



Department for
Communities and
Local Government

Nick Roberts
Axis PED Ltd
Camellia House
76 Water Lane
Wilmslow
Cheshire SK9 5BB

Our Ref: APP/T1600/A/13/2200210

Your Ref: NR/1422

16 January 2015

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY URBASER BALFOUR BEATTY
LAND AT JAVELIN PARK, NEAR HARESFIELD, GLOUCESTERSHIRE
APPLICATION REF: 12/0008/STMAJW**

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supercedes the decision letter issued on 6 January 2015.

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Brian Cook BA (Hons) DipTP MRTPI, who held a public local inquiry between 19 November and 13 December 2013 and between 14 – 29 January 2014 into your client's appeal against Gloucestershire County Council's (the Council) refusal to grant planning permission for an Energy from Waste (EfW) facility for the combustion of non-hazardous waste and the generation of energy, comprising the main EfW facility, a bottom ash processing facility and education/visitor centre, together with associated/ancillary infrastructure including access roads, weighbridges, fencing/gates, lighting, emissions stack, surface water drainage basins and landscaping, in accordance with application ref 12/0008/STMAJW dated 31 January 2012.
2. On 16 July 2013, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to the Town and Country Planning Act 1990, because the appeal involves proposals of major significance for the delivery of the Government's climate change programme and energy policies.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions. The Secretary of State agrees with the Inspector's analysis, except where indicated below and he has decided to allow the appeal and

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grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. In reaching this position, the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations, the two further statements submitted under Regulation 22(1) and the further clarification and errata statements (IR8). The Secretary of State considers that the ES and the further information provided complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposals.

Matters arising after the close of the inquiry

5. The Secretary of State has taken account of the fact that, following the close of the inquiry, two matters occurred on which the comments of the main and Rule 6 parties were requested by the Planning Inspectorate on 10 March 2014 (IR17). On 18 February 2014 the Court of Appeal decision in *Barnwell Manor Wind Energy Limited v East Northamptonshire DC, English Heritage, National Trust and Secretary of State for Communities and Local Government* [2014] EWCA Civ 137 (*Barnwell Manor*) was handed down (IR18). In addition, on 6 March 2014, the Government issued the National Planning Practice Guidance (the Guidance) (IR19).
6. Subsequently, on 1 August 2014, the Secretary of State received a letter from GlosVAIN which purported to describe new information, relevant to the Secretary of State's decision on this appeal. GlosVAIN's letter was circulated to interested parties on 16 September 2014. On 16 October 2014, the Secretary of State circulated the responses received and also invited comments on his publication of new planning policy and new planning practice guidance on waste.
7. In coming to his decision on the appeal before him, the Secretary of State has taken account of all the representations referred to in paragraphs 5 and 6 above, which are listed at Annex A to this letter.
8. The Secretary of State is also in receipt of further correspondence following the close of the inquiry which is again listed at Annex A. He has carefully considered these representations but does not consider that they raise new matters that would affect his decision or require him to refer back to parties on their contents prior to reaching his decision. Copies of the representations referred to in paragraphs 5-8 will be provided on application to the address at the bottom of the first page of this letter.

Policy considerations

9. In deciding the appeal the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

10. In this case the development plan consists of the Waste Core Strategy (WCS) (2012), the saved policies of the Waste Local Plan (WLP) (2004) and the Stroud District Local Plan (SDLP) (2005). The Secretary of State considers that the policies identified in IR30 – 39 are the most relevant policies to this appeal. The Secretary of State has had regard to the Inspector's remarks about the emerging Stroud District Local Plan (IR41) and he is aware that the Plan's examination in public is due to resume shortly.
11. The Secretary of State observes that Planning Policy Statement 10: *Planning for Sustainable Waste Management* was cancelled with the publication of the new waste policy and guidance in October 2014. With that exception, he has had regard to those documents identified by the Inspector at IR42. The Secretary of State has also taken into account the Guidance published in March 2014; and the policy and guidance on waste published on 16 October 2014;
12. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA), the Secretary of State has paid special attention to the desirability of preserving those listed structures potentially affected by the scheme or their settings or any features of special architectural or historic interest which they may possess.

Preliminary Matters

13. The Secretary of State has had regard to the Inspector's remarks at IR16 and IR21 about his role in relation to the WCS and about his former links with Gloucestershire including its County Council, and the fact that parties were made aware of those points.
14. In relation to the residual Municipal Solid Waste (MSW) treatment procurement project and the preparation of the WCS, the Secretary of State has taken account of the Inspector's timeline at IR964 and his comments at IR965. The Secretary of State sees no reason to disagree with the Inspector's analysis and conclusions about the way the WCS should be interpreted (IR966 – 992) including the weight to be given in this particular case to the Framework in respect of policy on the historic environment (IR989).
15. The Secretary of State has carefully considered the Inspector's comments about the procurement process (IR993 – 996) and he agrees with the Inspector (IR997) that this is not a matter he should take into account in his determination of this appeal.

Main Issues

16. The Secretary of State agrees that the main issues in this appeal are those identified by the Inspector at IR998.

Delivery of the Government's climate change programme and energy policies

17. The Secretary of State has noted the Inspector's introductory remarks at IR999-1009 and, like the Inspector, he considers that the two issues are firstly, the extent to which the appeal proposal would represent a renewable and low carbon source of energy and secondly, the contribution, if any, it would make towards cutting greenhouse gas emissions (IR1010).

18. The Secretary of State agrees with the Inspector's analysis in respect of renewable and low carbon energy (IR1011-1017) and endorses his summary (IR1018) that national energy policy confirms that there is an urgent and continuing need for new renewable electricity generating projects and recognises that even small scale projects have a valuable contribution to make. He also agrees that there is no limit to the provision that can come forward and no threshold below which the renewable energy contribution from a mixed scheme should be disregarded in some way and that EfW is a potential source of such energy which unlike weather dependant sources can provide a dependable peak and base load power on demand (IR1018). Like the Inspector, the Secretary of State considers that, with around half its exported electricity classified as renewable, the scheme would accord with national energy policy in this regard (IR1019).
19. The Secretary of State has given careful consideration to the Inspector's assessment of greenhouse gas emissions IR1020-1032. In terms of whether the proposal would be inherently better than landfill with regard to greenhouse gas emissions, the Secretary of State agrees with the Inspector that the EfW facility proposed would be better than landfill since there can be no methane released to the atmosphere as a result of the process (IR1033).
20. Turning to whether the proposal can be classified as low carbon, for the reasons given at IR1034-1035, the Secretary of State agrees with the Inspector that Government energy policy confirms that CO2 emissions from schemes like the appeal proposal are not a barrier to consent (IR1035).
21. For the reasons given by the Inspector at IR1036, the Secretary of State agrees with the Inspector's conclusion that the appeal proposal would contribute to the Government's overall policy for energy production over the period to 2050 and would do nothing to hinder its climate change programme. He agrees too that this would be a benefit of the scheme to which considerable weight should be attributed in the planning balance (IR1037).

Whether the appeal proposal would be acceptable 'in principle' under WCS policy WCS6

22. Having had regard to the Inspector's introductory remarks at IR1038-1042, the Secretary of State shares his view that, in principle, planning permission should be granted for the appeal proposal under policy WCS6 subject to compliance with its criteria a, b and c. He has gone on to consider those criteria.
23. The Secretary of State has carefully considered the Inspector's reasoning and conclusions on how the General and Key Development Criteria apply to this appeal (IR1043-1057). He has considered the representation dated 29 October 2014 submitted by GlosVAIN which argues that a localised height restriction applies to the appeal site but, having taken account of the Inspector's remarks at IR1123-1124, he does not consider that the height restriction relating to the planning consent for warehousing on the site amounts to a localised height restriction applicable to the appeal before him. He agrees with the Inspector's conclusion at IR1057 that the appeal proposal would be within the parameters of the guidance that underpins that part of the General Development Criteria in Appendix 5 as adopted. Like the Inspector

(IR1057), the Secretary of State agrees that it is incompatible with the content of the WCS to object to the appeal proposal for reasons of height and scale.

24. For the reasons given by the Inspector at IR1059-1064, the Secretary of State agrees with the Inspector's conclusion that an Appropriate Assessment is not required and there is no conflict with WCS policy WCS6(b) (IR1065).

25. In relation to the matter of dealing only with the County's waste, the Secretary of State has carefully considered the Inspector's assessment and his conclusion that the appeal proposal does not conflict with WCS policy WCS6(c) (IR1071). The Secretary of State has also had regard to the policy and guidance on waste which he published in October 2014. Under the heading "Do the self-sufficiency and proximity principles require each waste planning authority to manage all of its own waste?", the guidance (reference ID: 28-007-20141016) states that, "though this should be the aim, there is no expectation that each local planning authority should deal solely with its own waste to meet the requirements of the self-sufficiency and proximity principles". The guidance goes on to observe that "the ability to source waste from a range of locations/organisations helps ensure existing capacity is used effectively and efficiently, and importantly helps maintain local flexibility to increase recycling without resulting in local overcapacity". The Secretary of State considers that his recently published guidance on this matter is a material consideration which carries significant weight in relation to the matter of dealing only with the County's waste.

26. The Inspector also states (IR1071) that, in the absence of the condition which the Council wish to impose, criterion WCS6(c) can have no practical effect once planning permission has been granted. Having taken account of the Inspector's analysis at IR1296-1297 and the guidance referred to in the preceding paragraph, the Secretary of State shares the Inspector's view (IR1297) that there is some doubt whether suggested condition 30 is necessary or reasonable and that there is little doubt that it would be very difficult to enforce in the circumstances described by the appellant with respect to waste transfer station waste. He sees no reason to disagree with the Inspector's advice that suggested condition 30 should not be imposed. In these circumstances, and bearing in mind the Inspector's remarks at IR1067 – 1068 and the fact that the Council accepts that criterion (c) is complied with at the point the appeal falls to be determined (IR1069), the Secretary of State concludes that the appeal proposal does not materially conflict with WCS policy WCS6(c).

27. The Secretary of State has considered carefully the Inspector's conclusions (IR1072) on whether the appeal proposal would be acceptable 'in principle' under WCS policy WCS6. For the reasons set out above, the Secretary of State considers that there would not be any material conflict with WCS policy WCS6(b) or (c). In terms of compliance with WCS6(a), the Secretary of State agrees with the Inspector's approach in first considering the proposal against WCS policies WCS14 and WCS17. The Secretary of State addresses these matters below.

The character and appearance of the Vale landscape and the setting of the Cotswolds AONB

28. The Secretary of State has noted the Inspector's introductory comments (IR1073-1082), and his approach to his consideration of this issue (IR1083-1091). He has carefully considered the Inspector's assessment as set out at IR1092 -1163 and he

shares the Inspector's views both with regard to a fallback position of B8 warehousing (IR1102) and his characterisation of the site as urban fringe (IR1103).

29. Turning first to landscape impact, for the reasons given by the Inspector at IR1105 - 1121, the Secretary of State concurs with the Inspector's conclusion (IR1122) that there would be no conflict with WCS policy WCS14. In terms of visual impact, the Secretary of State also agrees with the Inspector's reasoning at IR1123 – 1151 and shares his view (IR1152) that there would be no conflict with WCS policy WCS17.
30. The Secretary of State has carefully considered the Inspector's comments on the proposal's effect on the setting of the Cotswolds AONB at IR1153 – 1162. For the reasons given at IR1154-1156, in common with the Inspector (IR1157) the Secretary of State concludes that the first indent of policy WCS14 would be met. He also agrees with the Inspector that, in the views out from the AONB, the expanse of the landscape is such that any impact would be mitigated by the design measures proposed (IR1159). The Inspector goes on to conclude that in looking towards the AONB it is only in the immediate vicinity of the building that there would be any significant interruption of the view (IR1160). The Secretary of State agrees with that assessment, and agrees too (IR1161) that the appeal proposal would cause no material difference in the light of the other developments and transport corridors nearby. He therefore endorses the Inspector's conclusion that there would not be any conflict in this regard with WCS policy WCS14 (IR1163).
31. The Secretary of State agrees with the Inspector that the way that WCS policy WCS6 and Appendix 5 work together means that the appeal site is allocated in the WCS unfettered both in terms of the type of strategic residual recovery facility that might be accommodated, and the scale of the buildings that might be constructed. He agrees too that while the development plan does not 'rubber stamp' the proposal, what amount to matters of principle cannot now be raised against the proposed development, when they should have properly been included within the WCS as constraints on the form of development that could come forward on this particular allocated site (IR1164).
32. The Secretary of State also agrees with the Inspector (IR1165) that, based on the available evidence, the appeal site should be considered as being on the urban fringe. He notes the Inspector's comment that it is an urban fringe that has been advancing into the Vale landscape over a period of at least 40 years and it is planned to continue that progress. He agrees too with the Inspector's conclusion that the landscape has the capacity to absorb this additional development (IR1165).
33. The Secretary of State acknowledges that considerations of visual impact are complex; particularly in light of the fall-back development of B8 warehousing that could take place. He agrees with the Inspector that a building of the size proposed on such an open site cannot be other than prominent in view although the appellant's Zone of Visual Influence shows that those views may be more limited than are indicated by the bare earth Zone of Theoretical Influence (IR1166). The Inspector goes on to argue that this is an inevitable consequence of the unfettered allocation of the site in WCS policy WCS6. The Secretary of State sees no reason to disagree with the Inspector's conclusion (IR1166) that the appellant has addressed the factors set out in WCS Appendix 5 to successfully deal with that consequence.

34. The Secretary of State endorses the Inspector's conclusion (IR1167) that the appeal proposal would not conflict with either WCS policy WCS14 or WCS policy WCS17. He agrees too that by virtue of the way those two policies are drawn into Appendix 5 there would be no conflict either with WCS policy WCS6(a) (IR1167).

The effect that the appeal proposal would have on the setting of the various heritage assets in the vicinity of the appeal site

35. The Secretary of State has given careful consideration to the Inspector's comments on the scheme's potential impacts on the setting of the various heritage assets in the vicinity of the appeal site (IR1169-1185). He has taken account of the view of the Council that the proposal would cause harm to the significance of 12 designated heritage assets whereas the appellant considers that this finding would apply to only two, Hiltmead Farmhouse and St Peters Church, Haresfield (IR1178). For the reasons given by the Inspector (IR1173 - 1183), the Secretary of State agrees with the Inspector that, generally, Mr Grover (for the Council) has interpreted the setting of each heritage asset to be far too extensive and, for the most part, incorrectly characterised settings as rural (IR1183). The Secretary of State sees no reason to disagree with the Inspector's assessments of the scheme's impacts on St Peter's Church, Haresfield (IR1175 – 1177), Haresfield Court (IR1180) and Haresfield Hillcamp and Ring Hill Earthworks (IR1181). He also concurs with the Inspector's analysis with regard to the heritage assets he references at IR1183, including the Grade II* listed Hardwicke Court.

36. Having had regard to the Inspector's analysis at IR1186 – 1188 and his view that the position taken by English Heritage is in fact contrary to its own guidance and not supported by evidence before the inquiry, the Secretary of State gives very little weight to the views of English Heritage in his determination of this case.

37. In accordance with the LBCA, the Secretary of State attaches considerable weight and importance to the harm which would be caused to designated heritage assets.

38. He agrees with the main parties (IR1184) and the Inspector (IR1191) that, in this case, the heritage assets most affected by the appeal scheme would be St Peter's Church, Haresfield (Grade II* listed) and Hiltmead Farmhouse (Grade II listed) and that, in the case of these two assets, the scheme's impact on setting would harm the significance of the asset.

39. The Secretary of State has considered the Inspector's remarks at IR1191. He agrees with the Inspector that the level of harm would not be 'substantial' in the terms set out in the Framework but he considers that, in accordance with s.66 of the LBCA, the preservation of setting is to be treated as a desired or sought-after objective, and considerable importance and weight attaches to the desirability of preserving the setting of listed buildings when weighing this factor in the balance. The Secretary of State takes the view that it does not follow that if the harm to heritage assets is found to be less than substantial, then the subsequent balancing exercise undertaken by the decision taker should ignore the overarching statutory duty imposed by section 66(1) and he therefore sees a need to give considerable weight to the desirability of preserving the setting of all listed buildings.

Other matters

Residential amenity

40. The Secretary of State has carefully considered the Inspector's assessment of residential amenity at IR1195-1201. For the reasons given by the Inspector at IR1199, he agrees that there would not be an overbearing effect on either Hiltmead or the Hiltmead Traveller's site. The Secretary of State agrees too that although the Lodge is somewhat nearer and the appeal development would be visible from it, for the reasons given by the Inspector at IR1200, the effect would not be overbearing (IR1201).

Need

41. Whilst the Inspector refers to the draft revision of PPS10 (IR1202) and the Companion Guide to PPS10 (IR1221), both of which have been superseded, the Secretary of State agrees with the Inspector's reasoning and conclusions on need at IR1202-1225. Like the Inspector (IR1204), the Secretary of State attributes considerable weight to the fact that the appeal development would achieve an upward shift in the waste hierarchy. The Secretary of State sees no reason to disagree with the Inspector's view that there is insufficient evidence before him to undermine the statistical basis on which the WCS has been adopted or require a reassessment of the residual waste for which other recovery facilities should be provided (IR1215). He accepts the Inspector's conclusion that while residual waste from outside the County may well be managed at the proposed facility, that would not be contrary to Government policy and should not be a factor that weighs against the appeal proposal (IR1224). He agrees too that the residual waste to be managed through other recovery facilities is set out in a recently adopted local plan and, like the Inspector, he finds no evidence that satisfies him that those figures do not remain robust (IR1225). The Secretary of State agrees with the Inspector's view that the quantitative need for recovery capacity is therefore established and the appeal proposal would make a very significant contribution to that need (IR1225).

Alternative technologies

42. Turning to the Inspector's consideration of the alternative technologies which were promoted at the inquiry (IR1226-1231), for the reasons given in those paragraphs the Secretary of State agrees with his conclusion that no weight should be given to the argument that alternative technologies should be considered, but rather, that the essence of the issue for determination in this appeal is whether the land use implications of the chosen technology are acceptable at the appeal site (IR1231).

Perception of harm

43. The Secretary of State has carefully considered the Inspector's assessment on this matter set out at IR1232 – 1248 and he too concludes that minimal weight should be attributed to the claimed land use consequence of the perceived harm to health and that limited weight should be given to this issue in the planning balance (IR1249).

Consequences of the appeal not succeeding

44. It is common ground between the main parties that the consequence of the appeal being dismissed would be the continued disposal of the County's residual municipal solid waste to landfill (IR1250). For the reasons given by the Inspector (IR1250 – 1256), the Secretary of State agrees with him that some weight should be attributed to the expectation that dismissal of this appeal would result in a delay of some years at least in moving away from disposal to landfill of the County's residual municipal solid waste (IR1256-1257).

Highway safety

45. For the reasons given by the Inspector at IR1258 -1261, the Secretary of State agrees with his conclusion that there would be no policy conflict arising from this issue and, as such, this is not a matter to which any weight should be attributed either way in the balance (IR1262)

Legal arguments

Priority considerations of alternatives (Persistent Organic Pollutants)

46. The Secretary of State has considered carefully the Inspector's comments on this issue at IR1263 – 1269 and agrees with him that the duty under Article 6(3) of Regulation (EC) No. 850/2004 rests with the Environment Agency, not the local planning authority (IR1270). He sees no reason to doubt that in issuing the Environmental Permit the Environment Agency has discharged that duty (IR1270).

Localism

47. For the reasons given by the Inspector at IR1271 – 1274, the Secretary of State agrees that in this case, the spirit of the Localism Act has been followed.

The best interests of children

48. The Secretary of State has carefully considered the Inspector's assessment of this issue (IR1275 – 1280), the evidence of Mr Ttofa (IR940 -941) and the evidence of Mr Phillips (IR449 – 450). He agrees with Mr Philips (IR449) that the issues raised by Mr Ttofa in this regard and which relate to health, visual, financial and environmental impacts have been comprehensively addressed in the submitted evidence and he has given that evidence very careful consideration. He has also taken account of the fact that neither the Inspector (IR1279) nor Mr Philips (IR450) consider that there is any suggestion that, in this particular case, the interests of children are any different from the interests of the general public. In these circumstances, the Secretary of State does not consider that the best interests of the children have a material impact on the planning balance in this case.

Conditions

49. The Secretary of State has considered the conditions recommended by the Inspector and set out at Annex B to the IR, the Inspector's comments at IR1281-1316, national policy set out at paragraphs 203 and 206 of the Framework and the planning

guidance. For the reasons given by the Inspector (IR1281-1316), he is satisfied that the proposed conditions, as reproduced at Annex B of this letter, are necessary and meet the tests identified at paragraph 206 of the Framework.

Planning balance

50. The Secretary of State finds that a number of matters weigh in the balance in favour of the appeal proposal, namely the contribution to the Government's overall energy policy and climate change programme, to which he attributes considerable weight; management of waste that is now consigned to landfill further up the waste hierarchy, to which he attributes considerable weight; a significant contribution towards a recently established quantitative need for residual waste recovery capacity, to which he attributes considerable weight; and the adverse consequences of the appeal not succeeding; to which he attributes some weight.

51. In terms of Framework paragraph 134, the Secretary of State finds that the planning balance falls in favour of the appeal scheme with the result that the less than substantial harm to the significance of the two heritage assets identified is outweighed. However, two matters weigh in the balance against the appeal proposal. The first is the desirability of preserving the settings of the heritage assets to which s66 of the LBCA requires that considerable importance and weight must be attributed. The Secretary of State finds in this case that the weight to be applied by s66 is in fact limited, given the extent of the harm to heritage assets which he has identified. With regard to the second matter, namely the perception of harm to the health of the local community, this is a matter to which the Secretary of State attributes limited weight.

Overall conclusions

52. The Secretary of State concludes that the appeal proposal would comply with the relevant development plan policies and is satisfied that for the purposes of paragraph 134 of the Framework, the less than substantial harm to the settings, and thus the significance of the two heritage assets, is outweighed by substantial public benefits. He concludes that there are no other material considerations to indicate that the appeal should be determined other than in accordance with the development plan. For this reason, the Secretary of State has concluded that the appeal should be allowed.

Formal decision

53. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for an Energy from Waste (EfW) facility for the combustion of non-hazardous waste and the generation of energy, comprising the main EfW facility, a bottom ash processing facility and education/visitor centre, together with associated/ancillary infrastructure including access roads, weighbridges, fencing/gates, lighting, emissions stack, surface water drainage basins and landscaping, in accordance with application ref 12/0008/STMAJW dated 31 January 2012 subject to the conditions set out at Annex B to this letter.

54. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the

Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

55. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

56. This letter serves as the Secretary of State's statement under Regulation 21(2) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to challenge the decision

57. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

58. A copy of this letter has been sent to Gloucestershire County Council, Stroud District Council, Gloucestershire Vale Against Incineration (GlosVAIN) and Gloucestershire Friends of the Earth Network (GFOEN). A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Christine Symes

Authorised by the Secretary of State to sign in that behalf

Annex A

| Representations received in response to the letter of 16 September 2014 | |
|---|------------------------------|
| Party | Date of letter/e-mail |
| Chris Jezewski | 19 September 2014 |
| Sue Oppenheimer, Chair of GlosVAIN | 3 October 2014 |
| Steve Read, Head of Gloucestershire Joint Waste Team (Gloucestershire County Council as Waste Disposal Authority) | 3 October 2014 |
| Nick Roberts, Director, Axis (on behalf of Urbaser Balfour Beatty) | 6 October 2014 |
| Barry Wyatt, Strategic Head (Development Services), Stroud District Council | 6 October 2014 |
| Nigel Riglar, Commissioning Director: Communities and Infrastructure (Gloucestershire County Council as Waste Planning Authority) | 7 October 2014 |

| Representations received in response to the letter of 16 October 2014 | |
|---|------------------------------|
| Party | Date of letter/e-mail |
| Ian Ginn | 29 October 2014 |
| Sue Oppenheimer, Chair of GlosVAIN | 29 October 2014 |
| Barry Wyatt, Strategic Head (Development Services), Stroud District Council | 30 October 2014 |
| Nigel Riglar, Commissioning Director: Communities and Infrastructure (Gloucestershire County Council as Waste Planning Authority) | 30 October 2014 |
| Tom Jarman | 30 October 2014 |
| Nick Roberts, Director, Axis (obo Urbaser Balfour Beatty) | 30 October 2014 |

| Other representations received | |
|--|------------------------------|
| Party | Date of letter/e-mail |
| Sue Oppenheimer, Chair of GlosVAIN | 1 August 2014 |
| Martin Horwood MP (enclosing one from Tom Jarman) | August 2014 |
| Neil Carmichael MP (enclosing one from Tom Jarman) | 11 August 2014 |
| Brian Stopp, Biocentre Technology Ltd | 12 August 2014 |
| Rt Hon Sir George Young Bt CH MP (encloisngone from Tony Field, Biocentre Technology Ltd) | 29 August 2014 |
| Ian Ginn | 1 September 2014 |
| Tom Jarman | 1 September 2014 |
| Richard Broackes-Carter Des RCA | 4 September 2014 |
| E A Reynolds | 11 September 2014 |
| Pete Bungard, Chief Executive, Gloucestershire County Council & Cllr Mark Hawthorne MBE, Leader, Gloucestershire County Council (joint letter) | 15 September 2014 |
| Derek Kingscote | 15 September 2014 |
| Paul Dewick | 16 September 2014 |
| Joy Elworthy | 24 September 2014 |
| K Lumber | 2 October 2014 |
| Geoffrey Clifton-Brown FRICS MP | 9 October 2014 |
| Neil Carmichael MP | 20 October 2014 |

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| Graham Mather, The Infrastructure Forum & Richard Threlfall, TIF Advisory Council & Shelley De Souza, TIF Waste & Renewable Energy Working Group (joint letter) | 5 December 2014 |
| Chris Harmer, Zero Waste England Ltd | 31 December 2014 |
| Chris Jezewski | 1 January 2015 |

Time limit

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

Notification of commencement

2. Notwithstanding condition 1 above, the operator shall notify the Waste Planning Authority of the date of the material start of each phase of development in writing at least 5 working days prior to each phase. The phases of development shall comprise:

2.1 completion of access road under condition 17;

2.2 the commencement of construction;

2.3 the commencement of commissioning trials (“commissioning trials” are defined as operations in which waste is processed under specified trials to demonstrate that the facility complies with its specified performance); and

2.4 the date when the development will become fully operational (“fully operational” is defined as the point from which it has been demonstrated that the facility operates in accordance with its specified performance once the commissioning trials have been successfully completed).

Approved Plans

3. The development hereby permitted shall be carried out in strict accordance with the following site layout and elevational drawings except in respect of those elements shown for illustrative or indicative purposes (and so noted on the drawings) and except as otherwise required by any of the conditions set out in this permission:

- Drawing Number 11034_PL10 (Part 4 of the Planning Application Document) – Elevations Sheet 1 – January 2012
- Drawing Number 11034_PL11 (Part 4 of the Planning Application Document) – Elevations Sheet 2 – January 2012
- Drawing Number 11034_PL13 (Part 4 of the Planning Application Document) – Gatehouse – January 2012
- Drawing Number 11034_PL15 (Part 4 of the Planning Application Document) – Ancillary Buildings – January 2012
- Drawing Number 11034_PL27 (Part 4 of the Planning Application Document) – South Elevation Sector 1 – January 2012
- Drawing Number 11034_PL28 (Part 4 of the Planning Application Document) – South Elevation Sector 2 – January 2012

- Drawing Number 11034_PL29 (Part 4 of the Planning Application Document) – South Elevation Sector 3 – January 2012
- Drawing Number 11034_PL30 (Part 4 of the Planning Application Document) – North Elevation Sector 1 – January 2012
- Drawing Number 11034_PL31 (Part 4 of the Planning Application Document) – North Elevation Sector 2 – January 2012
- Drawing Number 11034_PL32 (Part 4 of the Planning Application Document) – North Elevation Sector 3 – January 2012
- Drawing Number 11034_PL33 Rev A (Part 4 of the Planning Application Document) – East Elevation – January 2012
- Drawing Number 11034_PL34 Rev A (Part 4 of the Planning Application Document) – West Elevation – January 2012
- Drawing Number 11034_PL35 (Part 4 of the Planning Application Document) – Detailed Wall Section Bottom Ash – January 2012
- Drawing Number 11034_PL36 (Part 4 of the Planning Application Document) – Detailed Wall Section Refuse Bunker – January 2012
- Drawing Number 11034_PL37 (Part 4 of the Planning Application Document) – Detailed Wall Section Visitor Centre – January 2012
- Drawing Number 11034_PL38 (Part 4 of the Planning Application Document) – Detailed Wall Section Boiler / Turbine Hall – January 2012
- Drawing Number 11034_PL39 (Part 4 of the Planning Application Document) – Detailed Wall Section Flue gas Treatment – January 2012
- Drawing Number 11034_PL40 (Part 4 of the Planning Application Document) – Detailed Wall Section Tipping Hall – January 2012
- Drawing Number 11034_PL41 (Part 4 of the Planning Application Document) – Detailed Wall Section Tipping Hall / Offices – January 2012
- Drawing Number 11034_PL43 (Part 4 of the Planning Application Document) – Detailed Wall Section Bottom Ash Gable – January 2012
- Drawing Number 11034_PL44 (Part 4 of the Planning Application Document) – Detailed Wall Section FGT Gable – January 2012
- Drawing Number 11034_PL45 (Part 4 of the Planning Application Document) – Administrative Block Elevations – January 2012
- Drawing Number 11034_PL04 (Part 4 of the Planning Application Document) – Proposed Site Plan – January 2012
- Drawing Number 11034_PL05 (Part 4 of the Planning Application Document) – Level 0, Level 1 and Basement Plans – January 2012
- Drawing Number 11034_PL06 (Part 4 of the Planning Application Document) – Level 2, Level 3 and Roof Plan – January 2012

- Drawing Number 11034_PL08 (Part 4 of the Planning Application Document) – Longitudinal Section – January 2012
- Drawing Number 11034_PL09 (Part 4 of the Planning Application Document)– January 2012
- Drawing Number 11034_PL12 (Part 4 of the Planning Application Document) – Fencing and Gating Plan – January 2012
- Drawing Number 11034_PL16 (Part 4 of the Planning Application Document) – Level 0 Sector 1 Plan – January 2012
- Drawing Number 11034_PL17 (Part 4 of the Planning Application Document) – Level 0 Sector 2 Plan – January 2012
- Drawing Number 11034_PL18 (Part 4 of the Planning Application Document) – Level 0 Sector 3 Plan – January 2012
- Drawing Number 11034_PL19 (Part 4 of the Planning Application Document) – Level 1 Sector 1 Plan – January 2012
- Drawing Number 11034_PL20 (Part 4 of the Planning Application Document) – Level 1 Sector 2 Plan – January 2012
- Drawing Number 11034_PL21 (Part 4 of the Planning Application Document) – Level 2 Sector 1 Plan – January 2012
- Drawing Number 11034(0)PL22 (Part 4 of the Planning Application Document) – Level 2 Sector 2 Plan – January 2012
- Drawing Number 11034_PL23 (Part 4 of the Planning Application Document) – Level 3 Sector 1 Plan – January 2012
- Drawing Number 11034_PL24 (Part 4 of the Planning Application Document) – Level 3 Sector 2 Plan – January 2012
- Drawing Number 11034_PL25 (Part 4 of the Planning Application Document) – Level - 1 Plan – January 2012
- Drawing Number 11034_PL26 (Part 4 of the Planning Application Document) – Level - 2 Plan – January 2012
- Drawing Number GCC-ISRS-LAN-942-03-01 (Part 4 of the Planning Application Document) – Proposed Landscape Plan – January 2012
- Drawing Number 18917-SK-500-01 Revision D (submitted with the first Regulation 22 ES Further Information on 11th September 2012) – Schematic Drainage Layout – July 2011

CONSTRUCTION PHASE CONTROLS

Community Liaison Group

4. The development hereby permitted shall not be commenced until details of a Community Liaison Group, including their terms of reference (which shall include a complaints scheme), have been submitted to and approved in writing with the Waste

Planning Authority. The approved details shall be implemented and adhered to fully thereafter.

Finished Materials

5. Within six months of the commencement of the development a detailed scheme for the external finish of the main building and chimney stack shall be submitted for approval in writing by the Waste Planning Authority. The scheme shall include details and samples of:

- a. The type and colours and finishes of all external construction and cladding materials;
- b. The overhanging verge details of all the west and east facing roofs at a scale of 1:50 and details of the junctions between the various cladding materials at a scale of 1:100

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

Construction Environmental Management Plan (CEMP)

6. No development hereby permitted shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Waste Planning Authority. The approved CEMP shall be implemented as approved and shall be adhered to throughout the construction phase of the development.

7. The CEMP shall include:

Construction Traffic Management Plan

- i) A Construction Traffic Management Plan, which shall:
 - specify the type and number of vehicles expected to be using the site on a regular basis;
 - specify the vehicle delivery hours and the means for ensuring that delivery vehicles comply with those hours (ES paragraph 7.6.2);
 - provide for the parking and manoeuvring of vehicles of site operatives and visitors;
 - provide for the loading and unloading of plant and materials;
 - provide for the storage of plant and materials used in constructing the development;
 - specify off site construction vehicle routing to accord with the recommendations of the Transport Assessment paragraphs 8.3.1 to 8.3.3 (including local signage strategy - ES paragraph 7.6.2);
 - specify details of supporting staff/operative travel management initiatives;
 - specify details for the management of and procedures for the delivery of abnormal loads;
 - specify measures to be adopted to mitigate construction impacts in pursuance of the CIRIA Environmental Code of Good Practice on Site (C692) or its successor; and
 - include a scheme to encourage the use of Public Transport amongst contractors.

Ecology

A scheme to minimise and mitigate potential impacts on ecological interest during construction implementing the management actions contained in:

- ii) JP/CEMP/5/1 'Ecology – Bat Method Statement' or Method Statement based on the contents of JP/CEMP/5/1.
- iii) JP/CEMP/5/2 'Ecology – Badger Method Statement' or Method Statement based on the contents of JP/CEMP/5/2.
- iv) JP/CEMP/5/3 'Ecology – Breeding Birds Method Statement' or Method Statement based on the contents of JP/CEMP/5/3.
- v) JP/CEMP/5/4 'Ecology – Reptile Method Statement' or Method Statement based on the contents of JP/CEMP/5/4.

Dust and Odour

- vi) A scheme to minimise and mitigate the impacts of dust and odour on local air quality from construction operations (ES paragraph 13.4.8) during the construction of the development.

Noise and Vibration Management Plan

- vii) A scheme detailing the following:
 - the likely maximum construction-related noise and vibration levels at identified residential properties (as defined in Condition 30);
 - the measures that will be undertaken to measure and monitor construction related noise and vibration;
 - mitigation measures that will be used to reduce noise and vibration levels; and
 - actions that will be taken to respond to noise and vibration complaints.

Contaminated Land

- viii) A scheme to show the measures to be taken to ensure that contamination identified at the site does not result in any significant environmental impacts during construction.

Management of Hazardous and Polluting Substances

- ix) A scheme to manage and mitigate potential impacts from the storage of Fuels, Oils, Chemicals and Other Hazardous and Polluting Substances' based on the contents of JP/CEMP/4/1

Surface Waters and Flood Risk

- x) A scheme outlining the measures to be adopted at the site to reduce the potential for adverse water quality impacts during the construction phase (including the washing-out of vehicles) in accordance with JP/CEMP/3/1 'Procedure for Water Management' or Method Statement based on the contents of JP/CEMP/3/1.

Lighting

xi) A scheme for lighting during the construction phase. The Scheme shall include the following details:

- The position, height and type of all lighting;
- The intensity of lighting and spread of light (Lux plans);
- The measures proposed to minimise impact of the lighting on bats and the environment generally including the particular measures for reducing light spill from internal lighting of the western elevation; and
- The periods of day and night when such lighting will be used for construction and emergency needs.

Temporary Site Fencing

xii) A scheme setting out the arrangements for securing the site boundary and any spaces within the site that require isolation during works including specifying the types, height and method of installation of site fencing/hoarding throughout the construction phase.

Weed control

xiii) A scheme to manage any Japanese knot weed and invasive non-native species found on the site.

'Considerate Contractor'

xiv) Details of the measures to be introduced to ensure that the site contractor is a part of the Considerate Constructor scheme and that they will employ the principles of 'Best Practicable Means' (BPM) (ES paragraph 12.5.1).

Waste Minimisation

8. With the exception of survey works, no excavations shall commence on site until a detailed strategy and method statement for minimising the amount of construction waste resulting from the development has been submitted to and approved in writing by the Waste Planning Authority. The statement shall include details of the extent to which waste materials arising from the demolition and construction activities will be reused on site and demonstrate that the maximum use is being made of these materials. If such reuse on site is not practicable, then details shall be given of the extent to which the waste material will be removed from the site for reuse, recycling, composting or disposal in accordance with the waste hierarchy. All waste materials from demolition and construction associated with the development shall be reused, recycled or dealt with in accordance with the approved strategy and method statement.

Controlled Waters Protection Method Statement

9. No piling or any other foundation designs using penetrative measures shall commence until a detailed hydro-geological study has been undertaken and a Controlled Waters Protection Method Statement has been submitted to and approved in writing by the Waste Planning Authority. The submission must provide full consideration of the following:

- i. A ground investigation scheme providing a detailed assessment of the risk to all receptors that may be affected by the development or disturbance, including those off site;
- ii. An options appraisal and remediation strategy giving full details of any remediation measures required and how they are to be implemented;
- iii. An assessment of risks of groundwater flooding and settlement associated with any dewatering that may be required during the construction of the development;
- iv. An assessment of risks to surface waters on and off the site that may be affected by the construction works;
- v. The method of construction associated with site excavations and foundation works including the piling foundation works;
- vi. The method of controlling and discharging groundwater encountered during construction to avoid pollution of surface water and the underlying groundwater through any dewatering, drainage and discharges including details of how impacts on surface flows, groundwater flow path and groundwater levels will be controlled both during and post construction and how any potentially adverse effects will be mitigated particularly in relation to the risks of groundwater flooding and settlement from dewatering. The hydrogeological study must include:
 - a. An evaluation of groundwater flux beneath the site, including identification of key pathways within the Lias, elevations of pathways and associated pressure heads;
 - b. A thorough evaluation of the lateral hydraulic conductivity of the underlying Lower Lias strata at least to the depth of the deepest foundation;
 - c. Identification and design of mitigation measures required to manage the risks identified in bullet (a) and (b) above both during construction and for the completed scheme;
 - d. Assessment of any impact of the sunken bunker on groundwater flow, specifically addressing the potential impact on the adjacent M5 motorway with respect to flooding and potential subsidence as a result in changes in groundwater levels/flows together with any other potential environmental impacts that might be identified.
- vii. In the event that discharges of groundwater or increases in groundwater level would arise as a result of the scheme, the Flood Risk Assessment shall be updated and submitted for approval by the Waste Planning Authority;
- viii. Where changes in groundwater level, whether as a result of dewatering or otherwise, are identified as likely then the potential for subsidence in the area and specifically beneath the M5 shall be investigated and where necessary addressed. The scope of the investigation and mitigation measures, including design identified as part of the study shall be agreed in writing with the Waste Planning Authority prior to the piling or any other foundation designs using penetrative measures works commencing on site.

The development shall be fully implemented in accordance with the approved schemes.

Unexpected contamination

10. In the event that unexpected land contamination is found at the site during construction works, then no further development shall be carried out on that part of the site until the developer has submitted to and obtained written approval from the Waste Planning Authority for a Method Statement to deal with the unexpected contamination or material. This Method Statement shall set out in detail how this unexpected contamination or material is to be dealt with including a scheme of remedial measures and timescales for remediation. Thereafter the construction works shall proceed fully in accordance with the approved Method Statement.

Soil Management

11. No development hereby permitted shall commence until a soil management plan covering all the areas of proposed soft landscaping has been submitted to and approved in writing by the Waste Planning Authority. The soil management plan shall include details of the soil materials to be used, including their source, temporary stockpiling, depth of application and suitability as a growing medium. The soil management plan shall be implemented in accordance with the approved details.

Construction Times

12. Construction works shall only take place between 07.00 – 19.00 Monday to Friday and 07.00 – 12.00 on Saturdays and not at any time on Sundays, public or bank holidays, other than as prescribed for in this condition. Any construction related activities undertaken outside these hours shall be subject to a scheme to be approved in writing by the Waste Planning Authority and shall be carried out in accordance with the approved scheme. The scheme shall detail how construction related activities will not give rise to detriment to amenity from noise at the nearest noise sensitive dwelling.

Wheel cleaning facility

13. Prior to the commencement of any construction work, wheel cleaning facilities shall be installed at the site in accordance with details first to be submitted to and approved in writing by the Waste Planning Authority. The approved facilities shall be maintained in full and effective working order at all times and be available for use throughout the period of construction works. They shall be used by all vehicles carrying mud, dust or other debris on its wheels before leaving the site to prevent material being deposited on the public highway.

Pedestrian and cycle link

14. Within 12 months of the commencement of the development hereby permitted full details of a shared pedestrian and cycle link between the B4008 and the visitor and staff entrances shall be submitted to and approved in writing by the Waste Planning Authority. No commissioning trials shall commence until the shared pedestrian and cycle link has been constructed in accordance with the approved details.

Retention of Trees

15. All existing trees shown to be retained on the submitted plans shall be retained and protected during the construction operations (in accordance with BS5837:2012) with protective fencing erected and retained until construction of the development is complete.

Imported construction materials

16. The applicant or his contractor shall ensure that records are kept and made available for inspection by the Waste Planning Authority for the duration of the construction phases of the works, to demonstrate that only material appropriate for the end use of the site has been imported and used as infill material.

Provision of vehicular access

17. Vehicular access during the construction period shall be in accordance with the drawings contained within ES Appendix 5.5.

Landscape scheme

18. Within 12 months of the commencement of the development the plans and full details of hard and soft landscaping works and an Ecological Management Plan all based on the Proposed Landscape Plan Drawing Number GCC-ISRS-LAN-942-03-01 and Appendix 8.7 and Table 9.12 of the Environmental Statement shall have been submitted for the written approval of the Waste Planning Authority. These details shall include a detailed scheme for the landscaping of the site including details of:

- i) Hard landscaping, including:
 - a. Surface treatment finishes and colours;
 - b. Proposed finished levels or contours at 0.5 metre intervals;
 - c. Car parking layouts;
 - d. Other vehicle and pedestrian access and circulation areas;
 - e. Hard surfacing materials; and
 - f. Water attenuation basins and bio retention/wetland areas, and associated drainage scheme.
- ii) Soft Landscaping (including cultivation and other operations associated with plant and grass establishment) including planting plans covering the position, species, density and initial sizes of all new trees and shrubs;
- iii) The programme of implementation of the approved scheme, to include construction of the bund (using excavated material) at the eastern boundary of the site adjacent to the B4008 at the earliest opportunity in the construction programme (ES paragraph 12.5.3 and ES Appendix 5.5); and
- iv) Proposals for the maintenance of the landscaping.

The landscape works shall be implemented in accordance with the approved details and maintained for the duration of the development.

The approved soft landscaping scheme shall be implemented within the first available planting season (the period between 31 October in any one year and 31 March in the following year) following completion of the construction phase of the development. All planting and seeding undertaken in accordance with this condition shall be maintained and any plants which within five years of planting or seeding die, are removed, damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

PRE COMMISSIONING CONTROLS

Provision of on-site facilities

19. Commissioning trials shall only commence once the vehicular access, parking for site operatives and visitors and vehicular turning areas (marked on the ground for cars and commercial vehicles to turn so that they may enter and leave the site in a forward gear), are constructed, surfaced and drained in accordance with the details submitted to and approved in writing by the Waste Planning Authority. These areas shall be retained thereafter and not be used for any other purpose than the parking and turning of vehicles.

Cycle facilities

20. Prior to the commencement of commissioning trials of the development hereby permitted, details of secure and covered storage facilities, for a minimum of 7 bicycles and 3 motorbikes, shall be submitted for the approval in writing by the Waste Planning Authority. The approved facilities shall be provided within three months of approval and retained for the duration of the development.

Electrical Connection

21. The commissioning of the development hereby permitted shall not commence until the operator has submitted details of facilities to enable connection to the electricity distribution network and supply of generated electricity for approval in writing by the Waste Planning Authority. The connection to the electricity distribution network shall be carried out in accordance with the approved details.

Lighting details

22. Within 12 months of the commencement of the development hereby approved details of all operational external lighting and any operational internal lighting that would result in light spill from the western elevation of the building, shall be submitted for approval in writing by the Waste Planning Authority. The scheme shall be based on the Appendix 5.2 Lighting Design Report dated 2011, Section 3 and Appendices of the Argus Ecology Report dated 15th August 2012 and JP/CEMP/5/1 'Ecology – Bat Method Statement'. The scheme shall include the following details:

- a. The position, height and type of all lighting;
- b. The intensity of lighting and spread of light (Lux plans);
- c. The measures proposed to minimise impact of the lighting on bats and the environment generally including the particular measures for reducing light spill from internal lighting of the western elevation; and
- d. The periods of day and night when such lighting will be used for operational, maintenance and emergency needs.

The lighting scheme shall be carried out in accordance with the approved details.

Operational surface water drainage

23. Within 6 months of the commencement of development, a detailed scheme for surface water run-off control, surface water drainage (including the use of interceptors) and foul water drainage shall be submitted for approval in writing by the Waste Planning Authority. The detailed scheme for the provision of surface water drainage or a

sustainable containment drainage scheme to the operational development shall be based on the schematic drainage layout 18917-SK-500-01 RevD and the Proposed Drainage Strategy included in Section 11.4-5, and Vol 3 Appendix 11.1 of the Environmental Statement and in Drawings Number 18917-SK-500-01 (Drainage Principles), 18917-SK-500-03 (Detention Basins – long sections), and 18917-SK-500-04 (Bio retention Areas and Swales Cross Sections) as set out in the Regulation 22 Report of 7 September 2012. The submitted scheme shall show how the rate of run-off from the development site is to be managed and drained, with all clean roof and surface water being kept separate from foul water (including site drainage) with drainage from areas identified as high risk, e.g. loading bays and waste storage areas, not being discharged to any watercourse, surface water sewer or soakaways.

The scheme shall be implemented in full as approved prior to the date the development becomes fully operational and retained for the duration of the development.

Travel plan

24. Prior to the commencement of the commissioning trials of the development hereby permitted, an Operational Travel Plan covering all elements of the development, shall be submitted to and approved in writing by the Waste Planning Authority. The Travel Plan shall be adhered to and monitored in accordance with the approved details.

The Travel Plan shall be prepared in line with current best practice and shall include as a minimum:

- a. The identification of targets for trip reduction and modal shift;
- b. The method to be employed to meet these targets;
- c. The mechanisms for monitoring and review;
- d. The mechanisms for reporting;
- e. The penalties to be applied in the event that targets are not met;
- f. Mechanisms for mitigation;
- g. Mechanisms to seek variations to the Travel Plan following monitoring and reviews;
and
- h. Measures to ensure adherence to the existing weight restrictions associated with the Cotswolds Lorry Management Zone.

A review of the targets shall be undertaken and submitted for approval in writing by the Waste Planning Authority within three months of the date when the development becomes fully operational and on an annual basis thereafter.

Dust control

25. Prior to the commencement of the commissioning trials of the development hereby approved a scheme for the management and mitigation of dust shall be submitted for the written approval of the Waste Planning Authority. The scheme shall be adhered to fully in accordance with the approved scheme.

POST COMMISSIONING CONTROLS

Pollution prevention

26. There shall be no discharge of foul or contaminated drainage from the development hereby permitted into either the groundwater or any surface waters, whether direct or via soakaways, with all areas where non-inert waste is stored, handled or transferred underlain by impervious hardstanding with dedicated drainage to foul sewer or a sealed tank / sump.

Waste throughput

27. The amount of waste received for treatment by the Energy from Waste Facility in any one calendar year shall not exceed its nominal capacity of 190,000 tonnes. For the avoidance of doubt the nominal capacity is the processing capacity of the plant under normal operating conditions, taking account of its annual average availability, due to planned maintenance events and other plant shutdowns.

Securing of Loads

28. All loads of waste materials carried on HGV into and out of the development hereby approved shall be enclosed or covered so as to prevent spillage or loss of material at the site or on to the public highway.

Waste Delivery Times

29. Heavy goods vehicles delivering any waste material, process consumables (such as lime etc) or removing material or residues (including processed incinerator bottom ash) associated with the operational phase of the development hereby approved shall only enter or exit the site between 07:00 hours and 19:00 hours on Monday to Friday inclusive and between 07:30 hours and 18:00 hours on Saturdays and between 08:00 hours and 17:00 hours on Sundays, Public and Bank Holidays.

Operational day time noise control

30. Prior to commencement of development a scheme detailing the methodology that will be employed to measure and record the pre commencement daytime (07:00 – 23:00, T=16hrs) and night time (23:00 - 07:00, T=8hrs) background (LA90,T) noise levels separately for each period as determined at the closest points to the curtilages of the residential dwellings listed below, accessible by the applicant or his consultant (as agreed by the Waste Planning Authority) shall be submitted and approved in writing by the Waste Planning Authority. The methodology shall be in accordance with the measurement parameters set out in BS4142: 1997 'Rating industrial noise affecting mixed residential and industrial areas'. The scheme as approved shall be implemented to establish the pre-commencement LA90(T) noise levels under the supervision of the Waste Planning Authority.

1. The Lodge (50m to the east);
2. Hiltmead House (250m to the north-west);
3. St Joseph's Travellers Park (440m to the west);
4. Linda's Home (530m to the west);
5. Old Airfield Farm (620m to the south-west);

6. Royston (700m to the east);
7. Broadfield Farm (725m to the north-west);
8. Warren Farm (940m to the south)

all as identified in Figure 12.1 of the Environmental Statement.

31. In order to protect noise sensitive residential dwellings from operational noise associated with the Energy from Waste facility, the specific noise emissions attributable to all fixed or mobile internal and external plant situated at the development hereby approved shall be at least 2 dB(A) below the pre commencement daytime (07:00 – 23:00) background noise level (LA90,T) between the hours of 07:00 – 23:00 and at least 2 dB(A) below the pre commencement night time (23:00 – 07:00) background noise levels (LA90,T) between the hours of 23:00 – 07:00 as determined in accordance with condition 30.

The specific noise levels shall be determined (as a 1 hour LAeq between 07:00- 23:00 and a 5 minute LAeq between 23:00 – 07:00) at the closest points to the curtilages of the residential dwellings listed below, accessible by the applicant or his consultant as well as the Waste Planning Authority at a height of 1.5m above local ground height, to be determined either by way of direct measurement at the stated locations, or where extraneous ambient noise precludes this, by way of measurement at a point closer to the proposed facility and subsequent calculation of noise emissions at the locations stated below. The measurement should be free-field, taken at least 3.5m away from the nearest reflecting surface other than the ground.

1. The Lodge (50m to the east);
2. Hiltmead House (250m to the north-west);
3. St Joseph's Travellers Park (440m to the west);
4. Linda's Home (530m to the west);
5. Old Airfield Farm (620m to the south-west);
6. Royston (700m to the east);
7. Broadfield Farm (725m to the north-west);
8. Warren Farm (940m to the south)

all as identified in Figure 12.1 of the Environmental Statement.

32. Within three months of the date when the development hereby approved becomes fully operational a noise report shall be submitted for approval to the Waste Planning Authority, demonstrating compliance with the requirements of Conditions 30 and 31 above. The report shall include:

- a. A schedule of all plant and equipment installed or used during the operation of the facility;
- b. Locations of fixed plant and machinery and associated ducting, attenuation and damping equipment;
- c. Manufacturer specifications of sound emissions in octave or third octave detail;

- d. Comparison of plant noise levels with the established pre commencement background noise levels as required by condition 30;
- e. Relevant noise monitoring data gathered over a minimum of 24 hours during the normal working of the facility; and
- f. A list of remedial measures and timescales that shall be implemented in the event of non-compliance with Condition 31.

Note 1: A perceptible increase in low frequency noise can be established by comparing the pre-existing frequency content and operational frequency content at The Lodge in 1/3rd Octave band centre frequencies. An increase in individual 1/3rd octave bands greater than 10dB would result in a perceptible increase.

Noise monitoring complaints

33. In the event of a complaint being received by the Waste Planning Authority regarding operational noise emissions from the development hereby permitted the operator shall undertake a noise survey within 2 weeks of a written request by the Waste Planning Authority for such a survey to be undertaken. The noise survey shall be undertaken in accordance with BS 4142 (1997) and shall be carried out under the supervision of the Waste Planning Authority. The results of the noise survey shall be provided to the Waste Planning Authority for its written approval within 1 month of the survey being undertaken. Should the results of the noise survey suggest that further mitigation measures are necessary these shall be identified within the report and implemented within 1 month following their approval by the Waste Planning Authority.

Odour and dust containment

34. No handling, deposit or processing of waste material shall take place outside the confines of the buildings/structures hereby permitted.

35. No recyclable materials shall be stored outside on the ground and only a maximum of 2 fully covered containers of reject materials from the processing of incinerator bottom ash may be stored outside the incinerator bottom ash processing building pending collection during agreed HGV delivery/export hours as defined by Condition 29.

36. The containers of reject materials from the processing of incinerator bottom ash shall not be left outside the confines of the building outside of the agreed HGV delivery/export hours as defined by Condition 29.

37. To maintain negative air pressure within the Tipping Hall all doors to the waste Tipping Hall shall be kept closed unless vehicles are entering or leaving the Tipping Hall.

Use of machinery and mobile plant

38. All vehicles, plant and machinery operated solely within the site shall be maintained in accordance with the manufacturer's specification at all times, this shall include the fitting and use of effective silencers, and on all mobile wheeled plant used at the site the fitting and operation of a 'smart' or white noise reversing device, or similar non-intrusive reversing device.

Site Car Parking

39. Once the development hereby approved becomes fully operational the site shall provide no more than 45 car parking spaces and one coach parking bay including 4 car parking spaces for disabled drivers in accordance with drawing Proposed Site Plan reference 11034-PL04.

Removal of Permitted Development Rights

40. Notwithstanding the provisions of Part 4, Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) or any order revoking and re-enacting that Order with or without modification no buildings, fixed plant or fixed machinery shall be installed, erected or operated in, on or over this site except as authorised by this planning permission.

Management of residues

41. Two years from the date when the development hereby permitted becomes fully operational a review of APC (fly ash) residue management options shall be submitted for the written approval of the Waste Planning Authority, and on a bi-annual basis thereafter. This shall be based on monitoring of the market taking full account of social, environmental and economic factors and also potential emerging technologies and applications. Where viable opportunities for the diversion of the residues from landfill are identified, proposals shall be submitted to, and approved in writing by the Waste Planning Authority. Any scheme shall be executed in accordance with the approved details.

Site decommissioning

42. The operator shall inform the Waste Planning Authority in writing within 30 days of final cessation of operation of the development hereby permitted that all operations have ceased. Thereafter, the site shall be restored within a period of 24 months in accordance with a scheme to be submitted for the written approval of the Waste Planning Authority not less than 6 months prior to the final cessation of operation of the development hereby permitted. The scheme shall include the removal of all buildings, chimney stack, associated plant, machinery, waste and processed materials from the site.

Incinerator Bottom Ash (IBA) processing

43. There shall be no importation of IBA for processing at the site. IBA arising from the development hereby permitted shall be dispatched to the onsite IBA facility for processing into a construction material.

Breakdown or closure Contingency Plan

44. Prior to the first receipt of waste at the Energy from Waste facility details of the contingency plan to be employed to deal with the waste material destined for the Energy from Waste facility in the event of a breakdown or closure of it shall be submitted to and approved in writing by the Waste Planning Authority. In the event of any of the trigger events specified in the contingency plan occurring the contingency plan will be carried out as approved.

ENDS

Report to the Secretary of State for Communities and Local Government

by Brian Cook BA(Hons) DipTP MRTPI

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

Date: 6 June 2014

THE TOWN AND COUNTRY PLANNING ACT 1990

GLOUCESTERSHIRE COUNTY COUNCIL

APPEAL BY

URBASER BALFOUR BEATTY

Inquiry opened on 19 November 2013

File Ref(s): APP/T1600/A/13/2200210

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File Ref: APP/T1600/A/13/2200210

Land at Javelin Park, near Haresfield, Gloucestershire

- 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 Urbaser Balfour Beatty against the decision of Gloucestershire County Council.
- The application Ref 12/0008/STMAJW, dated 31 January 2012, was refused by notice dated 10 April 2013.
- The development proposed is proposed development of an Energy from Waste (EfW) facility for the combustion of non-hazardous waste and the generation of energy, comprising the main EfW facility, a bottom ash processing facility and education/visitor centre, together with associated/ancillary infrastructure including access roads, weighbridges, fencing/gates, lighting, emissions stack, surface water drainage basins and landscaping.

Summary of Recommendation: The appeal be allowed and planning permission be granted subject to conditions.

Procedural Matters

1. The Inquiry sat for 11 days between 19 November and 13 December 2013 and for a further 11 days between 14 and 29 January 2014. All of the Inquiry sessions were held in the Parkside Suite at the Hallmark Hotel, Matson Lane, Robinswood Hill, Gloucester. On the afternoon and evening of Tuesday 14 January personal statements were heard from the first 31 of the interested parties listed under Appearances at the end of this report. Mr Goodchild was unable to be present and I read his statement after opening proceedings on Wednesday 15 January.
2. The Inquiry was in connection with an appeal which has been recovered for determination by the Secretary of State by letter dated 16 July 2013. The reason given for recovery was that the appeal involves proposals of major significance for the delivery of the Government's climate change programme and energy policies.
3. Before the Inquiry, the Planning Inspectorate had agreed to the requests of Stroud District Council (SDC), Gloucestershire Vale Against Incineration (GlosVAIN) and Gloucestershire Friends of the Earth Network (GFOEN) to be made Rule 6(6) parties.
4. I held a pre-Inquiry meeting on 25 September 2013 at the Inquiry venue. My note of the meeting is at CD4.12. Following that Gloucestershire County Council (GCC) appointed Yvonne Parker of Programme Officer Services Limited as Programme Officer. Without Ms Parker's efficient and effective organisation of the Inquiry programme and documentation it is unlikely that the timetable would have been adhered to. She also played an important part in establishing the good humoured atmosphere in which the Inquiry took place and all expressed their appreciation to her at the close.
5. On 30 September 2013 the appellant, Urbaser Balfour Beatty (UBB), arranged for three blimps to be flown at heights representing the lowest and highest parts of the proposed building – that is the two ends – and the top of the proposed stack. I carried out an unaccompanied visit to most of the agreed viewpoints within 2.5km of the appeal site on that day. The weather was not suitable to see the

appeal site from more distant viewpoints. I carried out an accompanied inspection of the appeal site itself and the immediate surroundings on 30 January 2014 and on 17 April 2014 a further more extensive unaccompanied tour of the more distant viewpoints both agreed between UBB and GCC for the purposes of preparing the planning application and Environmental Statement (ES) and suggested during the evidence at the Inquiry by others. The weather on that day was warm and quite sunny to start but clouding over later. It was hazy throughout. While that did not restrict views from and of distant points they were not as clear as would have been ideal.

6. The planning application was supported by a planning statement with appendices, a Design and Access Statement (DAS), planning application drawings, a community involvement statement and other information which included a BS5837 tree survey; a CEEQUAL Pre-Assessment; a BREEAM Industrial 2008 Credit Tracker; a Site Waste Management Plan; a Waste Minimisation Statement; and a sunlight/daylight assessment. This is all within CD1.1.
7. During the Inquiry two amended drawings were submitted to correct an error that had been identified on the submitted planning application drawings. This had no material effect on the assessments undertaken and was done purely for the avoidance of doubt in the event of planning permission being granted. These are included at CD1.1(iv/a)
8. The planning application was also accompanied by an ES in four volumes (CD1.2) and a transport assessment (CD1.4). Following letters from GCC dated 7 August 2012 and 13 November 2012 under Regulation 22 (1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 two further statements were submitted in accordance with those Regulations. These are respectively CD1.5 and CD1.6. Further clarification and errata statements were submitted and are included as CDs 1.3, 1.7 and 1.8.
9. On 22 May 2013 the Environment Agency (EA) issued an Environmental Permit (EP) – ref: EPR/CP3535CK - in respect of the Javelin Park Energy Recovery Facility that is the subject of this appeal. The EP is included as CD2.1 and the EA's decision document is CD2.2. On 27 September 2012 Fichtner Consulting Engineers Limited submitted on behalf of UBB an R1 application to the EA (CD2.3). The EA confirmed by letter dated 7 March 2013 (CD2.4) that, based on the design data provided, the plant proposal is capable of having an R1 efficiency factor equal to or above 0.65. The letter therefore '*...preliminarily certifies that it is an R1 recovery operation under Annex II of Directive 2008/98/EC...*'.
10. A Statement of Common Ground (SOCG) between UBB and GCC was entered into on 4 October 2013 (CD4.7). It contains 11 sections covering the matters typically included in such a document. Importantly, it sets out what is agreed under each of the reasons for refusal and what remains at issue between the main parties to the Inquiry. At that date no requirement for an obligation under s106 of the principal Act was foreseen; that remained the case at the close of the Inquiry.
11. SDC submitted its comments on the SOCG between UBB and GCC on 20 November 2013 (CD4.8). This sets out those considerable sections outside the scope of SDC's case and a limited number of matters within sections 3, 6, 7, 9 and 10 which are not agreed.

12. A SOCG between UBB and GlosVAIN dated 17 October 2013 (CD4.9) sets out by way of text changes in red to the SOCG between UBB and GCC those areas of agreement and disagreement between the two parties and a considerable number of qualifications to other parts of the document.
13. When the planning application was consulted upon by GCC over 4,000 responses were received. These are all included with the appeal questionnaire and some, such as the representations by GlosVAIN, are extensive. Further submissions were made in response to the notification of the appeal by GCC on 15 July 2013 and these continued to be received up to the close of the Inquiry. Most of these were made by GlosVAIN and particular interested parties.
14. In my view such submissions by the main and Rule 6 parties after the Inquiry opened was not within either the spirit or the letter of Rule 6 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000. Accordingly, when resuming the Inquiry on 14 January 2014 after the Christmas break I announced that I would not accept from those parties any further document not first published in January 2014 unless the exceptional circumstances to do so were explained to me.
15. Submissions from particular interested parties continued to be received with some sent to the Programme Officer as late as during closing submissions. Again, this seemed to me contrary to natural justice and prejudicial to UBB in particular. During the afternoon of 28 January 2014 I announced that any submission made after 12.40 on that day (this being the time when closing submissions started) would be forwarded to the Secretary of State and not considered by me. Both David Elvin QC and Richard Phillips QC supported and endorsed this approach.
16. The Waste Core Strategy (WCS) (CD5.1) was adopted by GCC on 21 November 2012 following examination between 5 September 2011 and August 2012 in accordance with the provisions of the 2004 Act. I carried out that examination. I raised this matter at the pre-Inquiry meeting stating that I saw no reason why I should not hold the Inquiry. All present agreed and full details are given at paragraph 3 of CD4.12. In the event, a great deal of material from the WCS evidence base and examination library was introduced to the Inquiry Core Document library (CD5.7 to CD5.58 inclusive). Included among these documents was my report to GCC (CD5.49).
17. Following the close of the Inquiry two matters occurred on which the comments of the main and Rule 6 parties were requested on 10 March 2014 (PINQ 1).
18. On 18 February 2014 the Court of Appeal decision in *Barnwell Manor Wind Energy Limited v East Northamptonshire DC, English Heritage, National Trust and Secretary of State for Communities and Local Government* [2014] EWCA Civ 137 (*Barnwell Manor*) was handed down. The judgement upholds that of the Hon. Mrs Justice Lang in the lower court and has an important bearing on the cases put by GCC and UBB on the heritage issue. Accordingly, what was said by Mr Moules and Mr Phillips in closing on the other cases cited in their evidence is edited to an extent in my recording of their respective cases on heritage impacts.
19. On 6 March 2014 the National Planning Practice Guidance went 'live' on the Department for Communities and Local Government web site. This has replaced a large number of guidance documents including CDs 6.2, 6.7, 6.10, 6.13 and

- 6.14, listed towards the end of this report. However, the Ministerial Statement published at the launch is clear from the bullet points set out that where appropriate the National Planning Practice Guidance provides only greater clarity and affirmation of matters already included in policy (the Framework typically) rather than any new or additional policy. None of those bulleted points relate specifically to the matters relevant to the determination of this appeal since the reference to renewable energy is not to energy recovered from waste. As such where references to replaced documents were made in the closing submissions of the advocates these references remain in the summary of the cases made.
20. Responses to the letter of 10 March were received from GFOEN (PINQ2), GCC (PINQ3), GlosVAIN (PINQ4) and UBB (PINQ5 and PINQ6). Unfortunately, in his response on behalf of GlosVAIN, Mr Watson raised another matter. Comments on this were invited by letter dated 28 March 2014 (PINQ7). Responses to this letter were received from UBB (PINQ8) and GCC (PINQ9). I have taken into account all the views expressed in these various letters in making my recommendation.
21. Finally, I feel it is important to record that I worked for GCC planning department between August 1975 and December 1978 and lived to the north of the City of Gloucester. I moved to an adjoining county in 1978 and have lived there ever since. I mention this because I am as a consequence very familiar with the wider area in which the appeal site lies and have seen its evolution over a period of nearly 40 years. Parties to the Inquiry were made aware of that.

The Site and Surroundings

22. The appeal site is located approximately 1.6km west of the centre of Haresfield and 8.5km south of the centre of Gloucester. It is approximately 5.1ha in area (including the site access road) and forms the southern part of Javelin Park, a disused former airfield and cleared brownfield site, currently comprising derelict ground, hard-standing and vegetated areas.
23. The appeal site is bounded to the north by an undeveloped derelict area, (the northern part of Javelin Park) with extant planning permission for B8 use which also extends to the appeal site itself, beyond which lies Blooms Garden Centre. Junction 12 of the M5 motorway is approximately 550 metres to the north. The eastern boundary of the appeal site is formed by the B4008 beyond which are agricultural fields and one residential property, the Lodge, which is approximately 50 metres from the site boundary beyond a mature hedgerow. A small unnamed watercourse flows into the south-east corner of the appeal site and continues along the southern and western boundaries delineated by a security fence and hedge respectively.
24. Agricultural fields lie to the south and west of the appeal site. The M5 motorway runs in a north-east/south-west orientation, approximately 70 metres from the western boundary. Hiltmead Farmhouse is located approximately 230 metres to the west on the opposite side of the M5 motorway.
25. Access to the appeal site is via a purpose built private road from a roundabout junction, recently constructed to provide access to Javelin Park from the B4008. Another access onto the northern half of Javelin Park is via a right turn lane on the B4008 and is shared with the Blooms Garden Centre access. There are no Public Rights of Way crossing or passing adjacent to the site.

26. The appeal site lies within the Vale of Berkeley, part of the valley of the River Severn. The topography is defined by the very flat, low-lying valley bottom landform, with few obvious landmark features. The area beyond Javelin Park is predominantly semi-rural in nature. Within approximately 2km of the appeal site are the settlements of Haresfield, Little Haresfield, Standish and Moreton Valence and the Quedgeley East and West and Waterwells business parks. Framing the Vale and farther afield is the Cotswolds Escarpment broadly to the east and, farther away again, the high ground of the Forest of Dean to the west of the River Severn.

Planning Policy

Development Plan Policy

27. By the time of the Inquiry the development plan for the purposes of s38(6) of the 2004 Act included the WCS, saved policies of the Waste Local Plan (WLP) adopted in October 2004 (CD5.2) and the Stroud District Local Plan (SDLP) adopted in November 2005 (CD5.3). Policies cited in the reasons for refusal from these plans are WCS policies WCS14 and WCS16, SDLP policies NE10 and GE1 and WLP policy 37.
28. The Regional Planning Guidance for the South West and the saved policies of the Structure Plan were both revoked as a result of the Regional Strategy for the South West (Revocation) Order 2013 which came into effect on 20 May 2013. Structure Plan policies cited in the reasons for refusal were NHE1 and S6(a). These are no longer relevant.
29. The version of the WCS in effect submitted for examination (CD5.7) included a policy (WCS11) relating to Areas of Outstanding Natural Beauty (AONB) but no policy on the historic environment. Reliance was placed on Planning Policy Statements 7 and 5 to address general landscape and the historic environment respectively. By the time that the hearing sessions took place it appeared likely that these two Planning Policy Statements would be replaced by the National Planning Policy Framework (the Framework). However, that was not published until after the hearing sessions ended. The wording of what became adopted WCS policies WCS14 and WCS16 therefore emerged through the 'main modification' process set out in the 2004 Act and were consulted upon with, among others, Natural England and English Heritage.
30. Policy WCS14 addresses landscape and is divided into two main parts; general landscape and AONBs. Within the general landscape it is permissive of development where there would not be a significant adverse effect on the local landscape or where that impact can be mitigated. Where significant adverse impacts cannot be fully mitigated the social, environmental and economic benefits of the proposal must outweigh any harm arising from those impacts. Looking at the part relating to the AONB, the appeal site is not within an AONB but it is common ground that it does affect the setting of the Cotswolds AONB. Development proposals will only be permitted in those circumstances where it can be demonstrated that there is a lack of alternative sites not affecting the AONB to serve the market need; the impact on the defined special qualities of the AONB can be satisfactorily mitigated; and where there would be compliance with other relevant development plan policies. How this policy should be

interpreted was not agreed by the parties and, in the light of recent case law¹, was the subject of submissions. SDLP policy NE10 adds little of substance to policy WCS14.

31. The historic environment is addressed by WCS policy WCS16. Proposals that would have a significant adverse impact upon heritage assets including their integrity, character and setting will only be permitted where the benefits clearly outweigh the impacts of the proposal on the key features of the site or where adequate measures to mitigate adverse impacts are included and other relevant policies are complied with. The term 'significant adverse impact' is not one that appears in Framework paragraphs 131 to 135 inclusive and the way in which this policy should be interpreted was also the subject of submissions.
32. WLP policy 37 addresses proximity to other land uses and is cited in respect of both the second and fifth reasons for refusal. The second is concerned with the effect of the form of the proposed development on the character and appearance of the area and while this appears as a matter to be taken into account in determining applications against the policy, it does not seem to be its main thrust. This is the specific and cumulative effect on the amenity and health of nearby land users and occupiers arising from issues such as noise, dust, odour, vermin, leachate and flue emissions. The policy requires appropriate ameliorative measures to be incorporated into the proposals.
33. The fifth reason for refusal concerns the overbearing effect that the development would have on nearby residential properties. This is not a matter mentioned in the supporting text to the policy. It is however among the objectives of SDLP policy GE1.
34. Although not cited in the reasons for refusal, the SOCG (CD4.7) confirms that GCC also considers that the appeal proposal does not accord with WCS policy WCS6 and SDLP policies BE12 and NE8.
35. WCS policy WCS6 is the key delivery policy for the residual waste recovery capacity required over the Plan period. It identifies the amount of municipal solid waste (MSW) and commercial and industrial (C+I) waste for which capacity should be provided and identifies five sites where planning permission will be granted for strategic residual waste recovery facilities (>50,000 tonnes per annum) subject to compliance with three criteria. These are meeting the General and Key Development Criteria set out in Appendix 5 of the WCS; addressing Habitats Regulations issues; and demonstrating through a supporting statement that it would be the most sustainable option to manage waste arisings at the proposed facility where those wastes would come from outside the County. The appeal site is one of the five listed in the policy.
36. The policy also permits strategic scale residual waste recovery facilities on other sites within the defined Zone C and non-strategic scale facilities anywhere where it would form part of an integrated and adequate waste management system. These too are subject to a number of criteria.

¹ *Tesco Stores v Dundee City Council* [2012] UKSC 13, [2012] P.T.S.R 983

37. SDLP policy NE8 deals with development both within an AONB or affecting its setting. It is therefore similar in scope to WCS policy WCS14. However, the three criteria required to be met include the nature, siting and scale of the proposal being sympathetic to the landscape and the design and materials being complementary to the character of the area.
38. SDLP policy BE12 requires that any development proposal affecting the setting of a listed building will only be permitted where it preserves the setting of the affected listed building.
39. Design is the subject of WCS policy WCS17. This requires a high standard of design that is clearly robust and articulated through a DAS to be achieved. Particular issues set out include how the proposal reflects, responds and is appropriate to its local environment and surroundings and the use of high quality architecture and landscaping. In this context 'design' was taken throughout the Inquiry to mean more than 'appearance' although this was clearly embraced.
40. The SOCG (CD4.7 section 5) lists and gives details of many more development plan policies. However, those discussed above are the most relevant to the determination of this appeal.

Emerging Development Plan Policy

41. During the Inquiry the Stroud District Local Plan was submitted for examination. In evidence Mr Wyatt confirmed that the content was not materially different from the pre-submission consultation draft (CD5.4) insofar as it related to the matters before the Inquiry. In summary, the Plan proposes new allocations for strategic housing growth immediately to the north of the M5 at Junction 12 as an extension to the existing Hunts Grove development and new allocations for strategic employment growth to the south of M5 Junction 12 at Quedgeley East and Javelin Park.

National Planning and Other Policy and Guidance

42. The Core Documents include many such publications most of which are listed in the main and Rule 6 parties' statements of case. Those considered to be of particular relevance to the determination of this appeal are listed in the SOCG between UBB and GCC (CD4.7, paragraph 5.8). The following featured prominently in the evidence heard at the Inquiry:
 - National Planning Policy Framework (CD6.1) particularly paragraphs 131 to 135 inclusive;
 - Planning Policy Statement 10 (CD6.3) and the draft revision of it published in July 2013 (CD6.9);
 - EN-1: Overarching Energy National Policy Statement (CD6.5);
 - EN-3: Renewable Energy Infrastructure National Policy Statement (CD6.6);
 - Energy from Waste – A Guide to the Debate (CD7.9);
 - Forecasting 2020 waste arisings and treatment capacity (CD7.11) and the October 2013 update (CD7.11.1);
 - Waste Management Plan for England (CD7.30) which was published during the Inquiry and superseded Waste Management Strategy for England 2007 (CD7.5);

- Government Review of Waste Policy in England 2011 (CD7.6);
- The Guidelines on Landscape and Visual Impact Assessment 2nd Edition 2002 (CD10.2) and the more recently published 3rd Edition (2013) (CD10.1);
- Gloucestershire Landscape Character Assessment (CD10.4);
- Stroud District Council Landscape Character Assessment (CD10.8);
and
- Cotswolds AONB Landscape Character Assessment (CD10.9).

Planning History

43. The detailed planning history of the appeal site and its immediate surroundings is set out in Table 4.1 of the SOCG (CD4.7). Of most relevance is an outline planning permission (ref: S.01/1191) granted in November 2002 for up to 45,151 sqm for B8 use. It is agreed that this permission was lawfully implemented following approval of Reserved Matters application (ref: S.02/2178) by virtue of demolition of existing buildings and site clearance, completion of the new site access and initiating the landscape scheme.
44. In 2005 an application (ref: S.05/2138/VAR) was submitted to extend the period for submission of reserved matters pursuant to permission reference S.01/1191 for a further five years. The application was 'called in' for determination by the Secretary of State who granted the Outline permission in a decision dated 27 March 2007. SDC subsequently granted a further permission on 12 August 2011 (ref: S.10/0590/VAR) to extend the time for implementing the outline permission S.05/2138/VAR for a further three years.
45. There have been five reserved matters applications submitted pursuant to the Outline permission reference S.05/2138/VAR. These related to different configurations and phasing of the development (and include development on the appeal site) and were approved in 2008 and their life extended by virtue of a further permission (ref: S.10/0590/VAR). They all lapsed on 16 April 2013. However, permission S.10/0590/VAR remains extant in Outline and relates, through a number of interim permissions, to the original November 2002 permission and allows for 45,151 m² of B8 buildings on the whole Javelin Park site and for further Reserved Matters applications to be submitted up to 11 August 2014.

The Proposals

46. The appeal proposal is described extensively in CD1.1 and CD1.2 and in considerable detail in both the SOCG between UBB and GCC (CD4.7, section 3) and the report to the GCC planning committee (CD1.9, section 2). Therefore, the principal features only are described here.
47. The development proposed is for an Energy from Waste (EfW) facility for the combustion of waste and the generation of energy in the form of both electricity and heat. While the electricity will be provided to the local electricity distribution network no specific heat load has been identified; the facility would therefore be built in 'combined heat and power (CHP) ready' mode. The installed electricity generating capacity would be 17.4 Megawatts of which 14.5 Megawatts would be exported to the local network while the remainder would be used in the operation

- of the facility. The necessary connections are not part of the application but the potential environmental effects have been considered in the ES.
48. Electricity generated from the biogenic fraction of the waste would be classed as renewable. Reflecting the assumed composition of the waste, this was assessed at some 56% in the application².
49. The capacity of the facility would be approximately 190,000 tonnes per annum of non-hazardous residual waste, that is the waste left after recycling and composting. The majority would be residual MSW from Gloucestershire and UBB has been awarded the contract to manage this waste stream by GCC (CD12.1 and CD12.2). The balance would be C+I waste sourced mostly from the County but possibly from elsewhere. Access from the highway network would be via a private road within the Javelin Park area which connects via a roundabout, specifically designed to accommodate industrial traffic including bulk articulated HGVs, on the B4008. That highway connects to Junction 12 of the M5 and the A38 beyond.
50. The main building would include the following:
- waste reception hall;
 - waste bunker;
 - boiler hall and demineralisation plant;
 - turbine hall;
 - emissions stack;
 - flue gas treatment (FGT) facility;
 - Air Pollution Control (APC) reagent silos and APC residue silos;
 - bottom ash processing facility; and
 - education/visitor centre and staff facilities.
51. The main building would be some 236 metres long and between 55 and 25.6 metres wide. The highest part of the building (at some 48 metres) would house the FGT facility and the APC reagent and residue silos. In this area the building would slope away from the western end from a peak of 48 metres to about 40.65 metres in height.
52. The section of the building housing the boiler and turbine hall would be at a height of 42 metres, the waste bunker at a height of 31.5 metres. These building heights would be achieved by sinking these process elements to a depth of some 13 metres. The tipping hall would be at a height of 21 metres while the lowest part of the building, at a height of 14.65 metres, would house the bottom ash processing facility, which would be located at the eastern end of the building. The visitor centre and office space would be part of the main building located on the northern façade. It would provide an interactive exhibition space and visual

² Inspector note: This was revised by Mr Aumonier to 52.6% (see UBB5/REB/A paragraph 59)

- presentation suite for the use of local schools, further and higher education institutions and the community.
53. The orientation of the building would be along a north west/south east axis with the tallest elements closest to the M5. The emissions stack would be some 70 metres in height and about 2.5 metres in diameter and would be located adjacent to the western elevation. The air cooled condenser would be housed in a separate structure some 41 metres long, 14 metres wide and 21 metres high immediately to the south of the turbine hall. An on-site electricity sub station would be located immediately adjacent to the west of it.
54. The evolution of the deconstructed appearance of the building is explained fully in the DAS.
55. The following ancillary and infrastructure elements would also be provided:
- vehicle weighbridges and office;
 - electricity substation;
 - site fencing and gates;
 - service connections;
 - surface water drainage and attenuation features;
 - cycle/motorbike store;
 - external hardstanding areas for vehicle manoeuvring;
 - internal access roads and car parking;
 - ammonia and diesel tanks;
 - fire sprinkler system pump house; and
 - new areas of hard and soft landscaping.
56. Turning now to the waste management process, in simple terms waste would be delivered by vehicles which, having passed through the weighbridge and checking procedures, would progress to the enclosed tipping hall and would empty the waste into the bunker. After mixing, the waste would be transferred under negative pressure to the furnace grates comprising fixed and moving bars to ensure that all the waste is exposed to the combustion process. Various measures would be in place to ensure that the temperature was maintained above the required 850° Centigrade.
57. A demineralisation plant within the main building would use chemicals, including hydrochloric acid and caustic soda to treat boiler water to prevent corrosion. The chemicals would be delivered by bulk tanker and stored in bunded tanks within the building.
58. Combustion gases would be cleaned through the FGT system prior to release to atmosphere via the stack. The FGT would comprise an absorption system that includes dry lime scrubbing, activated carbon injection and fabric filters and would be both operated and monitored in accordance with the requirements of the EP (CD2.1).

59. Two types of solid residues would be produced: APC residues and bottom ash. About 10 days' APC residues storage capacity would be provided in the silos although, in practice, it would be moved more frequently than that. APC residues are a hazardous waste requiring management at a permitted facility or use in an industrial process³. After cooling and drying the bottom ash would be processed on site for use as secondary aggregate and matured at the eastern end of the building prior to movement off-site.
60. Construction of the facility would be in accordance with a Construction Environmental Management Plan which would control all aspects of the construction process. Once operational the waste treatment and combustion process would operate 24 hours a day except for those periods of planned shutdown for maintenance. HGV movements, which are assessed as being some 208 per day (104 in; 104 out), would be restricted to the hours of 07:00 to 19:00. Some 40 staff would be required to operate the facility on a shift pattern. About 62 of the assumed 80 staff vehicle movements would be expected to occur within this 12 hour core period.
61. Secure fencing would be erected where required around the perimeter with light weight fabric screening fitted on the northern boundary. Material excavated to enable the sinking of the boiler and turbine hall and the waste bunker would be used to form screen and noise attenuation bunds up to 7 metres in height where located along the eastern boundary. Planting with a mix of native species would take place here and at other points along the perimeter. The water course corridor running along the southern and eastern boundaries would be protected and enhanced.
62. During hours of darkness the site would be lit commensurate with health and safety requirements. Light spillage would be minimised to contain light pollution with lanterns chosen to achieve full cut off. Intelligent lighting control systems would be provided to those floors incorporating offices and the visitor/education centre to ensure no illumination outside operational hours. Lighting of operational areas would be to provide a safe working environment rather than full lighting. Measures would be put in place to avoid any impact on foraging bats from light spillage from within the building.

The cases put

63. The order in which the main and Rule 6 parties closed their cases was GFOEN, GlosVAIN, SDC, GCC and UBB. That is the reverse of the order in which they are presented in the next part of this report. In setting out those cases I have tried to avoid duplication. This is particularly the case with Mr Simons's submissions for SDC on landscape and visual impacts. These drew quite heavily on the cross examination (XX) of Mr Smith by Mr Elvin and the evidence of Mr Russell-Vick, something that Mr Elvin mentioned (albeit quite light heartedly) when he came to close his own case. As that appears first in my report, those matters are dealt with there and the summary of Mr Simons's closing submissions concentrates on the evidence presented by his landscape witness, Ms Marsh. Each closing submission is in any event listed and available to be read in full.

³ Inspector note: Mr Roberts confirmed the arrangements now made to transfer this material to Augean's facility at Kings Cliffe (see UBB1V)

64. In this part of the report quoted parts of documents are noted as having been emphasised by the advocate in closing submissions. Where the phrase 'emphasis added' appears therefore it means 'added by that advocate to draw attention to a particularly supportive passage'.

The Case for the appellant, UBB

Introduction

65. Before dealing in order with the nine main issues identified at the pre-Inquiry meeting as being of interest to the Secretary of State (CD4.12), Mr Phillips reviewed the cases put against the appellant.
66. Dealing first with that of **GCC**, the five reasons for refusal in fact amount to only three. The second of those, impacts on heritage assets, has simply not been substantiated. All of the alleged impacts constitute "less than substantial harm" in Framework terms and, consequently, there can be no presumption against planning permission being granted for this reason. Furthermore, none of the alleged impacts is significant in Environmental Impact Assessment (EIA) terms and WCS policy WCS16 is not therefore engaged. While those impacts may be material planning considerations, they should be accorded very little, if any, weight.
67. The third, the impacts on residential amenity, is at best a makeweight point. It is now agreed to be confined to one dwelling only, the Lodge. In fact, the Lodge would actually suffer greater harm if planning permission for the appeal proposal was refused and the extant B8 warehousing permission was implemented following a reserved matters approval reflecting the essential form of that previously approved.
68. The principal objection of GCC is therefore the landscape and visual impact that it is said the appeal proposal would have. There are however a number of contradictions and uncertainties within the case advanced by GCC.
69. First, on the one hand GCC accepts the need for the appeal proposal (WCS policy WCS6); the technology proposed; the scale at 190,000 tonnes per annum and the single process line; the suitability of the site in principle for residual waste treatment facilities at all three scales tested through the WCS examination process; and a stack at 70 metres with a plume. GCC does not suggest any alternative site where the landscape and visual impacts would be less or where the impact on the AONB would be more acceptable compared with the appeal proposal. Nor does it suggest any more favourable site for the potential provision of CHP or in any other respect. It does not challenge the correctness of its position in 2006 that this was the best of the then allocated waste sites, a position accepted by the Secretary of State in 2007 (CD9.2).
70. Nevertheless, on the other hand at the Inquiry the position of GCC is that the appeal proposal would have a massing and scale that is too great and would represent a vertical feature in a horizontal landscape. Furthermore, a landmark building would be wrong in this location. In making these arguments GCC seeks to denigrate the landscape and visual assessment carried out by Atkins and upon which GCC relied as part of the WCS evidence base to support the allocations proposed for that Plan (CD5.23).

71. These are mutually incompatible positions. Any EfW facility with the capacity proposed and the stack required is bound to be a bulky structure that would rise above the other development in the area even if sunk somewhat lower into the ground than proposed. Any such facility must be seen as a vertical feature in the landscape and would represent a landmark building. It cannot be a surprise to GCC that the strategic scale facilities envisaged on the allocated sites will be large. It is obvious from the images in the WCS itself used to illustrate what it notes as innovative design, the text that accompanies WCS policy WCS17 and the content of WCS Appendix 5. UBB's representations to the publication version of the WCS specifically drew attention to the fact that a strategic scale residual waste treatment facility would '*inevitably create a significant landmark*' (CD5.45 internal pages 3 and 33). What, if not the present proposal, was GCC actually expecting?
72. GCC's stance at the Inquiry is flatly contrary to the position it presented at the WCS examination, where it robustly defended the allocation of the site for a strategic scale residual waste management facility in full knowledge by that stage of the scale of development being proposed by UBB and the WDA, as had come forward through the procurement process; UBB's scoping report; and the scale model of the facility used in public exhibitions undertaken by UBB. As a result of the evidence put forward then by GCC the examination Inspector was able to find the Plan sound and endorse the suitability of the site for all three scales of EfW facility envisaged. That the Inspector did not identify any 'showstoppers' is an indication that, on the evidence, he had no reservations about the suitability of the appeal site in principle for a scale of development similar to that now proposed. GCC misinterprets the Inspector's report (CD5.49 paragraph 125) regarding the '*challenge*' that designers would face since this relates mainly to the tall stack. GCC's case is, however, in reality an 'in principle' objection to any large scale facility on the appeal site.
73. Second, the WCS and the Joint Municipal Waste Management Strategy (JMWMS) were prepared at approximately the same time, were informed by each other and were mutually interdependent. While there was clearly close cooperation between the WDA and the WPA throughout these parallel processes, within a month of the Cabinet signing the contract for its procurement the WPA illogically refused planning permission for the essential infrastructure that the WCS was designed to facilitate for the WDA.
74. Finally, it is obvious that design embraces more than just appearance and must include scale and massing, as is clear from the first indent of WCS policy WCS17 and the General Development Criteria of WCS Appendix 5. Mr Roberts in evidence-in-chief (EiC) and the WCS (CD5.1 paragraph 4.269) both confirm that WCS policy WCS17 is the key, lead or imperative policy for taller buildings. GCC has maintained throughout that the appeal proposal would not conflict with this policy. However, this position is untenable since it is not possible to claim that the appeal proposal would have unacceptable landscape and visual impacts while at the same time raising no conflict with a policy that requires a proposal to reflect or positively contribute to the character and quality of the area.
75. Turning to the uncertainties, the foremost is the lack of clarity in the landscape and visual impact case advanced by GCC. It is clear from GCC's Statement of Case that the objection was essentially an allegation that the building was taller than necessary to house the plant equipment (CD4.3, paragraph 6.8). Hence the

- Rolton exercise which attempted to demonstrate that the appeal proposal was much taller than other EfWs of comparable waste throughput and Mr Gillespie's evidence in reliance upon that exercise that the proposal was excessively or disproportionately tall.
76. This gave no indication that GCC would contend that the alleged excessive height resulted from a failure sufficiently to lower the building into the ground. There was no indication that GCC was advancing a design case, howsoever defined.
 77. Furthermore, Mr Russell-Vick gave no indication at all through the entirety of his evidence about the scale of building that would be acceptable at the appeal site. He did not assess the various options developed by Mr McQuitty and stated in respect of the various heights put to him in XX that none would overcome his objections. This was tantamount to an 'in principle' objection to even a medium scale facility at the site in direct contradiction to the policies of the adopted WCS.
 78. It also contradicts the evidence of other GCC witnesses whose objective was to demonstrate through their evidence that the building height was excessive and disproportionate and that a lower building could be achieved. It was only later in the Inquiry with the introduction of further documents (GCC/INQ/4 and GCC/INQ/11) that GCC pursued the notion that the whole facility should be sunk as low as possible into the ground to minimise the landscape and visual impacts. Even then, the Inquiry was left not knowing what scale of facility GCC would find acceptable.
 79. It is difficult to understand how the planning committee came to its decision since the minutes of the meeting (CD1.10, pages 58 to 59) do not record any discussion of the benefits of the appeal proposal set out in the officers' report. How the planning committee struck the overall planning balance is therefore unclear. Mr Gillespie explained that he attached significant weight to all the benefits advanced in the planning application submissions. If the planning balance exercise is properly done those benefits, set against what are weak reasons for refusal, should lead to planning permission being granted.
 80. For **SDC**, there are two principal objections; landscape and visual impact and the appeal proposal's impact on the extension of the Hunts Grove development. These are addressed in turn.
 81. Dealing with the first of these, the evidence of Ms Marsh was heavily criticised by Mr Smith for its absence of a coherent methodology. In any event, it adds little to that of GCC and is not consistent with previous professional landscape advice to SDC which was slightly complimentary about the proposal's design and proposed mitigation.
 82. Turning to the second, this was raised very late in the day and without any specific member endorsement. Moreover, Mr Jones, who gave evidence on this matter, contemporaneously advised SDC that Hunts Grove was viable and would make a full contribution to SDC's five year housing supply. When one examines the evidence Mr Jones put forward, it is abundantly clear that none of it actually supports the objection that house buyers would be deterred from purchasing properties at the Hunts Grove extension. SDC's own viability consultant's firm advice was that the extension was viable and it has been included as the principal strategic site in the emerging SDC Local Plan. The objection is deserving of no weight.

83. The evidence of Dr Coggins and Mr Christensen is, in reality, irrelevant to the determination of this appeal since there is no requirement to identify the optimal solution. In any event, SDC has not presented a worked up realistic alternative proposal and was unable to identify any site more suitable either of itself or for its CHP potential. The authorities referred to by Mr Simons need to be considered in that context.
84. Furthermore, the case now advanced is very different to the position taken during the preparation of the WCS when no issue was taken by SDC with the unfettered allocation of Javelin Park for residual waste treatment facilities including EfW at the three scales identified and assessed. The main motive appears to be to persuade the Secretary of State to dismiss the appeal so that GCC as a WDA would be forced to rethink the contract. However, as Mr Wyatt agreed this would be a totally illegitimate approach.
85. Many of the points taken by **GlosVAIN** are: irrelevant to the determination of this appeal (technology choice given the neutrality of the WCS); a rerun of matters dealt with at EP stage by the EA; an attempt to rewrite the need assessment in the recently adopted WCS on the basis of short term deviations from assumptions made over a lengthy plan period.
86. Issues relating to perceived effects on health were an attempt to rerun points identical to those already raised in response to the applications for both planning permission and the EP. They were considered by the WPA and the EA and rejected then and can gain no more traction now, even when rebadged as perceptions. Indeed, they should in fact attract considerably less attention now. As is usual in similar cases for EfW facilities, the local community has been stirred up by alarmist reports disseminated by action groups and the local press.
87. The case advanced by **GFOEN**, revolving around the correct application of the Habitats Regulations and the need for an Appropriate Assessment (AA), is almost entirely a matter for submissions and is addressed later. In short, AA is required only where a project is likely to have significant effects on a European site of conservation importance. In doing so at this stage, the in combination effects have to take into account the appeal proposal and those developments consented or subject to an application for development consent. Here, screening has established that the appeal proposal would not be likely to have significant effects on a European site of conservation importance so AA is not required to be carried out.
88. Finally to the cases advanced by the **interested parties**. Weight of objection is not in itself a proper reason to dismiss the appeal and, in any event, the number of persons and organisations who have objected is not unusual for a development of this type. Many of the points made are either reflected in the cases of the main and Rule 6 parties or not material to the decision that must be made. The decision not to ask questions of any of those who spoke was not to be dismissive of their evidence but was instead intended to focus the valuable Inquiry time on the principal issues of relevance.

Issues (a) and (b): national waste, energy and climate change policies

89. Under this issue reference is made to and support drawn from national policy for the dual role played by facilities such as the appeal proposal in the treatment of waste and the recovery of energy. This role is recognised in EN-1 (CD6.5) and

both the former Waste Strategy 2007 (CD7.5) and its replacement, the Waste Management Plan for England (CD7.30). The latter expressly incorporates the Government Review of Waste Policy in England 2011 (CD7.6) and refers to Energy from Waste – A Guide to the Debate (CD7.9). Together with the local authorities' waste management plans these fulfil the obligations under Article 28 of the revised Waste Framework Directive.

90. Both EN-1 and EN-3 clearly state that they are likely to be a material consideration (CD.6.5, paragraph 1.2.1 and CD.6.6, paragraph 1.2.3) and the Framework states that they are material considerations in decisions on planning applications (CD.6.1, paragraph 3). The Chief Planning Officer letter, dated 9 November 2009, also confirms their materiality (CD.6.18, Annex A, paragraph 16). All decision letters on EfW facilities since the publication of EN-1 and EN-3 in July 2011 accept their relevance (see, for example, CD.9.28, paragraph 37). Moreover, the Framework, which is the latest Government guidance in relation to planning policy, expressly states at paragraph 3 that national policy statements form part of the overall framework of national planning policy and are a material consideration in decisions on planning applications.
91. In any event, there is no real dispute between the parties as to these documents' relevance. The Secretary of State and Inspectors have repeatedly confirmed the relevance of all these strands of policy and have concluded that weight must be attached to an EfW facility's role in recovering energy, generating electricity, to its contribution to combatting climate change and to the Government's policy for a secure, affordable and diverse energy supply.

Waste policies

92. The objective of a zero waste economy means that only the minimum amount of waste possible is sent to landfill such that it is truly a last resort. No distinction is drawn between MSW and C+I waste and Waste Review 2011 says that sending waste to landfill when it could have been recovered is clearly wrong (CD7.6, paragraph 240). It also identifies the gap between the potential for energy recovery and the delivery of required infrastructure which means that valuable resources go to landfill (CD7.6, paragraph 219). Significant new investment in waste management facilities to close that gap is required.
93. That is certainly the case in Gloucestershire. In 2011 over 377, 000 tonnes of non-hazardous waste were landfilled in the County. There is therefore an urgent need to treat that waste higher up the waste hierarchy. However, there is no residual waste recovery capacity presently in the County so it will continue to be dependent on landfill for the management of residual waste. There is therefore an obvious and urgent need for the capacity that would be provided by the appeal proposal. Dismissal of the appeal would perpetuate landfilling of substantial amounts of residual waste or the unsustainable transport of such waste to out-of-county facilities.
94. Given the preliminary certification of R1 status by the EA (CD2.4), which is the highest level of certification that can be achieved prior to the facility becoming operational, there is no dispute that the appeal proposal should be considered as a recovery operation and thus above disposal in the waste hierarchy.
95. GlosVAIN makes the argument made at most EfW facility Inquiries that the appeal proposal would burn material that could be recycled and thus treated

- higher up the waste hierarchy. There are nine points to be made in response to this.
96. First, with regard to the waste hierarchy itself the Waste (England and Wales) Regulations 2011 require regard to be had to Article 4 of the revised Waste Framework Directive in the plan-making process but not in the development management function. This was confirmed by the Secretary of State in the '*Middlewich*' appeal decision (CD9.31, paragraph 24). In this respect, Mr Jarman was simply wrong (see paragraph 914 below).
 97. Second, Mr Roberts explained how the contract entered into with GCC as WDA provides that where insufficient MSW is available further waste may be secured (UBB1, paragraphs 2.3.8 to 2.3.13); exactly the flexibility stated in the Guide to the Debate as avoiding competition between recycling and EfW.
 98. Third, while MSW amounts will be below the design capacity of the facility, there will be ample C+I waste available over the plan period. Beyond that forecast MSW and C+I waste arisings will exceed the capacity of the plant.
 99. Fourth, the WDA and UBB deal only with the waste sent to them by waste collection authorities who are under regulatory provisions to ensure waste that is practicably capable of being recycled is recycled (CD7.4, Regulation 12). The private sector is equally under commercial pressures to recycle as much as possible. In the '*Cornwall*' appeal the Inspector noted that a waste producer selling materials for recycling was unlikely to pay for them to be sent to that EfW plant (CD9.4, paragraph 1879).
 100. Fifth, turning to the appeal proposal itself, the waste inputs are controlled by the EP which contains a pre-commencement condition under which the waste acceptance procedure must be agreed by the EA prior to the commencement of operations (CD2.1, page 13).
 101. Sixth, it is agreed by both GCC and SDC that high rates of recycling can and do sit alongside higher rates of recovery and evidence suggests this is so (CD7.7, page 78). Mr Watson's assertions to the contrary rely on European data from 2011 setting out member states' incineration and recycling rates (CD13.78). However, in those countries upon which he relies there is virtually no landfilling of waste at all, unlike the UK. The comparison is therefore not valid and tends to confirm that the competition is between incineration and landfill rather than between incineration and recycling.
 102. Seventh, it is clear from the Waste Review 2011 (CD7.6, paragraphs 214 and 215) and the Guide to the Debate (CD7.9, paragraph 56) that Government believes that high levels of EfW and high levels of recycling can coexist, supporting rather than competing with one another.
 103. Eighth, UBB's evidence assumes that what is a very challenging target of 60% recycling by 2020 will be achieved even though all the easy steps to boosting recycling rates have already been taken. The aspiration of 70% referred to in the WCS may require legislative changes such as reclassification of incinerator bottom ash as recycle to be achieved.
 104. Finally, any references to maximising opportunities for re-using, recycling and composting waste in the WCS (CD5.1, paragraph E.23) are part of the 'Vision'

which is translated into policy via the strategic objectives. The contract was entered into on the basis of the quantities set out in the WCS policy.

105. In short, the appeal proposal will not disincentivise recycling and it will comply with the waste hierarchy.
106. Government policy has been and remains technology-neutral save for support for anaerobic digestion (AD) for certain suitable waste streams (CD7.6, paragraph 22, CD6.5, paragraph 3.1.2, CD6.6, paragraph 2.5.11 and CD7.30, pages 32 to 33). It is for the market to bring forward development. However, the Waste Review 2011 provides explicit support for EfW which would not only move away from wholly unsustainable landfilling of waste but would also contribute to meeting national energy policies and renewable energy targets and help address climate change. The planning system is pivotal to the adequate and timely provision of new waste management facilities to close the gap identified above (paragraph 92) and, having regard to lead times, planning permissions need to be granted now.
107. The energy produced by EfW is *dependable* in that it provides security of supply by utilising home-grown residual waste thereby reducing reliance on insecure energy imports; EfW is a *diversified* energy source in accordance with Government policy to have a wide range of different energy generators and move away from the concentration on coal, gas and nuclear energy; EfW plants represent a dispersal of generating stations, producing *distributed* energy, and lessen the dependence on a small number of very large centralised plants; and the energy produced in EfW plants is not intermittent in nature and subject to the vagaries of the weather like most other renewable energy but is *dispatchable*. It is energy that meets what could be described as the four 'Ds'. Dr Coggins agreed in XX that the energy produced by the appeal proposal would have these qualities. Mr Gillespie said in XX that the four 'Ds' were all valid and pertinent characteristics that should be taken into account in the balancing exercise.

Energy and climate change policies

108. Government policy as expressed in the Climate Change Act 2008, the Energy White Paper 'Meeting the Energy Challenge' May 2007, the UK Renewable Energy Strategy, the UK Low Carbon Transition Plan, EN-1 and the Framework is an unremitting exhortation to industry to provide as much renewable energy capacity as swiftly as possible. It is absolutely clear that Government policy requires that significant weight should be given to a proposal's provision of renewable energy.
109. Energy produced from the biogenic fraction of the waste stream is renewable while that from the fossil based waste is not. Government assumes that about 50% of black bag waste is biogenic (CD8.15, page 35) and while the exact figure depends on the variables used, around 50% of the appeal proposal's energy output will be renewable. In terms of the reasons for the call-in, such a contribution cannot seriously be described as anything other than significant and low carbon. The Guide to the Debate confirms EfW as low carbon (CD7.9, pages 1, 2 and 7) and this has been accepted at previous Inquiries (CD9.11, paragraph IR224; CD9.17, paragraph IR154; CD9.10, paragraphs IR11.63 and 64; and CD9.9, paragraph IR16.12). Furthermore, as Mr Aumonier showed in his WRATE assessment, the appeal proposal will produce lower levels of carbon than the correct alternative, landfill.

110. It is accepted that the waste composition of the typical black bag will change over time but UBB has operational flexibility to manage such change appropriately and may preferentially select C+I waste with a high biomass content. This is specifically commended as an approach in the Guide to the Debate (CD7.9, paragraph 44).
111. In considering the appeal proposal's contribution to renewable energy generation there is clear Framework policy guidance that even small scale projects make a valuable contribution (CD6.1, paragraph 98) and even in the context of nationally significant infrastructure, the contribution from micro-generation is endorsed (CD6.5, paragraph 3.3.29). In all these circumstances, the generation of enough renewable energy to power all of GCC's functions for a year (with the total energy output amounting to twice GCC's needs) and increase by some 58% the renewable electricity generated in the County would be significant on any view. Other Inspectors have taken this view on substantially less energy production (CD9.17, DL paragraphs 20 and 126; CD9.10, DL paragraphs 19 and IR11.45 and 11.55).
112. GlosVAIN's position that the contribution to renewable energy vanishes to practical insignificance when taken as a percentage of nationally operating approved and pre-consented applications (GV/1, paragraph 307) is contrary to national policy just set out and illustrates the flaw in relying on such applications; two relied upon in the analysis will not now be built. Furthermore, as the energy export of 14.5 Megawatt hours would be over 25% of the threshold for a nationally significant infrastructure project it must be at the very least regionally significant, especially when, as Mr Wyatt agreed in XX, there are limited opportunities for other forms of renewable energy such as wind farms and the County struggles to generate its fair share of renewable energy.
113. With regard to carbon footprint, national policy is clear; there is no requirement for applicants to assess CO₂ emissions against carbon budgets despite the recognition that EfW plants may produce significant levels of CO_{2e} (CD6.5, paragraph 5.2.2 and CD6.6, paragraph 2.5.38). This has been confirmed in various recent appeal decisions (CD9.9, paragraph IR16.11 and CD9.11, paragraph IR241).
114. The question for this Inquiry therefore is not whether the application site is the best or whether there is another process with a lesser carbon impact. It is whether the application site is suitable and whether any harmful impacts can be properly mitigated.
115. In any event, Dr Coggins confirmed in XX that he accepted Mr Aumonier's estimate that the appeal proposal would produce a net annual saving of 19,714 tonnes of CO_{2e}. Mr Watson's assertion that assuming the appeal proposal would displace combined-cycle gas turbines for the purpose of this calculation rather than the long run marginal supply is both contrary to what the Guide to the Debate says (CD7.9, paragraph 39 and footnote 29) and nonsensical since that would include the appeal proposal.
116. The Department of Energy and Climate Change (DECC) recognises EfW with CHP as a '*highly efficient*' renewable technology that offers '*considerable*' carbon savings (CD6.12, paragraph 10.1) and explicitly exempts waste fed generators from the need to meet and report on sustainability criteria for generators of greater than 1MW (CD6.12, page 12). EfW proposals have consistently been

- held by Inspectors and the SoS to comply with climate change policies (CD9.9, DL paragraphs 7.6 and 7.9; CD9.10, DL paragraph 19; CD9.11, paragraph IR224 and 241; CD9.17, paragraph IR135 and CD9.31, DL paragraph 23). There is no basis for any different treatment of this appeal proposal.
117. Turning finally to CHP, the appeal proposal is CHP ready (paragraph 47 above). The climate change benefits of the proposal can therefore only increase should its CHP potential be realised. In the policy circumstances this is a factor that can only affect how much weight should be attributed in favour of planning permission being granted. However, CHP has been raised in two contexts at this Inquiry; the benefits that CHP would bring in terms of the appeal proposal's contribution towards energy and climate change policies and the appropriateness of the site in CHP terms since CHP potential was not adequately assessed in the WCS site identification process. These are now considered in turn.
118. National policy is clear as to the importance the Government attaches to CHP. Particular attention should be paid to the siting of facilities to maximise opportunities for CHP (CD6.6, paragraphs 2.5.26 and 27) and substantial additional positive weight should be given to applications incorporating CHP (CD6.24, page 79, paragraph 28). EN-1 recognises the need for CHP plants to be located close to industrial or domestic customers with heat demands (CD6.5, paragraph 4.6.8). The Guide to the Debate states that it is essential that customers for heat are relatively close by (CD7.9, paragraph 136). There is nothing in either the new Waste Management Plan for England or the draft replacement of PPS10 that changes these national policies on CHP.
119. WCS Appendix 5 sets out a criterion requiring applicants to identify the energy recovery and heat system proposed and the proposed client; UBB has done so as Mr Roberts confirmed in evidence since the export of electricity is proposed and the client is identified. Mr Wyatt was unable to identify any WCS policy that requires the provision of CHP.
120. It is obvious that contracts for the supply of heat and power cannot reasonably be expected to have been entered into prior to planning permission being obtained. Inspectors have accepted this (see for example CD9.37, paragraphs 37 to 38 among many). Nevertheless, Mr Aumonier gave written and oral evidence about the commercially sensitive discussions he has had with potential heat users and set out his conclusions. GCC do not object to this approach and Mr Darley explained why UBB should not be criticised for not yet having contracted a client for CHP (GCC/4/A, paragraphs 4.7 and 4.8).
121. The EA considered whether the appeal proposal would meet the duty under Article 50(5) of the Industrial Emissions Directive which requires that heat be recovered as far as practicable and concluded that in designing the facility to be CHP ready the appeal proposal did comply with that duty and also complied with the EA's own (then draft) CHP Ready Guidance. The EA further concluded that the appeal proposal represents Best Available Technology (BAT) as regards its energy efficiency and is in fact at the more efficient end of the indicative BAT scale for energy recovery, even with little or no use of heat (CD2.2, page 22).
122. Turning now to the site identification process, it was suggested by SDC and GlosVAIN that Government guidance issued since the adoption of the WCS somehow required consideration of the CHP potential of sites considered for allocation. There has been no such fundamental shift in policy and, as Mr

- Roberts explained in XX, it was entirely proper and sensible that the CHP potential of the final 13 sites only should be examined since CHP potential alone would not outweigh other contrary considerations.
123. No party to the Inquiry has sought to identify a more appropriate site for the EfW plant in terms of CHP. While references have been made to Dairy Crest as a potential customer with a matching heat load requirement no party has put forward a viable proposal or site closer to it than the appeal site.
124. In contrast, UBB has examined through the evidence of Mr Aumonier the most recent CHP demand assessment. There is real interest from Graftongate on the northern part of Javelin Park and agents for Quedgeley East (UBB/5/C, page 11). There is also the proposed extension to Hunts Grove. It is important to note here that the developer, Crest Nicholson, has not indicated 'no interest'; this contention by GCC arises from a misunderstanding by Mr Elvin of an answer by Mr Gillespie in XX. None of these would require retrofitting of the necessary infrastructure. Mr Aumonier did not rule out provision of heat to Dairy Crest; much would depend on the arrangement between commercial partners.
125. In short, the appeal site has the best CHP potential of all the allocated sites, a point accepted by Mr Gillespie in XX. In fact, this was one of the factors that led the Secretary of State in 2007 to conclude that it was the best of the then allocated sites (CD9.2, DL paragraph 11 and paragraph IR18) and it is noted that the WLP then in force contained identical requirements for CHP as are now found in WCS Appendix 5). For the reasons just explained, the advantages of the site in CHP potential terms have only increased since then.
126. There is therefore a very realistic prospect that the appeal proposal's CHP potential would be taken up, that it would represent an important source of heat and that that would increase the contribution it makes to climate change and renewable energy policies. Given that no party suggests any other site with greater CHP potential, there could be no valid criticism of the appellant even if, for whatever reason, its CHP potential was not taken up, especially as there is not a policy requirement to do so. However, both GCC and the EA clearly recognise there is good potential for CHP, as does UBB, and the Secretary of State should accord significant weight to that potential to supply CHP.
127. To conclude on issues (a) and (b) it is necessary to consider compliance of the appeal proposal with PPS10 and the Framework.
128. PPS10 is plainly a very significant material consideration. It is clear on its face that it may supersede policies in the development plan which are inconsistent with it. Further, PPS10 has been updated to reflect the revised Waste Framework Directive. One of the reasons for the revision of the document was to increase the use of waste as a resource (e.g. fuel), as is made clear in the Chief Planning Officer Letter. In the circumstances, compliance with PPS10 is perhaps the best indicator of the appeal proposal's fit with up to date waste policy (including proximity and waste hierarchy).
129. The appeal proposal would comply with the following key parts of PPS10 (CD6.3):
- Paragraphs 1 and 2: it would represent the positive planning required and would provide waste management facilities of the right type in the right place at the right (albeit belatedly) time virtually eliminating all

residual MSW from the County for which there is now no recovery capacity and which will continue, in the absence of the scheme, to be landfilled.

- Paragraph 3: there is no alternative recovery capacity available in the County and, Moreton Valence aside, no other facilities consented with the capacity required to recover the County's MSW and a significant proportion of its C+I waste. Relative to the source of the waste arisings it would not only be one of the nearest appropriate installations, it would be the nearest appropriate installation. Without it, the national landfill diversion target for 2020 will be virtually impossible for the County to achieve. The adequacy of the ES has not been seriously questioned and the EA has already issued the EP confirming that it is satisfied that the proposal is acceptable from a pollution control perspective. The relevant indents of this paragraph are therefore met.
- Paragraph 4: while the objective of enabling the recovery of MSW and co-collected C+I waste in one of the nearest appropriate installations has not yet been reflected in PPS10, the only concern with regard to the waste hierarchy is the under provision of recovery capacity and the over provision of disposal capacity. This objective would be met.
- Paragraph 20: the appeal site is allocated in the recently adopted WCS for strategic scale residual waste treatment facilities including EfW and must therefore be regarded as fully compliant with PPS10 as it has been found to be sound after examination.

130. The updated *National Waste Planning Policy: Planning for Sustainable Waste Management Consultation Document (CD6.9)* does not change the above analysis. As it is not yet extant policy, greater weight must be accorded to PPS10, the extant policy document. Once adopted it will replace PPS10. However, the weight to be accorded to the draft document is, in current circumstances, of little importance given that the proposed policy document does not bring about any radical changes to existing policy. Rather it reflects the emphasis in the Framework on sustainable development (which is addressed next); the aspirations of the revised Waste Framework Directive; the abolition of Regional Strategies; the need to increase the use of waste as a resource; perhaps a greater emphasis on CHP to reflect the Waste Review 2011 and the Guide to the Debate; and the re-emphasis of the importance of Green Belt land. The appeal proposal would accord with all these changes of emphasis.

131. Turning now to the Framework, this does not of course deal expressly with waste management. The principal objective of the Framework is to promote sustainable development and it identifies three dimensions of sustainable development: economic, social and environmental.

132. There has been no serious suggestion that the WCS is not in general conformity with the Framework. It requires the development of residual waste treatment facilities in order to maximise the renewable energy that can be generated from this source and seeks to provide much needed and sustainable waste management infrastructure of the right type. Development would also be located in accordance with the principles of sustainable development favouring sites well related to the major urban areas and on land already identified or suitable for such facilities.

133. The appeal proposal would contribute directly towards the achievement of a number of the core planning principles set out in Framework paragraph 17. In particular, Javelin Park has consistently been considered to be the best of the allocated sites; in 2007 by the Secretary of State on the evidence of WPA and the WCA (CD9.2); the comparative site assessment by Entec in 2007 (CD13.36); and in 2009 in the site options consultation as part of the WCS preparation (CD5.53).
134. Central to the concept of sustainable development is the transition to a low carbon economy and the maximisation of renewable energy developments. Planning permission for such development should be granted where their impacts are or can be made acceptable. The appeal proposal represents sustainable development that accords with the development plan. It can be delivered without unacceptable harm to the environment or to local communities. It therefore accords fully with the Framework and this factor should be accorded significant weight.
135. Framework paragraph 119 provides where development requiring AA is being considered, planned or determined, the presumption in favour of sustainable development does not apply. Mr Othen explains why the appeal proposal would not have a likely significant effect, alone or in combination, on ecological receptors of interest and as such an AA is not required. Accordingly the situation does not arise here. Even if it did, and it is strongly submitted that it does not, it has no material bearing on the substance of the appeal proposal as a proposal: it has been shown that it is sustainable, further it benefits from various presumptions in favour of granting planning permission as a consequence of its conformity with the development plan, the provision of renewable energy, the contribution towards sustainable economic growth and the presumption in favour of permitting unallocated sites where they comply with the policies and provisions of PPS10.
136. Taking into account paragraph 38 of PPS10 and Framework paragraph 14, this is a sustainable development in accordance with the policies of a recently adopted WCS that the applicant should have reasonably expected to have been approved without delay.

Conclusion on this Issue

137. The appeal proposal positively addresses three global policy aims and the urgent need for infrastructure to achieve them: first, the provision of urgently needed waste management capacity critical for the diversion of the County's waste from landfill; second, providing much needed renewable energy with potential exploitation of CHP, thereby increasing energy security and contributing to renewable energy targets; and, third, reducing the carbon dioxide that would otherwise be emitted in the generation of energy and displacing the harmful methane emissions that arise from landfilling. The generation of non-renewable electricity and the recovery of materials such as metals should not be overlooked either. The conclusion which the Secretary of State is invited to make is that there is a compelling requirement and urgent need to deliver this form of infrastructure now in order to fulfil the Government's policies on waste, energy and climate change.
138. The appeal proposal, operating with or without CHP, provides significant advantages over landfill and this is a factor which should weigh heavily in favour

of the grant of planning permission, not least given the importance the Government places on tackling climate change.

Issue (c): need

139. This issue can be dealt with quite briefly given the common ground with GCC and SDC (CD4.8) on the extent of the need for residual waste treatment capacity and the appeal proposal's capacity falling within the range of treatment capacity that the WCS requires to be provided (CD4.7, paragraphs 6.1 (ix), (xi) and (xii)).
140. There is no policy, national or local, which requires applicants for planning permission to demonstrate that a need exists for their proposal. Indeed, PPS10 specifically provides that when proposals accord with an up to date development plan, applicants for planning permission should not be required to demonstrate a quantitative or market need for their proposal (CD6.3, paragraph 22). This is supported by both the Energy White Paper (CD8.3, paragraph 5.3.67) and Framework paragraph 98.
141. However, where a need does exist it can be a material consideration to which very significant weight can be given. In this case, it is agreed that in addition to the compelling need shown for EfW facilities to meet energy and climate change policies, there is a need both generally in the UK and specifically in the County for new waste infrastructure to move the management of MSW and C+I waste up the hierarchy although SDC suggested that this need could be met outside the County. There is also a compelling quantitative need for residual waste recovery facilities both nationally and in the County.
142. This has been quantified in the County in the recently adopted WCS. This makes provision for a maximum of 145,000 tonnes per annum of MSW and a maximum of 73,000 tonnes per annum of C+I residual waste recovery capacity during the plan period. Unsurprisingly, these figures are agreed by GCC as is the fact that the appeal proposal falls below the upper combined tonnages (CD4.7, paragraph 6.1 (xii)).
143. Two points are taken against the appeal proposal on need. First that the need that does exist can be met elsewhere and second, that data available since the evidence base for the WCS was prepared cast doubt on the assumptions made and thus the figures in the WCS.
144. Dealing with the first, no party to the Inquiry has put forward any worked up proposal for a specific site that has any prospect of meeting the quantitative need for residual waste treatment facilities in anything like the timescale required. SDC contends that the need could be satisfied by utilising spare capacity in treatment facilities outside the County. However, Mr Wyatt was unable to provide any indication whether this capacity existed or would become operational, or whether any spare capacity would ever be available for Gloucestershire's waste.
145. Furthermore, the Secretary of State has been clear both in policy and in previous decisions that it is only operational capacity that should be taken into account when considering proposed waste management facilities (CD6.5, paragraph 3.3.22 and footnote 36; CD6.6, paragraph 2.5.67; CD9.29, paragraph 5.15; and CD9.9, paragraph IR16.18). In the same context GlosVAIN relied on two recently made planning applications in the County. They are only that and

for the reasons set out in these policies and decisions ought not to be taken into account. Moreover both involve elements of AD the feedstock for which formed no part of the quantitative need case for the appeal proposal. One made by Cory Environmental (ref: 13/0091/TWMAJW) was received by GCC on 11 December 2013 in relation to development on the Wingmoor Farm West site (as allocated in the WCS). It comprises two elements; a 30,000 tonnes per annum AD plant for organic wastes including food and liquid wastes and a 70,000 tonnes per annum pre-treatment, recycling and bulking facility. The other, (ref: 13/0094/TWMAJW) was made by Andigestion Ltd in relation to the Wingmoor Farm East site (as allocated in the WCS) and was received by GCC on 13 December 2013. It is a 34,000 tonnes per annum AD plant for food waste only. Both applications involve inappropriate development in the Green Belt.

146. Turning to the second, there is an inherent uncertainty in forecasting waste arisings (CD7.11, pages 1 and 3) and as PPS10 makes clear, spurious detail is to be avoided when considering quantitative need (CD6.3, paragraph 10). The appeal proposal is designed to provide residual waste treatment capacity to at least 2040 and thus well beyond the period for which the WCS plans. UBB could not commercially justify 'oversizing' the facility and the Guide to the Debate points out that funders would simply not permit such an approach (CD7.9, paragraph 172).
147. UBB recognises that actual MSW arisings in 2011/12 and 2012/13 were lower than forecast for the WCS but notes also recent indications of an upturn (UBB/1, paragraphs 5.2.42 to 5.2.43). This can be explained by changes in waste management practices such as the introduction of the Landfill Tax in 1996 and LATS in 2005; legislative changes relating to producer responsibilities; and local authority initiatives and educational change and the post 2007/8 economic turbulence. These are short term fluctuations which do not call into question the longer term forecasts for the plan period that underpin the WCS.
148. As explained above (see paragraph 103) the appeal proposal will not interfere with recycling rates. Even if the figures for MSW suggested by GlosVAIN prove to be correct, there would still be ample quantities of C+I waste available to allow the appeal proposal to operate at capacity. Access to this waste stream is one reason why UBB resist the suggested condition restricting waste treated to that arising in the County.
149. To conclude on this issue UBB is committed to developing the appeal proposal should planning permission be granted, and GCC accepts that there is no reason why the development would not come forward (CD4.7, paragraph 6.1 (xiii)). Consequently, the contribution the appeal proposal would make to acknowledged local quantitative need, as recently and robustly assessed in the WCS, should be given very significant weight.

Issues (d) and (e): alternative sites and technologies

150. This is addressed very briefly here for these reasons. The line of authorities referred to by Mr Simons for SDC hold, in essence, that alternatives may be a material consideration in exceptional circumstances. None exist here. No party at the Inquiry has explained how there can be the clear planning objection required when the appeal proposal is located on a site that has very recently been allocated by the WCS specifically for strategic scale residual waste treatment facilities, including those employing EfW technology, of the scale

- proposed. Moreover, there simply is no alternative site or alternative technology before the Inquiry capable of being considered as an alternative to the appeal proposal. If there are no alternatives, alternatives cannot be a material consideration.
151. Nevertheless, if they are to be so considered, the weight is for the decision maker taking into account the following factors.
152. Mr Christensen and Dr Coggins agreed or conceded that their evidence did not in substance advance beyond a generic review of the available alternatives with Mr Christensen clearly stating his hope for the outcome of the Inquiry (see paragraph 84). That there is no requirement in policy or law for developers to compare their chosen technology with alternative ways of managing the waste or to show their technology provides the best environmental outcome has already been explained (see paragraphs 96 and 106) and was agreed by Dr Coggins in XX. Furthermore, both agreed that neither had identified any alternative technology or provided a worked up alternative proposal and it was never part of the SDC case that it would advance alternative sites.
153. That no alternative sites have been put forward is not a surprise. The site identification process for the WCS was exhaustive and the outcome described by the examination Inspector as robust (CD5.49, paragraph 113). No party has identified another site on which the effects of the appeal proposal on landscape, visual amenity, heritage assets or residential amenity would be less or which would represent a better fit with development plan and national policy, including the other allocations.
154. Looking at other technologies, Dr Coggins accepted in XX that Mr Aumonier's key issues in relation to technology risk (namely: technical deliverability, provenness and end product liability) were the correct comparators for any assessment.
155. There was no dispute that EfW is well proven. It is also particularly well suited to treating MSW and C+I waste which are heterogeneous and require an inherently flexible technology in terms of its feedstock. Others are not and Mr Darley expressly stated that commercial scale gasification and pyrolysis is unproven.
156. There are ready outlets for the APC and incinerator bottom ash outputs of the appeal proposal. This is not the case with either MBT or mechanical heat treatment (MHT) which both use energy rather than producing it and, in the case of MSW sent to MBT plants, some 48% was sent on to landfill (UBB/1/X). There are several examples of both technologies which have experienced significant operational and product placement difficulties.
157. UBB's contract with Essex County Council and Southend Borough Council has been referred to by many at the Inquiry. There, a political decision was made to use MBT with a combustion solution being expressly precluded. Dr Coggins agreed that the requirements of that procurement exercise were very different to those in Gloucestershire. GCC required a complete solution (UBB/1, paragraph 2.1.15); MBT is not that solution.
158. It has also been said that the export of fuels derived from MBT/MHT should be exported to EfW plants in mainland Europe. The Guide to the Debate recognises

that this would be a missed opportunity for the UK to benefit from energy sources created in the UK (CD7.9, paragraphs 54 and 55). Moreover, existing capacity that may exist cannot be relied upon going forward.

159. Mr Jarman's purpose was to promote his own ambition to provide residual waste treatment capacity for the County at Javelin Park. However, he has no planning permission or application, no EIA screening opinion and no interest in any site. He gave no indication that he had any contract for residual waste, any funding or any contract for the outputs from what is an intermediate treatment process. It is therefore exactly the kind of vague and inchoate proposal that EN-1 advises is not important in decisions of this nature (CD6.5, paragraph 4.4.3, 7th bullet).
160. To conclude on this issue law and policy are clear: there is no need for the appellant to show its facility is the optimal solution in terms of the technology it employs, or its siting. Nevertheless, objectors have asserted there are better technologies. However, they failed to produce any evidence to make good that proposition. As set out above, any alternative that was discussed was shown to be unproven or one that produces an end product that is most frequently consigned to landfill. Mr Aumonier was correct to say in XX that all of the alternatives pursued by objectors in fact lead down a pathway to landfill, the very outcome that appeal proposal seeks to avoid.
161. Moreover, there is no realistic, worked up alternative proposal (either in terms of technology or site) before this Inquiry. EN-1 is clear as to the consequence of this: proposals that are vague or inchoate can be excluded from the process on the grounds that they are not important to the decision (CD6.5, paragraph 4.4.3, 7th bullet). The alternative proposals put forward are precisely that: inchoate and vague. Furthermore, any such alternative proposals would take a great number of years to come to fruition, in the meantime requiring the County to continue consigning almost all of its residual MSW to landfill – a situation that no party to this Inquiry can seriously be advocating. SDC's submission that UBB's evidence has not considered whether alternative technology would be capable of delivering the same benefits of the appeal proposal is false (SDC/INQ/3, paragraph 100). The ES and the evidence of Mr Aumonier clearly demonstrate that no alternative technology can deliver the same benefits.
162. Consequently, the issue of alternatives should not be given any material weight in the determination of this appeal, save in two respects. First, that UBB and the WDA's chosen technology is demonstrably a proven and reliable way of delivering waste, energy and climate change benefits. Second, the only alternative to the appeal proposal that is not vague and inchoate is landfill. That is where the County's waste will be consigned if planning permission for the appeal proposal is refused as Mr Gillespie accepts (GCC/1/A, paragraph 7.58 to 7.59). This clearly weighs heavily in favour of the appeal proposal, as does the fact that no party has identified an alternative site, still less one said to be preferable to the appeal site.

Issue (f): the WCS and the development plan

Introduction

163. The courts have held that compliance with the development plan is to be interpreted as compliance with the plan as a whole⁴. A proposal does not have to comply with each and every policy. The courts have also held that a development plan contains four elements: a written statement of the authority's policies; a proposals map; a reasoned justification of the policies; and any descriptive or explanatory matters⁵. The paragraphs surrounding a policy comprise supporting text which it is necessary to read in order to interpret the policy fully.
164. The role of text in the WCS outside of the policy itself, including the Strategic Objectives, is therefore clear; it serves to aid interpretation where it is necessary to construe the policies, perhaps because of ambiguity. It does not form a part of the development plan against which proposals should be assessed for compliance outside the policies themselves. It follows that the policies themselves are the execution of the plan's vision and objectives found in the supporting text and descriptive materials. Indeed, the WCS itself makes this clear providing that the WCS's Strategic Objectives are developed into the policies (CD5.1, paragraph E28).
165. This is the context in which this issue is addressed and in particular the requirement to minimise impact suggested by GCC.

Design and building height

Introduction

166. GCC's formal position is that there is no objection to the appeal proposal on grounds of design. WCS policy WCS17 is not cited in the reasons for refusal. This is highly material since both the WCS and the Framework emphasise the need for high quality design, EN-1 and the WCS recognise that design is one of the main ways in which the landscape and visual impacts of combustion plants may be mitigated and both Mr Gillespie and Mr McQuitty accepted in XX that high quality design was of key importance to the acceptability of the appeal proposal.
167. In a key concession, Mr McQuitty agreed in XX that the appeal proposal complied with WCS policy WCS17 and all the particular issues identified within it. This is important because the height and form of the appeal proposal were Mr Russell-Vick's principal objections to the development.
168. GCC's case on this is therefore confused and confusing and appeared to shift during the Inquiry. One formulation was to say that the case being advanced was that there would be unacceptable visual and heritage impacts that inevitably involved a consideration of design in the broadest sense including height, scale

⁴ *R v Rochdale MBC, ex parte Milne (No 2)* [2001] Env. LR 22 (UBB/INQ/12/10 paragraph 50)

⁵ *R (Cherkley Campaign Ltd) v Mole Valley DC* [2013] EWHC 2582 (Admin) (UBB/INQ/12/2 paragraph 72)

and massing (GCC/INQ/1 and GCC/INQ/3, paragraph 23). Another, from the witnesses and in particular Mr Gillespie, was that there was a distinction between design meaning architectural treatment (and to which there was no objection) and scale, height and massing.

169. This distinction must be false since policy at national level is clear that scale, height and massing all comprise aspects of design (CD6.5, paragraph 5.9.21 and CD6.6, paragraph 2.5.51). Moreover, WCS policy WCS17 requires a proposal to reflect or contribute positively to the character and quality of the area. It would be a nonsense to suggest a proposal could demonstrate that to be so if its scale, height and massing were totally inappropriate. Mr Gillespie eventually arrived at the proposition that the development should be reduced in scale as far as technically possible before it is permitted. Mr Russell-Vick appeared to support this but agreed in XX that the nature and size of the process equipment, practicality, site constraints and viability were all factors to take into account when determining the appropriate height of the development.
170. Mr Gillespie confirmed in an answer to Mr Jarman that Mr Darley was certainly an expert in his field and had assured him that the appeal proposal was the right solution. Mr Darley's evidence is therefore very important and confirms that even with up stream materials recovery, the plant height would not be reduced; the technology and the provider chosen were both fit for purpose and, respectively, the most appropriate and highly appropriate; a single EfW plant of 190,000 tonnes per annum capacity was preferable on technical and commercial grounds to two or more smaller plants; the principle of a single process line was not disputed; and the stack height ought not to be reduced.
171. In essence therefore the issue between UBB and GCC is how a 190,000 tonnes per annum single stream EfW should be accommodated on the appeal site. GCC has focussed very clearly on the height of the building and has gone to great lengths to demonstrate that it could be lower. It has also been almost fixated on the 48 metre height. However, only a very small proportion of the building would be at this height with 43 metres being more properly viewed as the process height.

The WCS

172. It is important to recognise that there is a clear policy baseline of what is acceptable on the appeal site in terms of design and height. This policy baseline is highly material to the assessment of the appeal proposal. All allocated sites in the WCS were subject to careful scrutiny including their ability to accommodate large scale development, which means buildings of up to 40 metres (or even higher) (CD5.1, Landscape/Visual General Development Criteria within Appendix 5) and a stack of up to 80 metres with regard to, among other things, landscape and visual impacts (CD5.1, paragraph 4.189). Any developer reading the WCS would understand, rightly in UBB's submission, that subject to detailed assessment a building of around 40 metres with a stack of 80 metres would be acceptable in principle (and Mr Gillespie agreed in XX that these were above ground heights).
173. This is further endorsed by the fact that an earlier reference to large-scale development being out of character on Javelin Park (CD5.49, page 44 of the Appendices) was expressly removed following the examination during which the Inspector was urged – by GCC – that such a scale development would be

acceptable on the appeal site. Furthermore, at the time the WCS was being examined, the basic outline of the current proposals for an EfW facility on the site were known to all parties involved in the examination, which gave '*added focus*' (CD5.49, paragraph 14) to the issue of Javelin Park's suitability for residual waste treatment facilities, even though the examination did not specifically consider the appeal proposal.

174. In XX Mr Russell-Vick accepted, by reference to the Inspector's Pre Hearing Meeting note from the WCS examination (CD.5.30), that the WCS had allocated the appeal site on an unfettered basis after being assessed for its suitability to accommodate development on the three indicative scales. It was further agreed that neither GCC nor the Inspector had identified any 'showstoppers' in the way of such development. It follows that the WCS proceeded on the basis that all three scales of development were acceptable in principle on the appeal site. Indeed, in XX Mr Russell-Vick accepted that 40 metres was not a '*complete cut off*' above which development would automatically be objectionable. However, his position was that development at 40 metres or above would only be acceptable so long as the building was no taller than it needed to be and, given his view that only Mr McQuitty's option C might be acceptable, this was tantamount to asserting that the WCS had been wrong in allocating the site on an unfettered basis. Ms Marsh for SDC was more overtly critical of the WCS. She said in EiC that she does not agree with the WCS and that she had difficulty trying to reconcile a building of that size (referring to large-scale development as defined in the WCS) on the appeal site. However, UBB submits that it is simply not tenable to attempt to reject or at the very least emasculate a key delivery policy in a so recently adopted development plan, particularly after such a thorough testing as the policy was subjected to in the examination.
175. It is also important to note that the WCS adopted the approach of allocating sites rather than relying on a criteria-based policy approach to give greater certainty about what may come forward. There is – rightly in UBB's view – considerable emphasis in the WCS on delivery (CD5.1, paragraphs 1.14, 4.94, 5.2 and pages 104 to 105). It would make a mockery of the WCS and its examination now to deny planning permission for the appeal proposal on the basis of an interpretation or application of policy which is contrived, contrary to the clear wording of policies themselves and their accompanying text and in conflict with the basis upon which GCC robustly promoted and defended the allocation of Javelin Park.
176. In UBB's view there is no room for a two stage approach to WCS policy WCS6 which, first, accepts that the proposed development would be consistent with the principle of what would be policy compliant, but then secondly at the application stage applies the Appendix 5 criteria in a manner that denies a scale and form of development that is demonstrably consistent with the principle. In other words, whilst of course the application must be critically assessed in terms of issues such as scale and height, the principle of development accepted at stage one cannot then be denied at stage two. Contending that development over a certain height or scale was unacceptable would be tantamount to an objection in principle to a scale and form of development that the policy was deliberately designed to facilitate. GCC is seemingly suggesting a wholly different policy approach which would rule out larger scale plants on this and, it would follow, the other allocated sites, at least unless they are constructed substantially below ground level, an approach which is not even hinted at in the WCS. To the contrary the approach

of the WCS is plainly that tall structures are appropriate provided they are built to the highest architectural and design standards, as is ensured through WCS policy WCS17, and comply with the requirements of Appendix 5.

177. Mr Gillespie asserted in EIC that it was implicit in the WCS that building heights must be reduced to the minimum possible and for this relied on Strategic Objective 5 and the references to the General Development Criteria in Appendix 5 helping to ensure that any impact was reduced (CD5.1, paragraphs 4.189 and 4.171 and page 40). This cannot be correct.
178. First, those references relate to what is acceptable mitigation, not the maximum degree of mitigation, and in any event as Mr Gillespie accepted in XX would have been fully taken into account in identifying and then assessing the suitability of the allocated sites, including Javelin Park. Further, as set out above (paragraph 164) Strategic Objective 5 is not a policy test or criterion in its own right. It has been reflected in the WCS policies and it is against these that the appeal proposal must be judged. There is no further requirement to demonstrate that the maximum level, or indeed any particular level, of impact minimisation has been achieved. WCS Appendix 5 (expressly incorporated into WCS policy WCS6) sets out the mitigation measures required to ameliorate the effects of large plants. Compliance with such measures must be the acceptable mitigation sought by the WCS.
179. Second, nothing in the WCS supports a contention that the height of the building must be shown to be as low as technically possible to achieve. Significantly, such a requirement is made in WCS Appendix 5 for small scale facilities but explicitly not for medium and large scale developments. For these facilities the WCS plainly recognises the need for tall buildings; hence, the requirement for these is to adopt design measures to reduce the perceived scale of the facility and to employ the highest possible architectural design. GCC do not object to the design in any aesthetical sense and Mr McQuitty confirmed that the development had successfully achieved the desired reduction in perceived scale and massing.
180. Third, the allocation of the appeal site in the WCS was on an unfettered basis and the site must, therefore, be regarded as appropriate in principle for all scales of EfW plants for which each strategic site was assessed. There is no reference to any limit to or restriction of building or stack heights, as there surely would have been if a building or stack on the site had been deemed to be unacceptable over a certain height. Indeed, the Inspector in the Pre Hearing Meeting note made clear that he needed to establish whether the allocation should be limited in type or scale (CD5.30, page 5).
181. Mr Roberts emphasised that 40 metres was not a precise cut off for the acceptable height of tall structures in Appendix 5. Contrary to Mr Simons's assertion in opening, he did not seek to suggest that 40 metres+ was a new category beyond the three considered in the WCS. Instead, he said that 48 metres was not materially different from 40 metres, especially when the real height for which to assess the appeal proposal was 43 metres (see paragraph 171 above). In any event, it is important to note that the relevant section states that the size ranges are a guide to be considered and the final paragraph of the landscape and visual impact section expressly defines large scale development as '*40 metre + buildings and stacks*'. The fact that the main height of the appeal

proposal modestly exceeds 40 metres does not prevent its qualifying as a large development within the meaning of that expression used in WCS Appendix 5.

182. Nor is there any reference in the WCS to the need for EfW plants to be partially buried. If applicants were intended to consider this, surely it should have been made explicit in either the General or site specific Key Development Criteria? As Mr Gillespie agreed in XX, the General Development Criteria do encourage particular measures to reduce perceived scale. These measures include avoiding or breaking up large roof expanses and hard standings but make no reference to lowering the plant below ground level. Indeed, the whole tenor of WCS policy WCS17 and its accompanying text is that taller buildings required by thermal treatment will be acceptable provided that the highest architectural and design standards are employed. The very words 'architectural and design' clearly signify this is referring to more than appearance alone and embraces height, scale and massing.
183. Finally and briefly there are two further points to make before reviewing UBB's approach to design and height. First is the paradox in GCC's position regarding the effect of vertical features in what it contends is a predominantly horizontal landscape. Mr Russell-Vick accepted the 70 metre stack that is proposed (because in his view it does not represent a major component of the development) but does not find the Dairy Crest development harmful in the view from Haresfield Beacon notwithstanding its prominence and verticality.
184. Second, GCC retreated from its stance in the written evidence that the building height should be no more than required to accommodate the plant facilities (and thus be reduced by about 20%) and instead placed the emphasis on lowering the building into the ground as far as technically possible. Material relating to plants at Issy in central Paris, Newhaven and Hartlebury was put forward in support. However, Mr Roberts explained through the totality of his evidence how in each case circumstances were very different to those at the appeal site.

The appellant's approach to design and height

185. Careful consideration has been given to height, scale and mass in the light of the General Development Criteria in WCS Appendix 5 with steps being taken to break up large expanses of roof and hard standings. The design process is explained in the DAS and the evidence. It is wrong to suggest that alternative designs featuring, for example, a curved roof have not been considered. The DAS shows that they were but since this would give rise to a large roof expanse it was not pursued.
186. Generally, the design steps taken result in a building that is orientated west to east such that its narrowest elevation is presented towards the most sensitive receptors (Haresfield Beacon and the Cotswolds AONB) with the taller elements farthest away from these receptors and that tightly wraps around the process equipment contained within (which the stepped nature of the design assists: each section needing only to be high enough to accommodate the particular process within that section). The only exception to this is at the westernmost end of the appeal proposal where the roof slopes from 40.65m to 48.2m. Mr McQuitty accepted in XX that this section of the appeal building represents less than 10% of its total length of some 236 metres.

187. Importantly, Mr McQuitty accepted in XX that the design is successful in a number of respects. These include the deconstructed blocks that break up the main north and south elevations of the building; the successful reduction in scale from elevated views; colours proposed helped to break up the building mass from the same views; and that the field pattern was matched by the proposed design.
188. This he described in XX as '*an advantage and commendable*'. He was right to do so in light of the Cotswolds AONB Landscape Strategy & Guidelines which provides: '*The landscape bordering these upland vantage points [i.e. the Escarpment] is also highly sensitive to development that may disturb the strong field patterns created by hedgerows as these are best perceived from higher ground.*' (CD10.11, second page of the '18. Settled Unwooded Vale' section). These concessions are especially valuable as the same guidelines emphasise the difficulty of screening industrial units, trading estates and housing in elevated views (CD10.11, same section). That the design of the appeal proposal successfully contributes to reducing its scale and mass from such views should therefore be commended.
189. Nevertheless Mr McQuitty maintained his view that UBB had sought to achieve a landmark building to the exclusion of all other considerations. This is not the case. Mr McQuitty did accept in XX that any EfW facility on the appeal site (including one with a building height of 30 metres which both he and Mr Gillespie said might be acceptable) would inevitably become a landmark building, especially for users of the M5 motorway. As Mr Roberts put it in XX a landmark building on the appeal site was not the driver of the design approach, it was the result.
190. This has always been recognised by GCC in the WCS. First, it cites two EfW facilities in the document as examples of the high quality and innovative design that should be aimed for; Mr McQuitty accepted in XX that both represent striking landmark buildings. Second, in the submission draft WCS two forms of development are deemed suitable for Javelin Park; a landmark building or, in the alternative, a low building (CD5.7, Appendix 5, Javelin Park Key Development Criteria). The omission of the reference to landmark building in Appendix 5 of the adopted WCS was due to the way in which GCC chose to resolve an internal inconsistency within Appendix 5 with the Moreton Valence allocated site. That is very different from saying that a landmark building would be inappropriate at Javelin Park. For GCC to contend that a landmark approach is contrary to the WCS is, therefore, fundamentally misconceived and would prevent delivery of strategic scale residual waste management facilities unless they were sunk deep into the ground.
191. Importantly, the design has been endorsed by an array of professional advisors. The Framework expressly recommends those applying for planning permission to consult CABA, the Government's advisor for design in the built environment (CD6.1, paragraph 62). The WCS relies on CABA's joint guidance with Defra on design for waste facilities (CD5.1, paragraph 4.267). UBB did and CABA welcomed and supported the design. It said there was '*intelligent site organisation*' and found '*the composition of the building components convincing.*' Given CABA's independent role and acknowledged expertise and the express policy encouragement to applicants to seek its views, CABA's considered opinions on design should be given substantial weight.

192. Furthermore, UBB's own expert advisors (Axis and, at the Inquiry, Mr Smith and those colleagues at SLR whose advise he sought) and GCC's professional officers and advisors (Bureau Veritas) support the design. As must Mr McQuitty insofar as he accepts that the appeal proposal meets the requirements of WCS policy WCS17 and successfully breaks up the mass and roofscape of the proposed development.
193. Significant weight ought therefore to be given to this broad professional consensus on the acceptability of the design.

The necessity of the appeal proposal's height

194. Mr Darley's oral evidence was that four main factors influence the above ground height of an EFW facility; the number of streams; the process equipment; the extent to which the facility is buried below ground level; and any architectural treatment. These are addressed in turn.
195. The capacity of the plant is a direct response to the requirements of the WCS and Mr Darley accepts that a single stream facility was the most appropriate solution (GCC/4/A, paragraph 6.4). In passing on this the design includes a waste bunker with 11 days' capacity to cover planned maintenance and unexpected shutdowns. Should this prove insufficient, waste would be diverted to an alternative facility. Carbon activated filters would be installed to prevent any odour problems (CD1.2 (i), paragraph 5.6.9) and odour is addressed in any event by condition in the EP (CD2.1, paragraph 3.4).
196. The correct process height for a single stream plant using the technology chosen is 43 metres which Mr Darley again accepts (GCC/4/A, paragraph 3.18). This height includes the internal crane which while not essential is, according to an answer from Mr Darley to the Inspector, always the preference of the design engineer. It makes maintenance of the boiler and FGT easier since it avoids the additional expense of removing the roof and bringing cranes onto site – neither being without a landscape and visual impact. Mr Darley agreed in XX that the crane adds at most some 2.5 metres to the process height.
197. There is simply no requirement for the building to be lowered further into the ground. There is no policy requirement to do so and the landscape and visual impact assessment did not show that this would assist in any way. Mr Roberts confirmed in EIC that no indications were given by GCC during either pre- or post-application discussions that this should be undertaken and no advice to this effect came from CABE or the expert advisors to GCC and SDC.
198. Viability was accepted by GCC's witnesses to be an important consideration but none of them had undertaken a study of the viability or practicability of sinking the appeal proposal or even discussing the implications of so doing with the WDA. The physical constraints of the site make such an approach technically challenging and costly and present material planning concerns in relation to both the conservation of the ditch and watercourse and their associated habitat and ecological interests (acknowledged in the WCS Appendix 5 Key Development Criteria) and the provision of effective mitigation screening on the eastern boundary of the appeal site.
199. Finally, having established a process height, the building was designed to comply with the WCS and the General Development Criteria of Appendix 5, in

particular to break up the mass and roofscape of the building and reduce its visual scale. UBB accepts that the architectural treatment of one small section of the building amounting to less than 10% of its total length adds about 5 metres to the height at that point.

200. In summary, many if not all of the height saving measures put forward by GCC would have limited impact as Mr McQuitty accepted in XX. UBB acknowledges that in closer views the appeal proposal would be visually commanding, but a reduction of height measured in single and even low-double digit figures is again unlikely to result in significant visual change. As Mr Gillespie agreed in XX, a lower building processing 190,000 tonnes per annum would still be prominent, would be associated with a 70 metre stack, would continue to affect views to and from the AONB, would be bound to have impacts on cultural heritage assets and would still be regarded as a landmark or gateway building.

Building height compared to other EfW facilities

201. The Rolton Group Report seeks to show a relationship between building height and capacity (GCC/4/A, Appendix E of Appendix 2). GCC and UBB agree that the height of the boiler determines the process height of the building and that in turn boiler height is determined by the throughput of waste treated. Furthermore, Mr Darley endorsed UBB's choice of boiler supplier. However, the Rolton exercise and therefore the conclusions drawn from it are flawed.

202. Put simply, Rolton has not distinguished plant capacity from stream throughput. Since each stream has its own boiler and it is boiler height that determines process height and thus building height the relationship claimed by Rolton between building height and plant capacity has no theoretical basis. The correct comparison is between the main process height and stream capacity.

203. On that basis, Mr Othen demonstrated throughout his evidence (UBB4/REB/A) that if the Rolton plants were correctly grouped on that basis the appeal proposal would have a relatively low process height for its capacity. The true position is, therefore, far removed from how GCC's proofs originally put it, that this would be the highest plant in the UK for this capacity and that it was therefore 'disproportionately' tall and the 'excessive' height could and should be removed. The stack would also be considerably lower than would be normal.

Mr McQuitty's alternative designs

204. Mr McQuitty put forward three alternative designs to illustrate how the height of the appeal proposal could be reduced. Neither Mr Russell-Vick nor Mr Grover had assessed these with regard to landscape and visual or heritage impacts respectively. Indeed, Mr Russell-Vick confirmed in oral evidence that neither options A or B would be acceptable and confirmed only that Option C might be. However, this option involves a curved roof and should be discounted given that GCC has no design objection to the appeal proposal. Moreover, this would fail to break up the mass of the roofscape.

205. Mr McQuitty's evidence should be given little weight. First, it has simply not been absorbed into or otherwise considered in GCC's wider case and exposes a paradox at its heart. Mr Russell-Vick confirmed when asked in XX about a lower building with reference to a number of viewpoints that even one reduced in height to about 33.5 metres would still break the skyline and thus lead him to

conclude that his assessment of acceptability would not change. So, if a reduced height does not cause his assessment to change, then it must follow that there is no significance in landscape and visual terms of the height reduction that GCC strives to show is achievable (to around 33m from Mr Elvin's reference to the facilities at Newhaven and Ardley in XX of Mr Othen) as compared with the impacts of the appeal proposal. Furthermore, if the heights of Mr McQuitty's options are unacceptable that would seem to rule out all but small scale facilities on the appeal site which would, of course, be directly contrary to the WCS.

206. Second, all of Mr McQuitty's options had a lower process height than that which Mr Darley's evidence (GCC/4/A, paragraph 3.18) said was necessary.

207. Third, for various reasons explained by Mr Othen (UBB4/REB/A, paragraph 2.3) there are significant operational and technical difficulties associated with each design option. Examples include crane rails shown with insufficient clearance to operate properly, alteration of the stack position is not feasible and not appreciating that the so-called 'flabby' space removed above the FGT was, as he conceded in XX, required to future-proof the facility against anticipated legislation change.

208. Fourth, he failed to consider or consult with others about the cost implications of the alternative designs put forward; a significant omission for a public body using public funds.

209. Finally, he failed to draw attention to the fact that he had altered the size of the boiler and the turbine hall in option B.

210. Conclusions on design and building height

211. GCC's objections on design are misplaced in at least two respects. First, the appeal proposal is not higher than it needs to be. The architectural treatment at the westernmost section of the facility is necessary to break up the perceived mass of the appeal proposal – an approach that Mr McQuitty accepted was effective. Moreover, the appeal proposal sits at the lower end of the range of building heights for plants of this type and capacity. Secondly, Mr Russell-Vick's evidence suggested that even if the appeal proposal was lowered to below 40 metres, it would still be objectionable in landscape and visual terms. This is clearly at odds with the appeal site's unfettered allocation in the WCS for residual waste treatment facilities and calls into question the point of Mr McQuitty's evidence in particular. It demonstrates that GCC has adopted an approach which directly conflicts with its promotion of Javelin Park in the WCS process and obliged it to advance an interpretation of policy which simply is not consistent with the plain words of those policies and their explanatory text

212. GCC has expressly not raised an objection under WCS policy WCS17. The WCS recognises that for thermal treatment facilities '*it is imperative that the highest architectural and design standards are applied*' (CD5.1, paragraph 4.269). WCS policy WCS17 is the mechanism by which these standards are ensured and it is, in UBB's submission, therefore the key policy for taller buildings such as the appeal proposal. The status of WCS policy WCS17 is clear from at least three sources:

- The Issue 5 Topic Paper made it clear that the design policy (then WCS13) is the key policy consideration for taller residual waste treatment facilities (CD5.54, paragraph 2.14);
- The introductory and supporting text to WCS policy WCS17 (which should be used as an interpretative aid to that policy) provides that the approach set out in that policy to achieve the '*highest architectural and design standards*' is '*imperative*' for taller residual waste treatment facilities (CD5.1, paragraph 4.269); and
- The text of Appendix 5, which is specifically incorporated into policy through WCS policy WCS6 (and therefore has policy status), provides that for medium and large developments '*proposals should be designed with particular attention to the requirements of Core Policy WCS17 to ensure that the building is of the highest architectural standard*' (CD5.1, Appendix 5 General Development Criteria, Landscape and Visual Impact).

213. The Appeal Proposal has been designed so that it addresses the issues raised by WCS policy WCS17. As this requires, the DAS articulates the design behind the appeal proposal and sets out how it: reflects the landscape within which it sits; is sustainable; responds to site constraints; and makes use of high quality architecture and landscaping. As WCS policy WCS17 is a, even if not the, key policy for developments such as the appeal proposal, it is highly significant that the appeal proposal accords with it and GCC agrees that there is no conflict.

214. At this point the appeal proposal's compliance with WCS policy WCS6, and by extension the Appendix 5 criteria, should also be considered. Mr Roberts has provided a detailed assessment of the appeal proposal's compliance with the WCS policy WCS6 Development Criteria and concludes that those criteria are met. That assessment is not repeated here since GCC do not find against the appeal proposal on those aspects and it was not challenged in XX of Mr Roberts. Mr McQuitty also agreed in XX that the appeal proposal complied with the Appendix 5 criteria while Mr Russell-Vick accepts that vegetation at the site boundary facilitates a degree of surface level screening (GCC/3/A, paragraphs 3.5 and 4.18), which Appendix 5 requires. Furthermore, Mr Gillespie accepted in XX that the appeal proposal complies with the environmental issues in Strategic Objective 5 (which are reflected in Appendix 5).

215. These submissions on design set the scene for those on landscape and visual effects to which attention now turns.

Landscape and visual: preliminary matters

The appeal site and its surroundings

216. The appeal site itself is entirely unconstrained by any policy, landscape, ecology, flood risk or any other designation. It is well related to the strategic road network and allocated as part of a key employment site in the now submitted draft SDLP. It is close to the main sources of waste arisings in the County and close also to potential users of heat and well located for connection with the electricity grid. Of great significance is its allocation in the recently adopted WCS for a strategic scale waste management facility and it benefits from an extant planning permission for major scale B8 development.

217. The wider area shows a higher concentration of built forms than areas further south in the Vale and already exhibits strong urban fringe characteristics. This urban influence will, all at the Inquiry agreed, increase in the near future as a result of development proposed in recently adopted or recently submitted plans. The WCS itself will lead to some form of major waste development and the SDLP is proposing major southwards extension of Gloucester's urban area (both residential and employment) down to and beyond Junction 12 of the M5. Mr Russell-Vick accepted that this increasing development would affect the landscape's sensitivity to change. It must be right therefore for Mr Smith to say that the appeal site and its context cannot be judged as entirely rural (UBB2, paragraph 406).
218. Where such expansion will end is a matter for the planning authorities taking strategic decisions about future development patterns. What is clear is that both GCC and SDC judge this area, including the appeal site, to be appropriate now for significant development including large-scale residual waste treatment facilities. In that respect nothing has changed since 2007 when the Secretary of State agreed with GCC that the appeal site was the best of the sites then allocated in the WLP for strategic scale residual waste treatment facilities (CD9.2, DL paragraph 22).

Methodology

219. In this Inquiry the Inspector has been faced with conflicting professional advice on landscape and visual impact. While needing to resolve that conflict by making his own judgement and advising the Secretary of State accordingly, the Inspector should not simply disregard the evidence and apply his own judgement. Mr Smith urged that a key consideration for an Inspector in this situation was whether the experts' evidence had correctly followed the methodology set out in the published guidance by the professional bodies, in particular Guidelines for Landscape and Visual Impact Assessment: Third Edition (GLVIA3). If a witness had not done so that would be likely to explain why different judgments would be reached from another witness who had complied with the methodology and would be a persuasive reason for accepting the judgment of the expert or experts who had followed the methodology.
220. Mr Smith has followed the recommended methodology in GLVIA3 (CD10.1) and is at the heart of understanding why the three landscape witnesses reach different conclusions. The first stage must be to define the baseline correctly. That leads to separate assessments of landscape and visual effects, in each case looking at the sensitivity of the receptor, then the magnitude of change which leads to an assessment of significance. It is essential to maintain the distinction between landscape and visual effects (CD10.1, paragraphs 2.21 to 23). However, that distinction between landscape and visual issues can be particularly confusing. For example, the key landscape receptor of the Cotswold AONB escarpment is the long distance views but not the people seeing those views who are the receptors for visual effects. These different receptors must be separately assessed in respect of sensitivity to change and the magnitude of change.
221. Mr Smith identified four main reasons why the weight to be applied to professional evidence should be diminished where the methodology was incorrectly applied:

- The assessment process must be transparent;

- Steps may be omitted or duplicated;
- Comparison of one judgement with another will be more difficult; and
- Failure to follow the correct method from the outset risks and incorrect judgement at each stage and thus undermines the final judgement.

222. At each stage the assessor must pose him or herself the correct question. For example, if in judging the sensitivity of the landscape, the assessor takes into account the magnitude of change, as Ms Marsh did, then there will be an error of method and, because magnitude of change has to be considered at the next stage in the assessment process, it will as a consequence have been double counted so that the final judgment on significance of impact will be overstated.

223. GCC and SDC do not disagree or challenge the UBB methodology forming part of the original planning application and ES (conforming to GLVIA 2nd Edition then current) or at any other stage of the appeal process (CD4.7, paragraph 7.1 and CD4.8, paragraphs 3 and 7).

224. Mr Smith's detailed criticism of Mr Russell-Vick's approach is set out in his rebuttal (UBB2/REB/A, paragraphs 3 to 19). Included are the following:

- Not all the GLVIA criteria for assessing the magnitude of visual change including duration, angle of view, distance and the extent of the area over which change would be available have been taken into account;
- Sensitivity of the landscape has been assessed by an approach akin to a landscape capacity study of the type published by the Countryside Agency and Scottish Natural Heritage in 2004 (CD10.15) to stimulate discussion within the profession. Its approach was not adopted in GLVIA and results in a generalised and coarse judgement on landscape sensitivity.
- No differentiation between sub-areas of different character and sensitivity within the Vale of Berkeley is undertaken thus failing to take into account the far more pronounced urban influences affecting the area around the appeal site as distinct from the rest of the Vale.
- There is insufficient differentiation between grades of magnitude of effect making it more likely that any degree of change will be assessed as resulting in a very large effect thus overstating the landscape effects.
- Contrary to GLVIA guidance that the site should be considered against both, as it is and as it will become, the permitted B8 warehousing has been ignored.

225. Furthermore, his approach ends up in a judgement of simply whether or not an issue is a material planning matter. It does not consider gradations of impact and consequently the gradations of weight that should be accorded to those matters by the decision maker.

226. This leaves a large gap in GCC's evidence. Aside from Mr Russell-Vick's overall conclusion that development is not acceptable based on all of the impacts he identifies, the decision maker is left without any guidance on how to take account and weigh in the balance the individual impacts he identifies as being material. He has left the decision maker with insufficient guidance to make a reasoned decision as to the weight that should be accorded to his own conclusions.

Therefore, there are important methodological criticisms in relation to Mr Russell-Vick's evidence that clearly suggest his results are overstated. There are further problems with what he does with those results. He simply does not help the decision maker judge how to deal with the impacts he has identified. For these reasons UBB submit that, where there is conflict between Mr Smith and Mr Russell-Vick, the evidence of Mr Smith should be preferred given that it has closely followed GLVIA3 and is not tainted by the methodological and other deficiencies identified in Mr Russell-Vick's evidence.

227. By her own evidence that landscape evidence should be traceable and that the weight to be applied to it depended on that traceability only limited weight at best should be attributed to the evidence of Ms Marsh. Again, Mr Smith provides a detailed critique of her approach which includes:

- Confusion between factors for assessing visual receptor sensitivity and magnitude of visual effects which leads to double counting and an overstatement of effects;
- Failure to consider the B8 warehousing in the baseline despite agreeing in XX that the permission was relevant;
- By carefully detailing six local landscape character areas within the Vale and setting them out in plan form (SDC/2, Drawings, HDA5) she overstates the effects the appeal proposal would have because the industrial and commercial areas that are clearly part of the mix of the development within the single landscape character mosaic are excluded from it before the assessment is carried out. Whereas the County, AONB and District landscape character assessments all draw attention to the significant extent to which commercial, industrial and urban development influence the landscape, Ms Marsh concludes that they are inconspicuous (SDC/2, paragraph 6.4.2).

228. Unlike any other landscape expert giving evidence at this inquiry, Mr Smith's evidence was peer reviewed as recommended in GLVIA3 (CD10.1, paragraph 2.25). The review team included Carys Swanwick, who drafted GLVIA3 (March 2013). In this respect it is notable that GLVIA3 was introduced '*to address some of the questions and uncertainties that have arisen from the second edition*' (CD10.1, page ix). This throws Mr Russell-Vick's and Ms Marsh's failure to follow GLVIA3, which had been available for seven months prior to the exchange of evidence, into sharper relief.

229. The Landscape Institute expressly state that 'obviously' assessments started after the publication of GLVIA3 should use it, rather than GLVIA2 (GCC/INQ/8). It is surprising therefore that of those who came to the project afresh after the publication of GLVIA3, including Mr Russell-Vick and Ms Marsh, he was the only one to use it.

230. Finally, UBB has engaged with the public and taken the views expressed on design and landscape matters into account as far as is possible within the constraints imposed by the procurement process. This concern is explicitly acknowledged in the Guide to the Debate (CD7.9, paragraphs 161 to 163).

National policy

231. EN-1 recognises at its outset that landscape effects for large-scale projects are likely to be unavoidable. The key is to minimise harm to the landscape, not to avoid any harm (CD6.5, paragraph 5.9.8). Within nationally designated landscapes development may take place in exceptional circumstances where the development is in the national interest. Outside such designations, as in this case, the aim should be to avoid compromising the purposes of the designation. As Mr Gillespie conceded there is no obligation to show exceptional circumstances. That a proposed development will be visible from a designated area should not in itself be a reason for refusal (CD6.5, paragraph 5.9.13), nor should local landscape designations be used in themselves as a reason to withhold consent (CD6.5, paragraph 5.9.14).
232. Mr Russell-Vick accepted in XX that paragraph 5.9.15 of EN-1 set out the appropriate approach for a decision maker to adopt in the current case where the site lies outside a nationally designated area. This says '*... should judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project.*' In other words, the correct approach is to balance the harm caused against the benefits achieved by the development; this was accepted in XX by both Mr Russell-Vick and Mr Wyatt. Moreover, those impacts must be '*so damaging*' that they would not be offset by the benefits.
233. EN-3 sets out a deliberate exception to the policy in EN-1 and establishes a more permissive approach towards renewable energy projects where they would impact on nationally designated landscapes (CD6.6 paragraph 2.5.33). There is no need to show exceptional circumstances; the test is to show that any significant adverse effects are clearly outweighed by the benefits of the development. Significantly, EN-3 indicates that the best way of mitigating impact is through design (which has been addressed above) and endorses the use of earth bunds – as is proposed here (CD6.6, paragraphs 2.5.47 and 2.5.50 to 52).
234. The Framework does not extend the protection afforded against development in nationally designated landscapes to adjacent areas. There is therefore no national policy protecting the setting of an AONB.

The development plan

235. Consistent with *Cherkley*, (see paragraphs 163 and 164 above) the starting point is the policy. The Strategic Objectives may help with interpreting the policy. Here, however, as set out below, the policies are very clear and there is no scope for reading into them an additional duty to minimise the impact that the proposed development would have.
236. As Mr Gillespie accepted in XX, it is the WCS that is the principal development plan document for the purposes of this appeal. It is the most recently adopted policy document and is specific to waste and, therefore, as he agreed in XX, deserves the most weight. He further agreed in XX that nothing in national policy published since the WCS's adoption should change the weight to be given to WCS policy WCS14. He further accepted in XX that the SDLP does not contain anything which materially adds to the policies within the WCS, although he thought that the SDLP contained policy at a finer level of (presumably geographic) detail.

237. The meaning of policies is a matter of law⁶. An understanding of the meaning of WCS policy WCS14 is therefore critical to the determination of this appeal⁷.
238. UBB's view is that the first 'general landscape' in the policy section refers not to any defined area of 'general landscape' (there is no such designation in the WCS) but is inclusive of all landscapes whether within or outwith the AONB. It is of universal application to the landscape, whatever the designation or location of the proposed development site. Where the proposed development lies within the AONB or its setting then further sections of the policy are additionally engaged, but do not oust the application of the initial section. Contrary to GlosVAIN's closing submissions (GV/INQ/3, paragraph 112), UBB does not suggest that once the first paragraph is complied with there is no need to consider the second. Rather, the benefits of the proposal are something to be considered in making the overall assessment of compliance in light of the first two paragraphs.
239. It is important to recognise that the policy was examined and adopted after the publication of the Framework and should, therefore, reflect the 'cost:benefit' approach set out there and which was explicitly referred to in *Colman*⁸. The first section of WCS policy WCS14 in its application to the landscape generally plainly adopts such an approach. It enables a proposal to comply with the policy despite causing significant harm to the landscape so long as those adverse impacts are outweighed by benefits the development would provide. That same cost:benefit approach is applied to development within the AONB, although of course the benefit side of the equation has here to be more compelling to outweigh harm.
240. Since the setting of the AONB is not fixed or defined whether or not a proposed development can be said to affect it (what the second part of the policy says) would depend on the scale and nature of the development proposed. The policy would therefore be unclear and applicants for planning permission would not know whether it was the 'general landscape' section of the policy or the first part of the AONB section which applied to sites outside but potentially within the setting of the AONB.
241. UBB's position therefore is that the first section of the policy is fully relevant to the appeal proposal and must be applied to it, so that – if and to the extent that the development is concluded to harm the landscape – such harm can be outweighed by the benefits that would be achieved. Of course, Mr Smith concluded that the appeal proposal would not have a significant adverse effect on the local landscape as defined in the Landscape Character Area (LCA) assessment. If that is accepted, then the proposal would accord with the first section of the policy. It can also qualify under that section if the impact can be 'mitigated'. Significantly that does not mean avoiding all harm. Even if the proposal is judged to be incapable of being 'fully mitigated' (again, plainly not a requirement to avoid all harm), it can still comply with the first section of the

⁶ *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13, [2012] PTSR 983

⁷ Inspector's note: On Day 15 of the Inquiry I explained my reading of this policy and invited views in closing submissions. My concern arose from a line of questioning to Mr Wyatt from Mr Phillips.

⁸ *Colman v Secretary of State for Communities and Local Government* [2013] EWHC 1138 (Admin)

- policy if the benefits outweigh the harm, which the appellant contends this proposal manifestly would do.
242. UBB also submits that given the proposed development would affect the setting of the AONB, the second section of the policy down to the 3rd indent additionally applies. However, even if that is – for whatever reason – not accepted so that only the AONB section applies and the ‘general landscape’ section is disregarded⁹, the appellant has successfully demonstrated compliance with the 3 indents so that the proposal accords with the policy even in the absence of a balancing exercise. If the Inspector agrees with that submission, it may be prudent to address the policy under both interpretations.
243. The commended approach is that taken in WCS policy WCS16 in relation to the historic environment. It would seem inconsistent if a cost:benefit approach was taken under one but not the other. Both policies contain an internal balancing exercise, in effect a cost:benefit approach similar to that carried out in a s38(6) exercise. However, the important difference with the internal balancing exercise is that, if the benefits outweigh the harm, the development would accord with the policy rather than being an acceptable departure from the policy.
244. The second part of WCS policy WCS14 relates to development proposals within or affecting the setting of an AONB. Since the appeal site is not within the AONB but does affect its setting it is only the three criteria or indents that apply. No alternative site has been put forward by any party to the appeal although Mr Smith has assessed all four others allocated in the WCS and found that a similar scale development of residual waste treatment facility would affect the setting of the AONB. In his view, those near Bishops Cleeve would be visible from a longer section of the Cotswold Way than the appeal site. The second indent is addressed below and Mr Roberts has explained how the appeal proposal would comply with all other relevant development plan policies (UBB1/J).
245. The interaction of WCS policies WCS14 and WCS17 and Appendix 5 is fundamental and in setting out that interaction the two stage approach advocated by Mr Roberts is contrasted with that suggested by Mr Gillespie.
246. GCC raise no objection under WCS policy WCS17. In these circumstances it ought not to follow that the appeal proposal, which Mr McQuitty accepted complies with the criteria in Appendix 5 (and by extension with WCS policy WCS6), can then fail WCS policy WCS14. It is no part of UBB’s case that any building fitting within the dimensions assessed by Atkins should obtain planning permission. Leaving aside WCS policy WSC6, a proposal comprising a stark, poorly designed box of a building of, say, 40 metres in height, with a footprint of 9,000 square metres, would be very unlikely to comply with WCS policy WCS17, despite fitting within the dimensions assessed to be appropriate for the site.
247. By extension, it would then be likely to fail to comply with WCS policy WCS14. However, where a proposal complies with WCS policy WCS6 and WCS policy WCS17 (as the appeal proposal does and neither policy is cited in the reasons for refusal) it is hard to see how it can then go on to fail WCS policy WCS14. A

⁹ The Inspector’s tentative understanding and also that of GlosVAIN

- proposal that gets that far simply should not be able to have significant adverse impacts that are not outweighed or capable of being mitigated.
248. Again, it is stressed that, as GCC's Issue 5 Topic Paper on the specific sites (CD5.54, paragraph 2.14) and the WCS itself (CD5.1, paragraph 4.269) make plain, the design policy is of key importance to taller residual waste treatment facilities. If the proposal complies with that policy and its requirements to respond and be appropriate to its local environment and surroundings and to reflect the character and quality of the area in which it is located, it cannot sensibly be contended that it fails the landscape policy.
249. When pressed on this, GCC attempted to retreat to a position that the design policy is not concerned with height, scale and massing which is the exclusive preserve of the landscape policy. But that is simply not a tenable position given the plain language of WCS policy WCS17 and its explanatory text. To that extent, we agree that the distinction between the two policies is 'blurred'. Having accepted the proposal complies with WCS policy WCS 17, which UBB considers is meant to apply particularly to taller structures, it is illogical for GCC to have refused on grounds of conflict with WCS policy WCS 14, especially in circumstances where GCC have not argued that on reflection they should have cited conflict with the design policy. To the contrary, they have, very fairly, maintained throughout the inquiry that there is no design objection.
250. Turning to SDC's characterisation in closing of UBB's position (SDC/INQ/3, paragraph 4 and following), this is a misrepresentation. First, the WCS allocates the appeal site for all 3 scales of development it assessed and if a building of the proposed scale is therefore judged to be acceptable in principle, that acceptance cannot then be denied by an 'in principle' objection to buildings at the largest scale, especially when there is no objection raised to the stack.
251. Secondly, WCS policy WCS17 is, of course, not the only relevant policy. Mr Roberts stressed during his evidence that it was his interpretation of the WCS that when a proposal passed WCS policy WCS17 and met the criteria in Appendix 5, it would be difficult for that proposal to go on to fail WCS policy WCS14. It is this second point that demonstrates the fallacy in SDC's submission that on UBB's case, once WCS policy WCS17 is passed there is no duty to seek to further mitigate the impacts of that height (SDC/INQ/3, paragraph 5(1)). Not only does that improperly conflate the minimising of height with the mitigation of impact, but it also fails to recognise that the Appendix 5 criteria themselves address mitigation measures.
252. Turning now to other development plan policies, Mr Wyatt agreed in XX that WLP policy 37 adds little now that the more detailed WCS has been adopted. He also agreed that SDLP policy NE10 must be interpreted to allow the same harm against benefits balancing exercise otherwise it makes little sense. Policy NE9 relates to Special Landscape Areas (SLAs) identified in the County. Although not a saved policy, it is agreed to be of some relevance in that the SDLP describes the purpose of defining SLAs and applying a particular policy to them. They are areas where the topography is a continuation of the AONB or where there are features characteristic of the AONB. The SDLP states that these SLAs primarily border the AONB and their purpose is to protect the setting of the AONB (CD5.3, paragraph 8.7.1). As Mr Wyatt agreed in XX, although there are a number of SLAs which border the western margins of the AONB in the District, it is

significant that the appeal site lies outside any SLA. Clearly it was not thought that this area warranted any further protection as an outlier to or setting of the AONB.

253. In summary therefore, both national and local policy require a balancing exercise to be undertaken. Manifestly the acceptability of the landscape and visual effects of the appeal proposal cannot be divorced from the benefits of the scheme.

Landscape and visual effects

Landscape character areas

254. Mr Russell-Vick accepted in XX that the landscape character of the appeal site was the starting point for any landscape and visual impact assessment of the appeal proposal. The clear and consistent theme running through each LCA assessment is that there is no one area of uniform character but rather a mixture of areas with different land uses and characteristics. Agricultural uses and rurality is not the defining character throughout and there are frequent references to the fact that the area is punctuated by significant built form, as is the case with the appeal site and the surrounding area. The appeal site is part of an area with a far greater concentration of urban influences than other parts of the Vale and now lies within an area which the emerging SDLP has identified as a 'focus for the District's strategic growth.' (CD5.5, page 53).

255. Both Gloucestershire's Landscape Character Assessment for the Settled Unwooded Vale (CD10.4, pages 55 to 58) and the Landscape Strategy and Guidelines for the Cotswolds AONB (CD10.11) draw the same distinctions between areas with a strong rural character and those urban fringe areas more affected by development and infrastructure and correspondingly less sensitive to development. The appeal site is within such an area.

Landscape impacts

256. Whilst the proposed development would be prominent in the local landscape, its visual influence would be reduced with distance and by the screening effects of existing vegetation and buildings around the appeal site. This is clearly illustrated by Mr Smith's Zone of Visual Influences (ZVI) which are based upon accurate aerial survey data (UBB2/C, Figures UBB2/1 and UBB2/2).

257. The highest magnitude of change would be within 1km of the site. However, this area is already strongly influenced by built elements and major infrastructure and Mr Smith concludes that the overall landscape effects of including the appeal proposal within this existing urban fringe, which in the near future is likely to become further urbanised, would be less than significant. The significance of landscape effects would reduce still further when compared with the baseline of the permitted warehousing at Javelin Park; this is addressed below. It follows that, although the magnitude of landscape effects is greatest at the appeal site and in the surrounding area, these are also the areas with the lowest sensitivity to the appeal proposal, and consequently the landscape effects there are less than significant. For areas more than 2.5km from the appeal site the landscape effects would be minor and neutral while at more than 5km effects would become negligible.

258. Similarly, with the exception of one isolated and atypical view from the Gloucester and Sharpness Canal (viewpoint 27), when compared with the baseline of the permitted warehousing all of the significant adverse visual effects of the proposed EfW would occur within 1km of the appeal site.
259. The majority of adverse landscape and visual effects of the proposed development would, therefore, be localised and focused within an area which is already strongly influenced by such urban fringe characteristics and less sensitive as a result. As Mr Smith notes, all of the existing large scale developments in the vicinity of the appeal site also result in adverse landscape and visual effects – Quedgeley West, Moreton Valence and Quedgeley East – but the landscape of the Vale of Berkeley has the capacity to assimilate these developments without fundamentally undermining or altering the characteristic mosaic of agricultural land and industrial/commercial development.
260. Mr Russell-Vick focuses on the verticality of the appeal proposal in what he characterises as a horizontal landscape. However, this downplays other existing vertical elements such as the Cotswold scarp itself and other industrial and commercial developments and is inconsistent with his acceptance of the proposed stack and his view that the Dairy Crest development was not harmful when viewed from Haresfield Beacon. It also ignores the fact that some of the industrial and commercial developments introduce larger plan areas with unrelieved expanses of roof and hardstandings which are equally or more prominent in elevated views than taller but more compact buildings.

AONB

261. The setting of the AONB is undefined. The Cotswold Conservation Board regards the setting to be the area within which development may be considered to have an impact upon the natural beauty or special qualities of the AONB. It must be noted that the appeal site is well outside any of the SLAs designated as Ms Marsh agreed to protect the setting of the AONB. The AONB is very large and is very difficult to conceive that the appeal proposal would harm the overall setting of it as alleged in reason for refusal 3 when it would not be visible from almost all of it.
262. As the ZVIs illustrate, the potential for visual effects on receptors in the AONB is actually limited (UBB2/X, Figures UBB2/1 and UBB/2) and in reality even more limited than they would suggest. Intervening hedgerows and tree groups severely limit or exclude views from viewpoints such as Maiden Hill and the northern flank of Haresfield Hill east of Beacon Lane. Views of the appeal proposal therefore become increasingly fragmented further than 1km from the appeal site. Within 5km of the appeal site there are only four views from the Cotswold Way, three of which are glimpsed through narrow breaks in structural vegetation. Even at Haresfield Beacon, the clearest of the views of the proposed EfW, the site lies at the extreme right of a panorama – and is visible only at the farthest extent of the promontory – with that panorama centred on the Severn Estuary and containing extensive views of built development at Stonehouse. This view represented by viewpoint 34 is therefore not necessarily representative of the majority of views along the Cotswold Way.
263. This is well illustrated by reference to the panoramic photograph taken from Haresfield Beacon (CD1.5, Tab 10, Figure 2d). In this extensive panorama the Dairy Crest development is clearly visible. In EIC Mr Russell-Vick said it was

'noticeable' while Ms Marsh said in XX that it was acceptable in the landscape as it was a good distance from Haresfield Beacon and formed only a very small part of the view.

264. However, UBB believe that there are two reasons for these conclusions. First, the industrial complex that includes Dairy Crest is on the urban fringe and is seen in that context, as would be the appeal proposal. The acceptance by Mr Russell-Vick and Ms Marsh of the Stonehouse complex is a clear indication that a degree of visual harm does not mean that the fundamental character of the landscape will be changed.
265. Second, the panoramic nature of the view leads the eye to sweep over the wide swathe of landscape available. It does not focus or linger on particular features unless they are being deliberately sought out as landmarks. While the appeal proposal would be seen clearly in the landscape from Haresfield Beacon, the panoramic nature of the view is such that the fundamental character of the landscape – which has already successfully absorbed substantial scale buildings and other urban forms – will not be changed. If Dairy Crest is acceptable in the landscape, then surely there can be no suggestion that the appeal proposal would not be.
266. GLVIA makes it clear that the angle of view is an important consideration in assessing the magnitude of visual effect along with the proportion of the view occupied and the degree of contrast it has with the context (CD10.2, page 21 and CD10.1, page 115). Dairy Crest is a particularly prominent building due both to its colouring and built form whereas the appeal proposal has been designed to ensure that both its colour and form reduce its perceived scale (and Mr McQuitty agreed in this regard it was successful).
267. Other development is conspicuous in the panorama. Ms Marsh agreed that the Blooms Garden Centre was and this must apply also to the traffic on the M5 (which also impacts on the tranquillity of the area), Junction 12 and the Quedgeley and Hunts Grove developments. Such developments are noted in the LCA assessments as having a profound effect on the evolution of the Gloucestershire landscape (CD10.4, paragraph 3.7 for example). Moreover, in elevated views from the escarpment the height of buildings is only as important as the spread of built form and the choice of building materials. Thus, although of lower height than the appeal proposal, Blooms stands out because of the expanse of roofscape and the colours of the roofing materials used and the area of hardstanding. While taller than this and the B8 development, the appeal proposal would be more compact and would use more sensitive materials and colours.
268. In short, the appeal proposal would fit into this wide panorama and would not change the character of a view that is already heavily influenced by the existing built development. Mr Smith, therefore, concludes the landscape effects of the EfW on the Cotswolds Escarpment would, when compared against a B8 baseline, be neutral in nature, since the development would not change the fundamental character of views from the Cotswolds Escarpment.
269. Significantly, Mr Russell-Vick conceded in XX that the landscape has some capacity to accommodate development and said that it could accommodate the permitted B8 development. To put it in context, that permitted development comprises large areas of flat roofscape and hard standing (precisely that which

the WCS Appendix 5 criteria seek to avoid). It has a far larger built footprint and contains far fewer mitigation measures than the appeal proposal. Moreover, in the elevated views the appeal proposal's extra height would be offset by its reduced site coverage. The magnitude of landscape and visual effects which would result from the proposed EfW would be further reduced if the permitted warehousing is included, as UBB say it should, within the assessment baseline.

Special qualities

270. Reason for refusal 3 refers to but does not define 'special qualities' of the AONB. Those that could be affected are the Cotswold escarpment, which has just been addressed, the High Wolds, which cannot be affected and the tranquillity. In relation to this, the appeal site is already significantly influenced by views of and noise from the M5 (as Ms Marsh agreed) and to a lesser extent the A38 and railway line, as well as by movement, light and noise from the urban edge and existing industrial and commercial developments such as Blooms and Quedgeley East. The proposed development would cause a negligible difference to this baseline, since it would generate little additional noise, movement or light.

The baseline

271. For a fallback position to be a material consideration requires there to be a realistic possibility of it happening¹⁰. It has to be more than a theoretical possibility but the more likely it is, the greater the weight that may be attributed to it. Of course, a planning permission that is no longer extant cannot be a material consideration but that is not the case here and Mr Wyatt agreed in XX that there was no reason why reserved matters applications pursuant to the extant outline consent should not receive planning permission. Substantial weight should therefore be afforded to the fallback position in this appeal.

272. Both editions of GLVIA require the assessment of impacts to be carried out against a baseline of what the conditions of the appeal site may be like in the future if the development proposed does not in fact take place. Historically that is what has happened in previous decisions at the appeal site (see for example CD5.34, paragraph 4.25.5; CD5.54, Question 2; CD9.2). That is not the approach adopted by either Mr Russell-Vick or Ms Marsh.

273. Witnesses for GCC did not consider the B8 development a realistic prospect but accepted in XX that the appeal site is allocated for employment uses in the emerging SDLP, that it was located in a prime position for distribution uses next to Junction 12 of the M5 and that there was evidence before the inquiry of the intention of both owners of the site regarding the future use of the site (UBB1/B and C). In fact, both landowners have confirmed that they will seek to implement the permitted B8 in the event that this appeal fails and other development does not take place. That is simple commercial sense: it would protect the value of their land.

274. It should be noted too that GCC as highway authority accepted (CD1.9, paragraph 3.36) that the correct approach to take in the transport assessment was to consider the net effect the appeal proposal would have on traffic adopting

¹⁰ *R (Zurich Assurance Limited) v North Lincolnshire Council* [2012] EWHC 3708 (Admin)

the permitted B8 development as the appropriate baseline (CD1.4, paragraphs 2.3.8 to 2.3.17 and section 4.3). GCC cannot have it both ways. In any event, Mr Russell-Vick accepted in XX that there was a realistic possibility of business development in some form coming forward at the site if the appeal proposal does not, so there is therefore common ground that the prospect of future development is a material consideration.

275. This is important and significant since the correct baseline is an important part of judging the magnitude of effect. Mr Russell-Vick accepted as a general proposition that the magnitude of change from a bare undeveloped site to a developed site is likely to be greater than that from one form of development to another. It is unnecessary therefore to know the precise form that the baseline development will take before reaching conclusions.

276. However, here the form is known because of the B8 warehousing permission. Both landowners intend to seek further reserved matters permissions under the extant outline in the same or similar form to those that have already been approved with Consi expressly stating that they intend to use the site for strategic distribution purposes even if some different configuration is put forward. Mr Roberts confirmed in re-examination that the use would inevitably require large B8 warehouses and Mr Russell-Vick accepted that the permitted warehousing would have contained a far greater area of hardstanding than the appeal proposal (UBB1/D).

277. Mr Russell-Vick ought therefore to have been in a position to make an assessment of the landscape and visual impacts of the appeal proposal against an appropriate fall back. His failure to do so obviously resulted in his overestimating the landscape and visual impacts of the appeal proposal, particularly given that the much greater spread of B8 warehousing and extensive areas of lorry parking and vehicular movement would occupy a greater proportion of the view than the appeal proposal and would be likely to be more noticeable than the much more compact although taller appeal proposal.

278. Given the fact that both GCC and Consi intend to apply for further reserved matters approvals reflecting the expired ones and such applications are likely to be approved, Mr Smith was entirely justified in using the now expired permissions and the detailing contained therein as the basis of his photomontages. The position advanced by SDC now in relation to those external details is wholly at odds with its view when approving them that '*...the design and external appearance of the buildings will safeguard long distance views from the Cotswolds AONB...*' (UBB/INQ/16).

279. As Mr Smith's evidence from photomontages demonstrated, significant adverse visual impacts would be reduced if the correct B8 baseline was used to assess the impact of the appeal proposal. The same reduction is true for effects on landscape receptors within the AONB. Ms Marsh's and Mr Russell-Vick's failure to assess the correct baseline therefore leads them to overstate the visual and landscape impacts of the appeal proposal.

Cumulative effects

280. This is not part of the case against the appeal proposal put forward by GCC and SDC. Nevertheless, Mr Smith has assessed the cumulative landscape and visual effects of the appeal proposal (UBB2, sections 5 and 6). His unchallenged

conclusion is that, whilst that the appeal proposal would cause a localised intensification in large scale built development, this would not significantly change the overall pattern of commercial and industrial uses combined with agricultural uses in this area. Extensive areas of agricultural fields would remain around the appeal site, together with the screening effect of existing structural vegetation in the wider area.

Conclusion on landscape and visual effects

281. The landscape and visual impact assessments carried out by Mr Russell-Vick and Ms Marsh have not followed the methodological and other guidance in either GLVIA2 or GLVIA3. That, together with their failure to take account of the B8 fallback, led them significantly to overstate the effects of the appeal proposal. They both failed to have proper regard to the more pronounced urban influences already existing or projected in this area which differentiates it from areas of the valley floor with greater rurality. They both failed to take proper account of the panoramic nature of the views from the Cotswold Escarpment and to the ability of the broad sweep of landscape successfully to accommodate substantial buildings. Both unduly focussed on the height of the proposal without fully appreciating that the more compact footprint, the deconstructed form of the building and its use of sensitive materials would result in a far less intrusive structure in this landscape than lower scale B8 and similar modern development that has already occurred in this area or has been permitted or is proposed to take place.

282. Clearly the development will be seen in the landscape, especially from close quarters, but so too would any scale of EfW facility on this site, as indeed would the permitted B8 development. The AONB Escarpment is some distance from the site. The most sensitive view would be from Haresfield Beacon; but the appeal proposal would sit comfortably in the expansive landscape visible from the Beacon, as is the case with other substantial development that the landscape has successfully accommodated. The landscape and visual effects would not be materially harmful and, in any event, those effects would be outweighed by the substantial benefits that the development would provide. The appeal proposal is, therefore, fully compliant with the recently adopted WCS policies WCS6, WCS14 and WCS17.

Cultural heritage

Introduction

283. The only expert evidence called on this point is that by GCC and is pursuant to reason for refusal 4. However, the heritage assets that are alleged to be harmed and the nature and extent of the alleged impacts are not spelled out therein. A number of preliminary matters have been established through the SOCG (CD4.3) and the evidence of Mr Grover. These are:

- GCC accepts that there was sufficient evidence before it and the Inquiry to enable a proper assessment of the appeal proposal's effects on heritage assets;
- GCC had not accepted either the approach of English Heritage or its advice on how the planning application should be determined;

- The 13 heritage assets alleged to be harmed are listed in the SOCG (CD4.3, paragraph 6.21). Mr Grover expressly confirmed that no harm is alleged to any undesignated asset or to any historic landscape;
- The objection on this ground relates solely to the effect of the proposed development on the setting of the identified heritage assets and, furthermore, the alleged harm to the significance of those assets is confined to the visual effects of the development (CD4.3, page 28, paragraph 8.6). Mr Grover agreed in XX that all references in his proof to objections arising from noise, odour, vibration, dust and lighting should be disregarded;
- It is no part of GCC's case on this matter that another site was preferable in terms of an EfW's likely impact on designated heritage assets;
- In an important concession, Mr Grover agreed in XX that a stack height of 70 metres was necessary and that he did not object on the basis of the stack;
- It was accepted that in the WCS adoption process account had been taken of the potential heritage impacts of the development of residual waste treatment facilities at all three scales considered and for each of the allocated sites. Such impacts were acceptable in principle;
- Mr Grover confirmed in XX that he had adopted the methodology used in the ES and the Ramboll report (CD1.5 and GCC/2/A, paragraph 4.6) and confirmed in EIC that Dr Carter's approach was logical.

284. There is, therefore, no major methodological difference in approach between the parties. However, in the application of an agreed methodology, Mr Grover fell into error in two material respects. This is significant because when the Inspector asked Mr Grover how he should approach and assess the conflicting evidence of two experts he replied that it would depend on the extent to which the witness correctly applied the relevant legal and policy provisions and used a robust and sensible methodology. UBB agrees but there are two obvious failures in his approach. The first is his continual conflation of visual change within the setting of heritage assets with harm to the significance of those assets and the second is his misapprehension of the proper interpretation of s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Applying Mr Grover's own response to the correct approach towards conflicting evidence, Dr Carter's evidence should be preferred because Mr Grover's is irreparably undermined by these errors. These two flaws are now addressed.

Visual effects

285. The ability to see the proposed development either from the heritage asset itself or from within its setting should not be equated with harm to the significance of the asset. The key issue is whether and, if so, to what extent, the proposed development would affect the contribution that setting makes to the significance of the heritage asset. This is what Mr Grover agreed in XX is the correct approach encapsulated in several passages in English Heritage's Guidance on the Setting of Heritage Assets (CD11.4, pages 7, 8 and 43 and endnote 8).

286. The relevant consideration is to assess what impact the appeal proposal would have on the contribution an asset's setting makes to that asset's significance. It

is therefore a two-stage analysis. First, the significance of the asset must be identified, including the contribution made by setting and, second, the effect of the appeal proposal on that contribution must be assessed.

287. Mr Grover does not address the first of these two questions in sharp contrast to Dr Carter who carefully and fully sets out the significance of each asset and examines the contribution the setting makes to the significance of the asset before assessing the impact of the appeal proposal on that contribution.
288. Where setting makes little contribution, or where the appeal proposal's impact on that setting's contribution to the asset is limited, Dr Carter properly reduces the weight to be accorded to that asset's setting. By contrast, Mr Grover's approach, which he said in EIC '*gave considerable weight to setting*', applies an inappropriate blanket approach and fails properly to distinguish between visual change on the one hand and impacts on a setting's contribution to an asset's significance on the other. Mr Grover's approach, therefore, has the effect of wrongly increasing the appeal proposal's alleged impacts on the affected heritage assets. Visual impacts, as perceived from the heritage assets or from within their settings, are inappropriately equated with harm to the significance of the heritage assets. This, together with the approach to s66, is the root cause of the difference between the conclusions of the two expert witnesses on heritage issues.

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990

289. Mr Grover placed great emphasis on s66 of the 1990 Act but accepted in EIC that contrary to what he said in his evidence (GCC/2/A, paragraph 5.5), it does not require setting to be preserved; rather special regard should be had to the desirability of doing so.
290. He placed a great deal of weight on the *Barnwell Manor* judgement of Mrs Justice Lang. This interpreted the 'special regard' stated in s66 to be 'special weight' (UBB/INQ/12/4, paragraph 46). However, this approach was not followed in two subsequent judgements¹¹. Dr Carter, again in contrast to Mr Grover, considered all three judgements and, explaining his reasons, preferred the approach adopted in *Colman* and *Nuon*. In *Colman* it was held that 'special regard' simply meant carrying out a careful and detailed assessment of the impact on the setting of the heritage assets in question (UBB/INQ/12/3, paragraph 68) while in *Nuon* it was held that 'special regard' did not equate to 'special weight' (UBB/INQ/12/1, paragraph 36).
291. Dr Carter summarises (UBB3/REB/A, paragraphs 3.5 and 3.6) the differences between the *Barnwell Manor* and *Colman/Nuon* approaches by referring to the former as requiring a 'two stage' approach, whereas the latter two cases endorsed a 'one stage' approach whereby the requirements of s66 were encompassed by the requirements of the Framework. Mr Grover accepted in EIC that these were fair summaries of the approaches taken in the cases. He said that he favoured the 'two stage' approach which he saw as imposing a 'more demanding' test on decision makers than that in the Framework, but had to

¹¹ *Colman v Secretary of State for Communities and Local Government* [2013] EWHC 1138 (Admin) (*Colman*) and *Bedford BC v Secretary of State for Communities and Local Government* [2013] EWHC 2847 (Admin) (*Nuon*)

accept in XX that that phrase is not to be found at all in the *Barnwell Manor* judgment and that there is no reference in the Framework to s66 imposing any further requirements on decision makers beyond those in the Framework. Further it should be noted that footnote 29 of the Framework expressly provides that '*The principles and policies set out in this section apply to the heritage-related consent regimes for which local planning authorities are responsible under the Planning (Listed Buildings and Conservation Areas) Act 1990, as well as to plan-making and decision-taking.*'

292. Framework paragraph 132 requires 'great weight' to be given to the conservation of heritage assets. Mr Grover accepted that this properly encapsulated the key reasoning of the *Barnwell Manor* judgement. It cannot be right therefore for Mr Grover to say that *Barnwell Manor* imposes a more demanding test than the Framework. He also accepted in XX that it was wrong to describe the requirement of s66 as a 'test'.
293. Furthermore he agreed both in EiC and in XX that the 'one stage' approach could discharge the s66 duty where it was sufficiently robust and rigorous. That was the case here and Mr Grover said in XX that no-one could properly suggest in this case, with all of the various assessments that had been carried out, that there had not been a careful and detailed assessment of the impact of the appeal proposal on heritage assets.
294. The decision of Mr Justice Lindblom¹² was drawn to attention of the parties by the Inspector. This post dates *Colman* and *Nuon* but refers to neither. He applied the 'special weight' test from *Barnwell Manor* and referred to the s66 'test' as being a high hurdle. He also accepted that the s66 duty was enshrined in the Framework (GCC/INQ/12.1, paragraph 52) and so Framework paragraph 134 is the key means of discharging the duty in this case.
295. In view of this and Mr Grover's acceptance that a 'robust and rigorous' approach would satisfy s66, his objection must fall away however one approaches the case law. Mr Grover accepted in XX that Framework paragraph 132 properly encapsulates the s66 duty. It must follow that the approach set out in *Barnwell Manor* (decided prior to the publication of the Framework) adds nothing to it; and nothing in *Forest of Dean* suggests otherwise. Mr Grover also accepted that the approaches in *Colman* and *Nuon* (requiring a detailed and careful assessment) comply with the Framework and that the assessments carried out on behalf of UBB in this appeal have been both detailed and careful. Having made those two concessions there is no scope for GCC to argue that UBB's evidence fails to properly take into account s66.
296. Even if it is accepted that special weight (as opposed to special attention) should be given to the desirability of preserving the setting of heritage assets, UBB's evidence still satisfies that requirement. Dr Carter made it clear in re-examination that he gave a weight to heritage assets and their settings which reflected their importance. A prudent decision maker should state explicitly that regard has been had to the s66 duty, but it should be obvious from the considerable focus on the effect of the appeal proposal on the setting of heritage

¹² *Forest of Dean DC v Secretary of State for Communities and Local Government* [2013] EWHC 4052 (Admin)

assets in the assessment accompanying the planning application; the evidence at this inquiry; and the Inspector's consideration of that material, that particular weight has indeed been given to the desirability of protecting the setting of all the heritage assets raised in this appeal.

Cultural heritage policy

297. Mr Grover confirmed that in relation to all the designated heritage assets he had identified as being affected the harm he was alleging was less than substantial in Framework terms. That must mean, as he accepted in XX, that the requirements of Framework paragraph 132 do not apply here and nor does the strong presumption against development found in Framework paragraph 133. Second, in accord with Framework paragraph 134, the proper approach to cases of less than substantial harm is simply to weigh that less than substantial harm against the public benefits of the proposal, without there being any presumption against development.
298. WCS policy WCS16 refers to development having 'significant' adverse impacts without defining what 'significant' means. Given that Mr Grover confirmed that none of the impacts he identified was significant in EIA terms, it would appear that WCS policy WCS16 is not engaged at all.
299. If, however, the policy is engaged - which Mr Roberts adopts as a cautious approach (UBB1, paragraph 8.3.17) – both Mr Grover and Mr Gillespie accepted in XX that it encompasses and is in conformity with the Framework and thus the balancing exercise in Framework paragraph 134 falls to be applied. It is of little consequence whether this is conducted under the Framework or the policy.
300. Mr Grover agreed in XX that as drafted compliance with SDLP policy BE12 is impossible. If however a purposive interpretation is taken, it adds nothing to WCS policy WCS16 and is therefore not considered any further.

Heritage assets

301. Mr Grover accepted in XX that the criteria for determining the importance of heritage assets set out by Dr Carter (UBB3/B, page 14) were correct. It follows that of the 12 heritage assets identified by GCC as being of concern the two scheduled ancient monuments and the two Grade II* listed buildings are the ones to be afforded high importance.

Fallback

302. Notwithstanding English Heritage guidance that prospective changes in the landscape should be assessed in any assessment of heritage assets (CD11.4, page 19), Mr Grover assessed impact against the existing state of the appeal site. He explained that this was because he relied upon the view of Mr Gillespie regarding the likelihood of the B8 warehousing permission being implemented. As with previous evidence that has been dealt with already, this leads to an overstatement of the impacts of the appeal proposal. This is illustrated by the evidence of Dr Carter, where the impacts he identifies the appeal proposal as having on Hiltmead Farmhouse are shown to be eliminated if the baseline is taken to be the B8 warehousing rather than the present condition of the appeal site (UBB3, paragraph 3.96).

303. While Mr Grover has not provided evidence as to how his assessment would change if he adopted the B8 baseline that UBB contend is correct, he accepted in XX that the warehousing itself would have a noticeable visual effect, although it would be less than the appeal proposal, and would erode the rural character of the landscape.

Mr McQuitty's alternative designs

304. Mr Grover confirmed in XX that he not been instructed to consider these alternative designs. He therefore provided no evidence to show that lowering the height of the proposed main building would remove or materially reduce the impacts that he claimed the appeal proposal would give rise to. In terms of their effects on heritage assets these alternative designs can be afforded no or very limited weight.

Specific assets

305. Four of the assets were the focus of the oral evidence and illustrate the flaws in Mr Grover's approach. These are now discussed in detail; Dr Carter's evidence applies these principles to the remaining assets.

306. The ability to see the appeal proposal from within the setting of ***St Peter's Church, Haresfield*** or the monuments in its churchyard should not be equated with harm to the significance of those assets.

307. First, Mr Grover accepted in XX that views of the appeal proposal from St Peter's Church are limited to the periphery of the churchyard. Second, he also accepted that a great part of the significance of the Church lies in its medieval fabric, rather than its wider setting. Third, in relation to the churchyard tombstones, Dr Carter's evidence demonstrates, and Mr Grover accepted, that their setting is primarily that of the churchyard itself. Following from that, fourth, the appreciation of both the Church's fabric and the monuments within the churchyard is gained almost entirely within the churchyard itself, not from the Church's wider setting. This is because, as Mr Grover accepts, the Church itself does not constitute a dominant feature in the local landscape (GCC/2/A, paragraph 4.16) and the churchyard is fringed with mature trees (GCC/2/A, paragraph 4.15), reducing inward visibility from the wider landscape and the contribution the churchyard makes to that landscape.

308. In policy terms there is no such thing as the setting of a setting and Mr Grover accepted this. Consequently, that the appeal proposal is visible from the edge of the churchyard says nothing about the effect it would have on the contribution the churchyard makes (as the setting of the tombstones or as part of the setting of the Church) to the significance of the tombstones or the Church. Mr Grover's approach, however, was to say: first, the appeal proposal is visible from the churchyard; second, it would break the skyline in that view; third, this would be a significant impact on the view; and finally, this would be a significantly harmful impact on the listed building. It is the jump between the third and final stages where Mr Grover falls into error by doing precisely that which he claims not to do, namely equating visual change to setting with harm to significance of the asset. Put simply, Mr Grover has failed to explain why the ability to see the appeal proposal from the edge of the churchyard adversely affects a person's ability to appreciate the significance of the heritage assets. What he assessed is

- little more than visual change in the setting and in so doing he has not correctly assessed the effect on the significance of the assets.
309. When considering viewpoints where both the Church and the appeal proposal would be visible, it is not enough to simply identify them. It also needs to be shown that those in-combination views are publicly accessible and comprise valued views of the heritage asset which contribute to the significance of that asset. Mr Grover failed properly to apply such requirements.
310. In the case of Mr Russell-Vick's viewpoint PVR02, the view chosen represents the only approach to the Church where the appeal proposal would be visible in combination with the Church. Furthermore, Mr Grover accepted that the Church would remain the dominant feature in the view and that there would be a wide angle of separation between the Church and the appeal proposal.
311. Mr Grover's Plate 4, taken from the Travellers' site was admitted to have been taken on land not accessible to the public. Mr Grover also accepted that Mr Russell-Vick's viewpoint PVR04 was not one of the more significant views of the Church, that the spire was not dominant in the view, and that there was significant separation between the spire and the appeal proposal.
312. It is submitted, therefore, that none of these in-combination views would materially harm the appreciation of the significance of the Church.
313. Importantly, Mr Grover accepted that he had no evidence that it was possible to see the appeal proposal from **Haresfield Court** itself. Indeed, Mr Smith's ZVI confirms there would be no visibility. The view from Haresfield Court toward the appeal site is blocked by vegetation. Mr Grover further accepted that much of the former parkland had been returned to agricultural use and therefore contributed less to the significance of the asset.
314. Mr Grover's evidence was that the Lodge formed '*an integral part of the wide composite heritage of Haresfield Court*' and that consequently it contributed to the setting of Haresfield Court. While in his proof, Mr Grover stated that the Lodge was part of the original estate of Haresfield Court (GCC/2/A, paragraph 4.24) in XX he admitted this was wrong and that the Lodge did not in fact form part of the original estate. Furthermore, the Lodge itself is physically and functionally separate from Haresfield Court. As an undesignated asset it cannot in its own right form part of GCC's reason for refusal. Given that Mr Grover accepts there is no such thing as the setting of a setting, which is the most the Lodge can represent, it is surprising to find the Lodge even being given consideration in his evidence. Significantly, English Heritage expressed no concern about Haresfield Court or its former Lodge.
315. Mr Grover accepted that although the **Haresfield Hill Camp and Ring Hill Earthworks** scheduled ancient monument extends across a broad area, there are actually few areas within it from which there are views across the Vale to the appeal site.
316. The significance that the Hill Camp derives from its setting lies in the dramatic topography and the commanding views it enjoys over the Severn Valley which explain why such a strong, defensive site was chosen (UBB3, paragraph 3.80). Given Mr Grover's agreement to that in XX, it was significant that he further agreed with UBB's case that the appeal proposal would not affect the topography

of the area, would not curtail the panoramic view and would not restrict the commanding nature of the view. This last concession is directly contrary to his position in his proof where he stated that the appeal proposal would 'impinge' on the commanding view from the Hill Camp (GCC/2/A, paragraph 4.55). This was the closest he came to dealing with the significance of the appeal proposal's impact on the contribution the asset's setting makes to its significance.

317. Mr Grover's insistence in XX that the appeal proposal would harm the significance of the scheduled ancient monument, therefore, represents a further example of his confusion between visual impact and significance. Paragraph 4.55 of his proof illustrates this well. In that paragraph, he sets out the appeal proposal's visibility in views from the Hill Camp, but fails to go on to explain why such visibility would affect the significance of the asset, in particular why the ability to see the development would undermine the ability of the public to appreciate why this site was chosen for its defensive qualities.
318. By contrast, Dr Carter demonstrates that the mere visibility of the appeal proposal from a small part of the Hill Camp does not restrict the panoramic views that illustrate why the Hill Camp was located where it is and which form part of its setting. Nor would the addition of another modern structure affect the commanding position of the site (UBB3, paragraph 3.82). Consequently, the appeal proposal would have no effect on the significance of the Hill Camp, whether the baseline is taken to be the site as it currently exists or the permitted B8 warehousing.
319. Turning to views of the Hill Camp Dr Carter shows that these are diminished now that it is no longer possible to make out the Hill Camp from distance (UBB3, paragraph 3.80). Mr Grover's contention (GCC/2/A, paragraph 4.55) that the appeal proposal would be visible in views of the Hill Camp from the west and the M5 must be seen in this light. They are not significant views.
320. Mr Grover does not identify how **Hardwicke Court's** setting contributes to its significance. By contrast, Dr Carter sets out that its significance derives primarily from its architectural interest. Consequently, the setting that contributes to this significance is limited to its associated structures, its garden and its parkland. The appeal proposal would be largely screened from views from within the parkland, and in those views where it would be visible, visibility would be generally limited to the stack and associated plume (to which GCC does not object). The appeal proposal would not be visible from the gardens around the house.
321. Hardwicke Court was located to have two designed views; one to the south-east and one to the south-west. The appeal proposal would not intrude into these designed views. The view to the south-east ends in a block of trees that would completely screen the appeal proposal structure and the view to south-west looks in the wrong direction (UBB3, paragraphs 3.42 to 3.47).
322. In those circumstances, it cannot be realistically maintained that the appeal proposal's impact on the significance of Hardwicke Court is anything more than negligible.

The approach of English Heritage

323. English Heritage assess the appeal proposal's effects on individual assets and conclude that in each and every case the impact would be less than substantial, but then – in the absence of any known precedent and wholly contrary to its own guidance - proceeds to lump those individual effects together to form one 'cumulative' impact which is assessed by some unexplained process or reasoning as giving rise to substantial harm.
324. Mr Grover conceded in XX that he did not in fact support this 'cumulative' approach and went so far as to say that it was '*quite improper*'. Significantly, GCC – while it resolved to refuse the proposed development on heritage impact grounds – did not accept the advice of English Heritage and, in particular, plainly rejected the conclusion that there would be substantial harm to the heritage assets however caused. While Mr Grover suggested the effects on the assets would be both individual and cumulative (GCC/2/A, paragraph 5.6), he readily acknowledged in XX that he meant no more than a collective effect (GCC/2/A, paragraph 5.3) and that this was not the same as English Heritage's cumulative impact. He was also careful to make plain that this collective effect remained one of less than substantial harm.
325. While English Heritage's guidance (CD11.4, page 25, paragraph 4.5) sets out the two circumstances in which cumulative impacts can occur neither arise here. English Heritage has clearly adopted the wrong approach as Dr Carter's evidence sets out (UBB3, pages 24 to 30). Mr Grover agreed that English Heritage has in this case departed from their own guidance and further agreed that this reduced the weight that could be applied to their objection.

Conclusion on heritage assets

326. Mr Grover's evidence is undermined by his failure to differentiate properly between mere visibility of the proposed development and the effect of that visibility on the significance of heritage assets. This, coupled with the enhanced weight he gave to setting based on his misapplication of s66 of the 1990 Act and his failure properly to assess the appropriate baseline, undermines his evidence and led to his overstating the impact the appeal proposal would have on heritage assets. When it is appreciated that, even on this overemphasised scale, the impacts he identified are, first, less than substantial in Framework terms and, second, not significant in EIA terms, the weakness of GCC's objection in its fourth reason for refusal becomes apparent.
327. In contrast to the evidence presented by Mr Grover, Dr Carter's evidence clearly sets out the contribution each asset's setting makes to its significance, before considering the impact the appeal proposal would have on those settings' contribution to significance. Mr Grover readily accepted that this was the correct approach, and that no criticism could be made of it or of the level of detail supplied by UBB. Significant weight should therefore be accorded to Dr Carter's conclusions that, even assuming a baseline of the current condition of the appeal site, only four heritage assets would be affected by the appeal proposal, and that in no case would the harm be greater than slight in magnitude and minor in significance. These impacts reduce to three if the B8 warehousing is taken as the baseline.

328. Although Dr Carter and Mr Grover agree that all impacts would be less than substantial in Framework terms and not significant in EIA terms, it is important to emphasise that within these broad categories, the harm identified by Dr Carter is considerably less in extent and in seriousness than that identified by Mr Grover.
329. It is that reduced level of harm that should be put into the planning balance. Mr Gillespie accepted in XX that his balance exercise was totally reliant on Mr Grover's evidence with respect to cultural heritage. It was Mr Grover's greater and erroneous level of impact that was placed in his balancing exercise. A reduction in cultural heritage harm, as Dr Carter's evidence demonstrates is the correct approach, inevitably alters the balance as struck by Mr Gillespie and in favour of the appeal proposal. Mr Gillespie accepted in XX that the cultural heritage impacts were '*not severe*'. For the reasons given in the evidence of Mr Roberts, the benefits of the appeal proposal demonstrably outweigh the limited harm that Dr Carter identifies would be caused to designated heritage assets.

Issue (g): residential amenity

Introduction

330. This derives from the fifth reason for refusal which contends that there would be an overbearing effect on nearby residential properties. The SOCG (CD4.7, paragraphs 9.1 and 9.2) has narrowed this concern to visual overbearing effects on three properties only; the Lodge, the Hiltmead Travellers' site and Hiltmead.
331. In his evidence (GCC/3/A, paragraphs 5.23 and 5.24) Mr Russell-Vick accepts that the effects on Hiltmead and the Travellers' Park would fall short of overbearing. Thus GCC's case on this is limited to the Lodge. As was clear from the XX of Mr Wyatt and Ms Marsh SDC actually take no point on this.
332. The relevant policies are WLP policy 37 and SDLP policy GE1. Supporting text for the latter describes an overbearing effect as one that '*...looms over, or dominates the amenity space or outlook of the occupiers of a (usually) residential property*' (CD5.3, paragraph 3.2.2). This chimes with what has become known as the 'Lavender test' after a passage in a wind turbine appeal decision (CD9.3, paragraph 66).
333. Clearly visibility alone is not enough to establish that a proposed development would be overbearing. Residential occupiers are not entitled to expect that there will be no change in the view from their property, particularly in an area proposed to be designated as the focus of the District's strategic growth. Instead, the test is whether the appeal proposal would in the terms of the 'Lavender test' render the residential property in question an unsatisfactory place in which to live.

Assessment

334. Mr Smith has carried out an assessment of the visual effects that the appeal proposal would have on nearby residential properties which extends well beyond those of concern to GCC (UBB2/G). GCC does not undertake a similar analysis and on that ground alone, Mr Smith's should be preferred. As a result of the analysis Mr Smith concludes that only three properties or property groups would have the potential for clear views of the proposed development. These are Airfield Farm, the Hiltmead Travellers' site and one building within the Mount

Farm complex at Haresfield. None of these is alleged by Mr Russell-Vick to suffer an overbearing effect and they do not therefore fall within the scope of reason for refusal 5.

335. The remaining properties to which the SOCG relates – the Lodge and Hiltmead – have the potential for views of the appeal proposal from only a small number of windows (one first floor and one ground floor window at the Lodge and two first floor windows at Hiltmead). Apart from those windows, the views from these properties are largely screened by vegetation on their own boundaries. The extent to which these are windows to habitable rooms is not clear.

336. Dealing first with the Lodge, it is contended that Mr Russell-Vick has overestimated the impact for the following reasons:

- Views of the appeal proposal could be obtained from only two windows to non-habitable rooms. The vertical subtended angles of the appeal proposal from the ground floor window would be 8° for the stack, and 6.6° for the building. These angles assume no screening effect from the proposed mitigation planting, and consequently the angle of visibility would gradually diminish as this planting establishes. Mr Russell-Vick provided no equivalent analysis from the relevant two windows;
- Mr Russell-Vick accepted in XX that his primary focus was on the exterior of the property, particularly the western side and the gardens to the north and south particularly in winter. However, since dwellings are for living in the proper concern should be the effect on rooms occupied during waking or daylight hours (CD10.1, page 114). These would be more limited than those views from outside and thus leads Mr Russell-Vick to overstate he impact;
- Appendix 5 of the WCS expressly acknowledges that there are two residential properties within 250 metres of Javelin Park. Knowing the potential relationship between the Lodge and a residual waste treatment facility coming forward on the unfettered allocation the WCS would have included some kind of buffer requirement had that been deemed necessary;
- Mr Russell-Vick again failed to take into account the permitted B8 development which, in XX, he accepted would have a worse impact than the appeal proposal. This is because it would extend right up to the eastern boundary thus leaving no space for landscaping and the vertical subtended angles would be 11° compared to the 6.6° for the proposed EfW building and the 8° for the stack;
- Traffic would turn off for the appeal site before the Lodge so it is simply wrong to claim that there would be visual disturbance from such movements.

337. Turning now to the Hiltmead Travellers' site:

- The view of the stack would extend up to 7° vertical subtended angle;
- The appeal proposal would be viewed across the M5 which is a prominent middle ground feature that is both distracting because of the rapid vehicle movement and intrusive by virtue of the noise;

- There would be a clear view of the permitted warehousing which would be a significant part of the view without the appeal proposal;
- While Mr Russell-Vick suggested that the impacts might be worse for the extension to the site permitted, Mr Gillespie confirmed in XX that this extension did not fall within the ambit of the reason for refusal. In any event, planting on the eastern boundary could achieve a screening effect within just a few years and would screen a large proportion of the views towards the proposed EfW.

338. For many of the same reasons, the visual effects on Hiltmead would be less than significant and neutral in nature on Mr Smith's analysis with which Mr Russell-Vick did not seriously disagree.

Conclusion on this issue

339. For these reasons, it cannot be said that any of the three residential receptors of concern would be 'loomed over', 'dominated' or be rendered 'an unsatisfactory place to live' by the appeal proposal, especially when contrasted with the position that would pertain should this appeal be refused and the permitted B8 warehousing permission be implemented.

340. Moreover, any large scale EfW plant on this site is bound to have impacts on the nearest residential properties and so, given that GCC accept the suitability of the site for all three scales of EfW facilities, do not suggest any better site and have made no attempt to differentiate between the effect of the appeal proposal and a 190,000 tonnes per annum plant lowered into the ground in terms of the effect on residential amenity, reason for refusal 5 should be seen as little more than a token objection, devoid of substance. Accordingly, we submit that this reason for refusal has not been substantiated.

Issue (h): perception of health risks

Introduction

341. No party to the Inquiry now contends that the appeal proposal would cause an actual adverse health effect. Since that is now the clear position of GlosVAIN, Mr Watson's assertions regarding anxiety felt by the local community (GV/1, paragraph 412 and GV/INQ/3, paragraphs 36 and 141) which are nevertheless unsupported by any evidence of such anxiety being manifested, can only be seen as part of the perception argument.

342. This general position is unsurprising. It reflects the clear position of Government that there is no credible evidence of adverse health outcomes for those living near incinerators which is most recently set out in the Guide to the Debate (CD7.9, pages 5 and 35 to 37) which the Waste Management Plan for England (CD7.30) expressly refers to as providing factual information for those interested in energy recovery developments. Furthermore, an EP has been issued following thorough consultation and no objections were received from any of the relevant statutory consultees.

343. Since it is so well known and uncontroversial it can be very simply put that public concerns or perceptions in relation to health and air quality are capable of being material considerations whether or not they are objectively justified. However, the weight that can be attributed to those perceptions is entirely a

matter for the decision maker and will depend on whether or not the concerns are objectively justified, as Mr Watson accepted in XX.

344. Again it is equally uncontroversial that the position established over numerous appeal decisions, many of which are included within the Inquiry core documents, is that Inspectors and the Secretary of State will consider whether there is any objective justification for that perception. If there is not, then little or no weight is attached to such perceptions. Where there is some justification, more weight can be given. Indeed, Mr Watson accepted in XX that this approach was '*almost universal*'.
345. It has also been established that for perceived risk to be material to a planning consideration there must be a clear demonstration of the land use planning consequences (CD9.15, paragraph 7.33). Furthermore, it is emphasised that there is no scope for the precautionary principle to be invoked here, as has been repeatedly accepted on EfW appeals (see for example CD9.42, paragraph 12.198); the level of uncertainty over health effects is simply not great enough.
346. In this case there is no reliable evidence either to suggest that perceptions of health risk are objectively justified or of any substantiated land use planning manifestation arising from the perceptions of health risk. These two propositions are considered now in turn by reference to the objections advanced by GlosVAIN and SDC.

Objective justification

347. While GlosVAIN now contends that there is a perception of health risks and a consequential anxiety amongst the public which should weigh against the development during his XX on this issue Mr Watson made the important concession that GlosVAIN does not say this perception ought to be given '*enormous*' or '*significant*' weight nor that this is an issue on which the appeal should be dismissed in its own right. Instead, he made it clear that this is seen, at most, as one factor to be placed in the overall planning balance.
348. In short, the material upon which Mr Watson relies in his proof of evidence (GV/1/C, paragraphs 86 to 97) is pretty much the same as that put before GCC and the EA as consultation responses to the applications for planning permission and an EP respectively. However, in those cases it was put to support a contention of actual harm to health and, following consultation with the relevant authorities and their own assessments, rejected by both determining authorities.
349. In these circumstances it would, as Mr Watson accepted in XX, be wrong to reopen matters that have already been fully considered by the EA. As PPS10 emphasises, the implications for human health of a waste management process are the responsibility of the pollution control authority and it is important that there should be consistency between consents granted under the planning and pollution control regimes (CD6.3, paragraphs 29 to 30). He further accepted in XX that the Secretary of State was required to assume that the EA would properly discharge its responsibilities. There is, in any event, no reliable evidence that the EA would not do so.
350. It is therefore difficult to understand why Mr Watson should maintain that the local community have no trust in the EA's competence unless they have been alarmed by misinformation. Furthermore, such distrust, even if genuine, is

contrary to the assumption that PPS10 requires decision takers to make, namely that the pollution control regime will be properly applied and enforced. Mr Watson's analysis of previous appeal decisions and the suggestion that the perception of risk has been a factor to which some Inspectors have contributed significant weight therefore needs to be assessed in this context. The following points may be made:

- Mr Watson accepted in XX that there was no instance where an appeal had been refused solely on grounds of perceived health risks;
- Perhaps more significantly, he conceded that he was aware of no case where perceptions that were found not to be objectively justified had then been a factor contributing to an appeal being rejected;
- None of the appeal decisions concerning incineration cited in his proof of evidence actually supports the suggestion that significant weight should attach to perceived health impacts in this case. In the few cases where some weight was attached to health concerns there are distinguishing factors that led to the conclusions reached being of little relevance to this appeal proposal, including the fact that some of them did not even concern incineration.

351. Those cited include *Round O Quarry* (CD9.43), *Portsmouth* (CD9.42), *Kidderminster* (CD9.38), *Lamberhurst Farm* (CD9.40), *Rivenhall* (CD9.39), *Sinfin (1)* (CD9.35), *Sinfin (2)* (CD9.37), *Salford* (CD9.28), *Milton Earnest* (CD9.41), *Port of Garston* (CD9.14) and *Barton Bridge* (CD9.34). The latter is particularly instructive since much of Mr Watson's evidence to this Inquiry is identical to that which he presented to *the Barton Bridge* Inquiry. Based on that evidence the Inspector concluded that there was no substantive evidence of actual harm to health, and consequently public fears and anxiety, while material considerations, could only be accorded some weight (CD9.34, paragraph IR 582), not sufficient to outweigh the granting of planning permission. The Secretary of State agreed with this approach (CD9.34, DL paragraphs 8 and 11).

352. Accordingly, UBB submits that no appeal decisions support the case that significant weight should be applied to the issue in this case.

353. Moreover, Mr Watson did not show that in this case the concerns were objectively justified such that significant weight might be justified:

- He accepted in XX that the quantity of objections alone could not provide a proper basis for dismissing the appeal or establishing that perceived health fears were objectively justified;
- He conceded that Gloucestershire is not an area that suffers from existing poor health, poor air quality or social deprivation, all of which are factors that could exacerbate and lend greater credence to perceptions of harm. Indeed, when asked if he knew of any such exacerbating features in the area, he was only able to point to Ms Bailey's concern, expressed only in re-examination, that her household had adopted a self-sufficient lifestyle relying on local produce. Mr Othen confirmed in EiC and in XX that in response to local concerns expressed during the public engagement phase that he had modelled the appeal proposal's impact on farmers and agricultural produce;

- As Mr Watson accepted, the consistent message from Government is that there is no evidence to suggest that EfW plants are harmful to health (CD6.3, paragraphs 30 and 31; CD6.6, paragraph 2.5.43). Although he made reference to the HPA's new study into health impacts, he accepted in XX that the HPA had embarked on this study to reassure the public and that the HPA maintained its earlier position that there were no health implications from EfW plants. In the *Barton Bridge* (CD9.34, paragraph 575), *Salford* (CD9.28, paragraph 68) and *Sinfin (2)* (CD9.37, paragraph 111) decisions, Inspectors have confirmed that the HPA's new study does not discredit its current position, nor reduce the weight that should be accorded to its 2009 statement.
- He accepted that local press reports perhaps exacerbated by the material produced by action groups, heightened perceptions of health risks here. By way of example GlosVAIN's reliance on and publicity given to a recent fire at Fos-sur-Mer (GV/1/C, pages 24 to 26) fuels concern. However, it now seems that the fire was started deliberately and, in any event, it was in the pre-processing materials recovery facility and not in the incinerator itself. Mr Watson's references to the appeal proposal being based on the same design with the invitation to draw the inference that it could therefore suffer the same fate are wholly disingenuous.

354. Turning briefly to the evidence of others, GlosAIN cited various examples of breaches of emission limits at other plants and evidence from Professor Howard referred to concerns about the efficiency of the proposed bag filters. Mr Othen demonstrated in respect of the first concern that there were factors at each plant to distinguish them from the appeal proposal and, in respect of the second, the EA considers the bag filters to be BAT and they are in fact efficient to the order of about 99.9%.
355. GlosVAIN also criticises UBB for not installing equipment to allow the continuous monitoring of dioxin emissions in the flue gasses (GV/1, paragraph 424). This was considered by the EA in its decision document where it is concluded that the proposed method of dioxin monitoring '*...remains the only acceptable way to monitor dioxins for the purpose of regulation...*' (CD2.2, paragraph 4.7.3). Should the EA subsequently require the use of continuous monitoring systems then obviously UBB would install them. In any event, the appeal proposal employs a number of processes to control other emissions (UBB4/REB/A, paragraph 4.3.6), which will be continuously monitored throughout the facility's operation and which themselves would clearly indicate any unusual dioxin emissions.
356. To draw this matter to a conclusion, first, the EA has issued the EP which it could not have done if the proposal was not compliant with the Industrial Emissions Directive/Waste Incineration Directive or if the EA had any concerns over potential impacts on human health. It was held in the *Ardley* challenge that the Secretary of State was entitled to leave matters relating to air quality to the EA, so long as those matters were in fact considered by the EA (UBB/INQ/12/13, paragraphs 65 to 78 and 80 to 81). Where there are relevant matters not considered by the EA, such as the effect of traffic associated with the appeal proposal (CD2.2, paragraph 5.2), the Secretary of State himself must make a conclusion on those impacts, and the Inspector is accordingly invited to report to him that there will be no adverse health impacts and that there have been

thorough and comprehensive assessments of the effect of the development on human health in both the planning and permitting regimes.

357. Second, the public have had a number of opportunities to voice their concerns on this issue and GlosVAIN fully availed itself of those opportunities. The applicant expressly has provided an air quality expert, not just at this Inquiry but also at public exhibitions of the proposed development, to answer questions and help allay concerns. The application was supported by a full human health impact assessment (CD1.2 (iii), Appendix 14.1).

358. Third, it is very clear that the public's views on this issue have been taken fully into account by the expert statutory consultees and the decision-makers on both the planning and permit applications. Furthermore, as the Inspector at *King's Cliffe* noted, this Inquiry process itself provides a direct link between the public and the decision-maker so that the public will know that their views will be taken into account (CD9.15, page 136, paragraph 7.44). For all these reasons, the perception of health impacts should not be accorded any significant weight in this decision.

359. In all those circumstances, while GlosVAIN's concerns about perceived health effects may be sincere, they are not objectively justified and have at least in part been irresponsibly induced (in UBB's view) and ought not, therefore, be given any material weight in the planning balance. There are no distinguishing factors in this case to set it apart from the almost universal response of Inspectors and the Secretary of State to perceived health effects raised at EfW inquiries. In particular, the approaches taken and conclusions drawn by the Inspectors at *Ince Marshes* (CD9.12, paragraph 11.28), *Lostock* (CD9.9, paragraphs 16.38 and 16.49), *Cornwall* (CD9.4, paragraphs 2097 and 2098), *Shrewsbury* (CD9.17, paragraph 94) and *Hartlebury* (CD9.10, paragraph 11.70) ought to apply to the appeal proposal.

SDC: land use impacts and Hunts Grove

360. SDC attempted to show that public fears would have implications for land use by claiming that the appeal proposal would prejudice the deliverability of the proposed Hunts Grove extension for 500 houses to the north east of Javelin Park. It was Mr Jones's case that this would have a knock on effect on SDC's ability to show they had a five-year housing supply, which would consequently jeopardise their (now) submitted SDLP. As he agreed in XX, the point was raised for the first time in SDC's statement of case. It had not been raised as an objection following the Development Control Committee's consideration of the application on either 24 April or 20 November 2012 or subsequently.

361. That this case should be run given the unequivocal statement of SDC's Environmental Health Officer that there is '*no hard evidence*' that EfW plants pose a risk to human health or that the perceived health impacts were '*real and justified*' (CD.3.4, page 12) is surprising.

362. Several detailed errors in the evidence of Mr Jones tended to undermine it. However, it was the timing of his evidence that is of more concern. In XX, he accepted that his instructions in relation to this appeal post-dated his instructions to update SDC's 5 year housing supply (CD13.7) and yet in that document – which he said was a cautious assessment – he assessed Hunts Grove to be a viable development site. Indeed, as he agreed in XX, he shortened the delivery

projections for Hunts Grove in that document from the previous housing land supply assessment. That conclusion (which was published on 17 October 2013) does not sit at all comfortably with the case he ran at the Inquiry on the basis of instructions dated 25 September 2013, and on which he reached his first considered view on or about the date the 5 year housing land supply was published, that perceptions of harm to health could have an impact on property prices.

363. The basis for the case put was that the visibility of the appeal proposal from the Hunts Grove site would serve as a reminder of the perceived health risks the EfW is alleged to give rise to. However, both Mr Russell-Vick and Ms Marsh agreed that viewpoint 7 – which Mr Jones relied upon – was not a view that would experience an effect which would be significant in EIA terms. Furthermore, once the Hunts Grove extension development was built out views of the appeal proposal would be severely limited with visibility only from properties on the edge of the development and, at the most, glimpses from elsewhere between houses.
364. Notwithstanding the considerable amount of adverse publicity levelled at the appeal proposal by objectors such as GlosVAIN and the extensive hostile coverage in the press all three real estate firms engaged in the marketing of Hunts Grove interviewed by Mr Jones had confirmed that the prospect of the EfW development was not currently affecting sales in the area.
365. The suggestion that the appeal proposal will negatively impact the deliverability of the Hunts Grove development is wholly undermined by the fact that Mr Jones's evidence is flatly contradicted by his acceptance in XX that SDC is confident that Hunts Grove is deliverable and viable as evidenced by its inclusion in the recent 5 year housing land supply update and its inclusion as one of a limited number of strategic housing allocations in the submitted SDLP.
366. Mr Jones accepted that there are approximately 25 EfW plants operating in the UK, but he was unable to identify any evidence that any had had an adverse effect on house prices or the pace of sales. This was not a surprising concession given the evidence contained in previous appeal decisions and empirical reports on which he relied and which are now addressed.
367. Mr Jones relied upon one appeal decision, *Middlewich* (CD9.31), which he had misinterpreted. However, in others in *Liverpool* (CD9.14), *Eastcroft* (CD9.18) and *Barton Bridge* (CD9.34) the alleged effect on housing delivery and regeneration has been raised, considered and dismissed on the basis that there was no evidence that the incinerators involved (existing or proposed) had had or would have an impact on house prices.
368. While he sought to distinguish each on the basis that they did not relate to comparable sites, the fact remains that the only appeal decisions where the similar issue to that raised by SDC has been considered support UBB's position that the appeal proposal will not affect the deliverability of the Hunts Grove development. In contrast, no appeal decision supports the evidence of Mr Jones.
369. Turning to the empirical studies, Mr Jones relies on three in his proof of evidence. The Phillips Report from 2013 actually supports UBB since it considered in the region of 50,000 property transactions and as Mr Jones accepted in XX, found no evidence that the incinerators concerned had led to any

reduction in property prices. Mr Jones accepted in XX that the Defra report is 10 years old, relates exclusively to landfill sites the common impacts of which are very different to incinerators and contains nothing that supports his hypothesis that EfW facilities impact upon house prices. In that light it is unsurprising that no Inspector has attributed weight to it when cited.

370. The CEBR Report is actually a proof of evidence prepared for Lewes District Council. It relies on two previous studies, the Kiel & McClain and DEFRA Reports just referred to, but it acknowledges that both studies have weaknesses. These weaknesses substantially, if not totally, reduce the weight that can be given to this report. Indeed, the Inspector examining the Brighton and Hove local plan, which the CEBR Report was prepared for, rejected it and pointed out the substantial differences between the regulatory regimes in the UK and US (the context of the Kiel & McClain study) (CD13.52, paragraphs 22.33 to 22.35) . Furthermore, in no other inquiry in so far as UBB is aware where the report has been relied on has weight been placed on it. Perhaps most tellingly, as Mr Jones agreed in XX, it was not raised by Lewes District Council when objecting to the planning application for the Newhaven incinerator (CD9.25, paragraph 8.151). Indeed in considering that application, the officers took into account that the possibility of an EfW facility on that site was well known since 1998 and there was no evidence of any loss of confidence or detriment to house sales or impact on house prices (CD9.25, paragraph 8.152).
371. Mr Jones accepted in XX that where cited, Inspectors had placed no weight on the Kiel & McClain report and that in his own proof he concedes that it would be unsafe to rely on the conclusions within it about the scale of any reduction in property values.
372. Crest Nicholson are the current and prospective developers of Hunts Grove. The Javelin Park site has been identified for a variety of waste management uses since at least 2004 when the WLP was adopted, that is well in advance of the Hunts Grove planning permission in 2008.
373. Mr Aumonier's firm consulted with Crest Nicholson in the preparation of the heat demand survey (UBB5/REB/B1). Mr Jones confirmed that agents acting for the developer had confirmed that they have prepared an application for the 500 dwelling extension to Hunts Grove and said that he would be '*amazed*' if the company had not secured an interest in the land. He also acknowledged in XX that neither the pace of development nor the value of sales had been adversely affected by the appeal proposal. Furthermore, Crest Nicholson has not objected to the appeal proposal and, in fact, had obtained planning permission for a large scheme at Crawley which includes a large scale waste treatment facility (UBB2/REB/A, paragraph 27 and UBB2/REB/B, page 4). Crest Nicholson has confirmed to SDC that the extension to Hunts Groove will be viable on the basis of full compliance with the affordable housing and infrastructure requirements of the Council (SDC/5/K, paragraphs 10.44 and 11.17).
374. In all these circumstances, for Mr Jones to suggest that CN may seek to negotiate the terms of the section 106 agreement required in connection with the extension site to reduce affordable housing and infrastructure requirements, is pure speculation.

375. Moreover, in the process of preparing their new Local Plan for submission for examination, SDC has consistently considered both the existing Hunts Grove site and the proposed extension to be available, suitable and deliverable for housing.
376. The HDH Viability Study (SDC/5/K) prepared for SDC makes not a single reference to any concern over EfW at the appeal site. In fact, it acknowledges and repeats Crest Nicholson's assurance that the site is viable and deliverable.
377. While it is true that the viability of Hunts Grove is coded 'marginal', this arose solely because of the so-called 'viability threshold' imposed. This was exceptionally high and largely unexplained. However, notwithstanding this, the advice to SDC was that the vast majority of the housing allocations were viable and that the effectiveness of the proposed development would not be threatened by the scale of obligations and policy burdens (SDC/5/K, paragraphs 11.21 and 11.25). Mr Jones accepted in XX that HDH could not possibly have given such advice had they entertained any real concerns about the viability of Hunts Grove extension and the other amber coded strategic sites. Furthermore, HDH stated that SDC should not be deterred in any way from including the site in its emerging Plan.
378. So far as the existing Hunts Grove site is concerned, it should be noted that the conclusion of SDC's Five Year Housing Land Supply (August 2012) was that Hunts Grove was available, deliverable and suitable (CD13.71, Appendix 9, page 12). In Mr Jones's review of it (CD13.72) he included the contribution towards housing supply made by Hunts Grove in his assessment that SDC had a 5.55 year housing supply available. Furthermore, this more recent document, which Mr Jones accepted was produced on a cautious basis, suggests a more optimistic forecast for Hunts Grove, whereby delivery is brought forward by two years from the initial estimate in August 2012.
379. Local planning authorities are required to submit for examination a plan they believe to be sound. The submitted SDLP would fail one of the tests of soundness if it relied upon sites for development that would be unlikely to be deliverable over the plan period. Mr Jones ultimately reached the position that, even if the appeal proposal went ahead, the Hunts Grove development and the proposed extension would proceed and would not become 'undeliverable'. SDC's position appears therefore to amount to little more than the developer may seek to vary the scheme as proposed, despite having given every indication that this was not its intention. Given this, Mr Wyatt accepted in XX that he had overstated the position in his proof when he said that the appeal proposal would make the Hunts Grove extension undeliverable.
380. To conclude on SDC's case on this issue, Mr Jones accepted that the impacts he expects will only manifest themselves when the appeal proposal is nearly complete, will only influence a certain section of the house buying public, and probably not first-time buyers and will be limited to those houses on the edge of the development or those inside with glimpsed views. In light of the above, it is no surprise that Mr Jones conceded that SDC regard Hunts Grove and its extension to be both viable and deliverable.
381. SDC is therefore in the curious position of submitting a plan for examination and supporting its allocations as part of that process, while simultaneously appearing to question the deliverability of one of those allocations in this appeal process. SDC cannot have it both ways. If the plan is sound, as SDC must

believe it to be, the Hunts Grove extension must be deliverable. UBB submit that it is and the appeal proposal will have no impact on that conclusion.

382. On his own admission in XX, Mr Jones's evidence is at best a hypothesis. However, ultimately he accepted that before the Secretary of State can attach weight to this objection he will need to have reliable evidence in relation to it. Mr Jones's hypothesis is anything but reliable. It is based on supposition and inferences drawn from evidence that simply does not support those inferences. Mr Roberts went so far as to say in EIC that after hearing Mr Jones's evidence he was even clearer in his mind that the appeal proposal would not have an impact on Hunts Grove. As with GlosVAIN's concerns, there is therefore nothing in SDC's objection, and the Secretary of State should not accord it any weight in his determination.

Issue (i): the environmental permit

Introduction

383. National policy requires the Inquiry to assume that the EA will properly apply and enforce the environmental permitting regulatory regime in its entirety. In respect of the appeal proposal an EP was issued on 22 May 2013 (CD2.1). Moreover, it was issued after a public consultation process during which a number of the present objectors voiced their concerns, often in very full terms. Those concerns were considered and rejected by the EA. The decision to issue the EP has not been challenged and there is no need for the Inquiry to go behind the matters considered in the EP.

384. Nevertheless, there are three matters raised by GlosVAIN and GFOEN that need to be addressed and they are in turn.

Persistent Organic Pollutants and Priority Consideration

385. Persistent Organic Pollutants (POPs) are subject to legislative control. At the international level, this comprises both the Stockholm Convention 2004 and Regulation (EC) No 850/2004 of the European Parliament and of the Council on POPs. At a domestic level, the Persistent Organic Pollutants Regulations 2007 (CD13.62) transpose the European Regulation into domestic law and no party before this Inquiry is suggesting that the domestic Regulations incorrectly transpose the European Regulation.

386. GlosVAIN argue that there has been a failure to comply with Article 6(3) of the European Regulation, in that the WPA did not consider or comply with that duty, and that therefore the decision maker, in this case the Secretary of State, should himself comply with the duty in Article 6(3).

387. However, this position rests on a fundamental misunderstanding of the terms of the legislation, of which Mr Othen provides a full overview in his rebuttal proof, (UBB4/REB/A, paragraph 4.2) and which place the Article 6(3) duty upon the EA.

388. Article 6(3) of the European Regulation gives rise to the duty to give priority consideration to alternative processes. It provides:

Member States shall, when considering proposals to construct new facilities or significantly to modify existing facilities using processes that release chemicals listed in Annex III, without prejudice to Council Directive 1996/61/EC 1, give

priority consideration to alternative processes, techniques or practices that have similar usefulness but which avoid the formation and release of substances listed in Annex III.

389. Regulation 3(1)(a) of the 2007 Regulations makes it clear that for the purposes of the European Regulation, the EA is the 'competent authority'.

390. Regulation 4 of the 2007 Regulations further provides that:

All duties placed on the member State in Regulation (EC) No. 850/2004 must be executed by the Secretary of State, other than —

(b) Article 6(3), which must be complied with by any person considering an application for a permit or a significant modification to a permit under the Pollution Prevention and Control (England and Wales) Regulations 2000, the Pollution Prevention and Control (Scotland) Regulations 2000 or the Pollution Prevention and Control Regulations (Northern Ireland) 2003.

391. In this case, it was the EA who considered and granted UBB's application for a permit. No challenge has been made to that grant. The effect of regulation 4(b) of the 2007 Regulations is therefore clear: the duty to comply with Article 6(3) rests with and has been carried out by the EA.

392. In XX Mr Watson accepted that this was what the legislation says and that there was no guidance document suggesting that the duty did not in fact lie with the EA. However, he qualified that relying on, first, a response by the EA to a letter before action seeking to challenge the decision to issue a permit in respect of the *Rufford* facility (CD13.82, paragraph 28) and, second, what was purported to be a quote from the judgement of the court in *Salt End*¹³ suggesting that the duty under Article 6(3) actually lay with the planning authority.

393. With respect to the first, the EA's statement therein that the consideration of alternatives was outside their statutory remit (CD13.82, paragraph 28) was clearly wrong and flatly contrary to the *Salt End* judgment (UBB/INQ/5). Significantly, that judgment postdates the EA's response to PAIN (the local action group in the *Rufford* case) by almost a year so the EA would not have had the benefit of being able to take that decision into account when making its response to PAIN. Further, in the event, the proposed challenge to the *Rufford* permit was not pursued and so the court did not consider the matter at all.

394. Regarding the second, the *Salt End* decision said no such thing. The quote and paragraph attributed by GlosVAIN to that judgment in its objection to the planning application (CD13.81, pages 2 and 3) does not exist within the judgment. In fact, it formed part of the EA's written submissions - submissions which are not reflected in the final judgment. Moreover, just as in EA's response to the PAIN letter before action in relation to *Rufford* and for precisely the same reasons, the submissions are plainly wrong. They flatly contradict the wording of the 2007 Regulations which clearly places the duty to comply with Article 6(3) on the EA.

¹³ *Yates-Taylor v Environment Agency* [2010] EWHC 3038 (Admin), [2011] Env. L.R. 14

395. It follows that the statement made by the EA towards the very end of its decision document in this case that appears to suggest that POPs are a matter for the local planning authority (CD2.2, page 130), and the statement to the same effect in the *Rufford* Inspector's Report (CD9.6, paragraph 1239) (which appears to have relied upon an email from the EA, rather than the decision itself) are therefore wrong. It is noted that the Secretary of State in *Rufford* did not come to a conclusion on the matter whilst the Inspector's conclusions were tentative (CD9.6, paragraph 1239) and based on his view that Mr Watson's evidence on the point had been 'uncontested'. However, this view was wrong. In XX, Mr Watson stated that the evidence had in fact been contested at that inquiry.
396. In the absence of any suggestion that the domestic Regulations do not fully transpose the EU Regulations, their clear wording must be correct. The duty to comply with Article 6(3) lies with the EA and not the planning authority. There is, therefore, no need for the Secretary of State to give priority consideration to alternatives in making his decision on this appeal.
397. In any event, there is nothing left for the Secretary of State to consider, as the EA has in fact fully discharged the Article 6(3) duty in this case. In the *Salt End* challenge, the first ground of challenge was that due to it incorrectly taking the view that Article 6(3) applied only to intentionally produced POPs (and not unintentionally produced ones), '*the Environment Agency failed to give priority consideration to alternative processes, techniques or practices which avoid the formation and release of persistent organic pollutants ("POPS"), contrary to Reg.4(b) of the POPS Regulations 2007 and Art.6(3) of the EC POPS Regulation*' (UBB/INQ/5, paragraph 7). Mr Watson accepted that the EA had not fallen into the same error in the present case. Although it was accepted in *Salt End* that this approach was an error of law, His Honour Judge Behrens, sitting as a Judge of the High Court, refused to quash the decision granting the permit on the basis that the EA had nonetheless given '*full consideration*' to the requirements of Article 6(3) (UBB/INQ/5, paragraphs 10, 15 and 16).
398. The same reasoning must apply here. The EA's decision document clearly sets out the Article 6(3) duty, addresses it and complies with it (CD2.2, pages 73 to 76, paragraph 6.4). The EA concluded that:
- We are therefore satisfied that the substantive requirements of the Convention and the POPs Regulation have been addressed and complied with.*
399. The EA has therefore discharged the requirements of Article 6(3) and the Secretary of State is not required to consider it further. The failure of the EA expressly to state that it had discharged the UK's responsibilities under the European Regulation (a failure that Mr Watson relied on in XX) is simply neither here nor there.
400. Although for those reasons, the Article 6(3) duty and the POPs legislation are not matters for this Inquiry, two points made by Mr Othen in his rebuttal evidence are relevant.
401. First, the requirement on the EA under Article 6(3) is to give priority consideration to alternatives of 'similar usefulness'. As he demonstrates (UBB4/REB/A, paragraphs 4.2.18 to 4.2.21), and as Mr Darley accepted in XX, in this case there is no alternative of similar usefulness to incineration. There was

therefore no obligation on the EA to consider processes other than incineration. If there were, there would logically be no end to the number and permutations of alternatives the EA would have to consider. In carrying out their functions, the EA concluded that the appeal proposal constituted BAT, applying the UN Economic Commission for Europe's BAT guidance for preventing the formation and release of POPs (CD2.2, section 6).

402. Second, in terms of dioxins, it is clear that both the UK and European authorities are satisfied that releases of dioxins from incineration plants can be sufficiently managed by the requirements of the Waste Incineration Directive. Furthermore, there is evidence to suggest that incineration plants can be a sink for dioxins (i.e. releasing fewer dioxins than are present in the waste that is incinerated), and that they will certainly be a sink where the APC residues are disposed of appropriately, as they will be here (UBB4/REB/A, paragraphs 4.2.22 to 4.2.40).
403. Consequently there is no requirement for the Secretary of State to give priority consideration to alternatives in accordance with Article 6(3). The EA has already fully discharged this duty and concluded that the appeal proposal represents BAT.

Adequacy of the ES

404. It is common ground that the ES is both legally compliant with the EIA Regulations 2011 and that it provides adequate information to assess the effects of the appeal proposal (CD4.7, paragraph 4.10). No issues were identified by any of the bodies consulted during the formal scoping process or subsequently. The environmental effects of the potential grid connection have now been assessed and found not to be likely to have significant effects (UBB1/E). GlosVAIN gave no evidence to substantiate the alleged deficiencies of the ES but during the course of the Inquiry raised new potential issues in relation to shutdown periods, namely, odour, flies and the rerouting of waste to other sites.
405. These have been addressed earlier. In any event, the EP contains a general condition controlling odour emissions (CD2.1, paragraph 3.4). Flies were addressed in the ES alongside vermin and other pests (CD1.2(i), page 68). The rerouting of waste during shutdowns where the bunker capacity was reached was also considered (CD1.2(i), paragraph 5.7.2). The ES was therefore comprehensive in considering the consequences of shutdowns as confirmed by Mr Roberts in re-examination.
406. It follows that there are no inadequacies in the ES and that its conclusion that the appeal proposal is unlikely to have significant effects is robust and reliable. In any event, *Milne* makes it clear that whether the information contained within an ES is adequate is for the decision maker to decide, and that the courts will not intervene in that decision unless that decision is irrational in the *Wednesbury* sense (UBB/INQ/12/10, paragraph 106). Here, GCC agree that the ES provides adequate information and there can be no serious allegation that their conclusion is irrational. In the event, Mr Watson in closing GlosVAIN's case did not submit that the ES was legally deficient or seek to substantiate the respects in which his proof had suggested that there were deficiencies.

Habitats Regulations and Appropriate Assessment

407. By way of introduction to this matter Article 6(3) of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora ('the Habitats Directive') (CD13.20) provides that:

Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

408. The Habitats Directive has been transposed into domestic law by the Conservation of Habitats and Species Regulations 2010 ('the Habitats Regulations') (CD13.21) and no party is suggesting that this transposition is incomplete. The Habitats Regulations contain a number of provisions implementing Article 6(3). For present purposes it is Regulation 61 that is relevant. This provides:

- (1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—
- (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of that site,
- must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.*

409. Appropriate Assessment can be required at two distinct phases of the planning process. First, at the plan making stage. Second, at the individual development application or project stage.

410. In relation to the former, the WCS was subject to an AA (CD5.12). No challenge is or has been made to that assessment.

411. In relation to the second stage, although the plain wording of WCS policy WCS6 appears to suggest that an AA may be required in every case, that interpretation cannot be what was intended, and such an approach is not required as a matter of law. Advocate General Sharpston¹⁴ made it very clear that assessment for the purposes of the Article 6(3) of the Habitats Directive has two distinct stages (UBB/INQ/12/12, paragraphs AG45 to 51). First, there are screening assessments. Second, where screening assessments identify the next

¹⁴ Case C-258/11 *Sweetman v An Bord Pleanála* [2013] 3 C.M.L.R. 16

stage as being necessary there are AAs. The former are intended to 'screen out' the need for AA where the proposed project is not likely to have a significant effect on a European site. This approach is reflected in Appendix 2 of the WCS, which provides that:

If as a result of an application there is 'likely to be a significant effect' on the designated features of the SAC (this could include impacts from activities not within the boundaries of the SAC and the cumulative effect of several separate applications) then the planning authority must obtain an 'Appropriate Assessment' of the application and its likely effect.

412. The same is apparent from the wording of Regulation 61 of the Habitats Regulations. It follows that there is no basis for an interpretation of WCS policy WCS6 that requires an AA in every case. An AA will only be required where a screening assessment concludes that significant effects may occur. Following this approach, GCC carried out a screening assessment of the appeal proposal to determine whether it was likely to have significant effects on a European Site, and as part of that process consulted with both Natural England and the EA. The screening assessment concluded that it was not likely to have significant effects; no AA was therefore necessary (CD3.72).
413. A number of issues have been raised in this regard either by objectors or the Inspector and these are addressed in turn.
414. The first is the matter of cumulative and in-combination effects. GFOEN object that the screening assessment undertaken for the appeal proposal ought to have considered the appeal proposal's likely effects in combination with development on all the other allocated sites in the WCS. There are several responses to this.
415. First, it would be simply impossible to carry out since nowhere is it said exactly what development would come forward on those sites and no details of scale or technology are known.
416. Second, it would be a wholly misconceived exercise. The WCS simply facilitates strategic scale residual waste treatment facilities at the allocated sites. It does not propose any specific type for any of the sites. If the appeal site was developed as proposed by UBB the policies themselves would not permit a similar facility on any other site because the required residual waste treatment capacity would have been provided.
417. So, whereas at the plan-making stage it was theoretically possible for a thermal treatment plant to be developed on any of the sites allocated under WCS policy WCS6, it would be pure fantasy to suggest there could be similar proposals on any other site if consent is granted for the appeal proposal. For these reasons, the suggestion that such an in-combination assessment with development on the other allocated sites is necessary at all is a misconception.
418. GlosAIN's submissions on this matter fail for the same reason (see paragraph 926 below). Indeed, GlosAIN's suggestion that in combination effects with the emerging Joint Core Strategy have not been considered was shown to be incorrect in EIC of Mr Othen. The WPA clearly considered Gloucester City, Cheltenham & Tewkesbury's emerging Joint Core Strategy in assessing in combination effects (CD3.72, page 12).

419. Third, there is clear guidance on this from the European Commission where it notes in its consideration of in combination effects (UBB/INQ/11/1/5, paragraph 4.4.3):

On grounds of legal certainty, it would seem appropriate to restrict the combination provision to other plans or projects which have been actually proposed...

420. In similar language it concludes:

When determining likely significant effects, the combination of other plans or projects should also be considered to take account of cumulative impacts. It would seem appropriate to restrict the combination provision to other plans or projects which have been actually proposed

421. Further, as part of its drive to simplify guidance, Defra's recently published consultation draft guidance on the Habitats Directive provides that:

In considering 'in combination' effects:

- *The competent authority should take account of all current and proposed plans or projects of which it is aware (and the applicant is responsible for making the authority aware of such plans or projects). This would include proposals where planning permission (or a similar regulatory consent) has been applied for or granted.*
- *It is not necessary to take account of plans or projects for which there have been no formal applications under an approvals process. (emphasis added)*

422. Albeit in the EIA context, European guidance follows the same approach as in the draft Habitats guidance (UBB/INQ/11/3, section 6.4). Further, again in the EIA context, it was held¹⁵ that when carrying out an EIA on a proposed development '*... there was no obligation on the council in the circumstances to consider the cumulative impact of the unknown future development...*' (UBB/INQ/11/2, paragraphs 32 and 33).

423. European and domestic guidance is therefore clear. It was only necessary for the appeal proposal to be considered alongside effects from other facilities that have actually been proposed and have entered the development consent process.

424. That was precisely the assessment that took place. By the time UBB's application was submitted the gasification proposal at Moreton Valence had received planning permission, so UBB's ES considered cumulative impacts with the Moreton Valence proposal (CD1.2(i) pages 338, 365 to 367 and 421 to 423), as did GCC's Habitats Regulations Screening Assessment (CD3.72). There are currently no applications for residual waste treatment facilities on any of the other four allocated sites (or on any unallocated site), and Mr Gillespie confirmed that so far as he was aware there were no such proposals under consideration or in the pipeline. Therefore, there was nothing more that should or could have been assessed at the time of UBB's application or now.

¹⁵ *R (Littlewood) v Bassetlaw District Council* [2008] EWHC 1812 (Admin) [2009] Env. L.R. 21

425. Various statements made at the Inquiry about intentions to submit applications are too vague and inchoate to require or permit assessment of any in combination effects. As Mr Othen noted in his evidence, even if the in combination effects of the appeal proposal were to be considered with some other notional development on the allocated sites at Bishops Cleeve (including the recently submitted applications on the Wingmoor Farm sites), the distance between those allocated sites and the appeal proposal means that they are too far away for there to be any measureable interaction with the appeal proposal.
426. Fourth, when considering the law as it relates to this matter GFOEN maintains that, notwithstanding all the above, the Opinion of Advocate General Kokott¹⁶ (CD13.67) allegedly gives rise to a requirement for UBB to assess the cumulative impacts of the appeal proposal with the WCS and other plans and projects that may have a cumulative impact. Two points may be made in response.
427. First, Advocates General issue Opinions, not binding judgements, which may or may not be agreed by the judges when they are placed before the Court of Justice.
428. Second, C-6/04 is an Opinion (agreed by the Court of Justice) relating to land use plans or development plans and not to projects. The upshot of the Court's judgement is that development plans had to be subject to an AA in order for Articles 6(3) and 6(4) to be complied with. The WCS was prior to its adoption and the assessment expressly considered in combination effects (CD5.19, pages 63 to 65 and Annex D).
429. It is therefore clear that the decision of the Court of Justice does not establish that, at the second or project stage, applicants for planning permission, or WPAs considering such applications, have to carry out an assessment of their likely impacts on European sites in combination with all developments considered or envisaged in the first or development plan stage regardless of whether those developments are the subject of formal applications, or are even in contemplation. There is a clear distinction between the two phases of the assessment process, such that while an AA considering the effects of a development plan as a whole may be required at the plan preparation stage to assume that each allocated site is fully developed, it certainly does not follow that an individual application on one of the sites allocated in that development plan is, in the absence of any other proposed development, nonetheless required to carry out an AA of its effects in combination with some unknown but assumed type and scale of development on all the other allocations.
430. It follows that the approach the ES and GCC's screening assessment took to the assessment of cumulative effects was correct. The suggestion made in Mrs Newton's proof of evidence that the EA has not fully considered cumulative effects with the plant at Moreton Valence misinterprets those conclusions (CD2.2, page 40). As there has been no permit application for that facility, the EA is simply recognising that it did not have definitive data to consider, and that a further cumulative assessment would be made when it came to consider any

¹⁶ C-6/04 *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland* [2005] E.C.R. I-9017

- permit for Moreton Valence in the future. As the Inspector put it, if that later assessment showed significant effects, it would be Moreton Valence whose permit application would be at risk of being refused.
431. The alternative would be to suggest that any cumulative assessment of Javelin Park's effects should be rejected because Moreton Valence, or any other plant, has not yet applied for a permit. That is self-evidently wrong. In any event, the WPA did include the facility at Moreton Valence in its screening assessment and Mr Othen explained in his evidence that there was no possibility of an in combination effect with the facility at Moreton Valence (UBB4, section 5.6).
432. The next matter raised concerns air dispersion modelling. The previous paragraphs have shown that AA is only required at this stage of the planning process where a plan or project is likely to have a significant effect on a European site, whether individually or cumulatively, or where such an effect cannot be excluded on the basis of objective information.
433. The appeal proposal is not likely to have significant effects. The EA's Habitat's Regulation Assessment concluded that the operation of the appeal proposal was unlikely to have a significant effect on any European site (UBB4/REB/B8, page 57) and GCC's own Habitats Regulation Screening Assessment concluded the same (CD3.72, page 39). Mrs Newton accepted in XX that the points she was raising before the Inquiry had previously been raised with and considered by both of these bodies in coming to those conclusions.
434. That the Cotswolds Beechwoods Special Area of Conservation (SAC) is vulnerable to air pollution is accepted (CD13.45). However, the assessments undertaken indicate that the predicted impacts of the appeal proposal are, in each case, less than 1% of the relevant long term Critical Level benchmarks, and less than 10% of the relevant short term Critical Level benchmarks. The use of these percentages complies and is in accordance with the EA's guidance (CD3.72, paragraph 4.68), which in any event sets the 1% level as a *de minimis* screening level rather than a threshold above which significant harm will occur (CD3.72, paragraph 4.69).
435. The Guidance is clear that this applies irrespective of background levels as Mr Othen explained in EIC. As a matter of policy therefore there is no requirement to consider the current background where the proposal's contribution is less than 1%. In essence, he explained that this was a policy recognition that a proposal should not be penalized if its effect on its own is small. This extends as a matter of policy to a series of small impacts from different developments. The policy is applied to the individual proposals, and still applies where those individual proposals each contributes less than 1% - the 1% is not calculated by adding together the contribution of the individual proposals. Here, there may be some confusion arising from the use by the EA of the word 'all' in the table at page 25 of CD3.72 in relation to in combination effects and the 1% threshold. The word 'all' would be better read as 'each' so as to make it clear that the 1% threshold is to be approached individually, not cumulatively.
436. In any event, the 1% level is exceedingly cautious. It represents two orders of magnitude below the level below which, on present knowledge, significant effects would not be likely to occur. It is not a barrier to development above that threshold and does not suggest that above that threshold significant effects will occur. Rather, it is the Critical Level which represents the level at which

- significant effects may begin to be experienced. Furthermore, the emissions data UBB used in its Habitats Regulation Assessment was based on maximum Industrial Emissions Directive emissions limits and assumed operation continuously throughout the year and at full capacity throughout (UBB4/REB/B8, page 57). It therefore represented a very conservative assessment.
437. While the 1% threshold has been challenged at the *Rufford* and the *Cornwall* Inquiries neither was upheld by the Inspectors. It was not disturbed by the court in the challenge to the *Cornwall* decision and, indeed, the court specifically noted that there had been no challenge to the application of the 1% rule (UBB/INQ/12/7, paragraph 40). In those circumstances it would not be appropriate for the Inspector to go behind that policy here, not least because it has not been the focus of any real challenge at this Inquiry.
438. Mrs Newton accepted that she was not expert in air dispersion modelling. In contrast, Mr Othen, the EA, Natural England and GCC who are all agreed that the air modelling carried out using ADMS was appropriate.
439. GFOEN raised a number of other matters. Notwithstanding advice from the EA that it was not required, Mr Othen has now considered the wet deposition of hydrogen chloride and confirmed that deposits from the appeal proposal would not approach the Critical Load figures (UBB4/REB/A, paragraphs 3.1.6 to 3.1.8). As the M5 is around 4km from the SAC emissions from traffic were screened out. In any event, the appeal proposal would give rise to virtually no change in overall traffic levels on the motorway. Assessment of alternatives is only required by EA guidance (UBB4/REB/A, paragraphs 3.1.12 and 3.1.13) where AA itself is required; it is not here.
440. Finally, in closing, GFOEN drew attention to *Rufford* and suggested that the approach there mandated a refusal of planning permission. The situation at *Rufford* was very different from here. First, the nature of the development is relevant. There, the proposal was for development on land used by breeding woodlark and foraging nightjar and although replacement land was proposed, there was no evidence that those birds would in fact make use of it (CD9.6, paragraphs 1151 to 1154). Second, the ecological impacts did not result from aerial emissions but from the direct loss of a valuable habitat and, therefore, did not involve the 1% screening threshold at all. It follows that impacts in combination with the numerous other developments taking place in the vicinity of that site could not be screened out on the basis of the 1% threshold, as they have been here. *Rufford* does not, therefore, support the argument that an AA was required here to take account of in combination effects.
441. To conclude on the need for an AA, Mrs Newton made repeated references to the precautionary principle, seeming to overlook the multiple layers of precaution that have in fact been employed in modelling and then assessing the likely effects of the appeal proposal. First, the 1% threshold is set at a highly precautionary level. Second, the determination of the Critical Level (from which the 1% threshold is measured) is itself precautionary. Third, the survey of Pope's Wood for nitrogen deposition was conducted on a precautionary basis because although approached, the 1% threshold was not being met. It follows that there has been a significant employment of the precautionary principle in the screening assessment, in addition to the various precautionary assumptions Mr Othen made in his air quality assessment.

442. That screening assessment properly discharged GCC's duties under Article 6(3) of the Habitats Regulation. Its conclusion that significant effects from the appeal proposal were unlikely was correct and based on full, accurate and highly precautionary information. Consequently no AA was required.

Further issues

Highway safety

443. Two further documents (UBB/INQ/1 and UBB/INQ/9) have been submitted to supplement the material already contained in the ES and the Transport Assessment. Significantly, neither GCC as highway authority nor the Highways Agency objects to the appeal proposal. An important context for the comments of the interested parties is also that, first, the area can expect to see an increase in traffic as a result of planned development and from the extant B8 warehousing development permission, second, traffic levels are expected to increase generally and, third, Junction 12 was specifically designed to cater for HGVs.

444. Increased traffic on the M5 at Junction 12 and the B4008 will be at 2% and 4% respectively above current levels. This would be less than expected if the B8 development was completed. Traffic associated with the appeal proposal would largely be outside the peak hours when congested conditions are experienced.

445. While HGV movements on the B4008 would increase, this must be seen in the context of the very low base level. Movements on the southern section would be controlled and enforced by the existing weight restriction in place as part of the Cotswold Lorry Management Zone.

446. Equally while HGV movements through the Junction would rise due to the appeal proposal all local links would still operate below the relevant Department for Transport link thresholds; unsurprising given recent Junction improvements specifically to cater for increased traffic volumes.

447. Concern has also been expressed about highway safety, given the size of the appeal proposal and its proximity to the M5. The Highways Agency conducted a thorough review of the appeal proposal at the planning application stage and raised no objections with regards to highway safety. Recent Highways Agency guidance expressly recognises that gateway structures can be located within close proximity of the road network to act as visual receptors for drivers (UBB/INQ/1, paragraph 3.4). Indeed, it is relatively common for large structures such as the appeal proposal to be located close to major roads, such as the rather striking sculpture of The Kelpies close to Junction 6 of the M9 in Falkirk.

448. For these reasons there will not be any adverse highway safety impacts.

Best interests of children

449. This has been raised by Mr Ttofa (see paragraph 940 below). While it is accepted that this Convention applies to planning decisions, the obligation under Article 3 is to treat the best interests of children as a primary consideration, not necessarily to reach a determination in accordance with those interests. Notwithstanding that, the issues raised by Mr Ttofa relating to health, visual, financial, and environmental impacts have been comprehensively addressed in evidence and considered above, and in respect of all of those issues the appeal proposal has been demonstrated to be acceptable.

450. There is no suggestion that the interests of children are any different from the interests of the general public. Furthermore, it is clear¹⁷ that the duty under Article 3 is one of substance, not form (UBB/INQ/12/9, paragraph 30). It follows from the fact that the Inquiry has considered all of the issues raised in relation to children that Article 3 will be complied with through the Inquiry simply following its normal course. In those circumstances there can be no suggestion that the appeal proposal, or the process by which - UBB submits - it should obtain planning permission, breaches Article 3 of the UN Convention.

Localism

451. Planning decisions are not taken on the basis of plebiscites or because a proposal has attracted a large volume of objection. It is not the weight of numbers who object but whether or not there are relevant planning objections. This (was) made plain in the Costs Circular, 03/2009 at paragraph B21.
452. Moreover this issue frequently arises at Inquiries into proposals of this type. In all cases the Inspector has concluded that if the objectors are afforded the opportunity to engage properly in a public inquiry then the requirement to give due regard to the local views will be discharged through that process. At Lostock the Secretary of State expressly found that adequate account had been taken of local views through the public Inquiry itself (CD9.9, DL paragraph 7.12).
453. Although some interested parties sought to suggest that there were deficiencies in consultation and engagement, which UBB wholly rejects, the Inquiry itself has provided objectors with a full opportunity to present their arguments. When it resumed in mid-January, many availed themselves of that opportunity and in addition GlosVAIN has presented a detailed case on behalf of many locals.
454. Although GlosVAIN contend that granting permission would challenge the meaning of localism (GV/INQ/3, paragraph 3), the Localism Act has not brought about any change to the approach set out above, as was confirmed recently¹⁸ where the court rejected the contention that the Localism Act 2011 brought a fundamental change in approach to the determination of planning applications. The court held that whilst the Localism Act made significant changes to the planning system, specifically by the removal of the regional tier of the plan making system and the introduction of neighbourhood plans, those changes did not eliminate the roles of the Secretary of State in determining planning applications opposed by local planning authorities or abolish the long-standing principles and policies by which such decisions are made. The opportunities afforded to the public through the Localism Act are through the plan making system, not development control (UBB/INQ/12/5, paragraphs 55, 59, 60, 64 and 65).

¹⁷ *Collins v Secretary of State for Communities and Local Government* [2012] EWHC 2760 (Admin)

¹⁸ *Tewkesbury Borough Council v Secretary of State for Communities and Local Government* [2013] EWHC 286 (Admin)

Conclusions and the planning balance

455. Properly analysed, the planning balance falls decisively in favour of granting planning permission. The weight of objection on the three issues comprised in GCC's reasons for refusal (landscape and visual, heritage and residential amenity impacts) is modest and does not begin to outweigh the benefits.
456. The decision on this appeal must be taken in accordance with s38(6) of the Planning and Compulsory Purchase Act 2004. If the appeal proposal complies with the development plan, planning permission ought to be granted regardless of the weight to be attached to the benefits resulting from the permission, unless material considerations indicate otherwise. The statutory test, properly formulated, is whether the proposal accords with the development plan as a whole. Mr Justice Sullivan (as he was then) held¹⁹ that for the purposes of s54A of the 1990 Act it is enough that a proposal accords with the development plan considered as a whole and that it does not have to accord with each and every policy therein (UBB/INQ/12/10, paragraph 50). The same principle should apply to s38(6) of the 2004 Act.
457. The position taken by the various parties in relation to this statutory test are extremely important.
458. For UBB Mr Roberts assesses the compliance of the appeal proposal with the development plan in depth and carries out a detailed balancing exercise. He concludes that the appeal proposal accords with the development plan (indeed, in XX he stated that in his experience he had in fact never come across a clearer development plan position) and that there are no material considerations outweighing that compliance. Conversely, he concludes that if it is held that the appeal proposal does not comply with the development plan, then there are material considerations – in particular the substantial benefits that would result from the development of this EfW plant – that should nonetheless result in the grant of planning permission.
459. For GCC, Mr Gillespie conceded in XX that, if the Secretary of State accepts the appellant's case on landscape, visual, heritage and residential amenity impacts, the appeal proposal would be policy compliant and planning permission should be granted. He agreed that he was not suggesting that other material considerations should stand in the way of permission being granted.
460. Mr Wyatt confirmed in XX for SDC that it was SDC's case that, if the appeal proposal complied with the WCS, then there was no material consideration of sufficient weight to outweigh that compliance (thus adopting a similar position to GCC).
461. There remains a degree of confusion over the ultimate position of GlosVAIN regarding the status of the WCS and the effect of other material considerations. On the one hand, Mr Watson contended that the WCS was not up to date due to its assessment of need not reflecting recent changes in waste arisings, and its failing to sufficiently focus on CHP, suggesting that GlosVAIN's position was that the WCS had been superseded by new material considerations undermining its

¹⁹ *R v Rochdale MBC ex parte Milne (No.2)* [2001] Env. L.R. 22 at paragraph 50

basis. One the other, he nonetheless confirmed in answer to the Inspector's questions after giving his evidence that GlosVAIN's case was that the appeal proposal conflicted with the development plan and that such conflict was not outweighed by material considerations.

462. To the extent that GlosVAIN's position is the first one set out above, recent forecasts based on data on waste arisings derived from a deeply recessionary period, and put forward by Defra primarily as a money-saving exercise, cannot provide a sound basis for departing from the assumptions made in the WCS for the whole plan period. Mr Roberts explained why those assumptions and, therefore, the residual waste treatment capacity which the WCS requires to be provided remain robust. UBB submits that if the appeal proposal is found to accord with the development plan, there are no material considerations which would require the appeal to be rejected. On the contrary, the material considerations advanced by UBB attract significant weight and considerably reinforce the case for permission to be granted.
463. The position therefore is that all of the objectors contend that the appeal proposal conflicts with the development plan and that there are no material considerations that outweigh that conflict. Apart from GlosVAIN's concerns over recent waste arisings and CHP on the status of the WCS, no party to the Inquiry is arguing that if the appeal proposal does comply with the development plan, that compliance is outweighed by material considerations. Accordingly, if the Secretary of State concludes that the appeal proposal does in fact comply with the development plan, planning permission ought to be granted. Both GCC and SDC accept that proposition and the case against the points raised by GlosVAIN is set out above.
464. Importantly, compliance with the development plan itself incorporates a balancing exercise. WCS policy WCS14 provides that:
- Proposals for waste development will be permitted where they do not have a significant adverse effect on the local landscape as identified in the Landscape Character Assessment or unless the impact can be mitigated. Where significant adverse impacts cannot be fully mitigated, the social, environmental and economic benefits of the proposal must outweigh any harm arising from the impacts. (emphasis added)*
465. The underlined sentence in WCS policy WCS14 recognises that a proposal can have significant adverse impacts on the landscape but can still be compliant with the policy where those adverse impacts are outweighed. A similar approach is contained in WCS policy WCS16 in relation to the historic environment. WCS policies WCS14 and WCS16, therefore, themselves contain a balancing exercise – what might be termed a 'mini' s38(6) exercise.
466. Therefore, even if the appellant's case that the appeal proposal does not cause significant adverse impacts on the landscape or heritage assets is not accepted, it is still entirely possible for the appeal proposal to comply with the WCS and, therefore, benefit from the presumption in favour of planning permission under s38(6) of the 2004 Act. This is extremely important given that both GCC and SDC conceded that planning permission should be granted if the appeal proposal accords with the development plan. The main policy relied on by GCC to support its case on residential impact was policy GE1 of the adopted SDLP, the adoption of which substantially predated the Framework and, therefore, its policies do not

reflect what was described in *Colman* as the 'cost:benefit approach' of the Framework (UBB3/REB/B, page 30). Accordingly, either weight cannot be attributed to policy GE1 or, if it is, then it must be applied in a Framework compliant manner and allow the cost:benefit balancing approach to be followed here as well.

467. Whether the balancing exercise falls to be considered under s38(6) of the Act or within the WCS policies themselves, it falls decisively in favour of planning permission being granted. Neither Mr Wyatt nor Mr Gillespie (despite his best efforts to do so) properly reflected the significant benefits of the appeal proposal in considering that balancing exercise.
468. Mr Wyatt failed completely to carry out a balancing exercise in either of his two reports to SDC's planning committee. Although in XX he accepted the need to carry this out, the only benefits he addressed in his proof related to need, renewable energy and CHP (SDC/1, paragraphs 4.2, 4.3 and 4.7). In XX he conceded that he had in any event only ascribed the renewable energy benefit as being neutral. He concluded that there was no quantitative need for the appeal proposal since all the County's waste could be treated outside of Gloucestershire. However, SDC adduced no evidence that such capacity existed elsewhere and in XX Mr Wyatt agreed that the proposal fell within the residual waste treatment capacity required to be provided in the County by the WCS. He accepted that that was a very different position from what had been put forward in SDC's statement of case. Furthermore, he gave only limited weight to the appeal proposal's CHP potential, but agreed in XX that SDC had not identified a better site in terms of CHP potential (it merely had pointed to Dairy Crest as a potential large user). He also agreed that SDC had welcomed the choice of Javelin Park in the December 2010 draft of the WCS due to the potential heat supply to Hunts Grove. SDC have not, therefore, in their evidence to this Inquiry or elsewhere carried out a full and fair assessment of the planning balance that properly reflects the benefits of the appeal proposal.
469. Turning to GCC, although Mr Gillespie asserted in XX that he had taken into account the urgent need for the development to meet both the local quantitative need for residual waste treatment facilities required by the WCS and national energy, climate change and renewable energy policies, there is no indication in his evidence that he gave any significant weight to the appeal proposal's ability to meet that urgency in a short timescale. The WCS requires that residual waste treatment capacity should be available from 2015. That target cannot now be met, but that only increases the need to deliver that capacity as soon as possible. The appeal proposal represents the only viable and worked up proposal to meet Gloucestershire's need. Its ability in an early timescale to meet that need should be afforded significant weight given the understandable emphasis placed by the WCS on the delivery of residual waste treatment capacity to enable the County to cease its total reliance on landfill. National policy, particularly as expressed in the EN-1 and 3, require decision makers to assume that the need for energy and renewable energy infrastructure is urgent. The fact that the Green Investment Bank is providing the senior debt for this project demonstrates not only how significant the project is to the nation but that it is also consistent with the Green Investment Bank's policies and objectives.
470. It follows that the consequences of refusing planning permission, including the environmental and financial costs, are also an important material consideration to

which significant weight should be given. No party has identified an alternative site or residual waste recovery proposal, and it would take a considerable amount of time for a new proposal to come forward should this appeal be refused, even allowing for the variation mechanisms contained within the Contract between UBB and the WDA. Despite Mr Gillespie's claims, there can be no likelihood, still less certainty, of a 'quick fix' solution if this appeal proposal is refused.

471. First, the situation with the Hereford and Worcester waste contract well illustrates the potentially protracted nature and uncertain extent of contract variations (UBB1/A, paragraphs 5.7.5 and 5.7.6). Second, there is no requirement for UBB to obtain a planning permission before the longstop date under the Contract (which specifically contemplates a revised project plan being submitted after the longstop date) (UBB1, paragraph 5.7.3(i) and CD12.2, pages 330 and 331, clause 3.4.2 (Schedule 26)), a requirement which it seemed was put to Mr Roberts in XX on the basis that it would incentivise the rapid submission of a new application if the appeal is refused. Third, the extent to which the contractual variation mechanism can be employed to amend or vary the contract is limited by the decision of the European Court of Justice²⁰ which held that amendments constitute a new award of a contract '*when they are materially different in character from the original contract*' (GCC/INQ/12.5, paragraphs 34 to 37). Any variation therefore cannot be such as to make the contract materially different from the one awarded. Plainly whether that would be the case or not cannot be judged in advance of knowing what variation, if any, would be required.
472. That large parts of the contract have been redacted before being placed before the Inquiry is perfectly normal where commercially sensitive information is concerned. Mr Downen provided to the Inquiry an email received from the case officer for the *Rufford* Inquiry detailing the approach taken by that Inspector to a redacted document (IP-130 – Mr Downen, pages 1 and 2 and the Appendix). The actual text (rather than Mr Downen's paraphrase of it that Mr Watson quoted in closing) states that in the Inspector's view '*only limited weight can be attached to findings which are claimed to flow from provisions which are not in the public domain*'.
473. This however is not a case where there has been no evidence on the redacted parts. Mr Roberts informed the Inquiry as to its contents within the limit of his instructions and knowledge, and in the absence of any other party suggesting that he was not telling the truth, as with Mr Aumonier's evidence on CHP, there can be no reason to doubt the veracity of his evidence. UBB submits therefore that the Inquiry has had sufficient information before it to determine the relevant issues and it ought not to follow that the contract, and Mr Roberts's evidence on it, is afforded little or no weight.
474. Even if there could be some reduction in scale which could come forward in a revised application under the aegis of the existing contract, there is no guarantee that it would be granted planning permission by GCC and it is significant that GCC appears not to be able to inform this Inquiry what scale of plant it would find acceptable. Given that inability, the question to Mr Roberts in XX as to

²⁰ C-454/06 *Presstext Nachrichtenagentur GmbH v Austria* [2008] E.C.R. I-4401

whether UBB had a 'Plan B' should planning permission be refused, and his suggestion that UBB ought to have asked officers what GCC members would find acceptable, were misguided.

475. If this appeal is dismissed, officers whose professional opinions would have in effect been rejected may well find it very difficult to give any meaningful advice and elected members are of course not able to fetter their discretion on how they would determine a revised application. Furthermore, until UBB knows first whether it needs to submit a new application and, second, the reasons for the dismissal of this appeal if permission is refused, it will hardly be in a position to start work on a replacement application. The Secretary of State's reasons for refusal would of course be of critical importance for framing a replacement application. Contrary to the Inspector's suggestion that GCC would have to approve an EfW facility on the appeal site at some point, there can sadly be no guarantee of that. As this appeal demonstrates, allocation in the recently adopted WCS and an unequivocal officer recommendation to approve are not sufficient to guarantee a planning permission.
476. GCC's inability to explain what development would be acceptable hardly inspires confidence to reapply, particularly as the County would have the unenviable record of two failed waste management projects. A negative decision on this appeal would severely damage the industry's confidence in the ability of the allocated sites to deliver development. This would undermine the whole purpose behind the WCS's allocations based approach, which was explicitly intended to *'increase confidence within the waste industry as to the availability of suitable sites in Gloucestershire, which in turn will help to improve the prospects of delivery'* (CD5.1, paragraph 4.81).
477. During any delay, which has the potential to last for a number of years, Gloucestershire would continue to landfill almost all of its residual MSW (with associated greenhouse gas emissions), a situation that all parties accept is clearly wrong, and the financial cost is likely to be far greater than the £35m estimated by Mr Gillespie in XX and based on landfill tax alone (GCC/1/A, paragraph 7.59).
478. UBB has described the energy produced by the appeal proposal as being dependable, diversified, distributed and dispatchable. These are attributes with significant benefits over other forms of renewable and low carbon energy, such as wind and solar power. Mr Gillespie accepted that these 'four Ds' were valid and pertinent characteristics that ought to be taken into account. However, despite contending in XX that in his balancing exercise he ascribes 'significant' weight to the benefits of the appeal proposal (GCC/1/A, paragraphs 7.41 and 7.42), nowhere in his evidence does Mr Gillespie actually draw attention to the nature and characteristics of the energy the appeal proposal would produce.
479. Policy dictates that great weight ought to be given to the climate change benefits of the scheme and the generation of energy, both renewable and non-renewable, to the contribution of decentralised, home grown, dispatchable energy which assists in energy security and resilience. It is therefore worthy of note that, as Mr Gillespie accepted in XX, the appeal proposal would generate more renewable energy than GCC's total electricity consumption per annum, and would have a total energy output of more than twice GCC's annual consumption. That is, by any measure, a significant contribution to the aforementioned goals.

This too is in a County which has a lamentable record of meeting national and former regional targets for renewable energy generation.

480. Mr Gillespie further accepted that the Secretary of State should give weight to the appeal proposal's CHP potential. However, in conducting their balancing exercise, he did not give that potential the full weight it deserves. He accepted in XX that he had conducted his planning balance exercise before he had read Mr Aumonier's evidence, including his heat survey, and that he had not investigated heat demand himself. However, Mr Gillespie accepted in XX that Javelin Park was the best site of those allocated in WCS policy WCS6 in terms of CHP potential and could not identify any other more suitable site and that GCC and the Secretary of State had in the recent past concluded that Javelin Park was the best site in the County for EfW development partly on account of its superior CHP potential. He also accepted that not having a committed heat user at this early stage was in no way unusual. It is puzzling, therefore, why Mr Gillespie was not prepared to give greater weight to this benefit of the appeal site.
481. The advantages of the location of Javelin Park should not be underestimated. In a County so heavily constrained by AONB, Green Belt, flood risk and ecological designations, the appeal site has the very considerable advantages that it is:
- Outside the AONB and Green Belt;
 - Outside any flood risk area;
 - Previously developed;
 - Unaffected by any ecological constraint;
 - Extremely well positioned in relation to the strategic road network;
 - Allocated as a strategic residual waste management site in the recently adopted WCS and proposed as part of a key employment site in the emerging SDLP;
 - Close to the main source of waste arisings in Gloucestershire;
 - Located close to major existing and proposed residential and commercial development where the potential for CHP would be superior to any of the other WCS policy WCS6 allocations; and
 - As noted already, benefits from an extant planning permission for B8 warehousing.
482. No party at this Inquiry has identified an alternative site, still less one suggested to be preferable to the appeal site. In the absence of any other proposal on a site possessing comparable spatial and locational advantages to those of the appeal site, those characteristics are deserving of significant weight, yet they are again absent from the balancing exercise carried out by the objectors.
483. The main harm alleged by GCC relates to its landscape and visual impacts. Even here, the evidence at this Inquiry shows that these impacts are limited in nature and would not conflict with the relevant policies in the WCS. The case GCC has promoted against this development is a startling departure from the promotion of the site's allocation in the WCS. Very little if any weight should,

therefore, be given to its objections to the proposal. The confusions, conflicts and changes so apparent in its evidence bear all the hallmarks of a witness team that (i) had difficulty in understanding the true nature of the members' objections and (ii) had, in any event, struggled to relate those to the WCS and the procurement contract that the Cabinet had approved. That is of course no basis for a sound planning decision.

484. In carrying out the balancing exercise it is, of course, important to keep in mind the fall back position provided by the extant B8 warehousing permission on the site. Mr Smith demonstrated that this fall back will itself have some of the landscape and heritage impacts attributed to the appeal proposal. This correspondingly reduces the impacts of the appeal proposal. Mr Gillespie failed to consider the fall back in his balancing exercise in his proof of evidence, mentioning it for the first time in his rebuttal where he accorded it only limited weight. Mr Russell-Vick and Mr Grover also failed to consider the existence of the fall back in making their assessments of landscape and heritage impacts.

485. The weight that attaches to a fall back depends on the likelihood of it being implemented. Contrary to the position of GCC, given Javelin Park's suitability for B8 development, as is set out by Mr Roberts's evidence, if this appeal is refused, it is highly likely that either the extant permission will be built out or development will come forward on the basis of new, similar, permissions (UBB1, section 3.3). This accords with the conclusion of the earlier called-in inquiry for the site where the fall back was given substantial weight (CD9.2, DL paragraph 17 and paragraphs IR 129 to 131). Nothing has altered in the interim to suggest any different approach to the fall back now.

486. However it is approached, there is a demonstrable and overriding need and policy support in Gloucestershire for the sustainable waste management facility represented by the appeal proposal. It is the only proposal that can meet these needs in anything like the required timescale. In doing so, it brings with it a range of benefits spanning environmental, social and economic benefits at both the national and local levels. These benefits should be accorded very significant weight.

487. It is therefore submitted that properly analysed and taking into account the benefits identified above and throughout the Inquiry, whether the exercise is conducted under the auspices of the development plan policies or s38(6), the planning balance falls decisively in favour of the grant of planning permission. Accordingly, UBB submits that the planning balance is clear and this is an application which the Secretary of State should have no hesitation in approving.

The Case for GCC

488. In introducing his closing submissions Mr Elvin emphasised that his submissions to and the evidence he had called at the Inquiry were on behalf of GCC as WPA only. The WDA had not been represented and had not appeared at the Inquiry.

The WPA's case

489. Put simply this is:

- The appeal proposal would result in significantly harmful impacts in terms of landscape and visual amenity and the significance of heritage assets;

- That harm is not outweighed by the benefits of the proposal;
- The harmful impacts exceed those reasonably necessary to deliver the scheme's benefits. UBB has failed to take adequate steps to minimise the impacts of the proposal.

490. The Inspector can and should conclude that UBB has not fully or properly heeded the warnings given in his report on the examination of the WCS at paragraphs 121 and 125 in particular (CD5.49). Emphasised are the passages from these saying '*how that solution would interplay with the landscape and visual impact of the resulting development design*' in paragraph 121 and '*the accommodation of any substantial built development that needs to include an emissions stack of any significant height would, in my opinion, present the designers with a challenge in the distinctive landscape context...*' in paragraph 125.

491. In refusing planning permission on 21 March 2013 GCC's planning committee identified three failings:

- The unacceptable landscape impacts (including on the setting of the AONB).
- The unacceptable (setting) impacts upon the significance of heritage assets.
- Overbearing impact on the residential amenity of nearby domestic properties.

These failings are not outweighed by the acknowledged public benefits of the scheme.

492. The basis on which planning permission was refused was clearly expressed. They included a recognition that the proposed building would be a very large and imposing structure in what was currently an open landscape and a balancing of the need for the provision of a facility for the disposal of the County's residual waste against the acknowledged detrimental impact on the visual amenity of the locality (CD1.10).

493. The WPA does not have a design reason for refusal *per se* under WCS policy WCS17 but issues of design come into consideration to the extent that the scale of the proposed development is too big even taking account of the need and the technology which are not disputed. One important aspect of this is the visual perception and impact of scale and size. In short, the proposal does not need to have this impact. Mr Roberts readily agreed in XX that there was a distinction between design in terms of aesthetics and design in terms of height, mass and scale. He plainly had no difficulty in understanding the thrust of the WPA's objection to the proposal.

494. The issue of minimisation of visual impact and scale is an important issue and is part of the strategy underpinning WCS policies. It does not follow that because an EfW plant may have to be large that it has to be of the scale of the UBB proposal. As Mr Gillespie explained in his evidence when approaching this proposal it is first necessary to consider whether the scale and impact has been minimised and then, when that has been done, consider what further steps may also be taken to mitigate any resulting harm (e.g. by architectural treatment). Such a distinction can also be plainly seen, for example, in the methodology

employed in the Hartlebury DAS where steps were first taken to minimise scale and impact, especially in terms of what would be visible, including by an iterative process considering the broad scope of design of the building, disposition and orientation of buildings on site, internal process arrangement and setting down as a whole and then, once that process had been undertaken, to apply a detailed architectural design solution to the resulting parameters.

495. The planning committee (irrespective of the views of individual members) did not in fact refuse the application for reasons relating to need, technology choice or health impact. The issue of alternative technology is dealt with in GCC's evidence only to demonstrate that the WPA has had regard to all of the variables which could be used to minimise this proposal's impact. GCC's evidence is not seeking positively to endorse combustion EfW technology, but simply notes that the WPA has no legitimate planning basis on which to dispute combustion EfW in this case. Nonetheless there appears to be a misunderstanding of the references to 'technology neutral' - this means that combustion EfW is not in principle ruled out by the WCS. This is a consequence of the decisions made by members in the context of the WCS. The WCS appears to recognise that the technology choice is primarily evaluated by the WDA (CD5.1, paragraph 4.85).
496. While others raise concerns about technology choice, the WPA's case can only be pursued on the basis of the reasons for refusal given by the planning committee.
497. The closing submissions therefore set out the following main arguments:
- The allocation of the site does not mean that a proposal of this height has been accepted in principle. In any event, the proposal falls outside the guideline scales in the General Development Criteria of WCS Appendix 5 which were only subject to a broad assessment in any event.
 - The WCS and national policy require UBB to minimise adverse impacts and then to mitigate them.
 - UBB has failed to minimise the scheme's adverse impacts, in particular the building is of an unnecessarily tall form and could reasonably have been reduced in visible height.
 - In any event, the adverse landscape/visual and heritage impacts of the scheme outweigh its acknowledged benefits. The weight to be attached to benefits ought not to be decisive in any event where an applicant has not acted appropriately given the likely adverse effects on the setting on the AONB and other interests.

The policy context of the WCS

Introduction

498. GCC does not dispute that the WCS establishes the principle of waste management facility development at the appeal site or the MSW and C+I waste requirements. However, UBB's primary case goes further and it depends critically upon the proposition that the fact of allocation means that a building of 40 metres or more is acceptable in principle. Much weight seems to have been placed by Mr Roberts (although he appeared to step back from this to a degree in XX) on the fact that an EfW with this throughput is bound to be large, relying on

what he referred to (incorrectly) in shorthand as the 'tall buildings' policy in WCS policy WCS17. His approach, especially his explanation in EiC, seemed to give little attention or weight to the fact that a building may have to be a large one means that this proposal, which is undoubtedly large, is acceptable. That does not necessarily follow which UBB does not seem to have fully understood or recognised.

499. Mr Roberts gave various confused and contradictory explanations of UBB's approach to the construction of the WCS on this critical point. Before turning to explain why his interpretation(s) are unlawful, it is first necessary to set out the correct approach to the construction and application of the WCS.

Construction of development plan policy

Proposition 1: the construction of planning policy is a question of law

500. The Supreme Court decision in *Tesco* establishing that the construction of policy, including development plan policy is a matter of law has been referred to above (paragraph 237). The following passages are emphasised from paragraph 17 ('*the planning authority is required by statute to have regard to the provisions of the development plan: it cannot have regard to the provisions of the plan if it fails to understand them*'; '(the decision maker's) *decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it*'); from paragraph 18 ('*The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it.*'; '*policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context*'); and from paragraph 19 ('*As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment.*').

Proposition 2: the interpretation of policy is based on the wording of the plan, not the draftsman's/examining inspector's intentions or knowledge

501. A difficulty may arise concerning the extent to which material and discussion before the plan examination is lawfully material or relevant to the determination of this appeal. What is clear though is that the presumption in s38(6) of the 2004 Act applies only to the development plan and not to any material behind it or leading to it. It is only to the plan, interpreted in the light of its underlying objectives and purposes that the public is entitled to have resort to in order to identify and understand the development framework for the area.

502. In this regard, it is important to note that the Supreme Court in *Tesco* relied upon *Raissi*²¹, to support the proposition that policy must be interpreted objectively (GGC/INQ/12.2). The Court of Appeal quoted with approval the

²¹ *R (Raissi) v. Secretary of State for the Home Department* [2008] Q.B. 836

statement of Lord Steyn in *re McFarland*²² that when it comes to deciding what a policy's objective meaning is:

'That question, like all questions of interpretation, is one of law. And on such a question of law it necessarily follows that the court does not defer to the minister: the court is bound to decide such a question for itself, paying, of course, close attention to the reasons advanced for the competing interpretations. This is not to say that policy statements must be construed like primary or subordinate legislation. It seems sensible that a broader and wholly untechnical approach should prevail. But what is involved is still an interpretative process conducted by a court which must necessarily be approached objectively and without speculation about what a particular minister may have had in mind.' (emphasis added')

503. That the draftsman's (or examining inspector's) intentions are irrelevant to the objective construction of policy is further supported by Lord Halsbury's well-known dictum²³ :

'My Lords, I have more than once had occasion to say that in construing a statute I believe the worst person to construe it is the person who is responsible for its drafting. He is very much disposed to confuse what he intended to do with the effect of the language which in fact has been employed. At the time he drafted the statute, at all events, he may have been under the impression that he had given full effect to what was intended, but he may be mistaken in construing it afterwards just because what was in his mind was what was intended, though, perhaps, it was not done.'

504. The same must be true of the interpretation of other documents with legal effect. The public reading the document may not have access to the underlying materials, and to the intention of the drafter, nor is it to be expected that they should have to undertake a paper chase to try to find it. The public are entitled to apply the wording of the final document in its approved form. However, the same is not true of the strategic purposes and objectives of the WCS that are set out in the WCS itself (CD5.1, paragraph 3.35).

505. GCC therefore respectfully submits that the Inspector must put from his mind what he intended the WCS to mean, what was said and done at the WCS Examination and, like the High Court and the public, ask what do the words in the adopted WCS mean interpreted objectively in their proper context.

Proposition 3: the "plan" to be construed consists of the policy wording interpreted in the light of the supporting text

506. With regard to s38(6), the development plan in that context means more than the text of the policies themselves shorn of any explanatory or other such wording outside the policies. In *Cherkley* (see paragraph 163 above) Haddon-Cave J considered an argument that the provisions of paragraphs 12.71 and 12.72 of the Mole Valley Local Plan were not 'policy' but only 'reasoned justification' or 'other descriptive or explanatory matter' and accordingly had not

²² *Re McFarland* [2004] 1 W.L.R. 1289, [24],

²³ *Hilder v. Dexter* [1902] A.C. 474, 477

been saved by the Secretary of State's direction under the 2004 Act. Haddon-Cave J rejected that argument in paragraph 82 (set out below with emphases added) and paragraphs 83 to 87 which are not (UBB/INQ/12/2):

82 My reasons for rejecting Mr Katkowski QC's first (minimalist) alternative is as follows. First, it makes no sense to preserve naked 'policies' shorn of their intellectual underpinning, interpretative context and expressly factual matrix and justifications. It makes even less sense to seek to preserve the stark wording of policies only, but then somehow proscribe any resort in the future to any 'map or 'reasoned justification' or 'other descriptive or explanatory matter' or 'supporting text' which it was intended by the framers of the policy should be had as a necessary aid to understanding, interpreting and implementing the policy. In my view, there is no conceptual difficulty in saving only 'the policy' but permitting, and expecting, consideration of it in its appropriate textural context.

507. Accordingly, in this case, the plan for the purposes of s38(6) consists of the policy text of the WCS interpreted in the light of the stated strategic objectives and purposes of the WCS (found in the WCS itself) which is a necessary aid to understanding, interpreting and implementing the policy. In this context, it is important to note the strategic function of the WCS and the site allocations set out in the 'Vision' (CD5.1, paragraph 3.34) of which the strategic objectives (CD5.1, paragraph 3.35) are a key underpinning.

508. A lawful interpretation of WCS policies WCS6, WCS14, WCS16, WCS17 and Appendix 5 must therefore be informed by:

- The key strategic Issues that the WCS must address (CD5.1, paragraph E.15), including Key Issue 3;
- The strategic objectives, including Strategic Objective 5 'Minimising Impact' (CD5.1, page.40);
- The fact that Core Policies are arranged under the heading of the strategic objectives that they are intended to deliver together with the fact that WCS policies WCS14 and WCS16 appear under the objective of 'minimising impact';
- The supporting text (key passages of which are set out below).

509. Against that background, a central question for the Inspector in this case is what does the WCS mean on an objective interpretation?

Meaning of the WCS

510. On a fair reading of the WCS as a whole the following emerges:

- While intended to create that greater certainty that would be lacking from purely criteria-based policies, even the allocated sites are required to be subject to the General Development Criteria in WCS Appendix 5. This is confirmed by both WCS policy WCS6(a) and the supporting text at WCS paragraphs 4.102, 4.169 to 4.171, 4.184, 4.189 and 4.190;
- The need for specific assessments of all proposals is also made clear in the heading to the General Development Criteria;

- This is further emphasised by the General Development Criteria themselves under the landscape/visual box;
- The assessment carried out of small, medium and large facilities was only a broad-based exercise to test the general acceptability of the use of the sites, not to determine the acceptability of any specific proposal. The many limitations of this were explored in XX with Mr Smith. Indeed, landscape assessments for development plan allocation purposes self-evidently are not suitable for that purpose. The WCS does not provide that proposals within the reference scales used to judge general acceptability will be acceptable simply because they fall within that range. Indeed, the point (as Mr Gillespie explained in evidence) is that the factors are applied to all proposals which may come forward in a number of forms, different types of facility, perhaps on multiple sites or with cumulative impacts, and a detailed appraisal can only be made once a detailed planning application is submitted (CD5.1, paragraphs 4.53 and 4.95);
- As a matter of fact, the appeal proposal does not fall within the reference criteria. 'Up to 40 metres' plainly does not include plants in excess of 40 metres. The Atkins Reports on the potential allocations simply did not consider buildings in excess of the reference heights;
- Indeed, although the UBB application was submitted on the first day of the WCS examination²⁴, it was not assessed for the purposes of the WCS nor is referenced at all in the WCS itself. The Inspector examining the WCS did not (and could not) say anything about the specifics of UBB's application because the details were not before the examination. Instead, those promoting development on the appeal site were given the clearest indication of the Inspector's concerns because the report specifically drew attention to them, including the passages (CD5.49, paragraphs 121 and 125) quoted above (paragraph 490);
- The General Development Criteria make it absolutely clear that all development proposals on a site allocated by WCS policy WCS6 should be supported by a landscape and visual impact assessment; be tested against WCS policies WCS14, WCS16 and WCS17 notwithstanding the allocation; give particular consideration to the potential impact on the setting of the AONB; and address potential mitigation measures through design;
- The test applied by WCS policy WCS14 for all sites is in two parts, general and AONB. Within the AONB part applications will only be permitted where, among other requirements:

The impact on the special qualities of the AONB as defined by the relevant management plan (including the landscape setting and recreational opportunities) can be satisfactorily mitigated (emphasis added)

511. There is a lack of clarity to the term 'design'. It is capable of including not only detailed design and aesthetic issues but also more fundamental issues such as massing, size, height and scale. In XX Mr Roberts accepted and understood

²⁴ Inspector note: actually the first day of the examination hearing sessions

the distinction. It is plain from EN-3 that design encompasses size (CD6.6, paragraphs 2.5.50 and 2.5.51) and is not simply concerned with detailed architectural treatment or aesthetics.

512. While good design under WCS policy WCS17 is necessary, it is not a sufficient basis on its own for approving a proposal. UBB's case however, is firmly rooted in the world of the submitted draft WCS which sought a landmark or gateway building on the site and was the draft policy when the proposals were designed, procured and the application made. However, such wording was deleted from the WCS prior to adoption. Recognising the scale of a building and describing it as a landmark or gateway is no longer an approach to solving the problem posed by a taller building.
513. Late in the day (mainly through the re-examination of Mr Roberts) UBB pointed out that WCS policy WCS17 refers to '*appropriate to local environment and surroundings*' on what is assumed to be the contention that concerns over scale, height, impact on landscape, visual amenity and setting are all encompassed within WCS policy WCS17. In fact, it merely reinforces that there is considerable overlap between that policy and WCS policies WCS6 and Appendix 5 General Development Criteria, WCS14 and WCS16. While GCC did not raise WCS policy WCS17 in the reasons for refusal, if the arguments focussed on the reasons for refusal and those policies are accepted then on UBB's latest view of the meaning of WCS policy WCS17 the appeal proposal must conflict with that too.
514. In any event, it is indisputable that GCC refused permission for reasons of the impact of the proposals on the landscape, considered to be 'very large and imposing' including the setting of the AONB, and because of its visual impact on sensitive receptors and that this objection is related to the scale, height and massing of the proposals as they would appear in context. This is particularly clear from the summary of the debate by members leading to the refusal (CD1.10, pages 58 to 60).
515. That there are likely to be AONB issues associated with development at Javelin Park is brought to the attention of any prospective developer by the specific details in the Javelin Park Site Schedule within WCS Appendix 5 and WCS policy WCS14. Here, the contrast between the allocated site at Moreton Valence (similar to Javelin Park and having similar considerations) and that at Wingmoor Farm West is notable.
516. It is equally clear that applicants are required to minimise the impacts of their proposals and this is not limited to providing mitigation by design only (if by that it is meant architectural treatment) as UBB stated in opening the case. Confirmation of this is found in:
- The fact that WCS policy WCS14 applies in addition to and before WCS policy WCS17 is applied;
 - The text of WCS paragraphs 4.171, 4.189 and 4.190 in particular which reference the role of the WCS to reduce the level of impact (that might arise from a new development) to an acceptable degree and the fact that further assessment will be needed at the planning application stage.

517. In this context, the suggestion in XX of Mr Gillespie and subsequently developed by Mr Roberts in his EiC, that allocated sites were only required to be subject to 'fine tuning' and that the principle of the impact of developments on those sites established a baseline for impacts should be rejected as an unlawful interpretation contrary to the clear meaning of the WCS.

518. First, as it is common ground that WCS policy WCS14 and Appendix 5 applies to all sites the suggestion is directly contrary to the clear requirements that individual applications even on allocated sites should be subject to a full visual appraisal including 'particular consideration' to 'the potential impact on the setting of the Cotswolds AONB'.

519. Second, the notion of 'fine tuning' only is contrary to the requirements of WCS policies WCS14 and WCS6 and the General Development Criteria and site schedules. It is not consistent with their strategic nature or with the clear statements of the need to carry out application specific assessments (CD5.1, paragraph 4.95). It is also inconsistent with WCS policy WCS17 which requires compliance with the other policies of the WCS.

520. Third, UBB appears to treat the reference heights as establishing heights in principle whereas:

- They were broadly assessed by what was largely a desk-top study only. This can be contrasted with the highly detailed and thorough assessments carried out by the various parties to the Inquiry in the context of the specific application;
- The plan does not provide that any proposals even within their limits are to be considered necessarily acceptable in terms of height, with resultant mass and scale. Indeed, Mr Roberts accepted in XX that there is nothing in the WCS saying that a building of a particular height will be acceptable. Rather, to see whether a particular scale of building would be acceptable there is nothing other than general criteria against which to judge the acceptability of specific proposals;
- Height has surely to be judged in the context of overall scale, size and massing in any event and the disposition of the proposals on the individual site. The form of the building to a large extent follows its function (although here process height has been overprovided with no attempt to minimise it), but it is an important requirement that the form is minimised with respect to achieving that function;
- The application significantly exceeds the reference height and the single reference to buildings in excess of 40 metres in the General Development Criteria expresses no view about their acceptability. As already noted, 'up to 40m' does not include plants in excess of 40 metres. The Atkins Reports on the potential allocations simply did not consider buildings in excess of the reference heights (CD5.23, Introduction). Whatever the argument regarding the 40 metres + in the final part of the General Development Criteria, it is nonetheless plain that Atkins only assessed up to 40 metres and 40 metres + plant buildings cannot be justified as Mr Smith and Mr Roberts variously attempted by reference to the general guidance. Indeed, the reference to 40 metres +, in the reference '*in the cases of 'large' scale development proposals (40 metres + buildings and stacks)*' as a matter of

consistency, ought to be read as referring to the fact that in the large ('up to 40 metres in height and potential emissions stack up to 80m in height') category the stacks were considered up to 80m. Although Mr Smith and Mr Roberts in XX both sought to argue (at least initially) that the categories on the final General Development Criteria page were not the equivalent to the 3 broad categories referenced beforehand, the subheadings plainly reference those categories. It follows that the final sentence on landscape, which explicitly refers to 'large' scale, so the '40 metres + buildings and stacks' cannot reasonably be construed as meaning a different category or anything other than up to 40 metres plant and up to 80m stack. It might have been expressed better but it is sufficiently clear. To interpret it otherwise would be to ignore the fact that this whole subsection is dealing with the Atkins 'large' category which had been broadly assessed and which does not deal with plant buildings in excess of 40 metres. UBB's approach is perversely to rely on the broad assessment by Atkins but then to treat the General Development Criteria as if they applied the guidance resulting from that as applicable to plant in excess of 40 metres.

Landscape

Mr Russell-Vick's methodology was appropriate

521. Mr Smith for UBB claimed the following failings by Mr Russell-Vick.

- He used GLVIA2 rather than GLVIA3 (although the former is used in the ES);
- A flawed methodology was used in relation to the baseline;
- His character assessment set off in the wrong direction by overstating the rural character of the area; and
- He failed to consider all the relevant criteria when assessing magnitude of effect.

Criticisms were made also of the methodology employed by SDC. However, when tested it became clear that Mr Smith's criticisms were misconceived and that his firm support for the GLVIA3 methodology had obscured professional judgements with process; something that both editions of GLVIA warn against.

522. First, Mr Smith was unaware of the text on the Landscape Institute's own web site (GCC/INQ/8) which says (emphasis added):

GLVIA3 replaces the second edition GLVIA2. In general terms the approach and methodologies in the new edition are the same. The main difference is that GLVIA3 places greater emphasis on professional judgment and less emphasis on a formulaic approach. Members have asked for clarification on the status of projects developed under GLVIA2, but reviewed or implemented after publication of the third edition.

An assessment started using GLVIA2 should be completed using that edition. However, if in the view of the professional a comparison should be undertaken with GLVIA3, and subsequently if necessary a re-assessment undertaken according to GLVIA3, then this should be discussed and agreed with the client

in the first instance. Obviously, assessments started after the publication of GLVIA3 should use it, rather than GLVIA2

523. Second, the benefits of Mr Smith's challenge meetings were overstated. In fact, the challenge group, which included the primary author of GLVIA3, had not done any fieldwork in the area and was thus unable to challenge the judgements that Mr Smith had made in any meaningful sense. Mr Smith countered this by saying that others had helped him do his fieldwork but Mr Russell-Vick had followed the same approach. An important difference however was that his practice colleagues had done their own additional fieldwork and had not confined themselves to an office-based reviewing role. There is no basis therefore for criticising Mr Russell-Vick's methodology in that regard. It is consistent with the advice in GLVIA3 that more than one person should be involved to provide checks and balances (CD10.1, paragraph 2.25).

524. Third, Mr Smith downplayed the role of common sense and subjectivity. However, apart from objective ZVIs and the consideration of the nature of various recognized character areas in establishing the baseline, landscape and visual assessment principally consists of exercising professional judgement as GLVIA3 makes clear saying (with emphasis added) (CD10.1, paragraph 2.23):

Professional judgment is a very important part of LVIA. While there is some scope for quantitative measurement of some relatively objective matters, for example the number of trees lost to construction of a new mine, much of the assessment must rely on qualitative judgments, for example about what effect the introduction of a new development or land use changes may have on visual amenity, or about the significance of change in the character of the landscape and whether it is positive or negative.

525. The flowchart on page 99 of GLVIA3 contains numerous reference to 'judge' while paragraph 3.35 says (with emphasis added):

In reporting on the significance of the identified effects the main aim should be to draw out the key issues and ensure that the significance of the effects and the scope for reducing any negative/adverse effects are properly understood by the public and the competent authority before it makes its decision. The potential pitfalls are:

- losing sight of the most glaringly obvious significant effects because of the complexity of the assessment*

526. As the preface to the document says GLVIA3 concentrates on principles and process and does not provide a formulaic recipe to be followed in every situation. The professional is responsible for ensuring that the approach and methodology adopted are appropriate for the particular circumstances (CD10.1, preface page x). Judgements made must be reasonable, based on clear and transparent methods and traceable by others examining the outcomes (CD10.1, paragraph 2.24). Moreover, a sense of proportion is required with one of the main pitfalls being identified as losing sight of the most glaringly obvious significant effects because of the complexity of the assessment (CD10.1, paragraph 3.35).

527. In summary therefore Mr Smith's criticism of flawed methodology actually amounts to a simple disagreement over professional judgement. Mr Russell-Vick

deals with landscape character at section 4 of his proof (GCC/3/A) from where it is clear that he:

- Appropriately used the ES plan;
- Accurately summarised and quoted from all relevant landscape character assessments;
- Noted the M5 and the power stations (paragraph 4.3); and
- Was fully aware of Blooms, Quedgeley East Business Park and other existing and emerging commercial developments (paragraph 4.20).

528. With reference to the diagram on page 71 of GLVIA3, Mr Russell-Vick had 'identified' the landscape baseline and Mr Smith was actually disagreeing at the stage of the process shown there where one must 'judge'. Mr Russell-Vick clearly understood the baseline and Mr Smith merely parts company with the conclusions to be drawn from the baseline and in particular the extent to which the character is judged to be rural. That is not methodology; that is judgment.

529. That even with qualified and experienced professionals there can be differences in the judgements made is recognised by GLVIA3 (CD10.1, paragraph 2.25). It must be noted too that Mr Smith felt able to accept instructions to present the landscape case on behalf of UBB after only a few days for reflection. This contrasts with the painstaking exercise to produce the evidence and critique of others.

The development plan does not rubber stamp the proposal

530. The assertion, never fully set out in UBB's legal submissions, that the allocation of the appeal site in the WCS precludes any legitimate criticism of the scheme's scale rests on an incorrect and unlawful interpretation of the WCS as set out earlier (see paragraphs 500 to 509).

531. UBB's approach is inconsistent with the evidence base for the WCS and in particular the Atkins report (CD5.23). Mr Smith agreed in XX that when looking to a guide for assessing individual planning applications, the reliability of and the weight attributed to this broad brush guide for development plan purposes needs to be considered carefully. The following are relevant to that:

- Mr Smith accepted that Atkins did not carry out a full assessment. Indeed the report states that it was primarily a desk-top study with a field study in June 2009, though the extent, location and duration of that study were not explained;
- Mr Smith agreed that the methodology employed is not set out and is thus not transparent;
- The study area and its extent are wholly unclear. It did not appear to include even the edge of the AONB in contrast to the ZVI of Mr Smith;
- It was based on the *'potential to created a landmark facility as a gateway to Gloucester'* – subsequently deleted from the WCS;

- The dimensions of the proposed building and its floorspace would significantly exceed the 'large' category used in the broad-based assessment;
- There is no reference to Haresfield Beacon, the National Trust site as a focus for leisure and recreation, the AONB character assessment, the Cotswolds management plan or the Cotswolds Conservation Board's Position Statement. The consideration of landscape character of the setting of the AONB Escarpment is by no means thorough or carried out to the level which would be expected in assessing the impact of a specific project saying (emphasis added):

'The Cotswold Escarpment, designated an AONB, rises to the east of the site and offers glimpsed views from a limited number of residential properties, as does the Forest of Dean to the west however these views are limited by distance and intervening vegetation.'

This appears (possibly because of the limits of the study) to consider only the impact on views from residential properties, not the Escarpment or the Beacon. The Atkins broad based assessment does not therefore provide a reliable basis for concluding that the specific appeal proposal is acceptable. It is no substitute for the detailed assessment undertaken through this Inquiry process. That is exactly what both the WCS and the examination Inspector's report envisages (CD5.49, paragraphs 121 and 125).

There is a policy requirement to minimise landscape and visual impact

532. The WCS requires the adverse landscape and visual impacts of the appeal proposal to be minimised to an acceptable level. Mr Roberts agreed in XX that proposals should minimise impact and accepted Mr Gillespie's two stage approach of minimisation followed by mitigation.

533. This is consistent with national policy. Framework paragraph 98 advises local planning authorities to approve planning applications if the impacts are or can be made acceptable. EN-1 also advises that the landscape impact of major energy infrastructure can be mitigated by reducing its scale (CD6.5, paragraph 5.9.21). That is not advice about architectural treatment but is concerned with scale, i.e. bulk, mass and height. Current Defra advice (CD7.9, paragraph 137) is (emphasis added):

Visual impact of energy from waste is increasingly recognised as an important issue and there is a tendency to move away from the big sheds and tall chimney approach towards innovative designs, more in keeping with the local environment. This is also relevant to the scale of the site: smaller scale plants can have much lower visual impact

UBB has failed to minimise landscape and visual impact

534. While the DAS and ES clearly show that building form and orientation have been considered, other ways of minimising impact have not. This is in clear contrast to the situation at Hartlebury where through the DAS (GCC/INQ/11) a reduction was achieved by rearranging the process elements within the building and then also setting the building down on site.

535. In that case there is a systematic, transparent and sustainable approach to minimise issues of sensitivity in what was nevertheless, as Mr Roberts explained, a policy vacuum. That site is in the Green Belt but landscape and visual amenity are not reasons for that designation. The closest that Mr Roberts could get to a similarly clear approach was a reference to the DAS at page 3. However, that does not compare favourably with the Hartlebury approach, does not advance minimisation in a similar rigorous and systematic manner, and ends with the repeated focus on the design solution as a 'bold focus' – yet another reference back to the landmark/gateway objective. Furthermore, the process undertaken and recorded in the DAS stopped short of considering process reorganisation or setting down.
536. Mr Roberts explained that it was not necessary to go further. However, the visual assessment at the time (whether begun in 2010 or early 2011 does not matter) is not available to see whether that claim can be made out and how it was in fact accomplished. The DAS does not explain.
537. In the appeal case there are the sensitivities of the AONB and an express development plan objective of minimising harm highlighted in WCS Appendix 5 site schedules and the General Development Criteria and the Inspector's report (CD5.49, paragraph 121). That objective was not pursued rigorously and systematically by UBB because, as both Mr Roberts and Mr Othen said in XX, the impact was acceptable. However, at the stage the design was fixed in about May 2011 (Mr Roberts in XX) there was no visual impact report that can be seen by the Inquiry and what appeared to have been undertaken was the limited exercise reported in the DAS. It is questionable, in the absence of any information other than the few pages in the DAS (summarised in the ES under 'alternatives'), that the exercise undertaken before the design was fixed before the final stage of the procurement process in Autumn 2011 properly considered the issues. The form of the scheme before this Inquiry does not appear to have changed in visual and landscape terms in any material respect since the design was fixed in May 2011.
538. Despite Mr Roberts's position that UBB was not guided by the 'landmark' and 'gateway' building concept this is difficult to accept because:
- Those concepts were part of the draft WCS only removed in Main Modification 31 well after the submission of the planning application. It is not credible that UBB ignored that statement in the draft WCS, which appears to have originated in the Atkins Study of 2009 as highlighted by GCC in the Topic Paper (CD5.54, paragraph 2.13);
 - UBB's objectives are clearly set out in the DAS and the Community Involvement Statement (CD1.2 (v));
 - The DAS said the following (emphasis added):
- 'the presented solution ... is nonetheless a bold vision'* (page 3).
- the building was to be a 'singular piece of sculpture in the landscape' and a 'journeyman's reference'* (page 15).
- 'the overall design objective has been to create a building with a strong dynamic but simple form, articulated and separated into distinctive elements that convey both the suggestion of the staged internal process and at the*

same time create a dynamic solution to a large imposing building form' (page 19);

- The objective of developing a design that is architecturally interesting was said to be met by providing an interesting landmark for travellers on the M5 (CD1.2 (v), paragraph 4.3.4);
- The representation made by Axis during the WCS process (CD5.54) shows that producing a prominent landmark was a guiding principle. It was acknowledged that a strategic waste management facility would inevitably create a significant landmark which may or may not be in keeping with the surrounding landscape. Nevertheless, it was said that an exemplar landmark development could *'strike the right balance between a simple, industrial appearance and a compelling, elegant design could have the opportunity to offer an interesting experience for visitors and attractive views for traffic on the M5, irrespective of the simple consideration of its size'*.

539. It is inconceivable that those designing the scheme were not influenced by the express terms of the then draft of the WCS. The design has plainly been influenced by a desire to produce an unashamedly prominent landmark building and this in turn explains why the design did not explore any further steps to minimise the harmful landscape/visual impacts by reducing the process height or setting the building down.

540. The chronology is also revealing in terms of the limited consideration given to minimising landscape and visual impacts. Mr Roberts confirmed that what became the appeal scheme was, to all intents and purposes, fixed some time between March and May 2011. Furthermore, the scheme did not change in any significant respect following the first public consultation in July 2011 notwithstanding concerns being expressed in relation to landscape and visual impact and the AONB in particular (CD1.2 (v) pages 14-17).

541. Mr Roberts conceded that even before UBB went to the first public consultation the design had reached a stage where UBB would not have been willing to make significant changes. UBB did not consult the public at the formative stages of the design with an open mind and a willingness to respond to feedback. Instead, it approached the consultation essentially as an exercise in telling the public why UBB's approach was the right one. That was fundamentally inconsistent with the good practice advocated by Defra (CD7.9) and Framework paragraphs 188-189. Nor is it consistent the constraints placed upon applicants engaged in a procurement process.

542. In seeking to now argue that impacts have been minimised as far as reasonably possible selective reliance is placed by Mr Roberts in EiC especially on Mr McQuitty's acceptance that the colour, alignment and deconstructed form are successful. This however ignores that he also emphasised:

- In addition to design, setting the building down in the ground would be *'an obvious'* way of minimising its landscape/visual impact;
- The unprecedented (because Mr Othen confirmed in XX that no other EfW plant had a feature of similar scale) 5-6 metres of 'architectural feature' does nothing to minimise or mitigate the harm caused by the building.

Making the building tall merely makes it taller and more prominent. The angular form could be achieved without raising part of the building; and

- UBB has not done all that it could reasonably be expected to do in order to reduce the landscape and visual impact of the proposal.

543. The inescapable conclusion is that:

- UBB's scheme was drawn up with the objective of producing a landmark building;
- That UBB consulted the public only after the design had crystallised and significant changes would not be made; and
- UBB held to that course of action notwithstanding the landmark building concept being omitted from the adopted WCS, the public concern about the landscape and visual impact, the Inspector's highlighting of the 'challenge' in the WCS examination report and the refusal of the application on visual grounds.

544. While it is said that the WCS does not state in terms that the building should be set down in the ground Mr Smith accepted in XX that the logic of setting buildings as low as possible (referred to in the General Development Criteria in relation to the 'small' reference case heights) applies equally to large buildings. Furthermore, Mr Roberts agreed that setting the building down is clearly a technique which could be used in order to reduce the adverse impact on the setting of the AONB which is obviously a key consideration in relation to the site. Mr Darley made it clear that sinking an EfW into the ground was '*one of the variables a designer has to use*'. Finally, as would be expected, no techniques for minimising impacts are specified in the WCS, so the absence of an express requirement to set the building down proves nothing.

545. Finally, in the context of UBB's determination to proceed with the design fixed in May 2011, it is surprising that UBB did not call either the scheme architects (Fletcher-Rae) nor plant designers (Ramboll and Vølund), or even the highways consultants, who still form part of the Javelin Park team and notable that witnesses of the appropriate expertise were not called to deal with 'plant' related issues.

Adverse landscape and visual impact

546. Mr Russell-Vick's evidence (GCC/3/A and GCC/3/REB/A) was that the appeal proposal would result in unacceptably adverse landscape and visual impacts. Although the site is an undesignated landscape, it performs an important role in providing the setting of the designated Cotswold escarpment. Mr Russell-Vick explained in EiC that the existing landscape is predominantly horizontal in character, with relatively few vertical features - most notably Dairy Crest which is some distance from the site and not of the same scale of verticality as the appeal proposal - together with the listed church spires. The landscape is therefore sensitive to new vertical elements. UBB's argument that elevated views are less affected was not accepted by Mr Russell-Vick and, moreover, that argument overlooks the important long views from the open access land on the lower slopes of the escarpment and the other public rights of way within the AONB.

547. Mr Russell-Vick identified the most important visual receptors as being:

- Local public rights of way users, in particular in the vicinity of Haresfield village (Church and manor) and linking with the Escarpment, in the vicinity of Hardwicke Court and Hardwicke village, the towpath of the Gloucester and Sharpness Canal and the Severn Way. In his judgment, the proposed EfW plant would dominate views from these locations. Its height and mass would be highly conspicuous and discordant. It would be particularly imposing in a local context containing nothing else of a similar scale;
- Users of the National Trust land at Haresfield Hill and Haresfield Beacon, the open access land (from which Mr Smith did not make an assessment until mid-Inquiry) and the many public rights of way linking to Haresfield and across the open Escarpment, including the popular Cotswold Way. Mr Russell-Vick considered that the proposed EfW plant would be wholly at odds with horizontal scene and the foothills and open access land would be particularly adversely affected. The proposed building would diminish the special qualities of the Haresfield Hill and Haresfield Beacon part of the Escarpment to such an extent as to be unacceptable in landscape terms;
- Users of the M5, in particular those exiting and entering at Junction 12. Mr Russell-Vick considered that there was no place on the site for a 'landmark' building approach given the importance of protecting the setting of the AONB. His view was that the prime objective should be reducing the height of the building to minimise its impact of the setting of the AONB. It does not follow that users of the M5 are not on it to enjoy the beauty of the surroundings. They may be coming to the area for recreation and to admire the landscape, in which case the view is obtained as part of that journey contribute to the experience. From points along the M5 the appeal proposal would be seen in competition with the important view of the Escarpment.

548. In closing, details of five viewpoints only are highlighted from the evidence of Mr Russell-Vick. The viewpoints are those identified in UBB2/D.

549. From viewpoint 2 on the B4008 the EfW plant would be very close at some 225 metres. There would be a very large magnitude of change and the effect on even medium sensitivity receptors such as cars would be significant.

550. St Peter's Church, Haresfield is viewpoint 4. From here the EfW plant would project significantly above the skyline as angular and unsympathetic and would obscure part of the Forest of Dean in the distance. It would contrast with the overall character of the view and the eye would be drawn to a significant alien vertical element in the view.

551. Viewpoint 6 is the bridge over the M5. There are no places 2km from the site where the warehousing can be seen from ground level. Even from raised views on the bridge over the M5 the warehousing (with its horizontal not vertical emphasis) would be readily absorbed into the landscape. By contrast, the EfW would still be a significant harmful feature and seen in the same context as the AONB Escarpment and overtop it.

552. Looking from Hiltmead Farm (viewpoint 29) the EfW plant would break the skyline. It would be a prominent built element in the view and would occupy a large proportion of the total view. Here the comparison with the B8 warehousing is particularly instructive. Mr Smith's photomontages omit the lorry from the

view of the B8 warehouses –although lorries are transient they are indicative of scale and it is clear that a lorry would screen the warehousing but would certainly not screen the EfW plant.

553. Finally, viewpoint 34 is Haresfield Beacon. In XX Mr Russell-Vick used the following phrases: *'Key promontory – get to the ultimate experience of Haresfield Beacon and the view opens up.....The way it is experienced – people walk around the whole of the earthworks – the whole experience....Not the only viewpoint within that part of the Escarpment'*. In XX Mr Smith agreed the recreational use of the earthworks and that visitors remained there for some time, often picnicking, and looked at the view in all directions. Despite the emphasis he placed on the panorama as a whole, it is in fact experienced in sections as the visitor turns to view different parts of it, so the use of the panorama argument underplays the significance or value of views in individual directions or sections of the panorama. The setting of the AONB is no less protected and no less valuable because it is experienced from the Beacon through an impressive and beautiful panorama.
554. Mr Russell-Vick strongly disagreed with UBB's contention that the key issue in relation to views from the Beacon is footprint as opposed to verticality. He considered that although horizontal buildings (such as warehouses) can be seen from the Beacon, they sit in the grain and pattern of the rectangular fields. In terms of verticality the only comparators appear to be church spires. It would be better if they were not there, but they are significantly less harmful compared to the EfW plant whose alien height would make it appear wholly different in views from the Beacon. Mr Russell-Vick also considers UBB to be wrong to suggest that there are only unimportant glimpses of the site from the Cotswold Way. As he explained, much of the Cotswold Way is wooded and therefore the relatively few views are very important. They are 'tempting tasters' of the views from the Beacon and they are an important part of the experience of walking the Cotswold Way.
555. GCC does not accept Mr Smith's argument that the B8 warehousing provides the appropriate baseline for judging the acceptability of UBB's proposal in landscape and visual terms. The site has been vacant during a strong market for B8 warehousing and yet there has been no serious attempt to build out the scheme. The reality is that the landowners seem anxious to retain the B8 permissions in order to fix the baseline value of the land, not actually to build warehouses. This seems to be the conclusion to be drawn from Slough Estates' expressed attitude in the early 2000s (UBB1A, paragraphs 4.3.4 and 4.3.5).
556. Moreover, statements by the landowner's agent must be read with a degree of realism and it is hardly to be expected that an agent would do other than express support for the concept of development on his client's site.
557. The weight to be given to a claimed fallback position requires an exercise of broad planning judgement on the facts of the individual case (GCC/INQ/012.4,

paragraphs 20 to 22). This was held in *Samuel Smith Old Brewery*²⁵ by Sullivan LJ having referred to *Brentwood*²⁶

558. Here, the weight to be given to UBB's claimed fallback depends upon the likelihood of the B8 permissions being implemented though only if GCC has not use of it for residual waste which is the stated position of the WDA (UBB1/C). The WDA makes it clear that the dismissal of this appeal would not be determinative of its use for waste. Set against the continuing intentions of the WDA to use the site for residual waste, the history of the site (including throughout buoyant economic times) very limited weight can be given to the B8 permissions because the approved schemes are not likely to be built out. It is notable that Dr Carter did not consider the appropriate baseline to be the B8 permissions and he only considered them 'briefly' in his proof (UBB3, paragraph 3.12). Mr Roberts carried out his planning balance using the evidence of Dr Carter and Mr Smith who each used different baselines in their assessments without him questioning this. The inconsistent approaches of UBB's witnesses further serves to undermine Mr Smith's insistence that Mr Russell-Vick's use of the existing landscape as the baseline was wrong.
559. In any event, Mr Russell-Vick considered the relative impacts of the B8 warehousing and the EfW at three different distances and explained in EiC the distinctions between the two in terms of impacts.
560. In close proximity the warehouses made some change to the existing baseline but the addition of the EfW plant would still cause significant harm. At a middle range of between 60 metres and 2km from the site the warehouses would be quickly absorbed or subsumed into the landscape and would cause no material landscape or visual harm, unlike the EfW. Two viewpoints (4 and 24) illustrate the different effects that would result from the warehousing not breaking the skyline while the EfW clearly would. From viewpoint 4 not doing so would enable the Forest of Dean to be seen over the horizon while from viewpoint 24 although the warehouses would just break the skyline, they would be screened by foreground vegetation; the EfW would be the dominant visual feature. Finally, from the Escarpment the warehouses would be acceptable in landscape and visual terms while the EfW would be seen as a significant and incongruous vertical element.
561. Mr Smith's reliance on the B8 permissions as a baseline overlooks two things. First, the reserved matters approvals expired in April 2013 and it is a misreading of the Graftongate letter (and that from the WDA) to assume that renewal applications will be made. The letters plainly say the owners have yet to decide what action to take. Second, his photomontages testing the visual effect of the warehousing assume the distinctive white strip below eaves level and assume that this will be replicated in any new approval. That cannot be a correct assumption. In any event, an expired permission cannot represent a fallback position.

²⁵ *Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities and Local Government* [2009] J.P.L. 1326

²⁶ *Brentwood BC v Secretary of State for the Environment* (1995) 72 P&CR 61

562. To summarise, the expert opinion of Mr Russell-Vick is that UBB has not met the challenge of devising a scheme that minimises and then mitigates the adverse landscape and visual impacts. Rather, the appeal proposal causes greater harm to the landscape and visual amenity than is necessary.
563. In conclusion on this topic, Mr Russell-Vick did not give a particular height at which the proposals could be acceptable. His evidence is that this is not the least harmful solution and it is incumbent upon the applicant to bring forward a design that minimises harm. While UBB asserts that at no stage did officers say that it should reduce the scale or height further, it did nothing to address matters despite being aware of the views of the elected members since March 2013.
564. Although CABI supported the design it is not concerned with landscape and visual impact and there is no evidence that it undertook any assessment of the effect of the proposal in the field. Moreover, Natural England objected to the application because (among other things) of the adverse landscape and visual impact of the proposal (CD3.21). This objection was maintained (CD3.23) having considered further information provided by Axis in July 2012 (CD3.22). Similar views were expressed by the Cotswold Conservation Board which emphasised the importance of the Beacon (IP-117). The Board drew attention to the fact that the Beacon was somewhere people came to in order to 'stand and stare' and take in the extensive panorama. It also highlighted that the proposed development would obstruct views of the Escarpment from viewpoints to the west of it.
565. Therefore set against CABI's design-based approach are the views of two bodies with remits which do include protection of the countryside and landscape, and this AONB in particular, who are opposed to the UBB proposal consistent with the decision of the WPA.

Heritage

566. Mr Moules presented this part of GCC's closing submissions.

Heritage policy and law

567. Dealing first with policy, the requirement to minimise adverse impacts applies equally to adverse impacts on the significance of heritage assets:
- Framework paragraph 132 provides that '*any harm or loss should require clear and convincing justification*'. Dr Carter agreed in XX that this was unqualified and that *any* harm to the significance of heritage assets had to be justified. Where reasonable steps to minimise harm have not been taken then that harm is not justified;
 - WCS policy WCS16 is one of the policies identified as delivering the strategic objective of minimising impacts;
 - Dr Carter agreed in XX that design was not the only way of reducing impact (it is merely one way to do so (CD5.1, paragraph 4.263));
 - EN-1 highlights the need to minimise harm when discussing 'generic impacts' (CD6.5, paragraph 5.8.12) (emphasis added):

In considering the impact of a proposed development on any heritage assets, the IPC should take into account the particular nature of the significance of the heritage assets and the value that they hold for this and future generations.

This understanding should be used to avoid or minimise conflict between conservation of that significance and proposals for development;

- The PPS5 Practice Guide, which Dr Carter agreed remained relevant notwithstanding the replacement of PPS5 by the Framework, also emphasises minimising impacts (CD11.7, paragraph 26) (emphasis added):

Proposals for large-scale schemes, such as wind farms, that have a positive role to play in mitigation of climate change and the delivery of energy security, but which may impact on the significance of a heritage asset, such as a historic landscape, should be carefully considered by the developer and planning authority with a view to minimising or eliminating the impact on the asset.

568. UBB's position now is that WCS policy WCS16 is not engaged at all because the harm in this case is not significant in EIA terms. That is an incorrect interpretation of the policy which provides that '*planning permission for waste management that would have a significant adverse impact on heritage assets*' will only be granted in the circumstances set out. It does not define 'significant' by reference to the EIA Regulations and nor should the policy be interpreted by reference to that definition. It would be inconsistent with national policy to have a heritage policy that is engaged only where harm that is significant in EIA terms is established; this is not what Framework paragraph 132 says.

569. Properly interpreted, WCS policy WCS16 is triggered when an adverse impact is shown to be significant in the sense of being more than *de minimis*. Planning permission may not then be granted unless (emphasis added):

- *the benefits of the development clearly outweighs the impact that the proposal would have on the key features of the site; or*
- *the proposal includes adequate measures to mitigate adverse impacts; and*
- *the proposal complies with other relevant policies in the development plan.*

The last requirement is plainly cumulative and corresponds with the similar requirement of WCS policy WCS17.

570. In this case there is clearly appreciable harm to the significance of designated heritage assets so WCS policy WCS16 is engaged. As set out above, the appeal proposal also conflicts with WCS policy WCS14. Planning permission may not therefore be granted under WCS policy WCS16 by virtue of the final policy indent quoted in the preceding paragraph.

571. GCC agrees that in terms of national policy, any harm in this case would be less than substantial harm such that the relevant test is contained in Framework paragraph 134. This requires the harm to be weighed against the public benefits of the proposal. As set out below, Mr Gillespie's evidence was that the benefits of the proposal do not outweigh the adverse impacts.

572. Turning now to law, the grant of planning permission would affect the setting of various listed buildings and the Inspector and the Secretary of State are also therefore required to '*have special regard to the desirability of preserving the*

building or its setting or any features of special architectural or historic interest which it possesses by virtue of s66(1) of the 1990 Act (see paragraph 289 above).

573. Mr Moules recorded the difference between Mr Grover and Dr Carter as to the correct approach to s66. In short, Mr Grover relies on the *Barnwell Manor* judgement while Dr Carter prefers the later approaches set out in *Colman* and *Nuon*. Mr Moules then quoted several passages from each and referred also to the *Forest of Dean* judgement and to *South Lakeland*²⁷.

574. In light of the judgement of the Court of Appeal (paragraph 18) those passages of the closing submissions (GCC/INQ/013, paragraph 80 to 85) are not set out here. The conclusion drawn, relying on *Barnwell Manor* (now confirmed by the Court of Appeal) and *South Lakeland*, was that special weight should be given to the desirability of preserving the setting of listed buildings and that this was more than treating this requirement as simply another factor in the planning balance.

Methodology and judgement

575. Mr Grover and Dr Carter agree that the question for the Inspector is whether and to what extent the appeal proposal would harm the significance of the identified heritage assets. They also agree that any harm to significance would occur as result of visual changes to the setting of the assets. There is no significant methodological difference between the two. The principal point on which they part company is the extent to which the setting of the identified asset contributes to its significance.

576. Unsurprisingly given his archaeological background, Dr Carter focuses on the fabric of the heritage assets and consistently takes the view that setting contributes little or nothing to their significance. His assertion that '*in cases where only setting is affected, it is difficult to envisage a situation where an adverse effect will constitute substantial harm*' contrasts with recent Government advice for renewable and low carbon energy where the potential for energy infrastructure to cause substantial harm to heritage assets by reason of affecting their setting is specifically highlighted (CD6.7)²⁸

577. Of course, the harm in this case is agreed to be less than substantial, but the point remains. Dr Carter finds it difficult to envisage precisely the sort of harm recent guidance goes out of its way to alert practitioners to and that is symptomatic of his downplaying of the importance setting makes to significance.

578. Three particular assets illustrate the differences between the two expert judgements:

- Regarding ***St Peter' Church, Haresfield***, Mr Grover considered that the rural setting of this medieval parish church makes an important

²⁷ *South Lakeland District Council v. Secretary of State* [1992] A.C. 141

²⁸ Inspector note: This document is replaced by the National Planning Practice Guidance although UBB considers that it replicates the replaced advice (PIN06, paragraph 3.3.24)

contribution to its significance. Ramboll also considered that the Church's rural setting contributes to its significance (CD1.5 paragraphs 6.4.10-6.4.11). Whereas, although Dr Carter acknowledged the rural setting, his view was that it made relatively little contribution to the asset's significance.

- Turning to **Hiltmead Farmhouse**, Mr Grover's view is that the rural setting of the farmhouse reflects its historic function and therefore it does make a contribution to its significance.
- Finally, to **Haresfield Beacon**. Dr Carter's argument in relation to the Beacon was an extreme one. The significance lay in the panorama and the asset's significance would be unaffected provided a panoramic view remained - it would not matter what that view was of. That is not tenable. It cannot sensibly be suggested that the Vale could be carpeted with EfW plants, or skyscrapers without there being any impact on the significance of the Beacon which is the logical conclusion of Dr Carter's approach. Even if the panorama remains, there must as a matter of judgment come a point where the view is adversely affected to such an extent as to detract from the Beacon's significance. A view dominated by an alien vertical form and mass would be *qualitatively* different to the present views over the landscape. It is GCC's submission that it would harm the significance of the Beacon.

Extent of setting impacts

579. The area around the appeal site is rich in cultural heritage and includes a number of listed buildings and scheduled ancient monuments. As Mr Grover shows, 12 of these heritage assets would experience an impact on their setting as a result of the proposed development. In particular St Peter's Church Haresfield (Grade II* Listed); the Mount (moated site) (scheduled ancient monument); Haresfield Camp and Ring Hill earthworks (scheduled ancient monument); and Hiltmead Farmhouse (Grade II Listed) would experience a moderate to large impact on their setting.

580. Although Mr Grover considers these effects to be less than substantial, they are nonetheless significant and the harm should be weighed against the scheme's public benefits and in the context of a consideration of whether the proposal needs to be of such a scale as proposed in order to meet the need for waste management facilities.

Overbearing

581. Three residential properties (the Lodge, St Joseph's Traveller's Site and Hiltmead Farmhouse) would experience a change in outlook and aspect since the appeal proposal would be unavoidably visible from the curtilages of those properties.

582. Mr Russell-Vick's evidence shows that the Lodge would suffer the most severe impact in terms of overbearing. It would be only 180 metres from the EfW building and some 375 metres from the stack. This is contrary to Defra advice that where possible facilities should be at least 250 metres from sensitive properties (CD7.17, pages 155 and 157 to 158). This is a layout consideration and is a factor that should weigh against the proposal. GCC does not agree

either that the effect would not be materially different from that arising from the B8 warehousing scheme or that local residents would not benefit materially from a reduction in the visible height of a well designed plant.

Clear and convincing justification for the scale of the proposal?

Introduction

583. So far, GCC has set out that it is the scale of the proposed building that gives rise to the landscape character, visual amenity, heritage and residential amenity objections to the appeal proposal. Also set out has been the WCS and national policy onus placed upon UBB to minimise impacts to an acceptable level.

584. The expert advice sought from Mr Darley and Mr McQuitty was to assist Mr Gillespie in understanding the flexibility available to respond to the landscape constraints of the appeal site. Mr McQuitty's options were not intended to be completed proposals but rather indications that other approaches could be taken which would minimise or reduce the visual impact of the plant. This showed a thought process that UBB had not even attempted because of its insistence that there was no reason to do so.

585. It is notable that notwithstanding the reasons for refusal, neither the scheme architects nor the plan engineers/designers were called to give evidence and explain their approaches. This was left to Mr Othen who, as a chemical engineer, fairly agreed in XX that this was not his area of expertise; that is air quality and environmental permitting. UBB did not advance evidence that reorganising the plant or setting it down to reduce height or visible height was unreasonably costly, still less that it would render the project unviable.

586. That these matters were not raised by officers prior to refusal is not the point. It is clear from the decision of the planning committee (CD1.10) and GCC Statement of Case (CD4.3, paragraph 6.18) that they would be in play at the Inquiry.

The proposal is unduly high when compared with similar EfW facilities

587. Mr Darley's evidence concludes that:

- The proposed building is unduly high when compared with other EfW facilities of a similar capacity. That process drives height and EfW plants may be taller (CD5.1, paragraph 4.269) does not mean that this particular scale and height is either necessary or acceptable. In this regard, Mr Roberts's answers in EiC and re-examination were confused in relying on WCS policy WCS17. No specific height/scale is supported by the policy, nor does it allow the strategic objective of minimising impact to be side-stepped.
- It would be almost the tallest EfW plant in the UK even though its capacity is only mid-range. Of those plants for which heights are known only Southwark (SELCHP), Avonmouth, South Clyde, and King's Lynn are a little taller and each has a greater capacity.
- The Meath EfW is the closest like-for-like technology (also Babcock & Wilcox Vølund). It processes 5% more waste but does so in a building some 16.6% lower in height. Issues at the plant are explained by Vølund

(UBB4/REB/C, paragraph 2.1.5) but not whether the height here could be lowered or the building set down.

- Newhaven (GCC/INQ/4) is an example of a similar size of plant (albeit two streams) set in a flood plain immediately abutting the AONB which is both set down in part at least and has a lower visual scale/height. Mr Othen's adjustment (UBB4/REB/C, paragraph 2.1.11) like his others adjusts for the extent of plant buried, overlooking the importance of visible height. The example of Issy in France is also relevant. The fact is that if there are sufficient reasons to lower height, or to set buildings down, this can be done practically and plainly in a manner which does not impair viability. Hartlebury is a good example of this even though the reasons for doing so were not as compelling as the AONB context here.
- A building with a capacity for 190,000 tonnes per annum should typically be some 20% lower at the tallest point than the appeal proposal.
- While a reduction in stack height may be feasible, other negative environmental impacts could result.

588. It is important to consider the visible height of the development since this is what is perceived by the public, generally and from the AONB and within its setting, and is also highly relevant to the impact on local residents. Mr Othen's pursuit of the cube root relationship between plant capacity and plant height (which is only an approximate relationship and turns on process design), and his adjustment of plant heights to represent only their absolute height, rather than their visible height, obscured what is perhaps one of the most critical issues for this appeal. He also sought (UBB/INQ/007, SMO-INQ3) to ignore the extra 5 to 6 metres for architectural reasons that actually places the plant well above his 1 stream 'best fit' line (which it undoubtedly is).

The visible building height could reasonably be lowered

589. As Mr Darley and Mr McQuitty explained the height of the building envelope is unnecessary in terms of the way it accommodates the plant within it. The issues they identified were explored with Mr Othen in XX as follows.

590. The only justification for the additional 5 or so metres on the tallest part of the building is said to be for aesthetic architectural reasons. Mr Othen explained that such comparable increases for those reasons did not exist elsewhere. Only another Fletcher-Rae design (South Clyde) came close but that added only 3 or 4 metres to a plant height of some 49 metres and a single stream capacity of 250,000 tonnes per annum. The additional 'architectural' height in the appeal case is therefore unprecedented and without explanation to the Inquiry from the architects. Mr McQuitty's view in XX was that while breaking up the form did assist with issues of scale, making the building taller did not.

591. The gantry crane over the baghouse filter and boiler shown on application plan PL08 adds 2.5 to 3 metres to the height. While 'desirable' Mr Othen agreed in XX that:

- The use of the crane would be in connection with the baghouse filters and dealing with the boiler tubes;

- The removal and dealing with the bag filters was a one or two man job and whilst it required some lifting equipment did not require a crane;
- There was insufficient headroom from the crane to lift out the boiler tubes in any event. This point had clearly not occurred to Mr Othen until he was asked the question in XX;
- The boiler had a life of some 40 years and it was likely that the tubes would only require repairs about every 4 years.

592. The justification for the gantry crane, however desirable generally, has little or no useful function here. It is not listed in the Contract Technology Description key components in Schedule 29 Basic Design Proposal (CD12.2, page 361) which while not exhaustive does mention, however, the grab cranes used to move waste to the hopper. The vast majority of the detailed designs including civils, M&E, Urbaser LAB and Vølund plans (which are likely to show any detailed plan designs) are all redacted from Schedule 29.

593. It should be noted that the redaction of the list of detailed plans in Schedule 29 of the Contract (CD12.2) means that little weight can be given to the broad plant design in PL08 especially in the context that as Mr Roberts agreed in XX detailed design was yet to be carried out and contract contains a design review process. This is included in clause 15 (design development) and especially clause 15.2 which requires design to be reviewed (CD12.1, page 35) and Schedule 9 (CD12.2). All the items of reviewable design data in Appendix 1 to Schedule 9 are redacted but they include Vølund, UBB and other drawings.

594. The height of the building due to the elevation of the FGT resulted from locating the switchgear underneath, though this did not functionally need to be located there.

595. While selective catalytic reduction (SCR) future proofing might be responsible for some additional space it is not within the key requirements of Schedule 29 listed out at page 361 of CD12.2 and it is not specifically a contract requirement, even if it did feed into the consideration of the contract. It is far from clear when, if at all, SCR would be required and there are no proposals for such at present. Moreover, a SCR unit is not tall and need not add to process height. In any event, it scarcely seems to be a factor which should weigh heavily in the context of minimising visual impact close to the AONB.

596. Despite the flood risk issue raised by Mr Othen in rebuttal, the site is plainly not at risk of flooding even though the boiler is proposed to be set down by 13m. The existence of the drainage ditch, as Mr Roberts confirmed, is part of the means of dealing with surface water and is not itself an element contributing to flood risk. No detailed justification has been advanced for this concern.

597. The issue of circulation and access by vehicles has not been supported by any response from the highways consultants instructed by UBB. Mr McQuitty was clear that his illustrative designs contained matters which could and would be resolved by taking forward the design process.

598. In Mr Darley's considerable experience (not matched by any UBB witness either in experience or discipline) was that it was perfectly possible to achieve lower process heights than had been achieved in this case.

Consequences of reducing height

599. To suggest that GCC should have some clear height or cut off point at which the balance favours the benefits of the scheme misunderstands the WCS and the General Development Criteria in Appendix 5. What would be acceptable turns on the specific proposals and the WCS does not deal in specifics. It is for the applicant to provide a solution that both minimises and mitigates impact.

600. GCC does not accept that a reduction from a potential combination of process re-arrangement, loss of architectural feature and lowering of the plant generally to about 30 metres (more if possible) would not be material and act to minimise impact. UBB has made no attempt after May 2011 when the design was fixed to respond at all public concerns prior to submission of the application, the adopted WCS or the Inspector's examination report. While reliance was placed on what is said in the Guide to the Debate (CD7.9, paragraph 161) the engagement with the public on a design that was never going to be altered was little more than window dressing. Although redacted, given the provisions for design review (see paragraph 593 above) it remains entirely possible that changes could have been made.

601. The following are examples of the benefits that GCC has shown to be achievable and material in terms of landscape and visual impact with a reduction in height:

- ***Viewpoint 4 – St Peter's Haresfield***

The achievable reduction in height would bring the EfW plant on or below the skyline and make a major contribution to it blending into its surroundings.

- ***Viewpoint 6 – M5 Overbridge***

From this viewpoint the EfW plant would be contained below the skyline.

- ***Viewpoint 16 – Lower Green Farm***

The proposed EfW plant would be close to the skyline and a reduction of height of approximately 40% would have the beneficial effect of bringing it significantly below the skyline.

- ***Viewpoint 24 – Old Airfield Farm***

Although not all of the EfW plant would be below the skyline, a significant amount of it would be and the adverse landscape and visual impact would be lessened considerably.

- ***Viewpoint 31 – Sheep House***

The EfW would be below the skyline and there would be a dramatic, positive, change in the landscape and visual impact.

602. The benefits of lowering the height of the EfW plant to minimise its visible scale are therefore considerable. The building would be less prominent and less likely to distract the eye. This was the process adopted in the Hartlebury DAS as part of the minimisation exercise even set within an industrial estate. Therefore, GCC submits there is no technical reason why the processing plant could not be

lower, or set down, thereby reducing the overall height of the building and consequently its scale of visual impact.

Planning balance

Benefits of the proposal

603. GCC does not deny the benefits that the proposal would have. These are fairly set out by Mr Gillespie and afforded the appropriate weight in his planning balance. He had considered the claimed benefits and there is no material difference between those he considered and those set out by UBB in its planning statement, ES, statement of case and proofs of evidence.

CHP

604. In short, while the site has the benefit of CHP potential it should not be given undue weight in the process. As Mr Aumonier agreed in XX, the timescale for delivery of CHP, even if it occurs, can be very protracted. The example of SELCHP was quoted where even after operation for 20 years, CHP has still to be provided.

Consequences of dismissing the appeal

605. That GCC as WDA would have no options for the sustainable management of its residual waste would not be a consequence of the appeal being dismissed for the following reasons.

606. A refusal would only be directed at these particular proposals and would leave untouched the technology-neutral allocations and the up-to-date development plan policy in the WCS. Indeed, as the OJEU notice makes clear, the bidding process was directed by reference to residual waste requirements and was specifically technology neutral (GCC/INQ/10, sections II.1.5, II.2.1 and VI.3).

607. The approach to variations in contracts following procurement is set out in *Presstext* (see paragraph 471) and summarised by Mr Roberts (UBB1, paragraphs 5.7.3 iv to vi).

608. Although Mr Roberts referred to the requirements of the procured residual waste contract (CD12.1 and CD12.2 Schedules) '*with even the dimensions of the buildings and height of the stack enshrined in the contract*', it is not possible to check this assertion since the primary provisions of the Contract setting out the 'basic design proposals' (CD12.2, Schedule 29 pages 360 to 370) and the parameters of design review (CD12.1, clauses 13.1 and 15.2; CD12.2, Schedule) are almost wholly redacted, including redaction of what appear to include plant drawings by UBB and Vølund.

609. Since the meaning and effect of a contract needs to be considered by reference to the terms used, it is not enough to be assured by Mr Roberts (without doubting his understanding of what he was told) that this is what he has been advised by UBB lawyers. Their interpretation may or may not be accepted and there is no way it can be verified by those participating in this Inquiry. Accordingly, little if any weight ought to be attached to the claims concerning the difficulties which might be caused by the contract since key features necessary to understanding the claims are not available. Similar concerns were noted by the Inspector at *Rufford* (CD9.6, paragraphs 1218, 1225 and 1281).

610. As Mr Roberts accepted in XX, the procured contract allows, so far as can be seen in principle for variation through design review, by amendments of varying significance and by the requirement of GCC for UBB to submit a revised project plan. Since these provisions have been procured, the contract obtained by the appropriate EU and national procedures allows under its own terms for variation without entering into another contract that would have to be re-procured.
611. While it may not be desirable to extend landfilling, that is not a strong reason for allowing significantly harmful development that will remain in place for 25 to 30 years.
612. It is important to be realistic about UBB's claims that the alleged adverse consequences of the appeal failing count in its favour. Despite planning permission having been refused in March 2013, Mr Roberts confirmed in XX that UBB had not even begun to consider a 'plan B'. It could have been undertaking preliminary work on alternative proposals in tandem with this appeal as a precaution, perhaps entering into discussion with WDA or WPA officers, but it has chosen not to. While the final view of the Secretary of State will not be known until the decision is issued, the views of at least the WPA and SDC are known and this would allow work to be considered on options. This needs to be understood against the clearly anticipated planning risk seen in, for example WCS implementation steps (CD5.1 pages 104 to 105; and the Cabinet Report of 14 December 2011 (CD12.10, paragraphs 21 to 23).
613. The UBB decision here, as with issues such as the concerns of local people and ultimately those of the WPA, has been to carry on regardless, asserting confidence in its assessment process. UBB's conscious decision to 'go for broke' for a proposal which it fixed nearly 3 years ago and has declined to review since is not a reason to grant planning permission.

Conclusion

614. In summary, the proposals breach development plan policies in terms of landscape, visual and heritage issues as found primarily in WCS policy WCS6, the General Development Criteria in Appendix 5, WCS policies WCS14 and WCS16. The proposals have not met the strategic objective of minimising impact. Those adverse landscape, heritage setting and overbearing impacts of the proposal have not been adequately minimised and the harm is not outweighed by the public benefits of the scheme. The appeal scheme is unnecessarily large in terms of its scale and massing when assessed against other comparable schemes. The proposed technology could be accommodated on the appeal site with a much-reduced impact while still meeting the need and WCS requirements. Apart from the development plan, the proposals are inconsistent with the Framework paragraphs 109 and 134.
615. Dismissal of the appeal does not end the contract between the WDA and UBB nor does it prevent the bringing forward of a more acceptable solution for Javelin Park which is materially more sensitive to the setting of the AONB, visual and residential amenities and heritage assets.
616. The WPA therefore submits that the appeal should be dismissed.

The case for SDC

Overview

617. Mr Simons began his closing submissions on behalf of SDC with a short overview of its case.
618. The appeal turns on an interpretation of WCS Appendix 5. There are two alternatives before the Inquiry.
619. The first is that it provides for an 'in principle' acceptability of buildings up to 40 metres (and, on Mr Roberts's evidence, 48 metres) in height. Is the nature of that acceptability such that, so long as the proposal meets the stipulations, WCS policy WCS17 as to its design, the protection of landscape and visual receptors within WCS policy WCS14 becomes, in effect, subsidiary? If that is the proper approach, two points follow. First a building up to 40 metres in height cannot be challenged on the basis of impacts flowing from its height, and second, there is, therefore, no duty on an applicant putting forward a building of up to 40 metres in height to seek to further mitigate the impacts of that height.
620. The second is that Appendix 5 provides for a 'broad based' guide to illustrative heights which must, in every case, be tested through a proposal-specific landscape and visual assessment taking full and equal account both of WCS policies WCS14 and WCS17. If that is the proper approach, then first, there is no 'in-principle' presumption in favour of a building of either 40 metres or 48 metres in height, and second, there is a duty on an applicant, through WCS policy WCS14, EN-1, and Appendix 5, to seek appropriate reduction of height in order to mitigate its impacts on the landscape, including the setting of the AONB.
621. In SDC's view the central flaw in the UBB case is that, as it has understood the position, there was no need to consider further strategies to mitigate the height, scale or massing of the appeal scheme so long as the Appendix 5 criteria on height were met. Even if the Inspector agrees with UBB on that, any 'in principle' support is not available in any event because at 48 metres high, the appeal proposal falls outside the three height references included in Appendix 5.
622. Turning now to the most important concern, namely the landscape and visual harm, including the setting of the AONB, Mr Smith's evidence is based on two fundamental failings. First, an understanding that the principle of a 48 metre building at the site was settled and, second, a confused and confusing failure to distinguish matters of methodology from questions of judgement. Mr Smith's analysis must therefore be approached with real caution.
623. Ms Marsh stated SDC's case very straightforwardly:
- The baseline landscape is of a horizontal and – predominantly, but not exclusively – rural quality.
 - The size, shape and massing of the appeal scheme is unprecedented within the landscape – indeed Mr Smith positively and 'unapologetically' asserted that to be the case.
 - There are significant and adverse impacts on the landscape and on viewpoints both within and without the AONB.

- In consequence, there is *prima facie* conflict both with WCS policies WCS14 and WCS17. In meeting those conflicts, the WCS places a particular focus on satisfactory mitigation. That duty has not been met in this case.

624. Such benefits as the appeal scheme is said to deliver do not outweigh its significant and adverse impacts on the landscape. For those reasons, the appeal proposal fails the stipulations of WCS policies WCS6, WCS14, WCS17 and Appendix 5, and the appeal should be refused on that basis.

625. Furthermore, given the significant and adverse harm to the landscape, it is material to consider whether alternative solutions could have mitigated those landscape harms. SDC's case is that there are patently genuine and realistic technological alternatives which could have reduced the scale of the built form and were simply not considered on that basis.

626. SDC also contends that the public's perception of health impacts from the appeal scheme are likely to impact on the development delivered as the extension to Hunts Grove.

Interpretation of the WCS

627. From the response that both Mr Roberts and Mr Smith gave in the totality of their respective XX and, in the case of Mr Roberts his extensive EIC, their clear position is that WCS Appendix 5 has decided the question of whether the height and area of the proposal is acceptable as a matter of principle. That principle having been set, it cannot then be undone by a challenge to the acceptability of a proposal's height. Having said that, Mr Roberts appeared to dilute that position somewhat in re-examination when he said that '*I don't think they're absolute and prescriptive but they give you a good feel as to the sort of development being envisaged*'.

Interpreting WCS Appendix 5

628. From *Tesco* it follows that whether Appendix 5 creates an 'in principle' acceptance of a 48 metre high building is a matter of law, not planning judgement.

629. The starting point in the analysis must be to consider not the WCS's Appendices, but its policies. It is the setting out of those policies, rather than the text supporting them, which is the central feature to the WCS's statutory purpose. Mr Roberts accepted in XX that nowhere in the WCS policies is there anything other than general guidance as to what might constitute an acceptable building height. He further accepted that '*absent consideration of Appendix 5, the only way in which we can decide acceptability in principle according to WCS is to apply judgment to specific proposals*'. The curious result of that concession is that the entirety of his argument on 'in principle' acceptability relies not on any specific policy in the WCS, but only on Appendix 5.

630. Mr Roberts's case therefore faces a significant hurdle given the express and repeated references in Appendix 5 to the need for a case-by-case assessment of applications coming forward. Moving through the text of the Appendix these are:

- The General Development Criteria, under Landscape/Visual Impact, expressly require that '*all proposals for waste management development must be supported by a landscape and visual impact assessment (LVIA)*'.

- In particular, it says that '*the requirements of Core Policies WCS14 and WCS17 should be considered carefully within this assessment*'. That is a significant requirement because it contradicts Mr Roberts's comment that WCS policy WCS14 is 'subsidiary' so long as WCS policy WCS17 and the relevant height thresholds are met. If Appendix 5 had intended to render WCS policy WCS14 subsidiary to WCS policy WCS17 in the case of an allocated site below 48 metres, that would have been an unusual position, and an express indication to that effect would have been expected. Not only is there no such indication, what express indications there are in the Appendix point in the opposite direction. WCS policies WCS14 and WCS17 are given equal prominence as to the requirement for a proposal-specific landscape and visual impact assessment.
- The broad-based landscape and visual impact assessment undertaken for all allocated sites was the October 2009 Atkins report (CD5.23). Drawing on the XX by Mr Elvin of Mr Smith²⁹ and the XX of Mr Russell-Vick by Mr Phillips which highlighted the weaknesses of the Atkins work establishes that this is not a safe empirical basis for founding an 'in principle' acceptability of any proposal up to 48 metres. Those limitations emphasise and are consistent with the need for a proposal-specific landscape and visual impact assessment.
- Mr Smith accepted that the Atkins work was the basis for the topic paper (CD5.54) which itself became the basis for Appendix 5. So to the extent there were limitations in the Atkins work, those were taken through into Appendix 5.
- That is no criticism of Appendix 5 itself because, having referred to the 'broad based' assessment underpinning the size categories, in the next paragraph of its Landscape/Visual section it says in terms that: *The landscape consideration for each site schedule should be considered carefully in the detailed assessment which should accompany any proposals*. That is yet another express direction for proposal-specific landscape assessment of any proposal – the Appendix makes no distinction between those above or below the three size thresholds.
- The three size thresholds are introduced in the following paragraph by noting that '*in the broad based assessment that the following possible building heights and scale of development were considered*'. The paragraph closes with '*these size ranges are a guide to be considered when proposals come forward on any of the allocated sites*' (emphasis added). The caveats therefore mount: the assessment was 'broad based', the building heights were 'possible', the ranges are 'a guide to be considered', there are several requirements for a proposal-specific landscape and visual impact assessment whether the proposal falls within the three height ranges or not. Mr Roberts's analysis requires 'a guide to be considered' to be read as 'a threshold not to be further questioned'. That is not compatible with *Tesco*.

²⁹ Inspector note: this is summarised at paragraph 531 and is not repeated here

- The three height thresholds are, of course, set out irrespective of any particular scale, massing and designs. That renders it less likely still that the Appendix was intended to confer in principle support to buildings of particular heights.

631. It must therefore be that the acceptability of any particular proposal depends on the proposal-specific landscape and visual impact assessment. Appendix 5 is unambiguous that the landscape and visual impact assessment will include assessment against WCS policy WCS14. Mr Roberts's position that this policy is somehow subsidiary is not borne out by the text of Appendix 5. In fact, it would lead to a perverse result since the broad based basis for the thresholds in the Atkins work can only be given limited weight for the reasons set out above. Moreover, an approach which seeks to subordinate WCS policy WCS14 to WCS policy WCS17 is inconsistent with the plain text of WCS policy WCS17 which begins '*subject to compliance with other relevant development plan policies....*'

Application of Mr Roberts's 'in principle' approach

632. Since both Mr Roberts and Mr Smith accept that the appeal proposal exceeds the 40 metre threshold in Appendix 5, Mr Roberts extends his 'in principle' approach beyond the parameters of the Appendix 5 thresholds assessed by Atkins. Moreover, his view is that the final sentence of the section which says '*In the cases of 'large' scale development proposals (40m+ buildings and stacks)...*' was intended to create a new and larger category of 'in principle' acceptable buildings beyond 40 metres high.

633. Neither contention is supported by the text of Appendix 5 or the WCS as a whole. In particular, the text of Appendix 5 expressly concerns itself only with the three size categories assessed by Atkins whose work formed the basis of them.

634. In contrast the position of SDC is plain. Appendix 5 does not provide 'in principle' support for any particular scale of proposal. WCS policy WCS6 and Appendix 5 require that each proposal must be assessed on its merits from the outset. That position is detailed above. It flows from the explicit and straightforward text of the Appendix. In any event, if and to the extent that the Inspector prefers Mr Roberts's 'in principle' approach to Appendix 5, then the appeal scheme is not able to benefit from that acceptability because it is a building which exceeds 40 metres.

635. For those reasons Mr Roberts's suggestion that Appendix 5 leads to an 'in principle' acceptability of the appeal scheme on height grounds is unsustainable. This point is critical since it underpins the UBB approach more generally. Once UBB understood this from their advisors there was no driver to consider further either the approach to mitigating landscape and visual impacts resulting from that height or any alternative technology solutions in order to reduce the building's height.

636. This is now examined.

WCS policy WCS14

637. In essence, SDC agrees with GCC and UBB regards interpretation. In short:

- The first paragraph under 'General Landscape' applies in all cases.

- The second paragraph beginning '*proposals for waste development within or affecting the setting of the Cotswolds...*' applies in addition to the first paragraph if and to the extent that an appeal proposal affects the setting of the AONB.
- The final section beginning '*in the case of major development within the AONB*' does not arise in this appeal.

638. It follows that SDC accepts that, as a matter of principle, benefits associated with the proposal fall to be balanced against whatever landscape harms are identified – even when those harms are to the setting of the AONB.

639. However, before addressing the balance the Inspector must determine whether there is a *prima facie* breach of WCS policy WCS14. In other words, whether such impacts as there are on the special qualities of the AONB can be satisfactorily mitigated and whether any significant adverse effects on the landscape are fully mitigated.

640. These are explored next.

Minimising impact

641. The WCS supports minimising adverse impact, including landscape and visual impact so far as that is possible. This is clear from:

- *A key role of the WCS is to reduce the level of that impact to an acceptable degree. The remainder of the spatial strategy below sets out how this will be achieved. (WCS-CD5.1, paragraph 4.171)*
- *The function of Appendix 5 is to help to ensure that any impact is reduced to an acceptable level (WCS-CD5.1, paragraph 4.189)*
- *In relation to proposals under 20 metres tall Developers should use materials and infrastructure that should reflect the local style of the surrounding area, designed to sit as low in the landscape as possible using neutral, matt colours and avoiding the introduction of reflective materials (WCS-CD5.1, Appendix 5, General Development Criteria, Landscape/Visual Impact)*

642. Mr Smith accepted in XX that the advice in Appendix 5 should also apply to larger proposals if that is possible.

WCS policy WCS17

643. A general recognition that there is a degree of blurring between WCS policies WCS14 and WCS17 emerged during the Inquiry. SDC takes no point on architectural design. While this is embraced by the policy, it is not limited to that consideration. Particularly, it is concerned with '*how the proposal reflects, responds and is appropriate to its local environment and surroundings within Gloucestershire*'. That language embraces a consideration of size, scale and orientation to the extent that those features impact on the proposal's response to its local surroundings. The SDC departs from GCC in its direct reliance on WCS17 as a ground against the appeal scheme. The evidence on that came from Ms Marsh, and is summarised below

Landscape and visual matters

Methodology or judgement

644. Mr Smith has, first, failed to appreciate the purpose of the GLVIA methodology and, second, confused and conflated points of methodology with questions of judgement. The GLVIA process is simply one way of systematising what is a series of inevitably subjective judgements. That is plain from the preface to GLVIA3 (CD1.10, page x) and from the passage warning that one of the potential pitfalls in preparing a landscape and visual impact assessment is *'losing sight of the most glaringly obvious significant effects because of the complexity of the assessment'* (CD1.10, paragraph 3.35).
645. That a GLVIA3 process is not required in order to form a view on landscape and visual impacts is shown by Mr Smith's own involvement in UBB's case. He made clear in XX that he formed a view that the scheme could be supported in landscape and visual terms before he accepted the instruction from UBB. However, he reached that view simply on the basis of a site visit for *'no more than an hour or two'* which involved *'rushing around to a number of viewpoints'*, and failing to visit the Haresfield Beacon – which he acknowledged to be the most significant viewpoint from the Cotswolds AONB. There was no further field work before the instruction was accepted. There was no ZVI. There was no further discussion with colleagues. There was nothing resembling a GLVIA compliant assessment. Mr Smith was prepared to proceed on the basis of series of relatively rushed judgments.
646. One of his criticisms of Ms Marsh illustrates his failure to distinguish between a methodological critique and a judgement. The curious allegation against her – which, it should be noted, was not put to her in XX so she was unable to answer herself – was that in assessing the character of the Severn Lowland Plain character area (SDC/2 appendices, plan HDA/5), she had artificially sieved out the employment areas and transport infrastructure from her assessment. As she expressly states however (SDC/2, paragraphs 3.4.1, 3.4.6 and 3.4.7), the relevant transport infrastructure and employment areas fall within the Severn Lowland Plain. When she comes to assess the impacts (SDC/2, paragraph 6.4), she notes *'industrial developments peppered across this character area'* (emphasis added) and, at paragraph 6.42, notes that industrial and commercial uses are *'components of the character area'*. Throughout the assessment, she acknowledges that the industrial and transport infrastructure fall within rather than without the Severn Lowland Plain.
647. Mr Smith is, of course, quite entitled to reach a different judgment from Ms Marsh on the characterisation of impacts on the Severn Lowland Plain (although he actually reaches no judgement at all having not carried out a localised character area assessment). What he is not entitled to do is to mischaracterise her evidence and identify that as an example of some flaw in her methodology. What emerged through Mr Smith's re-examination was that he simply could not understand, if the alleged error had not been made as he thought, how else Ms Marsh could have reached the views she did on the rurality of the appeal site. Again, that is not a methodological critique. That is a difference in judgment, and is yet another example of him confusing the two.
648. While all three landscape experts agreed that there would be significant and adverse impacts on particular viewpoints, they did not agree which viewpoints

those would be. However, the issues at the heart of this dispute turn on the proper characterisation of the baseline, not on the GLVIA methodology. Four issues divide them:

- The extent of rural vs. urban features.
- The consideration of horizontal vs. urban features – both in terms of topography and built form.
- The approach to the existing B8 consent.
- The approach to mitigation measures.

Assessment of baseline landscape character

649. Turning first to 'rurality' Mr Smith states at several points in his proof that the appeal site exhibited strong urban fringe characteristics although in EIC he also did not doubt that there were also strong rural elements. In XX he accepted that moving what is a short distance from the appeal site towards Haresfield in the east the landscape character transformed from predominantly urban fringe to predominantly rural. When pressed to identify the point at which this change could be said to have happened, he pointed to the Church.

650. Not only is this judgement of transition over such a short distance inconsistent with the views of both Ms Marsh and Mr Russell-Vick, it displays an artificiality of approach consistent with his desire throughout his evidence to overstate the degree of urban influence in the landscape. Nowhere is this more obvious than from Haresfield Beacon (viewpoint 34) from which the urban-rural transition relied upon by Mr Smith simply cannot be discerned.

651. That the area surrounding the appeal site contains a mosaic of rural and urban elements is common ground. In the end, Mr Smith accepted that the land to the south of the M5 and to the south also of Haresfield Lane was predominantly rural and it is within this segment of land that the appeal site lies. That is the picture that clearly emerges from Ms Marsh's aerial plan (SDC2/E, HDA6).

652. Dealing now with 'horizontality', several of the relevant landscape character assessments – including the 2006 Gloucestershire Assessment (CD10.4), the Cotswolds AONB assessment (CD10.9) and the 2000 Stroud Assessment (CD10.8) – note the area's '*gently undulating*' topography. The County assessment (CD10.4) notes '*intermittent locally elevated areas*'. As explored with Mr Smith in XX, the implications of gentle undulations combined with intermittent local elevations are that, to the extent there is vertical variation in the topography, that variation is limited in both its extent and frequency. On that basis, the landscape is properly characterised as 'horizontal'.

653. Mr Russell-Vick characterises the landscape of the Vale as predominantly horizontal with relatively few vertical features (generally, local spires and churches and Dairy Crest). Mr Smith agreed with the Inspector that when travelling from Bristol, it was a fair point to make that between the ridge at Tytherington and the appeal site there were very few vertical features in the landscape and that this was a much longer stretch than the immediate context that Mr Smith had described. He accepted that the appeal scheme would be of unprecedented height in the area and inconsistent with the heights of nearby development. Furthermore, he accepted that to the extent that it would be

commensurate in scale with local development, it was necessarily and 'unashamedly' unprecedented in terms of its shape.

654. These are important points to consider in relation to WCS policy WCS14 (where Mr Russell-Vick noted that even at a distance, the eye can pick out when an object is large in proportion to other objects around it even when that object is a small part of the total view) and WCS policy WCS17. A provision of that is how a proposal reflects, responds and is appropriate to its local environment and surroundings; this is critical to the analysis of compliance with the policy.

655. In respect of its height, its shape and its massing, Mr Smith concedes – indeed 'unapologetically' asserts – that far from reflecting its local environment and surroundings, the appeal scheme will be unprecedented.

656. Finally to the approach taken to the B8 permissions. There is no doubt that a GLVIA-based approach requires assessment of the landscape as it is at the time of that assessment (CD10.1, paragraph 5.33). Beyond that, the aim should also be to consider what it may be like in the future without the proposal being assessed. That requires a judgement to be made on matters that have nothing to do with landscape and visual impact and it is a judgement about which the respective parties' witnesses reach different conclusions.

657. Ms Marsh did not assess the B8 permission being built out as part of her baseline and, in this respect, was consistent with Axis when preparing the planning application (CD1.2(i)). In XX Mr Russell-Vick noted that there was considerable uncertainty about future development so that it was not very helpful for the Inspector to have an assessment based on what would be essentially a guess.

658. Both Mr Gillespie and Mr Wyatt gave evidence about the likelihood of B8 development on the appeal site coming forward. In EIC, Mr Wyatt thought it fairly unlikely and referred to consistent marketing efforts, in which he had taken part, which had not led to potential clients being attracted to the land.

659. As a consequence of the permitted B8 schemes being unlikely to be built out it is not appropriate to include them, as Mr Smith has done, as part of the baseline for considering landscape and visual effects.

660. Alternatively and in any event, if it is correct to include those permissions in the baseline Mr Smith's assessment of them has become skewed. Mr Roberts accepted that the white banding on the warehouses shown on Mr Smith's photomontages was part of reserved matters approvals now expired. Mr Smith accepted that if those bands were removed from the photomontages the effect of the B8 permission in the landscape would alter. Notwithstanding the banding, Mr Smith accepted in XX that from certain viewpoints (4, 16 and 24) the B8 warehousing would retain more, if not all, of the unbroken skyline and would be more consistent with the undulating, horizontal character of the landscape than the appeal proposal.

Assessment of impacts

661. It is clear that the appeal proposal would have impacts of a different nature to the B8 permission. Even if, from certain viewpoints, Mr Smith's evidence was that the difference between them would be no more than slight, the evidence from Ms Marsh, Mr Russell-Vick and Mr Smith has acknowledged throughout that

there would be differences between the B8 impacts compared against those of the EfW. This is when Mr Smith's methodology began to obfuscate rather than reveal.

662. Beginning with his table summarising his conclusions on visual effects (UBB2, pages 88 to 90). For viewpoints 3, 5, 9, 12, 13, 14, 22, 23, 29, 29A and – most importantly – 34, Mr Smith explains that the nature of the EfW's effects would be 'adverse' assuming an existing site baseline, and 'neutral' assuming a B8 baseline. His preference for a B8 baseline allows him to rule these viewpoints out of further consideration when totalling the number of viewpoints which suffer 'adverse effects'. In particular, the view from Haresfield Beacon is removed from those views tallied at paragraph 335 of his proof as suffering 'significant adverse effects'. Mr Smith explains (UBB2, paragraph 536) that:

Even Reason for Refusal 3 acknowledges this stating that from the AONB the EfW would be viewed 'generally against the backdrop of the Severn Vale which includes other built development'. It is for this reason that I have concluded that the landscape effects of the EfW on the Cotswold Escarpment would be neutral in nature, since the development would not change the fundamental character of views from the Cotswold Escarpment.

663. The result of that approach is that an effect can only be adverse if it changes the fundamental character of a view. That sets a surprisingly high bar to be reached before an effect can be characterised as 'adverse'. In fairness to Mr Smith, he appeared to step back from that bar during XX and said that, in his view, a 'neutral' effect would be one of a 'very similar' nature to the baseline, whereas an adverse effect would be 'slightly larger, or slightly different in nature' compared against the baseline. There is, of course, a significant difference between a 'fundamental change' in the character of a view, and one which is 'slightly different in nature'.

664. Whether an effect is positive, adverse or neutral is plainly a matter of judgment on which GLVIA3 offers little assistance, and Mr Smith is entitled to his view. However, there are at least three reasons why the Inspector should treat Mr Smith's approach with caution.

665. First he was, on his own terms, entirely inconsistent as to the approach to defining adverse views. His approach was not transparent. Worst of all, he appears to have adopted different thresholds of adversity at different times in this giving of his evidence. The 'slightly different in nature' test he articulated in XX featured nowhere in his proof.

666. Second, taking what he said during XX (an adverse effect would result from a view 'slightly different in nature' to the baseline) as his final position, it is inconceivable – given his acceptance of the differences between the B8 permission and the EfW in terms of height, shape and consistency with pre-existing development and the horizontal quality of the landscape – that the imposition of the EfW into viewpoints 3, 5, 9, 12, 13, 14, 22, 23, 29, 29A and 34 is not of a 'slightly different nature' to a B8 baseline.

667. Third there is, in fairness to Mr Smith, no evidence of which threshold of 'adversity' he had in mind when reaching the views summarised in his table of visual effects in UBB2. If he was looking for a 'fundamental change' in character, that is an unsupported standard – in GLVIA3 or anywhere else – and it

constitutes an unambiguous flaw in his methodology. If instead he was looking for a 'slight' change in the nature of the view, and if he failed to see such a change from any of viewpoints 3, 5, 9, 12, 13, 14, 22, 23, 29, 29A and 34, that constitutes a troubling error in judgment that goes to the heart of his conclusions. The point is all the more forceful if the white banding is removed from the B8 baseline which, as set out above, is a particularly visible feature of the B8 development but which is a feature of reserved matters which have expired.

668. Finally, particularly in relation to Haresfield Beacon (viewpoint 34) Mr Smith's shift from adverse to neutral by adopting the B8 baseline falls into one of the very pitfalls GLVIA3 seeks to avoid at (CD10.1, paragraph 3.35), losing sight of the most glaringly obvious significant effects because of the complexity of his assessment.
669. Mr Smith's approach at Haresfield Beacon is also relevant, of course, to the question of impacts on the setting of the AONB for the purposes of WCS policy WCS14. He accepted in XX that the proposal would be within the setting of the Cotswolds AONB, and will have impacts on that setting. As a consequence, WCS policy WCS14 puts particular focus on satisfactory mitigation – both in its general landscape policy, and its second part relating to the setting of the AONB.
670. The requirement to consider mitigation measures is also, in fairness to Mr Smith, part of the GLVIA3 guidance (CD10.1, page 57) which considers prevention, avoidance, reduction and compensation. The 'mitigation hierarchy' is set out at figure 4.4 on page 60.
671. On the question of mitigation, UBB's evidence is curiously sparse. Again, in fairness to him, Mr Smith said during XX that by the time of his instruction, the scheme was set. He was not asked to consider further mitigation measures. Further, he recognised as omissions from his proof the guidance in EN-1 (CD6.5, paragraph 5.9.8) that *'the aim should be to minimise harm to the landscape, providing reasonable mitigation where appropriate'* and that *'reducing the scale of project can help to mitigate the visual and landscape effects of the proposed project'* (CD6.5, paragraph 5.9.21).
672. On the position before Mr Smith became involved, Mr Roberts was emphatic in XX that *'We stopped when we had developed the requisite criteria in the WCS. That is where we stopped.'*
673. The legitimacy of that approach, of course, depends on Mr Roberts's argument that the proposal was 'in principle' acceptable according to WCS Appendix 5. SDC's submissions on that have been set out earlier. It was on the basis of that understanding of UBB's position that:
- Mr Smith said to Mr Elvin in XX that there was never an alternative scheme considered to deal with reducing the height of the building *'because it was not required by the WCS, because it envisaged a structure of up to 40 metres +'*.
 - As Mr Aumonier said in XX, there was no consideration of any alternative technological solutions with an aim to reducing the proposal's scale – this is addressed later.

- As Mr Othen said in XX to Mr Elvin, there was no consideration given to lowering the plant further into the ground.

674. Mr Elvin explored with Mr Roberts the position at Hartlebury. The sequence there was to determine site layout to minimise the overall height and visual impact of the main process building, to excavate a bowl within which to sit the EfW Main Building to further mitigate the visual impact of the proposed facility and, only then, to turn to detailed design. That has not been the approach here where, unlike Hartlebury, the proposal is within the setting of an AONB. If anything, in relative terms, the question of excavation should have been given greater priority at Javelin Park.

675. SDC's primary position is that the various omissions to consider mitigation measures considered above were on the mis-construction of the purported 'in principle' acceptability afforded by Appendix 5 – those points have been considered above. However, and in any event, Mr Smith failed to acknowledge or engage with the requirements in GLVIA3 as well as the WCS and EN-1 to examine possible strategies to reduce the building's height. The Inspector should weigh that failure in the balance when he comes to assess compliance with those parts of WCS policy WCS14 which require mitigation of landscape and visual impacts.

Landmark

676. The chronology of the WCS with respect to the term 'landmark' is set out by GCC above (paragraphs 538 to 544). It is necessary to consider what that approach reveals about UBB's attitude to scheme design and impact mitigation.

677. The starting point is to consider what is meant by the term. Mr Roberts said in XX that the characteristics of a landmark comprise '*a combination of a location proximate to where people go, scale, appearance and qualities*'. He accepted that, by definition, a landmark would have to be viewed as 'distinct' from its surroundings. A landmark design is, again by definition, intended to be seen. It is intended to be visually prominent. It is intended to stand out from the existing baseline topography and built form. Whether a building is a landmark is only partially, and not exclusively, a function of its height.

678. The landmark-based approach not only now lacks any support within the WCS, it is antithetical to what the WCS requires. It would contradict:

- The requirement of WCS policy WCS17 for design which '*reflects and is appropriate to*' its surroundings.
- The objective at paragraphs 4.171 and 4.189 (CD5.1) and WCS policy WCS14 to mitigate impacts to an acceptable degree.
- The approach in WCS Appendix 5 – which Mr Smith accepted in XX should apply to both small and large buildings 'if possible' – to design buildings '*to sit as low into the landscape as possible*'.

679. The extent to which the reference to a 'landmark' structure guided the design process is not particularly clear. References in the DAS (CD1.1(ii), pages 14 and 15) and the Community Involvement Statement (CD1.1(v), page 17) suggest that it did.

680. SDC's case is simple.

- In its early iterations, the appeal scheme sought to respond to the emerging WCS, which included reference to a 'landmark' facility at Javelin Park.
- A change of policy should have led to a change of approach.
- Absent direct support for a 'landmark' facility, not only is a landmark building not 'inevitable' as Mr Roberts claimed in XX, it is antithetical to several policies of the WCS.

681. Given the emerging policy context at the time the scheme was designed, and given the admitted failure to adapt the design in light of the adopted WCS, the conclusions of Ms Marsh and Mr Russell-Vick that the appeal scheme has significant adverse landscape and visual impacts and is out of keeping with its environment should come as no surprise.

682. Taking the above together, SDC submits that such benefits as the appeal scheme is said to deliver do not outweigh its significant and adverse impacts on the landscape. For those reasons, the appeal proposal fails the requirements of WCS policies WCS6, WCS14, WCS17 and Appendix 5, and the appeal should be refused on that basis.

Alternative technologies

Legal framework

683. While it is a fact that both national policy and the WCS are technology neutral, the question as to whether alternative technologies are material to the determination of this appeal is a matter of law, not policy as EN-1 expressly recognises (CD6.5, paragraph 4.4).

684. There are a number of authorities on this ³⁰. From these the following principles can be derived:

- Where there are clear planning objections to a particular form of development, then it may well be relevant and indeed necessary to consider whether there is a more appropriate alternative.
- That is particularly so when the development is bound to have significant adverse effects and where it is said that the need for the development outweighs any planning disadvantages inherent in it. As the *Langley Park* case makes clear, that approach is not restricted to the question of alternative sites.

³⁰ *R (on the application of Scott & Anor.) v. North Warwickshire Borough Council* [2001] EWCA Civ 315; *Trusthouse Forte Hotels Ltd v. Secretary of State for the Environment* (1986) 53 P. & C.R. 293; *R. (on the application of Bovale Ltd) v SoS for Communities and Local Government* [2008] EWHC 2538 (Admin); *R. (on the application of Langley Park School for Girls Governing Body) v Bromley LBC* [2009] EWCA Civ 734; [2010] 1 P. & C.R. 10

- The question in any case is whether the proposed development, though desirable in itself, involves such conspicuous adverse effects that the possibility of an alternative lacking such drawbacks necessarily itself becomes, in the mind of a reasonable decision maker, a relevant planning consideration upon the application in question.

Application of caselaw

685. This appeal fits squarely within those principles. The appeal scheme will, even on Mr Smith's evidence, but to a greater degree on that of Ms Marsh and Mr Russell-Vick, have significant adverse effects. Even if those impacts are held *prima facie* to breach WCS policy WCS14, Mr Roberts's position in EiC was that the need for the appeal scheme and the positive benefits it would bring about are sufficient to outweigh any harms to the landscape and the setting of the AONB. This matter is therefore, *per* Laws LJ at paragraph 30 of the *Scott* case, within one of the 'exceptional circumstances' where it is material to consider alternatives lacking the same drawbacks. Indeed, this is a paradigm case in which consideration of alternatives is material.

686. The approach of UBB stated by Mr Roberts and even more so by Mr Aumonier that alternatives were not material to the decision of the Secretary of State is misconceived and has led to further omissions. The most important of these is that there has been no consideration by any of the relevant UBB witnesses as to whether any alternative technology or design solutions would be, first, capable of delivering the same or similar benefits at the appeal site while, second, reducing the harm on landscape and visual receptors.

687. While the evidence of Mr Christensen and Dr Coggins on this was challenged extensively as supporting alternatives that were insufficiently proven or bankable, the starting point for SDC's case on this can equally flow from the evidence of Mr Aumonier and Mr Othen.

688. Mr Aumonier gives an appraisal of alternative technologies (UBB5, page 67 onwards) and says at paragraph 131 that while many technologies are theoretically available to UBB, that is only if no account is taken of risk. He then considers the relevant risks under three categories; technical deliverability, provenness and end product liability. Scores are attributed to a range of technology alternatives with no substantive point being taken with the methodology used or the scores given. The appeal proposal is ranked third equal behind the top-scoring mechanical treatment with off-site EfW and, in second place, gasification.

689. The conclusion (UBB5, paragraph 151) is that it is '*difficult to differentiate*' between these technologies. On that basis, Mr Aumonier accepted in XX that his analysis showed there to be '*genuine alternatives*' to UBB's technology choice at Javelin Park. Indeed, he notes as much at paragraph 166 of his proof.

Weight to be given to 'genuine alternatives'

690. As Mr Aumonier made clear in XX, when he said (UBB5/REB/A, paragraph 42) that it was not clear what advantages over EfW, apart from not being EfW, the alternatives raised by Mr Christensen offered he was taking no direct account of the technologies' relative impacts on landscape and visual receptors.

691. Mr Othen's evidence is that the height of the boiler is directly proportional to the cube root of the plant's capacity. A number of things flowed from his XX on these matters:

- In principle, a reduction in throughput of the incinerator leads to a reduction in its height.
- If MHT or MBT is used to pre-treat waste, fractions of it are retained as recyclate leading to a reduction in throughput and, assuming a representative proportion of the input is removed, a reduction in the height of the building.
- An MBT or MHT plant producing RDF but without on-site thermal treatment could fit within a building of 15.7 metres in height.
- Consistent with the Guide to the Debate (CD7.9, page 94) there is a synergy between pre-treatment and advanced conversion technologies like gasification and pyrolysis.
- Such gasification and pyrolysis plants are housed in buildings of lower height than the appeal proposal, albeit not as low as 15.7 metres.

692. Therefore, Mr Aumonier confirms that there are genuine alternatives and Mr Othen confirms that some of those would, as a matter of principle, reduce the height of the building. In the case of an MBT plant with off-site thermal treatment of exported RDF that reduction could even be to a total height of 15.7 metres.

693. To conclude on this issue, the analysis above is entirely consistent with the technology-neutral approach in EN-1 and the WCS:

- UBB is not required to deliver the best technological solution, or indeed any technology in particular. What UBB is required to do by policy WCS policy WCS14 is satisfactorily to mitigate the impacts of the appeal scheme on the landscape.
- If the Inspector accepts the analysis of the landscape evidence set out above, and prefers the evidence of Mr Russell-Vick and Ms Marsh on the point, he will conclude that landscape and visual impacts are significant, adverse, and – most important for this purpose – insufficiently mitigated.
- When it comes to the next step in WCS policy WCS14 – balancing the appeal scheme's benefits against its landscape and visual harms – it is critical that the exercise be approached on the basis that the harms are not an inevitable function of the benefits. There are, as Mr Aumonier freely conceded, genuine alternative technological solutions at Javelin Park. Those solutions could and in principle would, as Mr Othen confirmed, have resulted in a building of decreased height.

694. SDC does not propose a concrete scheme within the meaning of EN-1 (CD6.5, paragraph 4.4.3). The point taken on alternatives through Dr Coggins and Mr Chrstensen is that UBB has not assessed the extent to which alternative technological or design solutions could reduce the appeal scheme's height. That omission is predicated on three errors of principle, already examined above:

- Mr Roberts's misconception that for buildings up to 40 metres high, Appendix 5 is permissive 'in principle', and seeks no further mitigation of height, scale or massing.
- Mr Roberts's misconception that for buildings over 40 metres high and indeed up to and including 48 metres high, Appendix 5 is permissive 'in principle', and seeks no further mitigation of height, scale or massing.
- Mr Aumonier's misconception that alternative technological solutions were simply immaterial to the Secretary of State's determination.

695. UBB's failure to assess genuine technological alternatives – about which there is nothing vague or inchoate – to mitigate landscape and visual impacts of the scheme is a material consideration for the Inspector's consideration in reporting to the Secretary of State for his determination and evidences a failure to mitigate impacts under WCS policies WCS14, WCS17 and Appendix 5 of the WCS.

Perceived health impacts and Hunts Grove

696. SDC takes no case on actual health impacts of the appeal proposal. On the principles of perception of health impacts there is common ground with Mr Roberts's assessment of the authorities (UBB1, paragraph 10.4) and SDC says:

- Public perception of health risks a material consideration.
- It is rarely determinative in its own right.
- A lack of objective justification goes to the weight perceptions can be afforded.
- However, public perception of health impacts remains material, even if they are lacking objective justification.

697. Mr Wyatt made clear in XX that SDC attaches no more than limited weight to public perception of health impacts in themselves and to that extent endorses the Inspector's formulation (INSP/INQ/1) of the principle that *'rather than a generalised concern, some direct land-use consequence needs to flow from the perception of harm that would be caused'*.

698. Rather, SDC's case on this point has focused on one of the *consequences* of those perceptions, particularly the deliverability of the extension to the housing development at Hunts Grove.

699. The Hunts Grove development lies to the south of the settlement of Hardwicke. The consented scheme comprises about 1750 dwellings. The proposed Hunts Grove extension of 500 units extends the development to the south of Haresfield Lane. If allocated in the emerging plan³¹, this will be the closest part of the Hunts Grove development to the proposed EfW facility.

700. Mr Jones accepted in XX that, in short, valuation is about comparables. Taking his and Mr Roberts's evidence and XX shortly, the position arrived at was that, despite the best efforts of both, no truly comparable site to Javelin Park could be

³¹ Inspector note: the site IS so allocated in the plan submitted during the Inquiry for examination

identified. Mr Jones was of the view in re-examination that the appeal proposal may, in the sense that it is not on the site of a previous incinerator or in a previously industrialised or regeneration area, be the first site of its kind.

701. Mr Jones's conclusions are therefore a matter of his professional judgement and draw limited value from previous cases. His judgement is set out (SDC/5, paragraph 6.1.10) and is that the appeal proposal would, on the balance of probabilities, be likely to have a negative impact on property values and/or the speed of property sales. It is considered that influence would be greatest at the Hunts Grove site perimeter, namely properties closest to the EfW facility and will diminish with distance from the plant.

Viability of Hunts Grove extension

702. It is a matter of fact that the Hunts Grove extension is considered, at present, sufficiently deliverable by the SDC to warrant its inclusion as a major housing allocation in the emerging SDLP (CD5.4). Mr Jones fairly conceded in XX that his position was not that the appeal scheme would prevent the extension at Hunts Grove from being built out at all. The question is on what basis it will be built out in terms of its delivery of affordable housing and infrastructure payments through a s106 agreement.

703. HDH undertook a Local Plan Viability Study (SDC5-K) and coded the Hunts Grove extension as 'amber' (Table 10.7, page 111). Page 97 of the report shows that 'amber' means marginal viability where the Residual Value exceeds the Existing Use Value, but not the Existing Use Value plus appropriate uplift to provide a competitive return for the landowner. These sites should not be considered as viable as it is unlikely that the land would be made available to a developer at this level.

704. It is not the case that the HDH report concludes that the site should be removed from the emerging SDLP as undeliverable. As Mr Jones conceded in XX, it is a high level report with the 'amber' coding needing to be read with the caveat that sites will be subject to further detailed analysis as they come through the planning system.

705. The point is simply this. At the high level assessed by HDH, although the Hunts Grove extension was sufficiently viable to proceed with, its developer has not *'provided supporting viability work in a form that can be relied on by the Council'* and its amber coding denotes marginal viability. The implications of this are considered by Mr Wyatt (SDC/1, paragraph 3.4.2 and 3.4.3). In summary this is that any reduction in potential sales values would be likely to come out of the funds for infrastructure which could either prejudice the achievement of planning permission in the first place or make the development a less attractive and functional place to live. A new site may have to be identified outside of the development plan process which was not blighted by the appeal proposal. Such a site would be unlikely to perform as well in sustainability terms as Hunts Grove given its strong showing in the sustainability appraisal.

706. In summary on this issue, SDC's case is that first, there is likely to be a public perception that the appeal scheme would be harmful and, second, that perception would have significant land use consequences which go to the delivery of SDC's housing requirement, 5-year housing supply, the quality of the

development in terms of affordable housing and infrastructure delivery, and the soundness of its forthcoming Local Plan.

Alleged benefits: CHP

707. On this issue SDC submits that it is not likely that the appeal scheme, if permitted, would ever move from its CHP ready status and export heat and, as a consequence, the weight attributable to that aspect of UBB's case on benefits should be no more than negligible.

708. It is common ground that the WCS site selection process (CD5.22) did not consider the CHP potential of the possible sites until the shortlist of 13 had been derived from the initial 500 or so (CD5.24, page 12). While Mr Roberts stated in XX that this was a sensible approach as there would seldom be more than two or three such suitable sites in any county, SDC makes two points.

709. First, the scarcity of high quality CHP sites makes it all the more important that CHP is considered at the outset rather than, as Mr Wyatt put it, retrofitting the requirement rather than having it driving the process.

710. Second, it is not consistent with the guidance in the Guide to the Debate (CD7.9, page 46) or the consultation draft revised PPS10 (CD6.9, pages 8 to 9).

711. Mr Aumonier confirmed in XX that the potential for CHP that he had identified has not yet reached the stage of being a realistic prospect. SDC say that it is actually speculative. Taking the potential users in turn:

- Dairy Crest is one of the most significant heat users but he conceded that heat export from the appeal proposal to it was a very long shot but not beyond the bounds of possibility.
- Classing the opportunity at Kingsway Village and Quedgeley as 'average' was on the basis of input Mr Aumonier assured the Inquiry had been given but which nonetheless remain commercially confidential conversations. No challenge is made to Mr Aumonier's integrity on this. However, without more detail of those conversations, it is impossible for the Inspector to test the intentions of the relevant operators and if the intentions cannot be tested, they cannot be given weight.
- At Javelin Park the potential for CHP depends on the nature of future development which is not yet known.
- On Hunts Grove, and the Hunts Grove extension, Mr Aumonier puts the opportunity as average but, as UBB's ES noted (CD1.2(i), paragraph 5.4.18) that '*would require the development of a strategic CHP network that may not be financially viable at the present time*'. Mr Aumonier accepted that there had been no assessment of the possible funding arrangements for the supporting of a district heat main.
- Mr Aumonier confirmed that it would only be after a full business case is prepared including confirmation of customer interest, assessment of needs, engineering design etc that UBB would be in a position to assess its commercial decision on whether the benefits of CHP are sufficiently attractive. That there had been no further progress on that since the proofs were prepared was confirmed by Mr Roberts in XX.

712. To summarise, Mr Aumonier accepted in XX that it cannot be predicted with any degree of likelihood whether CHP will be initiated at the appeal site or not. Indeed, he accepted that at the current time the opportunities had not reached the stage of being realistic. Furthermore, even assuming all of his assumptions were correct, and heat was exported along the lines of his heat study (UBB5/ C), in terms of the scale of heat exported, he agreed with the broad parameters of the Entec study (CD7.29) that Javelin Park would export no more than only 3-4% of its potential heat output.
713. The General Development Criteria of WCS Appendix 5, under the heading CHP, require that:
- Where an Energy from Waste facility is proposed, applicants will need to outline the details of the energy recovery/and heating system proposed and should identify the envisaged energy client. (Emphasis added)*
714. On any view, that stipulation has not been met.
715. Drawing those points together, to the extent the Inspector considers the potential for CHP from the appeal site as a benefit weighing in favour of the proposal, that benefit should be given negligible weight. On the contrary, to the extent that Mr Aumonier's work has failed to identify envisaged clients for heat at Javelin Park, there is a failure to comply with Appendix 5, and that should weigh against the appeal scheme.

Inspector's issues at the Pre Inquiry Meeting

716. In this section, where it has one, SDC gives its view on those issues identified (INSP/INQ/1) that have not already been addressed.
717. Regarding the ***material policies***, SDC endorses the summary of the planning policy context in the SOCG between UBB and GCC (CD4.7). The position is also set out by Mr Wyatt (SDC/1). The statutory Development Plan comprises the adopted WCS (2012); saved policies of the WLP (October 2004) and the SDLP (November 2005). Key material considerations include the Framework, PPS10, EN-1 and EN-3, as well as the DCLG, Defra and DECC guidance documents listed at pages 28-30 of CD4.7. SDC's case on the appeal scheme's compliance with those policies is set out in the conclusions below.
718. In common with GCC, SDC accepts that the WCS identifies a ***need for the development of residual waste recovery capacity*** and that the appeal proposal could make a substantial contribution to the delivery of WCS policy objectives and to the County's waste management needs. The Inspector's observations at the Pre Inquiry Meeting (INSP/INQ/1, paragraph 2, issue (c)) are noted and accepted and no comment is made on the evidence of Mr Watson for GlosVAIN. Dr Coggins notes the central importance of ***climate change*** to the analysis (SDC/3, paragraphs 8 to 12).
719. Regarding the ***effect on the outlook of occupiers of nearby buildings***, SDC notes Mr Smith's admission that impacts on nearby residential receptors have not been fully assessed. He accepted in XX that there had been no cumulative impact assessment in relation to residential receptors. As to his Residential Impact Amenity Study (UBB2-G), he accepted that:
- He was not able to access the properties.

- He was not able to determine their internal layouts.
- Notwithstanding that limitation, properties which would have views on the appeal scheme were ruled out from further consideration so long as he judged those views to be glimpses from a small number of windows.
- He makes no finding on whether the views are from valued parts of the properties, or whether the views are significant or adverse. The views are quantified, but not qualified.

720. To that extent, his assessment of impacts on residential properties is deficient.

Conclusions

721. The appeal scheme is fundamentally out of keeping with its location. Its height, scale and massing are unprecedented within its surroundings. Its impacts on the landscape would be significant and adverse, including impacts on the setting of the AONB. That the appeal site was allocated through WCS policy WCS6 is no answer when:

- The WCS is explicit at Appendix 5 that its broad landscape and visual assessment did not extend to a proposal of the appeal scheme's scale and massing; and
- Genuine and proven alternative solutions, both as to design and technology, exist which can meet the need identified in the WCS without bringing about the harm it seeks to avoid in Appendix 5.

722. For those reasons, the appeal proposal fails the stipulations of WCS policies WCS6, WCS14, WCS17 and Appendix 5. Such benefits as the appeal scheme is said to deliver do not outweigh its significant and adverse impacts on the landscape, and on that basis SDC asks the Inspector to recommend that the appeal be refused.

The Case for GlosVAIN

Introduction

723. The GlosVAIN case, put simply in the opening statement, is that the proposed incinerator is far too large; that it would not deliver the benefits claimed and that it would be a long-term legacy to the profligate way in which we have wasted resources we should be sharing with future generations. If the appeal was to succeed then the massive, ugly and incongruous incinerator standing as an anomalous feature towering over the attractive landscape of the Severn Vale would be a constant reminder of this.

724. There has been an enormous amount of paper produced during the course of this Inquiry. Indeed a cynic might suggest that some vested interests were trying to reverse the downward trend of waste arisings in Gloucestershire and to boost the biogenic portion of the waste. But none of the evidence which has emerged during the course of the Inquiry has persuaded GlosVAIN that the planning committee was wrong to unanimously reject the application or that the GlosVAIN case, in spite of an enormous disparity of resources, has been answered by UBB.

725. GlosVAIN feels more strongly than ever that if this incinerator was to be approved in spite of the scale and detail of the objection more fundamental questions than just those of the planning regime would be raised. Overriding such strongly held and widespread objections would challenge both the meaning of localism, local democracy and ultimately the definition of sustainable development.

Design, landscape and countryside impacts

Introduction

726. The majority of the local topography is defined by the very flat, low-lying valley bottom landform which contains few obvious landmark features close to Javelin Park and it is not surprising that the impacts on this landscape have been some of the most common and strongly presented objections by the public. The evidence presented by GlosVAIN shows that the proposed development would do major and long-term damage to this fragile landscape and to people's enjoyment and experience of it.

727. GlosVAIN relies on the expertise provided to the Inquiry by GCC and SDC on this central issue. However, GlosVAIN goes further than GCC and argues that while a smaller incinerator would be an improvement in overall visual impact terms, it would still be unacceptable in this location. Furthermore, GlosVAIN considers that the plume would act like a long flag, albeit intermittently, which would draw attention to the incinerator even from distant viewpoints.

728. The wider public has not been impressed by the architectural form which might have some linkage with the field patterns when viewed from a plane flying high above the site but from terrestrial observation points still seems most appropriately described as being inspired by a jumble of boxes.

729. On heritage matters GlosVAIN relies on and supports the continued objection from English Heritage (CD4.14). The development would have an unacceptable visual blight and the proposals would not produce substantial public benefits that would outweigh the impacts on heritage assets. Mitigation of that visual impact is unlikely in any practical or realistic way.

Impacts on the AONB

730. The incinerator would be clearly visible from the AONB as a jarring industrial form in the predominantly rural flat or gently undulating landscape of the Severn Vale and would be the tallest building for many miles.

731. To the north-west there is nothing of remotely similar height. In recent years housing and warehousing has spread south towards the site from Gloucester but this is relatively unobtrusive compared to the appeal proposal, and is generally to the west of the M5, which can thus be seen to present a defensible line – particularly with the current height restrictions.

732. Mr Smith made frequent reference to most views of the site from the AONB as being partial or glimpsed. GlosVAIN do not accept this.

733. In general terms, he made much of the fact that people in the AONB, on the Cotswold Way for example, will not see the incinerator because they are on a walk with eyes fixed on the path ahead, so with lateral views and extensive tree

cover they would only see the incinerator in a very few places. It might be through Mr Smith's lack of local knowledge, but most people are not on the footpaths when on Haresfield Hill and Beacon, Standish Wood, Painswick Beacon or the many other places of public access, but roaming around, walking the dog, on their bikes, flying kites or engaged in many other activities.

734. He also said there will be many fewer visitors in winter. He must be assuming that people there are tourists from out of the area, whereas most people are from the local villages and towns, often dog-walkers.

ZVI maps

735. While useful, these are not completely reliable as Miss Bailey shows (GV3, paragraph 25 and accompanying photographs). Here, a blimp is visible where the ZVI shows that it would not be. Furthermore, unlike Ms Marsh, Mr Smith does not take into account that the intervening vegetation will be free of leaf for at least a third of the year thus allowing views of the proposed development.

736. While ZVIs were provided with and without the stack the plume was not included. Although Mr Smith explained in XX that this was because it was not always there and was so variable in size that it would have been impossible to identify a representative state, GlosVAIN believes it would have been helpful to have had an indicative 'worst case' ZVI showing the plume. Furthermore no ZVI was provided for the permitted B8 warehousing which UBB insists should be seen as the alternative baseline.

Visual receptors

737. Mr Smith's attempts a description of impact on visual receptors (in this case houses) by enumerating the numbers of windows from which the appeal proposal would be seen and whether these would be on ground or upper floors. These are not particularly accurate. No access to the properties was gained and, perhaps, too much reliance was placed on the ZVIs.

738. Mr Smith also fails to acknowledge that local residents are not restricted to their homes but chose to live and in some cases work in the countryside, often spending as much time as possible enjoying their gardens and farther afield. Many are permitted access by informal agreement as Miss Bailey said in answer to a question from the Inspector. In that respect, landowners, residents, farmers, workers and others would be affected from viewpoints which have not been assessed at all – and in some cases where the impacts are likely to be significantly greater than those assessed by the appellant.

Vegetation trends

739. Mr Smith's evidence pays little or no attention to the possibility of vegetation change due to tree disease, and thus gives undue weight to the continuing presence of woody vegetation. He takes account of neither of existing tree disease (eg Dutch Elm Disease, to which Miss Bailey drew attention as continuing to affect local hedges) nor new and emerging threats, such as Ash Dieback. Miss Bailey references The Forestry Commission view that this is '*potentially a very serious threat. It has caused widespread damage to Ash populations in continental Europe, including estimated losses of between 60 and 90 per cent of Denmark's Ash trees. We have no reason to believe that the consequences of its entering the natural environment in Britain will be any less serious.*' (GV3).

740. Although in XX Mr Smith indicated that he disagreed and said that some of the movement restrictions on Ash were to be lifted, GloSVAIN has been unable to verify this. The legislation currently in force³² prohibits all imports of Ash plants, trees and seeds into and within Great Britain until further notice. No pest-free areas are established.
741. Ash is a particularly common hedgerow tree species in the Severn Vale, and is the principal tree species on the scrub and young woodland on the slopes of the Escarpment. Mr Smith implies that Beech hangars are the principal woodland type on the Escarpment (UBB2, paragraphs 212 and 245). However, in XX Miss Bailey corrected this saying that beech woodland, though it occurs, is a rare and special habitat. Young Ash woodland, resulting from 20th century cessation of grazing, predominates on the Escarpment.

Field of view and careful framing of Axis photographs and photomontages

742. In both EiC and XX Miss Bailey stressed the importance of foveal vision, the central 2° used to see things with precision. Fifty percent of the nerve fibres in the optic nerve serve this function.
743. As an example she explained that people on Haresfield Beacon, once they have taken in the magnificent panorama, would look for their landmarks. To the people of Gloucestershire, May Hill with its topknot of pine trees is iconic – although this was lost on Mr Smith who in XX did not recognise May Hill. The incinerator, if built, would be within a few vertical degrees of May Hill, and could not be worse placed from this viewpoint. Furthermore, it may occupy as much as two vertical degrees even without a plume according to the ZVIs. The wide-angle view thus under-represents the likely effects of the proposal from many viewpoints on the AONB, and the scheme's appearance and its place within its environment cannot be recognised or understood from photos or photomontages using such a wide angle.
744. It is clear that Miss Bailey has taken her photograph from viewpoint 34 (Haresfield Beacon) from the logical and comfortable spot. The Axis image must have been taken from a point lower down the slope. The effect is to increase the amount of vegetation blocking the view and to screen the base of the incinerator in the foreground, while making visible the warehousing of Quedgeley West Business Park to the right of the photo. When retaken on the day the blimps were flown, the image must have been taken closer to the position that Miss Bailey used. This showed clear fields but when the photomontage was superimposed it was adjusted to re-introduce the screening (UBB2/52, page 110).
745. In addition, several of the Axis photos reveal significant errors of grid reference and spot height. Axis viewpoint 34 from Haresfield Beacon is particularly to be noted here. It is hard to understand how one of the most important views has been given a grid reference that is about 300m out - and the wrong spot height. Basic errors like this undermine confidence in techniques which require complex analysis of images by computers and which are thus not easily checked once produced.

³² Plant Health (Forestry) (Amendment) Order 2012 SI 2012 No2707

Unrepresentative viewpoints

746. GlosVAIN, Mr Smith and indeed others had concerns about how representative the chosen viewpoints are. Some, such as viewpoint 10, seem to have no view of the appeal proposal at all, while other important vantage points, such as the footpath along the face of the scarp below Haresfield Beacon towards Ringhill Farm have been ignored.
747. Vinegar Hill and the associated open access land below Haresfield Beacon in the AONB is likely to be one of the viewpoints most affected by the proposal but this has not been assessed at all by the appellant. In XX Mr Smith thought that the access land was further from the site than Haresfield Beacon. It is not – and it is difficult to understand how anybody familiar with the land could have thought this. He was also unclear about when, where and for how long he had been on Vinegar Hill and the access land. He also claimed that only glimpsed views could be had from it. The Inspector is requested to resolve this by way of a site visit as there was no satisfactory answer to why this attractive and much loved site should have been overlooked.

The significance of the plume

748. Although largely ignored by UBB (and wholly ignored by GCC) GlosVAIN considers that the plume is very significant.
749. When visible, it would appear like a flag and would draw attention to the appeal proposal from many more places than those from where the building itself would be visible. It would be unlikely to blend in to the sky when seen from below; neither would it blend into the green of the landscape when seen from elevated viewpoints.
750. Moreover, it simply would not be static as Mr Smith asserted in XX. It would move and, given the prevailing wind direction, would most often be at right angles to the line of the building and thus parallel to the Cotswold Ridge. This would undermine the purpose of the building alignment when seen from Haresfield Beacon.
751. The plume would be longer and more common in winter than in summer, but because the motorway, the Vale, and the Cotswolds are frequented all year round the plume would be seen at all times of the year, and it would draw attention to the site even from more distant viewpoints. Mr Smith accepted in XX that plumes are also likely to be more prevalent at night when there is the prospect of it being lit from below by lights from the plant, Blooms, and the nearby motorway junction.
752. Furthermore the presence of a visible plume would be a constant reminder to people concerned about health risks and would thus increase anxiety, itself a real health effect.

The M5 motorway and the B4008

753. There are few locations in the County that would be more prominent with over 31 million vehicles passing every year (GV3, paragraph 17).
754. Travelling north from the Bristol direction, the motorist would have views across an ordered rural landscape of fields and hedgerows, with distant views to

the river Severn and the hills that line the Vale corridor. The countryside surrounding the motorway is more undulating closer to Bristol but the Javelin Park site is in a much flatter area with few natural features which could provide any screening. In addition, from this direction, the Cotswold outlier on the edge of Gloucester, Robinswood Hill, would be almost wholly obscured from view.

755. While all other new developments along the corridor, for example the Kingsway and Hunts Grove housing development and motorway services currently under construction are being concealed or integrated into the landscape with earth banks and planting, the sheer scale of the incinerator would make this impossible.
756. Mr Smith suggests (UBB2, paragraph 288) that the M5 motorway has a lower susceptibility to the proposed development since travellers are often moving fast and are focused on the road rather than the countryside. Anybody who drives on motorways knows this is not correct.
757. Coming from the south on the M5 this would be an enormous new vertical element completely dominating and overbearing the locality with 2km of uninterrupted view head-on. At 110kph (equivalent of 70mph) the proposal would be in sight for a minute; at 80kph (50mph which is not at all unusual on this stretch of road which frequently jams, especially at rush hours) it would be one and a half minutes. Passengers would have a similar experience.
758. It is abundantly clear from the photomontages produced by all parties that the visual effect on the minor road, the B4008, that runs past the appeal site, and indeed links it to Junction 12, would be severe and adverse. The impacts would be particularly significant on the field adjacent to Blooms which as Miss Bailey confirmed in XX has public access.
759. How can landscape and visual impact be weighed and measured?
760. Ultimately, this is a matter of judgement for the Inspector who faces a difficult task confronted as he is by the evidence of landscape professionals following very similar methodologies but nevertheless drawing slightly different conclusions.
761. Mr Smith, who confirmed to Mr Elvin in XX that he assumed he had been instructed because he was *'good on the stand'*, set considerable store by the fact that he alone of the landscape professionals had used the approach commended in GLVIA3. However, the Landscape Institute advises that in general terms the main difference between GLVIA3 and GLVIA2 (the guidance used by others), is that the later edition places greater emphasis on professional judgement and less on a formulaic approach. Mr Smith's insistence on formulae and tabulation was thus baffling to GlosVAIN and others at the Inquiry.
762. GLVIA provides a useful framework for considering the effects of a development, but the experience of ordinary people should feed into their professional judgement. This was not apparent in Mr Smith's approach. He equated views towards the factories on the edge of Stonehouse to views towards the incinerator, but, as Miss Bailey explained in XX, this is not how it will be viewed. Stonehouse is a small town set in fields where many of the people using Haresfield Beacon will live, or work or shop. The factories are ugly, but associated with an already built area and a valued local employer. Similarly, Blooms Garden Centre and associated shops might not look beautiful from

Haresfield Beacon, but it is a pleasant and useful place for buying seeds, fishfood etc and having a cup of tea. Attitudes towards it are largely positive.

763. GlosVAIN hopes the Inspector will recognise and acknowledge the huge public antagonism to the development, and how it strengthens their experiential view of damaging visual impact and harm to the landscape.

764. If the appeal was to succeed and the appeal proposal was to be built it seems most unlikely that the people of Gloucestershire would get used to the incongruous building or come to love it. Their eyes will be drawn back towards it as a monument to the failure of our society to handle our waste in a sustainable way and as a constant reminder of how badly they were ultimately failed by the planning process and the over-ruling by a distant minister of local democracy. Thus the incinerator would loom larger even than its already enormous size might warrant.

Conclusion

765. In summary on this issue the GlosVAIN landscape evidence supports, and in some cases goes beyond, the evidence of both GCC and SDC. The proposal would have a significant adverse impact on the Cotswolds AONB. The overall design of the proposal is not of the high quality required to satisfy the (appropriately demanding) criteria of WCS policy WCS17. Indeed the architecture of the building was not informed by the public consultation process – which was largely a sham as described below – and has received little or no support from the wider public; there has been no support for the design at the Inquiry apart from by the appellant. The massive bulk of the proposal, combined with the excessive height of the buildings and the stack represent an incongruous feature in the landscape which cannot be screened or acceptably integrated; even much of the existing screening is heavily threatened by Ash die-back.

766. The appeal could reasonably be refused on these grounds alone.

Need

Introduction

767. Ms Oppenheimer's evidence shows (GV2, paragraph 41) that as waste arisings fell during the planning process the assumed capacity of the incinerator, driven by unrealistic projections for future MSW growth, increased from 130,000 tonnes per annum to 175,000 tonnes per annum. There was no obligation under the contract to increase the capacity above the MSW needs but Mr Roberts confirmed in XX that the proposal has been sized by UBB on the basis of receiving additional C+I waste. The result is that the final incinerator design is significantly larger than is necessary for the MSW arisings in Gloucestershire. This is justified by Mr Roberts in re-examination on the basis of the advice in the Guide to the Debate (CD7.9). The weight that GlosVAIN recommend should be attached to this guidance is addressed later.

768. The GlosVAIN evidence has also shown that with reasonable assumptions about waste growth and recycling there would be insufficient suitable residual waste, generated in Gloucestershire, available to feed the proposed incinerator. Contrary to the claims of UBB in the WCS6(c) Compliance Statement (CD1.6), (addressed in more detail in the policy section, below) it is practically inevitable that the incinerator will depend upon imports of waste from outside the County.

The contract

769. In contrast with the WCS vision aim to maximise recycling (CD5.1, page 7), the contract requires UBB only to optimise recycling but continually maximise recovery as Mr Roberts explained in XX.
770. Much important information in Schedules 31 and 32 (CD12.2) has been redacted. It is therefore impossible to establish what compromises are required in the event of a possible conflict between, for example, increasing recycling and a requirement for waste to be supplied to the incinerator to ensure that the waste input maximises recovery. This may be because the waste stream falls outside the necessary calorific value or even total tonnage. The evident prioritisation of recovery over recycling and the near complete redaction of the section of the contract relating to supplementary contract waste reinforces these concerns.
771. The GlosVAIN evidence to the Inquiry has been consistent with the WCS in that only waste which cannot reasonably be reused, recycled, digested or composted should be considered to be residual waste. The UBB position is that residual waste is simply '*waste that is not sent for reuse, recycling or composting*' (CD1.2(i)). The difference is significant and it is a key concern that if this appeal is approved then the level of recycling in Gloucestershire would inevitably be effectively capped at 60% - a level already achieved by neighbouring Oxfordshire (GV1, paragraph 66) - or possibly even less.
772. The public has, however, been given the clear impression by the then GCC waste champion (GV1, paragraph 163) that the incinerator was sized on the basis of 70% recycling both by the appellant and the Council. The move from achieving 60% to 70% recycling is a key concern and is potentially undermined by the scale of incineration proposals locally and nationally. This is the aspirational target in Strategic Objective 2 of the WCS. GlosVAIN regrets that the Inspector was not provided with the model output he requested at the WCS examination (CD5.57) showing a scenario with 70% recycling by 2030 (confirmed by Mr Roberts in XX) in order to ensure it was aligned more closely with the strategic objectives of the WCS. It should be noted that 70% is the statutory target for Scotland and Wales by 2025.
773. The GlosVAIN evidence reviews the MSW data and corrects it to:
- Accord with the Inspector's request at the WCS by adding 70% by 2029/30.
 - Use the most recent waste data.
 - Use the most recent Government's growth rates substituted for those of the WDA.
774. The results show the residual waste treatment tonnage declines from the original maximum of 145,000 tonnes to just 83,561 tonnes in 2029/30. Given that a proportion of the residual waste would necessarily be by-passed during maintenance and shut-downs or would not be suitable for incineration this means probably less than 80,000 tonnes would be available in practice.
775. In XX Mr Roberts calculated that the level of residual waste with 70% recycling would be about 102,000 tonnes per annum. The calculations underpinning this

are set out in the relevant sections of the two proofs of evidence (GV1 and UBB1). The difference in the figures presented is largely due to the different assumptions about waste growth which is reviewed next.

Waste growth

776. The waste growth estimates by the WDA have been consistently wrong. The WDA predicted MSW arisings would grow by 3.1% between 2010 and 2013. In fact they fell by 4.92% - thus introducing a large error into the recently adopted WCS of 8% - equivalent to close to 24,000 tonnes of MSW. The introduction of this error was quite foreseeable – and was predicted by the Inspector (CD5.49, paragraph 24).
777. The WDA's 2008 outline business case for the residual MSW procurement project predicted MSW would rise to 371,390 tonnes by 2013. In fact MSW arisings for 2012/13 were 279,370. The WDA overestimated waste growth by about 90,000 tonnes in just five years.
778. It is against the backdrop of over-estimation that the Government's recent projections, which post-date the WCS, predict MSW will reduce, albeit slowly, to 2020 (CD7.11, Figure 2). This is consistent with increasing evidence of decoupling of waste arisings from GDP presented in the GlosVAIN evidence which shows that across the UK GDP has risen by about 15% since 2000 whilst household waste has fallen by more than 10%.
779. It is true that there has been a very small local increase in Gloucestershire over the decade but this is largely due to the additional, and in GlosVAIN's view misguided, collection of additional green waste in an attempt by WCAs to increase recycling levels.
780. There is no good reason to assume that growth trends in Gloucestershire are significantly different from the rest of England or that the latest Government projections are not relevant here. The latest growth rates have been relied upon by Defra to inform important policy decisions about withdrawing PFI funding (and weighted against the risk of infraction proceedings and fines against the UK) so can be considered robust in a policy context. The same cannot be said of the waste growth figures in the WCS.
781. The UBB evidence indicates that in 2011 there was only 51,082 tonnes of C+I waste arising suitable for incineration and landfilled in Gloucestershire along with a further 13,494 tonnes which was exported and which could be incinerated.
782. If Defra's new projections for waste growth are accepted then even with 60% recycling rates it would be necessary to attract all of this waste if the incinerator was to rely on Gloucestershire waste alone. GlosVAIN maintains that it would be exceptionally difficult to capture all this waste for any incinerator and doing so would, in almost all cases, require a gate fee lower than alternatives.
783. With 70% recycling and the Defra waste projections then imports of waste into the County for incineration would become essential.
784. This is an area where it is suspected that the redactions in the contract hold important information about likely costs as well as how C+I waste would be treated at the incinerator and how it would supplement the MSW. There is a

form of cross-subsidy from MSW and this is explicit through the funding of the facility with C+I capacity on the strength of the MSW contract.

Climate and energy

785. The appeal proposal would generate renewable energy from the biogenic component of the waste. While the renewable electricity would also be classed as 'low carbon' the remainder of the electricity output, with which it is linked, would not be as both Mr Aumonier and Mr Roberts accepted in XX.
786. GlosVAIN does not challenge the need for renewable generating capacity but while it is common ground that the incinerator would generate some renewable energy this depends largely on paper in the waste.
787. This is a rapidly reducing element of the waste stream as society moves to paperless working and, for example, increasingly read news on tablets rather than from newspapers. Indeed current projections are that newspapers will be largely extinct in the UK by 2020.
788. UBB claimed in the planning application that 56% of the waste which would be incinerated would be biogenic based on the proportions by mass. This was incorrect and the properly weighted biogenic proportion calculated by the relative energy contribution consistent with the DECC methodology was 47.8%. Although Mr Roberts suggests that this level of change is not significant it equates to about 1.2 Megawatts less renewable electricity.
789. GlosVAIN has little doubt that the biomass content of waste is likely to decrease in the future and the evidence includes DECC's assessment of the reduction in the biogenic proportion of the waste to 30% -38% based on Defra's waste projection in line with the Government's aspirations. The levels of recycling used are not unusual and would represent a reduction in the renewable energy contribution of up to 3.7 Megawatts compared with the claims in the application - or about half of the renewable component. This would therefore reduce any claimed carbon dioxide savings compared with landfill by 50%.
790. Mr Aumonier introduced a new WRATE model and this included major changes to the composition of the whole waste stream. The C+I waste, for example, is now based on an analysis of Welsh waste in 2007 which contains 32.2% paper can card compared with 22.8% in the earlier model – presumably to enhance the biogenic element of the waste and thus to favour the greenhouse gas balance. It is thus claimed 52% of the waste would be biogenic.
791. In XX Mr Roberts agreed that the assumptions made to support an application must reasonably relate to the proposal. If this approach is not followed then any data could be used to give the result which was sought and the model would be meaningless. In this case, however, the calorific value of the new combined waste stream was very different, and much higher, than that on which the plant had been designed. This could not reasonably be considered to relate to the proposal. Mr Aumonier accepted in XX that the composition of the waste streams upon which he based his model would be likely to change as a result of higher recycling and also that the C+I data, particularly, was from before 2007. He had not dated his WRATE model but said that it would be for 2017.
792. GlosVAIN consider these revisions and the new waste composition data overstate the renewable element. GlosVAIN suggest that properly calculated and

- taking into account the fossil fuel contribution from support fuel most of the electricity generated by the incinerator would be derived from fossil fuel rather than renewable using a 2017 base date.
793. UBB also claimed in the planning application that the incinerator would result in a net annual reduction of 40,480 tonnes of CO₂ equivalent per annum. This was wrong – as GlosVAIN pointed out - because the displaced electricity level used by Ramboll was too high.
794. Mr Aumonier now relies on a much lower saving of around half of the original. This compares the incinerator impacts with those of untreated landfill – an option he accepted in XX no other party to the Inquiry is suggesting. The recovery of non-ferrous metals post incineration has been approximately doubled from the original WRATE model undertaken by the consultants responsible for designing the plant in spite of there being no changes in the recovery technology.
795. Mr Aumonier has also used combined cycle gas turbine (CCGT) as the displaced electricity mix rather than the long-run marginal mix as recommended by DECC and Defra (GV1/C, paragraphs 25 to 28). The new model therefore shows the highest benefits for 2017 and this overstates the carbon savings which would rapidly reduce as the electricity grid is decarbonised to 2030.
796. The efficiency could have been improved by the use of CHP and the GCC reference technology was EfW with CHP; EfW without CHP, as proposed in the appeal, having been dropped from the shortlisted options. The high carbon impacts of the proposal could have been reduced if the reference technology had been promoted operating in CHP mode from the outset.
797. Retrofitting CHP is always very difficult even when there is a large suitable heat load. The first publicly available attempt by UBB is the heat load report (UBB5/C) but that has identified only a very small potential need most of which is new build and well insulated domestic housing served by high efficiency boilers. Space heating is not a good heat load as the only demand in the summer is for domestic hot water and retrofitting will be prohibitively expensive. Mr Othen accepted in XX that even if the full heat load identified by UBB was supplied then the efficiency of the incinerator would still be less than 25%.
798. This he accepted in XX can be compared with efficiencies above 70% in European district heating schemes. Exported RDF could therefore be recovered far more efficiently and have much better climate benefits than burning waste at this site. It is correct that this would not contribute towards UK targets but the most important concern is that the global climate emissions could be significantly reduced by pre-treatment in the UK and final use in higher efficiency plants.
799. The most appropriate heat load in the County is the Dairy Crest site which is a good match for the 80 Giga watt hours that would be readily available and which, if all used, could increase the efficiency to around 36%. Mr Othen also accepted that, in practice and depending on the balance between heat and electricity, the total heat availability could be two or three times this level. The failure to match the heat output to this high and continuous local heat load represents a high opportunity cost arising from the inflexibility of such a large proposal on this site.
800. Mr Aumonier described supply to this heat load demand as a long shot (see paragraph 711). GlosVAIN considers what is said by Mr Aumonier in his evidence

(UBB5/C, paragraph 1.4.1) to be more robust on this point than his answer in XX to Mr Watson.

801. The GlosVAIN evidence shows that it is very unlikely that an incinerator of this capacity at Javelin Park would ever operate in efficient CHP mode and is thus not consistent with the strategic aims of the WCS to minimise impacts on climate change.

Policy

802. In this section GlosVAIN sets out:

- The approach to be taken to redacted documents and secrecy.
- The weight to be given to the Guide to the Debate (CD7.9).
- The interpretation of WCS policies WCS6 and WCS14.

Redacted documents

803. Here, the secrecy extends beyond the contract (CDs 12.1 and 12.2) to the discussions held between UBB and those they suggest may be potential users of the generated heat. The letter to the Inspector from Mr Shlomo Downen indicates the approach taken by the Inspector at *Rufford* (CD9.6)³³. That is commended as a valid approach to be taken in this case.

The Guide to the Debate

804. The Defra web site states that this document does not set out any new policy (GV1/REB/B Appendix 25). GlosVAIN has also provided correspondence with those responsible for the document which clarified that '*...a starting point for discussions about the role energy from waste might have in managing waste*' and that it was '*targeted at a broad mostly non-specialist audience hence it does contain some simplifications.*' (GV1/REB/A paragraphs 25 to 28)

805. Mr Phillips was rather critical of the emailed response giving only the fore name of the correspondent in Defra. However if Defra is contacted about the Guide using the email address provided for correspondence it is reasonable to consider that the reply can be relied upon to represent the views of the Department – especially when they are consistent with the advice on the relevant Defra web page.

806. GlosVAIN therefore recommend that no weight should be given to claims based exclusively upon the Guide. Weight should only be attached to policy claims derived from this report when they are fully supported by references to other recognised policy documents.

WCS policy WCS6

807. There a number of points to be made about this policy.

³³ Inspector note: However see paragraph 472 above which is correct.

808. First, the UBB report to address criterion (c) of the policy is based on out-of-date assumptions about waste arisings in the County and a misinterpretation of comments by the examination Inspector concerning C+I waste arisings³⁴. Moreover, it is no longer reasonable to assume that any waste that would be delivered to the appeal proposal would otherwise be consigned to landfill without treatment given the recent planning applications for treatment facilities at the Cory and Grundon landfill sites. These assumptions cannot be considered a robust justification for the sustainability of an unspecified waste stream from an unknown location outside the County.
809. Second, the Appendix 5 General Development Criteria which WCS policy WCS6 requires are met include a requirement to outline the energy recovery and heating system proposed and the envisaged energy client to be identified. In this case the only identified interest in the heat load relates to Quedgeley East and Javelin Park representing such a tiny heat load that little or no weight can be given to the possibility of a connection ever being made. To be meaningful the envisaged energy client must have some reasonable possibility of becoming a future heat user at a level that makes a material change to the efficiency of the incinerator or the criteria would fail to make any improvement contrary to the intention of the WCS.
810. GlosVAIN accepts that the allocation of the site in the WCS does not restrict developments on the site to the current 15.7 metre limit of the extant planning permission as consideration was given in the course of the preparation of the WCS to buildings of up to, but not exceeding, 40 metres in height. GlosVAIN does not accept, however, that the allocation covers buildings like the current proposal which exceeds 40 metres in height. Nor is it accepted that these 40 metre + buildings were considered in relation to their visual impacts during the WCS examination. Even Mr Roberts in re-examination limited his claims to the taller building being '*considered in general terms*'.
811. Furthermore, besides meeting the other criteria in full any larger building would need to demonstrate that the highest possible architectural design has been employed. This has clearly not been the case as CABE described the proposal in their letter of 10 Oct 2011 as '*a confident industrial building that unashamedly expresses its function and is a positive landmark for traffic on the M5*' although UBB has repeatedly denied that the appeal building is intended to be a landmark building. In the second letter of 3 August 2012 CABE commented '*we feel more work regarding the detailing of the facility is required to achieve (the highest architectural quality)*' and conclude '*it would be beneficial to simplify the proposal further to give it a more composed appearance*' yet the design remains as it did at that stage.
812. Finally, although not directly related to WCS policy WCS6, there are also concerns about possible future developments on the adjacent Javelin Park site in the event the appeal was to be successful. Mr Roberts emphasised in EIC that an advantage of site is that it could be promoted to attract a high energy user. This

³⁴ Inspector note: This is a reference to comments I made at the pre-Inquiry Meeting about the way various parties had misrepresented my examination report but it is not recorded in the note of that meeting (CD4.12).

makes it more likely that the consequence of an approval would be the additional development highlighted by Ms Oppenheimer in EiC. Furthermore it is clear that if the incinerator was to be approved then it would be much more difficult to require a 15.7 metre height limit for any future development on the site than is currently the case. The consequence could be that even the reserved matters applications of the adjacent warehouses could be for higher buildings in the event the incinerator was approved than would otherwise be the case.

WCS policy WCS14

813. It is common ground that this policy is in three parts and that since the appeal proposal is a major development but outside the AONB, the third part does not apply. GlosVAIN favours the tentative interpretation of this policy put forward by me following a line of questioning of Mr Wyatt by Mr Phillips. Those questions relied on an interpretation of the policy which was at odds with my understanding, namely that for:

- The general landscape outside and not affecting the setting of the AONB only the first paragraph applies
- Proposals affecting the setting of the AONB the second paragraph applies in which case the first paragraph does not.

814. GlosVAIN members present at the WCS examination hearings understand this to be the intention of the policy at that stage. Moreover, the second part, taken alone, is virtually identical to WLP policy 26 and it would be anomalous for the WCS to reduce the level of protection afforded to the AONB.

815. If this is the correct interpretation of the policy and Mr Smith accepted in XX by Mr Elvin that the appeal proposal would affect the setting of the AONB, then all three indents of the second part have to be met. GlosVAIN's view is that they are not because:

- Mr Roberts agreed in XX that not all alternative sites had been investigated; only those allocated in the WCS.
- The impact on the landscape setting cannot be satisfactorily mitigated.
- The appeal proposal would particularly, in GlosVAIN's submission, conflict with WCS policies WCS6, WCS10 (in respect of visual impacts of the extant permission at the Moreton Valence site), WCS17 and WLP37, Framework paragraph 109 and SDLP policies NE10 and NE8³⁵.

816. If an alternative interpretation is to be considered, then it seems most reasonable that it would be on the basis that the first part applies in all cases and the second part is then used as additional criteria when within, or affecting, the setting of the AONB.

817. If this approach was used, then any proposal would either pass or fail the test of the first part. If it passed then it would never be tested against the second part as the presumption would be that the proposal should be approved. Thus all

³⁵ Inspector note: The Structure Plan policies cited have been omitted as they are no longer in force.

that would need to be demonstrated would be that the proposals did not have a significant adverse effect on the landscape (or that the effect could be mitigated or balanced) and the policy would be satisfied. The threshold in the second part is simply that the sites are '*within or affecting the setting of the AONB*' and this is obviously a lower threshold than the first part. Failure to require the application of both limbs would therefore seriously weaken the sensible protection that the policy should give to the AONB and its setting.

818. GlosVAIN notes that in XX of Mrs Newton, Mr Westmoreland Smith emphasised that the evidence of Natural England should be given very substantial weight. GlosVAIN agrees and recommends that the clear objections from Natural England on landscape impact grounds (CD3.21) should be given that weight.

Priority consideration of alternatives

819. Article 6(3) of Regulation (EC) No 850/2004 of the European Parliament and of the Council on Persistent Organic Pollutants requires that, when considering proposals to construct new facilities which produce POPs such as dioxins and Polycyclic aromatic hydrocarbons (PAHs), member states should give priority consideration to alternative processes, techniques or practices that have similar usefulness but which avoid the formation and release of these chemicals.

820. There is no doubt that the appeal proposal would produce POPs. All the mass balances prepared by Mr Othen using UK data show incinerators to be net dioxin producers. Furthermore he accepted in XX that this would also be the case for PAHs given that they were largely products of combustion. GlosVAIN has no doubt, therefore that the proposal would be a producer of POPs and that the requirements of the Regulations are triggered.

821. GlosVAIN is grateful for the note provided by UBB (UBB/INO/10) outlining their skeleton argument on the issue of the POPs regulations and their domestic implementation. UBB claims that the Persistent Organic Pollutants Regulations 2007 (CD13.62) fully and correctly transpose the European Regulations into domestic law. GlosVAIN disagrees.

822. It is correct that Regulation 3(1)(a) of the 2007 Regulations indicates that for the purposes of the European Regulation, the EA is the 'competent authority'. It is also correct that Regulation 4 provides that:

All duties placed on the member State in Regulation (EC) No. 850/2004 must be executed by the Secretary of State, other than —

....(b) Article 6(3), which must be complied with by any person considering an application for a permit or a significant modification to a permit under the Pollution Prevention and Control (England and Wales) Regulations 2000.... .

823. UBB claims that the clear effect of regulation 4(b) of the 2007 Regulations is that the duty to comply with Article 6(3) rests with the EA.

824. The EA disagrees and confirms, for example, that issues such as the consideration of alternative facilities/waste disposal solutions, are matters for waste planning authorities and, where appropriate, the Secretary of State, but not for the Agency (CD13.82, paragraph 28). The EA confirms, and it was agreed by Mr Othen in XX, that such considerations are outside the EA's statutory remit under the PPC/EP Regulations. He also agreed that it was correct to state

- that in determining a permit application the EA is not able to conduct an investigation into local or regional waste planning considerations and matters such as whether the residents of a particular area should be recycling more, or whether a permit or modification should be refused in favour of pursuing alternatives for recovery or disposal of local waste streams.
825. The EA position on the consideration of alternatives is very clear: *'Sustainable development considerations and alternative waste strategies are matters first and foremost for the waste planning authority and, since the application in this case has now been called in, for the Secretary of State'* (CD13.82, paragraph 31).
826. In spite of this unambiguous explanation by the EA lawyers the UBB skeleton argument suggests that the EA is wrong both in documents relating to the appeal proposal (CD2.2, paragraph 130) and elsewhere (CD13.82, paragraph 28).
827. It is important to recognize that the conclusions of the Inspector in *Rufford* (CD9.6, paragraph 1239) were only based on uncontested evidence in relation to the dioxin balance (XX of Mr Watson by Mr Phillips). The decision post-dated the *Salt End* judgment and the inspector was advised about the implications by the two QCs representing Veolia and Nottinghamshire County Council (both of whom were supporters of the development) and informed by an email from the EA directly (CD9.6, paragraph 1036 and footnote 889).
828. Consequently, GlosVAIN submit that there remains a requirement for the Secretary of State to give priority consideration to alternatives in accordance with Article 6(3) as the EA has not fully discharged this duty. Nor could it lawfully do so as Mr Othen accepted that the powers of the EA when determining an application for an incinerator do not extend to consideration of alternatives such as recycling, waste minimisation or MBT .
829. The EA says *'We are therefore satisfied that the substantive requirements of the Convention and the POPs Regulation have been addressed and complied with'*. Mr Othen agreed that this did not indicate that there were no issues left to address – if this was the case the EA could have said so.
830. Instead the EA stated: *'It is for the Planning Authority to decide on their appropriate consideration of the requirements of the POP Regulations in respect to their consideration of other residual waste treatment options as part of the planning application process'* (CD2.2, page 130 and pages 104 and 129 re MBT).
831. It is unfortunate that, as the Inspector points out (INSP/INO/5), there is no planning guidance about this issue. Indeed it appears that it has largely been lost in the ambiguity about the relative roles of the planning and pollution control authorities in the implementation of a Regulation which does not comfortably rest in either camp.
832. It remains the case, however, that the EA expects the planning authority to deal with this important issue. No assessment has been undertaken as part of the application however and even the latest WRATE models produced by UBB compare only this proposal with landfill and EfW with CHP rather than with alternatives higher up the waste hierarchy; nowhere have the alternatives been addressed with 'priority consideration' or specifically in relation to the POPs issue.

833. For completeness it is noted that the most comprehensive comparative assessment is the WRATE assessment undertaken by Entec for GCC (GV1, paragraph 345). This shows that EfW alone was a relatively poor performer (and was broadly similar to MBT-to-landfill) and that it was improved by adding CHP and then improved still further by adding MBT as a pre-treatment.
834. Mr Roberts suggested in re-examination that *'everybody wants MBT'*. There are good reasons for this, not least the better suitability for this site, the longer term flexibility when aligned to waste reduction policies and environmental benefits of being able to match the final use more closely to heat loads. He claimed that all it does it *'turn waste into waste'*. The GlosVAIN evidence shows that this is very different to the way it was described by UBB when promoting their MBT proposal in Essex (GC1/C, paragraph 77).
835. Finally GlosVAIN opposes the use of the appeal site for incineration but is not opposed in principle to the site being used for management of the County's waste. Indeed, it has suggested that an MBT plant would be more acceptable in the setting of the AONB and could better serve climate change and energy policies.

Perception of risk

836. If the Secretary of State accepts the case made by UBB in relation to POPs rather than that set out above, that will amount to an acknowledgement that the EA was fundamentally wrong on what should be a fairly basic element of law. When added to the failure to properly implement the Industrial Emissions Directive, as Mr Othen agreed in XX was the case here with respect to reporting emissions results during plant start-up when waste had been added, it is fair for the local community to wonder what else the EA has got wrong, thus undermining confidence in the organisation.
837. It is fully appreciated that PPS10 requires that *'Waste planning authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced'* (CD6.3, paragraph 27). This does not, of itself, help to reassure the public – and can actually increase public concern. There were over 4,300 objections to the proposal from local people and their political representatives and the strength of feeling held in relation to concerns about possible effects on health and the environment from emissions has been clear at this Inquiry.
838. A summary of the most relevant case law was included in the GlosVAIN evidence. Perception of risk is capable of being a material consideration even if not objective, justified or soundly based upon scientific or logical fact (GV1, paragraph 378 and following) which Mr Roberts agreed in XX by Mr Simons. The most relevant case law³⁶ held that decision makers must recognise that the public concern is so important that it can – albeit in *'rare'* cases (Aldous LJ) or *'exceptional or special circumstances'* (Staughton LJ) - constitute a valid reason for refusing planning permission even if unfounded. Those perceived fears do not necessarily need to be objective, justified or soundly based upon scientific or logical fact.

³⁶ *Newport Borough Council v Secretary of State for Wales* [1998] Env. L.R. 174

839. There is no doubt that the application has caused anxiety in a wide cross section of the community – and the GlosVAIN evidence shows that anxiety itself is an adverse health impact.
840. An important influence on the level of anxiety is whether, and how effectively, the concerns of the public have been addressed by the applicant or appellant. The rather cynical approach to consultation and the lack of any meaningful change in response to the concerns of the public has increased concerns in this case.
841. GlosVAIN suggested that a key example of a cost effective improvement (the use of an 'AMESA' type continuous dioxin sampler, such as is required by planning conditions on the much smaller incinerators on the Isle of Man and in Exeter, and is required by law in Flanders) could have been introduced unilaterally. Mr Othen accepted in XX that it would be quite modest to install at about £100,000 capital cost and £20,000 per annum revenue. This would have helped to reassure the public that the emissions of dioxins were not increased between the bi-annual 6-hour monitoring campaigns. Results would be available continuously averaged over two-week periods.
842. However, unlike some other operators UBB has not offered to use this relatively cheap equipment for the Javelin Park incinerator. The public therefore assume that there is something to hide and therefore their anxiety has been increased. This anxiety, together with the high level of concern demonstrated by the overwhelming public and political rejection of the proposal is an important issue.
843. GlosVAIN does not suggest that public concern alone is sufficient reason to refuse the appeal but hopes that it will be given some weight in the balance for the determination of the application.

Public engagement and consultation

844. In opening GlosVAIN suggested that the reason that this appeal has taken place was not because of the intrinsic merits of the proposal but rather because a small group of the GCC administration, acting largely in secret - even from their fellow members – signed a contract with UBB, dated 22 February 2013, just weeks before the planning committee's consideration of the planning application.
845. The evidence of Ms Oppenheimer reviewed the history of the contract in the context of the development of the proposal and the planning application. This showed how, effectively, the public – and most of the elected members – have been kept in the dark about the project. Most of the documents and reports provided to the companies tendering for the contract – and which thus could not sensibly be claimed to be commercially confidential – are still not in the public domain. It is only through this appeal that one of those reports, the 2008 Entec CHP study (CD7.29), has become public and still only in a redacted form. This was relied upon to support the ES but Mr Roberts confirmed in XX that it was – rather bizarrely – not in the public domain.
846. The evidence presented and tested during the course of the Inquiry, especially in relation to the two 'consultation' meetings during the planning stage, demonstrates that UBB had no intention of making anything other than very minor changes in response to the public comments. The only real change which

has been suggested by Mr Othen in XX was the risk assessment of farmers. GlosVAIN suggests this would need to be done in any case in an agricultural area. In spite of this UBB's literature claimed that public's views were influencing the process. This approach, together with the excessive level of redaction of the contract, reinforced public concerns about the proposal.

Conclusions

847. The conclusions of the GlosVAIN opening statement bear repetition: had the proposal been for a 70% recycling target with a flexible MBT solution for the residuals then it is unlikely that this Inquiry would have been needed – the project, like UBB's MBT proposal in Essex which flew through planning, could now have been on site and under construction.

848. GlosVAIN concludes:

- The proposal would have large and unacceptable adverse impacts on the landscape and countryside including views from the Cotswolds AONB and heritage sites. The proposal conflicts with development plan policies including WCS policy WCS14, WLP policy 37, Framework paragraph 109 and SDLP policies NE10 and NE8 and causes harm to interests of acknowledged importance.
- The incinerator would not be a 'positive gateway' to Gloucester and the proposed design is totally out of keeping with the setting contrary to WCS policy WCS17.
- The height of the proposal excludes it from the benefits associated with the site allocation in WCS policy WCS6.
- Falling waste arisings over the three years since the publication of the data on which the WCS was founded has significantly reduced the need for residual waste treatment. Furthermore the most recent Government advice is that MSW is likely to fall slightly up to 2020 – this post-dates the publication of the WCS and while consistent with the vision of the WCS to achieve zero waste growth is contrary to the high growth rate assumptions upon which the WCS projections are founded. Partly as a consequence of this the proposal is far too large for the residual waste needs of Gloucestershire and would lead to increased waste imports to the County contrary to WCS policy WCS6.
- The proposal would undermine the waste hierarchy and would not be consistent with the objectives of the WCS.
- Any mitigating benefits in terms of climate change or renewable energy generation are largely illusory and have been incorrectly assessed by the appellant.
- The proposed incinerator as a whole is not, in any reasonable definition of the term, a low carbon electricity producer and only the electricity generated from the biogenic component can reasonably be described as 'low carbon' in policy terms.

- CHP, with the associated reduction in climate change impacts, would be unlikely ever to be achieved at this entirely unsuitable and inappropriate site.
- There is a widely held perception that the development poses an unacceptable risk to the health and safety of those communities – particularly due to periods of unregulated emissions. Some weight should be attached to this perception in any planning balance.
- There is an obligation to give ‘priority consideration’ to alternatives which do not produce POPs. It is clear from the EA that this is largely a planning function and that the obligations of the European legislation should be discharged by the planning decision maker.

849. For the reasons outlined above along with those presented in evidence previously GlosVAIN respectfully recommend that the appeal should be refused.

The Case for GFOEN

Introduction

850. GFOEN has raised a specific objection to the appeal proposal relating to compliance with the Habitats Directive. Mrs Newton’s closing submissions contain quite extensive extracts from core documents before the Inquiry; while these are referenced, they are not set out here. Mr Phillips included two of the most important of these in his closing submissions (see paragraphs 407 and 408) and again what is said there is not repeated here.

851. The Habitats Directive is pre-cautionary for the ‘maintenance and enhancement’ of natural habitats listed in Annex 1 of it which in this case is the Cotswold Beechwoods SAC. The appeal proposal is not directly connected with or necessary to the management of the SACs within the influence of the proposed incinerator.

852. GFOEN ask that the appeal be dismissed because the planning application is not accompanied by an AA which GFOEN believes is required by Articles 3, 4 and 6 of the Directive (CD13.20) and which are transposed into English law by the Habitats Regulations (CD13.21).

The characteristics of the SAC

853. The Cotswold Beechwoods SAC covers an area of some 585 hectares. The Natural England citation (CD13.43) cites Annex 1 habitats as the primary reason for the selection of the site and states that the Cotswold Beechwoods represent the most westerly extensive blocks of *Asperulo-Fagetum* beech forests in the UK. It adds that the woods are floristically richer than the Chilterns, and rare plants include red helleborine *Cephalanthera rubra*, stinking hellebore *Helleborus foetidus*, narrow-lipped helleborine *Epipactis leptochila* and wood barley *Hordelymus europaeus*. There is a rich mollusc fauna. The woods are structurally varied, including blocks of high forest and some areas of remnant beech coppice.

854. The citation also notes Annex I habitats are also present as a qualifying feature, but not a primary reason for selection of this site. They are semi-natural dry grasslands and scrubland facies on calcareous substrates

855. The Citation explicitly states: '*Note: when undertaking an appropriate assessment of impacts at a site all features of European importance (both primary and non – primary) need to be considered*'.

The survey undertaken

856. The *Waddenzee* judgement says that any assessment of a SAC must begin with the characteristics and specific environmental conditions of the site to provide the baseline by which to assess the significance of potential effects (CD13.48, paragraph 48). The Cotswold Beechwoods SAC citation describes a great variety of habitats. The woods are structurally varied, including blocks of high forest and some areas of remnant beech coppice, containing rare plants and mollusc fauna, semi-natural grassland and scrubland and important orchid sites yet all these features - the characteristics of the site - are not examined and no evidence is provided by UBB in a systematic approach to establishing the condition of the site in relation to the features listed in the citation and an assessment of their varying vulnerability to change. Neither is best scientific knowledge applied in examination of the site to establish condition.

857. The only field survey work undertaken for the planning application was of one wood, Popes Wood; clearly inadequate for a SAC of this variety and size (CD13.44). For this one wood only a basic Phase 1 walk over survey was undertaken; no soil sampling, no chemical analysis, no quantitative analysis or mapping of rare plant species or Phase 2 survey work as should be anticipated with regard to the Methodological Guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC Annex 1 for field survey work (CD13.25).

858. The Phase 1 survey records three areas as being of high nutrient status and states (CD13.44, pages 17 to 18):

The initial impression of a poor lichen flora could be a consequence of excess nitrogen deposition. It could equally be explained by the storm damage to the woodland 21 years ago.

859. In the summary at paragraph 5.2 it says:

the detection of impacts at Pope's Wood would require more detailed sampling of key parameters, repeated over a long timescale

and

that there could be some measurable impact on ecological processes as a consequence of existing deposition levels within the woodland, which could have negative consequences for its conservation status

860. Taking the precautionary approach this survey should be taken as indicating that the condition of the SAC requires further investigation and therefore potential likely significant effects from nitrogen deposition remain. Without a robust baseline it is not possible to provide any certainty as to the likely effects of a project alone or in combination with other plans or programmes.

Nitrogen deposition in relation to critical loads

861. CD13.21 sets out Regulation 61 which transposes Article 6(3) of the Directive into English law. Since the appeal proposal is not directly connected with or

necessary to the management of the SAC a Habitats Regulation Assessment is required.

862. UBB's own report (CD13.44, paragraph 6.1) shows that the background nitrogen deposition levels from the APIS database as being 36.3 kg nitrogen/ha/year for Cotswold Beechwoods SAC whereas the lowest critical load threshold for broadleaf woodlands is 10 kg nitrogen/ha/year. The Cotswold Beechwoods SAC is therefore already suffering from excessive pollution rates from nitrogen deposition to which should be added all the effects of the incinerator emissions and other in-combination effects.

863. The modelling results reported (CD13.44, Table 2 and paragraphs 5.13 to 5.15) show that for five of the 28 separate areas of woodland modelled nitrogen deposition would be between 0.9% and 1% of the critical load threshold set by the EA³⁷.

864. The Air Quality Assessment (CD 2.5, paragraph 4.4.1) states '*it can be seen that the impact of the stack emissions with respect to long term ground level concentrations of NO₂ is considered not to be insignificant using the EA criteria*'³⁸.

In-combination effects with other plans and projects

865. The phrase 'in combination with other plans or projects' in Article 3(3) refers to cumulative effects caused by the projects or plans that are currently under consideration together with the effects of any existing or proposed projects or plans. When impacts are assessed in combination in this way, it can be established whether or not there may be, overall, an impact which may have significant effects on a Natura 2000 site or which may adversely affect the integrity of a site. For example, a proposed road will pass some distance from a Natura 2000 site and the disturbance it will generate (noise etc.) will not significantly affect bird species important to the integrity of the site. However, if there are other existing or proposed projects or plans (e.g. a road on the other side of the Natura 2000 site), then total noise levels from all these projects taken together may cause disturbance that is assessed as significant (CD13.25, page 13).

866. GCC's Habitats Regulations Screening Assessment (CD3.72) provides a list of plans and projects including the SDLP and the Joint Core Strategy for Gloucester, Cheltenham and Tewkesbury (JCS). However in an assessment for the Cotswold Beechwoods in combination effect it denies the possibility of an in combination effect if the air emission rate is less than 1% (CD3.72, page 25). This is not in alignment with the Natura 2000 guidance as cited above and screens out plans and programmes which in combination with the incinerator emissions have the potential to become significant.

³⁷ Inspector note: This is not quite what Mrs Newton said in her closing submission; that did not appear to be an accurate reflection of the document she was quoting.

³⁸ Inspector note: It appears that this study is for another purpose unrelated to the effects that there might be on Natura 2000 sites.

867. This is also at odds with Habitats Regulation Assessment work done for the JCS and referred to by GlosAIN (see paragraph 926 below). Those reports identified the Cotswolds Beechwood SAC as being at risk from nitrogen deposition and acid deposition from extra vehicles travelling on the A46 generated by the developments proposed in the emerging JCS and recognised the WCS allocations as potential in-combination effects. It was concluded that further information was needed given the potential impacts of increased traffic.
868. In considering the in-combination effect of the appeal proposal and the development at Moreton Valence which has planning permission but not an EP the EA states:
- However, although we believe the Applicant's prediction of in-combination impact forms a reasonable assessment of the potential impact from both plants if they were to operate at the same time, the in-combination impact will be considered in more detail if an EPR permit application is subsequently submitted for the ATT plant. (CD2.2, page 40)*
869. In other words this in-combination assessment of the proposed development has not been concluded by the EA, therefore this in-combination effect remains significant.
870. This issue was addressed by the Inspector at *Rufford* (CD9.6, paragraphs 1288 and 1289). There, he noted that the application site was within an area known to support more than 1% of the UK breeding populations of woodlark and nightjar and, on the evidence before him, could not be certain that the appeal scheme in combination with other plans and projects would not harm the integrity of the area that was then being considered for designation as a Special Protection Area.

Conclusion

871. In assessing possible effects the pre-cautionary principle applies. That is to say that possible effects need to be excluded by the promoter, rather than proved against it therefore if potential effects remain they are likely significant effects.
872. This was debated at the WCS examination in the context of the Publication Habitat Regulations Assessment (HRA) Report (December 2010) (CD5.12). This was presented as containing an AA and concluded that the likelihood of an adverse effect on an SAC still remained. As a result, criterion (b) was added to what is now WCS policy WCS6 by way of a main modification.
873. GFOEN submit that the caveats in that criterion require certainty to be provided by the appellant that the integrity of an SAC, SPA, or RAMSAR site would be maintained through the provision of '*sufficient information for the purposes of an appropriate assessment of the implications of the proposal, alone or in combination with other plans and projects*'.
874. GFOEN contend that the iterative process of the Habitats Regulation Assessment for the appeal proposal from the GCC HRA 2010 Report (CD5.12) to this appeal now requires an AA as sufficient information has not been provided for the purposes of an appropriate assessment therefore likely significant effect remains and the appeal should be refused as instanced at the *Rufford* Inquiry.

The Case for the Interested Persons

Introduction

875. All 32 interested persons who made statements to the Inquiry did so by reading from a written text as I had suggested (INSP/INQ/003). I am grateful as, first, it made the session more efficient as I did not have to take a note and, second, it enabled the Programme Officer to make each available on the Inquiry web site so that others could read them. Below is a summary of what was said in the order in which people spoke. Points already made in the cases for the main and Rule 6 parties or by an earlier speaker are not repeated here. I have however taken them into account in reaching my conclusions. In particular, I have not repeated any general references to the landscape and visual effect that the appeal proposal would have since this is at the heart of the cases presented by GCC, SDC and GlosVAIN. Figures at the end of each summary are the representor number allocated by the Programme Officer to all those who made submissions following the notification of the appeal by GCC (see paragraph 13 above).
876. **David Drew** spoke on behalf of Stonehouse Town Council on which he had served for 26 years. He was concerned that there would be a detrimental increase in HGV traffic in the town as vehicles would no doubt use the B4008 notwithstanding the largely ignored and unenforceable lorry ban which has been in place since the opening of the full Junction 12. The situation at this difficult junction will be exacerbated by the development at Hunts Grove.
877. The visual impact of what will be an even bigger monstrosity than the Dairy Crest building and stack would be great, especially for those who walk the Cotswold Way and the Cotswold scarp and enjoy what are now stunning views across the Severn Vale. The stack and the plant will forever change this part of the Vale.
878. He expressed very similar concerns about the procedures and processes through which GCC as WDA awarded the contract to those expressed more fully by Ms Oppenheimer in evidence (GV2). Finally he asserted that SDC as a waste collection authority would seek to find alternative ways of disposing of its collected MSW when its contract comes for renewal in 2016 such was the lack of trust in the way in which GCC had dealt with this matter. (60)
879. **Cllr Anthony Blackburn** is the County Councillor for the Hardwicke and Severn Ward. He referred to the height restriction of 15.7 metres imposed by planning permission S.01/1191 and argued that this was still applicable to development at the appeal site. Referring to several passages in the Framework, he argued that the appeal proposal did not represent sustainable development and therefore the presumption in favour of it did not apply.
880. Regarding the landscape and visual impact, he made similar points to many others comparing the footprint of the building with the area of two football pitches. Given the height of the building and the stack it could scarcely be hidden by cosmetic tree planting. He criticised the design solution and argued that it would not ameliorate the bulk of the building. He was critical also of the

engagement process undertaken by UBB and drew my attention to both the lack of public support and the objections of CPRE and English Heritage.

881. In addition to the overbearing point raised by GCC in respect of the occupants of the Lodge, he expressed concern about the effect of noise and disturbance from vehicles using the site on the family's living conditions. Regarding traffic generally he made the same points as Mr Drew.

882. He also suggested two specific conditions. First, that either GCC or UBB should acquire the Lodge, compensate the occupiers for any loss of value and meet their reasonable expenses and, second, UBB should set up and fund a trust for the benefit of the Haresfield community to monitor the effects of the facility and be in a dialogue with the community and provide new facilities such as a village hall, drop in centre etc by way of compensation. (109)

883. **Mr Smith** spoke on behalf of Quedgeley Parish Council which is a member of GlosVAIN. He raised similar points to GlosVAIN in respect of the purchase of the appeal site by GCC; the residual waste management procurement process; the availability of alternative technologies; the provision of excessive capacity and the need to import waste from outside the County; and the potential risk to the health of local residents. He also did not believe that the provision of electricity to the local grid claimed would in fact happen. (59)

884. **Amanda Moriarty** spoke in her capacity as Mayor of Stroud Town. Given the reasons for the appeal being called in by the Secretary of State, she suggested that it should fail as it has been clearly shown that the proposed incinerator is far from being the most energy efficient example of technology. She also criticised what she characterised as GCC's half-hearted defence of its decision and cited the making of the SOCG as an example. She also drew my attention to the financial cost of the project which was being borne by taxpayers through the public ownership of most banks, the doubtful viability of the project, now that PFI funding had been withdrawn, and the fact that GCC was funding UBB's appeal. (75)

885. **V G Sheno**i spoke as a resident of the Forest of Dean with experience in the design and development of energy related projects. He referred to work in the USA, changes in the waste field such as the abolition of LATS fines and other factors to argue that the waste collection authorities in the County had instituted complex high cost/low efficiency collection systems in advance of the WDA selecting its residual treatment method. MBT, the technology favoured by those opposing the appeal proposal, is sensitive to waste inputs. In the County the collection authorities' strategies reduce the bio-degradable fraction of the residual waste thus affecting the outputs of the MBT process and consequently their marketability. Specific plants would need to be linked to any MBT plant to utilise the outputs otherwise it would not be cost effective. EfW as proposed is more tolerant of variations in waste input.

886. He made similar points to GlosVAIN regarding the problems inherent in retrofitting development to utilise heat from the proposed plant and drew attention to the risks inherent in a single boiler/treatment train as proposed by UBB. (120)

887. **Simon Allen** is a resident of Nailsworth. He explained how his interest in the procurement project developed and his concerns over the process echo those of

GlosVAIN whose views he supports. He has also concluded that MBT would be preferable environmentally and financially. He observed that all were now locked into an adversarial process with a 'yes' or 'no' outcome. He asked if there was not a better way whereby UBB and GCC stepped back and talked about MBT as the community's preference or where the Inspector and the Secretary of State took on a mediation role. (60)

888. **Peter Adams** read a poem entitled 'Incinerator Insanity' that he, as a local resident, had written. Any attempt to summarise the content could not do it justice. Suffice to say that the sentiments expressed included concern about potential health effects, a preference for the MBT technology UBB had provided in Essex, a concern about the manner in which GCC had approached the whole enterprise and a query whether democracy had been best served. (123)
889. **Swee-Fong Wharton** is a resident of Stonehouse. She made points in relation to visual impact, potential danger to public health, traffic issues and the lack of need for the facility made by GlosVAIN and many others. With regard to public health she added that air quality would undoubtedly deteriorate over time with the combined effect of the proposal and a similar scheme at Avonmouth some 30 miles to the south. She also stated that incinerator bottom ash can contain unacceptably high levels of dioxins, making its use in construction projects potentially a health hazard, and referred to existing health concerns about dust from flue ash deposits at Wingmoor Farm (near Bishops Cleeve) which could be a destination for the APC residues.
890. She referred to the negative impact on the environment that would arise from the 100 planned or proposed incinerators in the UK and drew attention to the paradox of the UK pursuing such technology as other European countries were closing theirs due to over capacity.
891. Finally, she referred to her meetings with Neil Carmichael MP and Julie Girling MEP. Ms Girling had been a GCC councillor at the time when the decision to commission a mass burn incinerator was taken. However, she now understood that the general trend had changed and that this outmoded form of waste disposal was only marginally better than landfill. (127)
892. **Rachel Stafford** is a Standish Parish councillor. She referred to the Parish Plan prepared in 2009 which was reflective of the view of the 100 or so households scattered thinly over what is a very rural area. Now that more details are available about the proposal opposition has grown to 98% of Standish households. The Dairy Crest building is already an eyesore but this would be much larger. It would be the first thing many would see in the morning before leaving home and the last thing to be seen when returning. Many would have a permanent view of the building from their homes and gardens. The plume would be a constant worry that the air was being polluted and health affected. People would not be opposed to an MBT plant at the site since it would fit into the 15.7 metre height restriction set by the Secretary of State.
893. Similar views to those of Mr Drew regarding traffic on the B4008 and concerns about the unenforceability of the weight restriction were expressed. (37)
894. **Humphrey Cook** spoke as Chairman Haresfield Parish Council. He made similar points to GlosVAIN and others in respect of GCC's processing of the planning application as WPA; overcapacity; preferable alternatives such as MBT,

- AD and pyrolosis; failure to mitigate the impact on the landscape through design; and visual impact from important viewpoints within the AONB. He also referred to the history of the Vale which dates back to Roman, Anglo Saxon, Viking and Norman times. The development would destroy the historic landscape characterised by small villages with parish churches and their spires or towers.
895. Should the appeal be allowed he suggested in headline form five conditions. These were compensation for loss of property values; changing the cladding colour to one that blends in with nature's colours; significant increase in landscaping with mature trees of rapid growth; grass roof; and excavated material to create a noise bund along east side of the M5 to reduce noise pollution in Haresfield. (145)
896. **Malcolm Watt** is a Chartered Town Planner and a Chartered Member of the Landscape Institute and spoke on behalf of the Cotswolds Conservation Board. He noted the large volume of material providing apparently conflicting assessments of the landscape and visual impacts of the proposal and expressed regret that professional judgements could come to such differing conclusions even when following similar methodologies. He made two particular points for consideration in evaluating the impact of the proposals on the special quality and thus the scenic beauty of the Cotswolds AONB.
897. First, noting the evidence of Mr Smith (UBB2, paragraphs 308 to 314) that the appeal can be seen from only a small proportion of the length of the Cotswolds Way and then by glimpses only from four viewpoints, attention was drawn to the conclusions of the Inspector on a similar point in the Standle Farm windfarm appeal nearby (CD9.5). Haresfield Beacon is a popular destination in its own right, similar to Stinchcombe Hill (from where the windfarm would have been viewed). It is therefore a place where people would go to 'stand and stare' at the extensive panorama and not somewhere where walkers would give only a cursory glance across the Vale. My attention was drawn to Natural England's view on this, namely that the enjoyment of views from the National Trail '*would be adversely affected to a significant degree*' by the appeal proposal.
898. Second, is the reverse consideration, namely obstruction by the appeal proposal of the view of the Escarpment in views of it from the west. Such views provide a significant appreciation of the scenic beauty of the AONB and interference with them does not conserve the scenic beauty contrary to Framework paragraph 115. (117)
899. **Sarah Lunnon** spoke on behalf of the Gloucestershire and Stroud Green Party although her contribution drew heavily on her part in refusing the appeal proposal as a member of the GCC Development Control Committee.
900. In summary, on the basis of GCC's verified waste arisings and its historical failure to predict arisings accurately, its consultant's analysis of the waste stream, industry analysts, Defra's forecasting data (CD7.11) and Eunomia's continued prediction of overcapacity (CD13.60 and CD13.77) she did not consider the 'need' to outweigh the harm to the landscape that would be caused.
901. In that context the appeal proposal would provide capacity considerably above the low end of the range in the adopted WCS (108,000 tonnes per annum MSW + 43,000 tonnes per annum C+I = 151,000 tonnes per annum). If, as seems likely, even this figure is an over estimate, the facility would not have the

- flexibility to adapt. How would the excess capacity be used particularly in the light of Eunomia's prediction of over capacity? MBT would be more flexible and thus more responsive with a ready market for SRF.
902. It is likely that waste composition will change with the current 53% bio-genic fraction being removed as far as is possible in an environmentally friendly way. If this was achieved it would decrease the percentage of the energy that would be classed as renewable and would mean that the proposal could not form part of a known future low-carbon energy mix. (77)
903. **John Beattie** spoke as a member of SWARD, an action group local to Bishops Cleeve which is very near to two large landfills operated by Cory Environmental (Gloucestershire) Limited and Grundon Waste Management. The latter has a hazardous waste disposal facility.
904. If lime is effective at cleaning flue gases it must be contaminated by the toxins that it removes. Toxins will therefore be included within the APC residues to be stored. Furthermore, it is disingenuous to focus upon the chemical nature of the APC residues and ignore its micro fine dust character. This dust is a significant health problem because below PM2.5, when inhaled into the lungs, the particles easily cross the cell boundary into the blood stream taking with them any attached toxic materials. Any intention to transport this material to (Kings Cliffe) will not be allowed to continue for long on cost and CO2 emissions grounds. The APC residues will surely come to Wingmoor Farm.
905. SWARD has had issues with the EA regarding white dust found outside the Wingmoor Farm site boundaries and has only recently succeeded in convincing the EA to measure this. Unfortunately, monitoring equipment failed to function and in any event the EA cannot distinguish the amount of dust below PM10 thus masking any PM2.5 particles.
906. Comments on 'need' were similar to those made by others. (119)
907. **Nicholas Dummett** spoke as an Executive Committee Member Gloucestershire CPRE. He made five brief points. First on 'need', much of what he said repeated points made by others. He specifically commended the use of the SARIMA model used to derive Defra's recent forecasts (CD7.11) arguing that a similar projection should be made for the County since the assumptions on which the WCS is based can no longer be relied upon.
908. Second, on the balance of risk it is better to under- than over-provide capacity. Under-provision can be countered by in the short term contracting with out of county facilities that are not fully utilised and continuing to landfill until in the longer term new, smaller scale plant was built.
909. Third, the Guide to the Debate (CD7.9) warns against over rigidly interpreting the proximity principle. A more sensible approach could see waste generated near to the County boundaries go to suitable facilities in adjoining areas such as Wales or Bristol while recognising that other waste could be more sustainably processed in Gloucestershire.
910. Fourth, in the first draft of the WCS (in effect CD5.7) the conclusions of Atkins' work were directly reflected in the Key Development Criteria for each site. These were revised in the adopted version for reasons which are set out in the Inspector's report (CD5.49). However, if the Atkins report is to have any weight

in this appeal it should be noted that the recommendation was that if the site was not to be developed with a landmark building, it should be sunk as low as possible into the site. As the appellant does not claim the building to be a landmark building the second condition applies.

911. Finally, it is wrong to suggest, as UBB imply, that from a distance of more than 2.5km the visual impact would be small and that looking down from the Escarpment would mean its verticality would be of no great consequence. Four additional viewpoints between 3.75 and 6km distant were suggested and from each the detail around Javelin Park is very clear in the right conditions. From each, the appeal site is seen as separate from the commercial buildings at Quedgeley. It will look out of scale with its surroundings set against either a largely rural landscape or the Cotswold escarpment. (8)
912. **Tom Jarman** spoke as a resident of Selsley. However, at the pre-Inquiry meeting SDC listed him as a witness from Advanced Recycling Technologies Gloucestershire Limited to be called to give evidence about alternative technology (MBT). For the reasons explained by Mr Simons in opening (SDC/INQ/001) and clarified in an amendment (SDC/INQ/001.1) Mr Jarman was not called. His status in the proceedings reverted to that of an interested party. He has submitted a considerable amount of material including a 63 page submission (reference 94/3). The abstract of this self styled 'proof of evidence' makes it quite clear that it is promoting an alternative to the appeal proposal although on which part of Javelin Park it is planned has never been clear since no planning application has been submitted³⁹.
913. In the event, SDC called Mr Christensen to give evidence on alternative technologies. Mr Christensen is a Director of the company whose technology Advanced Recycling Technologies Gloucestershire Limited intends to use and which Mr Jarman uses as a comparator in all of his submissions. In many respects the detailed further information appended to Mr Jarman's statement adds little to the evidence of several witnesses called by GlosVAIN, GCC and SDC⁴⁰.
914. The essence of Mr Jarman's statement was that good design was essential but that neither UBB nor GCC had followed the correct approach. Moreover, with reference to his email correspondence with the Design Council he argued that the design review procedures had evolved since the appeal proposal was reviewed by CABE and were now more comprehensive. He also argued that it was wrong in law not to encourage the best overall environmental outcome and that by pursuing this scheme GCC was failing in its duty under the Waste (England and Wales) Regulations 2011 (CD7.4)⁴¹.

³⁹ Inspector note: I made it clear to Mr Jarman that this Inquiry was not the forum to promote such a scheme since the Secretary of State could have no jurisdiction (94/5).

⁴⁰ Inspector note: While I have taken it into account in reaching my conclusions I therefore do not summarise it here.

⁴¹ Inspector note: In answer to my question he confirmed that this was his interpretation and not one on which he had taken legal advice.

915. In answer to further questions from me he confirmed that the drawing at the end of his statement was purely illustrative of how the type of technology he was promoting might be housed in a building that met the 15.7 metre height restriction. However, on further examination the building shown is some 19.25 metres above ground level and the cooling plant actually protrudes above the roof line. Mr Jarman said that the building could be sunk into the ground. He also confirmed that the emissions stack shown had not yet been modelled for height but would be in the order of 40 metres. (94)
916. **Jan Bayley** spoke as a resident of Cirencester. She made many points in relation to the landscape impact that are made by others. She focussed on the height and the footprint of the proposed building noting that in both cases the dimensions exceeded those in Appendix 5 of the adopted WCS.
917. She accepted that there was a need to manage the County's residual waste but considered that further materials capable of being recycled and composted could be extracted prior to final treatment. Her view was that other technologies were available to treat this waste with the key question being whether these would result in less landscape impact.
918. Of the three examples about which she provided details in her written submissions she focussed on the New Earth Solutions plant at Avonmouth, Bristol. This MBT, gasification and pyrolysis facility would process about the same tonnage but would be housed in buildings typically around 15 metres high with a 30 metre stack. Given that the WCS is technology neutral such a facility would be in accord with development plan policy.
919. Finally, while acknowledging that increasing the amount of renewable energy production is desirable, she did not consider that the relatively small amount that would be generated by the appeal proposal outweighed the harm to the landscape. (96)
920. **Paul Berkeley** spoke as a resident of Cirencester. He made very similar points to Jan Bayley and others regarding the landscape impact and other available technologies. He did however emphasise the process-driven verticality of the proposed building and set this in a historical context within the Vale. He referred to what he considered the three most important landmark buildings in the County; Gloucester Cathedral (68 metres) Tewkesbury Abbey (46 metres) and Cirencester Parish Church (some 40 metres). All comparable to the height of the proposed building but erected as monuments to the glory of God and standing out as dominant vertical features in the otherwise low level landscape. The symbolism is obvious when viewed from the many available vantage points which include Cam Long Down and Cam Peak and those on the Forest of Dean side of the Severn. (118)
921. **Kevin Marsden** spoke as a Hardwicke resident. He made a number of points on 'need', health implications, traffic and design made by others. Quoting personal family experience of the effects of working with asbestos before the health implications were understood, he added on health matters that a precautionary approach was sensible since 'we don't know what we don't know'.
922. He closed by referring to the Localism Act of 2011. He noted that this is about empowering communities to influence the future development of their area. In this case, all the locally elected parish and district councils had opposed this

proposal as had GCC planning committee. However, not only does GCC (as WDA) continue to actively pursue the incinerator option, it also arranges for local taxpayers to meet the contractor costs of the appeal. The democratic view should be upheld if localism is to have meaning. (73)

923. **Alice Ross** spoke as a Cheltenham resident and supporter of GlosVAIN. Her concerns were expressed in verse and can best be summarised as relating to the effect on the AONB, the use of obsolete technology and the transport of toxic ash for treatment or disposal. (146)

924. **Richard Broackes-Carter** spoke as a local resident. He took particular issue with some of the statements made by UBB in both the planning application and the grounds of appeal regarding the building design. In his view it is clear that the designers have set out to achieve a contemporary building having a bold form and not the building sympathetic to its surroundings that is required in this location. The jumbled and tilted box design would draw screaming attention to itself. People react to building forms that are not harmoniously vertical or horizontal or have pleasing curvatures. He cited the leaning Tower of Pisa and the twisted spire of Chesterfield as examples of disturbing buildings when viewed at close quarters. He also referred to the unnecessary and costly additional height added for architectural reasons. Other points relating to alternative technologies, flaws in the contract award process, issues with APC residues and traffic repeated those made by others. (110)

925. **Gerald Hartley** lives within 2km of the appeal site, is a member of GlosVAIN's core group and attended every day of the Inquiry and each hearing session of the WCS examination. Unsurprisingly, much of what he said about the need to minimise waste production, consider alternative technologies, the 15.7 metre height restriction, the proximity principle and avoiding over capacity by utilising existing and planned facilities in adjoining areas and electricity production in the context of the R1 calculation echoed the evidence of GlosVAIN. In respect of health matters he recognised that the HPA's position made such arguments difficult. However, he drew attention to the purpose of the study now underway as being to '*extend their evidence base*' (CD13.2) and not to reassure the public as claimed by UBB and GCC's waste champion. History is littered with examples of medicines, insecticides, materials and processes deemed safe when first launched only to be found damaging, dangerous or life-threatening later. Concern is therefore understandable. (121)

926. **Diana Shirley** spoke on behalf of GlosAIN, a separate group from GlosVAIN notwithstanding the similarity in the name. GlosAIN does however support the submissions made by GlosVAIN, GFOEN and SWARD. With respect to the environment she made very similar points to GFOEN regarding the effect of acid deposition on the Cotswolds Beechwoods SAC and the failure of UBB to comply with the Habitats Directive. Specifically, the in-combination effects assessment has not included the traffic emissions from the developments proposed in the emerging Joint Core Strategy being prepared by Gloucester City, Cheltenham Town and Tewkesbury Borough Councils (CD13.49 to CD13.51) whereas in documents prepared for that the air pollution from waste facilities in the WCS has been included in the assessment.

927. With respect to public health concerns she drew attention to the fact that many emissions are not monitored, many are only spot monitored (dioxins) and

in any event, the regulations are lax. She gave summary details of serious breaches in incinerators of various designs including Eastcroft (Nottingham), Dundee, Dargavel (Scotland), Moorwell, Isles of Scilly, Isle of Wight and Crymlyn Burrows (Swansea). (114)

928. **Martin Horwood MP** is the Member for Cheltenham and spoke on behalf of his constituents. His submission represents a strong objection to the appeal proposal and focussed on two aspects; the completely inappropriate visual impact in a highly sensitive landscape and the clear direction of national and local policy towards the reduction of residual waste which undermines the need for this incinerator.
929. Regarding the first point, he made similar arguments to many others and they are not repeated here. He did however contrast the appeal proposal with the sympathetic design of the new motorway service area now under construction to serve the M5 between Gloucester and Cheltenham.
930. Turning to his second point, he stated that incineration is clearly a residual waste technology falling below waste prevention, re-use and recycling in the waste hierarchy. It is therefore increasingly vulnerable over time to political drives to reduce the amount of material going into the waste stream in the first place. He referred to the measures being taken to work towards a 'zero waste' economy and drew attention to the Government's headline commitment on energy from waste to increase the use of AD. In answer to my question, he confirmed that his observation that incineration is perceived as a less clean, less sustainable policy option even than other forms of EfW was a personal view and not Government policy.
931. Drawing attention to the successes both locally and elsewhere in reducing the amount of residual waste he said the appeal proposal would create a perverse incentive to maintain levels of residual waste at 190,000 tonnes or more to fulfil the terms of the contract. He noted other evidence to the Inquiry suggesting both that at 70% recycling rates residual waste could be less than 80,000 tonnes per annum and that GCC had consistently over estimated the amount of residual waste arising. While C+I waste may fill the gap, price and other drivers may make this unlikely. He endorsed the view of GlosVAIN that the challenge may not be how to dispose of our residual waste but where to find enough waste to feed the machines. The temptation to incinerate otherwise reusable or recyclable waste would be strong but would run counter to both national and local policy. (45)
932. **Neil Carmichael MP** is the Member for Stroud and spoke on behalf of his constituents. While noting the many concerns expressed by others relating to perceived health effects and GCC's WCS and motives, his view from the outset has been that the matter should be determined on planning considerations.
933. In that regard he regards the proposal as out of keeping with the area with the potential for significant impact on the views out of the AONB being a clear planning consideration. In this context UBB's comparisons with Bloom's and other associated existing buildings are inappropriate. During consultation he had specifically asked that the option of lowering the facility to reduce the height of the building and therefore its impact on nearby residents and the adjacent AONB be explored.

934. He made similar comments to Mr Drew about the potential for traffic impacts and agreed that local people were correct to query the effectiveness of the existing lorry ban on the B4008.
935. An additional and particular concern, given experience of two waste facilities in Sharpness, is the potential impact on local residents from noise and odour. Disputes about acceptable levels should be prevented by clear and agreed thresholds.
936. Finally, he endorsed the conditions proposed by County Councillor Blackburn. (18)
937. **Cllr Roger Wyborne** spoke on behalf of Cheltenham Borough Council and focussed on the question 'what is an acceptable level of planning 'harm' to the surrounding environs to justify an appropriate waste plant?'
938. Compared with other technologies, such as MBT, the contribution to the Government's climate change programme would be poor and the CO2 volumes resulting from burning unrecovered plastics would offset the acknowledged benefits from electricity generation. The contribution the development would make towards the Government's energy policies would be at best marginal although better than landfill. However, it would also generate significant volumes of toxic waste.
939. Similar points to those made by others regarding landscape and visual impact, over capacity, inflexibility and perceptions of risk to health in what was a town downwind of the facility were put forward. It is unclear what building height would be acceptable but, given the fact that the roof of the Bloom's garden centre had to be lowered to gain planning permission, it seems inconceivable that an incinerator could be accommodated at the appeal site. A similar comparison to that made by Jan Bayley was drawn with the New Earth Solutions facility at Avonmouth. (15)
940. **Costas Ttofa** spoke as a Haresfield resident and father of two young children who, by the end of 2014, would be attending the village primary school. While his comments on the technology choice, the landscape and visual impact, the financial cost of the contract and the process through which it had been awarded and the perceived health effects were very similar to those made by others, they were made in the context of Article 3 of the UN Convention on the Rights of the Child.
941. He quoted this as stating '*the best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and law makers.*' In his view the appeal proposal breaches this Article. First, no specific consideration has been given to the effect on the best interests of children of a facility with a design life of at least 25 years. Second, alternative waste treatment options are available that would involve a significantly lower burden for children in the long term. (52)
942. **Maddy Cobbing** spoke as a resident of Stroud and a supporter of GlosVAIN; she is a freelance environmental consultant doing research and writing mainly for non-governmental organisations. Her concerns relate primarily to the issue of

POPs about which GlosVAIN give evidence. She stated that proving that pollution from incinerators causes any specific health effects is not easy since it is just one among many sources of hazardous chemicals in the environment. A direct cause and effect relationship is thus difficult to demonstrate. However, she asserted that the hazard posed by potential emissions from any mass burn incinerator is not in dispute.

943. She said that the variety of possible pollutants is understated. Only chlorinated dioxins are considered but where chlorine and bromine are present in the waste stream – which is common in mixed MSW – other dioxins can be produced. Only limited monitoring for dioxin is planned and it is not clear if sampling will take place for the full range of dioxins.
944. Incinerators emit an aerosol of fine and ultrafine particles. While many of the larger particles will be captured by the FGT, a greater number of the ultrafine particles will pass through bag filters. How such particles impact on health is not yet completely understood.
945. Some pollutants pose a risk to vulnerable people, even at low levels. Moreover, where they are persistent or bioaccumulative, contamination can build up over many years. As well as direct exposure through the air, both wildlife and people are affected through the food chain; the main source of exposure is, in fact, through our food.
946. In summary, if a chemical has intrinsically hazardous properties no level can ever justifiably be considered 'acceptable' and reassurances based on risk assessments are not therefore convincing. Public concern about the health effects of the appeal proposal is therefore entirely justified. (122)
947. **Malcolm Cheshire** spoke as resident. His concern is that the security of the appeal proposal must be fully established and evaluated before being commissioned. His concern was that terrorists, for example, could introduce radiological material into the pre-incineration waste stream effectively turning the facility into a 'dirty bomb'. The Chief Constable must therefore ensure that resources are available as and when required should the threat level rise to 'critical'. (116)
948. **Michael O'Dowd** is a retired Medical Practitioner and resident of Little Haresfield. He spoke of the special qualities of the Vale particularly as seen when walking on Frocester Hill, Cam Long Down, Uleybury, May Hill and any of the other many vantage points. It is more than the view from Haresfield Beacon that is important and the geometric, brutish design would be of a scale wholly out of proportion with its surroundings.
949. On the alternative technologies available and the out dated nature of incineration he made similar points to many others. Given his clinical background he had also been asked to speak about the health risks. It is impossible to prove that any system is safe since no accumulation of instances of harm not being caused will prove safety whereas one instance of harm being suffered would indicate danger. He explained that he had seen both sides of the conundrum fighting vaccine hysteria even when solid evidence favoured the vaccine. Other drugs believed to be safe on the available evidence and used on a daily basis are abruptly withdrawn when new information becomes available.

950. It is known that the incinerator will emit nanoparticles that are highly toxic. The very smallest cannot be monitored or controlled but these are the ones most likely to cause long term harm. While 'acceptable limits' are set within which facilities are allowed to function, this is a necessarily pragmatic approach. What constitutes safe practice in the long term is not known. The evidence is not available now and may not be for another 50 years or so. In short, today UBB cannot prove that such an incinerator will not cause harm and those opposing it cannot prove that it will. In such circumstances those who are alarmed cannot have their fears dismissed. (53)
951. **Chris Harmer** spoke as a resident of the County and was a participant in the hearing sessions of the WCS examination. He referred to the wording of Appendix 5 of the WCS that was submitted for examination and also to policy 26⁴² of the Gloucestershire Waste Local Plan (CD5.2) which addresses development in or affecting the AONB arguing that the appeal proposal fails each of the criteria.
952. His central point, however, is that common sense should be applied to the 15.7 metre height restriction imposed by a previous Secretary of State. This limit is unrelated to the use of the building and the WCS should be interpreted accordingly.
953. His points regarding alternative technologies, incorrect calculation of savings against landfill as the comparator, very modest contribution to energy requirements and CO2 generation from wastes that could have been recycled or removed by other technologies have been made by others. (143)
954. **Ian Richens** spoke as a resident of Little Haresfield and as a representative of a number of (unnamed) residents within about 1km of the appeal site. He made statements on four points. Landscape matters have been addressed by many others and the Best Available Technology point regarding the wet bag system is dealt with in greater detail by GlosVAIN. The letters of objection to GCC from English Heritage and Natural England are the subject of the evidence from the main parties.
955. He spoke about the perception of risk and referred to a local forum meeting on 10 May 2012 when Mr Othen answered questions from a neighbour about possible particulate contamination of his vegetable plot if there was a temperature inversion. His response that no-one usually consumed more than 10% of their food intake from their own local grown sources was not reassuring to those who have large gardens, are self-sufficient for much of the summer and also provide their own chicken and duck eggs. He also noted that the former joint Director of Public Health for Gloucestershire NHS had written to GCC asking that consideration be given to delaying any planning permissions until the HPA study results are available. All these matters add to the perception of risk that is held in the local community.

⁴² Inspector's note: this policy is not 'saved' and is therefore not material to the determination of this appeal.

956. Finally, he appended a list taken from the local newspaper⁴³ giving what he said were the reasons why those 16 of the 18 councillors who voted unanimously against the planning application at the GCC planning committee did so. (14)

957. **S J Goodchild** was not able to present his statement and I read it on his behalf as explained above (paragraph 1). He raised similar concerns to others that the heat is unlikely to be used and made an additional point about system resilience which would be a factor any potential users would take into account. Not only would there be periods of planned maintenance to interrupt heat supply, with only one waste line and therefore a single point of failure additional risks would be involved. (69)

Written Representations

958. Over 4,300 public representations were received by GCC in response to its formal notifications of the planning application. Many appear to be in a standard format raising issues of landscape and visual impact from the AONB; adverse effect on the residential amenity of neighbours from traffic, noise and occasional smells; health impact worries; negative impact on the trees in the Cotswold Beechwoods SAC; no proven need for the facility; and failure to meet the requirements of the waste hierarchy. Many of these appear to have been submitted via GlosVAIN.

959. Other issues raised include the proposed design including the size, scale and layout and the materials proposed; impact from lighting; technology and the waste hierarchy; the site selection process; cumulative impact when the approved scheme at Moreton Valence is also taken into account; flood risk given that adjoining fields are subject to surface water flooding; traffic; procedural matters including concerns over the process of letting the waste contract, inadequate scrutiny by GCC and insufficient community engagement; and costs and economics including a flawed business case, the withdrawal of PFI funding and the burden on local taxpayers.

960. A large number of statutory and other bodies also responded in some detail. Nearly all of the issues raised are addressed in some form by the cases put by the main and Rule 6 parties and/or by the statements by interested parties.

961. Following notification of the appeal around 120 further interested parties made submissions up to and including the start of the closing submissions by GOEN (see paragraph 13). Some of these were very detailed and all have been taken into account. However, the essence of each is summarised in the previous section and no further detail is given here.

Inspector's Conclusions

Structure of my conclusions

962. I deal first with a number of preliminary matters. These include a timeline for the project that gave rise to the application before the Inquiry and the concurrent preparation of the WCS, how the WCS should be properly interpreted and a matter that it was effectively agreed could not be taken into account in any

⁴³ Citizen News 23 March 2013

lawful determination of this appeal. I then consider the main issues, including the matters that prompted the recovery of the appeal by the Secretary of State, and other matters on which my recommendation turns.

963. Throughout, numbers in [] are references to other paragraphs in my report. Those in () are to the parts of the documentary or oral evidence upon which my conclusion or inference is based. Footnotes are, in the main, used only for full citations of judgements referenced.

Preliminary matters

Timeline

964. Below in chronological order are what I consider to be the key dates in the residual MSW treatment procurement project and the preparation of the WCS, drawn principally from documents GV2, UBB1, Section 2 and the oral evidence. It sets an important context for the later consideration of some of the main issues and other matters.

- *September 2005* – GCC resolves to terminate the then current PFI procurement process that would have led to a residual waste treatment contract based on an MBT technology.
- *2006 to 2008* – GCC and the six constituent district and borough councils form the Gloucestershire Waste Partnership and adopt in April 2008 the JMWMS.
- *November 2007* – GCC Cabinet determines that the procurement process will proceed on a technology neutral basis.
- *January 2008* – publication by GCC of the WCS Preferred Options paper listing the five shortlisted technology options identified by the WDA.
- *April 2008* – Outline Business Case for PFI funding submitted to Defra. The Reference Project included was EfW with potential for CHP, one facility with a capacity of 175,000 tonnes.
- *November 2008* – £92 million of PFI credits awarded and, as a condition of the award, the appeal site at Javelin Park was acquired by GCC.
- *February 2009* – OJEU tender notice published.
- *December 2009* – Four bidders selected (from 10) by GCC Cabinet to submit detailed solutions in response to the OJEU notice.
- *April 2010* – Axis meet with GCC planning officers for first preliminary meeting about proposed scheme.
- *October 2010* – PFI funding withdrawn.
- *December 2010* – Pre-submission draft of WCS published for consultation. This is technology neutral.
- *March 2011* – GCC Cabinet short list two bidders to submit refined final solutions. Both bidders propose solutions based on EfW at Javelin Park.

- *May 2011* – Axis hold second meeting with GCC planners including Kevin Phillips who was lead officer for the WCS.
- *June 2011* – Third meeting between Axis and GCC planners.
- *June 2011* – GCC publishes and consults upon a revised WCS and Schedule of Focused Changes in response to representations at pre-submission draft stage.
- *16 to 19 July 2011* – First public exhibitions of the UBB proposals.
- *5 September 2011* – GCC submits draft WCS for examination.
- *12 to 14 November 2011* - Second public exhibition of the UBB proposals including scale model and fly-through film showing the facility in operation.
- *18 November 2011* – Fourth pre-application meeting between Axis and GCC planning officers.
- *14 December 2011* – UBB selected as preferred bidder by GCC Cabinet.
- *31 January 2012* – WCS examination hearing sessions begin. On the same date planning application documents subject of this appeal submitted to GCC as WPA for approval and grant of planning permission.
- *12 March 2012* – Examination hearing sessions close.
- *August 2012* – Examination Inspector's report submitted to GCC.
- *12 September 2012* - GCC Cabinet approves award of contract to UBB.
- *21 November 2012* – WCS adopted by GCC.
- *22 February 2013* – Contract between UBB and GCC signed and award complete.
- *21 March 2013* – Planning application that is the subject of this appeal refused planning permission by GCC as WPA.

965. In my opinion, a number of matters are plain from any fair reading of the above chronology.

- First, the collaborative working between the WPA and the WDA on their respective strategies appears to have occurred in accordance with the advice in PPS10 (CD6.3, paragraph 16) and the Companion Guide to it (CD6.4, paragraphs 7.8 to 7.12).
- Second, by the time the Focused Changes were published the lead officer responsible for the WCS would have been aware that the WDA was likely to procure a residual waste treatment contract that entailed the development of a large-scale EfW facility at Javelin Park, one of the four sites then allocated in the draft WCS for strategic scale recovery facilities.
- Third, by the same time that officer would have been generally aware of the nature of the UBB proposals.

- Fourth, by the time the examination hearing sessions began, GCC as a WPA would have known exactly what was being proposed at Javelin Park by the preferred bidder.
- Finally, to the extent that the appeal proposal was prepared to accord with the WCS it could only have been with the WCS as submitted, not as adopted.

The way the WCS should be interpreted

966. It is explicit in the Non-Technical Summary to my examination report that all of the modifications to the submitted WCS to address issues of soundness were proposed by GCC (CD5.49, page 2). The text of the adopted WCS including, importantly, Appendix 5 is the County's, not mine. Mr Elvin's 'proposition 2' must be read in that light [501 to 505]. None of the GCC officers or consultants involved in the preparation of the WCS gave evidence to the Inquiry. I have already referred to the large number of documents brought forward to the Inquiry from the WCS examination evidence base [16]. While these must be material considerations in the determination of this appeal (which Mr Elvin appeared to acknowledge [501]), having reviewed the relevant case law [501 to 505], he ends his 'proposition 2' by saying that I should ask what do the words in the WCS mean interpreted objectively in their proper context [505]. This raises two questions; first, what part of the WCS constitutes the development plan for the purpose of s38(6) of the Act and, second, what do the policies mean?
967. Dealing with the first, the *Cherkley* judgement confirmed that a development plan comprises a written statement, a proposals map, a reasoned justification and such diagrams, illustrations or other descriptive or explanatory matter in respect of policies as may be prescribed and such descriptive or explanatory matter as the authority think appropriate [163]. This part of the judgement was dealing with a ground of challenge concerning precisely what was saved by a Direction by the Secretary of State under Schedule 8 of the 2004 Act. The argument by the interested party in that case that it was only the policy wording itself and nothing more that was saved was rejected [506].
968. From that, Mr Elvin's 'proposition 3' is that the policy text of the WCS should be interpreted in the light of the Strategic Objectives and purposes set out within it which are a necessary aid to understanding, interpreting and implementing the policy [507]. Mr Phillips did not wholly agree saying that the role of text outside the policy itself, including the Strategic Objectives serves only to aid interpretation where it is necessary to construe the policies because of, for example, ambiguity [164]. He does not consider the policies to be unclear so does not see any requirement to refer to Strategic Objective 5 [235].
969. The wording of WCS policies WCS6, WCS14, WCS16 and WCS17 is somewhat uncertain; this is developed below. However, resolution of that uncertainty is not helped by an analysis of the vision or strategic objectives which in any event I do not believe form part of the development plan in this case for the following reason.
970. The structure of the WCS is as follows. Following the executive summary, there is an introduction (Chapter 1). Although this includes a policy (the model policy introduced into all plans going through examination around the time that the Framework was published), its position here is somewhat anomalous and,

presumably, a matter of convenience as it was introduced after the examination hearings had taken place and would otherwise have disturbed the whole structure of the plan. Chapter 2 sets out 'Where are we now?' and describes the County's social and physical characteristics before setting out the outcomes of, among other things, the waste evidence base and identifying the key issues to be addressed. Chapter 3, 'Where do we want to be?' sets out the key drivers that will affect this and culminates in the spatial vision and strategic objectives underpinning the WCS.

971. Chapter 4 starts:

Having outlined where we want to be by 2027, we need to set out how we are going to get there. What policies and proposals will be put into place to deliver our vision and objectives? This is our spatial strategy – in other words, what we are going to do, how, where and when. (my emphasis) (CD5.1, paragraph 4.1).

972. That strategy is then aligned with the five strategic objectives and the policies are laid out under each of those headings. The first four headings broadly follow the waste hierarchy while the fifth is 'minimising impact'. Under this heading appears what is, in reality, a set of fairly standard development management policies.

973. What the WCS terms the spatial strategy quite clearly therefore develops the vision and strategic objectives into policy. As long as those policies are clear there is no need to revisit either. I take some support for this from the tests of soundness to be applied by an Inspector examining a local plan (CD6.1, paragraph 182). Both the 'positively prepared' and the 'justified' tests address the strategy of the plan. While the evidence base for that strategy is clearly crucially important, there is no mention of assessing either the vision or the objectives for soundness. These are simply precursors to the strategy and the policies for its delivery. I see no inconsistency between this conclusion and what Mr Elvin put in closing [508 to 510].

974. Furthermore, the wording of 'Strategic Objective 5 – Minimising Impact' indicates that the principal way in which it will be achieved is through locating the required facilities so as to avoid or minimise the risks and effects set out (CD5.1, page 40). That is what Chapter 4 does through criteria-based, site specific and development management policies.

975. The Chambers Dictionary (New Ninth Edition) defines 'minimise' as:

To reduce to the smallest possible amount; to make as light or insignificant as possible; to estimate at the lowest possible; to lessen or diminish; to belittle.

976. On a fair reading of the opening paragraphs to the 'minimising impact' section of WCS Chapter 4 which include phrases such as '*...reduce the impact...*' (CD5.1, paragraph 4.169) and '*...reduce the level of that impact to an acceptable degree*' (CD5.1, paragraph 4.171) the definition of the word being used is 'to lessen or diminish'. This would also be consistent with Government policy [231] which as a development plan found sound after the publication of EN-1, the WCS is.

977. There is nothing therefore in the strategic objective itself or the way it is later applied to suggest that any impact has to be reduced to an absolute minimum, or to a point where it could not be reduced further or that, when considering

landscape impact, a development should be reduced in scale as far as was technically possible before permission could be granted (UBB/INQ/17, paragraph 156 summarised at [169, 178 and 179]). In fairness, I do not consider that Mr Elvin suggested that it did in the lengthy section of his closing submissions on the meaning of the WCS (GCC/INQ/13, paragraphs 26 to 33, summarised at [510 to 520]). Nevertheless, that proposition forms a significant part of the case put by both GCC [614] and SDC [641] on landscape and, in the case of GCC heritage, matters.

978. On the first question therefore I regard the text in Chapter 4 of the WCS as the development plan (and any other parts of the WCS such as Appendix 5 to which reference must be made by virtue of a specific signpost in a policy) since this is where the policies and the reasoned justification for them is set out.
979. That leads to the second question which has been resolved by the Supreme Court in *Tesco* [237, 500 and GCC/INQ/13, paragraph 15]. As indicated above [969] four policies are not clear in some respect. These are now reviewed in order. I do not deal here with Appendix 5; that is considered under my third main issue.
980. WCS policy WCS6 first criterion (b) (which is repeated at criterion (d) and in other WCS policies) implies that sufficient information for the purposes of an AA must be provided in all cases. The appellant's view that this was an incorrect application of Regulation 61 of the Habitats Regulations [412] was not disputed. This error may lie in part behind the objection of GFOEN.
981. The interpretation of WCS policy WCS14 was subject of some debate. Mr Phillips set out the UBB position [237 to 242] and Mr Simons indicated that neither he nor Mr Elvin disagreed in any material respect [637]. However, Mr Watson preferred an alternative formulation which was much closer to my initial view [813 to 817].
982. I appreciate that when looking at WCS policy WCS14 the geographical extent of its application is only certain if the proposal falls within the designated boundary of an AONB. Whether or not a proposal is within or would affect the setting of an AONB is a matter of judgement. If the area to be regarded as 'general landscape' is that not within an AONB and not within or affecting its setting either, then the extent of that area will also be determined by that judgement. While I can see the difficulties that arise from this, those are matters that could be addressed during pre-application discussions so that the correct assessments against policy are undertaken.
983. However, in the light of *Tesco* and the consensus view of three members of the planning bar, two of whom are leading Queen's Counsel, I accept Mr Phillips's construction. I note that he considers Mr Watson's understanding of this [817] to be flawed and that where, as in this case, the proposed development would affect the setting of an AONB, both the first and second parts of the policy would in fact be engaged [238]. Nevertheless, since he also contends that both need to be assessed it seems to me that the outcome of the approach preferred by UBB, GCC and SDC would be that a proposal could be found to conflict with one or more of the three indents in the second part of the policy (and thus be found to harm the setting) but still be approved under the balancing exercise in the first. I have some sympathy for the GlosVAIN view that the protection for the setting of an AONB is weakened by what I have accepted is the lawful interpretation of

the policy. However, since the Framework gives no particular mention to 'setting' (CD6.1, paragraph 115) this interpretation is not necessarily inconsistent with national policy although as both the appellant (PINQ, paragraph 2.11.4) and GCC (PINQ3, page 3) point out, paragraph 003 ID-003-20140306 of the National Planning Policy Guidance refers to impact on setting and appears therefore to strengthen the Framework policy through later guidance.

984. In reaching his conclusion on the interpretation of this policy the Secretary of State may wish to consider whether under the consensus view about the lawful interpretation of the policy the circumstances in which a conflict with it would be shown would ever be likely to arise.

985. In light of the discussion above [975 to 977] it should be noted that WCS policy WCS14 refers in both the first and second parts to significant adverse impacts being fully or satisfactorily mitigated (my emphasis). The Dictionary definition of this word (in context, *to make more easily borne, to lessen the severity, to temper*) clearly differentiates it from 'minimise'. Some form of impact is expected; the policy requires only that it be made more acceptable. Even so, the first part of the policy is actually internally inconsistent. It starts by saying:

Proposals forwill be permitted where they do not have a significant adverse impact on the local landscape....or unless the impact can be mitigated. Where significant adverse impacts cannot be fully mitigated the...benefits...must outweigh any harm arising from the impacts (my emphasis).

986. On the one hand therefore the policy suggests that reducing the impact is acceptable whereas, on the other, 'fully' suggests that it must be eliminated. In any event, whatever the requirement for mitigation, it only bites if the adverse effect is judged to be 'significant'. This matter arises too in WCS policy WCS16 to which I turn now.

987. As already mentioned [29] the WCS submitted for examination did not include a policy on the historic environment. Instead, it relied on national policy set out in Planning Policy Statement 5: *Planning for the Historic Environment* (CD5.7, paragraph 4.251). However, by the time that the examination hearing sessions took place, it was known that this and most other planning policy statements would be replaced by the then forthcoming Framework. The form that replacement would take was however unknown until 27 March 2012 (CD5.49, paragraph 81). To avoid a policy vacuum GCC added by way of Main Modification 21 what is now WCS policy WCS16. This was supported by English Heritage (CD5.49, paragraph 85).

988. Notwithstanding this support, while the Framework refers to '*substantial harm*' and '*less than substantial harm*' (CD6.1, paragraphs 132 to 134), WCS policy WCS16 uses the term '*significant adverse impact*' without giving any definition of what that means. UBB define this in terms of the EIA Regulations but, on a precautionary basis, also consider the matter in the context set by the Framework [297 to 300]. I note however that UBB's expert witness states that '*Heritage significance should not be confused with EIA significance; it is unfortunate that the same word has two closely related but different meanings.*' (UBB3B, paragraph 1.5). GCC correctly states that the WCS does not define 'significant' by reference to those Regulations and considers the matter instead against the policy as being consistent with the Framework [568].

989. If Mr Phillips is correct in his assertion that WCS policy WCS16 is not engaged [298] this would mean that it does not deal fully with national policy on this issue. In view of this lack of consensus among the planning lawyers over the exact meaning of the WCS policy, I consider that significant weight should be given to the Framework policy on this matter.
990. Finally, there is a difference between UBB [168] and GCC [511] as to whether WCS policy WCS17 is concerned with matters other than simply the appearance of the building. I consider the WCS to be unclear on this and in this case the reasoned justification needs to be examined.
991. There are references to the Framework (CD5.1, paragraph 4.264). The need to make best use of the site and respond to local surroundings is mentioned (CD5.1, paragraph 4.265) as is the need to address the proposed use of the site, the footprint (size), layout and scale of the buildings and spaces by means of a DAS (CD5.1, paragraph 4.266). However, the same paragraphs refer to the need to make the building visually attractive and to address visual appearance through the DAS. Finally, in referencing PPS10 on this topic, design innovation is illustrated by two photographs of large-scale EfW plants that show only the external appearance of the facility (CD5.1, paragraph 4.268). Furthermore, in the light of the position advanced by GCC at the Inquiry it is difficult to understand how a conflict with WCS policy WCS17 was not cited in the reasons for refusal.
992. However, Framework paragraph 61 is quite clear that securing high quality and inclusive design goes beyond aesthetic considerations even though these are very important. It embraces the connections between people and places and the integration of new development into the natural, built and historic environment. In that sense there could be a certain blurring of the coverage of WCS policies WCS14 and WCS17 [643]. However, I set out below the context within which I have considered the appeal scheme against this policy [1052].

The award of the procurement contract

993. The local community has significant concerns with the procurement process. These extend beyond the outcome of it to the way in which GCC conducted it. This is evident from the comments received [959] and from the evidence of Ms Oppenheimer which is almost wholly devoted to this matter (GV2 and GV2/A) [844 to 846].
994. Some wish to see as an outcome of the appeal a review by GCC of the contract it has awarded with the WDA then selecting an alternative means for residual MSW treatment. Indeed, Mr Christensen was unequivocal; his evidence was that the Secretary of State should dismiss the appeal in order to force GCC as WDA to come to a different conclusion.
995. GCC has indeed established a 'Plan B' cross party working group to consider alternatives to the current proposals for a waste incinerator at Javelin Park, to be available in the event that the current GCC contract proposal with UBB ultimately fails (GCC/INQ/7). In answer to me following her personal statement, Sarah Lunnon confirmed that by January 2014 the Plan B group had met some five times and was in fact-finding mode with no consideration yet of alternatives to incineration.

996. Notwithstanding Mr Christensen's evidence, Mr Wyatt disagreed with him (UBB/INQ/17, paragraph 125) and such a position formed no part of Mr Simons's closing submissions for SDC. Mr Watson offered that while Mr Christensen's objective would be a desirable outcome of a decision that the appeal should be dismissed for planning reasons, it could not lawfully be the reason for coming to that decision.

997. No legal challenge has been made to the award of the contract by GCC. It is not within the remit of the Secretary of State to review that award as part of these appeal proceedings which must be determined in accordance with s38(6) of the 2004 Act. Insofar as the award of the contract is capable of being a material consideration at all it is, in the circumstances described, one to which I consider the Secretary of State should attribute no weight in coming to his decision.

Main Issues

998. From the foregoing I consider the main issues to be:

- (a) The effect that the appeal proposal would have on the delivery of the Government's climate change programme and energy policies.
- (b) Whether the appeal proposal would be acceptable 'in principle' under WCS policy WCS6.
- (c) The effect that the appeal proposal would have on the character and appearance of the Vale landscape and the setting of the Cotswolds AONB.
- (d) The effect that the appeal proposal would have on the setting of various heritage assets in the vicinity of the appeal site.

Delivery of the Government's climate change programme and energy policies.

Introduction

999. Energy policy is an important component of the Government's climate change programme. There is a legally binding commitment to cut greenhouse gas emissions by at least 80% by 2050 compared to 1990 levels (CD6.5, paragraph 2.2.1). In achieving the transition to a low carbon economy the UK needs to wean itself off the current high carbon energy mix to reduce greenhouse gas emissions and to improve the security, availability and affordability of energy through diversification (CD6.5, paragraph 2.26). Renewable energy infrastructure includes energy from biomass and/or waste (CD6.6, paragraph 1.8.1).

1000. Support for the transition to a low carbon future in a changing climate and encouraging the use of renewable resources by, for example, the development of renewable energy is one of the 12 core principles set out in the Framework (CD6.1, paragraph 17). The same policy document states that:

- Planning plays a key role in supporting the delivery of renewable and low carbon energy and associated infrastructure which is further said to be central to the economic, social and environmental dimensions of sustainable development (paragraph 93).
- Local planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable or low

carbon sources to help increase the use and supply of renewable and low carbon energy (paragraph 97).

- Local planning authorities should not require applicants for energy development to demonstrate the overall need for renewable or low carbon energy and should also recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions (paragraph 98).

1001. The Framework specifically does not contain policies for nationally significant infrastructure projects which are determined in accordance with the Planning Act 2008 procedures and the relevant national policy statements (CD6.1, paragraph 3). However, the same paragraph confirms that those national policy statements form part of the overall framework of national planning policy and are a material consideration in decisions on planning applications (my emphasis).

1002. This is entirely consistent with what is said about the role of the particular national policy statement in the planning system in both the Overarching National Policy Statement for Energy – (EN-1) (CD6.5, section 1.2) and in similar terms in the National Policy Statement for Renewable Energy – (EN-3) (CD6.6, section 1.2). Since their publication both have been accepted as relevant in all decisions on EfW appeals [90].

1003. The Framework does not contain specific waste policies either since national waste policy is published as part of the national Waste Management Plan for England (CD7.30). PPS10, and any revision to it published during the consideration of this appeal⁴⁴, is incorporated into the national Waste Management Plan for England. Nevertheless, regard must be had to the policies in the Framework so far as relevant to decisions on waste planning applications (CD6.1, paragraph 5).

1004. The Waste Management Plan for England very explicitly incorporates the Government Review of Waste Policy in England 2011 and specifically refers to A Guide to the Debate as providing factual information to those interested in the development of facilities to efficiently recover energy from residual waste (CD7.30, page 13).

1005. I consider UBB's characterisation of the status of these documents [89] to be broadly correct. A Guide to the Debate is, in my view, a very clear and helpful document that assists understanding of many of the issues of relevance to the determination of this appeal. Given the status it has been afforded in the recently published Waste Management Plan for England, Mr Watson cannot be entirely correct in saying that it cannot be relied upon for any definitive information on the question of low carbon generation although he is right to note that it is a non-technical publication (GV1, paragraph 311). Nor, in my view, can he be correct as to the weight that should be attributed to arguments based upon it [806]. For UBB Mr Phillips considered that it was deserving of considerable weight (UBB/INQ/17, paragraph 30) while for SDC Mr Simons felt it should be afforded significant weight (SDC/INQ/3, footnote 5, page 35). There is little between these two assessments, with which I concur.

⁴⁴ Inspector note: At the time of writing Ministers are considering the consultation responses.

1006. The appeal proposal would have a dual role. First, it would manage by means of combustion some 190,000 tonnes of non-hazardous residual MSW and C+I waste per annum, the overwhelming majority of which is currently disposed of to landfill. Second, the process would have an installed electricity generating capacity of some 17.4 Megawatts of which 14.5 Megawatts would be exported to the local network while the remainder would be used in the operation of the facility [47]. The facility has been designed and would be constructed in CHP ready mode with its R1 status confirmed by the EA [9]. This is the highest level of certification available prior to actual construction and operation of a facility [94].
1007. Renewable energy is that which comes from renewable non-fossil sources. The appeal proposal would use residual waste as the fuel source. Typically, such wastes contain a significant proportion of materials like food and wood (the 'biogenic' materials) and energy produced from this material is considered to be renewable. However, residual waste also contains wastes, such as plastics, manufactured from 'fossil' fuels. Energy from this fraction of the waste stream is not renewable and, for a mixed waste stream such as that in the appeal proposal, the energy recovered is considered to be only a partially renewable energy source (CD7.9, paragraph 18).
1008. UBB's case on this is put in detail by Mr Aumonier (UBB 5) and by Mr Phillips in closing [89 to 138]. In short, this is that there is an urgent need to divert the County's waste from landfill; much needed renewable energy with potential exploitation of CHP would be provided thus increasing energy security and assisting the achievement of renewable energy targets; and carbon dioxide otherwise emitted in the generation of energy would be reduced and harmful methane emissions from landfilling would be displaced [138].
1009. GlosVAIN accepts that renewable energy would be generated from the biogenic fraction of the waste and that this electricity would be classed as low carbon [785]. Nor does GlosVAIN challenge the need for renewable generating capacity [786]. However, it does challenge assumptions made by UBB and thus the actual contribution that would be made believing the renewable element to be considerably overstated [787 to 792]. GlosVAIN also considers even the lower carbon savings now claimed to be overstated since no allowance is made by Mr Aumonier in his WRATE model for the decarbonisation of the electricity grid to 2030 [795]. Finally, GlosVAIN does not accept that the facility would ever operate in CHP mode thus rendering its efficiency less than claimed [801]. SDC takes a similar position in that regard [707 to 715].
1010. What therefore appears to me to be in issue is first, the extent to which the appeal proposal would represent a renewable and low carbon source of energy and, second, the contribution, if any, it would make towards cutting greenhouse gas emissions. The weight that should be attributed in any planning balance to these two benefits claimed for the proposal can then be assessed.

Renewable and low carbon energy

1011. Residual waste typically contains many items that will have come from biological sources and the carbon stored within them is known as biogenic carbon. Other items that will be present such as plastics are manufactured using fossil fuels such as oil and the carbon embedded in them is known as fossil carbon. Biogenic carbon is also termed short cycle carbon because it was only

recently absorbed in growing matter. On the other hand, fossil carbon was absorbed millions of years ago and would be newly released to the atmosphere if combusted (CD7.9, paragraphs 37 to 38). These are principally accounting conventions when calculating contributions to global warming; the atmosphere does not distinguish between CO₂ released from a biogenic or fossil source (CD7.9, paragraph 37 and footnote 26).

1012. The extent to which the energy produced by the appeal proposal can be classed as renewable therefore turns on the proportion of biogenic material in the residual waste stream that would be treated. In the submitted application documents the renewable energy was assessed as 56% of the total ([48] and UBB1, paragraph 5.3.31) although this was revised to 52.6% by Mr Roberts (UBB1 Y, paragraph 8) as a result of further calculations by Mr Aumonier. For the reasons Mr Watson sets out (GV1, paragraphs 264 to 279) GlosVAIN calculate the figure as 47.8%.
1013. UBB used data for the County to assess the composition of MSW and EA Wales data for C+I waste composition (UBB5 I, paragraph 2.1.3). This is somewhat dated being from 2007, 2008 and 2010. The WDA has to accept the waste that is provided to it by the WCAs (whose collection arrangements may change) and UBB recognise that the make-up of the waste that the facility would deal with will likely change over its operational lifetime [110]. There it is said that UBB could preferentially select C+I waste with a high biomass content which would enhance the renewable energy produced. Ironically, if GlosVAIN is correct about the extent to which the WDA has overstated the MSW that would arise over the lifetime of the facility, the opportunity for UBB to do so may well present itself.
1014. In these circumstances there is therefore some uncertainty about the proportion of the energy that would be produced that could be correctly classed as renewable at any point in the facility's operational life. Although Mr Watson suggested that it may actually be lower than he calculated (GV1, paragraph 276) he did not put a figure on this [792].
1015. However, it seems to me that this is not relevant to this particular issue. I was not directed to any policy statement that sought to set a threshold for renewable energy above which a proposal must remain to be classed as making a contribution to the nation's renewable energy requirements. On the contrary, the evidence is that even the contribution made by small schemes is to be welcomed [111].
1016. Moreover, EN-1 confirms that to meet the target of sourcing 15% of the total UK energy across all sectors from renewable sources by 2020 '*...new projects need to continue to come forward urgently...*' (CD6.5, paragraph 3.4.1). While it goes on to suggest that by that date 30% or more of the UK's electricity generation at all scales 'could' come from renewable sources, there was no evidence to support Mr Watson's assertion that there was 'no doubt' that the proportion of electricity supply coming from renewable energy would exceed 15% well before 2020 (GV1, paragraph 100). Even if that assertion is proved to be correct, as Mr Aumonier points out, it is but a point on a trajectory towards maximising the contribution from renewables, rather than a ceiling on that contribution (UBB5/REB/A, paragraph 50). This is reinforced later in the same section of EN-1 (CD6.5, paragraph 3.4.5).

1017. Furthermore, the same section of EN-1 confirms EfW as one of the five sources of future large-scale renewable energy generation, the others being onshore and off shore wind, biomass and wave and tidal (CD6.5, paragraph 3.4.3). It goes on to say that renewable energy from the combustion of waste in EfW plants such as that proposed satisfies what Mr Phillips described as the four 'D's: dependable, diversified, distributed and dispatchable energy [107].

1018. In summary therefore, national energy policy confirms that there is an urgent and continuing need for new renewable electricity generating projects and recognises that even small scale projects have a valuable contribution to make. There is no limit to the provision that can come forward and no threshold below which the renewable energy contribution from a mixed scheme should be disregarded in some way. EfW is recognised as a potential source of such energy which unlike weather dependent sources can provide dependable peak and base load power on demand.

1019. The appeal proposal would export some 14.5 Megawatts to the local grid with around half classified as renewable. The appeal scheme would therefore accord with national energy policy in this regard. I return to consider the low carbon nature of the proposal below.

Greenhouse gas emissions

1020. Guide to the Debate contains a useful section on this and compares EfW with landfill (CD7.9, paragraphs 33 to 44). This is relevant to the consideration of this appeal since the appeal proposal is designed to manage residual waste, that is waste which remains after the prevention, preparing for reuse and recycling initiatives and activities of both the WCAs and the commercial and industrial waste generators have been brought to bear. Currently, this waste is largely landfilled by the WDA and the private sector.

1021. In short, managing untreated mixed waste by either combustion in an EfW plant or deposit in a landfill will release gases that contribute to global warming. However, whereas landfill will release both CO₂ and methane, an EfW process emits only CO₂. Methane is currently assessed as being 25 times more damaging (CD7.9, paragraph 35) although this multiplier may be increased (UBB5 I, paragraph 1.3). Whether EfW produces a lower volume of greenhouse gases than landfill is a complex assessment that needs to be undertaken on a case-by-case basis (CD7.9, paragraph 42). Nevertheless, there are two general rules that apply. These are (CD7.9, paragraph 43):

- The proportion and type of biogenic waste is key with high biogenic content making EfW inherently better and landfill inherently worse.
- The more efficient the EfW plant is at turning waste into energy, the greater the carbon offset from conventional power generation and the lower the net emissions from EfW.

1022. UBB has used WRATE to assess the CO₂ equivalent savings that would be achieved by the appeal proposal. This is explained by Mr Aumonier in his evidence (UBB5, section 5.5) and set out in detail in UBB5 I. GlosVAIN is highly critical of the approach used (GV1, paragraphs 323 to 359).

1023. Some of these criticisms do not stand scrutiny. The assumption in the model that the electricity exported from the appeal proposal would displace that

otherwise produced by a CCGT should not be criticised. This is what Guide to the Debate identifies as the current standard comparator since this is the marginal technology choice if building a new power station [115]. As already discussed [1005] this document is one which should be afforded considerable weight as part of Government policy.

1024. In contrast to GlosVAIN, the change to Footnote 29 in the Guide to the Debate that Mr Watson draws attention to (PINQ4) still does not advocate the use of the long run marginal supply as the comparator. In addition, he may well be right that Dairy Crest provides a major opportunity to match available heat load with potential heat supply from the appeal proposal. Mr Aumonier did not rule this out although he accepted that it was a long shot [711]. However, for the 'win-win' opportunity Mr Watson claims to be realised, there would need to be an available site and a clear proposal at or nearer to the Dairy Crest plant; none has been put forward at this Inquiry. Mr Watson's argument is therefore a theoretical one to which very little weight should be given.

1025. Nor is it wrong to consider the savings by comparison with greenhouse gas emissions from landfill. That is the waste management method that is used now and would be used in the near future at least should the appeal proposal not come forward [477].

1026. Having said that, WRATE is clearly very sensitive to the default assumptions embedded in the model and those fed into it. That much is clear since while the model used for the submitted the planning application assessed the carbon benefit as some 40,480 tonnes CO₂ equivalent (UBB5, paragraph 183), that undertaken by Mr Aumonier estimated the saving to be 19,714 tonnes CO₂ equivalent (UBB5, paragraph 181). Although Mr Aumonier explains the reasons for this (UBB5, paragraphs 183 to 184), it does tend to lend support to some of the criticisms identified by Mr Watson (GV1, paragraph 329).

1027. Guide to the Debate confirms that generating heat and electricity together through CHP typically produces much greater efficiencies, in excess of 40% (CD7.9, paragraph 121). As set out above from the same source, the more efficient the EfW plant is, the greater the carbon offset [1021]. It is not therefore surprising that Mr Aumonier does not dispute (UBB5/REB/A, paragraph 23) Mr Watson's evidence that incinerators are particularly inefficient generators of electricity although this can be improved by operation as CHP (GV1, paragraph 348).

1028. From this it seems to me therefore that the carbon offset that would be achieved, the extent to which the appeal proposal can be considered low carbon and therefore the contribution to reducing greenhouse emissions that would be made by the appeal proposal, will be influenced by the potential for CHP to be realised.

1029. That no contracts exist between UBB and potential users of any heat is entirely to be expected at this stage of the process towards a planning permission and this has been accepted in other appeal decisions of this nature [120]. Nevertheless, UBB has identified what it considers to be a number of potential users through the heat user study presented by Mr Aumonier (UBB5C). However, Mr Simons neatly summarised the difficulty with this evidence based as it is largely on conversations and correspondence entered into by Mr Aumonier but not available to the Inquiry for reasons of commercial sensitivity [711].

Equally concerning is the observation in Guide to the Debate that while many EfW plants are built 'CHP ready' a lack of heat customers, due either to location or the relative cost of alternatives, means that they operate in the less efficient electricity-only mode (CD7.9, paragraph 81). Mr Watson's evidence was that only three out of 25 plants actually export heat (GV1, paragraph 357).

1030. Given that the WCS is technology neutral it would have not been sensible to examine the CHP potential of every site from the outset of the site selection process. To have done so and then sieved out those with no or only poor potential in relation to only one of the many waste management uses envisaged by the WCS may have excluded sites which in all other respects would have been suitable. I therefore agree with the position of UBB that it was right to investigate this matter once a shortlist of sites had been drawn up on the basis of the full range of criteria [122].

1031. No party to the Inquiry suggested that any of the other sites allocated in the WCS had a CHP potential the same as or better than the appeal site [123]. However, retrofitting existing developments with the necessary infrastructure to accept heat from an external source such as the appeal proposal was said by GlosVAIN to be problematic [797], an assertion that did not seem to be challenged by UBB [124].

1032. There are nevertheless a number of potential housing and commercial developments proposed in the immediate vicinity of the appeal site where this would not be a barrier if the necessary infrastructure was included from the outset. These are the northern part of Javelin Park, Quedgeley East and the extension to Hunts Grove. Mr Wyatt however confirmed in answer to my question that there was no specific policy requirement for the developers of these proposed sites to specifically consider the utilisation of any heat available locally. Such use could come forward however as an 'Allowable Solution' under policy ES1 of the SDLP submitted for examination for addressing regulated CO2 emissions targets (CD5.4, page 138). Taking this into consideration I generally agree with UBB about the prospects of the potential for CHP being taken up at one of these sites being realistic although I would not put it as high as Mr Phillips did [126].

1033. To summarise, whether the appeal proposal would be inherently better than landfill with regard to greenhouse gas emissions would depend on the biogenic composition of the wastes. There is no evidence that the content of the residual waste would be determined by the management route chosen. Whatever the biogenic content of the residual waste was at any point in time the EfW facility proposed would be better than landfill in terms of greenhouse gas emissions since there can be no methane released to atmosphere as a result of the process.

1034. However, whether the proposal can be classified as low carbon seems to me uncertain. Although UBB argue that EfW is low carbon the sources quoted for this assertion (Guide to the Debate, EN-1, EN-3 and various appeal decisions) [109], do not put it in quite those terms. In fact Guide to the Debate comes closest to that characterisation when it refers to energy from waste as a partially renewable energy source, '*sometimes referred to as a low carbon source*' (CD7.9, page 1) and, in the context of financing, says (CD7.9, pages 6 to 7) that resources will be put to '*...optimising the role of energy from waste in the hierarchy and as a source of low carbon energy*' (my emphasis throughout).

1035. Indeed EN-3 recognises that CO2 emissions may be a significant adverse impact of waste combustion plant (CD6.5, paragraph 2.5.38) which seems to me inconsistent with an assertion that EfW technology is low carbon. However, Government energy policy confirms that CO2 emissions are not reasons to prohibit the consenting of projects which use these technologies [113]. Furthermore, EN-3 sets that recognition within the context of section 2.2 of EN-1 which is generally about the road to 2050, the transition to a low carbon economy and the decarbonisation of the power generation sector by moving away from fossil fuels. The clear message, therefore, is that in that overall context CO2 emissions from schemes like the appeal proposal are not a barrier to consent.

Conclusion on this issue

1036. There is no development plan policy directly relevant to this issue. In terms of national policy the appeal proposal would:

- Provide an uncertain but not insignificant proportion of the exported electricity generated in the form of nationally needed renewable energy.
- Provide that proportion in a form that was dependable, diversified, distributed and dispatchable.
- Displace fossil fuel generated electricity for that proportion of the generated power and, if the potential is realised, heat that is classed as renewable.
- Displace methane emissions that would arise from continued landfilling of the residual wastes which would be managed at the facility.

1037. The appeal proposal would therefore contribute to the Government's overall policy for energy production over the period to 2050 and would do nothing to hinder its climate change programme. This would be a benefit of the scheme to which considerable weight should be attributed in the planning balance.

Whether the appeal proposal would be acceptable 'in principle' under WCS policy WCS6

Introduction

1038. The part of paragraph 18 of *Tesco* that Mr Elvin emphasised is quoted above [500]. He set out the whole paragraph in his closing submissions (GCC/INQ/13, paragraph 15). There it also says that '(the carefully crafted and considered development plan) *is intended to guide the behaviour of developers and planning authorities*'. This is echoed in the WCS itself where the reason for following a site allocations approach rather than one that is criteria-based is to '*...provide greater certainty for residents and businesses about what may come forward and where, but will also increase confidence within the waste industry as to the availability of suitable sites...which will in turn...improve the prospects of delivery.*' (CD5.1, paragraph 4.81). Clearly therefore a prospective developer is entitled to read the WCS and understand from it what might be acceptable on any given plot of land, particularly those specifically allocated for waste uses.

1039. GCC does not dispute that the recent strategic allocation of the appeal site in WCS policy WCS6 means that the principle of its development for waste management facilities is established [498]. Following *Tesco* and reading the

policy plainly it goes considerably beyond that as Mr Phillips contended [172 to 182].

1040. The heading to the policy is 'Other Recovery (including energy recovery)'. The appeal proposal therefore falls within the scope of the policy. The preamble says that provision will be made for residual waste recovery capacity of up to 145,000 tonnes per annum MSW and up to 73,000 tonnes per annum C+I waste; it is technology neutral. At 190,000 tonnes per annum the appeal proposal falls within the upper limit of that combined range and there is nothing in the WCS that says the required capacity cannot be provided by a single facility. In fact, the WCS anticipates the potential for one large strategic facility to come forward to meet each requirement (CD5.1, paragraph 4.84) and says that it is for the waste industry to bring forward proposals to manage the residual C+I waste (CD5.1, paragraph 4.85). There is nothing to preclude a single plant providing treatment capacity for both residual waste streams.

1041. The policy continues by saying that planning permission will be granted for strategic residual recovery facilities, defined as those handling over 50,000 tonnes per annum, within the outline boundaries of the listed site allocations. The annual waste management capacity of the appeal proposal is clearly above that threshold and the appeal site is wholly within the boundaries shown for Javelin Park in WCS Appendix 5.

1042. In principle therefore planning permission should be granted for the appeal proposal under this policy subject only to compliance with the three criteria set out (the remainder of the policy not being applicable). Those criteria are (a) meeting the requirements of the General and Key Development Criteria in Appendix 5; (b) a particular Habitats Regulation issue; and (c) a requirement that the proposal be for the County's waste needs unless it can be shown to be the most sustainable option to manage waste from further afield. I deal with these in turn.

The General and Key Development Criteria in Appendix 5 - WCS policy WCS6(a)

1043. WCS Appendix 5 is in two parts. First, it sets out a series of General Development Criteria. The Appendix title says that these are for all sites whereas the preamble says that they are applicable to the sites identified in WCS policy WCS6. However, it goes on to say that they are also '*generally applicable*' to all strategic waste management development proposals and will also be relevant to the consideration of any waste development proposal proportionate to the scale of the development proposed. Since WCS policies WCS3, WCS4 and WCS5 also encompass strategic waste management development but, unlike WCS policy WCS6, make no reference to Appendix 5, the circumstances in which these General Development Criteria apply is a little confusing. Be that as it may, there is no question that they are in play in the determination of this appeal.

1044. Second, it sets out Key Development Criteria for each of the five sites allocated by WCS policy WCS6. They are not to be confused with the Environmental Considerations that precede them in the individual site schedules; these are more by way of a description of the site. In respect of Javelin Park, two Key Development Criteria are listed. The first is Access/Highways. This is not a matter of contention between the main parties although it has been raised as an issue by local residents [876, 893, 921, 934, 958 and 959] and is addressed later. The second is Ecology/HRA. Site specific ecological matters are

again not in dispute between the main parties and HRA matters are addressed below when considering WCS policy WCS6(b).

1045. Returning to the General Development Criteria, of those in dispute, CHP has already been addressed to a large degree [1029 and following]. UBB has confirmed that the user and the likely means of connection to the grid have been identified for the electricity that would be exported [119]. Since for both power and heat the actual or potential clients have been identified as far as is possible at this stage of the project development process, I consider that this element of the General Development Criteria has been met.
1046. The next of the General Development Criteria to be in dispute is Design. Since what is said in Appendix 5 simply refers to a requirement to address WCS policy WCS17, this is considered later. Similarly, Ecology/HRA is addressed later too.
1047. That leaves Landscape/Visual Impact. Setting aside for a moment the first paragraph of this section of the General Development Criteria, the second confirms that a broad based landscape and visual impact assessment was carried out for all the allocated sites with the main findings included within the profiles to each site schedule. As noted above by omission [1044], landscape and visual matters are not listed among the Key Development Criteria for Javelin Park. Within the Environmental Considerations section for the site, under Landscape/Visual Impact it is however noted that the area is relatively low and flat so any facility would be clearly visible from the Cotswolds AONB, the M5 and the surrounding low-lying areas (my emphasis). That some screen planting has already been undertaken on the western boundary is also recorded. The next paragraph requires that this consideration be carefully addressed in detail in any application.
1048. The fourth paragraph sets out the possible building heights and scale of development considered in the broad based assessment undertaken by Atkins as part of the preparation of the WCS (my emphasis). These are small, medium and large with large being 4000 to 9000 square metres with buildings up to a height of 40 metres and an emissions stack up to 80 metres tall. These size ranges are said to be a guide to be considered when proposals come forward. However, they were not strictly followed when giving more detailed guidance in the next section. Instead, the medium and large were combined in an 'over 20 metre' category. Why GCC did this is not clear and no-one was available to ask [966]. With respect, what Mr Elvin says [520 final bullet] is speculation and runs counter to his own 'proposition 2' [505].
1049. The guidance section advises on matters such as style, materials, colours, planting and boundary treatment for the small (under 20 metres) and the medium to large (over 20 metres) categories. The latter is set out in full because it is important:

Boundary enhancements should be made where possible to include the advanced planting of a native woodland mix of primarily deciduous trees and shrub understory planting to screen the lower levels of the site.

However, where development is proposed that breaches the potential screening levels, proposals should be designed with particular attention to the requirements of Core Policy WCS17 to ensure that the building is of the highest architectural standard. Appropriate external architectural

treatment/building materials, for example neutral, matt colours should be used and the introduction of reflective, shiny materials must be avoided.

Where possible, large roof and hardstanding expanses should be avoided or broken up to reduce the perceived scale of the facility. For all allocated sites particular consideration should be given to the potential impact on the setting of the Cotswolds AONB and how proposals have addressed potential mitigation measures through design.

In the cases of 'large' scale development proposals (40m+ buildings and stacks) there will be a need to demonstrate that the highest possible architectural design has been employed. (my emphasis)

1050. There is no ambiguity in any of the above. Adopting Mr Elvin's 'proposition 2' [501, 504, 505] it is not necessary to go beyond the WCS itself. In particular, it is unnecessary to examine in detail the work that Atkins did for GCC as WPA in coming to the conclusions set out in Appendix 5 and detailed in the immediately foregoing paragraphs. In doing so it seems to me that the purpose of Mr Elvin [531] and Mr Simons [630] was to question the basis on which the WCS had been adopted, not to resolve any ambiguity in the policy or the Appendix. While they may now disagree with the approach taken by GCC neither argued that, even if it was flawed, this amounted to a material consideration that should outweigh the development plan when applying s38(6) of the Act. I have not therefore considered those arguments further and have taken the text of WCS Appendix 5 at face value and on what I regard as its plain meaning.
1051. Several observations are therefore pertinent. Building height is just that; it is not process height or above ground height or visible height. While it is suggested that small developments should be designed to sit as low in the landscape as possible, this stipulation does not apply to the larger buildings.
1052. As stated already, the three reference categories for assessment purposes are combined into only two for the purposes of the guidance; under and over 20 metres. There is no cut-off and it is wrong to say that developments of the appeal proposal's size were not considered when finalising this part of the General Development Criteria. In drawing attention to the need to pay particular regard to WCS policy WCS17 in the second italicised paragraph above [1049] it is the appearance of the buildings that is constantly stressed. For those buildings larger than the 'large' study parameters the only additional requirement is the need to show that the highest possible architectural design has been employed (my emphasis). In both cases this is a narrower interpretation of 'design' than discussed above [990 to 992] and influences the way compliance with WCS policy WCS17 should be assessed. Although I do so with caution in the light of 'proposition 2', I consider the 'additional' to be implicit as it would be nonsensical if all the other requirements for 20 metre plus buildings did not apply to the very largest.
1053. Finally, there is no requirement for any development coming forward on Javelin Park or any of the other allocated sites to be limited in height so that the skyline is not breached. However, Mr Russell-Vick identified such a breach as a significant cause of harm [550 to 552, 560] and in XX by Mr Phillips confirmed that from the representative viewpoints he was taken to, a building at Javelin Park above about 34 metres would cause the same degree of harm as the appeal proposal since the skyline would be breached by it [205]. While that is clearly

and properly his professional view it amounts to an 'in principle' objection to any development in excess of some 34 metres [77]. That is simply contrary to what is said in the WCS and thus an untenable position for GCC to now take.

1054. Furthermore, as shown in the timeline [964], if that had have been the view of the WPA in the light of the application it had by then received, it could have made this clear during the examination hearings. It did not; in fact, it did the complete opposite [72].

1055. The exposed nature of the site and its prominence in views from the AONB were well understood; attention was drawn to them [1047]. The appeal proposal is within the 20 metre plus category in the adopted WCS Appendix 5 although the emissions stack would be lower than the maximum stack height assessed. While the footprint would exceed that assessed, the ranges are a guide, not an absolute and in any event have not been strictly adhered to. It is clear too that the assessment was based on scale as well as height [1048]; an objection on this ground is therefore inconsistent with what the WCS says.

1056. GCC does not object to the appearance of the appeal proposal [167] which is the principal factor to be taken into account when assessing acceptability of any proposal against WCS policy WCS17 [1049]. However others do, so this is a matter to which I shall return when considering compliance with WCS policy WCS17.

1057. To summarise, the appeal proposal would be within the parameters of the guidance that underpins that part of the General Development Criteria in Appendix 5 as adopted. In my judgement therefore it is incompatible with the content of the WCS to object to the appeal proposal for reasons of height and scale. Returning now to the first paragraph of the Landscape/Visual Impact section of the General Development Criteria and the landscape and visual impact assessment required to support all proposals, it is my judgement that this should explain how the applicant has addressed the guidance set out above [1049] in the light of WCS policies WCS14 and WCS17 which are concerned primarily with the mitigation of significant adverse effects that a proposed development would otherwise have. In respect of WCS policy WCS17, that must be primarily the way in which the building's appearance has been developed to address any issues arising from that assessment.

1058. That is a matter of detail for assessment against WCS policies WCS14 and WCS17.

Habitats Regulation - WCS policy WCS6(b)

1059. The alleged conflict with WCS policy WCS6(b) is raised principally by GFOEN and GlosAIN [926]. Underpinning the case put by Mrs Newton for GFOEN is an argument that an AA is required by both the Habitats Regulations and the WCS and that this has not been carried out [850 to 874]. As already indicated [980], this contention may have arisen from the flawed wording of WCS policy WCS6(b).

1060. Mr Phillips dealt comprehensively with these matters and those that I raised on this topic (INSP/INQ/1) in his closing submissions [407 to 442] drawing on European and national case law and guidance, the written and oral evidence of Mr Othen and the EA decision document (CD2.2).

1061. Dealing first with possible in-combination effects, the short point is that current law and guidance is that at the project stage (as opposed to the plan making stage which has passed unchallenged), it is only those schemes and projects about which sufficient detail is known for a sensible assessment to be made that need to be taken into account. This has been done by UBB, the EA and GCC in its Habitats Regulations Screening Assessment (CD3.72). Specifically, account was taken of the extant planning permission for the gasification plant at Moreton Valence and other plans and projects to the extent that information about them allowed. The policies of the WCS itself would ensure that no facility of similar effect would be permitted at any of the other sites allocated in WCS policy WCS6 [414 to 431].
1062. I turn now to the effect that there would be on the Cotswold Beechwoods SAC and what Mrs Newton contended was an inadequate survey of the SAC as a whole. My understanding of the evidence of Mr Othen is that the air dispersion modelling (accepted as appropriate by all the relevant authorities [438]) showed that even on the cautious approach taken it was only over a small part of the SAC that there would be any deposition of pollutants. Accordingly, it was that area that was the focus of the survey work undertaken. In any event, the impacts predicted would be less than both the short term and the long term Critical Level benchmarks. These are the levels that trigger further assessment; they are not reached here so the impacts may be screened out as insignificant. No challenge to the 1% threshold was made here and it has not been challenged through the courts [432 to 437].
1063. My mistaken assumption that even where a number of projects each contributed less than 1% of the Critical Level, the cumulative effect would exceed the threshold and thus trigger AA was corrected [435] and I acknowledge that correction.
1064. A number of other matters raised were addressed by Mr Phillips [439 to 442] including the important distinction to be drawn between the appeal proposal and *Rufford* (CD9.6). There, the proposed development would have been on land used by woodlark and nightjar and the ecological effects arose not as a result of aerial emissions but from direct loss of habitat. The 1% screening assessment did not therefore arise.
1065. On the evidence before me I conclude that AA is not required and there would be no conflict therefore with WCS policy WCS6(b). However, as decision maker, it is for the Secretary of State to satisfy himself that this is the case.

Dealing only with the County's waste - WCS policy WCS6(c)

1066. A Guide to the Debate (CD7.9) was published after the adoption of the WCS. Mr Roberts quotes extensively from it when discussing the proximity principle, highlighting those passages that he considers supportive of UBB's case that facilities should not be restricted to managing waste sourced from the local or administrative area within which they are located (UBB1, paragraphs 4.14.3 and 4.14.4). However, in answer to my question he confirmed that this was not to suggest that WCS policy WCS6(c) did not reflect current Government policy (UBB/INQ/17, paragraph 520).
1067. The appellant submitted a document to deal with this issue at Regulation 22 stage (CD1.6, Appendix 2). The gist of it is that UBB's intention is that the

residual waste to be managed will be sourced from the County. UBB considered that the C+I waste tonnages assumed in the WCS considerably understated actual arisings (CD1.6, paragraph 2.4.5). This argument was not pursued at the Inquiry in view of my comments at the pre-Inquiry meeting (UBB1, paragraph 5.2.34) but neither did Mr Roberts change his view. As such UBB is confident that waste will not need to be drawn in from other areas (CD1.6, paragraph 3.5.1).

1068. However, should it need to be this would be sustainable for the reasons summarised in CD1.6, paragraph 3.5.2. In short, these are:

- That waste which would otherwise be landfilled would be managed further up the waste hierarchy given the lack of recovery capacity in the region.
- There would be a contribution to renewable energy generation and a reduction in greenhouse gas emissions.
- Economic factors (gate fees and transport costs in essence) would make it highly unlikely that waste would move over significant distances unless there was no available facility closer to the C+I waste producer.

1069. It seems to me that GCC accepts that this criterion is complied with at the point at which the appeal falls to be determined (CD1.9, paragraphs 7.35 to 7.37) but is concerned that this may not continue to be the case once it becomes operational if the tonnages of residual waste actually produced in the County over the life of the facility prove to be less than assumed in the application (CD1.9, paragraph 7.38). Since the future source and nature of any waste to be imported cannot be known at this stage GCC considers continuing compliance can only be achieved through the imposition of a condition that enables the sustainability to be assessed at the time by way of an application (CD1.9, paragraph 7.39).

1070. In my opinion Government policy on this has evolved. One of the key planning objectives set out in PPS10 for those delivering planning strategies is to provide a framework in which communities take more responsibility for their own waste (CD6.3, paragraph 3, 2nd indent). However, the Government Review of Waste Policy in England 2011 asks councils to work together and look at waste management needs across different waste streams and across administrative boundaries. Trans-boundary options should not be missed and there is no requirement for individual authorities to be self-sufficient in terms of waste infrastructure. Transporting waste to existing infrastructure to deliver the best environmental solution should not be considered a barrier (CD7.6, paragraph 263). Any uncertainty there may have been about the status of this document has now been removed [1004]. The passages in Guide to the Debate quoted by Mr Roberts [1066] develop this theme and in particular suggests that there are clear advantages in an existing plant taking waste from a range of locations to keep that plant running at maximum efficiency (CD7.9, paragraph 155).

1071. While WCS policy WCS6(c) is not necessarily inconsistent with Government policy now, weight should be attributed to what I consider to be the shift in emphasis in the Waste Management Plan for England (CD7.30) by incorporation of the two earlier documents (CD7.6 and CD7.9). Furthermore, in the absence of the condition that GCC wish to impose, this criterion can have no practical effect once planning permission has been granted. For the reasons set out below

[1297], I do not consider that the condition is justified. Accordingly, I do not consider that the appeal proposal would conflict with WCS policy WCS6(c).

Conclusion on compliance with WCS policy WCS6

1072. For the reasons set out I do not consider that there would be any conflict with WCS policy WCS6(b) or (c). It is not possible to finally conclude on compliance with WCS policy WCS6(a) since an assessment against WCS policies WCS14 and WCS17 is required. However, the Landscape/Visual Impact section of the General Development Criteria set the context for that assessment. As explained above, it is my view that what is acceptable in principle in terms of the scale and height of any proposal coming forward has been established. The appeal proposal would be within those parameters. It follows from the above analysis that I do not agree with the fundamental principles on which GCC and SDC advanced this part of their respective cases.

The character and appearance of the Vale landscape and the setting of the Cotswolds AONB

Introduction

1073. GLVIA3 contains a short section on '*professional judgement in LVIA*' (CD10.1, paragraphs 2.23 to 2.26). It says that it is a very important part of landscape and visual impact assessment and confirms that even with qualified and experienced professionals there can be differences in the judgements made. It also notes that where those judgements made on behalf of different interested parties vary widely it is the decision maker who will ultimately need to weigh the evidence and come to a conclusion.

1074. It is therefore unfortunate that none of the landscape professionals involved in the preparation of the planning application or in the initial consideration of the submitted planning application and the preparation of the report to the planning committee gave evidence to explain the professional judgements underpinning those documents.

1075. The report to committee contains a lengthy discussion on Landscape and Visual Impact (CD1.9, paragraph 7.112 to 7.144) which I have read many times. The views of GCC's then consultants Bureau Veritas end at paragraph 7.136. This concludes by saying that '*...in relative close proximity there would be a significant adverse effect on views from the Cotswold AONB based on the criteria defined in the ES, but that the development would be acceptable in the context of the wider landscape*'. What I take to be ways of mitigating this effect are then suggested.

1076. Paragraph 7.141 repeats Bureau Veritas's conclusion but paragraph 7.142 concludes '*Whilst this issue is finely balanced, overall the proposed development is not considered to be so prominent that material harm would be caused to the setting of the AONB or that its presence would have an unacceptable impact on long distance views*.' Therefore I simply do not understand how the report author then arrived at the conclusion in paragraph 7.143 that there would be an adverse impact on the landscape contrary to WCS policy WCS14. The only explanation seems to be the sentence '*At closer quarters the building would be seen as a much more dramatic structure breaking the skyline, and unduly prominent to the extent that it conflicts with the objectives of development plan*

policies'. Why the consultant's suggested mitigation measures would not be acceptable is not explained and as I have already found, this conclusion is wholly inconsistent with what WCS Appendix 5 and thus WCS policy WCS6 says.

1077. In paragraph 7.144 the fact that the development plan must be considered as a whole is noted, as is the recognition that in some policies, including WCS policy WCS14, other factors could outweigh any harm identified. That balance was struck in the concluding section of the report. Again this says '*The visual impact of this proposal and the effect on the character of the landscape is therefore considered contrary to WCS policy WCS14 and WLP policy 37.*' (CD1.9, paragraph 8.15). It then goes on to explain that this WCS policy and others recognise the potential for social, economic and environmental benefits to outweigh any harm to the landscape that might arise and concludes that the proposal does accord with the development plan, taken as a whole (CD1.9, paragraph 8.22). That therefore represents a balance struck by those drafting the report in favour of the appeal proposal.

1078. Insofar as it can be understood from the record of the debate held by the members (CD1.10, page 58), this appears to be a case where the committee took a different view on the striking of that balance. It is not a case where the professional advice of officers on a technical matter was not accepted. The position of those presenting the professional landscape and visual impact advice to members had not therefore become untenable. Nevertheless, they were not available to the Inquiry to explain their report.

1079. This difference of view on the planning balance is reflected in the first of the reasons for refusal (CD1.11). However, it is only in the second reason for refusal that some indication of the cause of the identified policy conflict is given. This is that '*...the form of the development will introduce a prominent building causing significant loss of the open character and the natural appearance to this part of the Severn Vale...*'. The third reason for refusal explains that there would be significant harm to the overall setting of the AONB and long distance views. The reason for this is presumably that the layout and design measures do not succeed in mitigating the adverse impact.

1080. Therefore while the case on this issue put by GCC at the Inquiry was, in my view, quite clear, it was nevertheless an embellishment of the apparent reasons why the planning application was refused.

1081. The objection of others is much easier to understand. As a simple summary it is difficult to improve on the EiC of Ms Marsh for SDC or the opening and closing statements of Mr Watson for GlosVAIN. Ms Marsh said that the existing buildings established a height that was known and acceptable with familiarity. However, it was difficult to reconcile the height of the appeal proposal on this site – '*...it's just too big*'. Mr Watson suggested that the inspiration for the design was a jumble of boxes on the back of a delivery van after a rough ride down a pot-holed track. Neither characterisation is technical but both sum up the general position of the local community on this issue – too large in the landscape with the visual effect being exacerbated by a poor appearance.

1082. These go to the essence of WCS policies WCS14 and WCS17 and are the context in which I have considered this issue.

My approach to the consideration of this issue

1083. I asked for and received suggestions on the approach I should take to resolving the conflicting professional judgements put before me in advising the Secretary of State [219, 648, 760 and 762]. In answer to my question Ms Marsh said that the reasoning for any judgement should be transparent. In the light of the guidance about the small differences between the two editions of GLVIA [522] I have generally followed the advice in GLVIA3 in the following consideration.
1084. The landscape and visual impact assessment methodology and the viewpoints from which any assessment should be undertaken were agreed by all the relevant parties prior to the ES being prepared [223]. While those opposing the appeal proposal have now considered other viewpoints these it seems to me are additional to those already examined in the application submissions rather than ones that illustrate an entirely different effect.
1085. Included within the ES is an assessment matrix (CD1.2 (iii), Appendix 8.1, Table 7). This shows how a significant effect in EIA terms is determined and is to be applied in order to make that judgement for both landscape and visual impact. This is important since it is only where there would be a significant adverse impact that the possibility of a conflict with WCS policy WCS14 arises [985].
1086. The table shows on one axis 'magnitude of change' graded into five categories ranging from 'very small' to 'very large'. On the other axis is 'sensitivity of receptor' with five categories ranging from 'low' to 'high'. Within the matrix the effect is tabulated with 25 possible outcomes. These range from 'slight' where the magnitude of change would be very small and the sensitivity of the receptor low to 'substantial' where the equivalent assessments would be very large and high. Between those ends of the spectrum are various combinations of assessments. In addition, where the magnitude of change would be 'negligible' or 'no change' the effect is shown as 'negligible' and 'no effect' respectively.
1087. In all, 10 of the possible outcomes produce a significant effect in EIA terms. Obviously, a very large magnitude of change where the sensitivity of the receptor is high leads to a significant effect. However, so does a very large magnitude of change combined with a low to moderate sensitivity and a small magnitude with a high sensitivity. The assessment of effect therefore depends on judgements about both the magnitude of change and the sensitivity of the receptor. Given the number of categories, those judgements will be quite fine in most cases.
1088. I have therefore sought to understand whether there is any significant flaw within the methodology adopted by UBB and/or whether any of the judgements made by Mr Smith are simply untenable rather than a matter for legitimate argument. I have not sought to impose my own judgement although in weighing the evidence I have drawn on my own experience of the area over nearly 40 years.
1089. Finally, GLVIA3 draws the very clear distinction between a landscape impact and a visual impact. It says, in bold type, in the very first paragraph of the Introduction '*Landscape and visual impact assessment is a tool used to identify and assess the significance of and the effects of change resulting from the development on both the landscape as an environmental resource in its own right and on people's views and visual amenity.*' (CD10.1, paragraph 1.1)

1090. This distinction is carried through to the WCS. WCS policy WCS14 is headed 'Landscape' and says nothing about visual amenity or impact. The written justification is actually headed 'AONB' and also makes no reference to visual amenity or impact (CD5.1, paragraphs 4.231 to 4.238). Those references are to be found in the written justification for WCS policy WCS17, 'Design'. Here it says '*Like any form of built development, waste management facilities, particularly large-scale proposals have the potential to create a significant visual and environmental impact.*' (CD5.1, paragraph 4.262). It was the form of the development that was cited in the second reason for refusal [1079]. I have already noted the way WCS Appendix 5 describes the consideration against WCS policy WCS17 in terms of the appearance of the development [1052].

1091. In the following I have therefore maintained this distinction in my consideration of the appeal proposal against WCS policy

Landscape Impact: Establishing the baseline

1092. WCS policy WCS14 requires under the 'General Landscape' section an assessment of the effect on the local landscape as identified in the LCA. What this comprises is set out in a footnote reference to the GCC web site. This then reveals that the policy is referring to the Cotswolds AONB LCA (2004) (CD10.9) and the Gloucestershire LCA (CD10.4).

1093. GLVIA3 includes a section on using existing character assessments (CD10.1, paragraphs 5.12 to 5.18). It advises that, in general, they should be used but reviewed although any departure from the findings of an existing established LCA would need justification. It also advises that the landscape should be described both as it is and as it might be in the absence of the development proposal (CD10.1, paragraph 5.33 for example) and that in ascribing a value to the landscape the views of local people should also be taken into account (CD10.1, paragraph 5.32 as one of several references).

1094. It is agreed (CD4.7, paragraph 7.1) that the appeal site is within the Settled Unwooded Vale landscape character type and within the Vale of Berkeley LCA both as defined in the Gloucestershire LCA. It is also agreed at the same point of the document that the Stroud District LCA (2000) (CD10.8) and the Cotswolds AONB LCA (2004) (CD10.9) are relevant.

1095. The landscape character of what the Gloucestershire LCA describes as the most extensive landscape character type within the Severn Vale study area (CD10.4, paragraph 5.6.2) is set out in whole in the ES (CD1.2 (iii) Appendix 8.3a) and extensively by Mr Russell-Vick (GCC/3/A, section 4). Without going through this in detail, the area is best described as a mosaic of rural and urban elements in what is a predominantly open, gently undulating landscape. That it is a mainly horizontal landscape with few vertical features other than some church spires was agreed [653]. Nevertheless, there are some other vertical features which, even if not within the Vale itself, are certainly visible from higher ground when looking across it. These include but are not restricted to the nuclear power station at Berkeley, some developments at Sharpness Docks and the Dairy Crest development at Stonehouse.

1096. Moreover, the Gloucestershire LCA confirms that transport infrastructure, such as the M5 motorway and the railway, exerts an influence through both its physical presence and the effect on the tranquillity of the area from, for example,

the traffic and train noise (CD10.4, page 58). When on Haresfield Beacon the motorway traffic can be heard as a continuous hum while the trains give less frequent but louder pulses of sound. That settlement forms a strong influence on the overall character of the Vale of Berkeley is also noted. In particular, the urban edge of Gloucester is said to be clearly visible from the surrounding area with the industrial units at Hardwicke and on the eastern edge of Quedgeley gaining visual prominence when viewed from the flatter areas of the Vale to the south (CD10.4, page 58). This demonstrates that in the view of the document author at least these lower height developments have a landscape effect.

1097. That is a manifestation of the southern advance of Gloucester during the post second World War period. Figure 12 of the DAS shows the character of the area before the construction of the M5 which, I understand, follows broadly the line of the runway shown in the photograph; it exhibits the predominantly open landscape characteristic of the LCA. However, even though the need for the airfield was understood, its incursion into the landscape was commented upon by local people (see for example Dr O'Dowd IP-53).

1098. The dual carriageway that now links Gloucester to the full movement motorway junction and the housing and retail development to either side of it did not exist. Development of what might now be considered to be 'old' Quedgeley was only just beginning. The area between Javelin Park and the edge of Gloucester has therefore undergone a significant landscape change as the urban fringe has advanced relentlessly to the south.

1099. That expansion is planned to continue further and to cross the motorway to an even greater extent than it already has as a result of the development of Blooms and Quedgeley East [217]. This much is clear from the draft SDLP submitted during the Inquiry for examination. Figure UBB2/4 shows the extent of planned future development and, although not shown on the Figure, that includes the identification of land including the appeal site for employment development [273], while also acknowledging the allocation in the WCS.

1100. A local plan is submitted for examination on the basis that the local planning authority considers it to be sound. One of the soundness tests is deliverability (part of the 'effective' test) and it must follow therefore that SDC expects all this land to be developed out during the plan period for the residential and commercial purposes proposed [379]. Of course, the precise nature of that development is unknown which makes precision in any landscape and visual impact assessment more difficult. That does not alter the fact that further landscape change in the immediate vicinity of the appeal site is planned by SDC.

1101. The approach taken by UBB is to assess the extant B8 warehousing permission as the fallback position. The justification is explained [271 to 279]. Neither GCC [558] nor SDC [658, 659] consider that approach valid as they do not accept there is a realistic prospect of that development coming forward. There is however no question that an extant planning permission exists for B8 warehousing use (CD4.7, paragraph 4.3 and [271]).

1102. I accept that development has not occurred at what would appear to be a prime location, particularly since the motorway junction was upgraded. However, since at the latest 1999 (CD5.34), at least part of the land at Javelin Park has been earmarked for waste uses in a local plan. In my view uncertainty about the precise nature of the type of that development that would take place would have

had a delaying effect on other development. That uncertainty continues today given the nature of the WCS allocation but ultimately it will be resolved, although not necessarily by the outcome of this appeal. When it is, it seems inconceivable that the landowners will not wish to realise the development value of the land which the renewal of the planning permission keeps alive [273]. The most likely development to come forward on the basis of current permissions and stated owner intentions [273] would be B8 warehousing. On the evidence I regard this as a realistic prospect and having regard to the case law referred to me by both UBB and GCC attribute substantial weight to it.

1103. It seems to me that both Mr Russell-Vick and Ms Marsh were acting on the planning advice of other team members when not including the likely future development on and around the appeal site in the baseline. I do not consider this to be an error of methodology on their part but one of judgement by their team colleagues [527]. For the reasons set out, my judgement is that the appeal site and its surroundings will continue to be developed for commercial and, slightly further away, residential uses. The correct characterisation therefore is urban fringe, not rural. In that regard I see no reason to disagree with Mr Smith (UBB2, paragraph 223).

1104. Turning briefly to value, that placed on the area by the local community clearly goes beyond that ascribed by virtue of national and local designations. The landscape is clearly valued for itself and for the views it allows across it to the higher land on either side of the Severn and indeed over it from the numerous vantage points on that higher ground referred to in the evidence. Mr Smith fairly reflects that valuation (UBB2, paragraph 227). He was criticised for not visiting certain areas from which views could be obtained [747]. However, in my opinion the views from Vinegar Hill and the open access land would not be qualitatively different from those available from other elevated points that Mr Smith did assess.

Landscape Impact: Predicting and describing landscape effects

1105. Mr Smith sets out in detail his reasoning for the sensitivities he has ascribed to the various landscape receptors assessed under the worst case scenario (UBB2C, Table UBB2Ca). Having regard to the criteria listed in the ES, and therefore agreed by the parties (CD1.2 (iii), Appendix 8.1, Table 2), these do not seem to me unreasonable. The most contentious would be the decision to ascribe to some 'moderate' rather than 'moderate to high' because of the matrix effect. However, given the views over an already altered landscape by virtue of the urban edge development that can be seen from them, I consider 'moderate' to be the appropriate categorisation for the Vale Hillocks and Escarpment Outlier landscape receptors.

1106. Table UBB2Cb and UBB2Cc combine the magnitude and nature of the landscape effect for the existing site without and with the permitted warehousing respectively. In the summary paragraphs that follow (UBB2C, paragraphs 54 to 62), the effect is classified as positive (not applicable in this case), adverse or neutral as advised in GLVIA3 (CD10.1, page 94, 10th bullet).

1107. Since there would be no direct effect on the landscape fabric, I have had regard to Appendix 8.1, Table 4. Where the sensitivity has been assessed as 'moderate' the magnitude has to be 'large' or 'very large' for the effect to be

significant. Where sensitivity is 'high' any magnitude other than 'very small' would lead to a 'significant effect' assessment.

1108. To be classed either 'very large' or 'large' there has to be at least a very obvious change to the balance of the landscape characteristics over an extensive area. Since this flows from a methodology that is agreed, the criticism of it by Mr Simons (that I take to apply to both landscape and visual impact) seems unfair [663]. That description would apply only to the appeal site itself. A significant effect would not therefore be an appropriate assessment for any receptor rated as 'moderate'.

1109. Those landscape receptors within the AONB are all classified as being of 'high' sensitivity. Mr Smith rates the magnitude of the effect as negligible in most cases and small in the case of the Escarpment in the 'without permitted warehousing' scenario. The justification for this is primarily the evidence of the ZVI maps that show the limited potential for the landscape receptors in the character area to be affected.

1110. I believe that to be correct for the High Wold Valley and the High Wold character areas. On balance, I consider it correct too for the Settled Unwooded Vale character area within the AONB. The extent of intervening vegetation is such that any effect would decline quite rapidly with distance from the appeal site. An assessment of 'negligible' magnitude cannot therefore lead to a 'significant effect' outcome from the matrix.

1111. The most contentious of Mr Smith's assessments, particularly in the eyes of the local community, is that of a 'small' magnitude of change for the Escarpment landscape receptor in the 'without permitted warehousing' scenario. Nevertheless, that is still sufficient to trigger a 'significant effect' in EIA terms, as Mr Smith acknowledges (UBB2, paragraph 251). It is his characterisation of the effect as 'neutral' that needs to be examined since it is this that avoids the conflict with WCS policy WCS14 that would arise from an 'adverse' description. His reason is that *'...whilst some long views over the Severn Vale would undoubtedly include some views of the EfW, this would be just one of a number of built elements which would be seen in the panorama.'*

1112. I consider that Mr Smith underplays the extent to which people view the panorama from the Cotswold Way itself, from viewpoints such as Haresfield Beacon along it and from other high ground vantage points. I accept that in the context of the Cotswold Way as a whole such views may be considered to be fleeting. However, that is not the case on the shorter walks that many people may take. For example, walking along the route in the vicinity of Cam Peak and Cam Long Down there are open views across the Vale for considerable lengths. I do not feel that enough weight is given in his assessment to the extent to which these points are visited in their own right for what can broadly be described as recreational purposes [897].

1113. However, from some of the vantage points on both sides of the Severn mentioned in the written and oral evidence some very large structures such as the two road bridges across the river and the nuclear power stations on its banks at Berkeley and Oldbury can be seen, as can certain buildings at what I took to be Sharpness Docks. These all have considerable height. Closer to the appeal site, the Dairy Crest plant with its stack is prominent. To my mind the verticality of the Dairy Crest development is not the dominant feature in the view; it is the

expanse and light finish of the other industrial and commercial development that surrounds it on what is the edge of Stonehouse.

1114. The Blooms Garden Centre is particularly intrusive from Haresfield Beacon because of, in my opinion, the expanse and colour of its roof. In other views further along the Escarpment and the elevated ground below its highest points, a large box-like building is visible, also very light in colour, that I discovered is at the Walls plant outside Gloucester. While many people refer to the Cathedral, no-one referred to the tall General Hospital with its high stack situated what appears to be almost adjacent in some longer views.
1115. Not all of these structures are within the Vale of Berkeley LCA but they are within the panorama from some of the various high points around it. I was surprised therefore that what I regard as some visually significant built developments either did not appear to be considered intrusive or incongruous in the landscape or even to register at all without my prompting with various people who gave evidence. One explanation as to why could be the associations that people have with some of these buildings [762] which contrasts with their feelings about the appeal proposal. Another may be that the landscape viewed from those points is so expansive that it does indeed have the capacity to assimilate significant developments over the passage of time (UBB2, paragraph 250). In that respect the length of the Escarpment is such that although the detail of the view may change as different buildings and developments become visible, the fundamental character of it, namely the sweep of the Vale with the Severn meandering through it framed by the Escarpment to one side and the Forest of Dean to the other remains essentially unaltered [264, 265].
1116. In my judgement it is the second of these two explanations that is more likely. For example, when on Cam Peak and Cam Long Down the Dairy Crest building and the surrounding development is very prominent when looking in that direction. However, there are many other directions in the broad sweep where it is either peripheral or not noticeable at all.
1117. I believe the same can be said of the view from what is, due to its proximity to the appeal site, clearly one of the most important landscape receptors, Haresfield Beacon. Again, viewing the panorama neutrally rather than specifically trying to imagine how it would be affected by the appeal proposal, I believe the eye would be drawn to the expansive view across the Vale to the Severn and the Forest of Dean beyond. In that view both Dairy Crest and the appeal site would be on opposite edges of the periphery of the view. Looking more towards the Malverns, the view of the appeal development would, in time, be in association with Blooms and the large existing developments across the M5 (all of which have the same light and thus prominent finishes as at Stonehouse) together with the development that is planned. The effect, a tall structure set within but on the edge of an expanse of lower level development, would therefore be similar to the Stonehouse development which does not appear to be objectionable [264, 265]. Indeed, I believe it to be indicative of the way in which this landscape has and will continue to absorb development without fundamental alteration of its character.
1118. In passing, while much has been made of the recreational use of Haresfield Beacon I should note that when I visited the area just before Easter it was not the Beacon that was popular but the more extensive area around the topograph

above it (GCC/3/C, Figure PRV 02). This is where the formal car park marked on that Figure is situated and this was full. Tellingly since they are only likely to park where sales will be achieved, this was also where the ice-cream van was located. This is also on the Cotswold Way which seems to follow a very circuitous route hereabouts and any views of the appeal site from this quite extensive area would be blocked by the Beacon itself.

1119. Irrespective of whichever of the two explanations is correct, I share the view of the appellant that consideration of height alone without taking account of the associated spread of the development and the materials and colours to be used leads to a partial conclusion [267]. The appellant has addressed each of those matters in the detailed design put forward. I therefore consider Mr Smith to be justified in ascribing 'neutral' to the effect. Although there would be a significant effect applying the matrix correctly, that would not be a significant adverse effect. Since that is my conclusion on what is the appellant's worst case scenario, I do not consider further the assessments of the fallback scenario.

1120. If however the Secretary of State takes a different view in the fallback scenarios the effect would be even less since the proposed development would be seen in the context of the B8 warehousing. My finding would therefore be unchanged.

1121. I have also considered the evidence on cumulative impact and see no reason to disagree with Mr Smith's analysis. The key other developments to be taken into account are all within the immediate vicinity of the appeal site and are within broadly the same transitional, urban fringe landscape.

1122. On this part of the issue I therefore conclude that there would be no conflict with WCS policy WCS14.

Visual Impact

1123. For the reasons set out above, [1099 to 1102] the baseline for the consideration of visual impact is also the permitted B8 warehousing. Some of those who spoke represented a widely-held view that as a result of the succession of planning permissions there is a height restriction of 15.7 metres imposed by the Secretary of State on development at the appeal site [879, 892, 915, 925 and 952]. This is incorrect.

1124. There is a condition limiting development to that height. However, as GCC makes clear that was not the result of or informed by a detailed landscape assessment (CD1.9, paragraph 7.137). In reporting to the Secretary of State and recommending the condition, the Inspector also noted that the height of the buildings had not been discussed at the Inquiry although he had been told that height had been the subject of lengthy negotiations (CD9.2, paragraph 121). The nature of those negotiations and what informed them is unknown. Furthermore, if that had been an absolute restriction rather than a matter of judgement on the specifics of a proposal then GCC in preparing the WCS should have acknowledged the fact as a severe constraint; WCS Appendix 5 is silent on this.

1125. There are many points of detail on which the parties disagree. In essence, most of these are matters of judgement. By way of examples only, GlosVAIN cast doubt on the accuracy of the ZVIs [735] and the photomontages [742 to

745]. SDC considers the approach taken by Mr Smith sets a very high bar for an effect to be judged 'adverse' [for example, 662]. SDC also considers the approach taken to be heavily influenced by the superseded requirement to provide a landmark building [676 to 680]. On this, GCC take the same view and go further to say that there was no attempt to revise the scheme following the adoption of the WCS in a different form to that submitted for examination [summarised at 543]. GCC also disagrees with the assessment of visual impact from particular viewpoints [548 to 553].

1126. However, at a higher level there are key areas of broad agreement between the main parties. Critically Mr Smith records that in the planning application documents Axis identified that there would be significant adverse visual effects at some six representative viewpoints (UBB2, paragraph 200). His own assessment was made following the production of a ZVI rather than the bare earth Zone of Theoretical Visibility used by Axis which he considers would give a worst case outcome. His assessment nevertheless showed some nine viewpoints experiencing a significant adverse effect (UBB2, paragraph 291) which would fall to only five when assessed against the B8 warehousing baseline (UBB2, paragraph 293).

1127. Mr Russell-Vick carried out essentially the same exercise but applied different judgements to the sensitivity of the visual receptors and the magnitude of change (the criteria applied being not materially different). He concluded that 13 of the agreed viewpoints would experience a significant adverse effect (GCC/3/C, Appendix F). He also added a further 13 viewpoints and concluded in the same Appendix that there would be a significant adverse effect at 11 of them.

1128. Both therefore agree that there would be a significant adverse impact from some representative viewpoints. They disagree over the number that would be so affected.

1129. Both Mr Smith (UBB2, paragraphs 292 and 294) and Mr Russell-Vick (GCC/3/A, paragraph 5.18) are of the view that the likelihood of a significant adverse effect declines markedly with distance from the appeal site. Mr Russell-Vick considers the potential for the magnitude of change to be 'very large' or 'large' to be confined to a distance of 2 to 2.5 km. Mr Smith expresses it slightly differently noting only the distances of the viewpoints from where the effect would be significantly adverse. However, his general conclusion is the same and is based in large measure on the screening effect of intervening vegetation. This will vary with the season as GlosVAIN point out [735].

1130. Both are therefore also agreed in broad terms on a reduction in effect with distance from the appeal site.

1131. Neither of these two broadly agreed conclusions is surprising given what is noted in WCS Appendix 5 about the relationship of this relatively low-lying, flat site to its surroundings including the M5 and the AONB [1047]. Equally unsurprising is that it is the height of the proposed building that generates the adverse effect. This is confirmed by Mr Russell-Vick (GCC/3/REB/A, paragraph 6).

1132. There, he accepts that the 15.7 metre B8 warehousing buildings would be visible within the Vale at a distance of up to around 1 km. He also accepts that the B8 warehousing would be visible from the higher ground of the Escarpment.

He then says '*The key point is that the EfW plant is a substantially taller building and is quite unlike any other built form in the Vale; it would not be perceived as just another building as Mr Smith suggests.*' However, from the oral evidence given by Mr Russel-Vick it is very clearly the proposed height that is the principal cause of concern.

1133. National Policy Statement EN-3 is quite clear about this. It identifies the kind of equipment that a typical building will need to house. It confirms that the overall size of the building will be dependent on the design and the fuel throughput although it is unlikely to be less than 25 metres in height (CD6.6, paragraph 2.5.49). That is therefore some 10 metres taller than the B8 warehousing.

1134. GCC would have been aware of this when the WCS was prepared. The main impact minimisation approach was one of avoidance. The spatial strategy ensured that the extensive sensitive areas of the County were excluded from the area (Zone C) where the key sites would be allocated [974]. Site specific mitigation is set out in WCS Appendix 5.

1135. My reading of paragraphs 2.5.50 to 2.5.52 of EN-3 (CD6.6) is that, since some visual effect is inevitable, the focus should be on the mitigation measures that should be employed. These include (my emphasis):

- Good design will go some way to mitigate adverse landscape/visual effects.
- Mitigation will be achieved primarily through aesthetic aspects of site layout and building design.
- Size and external finish and colour should be used to minimise intrusive appearance as far as engineering requirements permit.
- Precise architectural treatment needs to be site specific.
- Visual enclosure at low level as seen from surrounding external viewpoints.
- Earth bunds and mounds, tree planting or both may be used to soften the visual intrusion.

1136. The General Development Criteria reflect national policy and give guidance as to how these matters should be addressed. They were promoted with, by the time the examination hearings sessions took place, a full understanding of the scheme that would come forward on one of the allocated sites [1049 to 1054].

1137. Mr Phillips set out in some detail how matters of design and height had been addressed through the development of the project [185 to 215] and therefore how the requirements of WCS Appendix 5 had been met.

1138. GCC accepted that for the throughput planned (which itself is a response to the requirements of the WCS) the process height was correct [196] and not untypical for this type of facility [201 to 203]. There is no requirement to set the building down into the site [197]. Indeed, the way that WCS Appendix 5 is written, it could be argued that this is deliberately excluded as a requirement for developments over 20 metres in height [1051]. In any event, the viability and practicality of doing so had not been investigated by GCC [198] as implicitly required by EN-3 [1135, third bullet].

1139. Mr Smith explains (UBB2, paragraphs 110 to 116) how the form and orientation of the building presents the narrowest elevation towards the most sensitive receptors, Haresfield and the AONB. The building wraps around the individual process elements to ensure, first, that each is no higher than it needs to be and, second, that the deconstructed form breaks up the visual mass of the building. Both of these measures are requirements of WCS Appendix 5 and Mr McQuitty accepted for GCC that this had been successful [187]. I see no reason to disagree and indeed consider that from elevated viewpoints, such as Haresfield Beacon, the appeal scheme would be less visually intrusive than the expanse of B8 warehousing that would otherwise be likely to be developed.
1140. Mr Smith also explains (UBB2, paragraphs 117 to 121) how the lower parts of the building and all the operational activity around it such as vehicle movements, would be screened by earth mounds and tree planting on top. While the time taken for the planting to be truly effective might be a legitimate area for discussion, the principle of such mitigation measures is in accordance with EN-3 and exactly what WCS Appendix 5 requires. I see no reason on the evidence why those measures should not achieve the objectives intended.
1141. That leaves the design of the building which in this context means appearance [1052, 1135]. As the foregoing explains the appearance is very clearly dictated by the function of the building and the design constraints imposed by its location. In my opinion the response is innovative and could encourage similarly imaginative solutions when other buildings come forward in accordance with the emerging SDLP in what is a visually prominent area. Clearly, there will be different opinions about the appearance of what would be a distinctive building but in all the circumstances I do not find it unacceptable. I note too that the proposed design was endorsed by CABE [191] and Mr McQuitty accepted that the requirements of WCS policy WCS17 had been met [192]. It should also be noted that GCC did not cite this policy in the reasons for refusal [74]. Considerable weight should be attributed to the views of CABE for the reasons Mr Phillips sets out [191] and accordingly I so recommend to the Secretary of State.
1142. I should deal briefly with two further matters; the issue of the landmark building since this formed a significant element of the criticism of the appeal proposal and the way the design had evolved [538, 676] and the visible plume.
1143. Dealing first with the landmark matter, UBB has sought to carefully frame the appeal proposal so that it addresses the key issues identified in the WCS. This is confirmed by the appellant albeit in another context in post-Inquiry correspondence (PINO6, paragraph 2.6.6). In view of the timeline and the date on which the application was submitted [964, 965], I agree with Mr Elvin and Mr Simons that the fact that GCC at that time sought a 'landmark' building on the site would have influenced the design approach. What GCC then meant by that term has not been explored at the Inquiry because it is no longer a requirement of the WCS [190]. There is a hint of a qualitative element given the inclusion of the two photographs of EfW facilities in the WCS and the implication that these are design exemplars (CD5.1, paragraph 4.268).
1144. However, I do not agree with the way that Mr Simons characterised a landmark building [677]. Turning again to the Chambers Dictionary the definition of the term, in context, is '*any conspicuous object on land marking a locality or serving as a guide.*' Given the nature of the site (level in an essentially

flat area) and the location (next to a motorway and visible from high surrounding ground), any large development could not become other than a landmark as defined. It is good planning and in accordance with WCS policy WCS17 and the Framework (CD6.1, paragraph 56) to ensure that it is therefore of high architectural quality. CABE's expert view, which is not for me to dispute, is that it would be.

1145. Turning now to the plume, my understanding of the case made by GlosVAIN [748 to 752] is that it is the effect that the plume would have in drawing the eye to the development and the reminder that it would give of a potential health hazard that is at issue rather than any adverse effect from the plume itself.
1146. I have some sympathy with the view that the plume, when there, would draw attention to the building from viewpoints where it may otherwise blend more readily into the landscape. I experienced this effect myself on my journeys to the Inquiry when the Dairy Crest building was more noticeable from the M5 when emitting a plume than when it was not.
1147. However, the number of viewpoints from where this would be experienced is not clear. It would not be an issue within about 2 to 2.5 km from the appeal site because the evidence is that over this distance the facility would be visible anyway. It is therefore likely only to be noticeable at more distant viewpoints where the very distance itself would have a mitigating effect. Moreover, while I acknowledge that Mr Watson did not wholly accept the evidence, Mr Smith's view was that the average annual period that the plume would be visible was some 22 to 24% of the time although there was a significant variation summer to winter (UBB2, paragraphs 130 to 133).
1148. Mr Othen explained in evidence that while it would be possible to reheat the plume and thus reduce the period of time during which it would be visible, there would be a penalty in the reduction of the efficiency of the plant. EN-1 explains that amendments to the design to achieve such mitigation are only likely to be necessary in exceptional circumstances where a very significant benefit would warrant the small reduction in function (CD6.1, paragraph 5.9.21). In my judgement, those circumstances do not apply in this case. Furthermore, as set out below [1312] reheating the plume is not considered by the EA to be BAT.
1149. WCS policy WCS17 has four indents which are said to be issues to address. The use of the word 'include' suggests that it is not necessarily an exhaustive list. The structure of the policy is such that they will be taken into account in assessing whether or not the high standard of design required for planning permission to be granted has been achieved and articulated through a DAS.
1150. The only one of the four that is in issue is the first which requires an explanation of the way the proposal reflects, responds and is appropriate to its local environment and surroundings within the County. GCC makes the most comment on the DAS [534 to 538] with similar implications drawn by SDC [679].
1151. These criticisms go to what the two local planning authorities see as the failure to minimise to the greatest possible extent the impacts that there would be through the principal mechanism of reducing the height to the lowest practicable level. As set out above [977, 1047 to 1057], I do not consider the WCS capable of bearing that interpretation. In my opinion, the DAS adequately describes the local context and explains how the design evolved to respond to it. A building of

the scale and height that inevitably flows from the provisions of the WCS for the site was always going to require an imaginative response. CABE considered that had been achieved (CD1.1 (ii), page 24) and I see no reason to disagree.

1152. To conclude on this part of the issue, I therefore find that there would be no conflict with WCS policy WCS17.

Effect on the setting of the AONB

1153. UBB agrees that the appeal proposal would affect the setting of the Cotswolds AONB, that the second part of WCS policy WCS14 applies and the three indents therefore need to be met [242].

1154. The first requires it to be shown that there is a lack of alternative sites not affecting the AONB to serve the market need. Mr Roberts addressed this in his proof of evidence (UBB1, paragraphs 5.5 27 to 5.5.55). The sites reviewed were, not unreasonably, the other four allocated in WCS policy WCS6 for similar strategic scale development. It would be unreasonable to expect the appellant to, in effect, revisit the exhaustive site selection process undertaken by GCC in preparing the WCS for submission as GlosVAIN suggested [815].

1155. These are grouped in two clusters. Very briefly, the three in the Wingmoor Farm cluster are similarly visible from the AONB including the popular destination of Cleeve Hill. Moreover, each is within the Green Belt. Built development would therefore be inappropriate development in Green Belt carrying the policy presumption against planning permission being granted other than where very special circumstances could be shown. The other site at Moreton Valence is only some 800 metres from the appeal site, part of the same cluster as Javelin Park and in the same landscape context. The points taken against the appeal proposal would therefore apply equally to that site. This evidence was not challenged and I have no reason not to agree with it. No alternative proposals were suggested by any party for any of these sites.

1156. Mr Jarman did put forward an alternative proposal for a site at Javelin Park. However, the detail was not worked up although from what he said [915], it appears that it might well raise similar issues to the appeal proposal given the potential height of the building and the emissions stack. Mr Phillips pointed out a number of other significant concerns [159] and I therefore consider that very little weight should be given to this suggestion.

1157. I therefore conclude that the first indent would be met.

1158. The second requires that any impact on the special qualities of the AONB be satisfactorily mitigated. Natural England defined the special qualities that would be affected as the Cotswold Escarpment and the High Wolds (CD3.21). There are two aspects to this as I understand it which is reinforced by the statement of Mr Watt [897, 898]. The first is the view across the landscape from the AONB, the second is the view across the Vale back towards the AONB.

1159. In all material respects, I consider that these two aspects have already been addressed in the consideration of this issue set out in the foregoing paragraphs. In summary, in views out from the AONB the expanse of the landscape is such that any impact would be mitigated by the design measures proposed, such as breaking up the mass of the footprint, the orientation of the building and the use of colour.

1160. Looking towards the AONB it is only in the immediate vicinity of the building that there would be any significant interruption of the view. From the motorway this would be fleeting. From the other limited viewpoints the obstruction of the view has to be seen in the context of the fallback position of the B8 warehousing which would cause a broadly similar interruption.

1161. The appellant identified a third quality, namely the tranquillity of the AONB [270]. I agree with the appellant's assessment in the same paragraph that the appeal proposal would cause no material difference in the light of the other developments and transport corridors nearby.

1162. The third indent is that the proposal complies with other relevant development plan policies. That is simply a restatement of the statute as interpreted by case law and I do not address that further here.

1163. On balance therefore I do not believe that there would be any conflict in this regard with WCS policy WCS14.

Conclusion on this issue

1164. This is one of the most important issues in the determination of this appeal. The way that WCS policy WCS6 and Appendix 5 work together means that the appeal site is allocated in the WCS unfettered both in terms of the type of strategic residual recovery facility that might be accommodated and the scale of the buildings that might be constructed [see for example, 174]. While Mr Elvin must be right that the development plan does not rubber stamp the proposal [heading to paragraph 530], it must also be right that what amount to matters of principle cannot now be raised against the proposed development, when they should have properly been included somewhere within the WCS as constraints on the form of development that could come forward on this particular allocated site. My conclusion is that much of the objection raised by GCC and SDC on this matter does go to principle. In that context Mr Elvin fairly explained the purpose of the evidence called from Mr Darley and Mr McQuitty [584]. For the reasons set out [1151] I do not consider it necessary to review their evidence on 'height'.

1165. In my judgement of the evidence the appeal site should be considered as being on the urban fringe. Moreover, in my personal experience it is an urban fringe that has been advancing into the Vale landscape over a period of at least 40 years and it is planned to continue that progress. For the reasons set out in the foregoing, the landscape has the capacity to absorb this additional development.

1166. Considerations of visual impact are more complex, particularly in light of the fallback development of B8 warehousing that could take place. A building of the size proposed on such an open site cannot be other than prominent in view although the appellant's ZVI shows that those views may be more limited than are indicated by the bare earth Zone of Theoretical Influence. However, that is an inevitable consequence of the unfettered allocation of the site in WCS policy WCS6. WCS Appendix 5 sets out the factors that an applicant needs to address to deal with that consequence and, for the reasons set out, my view is that the appellant has successfully done so.

1167. My conclusion on this issue therefore is that the appeal proposal would not conflict with either WCS policy WCS14 or WCS policy WCS17. By virtue of the

way those two policies are drawn into Appendix 5 there would be no conflict either with WCS policy WCS6(a) which was left unresolved earlier [1072].

1168. Should the Secretary of State come to a different view on the landscape impact and/or the effect on the setting of the AONB, whether or not there would then be a conflict with WCS policy WCS14 depends on the balancing exercise required by it [981]. The considerations to enable that balance to be struck are addressed later.

The effect that the appeal proposal would have on the setting of various heritage assets in the vicinity of the appeal site

Introduction

1169. The setting of a heritage asset is defined in the Glossary to the Framework (CD6.1, page 56). A number of the factors involved such as the experience gained of the asset, the contribution made to the significance of the asset by elements of its surroundings and the effect that the proposed development may have on the appreciation of the asset, are all matters of judgement.

1170. As with 'landscape', the judgements of those who prepared the planning submission and considered those submissions and then prepared the report to the planning committee were not available to the Inquiry. Dr Carter for the appellant and Mr Grover for GCC respectively played no part in the preparation of the submission documents or the consideration of those submissions and the preparation of the committee report. This is important since Dr Carter considers that the approach adopted in the ES and therefore the findings of that assessment '*should be set aside in the light of the negative comments made by GCC and English Heritage.*' (UBB3, paragraph 3.8).

1171. In considering this issue there are two elements. First are the judgements of the effect that the development would have that have been made by the two main parties. As part of that, the position taken by English Heritage in written representations must be considered. Second, is the way those judgements should be evaluated against the policy set out in the Framework [989] in the light of recent and evolving case law.

Judgements made of the effect on the setting of the identified heritage assets

1172. In responding to the Regulation 22 letter of 5 July 2012 on cultural heritage issues Ramboll state that the five stage procedure outlined in English Heritage Guidance (CD11.4) has been followed (CD1.5, Appendix 2, paragraph 2.1.6). Mr Grover also refers to these five stages (GCC/2/A, paragraph 3.22) before going on to confirm that the approach that he has taken broadly equates to the first three steps of the English Heritage Guidance (GCC/2/A, paragraph 4.2).

1173. Dr Carter notes that the Ramboll report used a methodology approved by both GCC and English Heritage. He also agrees with the broad assessment process but considers the criteria for the assessment of magnitude of impact used to be not consistent with current guidance on setting (UBB3, paragraph 3.9). He therefore repeated the assessment using the methodology he currently employs (UBB3B). This it seems to me also broadly follows the English Heritage stages.

1174. Both main parties agree that there is no methodological difference between them [284, 575]. I believe the criticism of Mr Grover's approach in applying that

methodology [set out in UBB/INQ/17, paragraph 314, summarised at 287] to be fair. Although structured similarly to the written evidence of Dr Carter, Mr Grover does not, in my view, fully explain his judgement of the contribution that setting makes to the significance of each of the heritage assets he reviews or how the experience of the asset would be affected by the proposed development. The different approaches taken to St Peter's Church, Haresfield illustrates this.

1175. Both experts describe the Church and attribute its Grade II* status to its architectural and historic interest. Thus it is the fabric of the building that is agreed to be the most significant feature. Dr Carter then assesses the contribution of the setting to the significance of the Church at a variety of scales (UBB3, paragraphs 3.20 to 3.22). He explains not only where the Church can be seen from but why that is important to the appreciation of it. He explains its long-standing role as a physical and spiritual focal point in the parish and how the spire is visible and prominent in certain views up to 1 km away. He particularly notes that it is visible from a number of footpaths which before vehicular transport would have been walked by the congregation guided to the Church by its spire. In contrast, Mr Grover simply describes the views that can be seen of the Church and from the churchyard into what he describes as the rural landscape within which it sits (GCC/2/A, paragraphs 4.15 and 4.16). However, he does not explain how any of that contributes to the significance of the Church as the heritage asset.
1176. Having explained why the views of the Church are important, Dr Carter is then able to assess not only the extent to which the proposed development would be visible in those views but how that would affect the significance of the asset (UBB3, paragraphs 3.23 to 3.27). He concludes that in views from the west there would be the potential for views of the main EfW building and the Church in combination. While limited, this would undermine the landmark quality of the Church which has been noted as a feature that contributes to the significance of the asset. It is this limited degree of visual competition that leads Dr Carter to his conclusion that there would be an effect of minor significance on an asset of high importance (UBB3, paragraph 3.27).
1177. Mr Grover also describes where he judges the in tandem views to be available and from where within the churchyard the proposed EfW building would be seen. However, although he says that '*The proposed development would affect the collective setting of the Church and its associated group of listed churchyard monuments...*' (GCC/2/A, paragraph 4.19) he does not say how this affects the significance of the heritage asset. He simply says that the proposed development would be visible without explaining why that matters.
1178. I therefore consider the criticism of his approach [308] to be justified. While in this case both experts come to a similar conclusion, in others they do not. Mr Grover considers that the proposal would cause harm to the significance of 12 designated heritage assets (GCC2/A, paragraph 5.3) whereas Dr Carter considers that this finding would apply to only two, Hiltmead Farmhouse and St Peter's Church, Haresfield (UBB3, paragraph 3.88).
1179. The oral evidence focussed on a few only of the designated heritage assets studied by the witnesses, namely, St Peter's Church, Haresfield, Haresfield Court, Haresfield Hillcamp and Ring Hill Earthworks and Hardwicke Court. What the

appellant sees as the flaws in approach for each of these is set out [305 to 322]. I consider those criticisms to be broadly justified for the reasons just set out.

1180. Taking Haresfield Court as one example, Dr Carter identifies the contribution that setting makes to the significance of the asset (that is the house) to relate to the gardens and parkland surrounding it (UBB3, paragraph 3.49). However, Mr Grover seems to combine the asset itself and that setting, placing both in what he describes as a quintessentially rural setting (GCC/2/A, paragraph 4.24). He then assesses the effect that the appeal proposal would have on the views out from the setting of the asset (GCC/2/A, paragraphs 4.26 and 4.27). This seems to me to be an example of considering the setting of the setting which Mr Grover accepted was incorrect [308] but something that he does on other occasions.

1181. A further example of what I consider to be the flawed approach is that taken to Haresfield Hillcamp and Ring Hill Earthworks. Here, as Mr Grover himself records (GCC/2/A, paragraph 4.51), the asset commands a wide view over the Severn Valley at its western end from these elevated positions. This commanding view is a major factor in the significance of the location and setting of the hillfort given its defensive role over the surrounding landscape. The commanding view is thus an important factor in the significance of the heritage asset. The fact that the appeal proposal may be seen from this point (and that has been reviewed under the previous issue) has, in my judgement, no effect on the significance of the heritage asset. That would only be affected if the view itself was blocked by the proposed development which would not be the case. The commanding view would be unaffected; only what may be seen in that view might be. I therefore disagree with the way Mr Moules put it in closing [578]. However, even if his characterisation is correct, the appeal proposal would not come close to the extreme he put forward so his point does not yet hold.

1182. For the reasons set out above [1093 to 1103], I have concluded that the area within which the appeal site is located is urban fringe rather than rural. I also concluded that the correct baseline for assessment purposes should include the permitted B8 warehousing. The same considerations apply when considering this issue and Mr Grover was in error not to deal with it although, in fairness to him, he was acting on the planning advice given [302, 303]. The effect however is that, as with St Peter's Church, Haresfield, he is likely to have overstated the effect that the appeal proposal would have. Dr Carter also assumed a baseline of the current landscape although he also considered briefly the implications of what he termed an alternative baseline (UBB3, paragraph 3.12). In my judgement that paragraph cannot be fairly interpreted as saying that he did not consider the B8 warehousing permission to be the appropriate baseline against which to assess the appeal proposal [558].

1183. I consider that, generally, Mr Grover has interpreted the setting of each heritage asset to be far too extensive and, for the most part, incorrectly characterised as rural, particularly when the fallback position is taken into account. In that context and from my own inspection of the area I conclude as follows in respect of those heritage assets not already reviewed:

- The Mount Moated site, Haresfield; Mount Farmhouse, Haresfield; The Old Vicarage, Haresfield; and The Thatched Cottage, Haresfield. These four heritage assets are part of the cluster around St Peter's Church. While I acknowledge that the proposed development would be visible in some

views from each, the appeal site is not, in my judgement, part of the setting of any of these assets. The fact that the proposed development would be seen from them would not affect the significance of any of them.

- Broadfield Farmhouse, the Thatched Cottage and Parkend Farmhouse, Parkend. These three assets are to the east of the A38 and are in close proximity to one another. In my judgement there is now simply too much built development (for example, the Hiltmead Travellers' site and the M5 motorway) between them and the proposed development site for the latter to be considered still to be part of the rural setting of the heritage assets. In my view, the EfW development would have no impact on the significance of these heritage asset.
- Hardwicke Court. This is an important building set in extensive grounds which provide its setting. The appeal site is not with these grounds and neither of the designed views from the asset includes the proposed EfW facility [321]. In my judgement, there would be no impact on the significance of this heritage asset.

1184. Irrespective of the different judgements that each expert has made, the outcome of those judgements is essentially the same; each conclude that where there would be an effect of the development on the setting, it would result in less than substantial harm to the significance of the designated heritage asset in Framework terms [297, 577]. This is important when considering the case law later.

1185. Turning back to the five stage assessment process used by Ramboll and others, stage four is to explore ways of maximising enhancement and avoiding or minimising harm. In this case, some, albeit less than substantial, harm has been identified by the appellant. However, it does not appear that any additional attempt has been made to address that. The section on 'mitigation' (CD1.5, Appendix 2, paragraph 7.2.1) refers only to the scheme design that would have been assessed. It does not discuss any further measures that may have been considered.

The position of English Heritage

1186. The Regulation 22 documentation (CD1.5, Appendix 2 and CD1.6, Appendices 5 and 6) sets out the detailed consultation that took place with English Heritage and the work that the appellant did to address the concerns raised.

1187. In its consultation response of 14 November 2012 (CD3.29) English Heritage says that the proposals would result in substantial cumulative harm to the historic environment through impacts to the significance of a number of heritage assets specifically to their settings. It notes that the impacts to individual receptors could not be regarded as substantial harm in themselves (referencing Framework paragraph 132); it is the cumulative effect of a number of such impacts. The letter closes by recommending that the application be refused on that basis and concludes '*Simply stated, we do not believe this to (be) an appropriate location for such a development.*' This was set out again and elaborated in a letter to the Planning Inspectorate dated 3 September 2013 (CD4.14). This is a further example of an 'in principle' objection to development on an allocated site in the WCS that is not reflected at all in WCS Appendix 5.

1188. English Heritage did not appear at the Inquiry. Mr Moules made no reference to the English Heritage letters or the approach in that part of GCC's closing submissions [566 to 580]. Dr Carter deals with this at length (UBB3, pages 24 to 30) and Mr Grover agreed that the cumulative approach taken by English Heritage was quite inappropriate [324]. On that basis Mr Phillips draws attention to the fact that the position taken by English Heritage is in fact contrary to its own guidance and not supported by any evidence before the Inquiry [323 to 325]. That is my conclusion also and accordingly, I consider the Secretary of State should give very little weight to the views of English Heritage in this instance.

Case law

1189. The Court of Appeal judgement in *Barnwell Manor* [18] has now established the law where, as here, s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is in play. In agreeing with the judgement in the lower court Sullivan LJ said:

'...Parliament's intention in enacting s66(1) was that decision makers should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise.'
(paragraph 29)

He also confirmed that 'preserving' meant 'merely doing no harm' as per Lord Bridge in *South Lakeland*.

1190. In the response (PINQ5) requested [17], the appellant drew my attention to a further judgement⁴⁵ which was handed down four days before *Barnwell Manor*. It is consistent with *Barnwell Manor* in finding that it is not enough to comply with the s66 duty to simply balance the relative harm and benefit as a matter of straightforward planning judgement without the special regard required under the statute. Importantly, it also confirms that the approach in the Framework is consistent with the duty set out in s66.

Conclusion on this issue

1191. I have concluded on the evidence that it is only at two of the heritage assets where the effect on the setting would harm the significance of the asset; Hiltmead Farmhouse and St Peter's Church, Haresfield. It is both my conclusion and common ground that the harm would be 'less than substantial' [1184]. It is therefore Framework paragraph 134 that is engaged. Nevertheless, having regard to the considerations in that paragraph and the application of s66 of the Act, this harm must be weighed in the overall planning balance. I consider these later in this report under 'other matters'. A final conclusion on this issue cannot be reached until that balancing exercise has been undertaken. When doing so I have taken account of the passage in *Barnwell Manor* drawn to my attention by the appellant (PINQ5, paragraph 4). In short, this says that a conclusion of 'less than substantial' harm lessens, but does not remove, the strength of the presumption against the grant of planning permission. In this case too, that finding is in respect of two only of the various heritage assets assessed.

⁴⁵ *North Norfolk DC v Secretary of State for Communities and Local Government* [2014] EWHC 279

1192. For completeness, GCC in its response (PINQ3) to the request [17] drew my attention to two paragraphs (16 and 17) in a decision by the Secretary of State⁴⁶ issued after the *Barnwell Manor* judgement was handed down. In summary, the Secretary of State disagreed with the Inspector's conclusions regarding the effect on a church (paragraph 16) and took a different view on the outcome of the overall balancing exercise (paragraph 17).

1193. The latter paragraph accepts that each of the affected assets would be subject to less than substantial harm when considered separately but '*looking at the sum total of the impact on so many and varied assets, the harm caused is arguably greater than the sum of its parts.*' That however stops short of concluding that this gives rise to a substantial cumulative harm which was the erroneous conclusion of English Heritage [1188]. It simply led to the Secretary of State taking a different view to the Inspector about the weight that should be attributed to these heritage assets in the overall balance (my emphasis). There is no suggestion that in that overall balance the assets were considered as an accumulated group and the measure of harm uplifted as a consequence.

Other matters

1194. The first matter that I address does go to compliance with development plan policy but, for the reasons given in the analysis, cannot be considered a main issue. I note that Mr Phillips characterised it as a 'make-weight' [67]. The remainder go to the planning balance and I therefore consider the weight that I believe they should be given in making that judgement.

Residential amenity – overbearing impact

1195. This matter forms the fifth reason for refusal. In the officers' report to the planning committee the recommendation is that with appropriate mitigation and controls there would be no conflict with, among others, WLP policy 37 and SDLP policy GE1 (CD1.9, page 197, 5th bullet). This recommendation flows from the earlier analysis of amenity effects (CD1.9, paragraphs 7.202 to 7.205). The issue of overbearing effect is not mentioned there.

1196. The record of the debate does not refer to this matter nor is there any reference to either of these development plan policies in the list put forward in the reasons for refusal proposed by Cllr Andrewartha and seconded by Cllr Lunnon (CD1.10, pages 58 and 59). Following the almost 90 minute adjournment to allow officers to advise on the detail of the reasons for refusal and detailed reasons to be prepared for the vote on the motion, reason for refusal 5 emerged and was approved (CD1.10, page 61).

1197. In the SOCG between the appellant and GCC it is agreed that the only properties to which this matter relates are the Lodge, the Hiltmead Travellers' site and Hiltmead (CD4.7, paragraph 9.1). It is further agreed that the alleged harm to residential amenity arises solely from a visual overbearing effect (CD4.7, paragraph 9.2). I have been to all three properties.

⁴⁶ Asfordby, Welby Road, Melton (APP/Y2430/A/13/2191290)

1198. In the supporting text to policy GE1 the SDLP defines 'overbearing effect' as '*...the effect a development proposal may have when it looms over, or dominates the amenity space or outlook of the occupiers of a (usually) residential property.*' (CD5.3, paragraph 3.2.2). Whether such an effect would be experienced in any particular case will be determined by the interplay of the height and mass of the proposed development and the proximity to it of the potentially affected property. There is a qualitative difference between a change in the outlook from a property and an overbearing effect. The former is properly considered as a visual impact and that has been addressed under my second main issue.
1199. There is no dispute that the proposed development would be large. However, both Hiltmead and the Hiltmead Travellers' site are at least 300 metres from the nearest, but tallest, part of the proposed development (GCC/3/A, paragraphs 5.23 and 5.24). Moreover, the M5 motorway runs between both properties and the proposed development with the associated distracting and disturbing effect that must have for residents arising from movement and noise. Having regard to that and the separation distance that there would be, I agree with Mr Russell-Vick that there would not be an overbearing effect on either property [332].
1200. The Lodge however would be somewhat nearer at about 180 metres from the nearest, but lowest, part of the proposed building (GCC/3/A, paragraph 5.22). However, the dwelling itself is set down slightly and there is a good tree screen on the boundary which would filter views out from the property towards the appeal site. Moreover, the appeal proposal would include earth bunding on that boundary to about seven metres with native woodland tree planting on top (UBB1, paragraph 3.2.7); this is shown on application drawing 11034-PL04. This would further serve to limit the views of the development that would be obtained from the Lodge. This is shown graphically by Mr Smith (UBB2G, Figure UBB2/38). This Figure also shows that the permitted B8 warehousing would actually be more intrusive in the view from the Lodge since the building would be closer to both the site boundary and the Lodge and the opportunity for effective screen planting would be minimal [336].
1201. Taking all these factors into account I consider that while the appeal development would be visible from the Lodge the effect would not be overbearing as defined. Consequently I do not consider that there would be any conflict with the cited development plan policies on this matter.

Need

1202. There is no requirement for an applicant to demonstrate a need for the development [140] particularly where, as I have concluded would be the case here [1072, 1167], the proposal would be consistent with an up-to-date development plan (CD6.3, paragraph 22). That position would not be materially altered by the draft revision of PPS10 (CD6.9, paragraph 6). Footnote 5 to that paragraph which requires a consideration of the extent to which existing and consented capacity that is not yet operational would satisfy any identified need must be intended to apply only where a proposal would not be consistent with the plan. Any other interpretation would seem to be contrary to other expressions of Government policy and decisions of the Secretary of State [145]. In any event, as a draft subject still to the response to the consultation comments received, I consider limited weight should be attributed to that document.

1203. There are many strands to 'need' that have been raised in the evidence. Those relating to the need to contribute to the Government's climate change agenda and renewable energy requirements have been addressed under my first main issue. The weight attributable to those matters is set out above [1037].
1204. I do not understand any party at the Inquiry to be arguing that there is not a need to move the management of residual waste away from disposal to landfill (which is the current management route for the County's residual MSW) to a position further up the waste hierarchy. Given the EA position on the R1 status of the facility [9] there is no question that the appeal proposal would be classed as a recovery facility and would thus achieve that upward shift. That is a matter to which considerable weight should be given in the planning balance.
1205. Indeed, neither GCC [495] nor SDC [718] raise any issue against the appeal proposal on any 'need' aspect. My understanding of the case made by GlosVAIN [767 to 784] is this. GlosVAIN does not believe that the amount of residual waste that will be available to the EFW facility will be anything like sufficient to justify the capacity for which it has been designed. GlosVAIN sees two consequences flowing from that. First, the amount of waste that could be recycled will not be since there will be a requirement to supply material that could otherwise be recycled to the facility. GlosVAIN believes this to be inherent in the contract. Second, waste will need to be drawn into the County from elsewhere which would not represent sustainable development.
1206. I turn now to the first of these points, namely the amount of residual waste arising. This is a matter that was subject of considerable debate at the WCS examination hearings and gave rise to two significant main modifications to the submitted plan in order that it could be found sound (CD5.49, paragraphs 16 to 49). Mr Roberts accepts that this issue should not be revisited. His analysis is confined to a consideration of whether the very limited more recent data (confined to the MSW stream) affects the robustness of the WCS figures (UBB1, paragraph 5.2.34). Mr Watson's position is more confusing. I sought clarification at the end of his closing submissions. My tentative understanding of his position is that GlosVAIN actually continues to doubt the basis on which the WCS has been adopted.
1207. What Mr Watson says in his closing submissions [771] is drawn from his proof of evidence (GV1, paragraphs 135 and 136) where he says that a definition of residual waste as that which cannot reasonably be reused, recycled, digested or composted is clear from the WCS. To support that he quotes two passages from the Executive Summary (CD5.1, paragraphs E18 and E23), neither of which express it in quite the terms he used. However, elsewhere the WCS says in specifically discussing 'other recovery' options, that residual waste is that which is not re-used, recycled or composted (my emphasis) (CD5.1, paragraph 2.52), thus omitting any reference to 'cannot be' or 'reasonably'. The context for that comment is the recognition that not all waste is suitable for composting or recycling or processing through an AD facility and the further acknowledgement that some people and businesses chose not to compost or recycle their waste (CD5.1, paragraph 2.51). Furthermore, Key Issue 9 discusses residual waste recovery facilities for MSW defining that as waste that cannot be recycled or composted (CD5.1, page 29).

1208. I do not therefore agree with Mr Watson that the WCS is unequivocal about the meaning of the term 'residual waste'. Even though the term is defined in the WCS Glossary (as '*waste that is not/cannot be re-used, recycled or composted*' - CD5.1, page 153), my understanding is that the meaning of the term is context dependent. In the context of the approach to the provision of other recovery facilities the meaning is waste that is not reused, recycled or composted (my emphasis). How much residual MSW that amounts to at any point in time is not within the control of the appellant since the WDA and, as the contracted partner, UBB must deal with the material the WCAs provide [99].
1209. How much residual MSW there will be at any given time depends on the interplay of two factors: the amount of waste arising and the percentage of that waste which will be recycled and composted.
1210. In my examination of the submitted WCS I did not wholly accept the assumptions made by, in effect, the WDA on either of these factors believing both to overstate the amount of residual MSW that would arise over the plan period. As a result of the changes made through main modification 3 (CD5.49, paragraph 36) the range that is reflected in WCS policy WCS6 already acknowledges and reacts to some of the concerns now expressed again by GlosVAIN. For the reasons set out by Mr Roberts (UBB1, paragraph 5.2.46 and Table 5.1) Mr Watson's assertion (GV1, paragraph 183) that I was misled by GCC during the WCS examination is incorrect. The figures used in the adopted WCS do align with the recycling targets embedded in the plan.
1211. The issue for this Inquiry therefore is the extent to which the very limited more recent data undermines the range in the adopted WCS.
1212. UBB acknowledge that actual MSW arisings in the two further years for which data are now available were lower than forecast by the WDA [147]. What matters in taking this forward is why that is so. Mr Roberts sets out his view (UBB1, paragraphs 5.2.59 to 5.2.72) and considers the explanation to be a combination of changes in waste management practice in response to legislative and fiscal measures and the recent economic upheaval resulting from the severe 2007/8 downturn. As he notes the balance between the two is difficult to discern so the effect of what appears to be a sustainable return to economic growth is difficult to predict. Furthermore, the extent to which the changes brought about by legislative and fiscal measures have now been felt or will continue to produce falls in waste arising is a matter of speculation. Clearly Mr Watson does not agree with that, believing that the fall already experienced will be sustained. This disagreement illustrates why forecasting future waste arisings is difficult.
1213. Mr Dummett commended the use of the SARIMA model that underpins the MSW analysis in Defra's *Forecasting 2020 waste arisings and treatment capacity* (CD7.11 and CD7.11.1) [907]. However, no party to the Inquiry used that modelling to extend the analysis through the design life of the EfW facility. Both Mr Watson and Mr Roberts do reproduce Figure 2 from that document but whereas Mr Watson relies on the central forecast (GV1, paragraph 220), Mr Roberts notes that it actually shows a range with the upper forecast showing a slight increase and the lower showing a steeper fall (UBB1, paragraph 5.2.52). It must be noted too that the Defra report goes only to 2020. That is not even to the end of the WCS plan period let alone the design life of the proposed facility. In passing I note that in contrast to Mr Roberts, Mr Watson does not reproduce

Figure 3 which carries out a similar analysis for C+I waste, albeit on a different modelling basis; that outcome is a rising trend by 2020 on all three scenarios presented.

1214. Turning very briefly to C+I waste, my reservations about the assumptions made by GCC for this waste stream in developing the WCS were clearly set out in my report to GCC (CD5.49, paragraphs 37 to 42). However, as stated there, no alternative more robust means of assessing the waste arising in the County was put forward then and no new information has been put before this Inquiry.

1215. In my view in all these circumstances there is insufficient evidence before the Secretary of State to undermine the statistical basis on which the WCS has been adopted or to require a reassessment of the residual waste for which other recovery facilities should be provided.

1216. Having said that, for the same reason referred to earlier [1143], it is clear to me that the planning application was prepared on the basis of the WCS submitted for examination, not the adopted version. Therefore, while the design capacity of the proposed EfW facility remains within the range set out in WCS policy WCS6 it would absorb a greater proportion of that requirement than UBB would have assumed when making the planning application. There would be therefore a greater sensitivity to the inherent uncertainty in waste forecasting that the appellant recognises [146]. That leads to consideration of the first of the two consequences that GlosVAIN fears.

1217. As both Mr Elvin [608, 609] and Mr Watson [803] comment upon, the contract documents are heavily redacted (CD12.1 and CD12.2). It cannot be determined therefore whether or not any shortfall in residual MSW that might result from Mr Watson's assessment about future arisings being correct has to be made up by sending material that would have otherwise been recycled to the EfW facility. In the absence of any clear evidence about this I can only take a 'balance of probability' view. That view is that the WCAs will have their own recycling targets and aspirations to meet. I therefore consider it unlikely that they would divert to the facility material that could help meet those targets.

1218. The position is, I believe, clearer with regard to C+I waste. As Mr Roberts points out (UBB1, paragraph 5.2.96) the choice between being paid to have waste recycled and paying to have it managed is a fairly straightforward one in a commercial market. It seems to me that C+I waste going now to landfill in Gloucestershire is largely that which needs to because it cannot readily be recycled or composted. The amount of that waste that the EfW facility will intercept will be a commercial decision for UBB within the terms of the contract; these terms are not available to the Secretary of State. While that decision might affect the extent to which C+I waste might fill any gap left by a residual MSW shortfall, in my judgement it would not lead to a reduction in the recycling of C+I waste.

1219. I therefore consider the first consequence feared by GlosVAIN is unlikely to arise.

1220. Turning now to the second consequence of concern to GlosVAIN. The appellant fully appreciates and is comfortable that, even if Mr Watson is correct, there is more than sufficient residual C+I waste now being disposed of to landfill in the County to make up any shortfall in residual MSW [148]. That may well be

correct since my main criticism of the data put forward by GCC in the submitted WCS for this waste stream was that it represented waste managed rather than waste arising in the County (CD5.49, paragraph 40). However, Mr Roberts shows that about 52% of this managed waste is produced outside the County (UBB1, paragraph 5.2.92 and Table 5.3).

1221. I have already addressed this to a certain extent when considering whether or not the appeal proposal complied with WCS policy WCS6(c) [1066 to 1071]. It seems to me that 'top-up' residual C+I waste material may well be sourced from outside the County. However, that would certainly not be contrary to national policy as expressed in Guide to the Debate (CD7.9, paragraphs 151 to 155 and 171) or the Companion Guide to PPS10 (CD6.4, paragraph 6.46). In short, each of these references envisages some benefits in cross boundary waste movements in response to the proximity principle requirement of the Waste Framework Directive. Guide to the Debate emphasises the expectation that local authorities will work together when managing their waste needs (CD7.9, paragraph 153) and notes that sourcing waste from a variety of locations can avoid local overcapacity and maintain local flexibility to increase recycling (CD7.9, paragraph 155).

1222. Part of Mr Watson's proof of evidence is devoted to a presentation of residual waste management capacity either operational or under construction outside the County (GV1, paragraphs 245 to 260). The argument advanced is that this capacity would be available for much of the waste that UBB assume would be managed at the EfW facility unless UBB's gate fees are sufficiently low to be commercially attractive. If they are not, then 'top-up' waste would be attracted from further afield where there are capacity shortages and consequently higher gate fees. Targeting or attracting such waste over substantial distances would be unsustainable and contrary to WCS policy WCS6(c). Others make the more straightforward point that the appeal proposal would result in over capacity since suitable capacity already exists in, say, the Bristol and South Gloucestershire areas to the south [883, 890, 894, 900, 901, 909 and 925].

1223. I consider very little weight should be given to this argument. First, irrespective of distance travelled a facility may still be the nearest suitable for the waste to be managed. Second, there is the point already made that it would be inconsistent with Government policy and previous Secretary of State decisions to take into account anything other than operational capacity [145]. When that is done the available capacity in reasonable proximity to the County diminishes considerably (GV1, Table within paragraph 247). Third, there is no evidence before the Secretary of State that the available facilities actually have spare capacity or whether or not they are subject to conditions restricting the sources of waste. Finally, there is a certain inconsistency in objectors promoting the movement of waste out of the County to be managed while seeking to place a restriction on similar movements into the County.

1224. While I consider that residual waste from outside the County may well be managed at the proposed facility that would not be contrary to Government policy and should not be a factor that weighs against the appeal proposal.

1225. To conclude on this matter, the residual waste to be managed through other recovery facilities is set out in a recently adopted local plan and there is no evidence that satisfies me that those figures do not remain robust. The

quantitative need for recovery capacity is therefore established. The appeal proposal would make a very significant contribution that need. This is a matter that should be afforded considerable weight in the planning balance.

Alternative technologies

1226. It is not a straightforward task to unravel the reasons for alternative technologies being promoted at the Inquiry by those who object to the appeal proposal. The clearest is that of GlosVAIN, GlosAIN and those associated with them who are simply ideologically opposed to incineration for a whole host of reasons and some of those who spoke were quite open about that; that position is perfectly well understood. GlosVAIN and others also promote MBT as both a more effective technology at recovering valuable resources prior to final treatment and, through the production of RDF or SRF, a better way of generating power from truly residual waste material. A further reason raised by several and which underpins the case of SDC on this [see for example 691] is that MBT processes are typically housed in buildings much more akin to the B8 warehousing already permitted on the appeal site and thus have a far lesser landscape and visual impact. GCC does not suggest an alternative technology; indeed it accepts that proposed [69].
1227. That there are alternative ways of dealing with the residual waste arising in the County is self-evident. The WCS lists and discusses them (CD5.1, paragraphs 4.64 to 4.78) but expresses no preference between them. Mr Aumonier devotes much of his proof of evidence (UBB5) to a consideration of various aspects of the alternative technologies that might realistically be available. Indeed, in ranking them on overall performance against the criteria he sets out, the technology that forms the basis for the appeal proposal comes out below both mechanical treatment with off-site/out of County EfW and gasification with front end shredding and metals extraction [688].
1228. However, there is no requirement in law for the optimal technological solution to be identified and promoted and Government policy has been and remains to express no preference for one recovery technology over any other, save for AD which has specific feedstock requirements [96, 106, 152 and 160]. Martin Horwood MP endorsed this latter point when he spoke and while he suggested that incineration was lower than other recovery technology choices, he confirmed that was a personal view and not Government policy [930].
1229. None of those suggesting alternative technologies put forward a worked up scheme on a specific site [161]. The nearest to such a scheme was that promoted by Mr Jarman. On the evidence put forward I do not consider that Mr Phillips's characterisation of this scheme was unfair [159]. Moreover, it was clear when Mr Jarman gave his statement that little detailed design work had actually been done. On the basis of the drawings he provided the building might be nearly 20 metres in height and while the modelling required to establish the stack height had yet to be done, he thought it could be about 40 metres tall [915]. In my view, the alternative proposals put forward do merit the description 'vague or inchoate' and can be excluded from the process on the grounds that they are not important to the decision (CD6.5, paragraph 4.4.3, 7th bullet).
1230. Several references were made to the appellant's contract in Essex to provide an MBT solution [for example, 888]. The circumstances surrounding the award of that contract are set out by the appellant [157]. To my mind that is an

illustration that UBB is not wedded to one technology solution. It simply evaluates the best response to the tender placed. In Gloucestershire UBB followed up the OJEU notice (GCC/INQ/10) and was ultimately awarded the contract. I have already addressed the objections that some have expressed to that process and explained what was the considered view of all parties that this can have no bearing on the Secretary of State's decision on this appeal [993 to 997].

1231. The appeal proposal is the necessary follow up to that award in order to implement the contract. It seems to me an example of Government policy that the market should decide how the required capacity should be delivered most efficiently (CD6.5, paragraph 2.2.19). I therefore consider that no weight should be given to the argument that alternative technologies should be considered. The essence of the issue for determination in this appeal is whether the land use implications of the chosen technology are acceptable at the appeal site.

Perception of harm

1232. On this matter the position that is well established on the basis of the judicial authorities that have been followed in various reports to and decisions by the Secretary of State is that the matter, if raised, will always be a material consideration with the weight attributed to it determined by the particular facts. Weight will be affected by the existence or otherwise of objective justification for the concern and the degree to which land use consequences flow from the perception of harm. No instance was brought to my attention where this had amounted to a reason for refusal of itself. Rather, it is a factor to be weighed in the planning balance. SDC and GlosVAIN accepted this as a general proposition [341 to 346, 696 and 843].

1233. GlosVAIN has run a campaign against the incineration of the County's residual MSW for some time. Some of the material placed in the public domain by GlosVAIN is included in the appendices to Mr Other's evidence (UBB4B). In XX Mr Watson said that he did not consider this particularly controversial (presumably by comparison with other such material he had seen in other cases). Although carefully phrased, the text and graphics are quite clearly intended to suggest that incinerators are a cause of birth defects and deaths and are a known cause of cancer. Moreover, a report titled '*Schooling in the Shadow of the Incinerator*' was prepared by GlosVAIN in March 2012 with a letter sent to each head teacher in what GlosVAIN claimed would be the affected area. This was accompanied by a press release and Mr Watson's comments regarding fear being clearly prompted by press coverage (GV1/REB/A, paragraph 100 and GV1/REB/B, pages 47 to 56) need to be read in that context. Again, I consider the clear message that those not reading the full report would be likely to gain is that the health of children in about 140 schools was being put at risk by the actions of GCC. Mr Ttofa made points of this nature [940, 941].

1234. Although UBB responded to these documents (UBB4B) I do not find it at all surprising that there is a perception in the local community that the appeal proposal would pose a risk to their health.

1235. It is national waste planning policy that the determination of this appeal must proceed on the basis that the EA will carry out its functions competently and in accordance with its various statutory and regulatory duties [349, 356, 383]. The objective evidence is that an EP has been issued for the facility and that it will

therefore operate in compliance with the emission limits specified by the Industrial Emissions Directive. The EP will be monitored in accordance with the conditions set out within it.

1236. SWARD gave evidence to the Inquiry about what it regards as a specific failing on the part of the EA in this regard in the local area [905]. However, I have no response about this from the EA. While I can appreciate that, if accurate, this would undermine local confidence in the EA, on the evidence before me I am not able to resolve this matter.

1237. GlosVAIN criticises UBB for not going beyond the requirements necessary to satisfy the EA in order to provide more reassurance for the local community [841]. The appellant has indicated that this further monitoring equipment will be provided if that becomes a requirement [355]. I give little weight to this point from GlosVAIN since in my view there is a logical inconsistency within it. I fail to understand how yet more monitoring data collected by an operator that the local community does not trust and provided for review to an organisation whose competence it questions will provide any of the assurance claimed now to be missing.

1238. Having said all that however, I do not consider the fears within the local community are either irrational or unfounded. The summary to the HPA 2009 position statement (CD13.1, page 1) says this:

The Health Protection Agency has reviewed research undertaken to examine the suggested links between emissions from municipal waste incinerators and effects on health. While it is not possible to rule out adverse health effects from modern, well regulated municipal waste incinerators with complete certainty, any potential damage to the health of those living close-by is likely to be very small, if detectable. This view is based on detailed assessments of the effects of air pollutants on health and on the fact that modern and well managed municipal waste incinerators make only a very small contribution to local concentrations of air pollutants. The Committee on Carcinogenicity of Chemicals in Food, Consumer Products and the Environment has reviewed recent data and has concluded that there is no need to change its previous advice, namely that any potential risk of cancer due to residency near to municipal waste incinerators is exceedingly low and probably not measurable by the most modern techniques. Since any possible health effects are likely to be very small, if detectable, studies of public health around modern, well managed municipal waste incinerators are not recommended.

1239. That seems to me a fair position statement and an acknowledgment that an EP is actually a permit to allow emissions to the atmosphere of various substances including pollutants within what are judged on currently available evidence to be levels within which harm is not likely to be caused. That older generation incinerators operating prior to the introduction of current strict emission controls were more polluting than modern incinerators is acknowledged (CD13.1, paragraph 26).

1240. In many fields what is regarded as 'safe' varies over time as the scientific method or epidemiology develops knowledge and understanding. Dr O'Dowd gave cogent evidence about this from the field of medicine [949, 950]. Mr Othen points to the 99% reduction in dioxin emissions from municipal waste incinerators between 1993 and 2004 (UBB4/REB/A, paragraph 4.2.10) which I

believe covers the period when many old plants were decommissioned in response to much stricter emission limits. While I imagine Mr Othen intended that evidence to be reassuring, I consider it to be the opposite. It would defy the experience of many people in other fields if current limits were not also tightened in future [921, 925, 942 to 946 and 955].

1241. HPA continues to gather evidence to extend the evidence base and provide further information to the public (CD13.2). Within that press release it says this:

It is important to stress that our current position on the potential health effects of well run and regulated modern Municipal Waste Incinerators remains valid. This is that while it is not possible to rule out adverse health effects from modern well regulated municipal waste incinerators with complete certainty, any potential damage to the health of those living close-by is likely to be very small, if detectable. This view is based on detailed assessments of the effects of air pollutants on health and on the fact that modern...incinerators make only a very small contribution to local concentrations of air pollutants.

1242. Essentially the HPA's position is that on the basis of what is known it considers the risk of harm to health to be very small. Mr Watson raises the issue of PM2.5 (GV1/REB/A, paragraphs 86 to 96) and while this is addressed by the HPA (CD13.1, paragraphs 8 to 18) it is clear that the health effects remain a matter for debate and study. The EA's worst case assessment and conclusion that the impact of PM2.5 emissions from the facility would be insignificant (CD2.2, page 35) must be seen in the context of that uncertainty.

1243. Whether or not the position of the HPA is reassuring will depend on an individual's attitude to risk and the ability to manage it. In this case, as Mr Watson points out (GV1, paragraphs 401 to 404), whatever the level of risk is perceived to be it is an involuntary risk and one for which no mitigation or avoidance measures short of moving away from the area are available to the individual.

1244. Furthermore, while Mr Othen points out that breaches of emissions limits at EfW plants are very rare (UBB4/REB/A, paragraph 4.1.6) and in EIC he explained the particular circumstances pertaining to each of the breaches identified by Ms Shirley [927], the fact remains that a breach occurred; it was resolved by the EA only after the incident had been detected, usually by monitoring. While that tends to undermine the claim of EA incompetence, it does suggest that a pollution incident took place in respect of at least some of those examples.

1245. It is for these reasons that I consider the concern arising from a perception of harm to be rational even though there is no objective evidence that actual harm will occur.

1246. The weight that should be attributed to this perception of harm, however, is influenced by the extent to which there would be a land use consequence [345]. Only one has been put forward in this case, the effect that there would be on the delivery of the Hunts Grove extension.

1247. As I understand it SDC's case on this shifted somewhat following the XX of Mr Jones. Mr Simons accepted in closing that it was not that the housing would be undeliverable as a result of the appeal proposal, it was simply that sales may

slow and/or property values may be depressed [701]. The basis for this as I understand it would be that the EfW building and the associated emissions stack would be visible in some views from parts of the periphery of the residential development.

1248. While that may be the professional judgement of Mr Jones, there is simply no evidence from studies elsewhere to support that view [366 to 371]. Moreover, in spite of all the publicity that GlosVAIN and the local media have given to the alleged adverse effects of the appeal proposal local estate agents report no impact on sales or values achieved [364]. Furthermore, the prospective developer reported no issues relating to deliverability in what was virtually a contemporaneous assessment as part of the evidence base for the SDLP submitted for examination [362, 373 to 378].

1249. In my view minimal weight should be attributed to the claimed land use consequence of the perceived harm to health. Overall I therefore consider that limited weight should be given to this issue in the planning balance.

Consequences of the appeal not succeeding

1250. It is common ground between the main parties that the consequence of the appeal being dismissed would be the continued disposal of the County's residual MSW to landfill [162]. Since the thrust of national and development plan policy is that the management of waste should be moved up the waste hierarchy away from what is the last resort management method that contributes harmful greenhouse gas emissions to the atmosphere this is a consideration that should be afforded weight in the planning balance. How much weight will be influenced by the length of that period of continuing disposal to landfill.

1251. This turns in the main on the interpretation of the contract between GCC and UBB (CD12.1 and CD12.2). This is heavily redacted which Mr Phillips says is not unusual in such cases [472]. That may be so but as Mr Elvin points out [609], it means that it cannot be examined and reliance in this case must be placed on the meaning of it that UBB's lawyers have given to Mr Roberts (UBB1, paragraph 5.7.3). Whether they are right cannot be tested.

1252. The detail is set out in the proof of Mr Roberts. In short, it seems to depend on whether any revised planning application can fall within the terms of the contract. UBB considers it unlikely that it would and cites the Hereford and Worcestershire process as an example of the lengthy delay caused by such issues (UBB1, paragraphs 5.7.5 to 5.7.8). There, the initial proposal was refused planning permission following a public Inquiry in 2002. Work on the replacement project is expected to have commenced in March 2014, some 12 years later.

1253. Mr Elvin considers that to be a pessimistic scenario and does not accept that a revised scheme could not be promoted within the terms of the contract as he is able to understand it from general principles [610]. He considers that the WCS anticipates the failure of a proposal and deals with it by way of required actions – in essence, a resubmission of the scheme [612].

1254. On the one hand I consider that Mr Phillips is wrong to characterise the officers as making an unequivocal recommendation to the planning committee for approval of the appeal proposal [475]. My understanding is that it was a recommendation having taken a balanced view [1077] with members coming to a

different view of the balance [1078]. It must be theoretically possible to address the technical objections through a revised scheme to enable an unequivocal recommendation to be made.

1255. On the other hand, Mr Richens provided the Inquiry with the reasons given to the local newspaper by 16 of the 18 committee members as to why they voted against the scheme (IP-14, Appendix A). Of those that could be described as planning considerations, two related to health issues, four related at least in part to the technology chosen being the wrong one, and one related to local highway impact. Those (four) whose reasons were related to the stated reasons for refusal (CD1.11) appeared to be concerned principally with the size of the building in that location. That is a matter of principle which I consider settled by the adoption of the WCS [1057].

1256. There is therefore substance to Mr Phillips's rejection of any suggestion that an EfW application at this site would have to be approved at some time [475]. If Mr Phillips is correct and the Plan B committee does eventually pursue a different technology option [995] then the delay that Mr Roberts spoke of is not out of the question. However, there are many uncertainties to be resolved before that could become a firm conclusion and there is no firm evidence before the Inquiry in relation to any of them. Nevertheless, given timescales for the preparation, submission and determination of a planning application followed by facility construction and commissioning, a delay of some years at least in moving away from disposal to landfill of the County's residual MSW must be expected.

1257. That is an outcome of the appeal being dismissed to which some weight should be attributed.

Highway safety

1258. This is not a matter that is in dispute between the main parties. The SOCG confirms that neither the Highway Authority nor the Highways Agency have an objection subject to conditions being imposed. Indeed, it is recognised that the development would actually result in a slight net improvement in traffic conditions when compared with the B8 warehousing permission alternative (CD4.7, paragraph 10.6). Nevertheless, in response to issues raised UBB prepared two additional papers (UBB/INQ/1 and UBB/INQ/9).

1259. The main issue raised by local people is EfW traffic travelling to the south of the appeal site on the B4008 [see for example 876]. The measures both in place now and that would be implemented in the event of planning permission being granted are set out (UBB/INQ/9, paragraphs 3.1 to 3.4). In summary these are:

- Driver education and signage.
- Enforcement through commercial contracts with waste suppliers.
- Cooperation by the WCAs.
- Enforcement of the existing weight restriction by the police and GCC Trading Standards.
- HGV monitoring and reporting via the Community Liaison Committee.

1260. These are all measures which should prevent the problem that local people consider will arise and they would be secured by condition where appropriate.

While I recognise that the local community considers that the weight restriction is largely ignored and not enforced, the appeal should be determined on the basis that it will be.

1261. Issues of cumulative effect on Junction 12 from the totality of development planned in the vicinity have been addressed at length and are summarised in UBB/INQ/9. When revised, Junction 12 was designed to accommodate traffic demand from the permitted B8 warehousing. As noted above, the appeal proposal would result in a net improvement on that situation. The operation of the A38/B4008 Cross Keys roundabout is still the subject of investigation in association with the consented and planned development in the area. The modelling work includes consideration of the B8 warehousing development at Javelin Park and is thus robust (UBB/INQ/9, paragraph 2.12). Furthermore, traffic associated with the appeal scheme would be limited during the peak periods when congestion issues are likely to arise (UBB/INQ/9, paragraph 2.6).

1262. I therefore conclude that there would be no policy conflict arising from this issue and, as such, this is not a matter to which any weight should be attributed either way in the balance.

Legal arguments

1263. There are three matters which have been raised by GlosVAIN and/or individuals that are matters of law. These are therefore not matters to be weighed in the planning balance but instances where the Secretary of State must determine the appeal in accordance with the relevant law. They are addressed in turn.

Priority considerations of alternatives (POPs)

1264. GlosVAIN's core point on this matter is that the priority consideration required to be given to alternative processes, techniques or practices that have similar usefulness but which avoid the formation and release of POPs is the responsibility of the local planning authority or, as in this case, the Secretary of State [819]. My understanding of the case put by Mr Watson is that GlosVAIN relies wholly on documents produced by the EA in coming to this view [824 to 827]. Even the support drawn for this position from the Inspector's report in *Rufford* is based, as I understand the relevant paragraph and footnote [827], on what he was told by the EA about the *Saltend* challenge.

1265. Having read the evidence I agree with the submissions of Mr Phillips that in the documents that Mr Watson relies upon the EA has got it completely, but not consistently, wrong.

1266. It is quite clear from the 2007 Regulations (CD13.62) that the duty under Article 6(3) of Regulation (EC) No. 850/2004 rests with the EA and not the local planning authority [388 to 390]. The *Saltend* judgement (UBB/INQ/5) was not about jurisdiction. The relevant ground of the challenge (Ground 1) was about whether the EA had correctly interpreted Article 6(3) when it concluded that it applied to intentionally produced POPs; it was common ground at the hearing that it had not (UBB/INQ/5, paragraph 9). Notwithstanding that error the judge accepted the submissions of those defending the action that the EA had nevertheless given full consideration to the requirement of Article 6(3) and that

the grant of the EP should stand (paragraph 16). From that it appears that the court concluded that the EA correctly discharged the duty placed upon it.

1267. I note what Mr Phillips says about the points taken by Mr Watson in respect of *Rufford* [393]. Since the *Saltend* judgement post-dates that and having regard to the fact that *Rufford* did not come before the court in any event, I do not believe it needs to be considered further.

1268. In the EP decision document relating to the appeal EfW facility the EA specifically refers to its 'legal obligation' under Regulation 4(b) of the POPs Regulations (CD2.2, page 74). It also refers on the same page to the requirement to examine BAT including potential alternative techniques and confirms that this has been done. Furthermore, the EA correctly considered unintentionally produced POPs (CD2.2, page 74). For the reasons set out in the document it was '*satisfied that the substantive requirements of the Convention and the POPs Regulations have been addressed and complied with.*' (CD2.2, page 76). In all these circumstances, it is difficult to understand what is then said on page 130 of the document since this seems to be wholly at odds with what the EA accepts as the proper interpretation of Article 6(3).

1269. While I note what the appellant says about incineration plants being a sink for dioxins (i.e. releasing fewer dioxins than are present in the waste that is incinerated), and that they will certainly be a sink where the APC residues are disposed of appropriately, as they would be here [402], dioxins are not the only POPs as is clear from the EA decision document (CD2.2, page 75).

1270. In summary, I conclude on the submissions made that the law is clear. The duty under Article 6(3) rests with the EA, not the local planning authority. In this case the EA would appear to have discharged that duty in issuing the EP. That decision has not been challenged. No planning guidance on this matter was brought to my attention. Apart from *Rufford*, no decision by or report to the Secretary of State where this was a live matter has been brought to my attention either. If the ambiguity that Mr Watson claims [831] truly existed I would have expected this point to have been raised by those who vigorously oppose such schemes either before an Inspector or the court. That it does not appear to have been leads me to conclude that no such ambiguity exists.

Localism

1271. The essence of the argument made by GlosVAIN [725] and others is that it would be a denial of local democracy to allow the appeal and override the strongly held feelings of the local community. Mr Phillips dealt with this in his closing submissions [451 to 454]. The reference there to Circular 3/2009 has been overtaken by the National Planning Practice Guidance since that circular is among the cancelled documents. The precise reference (paragraph B21) that Mr Phillips alludes to has not been carried forward into the National Planning Practice Guidance. However, that does not mean that the principle no longer holds.

1272. The judgement referred to (*Tewkesbury* – UBB/INQ/12/5) makes it plain that in this respect the effect of the Localism Act was quite limited (paragraph 61). Giving local communities a greater say over the scale, location and timing of developments in their areas than was previously the case when regional strategies were part of the development plan is dependent on the expeditious

preparation of local plans (paragraph 65). In that case there was no up-to-date local plan; that is not the position here.

1273. The 'greater say' that the Localism Act envisaged has therefore been taken into account primarily through the preparation and adoption of the WCS which has settled the scale, location and timing of strategic scale residual waste recovery infrastructure in the County. Under s38(6) of the 2004 Act this appeal must be determined in accordance with the development plan, the WCS being a crucial element of it, unless material considerations indicate otherwise.

1274. The bulk of the material considerations that are in play in this case have been brought forward by GlosVAIN, the local community's elected representatives at County, District and Parish level and by individual community members. Those matters have been raised through the initial consideration of the proposal by GCC as WPA and again through the mechanism of the Inquiry. The spirit of the Localism Act has therefore been followed. However, there is '*...nothing in the Act to suggest thatthe Secretary of State would no longer perform his function in determining planning application appeals applying ...the same principles and policies as before (the Act)*' (UBB/INQ/12/5, paragraph 60).

The best interests of children

1275. This is the matter raised by Mr Ttofa [940, 941] and addressed by Mr Phillips [449, 450] with reference to *Collins* (UBB/INQ/12/9).

1276. Article 3 of the UN Convention on the Rights of the Child is given effect in UK law by s11 of the Children Act 2004. That section applies to a local authority in England and provides, among other things, that their functions are discharged having regard to the need to safeguard and promote the welfare of children. It also provides that in discharging that duty regard must be had to any guidance given by the Secretary of State. No such guidance has been given in respect of planning matters (UBB/INQ/12/9, paragraph 26). While the best interests of children must be considered first (the meaning of primary consideration) it does not mean that the decision must inexorably be made in conformity with those interests. They could be outweighed by other considerations (UBB/INQ/12/9, paragraph 28). The first thing to do therefore is identify what they are in the particular case.

1277. Mr Ttofa identified four, all of which he considered to be long term effects of the development and therefore of relevance to children. They are:

- Locking into a carbon emitting technology when there are other practical alternatives that might be pursued which would minimise contributions to climate change.
- The visual impact of a very large building in an essentially rural setting.
- Burdening children with the cost of an inflexible scheme when cheaper alternatives could save GCC significantly more money.
- Long term negative health impacts.

1278. All of these issues with the exception of cost have been assessed in the foregoing paragraphs and therefore taken into account. With regard to cost, this was not the subject of detailed evidence at the Inquiry either in respect of the

appeal proposal or any of the potential alternatives that were put forward. It is not possible therefore to say, as Mr Ttofa does, how the burden on future council tax payers would be affected by the residual waste management method pursued by GCC.

1279. In any event, I agree with Mr Phillips that in this case the best interests of children are indistinguishable from those of the community at large. In the sense that there is nothing that merits particular attention to an exclusively children orientated issue, I therefore consider that the best interests of children have been considered first. Where each sits in the balancing exercise applicable is a matter to which I turn later.

1280. I therefore conclude that Article 3 has been complied with.

Conditions

1281. The conditions suggested by GCC (CD4.16 and CD4.16.1), by GlosVAIN (CD4.15) and by those who spoke [882, 895, 936] were discussed during the Inquiry. As a result I requested a further list reflecting those discussions be sent after the close of the Inquiry. This is document CD4.17. Further email correspondence on conditions from GlosVAIN and UBB is at CD4.18 and CD4.19.

1282. While the discussion of the conditions was in the context of Circular 11/95 (CD6.13), this was replaced by the National Planning Policy Guidance. Nevertheless, the six tests set out previously in Circular 11/95 remain and have guided my consideration of the conditions that I recommend the Secretary of State should impose in the event that planning permission is granted; these are set out in Appendix B. In general I have focussed below on those conditions where the parties are in dispute. Those which I considered did not meet the (then) Circular tests were identified during the discussion and document CD4.17 generally reflects those observations.

1283. Several of the suggested conditions require both the submission and approval of the required scheme within the period set out. While the submission is within the control of the appellant, the approval is not. I have therefore changed the wording of those conditions.

1284. Conditions 1, 2 and 3 are required to remove any doubt about the date by or from which certain other conditions need to be implemented and to confirm the plans and drawings that describe the approved scheme. I queried why the details of the Community Liaison Group needed to be agreed before development commenced. Both main parties explained the important role that the Group would play during both construction and operation and I therefore recommend condition 4 as set out.

1285. Condition 5 gives GCC control over the external appearance of the building and stack. This is required since the endorsement of the appeal proposal by CABE was subject to further detailed work on the finishes and certain junction arrangements [811]. The final suggested condition by GCC incorporates the proposed wording of GlosVAIN (CD4.15) and is opposed by the appellant on a matter of detail (CD4.17). This condition is a development of that originally submitted and discussed (CD4.11) and is both confusing and imprecise. As such it fails to meet two of the six tests and I have amended the wording accordingly while retaining the essence of GCC's objective.

1286. Conditions 6 to 18 inclusive control matters relating either to aspects of the construction phase or to matters that need to be resolved early in the development programme, such as the approved landscaping scheme, so that implementation can take place as soon as practicable. The wording set out is largely agreed by the main parties with the exception of the suggested condition 17 (CD4.17). Apart from some minor changes to the wording for clarity and precision I have included the conditions as proposed.
1287. Regarding condition 17, I understand the purpose to be simply to confirm the detail of the access to be provided. The timing of that provision and ensuring that it is used is a matter to be secured under the arrangements set out in the construction traffic management plan required by condition 7. I do not see why GCC requires the surface of a private road outside of both the application site and the control of the appellant to be maintained as specified. Any issues with the carrying of mud and debris onto the public highway will be resolved by the wheel cleaning measures required by condition 13. I have therefore adopted the alternative wording for condition 17 suggested by UBB.
1288. Conditions 19 to 27 inclusive address matters that broadly need to be in place before the facility is commissioned. Again the wording of most is agreed between the parties. However, the appellant objects to the need for suggested condition 22 and the wording of suggested condition 23.
1289. I agree that suggested condition 22 is not required. I understand the purpose to be to control within the application site boundary any physical works required to provide a heat supply to an external user. To the extent that any such works amount to development requiring planning permission that is not granted by the approval of the appeal proposal a separate planning permission would be required in any event. The condition therefore serves no purpose and is not therefore necessary. Failing one of the tests for conditions therefore, I have not included it in the list at Appendix B.
1290. Suggested condition 23 requires, in effect, a regular update on the opportunities available to utilise the heat available and thus move the facility from CHP ready to a true CHP plant. Firstly, EP conditions 1.2.1 to 1.2.3 require much the same information although not as frequently. There is therefore duplication between the two regulatory regimes. Secondly, the condition simply requires a report. There is no consequence for UBB if no viable opportunities are identified or taken up. The necessity of the condition is thus not clear. It therefore fails to meet one of the six tests and I shall not include it in Appendix B.
1291. The suggested condition controlling the storage of fuels (CD4.17, unnumbered but between conditions 26 and 27) is, in my experience, one that the EA routinely suggests in the event that the application consulted upon does not come under EA regulatory control. That is not the case here and this matter is addressed by EP condition 3.2.3, albeit with slightly different wording. That is an even greater reason for deleting the suggested condition from those in Appendix B since not only would there be duplication, there could also be difficulties over enforcement if compliance with the EP was deemed not sufficient to satisfy the WPA.
1292. Conditions 28 to 45 inclusive address post commissioning issues and are the subject of most disagreement between the main parties. Suggested conditions

28, 31, 33 to 41, 43, 44 and 45 are not contentious and subject to minor changes to the wording, these are included in Appendix B although with different numbering to reflect the earlier deletions.

1293. The purpose of suggested condition 29 is to limit the waste treated at the EfW facility to the design tonnage of 190,000 that formed the basis of the application and the ES. That appears to me to meet the six tests for conditions and is not opposed in principle by UBB. The matter between the parties is the period over which the receipt of the waste should be measured. GCC now suggests any 12 month period while UBB wishes the specification of any one calendar year as originally put forward (CD4.11, condition 31).

1294. GCC argues that specifying a single calendar year could lead to the receipt of up to 380,000 tonnes in a 12 month period following a lengthy period of shut down (say, 190,000 tonnes in July to December of one year and 190,000 tonnes in January to June of the following year). I appreciate the concern and of course the extensive redactions in the contract documents (CD12.1 and CD12.2) do not permit a detailed understanding of how the commercial implications of such a shut-down would be managed.

1295. However, as worded, GCC's suggested condition sets a rolling 12 month period. Therefore at any point in that rolling period UBB could exceed the permitted amount and thus be in breach of the condition. Although not specified, the remedial action could be to cease waste receipts until the typical monthly waste receipt would once again bring the rolling 12 month total within the condition. This would create unreasonable uncertainty and potentially hamper the WDA's treatment of its residual MSW and possibly requiring its consignment to landfill. I therefore consider the wording suggested by the appellant to be more appropriate to the circumstances and have made that change to the condition (29) in Appendix B.

1296. Suggested condition 30 seeks to place a geographic restriction on the waste that would be managed at the EfW facility. The justification is to ensure compliance with WCS policy WCS6(c) (CD4.17, condition 30, GCC note). Although a GCC officer advised that on current information such compliance cannot be shown (CD3.2) that advice does not appear to have been accepted by those preparing the report to the planning committee [1069] and a conflict with that policy was not included in the reasons for refusal (CD1.11). GloSVAIN strongly supported this condition during the discussion. UBB objects to this condition for the reasons set out in several places but perhaps most usefully summarised by Mr Phillips in closing (UBB/INQ/17, paragraphs 518 to 522) and in the note on the condition (CD4.17, condition 30, UBB note). In summary, this is that in other appeal decisions the Inspector has declined to recommend such a condition; it would be contrary to national policy set out in the Guide to the Debate (CD7.9); there is in any event no intention to actively source waste from outside the County since the facility is sized below the requirements for residual MSW and C+I waste tonnages in the adopted WCS; and the condition would fail to meet the 'enforceable' test given that waste sourced from and processed within a waste transfer station would not be traceable in terms of its origin.

1297. I have discussed the policy elements of compliance with WCS policy WCS6(c) above and conclude, in short, that national waste policy on this particular matter has evolved since the adoption of the WCS and that weight should be attributed

to this conclusion [1066 to 1071]. In terms of the tests that all conditions must meet there is some doubt therefore whether this condition is necessary or reasonable. There is though little doubt that it would be very difficult to enforce in the circumstances described by UBB with respect to waste transfer station waste. I shall therefore not include this condition in Appendix B.

1298. The reason for suggested condition 32 is to safeguard the amenity of local residents in the vicinity of the site (CD4.11, reason for condition 35). However, as Mr Roberts points out, the route into the appeal site from the M5 Junction 12 does not pass any residential dwelling (UBB1, paragraph 10.10.19). Even if that was not the case, it is not clear to me that the documents cited by GCC (CD4.17, condition 32, GCC note) explain why GCC has suggested the limit should be 10. I therefore propose to alter the suggested condition to the wording put forward by UBB.

1299. Should the Secretary of State prefer the suggested GCC condition wording (CD4.17, condition 32), it should be noted that it only limits deliveries between the hours specified and places no such restriction on removal of materials. It is not clear whether that was the intention of GCC. While I have little doubt that the following was not the intention, as worded, the suggested condition could be read as placing no limit at all on movements before 08.00 and after 17.00 on Sundays, Public and Bank Holidays.

1300. The appellant objected to suggested condition 42 (removal of permitted development rights) on the grounds that it did not meet the 'exceptional' test of Circular 11/95 (which is unchanged by the National Planning Policy Guidance), that it lacked precision and that it was impracticable (UBB1, paragraph 10.10.20). I do not agree.

1301. It is clear from the wording that it is only meant to apply to developments that fall within Class A of the Part and I have changed the suggested wording to reflect that. That resolves any imprecision. The rights conferred by the Town and Country Planning (General Permitted Development) Order, 1995 as amended, only relate to that which would be defined as development under s55 of the principal Act in any event. That is a matter of fact and degree judgement on a case-by-case basis. I accept that the proposed earth bunds and perimeter planting would assist in screening from low level views many of the developments that would fall within the Class. I also acknowledge that the conditions of the Class require the temporary development permitted to be removed as soon as reasonably practicable. However, from certain elevated positions such as Haresfield Beacon, the spread of development is an important contributory factor to landscape and visual impact. It is important not to undermine the minimisation of that impact, which is the design objective of the appellant in this regard, by a proliferation of random buildings and plant around the main EfW building. I consider this to meet the 'exceptional' test in this case and have retained the suggested condition with the minor change to the wording indicated.

1302. Turning now to the conditions suggested by GlosVAIN (CD4.15), I note that none of these have been included within the list suggested by GCC following the close of the Inquiry (CD4.17).

1303. The first suggested condition is for continuous dioxin sampling. Mr Watson appears to accept that this is not necessary (CD4.15, page 1) and it thus fails

- one of the six tests for conditions. The reason put forward is for reassurance of the public which I address above when dealing with perception of harm [1237].
1304. The second suggested condition seeks to ensure that the EfW facility would always be capable of being classified as a recovery operation. The wording of the proposed condition seems to me to be largely duplicating the monitoring and reporting requirements set out by the EA in the letter of 7 March 2013 preliminarily certifying the proposed EfW facility as an R1 recovery operation (CD2.4).
1305. My understanding of the reason for the proposed condition is the same as Mr Phillips; to reassure the public (UBB/INQ/17, paragraph 524). I do not see how it could do so. Establishing the R1 status at this stage of the project is critical since it affects the national and development plan policy base against which the appeal proposal must be assessed. The appeal proposal has achieved the highest level of R1 certification that could be obtained prior to becoming operational [94] and has thus been considered against the correct policy base.
1306. The proposed condition is therefore both not necessary and duplicating requirements of the regulatory regime of the EA.
1307. The third suggested condition concerns the need for a contingency plan in the event of what I take to be an unplanned closure due to breakdown. UBB's oral response was that it would not be possible to deal with the waste in any way that did not meet the requirements of the EA and that this should be sufficient safeguard. The waste bunker has also been sized to provide the required capacity during periods of maintenance.
1308. I agree with GlosVAIN that the oral evidence of Mr Othen on the latter point was a little unclear. I would also have expected this to be a matter of interest to the WDA and thus covered somewhere in the contract with UBB. I was not directed to any part of that contract, redacted or otherwise. While I appreciate that any waste not going to the EfW would have to be taken to an appropriately permitted facility, there may be implications for other conditions of this permission or for the wider area. This is a matter that the WPA should be interested in and since the proposed condition would therefore meet the six tests I shall include it as condition 46 in Appendix B, albeit with altered wording for clarity.
1309. The objective of suggested condition 4 is to prevent the incineration of any pre-sorted uncontaminated recyclable wastes. EP condition 2.3.3(c) already secures this (CD2.1, page 3) since it only allows waste that has been separately collected for recycling to be accepted at the EfW facility if it is subsequently found to be unsuitable for recovery, which in context, must mean recovery as recycle. The suggested condition is not therefore necessary.
1310. The fifth suggested condition seeks to ensure that no visible plume would be emitted from the proposed EfW facility. The proposed condition is drawn from a previous decision by the Secretary of State (*Rivenhall*) and support for it is taken from the Inspector's report (CD9.39, paragraph IR13.140).
1311. Mr Elvin represented the applicant at that Inquiry and assisted me with context and background. I note also that no EP had been applied for in that case.
1312. UBB object to the proposed condition on four grounds:

- There would be no 'spare' heat to reheat the plume sufficiently to render it invisible and there would be an operating efficiency penalty in doing so.
- Reheating the plume is not considered to be BAT by the EA and a variation to the EP would thus be required.
- The plume would not be rendered invisible at all times in any event.
- The *Rivenhall* condition was imposed for reasons of public perceptions relating to air quality and not to respond to landscape and visual impacts.

1313. The reference to the plume giving the area a somewhat industrialised appearance suggests to me that the impact on the landscape did have some bearing on the *Rivenhall* Inspector's conclusion. However, I have considered this and some of the other matters raised by UBB [1146 to 1148] and concluded that the visible plume would not have an effect such that it needed to be controlled. I do not consider that in the circumstances of the publicity given to the alleged health impacts of the appeal proposal, removing the visible plume would have any material effect on the perception of those who are concerned. The suggested condition is not therefore necessary.

1314. The final suggested condition that has not already been addressed is one seeking traffic restrictions. I have acknowledged that some of the suggested measures would be welcome [1260]. However, they could be secured through the Travel Plan condition (condition 24); a separate condition is not therefore required.

1315. Most of the topics promoted by Mr Cook have been addressed in the suggested conditions [895]. The National Planning Practice Guidance sets out the very limited circumstances in which compensation may be payable. An alleged reduction in property values is not among them.

1316. Cllr Blackburn made similar suggestions for compensation to be payable to the owner of the Lodge and also proposed that UBB should fund a trust for the Haresfield residents and provide community buildings by way of compensation [882]. Mr Phillips explained why UBB was not proposing these measures which would need to be by way of an obligation under s106 of the Act (UBB/INQ/17, paragraph 525). In short, no evidence was put before the Inquiry that such facilities were needed; the visitors' centre that forms part of the appeal proposal would provide a resource in any event; and the requirement for funding to be given to the local community would be tantamount to selling a planning permission. I see no argument of substance against any of those rebuttal points by UBB.

Planning balance and overall conclusions

1317. The WCS is recently adopted. EN-1 and EN-3 were extant at the time of its preparation as was PPS10 and its Companion Guide. The Framework was published during the examination and main modifications were proposed as appropriate to ensure that the WCS remained consistent with it – one of the tests of soundness.

1318. In preparing the WCS GCC objectively assessed the amount of waste that would need to be managed during the plan period. GCC also set out the strategy for moving the management of that waste away from landfill, the route now for

most of the County's residual MSW, to options further up the waste hierarchy. Included in this was a judgement about the tonnages of residual MSW and C+I waste that would require recovery each year.

1319. WCS policy WCS6 is the mechanism for delivery of that required recovery capacity. It sets out the quantum and identifies the five sites where planning permission will be granted subject to certain limited criteria being met. The plan and the policy are neutral as to the technology that should be employed.
1320. A broad-based assessment of each of the allocated sites was undertaken by consultants commissioned by GCC at three scales of development and included in the WCS evidence base for the plan submitted for examination. Those three scales were combined by GCC into two following the examination hearings to give guidance about developments under and over 20 metres in height. On any fair reading of WCS Appendix 5, the scale, height and mass of any proposal coming forward on any allocated site is not constrained.
1321. The appeal proposal is wholly within the boundaries of the allocated Javelin Park site, is sized below the combined annual MSW and C+I waste tonnage requirement and proposes to use one of the recovery technologies that is envisaged by the WCS. As a matter of principle it must be in accord with WCS policy WCS6. That is my second main issue
1322. The essence of the objections to the appeal scheme raised by GCC and SDC is the size of the building in this location; the landscape and visual effect that the appeal proposal would have is my third main issue. In this respect, size embraces height, mass and scale. Javelin Park is an exposed site adjacent to the M5 motorway in a largely flat area overlooked in the broad sweep of the landscape from many elevated positions on either side of the River Severn including several points on the Cotswolds Escarpment such as Haresfield Beacon and other access land below the ridge. The obvious landscape and visual impact that a large building in this location would have was assessed and concluded upon by GCC in the evidence base supporting the WCS. It was found to be acceptable and no height, mass or scale constraints were noted in Appendix 5. The evidence to the Inquiry of the consultants instructed by GCC and SDC that any development that would break the skyline or be in excess of some 34 metres in height would be unacceptable as a matter of principle is simply not reflected in or consistent with the adopted WCS.
1323. My conclusion is that the appeal site is on the urban fringe, an area that has been subject to considerable change over the past period and one that is planned to change further by virtue of the SDLP submitted for examination during the Inquiry. The landscape within which the appeal site sits has absorbed some significant development over time and has the capacity to continue to do so. While there would be an effect on the landscape of the area and the appeal site is acknowledged to be within the setting of the AONB, I do not consider that the harm that would be caused would be such that a landscape objection to the appeal proposal would be justified in terms of development plan policy.
1324. It is self-evident that a large building such as that proposed but nevertheless envisaged by the WCS will have a visual impact, at least in relatively proximate views. The WCS anticipates that and requires a high quality design solution to be promoted by way of mitigation. In the light of the contrasting evidence heard at the Inquiry I regard a reasonable interpretation of the wording in Appendix 5 as

being that 'design' in this context means architectural treatment. I believe that the appearance of the building in its context and the constraints that imposes would be acceptable in visual terms. This conclusion is consistent with that of CABE who, in all material respects, supported the design of the building proposed. I do not consider therefore that a refusal on visual impact grounds can be sustained.

1325. Notwithstanding Mr Watson's lack of clarity on the one point [1206], no party at the Inquiry argued that there were material considerations in this case to indicate that the appeal should be determined otherwise than in accordance with the development plan. My conclusions on my second and third main issues are that the appeal proposal would not conflict with the policies of the development plan, specifically WCS policies WCS6, WCS14 and WCS17 [1072 and 1167]. Furthermore, I have concluded that in respect of any overbearing effect on occupiers of nearby residential properties there would be no conflict with WLP policy 37 or SDLP policy GE1 [1201]. That addresses four of the five reasons for refusal.

1326. The final reason for refusal relates to heritage matters which are addressed under my fourth main issue. For the reasons set out [989] I consider that greater weight should be given to the Framework policy on this matter than to the development plan. My understanding of *Barnwell Manor* and *North Norfolk* is that this is a two stage exercise. First, an assessment of compliance against policy must be undertaken. In this case, that requires the less than substantial harm to be weighed against the public benefits of the proposal. Second, the duty in s66 of the Act to afford considerable importance and weight to the desirability of preserving the settings of the heritage assets identified must be weighed in the overall planning balance.

1327. Dealing with the first stage, it is Framework paragraph 134 that applies since it is less than substantial harm that has been identified [297]. The presumption of refusal that must apply when substantial harm is found (Framework paragraph 133) is not removed entirely, but the strength of the presumption against the grant of planning permission has plainly been lessened (PINQ5, paragraph 4 quoting Sullivan LJ in *Barnwell Manor* at paragraph 28).

1328. Furthermore, the harm applies to only two heritage assets. Drawing on the Secretary of State's recent decision brought to my attention by GCC [1192 and 1193] and applying the same principles, this would be a case where the weight to be applied should be limited since the number of assets that would be affected is similarly limited.

1329. A number of matters weigh in the balance in favour of the appeal proposal. These and the weight that should be attributed to them are as follows:

- Contribution to the Government's overall energy policy and climate change programme (my first main issue); considerable weight [1037].
- Management of waste that is now consigned to landfill further up the waste hierarchy; considerable weight [1204].
- A significant contribution towards a recently established quantitative need for residual waste recovery capacity; considerable weight [1225].
- The adverse consequences of the appeal not succeeding; some weight [1257].

1330. To the extent that the management of waste further up the waste hierarchy and the meeting of a quantitative need established by the WCS are already encompassed within WCS policy WCS6 with which I believe the appeal proposal would accord, I consider that caution needs to be applied to avoid double counting the weight to be attributed to the benefits that would result from the appeal proposal. Nevertheless, I consider that at this first stage the planning balance falls in favour of the appeal scheme with the result that the less than substantial harm to the significance of the two heritage assets identified is outweighed. Refusal of planning permission as a matter of policy under Framework paragraph 134 would not therefore be justified.
1331. Turning now to the second stage, two matters weigh in the balance against the appeal proposal.
1332. The first is the desirability of preserving the settings of the heritage assets to which, as a matter of law, s66 of the Act requires that considerable importance and weight must be attributed. However, for the reasons set out above [1327 and 1328] I consider that in this case the weight to be applied by s66 is in fact limited. The second is the perception of harm to the health of the local community. This is a matter to which I consider limited weight should be attributed [1249].
1333. The matters that weigh in favour of the proposal in the balance are those set out in paragraph 1329 above. It is my judgement that the energy and climate change benefit of the appeal proposal is such that the harm that would be caused would be outweighed.
1334. To summarise, I consider that the appeal proposal would comply with the relevant development plan policies and I am satisfied that for the purposes of paragraph 134 of the Framework, the less than substantial harm to the settings, and thus the significance of two heritage assets, is outweighed by the substantial public benefits I have identified. Moreover, the desirability of preserving those settings anticipated by section 66 of the Act (and to which I have had special regard) has also been weighed in the overall balance of considerations which have framed my conclusions. There are no other material considerations to indicate that the appeal should be determined other than in accordance with the development plan and I conclude therefore that the appeal should succeed.

Recommendation

1335. I recommend that the appeal be allowed subject to the conditions set out in Annex B.

Brian Cook

Inspector

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Juliet Bailey BA MA Local resident with professional experience in landscape conservation

FOR GLOUCESTERSHIRE FRIENDS OF THE EARTH NETWORK:

Mary Newton BA (Hons) Planning and Waste Officer

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Cllr Anthony Blackburn County Councillor

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|---|--|
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| Neil Carmichael MP | Member for Stroud |
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CORE DOCUMENTS

CD1 Planning Application and Decision Documents

- CD1.1 The Planning Application Document (UBB, January 2012) comprising:
- (i) Planning Application Forms and Certification;
 - (ii) Design and Access Statement;
 - (iii) Planning Statement (with appendices);
 - (iv) Planning Application Drawings;

- (iv/a) Planning Application Drawings 11034_PL33 (Rev A) and 11034_PL34 (Rev A)
- (v) Community Involvement Statement (with appendices)
- (vi) Other Information.
- CD1.2 Environmental Statement (4 volumes) (UBB, January 2012) comprising:
 - (i) Volume 1 – Main Report;
 - (ii) Volume 2 – Illustrative Figures;
 - (iii) Volume 3 – Technical Appendices; and
 - (iv) Volume 4 – Non-Technical Summary.
- CD1.3 Environmental Statement Errata
- CD1.4 Transport Assessment
- CD1.5 Environmental Statement Regulation 22 submission 1 (11 September 2012)
- CD1.6 Environmental Statement Regulation 22 submission 2 (19 November 2012)
- CD1.7 Regulation 22 Consultation October 2012 - correction to Appendix 3 to the first Regulation 22 submission and a technical note on groundwater flooding issues
- CD1.8 Planning Application and Environmental Statement Points of Clarification (11 September 2012)
- CD1.9 Gloucestershire County Council's Committee Report including the Errata (21 March 2013)
- CD1.10 Gloucestershire County Council's Committee minutes (21 March 2013)
- CD1.11 Gloucestershire County Council's Decision Notice (10 April 2013)

CD2 *Environmental Permit Documents*

- CD2.1 Environmental Permit for Javelin Park EfW facility EPR/CP3535CK/A001 dated 22 May 2013
- CD2.2 Decision Document for Environmental Permit for Javelin Park reference: EPR/CP3535CK/A001 (24 May 2013)
- CD2.3 Application for R1 status for Javelin Park
- CD2.4 Letter from the Environment Agency dated 7 March 2013 confirming that the Design Stage Assessment shows that the Javelin Park EfW facility meets or exceeds the R1 recovery threshold
- CD2.5 Application for Environmental Permit

CD3 *Consultation Responses from the Planning Application Process*

- CD3.1 Memorandum From Kevin Phillips to Chris Kenneford; October 2012
- CD3.2 Memorandum From Kevin Phillips to Chris Kenneford 7 January 2012
- CD3.3 Email From County Archaeologist to GCC 13 April 2012
- CD3.4 Letter From County Archaeologist to GCC 27 April 2012
- CD3.5 Letter From County Archaeologist to GCC 6 November 2012
- CD3.6 Letter GCC Highways to GCC 14 May 2012

- CD3.7 Letter GCC Highways to GCC 1 June 2012
- CD3.8 Notes Following Site Visit BV to GCC Rec'd 9 July 2012
- CD3.9 Letter + checklist EA to GCC 2 May 2012
- CD3.10 Letter EA to GCC 14 May 2012
- CD3.11 Email, Letter + encs Axis to EA 13 June 2012
- CD3.12 Letter EA to GCC 17 October 2012
- CD3.13 Letter EA to GCC 9 November 2012
- CD3.14 Letter EA to GCC 19 December 2012
- CD3.15 Letter EA to GCC 1 February 2013
- CD3.16 Letter HA to GCC 17 April 2012
- CD3.17 Letter HA to GCC 17 May 2012
- CD3.18 Letter HA to GCC 17 July 2012
- CD3.19 Letter HA to GCC 19 September 2012
- CD3.20 Letter HA to GCC 11 October 2012
- CD3.21 Letter NE to GCC 31 May 2012
- CD3.22 Letter Axis to NE 25 July 2012
- CD3.23 Letter NE to GCC 28 September 2012
- CD3.24 Letter NE to GCC 9 November 2012
- CD3.25 Letter EH to GCC 24 April 2012
- CD3.26 Email, Letter + enclosures 8 June 2012 Axis to EH
- CD3.27 Email EH to GCC 11 October 2012
- CD3.28 Email + technical note draft Axis to EH 22 October 2012
- CD3.29 Letter EH to GCC 14 November 2012
- CD3.30 Letter DC to GCC 3 August 2012
- CD3.31 Letter DC to GCC 22 August 2012
- CD3.32 Letter DC to GCC 5 December 2012
- CD3.33 Letter CPRE to GCC 17 April 2012
- CD3.34 Letter CPRE to GCC 10 September 2012
- CD3.35 Letter CPRE to GCC 14 January 2013
- CD3.36 Letter CPRE to GCC 16 March 2013
- CD3.37 Letter SDC to GCC 27 March 2012
- CD3.38 Letter Axis to SDC 20 April 2012
- CD3.39 Letter + enclosures SDC to GCC 9 May 2012
- CD3.40 Report SDC 20 November 2012
- CD3.41 Review of Submitted Landscape and Visual Impact Assessment SDC November 2012
- CD3.42 Letter + enclosure SDC to GCC 21 December 2012
- CD3.43 Email + enclosure CCB to GCC 23 April 2012
- CD3.44 Letter Axis to CCB 25 July 2012
- CD3.45 Email NG to GCC 10 May 2012
- CD3.46 Email NPCU to GCC 26 September 2012
- CD3.47 Letter DCLG to GCC 20 March 2012
- CD3.48 Letter DCLG to GCC 25 March 2012
- CD3.49 Axis to GCC - Application covering letter 31 January 2012
- CD3.50 Axis to GCC - Article 11 Notice letter 31 January 2012
- CD3.51 Axis to GCC - Letter enclosing DVDs 1 February 2012
- CD3.52 GCC to Axis - Validation letter 15 February 2012
- CD3.53 Axis to GCC - Response to GCC validation letter 29 February 2012
- CD3.54 Axis to GCC - Email concerning errata with attachment 30 March 2012
- CD3.55 Bureau Veritas Review of Environmental Statement (ES) for

- GCC April 2012
- CD3.56 GCC to Axis - Registration letter 3 May 2012
- CD3.57 Axis to GCC - Letter concerning extension of timescales
22 May 2012
- CD3.58 Axis to GCC - Draft response to Bureau Veritas critique of ES
7 June 2012
- CD3.59 Axis to GCC - Email and attachment (response to draft
Regulation 22 letter) 28 June 2012
- CD3.60 GCC to Axis - Regulation 22 request and covering email
5 July 2012
- CD3.61 GCC to Axis - Letter seeking clarification of other Matters
5 July 2012
- CD3.62 GCC to Axis - Regulation 22 request 7 August 2012
- CD3.63 Axis to GCC - Regulation 22 submission and Points of
Clarification document 11 September 2012
- CD3.64 Axis to GCC - Letter responding to BV critique with Covering
email (14-09-12) and appendices 13 September
- CD3.65 Axis to GCC - Email responding to clarification questions
26 September 2012
- CD3.66 Bureau Veritas Review of Regulation 22 Submissions for GCC
October 2012
- CD3.67 Axis to GCC and others - Email regarding heritage Matters
16 October 2012
- CD3.68 GCC to Axis - Letter requesting agreement to extend
determination date for application 16 November 2012
- CD3.69 Axis to GCC - Letter agreeing to extend determination date
for application 16 November 2012
- CD3.70 Axis to GCC - Regulation 22 submission No. II 19 November
2012
- CD3.71 Axis to Stroud DC (copied to GCC) - Regulation 22
submission No. II 19 November 2012
- CD3.72 GCC Habitat Regulations Screening Assessment (Feb 2013)
- CD3.73 NHSGC PCT to GCC - Not dated - Querys on the Planning
Application
- CD3.74 NHSGC PCT to GCC - 2 October 2012
- CD3.75 Bureau Veritas Additional Comments Following Site Visit
(June 2012)

CD4 *Appeal Documentation*

- CD4.1 Recovery letter from the Secretary of State for DCLG dated
16 July 2013
- CD4.2 Grounds of Appeal on Behalf of the Appellant (UBB, June
2013)
- CD4.3 Statement of Case on Behalf of Gloucestershire County
Council (September 2013)
- CD4.4 Statement of Case on Behalf of the Appellant (UBB,
September 2013)
- CD4.5 Statement of Case on Behalf of GlosVAIN (September 2013)
- CD4.6 Statement of Case on Behalf of GlosFoEN (September 2013)
- CD4.7 Statement of Common Ground 1 (UBB and GCC October
2013)

- CD4.8 Statement of Common Ground 2 (UBB and SDC October 2013) – submitted 20 November 2013
- CD4.9 Statement of Common Ground 3 (UBB and GlosVAIN October 2013)
- CD4.10 Not used
- CD4.11 Draft planning Conditions agreed between UBB and GCC - submitted 18 November 2013
- CD4.12 Pre-Inquiry Meeting Note
- CD4.13 Statement of Case on Behalf of SDC (September 2013)
- CD4.14 Representation from English Heritage (3 September 2013)
- CD4.15 Suggested Planning Conditions from Glosvain – 23 January 2014
- CD4.16 Suggested Planning Condtiions from GCC – 27 January 2014
- CD4.16.1 Further Suggested Planning Condtiions from GCC – 27 January 2014
- CD4.17 Further Suggested Planning Conditions dated 25 February 2014 with GCC and UBB comments
- CD4.18 GlosVAIN comments on CD4.17 with rebuttal comments from UBB
- CD4.19 UBB comments on GlosVAIN suggested planning conditions

CD5 *Development Plan Documents – Extant and Emerging (including WCS examination evidence)*

- CD5.1 Gloucestershire Waste Core Strategy (November 2012)
- CD5.2 Gloucestershire Waste Local Plan 2002-2012 - Saved Policies (October 2004)
- CD5.3 The Stroud District Local Plan - Saved Policies (November 2005)
- CD5.4 Stroud District Local Plan: Pre-Submission Draft for Consultation (September 2013)
- CD5.5 Strategy Consultation: A Preferred Strategy for shaping the future of Stroud District 6th February – 19 March 2012 (February 2012)
- CD5.6 Stroud District Local Plan: Policies consultation 27 March – 8th May 2013 (undated but March 2013)
- CD5.7 Revised Gloucestershire Waste Core Strategy (June 2011) (WCS CD no: 1.2)
- CD5.8 Schedule of Focused Changes (GCC, June 2011) (WCS CD 1.3)
- CD5.9 Schedule of Minor Editorial Changes (GCC, September 2011) (WCS CD no: 1.4)
- CD5.10 Proposals Map Update Statement (GCC, September 2011) (WCS CD no: 1.8)
- CD5.11 Site Options Paper – Main Document (GCC, October 2009) (WCS CD no: 4.1)
- CD5.12 Publication Habitat Regulations Assessment (HRA) Report (December 2010) (WCS CD no: 5.1)
- CD5.13 Focused Changes - Habitat Regulations Assessment (HRA) Report Supplementary Statement (May 2011) (WCS CD no: 6.3)

- CD5.14 Habitat Regulations Assessment (HRA) Evidence Gathering/Baseline Report (February 2007) (WCS CD no: 9.1)
- CD5.15 Habitat Regulations Assessment (HRA) Evidence Gathering/Baseline Report Update 1 (May 2009) (WCS CD no: 9.2)
- CD5.16 Habitat Regulations Assessment (HRA) Evidence Gathering/Baseline Report Update 2 (August 2009) (WCS CD no: 9.3)
- CD5.17 Technical Evidence Paper WCS A - Data (September 2007) (WCS CD no: 10.3)
- CD5.18 Technical Evidence Paper WCS – A Data Update (November 2010) (WCS CD no: 10.4)
- CD5.19 Technical Evidence Paper WCS-G Waste Facility Types (January 2008) (WCS CD no: 10.10)
- CD5.20 Technical Evidence Paper WCS- I – Waste Facilities in the Green Belt (January 2008) (WCS CD no: 10.12)
- CD5.21 Technical Evidence Paper WCS- K Joint Working with the WDA (November 2007) (WCS CD no: 10.14)
- CD5.22 Technical Evidence Paper WCS N Site Selection (September 2009) (WCS CD no: 10.17)
- CD5.23 Technical Evidence Paper WCS-N Site Selection Appendix C.14-145 Industrial Estate, Former Moreton Valence Airfield (GCC, October 2009) (WCS CD no: 10.31)
- CD5.24 Technical Evidence Paper WCS-Q EfW CHP Potential (December 2010) (WCS CD no: 10.130)
- CD5.25 Joint Technical Evidence Paper WCS-MCS 4 Landscape and AONB (January 2008) (WCS CD no: 10.134)
- CD5.26 Joint Technical Evidence Paper WCS- MCS 6 Archaeology and the Historic Environment (July 2009) (WCS CD no: 10.136)
- CD5.27 Gloucestershire Joint Municipal Waste Management Strategy 2007 - 2020 (April 2008) (WCS CD no: 11.12)
- CD5.28 Issue 2 - Topic Paper - Whether the statistical basis for the CS is robust and justifies the vision and the strategic objectives (Gloucestershire County Council) (WCS CD no: 13.12)
- CD5.29 Issue 4 - Topic Paper - Habitats Regulation Assessment (Gloucestershire County Council) (WCS CD no: 13.4)
- CD5.30 Post Pre-hearing Meeting Pack (29 November 2011) (WCS CD no: 13.18)
- CD5.31 Balfour Beatty Urbaser Scoping Report (October 2011) (WCS CD no: 13.19)
- CD5.32 Complete Circle Exhibition Material (November 2011) (WCS CD no: 13.20)
- CD5.33 Urbaser Balfour Beatty First Exhibition Material (WCS CD no: 13.28)
- CD5.34 WLP Inspectors Report (August 2002) (WCS CD no: 13.32)
- CD5.35 WCS Inspector's Guidance Notes
- CD5.36 Issue 3 Graftongate Investment Ltd and Consi Investments Ltd (January 2012) (WCS CD no: 13.50.1)

- CD5.37 Issue 5 Graftongate Investment Ltd and Consi Investments Ltd (January 2012) (WCS CD no: 13.50.2)
- CD5.38 WCS Publication Response Schedule
- CD5.39 Matthew Fox (GVA) on behalf of Graftongate Investments Representation Form for WCS DPD Revised Publication (focused changes stage)
- CD5.40 WCS Preferred Options Response Report (2008)
- CD5.41 Complete residual waste tonnage paper for WCS (WCS CD no: 13.58)
- CD5.42 Schedule of Additional Changes (WCS CD no: 14.2)
- CD5.43 Post Examination Changes update to Core Documents Proposals Map (WCS CD no: 14.5)
- CD5.44 Issues and Options Schedule of Representations (March 2007)
- CD5.45 David Adams (AXISPED) on behalf of UBB; Representation Form for WCD DPD Publication Stage (ref: 266)
- CD5.46 Schedule of Main Modifications (April 2012) (WCS CD no: 14.1)
- CD5.47 Matthew Fox (GVA) on behalf of Graftongate/Consi Investments representations form for WCS DPD Main Modifications/ Additional Changes.
- CD5.48 Nick Roberts (AXISPED) on behalf of UBB; Representation Form for WCS DPD Main Modification/ Additional Changes
- CD5.49 The Inspector's Report for the WCS
- CD5.50 Natural England's response to WCS 7th February 2011
- CD5.51 Not used
- CD5.52 Eunomia Research & Consulting. 2006. Municipal Waste Arisings Projection Final Report for Gloucestershire County Council (WCS CD no: 13.38)
- CD5.53 Site Options Summary Response Report (2010) (WCS CD4.4)
- CD5.54 Topic Paper 5 Specific Sites (WCS CD13.15)
- CD5.55 Technical Evidence Paper WCS-N Site Selection Appendix C.30 - 272 Wingmoor West (GCC, October 2009) (WCS CD no: 10.47)
- CD5.56 Technical Evidence Paper WCS-N Site Selection Appendix C.102 - 561 Wingmoor East (GCC, October 2009) (WCS CD no: 10.119)
- CD5.57 Exchange of Correspondence between the Inspector and the County Council following consultation on the Main Modifications to the WCS (WCS CD no: 14.12)
- CD5.58 Waste Core Strategy, Technical Paper WCS-C, Broad Locational Analysis, Living Draft (January 2008)

CD6 *Planning Policy Documents*

- CD6.1 National Planning Policy Framework (DCLG, March 2012)
- CD6.2 Technical Guidance to the National Planning Policy Framework (DCLG, March 2012)
- CD6.3 Planning Policy Statement 10 (PPS10): Planning for Sustainable Waste Management (DCLG, March 2011)
- CD6.4 Companion Guide to PPS10: Planning for Sustainable Waste

- CD6.5 Management (DCLG, June 2006)
- CD6.5 EN1 – Overarching Energy National Policy Statement (NPS) (DECC, June 2011)
- CD6.6 EN3 – Renewable Energy Infrastructure National Policy Statement (NPS) (DECC, June 2011)
- CD6.7 DCLG Planning Practice Guidance for Renewable and Low Carbon Energy (July 2013)
- CD6.8 Dear Chief Planning Officer Letter concerning NPSs dated 9 November 2009
- CD6.9 DCLG Updated National Waste Planning Policy: Planning for Sustainable Waste Management Consultation Document (July 2013)
- CD6.10 The letter from Steve Quartermain dated 6 July 2010 to the Chief Planning Officers in England with regard to the abolition of Regional Strategies.
- CD6.11 The letter from Steve Quartermain dated 10 January 2011 to the Chief Executives of all Waste Planning Authorities in England with regard to the need for Waste Framework Directive compliant local waste plans
- CD6.12 Government response to the consultation on proposals for the levels of banded support under the Renewables Obligation for the period 2013-2017 and the Renewables Obligation Order 2012 (DECC, July 2012)
- CD6.13 Circular 11/95 Use of Conditions in Planning Permission (ODPM, 1995)
- CD6.14 Chief Planning Officer letter of 31 March 2011 and Written Ministerial Statement: Planning for Growth of 23 March 2011

CD7 *Waste Management Strategy, Guidance and Legislation*

- CD7.1 The Waste Incineration Directive 2000/76/EC (December 2000)
- CD7.2 The Landfill Directive 1999/31/EC (April 1999)
- CD7.3 The revised Waste Framework Directive 2008/98/EC (December 2008)
- CD7.4 The Waste (England and Wales) Regulations 2011 (Statutory Instrument 2011 No. 988) (March 2011)
- CD7.5 Waste Management Strategy England 2007 (Defra, May 2007)
- CD7.6 Government Review of Waste Policy in England 2011 (Defra, June 2011)
- CD7.7 DEFRA Consultation Draft of the Waste Management Plan for England (Defra, July 2013)
- CD7.8 DEFRA Guidance on applying the waste hierarchy (Defra, June 2011)
- CD7.9 DEFRA Energy from Waste - A Guide to the Debate (Defra, 2013)
- CD7.10 DEFRA The Economics of Waste and Waste Policy (Defra, June 2011)
- CD7.11 DEFRA Forecasting 2020 waste arisings and treatment capacity (Defra, February 2013)

- CD7.11.1 Updated DEFRA Forecasting 2020 waste arisings and treatment capacity (Defra, February 2013) (updated October 2013)
- CD7.12 Survey of Commercial And Industrial Waste Arisings 2010 – Revised Final Results (Defra, June 2011) (including Commercial and Industrial Waste Survey 2009: Final Report (Jacobs, 2011))
- CD7.13 Environment Agency Briefing Note "Qualifying for R1 status using the R1 energy efficiency formula" (Environment Agency, April 2012)
- CD7.14 Guidelines on the Interpretation of the R1 Energy Efficiency Formula for Incineration Facilities Dedicated to the Processing of Municipal Solid Waste According to Annex II of Directive 2008/98/EC on Waste (European Commission, June 2011)
- CD7.15 Waste Prevention Programme for England – Call for Evidence and associated documents (DEFRA, March, 2013)
- CD7.16 Waste Management Technology Briefs for Incineration of Municipal Solid Waste (DEFRA, February 2013)
- CD7.17 Planning for Waste Management Facilities: A Research Study (ODPM, August 2004)
- CD7.18 Progress with delivery of commitments from the Government's Review of Waste Policy in England 2011 (DEFRA, March 2012)
- CD7.19 Designing Waste Facilities – a key guide to modern design in Waste (DEFRA/CABE 2008)
- CD7.20 Research into SRF and RDF Exports to Other EU Countries. For Chartered Institution of Wastes Management. amec (2013).
- CD7.21 Mechanical Biological Treatment of Waste – MBT. Policy Statement. Chartered Institution of Water and Environmental Management (2013).
- CD7.22 Solid Recovered Fuel Regional Assessments: West of England and Dorset. Report by RPS. Department of Environment Food & Rural Affairs (2009).
- CD7.23 WasteDataFlow recycling statistics for 1996/97 to 2011/12. Department of Environment Food & Rural Affairs (2012).
- CD7.24 Review of the Energy Efficiency Performance of Electricity-only EFW plants. Environment Agency (2012).
- CD7.25 Export option 'cheaper' than Norfolk Efw contract. Letsrecycle (3 October 2013).
- CD7.26 Energy from Waste: the benefits of upgrading household waste before energy recovery. National Non-Foods Crop Centre (2012).
- CD7.27 Wasting Waste. Risks and benefits of exporting the UK's waste. Summary of a roundtable discussion on 25 June 2013. Published by Policy Exchange. Newey G. (2013).
- CD7.28 Energy from Waste (Efw) plant database. Waste and Resources Action Programme (2013).
- CD7.29 Combined Heat and Power (CHP) Appraisal: Final Report. GCC. (July, 2008)
- CD7.30 Waste Management Plan for England (December 2013)

CD8 Energy Strategy, Guidance and Legislation

- CD8.1 Renewable Energy Directive 2009/28/EC (April 2009)
- CD8.2 The promotion of cogeneration based on a useful heat demand in the internal energy market (amending Directive 92/42/EEC) Directive 2004/8/EC (February 2004)
- CD8.3 Energy White Paper 'Meeting the Energy Challenge (DTI, May 2007)
- CD8.4 UK Renewable Energy Strategy (HM Government, July 2009);
- CD8.5 The UK Biomass Strategy (DfT, DECC, Defra, May 2007)
- CD8.6 Review of the Generation Costs and Deployment Potential of Renewable Electricity Technologies in the UK – DECC Study (DECC, June 2011)
- CD8.7 The UK Low Carbon Transition Plan (DECC, July 2009)
- CD8.8 Planning our electric future: a white paper for secure, affordable and low-carbon electricity (DECC, July 2011)
- CD8.9 UK Renewable Energy Roadmap (DECC, July 2011)
- CD8.10 UK Renewable Energy Road Map Update 2012 (DECC, December 2012)
- CD8.11 UK Bioenergy Strategy (DECC, April 2012)
- CD8.12 The Renewables Obligation Order (2009 and subsequent amendments)
- CD8.13 The Carbon Plan: Delivering Our Low Carbon Future (DECC, December 2011)
- CD8.14 Stroud District Renewable Energy SPA (not dated)
- CD8.15 Renewable Heat Incentive. (DECC, March 2011)
- CD8.16 Renewable Heat Incentive: consultation on the proposed RHI financial support scheme. (DECC, February 2010)
- CD8.17 Renewables obligation: fuel measurement and sampling guidance. Office of Gas and Electricity Markets (Ofgem, May 2013)
- CD8.18 Renewables Obligation Preliminary Consultation. (DTI, 2000)
- CD8.19 The 2050 Pathways Analysis (DECC, August 2012)
- CD8.20 European Parliament resolution of 24 May 2012 on a resource-efficient Europe (2011/2068(INI))
- CD8.21 Roadmap to a Resource Efficient Europe. European Commission COM(2011) 571 final, 20 September 2011
- CD8.22 WORKING GROUP I CONTRIBUTION TO THE IPCC FIFTH ASSESSMENT REPORT CLIMATE CHANGE 2013: THE PHYSICAL SCIENCE BASIS - Final Draft Underlying Scientific-Technical Assessment (IPCC - June 2013)

CD9 Other Applications, Permission and Decisions

- CD9.1 Planning Permission 11/00117/STMAJW. Smiths (Gloucester) Ltd (GCC, 27 September 2011)
- CD9.2 Appeal Decision APP/C1625/V/06/1199309 27 March 2007 Secretary of States Decision letter on Application S.05/2138VAR at Javelin Park (DCLG, March 2007)

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- CD9.3 Costs (16 March 2009) and Appeal (28 April 2009) Decisions for APP/X2220/A/08/2071880. Land West of Enifer Down Farm east of Archers Court Road and little Pineham Farm, Langdon (DCLG, 28 April 2009)
 - CD9.4 Appeal by SITA Cornwall APP/D0840/A/09/2113075. Secretary of State Decision (19 May 2011) and Inspector's Report (3 March 2011). Land at Rostowrack Farm and land at Wheal Remfry and Goonvean and Park Andillick Dryers, St Dennis, Cornwall
 - CD9.5 Appeal Decision APP/C1625/11/2155923. Agricultural Land at Standle Farm, bounded by the M5 and A38, Stinchcombe, Gloucestershire, GL13 9HD (DCLG, 28 November 2012).
 - CD9.6 Application by Veolia ES Nottinghamshire Limited land at former Rufford Colliery, Rainworth, Nottinghamshire NG21 OET. Application ref: 3/07/01793/CMW SOS ref: APP/L3055/V/09/2102006. (DCLG, May 2011) (also referred to at CD13.55)
 - CD9.7 Secretary of State for Communities and Local Government (2011, May 26). Decision letters re application by Veolia ES Nottinghamshire Limited land at former Rufford Colliery, Rainworth, Nottinghamshire NG21 OET. Application ref: 3/07/01793/CMW SOS ref: APP/L3055/V/09/2102006. Communities and Local Government (also referred to at CD13.55)
 - CD9.8 Appeal Decision APP/Q3060/A/08/2063129. Eastcroft, Nottingham - Secretary of State letter dated 12 February 2009 and conclusions of the Inspector's Report dated 10 December 2008
 - CD9.9 Appeal Decision DPI/A0665/11/10. Lostock, Northwich. Secretary of State letter dated 2 October 2012 and conclusions of the Inspector's Report dated 5 March 2012
 - CD9.10 Appeal Decision APP/E1855/V/11/2153273. Hartlebury, Worcestershire. Secretary of State letter dated 19 July 2012 and conclusions of the Inspector's Report dated 31 January 2012.
 - CD9.11 Appeal Decision APP/P0119/A/10/2140199 Severnside, South Gloucestershire - Secretary of State letter dated 15 September 2011, relevant extracts and conclusions of the Inspectors Report dated 18 July 2011
 - CD9.12 Appeal Decision APP/Z0645/A/07/2059609 Ince Marshes, Cheshire - Secretary of State letter dated 11 August 2009 and conclusions of the Inspector's Report dated 3 October 2008 (DBERR Ref: 01.08.10.04/36C)
 - CD9.13 Ineos Chlor, Runcorn - Secretary of State letter dated 16 September 2008 (DBERR Ref: 01.08.10.04/8C)
 - CD9.14 Appeal Decision APP/Z4310/A/09/2117527. Port of Garston, Liverpool - Inspector's Report dated 5 October 2010
 - CD9.15 Appeal Decision APP/K2800/A/10/2126938. East Northants (King's Cliffe) - Secretary of State letter dated 24 May 2011 and conclusions of the Inspector's Report dated 16 February 2011
 - CD9.16 Appeal Decision APP/U3100/A/09/2119454. Ardley Landfill

- Site, Oxfordshire - Secretary of State letter dated 15 December 2010 and conclusions of the Inspector's Report (not dated)
- CD9.17 Appeal Decision APP/L3245/A/11/2146219, Battlefield Enterprise Park. - Conclusions of the Inspector's Report dated 10 January 2012
- CD9.18 Appeal Decision T/APP/C1625/A/93/232368/P5, Ongers Farm Motorway Service Area - Inspectors Report dated 27 June 1994
- CD9.19 Planning Permission S.01/1191 - Outline application for the redevelopment for up to 45,151 m2 of distribution warehouses at Javelin Park, Gloucestershire
- CD9.20 Planning permission S.02/2178 - Reserved Matters application for external appearance, siting, design and landscaping (pursuant to Outline Permission S.01/1191). Including drawings.
- CD9.21 Planning permissions S.07/2468/REM; S.07/2471/REM; S.07/2472/REM; S.07/2473/REM; S.07/2474/REM. All reserved matters applications pursuant to permission S.05/2138/VAR - including relevant drawings
- CD9.22 Planning permission S.10/0590/VAR - Permission for extension of time period for the implementation of outline permission S.05/2138/VAR for a further three years
- CD9.23 Planning Permission S.10/1451/FUL - Construction of private estate road and associated lighting, services and surface water drainage infrastructure.
- CD9.24 Appeal Decision APP/M2460/A/11/2150748 - Newhurst Energy Recovery Facility, Shepshed, Leicestershire Secretary of State letter dated 28 June 2012 and conclusions of the Inspector's Report dated 9 February 2012
- CD9.25 Planning Permission LW/462/CM (EIA) New Haven ERF, East Sussex. Committee Report dated 21st February 2007
- CD9.26 Appeal Decision APP/H1840/A/06/2023564 - Honeybourne Airfield Industrial Estate, Evesham. Inspector's Report dated 1 August 2007
- CD9.27 Appeal Decision APP/G1630/A/12/2172936 Land to the rear of the Invista Plant, Brockworth, Gloucester . Decision dated 8 November 2012
- CD9.28 Appeal Decisions APP/U4230/A/11/2162115 and APP/U4230/A/11/2162103 Green Lane, Eccles, Salford. Decision dated 21 August 2012
- CD9.29 IPC Decision EN0100011 Rookery South Pit, near Stewartby, Bedfordshire. Decision dated 13 October 2011
- CD9.30 Inspectors Report for Appeal Wadlow Farm, Six Mile Bottom Road, West Wrating, Cambridgeshire. Decision dated 26 August 2009
- CD9.31 Appeal Decisions APP/R0660/A/10/2129865 and APP/R0660/A/10/2142388 - Land off Pochin Way, and Land to the South of ERF Way and North of Cledford Lane Land, Middlewich, Cheshire. Secretary of State letter dated 20 July 2012 and conclusions of the Inspector's Report dated 24 February 2012

- CD9.32 Appeal Decision APP/U3100/A/09/2119454. Ardley Landfill Site, Oxfordshire - Secretary of State letter dated 17 February 2011
- CD9.33 Appeal Decision APP/W0530/A/07/2059471. Wadlow Farm, Cambridgeshire - Secretary of State letter dated 9 November 2009
- CD9.34 Appeal Decision APP/F5540/A/12/2174323. Appeal by Peel Energy Ltd, Land to south of Manchester Ship Canal and west of Barton Bridge – Secretary of State decision letter dated 15 May 2013 and Inspectors Report dated 8 February 2013.
- CD9.35 Appeal Decision APP/C1055/A/10/2124772. Appeal by Resource Recovery Solutions (Derbyshire), Disused Land adjacent to 1-5 Railway Cottages, Sinfin Lane, Derby. Inspectors Report 16 November 2010
- CD9.36 High Court Decision on appeal against Appeal Decision APP/C1055/A/10/2124772 dated 16 November 2010. Case number CO/13124/2010, decision date 5 July 2011.
- CD9.37 Appeal Decision APP/C1055/A/10/2124772. Appeal by Resource Recovery Solutions (Derbyshire), Disused Land adjacent to 1-5 Railway Cottages, Sinfin Lane, Derby. Inspectors Report 21 September 2012
- CD9.38 Appeal Decision APP/E1855/A/01/1070998. Appeal by Mercia Waste Management, British Sugar Site, Stourport Raod, Kidderminster.
- CD9.39 Appeal Decision APP/Z1585/V/09/2104804, Rivenhall Airfield, Essex, SoS Decision 2 March 2010 and Inspectors Report dated 22 December 2009
- CD9.40 Appeal Decision APP/W2275/A/97/281832 &281833 Lamberhurst Farm, Yorkletts, Dargate, Kent SoS Decision 30 August 2001
- CD9.40.1 Appeal Decision APP/W2275/A/97/281832 &281833 Lamberhurst Farm, Yorkletts, Dargate, Kent SoS Decision 30 August 2001 including report
- CD9.41 Appeal Decision APP/K0235/A/10/2141593 Twinwoods Business Park, Thurleigh Road, Milton Ernest SoS decision 9 February 2012 and Inspectors Report 19 July 2011
- CD9.42 Appeal Decision App/Z1775/A/00/1037287 Portsmouth Incinerator, Quartermaine Road, Copnor, SoS decision 15 October 2001 and undated Inspectors Report
- CD9.43 Appeal Decision T/APP/Q2371/A/97/288746/P5 Round O Quarry, Cobbs Brow Lane, Skelmesdale, SoS decision 1 Feb 1999
- CD9.44 High Court decision CO 1007/99 Round O Quarry, Cobbs Brow Lane, Skelmesdale, 21 September 1999
- CD9.45 Judgement of the Court – 20 October 2005 – Kokott – Case 6/04.

CD10 Other Landscape Documents

- CD10.1 The Guidelines on Landscape and Visual Impact Assessment 3rd Edition (Landscape Institute and Institute of

- CD10.2 Environmental Management and Assessment , 2013)
The Guidelines on Landscape and Visual Impact Assessment
2nd Edition (Landscape Institute and Institute of
Environmental Management and Assessment, 2002)
- CD10.3 Landscape Character Assessment: Guidance for England and
Scotland (Scotland Natural Heritage and the Countryside
Agency, 2002)
- CD10.4 Gloucestershire Landscape Character Assessment (LDA,
Design 2006)
- CD10.5 The Cotswold AONB Management Plan 2013 – 2018
(Cotswold Conservation Board, 2012)
- CD10.6 Cotswold Conservation Board Position Statement
Development in the setting of the Cotswolds AONB
(Cotswold Conservation Board, October 2010)
- CD10.7 Guidance on Tall Buildings (July 2007), English Heritage and
CABE
- CD10.8 Stroud District Landscape Character Assessment (LDA for
Stroud District Council 2000)
- CD10.9 Cotswolds Area of Outstanding Natural Beauty Landscape
Character Assessment (LDA 2004)
- CD10.10 National Character Area Descriptions 104, 105, 106, 107:
Severn & Avon, Cotswolds, Forest of Dean & Lower Wye
Valley and South Herefordshire & Over Severn respectively
(Natural England; 2012/2013)
- CD10.11 The Cotswolds AONB Landscape Strategy & Guidelines:
LCT2: escarpment, LCT18: settled unwooded valley
- CD10.12 Landscape Strategy and Guidelines for the Cotswolds AONB
(2008)
- CD10.13 Forest of Dean District Landscape Character Assessment
(2002)
- CD10.14 Not used
- CD10.15 'Landscape Character Assessment, Topic paper 6 -
Techniques and Criteria for Judging Capacity and Sensitivity'
Countryside Agency and Scottish Natural Heritage (2004)

CD11 *Other Cultural Heritage Documents*

- CD11.1 Gloucestershire Historic Landscape Characterisation
(September 2006)
- CD11.2 Seeing the History in the View (English Heritage, May 2011)
- CD11.3 Climate Change and the Historic Environment (English
Heritage, January 2008)
- CD11.4 The Setting of Heritage Assets (English Heritage 2011)
- CD11.5 Ancient Monuments and Archaeological Areas Act 1979
- CD11.6 Conservation Principles Policies and Guidance for Sustainable
Management of the Historic Environment. English Heritage
(April 2008)
- CD11.7 PPS5 Planning and the Historic Planning Practice Guide
(DCLG, English Heritage 2010)
- CD11.8 The Planning (Listed Buildings and Conservation Areas) Act
1990 (as amended)

CD12 Waste Procurement Process Documents

- CD12.1 Project Agreement (22nd February 2013)
- CD12.2 Contract Schedules (22nd February 2013)
- CD12.3 Cabinet Report 7th September 2005 Agenda Item 3 Waste Contract Procurement Strategy (GCC, September 2005)
- CD12.4 GCC Cabinet Report of 12 September 2012: Residual Waste Project – Award of the contract for the treatment of residual waste
- CD12.5 Cabinet Report Annex A: Strategic Re-appraisal : Terms of Reference (16 March 2011)
- CD12.6 Cabinet Report Annex B: Projected Residual MSW Tonnage from 2010/11 to 2039/40 (16 March 2011)
- CD12.7 Cabinet Report Annex C: Strategic Re-appraisal Stakeholder Engagement Report (16 March 2011)
- CD12.8 Cabinet Report Annex D: How 70% recycling should be achieved (16 March 2011)
- CD12.9 Cabinet Report Agenda Item 5; Residual Waste Project – Strategic re-appraisal with appendices (16 March 2011)
- CD12.10 Cabinet Report Agenda Item 7 Residual Waste Project Preferred Bidder (14 December 2011)
- CD12.11 Cabinet Reports- Agenda Item 12 Annex 1 History/Project Background (12 September 2012)
- CD12.12 Cabinet Reports Agenda Item 12 Annex 2 UBB Proposal (12 September 2012)
- CD12.13 Cabinet Report Agenda item 12 Annex 3 Contract Structure (12 September 2012)
- CD12.14 Cabinet Report Agenda item 12; Annex 5 Equality Impact Assessment (12 September 2012)
- CD12.15 Cabinet Report Back page Agenda item 12 (12 September 2012)
- CD12.16 Cabinet Report; Agenda Item 5: Approval of Outline Business Case for Residual Waste Procurement
- CD12.17 Cabinet Report Agenda Item 13: Residual Waste Project Selection of bidders to be invited to submit detailed solutions
- CD12.18 Cabinet Report: Options for the treatment of residual household waste.
- CD12.19 Cabinet Report: Residual Waste Contract – Competitive Dialogue Evaluation
- CD12.20 Cabinet Report: Residual Waste Procurement Plan for diversion of residual municipal waste from landfill
- CD12.21 Strategic Re-appraisal: Residual Waste Project GCC response to issues raised outside of the scope of engagement (January 2011)
- CD12.22 GCC: Residual Waste Procurement Project; Expression of Interest FINAL (30 September 2007)
- CD12.23 Outline Business Case for application for private finance Initiative credits- Waste Infrastructure Delivery Programme (GCC, 30 April 2008)
- CD12.24 Cabinet Report: To Consider an Extension of the County

Council's Waste Management Services Contract with Cory Environmental Ltd (14 September 2011)

CD13 Other Miscellaneous Documents

- CD13.1 HPA Statement "The Impact on Health of Emissions to Air from Municipal Waste Incinerators" (Health Protection Agency, September 2009)
- CD13.2 HPA statement on the new study of health impacts around incinerators (HPA, January 2012)
- CD13.3 "Comparison of the Complex Terrain Algorithms Incorporated into Two Commonly Used Local-Scale Air Pollution Dispersion Models (ADMS and AERMOD) Using a Hybrid Model", 2011, Carruthers, D.J., Seaton, M.D., McHugh, C.A., Sheng, X, Solazzo, E., and Vanvyne, E., Journal of the Air and Waste Management Association, 61:11, 1227-1235
- CD13.4 National Infrastructure Plan 2010 and following updates (HM Treasury, Infrastructure UK, 2010)
- CD13.5 Mainstreaming Sustainable Development: the Governments vision and what this means in practice. (Defra, February 2011)
- CD13.6 Annual Energy Statement (DECC, July 2010)
- CD13.7 Annual Energy Statement (DECC, November 2012)
- CD13.8 Defra, Waste Private Finance Initiative (PFI) – frequently asked questions (FAQs). October 2009
- CD13.9 Thermal methods of municipal waste treatment. C-Tech Innovation for Biffaward. 2003
- CD13.10 Government Response to the Statutory Consultation on the Renewables Order 2011. (DECC December 2010)
- CD13.11 DCLG, Planning Act 2008: Guidance for the examination of applications for development consent for nationally significant infrastructure projects (Feb 2010)
- CD13.12 The Coalition: Our Programme for Government (May 2010)
- CD13.13 EU Industrial Emissions Directive 2010/75/EU (November 2010)
- CD13.14 The Revoked Second Review Gloucestershire Structure Plan (November 1999)
- CD13.15 PPS22: Renewable Energy (DCLG 2004)
- CD13.16 Planning for Renewable Energy (DCLG 2004)
- CD13.17 Economies of Scale – Waste Management Optimisation Study (Defra, April 2007)
- CD13.18 South West Renewable Energy Progress Report 2013 (Regen SW 2013)
- CD13.19 Valuation of energy use and greenhouse gas (GHG) emissions: Supplementary guidance to the HM Treasury Green Book on appraisal and evaluation in central government. HM Treasury and DECC. September 2013 An outline of the WRATE software
- CD13.20 The Habitats Directive 92/43/EEC
- CD13.21 The Conservation of Habitats and Species Regulations 2010
- CD13.22 Circular 01/2005 Biodiversity and Geological Conservation –

- Statutory Obligations and their Impact within the Planning System.
- CD13.23 DEFRA Statistical Release: Local Authority Collected Waste Management Statistics for England – Final Annual Results 2011/12. November 2012
- CD13.24 Waste Infrastructure Delivery Programme Information Note on Combined Heat and Power. (DEFRA Jan 2009)
- CD13.25 The Assessment of plans and projects significantly affecting Natura 2000 sites Methodological Guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC
- CD13.26 DCLG Housing Statistical Release 4: 'House Building: June Quarter 2013 England' (August 2013)
- CD13.27 DCLG Housing Statistical Release 2: 'Household Interim Projections, 2011 to 2021' England (April 2013)
- CD13.28 HMRC Annual UK Property Transaction Statistics (June 2013)
- CD13.29 HMRC Monthly UK Property Transaction Statistics (August 2013)
- CD13.30 Ernst and Young ITEM Club Special Report on Consumer Spending (June 2013)
- CD13.31 Office of National Statistics 'Labour Market Statistics' (July 2013)
- CD13.32 Tranquillity Mapping: Developing a Robust Methodology for Planning Support Technical Report on Research in England, January 2008 (revised) CPRE and Northumbria University
- CD13.33 Annual Energy Statement (DECC, November 2011)
- CD13.34 Guidelines for the Preparation of Dispersion Modelling Assessments for Compliance with Regulatory Requirements – an Update to the 1995 Royal Meteorological Society Guidance
- CD13.35 Not used
- CD13.36 Comparative Site Assessment for a Strategic Waste Management Facility (September 2007)
- CD13.37 Photography and photomontage in landscape and visual impact assessment, Landscape Institute Advice Note 01/11 (2011)
- CD13.38 Chalara dieback of ash (*Chalara fraxinea*). Forestry Commission
- CD13.39 Action Plan for Tree Health and Plant Biosecurity. Defra and Forestry Commission
- CD13.40 *Feeney v Secretary of State for Transport & Ors* [2013] EWHC 1238 (Admin) point 90
- CD13.41 Mark McMurray, Solicitor of Dundas & Wilson published in *Scottish Planning & Environmental Law (SPEL)* in August 2013 Waste Core Strategy adopted 21st November 2012 Policy WCS 6
- CD13.42 *Bagmoor v Scottish Ministers*
- CD13.43 Citation Cotswold Beechwoods
- CD13.44 Urbaser Balfour Beatty Gloucestershire Residual Waste Project Habitat Regulations Screening Report January 2012 Appendix 2 – Pope's Wood, Gloucestershire, Assessment of Vulnerability to Nitrogen Deposition
- CD13.45 Technical Note III Assessment of air pollution impacts for

- Conservation status reporting European Community Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora (92/43/EEC)
- CD13.46 SEPA e-mail dated 18 & 31 October 2013
 - CD13.47 Weather spark
 - CD13.48 Waddenzee Judgement 7 September 2004 C-127/02
 - CD13.49 Joint Core Strategy Gloucester, Cheltenham and Tewksbury – Draft for Consultation October 2013 (Extract)
 - CD13.50 Joint Core Strategy Gloucester, Cheltenham and Tewksbury – Developing the Preferred Option Consultation Document December 2011 – February 2012 (Extract)
 - CD13.51 Tewkesbury Borough Council, Gloucester City Council, Cheltenham Borough Council – Joint Core Strategy Green Belt Assessment (AMEC, September 2011) (Extract)
 - CD13.52 East Sussex and Brighton and Hove Waste Local Plan Inspectors Report (2004) (extract)
 - CD13.53 Coopers Edge - Plan
 - CD13.54 Coopers Edge – 800 Homes
 - CD13.55 Not used
 - CD13.56 York & Brussels workshops on Air Pollution
 - CD13.57 Advanced Thermal Treatment of Municipal Solid Waste, Defra (Feb 2013)
 - CD13.58 Mechanical Biological Treatment of Municipal Solid Waste, Defra (Feb 2013)
 - CD13.59 CEWEP Energy Report III (Status 2007-2010) Results of Specific Data for Energy, R1 Plant Efficiency Factor and NVC of 314 European Waste-to-Energy (WtE) Plants (Dec 2012)
 - CD13.60 Residual Waste Infrastructure Review, High Level Analysis – Issue 4, Eunomia (May 2013)
 - CD13.61 Hansard extract: Parliamentary Question & Answer referred to in paragraph 36 on page 17 of Dr P C Coggins proof of evidence.
 - CD13.62 The Persistent Organic Pollutants Regulations 2007, SI No. 3106
 - CD13.63 (a) English Translation of Section 1 and Section 2 scientific paper “Dioxin pollution after flue gas cleaning during startup subsequent to short- and long-term inspection and overhaul outages of a waste-to-energy plant”.
 - CD13.63 (b) Dioxinbelastung der Rauchgasreinigung während des Anfahrbetriebes nach Kurz und Langzeitrevisionen einer thermischen Abfallverwertungsanlage” MPU-Meß- und Prüfstelle Technischer Umweltschutz GmbH, Berlin
 - CD13.64 Email exchange between S Aumonier (ERM) and A Harm (DECC) regarding Quantifying GHG benefits of waste projects. November 2013.
 - CD13.65 Green Impact Reporting Criteria. Green Investment Bank. November 2013
 - CD13.66 The National Household Waste Analysis Programme, Phase 2 Results Report, Volume 2, Chemical Analysis Data, AEA Technology, (Sept 1994)
 - CD13.67 Opinion of Advocate General Kokott, Case C-6/04, Commission of European Communities v UK and Great

- Britain and Northern Ireland, Conservation of natural habitats – wild fauna and flora (June 2005)
- CD13.68 CIWM Report 2013, Commercial and Industrial Waste in the UK and Republic of Ireland. October 2013.
- CD13.69 Energy from Waste UK – Joint Statement on Energy from Waste. Version One, 2011.
- CD13.70 Stroud District Council Waste Core Strategy Representation, January 2011
- CD13.71 Stroud District Council, Five Year Housing Land Supply, August 2012
- CD13.72 Stroud District Council, A Review of Stroud District Council's Five Year Housing Land Supply, October 2013
- CD13.73 DECC – UK renewable Energy Roadmap Update 2013
- CD13.74 DEFRA 2012-13 Annual Publication LA Levels
- CD13.75 DEFRA- Statistics on waste managed by local authorities in England in 2012/13
- CD13.76 Eunomia Volume 5 Review
- CD13.77 Eunomia Residual Waste Infrastructure Review High-level Analysis
- CD13.78 Eurostat Waste in the EU27
- CD13.79 Let's Recycle 2013 Hogg -Waste arisings - will we have capacity? recycling and waste management news and information 14 November 2013
- CD13.80 Welsh Government 2013 Towards Zero Waste One Wales One Planet The Waste Prevention Programme for Wales Number WG19974
- CD13.81 Submission from Glosvain to the WCS (Stockholm Convention on persistent organic pollutants)
- CD13.82 Letter from the Environment Agency to Friends of the Earth dated 21 August 2009
- CD13.83 Timeline Submission from Glosvain to the WCS
- CD13.84 Letter from FOE to GCC dated 8 September 2008
- CD13.85 Rogerson launches waste prevention programme

PROOFS OF EVIDENCE

URBASER BALFOUR BEATTY (UBB)

- UBB1 Proof of Evidence by Nicholas Roberts
- UBB1/A-X Appendices to Proof of Evidence by Nicholas Roberts
- UBB1 Y Errata Proof by Nicholas Roberts
- UBB1/Z Nicholas Roberts Summary Proof of Evidence
- UBB2 Proof of Evidence by Jeremy Smith
- UBB2/A-G Appendices to Proof of Evidence by Jeremy Smith
- UBB2/Z Jeremy Smith Summary Proof of Evidence
- UBB2/REB/A Rebuttal Proof of Evidence by Jeremy Smith
- UBB2/REB/B Appendices to the Rebuttal Proof of Evidence of Jeremy Smith
- UBB3 Proof of Evidence by Dr Stephen Carter
- UBB3/A-D Appendices to Proof of Evidence by Dr Stephen Carter
- UBB3/Y Errata to Proof of Evidence by Dr Stephen Carter
- UBB3/Z Dr Stephen Carter Summary Proof of Evidence

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| UBB3/REB/A | Rebuttal Proof of Evidence by Stephen Carter |
| UBB3/REB/B | Appendices to Rebuttal Proof of Evidence by Dr Stephen Carter |
| UBB3/REB/C | Summary to the Rebuttal Proof of Evidence by Dr Stephen Carter |
| UBB4 | Proof of Evidence by Stephen Othen |
| UBB4/A-B | Appendices to the Proof of Evidence of Stephen Othen |
| UBB4 Z | Stephen Othen Summary Proof of Evidence |
| UBB4/REB/A | Rebuttal Proof of Evidence by Stephen Othen |
| UBB4/REB/B | Appendices to the Rebuttal Proof of evidence by Stephen Othen |
| UBB4/REB/C | Summary to the Rebuttal Proof of Evidence by Stephen Othen |
| UBB5 | Proof of Evidence by Simon Aumonier |
| UBB5/A-I | Appendices to the Proof of Evidence by Simon Aumonier |
| UBB5/Y | Note on the calculation of biomass content of waste fuel for the Javeline Park EFW facility (in response to query by Glosvain email)... |
| UBB5/Z | Summary Proof of Evidence Simon Aumonier |
| UBB5/REB/A | Rebuttal Proof of Evidence by Simon Aumonier |
| UBB5/REB/B | Appendices to the Proof of Evidence by Simon Aumonier |
| UBB5/REB/C | Summary to the Rebuttal Proof of Evidence by Simon Aumonier |

GLOUCESTERSHIRE COUNTY COUNCIL (GCC)

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| GCC/1/A | Proof of Evidence by R Gillespie |
| GCC/1/B | Summary Proof of Evidence by R Gillespie |
| GCC/1/C | Appendices to R Gillespie Proof of Evidence |
| GCC/1/REB/A | Rebuttal Proof of Evidence by R Gillespie |
| GCC/2/A | Proof of Evidence by P Grover |
| GCC/2/B | Summary Proof of Evidence by P Grover |
| GCC/2/C | Appendices to the Proof of Evidence by P Grover |
| GCC/2/REB/A | Rebuttal Proof of Evidence by P Grover |
| GCC/3/A | Proof of Evidence by P Russell-Vick |
| GCC/3/B | Summary Proof of Evidence by P Russell-Vick |
| GCC/3/C | Appendices to the Proof of Evidence by P Russell-Vick |
| GCC/3/REB/A | Rebuttal Proof of Evidence by P Russell-Vick |
| GCC/4/A | Proof of Evidence by P Darley |
| GCC/4/B | Summary Proof of Evidence by P Darley |
| GCC/4/C | Appendices to the Proof of Evidence by P Darley |
| GCC/4/D | Addendum to the Proof of Evidence by P Darley |
| GCC/4/REB/A | Rebuttal Proof of Evidence by P Darley |
| GCC/5/A | Proof of Evidence by N McQuitty |
| GCC/5/B | Summary Proof of Evidence by N McQuitty |
| GCC/5/C | Appendices to the Proof of Evidence by N McQuitty |
| GCC/5/D | Addendum to the Proof of Evidence by N McQuitty |
| GCC/5/REB/A | Rebuttal Proof of Evidence by N McQuitty |

STROUD DISTRICT COUNCIL (SDC)

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| SDC/1 | Proof of Evidence of Barry Wyatt |
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| SDC/1/A-J | Appendices to the Proof of Evidence of Mr Wyatt |
| SDC/1/Z | Summary of Proof of Evidence of Mr Barry Wyatt |
| SDC/2 | Proof of Evidence of Christine Marsh |
| SDC/2/A-E | Appendices to the Proof of Evidence of Christine Marsh |
| SDC/2/Z | Summary to the Proof of Evidence of Christine Marsh |
| SDC/3 | Proof of Evidence of Dr Christopher Coggins |
| SDC/3/Z | Summary Proof of Evidence of Dr Christopher Coggins' Proof of Evidence |
| SDC/4 | Proof of Evidence of Mark Christensen |
| SDC/4/A-V | Appendices to the Proof of Evidence of Mark Christensen |
| SDC/4/Z | Summary to the Proof of Evidence of Mark Christensen |
| SDC/4/REB/A | Rebuttal Proof of Evidence of Mark Christensen |
| SDC/5 | Proof of Evidence of David Jones |
| SDC/5/A-K | Appendices to the Proof of Evidence of David Jones |
| SDC/5/Z | Summary Proof of Evidence of David Jones |

GLOSVAIN

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| GV1 | Proof of Evidence by Mr Watson |
| GV/1/A | Appendices to the Proof of Evidence by Mr Watson |
| GV/1/B | Summary to the Proof of Evidence by Mr Watson |
| GV/1/REB/A | Rebuttal Proof of Evidence of Mr Watson |
| GV/1/REB/B | Appendices to the Rebuttal Proof of Evidence of Mr Watson (VOL 1) |
| GV/1/REB/C | Appendices to the Rebuttal Proof of Evidence of Mr Watson (VOL 2) |
| GV/1/Y | Errata to Mr Watson's Proof of Evidence. |
| GV2 | Proof of Evidence by Sue Oppenheimer |
| GV2/A | Appendices to the Proof of Evidence by Sue Oppenheimer |
| GV2/B | Summary Proof of Evidence by Sue Oppenheimer |
| GV3 | Proof of Evidence of Juliet Bailey |
| GV3/A | Appendices to the Proof of Evidence of Juliet Bailey |

GLOUCESTERSHIRE FRIENDS OF THE EARTH NETWORK (GFOEN)

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|-------------|---|
| FOE/1/A | Proof of Evidence by Mary Newton |
| FOE/1/B | Summary to the Proof of Evidence by Mary Newton |
| FOE/1/REB/A | Rebuttal Proof of Evidence by Mary Newton |

OTHER INQUIRY DOCUMENTS

UBB

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| UBB/INQ/1 | Response to Highways Matters raised by the Planning Inspector in the Pre-Inquiry Note of 14 November 2013 |
| UBB/INQ/2 | Opening submission on behalf of UBB |
| UBB/INQ/3 | Landscape Viewpoint Locations Plans |
| UBB/INQ/4 | Extract from the Stroud Local Plan |
| UBB/INQ/5 | 273 Yates-Taylor Environment Agency – 8 June 2010 |

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| UBB/INQ/6 | National Trust – Somerset site gives hope for ash dieback disease |
| UBB/INQ/7 | Building height graphs |
| UBB/INQ/8 | Press articles relating to the fire at Fos-Sur-Mer |
| UBB/INQ/9 | Review of Highways Matters raised by Members of the Public |
| UBB/INQ/010 | Note regarding Persistent Organic Pollutants |
| UBB/INQ/011 | Note regarding the Habitats Directive and cumulative impacts |
| UBB/INQ/11.1 | Revised Note regarding the Habitats Directive and cumulative impacts |
| UBB/INQ/12 | Cases referred to in closing submissions |
| UBB/INQ/12.1 | Revised Cases referred to in closing submissions |
| UBB/INQ/12.2 | Further revised cases referred to in closing submissions |
| UBB/INQ/13 | Note from UBB (Stephen Othen) with a corrected table and stack height |
| UBB/INQ/14 | Transcribed note of UBB's cross examination of Robert Gillespie on CHP and Hunts Grove on 26 November 2013 |
| UBB/INQ/15 | Note clarifying CHP Assumptions in WRATE Analysis UBB5I |
| UBB/INQ/16 | Javelin Park B8 reserved matters decisions documents |
| UBB/INQ/17 | Closing submissions by UBB |

GCC

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| GCC/INQ/1 | Response to the Inspectors Note INSP/INQ/1 |
| GCC/INQ/2 | Not used |
| GCC/INQ/3 | Opening submissions on behalf of GCC |
| GCC/INQ/4 | Alternative approaches to Plants |
| GCC/INQ/5 | Information on largest incinerator in France |
| GCC/INQ/6 | Comparative Assessment of Effects on Designated Heritage Assets |
| GCC/INQ/7 | Extract of Minutes of County Council Meeting 15 May 2013 |
| GCC/INQ/8 | Landscape Institute GLVIA3 extract |
| GCC/INQ/9 | Let's Recycle – Gloucestershire advertises £646 million PFI deal |
| GCC/INQ/10 | GCC's OJEU Notice for its Residual Waste contract in 2009 |
| GCC/INQ/011 | Proposed development of an energy from waste facility on land at Hartlebury Trading Estate, Worcestershire. Design & Access Statement April 2010 |
| GCC/INQ/12.1 | <i>Forest of Dean DC v Secretary of State for Communities and Local Government</i> [2013] EWHC 4052 (Admin) |
| GCC/INQ/12.2 | <i>R(Raissi) v SSHD</i> [2008] QB 836 |
| GCC/INQ/12.3 | <i>Hilder v Dexter</i> [1902] AC 474, 477 |
| GCC/INQ/12.4 | <i>Samuel Smith Old Brewery (Tadcaster) v SSCLG</i> [2009] EWCA Civ 333 |

GCC/INQ/12.5 *Presstext v Austria* [2008] Bus LR D118
GCC/INQ/13 Closing submissions by GCC

SDC

SDC/INQ/1 Opening statement on behalf of SDC
SDC/INQ/1.1 Amendment to the Opening Statement by SDC
SDC/INQ/2 Caselaw to be referred to in Closing submissions by SDC
SDC/INQ/3 Closing submissions by SDC

GLOSVAIN

GV/INQ/001 Opening Statement on behalf of Glosvain
GV/INQ/002 Email exchange between Mr Watson & Energy to Waste & Dominic Hogg (Eunomia)
GV/INQ/003 Closing submissions by Glosvain

GFOEN

FOE/INQ/001 Opening statement on behalf of GFOEN
FOE/INQ/002 Closing statement on behalf of GFOEN

INSPECTOR

INSP/INQ/1 Note from Inspector – Request for further guidance & Information.
INSP/INQ/2 Note from Inspector – Response to Mr Elvin – GCC/INQ/1
INSP/INQ/3 Note from the Inspector to assist Third Parties at the Inquiry
INSP/INQ/4 Note from the Inspector regarding Issue 5 of the WCS
INSP/INQ/5 Note from the Inspector regarding POPS
INSP/INQ/6 Note from the Inspector regarding the statements from the Interested Parties

POST INQUIRY DOCUMENTS OTHER THAN THOSE RELATING TO CONDITIONS

PINQ1 Letter dated 10 March 2014 from Planning Inspectorate to main and Rule 6 parties
PINQ2 Response from GFOEN
PINQ3 Response from GCC
PINQ4 Response from GlosVAIN
PINQ5 Response from UBB on *Barnwell Manor*
PINQ6 Response from UBB on National Planning Practice Guidance
PINQ7 Letter dated 28 March 2014 from Planning Inspectorate to main and Rule 6 parties
PINQ8 Response from UBB
PINQ9 Response from GCC

Annex B: Schedule of Conditions

Time limit

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

Notification of commencement

2. Notwithstanding condition 1 above, the operator shall notify the Waste Planning Authority of the date of the material start of each phase of development in writing at least 5 working days prior to each phase. The phases of development shall comprise:

2.1 completion of access road under condition 17;

2.2 the commencement of construction;

2.3 the commencement of commissioning trials ("commissioning trials" are defined as operations in which waste is processed under specified trials to demonstrate that the facility complies with its specified performance); and

2.4 the date when the development will become fully operational ("fully operational" is defined as the point from which it has been demonstrated that the facility operates in accordance with its specified performance once the commissioning trials have been successfully completed).

Approved Plans

3. The development hereby permitted shall be carried out in strict accordance with the following site layout and elevational drawings except in respect of those elements shown for illustrative or indicative purposes (and so noted on the drawings) and except as otherwise required by any of the conditions set out in this permission:

- Drawing Number 11034_PL10 (Part 4 of the Planning Application Document) – Elevations Sheet 1 – January 2012
- Drawing Number 11034_PL11 (Part 4 of the Planning Application Document) – Elevations Sheet 2 – January 2012
- Drawing Number 11034_PL13 (Part 4 of the Planning Application Document) – Gatehouse – January 2012
- Drawing Number 11034_PL15 (Part 4 of the Planning Application Document) – Ancillary Buildings – January 2012
- Drawing Number 11034_PL27 (Part 4 of the Planning Application Document) – South Elevation Sector 1 – January 2012
- Drawing Number 11034_PL28 (Part 4 of the Planning Application Document) – South Elevation Sector 2 – January 2012
- Drawing Number 11034_PL29 (Part 4 of the Planning Application Document) – South Elevation Sector 3 – January 2012

- Drawing Number 11034_PL30 (Part 4 of the Planning Application Document) – North Elevation Sector 1 – January 2012
- Drawing Number 11034_PL31 (Part 4 of the Planning Application Document) – North Elevation Sector 2 – January 2012
- Drawing Number 11034_PL32 (Part 4 of the Planning Application Document) – North Elevation Sector 3 – January 2012
- Drawing Number 11034_PL33 Rev A (Part 4 of the Planning Application Document) – East Elevation – January 2012
- Drawing Number 11034_PL34 Rev A (Part 4 of the Planning Application Document) – West Elevation – January 2012
- Drawing Number 11034_PL35 (Part 4 of the Planning Application Document) – Detailed Wall Section Bottom Ash – January 2012
- Drawing Number 11034_PL36 (Part 4 of the Planning Application Document) – Detailed Wall Section Refuse Bunker – January 2012
- Drawing Number 11034_PL37 (Part 4 of the Planning Application Document) – Detailed Wall Section Visitor Centre – January 2012
- Drawing Number 11034_PL38 (Part 4 of the Planning Application Document) – Detailed Wall Section Boiler / Turbine Hall – January 2012
- Drawing Number 11034_PL39 (Part 4 of the Planning Application Document) – Detailed Wall Section Flue gas Treatment – January 2012
- Drawing Number 11034_PL40 (Part 4 of the Planning Application Document) – Detailed Wall Section Tipping Hall – January 2012
- Drawing Number 11034_PL41 (Part 4 of the Planning Application Document) – Detailed Wall Section Tipping Hall / Offices – January 2012
- Drawing Number 11034_PL43 (Part 4 of the Planning Application Document) – Detailed Wall Section Bottom Ash Gable – January 2012
- Drawing Number 11034_PL44 (Part 4 of the Planning Application Document) – Detailed Wall Section FGT Gable – January 2012
- Drawing Number 11034_PL45 (Part 4 of the Planning Application Document) – Administrative Block Elevations – January 2012
- Drawing Number 11034_PL04 (Part 4 of the Planning Application Document) – Proposed Site Plan – January 2012
- Drawing Number 11034_PL05 (Part 4 of the Planning Application Document) – Level 0, Level 1 and Basement Plans – January 2012
- Drawing Number 11034_PL06 (Part 4 of the Planning Application Document) – Level 2, Level 3 and Roof Plan – January 2012
- Drawing Number 11034_PL08 (Part 4 of the Planning Application Document) – Longitudinal Section – January 2012

- Drawing Number 11034_PL09 (Part 4 of the Planning Application Document) – January 2012
- Drawing Number 11034_PL12 (Part 4 of the Planning Application Document) – Fencing and Gating Plan – January 2012
- Drawing Number 11034_PL16 (Part 4 of the Planning Application Document) – Level 0 Sector 1 Plan – January 2012
- Drawing Number 11034_PL17 (Part 4 of the Planning Application Document) – Level 0 Sector 2 Plan – January 2012
- Drawing Number 11034_PL18 (Part 4 of the Planning Application Document) – Level 0 Sector 3 Plan – January 2012
- Drawing Number 11034_PL19 (Part 4 of the Planning Application Document) – Level 1 Sector 1 Plan – January 2012
- Drawing Number 11034_PL20 (Part 4 of the Planning Application Document) – Level 1 Sector 2 Plan – January 2012
- Drawing Number 11034_PL21 (Part 4 of the Planning Application Document) – Level 2 Sector 1 Plan – January 2012
- Drawing Number 11034(0)PL22 (Part 4 of the Planning Application Document) – Level 2 Sector 2 Plan – January 2012
- Drawing Number 11034_PL23 (Part 4 of the Planning Application Document) – Level 3 Sector 1 Plan – January 2012
- Drawing Number 11034_PL24 (Part 4 of the Planning Application Document) – Level 3 Sector 2 Plan – January 2012
- Drawing Number 11034_PL25 (Part 4 of the Planning Application Document) – Level - 1 Plan – January 2012
- Drawing Number 11034_PL26 (Part 4 of the Planning Application Document) – Level - 2 Plan – January 2012
- Drawing Number GCC-ISRS-LAN-942-03-01 (Part 4 of the Planning Application Document) – Proposed Landscape Plan – January 2012
- Drawing Number 18917-SK-500-01 Revision D (submitted with the first Regulation 22 ES Further Information on 11th September 2012) – Schematic Drainage Layout – July 2011

CONSTRUCTION PHASE CONTROLS

Community Liaison Group

4. The development hereby permitted shall not be commenced until details of a Community Liaison Group, including their terms of reference (which shall include a complaints scheme), have been submitted to and approved in writing with the Waste Planning Authority. The approved details shall be implemented and adhered to fully thereafter.

Finished Materials

5. Within six months of the commencement of the development a detailed scheme for the external finish of the main building and chimney stack shall be submitted for approval in writing by the Waste Planning Authority. The scheme shall include details and samples of:

- a. The type and colours and finishes of all external construction and cladding materials;
- b. The overhanging verge details of all the west and east facing roofs at a scale of 1:50 and details of the junctions between the various cladding materials at a scale of 1:100

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

Construction Environmental Management Plan (CEMP)

6. No development hereby permitted shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Waste Planning Authority. The approved CEMP shall be implemented as approved and shall be adhered to throughout the construction phase of the development.

7. The CEMP shall include:

Construction Traffic Management Plan

i) A Construction Traffic Management Plan, which shall:

- specify the type and number of vehicles expected to be using the site on a regular basis;
- specify the vehicle delivery hours and the means for ensuring that delivery vehicles comply with those hours (ES paragraph 7.6.2);
- provide for the parking and manoeuvring of vehicles of site operatives and visitors;
- provide for the loading and unloading of plant and materials;
- provide for the storage of plant and materials used in constructing the development;
- specify off site construction vehicle routing to accord with the recommendations of the Transport Assessment paragraphs 8.3.1 to 8.3.3 (including local signage strategy - ES paragraph 7.6.2);
- specify details of supporting staff/operative travel management initiatives;
- specify details for the management of and procedures for the delivery of abnormal loads;
- specify measures to be adopted to mitigate construction impacts in pursuance of the CIRIA Environmental Code of Good Practice on Site (C692) or its successor; and
- include a scheme to encourage the use of Public Transport amongst contractors.

Ecology

A scheme to minimise and mitigate potential impacts on ecological interest during construction implementing the management actions contained in:

- ii) JP/CEMP/5/1 'Ecology – Bat Method Statement' or Method Statement based on the contents of JP/CEMP/5/1.
- iii) JP/CEMP/5/2 'Ecology – Badger Method Statement' or Method Statement based on the contents of JP/CEMP/5/2.
- iv) JP/CEMP/5/3 'Ecology – Breeding Birds Method Statement' or Method Statement based on the contents of JP/CEMP/5/3.
- v) JP/CEMP/5/4 'Ecology – Reptile Method Statement' or Method Statement based on the contents of JP/CEMP/5/4.

Dust and Odour

- vi) A scheme to minimise and mitigate the impacts of dust and odour on local air quality from construction operations (ES paragraph 13.4.8) during the construction of the development.

Noise and Vibration Management Plan

- vii) A scheme detailing the following:
 - the likely maximum construction-related noise and vibration levels at identified residential properties (as defined in Condition 32);
 - the measures that will be undertaken to measure and monitor construction related noise and vibration;
 - mitigation measures that will be used to reduce noise and vibration levels; and
 - actions that will be taken to respond to noise and vibration complaints.

Contaminated Land

viii) A scheme to show the measures to be taken to ensure that contamination identified at the site does not result in any significant environmental impacts during construction.

Management of Hazardous and Polluting Substances

ix) A scheme to manage and mitigate potential impacts from the storage of Fuels, Oils, Chemicals and Other Hazardous and Polluting Substances' based on the contents of JP/CEMP/4/1

Surface Waters and Flood Risk

x) A scheme outlining the measures to be adopted at the site to reduce the potential for adverse water quality impacts during the construction phase (including the washing-out of vehicles) in accordance with JP/CEMP/3/1 'Procedure for Water Management' or Method Statement based on the contents of JP/CEMP/3/1.

Lighting

xi) A scheme for lighting during the construction phase. The Scheme shall include the following details:

- The position, height and type of all lighting;
- The intensity of lighting and spread of light (Lux plans);
- The measures proposed to minimise impact of the lighting on bats and the environment generally including the particular measures for reducing light spill from internal lighting of the western elevation; and
- The periods of day and night when such lighting will be used for construction, and emergency needs.

Temporary Site Fencing

xii) A scheme setting out the arrangements for securing the site boundary and any spaces within the site that require isolation during works including specifying the types, height and method of installation of site fencing/hoarding throughout the construction phase.

Weed control

xiii) A scheme to manage any Japanese knot weed and invasive non-native species found on the site.

'Considerate Contractor'

xiv) Details of the measures to be introduced to ensure that the site contractor is a part of the Considerate Constructor scheme and that they will employ the principles of 'Best Practicable Means' (BPM) (ES paragraph 12.5.1).

Waste Minimisation

8. With the exception of survey works, no excavations shall commence on site until a detailed strategy and method statement for minimising the amount of construction waste resulting from the development has been submitted to and approved in writing by the Waste Planning Authority. The statement shall include details of the extent to which waste materials arising from the demolition and construction activities will be reused on site and demonstrate that the maximum use is being made of these materials. If such reuse on site is not practicable, then details shall be given of the extent to which the waste material will be removed from the site for reuse, recycling, composting or disposal in accordance with the waste hierarchy. All waste materials from demolition and construction associated with the development shall be reused, recycled or dealt with in accordance with the approved strategy and method statement.

Controlled Waters Protection Method Statement

9. No piling or any other foundation designs using penetrative measures shall commence until a detailed hydro-geological study has been undertaken and a Controlled Waters Protection Method Statement has been submitted to and approved in writing by the Waste Planning Authority. The submission must provide full consideration of the following:

- i. A ground investigation scheme providing a detailed assessment of the risk to all receptors that may be affected by the development or disturbance, including those off site;
- ii. An options appraisal and remediation strategy giving full details of any remediation measures required and how they are to be implemented;
- iii. An assessment of risks of groundwater flooding and settlement associated with any dewatering that may be required during the construction of the development;
- iv. An assessment of risks to surface waters on and off the site that may be affected by the construction works;
- v. The method of construction associated with site excavations and foundation works including the piling foundation works;
- vi. The method of controlling and discharging groundwater encountered during construction to avoid pollution of surface water and the underlying groundwater through any dewatering, drainage and discharges including details of how impacts on surface flows, groundwater flow path and groundwater levels will be controlled both during and post construction and how any potentially adverse effects will be mitigated particularly in relation to the risks of groundwater flooding and settlement from dewatering. The hydrogeological study must include:
 - a. An evaluation of groundwater flux beneath the site, including identification of key pathways within the Lias, elevations of pathways and associated pressure heads;
 - b. A thorough evaluation of the lateral hydraulic conductivity of the underlying Lower Lias strata at least to the depth of the deepest foundation;
 - c. Identification and design of mitigation measures required to manage the risks identified in bullet (a) and (b) above both during construction and for the completed scheme;
 - d. Assessment of any impact of the sunken bunker on groundwater flow, specifically addressing the potential impact on the adjacent M5 motorway with respect to flooding and potential subsidence as a result in changes in groundwater levels/flows together with any other potential environmental impacts that might be identified.
- vii. In the event that discharges of groundwater or increases in groundwater level would arise as a result of the scheme, the Flood Risk Assessment shall be updated and submitted for approval by the Waste Planning Authority;
- viii. Where changes in groundwater level, whether as a result of dewatering or otherwise, are identified as likely then the potential for subsidence in the area and specifically beneath the M5 shall be investigated and where necessary addressed. The scope of the investigation and mitigation measures, including design identified as part of the study shall be agreed in writing with the Waste Planning Authority prior to the piling or any other foundation designs using penetrative measures works commencing on site.

The development shall be fully implemented in accordance with the approved schemes.

Unexpected contamination

10. In the event that unexpected land contamination is found at the site during construction works, then no further development shall be carried out on that part of the site until the developer has submitted to and obtained written approval from the Waste Planning Authority for a Method Statement to deal with the unexpected contamination or material. This Method Statement shall set out in detail how this unexpected contamination or material is to be dealt with including a scheme of remedial measures and timescales for remediation. Thereafter the construction works shall proceed fully in accordance with the approved Method Statement.

Soil Management

11. No development hereby permitted shall commence until a soil management plan covering all the areas of proposed soft landscaping has been submitted to and approved in writing by the Waste Planning Authority. The soil management plan shall include details of the soil materials to be used, including their source, temporary stockpiling, depth of application and suitability as a growing medium. The soil management plan shall be implemented in accordance with the approved details.

Construction Times

12. Construction works shall only take place between 07.00 – 19.00 Monday to Friday and 07.00 – 12.00 on Saturdays and not at any time on Sundays, public or bank holidays, other than as prescribed for in this condition. Any construction related activities undertaken outside these hours shall be subject to a scheme to be approved in writing by the Waste Planning Authority and shall be carried out in accordance with the approved scheme. The scheme shall detail how construction related activities will not give rise to detriment to amenity from noise at the nearest noise sensitive dwelling.

Wheel cleaning facility

13. Prior to the commencement of any construction work, wheel cleaning facilities shall be installed at the site in accordance with details first to be submitted to and approved in writing by the Waste Planning Authority. The approved facilities shall be maintained in full and effective working order at all times and be available for use throughout the period of construction works. They shall be used by all vehicles carrying mud, dust or other debris on its wheels before leaving the site to prevent material being deposited on the public highway.

Pedestrian and cycle link

14. Within 12 months of the commencement of the development hereby permitted full details of a shared pedestrian and cycle link between the B4008 and the visitor and staff entrances shall be submitted to and approved in writing by the Waste Planning Authority. No commissioning trials shall commence until the shared pedestrian and cycle link has been constructed in accordance with the approved details.

Retention of Trees

15. All existing trees shown to be retained on the submitted plans shall be retained and protected during the construction operations (in accordance with BS5837:2012) with protective fencing erected and retained until construction of the development is complete.

Imported construction materials

16. The applicant or his contractor shall ensure that records are kept and made available for inspection by the Waste Planning Authority for the duration of the construction phases of the works, to demonstrate that only material appropriate for the end use of the site has been imported and used as infill material.

Provision of vehicular access

17. Vehicular access during the construction period shall be in accordance with the drawings contained within ES Appendix 5.5.

Landscape scheme

18. Within 12 months of the commencement of the development the plans and full details of hard and soft landscaping works and an Ecological Management Plan all based on the Proposed Landscape Plan Drawing Number GCC-ISRS-LAN-942-03-01 and Appendix 8.7 and Table 9.12 of the Environmental Statement shall have been submitted for the written approval of the Waste Planning Authority. These details shall include a detailed scheme for the landscaping of the site including details of:

- i) Hard landscaping, including:
 - a. Surface treatment finishes and colours;
 - b. Proposed finished levels or contours at 0.5 metre intervals;
 - c. Car parking layouts;
 - d. Other vehicle and pedestrian access and circulation areas;
 - e. Hard surfacing materials; and
 - f. Water attenuation basins and bio retention/wetland areas, and associated drainage scheme.
- ii) Soft Landscaping (including cultivation and other operations associated with plant and grass establishment) including planting plans covering the position, species, density and initial sizes of all new trees and shrubs;
- iii) The programme of implementation of the approved scheme, to include construction of the bund (using excavated material) at the eastern boundary of the site adjacent to the B4008 at the earliest opportunity in the construction programme (ES paragraph 12.5.3 and ES Appendix 5.5); and
- iv) Proposals for the maintenance of the landscaping.

The landscape works shall be implemented in accordance with the approved details and maintained for the duration of the development.

The approved soft landscaping scheme shall be implemented within the first available planting season (the period between 31 October in any one year and 31 March in the following year) following completion of the construction phase of the development. All planting and seeding undertaken in accordance with this condition shall be maintained and any plants which within five years of planting or seeding die, are removed, damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

PRE COMMISSIONING CONTROLS

Provision of on-site facilities

19. Commissioning trials shall only commence once the vehicular access, parking for site operatives and visitors and vehicular turning areas (marked on the ground for cars and commercial vehicles to turn so that they may enter and leave the site in a forward gear), are constructed, surfaced and drained in accordance with the details submitted to and approved in writing by the Waste Planning Authority. These areas shall be retained thereafter and not be used for any other purpose than the parking and turning of vehicles.

Cycle facilities

20. Prior to the commencement of commissioning trials of the development hereby permitted, details of secure and covered storage facilities, for a minimum of 7 bicycles and 3 motorbikes, shall be submitted for the approval in writing by the Waste Planning Authority. The approved facilities shall be provided within three months of approval and retained for the duration of the development.

Electrical Connection

21. The commissioning of the development hereby permitted shall not commence until the operator has submitted details of facilities to enable connection to the electricity distribution network and supply of generated electricity for approval in writing by the Waste Planning Authority. The connection to the electricity distribution network shall be carried out in accordance with the approved details.

Lighting details

22. Within 12 months of the commencement of the development hereby approved details of all operational external lighting and any operational internal lighting that would result in light spill from the western elevation of the building, shall be submitted for approval in writing by the Waste Planning Authority. The scheme shall be based on the Appendix 5.2 Lighting Design Report dated 2011, Section 3 and Appendices of the Argus Ecology Report dated 15th August 2012 and JP/CEMP/5/1 'Ecology – Bat Method Statement'. The scheme shall include the following details:

- a. The position, height and type of all lighting;
- b. The intensity of lighting and spread of light (Lux plans);
- c. The measures proposed to minimise impact of the lighting on bats and the environment generally including the particular measures for reducing light spill from internal lighting of the western elevation; and
- d. The periods of day and night when such lighting will be used for operational, maintenance and emergency needs.

The lighting scheme shall be carried out in accordance with the approved details.

Operational surface water drainage

23. Within 6 months of the commencement of development, a detailed scheme for surface water run-off control, surface water drainage (including the use of interceptors) and foul water drainage shall be submitted for approval in writing by the Waste Planning Authority. The detailed scheme for the provision of surface water

drainage or a sustainable containment drainage scheme to the operational development shall be based on the schematic drainage layout 18917-SK-500-01 RevD and the Proposed Drainage Strategy included in Section 11.4-5, and Vol 3 Appendix 11.1 of the Environmental Statement and in Drawings Number 18917-SK-500-01 (Drainage Principles), 18917-SK-500-03 (Detention Basins – long sections), and 18917-SK-500-04 (Bio retention Areas and Swales Cross Sections) as set out in the Regulation 22 Report of 7 September 2012. The submitted scheme shall show how the rate of run-off from the development site is to be managed and drained, with all clean roof and surface water being kept separate from foul water (including site drainage) with drainage from areas identified as high risk, e.g. loading bays and waste storage areas, not being discharged to any watercourse, surface water sewer or soakaways.

The scheme shall be implemented in full as approved prior to the date the development becomes fully operational and retained for the duration of the development.

Travel plan

24. Prior to the commencement of the commissioning trials of the development hereby permitted, an Operational Travel Plan covering all elements of the development, shall be submitted to and approved in writing by the Waste Planning Authority. The Travel Plan shall be adhered to and monitored in accordance with the approved details.

The Travel Plan shall be prepared in line with current best practice and shall include as a minimum:

- a. The identification of targets for trip reduction and modal shift;
- b. The method to be employed to meet these targets;
- c. The mechanisms for monitoring and review;
- d. The mechanisms for reporting;
- e. The penalties to be applied in the event that targets are not met;
- f. Mechanisms for mitigation;
- g. Mechanisms to seek variations to the Travel Plan following monitoring and reviews; and
- h. Measures to ensure adherence to the existing weight restrictions associated with the Cotswolds Lorry Management Zone.

A review of the targets shall be undertaken and submitted for approval in writing by the Waste Planning Authority within three months of the date when the development becomes fully operational and on an annual basis thereafter.

Dust control

24. Prior to the commencement of the commissioning trials of the development hereby approved a scheme for the management and mitigation of dust shall be submitted for the written approval of the Waste Planning Authority. The scheme shall be adhered to fully in accordance with the approved scheme.

POST COMMISSIONING CONTROLS

Pollution prevention

26. There shall be no discharge of foul or contaminated drainage from the development hereby permitted into either the groundwater or any surface waters, whether direct or via soakaways, with all areas where non-inert waste is stored, handled or transferred underlain by impervious hardstanding with dedicated drainage to foul sewer or a sealed tank / sump.

Waste throughput

29. The amount of waste received for treatment by the Energy from Waste Facility in any one calendar year shall not exceed its nominal capacity of 190,000 tonnes. For the avoidance of doubt the nominal capacity is the processing capacity of the plant under normal operating conditions, taking account of its annual average availability, due to planned maintenance events and other plant shutdowns.

Securing of Loads

30. All loads of waste materials carried on HGV into and out of the development hereby approved shall be enclosed or covered so as to prevent spillage or loss of material at the site or on to the public highway.

Waste Delivery Times

31. Heavy goods vehicles delivering any waste material, process consumables (such as lime etc) or removing material or residues (including processed incinerator bottom ash) associated with the operational phase of the development hereby approved shall only enter or exit the site between 07:00 hours and 19:00 hours on Monday to Friday inclusive and between 07:30 hours and 18:00 hours on Saturdays and between 08:00 hours and 17:00 hours on Sundays, Public and Bank Holidays.

Operational day time noise control

32. Prior to commencement of development a scheme detailing the methodology that will be employed to measure and record the pre commencement daytime (07:00 – 23:00, T=16hrs) and night time (23:00 - 07:00, T=8hrs) background (LA90,T) noise levels separately for each period as determined at the closest points to the curtilages of the residential dwellings listed below, accessible by the applicant or his consultant (as agreed by the Waste Planning Authority) shall be submitted and approved in writing by the Waste Planning Authority. The methodology shall be in accordance with the measurement parameters set out in BS4142: 1997 'Rating industrial noise affecting mixed residential and industrial areas'. The scheme as approved shall be implemented to establish the pre-commencement LA90(T) noise levels under the supervision of the Waste Planning Authority.

1. The Lodge (50m to the east);
2. Hiltmead House (250m to the north-west);
3. St Joseph's Travellers Park (440m to the west);
4. Linda's Home (530m to the west);
5. Old Airfield Farm (620m to the south-west);

6. Royston (700m to the east);
7. Broadfield Farm (725m to the north-west);
8. Warren Farm (940m to the south)

all as identified in Figure 12.1 of the Environmental Statement.

33. In order to protect noise sensitive residential dwellings from operational noise associated with the Energy from Waste facility, the specific noise emissions attributable to all fixed or mobile internal and external plant situated at the development hereby approved shall be at least 2 dB(A) below the pre commencement daytime (07:00 – 23:00) background noise level (LA90,T) between the hours of 07:00 – 23:00 and at least 2 dB(A) below the pre commencement night time (23:00 – 07:00) background noise levels (LA90,T) between the hours of 23:00 – 07:00 as determined in accordance with condition 32.

The specific noise levels shall be determined (as a 1 hour LAeq between 07:00-23:00 and a 5 minute LAeq between 23:00 – 07:00) at the closest points to the curtilages of the residential dwellings listed below, accessible by the applicant or his consultant as well as the Waste Planning Authority at a height of 1.5m above local ground height, to be determined either by way of direct measurement at the stated locations, or where extraneous ambient noise precludes this, by way of measurement at a point closer to the proposed facility and subsequent calculation of noise emissions at the locations stated below. The measurement should be free-field, taken at least 3.5m away from the nearest reflecting surface other than the ground.

1. The Lodge (50m to the east);
2. Hiltmead House (250m to the north-west);
3. St Joseph's Travellers Park (440m to the west);
4. Linda's Home (530m to the west);
5. Old Airfield Farm (620m to the south-west);
6. Royston (700m to the east);
7. Broadfield Farm (725m to the north-west);
8. Warren Farm (940m to the south)

all as identified in Figure 12.1 of the Environmental Statement.

34. Within three months of the date when the development hereby approved becomes fully operational a noise report shall be submitted for approval to the Waste Planning Authority, demonstrating compliance with the requirements of Conditions 32 and 33 above. The report shall include:

- a. A schedule of all plant and equipment installed or used during the operation of the facility;
- b. Locations of fixed plant and machinery and associated ducting, attenuation and damping equipment;
- c. Manufacturer specifications of sound emissions in octave or third octave detail;

- d. Comparison of plant noise levels with the established pre commencement background noise levels as required by condition 32;
- e. Relevant noise monitoring data gathered over a minimum of 24 hours during the normal working of the facility; and
- f. A list of remedial measures and timescales that shall be implemented in the event of non-compliance with Condition 33.

Note 1: A perceptible increase in low frequency noise can be established by comparing the pre-existing frequency content and operational frequency content at The Lodge in 1/3rd Octave band centre frequencies. An increase in individual 1/3rd octave bands greater than 10dB would result in a perceptible increase.

Noise monitoring complaints

35. In the event of a complaint being received by the Waste Planning Authority regarding operational noise emissions from the development hereby permitted the operator shall undertake a noise survey within 2 weeks of a written request by the Waste Planning Authority for such a survey to be undertaken. The noise survey shall be undertaken in accordance with BS 4142 (1997) and shall be carried out under the supervision of the Waste Planning Authority. The results of the noise survey shall be provided to the Waste Planning Authority for its written approval within 1 month of the survey being undertaken. Should the results of the noise survey suggest that further mitigation measures are necessary these shall be identified within the report and implemented within 1 month following their approval by the Waste Planning Authority.

Odour and dust containment

36. No handling, deposit or processing of waste material shall take place outside the confines of the buildings/structures hereby permitted.

37. No recyclable materials shall be stored outside on the ground and only a maximum of 2 fully covered containers of reject materials from the processing of incinerator bottom ash may be stored outside the incinerator bottom ash processing building pending collection during agreed HGV delivery/export hours as defined by Condition 31.

38. The containers of reject materials from the processing of incinerator bottom ash shall not be left outside the confines of the building outside of the agreed HGV delivery/export hours as defined by Condition 31.

39. To maintain negative air pressure within the Tipping Hall all doors to the waste Tipping Hall shall be kept closed unless vehicles are entering or leaving the Tipping Hall.

Use of machinery and mobile plant

40. All vehicles, plant and machinery operated solely within the site shall be maintained in accordance with the manufacturer's specification at all times, this shall include the fitting and use of effective silencers, and on all mobile wheeled plant used at the site the fitting and operation of a 'smart' or white noise reversing device, or similar non-intrusive reversing device.

Site Car Parking

41. Once the development hereby approved becomes fully operational the site shall provide no more than 45 car parking spaces and one coach parking bay including 4 car parking spaces for disabled drivers in accordance with drawing Proposed Site Plan reference 11034-PL04.

Removal of Permitted Development Rights

42. Notwithstanding the provisions of Part 4, Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) or any order revoking and re-enacting that Order with or without modification no buildings, fixed plant or fixed machinery shall be installed, erected or operated in, on or over this site except as authorised by this planning permission.

Management of residues

43. Two years from the date when the development hereby permitted becomes fully operational a review of APC (fly ash) residue management options shall be submitted for the written approval of the Waste Planning Authority, and on a bi-annual basis thereafter. This shall be based on monitoring of the market taking full account of social, environmental and economic factors and also potential emerging technologies and applications. Where viable opportunities for the diversion of the residues from landfill are identified, proposals shall be submitted to, and approved in writing by the Waste Planning Authority. Any scheme shall be executed in accordance with the approved details.

Site decommissioning

44. The operator shall inform the Waste Planning Authority in writing within 30 days of final cessation of operation of the development hereby permitted that all operations have ceased. Thereafter, the site shall be restored within a period of 24 months in accordance with a scheme to be submitted for the written approval of the Waste Planning Authority not less than 6 months prior to the final cessation of operation of the development hereby permitted. The scheme shall include the removal of all buildings, chimney stack, associated plant, machinery, waste and processed materials from the site.

Incinerator Bottom Ash (IBA) processing

45. There shall be no importation of IBA for processing at the site. IBA arising from the development hereby permitted shall be dispatched to the onsite IBA facility for processing into a construction material.

Breakdown or closure Contingency Plan

46. Prior to the first receipt of waste at the Energy from Waste facility details of the contingency plan to be employed to deal with the waste material destined for the Energy from Waste facility in the event of a breakdown or closure of it shall be submitted to and approved in writing by the Waste Planning Authority. In the event of any of the trigger events specified in the contingency plan occurring the contingency plan will be carried out as approved.

Annex C Abbreviations used in this report

| | |
|----------|---|
| APC | Air Pollution Control |
| AD | Anaerobic Digestion |
| AA | Appropriate Assessment |
| AONB | Area of Outstanding Natural Beauty |
| BAT | Best Available Technology |
| CCGT | Combined Cycle Gas Turbine |
| CHP | Combined Heat and Power |
| C+I | Commercial and Industrial |
| DAS | Design and Access Statement |
| DECC | Department of Energy and Climate Change |
| EfW | Energy from Waste |
| EiC | evidence-in-chief |
| EA | Environment Agency |
| EIA | Environmental Impact Assessment |
| EP | Environmental Permit |
| ES | Environmental Statement |
| FGT | Flue Gas Treatment |
| GCC | Gloucestershire County Council |
| GFOEN | Gloucestershire Friends of the Earth Network |
| GlosVAIN | Gloucestershire Vale Against Incineration |
| GLVIA | Guidelines for Landscape and Visual Impact Assessment: (Second or Third Edition as indicated) |
| HPA | Health Protection Agency (now Public Health England) |
| JCS | Joint Core Strategy for Gloucester, Cheltenham and Tewkesbury |
| JMWMS | Joint Municipal Waste Management Strategy |
| LCA | Landscape Character Area |
| MBT | Mechanical Biological Treatment |
| MHT | Mechanical Heat Treatment |
| MSW | Municipal Solid Waste |
| PAH | Polycyclic aromatic hydrocarbons |
| POPs | Persistent Organic Pollutants |
| RDF | Refuse Derived Fuel |
| SAC | Special Area of Conservation |
| SCR | Selective Catalytic Reduction |
| SOCG | Statement of Common Ground |
| SDC | Stroud District Council |
| SDLP | Stroud District Local Plan |
| SLA | Special Landscape Area |
| SRF | Solid Recovered Fuel |
| UBB | Urbaser Balfour Beatty |
| WCS | Waste Core Strategy |
| WDA | Waste Disposal Authority |
| WLP | Waste Local Plan |
| WPA | Waste Planning Authority |

XX
ZVI

Cross Examination
Zone of Visual Influence



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.