

Comments on submissions received at D3

UKWIN'S D4 COMMENTS ON REP3-031

REP3-031: 9.18 NATIONAL POLICY STATEMENT TRACKER - REV 2

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**

Paragraph 3.3.39 – 3.3.40 of EN-1 (March 2023)

1. At internal pages 46-48 of REP3-031 the Applicant summarises and responds to paragraphs 3.3.39-40 of EN-1.
2. Paragraphs 3.3.39-40 of EN-1 (March 2023) are the same as the statements made in paragraphs 3.7.6 and 3.7.7 of EN-3 (March 2023).
3. UKWIN commented on paragraph 3.7.7 of EN-3 (March 2023) at paragraphs 168-175 of REP3-050 and discuss it further with respect to 3.7.7 of EN-3 (March 2023) later in this submission.

4. Paragraph 3.3.39 of EN-1 (March 2023) states:

“As the primary function of EfW plants, or similar processes is to treat waste, applicants must demonstrate that proposed facilities are in line with Defra’s policy position on the role of energy from waste in treating municipal waste”.

5. Paragraph 3.3.40 of EN-1 (March 2023) states:

“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”.

6. In the Applicant’s comments on their proposed scheme’s compliance with these policies, the Applicant claims on pages 47-48 of REP3-031 that:

The Waste Fuel Availability Assessment (Volume 7.3) [REP2-009] has assessed both the regional requirement for the EfW CHP Facility as well as the national need. It has concluded that there is insufficient residual waste management capacity available to ensure that our non-recyclable waste can be managed as far up the waste hierarchy as possible. The Proposed Development will therefore not result in over-capacity of EfW treatment at a national or local level.

7. It could be simultaneously true that, at one point in time, there is “insufficient residual waste management capacity available to ensure that our non-recyclable waste can be managed as far up the waste hierarchy as possible” and that proposed capacity which would operate in the future could result in over-capacity. This is because EfW capacity is increasing whilst the quantity of residual waste is falling (and Government measures and targets mean residual waste is expected to fall further).
8. Indeed, there is a significant amount of EfW capacity under construction and ‘in development’, including capacity which has planning consent, and Government proposals anticipate significant falls in residual waste arisings.

9. Similarly, even if there was a permanent shortfall in residual waste treatment capacity, and UKWIN does not believe this is the case, that would not justify the approval of 'unlimited' additional capacity in circumstances where that proposed new capacity greatly exceeds that shortfall.
10. As such, even if the Applicant's assertion as set out above was correct, this would not actually demonstrate that the plant proposed for Medworth would not result in EfW over-capacity at a national or local level.
11. As set out in UKWIN's other submissions, the Applicant's WFAAs adopt flawed methodologies and assumptions, undermining their conclusions.
12. The reality is that, once the Government's various waste targets are taken into account, the proposed Medworth capacity would clearly result in creating or exacerbating EfW overcapacity at a local, regional and national levels even if no other new incinerators enter construction.
13. Furthermore, if even some of the capacity which is 'in development' but not yet under construction goes ahead, then the level of overcapacity to which Medworth would contribute would be pushed even higher.
14. As such, the Applicant's statements are incorrect, and the Medworth scheme would actually conflict with paragraphs 3.3.39 and 3.3.40 of EN-1 (March 2023) and their counterparts in EN-3.
15. The Applicant also claims on internal page 48 of REP3-031 that:

"The Proposed Development will not compromise recycling rates. It uses residual waste as fuel. This is the waste which cannot be recycled."
16. As set out in more detail below with respect to paragraphs 2.5.64 - 2.5.70 of EN-3 (2011), the fact that the plant would process residual waste does not mean that it could not compromise recycling rates.

Paragraph 4.2.29 of EN-1 (March 2023)

17. The Applicant fails to comment on one of the most relevant paragraphs of the March 2023 Draft EN-1, i.e. paragraph 4.2.29.
18. As noted at paragraph 183 of REP3-050, page 54 of EN-1 (March 2023) includes the statement (under the 'Assessment Principles' section and 'Environmental Principles' sub-section) that:

"4.2.29 Through the Environment Act 2021 the Government has set 13 legally binding targets for England covering the areas of: biodiversity; air quality; water; resource efficiency and waste reduction...The Secretary of State must consider duties under the Environment Act 2021 in relation to environmental targets and have regard to the policies set out in the Government's Environmental Improvement Plan for improving the natural environment".

19. Of particular relevance to this application are the Environment Act 2021 target's legally binding target to halve residual waste per person by 2042 relative to a 2019 base year and the associated interim targets set out in the Environmental Improvement Plan (EIP) to reduce municipal waste by 24% per person by 2027 and to reduce municipal residual waste by 29% per person by 2027.
20. As explained further below, the EfW capacity proposed for Medworth does not accord with the achievement of the legally binding targets, and the Applicant's WFAAs do not pay adequate regard to the relevant EIP targets.
21. These failures should be given great weight in the planning balance, especially in light of the Government's stated desire to avoid EfW overcapacity at local and national levels.

Paragraph 3.3.39-3.3.40 of EN-1 (March 2023)

22. On internal pages 45-46 of REP3-031, the Applicant states:

DEFRA's waste management policy is set out in the following key documents:

- **The Waste Management Plan for England (January 2021); and**
- **The Resources and Waste Strategy 'Our Waste, Our Resources: A Strategy for England' (2018)...**

23. The following recent sources of information on Defra's current waste management policy should also be considered 'key' to understanding Defra's current policy position on waste management:

- a) Goal 5 of the Environmental Improvement Plan (EIP), which is the section entitled 'Maximise our resources, minimise our waste' with the subtitle 'Key policies to reduce waste and maximize our resources'.

This section of the EIP includes the policy of meeting the 2027 and 2042 waste reduction targets, setting out a number of measures to help achieve those targets.

- b) Defra's 11th July 2022 statement to Parliament noted that: "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".

24. The Medworth proposal goes against all four of these key waste policy statements, not least because of the proposal's potential to harm recycling and the top tiers of the waste hierarchy.

EN-3 (2011)

Paragraphs 2.5.64 - 2.5.70 of EN-3 (2011)

25. EN-3 (2011) paragraph 2.5.70 states:

“The IPC [SoS] should be satisfied, with reference to the relevant waste strategies and plans, that the proposed waste combustion generating station is in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England and local, regional or national waste management targets in Wales. Where there are concerns in terms of a possible conflict, evidence should be provided to the IPC [SoS] by the applicant as to why this is not the case or why a deviation from the relevant waste strategy or plan is nonetheless appropriate and in accordance with the waste hierarchy”.

26. The Applicant summarises this on internal page 77 of REP3-031 as follows:

“The SoS should be satisfied that the proposed waste generating station is in accordance with the waste hierarchy and will not prejudice the achievement of local or national waste management targets”.

27. Commenting on the scheme’s compliance with this requirement, on internal page 77 of REP3-031, the Applicant states:

The Proposed Development would only use residual waste as a fuel source. This is waste that would otherwise be landfilled. EfW moves waste up the waste hierarchy and away from landfill...

28. It makes no sense for the Government to have stated in 2.5.70 of EN-3 that: “The SoS should be satisfied that the proposed waste generating station is in accordance with the waste hierarchy and will not prejudice the achievement of local or national waste management targets” if, as the Applicant suggests, all residual waste “would otherwise be landfilled”.

29. Indeed, the Applicant’s apparent interpretation of Government waste planning policy is at odds with the SoS’s Wheelabrator Kemsley North decision, as noted at paragraphs 148-154 of REP2-066, which found that the Kemsley EfW project would “divert a significant proportion of waste from recycling rather than landfill” despite the Kemsley applicant’s similar claim that their proposed incinerator was only intended to treat non-recyclable residual material that would otherwise be landfilled.

30. As such, the Medworth Applicant’s assumption that feedstock to be treated at Medworth would inevitably otherwise be landfilled is incorrect and out of line with Government policy and thinking.

31. As noted by UKWIN in REP3-050, much of what is currently treated as 'residual waste' is actually recyclable or compostable.
32. The Government introduced targets to increase recycling and to reduce residual waste precisely because much of the material in the residual waste stream ought not to be either landfilled or sent to EfW, but instead should be reduced, reused or recycled.
33. By providing high levels of new EfW capacity the Medworth development could hamper these Government efforts by creating local, regional and/or national EfW overcapacity, and as such the Medworth development could be expected to divert from recycling rather than diverting from landfill.
34. Given the high level of EfW capacity which is currently operational or under construction – and taking account of other capacity which is 'in development' and already has planning permission – it is also possible that the Medworth plant would be taking waste which would otherwise be treated at other EfW facilities, reinforcing the notion that the Proposed Development would not use only waste that would otherwise be landfilled.
35. The new EfW capacity proposed for Medworth could indirectly encourage those other EfW facilities to lower their gate fees, increasing the extent to which the introduction of this new EfW capacity could undermine the waste hierarchy.
36. Defra's Guidance on Applying the Waste Hierarchy, produced under regulation 15(1) of the Waste (England and Wales) Regulations 2011, acknowledges that technical feasibility and economic viability can influence decisions about waste generation and management.
37. For example, in section 13.2 ('What does this mean in practice?') of Defra's Guidance on Applying the Waste Hierarchy Defra acknowledges how:

“Other factors will influence the decisions...about waste generation and management, such as which options are technically feasible, which are economically viable...”
38. As such, if EfW overcapacity (and/or the shortage of supply of waste for the generation of energy from waste) locally, regionally or nationally were to impact on the wider waste market then it could potentially influence decisions on waste generation and waste management, and therefore the new EfW capacity proposed for Medworth could potentially have an adverse effect on prevention, re-use and/or recycling.
39. If the Applicant's suggestion that the use of residual waste as EfW feedstock prevents harm to recycling was correct, then Defra's Resources and Waste Strategy Monitoring Report would not, as noted by UKWIN on paragraph 145 of REP2-066, have stated that:

“a substantial quantity of material appears to be going into the residual waste stream, where it could have at least been recycled or dealt with higher up the waste hierarchy”.

40. The Applicant’s failure to understand how residual waste might contain recyclable material perhaps explains why their proposal does not include mixed waste sorting and why their WFAAs do not adequately assess the Government’s various recycling and waste reduction targets.
41. As mentioned above, EfW overcapacity could be expected to lower EfW gate fees, in order to attract at least the minimum quantity of feedstock required to operate the EfW facility. This in turn could undercut the level of gate fee that could be charged at recycling facilities for a particular material, especially once sorting, collection and extraction costs are taken into account.
42. Material quality also impacts recycling gate fees, and this is in part reflected in the wide range of gate fees charged for any given material.
43. There is an association between how much is invested in collection, sorting and extraction and how much of a given material stream is collected at a high enough quality to be sold for a higher price.
44. There are costs associated with constructing a Materials Recovery Facility (MRF), and there are costs associated with extracting a wider range of materials at a MRF.
45. There are also additional costs associated with accepting a wider range of material qualities for reprocessing, and with improving waste collection methods. Furthermore, there are additional costs associated with the extent to which material is pre-processed prior to incineration to remove recyclates.
46. This means that EfW overcapacity could directly and/or indirectly influence any, and potentially all, of these resource management decisions in a manner that would adversely impact upon the quantity of waste that is reduced, reused, or recycled, at local, regional, and/or national levels.
47. As such, by creating or exacerbating EfW overcapacity the Medworth EfW plant could be expected to hamper the achievement of the Government’s 65% municipal recycling target and the Government’s targets to reduce municipal residual waste by 29% per person by 2027 and to reduce all residual waste by 50% by 2042.
48. Given the serious outstanding issues regarding the potential for the Medworth plant to create or exacerbate EfW overcapacity, the potential for the plant to adversely impact on recycling, and the various flaws in the Applicant’s WFAAs, the clear conclusion is that the Applicant has:

- a) Not provided an assessment of the proposed waste combustion generating station 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, as expected by EN-3 (2011) paragraph 2.5.66.
- b) Not provided evidence that would be sufficient to satisfy the SoS that the proposed waste generating station would be in accordance with the waste hierarchy and would not prejudice the achievement of local or national waste management targets, as expected by EN-3 (2011) paragraph 2.5.70.

REVISED DRAFT EN-3 (MARCH 2023)

Paragraphs 3.7.7, 3.7.29 and 3.7.55 of EN-3 (March 2023)

49. As part of their comments on Revised Draft NPS EN-3: 3.7.6 – 3.7.7, 3.7.9, 3.7.17, 3.7.43 - 3.7.47, the Applicant summarises paragraph 3.7.7 of EN-3, which 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”.

50. However, the Applicant does not directly comment on the compliance of the scheme with paragraph 3.7.7. Presumably they are relying on their response to EN-1 paragraphs 3.3.39-40, which UKWIN refutes above.

51. Furthermore, the Applicant’s assessment of the Revised Draft EN-3 skips over two important paragraphs found within the March 2023 Draft, paragraphs of EN-3 that were mentioned at paragraphs 177-179 of UKWIN’s REP3-050.

52. Paragraph 3.7.29 of EN-3 (March 2023) states:

“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”.

53. While this line is similar to paragraph 3.7.7 of EN-3 (March 2023), to which the Applicant does refer, it is broader in the scope of what must be ensured as it requires that EfW plants be “fit for the future” and places a clear burden on the Applicant to demonstrate compliance with these responsibilities.

54. Paragraph 3.7.55 of EN-3 (March 2023) 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”.

55. This is also similar to paragraph 3.7.7 of EN-3 (March 2023) which is mentioned by the Applicant, but as with paragraph 3.7.29 the Government policy statement clearly places the burden of proof on the Applicant.
56. The Applicant has not carried their burden of proof with respect to these paragraphs of EN-3 (March 2023), adding further reasons why the development is not compliant with emerging national policy.
57. This failure supports the case for refusing the DCO application.

Paragraph 3.7.45 of EN-3 (March 2023)

58. While the Applicant refers to 3.7.43 – 3.7.47 on internal pages 80-82 of REP3-031, they do not include a summary of paragraph 3.7.45 nor do they offer any commentary on this pivotal paragraph.
59. Paragraph 3.7.45 of EN-3 (March 2023) states:

“Applicants should set out the extent to which the generating station and capacity proposed is compatible with, and supports long-term recycling targets, taking into account existing residual waste treatment capacity and that already in development”.
60. UKWIN drew attention to paragraph 3.7.45 of EN-3 (March 2023) at paragraph 180 of REP3-050.
61. As previously set out by UKWIN, the Applicant’s WFAAs fail to adequately assess capacity against arisings, and the Applicant’s approach to assessing impact on recycling targets is flawed.
62. As such, the Medworth proposal is not compliant with the requirements set out by the Government in EN-3 (March 2023) paragraph 3.7.45.
63. As the evidence provided by UKWIN and by other Interested Parties shows, the EfW scheme proposed for Medworth is not compatible with, and does not support, the Government’s long-term recycling targets.
64. This failure is apparent when, as per paragraph 3.7.45 of EN-3 (March 2023), one takes account of existing residual waste treatment capacity and capacity that is in development.