

**14 November 2013****Agenda Item: 7****REPORT OF THE CORPORATE DIRECTOR FOR POLICY, PLANNING AND  
CORPORATE SERVICES****WASTE CORE STRATEGY EXAMINATION – RECEIPT OF INSPECTOR'S  
REPORT AND ADOPTION****Purpose of the Report**

1. To inform Committee of the outcome of the independent examination into the soundness of the Nottinghamshire and Nottingham Waste Core Strategy and to outline the formal adoption process.

**Information and Advice**

2. The Nottinghamshire and Nottingham Waste Core Strategy has been prepared jointly with Nottingham City Council. It is the first in a series of new waste policy documents which will progressively replace the County Council's existing joint Waste Local Plan which was adopted in 2002. When adopted, the Waste Core Strategy will set the strategic direction for all future all proposals for waste development such as recycling plants, energy from waste plants and landfill. Subsequent policies will deal with site allocations and development management issues.
3. In line with European and national legislation and policy, the Waste Core Strategy sets out the overall vision and strategic planning policies for the development of future waste management facilities across Nottinghamshire and Nottingham. Key principles are the need to manage waste according to the 'waste hierarchy' which promotes waste prevention and re-use followed by recycling, recovery and finally disposal; and the 'proximity principle' which seek to ensure that waste is managed at one of the nearest, most appropriate facilities. The strategy therefore seeks to encourage the movement of waste away from landfill with an ambitious target of 70% recycling for all waste by 2025. This is supported by a moderate increase in energy recovery where appropriate, and a reduction in landfill disposal to approximately 10% or less of all waste arisings.
4. The Waste Core Strategy identifies broad locations where future development is likely to be acceptable but does not allocate any specific sites as this will be carried out in separate, supporting, policies that will be subject to further consultation and public examination. In broad terms facilities for the sorting, processing and treatment of waste are supported in, or close to, the main urban

areas of Nottingham, Mansfield/Ashfield, Newark, Worksop and Retford. Within these broad locations development will be focused on existing or proposed employment sites and other derelict or previously developed land in order to minimise environmental impacts. Limited provision is also made for small-scale recycling or recovery facilities in rural locations where these can meet a specific local need; especially where this would allow for the re-use of existing farm or forestry buildings.

5. Although the Waste Core Strategy aims to minimise future waste disposal as far as possible, it is recognised that there will still be a need for the disposal of residual waste which cannot be further recycled or recovered. Where there is a proven need for disposal, the strategy promotes a sequential approach which favours the extension of existing sites where this would be environmentally acceptable, followed by the restoration and/or re-working of old colliery tips and other mineral voids.
6. The Waste Core Strategy has been through a number of stages of consultation and was submitted to the Secretary of State for Communities and Local Government on 14<sup>th</sup> January 2013. The Planning Inspectorate subsequently appointed Inspector Susan Holland to undertake the independent examination of the Core Strategy to determine whether or not the Strategy is legally and procedurally sound. This included public hearing sessions held at the National Water Sports Centre between 8<sup>th</sup> May and 17<sup>th</sup> May 2013. These resulted in three main modifications to the Waste Core Strategy in relation to Green Belt policy and clarifying the basis of the plan estimates. These modifications were approved by this Committee on 20<sup>th</sup> June 2013 and subsequently advertised for public consultation. A number of other minor modifications were also made for reasons of clarity which did not need to be advertised or consulted on but were published at the same time for information. The draft Core Strategy and subsequent modifications are available on the Council's website at [www.nottinghamshire.gov.uk/wastehaveyoursay](http://www.nottinghamshire.gov.uk/wastehaveyoursay).
7. Shortly after the hearing sessions, the Government published a new Waste Management Plan for England, and updated national waste planning policy, for consultation. These were reported to this Committee on 10<sup>th</sup> October 2013. In light of this national consultation the Inspector invited those who had previously made representations to submit further comments on possible implications for the Waste Core Strategy. Two additional responses were received at this stage and passed to the Inspector.
8. The Inspector's final report was received on 7<sup>th</sup> October 2013 and concludes that the Waste Core Strategy is sound and provides an appropriate basis for the planning of the area over the next 15 years, subject to the inclusion of the main modifications referred to above. A copy of the Inspector's Report is appended to this report and has been published on the Council's website and made available for inspection. All those who made formal representations, or who have asked to be kept informed, have been notified of separately.
9. The two Councils can now proceed to adopt the Waste Core Strategy subject to the formal approval of both waste planning authorities. Members will be asked to

approve the adoption of the Nottinghamshire and Nottingham Waste Core Strategy at the County Council meeting on 21<sup>st</sup> November 2013. Similar approval will be sought at the City Council meeting on 9<sup>th</sup> December 2013. Subject to these final approvals the Waste Core Strategy will be adopted on 10<sup>th</sup> December 2013. There is then a six week period during which anyone aggrieved by the adoption of the Waste Core Strategy can make a legal challenge on procedural grounds.

10. For reasons of clarity the final Waste Core Strategy document, when printed, will be re-titled as the Nottinghamshire and Nottingham Replacement Waste Local Plan Part 1: Waste Core Strategy. The policies within the Plan will also be re-numbered to accommodate the inclusion of the model policy on the presumption in favour of sustainable development. This will be numbered as Policy WCS1 and all other policies will be re-numbered accordingly.
11. Following adoption of the Waste Core Strategy, work will continue with the preparation of the site specific and development management policies development plan document which will form Part 2 of the Replacement Waste Local Plan. This will again be subject to several stages of public consultation which are due to start early next year.

### **Other Options Considered**

12. The County Council has a statutory duty to prepare and maintain an up to date Waste Local Plan. The only alternative would be not to adopt the Waste Core Strategy which would result in policies becoming out of date and the lack of an appropriate local policy framework for future development decisions.

### **Reason/s for Recommendation/s**

13. The re-naming of the Waste Core Strategy to the 'Nottinghamshire and Nottingham Replacement Waste Local Plan Part 1: Waste Core Strategy' provides clarity and brings it in line with current Government guidance.

### **Statutory and Policy Implications**

14. This report has been compiled after consideration of implications in respect of finance, the public sector equality duty, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

### **Financial Implications**

15. Adoption of the Waste Core Strategy will require printed copies of the final document to be made available for local councils and public reference and/or purchase. A Waste Local Plan budget is in place to meet these costs.

### **Implications for Sustainability and the Environment**

16. Production of the Waste Core Strategy is a statutory requirement and the Council could be subject to European Union fines if they do not have an up to date Waste Plan.

## **RECOMMENDATION/S**

- 1) That the progress on the Waste Core Strategy is noted; and
- 2) That Committee approve the re-naming of the Waste Core Strategy to the 'Nottinghamshire and Nottingham Replacement Waste Local Plan Part 1: Waste Core Strategy'.

**Jayne Francis-Ward**

**Corporate Director, Policy, Planning and Corporate Services**

**For any enquiries about this report please contact: Lisa Bell, Planning Policy Team Manager, 01159 97 74547**

### **Constitutional Comments (SLB 31/10/13)**

17. Environment and Sustainability Committee is the appropriate body to consider the content of this report.

### **Financial Comments (SEM 23/10/13)**

18. The financial implications are set out in the report.

### **Background Papers and Published Documents**

None.

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

### **Electoral Division(s) and Member(s) Affected**

All.

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# **Report to Nottinghamshire County Council and Nottingham City Council**

**by Susan Holland MA DipTP MRTPI DipPollCon**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Date 7 October 2013**

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PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)

SECTION 20

## **REPORT ON THE EXAMINATION INTO THE NOTTINGHAMSHIRE AND NOTTINGHAM WASTE CORE STRATEGY**

Document submitted for examination on 14 January 2013

Examination hearings held between 8 and 17 May 2013

File Ref: 648



## Abbreviations Used in this Report

¶	paragraph
AD	Anaerobic Digestion
AM	Additional Modification
C&I	Commercial and Industrial (waste)
CDE	Construction, Demolition and Excavation (waste)
CHP	Combined Heat and Power
CS	Core Strategy
DEFRA	Department for the Environment, Food and Rural Affairs
DPD	Development Plan Document
EA	Environment Agency
EfW	Energy from Waste
FBA	Furnace Bottom Ash
FPC	Further Proposed Change
LAC	Local Authority-collected (waste)
LDS	Local Development Scheme
LP	Local Plan
MM	Main Modification
MSW	Municipal Solid Waste
mtpa	million tonnes per annum
MWSS	Municipal Waste Spatial Strategy
N/N	Nottinghamshire and Nottingham
NPPF	National Planning Policy Framework ('The Framework')
NWMP	National Waste Management Plan
PFA	Pulverised Fuel Ash
PHM	Post-Hearing Modification
PPS	Planning Policy Statement
RDF	Refuse-derived fuel
RSS	Regional Spatial Strategy
RTAB	Regional Technical Advisory Body (for waste)
SA	Sustainability Appraisal
SCI	Statement of Community Involvement
SWAG	Strategic Waste Advisory Group
WCA	Waste Collection Authority
WCS	Waste Core Strategy
WPA	Waste Planning Authority

## Non-Technical Summary

This report concludes that the Nottinghamshire & Nottingham Waste Core Strategy provides an appropriate basis for the planning of the area over the next 15 years providing a number of modifications are made to the plan. The Councils have specifically requested that I recommend any main modifications necessary to enable them to adopt the Plan. The main modifications are represented by specific Proposed Changes and Further Proposed Changes put forward by the Councils. Public consultation was required, and has been carried out between June-July 2013. Further public consultation on the draft National Waste Management Plan and on the draft revised PPS10 – Planning for Sustainable Waste Development was carried out in August 2013.

The main modifications can be summarised as follows:

- **MM1:** amendments to Table 1 and to paragraphs 4.25-4.35 to clarify the statistics on which the WCS capacity requirements are based;
- **MM2:** amendments to Policy WCS3 to bring it in line with national policy on the Green Belt;
- **MM3:** amendments to Policy WCS4 to bring it in line with national policy on the Green Belt.
- **MM4:** inclusion of Policy WCSSD as the Government's Model Policy.

(Other modifications put forward by the Councils, some arising out of the discussions at the Examination Hearings, are referred to in the Report. Whilst these represent minor modifications which neither individually nor collectively amount to Main Modifications on which public consultation would have been necessary, I commend these particular changes to the Councils in the interests of clarity).

## Introduction

1. This report contains my assessment of the Nottinghamshire & Nottingham Waste Core Strategy<sup>1</sup> in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers whether the Plan is sound and whether it is compliant with the legal requirements. The Report considers first whether the Plan's preparation has complied with the duty to co-operate, in recognition that there is no scope to remedy any failure in that respect. It then considers whether the Plan is compliant with the legal requirements, and whether it is sound. The National Planning Policy Framework (the Framework) at paragraph (¶)182 makes clear that to be sound, a local plan should be positively prepared, justified, effective and consistent with national policy.

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<sup>1</sup> Throughout this Report I shall refer to the document in summary as 'the Plan', 'the Core Strategy' or as 'the WCS'.



2. The starting point for the examination is the assumption that the Councils have submitted what they consider to be a sound plan. The basis for my examination is the submitted draft core strategy (January 2013) which is the same as the document published for consultation in March 2012.
3. In accordance with section 20(7C) of the 2004 Act the Councils requested that I should make any modifications needed to rectify matters that make the Plan unsound/not legally compliant and thus incapable of being adopted. My report deals with the main modifications that are needed to make the Plan sound and legally compliant and they are identified in bold in the report (**MM**). In response to the main matters and issues raised during the course of the Examination, the Councils submitted a Schedule of Further Proposed Changes/Main Modifications in May 2013. A 4-week consultation was carried out on these during June -July 2013. The Main Modifications that go to soundness have therefore been subject to public consultation and, where necessary, Sustainability Appraisal (SA) and I have taken the consultation responses into account in writing this report.
4. Other Further Proposed Changes (FPC) put forward by the Councils represent 'additional modifications' in the terms of the new Section 20 of the 2004 Act<sup>2</sup> as amended by Section 112 of the Localism Act 2011, which came into force on 15 January 2012. These modifications do not go to the main issues of soundness, do not require my endorsement, and can be made by the Authorities on adoption. Having said that, some such modifications are identified in my Report as arising out of the discussions at the Examination Hearings: and I commend these to the Authorities in the interests of clarity
5. In mid-April 2012 the Government published a Model Policy, to be included in all development plan documents (local Plans), to ensure implementation of the presumption in favour of sustainable development included in the Framework. The Model Policy has been incorporated into the Waste Core Strategy as Policy WCSSD, via Proposed Change No.32. The Government has made it clear that it is essential to soundness that the Model Policy be included. Accordingly I recommend the inclusion of Policy WCSSD as Main Modification **MM4**.

## Assessment of the Duty to Co-operate

6. Section 20(5)(c) of the 2004 Act requires that I consider whether the Authorities complied with any duty imposed on them by Section 33A of the 2004 Act in relation to the Plan's preparation. Evidence of the exercise of their duty to co-operate has been submitted to the Examination by the Councils in written form in their *Statement on the Duty to Co-operate* [SD07]; in their *Position Paper on Main Matter 1*; and orally at a dedicated Hearing session.
7. The Duty to Co-operate as set out in section 110 of the Localism Act 2011 requires mutual co-operation on the part of those persons and bodies which

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<sup>2</sup> The Planning and Compulsory Purchase Act 2004.

it prescribes: co-operation to consist of constructive, active and ongoing engagement in any process by means of which activities in subsection (3) are undertaken. These activities include the preparation of development plan documents and other local development documents (including activities that can reasonably be considered to prepare the way for such documents), and activities that support the preparation of such documents *so far as relating to a strategic matter*. Included in the definition, given at subsection (4), of a *strategic matter* is *sustainable development or use of land that has or would have a significant impact on at least two planning areas* (including in particular such development or use *in connection with infrastructure that is strategic*).

8. In relation to planning for waste management and policy there is a well-established background structure of collaboration and co-operation in the former East Midlands Regional Technical Advisory Body (RTAB). In order to meet the new Duty to Co-operate, to prepare for the anticipated revocation of the Regional Strategy (the East Midlands Plan, now revoked), and to assemble the evidence necessary to justify waste development plans and proposals having a strategic element and impact, the work of the former RTAB has been carried forward by the new Strategic Waste Advisory Group (SWAG). This group brings together representatives from each of the Waste Planning Authorities (WPA), the waste industry, the Environment Agency and various environmental bodies. This arrangement has ensured valuable continuity of evidence generation, and its collaborative character has enabled an essential foundation of the new Duty to Co-operate. In addition to its work on the SWAG, Nottinghamshire County Council initiated regular, programmed meetings of WPAs within the East Midlands as the East Midlands Minerals and Waste Policy Officers' Group to share information and discuss areas of common interest.
9. A desk-based review of all neighbouring waste plans was undertaken to identify existing waste management capacity, anticipated shortfalls and key proposals. Meetings on the Core Strategy were also held with individual WPAs, including those in neighbouring parts of South Yorkshire – in Sheffield, Rotherham, Barnsley and Doncaster. Co-operation within SWAG and outside it enabled account to be taken of available treatment capacity, and of cross-boundary movements of waste between WPAs within the East Midlands and beyond the former regional boundary. Contacts were also made further afield, especially in relation to hazardous waste for which the Nottinghamshire and Nottingham (N/N) area includes treatment capacity used by operators in WPAs well beyond the East Midlands: but requires waste disposal capacity outside its own boundaries. On waste imports and exports, the Councils have worked closely with the Environment Agency (EA). In co-operation with the EA the Councils have made efforts to extract from the available data the maximum amount of useful information possible given the limitations of the records and recording systems. Whilst there are current difficulties in extracting information on particular matters - for example arisings of food waste, which are recorded within more than one waste stream and are particularly relevant to the potential for anaerobic digestion – there is no indication that those difficulties have stemmed from lack of co-operation between those parties bound to the Duty. Co-operation may be taken to imply, but is not necessarily synonymous with, agreement:

its essential component is a high degree of engagement, and this has been demonstrated.

10. Nottinghamshire County Council and Nottingham City Council have statutory responsibility as Waste Planning Authority for their respective plan areas. Given their close relationship, and the significant links in terms of waste generation, treatment and disposal between the 2 areas, the Councils have an established history of joint working on waste planning. This is evident in their collaborative production of their joint Waste Core Strategy and in their co-ordinated approach to producing the evidence base and presenting it to the Examination.

#### *Conclusion on the Duty to Co-operate*

11. On the evidence, therefore, I conclude that the Councils have met the duty to co-operate with regard to the Nottinghamshire and Nottingham Waste Core Strategy.

## **Assessment of Soundness**

### **Main Issues**

12. Taking account of all the representations, written evidence and the discussions that took place at the examination hearings I have identified 4 main issues upon which the soundness of the Plan depends.

### **Issue 1 – Whether the Core Strategy deals appropriately with national planning policy for the Green Belt.**

13. The principal urban areas covered by the Core Strategy are the City of Nottingham, with its surrounding built-up areas including Hucknall, Arnold, Beeston, Carlton, Stapleford, West Bridgford and Clifton; and the town of Mansfield together with Sutton-in-Ashfield and Kirkby-in-Ashfield (Mansfield/Ashfield). These urban areas are closely spaced, leaving the intervening rural areas vulnerable to outward urban sprawl and infill development. In consequence, Green Belt designation covers much of the area between Nottingham and Mansfield, and encircles the combined Nottingham built-up area. Within the County of Nottinghamshire, Green Belt extends out to the east, south-east and south, and to the north-west.
14. This arrangement causes some difficulty for the Waste Core Strategy. For reasons of proximity to the urban population which collectively produces most waste, and also in compliance with government guidance at PPS10 on Planning for Sustainable Waste Management which requires that *communities take more responsibility for their own waste*, the Core Strategy at Policy WCS3 – *Broad Locations for Waste Treatment Facilities* supports waste treatment facilities of either large or medium scale *in or close to the built-up areas of Nottingham and Mansfield/Ashfield*. In many cases, a site *close to the built-up area* will be located in the Green Belt. In recognition of this difficulty, draft Policy WCS3 states that *development of facilities within the open countryside and within the Green Belt will be supported only where such locations are justified by a clear local need*.

15. However, this represents a telescoping of national Green Belt policy (now contained in the National Planning Policy Framework), amounting to misinterpretation: prejudging the consideration of waste development proposals against the Framework in such a way as to appear to ignore it altogether. In the implementation of Green Belt policy, the need for a development, the weight to be given to that need, and whether it is capable of outweighing inappropriateness and other harm so as to amount to very special circumstances, are matters to be judged in respect of a specific proposal. In the Green Belt context, support for any form of waste management development should not be stated in such a way as to pre-empt the full Green Belt balancing exercise in the manner of a foregone conclusion.
16. Government policy guidance at PPS10 – *Planning for Sustainable Waste Management* at ¶3 requires planning authorities to *prepare and deliver planning strategies that ... protect green belts but recognise the particular locational needs of some types of waste management facilities ... and ... that these locational needs, together with the wider environmental and economic benefits of sustainable waste management, are material considerations that should be given significant weight in determining whether proposals should be given planning permission*. This guidance applies to the consideration of individual proposals for waste management development, and in particular to the relative weight to be applied in the balance leading to a decision whether very special circumstances existed in the individual case. The guidance should not, however, have been taken to imply that the Green Belt balancing exercise as a whole could be short-circuited in respect of waste development, or that any single step in that exercise could be omitted.
17. The draft Revised PPS10 published in July 2013 removes the former reference that waste planning authorities should give significant weight towards locational needs and wider environmental and economic benefits when considering waste planning applications in the Green Belt. Revised PPS10 has not yet been finalised. However, whether the final document includes the revised Green Belt reference as drafted, or not, the valid and safe solution is to avoid misunderstanding by simply including within the relevant WCS policies the fundamental Green Belt test to be applied, as it appears in the Framework, without attempt at local variation.
18. Waste management development, whether by construction of new buildings or by use of land, represents *inappropriate* development in the Green Belt, to be justified only by reference to *very special circumstances*. The full force of Green Belt policy must apply. The Framework states at ¶87-88 that *as with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. When considering any planning applications, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations*.
19. Representors, in particular Gedling Borough Council, have objected to Policy WCS3 on Green Belt grounds. Though WCS3 is the most obvious

point of conflict with national Green Belt policy, conflicts arise also in the supporting text (at ¶7.39) to Policy WCS6 – *General Site Criteria*, and in the table of criteria embodied in the policy itself, in which Green Belt is shown as a suitable location for small materials recovery facilities and for enclosed in-vessel composting and anaerobic digestion. In addition, Policy WCS4 – *Disposal Sites for Non-Hazardous and Inert Waste* makes no reference to Green Belt and so provides inadequate policy guidance in that respect, given that disposal facilities may well be sought in the Green Belt in proximity to built-up areas.

20. In order to make the Core Strategy sound by bringing it into line with national planning policy, it is necessary to modify the Plan. The Councils have done this through Main Modifications **MM2**, to Policy WCS3 and **MM3**, to Policy WCS4, and also AM10, amending Policy WCS6: in each case, to state the need for the demonstration of very special circumstances. Gedling Borough Council supports the Main Modifications in this respect.
21. In conclusion, therefore, the Core Strategy is sound in its treatment of Green Belt policy, provided that Main Modifications **MM2** and **MM3**, and also additional modification AM10, are made to the document.

## **Issue 2 – Whether the Core Strategy is founded upon adequate statistics and forecasts of the waste to be managed.**

22. The Waste Core Strategy was prepared, and most of its procedural stages undergone, at a time when the East Midlands Plan – the Regional Strategy – remained in force. Even after the Government had announced, in 2010, its intention to abolish the Regional Strategies (RS) the position remained, in law<sup>3</sup>, that *it would be unlawful for a local planning authority preparing, or a Planning Inspector examining, development plan documents to have regard to the proposal to abolish regional strategies. For so long as the regional strategies continue to exist, any development plan documents must be in general conformity with the relevant regional strategy* [my emphasis]. The Regional Strategy for the East Midlands (Revocation) Order 2013 only came into force on 12 April 2013, just over 2 months after the Core Strategy was submitted for Examination, and 1 month before the Examination Hearings began.
23. The East Midlands Plan set out indicative sub-regional waste apportionments for each WPA, projected forward to 2026. Planning Policy Statement 10 (PPS10) states at ¶13 that *the strategy for waste management confirmed by the Secretary of State following public examination should be carried forward into local development documents.... In preparing local development documents, there should be no need to reopen consideration of either its principles or the annual rates of waste to be managed* [my emphasis]. A slight fall in municipal waste arisings for the year 2007/8, however, prompted concern on the part of the Councils that the data underpinning the regional arisings estimates were becoming out-of-date. There was no clear consistency in national and local arisings for that year,

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<sup>3</sup> Via the Appeal Court judgment of 27 May 2011 on the case of *Cala Homes (South Ltd v SSCLG & ANR* (Ref [2011] EWCA Civ 639).

but subsequent data for 2008/9 and 2009/10 confirmed further slight falls in municipal waste arisings. National DEFRA survey results published in 2010 suggested a fall in commercial and industrial (C&I) waste arisings of 29% nationally and 22% in the East Midlands. On that basis the evidence suggests that the arisings estimates in the RS were indeed too high, and did not reasonably represent conditions prevailing at least in the first half of the Plan period.

24. Work on existing capacity, and future capacity requirements, was carried out in 2010 on behalf of the RTAB (by consultants RPS, at SD21). The study used a projected growth rate of 0.5% per annum for municipal waste, taken from the DEFRA estimate in the National Waste Strategy for England 2007. For C&I waste and for construction, demolition and excavation (CDE) waste, the study assumes a rate of 1% per annum growth up to and including 2014/15 and 0% thereafter, reflecting assumptions from the Regional Plan, but at a slightly lower growth rate. Using these growth rates results in an estimate, for 2031, of 4.9 million tonnes per annum (mtpa) of municipal, C&I and CDE waste. The Regional Plan 'best case' estimate was 4.7 mtpa, and the 'worst case' estimate was 7 mtpa.
25. It is reasonable, given the length of the Plan period, to take account of both the recession and the prospect of a return to more normal economic circumstances. Other contributory factors include assumptions on recycling rates, based upon the Councils' experience (which is replicated in other urban WPA areas) of difficulty in maintaining increases in recycling rates in a built-up city environment, within deprived areas and in the current absence of solutions for improved separation at source. On development sites where reconstruction follows demolition, the immediate recycling of demolition and excavation materials is now common practice. The overall target of adopted by the WCS for the recycling or composting of 70% of municipal, commercial & industrial, and construction & demolition waste by 2025 is balanced and realistic.
26. Concerning the influence of waste imports and exports, the Councils have had some success in clarifying such movements through detailed scrutiny of the Environment Agency's Waste Data Interrogator information; improved recording of origins and coding of data on the waste movement returns (64% of data uncoded in 2010 reduced to 27% uncoded in 2011); and through co-ordinated examination of waste movements with the neighbouring waste authorities concerned. It is clear that there are many cross-boundary movements of similar waste categories. It is probable that these reflect the proximity of treatment facilities to sources, and the terms of existing contracts with waste operators.
27. On the availability of waste treatment facilities outside the N/N area, it cannot on the evidence be assumed that continuing spare capacity would be necessarily available at the existing incinerator at Sheffield to take waste from N/N. The Councils have maintained close contact with Sheffield as WPA, and there is no evidence that Sheffield plans or intends to provide capacity for N/N use throughout the Plan period.
28. A 'grey area' of potential difficulty concerning capacity estimates was

identified in respect of the gasification plant at Bentinck Colliery in Kirkby-in-Ashfield. This plant generates electricity as renewable energy, and its gasification process uses refuse-derived fuel (RDF). The plant does not appear in the table of existing capacity (Table 1), because its input material is regarded as fuel and not as waste. PAIN suggests its effective capacity is that of 75,000 tonnes of MSW, and considers that this plant should be counted as existing waste capacity. The available evidence did not include the extent to which the RDF was derived from N/N waste, and/or from imported material (though much was thought to be imported). Better recording and accounting of waste movements, and its tracking through intermediate treatment processes, via the Environment Agency's Waste Data Interrogator ought to improve the understanding of this particular technology and its influence upon waste treatment capacity. If gasification were to become more widespread as a technique for providing renewable energy based upon MSW and/or C&I waste, it would clearly undermine and distort the waste statistics if RDF were to be routinely discounted on the basis that it represented fuel rather than waste.

29. In these circumstances, and given the growth planned across the City and the County in other development plan documents, the Councils consider a single lower estimate of 5 mtpa is the most appropriate for the overall Plan period. On balance, this represents a reasonable compromise, unlikely to undermine credibility of the Core Strategy through extremes of either under-provision or over-provision.
30. PAIN argues that actual municipal waste generation figures have not increased at 0.5% per annum since 2007, but have decreased, resulting in a 93,000 tonne deficit for municipal waste alone. PAIN's calculations resulted in a figure of 4.2-4.3 mtpa. This was apparently achieved by starting from current government figures, projected into the future (rather than the 2007 Waste Strategy baseline), and by *abandoning* estimates for CDE waste, on the grounds that the figures for CDE waste represent a *distortion* of overall waste figures. PAIN maintains that there is no single *correct* set of figures to be applied, but sees in the Examination process an *opportunity to adopt better figures*.
31. Any change to the originally adopted baseline for the Waste Core Strategy would require all the assumptions involved to be re-visited, re-examined and re-calculated. The Core Strategy figures have been established by standard practice, using openly available evidence of the baseline position amended through the application of more recent data and growth projections, and to that extent can be readily understood. As a foundation for broad strategic policies the resulting figures are sufficiently realistic. The very recent revocation of the East Midlands Plan – with which, before its revocation, the Core Strategy was obliged to be in conformity – should not be used as the occasion for overturning the WCS and returning to square one.
32. Nevertheless, in its conversion of the figures for projected waste generation into capacity requirements for the Plan period, the Core Strategy lacks clarity. In part, the situation arises directly from the apportionment set out in the East Midlands Plan, in that *no provision is made for any additional recycling of commercial/industrial or construction & demolition waste* (¶4.29

and Table 4). This leads, in Table 4, to a complete absence of *estimated future capacity requirements* for the recovery of C&I waste. Other deficiencies lie in lack of precision on recovery capacity, taking account of maintenance at the Eastcroft EfW plant and on the conversion factor to be applied to non-hazardous waste treated for disposal; and on the over-precision of capacity requirements allocated to dates within the overall Plan period (again, taken from the East Midlands Plan).

33. The Councils put forward, in response, Main Modification **MM1** (PHM6). This involves comprehensive re-writing, re-ordering and re-tabling of the information presented in draft Tables 1, 2, 3 and 4 and at ¶4.25-4.35 of the Plan text. The modification enables the deletion of the now unhelpful references to the East Midlands Plan; the updating of figures for disposal, validly based on recent past practice in response to increased costs and changing behaviour; and the insertion of additional text to provide necessary explanation of the figures.
34. PAIN acknowledges that **MM1** *goes some way towards addressing [its] concerns...on soundness in respect of estimates of current waste arisings and the waste to be managed*. However, PAIN considers that the Core Strategy continues to place insufficient emphasis upon *Government central forecasts that anticipate waste falling significantly between now and 2020*. (PAIN reinforces this point in relation to the issue, in July 2013, of the consultation draft National Waste Management Plan, with its emphasis upon the February 2013 DEFRA document 'Forecasting 2020 waste arisings and treatment capacity'). PAIN maintains that the Core Strategy under-represents existing recovery capacity. PAIN also objects to the statement in **MM1** ¶4.32 that *the figures in Table 4a show the overall level of recycling, recovery or disposal that is likely to be required annually*: on the grounds that the qualification *likely* overstates the certainty of the requirement in the light of the evidence.
35. The evidence given to the Examination Hearings brought out the various constraints upon the availability of existing recovery capacity. Such constraints operate principally through the commercial system of waste operators, contracts, competition, and also availability, purity and consistency of waste materials. Data sources themselves, though improving, vary in their reliability. Forecasting models embody flaws both known and unknown, are based upon assumptions, and are incompletely robust. The behaviour of individual waste producers and handlers, can be crucial to the quality of the input material, and so to the appropriateness of treatment methods. The scope for changes in such behaviour can be limited. The links between waste generation and the state of the economy continue to be imperfectly understood. Forecasting the state of the economy is not straightforward. Given the existence and complex interplay of so many variables, it would be over-simplistic to forecast generation or capacity in precise and immutable terms. It would also be over-simplistic to assume, as PAIN appears to do, that in practice (as opposed to theory, which is not in doubt) treatment capacity is directly interchangeable between MSW and C&I waste. What might appear to some as harmful over-provision would represent, to others, beneficial flexibility ensuring that waste could always be properly managed in all circumstances.



36. In sum, therefore, the figures presented in the Waste Core Strategy represent a reasonable working basis for a sound plan. No figures are presented as immovable, nor should they be. The Core Strategy presents a set of capacity requirements openly stated to be *estimated*. It is sufficient for justification and for soundness that these should be realistic on the basis of known assumptions as included in the evidence base.
37. Draft Revised PPS10 states that *when determining planning applications, waste planning authorities should ... only take into account the quantitative or market need for new or enhanced waste management facilities where proposals are not consistent with an up-to-date local plan*. (Footnote 5 adds the guidance that *in such cases, waste planning authorities should consider the extent to which existing, and consented waste management capacity not yet operational, would satisfy any identified need*). This implies that the quantitative need for a proposal does not have to be demonstrated if the proposal complies with the provisions of the development plan. The qualification that the plan should be *up-to-date* is, however, significant where it can be shown that trends in, for example waste arisings, have overtaken the plan and rendered it out of date.
38. Moreover, there are many elements of the development plan to be satisfied by a proposal: and not simply the overall figure for waste treatment capacity – a figure which in any case the Plan states to be *estimated* on the basis that it cannot be accurately predicted. The requirements to be satisfied include those of Policies WCS3- *Broad Locations*; WCS11 – *Managing Non-Local Waste* which is likely to come into play in many instances, particularly for large-scale facilities, through the Core Strategy's provision for overall 'equivalence' to its own waste arisings, and which requires that *there are no facilities or potential locations in more sustainable locations in relation to the anticipated source of the identified waste stream* and that *there are wider social, economic or environmental sustainability benefits that clearly support the proposal*; and WCSSD – *Presumption in Favour of Sustainable Development* (inserted as Proposed Change No.32 and **MM4**, following the government's Model Policy and the Framework).
39. Furthermore, the following is an essential characteristic of the planning process. When any individual proposal (whether for waste, or for any other form of development, and particularly one of a significant scale) is put forward, the figures representing justification for that proposal are scrutinised against the development plan provisions in the context of more recent trends and events. These are capable of status as material considerations. In practice, therefore, it may be appropriate or even necessary to query the capacity figure in the majority of instances, particularly in respect of large-scale proposals.
40. The consultation draft National Waste Management Plan (NWMP) is just that: a draft document, issued very recently, and potentially to be amended as a result of consultation responses. The NWMP draws attention, on p27 and via its footnote 25, to the government's 'Forecasting 2020' document: though the NWMP refers simply to DEFRA's own *forecasts of waste arisings, recycling and landfill diversion*, and to its *range of forecasts and sensitivity analysis around those forecasts* and does not advocate the wholesale

adoption of its forecasts by all waste planning authorities.

41. The WCS gives a broad statement of waste policy covering a particular local area over a wide timespan. The Plan has to provide for the possibility of fundamental technological advances, and contains many essential policies which are largely independent of those which establish the capacity requirement. It would not be appropriate to overturn the entire Core Strategy for the sake of what represents the latest advance on forecasting methods as yet largely untried in the field of practical waste development planning. The sound plan should not be sacrificed for the prospect of a slightly better plan. The overall planning system is capable of compensating, via the scrutiny of data at application stage, for any mismatches that might occur in the course of time and events.
42. In conclusion, therefore, the Core Strategy is sound in its use of statistics and forecasts of the waste to be managed, provided that Main Modification **MM1** is made to the document.

### **Issue 3 – Whether the Core Strategy makes appropriate provision for waste technologies.**

43. The balance of technological advantage is not stable over time. Past government guidance has shifted in its 'steer' and focus between energy from waste (EfW) - incineration with energy recovery (e.g. CHP) - and anaerobic digestion (variously regarded as composting and as energy recovery). It is likely that the tension between technologies may be pronounced at times within the Plan period, and at others unremarkable. A further complicating factor is the degree to which technologies are dependent, for their practicality, sustainability and success upon the purity and consistency of waste input - a factor which was frequently emphasised in evidence to the Examination Hearings.
44. The importance of adequate provision for waste materials recycling facilities to enable handling appropriate to subsequent stages of waste treatment is clear. Policy WCS1 – *waste awareness, prevention and re-use* is clearly of paramount importance to the achievement of suitable recycle materials, via its provision that *all new development should be designed and constructed to ... assist the collection, separation, sorting, recycling and recovery of waste arising from the development*. But much remains to be done in the handling of waste arising from existing developments – food waste in particular, but also other forms of waste which if not properly separated can suffer 'contamination' limiting their capability of use as recycle materials. That problem is not in the control of the WCS as a spatial development plan.
45. WCS2 – *Future Waste Management Provision* is explicitly linked, within the wording of the policy itself, to the aim of the WCS *to achieve 70% recycling or composting of all waste by 2025*. Policy WCS2 clearly states at (a) that *priority will be given to the development of new or extended waste recycling, composting and anaerobic digestion facilities*. At (b) the policy states that *new or extended energy recovery facilities will be permitted only where it can be shown that this would divert waste that would otherwise*

*need to be disposed of and the heat and/or power generated can be used locally or fed into the national grid.* That is a demanding requirement. Disposal capacity (and this would include incineration without energy recovery) is ranked lowest in the order of priority: though some element of disposal capacity is always likely to be required. In its priorities, therefore, Policy WCS2 mirrors the Waste Hierarchy and sets a clear order of precedence in the consideration of technologies. At the same time, the policies of the Core Strategy would *take care to avoid stifling innovation in line with the Waste Hierarchy* in the terms of the current PPS10. It is, appropriately, through the Waste Hierarchy that preference is given to particular technological areas or groups of technologies.

46. In conclusion, therefore, the Core Strategy makes appropriate provision for waste technologies.

#### **Issue 4 – Whether the Core Strategy makes appropriate provision for power station ash.**

47. As an element of local distinctiveness, the Core Strategy includes a specific policy, WCS5, dedicated solely to the matter of power station ash. The waste ash is produced by the 3 coal-fired power stations at Ratcliffe-on-Soar, West Burton, and Cottam. The policy is necessary, because pulverised fuel ash (PFA) and furnace bottom ash (FBA) together constitute the largest waste stream, by volume, arising in Nottinghamshire and Nottingham. PFA and FBA have properties, potential uses, and problems of management distinct from those of other wastes.
48. PFA contains elevated levels of the soluble metal boron which may be harmful to plants, and so is not regarded as truly inert. Disposal into former mineral workings is now possible only with some form of engineering containment. Past infill of mineral workings has taken place via pipeline, and distance is a limiting factor. Power station ash is not currently involved at non-hazardous landfill disposal sites, and its management is dealt with as a separate matter. No PFA has been exported. The WCS envisages that the ash would not compete for disposal capacity at the remaining operational landfill sites: but that it might be possible to arrange disposal of some PFA as restoration material in certain sand and gravel workings in the north of the county. Detailed requirements to secure beneficial restoration, in terms of physical containment, visual character, biodiversity and after-use, can be dealt with appropriately in the subsequent development management policies document.
49. Otherwise, Policy WCS5 provides for temporary stockpiling of ash within or on land adjacent to coal-fired power stations *where this will help maximise recycling*. The policy states that *landraising of ash for disposal will only be acceptable when no other reasonable options exist*. The element of priority within these provisions is necessary because of the visual impact of stockpiled or landraised ash. The policy provides for a variety of opposing possibilities: that quantities of ash produced may reduce with lesser reliance upon coal-fired power stations as a source of energy; that the markets for PFA and FBA as secondary aggregate may decline (or increase); that storage space within the power station sites may become severely

limited; and that suitably-located and viable disposal sites in former sand and gravel workings may or may not be found.

50. In conclusion, therefore, the Core Strategy makes appropriate provision for power station ash.

## **Other Matters**

### **Sustainable Transport**

51. Policy WCS10 seeks to *minimise the distance waste is transported by road*. This is to be achieved by *maximis[ing] the use of alternative forms of non-road transport such as rail, water, pipeline or conveyor*. In relation to water in particular, there are obvious tensions between potential residential waterfront uses in regeneration schemes and the restoration of water transport using former wharves; and also between recreational use of rivers and canals, and the transport of waste by water. The WCS therefore appropriately does not refer to specific locations where alternative transport opportunities might be considered to arise; but requires *all waste management proposals to seek to maximise the use of alternative forms*: in other words, to make an effort at least to examine and consider the possibilities for alternative transport, in each and every proposal.

### **Fly-Tipping**

52. Fly-tipping – the unauthorised deposit of waste – has relevance, to a degree, to a number of policies in the WCS. The activity has some relevance to Green Belt and to disposal: but is not open to control at the strategic policy level. The problem of fly-tipping can be traced back to individual behaviour: in evident contravention of previous policies in development plans, in contravention also of planning legislation; in avoidance of charges made to anyone other than a householder for the use of legitimate waste deposit facilities; and in the absence of convenient facilities. Though liable, in law, to face enforcement action, the perpetrators often cannot be traced. Even where they are known, enforcement action is not always the course chosen by Councils for practical reasons. Particularly in connection with agricultural activities, the deposit of waste materials (such as demolition material to form hardcore for access routes) represents a potentially 'grey area' in which the planning application process, for reasons of permitted development allowances, may not be engaged.
53. In consequence, the Core Strategy is not an appropriate vehicle through which to superimpose an additional or improved level of control. To frame a strategic policy outlawing the random deposit of waste would be unlikely to have any prospect of the desired response: it would not be effective. More thorough tracking of waste from its source would go some way to improve matters. Increased provision of local recycling and deposit facilities, and possibly also a review of the charging regime, could also help. But the solutions lie outside the scope of this strategic policy document.

### **Minewater Rebound**

54. The cessation of coal mining and the de-watering of deep mines have led to a recovery in water levels, with potentially significant pollution of receiving watercourses: particularly where mine space was used, in the interim, for the deposit of waste allowing the build-up of toxic substances. Such practices could not be continued under the current pollution control regime, which carries its own legislative control. The Waste Core Strategy is not therefore the appropriate vehicle for achieving improved knowledge or control of conditions in former mines. The Environment Agency is aware of the problem, and of the consequent need for monitoring of water quality.

## Assessment of Legal Compliance

55. My examination of the compliance of the Core Strategy with the legal requirements is summarised in the table below. I conclude that the Core Strategy meets them all.

<b>LEGAL REQUIREMENTS</b>	
Local Development Scheme (LDS)	The Waste Core Strategy is identified within the approved Nottinghamshire LDS March 2013; and in the approved Nottingham City LDS January 2013, which sets out expected adoption in October 2013. The Core Strategy's content and timing are compliant with the LDS.
Statement of Community Involvement (SCI) and relevant regulations	The Nottinghamshire County Council's SCI was first adopted in January 2007. Since then, the issue of the NPPF, the Localism Act, and County Council reorganisation made the original SCI out of date. Following a review, including a period of consultation, the SCI Review was adopted in April 2013. The Nottingham City Council's SCI, first adopted in June 2007, was subsequently updated in January 2010 via the Technical Addendum, which made changes to the SCI in line with changes to legislation. Consultation has been compliant with the requirements therein, including the consultation on the post-submission proposed 'main modification' changes (MM).
Sustainability Appraisal (SA)	SA has been carried out and is adequate.
Appropriate Assessment (AA)	The Habitats Regulations Assessment 2012 sets out why AA is not necessary.
National Policy	The Core Strategy complies with national policy except where indicated and modifications are recommended.
Sustainable Community Strategy (SCS)	Satisfactory regard has been paid to the SCS of each authority.
2004 Act and Regulations (as amended)	The Core Strategy complies with the Act and the Regulations.

## Overall Conclusion and Recommendation

- 56. The Plan has a number of deficiencies in relation to soundness for the reasons set out above which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the Act. The deficiencies have been explored in Issues 1 and 2 set out above. Consideration of Issues 3 and 4 has identified no other unsoundness.**
- 57. The Councils have requested that I recommend main modifications to make the Plan sound and/or legally compliant and capable of adoption. I conclude that with the recommended main modifications MM1-MM4 the Nottinghamshire and Nottingham Waste Core Strategy satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the Framework.**

*S Holland* **INSPECTOR**