

## Essex County Council (ECC) Response to ExA's Q01 – 7<sup>th</sup> May 2024

Question Number	Topic & Question	Response
Q1.2.2	<p><b>Climate Change</b></p> <p>ECC [at RR-002] has set out that the opportunity to deliver other climate-related co-benefits of the project should be explored in order to make best use of the development and that this could include educational benefits, such as education information boards and explaining the role of the project in delivering a decarbonised national grid, UK energy security, strategy and tackling climate change. a) Applicant, respond to this request and set out whether you consider this to be necessary. b) <b>ECC, how would such measures be secured and are they necessary to make the Proposed Development acceptable?</b></p>	Within the Climate Change Section 7 of our LiR.
Q1.2.3	ECC [at RR-002] are of the view that carbon emissions should be recorded and published, to show the positive impact even if small.	Within the Climate Change Section 7 of our LiR.

	<p>a) Applicant, respond to this request and set out whether you consider this to be necessary. b) <b>ECC, set out how would such measures be secured and are they necessary to make the Proposed Development acceptable?</b></p>									
Q1.3.2	<p>ECC has set out [RR-002] that it does not believe an EfW plant alone can be constructed in accordance with the existing consent. a) Applicant, confirm whether or not this is the case. b) <b>ECC, provide full and comprehensive evidence to support your view and set out what implications you consider there are for the Proposed Development.</b></p>	<p>Planning permission for the Rivenhall IWMF was originally granted planning permission by the Secretary of State (SoS) in 2010 following a call-in inquiry. A copy of the Inspector’s Report and SoS Decision are attached as Appendix 1 and 2 of LiR. The planning permission was subsequently varied in 2016 by way of a S73 application Reference ESS/34/15/BTE determined by ECC as Waste Planning Authority (WPA). This application sort to amend the capacities of various elements of the IWMF i.e. the capacities of Combined Heat and Power Plant (CHP), Materials Recycling Facility (MRF), Mechanical Biological Treatment Plant (MBT), Anaerobic Digestion plant (AD) and the Merchant De Ink Paper Pulp Plant (MDIP).</p>								
		<table border="1"> <thead> <tr> <th data-bbox="927 1085 1346 1209">Process</th> <th data-bbox="1346 1085 1581 1209">SoS decision tpa</th> <th data-bbox="1581 1085 2042 1209">ESS/34/15/BTE tpa</th> </tr> </thead> <tbody> <tr> <td data-bbox="927 1209 1346 1327">Materials recycling facility (MRF)</td> <td data-bbox="1346 1209 1581 1327">287,500</td> <td data-bbox="1581 1209 2042 1327">300,000</td> </tr> </tbody> </table>	Process	SoS decision tpa	ESS/34/15/BTE tpa	Materials recycling facility (MRF)	287,500	300,000		
Process	SoS decision tpa	ESS/34/15/BTE tpa								
Materials recycling facility (MRF)	287,500	300,000								

Mechanical Biological Treatment (MBT)	250,000	170,000
Anaerobic digestion (AD)	85,000	30,000
Combined Heat & Power (CHP)	360,000	595,000
De-ink paper pulp plant	360,000	170,000
Total	1,342,500	1,265,000

While the balance of capacities between the various elements of the IWWMF was changed, the overall input of waste was not, and remains restricted at 853,000tpa. The planning application in 2015 also sought to discharge a number of conditions of the original permission. A copy of the Development & Regulation Committee Report Feb 2016 and the Decision Notice Mar 2016 are provided at Appendix 3 and 4 respectively in LiR.

The planning permission in 2016 was subject to additional conditions including condition 66, which sort to require a plan of action or a scheme of rehabilitation if the IWWMF had were progressed. At the time in February 2016 the IWWMF had

		<p>planning permission, so could technically be implemented, but potentially not progressed, in light of the fact at that time Environmental Permit had been obtained. The condition sought to address this situation, such that the site was not left in no beneficial use.</p> <p>The developers indicated when submitting details to discharge condition 66 of the planning permission by application ESS/34/15/BTE/66/01, that elements of the IWMF are no longer technically or commercially viable and at the current time development of the IWMF would focus on the CHP/EfW. This discharge of condition application highlighted to the WPA that the developer's intention was to focus on the development of the CHP/EfW, potentially bringing into operation the CHP/EfW, without the other integrated elements of the IWMF. The submission of condition 66 was determined, subject to conditions which required implementation of the whole IWMF development and completion by 2026. The applicant appealed against these conditions.</p> <p>It was agreed between the parties that as an alternative to progressing the appeal, the applicant could apply to delete condition 66, the details approved there under and the associated conditions. Since the IWMF now has an Environmental Permit to operate and is being actively constructed the original purpose of Condition 66 was no longer relevant.</p> <p>A S73 application (ESS/39/23/BTE) to delete condition 66 the details approved there under and the associated conditions was submitted in May 2023 and granted in January 2024 and the subsequently the appeal against the decision on condition 66 withdrawn (The Committee Report July 2023, Addendum, and decision notice are attached at <b>Appendix 1, 2 &amp; 3</b>)</p> <p>ECC has highlighted within its response to the Scoping Opinion and the Preliminary Environmental Report on the DCO, it's concerns that it considers there could be a</p>
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		<p>breach of planning control if the CHP/EfW were to operate as standalone EfW without integration with the other permitted elements of the IWMF.</p> <p>The IWMF was permitted on the basis of an “integrated facility” combining a number of waste management processes and a de-ink paper pulp plant, to make use of the excess heat and steam. The IWMF included a CHP which would in part generate electricity, but the application in 2016 proposed approximately half the electricity and heat and steam generated at the site would be used to power other elements of the IWMF and some of the heat and steam generated by the CHP would be used directly in the MDIP.</p> <p><b>WPA’s Current Position</b></p> <p>The Waste Planning Authority has considered it’s position further since these earlier submissions with respect to the Rivenhall DCO.</p> <p>It is acknowledged that the IWMF does include permission for a CHP/EfW plant. The DCO seeks to extend the power output to above 49.9MW, that being the limited to which a local planning authority can consider. If other elements of the IWMF were to be developed it is likely that a substantial percentage of the heat and steam would be utilised by other elements of the IWMF and the available heat and steam to generate power would be substantially reduced. However, on further consideration it is recognised, that at this stage the current development on site and the works proposed as part of the DCO would not preclude the development of the other elements of the IWMF. In addition, if a DCO were to be granted the applicant does not have to utilise the full power output permitted and could choose to develop any or all of the elements of the IWMF, such as the MDIP and generate less electricity.</p>
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		<p>While the WPA remains of the view that the IWMF was considered by both the SoS and the WPA on the basis of an integrated facility, which delivered more sustainable development than a standalone EfW, the WPA is now of the view the DCO, if granted, would not undermine the WPA position on the integration/severability of the planning permission. The point at which there could be breach of planning control would be at the point the EfW operates without the other integrated elements of the IWMF. It is the intention of the WPA to work with the developer to try to resolve this difference of interpretation of the planning permission prior to the EfW coming into operation. The submission of a Certificate of Lawful Development for a Proposed Use (CLPUD) has been suggested to the applicant, but to date this option has not been taken up. The submission of a CLPUD would enable the WPA to formally consider the matter taking into account the position of the applicant and as well as its own advice. Nonetheless, the Inspector may wish to consider whether the WPA's position is correct (whether the IWMF planning permission does not permit the operation of a standalone EfW; that in fact there is not an extant permission for "An existing generating station" that allows its output to be increased through the DCO process.)</p> <p><b>Evidence to support ECC view that there could be breach of planning control if the CHP/EfW were to operate as a standalone EFW</b></p> <p>As mentioned above the WPA is of the view that both the Inspector/SoS in 2010 and the WPA in 2016 considered the IWMF on the basis of an integrated facility. It is the view of the WPA that the planning permission for Rivenhall IWMF was for an integrated facility of different waste management processes, ensuring the maximum recovery of recyclables as well as energy generation with an on-site use of heat and steam in the MDIP that, overall and on balance, made the development sustainable. The direct use of heat and steam on site, in something like an MDIP, is a more</p>
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		<p>efficient use of the heat and steam than just energy generation. Energy generation from an EFW alone is considered by the WPA as being less sustainable.</p> <p><b>Appendices 4, 5 and 6</b> provide the Committee Report (Feb 2022), Addendum to the Committee Report and the decision letter on the consideration of the submission to discharge condition 66. Within sections C, E and F of the Committee Report of Feb 2022 the WPA sets out its position with respect to what it considers the existing Planning Permission gives consent for with reference to the Inspectors report of 2010. An extract from Section C of the Committee Report of Feb 2022 is set out below:</p> <p><i>Considering the natural meaning of the words used in the description of the development in the planning permission [ESS/34/15/BTE], the description is of an “Integrated Waste Management Facility” which “comprises” certain elements. Naturally read it is considered that “comprises” means “amounts to” or “is”; that is, supported by the use of the word “integrated” – i.e. including the identified elements. Consistent with that description, the nature of that facility is identified in the plans identified in condition 2. Plans 1-9A and 10A identify each of the elements specified in the description of development and show how the facility would operate in an “integrated” manner. It is therefore considered plain that the “Integrated Waste Management Facility” is a development which includes all of the identified elements; the conditions require that to be carried out.</i></p> <p><i>The interpretation of the planning permission is that it is for an integrated facility and was considered and granted on this basis.</i></p> <p><i>The Inspector (in making his recommendation following the call-in inquiry in 2009/10) and the WPA (in considering subsequent applications) took into account all</i></p>
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		<p><i>elements of the IWWMF and how they would provide an integrated facility, maximising recycling and maximising the use of heat and steam, through a combination of power generation and direct use of the heat and steam to reprocess waste paper, in order to deliver a sustainable development.</i></p> <p><i>It is evident within the Inspector's report and the subsequent WPA officer reports (ESS/34/15/BTE), that the consideration as to the acceptability of the IWWMF in planning terms was on the basis that all elements of the IWWMF would be delivered to result in sustainable development.</i></p> <p>The WPA reiterated its position when considering the planning application (ESS/39/23/BTE) to delete condition 66 of ESS/34/15/BTE, as set out in section D of the Committee Report (July 2023) at <b>Appendix 1</b>.</p> <p>Should the Inspector require any further information please do not hesitate to contact the WPA.</p>
Q1.4.1	<b>Has the Proposed Development suitably considered all other relevant developments in the vicinity of the site, including all minerals workings?</b>	ECC considers that in respect of applications which falls to it to consider that the submission has considered relevant developments in the vicinity of the site.
Q1.6.3	<b>ECC consider [RR-002] that it is not appropriate for the noise limits of the existing permission to form the baseline for the assessment. Explain fully why the</b>	Response within our LiR at the relevant section.



	<b>correlation between planning condition compliance and residential effects should not be used.</b>	
Q1.6.6	<b>ECC has noted [RR-002] that there are no specific noise limits within the EA's Environmental Permit. Explain why this has raised concern given there are noise limits set out within the existing consent.</b>	Response within our LiR at the relevant section.
Q1.6.8	<b>Do ECC agree with the modelling inputs and assumptions used in the ES [APP-033, Paragraph 8.6.2] and its appendices [APP-045]?</b>	Response within our LiR at the relevant section.

## **1. Index of Appendices**

- 1) *Appendix 1 - ESS/39/23/BTE (S73 Application to remove Condition 66 of the 2016 Planning Permission - Committee Report 28 July 2023*
- 2) *Appendix 2 - ESS/39/23/BTE - Addendum to Development & Regulation Committee Report 28 July 2023*
- 3) *Appendix 3 – ESS/39/23/BTE – (Discharge of Condition 66 of ESS/34/15/BTE) – Decision Notice 26 January 2024*
- 4) *Appendix 4 - ESS/34/15/BTE/66/01 (Submission of details under Condition 66 of ESS/34/15/BTE) – Development & Regulation Committee Report 25 February 2022*
- 5) *Appendix 5 - ESS/34/15/BTE/66/01 – Addendum to Development & Regulation Committee Report 25 February 2022*
- 6) *Appendix 6 - ESS/34/15/BTE/66/01 (Submission of details under Condition 66 of ESS/34/15/BTE) – Decision letter 7 March 2022*

**Appendix 1 - ESS/39/23/BTE (S73 Application to remove Condition 66 of the  
2016 Planning Permission - Committee Report 28 July 2023**

**DR/25/23**

**Report to:** DEVELOPMENT & REGULATION (28 July 2023)

**Proposal:** MINERALS AND WASTE DEVELOPMENT

Continuation of development of the Integrated Waste Management Facility (IWMF) with deletion of condition 66, approved details thereunder and associated conditions (Plan of Action if development not taken forward within 5 years) of planning permission ESS/34/15/BTE. ESS/34/15/BTE was amended planning permission for "The Integrated Waste Management Facility comprising: Anaerobic Digestion Plant treating mixed organic waste, producing biogas converted to electricity through biogas generators; Materials Recovery Facility for mixed dry recyclable waste to recover materials e.g. paper, plastic, metals; Mechanical Biological Treatment facility for the treatment of residual municipal and residual commercial and industrial wastes to produce a solid recovered fuel; De-inking and Pulping Paper Recycling Facility to reclaim paper; Combined Heat and Power Plant (CHP) utilising solid recovered fuel to produce electricity, heat and steam; extraction of minerals to enable buildings to be partially sunken below ground level within the resulting void; visitor/education centre; extension to existing access road; provision of offices and vehicle parking; and associated engineering works and storage tanks."

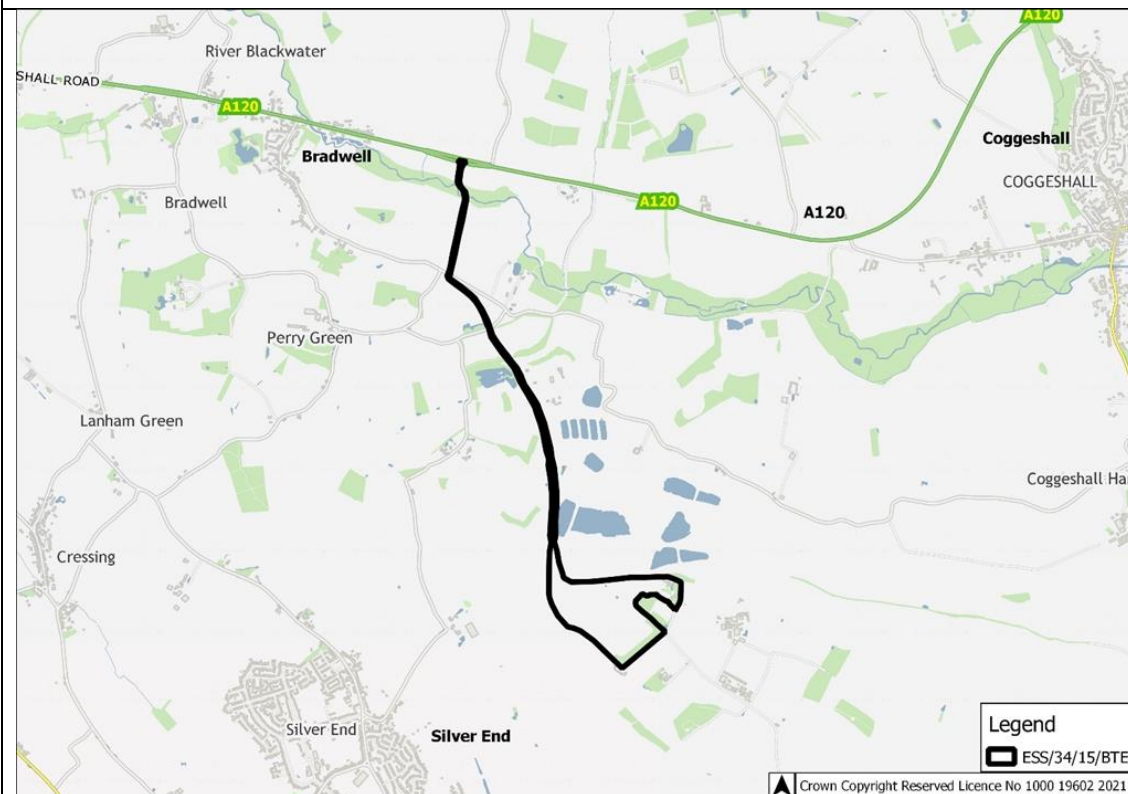
**Ref:** ESS/39/23/BTE

**Applicant:** Indaver Rivenhall Limited

**Location:** Land at Rivenhall Airfield Coggeshall Road, Braintree, CO5 9DF

**Report author:** Chief Planning Officer (County Planning and Major Development)

**Enquiries to:** Claire Tomalin Tel: [REDACTED]  
The full application can be viewed at <https://planning.essex.gov.uk>



## 1. BACKGROUND

Planning Permission for the Rivenhall Integrated Waste Management Facility (IWMF) was first granted by the Secretary of State (SoS) in March 2010 following a call-in public inquiry (ECC Ref ESS/37/08/BTE).

While the original application was determined by the SoS, subsequent applications fall to the Waste Planning Authority (WPA) to determine, unless called-in or legislation requires otherwise. There have been subsequent variations to the planning permission and submissions in response to conditions, which have been dealt with by the WPA, the summary below focuses on those relevant to the current application.

In 2015 a planning application (ESS/34/15/BTE) was made to amend the capacities of the different elements of the IWMF, in particular increasing the capacity of the Combined Heat and Power Plant (CHP) from 360,000tpa to 595,000tpa, but not increasing the overall input of waste or traffic movements to the site. The application also incorporated details to discharge a number of conditions of the original permission. The planning permission was granted in February 2016.. Implementation of planning permission ESS/34/15/BTE was undertaken in March 2016, however, only sufficient works were carried out to constituent technical implementation of the planning permission.

The planning permission for the IWMF gives consent for:

- A CHP plant (595,000tpa) utilising Refuse Derived Fuel (RDF) generated on site and imported RDF/Solid Recovered Fuel (SRF) to generate heat, steam and electricity to be used on site. Some electricity to be exported to the National Grid.
- Materials Recycling Facility (MRF – 300,000tpa) to sort through imported waste recovering recyclables such as paper, card, plastics and metal.
- Merchant De-Ink Paper pulp plant (MDIP – 170,000tpa) to reprocess waste paper imported to the site, as well as any suitable paper recovered by the MRF and would utilise, heat, steam and power generated by the CHP. Paper pulp board to be exported from the site.
- Anaerobic Digestion (AD – 30,000tpa) facility to treat food and green waste generating biogas for production of electricity on site and generating a compost like output for export.
- Mechanical Biological Treatment Facility (MBT – 170,000tpa), to treat waste by mechanical treatment e.g. shredding and then biological treatment using air and moisture to bio-stabilise the waste, the output being an RDF.

The total amount of waste that can be imported to the site is limited by condition to 853,000tpa. The maximum number of HGV movements is limited to 404 a day Monday to Friday and 202 on Saturday mornings.

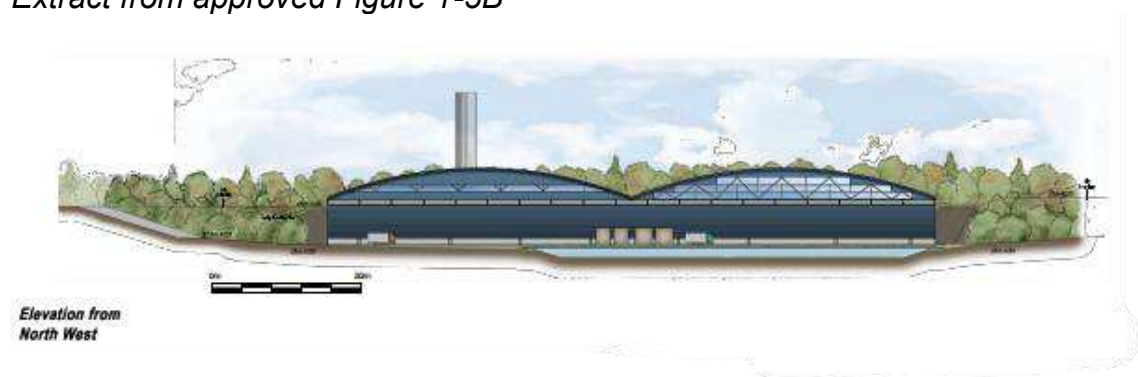
The permission also includes the creation of an extended access road from the A120, now completed, and refurbishment of the Woodhouse Farm Listed Buildings complex and other associated infrastructure. Listed Buildings applications to enable refurbishment of Woodhouse Farm are with Braintree District Council for determination.

*Extract from Figure 1-5B*



The MDIP, MRF, MBT and AD are permitted to be housed in a double arched building, where the majority of the building is to be located below natural ground. The CHP and other associated infrastructure is to be located also partly below ground to the rear of the IVMF building.

*Extract from approved Figure 1-5B*







In October 2018 Indaver took over development of the IWMF from the original applicant Gent Fairhead & Co. Works commenced on site in winter 2019/20.

Works on site since 2019/20 include stabilisation of the void faces, construction of the extended access from the Bradwell Quarry to the IWMF site and works which are now underway with respect to construction of the Energy from Waste (EfW) element of the IWMF and supporting infrastructure.



15 July 2023 - IWMF site viewed from the south east.

The planning permission granted in 2016 (ESS/3415/BTE) to amend the capacities of the different elements was granted subject to additional conditions, including condition 66. This condition sought to address the possibility that if the development was technically implemented, but did not progress, the site would not be left without a beneficial use or not rehabilitated. The condition required submission of a "Plan of Action" either to rehabilitate the site or for an alternative use which was required to be submitted by September 2021.

Indaver submitted an application to discharge the condition (Ref ESS/34/15/BTE/66/01) in September 2021. The “Plan of Action” submitted consisted of three different options, summarised below:

- 1. To build out the permission as authorised by the Planning Permission.*
- 2. Build out those elements within the consent which are technically and commercially viable, all within the building which currently has consent, and/or;*
- 3. Submit an application for consent for alternative waste management and/or energy generation uses.*

Members may recall that this application to discharge the condition was considered in February 2022, when it was resolved to approve option 1 - *To build out the permission as authorised by the Planning Permission*. The discharge of the condition was approved subject to additional conditions, requiring all elements of the IWMF to be constructed before beneficial operation of the EfW Facility and a requirement that construction of the IWMF be completed by 31 December 2026.

Indaver subsequently appealed against the decision of condition 66 ECC Ref ESS/34/15/BTE/06/1APP (PINS Ref APP/Z1585/W/22/3306429) which is currently pending with the Planning Inspectorate.

The applicant has subsequently submitted the current application (ESS/39/23/BTE), which is a variation application under Section 73 of the Town and Country Planning Act which seeks to delete condition 66, including the approved details thereunder and associated conditions, and is the subject of this report.

## **2. SITE**

The IWMF site is located east of Braintree, approximately 1km to the north east of Silver End and approximately 3km south west of Coggeshall and approximately 3km south east of Bradwell village. The site is 25.3 ha which includes the access road.

The IWMF site at its northern end comprises a narrow strip of land leading southwards from the A120 Coggeshall Road, the location of the access road. To the south the IWMF site widens into an irregular shaped plot of land.

The IWMF site lies within the boundaries of both Bradwell Parish and Kelvedon Parish, the access road being mainly within Bradwell Parish and the remainder of the access road and IWMF itself lying within Kelvedon Parish.

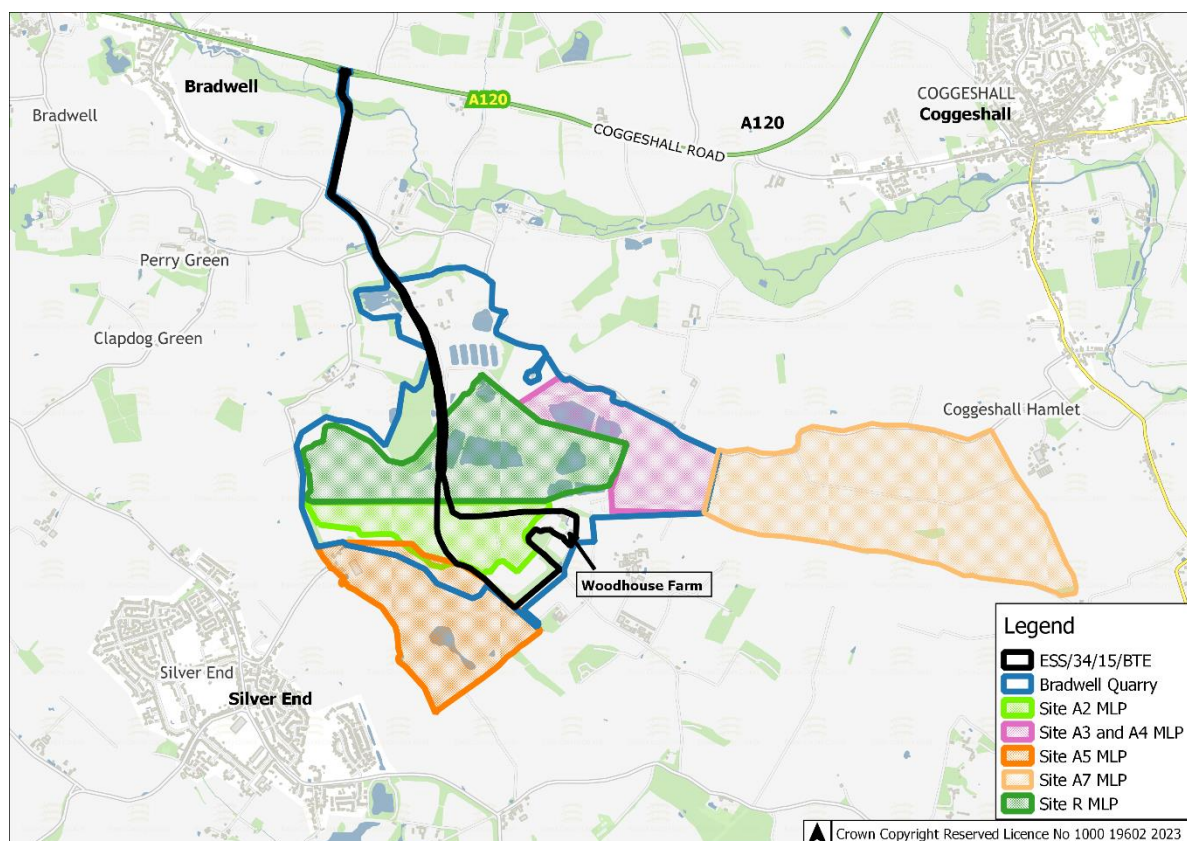
The IWMF site lies on the southern part of the former Rivenhall airfield; the runways have been removed as part of mineral extraction. The IWMF site (not including the access road) is located approximately 1.7km south of Coggeshall Road (A120T) and includes the Grade II Listed Buildings of Woodhouse Farm.



The Woodhouse Farm buildings are located on the south eastern side of the IWMF site and included in the IWMF planning permission area. The IWMF site also includes woodland protected by Tree Preservation Order, which surrounds the southern boundary of the IWMF itself.

The IWMF site also included an airfield hangar which, upon implementation of IWMF permission in 2016, was removed.

The IWMF site overlaps with Bradwell Quarry, where sand and gravel extraction is currently taking place within Minerals Local Plan Preferred site A7. The location plan below shows the extent of previous and current mineral extraction areas; site R permitted in 2001; site A2 permitted in 2011 (which included extraction in part of the site for the IWMF); sites A3 and A4 permitted in 2015; and site A5 granted in 2019. Previously worked out areas of the quarry have been restored at low level to arable agriculture with new hedgerows and woodland planting. Areas of Bradwell Quarry (sites R, A2, A3, A4 and A5) are undergoing or awaiting restoration to a combination of arable, woodland and water.



The IWMF site is set within a predominantly rural character area, consisting of arable crops in large fields, often without boundaries resulting in an open landscape in gently undulating countryside. The landform around the site forms a flat plateau at about 50m Above Ordnance Datum, although the restored minerals workings to the northwest (site R) and southwest (site A5) have been or will be restored at a lower level, creating bowls in the landscape. Sites A3 and A4 have been restored to near natural levels utilising overburden from the IWMF site.

The nearest residential properties, not including Woodhouse Farm (not occupied), include The Lodge and Allshots Farm located to the east of the IWMF site,

approximately 450m away. To the north/north east on Cuthedge Lane are Heron's Farm at approximately 700m from the site of the IWMF, Deeks Cottage at approximately 850m and Haywards 920m from the site of the IWMF. To the west of the site on Sheepcotes Lane lies Sheepcotes Farm, 580m from the site of the IWMF, also Gosling's Cottage, Gosling's Farm and Goslings Barn and Greenpastures all approximately 1200m from the site of the IWMF. Properties to the southwest within Silver End village lie approximately 850m from the site of the IWMF. Parkgate Farm lies south of the site, approximately 1000m from the site of the IWMF.

Approximately 400m to the east of the IWMF site boundary and Woodhouse Farm, lies a group of buildings, including the Grade II listed Allshots Farm and a scrap yard.

Approximately 500m to the south east of the IWMF, beyond agricultural fields, there is a group of buildings known as the Polish site. These buildings are used by a number of businesses and form a small industrial and commercial estate to which access is gained via a public highway (Woodhouse Lane leading from Parkgate Road).

A further business operates on the south west edge of the IWMF site, at the "Elephant House", the building being the fire station for the redundant airfield. The site is used by a road sweeping company, but the site is well screened by mature evergreen trees.

The permitted vehicular route to the IWMF site shares the existing access on the A120 and the private access road for Bradwell Quarry. The access route crosses the River Blackwater by two bailey style bridges and crosses Church Road and Ash Lane (a Protected Lane as defined in Braintree District Local Plan 2023). The access road has now been extended to the IWMF site, and is two way, except where it crosses Church Road and Ash Lane.

A similar area to that of the IWMF application site is allocated in the adopted Waste Local Plan 2017 as a site IWMF2 for residual non-hazardous waste management and biological treatment.

The land comprising the IWMF site has no designations within the Braintree District Local Plan 2023.

There are two Local Wildlife Sites (LoWS) within 3 km of the IWMF site at Blackwater Plantation West, which is within the Blackwater Valley which the access road crosses. The second LoWS is at Storey's Wood (south of the site), which is also an Ancient Woodland.

There are 4 Grade II Listed properties within 1km of the IWMF site including Woodhouse Farm and buildings (within 200m), Allshots Farm and Lodge (400m away) to the east and Sheepcotes Farm (1000m) to the west.

Five footpaths (FP's Bradwell 19, 35, 57 [Essex Way], 58) are crossed by the access road to the IWMF. There is also a public footpath No. 8 (Kelvedon) which heads south through the Woodhouse Farm complex.

### 3. PROPOSAL

The proposal is to delete condition 66; the details approved thereunder and the associated conditions.

Condition 66 (following the approval of the submission in March 2022) reads as follows:

*The development hereby permitted shall be implemented in accordance with the Plan Of Action Option 1 approved on 7 March 2022 under condition 66 of planning permission ESS/34/15/BTE. The approved Plan of Action are set out in the application for approval of details reserved by condition dated 1 September 2022, covering letter from RPS dated 1 September 2022 and additional supporting information in email dated 17 November 2021 (10:387) from RPS with attachment "IWMF High Level Programme v01", subject to the following 2 conditions:*

- i) *Plan of action Option 1 as detailed in letter from RPA dated 1 September 2021 shall be implemented in accordance with:
  - a) the conditions of planning permission ESS/34/15/BTE dated 26 February 2016;
  - b) any details approved under those conditions or to be approved under those conditions;
  - c) Non Material Amendments References ESS/34/15/BTE/NMA1 and ESS/4/15/BTE/NMA2 or any subsequently approved Non Material Amendments; and d) the obligations set out in the Section 106 Legal agreement dated 20 October 2009 as amended by deeds of variations dated 1 December 2014, 26 March 2015 and 26 February 2016.*

*Reason: For the avoidance of doubt as to the nature of the development hereby permitted, to ensure development is carried out in accordance with the approved application drawings, details (except as varied by other conditions), to ensure that the development is Sustainable Development and is carried out with the minimum harm to the local environment and in accordance with the NPPF, NPPW, Essex Minerals Local Plan 2014 (MLP) policies P1, S1, S10, S11, S12, DM1, DM2 and DM3, Essex and Southend Waste Local Plan 2017 (WLP) policies 1, 3, 10, 11 and 12, Braintree District Local Plan 2013-2033 Section 1 (BLP S1) policy SP 7, Braintree District Core Strategy adopted 2011 (BCS) policies CS5, and CS8 and Braintree District Local Plan Review 2005 (BDLPR) policies RLP 36, RLP 49, RLP 54, RLP 62, RLP 63, RLP 64, RLP 65, RLP 71, RLP 72, RLP 80, RLP 81, RLP 84, RLP 87, RLP 90, RLP 100, RLP 105 and RLP 106;*

- ii) *There shall be no beneficial operation of the Combined Heat and Power (CHP) plant without all other elements of the Integrated Waste Management Facility (IWMF) i.e. Market De Ink Paper Pulp Plant (MDIP) Materials Recycling Facility (MRF), Mechanical Biological Treatment (MBT) plant, Anaerobic Digestion (AD) plant, Waste Water Treatment Plant and all other permitted associated infrastructure having been constructed and available for beneficial operation. For the avoidance of doubt the CHP shall not operate without the MDIP utilising the heat and steam directly from the CHP. The development as permitted shall be constructed and ready for beneficial use by*

31 December 2026.

*Reason: To ensure the development delivers Sustainable Development in accordance with the Development Plan. To ensure the development operates in an integrated manner, in particular that the CHP operates in conjunction with the de ink paper pulp plant, such that the facility operates as a combined heat and power facility delivering greater efficiency rather than solely generating electricity in accordance with WLP policy 11, Resources and Waste Strategy 2018 and The Environment Plan for England 2021. To ensure the development is completed within a reasonable time to minimise the impacts from construction and in accordance with Essex and Southend Waste Local Plan 2017 Policies (WLP) 10 & 11, Braintree District Local Plan 2013-2033 Section 1 (BLP S1) policy SP 7, Braintree District Core Strategy adopted 2011 (BCS) policies CS5, and CS8 and Braintree District Local Plan Review 2005 (BDLPR) policies RLP 36, RLP 49, RLP 54, RLP 62, RLP 63, RLP 64, RLP 65, RLP 71, RLP 72, RLP 80, RLP 81, RLP 84, RLP 87, RLP 90, RLP 100, RLP 105 and RLP 106.*

The application seeks to delete this condition, the details approved under it and the additional conditions imposed upon it, hereafter together referred to as C66.

#### 4. POLICIES

Since determination of the last planning permission for the IWMF in 2016, a new Waste Local Plan and a new Braintree Local Plan have been adopted. When a S73/Variation application is positively determined a new planning permission is subsequently issued. The reasons for conditions in any new planning permission would need to refer to the current policies. The relevant current policies are listed below:

##### ESSEX AND SOUTHEND WASTE LOCAL PLAN (WLP) adopted 2017

Policy 1 - Need for Waste Management Facilities

Policy 2 - Safeguarding Waste Management Sites & Infrastructure

Policy 3 - Strategic Site Allocations

Policy 10 - Development Management Criteria

Policy 11 - Mitigating and Adapting to Climate Change

##### BRAINTREE DISTRICT LOCAL PLAN (BDLP) adopted July 2022

LLP1 Development boundaries

LLP42 Sustainable Transport

LLP52 Layout and Design of Development

LLP57 Heritage Assets and their Settings

LLP59 Archaeological Evaluation, Excavation and Recording

LLP63 Natural Environment and Green Infrastructure

LLP64 Protected Sites

LLP65 Tree Protection

LLP67 Landscape Character and Features

LLP70 Protecting and Enhancing Natural Resources, Minimising Pollution and Safeguarding from Hazards

LLP74 Flood and surface water drainage

LLP77 External Lighting

## NEIGHBOURHOOD PLANS

### Bradwell with Pattiswick Neighbourhood Plan adopted July 2019

Policy 1 – Protecting and enhancing the natural environment and green infrastructure

Policy 5 – Protecting and enhancing the historic environment

### Kelvedon Neighbourhood Plan adopted July 2022

Policy NE3 - Protection Of Green Infrastructure and Biodiversity

Policy NE7 – Pollution

The Revised National Planning Policy Framework (NPPF) was published on 20 July 2021 and sets out the Government’s planning policies for England and how these should be applied. The NPPF highlights that the purpose of the planning system is to contribute to the achievement of sustainable development. It goes on to state that achieving sustainable development means the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways: economic, social and environmental. The NPPF places a presumption in favour of sustainable development. However, paragraph 47 states that *“Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.”*

Paragraph 48 of the NPPF goes on to state *“Local planning authorities may give weight to relevant policies in emerging plans according to: a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given); b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).”*

Planning policy with respect to waste is set out in the National Planning Policy for Waste (NPPW published on 16 October 2014). Additionally, the National Waste Management Plan for England (NWMPE) is the overarching National Plan for Waste Management and is a material consideration in planning decisions.

Paragraphs 218 and 219 of the NPPF, in summary, detail that the policies in the Framework are material considerations which should be taken into account in dealing with applications and plans adopted in accordance with previous policy and guidance may need to be revised to reflect this and changes made. Policies should not however be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

### Neighbourhood Plans

## 5. CONSULTATIONS

**BRAINTREE DISTRICT COUNCIL (Planning):** Braintree District Council expressed its objection in the strongest terms during the consideration of the IWMF at Rivenhall Airfield by the SoS in 2010. However it had to accept the decision of the planning process via the SoS that the proposal was acceptable in principle and has since sought to work proactively with the statutory planning and licencing bodies (namely ECC and the Environment Agency) to minimise the impacts on local residents, amenity, infrastructure and the environment. This development continues to be an area of grave concern to many residents, the local Parish Councils, as well as the District Council itself, with the centre to become the largest single emitter of greenhouse gases within the District and sits within the County Council's identified 'Climate Change Focus Area'.

The District Council had also previously objected to the discharge of condition 66 which was approved by Essex County Council and appealed by the applicant. Braintree DC had been accepted as a Rule 6 Party in that appeal. This was on the basis that the Plan of Action submitted was disingenuous and lacking both a clear plan or any actions and did not respond to local resident concerns.

This application now seeks to remove condition 66 completely and the applicant notes that this is because the development has started with contracts let and work on site is underway, meaning that the need for the condition has fallen away and therefore, in their view, it fails to meet the tests for conditions set out in national policy and guidance.

Braintree DC notes that for the purposes of this individual condition, the requirements set out within it have largely been superseded by development on site. However we remain firmly of the view that given the time that has passed since the original application was determined and the fundamental change in what is being proposed to be brought forward by the applicant on the site (including the increase in electricity generation which is being sort through the NSIP process), a single new application appears to be the only sensible way in which residents, stakeholders and statutory bodies can properly consider and engage in the proposals which are now before us, and consider them in the context of the current national and local planning policy framework.

**BRAINTREE DISTRICT (EHO):** No comments received.

**ENVIRONMENT AGENCY:** No objection. The applicant may wish to apply to remove those elements of the IWMF that are not to be developed as monitoring fees will be charged for all elements included in the Environmental Permit.

**HISTORIC ENGLAND:** No comments to make.

**LEAD LOCAL FLOOD AUTHORITY:** No comments to make.

NATIONAL HIGHWAYS (EAST OF ENGLAND): No objection

BRADWELL WITH PATTISWICK PARISH COUNCIL: No comments to make.

KELVEDON PARISH COUNCIL: Objection. It is considered to be an attempt to extensively vary the original planning approval which now amounts to planning creep. The current project bears almost no resemblance to what was originally granted planning consent and request that the whole project be re-assessed on its merits.

COGGESHALL PARISH COUNCIL (Adjacent): Objection. Despite significant local opposition to the original scheme, it could be argued that the IWMF project had some benefits attached in relation to its sustainability credentials with the facilities required under Condition 66, giving some mitigation to the incinerator. This Condition would have been imposed for sound national and local planning policy reasons, and afforded some sustainability to what is otherwise purely a new incineration plant, and on this basis, the Parish Council objects to the removal of the Condition.

Conditions are imposed to make applications acceptable in planning terms, where they otherwise may not be. The Condition is not a small one, but a requirement to ensure that all of the related services being proposed would also come forward, to ensure that waste treatments other than purely incineration would occur.

The fundamental structure of how this project was originally put forward to both Essex County Council, and the community, has been undermined and the removal of Condition 66 will bring the process to the point where it is an entirely new proposal. Any such new proposal should be required to be put in as a new planning application to be determined on its merits within the current policy framework and overall guidance, along with our understanding of how the incineration of waste should be dealt with in 2023. This scheme was originally permitted - with the associated recycling elements - in 2010. Even within the intervening 13 years, our understanding of the effect of burning on the climate has vastly changed and is becoming unacceptable. Therefore, one of the first questions that should be asked is whether this scheme would be permitted in its incineration only guise, today.

If the argument for not bringing forward the associated works is one of viability, and the removal of the impositions under Condition 66 are needed in order to make it viable, then the entire project should stop, as it is therefore fundamentally unviable in its proposed form. There should not be a situation whereby the sub-division of a planning permission from the conditions deemed necessary at the time, is permitted.

SILVER END PARISH COUNCIL (adjacent): No comments received.

RIVENHALL PARISH COUNCIL (nearby): Objection. The application raises further complex planning and legal matters which are a consequence of the long planning history for the site and the numerous changes of plans – and the failure to deliver (i.e. bring to operation) any permission given to date.

The first permission for the “Integrated” waste site, which included a significant proportion of recycling, was given following a Public Planning Inquiry, by the Secretary of State, in March 2010. Over 60 planning conditions were imposed, to give the Local Planning Authority (LPA) and local communities assurances about control of impacts for what is a major industrial development in the countryside.

A significant s73 variation was then granted by the LPA, Essex County Council, in February 2016, which reduced the proportion of recycling and greatly increased the proportion of waste incineration. There have also been other changes and overall, the amount of consented waste incineration has increased from 300,000 tpa to 595,000 tpa. Prior to 2010 there were also consents for waste plants on the site which did not involve waste incineration, but these were never implemented.

This latest application seeks the removal of Condition 66 (C66) from the planning permission for the site referenced ESS/34/15/BTE (the major s73 variation) which was granted by ECC in February 2016.

An approved plan of action and a condition 69 was attached to the C66 discharge notice requiring that the 2016 consent be implemented in full so that the consented facility is actually built. The applicants in the current application are arguing that they are not required to deliver the consent and that removal of such requirements would not lead to significant environmental effects.

However, such an assurance cannot be made. The applicants have repeatedly stated at the Rivenhall Airfield Waste Site Liaison meetings (to which Rivenhall Parish Council sends representatives who always attend), that they will not be building to the consent. The applicants have stated that they are seeking a series of significant changes to the consent including increased electricity production and alternative uses for heat. The consent says that to deliver Combined Heat and Power status, the facility includes a paper pulping unit linked to the incinerator to use heat, steam and electricity. The applicants have stated that the paper pulping unit, the footprint of which is leased to a different company, is “not viable and will not be built”. They have given no assurances that they will deliver any of the consented recycling elements of the extant consent – so that is potentially no paper pulping plant, no materials recycling and no anaerobic digestion (AD).

The applicants (Indaver) knew when they acquired the site what the planning requirements were, yet have set about dismantling them just as Gent Fairhead sought to repeatedly alter the 2010 original consent (as the previous owners).

C66 of the 2016 consent related to the event that the waste facility is not brought into beneficial use (i.e. operating) within 5 years of commencement of the development. That period has already lapsed – and by some margin, as it became due in February 2021.

C66 required that a plan of action for an alternative use or a scheme of rehabilitation for the site would be required for approval by the Waste Planning Authority and that it should be implemented within 6 months of approval by the Waste Planning Authority.



The approved plan of action is that the site should be built according to the 2016 consent. Yet the applicants have made it clear they will not do so.

The applicants argue in the current application that the only reason that C66 was considered necessary when it was imposed in February 2016 was due to the absence of an environmental permit and the consequential desire to mitigate the risk that the planning permission might be implemented and construction commenced, but then halted prior to the start of operation because the necessary environmental permit could not be obtained.

What the applicants fail to address in their current application, but have admitted to the Waste Site Liaison meeting, is that the changes they seek to the consent for the facility may require a new or amended environmental permit. There is no guarantee that the current permit will be the one that is in place for the facility if and when it starts operations. The applicants also assume that there will be no significant changes to environmental impacts as a result of their proposed changes and yet have submitted a Scoping Opinion request for a series of huge glasshouses to be built on land that has long been allocated within the planning consents for both the waste site and the quarry land for environmental restoration to meadows, woodland and agricultural land, with a road access though part of that land. If such major changes are not approved, and for other reasons such as the commercial environment, there remains a risk that overall, the waste facility will not be delivered.

The applicants conclude that, in deleting C66, Essex County Council should not impose any new condition requiring full or entire implementation of the 2016 consent. In other words, they seek an almost blank sheet of paper to do as they wish. The applicants state:

“To impose a new condition through this s73 application to require full or entire implementation would be an unlawful new and onerous burden” and that the “legal position is that the partial implementation of the development is lawful”. However, no indication is given as to what “partial” means.

In conclusion, this latest application to change the waste site consent introduces yet more uncertainty and further undermines any residual confidence that local communities have in what will actually be built. There can be no firm assurances on environmental impacts as it is simply unknown as to what the applicants will actually build whilst suggested and proposed changes keep being raised by them.

If successful, the current application would deliver an almost blank sheet of paper (in planning terms) to the applicants to build whatever parts of the current consent they wish to build and nothing more, whilst at the same time applying for other changes. This despite decades of planning history for the site. It appears that the only part of the facility the applicants are committed to build is the waste incinerator and in that case the facility could not be described as “integrated”.

Rivenhall Parish Council would submit that the current application should be refused and that the applicants should be required to build to the extant consent. Failing that, and as the parish council has repeatedly requested, a new and full planning application should be required to detail what the applicants actually do

wish to build, and that should be subject to full consultation and appraisal by the local community and statutory consultees in order to put an end to the decades of planning creep on the site.

FEERING PARISH COUNCIL (nearby): No objection to an obligation to carry out the planning application as it still stands are not removed and that all elements of the IWMF as permitted are delivered within a timely fashion.

LOCAL MEMBER- BRAINTREE - Witham Northern: Any comments will be reported verbally.

LOCAL MEMBER- BRAINTREE - Braintree Eastern: Objection. My view that Essex County Council is not applying the criteria for Section 73 correctly.

Indaver submitted a minor-material amendment (S73) to ECC with regards to the planning permission of the Rivenhall Integrated Waste Management Facility, the MMA is summarised below:

- Continuation of development of the Integrated Waste Management Facility (IWMF) with deletion of condition 66, approved details thereunder and associated conditions (Plan of Action if development not taken forward within 5 years) of planning permission ESS/34/15/BTE (ref: ESS/39/23/BTE).

It is my view this is not a “minor-material amendment” and should result in a new Environment Impact Assessment being carried out using today’s criteria and legislation and not that of 2010 as much has changed since then.

I understand that last month (May 2023) ECC decided a new EIA was not required, because “Deletion of the approved details and associated conditions, would not change the development permitted under the original planning permission, thus there would be no change to the characteristics of the development as described in the list above, which were considered as part of the Environmental Statement and subsequent addendums to that Environmental Statement”.

It has been pointed out to me that this was not the correct test and ECC should have considered whether the amended proposed development as a whole would comprise EIA development and not simply whether the changes amounted to a significant change to the existing development.

Deleting Condition 66 is a material change because it changes the IWMF into an waste incinerator facility only and would be different from what was envisaged by the then Secretary of State in 2010; basically it is not a minor material amendment. Therefore, please will you look at whether Section 73 has been applied correctly and whether a new EIA is required.

It is my view that deleting Condition 66 is such a huge material consideration, it should be called in by today’s Secretary of State.

## 6. REPRESENTATIONS

6 properties were directly notified of the application of which only 2 are residential properties. 13 letters of representation have been received These relate to planning issues, summarised as follows:

<u>Observation</u>	<u>Comment</u>
Object to the principle of a waste facility close to Silver End, as moved to the area for green surroundings and better air quality. The facility would reduce air quality.	The principle of the IWMF was established through the original planning permission determined following a call-in inquiry.
Object as removal of condition 66 ensure the facility is built in accordance with the agreed plans.	See appraisal
The application raises further complex planning and legal matters a consequence of numerous changes of plans and failure to bring into operation any facility.	See appraisal
The planning conditions give assurance to the public that the impacts of the development will be controlled.	See appraisal
Past permissions have watered down the recycling elements of the proposal and increased the waste incineration facility to nearly 600,000tpa.	See appraisal
Applicants state that the changes would not result in additional impacts on the local community, but it's not clear what will be built.	See appraisal
All aspects keep changing and recently developers announced plans to build huge glasshouses all around the waste site on land agreed to be restored to meadows, woodland and agricultural land.	See section 7
Application should be refused and either Applicant's should be required to build all what they have planning permission for or make a new planning application for what they wish to build, with full consultation to avoid decades of planning creep.	See appraisal

<p>Indaver (the applicant) have stated that they will not build or unlikely to build all the elements of the IWWMF, thus not delivering the AD, MRF or the paper pulping plant that the Inspector took into account in 2009/10 when making his recommendation for approval.</p>	<p>See appraisal</p>
<p>Applications considered since 2010 have reduced the recycling elements of the IWWMF, increased the proportion of incineration and demonstrated the lack of viability of an integrated facility.</p>	<p>See appraisal</p>
<p>ECC imposed conditions in determining the submission under condition 66 to require all elements of the IWWMF to be built, but the applicant's stated the would not build all elements as they were unviable.</p>	<p>See appraisal</p>
<p>Applicant argues condition 66 was only imposed as at the time no Environmental Permit had been obtained. But if all elements of the IWWMF are not to be built, the EA have stated an amended EP would be required, which potentially they may not get that amended EP.</p>	<p>See appraisal</p>
<p>Glasshouses are being considered linked to the IWWMF which would significantly change the approved restoration scheme for the surrounding quarry.</p>	<p>See section 7</p>
<p>Applicant considers partial implementation of the planning permission is lawful, but not clear what partial means.</p>	<p>See appraisal</p>
<p>Current application introduces yet more uncertainty and further undermines any residual confidence that local communities have in what will actually be built and what environmental impacts there would be.</p>	<p>See appraisal</p>
<p>If current application approved it would give blank sheet of paper (in planning terms) to build whatever parts of the</p>	<p>See appraisal</p>

current permission they wish to build and nothing more.

If the applicant only builds the EfW it would not be an integrated facility. See appraisal

## 7. Other developments associated with IWMF

Representations refer to two other developments associated with the IWMF.

A) Increased power output The applicant Indaver is seeking to increase the power output of the facility. The current planning permission allows power output up to 49.9MW. This the maximum output of a power plant they may be granted by a local authority. Due to technological changes Indaver consider they can generate greater than 49.9MW, without increasing the volume of waste permitted to be treated through the EfW plant and without any additional traffic movements above those currently permitted.

Power plants generating greater than 49.9MW are classified as National Significant Infrastructure Projects (NSIP) under the 2008 Planning Act and applications for such are determined by the Planning Inspectorate. NSIPs have a specific procedure which includes a pre-application consultation stage. The NSIP website indicates an application is expected in the fourth quarter of 2023. The application to PINS for a Development Consent Order to increase the power output at Rivenhall IWMF is currently at the pre-application consultation stage, consultation having commenced on the 29 June 2023 for 8 weeks. This is a separate planning process and does not impact on the determination of the current planning application.

B) Greenhouses A separate developer Oasthouse, but with knowledge from Indaver, has recently made a request for pre-application advice to both ECC as Minerals and Waste Planning Authority and Braintree District Council regarding the potential for development of greenhouses on land surrounding the IWMF site, on parts of the former Bradwell Quarry. This potential proposal has been presented at the Rivenhall IWMF liaison group and the local Parish Council consulted on the pre-application request. The greenhouses are proposed to use heat from IWMF to heat the greenhouses and utilise CO<sup>2</sup> in the growing process. . As part of this pre-application advice it has been agreed between the Minerals and Waste Planning Authority and Braintree District Council that the application would be a County Matter as, if the application were to come forward, it would significantly change the approved restoration scheme for Bradwell Quarry and would require linkages to the IWMF. At this stage, no planning application has been made.

These applications will be dealt with on their individual merits but, as no planning permissions have been issued, they currently have no bearing on the determination of the current application subject of this report.

## 8. Screening Opinion Direction Request

Under the Environmental Impact Regulations 2017, it was necessary to screen the proposed application to assess whether it was EIA development and if so whether it should be submitted with a revised or new Environmental Statement. The original 2008 and subsequent 2015 applications were supported by Environmental Statements.

The Screening Opinion issued by the WPA concluded that the application was not EIA development as the development, as changed, did not meet the thresholds requiring mandatory EIA and would not give rise to significant environmental effects. The application would not change what is permitted by the current extant planning permission.

There is a right for any third party to seek what is known as a "Screening Direction" from the SoS. A Screening Direction is the SoS's view as to whether the application is EIA development and should be supported by an Environmental Statement.

A request for a Screening Direction has been made by a third party to the SoS. The Planning Casework Unit at the Department of Levelling Up, Housing and Communities has indicated that a decision on the request may take as long as 90 days, if not longer, to consider. This does not prevent the WPA making a resolution on the application, but it would not necessarily be appropriate to issue a decision on the application until such time as the SoS has considered the request and notified the WPA of its decision.

## **9. Call-In**

Representations have made reference to the fact that the application should be called-in i.e. that the determination of the application should be undertaken by the SoS. At this stage, the WPA has not received any notification from the SoS that a request for call-in is being considered.

## **10. APPRAISAL**

The key issues for consideration are:

- A. The original purpose of condition 66;
- B. What was approved under Condition 66 in March 2022;
- C. Changes in case law since determination of the submission under condition 66;
- D. The consequences with respect to planning control that would arise from the deletion of condition 66, the details approved thereunder and associated conditions;
- E. The environmental impacts that would arise from the deletion of C66; and
- F. Relationship to outstanding appeal with respect to C66

### **A THE ORIGINAL PURPOSE OF CONDITION 66**

Condition 66 was imposed in 2016 when the WPA determined the application to change the capacities of the various elements of the IWFM (application reference ESS/34/15/BTE). At that time while the IWFM had gained planning permission it

had not obtained an Environmental Permit (EP) from the Environment Agency that would allow it to operate as permitted by the planning permission.

It was unlikely that a developer would take the commercial risk to progress to full construction of the IWMF without an EP, but it was likely that a technical implementation would take place such that the planning permission would not expire. Condition 66 sought to address the possibility that the site might technically be started but not obtain an EP and therefore not progress beyond initial groundworks. Groundworks that constituted technical implementation were undertaken in March 2016, but then further works did not progress immediately beyond this time. The condition sought to require that if development had not progressed within 5 years from the date of commencement that a scheme for rehabilitation or a plan of action for an alternative use for the site should be submitted within 6 months. The Plan of Action was required by September 2021.

As explained, the applicant submitted a Plan Of Action (ECC reference ESS/34/15/BTE/66/01) in September 2021, setting out 3 potential options, and the submission was determined in February 2022 by the Development and Regulation Committee. A copy of the Committee report documents are available [here](#).

The IWMF obtained an EP in June 2020 that was in line with the planning permission ESS/34/15/BTE. Construction of the CHP/EfW element of the IWMF development is now positively progressing (see the photographs in Section 1 of the report) and the original purpose for the planning condition imposed in 2016 has fallen away.

#### B WHAT WAS APPROVED UNDER CONDITION 66 of ESS/34/15/BTE/66/01 IN MARCH 2022

In March 2022, the decision on the submission under Condition 66 was issued, approving the details under Option 1 of the applicant's submission i.e. that the IWMF should be built as per the planning permission. The approval was subject to two conditions. The first ensuring that there was no doubt that in approving Option 1, the approval was still subject to all the conditions of the ESS/34/15/BTE and a further condition that required all elements of the IWMF to be constructed prior to the operation of the CHP/EfW plant and that the construction should be completed by 31 December 2026.

The applicant has appealed this decision as it is their view that it is unlawful to require all elements of the IWMF to be built prior to operation of the EfW facility and that it is unlawful to impose a time limit on completion. The appeal is currently scheduled to be heard in October 2023.

#### C CHANGES IN CASE LAW SINCE DETERMINATION OF THE SUBMISSION UNDER CONDITION 66.

Since determination of the submission under condition 66 there has been a planning case determined in the Supreme Court - *Hillside Parks Ltd. v. Snowdonia National Park Authority* [2022] UKSC 30, which has clarified that non-completion of a project for which planning permission has been granted (i.e.

partial implementation) does not make development carried out pursuant to the permission unlawful.

This is in line with Government guidance paragraph 21a-005 of National Planning Practice Guidance which states:

*“Are there any circumstances where planning conditions should not be used?*

*...*

*Conditions requiring the development to be carried out in its entirety:*

*Conditions requiring a development to be carried out in its entirety will fail the test of necessity by requiring more than is needed to deal with the problem they are designed to solve. Such a condition is also likely to be difficult to enforce due to the range of external factors that can influence a decision whether or not to carry out and complete a development.”*

Without pre-judging the appeal outcome, it is likely that this case and guidance will be taken into account by the appointed Planning Inspector.

In light of the above and in discussion with the appellant and Braintree District Council (a rule 6 party to the appeal), it was agreed to consider resolving the matters subject of the appeal via an application by the appellant/applicant (Indaver) to delete condition 66, including the approved details thereunder and associated conditions and hence the current application has come forward.

**D THE CONSEQUENCES WITH RESPECT TO PLANNING CONTROL THAT WOULD ARISE FROM THE DELETION OF CONDITION 66, THE DETAILS APPROVED THEREUNDER AND ASSOCIATED CONDITIONS.**

If C66 were deleted as applied for, there would not be a condition that specifically requires:

- a) All elements of the IWWMF to be built prior to operation of the EfW facility
- b) A condition requiring that all elements are constructed by 31 December 2026.

The WPA remains of the view that the planning permission for the IWWMF is permission for an Integrated Waste Management Facility – the components listed in the description of development highlighted in the title of this report. The application for the IWWMF was considered to represent ‘sustainable development’ in the context of planning guidance (NPPF) notably because of the benefits of integration. For example, having an MRF co-located with CHP facility, providing the last opportunity to recover recyclables and that of co-locating a paper pulp plant with the CHP, meant heat and steam could be used directly in the paper pulp facility, which is more efficient use of heat and steam than power generation alone. Such integrated uses sought to maximise the sustainability of the IWWMF.

However, it is acknowledged that the applicant has stated that the paper market has changed since 2010 when the permission was granted, in particular since the COVID 19 Pandemic the greater prevalence of working online and from home has reduced paper usage in offices.



Indaver as a company has been open in stating that it does not now consider the paper pulp plant to be viable. Indaver has been exploring with other developers other options for direct use of heat and/or CO<sup>2</sup>. As explained previously, pre-application advice has been provided on potential greenhouses using heat and CO<sup>2</sup>. MBT also permitted as part of the IWWMF is a technology that has since been shown to have disadvantages because, while reducing the volume of waste, ultimately the output still needs to be disposed of either through landfill or incineration; reduction of the volume of waste is less beneficial when co-located with an incinerator. Indaver has stated that it doesn't consider there is sufficient feed material for the AD plant permitted as part of the IWWMF. Thus at the current time Indaver is only indicated it is progressing the EfW facility, but has stated it is exploring other waste management facilities that could be co-located at the site, in particular a MRF.

As explained earlier, national planning guidance considers planning conditions requiring completion of a development are unreasonable, because not all factors are fully in the control of the developer, such as the change in circumstances since 2016 as put forward by the developer as not matters in their control. As previously mentioned, the PPG states, with respect to conditions that require development in its entirety, *“Such a condition is also likely to be difficult to enforce due to the range of external factors that can influence a decision whether or not to carry out and complete a development.”*

While the WPA acknowledges the above, the WPA remains of the view that the SoS in determining the original application in 2010 and the WPA in considering the 2015 variation, took into account the integration of the facility and how this contributed to delivering sustainable development. Without this integration the IWWMF would not be the IWWMF as permitted and would be a standalone EfW, which is less sustainable than if all elements were delivered. However, it has to be recognised that sustainable development is made up of 3 dimensions, namely, social, economic and environmental. Indaver at this stage does not consider elements of the IWWMF are financially viable thereby impacting the economic sustainability of those elements of the IWWMF.

Nonetheless, even if C66 was deleted, the IWWMF can only be developed in accordance with the planning permission. Representees have stated that removal of condition 66 would lead to uncertainty as to what is to be developed. While it is not clear what elements of the IWWMF will be finally delivered, apart from the EfW, the existing planning permission only permits what is set out in the planning decision notice. Condition 2, for example, approves all the main drawings to which development under the planning permission is required to be built unless alternative approval is given via any future applications to the WPA, or the SoS in the case of DCO development. In addition, other conditions of the planning permission control various detailed aspects of the development. For example the building roof details, lighting, landscaping, ecological mitigation, access and noise which minimise the environmental impacts of the development. The IWWMF is also subject to an EP administered by the Environment Agency, which controls pollution aspects of the IWWMF.

In addition, the Local County Council Member for Braintree Eastern doesn't consider the deletion of C66 should be dealt with by a S73, considering it to be a

material change to the development, because it removes the specific requirement to build all elements of the IWMF. As explained earlier, the WPA's view has always been that the planning permission required all elements to be built and in many respects the condition on the approval of the Plan of Action just reinforced the sequencing in specific terms. In addition, recent caselaw would indicate that not developing all elements of a permitted development, does not make that part that has been developed unlawful and as explained above, the deletion of C66 doesn't change what is permitted by the planning permission. It is therefore considered that the deletion of condition 66 would not in fact result in a more than a minor material amendment to the permitted development.

It is understood that if certain elements of the IWMF are not built then a variation may be required to the EP administered by the Environment Agency. While no application has been made to the EA at this stage, it does not prevent the developer progressing with the development. Ultimately, if a variation to the EP was not obtained the developer could develop the site fully as permitted through the extant planning permission and operate under the extant EP.

Braintree District Council, several parish councils and representees have objected to the application on the basis that, if the development for the waste facility is not going to be the integrated waste facility considered by the SoS in 2010 and the WPA in 2015, then the development should be subject to a completely new application. It is suggested the new planning application should set out what would be developed at the site, which might for instance be a stand-alone EfW facility and the proposals considered against current local and national planning policy, particularly with respect to climate change.

Nonetheless, at the current time, it is considered that there is no tangible position to claim Indaver are not lawfully implementing the extant planning permission. There is no breach of planning control and thus there is no justification to require a new planning application. However, should Indaver only build out and beneficially operate the EfW facility alone, further advice may be needed on whether a breach of planning control would exist at that time.

## E THE ENVIRONMENTAL IMPACTS THAT WOULD ARISE FROM THE DELETION OF C66

As explained above, while deletion of C66 would mean there was no direct conditional requirement to build all elements of the IWMF prior to operation of the CHP/EfW plant or to complete it by the 31 December 2026, the deletion would not change what is permitted to be developed and operated on the site.

As Indaver has openly stated, it is likely that not all elements of the IWMF will be built, however, building less than what was permitted could, for example, lead to different environmental impacts than those assessed as part of the previous Environmental Impact Assessment process. While it is considered that not building all elements of the IWMF could deliver less environmentally sustainable development, being less sustainable does not necessarily equate to greater environmental impacts in the locality. The environmental impacts were considered both in 2010 by the SoS and by the WPA in 2016 and appropriate mitigation

required as part of the proposals or required and controlled through the planning conditions and legal obligations.

Not developing all elements of the IWMF (as long as the main building and EfW plant is developed as permitted) would not change the following matters considered as part of the original Environment Statement:

- Water Environment
- Ecology Impact
- Landscape and visual Impact
- Cultural Heritage
- Traffic and Transport
- Air Quality
- Noise and vibration
- Social and Community Issues
- Human Health

However, further advice on this position may be needed depending on what is eventually built out and operated at that point in time.

#### F RELATIONSHIP TO OUTSTANDING APPEAL WITH RESPECT TO C66

Currently the applicant has appealed the decision of the WPA with respect to C66 and an inquiry is programmed for October 2023. At the time of submitting the S73 application the applicant had indicated that , if the application was approved, they would be willing to withdraw the appeal.

In view of the clarifying caselaw since determination of the submission under condition 66, as set out earlier (Section C), as part of the preparation the pending planning appeal, Counsel's advice has been sought and it is considered that the WPA's case may have been undermined by this recent caselaw. Defending such an appeal will require significant staff and financial resources. It is not considered in the wider public interest that the WPA can provide any additional evidence, bar that already provided within the February 2022 Committee Report and submitted Statement Of Case, which would justify its position in relation to the pending appeal.

The delay resulting from the SoS notification – i.e. that it may take 90 days or longer to consider the EIA Screening Direction - means potentially no decision on the current application, if positively resolved, can be issued in time to negate the need for a public inquiry into the appeal. As a result, the appellant has advised that they are likely to continue with the appeal and planned Public Inquiry in October 2023, regardless of the resolution on the current application.

It is considered that, due to the clarification provided by the recent *Hillside* case, in any event, the WPA should not continue with participation in the public inquiry, other than relying on the evidence already submitted, as it would not be in the wider public interest to do so.

## 11. LEGAL AGREEMENT

The current planning permission is subject to a legal agreement and deeds of variation associated with previous S73/variation planning permissions. In order to ensure the obligations remain associated with any new planning permission, it is necessary for all parties to the agreement to enter into a deed of variation to the agreement. Thus if planning permission were to be granted i.e. deletion of C66, a deed of variation would need to be completed before the planning permission could be issued.

## **12. CONCLUSION**

The deletion of Condition 66, the details approved thereunder and the associated conditions would remove a specific condition requiring all elements of the IWWMF to be built before the EfW plant could be operated and also remove the requirement to complete all construction by 2026.

Recent caselaw has clarified that partial implementation of a development is not unlawful and thus the requirements approved under condition 66 are considered to be unenforceable. This position is also supported by planning guidance.

However, it should be emphasised that it is the opinion of the WPA that the removal of C66 does not give the developer the right to build anything other than that which has been approved. The development would still be required to comply with all the conditions of the planning permission, including, layout, access, vehicle numbers, waste throughput, lighting noise, ecology etc, unless planning applications are made either to the WPA or SoS for changes and these applications subsequently approved.

It remains the view of the WPA that the IWWMF was permitted as an integrated facility and that, without the integration of all the elements of the IWWMF, it would not deliver the full benefits of integration. And as a result it would deliver less environmentally sustainable development.

Should permission be resolved to be granted, no decision on the application would be issued until such time as the SoS has issued its decision on the EIA Screening Direction.

## **13. RECOMMENDED**

13.1 That planning permission be granted subject to the following:

- a) The SoS not concluding the application should be supported by an EIA and/or that the application should be called in for his determination;
- b) Legal agreement: The prior completion, within 6 months (unless otherwise agreed with Chairman) a Deed of Variation to the existing Legal Agreement to ensure all previous legal obligations remain associated with the new permission; and
- c) Conditions: Imposition of the previous conditions, except C66, and incorporating any details approved under the conditions or non material

amendments granted to existing conditions as set in Appendix A

- 13.2 If the appellant fails to withdraw the appeal into Condition 66 decision ECC Ref ESS/34/15/BTE/06/1APP (PINS Ref APP/Z1585/W/22/3306429) that ECC should not present further evidence and not provide representation at the Public Inquiry

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## **BACKGROUND PAPERS**

Consultation replies  
Representations

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## **THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017 (AS AMENDED)**

The proposed development would not be located adjacent or within a European site.

Therefore, it is considered that an Appropriate Assessment under Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (as amended) is not required.

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## **EQUALITIES IMPACT ASSESSMENT**

This report only concerns the determination of an application for planning permission. It does however take into account any equality implications. The recommendation has been made after consideration of the application and supporting documents, the development plan, government policy and guidance, representations and all other material planning considerations as detailed in the body of the report.

## **STATEMENT OF HOW THE LOCAL AUTHORITY HAS WORKED WITH THE APPLICANT IN A POSITIVE AND PROACTIVE MANNER**

In determining this planning application, the Waste Planning Authority has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with the planning application by liaising with respondents and the applicant/agent. This approach has been taken positively and proactively in accordance with the requirement in the NPPF, as set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

## **LOCAL MEMBER NOTIFICATION**

BRAINTREE - Witham Northern  
BRAINTREE - Braintree Eastern

## Appendix A – Conditions for ESS/39/23/BTE

- 1 This planning permission will have deemed to have been implemented and commenced from the date of the planning permission. The development permitted under planning permission ESS/34/15/BTE was notified as commenced on 1 March 2016 by letters dated 1 March 2016 and 3 March 2016 from Holmes and Hills Solicitors. The commencement was acknowledged by the Waste Planning Authority under reference ESS/34/15/BTE/1/1 on 14 March 2016.

*Reason: To comply with section 91 of the Town and Country Planning Act 1990 (as amended).*

- 2 The development hereby permitted shall only be carried out in accordance with planning application ECC ref ESS/37/08/BTE (PINS Ref. APP/Z1585/V/09/2104804) dated 26 August 2008 (as amended) and

As amended by Non-Material Amendment application reference ESS/37/08/BTE/NMA2 dated 4 September 2012, accompanied by letter from Berwin Leighton Paisner dated 29 August 2012 and email dated 18 September 2012 as approved by the Waste Planning Authority on 25 October 2012.

and

As amended by planning application reference ESS/44/14/BTE dated 5 August 2014, accompanied by letter from Holmes & Hills dated 5 August 2014, report entitled "Business development since obtaining planning permission" dated August 2014, report "Changes in the Case for Need since September 2009" dated August 2014 and letters from Honace dated 5 August 2014 and Golder Associates dated 4 August 2014 and granted by the Waste Planning Authority on 4 December 2014.

and

As amended by planning application reference ESS/55/14/BTE dated 12 December 2014, accompanied by letter from Holmes & Hills LLP dated 12 December 2014, SLR report "Justification for Removal of Fuel Sourcing Conditions" Rev 4" dated December 2014 and letter from Honace dated 5 August 2014 and Golder Associates dated 4 August 2014.

And

As amended by planning application reference ESS/34/15/BTE dated 4 August 2015 and drawing numbers:

Drawing Ref	Title	Dated
1-1A	Land Ownership & Proposed Site Plan	21/12/15
1-2B	Proposed Planning Application Area and Site Plan	21/05/15
1-5B	Typical Arrangement and Architectural Features	21/05/15

1-8	Schematic Arrangement of Woodhouse Farm	21/05/15
1-9A	Simplified Process Flow	21/05/15
1-10A	Integrated Process Flow	21/05/15
3-3B	Site Plan Layout	21/05/15
3-8E	Building and Process Cross Sections	Dec 2015
3-12E	Building and Process Layout and Cross Sections	Dec 2015
3-14B	Upper Lagoon & Wetland Shelf	18/12/14
3-16	Services Plan	21/05/15
3-19D	General Arrangement & Front Elevation	Dec 2015
8-6A	Landscape Mitigation Measures	21/05/15
IT569/SK/06 A	Proposed Improvements to Site Access Road Junction with Church Road	05/08/08
IT569/SK/07 A	Proposed Improvements to Site Access Road Junction with Ash Lane	05/08/08
19-2C	Tree Survey	21/05/15
19-3C	The Constraints and Protection Plan	21/05/15
19-5A	Base Plan Woodhouse Farm	21/05/15
IWMF RP 01	IWMF Roof Layout Plan	24/12/15

As amended by Non-Material Amendment application reference ESS/34/15/BTE/NMA1 dated 10 August 2021, accompanied by letter from RPS dated 9 August 2021 as approved by the Waste Planning Authority on 30 September 2021.

As amended by Non-Material Amendment application Reference ESS/34/15/BTE/NMA2 dated 10 December 2021 accompanied by letter from RPS dated 16 December 2021 as approved by Waste Planning Authority on 31 January 2022.

As amended by Non-Material Amendment application reference ESS/34/15/BTE/NMA4 dated 10 December 2021 accompanied by covering letter dated 16 December 2021 as approved by the Waste Planning Authority on 13 January 2022.

As amended by Non-Material Amendment application reference ESS/34/15/BTE/NMA5 dated 25 April 2023 accompanied by covering letter dated 20 April 2023 as approved by Waste Planning Authority on 31 May 2023.

As amended by Non Material Amendment application reference ESS/34/15/BTE/NMA6 dated 5 May 2023 and covering letter dated 3 May 2023 as approved by the Waste Planning Authority on 7 June 2023.

And in accordance with any non-material amendment(s) as may be subsequently approved in writing by the Waste Planning Authority and except as varied by the following conditions:

*Reason: For the avoidance of doubt as to the nature of the development hereby permitted, to ensure development is carried out in accordance with the approved application drawings, details (except as varied by other conditions), to ensure that the development is carried out with the minimum harm to the local environment and in accordance with Essex and Southend Waste Local Plan 2017 (WLP) policies 1, 3, 10, 11 and 12 and Braintree District Local Plan 2022 (BDLP) policies SP1, SP7, LPP1, LPP47, LPP52, LPP57, LPP63, LPP64, LPP65, LPP66, LPP67, LPP70, LPP71, LPP72, and LPP77.*

- 3 The total number of Heavy Goods Vehicle (HGV<sup>1</sup>) movements associated with the excavation of materials (i.e. overburden, sand, gravel, and boulder clay) and import and/or export of materials associated with the operation of the completed Integrated Waste Management Facility (IW<sup>2</sup>) hereby permitted shall not exceed the following limits:

404 movements 202 in and 202 out per day (Monday to Friday);  
202 movements 101 in and 101 out per day (Saturdays);

and shall not take place on Sundays, Public or Bank Holidays, except for clearances from Household Waste Recycling Centres between 10:00 and 16:00 hours as required by the Waste Disposal Authority and previously approved in writing by the Waste Planning Authority. No HGV movements shall take place outside the hours of operation authorised in Conditions 34 & 36 of this permission.

<sup>1</sup> An HGV shall be defined as having a gross vehicle weight of 7.5 tonnes or more.

<sup>2</sup> IW<sup>2</sup> shall be defined as the buildings, structures and associated plant and equipment for the treatment of waste at the site.

*Reason: In the interests of highway safety, safeguarding local amenity and to comply with, WLP policies 10 and 12 and BDLP policies LPP52 and LPP66.*

- 4 The total number of HGV vehicle movements associated with the construction of the IW<sup>2</sup> (including deliveries of building materials) when combined with the maximum permitted vehicle movements under Condition 3 shall not exceed the following limits 404 movements 202 in and 202 out per day (Monday to Sunday). No HGV movements shall take place outside the hours of operation authorised in Condition 35 of this permission.

*Reason: In the interests of highway safety, safeguarding local amenity and to comply with, WLP policies 10 and 12 BDLP policies LPP52 and LPP66.*

- 5 A written record of daily HGV movements into and out of the site shall be maintained by the operator from commencement of the development and kept for the previous 2 years and shall be supplied to the Waste Planning Authority within 14 days of a written request. The details for each vehicle shall include the identity of the vehicle operator, the type and size of the vehicle, the vehicle registration number, and an indication of whether the vehicle is empty or loaded.

*Reason: In the interests of highway safety, safeguarding local amenity and to comply with, WLP policies 10 and 12 and BDLP policies LPP52 and LPP66.*



- 6 The development hereby permitted shall be implemented in accordance with the details submitted with respect to the extended access road and crossing points with Public Right of Way. The approved details include the application for approval of details reserved by condition dated 4 August 2015 and include the following drawings:

Drawing Ref	Title	Date
IT569/PAA/01A	Horizontal & vertical alignment of extended access road Sheet 1	18/11/15
IT569/PAA/02C	Horizontal & vertical alignment of extended access road Sheet 2	18/11/15
IT569/PAA/03	Extended access road cross sections, Sheet 1	14/05/15
IT569/PAA/04	Extended access road cross sections, Sheet 2	14/05/15
IT569/PAA/05	Extended access road cross sections, Sheet 3	14/05/15
IT569/PAA/06	Extended access road cross sections, Sheet 4	14/05/15
IT569/PAA/07A	Extended access road cross sections, Sheet 5	14/07/15
IT569/PAA/08	Typical drainage details	May 2015
IT569/PAA/09	Typical access road detailed cross sections	May 2015
IT569/PAA/10	Drainage long section detail, Sheet 1	May 2015
IT569/PAA/11	Drainage long section detail, Sheet 2	May 2015
142064-DC-GA-C-116 C	Access road longitudinal section	17/12/15
142064-DC-GA-C-117	Access road cross sections	Jun 2015
IT569_WR_01_Rev A	Widening details for access road between Church Road and Ash lane	15/05/2015
IT569/S278_01G	Footpath crossing typical detail	12/11/15

*Reason: In the interests of highway safety, safeguarding local amenity and to comply with WLP policies 10 and 12 and BDLP policies LPP42, LPP52 and LPP66.*

- 7 No works on the construction of the IWMF shall commence until the access road extension and widening and all footpath cross-over points have been constructed.

*Reason: In the interests of highway and pedestrian safety, safeguarding local amenity and to comply with, WLP policies 10 and 12 and BDLP policies LPP42, LPP52 and LPP66.*

- 8 No vehicles shall access or egress the site except via the access onto the Coggeshall Road (A120 trunk road) junction as shown on application drawing Figure 1-2.

*Reason: In the interests of highway safety, safeguarding local amenity and to comply with WLP policies 10 and 12 and BDLP policies LPP42, LPP52 and LPP66.*

- 9 No vehicles shall park on the access road between the A120 and Ash Lane.

*Reason: In the interests of highway safety, safeguarding local amenity and to comply with WLP policies 10 and 12 BDLP policies LPP42, LPP52 and LPP66.*

- 10 Intentionally blank  
NB Condition fully discharged see application reference ESS/55/14/BTE/10/01

- 11 Intentionally blank  
NB Condition fully discharged see application reference ESS/55/14/BTE/11/1

*Reason: To ensure that any heritage interest has been adequately investigated and recorded prior to the development taking place and to comply with WLP policy 10, BDLP policy LPP57 and in accordance with the NPPF.*

- 12 The development hereby permitted shall be implemented in accordance with the ecological works and works to the Woodhouse Farm moat approved on 17 August 2022 under condition 12 of planning permission ESS/34/15/BTE. The approved details are set out in the application for approval of details reserved by condition dated 12 November 2021, email from Indaver/RPS dated 27 Jul7 2022 and document “Rivenhall IWMF – Moat Plan of Action.

*Reason: To make appropriate provision for conserving and enhancing the natural environment within the approved development, in the interests of biodiversity and to protect the setting of the Woodhouse Farm Listed Buildings and in accordance with, WLP policy 10 and BDLP policies LPP47, LPP57, LPP63, LPP64, LPP65, LPP66 and LPP67.*

- 13 The development hereby permitted shall be implemented in accordance with the details submitted with respect to the signage, telecommunications equipment and lighting within the Woodhouse Farm complex (comprising Woodhouse Farmhouse, the Bakehouse, and the listed pump together with the adjoining land outlined in green on Plan 1 [which can be found in the S106 legal agreement dated 30 October 2009 associated with ESS/37/08/BTE]). The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the following drawings & documents:

Drawing Ref.	Title	Dated
135	Site plan & signage proposals	Jul 2015
	APC Communications solutions – Internet & voice solutions V2	14/07/15
	Pell Frischmann – Exterior lighting design	23/07/15

DW40019H001/P1	Proposed lighting layout	22/07/2015
CW40019H001	Proposed lighting to car parking and pedestrian areas	23/07/2015
	The Pharos LED bollard – Urbis Schreder	
	The Axia (the Green light) - Schreder	

The signage, telecommunications equipment and lighting shall be implemented in accordance with the details approved.

*Reason: To protect the setting of the Listed Buildings and in the interest of visual amenity and to comply with WLP policy 10 and BDLP policies SP1, SP7, LPP52, LPP57, LPP70 and LPP77 .*

- 14 The development hereby permitted shall be implemented in accordance with the details submitted with respect to the design and maintenance of the stack. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the following drawings and specifications:

Drawing Ref.	Title	Dated
LA01A	Chimney stack top cladding details plan & elevations	23/07/15
LA02A	Chimney stack top cladding details fixing details	23/07/15
	Alucobond reflect- technical data sheet	
	Alucobond – cleaning & maintenance of stove-lacquered surfaces	
	Genie – Self-propelled telescopic booms - specifications	
	Genie – Self-propelled telescopic booms - features	

The stack shall be constructed and maintained in accordance with the approved details throughout the life of the IWMF.

*Reason: In the interest of visual amenity and to protect the countryside and to comply with WLP policy 10 and BDLP policies LPP1, LPP47, LPP52, LPP57 and LPP67.*

- 15 Prior to construction of the IWMF buildings or the structures to the rear of the main building details of the IWMF buildings and structures including the design and samples of the external construction materials, colours and finishes of the external cladding of the, and design and operation of the vehicle entry and exit doors, shall be submitted to and approved in writing by the Waste Planning Authority. The development shall be implemented in accordance with the details and samples approved.

*Reason: For the avoidance of doubt, in the interests of visual and landscape amenity and to comply with WLP policy 10 and BDLP policies SP7, LPP1 and LPP52.*

- 16 Intentionally blank  
NB Condition not used by SoS in 2010
- 17 The development hereby permitted shall be implemented in accordance with the details submitted with respect to the management plan for the CHP plant to ensure there is no visible plume from the stack. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and documents referenced:
- S1552-0700-0008RSF entitled "CHP Management Plan for Plume Abatement" Issue no. 5 dated 16/02/16 by Fichtner; and
  - S1552-0700-0013RSF entitled "Plume Visibility Analysis" both by Fichtner.
- The development shall be implemented in accordance with the approved details.

*Reason: In the interest of visual amenity, to protect the countryside and to comply with WLP policy 10 and BDLP policies SP7, LPP47, LPP52, LPP67 and LPP70.*

- 18 The development hereby permitted shall be implemented in accordance with the details submitted with respect to the green roof for the main IWFM building. The approved details include the application for approval of details reserved by condition dated 4 August 2015, statement by Honace "Condition 18 Green Roof" and document entitled "Bauder extensive biodiverse vegetation (XF301)". The green roof shall be implemented in accordance with the details approved.

*Reason: In the interests of visual and landscape amenity and enhancement of ecological biodiversity and to comply with WLP policy 10 and BDLP policies SP7, LPP47, LPP52, LPP63 and LPP66.*

- 19 No works to install process equipment or plant within the IWFM shall commence until details of the IWFM process layout and configuration have been submitted to and approved in writing by the Waste Planning Authority. The development shall be implemented in accordance with the approved details.

*Reason: To ensure the layout and configuration of the process equipment and plant would not give rise to impacts not assessed as part of the application and Environmental Statement and to protect local amenity and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

- 20 The development hereby permitted shall be implemented in accordance with the details submitted with respect to construction compounds and parking of all vehicles and plant and equipment associated with the extraction of materials and the construction of the IWFM. The approved details include the application for approval of details reserved by condition dated 4 August 2015 and as set out on drawing CCE-HZI-50043049 Rev 0.3 dated 17/12/15. .

*Reason: In the interest of visual amenity, to protect biodiversity and the countryside and to comply with WLP policy 10 and BDLP policies SP7, LPP47, LPP52, LPP57, LPP63, LPP67, LPP70 and LPP77.*

- 21 No beneficial operation of the IWFM shall commence until details of the provision to be made for and the marking out of parking spaces for cars, HGVs and any other vehicles that may use the IWFM have been submitted to and approved in

writing by the Waste Planning Authority. The parking provision and marking out shall be implemented in accordance with the approved details. The parking areas shall be retained and maintained permanently for manoeuvring and parking. No HGVs shall park in the parking area adjacent to Woodhouse Farm complex except in relation to deliveries for the uses at Woodhouse Farm complex.

*Reason: In the interest of visual amenity, to protect biodiversity and the countryside and to comply with WLP policy 10 and BDLP policies SP7, LPP47, LPP52, LPP57, LPP63, LPP67, LPP70 and LPP77*

- 22 The development hereby permitted shall be implemented in accordance with the details submitted with respect to foul water management. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the following drawings and documents:

<b>Drawing Ref</b>	<b>Title</b>	<b>Dated</b>
142064-DC-GA-C-108G	Proposed drainage layout Sheet 1 of 2	16/10/15
142064-DC-GA-C-109G	Proposed drainage layout Sheet 2 of 2	16/10/15
142064-DC-GA-C-111A	Drainage Construction details	30/06/15

And email from Honace with enclosures dated 22/01/16 (17:13).

The foul water management scheme shall be implemented in accordance with the details.

*Reason: To minimise the risk of pollution on ground and surface water, to minimise the risk of flooding and to comply with WLP policy 10 and BDLP policies LPP70 and LPP77*

- 23 The development hereby permitted shall be implemented in accordance with the details submitted with respect to surface water drainage and ground water management. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the following drawings and documents:

<b>Drawing Ref</b>	<b>Title</b>	<b>Dated</b>
142064-DC-GA-C-108G	Proposed drainage layout Sheet 1 of 2	16/10/15
142064-DC-GA-C-109G	Proposed drainage layout Sheet 2 of 2	16/10/15
142064-DC-GA-C-111A	Drainage Construction details	30/06/15

And email from Honace with enclosures dated 22/01/16 (17:13).

The surface water drainage and ground water management scheme shall be implemented in accordance with the approved details.

***Reason:*** To minimise the risk of pollution on ground and surface water, to minimise the risk of flooding and to comply with WLP policy 10 and BDLP policies LPP70 and LPP74.

- 24 The development hereby permitted shall be implemented in accordance with the details submitted with respect to the scheme of ground water monitoring. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the following drawings and documents:

<b>Drawing ref</b>	<b>Title</b>	<b>Dated</b>
SOD-24 Rev A	Ground water borehole monitoring points	29/07/15
6-4	Groundwater Monitoring points	12/05/11
13 Rev A	Ground water Monitoring points	20/03/14
213033-150	As-built borehole locations	17/09/14
142064-DC-GA-C-111A	Drainage Construction details	30/06/15

- Appendix A – Bradwell Quarry Groundwater Monitoring plots Jan 2008 to Jul 2015
- CC Ground Investigations Ltd – Key to exploratory hole logs
- CC Ground Investigations Ltd – Rotary borehole log for borehole nos. BH10 (sheets 1 to 4) dated 2014, BH11 (sheets 1 to 6) dated 2014, BH19 (sheets 1 to 4) dated 2014,
- Email from Honace dated 11/02/16 (09:19)
- Email from Honace dated 11/02/16 (13:59)

***Reason:*** To minimise the risk of pollution to ground and surface water and to comply with WLP policy 10 and BDLP policy LPP70.

- 25 The development hereby permitted shall be implemented in accordance with the details submitted with respect to land contamination and land remediation and mitigation measures where contamination is identified approved on 16 February 2016 under condition 25 of planning permission ESS/55/14/BTE. The approved details include: application for approval of details reserved by condition dated 4 August 2015 and the following documents:

- Condition 25 – Contaminated Land by Honace
- Rivenhall – Record Site Plan & Schedule of buildings
- Analytical Report Number : 14-59380 dated September 2014 by i2 Analytical Ltd
- Drawing no. 213033-150 As-Built Borehole Locations dated 14 July 2014

***Reason:*** To minimise the risk of pollution to ground and surface water, to minimise the risk of flooding and to comply with WLP policy 10 and BDLP policy LPP70.

- 26 The market de-inked paper pulp plant shall only source its heat steam and energy from the IWMF with the exception of periods of start-up and maintenance and repair of the IWMF.

***Reason:*** To ensure the market de-inked paper pulp plant only remains at the site as a direct consequence of its co-location with the IWMF and to protect the

*countryside from inappropriate development and to comply with WLP policies 10 and 11 and BDLP LPP71 and LPP72.*

- 27 No waste, except pre-sorted waste paper and card and Solid Recovered Fuel, shall be brought on to the site other than that arising from within the administrative area of Essex and Southend-on-Sea. Records indicating the origin of all waste consignments and tonnages brought to the site shall be kept and made available for inspection by the Waste Planning Authority for at least 2 years after receipt of the waste. The records shall be made available to the Waste Planning Authority within 14 days of a written request.

*Reason: In the interests of the environment by assisting the Essex and Southend-on-Sea waste planning authorities to become self-sufficient for managing the equivalent of the waste arising in their administrative areas, ensuring that the waste is transported in accordance with the proximity principle, minimising pollution and minimising the impact upon the local environment and amenity and to comply with WLP policies 10 and 11.*

- 28 Intentionally blank  
NB condition removed following planning permission reference ESS/55/14/BTE.

- 29 No waste other than those waste materials defined in the application shall enter the site for processing or treatment in the IWMF plant. No more than 853,000tpa of Municipal Solid Waste and/or Commercial and Industrial Waste shall be imported to the site.

*Reason: To ensure the scale of the facility would not give rise to impacts not assessed as part of the planning application and Environmental Statement and to protect local amenity and to comply with WLP policy 10 and BDLP SP1, SP7, LPP52 and LPP70.*

- 30 Intentionally blank  
NB condition removed following planning permission reference ESS/55/14/BTE.

- 31 No waste brought onto the site shall be deposited, handled, stored, composted or otherwise processed outside the IWMF buildings and structures.

*Reason: To ensure minimum disturbance from operations, to avoid nuisance to local amenity and to comply with WLP policy 10 and BDLP SP1, SP7, LPP52 and LPP70..*

- 32 All waste materials shall be imported and exported from the site in enclosed, containerised or sheeted vehicles.

*Reason: To ensure minimum nuisance from operations on local amenity, particularly litter and odour and to comply with WLP policy 10 and BDLP SP1, SP7, LPP52 and LPP70..*

- 33 No vehicle shall leave the IWMF site without first having been cleansed of all loose residual mineral or waste materials from the vehicle's body and chassis.

*Reason: In the interests of highway safety, safeguarding local amenity and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

- 34 No removal of soils or excavation of overburden, boulder clay, sand and gravel shall be carried out other than between the following hours:

07:00-18:30 hours Monday to Friday; and,

07:00 -13:00 hours Saturdays;

and shall not take place on Sundays, Bank and Public Holidays except for water pumping, environmental monitoring and occasional maintenance of machinery, unless temporary changes are otherwise approved in writing by the Waste Planning Authority.

*Reason: In the interests of limiting the effects on local amenity, to control the impacts of the development and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

- 35 The construction works (including deliveries of building materials) for the development hereby permitted shall only be carried out between 07:00-19:00 hours Monday to Sunday and not on Bank and Public Holidays except for occasional maintenance of machinery for the pouring and finishing works to concrete between May 2023 and December 2023, unless temporary changes are otherwise approved in writing by the Waste Planning Authority.

*Reason: In the interests of limiting the effects on local amenity, to control the impacts of the development and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

- 36 No waste or processed materials shall be imported or exported from any part of the IWMF other than between the following hours:  
07:00 and 18:30 hours Monday to Friday; and,  
07:00 and 13:00 hours on Saturdays,  
and not on Sundays, Public or Bank Holidays except for clearances from Household Waste Recycling Centres on Sundays and Bank and Public Holidays between 10:00 and 16:00 hours as required by the Waste Disposal Authority and previously approved in writing by the Waste Planning Authority.

*Reason: In the interests of limiting the effects on local amenity, to control the impacts of the development and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

- 37 The development hereby permitted shall be implemented in accordance with the details submitted with respect to the signage for Public Rights of Way where they cross the access road. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the following drawing no. IT569/S278\_01G entitled "Footpath crossing typical detail" dated 12/11/15. The signage for Public Rights of Way implemented in accordance with the approved details and shall be maintained throughout the life of the IWMF.



*Reason: In the interest of the safety of all users of both the Right of Way and the haul road and to comply with WLP policy 10 and BDLP policies LPP42 and LPP52,*

- 38 During the commissioning and beneficial operation of the IWMF, except for temporary operations, as defined in Condition 42, between the hours of 07:00 and 19:00 the free field Equivalent Continuous Noise Level (LAeq 1 hour ) at noise sensitive properties adjoining the Site, due to operations in the Site, shall not exceed the LAeq 1 hour levels set out in the following table:

Noise Sensitive Properties Location:

Herring's Farm	45
Deeks Cottage	45
Haywards	45
Allshot's Farm	47
The Lodge	49
Sheepcotes Farm	45
Greenpastures Bungalow	45
Goslings Cottage	47
Goslings Farm	47
Goslings Barn	47
Bumby Hall	45
Parkgate Farm Cottages	45

Measurements shall be made no closer than 3.5m to the façade of properties or any other reflective surface facing the site and shall have regard to the effects of extraneous noise and shall be corrected for any such effects.

*Reason: In the interests of residential and local amenity and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

- 39 The free field Equivalent Continuous Noise Level (LAeq 1 hour) shall not exceed 42 dB(A) LAeq 1hour between the hours of 19:00 and 23:00, as measured or predicted at noise sensitive properties, listed in Condition 38, adjoining the site. Measurements shall be made no closer than 3.5m to the façade of properties or any other reflective surface facing the site and shall have regard to the effects of extraneous noise and shall be corrected for any such effects.

*Reason: In the interests of residential and local amenity and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

- 40 The free field Equivalent Continuous Noise Level (LAeq 1 hour) shall not exceed 40 dB(A) LAeq 5min between the hours of 23:00 and 07:00, as measured and/or predicted at 1 metre from the façade facing the site at noise sensitive properties, listed in Condition 38, adjoining the site.

*Reason: In the interests of residential and local amenity and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

- 41 Noise levels shall be monitored at three monthly intervals at up to five of the locations, listed in Condition 38, the five locations shall be agreed with the Waste

Planning Authority. Monitoring shall begin upon commencement of the commissioning phase of any element of the IWMF. The results of the monitoring shall include the LA90 and LAeq noise levels, the prevailing weather conditions, details of the measurement equipment used and its calibration and comments on the sources of noise which control the noise climate. The survey shall be for four separate 15 minute periods, two during the working day 0700 and 1830, and two during the evening/night time 18:30 to 07:00 hours, the results shall be kept by the operating company during the life of the permitted operations and a copy shall be supplied to the Waste Planning Authority. After the first year of operation of the IWMF, the frequency of the monitoring may be modified by agreement with the Waste Planning Authority.

*Reason: In the interests of residential and local amenity and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

- 42 For temporary operations at the site in relation to the excavation of materials, the free field noise level at sensitive properties, listed in Condition 38, adjoining the site shall not exceed 70dB LAeq 1 hour, due to operations on the site. Temporary operations shall not exceed a total of eight weeks in any continuous 12 month period for work affecting any noise sensitive property. Not less than 5 days written notice shall be given to the Waste Planning Authority in advance of the commencement of any temporary operation. Temporary operations shall include site preparation, bund formation and removal, site stripping and restoration, and other temporary activity as may be agreed, in advance of works taking place, with the Waste Planning Authority.

*Reason: In the interests of amenity and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

- 43 The development hereby permitted shall be implemented in accordance with the details submitted with respect to lighting. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the following documents:
- Condition 43 Construction lighting By Honace; and
  - Hilcare Ltd – Project P118536R2a – Reschemed scheme as a flat open area using 6m columns and the specified number of flood lights dated 03/08/2015 including with data sheets, light locations and light level calculations.

The lighting shall be erected, installed and operated in accordance with the approved details throughout the life of the IWMF. The lighting details with respect to excavation of materials shall not be illuminated outside the hours of 0700 and 1830 Monday to Friday and 0700 and 1300 Saturday and at no time on Sundays, Bank or Public Holidays except for security and safety lighting activated by sensors. No lighting for construction of the IWMF shall be illuminated outside the hours of 0700 and 1900 Monday to Sunday and at no time on, Bank or Public Holidays except for security and safety lighting activated by sensors. The lighting shall be maintained such that no lighting shall exceed 5 lux maintained average luminance.

***Reason:** In the interests of residential and local amenity and protection of the environment and in the interest of protecting biodiversity and in the interests of highway safety and to comply with WLP policy 10 and BDLP policies LPP52 and LPP77.*

- 44 No lighting for use during operation of the IW MF within the site shall be erected or installed until details of the location, height, design, sensors, times and luminance have been submitted to and approved in writing by the Waste Planning Authority. The lighting details shall be such that no lighting shall exceed 5 lux maintained average luminance. The lighting details shall be such that the lighting shall not be illuminated outside the hours of 0700 and 1830 Monday to Friday and 0700 and 1300 Saturday and at no time on Sundays, Bank or Public Holidays except for security and safety lighting activated by sensors. The details shall ensure the lighting is designed to minimise the potential nuisance of light spillage from the boundaries of the site. The lighting shall thereafter be erected, installed and operated in accordance with the approved details.

***Reason:** In the interests of residential and local amenity and protection of the environment and in the interest of protecting biodiversity, in the interests of highway safety and to comply with WLP policy 10 and BDLP policies LPP52 and LPP77.*

- 45 The development hereby permitted shall be implemented in accordance with the details submitted with respect to phasing of the construction of the access road, creation of the retaining structures around the site of the IW MF and extraction of the minerals. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 as amended by Non Material Amendment applications ref. ESS/34/15/BTE/NMA2 application dated 10 December 2022 and ESS/34/15/BTE/NMA5 dated 25 April 2023 and the following drawings:

<b>Drawing Ref</b>	<b>Title</b>	<b>Dated</b>
IT569 PAA 12	Access Road construction phasing	Jul 2015
11780-0022-04	Proposed earthworks sequencing	Aug 2022

***Reason:** In the interests of residential and local amenity and protection of the environment and in the interest of protecting biodiversity, in the interests of highway safety and to comply with WLP policy 10 and BDLP policies SP7, LPP52 and LPP42, LPP63, LPP70.*

- 46 The development hereby permitted shall be implemented in accordance with the details submitted with respect to soil handling, soil storage and machine movements and the end use of soils as approved on 16 February 2016 under condition 46 of planning permission ESS/55/14/BTE. The approved details include: application for approval of details reserved by condition dated 4 August 2015 and the following documents:
- Condition 46 – Soil Handling by Honace
  - Figure 5-1 Agricultural land classification – Rivenhall Airfield RCF dated 10 July 2006
  - Figure 5-2 Soil types – Rivenhall Airfield RCF dated 10 July 2006

- Drawing no. 5-4 Agricultural Land Classification – Site A2 Bradwell Quarry dated 11 May 2011
- Drawing 5-5 Soil types – Site A2 Bradwell Quarry dated 11 May 2011

*Reason: To minimise structural damage and compaction of the soil and ensure sustainable use of surplus soils and to aid in the restoration and planting of the site and to comply with WLP policy 10.*

47 Unless otherwise agreed in writing by the Waste Planning Authority, no topsoil, subsoil and/or soil making material shall be stripped or handled unless it is in a dry and friable condition<sup>3</sup> and no movement of soils shall take place: During the months November to March (inclusive);

- (a) When the upper 50 mm of soil has a moisture content which is equal to or greater than that at which the soil becomes plastic, tested in accordance with the 'Worm Test' as set out in BS1377:1977, 'British Standards Methods Test for Soils for Civil Engineering Purposes'; or  
 (b) When there are pools of water on the soil surface.

<sup>3</sup> The criteria for determining whether soils are dry and friable involves an assessment based on the soil's wetness and lower plastic limit. This assessment shall be made by attempting to roll a ball of soil into a thread on the surface of a clean glazed tile using light pressure from the flat of the hand. If a thread of 15cm in length and less than 3mm in diameter can be formed, soil moving should not take place until the soil has dried out. If the soil crumbles before a thread of the aforementioned dimensions can be made, then the soil is dry enough to be moved.

*Reason: To minimise structural damage and compaction of the soil and to aid in the restoration and planting of the site and to comply with WLP policies 10.*

48 No minerals processing other than dry screening of excavated sand and gravel or in the reformation of levels using Boulder or London Clays shall take place within the site.

*Reason: To ensure that there are no adverse impacts on local amenity from the development not previously assessed in the planning application and Environmental Statement and to comply with, WLP policy 10 and BDLP LPP52 and LPP70.*

49 Any fuel, lubricant or/and chemical storage vessel whether temporary or not shall be placed or installed within an impermeable container with a sealed sump and capable of holding at least 110% of the vessel's capacity. All fill, draw and overflow pipes shall be properly housed within the bunded area to avoid spillage. The storage vessel, impermeable container and pipes shall be maintained for the duration of the development.

*Reason: To minimise the risk of pollution to water courses and aquifers and to comply WLP policy 10 and BDLP policy LPP70.*

50 The development hereby permitted shall be implemented in accordance with the details submitted with respect to temporary and permanent site perimeter fencing. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and as by Non Material Amendment application ref. ESS/34/15/BTE/NMA4 dated 3 January 2023 and the following documents and drawings:

Drawing Ref	Title	Dated
CCE-HZI-500430049 Rev 0.3	Construction site layout	17/12/2015
732.1/08A HDA D1	Rabbit proof fence detail	Jun 2015
732.1/10A HDA D3	Tree protection fencing – BS 5837:2012	Jul 2015
222009-DC-XX-XX-GA-C-1602 P03	Site Wide – Fencing Details	Sept 2022
SHA 1359	Arboricultural Method Statement Report by Sharon Hosegood Associates	Jan 2023

The fencing and gates shall be erected in accordance with the details approved and maintained throughout the life of the IWMF.

*Reason: In the interest of visual amenity, to protect the countryside and to comply with WLP policy 10 and BDLP SP7, LPP52, LPP63, LPP65, LPP67.*

51 (a) The development hereby permitted shall be implemented in accordance with the details submitted with respect to a scheme and programme of measures for the suppression of dust as approved on 16 February 2016 under condition 51a of planning permission ESS/55/14/BTE. The approved details include: application for approval of details reserved by condition dated 4 August 2015 and the following documents:

- Condition 51a – Dust minimisation scheme by Honace; and
- Construction dust – HSE Information Sheet no. 36 (revision 2).

(b) No beneficial operation of the IWMF shall commence until a scheme and programme of measures for the suppression of dust, have been submitted to and approved in writing by the Waste Planning Authority. The scheme shall include:

(i) The suppression of dust caused by handling, storage and processing of waste; and

(ii) Dust suppression on haul roads, including speed limits.

In relation each scheme provision for monitoring and review.

The development shall be implemented in accordance with the approved schemes and programme for the duration of the development hereby permitted.

*Reason: To reduce the impacts of dust disturbance from the site on the local environment and to comply with WLP policy 10 and BDLP policies LPP66 and LPP70.*

52 (a) The development hereby permitted shall be implemented in accordance with the details submitted with respect to measures to control fugitive odour from the

excavation of materials and construction of the IWMF as approved on 16 February 2016 under condition 52a of planning permission ESS/55/14/BTE. The approved details include: application for approval of details reserved by condition dated 4 August 2015 and the following document "Condition 52a – Odour minimisation scheme by Honace"

(b) No beneficial operation of the IWMF shall commence until details of equipment required to control any fugitive odour from the handling/storage/processing of waste have been submitted to and approved in writing by the Waste Planning Authority. The details shall be implemented as approved.

*Reason: In the interests of local amenity and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

- 53 The development hereby permitted shall be implemented in accordance with the details submitted with respect to the ecological information and mitigation. The approved ecological information and mitigation includes the following:

Ecological information approved on 27 July 2011 in accordance with condition 53 of planning permission Ref. APP/Z1585/V/09/2104804 (ECC ref ESS/37/08/BTE). The details approved included letter dated 19 May 2011 from Golder Associates with accompanying application form and Ecology report dated October 2010.

The application for approval of details reserved by condition dated 4 August 2015 and the information contained within the Ecological report by Green Environmental Consultants dated July 2015 and Appendix 7-1 Baseline ecology report August 2008.

Ecological mitigation shall be carried out in accordance with the approved details throughout the life of the IWMF.

*Reason: To make appropriate provision for conserving and enhancing the natural environment, in the interests of biodiversity and in accordance, WLP policy 10 and BDLP policies LPP64, LPP63, LPP65, LPP66 and LPP67.*

- 54 The development hereby permitted shall be implemented in accordance with the details submitted with respect to the habitat management plan. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the "Habitat Management Plan – revised July 2015 – report number 499/10" by Green Environmental Consultants and appendices A to E.

The development shall be implemented in accordance with the approved habitat management plan throughout the life of the IWMF.

*Reason: To make appropriate provision for conserving and enhancing the natural environment, in the interests of biodiversity and in accordance with, WLP policy 10 and BDLP policies LPP63, LPP64, LPP65 and LPP66 and LPP67.*

- 55 No demolition, excavation works or removal of hedgerows or trees shall be undertaken on the site during the bird nesting season [1 March to 30 September inclusive] except where a suitably qualified ecological consultant has confirmed

that such construction etc. should not affect any nesting birds. Details of such written confirmations shall be sent to the Waste Planning Authority 14 days prior to commencement of the works.

*Reason: To make appropriate provision for conserving and enhancing the natural environment, in the interests of biodiversity and in accordance with WLP policy 10 and BDLP policies LPP63, LPP64 , LPP65 and LPP66 and LPP67.*

- 56 Only one stack shall be erected on the site to service all elements of the IWMF. The height of the stack shall not exceed 85m Above Ordnance Datum.

*Reason: In the interest of visual amenity, to protect the countryside and to comply with WLP policy 10 and BDLP policies SP7, LPP47, LPP52, and LPP66 and LPP67.*

- 57 The development hereby permitted shall be implemented in accordance with the details submitted with respect to bunding and planting. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 as amended by Non-Material Amendment applications ref. ESS/34/15/BTE/NMA2 application dated 10 December 2022 and ESS/34/15/BTE/NMA5 application dated 25 April 2023 and the following drawings:

<b>Drawing Ref</b>	<b>Title</b>	<b>Dated</b>
732.1_07B HDA SA1	Soft landscape proposals site access	Jun 2015
732.1_02G HDA SL1	Soft landscape proposals sheet 1 of 5	18/12/15
732.1_03G HDA SL2	Soft landscape proposals sheet 2 of 5	18/12/15
903.2/04E HDA SL3	Soft landscape proposals sheet 3 of 5	April 2023
903.2/05E HDA SL4	Soft landscape proposals sheet 4 of 5	April 2023
903.2/06D HDA SL5	Soft landscape proposals sheet 5 of 5	April 2023
732.1_09 HDA D2	Standard tree pit detail	Jun 2015
In respect of area W2-A only		
4321/PO2	Outline Planting W2-A	01/11/21
	IWMF W2-A Outline Landscape specification	02/11/21

*Reason: To comply with section 197 of the Town and Country Planning Act 1990 (as amended), to improve the appearance of the site in the interest of visual amenity, to protect the countryside and to comply with WLP policy 10 and BDLP policies SP7, LPP47, LPP52, LPP63, LPP66 and LPP67..*

- 58 Any tree or shrub forming part of the retained existing vegetation or the planting scheme approved in connection with the development that dies, is damaged,

diseased or removed within the duration of 5 years during and after the completion of construction of the IWWMF, shall be replaced during the next available planting season (October-March inclusive) with a tree or shrub to be agreed in advance in writing by the Waste Planning Authority.

***Reason:*** To comply with section 197 of the Town and Country Planning Act 1990 (as amended), to improve the appearance of the site in the interest of visual amenity, to protect the countryside and to comply with WLP policy 10 and BDLP policies SP7, LPP52, LPP63 and LPP66 and LPP67.

- 59 The development hereby permitted shall be implemented in accordance with the details submitted with respect to tree retention and protection measures. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and as amended by Non Material Amendment application ref. ESS/34/15/BTE/NMA5 application dated 25 April 2023 and the following drawings:

<b>Drawing Ref</b>	<b>Title</b>	<b>Dated</b>
732.1_07B HDA SA1	Soft landscape proposals site access	Jun 2015
732.1_02G HDA SL1	Soft landscape proposals sheet 1 of 5	18/12/15
732.1_03G HDA SL2	Soft landscape proposals sheet 2 of 5	18/12/15
903.2/04E HDA SL3	Soft landscape proposals sheet 3 of 5	April 2023
903.2/05E HDA SL4	Soft landscape proposals sheet 4 of 5	April 2023
903.2/06D HDA SL5	Soft landscape proposals sheet 5 of 5	April 2023
732.1_10A HDA D3	Tree protection fencing	Jul 2015
732.1_08A HDA D3	Rabbit proof fence detail	Jun 2015

The tree protection measures shall be implemented at the time of planting and maintained throughout the life of the IWWMF.

***Reason:*** In the interest of visual amenity, to ensure protection for the existing natural environment, including adjacent TPO woodland and to comply with WLP policy 10 and BDLP policies SP7, LPP52, LPP63, LPP64, LPP65, LPP66 and LPP67.

- 60 The development hereby permitted shall be implemented in accordance with the details submitted with respect to management and watering of trees adjacent to the retaining wall surrounding the IWWMF. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the statement by HDA entitled “Rivenhall Integrated Waste Management Facility – Condition 60” dated 8 June 2015. The management and watering shall be carried out in accordance with the approved details throughout the life of the IWWMF.

***Reason:*** In the interest of visual amenity, to ensure protection for the existing natural environment, including adjacent TPO woodland and to comply with, WLP policy 10 and BDLP policies SP7, LPP52, LPP63, LPP64, LPP65 and LPP66 and LPP67.



- 61 The development hereby permitted shall be implemented in accordance with the details submitted with respect to the layout of parking area including hard and soft landscaping and lighting adjacent to Woodhouse Farm. The approved details include: the application for approval of details reserved by condition dated 4 August 2015, the Statement by Honace entitled “Condition 61 Woodhouse Farm Parking & Lighting” and the followings drawings:

Drawing ref	Title	Dated
IT569/CP/01 Rev B	Woodhouse car park layout and typical details	21/07/15
732.1_05G HDA SL4	Soft landscape proposals sheet 4 of 5	18/12/15
DW40019H001 Rev p1	Proposed lighting layout	22/07/15

The parking, lighting and landscaping shall be maintained in accordance with the details approved throughout the life of the IWFMF.

*Reason: To protect the setting of the Listed Buildings and in the interest of visual amenity and to comply with WLP policy 10 and BDLP policies SP7, LPP52 and LPP77.*

- 62 The development hereby permitted shall be implemented in accordance with the details submitted with respect to traffic calming measures designed to reduce the speed of traffic using the access road in the vicinity of the River Blackwater. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the following drawings:

Drawing Ref	Title	Dated
IT569_S278_01G	Footpath crossing typical detail	12/11/15
IT569_S278_02C	Vole and otter crossing	24/07/2015
SignPlot v3.10	“Vole and otter crossing” sign	

The traffic calming measures shall be maintained throughout the life of the IWFMF in accordance with the approved details.

*Reason: To make appropriate provision for conserving and enhancing the natural environment within the approved development, in the interests of biodiversity and in accordance with WLP policy 10 and BDP policies LPP63 and LPP66.*

- 63 The development hereby permitted shall be implemented in accordance with the details submitted with respect to the lining and signing of the crossing points of the access road with Church Road and Ash Lane. . The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the following drawings:

Drawing ref	Title	Dated
IT569/S278/03 C	Proposed improvements to site access road junction with Church Road	June 2015
IT569/S278/04 C	Proposed improvements to site access road junction with Ash Lane	June 2015

SignPlot v3.10	“Heavy Plant crossing” sign	
SignPlot v3.10	“Stop” sign	
SignPlot v3.10	Priority sign	

The lining and signing shall be maintained in accordance with the approved details throughout the life of the IWWMF.

*Reason: In the interests of highway safety, safeguarding local amenity and to comply with WLP policy 10 and BDLP policies LPP52, LPP42, LPP70.*

64 Intentionally blank  
NB Condition fully discharged see application ESS/55/14/BTE/64/1 as amended by ESS/34/15/BTE/NMA1.

65 There shall be no use of the access road from the A120 to the IWWMF except by traffic associated with the IWWMF, Bradwell Quarry or to access agricultural land for agricultural purposes.

*Reason: In the interests of highway safety, as traffic movements above those associated with the IWWMF, Bradwell Quarry and existing agricultural movements would need to be considered afresh and to comply with , WLP policy 10 and BDLP polices SP7, LPP42 and LPP52.*

66 Intentionally blank  
NB condition removed following planning permission reference ESS/39/23/BTE.

67 Intentionally blank  
NB Condition fully discharged see application reference ESS/34/15/BTE/67/01.

68 Woodhouse Farm and buildings shall be refurbished to a visitor and education centre no later than 1 March 2022.

*Reason: To ensure the timely refurbishment of the Listed Buildings and their being brought into beneficial in order to protect these heritage assets and to comply with WLP policy 10 and BDLP policy SP7 and LPP57 and the NPPF.*

69 Following the approval of details required by condition 19 and prior to the installation of process equipment and plant, an updated noise assessment shall be undertaken and submitted to the Waste Planning Authority for approval to demonstrate that the maximum noise levels set out in condition 38 would not be exceeded. Installation of process equipment and plant for the IWWMF shall not commence until the updated noise assessment has been approved by the Waste Planning Authority.

*Reason: In the interests of residential and local amenity and to comply with WLP policy 10 and BDLP policies LL52 and LPP70.*

***Informative:*** This planning permission shall be read and construed in conjunction with the Legal Agreement dated 20 October 2009, as amended by deeds of

*variation dated 1 December 2014, 26 March 2015, 26 February 2016 and [date to be confirmed].*

**Appendix 2 - ESS/39/23/BTE - Addendum to Development & Regulation  
Committee Report 28 July 2023**

**ADDENDUM FOR THE MEETING OF DEVELOPMENT AND REGULATION  
COMMITTEE 28 July 2023**

**Item (DR/25/23) Rivenhall IWMF, land at Rivenhall Airfield Coggeshall Road,  
Braintree, CO5 9DF**

Page 49 Photograph

Date of photo should read “14 July 2023”.

Page 60 Section 5 -CONSULTATIONS

Replace Feering Parish Council comment with the following “No objection subject to an obligation...”

Page 61 Section 6 REPRESENTATIONS

72 additional representations have been received since publication of the report.  
Replace “13” with “85” in the second sentence.

Some of these additional representations have been received with no postal address, they are reported in good faith that a postal address will be provided.

One of the representations was from PAIN (Parishes Against Incineration).

The comments raised by these additional representations are summarised below:

<u>Observation</u>	<u>Comment</u>
Do not consider the Hillside case impacts the consideration of the appeal	See appraisal
ECC should continue to push to require all elements of the IWMF are delivered	The WPA will continue to review development of the IWMF, to assess whether there has been a breach of planning control.
The proposed NSIP to increase power output is more likely to result in a visual plume	ECC will be a consultee on the NSIP application when submitted and shall seek to ensure the development complies with existing conditions. The decision however is ultimately for Planning Inspectorate or the SoS.

ECC should continue to defend at appeal the conditions imposed as part of Condition 66, as PAIN has sought Counsel advice that outlines why Hillside case is not relevant.

The Committee should use 20.15 of the ECC constitution to call in the decision by the WPA on an EIA Screening Opinion on the application which concluded the application was not required to be accompanied by an Environmental Statement which was made without reference to the Development and Regulation Committee.

Object to the deletion of Condition 66 because if the facility is to come forward despite all the evidence of global warming and CO2 emissions then all facilities on the IWFMF site, as per the original application, should be built which delivered recycling.

The Environment Agency should also impose new conditions requiring additional air quality checks to make sure the site is immediately closed down if it breaches safe levels of particulate matter, heavy metals and toxic chemicals.

The IWFMF has resulted in lost trees, ecological areas and the construction site has resulted in litter and PRow not respected

There is no need for an incinerator of this size, now a worse management proposal than when granted in 2010

ECC should seek to ensure all elements of the IWFMF are delivered

See appraisal. The Counsel advice obtained by PAIN has not been shared with ECC. The period to request to be a Rule 6 Party at the appeal has past therefore it may not be possible for this evidence to presented at appeal.

The WPA has officer delegated powers to determine EIA Screening Opinions. PAIN's request to the SoS to issue a Screening Direction was denied. The SoS has also concluded that no Environmental Statement was required to support the application.

See appraisal

Not a planning issue. The comments will be passed to the Environment Agency. Potentially a new EP or a variation to the existing EP will be required if elements of the IWFMF are not built. There may be an opportunity for the public to comment to the EA at that time.

The loss of trees and impact upon ecology were considered as part of the original application. Site monitoring is carried by the WPA, the issues raised will be investigated.

The principle of a waste management facility on this site including EfW was established through the WLP.

See appraisal

Health problems are exacerbated by environmental conditions. Strong conditions should be imposed.

The control of emissions is a matter controlled though the EP administered by the EA.

Do not have confidence that the facility will be adequately monitored by the EA with respect to emissions.

The National Planning Policy Framework requires planning authorities to assume that these pollution control regimes will operate effectively.

Condition 66 should not be removed, all elements of the IWMF should be built. The paper pulp plant and recycling facilities helped to offset the negative impact of incineration. This is particularly important in light of continuing evidence of global warming.

See appraisal

Contrary to ECC own sustainability policies and would not looking after the people of Essex

Planning applications have to be determined in accordance with National and Local Planning Policy.

#### Page 64 Section 8 - SCREENING OPINION DIRECTION REQUEST

Add additional sentence at end of section.

“The Waste Planning Authority was notified of the SoS decision on the 21 July 2023 that he would not be issuing a Screening Direction.”

#### Page 66 Section 9 – Subsection D

Last paragraph first sentence should read “However, it is acknowledged that it has been stated at Rivenhall Liaison group meeting that...”

#### Pages 70 and 71 Section 9 RECOMMENDED

Replace recommendation with the following

13.1 That planning permission be granted subject to the following:

- a) That the Waste Planning Authority are not notified that a third party request has been made to call-in the application for determination by the SoS;

- b) Legal agreement: The prior completion, within 6 months (unless otherwise agreed with Chairman) of a Deed of Variation to the existing Legal Agreement to ensure all previous legal obligations remain associated with the new permission; and
- c) Conditions: Imposition of the previous conditions, except C66, and incorporating any details approved under the conditions or non material amendments granted to existing conditions as set in Appendix A

13.2 If the appellant fails to withdraw the appeal into Condition 66 decision (ECC Ref ESS/34/15/BTE/06/1APP and PINS Ref APP/Z1585/W/22/3306429) that ECC should not present further evidence and not provide representation at the Public Inquiry.

**Item (DR/26/23) Phoenix Freight International Limited, Swinborne Road, Basildon, Essex, SS13 1EF**

Page 94 section 1

heading should read BACKGROUND

Page 95 SITE

3<sup>rd</sup> paragraph should read 'The site can be accessed from the north via a roundabout on Courtauld Road. This is an ingress only ...'

4<sup>th</sup> paragraph should read 'To the east ... buildings and on its southern boundary, two thirds by ...'

4<sup>th</sup> paragraph last sentence replace "Noble Square" with "Nobel Square".

Page 100 CONSULTATIONS

Add following officer comment to Local Member- Basildon -Pitsea – Cllr McGurran

Comment: In view of the comments raised by Basildon Borough Council it was considered necessary for the matter to be determined by the Development & Regulation Committee in any event.

Page 102 APPRAISAL – Sub-section A - NEED AND POLICY CONSIDERATIONS

3<sup>rd</sup> paragraph from bottom should read "As well as dealing with black bag waste ...' .



Page 104 APPRAISAL – Sub-section C HIGHWAYS AND TRAFFIC

2<sup>nd</sup> paragraph replace “120,00tpa” with “120,000tpa”.

3<sup>rd</sup> paragraph replace “75,000pa” with “75,000tpa”.

Last paragraph should read “...operating at 75,000tpa, without any complaint ....”

Page 109 RECOMMENDED

Amend condition 10 to read:

The vehicle parking, cycle parking, disabled parking and electric charging point parking and associated turning areas as shown on drawing no. WAW/SR/LAY/01 dated Nov 2022 shall be retained at all times and shall not be used for any other purpose.

*Reason: In the interests of highway safety, safeguarding local amenity and to comply with WLP policy 10 and BDLP policy BE12.*

**Appendix 3 – ESS/39/23/BTE – (Discharge of Condition 66 of ESS/34/15/BTE)  
– Decision Notice 26 January 2024**

**ESSEX COUNTY COUNCIL**

**Town and Country Planning Act 1990 (as amended)  
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)  
ORDER 2015**

In pursuance of the powers exercised by it as County Planning Authority, Essex County Council has considered an application to carry out the following development:

**Continuation of development of the Integrated Waste Management Facility (IWMF) with deletion of condition 66, approved details thereunder and associated conditions (Plan of Action if development not taken forward within 5 years) of planning permission ESS/34/15/BTE. ESS/34/15/BTE was amended planning permission for "The Integrated Waste Management Facility comprising: Anaerobic Digestion Plant treating mixed organic waste, producing biogas converted to electricity through biogas generators; Materials Recovery Facility for mixed dry recyclable waste to recover materials e.g. paper, plastic, metals; Mechanical Biological Treatment facility for the treatment of residual municipal and residual commercial and industrial wastes to produce a solid recovered fuel; De-inking and Pulping Paper Recycling Facility to reclaim paper; Combined Heat and Power Plant (CHP) utilising solid recovered fuel to produce electricity, heat and steam; extraction of minerals to enable buildings to be partially sunken below ground level within the resulting void; visitor/education centre; extension to existing access road; provision of offices and vehicle parking; and associated engineering works and storage tanks."**

**At Land at Rivenhall Airfield Coggeshall Road, Braintree, CO5 9DF**

and in accordance with the said application and the plan(s) accompanying it, hereby gives notice of its decision to GRANT PERMISSION FOR the said development subject to compliance with the following conditions and reasons:

1. The development hereby permitted shall be begun before the expiry of 3 years from the date of this permission. Written notification of the date of commencement shall be sent to the Waste Planning Authority within 7 days of such commencement.

The development permitted under planning permission ESS/34/15/BTE was notified as commenced on 1 March 2016 by letters dated 1 March 2016 and 3 March 2016 from Holmes and Hills Solicitors. The commencement was acknowledged by the Waste Planning Authority under reference ESS/34/15/BTE/1/1 on 14 March 2016.

*Reason: To comply with section 91 of the Town and Country Planning Act 1990 (as amended).*

2. The development hereby permitted shall only be carried out in accordance with planning application ECC ref ESS/37/08/BTE (PINS Ref. APP/Z1585/V/09/2104804) dated 26 August 2008 (as amended) and

As amended by Non-Material Amendment application reference ESS/37/08/BTE/NMA2 dated 4 September 2012, accompanied by letter from Berwin Leighton Paisner dated 29 August 2012 and email dated 18 September 2012 as approved by the Waste Planning Authority on 25 October 2012.  
and

As amended by planning application reference ESS/44/14/BTE dated 5 August 2014, accompanied by letter from Holmes & Hills dated 5 August 2014, report entitled "Business development since obtaining planning permission" dated August 2014, report "Changes in the Case for Need since September 2009" dated August 2014 and letters from Honace dated 5 August 2014 and Golder Associates dated 4 August 2014 and granted by the Waste Planning Authority on 4 December 2014.

and

As amended by planning application reference ESS/55/14/BTE dated 12 December 2014, accompanied by letter from Holmes & Hills LLP dated 12 December 2014, SLR report "Justification for Removal of Fuel Sourcing Conditions" Rev 4" dated December 2014 and letter from Honace dated 5 August 2014 and Golder Associates dated 4 August 2014.

And

As amended by planning application reference ESS/34/15/BTE dated 4 August 2015 and drawing numbers:

Drawing Ref	Title	Dated
1-1A	Land Ownership & Proposed Site Plan	21/12/15
1-2B	Proposed Planning Application Area and Site Plan	21/05/15
1-5B	Typical Arrangement and Architectural Features	21/05/15
1-8	Schematic Arrangement of Woodhouse Farm	21/05/15
1-9A	Simplified Process Flow	21/05/15
1-10A	Integrated Process Flow	21/05/15
3-3B	Site Plan Layout	21/05/15
3-8E	Building and Process Cross Sections	Dec 2015
3-12E	Building and Process Layout and Cross Sections	Dec 2015
3-14B	Upper Lagoon & Wetland Shelf	18/12/14
3-16	Services Plan	21/05/15
3-19D	General Arrangement & Front Elevation	Dec 2015
8-6A	Landscape Mitigation Measures	21/05/15
IT569/SK/06 A	Proposed Improvements to Site Access Road Junction with Church Road	05/08/08
IT569/SK/07 A	Proposed Improvements to Site Access Road Junction with Ash Lane	05/08/08

19-2C	Tree Survey	21/05/15
19-3C	The Constraints and Protection Plan	21/05/15
19-5A	Base Plan Woodhouse Farm	21/05/15
IWMF RP 01	IWMF Roof Layout Plan	24/12/15

And

As amended by Non-Material Amendment application reference ESS/34/15/BTE/NMA1 dated 10 August 2021, accompanied by letter from RPS dated 9 August 2021 as approved by the Waste Planning Authority on 30 September 2021.

And

As amended by Non-Material Amendment application Reference ESS/34/15/BTE/NMA2 dated 10 December 2021 accompanied by letter from RPS dated 16 December 2021 as approved by Waste Planning Authority on 31 January 2022.

And

As amended by Non-Material Amendment application reference ESS/34/15/BTE/NMA4 dated 10 December 2021 accompanied by covering letter dated 16 December 2021 as approved by the Waste Planning Authority on 13 January 2022.

And

As amended by Non-Material Amendment application reference ESS/34/15/BTE/NMA5 dated 25 April 2023 accompanied by covering letter dated 20 April 2023 as approved by Waste Planning Authority on 31 May 2023.

And

As amended by Non Material Amendment application reference ESS/34/15/BTE/NMA6 dated 5 May 2023 accompanied by covering letter dated 3 May 2023 as approved by the Waste Planning Authority on 7 June 2023.

And

As amended by planning application ESS/39/23/BTE dated 27 April 2023 and covering letter from RPS dated 24 April 2023.

And

As amended by Non Material Amendment application reference ESS/34/15/BTE/NMA9 dated 6 November 2023 accompanied by covering letter dated 6 November 2023 as approved by the Waste Planning Authority on 19 December 2023.

And

As amended by Non Material Amendment application reference ESS/34/15/BTE/NMA8 dated 13 October 2023 accompanied by covering letter dated 9 November 2023 and supporting email from RPS dated 12 January 2024 (12:53) as approved by the Waste Planning Authority on 19 January 2024.

And in accordance with any non-material amendment(s) as may be subsequently approved in writing by the Waste Planning Authority and except as varied by the following conditions:

*Reason: For the avoidance of doubt as to the nature of the development hereby permitted, to ensure development is carried out in accordance with the approved application drawings, details (except as varied by other conditions), to ensure that the development is carried out with the minimum harm to the local environment and in accordance with Essex and Southend Waste Local Plan 2017 (WLP) policies 1, 3, 10, 11 and 12 and Braintree District Local Plan 2022 (BDLP) policies SP1, SP7, LPP1, LPP47, LPP52, LPP57, LPP63, LPP64, LPP65, LPP66, LPP67, LPP70, LPP71, LPP72, and LPP77.*

3. The total number of Heavy Goods Vehicle (HGV<sup>1</sup>) movements associated with the excavation of materials (i.e. overburden, sand, gravel, and boulder clay) and import and/or export of materials associated with the operation of the completed Integrated Waste Management Facility (IWMF<sup>2</sup>) hereby permitted shall not exceed the following limits:

404 movements 202 in and 202 out per day (Monday to Friday);  
202 movements 101 in and 101 out per day (Saturdays);

and shall not take place on Sundays, Public or Bank Holidays, except for clearances from Household Waste Recycling Centres between 10:00 and 16:00 hours as required by the Waste Disposal Authority and previously approved in writing by the Waste Planning Authority. No HGV movements shall take place outside the hours of operation authorised in Conditions 34 & 36 of this permission.

<sup>1</sup> An HGV shall be defined as having a gross vehicle weight of 7.5 tonnes or more.

<sup>2</sup> IWMF shall be defined as the buildings, structures and associated plant and equipment for the treatment of waste at the site.

*Reason: In the interests of highway safety, safeguarding local amenity and to comply with, WLP policies 10 and 12 and BDLP policies LPP52 and LPP66.*

4. The total number of HGV vehicle movements associated with the construction of the IWMF (including deliveries of building materials) when combined with the maximum permitted vehicle movements under Condition 3 shall not exceed the following limits 404 movements 202 in and 202 out per day (Monday to Sunday). No HGV movements shall take place outside the hours of operation authorised in Condition 35 of this permission.

Reason: In the interests of highway safety, safeguarding local amenity and to comply with, WLP policies 10 and 12 BDLP policies LPP52 and LPP66.

5. A written record of daily HGV movements into and out of the site shall be maintained by the operator from commencement of the development and kept for the previous 2 years and shall be supplied to the Waste Planning Authority within 14 days of a written request. The details for each vehicle shall include the identity of the vehicle operator, the type and size of the vehicle, the vehicle registration number, and an indication of whether the vehicle is empty or loaded.

Reason: In the interests of highway safety, safeguarding local amenity and to comply with, WLP policies 10 and 12 and BDLP policies LPP52 and LPP66.

6. The development hereby permitted shall be implemented in accordance with the details submitted with respect to the extended access road and crossing points with Public Right of Way. The approved details include the application for approval of details reserved by condition dated 4 August 2015 and include the following drawings:

Drawing Ref	Title	Date
IT569/PAA/01A	Horizontal & vertical alignment of extended access road Sheet 1	18/11/15
IT569/PAA/02C	Horizontal & vertical alignment of extended access road Sheet 2	18/11/15
IT569/PAA/03	Extended access road cross sections, Sheet 1	14/05/15
IT569/PAA/04	Extended access road cross sections, Sheet 2	14/05/15
IT569/PAA/05	Extended access road cross sections, Sheet 3	14/05/15
IT569/PAA/06	Extended access road cross sections, Sheet 4	14/05/15
IT569/PAA/07A	Extended access road cross sections, Sheet 5	14/07/15
IT569/PAA/08	Typical drainage details	May 2015
IT569/PAA/09	Typical access road detailed cross sections	May 2015
IT569/PAA/10	Drainage long section detail, Sheet 1	May 2015
IT569/PAA/11	Drainage long section detail, Sheet 2	May 2015
142064-DC-GA-C-116 C	Access road longitudinal section	17/12/15
142064-DC-GA-C-117	Access road cross sections	Jun 2015
IT569_WR_01_Rev A	Widening details for access road between Church Road and Ash lane	15/05/2015

IT569/S278_01G	Footpath crossing typical detail	12/11/15
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*Reason: In the interests of highway safety, safeguarding local amenity and to comply with WLP policies 10 and 12 and BDLP policies LPP42, LPP52 and LPP66.*

7. No works on the construction of the IWMF shall commence until the access road extension and widening and all footpath cross-over points have been constructed.

*Reason: In the interests of highway and pedestrian safety, safeguarding local amenity and to comply with, WLP policies 10 and 12 and BDLP policies LPP42, LPP52 and LPP66.*

8. No vehicles shall access or egress the site except via the access onto the Coggleshall Road (A120 Trunk Road) junction as shown on application drawing Figure 1-2, except for the movement of the abnormal indivisible loads associated with the mobile cranes in connection with the construction the IWMF, as detailed in non material amendment application (ref ESS/34/15/BTE/NMA9) 6 November 2023, Cover Letter from RPS dated 6 November 2023 and Technical Note prepared by RPS (Referenced JNY11225-03, dated 31 October 2023). The Waste Planning Authority shall be informed at least 14 days before any abnormal indivisible loads are brought to site.

*Reason: In the interests of highway safety, safeguarding local amenity and to comply with WLP policies 10 and 12 and BDLP policies LPP42, LPP52 and LPP66.*

9. No vehicles shall park on the access road between the A120 and Ash Lane.

*Reason: In the interests of highway safety, safeguarding local amenity and to comply with WLP policies 10 and 12 BDLP policies LPP42, LPP52 and LPP66.*

10. Intentionally blank  
NB Condition fully discharged see application reference ESS/55/14/BTE/10/01

11. Intentionally blank  
NB Condition fully discharged see application reference ESS/55/14/BTE/11/1

12. The development hereby permitted shall be implemented in accordance with the ecological works and works to the Woodhouse Farm moat approved on 17 August 2022 under condition 12 of planning permission ESS/34/15/BTE. The approved details are set out in the application for approval of details reserved by condition dated 12 November 2021, email from Indaver/RPS dated 27 Jul 2022 and document "Rivenhall IWMF – Moat Plan of Action.

*Reason: To make appropriate provision for conserving and enhancing the natural environment within the approved development, in the interests of biodiversity and to protect the setting of the Woodhouse Farm Listed Buildings and in accordance with, WLP policy 10 and BDLP policies LPP47, LPP57, LPP63, LPP64, LPP65, LPP66 and LPP67.*



13. The development hereby permitted shall be implemented in accordance with the details submitted with respect to the signage, telecommunications equipment and lighting within the Woodhouse Farm complex (comprising Woodhouse Farmhouse, the Bakehouse, and the listed pump together with the adjoining land outlined in green on Plan 1 [which can be found in the S106 legal agreement dated 30 October 2009 associated with ESS/37/08/BTE]). The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the following drawings & documents:

Drawing Ref.	Title	Dated
135	Site plan & signage proposals	Jul 2015
	APC Communications solutions – Internet & voice solutions V2	14/07/15
	Pell Frischmann – Exterior lighting design	23/07/15
DW40019H001/P1	Proposed lighting layout	22/07/2015
CW40019H001	Proposed lighting to car parking and pedestrian areas	23/07/2015
	The Pharos LED bollard – Urbis Schreder	
	The Axia (the Green light) - Schreder	

The signage, telecommunications equipment and lighting shall be implemented in accordance with the details approved.

*Reason: To protect the setting of the Listed Buildings and in the interest of visual amenity and to comply with WLP policy 10 and BDLP policies SP1, SP7, LPP52, LPP57, LPP70 and LPP77 .*

14. The development hereby permitted shall be implemented in accordance with the details submitted with respect to the design and maintenance of the stack. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the following drawings and specifications:

Drawing Ref.	Title	Dated
LA01A	Chimney stack top cladding details plan & elevations	23/07/15
LA02A	Chimney stack top cladding details fixing details	23/07/15
	Alucobond reflect- technical data sheet	
	Alucobond – cleaning & maintenance of stove-lacquered surfaces	
	Genie – Self-propelled telescopic booms - specifications	
	Genie – Self-propelled telescopic booms - features	

The stack shall be constructed and maintained in accordance with the approved details throughout the life of the IWMF.

*Reason: In the interest of visual amenity and to protect the countryside and to comply with WLP policy 10 and BDLP policies LPP1, LPP47, LPP52, LPP57 and LPP67.*

15. Prior to construction of the IWMF buildings or the structures to the rear of the main building details of the IWMF buildings and structures including the design and samples of the external construction materials, colours and finishes of the external cladding of the, and design and operation of the vehicle entry and exit doors, shall be submitted to and approved in writing by the Waste Planning Authority. The development shall be implemented in accordance with the details and samples approved.

*Reason: For the avoidance of doubt, in the interests of visual and landscape amenity and to comply with WLP policy 10 and BDLP policies SP7, LPP1 and LPP52.*

16. Intentionally blank  
NB Condition not used by Secretary of State in 2010.
17. The development hereby permitted shall be implemented in accordance with the details submitted with respect to the management plan for the CHP plant to ensure there is no visible plume from the stack. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and documents referenced:
  - S1552-0700-0008RSF entitled “CHP Management Plan for Plume Abatement” Issue no. 5 dated 16/02/16 by Fichtner; and
  - S1552-0700-0013RSF entitled “Plume Visibility Analysis” both by Fichtner.

The development shall be implemented in accordance with the approved details.

*Reason: In the interest of visual amenity, to protect the countryside and to comply with WLP policy 10 and BDLP policies SP7, LPP47, LPP52, LPP67 and LPP70.*

18. The development hereby permitted shall be implemented in accordance with the details submitted with respect to the green roof for the main IWMF building. The approved details include the application for approval of details reserved by condition dated 4 August 2015, statement by Honace “Condition 18 Green Roof” and document entitled “Bauder extensive biodiverse vegetation (XF301)”. The green roof shall be implemented in accordance with the details approved.

*Reason: In the interests of visual and landscape amenity and enhancement of ecological biodiversity and to comply with WLP policy 10 and BDLP policies SP7, LPP47, LPP52, LPP63 and LPP66.*

19. No works to install process equipment or plant within the IWMF shall commence until details of the IWMF process layout and configuration have been submitted to

and approved in writing by the Waste Planning Authority. The development shall be implemented in accordance with the approved details.

*Reason: To ensure the layout and configuration of the process equipment and plant would not give rise to impacts not assessed as part of the application and Environmental Statement and to protect local amenity and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

20. The development hereby permitted shall be implemented in accordance with the details submitted with respect to construction compounds and parking of all vehicles and plant and equipment associated with the extraction of materials and the construction of the IWMF. The approved details include the application for approval of details reserved by condition dated 4 August 2015 and as set out on drawing CCE-HZI-50043049 Rev 0.3 dated 17/12/15.

*Reason: In the interest of visual amenity, to protect biodiversity and the countryside and to comply with WLP policy 10 and BDLP policies SP7, LPP47, LPP52, LPP57, LPP63, LPP67, LPP70 and LPP77.*

21. No beneficial operation of the IWMF shall commence until details of the provision to be made for and the marking out of parking spaces for cars, HGVs and any other vehicles that may use the IWMF have been submitted to and approved in writing by the Waste Planning Authority. The parking provision and marking out shall be implemented in accordance with the approved details. The parking areas shall be retained and maintained permanently for manoeuvring and parking. No HGVs shall park in the parking area adjacent to Woodhouse Farm complex except in relation to deliveries for the uses at Woodhouse Farm complex.

*Reason: In the interest of visual amenity, to protect biodiversity and the countryside and to comply with WLP policy 10 and BDLP policies SP7, LPP47, LPP52, LPP57, LPP63, LPP67, LPP70 and LPP77*

22. The development hereby permitted shall be implemented in accordance with the details submitted with respect to foul water management. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the following drawings and documents:

Drawing Ref	Title	Dated
142064-DC-GA-C-108G	Proposed drainage layout Sheet 1 of 2	16/10/15
142064-DC-GA-C-109G	Proposed drainage layout Sheet 2 of 2	16/10/15
142064-DC-GA-C-111A	Drainage Construction details	30/06/15

And email from Honace with enclosures dated 22/01/16 (17:13).

The foul water management scheme shall be implemented in accordance with the details.

Reason: To minimise the risk of pollution on ground and surface water, to minimise the risk of flooding and to comply with WLP policy 10 and BDLP policies LPP70 and LPP77

23. The development hereby permitted shall be implemented in accordance with the details submitted with respect to surface water drainage and ground water management. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the following drawings and documents:

Drawing Ref	Title	Dated
142064-DC-GA-C-108G	Proposed drainage layout Sheet 1 of 2	16/10/15
142064-DC-GA-C-109G	Proposed drainage layout Sheet 2 of 2	16/10/15
142064-DC-GA-C-111A	Drainage Construction details	30/06/15

And email from Honace with enclosures dated 22/01/16 (17:13).

The surface water drainage and ground water management scheme shall be implemented in accordance with the approved details.

Reason: To minimise the risk of pollution on ground and surface water, to minimise the risk of flooding and to comply with WLP policy 10 and BDLP policies LPP70 and LPP74.

24. The development hereby permitted shall be implemented in accordance with the details submitted with respect to the scheme of ground water monitoring. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the following drawings and documents:

Drawing ref	Title	Dated
SOD-24 Rev A	Ground water borehole monitoring points	29/07/15
6-4	Groundwater Monitoring points	12/05/11
13 Rev A	Ground water Monitoring points	20/03/14
213033-150	As-built borehole locations	17/09/14
142064-DC-GA-C-111A	Drainage Construction details	30/06/15

- Appendix A – Bradwell Quarry Groundwater Monitoring plots Jan 2008 to Jul 2015
- CC Ground Investigations Ltd – Key to exploratory hole logs
- CC Ground Investigations Ltd – Rotary borehole log for borehole nos. BH10 (sheets 1 to 4) dated 2014, BH11 (sheets 1 to 6) dated 2014, BH19 (sheets 1 to 4) dated 2014,
- Email from Honace dated 11/02/16 (09:19)
- Email from Honace dated 11/02/16 (13:59)

*Reason: To minimise the risk of pollution to ground and surface water and to comply with WLP policy 10 and BDLP policy LPP70.*

25. The development hereby permitted shall be implemented in accordance with the details submitted with respect to land contamination and land remediation and mitigation measures where contamination is identified approved on 16 February 2016 under condition 25 of planning permission ESS/55/14/BTE. The approved details include: application for approval of details reserved by condition dated 4 August 2015 and the following documents:

- Condition 25 – Contaminated Land by Honace
- Rivenhall – Record Site Plan & Schedule of buildings
- Analytical Report Number : 14-59380 dated September 2014 by i2 Analytical Ltd
- Drawing no. 213033-150 As-Built Borehole Locations dated 14 July 2014

*Reason: To minimise the risk of pollution to ground and surface water, to minimise the risk of flooding and to comply with WLP policy 10 and BDLP policy LPP70.*

26. The market de-inked paper pulp plant shall only source its heat steam and energy from the IWMF with the exception of periods of start-up and maintenance and repair of the IWMF.

*Reason: To ensure the market de-inked paper pulp plant only remains at the site as a direct consequence of its co-location with the IWMF and to protect the countryside from inappropriate development and to comply with WLP policies 10 and 11 and BDLP LPP71 and LPP72.*

27. No waste, except pre-sorted waste paper and card and Solid Recovered Fuel, shall be brought on to the site other than that arising from within the administrative area of Essex and Southend-on-Sea. Records indicating the origin of all waste consignments and tonnages brought to the site shall be kept and made available for inspection by the Waste Planning Authority for at least 2 years after receipt of the waste. The records shall be made available to the Waste Planning Authority within 14 days of a written request.

*Reason: In the interests of the environment by assisting the Essex and Southend-on-Sea waste planning authorities to become self-sufficient for managing the equivalent of the waste arising in their administrative areas, ensuring that the waste is transported in accordance with the proximity principle, minimising pollution and minimising the impact upon the local environment and amenity and to comply with WLP policies 10 and 11.*

28. Intentionally blank  
NB condition removed following planning permission reference ESS/55/14/BTE.

29. No waste other than those waste materials defined in the application shall enter the site for processing or treatment in the IWMF plant. No more than 853,000tpa

of Municipal Solid Waste and/or Commercial and Industrial Waste shall be imported to the site.

*Reason: To ensure the scale of the facility would not give rise to impacts not assessed as part of the planning application and Environmental Statement and to protect local amenity and to comply with WLP policy 10 and BDLP SP1, SP7, LPP52 and LPP70.*

30. Intentionally blank  
NB condition removed following planning permission reference ESS/55/14/BTE.
31. No waste brought onto the site shall be deposited, handled, stored, composted or otherwise processed outside the IWMF buildings and structures.

*Reason: To ensure minimum disturbance from operations, to avoid nuisance to local amenity and to comply with WLP policy 10 and BDLP SP1, SP7, LPP52 and LPP70.*

32. All waste materials shall be imported and exported from the site in enclosed, containerised or sheeted vehicles.

*Reason: To ensure minimum nuisance from operations on local amenity, particularly litter and odour and to comply with WLP policy 10 and BDLP SP1, SP7, LPP52 and LPP70.*

33. No vehicle shall leave the IWMF site without first having been cleansed of all loose residual mineral or waste materials from the vehicle's body and chassis.

*Reason: In the interests of highway safety, safeguarding local amenity and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

34. No removal of soils or excavation of overburden, boulder clay, sand and gravel shall be carried out other than between the following hours:

07:00-18:30 hours Monday to Friday; and,  
07:00 -13:00 hours Saturdays;

and shall not take place on Sundays, Bank and Public Holidays except for water pumping, environmental monitoring and occasional maintenance of machinery, unless temporary changes are otherwise approved in writing by the Waste Planning Authority.

*Reason: In the interests of limiting the effects on local amenity, to control the impacts of the development and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

35. The construction works (including deliveries of building materials) for the development hereby permitted shall only be carried out between 07:00-19:00 hours Monday to Sunday, and not on Bank and Public Holidays except for:

- a) the pouring and finishing works to concrete (and associated concrete deliveries) between 1 May 2023 and 31 December 2023 and 15 January 2024 and 30 June 2024;
- b) heavy lifting operations, where required to ensure the safety and integrity of the site and construction personnel, between 15 January 2024 and 30 June 2024;
- c) works to ensure the safety and integrity of the site and construction personnel, including emergency works to scaffolding and temporary power systems between 15 January 2024 and 30 June 2024;
- d) works undertaken by statutory undertakers between 15 January 2024 and 30 June 2024;
- e) abnormal load deliveries between 15 January 2024 and 30 June 2024 where required to be carried out outside the above hours by the relevant highways authority or the police; and
- f) the occasional maintenance of machinery,

Out of hours working shall be in accordance with details set out in the letter from RPS dated 9 November 2023, in particular the "Noise Abatement Measures" described in the letter.

Notification of any out of hours work shall be sent to the Waste Planning Authority within 3 days of such work being undertaken. This notification (which may be made by email to [mineralsandwastedm@essex.gov.uk](mailto:mineralsandwastedm@essex.gov.uk)) shall include: (a) the nature and reason for the out of hours work and (b) the date and finish time of the out of hours work.

*Reason: In the interests of limiting the effects on local amenity, to control the impacts of the development and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

36. No waste or processed materials shall be imported or exported from any part of the IWMF other than between the following hours:

07:00 and 18:30 hours Monday to Friday; and,  
07:00 and 13:00 hours on Saturdays,

and not on Sundays, Public or Bank Holidays except for clearances from Household Waste Recycling Centres on Sundays and Bank and Public Holidays between 10:00 and 16:00 hours as required by the Waste Disposal Authority and previously approved in writing by the Waste Planning Authority.

*Reason: In the interests of limiting the effects on local amenity, to control the impacts of the development and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

37. The development hereby permitted shall be implemented in accordance with the details submitted with respect to the signage for Public Rights of Way where they

cross the access road. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the following drawing no. IT569/S278\_01G entitled "Footpath crossing typical detail" dated 12/11/15. The signage for Public Rights of Way implemented in accordance with the approved details and shall be maintained throughout the life of the IWMF.

*Reason: In the interest of the safety of all users of both the Right of Way and the haul road and to comply with WLP policy 10 and BDLP policies LPP42 and LPP52.*

38. During the commissioning and beneficial operation of the IWMF, except for temporary operations, as defined in Condition 42, between the hours of 07:00 and 19:00 the free field Equivalent Continuous Noise Level (LAeq 1 hour ) at noise sensitive properties adjoining the Site, due to operations in the Site, shall not exceed the LAeq 1 hour levels set out in the following table:

Noise Sensitive Properties Location:	LAeq 1 hour levels
Herring's Farm	45
Deeks Cottage	45
Haywards	45
Allshot's Farm	47
The Lodge	49
Sheepcotes Farm	45
Greenpastures Bungalow	45
Goslings Cottage	47
Goslings Farm	47
Goslings Barn	47
Bumby Hall	45
Parkgate Farm Cottages	45

Measurements shall be made no closer than 3.5m to the façade of properties or any other reflective surface facing the site and shall have regard to the effects of extraneous noise and shall be corrected for any such effects.

*Reason: In the interests of residential and local amenity and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

39. The free field Equivalent Continuous Noise Level (LAeq 1 hour) shall not exceed 42 dB(A) LAeq 1hour between the hours of 19:00 and 23:00, as measured or predicted at noise sensitive properties, listed in Condition 38, adjoining the site. Measurements shall be made no closer than 3.5m to the façade of properties or any other reflective surface facing the site and shall have regard to the effects of extraneous noise and shall be corrected for any such effects.

*Reason: In the interests of residential and local amenity and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

40. The free field Equivalent Continuous Noise Level (LAeq 1 hour) shall not exceed 40 dB(A) LAeq 5min between the hours of 23:00 and 07:00, as measured and/or



predicted at 1 metre from the façade facing the site at noise sensitive properties, listed in Condition 38, adjoining the site.

*Reason: In the interests of residential and local amenity and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

41. Noise levels shall be monitored at three monthly intervals at up to five of the locations, listed in Condition 38, the five locations shall be agreed with the Waste Planning Authority. Monitoring shall begin upon commencement of the commissioning phase of any element of the IWFM. The results of the monitoring shall include the LA90 and LAeq noise levels, the prevailing weather conditions, details of the measurement equipment used and its calibration and comments on the sources of noise which control the noise climate. The survey shall be for four separate 15 minute periods, two during the working day 0700 and 1830, and two during the evening/night time 18:30 to 07:00 hours, the results shall be kept by the operating company during the life of the permitted operations and a copy shall be supplied to the Waste Planning Authority. After the first year of operation of the IWFM, the frequency of the monitoring may be modified by agreement with the Waste Planning Authority.

*Reason: In the interests of residential and local amenity and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

42. For temporary operations at the site in relation to the excavation of materials, the free field noise level at sensitive properties, listed in Condition 38, adjoining the site shall not exceed 70dB LAeq 1 hour, due to operations on the site. Temporary operations shall not exceed a total of eight weeks in any continuous 12 month period for work affecting any noise sensitive property. Not less than 5 days written notice shall be given to the Waste Planning Authority in advance of the commencement of any temporary operation. Temporary operations shall include site preparation, bund formation and removal, site stripping and restoration, and other temporary activity as may be agreed, in advance of works taking place, with the Waste Planning Authority.

*Reason: In the interests of amenity and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

43. The development hereby permitted shall be implemented in accordance with the details submitted with respect to lighting. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the following documents:
- Condition 43 Construction lighting By Honace; and
  - Hilcare Ltd – Project P118536R2a – Reschemed scheme as a flat open area using 6m columns and the specified number of flood lights dated 03/08/2015 including with data sheets, light locations and light level calculations.

The lighting shall be erected, installed and operated in accordance with the approved details throughout the life of the IWFM. The lighting details with respect

to excavation of materials shall not be illuminated outside the hours of 0700 and 1830 Monday to Friday and 0700 and 1300 Saturday and at no time on Sundays, Bank or Public Holidays except for security and safety lighting activated by sensors. No lighting for construction of the IWMF shall be illuminated outside the hours of 0700 and 1900 Monday to Sunday and at no time on, Bank or Public Holidays except for security and safety lighting activated by sensors. The lighting shall be maintained such that no lighting shall exceed 5 lux maintained average luminance.

*Reason: In the interests of residential and local amenity and protection of the environment and in the interest of protecting biodiversity and in the interests of highway safety and to comply with WLP policy 10 and BDLP policies LPP52 and LPP77.*

44. No lighting for use during operation of the IWMF within the site shall be erected or installed until details of the location, height, design, sensors, times and luminance have been submitted to and approved in writing by the Waste Planning Authority. The lighting details shall be such that no lighting shall exceed 5 lux maintained average luminance. The lighting details shall be such that the lighting shall not be illuminated outside the hours of 0700 and 1830 Monday to Friday and 0700 and 1300 Saturday and at no time on Sundays, Bank or Public Holidays except for security and safety lighting activated by sensors. The details shall ensure the lighting is designed to minimise the potential nuisance of light spillage from the boundaries of the site. The lighting shall thereafter be erected, installed and operated in accordance with the approved details.

*Reason: In the interests of residential and local amenity and protection of the environment and in the interest of protecting biodiversity, in the interests of highway safety and to comply with WLP policy 10 and BDLP policies LPP52 and LPP77.*

45. The development hereby permitted shall be implemented in accordance with the details submitted with respect to phasing of the construction of the access road, creation of the retaining structures around the site of the IWMF and extraction of the minerals. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 as amended by Non Material Amendment applications ref. ESS/34/15/BTE/NMA2 application dated 10 December 2022 and ESS/34/15/BTE/NMA5 dated 25 April 2023 and the following drawings:

Drawing Ref	Title	Dated
IT569_PAA_12	Access Road construction phasing	Jul 2015
11780-0022-04	Proposed earthworks sequencing	Aug 2022

*Reason: In the interests of residential and local amenity and protection of the environment and in the interest of protecting biodiversity, in the interests of highway safety and to comply with WLP policy 10 and BDLP policies SP7, LPP52 and LPP42, LPP63, LPP70.*

46. The development hereby permitted shall be implemented in accordance with the details submitted with respect to soil handling, soil storage and machine movements and the end use of soils as approved on 16 February 2016 under condition 46 of planning permission ESS/55/14/BTE. The approved details include: application for approval of details reserved by condition dated 4 August 2015 and the following documents:

- Condition 46 – Soil Handling by Honace
- Figure 5-1 Agricultural land classification – Rivenhall Airfield RCF dated 10 July 2006
- Figure 5-2 Soil types – Rivenhall Airfield RCF dated 10 July 2006
- Drawing no. 5-4 Agricultural Land Classification – Site A2 Bradwell Quarry dated 11 May 2011
- Drawing 5-5 Soil types – Site A2 Bradwell Quarry dated 11 May 2011

*Reason: To minimise structural damage and compaction of the soil and ensure sustainable use of surplus soils and to aid in the restoration and planting of the site and to comply with WLP policy 10.*

47. Unless otherwise agreed in writing by the Waste Planning Authority, no topsoil, subsoil and/or soil making material shall be stripped or handled unless it is in a dry and friable condition<sup>3</sup> and no movement of soils shall take place: During the months November to March (inclusive);

(a) When the upper 50 mm of soil has a moisture content which is equal to or greater than that at which the soil becomes plastic, tested in accordance with the 'Worm Test' as set out in BS1377:1977, 'British Standards Methods Test for Soils for Civil Engineering Purposes'; or

(b) When there are pools of water on the soil surface.

<sup>3</sup> The criteria for determining whether soils are dry and friable involves an assessment based on the soil's wetness and lower plastic limit. This assessment shall be made by attempting to roll a ball of soil into a thread on the surface of a clean glazed tile using light pressure from the flat of the hand. If a thread of 15cm in length and less than 3mm in diameter can be formed, soil moving should not take place until the soil has dried out. If the soil crumbles before a thread of the aforementioned dimensions can be made, then the soil is dry enough to be moved.

*Reason: To minimise structural damage and compaction of the soil and to aid in the restoration and planting of the site and to comply with WLP policies 10.*

48. No minerals processing other than dry screening of excavated sand and gravel or in the reformation of levels using Boulder or London Clays shall take place within the site.

*Reason: To ensure that there are no adverse impacts on local amenity from the development not previously assessed in the planning application and Environmental Statement and to comply with, WLP policy 10 and BDLP LPP52 and LPP70.*

49. Any fuel, lubricant or/and chemical storage vessel whether temporary or not shall be placed or installed within an impermeable container with a sealed sump and capable of holding at least 110% of the vessel's capacity. All fill, draw and overflow pipes shall be properly housed within the bunded area to avoid spillage. The storage vessel, impermeable container and pipes shall be maintained for the duration of the development.

*Reason: To minimise the risk of pollution to water courses and aquifers and to comply WLP policy 10 and BDLP policy LPP70.*

50. The development hereby permitted shall be implemented in accordance with the details submitted with respect to temporary and permanent site perimeter fencing. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and as by Non Material Amendment application ref. ESS/34/15/BTE/NMA4 dated 3 January 2023 and the following documents and drawings:

Drawing Ref	Title	Dated
CCE-HZI-500430049 Rev 0.3	Construction site layout	17/12/2015
732.1/08A HDA D1	Rabbit proof fence detail	Jun 2015
732.1/10A HDA D3	Tree protection fencing – BS 5837:2012	Jul 2015
222009-DC-XX-XX-GA-C-1602 P03	Site Wide – Fencing Details	Sept 2022
SHA 1359	Arboricultural Method Statement Report by Sharon Hosegood Associates	Jan 2023

The fencing and gates shall be erected in accordance with the details approved and maintained throughout the life of the IWMF.

*Reason: In the interest of visual amenity, to protect the countryside and to comply with WLP policy 10 and BDLP SP7, LPP52, LPP63, LPP65, LPP67.*

51. (a) The development hereby permitted shall be implemented in accordance with the details submitted with respect to a scheme and programme of measures for the suppression of dust as approved on 16 February 2016 under condition 51a of planning permission ESS/55/14/BTE. The approved details include: application for approval of details reserved by condition dated 4 August 2015 and the following documents:
- Condition 51a – Dust minimisation scheme by Honace; and
  - Construction dust – HSE Information Sheet no. 36 (revision 2).
- (b) No beneficial operation of the IWMF shall commence until a scheme and programme of measures for the suppression of dust, have been submitted to and approved in writing by the Waste Planning Authority. The scheme shall include:

- (i) The suppression of dust caused by handling, storage and processing of waste; and
- (ii) Dust suppression on haul roads, including speed limits.

In relation to each scheme provision for monitoring and review.

The development shall be implemented in accordance with the approved schemes and programme for the duration of the development hereby permitted.

*Reason: To reduce the impacts of dust disturbance from the site on the local environment and to comply with WLP policy 10 and BDLP policies LPP66 and LPP70.*

52. (a) The development hereby permitted shall be implemented in accordance with the details submitted with respect to measures to control fugitive odour from the excavation of materials and construction of the IWMF as approved on 16 February 2016 under condition 52a of planning permission ESS/55/14/BTE. The approved details include: application for approval of details reserved by condition dated 4 August 2015 and the following document "Condition 52a – Odour minimisation scheme by Honace"
- (b) No beneficial operation of the IWMF shall commence until details of equipment required to control any fugitive odour from the handling/storage/processing of waste have been submitted to and approved in writing by the Waste Planning Authority. The details shall be implemented as approved.

*Reason: In the interests of local amenity and to comply with WLP policy 10 and BDLP policies LPP52 and LPP70.*

53. The development hereby permitted shall be implemented in accordance with the details submitted with respect to the ecological information and mitigation. The approved ecological information and mitigation includes the following:

Ecological information approved on 27 July 2011 in accordance with condition 53 of planning permission Ref. APP/Z1585/V/09/2104804 (ECC ref ESS/37/08/BTE). The details approved included letter dated 19 May 2011 from Golder Associates with accompanying application form and Ecology report dated October 2010.

The application for approval of details reserved by condition dated 4 August 2015 and the information contained within the Ecological report by Green Environmental Consultants dated July 2015 and Appendix 7-1 Baseline ecology report August 2008.

Ecological mitigation shall be carried out in accordance with the approved details throughout the life of the IWMF.

Reason: To make appropriate provision for conserving and enhancing the natural environment, in the interests of biodiversity and in accordance, WLP policy 10 and BDLP policies LPP64, LPP63, LPP65, LPP66 and LPP67.

54. The development hereby permitted shall be implemented in accordance with the details submitted with respect to the habitat management plan. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the “Habitat Management Plan – revised July 2015 – report number 499/10” by Green Environmental Consultants and appendices A to E. The development shall be implemented in accordance with the approved habitat management plan throughout the life of the IW MF.

Reason: To make appropriate provision for conserving and enhancing the natural environment, in the interests of biodiversity and in accordance with, WLP policy 10 and BDLP policies LPP63, LPP64 , LPP65 and LPP66 and LPP67.

55. No demolition, excavation works or removal of hedgerows or trees shall be undertaken on the site during the bird nesting season [1 March to 30 September inclusive] except where a suitably qualified ecological consultant has confirmed that such construction etc. should not affect any nesting birds. Details of such written confirmations shall be sent to the Waste Planning Authority 14 days prior to commencement of the works.

Reason: To make appropriate provision for conserving and enhancing the natural environment, in the interests of biodiversity and in accordance with WLP policy 10 and BDLP policies LPP63, LPP64 , LPP65 and LPP66 and LPP67.

56. Only one stack shall be erected on the site to service all elements of the IW MF. The height of the stack shall not exceed 85m Above Ordnance Datum.

Reason: In the interest of visual amenity, to protect the countryside and to comply with WLP policy 10 and BDLP policies SP7, LPP47, LPP52, and LPP66 and LPP67.

57. The development hereby permitted shall be implemented in accordance with the details submitted with respect to bunding and planting. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 as amended by Non-Material Amendment applications ref. ESS/34/15/BTE/NMA2 application dated 10 December 2022 and ESS/34/15/BTE/NMA5 application dated 25 April 2023 and the following drawings:

Drawing Ref	Title	Dated
732.1_07B HDA SA1	Soft landscape proposals site access	Jun 2015
732.1_02G HDA SL1	Soft landscape proposals sheet 1 of 5	18/12/15
732.1_03G HDA SL2	Soft landscape proposals sheet 2 of 5	18/12/15

903.2/04E HDA SL3	Soft landscape proposals sheet 3 of 5	April 2023
903.2/05E HDA SL4	Soft landscape proposals sheet 4 of 5	April 2023
903.2/06D HDA SL5	Soft landscape proposals sheet 5 of 5	April 2023
732.1_09 HDA D2	Standard tree pit detail	Jun 2015
In respect of area W2-A only		
4321/PO2	Outline Planting W2-A	01/11/21
	IWMF W2-A Outline Landscape specification	02/11/21

*Reason: To comply with section 197 of the Town and Country Planning Act 1990 (as amended), to improve the appearance of the site in the interest of visual amenity, to protect the countryside and to comply with WLP policy 10 and BDLP policies SP7, LPP47, LPP52, LPP63, LPP66 and LPP67.*

58. Any tree or shrub forming part of the retained existing vegetation or the planting scheme approved in connection with the development that dies, is damaged, diseased or removed within the duration of 5 years during and after the completion of construction of the IWMF, shall be replaced during the next available planting season (October-March inclusive) with a tree or shrub to be agreed in advance in writing by the Waste Planning Authority.

*Reason: To comply with section 197 of the Town and Country Planning Act 1990 (as amended), to improve the appearance of the site in the interest of visual amenity, to protect the countryside and to comply with WLP policy 10 and BDLP policies SP7, LPP52, LPP63 and LPP66 and LPP67.*

59. The development hereby permitted shall be implemented in accordance with the details submitted with respect to tree retention and protection measures. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and as amended by Non Material Amendment application ref. ESS/34/15/BTE/NMA5 application dated 25 April 2023 and the following drawings:

<b>Drawing Ref</b>	<b>Title</b>	<b>Dated</b>
732.1_07B HDA SA1	Soft landscape proposals site access	Jun 2015
732.1_02G HDA SL1	Soft landscape proposals sheet 1 of 5	18/12/15
732.1_03G HDA SL2	Soft landscape proposals sheet 2 of 5	18/12/15
903.2/04E HDA SL3	Soft landscape proposals sheet 3 of 5	April 2023
903.2/05E HDA SL4	Soft landscape proposals sheet 4 of 5	April 2023

903.2/06D HDA SL5	Soft landscape proposals sheet 5 of 5	April 2023
732.1_10A HDA D3	Tree protection fencing	Jul 2015
732.1_08A HDA D3	Rabbit proof fence detail	Jun 2015

The tree protection measures shall be implemented at the time of planting and maintained throughout the life of the IWMF.

*Reason: In the interest of visual amenity, to ensure protection for the existing natural environment, including adjacent TPO woodland and to comply with WLP policy 10 and BDLP policies SP7, LPP52, LPP63, LPP64, LPP65, LPP66 and LPP67.*

60. The development hereby permitted shall be implemented in accordance with the details submitted with respect to management and watering of trees adjacent to the retaining wall surrounding the IWMF. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the statement by HDA entitled "Rivenhall Integrated Waste Management Facility – Condition 60" dated 8 June 2015. The management and watering shall be carried out in accordance with the approved details throughout the life of the IWMF.

*Reason: In the interest of visual amenity, to ensure protection for the existing natural environment, including adjacent TPO woodland and to comply with, WLP policy 10 and BDLP policies SP7, LPP52, LPP63, LPP64, LPP65 and LPP66 and LPP67.*

61. The development hereby permitted shall be implemented in accordance with the details submitted with respect to the layout of parking area including hard and soft landscaping and lighting adjacent to Woodhouse Farm. The approved details include: the application for approval of details reserved by condition dated 4 August 2015, the Statement by Honace entitled "Condition 61 Woodhouse Farm Parking & Lighting" and the followings drawings:

Drawing ref	Title	Dated
IT569/CP/01 Rev B	Woodhouse car park layout and typical details	21/07/15
732.1_05G HDA SL4	Soft landscape proposals sheet 4 of 5	18/12/15
DW40019H001 Rev p1	Proposed lighting layout	22/07/15

The parking, lighting and landscaping shall be maintained in accordance with the details approved throughout the life of the IWMF.

*Reason: To protect the setting of the Listed Buildings and in the interest of visual amenity and to comply with WLP policy 10 and BDLP policies SP7, LPP52 and LPP77.*

62. The development hereby permitted shall be implemented in accordance with the details submitted with respect to traffic calming measures designed to reduce the



speed of traffic using the access road in the vicinity of the River Blackwater. The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the following drawings:

Drawing Ref	Title	Dated
IT569_S278_01G	Footpath crossing typical detail	12/11/15
IT569_S278_02C	Vole and otter crossing	24/07/2015
SignPlot v3.10	"Vole and otter crossing" sign	

The traffic calming measures shall be maintained throughout the life of the IWMF in accordance with the approved details.

*Reason: To make appropriate provision for conserving and enhancing the natural environment within the approved development, in the interests of biodiversity and in accordance with WLP policy 10 and BDLP policies LPP63 and LPP66.*

63. The development hereby permitted shall be implemented in accordance with the details submitted with respect to the lining and signing of the crossing points of the access road with Church Road and Ash Lane. . The approved details include: the application for approval of details reserved by condition dated 4 August 2015 and the following drawings:

Drawing ref	Title	Dated
IT569/S278/03 C	Proposed improvements to site access road junction with Church Road	June 2015
IT569/S278/04 C	Proposed improvements to site access road junction with Ash Lane	June 2015
SignPlot v3.10	"Heavy Plant crossing" sign	
SignPlot v3.10	"Stop" sign	
SignPlot v3.10	Priority sign	

The lining and signing shall be maintained in accordance with the approved details throughout the life of the IWMF.

*Reason: In the interests of highway safety, safeguarding local amenity and to comply with WLP policy 10 and BDLP policies LPP52, LPP42, LPP70.*

64. Intentionally blank  
NB Condition fully discharged see application ESS/55/14/BTE/64/1 as amended by ESS/34/15/BTE/NMA1.
65. There shall be no use of the access road from the A120 to the IWMF except by traffic associated with the IWMF, Bradwell Quarry or to access agricultural land for agricultural purposes.

*Reason: In the interests of highway safety, as traffic movements above those associated with the IWMF, Bradwell Quarry and existing agricultural movements would need to be considered afresh and to comply with , WLP policy 10 and BDLP polices SP7, LPP42 and LPP52.*

66.. Intentionally blank  
NB condition removed following planning permission reference ESS/39/23/BTE.

67. Intentionally blank  
NB Condition fully discharged see application reference ESS/34/15/BTE/67/01.

68. Woodhouse Farm and buildings shall be refurbished to a visitor and education centre no later than 1 March 2022.

*Reason: To ensure the timely refurbishment of the Listed Buildings and their being brought into beneficial in order to protect these heritage assets and to comply with WLP policy 10 and BDLP policy SP7 and LPP57 and the NPPF.*

69. Following the approval of details required by condition 19 and prior to the installation of process equipment and plant, an updated noise assessment shall be undertaken and submitted to the Waste Planning Authority for approval to demonstrate that the maximum noise levels set out in condition 38 would not be exceeded. Installation of process equipment and plant for the IWMF shall not commence until the updated noise assessment has been approved by the Waste Planning Authority.

*Reason: In the interests of residential and local amenity and to comply with WLP policy 10 and BDLP policies LL52 and LPP70.*

### **Informatives**

1. Upon commencement this planning permission shall supersede planning permission reference ESS/34/15/BTE
2. This planning permission shall be read and construed in conjunction with the Legal Agreement dated 20 October 2009, as amended by deeds of variation dated 1 December 2014, 26 March 2015, 26 February 2016 and 25 January 2024.

### **Reason for Approval**

**Subject to the imposition of the attached conditions, the proposal is acceptable having been assessed in the light of all material considerations, including weighting against the following policies of the development plan:**

#### ESSEX AND SOUTHEND WASTE LOCAL PLAN (WLP) adopted 2017

Policy 1 - Need for Waste Management Facilities

Policy 2 - Safeguarding Waste Management Sites & Infrastructure

Policy 3 - Strategic Site Allocations

Policy 10 - Development Management Criteria

Policy 11 - Mitigating and Adapting to Climate Change

BRAINTREE DISTRICT LOCAL PLAN (BDLP) adopted July 2022

LPP1	Development boundaries
LPP42	Sustainable Transport
LPP52	Layout and Design of Development
LPP57	Heritage Assets and their Settings
LPP59	Archaeological Evaluation, Excavation and Recording
LPP63	Natural Environment and Green Infrastructure
LPP64	Protected Sites
LPP65	Tree Protection
LPP67	Landscape Character and Features
LPP70	Protecting and Enhancing Natural Resources, Minimising Pollution and Safeguarding from Hazards
LPP74	Flood and surface water drainage
LPP77	External Lighting

**Statement of Reasons**

The deletion of Condition 66, the details approved thereunder and the associated conditions would remove a specific condition requiring all elements of the IWMF to be built before the EfW plant could be operated and also remove the requirement to complete all construction by 2026.

Recent caselaw has clarified that partial implementation of a development is not unlawful and thus the requirements approved under condition 66 are considered to be unenforceable. This position is also supported by planning guidance.

However, it should be emphasised that it is the opinion of the Waste Planning Authority that the removal of condition 66 does not give the developer the right to build anything other than that which has been approved. The development would still be required to comply with all the conditions of the planning permission, including, layout, access, vehicle numbers, waste throughput, lighting noise, ecology etc, unless planning applications are made either to the Waste Planning Authority or Secretary of State for changes and these applications subsequently approved.

It remains the view of the Waste Planning Authority that the IWMF was permitted as an integrated facility and that, without the integration of all the elements of the IWMF, it would not deliver the full benefits of integration. And as a result it would deliver less environmentally sustainable development.

**There are no other policies or other material considerations which are overriding or warrant the withholding of permissions.**

**THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017 (AS AMENDED)**

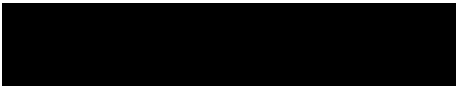
The proposed development would not be located adjacent or within a European site.

Therefore, it is considered that an Appropriate Assessment under Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (as amended) is not required.

**STATEMENT OF HOW THE LOCAL AUTHORITY HAS WORKED WITH THE APPLICANT IN A POSITIVE AND PROACTIVE MANNER:** In determining this planning application, the Waste Planning Authority has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with the planning application by liaising with respondents and the applicant/agent. This approach has been taken positively and proactively in accordance with the requirement in the NPPF, as set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Dated: 26/01/2024  
COUNTY HALL  
CHELMSFORD

Signed

A solid black rectangular box redacting the signature of Graham Thomas.

Graham Thomas - Head of Planning Service

**IMPORTANT - ATTENTION IS DRAWN TO THE NOTES ON THE NEXT PAGE**

## NOTES

### TOWN AND COUNTRY PLANNING ACT 1990

#### NOTIFICATION TO BE SENT TO AN APPLICANT WHEN A LOCAL PLANNING AUTHORITY REFUSE PLANNING PERMISSION OR GRANT IT SUBJECT TO CONDITIONS

##### Appeals to the Secretary of State

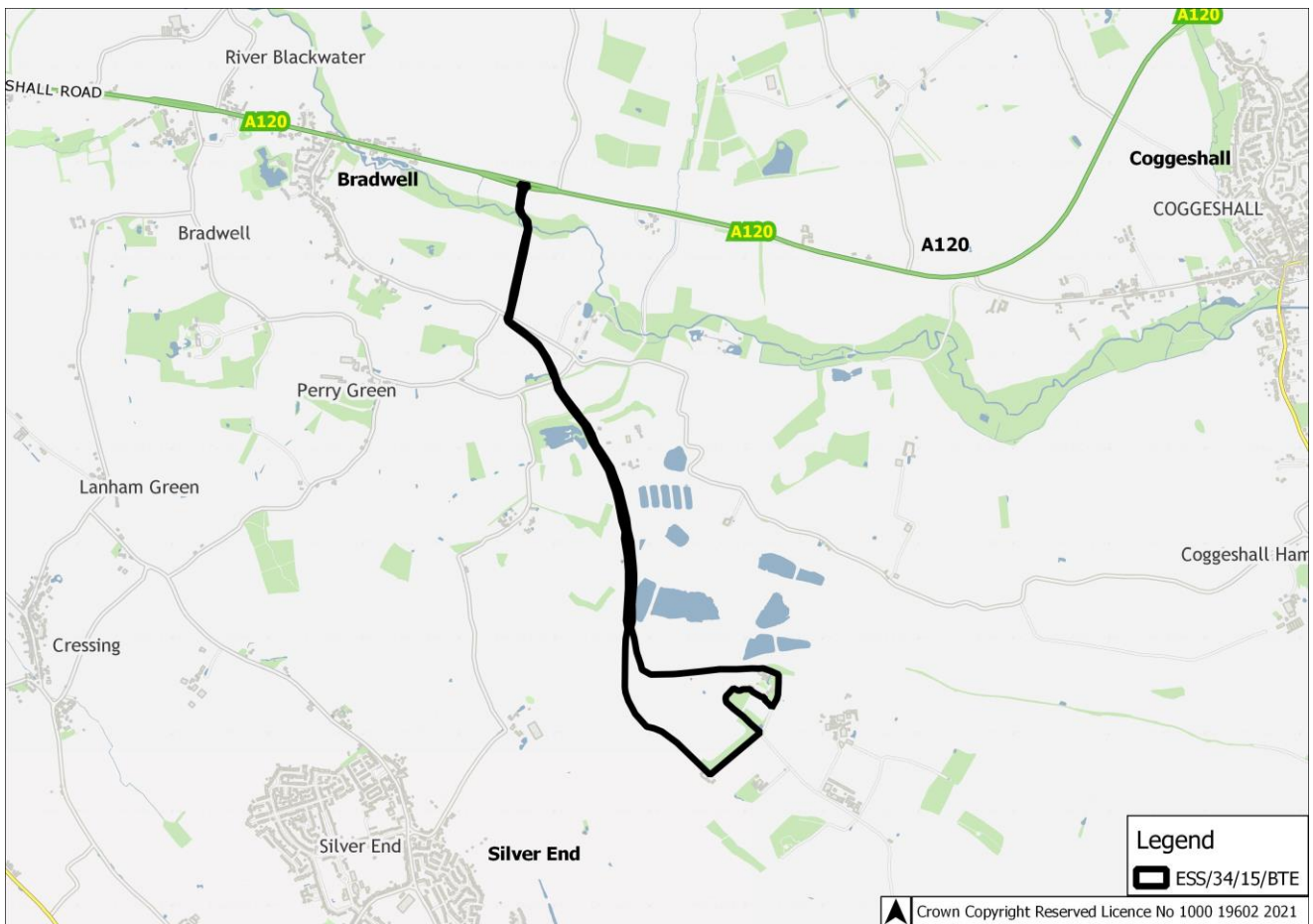
- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990 (as amended).
- If you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this notice.
- If this is a decision that relates to the same or substantially the same land and development as is already the subject of an enforcement notice, if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice.
- Alternatively, if an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of service of the enforcement notice, or within 6 months of the date of this notice, whichever period expires earlier.
- Appeals can be made online at: <https://www.gov.uk/appeal-planning-decision> .If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000
- The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate ([inquiryappeals@planninginspectorate.gov.uk](mailto:inquiryappeals@planninginspectorate.gov.uk)) at least 10 days before submitting the appeal. Further details are on GOV.UK.

**Appendix 4 - ESS/34/15/BTE/66/01 (Submission of details under Condition 66  
of ESS/34/15/BTE) – Development & Regulation Committee Report 25  
February 2022**

**DR/06/22****Report to:** DEVELOPMENT & REGULATION (25 February 2022)**Proposal:** MINERALS AND WASTE DEVELOPMENT

Details pursuant to Condition 66 (Plan of action for an alternative use or a scheme of rehabilitation) of ESS/34/15/BTE. ESS/34/15/BTE was for "Variation of condition 2 (application drawings) of planning permission ESS/55/14/BTE to allow amended layout of the Integrated Waste Management Facility. The Integrated Waste Management Facility comprising: Anaerobic Digestion Plant treating mixed organic waste, producing biogas converted to electricity through biogas generators; Materials Recovery Facility for mixed dry recyclable waste to recover materials e.g. paper, plastic, metals; Mechanical Biological Treatment facility for the treatment of residual municipal and residual commercial and industrial wastes to produce a solid recovered fuel; De-inking and Pulping Paper Recycling Facility to reclaim paper; Combined Heat and Power Plant (CHP) utilising solid recovered fuel to produce electricity, heat and steam; extraction of minerals to enable buildings to be partially sunken below ground level within the resulting void; visitor/education centre; extension to existing access road; provision of offices and vehicle parking; and associated engineering works and storage tanks. And approval of details required by condition (the details taking account of the proposed amended drawings), the conditions sought to be discharged are as follows: 6 (access road, cross over points), 13 (Signage, Telecommunications & Lighting at Woodhouse Farm complex), 14 (Stack design and finishes), 15 (design details and construction materials), 17 (management plan for the CHP), 18 (green roof), 20 (construction compounds, parking of vehicles), 22 (foul water management), 23 (surface water drainage and ground water management), 24, (groundwater monitoring), 37 (signs on access road at footpath crossings), 43 (lighting scheme during construction), 45 (phasing scheme for access road, retaining wall and mineral extraction), 50 (fencing - temporary and permanent), 53 (ecological survey update), 54 (Habitat Management Plan update), 57 (landscaping - bunding & planting), 59 (trees, shrubs and hedgerows - retention and protection), 60 (tree management and watering adjacent to retaining wall), 61 (Woodhouse Farm parking and landscaping), 62 (traffic calming measures at River Blackwater for otters and voles) and 63 (access road crossing points - lining and signing)"

**Ref:** ESS/34/15/BTE/66/01**Applicant:** Indaver**Location:** Rivenhall Airfield, Coggeshall Road (A120), Braintree, CO5 9DF**Report author:** Chief Planning Officer (County Planning and Major Development)**Enquiries to:** Claire Tomalin Tel: [REDACTED]The full application can be viewed at <https://planning.essex.gov.uk>



## 1. BACKGROUND

The current application is not a planning application, but an application to discharge details reserved by condition, in this case condition 66 of the planning permission ESS/34/15/BTE for Rivenhall Integrated Waste Management Facility (IWMF).

Planning Permission for the Rivenhall IWMF was first granted by the Secretary of State (SoS) in March 2010 following a call-in public inquiry (ECC Ref ESS/37/08/BTE). The Inspector's Report and SoS Decision are at Appendix A and B.

While the original application was determined by the SoS, subsequent applications fall to the Waste Planning Authority (WPA) to determine, unless called-in or legislation requires otherwise. There have been subsequent variations to the planning permission and submissions in response to conditions, which have been dealt with by the WPA, the summary below focuses on those relevant to the current application.

The 2010 planning permission was required to be implemented by March 2015. In 2014 a planning application (ESS/41/14/BTE) was made to the WPA to extend the implementation period by 2 years. In December 2014, planning permission was granted for a 1 year extension only, such that the planning permission was required to be commenced by March 2016.



In 2015 a planning application (ESS/34/15/BTE) was made to amend the capacities of the different elements of the IWWMF, in particular increasing the capacity of the Combined Heat and Power Plant (CHP) from 360,000tpa to 595,000tpa. The application also incorporated details to discharge a number of conditions of the original permission. The planning permission was granted in February 2016 (copy of the decision notice is at Appendix C) and at that time additional conditions were added, including condition 66. This condition sought to address the possibility that if the development was started but did not progress, the site would not be left without a beneficial use. Implementation of planning permission ESS/34/15/BTE was undertaken in March 2016.

In 2017 two planning applications were made (ESS/37/17/BTE & ESS/36/17/BTE) which in combination sought to increase the height of the stack of the CHP. An Environmental Permit (EP) had been granted by the Environment Agency (EA) but with a higher stack than that permitted by the planning permission, the applications sought to increase the stack height in line with EP. These planning applications were refused in May 2019 primarily as it had not been demonstrated that the harm to the landscape, visual amenity and setting of Listed Buildings was not outweighed by other factors, notably the need for the capacity of the facility. The extant permission for the IWWMF therefore remains ESS/34/15/BTE.

The applicant/developer had been Gent Fairhead & Co until October 2018, when it was announced that Indaver would be working with Gent Fairhead & Co. Indaver has since taken on a long-term lease for the IWWMF site and works commenced on site in winter 2019/20. Gent Fairhead & Co have an option to lease the land on which there is permission for a market de-ink paper pulp plant facility that forms part of the IWWMF.

The planning permission for the IWWMF gives consent for:

- A CHP plant (595,000tpa) utilising Refuse Derived Fuel (RDF) generated on site and imported RDF/Solid Recovered Fuel (SRF) to generate heat, steam and electricity to be used on site. Some electricity to be exported to the National Grid.
- Merchant De-ink Paper pulp plant (MDIP – 170,000tpa) to reprocess waste paper imported to the site, as well as any suitable paper recovered by the MRF and would utilise, heat, steam and power generated by the CHP. Paper pulp board to be exported from the site.
- Anaerobic Digestion (AD – 30,000tpa) facility to treat food and green waste generating biogas for production of electricity on site and generating a compost like output for export.
- Materials Recycling Facility (MRF – 300,000tpa) to sort through imported waste recovering recyclables such as paper, card, plastics and metal.
- Mechanical Biological Treatment Facility (MBT – 170,000tpa), to treat waste by mechanical treatment e.g. shredding and then biological treatment using air and moisture to bio-stabilise the waste, the output being an RDF.

The total amount of waste that can be imported to the site is limited by condition to 853,000tpa. The maximum number of HGV movements is limited to 404 a day Monday to Friday and 202 on Saturday mornings.

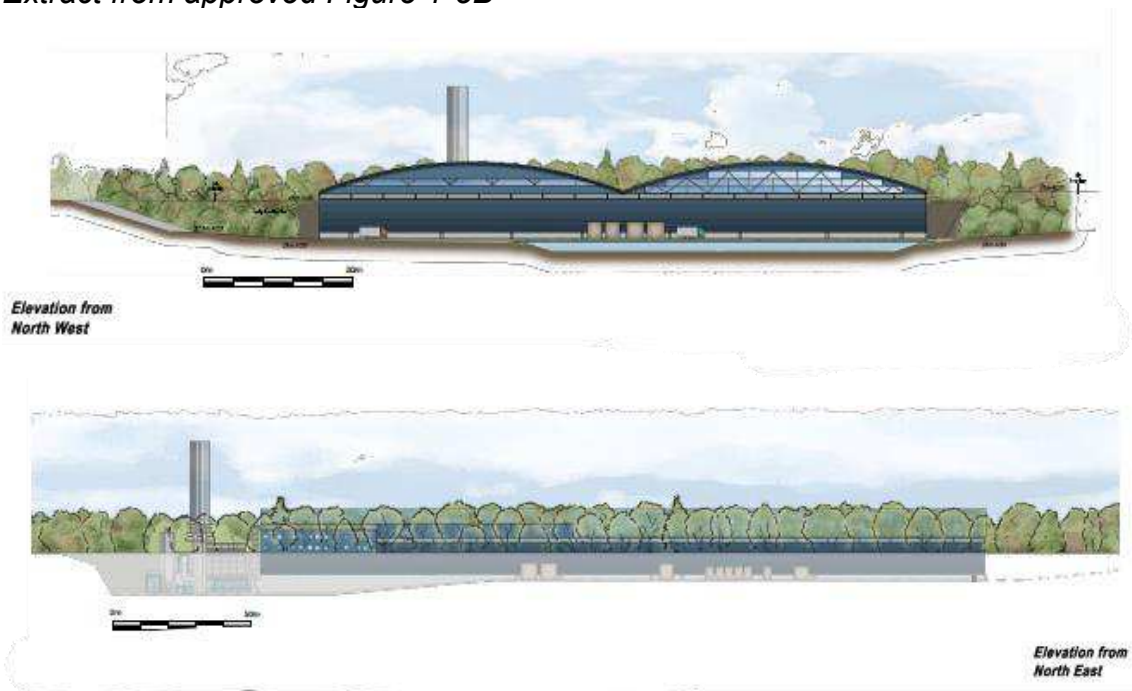
The permission also includes the creation of an extended access road from the A120 and refurbishment of the Woodhouse Farm Listed Buildings complex and other associated infrastructure.

Extract from Figure 1-5B



The MDIP, MRF, MBT and AD are permitted to be housed in a double arched building, where the majority of the building is to be located below natural ground. The CHP and other associated infrastructure is to be located also partly below ground to the rear of the IWMF building.

Extract from approved Figure 1-5B



The IWMF site overlaps in part with the worked-out areas of Bradwell Quarry, operated by Blackwater Aggregates (a joint company of Cemex and Gent Fairhead & Co). Planning permission for extraction and restoration of sites A3 and A4<sup>1</sup> (see plan below) incorporated the possibility of overburden from within the IWMF site to be utilised to restore sites A3 and A4 to near natural levels rather than low-level restoration. In Spring 2021 works commenced to remove overburden from the IWMF site and be placed in sites A3 and A4 to achieve restoration to near natural levels. These works are ongoing.

## **2. SITE**

The IWMF site is located east of Braintree, approximately 1km to the north east of Silver End and approximately 3km south west of Coggeshall and approximately 3km south east of Bradwell village. The site is 25.3 ha which includes the access road.

The IWMF site at its northern end comprises a narrow strip of land leading southwards from the A120 Coggeshall Road, the location of the access road. To the south the IWMF site widens into an irregular shaped plot of land.

The IWMF site lies within the boundaries of both Bradwell Parish Council and Kelvedon Parish Council, the access road being mainly within Bradwell Parish Council and the remainder of the access road and IWMF itself lying within Kelvedon Parish Council.

The IWMF site lies on the southern part of the former Rivenhall airfield; the runways have been removed as part of mineral extraction. The IWMF site (not including the access road) is located approximately 1.7km south of Coggeshall Road (A120T) and includes the Grade II Listed Buildings of Woodhouse Farm.

Woodhouse Farm buildings are located on the south eastern side of the IWMF site and included in the IWMF planning permission area. The IWMF site also includes woodland protected by Tree Preservation Order, which surrounds the southern boundary of the IWMF itself.

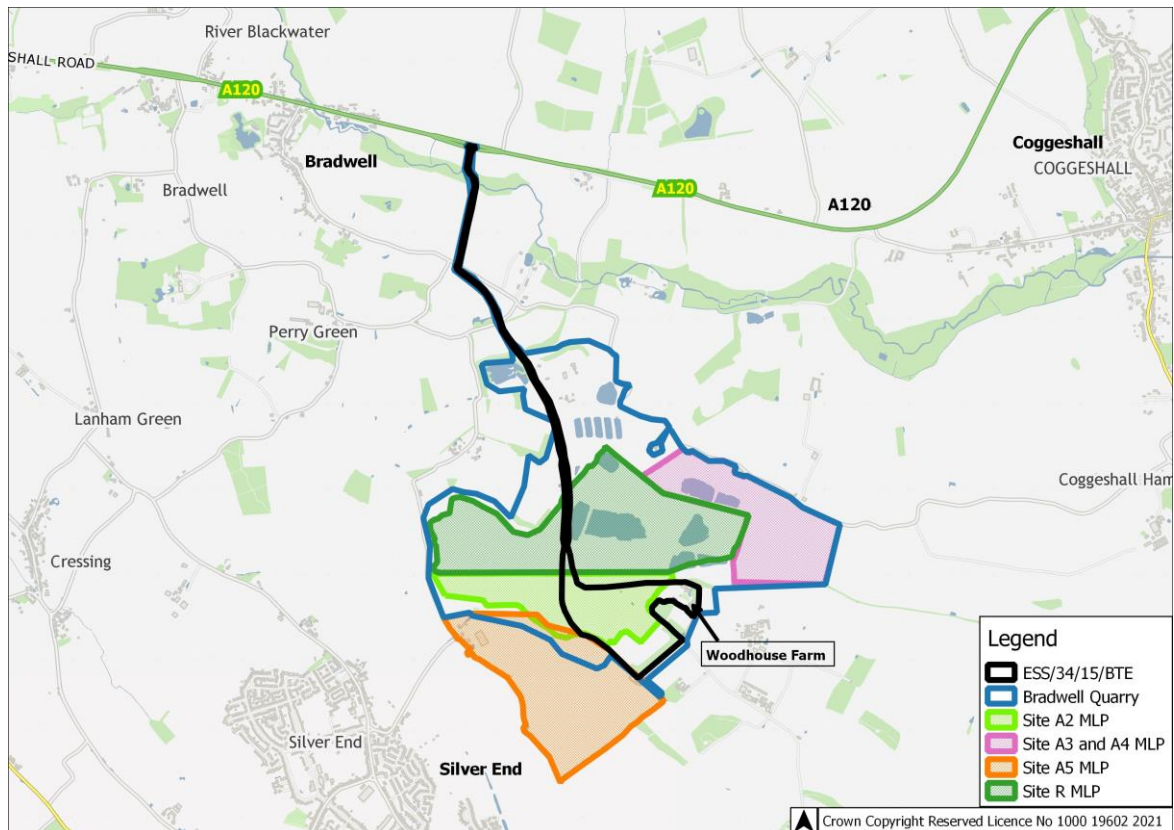
The IWMF site also included an airfield hangar which upon implementation of IWMF permission in 2016 was removed.

The IWMF site overlaps with Bradwell Quarry where sand and gravel extraction is currently taking place within Minerals Local Plan Preferred site A5. The location plan below shows the extent of previous and current mineral extraction areas; Site R permitted in 2001; site A2 permitted in 2011 (which included extraction in part of the site for the IWMF); and sites A3 and A4 permitted in 2015 and site A5 granted in 2019. Previously worked out areas of the quarry have been restored at low level to arable agriculture with new hedgerows and woodland planting. There are, however, areas of Bradwell Quarry (sites A2, R and A3 and A4) which are awaiting restoration to a combination of arable, woodland and water. The delay in completion of the restoration in these areas has in part been due to the uncertainty as to the progression of the IWMF. With progression of the IWMF, works to

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<sup>1</sup> Sites A3 and A4 are identified as preferred sites for extraction in the Minerals Local Plan (2014)

complete unrestored mineral workings is now ongoing.



The IWMF site is set within a predominantly rural character area, consisting of arable crops in large fields, often without boundaries resulting in an open landscape in gently undulating countryside. The landform around the site forms a flat plateau at about 50m AOD, although the restored minerals workings to the northwest (site R) and southwest (site A5) have been or will be restored at a lower level, creating bowls in the landscape. Site A3 and A4 as previously mentioned are to be restored to near natural levels utilising overburden from the IWMF site.

The nearest residential properties, not including Woodhouse Farm (not occupied), include The Lodge and Allshots Farm located to the east of the IWMF site approximately 450m. To the north/north east on Cuthedge Lane are Heron's Farm at approximately 700m from the site of the IWMF, Deeks Cottage at approximately 850m and Haywards 920m from the site of the IWMF. To the west of the site on Sheepcotes Lane lies Sheepcotes Farm 580mm from the site of the IWMF, also Gosling's Cottage, Gosling's Farm and Goslings Barn and Greenpastures all approximately 1200m from the site of the IWMF. Properties to the southwest within Silver End village lie approximately 850m from the of the IWMF. Parkgate Farm lies south of the site approximately 1000m from the site of the IWMF.

Approximately 400m to the east of the IWMF site boundary and Woodhouse Farm, lies a group of buildings, including the Grade II listed Allshots Farm and a scrap yard.

Approximately 500m to the south east of the IWMF, beyond agricultural fields, there is a group of buildings known as the Polish site. These buildings are used by a number of businesses and form a small industrial and commercial estate to which

access is gained via a public highway Woodhouse Lane leading from Parkgate Road.

A further business operates on the south west edge of the IWMF site, at the "Elephant House", the building being the fire station for the redundant airfield. The site is used by a road sweeping company, but the site is well screened by mature evergreen trees.

The permitted vehicular route to the IWMF site shares the existing access on the A120 and the private access road for Bradwell Quarry. The access route crosses the River Blackwater by two bailey style bridges and crosses Church Road and Ash Lane (a Protected Lane as defined in Braintree District Local Plan Review 2005). The access road is two way from the A120 to Church Road, then single lane with passing bays between Church Road and Ash Lane and then two way south of Ash Lane to Bradwell Quarry processing plant. The crossing points on Church Road and Ash Lane are both single lane width only. Some works have already taken place with respect to the IWMF including preparing the access road to be two way between Church Road and Ash Lane, as well as speed bumps and signage.

To the south of the Bradwell processing area, the permitted access road to the IWMF site has not been constructed. However, works have been undertaken to create a construction access road for plant and staff to the IWMF site where a construction compound has been formed. The site of the IWMF has been largely worked for sand and gravel but then the overburden was replaced. The remaining unworked mineral area within the IWMF site has been cleared of vegetation and topsoils and the subsoils stripped, and overburden is currently being removed to create the void for the IWMF plant and buildings. The remaining mineral within the site will be extracted for which there is planning permission.

The same area of the IWMF site is allocated in the adopted Waste Local Plan 2017 as a site IWMF2 for residual non-hazardous waste management and biological treatment.

The land comprising the IWMF site has no designations within the Braintree Development Plan.

There are two County Wildlife Sites (CWS) within 3 km of the site at Blackwater Plantation West, which is within the Blackwater Valley which the access road crosses. The second CWS is at Storey's Wood (south of the site), which is also an Ancient Woodland.

There are 4 Grade II Listed properties within 1km of the IWMF site including Woodhouse Farm and buildings within 200m, Allshots Farm and Lodge (400m away) to the east, Sheepcotes Farm (1000m) to the west.

Three footpaths (FP's 19, 57 [Essex Way], 58) are crossed by the existing quarry access road and the extended access road to the IWMF would cross the FP35. There is also a public footpath No. 8 (Kelvedon) which heads south through Woodhouse Farm complex. FP 8 (Kelvedon) links with FPs 35 and 55 (Bradwell) to provide links west to Sheepcotes Lane and FP 44 (Kelvedon) runs eastwards



linking with bridleway 1 (Kelvedon - Pantlings Lane) towards Coggeshall.

### 3. PROPOSAL

The application seeks to address the requirements of condition 66 of ESS/34/15/BTE; the wording and reason for condition 66 are set out below.

In the event that the IWMF is not brought into beneficial use within 5 years of commencement of the development (as notified under condition 1) the operator shall within 6 months of the end of the 5 year period submit a plan of action for an alternative use or a scheme of rehabilitation for the site for approval by the Waste Planning Authority. The plan of action for an alternative use or scheme of rehabilitation shall be implemented within 6 months of approval by the Waste Planning Authority.

*Reason: To ensure that if the development of the IWMF is not progressed to a beneficial use within a reasonable period, that the site is either planned for an alternative use or the site rehabilitated in the interests, of minimising the adverse environment impacts of incomplete implementation and in accordance with WLP W8A, W10E and MLP DM1 and BCS policies CS5 and CS8.*

It should be noted that the Policies referred to within the reason for the condition are those from the 2001 Waste Local Plan, which has since been superseded by the Waste Local Plan 2017. Policy W8A related to allocated sites of the WLP 2001 and is superseded by Policy 3 (Strategic Site Allocations) of the WLP 2017. The site allocated in the WLP 2001 was smaller than that allocated in WLP 2017. The site in the WLP 2017 is similar to that of the permission area for the IWMF. Policy W10E was with respect to Development Control Criteria, now superseded by policy 10 (Development Management Criteria) of the WLP 2017.

The applicant has submitted a letter to address the requirements of condition 66 (a copy of the letter is included as Appendix D) and a clarifying email and the “plan of action” is as follows:

#### ***Plan of action***

*RPS [applicant's agent] proposes the following staged plan of action which we believe reflects the circumstances and decisions we currently face. They are presented in a manner which aims to provide the planning authority with transparency in relation to our intentions for the site. In sequence the plan is:*

*1. To build out the permission as authorised by the Planning Permission. Indaver regard this permission as valuable commercially and necessary to deal with the waste management needs arising in the area. As is well known, their immediate focus is to deliver the CHP (or Energy from Waste (EfW)) component within the approved building. They are looking at developing the other consented waste management and energy components too, with the help of GFC, but we cannot yet confirm details of these and when they might be brought forward.*

*If, in the event that for technical or commercial reasons, Indaver is unable to bring forward all parts of the consented development e.g. the market or technology has*

*changed, then they are likely to wish to resort to options under stage 2 or 3 of the plan of action, as set out below.*

*2. Build out those elements within the consent which are technically and commercially viable, all within the building which currently has consent, and/or;*

*3. Submit an application for consent for alternative waste management and/or energy generation uses.*

*Option 2 allows for the possibility of us not building out certain elements of the consented scheme if they prove untenable technically or commercially. In particular, we are concerned that at present the paper pulp plant may fall into this category, and therefore lead us to initiate options 2 or 3 of the plan.*

*Finally, in terms of Option 3, we are exploring the possibility of increasing the power output of the EfW to above the 50 MWe threshold, which would require consent from the Secretary of State under the Planning Act 2008 (a Development Consent Order). Option 3 of the plan caters for this scenario. In addition, although not currently planned, should we wish to apply for something that falls outside the scope of the current planning permission, we will of course approach you and the local liaison committee in advance to set out those plans.*

#### **4. POLICIES**

The following policies of the [Minerals Local Plan](#), adopted July 2014, [Essex and Southend Waste Local Plan adopted 2017](#) and [Braintree Local Plan 2013-2033 - Section 1 adopted February 2021](#), the [Braintree Core Strategy adopted September 2011](#) and [Braintree District Local Plan Review adopted July 2005](#) provide the development plan framework for this application. The following policies are of relevance to this application:

##### MINERALS LOCAL PLAN (MLP)

S8 - Safeguarding mineral resources and mineral reserves

##### WASTE LOCAL PLAN (WLP) 2017

Policy 1 - Need for Waste Management Facilities

Policy 2 - Safeguarding Waste Management Sites & Infrastructure

Policy 3 - Strategic Site Allocations

Policy 10 - Development Management Criteria

Policy 11 - Mitigating and Adapting to Climate Change

##### BRAINTREE DISTRICT LOCAL PLAN (BLP S1) 2013-2033 Section 1

SP 7 Place Shaping Principles

##### BRAINTREE DISTRICT COUNCIL LOCAL DEVELOPMENT FRAMEWORK CORE STRATEGY (BCS) adopted 2011

CS5 Countryside

CS8 Natural Environment and Biodiversity

##### BRAINTREE DISTRICT LOCAL PLAN REVIEW (BDLPR) 2005

RLP 36 Industrial and Environmental Standards

RLP 62	Development Likely to Give Rise to Pollution, or the Risk of Pollution
RLP 63	Air quality
RLP 65	External Lighting
RLP 72	Water Quality
RLP 80	Landscape Features and Habitats
RLP 81	Trees, Woodlands, Grasslands and Hedgerows
RLP 84	Protected species
RLP 87	Protected Lanes
RLP 90	Layout and Design of Development
RLP 100	Alterations, extensions and changes of use to Listed Buildings and their settings
RLP 101	Listed agricultural buildings
RLP 105	Archaeological Evaluation
RLP 106	Archaeological Excavation and Monitoring

## NEIGHBOURHOOD PLANS

Bradwell With Pattiswick Neighbourhood Plan 2019

Policy 1 Protecting and enhancing the Natural Environment and Green Infrastructure

Coggeshall PC (adjacent parish) Neighbourhood Plan (CNP) was adopted by Braintree District Council as part of the Development Plan in July 2021.

Policy 11 Preventing Pollution (including air and water quality, noise and light)

Kelvedon PC Neighbourhood Plan is at too earlier stage to have weight.

The Revised National Planning Policy Framework (NPPF) was published on 20 July 2021 and sets out the Government's planning policies for England and how these should be applied. The NPPF highlights that the purpose of the planning system is to contribute to the achievement of sustainable development. It goes on to state that achieving sustainable development means the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways: economic, social and environmental. The NPPF places a presumption in favour of sustainable development. However, paragraph 47 states that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

For decision-taking the NPPF states that this means; approving development proposals that accord with an up-to-date development plan without delay; or where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless: the application of policies in this NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this NPPF taken as a whole.

Planning policy with respect to waste is set out in the National Planning Policy for



Waste (NPPW published on 16 October 2014). Additionally, the National Waste Management Plan for England (NWMPE) is the overarching National Plan for Waste Management and is a material consideration in planning decisions.

Paragraphs 218 and 219 of the NPPF, in summary, detail that the policies in the Framework are material considerations which should be taken into account in dealing with applications and plans adopted in accordance with previous policy and guidance may need to be revised to reflect this and changes made. Policies should not however be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

Paragraph 48 of the NPPF states, in summary, that local planning authorities may give weight to relevant policies in emerging plans according to the stage of preparation of the emerging plan; the extent to which there are unresolved objections to relevant policies and the degree of consistency of the relevant policies in the emerging plan to the NPPF. Braintree District Council is currently awaiting the outcome of the Examination of Section 2 of the Local Plan 2013-2033, the emerging policies can therefore only be given limited weight.

## **5. CONSULTATIONS**

Summarised as follows:

### **BRAINTREE DISTRICT COUNCIL: Objection**

Braintree District Council expressed its objection in the strongest terms during the consideration of the IWMF at Rivenhall Airfield by the SoS in 2010. However it had to accept the decision of the planning process via the Secretary of State that the proposal was acceptable in principle and has since sought to work proactively with the statutory planning and licencing bodies (namely ECC and the EA) to minimise the impacts on local residents, amenity, infrastructure and the environment. Despite this our local residents continue to express their concern on these proposals. Our recent community engagement exercise on our own climate change strategy saw a significant number of comments about the incinerator which would become the biggest single emitter of carbon dioxide in the District and how impactful that would be on the environment and residents' health.

The Council wishes to express its increasing concern and disappointment that that site owners seem unwilling to bring the site forward in the manner that was consented and that all but the CHP now appear to be lost. The Council would ask that ECC take all possible legal steps to consider how it can compel the applicant to develop the proposal originally consented, or alternatively consider that a new application should be sought to consider properly the proposals as they now stand.

Alternatively, we note that the applicant has stated that they are considering whether they will propose to increase the output of the incinerator to above 50MW, and as stated we believe this would require a new permission through the NSIP process.

Condition 66 was imposed by Essex County Council as part of the permission granted on 26th February 2016. The Officer Report to the County Council's Planning Committee refers to the fact that the planning permission was being granted before the applicant had obtained the required EP from the EA. It is clear therefore that the intention of condition 66 is to prevent the situation that we currently find ourselves in, where some 11 years after the application was originally granted, the proposal has not been brought forward. Indeed the information from the landowner/developer now considers that proposals for part of the permission will come forward in 2024/25. This level of uncertainty for local residents in particular, is not acceptable.

The Plan for Action submitted to discharge this condition appears to be less than a page long and provides little detail, noting technical and commercial reasons but provides none of the details of these reasons that prevents four fifths of the consented scheme being developed. In our view this is a disingenuous approach to the discharging of this condition and the local resident's concerns. The details submitted to discharge condition 66 therefore seem to lack either a plan or action.

The applicant states that the only element of the consented scheme which is currently under active consideration for implementation is the CHP (the Combined Heat and Power Plant). Again the plan of action lacks any substance or detail, simply stating that 'The commissioning of this part of the plant is not expected until 2024/5'. The plan of action provides no details of how, or when, the CHP will be delivered beyond this vague statement. Even allowing a further four years for the CHP to come into beneficial use the plan of action fails to provide a clear programme of how the applicant will achieve this. The District Council considers that a further 4 year period until there is an operational use on the site, which bears limited resemblance to the consented scheme, does not meet the requirements set out in condition 66. There is no plan of action for an alternative use which can be implemented within six months. Indeed the third alternative use would require the submission of an application for consent for alternative waste management and/or energy generation uses. There is no commitment or timeframe given for this to happen. As such the application to discharge this condition should be refused.

A new application, whether to ECC or through the NSIP process appears the only sensible way in which residents, stakeholders and statutory bodies can properly engage and have their say on the plans as they are currently are, and consider these revised proposals in the changed context of the NPPF and increasing focus on the impacts of climate change.

**ENVIRONMENT AGENCY:** No objection

Option 1 is to continue and build the complete IWWMF with the intention of delivering the first phase (EfW plant) from 2024/25. Option 1 has no environmental permit issues as the permit was issued on the basis of all elements of the IWWMF being built.

Option 2 is to only build those elements of the IWWMF which are 'technically and commercially viable'. Depending on what elements were removed, Option 2 may need the developer to apply for a permit variation. This is due to the fact that all the elements of the IWWMF are interconnected (integrated) and therefore removing one of more elements of the scheme may have an impact on emissions to the

environment. As a minimum, removal of certain elements is likely to affect the overall energy efficiency of the scheme and also its carbon footprint.

Option 3 provides for a planning application to be made for 'alternative waste management and/or energy generation uses'. Option 3 would need a new environmental permit application to be submitted and a permit to be issued before any commencement of alternative waste treatment and/or energy generation uses.

BRADWELL WITH PATTISWICK PARISH COUNCIL: Objection – consider the details are incomplete as they should provide details of when all the components of the IWMF will be commenced and completed. Option 3 suggests only the incinerator will be built and permission sought to increase its power output. WPA should require a complete plan of action.

KELVEDON PARISH COUNCIL: Objection. The plan of action does not meet the full requirements of condition 66. The plan of action is in contradiction of the authorised permission granted in 2016 and goes against the wishes of the Inspector's original decision.

The plan of action represents a material change and therefore requires a new planning application. It has become clear that the commercial feasibility of a paper pulping plant is currently lacking and therefore, for at least the time being, the IWMF will be little, if anything, more than an incinerator. Commercial reasons should not allow for Condition 66 to be discharged.

The plan of action also does not comply with the waste hierarchy as stated in the ESS/36/17/BTE stack height refusal. Kelvedon Parish Council objects to the construction of an incinerator at this point in time, when Braintree District Council have declared a climate emergency and when there does not appear to be a current shortage of incinerator capacity in this region. There is also the pressing issue of air contamination from both the incinerator and the considerable number of vehicle movements that will be required in order to supply such an enormous incinerator with waste. Current research indicates a very detrimental impact of air pollution on health - linking to asthma and early death.

Furthermore, Kelvedon Parish Council objects to the discharge of Condition 66 on the basis that the applicant appears to have shown disregard for the Planning Authority, the Secretary of State and the planning process, through a process of planning creep and continuous change.

SILVER END PARISH COUNCIL (adjacent Parish): No comments received

COGGESHALL PARISH COUNCIL (adjacent Parish): Objection. The plan of action does not meet the full requirements of condition 66 on the basis:

1. Is non-compliant;
2. Contradicts the Authorised permission granted in 2016;
3. Is not viable as consented by their own admission and therefore ECC must stop the development;
4. Goes against the express wishes of the Inspector's original decision;
5. Does not comply with waste hierarchy as stated in the ESS/36/17/BTE stack height refusal;

6. Does not represent 'non-material changes' and as such requires a new application;
  - a. Changes significantly,
  - b. Is described in a different way,
  - c. Has components removed meaning it is designed differently,
  - d. Will result in different objections;and
7. Contravenes the policies W8A and now W10B and W10C.

In addition the applicant has stated they will not adhere to the authorised permission, CPC requires ECC to enforce condition 66 and cessation of the development coupled with a scheme of rehabilitation.

The response was accompanied by a statement expanding upon the points raised above and the full response is attached at Appendix E

FEERING PARISH COUNCIL (nearby Parish): Objection. We have read the objection comments received by Bradwell with Pattiswick Parish Council and we agree with their comments. The document which has been submitted as a plan of action is missing important information and until this plan of action is complete, we cannot support the discharge.

Feering Parish Council would also like clarity as to Indaver's role in the application for the discharge of condition 66. The original application ESS/34/15/BTE was submitted by Gent Fairhead and permission was given to Gent Fairhead. There is confusion between the relationship between Indaver and Gent Fairhead. Will Indaver be delivering the whole of the Integrated Waste Management Facility or are they just delivering part of it? We would like clarity as to who the "operator" is.

Officer Comment: The planning permission runs with the land, not the applicant.

RIVENHALL PARISH COUNCIL (nearby Parish): Objection, submission made on last day possible and is not "a plan of action for an alternative use" only speculative suggestions and there is no site restoration proposal is included. The restoration scheme should include replanting the woodland.

Condition 66 has been triggered because there has been no beneficial use of the site, in fact nothing has been built since it was granted in March 2010, some 11.5 years ago and it has been stated no waste processing will take place before 2024/5.

Option 1 says that the IWMF will be built as permitted, but it has been stated at Liaison meetings by Gent Fairhead/WREN that the paper pulp plant is now not commercially viable. Indaver have stated at liaison meeting that alternatives are being explored "on and off site" to take heat from the incinerator. Such uses would be outside the scope of the current consent.

Option 2 is to "build out those elements within the consent which are technically and commercially viable, all within the building which currently has consent". But this also does not align with the known facts. Indaver has stated at the liaison meeting, and in writing to the planning authority, that the only element they are

committed to construction is the waste incinerator, with commissioning by 2024/25. There is no commitment to any other elements of the IWWMF, no evidence has been submitted that these other elements are not commercially viable.

Option 3 - is to "submit an application for consent for alternative waste management and/or energy generation uses". Indaver state that they are in dialogue with ECC regarding the lawfulness of their approach, but ECC have stated they require the IWWMF to be built in full. It appears even after many years that there will be more changes.

Indaver have mentioned the possibility that they may wish to increase the power output to greater than 50MWe, which would require a development consent order from the Secretary of State. The incinerator has grown in size from 300,000 tonnes of waste per year to 595,000 tonnes per year in stages. It now appears that a further increase is under consideration with more, not less, uncertainty as to what the developers are really intending to build.

The application fails to offer any plan of restoration and only vague suggestions of what the alternative to the IWWMF could be. It appears the IWWMF has consented is not viable as consented and therefore WPA should bring an end to the ongoing "planning creep" and require a fresh and full planning application of what Indaver actually wants to build. This is important because in 2019 the WPA refused an application for a higher stack, with one of the reasons given being that the IWWMF was not required for Essex waste needs. A new and full planning application for the actual plant Indaver wants to build would allow consideration of whether that plant is needed for Essex and a judgement could then be made as to whether that plant would be acceptable set against current planning policies and climate change legislation.

LOCAL MEMBER- BRAINTREE - Witham Northern: Objection.

By removing Condition 66 this no longer becomes an "integrated" waste management facility, with many of the components from the original planning application stripped out by the developer. If the IWWMF is not built out with all the components, then this must be considered a breach of the original planning consent which was for all elements and demonstrates more than a "non-material" change to that application.

Furthermore, the parts that have been removed, such as the Pulping Paper Recycling Facility, brought environmental benefits of recycling and recovery of reusable materials – offsetting some of the harms from incineration. These are now gone, and this goes against the expressed wishes of the inspector's original decision.

The 'plan of action' that has been submitted by the developers is incomplete and, along with the continued changes to the application, demonstrates a complete disregard towards the planning process, the Planning Authority and most importantly to local residents.

LOCAL MEMBER- BRAINTREE - Braintree Eastern: Objection.

In 2010 the Inspector permitted an Integrated Waste Management Facility (IWWMF) and the then Labour Secretary of State (SoS) supported this. An IWWMF is, by

definition, made up of different elements and the inclusion of these “greener” elements was the only reason the dirty, environmentally damaging incinerator secured planning permission.

At no point did the Inspector or SoS allow for individual components to be omitted.

The IWMF has permission for an Anaerobic Digestion Plant (AD) treating mixed organic waste, producing biogas converted to electricity through biogas generators; Materials Recovery Facility (MRF) for mixed dry recyclable waste to recover materials e.g. paper, plastic, metals; Mechanical Biological Treatment (MBT) Facility for the treatment of residual municipal and residual commercial and industrial wastes to produce a solid recovered fuel; De-inking and Pulping Paper Recycling Facility to reclaim paper; Combined Heat and Power Plant (CHP) utilising solid recovered fuel to produce electricity, heat and steam.

Condition 66 sets out that in the event that the IWMF is not brought into beneficial use within five years of commencement of the development (as notified under Condition 1) the operator shall within six months of the end of the five-year period submit a plan of action for an alternative use or a scheme of rehabilitation for the site for approval by the Waste Planning Authority. The plan of action for an alternative use or scheme of rehabilitation shall be implemented within six months of approval by the Waste Planning Authority.

At the Indaver/ECC Rivenhall Waste Liaison Committee on June 17, 2021, Indaver stated that the Paper Pulping Recycling Facility was not commercially viable and would no longer be going ahead.

There has been some disagreement over what John Ahern of Indaver said at the meeting on June 17, 2021, about the hangars for the non-incinerator elements of the IWMF. The meeting was not recorded and there was no stenographer taking verbatim notes. I thought Mr Ahern made a pledge that at some point in the future Indaver would build an “empty hangar” at the cost of “£30million” to house the other elements of the IWMF after the incinerator was built and operational at the end 2025. As chair of committee, I tried to get this minuted but in an exchange of emails Mr Ahern said that was not what he said. Mr Ahern says he said Indaver would not build an empty hangar that it had no use for and costing £30million as that would be a waste of resources. He added: “However we are keen to build the hangars provided we have developed a beneficial use for them.”

So it can be deduced, Indaver currently hasn’t developed a beneficial use for and has no plans to build the infrastructure - empty hangars or otherwise - for the non incinerator elements of the IWMF.

This implies an arbitrary approach to the authorised planning permission.

Indaver has clearly indicated its intention to build the incinerator element of the plant first and vaguely suggests it is seeking partners to develop the AD, MRF and MBT. Seeking partners. Who, when, where, why, what? There are more questions than answers.

A separate company, Wren Renewables had previously stated it would bring

forward the development of the direct use of the heat and steam element of the IWMF.

But now Wren has stated that the market to reprocess high quality paper, the material which was aimed to be treated in the paper pulp plant, has changed, such that at the current time Wren no longer consider there is a market demand for the facility.

Wren has stated it is working with Indaver to find alternative proposals for the direct use of heat and steam from the incinerator. Where, when, with whom?

Thomas Fairhead, a director of Gent Fairhead, the company that secured permission for the IWMF in 2010, is also a director of Wren Renewables. Has another company involved in paper pulping been approached in regards to the viability of the Paper Pulping Recycling Facility at Rivenhall? It would be preferable to have an objective answer from a company not previously involved.

It is quite clear Indaver is only committed to building the incinerator - the dirty, climate-harming element - and not the greener elements of the IWMF as permitted. This is a significant change and one that needs to go back to the committee if not the SoS as a new application.

To date, apart from removing Condition 66, no application has been made to change the development as currently permitted.

Indaver has only made vague pledges to seek partners with respect to the AD, MRF and MBT, and the £30million hangar pledge if there's a "beneficial use" appears to be a cynical attempt to hoodwink ECC to get the incinerator-only element of IMWF through the final stages of planning.

If Indaver does eventually build a hangar at a cost of £30 million for the other elements, that sum is chicken feed when it comes to the profits the incinerator would make in its 30-year life span and could easily be written off as planning expenses. Based on the Croydon incinerator's profit figures, £80-£120 is charged per tonne of waste incinerated - that's £60 million a year income for the 600,000 tonnes per year Rivenhall incinerator or £1.8 billion over 30 years.

The Environment Agency has confirmed the transfer of their permit from Gent Fairhead to Indaver and has been transfer on the "as is" design & extant planning basis.

Dropping the Paper Pulping element of the permission will impact the calculations concerning emissions and heat outputs within the original EA permit, and as such, should be reviewed as well.

The five-year time limit (Condition 66) where the IWMF must be making a beneficial contribution has expired since they had a legal start on the 2<sup>nd</sup> March 2016.

The condition states that they have six months to provide a new plan of works and if none is received six months to restore the site.

Condition 66 requires that if there was no beneficial use of the IWMF within five years of commencement (i.e. 2<sup>nd</sup> March 2021), then the applicant is required within six months (i.e. 2<sup>nd</sup> September 2021) to "...submit a plan of action for an alternative use or a scheme of rehabilitation for the site...".

Indaver's plan of action is to remove Condition 66. That's not a plan of action - that's simply sidestepping the condition.

All this plan of action does is abuse the use of conditions, question their validity and inject a huge level of unacceptable risk and uncertainty; it is simply not clear what will be delivered.

The world has changed in the decade since the IWMF was permitted in 2010. If paper pulping is no longer commercially viable due to the impact of Covid19, then burning waste cannot be considered environmentally sustainable with all the scientific evidence that has been gathered on climate change since 2010 - and empirical evidence we see on our TV screens every day.

In the 11 years of delay and change we have a much deeper understanding of how air quality impacts human health and the environment; waste incineration may have been acceptable in the 20th century but it has simply become unacceptable in the 2020s. The USA stopped building new waste incinerators in the 1990s.

We now understand the impact of poor air quality and the damage that the emissions from the incinerator will do to both our environment and our health in terms of climate change, small particles, and with CO2 emissions taking centre stage and driving an unprecedented and current 1.5C increase in global warming.

Global emissions must peak by 2025 to keep global warming at 1.5C. The Rivenhall incinerator is set to start operating at the end of 2025.

On this basis, ECC must now stop development on the site, understand what is being built and require a new application based on the latest scientific knowledge, not ones that prevailed 5-10 years ago before making a much more informed decision.

Addressing Condition 66 provides the opportunity to reassess environmental impact and climate change impact in light of current data, thinking and evidence. I strongly object to the removal and discharge of Condition 66 and ask ECC's Development & Regulation committee to consider rejecting the application.

## **6. REPRESENTATIONS**

In accordance with the adopted Statement of Community Involvement, as this was not a planning application, but an application to discharge details required by condition no properties were directly notified of the application. Nonetheless, 100 representees have sent in comments, including one from Priti Patel MP, which is attached at Appendix F. The issues raised are summarised as follows:



<u>Observation</u>	<u>Comment</u>
The Inspector's report and SoS decision envisaged the IWMF to be built in its entirety not just the incinerator, all elements should be delivered, CHP, MRF, MBT, AD and paper plant	See appraisal
Plan of action states will build to permission authorised, but focuses on CHP with no commitment to other processes, thus non-compliant with the permission which is for all elements as set out in the description of development.	See appraisal
The applicant has failed to comply with the essential terms of the condition and therefore the application should be rejected.	See appraisal
The "plan of action" constitutes little more than a very brief summary or menu of potential options for further consideration and decision.	See appraisal
There is no detail in the C66 letter about "an alternative use" and nothing at all about a "scheme of rehabilitation" that would constitute a 'plan' and clearly the IWMF has not been "brought into beneficial use within 5 years of commencement of the development".	See appraisal
It is not a "plan of action" but a plan to delay and stall. It makes no firm commitments on the approach being taken and it appears it is being used as a tool to keep open the prospect of more damaging development taking place on this site and because, by their own admission, the currently approved scheme is not commercially viable.	See appraisal
Moreover, the reason given for the condition states that the plan of action is proposed so:	
<i>that the site is either planned for an alternative use or the site rehabilitated in the interests, of minimising the adverse environment impacts of incomplete</i>	

## *implementation*

The submission from Indaver is neither a substantial plan 'for an alternative use' nor is it a plan to rehabilitate the site.

The submission from Indaver and the three options it suggests provides no such certainty over the future and no clarity about what they will develop. It merely concedes that the development cannot take place as currently consented. A clear alternative is not given and no timetable to deliver such an alternative is provided either.

See appraisal

The submission from Indaver is neither a substantial plan 'for an alternative use' nor is it a plan to rehabilitate the site. It is therefore questioned why the application was validated.

See appraisal

Condition 66 is designed to provide people with certainty about the future of the site if the consented scheme is not developed as approved within the designated five year timescale. Condition 66 was put in place to give a reasonable time for the site to be fully completed as proposed, which it has not been. The document from Indaver and the three options it suggests provides no such certainty over the future and no clarity about what they will develop. It merely concedes that the development cannot take place as currently consented. A clear alternative is not given and no timetable to deliver such an alternative is provided either.

See appraisal

Consequently, any decision to discharge condition 66 based on the document and evidence provided by Indaver would not provide further certainty and clarity and would have the opposite effect. The application does not constitute a clear 'plan of action' and as such it must be refused by the Council.

One of the three options includes the prospect of new build incinerator of a

See appraisal

larger and more environmentally damaging scale than the one that falls within the existing consented scheme (Option 3). Although such a proposal would need to go through the Development Consent Order process, the Council should consider in relation to the discharge of condition 66 whether this proposal is viable and credible. A development on this scale would not be viable or credible and given how damaging it would be for the environment the Council should not accept this as being a credible 'plan of action' for the site for the purposes of discharging condition 66.

Options 1 and 2 are not credible as 'plans of action' for the site as they give no details of timescales and both options would represent a significant net increase in the environmental harm caused by the site by focusing on developing and putting into the use the incinerator first or the incinerator only. As such, all three options listed are not credible and as they do not represent a 'plan of action' and do not provide certainty over the future of the site they should be rejected.

See appraisal

Nothing will be brought into 'beneficial use' for several years to come - Indaver say not before 2024/5.

See appraisal

The application states "To build out the permission as authorised by the Planning Permission." It is stated Indaver will be working with Gent Fairhead (WREN), but it has been verbally stated at liaison meetings that the pulping plant is not commercially viable. It has also been stated alternatives to take the heat are being explored on and off site, this is outside the scope of the current consent.

See appraisal

Given the recent liaison meetings, attended by the ECC officers, and the submitted plan of action in response to condition 66 clearly stating they are only

See appraisal

'bringing forward the Incinerator', constructing the remaining elements' only if they are commercial and technically viable'. When do you consider you have been 'officially informed' of the changes?

The operator Indaver stated at all liaison meetings and in writing to the planning authority that the only element they are committed to constructing is the waste incinerator. See appraisal

How will you mitigate the risk that the applicant only builds the Incinerator under option one contravening the authorised planning permissions?

Given the EA response, when do you consider the integrated nature of the authorised planning is breached? See appraisal

Given the original application was controversial and only allowed after ministerial call in and with the application expressly including all elements, and it was the clear wish of the then Secretary of State that all would be delivered together, why is ECC not requiring a plan for all elements to be built, as per condition 66? See appraisal

Please can you identify what beneficial use has been cited and that will allow the discharge of condition 66? See appraisal

Given the 'uncertainty risk' now associated with this development, why is ECC not stopping this development? See appraisal

Since the only way residents, stakeholders, and statutory bodies can adequately engage and given the significant level of risk and uncertainty, will the Council and its Development and Regulation Committee stop the currently unauthorised development and require a new application? See appraisal

The link between the EfW and the paper See appraisal

plant was given weight in the original consent recommended by the Inspector in 2009 and confirmed by SoS in 2010.

The application makes no commitment to the consented MRF, MBT, AD or paper pulping plant. See appraisal

Indaver state there has been dialogue with ECC in regard to lawfulness of their approach, but WPA has stated it considers the IWWMF should be built in accordance with the permission. See appraisal

Indaver state they are exploring increasing the power output to 50MW, which would require a Development Consent Order from the SoS. In other words Indaver are looking to increase the capacity of the waste incinerator yet again, from 595,000tpa to in excess of 800,000tpa

Indaver has stated it does not intend to increase the input to the CHP above 595,000tpa. Any increase in electricity generation capacity would arise from the efficiency of the incinerator. An increase above 50MW would require a Development Consent Order which would be considered by the SoS.

The IWWMF has been delayed and changed over a number of years, it is clear the IWWMF is not viable and ECC should require a fresh full planning application, when Indaver knows what it wants to build. ECC stated in 2019 that the IWWMF was not longer needed for Essex. See appraisal

A new application could be judged against current policy, including sustainable development goals and climate change legislation. See appraisal

The current submission provides no details of a restoration plan and only raises more uncertainty as to the alternatives to the current consent. See appraisal

The plan of action is not complete it does not provide details of when other consented waste management and energy components will be commenced and completed. See appraisal

The plan of action does not provide sufficient detail to discharge the condition. See appraisal

The applicant has stated not all elements are viable and therefore the development should be stopped.	See appraisal
Without all elements goes against the decision of the SoS.	See appraisal
Proposal do not comply with waste hierarchy as stated in 2019 refusal.	Applications ESS/36/17/BTE & ESS/37/17/BTE were for an increase in stack height and the applications were determined on their individual merits at that time.
Proposal requires a new application as described differently, removes elements of the permitted development, would give rise to different objections.	See appraisal
Contravenes WLP policies W8A and now W10B and W10C	These policies while referred to in the decision for ESS/34/15/BTE, have now been superseded by policies of the Waste Local Plan 2017.
Proposals do not adhere to the planning permission; development should be stopped and rehabilitation plan should be submitted.	See appraisal
Does not comply with stack height refusal	Applications ESS/36/17/BTE & ESS/37/17/BTE were for an increase in stack height and the applications were determined on their individual merits at that time.
Non-compliant and contradicts 2016 planning permission	See appraisal
Goes against the Inspector's original decision	See appraisal
The applicant has stated that they will not adhere to the authorised permission and therefore the plan of action must be considered unviable.	See appraisal
The document significantly changes the original proposal and cannot be seen to represent 'non-material change'	The applicant has made the submission to address a condition, it is not an application for a non-material amendment. Also see appraisal.

To proceed in the way described requires a new application	See appraisal
Urge ECC to enforce condition 66, ordering development to be stopped and a scheme of reconstitution to be submitted	See appraisal
Neighbours should have been directly notified of this application.	The application was consulted on in accordance with Statement of Community Involvement. Also see appraisal.
The incinerator was granted consent in 2016 and given 5 years for a reason. Political, economic, social, technological, legal and environmental frameworks change quickly and in a given timescale planning law allows for consents but ensures a backstop for significant changes that may occur over the period.	See appraisal
Section 91 of the Town and Country Planning Act states that the time period in the conditions has regard to the “provisions of the development plan and other <i>material considerations</i> ”.	
The period between 2016 and 2021 is possibly one of the most important and significant upheavals in recent history for changes that can be classed as ' <i>material considerations</i> '.	
<p>a. Political – Brexit, geopolitical changes and local government changes have seen a huge shift in the global, national and local political sphere that changes the way the UK and the local area perceive relationships and policies since 2016. This affects relationships in Europe, supply chains, resource efficiency and environmental expectations. In that period the local area has moved towards green political parties who have seen significant gains in local elections due to the concerns over the incinerator, global warming and</p>	

the extension of the gravel pit.

- b. Economic – the economics of incineration v landfill v recycling v reuse have significantly altered over the last 5 years. Landfill has increased by about 20% in this time. There is little energy from waste in the incinerator to justify the incineration route. It saves money to recycle materials and use in new materials. The demand for recycled content in roads, flooring, concrete, steel, gypsum, insulation, furniture, fabrics, other building materials has increased enormously over the last 5 years and will increase exponentially over the next few years. Burning waste will not allow this demand to be met. It is essential that resources remain on the planet to meet the recycled content demands rather than mining or extracting virgin materials.
- c. Social – there is less contamination in recycling waste due to an additional 5 years of domestic and industrial habits and processes to ensure better segregation. This makes recycling more viable. COVID and lockdowns have changed the way people view the environment and what they expect from local authorities in order to meet carbon targets and recycling which is intrinsic to environmental performance.
- d. Technological – technology is changing rapidly and there are significant advances over the last 5 years in recycling major waste products including concrete, steel, gypsum, plastics, household waste to meet circular economy principles. New recycling processes, 3 D printing, enhanced AI and data use will mean resources can be extracted from materials more easily and



manufacturers are changing to a more flexible and adaptable model for products to allow this.

- e. Legal – since 2016 and the Paris Agreement there is no doubt in anyone’s mind that climate change is occurring. Up until that point there were still climate sceptics in government and other industries. The greenhouse gas emissions from the incinerator do not meet the UK 2020 carbon budget or net zero target. In addition the UN IPCC Report August 2021 states unequivocally that the next 10 years are key to reducing emissions to prevent catastrophic change. The incineration strategy does not comply with the 2020 carbon budget submitted by the Committee on Climate Change to the Government in line with the Climate Change Act, which states that to meet targets the UK needs to waste fewer resources. Incineration results in resources being lost forever when part of these could be recycled. The incineration model relies on a constant supply of waste to be incinerated to keep the plant running and profitable. This encourages incineration of resources rather than looking at other routes and a circular economy.
- f. Environmental – all industries recognise that the circular economy is key to achieving net zero as it encourages reuse, material efficiency, standardisation, recycled content in materials, low embodied carbon for materials and designing out waste. Incineration as a means to dispose of waste in 2021 does not fit into this model.

All the built environment key bodies such as RICS, RIBA, BRE, CIOB, UKGBC, LETI Climate Emergency Design Guide and Embodied Carbon Primer and

CIBSE as well as architects, contractors and the supply chains now recognise that a circular building project is key to meeting net zero targets.

For the above reasons an extension of time is not acceptable for an incineration plant that not only is much higher in burnt volumes than originally granted but also does not include the recycling required to meet UK and global targets. The landscape has changed in the last 5 years and to extend the time scales on a scheme that was devised in 2016 when so much has changed does not meet planning or environmental legislation.

No need for facility, will generate green house gases, give rise to air pollution, reduce air quality increasing particulates in the air from the lorries and the removal of elements that were aimed at recycling materials should be investigated.

The Inspector's report in 2010 in making a positive recommendation relied upon the fact, which is referred to several times within the report that the planning permission was granted on the basis of the benefits of the facility because it was integrated. Removal of this integration would not deliver the sustainable development that was envisaged and granted by the Inspector.

If only the incinerator alone is developed, there is potential the applicant would seek to increase the capacity of the incinerator to utilise all the permitted HGV movements.

The potential alternative developments suggested, may not be practical or viable and give rise to different impacts than those previously considered.

The developer in making the

The application is not for an extension of time to implement the planning permission. There is an extant planning permission. The application seeks to discharge condition 66. See also appraisal.

See appraisal

See appraisal

An application would be required to increase the capacity of the incinerator.

The information submitted with the application and presented at the liaison meeting, gave only an indication of possible alternatives that might be proposed at the site. If and when an application is made for alternatives, the impacts would be considered at that time.

The EA permitting regime is separate to

Environmental Permit application made reference to only building the incinerator element of the IWMF

the planning process. The EA have stated that an EP variation may be required if only the incinerator element is brought forward.

Request a copy of the legal advice obtained in relation to this application

Legal advice subject to legal privilege. See also section J

## 7. APPRAISAL

The key issues for consideration are:

- A. NATURE OF THE APPLICATION
- B. INTERPRETATION OF CONDITION 66 AND WHAT IS REQUIRED
- C. WHETHER THERE IS CURRENTLY A BREACH OF PLANNING CONTROL
- D. APPRAISAL OF THE INFORMATION SUBMITTED TO DISCHARGE THE CONDITION
- E. APPRAISAL OF OPTION 1
- F. APPRAISAL OF OPTION 2
- G. APPRAISAL OF OPTION 3
- H. IMPLICATIONS IF NONE OF THE OPTIONS WERE APPROVED TO DISCHARGE CONDITION 66
- I. ENVIRONMENTAL PERMIT
- J. LEGAL ADVICE
- K. CONCLUSION

### A NATURE OF THE APPLICATION

It is important to clarify the nature of the application. This is not a planning application; it is an application to discharge details reserved by a planning condition. There has also been some confusion that the applicant is seeking to delete the condition, which could only be achieved through S73 of the Town & Country Planning Act (often known as a variation application). This is not the case. The application seeks to submit details required by the condition, so that they can be approved or refused, not to delete the condition. An approval granted under a condition attached to a planning permission may itself be granted subject to conditions (this is clear from the terms of section 78(1)(b) of the Town and Country Planning Act 1990 ("the 1990 Act") and the decision in *Pressland v Hammersmith and Fulham LBC* [2016] EWHC 1763, as approved by the Court of Appeal in the Court of Appeal in *Fulford Parish Council, R (On the Application Of) v City of York Council* [2019] EWCA Civ 1359 (30 July 2019). Conditions attached to an approval should not ordinarily go to the principle of the development authorised by the permission. In the present case, however, the approval under condition 66 is referring to a procedure (a plan of action) separate from that which is permitted under the planning permission. The plan of action would supersede the development authorised under the permission and may entail the modification of what is authorised by the permission with appropriate and new conditions controlling the use or development. If the plan of action is the continuation of the development under the existing planning permission, additional conditions to those attached to the permission may be imposed to control how the authorised use may

be carried out. Such conditions must, however, be lawful and imposed in accordance with policy; this is dealt with further below.

As an application to discharge a condition, the application would normally only be subject to consultation with relevant technical consultees to the subject matter of the condition. In this case because of the nature of the condition and the high public interest in the site it was felt appropriate to consult wider, including local councils. Some local residents have raised concerns that neighbours were not directly notified, but the application was consulted on in accordance with the Council's Statement of Community Involvement.

While the application is not a planning application, the application is able to be considered against current planning policy and any other material considerations.

The effect of condition 66 is that a plan of action to bring forward either an alternative use or remediation rehabilitation is required and that any development of the Site under the permission for the permitted development (as amended) will be required to be replaced by the proposals contained in the plan of action or remediation rehabilitation scheme. An application to discharge the condition should include both a scheme of rehabilitation and a plan of action as alternatives. This makes sense of the condition since it achieves a resolution of the future of the permission, in accordance with the purpose of the condition.

It should be noted that the application site for the IWMF site was included within the planning application areas for the mineral extraction of both sites A3 and A4 (ESS/24/14/BTE and subsequent variations) and later site A5 (ESS/03/18/BTE and subsequent variations). Under these planning applications, restoration schemes were included as to how the IWMF site would be restored should the IWMF not progress.

A proposed "alternative use" under the plan of action that is not that already permitted under the existing planning permission (Ref ESS/34/15/TE) would need to be judged against the current policy position and context; this is because the effect of condition 66 is to approve a use or development which will supersede the current authorised use. However, while the "Plan of action" may set out a way forward to achieve an alternative use for the site, anything that is not that already permitted would need to be subject of a new planning application supported by all the necessary supporting information, and potentially require Environmental Impact Assessment, to enable proper consideration of the individual merits of the alternative use. It is not possible under condition 66 to give express planning permission for the "Alternative Use" (unless the same as that already granted planning permission), only a "Plan of action" of how that "Alternative use" might be achieved. The applicant does have the right of appeal should the details be refused or against any condition(s) imposed on any approval.

The timeline for submission under condition 66 was specified and has now expired. It is not therefore possible for a further submission under condition 66 to be made.

## **B INTERPRETATION OF CONDITION 66 AND WHAT IS REQUIRED**

As explained previously condition 66 was added to the conditions of the IWMF

permission as part of the determination by the WPA of planning application ESS/34/15/BTE.

At the time ESS/34/15/BTE was determined no EP from the EA had been obtained for the IWMF. The purpose of the condition was to seek to ensure that, if the IWMF were implemented but did not ultimately gain an EP or failed to be constructed, there was a mechanism by which the site would be put to alternative beneficial use or the site rehabilitated. The IWMF has subsequently obtained an EP and thus the IWMF has both an implemented extant planning permission and an EP to operate.

Condition 66 requires that if the site was not in beneficial use within 5 years from commencement i.e. by 2 March 2021, then within 6 months (2 September 2021) an application for a scheme of rehabilitation or a plan of action for an alternative use should be made for approval by the WPA.

When originally imposed, the condition did not anticipate the current scenario whereby the implementation of the planning permission was positively progressing but that the site had not been brought into beneficial use. At the time the condition was imposed it was anticipated that within the 5 years an EP would either have been gained and the IWMF completed or that potentially an EP might not have been gained and that the WPA needed a mechanism to minimise the environmental impacts of a partially implemented site, but stalled development.

Representations have also been made that the wording of the condition should allow the WPA to prevent development of the IWMF, as 5 years have elapsed and there is no beneficial use of the site. Notification of commencement i.e. implementation of the planning permission, was given to the WPA in accordance with Condition 1 and it was confirmed by the WPA that the permission had been lawfully implemented on 2 March 2016. Thus, at this stage, there remains an extant permission.

However, the effect of condition 66 is that its mechanism overtakes the originally permitted use and provides for the replacement with either a "Plan of Action" to seek to achieve an alternative use or for rehabilitation of the site, whichever is approved by the WPA. Because the purpose of the condition is to achieve a position by which the adverse environmental impacts of incomplete implementation will be minimised (see the reason for the condition), the application under the condition must include both options: a plan of action for an alternative use and a scheme of rehabilitation as an alternative.

Consistent with its purpose, the condition envisages that, if the "Plan of action for the alternative use" is refused, there will be rehabilitation of the site and that, therefore, an application would allow the WPA to refuse the plan of action for an alternative use but allow rehabilitation. If only a plan of action for an alternative use was capable of being applied for, without the alternative rehabilitation option, and the application was refused (and dismissed on appeal), then the site would remain in its partially developed state, contrary to the purpose of the condition. Consequently, both options should have been applied for, but the application is only for a plan of action for an alternative use. The consequences of this are dealt with below.

It is the WPA view, having taken legal advice, that the condition does not allow for the use permitted under the planning permission and the “alternative use” to come forward simultaneously. Where a plan of action for alternative use proposes any development that requires express planning permission, whilst the plan of action to achieve that “alternative use” might be considered acceptable (such as the timescale for submission of an application), the actual principle and detail of the alternative use could only be properly considered through a separate planning application, with the appropriate supporting information (such as for the provision of the incinerator element of the CHP in isolation).

As there is no definition of “alternative use” in condition 66 the alternative use could be something which is the same as the use permitted under the current planning permission (ESS/34/15/BTE).

Consideration of the 3 Options put forward within the plan of action by the applicant is set out in sections E to G below.

It should be noted that the Department of Levelling Up, Communities & Local Government has requested that before a decision is issued with respect to the application, the SoS is given an opportunity to consider whether he wishes to intervene.

Some letters of representation have raised concern that the submission does not include “plans”. The dictionary definition of a “plan of action” is “*an organised programme of measures to be taken in order to achieve a goal*”. Comments have been made that it was envisaged that the “plan of action” should include drawings as to what is proposed, but the word “plan” in this context (or in its natural meaning) was not intended to mean a drawing and thus drawings are not required.

## C WHETHER THERE IS CURRENTLY A BREACH OF PLANNING CONTROL

There has been much concern raised by local councils and representees that there is a breach of planning control due to the fact that Indaver has openly indicated that it is not clear whether all elements of the IWWMF would be built and, at the current time, are only focussing on building the incinerator element of the CHP. It is agreed that the correct interpretation of the planning permission is that all of the approved development (as set out on Plans 1-9A and 10A as conditioned by condition 2) must be carried out for the development to lawfully operate.

The conditions imposed do not prevent the building of the incinerator element of the CHP first. The extant planning permission is not restrictive in what order the individual components of the IWWMF should be constructed.

The WPA has taken legal advice on the interpretation of the planning permission and the advice received is that constructing the incinerator element first is not in breach of the planning permission, as long as the construction is in accordance with the planning permission. Statements by the applicant that other elements of the IWWMF may not be viable only at this stage gives an indication that other elements may not be built; not that they will not be built. In general terms, unlawful development must take place before any action can be taken by planning

authorities to remedy any breach of planning control, such action satisfying the test of being expedient to do so. At this time, it is considered there is no breach of planning control.

The applicant and its agents have expressed the view that to build the incinerator, without building all the other elements, would not be in breach of the planning permission. Such a contention is wrong. If the incinerator is constructed or commences operation and the other parts of the IWMF are not built and are unable to be integrated with the incinerator, it is the WPA's view that there would be a breach of planning control. The reasoning as to why the WPA take this view is set out below. Alternatively, if there is a clear statement that not all of the uses will be carried out, this will be sufficient to establish that the planning permission is not being completed in accordance with its terms. At the current time the applicant has not categorically stated in writing that it will not build other elements of the IWMF, as permitted. Indeed, option 1 of the condition 66 approval application is based upon all elements being carried out.

Considering the natural meaning of the words used in the description of the development in the planning permission, the description is of an "Integrated Waste Management Facility" which "comprises" certain elements. Naturally read it is considered that "comprises" means "amounts to" or "is"; that is, supported by the use of the word "integrated" – i.e. including the identified elements. Consistent with that description, the nature of that facility is identified in the plans identified in condition 2. Plans 1-9A and 10A identify each of the elements specified in the description of development and show how the facility would operate in an "integrated" manner. It is therefore considered plain that the "Integrated Waste Management Facility" is a development which includes all of the identified elements; the conditions require that to be carried out.

The interpretation of the planning permission is that it is for an integrated facility and was considered and granted on this basis.

The Inspector (in making his recommendation following the call-in inquiry in 2009/10) and the WPA (in considering subsequent applications) took into account all elements of the IWMF and how they would provide an integrated facility, maximising recycling and maximising the use of heat and steam, through a combination of power generation and direct use of the heat and steam to reprocess waste paper, in order to deliver a sustainable development.

It is evident within the Inspector's report and the subsequent WPA officer reports (ESS/34/15/BTE), that the consideration as to the acceptability of the IWMF in planning terms was on the basis that all elements of the IWMF would be delivered to result in sustainable development.

Extracts are set out below from the Inspector's Report of March 2010, with numbers indicating the paragraph from which the extract has been taken. (A copy of the Inspector Report is at Appendix A.) These extracts evidence that the 2008 application was considered by the Inspector on the basis of an integrated facility.

It should be noted that at the time of public inquiry the IWMF was referred to by the applicant as the eRCF (evolution of the Recycling Composting Facility).

Extract from Inspector's report section on "Prevailing Planning Policy":

13.4 "...it seems to me that the MDIP [Market De-ink Paper Pulp] is an integrated part of the eRCF designed to recover high quality pulp from waste."

Extracts from Inspector's report on "The quality of the design and sustainability implications":

13.16 "It seems to me that each of the waste management processes within the eRCF would benefit from the proposed integration with others. However, there is sufficient capacity in each of the processes to allow for variation thereby providing flexibility of use. "

13.17 "The integrated nature of the development would enable the power supply required to run the entire plant to be self generated at a lower carbon emission rate than electricity drawn from the National Grid."

13.19 "The use of SRF in the proposed CHP plant and the export of electricity to the National Grid would contribute to meeting the Government's Renewable Energy target of producing 15% of UK energy from renewables by 2020. The contribution would be increased by the proposed co-location of the MDIP and its consumption of heat from the CHP plant."

13.22 "...I conclude that the design of the eRCF is of high quality and that it would be a sustainable form of development which would enable the management of waste to be undertaken in a sustainable manner."

Extracts from Inspector's report on "Consistency with PPS10" [PPS10 – Planning for Sustainable Waste Management]:

13.32 "The eRCF would provide various means of dealing with waste, all of which would help to reduce the need for landfill. The various elements of the integrated plant would recycle waste, produce compost, and create energy from waste."

13.35 "The proposed facility would help to deliver these objectives by moving waste up the hierarchy. It would recover recyclables, produce compost and reduce the need for disposal of residual material to landfill by using such material as a fuel for combustion in the CHP plant. It would also use imported SRF from other permitted waste management facilities in Essex, which might otherwise go to landfill. The scheme would generate electricity and provide a specialized facility for the recovery of recycled paper. Although the combustion of waste is only one step above landfilling in the waste hierarchy, the CHP is only one of the facilities that would be available at the eRCF. In my judgment, this integrated plant would allow the anticipated waste arisings to be managed as far up the waste hierarchy as reasonably and practically possible. Moreover, it would significantly reduce the amount of residual waste that would need to be sent to landfill. In these respects the proposal is in accord with the objectives of PPS10."



13.38 *“The eRCF would allow Essex to increase its provision of sustainable waste management, secure increases in recycling and recovery, and reduce carbon emissions.”*

13.40 *“Overall, I am satisfied that the proposal is consistent with the key planning objectives set out in PPS10. It would help to deliver sustainable development by driving waste management up the waste hierarchy and contribute towards ensuring the timely provision of sufficient waste management facilities to meet the needs of the community. With regard to self sufficiency, the facility would meet a need in the region to deal with MSW and/or C&I waste.”*

Extracts from Inspector’s report on *“The need for the proposed facility”*:

13.45 *“The CHP would reduce the need for landfilling of residuals from the MBT, and by using residues from the paper pulp recovery process as a fuel, it would remove a need for offsite disposal of such material and the potential for it to be sent to landfill.”*

13.48 *The eRCF has the potential to increase still further the amount of recycling, treatment and recovery of waste in the County, and it seems to me that such facilities will be necessary to help ECC to meet its waste targets.”*

13.49 *“I appreciate the concern that recyclable material should not be incinerated. Such an approach encourages the treatment of waste at a lower level in the waste hierarchy than need be the case. However, the application proposal would provide facilities to maximise the recovery of recyclable material and there is no reason to believe that materials which could reasonably be recycled would be used as fuel in the CHP.”*

13.50 *“The proposed MDIP at Rivenhall would be capable of meeting the needs of Essex and the East of England in terms of the recycling and recovery of high quality paper, thus meeting WSE 2007 key objectives. The facility is likely to stimulate greater recovery of high quality paper waste. I agree with the applicants that it would help to divert a significant quantity of paper and card from landfill.”*

13.51 *“The individual elements of the integrated plant would also help to satisfy various needs, including the need to move the treatment of waste further up the waste hierarchy and minimise the amount of waste that would otherwise be sent to landfill.”*

Extracts from Inspector’s report on *“The viability of the proposal”*:

13.57 *“A plant which is capable of dealing with large quantities of MSW and/or C&I waste (and in this case is combined with a specialised waste paper facility), provides considerable flexibility in terms of the type of waste that could be treated and the customers that could be served. It seems to me that such flexibility helps to maximise the economic viability of the*

project.”

13.64 *“It is arguable that the integrated nature of the proposed eRCF; its exceptionally large scale; and the very significant amount of investment that would obviously be needed for its development would, in combination, result in a degree of inflexibility. On the other hand, the modular nature of the design, the flexibility of capacity of each process, and ability to make alterations to various modules would allow the eRCF to be adapted to varying compositions of waste. Moreover, the multiple autonomous process lines would allow a particular process to be upgraded in stages if necessary. For example, a CHP process line could be upgraded or replaced without shutting down the entire CHP process. In this respect, the large scale of the development provides opportunity for changes to be made to the process without endangering the overall viability of the operation.”*

13.65 *“On balance, I consider that the design of the proposal and its multiple autonomous process lines would provide a reasonable and sufficient degree of flexibility to enable future changes in the composition of waste and the ways in which waste is managed to be accommodated. In this respect, the scheme would not be detrimental to the achievement of increased rates of recycling.”*

Extracts from Inspector’s report on “Conditions and obligations”:

13.161 *“I consider that the provisions of the S106 agreement are necessary to ensure that the necessary highway and access works are completed at the appropriate time in the interests of road safety; ...;to ensure the MDIP is operated as an integral part of the IWMF...”*

Within the conclusion of the officer’s report in 2016 is also evidence that when considering the extant planning permission (ESS/34/15/BTE), it was considered on the basis of an integrated facility as per the extracts below:

“The Inspector in considering the original application stated

*The eRCF is consistent with the key planning objectives set out in PPS10 [now superseded and embodied within the NPPW]. It would help to deliver sustainable development by driving waste management up the waste hierarchy and addressing waste as a resource. It would reduce the need for disposal by landfill and would recycle waste into marketable products. Moreover, it would have benefits in terms of climate change. It would also contribute towards ensuring the timely provision of sufficient waste management facilities to meet the needs of the community and assist in the implementation of ECC’s strategy to provide a framework within which the community takes more responsibility for its own waste. The eRCF would contribute to the implementation of the national waste strategy.*

It is not considered that the proposed changes would undermine these original conclusions. The proposal is sustainable development, in that it meets the needs of Essex & Southend; contributes to the sustainable management of waste; provides recycling capacity for C & I waste; provides

reprocessing capacity for recovered paper efficiently using on site heat and power; provides a source of energy offsetting fossil fuels and reducing greenhouse gases from alternative forms of energy, better waste management, in particular by providing capacity to divert C & I waste from landfill; and is in accordance with the principles of the waste hierarchy set out in the National Planning Policy for Waste.

The development is therefore considered to represent sustainable development for the purposes of the NPPF and is considered to comply with the relevant policies of the development plan taken as a whole.”

*Note: C & I is commercial and industrial waste.*

The WPA do not accept that the development of the incinerator element of the CHP could be operated alone under the existing planning permission.

The WPA considers that to operate the incinerator without all elements of the IWMF developed and integrated with it would be in breach of the planning permission (ESS/34/15/BTE).

If the developer should not construct the IWMF in accordance with the planning permission (which includes the permitted drawings), then the WPA would need to consider how to address any breach of planning control in the usual way, including whether enforcement action was appropriate to remedy any harm caused.

#### D APPRAISAL OF THE INFORMATION SUBMITTED TO DISCHARGE THE CONDITION

The applicant has indicated 3 potential options in their “plan of action”, as described in section 3.

As has been indicated above, there is an issue in that the current application does not propose any rehabilitation as an alternative option and, to that extent, it is defective. However, there are restoration proposals approved under subsequent minerals permissions providing for restoration of the site should the IWMF not have progressed. Whilst it could be argued that the application is invalid, the WPA must have regard to the ultimate expediency of enforcement action if it refuses to consider the application. In that regard, since a plan of action has been proposed, should this be regarded as acceptable, enforcement action could not be considered expedient because the applicant would only need to put in a planning application for the proposals and this (on the assumption that it is granted planning permission) would override any enforcement action undertaken at this stage. In these circumstances, the WPA considers it appropriate to consider the merits of the plan of action, in spite of the deficiencies of the application. The WPA also considers that, given that 3 separate options are proposed, each of which are proposed by the applicant to be acceptable, it may approve only one or more than one of the options.

Option 1 – is to seek to build out the IWMF as permitted

Should the other elements of the IWMF (namely MBT, AD, MRF and MDIP) not be

brought forward due to technical and/or commercial reasons then the applicant has indicated 2 potential alternative ways forward.

Option 2 - To build out those that are commercially and technically viable, which could involve building only the incinerator

or

Option 3 -To submit an application/applications/development consent order for planning permission for alternative waste management and/or energy generation uses.

The WPA is of the view that it should consider each of these options against the Development Plan and other material considerations. Appraisal of the three Options is set out in the subsequent 3 sections of this report – E, F and G.

## E APPRAISAL OF OPTION 1

Option 1 – is to seek to build out the IWMMF, as permitted

Condition 66 when drafted, as previously mentioned, did not anticipate the scenario that within 5 years of implementation of the planning permission i.e. 2 March 2021 the IWMMF would not be in beneficial use but was positively progressing to achieve its operation. The condition sought to ensure that the site was either rehabilitated or there was a “Plan of action” in place to achieve an alternative beneficial use.

The applicant under Option 1 has proposed to continue implementation of the extant planning permission, with beneficial use planned by early 2026. As mentioned previously, at the current time the works being carried out are considered to be in accordance with the planning permission. The works to construct the site infrastructure (including the extraction of the overburden to create the void in which the facility would sit and works to take forward the refurbishment of the Woodhouse Farm Listing Building complex) are all in accordance with existing planning permission.

The applicant has indicated that it is likely to take 3 to 4 years (i.e. until 2025/26) to construct the IWMMF, which is longer than originally proposed (24 months construction). No condition was imposed in the planning permission that restricted the period within which the development was required to be constructed, save for Condition 66. The applicant has provided an anticipated construction timeline that shows why it is predicted that construction period will be longer than originally envisaged.

This longer period of construction would also result in a longer period of the impacts arising from construction, such as construction traffic, noise, dust, light pollution, visual and landscape impacts and a longer period of extended construction hours permitted by condition 35 (7am to 7pm Monday to Sunday, but not public holidays). However, mitigation was included in the application for the IWMMF (ESS/37/08/BTE) and conditions imposed in the extant permission to minimise the environmental impacts.

While there have been amendments to National planning policy and updated Development Plan documents since the consideration of the IWMF planning permission in 2016, these changes have not given rise to any significant changes in the objectives and aims of the planning policy since consideration of the IWMF proposals in 2016.

The Waste Local Plan adopted in 2017 confirmed the site of the IWMF as a Strategic Site Allocation (IWMF2) under policy 3 (for residual non hazardous waste management and biological waste management. The IWMF would provide a treatment facility for biological treatment of waste, via the AD facility and in part from the MBT facility. The MRF, CHP and MRF elements of the IWMF would provide waste treatment for residual non hazardous waste. The MRF would provide an opportunity for waste imported to the site to be processed to remove any remaining recyclates prior to incineration. The MDIP would provide a facility to reprocess waste paper utilising the heat and steam directly from the CHP.

Policy 3 of the WLP also requires “Waste Management ...will be permitted where proposals take into account the requirements identified in the relevant development principles:...”.

The development principles for site IWMF2 are set out below in italics with appraisal of conformity below each principle.

*The following specific issues and opportunities are to be addressed:*

- *Any development of the site would need to ensure mineral traffic associated with the quarry (MLP sites A3, A4, A5, A6 and A7) is still able to utilise the existing access road to the A120.*

The access road to the IWMF as permitted would not hinder utilisation of the access road to the A120 for mineral traffic to Bradwell Quarry.

- *Widening of private haul road to two way working and improvement of minor road crossings (as identified in S106 attached to extant planning consent for IWMF)*

Widening of the access road and improvement of the crossings is secured through existing conditions and the existing S106.

- *Waste traffic would use the existing access, which would be required to be made to a standard suitable for road traffic from the existing mineral processing area to the waste site. HGV movements would be restricted in line with current permitted movements to avoid adverse impacts to the A120. Provision of screening on south-west, south-east and northern boundaries would be important. Views from the Essex Way should be screened. The access road to the facility should be at low level with planting on both sides of the access road.*

The access road details have been submitted and approved and require a standard suitable for road traffic. Conditions limit HGV movements to 404 movements per day. Tree planting details have been approved providing planting on the south-west, south-east and northern boundaries. The Essex Way is screened by existing vegetation. The access road is permitted at low level and planting provided at natural ground levels screening views of HGV traffic on the extended access road.

- *Future built development to be at low level, with the bulk of any structure to be below ground level. Tree Preservation Order (TPO) to be protected as much as possible and management of surrounding TPO woodland suggested to maximise screening and biodiversity value.*

The main IWMF buildings are located below natural ground levels and the maximum amount of TPO area has been retained, supplement by additional planting and biodiversity enhancements.

- *The impacts from the proposal need to be addressed on the designated buildings located in the vicinity - especially on the setting of the Woodhouse Farm Listed Building.*

The height of the chimney is restricted by condition to minimise its impact upon the setting of Woodhouse Farm Listed Building complex.

- *Right of Ways – Kelvedon footpath 8 runs close to the site and its route should be protected.*

Footpath 8 which passes through the Woodhouse Farm Complex has been retained on its original route.

- *Dust mitigation measures, limits on duration (hours of operation) and noise standards (from noise sensitive properties) will be established in the interests of protecting local amenity.*

Conditions have been imposed to control dust, restrict hours of working both during construction and operation and maximum noise limits set at sensitive properties, noise monitoring is required to show compliance, including a requirement for an updated noise assessment upon installation of plant and process equipment.

- *If the proposed site layout cannot accommodate the statutory easements (relevant to existing infrastructure on the site) the diversion of the existing assets may need to be considered. Any activity that requires excavation should only proceed with caution, and the existing underground infrastructure must be supported and protected and not be put at risk from disturbance.*

The WPA is not aware of the need to divert any existing infrastructure.

Concern has been expressed within representations received to this submission that, since the applications (ESS/36/17/BTE and ESS/37/17/BTE) to increase the height of the stack were refused partly on the grounds that it had not been demonstrated there was a need for the facility, there must be a case that the IWMF is no longer needed. It was necessary to consider need (especially the CHP's capacity) at that time because it had not been demonstrated that the increased stack height would not give rise to adverse impact on landscape, visual amenity and heritage impact and therefore it was necessary to assess whether there was a need within Essex and Southend for the capacity of the IWMF that outweighed the identified harm caused by the increased stack height.

With respect to need, it should be noted that, at the time of the consideration of the stack height increase, the MBT at Tovi Eco Park in Basildon was operational and treating the majority of Essex's residual Municipal Solid Waste (MSW). This MBT ceased to receive residual waste in June 2020 and the majority of Essex's MSW, is now going to landfill, which is considered the lowest option on the Waste Hierarchy – i.e. "Disposal without recovery". The assessment of waste arising and treatment capacity in 2018 for the stack height increase applications showed that approximately 250,000 of commercial and industrial waste was going to landfill, could be potentially diverted to Rivenhall and that the Tovi Eco Park was generating approximately 200,000tpa of refuse derived fuel from 400,000tpa of residual Municipal Solid Waste (MSW). Thus, there was a total potential 450,000tpa of material that could be diverted to Rivenhall CHP, considerably less than the 595,000tpa capacity of the CHP. However, with the loss of Tovi Eco MBT, the potential quantity of suitable material that could potentially be diverted to Rivenhall rises to 650,000tpa (C & I 250,000tpa and MSW 400,000tpa). While it is likely there will be some changes to the assessments made in 2018, within Essex the WPA has not dealt with any applications for facilities with substantial treatment capacity that would substantially change the treatment capacity assessed in 2018. It is therefore considered that at the current time there is a need for the Rivenhall CHP. However, it should be emphasised that just because there may be a need for the treatment capacity provided by Rivenhall CHP, it does not mean that waste arising in Essex would be treated at Rivenhall, as this this would depend on Indaver gaining contracts to do so.

Considerable concern has been raised during the various planning applications associated with the IWMF, including with respect to this submission, as to the potential for adverse impacts from emissions, particularly on the health of residents in the area. Pollution control is matter for control through the EP administered by the EA. When considering previous planning applications, an EP had not been obtained. However, an Environmental Permit has been issued for the IWMF as permitted by planning permission ESS/34/15/BTE, such that it has been adequately demonstrated to the EA, that the IWMF could operate within the required pollution control standards.

The role of the WPA and the EA is set out in paragraph 188 of the NPPF :

*The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively.*

Concern has been expressed by objectors that the IWMF will not contribute to mitigating climate change due the CO<sub>2</sub> that would be emitted to the local area from the facility.

The NPPF (para 152) seeks to "shape places in ways that contribute to radical reductions in greenhouse gas emissions". The NPPW (Section 1) recognises the role that driving waste up the Waste Hierarchy has on mitigating and adapting to climate change.

Strategic Objectives (SO4 and SO6) of the WLP are to provide for net self-

sufficiency i.e. ensuring there is adequate capacity within Essex and Southend to deal with the waste arisings within Essex and Southend, such that waste should not be required to transported unnecessary distances.

Landfill contributes to greenhouse emissions, thus diversion from landfilling contributes to reducing greenhouse gases.

The IWMF would contribute to the shortfalls identified in Policy 1 of the WLP of both “biological treatment for non-hazardous organic waste” and “further management of non-hazardous residual waste” and as such would contribute to net self-sufficiency.

Policy 11 of the WLP seeks to minimise the potential contribution waste management would make to climate change “*by reducing greenhouse gas emissions, incorporating energy and water efficient design measures and being adaptable to future climate conditions*”.

Policy 11 sets out a number of factors that will be considered in the determination of applications.

These include inter alia:

- *through transportation related to the development to limit greenhouse gas emissions.* The co-location of the MRF and MBT with CHP as permitted reduces the need for transport movements between such facilities.
- *through sustainable drainage systems.* The IWMF as permitted would capture all site surface water for use in the IWMF, however this might need to be supplemented with river water. Waste water generated by the MDIP would be treated on site within the waste water treatment facility. This waste treatment facility would use, heat, steam and energy generated by the CHP to help treat the waste water.
- *where proposals are capable of directly producing energy to demonstrate that excess heat can be directed to a commercial or industrial user of heat.* The IWMF as permitted would use the heat and steam from the CHP directly in the MDIP and waste water treatment plant and energy generated by the facility would offset energy required to power the IWMF itself.
- *where proposals include AD the gas is either direct to a gas pipeline or stored for use as a fuel.* In the case of the permitted IWMF the gas from the AD facility is being used directly within the CHP to generate electricity.

The Resource and Waste Strategy 2018 supports these principles but goes further as set out below:

*England has around 40 EfW plants. Eight operate in Combined Heat and Power (CHP) mode, delivering greater efficiency than solely generating electricity. We want to help the companies that run EfW plants to use the heat produced to improve their efficiency, and to help industry make the right decisions over infrastructure investment.*



*Work is underway across Government to make the remaining plants more efficient, by assessing and removing barriers to making use of heat produced when incinerating waste. The Department for Business, Energy and Industrial Strategy (BEIS) has a Heat Networks Investment Project, with a £320m capital fund, and we are working to ensure that this project helps to utilise EfW plants as a source of heat for district heat networks where possible. As part of the review of the Waste Management Plan for England in 2019, Defra will work with the Ministry of Housing, Communities and Local Government (MHCLG) to ensure that the Waste Management Plan for England and the National Planning Policy for Waste and its supporting planning practice guidance reflects the policies set out in this Strategy. This will consider how to ensure, where appropriate, future plants are situated near potential heat customers.*

*In addition, we will work closely with industry to secure a substantial increase in the number of EfW plants that are formally recognised as achieving recovery status, and will ensure that all future EfW plants achieve recovery status.*

This has been further reiterated in The Environment Plan 2018 and Waste Management Plan for England 2021.

The EA (in considering the granted EP) commented as follow in the decision document with respect to energy recovery: *“The Operator has not presented an R1 calculation with this application, nor have we received a separate application for a determination of whether the installation is a recovery or disposal facility. The Operator has obtained accreditation under the Defra Good Quality CHP Scheme. This process does not form part of the matters relevant to our determination, but forms part of financial aspects of the project drawing down funding through Renewable Obligations Credits (ROCs). Gaining accreditation under the scheme is however an indication of achieving a high level of energy recovery”*.

Thus, it would appear the IWMF as permitted is relatively efficient in terms of its energy recovery.

It is acknowledged that incineration of waste is now not considered a renewable energy (unless the waste source is biogenic only). However, the use of waste as an energy source does reduce the need to use of fossil fuels and, unlike renewable sources such as wind and solar, are not weather/time of day dependent, thus helping to provide energy security from a non fossil fuel source.

In considering this proposed “alternative use”, i.e. the continuation of the implementation of the extant planning permission it is within the remit of the WPA to apply appropriate additional conditions. Because the proposed “alternative use” under the plan of action will replace the development permitted under the planning permission, the WPA is able to consider imposing conditions on the approval which meet the policy tests in the NPPF and the legal requirements of a condition, namely, that it is relevant to planning, fairly and reasonably related to the development being permitted and reasonable.

In view of the national policy emphasis on ensuring that EfW facilities operate in heat and power mode rather than just power mode, it is felt appropriate to clarify

that the IWWMF should be operated as permitted i.e. with all elements operational, to ensure it delivers sustainable development and as such it is appropriate an additional condition should be imposed to ensure all elements of the IWWMF are delivered and operated in an integrated manner. This condition meets the tests identified above.

In conclusion with respect to Option 1 the continuation of the development of the IWWMF in accordance with the planning permission, constructing and operating all elements of the IWWMF would deliver the sustainable development previously considered and compliant with the Development Plan. However, it is considered appropriate to impose an additional condition to the planning permission to clarify all elements of the IWWMF must be constructed, operated and integrated to ensure delivery of the sustainable development.

## F APPRAISAL OF OPTION 2

Under Option 2 the applicant has indicated there is the possibility of the incinerator alone to be completed as a standalone EfW Facility, not as a CHP, but power generation only, with potentially no other permitted elements of the IWWMF to be constructed and/or operated, particularly with no direct use for the heat and steam generated. Indaver and their agents have indicated that they do not believe this would be in breach of the current planning permission i.e. that the EfW facility could operate as power generator only. As explained previously, this is not the view of the WPA having taken its own legal advice.

The operation of an EfW in isolation with no direct use of the heat and steam would require different justification and consideration than that where the heat and steam is used directly on site. Without the DIMP facility on site there would be no direct use of the heat and steam, which was a significant factor taken into account by the Inspector when considering whether the IWWMF amounted to sustainable development.

The WLP policy 11 seeks to encourage direct use of heat from waste facilities:

*“3. Proposals which are capable of directly producing energy or a fuel from waste should, where reasonably practicable, demonstrate that: a. excess heat can be supplied locally to a district heat network or directed to commercial or industrial users of heat;”*

The NPPW 2014 (section 4) requires WPAs to seek to co-locate heat users with low carbon energy recovery facilities:

*“...looking for opportunities to co-locate waste management facilities together and with complementary activities. Where a low carbon energy recovery facility is considered as an appropriate type of development, waste planning authorities should consider the suitable siting of such facilities to enable the utilisation of the heat produced as an energy source in close proximity to suitable potential heat customers;”*

It is acknowledged that incineration of residual waste is not a fully low carbon energy recovery facility, as the waste will likely contain non-renewable resources

such as plastics. However, the principle of co-locating a heat user with an EfW is encouraged.

Since the determination of the application in 2016 for the IWMF the Resources and Waste Strategy 2018, The Environment Plan 2018 and the Waste Management Plan For England 2021 have been published. All emphasise and highlight the need for EfW facilities to operate in both power and heat mode rather than just power mode.

One of the actions of The Resources and Waste Strategy is

*Actions we will take include: 3.2.1 Driving greater efficiency of Energy from Waste (EfW) plants by encouraging use of the heat the plants produce.*

One of The Environment Plan's stated actions is *"Looking at ways to increase the use of heat produced at waste facilities through better connections to heat networks. The facilities will become more efficient and emit less carbon dioxide."*

This emphasis is reiterated in the Waste Management Plan for England (January 2021) :

*"We have committed in the Resources and Waste Strategy to drive greater efficiency of energy from waste plants by encouraging use of the heat the plants produce. We also want to work closely with industry to secure a substantial increase in the number of energy from waste plants that are formally recognised as achieving recovery (R1) status, and to ensure all future energy from waste plants achieve recovery status. To deliver net zero virtually all heat will need to be decarbonised and heat networks will form a vital component of this. Energy from waste has a role to play in supplying this heat, but currently only around a quarter of energy from waste plants operate in combined heat and power mode, despite most being enabled to do so. We want to see this number increase"*

Option 2, of operating the EfW in power only mode, would not be supported by these recent Government policy statements. It is not doubted that surplus heat and steam could be used to generate more electricity. This is in fact demonstrated by the applicant in Option 3 (put forward as part of this application) that the energy generation might exceed 50MW requiring a DCO from SoS, but this is not as efficient as using the heat and steam directly in a facility on site, which is the situation with the IWMF as permitted.

It can be foreseen that an EfW facility generating only power could be located within the existing physical envelope of the IWMF, such that factors such as heritage impact, landscape and visual impact, ecological impact, light impact, highway impacts, could be unaffected by the change. However, other factors, such as impacts on air quality, noise impact, impacts on the water environment may be different, depending on the nature and operation of a standalone EfW only generating power, such factors would require reassessment. This reassessment would most appropriately be via a new planning application, supported by an updated Environmental Impact Assessment. Also, as indicated by the EA, it may require a new EP.

The applicant is of the view that Option 2 can be progressed without the need for express planning permission. This is not the view of the WPA and, as the plan of action for Option 2 does not propose the submission of a planning application with necessary supporting information/Environmental Statement to test the acceptability of such an Alternative use, the “Plan of action for a standalone EfW” should be refused.

## G APPRAISAL OF OPTION 3

The applicant has indicated that, throughout the construction period for the EfW element of the IWMF they would assess the commercial and technical viability of other elements of the IWMF and, if unviable (commercially or technically) would look for potential alternatives.

The applicant has acknowledged that such alternatives would require planning permission and such applications would need to be considered on their individual merits at that time. This might include an application/applications to the WPA or an application to the SoS for a Development Consent Order.

Potential alternative waste management facilities have been suggested by the applicant that could be co-located with the EfW. One suggestion is a facility to process the incinerator bottom ash (IBA) to produce a secondary aggregate. Alternatively, this IBA would otherwise have to be exported from the site unprocessed for reprocessing elsewhere or for disposal. Another alternative suggested by the applicant is for a facility for dealing with bulky household waste.

The applicant has also indicated that they may wish to apply to allow power generation beyond 50MW, which would require a Development Consent Order from the SoS. Concern has been raised that the input capacity of the EfW would be increased to achieve this increased electricity generation. The applicant has advised that at the current time it is not their intention to increase the input capacity of the incinerator beyond that previously stated of 595,000tpa. It has been explained the increase in generation capacity would arise from a combination of a more efficient EfW plant and the possibility that the heat and steam, rather being as part of a CHP, would be used to generate electricity as an alternative. It would be for the SoS to consider such an application and the application would be determined against national and local planning policy and other material considerations.

Much concern has been raised as to the environmental impacts of an EfW and the sustainability of the proposals, particularly in light of the major concern with respect to CO<sub>2</sub> and the negative contribution to climate change. Such factors would be taken into consideration in accordance with local and national planning guidance if and when further planning applications are considered by the SoS or the WPA.

Option 3 rightly acknowledges that any potential alternative uses of the site would require planning permission and potentially a Development Consent Order from the SoS.

It is only appropriate to approve one “Plan of Action” and, as the applicant has proposed under Option 1 for the continuation of the extant planning permission,

which is actively ongoing, Option 3 is not proposed to be approved. However, this does not of course prevent the applicant coming forward with other planning and/or DCO applications supported by the necessary information and Environmental Statements at some stage. The WPA is aware that initial discussions have commenced with the Planning Inspectorate with respect to a potential DCO application.

#### H IMPLICATIONS IF NONE OF THE OPTIONS WERE APPROVED TO DISCHARGE CONDITION 66

If all Options were refused the condition would remain undischarged. The applicant has the right of appeal.

It should be emphasised that refusing all three options would not prevent the applicant from continuing to develop the IWMF, as long as it was in accordance with the planning permission and until resolution of the condition 66 process, potentially through an appeal. If the appeal were dismissed then the WPA would need to consider whether it was expedient to take enforcement action to achieve rehabilitation of the site in accordance with the approach which is required to be taken under condition 66 (as properly interpreted) – i.e., given no acceptable alternative use under a plan of action, rehabilitation should take place.

If refused, the applicant could alternatively seek to delete the condition through a section 73 (deletion or variation of a condition), so as not to be in breach of the condition.

If no successful appeal or submission was made and the applicant continued to develop the site in accordance with the extant planning permission, the WPA would need to consider whether enforcement action was expedient.

As stated before, if the developer were found to not be developing the site in accordance with the planning permission, then the WPA would need to consider enforcement action at that time.

#### I ENVIRONMENTAL PERMIT

Comments have been made by the public that the suggested changes were not considered as part of the determination of the current EP issued by the EA.

The EA have commented that the suggested options by the applicant do have implications to the EP, either requiring changes or a new EP, depending on the nature of the changes. The incinerator could not operate until any necessary changes to the EP have been obtained from the EA.

#### J LEGAL ADVICE

It will have been noted within the report that legal advice has been sought in relation to the consideration of this application and the planning status of the current planning permission. The full details of this legal advice have not been included, only referenced where necessary to facilitate determination of the application. The legal advice is subject to legal privilege i.e. the right to resist

disclosure of confidential and potentially sensitive material in the context of litigation and investigations, including in relation to potential enforcement. Therefore requests from interested parties to see this legal advice are expected to be resisted.

## K CONCLUSION

The consideration of the application to discharge condition 66 has to be on the basis of the details submitted with respect to “a plan of action for an alternative use”, referred to by the applicant as a “plan of action”.

The applicant has put forward three potential Options and each of these options has been considered against the Development Plan and other material considerations.

It is concluded that only Option 1 should be approved. This would be the continuation of the IWFM as permitted, subject to an additional condition to provide clarification. In particular, the additional condition clarifies that all elements of the IWFM are required to be brought into operation in tandem with the CHP facility. The condition is to ensure the IWFM delivers the sustainable development as originally proposed, namely that the heat and steam is used directly on site in the MDIP. It is permissible to impose such a condition for the reasons explained in Sections A and E. In particular, it is considered that the condition is necessary to ensure the appropriate implementation of Option 1. There are no reasons to suggest that if the IWFM is implemented as permitted it would no longer comply with the Development Plan, the site remains an allocated site within the extant Waste Local Plan and the permitted development accords with the allocation, as explained in Section E.

Whether the IWFM is built out in full, as permitted, remains to be seen, as explained more fully in section C. However, should the non-EfW elements of the IWFM not be built out and operated as part of the approved scheme, then consideration afresh would need to be made whether the development complies with waste planning policy and any other material considerations, such as national waste guidance and policy. Such considerations would need to be taken into account before any recommendation could be made whether or not it would, for example, be considered expedient to take enforcement action

Option 2, where potentially only an EfW generating electricity is delivered. This option is considered by the applicant to be permissible under the current planning permission. This is not the view of the WPA; such development would give rise to different issues that would need to be considered afresh, through a planning application. Insufficient information has been provided to allow an assessment both in terms of any additional environmental impacts and whether an EfW that only generates electricity is in conformity with current national policy seeking to ensure EfW operates in both power and heat mode to maximise the efficiency and sustainability of the development. Insufficient information has been provided to justify option 2. It is therefore considered that this option does not warrant support and should be refused.

Option 3 suggests potential new waste management developments at the site,

which the applicant acknowledges would require further planning applications. Such applications can come forward at any stage regardless of condition 66 and therefore it not considered necessary or appropriate to approve Option 3 and it should be refused.

## 8. RECOMMENDED

Subject to there being no intervention by the SoS, with respect to the 3 Options put forward to discharge condition 66:

Plan of action Option 1 be approved subject to the development of the IWMF being implemented in accordance with:

- a) all the conditions of planning permission ESS/34/15/BTE and for the avoidance of doubt a condition to be imposed on the approval to clarify such as set out below:

### Condition 69

Plan of action Option 1 as detailed in letter from RPA dated 1 September 2021 shall be implemented in accordance with

- a) the conditions of planning permission ESS/34/15/BTE dated 26 February 2016;
- b) any details approved under those conditions or to be approved under those conditions;
- c) Non Material Amendments References ESS/34/15/BTE/NMA1 and ESS/4/15/BTE/NMA2 or any subsequently approved Non Material Amendments; and
- d) the obligations set out in the Section 106 Legal agreement dated 20 October 2009 as amended by deeds of variations dated 1 December 2014, 26 March 2015 and 26 February 2016.

*Reason: For the avoidance of doubt as to the nature of the development hereby permitted, to ensure development is carried out in accordance with the approved application drawings, details (except as varied by other conditions), to ensure that the development is Sustainable Development and is carried out with the minimum harm to the local environment and in accordance with the NPPF, NPPW, Essex Minerals Local Plan 2014 (MLP) policies P1, S1, S10, S11, S12, DM1, DM2 and DM3, Essex and Southend Waste Local Plan 2017 (WLP) policies 1, 3, 10, 11 and 12, Braintree District Local Plan 2013-2033 Section 1 (BLP S1) policy SP 7, Braintree District Core Strategy adopted 2011 (BCS) policies CS5, and CS8 and Braintree District Local Plan Review 2005 (BDLPR) policies RLP 36, RLP 49, RLP 54, RLP 62, RLP 63, RLP 64, RLP 65, RLP 71, RLP 72, RLP 80, RLP 81, RLP 84, RLP 87, RLP 90, RLP 100, RLP 105 and RLP 106;*

- b) A further additional condition to ensure all elements of the IWMF are constructed, operated and integrated as set out below

### Condition 70

There shall be no beneficial operation of the Combined Heat and Power (CHP) plant without all other elements of the IWMF i.e. Market De Ink Paper Pulp Plant

(MDIP) Materials Recycling Facility (MRF), Mechanical Biological Treatment (MBT) plant, Anaerobic Digestion (AD) plant, Waste Water Treatment Plant and all other permitted associated infrastructure having been constructed and available for beneficial operation. For the avoidance of doubt the CHP shall not operate without the MDIP utilising the heat and steam directly from the CHP.

*Reason: To ensure the development delivers Sustainable Development in accordance with the Development Plan. To ensure the development operates in an integrated manner, in particular that the CHP operates in conjunction with the de ink paper pulp plant, such that the facility operates as a combined heat and power facility delivering greater efficiency rather than solely generating electricity in accordance with WLP policy 11, Resources and Waste Strategy 2018 and The Environment Plan for England 2021;*

- c) subject to the obligations set out in the Section 106 Legal agreement dated 20 October 2009 as amended by deeds of variations dated 1 December 2014, 26 March 2015 and 26 February 2016.

Plan of action Option 2 be refused for the following reason:

It has not been demonstrated that the part development of the IWMF would amount to sustainable development contrary to the NPPF and does not accord with the Waste and Resource Strategy, The Environment Plan and The Waste Management Plan for England and WLP policy 11 in that the EfW would only generate electricity rather than utilising the heat directly. Insufficient information has been submitted to determine whether there would be additional adverse environmental effects contrary to the WLP policy 10. Furthermore, because in order to assess whether an EfW only generating electricity amounts to Sustainable Development would require a separate planning application with relevant supporting information/Environmental Impact Assessment to be submitted for such.

Plan of action Option 3 be refused for the following reason:

The acceptability of the proposed alternative waste management facilities could only be considered by way of a planning application with associated details and where necessary Environmental Impact Assessment.

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## **BACKGROUND PAPERS**

Consultation replies  
Representations

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## **LIST OF APPENDICES**

Appendix A The Inspector's Report dated March 2010  
Appendix B SoS Decision March 2010  
Appendix C The planning permission February 2016  
Appendix D The applicant's letter to address the requirements of condition 66



## **EQUALITIES IMPACT ASSESSMENT**

This report only concerns the determination of an application for planning permission. It does however take into account any equality implications. The recommendation has been made after consideration of the application and supporting documents, the development plan, government policy and guidance, representations and all other material planning considerations as detailed in the body of the report.

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## **STATEMENT OF HOW THE LOCAL AUTHORITY HAS WORKED WITH THE APPLICANT IN A POSITIVE AND PROACTIVE MANNER**

In determining this application, the Waste Planning Authority has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with the application by liaising with consultees, respondents and the applicant/agent and discussing changes to the proposal where considered appropriate or necessary. This approach has been taken positively and proactively in accordance with the requirement in the NPPF, as set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

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## **LOCAL MEMBER NOTIFICATION**

BRAINTREE – Braintree Eastern  
BRAINTREE – Witham Northern

**Appendix 5 - ESS/34/15/BTE/66/01 – Addendum to Development &  
Regulation Committee Report 25 February 2022**

## **ADDENDUM FOR THE MEETING OF DEVELOPMENT AND REGULATION**

### **COMMITTEE 25 FEBRUARY 2022**

#### **Item 4.1 (DR/06/22) Rivenhall IWMF, Coggeshall Road (A120), Braintree**

##### Page 66 REPRESENTATIONS

Add- A further letter has been received from Priti Patel MP (attached at APPENDIX H)

In summary the further concerns raised are

- waste incineration is viewed as being a less favourable approach and through the Government's Resources and Waste Strategy as there is an increased focus on waste reduction, re-use and recycling.
- The proposed plan of action from Indaver to address condition 66 is unacceptable as all three options they have put forward fail to provide certainty and the application should be refused.
- No scheme of rehabilitation was submitted and therefore should be refused.
- That there is continued uncertainty that the permitted facility would be delivered as the applicant has stated that they do not think that they can deliver the integrated waste management facilities in full.
- There would be continued uncertainty and impact on the local community and Option 1 should therefore be refused.
- Refusing the application would enable the Council to take enforcement action to stop the development.
- There are strong material grounds to refuse the application including on environmental and climate change grounds.
- Approving Option 1 conflicts with planning and environmental policy.
- If granted, conditions should be tightened to ensure the facility is constructed as permitted. All the component parts of the IWMF should be constructed and ready for beneficial operation at the same time rather, than as suggested with the proposed condition.
- A scheme for rehabilitation should be sought by condition as well as a deadline imposed for completion of the IWMF.

##### Page 78 Section 7 APPRAISAL

Replace the list of key issues for consideration with the following

A. NATURE OF THE APPLICATION

B. INTERPRETATION OF CONDITION 66 AND WHAT IS REQUIRED

C. WHETHER THERE IS CURRENTLY A BREACH OF PLANNING CONTROL

D. APPRAISAL OF THE INFORMATION SUBMITTED TO DISCHARGE THE CONDITION

E. APPRAISAL OF OPTION 1

F. APPRAISAL OF OPTION 2

G. APPRAISAL OF OPTION 3

GG. APPRAISAL OF THE PLAN OF ACTION, AS A WHOLE (STAGED APPROACH)

H. IMPLICATIONS IF NONE OF THE OPTIONS WERE APPROVED TO DISCHARGE CONDITION 66

I. ENVIRONMENTAL PERMIT

J. LEGAL ADVICE

JJ. LAWFULNESS OF APPROACH

K. CONCLUSION

Page 96 New section before section H

**GG. APPRAISAL OF THE PLAN OF ACTION, AS A WHOLE (STAGED APPROACH)**

Since publication of the report the applicant's solicitors Herbert Smith Freehills have submitted a letter dated 22 February 2022. The letter is attached to the Addendum and forms Appendix G to Agenda Item 4.1.

The applicant's solicitor considers that the Plan of Action should have been considered as a whole.

If this position was accepted by the WPA, it is likely that a recommendation to refuse the whole plan of action would have been reached, especially as the WPA could not fully appraise Option 2 without a further planning application being lodged (for example a standalone EFW facility) and necessary Environmental Impact Assessment (EIA). As such it would not be anticipated (and has not been offered) that this submission (to discharge Condition 66) should have come forward with such information that would be needed to support a planning application.

In any case, if that was the position, it would be unlikely that the (whole) Plan of Action could be determined until such a fresh permission for an alternative (viable) waste management proposal was in place, which, without prejudice, would not be certain given the highlighted concerns regarding sustainable development and current and future policy approaches to such.

Therefore, and taking into account the requirement to determine the submission swiftly, the only course of action would be for the WPA to recommend refusal of the whole Plan of Action. It is not considered that the applicant could supply any further information at this stage that could make Option 2 acceptable, except by way of a new planning application (and EIA) and subsequent decision on such, as stated.

The WPA remains of the view that it is not possible under Condition 66 to give express planning permission for something that is not that already permitted by the extant permission; it could only approve a plan of action as to how an alternative use might be brought forward. If Option 2 had included, for instance, that the applicant was to submit a planning application for only parts of the permitted IWMP, with an estimated timescale for the same and the following sequential steps, then, potentially, the Plan of Action as a whole could have been approved,. But that is not the case and, as the letter from the applicant's solicitor points out, it would not be for the WPA to seek to propose "*approval of a plan of action which is substantially different from that for which approval was sought*" by effectively re-writing what was submitted.

If the Plan of Action was considered as a whole and refused, the applicant would be in breach of Condition 66. The only way they could resolve that is by a successful appeal against the refusal. If the Options are considered separately, as currently appraised in the report, the applicant could appeal the refusal of Option 2 or appeal the conditions imposed on Option 1 or appeal refusal of Option 3 or a combination of such.

Whichever way the application details pursuant to the Condition 66 submission are interpreted, the underlying difference of opinion is whether a different waste management development may be built and operated at this site without all the approved elements of the IWMP being constructed and operated in an integrated manner.

If the applicant remains of the view that, for example, the EFW facility may be developed without other elements of the IWMP being constructed and operated, this may, at some stage, need to be tested at appeal or by way of other challenge and it is at the applicant's discretion whether or not to do that in the absence of any future planning permission (either by DCO or issued by the WPA) being in place.

Page 97

Insert new section JJ before section K

## JJ. LAWFULNESS OF APPROACH

As explained previously, since publication of the report the applicant's solicitors Herbert Smith Freehills have submitted a letter dated 22 February 2022. The letter is attached to the Addendum circulated at the meeting and forms Appendix G to Agenda Item 4.1.

The letter indicates that it would be "*not be appropriate and unlawful*" for the Council to determine the application as the current report contains "*fundamental flaws*".

### Applicant's solicitor's letter sub heading "Misunderstanding of submitted Plan of Action"

The applicant considers that the scope of the decision making is defined by the application that is made and that the WPA can only approve, approve subject to lawful conditions or refuse the whole "plan of action" (inclusive of all the 3 options).

They then go on to state that that the Plan of Action described a staged approach, to be followed in sequence, thus is an integral whole, it "*does not present Options from which the Council may select at its discretion.*"

Thus the applicant does not accept that the WPA may approve only one or more of the options. The applicant considers that, as this misunderstanding underpins the entire approach of the Report, the recommendation is for "*approval of a plan of action which is substantially different from that for which approval was sought*".

They say that "*the necessity for this staged approach is explained within the Application*".

The 'Application' is the submission letter dated 1 September 2021 (at Appendix D page 296-298 of this report) which explained the current position of the applicant's development, some of the detail of future commissioning timelines, the fact that a scheme of rehabilitation was not considered sensible and that (under Plan of Action, page 297) "*proposes the following staged plan of action which we believe reflects the circumstances and decisions we currently face. They are presented in a manner which aims to provide the planning authority with transparency in relation to our intentions for the site. In sequence the plan is:*" and then proceeds to set out what it identifies as 1,2 and 3 with indications that they are "*options*" and a "*stage*", some of which are in combination, with 'option' being the primary reference to each of those 3 scenarios thereafter.

While it is accepted that reference is made to a staged approach within the applicant's original submission letter at Appendix D it is not the case that it is actually a staged approach, especially as the applicant states that sequentially, whilst "*option*" 1 would come first, it may be that "*options*" 2 "*or/and*" 3 would follow (and either stand independently or follow in sequence). Whilst the approach may have

been signalled as a “staged” approach it is clear that sequentially there are several option scenarios that the applicant claims they might pursue.

Option 1 is to implement the whole development as implemented.

It is stated in the application letter that if elements of Option 1 are unviable for “technical or commercial reasons” the applicant is “likely to wish to resort to options under stage 2 or 3 of the plan of action” (top of page 198), clearly indicating that Option 2 doesn’t need to have been pursued before Option 3 could be commenced. It is known that the applicant has already approached the Planning Inspectorate with respect to the potential submission of a DCO which forms part of the proposed plan of action under Option 3. This supports the WPA’s impression that Option 2 does not have to have occurred for Option 3 to be progressed.

The applicant also considers that the WPA’s unlawful approach is unfair as Condition 66 “requires the approved plan [of action]” to be implemented by the operator within 6 months”.

If Option 1 were to be approved by the WPA, under Option 1 the applicant submitted a timetable as part of the submission for Condition 66 that showed that the development would likely be completed by early 2026 (page 296 of this report). Accordingly, it is not considered that the approval of Option 1 alone requires any ‘alternative use’ to be completed within 6 months of approval, only that the applicant implement the plan of action contained in Option 1. As Option 1 is technically ratifying the implementation of the development permitted under planning permission ESS/34/15/BTE it is not considered that it would be “fundamentally and patently unfair” to approve a plan of action (for Option 1) that is consistent with the extant planning permission.

#### Applicant’s solicitor’s letter sub heading “Refusal of Option 2”

The applicant considers the WPA’s position that Option 2 should be refused because it would only allow the partial implementation of the planning permission, which is in breach of the planning permission, is wrong.

The applicant considers that the Inspector’s report expressly rejected this through his refusal of the proposed condition that “no element of the development may be implemented in isolation of others” (see condition 23 at page 239 of the report).

The Inspector did state, as referred to by the applicant, he wished to allow “flexibility to accommodate future changes in waste arisings and in waste management techniques and practices” (see paragraph 13.61 at page 200). However, it is considered that this quote needs to be taken in context. The Inspector, whilst acknowledging there needed to be some flexibility in the changes in waste arising and waste management techniques and practices, did not envisage that potentially there would only be an incinerator element coming forward as part of the IWMMF.

The IWMF that was granted planning permission permits the heat and steam to be used to process waste paper, not to be used simply to generate more energy, which is a less efficient use of the heat and steam and as explained in the Report. This is not in accordance with the more recent position of central government trying to drive the more sustainable use of energy from waste facilities which is now coming forward, as explained on pages 91 and 92 of the report.

Also, without the other elements of the IWMF, it is considered (for reasons explained in the report) that the facility would not deliver sustainable development as permitted (as required by the Development Plan and national policy) as, for one, it would not push waste management higher up the waste hierarchy. For example, without the materials recycling facility there would be no opportunity to recover any recyclates from waste imported to the IWMF.

The applicant considers that the WPA's recommendation to refuse Option 2 is "*unlawful*" and "*manifestly unreasonable*", because the applicant considers that the WPA is wrong in its interpretation of the extant planning permission that it requires development of the facility as a whole and also consider that it would still be "*manifestly unreasonable*", even if the WPA's interpretation was correct.

Ultimately there is a difference of opinion on this point. Should members be minded to follow the officer recommendation, the applicant is entitled to appeal the refusal of Option 2 (as a part of the parts of the submitted plan of action that the WPA does not consider can be approved) and therefore it is not considered unlawful or unreasonable to refuse Option 2 as there is a method of remedy open to the applicant should the WPA's interpretation of the planning permission be found to be incorrect. The interpretation of the extant planning permission would need to be considered as part of the appeal. The applicant has indeed suggested in paragraph 1.6 of the letter at Appendix G (with this Addendum) that an appeal may be lodged in this respect.

The applicant suggests that the WPA is not complying with the NPPF in that it is not taking a positive and creative approach to the proposed development under Option 2. As explained in the report on page 94, the operation of potentially the EFW facility in isolation would give rise to different impacts, which could only be appropriately considered through a new planning application, supported by an updated EIA. As explained on page 95 of the report it is not the view of the WPA that a submission under Condition 66 could grant a standalone permission for alternative development that needs express planning permission in its own right.

#### Applicant's solicitor's letter heading "Refusal of Option 3"

The applicant once again contends that it is not possible for the WPA to refuse Option 3 as the applicant considered the Plan of Action to include all 3 options. It is also said that, if the WPA wanted to understand better the timescale for such applications proposed under Option 3, it could have sought this additional



information; it could have formed part of the “plan of action” following discussions or imposed a condition requiring submission of such information.

As stated previously the WPA is not of the view that the “plan of action” requires to be considered as a whole; each option has the ability to be progressed regardless of whether another option is or is not progressed. Option 3 is stated to be an “*and/or*” to Option 2 and Options 2 and 3 are both stated to be a “*resort*” to the applicant being “*unable to bring forward all parts of the consented development*”. Option 3, as acknowledged by the applicant (at paragraph 1.5.3 (A) of the letter at Appendix G (with the Addendum)), requires the submission of further application(s) to either the WPA or the Planning Inspectorate. The applicant is free to submit such applications at any stage regardless of any timescales that might have been submitted in the Application letter containing the plan of action and which related to Option 3.

The applicant states because they consider any decision would be unlawful and unreasonable that they would appeal any decision and to avoid such an appeal request that the item be deferred such that the

- a) misunderstandings of the application can be addressed,
- b) allow submission of any further information required, and
- c) enable Indaver to respond in full to the legal analysis set out in the report.

This is dealt with below.

#### Consideration of the Plan Of Action if taken as a staged approach i.e. as a whole

The applicant considers that the Plan of Action should have been considered as a whole.

If this position was accepted by the WPA, it is likely that a recommendation to refuse the whole plan of action would have been reached, especially as the WPA could not fully appraise Option 2 without a further planning application being lodged (for example a standalone EFW facility) and necessary EIA. As such it would not be anticipated (and has not been offered) that this submission (to discharge Condition 66) should have come forward with such information that would be needed to support a planning application.

In any case, if that was the position, it would be unlikely that the (whole) Plan of Action could be determined until such a fresh permission for an (viable) waste management proposal was in place, which, without prejudice, would not be certain given the highlighted concerns regarding sustainable development and current and future policy approaches to such. For example if a standalone EFW facility was applied for it is considered that, without the utilisation of the heat and steam offtake, this would not be in line with National waste policy, which seeks to move EFW facilities away from just power mode to heat and power mode.

Therefore, and taking into account the requirement to determine the submission swiftly, the only course of action would be for the WPA to recommend refusal of the whole plan of action. It is not considered that the applicant could supply any further information at this stage that could make Option 2 acceptable, except by way of a new planning application (and EIA) and subsequent decision on such, as stated.

The WPA remains of the view that it is not possible under Condition 66 to give express planning permission for something that is not that already permitted by the extant permission; only approve a plan of action as to how an alternative use might be brought forward. If Option 2 had included, for instance, that the applicant was to submit a planning application to bring forward only part of the IWMF e.g. a standalone EFW facility, with an estimated timescale for the same and the following sequential steps, then, potentially, the Plan of Action as a whole could have been approved. But that is not the case [and, as the letter from the applicant's solicitor points out, it would not be for the WPA to seek to propose "*approval of a plan of action which is substantially different from that for which approval was sought*" by effectively re-writing what was submitted.

If the Plan of Action was considered as a whole and refused, the applicant would be in breach of Condition 66. The only way they could resolve that is by a successful appeal against the refusal. If the Options are considered separately, as currently appraised in the report, the applicant could appeal the refusal of Option 2 or appeal the conditions imposed on Option 1 or appeal refusal of Option 3 or a combination of such.

Whichever way the application details pursuant to the Condition 66 submission are interpreted; the underlying difference of opinion is whether a different waste management development may be built and operated at this site without all the approved elements of the IWMF being constructed and operated in an integrated manner.

If the applicant remains of the view that, for example, the EFW facility may be developed without other elements of the IWMF being constructed and operated, this may, at some stage, need to be tested at appeal or by way of other challenge and it is at the applicant's discretion whether or not to do this in the absence of any future planning permission (either by DCO or issued by the WPA) being in place.

#### Deferral of consideration of the application

It is the view of the WPA that a deferral of consideration of the submission would not necessarily be beneficial nor prevent a future appeal. The WPA fundamentally has a different interpretation of the extant planning permission to that of the applicant/ developer. The submission under Condition 66 has required the WPA to take advice on the matter and this advice has supported the WPA's position that the extant planning permission permits development of all elements of the IWMF – in

integration - to effectively deliver sustainable waste management development as originally considered and granted permission.

If it is established by the applicant/developer that it is technically or commercially unviable to bring forward all elements of the IWMF, then the applicant/developer should, at an appropriate time, come forward with any relevant application(s), supported by any necessary supporting information, including EIA, for what is proposed to be developed. Such an application(s) could then be properly considered against the prevailing planning policy and any other material considerations.

Conclusion on the issues raised by the applicant's solicitors' letter dated 22 February 2022 (Appendix G)

It is the view of officers that there is no fundamental reason why the submission cannot be determined, as presented to members of the committee, and the recommendation on page 98 of the report remains unaltered. Should members determine the application in accordance with the officer recommendation, as stated, the applicant would have the right of appeal.

Page 97 Section K CONCLUSION

Add after last paragraph

If the Plan of Action had been taken as a staged approach i.e. as a whole, it is likely that a recommendation to refuse the whole plan of action would have been reached for the reasons explained in Section GG. If the Plan of Action was considered as a whole and refused, the applicant would be in breach of Condition 66. It is considered that by appraising the three options separately the WPA is able to approve Option 1, the continuation of the development of the IWMF, with additional condition to ensure all elements are delivered and not leave the applicant in breach of condition 66.

Page 99 LIST OF APPENDICIES

Add

Appendix G Applicant's solicitors Herbert Smith Freehills letter dated 22 February 2022

Appendix H Priti Patel letter dated 24 February 2022 received by email at 16:54

**Item 4.3 (DR/08/22) Lufkins Farm, Great Bentley Road, Frating**

RECOMMENDED

Add 'c) that it is not considered expedient to take enforcement action at this time or during the period until the legal agreement is completed and the planning permission issued. If the legal agreement is not completed, then the situation with respect to enforcement action will be reviewed at that time.'

**Item 5.1 (DR/09/22) Fairview, Fairview Road, Basildon, Essex, SS14 1PW**

**RECOMMENDED**

Condition 22 replace 'prior to commencement of development' with 'post demolition and prior to commencement of construction of the development hereby permitted'

Condition 23 replace 'prior to commencement of development' with 'post demolition and prior to commencement of construction of the development hereby permitted'

Page 415

**APPRAISAL – NEED**

4<sup>th</sup> paragraph – Delete 'Up to 70' and replace with 'Up to 60'

Page 421

2<sup>nd</sup> paragraph – Delete 'up to 70' and replace with 'up to 60'

**Appendix 6 - ESS/34/15/BTE/66/01 (Submission of details under Condition 66  
of ESS/34/15/BTE) – Decision letter 7 March 2022**

Mr Jon Brier  
RPS Planning & Development  
RPS P&D  
Suite D10 Josephs Well  
Hanover Walk  
Leeds  
LS3 1AB

Our ref: ESS/34/15/BTE/66/01  
Your ref:  
Date: 7 March 2022

**PLEASE QUOTE REFERENCE ON ALL CORRESPONDENCE**

Dear Mr Brier

**TOWN AND COUNTRY PLANNING ACT 1990 (as amended)**

**Application No:** ESS/34/15/BTE/66/01

**Proposal:** Details pursuant to Condition 66 (Plan of action for an alternative use or a scheme of rehabilitation) of ESS/34/15/BTE. ESS/34/15/BTE was for "Variation of condition 2 (application drawings) of planning permission ESS/55/14/BTE to allow amended layout of the Integrated Waste Management Facility. The Integrated Waste Management Facility comprising: Anaerobic Digestion Plant treating mixed organic waste, producing biogas converted to electricity through biogas generators; Materials Recovery Facility for mixed dry recyclable waste to recover materials e.g. paper, plastic, metals; Mechanical Biological Treatment facility for the treatment of residual municipal and residual commercial and industrial wastes to produce a solid recovered fuel; De-inking and Pulping Paper Recycling Facility to reclaim paper; Combined Heat and Power Plant (CHP) utilising solid recovered fuel to produce electricity, heat and steam; extraction of minerals to enable buildings to be partially sunken below ground level within the resulting void; visitor/education centre; extension to existing access road; provision of offices and vehicle parking; and associated engineering works and storage tanks. And approval of details required by condition (the details taking account of the proposed amended drawings), the conditions sought to be discharged are as follows: 6 (access road, cross over points), 13 (Signage, Telecommunications & Lighting at Woodhouse Farm complex), 14 (Stack design and finishes), 15 (design details and construction materials), 17 (management plan for the CHP), 18 (green roof), 20 (construction compounds, parking of vehicles), 22 (foul water management), 23 (surface water drainage and ground water management), 24, (groundwater

monitoring), 37 (signs on access road at footpath crossings), 43 (lighting scheme during construction), 45 (phasing scheme for access road, retaining wall and mineral extraction), 50 (fencing - temporary and permanent), 53 (ecological survey update), 54 (Habitat Management Plan update), 57 (landscaping - bunding & planting), 59 (trees, shrubs and hedgerows - retention and protection), 60 (tree management and watering adjacent to retaining wall), 61 (Woodhouse Farm parking and landscaping), 62 (traffic calming measures at River Blackwater for otters and voles) and 63 (access road crossing points - lining and signing)"

**Location:** Rivenhall Airfield, Coggeshall Road (A120)  
Braintree, CO5 9DF

I refer to your application dated 1 September 2021 in respect of condition 66 of the above planning permission.

I hereby approve the details as set out under Option 1 of the Plan Of Action as detailed in the covering letter dated 1 September 2021 received on 2 September 2021 and additional supporting information in email dated 17 November 2021 (10:387) from RPS with attachment "IWMF High Level Programme v01", subject to the following 2 additional conditions

#### Condition 69

Plan of action Option 1 as detailed in letter from RPA dated 1 September 2021 shall be implemented in accordance with

a) the conditions of planning permission ESS/34/15/BTE dated 26 February 2016;  
b) any details approved under those conditions or to be approved under those conditions;

c) Non Material Amendments References ESS/34/15/BTE/NMA1 and ESS/4/15/BTE/NMA2 or any subsequently approved Non Material Amendments; and  
d) the obligations set out in the Section 106 Legal agreement dated 20 October 2009 as amended by deeds of variations dated 1 December 2014, 26 March 2015 and 26 February 2016.

*Reason: For the avoidance of doubt as to the nature of the development hereby permitted, to ensure development is carried out in accordance with the approved application drawings, details (except as varied by other conditions), to ensure that the development is Sustainable Development and is carried out with the minimum harm to the local environment and in accordance with the NPPF, NPPW, Essex Minerals Local Plan 2014 (MLP) policies P1, S1, S10, S11, S12, DM1, DM2 and DM3, Essex and Southend Waste Local Plan 2017 (WLP) policies 1, 3, 10, 11 and 12, Braintree District Local Plan 2013-2033 Section 1 (BLP S1) policy SP 7, Braintree District Core Strategy adopted 2011 (BCS) policies CS5, and CS8 and Braintree District Local Plan Review 2005 (BDLPR) policies RLP 36, RLP 49, RLP 54, RLP 62, RLP 63, RLP 64, RLP 65, RLP 71, RLP 72, RLP 80, RLP 81, RLP 84, RLP 87, RLP 90, RLP 100, RLP 105 and RLP 106;*

And

Condition 70

There shall be no beneficial operation of the Combined Heat and Power (CHP) plant without all other elements of the Integrated Waste Management Facility (IWMF) i.e. Market De Ink Paper Pulp Plant (MDIP) Materials Recycling Facility (MRF), Mechanical Biological Treatment (MBT) plant, Anaerobic Digestion (AD) plant, Waste Water Treatment Plant and all other permitted associated infrastructure having been constructed and available for beneficial operation. For the avoidance of doubt the CHP shall not operate without the MDIP utilising the heat and steam directly from the CHP. The development as permitted shall be constructed and ready for beneficial use by 31 December 2026.

*Reason: To ensure the development delivers Sustainable Development in accordance with the Development Plan. To ensure the development operates in an integrated manner, in particular that the CHP operates in conjunction with the de ink paper pulp plant, such that the facility operates as a combined heat and power facility delivering greater efficiency rather than solely generating electricity in accordance with WLP policy 11, Resources and Waste Strategy 2018 and The Environment Plan for England 2021. To ensure the development is completed within a reasonable time to minimise the impacts from construction and in accordance with Essex and Southend Waste Local Plan 2017 Policies (WLP) 10 & 11, Braintree District Local Plan 2013-2033 Section 1 (BLP S1) policy SP 7, Braintree District Core Strategy adopted 2011 (BCS) policies CS5, and CS8 and Braintree District Local Plan Review 2005 (BDLPR) policies RLP 36, RLP 49, RLP 54, RLP 62, RLP 63, RLP 64, RLP 65, RLP 71, RLP 72, RLP 80, RLP 81, RLP 84, RLP 87, RLP 90, RLP 100, RLP 105 and RLP 106.*

I hereby refuse the details as set out under Option 2 of the Plan Of Action as detailed in the covering letter dated 1 September 2021 received on 2 September 2021. The reason for refusal is set out below:

*It has not been demonstrated that the part development of the IWMF would amount to sustainable development contrary to the NPPF and does not accord with the Waste and Resource Strategy, The Environment Plan and The Waste Management Plan for England and WLP policy 11 in that the EfW would only generate electricity rather than utilising the heat directly. Insufficient information has been submitted to determine whether there would be additional adverse environmental effects contrary to the WLP policy 10. Furthermore, because in order to assess whether an EfW only generating electricity amounts to Sustainable Development would require a separate planning application with relevant supporting information/Environmental Impact Assessment to be submitted for such.*




I hereby refuse the details as set out under Option 3 of the Plan Of Action as detailed in the covering letter dated 1 September 2021 received on 2 September 2021. The reason for refusal is set out below:

*The acceptability of the proposed alternative waste management facilities could only be considered by way of a planning application with associated details and where necessary Environmental Impact Assessment.*

For details on how information will be used and held by ECC please see the County Planning Privacy Statement at <https://www.essex.gov.uk/county-planning-privacy-notice/>

Yours sincerely

A large black rectangular redaction box covering the signature of Graham Thomas.

Graham Thomas - Head of Planning Service

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