



HOUSE OF COMMONS

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29 July 2022

Dear Planning Inspector

**Medworth Energy from Waste project**

Planning Inspectorate acceptance decision - inadequate consultation and non-DCO development

I am the Member of Parliament for North East Cambridgeshire, the constituency within which the proposed site of the Medworth Energy from Waste project in Wisbech is located. On July 7th the developer of the proposed project, Medworth CHP Limited, submitted an application to the Planning Inspectorate ("PINS") for a Development Consent Order.

Having taken professional advice, I believe that the developer has failed to meet the requirements of s.55 Planning Act 2008, and therefore the Planning Inspectorate, on behalf of the Secretary of State, should reject the application and recommend that the applicant carries out more consultation activity before the application can be accepted.

Along with the community and local authorities, I have attempted to engage positively with Medworth CHP Limited on behalf of constituents. However, the developer has very much treated the consultation process as a "tick box" exercise, rather than taking its statutory duties on consultation seriously.

The developer has consistently failed to engage in good faith with local residents, has failed to follow its Statement of Community Consultation and has not followed good consultation practice. In particular, the consultation information it has provided has been of a poor standard, incomplete or inaccurate. The application fails to meet the requirements of s.55 Planning Act 2008 for a number of important reasons, set out below.

## Acceptance of applications

The Planning Act 2008 directs PINS to only accept an application where it meets the requirements of s.55. These requirements are listed below

- s.55(3)(c) "that development consent is required for any of the development to which the application relates"
- s.55(3)(e) "that the applicant has.... complied with Chapter 2 of Part 5 (pre-application procedure)"
- s.55(3)(f) "that the application (including accompaniments) is of a standard that the Secretary of State considers satisfactory"

The legislation directs PINS, when deciding whether to accept the application, to consider the consultation report, the local authority adequacy of consultation response and the extent to which the applicant has had regard to guidance. However, PINS should also take into account other material considerations, and I would be grateful if you could consider this letter and the issues raised below as being relevant to your decision-making in respect of the application. In particular, I would be grateful if you could check that the Consultation Report appropriately references the detailed consultation response which was commissioned on behalf of my constituents but which the applicant has expressly declined to respond to. I can provide a copy of that consultation response and accompanying expert report on request.

Following the three statutory tests above, the reasons why the application should not be accepted are as follows:

### 1. Non-DCO development - below 50MW generation threshold

It is likely that the proposal does not constitute DCO development. The 53MW threshold for the project claimed by the applicant is unlikely to be attainable and has clearly been selected to ensure that the project consent cannot be determined by the local planning authority, where refusal would be highly likely. Further information on the selected turbine's "boilerplate" capacity and the likely output from the available waste is required before PINS can ascertain that this is indeed DCO development. To accept an application for non-DCO development at this stage would be a significant legal and technical error.

This issue was raised during consultation where I specifically raised questions on the realistic capacity of the plant, including about misleading assumptions around turbine availability and the power density of fuel stocks. The developer declined to respond to these questions and to date has not addressed them. Using an industry average power export of around 540 kWh/t1 of waste input to the plant and based on the

applicant's proposals to incinerate "up to" 625,600 tonnes of waste a year, the plant would only be capable of generating around 337,824 mW/h per year. Assuming 8000 hours of operation (91% availability as stated in the PEI) this would only require a 42MW capacity plant - it should be noted that the applicant's 53 MWe of generation is for net power (as stated in the s.46 notice) and therefore further stretches the credibility of the calculations available from the corresponding waste sources. Prior to accepting the application PINS should be certain that the CHP element of the project does indeed have a capacity of over 50MW, and that such capacity has been appropriately assessed through the EIA process and is consistent in respect of the environmental impacts of the predicted fuel load and its calorific content. As discussed above, the PEIR was inconsistent and flawed in this respect, particularly as it significantly distorted the carbon benefits of the project.

## 2. Inadequate and premature consultation

The applicant's consultation exercises have not been of the required standard and little or no attempt has been made to either respond to consultation responses, or to provide information of sufficient quality or detail to inform the local community or statutory consultees. This is contrary to both the spirit and legal requirements of the Planning Act 2008. This may be because at the time of the statutory consultation the project design was not sufficiently advanced - for example a grid connection had not been secured, access to land was not available, vital traffic and transport information had not been collated and information about the sourcing of waste was only rudimentary and speculative.

In August 2021 on behalf of constituents I commissioned an expert report on the adequacy of the consultation which identified significant failings in the applicant's approach. That report, together with a long list of consultation questions, was provided to the applicant. However, the applicant expressly declined to respond to the report, or address the request that a further round of consultation be carried out to address consultation shortcomings.

Those consultation shortcomings included a significant failure to meet its obligations under the Statement of Community Consultation, which stated that it would provide "clear and concise technical and non-technical information". Consideration of the treatment of, for example, the project description, air quality, traffic or visual impact in the consultation material immediately shows that this commitment was not met.

Furthermore, the applicant has failed to meet an appropriate standard for Preliminary Environmental Information (PEI). The information provided by the applicant which purported to be PEI did not comply with Regulation 12 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. The information did not provide the information reasonably required for consultees to develop an informed view of the likely significant environmental effects of the development. In particular, local residents were not clearly informed on likely impacts arising from air pollution, traffic movements, the construction and visual impact of the grid connection, the

likely greenhouse gas emissions associated with the plant or issues concerning toxic waste ash. These issues will all give rise to likely significant environmental effects and should have been discussed adequately in the PEI. Further information on these omissions is provided in the Annex to this letter.

As discussed below, despite making commitments on a number of occasions, no residential amenity assessment was provided to local residents by the applicant. Although a limited and incomplete visual impact assessment of residential receptors was provided at Appendix 9K of the PEI, local residents were not provided with a full residential amenity assessment and therefore were unable to assess the overall impact of the project on the local community.

### 3. Applicant's failure to follow guidance and good practice

A key part of the test of the application's quality at Section 55(3)(f) of the Planning Act 2008 is whether the applicant has conformed with relevant standards and guidance. The applicant has failed to follow important guidance including:

Guidance about the pre-application procedure issued by the Secretary of State under s.37 and s.50 Planning Act 2008

The applicant has not complied with guidance on the pre-application consultation process, published by the then Department for Communities and Local Government in April 2012.

The guidance on the DCO pre-application process states that consultation should be:

- based on accurate information that gives consultees a clear view of what is proposed.
- shared at an early enough stage so that the proposal can still be influenced, while being sufficiently developed to provide some detail on what is being proposed;
- engaging and accessible in style, encouraging consultees to react and offer their views.

These good practice criteria have not been met by the developer's consultation documentation. The documentation contained inaccurate information, was missing key details of what is being proposed and stylistically was complex, dense and inaccessible.

More specifically, as discussed above, the requirements of paragraph 38 of the guidance for a community / "residential amenity assessment" were not been met, despite this being requested by the Planning Inspectorate at a meeting in January 2021.

Paragraph 61 of the guidance states that "it is important that those who have



contributed to the consultation are informed of the results of the consultation exercise, how the information received by applicants has been used to shape and influence the proposals. Paragraph 63 emphasises that the consultation report may not be the most appropriate format in which to provide feedback - however the applicant does not appear to have considered providing a summary report, as suggested in this paragraph. As I indicated above, I find it difficult to understand why the applicant refused to respond during consultation to a Member of Parliament who had submitted an expert report on the project on behalf of his constituents.

Paragraph 64 recommends that where feedback from consultees with technical information has been provided then applicants should be prepared to engage with bodies on an individual basis. This has not been done in my case.

Paragraphs 71 and 72 provide guidance on the provision of preliminary environmental information. As discussed above this has not been delivered in a comprehensive or clear manner.

- Guidance on Good Design

The National Policy Statement for Energy (EN-1) sets out criteria for Good Design.

These criteria have recently been supplemented by guidance from the National Infrastructure Commission (NIC) on design principles, focussing on the core elements of "people, place, climate and value". The project design has clearly not taken these principles into account, despite these being highlighted to the developer in the PINS meeting of 15th January 2021. This lack of compliance with Good Design principles further confirms the poor quality of the consultation process.

- Advice Note 7 on Preliminary Environmental Assessment

As discussed above, the requirements to provide Preliminary Environmental Assessment during consultation have not been met. The applicant has failed to meet the requirements of Advice Note 7

- Guidance on Compulsory Acquisition and alternatives

The applicant has not followed the Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land, published in September 2013 by the then Department for Communities and Local Government. Paragraph 8 of the guidance requires applicants to demonstrate that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored.

However, during statutory consultation, the applicant acknowledged that little or no exploration of alternatives had taken place. Paragraph 2.3.3 of the PEI stated that "the consideration of specific alternatives was not considered to be necessary". No alternative sites were identified, despite the PEI claiming to set out criteria for site

selection. In this context it is simply not credible that all alternatives to compulsory acquisition have been fully explored by the applicant.

I trust that the above provides a sufficient basis for my contention that the application for the Medworth incinerator should be rejected at this stage. The applicant has not met the requirements of s.55 Planning Act 2008 and my constituents should be given the courtesy of the comprehensive and meaningful consultation process which the Act envisages.

I am copying this letter to Fenland District Council and also placing it in the public domain.

Yours sincerely,



**Stephen Barclay MP**





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Annex

The following paragraphs provide examples of the inadequate level of Preliminary Environmental Information. All of these issues were raised with the applicant in an expert report commissioned on behalf of constituents as part of the public consultation process, however the applicant expressly declined to respond to these observations.

- Incomplete project description

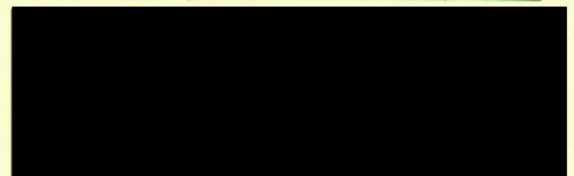
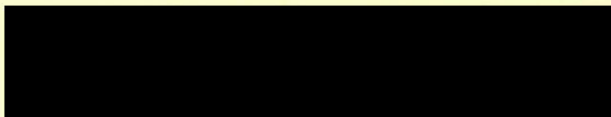
The project description in the PEI was incomplete, providing only cursory detail in respect of the works at the proposed substation locations; no dimensions of substation work were provided, there was no description of the apparatus, the substation construction / installation details were absent and, in the case of “TCC4”, the location of a construction compound was not presented. These are significant elements of the project and should not have been omitted from the Preliminary Environmental Information (PEI) and deferred until the publication of the environmental statement (the approach proposed at page 11 of the project description). This is particularly the case because the Environmental Impact Assessment (EIA) Regulations specifically require the PEI to include consideration of associated development and the need for all the above information was highlighted at paragraph 2.2.6 of the Scoping Opinion. It is unclear why it was omitted from the PEI.

- Residential Amenity Assessment

In January 2021 the developer undertook to publish a Residential Amenity Assessment (PINS meeting note). The findings of this assessment was not provided at the consultation stage, denying residents of Wisbech, and further afield, the opportunity to comment on the potential impacts on their homes and community.

- Status of ash waste

The uncertainties around the status of Incinerator Bottom Ash (26.5% of the input waste, over 165,000t) and the potential for parts of that waste to enter landfill as hazardous waste rather than reclamation were not discussed in the Preliminary Environmental Information. The project description failed to inform consultees that the Air Pollution Control (APC) residues (a further 5% of input waste) are





classified as hazardous waste. The developer has failed to provide information highlighting that the project is less sustainable than presented, creating hazardous waste where none existed in the feedstock and consigning significant proportion of waste to landfill. The transport of these wastes is not discussed in the PEI, either under traffic and transport (Chapter 6) or accidents and disasters (Chapter 17). The absence of a waste chapter to the PEI is particularly notable for a project which creates hazardous wastes. Advice Note 7 highlights the importance of providing clear information to consultees.

- Air quality

Air quality is a key issue of concern for residents and yet full-time monitoring only commenced in June 2021. The lack of location specific weather data in the PEI created significant uncertainty around the modelling (paragraph 8.6.27), relying instead on modelled data. These inadequacies again suggest the prematurity of the consultation exercise and poor quality of the PEI. Modelling of abnormal operations had not taken place at all, despite schools and a hospital being in close downwind proximity to the proposed site.

There was no attempt to present the modelling in an easily accessible and understandable form, instead the developer presented over 270 pages of tables (Appendix 8C). Modelling could have been easily presented in graphical form (for example by showing plumes overlaid on OS Maps) – it could be assumed that this is because the developer did not wish to show potential effects on the developed areas of Wisbech, which are largely downwind from the proposed location. The Plumeplotter website shows this to be the case for the developer’s operational project in Plymouth. The poor location of the proposed project (exacerbated by the developer’s failure to adequately consider alternatives, as discussed above) should not be used as a reason for not presenting PEI in a simple manner, consistent with the requirements of Advice Note 7.

- Inaccurate and misleading information on greenhouse gas emissions

One of the main claims of the Energy from Waste (EfW) technology proponents, that these projects deliver greenhouse gas (GHG) emissions reductions as a renewable energy, is not evidenced in the PEI. The GHG emissions reductions set out in Chapter 14 show a net increase in greenhouse gas emissions from the “without proposed development” scenario of 32.9 ktCO<sub>2</sub>e/yr during operation. There is a high likelihood that the increase in GHG emissions would, in fact, be



greater than assessed. The PEI uses conservative assumptions as to the future efficacy of capture and re-use of landfill gas (for example, discounting export of biogas rather than generation by gas engines) and does not consider the requirement under the UK's 6th Carbon Budget for many of the more GHG intensive landfill wastes to be processed further up the waste hierarchy.

- Flawed assumptions relating to waste fuel availability

The draft waste fuel availability assessment provided at PEI was incomplete, and significantly flawed. The assessment failed to address the waste hierarchy and the extent to which wastes can be managed higher up in the waste hierarchy.

The assumptions in the PEI respect of source local authorities does not accord with the proximity principle. It is difficult to understand how sourcing waste from 12 authorities can satisfy the requirement to treat wastes as locally as possible. Furthermore, the use of the 2-hour travel time metric (even if appropriate under the proximity principle) has not been consistency applied – many of the towns listed in table 14.26 as sources of waste fuel are at distances which would be impossible to travel from by HGV in 2 hours, including Coventry, Basildon, Watford, Scunthorpe, Warwick and Mansfield.

The breakdown of waste composition used to assess the carbon intensity of the proposed project (table 14.22) appears to include a significant element of waste could be managed further up the waste hierarchy, including food waste (27%), garden and other organic waste (5%), paper (14.8%), card (6.3%) and textiles (5.5%) – this analysis undermines the assumptions of the fuel availability assessment. Under the 6th Carbon Budget nearly all this material must either be treated higher up the waste hierarchy or through EfW equipped with CCS. Card, paper and textiles can all be recycled, food, garden and other organic waste can be more benignly managed through anaerobic digestion.

- Traffic and transport

As previously advised by statutory consultees (see responses to Environmental Impact Assessment scoping on the PINS website) a rigorous assessment of traffic impacts is required but was not delivered in the PEI. Nor was the preliminary information clear or understandable to consultees. Most of the information presented assessment methodologies rather than a clear indication of likely effects required for PEI, or the mitigation (including the delivery of associated development). The prematurity of the information provided was clearly indicated by the “further steps” which include traffic surveys, further assessment, technical

consultation and design arrangements for A1101 Elm High Road and A47 Broadend crossings. Further statutory consultation should have taken place when this information was available.

Given the flawed nature of the draft waste fuel availability assessment (discussed above) and the uncertainties surrounding the location of waste sources and ash disposal facilities, it is questionable whether the HGV traffic distribution data set out in the PEI was accurate or reliable.