UNITED KINGDOM WITHOUT INCINERATION NETWORK

Application by Peel Environmental for Off Eakring Road, Bilsthorpe

PINS Ref: ***APP/L3055/V/14/3001886***
Application No: ***ES/2950***

INTERESTED PARTY NOTE TO THE INQUIRY ON THE MAIN ISSUES SET OUT BY THE INSPECTOR AT THE PRE-INQUIRY MEETING

"Development of the Bilsthorpe Energy Centre to manage unprocessed and pre-treated waste materials through the construction and operation of a plasma gasification facility, materials recovery facility and energy generation infrastructure together with supporting infrastructure"

9th July 2015

Introduction

1. On the 24th of June 2015 the Planning Inspector helpfully set out matters identified as "*those most likely to be of interest to the Secretary of State*".

2. UKWIN has already provided evidence in relation to some of these matters, however UKWIN has not previously used the headings which have now been identified. As such, we thought it would be helpful to the Inquiry to set out our understanding of how UKWIN's existing evidence relates to the main issues as set out in Paragraph 32 of the Pre-Inquiry Meeting Notes [CD69].

UKWIN's comments on the main issues

3. ***Whether the facility would comprise a waste disposal or recovery operation***

   3.1. As previously stated, UKWIN's case is that the facility would comprise a waste disposal operation, sitting at the very bottom of the Waste Hierarchy as set out in both EU and UK policy, and that this is an issue which cannot be overcome through the imposition of a planning condition due to uncertainty regarding the enforceability and efficacy of such a condition.

   3.2. If the applicant were to provide a persuasive legal submission demonstrating that the planning condition set out in the Statement of Common Ground with the WPA [CD65] (under the heading 'Recovery Status of Plant') would be enforceable even in the event that achieving R1 proved not to be technically/economically practicable, UKWIN would remain concerned that, even if the facility could in theory be said to have the potential to meet the R1 threshold for recovery status, the facility as proposed would in fact be unlikely to operate as R1 in practice (e.g. due to the experimental nature and of the technology and technology configuration, the poor track record of advanced thermal treatment (ATT), and the high energy demands associated with plasma gasification).

3.3. As UKWIN has already mentioned, for example at Paragraph 24 of IP2, a planning condition requiring a Design Stage R1 certificate (along the lines of that proposed at Paragraph 16 of CD65, Appendix B) would fail to ensure that the facility would actually operate as recovery, because:

a) If, having completed the construction of the proposed facility, it transpires that the technology configuration used would simply not be capable of meeting the R1 threshold, then it can be anticipated that the applicant would at that point argue that the 'R1 condition' should be lifted and the facility be allowed to operate without a Design Stage certificate (despite the R1 condition having been relied upon as necessary for the grant of planning permission in the first instance);

b) In the event that the Planning Authority later decides that enforcement of the condition would not be expedient, e.g. because the facility had been constructed and because the applicant would be unable to comply with the condition using the technology configuration as constructed; and

c) A Design Stage certificate cannot guarantee that a facility would operate as R1 in practice, and there are reasonable grounds to doubt the ability of the facility proposed for Bilsthorpe to operate as R1 (e.g. the track record of the Dargavel ATT plant, which performed significantly worse than anticipated, and the applicant's own lack of clarity regarding the proposed technology and feedstock composition, etc.).

3.4. UKWIN's position is set out at Paragraphs 5 - 87 (pages 3 - 21) of IP2, under the heading "*R1/D10 status and the waste management hierarchy*".

3.5. UKWIN's arguments are supported by evidence, including evidence submitted as Appendices A - F:

- IP2 Appendix A: Excerpts from Guidelines on the R1 energy efficiency formula in Annex II of Directive 2008/98/EC
- IP2 Appendix B: October 2013 Appeal Court Judgement Skrytek v Secretary of State for Communities and Local Government, et al ([2013] EWCA Civ 1231)
- IP2 Appendix C: RDF Market Call for Evidence (DEFRA, March 2014)

- IP2 Appendix D: Evidence submitted to the Battlefield inquiry (Veolia, September 2011)
- IP2 Appendix E: The Scotgen Dumfries Site Status Report - V13 (SEPA, August 2013)
- IP2 Appendix F: Extracts from Tables 1 and 2 of Local Authority Collected Waste Statistics - Local Authority data (Defra, 18 November 2014)

3.6. In summary, UKWIN's case is that the applicant has failed to demonstrate that the gasification facility as proposed would be more likely than not to operate as recovery, and that therefore the gasification plant should be treated as a disposal operation, and that this cannot be overcome by a planning condition.

4. ***Whether the scheme would accord with the development plan for the area***

4.1. UKWIN's position is that the proposal fails to accord with the development plan for the area. Any support the proposed scheme may derive from individual policies within the development plan is outweighed by the numerous conflicts and tensions with the development plan, and the proposed scheme goes the development plan when read as a whole.

4.2. UKWIN has provided evidence to support our arguments that the proposal does not accord with the Nottinghamshire and Nottingham Replacement Waste Local Plan Waste Core Strategy (Dec 2013) [CD62], for example:

a) IP2, Paras 57 - 61 and 64 - 87, and Appendix I, contain evidence regarding the proposal's conflicts with **Policy WCS3** ('Future waste management provision') including **WCS3(b)** and/or **WCS3(c)**;

b) IP2, Paras 105 and 147 (and indeed IP1) contain evidence regarding the proposal's conflicts with **Policy WCS4** ('Broad locations for waste treatment facilities');

c) IP2, Para 105, and the whole of UKWIN's 10th June 2015 Supplementary Representation on Restoration Plan [IP8], contain evidence regarding the proposal's conflicts with **Policy WCS7** ('General site criteria');

d) IP2, Paras 95 - 104 contain evidence regarding the proposal's failure to benefit from **Policy WCS9** ('New and emerging technologies');

e) IP2, Paras 112 - 114 (and Paras 132 - 143 of UKWIN's August 2014 Part 2 Objection [CD40]) contain evidence regarding the proposal's failure to benefit from **Policy WCS11** ('Sustainable transport'); and

f) IP2, Paras 62 - 63 and 112 - 114 (and Paras 132 - 143 of UKWIN's August 2014 Part 2 Objection [CD40]) contain evidence regarding the proposal's conflicts with **Policy WCS12(b)** ('Managing non-local waste').

g) Additionally, in IP2, Paras 110 and 115 UKWIN argues that the proposal goes against **Policy WCS13** ('Protecting and enhancing our environment') for the reasons, and based on the evidence, given by RAGE and the Nottinghamshire Wildlife Trust.

4.3. UKWIN has provided evidence to support our arguments that the proposal does not accord with **saved policy W3.1** ('Information in support of waste planning applications') of the Nottinghamshire and Nottingham Waste Local Plan of January 2002 [CD61], for example at IP2, Paras 125, 143, and 148 - 165.

4.4. UKWIN has provided evidence to support our arguments that the proposal does not accord with the Newark and Sherwood Core Strategy of March 2011 [CD63], for example at IP2, Paras 105, 109, 110, 125, and 147 UKWIN sets out how the proposal conflicts with **Core Policies 6** ('Shaping our employment profile'), **9** ('Sustainable design'), **13** ('Landscape character') and **14** ('Historic environment'), **Spatial Policy 3** ('Rural areas'), and **ShAP 1** ('Sherwood Area and Sherwood Forest Regional Park') based on the evidence given by RAGE (IP1) and others.

4.5. UKWIN has provided evidence to support our arguments that the proposal does not accord with the Newark and Sherwood Allocations and Development Management DPD dated July 2013 [CD64], for example at IP2, Paras 105, 109, and 111 UKWIN sets out how the proposal conflicts with **ADMDPD Policy DM5** ('Design'), including **DM5(4)** ('Local Distinctiveness and Character'), **DM5(7)** ('Ecology'), **DM8** ('Development in the open countryside') and **DM9** ('Protecting and enhancing the historic environment') based on the evidence given by RAGE (IP1) and others.

5. ***The extent to which the scheme would be consistent with the National Planning Policy for Waste and the National Waste Management Plan for England***

5.1. UKWIN has provided evidence to support our arguments that the scheme would be inconsistent with both the National Planning Policy for Waste [CD53] and the National Waste Management Plan for England [CD58], for example:

a) Because the proposal is for a disposal facility, e.g. as set out in IP2 Paras 5 - 87, the scheme would conflict with policies that promote the Waste Hierarchy, such as NPPW [CD53] Paras 1, 3 and 7, and National Waste Management Plan for England [CD58] Pages 1, 11 - 14 and 34, and Paras 9 and 46 and Annex 1 of the Planning Practice Guidance on Waste [CD54]; and

b) Because the proposal is for an inefficient process, e.g. as set out in IP2 Paras 88 - 104 (and Appendices C, D and E), the scheme would conflict with Government's aim of getting the most energy out of that waste, as set out on Page 13 of the National Waste Management Plan for England [CD58].

c) As noted at Para 10 of IP1, Paragraph 1 of the NPPW refers to the role of planning in delivering the country's waste ambitions through delivery of resource efficiency. Paragraph 1 of NPPW sets out the ambitions of the National Waste Management Plan for England to "*work towards a more sustainable and efficient approach to resource use and management*", and within this context sets out the role of planning in the delivery of "*resource efficiency*". UKWIN has provided evidence that the proposal does not get the most energy out of waste, and this evidence also demonstrates how the proposed development fails to deliver the resource efficiency expected by the NPPW.

5.2. As noted at IP2 Para 106, adverse impacts in relation to ecology / wildlife mean that the proposal goes against NPPW Para 7, 3rd bullet and the associated Appendix B, Locational Criterion D. UKWIN is leaving it to others, in particular the Nottinghamshire Wildlife Trust, to provide evidence regarding adverse ecology / wildlife impacts.

5.3. As noted at IP2 Para 108, adverse impacts in relation to heritage assets and local amenity means the proposal goes against NPPW Para 7, 3rd bullet and the associated Appendix B, Locational Criteria C and E, as well as the Planning Practice Guidance on Waste ('Conserving and enhancing the historic environment' Paragraph 017, and 'Renewable and low carbon energy' Paragraph 007). UKWIN is leaving it to others to provide evidence regarding adverse impacts on heritage assets.

5.4. As noted at IP2 Para 116, adverse impacts in relation to traffic mean that the proposal goes against NPPW Para 7, 3rd bullet and the associated Appendix B, Locational Criteria F, G and J. UKWIN is leaving it to others to provide evidence regarding adverse traffic impacts.

6. ***The historic environment; landscape and visual impact; source emissions; odour, noise and vibration; ecology and agriculture; surface water quality and sewage disposal; tourism and socio-economic development in the area; traffic and access***

6.1. Whilst UKWIN believes that the proposal would have adverse impacts in relation to these issues, and has noted some of the policies that such adverse impact would conflict with in our evidence (e.g. Paras 105 - 116 of IP2) and above, we leave it to others to provide evidence in relation to these matters. Particularly relevant is the evidence provided by RAGE [CD36, IP1] and the Nottinghamshire Wildlife Trust [CD38 and IP3].

6.2. For example, CD36 notes that concerns about the impact of an incinerator on tourism in Sherwood Forest were taken seriously at the Rufford Inquiry, where the Secretary of State agreed with the Inspector's observation that: *"...the ERF [incinerator] would be prominent in residents' views and it would detract from their enjoyment of the area. It would also undermine efforts being made to develop Sherwood Forest as a tourist destination, because of the harm that would be caused to the rural landscape. This is clearly at odds with the need to protect the countryside for the sake of its intrinsic character and beauty, so that it may be enjoyed by all"*.

7. ***The adequacy of the environmental statement***

7.1. As noted at the Pre-Inquiry Meeting, UKWIN's position is that the environmental statement is incomplete due to:

a) Lack of information about the origin and composition of the anticipated feedstock. Such information is relevant to the emissions of the plant / operation, and therefore to its environmental impact, as set out in IP2 (final two bullets of Para 40) and UKWIN's Part 2 Objection [CD40] (especially Paras 119 - 131) and UKWIN's Part 3 Objection [CD40] (especially Paras 10 -12); and

b) The inadequacy of the ecological appraisal and the uncertainty regarding the efficacy of any mitigation, as identified and evidenced by the Nottinghamshire Wildlife Trust [CD38 and IP3].

7.2. Furthermore, UKWIN believes the applicant should provide further evidence to demonstrate that their proposed wader scrape mitigation would work in practice.

8. ***Any benefits to be weighed in the planning balance, including any implications of not proceeding with the scheme***

8.1. UKWIN provides evidence in IP2 Paras 117 - 165 that the proposed gasification facility not needed, and that the gasification facility could crowd out options that would treat the waste higher in the Waste Hierarchy, more efficiently and more reliably.

8.2. UKWIN provides evidence in IP2 Paras 166 - 185 that any weight to be given to claimed benefits should be reduced due to uncertainty that those benefits would be realised.

8.3. UKWIN may make a further submission on the lack of need for the proposed gasification facility and potential adverse impacts in relation to the Waste Hierarchy. This submission would draw upon new information such as Eunomia's latest Residual Waste Infrastructure Review (the 8th Issue was released on 22nd June 2015, and the 9th Issue is expected to be released in late November 2015) and upon details regarding the emerging European Circular Economy Package.