Written summary of oral case

SUMMARY OF UKWIN'S ISH3 ORAL SUBMISSIONS (26TH JANUARY 2023)

Proposed Development:
North Lincolnshire Green Energy Park

Proposed Location:
Flixborough Wharf, Flixborough Industrial Estate, North Lincolnshire

Applicant:
North Lincolnshire Green Energy Park Limited

Planning Inspectorate Ref:
EN010116

Registration Identification Ref:
20031828

FEBRUARY 2023

United Kingdom Without Incineration Network

AGENDA ITEM 3 (ISSUES IN RESPECT OF WASTE)

3(a) The likely balance between waste as fuel (WaF) supply and energy from waste (EfW) capacity in England until 2035

1. UKWIN sought to clarify that "Waste as Fuel" (WaF) is used not only as incinerator feedstock, but also for purposes other than energy from waste, including fuelling co-incineration in cement kilns (approximately 1 million tpa of Solid Recovered Fuel by 2030 according to Eunomia) and possibly more than 2.7 million tpa for three Sustainable Aviation Fuels (SAF) projects awarded Government funding in December 2022 (because the facilities would contribute to the Government's Jet Zero Strategy).
2. UKWIN is submitting further Deadline 4 (D4) evidence on Sustainable Aviation Fuels, and as promised during ISH3, UKWIN has provided the Applicant with more details on this to aid the Statement of Common Ground (SoCG) process.
3. In terms of cement kilns, the Applicant did not take cement kiln capacity in their RDF Supply Assessment from December 2022 [REP3-040], but 375 kte of cement kiln capacity was acknowledged in Afry's January 2023 response to UKWIN which was appended to REP3-022.
4. In UKWIN's view, while this is a good start, the Applicant's figure neither matches the historic peak nor does it anticipate the potential for future increases in the use of WaF as the cement sector seeks to decarbonise.
5. In terms of SAF, while the Applicant included 500 ktpa of Yorkshire and Humber SAF capacity in REP3-040, this was lumped together with other consented development and so its role was downplayed. Thus, the Applicant has yet to adequately assess whether their proposed 760,000 tpa of new capacity is likely to undermine and compete with the delivery of Government-funded waste-to-SAF capacity in the region.
6. More broadly, UKWIN registered our concerns about how it appears that every major revision of the applicant's RDF Feedstock Supply Assessment has featured a profound reformulation of its central methodology.
7. One could speculate that these shifts in approach were made to avoid admitting that – based on their previously established methodology – there would be significant regional and national overcapacity in light of additional capacity entering construction and/or increased Government recycling ambitions.
8. UKWIN noted how the Applicant's approach was getting increasingly detached from Government policy, including acting as if the Government plans to shut down all incinerators that do not meet the R1 threshold when this is clearly not the case.

9. UKWIN set out how one of the most egregious flaws in the Applicant's approach was their reliance on a fanciful confection that entails applying self-serving 'policy assumptions' regarding the enforced closure of all EfW incinerators that have not had full carbon capture fitted by 2035.

10. Such a policy has neither been proposed nor subject to consultation (e.g. as part of the Government's Carbon Capture Readiness consultation), let alone adopted, by the UK Government. The Applicant simultaneously appears to ignore extant Government policies that they find inconvenient. This contrasts sharply with UKWIN's approach, which is based on aligning projections with Government policy.

11. UKWIN referred to how that the Applicant made much of the Government's UK ETS call for evidence statement that: "...the UK ETS could be [used] to incentivise CCS uptake for EfW and waste incineration plants across the UK".

12. UKWIN noted that the Government's proposals in relation to the Emissions Trading Scheme (ETS) says that they want to incentivise carbon capture, and it makes no sense why the Government's proposals are focused on incentivising carbon capture if carbon capture would be a requirement for all incineration facilities and/or if the Government would shut down plants that do not have carbon capture. It is also noted that the Government consultation included not just energy from waste but also waste incineration.

13. So, it seems the Government is not planning to shut down all existing R1/non-CCS incinerators in the foreseeable future, and that no such policy forms part of current Government plans. As such, the assessments should be made on the basis that existing capacity will continue to exist, and that capacity under construction will not be halted.

14. During ISH3, following UKWIN's comments, the Applicant resiled from their previously held position with respect to the closure of EfW plants without full CCS. The Applicant went on to describe a scenario where operators voluntarily shut down their EfW facilities for commercial reasons. UKWIN responds to this new suggestion within our other Deadline 4 submissions.

15. It is perhaps telling that the Applicant is not committing to full CCS in their own proposal.

16. The Applicant's own figures appear to indicate significant regional overcapacity. In terms of regional waste versus capacity, in REP3-040 we see the Applicant's projected regional waste figures on Figure 10 within electronic page 45 arisings.

17. The Applicant anticipates regional waste will fall to around 3.9 million tonnes based on 65% recycling, or around 3.8 million tonnes based on 68% recycling, or even lower if we assume that residual waste per capita would be halved in line with Government commitments.

18. Focusing on capacity, the Applicant's REP3-040 Figure 10 provides a figure for "R1 capacity" of around 3.7 million tonnes, but this does not include the Rivenhall capacity which they now acknowledge is under construction.

19. If we include all existing capacity acknowledged by the Applicant, excluding the non-R1 capacity, then this would add up to 3.7 Mtpa of capacity.

20. If we add in the non-R1 capacity then this would bring us to 3.94 Mtpa of capacity, so there is clearly no room for an additional 760ktpa of capacity.

21. When we add in 500ktpa of capacity for the Yorkshire & Humber SAF plant, this brings regional capacity to 4.44 Mtpa – which is acknowledged, but not properly considered, by the Applicant.

22. UKWIN's approach is based on aligning projections with current and emergent Government policy, while the Applicant appears to ignore policies that they find inconvenient whilst adopting policy assumptions that have not been proposed, let alone adopted, by the UK Government.

23. During ISH3 UKWIN explicitly confirmed to the ExA that UKWIN is prepared to accept the Applicant's 2020 figure of 22 million as the starting point for the WaF assessment.

24. The Applicant also confirmed that they considered 22 million tonnes was an appropriate starting point. This was made clear during ISH3 when Ali Lloyd stating on behalf of the Applicant that they had benchmarked the 22 million tonne figure against other studies and considered it an appropriate figure based not only on how the figure was derived by AFRY but also within the wider context of estimates from the other studies they had benchmarked.

3(b) Securing consistency with the waste hierarchy through the use of a draft requirement

25. UKWN noted that when concerns are raised about the impact of new incineration capacity on recycling rates as part of the permitting process the Environment Agency (EA) responds within their permit decision documents by stating that this is a matter that falls outside of the scope of Environmental Permitting because it is a planning matter.

26. UKWIN agreed to provide a real world example of this at Deadline 4, and this is set out in an accompanying submission that contains extracts from the permit decision document for the Horsham incinerator.

27. For context it should be noted that planning permission for a conventional incinerator in Horsham was granted on appeal in February 2020 (PINS Ref APP/P3800/W/18/3218965), and that the facility is designed to process 180,000 tonnes of feedstock per annum. Permit EPR/CB3308TD/V002 was determined on 16th November 2022, and provided responses to a number of concerns regarding recycling and incineration overcapacity.

28. On page 109 of the Horsham permit decision document we read how: "The consultation responses received were wide ranging and a number of the issues raised were outside the Environment Agency's remit in reaching its permitting decisions. Specifically, questions were raised which fall within the jurisdiction of the planning system, both on the development of planning policy and the grant of planning permission. Guidance on the interaction between planning and pollution control is given in the National Planning Policy Framework. It says that the planning and pollution control systems are separate but complementary. We are only able to take into account those issues, which fall within the scope of the Environmental Permitting Regulations" [EPR].

29. This principle was then invoked on the following page of the decision document (page 110) in the section on representations from North Horsham Parish Council, where the "request for evidence to be provided that the National Planning Policy Framework is being adhered to" was met with the response from the Environment Agency that: "Wider issues of policy are outside our remit. We have to assess the environmental impacts of what is proposed which is an activity that can be authorised under EPR".

30. As can be seen from the submitted extracts, and as noted at ISH3, further comments from the public included "Concern over whether Incineration is the best way to deal with the waste", "Concern that incineration reduces recycling", "Concern that incineration is a barrier to the circular economy", and "Concern that the UK already faces incineration overcapacity".

31. These concerns about recycling, incineration overcapacity and barriers to the circular economy were all met with similar responses from the Environment Agency, setting out how the EA did not have the power to refuse to issue environmental permits on such grounds because their role was limited to enforcing the Environmental Permitting Regulations (EPR), and this meant that "Wider issues of waste policy are outside our remit".

32. UKWIN noted that Riverside Energy Park was granted a DCO in April 2020. While the DCO has been subsequently modified, the DCO, with its Waste Hierarchy Requirement (Requirement 16), established the principle of the development at a time before the Government placed the same emphasis on avoiding incineration overcapacity and before the Government's latest commitment to halving residual waste sent to incineration or landfill.

33. As such, the North Lincolnshire proposal can be distinguished from the Riverside Energy Park, for example because UK incineration capacity was not as high in April 2020, draft EN-3 had yet to be introduced and its incineration overcapacity avoidance requirements had yet to be adopted as Government policy in Parliament, and the Environment Act's residual waste reduction targets had yet to be introduced.

34. It is notable that, subsequent to the Riverside decision, the Wheelebrator Kemsley North incinerator was refused DCO consent in February 2021, with the Secretary of State agreeing with the Examining Authority that "…the projects would divert a significant proportion of waste from recycling rather than landfill" despite the Kemsley applicant's claim the incinerator would only burn non-recyclable material.

35. One could also distinguish the circumstances on the basis that Riverside was decided without Cory's Waste Hierarchy Scheme being available for scrutiny. It is now available, and it should serve as a cautionary tale – an opportunity for learning.

36. Based on our experience of Cory's Riverside Energy Park Waste Hierarchy Scheme, we can expect the draft DCO requirement for North Lincolnshire would amount to merely relying on the existing legal duties such as Regulation 12 of the Waste Regulations 2011 (which only applies on the transfer of waste, as is explored further in Appendix A, below), and on the goodwill of suppliers, but with extra steps.

37. There is very little 'additionality' that would actually be required by replicating such a DCO Requirement, and the Applicant's proposed DCO Requirement fails to address the concerns raised by UKWIN in REP1-023 and REP2-110.

38. This failure is explored in further detail in Appendix A, which provides an analysis of the Riverside scheme and a discussion of the limited potential to improve the proposed Requirement 15 for the proposed North Lincolnshire development.

39. The draft Requirement for North Lincolnshire (proposed Requirement 15) does not, and cannot, obviate the harm caused to the waste hierarchy and the Government's recycling and residual waste reduction ambitions by the introduction of incineration capacity that would result in English incineration capacity exceeding the level of genuinely residual waste available to burn.

40. What can obviate that harm is to refuse planning consent for the capacity proposed for North Lincolnshire.

3(d) Local waste related concerns raised by Interested Parties

41. At the instigation of UKWIN the EA confirmed that their interest in odour management relates strictly to the facility and its curtilage, i.e. the 'installation', and not with respect to odours during transport to or from the installation.

3(e) The carbon intensity of incineration v landfill and incineration v displaced power generation

42. UKWIN clarified that the Applicant's current approach to calculating carbon intensity cannot be considered 'conservative' if one defines 'conservative' as being likely to understate GHG benefits.

43. The Applicant clearly overstates the GHG benefits of their proposed scheme, which is likely to have a net climate disbenefit.

44. UKWIN does not accept the Applicant's assertion that their approach is consistent with IEMA and Defra guidance.

45. UKWIN has set out our position on this (e.g. electronic page 5 of UKWIN's REP3-043, and electronic pages 58, 59 and 65 of REP2-019, and electronic pages 49-54 of REP2-110) and has responded further, as part of our Deadline 4 submissions, to the Applicant's latest arguments.

46. As part of ISH3 UKWIN also noted how the stricter the Applicant is with respect to their RDF specifications the less waste would be available to meet those specifications and the further this specialised material would need to travel. These sorts of restrictions have not been adequately assessed by the Applicant, e.g. in their various RDF Supply Assessments.

47. UKWIN went on to clarify how the North Lincolnshire incinerator proposal would constitute a 'high carbon development' as set out in UKWIN's evidence, e.g. at paragraph 139 of REP2-110, where an estimated fossil carbon intensity figure of 548g of fossil CO_2 per kWh is provided.

48. Such a high level of carbon intensity means that the North Lincolnshire incinerator would be generating electricity that would be considerably worse for the climate than the conventional use of fossil fuels such as unabated CCGT.

49. UKWIN noted at ISH3 that the BEIS marginal emissions factors are designed to be used when considering the impact of a sustained change in electricity demand, and that this can derive not just from a reduction in usage but also the introduction of new capacity such as from new incineration capacity. This means that the marginal emissions factors are clearly the appropriate counterfactual in line with BEIS guidance and previous statements from Defra.

50. Having revisited the relevant guidance as suggested Mr. Aumonier, we confirm that this is the position as set out by BEIS in their ‘Valuation of energy use and greenhouse gas background documentation’ as noted on electronic pages 52 and 53 of REP2-110 and that we remain confident that the position previously set out in our evidence accurately describes the Government’s position as set out in relevant Government guidance.

APPENDIX A – COMMENTS ON DRAFT DCO REQUIREMENT 15

Riverside Energy Park Waste Hierarchy Scheme

51. Accompanying this submission is London Borough of Bexley Council's letter confirming that Requirement 16 had been discharged. This decision was made based on a scheme and a determination that that scheme satisfied the requirements for Requirement 16.

52. 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.

53. The approved Riverside Waste Hierarchy Scheme appears to provide very little additionality in practice. To assess, this, we consider a key element of the scheme which begins at electronic page 17 of the document.

54. Requirement 16(2)(b) requires that: "The arrangements that must be put in place for ensuring that as much reusable and recyclable waste as is reasonably possible is removed from waste to be received at the authorised development, including contractual measures to encourage as much reusable and recyclable waste being removed as far as possible".

55. While this may appear reassuring, in practice the Scheme amounts to very little. The Scheme's response to this requirement includes paragraph 3.3.9 on electronic page 18 which requires waste type restrictions in the permit are adhered to and the Waste Regulations 2011 is adhered to. This offers no meaningful additionality, as legal requirements would need to be met in any case, and as set out below these legal requirements would not prevent the incinerator from adversely impacting on recycling rates.

56. Paragraph 3.3.9 includes a mechanism asking suppliers to set their own targets for improving the percentage of reusable and recyclable waste removed from the supplier's waste stream. This implies that there will be both reusable and recyclable material that would not be removed, and the mechanism does not require any specific level of recyclate removal.

57. Furthermore, Paragraph 3.3.9 makes clear that it is for the supplier to self-report any breaches of the target, even though it is not in their interests to be thorough in this regard. The Scheme goes on to explain how the consequences of the supplier missing their self-set targets are minimal, with a mechanism for agreeing more time to meet with the self-set targets, and with the prospect that no specific timescales might be set – so, suppliers may be given unlimited time to meet their previously missed self-set targets.

58. It is difficult to see how any local authority tasked with enforcing such a requirement would be able to do so effectively. There is no mechanism, for example, for the local authority to be involved in the process of setting the targets or monitoring their degree compliance, or the process of extending any deadlines for compliance.

59. It is hard to see how either the operator or the local authority would be able to determine whether or not a supplier was breaching the Environmental Management System if they failed to self-report their non-compliance.

60. As such, even if the Scheme did include specific targets for removing recyclable and reusable material from the waste stream, it is difficult to see how this would be enforced.

61. And even if there were suspicions regarding possible unreported non-compliance due to the nature of the material being received by the operator, there seems to be no obvious mechanism for the operator to require their supplier to demonstrate compliance.

62. And even if there were such a mechanism, there is also no clear way for a local authority to require the operator to act on any such suspicions.

63. Suffice it to say, it appears that the Scheme's attempt to respond to the requirement for "ensuring that **as much** reusable and recyclable waste **as is reasonably possible** is removed from waste to be received at the authorised development, including contractual measures to encourage **as much** reusable and recyclable waste being removed **as far as possible**" appears to be an admission that once one builds an incinerator, not much is actually possible because the operator is reliant on the goodwill and co-operation of suppliers who would be able to send their waste elsewhere if they could not conveniently send it to the proposed incinerator, and therefore there is little leverage that the operator can have over their suppliers in terms of requiring best practice.

64. This means 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.

65. 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.

Regulation 12 of the Waste Regulations 2011

66. As UKWIN noted at ISH1 [REP1-023], Regulation 12 of the Waste Regulations [REP1-028] applies only 'on the transfer of waste', and so cannot be relied upon to guarantee waste is collected and processed to prevent reusable and/or recyclable material being used as incinerator feedstock.

Restrictions from the Environmental Permit

67. Permits restrict waste to certain waste types or waste codes, but these codes include mixed waste and processed waste, meaning such restrictions cannot prevent residual waste streams that contain material that is either recyclable or that could alternatively have been collected for re-use or recycling from being part of the incinerator feedstock.

68. The permitting system's inability to prevent material that could have been collected for recycling, or residual waste that includes recyclable material, from being incinerated explains why (as noted above) the Environment Agency responds to concerns about recycling in permit decision documents by stating that this is a matter that falls outside the remit of the permitting system and that therefore such concerns fall within the planning system.

Improving Requirement 15

69. The more incineration capacity that there is, the stronger the negotiating position of waste suppliers, as operators increasingly compete with other operators for access to the ever-decreasing quantities of potential incinerator feedstock.

70. This means that it is implausible to expect that an incinerator operator would in practice consider it economic to impose significant burdens on waste suppliers as these suppliers could simply turn to other operators who can process waste as a fuel (WaF).

71. This means that any scheme that may look good on paper is unlikely to be meticulously executed, and it is hard to see a circumstance where a local authority would be readily able to identify non-compliance with sufficient certainty to be able to take effective enforcement action.

72. As such, despite a genuine consideration of the prospect of improving the wording of the Requirement, UKWIN does not think that the proposed draft DCO Requirement 15, or a modified version of it, will or could overcome the issues that we have raised.

73. That said, if the DCO is to be consented and such a requirement were to be imposed then there is one area that could be improved. This suggested improvement relates to the transparency of the compositional analysis.

74. While on the one hand the compositional analysis requirement appears to have no 'teeth' – in that it does not have any automatic triggers for action with respect to the relationship between the operator and the supplier – it does at least provide an insight into what has previously been incinerated.

75. UKWIN suggests that operators be required to make such compositional and chemical analyses public, to provide transparency regarding the nature of the material that has been incinerated.

76. To make this publication more meaningful, it should be required to set out the feedstock composition data using the same first-, second-, and third-tier waste categories as are set out in Defra's 2020 'Resources and Waste Strategy Monitoring Progress' report. UKWIN has submitted relevant extracts from this document to accompany this Appendix.

77. Furthermore, compositional analysis reports should be required to show how the incinerated material would be classified in terms of Defra's 'Avoidability Classification' scheme following the methodology used in Defra's report to assess the recyclability of the residual waste stream.

78. As set out on internal page 34 of that Defra document, the 'Avoidability Classification' categories used were as follows: "1. **Readily recyclable with current technologies** – items which shouldn't be in the residual waste stream whatsoever because they are recyclable or compostable at the kerbside or household waste recycling centres (HWRCs); 2. **Potentially recyclable with technologies in development** – recycling of this material either: a) happens already but not at scale due to collection or technical challenges; or b) could be possible with technological/methodological changes that are already on the market and can be readily envisaged; 3. **Potentially substitutable to a material which could be recycled** – it is hard to envisage a recycling route for these materials, but they could be substituted for something else which could be recycled; 4. **Difficult to recycle or substitute** – the material is difficult to avoid becoming residual and no feasible alternative can be envisaged without entailing substantial cost."

79. Information setting out which material category is assigned to which "Avoidability Classification" can be found on internal pages 92-93 of the Defra document, and any report on recyclability under Requirement 15 should use these categories in the interests of comparability and consistency.

80. While such improvements would not prevent recyclable material from being incinerated, they would at least provide an increased level of transparency.