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# Appeal Decision

Inquiry opened on 12 June 2012

**by Alan Robinson BA (Hons) DipTP MRTPI**

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

**Decision date: 21 September 2012**

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**Appeal Ref: APP/C1055/A/10/2124772**

**Disused land adjacent to 1-5 Railway Cottages, Sinfin Lane, Sinfin, Derby**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Resource Recovery Solutions (Derbyshire) Limited against the decision of Derby City Council.
  - The application Ref DER/05/09/00571/PRI, dated 18 May 2009, was refused by notice dated 5 January 2010.
  - The development proposed is a waste treatment facility comprising reception and recycling hall, mechanical biological treatment, advanced conversion technology, power generation and export facility, education and office facility, landscaping and formation of access.
  - This decision supersedes that issued on 16 November 2010. That decision on the appeal was quashed by order of the High Court.
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## Decision

1. The appeal is allowed and planning permission is granted for a waste treatment facility comprising reception and recycling hall, mechanical biological treatment, advanced conversion technology, power generation and export facility, education and office facility, landscaping and formation of access on disused land adjacent to 1-5 Railway Cottages, Sinfin Lane, Sinfin, Derby in accordance with the terms of the application, Ref DER/05/09/00571/PRI, dated 18 May 2009, and subject to the schedule of conditions set out in the attached Annex.

## Application for costs

2. At the inquiry an application for costs was made by the appellant against the City Council. This application is the subject of a separate Decision. This is to be issued separately.

## Procedural Matters

3. The inquiry sat on 12, 13, 14, 18, 19, 20, 21, 22, 26 and 27 June at the Burdsall Building, Derby Conference Centre. An evening session of the inquiry was held on 19 June in St Stephens Church Hall in Sinfin and an all day session was held on 20 June in the Guildhall in Derby City Centre. Both these sessions were to enable local residents to put their views to me in a less formal setting than the inquiry sessions held in the Derby Conference Centre.
4. I undertook an accompanied visit on 26 June which took in the appeal site and a number of other sites in a wide area to the south-west, south and south-east

of the City Centre. These sites were visited at the request of the parties. A plan showing the route taken in the accompanied site visit and a list of the sites visited is included as document 33. In addition, I carried out three unaccompanied visits of the area around the appeal site, taking in the Sinfin, Normanton and Osmaston areas of the City. The unaccompanied site visits were undertaken during the evenings of 19 and 26 June and also late at night on 20 June. The latter was undertaken at the request of the parties so that I could gain an impression of night time noise and disturbance in and around Sinfin.

5. Four parties were given Rule 6(6) status at an early stage in the appeal proceedings: Sinfin, Spondon and All Against Incineration (hereafter referred to as SSAIN); Derby and South Derbyshire Friends of the Earth (hereafter referred to as FOE); City Councillors Robin Turner and Baggy Shanker; and Derbyshire County Council. During the inquiry, Mr Bacon on behalf of SSAIN, Ms Skrytek on behalf of FOE and Councillor Turner were in attendance and gave evidence. Councillor Shanker also gave evidence. The County Council submitted written representations and responded in writing to evidence given by others.
6. When the planning application was originally submitted it was accompanied by an environmental statement (see Core Documents CD10 to CD52). Since the publication of the environmental statement much time has gone by. The time taken included the holding of the original inquiry, the challenge to the appeal decision, the quashing by the High Court of the appeal decision from the first inquiry and the arrangements made for the redetermination of the appeal by way of a second inquiry. Accordingly, the appellant published in April 2012 an updated environmental statement to take account of any changes since the original environmental statement. (See the updated environmental statement at CD120 to CD 136).
7. Before the first inquiry, a Statement of Common Ground (hereafter referred to as SoCG) was produced. Before the second inquiry a revised SoCG was submitted. Amongst other things, the revised SoCG contains a detailed description of the development, an explanation of how waste is to be handled and treated within the proposed waste treatment facility and a detailed description of the site and its immediate surroundings. Given the existence of the account within the SoCG of how the proposed plant is intended to operate and also the lengthy description within the SoCG of the site and its surroundings, it is not intended to repeat these within this decision. After all, the SoCG was available to all the parties attending the inquiry and was available from the programme officer throughout the inquiry for anyone else who wanted to peruse it. (The revised SoCG is at CD146).
8. For completeness, before the second inquiry, three further SoCG were submitted: one relating to transportation, another in respect of air quality and an addendum to the revised SoCG on noise. (These are to be found respectively at CD147, CD148 and C149).
9. On 11 November 2010, the Environment Agency (hereafter referred to as the Agency) issued an environmental permit (ref EPR/WP3133KP) for the proposed waste treatment facility. The permit is accompanied by a decision document. This gives an account of how the Agency reached its decision to issue the permit. Amongst other things, the document sets out the Agency's appraisal of the proposed facility as to whether it represents Best Available Technology

(hereafter referred to as BAT), an assessment of emissions from the proposal and an assessment of the development against various regulatory requirements. The document also describes the Agency's response to the consultation process on the permit application. (See the permit at CD137 and the decision document at CD138).

10. At the inquiry, some of the Rule 6(6) parties said that they challenged a number of the conclusions reached by the Agency in its decision document. However, on being questioned as to what they meant by challenging the permit, it became clear that whilst a number of the Agency's conclusions were disputed by the Rule 6(6) parties no formal challenge through the Courts had been mounted against the Agency in respect of the permit. Thus, the permit remains the mechanism by which the Agency, as the pollution control authority, intends to regulate the operation of the proposed waste treatment facility in the interests of preventing pollution and protecting health. I will return later in this decision to the weight to be accorded to the role of the pollution control authority through the permitting regime in safeguarding the environment and public health.
11. The procedure adopted at the inquiry was discussed at a pre-inquiry meeting held on 20 February. The smooth running of the inquiry, and particularly the evening session in St Stephens Church Hall in Sinfin and the all day session held in the Guildhall in the City Centre, owed much to the quiet efficiency and good nature of my programme officer, Mrs Isabel Howdon-Bancroft.

### **Main Issues**

12. From the evidence put before me both orally and in writing, I consider that the main issues in this appeal are:
  - (i) The performance of the proposal against the development plan;
  - (ii) The relationship of the proposed development to the waste hierarchy and whether the development would hinder the achievement of higher recycling rates;
  - (iii) The effect of the proposal on the character and appearance of the area;
  - (iv) The effect of traffic generated by the proposed development on the safety and free flow of traffic on the road system in this part of Derby;
  - (v) The effect of the proposal on air quality in this part of Derby; and
  - (vi) The effect of the proposal on the health of those living in this part of Derby.

### **Reasons**

#### *(i) Performance of the proposal against the development plan*

13. For the purposes of this appeal, the statutory development plan comprises the Derby and Derbyshire Waste Local Plan (hereafter referred to as the WLP) adopted in 2005, City of Derby Local Plan Review (hereafter referred to as the LP) adopted in 2006 and the East Midlands Regional Plan (hereafter referred to

- as the RP) which was issued in 2009. (A copy of the WLP is to be found at CD98, the LP at CD99 and the RP at CD97).
14. Although the first steps have been taken in producing new local policy documents to bring elements of the development plan up to date, neither the Derby and Derbyshire Waste Development Framework nor the City of Derby Local Development Framework have gone very far along the procedural path that will eventually lead to their adoption. The former has got to the stage of having a report produced into choices and issues, whilst the latter has reached the stage of having a report published into options for the City Council's evolving core strategy. Given the early stage in their preparation, the emerging plans can be accorded very little weight. (A copy of the Big Choices report of the Waste Development Framework is to be found at CD101 and the Core Strategy Options Report of the City of Derby Local Development Framework at CD102).
  15. In respect of this appeal, the relevant development plan policies can be considered to come within two categories. There are those that are directly concerned with waste management and those which set out the considerations to be taken into account in assessing the merits of individual proposals, such as transportation, air quality and the like. This section of the decision and the next one deal only with development plan policies which are concerned with waste management. In subsequent sections I shall deal with specific impacts of the proposal, such as air quality, and how the proposal performs against policies concerned with these impacts.
  16. In looking at the proposal against a raft of individual development plan policies, it is more important that the development plan is considered as a whole. In *R v Rochdale MBC ex parte Milne* [2001] reported at 81 P&CR 365 it was held by Sullivan J that in assessing compliance with the development plan it is not necessary to comply with all policies; there will be some core or site specific policies that take precedence over others.
  17. In this case, I consider that it is the waste management policies of the development plan which are critical to an assessment of the appeal proposal. Whilst policies dealing with transportation and air quality are important in looking at the impact of development generally, the waste management policies set out the specific requirements for waste related development. They are thus pertinent to the consideration of the appeal proposal.
  18. Waste management policies are to be found in the WLP and the RP. Although the Secretary of State has announced his intention of revoking regional strategies, no timetable of when this is likely to take place has been published. Thus, for the time being, the RP remains a part of the statutory development plan. In any event, the evidence base on which the RP's policies have been drawn up remain a material consideration.
  19. In my view, the sole waste management policy within the RP is to be accorded much greater weight than the waste policies contained in the WLP. I say this for a number of reasons. The first is that Section 38(5) of the Planning and Compulsory Purchase Act 2004 makes it clear that where there is any conflict between elements of the development plan, the conflict must be resolved in favour of the policy that is contained within the most recent document to have been adopted, approved or published. The RP was published only a few years ago and some years after the adoption of the WLP.

20. Second, I have had regard to the guidance contained in paragraph 214 of the most recent statement of national planning policy, the National Planning Policy Framework (hereafter referred to as the Framework), as to the weight to be accorded to development plan policies. The paragraph advises that for a period of twelve months from the time of its publication full weight may be given to development plan policies since 2004, that is, they have been adopted in accordance with the Planning and Compulsory Purchase Act 2004. The RP is the only component of the development plan that has been adopted in accordance with the 2004 Act. The WLP pre-dates the 2004 Act.
21. The publication of the Framework does not mean that other, older components of the development plan have little weight or can be disregarded. Paragraph 215 of the Framework advises that in other cases, that is, plans adopted pre 2004, and following this twelve month period from the date of issue of the Framework 'due weight should be given to relevant policies in existing plans according to the degree of consistency with policies in the Framework'. The paragraph makes the point that the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.
22. Third, the RP has been prepared in the light of the most recent national policy statements in respect of waste management. Whilst the Framework contains the Government's national planning policies, it does not contain specific waste policies. Until such time as a National Waste Management Plan is published, waste planning policy at the national level continues to be provided by Planning Policy Statement 10 (hereafter referred to as PPS10) and also by the national waste strategy, Waste Strategy 2007 (hereafter referred to as WS2007). The RP was prepared in the light of up to date national waste planning and waste management policies in PPS10 and WS2007.
23. In contrast, the WLP was prepared in the context of earlier national planning policy and an earlier version of the national waste strategy issued in 2000. Thus, the WLP does not reflect current national waste planning policy and the existing national waste strategy. As such, I accord the WLP less weight than the RP which is reflective of up to date waste policy at the national level.
24. RP Policy 38 sets out the regional priorities for waste management. These include an exhortation to the private and public sectors to work together to promote proposals and policies that will result in zero growth in all forms of waste by 2016 and for waste to be treated higher up the waste hierarchy as identified in WS2007. The regional priorities also require waste collection and disposal authorities to achieve minimum targets for the recycling and composting of solid municipal waste of 30% by 2010 and 50% by 2015. The regional priorities also require waste planning authorities to make provision in their planning policy documents for waste management capacity equal to the amount of waste generated in their areas and needing to be managed. Critically, Policy 38 also says that within the three cities sub-area in the Region, that is, the area around and including Leicester, Nottingham and Derby, a centralised pattern of large facilities should be developed.
25. I shall deal in a subsequent issue with the proposal in respect of two of the components of Policy 38, namely, taking the management of waste higher up the waste hierarchy and the achievement of higher recycling rates. Here I am concerned with the relationship of the proposal to the spatial pattern of waste facilities within the Region as proposed in the RP.

26. The appeal proposal accords with the requirement of the RP insofar that it delivers a centrally located waste management facility within the Derby sub-area to deal with residual waste arising from Derby and Derbyshire. Such an arrangement gives rise to important sustainability benefits. It is within Derby and the immediately adjoining parts of Derbyshire that much of the residual waste arises. Having a centralised facility would mean that much of this waste would not have to be transported long distances. A centralised facility is also likely to be accessible from the region's major road system. A centralised location within the built up area also means that there would be greater opportunities to export any energy that may be generated by the waste management facility to nearby users.
27. Some at the inquiry suggested that a rural location rather than a more centralised location would be preferable in order to minimise the impact on those living nearby. I will deal with the impact of the appeal proposal on its surroundings in later issues. I am doubtful whether a rural location can offer the same sustainability advantages as a site within the built up area of Derby. It could be difficult to find a rural location that was as readily accessible from Derby and much of Derbyshire via the region's major road network as a centrally located facility. It could also be difficult to find a rural location that offers the same opportunities for energy to be exported from a waste management facility to adjacent consumers as a more centrally located facility.
28. It was suggested at the inquiry that the current arrangements whereby some of the waste from two of the District Councils within Derbyshire is sent to energy from waste plants in neighbouring Counties could be extended so that more of Derby and Derbyshire's residual waste is taken elsewhere for treatment. This approach would run counter to the requirement in RP Policy 38 that waste planning authorities make provision for waste management capacity equal to the amount of waste that is generated within their areas. In other words, the RP is requiring waste planning authorities to deal with their own waste arisings rather than merely export waste for others to deal with. There is a good reason for doing this. It focuses the attention of communities and authorities on how to deal with their own waste instead of allowing them to merely sweep the problem under the carpet by getting others to treat their waste. In doing so, it means that communities and authorities have to take responsibility for managing their own waste.
29. In addition, there are other reasons for disregarding the suggestion that Derby and Derbyshire's residual waste should be taken to facilities in adjoining Counties. Although existing facilities in neighbouring Counties may have some capacity now for taking waste from elsewhere, there is no evidence to show that this capacity will be available in the long term. When making investment and planning decisions on major new waste management facilities a robust, long term view has to be taken. Relying on capacity elsewhere which may be here today and gone tomorrow is not a sound way of making such decisions.
30. The RP's requirement for a centralised waste management facility within each of the three cities sub areas of the region is based on information gathered to inform the formulation of the RP's policies. As such, the evidential basis of the RP's assessment of arisings and need for treatment capacity is more up to date than the evidence produced in support of the WLP, the only other component of the development plan to contain waste management policies. Accordingly, I

give the evidential basis for the RP's approach to waste management substantial weight.

31. Some at the inquiry said that the level of waste arisings had gone down. The implication is clear; that solid municipal waste arisings within the City and the County is no longer of a level to support the scale of waste treatment facility being proposed in this appeal. This is not a matter argued by the City Council as local planning authority. The County Council in its written submissions provides figures for the amount of municipal waste collected in Derby and Derbyshire during the years 2008/2009, 2009/2010 and 2010/2011. These show a very small reduction in the amount of municipal waste collected. The reduction is of such a small order that it does not, in my view, alter the requirement for a centralised waste management facility to be provided to serve this part of the Region. Nor does it cast doubt as to the suitability of the capacity being provided by the proposed waste treatment facility on the appeal site.
32. In any case, there is a need to take a cautious view on statistics of waste arisings. I acknowledge that as measures to minimise waste become more effective, for example, by reducing the amount of packaging of items bought in shops, this will have an effect on levels of waste arisings and thus the amount of waste that is collected by local authorities. On the other hand, the increase in the number of households is likely to have the opposite effect on level of waste arisings. A further reason for being cautious is that the statistics gathered by the County Council cover several years in which the nation was suffering economic woes. It could be that when the economy recovers and housing and property development reaches levels last seen before the economic crisis, then the amount of waste generated could also rise.
33. Another factor to take into account in looking at whether the level of waste arisings justifies the proposed waste treatment facility is that much commercial and industrial waste is similar to municipal solid waste. Examples are food waste from canteens and paper and cardboard waste from offices. Although I recognise that much of this waste, which is collected under separate contracts from municipal waste, is recycled, it is important to have various options open for commercial and industrial waste that cannot be recycled. The proposed waste management facility on the appeal site provides one such option.
34. I conclude on this issue that the proposal meets the requirement of Policy 38 of the RP, the most up to date element of the development plan, for a centralised waste management facility to be provided in this part of the Region. The proposal also accords with RP Policy 38 in requiring waste management capacity to be brought forward to deal with the level of waste arisings. There is no evidence to suggest that the proposed facility is oversized in relation to the waste arisings in Derby and Derbyshire. I shall now go on to look at the proposal in the light of other requirements of RP Policy 38.

*(ii) Relationship of the proposed development to the waste hierarchy and whether the development would hinder the achievement of higher recycling*

35. Other elements of RP Policy 38 require waste to be treated higher up the waste hierarchy and for minimum targets for recycling and composting of municipal solid waste to be raised to 30% by 2010 and 50% by 2015. It forms no part of the City Council's case as local planning authority that the proposal

- would fail to conform to the former or would prejudice recycling and composting targets being met. However, others take a different view.
36. Dealing first of all with the waste hierarchy, one of the key objectives of national policy in both PPS10 and WS2007 is to drive the management of waste up the hierarchy. This is to take the management of waste away from the old and long established practice in this country of disposing of much of our municipal solid waste to landfill. Although one of the processes of the proposed waste treatment facility is to separate out glass and ferrous and non-ferrous metals from the municipal waste that is received and send these off for recycling, I recognise that most of the waste would be treated and used as a feedstock for the gasification process to generate energy. Much has been made of the permit's classification of the proposed facility as an incineration plant rather than as an energy recovery plant. The point was made by some at the inquiry that incineration can be regarded as disposal at the bottom of the waste hierarchy whilst energy recovery lies on the next step up in the hierarchy.
37. This seems to me to stem from a misunderstanding of how energy efficiency from the proposed plant is treated in the permit. Initially, the proposed plant will generate electricity which will be fed into the grid. Just generating electricity does not qualify a plant to be treated as a recovery process. To qualify, a plant has to raise its energy efficiency by also exporting heat. In my view, it would be unusual for the operator to sign up customers to take any heat produced by the plant at the outset. Potential customers are likely to wait to see whether the plant comes up to expectations in terms of the amount of heat that it produces and the reliability of supply of the heat. Once they are satisfied on these points, then contracts to take the heat may well be signed. It is in the financial interests of the operator of the plant to secure customers to take any heat generated. Once heat is being exported, the operator of the plant can return to the Environment Agency to have the plant reclassified as an energy recovery facility.
38. The important factor is that a plant is located so that potential customers for the heat are within easy reach. Long lengths of pipe work can be expensive to install and there is the challenge of ensuring that heat is not lost whilst being transported in long lengths of pipe. In this case, the appeal site lies cheek by jowl with a large area of manufacturing industry. Thus, there is considerable potential for heat produced by the proposed facility to be used by neighbouring industrial consumers.
39. In this regard, I note that the Environment Agency through the environmental permit requires steam/hot water pass-outs to be provided and maintained. This would enable the plant to provide heat to nearby consumers once the plant is up and running and customers have been signed up. Through the permit, the Agency also requires the operator of the plant to review options for recovering heat on an ongoing basis.
40. In recognition that there can be misunderstanding as to how to apply the waste hierarchy in such situations, DEFRA has produced guidance on the interpretation of the hierarchy. (See a copy of DEFRA's "Guidance on Applying the Waste Hierarchy" at CD151). The table on page 6 of the guidance, which is dated June 2011, makes it clear that all energy recovery technologies, whether electricity only, heat only or heat and power combined, come higher in the

waste hierarchy than disposal. Thus, the proposed waste treatment facility on the appeal site lies higher in the hierarchy than disposal.

41. On behalf of SSAIN, it was argued at the inquiry that the proposed facility would not have the same energy efficiency as a large power station. This is an argument to which I give little weight. The operation of a power station is wholly different from that of a facility generating energy from waste. Whereas a power station usually has a homogeneous supply of fuel, the composition of waste can vary considerably. In addition, a large power station operates at very different order of scale to a facility producing energy from waste.
42. Also on behalf of SSAIN it was argued that other technologies can recover three times the energy that would be recovered by the proposed facility. As the only alternative technology spoken about by SSAIN's witness was anaerobic digestion, I assume that it is this technology that is claimed to produce a much higher level of energy than proposed for the appeal site. I share the appellant's view that this is an unlikely claim given that anaerobic digestion can only recover energy from a small proportion of the waste stream, which is mainly but not exclusively food waste, and this technology would not work on the waste stream that is to be received by the proposed plant.
43. SSAIN also raised doubts about the WRATE modelling exercise conducted for the appellant to demonstrate the energy efficiency of the technology to be used at the proposed waste treatment facility over other waste management options. The assumptions made by the appellant in the modelling exercise have been clearly set out and the WRATE model itself is a widely used tool for comparing advantages and disadvantages of different waste technologies. I have no reason for questioning the modelling exercise that has been carried out. Indeed, in the decision making document accompanying the environmental permit, the Environment Agency accepts the conclusions reached by the appellant as to energy efficiency.
44. Turning to the question of the impact of the proposed facility on recycling within the City and County, it was an oft repeated view at the inquiry that both Derby and Derbyshire were performing poorly in terms of the recycling of municipal waste and that the proposed facility would act as a disincentive to improve recycling rates. An article dated March 2011 from the Journal of Waste and Resource Management Professionals which was submitted by the appellant shows that Derby with a recycling rate of 44.66% comes 90<sup>th</sup> out of 357 local authorities whilst the performance of the Districts within Derbyshire varies considerably from South Derbyshire with a recycling rate of 47.40% lies 61<sup>st</sup> in the performance table to Bolsover with a recycling rate of 29.94% and 327<sup>th</sup> in the table. However, I note that the majority of the Derbyshire Districts have recycling rates of more than 40% and that the County Council for the waste that it receives has a recycling rate of 42.08%.
45. Whilst I accept that more can be done to improve recycling rates, I note that Derby, Derbyshire and most of the Derbyshire Districts already have recycling rates well above the RP's requirement of a recycling rate of 30% to be achieved by 2010. Some claim that the proposed waste management facility will act as a disincentive for the RP higher recycling rate of 50% to be achieved by 2015. This is not borne out by the evidence. Although the contract between the City Council, County Council and the appellant requires a minimum amount of residual waste to be delivered to the plant, the appellant makes the point that recycling rates of up to about 70% can be achieved before financial penalties

are incurred for failing to deliver the minimum amount of waste to the proposed plant. This is far above the RP's 2015 recycling and composting target and well above any national recycling and composting target set out in WS2007. Given the level at which a financial penalty would be incurred if sufficient waste was not delivered to the proposed waste treatment facility, and providing the right level of investment was made in collecting and handling recyclables, I see no reason why a recycling rate well above 50% should not be achieved.

46. The prospect of the proposed waste treatment facility coming forward has not stopped other initiatives coming forward which are designed to assist the recycling and composting of municipal waste. In this respect, I note that planning permission has recently been granted within the County for a further in-vessel composting facility to take food and other biodegradable material collected from householders. In addition, I note that the waste collection authorities, that is, the City Council and the Derbyshire District Councils, now collect a wide range of recyclable and compostable materials that have been separated at source by householders. I also see no reason why the proposed waste treatment facility would impinge upon the activities of recycling schemes organised by local communities. There is sufficient waste for both to live side by side.
47. As WS2007 points out on page 78, the evidence from many of our neighbours in Europe is that high recycling rates are not incompatible with large volumes of waste being treated in energy from waste plants of one type or another. In England, an energy from waste plant has been granted planning permission to handle residual municipal waste in Oxfordshire, a County in which a number of Districts have high recycling rates.
48. I conclude on this issue that the proposal meets the requirement of RP Policy 38 for the management of waste to be taken up the waste hierarchy as defined in WS2007. The proposal would also not prejudice the achievement of the higher recycling and composting target identified in RP Policy 38 for 2015. I now go on to consider some of the site specific impacts of the development against development plan policies.

*(iii) Effect of the proposal on the character and appearance of the area*

49. Although the effect of the proposal on the character and appearance of the area formed one of the City Council's reasons for refusal, at the second inquiry the Council no longer wished to pursue this reason for refusal. Nevertheless, the effect of the proposed development on the character and appearance of its surroundings was a matter that others wished to pursue.
50. The reason for refusal cites a number of development plan policies, including WLP Policy W7 which indicates that waste development will only be permitted if the development would not materially harm the local townscape, would respect the character of the area and would be located and designed to minimise its visual impact. Amongst other things, LP Policy GD2 says that development should pay regard to the need to protect and enhance the City's environment, whilst Policies GD4 and E23 point to the importance of good design that respect its surroundings in terms of height, massing, layout and landscaping. LP Policy GD5 is concerned with the protection of amenity of occupants of adjoining properties and buildings.

51. In terms of national policy, I note that paragraph 56 of the Framework stresses the need for developments exhibiting a high quality of design whilst paragraph 36 of PPS10 says that waste management facilities should be well designed and contribute positively to the character and quality of the area in which they are located.
52. The site is located on the eastern side of Sinfin Lane a short distance to the south of the junction of Sinfin Lane with the ring road (A5111) through the southern and south-western areas of Derby. The site is of an irregular shape and extends for some distance back from Sinfin Lane. It has an area of about 3.4 hectares. On its northern and eastern sides it is bounded by railway lines; along the northern boundary by the line from Derby to Crewe and Birmingham and on its eastern boundary by a freight siding serving nearby industry. On its southern side the site is adjoined by industrial premises and to the west, the site has a frontage to Sinfin Lane and also adjoins a short row of small terraced houses, Railway Cottages.
53. The site was formerly in use as a brickworks and subsequently as a tannery. The buildings and any other structures associated with the tannery have long since been demolished and the site now is overgrown with thick grass, scrub and a number of trees. LP Policy EP9j allocates the site for a mix of business, industrial, storage and distribution uses and also community uses. The allocation is subject to a number of conditions; that satisfactory remediation is carried out of the ground contamination left by the tannery use, the boundary of the site with the row of houses is satisfactorily treated and community uses are established.
54. The area around the site is mixed in character. Sinfin Lane to the north of the railway line that borders the northern edge of the site comprises allotments and a housing estate on the western side of the road and a mix of small storage, retail and leisure uses on the eastern side of Sinfin Lane. On the opposite side of Sinfin Lane to the site and extending for some distance down Sinfin Lane to the south are a number of large industrial style buildings in a variety of industrial and storage uses. On the same side of Sinfin Lane as the site extending south to its junction with Wilmore Road are industrial premises. This industrial area continues for a considerable distance along Wilmore Road to the east where it is joined by Victory Road, another road serving an industrial area. To the rear beyond the railway sidings forming the eastern boundary of the site is a mixed area comprising a do-it-yourself store, a recycling depot and an energy plant which burns wood.
55. Further away from the site to the south, Sinfin Lane beyond its junction with Wilmore Road is largely residential in character with Sinfin Lane serving an extensive housing area including schools, local shops, park and a nature reserve. Also further away from the site to the north-west and north-east, the ring road passes through the predominantly well established residential areas of Normanton and Osmaston.
56. In the reason for refusal, it is alleged that the development by dint of its size, bulk and design would be out of character with surrounding industrial and commercial buildings. The first thing to be said is that there is no set design to the industrial and commercial buildings in the surrounding area. Industrial and commercial buildings along this part of Sinfin Lane and also along Wilmore Road and Victory Road are varied both in design, materials, proportions and height. For many buildings, landscaping is minimal. In contrast, the clean,

- clear cut lines and gently sloping roofline of the main building of the proposed waste treatment facility make for a building of visual interest. The main building is of a high standard of design which would fit in well in the varied industrial scene provided by the mix of industrial and commercial premises within the locality.
57. Although the proposed main building would be of some size, it would not appear as a dominating feature within the area and when seen from adjoining industrial and commercial premises. The main building would be set well back from Sinfin Lane behind a four metre high screen mound that would also be landscaped. The setting back of the building coupled with the mound cum landscaping would ensure that the building would not be unduly conspicuous from vantage points when approaching the site along Sinfin Lane in either direction. The landscaping along the northern, eastern and southern site boundaries would also ensure that the main building would not appear obtrusive when seen from nearby premises. The mounding and landscaping towards the front of the site would also provide an effective visual screen for those living in Railway Cottages from the proposed main building and the activities that are likely to take place around it.
58. From Sinfin Lane, the building that would be most evident is the single storey, sloping roof education and office building. This would be of a height and proportions that would be in keeping with the height and proportions of the adjoining Railway Cottages. From the immediate vicinity of the site, the main view of the development from Sinfin Lane in addition to the education and office building would be of the access with its long waiting area for vehicles to go past reception and over the weighbridge. The main building would be seen to one side of the access. Given the proximity of neighbouring premises, peripheral landscaping and changing levels, it would be difficult for those passing by along Sinfin Lane in the immediate vicinity of the site to gain an impression of the size and proportions of the main building.
59. At the inquiry, the prominence of the proposed chimney stack was referred to. Whilst the stack would be some 55 metres in height, it would be slim and not out of character with the adjoining industrial area with numerous stacks of varying heights, thicknesses and design. Indeed, on my site visit around the southern part of Derby, numerous chimney stacks could be seen. They are part and parcel of the urban scene in this area of Derby and a sign of the City's industrial manufacturing muscle.
60. Also at the inquiry, it was said that that the proposed development would be out of kilter with the residential areas along and around Sinfin Lane. In the first place, the LP allocates the site for industrial or storage uses. The current overgrown appearance of the site would be largely replaced by whatever development was to be permitted in accordance with the site's allocation. Second, the main residential areas along Sinfin Lane are either to the north of the site or well to the south. Given these distances and the nature of intervening development, and to the north changes in levels and intervening vegetation, I do not consider that the proposed waste treatment facility would impinge to any significant degree into views from existing residential areas.
61. The view was expressed at the inquiry that the erection of the waste treatment facility would deter people from moving into the area. The evidence does not support this view. The proposed development has received much publicity, often of an adverse nature, yet this has not deterred developers from

submitting planning applications for substantial residential developments within the locality, including further down Sinfin Lane to the south of the site. Developers would not be investing time and money in making applications for sizeable housing schemes if they thought that prospective buyers would be put off by the proposed waste treatment facility. I understand the concern of local residents that the introduction of the proposed facility into the local area would make it difficult to sell their homes or would reduce the price that their homes may fetch when sold. In the first place, the effect of proposals on house values is not a matter to be accorded weight in the consideration of planning applications and appeals. Second, no evidence has been advanced to show that the presence or expansion of manufacturing industry within this part of Derby has adversely affected house values.

62. I conclude on this issue that the proposed waste treatment facility would not adversely affect the character and appearance of the area. The proposed development is well designed and would be in keeping with its immediate surroundings. The development would also not adversely affect the amenities of those living in Railway Cottages by reason of visual intrusion or the outlook from those working in neighbouring premises. As such, the proposal complies with WLP Policy W7 and LP Policies GD2, GD4 and E23.
63. The proposal also satisfies the requirements placed upon any development of the site for industrial or storage uses by LP Policy EP9j in that the proposed scheme contains an appropriate degree of screening of Railway Cottages, there is to be a suitable scheme of dealing with the contamination of the site and the education and office building would offer opportunities for community use.

*(iv) Effect of traffic from the proposal on the safety and flow of traffic on the local road network*

64. Although one of the reasons for refusal alleges that traffic generated by the proposal would exacerbate existing traffic problems in the area, the City Council as local highway authority has not objected to the proposal and has provided no evidence to either inquiry on the highway implications of the proposal. Nevertheless, after the first inquiry it was concluded that traffic generated by the proposed waste treatment facility could result in an increase in congestion at the Sinfin Lane/A5111 junction particularly in exceptional conditions such as accidents and when vehicle break down.
65. This is not the appropriate way of approaching the assessment of traffic arising from a development on local highway conditions. It is not the unusual situation that should be taken into account. Accidents, breakdowns or the temporary closure of other roads are, by nature, unusual and unpredictable occurrences. It is clearly impossible for highway authorities at national or local level to provide highway capacity to cater for accidents and the like. The cost of providing highway capacity to meet all eventualities would be unsustainable both in financial terms and environmental impact.
66. The proper way of looking at the highway implications of a proposed development is to look at the evidence in respect of the effect of the traffic generated by a proposal on the performance of the local highway network. The way to do this is to examine survey information on traffic flows and accident records. This information has then to be interpreted against the appropriate development plan policies. In this case, the relevant development plan policies for assessing the highway implications of proposals are LP Policy T1 which

indicates that proposed development will not result in increased traffic congestion or reduce road safety and WLP Policy W8 which says, amongst other things, that routes for traffic for waste development should minimise the potential for congestion.

67. In terms of safety, there is nothing from the personal accident records of the last few years to indicate that there is a particular accident or safety problem on this part of the local highway network. Insofar as traffic flows are concerned, observations made of traffic flows during the morning and evening peak hours at the Sinfin Lane/A5111 junction and also of peak hour traffic flows on Sinfin Lane and the A5111 to the east of the Sinfin Lane junction indicate that the local highway network currently performs adequately. In particular, observations show that the Sinfin Lane/A5111 junction, which was the source of contention in the first inquiry, has no significant residual queuing across the day, including during the morning and evening peak hours.
68. Traffic movement associated with the proposed development would essentially be complementary to existing traffic flows in the area. Waste carrying vehicles are expected to arrive at the site after the morning peak hour after the completion of the morning collection rounds or bringing waste in bulk from transfer stations at more distant locations within Derbyshire. Similarly, waste carrying vehicles are likely to leave the site before the evening peak hour.
69. The traffic arriving and leaving the site at peak hours is likely to be confined to employee's cars, but I share the appellant's view that the amount of car traffic involved, about a car every five minutes at the Sinfin Lane/A5111 junction in the peak hours, would not be noticeable.
70. The site lies in a highly accessible location. It is well served by bus and is within easy walking distance of a local railway station. It is to be hoped that a travel plan which encourages use of public transport, highlights local pedestrian and cycle routes and encourages car sharing would reduce further the number of cars visiting the site.
71. The level and type of traffic generated by the proposed development would be unlikely to have an effect upon the transport character of Sinfin Lane. The site lies close to a major manufacturer of household goods and also to an extensive complex of offices and factories building and testing aircraft engines. These generate both movements by heavy goods vehicles, lighter goods vehicles and cars. In addition, Sinfin Lane provides access to an extensive area of housing further to the south. This gives rise to much movement by car.
72. I note that the City Council has updated its forecasts for traffic flows in this part of Derby to take account of some major developments in the area, including a number of large housing developments, a substantial expansion of employment land on the southern outskirts of the City and a new superstore. Some of these developments have the benefit of planning permission, others have applied for planning permission and others are in the future. The work undertaken by the City Council indicates that the traffic generated by these developments can use the existing road network, including the Sinfin Lane/A5111 junction. These developments would generate considerably more traffic at peak hours than the proposed waste management facility on the appeal site. This points to the robustness of the local road network in being able to take additional traffic.

73. I understand that the City Council has been considering various options for improving the Sinfin Lane/A5111 junction which would be funded by major development in the area. I also understand that if the junction was to be improved, the implementation of the improvement would be undertaken in association with bringing forward one or more of the major developments. Whilst I note that the appellant accepts that the junction is capable of being improved, the evidence clearly points to the low traffic flows associated with the appeal proposal not requiring any improvement to be made to accommodate this traffic.
74. At the inquiry, Councillor Turner suggested that the proposed access into the appeal site from Sinfin Lane raised highway safety problems for other road users. There is no evidence to support this view. The City Council as local highway authority has raised no objection to the position or design of the proposed access. Visibility in both directions from the proposed access would meet the highway authority's requirements and I note that by placing the reception building and weighbridge at some distance from the site entrance there would be room for a large number of waste carrying vehicles to pull clear of the highway while waiting to unload.
75. I conclude on this issue that the proposal would not affect safety or the flow of traffic on the local highway network. As such, the proposal complies with the relevant development plan policies, namely LP Policy T1 and WLP Policy W8.

*(v) Effect of the proposal on air quality in this part of Derby*

76. Two of the reasons for refusal refer to the impact of emissions to air from the stack and also traffic related emissions to air from traffic generated by the proposed waste treatment facility on air quality in this part of Derby. In particular, reference is made in the reasons for refusal of the effect on the Local Air Quality Management Area (hereafter referred to as AQMA). Whilst there are two reasons for refusal which are concerned with air quality, I note that there was no recommendation from Council officers that the proposal should be refused on air quality grounds.
77. Within this part of Derby there are two declared AQMAs. One covers an area in Victory Road to the east of the appeal site and was declared because of heightened levels of particulate matter (PM<sub>10</sub>) associated with a foundry. The foundry has closed and subsequent monitoring has shown that PM<sub>10</sub> concentrations are now well within the National Air Quality Objective. Consequently, the City Council is to take steps to revoke this AQMA. I note that the City Council takes no point against the appeal proposal on the grounds of any material increase in PM<sub>10</sub> levels.
78. The other AQMA in this part of Derby was declared in 2001 and extends along the ring road (A5111). This was declared because of nitrogen dioxide (NO<sub>2</sub>) concentrations being in excess of the National Air Quality Objective. The main source of NO<sub>2</sub> is from the traffic using the ring road. The AQMA closely follows the line of the carriageway and extends for some 14 metres beyond the carriageway to encompass properties which front onto the ring road. It is these properties which are the receptors. Air quality at a number of receptors has been monitored by the City Council.
79. The development plan contains a number of policies relating to the impact of developments on air quality. RP Policy 36 sets out the regional priorities for air

quality. These include giving consideration to the potential effects of new development and increased traffic levels on air quality. WLP Policy W6 indicates that waste development will be permitted only if the development would not give rise to material harm caused by pollution or other adverse environmental effects. The explanatory box makes it clear that the matters that this policy relates to include dust, particles and other emissions. LP Policy E12 is similar in scope to WLP Policy W6, albeit that it relates to all forms of development.

80. The City Council has adopted Supplementary Planning Guidance (hereafter referred to as SPG) for considering air quality when determining applications for new development. As the SPG has been subject to consultation, I give it due weight. The SPG indicates a significant concern would arise if, amongst other things, a proposed development requires an AQMA to be extended or causes an Air Quality Objective to be breached (which in this case, is the Annual Mean Concentration for NO<sub>2</sub> of 40µg/m<sup>3</sup>) and the development increases the concentration of the pollutant by a given amount (which in the case of NO<sub>2</sub> is 1µg/m<sub>3</sub>).
81. I shall deal first of all with the effect of emissions from traffic generated by the proposed development on air quality. This is essentially about the effect of the additional traffic on NO<sub>2</sub> levels. Whilst the City Council's evidence indicates that the traffic associated with the proposed development would lead to rises in the NO<sub>2</sub> levels at all of the monitored receptor points, it acknowledges that at no point would the scale of the increase breach the 1µg/m<sub>3</sub> threshold set out in the SPG. However, the City Council claims that the predicted annual mean concentrations of NO<sub>2</sub> at a number of receptor points would exceed the Air Quality Objective if the development was to go ahead. The City Council concludes that as these breaches would occur at receptor points outside the AQMA; this could mean that an extension of the AQMA is required.
82. I see no compelling evidence that there would be a significant impact on air quality as a result of the traffic generated by the proposed waste treatment facility and that no extension to the AQMA is required. I say this for the following reasons.
83. First of all, it is far from clear whether the City Council considers that it is necessary to extend the AQMA. In its evidence, the City Council merely says that it 'could' mean that an extension is needed. This is hardly a definitive stance.
84. Second, the data that the City Council has based its views on are in the updated Environmental Statement. This assumes a worst case scenario. This is based on the worst meteorological conditions and the operation of the proposed waste treatment facility continuously at the limits set in the environmental permit. However, under more typical weather conditions it is predicted that lower concentrations would result. The City Council in the Air Quality SoCG accepts as appropriate the use of typical weather data in estimating the effect of traffic from the proposed development on NO<sub>2</sub> concentrations. Reworking predicted NO<sub>2</sub> concentrations in the light of typical weather conditions rather than the worst meteorological conditions, it is not anticipated that any extension of the AQMA would be required and that there would be no breach of the SPG.

85. Third, I note that the City Council has granted planning permission or is favourably inclined to grant planning permission for a number of strategic developments which would have the effect of putting far more traffic on the ring road than would be generated by the proposed waste treatment facility. These include a major supermarket, a large employment park at Chellaston and several large housing developments. In addition, there is at least one major housing development in a neighbouring authority which is likely to come forward and lead to increased use of the ring road. I know of no objection made by the City Council to any of these strategic developments on air quality grounds. To my mind, this supports the appellant's position that air quality around the ring road at least in this part of Derby is not such as to require extensions to the existing AQMA.
86. Fourth, setting aside the current proposal to develop the appeal site for a waste treatment facility, the site is, in any event, allocated in the LP for a mix of industry, storage/distribution and community use. A sizeable industrial or storage/distribution development on the site is likely to have the potential for generating traffic, including heavy goods vehicles. These vehicles will have some impact on air quality. The traffic generated by the appeal proposal has to be viewed in the context of what alternative developments could be expected to take place on the site.
87. Fifth, and critically, the Environment Agency on page 61 of the document explaining its decision on the environmental permit says that the impact of traffic emissions is not a matter that the Agency normally takes into consideration. The document goes on to say that in this case, consideration has been given to the effect of traffic on the AQMA as part of its assessment on whether emissions to air from the proposed plant would result in significant harm to the AQMA. The Agency concludes that it is satisfied that notwithstanding any environmental impact from the additional traffic, the installation will not result in significant detriment to the AQMA.
88. At the inquiry, Councillor Turner drew attention to air quality on Newdigate Street. He did this by an analysis of passive diffusion tube monitoring at Newdigate Street. His analysis depended upon bias corrected monthly monitored NO<sub>2</sub> concentrations between 2004 and 2010 and uncorrected monthly NO<sub>2</sub> concentrations between 2004 and 2011. From this analysis he concludes that NO<sub>2</sub> concentrations are increasing.
89. I lean to the appellant's view that Councillor Turner's analysis is to be given little weight. First, only bias adjusted data should be analysed as there is a tendency for diffusion tubes to over read or under read in relation to the method used as a reference. This factor can vary from year to year and thus any use of uncorrected data is of little value. Second, air quality objectives and standards for NO<sub>2</sub> are expressed as annual means and not monthly means. The diffusion tube monitoring undertaken by the City Council provides monthly mean concentrations. The analysis carried out by Councillor Turner, while undertaken with the best of intentions, is thus in error as it considers the trend in monthly mean concentrations and not annual mean concentrations. Third, there is no correction for other factors such as changes in the weather over the year.
90. I note that the appellant has attempted to use data supplied by the City Council from the diffusion tubes in Newdigate Street. After employing bias correction etc, the data shows a trend line indicating a very slight decrease in

NO<sub>2</sub> concentrations rather than the slight increase indicated by Councillor Turner's analysis of uncorrected data.

91. Turning to emissions to air from the stack, I take the view that this is a matter for the Environment Agency through the environmental permit. What emanates out of the stack derives to a significant degree from three factors: the composition of the feedstock going into the gasification unit, the processes involved in the gasification process and the pollution control measures placed on the emissions from the gasification process. All these measures are regulated by the Environment Agency through the environmental permit.
92. This is made clear in the document explaining the Agency's decision on the permit. On page 61 it says 'the control of emissions from the plant is the regulatory responsibility of the Environment Agency under the Environmental Permitting Regulations'.
93. National policy on the responsibilities of planning authorities and the pollution control authorities is provided by PPS10. Paragraph 26 says that 'waste planning authorities should concern themselves with implementing the planning strategy in the development plan and not with the control of process which are a matter for the pollution control authorities'. Paragraph 27 goes on to say that 'pollution control is concerned with preventing pollution through the use of measures to prohibit or limit the release of substances to the environment to the lowest practicable level. It also ensures that ambient air and water quality meet standards that guards against impacts to the environment and human health.'
94. I note that the environmental permit in this case sets out detailed measures for controlling emissions to air. Schedule 2 sets out the waste types that can be accepted at the proposed waste treatment facility. Schedule 3 sets out the limits for emission to air of certain substances and the detailed monitoring requirements. Schedule 4 sets out the reporting requirements, whilst Schedule 5 establishes the reporting requirements in the event of malfunction, breakdown or failure of equipment, accidents or the release of fugitive emissions which have caused or are likely to cause significant pollution or breach the emission limits identified in Schedule 3. Thus, the permit contains all the regulatory components for ensuring that emissions to air from the plant do not compromise air quality.
95. In this respect, I note that the application for the permit included detailed dispersion modelling of emissions from the stack to assess the effect on air quality. The modelling was undertaken on a worse case scenario. This assumed that the waste treatment facility would operate continuously, at the maximum throughput of waste, at the emission limits stipulated by the Environment Agency and using the worse case meteorological data. The dispersion modelling, including the selection of data and the assumptions that were made, was reviewed by the Environment Agency's specialist Air Quality Modelling and Assessment Unit. Page 24 of the document explaining the Agency's decision on the permit says that the Unit concurs with the conclusions of the dispersion modelling that the predicted concentrations of all pollutants that were considered were well within the relevant air quality objectives and environmental assessment levels.
96. Paragraph 27 of PPS10 says that planning authorities 'should work on the assumption that the relevant pollution control regime will be properly applied

and enforced'. This is the basis that I have approached the question of the effect of emissions from the stack on air quality. I am satisfied that the environmental permit has been issued after a detailed examination of the plant and its capabilities, the processes and controls involved and the likely impacts upon the environment and health. I am also satisfied that the permit provides the mechanism for controlling and monitoring emissions.

97. The environmental permitting system has a number of advantages over the planning system for controlling the operation of processes such as the one proposed for this site. First, unlike conditions on planning permissions which are fixed when the permission is granted, permit conditions can be amended at any time. This means that the operating standards of a plant can be raised as new regulatory standards are introduced. Second, there is a wide range of options available for enforcing conditions on permits. Permits can be suspended or revoked. These represent a more rapid way of dealing with breaches of a permit than what happens with breaches of planning conditions. Third, breach of permit conditions can attract sanctions through the Courts.
98. FOE and SSAIN in particular cast doubts over the willingness or ability of the Environment Agency to enforce the requirements of a permit. I see no evidence of this. The technical press contains numerous reports of the Agency taking action in the Courts to penalise those who do not abide by the requirements set down by the Agency. The Planning Inspectorate also deals with appeals by those holding permits where the Agency is seeking to revoke or suspend permits or where new conditions have been imposed.
99. FOE refers to the waste gasification plant in the Isle of Wight as an example of where regulation has failed. FOE also says that this points to the unreliability of the type of gasification technology adopted for the appeal site. However, the operation of the Isle of Wight plant was suspended at least once, and possibly several times, when monitoring showed excessive emissions to air of dioxins, amongst other substances. The plant ceased operating whilst improvements were carried out to the plant. This seems to point to the regulatory system working. As for the Isle of Wight plant indicating the unreliability of the gasification technology to be employed on the appeal site, I note that the Isle of Wight plant was an existing installation where the gasification technology was fitted retrospectively. The proposed plant has the considerable advantage of being designed and built entirely from new. I also understand that the boiler design at the Isle of Wight plant is different to that of the proposed plant.
100. Councillor Turner and others referred to there being no requirement in the permit for further air quality monitoring points in and around the AQMA. The AQMA is concerned with NO<sub>2</sub> concentrations as a result of vehicle emissions. This is essentially a planning matter. As such, it is a matter for the City Council; it is not a matter for the Environment Agency through the permitting process. As already discussed, the evidence does not point to there being an increase in NO<sub>2</sub> concentrations as a result of the traffic generated by the appeal proposal which would give rise to concern.
101. It was a recurrent theme of many local residents that this part of Derby is being 'dumped on' with heavy industry. Although the area contains a concentration of manufacturing industry, this has not given rise to concern by the City Council in respect of emissions to air emanating from manufacturing

processes. The AQMA covering the ring road within this part of Derby is solely concerned with emissions from traffic.

102. I conclude that the proposal would not adversely affect air quality in this part of Derby. The emissions from the traffic likely to be generated by the proposal would not require the extension of the declared AQMA nor would they give rise to concern that would lead to the proposed scheme being rejected. The emissions from the stack are a matter for the Environment Agency through the environmental permit. As such, the proposal does not conflict with RP Policy 36, WLP Policy W6, LP Policy E12 or the City Council's adopted SPG on development and air quality. I shall now go on to consider the health effects of emissions to air.

*(vi) Effect of the proposal on health of those living in this part of Derby*

103. One of the duties of the Environment Agency in administering the environmental permitting system is to ensure that public health is not affected by emissions from a permitted plant. PPS10 sets out national policy in respect of the roles of the pollution control authorities and planning authorities as to dealing with the impact of waste management facilities on health. Paragraph 30 says that modern, appropriately located, well run and well regulated, waste management facilities operated in line with current pollution control techniques and standards should pose little risk to human health'. It goes on to say that 'the detailed consideration of a waste management process and the implications, if any, for human health is the responsibility of the pollution authorities. However, planning operates in the public interest to ensure that the location of proposed development is acceptable and health can be material to such decisions'.

104. Paragraph 31 explains that where concerns about health are raised, planning authorities should avoid carrying out their own detailed assessment of health studies. Instead, national policy exhorts planning authorities to draw on Government advice and research and consult with the relevant health authorities and agencies so that they are in possession of the implications for health, if any, when considering the locational implications of planning applications.

105. From this I take the view that the health implications of the location of a waste related development are capable of being a material planning consideration. I also recognise that whilst the permit is responsible for controlling emissions and thus minimising the impact on human health, the fear or anxiety about possible health effects is capable of being a material planning consideration. However, the weight to be given to both matters depends upon the views expressed by the relevant health organisations and the evidence that is submitted about the health impacts.

106. In considering such matters, the starting point remains the development plan. The development plan contains a number of policies which are relevant to a consideration of the health impact in particular and the effect on residential amenity in general of the proposal. These are to be found in the WLP and LP. WLP Policy W4 says, amongst other things, that where there is reasonable cause for concern that a proposed waste development presents a threat of serious or irreversible damage to the use or enjoyment of land then the development will not be permitted. Policy W6 says that waste developments will only be permitted if the developments would not result in

material harm by reason of health effects. In respect of the LP, Policy GD5 says that development will only be permitted where it would not cause unacceptable harm to the amenity of nearby areas by reason of, amongst other things, air pollution. Policy EP14 is concerned with employment related development which may give rise to potential off-site effects. It says that planning permission will be forthcoming provided that there would be no significant risk or detriment to health. Policy E12 is in similar vein and relates to all development.

107. Dealing first with the suitability of the proposed development's location in terms of health impacts on the wider community I make two points. The first is that the site is owned by the City Council. It was made available for the proposed development by the City Council under the terms of the waste contract. I find it inconceivable that the City Council would have made available a site that it considered was unsuitable due to its location in relation to the local community. The second is that during the consideration of the planning application, the City Council received no responses from the appropriate health organisations indicating that the proposed waste treatment facility would be inappropriately located in respect of its relationship to the local community or that the operation of the facility would give rise to significant or unacceptable health impacts.
108. During the inquiry there was much comment from Rule 6(6) parties and members of the public that this was the 'wrong site'. The appellant has twice undertaken an exercise looking at the suitability of alternative sites. The weighting given to various sites was based on the locational factors set out in Annex E of PPS10. In both exercises, the appeal site has emerged as the preferred site. At the inquiry, the City Council made no comment upon the investigation of alternative sites. It took a neutral stand, neither supporting nor criticising the exercise. No compelling evidence was put forward by others to suggest that there was a preferable site to the one which is the subject of the appeal.
109. Turning to fear or anxiety about the health impacts of the proposed plant, it was pointed out that communities in this part of Derby suffer from poor health and have a lower expectation of life than other areas of the City. However, air quality, although important, is only one of a number of factors that contribute to poor health. Low quality housing, poor employment prospects, low educational achievements and poor diet are all factors that contribute to the health of a community. It is difficult, if nigh impossible, to entangle one factor from another or to say that one factor is the primary cause of poor health.
110. In considering the potential impact of the proposed plant on health, the Environment Agency consulted a number of organisations responsible for safeguarding public health, including the Health Protection Agency (hereafter referred to as the HPA) and the Derbyshire County Primary Care Trust (referred to as the PCT). The latter with its responsibilities for the provision of health services in and around Derby would have been aware of the health issues of the local community and of local concerns and anxieties.
111. The HPA and the PCT when consulted concluded that they had no significant concerns regarding the risk to the local population from the proposed facility. At the inquiry it was claimed that as the HPA is carrying out a review of studies into the health impacts around incinerators it is premature for the HPA to conclude that it had no significant concerns in this case. As I see it the HPA is

acting prudently. It has undertaken a review of the research literature to see whether there is anything more to be taken into account in responding to consultations on incinerators. It is worth noting the statement issued by the HPA which states that it has 'reviewed research undertaken to examine the suggested links between emissions from municipal waste incinerators and the effects on health. While it is not possible to rule out adverse health effects from modern, well regulated municipal incinerators with complete certainty, any potential damage to the health of those living close by is likely to be very small, if detectable'. It goes on to conclude that as any possible health effects are likely to be very small, 'studies of public health around modern, well run incinerators are not recommended'.

112. The view reached by the HPA and the PCT reflects the health assessment undertaken by the appellant for the permit application. The Environment Agency has accepted the soundness of the conclusions reached in the appellant's health assessment.
113. SSAIN and FOE express concern at the effect of particulate matter on public health. In the first place, the permit requires the installation of equipment to reduce the amount of particulate matter that is emitted and also requires monitoring to be carried out of particulate concentrations. Second, the appellant has undertaken an assessment of the effect of the particulate matter on the health of the local population if the proposed facility goes ahead. The results of the assessment are set out on pages 54-7 and 55-7 of the updated environmental statement. Applying widely used and accepted national assessment methodology and factoring in conservative assumptions to err on the cautious side, the appellant's assessment says exposure to PM<sub>10</sub> emissions would have the potential to reduce life expectancy of 0.002 to 0.007 seconds for 100,000 people whose health is already seriously compromised and are subject to the highest concentration exposures from the proposed facility.
114. This conclusion was described by FOE as the appellant playing God with people's lives in much the same fashion as a totalitarian regime. I deprecate this sort of language. What is needed is an objective look at the evidence. The small parts of a second mentioned in the appellant's assessment are infinitesimal. Given that the calculation requires an exaggeration of potential exposure, it can be concluded that the proposed facility would not result in PM<sub>10</sub> emissions of a level that would have any measurable health outcome in the locality.
115. Reference was made by some of the Rule 6(6) parties to Professor Howard's research on very small particulate matter, that is, nano particles, and the need for enforced permanent monitoring of air quality. In the document setting out the decision making process on the permit, the Environment Agency makes the point that Professor Howard's work on the link between public health and incineration has not been accepted in any peer reviewed scientific journal. However, the Agency is clearly aware of the health effects of small particulate matter and in the determination of the permit has relied on the advice of the HPA and the PCT, who have the acknowledged expertise in this matter.
116. Whilst I understand the concern expressed by those in the local community as to potential health effects from the proposed waste management facility, these concerns are not supported by any objective review of the evidence. They are also not supported by those who have a responsibility for safeguarding public health.

117. I conclude on this issue that there is no evidence to suggest that the proposal would adversely affect the health of those living in this part of Derby. Accordingly, I do not consider that the proposal conflicts with WLP Policies W4 and W6 and LP Policies GD5, EP14 and E12.

**Overall conclusion on the development plan and a consideration of benefits and harm**

118. Gathering together my conclusions on the issues that I have identified in this case, I conclude that the proposal complies with the RP in providing a centralised facility for dealing with the waste management needs of this part of the region. The proposal also complies with the RP in that it would enable waste to be managed higher up the waste hierarchy and would not inhibit recycling or prevent the RP's recycling target or a higher target from being met. In considering the proposal against the various site specific impacts such as being compatible with the character and appearance of the locality, effect on the local highway network, impact on air quality and effect on health, I conclude that the proposal does not breach any RP, WLP or LP policy. In short, I find that the proposal complies with the relevant policies in the development plan.

119. I go on to consider the benefits and harm that would be associated with the proposed development. Given my overall conclusions on the individual impacts of the development, I am unable to find any evidence of demonstrable harm to an interest of acknowledged importance. Nevertheless, I acknowledge that there is a heightened anxiety, even fear, emanating in the local community about the consequences of the proposed facility, albeit that these anxieties are not supported by evidence. Against this the development would give rise to a number of benefits.

120. In the first place, it would enable the last major element of the City and County's joint waste strategy to be brought to fruition. It would enable the City and the County's residual municipal waste to be dealt with in a sustainable manner by reducing the volume of waste going to landfill. The proposed plant would also provide for the separation of recyclable elements of waste that had missed the kerbside collection of recyclable materials. It would also put the bottom ash to use as an aggregate.

121. The facility would also provide a benefit for local businesses and services by providing an opportunity to deal with commercial and industrial waste. The facility also offers renewable energy benefits. By exporting some 8.7MW of electricity, sufficient for 14,000 homes, the plant would be a source of renewable energy contributing to lowering the reliance on fossil fuels. The facility would offer the opportunity in the future for heat to be used by local industrial concerns either in the form of steam or hot water.

122. For the local community, the proposed facility would have the benefits of ensuring that a contaminated site was responsibly cleaned up. It would also offer job opportunities and in the education building provide both education opportunities for looking at responsible waste management but also meeting room facilities.

123. I give the benefits that would be generated by the proposed development very substantial weight, particularly in respect of the waste management and renewable energy benefits. In my judgement, the fact that local concerns and

anxieties seem to me to have been based on perception rather than substantive or proven evidence mean that they cannot outweigh the benefits I have identified nor the fact that the proposal complies with the development plan.

### **Other Matters**

124. I have had regard to a number of other matters that were raised at the inquiry. The suggestion was made that the gasification technology to be provided on this site does not represent proven technology. In the document explaining the decision on the permit, the Environment Agency explains on page 79 that the basic principle of the technology is well established and that the technology is at work in a number of plants in Europe.
125. The common lizard has been seen on the site. In my experience, the ideal habitat for lizards is one where the vegetation is low so that they can stalk insects and also be aware of any predators. Walls, rocks and rubble also provide lizards with places to bask and places in which to hide. Much of the site is covered with very tall grass and scrub which is a less than ideal habitat for reptiles. Nevertheless, I am satisfied from surveys carried out that at least part of the site provides a suitable habitat for common lizards and that there is a small population of the reptile on the site. I am satisfied that subject to the appropriate measures being taken during the construction phase, the lizards can be relocated and that following landscaping the site can provide a suitable habitat. I note that the site has no nature conservation designation and there are no objections to the proposed development from the relevant nature conservation organisations.
126. Neither these nor any other matters raised alter my overall conclusions on the appeal.

### **Human Rights**

127. FOE claimed that allowing the appeal would result in a breach of the Human Rights Act 1998. It is put on the basis of a breach of Article 8 of the European Convention on Human Rights, the right to family life, and Article 2, the right to life. The right to family life is a 'qualified right'.
128. Article 8(2) of the Convention provides that 'there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ...'. Any interference, if such there be, following the grant of planning permission in accordance with the statutory scheme is in accordance with the law. The Courts in *Lough v First Secretary of State* [2004] EWCA Civ 905 have held that in making decisions on development proposals what is required is the balancing of the competing interests of individuals and the community as a whole. In essence, this is what the inquiry has been about. This balance is what is reflected in this decision. The need for the development and the needs of individuals and the local community have been considered in the light of the evidence.
129. The right to life is not qualified, it is an absolute right. Article 2(1) of the Convention states that 'everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally ...'. The question in this case as put to me by both FOE and the City Council is whether the risk of shortening life by up to 0.007 seconds is to deprive someone of his/her life. I do not

consider that this represents depriving someone of life. In saying this I have had regard to the advice offered by the relevant bodies responsible for safeguarding health, the HPA and PCT, to the effect that they have no significant concerns about the impact of the proposed development on the health of the local community. I also have had regard to controls operated by the Environment Agency through the environmental permitting system to safeguard public health. In addition, I have had regard to the conclusion reached by the appellant's health impact assessment, from which the figure of 0.007 seconds is taken. This figure has to be placed in context. It is an assessment that is based on the most conservative of assumptions and even on these assumptions it can be concluded that the plant would not result in particulate emissions of a level that would have any measurable health outcome.

130. I do not consider that allowing the appeal would breach human rights. In coming to this view, I note that in the document describing its decision making process on the permit, the Environment Agency considers the potential interference with human rights set out by the Convention. Page 65 of the document says that the decision on the permit is compatible with its duties under the Human Rights Act 1998. In particular, the Agency has considered the right to life, Article 2, the right to a fair trial (Article 6), the right to respect for private and family life, Article 8, and the right to protection of property, Article 1 of the First Protocol. The Agency has concluded that it does not consider the rights conveyed under the Convention are engaged by the determination of the permit application. I note that there has been no challenge to the permit in respect of its conclusions on human rights.

### **Localism**

131. The City Council and others suggest that to allow the appeal would be to run counter to the stated intentions of the Government to move decision making to the local community in planning matters. Much was made of both the DEFRA document reviewing waste policy (see a copy of the document at CD139) and Bob Neill MP's speech to the Institute of Waste Management in June 2012 on the subject of local government and waste management in a localist world (see a copy of the speech at CD152).
132. I recognise that to allow the appeal runs counter to the strongly expressed wishes of the local community. However, it is important in determining planning appeals and applications to have regard first of all to the development plan and then to all other relevant material considerations. In doing so, there is a need to objectively consider the evidence that has been submitted. In this case, there is no compelling evidence which supports the stance of local people. There is nothing in the recent review of waste policy or Mr Neill's speech to suggest that evidence is unimportant or can be lightly set aside.
133. It cannot be that a strategic facility to provide for the needs of a very wide area can be decided solely on the basis that the local community do not wish it to be located within their area. This would be to hold much needed, major development to ransom. If applied widely, this could hold up economic recovery as well as deprive future generations of important developments and facilities.
134. The City Council suggest that this is an unusual case. In my experience, most major proposals for waste management facilities are deeply controversial.

135. What is needed is to provide opportunities for the local community to become involved in the planning process, both at the policy formulation stage and subsequently when a planning application is forthcoming. In this case, there is nothing before me to suggest that the preparation of the LP, WLP, RP or joint waste management strategy has not provided opportunities for public comment and debate. At the planning application stage, there has also been the opportunity for public involvement as is testified by the number of written representations being submitted and the level of public involvement during two inquiries. However, what is required are views backed by firm evidence and the merits or otherwise of a policy or proposal being objectively debated. As already stated, there is an absence of evidence to support the community's views in this case.
136. In the last resort, planning has to balance the need for a development with the impact on the environment in the broadest sense of the word. That balance has to be made taking into account the development plan and having regard to evidence. The decision to allow the appeal against the wishes of the local community has had regard to these considerations.

### **Adequacy of the Environmental Statement**

137. Both the originally submitted environmental statement and the updated environmental statement comprise non-technical summaries with a number of chapters detailing the proposal and exploring the main impacts likely to arise as a result of the proposals together with a discussion of possible mitigation measures. The evidence base for the discussion of the issues include a number of detailed, technical appendices.
138. No one has suggested that the necessary steps have not been taken with regard to the arrangements for consultation and publicity for either the environmental statement or the revised environmental statement. I consider that together the original and updated environmental statements, in terms of their coverage of the main impacts and the mitigation likely to be required, are adequate and satisfy the requirements of the Environmental Impact Assessment Regulations.
139. The Rule 6(6) parties indicated that they disagreed with certain aspects of the environmental statements. These were matters on which the Rule 6(6) parties and the appellant held opposing views. Such differences are to be expected and were the subject of evidence at the inquiry. These differences do not alter my view as to the adequacy of the environmental statements.

### **Conditions**

140. The SoCG contains a number of conditions that the appellant and the City Council suggested could be attached to the planning permission in the event that the appeal was to be allowed. I have considered the suggested conditions in the light of the advice contained in Circular 11/95 "*The Use of Conditions in Planning Permissions*". This puts forward a number of tests against which the acceptability of a condition is to be assessed. The tests set out in the Circular are that the condition should be necessary, relevant to planning, relevant to the development being proposed, enforceable, precise and reasonable in all other respects.
141. With the exception of one condition, the suggested conditions satisfy the tests in the Circular. The exception being the requirement that all mitigation

measures identified in the environmental statements and any variation of the statements be implemented in accordance with the approved plans and drawings. I am far from being convinced that this condition is needed. Most of the main impacts of the proposed development in planning terms, such as visual impact, nature conservation, noise, drainage, access, parking and so on, are the subject of other conditions. In addition, some of the impacts identified in the environmental statements, such as air quality, are subject to other controls. It also seems to me that the condition in referring to all mitigation measures lacks the necessary precision and is likely to raise problems of enforceability.

142. In respect of the other conditions, I have made amended the suggested wording in the interests of clarity and enforceability. In a number of conditions I have made it clear that what is being required to be provided by the condition should be retained thereafter.

143. In addition to the standard condition requiring development to commence within three years, a condition also needs to be imposed which identifies the plans and drawings that define the extent and nature of the proposed development. The suggested conditions put forward at the inquiry contain a long list of photomontages, diagrams and other matters which the main parties claim define the proposal. However, some of the matters that have been identified, such as predicted contributions of NO<sub>2</sub> and PM<sub>10</sub>, are to be controlled through other regulatory regimes, whilst other matters, such as noise levels and dealing with ground contamination, are the subject of other conditions. Accordingly, for the purposes of this condition I have only referred to the plans and drawings submitted as part of the planning application process and which physically define the proposed development. (These plans and drawings are included in the inquiry documents as plan A).

144. To ensure that the development blends in as far as possible with its surroundings, I am attaching a raft of conditions in respect of external materials, landscaping, protection of existing trees and plants which are to be retained and the boundary treatment of the site. To minimise the impact of the development upon common lizards on the site, I am requiring the submission of a mitigation strategy and method statement for the species. I am requiring the submission of a monitoring and management plan to enable the site to fulfil its potential as a wildlife corridor, that is, linking up with adjoining land.

145. No details or insufficient detail has been submitted in respect of the earth mounding and rear retaining wall. To ensure that the mounding and retaining wall is in keeping with the locality and to ensure that the mounding does not impinge upon those living nearby, I am requiring the submission of details of these elements of the project. To ensure that external lighting around the development does not impinge upon the locality, I am requiring the submission of details of external lighting.

146. To ensure that the new access is in place for the construction of the proposed buildings, I am requiring the access to be constructed in accordance with details to be submitted and for the existing access to be permanently closed. To ensure that parking takes place within the site and not on adjacent stretches of the public highway, I am imposing a number of conditions requiring the provision of parking and turning areas, including provision for parking motorcycles and cycles. So that disabled employees and visitors are

not disadvantaged, I am requiring the provision of a number of parking spaces for the disabled together with a level or ramped access to the education and visitors centre. In an attempt to limit the use of the car, I am requiring the submission of a travel plan.

147. To ensure that the contamination within the site is properly dealt with in the interests of the health and safety of those who will be employed within the development, I am imposing a condition requiring the submission and implementation of a remediation scheme. As no drainage details have been submitted, I am requiring such details to be submitted. The details to be submitted should include an assessment of whether the provision of sustainable surface water drainage would be appropriate. To safeguard the living conditions of those residing nearby, I am requiring the submission of noise attenuation measures.
148. The proposed development has been assessed in the environmental statements on the basis that it would handle 200,000 tonnes of waste per annum. As no assessment has been made of the impact of the development if it accepts larger quantities of waste, I agree with the main parties that a condition needs to be imposed which limits the amount of waste that can be handled by the development to 200,000 tonnes per year. To protect the character and appearance of the area, I am requiring no waste to be stored outside of the buildings except in designated areas for skips. To safeguard the living conditions of those residing nearby, I am limiting the hours in which waste can be accepted at the site and also to advise drivers of a preferred lorry route. I make it clear that the preferred lorry route is advisory and that this falls far short of prescribing a route which lorries must take. The appellant has no control over who uses the public highway and only limited control over what vehicles will bring waste to the site. To protect the living conditions of those residing nearby, I am requiring a construction management scheme to be submitted. Amongst other things, this will limit the hours in which construction work can take place.
149. Last, I am requiring the submission of a management scheme for the education and visitors centre. The scheme is to include opening hours so that the living conditions of those residing nearby are not affected by late opening and also details of the education programme to be run by the centre so that it can make a contribution to educating the public about waste and waste management.

### **Conclusion**

150. For the reasons above, and having regard to all other matters raised, I conclude that the appeal should succeed.

*Alan D Robinson*

**Inspector**

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

Hugh Richards of Counsel	Instructed by the Head of Legal and Democratic Services, Derby City Council
He called: Michael Kay	Head of Environmental Health and Licensing, Derby City Council
Councillor Philip Hickson	Elected Member on Derby City Council and Member of the Council's Planning Control Committee. Formerly Leader of the Council

### **FOR THE APPELLANT:**

Martin Kingston of Queen's Counsel	Instructed by Grant Anderson of Addleshaw Goddard LLP, 100 Barbirolli Square, Manchester
He called: Michael Axon	Fellow of Institution of Highways and Transportation and a Member of the Transport Planning Society. Director of Vectos, highway and traffic consultants
Daniel Smythe	Senior Director with responsibility for air quality at RPS, planning and development consultants.
Kirsten Berry	Chartered Town Planner and Partner with Environmental Resources Management Limited, planning and development consultants
Abi Cox	Waste Education & Minimisation Officer employed by Resource Recovery Solutions (Derbyshire) Limited. Was not called by Mr Kingston but gave evidence on behalf of the appellant as to her role in delivering waste education in Derby and Derbyshire

### **FOR SINFIN, SPONDON AND ALL AGAINST INCINERATION (SSAIN) (A RULE 6(6) PARTY):**

Simon Bacon	Chairman of SSAIN, of 114 Swarkestone Drive, Littleover, Derby
He gave evidence and also called: Keith Kondakor	Electrical and Communications Engineer. Of 19 Gloucester Close, Nuneaton
Tim Hill	Chartered Mechanical Engineer. Of 180 Tom Lane, Fulwood, Sheffield

### **DERBY AND SOUTH DERBYSHIRE FRIENDS OF THE EARTH (FOE) (A RULE 6(6) PARTY):**

Dorothy Skrytek, co-ordinator of Derby and South Derbyshire	85 Crewe Street, Normanton, Derby
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FOE, presented the case on behalf of FOE and gave evidence

**CITY COUNCILLORS ROBIN TURNER AND BAGGY SHANKER (RULE 6(6) PARTY):**

Robin Turner presented his case and that of Councillor Shanker and also gave evidence on his own behalf	City Councillor. Of 10 Ridgeway Avenue, Littleover, Derby
Baggy Shanker	City Councillor. Of 11 Ambervale Close, Littleover, Derby

**INTERESTED PERSONS WHO APPEARED AT THE INQUIRY:**

Hugh Ulliyatt	Garden Flat, 5 Jubilee Road, Bristol
Mark Harris	62 The Chase, Sinfin, Derby
Graham Cliff	10 Raven Road, Timperley, Altrincham
Peter Ambler	4 Holm Lane, Spondon, Derby
City Councillor Karen Hillier	15 Pineview Gardens, Littleover, Derby

**INTERESTED PERSONS WHO SPOKE AT THE EVENING SESSION HELD AT ST STEPHENS CHURCH HALL, SINFIN ON 19 JUNE:**

Gary Wooley	153 Cotton Lane, Derby
Mr Dodd	2 Mossdale Crescent, Derby
Dr R Downing	321 Osmaston Park Road, Derby
Michael Whitehead	41 Elton Road, Derby
Mark Slayley	4 Peebles Close, Sinfin, Derby
Anthony Slater	Flat 8, 161 Cotton Lane, Derby
Patricia Hamilton	8 Hamblyn Crescent, Sinfin, Derby
David Kirkwood	7 Dun Close, Sinfin, Derby
Jean Lung	17 Carron Close, Sinfin, Derby
Prince Sweeney	30 Campbell Street, Osmaston, Derby
Tom Fuller	11 Carron Close, Sinfin, Derby
Gina Mildred	105 Thackeray Street, Sinfin, Derby
Simon Lee	569 Lower Somercotes, Somercotes, Alfreton
Sharon Harding	25 Radford Street, Alvaston, Derby
Sonia Siczkarenko	34 Redwood Road, Sinfin, Derby
Chris Skrytek	75 Hillsway, Derby
John Eccarius	1 Dunbar Close, Sinfin, Derby
Debbie Grafton	61 Islay Close, Sinfin, Derby
Narinder Dhinsa	149 Nightingale Road, Derby
Eirlys Smith	446 Stenson Road, Derby
Susan Moon	94 Victory Road, Sinfin, Derby
John Wainwright	68 Thackeray Street, Sinfin, Derby
Ann Clarke	31 Shakespeare Street, Sinfin, Derby
Stuart Williamson	61 Grasmere Crescent, Sinfin, Derby
Glenys Williamson	61 Grasmere Crescent, Sinfin, Derby
Balaj Dhanda	15 Maree Close, Sinfin, Derby
Hashani Dhanda	15 Maree Close, Sinfin, Derby
Mick Vernon	47 Kingsley Close, Sinfin, Derby

Ranjit Dhanda	15 Maree Close, Sinfin, Derby
Mary Borgac-Kemp	37 Lynwood Road, Sinfin, Derby
Ajit Gahunia	6 Larkhill Crescent, Sinfin, Derby
Jackie Harvey-Atkins	28 Grasmere Crescent, Sinfin, Derby
Marcus Harrison	33 Victory Road, Sinfin, Derby
Kieran Dhanda	15 Maree Close, Sinfin, Derby

**INTERESTED PERSONS WHO SPOKE AT THE DAY LONG SESSION HELD AT THE GUILDHALL IN DERBY CITY CENTRE ON 20 JUNE:**

Stephen Peat	19 Wood Road, Spondon, Derby
Mohan Singh	316 Sinfin Lane, Sinfin, Derby
Jarnal Kaur	316 Sinfin Lane, Sinfin, Derby
Sylvia Kirkwood	7 Dunoon Close, Sinfin, Derby
Alan Street	74 Grange Avenue, Old Normanton, Derby
Colin Attenborough	24 Redwood Road, Sinfin, Derby
Eve Dudden	2 Tay Close, Stenson Fields, Derby
Peter Johnson	9 Grange Avenue, Derby
Louise Noble	96 High Lane East, West Hallam, Ilkeston
Donna Chambers	112 Swarkestone Drive, Littleover, Derby
Jaginda Bains	51 Ladybank Road, Mickleover, Derby. Mrs Bains spoke on behalf of Indian Workers Association
Carole Martin	224 Sinfin Avenue, Shelton Lock, Derby
Mr J West	3 Oaktree Avenue, Derby
David Gale	5 Church Street, Alvaston, Derby
City Councillor David Shepherd	11 High Street, Ticknell, Derby
John Harrison	8 Hamblin Crescent, Sinfin Moor, Derby
Penny De Abreu	93 Arthur Street, Derby

**DOCUMENTS SUBMITTED AT THE INQUIRY**

- 1 Attendance sheets
- 2 List of those who attended the day long session held at the Guildhall on 20 June
- 3 List of those who spoke at the evening session held at St Stephens Church Hall on 19 June
- 4 List of those submitting written statements at the evening session held at St Stephens Church Hall on 19 June
- 5 List of those who spoke at the day long session held at the Guildhall on 20 June
- 6 List of those submitting written statements at the day long session held at the Guildhall on 20 June
- 7 City Council's letter of notification and list of persons notified
- 8 Opening statement on behalf of the appellant
- 9 Opening statement on behalf of the City Council
- 10 Opening statement on behalf of SSAIN
- 11 Opening statement on behalf of FOE
- 12 Opening statement on behalf of Councillors Turner and Shanker
- 13 Diagram of mass balance summary of the Sinfin waste treatment facility. Submitted by Mr Ulliyatt
- 14 Questions arising from the Environmental Permit that Ms Skrytek wishes to see answered in the inquiry process. Submitted by Ms Skrytek
- 15 Opening statement and closing submissions made by Councillor Turner at the

- previous inquiry. Submitted by Councillor Turner
- 16 Various additional documents submitted by Councillor Turner in respect of his rebuttal proof dealing with air quality
- 17 Letter of 18 June from the County Council to the Planning Inspectorate regarding requests made to the County Council for release of environmental information
- 18 E-mail of 18 June from the County Council to the Planning Inspectorate attaching two documents that have been released under the request for environmental information. The first relates to financial viability. The second relates to the inter authority agreement as to the operation of the contract for the long term treatment of residual waste. Appended to the latter is Schedule 1 which is concerned with the membership of the board managing the contract and Schedule 8 which is concerned with the project payment mechanism and the allocation of liabilities and benefits
- 19 Bundle of written statements made by interested persons and submitted at the evening session held at St Stephens Church Hall on 19 June
- 20 Bundle of written statements made by interested persons and submitted at the Guildhall on 20 June
- 21 Written statement submitted by Councillor Hillier on which her oral evidence to the inquiry was based
- 22 Written statement read by Councillor Shanker during his appearance at the inquiry
- 23 DEFRA's document entitled "Applying the Waste Hierarchy: Evidence Summary" (this has been added to the list of core documents as CD150). Submitted by Mr Kingston
- 24 DEFRA's document entitled "Guidance on Applying the Waste Hierarchy" (this has been added to the list of core documents as CD151). Submitted by Mr Kingston
- 25 Copy of speech given on 13 June by Bob Nield MP, the Parliamentary Under Secretary of State, on local government and waste management in a localist world (this has been added to the list of core documents as CD152). Submitted by Mr Richards
- 26 Written statement submitted by Mr Cliff on which his oral evidence to the inquiry was based
- 27 Written statement submitted by Ms De Abreu on which her oral evidence given at the Guildhall was based
- 28 Press release by the Derby Evening Telegraph concerning the evening meeting at St Stephen's Church Hall. Submitted by Mr Kingston
- 29 Selection of publicity material about the appeal proposal featuring Mr Bacon and Ms Skrytek. Submitted by Mr Kingston
- 30 List of conditions agreed between the appellant and the City Council (this has been added to the list of core documents as CD154)
- 31 Schedule of waste collection kerbside schemes in Derby and Derbyshire (this has been added to the list of core documents as CD153)
- 32 Outline of application for costs. Submitted by Mr Kingston
- 33 Schedule showing locations visited during site visit and map showing route followed.
- 34 Mr Bacon's closing submissions on behalf of SSAIN
- 35 Ms Skrytek's closing submissions on behalf of FOE
- 36 Councillor Turner's closing submissions
- 37 Mr Richards's closing submissions on behalf of the City Council
- 38 Mr Kingston's closing submissions on behalf of the appellant
- 39 Outline of costs application (final version). Submitted by Mr Kingston

- 40 Outline submissions made by Mr Richards in reply to appellant's costs application

**PLANS SUBMITTED AT THE INQUIRY**

- A Folder of application plans and drawings
- B Plans provided by the City Council showing the appeal site in relation to major development sites in this part of Derby

## ANNEX

### **Schedule of conditions in respect of planning permission granted for a waste treatment facility comprising reception and recycling hall, mechanical biological treatment, advanced conversion technology, power generation and export facility, education and office facility, landscaping and formation of access on disused land adjacent to 1-5 Railway Cottages, Sinfin Lane, Sinfin, Derby.**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and drawings:
  - Figure 1.1: Site Location Plan
  - Figure 1.2: Proposed Site Boundary
  - Figure 1.3: Site Topography
  - Figure 4.1: [D124019-Sin-1001] Site Layout Plan
  - Figure 4.2: [D124019-Sin-1003] General Arrangements
  - Figure 4.3: [D124019-Sin-1101] Process Building Plan
  - Figure 4.4: [D124019-Sin-1601] Welfare Facility Floor Plan
  - Figure 4.5: [D124019-Sin-1102] Process Building – West Elevation
  - Figure 4.6: [D124019-Sin-1103] Process Building – East Elevation
  - Figure 4.7: [D124019-Sin-1104] Process Building – South Elevation
  - Figure 4.8: [D124019-Sin-1105] Process Building – North Elevation
  - Figure 4.9: [D124019-Sin-1106] Process Building – Section
  - Figure 4.10: [D124019-Sin-R1004] Colour Elevations
  - Figure 4.11: [D124019-Sin-R1001] View from west Looking into Site Entrance
  - Figure 4.12: [D124019-Sin-R1002] View from south Looking to Visitor Centre
  - Figure 4.13: [D124019-Sin-R1003] Elevation View from North West
  - Figure 4.14: [D124019-Sin-1201] Education and Visitor Centre with Office
  - Figure 4.15: [D124019-Sin-1202] Education and Visitors Centre Sections and Elevations
  - Figure 4.16: [D124019-Sin-1301] Gatehouse Plan
  - Figure 4.17: [D124019-Sin-1302] Gatehouse – Sections and Elevations
  - Figure 4.18: [D124019-Sin-5001] External Lighting Layout
  - Figure 4.19: [D124019-Sin-3021] Site Drainage Layout
  - Figure 4.20: [D124033-Sin-L-002] Landscape Master plan
  - Figure 4.21: [D124033-Sin-L-001] Landscape Layout (as revised)
  - Figure 4.22: [D124019-Sin-3001] Access Arrangements
- 3) Notwithstanding the details of any external materials that may have been submitted with the application, details of all external materials shall be submitted to and approved in writing by the local planning authority before the commencement of development. Development shall be carried out in accordance with the approved details.
- 4) Detailed plans showing the design, location and materials to be used on all boundary walls/fences/screen walls and other means of enclosure shall be submitted to and approved in writing by the local planning authority

- before the commencement of the development. Development shall be carried out in accordance with the approved details.
- 5) Notwithstanding the submitted details no development shall commence until a landscaping scheme indicating the existing trees, hedgerows and other vegetation to be retained, the species, size and position of trees and shrubs to be planted and the treatment of paved and other areas has been submitted to and approved in writing by the local planning authority. The submitted landscaping scheme shall make suitable provision for the retention of lizards on the site.
  - 6) The landscaping scheme approved pursuant to condition 5 above shall be carried out within 12 months of the completion of the development or the first planting season whichever is the sooner, and any trees or plants which, within a period of five years from the date of such landscaping works, die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species unless the local planning authority gives written consent to any variation. No vehicles shall be driven or parked on landscaping areas except for those vehicles necessary for the maintenance of those areas.
  - 7) Before development commences, a landscape management plan shall be submitted to and approved by the local planning authority to demonstrate provision for the long term establishment of the landscaping scheme approved under condition 5 above. The landscaping scheme shall be managed in accordance with the terms of the approved management plan.
  - 8) Before development commences, including any ground clearance operations on the site, a mitigation strategy and working method statement in respect of the common lizard population shall be submitted to and approved in writing by the local planning authority. The submitted mitigation strategy and method statement shall provide for the management of any refuge areas both during and after construction. The approved details shall be implemented before the site is first brought into use for waste management purposes.
  - 9) Before development commences, details of the creation of a habitat corridor within the site, together with monitoring and management arrangements, shall be submitted to, and approved in writing by the local planning authority. The approved details shall be implemented before the site is first brought into use for waste management purposes.
  - 10) During the period of construction works all trees, hedgerows and other vegetation to be retained, including any which are on adjoining land but which overhang the site, shall be protected in accordance with BS:5837:2005 ("Trees in Relation to Construction") and in accordance with the following requirements:
    - A scheme of protection shall be submitted to and agreed in writing by the local planning authority before any development commences;
    - The date of the construction of such protection and of its completion shall be notified to and agreed in writing by the local planning authority before any other site works commence; and
    - The agreed protection measures shall be retained in position at all times, with no use of or interference with the land contained within

the protection zone, until completion of all site construction operations.

- 11) In the absence of such necessary details, no development shall commence until further drawings indicating the cross sections through the proposed earth mounding at a scale of 1:50 have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 12) Before the commencement of development, details of the retaining wall to be constructed along the rear boundary of the site shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 13) Before development commences, details of external lighting to be erected on the site shall be submitted to and approved in writing by the local planning authority. The details to be submitted shall provide for any external lighting to be angled or shaded so as not to cast light at any time outside the site boundary. Any approved lighting shall be in place before the site is first brought into use for waste management purposes and thereafter retained.
- 14) No work on the construction of any of the buildings hereby permitted shall commence until the new access to Sinfin Lane has been constructed in the position as shown on the approved plans and in accordance with details of drainage, means of construction and surfacing materials that have previously been submitted to and approved in writing by the local planning authority. Within one week of the new access being brought into use, the existing access shall be permanently closed in accordance with a scheme that has previously been submitted to and approved in writing by the local planning authority.
- 15) Before the site is first brought into use for waste management purposes, those parts of the site to be hard surfaced or used by vehicles for parking or manoeuvring shall be laid out, drained and surfaced in accordance with details which shall have previously been submitted to and approved in writing by the local planning authority. Thereafter, these areas shall be retained and parking areas and areas for vehicles to manoeuvre and shall not be used for any other purpose.
- 16) Before the site is first brought into use for waste management purposes, motor cycle and cycle parking facilities for staff and visitors shall have been provided in accordance with details which shall have previously been submitted to and approved in writing by the local planning authority and until such provision has been implemented. Thereafter, the approved motor cycle and cycle parking facilities shall be retained.
- 17) Before the site is first brought into use for waste management purposes, provision shall be made for 5 parking spaces for disabled people and for a level or ramped pedestrian route from the spaces to the education centre's principal entrance in accordance with BS 8300:2001, "*Design of Buildings and their Approaches to Meet the Needs of Disabled People*". Thereafter, the disabled parking spaces and the level or ramped pedestrian route shall be retained.

- 18) Within 12 months of the completion of commissioning of the waste management facility hereby permitted, a study of travel to work by employees shall be undertaken and a commuter plan developed. Before work on the study and plan commences, the terms and extent of the study and plan shall be agreed in writing by the local planning authority. The study and plan shall include the location of residence of employees (by district or post code), their current mode of travel, the factors influencing their current mode of travel, the action to be taken or planned to be taken by the applicant to encourage car sharing and the use of modes of transport other than the private car. Details of the study of travel and commuter plan shall be submitted to and approved in writing by the local planning authority. The study of travel to work and the commuter plan shall be regularly reviewed in accordance with arrangements that shall have been agreed in writing with the local planning authority.
- 19) No development shall commence until:
- Details of a further site investigative/phase II report to be undertaken to document the ground conditions of the site and has been submitted to and approved in writing by the local planning authority. This investigative survey shall have regard for ground and water contamination, the potential for gas emissions and any associated risk to the public, buildings and/or the environment;
  - A detailed scheme of remedial works, including a remediation method statement and risk assessment strategy to be taken to avoid any risk arising when the site is developed or occupied; and both the report and the remedial measures have been submitted to and approved in writing by the local planning authority;
  - If, during remediation works any contamination is identified that has not been considered in the remediation method statement then additional remediation proposals for this material shall be submitted to the local planning authority for written approval. Any approved proposals should thereafter form part of the remediation method statement;
  - Construction work for the development shall not begin until a written Validation Report has been submitted to and approved in writing by the local planning authority. The Validation Report is required to confirm that all the necessary remedial measures have been completed in accordance with the approved details; and
  - The author of the above reports, studies and method statements shall certify to the local planning authority that the measures taken have rendered the site free from risk to human health from the contaminants identified.
- 20) Before the site is first brought into use for waste management purposes, foul and surface water drainage works shall be provided in accordance with details that have previously been submitted to and approved in writing by the local planning authority. Thereafter, the approved works shall be retained. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system and the results of the

assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- Provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; and
  - Include a timetable for its implementation; and provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 21) In response to the base line noise monitoring results submitted with the planning application, details of sound attenuation measures to address possible noise nuisance from the operation of the waste management facility shall be submitted to and approved in writing by the local planning authority. The approved measures shall be implemented in their entirety before any part of the waste management facility is brought into use. Thereafter, the approved measures shall be retained.
- 22) The waste management facility hereby permitted shall accept no more than 200,000 tonnes of waste per annum
- 23) There shall be no storage of waste outside the confines of the processing building on the site other than in designated skip areas as identified on the approved plans.
- 24) Deliveries to the waste facility shall not be received before 07:00 hours or after 17:00 hours on weekdays (including Bank or other Public Holidays), before 07:00 hours or after 13:00 hours on Saturdays, or before 07:00 hours or after 09:00 hours on Sundays.
- 25) Before the site is first brought into use for waste management purposes, details of a preferred route to be used by lorries getting to and from the site shall be submitted to and approved in writing by the local planning authority. Thereafter, details of the approved preferred route shall be displayed and maintained at the exit to the site to advise drivers of the preferred haul route.
- 26) No development shall commence until a 'construction management scheme' has been submitted to and approved in writing by the local planning authority. The details to be submitted shall include restricting the hours when site clearance, site preparation works and construction takes place to between 07:30 and 18:00 hours on Mondays to Fridays, between 07:30 and 13:00 hours on Saturdays and not at all on Sundays, Bank Holidays and Public Holidays. All site clearance, site preparation and construction operations shall take place in accordance with the approved details.
- 27) Before the site is first brought into use for waste management purposes, a management plan for the Education and Visitor Centre shall be submitted to and approved in writing by the local planning authority. The submitted management plan shall include:
- Details of the education programme. The details are to include promoting an understanding of sustainable waste management, the

waste hierarchy and the role of the constituent elements in the hierarchy; and explaining the management and treatment of waste at the site; and

- Details of the management of the centre to include the hours of use, the facilities available at the education centre and the basis on which the centre can be used by the local community.

The Education and Visitor Centre shall be operated in accordance with the approved management plan.