Responses to the ExA's ExQ3

UKWIN'S D8 RESPONSE TO THE EXA'S EXQ3 QUESTIONS Q14.0.1 AND Q17.0.1

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

APRIL 2023

United Kingdom Without Incineration Network

UKWIN'S RESPONSE TO Q14.0.1

1. The ExA's ExQ3 [PD-015] question Q14.0.1 relates to Policy, and in particular to the National Policy Statement (NPS) Energy Suite of national policies that is currently out for consultation.

2. The question is as follows: *"The Government published further iterations of the National Policy Statement (NPS) Energy Suite of national policies for consultation, the period of which will run until the 23 May 2023.*

   Could each IP provide an update on their position in respect of the status of these policy documents, what elements within them should be regarded as important and relevant in the ExAs recommendation and subsequently in the Secretary of State (SoS) decision.

   Could IPs advise on what weight they consider the ExA should give to these documents and advise on whether there are any particular aspects of the consultation documents the ExA should have particular regard to".

3. UKWIN's position is in essence as set out on electronic pages 3-5 of REP7-037 where UKWIN provided specific comments focused on the March 2023 EN-3 paragraphs 3.7.6, 3.7.7, 3.7.29, 3.7.55 and the March 2023 EN-1 paragraph 4.2.29.

4. The aforementioned EN-3 (March 2023) statements are as follows:

   Waste treatment capacity

   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 or commercial and industrial sources.

   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.

   Commercial aspects of waste combustion plants

   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.

   Residue management

   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.

5. The aforementioned EN-1 (March 2023) statement is as follows:

> ***Secretary of State decision making***
>
> 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; tree and woodland cover; and Marine Protected Areas. 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.

6. UKWIN would also like to draw attention to paragraph 3.7.45 of EN-3 (March 2023) which states:

> ***Waste management***
>
> 3.7.45 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.

7. EN-3 (2011) paragraph 2.5.67 refers to 'recovery targets' and this includes recycling (i.e. materials recovery) targets, but its successor paragraph in EN-3 (March 2023), i.e. paragraph 3.7.45, explicitly places the burden of proof on the applicant to demonstrate that their proposal would be compatible with, and would support, long-term recycling targets.

8. We believe that the ExA should have particular regard to all of the aforementioned statements in the March 2023 versions of EN-1 and EN-3 when considering the North Lincolnshire Green Energy Park proposal in line with the rationale given in REP7-037.

9. The statements and the principles that these paragraphs advance relate to matters which were clearly the subject of much consultation interest, and the Government, having read those consultation submissions, decided to retain and in some instances strengthen these aspects from the previous draft.

10. In that regard, particular emphasis should be placed on pages 37 and 38 of the Government's March 2023 response to the previous consultation set out on page 3 of REP1-110, which is before the Examination as REP7-040; these pages show that the policies on avoiding EfW overcapacity and protecting the waste hierarchy have been the subject of detailed consideration and the Government decided to retain and strengthen them in light of the consultation evidence.

11. The Government's latest consultation does not focus on seeking views on these aspects of the NPS Energy suite, providing further indication that the Government's view on these matters has settled on its current form.

12. All of the aforementioned paragraphs from the March 2023 EN-1 and EN-3 provide a strong steer to refuse planning applications for EfW capacity that could result in creating or exacerbating incineration overcapacity at a local, regional or nation level and/or that might end up diverting waste from recycling (or the other top tiers of the waste hierarchy) in light of the Government's recycling and residual waste reduction ambitions.

13. Those paragraphs also place the burden of proof on the North Lincolnshire Applicant to demonstrate that their proposal is consistent with UK Government policy and ambitions in this regard in light of both existing residual waste treatment capacity and that in development.

14. UKWN believes the aforementioned paragraphs should be given significant weight in the planning balance for the North Lincolnshire proposal, especially in view of Defra's 11th July 2022 statement 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" as noted on paragraph 6 of UKWIN's Written Representation [REP2-110].

15. In line with the comments UKWIN made with respect to the previous NPS drafts in REP2-110 paragraphs 264-271, UKWIN's position is that these new or updated paragraphs (and Defra's July 2022 statement) also add to the weight that should be afforded to existing policies in the extant 2011 versions of EN-1 and EN-3, especially with respect to EN-3 (2011) paragraphs 2.5.66 and 2.5.70, because these paragraphs are expressions of similar principles that are now more relevant than ever.

16. EN-3 (2011) Paragraph 2.5.66 reads as follows:

> ***Applicant's assessment***
>
> 2.5.66 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.

17. This statement is retained in the March 2023 version of EN-3 as paragraph 3.7.44.

18. Paragraph 2.5.70 of EN-3 (2011) stated:

> ***IPC decision making***
>
> 2.5.70 The IPC 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…"

19. This policy is now set out in paragraph 3.7.104 of EN-3 March 2023, with "IPC" replaced with "Secretary of State".

20. National waste management targets include not just the 65% municipal recycling target but also the residual waste reduction targets. As such, the retention of this policy supports UKWIN's position that assessment of waste need for the proposal must be made on a basis that is compatible with achieving the Environmental Improvement Plan's various 2027 interim targets and the Environment Act's ultimate 2042 target.

21. For the reasons set out in UKWIN's evidence, the proposed North Lincolnshire development conflicts with all the aforementioned extant and proposed policies, and these policy conflicts justify refusal of this NSIP application.

UKWIN'S RESPONSE TO Q17.0.1

22. The ExA's ExQ3 [PD-015] question Q17.0.1 relates to Waste, and in particular to waste capacity.

23. The question is as follows: *"If it was demonstrated the proposed development were to create an excess capacity of energy from waste plants or there was a shortage of supply of waste for the generation of energy from waste either locally, regionally or nationally, is there any evidence which you can refer to that identifies at what level this may create an adverse effect on prevention, re-use or recycling, as expected within the waste hierarchy?"*

24. The Applicant, the Environment Agency, and UKWIN were invited to provide evidence for the Examination regarding the level of excess capacity of (and/or shortage of waste feedstock for) energy from waste (EfW) plants ('incineration overcapacity') at which we would see "an adverse effect on prevention, re-use or recycling, as expected within the waste hierarchy".

25. UKWIN welcomes this opportunity to provide such evidence.

26. UKWIN maintains that any level of incineration overcapacity is likely to have a disproportionately adverse impact on prevention, re-use or recycling, and that the evidence clearly supports this position.

27. This adverse effect is disproportionate in the sense that 1 tonne of incineration overcapacity could be expected to result in preventing significantly more than 1 tonne of waste being recycled.

28. Some of this evidence is already before this Examination, including within REP7-037, REP4-042, REP4-045, and REP2-110, and the nature of this evidence is briefly summarised as follows:

    a) UKWIN'S REP7-037 provided evidence regarding the Government's prioritisation of residual waste reduction over energy generation, alongside arguing that "as incineration rates in England are already high, in order to meet recycling and residual waste reduction targets it is necessary to divert waste from landfill and incineration to recycling";

    b) UKWIN's REP4-042 provided evidence, on electronic pages 14-17 (paragraphs 92-102), that a failure to demonstrate a need for the facility provides grounds for refusal, concluding that: "The Applicant's failure to rule out potentially significant adverse impacts on Local Development Plans across the Yorkshire & Humber and East Midlands region should be given significant weight".

c) UKWIN's REP4-045 provided evidence demonstrating how the permitting regime is limited to enforcing the Environmental Permitting Regulations and how the "wider issues of waste policy" that fell outside the Environment Agency's remit include concerns about the adverse impacts of EfW (over-)capacity on recycling and the circular economy.

   UKWIN noted how the Applicant's 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"; and

d) UKWIN's Written Representation [REP2-110] devoted 20 pages (electronic pages 10-29) to exploring various aspects of the lack of need for the proposed North Lincolnshire incineration capacity and the risk of local/national overcapacity, including a sub-section from electronic page 12 devoted to explaining how the proposed capacity could undermine recycling and the circular economy (see REP2-110 paragraphs 15-36).

   As part of REP2-110 UKWIN made the point (at paragraph 26) that "money invested in incineration cannot then be invested in better collection, sorting and treatment infrastructure, and the presence of expensive residual waste treatment infrastructure reduces the financial incentives to reduce, re-use and recycle".

   At paragraph 27 of REP2-110 UKWIN provided "A basic theory of how incineration can harm recycling" which included the following points:

   - Much of what is in the incinerator feedstock is material that could and should have been collected for recycling or composting, or could have been avoided or re-used, or at the very least removed prior to incineration.
   - The same material cannot be sent for recycling if it has been destroyed through incineration.
   - Incineration overcapacity drives down gate fees, as rather than competing with the landfill tax, incinerator operators complete with one another, and this makes recycling relatively less competitive compared to incineration.

- Economic considerations inform both waste management practices and investment in collection, sorting, and reprocessing infrastructure.
- There is a financial incentive for operators to maximise how much they burn in order to maximise the income generated from gate fees, and there are operational difficulties that can arise if an incinerator is operating below capacity.

And at paragraphs 32 and 33 of REP2-110 UKWIN noted how "Concerns about the long-term viability of recycling and reprocessing capacity, arising from competition for feedstock, can discourage much-needed investment in the top tiers of the waste hierarchy. As such, even the plausible risk of incineration overcapacity is therefore harmful for recycling, because it harms potential investment in recycling and reprocessing infrastructure".

REP2-110 also included a short sub-section (on electronic page 17, paragraphs 48-51) that referred to the Secretary of State's concerns regarding incineration diverting waste from recycling. These concerns were at the heart of the Secretary of State's decision to refuse planning permission for the proposed Wheelabrator Kemsley North (WKN) incinerator [PINS Ref EN010083], which was refused in part "because it would put at risk the achievement of revised recycling and composting targets".

As UKWIN noted at paragraph 51 of REP2-110: "In his decision letter, the Secretary of State adopted the view of the Examining Authority that '…the projects would divert a significant proportion of waste from recycling rather than landfill' despite the Kemsley applicant's familiar claim that the proposed incinerator would only be burning non-recyclable material".

29. The REP2-110 paragraph 27 point about the prospect of operational difficulties arising when an incinerator is operating below capacity is closely related to the adverse impacts that could arise from a shortage of supply of waste for the generation of energy from waste either locally, regionally, or nationally.

30. It is unclear what minimum tonnages of feedstock would be absolutely necessary for the operation of the proposed North Lincolnshire incinerator.

31. Further evidence of the potential for new incineration capacity to harm recycling can be found in public statements made by the Climate Change Committee, the University of Greenwich's Public Services International Research Unit, DS Smith, Defra, Stroud District Council, Durham University, and the London Assembly's Environment Committee, such as the following:

a) According to Climate Change Committee, in their 29th June 2022 ‘Report to Parliament: Progress in reducing emissions’ (on page 392): "We agree with the draft National Planning Statement for renewables that further Energy from Waste plants should not be built unless they can demonstrate consistency with residual waste capacity needs and alignment to the waste hierarchy. We therefore call for Government to confirm how such assessments will be made".

b) The Climate Change Committee also expressed their concerns in their 24th June 2021 ‘Report to Parliament: Progress in reducing emissions’, where they set out (on page 181) how: "If EfW usage is left to grow unchecked, EfW emissions will quickly exceed those of the CCC pathway while undermining recycling and re-use efforts".

c) According to Dr Vera Weghmann of the Public Services International Research Unit (PSIRU) at the University of Greenwich: "While EfW is often promoted as an environmentally friendly alternative to landfilling, it often ends up discouraging waste prevention as well as recycling" (quote taken from ‘Getting to net zero in UK public services: The road to decarbonisation’ dated 8th November 2021).

d) According to Miles Roberts, Chief Executive of DS Smith: "...wasted material could have been worth up to £1bn last year if recycled instead of being sent to landfill or incineration" (quote taken from a 31st August 2021 Materials Recycling World article entitled ‘DS Smith chief warns on recycling slump’).

e) Stroud District Council leaders Doina Cornell (Labour), Martin Whiteside (Green) and Ken Tucker (Liberal Democrat) jointly declared, on 2nd July 2019, that: "The [Javelin Park] incinerator is a disaster. It is expensive to run, the contract undermines attempts to reduce the amount of waste we produce and recycle, and will undermine our commitment to become carbon neutral by 2030 and tackle climate change" (quote taken from the Stroud District Council website).

f) In an article entitled ‘Major waste firm “investing heavily in EfW” over recycling infrastructure‘ which was published by ENDS on 25th January 2019, Dawn Woodward, DEFRA's Deputy Head of Resources and Waste, is quoted as saying: “[EfW] is at the bottom of the waste hierarchy. There always be a place for it but we hope with the activities [set out in the Government's waste and resources strategy] that we will push up everything else and that EfW remains at the bottom. There should not be such a parity between recycling and EfW [with respect to relative rates of recycling and incineration]”.

g) According to Durham University Professor Nicky Gregson, in oral evidence provided on 20th May 2019 to the Parliamentary Committee with oversight of the Environment, Food and Rural Affairs (EFRACOM) as part of EFRACOM's investigation into the 'Implications of Waste Strategy for Local Authorities': "...there is a distinct trade-off. The areas with higher levels of incineration have the lowest recycling rates". This point was supported by Prof Gregson's written evidence.

h) According to the London Assembly's Environment Committee: "Investing in more EfW [incineration] can negatively affect long term recycling rates" (quote taken from the 'Committee Report on Energy from Waste' published by the London Assembly, dated 15th February 2018).

32. Further evidence of the potential for new incineration capacity to harm the circular economy (and therefore the waste hierarchy) can be found in public statements made by the Scottish Government's Minister for the Circular Economy, the Climate Change Committee, the Welsh Government's Minister for Environment, Energy and Rural Affairs, Professor Sir Ian Boyd (former DEFRA Chief Scientific Adviser), Forbes, and the Green Alliance, such as the following:

a) According to Lorna Slater, the Scottish Government's Minister for the Circular Economy: "The moratorium [on the consenting of any new waste incineration capacity in Scotland] was an action taken to encourage a circular economy, in which materials were kept in use as long as possible and precious natural resources were not wasted" (quote taken from 'Moratorium on waste-to-energy incinerators' published by the Scottish Government on 20th June 2022).

b) According to Climate Change Committee, on page 373 of their aforementioned 29th June 2022 'Report to Parliament: Progress in reducing emissions': "The key challenge now is to...reduce reliance on incineration by delivering a step-change in recycling, re-use and waste prevention…", highlighting the distinct trade-off between EfW and the top tiers of the waste hierarchy.

c) According to Lesley Griffiths MS, the Welsh Government's Minister for Environment, Energy and Rural Affairs: "The moratorium on large-scale energy from waste and the upcoming consultations on plastic packaging and deposit return are a clear statement of our intent. Collectively they show how we are taking action to make the circular economy a reality in Wales by keeping resources in use and avoid all waste" (quote taken from a Welsh Government press release dated 24th March 2021, entitled 'Wales takes action on

Circular Economy with funding, upcoming reforms on plastic and a moratorium on large-scale waste energy'), similarly implying a trade-off between EfW and the top tiers of the waste hierarchy.

d) According to Professor Sir Ian Boyd, former Chief Scientific Adviser to the Department for Environment, Food and Rural Affairs (2012-2019): "There are a lot of people who are highly incentivised to incinerate waste. Because of the investments we make in waste power plants, we end up a lot of the time creating a market for waste, and therefore trying to generate more waste in order to generate the inputs for the power plants that we've made such large investments in. My feeling is that we've got to use the capacity we have rather than create more capacity, because if you create more capacity you create more demand for materials, and that is simply cranking up the amount of material that comes into the system, and the very last thing we should be doing is, when we throw it away, is putting it in an incinerator" (quote taken from 'Dirty Truth About Your Rubbish', the Channel 4 Dispatches programme episode first aired on 8th March 2021).

e) According to Forbes Contributor Robert Clarke, in an article published by Forbes on 27th November 2020, entitled 'New Report Highlights Urgent Need for Clear Communication Around Sustainability': "The main reason for companies to opt for landfill or incineration is unfortunately down to both convenience and cost…", which supports the case that a downward push on gate fees from incineration overcapacity could harm the top tiers of the waste hierarchy.

f) According to Libby Peake, Senior Policy Adviser at resources think tank Green Alliance: "Years of neglecting the top options - recycling, reuse and, most importantly, reduction - are starting to take their toll. Most waste isn't an inevitability, but a failure of our current linear economy. Focusing exclusively on diverting material from landfill (in most instances into incineration) represents only a marginal improvement and risks detracting attention from the larger structural changes that will be required to make the economy more sustainable" (quote taken from 'Waste incineration levels double over five years' published by ENDS on 17th September 2019.

33. The views expressed in the quotations provided above resonate with the exchange between an MP and the then Secretary of State for Environment, Food and Rural Affairs that took place in the House of Commons on 28th March 2019 when John Grogan MP questioned Michael Gove, asking: "Most studies now indicate that we have an excess of incineration capacity

to deal with residual waste. Is there not a danger that, if we build more incinerators, waste that would otherwise be recycled will be diverted to those waste that would otherwise be recycled will be diverted to those incinerators?" and the then Environment Secretary acknowledged this danger by responding: "That is a fair point".

34. As can be seen from both sets of quotations, incineration's potential to harm recycling is widely recognised, with many commentators noting how existing incineration capacity is already harming recycling and the circular economy in a variety of ways.

35. The potential for incineration to harm recycling and the circular economy was a topic explored in the recent review commissioned by the Scottish Government and carried out by Dr Colin Church, whose initial recommendations were accepted in full by the Scottish Government.

36. In May 2022 Dr Church's 57-page report, described as an 'Independent Review of the Role of Incineration in the Waste Hierarchy in Scotland', was published under the title 'Stop, Sort, Burn, Bury?'.

37. Dr Church's Scottish Incineration Review's overall conclusions includes the following: "...given the risks that incineration poses to human health and the environment, and the risk of lock-in, Scotland should not construct more capacity than it needs and only some of the currently planned capacity should be built".

38. With respect to lock-in and to the conclusions reached by Dr Church, it is worth considering pages 26-29 of Stop, Sort, Burn, Bury? These four pages are reproduced in an extract that accompanies this submission.

39. The section of Dr Church's Review on Risk of Lock-In and Stranded Assets includes the following:

    "…Lock-in is where the development of residual waste treatment infrastructure with a long operational life, such as incineration, limits the treatment of waste further up the hierarchy. This can come about nationally if more capacity is built than, over time, is needed as an economy moves towards a more circular model…It can also happen on a more local basis because, in order to finance the infrastructure, long term residual waste supply contracts with local authorities may have guaranteed minimum amounts with either financial penalties for not meeting them or bonuses for meeting them. If set at too high a level, this can constrain local recycling or waste prevention activities as the penalties (or missed bonuses) that might result are viewed as too expensive…One evidence contribution [attributed to Prof Phil Purnell of the University of Leeds] provided the results of some unpublished analysis of English data showing the relationship between rates of incineration and rates of recycling over the past ten years (a period

of significant growth in incineration capacity in England). For most combustible materials, this shows an inverse relationship (that is, recycling is dropping and incineration is growing) which might be an indication of the impact of lock-in…"

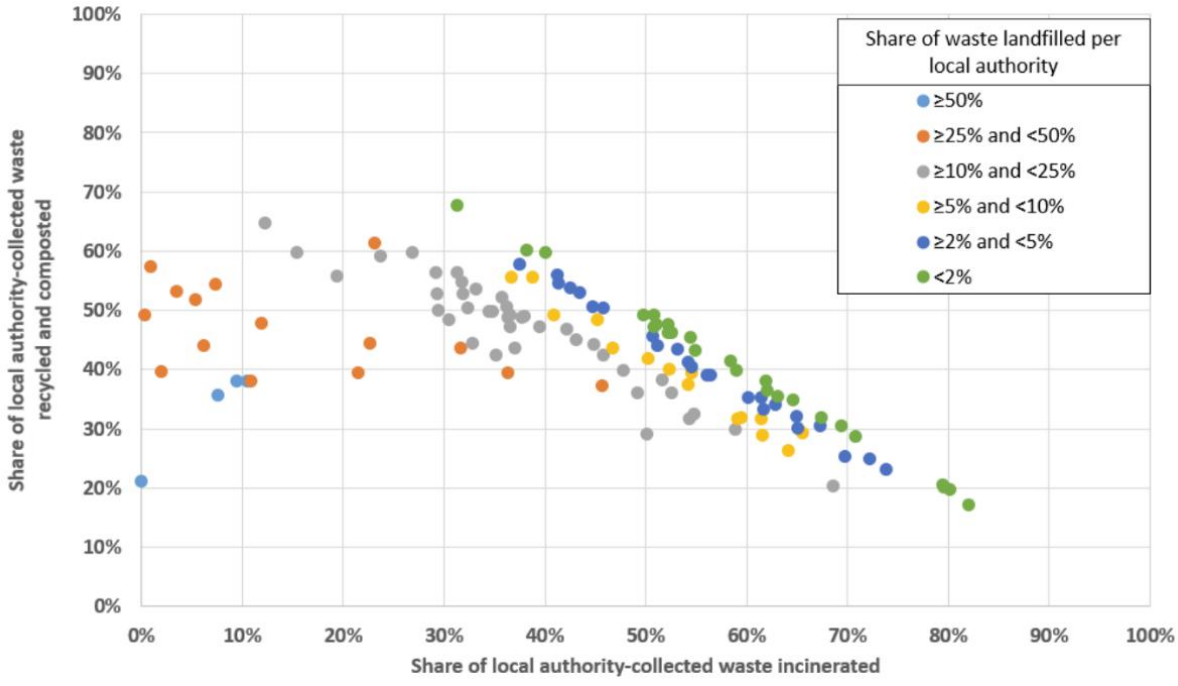
40. And in Dr Church's Conclusions on Capacity (starting on page 28) we read: "The capacity analysis also shows there is a risk of long-term overcapacity beginning from 2026 or 2027, if all or most of the incineration capacity in the pipeline is built, notwithstanding the predicted closure of some facilities in the future…Scotland appears to have more than enough capacity (in operation and in the development pipeline) to manage its residual waste beyond 2025. Given the risks of overcapacity, Scottish Government should limit the amount of national capacity that is developed…"
41. Ample evidence is available to show how incineration competes with recycling for feedstock.
42. It has been argued that, at the system level, waste incineration and recycling compete for the same materials, for example by Dr Jeff Seadon (Programme Director of the School of Future Environments at Auckland University of Technology) who pointed out in 'Climate explained: seven reasons to be wary of waste-to-energy proposals' (published in The Conversation on 11th December 2019): "The waste materials that are easiest to source and have buyers for recycling – like paper and plastic – also produce most energy when burned".
43. In light of this observation it is noted that, as set out on Table 4 of the Applicant's REP1-015, the composition used for the Applicant's central GHG assessment assumes that paper and card would represent 40% of the RDF's composition by weight and that plastic film and dense plastic would represent 23% of the feedstock by weight. This implies 63% of the central feedstock would be paper, card or plastic.
44. The notion that waste incineration and recycling compete for the same materials is also evidenced by both DEFRA's 'Resources and Waste Strategy: Monitoring Progress, 2020' and WRAP Cymru's 2020 report into 'Commercial and Industrial Waste in Wales'.
45. DEFRA's August 2020 'Resources and Waste Strategy: Monitoring Progress' report found that "Of total residual waste from household sources in England in 2017, an estimated 53% could be categorised as readily recyclable, 27% as potentially recyclable, 12% as potentially substitutable and 8% as difficult to either recycle or substitute" and that "Of approximately 13.1 million tonnes of residual waste generated by household sources in England in 2017, around 7 million tonnes could be categorised as readily recyclable 3.5 million tonnes as potentially recyclable, 1.6 million tonnes as

potentially substitutable, and 1.0 million tonnes as difficult to recycle or substitute".

46. DEFRA's Monitoring Progress report highlighted how "The large amount of avoidable residual waste and avoidable residual plastic waste generated by household sources each year suggests there remains substantial opportunity for increased recycling…" adding: "The message from this assessment is 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".

47. The Waste and Resources Action Programme (WRAP) is a charity working with government, businesses, and communities to achieve a circular economy in the UK. The 2020 WRAP Cymru study of residual commercial and industrial (C&I) waste in Wales found that in 2019: "The majority of the waste analysed (74.5%…) could have potentially been recycled".

48. Historic DEFRA data on waste collected by 123 local authorities published as 'Local Authority Collected Waste Statistics: Local Authority Data' on 11th December 2018 showed a clear relationship between above-average incineration rates and lower recycling rates when controlling for landfilled waste (based on the share of waste recycled and composted vs. the share of waste incinerated in 2017/18) as is reflected in the image below:



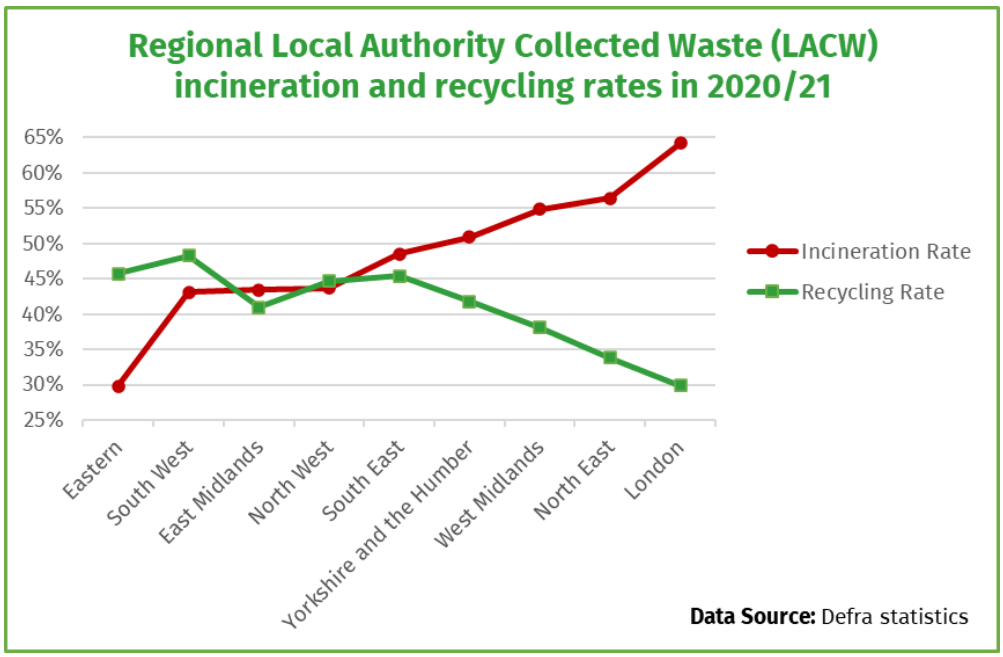
49. For each of the 123 local authorities in the sample shown in the image above, the dot colour indicates the share of waste landfilled, indicating a clear relationship between above-average incineration rates and lower recycling rates when controlling for landfilled waste.

50. The official data shows that after a Local Authority has reduced its landfilled share of collected waste (LACW) to less than 15%, the share of LACW that is incinerated becomes highly linearly correlated with the share of recycled and composted waste. The data shows that each 1% increase in EfW incineration results in a 0.8% reduction in recycling and composting (Significant at R2=0.86).

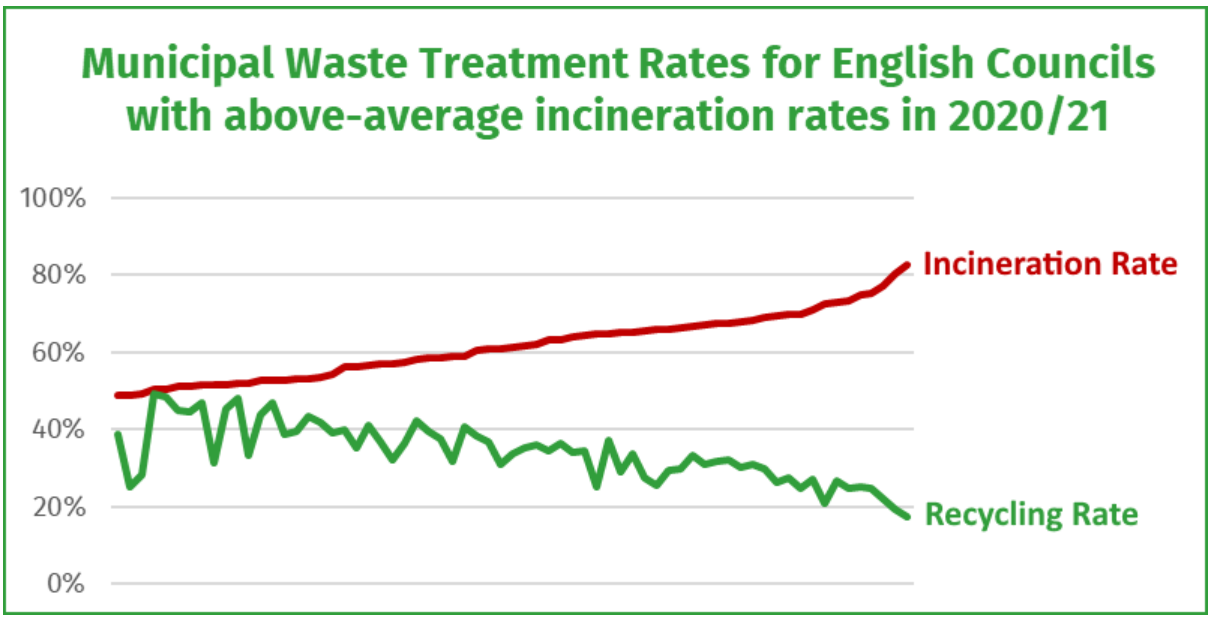
51. At a landfilling share of LACW below 10%, each 1% increase in EfW incineration results in a 0.94% reduction in recycling and composting (Significant at R2=0.94). Of the Local Authorities with landfill rates below 10%, 55 incinerated more than 50% of their waste, 26 incinerated more than 60%, and 7 incinerated more than 70%. Their poor recycling performance, combined with their low landfill rate, indicates that they were incinerating a significant amount of readily recyclable material.

52. This evidence aligns with the observation contained within DEFRA's 'Statistical Release: Local Authority Collected Waste Management Statistics for England – Final Annual Results 2011/12' published on 8th November 2012, where we read on page 4 how, according to Defra: "At Local Authority level, individual recycling rates ranged from 14 per cent to 69 per cent…lower rates could result from an authority focusing on avoiding landfill by investing in incineration and targeting its waste management policies on that treatment solution, rather than poor recycling awareness or initiatives".

53. Using more recent data from Table 2a of DEFRA's LACW generation from April 2000 to March 2021 (England and regions) and local authority data April 2020 to March 2021 (published by Defra, January 2022), we see how regions with higher rates of incineration continue to exhibit lower recycling rates, as follows:



54. Similarly, DEFRA data shows how, for councils with above-average rates of incineration, there is a clear correlation between higher rates of incineration and lower recycling rates, as follows:



55. This more recent evidence continues to support the arguments set out in UKWIN's 'How incineration harms recycling' briefing produced as part of our Bin the Burners Briefing Series in 2017 (a copy of which accompanies this submission), which include the following:

    a) Much of what ends up as incinerator feedstock is not genuinely residual waste, it is material that could and should have been recycled and composted.

    b) The prospect of worsening incineration overcapacity discourages investment in recycling by reducing the market for, and confidence in, recycling infrastructure.

    c) Money and feedstock are locked in to existing and proposed incinerators and this reduces flexibility and means that money is diverted from investment in recycling and that feedstock becomes unavailable for reprocessing.

56. As we argued in 2017: "Taken together, these factors serve to perversely disincentivise councils and businesses from maximising high quality recycling of plastics, food and other waste, and in turn this reduces the market for such services, hampering investment in the research and development of technologies and the construction of domestic recycling and reprocessing facilities".

57. As noted above, even if a newly-proposed incinerator does not enter into contracts that guarantee the delivery of a minimum tonnage of feedstock, or that includes put-or-pay mechanisms or banded arrangements, the presence of incineration overcapacity could make it more difficult for Local Authorities who have entered into contracts with such mechanisms to invest in the top tiers of the waste hierarchy because local, regional, or national overcapacity makes it more difficult to find 'third party' waste to make up (and fund) any contractual shortfall.

58. This poses difficulties for Local Authorities both in relation to their current waste management contracts and with respect to renegotiating long-term waste management contracts that transferred feedstock risk to the Local Authority. In this regard, the number of Councils who have historically cited incineration commitments as a reason for poor recycling performance indicates that the North Lincolnshire incinerator's potential to create or exacerbate overcapacity should be seen as likely to adversely effect management of waste in accordance with the waste hierarchy.

59. By way of further evidence, UKWIN offers a number of case studies demonstrating the way that incineration competes for feedstock with recycling.

60. Many of these case studies involve responses provided by waste authorities to letters written in 2018 by then Resource Minister Dr Thérèse Coffey MP who contacted all underperforming councils asking for an explanation of why their recycling rates were so low.[1]

61. The value of these case studies to this Examination relates to the way they demonstrate how any creation or exacerbation of incineration overcapacity arising from the North Lincolnshire proposal could adversely impact on Councils who wish to reduce their reliance on incinerators associated with long-term contractual obligations who may be impeded with such efforts by the North Lincolnshire capacity increasing the risk that existing incinerators would be unable to source 'top up waste' at a gate fee that would be sufficient to compensate for the financial consequences of the Council diverting material from incineration to the top tiers of the waste hierarchy.

62. The UK Government is well aware of the contractual issues with respect to incineration harming the management of waste in accordance with the waste hierarchy,[2] whilst maintaining that their current recycling and waste reduction targets are achievable.

[1] https://www.gov.uk/government/publications/local-authority-letters-on-recycling-rates
[2] https://www.gov.uk/government/consultations/waste-and-recycling-making-recycling-collections-consistent-in-england/outcome/consistency-in-recycling-collections-in-england-executive-summary-and-government-response

63. This means that the issue is not one that justifies being less ambitious with respect to such targets, but rather more cautious with respect to consenting any new waste incineration capacity.

64. **Brighton and Hove (2017 and 2018)**

It was reported in January 2019 that: "Brighton and Hove has a recycling rate of 30%. The council is restricted to collecting plastic bottles from householders for recycling as a result of its contract with Veolia; many other UK councils collect trays and other plastic recyclate along with bottles. [Caroline] Lucas said: 'Brighton and Hove council have a 30-year PFI contract with Veolia. They are refusing to change the contract so that a wide range of plastics can be recycled. The council doesn't have the £1m for the required machinery at the Veolia plant to enable a wide range of plastic to be recycled.'"[3]

To quote Brighton & Hove City Council's letter to Dr Thérèse Coffey MP on Brighton & Hove City Council Recycling Rates: "…in terms of contractual status, in partnership with East Sussex County Council, boroughs and Districts, Brighton & Hove City Council is contracted to Veolia as part of the 30 year PFI contact that was awarded in 2003. There are therefore 17 years of this contact remaining. Veolia will only take limited types of materials as they state they cannot find a guaranteed end market for products that can be recycled, such as certain types of plastics. Whilst other Councils can and do recycle these kinds of materials, the B&HCC is contractually obliged under the terms of the PFI agreement to provide all waste materials, whether residual or recyclable to Veolia. We have raised this anomaly with Veolia on a number of occasions, but they are not willing to change their position on this".[4]

65. **Stoke-on-Trent City Council (2010)**

Stoke City Council faced the prospect of a £645,000 fine resulting from a failure to meet minimum contracted waste tonnage levels at their local incinerator. It was reported by Letsrecycle in October 2010 that: "...Stoke-on-Trent city council could be forced to pay its energy-from-waste contractor hundreds of thousands of pounds after failing to deliver the minimum contracted tonnage for the facility in 2009/10...The issue was acknowledged in minutes from a transformation and services overview scrutiny committee meeting…The minutes state: 'Additional ongoing costs in respect of backdated claims from the Waste to Energy Plant made late in 2009/10 (£60,000) were also an unexpected pressure. A claim was received in June in respect of the city council failing to achieve minimum tonnage levels in

[3] As reported in the Guardian newspaper on 8th January 2019 in an article entitled 'Caroline Lucas calls for action in Brighton recycling row'.
[4] https://www.gov.uk/government/publications/local-authority-letters-on-recycling-rates

2009/10 for £645,000.' The minutes indicate that the actual cost of the claim is likely to be around £329,000, once a rebate of £316,000 is taking into account".[5]

66. **Kent County Council (2008)**

Regarding the Allington incinerator contract, the Kent Messenger reported that: "…what was initially seen as a cash-saving opportunity has quickly turned into a money pit, as the council is forced to send increasingly valuable recyclable material to the incinerator in order to meet its annual quota".[6]

67. **East London Waste Authority (2017)**

The London Borough of Newham's letter to Dr Thérèse Coffey MP in response to her request for an explanation of their low recycling rate states: "…we are tied into an expensive and inflexible waste disposal PFI contract until 2027 that limits our ability to improve recycling performance…[the contract] was designed with the primary aim of diverting waste from landfill rather than increasing recycling…the contract presents a major obstacle when it comes to recycling performance due to restrictions on what materials can be collected separately, the overall cost of the waste levy, and the lack of any financial incentives for the council to invest in achieving higher recycling rates".

"…At present Newham is only permitted to collect a restricted range of materials for recycling, comprising paper, cardboard, tins, cans and plastic bottles. All other materials must go into the general refuse, and although some materials are subsequently recovered for recycling, the yields and quality do not match what other local authorities can achieve."

"The structure of the PFI contract essentially means that Renewi retains any financial benefits from recycling, rather than there being a notably reduced gate fee or any revenue-sharing for the boroughs. As such, the ELWA levy continues to be structured as per the basic model set out in The Joint Waste Disposal Authorities (Levies) (England) Regulations 2006, with no variation in prices for waste disposal according to the material being delivered. In short, Newham pays the same amount to dispose of a tonne of waste whether it is refuse or recycling, and as such the financial incentive to recycle that has driven most other local authorities to invest in collection services and achieve higher performance simply does not exist for us".[7]

[5] Letsrecycle article published 22nd October 2010, entitled 'Stoke faces bill for sending less waste to EfW' by Chris Sloley.
[6] KentOnline article published 12th August 2008, entitled 'Kent's waste contract could be money in the bin'.
[7] https://www.gov.uk/government/publications/local-authority-letters-on-recycling-rates

68. **Shropshire**

Schedule 7a of the Shropshire waste PFI contract contains details showing the annual utility payment for the incinerator before the effect of adding inflation. It shows a £10.8 million fixed charge each year.

It also shows the rebate for landfilling or burning less waste which is £63.10 per tonne before the incinerator is operational and £12 per tonne saving should the incinerator become operational. Unused incinerator capacity is in effect charged at £108 per tonne while used capacity costs £120 per tonne.

The payment mechanism shows that Shropshire will receive a royalty payment of 80% of the third party income that Veolia generates from selling spare capacity.

For example if the plant had 10,000 tonnes of spare capacity, of which 80% was used for third party waste, then the royalty would appear to be £512,000. That capacity would have cost the council taxpayer £1.2 million. It can therefore be concluded that the PFI incinerator contract is based on a massive fixed charge and a very low marginal charge.

For Shropshire the fixed cost is 10 times the marginal cost for capacity that is not used, meaning every extra tonne recycled may only save the council £12 as the council has to pay £108 for the unused incinerator capacity in any case".[8]

69. **Hampshire (2017)**

Portsmouth's letter to Dr Coffey MP in response to her request for an explanation of their low recycling rate included the following: "There are challenges in adding materials into the recycling stream - Portsmouth is part of a Hampshire wide disposal contract...Hampshire wide contract [is an obstacle outside of our control that affects the recycling rate] - long term contracts (waste disposal contract ends 2030) requiring massive investment at the outset - difficult to make changes as markets and technology change".[9]

According to Southampton's Letter: "What can be recycled is currently constrained by disposal infrastructure and any changes to this would require significant financial investment. The waste disposal authorities in Hampshire, including Southampton have a long term integrated waste disposal contract which currently handles the disposal of residual waste and the processing of collected recyclables..."

[8] UKWIN's October 2010 response to Defra's Call for Evidence to inform the UK Government's Review of Waste Policies
[9] https://www.gov.uk/government/publications/local-authority-letters-on-recycling-rates

70. Similar comments to those made by Southampton were made by Basingstoke, Gosport and New Forest Councils in their respective response letters.[10]

71. In conclusion, the evidence shows that there is no desirable or acceptable level of incineration overcapacity that would not result in an adverse effect on prevention, re-use or recycling.

[10] https://www.gov.uk/government/publications/local-authority-letters-on-recycling-rates