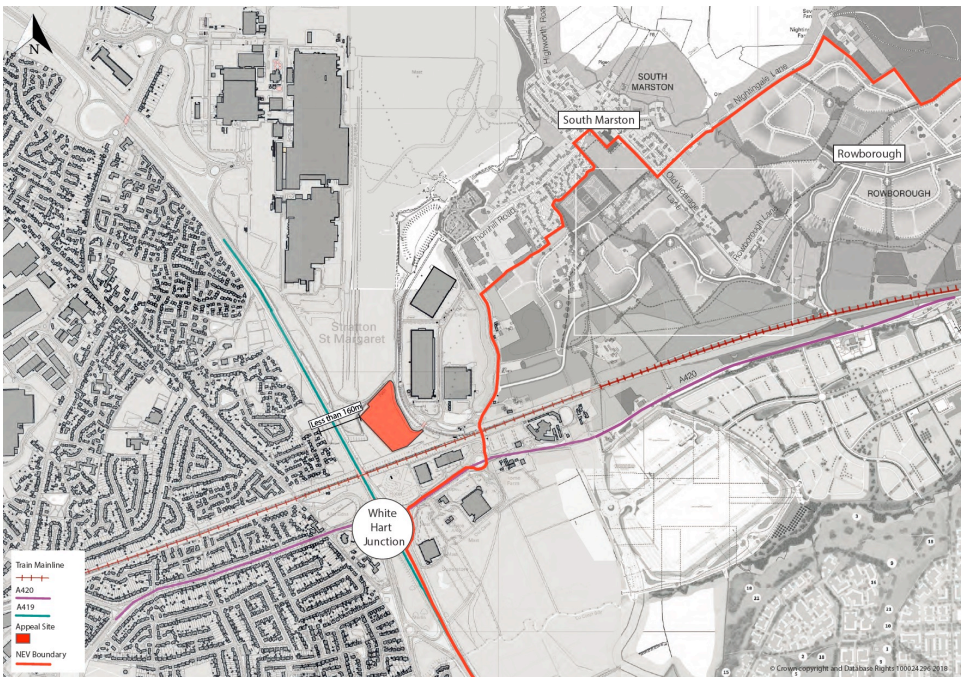
[11] The fourth most affordable local authority in southern England.
[12] CD 7.4, p.20.
[13] Proof of Mr Dewart, p.24, para. 8.4.

south of the A420 (in the NEV); c.1,500 dwellings at Rowborough, north of the A420 and 500 dwellings at South Marston; in addition to (inter alia) 40ha of employment land, c.12,000m2 of retail floorspace, comprehensive community infrastructure including sports and leisure facilities, education provision, community facilities and a healthcare facility.

15. Delivery of the NEV is a key component of the development strategy over the plan period. It will require significant public sector investment of £150m; proposed improvements to the White Hart junction, located to the south-west of the Appeal Site, which is envisaged in NC3 to become *"an improved gateway junction"*, will alone require public sector investment of £22.5m.[14] Per the Local Plan:[15]

> *"The White Hart junction is a critical part of the local and strategic road network, principally providing an interchange between the A420 and the A419 Trunk Road. The White Hart Junction also has a critical role in high quality urban design and should provide a gateway to the town."*

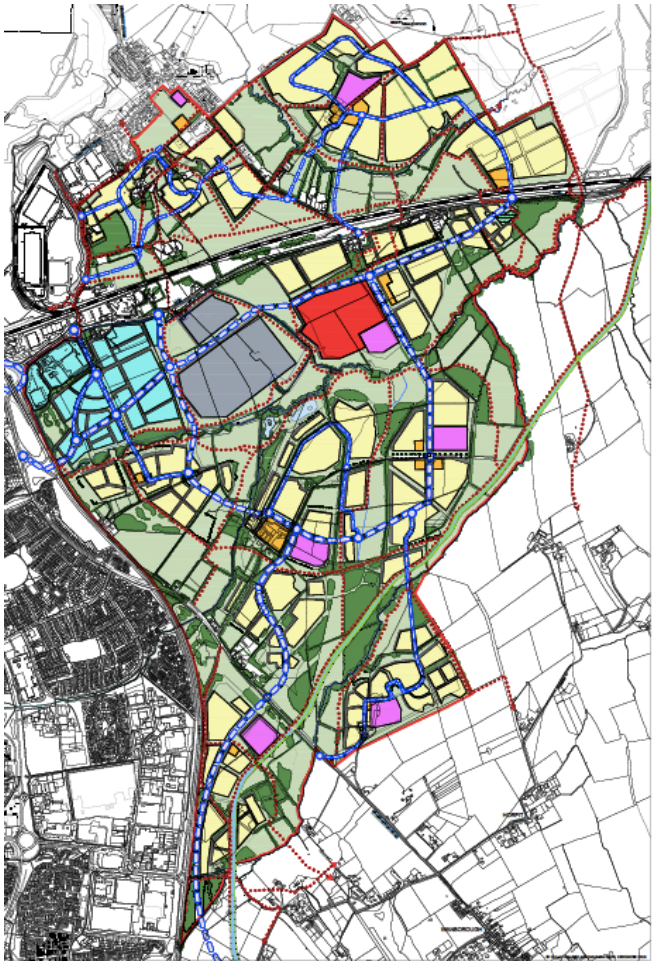
16. The relative location of the Appeal Site to the NEV and the White Hart junction is shown at Map 3 in Mr Dewart's proof:



17. Mr Dewart in his evidence emphasised (and Mr Burrell, the Appellant's planning witness, accepted) the importance of place making in the delivery of the NEV.[16] An important part of the NEV in this respect will be the new District Centre, which will include 900 homes, and was described by Mr Dewart as *"the heart of the NEV"* and its *"shop window onto the world… the highest density, most vibrant, most vital part of the*

[14] Proof of Mr Dewart, p.24, para. 8.6
[15] CD 7.4, p.167, para. 5.79, emphasis added.
[16] In response to cross-examination by Mr Maurici QC, Day 8 of the Inquiry, 1 February 2019

NEV".[17] The District Centre is shaded light blue in the NEV Masterplan and, as can be seen, is the part of the NEV in closest proximity to the Appeal Site:[18]



18. It is the Council's case that the introduction of a major EfW plant with a 52m Flue Stack, signalling across the NEV the presence of a waste processing facility, would create a serious risk of undermining delivery of the NEV. This is based on the proposition that the desirability, and thus possible sales price, of a property within the NEV would be negatively affected by the introduction of a large waste facility with a 52m stack in its immediate vicinity, and that this could, in turn, have knock-on effects on deliverability of the NEV.

19. Two points of context should be emphasised that are particularly relevant to this Proposal and Swindon.

20. First, there is, within the local community, a significant public perception of health concerns about a facility such as the Proposal. This was in evidence in the statements

[17] Evidence of Mr Dewart in chief, Day 2 of the Inquiry, Wednesday 24 January 2019
[18] The Masterplan is Appendix A to the New Eastern Villages Supplementary Planning Document and can be found at Appendix 14 of the Appendices to Mr Cook's Proof.

of objectors at Planning Committee, and in the representations from local residents before the Inquiry. 3,293 local residents signed a petition against the Proposal.[19] While the Appellant was dismissive of such concerns, it can scarcely be disputed that such concerns exist, and are significant in scale. Mr Dewart told the Inquiry that, in his 16 years as a planner, he had never seen such a large public attendance at a Planning Committee; his evaluation was that these were real anxiety and fear at the heart of these concerns, and not mere nimbyism. Public concerns about health can be a material consideration in the planning balance. The relevant principles are not controversial and were summarised as follows by the Inspector in Javelin Park appeal:[20]

a. public perception of health risks is a material consideration;
b. it is rarely determinative in its own right;
c. the weight to be attributed to the material factor will depend on the particular facts, including the extent of the objective justification for the perception;
d. that said, public perception of health impacts remains material, even if they are lacking objective justification.

21. While the expert consensus is that there is no evidence in support of a causal link, it does not follow that objectors' concerns are necessarily unreasonable or irrational, as counsel for the Appellant appeared to assume. Per the Planning Encyclopaedia, "*differences over safety… usually boil down to the acceptability of different degrees of risk, rather than a clear conclusion that the fear is either justified or baseless*".[21] This was recognised by the Inspector in the Javelin Park appeal in dealing with the concerns about public safety in relation to a proposed EfW plant in Gloucestershire.[22]

22. Mr Crummack, the Appellant's witness on technology matters, while noting the expert consensus, correctly observed that "*there is objective evidence to support people's perceptions*".[23] The recent fire at the Averies Recycling site in Marshgate which burned

[19] Evidence of Maureen Dilley, local resident, before the Inquiry. The total population of the borough of Swindon is 209,156 (2011 figures).

[20] CD 17.9, p.130, paras.696 and 1232

[21] This is precisely the approach taken by the Inspector in the Javelin Park appeal:

"1240. In many fields what is regarded as 'safe' varies over time as the scientific method or epidemiology develops knowledge and understanding. Dr O'Dowd gave cogent evidence about this from the field of medicine […] It would defy the experience of many people in other fields if current limits were not also tightened in future […].

1242. Essentially the HPA's position is that on the basis of what is known it considers the risk of harm to health to be very small. […]

1243. Whether or not the position of the HPA is reassuring will depend on an individual's attitude to risk and the ability to manage it. In this case, as Mr Watson points out, whatever the level of risk is perceived to be it is an involuntary risk and one for which no mitigation or avoidance measures short of moving away from the area are available to the individual.

1244. Furthermore, while Mr Othen points out that breaches of emissions limits at EfW plants are very rare (…) and in EiC he explained the particular circumstances pertaining to each of the breaches identified by Ms Shirley, the fact remains that a breach occurred; it was resolved by the EA only after the incident had been detected, usually by monitoring. While that tends to undermine the claim of EA incompetence, it does suggest that a pollution incident took place in respect of at least some of those examples.

1245. It is for these reasons that I consider the concern arising from a perception of harm to be rational even though there is no objective evidence that actual harm will occur."

[22] *"I consider the concern arising from a perception of harm to be rational even though there is no objective evidence that actual harm will occur."* CD 17.9, para. 1245. see the analysis at paras. 1238 and 1245.

[23] Day 4 of the Inquiry, Friday 25of January 2019, in response to cross-examination by Mr Maurici QC

for two days is a recent memory in the minds of local residents; furthermore, Swindon has an unfortunate history in relation to health and safety issues arising out of industrial activities that cannot be entirely ignored in assessing the reasonableness of such concerns.[24]

23. Secondly, as Mr Dewart highlighted in his evidence, Swindon's biggest obstacle to housing growth is not a dearth of housing sites, but a serious image problem.[25] References to improving Swindon's image are peppered throughout the Local Plan.[26] The image problem was highlighted by local residents such as Anne Bridgeman, who told the Inquiry of the numerous disparaging characterisations of Swindon found in popular culture, from "*Swindump*" to "*the arse end of the world*". Swindon's history of health and safety issues arising out of industrial activities feeds into this image problem.

24. The nature of the Proposal as a waste processing facility and its proximity to densely populated residential areas strikes at the overlap of these dual sensitivities. As Stratton St Margaret resident (and local councillor), Mr Barry Jennings put it, "*Swindon is already the butt of unwelcome jokes – we do not want our town to become the dumping ground of other people's waste*". The question for the Inquiry is not whether or not these views should be agreed with, or whether they are justifiable by the standard of some other person. It is whether such views are likely to be shared by those that Swindon is seeking to attract to the NEV; and if so whether such views are likely to influence decisions about buying properties in the NEV.

25. The starting point must be that there is no reason why the market of householders that Swindon is seeking to attract to the NEV would hold any different a view to that of current residents. Indeed, that is the view of developers directly involved in the NEV development, and on whose commercial judgment successful delivery of the NEV will depend. The evidence before the Inquiry was:[27]
    a. A letter of objection to the Proposal dated 23 August 2016 submitted on behalf of Hallam Land Management Ltd ("HLM"), Hannick Homes & Developments Limited (a Swindon-based housebuilder) and Taylor Wimpey UK Ltd by

[24] Such as the town's association with mesothelioma, the cancer caused by asbestos exposure that was termed '*the Swindon disease*'. As Mr Dewart highlighted in his evidence, that term arose because of the large number of former railway workers that died from exposure to the disease at Swindon's former railway works, which were located at the site which is today the Steam Museum, the venue for this Inquiry.

[25] That is, in the eyes of its residents and neighbours.

[26] CD 7.4: para 2.8 (p.10): "*Swindon has a strong potential for growth, however there remain significant threats to economic success, particularly … the perceived poor image of Swindon*". See also Strategic Objective 1 at para 2.16 (p.13); para 3.12 (p.18); para 4.108 (p.60): "*The type and mix of new housing can play a role in improving the physical environment; ensuring inclusive communities; attracting industry to locate to Swindon and higher skilled workers to live here; and improving Swindon's overall image.*"; Para 5.87 (p.168): "*The design principles include…to create a new eastern approach to Swindon and help redefine and improve the image of Swindon.*"

[27] Counsel for the Appellant's insistence that the letters and statements submitted on behalf of the NEV developers did not constitute 'evidence' was somewhat baffling. Per the leading textbook on evidence, *Phipson on Evidence*, 19th Ed. "*Evidence … means the testimony, whether oral, documentary or real, which may be legally received in order to prove or disprove some fact in dispute*", para. 1-10. The letters from Ridge and David Lock Associates are plainly evidence of the state of mind of the NEV developers, which is the relevant factual point to which they relate. Notably, counsel for the Appellant did not seem to apply these peculiar standards of evidence to the Appellant's own evidence.

David Lock Associates that highlighted the concern of the developers in relation to "*the marketability of the new community*" and the risk of a "*substantial conflict with the aspirations, policies and implementation mechanism of …Policy NC3* [of the Local Plan]" and that "*the scale and nature of the development will be very apparent in a larger area than the site… the scale impacts … are substantial and not context consistent*". [28]

b. A further letter from David Lock of 15 December 2016 highlighting that the developers "*remain concerned in relation to the marketability of the new community at the NEV*" and emphasising that "*it is critical that the Council is satisfied that the proposed development will not impact on the delivery of the NEV and have due consideration to impacts on the amenity of both existing and future residents… a fundamental issue*". The letter concludes that "*it has not been demonstrated with any certainty that the* [Proposal] *would not fetter the delivery of the strategic allocation of the NEV, and taking into consideration the amenity of existing and future residents*".

c. A written statement by Nick Freer of David Lock Associates highlighted that HLM and Taylor Wimpey's concerns related to the "*clear perception of harm or impact arising from the proposal's proximity to residential homes*" and that ***"such concerns as are evident among the existing community in this locality are also likely to translate into concerns for some otherwise prospective purchasers of new homes in the NEV….there is clear evidence of perceived broadly based concern."*** Mr Freer's evidence, having been subject to cross-examination, should be accorded significant weight.

d. A letter from Ridge Property & Construction Consultants of 14 January 2019 on behalf of Capital Land and Property Group Ltd, highlighting that "*the proposed development of a major Energy from Waste Plant near to the New Eastern Villages is weighing heavily on the decision of housebuilders as to whether they will invest in the New Eastern Villages*".

26. There has, in other words, been consistent objection from developers directly involved in the NEV development since soon after the application for planning permission was submitted, expressing the consistent view that the concerns of local residents are likely to translate into difficulties for delivery for the NEV.[29]

27. In terms of landscape and visual impact, even Mr Cook accepted that, contrary to Policy NC3, the Proposal would have "*no positive effect*" on the White Hart Junction and that to the extent the Proposal made any contribution, it would be negative.[30] Visibility of the Proposal from the White Hart Junction is clear from Mr Cook's Zone of Theoretical Visibility and Viewpoint Locations Plan ("the ZTV").[31]

[28] Letter of 23 August 2016, Appendix 2 to Proof of Mr Dewart, p.57

[29] The point was also made by local residents. Per Maureen Dilley, speaking on the first day of the Inquiry: "*The sight of the chimney might even deter parents from moving to that development. Who would willingly send their children to such a place?*"

[30] In response to cross-examination by Mr Maurici QC, Day 6 of the Inquiry, 30 January 2019

[31] Appendix 17.1 to Mr Cook's Proof, and in particular the blown up section of this he produced when giving his evidence in chief.

28. As Mr Dewart put in his examination in chief before the Inquiry:

> *"The issue boils down to - would people buy a house in sight of a major EfW Plant? For many people the answer is clearly no, for others, maybe, but they would be prepared to pay a great deal less for that house. This is a major concern – and appellant does not address this, presumably because no chartered surveyor is going to say that the EfW Plant would not depress house prices."*[32]

29. The evidence of those actually involved in the NEV development confirms the Council's concern that the negative public perceptions engendered by the Proposal risk undermining the confidence of the developers in bringing forward the NEV in time or at all.[33] Mr Barefoot's characterisation of the concerns expressed by NEV developers as emanating from *"an idealistic housebuilder perspective"* is difficult to take seriously.[34] In truth, the authors of the aforementioned objections are, as Mr Dewart noted, highly experienced, hard-nosed companies who understand the business of housebuilding; Taylor Wimpey is one of the largest housebuilders in the UK; HLM are the strategic arm of Henry Boot; and Hannick and Capital are locally-based housebuilders who can be taken to be familiar with the Swindon market. Before the Inquiry, Mr Barefoot accepted that such developers would have no reason to object unless they were genuinely concerned about the Proposal.[35] Their concerns should be taken seriously.

30. Mr Barefoot for the Appellant displayed an unabashed enthusiasm for the aesthetic appeal of industrial landscapes, which he appeared to assume was universally held.[36] His suggestion that people should *"celebrate the stack"* clearly shows his own perhaps somewhat unique perspective. His evidence sought to demonstrate that the Proposal would not deleteriously impact on delivery rates in the NEV. Mr Barefoot presented evidence on locations where residential dwellings were located nearby to industrial facilities, but this evidence neither addressed the Council's main concern which have always been in respect to deliverability,[37] and build-out rates in particular; nor did Mr Barefoot's evidence dislodge the logical assumption that properties located in close proximity to an incinerator or EfW plant (or a power plant) would be viewed as less attractive by the market than properties that were not. Mr Barefoot, in fact, produced no evidence on the effect of facilities such as the Proposal (or imposing industrial facilities of other kinds) on build-out rates, sales prices or negotiation of planning obligations. Moreover, it is clear from Mr Barefoot's answers in cross-examination and Mr Dewart's evidence-in-chief that none of the examples given are

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[32] Day 3 of the Inquiry, 24 February 2019
[33] Proof of Mr Dewart, Para.8.25
[34] Proof of Mr Barefoot, para. 8.8
[35] Day 5 of the Inquiry, Tuesday the 29th of January 2019, in cross-examination by Mr Maurici QC
[36] Mr Barefoot described himself as a *"dyed in the wool industrial agent"*. Mr Barefoot categorised Swindon as an 'industrial town' on the basis of that the ratio of industrial floorspace to office floorspace in Swindon is higher than in nearby towns. Not only is this categorisation irrelevant in planning terms, it is of little use as a guide to the development of Swindon because, according to the latest assessment of employment floorspace in Swindon, projections are for office jobs to increase and industrial jobs to decrease in the future: CD 12.3, p.54; referred to by Mr Barefoot in his Proof.
[37] Per RFR1: "[the Proposal] *could prejudice **delivery** of Swindon's development strategy"*

even remotely comparable to the present situation (they included a number of B8 uses, telecom masts, a wind turbine and (non-waste) power stations that had been present for many, many years e.g. Didcot and Slough). This is a view echoed in the appeal representations made by the NEV developers. The only example that requires further comment is Javelin Park.

31. It is correct that in the appeal in Javelin Park, which was concerned with planned residential development of a 500-home urban extension at Hunts Grove,[38] similar arguments were made as to the possible impact of an EfW facility on deliverability and rejected. There are, however, some key points of distinction from the present appeal which should be borne firmly in mind. First, in the Javelin Park appeal, there was no objection from the housebuilder, Crest Nicholson,[39] such that complaints as to possible knock-on effects were fairly characterised by the Inspector as "*pure speculation*".[40] That is not the position here; there is before the Inquiry evidence from a number of developers directly involved in the NEV development going directly to the fact of their concern as to the risk to deliverability, and Mr Barefoot accepted that the likes of Taylor Wimpey and others such as them would not object unless they had a genuine concern. Secondly, the scale of the development envisaged by Policy NC3 is on a different scale; and Swindon faces obstacles to delivery that are of a different order of magnitude to those associated with the Hunts Grove development. Third, as has now been agreed, the distance between the proposed EfW and the housing allocation there in issue – Grove Park – is at least 1 kilometre, and with proposed screening etc. Mr Dewart's evidence was that it was more likely to be in the order of 1.6 kilometres. Here the closest point of the NEV, and indeed its most vital part, is only some 330 metres from the Appeal Site. This is, in short, a different situation.

32. In summary, the Proposal risks undermining the delivery of the NEV and would not, as such, be in accordance with Policy NC3 of the Local Plan. Mr Burrell, in evidence, sought to characterise Policy NC3 as only concerned with the NEV developers and suggested that the Proposal would not be "*in breach*" of NC3. The question is whether the Proposal would be in accordance NC3, which *requires* the bringing forward of the NEV within the plan period. By undermining the delivery of the NEV, the Proposal would not be in accordance with NC3. But in any event even if this were wrong (which it is plainly not) the fact that the NEV risked being undermined would be a material consideration of significant weight even if on a technicality there was no breach of NC3.

Issue 1 – Landscape and visual impact of the proposed Renewable Energy Centre

33. The Appeal Site lies 160m from residential properties in Stratton St. Margaret, 330m from the proposed NEV and 700m from the village of South Marston..

[38] CD 17.9, paras.360, 699
[39] CD 17.9, para. 373
[40] CD 17.9, para. 374

34. Mr Potterton distinguished the impacts of the main REC building and Flue Stack; but the Proposal must, of course, be considered as a whole.[41] The focus of the Council's landscape and visual impact concerns is the proposed Flue Stack. The David Murray John Tower, the tallest building in Swindon, is 84 metres tall; the Flue Stack is 52m tall and would become the second tallest structure in Swindon. Mr Potterton, giving evidence on behalf of the Council in relation to landscape and visual impact, described the Flue Stack as an *"anomalous"* structure and, certainly in relation to its height, this cannot be reasonably disputed.

35. The immediate context for the Appeal Site is the Keypoint Industrial Estate ("the KIE"). The LIDAR Building Heights Plan[42] shows the context in terms of building height. In short, there is a dearth of comparably tall structures both within the KIE and the wider Swindon area. The LIDAR Plan, unhelpfully, does not distinguish between buildings that are over 20m tall, but Mr Potterton clarified in his evidence that those buildings identified as over 20m tall within the KIE were the flues over the Honda plant which measured 23m in height. Furthermore, Mr Dewart, the Council's planning witness, explained that the Council had taken care to manage the development of the part of the KIE to the north-east of the Appeal Site, adjoining the village of South Marston, to ensure that these buildings had, notwithstanding their significant footprint, heights of no more than c.15m.[43]

36. The central concern of the Council, however, is the impact of the views of the Flue Stack from beyond the KIE; in particular, views from Stratton St. Margaret to the west and South Marston the north-east. The LIDAR Plan and aerial photos of the Appeal Site[44] highlight the density of residential development to the west of the A419. As Mr Potterton noted, the number of existing receptors within 1 kilometre was c. 2000, something not disputed by Mr Cook when it was put to him in cross-examination. Further, to the east and south-east, located some 330m from the Appeal Site will be the NEV, introducing a further 8,000 new receptors (albeit, of course, not all of these would be within 1 kilometre). Mr Potterton's evidence was that the Flue Stack would be visible from extensive parts of both existing residential areas, particularly the Stratton St. Margaret area and South Marston, and the NEV. It was accepted between Mr Potterton and Mr Cook that (i) the visual impact of the Flue Stack beyond the KIE would be adverse; and (ii) there is no way in which views of the Flue Stack could be screened or mitigated. This is a simple function of the fact that it is 52 metres tall in a landscape in which tall structures are a rarity. There was dispute between Mr Potterton and Mr Cook on the precise extent to which the Flue Stack would be visible from in amongst the densely populated parts of Stratton St Margaret. Mr Potterton, relying on the drone images set out in his Appendix, said that the Proposal would be highly visible from Stratton St Margaret, the A419 and beyond; Mr Cook relied on

[41] Mr Potterton acknowledged that, while clearly larger than the surrounding buildings by some way, it did broadly fit in with the character of the area as an industrial estate, and had less significant impacts in relation to the broader area. This was also the position taken in the Statement of Common Ground.
[42] Appendix 12.1 to Mr Cook's Proof
[43] The Bodleian Library building, for example, is 15.2m in height.
[44] Appendix 3.1 to Mr Cook's Proof

the ZTV as showing the contrary; the Inspector will no doubt form his own view in the course of the site visit. It is clear even from the ZTV, however, that there are multiple locations within Stratton St Margaret from which the Flue Stack would be visible. This contrasts with the existing position whereby the buildings on the KIE are very largely invisible from Stratton St Margaret. It was, moreover, common ground between the parties that to the south, south-east, north-east and east of the A419, the Proposal would be widely visible across a wide area.[45]

37. There was no dispute between the parties that the visible aspects of the Proposal, particularly the Flue Stack, would signal to receptors the presence of a waste facility and would, as such, be indelibly associated with that facility.[46] As well as its height and visibility, the fact that the Flue Stack would signal to all who saw it that it marked the site of a large waste processing facility is, in Mr Potterton's view, relevant.[47] With that context in mind, the associations that receptors would hold with the Flue Stack are relevant to the landscape and visual impact analysis and should inform the landscape and visual impact analysis.

38. Mr Potterton's approach in this respect is consistent with GLVIA, para.2.19, which states: "*Character is not just about the physical and elements and features that make up a landscape, but also embraces the aesthetic, perceptual and experiential aspects of the landscape that make different places distinctive*". [48] This reflects the reality that a town's landscape is not simply a series of masses and heights, and that analysis of landscape and visual impacts requires consideration of the subjective responses to landscape, and the way in which landscape can form part of a town's identity. Mr Cook, while characteristically reluctant to accept such a proposition, took in substance the same approach in modifying his starting point that overall the Proposal would have a neutral effect to one that it would have an adverse effect on the basis of public views about change in the appearance of an area.[49]

39. There was abundant evidence before the Inquiry as to the kinds of associations that the Flue Stack would hold for receptors in the locality:
    a. "*the development would be a blot on the rural aspect of our village*": Mr Leathart, a South Marston resident;[50]
    b. "*to plant a 52m stack there – if it is that high, it must be emitting pollutants. I'm not assured by experts that say the pollutants will be insignificant*": Maureen Dilley, local resident;[51]

[45] See the ZTV, Appendix 17.1 to Mr Cook's Proof
[46] Accepted by Mr Cook in response to comments from an objector, Mr Jennings on Day 7 of the Inquiry, Thursday 31 January 2019
[47] The presence of a plume which would, per Mr Cook's evidence for the Appellant (para. 3.17 of Mr Cook's Proof) be visible roughly 2% of the time (or half an hour a day), would, in Mr Potterton's view, exacerbate this association and the resultant exacerbation of the negative landscape and visual impact.
[48] This extract is cited by Mr Potterton in his proof at para. 4.78.
[49] Para. 2.20, Proof of Mr Cook.
[50] Day 1 of the Inquiry 22 January 2019
[51] Day 1 of the Inquiry 22 January 2019

c. *"Why is a 52m high smoke stack needed if no pollutants coming out of the chimney?... Residents do not a waste plant and all it implies dominating their community and blighting their lives. The development is neither welcome nor appropriate in our community"* : Barry Jennings, resident of Stratton St Margaret and Councillor.[52]

40. Thus, in addition to its height relative to other buildings in the locality, the associations held in relation to the REC building and especially the Flue Stack and the connection to the waste facility by those in the local area are associations that exacerbate the negative impact of the Proposal. As Mr Potterton indicated in his evidence in chief, the Flue Stack would cause significant visual harm and harm to the character of the area because "*it is perceived as an unusual, abnormal element that is associated with waste – chimneys of all sorts deal with the nasty by-products*". In Mr Potterton's words, the associations, and the impact, would not be the same were the Proposal for, say, a church spire (or Nelson's Column, which stands at the same height as the Flue Stack). This is hardly surprising once one accepts that a town's landscape is not a series of building heights, but part of that town's identity.

41. Turning to Mr Cook's evidence, Mr Cook suggested that the ZTV "*should be treated with caution*".[53] Certainly to the extent it is relied on as a sole source of evidence, the Council agrees. To give one example, the ZTV, inexplicably, appeared to suggest that in some areas over 2km away from the Appeal Site, the REC building but *not* the Flue Stack would be visible. Mr Cook could give no sensible explanation for this in cross-examination.

42. Mr Cook's evidence on landscape and visual impact more generally seriously underplays the impact of the Flue Stack. The Flue Stack, in Mr Potterton's words, was the "*elephant in the room*" in Mr Cook's evidence on landscape and visual impact. This characterisation is apt. In considering Mr Cook's Proof, it became all too easy to forget that the Proposal included a 52 metre chimney as part of it. Perhaps most strikingly, in the whole of sections 4 and 5 of Mr Cook's Proof describing the effect of the Proposal on landscape within and beyond the site the Flue Stack is not even mentioned. When Mr Cook felt moved to acknowledge the existence of the Flue Stack, it was in the context of factual descriptions of the site. In considering the impact of the Proposal on the townscape, for example, and factors such as "*roof line*", "*skyline*" and "*building height*", there is not a single mention of the Flue Stack or its height.[54]

43. Some sense of the impacts on Stratton St Margaret can be gleaned from the AVRs produced by Mr Cook to highlight residential amenity views, at Appendix 16 to his Proof. In particular, Appendix 16.10-13 highlights the level of intrusion that the Proposal would introduce into the view from Watermead Park.

[52] Day 1 of the Inquiry 22 January 2019
[53] In response to cross-examination by Mr Maurici QC, Day 6 of the Inquiry, 30 January 2019
[54] Paras.5.19-5.48; see 5.42 in particular, the discussion of height

44. The guidance in GLVIA provides that people who are *"engaged in outdoor recreation, including use of public rights of way, whose attention or interest is likely to be focused on the landscape and on particular views"* should be considered receptors likely to be sensitive to change.[55] That this is an appropriate approach to taken to Watermead Park was further confirmed by the observations of one local resident, Ms Liz Rouse, as to the importance of Watermead Park to local residents, highlighting that *"green spaces as they exist in Stratton… are very very precious to us"* and described herself as *"continually encountering young people, old people, people playing with their dogs – out to get some fresh air, as fresh as you can get in Stratton"* in Watermead Park.[56] The adverse visual and landscape impacts in Stratton St Margaret would be very significant, particularly in light of the associations held with the Flue Stack.

45. In relation to South Marston, the Proposal and the Flue Stack in particular would, contrary to Policy RA3(a), fail to contribute to that village's distinct rural and separate identity. The Appellant suggested[57] that RA3 did not apply to the Appeal Site, but this is an illogical submission. It does not follow from the fact that the Appeal Site is not in the village of South Marston (it is within the parish) that RA3 does not apply; on the contrary, a policy protecting the distinct identity of South Marston village would logically also require development control of areas outside the village, especially close by. There is nothing in the Local Plan to indicate that RA3(a) only

[55] GLVIA, para. 6.33, p.113
[56] Day 7 of the Inquiry, 31 January 2019
[57] In cross-examination of Mr Dewart.

applies within the village of South Marston.[58] The Appellant's argument appeared to be based on the misapprehension that the Council's objection was on the basis of RA3(c); however, the Council's position is that the Proposal is not in accordance with RA3(a), as Mr Dewart made clear in cross-examination.[59]

46. Views from South Marston were not presented as part of the AVRs, but a sense of the impact of the scale of the REC building and the Flue Stack can be taken from Mr Cook's Appendices 17.13 and 17.19. The Council's policy of managing the development between the Appeal Site and South Marston so as to keep building heights below c.15m has resulted in the harmonious juxtaposition of a significant industrial area composed of large warehouses and a small rural settlement. The Proposal undermines that delicate balance.

47. In sum, therefore, the impact of the Proposal in landscape and visual terms would be highly adverse, and amplified by the anxiety and concern engendered by the association of the Flue Stack and the main REC building with major waste processing facility. This is a significant factor to be weighed in the planning balance. The Appellant argued that that the landscape and visual impact arising from the Proposal was an inevitable feature of the Appeal Site's allocation for industrial/employment use, apparently in an attempt to preclude any consideration of the landscape and visual impact of the Proposal. This submission is untenable. An allocation for industrial/employment use does not necessitate a 52m flue stack, as the surrounding buildings in the KIE demonstrate.[60] More to the point, it is perfectly possible for an industrial use not to intrude on the local community's enjoyment of the landscape: see, for example, Mr Cook's Appendix 16.10 showing the view of Watermead Park,[61] behind which sits, obscured behind the treeline, the KIE. There is no warrant for taking the negative landscape and visual impact of the Proposal as given.

RFR2 ISSUES[62]

Issue 3 - Need for a strategic scale waste management facility in this location
Issue 4 – Assessment of alternative potentially suitable sites
Issue 6 – the waste hierarchy, including whether the proposal can be categorised as a recovery facility

48. The Council's reason for RFR2 focussed on the Appellant having failed to demonstrate key matters.[63] Notwithstanding the passage of time since the original refusal in 2017, the voluminous evidence provided and number of witnesses

[58] It is not disputed that the Appeal Site is within the parish of South Marston; it is described as "*Keypoint, South Marston"* in the Local Plan, CD 7.4, p.49.
[59] See also paras. 4.13 and 8.50 of Mr Dewart's proof, where he quotes from RA3(a).
[60] The argument assumes that the effect of WCS3 is to designate any employment/industrial site as appropriate for the development of an EfW facility, whereas, as will be explained, the purpose of WCS3 is to guide the allocation of sites in the SALP. See further below.
[61] See appendix 16.1 to Mr Cook's Proof for a plan of the viewpoints.
[62] Issue 5 – Proximity principle is dealt with under the Planning Balance
[63] That is why it is for the Appellant to show (for example) need, not for the Council or Miss Darrie to put an alternative need case.

produced by the Appellant, it remains the case that, strikingly, the Appellant has fallen significantly short in providing evidence that has always been obviously required to ensure that the Proposal is compliant with the development plan. As such, a refusal under RFR2 remains very much open to you, Sir, on this appeal.

Issue 3 – Need for a strategic scale waste management facility in this location

49. The Appellant's application, originally submitted on 8 June 2016, was refused by the Council on 15 September 2017 on the basis that, inter alia, the Appellant had "*failed to demonstrated a need*" for the Proposal.[64] Some 18 months after the original refusal and two and a half years after the original application, the Appellant comes before the Inquiry with a need case that is opaque, in parts incomprehensible; that fails to set out the basis for its analysis, deal with predictable objections or take into account obvious points (such as the extent of allocated capacity); and, even on its own terms and allowing for its various imponderable features, ultimately articulates the most flaccid of need cases. It is particularly noteworthy that, even now, key information that underlies the assumptions in the Appellant's need case has yet to be provided.[65]

50. The present position is all the more striking in view of the Appellant's confident assertion in its Statement of Case that it would provide evidence to demonstrate need;[66] made, it now transpires, before Mr Brown had even been instructed.[67] No doubt cognisant of the rather inauspicious position, the Appellant has, at the eleventh hour, sought to heavily caveat their need case by arguing, for the first time, that there is no requirement to show need. This argument is both poor and entirely academic, as will be explained shortly.

The Appellant's need evidence

51. Dealing, first, with the merits of the case that the Appellant has now put forward on need, the Council's case is that the Appellant, now as in 2017, has failed to demonstrate a need for the Proposal. There are fundamental flaws in both the inputs into Mr Brown's analysis; and the way in which those inputs have been analysed in his outputs.

(a) Mr Brown's inputs

52. Before the Inquiry, Mike Brown appeared to have adopted a policy of keeping the Inquiry in suspense as to the sources and methodology of his inputs for as long as possible. When clarification was provided, it often led to more, not less, confusion.

[64] CD 4.1
[65] Such as, for example, the document which forms the basis for Mr Brown's overall commercial and industrial waste arisings figures.
[66] CD 6.1, Appellant's Statement of Case, p.20, para. 8.19
[67] As confirmed by Mr Brown in response to cross-examination by Mr Maurici QC, Day 5 of the Inquiry, 29 January 2019

53. **First**, Mr Brown's choice of **baseline figures for commercial and industrial (C&I) waste**, and the way he has presented this aspect of his evidence, is wholly unsatisfactory. In his Proof, Mr Brown noted that DEFRA had produced three "*substantially different updated estimates of 2012 C&I waste arisings*" in August 2016, December 2016 and October 2018;[68] having discussed the background to the changes in the DEFRA estimates, Mr Brown went on to state that he had relied on "*the originally calculated C&I waste data for 2012*".[69] This was, wholly reasonably,[70] understood by Ms Darrie as referring to the first (i.e. August 2016) set of DEFRA estimates for 2012 C&I waste arisings. As Ms Darrie set out in her Reply, these figures could not be considered to represent a sensible basis for a baseline C&I waste arisings figure because they were (i) based on figures which had been revised not once but twice, including because "*several areas of double counting were identified*";[71] and (ii) some 10 million tonnes higher than the most recent figures produced by DEFRA in its October 2018 *UK Statistics on Waste* figures,[72] described by DEFRA as "*the most reliable figures that can be reasonably produced with currently available data*".[73]

54. In the course of cross-examination of Ms Darrie, Mr Katkowski QC made a comment indicating that Mr Brown's source for his figures was the *Commercial and Industrial Waste Survey 2009, Final Report*, which had been included as an appendix to Ms Darrie's Reply Proof. In the course of Mr Brown's evidence before the Inquiry, however, it emerged that the document he had actually used for his C&I figures was a different document, *New Methodology to Estimate Waste Generation by the Commercial and Industrial Sector in England, August 2014*, produced by Jacobs for DEFRA ("the 2014 Report"). This was clarified for the first time in cross-examination of Mr Brown. The 2014 Report has not ever been provided as evidence to the Inquiry; and its title is not mentioned once in Mr Brown's Main Proof, his Supplemental Proof, or in the response of 10 January 2019 provided in response to the Council's queries.[74] Mr Brown's failure to provide the source for his figures has deprived the Council and the Inquiry of a meaningful opportunity to interrogate and test his approach. This is particularly relevant in light of the fact that Mr Brown justified his use of the 2014 Report, rather than the approved, most recent DEFRA figures, on the basis of methodological preference.[75] The effect of the Appellant's *fait accompli* was that it was

[68] The figures are summarised at p. 27 of Ms Darrie's Reply Proof.
[69] Paras.3.33-3.37 and footnote 4 of Mr Brown's Proof, pp.12-13.
[70] As accepted by Mr Brown in cross-examination.
[71] DEFRA's methodology note at Appendix 8, p.70 of the Appendices to Miss Darrie's Reply Proof.
[72] Appendix 7, p.51 of the Appendices to Miss Darrie's Reply Proof
[73] DEFRA's methodology note at Appendix 8, p.71 of the Appendices to Miss Darrie's Reply Proof. Much play was made by counsel for the Appellant of the use of the wording "*currently available data*"; given, however, that all analysis must be based on *currently* available data, it is difficult to understand where this leads. Similarly, the reference in the second paragraph on p.71 to the possibility that the figures "*may*" underestimate arisings should be read as evidence of a precautionary approach, rather than invitation to use other, outdated figures.
[74] The 10 January 2019 response is at Appendix 2 to Miss Darrie's Reply Appendices. Mr Brown sought to downplay his failure to provide a source by characterising it as a matter of "*six or seven words*" that he could have included – however, six or seven words can be rather important if those words are the title of the source. Mr Brown also sought, desperately, to argue that his para. 3.34 should have been read as referring to the 2014 Report – however, as this paragraph refers to a "*project report*" for the Reconcile methodology – the source of the DEFRA figures – one is left even further confused.
[75] As the title of the 2014 report indicates, it is centrally concerned with formulating a new methodology for calculating C&I waste.

simply not possible to properly cross-examine Mr Brown on his methodological arguments.

55. The Inquiry is, nevertheless, invited to note two points. First, Mr Brown did not, despite his confident assertion that his reliance on the 2014 Report over DEFRA's 2018 figures was "*standard*", present any evidence of such an approach being taken in industry analyses such as the three reports prepared by Tolvik contained in the Core Documents (one of which was a review of third-party reports on the waste market commissioned by Environmental Services Association). We are, as with much of Mr Brown's evidence, simply supposed to take his word that his approach is sound.

56. Further, the overall C&I waste arisings figure that Mr Brown takes from the 2014 Report is actually materially identical to the original, August 2016 DEFRA figures, and, therefore, the substance of Ms Darrie's criticisms remain: Mr Brown is asking the Inquiry to accept an analysis based on figures which are 10m tonnes higher than the most recent government figure; and, further, in circumstances where figures subsequent to 2012 (the year used by Mr Brown as a baseline) have been lower in every single year thereafter.[76]

57. **Second**, Mr Brown's approach to **competitor facilities** is unsatisfactory on multiple levels. In summary, Mr Brown:
    a. takes no account at all in his analysis of sites that are in planning but have not yet been granted planning permission, something that was done in the Lievers Report on which the Appellant relied at the planning application stage;
    b. takes no account at all of the 35 sites that have been allocated in the SALP to meet the waste needs of Swindon and Wiltshire. The examining Inspector[77] concluded that together these offered "*significantly more capacity than could be justified on the basis of need*" in order to allow flexibility. Thus, she noted that some sites could fail to come forward for waste facilities and yet the need still be met in full. Mr Brown said that it "*would not be rational*" to take into allocated sites because "*you wouldn't know what capacity to put in*". This is itself an irrational proposition given that the SALP identifies the capacity of allocated sites and conducts an analysis of the capacity gap in Swindon and Wiltshire in light of those allocations.[78] This would be obvious to anybody who had looked at the SALP; the problem was that Mr Brown had not, by his own admission, done so.[79]
    c. takes a confusing and inconsistent approach to the competitor catchment:

[76] Appendix 7, p.58 of the Appendices to Miss Darrie's Reply Proof. The most recent figures for England are for 2016: 33.1 million tonnes; Mr Brown uses a figure of 43.8 million tonnes from the 2014 Report, which is the same as the August 2016 C&I figure for England: see p.27, para. 5.5.2 of Miss Darrie's Reply Proof.
[77] See Miss Darrie's proof at paras. 4.3.9 – 4.3.10.
[78] CD 7.3, pp. 6-8, paras 1.23-1.28
[79] *"Q: You didn't look at the Site Allocations Local Plan? A: No. If a site isn't consented….to allow for capacity on an unconsented site would make a nonsense of the needs analysis."* In response to cross-examination by Mr Maurici QC, Day 5 of the Inquiry, 29 January 2019.

i. in his Proof, Mr Brown defined a "*two-hour competitor facility catchment area*" based on a two-hour isochrone,[80] of which he provides a map at Fig 4.1 and Appendix 3 of his Proof; but then, in evidence, said that the catchment was in fact a 54 mile radius around the Appeal Site. But confusingly some of the sites he actually had regard to and assessed (see e.g. his Appendix 5) were within the two-hour drive but not the red line.

ii. the 54m radius thus excludes three sites that would have fallen within the two-hour isochrone, which had a total of 638,000 tonnes of operational capacity (as well as 55,000 tonnes relating to a gasification site currently undergoing commissioning);[81]

iii. Mr Brown also excluded two sites with a total consented capacity of 222,000 tonnes of capacity that should have been included in his analysis on the basis of the 54m radius;[82]

d. further, in failing to consider sites just beyond the 2-hour isochrone, Mr Brown excludes facilities with significant potential to affect the needs analysis, such as the 585,000 tonnes per annum facility planned by Covanta and Veolia in Ampthill, Bedfordshire. The sheer size of this facility, an NSIP, suggests it would have a greater catchment. Thus, as Mr Brown accepted in cross-examination, the Lakeside Facility near Heathrow is smaller than the Covanta facility and yet pulls in Wiltshire's waste notwithstanding that the vast majority of Wiltshire lies well beyond a 1-hour drive (or 27 mile radius) from Lakeside; [83]

e. provides no breakdown of how he applies his weightings for distance; or how he applies *any* of his criteria in respect of operational facilities, which form the largest component of the capacity figure - it is, again, impossible to interrogate Mr Brown's analysis;[84]

f. the foregoing points give pause for thought, particularly in light of the surprising results of Mr Brown's analysis of competitors; in relation to consented facilities, Mr Brown's analysis results in a 96% reduction in operational capacity (the latter of which itself incorporates reductions on consented capacity).

58. **Third**, Mr Brown's approach to **the non-combustible portion of C&I waste arisings** (which fall to be excluded from the supply market in the needs analysis) for which he assumes a 35% reduction, is impenetrable. Mr Brown uses 2009/10 figures of

[80] See references at paras. 4.5, 4.7

[81] Sites nos. 6, 7 and 3 (respectively) as listed in Miss Darrie's Reply Proof at pp.36-38; see also the A3 map produced by Mr Brown in the course of the inquiry, showing the position of the facilities listed in this section of Miss Darrie's Reply Proof.

[82] Sites no.1 and 4 as listed in Miss Darrie's Reply Proof at pp.36-38

[83] Ibid, facility no (5)

[84] Some of this information has been provided by the Appellant on 4 February 2019 – the day before closing speeches. An example of an omission that only became clear on cross-examination is Mr Brown's discounting of an energy recover facility at Chickenhall Lane, Eastleigh, in respect of which it has been recently confirmed that the developer's intention is to deliver the facility and that they are in the process of implementing the existing consent; Mr Brown discounted the facility on the basis that an environmental permit had been withdrawn, which is not identified as a criterion for exclusion anywhere in his analysis.

18.5% and 17% for industrial and commercial waste arisings based, it seems, in part on figures for "recovery to land"; and then proceeds to assume that these figures will reduce to 12.5 and 12% respectively by 2030.[85] The Council sought clarification on the basis for these figures on 31 December 2018, to which a response was received on 10 January 2019.[86] In that response, Mr Brown indicated that the basis for his figures were the recovery to land figures cited in the *Commercial and Industrial Waste Survey 2009, Final Report;*[87] this report, however, contains a figure of 5% for waste that is recovered to land. In his evidence before the Inquiry, Mr Brown explained that, of the 18.5/17% figure, only 5% is taken from the 2009 waste survey; the rest of the figure is simply based on a wholly unexplained estimate by Mr Brown as to what proportion of C&I waste arisings are non-combustible. As to the estimated 35% reduction – that is also said to be Mr Brown's *"professional opinion"* – based, at least in part on his being *"optimistic about the levels of recycling that can be achieved"*.[88] Again, no underlying data or analysis has been provided to allow interrogation of Mr Brown's opinion. Despite requests in correspondence for more information, and even following his oral evidence, no more has been provided to justify the views he expresses on this complex matter. Frankly, the "trust me I am an expert" approach is just not good enough on such matters. The Council needs to see the "workings" in order to interrogate them. This never happened.

59. **Fourth,** Mr Brown fails to factor into his analysis the possibility of **RDF exports** increasing going forward. Mr Brown notes that the past incidence of increased recycling amongst northern European countries that had *"invested substantially in waste treatment infrastructure rather earlier than the UK"* led to an increase in their EfW capacity, which UK exports filled.[89] It would have been equally reasonable to assume that another increase in recycling targets (introduced by the EU Circular Economy Package) would lead to the same effect; Mike Brown should, at the very least, have presented outputs based on this scenario also.[90] Mr Brown's proof suggested that his view that RDF exports would remain the same was the most reasonable view, which suggested that other views (e.g. that RDF exports would increase) were also reasonable. After all he acknowledges in his proof that *"they could rise or fall"*[91]. Bizarrely, though, in cross-examination, he took the line that all views other than what he had described as being in his judgment *"the most reasonable"* were automatically unreasonable views.

60. It is a striking feature of these various errors or imponderables that they all tend to result in an increase in the volume of total waste available for the Proposal and a

[85] See paras 4.27 to 4.30 of Mr Brown's Main Proof.
[86] Appendices 1 and 2 to Miss Darrie's Reply Proof
[87] Appendix 9 to Miss Darrie's Reply Proof
[88] Both statements made in response to cross-examination by Mr Maurici QC
[89] Para 3.24 of Mike Brown's Main Proof
[90] Indeed, that was the scenario articulated as the most likely by Mike Brown's Eunomia Research & Consulting Ltd in its Residual Waste Infrastructure Review of August 2017, as cited in Tolvik's 2030 Market Review of residual waste: CD 9.3, p.26. Again, Eunomia's assumptions and approach to market analysis appear to differ as between its reports prepared for the market and Mr Brown's evidence on behalf of the Appellants.
[91] See Mr Brown's proof para. 3.29.

decrease in the capacity of alternative facilities. Mr Brown was, in an attempt to rebut the obvious inference, keen to highlight the reputation of his company, Eunomia, for taking a conservative approach to analysing waste arisings and general market need for EfW. The difficulty with this defence, however, is twofold: the complaint is not in relation to Mr Brown's Eunomia reports, but to his evidence in this appeal; and, as will be shown, Mr Brown's evidence to this Inquiry in certain important respects parts company with Eunomia's (national) analyses in ways that, again, inflate the need argument for the Proposal.

(b) Mr Brown's Outputs

61. Even taking Mr Brown's inputs as read, the need case he makes is a limp, unconvincing one, and beset with difficulties.

62. **First**, on the scenario that is consistent with stated Government policy, the Proposal has potential to divert an amount of waste from landfill equivalent to just four years of its operational capacity; after that, it will represent over-capacity.

63. Mr Brown recognised the importance of the recycling target used for his overall analysis. The EU's Circular Economy Package and the Government's Waste Strategy, the latter published subsequent to the exchange of proofs, set recycling levels that align with Mr Brown's High Recycling Scenario.[92] Unless, therefore, some clear and cogent reason has been presented to the contrary, the High Scenario should form the starting point for the need analysis. In making an assumption that the proportion of non-combustible waste would decrease over time, Mr Brown highlighted that he was "*optimistic about the levels of recycling that can be achieved*". This might explain why Eunomia modelled on the basis of targets that align with the High Scenario even before the CEP was adopted.[93]

64. The Appellant's need case is based on diverting waste from landfill.[94] On the High Recycling Scenario, at the point of the Proposal coming into operation in 2021/22, there is c.79,000 tonnes of waste going to landfill, reducing to zero by 2033/34. Mr Brown assumed a potential for the Proposal to divert 530,000 tonnes of waste going to landfill *over its lifetime*. Thus, even putting aside the numerous problems with Mr Brown's analysis, one is left with a very poor need case.

65. **Secondly**, Mr Brown's need analysis assumes that the Proposal will process every piece of waste that is going to landfill. This is a questionable approach, and inconsistent with the Government's acceptance that some waste going to landfill is

[92] Certainly, with the publication of the Waste Strategy, any uncertainty in relation to the UK Government's future intentions discussed in Mr Brown's proof can be set aside: see paras.3.7-3.8 of Mr Brown's main proof.
[93] CD 9.2, p.5
[94] Para. 5 of the Appellant's Opening Statement

unavoidable,[95] and contrary with the approach taken in Eunomia's reports, described by Mr Brown as his best analysis of the market.

66. **Thirdly** , Mr Brown's outputs for both the Central and the High Scenario show that the Proposal would provide more capacity than there is landfill by 2026 (Central scenario) and as soon as it was operational (High scenario).[96] No analysis was provided in Mr Brown's Proof or Supplemental Proof as to the effect of this on the needs analysis. However, Eunomia's analysis on the effects of over-capacity is very clear. The press summary of the 2017 report at 9.2 (provided to the Inquiry) is unambiguous that over-capacity would constrain recycling rates:

> *"With more facilities still in the construction pipeline, the report forecasts that the UK's supply of treatment capacity will exceed the available quantity of residual waste in 2020/21. Were all facilities to operate at full capacity, together they would limit the UK's recycling rate to 63%.... The new Secretary of State has signalled a renewed strategy on waste and resources: it could hardly be more timely to commit England, and the UK, to developing a resource efficient economy that focuses activity at the upper tiers of the waste hierarchy. This would help clarify to investors and developers just how tough competition for residual waste is likely to be in the future …"*

67. Mr Brown stressed that he was "*heavily involved*" in the 2017 report and that there is "*definitely no distance between me and that report…we don't have a client for that work – that is our honest and best estimate for the field.*"[97] Indeed, Eunomia's analysis is consistent with that of the European Commission which, in its communication of January 2017, highlighted the same risk:[98]

> *"Waste-to-energy processes can play a role in the transition to a circular economy provided that the EU waste hierarchy is used as a guiding principle and that choices made do not prevent higher levels of prevention, reuse and recycling. This is essential in order to ensure the full potential of a circular economy, both environmentally and economically and to reinforce the European leadership in green technology …it is waste prevention and recycling that deliver the highest contribution in terms of energy savings and reductions in GHGs emissions.*
> *In the future, more consideration should be given to those processes, such as anaerobic digestion of biodegradable waste, where material recycling is combined with energy recovery. Conversely, the role of waste incineration – currently, the predominant waste-to-energy option - needs to be redefined to ensure that increases in recycling and reuse are not hampered and that overcapacities for residual waste treatment are averted."*

68. In his evidence before the Inquiry, however, Mr Brown appeared to take the position, at least initially, that the REC's inevitable (and, in the High scenario, immediate) over-capacity would *only* divert waste from RDF exports. No explanation was provided as to why over-capacity would not hinder recycling rates. On cross-examination, Mr Brown appeared willing to accept that over-capacity would at the

[95] The Waste Strategy sets a target of municipal waste to landfill being 10% or less by 2035 (CD 11.17, p.13 and p.79); municipal waste, as has been clarified by Mr Brown's update to his evidence of 4 February 2019, represents 30% of the available arisings in his analysis.
[96] This is clearer in Figures 1 and 2 of the document provided by Mr Brown on 4 February 2019.
[97] In response to cross-examination by Mr Maurici QC, Day 5 of the Inquiry, 29 January 2019. The point latter is particularly clear from the press release summary accompanying the Eunomia report at CD 9.2, which sets out the report's assumption of 2 million tonnes of 'unavoidable' landfill.
[98] CD 11.6, pp.10-11

very least divert waste from other EfW facilities; hardly a good argument for need. Notably, Mr Brown's assumption that it would be RDF exports that are diverted contradicts his stated assumption for the purposes of his analysis that RDF exports would remain constant. There is a contradiction between the assumption that RDF exports should remain constant and Mr Brown's analysis that RDF exports would lose out to new local capacity in Swindon. Mr Brown accepted that ultimately whether the Proposal could compete with RDF facilities in Europe was economic and certainly in the recent past facilities in Holland, Germany and Sweden were cheaper than English EfW for a number of reasons. Further, the assumption that over-capacity would eat into RDF exports also does not sit well with Eunomia's analysis that there is an over-capacity across the UK generally and particularly outside the south-west.

69. Thus, on either the High or Medium Scenario, the need for the Proposal is predicated on absorbing supply in ways which either not analysed or which are contrary to Mr Brown's assumptions, or both. It is, again even accepting Mr Brown's assumptions were robust, a confusing and confused analysis. While Mr Katkowski QC appeared at pains to ensure that you, Sir, "*understood*" the evidence, the truth of it is that there was much in Mr Brown's evidence that was simply incomprehensible. Further exacerbating the difficulties is the fact that the evidence has not been properly and fully presented to allow it to be understood and interrogated.

(c) Footnote: presentation of the evidence and further evidence provided on 4 February 2019

70. Mr Brown was reluctant to accept that the way the evidence on need has emerged is unsatisfactory, but this is plainly the case.

71. The Appellant commissioned a feedstock study in 2016, on which its planning application was plainly based;[99] when the Council requested this document in October 2018,[100] it was initially refused;[101] the Appellant then provided the 2016 study with Mr Brown's proof; there seems to be no good reason why the 2016 feedstock study could not have been provided earlier.[102] The difficulties with the way in which Mr Brown has presented his evidence have been summarised above; the need case has truly been an evolving one, requiring the Council to attempt to catch up at every turn.

72. The latest instalment in this unfortunate saga has been the production by Mr Brown of a series of extended appendices to his Main Proof of evidence, received by the Council on 4 February 2019, after the conclusion of evidence before the Inquiry, comprising some 10 pages of analysis and data ("the February 2019 Appendix"). In the short time available, one thing that has become clear is that Mr Brown's analysis does, contrary to comments by Mr Katkowski in the Inquiry, depend on a significant

[99] See email from Graham Eaves of PLA Planning at CD 3.15; and the Planning Statement at para. 3.2, CD 1.0, p.10
[100] CD 18.8
[101] CD 18.9
[102] See the summary of the correspondence in Ms Darrie's Reply Proof at p.4, para. 1.1.2

proportion of the available waste arisings being derived from **municipal** waste: some 30%.[103] The majority of this municipal waste (78%) is generated in Swindon and Wiltshire;[104] the total amount of waste in the waste arisings that is municipal waste from Wiltshire and Swindon is just under a quarter. This feature of Mr Brown's evidence is one on which Ms Darrie and Mr Dewart would doubtless have wished to comment on, given Mr Dewart's evidence that only 4% of Swindon's municipal waste is landfilled[105] and that, in light of the Waste Management Strategy in Swindon, "*no municipal waste will be available to feed the REC*"; and also given the evidence of capacity in Waterside Park and the gasification plant at Northacre (neither of which appear to have been considered by Mr Brown), the latter of which is to provide some 118,500 tonnes of capacity.[106] It may also have assisted the Inquiry to have further interrogation of Mr Brown's methodology for including local authority areas into his analysis, given that it is also clear that Bath and North-east Somerset, barely within the 1-hour isochrone, contributes some 22% of the municipal waste component of the total waste arisings figure.

73. Taking the flimsiness of the Appellant's analysis, the numerous problems with inputs, and the generally unsatisfactory approach taken by the Appellant to need evidence together (underlined by the most recent 'clarification'), it is respectfully submitted that the Appellant has failed to show need.

Do the Appellants need to show need?

74. An argument that the Appellant did not need to make out need was made for the very first time in the Appellant's opening speech before this Inquiry. In the Appellant's Statement of Case, in the Statement of Common Ground and in the Proofs of Evidence, the Appellant had simply set out why they met a requirement for need. There had never at any point prior to the opening of the inquiry been even a hint that need was something that did not have to be demonstrated in this case. As the Appellant has raised this issue, the Council is obliged to answer it.

75. It should be noted at the outset that, as Mr Burrell noted in evidence, need is put forward as a benefit of this Proposal.[107] It follows that the determination of whether or not there is a need for the Proposal is, on the Appellant's own case, highly relevant to the question of whether permission should be granted. The Appellant's contention that it does not need to show need is thus a sterile one.

76. The Appellant's argument is, in addition, poor. There are at least three further bases on which a need to show need arises.

[103] This can be seen from the extended Appendix 5, which provides that 164,839 tonnes out of a total of 551,279 tonnes is from municipal waste: 29.9%.
[104] 23.4%
[105] Para.8.80, Mr Dewart's Proof
[106] Proof of Miss Darrie, para. 4.5.4.
[107] In response to cross-examination by Mr Maurici QC, Day 8 of the Inquiry, 1 February 2019

77. First, if the Proposal is, as per the Council's submission, not in accordance with the Development Plan, it would follow that, by virtue of para. 7 of the National Planning Policy for Waste, the Appellant is required to make out need. The NPPW directs the planning authority to "*consider the extent to which the capacity of existing operational facilities would satisfy any need*".[108] That is not, however, an invitation to disregard the provision for addressing need provided through the plan-led system, contrary to the Appellant's suggestion.

78. Second, over-capacity of EfW plants creates a risk of the diversion of waste from higher up the waste hierarchy, contrary to the NPPW and Policy WCS5 of the WCS. This is also, as noted above, the analysis of Mr Brown's company Eunomia and the European Commission. The NPPW itself emphasises the importance of ensuring that proposals in conflict with the development plan do not result in the "*prejudicing [of] movement up the waste hierarchy*".[109] Thus unless need can be shown, the Appellant cannot demonstrate that allowing this appeal would not have an adverse impact on the waste hierarchy and thus be contrary to Policy WCS5 of the WCS.[110]

79. Third, even within the context of the application of the development plan to an unallocated site that is otherwise compliant with it, the spirit if not the letter of the WCS requires the Appellant to make out need. Addressing need is at the heart of the development plan. One of the strategic objectives for Wiltshire and Swindon identified in the WCS is entitled 'The need for waste management facilities'; that is, to "*Ensure that there is a sufficient and flexible network of safeguarded waste management facilities that make adequate provision for waste requiring management in Wiltshire and Swindon in accordance with the apportionments set out in the South West Regional Spatial Strategy.*"[111] The express purpose of WCS1, which Mr Burrell described as "*very much setting the overall framework*" for the WCS,[112] is to address need by a network of site allocations. It would be incongruous and contrary to the thrust of the WCS for an unallocated site to circumvent the central point of WCS1. The rationale for the exceptional consideration of unallocated sites in WCS3 is "*in order to provide flexibility*",[113] a criterion which itself impliedly requires consideration of need. In failing to show need, therefore, the Proposal is not in accordance with Policy WCS1.

80. Thus, however one analyses the issues on this appeal, the Appellant is required to show need for the Proposal.

Issue 4 - Assessment of alternative potentially suitable sites

Part 2 of Policy WCS3

[108] The Appellant appeared to suggest that this part of the policy set a ceiling for what was required in terms of the need assessment. This is an erroneous interpretation; the policy, as is clear from the mandatory wording, sets out the minimum level of need assessment on which the planning authority should rely.
[109] Para.7, second bullet point
[110] Accepted in cross-examination by Mr Maurici QC, Day 8 of the Inquiry, 1 February 2019.
[111] CD 7.1, p.16
[112] Mr Burrell's examination-in-chief, Day 8 of the Inquiry, 1 February 2019
[113] Text of WCS3, CD 7.1, p.23

81. As noted above, the principal way in which the WCS seeks to meet the need for waste management facilities is through the site allocations process. To provide yet further flexibility,[114] however, Part 2 of WCS3 also contains a specific paragraph dealing with unallocated sites:

> *"Sites not contained in the Site Allocations DPD will also be considered in order to provide flexibility if they can be demonstrated by the applicant to be in accordance with all relevant provisions of the Strategy, objectives and policies of Waste Development Plan Documents. Strategic sites must be supported by an independent Sustainability Appraisal / Strategic Environmental Assessment (SA/SEA) report and all other relevant assessments. As part of the SA/SEA report the Councils will expect to see a full consideration of suitable alternative sites, especially of those contained in the Site Allocations DPD."*

82. The purpose of Part 2 of WCS3 is clear; it provides the policy context for what, in the framework of the WCS, is an exceptional situation of permission being granted for an unallocated site.

83. As Ms Darrie indicated, a common-sense reading of Part 2 of WCS3, and the express requirement for a SA/SEA with *"full consideration of suitable alternative sites"*, is that it should be taken as requiring, for applications in relation to non-allocated sites, the production of a rigorous ASA. The reference to SA/SEA is explained by the fact that this is the defining point of distinction between the SA/SEA process and the EIA process; see the judgment of the Supreme Court in ***R (Buckinghamshire CC) v Secretary of State for Transport*** [2014] UKSC 3 at [44].[115] As the site allocation process would have required the production of an SA/SEA, and the focus of the WCS is on allocating sites to meet need, this further requirement is of a piece with the WCS because it ensures that 'windfall' sites that are unallocated are appraised as rigorously as allocated sites with full consideration of reasonable alternatives; and indeed that they truly are required *"in order to provide flexibility"*.

84. The key features of the ASA that accompanied the SALP is set out in Ms Darrie's Main Proof at paras. 3.4.1-3.4.20.[116] As noted in Ms Darrie's proof, the Examining Inspector concluded at para. 20 of her report that:

> *"The site assessment process was a comprehensive one, with sites being considered against a range of criteria, both qualitative and quantitative. The methodology allowed for a site to be excluded on the basis of significant adverse impact in relation to all of the identified criteria. In the round therefore, a reasonable balance has been ensured between objectively measurable features such as distance from an AONB and criteria requiring a more subjective level of judgement such as impact on amenity or visual intrusion. The findings of the assessment process have then created a clear evidence base to support the various mitigation measures identified within the site profile tables."*

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[114] While the focus of the WCS is on guiding the allocation of sites for waste management facilities, there is also a recognition of to build in flexibility *"to accommodate the projected growth"*, albeit that this *"will be reviewed in subsequent updates of the Councils' evidence base and any review of the Waste Core Strategy as specific growth areas are identified, planned and implemented through the Councils' wider LDF work"*: CD 7.1, p. 20, para. 5.12.

[115] Cited at para. 3.2.31 of the Main Proof of Ms Darrie

[116] Pp.33-39

85. As Ms Darrie set out in her evidence, that assessment represents a benchmark against which any ASA submitted by the Appellant should be measured.[117]

The Appellant's ASA

86. Mr Burrell, the Appellant's planning witness, valiantly took as his starting point that the alternative site assessment provided in the Environmental Statement (ES) satisfied the requirements of Policy WCS3.[118] That assessment:
    a. is contained within a chapter extending to two pages; of which, only two paragraphs discuss alternative *sites,* the remainder of the chapter comprising a discussion of alternative designs;
    b. the factors considered are limited to site size, proximity to intensive industrial users and road access;
    c. only looked at sites owned by the owner of the Appeal Site.

87. The ES assessment cannot seriously be considered to represent a full consideration of alternatives.[119] Thus, RFR2, in alleging that there was no proper assessment of alternatives was correct.

88. The Appellants then provided a further alternative site assessment ("the ASA") with their Statement of Case; that is, *after* the Appellant had chosen the Appeal Site, spent money on making a planning application, been refused and decided to appeal. That is the context in which the ASA was embarked upon. Taking the analogy with the SEA/SA process that WCS3 invites, the correct time to undertake the ASA would have been prior to making the application.

89. Appellant's undertook a three-stage ASA, beginning with the consideration of 62 sites in total; reduced to 52 sites for Stage 2 of the assessment; and 28 sites for Stage 3, the final stage of the assessment.

90. The ASA is deficient in a number of respects.

91. As to the parameters, the Proposal would operate within a 1-hour isochrone, but the geographical areas of search are limited on the basis of 16km radiuses around the SSCTs/Swindon. This is said to be on the basis of Policy WCS2, a policy that Mr Burrell described as not applying to the Proposal. Therefore, the Appellant's position appears to be that the requirements of WCS2 do not apply to the Proposal, but do apply to alternatives.

92. At Stage 1, two sites were excluded on the basis of their being within Flood Zone 2 However, such sites could be capable of development with appropriate mitigation measures.

93. At Stage 2 of the ASA, 13 out of 28 sites were excluded on the basis that they had "*not been identified within the* [SALP] *as a site suitable for Waste Treatment*". The Appeal Site

[117] Para.3.4.19, Main Proof of Miss Darrie
[118] In response to cross-examination by Mr Maurici QC, Day 8 of the Inquiry, 1 February 2019. The relevant part of the Environmental Statement is to be found at CD 1.6, Section 4 (no page numbering)
[119] Note the criticisms in the Officer's Report at CD 4.2, para. 5.81.

falls within such a category of site. This is not a logical basis for excluding sites from the ASA. Moreover, some sites were excluded because they had planning permission for B class uses. Again this is also true of the Appeal Site which benefits from an extant planning permission and a LDO. Further, while a more detailed site-by-site analysis was provided in relation to Stages 1 and 3 of the ASA (at Appendix 5 and 8 to the ASA respectively), no such analysis was provided in relation to Stage 2 – until the very end of the second week of the Inquiry: such eleventh hour further evidence to make up for deficiencies identified in Ms Darrie's proof is wholly unacceptable, though of a piece with the Appellant's broader approach to evidence.

94. At Stage 3, a large number of sites were on the face of it excluded on the principal basis that they did not have the opportunity to provide for a connection to rail. This is perverse on two levels.

95. First, rail access is presented as no more than a mere possibility in relation to the Proposal:
    a. The Appellant's Statement of Case makes reference to multiple expressions of interest to supply waste by rail.[120] Evidence of only one such expression of interest is provided, in the form of a letter from Seneca Resource Recovery provided at Appendix 1 to Mr Burrell's proof. This letter was provided in May 2018 – 8 months ago. It refers to issuing a set of non-binding heads of terms *"for discussion purposes"*. No evidence has been presented of this being taken forward. Further, the expression of interest is said to be subject to routing agreements.
    b. Appendix 2 to Mr Burrell's proof is a Routing Study provided by PRA Operations Planning Ltd. This notes that paths would require validation by Network Rail in order to "*examine these draft paths in conjunction with any additional information, timetable amendments and other operators trains received/amended under the spot bid process post the release of the May 2018 timetable*." No evidence has been presented regarding validation by Network Rail. The Council has been informed by Network Rail that they have not been approached by any developers to explore the potential of opening the rail sidings at Keypoint for the transportation of waste.[121] The Routing Study also highlights the *"unknown"* effect that Crossrail will have on capacity and availability of paths and od changes in freight timetabling more generally.[122]
    c. It was highlighted in evidence that Honda are currently making use of part of the rail terminal – no evidence was presented of any discussions with Honda, or any indication that the proposed used would not be inconsistent with the use made of the terminal by Honda.

96. The Appellant did not incorporate use of the rail sidings adjacent to the Appeal Site in the planning application. The Planning Statement specifically disavowed use of rail for importing materials, setting out a range of reasons why this option was not to be pursued, including that "*the rail spur to the east of the site is fully let and at capacity,*

[120] CD 6.1, para. 8.27
[121] Proof of Mr Dewart, para. 5.15
[122] Paras 3.4 and 5.4, Appendix 2 to Mr Burrell's Proof.

and would not be suitable without significant investment".[123] Moreover, there is no assessment anywhere in any of the evidence of the effects of making use of rail in association with the Proposal.[124]

97. The introduction of a potential rail access has been made very late in the day, has not been considered properly, and is insufficiently detailed. It is wholly uncertain that it could or would ever be delivered. No weight can be given to the possibility of rail access. In particular, as Ms Darrie noted in cross-examination, whatever the logic of using rail as a criterion *in general,* it is perverse to exclude sites on the basis of a lack of a rail access in circumstances where the case for the possibility of rail access to the Proposal is uncertain in the extreme.

98. Second, what is proposed is to bring, by rail, waste from north-west London (in other words, the very western edge of the 2-hour isochrone used to identify competitor facilities) to the REC facility in Swindon; it is not clear why, in planning terms, this should be considered a benefit (and compliant with the proximity principle) relative to a closer alternative facility processing waste from the local area that is delivered by road. Thus while having some regard to the possibility of rail use in assessing alternative sites might have been justified, using it as a benchmark to exclude a site from further consideration is perverse. Rail both for the Proposal and alternatives is a "*nice to have*" but not essential.[125]

The Appellant's arguments that Part 2 of Policy WCS3 did not apply

99. The Appellant sought (again at the eleventh hour, in Mr Katkowski's opening) to avoid the application of policy requirement to provide a robust ASA by two arguments, both of them hopeless, not to mention entirely at odds with the fact that the Appellant had already submitted an ASA in the apparent view that the same was a requirement.

100. First, the Appellant argued that the requirement was "*nonsense*" – presumably with the result that the policy simply should not apply to the Proposal. This was on the basis that the *legal* obligation to carry out an SA/SEA in compliance with the Environmental Assessment of Plans and Programmes Regulations 2004 ("the SEA Regs") only arose in relation to 'plans or programmes' and not to the determination of applications for planning permission.[126] This (entirely obvious) point has never been disputed by anybody in the Appellant's vast team of consultants and advisers over a period of two and a half years, and Ms Darrie noted the point in her Proof.[127] The question is whether Policy WCS3 should be interpreted as imposing a (by definition) impossible legal obligation when a perfectly sensible interpretation of that policy is available. Clearly, it should not. There is, in truth, no obstacle, legal or

[123] CD 1.9, p.78, para. 6.56
[124] Subsequently, however, the Appellant began to show an interest in rail access. The Appellant indicated in 17 October 2018 that a feasibility study into the transport of waste by train would be provided to the Council "at least one month before the exchange of proofs": CD 18.9. No such report was provided in advance of proofs.
[125] See CD18.8.
[126] The obligation to carry out a sustainability appraisal.
[127] Para.3.2.40, p.23

otherwise, to providing the information that the SEA Regs stipulate should be contained in an SA/SEA report, focussed on a full consideration of alternatives as required for SEA, alongside an application for planning permission.

101. In contrast, the Appellant's recently proposed interpretation of Policy WCS3 is highly contrived and unattractive. Mr Katkowski QC invites the Inquiry to interpret Policy WCS3 as imposing a legal requirement that, by definition, is impossible for an applicant for planning permission to fulfil. The Appellant's interpretation potentially creates a conflict with para. 5.17 of the WCS's supporting text that does not arise on the Council's interpretation. The Appellant's interpretation is based pretty much wholly on the explanatory text and asks that words be both deleted and read into Part II of Policy WCS3, so that it reads: "Sites not ~~contained in the Site Allocations DPD~~ in a "Preferred Location" (even if not allocated in the Site Allocations DPD)". In addition to those significant textual contra-indicators, the notable effect of the Appellant's proposed interpretation of Policy WCS3 is quite simply to disapply its express requirement for an ASA for applications in relation to unallocated sites. The Appellant's argument in substance amounts to an invitation to read a policy as meaning something incoherent when it can plainly be interpreted to mean something entirely sensible. The WCS was examined and found sound. It is not properly open to the Appellant to seek to challenge the content of this adopted part of the statutory development plan on a s. 78 appeal.

102. Secondly, the Appellant sought to argue that the express words of Part 2 of Policy WCS3 referring to such a requirement being imposed on "s*ites not contained in the Site Allocations DPD"* should give way to the supporting text of para. 5.17, which describes such an obligation arising in relation to sites outside of the *"preferred locations"* within which the Appellant considers the Appeal Site to fall. This argument fails on multiple levels. As a simple point of principle, supporting text in a development plan document "*cannot trump the policy*": per Richards LJ in ***R (Cherkley Campaign Limited) v Mole Valley District Council*** [2014] EWCA Civ 567 at [16].[128]

103. More to the point, however, the imagined conflict in this case is illusory, once it is understood that Part 1 of WCS3 is a policy on future *allocations* policy, seeking to guide policy on the allocation of sites for particular kinds of waste facilities, namely: (i) employment/industrial allocations; (ii) sites allocated for waste in earlier Plans; and (iii) current waste management facilities. This interpretation is strongly supported by: (i) the opening words of the policy itself (which as Mr Burrell accepted in cross-examination) look to the future "*will seek to allocate*"; (ii) the note to the WCS Key Diagram which shows employment land referred to in WCS3 and says "*The Key Diagram is an illustraton of existing sites. It should not be used to identify individual sites for future use. Potential sites for waste development will be defined in the detailed Waste Site Allocations DPD*"; and (iii) the wording of the SALP in particular para. 3 of the executive summary, and paras. 1.2 and 1.8 of the supporting text.

[128] A case in which leading counsel for the Appellant appeared for the Interested Party.

104. It should also be noted that the policy to require an alternative site assessment in circumstances where a central issue is the need for a waste facility on a *particular* site (i.e. in light of allocations elsewhere) is entirely consistent with the approach in case law. Where the development plan requires establishing a need for a particular development on the specific site in question, the burden lies squarely on an applicant to establish the need for their proposed development on their site rather than elsewhere: ***Trusthouse Forte Hotels Ltd v Secretary of State for the Environment*** (1986) 53 P. & C. R. 293 per Scott Baker LJ.[129]

105. Consistently with the focus in the WCS of allocating sites for waste management facilities through the site allocations process, and the exceptional nature of the policy to consider unallocated sites ("*in order to provide flexibility*"),[130] WCS3 expressly asks for "*a full consideration of suitable alternative sites, especially those contained in the Site Allocations DPD*". As per Ms Darrie's evidence, the requirement to provide "*an Independent SA/SEA report*" is sensibly to be taken as requiring the production of a rigorous ASA, going beyond that required for EIA.[131] In any event, the production of the equivalent of an SEA report in relation to an application for planning permission is entirely practicable, as can be seen by consideration of the requirements for such a report in Regulation 12(2) and (3) of the Environmental Assessment of Plans and Programmes Regulations 2004/1633. The logic for such a requirement, in a WCS which seeks to address need principally through a site allocations process is clear: it allows the Council to ensure that proposals for waste management facilities on unallocated sites are subject to a comparable level of scrutiny to allocated sites. It is difficult to see why this is objectionable in principle, and until the Appellant's opening it was not something to which the Appellant made any objection at all.

Issue 6 – The waste hierarchy, including whether the proposal can be categorised as a recovery facility

106. The Government's recently issued *Our Waste, Our Resources: A Strategy for England*[132] ("the Strategy") sets out the intention that all future EfW plants achieve recovery status, underscoring the importance accorded to obtaining R1 status as a matter of national policy.

107. The Council accepts that it would be possible to impose a planning condition requiring 'design stage' R1 (Recovery) compliance, and that such an approach was employed by the Secretary of State's Inspector in relation to an EfW planning application in Bilsthorpe in Nottinghamshire in 2016.[133] In order for such a condition to be applied, the Appellant must satisfy you, Sir, that it is not the case that there is

[129] This case was superseded in part on a different point in ***FCC Environment (UK) Ltd v Secretary of State for Energy and Climate Change*** [2014] EWHC 947 (Admin), but it remains good law on alternatives.
[130] Text from Part 2 of Policy WCS3; CD 7.1, p.23
[131] Paras. 3.2.40 to 3.2.46, Miss Darrie's Main Proof
[132] Ironically, it was published on the day that proofs were exchanged, and so is dealt with in reply proofs from Miss Darrie and Mike Brown.
[133] CD 17.1

no prospect of the Proposal achieving R1 status; or, to put it more simply, that there is some prospect of the Proposal doing so. That burden may not be a high one but it falls on the Appellant to discharge. It is not sufficient to discharge that burden for Mr Katkowski QC to put in cross-examination to the Council's witnesses that they are not alleging that there is no prospect. That is to seek to reverse the burden that falls squarely on the Appellant.

108. The decision in the Bilsthorpe appeal provides an example of the kinds of steps that an Appellant might take to discharge this burden.[134] In that appeal (i) the developer had already applied for design-stage R1 status from the Environment Agency;[135] and (ii) the Environment Agency had confirmed that, based on the design data provided in the developer's application, the proposed facility was capable of having an efficiency factor that would qualify it for R1 status.[136] That was the key reason that the Inspector in that appeal considered herself to be satisfied that the proposal would be R1 compliant operationally.[137] Following the Inspector's Report the company behind the technology on which the application was based withdrew from the EfW market because of technical difficulties. [138] The Secretary of State though, on the evidence and following post-inquiry representations concluded that the proposed scheme would still be capable of meeting R1 and thus imposed a condition.

109. The position in the present appeal is different in that the evidence before the Inquiry as to the ability of the Proposal to achieve R1 status is strikingly thin. Parkes simply assumes that the Proposal will have R1 status;[139] whereas Mr Crummack's evidence boils down to the bare assertion that he has *"absolute confidence"* that *"the equipment suppliers and facility designers will achieve an R1 status".*[140] No further substance was offered in the course of the Inquiry. Mr Crummack noted in his evidence that it had been *"perfectly possible to obtain R1 status prior to submitting a planning application".*[141] The Appellant does not, however, appear to have made an application for R1 status; has provided the Inquiry with a dearth of evidence as to what the gasification technology will actually be; and it seems that the specific technology to be used at the Proposal has yet been decided.

OTHER MATERIAL ISSUES AND PLANNING BALANCE (incorporating Issue 2 – Principle of development/compliance with the Development Plan and Issue 5 – Proximity Principle)

(i) The harms

134 CD 17.1
135 CD 17.1, para. 14.13
136 CD 17.1, para. 14.14
137 Paras. 14.19-14.20
138 See paras. 4 – 5 and 12 – 13 of the Secretary of State's decision letter.
139 Para. 3.1, Proof of Mr Parkes
140 Para. 3.35, Proof of Mr Crummack
141 In response to cross-examination by Mr Maurici QC, Day 4 of the Inquiry, 24 February 2019

(a) Land use conflicts/harm to the development strategy

110. In view of the nature of waste facilities and their potential to impact on neighbouring land uses, Swindon's development plan focuses heavily on allocating sites to meet waste needs. We have a plan-led system. The statutory development plan here, in particular the WCS, makes clear that the need for waste facilities is to be met by allocating sites. This was done through the SALP. These plans were subject to the full statutory processes laid down in the Planning Acts, and which allow for extensive public involvement, including examination by independent inspectors. If development of a waste facility is proposed on an unallocated site, it is expected, by Policy WCS3 of the WCS,[142] to be appraised as rigorously as an allocated site insofar as a full consideration of reasonable alternatives is concerned.

111. The Proposal falls at both hurdles. It is not on an allocated site. The focus in the Development Plan on allocated sites reflects the principle that the local community are entitled to certainty about the location of future development, particularly of a kind such as this which is likely to engender strong local opposition. The extent to which the Proposal cuts across the statutory development plan is only further underscored by its potential to undermine the NEV and thus Swindon's broader housing strategy (see the RFR1 issues discussed above).

112. It is correct that the Appeal Site is allocated for employment use, and that employment use is set out as a preferred location for waste from energy facilities in Policy WCS3. But the Appeal Site is not allocated as it is clear WCS3 and SALP intended – see above analysis.

(b) Visual and landscape impact

113. It is not in dispute between the parties that the visual and landscape impacts of the Proposal are adverse. The Flue Stack would be widely visible both from Stratton St Margaret and South Marston, as well as the future NEV. The impact of the Flue Stack cannot be screened or mitigated. These adverse impacts would be amplified by the anxiety and concern engendered by the association of the Flue Stack and the main REC building with a major waste processing facility. Those concerns are relevant and cannot be dismissed in considering visual and landscape impact.

(c) Failure to demonstrate need

114. The implications of granting permission for an EfW facility for which there is no need are serious:
    a. undermining the development plan and its framework for addressing need, including creating a risk that sites which have been through the allocation process may not come forward as a result;

[142] CD 7.1, pp.22-23

b. creating the risk of diversion of waste from higher up the waste hierarchy, which is the focus of the Government's Waste Strategy;
c. imposing the range of harmful impacts in relation to the development in a situation where there is no need for the facility in question.

115. The Appellant's evidence on need, a central issue on any view, has been a total failure. Even accepting Mr Brown's inputs, his conclusion, if one accepts the Government's recycling targets, is that there is no real need for the Proposal. Mr Brown's analysis is, further, riddled with difficulties, is opaque and confusing, and has been presented in a manner that has made it very difficult for the Council or the inquiry to truly understand it. His inputs are highly contentious. The Appellant has failed to demonstrate a need for the Proposal.

(d) Proximity principle

116. The Appellant has failed to demonstrate that transportation distances for waste will be minimised. The Proposal is thus in conflict with policies requiring sustainable development, in particular Policy WDC 11,[143] as well as the Proximity Principle. The Appellant's Transport witness, Mr Eves, frankly acknowledged that he had not considered WDC11 in his evidence. Mr Burrell sought to argue that a waste management facility targeting commercial waste producers would by definition not be able to comply with WDC11. But this is to challenge the merits of the adopted policy rather than to argue that it is complied with. This gets the Appellant nowhere at all.

(e) Failure to undertake a robust alternatives assessment

117. The Appellant has on appeal, and not with the application, produced an ASA. This, however, is seriously deficient, notably by its exclusion of sites on the basis of criteria which the Proposal itself does not satisfy, such as rail access and site allocation for waste treatment.

(f) Resident perception of harm

118. There has been before this inquiry no shortage of evidence as to the negative perception of the Proposal by local residents. Residents' concerns in this respect are particularly relevant in view of the likelihood that those households that Swindon wishes to attract to the NEV will share those views; as articulated by the NEV developers, that is a likelihood with significant implications for delivery of the NEV.

(g) Heritage harm

[143] CD 7.2

119. There is heritage harm to weigh in the balance. This concerns the impact of the Flue Stack on the Grade I Church of St Margaret, Stratton which is 560m northwest of the Appeal Site. The church is thus (see the NPPF at para 194) an asset of the highest significance. The OR recorded the view that the setting of the Church would be adversely affected: see paras. 5.127 – 5.129. The heritage assessment submitted with the planning application agreed with this view.[144] This therefore engages the statutory duty to have special regard to preserving the setting of a listed building.[145] Moreover, the NPPF at para 193 requires that great weight is given to an asset's conservation irrespective of whether the harm is more or less than substantial harm.

120. Here, the harm is less than substantial. Therefore, it is to weigh in the balance against the Proposal.

(ii) Benefits of proposal

(a) **Greenhuse gas reduction/ contribution to minimising fossil fuel imports**

121. The Appellant puts forward a reduction in greenhouse gases effected by the Proposal (in comparison to landfill) as a benefit of the Proposal. In the Council's submission, this should be given limited weight for three reasons.

122. First, as Mr Parkes accepted in cross-examination, a range of figures have been put forward for the GHG emissions: the ES gave a figure of 23,000 tonnes (equivalent) of CO2 per annum; the Appendix to the ES gives a different figure of 15,000; whereas Mr Parkes 's estimated the figure at 33,000.

123. Second, as it is entirely unclear what kind of EfW facility the Proposal is going to be, there cannot be certainty in the figure provided in any event. Mr Parkes for the Appellant accepted that the analysis of Mr Ayres of SKIP, which sought (unlike Mr Parkes) to feed in the gasification technology identified by the Appellant as an input into the analysis carried out by the Appellant,[146] provided a fair picture of the possible effect of the technology. Mr Ayres' figures of 3,500-11,500[147] differed very significantly from Mr Parkes' figure of 33,000.

124. Third, as Mr Parkes also accepted, there is a need to account for travel emissions (his modelling excluded this on both ends of the analysis) and this is impossible to do at present as the source of waste that will come to the facility is not known; and it is also not known if that waste would have gone to a closer landfill or competitor EfW facility if the Proposal had not been built.

[144] Officer's Report at CD 4.2 para 5.132, and see also the Appellant's Statement of Case at CD 6.1 para 8.34
[145] CD 4.2 para 5.133
[146] Mr Parkes did not appear to consider that it would be appropriate to carry out this analysis himself, on the basis that the technology to be used was yet to be determined. But this hardly explains why it is logical to use the technology assumed in the standard WRATE analysis rather than the technology identified by the Appellant's own witness as the technology *"selected"* for the Proposal (para. 3.68 of Mr Crummack's Proof).
[147] SKIP Note no. 3, para.5.

125. The uncertainty associated with GHG emissions should reduce the weight to be attached to this benefit.

(b) **Job creation**

126. Job creation is a benefit of the Proposal.[148] However, this benefit must be viewed in context. The Appeal Site is located in the Keypoint "Key Employment Area". Policy EC2 (Employment Land and Premises) applies, and provides that Key Employment Areas are to be retained primarily for employment generating uses within the Use Classes B1, B2 and B8, and also for certain *sui generis* uses. The development proposal would deliver 50fte jobs on a 3.17 hectare site. This is described by Mr Dewart as "modest" in terms of employment opportunities for a development of this size.[149] As Mr Dewart indicates, if the site were to be developed for Class B8 use, and the standard plot ratio of 40% applied, this would generate a building of 12,680 sqm. The HCA Employment Density Guide (3rd edition) (CD7.19) suggests three alternative jobs per sqm densities. This would give respectively 181, 165 and 133 fte jobs at this site for a Class B8 land use.[150]

(c) **Diversion for landfill**

127. As Mr Dewart noted in his oral evidence, while waste recovery is preferable to landfill, diversion from landfill is a limited ambition. The policy context (strongly) supporting this is Policy WCS5 and the Government's new Waste Strategy. In view of the risk of over-capacity resulting in the diversion of waste from higher up in the waste hierarchy, it follows from the deficiencies in the Appellant's need case that the Appellant has failed to demonstrate that waste is being processed as high as possible up the waste hierarchy.

(d) **Energy generation**

128. As to energy generation, there are two relevant points to note.

129. First, as to the stated benefit of supplying nearby users, there are currently no supply agreements for either the electricity or the heat, as confirmed by Mr Burrell in cross-examination.[151]

130. Second, if such users are not secured, the alternative option will be to connect directly to the Grid. Mr Burrell accepted Mr Dewart's analysis that, in order to make this connection a cable run of some 4km length would be required, on a route that travels through the built-up area of Swindon. This proposed route is shown on a map in the Assessment of Alternatives Section of the Environmental Statement (CD1.6). The

[148] See the ES at CD 1.6, paras. 13.4.11 (and during construction 13.4.5); para. 1.7.14 for relevant definitions
[149] Paras 4.14 to 4.16, Mr Dewart's Proof.
[150] Para.8.67, Mr Dewart's Proof.
[151] See Statement of Common Ground, CD 6.3 para 3.6

Appellant would either need to apply for planning permission itself or, if the Appellant proposed to rely on the statutory undertaker's powers, this would, as Mr Burrell noted, be priced in.

CONCLUSION

131. While much of the questioning by Mr Katkowski QC focused on whether the Proposal was "*in breach of*" various policies in the development plan, the correct question, of course, is whether this application is in accordance with the provisions of the development plan. In assessing whether a proposal is in accordance with the development plan as a whole, all policies that are "*relevant to*" the proposal must be considered.[152] In the Council's submission, the Appellant is not in accordance with the relevant policies in the development plan, being the policies set out in RFR 1 and RFR 2, for the reasons explained in this closing speech and summarised in the table at Annex 1 thereto.

132. The Proposal is on an unallocated site; its presence, and particularly its 52m Flue Stack, would have an adverse visual and landscape impact, and is a cause of genuine concern for local residents. Moreover, it risks undermining a major urban extension in the NEV; and the need for the facility and its claimed environmental benefits have not been demonstrated. In the absence of need, there is a serious risk of the Proposal diverting waste from higher up in the waste hierarchy and undermining the development plan framework for addressing need. These features of the Proposal significantly outweigh its rather modest benefits. The Council respectfully invites the Inspector to dismiss this appeal and refuse planning permission for the Proposal.

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Tuesday, 05 February 2019

[152] Whether a policy is relevant to an application is a matter of planning judgment. ***City of Edinburgh Council v Secretary of State for Scotland & Ors.*** [1997] 1 WLR 1447. Also, per ***R v Rochdale Metropolitan Borough Council ex parte Milne*** [2000] EWHC 650: non-compliance with one bullet point of a policy will not, of itself, be sufficient to show that the proposal is not in accordance with the development plan as a whole.

APP/U3935/W/18/3197964
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OPENING SPEECH ON BEHALF OF THE COUNCIL

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ANNEX 1

TABLE OF RELEVANT POLICIES

Of the development plan

In the Council's submission, the Proposal is not in accordance with the relevant policies in the Development Plan. The relevant policies, and a summary of the reason(s) why the Proposal is not accordance with such policies, is set out below.

Swindon Borough Local Plan (2015)

Policy Number	Policy Title	Reason (summary)
SD1 SD2 NC3	Sustainable Development Principles The Sustainable Development Strategy New Eastern Villages	The Proposal would undermine the deliverability of the NEV. The local community is strongly against the Proposal because of perceived risks to health and negative associations with the Flue Stack. Evidence from the NEV developers is that future purchasers of properties at the NEV would share the same concerns.
DE1	High Quality Design	The Proposal would introduce a visually dominant, intrusive and unsightly feature in a highly prominent location, which would substantially harm the visual setting of Swindon and its surrounding local area. Parties are agreed as to adverse impacts of the Proposal; impact of the Flue Stack cannot be screened or mitigated. Adverse impacts are exacerbated by negative associations with the Flue Stack.
RA3(a)	South Marston	The Proposal would undermine the distinct rural and separate identity of South Marston.
TR2	Transport and Development	The lack of certainty as to the source/nature of the feedstock means that it cannot be established that the Proposal will reduce the need to travel by road.

Wiltshire and Swindon Waste Core Strategy (2009)

Policy Number	Policy Title	Opportunity to overcome through Conditions

WCS1	The Need for Additional Waste Management Capacity and Self Sufficiency	The Proposal is not in accordance with the policy of addressing need through a network of site allocations.
WCS3	Preferred Locations for Waste Management Facilities by Type and the Provision of Flexibility	The Proposal (i) does not provide a full consideration of suitable alternative sites to the standard required; and (ii) is further not in compliance with the development plan.
WCS5	The Wiltshire and Swindon Waste Hierarchy and Sustainable Waste Management	In failing to make out a need for the REC facility, the Proposal cannot exclude the risk of its diverting waste from higher up the waste hierarchy; it follows that it cannot be demonstrated that the most sustainable option for waste management has been promoted.

The Council and the Appellant accept that Policy WCS2 is not relevant to the Proposal.

Wiltshire and Swindon Waste Development Control Policies DPD (2009)

Policy Number	**Policy Title**	**Opportunity to overcome through Conditions**
WDC1	Key Criteria for Ensuring Sustainable Waste Management Development	In view of the uncertainty of the source/nature of the feedstock, the Proposal fails to demonstrate that the impacts of transporting waste to and from the REC facility will be minimised; and further fails to demonstrate that the impact of structures and buildings in terms of scale and form has been minimised.
WDC2	Managing the Impact of Waste Management	The Proposal fails to avoid or adequately mitigate against adverse impacts relating to amenity and transportation of waste.
WDC11	Sustainable Transportation of Waste	The Proposal fails to demonstrate that transport distances have been minimised.