



8th March 2022

Agenda Item: 5

REPORT OF CORPORATE DIRECTOR – PLACE

RUSHCLIFFE DISTRICT REF. NO.: 8/20/01826/CTY

PROPOSAL: PROPOSED DEVELOPMENT OF THE EAST MIDLANDS ENERGY RE-GENERATION (EMERGE) CENTRE (A MULTIFUEL ENERGY RECOVERY FACILITY, RECOVERING ENERGY FROM WASTE MATERIAL) AND ASSOCIATED INFRASTRUCTURE.

LOCATION: RATCLIFFE-ON-SOAR POWER STATION, NOTTINGHAM, RATCLIFFE-ON-SOAR, NG11 0EE

APPLICANT: UNIPER UK LIMITED

Background

1. At the 22nd June 2021 Planning and Rights of Way Committee meeting Members resolved to support a grant of planning permission for the EMERGE Energy Recovery Facility at Ratcliffe on Soar Power Station subject to the decision being referred to the Secretary of State for Housing, Communities and Local Government under the Green Belt departure notification provisions and the applicant entering into a Section 106 legal agreement to regulate lorry routeing and the retention of the rail head. A copy of the original report to committee is attached as Appendix 1
2. The Council has subsequently received confirmation from the Secretary of State that he does not wish to call the planning application in for determination and confirmed that NCC may proceed and issue the planning permission. The Section 106 legal agreement is in an agreed form and at the time this report was published is currently being signed by the applicant.
3. Planning law requires the County Council in dealing with an application for planning permission to have regard to the Development Plan and all material considerations. If Officers become aware of a new material consideration, or other matter, which could impact on the planning assessment before issuing a decision notice following a resolution to grant by Committee, then case law has set out that it is advisable for officers to refer the application back to Committee so as to be sure that any decision to grant planning permission has been taken with the Committee being aware of those matters.

4. In the nine months since the planning application was considered by Planning and Rights of Way Committee there have been a number of updates to planning policy and legislation as well as some further representations received from third parties. The purpose of this report is to update Members of these recent publications and set out Officers' appraisal as to the extent to which they may affect the original planning assessment of the EMERGE planning application set out in the original committee report of June 2021.

Summary of policy update and additional Information received since the 22nd June 2021 Planning and Licensing Committee Meeting

5. The documents of which planning officers have been made aware and have considered since the Committee resolved to grant planning permission in June 2021 are set out below:
 - a. Updated version of the National Planning Policy Framework published by the Ministry of Housing, Communities and Local Government on the 20th July 2021.
 - b. Net Zero Strategy: Build Back Greener published by the Ministry of Business, Energy and Industrial Strategy on 19th October 2021.
 - c. The Environment Act which was enacted into law on the 9th November 2021.
 - d. Publication of draft Nottinghamshire and Nottingham Joint Waste Local Plan for publicity on 7th February 2022.
 - e. Nottinghamshire and Nottingham Waste Needs Assessment, prepared by AECOM Consultancy on behalf of Nottinghamshire County Council and Nottingham City Council and published alongside the Joint Waste Local Plan in February 2022.
 - f. Further written representations received from interested parties after the EMERGE decision was reported to Planning and Rights of Way Committee.
 - g. The Government's consultation on the review of National Energy Policy Statements, specifically EN-1: Draft Overarching National Policy Statement for Energy and EN-3: Draft Policy Statement for Renewable Energy Infrastructure.
6. In the most part Planning Officers are satisfied that the documents published since the June Planning and Rights of Way Committee either do not raise matters which have not been identified and assessed within the original committee report or include new information which could lead to a different conclusion being reached in terms of the assessment of the planning application. Specifically:
 - The 2021 NPPF is an update of previous policy. The policy changes incorporated in the updated NPPF are considered to not significantly affect the merits of the original planning policy assessment.

- The Government's Net Zero Strategy builds on current waste and energy policies, it does not identify major policy reforms in the energy from waste sector and officers are satisfied that these policies have been appraised in the original EMERGE decision.
 - The planning appraisal of the EMERGE development referenced draft legislation incorporated within the Environment Bill. There have not been any significant changes to the Environment Bill as part of its enactment into law through the Environment Act 2021 insofar that it is relevant to the assessment of the EMERGE planning decision.
 - The representations received from interested parties since the EMERGE planning committee date do not raise any significant new issues that have not already been assessed.
 - The Government's consultation on the review of National Energy Policy Statements is a consultation document seeking to update existing policy. While the review is undertaken the current suite of National Energy Policy Statements continue to form the basis for any development decision.
7. The draft Waste Local Plan and the AECOM Waste Needs Assessment were published in January 2022. These are entirely new documents and therefore their content has not been referenced or appraised as part of the original EMERGE planning assessment. Officers have therefore carefully reviewed these documents to consider whether they introduce any issues of substance which materially change the previous planning policy assessment. A summary of the appraisal carried out by Officers is set out below wherein it is concluded that the draft Waste Local Plan and its supporting waste needs assessment do not materially change the original assessment of the planning merits of the planning application.

Updated National Planning Policy Framework

8. The NPPF provides the clearest statement of central Government planning policy. The 2019 version of the NPPF was extensively referenced within the committee report which informed the EMERGE planning decision.
9. Shortly after the June Planning and Rights of Way Committee meeting, the Government replaced the 2019 NPPF with an updated version on the 20th July 2021. The 2021 NPPF is not a wholly new policy document but it does update and revise national planning policy across a number of topic areas.
10. Officers have carefully analysed the differences between the 2019 and 2021 versions of the NPPF, specifically those sections of the NPPF which are most relevant to the EMERGE planning decision including the presumption in favour of sustainable development, greenhouse gas emissions and climate change, biodiversity and Green Belt. This analysis has concluded that the changes made within the 2021 NPPF are minor in nature and do not affect the planning balance set out within the conclusions section of the original report.

Net Zero Strategy: Build Back Greener

11. On the 19th October 2021 the Government published its Net Zero Strategy. The Strategy sets out policies and proposals for decarbonising all sectors of the UK economy and cutting greenhouse gas emissions to reach the overall target of achieving net zero emissions by 2050. The strategy confirms that emissions from the waste industry must decarbonise to achieve the Net Zero target.
12. The Strategy builds on existing Government policy to identify decarbonisation pathways aimed at keeping the UK on track to deliver Net Zero by 2050. Specific policies and proposals are set out for each sector and cross-cutting actions across the economy to support the transition to a net zero economy. The sections in relation to waste management and energy generation are particularly relevant to the EMERGE planning decision.
13. In terms of waste management, the key measures set out within the Strategy to decarbonise the waste sector are:
 - a. The near elimination of biodegradable municipal waste to landfill from 2028.
 - b. Separate food waste collections for all households in England from 2025.
 - c. An increase in municipal recycling rates to 65% and to send no more than 10% of municipal waste to landfill by 2035 in accordance with targets set out within the Government's Resources and Waste Strategy.
 - d. A requirement for local authorities to separately collect a core set of materials for recycling, including paper and card, glass, metal, plastic, food waste and household garden waste will be regulated through the Environment Act.
 - e. The implementation of other measures incorporated in the Environment Act including a deposit return scheme for drinks containers and extended producer responsibility including plastic packaging taxes and incentives for producers to use recycled plastics.
 - f. A move to a more circular economy and continue managing waste following the principles of the waste hierarchy but acknowledging that there will continue to be some non-recyclable residual waste which should be treated to recover valuable outputs such as energy.
14. The publication of the Government's Net Zero Strategy builds on the progress which has been made since 1990 in terms of reducing the level of greenhouse gas emissions and has seen the UK waste sector reduce its emissions by 71%. The Strategy pulls its ambitions and direction of travel for future waste management policy from existing policy and legislation which is currently in place.
15. It is considered that the policy direction within the Government's Net Zero Strategy, which builds on current waste and energy policies insofar that they

relate to energy from waste does not propose major policy reforms in the sector. The EMERGE planning decision was taken with full reference to the most recently published and up to date waste and energy policies specific to the sectors with these matters being discussed in some detail in paragraphs 228-309 and 382-397 of the original report and also a detailed analysis of the level of greenhouse gas emissions, their climate change emissions and how the facility would contribute towards meeting the Net Zero policy objective within paragraphs 310-381 of the original report. It is concluded that the EMERGE decision continues to be consistent with Net Zero objectives including the policies set out within this latest Net Zero Strategy.

The Environment Act 2021

16. The Environment Act was enacted into law on the 9th November 2021 and therefore postdates the EMERGE June Committee date.
17. Although post-dating the EMERGE decision, the planning appraisal of the development referenced the draft legislation in the Environment Bill, specifically the measures to introduce the extended producer responsibility for waste, more consistent recycling collections including weekly separate food waste collection and the reduction of plastic content in residual waste by phasing out non-recyclable plastic in the wider economy, a move to a more circular economy and commitments to enhancing biodiversity within development. Most of the provisions in the Environment Act require the enactment of secondary legislation to bring them into effect.
18. Since the EMERGE decision was informed by the policy commitments incorporated within the Environment Bill and the enactment of this Bill into law through the Environment Act 2021 did not involve significant modifications to the draft legislation, it is concluded that the enactment of the Bill into law does not alter the original assessment of the planning merits considered by Committee in June 2021.

Publication of draft Nottinghamshire and Nottingham Joint Waste Local Plan

19. NPPF paragraph 47 confirms that planning law requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. The current adopted development plan remains as set out in paragraph 224 of the original report.
20. NPPF paragraph 48 advises that local planning authorities may give weight to relevant policies in emerging plans according to:
 - (a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
 - (b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and

- (c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).
21. NPPF paragraph 50 confirms that the refusal of planning permission on grounds that a development may not comply with a draft plan which has not been submitted for examination will seldom be justified, and that if planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process.
 22. The original report did not reference/give consideration to the emerging policies of the draft new Nottinghamshire and Nottingham Waste Local Plan as it had not been published at the time the application was considered by Committee in June 2021. The situation has now moved forward following the publication of the new draft Waste Local Plan which was issued for consultation on 7th February 2022 (the consultation period running until 4th April 2022).
 23. The draft Waste Local Plan incorporates an appraisal of anticipated waste arisings and need for additional waste management capacity in the plan area, and strategic policies to ensure that future waste arisings are treated in accordance with the waste hierarchy and developed in appropriate locations across the plan area. The draft plan also incorporates development management policies aimed at protecting local amenity and the built, natural and historic environment.
 24. As set out above, the NPPF incorporates clear guidance regarding the weight that should be given to policies in emerging development plans when making planning decisions.
 25. Since the new draft Waste Local Plan is at an early stage of preparation having not completed its first round of public consultation, it is concluded that very limited weight should be given to the policies of the new draft plan. This approach is consistent with NPPF Paragraph 48(a) and the approach set out in the original report to committee in June 2021 at paragraph 225.
 26. In terms of the determination of planning applications for waste development in the Nottinghamshire area, the adopted Nottinghamshire and Nottingham Waste Core Strategy continues to be the most relevant part of the development plan to assess the merits of the EMERGE planning application against. The original committee report provides this detailed policy appraisal.

Nottinghamshire and Nottingham Waste Needs Assessment

27. As part of the evidence base to inform the preparation of the Nottinghamshire and Nottingham new Joint Waste Local Plan, AECOM Consultancy were commissioned to prepare a Waste Needs Assessment. The findings of the AECOM Waste Needs Assessment are set out within a report which has been published alongside the draft Plan and is available on the Nottinghamshire County Council website by using the following link:

28. The need for new waste management capacity was a material consideration in the assessment of the EMERGE planning application. The original report to committee provided a detailed appraisal of the level of need for new energy recovery capacity within paragraphs 246-282, drawing on a variety of waste data including:
- a. Chapter 4 of the adopted Nottinghamshire and Nottingham Waste Core Strategy which incorporates data setting out the levels of waste produced within the plan area and the availability of facilities to process this waste including projections of waste arisings in future years up to end of the plan period in 2031 and the quantity of waste management capacity that is forecast to be required to treat this waste over this period.
 - b. The Nottinghamshire and Nottingham Waste Local Plan Annual Monitoring Report (1st April – 31st March 2019) which identifies the most recent published data on waste arisings and waste treatment within the plan area.
 - c. Data supplied in support of the planning application which references the published data and seeks to re-appraise the levels of waste arisings against current/future projected levels of recycling performance to calculate levels of capacity shortfall/need.
29. Paragraph 273 of the original report acknowledged that:
- ‘forecasting future waste management needs is a complex process involving many variables and uncertainties in terms of predicting future behaviour, the level of waste arisings, future legislative obligations, changes in recycling rates, when infrastructure projects are likely to come online, and how much waste they will divert from landfill. These factors result in significant variances in the results identified through waste modelling. The complexities and uncertainties of forecasting future waste management requirements are acknowledged within the NPPW which cautions against the use of spurious precision in assessing quantities of new capacity required.’*
30. The overall conclusion reached in the original committee report regarding need was that there was residual waste capacity shortfall within the Nottinghamshire and Nottingham area, with the level of this shortfall projected to be in the range of 294,000tpa and 562,526tpa in 2038 and that the shortfall in residual waste processing capacity broadly equates to the capacity proposed within the EMERGE facility.
31. In terms of policy compliance, the original committee report referenced Nottinghamshire and Nottingham Waste Core Strategy Policy WCS3 which seeks to ensure the level of waste management capacity is broadly equivalent to the amount of waste produced in the plan area, concluding that the development was supported by Policy WCS3, but acknowledging that there were some uncertainties regarding the precise level of waste requiring treatment

and thus giving moderate beneficial weight in the planning balance in terms of compliance with Policy WCS3 rather than substantial beneficial weight.

32. The committee report acknowledged that if the EMERGE facility was shown to exceed the residual waste management shortfall of Nottinghamshire and Nottingham it would look to import waste from outside the plan area. The development was therefore assessed against Nottinghamshire and Nottingham Waste Core Strategy Policy WCS12 (Managing non-local waste) which provides the policy framework for assessing developments which are likely to manage waste originating from outside the plan area. Since the evidence in front of the Council demonstrated that there were shortfalls in both local, regional and national residual waste management recovery capacity which the EMERGE facility could assist in reducing and by doing this the facility would reduce the UK's dependence on landfill disposal, it was concluded that the management of this waste within the EMERGE would result in a significant contribution to the movement of waste up the waste hierarchy as well as providing a source of low carbon energy and therefore was supported by Policy WCS12 criteria a and c.
33. The need for additional waste management capacity to address identified shortfalls in residual waste management recovery capacity within Nottinghamshire and Nottingham as well as regional and national shortfalls was also identified as one of five benefits derived from the development which contributed to the demonstration of 'very special circumstances' to justify inappropriate development in the Green Belt.
34. Since need was a material consideration in the assessment of the original planning application, the AECOM Waste Needs Assessment report would have been referenced in the original policy assessment had it been available when the original committee report was published in June 2021. Because of this, officers have carefully reappraised the need for the EMERGE in light of the AECOM report. The conclusions of this assessment are set out below.
35. The AECOM report sets out information on the current level of waste arisings and forecasts anticipated future growth for each of the main waste streams. The assessment then looks at existing waste management capacity within the plan area and makes specific recommendations as to whether additional facilities are likely to be needed using a series of assumptions to forecast the quantity of waste likely to require treatment up to the year 2038 (the end of the plan period). These assumptions include population growth, increased economic activity, the quantity of waste produced by householders and business, and appraisals of different levels of recycling performance in terms of the quantity of waste requiring treatment.
36. The AECOM Waste Needs Assessment identifies a 'preferred scenario' to calculate the quantity of waste requiring treatment in future years. The consultations and subsequent examination of the new Waste Local Plan will review the projections and assumptions which underpin this 'preferred scenario' with this process having potential to result in a different projection scenario to that set out within the AECOM report. Paragraph 5.2 of the draft Waste Local Plan therefore confirms that the evidence base within the AECOM Waste Needs

Assessment will continue to be reviewed and updated at later stages if relevant new information becomes available.

37. In terms of the need for energy recovery capacity up to 2038 the preferred scenario in the AECOM report is premised on projecting forward assumptions that no new waste management facilities will be built, local authority waste will reduce per household along a 'medium trajectory' and commercial and industrial waste will increase along a medium trajectory throughout the assessment period. Based on this preferred scenario of high recycling rates it is projected that there would be an over-supply of recovery capacity of 35,378 tonnes per annum (tpa) in 2038. However, the AECOM report also identifies that if recycling was not to increase to a high level as projected there would be a shortfall of recovery capacity in the area of 212,140tpa.
38. It can be seen from the above that there are differences between the assessment of capacity and shortfall set out in the AECOM Waste Needs Assessment, the waste assessment included with the applicant's submission and the evaluation set out in the original report in paragraphs 246-282.
39. Officers have closely examined the AECOM Waste Needs Assessment report against the data referenced in the EMERGE committee report to explore why the modelling identifies differing levels of waste needs. This process shows that a change to the assumptions used in each waste model in terms of population growth, the amount of waste households and businesses produce including how this will change in future years, and differing levels of future recycling performance significantly impact on the projected quantity of waste requiring treatment through either recycling or recovery/disposal. The models also utilise different assumptions regarding the future use of landfill, different data sets for commercial and industrial waste arisings and treatment, the potential use of a proportion of construction, demolition and excavation waste within a recovery facility, and the current available level of treatment capacity. The different scenarios and assumptions used within the AECOM report have not been tested through local plan consultation and examination process and therefore may be subject to change. However, the different assumptions that have been used do result in significant changes in the forecasted results. In particular:
 - a. The AECOM waste model incorporates future projections for low, medium and high levels of recycling performance showing that this would have a strong influence on the need for new energy recovery capacity with their assessment of capacity shortfall in 2038 (which is also affected by other factors detailed below) ranging from a 35,378tpa surplus to a 212,140tpa shortfall: a difference of 247,518tpa.
 - b. The AECOM model assumes 10% of the local authority and commercial/industrial waste streams will be disposed to landfill, whereas the model that informed the needs assessment supporting the planning application assumed all this waste would be treated within energy recovery facilities. Officers consider a 10% reliance on landfill to be high having regard to current practice where only 5.5% of local authority collected waste in Nottinghamshire was disposed to

landfill in 2020/21, in addition to the commitments set out within the draft new Joint Waste Local Plan which seek to continue to divert more than 95% of local authority waste from landfill. It should also be borne in mind that there is now only one operational landfill site in the county, and this only presently takes small amounts of non-recyclable waste from household waste recycling centres. If the 10% of waste projected to be disposed to landfill in the AECOM model was treated in a recovery facility this would increase the level of need for additional energy recovery capacity by 258,412tpa in 2019 and 148,157tpa in 2038 whilst also ensuring that this waste is managed at a higher level in the waste hierarchy.

- c. Unlike waste collected by local authorities, commercial and industrial waste collections are not audited and therefore calculating the level of waste produced and the proportion of this waste which is recycled is reliant on estimates. The needs assessment which supports the planning application and the AECOM report utilise different methodologies for estimating the quantity of commercial and industrial waste collected and recycled.
- The AECOM data estimates 903,000 tonnes of commercial and industrial waste was collected in 2019 and this will increase to 988,000 tonnes in 2038. The AECOM report assumes 75% of this waste would be recycled in 2038 leaving 247,000 tonnes, of which it assumes 10% will be landfilled (99,000 tonnes) with the remainder being managed through energy from waste (148,000 tonnes).
 - The planning application data estimates 530,000 tonnes of commercial and industrial waste was collected in 2018 and considers this will grow to 664,000 tonnes in 2038 with a recycling rate of 52% in 2018 rising to 67.5% in 2038. A 67.5% recycling rate in 2038 would leave 215,800 tonnes requiring disposal which the applicant indicates would be through energy from waste.

The difference between the AECOM and planning application data in terms of the amount of commercial and industrial waste projected to require treatment by energy recovery in 2038 is 67,800 tonnes, i.e. the planning application data estimates that an additional 67,800 tonnes of commercial and industrial waste would require treatment by energy recovery compared to the AECOM data. It is noted that much of this difference between the two models is because the AECOM calculations assume 10% of the waste stream will be disposed to landfill.

- d. The AECOM report assumes that construction, demolition and excavation waste streams are either recycled or landfilled with none of this material being utilised in energy recovery, whereas the waste appraisal which informed the planning decision assumed that 5% of this material is suitable for energy recovery equating to 57,500tpa.

- e. The AECOM and planning application waste needs assessments reach different conclusions regarding the level of existing operational energy recovery capacity within the Nottinghamshire and Nottingham area. The AECOM reports calculates the existing capacity to be 280,770tpa provided across three facilities consisting of:
- Eastcroft Energy From Waste (EFW) Facility in Nottingham which has an operating capacity of 188,213tpa and which is licensed to process mixed municipal and commercial waste.
 - Widmerpool Biomass Plant on the A46 which has an operating capacity of 38,793tpa and which is licensed to process wood waste only.
 - J.G Pears north of Newark which has an operating capacity of 53,764tpa and which is licensed to process animal by-products only.
40. The waste appraisal which informed the planning decision did not take account of the recovery capacity at Widmerpool and J.G Pears on the basis that these facilities are not licensed to accept mixed municipal and commercial waste streams and therefore are only capable of processing a small and specialist proportion of these waste streams. The net level of existing mixed municipal and commercial processing capacity is therefore potentially 92,557tpa lower than the figure identified in the AECOM report, equating to only the 188,213tpa operating capacity of the Eastcroft EFW Facility.
41. The overall conclusion of the AECOM Waste Needs Assessment is premised on the assumptions and scenarios inbuilt in the AECOM model being delivered in future years. In the preferred high recycling scenario, incorporated in the AECOM model, it is projected that there is currently a 71,430tpa shortfall in energy recovery capacity, but this capacity gap shortfall is predicted to become a 35,378tpa capacity surplus in 2038. However, the assumptions which underpin the AECOM preferred scenario model have not yet been tested through consultation and examination and therefore may be subject to change. It is also acknowledged that the AECOM model does not use like for like waste data comparisons to the models which informed the assessment of the planning application.
42. Nottinghamshire and Nottingham Waste Core Strategy Policy WCS3 seeks to provide sufficient waste management capacity to manage a broadly equivalent amount of waste to that produced within the area throughout the plan period of the adopted Waste Core Strategy up to 2031. Whilst not seeking to undermine the waste projections and aspirations for high recycling performance set out within the AECOM Waste Needs Assessment, the current levels of waste production and management and specifically the levels of recycling performance indicate that there is a clear shortfall of recovery capacity in the plan area and that this is likely to continue during the Waste Core Strategy plan period. The EMERGE facility would address these shortfalls and in so doing would ensure that polices within the adopted development plan are complied with.

43. Paragraph 2 of the National Planning Policy for Waste (NPPW) readily acknowledges that waste modelling is not an exact science and cautions against the use of 'spurious precision' when calculating the level of new capacity required. The factors identified in paragraph 39a-e identify there are potential margins of theoretical error within the accuracy of the AECOM waste needs model which mean that the predicted levels of energy recovery capacity within Nottinghamshire and Nottingham could be significantly different to the levels identified within the preferred scenario with the level of need potentially significantly higher.
44. The original appraisal which assessed the level of need for new energy recovery capacity to serve waste arisings within Nottinghamshire and Nottingham, identified a shortfall of recovery capacity within a range between 294,000tpa and 562,526tpa, but may have been as high as 900,000tpa in a worse-case scenario. This level of need informs the conclusion reached within paragraph 282 of the original committee report which is set out below:

'Taking all the evidence before the Council into account, the waste management benefits of the scheme and compliance with WCS Policy WCS3 are an important consideration in the assessment of this planning application. Whilst it is clear that there is a shortfall of residual waste management recovery capacity within Nottinghamshire and Nottingham which is calculated to broadly equate to the operational capacity of the EMERGE facility, it is acknowledged that the projections of future residual waste requiring treatment in the plan area identify some scenarios where the capacity of the EMERGE facility potentially exceeds Nottinghamshire and Nottingham's level of need. Since WCS Policy WCS3 seeks to ensure the level of waste management capacity is broadly equivalent to the amount of waste produced in the plan area, the uncertainties regarding the precise level of waste requiring treatment, particularly in future years, means that the need for the facility in the context of WCS Policy WCS3 should be given moderate beneficial weight in the planning balance, rather than substantial weight'.

45. Paragraph 282 of the original committee report acknowledges the uncertainties regarding the precise level of waste requiring treatment, particularly in future years, and as a result tempers the level of policy support in the context of WCS Policy WCS3 from substantial policy support to moderate policy support in the overall planning balance. Furthermore, the original committee report acknowledges that if the capacity of the EMERGE facility was found to exceed the level of residual waste management shortfall of the Nottinghamshire and Nottingham area it would manage waste from outside the plan area, assisting in addressing shortfalls in regional and national residual waste management recovery capacity and reducing levels of landfill disposal consistent with WCS Policy WCS12.
46. Whilst acknowledging that the AECOM report further confirms that there is a level of uncertainty regarding the exact level of any capacity shortfall in future years, the uncertainties associated with forecasting future waste arisings and treatment options and the cautions expressed in the NPPW regarding the use of

spurious precision in waste forecasting mean that the conclusions of the AECOM report do not undermine the original conclusion reached in terms of need for additional energy recovery capacity to treat Nottingham and Nottinghamshire's waste and policy compliance with WCS Policy WCS3.

47. In terms of the implications to the assessment of compliance with Green Belt policy, because the conclusions reached regarding the level of need for the EMERGE development are not materially changed as a result of the AECOM Waste Needs Assessment, the conclusions reached in the Green Belt assessment in terms of a need for the facility representing a 'very special circumstance' to justify the development proceeding in the Green Belt have not been changed.
48. Members are therefore advised that the publication of the AECOM Waste Needs Assessment does not materially change the assessment of need undertaken in connection with the EMERGE planning application or the weight given to the need for the development in the overall planning balance.

Representations received from interested parties after the EMERGE decision was reported to Planning and Rights of Way Committee

49. After the EMERGE planning decision was reported to the Planning and Rights of Way Committee, the Council received four representations from interested parties raising further observations in connection with the planning application and the Council's planning policy assessment of the development. The areas of concern related to the climate change implications of energy from waste, compliance with Net Zero and the enactment of the Sixth Carbon Budget into law, the publication of a report by United Kingdom Without Incineration concerning the assessment of greenhouse gas emissions when assessing waste incinerator developments, and a legal challenge mounted by the applicants concerning the continued use of coal fired power stations in the Netherlands. Officers have reviewed these representations and are satisfied they raise no new issues of any substance which were not considered prior to the resolution to grant or which could result in a different conclusion being reached as to the planning merits of the application.

The Government's consultation on the review of energy National Policy Statements, specifically EN-1: Draft Overarching National Policy Statement for Energy and EN-3: Draft Policy Statement for Renewable Energy Infrastructure.

50. Between the 6th September and 29th November 2021 the Government undertook a consultation in connection with a suite of revised energy National Policy Statements seeking to update and replace the existing policy documents first designated in 2011. Whilst the National Energy Policy Statements are directed at large scale nationally significant energy infrastructure, which in the case of Energy for Waste relates to facilities generating more than 50MW of electricity which the EMERGE does not exceed, the underlying principles of the policy are considered relevant to the EMERGE decision and the current National Energy Policy was referenced in the original committee report.

51. In terms of the status of the current consultation documents, the Government's consultation clearly states that while the review is undertaken the current suite of National Energy Policy Statements remain relevant government policy and have effect for the purposes of the 2008 Planning Act and continue to provide a proper basis on which applications can be prepared, the Planning Inspectorate can examine, and the Secretary of State can make decisions on, (ref: Transitional Arrangements – Page 11)
52. Since the original committee report made reference to Overarching National Policy Statement for Energy (EN-1) the policy advice which informed the EMERGE planning decision in the context of national energy policy continues to be the proper basis against which decisions should be made and very limited weight should be given to the policies of the new draft policy.
53. Notwithstanding this conclusion, officers have appraised the draft National Energy Policy Statements to consider their implications to the EMERGE decision. This appraisal concludes that there has only been limited changes to the policy sections relating to biomass and Energy from Waste to generally update references to legislation, renewable support schemes and cross references. Specifically, the policy statements identify a continuing role for Energy from Waste as part of a mix of energy generation and there is not a requirement for new energy from waste facilities to incorporate carbon capture and storage but facilities which exceed 300MW production threshold are required to demonstrate that the installation of carbon capture and storage is feasible. Also, all developments are required to show that the possibilities for combined heat and power have been fully explored as part of the application process. The EMERGE planning submission was supported by this information.

Conclusion

54. At the 22nd June 2021 Planning and Rights of Way Committee Members resolved:
 - I. That subject to the application being referred to the Secretary of State in accordance with the Town and Country Planning (Consultation) (England) Direction 2009 and the Secretary of State deciding not to call in the application for his own determination, the Corporate Director – Place be instructed to enter into a legal agreement under section 106 of the Town and Country Planning Act 1990 to secure the retention of the Ratcliffe on Soar Power Station railhead and connecting rail link to the mainline railway for the duration of the operational life of the EMERGE facility and to regulate lorry routeing.
 - II. That subject to the completion of the legal agreement and within three months of receiving notification from the Secretary of State that he does not wish to call in the planning application for determination, or another date which may be agreed by the Team Manager Development Management in consultation with the Chairman and the Vice Chairman, the Corporate Director – Place be authorised to grant planning permission for the above development subject to the conditions set out in

Appendix 1 of the report. In the event that the legal agreement is not signed before the 22 September 2021, or within any subsequent extension of decision time agreed with the Waste Planning Authority, the Corporate Director – Place be authorised to refuse planning permission on the grounds that the development fails to provide for the measures identified in the Heads of Terms of the Section 106 legal agreement within a reasonable period of time.

55. Members are requested to note the contents of this report and confirm that they are content for officers to proceed with formally issuing the decision notice once the Section 106 agreement controlling HGV movements and securing the retention of the railhead, which is in an agreed form and at the time this report was published is being signed by the applicant, has been completed.
56. Although not provided for under the Town and Country Planning (Consultation) (England) Direction 2009, officers will make further contact with the Secretary of State for Levelling Up, Housing, and Communities to update him that the matter has been reconsidered by Committee in light of this updated report, and to seek confirmation that the application does not need to be referred back to him under the Direction; alternatively that he is content that he does not need to reconsider the same; and/or that he does not wish to call the application in for his determination.

Other Options Considered

57. The original report to committee acknowledged that the report relates to the determination of a planning application. The County Council remains under a duty to consider the planning application as submitted.
58. With respect to Schedule 4 of the EIA Regulations 2017 and the need to describe reasonable alternatives, these details were set out within paragraphs 663-669 of the original report to committee.

Statutory and Policy Implications

59. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, the safeguarding of children and adults at risk, service users, smarter working, and sustainability and the environment, and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.
60. Crime and Disorder Implications: It remains the case that the proposed EMERGE facility would be developed within the boundaries of the existing Ratcliffe on Soar Power Station site which is secured by an electrical security fence, benefits from external lighting and remotely monitored CCTV. The

facility would be staffed on a 24-hour basis with controlled access at the gateway.

61. Data Protection and Information Governance: Any member of the public who has made representations on this application has been informed that a copy of their representation, including their name and address, is publicly available and is retained for the period of the application and for a relevant period thereafter.
62. Financial Implications: The recommendation to grant planning permission is provided on the basis that the applicant would be expected to enter into a Section 106 legal agreement to regulate the retention of the existing railhead facility and connecting rail line and controls in relation to lorry routeing. The applicant has covered all the reasonable legal costs incurred by the County Council during the drafting and execution of the required legal agreement.
63. Human Rights Implications: The relevant issues arising out of consideration of the Human Rights Act have already been assessed in accordance with the Council's adopted protocol and it is considered that these have not changed. Rights under Article 8 and Article 1 of the First Protocol may be affected.
64. The main Convention rights relevant when considering planning proposals are Article 1 of the First Protocol, which guarantees the right of peaceful enjoyment of possessions, and Article 8 which guarantees a right to respect for private and family life. Article 8 also provides that there shall be no interference by a public authority with the exercise of this right except in the interests of national security, public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or the protection of the freedom of others.
65. A grant of planning permission has potential to affect these rights, but they are qualified rights as noted above. In assessing that balance when making a decision, the Waste Planning Authority may also take into account that the amenity of local residents could be adequately safeguarded by planning conditions. Indeed, depending on the conclusion reached as to the level of efficacy of the safeguards, it may be concluded that there is a minimal interference with Convention rights in any event.
66. In this instance it is not considered that there would be any disproportionate interference with the human rights of nearby residents. On that basis it is considered that the wider benefits of the development in so far that it provides a modern waste management facility which generates low-carbon energy with associated benefits should take precedence over the limited impacts (which are limited and mitigated through the planning conditions) on the Convention rights of private individuals. It is considered that this update report does not change this assessment and its conclusions.
67. Accordingly, the grant of planning permission for this development would be in accordance with Convention rights and be entirely lawful.

68. Public Sector Equality Duty Implications: The report and its consideration of the planning application has been undertaken in compliance with the Public Sector Equality duty. Potential direct, indirect and cumulative impacts from the proposal have been considered equally to all nearby receptors and resulting from this there are no identified impacts to persons with a protected characteristic.
69. Implications for Sustainability and the Environment: Implications to sustainability and the environment were considered within the original committee report wherein it was concluded that the development would positively assist with the sustainable management of waste by diverting residual waste from landfill disposal and managing it within a recovery facility and generating low carbon energy which would have a positive impact in terms of climate change effects. Balanced against this were the limited impact to the environment, notably in terms of the visual effects, heritage effects and transport levels. The report considered these issues, balancing their merits as part of the recommendation to support a grant of planning permission. It is considered that this update report does not change this assessment and its conclusions.
70. There are no safeguarding of children and adults at risk implications, implications for County Council service users, or human resource implications.

Statement of Positive and Proactive Engagement

71. In determining this application, the Waste Planning Authority has worked positively and proactively with the applicant by entering into pre-application discussions; encouraging pre-application community engagement which the applicant acceded to by holding pre-application exhibitions and distribution of newsletters, and the scoping of the application. The proposals and the content of the Environmental Statement have been assessed against relevant Development Plan policies, the National Planning Policy Framework, including the accompanying technical guidance and European Regulations. The Waste Planning Authority has identified all material considerations; forwarded consultation responses that may have been received in a timely manner; considered any valid representations received; liaised with consultees to resolve issues and progressed towards a timely determination of the application. Issues of concern have been raised with the applicant and have been addressed through negotiation and the submission of supplementary information through the Regulation 25 submission. The applicant has been given advance sight of the draft planning conditions and the Waste Planning Authority has also engaged positively in the agreement of the Section 106 legal agreement. This approach has been in accordance with the requirement set out in the National Planning Policy Framework.

RECOMMENDATION

72. Members are requested to:

- a. Consider the matters set out in the report;
- b. Affirm their previous resolution to grant planning permission for the development; and
- c. Confirm that they are content for officers to proceed with formally issuing the decision notice, in accordance with the previous resolution.

ADRIAN SMITH

Corporate Director – Place

Constitutional Comments [RHC 23/02/2022]

Planning & Rights of Way Committee is the appropriate body to consider the contents of this report by virtue of its terms of reference.

Financial Comments [RWK 28/02/2022]

There are no specific financial implications arising directly from the report.

Background Papers Available for Inspection

The application file is available for public inspection by virtue of the Local Government (Access to Information) Act 1985 and you can view them at: www.nottinghamshire.gov.uk/planningsearch/plandisp.aspx?AppNo=ES/4154

Electoral Division(s) and Member(s) Affected

Leake & Ruddington

Councillor Reg Adair and Councillor Matt Barney

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