Grounds of Appeal

1st Reason for refusal

1. The Council's first reason for refusal suggests that there will be adverse impacts on the amenities of the local community by virtue of both the HGV movements associated with the proposed development and the operations on site.

2. The Appellant asked for clarification of this reason for refusal by letter dated 29th August 2012 (attached). The Council responded on 7th September 2012 (attached).

Planning Statement and Environmental Statement

3. The planning application, Planning Application Supporting Statement (PASS) and Environmental Statement (ES) which accompanied the application fully assessed the impact of the proposed development on the amentities of the local community both as a result of the operations on site and as a result of the traffic movements associated with the proposed development. The Appellant will seek to rely on the conclusions in the ES as part of their appeal. These conclusions were also accepted by the relevant statutory consultees.

4. The impact of the development on the Air Quality of the area is described in Section 5.2 of the PASS and in Chapter 12 of the ES. Chapter 12 of the ES concludes that with the adoption of mitigation measures the proposed development will result in *„minimal risks associated with the airborne emissions from the site."*

5. The Report to Committee also confirms that „*having visited a similar facility* [the Environmental Health Officer] *is of the view that with the suggested conditions the proposed facility will be able to operate and that its impact on local air quality is likely to be negligible."* Other members of Devon County Council and Teignbridge District Council also visited the similar facility.

6. The increase in noise arising from both construction and operational activities on the site was assessed more fully in Section 5.11 of the PASS and in Chapter 13 of the ES. Chapter 13 of the ES concludes that the significance of the construction and operational noise effects will be negligible. Operational traffic noise effects are also assessed as negligible.

7. On noise, the Report to Committee concludes that „*the EHO has not objected to this application and therefore there is no reasonable ground to object to the proposal on noise subject to the imposition of the conditions discussed above."*

Impacts from HGVs

8. In response to concerns from local residents that the development would significantly increase the number of HGVs on the B3380 to the detriment of existing residents and road users, the Highway Authority determined that the increase in HGVs (22 a day) is *„deemed to be very low".* After a

thorough examinaton of the Transport Statement, they concluded that they could not substantiate an objection to the application on highway safety or highway capacity grounds.

9. A supplementary note on the Environmental Impact Assessment of Traffic was prepared in February 2012 and submitted as part of the planning application in March 2012. The note concluded that the environmental impact arising from the increase in traffic movements would be negligible and that the increase in noise would be imperceptible in comparison to the background noise levels.

10. The Council also carried out their own independent assessment of road traffic noise and produced a report in February 2012. This report agrees with the conclusions in the ES and concluded that the increase in noise levels from the average use of the site would not be perceptible. Even in terms of the worst case traffic figures, the greatest resulting noise impact (an increase of 0.4dB) on the B3380 is determined by the Council to be minor.

11. The Council has clarified that as well as noise and dust impacts from HGVs, it is also likely to include evidence on *‚community separation issues'*. The issue of severance was considered in the Appellant's supplementary note. Given that the numbers of vehicles on the relevant roads are well below the thresholds where severance may become an issue, the sensitivity of the network to such impacts is considered to be negligible /low. The Appellant will seek to rely on this evidence as part of its appeal to demonstrate that there will be no severance impacts arising from the proposed development.

<u>Compliance with the NPPF</u>

12. The reason for refusal states that the proposed development would be contrary to the National Planning Policy Framework (NPPF). The reason is not explicit about which policies the proposed development is contrary to and the appellant has sought clarification from the Council on this. In their letter dated 7th September the Council refer to policies 9 (achieving sustainable development) and 109 (preventing new development from contributing to unacceptable levels of pollution) of the NPPF. It is not clear how the proposed development fails to meet the aspirations of policy 9 or how this relates to the reason for refusal, particularly given the Officer's comments on the sustainablity of the proposals in section 7 of his Report. However, the Appellant will present evidence on the sustainable benefits of the proposed development as part of its appeal.

13. In the Report to Committee it is noted that the Officer referred to a number of other key policies in the NPPF that are relevant to the proposed development and particularly the points raised in the reason for refusal.

14. In terms of transport, the Officer notes paragraph 32 of the NPPF which provides that decisions should *„only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe."* The Council is not suggesting that the proposed development ought to be refused on these grounds. The Officer concluded that the local impacts from traffic would be *„low to moderate on some properties along the access roads"* (paragraph 8.5). The Appellant will rely on the

evidence referred to above to demonstrate that there is no basis upon which it can be concluded that the impacts will be severe. Accordingly, it will argue that there is no basis for a refusal on transport grounds.

15. On noise, the Officer referred to paragraph 123 of the NPPF and noted that decisions should avoid ‚*noise from giving rise to significant adverse impacts on health and the quality of life'; ‚recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established.'*

16. The Officer notes that „*these phrases are significant in assessing a number of the comments made by local residents who have objected to the continuing use of the site since new housing was built in the west of Buckfastleigh. In considering issues of noise and amenity, it is clear that the use of conditions would considerably mitigate the potential for disturbance from the development*."

17. The Appellant will refer to other relevant paragraphs of the NPPF as part of its appeal.

18. In particular, paragraph 144 of the NPPF provides that in determining planning applications, local planning authorities should ensure that any „*unavoidable noise, dust and particle emissions and any blasting vibrations are controlled, mitigated or removed at source, and establish appropriate noise limits for extraction in proximity to noise sensitive properties."* The Appellant will demonstrate that the conditions proposed by the Council in the Officer's Report would satisfy this requirement.

19. Although adverse health impacts are not separately identified in the reason for refusal, the Council does refer to health and amenity impacts in its letter of 7th September 2012. Paragraph 144 of the NPPF provides that local planning authorities should ensure that in granting planning permission for mineral development there are no unacceptable adverse impacts on human health. As a result of local concerns the Primary Care Trust (PCT) agreed to oversee the preparation of a Health Impact Assessment (HIA). This Assessment looked at all potential impacts from the operation of the proposed development without mitigation by planning conditions or compensatory measures. The report concluded that there was no specific or evidenced threat to public health from this site if appropriate conditions were imposed.

20. Finally, in its conclusions the Report to Committee notes the clear advice in paragraph 122 of the NPPF which states that *„planning authorities should focus on whether the development is itself an acceptable use of land, and the impact of the use, rather than the control of processes or emissions themselves where these are subject to approval under pollution control regimes."* The Appellant has demonstrated that the proposed development is an acceptable use of the land and does not give rise to unacceptable impacts which are not capable of being adequately controlled.

PPS10

21. Although the Council does not refer to PPS10 in its reason for refusal it does raise it in its letter of clarification and suggests that it will refer to Annex E of the PPS on the protection of amenity. These locational criteria have been appropriately assessed and dealt with in the Environmental Statement. The Appellant will demonstrate that the proposed development will not have any adverse amenity impacts on the local community.

Statutory Development Plan

22. The reason for refusal states that the proposed development is contrary to Policy WPP4 of the Devon County Waste Local Plan. Policy WPP4 is a general policy in the Plan which allows for proposals for waste management facilities on unallocated sites to be permitted if they comply with „*all relevant policies in the Plan*" and „*contribute to the achievement of an integrated and sustainable waste management strategy for the County"* as provided for in paragraph 24 of PPS10 and paragraph 8.15 of the Companion Guide. There is no suggestion that the proposed development fails to meet this latter requirement to contribute to the achievement of the waste strategy.

23. It is not clear from the reasons for refusal which of the relevant policies the proposed development fails to comply with and further clarification was sought from the Council on this. In its letter dated 7th September the Council gives examples of the policies that the proposed development will need to comply with but does not suggest how, if at all, the proposed development fails to comply with these policies.

24. The Appellant will demonstrate compliance with all of the relevant policies in the Statutory Development Plan, including the policies referenced by the Council in its letter of 7th September.

Conclusions

25. The Environmental Health Officer has indicated that with appropriate conditions, including a dust management plan he has no objection to the proposed development. The Officer notes in his Report that whilst the residents are concerned about the potential impacts from the site, „*there would need to be evidence that the proposed site operations would have an unacceptable impact on the adjacent residential properties which could not be managed by the application of appropriate planning conditions rather than an artificial ‚cut-off' point to make the development acceptable or unacceptable."*

26. The Appellant will argue that there is no evidence that the proposed development would lead to unacceptable adverse impacts on the amenities of the local community by virtue of increased movement of HGVs. The available evidence in the ES, the supplementary note of March 2012 and the Council's own traffic noise assessment demonstrates that the impacts will be negligible or imperceptible during normal operations. Appropriate conditions can also be imposed to control any potential impacts, including a daily limit on the number of HGVs.

27. The Appellant will also argue that there is no evidence that the proposed development would lead to unacceptable adverse impacts as a result of an increase in noise or dust generated by operations on site.

2nd Reason for refusal

28. Policy WPP4 of the Devon Waste Local Plan is a permissive policy for the development of sites for waste management facilities which are not allocated in the Plan. As referred to above, the policy provides that proposals for waste management facilities will be permitted where „*they would accord with all relevant policies in the Plan*" and „*contribute to the achievement of an integrated and sustainable waste management strategy for the County*".

29. It is not clear from the reason for refusal whether it is isolated to the IBA operations or whether the Council also consider that the site is not suitable for proposed MRF operations.

30. The Appellant will demonstrate that the submitted application fully assessed the alternative sites in the Devon Waste Local Plan and Plymouth Waste Core Strategy. Part 6 of the PASS assesses the proposed development against planning policy at both the national and local level and Part 8 of the PASS looks at the alternative sites which are allocated for waste management facilities in the Devon Waste Local Plan and the Plymouth Waste Development Plan Document.

31. Paragraph 4.2.4 of the PASS explains the reason why the owners of the site, Sam Gilpin Demolition Limited (SGDL) applied for the MRF on this site and paragraphs 4.3.1.- 4.3.7 of the PASS explain the background to the proposed IBA processing facility. Planning permission for the EfW CHP facility at Devonport Dockyard Plymouth was granted by Plymouth City Council on 3 February 2012. Section 8 of the PASS also summarises the Appellant's approach to the assessment of alternative sites. Paragraph 8.1.12 concludes that „*none of the allocated sites are obviously preferable to Whitecleave Quarry as a site for the development of an IBA processing facility*" and paragraph 8.1.13 explains the extensive search which SGDL undertook before identifying the Whitecleave Quarry site as being suitable for their MRF activities.

32. Chapter 5 of the ES described in full the locational requirements and assessment of alternative sites for the MRF and a facility to treat the IBA from the Energy from waste facility which is now under construction in North Yard, Devonport, Plymouth. Each site which is allocated in the Waste Plans of Plymouth City Council and Devon County Council is individually assessed. The rationale for the selection of Whitecleave Quarry for the IBA facility is set out at paragraph 5.3.44 of the ES and the benefits of the Whitecleave site are listed at paragraph 5.3.47 of the ES.

33. There is no policy requirement for the Appellant to demonstrate an '*overriding need*' to locate the proposed development at Whitecleave Quarry. The Appellant will re-iterate the benefits of the combined development proposed at Whitecleave Quarry and the lack of preferable, available alternative sites.

34. The Report to Committee recognises *„this one site can be used for the blending the IBA with the construction and demolition materials and the dolerite arising at the same location to make a more saleable product.. and its location, between the source of the IBA and the markets to the east would indicate that this site is a reasonable central point between the producer and the market. Also there are unlikely to be alternative sites where these uses could all be delivered in one location so close to good transportation links.“*

35. The Report to Committee goes on to conclude that this clearly demonstrates that the proposal *„would represent an integrated waste management facility“* .

36. Whilst the Report to Committee notes that it is possible that either the MRF or the IBA facilities could be located at an alternative venue or on an allocated site, *„the combination of the two uses with the production of the dolerite makes the proposal unusually beneficial.... It is considered that it would be difficult to find such a combination of facilities so well related to the strategic highway network, the source of materials and the markets elsewhere in the County.“*

37. Paragraph 24 of PPS 10 deals specifically with unallocated sites and provides that „*planning applications for sites that have not been identified, or are not located in an area identified, in a development plan document as suitable for new or enhanced waste management facilities should be considered favourably when consistent with: (i) the policies in this PPS, including the criteria set out in paragraph 21;(ii) the waste planning authority's core strategy."*

38. The Appellant will demonstrate that the proposed development does comply with the relevant policies in PPS 10, including the criteria in paragraph 21, and complies with the adopted Devon Waste Local Plan and as such, should be considered favourably. In particular, paragraph 20 of PPS 10 promotes the co-location of facilities with complementary activities as encompassed in the proposed development. The Appellant will also demonstrate that the site represents one of the nearest appropriate facilities for the proposed development.

39. In addition to policy WPP4, policy WPP32 is relevant to the proposed MRF on the site and provides that proposals for the development of facilities for the recycling and re-use of inert waste will be permitted and encouraged, particularly where they are proposed at existing mineral sites subject to having regard to certain criteria. There is no requirement for such mineral sites to be allocated for waste management uses or for alternative sites to be considered.

40. The Appellant will argue that there has been more than adequate consideration of alternative sites to accommodate the proposed development. It will further argue that Whitecleave Quarry represents a highly suitable site for the proposed development and that there are no national or local policy grounds to warrant a refusal of planning permission. Indeed, the Appellant will refer to the national and local policy support for the proposed development, the need for the proposed development and the benefits of the site location.

Overall, the Appellant will argue that the proposed development is in accordance with the statutory development plan and there are no material considerations which indicate a determination should be made otherwise than in accordance with the plan. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, the Appellant will argue that planning permission should therefore be granted.