

Comments on responses to the ExA's ExQ3

UKWIN'S D9 RESPONSE TO REP8-020

**REP8-020: 9.30 - APPLICANT'S RESPONSES TO THE
EXAMINING AUTHORITY'S THIRD WRITTEN QUESTIONS (EXQ3)**

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

MAY 2023



**United Kingdom
Without Incineration
Network**

CLIMATE CHANGE

Q6.0.1 – Decarbonisation Readiness

1. The ExA asked about the Department for Energy Security and Net Zero's consultation on Decarbonisation Readiness (DR) published on 13 March 2023.
2. The Applicant's REP8-020 response to Q6.0.1 begins:
 - (i) **If adopted, the project would be required to comply with the decarbonisation readiness requirements to attain an Environmental Permit...**
3. The Applicant's REP8-020 statement appears to be somewhat at odds with Section 3.5.4 ('Proposal – Transitional arrangements') of the Decarbonisation Readiness consultation which summarises the Government's proposal on page 26 of the consultation document as "exempting plants from DR which obtain a Capacity Markets agreement before DR is implemented".
4. If implemented by the Government as proposed in their consultation document, the DR requirement would not apply to projects that had obtained a Capacity Market (CM) agreement at the time that the DR requirement would come into force (1st July 2024), and developers could secure such an agreement by the 2024 CM auction which would be held in the first quarter of 2024.
5. As such, if the DCO is granted for North Lincolnshire and if it secures such a CM agreement in the first quarter of 2024, it might end up being the last new incinerator that does not have to implement CCS and could therefore potentially displace a new facility which did have to meet that requirement.
6. This means that, even if the DR requirement was adopted, it would not be safe for the ExA and the Secretary of State to rely on the implementation of the DR requirement to ensure that 95%+ carbon capture would be delivered for this facility.
7. If the incinerator proposed for North Lincolnshire is captured by the DR requirement, then the Applicant would need to demonstrate decarbonisation readiness as part of the permitting system. This is not the same as actually having to implement carbon capture of 95%+.
8. The Applicant noted in their response that their likelihood of passing the test was "**subject to technology selection and the influence of this on space requirements**".

9. Thus, it has not been ruled out that the Applicant might not meet the DR Requirement because the site might not have sufficient space to accommodate the capture 95%+ of all of the CO₂ the plant would produce.
10. The Applicant's previous comments with respect to potentially only having the capacity to capture the CO₂ equivalent to 95% of the fossil CO₂ could imply that their plant would not be consistent with the DR requirements set out in the Government's consultation document which would expect "a design CO₂ capture rate of at least 95%" with no exception for biogenic CO₂.

POLICY

Q14.0.1 – Future NPS energy suite

11. The ExA asks about the emerging National Policy Statement (NPS) energy suite.
12. The Applicant's REP8-020 response to Q14.0.1 includes the following:

One relevant change that the Applicant wishes to draw the ExAs attention to is to paragraph 3.7.29 within the revised draft NPS EN3 which states:

“Applicants must ensure EfW plants are fit for the future, do not compete with greater waste prevention, re-use, or recycling and do not result in an over-capacity of EfW waste treatment provision at a local or national level.”

This supports the Applicant's position that older EfW will find it increasingly hard to compete and therefore that older plant which may struggle to meet increasingly challenging environmental controls (e.g. under BREF).
13. The Applicant appears to be confusing the requirements set out at paragraph 3.7.29 of the revised draft NPS EN-3, which applies only to future applicants for Nationally Significant EfW Infrastructure, with a requirement that is not being proposed that applies to existing operational plants or plants that have already secured planning permission.
14. The statement made in EN-3 does not mention “older EfW plants” nor “increasingly challenging environmental controls”, and so these statements constitute the Applicant's speculation rather than an actual statement of Government policy.
15. The Applicant goes on to state in their REP8-020 response to Q14.0.1 that:

Further, it supports our position that not all plants will be considered ‘fit for the future’ in terms of their ability to install carbon capture equipment and transport carbon dioxide for storage.
16. Again, the Applicant is reading into the Government's statements ideas that the Government could have stated but instead chose not to state.
17. The Government does not, for example, say anything about forcing, or even encouraging, the closure of existing EfW plants.
18. The Applicant's own statement about how their facility might not deliver 95%+ carbon capture mean that they appear to be casting doubt on their own facility's fitness for the future.

WASTE

Q17.0.1 – Waste Capacity

19. The ExA asks about the level of EfW overcapacity or shortage of waste supply that would create an adverse effect on prevention, re-use or recycling, as expected within the waste hierarchy.

Whether overcapacity can harm recycling

20. The Applicant's REP8-020 response to Q17.0.1 includes the following:

...if the ExA were to consider that the development would create an excess capacity of energy from waste plants at a local, regional or national level, the Applicant's view is that this would not create an adverse effect on prevention, re-use or recycling...

21. It is unclear if the Applicant is stating here that they would expect that the level of overcapacity that could arise from the proposed North Lincolnshire capacity would be low enough to mean the development would not have adverse impacts or if they are claiming that no level of overcapacity could have adverse impacts.

22. If they are intending to imply the latter, then this raises the obvious question about why the Government is so clearly concerned about potential adverse impacts of EfW overcapacity at local and national levels, and the potential adverse impact of that overcapacity on recycling and the top tiers of the waste hierarchy.

23. Even if we restrict our examples to current and proposed EN-1 and EN-3, there is plethora of examples where the UK Government expresses such concern, as set out in more detail by UKWIN in REP8-040.

24. For example, EN-3 (2011) states:

"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. Where there are concerns in terms of a possible conflict, evidence should be provided to the IPC by the applicant as to why this is not the case or why a deviation from the relevant waste strategy or plan is nonetheless appropriate and in accordance with the waste hierarchy." (emphasis added)

25. Paragraph 3.7.104-105 of the proposed EN-3 (March 2023) states the same, but with 'IPC' replaced with 'Secretary of State'.
26. These Government statements denote that waste combustion (i.e. EfW incineration) could be at a scale that would adversely impact waste management targets, contradicting the Applicant's position that EfW overcapacity is somehow incapable of resulting in any adverse effect on prevention, re-use or recycling.
27. Proposed EN-3 (March 2023) also states:
- "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 overcapacity of EfW waste treatment provision at a local or national level."
28. These statements show the Government position is that EfW plants could potentially compete with greater prevention, re-use or recycling, and that proposals could be inconsistent with Defra's policy position on the role of EfW, and that proposals could result in EfW overcapacity.
29. Once again we see the Applicant adopting a position that is at odds with the Government's clearly stated position.
30. Proposed EN-3 (March 2023) also 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."

31. This denotes that it is the Government's view that generating stations and EfW capacity might potentially be incompatible with, and could in fact hinder, the achievement of long-term recycling targets.

Meaning of draft EN-3's reference to: 'need not disadvantage reuse or recycling initiatives'

32. The Applicant also states in their response to Q17.0.1 that:

Paragraph 3.7.43 of draft NPS EN-3 continues to recognise the role of EfW in the waste hierarchy, stating, 'EfW plants need not disadvantage reuse or recycling initiatives where the proposed development accords with the waste hierarchy'.

33. This implies that disadvantaging reuse or recycling is not an inevitability, but it does not suggest that such adverse impacts are not a possibility.

34. Indeed, draft EN-3's paragraph 3.7.43 states that EfW capacity need not harm reuse or recycling initiatives "where the proposed development accords with the waste hierarchy", and this indicates that it is the Government's view that proposed EfW capacity might not accord with the waste hierarchy, e.g. because such proposals *might* prejudice reuse or recycling initiatives.

35. As above, the current and proposed NPS makes it clear that planning decisions should be made so as to ensure that EfW capacity is of an appropriate scale so as not to prejudice recycling targets or result in EfW overcapacity.

36. As such, one key control to prevent EfW capacity from harming recycling is the ability of the Secretary of State to refuse planning permission where an Applicant has not demonstrated that their proposed capacity would not harm recycling or result in EfW overcapacity.

37. This control was exercised for Wheelabrator Kemsley North, and it should be exercised for the North Lincolnshire Green Energy Park.

Control offered by DCO conditions and Regulation 12 obligation

38. The Applicant's response to Q17.0.1 also claims that:

Requirement 15 of the draft DCO will ensure that only RDF, where the waste hierarchy has already been applied to wastes arising, is accepted at the proposed ERF. This requirement will also be secured by the Environmental Permit through specifications of specific EWC codes for waste that can be accepted at the facility and will specifically exclude source segregated recyclable waste.

...implementation of the waste hierarchy and adherence to Regulation 12 alongside compliance with the DCO requirement and the Environmental Permit would ensure that there is no adverse effect on securing improved (and legally required) rates of prevention, re-use or recycling...

39. This significantly overstates the ability of DCO Requirements, the permitting regime, and Regulation 12 to prevent EfW overcapacity from harming recycling.
40. Regulation 12 of the Waste Regs 2011 only apply to activities taken “on the transfer of waste” and does not require all businesses to prioritise the top tiers of the waste hierarchy over the businesses’ economic interests.
41. Similarly, the permitting regime does not ensure that material which might have otherwise been collected or extracted for recycling are incinerated.
42. As UKWIN has previously set out, where concerns about EfW overcapacity and the potential adverse impacts of EfW on recycling have been raised with the EA as part of the permitting system, the EA has responded that such concerns are to be addressed through the planning system.
43. As previously set out by UKWIN, the requirements that can be imposed as DCO requirements cannot meaningfully go beyond the controls that already exist as part of other regimes, and so cannot be relied upon to ensure that the capacity proposed for North Lincolnshire would be incapable of adversely impacting on the top tiers of the waste hierarchy.
44. As should be clear from REP2-110 and REP8-040, if the requirements under Regulation 12 and the permitting regime prevented all recyclable material from being incinerated, then Defra’s August 2020 Resources and Waste Strategy Monitoring Report would not have stated that: “a substantial quantity of material appears to be going into the residual waste stream, where it could have at least been recycled or dealt with higher up the waste hierarchy”, and the Wheelabrator Kemsley North decision would not have refused consent for a proposed NSIP on the basis that the proposed incinerator “would divert a significant proportion of waste from recycling rather than landfill”.
45. The Applicant make much of the fact that their plant would treat RDF rather than mixed waste. As previously noted by UKWIN, not only might RDF still contain recyclable material, but even if the plant successfully limited feedstock to non-recyclable material the impact of EfW overcapacity on the wider waste and EfW market would still harm recycling and re-use efforts.

46. Such harm could result from, for example, driving down EfW gate fees and/or from the treatment of material that might have otherwise been incinerated elsewhere in the UK thereby forcing those facilities to find alternative (potentially recyclable) material to serve as incinerator feedstock in order to remain operational and maximise profits.
47. The main control to prevent the adverse effects of EfW overcapacity is to refuse permission for such excess capacity, and that is a responsibility of the planning system which falls outside of the Environment Agency's regulatory remit.

Economic context of waste hierarchy impacts of EfW capacity

48. The Applicant's response to Q17.0.1 states:

Notwithstanding the Regulatory requirement to apply the waste hierarchy, the market acts strongly to support it. It is less expensive for waste producers that they intervene to ensure that materials and mixed wastes are managed at as high a level in the hierarchy as possible.

49. The Applicant is right to argue that the economics of the waste market is an important consideration, but their subsequent economic analysis ignores the realities of the waste market.
50. Defra's Guidance on Applying the Waste Hierarchy was produced under regulation 15(1) of the Waste (England and Wales) Regulations 2011 and acknowledges that technical feasibility and economic viability can influence decisions about waste generation and management.
51. For example, in section 13.2 ('What does this mean in practice?') of Defra's Guidance on Applying the Waste Hierarchy Defra acknowledges how: "Other factors will influence the decisions...about waste generation and management, such as which options are technically feasible, which are economically viable..."
52. As such, if EfW overcapacity or the shortage of supply of waste for the generation of energy from waste either locally, regionally or nationally were to impact on the wider waste market then it could potentially influence decisions on waste generation and management and therefore the new EfW capacity could potentially have an adverse effect on prevention, re-use or recycling.
53. If the Applicant's proposed interpretation of the waste market was correct, then Defra's Resources and Waste Strategy Monitoring Report would not, as noted earlier, have stated that: "a substantial quantity of material appears to be going into the residual waste stream, where it could have at least been recycled or dealt with higher up the waste hierarchy".

54. As previously set out by UKWIN, the prospect of EfW overcapacity crowding out recycling is capable of hampering investment in specific recycling plants and in improvements to recycling (e.g. sorting) technology.
55. Going into some of the detail of the Applicant's argument, they state in their response to Q17.0.1 that:

WRAP's most recent gate fee report (WRAP, Gate Fees 2021/22 report, August 2022) shows that the mean gate fees for Materials Recycling Facilities, In-Vessel Composting or Anaerobic Digestion plant are much lower than the mean gate fee for EfW (see pages 4-7), even when considered net of the value of recyclables in the case of dry recyclables. Where gross gate fees are considered, the difference is a multiple of two or more.

56. 'Mean gate fees' only cover the gate fees, and indeed only covers the 'mean' gate fees. Mean gate fees do not reflect many of the economic considerations that could result in different parties making different business decisions which could be influenced by EfW gate fees, which themselves are influenced by the level of EfW overcapacity.
57. EfW overcapacity could be expected to lower EfW gate fees, in order to attract at least the minimum quantity of feedstock required to operate the EfW facility, which in turn could undercut the level of gate fee that could be charged at recycling facilities for a particular material, especially once sorting, collection and extraction costs are taken into account.
58. Material quality impacts recycling gate fees, and this is in part reflected by the wide range of gate fees charged for any given material.
59. There is an association between how much is invested in collection, sorting and extraction and how much of a material stream is collected at a high enough quality to be sold for a higher price.
60. There are costs associated with constructing a MRF, and there are costs associated with extracting a wider range of materials at a MRF. There are also costs associated with accepting a wider range of material qualities for reprocessing, and with improving waste collection methods. Furthermore, there are additional costs associated with the extent to which material is pre-processed prior to incineration to remove recyclates.
61. This means that EfW overcapacity could directly and/or indirectly influence any and potentially all of these decisions in a manner that would adversely impact upon the quantity of waste that is reduced, reused, or recycled, at local, regional, and/or national levels.

62. We recall that during the Examination in Public for the Nottingham and Nottinghamshire Waste Core Strategy a Waste and Energy Services Manager for Nottingham City Council explained how their operational decision about whether or not to extract plastic bags from their MRF for recycling was a regularly changing position dependent upon the relative cost of recycling that material or sending it to EfW.
63. Whilst anecdotal, this evidence reflects just the sort of real-world operational considerations anticipated in the UK Government's guidance on applying the waste hierarchy, which acknowledges the economic reality that costs can impact on what is or is not considered 'economic' to recycle.