

Update to Section 3d ('Consideration of New Material Considerations')

d. Further written representations received from interested parties

Representation by Stephen Eades (Chair, North Wilts Friends of the Earth)

1. Representation: The Government's recent announcement through its Consultation on Environmental Targets document that it will be seeking a target for "halving the waste that ends up at landfill or incineration by 2042".

Response: See response to 'Representation by UKWIN' at Section 3d of main Committee report which raises the same point.

2. Representation: Statement in Secretary of State's decision letter that it is the local planning authority's responsibility to consider whether the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 apply and, if so, to ensure that the requirements of the Regulations are complied with. The position is "unclear".

Response: The position is clear. This is 'EIA development', and accordingly the planning application is accompanied by an Environmental Statement (ES). All necessary information is provided in the ES, meaning that the environmental effects have been fully and properly assessed by the local planning authority through the planning application process, and as set out in the original committee report. All procedural requirements for EIA development have been followed. This is not a new material consideration.

3. Representation: The Environment Agency has issued a preliminary 'minded to approve' decision in relation to the application for an Environmental Permit, subject to public consultation with closing date of 22 April 2022; "..... *to enable the Strategic Planning Committee to know whether NPPF 188 is truly the final word in this matter in planning terms, and to test whether the Environmental Permit is assuredly able to protect the public's health at Westbury and, thereby, inform a full consideration by the Strategic Planning Committee of all the planning issues relating to this planning application, we submit that Wiltshire Council on behalf of the Strategic Planning Committee should engage with the Environment Agency current public consultation to achieve clarity on this*". Specific matters of concern are plume grounding, the extent and operational procedures of continuous air monitoring stations, and the monitoring of ultrafine particulate matter.

Response: The effects of emissions were considered in the original committee report at Section 9.6 to an extent that is appropriate for the purposes of planning; they are not new material planning considerations nor has there been any material change relevant to them.

Paragraph 188 of the NPPF states that *“The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issue should not be revisited through the permitting regimes operated by pollution control authorities”*. National Planning Policy for Waste further states that waste planning authorities should *“..... concern themselves with implementing the planning strategy in the Local Plan and not the control of processes which are a matter for the pollution control authorities. Waste planning authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced”*.

But in any event, the ES sets out the results of modelling and assessment which demonstrate that the maximum predicted concentrates of all substances that will be emitted comply with relevant air quality objectives at nearby sensitive locations, including residential areas and nature conservation sites, and the adjacent dairy. The ES has been considered by Public Health England (now UKHSA, but referred to as PHE in this supplement), the Environment Agency and WC Public Protection on behalf of the local planning authority; and the outcome of these consultations is no objections.

PHE has specifically stated that it is satisfied that the applicant approached the environmental impact assessment in a manner consistent with the UK requirements. It further states that PHE will consider the emissions and appropriate control measures when consulted as part of the Environmental Permitting process and make additional comments at that time *“... We are however satisfied that the applicant has demonstrated that the proposed development can be carried out without any significant impact on health, subject to compliance with UK air quality and emissions standards. For that reason we do not wish to raise any objection to this planning application”*.

The Environmental Permit application process is now well advanced, with the Environment Agency ‘minded to approve’ subject to a consultation exercise currently underway. In accordance with paragraph 188 of the NPPF, the concerns in this representation relating to the fine detail of control processes for emissions, etc., should be directed to the Environment Agency through the Environmental Permit consultation process. In the meantime, and in accordance with the NPPF, Wiltshire Council as local planning authority should be content that the Environmental Permit pollution control regime will operate effectively in addressing the matters raised. And accordingly the matters – which are not new considerations for the purposes of the Strategic Planning Committee’s reconsideration of the planning application anyway – should continue to be given very little weight.

4. Representation: The Council recently refused planning permission for a ‘7.5MW gas peaking generation plant’ at Kingdom Way, Westbury on grounds of adverse impact on air quality in Westbury (reference 20/10440/FUL). This decision *“..... is in serious conflict in planning terms with the Strategic Planning Committee deliberation in June 2021 on the Westbury incineration”*.

Response: Planning application no. 20/10440/FUL was refused by the Western Area Planning Committee at its meeting held on 9 March 2022. This was against the advice of officers who had recommended that the application be approved. The refusal is because the proposal, by reason of its scale and nature in proximity to the Westbury Air Quality Management Area, would exacerbate poor air quality, with inadequate mitigation to off-set the effects; the proposal therefore fails to protect public health, environmental quality and amenity contrary to Wiltshire Core Strategy Policy 55.

In accordance with usual practice every planning application must be considered on its own merits; there is no such thing as a precedent in planning. The Western Area Planning Committee's decision to refuse planning permission was made with regard to the particular circumstances of that proposal. It follows that the energy from waste application before the Strategic Planning Committee now must be considered with due regard to its own circumstances, but in addition with regard to the committee's earlier decision to grant planning permission. That earlier decision was made with full knowledge of the proposals scale, nature and proximity to the Air Quality Management Area; and with a full understanding of the effects of the proposal on air quality as a consequence of emissions, etc., this as set out in the original committee report and accompanying documents. Circumstances relating to these matters have not changed since June 2021. So it follows that very limited weight, if any, can be given to the peaking generation plant decision.

Further representation ('Questions') on behalf of Arla

1. Question: In June 2021, there was no information presented to the planning committee in relation to the *business consequences (including financial consequences)* of the risk of food tainting at the Arla dairy. There was no report on the topic from the applicant or otherwise. There is no information presented in the update report to the 20 April 2022 Committee as to *business consequences (including financial consequences)* for Arla. How does the Council then suggest that members are being or have been appraised of the effects on the Arla *business (including financial consequences)* in terms of food tainting?

Response: It is emissions from the proposed development that potentially pose the "risk of food tainting" at the Arla dairy. It is food tainting that poses the risk to the business - the "business consequences (including financial consequences)". As set out in the 22 June 2021 committee report ('the original committee report'), the planning application adequately demonstrates that emissions will be insignificant, and that when operational, and regulated by other authorities, the facility will manage emissions in a manner which should pose inconsequential risk to the dairy.

Emissions are addressed in the Environmental Statement (ES) and a supplementary technical report accompanying the planning application and are considered at section 9.6 of the original planning committee report. As explained in the original committee report, the ES – through modelling and assessment – demonstrates that the maximum predicted concentrations of all substances emitted comply with relevant air quality objectives. The ES concludes that the overall effect on air quality of emissions is insignificant. In its response to the planning application Public Health England (now UKHSA, but referred to as PHE in this supplement), states that it is satisfied that the applicant has approached the environmental impact assessment, as

set out in the ES, in a manner consistent with UK requirements; it is further satisfied that the applicant has utilised a satisfactory approach and methodology to predict the likely emissions, the range of key pollutants and the impact on the local environment and receptors. The Environment Agency has raised no objections, referring to the requirement for the proposed facility to also have an Environmental Permit to operate – to regulate matters including emissions to air and odour control. With this in mind, and for the purposes of a planning application, the ES and the supplementary report – and the conclusions of PHE and the EA in particular – are sufficient for the local planning application to conclude that the proposed facility can operate alongside the dairy without imposing unreasonable restrictions on it or putting it ‘at risk’; and this conclusion is drawn in the context of there being the separate Environmental Permitting process for addressing operational considerations anyway, including the regulation of emissions. This approach is consistent with the expectations for the planning system set out in paragraph 188 of the National Planning Policy Framework.

More specifically on Environmental Permitting, the proposal relates to a process that requires an Environmental Permit (EP) from the Environment Agency under the provisions of the Environmental Permitting Regulations 2016. The EP will govern emissions and impacts from the thermal treatment process and ancillary waste handling activities. The EP application for the proposal is now advanced, and as part of its consideration the Environment Agency has addressed – as is appropriate for the EP process – emissions, including the risk of these for food tainting at the dairy. The EA’s draft concluding report – which is subject to on-going public consultation – addresses food tainting and concludes that there will not be a significant impact.

To conclude on question 1, the planning application and its ES, the technical consultee responses, and the original committee report demonstrate that the effects of emissions – and notably emissions that could lead to food tainting – are insignificant. The matter was both addressed in the original committee report, raised by Arla at the original committee meeting, and debated by the planning committee. It is, therefore, implicit from this that the ‘risks’ to the Arla dairy – both relating to food tainting and to, more generally, the ‘business’ – are inconsequential.

2. Question: In principle, the tainting of a food product may have no effect on health or the environment (the matters that the EA considers in the context of an EP), but that is different from, for example, making food products unsaleable, having to be destroyed due to actual tainting *or fear it has taken place*, factory shutdowns for checks or indeed the *business effects of consumer perceptions*. These matters can impact on Arla's *business operations and continuity (including financial)*. These are land use considerations as they fall squarely into the territory of NPPF 187; *unreasonable restrictions placed upon a business as a result of development permitted after it was established*. There is no reference to these matters in either of the committee reports. How and in what documents has the Council considered these matters?

Response: Paragraph 182 of the 2019 version of the NPPF (now paragraph 187 of the current NPPF) is referred to in section 9.6.5 of the committee report.

Any person with ‘fears’ concerning emissions / food tainting / etc. should be reassured by the answer to question 1 (above) and by the extent to which the proposal explained in the planning application and ‘interrogated’ in the original committee report (and in the draft documents prepared by the Environment Agency

for the separate Environmental Permit) addresses this. Accordingly – and albeit that the matters set out in question 2 are material planning considerations – they should be given very little or negligible weight under the circumstances.

3. Question: When dealing with the now built MBT facility in 2008/9 the Council at the time, as part of the planning process, asked for and received a report in relation to tainting effects on the Arla dairy. That facility is further away than the current proposal. In those circumstances the Council clearly felt that food tainting was a land use planning consideration, relevant to planning and necessary for a proper planning decision to be reached. Why is it now said, in the update report to members for the 20 April Planning Committee meeting, that tainting from a substantial incinerator next to the Arla dairy, dealing with a wide array of different waste is not a relevant land use planning issue?

Response: It is not said in the update report for the 20 April planning committee meeting that the risk of tainting is not a material planning consideration. Anything that is relevant to the making of a planning decision can in principle be a material planning consideration. The actual question to be asked here is, however, what weight should be given to the risk of tainting as a material planning consideration?

The answer to the ‘what weight?’ question is – in the light of the answer to question 1 (above) – that this should be very little or negligible weight on the basis of the evidence and in view of there being the separate Environmental Permitting regime for dealing with such matters. Paragraph 188 of the NPPF says that in such circumstances the focus of planning decisions should be on whether the proposal is an acceptable use of land rather than the control of processes or emissions where these are subject to separate pollution control regimes.

Nonetheless, the planning application and the committee report considered the issue in detail in any event. The committee report includes the following quote from the applicant’s supplementary report (‘Response to Odour Assessment Review and Further Odour Modelling’) addressing the issue –

- *A quantitative assessment of odour from the Facility has been carried out. This has shown that the impact of odour at Arla Dairies is well below the Environment Agency (EA) criterion of 1.5 OUE/m³ and well below the odour criterion for hypersensitive populations of 1 OUE/m³, and so there would be “no reasonable cause for annoyance”. Additional consideration has been made to the maximum 1-hour impact, interannual variability, the likelihood of the odour abatement system operating in the worst-case weather conditions for dispersion, and the assumptions used in the modelling. This has concluded that the results are conservative, and the likelihood occurrence is low, and therefore the risk of odour is not considered to be significant to the operations of Westbury Dairies.*
- *A quantitative assessment of bioaerosols from the Facility has been carried out. This has shown that the change in bioaerosols from background levels at Arla Dairies air intake can be considered to be ‘insignificant’. Therefore, bioaerosol emissions from the Facility are not considered to be of significant risk to operations at Arla Dairies.*

The planning application, therefore, demonstrates that, for the purposes of planning, the proposed facility can operate alongside the dairy without imposing unreasonable

restrictions on it. The facility has been designed, and will be operated, to ensure outputs (emissions, etc.) are at levels which are below relevant emissions standards.

The application for the adjacent MBT facility was made and considered in c. 2008/09. At the time the MBT planning application was progressing, an application for a Waste Management Licence (WML) had also been made to the Environment Agency (EA), which was fully in accordance with the regulations in place at the time. However, during the WML's determination the legislation switched to a Pollution Prevention & Control (PPC) permitting regime as set out in the Environment Permitting Regulations 2007. Discussions with the EA, the local planning authority and the applicant noted that as a WML had been applied for, the more onerous application and higher level operational standards of a PPC site would not apply to the MBT. In particular, Best Available Technique (BAT) assessments would not apply under the WML being issued for the facility. For this reason, the local planning authority requested that further information be provided relating to the levels of risk, technical control and monitoring be provided to enable them to be satisfied. The situation with the proposed energy from waste facility is not comparable as Permits for energy from waste facilities falls fully within the Permitting regime at the highest levels of control and requires the applicant to demonstrate BAT.

4. Question: In the Council's view, if the Environmental Permit (EP) is the vehicle to control the operation of the incinerator proposal, can the Council explain where the draft EP (which is yet to be issued in final form) deals with continuous monitoring, reporting and setting emissions limit values for all the aspects of the operations that could affect the *business operations (including financial consequences)* of Arla, in particular via the odour abatement process and the operation of the reception hall with open doors and consequent emissions? These are matters that the Secretary of State claims (see correspondence from Stuart Andrew of 31 March 2022- attached) to have taken into account in the decision not to call in, but are absent from the draft EP. How has the Council taken the absence of these matters from the draft EP into account in concluding that the effects on the business of Arla is governed by the EP?

The EA's EP Draft Decision Document - [BA13 4WE, Northacre Renewable Energy Limited, EPR/CP3803LV/A001: environmental permit draft decision advertisement - Environment Agency - Citizen Space \(environment-agency.gov.uk\)](#) addresses Arla's concerns. Regard should also be had to the answers to questions 1-3 set out above. Any further questions on this should be put to the EA by Arla.

The Environment Agency (EA) has comprehensively assessed the Environmental Permit application, including supplementary information requested to deal with specific concerns raised by Arla and extensive consultations with other agencies, including the Food Standards Agency. The EA has determined that the information provided, which includes design basis, operating techniques, mitigation measures, monitoring and others, lead to the conclusion that the facility can operate without adverse impact to Arla under the emission limits and operating techniques set out extensively in the draft Permit. It is not standard practice for specific business interests, such as Arla, to be referenced in Permit conditions.