



The Planning
Inspectorate

**Boston Alternative Energy Facility
(EN010095)**

Correspondence received after the close of the Examination at
23:59 on 7 April 2022

No.	From	Date received
1	Alternative Use Boston Projects Limited	6 July 2022
2	United Kingdom Without Incineration Network (UKWIN)	12 July 2022
3	Environment Agency	5 January 2023
4	Boston Borough Council	16 January 2023
5	United Kingdom Without Incineration Network (UKWIN)	2 March 2023
6	United Kingdom Without Incineration Network (UKWIN)	11 April 2023
7	Alternative Use Boston Projects Limited	28 June 2023

From: HOBBS Jessica [REDACTED]
Sent: 06 July 2022 15:43
To: Evans, Sian [REDACTED] Boston Alternative Energy Facility
<BostonAlternativeEnergyFacility@planninginspectorate.gov.uk>
Cc: MARSH Richard [REDACTED]; REESE Sophie
<[REDACTED]>; HAQ Rahil <[REDACTED]>
Subject: Boston Alternative Energy Facility DCO application [BDB-BDB1.FID10564112]

Dear Sian, Caroline

We act on behalf of Alternative Use Boston Projects Limited, the promoter of the Boston Alternative Energy Facility DCO application.

We are writing to provide an update on the s.106 agreement and flood defences agreement with the EA.

The terms of the s.106 have been agreed between all parties, to confirm, the version of the agreement submitted at Deadline 10 (REP10-018) is the final version. We are in the process of arranging for all parties to sign the agreement and we can then agree a completion date. We anticipate the completion of the agreement to be shortly.

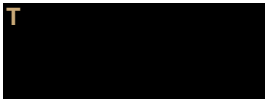
The terms of the flood defences agreement are well advanced and it is anticipated that an agreement will be reached in the week commencing 18 July 2022, with engrossments/signatures and to conclude shortly thereafter.

If you have any questions, please don't hesitate to get in touch.

Kind regards
Jess



Jessica Hobbs Associate



For and on behalf of BDB Pitmans LLP
One Bartholomew Close, London EC1A 7BL

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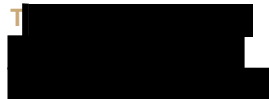
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Jessica Hobbs Associate



For and on behalf of BDB Pitmans LLP
One Bartholomew Close, London EC1A 7BL

United Kingdom Without Incineration Network (UKWIN) - 12 July 2022

POST EXAMINATION SUBMISSIONS
BOSTON ALTERNATIVE ENERGY FACILITY EN010095
REPORT TO THE SECRETARY OF STATE: 7 JULY 2022

From: Shlomo Downen <[REDACTED]>
Sent: 12 July 2022 11:05
To: Boston Alternative Energy Facility
<BostonAlternativeEnergyFacility@planninginspectorate.gov.uk>
Subject: New material information on incineration overcapacity to inform post-completion consideration of the Boston proposal

To Whom It May Concern,

We understand that the Examining Authority's report is now with the Secretary of State, and we ask for the following new information to be passed on to the relevant decision-making team.

As noted by the Applicant in their summary of the respective positions of themselves and UKWIN (REP5-009; Applicant Ref 9.64) and in UKWIN's summary of the same (REP7-036), one of the material matters in dispute at the Examination was the relevance and intention of Paragraph 2.10.5 of Draft EN-3 (2021) which states:

"The proposed plant must not result in over-capacity of EfW waste treatment at a national or local level."

The Applicant queried the intention of this policy. For example, in Paragraph 2.2.3 of the Applicant's Deadline 4 submission REP4-020 (Applicant Ref 9.55) the Applicant's Response to United Kingdom Without Incineration Network's (UKWIN) Oral Submission at Issue Specific Hearing 2 (ISH2) on Environmental Matters (Part 1) stated:

"Similarly, paragraph 2.10.5 [of EN-3] is an isolated and otiose inclusion which is not quantified in any way and which appears to place a limit on Energy from Waste (EfW) projects; something which is not considered appropriate in the context of EfW remaining a technology which will play an important role in the UK meeting its climate change commitments..."

The Secretary of State should take into account when considering this proposed scheme that the UK Government has just confirmed their current policy position with respect to this issue, which is in line with the position advanced by UKWIN during the Examination.

On the 11th of July 2022 Victoria Prentis, The Minister of State, Department for Environment, Food and Rural Affairs, answered a Parliamentary question on behalf of Defra as follows:

"The Government's view is that Energy from Waste (EfW) should not compete with greater waste prevention, re-use, or recycling. Proposed new plants must not result in an over-capacity of EfW waste treatment provision at a local or national level. Officials are currently assessing planned incinerator capacity against expected future residual waste arisings. This further assessment of residual waste treatment capacity needs will be published in due course." **[emphasis added]**

As such, it is clearly current (rather than 'emerging') Government policy that incineration over-capacity is undesirable and should be avoided due to its potential adverse impact on the achievement of greater waste prevention, re-use, and recycling. This significantly increases the weight to be given to Paragraph 2.10.5 of EN-3 (2021).

This is especially relevant in light of UKWIN's existing evidence to the Examination that the proposal would, based on the Applicant's own figures and methodologies, result in significant incineration

overcapacity compared to the capacity that would be needed if the current target of 65% recycling for municipal waste were to be achieved.

Kind regards,
Shlomo Downen
UK Without Incineration Network (UKWIN)

Planning Inspectorate Ref: EN010095
UKWIN's Registration Identification Ref: 20028052

Written questions, answers and statements

[UK Parliament](#) > [Business](#) > [Written questions, answers and statements](#) > [Find written questions and answers](#) > 28465

Incinerators: Recycling

Question for Department for Environment, Food and Rural Affairs

UIN 28465, tabled on 30 June 2022

Question

Catherine West

Labour

Hornsey and Wood Green

 Commons

To ask the Secretary of State for Environment, Food and Rural Affairs, with reference to the Answer of 6 October 2020 to Question HL 8373 on Incinerators: Recycling, whether the further monitoring provided adequate evidence of incinerator capacity planned between July 2022...

[Show full question](#)

Answer

Victoria Prentis

Conservative

Banbury

 Commons

Answered on

11 July 2022

The Government's view is that Energy from Waste (EfW) should not compete with greater waste prevention, re-use, or recycling. Proposed new plants must not result in an over-capacity of EfW waste treatment provision at a local or national level. Officials are currently assessing planned incinerator capacity against expected future residual waste arisings. This further assessment of residual waste treatment capacity needs will be published in due course.

Answered by

Department for Environment, Food and Rural Affairs



Environment Agency - 5 January 2023



**Alternative Use Boston Projects
Boston Alternative Energy Facility Order**

Planning Inspectorate Reference: EN010095

Update on position from the Environment Agency

Unique Reference Number: 20028344

5 January 2023

Submitted on behalf of the
Environment Agency by:
Jake Newby, MSc
Planning Specialist
Ceres House
Searby Road
Lincoln
LN2 4DW

1. Scope of this response

- 1.1. We are writing further to our Deadline 10 response, dated 7 April 2022 (REP10-034).
- 1.2. We have now entered into a side legal agreement with the applicant and land-owner in relation to works affecting flood defences.
- 1.3. We therefore withdraw the objection as set out in paragraphs 2.1-2.3 of our previous response, subject to the requirements and protective provisions remaining as set out in the Final Development Consent Order (REP10-004).
- 1.4. Please note that our objection to the DCO due to the loss of habitat from the development remains in place until such a time as Natural England confirm that the proposed scheme of mitigation/compensation is suitable (REP10-034, paragraph 2.4).
- 1.5. Please also note that there is no change in our advice as set out in paragraphs 2.5-2.10 of REP10-034 regarding the Environmental Permit.

Boston Borough Council - 16 January 2023



B O S T O N

BOROUGH COUNCIL

Municipal Buildings, West Street, Boston, Lincolnshire, PE21 8QR

The Rt Hon Grant Shapps
Secretary of State for BEIS
1 Victoria Street
London
SW1H 0ET

Telephone:
Email: [REDACTED]@boston.gov.uk
Our BAEF ref: 20028366
BAEF ref: EN10095

16 January 2023

Dear Secretary of State,

Planning Act 2008 and The Infrastructure Planning (Examination Procedure) Rules 2010

Application by Alternative Use Boston Limited (“the Applicant”) for an Order granting Development Consent for the proposed Boston Alternative Energy Facility (“the Proposed Development)

I write following the issuing of your letter on 10 January 2023 postponing the date for a decision on this project to 6 July 2023. Originally the decision for this project was to be made by 7 October 2022. That was postponed to 10 January 2023 and now it has been postponed again.

I am fully aware that the Council has a statutory duty as a Relevant Authority to ensure human activities do not adversely impact The Wash and North Norfolk Marine Protected Area. The examination of this scheme has considered the impact of the proposal on this issue, with others, and from the questions you have recently posed the Government continues to do so. At the examination, it was disappointing to hear that the key specialists, including Natural England and the Environment Agency, were suggesting the scheme was delayed due to resource constraints impacting on their ability to engage with the project. It therefore remains disappointing that these issues are arising so late in the day, when the Examination gave the opportunity for consideration of them.

A large part of my time is spent with senior officers of the Borough Council seeking to grow the economic activity of the Borough. Although this is not a statutory function it is the life blood of the Borough and the nation. Boston is part of the food growing and producing industry that helps feed the country. We know that the capacity of the local grid is constrained. The proposal will provide 80MW of electricity into the local grid and this will be a tremendous help for local food producing businesses and the nation as we seek to diversify our electricity generation away from imported fuels.

The River Haven has historically been the driver of Boston’s economic prosperity, with its connections to the Wash, having provided the source of various trade throughout history. Even now, the Port of Boston plays a considerable economic role, to Boston, the region,





B O S T O N

BOROUGH COUNCIL

Municipal Buildings, West Street, Boston, Lincolnshire, PE21 8QR

and the wider Midlands. We are supportive of proposals that will enhance the use of the river and maintain its importance economically.

The scale of the proposal will inject £100's of millions into the local economy and could attract other businesses that support the proposal, or other businesses in the Borough, owing to the availability of more electricity. It is therefore, an important project for the Borough and hence we are disappointed that after much consideration this project has been delayed further.

It is frustrating that this project has been delayed yet again.

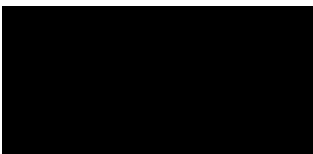
Although we appreciate the environmental sensitivities, these matters were looked at in detail as part of the Examination and the various parties have had several years to consider them as this project has developed. It is disappointing therefore that this decision has been delayed on the basis of hypothetical or aspirational impacts upon the Wash - pertaining to matters which could happen in future as opposed to having any short-medium term direct affect. We note the considerable lengths the Applicants have gone to in an effort to demonstrate compliance and acceptability.

We also hope that the approach here in respect of the designations, does not set a dangerous precedent which could impact upon the future ability of the Port of Boston to function, or indeed for the economic prosperity of the town to flourish as a result of increased use of the River Haven and the Wash which serves it.

The Council has also worked hard to engage with this scheme; and recognises its importance, and also with the Applicants to address any detrimental impacts we have identified.

I hope that a decision will be made in July as this project fits with the Governments Levelling Up agenda; the need to support the economy; and the need to address our national challenges on energy and skills; all of which in a local sense are being slowed down whilst the environmental issues are being investigated. Given that economy, investment, energy and skills fall heavily within your remit, we hope that you will do all you can to address the current blockages and support this important scheme.

Yours faithfully



Councillor Nigel Welton
Deputy Leader and Portfolio Holder
Economic Development and Planning.



From: Shlomo Downen <[REDACTED]>
Sent: 02 March 2023 17:06
To: Boston Alternative Energy Facility
<BostonAlternativeEnergyFacility@planninginspectorate.gov.uk>
Subject: Material changes in circumstances since 7th April 2022

Dear BAEF Case Team and/or David Wagstaff (BEIS)

As you know, UKWIN (Registration Identification Ref: 20028052) has previously provided evidence regarding the balance between residual waste available for incineration and capacity that can treat such feedstock.

There have been a number of developments on this front since the 7th April 2022 Examination close, and so we thought we'd summarise some of these to ensure that you can consider asking parties to provide evidence on this topic to allow for a decision which is based on current Government policy and the latest information regarding existing incineration capacity.

As set out below, these factors combine to hasten the day when operational incineration capacity - in combination with other residual waste management approaches - will far exceed the supply of potential feedstock, even setting aside the arguments about how much of the current feedstock could and should have been recycled or composted. As such we consider these changes to be material to the Boston decision as it relates to the need for the capacity proposed for Boston and the impact of this capacity on 'overcapacity', Local Plans, and potential adverse impacts on recycling and the waste hierarchy, as per both the extant versions of EN-1, EN-3 and the emerging National Policy Guidance (EN-1 and EN-3).

1. More incineration capacity entering construction, and existing incineration increasing capacity

Incinerators that have recently entered construction include:

- **Redcar Energy Centre** (Redcar Holdings). According to the UK Government's Renewable Energy Planning Database (updated January 2023), this **450ktpa** incinerator may have entered construction. <https://www.gov.uk/government/publications/renewable-energy-planning-database-monthly-extract>
- **Rivenhall** (Gent Fairhead Environmental Services). It was announced in November 2022 that this **595ktpa** incinerator entered construction in November 2022. [REDACTED]
- **Skelton Grange** (SSE). According to the UK Government's Renewable Energy Planning Database (updated January 2023), this **410ktpa** incinerator has now entered construction. <https://www.gov.uk/government/publications/renewable-energy-planning-database-monthly-extract>

Incinerators that have recently increased their permitted capacity include:

- **Protos Energy Recovery Facility (Ref: EPR/LP3132FX/V007)**. On the 9th of January 2023, the EA permit was varied to **increase the capacity from 400ktpa to 500ktpa**. Ref: EPR/LP3132FX/V007
- **Riverside Energy Park** (Cory Riverside Energy). In September 2022 the Environment Agency granted a permit variation **increasing capacity to 850ktpa**. Ref: EPR/BK0825IU/V009

2. Residual waste feedstock requirements for the UK's Jet Zero Strategy and SAF Mandate and SRF for cement kilns

Conventional incineration is not the only non-landfill destination for residual waste.

According to our calculations, the Government's Jet Zero Strategy / Sustainable Aviation Fuel [SAF] mandate and the three waste-to-SAF projects that received financial support under the associated Advanced Fuels Fund seem likely to require well over 2 million tonnes of waste to produce the promised SAF.

On 22nd December 2022, the UK Government announced 'Advanced Fuels Fund (AFF) competition winners', three of which intended to convert waste into SAF.

The stated outputs for these three waste-to-SAF projects were as follows:

- 37.4kt/y of SAF for Velocys plc (Altafto), to be in operation by 2028
- 83.7kt/y of SAF for Fulcrum BioEnergy Ltd (NorthPoint), to be in operation by 2027
- 86.6kt/y of SAF for alfanar Energy Ltd (Lighthouse Green Fuels), to be in operation by 2028

These figures are expressed in terms of kt/y of SAF, and the three projects combine to amount to just under 208 kt/y of SAF, giving rise to a question about how much feedstock would be required to deliver the promised level of SAF, i.e. how many tonnes of waste are required to make a kt of SAF.

Based on the advertised waste feedstock requirement of the Velocys plant of 500ktpa, this would imply around 2.77 million tonnes of waste would be required to produce 208 kt/y of SAF (i.e. based on the Velocys figures of 500 ktpa of waste required to produce 37.4kt/y of SAF, 1 kt/y of output requires around 13.33 ktpa of input)

However, if a lower factor of 1 kt/y of output requiring 10 ktpa of input, this would still mean over 2 million tonnes of residual waste would be required to feed these three Government-supported SAF projects.

The upshot of this is that in addition to co-incineration (e.g. cement kilns), waste incinerators will increasingly be competing for waste feedstock with SAF and similar projects (rather than competing with landfill or RDF export).

3. Residual waste reduction set out in the Environmental Improvement Plan 2023 and The Environmental Targets (Residual Waste) (England) Regulations

The Environmental Targets (Residual Waste) (England) Regulations commits the UK to halving England's residual waste (excluding major mineral waste) to a maximum of 287 kg per capita by 2042, assessed by reference to the Office for National Statistics annual mid-year population estimates.

Assuming a population in England of 59,997,119 people in 2042 as per the ONS 2020-based principal projection, that would mean 17,219,173 tonnes (or 17.22 million tonnes) of non-mineral residual waste in England. Given that England already has around 20mt of incineration capacity operational and under construction, even if we were burning ALL of this residual waste we wouldn't be able to feed all of our current incineration capacity (and not all of this material would be combustible, e.g. ceramics, glass, etc.).

UKWIN further notes that the Government's Statutory Instrument is very clear that SAF would be included in the definition of 'energy recovery'. As the Letsrecycle.com article at [REDACTED] puts it: "The legislation says that 'energy recovery' means any waste treatment, excluding anaerobic digestion, which generates energy such as electricity or heat or which converts the waste into other energy products such as fuels and substitute natural gas". The definition presumably also covers co-incineration at cement kilns, as the RDF used as cement kiln feedstock is burnt to generate heat.

As such, to meet the Government's 2042 halving residual waste target, assuming around 3 million tonnes per annum will be used for conversion to SAF, co-incineration at cement kilns, and other non-incineration energy recovery processes (e.g. waste to road transport fuels), the total quantity of waste incinerated in England would now need to fall to no more than around 10 million tonnes (taking account of the fact that some of the arisings would not be combustible). In turn, this suggests the need to phase out around half of England's existing incineration capacity, rather than construct yet more new capacity.

There are also two significant interim targets set out in the Environmental Improvement Plan.

- "By 31 January 2028, the total mass of residual waste excluding major mineral wastes in the most recent full calendar year does not exceed 437 kg per capita."
- "By 31 January 2028, the total mass of municipal residual waste in a year does not exceed 333 kg per capita."

In terms of waste to be used for incinerators and otherwise as a fuel, it makes sense to focus on the *municipal* element of these interim targets, which comprises both household waste and C&I that is of a similar composition.

The 2027 population for England is forecast by the ONS to be 58,061,002.

Based on 333 kg per capita, the amount of waste available as potential feedstock in 2027 would depend on the fraction of municipal residual waste is deemed suitable for incineration:

- 90% = 17,400,882 tonnes (17.40 Mt)
- 85% = 16,434,167 tonnes (16.43 Mt)
- 80% = 15,467,451 tonnes (15.47 Mt)

Thank you for your consideration of the matters raised in this email message. UKWIN would be happy to provide additional evidence should the Examining Authority / Secretary of State wish to receive it.

Kind regards,
Shlomo Downen
on behalf of UKWIN

From: [REDACTED]
To: [Boston Alternative Energy Facility](#)
Subject: Re: Material changes in circumstances since 7th April 2022
Date: 11 April 2023 15:00:48
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Hello again Caroline

Further to our email exchange of March 2023, I wish to draw further new information and material changes in circumstance to the Secretary of State's attention.

In the event that the Secretary of State is minded to refuse then these matters may not be relevant, however in the event that the Secretary of State is minded to approve then, prior to any decision, interested parties should be afforded the opportunity to set out the implications for the Boston proposal of these new considerations.

Might you be able to pass this on? If not, could you please provide me with the most appropriate email address to which we should be sending this email message?

In addition to the Government's Environment Act commitments to reducing waste arisings (which will impact on feedstock availability and incineration overcapacity) the Government has recently released the next consultation version of the replacement National Policy Statements (NPSs) including EN-1 and EN-3 as well as the Government's response to the previous consultation.

Firstly, one of the matters subject to conflicting evidence at the Examination related to the potential mixing or co-treatment of bottom ash and air pollution control residues ('fly ash') as part of the Applicant's proposed 'Lightweight Aggregate Plant' and whether the degree of separation between the two forms of ash is sufficient or if there is insufficient detail to make an assessment that the proposal is acceptable in this regard, either of which could provide barriers to issuing the development consent order. One of the primary parties raising concerns in this regard was the Environment Agency, who raised and maintained such concerns throughout the hearings as well as subsequently. The current consultation drafts for EN-1 and EN-3 include some statements that are material to the consideration of the proposed Lightweight Aggregate Plant, including the following from EN-3 (2023 consultation version):

2.18.2 Generating stations that burn waste (even if mixed with biomass fuel) produce two types of residues:

- combustion residue is inert material from the combustion chamber. The quantity of residue produced is dependent on the technology process and fuel type but might be as much as 30% (in terms of weight) of the fuel throughput of the generating station
- fly ash, a residue from flue gas emission abatement technology and usually 3-4% (in terms of weight) of the fuel throughput of the generating station

2.18.3 The two residues from waste combustion generating stations cannot be mixed; they must be disposed of separately, under different regimes.

2.18.4 Biomass combustion generating stations will also produce both combustion and flue gas treatment residues. However, the residue types can be mixed and managed as one product for disposal. Residues arising from biomass combustion generating stations are usually between 1% and 12% (in terms of weight) of the fuel capacity of the plant.

2.18.5 The regulations on waste disposal for waste combustion and flue gas residues from biomass combustion are intended to reduce the amount of waste that is sent to landfill. Waste combustion fly ash is classified as a hazardous waste material and needs to be managed as such.

This could be interpreted as increasing the certainty that the Applicant's proposed DCO ought not to be consented (based on the concerns raised by the Environment Agency).

Additionally, there are issues relating to the waste management function of the plant, and its potential

impact on the waste hierarchy in light of the proposal contributing to 'EfW overcapacity' and how this should be assessed (especially in light of the Environment Act and the associated Environmental Improvement Plan targets and other changes in circumstances that limit how much genuinely residual waste feedstock can be expected to be available for waste combustion, combined with the rising levels of operational EfW capacity).

It is worth noting that, as set out by UKWIN in REP7-036, one matter of contention during the Examination was the wording used in the 2021 draft EN-3 Paragraphs 2.10.4 and 2.10.5, with the Boston Applicant arguing in REP5-009 that:

"Paragraph 2.10.4 is not a relevant consideration relating to site selection for applicants and is also unnecessary given the provisions retained in EN-3 at Para 2.17.7., for waste combustion generating station proposals to have to demonstrate that they accord with the waste hierarchy and national and local waste management targets, or to demonstrate why a conflict with those targets is nonetheless appropriate. Similarly, Para 2.10.5 is an isolated and otiose inclusion which is not quantified in any way and which appears to place a limit on EfW projects; something which is not considered appropriate in the context of EfW remaining a technology which will play an important role in the UK meeting its climate change commitments .

"As with Paragraph 2.10.4, Paragraph 2.10.5 is not necessary as the test at Para 2.17.7 of the draft NPS already gives due consideration to the relevance of the waste hierarchy and national and local waste management targets, and therefore provides the appropriate criteria for assessing applications against the national and local context. In particular Para 2.17.7 recognises that there may be occasions where a deviation from the relevant waste strategy or plan is nonetheless appropriate, which is important context which is missing from Para 2.10.5. In any event, and notwithstanding paragraphs 2.10.4 and 2.10.5 of consultation draft EN-3, the Applicant's application (including its need case and Waste Hierarchy Assessment report (document reference 5.8, APP-037)) demonstrates that the Facility would not result in an over capacity of EfW waste treatment; the Facility is being developed to meet a need to treat national waste (arriving at the Facility by water) that may otherwise be exported."

And UKWIN countering as follows (as summarised in REP7-036):

"UKWIN maintains our position that draft EN-3 Paragraphs 2.10.4 and 2.10.5 are not only "potentially capable of being important and relevant considerations in the decision-making process", but are in fact of particular relevance to the consideration of the proposed Boston proposal. UKWIN agrees with the Applicant that a plain reading of EN-3 (2021) Paragraph 2.10.5 constitutes a Government-imposed limit on incineration capacity. UKWIN's position is that such an interpretation is correct and is the intended interpretation of this paragraph and of Government policy. UKWIN's position is bolstered by Paragraph 2.10.4 of EN-3 (2021), because when those two paragraphs are read together they provide a clear narrative that is entirely consistent with other Government statements and policies. UKWIN maintains our position that the currently adopted NPS statement also provides protections against incineration overcapacity and against proposals that could prejudice the management of waste in line with the Waste Hierarchy.

"For example, EN-3 states at Paragraphs 2.5.66 that: "An assessment of the proposed waste combustion generating station should be undertaken that examines the conformity of the scheme with the waste hierarchy and the effect of the scheme on the relevant waste plan or plans where a proposal is likely to involve more than one local authority". UKWIN disagrees with the Applicant's position that Paragraph 2.10.5 of EN-3 (2021) was somehow included in error. UKWIN's position is that the Government deliberately chose to strengthen the requirement for applicants to demonstrate that new incineration capacity "must not result in over-capacity of waste treatment at a local or national level", and that this requirement sets a "high bar". UKWIN's position is based on a series of Government statements (including that Government seeks "...to minimise the amount of waste that goes to incineration..."), as outlined in pages 1 and 2 of REP5-020, which we noted is consistent with advice provided to the Government by the Committee on Climate Change (CCC) that: "If EfW usage is left to grow unchecked, EfW emissions will quickly exceed those of the CCC pathway while undermining recycling and reuse efforts".

The recently released revised draft EN-3 and EN-1 appear to have resolved the dispute, in UKWIN's favour.

The Government launched a consultation on an updated draft EN-3 on the 30th of March 2023. On electronic page 15 are paragraphs 3.7.6 and 3.7.7 which are an updated version of paragraph 2.10.4 and 2.10.5 which are under the heading of 'Factors Influencing site selection and design' and sub-heading of 'Waste treatment capacity'.

The March 2023 draft updates the earlier 2021 proposals as follows:

2.10.4 3.7.6 As the primary function of EfW plants is to treat waste, applicants must demonstrate that proposed EfW plants are in line with Defra's policy position on the role of energy from waste in treating waste from municipal **waste** or commercial and industrial sources.

2.10.5 3.7.7 The proposed plant must not compete with greater waste prevention, re-use, or recycling, or result in over-capacity of EfW waste treatment at a national or local level."

As such, rather than dropping the previous language the Government's updated version of draft EN-3 strengthens the language regarding the potential for EfW to harm waste prevention, re-use, and recycling.

On internal page 38 of the Government's March 2023 response to the previous consultation, in relation to "biomass and energy from waste", notes how "Several responses questioned the inclusion of waste capacity in EN-3 as a consideration that should influence site selection. Additionally, responses pointed out a perceived contradiction between this consideration and the principle set out in EN-1, which states that it is not the government's intention to propose limits on any new electricity infrastructure that can be consented in accordance with the energy NPSs. Some respondents also expressed a view that additional EfW capacity was urgently required, whilst others expressed a conflicting view that there is over-capacity for EfW and called for a moratorium".

Despite these pleas from the incineration industry about the supposed urgency to allow new incineration capacity and the 'apparent' conflict between restricting incineration and the principles of EN-1 about not placing limits on new energy infrastructure, the Government decided not only to maintain statements about incineration overcapacity, but to strengthen those statements and to add further such statements. The Government similarly kept these considerations under the heading of 'factors influencing site selection by applicants'. It is clear from the response that the Government considered the matters to be ones which ought to influence site selection and they decided not to move the text away from that section, and this cuts against the Boston Applicant's position that "Paragraph 2.10.4 [as was] is not a relevant consideration relating to site selection".

Indeed, the text in the updated paragraphs 3.7.6 and 3.7.7 of EN-3 (March 2023) have now also been incorporated into EN-1 (March 2023) as paragraphs 3.3.39 and 3.3.40.

This is further reinforced by the introduction of two new paragraphs to the Government's revised EN-3 (paragraphs that, like the updated paragraphs 3.7.6 and 3.7.7, are not the focus of further consultation).

The first of these new paragraphs (on page 18, under the 'Technical considerations' heading and the 'Commercial aspects of waste combustion plants' sub-heading) reads: "3.7.29 Applicants must ensure EfW plants are fit for the future, do not compete with greater waste prevention, re-use, or recycling and do not result in an over-capacity of EfW waste treatment provision at a local or national level".

The second of these new paragraphs (on page 21, under the 'Impacts' heading and 'Waste management' sub-heading) states: "3.7.55 Applicants must ensure proposals do not result in an over-capacity of EfW waste treatment provision at a local or national level".

These new paragraphs unambiguously place the burden of proof onto the Applicant to demonstrate that their proposal for 1.2 million tonnes of new EfW capacity would not result in EfW over-capacity and would not harm the waste hierarchy.

It is important for such an assessment of overcapacity and harm to the Waste Hierarchy to be made within in the context of the UK Government's targets to halve residual waste by 2042 and to reduce municipal residual waste per person by 29% (i.e. to 333 kg person) by 2027, especially in light of the EN-1 (March 2023) statement on the need to consider duties under the Environment Act 2021 in relation to environmental targets (which includes the waste reduction target).

Thank you once again for your consideration of the matters raised. UKWIN remains happy to provide additional evidence should the Secretary of State wish to receive it.

Kind regards,
Shlomo Downen
on behalf of UKWIN

On Sat, 11 Mar 2023 at 17:06, Shlomo Downen <[REDACTED]> wrote:

Thank you so much for this update Caroline. We await the Secretary of State's decision.

----- Forwarded message -----

From: **Boston Alternative Energy Facility**

<BostonAlternativeEnergyFacility@planninginspectorate.gov.uk>

Date: Fri, 10 Mar 2023 at 12:32

Subject: RE: Material changes in circumstances since 7th April 2022

To: Shlomo Downen <[REDACTED]>, Boston Alternative Energy Facility

<BostonAlternativeEnergyFacility@planninginspectorate.gov.uk>

Good afternoon Shlomo,

Thank you for your email, which we forwarded to the Secretary of State on 3 March 2023.

As you are aware, The Examination of the above application closed on 7 April 2022. The Examining Authority submitted their recommendation report to the Secretary of State for Business, Energy and Industrial Strategy on 7 July 2022. In accordance with section 107(7) of the Planning Act 2008, the Secretary of State has made a statement setting a new deadline of 6 July 2023 to make the decision.

The Examining Authority's report will be published on the [project webpage of the National Infrastructure Planning website](#) at the same time as the Secretary of State's decision.

It is for the Secretary of State to decide whether or not to take your submission into consideration.

If you have any questions please do not hesitate to contact us.

Kind regards

Caroline

She/Her

Alternative Use Boston Projects Limited – 28 June 2023

REPORT

Boston Alternative Energy Facility

The Applicant's Response to NE's Letter of 7th June 2023

Client: Alternative Use Boston Projects Ltd.

Planning Inspectorate EN010095

Reference:

Document Reference: 9.117

Pursuant to: APFP Regulation: 5(2)(q)

Reference: PB6934-ZZ-XX-RP-Z-4134

Status: Final/0.0

Date: 28 June 2023





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Project name: Boston Alternative Energy Facility

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Author(s):

Drafted by: RHDHV and BDB Pitmans

Checked by: PS

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Approved by: MH

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1 Purpose of this Report

- 1.1.1 This document is submitted in response to Natural England's comments on the Applicant's derogations case set out in their letter dated 7th June 2023. The Natural England letter was submitted in response to a letter issued by the Department for Energy Security and Net Zero (DESNZ) on behalf of the Secretary of State (SoS) dated 25 May 2023 ("the May DESNZ letter") with regard to the Boston Alternative Energy Facility (the Facility).
- 1.1.2 Whilst this response document from the Applicant was not requested by the SoS, the Applicant feels compelled to provide a response to key points made in the final round of submissions and trusts that the SoS will give this submission due consideration prior to the determination of the DCO application. In particular the Applicant considers that it must address the points raised in relation to Assessment of Alternative Solutions and Imperative Reasons of Overriding Public Interest (IROPI) as there have been limited comments on these topics from Natural England during the application process.
- 1.1.3 The Applicant has not provided a further response on the points raised in relation to ornithological impacts or compensation measures. Comprehensive responses to similar points have been provided previously and the Applicant considers that it has set out its position fully, has clearly and completely responded to all matters raised, and that there are no materially new points of significance. The previous position of the Applicant on these points still stands. However, the Applicant is prepared to provide a further response should the Secretary of State consider that a final response on these points would be of merit.
- 1.1.4 The Applicant notes with disappointment that Natural England did not respond to the question presented within the May DESNZ letter as follows:
- "Natural England is invited to confirm whether the information provided by the Applicant in its response of 15 May 2023 resolves its outstanding concerns regarding air quality impacts."
- 1.1.5 It would be helpful if Natural England is able to provide its confirmation to the SoS on this point as soon as possible. As set out at para 3.4.1 of the Applicant's response to the SoS dated 15 May 2023, the Applicant considers all previously outstanding air quality points are fully resolved.

2 Responses to Natural England's Comments

2.1.1 **Table 2-1** provides responses to Natural England's most recent comments in relation to the legal tests of Alternatives and IROPI.

Table 2-1 Responses to Natural England's Comments on Alternatives and IROPI

No.	Paragraph No. in NE Response	Comment	The Applicant's Response
3. Derogations Case			
1.	N/A	<p>At Deadline 2 of the BAEF examination the Applicant submitted an Imperative Reasons of Overriding Public Interest (IROPI) case. Within the document reference is made to the DEFRA HRA guidance https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site#derogation and whilst they have quoted a part of the IROPI guidance, the section relating to alternative solutions is not provided. Natural England considers it has not been demonstrated that there are no feasible alternative solutions that would be less damaging or avoid damage to the site, and also that there has not been full consideration of all factors including environmental impacts to inform the IROPI test. Without further consideration of these tests as advised below we consider that any decision would be at risk from legal challenge.</p>	<p>The Applicant has included guidance relevant to alternative solutions within the Without Prejudice Habitats Regulations Assessment Derogation Case: Assessment of Alternative Solutions (document reference 9.28, REP2-011). As the first legal test it was assumed that this would be read before the IROPI case, therefore the guidance was not repeated within the IROPI case document.</p> <p>Responses to Natural England's specific questions with regards to the assessment of alternative solutions are provided below.</p> <p>The Applicant considers that the extensive assessments within the Environmental Impact Assessment (EIA), Habitats Regulations Assessment (HRA) and supporting addenda sufficiently inform the IROPI test.</p> <p>The Applicant does not consider Natural England's assertion around legal challenge to be reasonable or appropriate given the significant consideration given to the relevant tests throughout the examination.</p>
2.	i) Alternative Test	<p>Natural England considers that 'alternatives' have not adequately been considered by Applicant, and therefore it has not been sufficiently demonstrated to DESNZ that i) there are no alternative locations available that would be less damaging to the SPA or any other site in the national site network (NSN), and</p>	<p>The Applicant has responded to these points during the examination period:</p> <p>i) With regards to alternative locations the Applicant published a Without Prejudice 'In-Principle' Alternative Locations Case (document reference 9.86, REP8-015). This assessment considered 31 alternative sites on its long list and concluded:</p>

No.	Paragraph No. in NE Response	Comment	The Applicant's Response
		ii) alternative options for disposal of waste and renewable energy sources that would be less damaging to the SPA or other NSN site.	<p>“...that there are no potentially feasible alternative sites to that being considered for the Facility which would have a less damaging effect on the national site network (and Ramsar sites). Therefore, it is considered that the option of an alternative location would not constitute an alternative solution to the proposed Facility.”</p> <p>ii) With regards to alternative options for disposal of waste and renewable energy sources the Applicant responded at Deadline 5 (document reference 9.64, REP5-009) as follows:</p> <p>“As explained within the Assessment of Alternative Solutions methodology (section 4, document reference 9.28, REP2-011), in the context of HRA, the approach to alternative solutions should provide alternatives that meet the original objective of the proposal. The definition of an alternative solution is based on paragraph 4 of page 9 in Methodological Guidance for the Habitats Regulations¹: “<i>Alternative ways of achieving the objectives of the project or plan that avoid adverse impacts on the integrity of the Natura 2000 site</i>”.</p> <p>Within the Defra, NE, Welsh Government and Natural Resources Wales 2021 guidance² (<i>Habitats regulations assessment: protecting a European site</i>), “nuclear instead of offshore wind energy” is quoted as an example of an alternative solution which may not meet the original objective of the proposal.</p>

¹ European Commission. 2000. Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC. (“Methodological Guidance for the Habitats Directive”).

² Department for Environment, Food and Rural Affairs (Defra), Natural England, Welsh Government and Natural Resources Wales. 2021. Habitats regulations assessments: protecting a European site.

No.	Paragraph No. in NE Response	Comment	The Applicant's Response
			Therefore, alternative waste management options have not been considered."
3	i) Alternative Test	For example, Natural England considers that it has not been demonstrated that waste couldn't be transported over land, or to another existing facility, or to a new facility in a port, which if implemented would reduce/remove the impacts on interest features of The Wash SPA from vessel disturbance/displacement. Natural England also notes from United Kingdom Without Incineration Network's (UKWIN) Deadline 9 and 10 submissions that it is considered that there are alternative options for waste disposal which are more environmentally beneficial, with particular emphasis on the national drive for less incineration and more recycling.	<p>The Without Prejudice Habitats Regulations Assessment Derogation Case: Assessment of Alternative Solutions (document reference 9.28, REP2-011) focusses on demonstrating alternatives including alternative methods for transporting materials to the Facility. Detailed analysis of the options of road and rail transport were provided in Appendix 1 of the Assessment of Alternative Solutions report. It was concluded through these assessments that this would not be feasible and would be contrary to National Policy Statement (NPS) objectives, particularly as the rail option would still result in road movements between the station and the Facility. Further information can be found within the Assessment of Alternative Solutions report.</p> <p>With regards to the points on "another existing facility" or a "facility within a port", alternative options for siting the Facility were included within the Without Prejudice 'In-Principle' Alternative Locations Case (document reference 9.86, REP8-015).</p> <p>The point regarding other options for waste disposal is responded to in row 2 above.</p>
4	ii) IROPI	Natural England's nature conservation remit means we cannot advise DESNZ whether the project meets the tests of IROPI. We can only highlight that the Secretary of State should be fully satisfied that the project is 'imperative' taking into account legislation, planning guidance, site proposals and national need. The DEFRA guidance provides the following: [guidance inserted]	The Applicant notes that no comments have been made on the IROPI case by Natural England or RSPB throughout Examination including at Deadline 3 where Natural England noted "Natural England does not intend to comment on the IROPI case." (document reference REP3-028).

No.	Paragraph No. in NE Response	Comment	The Applicant's Response
		<p>With regards to the 'overriding' aspect (3rd bullet), we advise that DESNZ should have a full understanding of the anticipated impacts in the context of the ecological value of the site. Again, the insufficient information on impacts to SPA waterbirds presents considerable challenge for evaluating whether the production of 80MW of alternative energy (should this level of energy production be considered 'imperative') would be sufficient to 'override' the impacts on the SPA.</p>	<p>The Applicant has set out its case for IROPI (document reference 9.29, REP2-012) and will not repeat that submitted material here. However, the overall conclusion is set out below:</p> <p><i>"The Facility would support good human health and public safety through diversifying energy supply, improving energy security, providing additional electricity generation to meet rising demand and by diverting waste from landfill, which has benefits associated with reducing carbon emissions. The Facility also provides key social and economic benefits both UK-wide and locally."</i></p>
5	Conclusions	<p>Without further evidence to support the alternative test and to demonstrate nationally imperative reasons for the project to progress; we consider that there a risk of legal challenge and a significant risk of setting a precedent for future plans/projects.</p>	<p>Following the responses provided above the Applicant is not clear what further evidence Natural England would require to demonstrate the alternatives test or IROPI, particularly given that the Applicant had already considered the necessary legal tests. If further evidence was required the Applicant would have expected this to be raised by Natural England at an earlier date. In particular, the Applicant would have expected substantive comments within Natural England's Deadline 3 response Natural England's Advice on BAEF Derogation Case - Alternatives and Compensation Measures (document reference REP3-031). The points raised in this document were responded to within the Applicant's Report on Outstanding Deadline 2, 3 and 4 Submissions (document reference 9.63, REP5-008). In the previous absence of further comment, and the focus in subsequent correspondence on compensation provided in the without-prejudice case, the Applicant feels it fairly considered that this matter had been fully and suitably addressed.</p>

No.	Paragraph No. in NE Response	Comment	The Applicant's Response
			The Applicant does not consider that the comments around legal challenge or precedent are reasonable or appropriate given that it has already provided the necessary information.