

Comments on submissions received at D8

UKWIN'S D9 RESPONSE TO REP8-023

**REP8-023: 9.33 - APPLICANT'S COMMENTS
ON SUBMISSIONS RECEIVED AT DEADLINE 7**

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**

POLICY

1. Much of this section, such as how EN-1 and EN-3 in practice place a 'need to demonstrate waste need' on the Applicant, has already been subject to detailed submission by UKWIN and does not require further comment here.

Whether or not only NPS policies can be determinative

2. On internal page 10, the Applicant states:

4.4 As an NSIP, the project falls to be considered under the policies in the relevant NPSs (EN1 and EN3) – other policies can be important and relevant but are not determinative.

3. It is unclear whether the Applicant is claiming that other policies are not determinative in this instance or if they are claiming that other policies are not capable of being determinative for any NSIP development.
4. As noted in ClientEarth, R v Secretary of State for BEIS & Anor [2021]:

“104...the purpose of the balancing exercise in section 104(7) [of the Planning Act 2008 as amended] is to establish whether an exception should be made to the requirement in section 104(3) that an application for development consent must be decided ‘in accordance with any relevant national policy statement’. The exercise involves a straightforward balance, setting ‘adverse impact’ against ‘benefits’...”
5. This means that, even if the Secretary of State concluded that the proposal was in general accordance with the relevant NPSs, it would still be open to Secretary of State to refuse permission based, for example, on the adverse impacts on recycling caused by the potential for the development to create or exacerbate local, regional or national overcapacity in light of the draft NPSs, Government statements about the need to avoid EfW overcapacity, the targets in the EIP, and the Examination’s evidence on the potential for the development to create or exacerbate EfW overcapacity.
6. This principle was the basis of ClientEarth, R v Secretary of State for BEIS & Anor [2021]. As noted by UKWIN at REP2-110 paragraphs 146-147, the Court of Appeal found that when considering a proposed NSIP development the adverse impacts of GHG emissions from that development can be given "significant, or even decisive" weight in the planning balance and are even capable of being "treated as a freestanding reason for refusal".
7. For the avoidance of doubt, UKWIN’s case is that the North Lincolnshire proposal goes against both extant NPSs and the proposed updated NPSs, and that additionally the adverse impacts of the proposal outweigh the potential benefits (especially in light of the uncertainty surrounding these benefits) and this would provide an additional basis for refusal.

8. UKWIN also notes that for this proposal the Applicant is requesting compulsory acquisition of land and rights over land.
9. As noted at paragraph 6.3 of the Applicant's Statement of Reasons [REP5-011], Section 122(3) of the Planning Act 2008 means it is necessary for the decision-maker to be satisfied that there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition in the Order.
10. As such, in addition to any 'need to demonstrate need' that can be found within current and proposed NPS policy, Section 122(3) requires that the Secretary of State must be satisfied of a 'compelling case in the public interest' and that "The public benefits derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is proposed to be acquired".
11. There is already evidence before the Examination that there would be the potential for private loss suffered by those whose land is proposed to be acquired (e.g. AB Agri Limited).
12. Given the lack of waste need for the plant, the uncertainty regarding claimed climate benefits, and the potential harm from EfW overcapacity, etc. there is clearly no compelling case to grant the Applicant the powers it seeks, and the use of these powers would not be proportionate.

Relevance of treating RDF rather than mixed waste

13. On internal page 11, the Applicant states:

4.11 ...the Applicant has been very clear that it will accept binding requirements that the Proposed Development will only accept RDF. It will therefore not divert waste from recycling, reuse or prevention. Further information on this is provided in the Applicant's response to ExA's third written questions [PD-015] Q 17.0.1.

14. In our other Deadline 9 submission, when we comment on the Applicant's response to the ExA's third written questions, UKWIN sets out an explanation of why limiting feedstock to RDF does not prevent the proposed facility from harming recycling. This includes an explanation of how, even if the plant treated only non-recyclable material, it could still harm recycling and re-use efforts through wider impacts of EfW overcapacity on the waste market.
15. UKWIN's explanation is in line with longstanding evidence from UKWIN on this topic which explains how using RDF as incinerator feedstock does not resolve concerns regarding adverse impacts on recycling.

16. For example, paragraphs 45-47 of UKWIN’s Written Representation [REP2-110] notes that:

“...feedstock can meet the technical definition of RDF with only a minimal level of recycling, and there are no requirements in terms of the amount of effort taken to ensure that waste is fully separated and sorted prior to entering the waste stream, nor any absolute requirement that all recyclables need to be removed prior to use as incinerator feedstock.

As such, the fact that the proposal would be taking some of level RDF does not obviate concerns that the proposal could be incinerating material that could have been treated higher up the waste hierarchy, such as recyclable or compostable paper and card.

Furthermore, as noted earlier, if the facility results in creating or exacerbating incineration overcapacity then this would encourage the incineration of potentially recyclable material at incinerators more generally, even if not at this specific incinerator.”

17. While the Applicant may have been clear that their feedstock would be RDF, they have not demonstrated that their proposed EfW facility “will therefore not divert waste from recycling, reuse or prevention”.
18. UKWIN’s evidence demonstrates that through creating or exacerbating EfW overcapacity at a local, regional and/or national level the North Lincolnshire plant would be likely to treat waste that would otherwise be prevented, reused, recycled or composted.

PROJECTIONS FOR RESIDUAL WASTE ARISING & EFW CAPACITY

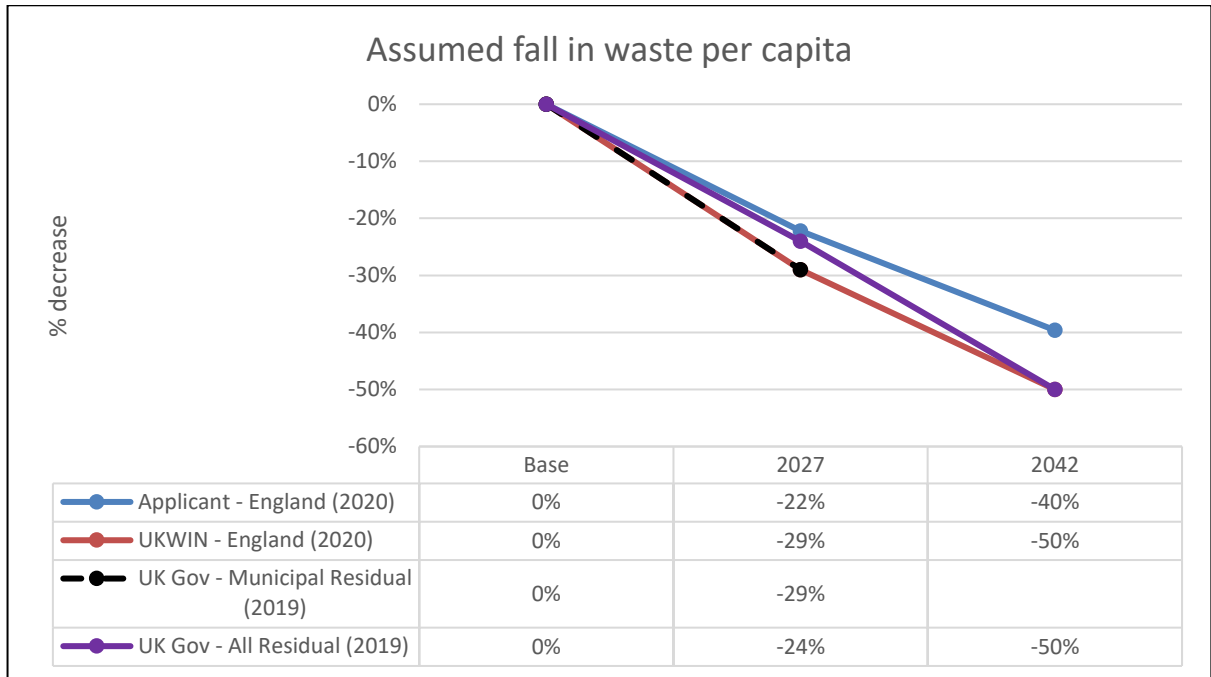
Alignment with Government waste targets

19. On internal page 12, at paragraph 4.14, of their REP8-023, the Applicant states that:

The Applicant rejects UKWIN’s claim that the ‘base case’ presented in REP6-032 is not consistent with UK Government waste targets.

20. UKWIN provided detailed evidence on this point at Deadline 8, but to help explain the point UKWIN is making we directly compare (overleaf) the Applicant’s assumptions regarding the fall in waste per capita from 2020 to 2027 and from 2020 to 2042 against the Government’s anticipated trajectories for falls in residual waste and municipal residual waste.
21. Such a comparison clearly shows how the Applicant’s approach is not consistent with UK Government waste targets, whereas UKWIN’s approach is consistent with feedstock falling in line with UK Government targets.

Chart of fall in waste per capita in 2027 and 2042 relative to a 2019/2020 base year



22. As set out in the Environmental Improvement Plan (EIP), the UK Government expects all residual waste (other than major mineral waste) to fall by 50% by 2042 compared to a 2019 base year.
23. The UK Government's EIP also includes interim targets, such as:
 - a) Interim Target 1 for a reduction in all residual waste by 24% by 2027 compared to a 2019 base year; and
 - b) Interim Target 3 for a reduction in municipal residual waste by 29% by 2027 compared to a 2019 base year.
24. UKWIN's approach therefore starts with a 23.7Mt figure and reduces this by 29% per capita in 2027 in line with the EIP's Interim Target 3 and then assumes it will halve per capita in line with the 2042 target (compared to a 2020 base year).
25. UKWIN's approach is generous to the Applicant in that one might expect that the residual waste stream relied upon for incinerator feedstock would more than halve by 2042 in line with the way that municipal residual waste is expected to fall further than all residual waste by 2027.
26. However, rather than assuming falls in line with any of the Government's targets, the Applicant instead assumes that their feedstock would fall by only around 22% per capita by 2027 and thereafter by only around 40% per capita by 2042 (compared to a 2020 base year).

27. The waste stream that the Applicant is relying on for feedstock would therefore be assumed by the Applicant to have significantly lower falls (i.e. smaller reductions) per capita than those indicated by the EIP targets.
28. Put another way, the Applicant's assumed trajectory is inconsistent with achieving the Government's targets.
29. To calculate the 22% and 40% per capita figures associated with the Applicant's numbers in their ExQ2 response (REP6-032) we first calculated the Applicant's assumed level of waste as fuel available per capita for 2020:
 - a) We started with 23,700kt of waste for 2020, in line with the agreed 22Mt figure plus 1.7Mt to include RDF export which formed part of the waste arisings in 2020.
 - b) We then divided this 23,700kt figure by the ONS population figure for 2020 of 56,550,138 people to obtain 419.097kg of waste per person for 2020.
30. To obtain the 22% figure, we compared this 419.097kg per capita figure for 2020 with the Applicant's waste per capita for 2027, as follows:
 - a) As set out by the Applicant in REP4-020 "The updated RDF Supply Assessment in REP3-022 projects 18.9mtes [of waste available as fuel] in 2027 in the Targets Met scenario".
 - b) 18.9mt is the same as 18,900kt. This 18,900kt figure is divided by the ONS forecast population for 2027 of 58,061,002 to arrive at a per capita figure of 325.520kg per person. This figure is generally in line with the waste per capita figure stated in the Applicant's ExQ2 response for 2026 (REP6-032), reduced in line with the Applicant's trend for reductions from 2020-2026.
 - c) A reduction from 419.097kg to 325.520kg is a 22.3282% decrease (rounded down to 22%).
31. To obtain the 40% figure, we compared this 419.097kg per capita figure for 2020 with the Applicant's waste per capita for 2042, as follows:
 - a) At internal page 29 of REP7-032 the Applicant states: "The Applicant's projection for residual waste as fuel for 2042 is 0.253te/capita".
 - b) 0.253te/capita is the same as 253kg/capita.
 - c) A reduction from 419.097kg to 253kg is a decrease of 39.6321% (rounded up to 40%).

32. As such, even when the 1.7Mt of RDF that was exported in 2020 is taken into account, the Applicant's figures as set out in their REP6-032 response to ExQ2 are out of step with feedstock falling in line with either the residual waste trend or the municipal residual waste trend set out in the EIP.
33. In stark contrast, UKWIN's figures align perfectly, first with the Government's anticipated 29% per capita fall in municipal residual waste to 2027 and then with the Government's anticipated fall in all residual waste to 50% per capita by 2042.

Waste-to-SAF capacity at Fulcum

34. The Applicant continues to rely upon REP7-032. At Paragraph 6.5 of REP7-032 the Applicant states: "All SAF projects are in early stages of development and there remains a high degree of uncertainty as to which, if any will come forward..."
35. We note that regarding one of the projects, the 600ktpa of Fulcum capacity, there has recently been an announcement of funding, which provides a higher degree of confidence that the project is in fact progressing.
36. An article published by The Engineer (a copy of which accompanies this submission) on 5th May 2023, entitled "Jet2 announces Sustainable Aviation Fuel investment", refers explicitly to diverting waste from EfW as follows: "Production of SAF is expected to commence at the plant in 2027. When at full capacity, 600,000 tonnes of non-recyclable household waste – which would otherwise have been destined for incineration or landfill – will be converted into around 100 million litres of SAF annually".
37. This investment adds weight to the notion that Waste-to-SAF can be expected to compete with conventional EfW for the same waste feedstock.
38. We also note that on the 10th of May 2023 Velocys provided an update on the half a million tonnes of waste-to-SAF capacity at Atalto Immingham.
39. The announcement, a copy of which accompanies UKWIN's submission, states that: "...further to the award of the grant from the UK Government's Department for Transport ("DfT") Advanced Fuel Funds of up to £27 million for the Atalto Immingham Sustainable Aviation Fuel ("SAF") Project, announced on 12 December 2022, Atalto Ltd...has completed the work necessary to claim the first tranche (£7 million) of the grant up to 31 March 2023. In addition, as planned, the project has obtained the first tranche of private funding for the period from 1 April 2023 from its existing private sector participants".
40. This new evidence provides further support for the approach taken by UKWIN – but not by the Applicant – with respect to assessing waste fuel availability.

Coventry and Stoke

41. In response to REP8-023 paragraph 4.16, UKWIN apologises for any confusion caused by our typographical error made in REP7-037.

42. Of course, what we meant to say was:

For example, it was reported on the 3rd of April 2023 that Stoke on Trent Council are looking for an operator to continue to operate the existing Stoke incinerator until 2030 (not until 2028 which is when the Applicant assumes it would be closed) and that the existing Stoke incinerator will only be decommissioned once a replacement at the same site is in place which is “reported to be expected to come into operation by 2029. [Source: ‘Search for operator to run Stoke-on-Trent's 1970s waste incinerator’ (Phil Corrigan, 9 April 2023)]

43. Regarding the prospect of the closure of the Coventry incinerator, UKWIN's position is set out at paragraphs 81-83 of REP8-038 (UKWIN's D8 Response to REP7-032) where UKWIN pointed out how, whilst the Applicant assumes that the Coventry incinerator will cease operations in 2025, according to the facility operator's 'Environment, Health and Safety Review for the year to 31st December 2021': “There is an ongoing steer from the Environment Agency to achieve R1 status. CSWDC [Coventry and Solihull Waste Disposal Company] is working with technical specialists Ramboll to achieve this. The ambition in 2022/23 is to continue working with Ramboll...If requirements are met then Ramboll will carry out further modelling work with the intention of submitting an application to the Environment Agency in 2023/24. If successful, this will result in the plant being classified as recovery rather than disposal”.

44. As UKWIN observes at paragraph 83 of REP8-038: "This statement from the operators of the Coventry incinerator provides no indication that R1 is unlikely to be achievable at the Coventry site, and instead shows that CSWDC is investing money to secure R1 certification in the future".

45. UKWIN reiterates our position that the Applicant has still not provided any solid evidence of plans to abandon sites currently being used to operate existing incinerators rather than either extending the life of those existing plants through refurbishment and/or creating replacement facilities on the same site.

46. Proposals to replace older incinerators with newer ones do not demonstrate that capacity at those sites can be expected to decrease.

47. If, for whatever reason, plans to replace existing incinerators are abandoned or delayed, this could be expected to result in the extension of the operational life of these existing operational EfW facilities.

CARBON CAPTURE REQUIREMENTS

48. In line with UKWIN's previous comments on this topic, UKWIN noted in our other Deadline 9 submission how the Applicant's assumption that Decarbonisation Readiness (DR) requirements might only require the equivalent of the fossil CO₂ to be captured is a novel idea which is at odds with what the UK Government actually says in their consultation documents.
49. As such, we do not need to comment further on the Applicant's paragraph 4.17 response which relies heavily on this novel idea which is wholly without foundation.
50. We appreciate that the Applicant confirms in paragraph 4.18 that their proposed EfW plant falls outside the current scope of the Low Carbon Humber pipeline.