

**RE: BILSTHORPE ENERGY CENTRE: LAND AT BILSTHORPE BUSINESS PARK,  
BILSTHORPE, NOTTINGHAMSHIRE**

**OPENING STATEMENT ON BEHALF OF THE APPLICANT**

**Introduction**

1. There are the following Statements of Common Ground and related documents:
  - (i) Statement of Common Ground (SOCG) 1 between the Applicants and Nottinghamshire County Council (NCC) [CD65];
  - (ii) SOCG between the Applicants and Dr Chow [CD66];
  - (iii) SOCG 1 Supplement between the Applicants and the NCC [CD70];
  - (iv) Letter from Newark and Sherwood District Council (NSDC) confirming the factual accuracy of paragraphs 2.19-2.21 of CD70 [CD71].
2. SOCG1 addresses comprehensively the description of the application site and its surroundings, a description of the proposed development and the planning history and application process. In the light of that recitation those matters are not addressed further. This Opening Statement sets out briefly and by way of summary the Appellant's position with regard to the matters identified by the Inspector from her initial consideration of the Application documents which were listed in paragraph 32 of the note of the pre-inquiry meeting [CD69].

Waste Disposal or Recovery Operation?

3. On the 14<sup>th</sup> October 2015 the Environment Agency wrote with its determination of the R1 Design Stage Application submitted by the Applicants. The EA has determined that based on the design data submitted the plant is capable of having an R1 energy efficiency factor equal to or above 0.65. The consequence is that the Agency's letter certifies on a preliminary basis that the proposal is an R1 recovery operation under Annex II of the Directive. Accordingly a predicted R1 factor of in excess of 0.65 has now been independently verified by the EA.
  
4. In the light of that certification the Applicants submit that there ought not sensibly now to be any issue at all with regard to the recovery status of the application proposals. In due course, and assuming that consent is granted, the design stage certification will need to be validated when plant acceptance data is available and it will be necessary for the operational plant to submit an updated R1 application by the end of January each year covering the performance of the plant over the previous calendar year so that the R1 certification can be revalidated. In these circumstances we submit that ongoing objection to the recovery status of the plant would be unreasonable. There will in any event be a condition addressing the R1 compliance issue.
  
5. The EA's independent verification of the Applicant's position ought, we respectfully submit, to give the Secretary of State confidence in the Applicant's approach to the design of the facility and its ability to function in a way which is entirely consistent with Government objectives for the management of waste and moving waste up the Waste Management Hierarchy. That the certification is on the basis of the data supplied by the Applicants should be no surprise, the Agency operates on the same basis with regard to all design stage applications and it is entirely reasonable that it should do so. The fact that that is so ought not to in any way lessen the weight which is accorded to the validation.
  
6. We have received a yet further submission from UKWIN [IP26] (their sixteenth comment upon the application proposals). We shall provide a written response to this new material as soon as possible.

Whether the Scheme Would Accord with the Development Plan for the Area

7. What is the Development Plan for the area is set out in SOCG 1 section 5. In considering the Development Plan it is necessary to have in mind both the relevant statutory provisions and relevant court decisions. At this stage we make the following points:

- (i) Determination should be made in accordance with the Development Plan unless material considerations indicate otherwise: section 38(6) Of the 2004 Act;
- (ii) If to any extent a policy contained in a Development Plan for an area conflicts with any other policy in the Development Plan the conflict must be resolved in favour of the policy which is contained in the last document to be adopted: Section 38(5) of the 2004 Act;
- (iii) Accordance with the Development Plan is not an accordance with each relevant policy of the plan, it is accordingly an untenable proposition to suggest that breach of any one policy in a Development Plan means that a proposal cannot be said to be in accordance with the plan: R v Rochdale MBC ex parte Milne paragraphs 48 and 49 (see Mr Roberts' Proof of Evidence [APP/NR/1] paragraph 7.2.2 p.101);
- (iv) In circumstances where policies pull in different directions it may be necessary to decide which is the dominant policy: whether one policy compared to another is directly as opposed to tangentially relevant or should be seen as the one to which greater weight is required to be given: R (Cummins) v. London Borough of Camden (2001) EWHC 1116 paragraph 162 [CD89?].

8. In this case the most up to date part of the Development Plan is the Waste Core Strategy of December 2013 [CD62]. Happily that is clearly the most directly relevant part of the Development Plan in relation to a proposal which is concerned with the management of waste. The Applicant's position with regard to conformity with the Development Plan is set out in SOCG1 and the evidence of Mr Roberts. We do not propose to rehearse it but have seen nothing in the evidence of objectors which would cause us to take any different view.

9. A number of objectors draw attention to policies contained in other parts of the Development Plan among them the NSDC Core Strategy [CD63] and the NSDC Allocations and Management Document [CD64]. Much is made by objectors of the fact that the Development Plan elements they rely on identify the application site as being part of an area which is outside the settlement boundary and therefore in terms of the Development Plan in open countryside. However as NSDC acknowledge it is quite clear that:
- (i) The District Council's objectives for Bilsthorpe include regeneration of vacant land and the securing of new employment opportunities. This is land which has been made ready for development after significant public funds were made available to provide infrastructure to support redevelopment [CD91?];
  - (ii) When the Development Plan was prepared and consideration was given as to the amount of employment land required in the Sherwood area, which includes Bilsthorpe, account was specifically taken of the availability of the designated employment area at Bilsthorpe Colliery extending to some 9.74 hectares: see CD64 Appendix C page 194;
  - (iii) The land at Bilsthorpe Colliery forms part of the District Council's available stock of employment land used to promote regeneration in the area;
  - (iv) In the context of addressing landscape considerations the District Council is explicit in looking for the creation of a new industrial economy within the area: See Mr Roberts' Proof of Evidence [APP/NR/1] paragraph 5.3.3 p.69.
10. Read as a whole and having regard to the matters we have referred to it is quite clear that the proposal should be regarded as being in accordance with the Development Plan when taken as a whole and approached correctly.

Whether Relevant Development Plan Policies Are Up To Date and Consistent with the NPPF

11. This matter is addressed in Sections 3 and 4 of Mr Roberts' evidence which we do not propose to repeat in Opening. At this stage we simply observe that it is necessary to consider the extent to which policies in any part of the Development Plan are in conflict with the Framework. That is an exercise which will depend on the specific terms of the policy and the corresponding parts of the Framework reading both the policy and Framework in full and in context and having regard to the extent to which the policy is adopting a cost benefit approach consistent with the overall approach in the Framework.
12. That is the approach which in substance Mr Roberts has set out in Section 3 of his evidence in reaching conclusions with regard to elements of the Development Plan which pre date the Framework.

Consistency with The National Planning Policy For Waste And The National Waste Management Plan For England

13. These matters are addressed in Section 7 of Mr Roberts' evidence [Section 7.4 pp110-113] and in SOCG 1 paragraph 7.5 and 7.6. In Opening we make the following brief points:
  - (i) The proposal is in accordance with the most relevant and up to date parts of the Development Plan and will fulfil its objectives with regard to the meeting of the need for waste handling facilities;
  - (ii) The proposal will enable the diversion of up to 117,310 tonnes per annum of residual waste from landfill and thus support the national policy's desire to move waste further up the waste hierarchy;
  - (iii) Viewed objectively and in the context of the available evidence the proposal would not give rise to any significant impacts upon the local environment and amenity;
  - (iv) The proposal will be located within a well screened setting within a business park with good quality landscaping;

- (v) In the context of the NPPW's guidance in relation to suitable locations for waste management facilities the application site should be considered entirely appropriate being employment land, within a business park and consisting of previously developed land;
- (vi) The proposal would be "*CHP ready*" and is in a location where it is realistic to expect that there would be opportunities for heat customers;
- (vii) The highways infrastructure available to support the proposal is entirely satisfactory and has been judged so by the Highway Authority;
- (viii) The proposal would support recycling through the material recovery facility;
- (ix) The proposal would make a material contribution to electricity generation needs from a reliable based load source and would also make a significant contribution towards the aim of self sufficiency in the recovery of waste in England.

14. In those circumstances we respectfully submit that the proposal is entirely consistent with the National Policy Framework for the management of waste.

#### The Historic Environment

15. Great care has been taken the consideration of the historic environment in the preparation of the application proposals. The ES has carefully considered the matter and further consideration has been given to it in the context of Mr Sutton's statement attached as Appendix J to Mr Roberts' Proof of Evidence. For the reasons set out by Mr Sutton the Applicants do not consider that it is possible to suggest that there will be any harm at all arising from the application proposals to the interest features of any heritage asset. The County Council has a very slightly different view with regard to one aspect of the assessment but so insubstantial is the harm that it is considered that it can be addressed by the provision of interpretation boards for the heritage asset concerned. If the Secretary of State agrees with the County Council the Applicants have indicated their willingness to fund the necessary works.

### Source Emissions

16. National Planning Policy for Waste [CD53] is quite clear as to the division of responsibility between local planning authorities and relevant health bodies. In this instance the HPA/PHE have made their position quite clear. There is no basis for attempting to go behind it. Whilst therefore the Applicants understand that as a consequence of some ill informed scaremongering there may be concerns about emissions there is no basis for going behind PHE's assessment.
17. With regard to emissions and matters such as drainage, these issues are addressed in the evidence of Mr Roberts and Mr Othen, we rely on that evidence and note the extent to which it is supported by the assessment of every responsible body concerned with these matters. It remains the case of course that any facility such as that proposed will be regulated by the EA; in the context of this application one should proceed on the assumption that the EA will properly apply and enforce the relevant pollution control regime: paragraph 50 of the National Planning Practice Guidance's chapter on 'Waste' (reference ID:28-050-20141016) [CD54].

### Odour, Noise and Vibration

18. In relation to these matters we rely upon the evidence of Mr Othen and the written statement of Mr Kettlewell at Appendix L of Mr Roberts' evidence.

### Ecology and Agriculture

19. Mr Honour's evidence deals with all relevant aspects of the ecological considerations. We have noted that his position is supported by the independent consideration of these matters undertaken by NCC and as noted in their response to the third Regulation 22 submission. Among objectors there appears to be the view that if a particular species is referred to often enough then even in the absence of any evidence which could rationally conclude that it was present and/or likely to be affected in any material way somehow the species will become relevant to the determination of this application. Whilst therefore the Applicants, as is demonstrated by the substantial amount of effort applied to the issues, take these matters very seriously they are quite unable to subscribe to the view that there will be any materially harmful impact of any species of concern. To the contrary the application proposals offer the opportunity to make provision for species of conservation concern in a way which will provide for the long term availability of habitats.

20. In the context of a site which is undergoing rapid succession and on its way to not providing any substantial benefit for any species of conservation interests the application proposals should be welcomed.

#### Surface Water Quality and Sewage Disposal

21. These matters are addressed in Mr Roberts' evidence and Mr Roberts' evidence, and Mr Othen's evidence in respect of issues raised by Dr Kit Chow. We have referred to the relevant principles related to a consideration of them earlier in these submissions.

#### Tourism and Socio-Economic Development In The Area

22. Tourism is undoubtedly a significant element in the local economy. It is accordingly important that consideration should be given as to the extent to which proposals of any kind would materially harm it. Having taken full account of the importance of tourism we respectfully submit it is quite impossible to rationally conclude on the evidence, that the proposals would have any harmful effect on the attractiveness of the area from a tourist point of view. The available views of any element of the proposals are not such as to be capable of having any harmful impact on any visitors' perceptions of the area.
23. The socio-economic impacts of the proposal are considered in the Environmental Statement and the evidence of Mr Roberts at section 5.7. We do not repeat it but simply point out that evidence from around the country considered at other inquiries, does not support the view that facilities of this kind, when suitably located and appropriately designed, as this one is, will have any harmful effects whatsoever. Attempts to draw a parallel with the proposal which was refused permission at Rufford Colliery are misplaced bearing in mind the District Council's insistence at that Inquiry that there were significant differences between Bilsthorpe and Rufford both in terms of their respective locations, their proximity to settlements, topography and landscape protections. On the positive side the application proposals offer the opportunity for a very significant level of employment with regard to the construction of the application proposals and in addition continuing longer term employment in the operation of them which should be seen as entirely

consistent with the District Council's economic strategy for the area. It is not surprising therefore that there should be support for the proposal from the Chamber of Commerce.

#### Traffic and Access Arrangements

24. There is a good deal of evidence given with regard to traffic in the area. The fact remains however that objectively assessed there is no basis for any concern as to the impacts of the very modest levels of traffic likely to be generated by the application proposals. The Applicants' view in that respect is supported by the Highway Authority. There will be put in place, upon the grant of any planning permission, appropriate arrangements to regulate the movement of HGV traffic.

#### The Adequacy of the Environmental Statement

25. This matter is addressed in the evidence of Mr Roberts. We have nothing further to add with regard to it at this stage.

#### The Benefits to Be Weighed In The Planning Balance Including Any Implications Of Not Proceeding With The Scheme

26. The benefits of proceeding with the Application scheme are legion. They range over the whole range of waste management, environmental and economic considerations. They are addressed in detail in the evidence of Mr Roberts at Sections 4 and 7. We do not repeat them in Opening but respectfully submit that they represent a compelling set of circumstances in support of the grant of planning permission. They arise from the coming together of circumstances related to the location of the site, the need for the proposal and the consistency with local policies for economic regeneration and environmental improvements. Whilst we note that objectors take a range of points against the proposal and suggest that alternative sites should be considered, none has been able to identify an alternative site which would be capable of delivering the wide range of advantages of the application site and as a consequence the many benefits that the application proposals would bring.

#### Conditions and Agreements

27. There is a draft set of conditions attached to SOCG1 and a draft S106 Agreement and Planning Obligation which can no doubt be discussed at an appropriate time during the Inquiry.

Conclusions

28. The application proposals have been subject to rigorous assessment not only by the Applicants' professional team but also by the County Council. As a consequence of the care taken with regard to the siting and design of the proposals and the associated landscaping it can we submit, be confidently concluded that the proposals will not only deliver much needed waste management handling capacity but will also deliver a wide range of environmental and socio-economic benefits entirely consistent with national policy and the up to date elements of the Development Plan for the area. We shall in due course submit that planning permission should be granted.

**Martin Kingston Q.C.**

November 2015

No 5 Chambers

Birmingham – London – Bristol

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