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## Appeal Decision

Inquiry opened on 6 September 20165

Site visit made on 20 February 2017

**by B J Sims BSc(Hons) CEng MICE MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 12 June 2017**

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**Appeal Ref: APP/Y3940/W/15/3139189**

**Lower Compton Materials Recycling Facility, Lower Compton, Calne, Wiltshire SN11 8RB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Hills Waste Solutions Limited against the decision of Wiltshire Council.
  - The application Ref 14/09744/WCM, dated 13 October 2014, was refused by notice dated 17 June 2015.
  - The development proposed is to retain and extend the existing Materials Recycling Facility, including transfer activities, screening bund and ancillary activities and development.
  - The Inquiry sat for 7 days on 6 September 2016, 21 to 24 and 28 February and 2 March 2017.
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### Decision

1. The appeal is allowed and planning permission is granted to retain and extend the existing Materials Recycling Facility, including transfer activities, screening bund and ancillary activities and development, at Lower Compton Materials Recycling Facility, Lower Compton, Calne, Wiltshire, SN11 8RB, in accordance with the terms of the application, Ref 14/09744/WCM, dated 13 October 2014, subject to the conditions set out in the Schedule of Conditions appended to this decision.

### Applications for Costs

2. At the Inquiry applications for costs were made by Wiltshire Waste Alliance (WWA) against Hills Waste Solutions Limited (HWS). These applications are the subject of a separate Decision.

### Site Visits

3. Prior to the Inquiry, I toured the area of Lower Compton, Compton Basset and Calne, noting the general extent of the HWS landfill and other waste management operations as well as the highway route between Lower Compton and Calne.
  4. On Monday 20 February 2017, I conducted my formal accompanied visit to the appeal site itself, including the existing Materials Recycling Facility (MRF) and adjacent areas, accompanied by representatives of HWS, Wiltshire Council (WC), WWA and elected local representatives. During the Inquiry I
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made an unaccompanied visit to observe the HWS waste management facility at Porte Marsh.

### **Preliminary Matters**

5. Lists of Abbreviations, Appearances, Documents and Plans are appended below.
6. Two Pre-Inquiry Notes, an Adjournment Note and a Pre-resumption Note were issued [Docs 7.1-2]. These were all essentially procedural and provisionally identified the planning issues but did not address the merits of the cases for and against the appeal.
7. The application was refused by WC despite a recommendation from its officers for approval. Subsequently, WC chose to adduce no evidence in support of the Reasons for Refusal but those reasons stand and have not been formally withdrawn. Evidence in opposition to the proposed development was put forward primarily by WWA as a Rule 6 Party and a number of interested parties. HWS contend that the only allegations of planning harm are narrowly limited to policy and air quality issues and that it is inconceivable that WC would have left third parties to oppose the appeal and not defended its own position had there been a proper land use basis for its refusal. Notwithstanding that viewpoint put forward in closing submissions for the appellants company, it is fundamental that this appeal now falls to be determined on an entirely fresh appraisal of all the available planning evidence, irrespective by whom it is put forward.
8. The Council, as Waste Planning Authority (WPA) and HWS, as Appellants, provided a Statement of Common Ground (SOCG). [Doc 4]
9. HWS put forward a Unilateral Undertaking (UU) under section 106 of the Act, as amended [Doc 5], to provide mitigation measures with respect to air quality along the A4 New Road through Calne. The degree to which this UU is material to the determination of the appeal is discussed below.
10. HWS and the Council put forward a schedule of Suggested Conditions without prejudice. [Doc 6.1-3] These are also discussed below.
11. Reference was made at the Inquiry to a previous application by HWS for a Certificate of Lawful Existing Use or Development (CLEUD) for the several waste uses on and adjacent to the appeal site. This was withdrawn before determination. It was accepted at the Inquiry, and is here confirmed, that nothing in this decision that relates to previous or current planning permissions or developments in any way replaces consideration of the withdrawn CLEUD application nor anticipates the consideration of any future such application. Where consideration is given below to likely planning fallback positions, conclusions are reached solely on the evidence put forward for the purpose of deciding the present appeal.

### **The Appeal Site and the Surrounding Area**

12. The 4.8 hectare (ha) appeal site is located about 1 kilometre (Km) east of Calne, 1Km north of the A4 and just north of the residential area of Lower Compton, where the site access road joins the public highway. Compton Bassett is about 1.6Km to the north east. The site currently accommodates

the existing Lower Compton MRF. Planning permission for the existing MRF expired in December 2016.

13. The floor area of the existing MRF is some 1,980 square metres (sqm). The green-clad, pitched-roofed building is 41m wide and rises to around 8.5 metres (m) at the eaves. Immediately north of the MRF is an open area devoted to composting and other types of material handling including skip waste.
14. On lands extending north and west of the appeal site there is a household recycling centre and several mineral and waste landfill sites. Within the east boundary of the appeal site is a grassed screen bund, beyond which is grazing land and, beyond, that a C class rural road running along the western border of the North Wessex Downs Area of Outstanding Natural Beauty (AONB).
15. The existing uses of the appeal site and adjacent land are the subject of a complicated planning history involving a series of permanent and temporary planning permissions. These are highly germane to the establishment of the planning fallback position affecting the determination of this appeal and are examined in detail below in connection with baseline positions and Environmental Impact Assessment (EIA).
16. Further away to the west the A4 passes through Calne, where an Air Quality Management Area (AQMA) has been declared along New Road.

### **The Proposed Development**

17. The development proposed is to extend the MRF building northward in the same type of design, construction and finish by some 3,770sqm to cover a total area of some 5,760sqm. This would encompass some of the current outdoor operations and provide for bulking of residual municipal and green wastes for onward transfer.
18. The maximum proposed annual throughput is 119,000 tonnes per annum (tpa) comprising 44,000tpa of kerbside-collected municipal solid waste (MSW), 35,000tpa transfer of residual wastes and 40,000tpa green waste transfer.
19. The development would continue to share the same access from Lower Compton. The net increase in the flow of heavy good vehicles (HGVs) to and from the site as a result of the proposed development is a matter of dispute addressed below in connection with road safety and air quality.

### **Environmental Impact Assessment Regulations**

20. The appeal proposals are EIA development under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (EIA Regulations 2011).
21. On the 16 May 2017 the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations 2017) came into force. Regulation 76 of the EIA Regulations 2017 includes transitional arrangements for qualifying applications and appeals. I have considered the appeal in accordance with these Regulations and I am content that it meets the requirements of the transitional arrangements. Therefore the EIA Regulations 2011 continue to apply to this appeal.

## **Adjournment and Environmental Statement**

22. The Inquiry was adjourned on its first day, before any evidence was heard, in response to submissions by WWA and HWS. As explained in an Adjournment Note dated 7 September 2016 [Doc 8], the adjournment was to allow time for the submission by HWS of additional environmental information. This was formally requested by notice of the Secretary of State (SoS), dated 28 September 2016, under Regulation 22 of the EIA Regulations 2011. The additional information assessed the likelihood of significant environmental effects due to the proposed development, in particular with respect to traffic flow and emissions and landscape visual impact. This was to provide comparison with the several baseline scenarios which had been assumed in the Inquiry evidence of HWS but not taken into account in the Environmental Statement (ES) previously submitted.
23. That additional information comprises updates to Chapters 1, 2, 6, 7, 8 and the Non-Technical Summary of the original ES and has been subject to voluntary public consultation. Prior to the resumption of the Inquiry, the ES, as updated, was assessed on behalf of the SoS, in the light of the public consultation. It was found adequately to assess the several baseline scenarios on which the evidence of HWS is predicated. The ES, as updated, now forms part of the evidence considered in the Inquiry and is taken into account in this decision.

## **Scope and Planning Issues**

24. The waste development at the appeal site and on surrounding land, both as currently approved, and as now proposed, is the subject of Environmental Permit EPR/BB3330AF/V002. This forms the primary control mechanism, setting specific limits in terms of emissions to the environment in line with national and international guidelines.
25. The application and appeal are concerned with implementing the planning strategy in the Local Plan and not with the control of processes and it is to be assumed that the pollution control regime will be properly applied and enforced.
26. The main planning matters for consideration flow from the original Reasons for Refusal put forward by the Council, as follows:
  - 26.1 the principle of the permanent retention and extension of the MRF in the light of adopted planning policy,
  - 26.2 the planning fallback positions assumed as baseline scenarios and the adequacy of the ES,
  - 26.3 the number of HGV movements likely to be generated by the proposed development, their effect on traffic flow, road safety, sustainable transport and air quality,
  - 26.4 the effect the proposed development would have on the appearance and character of the surrounding area, including the nearby North Wessex Downs AONB,
  - 26.5 other local concerns expressed at the Inquiry and demonstrated at the formal site visit,

- 26.6 the planning need for the proposed development, and
- 26.7 on balance overall, whether the proposed development would comply with the development plan as a whole and whether any adverse impact due to the development would warrant dismissal of the appeal, having regard also to the national policy presumption in favour of sustainable development set down by the National Planning Policy Framework (NPPF).

## **Reasons**

### ***Planning Law, Policy and Guidance***

#### *National Policy*

27. The NPPF of March 2012 contains no specific waste policies but the National Planning Policy for Waste (NPPW) of October 2014 sets out detailed waste planning policies expressly to be read in conjunction with the NPPF. Both are read in conjunction with the national Planning Practice Guidance (PPG).
28. The NPPF reasserts the statutory requirement of Section 38(6) of the Planning and Compulsory Purchase Act 2004 that development proposals should be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The NPPF by paragraphs 7 and 14 sets a presumption in favour of sustainable development, with its triple economic, social and environmental role. This means that proposals in accordance with the development plan should be approved without delay. The NPPF at paragraph 215 makes clear that due weight should be given to relevant policies according to their degree of consistency with the NPPF.
29. With respect to the issue of road traffic, the NPPF promotes sustainable transport at section 4, albeit paragraph 32 makes clear that development should only be refused on transport grounds where its residual cumulative impacts are severe.
30. With respect to the issue of air quality, the NPPF at paragraph 124 states that policies should sustain compliance with and contribute towards European Union (EU) limit values or national objectives for pollutants, taking into account AQMAs and cumulative impact. The PPG on Air Quality makes clear that refusal should be considered if proposed development, including any mitigation measures, would lead to an unacceptable risk from air pollution compared with the 'no project' baseline, or if it would prevent sustained compliance with EU limit values or national air quality objective (AQO) values for pollutants.
31. The PPG explains that the 2008 EU Air Quality Directive sets legally binding limit values for air pollutants and that the Department for Environment Food and Rural Affairs (DEFRA) annually models and monitors compliance with EU limit values, whilst the Local Air Quality Management (LAQM) regime requires the local authority to declare an AQMA and prepare an Air Quality Action Plan (AQAP) where they are exceeded. The PPG highlights that concerns relevant to planning will arise when development is likely to generate air quality impact in places where air quality is known to be poor, for example by changing traffic volumes.

32. The NPPW seeks to drive waste management up the waste hierarchy, away from disposal by landfill toward recycling. The NPPW also includes the provision that applicants for permission for waste development should only be expected to demonstrate a quantitative or market need for new or enhanced waste management facilities where proposals are not consistent with an up-to-date local plan, when the operational capacity of existing facilities should be considered.

#### *Development Plan*

33. Policies of the development plan relevant to this appeal are contained within the Wiltshire and Swindon Waste Core Strategy (Waste CS) Development Plan Document (DPD) 2006-26, adopted in July 2009, the Wiltshire and Swindon Waste Development Control (Waste DC) Policies DPD, adopted in September 2009, the Wiltshire and Swindon Waste Site Allocations Local Plan (WSALP), adopted in February 2013, and the Wiltshire Core Strategy (Wilts CS) adopted in January 2015.
34. Waste CS Policies WCS1, WCS2 and WCS4 together provide for the allocation and safeguarding of a network of sufficient waste sites, with strategic allocations located as close as practicable to, and within 16Km of Strategically Significant Cities and Towns (SSCTs), including Chippenham, and outside Areas of Outstanding Natural Beauty (AONBs). Policy WCS3 includes a table of preferred locations for a range of types of waste management facility required to be provided by 2026, including a MRF. Tabulated opposite Materials Recovery Facilities as potential locations are Industrial Land/Employment Allocations, Site Allocations and Current Waste Management Facilities.
35. Waste DC Policy WDC1 sets criteria for ensuring sustainable waste management development by ensuring that its social, economic and environmental benefits are maximised and their adverse impacts are kept to an acceptable minimum. Policies WDC2 and WDC7 together aim to manage the impact of waste development, permitting proposals where it can be demonstrated that they avoid or mitigate adverse impacts, including harm to the landscape. Policy WDC11 requires waste development proposals to demonstrate that they will facilitate sustainable transport of waste.
36. WSALP Policy WSA1 expressly encompasses the presumption in favour of sustainable development, with respect to waste development proposals, in terms of paragraph 14 of the NPPF. The WSALP allocates specific sites for which the Waste CS makes general provision. These include, in effect, the area of the current appeal site under the heading of Hills Recovery Centre, Compton Bassett, Inset Map N3. The allocation is for Waste Treatment (excluding energy from waste) of strategic scale, noting the current uses of the site as an operational waste management facility which includes a MRF as well as composting and skip waste recycling and a range of other waste uses. These are related to surrounding land now subject to landfilling following historic mineral extraction.
37. WCS Core Policy 55 (CP55) is central to this appeal in relation to air quality. The Policy is consistent with the NPPF and NPPW in stating that proposals for developments which are likely to exacerbate existing areas of poor air quality will need to demonstrate that measures can be taken to effectively mitigate emission levels, in order to protect public health, environmental quality and

amenity, and to make a positive contribution to the aims of the Air Quality Strategy for Wiltshire (AQSWS) and the Wiltshire Air Quality Action Plan (WAQAP). The Policy indicates that mitigation measures may include traffic management and routing. CP8 is also of particular relevance to this appeal in setting down the Spatial Strategy for Calne, wherein development proposals are required to demonstrate how a range of considerations are addressed, including the AQMA in the town.

38. CP60, CP61, CP62 and CP65 of the WCS are also germane to this appeal in together seeking a reduction in the need to travel and encouraging sustainable movement of freight in connection with new development, with mitigation of adverse impacts on the transport network. CP51 of the WCS seeks, in addition, to ensure that new development protects the landscape.

### ***Principle of the Development***

39. The meaning of the foregoing development plan policies and their consistency with the NPPF are contested in two respects.

### ***Interpretation of the Site Allocation***

40. First, HWS regard the appeal site as having been allocated for a MRF as now proposed, in particular by WSALP Inset N3, and thus to be compliant with the development plan in this respect. WWA contend that this is an incorrect interpretation, such that the proposal is not in accordance with the land use allocations of the development plan and can only be justified by other material considerations.
41. WSALP Inset Map 3 and Table 2.3 identify the Hills Resource Recovery Centre, Compton Bassett, as a strategic site with nominated 'potential use' for 'waste treatment', broadly within the area of the present appeal site. The existing MRF within the appeal site boundary is listed as one of a number of 'current uses' within a wider operational waste management facility, including landfill, gas generation, household recycling centre (HRC), composting and skip waste recycling.
42. WWA point out that the WSALP defines 'waste treatment' separately from MRFs and refers to allocations being for the nominated 'potential uses'. The appeal site allocation is qualified to the effect that the waste site should be contained as far as possible within the existing buildings and hardstanding area and be as far from residential properties as practical, and by at least 150 metres, in the interests of ecology and human health. WWA contrast the terms of the allocation of the appeal site with several other allocations where potential uses expressly include a MRF. WWA therefore contend that the allocation cannot be interpreted as providing for the extension to the MRF now proposed.
43. HWS draw attention to the safeguarding of the appeal site by Waste CS Policy WCS4 for 'waste management' and to the fact that all the allocations of the WSALP list both potential and current uses and generally do not list a MRF as a potential use where one currently exists; also that the WSALP makes clear that it flexibly provides room for existing waste management facilities to grow. HWS maintains that, read together with Policy WCS4 or alone, it is self-evident that the Lower Compton allocation is for a strategic site encompassing both potential and existing uses, including an extended MRF, as

part of a wider operation. HWS also refers to WSALP Table 1.3 which updates Waste CS Policy WCS3 still to include the need for a MRF, whereas the loss of the present MRF on expiry of its planning permission would exacerbate that need. HWS therefore maintains that, given the existing use for an MRF, there is no warrant within the WSALP to confine the allocation to waste treatment only.

44. The presentation of the WSALP, as conceded at the Inquiry for HWS, is less than ideal and by itself does not provide the degree of certainty sought in national policy. However, the development plan is to be considered as a whole and the WSALP needs to be read with the Waste CS. The latter predates the NPPF but there is no suggestion in this appeal that its policies are inconsistent with it. Taking this approach, it is reasonable to interpret the meaning and intention of the allocation of the appeal site for strategic waste management to include a new or extended MRF. That is noting that the proposal complies with stated criteria that the development be contained as far as possible within the existing hardstanding area and be 150 metres distant from dwellings and that the site is located within 16Km of a SSCT, in this case Chippenham, as required by Waste CS Policy WCS2.
45. Accordingly, the proposed development would be compliant with the Waste CS and WSALP in terms of land use. It remains to be determined whether it would comply with other policies of the development plan with respect to its planning effects and overall whether it can be judged as being compliant with the development plan as a whole.
46. WWA add that the timing of the adoption of the WSALP very soon after the declaration of the Calne AQMA is critical to the weight that can be attributed to the allocation of the appeal site for waste use. However, the proper starting point is the allocation policy of the adopted development plan. The subsequent declaration of the AQMA is a material consideration to be taken into account in the planning balance.

#### *Consistency with the NPPF*

47. Second, HWS claim that the Waste DC policies relevant to this appeal (as summarised above – WDC2, 7 and 11) are inconsistent with the NPPF in that they set tests which fail to provide meaningful thresholds of acceptability or include the balancing or 'cost-benefit' approach to planning effects and benefits advocated in the NPPF and supported in the judgment in the *Colman*<sup>1</sup> case. However, the policies in question in the *Colman* case were found to be unduly restrictive, whereas the relevant policies of the Waste DC Local Plan are permissive, subject to criteria of acceptability, a distinction made in the judgment in the case of *Chase Milton Energy*<sup>2</sup>. As a matter of judgement in relation to this appeal, those policies of the Waste DC Local Plan are properly to be regarded as consistent with the NPPF and NPPW in providing the basis for balanced assessment of development proposals, especially when viewed with the other components of the development plan as an integral whole, including the presumption in favour of sustainable development imported from national policy via Policy WSA1 of the WSALP.

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<sup>1</sup> *Colman v SSCLG and others*[2013] EWHC 1138 (Admin)

<sup>2</sup> *Chase Milton Energy Limited v SSCLG* [2014] EWHC 1213 (Admin)

*Conclusion on the Principle of the Development*

48. The proposed permanent retention and extension of the MRF is in principle compliant with the land use provisions of the Waste CS and WSALP and the Waste DC policies are an appropriate means of assessing its effects.

***Fallback, Baseline Positions and Adequacy of the Environmental Statement***

49. It is crucial to the proper determination of this appeal that the effects of generated HGV traffic on the highway network and on air quality are calculated on a precautionary basis and compared with any planning fallback position from which realistic baseline positions are drawn. It is established law that for a fallback position to be taken into account it must be legally possible with respect to existing permitted land uses and also likely to occur on available evidence<sup>3</sup>.

*Planning Status and Permitted Uses*

50. The current use of the appeal site for a MRF is strictly time-expired with effect from December 2016. Accordingly the continued use of the current MRF is properly excluded from consideration of any 'no project' baseline scenario.
51. However, the complexities of the planning history of the site and adjacent landfilling and other waste facilities currently in operation give rise to dispute as to the planning status of the site and surrounding area as it affects the fallback and baseline positions, if this appeal fails and the retention and extension of the MRF now proposed does not proceed.
52. In the absence of any evidence to the Inquiry by the Council as WPA, the best graphical summary of the current land uses relevant to the appeal was put forward by HWS, albeit subject to correction during the Inquiry. [Plans B1 and B2 and Doc HWS2.2.B] This shows the appeal site adjacent to ongoing post mineral-extraction waste landfilling and site restoration, a public HRC, concrete plant, and lorry park, together with the existing MRF and external waste handling area within the appeal site itself.
53. The main controversy regarding land use and planning status surrounds two overlapping areas within the appeal site north of the existing MRF building termed, at least for the purposes of this appeal, as Area F and Area G. There is also dispute over the future level and scale of landfilling.
54. Apart from the HRC, areas F and G are the only parts of the entire waste management complex that are subject to permanent planning permissions. These are for the management of green waste on Area F and Commercial and Industrial (C&I) waste on area G. The interpretation of the terms of the permissions and certain practical considerations for their future implementation potentially affect the degree to which the permitted operations should contribute to the baseline scenarios for the assessment of HGV generation.
55. Area F is operated under two permissions, the original and a later variation of operating hours under section 73 of the Act. These permissions contain no limiting conditions as to tonnage or HGV movements but incorporate the terms of the original application. Area G is also operated under an original

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<sup>3</sup> *R v SSE and Havering BC Ex p P F Ahern (London) Ltd [1998] Env LR 189 and Gambone v SSCLG [2014] EWHC 952 (Admin)*

- permission with no conditions limiting tonnage or HGV movements and a subsequent section 73 permission to vary its operating hours.
56. HWS maintain that, as these permissions are unrestricted, the amounts of waste which can be managed over areas F and G, and hence the HGV movements that they could generate, are to be determined with reference to considerations of commercial demand and practical site capacity. It was central to the Inquiry that this contention is challenged by WWA on a number of grounds.
57. Therefore, before forming any view as to the nature and amount of waste management development or operations practically permitted over areas F and G, it is appropriate to review, and to bear in mind, the implications of the case law on which WWA and HWS respectively rely in this connection.
58. It is established by the Courts that any limitation on a planning permission should be imposed by way of a planning condition but that regard may be had to other documentation expressly incorporated or where there is ambiguity in the permission<sup>4</sup>. Development commenced in breach of a pre-commencement condition is unlawful with exceptions including whether it is a true pre-condition going to the heart of the permission<sup>5</sup>. A permission granted under section 73 of the Act is a free-standing consent related to the site and development described in the original permission. The degree to which a subsequent section 73 permission incorporates the original conditions is a matter of construction, although it is established good practice to repeat in the new permission any conditions still to be imposed from the original permission, whilst a mere informative to a permission has no legal effect<sup>6</sup>. Development authorised by a permission is both that which is described in the permission and any use which is not materially different from it<sup>7</sup>.
59. The green waste composting use of Area F was permitted under Ref N012802. This permission imposes no express quantitative limits on the development. However, it is subject to an express condition that the development be carried out in accordance with the details set out in the application. A further condition states that details of external finishes must be approved before commencement. The subsequent section 73 permission, under Ref N/09/01498/WCM, merely varied the operating hours for the same development, again without imposing any quantitative limits. According to case law and good practice, the section 73 consent is free-standing and not a replacement permission and should better have repeated any conditions of the previous permission still subsisting. Nevertheless, the earlier permission continues to operate and is subject to specific incorporation of the application documentation, which case law indicates should properly be construed as part of the description of the development permitted. This limits the total quantity of green waste to 32,000tpa for composting on site.
60. The waste recycling, recovery and continued composting use of Area G was permitted under Ref N033304 and its hours of operation were also varied by a

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<sup>4</sup> *I'm Your Man v SSE* [1998] 4 PLR 107 and *R v Ashford BC Ex p Shepway* [1998] JPL 1073 and *Wilson v W Sussex CC* [1963] 2 QB 764

<sup>5</sup> *Whitley and Sons v SSW and Clwyd CC* [1992] 64 P&CR 296 and *R oao Prokopp v London Underground Ltd* [2004] Env LR 8 and *R oao Hart Aggregates Ltd v Hartlepool BC* [2005] EWHC 2174 (Admin)

<sup>6</sup> *R oao Reid and Anr v SSSLGR and Anr* [2002] EWHC 2174 (Admin) and *R (Helford Village Development Co v Kerrier DC*

<sup>7</sup> *Herts CC v SSCLG and Anr* [2012] EWCA Civ 1473

subsequent section 73 consent under Ref N/06/07019. Neither permission imposes any quantitative restriction on the development, either by specific condition or by express incorporation of application or other documentation, and neither contain any ambiguity in their terms. Accordingly, under established case law, there is no legal planning limitation upon the quantity or type of waste to be processed on Area G.

61. With respect to landfilling, there are two time-limited permissions covering three areas with total remaining void space of approximately 3 million cubic metres (m<sup>3</sup>) with no restriction on quantities. The permissions expire in 2019 and 2022 with requirements for site restoration. There is no evidence in this appeal to suggest that landfilling operations will not continue at least until those dates.
62. There is also an unresolved dispute between HWS and WC as to whether the permissions covering area F allow green waste transfer without composting and whether the permissions covering area G allow the processing of MSW as well as well as C&I waste. This factor is considered below in relation to the practical likelihood of the baseline scenarios occurring in practice.

#### *Baseline Scenarios*

63. HWS adopt three baseline scenarios with reference to the foregoing planning permissions and allowing for the difference of view with WC on the type of waste management permitted:
  - 63.1 Baseline 1 assumes composting 40,000tpa of green waste on Area F, 75,000tpa of C&I waste on Area G and 130,000tpa of landfill.
  - 63.2 Baseline 2 assumes 40,000tpa of green waste composting and transfer on Area F, 40,000tpa of C&I waste processing and 35,000tpa of MSW processing on Area G and 130,000tpa of landfill.
  - 63.3 Baseline 3 is assessed as a sensitivity test and is similar to Baseline 2 except that it includes 300,000tpa of landfill, recognising the absence of any quantitative restrictions on the landfill permissions.
64. The baseline scenarios are assessed on the proper assumption that the permanently permitted HRC will continue in use.
65. Baseline 2 corresponds to the intended uses within the proposed extended MRF and is thus the preferred scenario of HWS. Baseline 3 is clearly a much higher generator of HGV traffic than either Baselines 1 or 2 and can, in effect, be disregarded. Baselines 1 and 2 are broadly equivalent in terms of quantities of waste to be transported by HGV, including a total of 115,000tpa on Areas F and G together.
66. The 40,000tpa on Area F is assumed by HWS on the basis of their interpretation of the relevant permissions as imposing no tonnage limits. However, for the reasons set out above, that figure should be reduced to 32,000tpa, making a total for Areas F and G of 107,000tpa.
67. Baselines 1 and 2 are further challenged by WWA on grounds that the sites will be devoid of access and landlocked. However, there is nothing to prevent shared access via the existing access road which is preserved in the approved landfill restoration plan for maintenance purposes.

68. WWA further maintain that the Area F permission was never lawfully implemented because the condition requiring details of finishing material was never discharged. That condition does not, however, go to the heart of the permission, in terms of relevant case law, and it is proper to regard the Area F development as having been lawfully commenced.
69. WWA further submit with respect to Baseline 1 that green waste composting has been moved from Lower Compton due to public complaints and is unlikely to be returned in compliance with the Area F permission and also that the current environmental permit does not allow the claimed quantity of 40,000tpa in any event. The true amount is evidently some 26,000tpa based on 75t per day of operation. Even so, there is no evidence or suggestion of any enforcement action being taken by the EA regarding past or present green waste composting on the site and there are no residential properties closer than 250m from Areas F and G, other than those under the direct ownership and control of HWS. There is no evidence that composting could not be permitted to return to Lower Compton.
70. With respect to Area G, WWA question the capacity of the site to accommodate the 75,000tpa of waste claimed to be processed there, although this appears to be based on an underestimate of the handling space available.
71. Thus, the planning fallback position legally possible is appropriately represented by the chosen Baselines 1, 2 and 3 with the exception that the amount of green waste permitted to be processed on Area F is reduced from 40,000tpa to 32,000tpa.

*Practical Likelihood*

72. HWS place considerable emphasis on their recent reappointment as the waste management contractor for WC for the next 20 years, being named in that connection within the text of the Waste CS. The status of HWS in this regard and their contractual commitments for the collection of co-mingled roadside MSW is cited in connection with the planning need for the proposed MSW, discussed below. However, it was equally emphasised and accepted at the Inquiry that the business interests of HWS do not amount to a material planning consideration in this appeal.
73. At the same time, it is acknowledged that the effects of likely future activities of HWS on and adjacent to the appeal site can be relevant to the definition of the baseline scenarios for environmental assessment. It is reasonable to suppose that HWS, as a company with strong local connections and contractual commitments will seek to continue to maximise the returns from its holdings at Lower Compton, whether or not this appeal is successful.
74. HWS provides written evidence of its commercial intentions, including by way of a sworn statement by its Divisional Director [Doc HWS5]. Although HWS declined to offer this evidence for cross-examination, it is not substantively challenged, other than with respect to the quantitative terms of the permissions discussed above, and is therefore to be regarded as robust.
75. Notwithstanding the unresolved disagreement with WC regarding the precise wastes allowed to be processed on Areas F and G, the evidence of HWS is that they would in practice continue with managing a total of 40,000tpa of green

waste on area F and 75,000tpa of C&I waste and/or MSW under the respective permanent permissions for those areas, as reviewed above, together with at least 130,000tpa of landfill. That is compared with a stated potential landfill capacity of up to 300,000tpa and HWS assert that they would also seek to extend the life of the landfill sites in order to make use of the unused void space as a diminishing national resource.

76. HWS expressly do not rely on any claim that any historic exceedance of the permitted tonnage on Area F has acquired immunity from enforcement and there is no evidence from WC as WPA to assist in this respect. It can only be concluded, therefore, that no more than 32,000tpa of waste can lawfully be processed via Area F, a reduction of 8,000tpa below any of Baselines 1-3.
77. Otherwise, the foregoing considerations add credibility to the practical likelihood of at least 130,000tpa of landfill continuing into the foreseeable future, together with a total of 107,000tpa of waste processing on Areas F and G, in the event of the failure of the present appeal. Moreover, there is potential for the importation of an additional 170,000tpa of landfill over the 130,000tpa that the baselines assume, vastly in excess of the required 8,000tpa reduction to comply with the Area F permission.
78. A further point of argument at the Inquiry was that the baselines ignore the potential for an alternative MRF to be provided in the County in compliance with Waste CS. However, that would tend to reduce the baseline levels in comparison with the predicted 'with project' scenario.
79. These factors lead to the reasonable and safe assumption that the assessment of increased HGV movements and their environmental effects against Baselines 1 and 2 will still result in a substantially conservative under estimate.

#### *Adequacy of the ES*

80. It is submitted for WWA, including with reference to the NPPF, PPG and CP55 of the WCS on air quality, that the ES is inadequate because it does not assess the total cumulative environmental effects of the proposed development and associated waste uses on adjacent lands before comparing these with realistic baseline scenarios. It is also claimed that the baselines chosen are incorrect with respect to the interpretation of the planning permissions governing the waste land uses on and adjacent to the appeal site as well as the likely future actions of HWS.
81. The fallback and baseline positions are discussed above with the conclusion that the scenarios on which the ES is founded will give rise to a conservative under estimate of environmental effects, including with reference to the third and latest Regulation 22 submission of additional information.
82. However, it is argued for WWA that, by assuming the baseline position at the outset, the assessment adds to the environmental impact of the baseline and at the same time reduces the total cumulative effect, doubly diminishing the calculated effects of HGV traffic. Provided the respective total and baseline effects are appropriately calculated, this criticism appears unfounded. Moreover, on the practical evidence of the planning fallback position, it is the comparison with a return to a 'greenfield no project' scenario which is unrealistic. Moreover, when CP55 is read objectively in accordance with the

language used and as part of the development plan as a whole, in line with the well-known *Tesco*<sup>8</sup> and *Rochdale*<sup>9</sup> judgments, it is not reasonable to be construed as requiring the approach advocated by WWA. Nor does such an approach follow from the wording of the NPPF or PPG.

83. It is important that the ES has been judged to be adequate, in terms of the EIA Regulations, in that it assesses the likely environmental effects of the proposed development against the baselines upon which HWS rely. The ES does not wrongly take the baseline position as the starting point for assessment, as submitted for WWA, and there is nothing to suggest that the ES is inadequate or legally non-compliant.

#### *Conclusion on Baselines and Adequacy of the Environmental Statement*

84. Baselines 1 and 2, as identified by HWS, provide an appropriate starting point for assessing the likely environmental effects of the proposed development, reflecting the legal and practical planning fallback position. In relying upon those baselines, the ES is adequate with reference to the EIA Regulations.
85. However, all the available evidence on HGV generation and emissions remains to be examined in relation to the issue of traffic flows and air quality.

#### ***HGV Movements - Traffic Flow, Road Safety, Sustainable Transport and Air Quality***

##### *Transport Assessment*

86. HWS provided specialist highway evidence to the Inquiry which did not abandon but updated the original Transport Assessment (TA) originally submitted with the application as part of the ES, giving rise in part to the third Regulation 22 additional environmental information, wherein the updated ES retains the original TA.
87. This updated TA necessarily, but reasonably, makes use of the sworn statement of HWS by its Divisional Director regarding their future waste contracts. The updated TA makes use of more recent traffic counts than the original TA and takes into account more recent information upon the composition of the HGV fleet that HWS indicates that they have ordered and propose to use in connection with its new waste collection and management contract with WC. Unlike the original, the updated TA disregards the potential for the existing lorry park to continue in use, notwithstanding the potential for it to remain in connection with extended landfilling operations. It also disregards the fact that some 15,000tpa of waste is already transported on the local highway network in connection with the Porte Marsh MRF.
88. The updated TA is criticised for nevertheless relying upon a dated, brief origin and destination survey from 2011 to assess the directional split of HGV trips from the appeal site along the A4. Clearly it would have been better to update this information also. However, there is no contradictory evidence to question it. The assumptions made that 75 per cent of HGVs from the MRF would travel in the direction of Calne with 56 per cent passing through the AQMA itself after distribution via an intervening junction, appear conservative.

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<sup>8</sup> *Tesco v Dundee CC* [2012] UKSC 13

<sup>9</sup> *R v Rochdale MBC Ex p Milne (No 2)* [2001] Env LR 22

89. Thus, overall, the revised TA is based on a range of conservative assumptions both in terms of potentially over-predicting the 'with project' scenario and underestimating the baseline values.
90. The updated TA concludes that the proposed development would give rise to an additional 31 HGV movements per day at the site entrance, over baseline figures. That is compared with 66 HGV movements per day calculated in the original TA and used in the ES, as compared in turn with around 260 currently over site access road. Taking the higher figure of 66, about 50 would travel westerly towards Calne and some 42 would enter the AQMA.
91. Notwithstanding the complexity of assumptions behind the TA, the higher figures are not effectively challenged.

*Traffic Flow, Road Safety and Sustainable Transport*

92. The existing traffic along the A4 through Calne is up to the order to 18,000 vehicles per day (vpd) annual average daily flow (AADT) of which some 11 per cent or about 2,000 are HGVs. Even if the full 66 additional movements were generated by the development, this would make a trivial and insignificant difference to these figures in traffic terms, especially on the widely accepted assumption that 5 per cent fluctuations are usual in such analyses.
93. The original TA concluded that the very small increase of 66 HGV trips per day would have no significant impact on the highway network or the capacity of any road junction. Nor is there evidence of any significant decrease in road safety, nor any safety issues related to existing HSW traffic, based on accident record data. There is no objection from the highway authority in these respects. Moreover, the additional trips are predicted to take place throughout the day, largely outside the daily peak traffic periods. Furthermore, the A4 constitutes a local lorry route and principal route of the Wiltshire road network.
94. The junction of the site access with the public road at Lower Compton requires improvement but that would be secured by way of a planning condition, again to the satisfaction of the highway authority.
95. WWA and others maintain that the location of the appeal site gives rise to unsustainable routing of HGVs transporting waste away from major strategic routes including the M4. However, the site is allocated by the adopted development plan within the stated threshold distance of 16Km from Chippenham as a SSCT.
96. With respect to traffic flow, road safety and sustainable transport, the proposed development avoids conflict with Waste DC Policy WDC11 and CP60, CP61, CP62 and CP65 of the WCS. There is no evidence of any severe residual transport impact, in terms of paragraph 32 of the NPPF.
97. Nevertheless, the fact that the effect of the net additional vehicle movements from the proposed development on traffic flow, road safety and sustainable transport would be limited is a matter quite apart from their effect on air quality due to exhaust emissions. This is separately assessed in the following paragraphs.

### *Air Quality*

98. No substantive case is advanced in this appeal that any pollutant would exacerbate poor air quality or give rise to an unacceptable risk of air pollution other than nitrogen dioxide (NO<sub>2</sub>) from additional HGV movements via the Calne AQMA.
99. Whilst CP55 of the WCS and the NPPF consistently resist development which would risk unacceptable air pollution, there is nothing in either national or local policy to mandate refusal where mitigation measures would be effective.
100. The Calne AQMA was declared on the basis of exceedances of the annual average AQO value for NO<sub>2</sub> of 40µgm/m<sup>3</sup> (micrograms per cubic metre) by air quality monitoring and modelling within the County by WC, information from DEFRA and baseline assessment using the established ADMS-Roads model. Exceedances of over 64µgm/m<sup>3</sup> were noted in 2015 and values up to 57µgm/m<sup>3</sup> have been noted in 2017. HWS assess the air quality impacts of the proposed development with respect to whether there would be any greater exceedance of national AQO values within the AQMA.
101. The EU annual average limit value for NO<sub>2</sub> is numerically equal to the AQO value at 40µgm/m<sup>3</sup>, whilst the hourly limit value is 200µgm/m<sup>3</sup>. Compliance with EU limit values is monitored nationally using a separate Pollution Control Model (PCM). This has detected no exceedances of NO<sub>2</sub> limit values specific to Calne. It was agreed between specialist witnesses at the Inquiry that the PCM is too coarse a model to provide information to that level of detail.
102. WWA nevertheless argue that it is necessary to undertake a further assessment to determine whether the EU limit is exceeded, noting the DEFRA advice that exceedances above 60µgm/m<sup>3</sup> of NO<sub>2</sub>, as measured in 2015, could indicate that the EU hourly limit value rate of 200µgm/m<sup>3</sup> might also have been exceeded. WWA also consider that the fall of some 10µgm/m<sup>3</sup> between 2015 and 2017 NO<sub>2</sub> values seems improbable. In this connection, WWA cite legal opinion [Doc WWA7.C], expressed in connection with the recent case of *Client Earth*<sup>10</sup>, to the effect that, where a development would cause, or significantly worsen, a breach of EU limit values for air pollutants, or delay the achievement of compliance, permission must be refused.
103. However, the *Client Earth* case dealt with the non-compliance of the UK with the Air Quality Standards Regulations 2010 which transpose the EU Directive on Ambient Air Quality into UK law. The judgment led to the 2015 AQAP being adopted as an interim measure. That judgment does not deal with the assessment of AQO values and does not appear to impose an obligation that the present appeal should be dismissed with reference to EU limit values, which are measured differently from national AQO values.
104. Therefore the crucial question for this appeal, with respect to air quality, is whether the additional HGV movements predicted to be generated by the proposed development, over the baseline scenario, would cause any further exceedance of national AQO values within the Calne AQMA and, if so, whether mitigation measures could be secured to offset such exceedances.
105. The most up to date assessment of air quality by HWS, undertaken during the Inquiry adjournment, takes account of the predicted HGV trip generation as

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<sup>10</sup> *Client Earth No2 v SOS [2016] EWHC 2740 (Admin)*

well as technical and procedural changes in guidance on air quality assessments by Environmental Protection UK (EPUK) and the Institute of Air Quality Management (IAQM). These include the requirement to round up figures to the nearest whole number, potentially rendering comparative results more conservative, before a professional judgement is made as to whether or not any increase would be significant. The model used was the latest version of ADMS-Roads, including a canyon model for roads enclosed by frontage property, such as the A4 through Calne. This evidently performs better than the earlier version, as indicated by a lower verification factor, and within a 25 per cent permitted tolerance. Corrections were applied using a sensitivity test developed by the HWS consultants (AQC CURED) to account for a failure of vehicle emission levels to improve as formerly predicted, resulting in a known characteristic of the ADMS-Roads dispersion model to give optimistic results. On the other hand, no correction was applied to account for the proposed use of the new fleet of refuse collection HGVs which has been ordered by HWS for the WC contracts. These are specified to be compliant with the latest Euro VI HGV emission standards of 2013.

106. The HWS assessment shows a numerically negligible impact on NO<sub>2</sub> levels in the AQMA. Notwithstanding this finding, HWS put forward mitigation measures, secured by way of the UU, committing the company to participation in the AQAP, provision of eco-driving training under the safe and fuel efficient driving (SAFED) scheme, complemented by membership of the HowsMyDriving? Reporting mechanism, and use of Euro VI compliant kerbside waste collection HGVs. In the event that additional AQO exceedances were predicted, the material weight to be accorded to the UU would be limited, owing to the superficial nature of the measures it secures and the potential difficulty of ensuring their efficacy in practice.
107. WWA attempted during the Inquiry to show an incremental moderate to significant impact by individual HGV movements but such an approach appears simplistic and the results modelled by proven methodology are to be preferred.
108. Otherwise, the specialist air quality evidence of HWS, although technically complex, was not successfully challenged in itself by WWA and evidently followed accepted practice.
109. The challenge from WWA relied instead upon the more conservative baseline scenario which is concluded above to be unrealistic. Even when the HWS results are recomputed to take account of the WWA preferred baseline position, the air quality impact is still indicated to be moderate at worst.
110. Having regard to the conclusion above that the baseline scenarios are conservative in the first place, it is evident that the proposed development would comply with both Core Policy 55 and Core Policy 8 of the Wiltshire Core Strategy regarding air quality in the Calne AQMA, even without the mitigation measures provided by UU.

*Conclusion on HGV Movements –  
Traffic Flow, Road Safety, Sustainable Transport and Air Quality*

111. The number of HGV movements likely to be generated by the proposed development would have no unacceptable impact on traffic flow, road safety,

sustainable transport or air quality in terms of the relevant adopted planning policies quoted above.

### ***Visual Amenity***

112. The appeal site is in a visually sensitive location, due to its position outside, but close to, the western boundary of the North Wessex Downs AONB and the residential area of Lower Compton. However, the appeal site and the existing MRF building, as well as the associated outdoor waste management operations, are nevertheless reasonably well separated spatially and visually from the settlement and from the AONB, including by the landscape bund to be retained in the appeal proposal. There is intervening agricultural land between the eastern site boundary and the AONB and the site is screened by trees from the area of Lower Compton to the south. Screening could be further reinforced by additional landscape planting secured by planning condition.
113. As a result, views into and out of the appeal site would be limited and the proposed extended MRF building would not be visually intrusive from Lower Compton. Moreover, it would enclose certain of the comparatively unsightly outdoor operations currently undertaken on the appeal site.
114. From within the AONB, views would also be restricted and softened by the intervening bund and farmland.
115. The MRF would be clearly seen from within the landfill sites to the north and west but these are ultimately subject to separate landscape restoration conditions.
116. Accordingly, the proposed development would have no unacceptably harmful impact on the appearance and character of the surrounding area, including the North Wessex Downs AONB.
117. In this respect, the development would comply with the protective provisions of Waste DC Policies WDC2 and WDC7 as well as CP51 of the WCS.

### ***Other Local Concerns***

118. Notwithstanding the narrowly technical nature of the foregoing issues identified in this case, the strongly voiced local objections to the proposed permanent, enlarged MRF at Lower Compton cannot go unremarked. These objections are clearly founded on fear of adverse impact on living conditions and health, particularly increased air pollution where air quality is already compromised along the A4 in Calne.
119. As I acknowledged, in resuming the Inquiry on 21 February 2017, the day after my formal site visit, the genuine concern within local communities was amply demonstrated by the number of people who attended both at the site entrance and at the Inquiry venue and the placards and signs erected along the route between Lower Compton and Calne. This local concern is a material planning consideration to be taken into account alongside all other planning issues.
120. Other concerns were voiced at the Inquiry by several interested persons, including elected Members of the County and Parish Councils. [Docs IP/1-5] Where these relate to the main issues set out above they are covered there.

121. Otherwise, there were calls for the MRF to be located close to Junction 17 of the M4, whilst the Campaign to Protect Rural England (CPRE) submitted that the site is no longer suitable for waste management due to increased conflict between HGV traffic and community and tourism interests. There were also assertions that the communities of Lower Compton, Calne and other settlements, have already made a sufficient contribution to waste management over many years and local people never anticipated that the temporary permissions on which HWS rely would be made permanent, to the detriment of their living conditions. Aside from the technical appraisal rehearsed at the Inquiry, the lay perception is that there are simply too many HGVs passing through Calne, causing noise and vibration as well as air pollution and, at the same time, intimidating residents. The proposed development was regarded as unsustainable. The past record of HWS in abiding by planning conditions and the potential for importation of waste from outside the County for commercial reasons were also questioned. All these matters inform the overall planning balance below.
122. WWA contend that the kerbside collection of waste, on which the ordering by HSW and the entire proposed MRF technology is based, fails to drive waste processing up the waste hierarchy in line with national policy. This amounts to a criticism of waste management outside the scope of planning, and would only become material in the event of non-compliance of the proposed development with the development plan.

### ***Planning Need***

123. The business needs of HWS are not a planning matter for consideration.
124. It is material, however, that HWS hold new contracts for the collection and management of waste for WC, separately from its planning role. In terms of need for the proposed development, it is germane to this appeal that, if the appeal proposal is not permitted, the implementation of the kerbside collection of co-mingled waste would be compromised. It is that co-mingled waste which the extended MRF is designed to process. It is debateable whether the same process could be undertaken elsewhere, for example at Porte Marsh.
125. In the absence of any contribution of information to the Inquiry by WC, it is not clear whether WC possesses a contingency plan to overcome such a set-back to its waste management strategy. Accordingly, there is an apparent degree of material need for the development.
126. However, for the purpose of this appeal decision, it is not necessary to explore this matter further. For, in the event that the development would give rise to any exacerbation of the existing poor air quality which brought about the declaration of the Calne AQMA, there is no level of need for the development which could override that planning harm in conflict with the adopted provisions of CP8 and CP55
127. On the other hand, in the alternative circumstances where the proposal can be judged on the available evidence to be compliant with the development plan, it will not be necessary to demonstrate a planning need for it, as stated in the NPPW.

### ***Planning Obligation***

128. The UU is a planning obligation under section 106 of the Act. Its provisions for mitigation measures are not central to the decision to permit the development but potentially add assurance that the development will not cause further harm to air quality and would support the broad aim of improving it. To that extent the mitigation measures are necessary, relevant and reasonably related to the development. In these respects the UU is compliant with Regulation 122 of the Community Infrastructure Levy (CIL) Regulations.

### ***Planning Conditions***

129. For any permission to be granted, conditions would be necessary, as agreed by HWS and WC, to ensure notification of commencement and compliance with the approved plans, for the avoidance of doubt. Further conditions would be required to limit the total tonnage of waste to the quantity applied for, to be managed during stated operating hours, reasonably excluding night-time, Saturday afternoons, Sundays and Bank Holidays, save to enable the necessary management of waste after holiday periods. These conditions would serve to keep the effects of the development on residential amenity to the levels predicted. The development should also be required to comply with the recommendations of a submitted Flood Risk Assessment to avoid surface water flooding. A Construction Management Plan should also be required to mitigate the impact of traffic during the construction of the MRF. Conditions would also be required to control the materials used in the construction of the MRF building, and to secure appropriate soft landscaping, in the interests of visual amenity. The improvement and future maintenance of the access road and the implementation of a Travel Plan would also require to be secured by conditions to ensure public safety and reduced vehicular travel.

### ***Balance of Planning Considerations and Overall Conclusions***

130. On the first main issue, it is concluded that the proposed retention and extension of the Lower Compton MRF is acceptable in principle, as compliant with the land use provisions of the statutory development plan and, in particular, the Wiltshire and Swindon Waste CS and WSALP as its relevant components.
131. On the second main issue, it is concluded that the appeal proposal is supported by an adequate Environmental Statement which is compliant with the EIA Regulations and founded upon appropriate baseline scenarios, in turn drawn from a legal and realistic planning fallback position.
132. On the third main issue, it is concluded that the proposed development would generate a very small percentage increase in HGV traffic, having no material adverse impact either on traffic flow, road safety, transport sustainability or, crucially, on air quality within the Calne AQMA. The development would meet all the relevant transport-related protective provisions of the Wiltshire and Swindon Waste DC Policies DPD as a further component of the development plan. More particularly, the proposal would comply with both Core Policy 55 and Core Policy 8 of the Wiltshire Core Strategy regarding air quality in the Calne AQMA.

133. On the fourth main issue, it is concluded that the development would be visually acceptable in terms of further relevant development plan policies to protect the landscape and AONB.
134. On the fifth main issue, it is concluded that local fear of the effects of the development together with concern that the community has already contributed sufficiently to the needs of waste management, and that the new MRF should be located closer to strategic routes, are material considerations against the appeal.
135. On balance, however, those local concerns, no matter how genuine or widely shared, cannot reasonably be judged to amount to an overriding consideration in the face of legal and technical evidence that the development is in accordance with the adopted development plan and would not cause planning harm. It has to be born in mind that the comparatively recent adoption of the WSALP, as that part of the development plan which allocates the appeal site for waste use, followed a finding of soundness at independent public examination. That process will have involved the local community in accordance with the Localism Act.
136. Finally, on the sixth main issue it is concluded that, where the proposal is compliant with the development plan, there is no requirement to demonstrate a planning need for it, although there is a degree of practical need in favour of permission.
137. For these reasons the proposed development is properly to be regarded as sustainable development compliant with the development plan, taken as a whole. Accordingly, the presumption in favour of sustainable development, as expressed in the NPPF at paragraph 14 and also reflected in the development plan, in particular by Policy WSA1, means that permission should be granted, subject to the conditions outlined above.

*B J Sims*

Inspector

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision. Written notification of the date of commencement shall be sent to the Local Planning Authority within 7 days of such commencement.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - Elevations\_1335-PLAN3 building.dwg (dated 10/06/2014)
  - Plan-section\_1335-PLAN3 building.dwg (dated 10/06/2014)
  - Location 339/MRF1 (17/07/2014)
  - Combined Landscape and Ecological Masterplan: HILLS/1011-DWG-012-REVD (dated 05/08/2014)
  - Combined Landscape and Ecological Mitigation Plan: HILLS/1011-DWG-010-REVC (dated 05/08/2014)
  - Site and Roof\_1335-PLAN4-site-dwg (dated 16/07/2014)
  - Site and plans\_1335-PLAN4-site.dwg (dated 16/07/2014)
  - Proposed Lighting Design: SP01399-LD05170-1(D) (dated 17/06/2014)
- 3) The total tonnage of material delivered to the Materials Recycling Facility and Waste Transfer Facility shall not exceed 119,000 tonnes in any twelve month period.
- 4) A record of the quantities (in tonnes) of waste materials delivered to the site and all waste and waste-derived products despatched from the site shall be maintained by the operator at all times and made available to the Local Planning Authority upon request. All records shall be kept for at least 36 months.
- 5) The development hereby permitted shall not commence until there has been submitted to and approved in writing by the Local Planning Authority a Construction Management Plan (CMP). The CMP shall include construction vehicle movements, construction operation hours, construction vehicular routes to and from the site, construction delivery hours, expected number of construction vehicles per day, car parking for contractors, specific measures to be adopted to mitigate construction impacts in pursuance of the Environmental Code of Construction Practice and a scheme to encourage the use of Public Transport amongst contractors. The development shall be carried out strictly in accordance with the approved CMP.
- 6) Operations authorised by this permission, including vehicles entering and leaving the site as shown on drawing reference 339/MRF1 (dated 17/07/2014) shall be restricted to the following durations:

07:00 to 20:00 hours Monday to Friday  
07:00 to 13:00 hours Saturday

and shall not take place on Sundays or Bank Holidays, other than as indicated below:

07:00 to 20:00 hours Bank Holidays (excluding Christmas Day and New Year's Day)  
07:00 to 20:00 hours Saturdays following Bank Holidays

07:00 to 20:00 hours for the two consecutive Saturdays immediately following New Year's Day

13:00 to 20:00 Saturday receipt of wastes from household waste recycling centres

07:00 to 18:00 Sunday receipt of wastes from household waste recycling centres

No operations shall take place on Christmas Day, Boxing Day or New Year's Day.

- 7) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match in material, colour and texture those used in the existing MRF building.
- 8) The improvement of the site access road and the provision of a footway into the site from the public highway as shown on Drawing No A094007-SK005 shall be implemented within 12 months of the extension to the MRF building being commenced as notified under Condition 1.
- 9) The Access Road Maintenance Plan v2.1 dated 14/11/2016 shall be implemented within 12 months of the extension to the MRF building being commenced as notified under Condition 1. The access road shall be maintained at all times in accordance with the approved details.
- 10) The Travel Plan (Cole Easdon Consultants Issue 4 February 2015) shall be implemented from the date of commencement as notified under Condition 1.
- 11) The development shall be carried out in strict accordance with all recommendations and procedures set out Chapter 5 of the submitted Flood Risk Assessment prepared by Johns Associates Limited dated October 2014.
- 12) All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first use of the extended building or the completion of the development whichever is the sooner; all shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

## ABBREVIATIONS

AONB	Area of Outstanding Natural Beauty
AQAP	Air Quality Action Plan
AQO	Air Quality Objective
AQMA	Air Quality Management Area
AQSW	Air Quality Strategy for Wiltshire
CLEUD	Certificate of Lawful Existing Use or Development
CP	Core Policy
CPRE	Campaign to Protect Rural England
DEFRA	Department of Environment Food and Rural Affairs
DPD	Development Plan Document
EA	Environment Agency
EIA	Environmental Impact Assessment
ES	Environmental Statement
EU	European Union
ha	hectare
HGV	Heavy Goods Vehicle
HRC	Household Recycling Centre
HWS	Hills Waste Solutions
Km	kilometre
LP	Local Plan
m	metres
m <sup>3</sup>	cubic metres
µgm/m <sup>3</sup>	micrograms per cubic metre
MRF	Materials Recycling Facility
MSW	Municipal Solid Waste
NO <sub>2</sub>	nitrogen dioxide
NPPF	National Planning Policy Guidance
NPPW	National Planning Policy for Waste
PPG	Planning Practice Guidance
SOCG	Statement of Common Ground
SoS	Secretary of State
sqm	square metres
SSCTs	Strategically Significant Cities and Towns
TA	Transport Assessment
tpa	tonnes per annum
UU	Unilateral Undertaking
WC	Wiltshire Council
Wilts CS	Wiltshire Core Strategy
WAQAP	Wiltshire Air Quality Action Plan
Waste CS	Wiltshire and Swindon Waste Core Strategy
Waste DC	Wiltshire and Swindon Waste Development Control [Policies DPD]
WPA	Waste Planning Authority
WSALP	Wiltshire and Swindon Waste Site Allocations Local Plan
WWA	Wiltshire Waste Alliance

## APPEARANCES

### FOR WILTSHIRE COUNCIL:

Mr Hashi Mohamed of Counsel

He called no witnesses  
but was assisted by the  
following Council officers  
on matters of fact,  
planning conditions and  
obligations

Ms Dorcas Ephraim Senior Solicitor

Mr J Day Minerals and Waste Team Leader  
BA DipTP MRTPI

Mr M Wilmott BSc(Hons) Head of Development Management  
DipTP DM MRTPI

### FOR HILLS WASTE SOLUTIONS LIMITED - APPELLANTS:

Mr P Tucker of Queens Council  
and  
Ms S Clover of Counsel

They called

Mr P Blair BEng(Hons) Head of Transport WYG  
DipIS CEng FICE FCIHT

Dr C Beattie BSc(Hons)  
MSc PhD MIES MIAQM

Mr N Roberts  
BA(Hons) DipLA CMLI



## DOCUMENTS

	GENERAL
1.1-7	Attendance Lists
2.1-2	Letters of Notification
3	Letters from Interested Persons
4	Statement of Common Ground
5	Unilateral Undertaking
6.1-3	Suggested Conditions
7.1-2	Pre Inquiry Notes
8	Adjournment Note
9.1-2	Pre-Inquiry Submissions
10	Judgment [2008] EWHC 2223 (Admin) – <i>Linda Davies</i>
11	Addendum to Adjournment Note
12	Pre-Resumption Note
13	Planning Permission N/09/01497/WCM
14	Planning Permission N/012803
15	Wiltshire Core Strategy
16	Wiltshire and Swindon Waste Core Strategy
17	Wiltshire and Swindon Waste Development Control Policies DPD
18	Wiltshire and Swindon Waste Site Allocations Local Plan
19	Environmental Statement and First and Second Reg 22 Submissions
20	Environmental Statement Third Regulation 22 Submission
	HILLS WASTE SOLUTIONS LIMITED – APPELLANTS
HWS1	Opening Submissions
HWS2.1-5	Mr Blair - proof appendices and technical note
HWS3.1-5	Dr Beattie – proof appendices, rebuttal, technical note and response to Cllr Hill
HWS4.1-2	Mr Roberts - proof and appendices
HWS5	Mr S Burns, HWS Divisional Director – written declaration
HWS6.1-5	Closing Submissions
HWS7	Legal Authorities appended to HWS Closing Submission
	WILTSHIRE WASTE ALLIANCE – RULE 6 PARTY
WWA1	Opening Submissions
WWA2.1-4	Mr Vaughan – proof, appendices, rebuttal and technical note
WWA3.1-5	Mr Smyth – proof, appendices, rebuttal, rebuttal appendices and technical note
WWA4.1-2	Mr Potter – consolidated proof and appendices
WWA5.1-5	Dr P Alberry – written evidence
WWA6	Closing Submissions
WWA7	Legal Authorities appended to WWA Closing Submission
WWA8	Costs Application – transcript

	INTERESTED PERSONS - transcripts
IP/1	Dr B Mathew
IP/2	Cllr P Szczesiak
IP/3	Ms Kate Morley
IP/4	Ms A Henshaw
IP/5.1-2	Cllr A Hill including counter response to Dr Beattie

## **PLANS**

### APPLICATION PLANS

- A.1 339/MRF/1 - Location
- A.2 339/MRF/2 - Site Plan
- A.3 1335-PLAN 3 - Plans and Layout
- A.4 1335-PLAN 3 - Elevations
- A.5 1335-PLAN 4 - Roof Plan
- A.6 1335-PLAN 5 - Site Layout

### OTHER SUBMITTED PLANS

- B.1 Land use plan - all permissions
- B.2 Land use plan - Areas F and G
- B.3 Approved Restoration Plan - existing MRF

## Costs Decision

Inquiry opened on 6 September 2016

Site visit made on 20 February 2017

**by B J Sims BSc(Hons) CEng MICE MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 12 June 2017**

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### **Costs Applications in relation to Appeal Ref: APP/Y3940/W/15/3139189 Lower Compton Materials Recycling Facility, Lower Compton, Calne, Wiltshire SN11 8RB**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Wiltshire Waste Alliance for a full award or two alternative partial awards of costs against Hills Waste Solutions Limited.
  - The Inquiry was in connection with an appeal against the refusal of an application for planning permission to retain and extend the existing Materials Recycling Facility, including transfer activities, screening bund and ancillary activities and development.
  - The Inquiry sat for 7 days on 6 September 2016, 21 to 24 and 28 February and 2 March 2017.
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### **Decision**

1. The application for a full award of costs and one application for a partial award of costs are refused.
2. One application for a partial award of costs is allowed in the terms set out in the Costs Order below.

### **The Submissions for Wiltshire Waste Alliance**

#### *Introduction*

3. Wiltshire Waste Alliance (WWA) made a detailed written application for a full award of costs or two partial awards of costs in the alternative. [Doc WWA8]
  4. WWA appeared at the Inquiry as a Rule 6 party. Wiltshire Council (WC) as Waste Planning Authority (WPA) did not resile from its refusal of the application but resolved not to defend its reasons for refusal (RRs) and remained passive throughout the Inquiry. WWA accordingly carried the whole cost of defending the RRs, notwithstanding its third party Rule 6 status.
  5. The full award was sought on the basis that:
    - 5.1 the reliance by the appellant company, Hills Waste Solutions Limited (HWS) on a fallback position, rather than the actual baseline, to assess the effects of the proposed development, is wrong in principle, and
    - 5.2 that insufficient or inadequate evidence was provided to support the alleged fallback position upon which the whole appeal case of HWS rested.
  6. The two partial awards were sought in respect of:
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- 6.1 costs 'thrown away' as a result of the adjournment of the Inquiry in September 2016 to allow for the submission by HWS of additional environment information requested by the Inspector under Regulation 22 of the Environmental Impact Assessment (EIA) Regulations, and
  - 6.2 costs incurred in checking the planning permissions and documents related to the fallback position alleged by HWS.
7. The applications were made with reference to national Planning Practice Guidance (PPG). This provides examples of unreasonable conduct likely to result in the award of costs on substantive grounds, including where a development is not in accordance with the development plan and there is inadequate evidence of other material circumstances to indicate that permission should be granted. Examples of unreasonable conduct likely to result in an award of costs on procedural grounds include delay in providing information or introducing substantial fresh evidence at a late stage, necessitating an adjournment or extra expense in preparation. The PPG makes clear that costs may be awarded to a Rule 6 party, in particular where an unnecessary adjournment is caused by unreasonable conduct.

### **Ground 1 – Full Application**

#### *Failure to Assess True Impacts*

8. In brief, WWA has consistently set out its position, including by legal submission before the Inquiry and in closing its case at appeal<sup>1</sup>. It is submitted that, in relying on a fallback position rather than a baseline, HWS has adopted entirely the wrong approach to the assessment of the impacts of the proposed development, both in domestic terms and in terms of statutory EIA. In connection with a previous application<sup>2</sup>, subsequently withdrawn by HWS, the Secretary of State (SoS) set out, in a Screening Direction, that the cumulative effects of wider operations being carried out at the appeal site should be considered from a baseline that excluded current uses. However, HWS adopted the same flawed approach in the present case. This was never more apparent than in the reliance of HWS on two outdated 'no project' baselines to show a reduction in Heavy Goods Vehicle (HGV) movements and failing to carry through a third possible baseline in a 'with development' scenario. This approach is unreasonable, the more so since HWS accepts that, if it is wrong, the development will give rise to unacceptable harm in conflict with the development plan. The result is that, in the absence of any evidence from WC, the members of WWA have unnecessarily incurred the entire costs of resisting the appeal, in order to protect their position as local residents.

#### *Insufficient Evidence on Fallback*

9. The burden of proof of any fallback position rests with HWS as appellants. Yet, as submitted for WWA in closing its appeal case<sup>3</sup>, HWS failed to produce planning consent documents requested by the Inspector, failed to provide adequate plans or contract documents and failed to call witnesses of fact on which reliance was placed. Such reliance upon material considerations with inadequate supporting evidence is extremely unreasonable in terms of the PPG where the only other main party to the appeal is a Rule 6 party. This

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<sup>1</sup> Doc WWA6 para 5-7, 40-42, 138-148

<sup>2</sup> 13/07043/WCM

<sup>3</sup> Doc WWA6 para 8-11, 13, 43

unreasonable conduct is compounded by the earlier withdrawal by HWS of an application for a Certificate of Lawful Existing Use or Development (CLEUD) on professional advice that it would be refused. As submitted in opening the WWA case<sup>4</sup>, the scope of the appeal was thus widened, directly resulting in wasted expense by WWA.

*Conclusion*

10. Subject partly to the ultimate conclusions of the Inspector on the appeal, WWA should be awarded the full costs of resisting the appeal.

***Ground 2 – Partial Application – Costs Following Adjournment***

11. WWA has consistently maintained that the submitted Environmental Statement (ES) is inadequate, resulting in RR3. WWA then established that HWS had submitted essentially new transportation and air quality assessments for the Inquiry, based on new fallback positions but without updating the ES.
12. WWA was therefore forced to prepare for and attend the Inquiry in September 2016 only for the Inspector to rule, with reference to legal authority, that the ES did not represent understandable starting points or baseline planning positions and that the Inquiry could not safely continue.
13. During the ensuing adjournment the Inspector issued a Regulation 22 notice requesting additional information especially in relation to planning permissions on and around the appeal site but little was provided.
14. The adjournment was sought by HWS and was no fault of WWA. It resulted from the unreasonable conduct of HWS in delayed submission of substantial fresh evidence not supplied at application stage but only when requested at appeal, giving rise to adjournment and wasted expense.
15. This is compounded by the refusal of HWS to accept that the original ES was inadequate, despite the ruling by the Inspector to that effect.
16. Therefore, if the application for a full award of costs is unsuccessful, costs are nevertheless sought for:
  - 16.1 preparing for and attending the first day of the Inquiry,
  - 16.2 preparing evidence and appearing at the resumed Inquiry in response to inadequate ES documents no longer directly relied upon but not disavowed by HWS, and
  - 16.3 responding to the Regulation 22 notice and public consultation on the additional environmental information.

***Ground 3 – Partial Application – Costs Checking the HWS Fallback Position***

17. If the application for a full award of costs is unsuccessful, a partial application is nevertheless made, on grounds that insufficient or inadequate evidence was provided to support the alleged fallback position. These costs relate to:
  - 17.1 obtaining copies of relevant planning permissions and other documents (as requested of HWS by the Inspector), and

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<sup>4</sup> WWA1 para 18-19

- 17.2 undertaking a proper assessment of the planning position not provided by HWS.

**The Response by Hills Waste Solutions Limited (HWS)**

18. In submissions closing their case for the appeal<sup>5</sup>, and in oral response to the costs application, HWS stated that WC had itself acted unreasonably in not substantiating its RRs and yet not withdrawing them. However, to avoid souring goodwill no application for costs was made by HWS against WC.
19. As for WWA, procedural claims for costs are resisted and WWA is fortunate not to face a costs application relating to its own procedural defaults. Nevertheless no application is made against WWA as a Rule 6 party.
20. The allegation by WWA that HWS has failed to substantiate the basis for the appeal is absurd. Far from being unreasonable, the case of HWS is compelling and right.
21. In specific response to points made in the Ground 1 full application:
- 21.1 Regarding reliance upon outdated project baselines, HWS clearly explained how these had been updated and indicated how the third baseline had been assessed.
- 21.2 No Regulation 22 request has gone unanswered. The additional information has been scrutinised and found adequate by two decision makers. The ES cannot be so badly wrong as to warrant an allegation of unreasonable behaviour.
- 21.3 WWA chose to stand in the shoes of WC who had resolved not to defend its RRs.
22. In specific response to the Ground 2 partial application:
- 22.1 The first intimation that rebuttal proofs were put forward was on 2 September 2016, late on the date of the deadline set by the Inspector and after close of business on a Friday. These included the criticism of the ES, ultimately leading to the submission for the adjournment. In the context of that chronology, it is not accepted that HWS behaved unreasonably but, if anything, showed prudence.
23. In specific response to the Ground 3 partial application:
- 23.1 The evidence of HWS supports its own fallback case. It was not unreasonable for HWS not to provide documents in support of the alternative fallback case of WWA.
- 23.2 The land use position on which HWS relied was depicted in evidence<sup>6</sup>. Any inaccuracy in that evidence did not become an issue until during the resumed Inquiry when a further plan was provided to substantiate the HWS case.
24. Overall, the full and two partial applications for costs are all misguided and wrong.

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<sup>5</sup> HWS6.1 para 7.2.2-3

<sup>6</sup> HWS2.2 App B - plan

## **Assessment by the Inspector**

### *Preliminary Matters*

25. The PPG makes clear that costs may be awarded if unreasonable conduct by one party results in unnecessary or wasted expense by another party to an appeal.
26. I share the views of both HWS and WWA that WC acted unreasonably in failing to defend its RRs whilst, at the same time, not withdrawing them and remaining almost entirely passive during the Inquiry, despite matters of planning history and WC waste contracts being at issue.
27. I also share the view of HWS that the conduct of WWA was unreasonable to the extent that it including late submission of rebuttal evidence and changing witnesses during the Inquiry without withdrawing earlier evidence subject to consolidation by the new witness.
28. However, I note the goodwill shown by HWS in forbearing to make applications for costs against either WC, as the Waste Planning Authority (WPA), or WWA, as a Rule 6 party, and the strong emotion shown by local opponents to the proposed development, on whose behalf, in effect, WWA made out a case against the appeal.

### *The Full Application – Ground 1*

29. WWA, as a Rule 6, party made the choice to oppose the appeal, in place of WC as WPA, and it is accepted that parties to an appeal generally meet their own costs.
30. In the event, the approach of HWS to the preparation of the ES and the three Regulation 22 submissions was not found to be flawed and the updated ES was found to be adequately based upon appropriate baselines.
31. The evidence of HWS on the planning fallback position was also found to be sufficient to justify the ES baselines as a starting point for comparative assessment of likely environmental effects. This included information on HWS contracts and business intentions, by way of a sworn statement by a company director, found to be adequate to justify the likelihood of the fallback scenario occurring in practice. Overall, the proposed development was found to be in compliance with the development plan, such that no further evidence was required of other material considerations to justify it.
32. Neither the earlier screening direction by the SoS on a previous case, nor a previously withdrawn CLEUD application had any direct bearing on the present appeal nor any significant effect on the scope of the Inquiry.
33. In terms of the full application, unreasonable conduct on the part of HWS has not been demonstrated and, accordingly, a full award of costs is not justified.

### *The Partial Application – Ground 2*

34. The fact that WWA submitted rebuttal proofs just before the initial opening of the Inquiry in September 2016 is of no consequence because HWS had, by then, altered the basis upon which they chose to submit their appeal evidence with respect to the crucial baseline scenarios. These were found not to have been adequately assessed in the submitted ES and two pre-Inquiry Regulation

22 submissions, giving rise to the adjournment and the third Regulation 22 request.

35. The submission by HWS for the adjournment for that purpose was certainly prudent in the circumstances and the manner in which their Inquiry evidence was put forward represented a genuine attempt to explain an undeniably complex planning situation without the help of the WPA. Thus, it is apparent that HWS used their best endeavours in this respect and there is nothing to suggest that they behaved unreasonably by intent.
36. Nevertheless, it was, in practice, unreasonable that their conduct resulted in the adjournment and wasted expense by WWA in preparing for and attending the first day of the Inquiry prior to the adjournment, and in responding to the additional environmental information submitted before the resumption of the proceedings, and in preparing evidence in response to the revised ES.
37. The partial award of costs on Ground 2 is accordingly justified in those terms.

*The Partial Application – Ground 3*

38. It was for WWA to provide its own evidence in support of its case on the planning fallback position. Although copies of the relevant planning permissions were appended to the WWA evidence and not to the proofs of HWS, they are in the public domain in any event. HWS did provide a graphical representation of the planning status of the appeal site and surrounding land, albeit corrected during the Inquiry.
39. In respect of the partial application on Ground 3, no unreasonable conduct or wasted expense is demonstrated and no award of costs is justified.

**Costs Order**

40. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Hills Waste Solutions Limited shall pay to Wiltshire Waste Alliance the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing for and attending the first day of the Inquiry prior to the adjournment of the Inquiry on 6 September 2016 and in responding to the additional environmental information submitted before the resumption of the proceedings and in preparing evidence in response to the revised ES; such costs to be assessed in the Senior Courts Costs Office if not agreed.
41. The applicant, Wiltshire Waste Alliance, is now invited to submit to Hills Waste Solutions Limited, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

***B J Sims***

Inspector