

Written summary of oral case

D4 POST-HEARING SUBMISSION INCLUDING SUMMARY OF UKWIN'S ISH3 ORAL SUBMISSIONS

Proposed Development:
Medworth EfW CHP

Proposed Location:
Land on the Algores Way Industrial Estate to the west of Algores Way in Wisbech, Fenland, Cambridge

Applicant:
Medworth CHP Limited

Planning Inspectorate Ref:
EN010110

Registration Identification Ref:
20032985

MAY 2023



United Kingdom
Without Incineration
Network

INTRODUCTION

1. On the 16th of May 2023 UKWIN representatives Shlomo Downen and Josh Downen took part in Issue Specific Hearing 3 (ISH3).
2. UKWIN's ISH3 contribution related to Agenda Items 3 ('Waste matters, Size and Need') and 5 ('Relevant Planning Policy').
3. At ISH3 UKWIN was asked to provide relevant extracts from the UK Government's consultation document on their Environmental Targets to identify the Government's reference to recycling rates of up to 75%, and this is submitted as part of our Deadline 4 representations.

ISH3 AGENDA ITEM 3 (WASTE MATTERS, SIZE AND NEED)

4. UKWIN's oral evidence to ISH3 made a series of points as part of discussions about Agenda Item 3 on waste matters, size and need, and these are summarised below.

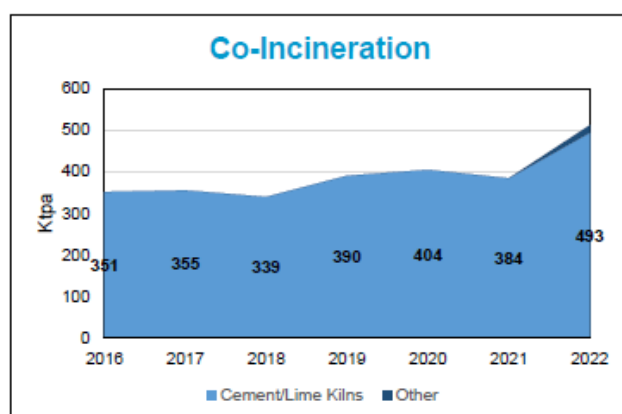
Use of the term 'recycling' for Incinerator Bottom Ash Aggregate

5. The use of incinerator bottom ash (IBA) as aggregate is not correctly defined as 'recycling', as it does not contribute to the achievement of the Government's recycling targets.

Cement kilns and the May 2023 Tolvik report on 2022 EfW Statistics

6. A key message that arises from the May 2023 'UK Energy from Waste Statistics – 2022' report produced by Tolvik is that there has been an increase in the use of residual waste to power cement kilns.
7. This can be seen from the following extract from Tolvik's May 2023 report:

Residual Waste Co-Incinerated in the UK



In 2022, 10 cement and lime kilns (out of 11 operational facilities in the UK) accepted a total of 493kt of SRF under EWC code 19 10 12. This was a 28% increase on the tonnage in the previous year reflecting investment activity at several kilns. The total tonnages of other wastes co-incinerated at these facilities were broadly in line with previous years.

In addition, in 2022 two facilities, originally consented for the processing of biomass, accepted 18kt of Refuse Derived Fuel ("RDF").

8. As discussed with the Applicant as part of ISH3 within the context of feedstock availability, the production of each tonne of SRF requires more than one tonne of 'raw' waste, e.g. due to moisture loss.

9. This means that the 493,000 tonnes of SRF used to power cement kilns in 2022 could have represented more than 650,000 tonnes of residual waste (that would not have been available for use as incinerator feedstock).
10. UKWIN also raised concerns the Applicant's WFAA methodology is not robust and that the Applicant has yet to properly account for the use of processed waste (in the form of RDF or SRF) to power cement kilns.
11. UKWIN noted that despite the Applicant's comments that they considered cement kilns in D2 WFAA there does not appear to have been any assessment of residual waste used as cement kilns in the D2 WFAA.
12. The Applicant referred at ISH3 to cement kiln capacity having been considered by virtue of their use of figures from Tolvik's report on 2021 EfW statistics (published in May 2022). UKWIN shared our presumption that this is a reference to their use of the May 2022 Tolvik report's 19.4Mt figure for UK operational capacity.
13. UKWIN went on to point out that, as set on internal page 15 of Tolvik's May 2022 report, Tolvik's 19.4Mt figure for operational capacity is based on "the EfWs listed in Appendix 1". Figure 34 on internal page of Appendix 1 states that the EfW plants listed are as set out in Figures 35-38. The information on co-incineration and cement kilns is instead listed on in Figure 39, which is in Appendix 1 but outside of the EfW plants mentioned in Figure 34. Neither the title of Figure 39 nor the accompanying text refers to the plants as EfW plants.
14. This means that despite their reassurances, the Applicant does not appear to have considered cement kilns at any geographical scale.
15. At ISH3 the Applicant promised to get back to the Examination on this point, and UKWIN also expects the Applicant to take this into account as part of their anticipated D5 WFAA.

Sourcing of feedstock

16. In response to the ISH3 discussion of the Applicants 2-hour drive time and their self-defined study area, UKWIN raised the issue of how in the event that the Applicant's notion that Essex would send some of its residual waste to the Medworth incinerator, rather than the 595,000 tonne per annum Rivenhall incinerator in Essex itself, it raises the question of where Rivenhall would then source its waste.
17. UKWIN noted how displacing capacity at rival incinerators can hardly be treated as a benefit of the scheme, especially as it may force competitors to source their waste from further afield and/or to narrow the range of materials that are considered economic to recycle so as to maintain incinerator feedstock.

Tolvik's UK Residual Waste: 2030 Market Review published in 2017

18. Within the context of the Applicant's references to Tolvik's 2017 scenario for 2030 as aligning with the Government's 65% recycling target, UKWIN noted that when the Government proposed halving residual waste the Government, in their consultation document, stated that this represented a municipal recycling rate of up to 75%.
19. Evidence to support this, in the form of an excerpt from the Government's Environment Targets Public Consultation document (published on 6th May 2022) accompanies this submission.
20. On page 31 of the Government's Environment Targets Public Consultation document (published on 6th May 2022) we read how: "Meeting the target [to halve residual waste per person] will require progress beyond the current commitment to achieve a 65% municipal recycling rate by 2035, and would represent a municipal recycling rate of around 70-75% by 2042".
21. This follows the statement on page 30 of that Environment Targets Public Consultation document that: "The proposed target level is based on modelling the collective impacts of the planned Collection and Packaging Reforms (CPR) on residual waste, as well as considering potential future pathways. These could include policies to separate more waste materials for recycling and to **divert waste from residual waste treatment**". (emphasis added)
22. At ISH3 UKWIN also pointed out how it is important to consider not just recycling rates but also waste reduction, noting that Tolvik's 2017 scenarios for 2030 were premised on an assumption of significant increases in waste arisings rather than on the Government's intended reduction in waste arisings (the announcement of which post-dated Tolvik's 2017 study).
23. Furthermore, as set out in UKWIN's evidence, Tolvik's 2017 assessment did not just look at waste arisings but also at waste treatment capacity, and unlike the Applicant's equivalent WFAA assessment Tolvik's 2017 work did consider non-incineration capacity such as cement kilns, biomass plants and MBT plants which would also treat the waste that Tolvik's scenarios anticipated might arise.
24. The fact that the Applicant is using the residual waste from Tolvik's work but ignoring the treatment capacity from that work highlights the internal inconsistency of the Applicant's approach, which is far from the 'worst case scenario' that they claim.

Further comments on assessing achievement of the 2042 target

25. While the Applicant sets out their assessment of the situation as they anticipate it will be in 2042, they do not appear to have adequately accounted for the pathway to 2042 where waste arisings will need to be significantly reducing as we progress towards meeting the Government's 2042 target.
26. While the Applicant stated at ISH3 that if there is a need in 2042 then there is no value considering intervening years, such a notion is incompatible with the Applicant's approach of assuming that a number of plants will be decommissioned in 2042 because there would be years prior to 2042 when those plants would be operational.
27. UKWIN does not endorse the Applicant's approach of assuming in their assessment that existing plants with permanent planning permission will be decommissioned, but the Applicant's adoption of such an approach makes it clear that it is essential that they provide assessments of the intervening years, alongside evidence of operators' intentions to decommission currently operational EfW facilities.
28. The Applicant is prepared to speculate about the decommissioning of older plants by 2042, without acknowledging how this could be more than outweighed by proposals that are already in development being constructed, including those intended to replace existing plants.
29. The Applicant's WFAA assessment of 2042 waste also fails to adequately consider how a significant portion of the residual waste stream is not suitable for incineration.
30. At ISH3 UKWIN expressed our hope that all of these concerns will be addressed in the Applicant's D5 WFAA.

Summary of UKWIN's previous evidence on size and lack of need

31. For time management reasons, at ISH3 UKWIN agreed to provide a written summary of concerns regarding the size of the proposed development and the lack of need for the proposed new EfW capacity drawing on evidence from our previous submissions (RR-055, REP1-096, REP2-066, and REP3-050).
32. In RR-055 UKWIN outlined how the claimed need for the proposed capacity is overstated whilst potential adverse impacts are understated.
33. We noted that the Applicant's failure to demonstrate a need for their proposed capacity demonstrates a way that their proposal is not in line with Defra's policy position on the role of energy from waste (EfW) in treating municipal waste and that allowing the Medworth proposal to go ahead would result in EfW overcapacity.

34. The proposal also goes against other relevant policies, statements, goals and targets that promote the top tiers of the waste hierarchy over EfW incineration and that seek to avoid incineration overcapacity.
35. UKWIN developed these points in our contribution to ISH1 and in our subsequent written submissions, noting in our Written Representation (REP2-066) how Government policy is clear about the need to avoid incineration overcapacity.
36. In this respect UKWIN's WR drew support from existing National Policy Statements, including EN-1 (2011) paragraph 3.4.3 and EN-3 (2011) paragraphs 2.5.66 and 2.5.70, which emphasise the importance of ensuring that incineration capacity is not approved at the expense of the top tiers of the waste hierarchy.
37. Such Policy Statements inherently acknowledge both the potential for EfW capacity to compete with recycling and the role of the planning system in guarding against this, as can be seen from the application of such policies in the Secretary of State's refusal for new EfW capacity at Wheelabrator Kemsley North.
38. UKWIN's Written Representation explored how the proposed Medworth capacity could undermine recycling and the circular economy in light of the ambitions set out in the 2018 Resources and Waste Strategy, the 2023 Environmental Targets Regulation, and the 2023 Environmental Improvement Plan.
39. UKWIN highlighted evidence from Defra about how a large proportion of the current residual waste stream is recyclable, and so there is no need for more capacity to divert from landfill to incineration, instead emphasising the importance of diverting waste from both landfill and incineration towards reduction, reuse and recycling.
40. Incineration is considered a 'leakage' from the circular economy because it results in the loss of materials and nutrients from their original cycles.
41. Anticipated reductions in residual waste arisings, for example, are expected to free up capacity at existing incinerators (including those currently under construction or in commissioning). This undermines the justification put forward by the Applicant for their proposed new capacity.
42. By creating or exacerbating incineration overcapacity, the proposed Medworth development would run counter to the direction of the Government's current and emerging resource management policies.
43. In REP3-050, UKWIN quoted Defra's statement that the measures in the Government's waste and recycling strategy are intended to reduce the amount of waste being treated at EfW plants.

44. REP3-050 provided detailed critiques of the D2 WFAA.
45. UKWIN explained how the Applicant's D2 WFAA [REP2-009] fails to adequately consider the Government's Environmental Improvement Plan (EIP), the Government's Jet Zero Strategy, and the move towards the production of sustainable aviation fuel (SAF).
46. UKWIN set out how the D2 WFAA fails to account for co-incineration (e.g. cement kiln) capacity and the conversion of dedicated biomass capacity to treat mixed waste [despite these factors being considered in the 2017 UK Residual Waste Market Review conducted by Tolvik which provided the Applicant with their waste arising projections for Table 5.3 of their WFAA].
47. The Applicant's D2 WFAA downplays Tolvik's 'high recycling' scenario for waste arisings despite the UK Government adopting a high recycling pathway within the context of their residual waste reduction targets.
48. The Applicant also underplays the fact that Tolvik's 2017 analysis was premised on significant future growth in waste arising which has been overtaken by events as the UK Government is now seeking to reduce overall waste arisings.
49. UKWIN also pointed out how historic rates of landfill and RDF export do not mean that the same levels of waste would still be produced in the future, nor that that material would not be recycled or composted, nor that that material would be suitable for incineration or available for incineration.
50. Furthermore, the average amount of domestic incineration capacity which was available in 2020 is significantly below the level of incineration which is currently operational and under construction, and this has not been adequately reflected in the Applicant's D2 WFAA.
51. UKWIN set out how it is clear that the Applicant has failed to adequately assess the impacts of the 2027 and 2042 residual waste reduction targets on future residual waste arisings, and how these failures undermine the Applicant's latest assessment of compatibility with local and national recycling and residual waste reduction targets.
52. The extent to which the Applicant overstates the supposed need for their proposed capacity is exacerbated by the Applicant's failure to consider residual treatment capacity other than through incineration.
53. UKWIN's Deadline 3 submission also raised concerns about the Applicant's failure to consider the impact of changes in waste composition on waste processing capacity, with anticipated reductions in plastic in the residual waste stream potentially significantly increasing the quantity of waste capable of being processed at existing English incinerators.

54. In UKWIN's Deadline 3 submissions we also commented on the updates to NPS EN-1 and EN-3 and the Government's consultation response, highlighting how these strengthened UKWIN's case regarding the 'need to demonstrate need' and 'need to avoid EfW overcapacity'.
55. In relation to the 2023 draft of EN-1, we highlighted paragraph 4.2.29, which point to the need to take account of the legally binding target for waste reduction set out in the Environment Act 2021.
56. In relation to the 2023 draft EN-3, we highlighted paragraphs 3.7.6, 3.7.7, 3.2.29, 3.7.45, and 3.7.55 which included policies placing a clear burden on the Applicant to demonstrate that their capacity would not compete with greater waste prevention, reuse or recycling or result in over-capacity of EfW treatment at a national or local level, and to ensure that any new EfW capacity is compatible with, and supports, long-term recycling targets, taking into account existing capacity and that already in development.
57. UKWIN also set in detail our concerns that the Applicant is overly reliant on Requirement 14 of the draft DCO, and Regulation 12 of the Waste Regulations 2011, and the EWC Codes to protect the waste hierarchy when none of these can ensure that local, regional or national EfW overcapacity would not adversely impact on the top tiers of the waste hierarchy.
58. This final point was revisited as part of ISH3 Agenda Item 5, as set out below.

ISH3 AGENDA ITEM 5 (RELEVANT PLANNING POLICY)

59. UKWIN's oral evidence to ISH3 also raised two matters as part of the consideration of Agenda Item 5 on relevant planning policy.

Requirement 14 of the draft DCO (Waste Hierarchy)

60. Firstly, UKWIN noted that there has been some discussion of proposed Requirement 14 of the draft DCO [REP3-007] which is intended to secure compliance with the Waste Hierarchy.
61. UKWIN went on to flag that on electronic pages 44-49 of REP3-050 UKWIN set out how a similar requirement was recently considered in North Lincolnshire as part of the NSIP Examination for an incinerator of a similar scale, and in that case the Examining Authority (ExA) determined that the equivalent DCO requirement did not meet the tests of precision, necessity, or enforceability.
62. UKWIN's position is that these same criticisms also apply to the current Medworth draft DCO requirement, and we do not believe that there is an enforceable form of wording that would ensure compliance with the Waste Hierarchy.

63. In response, as part of ISH3, the Applicant referred to the equivalent Requirement included as part of the DCO issued for Cory's Riverside expansion.
64. As set out on pages 205-206 of REP3-050, UKWIN's evidence to the North Lincolnshire NSIP Examination set out how the North Lincolnshire ExA could now take into account the wording of the actual, rather than theoretical, Riverside Waste Hierarchy Scheme which the Secretary of State could not have considered when determining the Riverside NSIP project in April 2020.
65. REP3-050 electronic page 47 paragraphs 205 and 206 state:
- Accompanying this submission is London Borough of Bexley Council's letter confirming that Requirement 16 [of the Riverside Energy Park DCO] had been discharged. This decision was made based on a scheme and a determination that that scheme satisfied the requirements for Requirement 16.
- This means that, when considering the implications of imposing a similar condition for a different DCO (i.e. for the NLGEP), those considering the North Lincolnshire proposal can benefit from something that those determining the Riverside Energy Park consent did not, which is a copy of a scheme that complied with a Waste Hierarchy Scheme condition.
66. In this same section of REP3-050, entitled 'Detailed analysis of the Riverside Waste Hierarchy Scheme', UKWIN set out how "The approved Riverside Waste Hierarchy Scheme appears to provide very little additionality in practice". This was accompanied by further concerns regarding enforceability.
67. This analysis concluded that: "...any requirement strong enough to have a significant impact on the reusability and recyclability of the feedstock would not be considered 'practicable' or 'possible' given the commercial realities of waste treatment. As such, the only way to ensure that incineration capacity does not adversely impact upon Government ambitions in terms of recycling, reuse, and residual waste reduction is to heed the Government's warnings about the need to avoid incineration overcapacity by refusing to grant new planning permissions for new incineration capacity that threatens such Government ambitions".
68. As such, the North Lincolnshire ExA's recommendation was made in light of not only the Riverside decision, but also on information not available at the time of the Riverside decision.

69. UKWIN provided a copy to the Riverside Waste Hierarchy Scheme as part of REP3-050, and so the Examining Authority for Medworth can similarly consider the proposed Requirement in light of this information as well as in light of further changes in circumstances.
70. Examples of changes in circumstances since the Riverside DCO was approved in April 2020 include:
- the publication of the Waste Management Plan for England (January 2021);
 - the proposed changes to EN-1 and EN-3 (September 2021 and March 2023);
 - Government statements about the importance of avoiding EfW overcapacity (e.g. as made in July 2022);
 - the publication of the Environmental Improvement Plan (EIP), including the interim waste reduction targets for 2027 (January 2023);
 - the adoption of a legally binding target to halve residual waste by 2042 as part of the Environmental Targets (Residual Waste) (England) Regulations (January 2023).
71. All these changes post-date the Riverside decision and can therefore justify arriving at a different conclusion due to the changes in circumstances since April 2020 when the Riverside DCO was granted.

EN-3 policies to avoid EfW overcapacity and prevent harm to recycling

72. Paragraph 2.5.70 of adopted EN-3 (2011) states that proposed “waste combustion generating station” must be of “an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England” and revised draft EN-3 (2023) paragraph 3.7.7 states that “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”.
73. This implies that the Government’s position is that too much EfW capacity could in some circumstances harm or compete with recycling and/or could be of an inappropriate type of scale and so prejudice the achievement of waste management targets.
74. It is safe to say that policies are advanced for a reason, and if the Applicant is assessing compliance with such policies then they will have given some consideration to the rationale for those policies having been adopted or proposed.

75. At ISH3 UKWIN invited the Applicant to “please provide us with some illustrative examples of how excessive or inappropriate EfW capacity could harm or compete with greater recycling and prevention and prejudice the achievement of waste management targets”, but the Applicant declined to do so.
76. It is hard to see how the Applicant can declare that their proposal is compliant with policies that they appear not to understand.